

**To: Chief Justice Mary E. Fairhurst, Chair
Bench Bar Press Committee**

**From: Judith H. Ramseyer, Chief
Fire Brigade Liaison Committee**

Date: October 25, 2019

FIRE BRIGADE LIAISON COMMITTEE 2019 ANNUAL REPORT

As of the date of this report, contacts with the Fire Brigade in 2019 have not been too heavy, but always interesting.

February 2019 – A new King County Superior Court Judge was contacted by a reporter for *Mother Jones*, inquiring about a high profile sentencing of a juvenile who pled guilty as an adult to the charge of Murder in the Second Degree. The reporter told the Judge she was on a short time line and would like his quick response to several questions she provided in writing. The Fire Brigade discussed the questions with the Judge and determined how he might respond with information contained in the record, as opposed to discussing his reasons for making certain decisions that were not stated on the record. Where the Judge was unable to offer explanation, he would direct the reporter to the public record and to prosecution and defense counsel who would have the option to answer questions about sentencing recommendations.

March 2019 – An Okanagan County Superior Court Judge inquired about the media photographing a 14-year-old being arraigned for Murder in the First Degree. We discussed that there is no difference in the law regarding photographing a juvenile versus an adult, but specific reasons may exist in the case to justify limitations. Standard GR 16 procedures apply regarding hearing from interested parties and making case-specific findings on the record. Additionally, a number of counties have informal agreements with media outlets to photograph juveniles only from the neck down or from the back. The Judge planned to reach out to local media to see if an agreement not to photograph the juvenile's face could be reached, thereby avoiding the need to hold a hearing to limit photography. There was no subsequent contact with the Judge.

March 2019 – A Walla Walla County District Court Judge contacted the Fire Brigade about an unusual situation that had arisen in their courthouse. A private citizen, not associated with a specific court proceeding, initially objected to a sign posted in the courthouse asking people to silence their phones upon entering. This individual confronted the Presiding Judge about the sign and was told it was a request, not an order, intended to respect others and the business being conducted in the courthouse. The individual returned to the courthouse several times to videotape with his cell phone, asking questions of members of the public and staff while videotaping and, at one point, following the Clerk of the Court into her private office while questioning her and videotaping. The individual did more of the same in the area where family members wait for people being held before a criminal hearing. There, the Sheriff's Deputy asked the individual to leave.

When the man would not stop videotaping in the courthouse, the Presiding Judge asked him to leave and warned he would be arrested for trespass. The individual posted on YouTube a video of the Presiding Judge telling the man to leave the courthouse, and asked viewers to call and confront the Judge. Several people from around the country did, but no local residents. This individual claimed to be a member of the media because he has a blog. An organization called Right to Film contacted the Presiding Judge to tell him he does not know the law in this area. This is when the Judge contacted the Fire Brigade.

Several issues arose from our conversations:

1. This is not a CR 16, media in the courtroom, matter.
2. The public has a right to access a public building, but no right to disrupt business, intimidate, or harass others. The courthouse has no security screening, so security issues are front of mind. This is a law enforcement matter.
3. The Presiding Judge has the authority to manage the security and safe operation of the courthouse. He should consult with his local prosecutor and law enforcement regarding access to/use of public buildings and how to enforce laws that protect persons using the courthouse.
4. The Presiding Judge should determine whether this person has a bona fide media purpose to educate the public or if he is using his tools to harass and intimidate others.
5. The Presiding Judge may have a public relations problem. He should reach out to his local newspaper and perhaps publish an Op Ed related to maintaining the operation of the court for the safety and fairness of all.

The Fire Brigade followed up with the Presiding Judge the next week and learned his court had adopted a written policy regarding the use of cameras and electronic recording/broadcasting devices in the courthouse without prior court approval. All such devices are to be turned off in a courtroom except as provided in GR 16 or court policy. The policy does not restrict the use of devices to make or receive telephone calls, email, or text messages.

The Fire Brigade checked back in mid-April, and learned that the court's new policy had been implemented without complaint. The Presiding Judge continued to receive threatening telephone and email messages as a consequence of the YouTube posting. He was dealing directly with YouTube to have the posting taken down due to its harassing and defamatory content. Criminal charges for violation of an anti-harassment order were filed against the person who initiated this controversy. The Presiding Judge also pursued publication of an Op Ed in his local newspaper regarding the importance of maintaining courthouse safety for the benefit of all who seek the court's services.

March 2019 – The Fire Brigade was contacted by the Executive Editor of *The Bellingham Herald* about a high-profile criminal case in Whatcom County. An individual was apprehended and charged with Murder in the First Degree for the 1984 death of a young woman. Due to the age of the case and advancements in DNA profiling that led to the arrest, the case was generating substantial local and national media attention. The Judge presiding over the trial had been appointed to the bench less than one year earlier. A GR 16 media status conference had been

scheduled for the following week, and the Editor wanted to ensure that the Judge had the benefit of the Fire Brigade's experience with court and media relations.

The Fire Brigade contacted the Judge to discuss the situation and to offer resources. The Judge had attended the Judicial Conference in January, including the session of Media Relations. He also had consulted with a local retired judge on managing a case with high media interest. We discussed potential issues and provided the Judge with a media checklist and a model order he could use as a template to structure his upcoming GR 16 hearing. The Fire Brigade assured the Editor the Judge was carefully thinking through how best to protect the needs of the parties and trial participants while ensuring public and media access to the proceedings. She was invited to contact the Fire Brigade if the status conference was concerning or the Fire Brigade could be of further assistance. There has been no further contact.

May 2019 – An attorney wrote to the Fire Brigade on behalf of the Washington Newspaper Publishers Association and the Washington Coalition for Open Government to complain that the Columbia County Court Clerk had prohibited a newspaper publisher from photographing a court file document with his telephone. The Court Clerk advised the publisher that all copies of court records must be provided by the Clerk's Office at the cost of \$.50/page for hard copy, \$.25 per page for an email copy, as provided by RCW 36.18.016(4). Ms. George asserted that the publisher was taking the photograph in his role as a reporter to accurately record information of public interest. Because he was not using the court's resources or asking the Court Clerk to "prepare" or "copy" the document, he should not be prohibited from pursuing his reporting service to the public.

Because many Court Clerks are separately elected officials, they are not subject to court administration. Consequently, the Fire Brigade consulted with both Chief Justice Fairhurst and President of the Washington State Association of Court Clerks ("WSACC"). Coincidentally, WSACC was having a Board meeting the next day and agreed to discuss the practice at the meeting. The WSACC Board determined that only a few counties took this restrictive position, most having concluded they had no authority to prevent the public from photographing court records. WSACC's President offered to speak with the Clerks of Court who imposed the prohibition to see if a consensus could be reached among all counties. She reported back that all counties now agree not to prohibit photography of court. The attorney was so notified, and is happy with the resolution.

July 2019 – An experienced courthouse reporter with the Spokane *Spokesman-Review* emailed the Fire Brigade to inquire about restrictions a Spokane Superior Court Judge had imposed during a high-profile discretionary decline hearing for a 17-year-old charged with Murder in the First Degree, requiring print reporters to turn off or turn over cell phones before entering the courtroom. The reporter was of the opinion that a courtroom is a public space not subject to reasonable restrictions until a judge takes the bench. He asked the Fire Brigade to follow up with his boss to discuss specific restrictions imposed in the proceeding.

The Fire Brigade contacted the reporter's Editor, who expressed the newspaper's concern that courtroom restrictions had been imposed unilaterally, requiring reporters to turn off their cell phones while in court, even though cell phones are essentially their work stations. Still and TV

cameras were allowed in the courtroom. The *Spokesman-Review* had filed a motion with the court to challenge certain restrictions, but the decline hearing already was underway and newspaper representatives had not heard from the Judge when or how their motion would be decided.

The Fire Brigade emailed the Judge to schedule a time to talk about the newspaper's concerns. The next day the Judge emailed that he had spoken with the Managing and Assistant Editors of the newspaper. They determined that the primary issue was requiring reporters to turn off their cell phones. Because the court had made other accommodations for the reporters, the Editors concluded they were able to fully report on the proceedings.

The Fire Brigade responded to the Judge's email supporting what appeared to be a satisfactory resolution. It reminded the Judge, however, of GR 16 and caselaw, which require that before imposing restrictions on public access to the court, a judge must conduct a hearing, hear from all interested parties, make restrictions only if warranted under the specific facts of the case, narrow restrictions as needed to address the identified compelling concerns, and make a record of the court's findings and conclusions. The Judge was encouraged to hold such a hearing even though an agreement apparently had been reached, so the court's reasoning and conclusions were transparent and of record.

Despite several telephone messages left with the *Spokesman-Review* representative, there has been no further contact. The Fire Brigade does not know if the court conducted a hearing on media restrictions, but assumes no follow up indicates a satisfactory outcome.

In March 2019, the Fire Brigade Chief also attended a Supreme Court reception and dinner in the Governor's mansion sponsored by Allied Daily Newspapers as the capstone of Newspaper Day at the Capitol. Rowland Thompson and his wife are delightful hosts. As a person who appreciates a cup of coffee and newsprint, it was a treat to meet and speak with newspaper representatives from around Washington.

Fire Brigade activity during 2019 confirms the effective and valuable working relationships between the media and Washington courts. It is a privilege to serve in this capacity.

Respectfully submitted,
The Fire Brigade