

FILED

AUG 25 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

CAUSE NO. 08-2-00897-4

APPEAL NO. 287017

IN THE COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

---

Alphonso R. Lee

Appellant

v.

Yakima Valley Community College

Respondent

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Appeal of dismissal as a tenured Counselor

Appellant's Brief

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Alphonso R. Lee, Pro Se

1114 South 38th Avenue

Yakima, WA 98902

(509) 965-8647

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## INTRODUCTION

In. § 8.6 Scope of Discovery—Privilege. In paragraph 1, it says,

“A party may not discover matters or communications protected by privilege. The existence and scope of the privilege are the same for purposes of discovery as for trial and are governed by statute and decisional law.”

See *Coburn v. Seda*. 101 Wn. 2d. 270 677 P. 2d. 173(1984) “a matter that is privileged is nondiscoverable.” In § 8.4 Scope of Discovery. In paragraph 1 it says,

“The scope of discovery is defined in Rule 26(6), which provides, parties may obtain discovery regarding any matter, not privileged.”

Mr. Lee has argued from day one to Yakima Valley Community College administrators and the YVCC AFT-Yakima Union that I can oppose discriminatory practices by the employer. I can do my job as a licensed mental health counselor and follow public policy mandates or a mandatory reporter of child abuse under Chapter 26.44 RCW and vulnerable adult abuse under Chapter 74.34 RCW. The College has a child care center and it has Running Start students under 18 and Adult Basic Education (GED) students under 18 years old. In *Jaffee v. Redmond*, a Supreme Court case, Mr. Lee as a psychotherapist, is not compelled to discuss his privileged communications with his client/patients. The YVCC administrators violated Title VII of the Civil Rights Act of 1964 that prohibits discrimination in hiring and discharge. Mr. Lee believes he is a victim of

retaliatory discharge in violation of the Washington Law against Discrimination (WLAD). An examination of the records will show that Mr. Lee was tried and prosecuted as a Speech/Communications instructor. There is not sufficient cause to dismiss Mr. Lee as a tenured counselor. My discharge was based mainly on Mark Rogstad converting my crime victim report into a complaint that was a violation of several statutes. In § 17.3 Discharge in violation of public policy is against the law in Washington State. I filed Equal Employment Opportunity Commission and Human Rights Commission complaints to oppose unlawful hiring practices by Yakima Valley Community College. The administrative record is full of exempt information and it was not admissible. RCW 9.73.030 Intercepting, recording, or divulging—private communications—consent required—Exceptions.

#### ASSIGNMENTS OF ERROR

(1) The Hearing Officer had a motion to suppress the October 2006 letter that also had several additions. The October 2006 letter was written by Bernal Baca, the AFT-Yakima Union President. He was asking the YVCC President, Linda Kaminski, to investigate Mr. Lee for misconduct. Private personnel file discipline and crime report personal information was disclosed in violation of exempt information under Chapter 42.56 RCW Public Records Act. I filed a Motion for a Change of Venue, because the

AFT-Yakima Union was not impartial to me, they were prejudicial. Bonnie Labbee had refused to represent me in a grievance and I was able to write a letter to have her recuse herself and she did so. The Hearing Committee still had other faculty members who were not impartial to me. The Board of Trustees was refusing my mail and it was returned to me and they were going to make the final decision on my dismissal and they also had failed to direct in 2005 for the Dean of Arts and Sciences to solve the Speech issue that I had raised. They refer me off campus and the problems continued. The Hearing Officer committed error of law because I also filed a Motion of Prejudice against the Board of Trustees and she still did not approve the Change of Venue. The Hearing Committee never raised any concerns about not having an Arts and Sciences Dean at the dismissal hearing and Mr. Rogstad making false statements about my email having electronic signature, digital signature or I signed it with a PIN number and none of it was true.

(2) Having access to my personnel file was Section 9.1 See AR EX 233 of the Collective Bargaining Agreement and Public Policy gave me access to my personnel file in RCW 49.12.240 Employee inspection of personnel file and RCW 49.12.250 Employee inspection of personnel file—Erroneous or disputed information. Assistant Attorney General James Yockey and YVCC Human Resources Director Mark Rogstad

made sure that I did not inspect my personnel file. This was obstruction of justice because Mr. Yockey sent an email to Mr. Rogstad alerting him that Mr. Lee is going to request that all corrective actions that are three years old be removed from his personnel file. See CP page 343 Mr. Yockey's email. The Court should as a matter of law and due process of law vacate or reverse the Findings of Fact, Conclusions of Law and Final Order for obstruction of justice by Mr. Yockey and Mr. Rogstad for denying Mr. Lee access and inspection of his personnel file and also denying him being able to have the 2000 written warning removed from his personnel file before the dismissal hearing. I also experienced discrimination from Mr. Yockey and Mr. Rogstad keeping my personnel file from me. I was unable to put a case together. They kept my discovery from me in my personnel file. Mr. Yockey argues progressive discipline, but he obstructed justice by making sure Mr. Rogstad kept my personnel file from me and the intent was to keep Mr. Lee from removing the 2000 written warning that was seven years old.

“Act of discrimination in violation of statute must be classified as wrongful act intentionally done.”

See Browning v. Slenderella Systems of Seattle (1959) 54 Wash. 2d. 440.

341. P. 2d. 859. The CBA also gave Mr. Lee access to documents in Section 8.13 that says,

“each academic employee shall have access to any District document that affects his or her status of employment.”

If I had been allowed access to my personnel file before the dismissal

hearing, I would have been able to have the 2000 written warning

removed from my personnel file. In Section 9.1 Personnel File, it says,

“each academic employee shall have the right to review the entire contents of his or her personnel file, except for confidential credentials.”

It also says in Section 9.1, “the contents of the personnel file shall be available for photocopying.”

(3) Mr. James Yockey, the Assistant Attorney General, charged Mr. Lee \$13,169.41 for copies of the YVCC administrative record, but did not give Mr. Lee 520 pages that were the originals for record of hearing proceedings so that he could argue his appeal in Superior Court. I request sanctions because I paid \$13,169.41 for the administrative record and I found out during my appeal to the Court of Appeals that I never received the 520 pages, so I had to pay the Superior Court for the copies. I cannot recover the denial of my appeal in Superior Court because of the 520 pages not given to me to support my appeal, but charging me \$13,169.41 for copies of the administrative record to be sent to Superior Court was against the law. The State cannot charge an individual so much money that they cannot appeal because of the costs. The sanctions should reflect a penalty for charging me \$13,169.41 and then not giving me 520 pages that

I had to pay for a second time to appeal to the Court of Appeals. The only reason I found out about not receiving the documents was because the Superior Court Clerk asked me if I wanted to examine what I was paying for and I accepted the offer. See CP pages 1303, 1304, and 1305.

#### DISMISSAL IN VIOLATION OF PUBLIC POLICY

(4) In AR Ex 3 and EX 4, a complaint is either 15.2 Complaints or 9.4 Complaints against Academic Employee. In 15.2 and 9.4 a complaint must be signed. In AR Ex 205 I send an email to Phyllis Strain and the subject is student. Ms. Strain forwards my crime victim report to Mr. Rogstad. She did not have my consent to forward my crime victim report to Mr. Rogstad. My client/patient in the crime victim report was also a vulnerable adult. In RCW 42.56.240 Investigative—Law enforcement and crime victims, the name of the crime victim is confidential. The identity of the person who reported the crime is confidential to protect their privacy. In RCW 74.34.040 Reports—Contents—Identity confidential the person who makes the report, their identity is confidential. In RCW 74.34.095 Confidential information disclosure. The name of the person who made the report is confidential, the report is confidential, the report is confidential, the investigation is confidential. The records are confidential and the witnesses are confidential. Since the assault took place on the YVCC campus, the student records are confidential under RCW 42.56.230

Personal information. In RCW 74.34.035 Reports—Mandated and permissive—Contents—Confidentiality. The report is confidential. In RCW 74.34.030 Immunity from liability. I can only be disciplined if it is proven that I made the crime victim report in bad faith. Tim Smith was an eye witness to Mr. Luckett being grabbed by Mr. McCormick. My patient/client told me that Mr. McCormick accused him of cheating on an exam and got in a physical struggle with him that included Mr. McCormick trying to force his hand open. The Hearing Officer and the Superior Court Judge should not have allowed my Motion to Suppress the November 3, 2006 investigation because it had numerous Chapter 74.34 RCW violations, Chapter 70.02 RCW violations, Chapter 5.60 RCW violations client/patient privilege communications violations and Jaffee v. Redmond violations, and Chapter 42.56 RCW Public Records Act violations. I ask the Court of Appeals to rule that the Hearing Officer should have suppressed the November 3, 2006 investigation by Mr. Rogstad and Judy Kjellman because it was a crime victim report and not a complaint against James McCormick as Mr. Rogstad claimed. Mr. Lee stated it was not a complaint because under Washington State law under Chapter 26.44 RCW and Chapter 74.34 RCW mandatory reporters make reports of abuse and not complaints by statute. Under Washington State mandatory reporting law, there is no statute that allows a Human Resources Director to convert

a crime victim report by a Licensed Mental Health Counselor into a complaint. The August 2, 2006 crime victim report is an email and a valid complaint under Sections 15.2 and 9.4 a valid complaint must be signed and it must be a complaint that is received. See AR EX 208 9.4 It cannot be converted into a complaint by a biased and non-impartial Human Resources Director with the intent to create problems. Mr. Rogstad lied that I filed a complaint so that he could send Mr. McCormick the August 31, 2006 letter that a complaint had been filed against him. See AR Ex 206 and then after framing me with a false complaint, he turns around and files a complaint against me and claims I was harassing Mr. McCormick. This was institutional racism and a violation of public policy because I have immunity for making a crime victim report in good faith based on RCW 74.34.050 Immunity from liability. See the crime victim report AR Ex 201 See Wed. 8/29/07 pages 31 Section 10-25 page 32 Section 1-23 and testimony by Tim Smith that he witnessed Mr. Lockett in a struggle and his hand was attempting to be forced open. I cannot be charged with bad faith reporting. See November 3, 2006 investigation AR Ex 19. It lists my name over 120 times that was confidential. It lists the crime victim over 80 times and his name was confidential. It lists Mr. Esparza over 20 times and his identity was confidential as a witness. The law under discovery is that privileged communications cannot be discovered. My dismissal was a

public policy violation for making a crime victim report that was also a public safety report under the duty to protect third parties in *Tarasoff v. Regents University of California*.

(5) Mr. Lee argues unfair prejudice under § 403.3 The balancing process—unfair prejudice. The Yakima Valley Community College administration should not have released Washington State Human Rights Commission complaints and Equal Employment Opportunity Commission discrimination complaints into the dismissal record. It was unfair prejudice under Rule 403. Rule 403 authorizes the exclusion of relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice.”

The Human Rights Commission complaints and the EEOC complaints were used to prejudice the Hearing Officer and the Hearing Committee about evidence that I viewed 05 a private employment record. In RCW 42.56.230 Personal information it says,

“personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.”

It was retaliatory discharge for Mr. Lee opposing right to privacy.” It was retaliatory discharge for Mr. Lee opposing forbidden discriminatory practices and for participation in investigations. See Charts 0, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 that show that Mr. Lee experienced a racially hostile

work environment in Speech/Communication job assignments, counselor job assignments and transfers. See *CBOCS West, Inc. v. Humphries* No. 06-1431 (May, 27, 2008). A racial or ethnically hostile work environment is also actionable under 42 U.S.C. § 1981 et. seq. See e.g., *Taylor v. Jones*, 653, F. 2d 1193, 1196 (8th Cir. 1981); *Spriggs v. Diamond Auto Glass*, 165 F. 3d 1015 (4th Cir. 1999); *Boutrous v. Canton Regional Transit Auth.*, 997 F. 2d 198 (6th Cir. 1993). There is no “threshold magic number” that Courts will apply to determine whether the conduct meets the “severe or pervasive” standard. *Rodgers v. Western-Southern Life Inc. Co.* 12 F. 3d 668, 674 (7th Cir. 1993); *Vance v. Southern Bell Tel. & Tel. Co.*, 863 F. 2d 1503, 1511 (11th Cir. 1989). Several courts have recognized that under the “severe or pervasive test, a single incident of invidious harassment can create a hostile work environment. See e.g., *Daniels v. Esset Group Inc.*, 937 F. 2d. 1264, 1274 N. 4 (7th Cir. 1991). The Court of Appeals must see the retaliatory discharge and the hostile work environment leading up to the discharge. There is sufficient evidence to convince a fair-minded person of the hostile work environment for Mr. Lee. My discharge was error of law and a public policy violation. “Legal determination of an agency is reviewed under an error of law standard.” *Clay v. Portik* (1997) 84 Wash. App. 553, 929 P). 2d 1132. Mr. Lee is a protected class under Title VII. Title VII of the Civil Rights Act of 1964

prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The Courts have allowed public employers to use carefully constructed affirmative action plans to remedy specific past discrimination that resulted in women and minorities being under-represented in the workplace (Johnson v. Transportation Agency, Santa Clara County), and upheld State and local laws prohibiting gender discrimination. Mr. Lee experienced gender discrimination at YVCC that he opposed. Mr. Lee challenged unfair job assignments being the only African-American faculty member, the only African-American Counselor and the only African-American Speech/ Communication adjunct instructor and the only minority male Speech/ Communications adjunct instructor. The YVCC administrators did not protect Mr. Lee from unfair job assignments, but they retaliated against him for filing discrimination complaints.

“To establish a prima facie case for retaliatory discharge, a plaintiff must show that he engaged in statutorily protected activity, that he was discharged, and that retaliation was a substantial factor behind the discharge.”

Vasquez v. Dept. of Soc. & Health Servs., 94 Wash. App. 976, 984, 974 P. 2d 348 (1999). The elements of the tort for wrongful termination in violation of public policy are set out in Gardner v. Loomis, 128 Wn. 2d. 931.

1) The clarity element. It is a violation of Title VII of the Civil Rights of 1964 to retaliate against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice. Retaliatory discharge is rooted in RCW 49.60.210 which makes it

“an unfair practice for an employer to discharge any person because he or she opposed any practices forbidden by this Chapter, or because he or she has filed a charge; testified, or assisted in any proceedings under this Chapter.”

Mr. Lee asserts a claim for wrongful discharge in violation of a clear mandate of public policy. Mr. Lee filed complaints of discrimination with the Washington State Human Rights Communication and the Equal Employment Opportunity Commission. The YVCC administration documented the complaints, but did not correct any of the unfair employment practices that caused the complaints. “The question of what constitutes a clear mandate of public policy is one of law.” *Dicomes v. States*, 113 Wash. 2d. 612, 617, 782 P. 2d 1002 (1989).

2) The Jeopardy element. The federal government recognizes a need for an EEOC that monitors the age discrimination in employment Act of 1967, Title I of The Americans with Disabilities Act of 1990, The Equal Pay Act of 1963, Sections 501 and 505, Rehabilitation Act of 1973, prohibits employment discrimination on the basis of handicap in any

program or activity which receives Federal Financial Assistance. The Washington State Legislature see the need to have the Washington State Human Rights Commission to help assure that the human rights of people in Washington are not being violated. Most poor people cannot afford an attorney and more injustices would go unreported and there would be more employer abuses if employees had to fear retaliation and discharge for opposing unlawful employment practices.

3) The Causation link. Mr. Lee believes that there is a link with his Human Rights Commission complaints and EEOC complaints with his discharge. See AR EX 12 page 3 paragraph three where Mr. Rogstad says, "In December of 1999, you made a similar claim in a filing with the Washington Human Rights Commission." In the AR that has Ex 12, there is another document dated December 26, 2004 and in paragraph five Mr. Rogstad again mentions the "Washington State Human Rights Commission." See AR EX 14 Mr. Rogstad shares with James McCormick, Linda Kaminski, Anthony Beebe, Tomas Ybarra, MaryLou Rozdilsky, Bryce Humphries, Mr. Lee and Bernal Baca information about my EEOC complaints and Human Rights Commission complaints page 2 in the last paragraph, page 3 he makes references to the HRC in paragraph 1, on page 4 in paragraph 7 he makes two references to EEOC, on page 5 paragraph 4 he mentions the EEOC again, on page 8 he mentions the EEOC in

paragraph 1, 6 and the HRC in paragraph 6. In the same document beginning on page 9, paragraph 8, it says, “in this case, you have requested that Mr. Lee be removed from the list of eligible Speech department instructors. As the department chair, you can make a recommendation that Lee be removed from the list of eligible instructors, but that recommendation is subject to a determination by the Dean under the terms of the Agreement. In this case, the Dean has not determined grounds exist to disqualify him.” Mr. Rogstad and Mr. McCormick are racists. His investigation was unauthorized. He retaliated against me by including the contents of HRC and EEOC complaints that were private. Ms. Bauer has no credentials in Communication or Speech. Mr. Rogstad refuses to acknowledge AR Ex 8 when he assaulted me in 2000. After AR Ex 14 is a copy of my Washington State Human Rights Commission complaints dated December 21, 1999. This was privileged communication and it was private. On the next page dated July 31, 2001 Mr. Rogstad includes a copy of an Equal Employment Opportunity Commission determination that was private. On the next page he includes another Human Rights Commission document that was private. On the next page he includes another Human Rights Commission document that was private. On the next page he includes another HRC document dated July 13, 2001 that was private. On the next page he includes another HRC

document that was private, further along he includes a copy of my EEOC complaint dated January 21, 2005. It is clear that my discharge was retaliation for filing HRC and EEOC complaints. AR Ex 21 is another EEOC document dated March 29, 2007, AR Ex 29 is another HRC complaint dated December 21, 1999 and AR EX 54 is another EEOC document dated June 20, 2005. SEE CP 1517-1523. The Board of Trustees mention the HRC discrimination complaint in 1.7 and the EEOC twice in 1.7. They mention the EEOC and HRC investigations again in 2.4 and make false assumptions about what the investigations really proved. The Findings of Fact Conclusions of Law and Final Order must be reversed or vacated for public policy violations regarding retaliatory use of EEOC and HRC private information. My dismissal created fear at YVCC about filing EEOC and HRC complaints.

4) The absence of justification element. Mr. Lee is a tenured Counselor and the majority of his HRC and EEOC complaints were about part time adjunct Speech/Communication unlawful job assignments. There is not sufficient cause to discharge me as a tenured Counselor.

“An appellate court may overturn a jury verdict only when it is clearly unsupported by substantial evidence.”

Burnside v. Simpson Paper Co., 123 Wash. 2d. 93, 107-108, 864 P. 2d 937 (1994). In other words,

“[t]he record must contain a sufficient quantity of evidence to persuade a rational, fair-minded person of the truth of the premise in question.”

*Cannon, Inc. v. Fed. Ins. Co.* 82 Wash. App. 480, 486, 918, P. 2d 937

(1996). Under Title VII, employees enjoy absolute protection from adverse employment decisions based on their participation in proceedings targeting discriminatory employment practices. Retaliation is prohibited under the Washington Law Against Discrimination (WLAD). See *Multicare Med. Ctr. V. Dept. of Soc. & Health Servs*, 114 Wash. 2d. 572. 584, 790 P. 2d. 124 (1990). Mr. Lee has no Section 9.2 Poor performance evaluations for teaching in 18 years. No Section 9.3 Poor counseling evaluations in 18 years and No Section 9.6 Progressive discipline. The Mark Rogstad investigations are made up by his racial prejudice towards Mr. Lee as an African-American and there is no substantial evidence to support his claims other than his own investigations and the racial prejudice of James McCormick.

The elements of the tort or wrongful termination in violation of public policy are set out in *Gardner v. Loomis*, 128 Wn. 2d 931:

- (1) The plaintiff must prove the existence of a clear public policy (the clarity element).
- (2) The plaintiff must prove that discouraging the conduct in which they engaged would jeopardize the public policy (the jeopardy element).

(3) The plaintiff must prove that the public policy-linked conduct caused the dismissal (the causation element).

(4) The defendant must not be able to offer an overriding justification for the dismissal (the absence of justification element).

#### Clarity element

The clear public policy for reporting crime victim abuse is found in Chapter 26.44 RCW, Chapter 74.34 RCW, Chapter 18.19 RCW, Chapter 28 RCW and RCW 42.56.240 investigative, law enforcement, and crime victims and Domestic violence law and Domestic relations. School Districts have special procedure for reporting abuse and so do Health Care professionals like doctors, nurses, psychiatrist, dentists and others. The State of Washington has created the Offices of Child Protective Services and Adult Protective Services to respond to reports of abuse. Law enforcement also responds to abuse reports in the State of Washington. The State of Washington also created a mandatory reporting system that makes it a crime for a mandatory reporter not to report suspected child abuse or vulnerable adult abuse.

#### Jeopardy Element

The Court has clarified the jeopardy element in Thompson v. St. Regis Paper Co. (appellant employee claimed he was discharged for compliance

with the Foreign Corrupt Practices Act). The Court reversed the pretrial order of the employer for summary judgment, holding:

The Foreign Corrupt Practices Act is a clear expression of public policy that bribery of foreign officials is contrary to the public interest ... if appellant's discharge was premised upon his compliance with the accounting requirements of the Foreign Corrupt Practices Act and intended as a warning to other St. Regis controllers, as appellant alleges, then his discharge was contrary to a clear mandate of public policy and, thus, tortious.

Mr. Lee alleges that he was discharged in violation of public policy for being a mandatory reporter of suspected abuse, or permissive abuse. To deal with the high levels of abuse in the State of Washington, the Offices of Child Protective Services and Adult Protective Services were created to take calls and respond to reports of suspected abuse. It is the intent of the State of Washington that no child or vulnerable adult suffer from abuse. Teachers, counselors, principals, secretaries, coaches, nurses, psychologists, childcare providers, and others are mandatory reporters of abuse. Dismissal proceedings were started against Mr. Lee for making a crime victim report. The law required Mr. Lee to make a crime victim report for public safety. The Tarasoff v. Regents of University of California (1976) Court case is clear that psychotherapist and psychologists have a duty to protect third party individuals from harm. Ms. Tarasoff was killed on the Berkeley campus because no one warned

her or her parents of the potential or suspected harm that may come to her. Mr. Rogstad violated the mandatory reporting law and duty to protect third parties from harm when he claimed that my crime victim report was harassment of Mr. McCormick. Under RCW 42.56.240 investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter. The specific investigative records compiled by investigative groups is exempt. The information revealing the identity of persons who are a witness to or victims of the crime is exempt. In his November 3, 2006 investigation AR Ex 19, Mr. Rogstad and Ms. Kjellman released Mr. Lee's name over 120 times, the name of the crime victim 80 times, and the name of Mr. Esparza, another witness, over 20 times. This violated the right to privacy and the statute. It also violated these statutes because information about vulnerable adult abuse is 100% confidential under RCW 74.34.095 and Chapter 74.34 RCW. If child abuse and vulnerable adult abuse was not monitored in the United States and the State of Washington, more children will be raped, sodomized, abused, neglected, burned, beaten, and killed. The same types of things would happen to vulnerable adults. Mr. Rogstad filed a complaint against Mr. Lee for doing his public safety duty to protect and it started the dismissal process. It is the intent of Child Protective Services

and Adult Protective Services for health care professionals like Mr. Lee to report suspected abuse to end harm and to save lives.

### Causation

The application of determinative factor causation was conclusively rejected in Wilmont v. Kaiser Alum. Co. 118 Wn. 2d 46, 70-74, 821, P. 2d 18 (1991):

The need not attempt to prove the employer's sole motivation was retaliation ... instead the employee must produce evidence that (protected conduct) was cause of the firing ... under the determinative factor test, an employer could clearly contravene the public policy mandate ... yet not be liable for wrongful discharge ... if the employer fired an employee both for misconduct and for pursuing (protected conduct) ... under the substantial factor test, if the pursuit of a claim ... was a significant or substantial factor in the firing, the employer could be liable even if the employee conduct otherwise did not meet the employer standards ... Furthermore, "proximity in time" between the desirable employee action and firing creates a rebuttable presumption of a causal link which "precludes a motion for dismissal" Wilmot 118 Wn. 2d 46 at 68-69.

Mr. Lee established time proximity because Mr. Rogstad made my crime victim report a complaint on August 31, 2006 and YVCC had forced Mr. Lee out of his tenured counselor contract and Speech 180 contract on February 7, 2007 and sent Mr. Lee home to wait until his dismissal. Mr. Lee filed a grievance in January 2007 and the AFT-Yakima Union refused to represent Mr. Lee that disputed that his crime victim report was a complaint. In Kahn v. Salerno, the Court stated that

“if an employee establishes that he or she participated in an opposition activity, the employer knew about the opposition activity and he or she was discharged, then a rebuttable presumption is created in favor of the employee that precludes us from dismissing the employee’s case.”

Marc Coomer, the interim Dean for Student Development, attended the grievance meeting and he wrote in his notice that Mr. Lee says he did not file a complaint against Mr. McCormick. See AR Ex 4 page 15 Section 9.2 Performance evaluations for Tenured and Special Appointment Academic Employees. Mr. Lee had no poor performance evaluations as a counselor under Section 9.2 of the CBA or Section 9.3 part time teaching in eighteen (18) years. The dismissal of Mr. Lee was error of law because Mr. Rogstad made his crime victim report into a complaint in violation of statutes.

### Justification

Company justification is an inherently factual question of both credibility and subjective motivation:

The plaintiff may respond to the employer’s articulated reason either by showing that the reason is pretextual, or by showing that although the employer’s stated reason is legitimate, the worker’s pursuit of (protected conduct ...) was nevertheless a substantial factor motivating the ... discharge. This is not to say, however, that simply pointing to a policy of discharging employees for ... (violations) will entitle an employer to prevail. For example, if that policy is not evenly applied ... an employee may use those circumstances as tending to show the ... policy was a pretext for discharge.

Wilmot, 188 Wn. 2d. at 73, 74. In Mr. Lee's case, he correctly applied the public policy, but Mr. Rogstad took the crime victim report and claimed it was a complaint. I was clearly discharged in violation of public policy. The crime victim report was a substantial factor in my discharge. It was mentioned by the President in her notice of dismissal.

#### STATEMENT OF THE CASE

Mr. Lee despite the negative investigations by Mark Rogstad had no Section 9.2 Poor performance evaluations for tenured faculty and special faculty appointment. He had no 9.3 Poor performance evaluations for part time teaching. See AR Ex 208 He had no 9.4 Complaints against Academic Employees. See AR Ex 208 He had no 9.6 Progressive discipline that included corrective interview, letter of reprimand, or oral reprimands. See AR Ex 208 He was never disciplined between 1989 and 2008 by any Arts and Sciences Dean and from 2000 to 2008 was never disciplined by a Grandview campus Dean. The 2000 written warning was a violation of the Collective Bargaining Agreement because Mr. Lee's supervising Dean did not give him the 2000 written warning. See AR Ex 210 8.3 The 3-day suspension was illegal, because again Mr. Lee's supervising Dean did not give him the three day suspension. See AR EX 211 8.1 The Dean for Arts and Sciences was the supervising Dean and she resolved the McCormick complaint informally. See Chart 0 below that

shows that Dean Rozdilsky took no disciplinary action against me for all of the letters Mr. McCormick wrote. The Court of Appeals must place a lot of weight on the no discipline or recommendation for discipline by Dean Rozdilsky.

NAME	DATE	EXHIBIT	DISCIPLINE
James McCormick	May 31, 2005	22	NONE
James McCormick	June 24, 2005	23	NONE
James McCormick	October 31, 2005	26	NONE
James McCormick	May 16, 2006	18	NONE
James McCormick	May 16, 2006	27	NONE

CHART 0

See Chart 0 Linda Kaminski, the YVCC President, appointed Tomas Ybarra to discipline Mr. Lee when he had already met with Dean Rozdilsky. Mr. Ybarra gave Mr. Lee a 3-day suspension and never spoke to Mr. Lee about the issues leading up to the 3-day suspension. The November 3 investigation is full of private information, personal information, student records, crime victim information, and other exempt information under the Public Records Act. The November 3 investigation is based on a made up complaint by Mark Rogstad who converted a crime victim report into a complaint which violated Washington Statutory Law under Chapter 26.44 RCW and Chapter 74.34 RCW. The dismissal is in

violation of Public Policy. It also has error of law and does not include substantial evidence to dismiss me as a tenured counselor. The following court cases support my assertions:

Pasco Police Officer's Ass'n v. City of Pasco (1997); Perry v. Sindermann (1972); Postema v. Pollution Control Hearing Bd. (2000); Hearings Bd., State of Washington (2003); Children's Hosp. and Medical Center v. Washington State Dept. of Health (1999); Brown v. State Dept. of Health, Dental Disciplinary Bd. (1999); Boundry Review Bd.; National Railroad Passenger Corporation v. Morgan; Sunrise Exp. Inc. v. Washington State Dept. of Licensing (1995); Rate Payers Ass'n for Cost Based and Equitable Rates (TRACER) (1994). See CP Notice of Appeal.

ARGUMENT

The Chart 1 below reflects the years that Mr. Lee did advising on the Yakima campus that was for extra pay and when Ms. Bauer and Ms. Labbee began to exclude Mr. Lee from being able to sign up for advising duties on the Yakima campus.

NAME	COUNSELOR ADVISING	CAMPUS
Alphonso Lee	1989-2000	Yakima
Alphonso Lee	2000-2005	Yakima and Grandview
Alphonso Lee	2006-2008	Grandview only

Chart 1

The removal from adjunct teaching assignments in Speech was consistent with the removal of Mr. Lee from advising duties on the Yakima campus. Ms. Bauer and Ms. Labbee were jealous that Mr. Lee made more money than they did, because they would always state, "that's an extra contract

for more pay.” Mr. Lee worked evenings, mornings and weekends to help students and to take them to 4-year colleges/universities for campus visits in vans that the other counselors did not do. I was not paid.

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER IS SUBSTANTIAL EVIDENCE THAT RESPONDENT YAKIMA VALLEY COMMUNITY COLLEGE COMMITTED ERROR LAW BY USING PART TIME SPEECH ISSUES TO DISMISS MR. LEE AS A TENURED COUNSELOR.

Yakima Valley Community College has not provided substantial evidence to support Mr. Lee’s dismissal as a tenured Counselor.

“When a party asserts that an agency action is not supported by substantial evidence, an appellate court does not weigh witness credibility or substitute its judgment for the agency’s finding of fact.”

Brown v. State, Dept. of Social and Health Services (2008) 145 Wash.

App. 177, 185 P. 3d 210. The YVCC evidence is related to Speech issues and not tenured counselor performance problems, tardiness, failure to perform duties or misconduct.

“Clearly erroneous standard applies to Court review of factual issues decided by administrative agency, while error of law standard applies to issues of law.”

Read v. Employment Security Dept. of State of Wash. (1991) 62 Wash.

App. 227, 813 P. 2d. 1262. Mr. Lee asks the Court of Appeals to reverse or vacate the Findings of Fact, Conclusions of Law and Final Order

because it does not address what Mr. Lee did to get dismissed at Yakima Valley Community College after eighteen (18) years as a tenured counselor.

“Court of Appeals reviews an agency’s interpretation of statutes under an error of law standard, which allows an appellate court to substitute its own interpretation of the statute or regulation for the agency’s interpretation.”

Seattle Area Plumbers v. Washington State Apprenticeship and Training

Council (2006) 131 Wash. App. 862, 129 P. 3d. 838, as amended. See CP

which is the Findings of Fact, Conclusions of Law and Final Order pages

1517-1523 Speech 180 is listed fourteen (14) times in the Findings of

Fact, Conclusions of Law and Final Order. James McCormick, a full time

Speech instructor, is referenced eleven (11) times about Speech issues.

Ms. Kathryn Bauer is referenced twenty-two (22) times about Speech

related issues. Mr. Lee is referenced twenty-nine (29) times about part

time adjunct Speech issues. This proves by substantial evidence that the

Finding of Fact, Conclusions of Law and Final Order is about Speech and

not about Mr. Lee as a tenured Counselor. The Findings of Fact,

Conclusions of Law and Final Order does not discuss Mr. Lee not doing

his tenured Counselor job for eighteen (18) years. From 2000 to 2008, Mr.

Lee worked on the Grandview campus of YVCC, forty-five (45) miles

from Yakima and never saw Ms. Bauer or Mr. McCormick. Testimony by

Daniel Erickson, a full-time Speech instructor, confirmed that he never

approved for Ms. Bauer, Ms. Cuevas, or Mr. Camerer to replace Mr. Lee teaching Speech 180 or Speech 280. This proves that Mr. McCormick was treating Mr. Lee differently with unfair job assignments in violation of Title VII. On CP Page 1519 in paragraph 2.2, the Board of Trustees says, “College had sufficient cause to terminate a tenured instructor after progressively disciplining the instructor for making repeated, derogatory remarks about colleagues.”

The College committed error of law by claiming they could dismiss Mr. Lee as an instructor when he was a tenured Counselor. See *Armstrong v. State* (1998). The College did not progressively discipline Mr. Lee. The 2000 written warning was about a jealous female, Ludvina Donaldson, who was angry that I would not date her. She was almost twenty (20) years older than me and she was jealous that I spent time with Isabel Garcia and not her. See AR Ex 238 where over a two-year period from 1998-1999, Ms. Donaldson secretly recorded when Nick Esparza came to the Counseling Center and who he saw, for what purpose and for how long. This was not done with any of the other counselors. Kathryn Bauer is not an innocent victim at YVCC. See AR Ex 215 which is a hostile work environment complaint I filed against Ms. Bauer on Wednesday, September 24, 2003 and nothing was done. See AR Ex 34 which is a document that again addresses problems with Mr. McCormick and Ms. Bauer dated November 22, 2004. See AR Ex 36 where I correct my error

that Ms. Bauer had the academic credentials to teach Speech 180 interpersonal communication. The Findings of Fact, Conclusion of Law and Final Order does not have the facts correct. The interpersonal communications class was cross listed as Speech 180/Student Development 150. The cross listing of the interpersonal communications class gave the false appearance that counselors had the academic credentials to teach Speech courses. See AR Ex 61 where I dropped the Student Development cross listing of interpersonal communications and it became only Speech 180 interpersonal communications. Ms. Bauer has no degree in Communications. See AR Ex 252 on page 2 where Speech part time instructors should have a Master's degree in Speech with emphasis on Public Speaking. See AR Ex 221 which is the employment application of Ms. Bauer who was Ms. Calvert at the time of her application. On page 2 under Education, Ms. Bauer is deceptive where she puts Applied Psychology/Communications under Bachelor of Arts, but she has no degree in Communications. Her Master's degree is in Counseling Psychology and not Communications or Speech. The Board of Trustees are out of date because the whole Community College and Technical College system in the State of Washington have changed to common course numbering and Speech 180 is now Communication Studies 210 at every Community College and Technical College that teaches

interpersonal communication in the State of Washington. It is not true that Applied Psychology is the chosen degree to teach interpersonal communications as stated by the Board of Trustees in their Findings of Fact, Conclusions of Law and Final Order. I have a degree in Communications from the University of Washington, School of Communications and I have Communications graduate level course work from Portland State University, and the University of Oregon. I am not harassing Ms. Bauer or challenging her academic credentials to teach Communication courses, she does not have the academic background. She is not trained in Communications. The Findings of Fact, Conclusions of Law and Final Order shows substantial evidence that the YVCC administration and the AFT-Yakima Union did nothing to assure that discrimination was not taking place in adjunct Speech/Communication job assignments. Mr. Lee is blamed for being removed from Communication Studies/Speech adjunct teaching assignments when he had excellent course enrollment and positive student evaluations. The problem was Ms. Bauer's desire to conflict with Mr. Lee to get his Winter adjunct Communication Studies teaching assignment. She could not claim to be more qualified or better educated, so she used staged conflict like Ms. Donaldson in 2000 to make Mr. Lee appear to be a problem. The substantial evidence proves that the Arts and Sciences Dean, MaryLou

Rozdilsky from 1999-2006 who was the supervising administrator of Communication Studies/Speech never recommended discipline of any type for Mr. Lee AND THE YVCC ADMINISTRATION AND JAMES YOCKEY DID NOT HAVE MARYLOU ROZDILSKY TESTIFY IN MY DISMISSAL HEARING NOR DID THEY CALL JUDY KJELLMAN WHO WAS THE INTERIM ARTS AND SCIENCES DEAN TO TESTIFY. THEY CHOSE TO INSERT THE HUMAN RESOURCES DIRECTOR, MARK ROGSTAD, WHO IS NOBODY IN ANY OF THE COLLECTIVE BARGAINING AGREEMENTS AND HE HAD NO ACCESS TO MY PERSONNEL FILE. See AR Ex 210 CBA Section 8.3 Counselor Job Description that proves Mr. Lee is responsible to the Dean of Students. See Exhibit 233 CBA Section 9.1 Personnel File where it says in paragraph five,

“use of an individual’s personnel file is restricted to the individual academic employee, his or her immediate supervisor, the appropriate Dean, the Vice-President of Instruction and Student Services and the President.”

In Paragraph one (1) it says,

“the District shall retain one (1) personnel file for each academic employee.”

I ask the Court of Appeals how YVCC retained one (1) personnel file when most of the Exhibits by YVCC were not in my personnel file and I

had never seen some of them before, like all of the Board Policies that were not in the CBA.

RESPONDENT YAKIMA VALLEY COMMUNITY COLLEGE  
 EXHIBITS PERSUADE A FAIR-MINDED PERSON THAT  
 SUBSTANTIAL EVIDENCE IS ABOUT PART-TIME SPEECH  
 ISSUES AND NOT ABOUT MR. LEE’S PERFORMANCE AS A  
 TENURED COUNSELOR.

The majority of respondent’s exhibits have nothing to do with Mr. Lee’s protected counselor tenure status that requires sufficient cause to dismiss Mr. Lee as a tenured counselor. See RCW 28B.50.861. The following exhibits and Sections do not show sufficient cause to dismiss Mr. Lee as a tenured Counselor. From AR EX 15-62. And Sections 1-12 after exhibits 14 in AR.

EXHIBIT	EXHIBIT	EXHIBIT	SECTION
15 16 17	35 36 37	56 57 58	1) Applicable Collective Bargaining Agreement Provisions and Applicable Board of Trustees Policies. 2) November 22, 2004 Lee complaint to Mark Rogstad against McCormick and Bauer.
18 19 20 21	38 39 40 41	59 60 61 62	3) December 21, 1999 Lee complaint to Washington Human Rights Commission regarding Part-time Teaching class cancellation. 4) Spring, 2004 Lee Letters & emails regarding Bauer Not Qualified to teach Speech 280

20	41	5	5) Internal report on Lee's complaint about adjunct Speech department assignments (Lee, Bauer, McCormick) 6) Letters to Lee as directed by Board of Trustees Chair outlining appropriate complaint procedures 7) McCormick letter of complaint against Lee for hostile work environment
21	42	6	
22	43	7	
23	44	8	
24	45	9	8) E-mails regarding Lee's request to get letter of complaint against him prior to attempt to informally resolve dispute
25	46	10	
26	47	11	
27	48	12	9) June 24, 2005 McCormick letter amending his complaint against Lee for harassment arising from public information requests
28	49	13	
29	50	14	
30	51		10) Lee complaint to President Kaminski and Dean Rozdilsky regarding request to meet over McCormick complaint 11) October 31, 2005 complaint by McCormick regarding harassment by Lee arising from Lee picketing and news interviews
31	52		
32	53		
33	54		
34	55		
			12) November, 2005 e-mails by Lee and faculty Union members regarding Lee's grievance over Speech department adjunct teaching assignments

Chart 2

The Yakima Valley Community College administration did not have the conflict resolution skills to easily resolve the Speech problem with Ms. Bauer and Mr. McCormick. They tried to blame Mr. Lee for everything when I was only responding to the unequal treatment. I requested public

information and James McCormick filed a complaint. I used my first amendment right to express my feelings by picketing for thirty (30) minutes and Mr. McCormick charges me with harassment. The exhibits and Sections were a good example of how YVCC has contributory fault for not correcting the behavior of Ms. Bauer and Mr. McCormick. I filed Human Rights Commission complaints and EEOC complaints and YVCC never tried to correct the problem. They let Mr. McCormick refuse mediation to try to resolve the problems. The problems started when the incompetent Mr. McCormick became the Speech department head. There is substantial evidence that YVCC did not use evidence against Mr. Lee as a tenured Counselor to dismiss him, they used adjunct part-time Speech evidence. The Court of Appeals must find that the evidence from the Administrative record is not sufficient cause to dismiss a tenured Counselor based on RCW 28B.50.861 dismissal only for sufficient cause. See Brown v. State, Dept. of Social and Health Service (2008); see Ongom v. State Dept. of Health, Office of Professional Standards (2005).

JAMES YOCKEY AND YAKIMA VALLEY COMMUNITY COLLEGE  
FAIL TO HAVE A RULING OF MISCONDUCT BY THE  
SECRETARY TO SUPPORT MY DISMISSAL FROM YVCC AS A  
TENURED LICENSED MENTAL HEALTH COUNSELOR AND THEY  
HAVE NO BAD FAITH ARGUMENTS.

In RCW 18.225.080 Uniform Disciplinary Act it says,

“The uniform disciplinary act, Chapter 18.130 RCW governs unlicensed practice, the issuance and denial of licensure, and the discipline of persons licensed under this Chapter. The Secretary shall be the disciplinary authority under this Chapter.”

Does YVCC have the authority to charge a licensed lawyer with misconduct for part time teaching of Business Law or a criminal justice course without contacting the Washington State Bar Association? Can YVCC charge a dentist who teaches in the Dental Hygiene program with misconduct without contacting the Department of Health? Can YVCC charge Mr. Lee with misconduct and terminate his employment without raising the issue with the Secretary, who is responsible for the discipline of Licensed Mental Health Counselors? Mr. Lee never received a disciplinary hearing because the Department of Health ruled no misconduct. See CP page 1127 which is a copy of Mr. Lee’s Licensed Mental Health Counselor license signed by the Secretary. The other problem with the misconduct ruling by YVCC is that the Department of Health did not find misconduct. See CP page 907 that was a complaint of alleged unprofessional conduct. The ruling by the program was, “no cause for disciplinary action against your license to practice as a counselor.”

Since the Respondent was alleging misconduct, they failed to provide legal argument that identified which statutes I violated to commit misconduct that would lead to bad faith reporting of crime victim abuse.

RCW 26.44.060 Immunity from Civil or Criminal liability—Confidential communication not violated—Actions against State not affects—False report, penalty. The Respondent never proved that Mr. Lee made a false report. See crime victim report under penalty of perjury AR Ex 201 by Mr. Luckett. Mr. Lee made the crime victim report in good faith. See AR Ex 205 which is a crime victim report to Phyllis Strain and it was a treatment issue for my client. In RCW 74.34.035 Reports—Mandated and permissive—Contents—Confidential. In Section (4) it says a mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult.” Mr. Luckett did not ask me to contact law enforcement or Adult Protective Services. He was upset about the assault, but the Disability Support Services Director was dealing with the issue and was going to take care of the incident for Mr. Luckett. Mr. Rogstad, in his November 3, 2006 investigation, released my name over one hundred (100) times and the name of the crime victim over eighty (80) times in violation of RCW 42.56.230 Personal information and RCW 42.56.240 Investigative, law enforcement, and crime victims. Mr. Rogstad had no statutory authority to disclose the reporter’s name or the crime victim’s name. In RCW 74.34.035 in Section (8) it says, “unless there is a judicial proceeding or the person consents, the identity of the person making the report under this Section is confidential.”

Mr. Rogstad violated my right to privacy and his November 3, 2006 investigation violated public policy and my dismissal was a public policy violation. § 17:3 Discharge in violation of public policy. Washington law prevents an employer from discharging employee in violation of public policy.

Mr. Lee did nothing wrong in making a crime victim report. I truthfully reported what the crime victim told me.

“Social worker was entitled to qualified immunity in truthfully reporting children’s statements as required by Washington State law.”

Safouane v. King County, C.A.9 Wash (2007), 27 Fed. Appx. 780, 2001

WL 138 2049, unreported, certiorari denied 122 S.Ct. 1795, 535 U.S.

1036, 152 L.Ed. 2d. 653. Mr. Rogstad exceeded his statutory authority by

violating Chapter 74.34 RCW and the Public Records Act Chapter 42.56

RCW. See Galvis v. State, Dept. of Transp. (2007) 140 Wash. App. 693,

167 P. 3d 584, review denied 163 Wash. 2d. 1041, 187 P. 3d. 269. See

Stephens v. Employment Sec. Dept. of State of Wash. (2004) 123 Wash.

App. 894, 98 P. 3d. 1284. Agency interpretation of the law is not binding

on the Courts “As the reviewing officer, the Director of the Department of

Licensing (DOL) has the ability and right to modify or to replace findings

of witness credibility.” Regan v. State Dept. of Licensing (2005) 130

Wash. App. 39, 121 P. 3d. 731, review denied 157 Wash. 2d. 1013, 139 P.

3d. 350. See CP page 907. The Dept. of Health reviewed my conduct and took no action regarding the issue of misconduct that YVCC claimed. See CP page 907

SUPERVISING ADMINISTRATOR DEAN FOR ARTS AND  
SCIENCES MARYLOU ROZDILSKY TOOK NO DISCIPLINARY  
ACTIONS AGAINST MR. LEE FOR LETTERS WRITTEN BY JAMES  
MCCORMICK FROM 2005 TO 2006

MaryLou Rozdilsky served as the Dean for Arts and Sciences from 1999 to June 2006. From 1999 to 2004, over a five (5) year period, there were no problems between James McCormick and Mr. Lee. Dean Rozdilsky sat in the position of knowing that the problems began when Mr. McCormick began to force Mr. Lee out of adjunct Speech 180 Interpersonal Communication teaching assignments that Mr. Lee had been teaching since 1997. Dean Rozdilsky also was on the Curriculum Committee with Mr. Lee when he got approval for Speech 280 Intercultural Communications to receive Humanities distribution for the Associate of Arts and Associate of Sciences degrees.

We met in late August 2005 about Mr. McCormick's concerns. Arts and Sciences Dean MaryLou Rozdilsky headed up the meeting. Mark Rogstad was present, Steve Mitchell was present and Mr. Lee was present. Mr. Mitchell had conducted diversity trainings for the Yakima Policy

Department, Yakima Valley Community College and he taught Ethnic Studies for YVCC. See AR VERBATIM REPORT OF PROCEEDINGS for Friday, August 31, 2007. See AR page 150 which is direct examination of Steve Mitchell and his qualifications Sections 1-25. See AR page 154 Sections 3-25, page 155 Sections 5-9. Mr. Mitchell recalls the August 2005 meeting. Sections 13-25 address the May 31, 2005 letter from Mr. McCormick.

On page 159 Sections 7-23, Mr. Mitchell talked about his recommendation. In Sections 18-23 he identified a relationship problem and bringing in someone from the outside to try and bring the people back together and get them on course. See page 160 Sections 1-8 where Mr. McCormick was given a private note from the meeting and Mr. McCormick refused to participate in remediation for the relationship problem. Mr. Rogstad sent him the unauthorized note to create further problems. See page 164 Sections 1-9. It is clear in the record that Arts and Sciences Dean MaryLou Rozdilsky took no action against Mr. Lee and she took no disciplinary action on any letters from Mr. McCormick because he was writing letters, but refusing to participate to resolve the problems he was writing about. He complained and complained, but refused to participate in conflict resolution activities and relationship building activities. See AR Ex 28. It is the letter Mr. Rogstad sent to Mr.

McCormick and he later told Mr. McCormick that Mr. Lee had filed the complaint against him which was not true. Mr. Rogstad did not follow the Collective Bargaining Agreement and he cannot by statute convert a crime victim report into a complaint that is made by a mandatory reporter and Licensed Mental Health Counselor. This issue has been addressed in the brief.

Dean Rozdilsky retired in June 2006 after informally disposing of all of James McCormick's letters or not valid complaints. The YVCC administration illegally used Mr. McCormick's letters for my dismissal when Dean Rozdilsky did not take any disciplinary action on the letters. The Findings of Fact, Conclusions of law and Final order is full of misinformation about Mr. Lee harassing Mr. McCormick because Dean Rozdilsky took no disciplinary action. Mr. Lee is a victim of a racially hostile work place created by James McCormick, Mark Rogstad and YVCC administration and the AFT-Yakima union which failed to represent Mr. Lee. There is no substantial evidence that proves Mr. Lee harassed Mr. McCormick. Dean Rozdilsky never said Mr. Lee harassed Mr. McCormick, Ms. Bauer or anyone else. "Substantial evidence in context of appellate analysis of agency finding of fact is evidence that would persuade a fair-minded person of truth or correctness of matter." He didn't persuade the fair-minded Arts and Sciences Dean Mary Lou

Rozdilsky that Mr. Lee was harassing Mr. McCormick 45 miles away from him in Grandview. See Lee’s Drywall Co. Inc. v. State Dept. of Labor & Industries (2007) 141 Wash. App. 859 173 P. 3d. 934.

The following protected the crime victim’s rights against discrimination and disability discrimination:

- 1) RCW 60.215 Labor Regulations (disability discrimination)
- 2) RCW 28B.10.570 Interfering by force or violence with any administrator, faculty member or student unlawful—Penalty
- 3) RCW 28B.10.571 Intimidating any administrator, faculty member or student by threat of force or violence unlawful—penalty
- 4) Chapter 53 Crimes—Statute of limitations
  - (i) No gross misdemeanor may be prosecuted more than two years after its commission
  - (j) No misdemeanor may be prosecuted more than one year after its commission
- 5) RCW 28B.52.070 Discrimination prohibited
- 6) RCW 4.16.100 Actions limited to two years within two years:
  - (i) An action for libel, slander, assault, assault and battery, or false imprisonment
- 7) RCW 42.56.210 Certain personal and other records exempt
- 8) RCW 42.56.230 Personal information

The following personal information is exempt from public inspection and copying under this Chapter:

- (1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies or welfare recipients;
- (2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

- 9) RCW 42.56.240 Investigative, law enforcement, and crime victims.

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

- (1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;
- (2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure such desire shall govern.

- 10) Title I of The Americans with Disabilities Act of 1990.
- 11) Washington Law against Discrimination
- 12) RCW 28B.10.912 Students with disabilities—Core services describes—Notice of nondiscrimination
- 13) RCW 28B.10.914 Students with disabilities—Accommodation

14) Chapter 74.34 RCW

15) Rehabilitation Act Section 501 and Section 505

The AFT-Yakima failed to represent plaintiff Mr. Lee as he tried to provide services to his vulnerable adult, crime victim that were nondiscriminatory. The AFT-Yakima wanted Mr. Lee investigated for misconduct as he tried to provide appropriate services that were nondiscriminatory to my client/patient.

See Chart 3 which reflects the number of Communications instructors who have taught with no degree in Communications.

DISPARATE TREATMENT AS EVIDENCE OF A HOSTILE WORK ENVIRONMENT

NAME	RACE	DEGREE IN COMMUNICATION
Maria Cuevas	Hispanic	No
Susan Hale	White	No
Kathryn Bauer	White	No
Michael Campbell	White	No
Carolyn Dillahunt Calhoun	White	No
Alphonso Lee	African-American	Yes

Chart 3

James McCormick, the new Communications Department head in 2004, knew he was making an unfair job assignment and was creating a racially hostile work environment for Alphonso Lee when he told Mr. Lee that he needed to change teaching Communication Studies/Speech 210 Interpersonal Communications because he wanted to give Kathryn Bauer the winter slot. Mr. Lee had been teaching Communications

Studies/Speech 210 Interpersonal Communications since 1997. From 1997 to 2004 the evening Communication Studies/Speech 210 Interpersonal Communication looked like the Chart 4 below.

Name: Kathryn Bauer	Fall Quarter	Spring Quarter
Name: Alphonso Lee	Winter Quarter	Summer Quarter

CHART 4

In 2005, Chart 5 the evening Communication Studies/Speech 210 Interpersonal Communication had Mr. Lee with no Interpersonal Communication course, but Mr. McCormick had pushed Mr. Lee into the race-based Communication Studies/Speech 280 Intercultural Communication.

Name: Kathryn Bauer	Fall Quarter Comm. Studies/ Speech 210	Winter Quarter Comm. Studies/ Speech 210	Spring Quarter Comm. Studies/ Speech 210
Name: Alphonso Lee	No Course	Winter Quarter Comm. Studies/ Speech 280	Summer Quarter Comm. Studies/ Speech 210

CHART 5

The AFT-Yakima did nothing about the hostile work place being generated by James McCormick. In fact, Bernal Baca encouraged James McCormick to replace Mr. Lee teaching Communication Studies/Speech 280 with Maria Cuevas.

By the time 2006 had come around Chart 6, Mr. McCormick had continued his unfair job assignments and the 2006 Communication

Studies/Speech classes had no African-American instructor for the first time in nine (9) years on the Yakima campus.

Name: Kathryn Bauer	Fall Qtr. 2005 Comm. St. SPCH 210	Win. Qtr. 2006 Comm. St. SPCH 210	Spr. Qtr. 2006 Comm. St. SPCH 210	
Name: Maria Cuevas	Fall Qtr. 2005 No course	Win. Qtr. 2006 Comm. St. SPCH 280		Sum. Qtr. 2006 Comm. St. SPCH 280
Name: Steve Camerer	Fall Qtr. 2005 No course	Win. Qtr. 2006 No course		Sum. Qtr. 2006 Comm. St. SPCH 210
Name: Alphonso Lee	Fall Qtr. 2005 No course	Win. Qtr. 2006 No course	Spr. Qtr. 2006 No course	Sum. Qtr. 2006 No course

CHART 6

It was a hardship for Mr. Lee losing all of the income from teaching and it was especially more difficult because Mr. Lee had no Yakima teaching in the Winter or Summer and from June to September Mr. Lee was off for Summer vacation without money he used to get by teaching over the Summer break.

The AFT-Yakima, through Bernal Baca, the AFT-Yakima President, created a racially hostile work place by denying the African-American counselor an opportunity to work on the Yakima campus instead of being involuntarily transferred to the Grandview campus after being sexually harassed by Linda Kaminski, the YVCC President and assaulted by Mark Rogstad, the Human Resources Director.

Chart 7 below lists the seniority of the counselors in 2000 that could be involuntarily transferred to the Grandview campus. One has the most seniority and three had the least seniority.

SENIORITY OF COUNSELORS IN 2000

NAME	RACE	SENIORITY RANK
Alphonso Lee	African American	1
Tom Mount	White	2
Kathleen McDonald	White	3

CHART 7

Chart 8 shows how the AFT-Yakima and the YVCC administration did unfair job assignments and disparate treatment.

DISPARATE TREATMENT

NAME	RACE	SENIORITY	JOB ASSIGNMENT
Alphonso Lee	African American	1	Involuntary transfer to Grandview, 45 miles from Yakima
Tom Mount	White	2	Psychology position created Yakima
Kathleen McDonald	White	3	Counselor with Bernal Baca in the Federal Gear-up Grant Yakima

CHART 8

Chart 9 shows how the AFT-Yakima and the YVCC administration continued to work together to make sure the African-American had unfair job assignments and continued to experience a hostile work environment.

NAME	RACE	FEDERAL PROGRAM	YEAR	YAKIMA COUNSELOR POSITION
Kathleen McDonald	White	Gear Up	2000	African American Alphonso Lee denied position
Paulette Lopez	Hispanic	Title V	2002	African American Alphonso Lee denied position
Bob Chavez	Hispanic	Student Support	2003	African American Alphonso Lee denied position

		Services		
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CHART 9

THE COUNSELOR CHART SHOWS FURTHER DISPARATE TREATMENT BECAUSE THE AFRICAN-AMERICAN HAD THE PREFERRED COUNSELING CREDENTIAL AND HE WAS THE ONLY LICENSED MENTAL HEALTH COUNSELOR AND WAS NUMBER 20 ON THE FACULTY SENIORITY LIST

	LMHC	DEGREE IN COUNSELING	SENIORITY #
Alphonso Lee	Yes	Yes	20
Kathleen McDonald	No	No	Not tenured
Paulette Lopez	No	No	Not tenured
Bob Chavez	No	Yes	61

CHART 10

The AFT-Yakima created a racially hostile work environment by allowing unfair job assignments, discriminatory imposition of discipline, and allowed rule violations to be overlooked by white supervisors and James McCormick, the Communications/Speech Department Chair. Mr. Lee, from the charts mentioned, argues that the AFT-Yakima did not conduct its duty to fairly represent Mr. Lee and he experienced these causes of action: unfair job assignments, unfair disciplinary action, racial harassment included unwarranted disciplinary actions and closer monitoring than non-African-American employees, sexually hostile work environment, and racially hostile work environment.

DISCRIMINATION IN TRANSFERS

Carolyn Dillahunt Calhoun was allowed to transfer from the Grandview campus in 2008 to the Yakima campus of YVCC into an open English position. The following individuals were also allowed to transfer from the Grandview campus, to the Yakima campus, but Mr. Lee was denied the equal opportunity and was forced to continue in the unfair Grandview job assignment. See Chart 11 below discrimination in transfers and job assignments.

<u>NAME</u>	<u>RACE</u>	<u>YEAR</u>	<u>AREA</u>
Dr. Terry Leas Student Development	White	2003	Dean for
Sandra Schroeder	White	2000	English
Tony Lopez	Hispanic	2004	Custodian
Carolyn Dillahunt Calhoun	White	2008	English
Michael Campbell	White	early 1990's	English
Ben Mayo	White	middle 1990's	Math
David Huycke	White	late 1990's	Geology
Tracy Arostegui	White	late 1990's	English
Alphonso Lee	Black	denied 2000, 2002 and 2003	Counseling

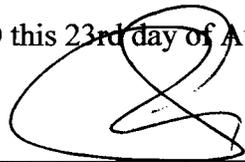
CHART 11

RELIEF

Mr. Lee requests front pay and back pay from his wrongful termination. Mr. Lee requests that the State pay for all the interest on any money he may receive as punitive damages or compensatory damages. Mr. Lee requests his counselor job back. Mr. Lee requests all costs and damages for emotional distress from the dismissal. Mr. Lee prays for at least

\$300,000. Repayment for all retirement benefits used and catching up benefits and all costs related to the dismissal and all interest paid on any money received. Reinstatement to all previous teaching responsibilities. The Respondent did not follow Chapter 70.02 RCW or CR35 and they never provided any certificate of compliance for any records as provided under Rule 26 at § 26.91 See re FireStorm 1991, 129 Wn. 2d. 130, 916, P. 2d. 411 (1996); Burnet v. Spokane Ambulance, 131 Wn. 2d 484, 933 P. 2d 1036 (1997) to avoid being charged with unauthorized use of report I ask the Court of Appeals to reverse or vacate the Findings of Fact, Conclusions of law and Final Order. Mr. Yockey denied me production of administrative hearing records and I request money sanctions for my losses under CR 37(d) records.

DATED this 23<sup>rd</sup> day of August, 2010 at Yakima, Washington.



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Alphonso R. Lee, Pro Se  
1114 South 38th Avenue  
Yakima, WA 98902

IN THE COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

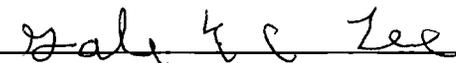
Alphonso R. Lee,	)	
Appellant	)	CAUSE NO. 08-2-00897-4
	)	APPEAL NO. 287017
v.	)	
	)	CERTIFICATE OF SERVICE
Yakima Valley Community College,	)	
Respondent.	)	

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I declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct to the best of my knowledge: I am over the age of 18. I served true copies of Appellant's brief and Certificate of Service by U.S. Mail on the individuals listed below:

<u>Name</u>	<u>Address</u>
Suzy West President's Office	Yakima Valley Community College South 16th Avenue and Nob Hill Blvd. Yakima, WA 98902
James Yockey Assistant Attorney General	1433 Lakeside Court #102 Yakima, WA 98902

DATED this 23rd day of August, 2010 at Yakima, Washington.

  
Gale Lee  
1113 Cornell Avenue  
Yakima, WA 98902