

2010 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

Continuing the trend noted in recent Annual Reports, 2010 was a relatively quiet year for the Fire Brigade and one in which its assistance was sought roughly equally by courts and members of the press. The opinion here remains that this is attributable to the clarity of the amendments to GR 16 on cameras in court (effective January 2005) and GR 15 on the sealing of court records (effective July 2006).

The Brigade's involvement this year has been limited to the state and county courts of King, Pierce, Skamania, Snohomish and Yakima Counties and the Municipal Courts of Seattle and Orting.

CAMERAS

“Rule of Law.” The Fire Brigade was contacted at least twice in advance of court hearings in which there was an indication that press cameras were going to be barred or severely restricted. Interestingly, one of these was in a rural court while another was in a quite large metropolitan court. In both of these instances the presiding judge's attention was directed to the specific language of GR 16 (in one case by the reporter and in the other by the Brigade) and, after this, all went smoothly. Experiences like these are why it can be readily concluded that so much credit is due to the Supreme Court's wise work in its rule-making capacity.

Logistics. When court photography problems do arise, it is now most common that logistical concerns are at the heart of the matter. Examples include a high profile six defendant criminal case in Pierce County, an equally crowded and emotional death penalty hearing in King County, the more informal setting of juvenile courtrooms and, of course, the perennial problem of prisoners being transported through public hallways. The Fire Brigade cannot claim credit for crafting any brilliant solutions in any of these situations but only for providing consistent counsel to all parties in each of them. That urging was to try just a little bit harder to find a workable answer - whether that answer was a larger courtroom, a few square feet to plant a tripod, pooled camera responsibility or a quieter shutter. To the credit of all, when time permitted, satisfactory resolutions were most often achieved.

ACCESS

Some mildly interesting situations arose this year presenting access issues. In Yakima County, the state had filed a criminal case alleging sexual abuse of a child only to later move for the dismissal of all charges. At the same time, it sought and obtained an order sealing its motion to dismiss. Of course, it would have been sufficient for the prosecutor to simply say that he had doubts about the truth of the original charge (or even just that new information made it highly unlikely that any jury would convict) but, instead, the motion contained excruciating detail about probable misconduct of the family of the victim. The Fire Brigade encouraged the reporter to press the prosecutor to be more forthcoming about explaining his actions and encouraged the judge, upon request, to consider redactions (geared to protecting the child's privacy) instead of the total sealing of the document. All were receptive and the public was soon able to acquire some information they deserved about how the police and prosecutor had handled the case.

Another access issue concerned a reporter's belated request of the court to get a copy of a DVD that had been placed into evidence when played for the jury a day earlier. If the exhibit were a photograph or document, it could and would have been easily copied or photographed. However, this was a DVD and the death penalty case was about to be submitted to the jury. The timing was tight and the stakes high. At that point, there was no way the clerk would let this exhibit out of her custody with any chance that it could be erased or altered. Lesson? "TGB" as the submariners ruefully say. Target gone by.

Of course it's not an access issue in the traditional sense but an odd issue did arise when a criminal defense attorney sought a subpoena *duces tecum* directed at a newspaper. She wanted to obtain the notes of the reporter who had been contacted by her jailed client. This is not exactly your prototypical "journalist's source" situation! Since the prosecutor had no intention of using the information as evidence and since the defense attorney had access to the information from her own client, the court denied the requested subpoena.

Proactive Measures

In January, 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.

Respectfully submitted,

William L. Downing

William L. Downing, Chair