

STATE OF NORTH CAROLINA    IN THE GENERAL COURT OF JUSTICE  
   SUPERIOR COURT DIVISION  
COUNTY OF WAKE                    FILE NO. 02-CVS-06418

\_\_\_\_\_  
ROBERT GROVER BOREN            )  
   )  
vs.                                    )  
   )  
N.C. STATE UNIVERSITY, et al    )  
\_\_\_\_\_  
   )

Transcript of proceedings taken in the  
General Court of Justice, Superior Court Division,  
Wake County, North Carolina, at the February 5, 2004  
Civil Session before the Honorable S. Bullock, Judge  
Presiding.

APPEARANCES:

ROBERT GROVER BOREN, PRO SE PETITIONER  
Raleigh, NC

KIMBERLY D. POTTER, ESQUIRE  
MOLLY G. RYAN  
Office of the Attorney General  
Raleigh, NC.  
On behalf of the Respondents, N.C. State

University

Reported by:  
Gina M. Macchio, RPR, CSR  
Official Court Reporter  
Tenth Judicial District

1                   (The proceedings were commenced at 10:50 a.m.  
2 in open court.)

3                   THE COURT: All right.

4                   MS. POTTER: This is all I have. This is all  
5 the recovered records.

6                   Copy of our brief, Your Honor.

7                   THE COURT: There was an administrative  
8 hearing held on this at some point?

9                   MS. POTTER: Yes, Your Honor, there was. It  
10 should be in the official record. Do you have that?

11                   THE COURT: I don't know. This is all I have.  
12 Maybe this is it.

13                   MS. POTTER: Let's see.

14                   THE COURT: There was a hearing held on June  
15 14, 2002?

16                   MR. BOREN: Yes, sir.

17                   THE COURT: Is the transcript of that  
18 hearing -- this is it, you want to look at this, see if  
19 this is what you need?

20                   MR. BOREN: I have a copy of the transcript.

21                   MS. POTTER: We do, as well. Is the date on  
22 your order June 14, 2002?

23                   MS. RYAN: Your Honor, may I approach?

24                   MR. BOREN: Your Honor, I have --

25                   THE COURT: Hold on just a second.

1 MS. RYAN: Your Honor --

2 THE COURT: Is it there?

3 MS. RYAN: Yes, sir.

4 THE COURT: Okay. Somebody tell me what this  
5 case is about, how it got here.

6 MS. POTTER: Yes, Your Honor, I'd be happy to  
7 do that.

8 THE COURT: Yes, ma'am.

9 MS. POTTER: The petitioner, Mr. Boren, was  
10 not a student at North Carolina State University, when  
11 in 2002, he repeatedly visited the education department  
12 there and interacted with several employees in the  
13 department. He was asking for the same information each  
14 time he visited, I believe, some documents. And the  
15 interactions during those visits made the employees  
16 uncomfortable. And they were intimidated to such a  
17 degree that they contacted the chief of police at N.C.  
18 State, Chief Younce, and asked him to install panic  
19 buttons in their offices. Chief Younce asked why the  
20 panic buttons were necessary, and the employees, which  
21 consisted of two faculty members and one staff member,  
22 explained to him that the repeated requests of Mr. Boren  
23 made them uncomfortable and caused them to fear for  
24 their safety.

25 Chief Younce installed the panic buttons and

1 he began an investigation into the matter. His  
2 investigation concluded in a trespass warning being  
3 issued to Mr. Boren and that warning just minimally  
4 restricted the time, place and manner in which he was to  
5 enter this education department. First the warning  
6 asked that he make an appointment with the dean's office  
7 before he enter. And second, the warning asked that on  
8 the day of that appointment, if one were to be made, he  
9 check in with the police station before he proceeded to  
10 that appointment.

11 Mr. Boren took issue with the trespass warning  
12 and followed the procedure of appeals process through  
13 the University, which resulted in a hearing. And the  
14 final agency decision of that hearing was to affirm the  
15 trespass warning against Mr. Boren. And that is the  
16 matter before Your Honor today.

17 THE COURT: All right. Anything you want to  
18 say in regard to the factual basis for this?

19 MR. BOREN: Certainly. First of all, I'm not  
20 a lawyer, so I trust you'll let me know if I stray.

21 THE COURT: I just want to know the reason  
22 that caused you to be here at this time.

23 MR. BOREN: Well --

24 THE COURT: What has happened, not what you  
25 think or all that, just what has actually happened.

1           MR. BOREN: What has actually -- my whole  
2 belief is that I think they made this up, they've done  
3 nothing to substantiate it.

4           THE COURT: Okay. All right.

5           MR. BOREN: I do have more to say.

6           THE COURT: Okay. All right. Who filed the  
7 petition to come here?

8           MS. POTTER: Your Honor, Mr. Boren, the  
9 Petitioner, did.

10          THE COURT: All right. Sir, why do you  
11 think -- what kind of relief are you asking for?

12          MR. BOREN: If I might introduce one of the  
13 documents that I requested a second time.

14          THE COURT: All right, sir.

15          MR. BOREN: The University has left a lot of  
16 information out of the record. I was a student, and I  
17 filed a grievance against a professor in 2001. That was  
18 in -- I'm going to try to be as brief as possible. I  
19 was in a gender issues class. I was applying to  
20 graduate school and there was an assignment that was  
21 handed out that required students to divulge their  
22 sexual identity, their sexual orientation and their  
23 gender identity, whether they are transgendered or not.  
24 You had to tell the professor. And they were going to  
25 be graded on whether or not they answered the questions.

1 And I found this inappropriate, and went to the  
2 professor privately, respectfully raised this issue, was  
3 warned that I'm, quote, I'm quoting, she quoted Kenny  
4 Rogers and warned me that you've got to know when to  
5 hold them, know when to fold them. I went on to be a  
6 target of her remarks for the rest of the semester.

7 During that semester, I applied to graduate  
8 school. At the end, toward the end of the semester, I  
9 got my rejection from the program. And I believe at  
10 that time that the professor had retaliated against me  
11 and compromised my application.

12 THE COURT: What reason did they give you for  
13 denying your admission?

14 MR. BOREN: That I was -- it's right on this  
15 document, this is where it says not competitive with  
16 current applicant pool. This is the official  
17 recommendation. And it took me a while to catch this,  
18 but if you'll look under applicant data, everything  
19 looks fine under applicant data. It has the Miller  
20 Analogies Test, M.A.T. 65, that is my correct score. My  
21 G.P.A. above that has three times been falsified. That  
22 has been one of my assertions in my initial grievance  
23 before I ever got a copy of this document, that I had  
24 been compromised. And when I asked for this again, was  
25 in -- was nine days before I got this threat of arrest.

1 I think it was in retaliation.

2 All I asked was, there are two things, the  
3 chief of police multiple times in the hearing admits  
4 that he didn't follow the policies that he used against  
5 me, and also admits that I did nothing wrong. There's  
6 not a single suggestion that I acted inappropriately at  
7 any point, not that I raised my voice once, that I gave  
8 someone a strange look, nothing, because I didn't. And  
9 he wouldn't tell me ahead of time how many people had  
10 said something, who said anything. I just said, look --  
11 I wrote him back, he didn't identify the policy that I  
12 was supposed to appeal under. I wrote him back, I said,  
13 yes, I would like to appeal, but I would like to know  
14 what I'm responding to, who said what. I think it's  
15 important for me to know.

16 THE COURT: Did you have a hearing?

17 MR. BOREN: That was in the hearing. In the  
18 hearing, I asked him, I said --

19 THE COURT: Hold on, did you have a hearing  
20 before a board or a body or somebody, present people  
21 standing up saying why they are taking the action  
22 they're taking?

23 MR. BOREN: The -- only the chief of police  
24 and the associate vice chancellor appeared. There were  
25 no witnesses against me. And my point was how -- let's

1 hear who they are, because then that gives me the  
2 opportunity to say specifically what my interactions  
3 were with those individuals, whether I even saw them at  
4 all, whether I had any contact with them. I was in the  
5 process toward the end of the hearing, explaining what  
6 my exact actions were, which had never been asked before  
7 I was threatened for the arrest. I was explaining my  
8 exact actions. Mr. Rainer continually interrupted me,  
9 and I said look --

10 THE COURT: Who's Mr. Rainer?

11 MR. BOREN: Mr. Rainer is the vice chancellor  
12 who was supposed to be the hearing officer.

13 THE COURT: Okay.

14 MR. BOREN: I feel he was dishonest with me in  
15 the hearing. He told me later on, this is one of the  
16 things that I asked the attorney general, to correct the  
17 record, the record is very poorly -- the transcript is  
18 very poorly prepared, has inaccuracies in it. Also, the  
19 written record that they submitted omitted -- had  
20 omissions, which I corrected, but in the hearing, toward  
21 the end, as Mr. Rainer, the hearing officer, was  
22 becoming exasperated with me, he asserted your grievance  
23 was responded to. Yet earlier in the hearing, at the  
24 very beginning, he maintained that he really didn't --  
25 he was almost unaware of any grievance issue, that he



1 really had no awareness of that, but it came out later  
2 that apparently that was less than truthful, but I have  
3 a record dating back throughout this grievance process  
4 of catching the University, catching deans and assistant  
5 deans and an associate dean lying to me.

6           The COURT: What is it that you want from the  
7 University?

8           MR. BOREN: I would like to know who made  
9 statements against me, specifically.

10          THE COURT: Okay.

11          MR. BOREN: I would like addresses.

12          THE COURT: I'm going back -- I don't  
13 understand what is it that you are trying to obtain from  
14 the University with all these problems.

15          MR. BOREN: I wanted to go to graduate school  
16 and I feel I was wrongfully denied admission.

17          THE COURT: But you were going back requesting  
18 something from somebody, what is it that you were  
19 requesting?

20          MR. BOREN: This document, this is one of  
21 those documents, they're saying I made multiple -- can I  
22 just finish my answer, please. There were documents;  
23 the only thing that I ever requested multiple times was  
24 documents that they weren't giving me. And then I  
25 wanted to, excuse me, get a stamped copy of this.

1           This was no accident. There's no way to  
2 explain falsifying my records. And this one was passed  
3 on to the graduate school and entered into the database.  
4 My grades were -- there's no way they didn't do this  
5 intentionally, because they had my transcripts in the  
6 same folder and they had my only sheet of computation  
7 where I worked it out carefully. And it happened right  
8 there. And one of the people who might have done this  
9 was the professor who I had accused of retaliating  
10 against me. If this was intentionally done, that is a  
11 crime. It is illegal to knowingly falsify records. I  
12 have gone on, I have asked the university police to  
13 identify who did this. And what their explanation is is  
14 they've refused, they've refused to do it, they're  
15 covering it up.

16           THE COURT: You're saying your G.P.A. is  
17 incorrect?

18           MR. BOREN: 2.5 each time, those are three  
19 separate figures.

20           THE COURT: Are you saying that's incorrect?

21           MR. BOREN: All three times it's incorrect.

22           THE COURT: What is the correct number?

23           MR. BOREN: Each time it's higher.

24           THE COURT: What is correct?

25           MR. BOREN: I don't have that specific piece

1 of paper with me, but in figuring that, those would be  
2 three different numbers.

3 THE COURT: You're on the four point system or  
4 the three point system?

5 MR. BOREN: Four point. I went to a junior  
6 college.

7 THE COURT: You're talking about a C plus  
8 here.

9 MR. BOREN: Well, yeah, this is the kind of  
10 G.P.A. that would justify rejecting me.

11 THE COURT: I understand. I'm putting it in  
12 double student language, it's a C plus here, what this  
13 amounts to.

14 MR. BOREN: Yes.

15 THE COURT: And to get into grad school,  
16 the --

17 MR. BOREN: You have to do better than that.

18 THE COURT: What do you mean you have to do  
19 better, what is the average requirement?

20 MR. BOREN: Well, I, don't know because I  
21 don't make those decisions, but I know that that's not  
22 good enough.

23 THE COURT: The information you read there,  
24 requirements for grad school, grad school is a three  
25 point requirement, three points, or does it require

1 three points?

2 MR. BOREN: I can't say for sure.

3 THE COURT: Well --

4 MR. BOREN: All I know is that I was rejected.  
5 This is an official document based upon false  
6 information.

7 THE COURT: Can you substantiate that your  
8 average is greater than 2.50?

9 MR. BOREN: Yes. Not at this moment. What  
10 I'm hoping for today is that you will require the  
11 University to identify the persons who said they were so  
12 frightened of me without me having done anything wrong,  
13 they were so frightened they put in panic buttons. That  
14 sounds made up to me.

15 Now, I'm not saying that there was -- I'll  
16 make one important statement. I'm not saying that there  
17 was no one in that -- I would admit that there were  
18 people in that building that didn't want me coming in  
19 there, but it wasn't because I was doing anything wrong,  
20 it was because I was obtaining proof and have obtained  
21 proof of their wrongdoing.

22 THE COURT: Do you understand that you may be  
23 in the wrong forum to get what you want? You understand  
24 that we are here to make a determination as to whether  
25 or not the University acted lawfully, whether or not

1 their actions were arbitrary and capricious. It doesn't  
2 matter whether or not I agree with what they did. We  
3 just have to make sure they have followed the  
4 regulations they're supposed to be following, and in  
5 following the regulations -- I'm not the one, believe  
6 me, with the authority to actually provide him with the  
7 names of those persons who accused him. I don't think  
8 it goes that far. If you want to get that information,  
9 you may have to have other proceedings in which to  
10 engage in, if that's all you want.

11 I can tell you now it's unlikely that I can  
12 require them to give you that information. If you want  
13 to look at whether or not they are following the rules  
14 and have done it the way it should be done, whether or  
15 not they acted arbitrarily and capriciously, we can do  
16 that, but to say specifically to the University provide  
17 Mr. Boren with the names of those persons who accused  
18 him, that I can't do. I don't think I can do that.

19 MR. BOREN: It's my understanding on a public  
20 record the cited, they said the names were confidential  
21 because they were part of a police investigation. He  
22 filled out the public records on police investigations,  
23 public records says I have the right to know. How can I  
24 respond to something when I believe they made it up? I  
25 don't think there are -- I don't believe there were

1 three people that made statements.

2 THE COURT: What is it that you want to  
3 respond to? They have said to you that if you come back  
4 on the premises, you're going to be arrested for  
5 trespassing; is that correct?

6 MR. BOREN: And they did not follow the  
7 policy.

8 THE COURT: Somebody's shaking their head over  
9 here.

10 MS. POTTER: That's not exactly correct.

11 THE COURT: They gave him a basis for which he  
12 can be arrested.

13 MS. POTTER: Yes, Your Honor, that's correct.  
14 They restricted the means, they gave him a procedure to  
15 follow before he entered the building.

16 THE COURT: Okay. Are you here because you  
17 think giving you a procedure to follow to enter the  
18 building is not appropriate or are you here because you  
19 want to know the names of persons who accused you?

20 Is there another hearing that's supposed to  
21 take place as a result of this?

22 MR. BOREN: I'm here to speak to what was  
23 falsely said about me. This was intimidation; there's  
24 nothing -- you don't threaten somebody whose done  
25 nothing, threaten them with arrest, whose done nothing

1 wrong, didn't prove I've done anything. You're saying  
2 that, but I'm -- show me how, who, on what occasion.

3 THE COURT: Let me put it this way. If you're  
4 here to speak to intimidating statements, things that --  
5 inappropriate things that are -- that's not true, that's  
6 why you're here, you're spoken to. Now, what --

7 MR. BOREN: Oh, okay, let me back up. I  
8 realize there's certain relief that you can't grant me.  
9 I'm aware of that.

10 THE COURT: Let me suggest this to you. If  
11 you want the information that you're suggesting, you may  
12 have to file a lawsuit against the University, and  
13 that's to be enjoined requiring you to follow this  
14 procedure, unless it is a procedure they ask everybody  
15 else to follow. And by doing that, the University is  
16 going to have to come in and say why they're asking you  
17 to follow that procedure. And then you can inquire as  
18 to who those persons are that made those statements.  
19 But to hear you, unless there's something they're doing  
20 arbitrarily and capriciously, that's what I'm going to  
21 have to look at as soon as this hearing is over.

22 MR. BOREN: The very beginning of the policy  
23 is --

24 THE COURT: Do I have a copy of this policy  
25 you're talking about?

1           MR. BOREN: It should be somewhere in the  
2 records, the very beginning of the policy. Should be  
3 page two and three.

4           Says persons who arouse suspicion may be  
5 briefly questioned about their identity and purpose on  
6 campus. If the response is reasonable and there is no  
7 evidence to implicate the subject in any disruptive or  
8 criminal conduct, the individual should be allowed to go  
9 with an explanation as to the reason for the questions.  
10 Never did that. Never identified the policy. Rejected  
11 an appeal before I even knew how I was supposed to make  
12 an appeal.

13           I realize I'm fighting an uphill battle. I  
14 don't think the University should just be able to single  
15 out individuals and retaliate against them when there's  
16 no business and they've actually -- because it's based  
17 on retaliation or whether there's a preexisting thing  
18 that they've done, they've uncovered wrongdoing. I  
19 think if they're going to take action, they should  
20 substantiate it when that doesn't fit under the law to  
21 the letter and there's some loophole that they can slip  
22 through and do this. Well, I still I feel that I have  
23 to speak up to it. I did nothing. I'm not that sort of  
24 person. I don't like my character sullied in that  
25 manner.



1           THE COURT: Just as a matter of curiosity,  
2 when you went into the dean's office or the registrar's  
3 office to -- whatever office you went to, just what  
4 happened. This is just a matter of curiosity.

5           MR. BOREN: Okay. The last time, well, the  
6 one thing is the chief of police couldn't tell me when I  
7 had been there, couldn't tell me what I did there.

8           THE COURT: I'm asking you, from your  
9 prospective, what did you do and what happened, not what  
10 the police chief thought, whatever. What did you do?  
11 Just tell us what happened when you went there.

12          MR. BOREN: Back when I was filing the  
13 grievance, many times in there delivering letters in  
14 person, like to have them stamped, I had good relations,  
15 respectful relationships with people who I was accusing  
16 of wrongdoing, nothing untoward ever happened. The last  
17 time I was there, in fact, what I was trying to -- the  
18 point I was trying to make was they were saying that  
19 there were three people one time in the written record,  
20 which as they prepared the transcript, had been omitted,  
21 cleaned up to say only three persons. At one point  
22 Chief Younce stumbled over his own stories and spoke of  
23 two faculty members, spoke of four people instead of  
24 two.

25          Okay. I'm coming to your answer. The last

1 time I was there, I went -- and the only person that in  
2 six or nine -- six months time that I had repeat contact  
3 with was a secretary. I went in, I came up the stairs,  
4 I was out of breath. We made -- I just said that's five  
5 flights of stairs, that's a lot. She actually smiled.  
6 I requested a copy of this stamped document. I told her  
7 I had a letter for the acting chair of the department.  
8 And she said, well, you can take it to him yourself,  
9 he's in his office down the hall. I went down there,  
10 stood in his doorway, knocked on the door. It was open.  
11 Stood in his doorway for about 15 to 20 seconds. Said I  
12 wanted to deliver this to him. That's all. That's all.  
13 That's two people.

14 THE COURT: There's never been any ill  
15 feeling, any ill words spoken between you and any of the  
16 other persons you came in contact with?

17 MR. BOREN: No, not even against the person  
18 who told me know when to hold them, know when to fold  
19 them. Never misbehaved once. That's not the kind of  
20 person I am.

21 THE COURT: Okay.

22 MR. BOREN: I followed this to the letter.  
23 I've done everything right, time lines, I mean, the  
24 policies have only applied to me when -- they only  
25 applied when they seemed to work to my disadvantage.

1 Time lines, I've got -- met it to the letter.

2 THE COURT: All right.

3 MR. BOREN: I just simply want to know -- all  
4 I want -- I want to specifically address this, treating  
5 me unfairly. I'm not looking to have a launch pad to  
6 any further actions, I just want to say, look, you can't  
7 treat people like this. If you're going to make  
8 statements against them, you should substantiate them.

9 THE COURT: Okay.

10 MR. BOREN: I think it's an abuse of power.

11 THE COURT: If you're finished. You may  
12 respond.

13 MR. BOREN: Yes, sir.

14 MS. RYAN: Your Honor, I'd just like to point  
15 out firstly that this matter is not properly before the  
16 Court today, as Mr. Boren's petition was untimely filed.  
17 The agency decision was received by him on March 25th,  
18 2002, and his petition for judicial review was submitted  
19 on May 15, 2002. He was seven -- he was 17 days past  
20 the statutory deadline and we find he's not shown good  
21 cause to rebut the statutory deadline.

22 THE COURT: What say you, why didn't you file  
23 on time?

24 MR. BOREN: Because, Your Honor, I was trying  
25 to get the information that I needed to file in this

1 matter. Again, they're -- that's what was just raised  
2 was the perfect example, time line is applying to me but  
3 not to them. Throughout the matter, back when I filed  
4 my initial grievance, I was told that it -- there could  
5 be no action for two and a half months right off the bat  
6 because the professor in question was not going to be  
7 back on campus. Untrue. I proved it is untrue.

8 THE COURT: Okay.

9 MR. BOREN: She was right there teaching the  
10 whole time.

11 THE COURT: The question is why didn't you  
12 file these things within the time frame?

13 MR. BOREN: I was trying to get the  
14 information that I needed, first of all. It took time.

15 THE COURT: What information did you need to  
16 get?

17 MR. BOREN: Well, the first time they sent me  
18 the tape of the hearing, it was inaccurate, incomplete.  
19 It was only half the tape. Then I said, again, I  
20 repeated my position, I need to know what was said about  
21 me, what am I -- I supposedly did wrong. And asked that  
22 before the hearing. I asked it again after.

23 I had a lawyer write to the University saying  
24 I believe Mr. Boren is entitled to know the names of the  
25 people who are the complaining witnesses against him.

1       They wrote back to the lawyer. Chief Younce had spoken  
2       of three persons in Poe Hall. He never represented  
3       himself as the witness against me, but yet when their  
4       attorney, Eileen Goldgeier, wrote back to my lawyer, she  
5       said Mr. Boren -- and I had asked for the names of the  
6       complaining witnesses, now it became only one. She  
7       wrote back to my attorney and said the name of the  
8       complaining witness that Mr. Boren has asked for is  
9       Thomas Younce, a man who had never, at the hearing  
10      admitted he had never seen me before. So their only  
11      named witness had never seen me before that. They're  
12      doing the switcheroo.

13                 THE COURT: All right, sir.

14                 MS. POTTER: First, Your Honor, I would like  
15      to say the statute that Mr. Boren cites that he feels --  
16      that he feels entitles him to the identity of the  
17      employees who complained against him is not on point in  
18      this case. It's a criminal disclosure statute, and his  
19      trespass warning was not considered a criminal  
20      violation. Even if that statute were to be on point,  
21      there is an exception to that statute, which in this  
22      case, which says that if the complaining witnesses fear  
23      for their safety, the names do not have to be disclosed.  
24      And that was exactly the case here.

25                 THE COURT: What did he do to put someone in

1 fear of their safety?

2 MS. POTTER: Well, the actual -- the words  
3 exchanged between Mr. Boren and the employees we are not  
4 aware of. Chief Younce -- she contacted Chief Younce to  
5 install the panic buttons, that they were intimidated  
6 and made uncomfortable by his repeated visits. And  
7 Chief Younce found that they were -- that their  
8 uncomfortableness justified the installation of the  
9 panic buttons. And I'd like to reiterate that Mr. Boren  
10 was not restricted from entering the education  
11 department or obtaining the information that he  
12 apparently desires. It was just the time, place and  
13 manner restrictions.

14 THE COURT: What did he do to make people  
15 uncomfortable?

16 MS. POTTER: The repeated requests of the same  
17 information, which that information is not at issue  
18 before Your Honor today, his prior grievance with the  
19 University.

20 THE COURT: Well, was anything in his  
21 behavior, was it threatening, was it imposing? Just to  
22 come in and make a request for the same thing day after  
23 day after day after day, that in and of itself is not  
24 grounds for somebody to panic. What did he do?

25 MS. POTTER: Well, the two faculty members and

1 the one staff feared for their safety because of Mr.  
2 Boren's visits. Whether -- whether that -- whether that  
3 would cause another individual to fear for their safety,  
4 I don't think we're here to determine.

5 THE COURT: Well, I understand. I think we  
6 need to determine the reasonableness of their fear. The  
7 only way we can determine that is to know or have some  
8 idea of the allegations of what he did or said other  
9 than just his appearance.

10 MS. POTTER: Well, Chief Younce, after he  
11 installed the panic buttons, he began an investigation  
12 into the matter and Mr. Boren was given his rights under  
13 the appeals process with the University. The hearing  
14 was held and the final agency decision upheld Chief  
15 Younce's actions.

16 THE COURT: Well, did Chief Younce state  
17 anywhere as to what he did that could constitute someone  
18 being uncomfortable other than his physical presence?

19 MS. POTTER: Chief Younce did not want to  
20 disclose the identities of the complaining witnesses.

21 THE COURT: That isn't what I asked you. Did  
22 he reveal any actions, behavior of the Defendant that  
23 could constitute, make someone be uncomfortable with his  
24 presence?

25 MS. POTTER: Your Honor, that's not in the

1 record.

2 THE COURT: Well, can anybody out there?

3 Arbitrary and capricious.

4 MS. RYAN: That's the issue, arbitrary and  
5 capricious. That is the only issue here today, but,  
6 Your Honor, Chief Younce followed University procedure  
7 and he took logical and predictable steps given the way  
8 that these three North Carolina state employees felt due  
9 to the Petitioner's interactions with them.

10 THE COURT: And that's what I keep trying to  
11 find out, were their feelings reasonable, because nobody  
12 knows anything about what he did. All we got is a  
13 statement from, in essence, in it's simplest form, I'm  
14 scared of him. He keeps coming here asking for the same  
15 thing. Well, he hasn't threatened anybody; he hasn't  
16 done anything that I know of that anybody's able to tell  
17 me thus far to make someone feel that way. It's just a  
18 statement made by somebody that I'm afraid of him.

19 MS. POTTER: Made by three different people.

20 THE COURT: Well, made by three different  
21 people. You can't tell me anything to support anything  
22 that he's done for them to be afraid.

23 MS. POTTER: Chief --

24 THE COURT: Just because the bailiff walks  
25 down that hall, officers or police walk down that hall



1       then anybody here should be afraid?

2               MS. POTTER: Chief Younce has not disclosed  
3 the information of what the employees said.

4               THE COURT: Okay. Thank you. Want to be  
5 heard, ma'am? You said to ask you if you wanted -- I'm  
6 going to ask you, you want to be heard?

7               MS. POTTER: No, Your Honor. We will -- just  
8 simply that Ms. Ryan said Mr. Boren is not properly here  
9 as an initial matter, and that Ms. Ryan said the issue  
10 is whether it's arbitrary and capricious. Your Honor, I  
11 don't think it's necessarily a question of whether these  
12 individuals reasonably complained, but whether the  
13 University, based on all that was before it, acted in an  
14 arbitrary manner. I think this is a little bit  
15 different question, Your Honor, I'm just -- we'll rest.

16              THE COURT: Okay.

17              MR. BOREN: Yes, sir. First of all, the only  
18 thing that I was given the opportunity to explain  
19 exactly what my actions were, I was cut off and the  
20 hearing was ended. So they still don't know. And  
21 that's the kind of thing that should have been gathered  
22 before. And I asked Chief Younce in the hearing, I said  
23 could you have simply contacted me by phone and just  
24 said people are uncomfortable with your presence, could  
25 you make other arrangements. And just, of course,

1       excuse me, just continue corresponding by mail. He said  
2       I could have, but I chose not to. Those were his exact  
3       words. He replied yes, he could have. But what I'm  
4       asking for today is -- I mean, what do they have? I  
5       want to say one thing. When this person, I forgot your  
6       name --

7                   MS. POTTER: Ms. Ryan.

8                   MR. BOREN: Ms. Ryan, when she says that the  
9       public records allows them to withhold the names if  
10      they're afraid of their safety, it allows them  
11      temporarily to hold it until it's established that the  
12      threat is passed. And there's been no problem for me, I  
13      told Chief Younce, I mean, I obeyed the order, I just --  
14      I don't have any dire need to go back in there today or  
15      tomorrow or anytime soon.

16                  I want to speak to the facts. I'm not  
17      convinced there were three witnesses or four or however  
18      many. You know, I think they're making it up and  
19      there's no specifics, there's nothing for me -- there  
20      was never anything for me to respond to. Just somebody  
21      says that, I like your example of the bailiff, if I'm  
22      there and I have a right to be there doing what I'm  
23      doing and then I'm not doing anything inappropriate,  
24      this just deteriorates quickly to a smear. Just to  
25      say -- I'm sorry --

1 THE COURT: Mr. Boren.

2 MR. BOREN: Yes, sir.

3 THE COURT: If you lived to be a hundred and  
4 five, you probably will never know the names of those  
5 persons who purportedly said they were afraid of you.  
6 All right. Generally, people do not make statements of  
7 that nature to anybody without a reason, whether or not  
8 their reasons are strong, weak, but it is their reason  
9 for doing it. And I suspect, I'm going off the top of  
10 my head, I'm not ruling if you show up in the same place  
11 day after day asking for the same thing and stating your  
12 feelings about why these are here and saying someone's  
13 changed this, then people are going to get concerned  
14 about your presence. They're going to be thinking this  
15 fellow may be about five bricks shy of a full load, and  
16 they get concerned and they're uncomfortable. Do you  
17 understand what I'm saying?

18 MR. BOREN: Yes. Can I respond to that?

19 THE COURT: No, you don't need to respond,  
20 that might have given rise to all of this. That brings  
21 you here, where I believe, from your prospective, you  
22 were just trying to get an explanation that they weren't  
23 in a position to give you. They told you all that they  
24 knew, and then you kept coming, kept coming, kept  
25 coming. Nothing else they can say to you. They've

1 given you everything they knew.

2 MR. BOREN: They have not. I have to differ  
3 with you there.

4 THE COURT: Again, I'm talking off the top of  
5 my head. I don't know. I wasn't there. I don't know,  
6 but I can understand why people would get concerned.

7 MR. BOREN: Can I offer another reason why  
8 they might get concerned and say this, because they're  
9 covering up the falsification of my grades.

10 THE COURT: Why would they want to cover up  
11 the falsification of grades?

12 MR. BOREN: I specifically asked them who did  
13 this and why they won't tell me. It's a crime to  
14 knowingly falsify grades.

15 THE COURT: Now, if they have falsified your  
16 grades and you can substantiate it, they're falsifying  
17 your grades, then you may have something to deal with  
18 the University on, but these -- you going in there  
19 fussing with this, they can only tell you this is what  
20 the record shows.

21 MR. BOREN: Can I just say just the -- just  
22 the issue is I wasn't going in there again and again, I  
23 was hardly there at all. After the -- I was hardly  
24 there at all in the last six months when this happened.

25 THE COURT: What happened before that?

1           MR. BOREN: Well, we were in the middle of  
2 this grievance process.

3           THE COURT: Let me ask you this. How many  
4 times did you go there prior to Chief Younce asking  
5 you --

6           MR. BOREN: Much of that time I was a student.  
7 That's impossible to answer that question. What I'm  
8 saying --

9           THE COURT: Sir, how many times were you in  
10 this particular building inquiring about this particular  
11 document prior to the time that Officer Younce had a  
12 conversation --

13          MR. BOREN: That I inquired about this  
14 document, I only went twice to ask about this specific  
15 document.

16          THE COURT: Did you inquire about anything  
17 else in the same building?

18          MR. BOREN: Well, in January, I hadn't been  
19 there for like five or six months of the previous year,  
20 then I went in there because I was still protesting this  
21 assignment that I felt was inappropriate. I wrote a  
22 letter, I brought this to the attention of the  
23 chancellor.

24          THE COURT: Okay. Anything else you want to  
25 say?

1           MR. BOREN: Just that the record, the written  
2 record, I wanted a verbatim record. I didn't think that  
3 they should be able to -- I thought that the written  
4 record, the transcript should be accurate and I should  
5 be given a chance to respond to what's going on here.  
6 That's all I wanted, was tell me who it is, then I can  
7 suggest to you why those specific individuals might have  
8 had reason to say something untrue about me, if they  
9 even existed to begin with.

10           THE COURT: Okay, sir. Anything else you want  
11 to say further?

12           MS. POTTER: Yes, Your Honor. Just that the  
13 Petitioner is not properly before this Court. And even  
14 if the Court were to reach the merits on this case,  
15 North Carolina State University did not act in an  
16 arbitrary or capricious manner.

17           THE COURT: Thank you.

18           MS. POTTER: Thank you.

19           THE COURT: I'll take this matter under  
20 advisement. You'll be notified of my decision.

21           The document that you're passing me, let it be  
22 marked as an exhibit by the Petitioner, Exhibit Number  
23 1.

24           (Thereupon, the proceedings were concluded at  
25 11:30 a.m.)

CERTIFICATE

1  
2  
3 STATE OF NORTH CAROLINA     )  
4                             :  
5 COUNTY OF WAKE                 )

6  
7 I, Gina M. Macchio, Certified Shorthand Reporter,  
8 Registered Professional Reporter, do hereby certify that  
9 I did stenographically report the foregoing proceedings  
10 and that the foregoing transcript is a true and complete  
11 record of my stenographic notes.

12 Dated this \_\_\_ day of \_\_\_\_\_, 2004.

13  
14 \_\_\_\_\_  
15 Gina M. Macchio, CSR, RPR  
16 Official Court Reporter  
17 Tenth Judicial District  
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