

2009 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

Whether it was a turning point, a tipping point or a pointless anomaly is not yet known. The point seems to be that this year, for the first time in recorded history, the Fire Brigade was contacted more often by judges and court staffers seeking guidance than by journalists and their representatives seeking corrective action. Whatever the significance of this development, let's look at some of the possible factors bringing us to this point.

- ◆ For ten years, the Fire Brigade has been making a friendly presentation at the annual judicial college, with the result that now a majority of sitting judges in Washington has learned of its existence through that exposure rather than a nagging phone call. Consequently, the Brigade has come to be viewed as a non-threatening Smokey the Bear freely dispensing free (and worth every bit of that price) fire prevention advice to the courts. This view of the Brigade's role goes a long ways in explaining the increase on that side of the ledger. How about the other side?
- ◆ The recently amended court rules on sealing court documents (GR 15) and on cameras in the courtroom (GR 16) have provided a more clearly lit path to help judges avoid the traps of banning cameras out of habit or fear and sealing court records based on mere agreement of the litigants. Much of the Brigade's work in past years has consisted of trying to pull people out of these traps and that need has been significantly lessened.
- ◆ To paraphrase the brilliant Spokane novelist Jess Walter, there were many journalists in the 1990's who aspired to be designated the "cultural trends reporter" and who went on to happily accept the "courthouse beat" as a stepping stone but have now found themselves assigned to "cops-courts-education-gardening." It seems quite possible that, in this compromised world, there may be some tough questions going unasked, some balky courtroom doors going unrattled, and some hidden legal paperwork going unrequested.

For historical purposes, it may be noted that 2009 Fire Brigade calls came in concerning court matters in Benton, Gray's Harbor, Jefferson, King, Kitsap, Kittitas, Pacific, Pierce, Snohomish, Spokane, Thurston and Whatcom Counties.

Court Queries

Inquiries coming from court officers reflected a genuine desire to do the right thing with respect to access issues – and, at the same time, to avoid getting crosswise with those who buy their ink and pixels by the gallon (formerly “by the barrel”). Specific access concerns included the proper handling of search warrant paperwork and jury questionnaires. Judges were also interested in the avoidance of gag orders, the entry of sensible media orders at trial and in the approach to those representing non-traditional media. Another recurrent theme was judges preparing to respond to requests for media interviews.

Media Concerns

Courtroom photography issues, these days, seem to arise exclusively at preliminary appearances of arrestees and at arraignments of newly charged defendants. While it is great news that news cameras are being well accommodated at trials and sentencings, those earlier proceedings present a persistent and nagging problem. Feeling pressured to move their crowded dockets along and with no reliable information about whether or not identification of the accused is genuinely in issue, judges will too frequently ignore the procedural requirements of GR 16. Reminders of those requirements from a Fire Brigade that can also be “persistent and nagging” are the current home remedy.

Other issues arising this year related to old, closed files, access to proceedings concerning expenditure of public funds for indigent defendants and an intriguing puzzler of a pretrial deposition masquerading as a court proceeding (i.e., in a locked courtroom with a robed judge on the bench).

Proactive Measures

In February, a representative of the Fire Brigade once again spoke about its function at the statewide orientation program for all new Washington judges. The undersigned has also continued to be involved as an occasional consultant for the incipient California Bench-Bar-Media Committee.

All in all, 2009 was a calm and quiet year for the Fire Brigade. Perhaps that should be the hope for the next year too but one can't help wondering if it wouldn't be healthy to have a little more heat and maybe even a dangerous spark or two. After all, isn't that the point?

Respectfully submitted,

William L. Downing

William L. Downing, Chair