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BENCH MEDIA PROJECT

By Rachelle M. Bin

I. INTRODUCTION

Last year, the Defense Counsel Section highlighted the need for programs focused on improving relations between the judiciary and members of the press. In response, the LDRC decided to learn more about those efforts undertaken in different states for such purposes, and to identify those which have been successful. The purpose of this report is to outline many of these numerous and varied efforts. Generally, they fall into one of five categories: conferences; response teams (also known as "fire brigades"); activities sponsored by Bar organizations; informal gatherings and publications; and the involvement of public information officers.

II. CONFERENCES

Conferences geared toward bench-press relations have promoted positive interaction between the two groups. By spending extended periods of time in one another's presence and discussing, usually on an informal basis, issues of mutual concern, participants have been able to resolve differences and build personal relationships.

A. Florida

Each year, the Florida Bar sponsors two different conferences which bring together judges and journalists from across the state.

1. Media Law Conference

The Florida Bar's Media and Communications Law Committee coordinates the state's annual Media-Law Conference. The conference, which includes more than 250 lawyers, judges, journalists and students, consists of a general session, morning and afternoon workshops, and lunch with a luncheon speaker. Judges, lawyers, academics and journalists participate on the panels. Past conferences have discussed Florida's new shield law, laws concerning access to juvenile records and proceedings, and reporters' rights to gather information. This year's conference will address the challenges inherent in building better relationships between judges, lawyers and members of the press and will offer solutions for effective communication among the three parties.

2. Reporters' Workshop

The Florida Bar's Media and Communications Law Committee also coordinates a Reporters' Workshop. Twenty-five journalists, usually court reporters new to their areas, are invited to attend the two-day workshop which gives them an overview of the legal system. Lawyers, judges and journalists serve on the panels and journalists learn about legal research, criminal and civil law, access to public records and the basics of the court system. In the recent past, a member of the Florida

Supreme Court has been the distinguished dinner speaker. This year, a Florida Supreme Court justice will host a dinner for reporters at his home.

B. Georgia

The State Bar of Georgia has a committee comprised of attorneys, judges and journalists, which holds an annual Bar, media and judiciary conference to discuss significant legal issues impacting the three groups. To date, there have been eight such conferences, each of which has been attended by hundreds of judges, journalists and lawyers from across the state. In order to ensure attendance by judges, the committee asks judges who have previously supported the conference, to encourage other judges to attend. The committee also invites many judges to participate on the panels. Panel presentations are followed by a breakout session with a judge, an attorney, and a member of the press acting as discussion facilitators.

The 1999 conference was entitled "Judges and the Modern Media: Independence and Interdependence." Topics discussed included access to court records and proceedings; subpoenas; the reporters' privilege; and the Georgia Shield Law. Sponsors of the 1999 conference included numerous law firms and news organizations (e.g., *The Atlanta Inquirer*, *The Atlanta Journal-Constitution*, CNN, and the Georgia Press Association), as well as many judicial organizations (e.g., the Council of Juvenile Court Judges, the Council of State Court Judges, and the Council of Superior Court Judges). This year's conference is entitled "News and the Courts in the New Century".

C. Iowa

For the past two years, an annual bench-journalist conference has been held in Des Moines, Iowa. The idea for the conference originated a few years ago when local journalists and judges met to discuss how to process requests for cameras in the courtroom. After a few meetings, the participants realized that many important issues and questions were being raised and that a more substantive deliberative forum was needed. Consequently, a day-long conference for judges and journalists was planned.

To date, two annual conferences have taken place. The conferences were held on a Saturday morning during a relatively slow time of the year, between January and early April. The Chief Judge strongly encouraged area judges to attend, and most were present. More than 60 judges and journalists attended each conference. To facilitate discussion, round tables were used and seats were pre-assigned. A representative from the Iowa Freedom of Information Council moderated the conferences. Comment sheets received at the end of each of the conferences indicated that participants found the gatherings not only informative, but also helpful in improving communication among the parties. Though the conferences were "on the record," judges could reserve the right to go "off" the record." The conferences helped clarify certain issues and resolve misunderstandings between the two groups. For example, at the first conference, the parties streamlined the filing process for camera requests;

the judges explained how the judicial canons restrict their comments about ongoing cases; and the parties discussed definitions of interview terms, such as "on-the-record," "off-the-record," and "on-background."

During the second conference, the parties agreed to form a committee to explore a statewide "court reporters' boot camp;" the judges agreed that reporters should be provided with a list of names and phone numbers of contacts at the courthouses; and the judges received input from the media regarding what the media needed, in terms of access and unique electronic media considerations, prior to the building of a new courthouse annex. Whereas the first conference was a bit reserved, the second conference consisted of a more frank and open discussion.

D. Kentucky

Three years ago, the University of Louisville sponsored a two-day seminar in Shakertown, Kentucky aimed at improving the understanding between judges, lawyers and journalists. Due to the seminar's success, the Chief Justice of the Kentucky Supreme Court recommended a series of meetings around the state where journalists and judges could meet to discuss issues of mutual concern. These subsequent meetings were organized by the University of Louisville, under the direction and with the encouragement of, the Chief Justice.

Four such meetings were held in three separate regions of the state, and more are planned for the future. All state judges, from all levels of the judiciary, are not only invited to attend, but are strongly urged to attend by the Chief Justice. Further, they receive CLE credit for their attendance. The Kentucky Press Association is active in organizing the seminars and has taken efforts to ensure that leading journalists attend the conference in their region. While each meeting has an outline of topics to be discussed, the meetings have been conducted informally, thus creating a relaxed environment in which participants are comfortable to express themselves. Because of the active participation of the University of Louisville and the Kentucky Press Association, and especially with the encouragement and cooperation of the Chief Justice, the meetings have increased the willingness of judges and journalists to communicate with one another.

E. Maryland

In 1998, the Maryland State Bar Association, the Maryland Judicial Conference, and the Society of Professional Journalists (Maryland Chapter), sponsored a one-day conference, "The Bar, the Bench and the Media: A Matter of Trust." The program's goal was to open the lines of communication between the parties and provide greater insight into each group's professional obligations and responsibilities. Additionally, the conference hoped to improve the reporting by the press of Maryland's legal system. The program consisted of three different panels comprised of journalists, judges and attorneys. Participants exchanged various opinions and engaged in a frank, constructive discussion. The conference also marked the culmination of a special joint project between the Maryland Chapter of the Society of

Professional Journalists and the Maryland State Bar Association: the publication of the state's first-ever "Journalist's Guide to Maryland's Legal System" (discussed further in Section V.F. below).

F. First Circuit

In October 1999, the New England Press Association, along with the First Circuit, co-sponsored a day-long conference to improve the media's understanding and accurate reporting of the federal judiciary. The interactive panel discussions, among judges, attorneys and journalists, offered practical advice on how best to gather and deliver news about the judicial system. Topics discussed included how reporters can access information; how attorneys can assist reporters in high profile cases; and how judges' comments about ongoing matters are restricted.

Because of this program's success, the First Circuit, along with the Office of State Courts in Puerto Rico and a group of area journalists, held a similar program in Puerto Rico earlier this year. The turnout among judges and journalists was high and many questions were directed to the panelists. In addition to improving journalists' understanding of the federal judiciary, the conference highlighted areas where judges can be helpful to reporters covering cases. For example, judges were encouraged to release opinions early in the day, before reporters' deadlines, so that the rulings could be included in that day's news reports.

G. National Center for the Courts and Media

In addition to the conferences mentioned above, The National Judicial College, located on the campus of the University of Nevada, Reno, recently opened The Donald W. Reynolds National Center for the Courts and Media, dedicated to improving relations between the bench and media. This year, the Center held its inaugural conference, "The Courts and Media-Conflict and Cooperation." The two-day conference included programs on such topics as "Fair Trial vs. Free Press," "Is Media Coverage Threatening Judicial Independence?" and "What Journalists Want: How the Courts Can Help." Participants at the conference included members of the national media and state and federal judges. One participating judge indicated that the conference provided a much-needed forum for judges and journalists to engage in a constructive dialogue about issues of mutual concern.

III. RESPONSE TEAMS

Some states have successfully created response teams, or "fire brigades," whose function is to resolve problems between the bench and the press as soon as they arise. These fire brigades, usually under the direction of a local judge or at least with the judiciary's encouragement, successfully strengthen relationships and clarify misunderstandings between the two groups.

A. Hawaii

Hawaii has a one-person "fire brigade." The Chief Justice has selected a local attorney to serve as the liaison between the court and the media who can be contacted by either side when conflicts or questions arise. The one-person brigade has worked fairly well in eliminating confrontation between the two groups and in reducing attorneys' fees.

B. Massachusetts

In 1997, Massachusetts' Supreme Judicial Court Judiciary/Media Committee formed a response team to quickly address conflicts arising between journalists and members of the judiciary. The response team is comprised of six judges, one clerk-magistrate, and five members of the media. Anyone from the media or the bench may contact any member of the response team. Though the advice given is not binding, the response team has resolved many problems and encouraged positive dialogue between the bench and the press.

C. Washington

Washington's brigade, formally known as the Bench-Bar-Press Liaison Committee, a sub-group of the Bench-Bar-Press Committee of the Washington State Bar Association, is comprised of judges, attorneys and media representatives. It was formed several decades ago as a forum in which to resolve conflicts among the bench and the press. Judges and the press contact the chair when they have questions concerning the media's access to or coverage of court proceedings or when there is an impasse between the press and the bench. Though the advice given is not binding, judges and members of the media are willing to listen to the advice given. Oftentimes, what appeared to be an impasse between the two parties, turns out to be a misunderstanding of what the judge ordered or what the media requested.

Currently, the brigade is chaired by Superior Court Judge William Downing who, like past brigade captains, works behind the scenes to minimize potential conflicts between the parties. Issues addressed by Judge Downing include gag orders, cameras in the courtroom, and access. In one matter, he persuaded a Superior Court Judge to promptly rescind a gag order prohibiting all parties from speaking to reporters after he provided the trial judge with a copy of the controlling case law. Recently, Judge Downing advised a new judge, who was concerned about reporters in the courtroom, on how to grant the media access while at the same time maintaining control of the trial. In addition to responding to complaints and answering questions, Judge Downing notifies his colleagues of changes in laws affecting the media, such as laws affecting cameras in the courtroom or the openness of sexually violent predator proceedings. As stated by former brigade captain, Judge Gerry Alexander, the brigade has improved the understanding between the judiciary and the media by offering the parties an opportunity to air their concerns and by fostering respect for opposing viewpoints.

IV. COMMITTEES

Numerous states have excellent Bar committees dedicated to promoting dialogue between the judges and the media. Involvement and support from local judges and media executives encourage greater participation by members of the two groups.

A. Colorado

In order to promote the accurate reporting of the courts, the Colorado Bar Association (“CBA”) holds meetings, usually every month, where judges, reporters and attorneys are invited to discuss a particular case. These meetings are usually held over breakfast.

Additionally, a representative of the CBA and the Public Information Officer (“PIO”) for the Colorado State Court System, organize lunches throughout the state for judges and reporters. (Attorneys are invited, though the focus is on relations between the judges and the press.) The luncheons are held in those cities with tension between the bench and the press, usually indicated by negative coverage of the courts in the media. In order to ensure that members of the media attend, the PIO contacts local editors regarding the best dates for the event. Prior to the lunch, the PIO and the Bar representative meet with the judges to address concerns they may have about meeting with the press. The luncheons discuss how reporters may obtain court files and information about an ongoing case, and what judges are permitted to say about cases. Reporters are informed that whenever they have questions about a case or the legal system, they should call the CBA, the PIO, or the court directly. The luncheons, which have been well received by all participants, are paid for by the Chief Justice of the Colorado Supreme Court and by the CBA.

B. Massachusetts

Massachusetts’ Supreme Judicial Court Judiciary/Media Committee, which has 25 members, includes judges at all levels, executives of media organizations, and attorneys. The Committee is co-chaired by Justice John Greany, of the Supreme Judicial Court (the highest state court in Massachusetts), and by the publisher of the *Springfield Union-News* and *Sunday Republican*. The Committee, which held its first meeting in the Fall of 1995, meets six to eight times throughout the year. The PIO for the state court system handles the day-to-day details of the organization. Because media executives and numerous judges are active on the Committee, problems are resolved at the highest level and usually much faster than if judges were speaking to beat reporters.

In the past 2-½ years, the Committee also has sponsored five educational conferences that have brought hundreds of judges, clerks and journalists together for off-the-record discussions of issues affecting them all. The conferences have permitted participants to spend several hours in small groups, of roughly even numbers of judicial participants and journalists, to discuss hypothetical scenarios of conflict. Evaluations received indicated that much of the

conferences' value came from providing the different groups with the opportunity to meet with each other in a relaxed environment. Many of the participants have attended smaller, follow-up sessions, to build on the progress made at the conferences.

C. Maryland

The Maryland Bench-Bar-Media Advisory Group, created in 1999, is comprised of 13 members: three from the judiciary (two judges and the Court Information Officer); four lawyers and the State Bar Association's Director of Communications; and five journalists (two from print, two from broadcast, and one college journalism teacher). With the support and encouragement of the Chief Judge of the Court of Appeals, Maryland's highest judicial officer, the Committee hopes to improve communication between the media, on the one hand, and judges and lawyers, on the other. Currently, the Committee is exploring future activities, such as local and regional meetings for journalists, orientations for new reporters covering the courts, and judicial conferences.

D. Other States

Within the past year, other states have established committees to improve relations between the judiciary and the media. For example, in 1999, the Maine Supreme Court established the "Committee on Media and Courts," specifying that of the 10 members, four shall be from the media, and three from the bench. Also, Iowa's committee, recently formed by its State Supreme Court, will meet a few times per year and will consist of judges at different levels and members of the print and broadcast media.

V. INFORMAL GATHERINGS AND PUBLICATIONS

In addition to activities and meetings hosted by the different Bar organizations, there are many other, non-Bar-related meetings between the bench and the media, as well as publications, aimed at resolving differences between the two groups.

A. California

The State Court's Media Committee in Southern California, comprised of six to eight judges, has monthly meetings and, every other month, invites media representatives and media lawyers for lunch to discuss issues of mutual interest. As expected, issues discussed include access to the courts and court proceedings. The lunches provide a forum in which to resolve problems affecting either side. For example, during past lunches, the media had complained about inconsistencies in media access policies in the Los Angeles Superior Court system. Because 20 new courtrooms were recently added, and court personnel and security were constantly changing, the media were treated differently in different courts. Some courts required cameras to have a lens cap; and in some, but not all courts, the media needed to display their credentials. In order to promote consistency, the Committee, in conjunction with

the media, is in the process of revising the rules to make them uniform in all courts. Further, the committee has requested that a “media survey” be conducted so the media can indicate the problems they have encountered while reporting on cases. Finally, the committee is involved in a project surveying the new courts for sites where the media can conduct their interviews and prepare their reports without disruption.

B. Colorado

The Chief Justice of the Colorado State Courts hosts an annual lunch for reporters of the state’s major dailies to discuss issues of common concern. Additionally, the state judges in Grand Junction, Colorado held a primer course for area journalists on legal terms and court processes. Though the journalists already had received training on proper courtroom conduct, the judges felt that in order to promote accurate reporting of the legal system, the journalists needed further instruction on the operations of the courts.

C. Massachusetts

The Chief Justice of the U.S. District Court in Massachusetts hosts monthly meetings in his chambers for members of the print media. These meetings are well attended, with members of the *Boston Globe*, the *Herald*, and A.P. as frequent participants.

D. Missouri

Missouri’s Supreme Court, the highest court in the state, initiated two programs to improve the understanding between the bench and the press. The first program involved a group of judges who traveled around the state and met with members of the press. The second program consisted of a day-long conference at the Supreme Court discussing the public’s perception of the courts and steps to improve such perception. Attorneys, members of the press, and all Supreme Court judges attended the conference.

E. New York

In the mid 1980’s, the New York State Bar Association’s Committee on Media Law sponsored off-the-record dinner meetings throughout the state between judges, attorneys, and journalists. The dinners facilitated the discussion of numerous issues, including access to judicial proceedings and subpoenas served upon the media. The general public was not permitted to attend.

F. Miscellaneous Publications

Numerous publications focus on promoting an understanding between the bench and the press. The Florida Bar Media and Communications Law Committee publishes and updates the manual, “Legal Issues Related to Public Access and the Press,” which is distributed at the annual education meeting of the Florida Conference of Circuit Judges. In 1990, the Maine

State Bar Association published a 139-page "Media/Law Guide," covering the court system, freedom of access laws, newsgathering processes and sources, defamation and legal terminology. In 1998, Maryland's Bench-Bar-Media Advisory Group, published a 92-page booklet, "A Journalist's Guide to Maryland's Legal System," which was distributed to lawyers and newsrooms across the state. Finally, the Oklahoma Bar Association's Bar-Media Relations Committee publishes a quarterly newsletter highlighting media-related cases and issues in the state.

VI. PUBLIC INFORMATION OFFICERS

In addition to the above efforts, many courts have Public Information Officers who actively serve as liaisons between the bench and the press and address problems as they arise.

A. Federal Court System

The federal courts receive assistance in dealing with the media from the Administrative Office of U.S. Courts' Office of Public Affairs. Currently, the First, Third, Fifth and Ninth Circuits, along with the Northern District of Illinois, are involved in a pilot program which has expanded the role of the PIO, including its interaction with the media. The PIO for each circuit will advise judges and court staff on media-related matters; will educate court staff about the media; will respond to media requests for information; and will conduct training for journalists on how to cover the courts. This pilot program began September 1, 1999 and will continue for two years. As mentioned earlier, in Section II.F above, the PIO for the First Circuit recently co-sponsored two conferences for the press concerning court coverage.

B. State Court System

Many state courts have a public information officer who interacts with the media as needed. In addition to the PIO's mentioned earlier, the Communications Director at the Office of Court Administration for New York has held seminars for judges discussing cameras in the courtrooms, access to court records, and general media-related issues. On a daily basis, he offers advice to and acts as a resource for judges who have media-related issues or questions. Additionally, Los Angeles Superior Court has designated one person at each of the 57 court facilities in the county as a "media liaison." Though the liaisons are not officially public information officers, they will interact with the media and the bench on an "as needed" basis.

VII. THE ROLE OF THE LIBEL DEFENSE RESOURCE CENTER

Many states are actively involved in improving relations between the bench and the press. Further, as discovered, many judges and members of the press are interested in participating in programs aimed at bridging differences between the two groups.

A. Inform Membership

By informing the membership of these numerous efforts, the LDRC hopes to provide attorneys who are interested in bench-media programs, with helpful ideas. Additionally, a list of names and phone numbers of persons whom to contact for further information on specific programs is included at the end of this report.

B. Panel Discussion

A panel discussion at the annual LDRC breakfast in New York in November could effectively convey past and ongoing efforts. Each of the five areas mentioned in the report could be represented by one panel participant who would explain the particulars of the program. Panel participants would discuss the success of their particular program and the resources necessary for implementation. Due to time constraints, follow-up questions can be directed to the participants after the panel presentation.

C. LDRC Website

The LDRC may want to consider outlining the nationwide activities and providing names and phone numbers of contact persons on the LDRC website. Further, the website could list upcoming meetings and conferences focused on improving relations between the bench and the media. Interested attorneys could simply access the website for further information.

D. Establish Bench-Media Committees

Local Bar organizations should be encouraged to establish bench-media committees that would host regular gatherings, such as a lunch or a breakfast, between judges and the media. Bar organizations should be advised to enlist the assistance of local judges, particularly the chief judge. Further, CLE credit might be an attractive lure for otherwise reluctant judges. Though local reporters should be included, Bar organizations should also consider inviting media executives to the gatherings which might accelerate problem resolution.

E. Response Teams

Finally, response teams work beautifully in several states. Experience has shown that they work best when the head judge either chairs the group or is actively involved in and supportive of the group's efforts.

VIII. CONCLUSION

As indicated in this report, many different programs and activities have successfully improved

the understanding between the bench and the members of the press. Not all activities are appropriate for every locale. By informing the membership of the numerous activities and how they were organized and implemented, attorneys would be able to determine what activity is best suited for their particular area.

Rachelle M. Bin was Senior Legal Counsel for Univision Communications from 1993-1999.

INDIVIDUALS KNOWLEDGEABLE ABOUT THE PROGRAMS

1. Conferences

Florida

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2. Response Teams

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