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UPFRONT

DWI Files Should Be Public

A Letter to the Honorable Jeff Aragon Los Lunas Municipal Court

Thomas J. Cole

Dear Judge: Sorry for the dust-up in your office last week. I can get a little testy.

I'm sure you recall I was there to look at the file of a drunken-driving case.

I guess we got off to a bad start when you told me your office had called a defense attorney in the case after learning of my interest.

Then you refused to allow me to inspect the case file. Instead, a court clerk copied only the records from the file that you all thought I should see.

I was given a copy of the criminal complaint, but based on your instructions, I was refused a copy of the DWI citation, which is required by law to be in the file.

I can't say for sure if there was anything else of interest in the file, because I don't know what all it contained.

I tried to be polite in insisting that I be able to look at the entire file. But when you continued to refuse, I admit that I got a bit irritated.

You might remember you threatened to have me removed from the office if I didn't leave voluntarily. I thought it best that I go. I've never been tossed in a jail cell and prefer to keep that record intact.

Judge, there's a point to this letter, and it is this:

"Secrecy in a democratic government is the antithesis to all that a representative democracy stands for. It keeps the people in the dark and destroys any opportunity they may have to speak out for or against any government action.

"When access to governmental activity is denied or restricted in any way and access to the opportunity to observe that activity is stopped — Democracy dies. It's just that simple."

Those are the words of former New Mexico Chief Justice Gene Franchini.

When it comes to your court, Judge, how can those who elected you be sure you are administering justice without favor or prejudice if they are denied access to case files or hearings?

Any member of the public, without explaining why, has a right under state law to review a case file. But don't take my word for it.

Having been elected to the bench in 2002, you might not be aware of an order handed down by the state Supreme Court in 1998. That order requires all courts to post a notice titled "Information Available From the Clerk's Office."

The notice says the public is allowed to inspect "the court file on a specific case, unless the case is sequestered." As you know, the DWI case I was inquiring about wasn't sequestered.

If your office doesn't have a copy of the public notice required by the Supreme Court, you can obtain it from the Administrative Office of the Courts in Santa Fe. I understand it comes laminated, suitable for framing.

You might want to know the state Attorney General's Office is holding a seminar Sept. 17 on the state's Inspection of Public Records and Open Meetings laws.

The seminar is from 9:30 a.m. to noon at Rio Rancho City Hall. Admission is free, by the way.

I also thought you might be interested in your own personal copies of the AG's compliance guides for the public-records and openmeetings laws. I'll mail you my copies. Feel free to pass them around the office.

As an added bonus, I've bought you a membership in the New Mexico Foundation for Open Government. I wrote a personal check. It was just \$35. My pleasure. Less than a tank of gas.

The foundation, known as FOG, is a nonprofit organization that educates the public on their First Amendment rights and their rights under the state's public-records and open-meetings laws.

You might think all of FOG's supporters would be news folks like me, but that's not so. They include business, government and community leaders. They get it.

Those words of Franchini came from a speech he gave at a FOG dinner five years ago this month. He also said:

"If this is truly a country of, by and for the people, then the public must be informed if they are expected to act. The people have the right to know."

Judge, I have reviewed hundreds of case files in courts in every county of this state. I misspoke when I told you I had never before been denied access to a file. It did happen once, in a court in Hobbs. (I'm not counting being denied access to sequestered files.)

In closing, I wanted to remind you that before I was ordered to leave your office, I gave you a formal written request to review the case file. I'm still waiting for your reply.

After all, if we can't count on judges to comply with the law, whom can we count on?

Sincerely,

You can reach Thom Cole in Santa Fe at 992-6280 or via e-mail at tcole@abqjournal.com





ARAGON: Judge in Los Lunas Municipal Court

