

2016 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

On the dusty shelf kept for Washington's Bench-Bar-Press Committee, buried deep in the AOC website, there now repose some 16 annual reports of the Fire Brigade. This, the 2016 edition, will sit at the top of the heap (or bottom, depending on Wendy Ferrell's archival whim). As the final installment issued by this writer, it may be expected to convey an atypically longer view tinged by a trace of nostalgia. During the tenure of this Chief, there has been a distinct evolution in the role – though not the goals and impact – of the Fire Brigade and this deserves to be chronicled. Several key factors have brought this about.

First, back when this writer donned the figurative cloak of Fire Brigade Chief (the actual hat would arrive much later courtesy of Rowland Thompson), trial judges across the state comfortably wore their own plus size range of discretion when it came to the sealing of court records and exclusion of cameras from the courtroom. In dealing with these issues, judges were understandably focused on the rights of the litigants before them and, hearing no voice on the public's behalf, would often shortchange its interest in openly administered justice. Either mid- or post-incident, it was a regular occurrence for the press corps to summon the Fire Brigade to raise that voice.

In 2004-6, our Supreme Court went a long way to remedying this situation by amending GR 15 and GR 16. These new court rules effectively became that voice for the public's interest as, from the printed page, they now remind judges there must always be a heavy presumption in favor of openness that may only be cast aside when there is a specifically identified compelling reason to do so.

Second, in that last century, local newspapers and broadcasters routinely had reporters dedicated to the courthouse beat. These individuals did a worthy job of keeping a close watch over prosecutors and judges who, going about their daily work, might occasionally forget that part of their position calling for steps to enhance the public's understanding of their justice system. When these reporters were frustrated in their efforts to properly do their jobs, they were not shy about raising the alarm and seeking the assistance of the Fire Brigade.

Regrettably, in the present world of high tech and low budgets, the press corps has become somewhat less of a fixture at the courthouse and, like the public at large, it tends to be less active and assertive in laboring to pierce the court's both deliberate and unintentional obscurities.

Finally, it must be noted that when these duties were first undertaken, the Brigade Chief was younger and greener than most of the judges to whom he found himself striving to reason and not lecture. Some of the old guard could be

quite set in their ways and more than once the Chief felt the fire hose had been turned back on him.

With the passage of years, there are now very few judges in the state who have not heard the undersigned lecture to their orientation cohort on the topic of “Court-Media Relations.” As a result, it at least appears there is a greater receptivity to the supposed sagacity of their elder. It has become far more commonplace for judges to contact the Brigade for guidance in advance of a court proceeding with anticipated press and public interest.

The impact of these three combined factors has been clear. With the public’s voice audible in the rulebook and fewer reporters blowing a whistle for the Brigade’s assistance, there have been far fewer of the old-time fires for the Brigade to fight. That same net result has also been contributed to by a healthy judicial view of the Fire Brigade as a handy resource rather than a nag.

There are, of course, still issues that have surfaced in 2016 and will in the years ahead. One is the ongoing practical issue of advance notice for cameras. The Brigade seems to regularly be reminding reporters to give as much notice as possible and judges to be realistic in their expectations. A second common issue is that of “citizen journalists” (or just plain citizens) wishing to make cell phone recordings in court. The undersigned’s recommended approach to these issues has been much discussed in other Annual Reports and won’t be repeated here. It may be that the approach to private recordings will need to be incorporated into a local or state rule that reflects some variant of the following principles:

- a. No video or audio recording or still photography of court proceedings may take place without prior approval of the court.
- b. The established role of professional news media entitles them to the benefit of a presumption that permission will be granted per GR 16.
- c. As to other requesters, the court retains full discretion to grant or deny permission based on consideration of the intended purpose, intended use, potential for disruption or distraction, and any other relevant factors.
- d. No photographing of jurors or potential jurors is allowed.

In signing off, the undersigned would like to express his appreciation to Wendy Ferrell, Rowland Thompson, those other Chiefs (of the Supreme Court) Richard Guy, Gerry Alexander and Barbara Madsen and really to all in the BBP community for supporting our shared goals of having a properly functioning justice system that is answerable to a well-informed public.

William J. Downing, Chair