

2006 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

Looking back over the rather thick file of 2006 Fire Brigade activities, I see two clear themes that emerge. These themes involve the recurrence of familiar issues of file access and courtroom photography but those issues now must be viewed through the lenses of the recently amended GR 15 and GR 16. A cynic might be tempted to sniff "*Plus ca change, plus c'est la meme chose.*" Not I. As I prepare to depart in two days for a visit to our Uruguay bureau, I prefer to say "*Del dicho al hecho, hay mucho trecho.*"

Algunas veces. Sometimes. Sometimes it takes a little while to snap what we do into conformance with what we know to be right. The heavy presumptions in favor of courtroom photography and the openness of all court documents have now been put indelibly into black-and-white. As these clearer rules get read all over -- and in the reading become more ingrained -- we shall certainly come to see less of a stretch between the saying and the doing.

The Fire Brigade's reach did not stretch into all corners of the state in 2006 but did deal with issues in Clark, King, Kitsap, Pierce, Skagit, Snohomish, Spokane and Yakima Counties. Calls for assistance came in from The Seattle Times, The News-Tribune, The King County Journal, KIRO, KOMO, Allied Daily Newspapers, and attorneys with Davis Wright Tremaine, Preston Gates & Ellis and Gordon Thomas Honeywell.

File Access

With great confidence, it can be stated that far fewer Washington court documents were sealed in 2006 than in any earlier calendar year. It is likely that no files at all have been improperly sealed in their entirety since the adoption of the new GR 15. The surprisingly easy death of certain old habits comes as very welcome news indeed.

Somewhat more troublesome has been the question of what to do with files and documents sealed during the reign of those old habits -- usually by agreement of the parties with a judge exercising a rubber stamp of expedience rather than a discretion guided by the public interest. More than just The Seattle Times have been interested in the pursuit of this retroactive course correction.

The results have been mixed, with the determining factor probably being whether the situation is viewed as presenting an old, dead issue or an ongoing one. Many courts and individual judges have perceived a current problem in the continuing maintenance of public court files that were improperly sealed in the past. In addition to feeling responsible for having been less than vigilant protectors of the public interest, these courts see their ongoing preservation of the status quo as a dereliction of their duties as custodians of public records that, by definition, should be publicly accessible at the present time. Accordingly, these courts and judges have assumed the responsibility for initiating actions to unseal documents unless a party could now present a legitimate basis for continued sealing.

Meanwhile, some other courts have declined to see this as a current problem (at least as to cases where the subject litigation is fully completed) and have concluded that initiating notice was simply too cumbersome a process for them to undertake. Instead, these courts have left it to intervenors to take the lead in advancing the public interest – regrettably, at some private expense.

The role of the Fire Brigade in all this has generally been to alert courts around the state to the issue and to advise those interested as to their options.

Cameras in Court

For a variety of reasons, it has become quite rare to encounter problems with media photography at trial. Besides the clarity of the new court rule, let's take a moment to laud the conscientiousness and mutual respect with which most Washington judges and news crews approach this key intersection of their duties.

Where problems do still tend to crop up is on busy District Court first appearance calendars and Superior Court arraignment calendars. For these brief proceedings, judges have little or no advance information and the stand-in attorneys usually don't have much more. In addition, the crush of business may leave the judge disinclined to slow things down in the perhaps futile hope of learning specifics or in order to hear from a non-party. (*Del dicho al hecho...*)

Typically, these issues come to the Fire Brigade's attention as after-the-fact complaints when the rule's clear requirements of the giving of an opportunity to be heard and the making of specific findings have not been honored. From the subsequent debriefings, it is clear what would constitute the so-called "best practice" in this area. That is for the reporter to give the court notice on the previous day of a desire to film court proceedings and an expectation of compliance with all parts of GR 16. Then, in court but before cameras are rolling, the judge would ask the parties if there are any restrictions on photography sought and, if so, on what case-specific basis. If there are, then anyone else present (including media) would have a brief opportunity to state their position.

Finally, the judge would announce whether any restrictions would be imposed and, if so, would explain on the record specifically how that restriction would serve a compelling interest outweighing the public's interest in access.

While that best practice may be easily stated, it remains unrealistic to expect, at arraignment and first appearance calendars, the immediate, complete elimination of the stretch between the word of the rule and the in-court action. The previously mentioned dynamics (scant available information and significant time pressures) continue to be simply too prevalent and too operative. The best that can be hoped for – and I think we are seeing it – is a steady reduction in that distance.

Some minor dust-ups did occur during 2006 on the emerging issues of the court's authority to impose hallway restrictions on media photography and the standards to be applied when private individuals seek to film or record court proceedings. These won't be further addressed here out of a certainty that far better stories will be ripe for the telling in future editions of the Fire Brigade Annual Report.

Proactive Measures

In February, a representative of the Fire Brigade once again spoke about its function at the statewide orientation program for new judges.

In addition, the undersigned was graciously treated to a luncheon with almost all of one county's judges and commissioners for a discussion of these and related issues over pizza.

Respectfully submitted,

William L. Downing, Chair