

2014-15 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

The Fire Brigade did not seem to be impacted – positively or negatively – by the absence of our usual BBP Committee meeting in late 2014. The trends noted in previous Annual Reports continued.

Let's make our record by cutting and pasting some Fire Brigade responses to issues that arose during this period:

1. To a judge inquiring about recording requests that come from non-traditional media:

I generally apply a two-part test for whether to allow a non-traditional media person to audio- or video-record court proceedings. First, do they have a legitimate educational purpose akin to that of the press (and this can be on behalf of an interest group rather than the general public) or is there some likelihood of it being put to an improper use (such as embarrassment, intimidation, retaliation, blackmail, etc.)? The second question is whether you trust them to follow any restrictions laid down by the court (e.g., don't record this particular witness, don't point your camera toward the jury box, don't be a distraction, etc.) If you feel the requestor fares OK on both these tests, I would generally allow it. There is, however, unlike the real press, no presumption in favor of permission and the court has full discretion. I do think that an exercise of that discretion does require an explanation of your reasoning on the record.

2. To a non-traditional media person ("Animal News Northwest") who had arrived during a court session and was not allowed to set up equipment:

You certainly are within the category of "News Media" and, therefore, fully entitled to the presumption in favor of being allowed to photograph and record in court so long as "*permission shall have first been expressly granted by the judge.*" GR 16. As I understand it, this request came while a hearing was already in progress and so obtaining the prior permission was an impossibility. I would just editorialize to say the philosophy of GR 16 is to support the news media's efforts to inform the public about what happens in the courtroom while not allowing application of the rule to alter what goes on in court and so it is common that a court will not interrupt proceedings to make the necessary inquiries to deal with a recording request.

Consistent with all this, I further understand that the timely request to record in court *tomorrow* has been granted.

3. When asked for some general thoughts about press access to trial exhibits:

Any exhibit, I think, is in the public record once it's admitted into evidence. One that is marked but not admitted can be withdrawn and is not in the public record. By definition, it cannot form the basis for any decision or ruling (other than the ruling on admissibility which, I suppose, could complicate this simplistic analysis sometimes if that were contested and the issue was appealable). Police reports are often marked for ID for use to refresh recollection as to some small detail but the entire document should not thereby immediately become public.

Once an exhibit is in the public record, I think the public (and its surrogate, the press) can view it and photograph it IF this does not cause concerns having to do with safety or orderliness. It's usually not a problem for the clerk to place an admitted photo on the bar during a court recess so that someone can look at it or photograph it – guns, cash and drugs will of course be handled with greater care. Recently, in King County, the press arrived just after a surveillance video was shown to a jury and they asked for a copy. They were rightly told that if they'd been there, they could have filmed it but now they'd have to wait until after the trial because the clerk had custody of it and was not about to let it go out for copying.

Of course, in the context of a jury trial there might be heightened concerns about a gruesome photo being published and causing the jurors to be exposed to emotional responses from family, friends or just people on the bus and, based on that, the court might well direct that it can be looked at by anyone present but not photographed until after verdict.

Some other recent matters drawing the Fire Brigade's attentions include:

- Assisting the press with file access issues in an involuntary TB treatment case (with an understanding that the patient's name would not be used);

- Engaging in discussions (maybe to no one's satisfaction?) of issues around access to materials put before a special master appointed by the Superior Court;
- Seeing an impressively fast re-cropping appear in an online newspaper after passing along a judge's concern about publication of a mid-trial photo of a shackled defendant;
- Gently steering a judge away from imposing an unconstitutional prior restraint when asked to prohibit publication of the identity of a testifying informant.

In other words, it was business as usual.

Respectfully submitted,

William L. Downing

William L. Downing, Chair