

Comments

My name is Jeff Parsons. I'm the developer of the Temple of Justice Project, at templeofjustice.org, a website dedicated to the work and history of the state supreme court.

I'm here to echo Justice Debra Stephens' observation in her dissent in the Federal Way v. Koenig case:

"It seems to me the PRA [Public Records Act] speaks for itself: '... The people ... do not give their public servants the right to decide what is *good* for the people to know and what is *not good* for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.' " [Emphasis added]

This goes to the heart of what I think is wrong with both GR31A and GR31: the *judiciary* is deciding "what is good for the people to know." The Federal Way decision is equally problematic: the Court decided what was in courts' best interests, not the people's.

The aspirations of GR31 and GR31A are commendable, and I appreciate all the work that's gone into them, but the next logical step is to take these rules to the legislature, and find a way to incorporate them into the PRA, so that we have one framework that explicitly covers *all* government agencies.

There are some troublesome differences between GR31A and the PRA. The ACLU mentions two that concern me as well: potentially higher fees (up to \$30/hour after the first hour) and the decision to limit GR31A to records created after July 2012. The creation date of a record should have *no* bearing on its access.

I'm also concerned that GR31A is not going to improve access to court records, because of some experience I have with its predecessor, GR31.

A year ago, I sent a letter to the Division I Court of Appeals, requesting a set of oral argument audio recordings. These are records that the AOC routinely posts on its website for 4 months after argument, and then it removes them from the website. In denying my request, the Court Administrator wrote that my "representation of said recordings as 'public records' is inaccurate. The audio recordings are made and provided for the convenience of the Court and the parties."

I've checked the "Judicial Records Listing" in the appendix to the Public Records Work Group Report, and that listing is unequivocal: "electronic recordings of court proceedings" are explicitly defined as **Court Records**. They are not **Administrative Records**, they are not **Chambers Records**, and they are certainly not in some new category called **Records Created For The Convenience of the Court**.

This Court Administrator went on to say that the Court of Appeals is "not required" to make these recordings, that "[T]here is no retention period or requirement for audio recordings," and that "the staff costs in terms of time and effort to copy a whole year of

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oral argument recordings makes your request prohibitive." When I requested a single audio recording, the Court easily fulfilled that request. Does this mean I must send 300 individual written requests over some period of time to obtain all the recordings?

Even after writing to the Chief Justice, I was given no procedure, no inventory, no cost estimate, no mechanism whatsoever, to obtain these audio recordings. In fact, the Chief Justice wrote that the recordings were "outside the official record" and that "most would not be useful to you." I respectfully disagree that recordings of open court proceedings are "outside the official record," nor do I feel it is proper for any judge or court administrator to decide whether any Court Record will be "useful" to the requestor.

I would also note that the reason the AOC gives for removing these recordings after 4 months is absurd: they claim it is to protect the privacy of a handful of individuals who simply don't want their names turning up in Google searches. However, there are far better and simpler technical solutions to that problem than deleting the files. And is it even a legitimate problem? It involves a tiny minority asserting a vague privacy interest in either their name or their involvement in a court proceeding, and it creates an unwritten exemption that is completely contrary to both the PRA and the courts' own rules.

I've repeatedly suggested that, at the very least, the Courts should deposit these types of records with the State Archives whenever they are removed from the AOC's website. I urge you to consider very specific retention periods for all types of records and to recommend that records be deposited with the State Archives once their retention period has expired.

If it is possible for the courts to assert any number of reasons for refusing access to selected public records--either by claiming that they are outside the official record, or that they are merely a convenience, or that they are simply not "useful", then I ask you: if GR31 is that vague and unenforceable, then how will GR31A be any better?

Thank you.

Comments

<p>Jeff Parsons Temple of Justice Project</p>	<p>Seattle, WA 98121 Phone: [REDACTED] E-Mail: Jeff@tojf.org Web: http://templeofjustice.org</p>
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February 17, 2011

Court of Appeals, Division I
Clerk's Office
One Union Square
600 University Street
Seattle, WA 98101-1176

Dear Clerk:

I called your office yesterday to inquire about obtaining a 2009 oral argument audio recording from the Division I Court of Appeals, and I was told I could submit a written request for the recording, along with a \$10 processing fee. I would like to request a copy of the recording for *Parsons v. Comcast*, No. 62152-1, argued on April 16, 2009. Please send the recording to the above address.

Additionally, the existence of these older audio recordings raises some important questions regarding the archiving of digital materials, especially those that are a matter of public record and public interest. I would genuinely appreciate the opportunity to discuss this further with your office.

Over the last year, the State Supreme Court and Chief Justice Madsen have been supportive of our efforts at the Temple of Justice Project (<http://templeofjustice.org>) to make information about the Justices, cases, and history of the Court more accessible to the public. For example, in April 2010, the Court permitted us to photograph nearly all of the Justices' chambers and other rooms in the Temple of Justice building that are not normally accessible to the public. We've also been working at the State Archives to inventory the large collection of audiotapes that the Court deposited at the Archives years ago.

With respect to the Court of Appeals, I'm particularly concerned about the court's practice of removing online docket sheets and audio recordings after 4 months. Because these are digital materials, the cost of archiving them in bulk is negligible. If the court has no interest in maintaining copies online, I'm confident the State Archives would be willing to take possession of the materials. At that point, the Temple of Justice Project could work with the State Archives to make portions of the archive available online.

Please let me know what can be done to insure that these records are preserved for the public.

Sincerely,

Jeff Parsons
Temple of Justice Project

Comments

RICHARD D. JOHNSON,
Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
(206) 464-7750
TDD: (206) 587-5505

February 22, 2011

Jeff Parsons
Temple of Justice Project
[REDACTED]
Seattle, WA 98121

Dear Mr. Parsons:

Enclosed is a copy of the oral argument hearing from April 16, 2009, along with the sales receipt. If you have any questions, feel free to call (206) 464-7750.

Sincerely,

[REDACTED]

Richard D. Johnson
Court Administrator/Clerk

law

Comments

State of Washington
Court of Appeals, Division I
600 University Street
One Union Square
Seattle, Washington 98101

Sales Receipt

Date	Case No.
2/22/2011	62152-1

Sold To
 Parsons Seattle, WA 98121

Check No.	Payment Method
9152	Check

Description	Rate	Amount
Tapes	9.13	9.13
Washington State Sales Tax	9.50%	0.87
Total		\$10.00

Comments

<p>Jeff Parsons Temple of Justice Project</p>	<p>Seattle, WA 98121 Phone: [REDACTED] E-Mail: Jeff@toj.org Web: http://templeofjustice.org</p>
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March 4, 2011

Court of Appeals, Division I
Richard D. Johnson, Court Administrator/Clerk
One Union Square
600 University Street
Seattle, WA 98101-1176

Dear Mr. Johnson:

Thank you for the prompt handling of my request last month for a 2009 oral argument recording that was no longer available on the Court of Appeals' website. The CD arrived quickly and I was glad to learn that the recording still existed.

However, there was no response to my general plea for a more open and comprehensive archival policy regarding the Court's digital records. I remain deeply concerned that there is a growing body of digital materials in the Court's possession that is at risk of being lost or destroyed, either through equipment failure, the lack of a clear digital records retention and archiving policy, or even a general inability or disinterest in maintaining and preserving materials that are not essential to the Court's day-to-day operations.

As I mentioned in my previous letter:

I'm particularly concerned about the court's practice of removing online docket sheets and audio recordings after 4 months. Because these are digital materials, the cost of archiving them in bulk is negligible. If the court has no interest in maintaining copies online, I'm confident the State Archives would be willing to take possession of the materials. At that point, the Temple of Justice Project could work with the State Archives to make portions of the archive available online. Please let me know what can be done to insure that these records are preserved for the public.

All audio/video recordings and corresponding docket sheets are public records, at least insofar as they are records of public proceedings, produced at taxpayer expense. Some cases will have interest for more than 4 months, some will inevitably be accepted for review by the State Supreme Court, and some will ultimately prove to have historical value. Moreover, it's difficult to understand why each recording should cost \$0 for the first 120 days and \$10 thereafter, with no clear indication of which recordings are even still available.

If the Court cannot afford to maintain these materials online indefinitely, or to establish an archival policy, then I would urge the Court to seek a public or private partnership with someone who can. The Washington State Archives seems a logical partner. In the interim, I would be happy to offer whatever advice or assistance the Court needs in this area.

At the same time, I would like to propose the establishment of an intermediate archive, hosted by the Temple of the Justice Project. As a first step, and assuming that the \$10 charge is really a "per disc" fee rather than a "per file" fee (since the cost of copying 50 files vs. 1 file to a CD is negligible), I'm enclosing a check for \$80 and a request for up 8 CDs containing the complete set of audio recordings for the 2008 calendar year. If you have copies of the corresponding docket sheets, it would be extremely helpful if you could include those as well; if they exist only in paper form, I'd be happy to pay any required copying fee.

Thank you for your time and understanding. I'm hopeful we can begin to make quick progress on this important preservation goal.

Sincerely,

Jeff Parsons
Temple of Justice Project

Comments

Richard D. Johnson, Court Administrator/Clerk
Division One
One Union Square
600 University Street
Seattle, Washington 98101

The Court of Appeals
of the
State of Washington

464-7750
AREA CODE 206

April 11, 2011

Jeff Parsons
[REDACTED]

Seattle, WA. 98121

Dear Mr. Parsons,

I am in receipt of your letter dated March 4, 2011 regarding acquiring copies of oral argument audio recordings of Court of Appeals proceedings. I am pleased you received the requested argument recording in a timely manner.

With regard to your concern regarding archiving of audio recordings, your representation of said recordings as "public records" is inaccurate. The audio recordings are made and provided for the convenience of the Court and the parties. The Court of Appeals is not required to make an official record of court proceedings. The official record of the Court of Appeals is the written opinion, order, and/or ruling of the Court and the associated case file. There is no retention period or requirement for audio recordings of argument as such recordings are not part of the official court record. The limitations regarding the availability of audio recordings and dockets on the state court website are related to website policies established by the Administrative Office of the Courts.

Your assumption regarding the ease and cost of reproducing copies of oral argument recordings is incorrect. Each case is recorded separately with six oral argument cases heard on each day of a given term. The staff costs in terms of time and effort to copy a whole year of oral argument recordings makes fulfilling your request prohibitive. Your personal check for \$80.00 is being returned with this correspondence.

Thanks for your interest in the Court of Appeals. If I can be of further assistance, please contact me at 206-464-5871.

Sincerely yours,
[REDACTED]

Richard D. Johnson
Court Administrator/Clerk

Enclosure

Comments

Jeff Parsons

Seattle, WA 98121
Phone: [REDACTED]
Web: <http://templeofjustice.org>, [REDACTED]

April 13, 2011

Chief Justice Barbara A. Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
360.357.2038

Dear Chief Justice Madsen:

I wanted to take a few moments to update you on the Temple of Justice Project. The website (<http://templeofjustice.org>) continues to evolve slowly, as we have limited resources and time to dedicate to the Project. However, the Project is very much alive and well. Both Cornell Clayton and I remain deeply committed to it, and we are enormously grateful to the Court for opening its doors to us. I'm looking forward to returning to the Court on Monday, April 18, to photograph Justice Wiggins chambers, as well as spending more time at the State Archives later this year, in an effort to bring more historical materials into the Project, including older audio recordings that pre-date TVW. And at some point, we would like to coordinate with the Court some means of obtaining copies of all the group photos currently on display on the Court's lower level. The work is seemingly endless, but it is also endlessly interesting, which is why I hope that the website eventually becomes a useful and popular public resource.

I would also like to briefly touch on a couple of related matters, to get some advice on how best to proceed. First, I've been trying to obtain recordings of past oral arguments from the Washington State Courts of Appeal, so that we can offer those recordings on the Temple of Justice website for cases that were appealed to the State Supreme Court. On March 4, I sent a request to the Division I Court of Appeals (see attached), and in their April 11 reply (also attached), my request was denied. This was rather disheartening, because all three Divisions post their oral argument recordings on the Washington Courts website for a few months, and then they are removed. Contrast that with Washington Supreme Court recordings and docket sheets, which are available online in their entirety back to 1995. Whether or not any of these recordings are "public records" is an interesting question, but I'm not sure that it's relevant. Also, I suspect that all the recordings exist as simple audio files on computers at the Court of Appeals, and that the "time and effort" to copy them would not be "prohibitive." Moreover, Division I seemed completely uninterested in contacting the State Archives as an alternative means of preserving the recordings. Can you conceive of any way that the Courts of Appeal might be convinced to release all past oral argument recordings back into the public domain?

Second, I've had several long-standing concerns and/or points of confusion regarding the Court's position on the publishing of (and copyright of) its opinions. I've raised some of these points before with the Court's Reporter of Decision, who has expressed some sympathy but no real solutions. Specifically, my concerns include:

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1. The Court's practice of removing its slip opinions after 90 days: it's ironic that the Court's most important documents are the worst preserved, electronically speaking; docket sheets, briefs, even oral argument recordings are preserved online for years.
2. Corrections to slip opinions are never posted online by the Court; they are sent only to the publisher, LexisNexis. Moreover, if the corrections are received by the publisher after the Advance Sheets have been printed (as was the case in *State v. Jaime*, No. 82008-2), then the public will not see the corrections until the Wn.2d bound volume is printed.
3. The inside cover of all Washington Reports Advance Sheets says "Headnotes, case summary paragraphs, tables, indexes, and other editorial matter, Copyright © 2011 State of Washington." I'm unclear as to what effect a copyright declaration by the *state* has, and whether that would preclude anyone, including us, from posting copies of the Advance Sheets online (e.g., on the Temple of Justice website).
4. The contract that the Court has entered into with LexisNexis (aka Matthew Bender & Company), and which expires on June 30, 2012, contains a number of sections of concern, including section 3.9.1.1, which restricts the Court's ability to share its own materials with all but one third party (the Municipal Research and Services Center), and section 3.9.1.2, which requires the third party suppress all "Reporter Copyrighted Elements."

I completely understand that slip opinions are superseded in authority by Advance Sheets, which in turn are superseded by the bound volumes, but if the Court is fully capable of posting a slip opinion on the day of the decision, then surely it is equally capable of posting corrected and final opinions on subsequent days. The Reporter of Decisions alluded to "security issues" and website vulnerabilities that would make it difficult for the Court to insure the continued accuracy of its online documents, but if that is a concern, then I assume the Court would be fearful to publish anything at all. I'm concerned that the LexisNexis contract is one of the constraints at play here.

Currently, the Temple of Justice Project archives the Court's slip opinions, but it would be infinitely preferable for the Court to simply publish its own final opinions, to which we and the rest of the online community could then link. The Municipal Research and Services Center website is another fine public service, but the quality of the opinions it renders leaves much to be desired.

That's all for now. I hope I've raised one or two interesting questions, and that you and others at the Court will at least think about them as time goes on, even if time, budgets, and other constraints prevent any meaningful action for now. Courts and other government institutions are notoriously slow to change, and to embrace technological change, even in the best of times, but surely we should still try!

Sincerely,

Jeff Parsons
Developer, Temple of Justice Project

Comments

Jeff Parsons

Seattle, WA 98121

Jeff@templeofjustice.org

September 5, 2011

Chief Justice Barbara A. Madsen
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Dear Chief Justice Madsen,

I wanted to follow-up with you regarding my April 13, 2011 letter, where I touched upon some concerns involving materials that we publish on the Temple of Justice website. I know the Fall 2011 term is just around the corner, so I'll try to be brief. To recap, I expressed the following concerns:

- Unlike the Washington Supreme Court, all the Washington Courts of Appeals have the unusual policy of removing both their docket sheets and their oral argument recordings from their respective websites after roughly 4 months. This has made it difficult to create a comprehensive online collection of lower-court oral arguments in all cases accepted for review by the Supreme Court. We have managed to make some progress in this area (for example: <http://templeofjustice.org/category/coa-division-i-audio/>), but it's difficult to understand why these materials cannot remain free and in the public domain for more than 120 days. The Court Administrator for Division I said that this policy was set by the Administrative Office of the Courts, but I have been unable to discover the underlying rationale.
- The Washington Supreme Court removes its opinions from its website after 90 days. Moreover, the Court does not update its website with changes to those opinions due to "reconsideration, modification orders, editorial corrections, and withdrawal." It is unclear why the Court can publish only slip opinions, or why the Court can communicate subsequent changes only to Matthew Bender & Company and not to the public. There would be no need for the 90-day rule if the Court simply published/republished its own opinions as they were released/updated. There is no question that the Washington official reports are an "authoritative source of Washington judicial opinions," but in the digital age, there is no longer any reason for them to be the "sole" source. I'm also concerned that Section 3.9 of the Court's contract with Matthew Bender & Company imposes some unnecessary restrictions on the Court's own work product, including restricting distribution to a single public-access website: Municipal Research and Services Center. Unfortunately, mrs.c.org has been doing a poor job reproducing the Court's opinions for the past several years. A more public-oriented policy, and a less-restrictive contract, are sorely needed.

I'm reminded of the expression that "ignorance of the law excuses no one." Unfortunately, there is cost and complexity to obtaining and understanding the law, and every component of that equation grows every year. The notion that a printed book can be the only authoritative source of an idea is not only quaint, it is unsustainable.

And on that happy note, best wishes for a productive new term!

Sincerely yours,

Jeff Parsons
Temple of Justice Project

Comments

The Supreme Court
State of Washington

BARBARA A. MADSEN
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2037
FAX (360) 357-2085
E-MAIL J.B.MADSEN@COURTS.WA.GOV

October 10, 2011

Jeff Parsons

Seattle, WA 98121

Re: Items Posted to Supreme Court and Court of Appeals Websites

Dear Mr. Parsons:

I have contacted staff for response to your questions regarding the information that the Supreme Court and the Court of Appeals post on their respective websites, and the length of time that this information is retained.

The docket sheets for Court of Appeals oral arguments used to be archived on the website indefinitely. In March 2006, however, AOC complied with a request from that court to limit the time during which the material would be available on the website. (Audio recordings of arguments were added as attachments only recently.)

The Court of Appeals apparently received complaints from people who had been parties to appellate cases or mentioned in the facts of such cases. Simple queries on Google, for example, were displaying individuals' involvement—long after cases concluded. In response to the complaints, all three divisions directed AOC to post the material for a four-month period and then to remove it.

As to recordings of all past oral arguments from the Court of Appeals, in responding to your March 4, 2011 letter, Division One court administrator/clerk, Richard Johnson, advised as follows: "The audio recordings are made and provided for the convenience of the Court and the parties. . . . The official record of the Court of Appeals is the written opinion, order, and/or ruling of the Court and the associated case file." (Letter from R. Johnson to J. Parsons dated April 11, 2011). Not only are the recordings outside the official record, but most would not be useful to you because so few cases heard by the Court of Appeals are accepted for review by the Supreme Court.

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Jeff Parsons
October 10, 2011
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Notwithstanding the usefulness of the recording, only recently have oral arguments been recorded in digital form. Allocating staff time to locate, organize, and convert old audiocassettes would not be feasible in light of the courts' ongoing budget constraints.

Going forward, it is possible both to listen to arguments and to download and save them, so perhaps you can access and archive material if you choose to do so.

Regarding the Supreme Court, you have stated that "the public should not have to pay a private company for prompt, accurate and complete access to all the Court's opinions." You express concern that the court "has traded away certain public interests and rights in exchange for . . . cost-savings and convenience." (Email from J. Parsons to Reporter of Decisions dated Feb. 15, 2011.)

The reality is that the Supreme Court receives the benefit of several expert editors at Lexis in finalizing its opinions. From a business standpoint, Lexis would have no motivation to continue to provide its services if final opinions were posted directly on the court's website. In that event, it would likely become necessary for the court to assume the expense of additional in-house staff, which is not possible at this time of budget cuts.

Fortunately, printed volumes of Supreme Court opinions are available in libraries across the state, and individuals can obtain PDF versions of up to five opinions per day (either LexisNexis or Westlaw databases) free of charge from the State Law Library.

Finally, you refer to slip opinions as "the Court's most important documents," and express concern that these are all removed from the website after 90 days. However, because slip opinions are fully superseded by bound volumes, their importance is transient at best and at worst confusing because the opinions in final form often differ from the slip opinions. (In addition, a survey of opinion websites in other jurisdictions shows that Washington currently provides more information than most state appellate courts.)

I am aware that some supreme courts have opted for a web based reporter system and have no written case law. Perhaps that will be our future as well. However, the Washington Supreme Court does not have the internal resources available to make such a shift, nor is there consensus for doing so at this time.

Sincerely,

A solid black rectangular box redacting the signature of Barbara A. Madsen.

Barbara A. Madsen
Chief Justice