

Justice Is Everyone's Business

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Seeking to Restore Integrity and Public Trust in Our Justice System

March 1, 2020

Chief Justice Martha L. Walters
Justice Rebecca A. Duncan
Justice Adrienne Nelson
Justice Christopher L. Garrett
Justice Thomas A. Balmer
Justice Lynn Nakamoto
Justice Meagan A. Flynn

Oregon Supreme Court
c/o 2850 Broadway Street, NE
Salem, OR 97303

Dear Justices:

Your webpage states:

Oregonians can be proud of their state courts, which every day strive to meet our constitutional obligations to provide impartial justice completely and without delay, while being open and accessible to all Oregonians.

Whether it is protecting your individual rights, sentencing a person convicted of a crime, helping victims of domestic violence or abuse, resolving child custody or other family disputes, enforcing the rules of the marketplace among businesses and consumers, or ensuring that government acts within its legal authority, Oregon's 194 elected state court judges and hundreds of professional staff work hard every day to provide justice efficiently, fairly, and promptly.

<https://www.courts.oregon.gov/courts/appellate/supreme/Pages/justices.aspx>

My husband and I are citizen reporters who live in the Grant neighborhood in Salem. We very much support your goals, but we must break some disturbing news to you. We have some serious problems in Oregon, among them a threat against free speech and press.

Please see the first several pages of a seven-part story we wrote on the matter ("The Siege on Summer Street"), which I attach for your reading convenience.

Briefly: On January 22, 2019, the Salem SWAT team over-reacted to a situation in our neighborhood. For approximately four hours, SWAT bombarded a residence with incendiary devices. After the fires went out, a Salem policeman removed the SWAT incendiary debris, and asked the Fire Marshal's office to conduct a "criminal" investigation. The same Salem policeman gave the fire investigator a tour of the ruins; she adopted his statements and wrote her report.

Kenneth Ketchem, a 39-year old Salem man, was arrested and accused of setting the fires. He denies he did so. He has been held in jail, for more than a year without trial, with excessive bail set, in violation of the US and Oregon constitutions.

Excessive Bail

Mr. Ketchem's bail has been set at \$1 million, in violation of the U.S. and Oregon Constitutions. In relevant part,

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Source: U.S. Constitution: Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense.—In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.

Source: Constitution of Oregon: Article I, § 16.

No Right To Speedy and Public Trial

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Source: U.S. Constitution: Amendment VI.

In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor ...

Source: Constitution of Oregon: Article I § 11, Rights of Accused in Criminal Prosecution.

On November 26, during a hearing to reduce bail, Judge Thomas Hart announced that Mr. Ketchem had committed the acts for which he is being charged -- *before a trial has been held*. We have the court recording of the November 26 hearing on our website, in Part 7. You can hear Judge's Hart's words.

Judicial Threat Against Free Speech and Press

But more shocking, however, is Judge Hart's January 9, 2020 threat against this writer for bringing the story to public attention. The threat was made during a hearing on a motion from the Public Defender's to withdraw from representing Ketchem. You can listen to the actual words of the judge -- as captured in a court recording -- posted on our website in Part 7. Judge Hart asked Mr. Ketchem:

"Have you been in contact with Ms. Decorsni [sic]?"

Judge Hart was obviously referring to me, whose last name is "DeCoursey". Ketchem, balking for a moment at the mispronunciation of my name, asked,

"Uh? DeCoursey? Yes." (Ketchem pronounced my name correctly.)

Judge Hart, apparently giving an order to a jail official, went on to say:

"I want to get the jail calls. I want to hear what's been being said. (OK.) OK. Because she's been writing the courts and writing the lawyers. And she's been interfering with this prosecution."

Moments later, Judge Hart again returned to the subject of *Everyone's Business* reportage. Again, apparently giving the order to the jail official, he said:

"And I would direct the State to go through every one of the phone calls because I believe that the information supports that there is interference with the wheels of justice with regard to this theory that has now arisen."

The "theory that has now arisen," was, perhaps, the theory that Ketchem was not guilty as charged and the SWAT barrage had caused the damage to the house?

Judge Hart was apparently hinting that he would apply a criminal statute to *Everyone's Business* reportage; his wording suggests prosecution under ORS 162.235 Obstructing governmental or judicial administration (a Class A misdemeanor) or ORS 162.325 Hindering prosecution (a Class C felony).

The First Amendment of the US Constitution states:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

The Oregon Constitution states:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

Source: Constitution of Oregon: Article I § 8. Freedom of speech and press.

For your reading convenience, I attach a print-out of the entire text of Part 7.

We believe Judge Hart's deportment does not "meet our constitutional obligations to provide impartial justice completely and without delay," and measures should be taken to correct the situation.

Sincerely,

Carol DeCoursey
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