

2018 Report on Activities

Bench-Bar-Press Liaison Committee (Fire Brigade)

The year 2018 was a busy one. I'm not sure whether the uptick in activity was due to an especially calm 2017, or the fact that new 2017 Fire Brigade contact information was slow to get out, or because in fact, lots of Fire Brigade-worthy conflicts arose in 2018. Whatever the reason, there were lots of calls to summarize for this report.

There were the usual inquiries:

From an attorney for KIRO concerned that a judge in King County had placed limits on the TV news camera operator, ordering that the defendant be filmed only from the neck down, without conducting an analysis or making findings on the record as to why;

From a judge in Chelan County wanting to be prepared for an anticipated request by defense counsel not to film the defendant;

From a brand new judge in Wahkiakum County needing advice on how to approach a non-media member of the public in her court, who was using a cell phone to audio and video record court proceedings; and

From a judge in King County wondering how to respond to an email the judge's bailiff had received from a reporter from The Stranger, asking when the judge would rule on a pending motion.

These were straightforward. The Fire Brigade consulted the relevant parties to refresh understanding of GR 16 and give advice. When dealing with non-media filmers and recorders, the judge is not required to presume access but a two part inquiry is useful with quasi-media folks. First, is the person's purpose to inform or advocate or to harass, threaten, or embarrass? Second, will the person abide by the court's rules of decorum? When a reporter contacts the court asking when something might happen, the court should make an effort to be helpful, even offering to notify that reporter when a decision is made, or simply providing contact information and a suggested date for the reporter to check back.

Other Fire Brigade contacts were not so run-of-the-mill.

A court administrator forwarded a draft set of media rules the bench had been working on for Fire Brigade review and comment. Fire Brigade feedback included a suggestion that media representatives be invited to participate in the process.

The King County Clerk asked the Fire Brigade to assist where a judge had signed an order redacting the party's names so that only initials appeared in the caption. The effect of such a redaction is that the case virtually disappears from public view by anyone that doesn't have the cause number. After a brief

consultation, the judge who had signed the order without realizing the impact, set a hearing to address this with the parties and then, without objection, vacated the order.

A media representative from the Lewis County Chronicle contacted the Fire Brigade concerning a civil action filed by a retired judge, seeking an injunction to prevent certain portions of records from being released pursuant to the Chronicle's Public Records Act request. The Chronicle had been added as a party to the litigation. After discussing the particulars with the representative, the Fire Brigade took no action, concluding that the PRA litigation was outside of its scope.

A Spokesman Review journalist wrote to the Fire Brigade for help gaining earlier access to affidavits of probable cause used by the judge to make bail decisions. After conferring with the parties, it appeared the court intended to convene a group to work on the question of how and when affidavits would be provided going forward. The fact that the Fire Brigade didn't hear of any further issues likely signals that they found a solution.

An attorney wrote the Fire Brigade asserting that the petitioner in an Anti Harassment case against his client had obtained an order sealing the file. He wrote that the hearing was to take place in 4 days and that he did not want to litigate the case because it would "embarrass" the petitioner (a "very fine judge" in Spokane). In other words, he wasn't seeking to unseal the file for the open administration of justice; rather he hoped that the the threat of unsealing the file would lead to settlement or dismissal of the petition. After talking to attorneys for both parties it was not clear what the Fire Brigade's role should be, other than to counsel against seeking a closed hearing and ensuring that attorneys for both parties understood GR 15 and the need for a sealing order that is narrow and specific to the particular needs of the case, and that contains appropriate findings.

Four months later, when the case was the punchline on an NPR *Wait, Wait, Don't Tell Me* segment, a UCLA professor was blogging about it, and the Spokesman Review wrote about the case as court "records sealed from public view," the petitioner judge contacted the Fire Brigade to share his frustration and explain his personal security concerns related to the case. Although water under the bridge by this time, the Fire Brigade takeaway message was that had the visiting judge that entered the order to seal entered particularized findings and narrowly tailored redactions to address the specific security issues in the case, rather than entering a blanket order sealing, things would have been better for all concerned.

Finally, several news organizations contacted the Fire Brigade about problems they were experiencing in King County Superior Court's criminal presiding courtroom, E1201. They asserted that defense attorneys were circumventing the

judge's orders allowing a defendant to be filmed, by standing and positioning themselves in such a way as to form a human shield, blocking the camera's view of the defendant just as the hearing would begin. This led to a series of meetings between the Chief Criminal Judge and the prosecution and defense bar, and between the Fire Brigade, Judges and media representatives. There was agreement among members of the bench and press (but not the defense bar) that this interference with the media's access had to stop. As of this writing efforts to find solutions have been launched. This includes securing funds to design and then implement the installation of cameras and monitors that will ensure access to the media, when authorized by the court. Stay tuned for an update in 2019.

All in all 2018 was a busy year.

Beyond our Jurisdiction

Should the United States Supreme Court continue to operate "immune from the watchful eye of television cameras?" This was the question posed to judges by the National Center for State Courts in May 2018. The National Center's Question of the Month asked judges around the country if they believe the Supreme Court's oral arguments should be broadcast live. Nearly 70 percent of the 759 judges responding said yes. There has been no change to the no cameras policy at this writing.

Proactive Measures

In February 2018 a representative of the Fire Brigade once again made a presentation about media relations and the role of the Fire Brigade to new judicial officers at the statewide Judicial College. As it has in years past, the judicial orientation program wrapped up its very full week of judicial education with a 30 minute introduction to this important topic. Feedback was very positive and the presentation led to several follow up inquiries to the Fire Brigade after these new judges took the bench.

Turning over the Gavel and the Fire Chief Helmet

This is my final report. The end of 2018 brings me to retirement. I look forward to following the work of the Bench Bar Press Committee in the months and years ahead. I am delighted that the BBP Executive Committee selected Judge Judy Ramseyer to carry on this work as Chair of the Bench Bar Press Liaison Committee (Fire Brigade).

It has been my honor and my privilege to serve with this committee.

Respectfully Submitted,

Judge Barbara Linde, Chair
January 9, 2019