

Oregon Court Rules on Elements of Proper Trespass Warning

A public university campus is a mixture of places that are open to the general public, such as bookstores, admission offices, sports facilities, libraries, park areas, etc., and places that are not open to the general public, such as dormitory rooms, classrooms, faculty offices and conference areas, etc. All states agree that a public university can protect its campus community, property, and educational processes by issuing, under appropriate circumstances, a trespass warning requiring an individual who is not an employee or a student to leave a designated campus facility or area and not return. Violation of such an order will subject the individual to arrest and criminal prosecution for trespass. These trespass warnings may encompass “public” portions of the campus, as well as the areas subject to more restricted-access. Because the effect of a campus-wide order impinges upon an individual’s “liberty” to be in a public place, it likely implicates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which provides that “[n]o State shall . . . deprive any person of life, liberty or property, without due process of law.”

A recent Oregon appellate case has considered the necessary elements for a valid trespass warning issued by a public university in the context of Due Process requirements. *State v. Barnes*, 2009 WL 3837454 (Ore.App. Nov. 18, 2009). In this case, a Portland State University campus police officer issued a trespass warning to a non-student who was in a private room of the campus student union building. The written warning stated as follows:

You have been ordered to leave the Portland State campus and not to return. If you return or remain, you will be subject to administrative and/or criminal prosecution. This warning is effective for two years from date of issue. If you return, you can be arrested for criminal trespass, merely because you are within the campus boundaries, and on campus property . . . If you wish to have this warning withdrawn, you must mail a petition to our office. It will be reviewed and a decision communicated to you in writing.

When the defendant returned to the Portland State campus, he was arrested. Following his conviction, the defendant sought review by an Oregon appellate court on the basis that the warning did not give him an adequate means of appeal and therefore failed to satisfy due process requirements. The court noted that procedural due process generally requires that a meaningful right of review be provided in order to reduce the risk of erroneous deprivation of rights. In this case, the court ruled against the defendant, however, since he was afforded a means of challenging the order and failed to avail himself of that right.

Written trespass warnings, such as the one issued by Portland State, are not mandatory in every situation, but they are obviously preferable. In this case, the written order helped the university meet its burden of proving that an appeal right was communicated to the defendant. The review process is strengthened when the review is provided by someone at a higher administrative level than the issuing authority. And a reasonably limited temporal duration of the warning may also incline a court to determine that the “rule of fundamental fairness” embodied within the Due Process concept was observed.

UAHuntsville has issued, in the past, trespass warnings to individuals upon a showing of good cause to believe that their presence on campus or in a particular campus area/facility will pose a risk of disruption or danger. Generally, a written order is approved and issued by a vice president. The individual is informed in the written notice of the specific reasons and/or circumstances that prompted the warning and that a right of appeal exists. On occasion, a University Police Officer may issue a verbal, short term trespass warning. Anyone who becomes aware of a situation in which a trespass warning may be needed is advised to contact the Office of Counsel and the Department of Public Safety.