WASHINGTON
COURTS
ADMINISTRATIVE OFFICE OF THE COURTS

WASHINGTON STATE SUPREME COURT

GENDER AND JUSTICE COMMISSION

MEETING

FRIDAY, MAY 11, 2012

AOC SEATAC OFFICE
SEATAC, WASHINGTON

GENDER AND JUSTICE COMMISSION

AOC SEATAC
CHIEF JUSTICE BARBARA MADSEN, CHAIR
JUDGE ALICIA NAKATA, VICE CHAIR

AGENDA	PAGE
CALL TO ORDER – Introductions and Approval of Minutes	1
Introduction of New Commission Members • Ms. Sara Ainsworth, Attorney-at-Law • Ms. Terri Cooper, Cheney Municipal Court Administrator • Ms. Emily Henry, Law Student Liaison • Judge Judy Jasprica, Pierce County District Court • Judge Richard Melnick, Clark County Superior Court • Judge Mark Pouley, Swinomish Tribal Court • Ms. Leslie Savina, Northwest Justice Project • Ms. Gail Stone, King County Law and Justice Policy Advisor	
COMMISSION BUSINESS – Tab 1	
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• SJI Grant – Extension, Bench Guides, and Annual Conference	
• DV Manual Update	
• In Her Shoes	27
• Tribal/State Consortiums	
• Sexual Assault Bench Guide	
CHAIR REPORT — Chief Justice Barbara Madsen	
• Initiative for Diversity June 27 Event Verna Meyers, Author; Peggy Nagae, Consultant • ABA DV Commission Reception and Presentation • AOC Changes	
Presentation from Department of Commerce Office of Crime Victims Advocacy	
Partnering – Pearl Gipson-Collier, Anita Granbois, and Bev Emery	

COMMITTEE REPORTS AND PROJECTS		
• Publications – Website	Ruth Gordon	
• Legislative Update	David Ward	
• DV Protocol Committee	Judge Chris Wickham	
• Legal Equality Judicial Officer Law Student Reception	Judith Lonnquist	
Presentation to Departing Members		
• Ms. Barbara Carr, Jefferson County Juvenile Court • Ms. Joan Dubuque, King County Superior Court • Professor Natasha Martin, Seattle University School of Law • Judge Craig Matheson, Benton Franklin Superior Court • Ms. Emily McClory, Law Student Liaison • Ms. Leslie Owen, Northwest Justice Project • Mr. Bernie Ryan, Citizen • Justice Jane Smith, Colville Tribal Court		
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ADJOURNMENT		

Gender and Justice Commission (GJCOM)

Friday, March 9, 2012 (10:30 a.m. – 1:30 p.m.)
Temple of Justice, 415-12th Ave SW, Olympia WA

MEETING NOTES

Members Present

Chair, Chief Justice Barbara Madsen	Ms. Emily McClory	Mr. David Ward
Vice-Chair, Judge Alicia Nakata	Mr. Ron Miles	Judge Chris Wickham
Judge Vickie Churchill	Ms. Leslie Owens	
Judge Joan DuBuque	Judge Ann Schindler (via phone)	Myra Downing, Staff
Dr. Margaret Hobart	Justice Jane Smith	Pam Dittman, Staff

Guests Steve Henley Monto Morton Nancy Smith

Members Absent Judge Stephen E. Brown Ms. Barbara Carr
Ms. Laura Contrereas Honorable Ruth Gordon Ms. Emily Henry
Judge Cynthia Jordan Ms. Judith Lonnquist Professor Natasha Martin

The meeting was called to order by Chief Justice Madsen. The January 13, 2012, meeting notes were approved.

COMMISSION BUSINESS
STAFF REPORT

- **STOP Grant**
  - **DV Scholarships**
    - Judges Mary Logan and Marilyn Hahn were awarded scholarships to attend the Enhancing Judicial Skills in Domestic Violence Cases in Ft. Lauderdale, Florida. Both judges provided thank you and follow-up letters with their insights on the training and proposed action to continue the discussion in their jurisdictions.
  - **STOP Grant RFP**
    - The STOP Grant contract for FY 2011, in the amount of $125,724, has been received. $35,000 has been set aside for continued staff support.
    - The RFP will be distributed with two clarifications: 1) Myra Downing is available to assist in writing the grant proposal, and 2) A new category of collaborative projects is being considered. Collaborative projects should highlight or support areas the GJCOM has worked on. For example, convening a coordinating council to implement a process to reduce conflicting orders per the work done by GJCOM on HB 2777.

ACTION: Myra will draft language for the RFP and provide examples of what a collaborative project entails and where assistance by GJCOM staff and/or members would intersect.

- **Judicial College**
  Judge DuBuque and Judge James Swanger were presenters at the 2012 Judicial College. Judge DuBuque presented an overview of the dynamics of domestic violence and Judge Swanger presented on types of protection and no contact orders and provided hypotheticals for small group exercises. The presentation was followed by the simulation, *In Her Shoes*. The cumulative evaluations ranked the session very high.

- **In Her Shoes**
  - In April, Commission members and staff will be facilitating six (6) *In Her Shoes* sessions around the state for district and municipal court staff. In preparation, Myra Downing offered a facilitator training session attended by Judge DuBuque, Dr. Hobart, Ron Miles, Judge Nakata, Justice Smith and AOC staff, Monto Morton.
  - Dates are:
    - April 12 – Gig Harbor
    - April 13 – Thurston County
    - April 19 – Lake Forest Park
    - April 25 – Ellensburg
    - April 26 – Pasco
    - April 27 – Spokane
- **Witness Intimidation Webinar**
  - Through STOP Grant funds, a webinar was developed and launched on February 14 and viewed by approximately 35 judicial officers and other court staff.
    - The webinar presenters were Judge Doug Miles, El Paso County, Colorado and former attorney advisor for Aequitas: the Prosecutor's Resource on Violence Against Women and Mr. Jeff Griepp, Director, National Witness Protection Center.
    - The evaluations indicate the participants were engaged and took away information and ways to implement the ideas presented.
    - The webinar is posted on Inside Courts for the next 90 days. It was suggested that it be archived and be posted again in the future.
  - Two other webinars are being developed. Suggested topics were father's who batter and batterer's intervention programs.

- **Procedural Fairness**
  - The DMCJA and SCJA Diversity and Fairness Committees are sponsoring sessions on procedural fairness at the conferences. This work is in coordination of an SJI grant to do blended learning. A survey will precede the conference programs and a webinar will follow the programs. Nancy Smith, AOC, is the lead for this work.
- **Immigration Bench Guides & Webinars**
  - Judge Schindler, Judge Mary Yu, Grace Huang, and Ann Benson have been working on the Civil and Criminal Immigration Bench Guides. Webinars are scheduled for June 20th and 27 to present the bench guides, provide education, and answer questions. Funding for this work is being provided through the SJI grant and all work needs to be completed by June 30, 2012.
  - The GJCOM Immigration Committee suggested that the webinar evaluations ask for areas where further education may be needed and then addressing those specific areas in other webinars.

CHAIR REPORT

- **Annual Conference** – GJCOM is sponsoring/cosponsoring four sessions. Ad-hoc committees are needed to assist with development of the sessions.
  - *What Makes It Cultural And How Would You Respond?* This session is modeled after a program observed at the National Association of Women Judges (NAWJ) conference last year. The program integrates high profile cases where gender and cultural issues may be relevant to the decision making process.
    - Committee: Chief Justice Madsen, Judge Churchill, Judge Nakata, Justice Smith

- *I Served My Country, Now How Can You Serve Me?* At the 2008 DMCJA Spring Conference, GJCOM sponsored a session on military and PTSD and traumatic brain injury. This session will continue that discussion along with addressing how their military experiences such as sexual assault may have influenced their behavior and thus brought them into court. Commission members also suggested addressing the repeal of the "don't ask, don't tell" policy and what that means in today's military.
  - Committee: Chief Justice Madsen, Ron Miles, David Ward

- *A Bench Guide for Washington Criminal Courts on Immigration Law.* This session will provide an introduction to the bench guide and an overview of the concepts and issues addressed in it. Commission members suggested also addressing interpreters, human trafficking, and ethical issues around U-Visas
  - Committee: Members of the Minority and Justice Commission, Chief Justice Madsen, and Judge Schindler

- *Beyond Inclusion, Beyond Empowerment and The Anatomy of an Interaction: Applying the Beyond Inclusion: Beyond Empowerment models.* Session participants will read *Beyond Inclusion, Beyond Empowerment* by Dr. Leticia Nieto wherein it provides a vision for attainable and sustainable social change in the context of oppression. Dr. Nieto will present and facilitate discussions.

- **Initiative for Diversity Governing Council (IDGC)**
  - IDGC continues to outreach to the legal profession. Microsoft hosted a corporate breakfast on February 27, with attendance from Holland America, Alaska Airlines, Starbucks, and others. The breakfast provided attendees with an overview of the program. Microsoft pledged $75,000 over a three-year period to assist with a half-time staff person for IDGC and committed to find five other firms commit $5,000 each over the same period.
  - A Managing Partners CLE will be held on Wednesday, June 27, as part of the continued outreach efforts. Part of the CLE will address the WSBA's latest results and report on the state of diversity and inclusion in the legal profession.
- **ABA Domestic Violence Reception, May 3**
  - GJCOM has agreed to be a sponsor for this reception. GJCOM is not providing any funding, but its members have been asked to attend.

ACTION: Myra will contact Judge James Riehl to inquire as GJCOM members making a presentation.

- **Diversity Staff Team**
  - GJCOM and MJCOM staff will be merged to facilitate collaboration and partnership between the two commissions. Myra will lead the team with other AOC staff Monto Morton, Margaret Fisher, Pam Dittman, and Paula Odegaard as part of the team. Staff are still establishing work assignments and determining which Commission will take lead on projects.
  - GJCOM, MJCOM, and the Foster Care Commission have agreed to form a consortium to work on issues of children and foster care.

ACTION: Myra will work with others and assist with developing how consortium will function.

- **Membership Recruitment**
  - The Commission has eight vacancies that need to be filled due to term limits and/or resignations. Vacancies to be filled are:
    - Trial Court Administrator (Ms. Barbara Carr)
    - Trial Court Judicial Officers (Judge Joan DuBuque, Judge Craig Matheson)
    - Bar Association/Attorney (Ms. Jennie Laird, Ms. Leslie Owen)
    - Tribal Court (Justice Jane Smith)
    - College Professor (Professor Natasha Martin)
    - Community Member (Mr. Bernard Ryan)
  - Suggestions were made by several Commission members.

ACTION: Myra will remind Commission members to approach potential members. Letters of interest and resumes should be submitted to Myra by ***May.***

COMMITTEE REPORTS AND PROJECTS

- **Sexual Assault Bench Guide**
  - Judge DuBuque discussed the proposed outline for the bench guide. Members suggested we not duplicate the materials found in the sexual orientation bench guide and add sections on the rape shield statute and sexual assault center records.
  - Pam Dittman outlined the partnerships with the Washington State Coalition of Sexual Assault Programs (WCSAP), University of Washington (UW) Law Students, and the King County Sexual Assault Resource Center (KCSARC).
  - The Committee is seeking more judicial officer participation for reviewing content and representing rural jurisdictions.

ACTION: Pam to seek judicial officer participation through AOC listservs.

- **Mission Statement**
  - Ron Miles, Chair presented on the work this committee has completed. Three options were provided in the meeting materials. Discussion included keeping the statement in an active voice and difference between value and mission. Members liked Option 3.
  - Members can submit suggestions to Ron.

- **Legislation Committee**

David Ward reviewed the bills that have passed, likely to pass and did not pass.

<u>Domestic violence and sexual assault bills that passed</u>

HB 2363 – Protecting victims of domestic violence and harassment (Status: Awaiting Governor's action)

This bill arose from Rep. Goodman's DV workgroup. As passed, it would:

- Limit the ability of courts in family law cases to compel DV survivors to disclose their addresses if they are in the ACP program, if they are living in a domestic violence shelters or transitional housing, or if the court has made a finding of domestic violence;
- Direct the Washington State Institute for Public Policy in collaboration with the Gender & Justice Commission and DV experts to conduct a statewide study to assess recidivism by domestic violence offenders and assess domestic violence perpetrator treatment, subject to provision of funding;

- Authorize courts to extend no-contact orders for DV crimes if defendant fails to appear at arraignment, and require DV no-contact orders issued prior to charging to be entered into criminal intelligence information system;
- Require violators of anti-harassment petitions to appear in court the next judicial day after arrest and make it a gross misdemeanor (rather than a misdemeanor) to violate a no-contact order in a harassment case;
- Protect confidentiality of communications or documents shared within or produced by domestic violence fatality review panels;

*Provisions **removed** from the bill during the legislative process*

- A provision to ensure that court records are sealed throughout a case when a DV survivor seeks a confidential name change;
- A provision to create a procedure in DV criminal cases for courts to reissue no-contact orders that were terminated at the victim's request.

SB 6100 – Updating the administration of the sexual assault grant program (Status: Signed by Governor March 7)
Makes changes to clarify and update the sexual assault grant program. Many changes are technical or update terms.

Anti-Trafficking Bills
The Legislature passed a series of bills designed to improve the response to human trafficking. These bills include:

SB 6251 – Regulating advertising of commercial sexual abuse of a minor (makes it a crime to knowingly publish an ad for a commercial sex act to take place in WA and which includes depiction of a minor).

SB 6252 – Addressing commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting prostitution in the first degree (Commercial sexual abuse of a minor and promoting commercial sexual abuse of a minor are added to the list of criminal offenses that may constitute a pattern of criminal profiteering activity).

SB 6253 – Concerning seizure and forfeiture of property in commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting prostitution in the first degree crimes (Civil forfeiture may be sought against the proceeds or property and instrumentalities used to facilitate the crimes of commercial sexual abuse of a minor, promoting sexual abuse of a minor, or promoting prostitution in the first degree).

SB 6254 – Changing promoting prostitution provisions (Promoting prostitution in the first degree may be committed if an individual knowingly advances prostitution by compelling a person with a mental or developmental disability to engage in prostitution or profits from that act. The disability must be one that renders the person incapable of consent).

SB 6255 – Concerning victims of human trafficking and promoting prostitution (In any prosecution for prostitution, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons under the Trafficking Victims Protection Act).

SB 6256 – Adding commercial sexual abuse of a minor to the list of criminal street gang-related offenses (Promoting commercial sexual abuse of a minor is added to the list of gang-

related offenses that are committed to provide the gang with any advantage in or control or dominance over a market sector).

SB 6257 – Addressing a sexually explicit act (Sexually explicit acts are added to the crimes of trafficking and commercial sexual abuse of a minor).

HB 1983 – Increasing fee assessments for prostitution crimes (significantly increases fees for prostitution and human trafficking offenses).

HB 2692 – Concerning the reduction of the commercial sale of sex (increases fine for patronizing a prostitute, directs revenue to jurisdiction in which offense occurred to pay for increased enforcement and prevention programs, mandates "john school" for first-time offenders).

<u>Other Legislation of Interest</u>
SB 6239 – Concerning marriage and domestic partnerships (Status: Signed by Governor Feb. 13)
Extends civil marriage to same-sex couples. Ends domestic partnerships by 2014, except for couples where one partner is 62 or older. The law would normally take effect June 7, but groups opposed to the legislation are seeking a referendum on the new law. If sufficient referendum signatures are submitted by June 6, the law will not take effect unless the voters approve it in the November election.

SB 6095 – Making technical corrections to gender-based terms (Status: Awaiting Governor's action)
Continues the multi-session process of eliminating gender-based terms in the Revised Code of Washington by 2015.

- **Incarcerated Women and Girls Committee**
  - Shackling
    - The Committee discussed using law students to research how the policy was implemented by the various correctional facilities, how it may have changed existing policy, and what was the impact of this legislation.
  - Areas of focus for the Committee
    - Violation of Probation and Recidivism - Why are women violating probation? Use that information to determine if there is a court-focused area that can be brought to forefront.
    - Transitional Services. There continues to be a need for services for offenders when leaving a correctional facility. The Committee is interested in creating a "how to" booklet.
- **Proof of Concept**
  - Judge Wickham and Myra spoke with staff from Chelan County regarding how they use JABS to see protection and no-contact orders. Judge Nakata expressed the system is very slow and that it would not work for purposes.

ACTION: Myra will follow-up with Judge Wickham who is drafting a letter to AOC expressing why this will not work. Continue looking for vendors.

- **Miscellaneous**

- Steve Henley (guest) is relatively new to AOC. His background is in strategic and long-range planning. Interaction with the Commission may be possible.

Meeting adjourned at 2:15 p.m.

DRAFT

Washington State Gender and Justice Commission

FY10 STOP GRANT TO THE COURTS QUARTERLY PROGRESS REPORT March 2012

Award No. IAA11283	Date Report Prepared: April 4, 2012
Project(s): Project One: Provide Domestic Violence (DV) Training for King County Superior Court, District Court, and Municipal Court Judicial Officers Project Two: Develop Statewide Web-based DV Training Modules for Judicial Officers	Report No.: 1 2 √ 3 4 Reporting Period: 1/1/12 - 3/31/12 Final Report Yes √ No
Grantee: King County Superior Court	Subgrantee: Seattle & King County Department of Public Health

PROJECT REPORT

(1) Project activities during the reporting quarter

Project Two: Develop web-based DV training modules for Washington State Judicial Officers

The first training module was planned and implemented as a webinar during this quarter. On January 17, 2012, Myra Downing and Nancy Smith from the Administrative Office of the Courts (AOC), Gender and Justice Commission (GJC) conducted a telephone conference with the webinar trainers Mr. Jeff Greipp and Judge Douglas Miles. The power point that they had submitted was reviewed and suggestions were given to the presenters for revisions. On February 8, 2012 a practice session was conducted with the webinar trainers, Nancy Smith, and Deborah Greenleaf. The trainers found the practice session as being very helpful to them, and they were planning to incorporate the feedback from the practice session into their presentation. The AOC/GJC agreed to develop an electronic participant evaluation survey for the webinar that would be sent to them after the webinar.

On February14, 2012 the judicial training webinar was implemented. The title of the presentation was *Intimidation in Domestic Violence Cases: What is the Judge's Role?* Nancy Smith from the AOC/GJC served as the facilitator for the webinar. Nancy coordinated the training power point, chat boxes, and polling questions. There were 32 people who joined in on this webinar presentation. Twenty-one judicial officers from locations across Washington State participated in the webinar and completed an evaluation survey that was provided electronically by the AOC/GJC. See **attachment A** for a summary of the webinar evaluation. Most or 72.7% of judicial participants reported that they had served as a judicial officer for more than 5 years. This was an unanticipated finding and it was reassuring to note that experienced judicial officers were interested in the training topic. Of those who completed the survey, 12 (54%) rated it as being excellent, 9 (41%) participants rated the webinar as being good, and only 1 participant rated it as being neutral. Participants reported that the polling questions and chat boxes were effective strategies to engage them in the presentation. They also rated the technical aspects of the training as being good to excellent. Participants also reported these following key take away messages they received during the webinar:

- To learn more about forfeiting confrontation rights
- Better use of risk assessments
- Prevalence of witness intimidation in DV cases.

- Correlation between delay of cases and lack of witness participation.
- Forfeiture by wrong-doing - had not heard of the concept, but will do some research.
- The importance of court intervention when there is intimidation. Also, that keeping defendants in custody is likely to produce more tampering/intimidation/VNCO charges, because this type of manipulation is very, very common.
- Pay closer attention to "relationship dynamics" in the courtroom, and in police reports
- Being more proactive regarding a defendant using the "look".
- Scheduling DV matters earlier in docket; place a security officer between counsel tables to block direct line-of-sight., plus other things

On February 28, 2012 members of the AOC/GJC, Judge Miles, and Deborah Greenleaf participated in a webinar debriefing session. The webinar participant evaluation results were shared and discussed. Judge Miles reported that he appreciated all the technical support and practice sessions that were provided by the AOC. Judge Miles thought the webinar was very interactive and he plans to use the polling feature and the chat box questions with further webinar development.

The AOC/GJC had recorded the February 14, 2012 judicial webinar training on *Intimidation in Domestic Violence Cases: What is the Judge's Role?* The web link for the webinar training was disseminated with Washington State judicial officers.

(2) Any significant problems that developed.

No significant problems occurred in this time period with the implementation of the first February 14, 2012 Webinar. All scheduled activities for this training occurred as planned.

(3) Activities scheduled during the next reporting period.

We will be reporting on the activities of the training committee for the planning and implementation of the two remaining judicial web-based training modules for this STOP grant project.

Submitted by:

Name:	**Deborah Greenleaf, RN, MN**
Title:	**Advanced Practice Nurse Specialist/Project Coordinator**
Phone Number:	**206-263-8375**
e-mail address:	**Deborah.Greenleaf@kingcounty.gov**

Attachment A

Washington State Gender and Justice Commission

FY10 STOP GRANT TO THE COURTS
QUARTERLY PROGRESS REPORT
March 2012

Summary of Webinar Evaluation
For Judicial Training on
Intimidation in DV Cases: What is the Judge's Role?
February 14, 2012

Question 1: Please rate the educational aspects of the webinar.

Answer Options	Poor	Fair	Neutral	Good	Excellent	Response Count
The webinar achieved its learning objective.	0	0	1	9	12	22
Voting in polls during the webinar engaged me in the learning process.	0	1	0	6	15	22
Typing answers in "chat" engaged me in the learning process.	0	0	3	8	11	22
The faculty effectively taught the webinar.	0	0	1	6	15	22
I gained important information for my court.	0	0	1	9	12	22
			answered question			22
			skipped question			0

Question 2: What did you learn today that you plan to implement in your court? (If nothing, please write "nothing.")

Answer Options	Response Count
	18
answered question	18
skipped question	4

Response Text

Take-aways

- Importance of reducing time from event to conclusion of the case
- To learn more about forfeiting confrontation rights
- Better use of risk assessments
- Prevalence of witness intimidation in DV cases.
- Correlation between delay of cases and lack of witness participation.
- Forfeiture by wrong-doing - had not heard of the concept, but will do some research.

Dynamics:

- The importance of court intervention when there is intimidation. Also, that keeping defendants in custody is likely to produce more tampering/intimidation/VNCO charges, because this type of manipulation is very, very common.
- Pay closer attention to "relationship dynamics" in the courtroom, and in police reports.
- Awareness and implementing a plan.

- Being more proactive regarding a defendant using the "look".
- Scheduling DV matters earlier in docket; place a security officer between counsel tables to block direct line-of-sight., plus other things

Prosecution:
- To ask the PA what security arrangements have been made to accommodate victims in the courthouse for a trial or other hearing where the victim may appear.
- Asking the prosecution to view this webinar and the discussion about forfeiting the right to confrontation.

Partnerships:
- Implement discussions with sheriff/police re: who shall be responsible to address alleged crimes occurring on County Courthouse property.
- Better planning and communication with the participating agencies
- I will talk to our victim/witness advocates to ensure the processes we have in place meet the needs of the dv victims.

Technological:
- Excellent use of the 'hands up', quick vote and other methods of using the webinar

General:
- This was a great refresher but nothing we do not already do (as judges), there were certainly things the prosecution can do.
- At this time I am not the Domestic Violence Court judge, but in July I will be accessing if adequate steps are being taken to address this problem area.
- We are drafting a protocol about use of cameras, cell phones and recording devices in the courtroom and I will use the information from the webinar to ensure we implement the proper protocol
- Great content thank you
- Good to see what others are utilizing
- Nothing. We already have security set up where defendant does not come in contact with victim.

Question 3: Please rate the technical aspects of the webinar.

Answer Options	Poor	Fair	Neutral	Good	Excellent	Response Count
The webinar directions were clear.	0	0	0	9	13	22
The webinar was easy to view.	0	0	0	6	15	21
The webinar was easy to hear.	0	0	0	6	16	22
			answered question			22
			skipped question			0

Question 4: Do you have comments/suggestions you would like to share? (If you have no comments, please write "none.")

Answer Options	Response Count
	18
answered question	18
skipped question	4

Response Text

Overall:
- My first webinar--I will sign up for more.
- Publicize that this training is available on Inside Courts.
- Nice job!! Thank you! Very Good Training. Great work on providing trainings like this.

Content:

- The first 10 -15 minutes of the webinar could be tightened up a bit.
- I would have liked more analysis on what to do if these situations occur in your court.

Technological:

- Took a minute to figure out there were more tools from the raised hand pull down.
- I was unable to figure out marking x or check
- I was in court until 12:20; signed into the webinar without difficulty; followed along for twenty minutes, and then the webinar went off line/terminated (I have no clue why). Then I had court again at 1:00, so I didn't bother trying to reconnect.

Question 5: What is your role in the courts?

Answer Options	Response Percent	Response Count
Judicial Officer	95.5%	21
Court Administrator/Manager	4.5%	1
Other Staff	0.0%	0
	answered question	22
	skipped question	0

Question 6: How much experience do you have in your current position?

Answer Options	Response Percent	Response Count
Less than one year.	13.6%	3
One to two years.	9.1%	2
Two to five years.	4.5%	1
More than five years.	72.7%	16
	answered question	22
	skipped question	0

Question 7: Approximately how many webinars have you participated in?

Answer Options	Response Percent	Response Count
This is my first webinar.	22.7%	5
Two to five webinars.	77.3%	17
Six or more webinars.	0.0%	0
	answered question	22
	skipped question	0

GJCOM – Webinar Evaluation
Witness Intimidation
February 14, 2012

Question 1: Please rate the educational aspects of the webinar.

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The faculty effectively taught the webinar.	0	0	1	6	15	22
I gained important information for my court.	0	0	1	9	12	22
					answered question	22
					skipped question	0

Question 2: What did you learn today that you plan to implement in your court? (If nothing, please write "nothing.")

Answer Options	Response Count
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answered question	18
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Response Text

Take-aways

- Importance of reducing time from event to conclusion of the case
- To learn more about forfeiting confrontation rights
- better use of risk assessments
- Prevalence of witness intimidation in DV cases.
- Correlation between delay of cases and lack of witness participation.
- Forfeiture by wrong-doing - had not heard of the concept, but will do some research.

Dynamics:

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- Pay closer attention to "relationship dynamics" in the courtroom, and in police reports.
- Awareness and implementing a plan.
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The webinar was easy to hear.	0	0	0	6	16	22
				answered question		22
				skipped question		0

Question 4: Do you have comments/suggestions you would like to share? (If you have no comments, please write "none.")

Answer Options	Response Count
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Response Text

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- Took a minute to figure out there were more tools from the raised hand pull down.
- I was unable to figure out marking x or check
- I was in court until 12:20; signed into the webinar without difficulty; followed along for twenty minutes, and then the webinar went off line/terminated (I have no clue why). Then I had court again at 1:00, so I didn't bother trying to reconnect.

Question 5: What is your role in the courts?

Answer Options	Response Percent	Response Count
Judicial Officer	95.5%	21
Court Administrator/Manager	4.5%	1
Other Staff	0.0%	0
	answered question	22
	skipped question	0

Question 6: How much experience do you have in your current position?

Answer Options	Response Percent	Response Count
Less than one year.	13.6%	3
One to two years.	9.1%	2
Two to five years.	4.5%	1
More than five years.	72.7%	16
	answered question	22
	skipped question	0

Question 7: Approximately how many webinars have you participated in?

Answer Options	Response Percent	Response Count
This is my first webinar.	22.7%	5
Two to five webinars.	77.3%	17
Six or more webinars.	0.0%	0
	answered question	22
	skipped question	0

Washington State Gender and Justice Commission

FFY10 STOP GRANT TO THE COURTS QUARTERLY PROGRESS REPORT

Award No. IAA11282	**Date Report Prepared: March 26, 2012**
Project(s): Hire a full time court-based DV Advocate.	**Report No.:** ☐ 1 ☐ 2 ☐ 3 X 4
	Reporting Period: Jan-March 2012
	Final Report ☐ **Yes** X **No**
Grantee: Spokane County District Court	**Subgrantee: YWCA**

REPORT (Attach additional pages if necessary.)

(1) Project activities during the reporting quarter.

- The advocate attended all Mental Health Court and Veterans Court staffings, Show Cause dockets, Pretrial and Motion dockets
- While at those staffings and dockets the advocate communicated the desires and concerns of the listed victims on the domestic violence cases, and provided education to the Mental Health and Veterans Court teams on the interplay between mental health issues, military experiences and domestic violence dynamics
- The advocate contacted the listed victims of defendants newly accepted into the Mental Health and Veterans courts, by phone and by mail, to inform them of the defendant's new court status. She educated the victims about the intricacies of the mental health court or veterans court and its emphasis on treatment and intensive supervision of the defendants.
- The advocate contacted the listed victims of defendants prior to the defendant's ShowCause, PreTrial and Motion hearings. She collected statements from the victims and shared those statements, with the victim's consent, with the prosecution and the court. After court hearings the advocate checked back with the victims to update them on the status of the cases.
- The advocate checked in with victims who attended the defendant's hearings. She helped them to prepare for their motion hearings and stood with them when they addressed the judge in the courtroom.
- The advocate worked with the prosecutors to help them understand the safety needs of the victim. She scheduled and facilitated meetings between the victims, prosecutors, and defense attorneys in order to help the victim's voices be heard.
- The advocate kept statistics on the clients she served and gathered data in the following domains: demographic data, defendants diagnoses, defendant's date of acceptance into the mental health or veterans court, defendant's progress, all active protection orders, written correspondence with victims, informing victims about their legal options, educating victims on mental health topics, empowering victims to work towards safety within the legal system, and all contacts attempted and made with the victims.
- The following is a summary of the statistics gathered from January 2012 – March 2012:
  - Number of New DV Cases in Mental Health Court: 5
  - Number of Clients Served: 25
  - Total Gender Split of Victims: Women-63, Men-32
  - Protection Order Assistance: 11
  - MHTC/Veterans Court Intro Letters Sent: 4
  - Clients Who Discussed Safety Planning: 25
  - Clients Informed About Their Legal Options: 15
  - Conversations About Mental Illness Dynamics: 9
- The advocate organized presentations from domestic violence service providers for the mental health team to explain how perpetrator treatment could contribute to the court's goals of reduced recidivism. She provided informal education on domestic violence and legal advocacy, while also building relationships between the advocate office, the probation office, the public defender's office and the prosecutor's office.
- The community based advocates from the YWCA now provide a "DV101" training for the legal community. The training covers definitions, dynamics, and the legal response to domestic violence and battering. As of March 2012 seven domestic violence prosecutors, one probation officer, and four law enforcement officers have attended the training. All gave positive feedback to the advocate office for its efficacy and applicability. The Mental Health Team, Veterans Court Team, and Veterans Court mentors are currently scheduling a time to attend this training in order to increase its understanding of domestic violence.

- The community based advocates from the YWCA also spearhead the Spokane County Domestic Violence Taskforce, an interagency group of professionals devoted to tackling the problem of domestic violence in the community. Since September 2011, the Task Force now has a representative from the mental health court and veteran's court in attendance, increasing the response to and consideration for domestic violence in the therapeutic courts. The Task Force is about to embark on an audit of the coordinated community response to DV, starting with 911 call centers. The goal of the audit process is to identify gaps in the legal response to DV and work as a team to fill those gaps and respond more efficaciously to domestic violence.

(2) Any significant problems that developed.

The advocate has served fewer listed victims on domestic violence crimes in this quarter (January 2012 – March 2012) than last quarter (July 2011 – September 2011) due to a drop in new referrals coming to the Mental Health Court and Veterans Court. With a smaller defendant caseload, the advocate has a smaller victim caseload. The advocate office has started making its own referrals to the mental health and veteran's courts when the advocate pick up on defendants who could potentially meet the criteria for and benefit from the therapeutic courts.

The advocate continues to work to build understanding within the mental health and veteran's court team on domestic violence dynamics. There seems to be a lack of understanding of the experience of victims, the necessity of protection orders, and the separate issue of battering behavior from mental illness or combat related trauma. Fortunately, the team has welcomed presentations from perpetrator treatment providers and the YWCA to build awareness within the team of how to serve both victims and perpetrators who are facing domestic violence charges.

(3) Activities scheduled during the next reporting period.

1 – The community based advocates from the YWCA will provide the DV101 training to the mental health court team, the veteran's court team, and the veteran's court mentors.
2 – The mental health/veteran's court advocate will continue to meet individually with therapeutic team members in order to build inter-agency relationships and to advocate on a systemic level for victims of battering.
3 – The community based advocates from the YWCA will facilitate and manage the audit process for the Spokane County Domestic Violence Task Force. At the end of that process, a report will be produced for a review of the strengths and weaknesses in the coordinated community response to DV.

Submitted by:

Name:	Sandy Manfred
Title:	Mental Health Court Manager
Phone Number:	509-477-2277
e-mail address:	smanfred@spokanecounty.org

FY11 STOP Grant to the Courts (2012 – 2013)
Committee Responses to the Request for Proposals

RECOMMENDED FOR FUNDING		
Court	**Project**	**Amount**
Island County	Production of educational brochures and posters	$784
King County Superior	Assistance in developing judicial component for 4th Annual DV Symposium; pay for registration fee for judges to attend training and lodging and per diem.	$10,880
Snohomish County Clerk's Office	Update translated version of the DV brochures (Spanish, Russian, and Vietnamese).	$1,800
Snohomish County Clerk's Office	Assist in purchase and installation of security cameras – to be placed in the DV Office and in court rooms. (Only a portion of the original request is being funded.)	$3,000
Thurston Superior	Add DV component to Risk Assessment Tool	$5,000
Thurston Superior	Domestic Violence Training for judicial officers, court staff, and court partners	$6,900
GJCOM	Update Parenting Study to include: • Analysis of impact of DV allegations on child custody results • Impact of parent gender in custody results	$10,000
GJCOM	BIP – work with researcher to examine and recommend "what works" for Washington State	$5,000
GJCOM	Technical Assistance	$2,000
GJCOM	Translate brochures	$2,000
	Total Funded	$47,364
	Total Available	$90,000
	Total Remaining	$42,636

FY11 STOP Grant to the Courts (2012 – 2013)
Committee Responses to the Request for Proposals

NOT RECOMMENDED FOR FUNDING		
Court	**Project**	**Amount**
Island County	Purchase security equipment, funding for advocate	$10,058.98
Jefferson District Court Adult Probation	Provide funding for judge and adult probation staff to attend the Washington State Coalition against Domestic Violence Annual Conference.	$4,108
King County Clerk's Office	Collect and analyze program data from the King County Step-Up Program. (not allowed under STOP Grant funds)	$16,875
Pierce County Superior	Appoint a Guardian ad Litem in Family Law case with DV and/or Sexual Assault. (not allowed under STOP Grant funds)	$10,000
Puyallup Municipal Court	Provide for a court security deputy for ½ day docket of DV hearings.	$8,860
Snohomish County Clerk's Office	Provide a paralegal-oriented paid intern to provide support in the DV Office hours of 1 p.m. to 3:30 p.m.	$9,062.24
Snohomish County Clerk's Office	Purchase and install five security cameras – one will be placed in the DV office, the other four in the courtrooms where domestic violence hearings occur. (Portion of this is funded based on the percentage of DV cases heard.)	$6,914
Spokane	Contract for a full time court-based DV Advocate.	$41,267
Yakima	One FTE bilingual court based domestic violence advocate.	$36,461
	Total Not funded	$143,606.22

Updated 5.9.2012
N:\Programs & Organizations\GJCOM-Gender & Justice Commission\GJCOM\Commission\2011-2012\May 11, 2012\PRO REC GJC STOP FY11 Grant Project funded or not.docx

WASHINGTON
COURTS

BOARD FOR JUDICIAL ADMINISTRATION

April 5, 2012

The Honorable Patty Murray
United States Senate
448 Russell Senate Office Building
Washington, DC 20510

RE: Violence Against Women Act – S 1925

Dear Senator Murray:

On behalf of the Board for Judicial Administration, we write to thank you for your support of the reauthorization of the Violence Against Women Act (VAWA) and urge that sufficient funding be provided to support the goals and objectives of the Act. As the organization that coordinates policy for all court levels in the State of Washington, the members of the Board believe reauthorization of the Act is critical to appropriately addressing domestic violence cases in our justice system.

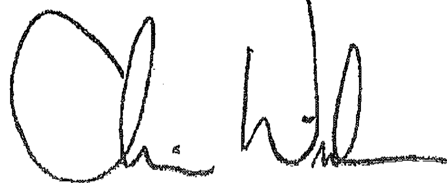
Five percent of the VAWA funding is set aside to be used as Services-Training-Officers-Prosecutors (STOP) grants for state and local courts. With the STOP funds, Washington courts have been able to make a significant and positive difference in court operations and programs designed to address domestic violence, stalking, sexual assault, and teen violence issues. Washington courts are struggling, as are most courts in the country, during these challenging economic times and scarce funds need to be used wisely. STOP funds in our state are distributed through the Gender and Justice Commission and are used to develop statewide model policies and procedures, increasing the communication and collaboration among judicial officers and those served by the courts and those who work within the court system.

Domestic violence, sexual assault, stalking, and teen violence are some of the most difficult cases for our judicial officers and require the most training for our judges and staff. With the aid of STOP grant funding, over 47 different projects have been funded, 160 judicial officers have received advanced domestic violence training, and educational programs are offered every year to judicial officers and staff, including the addition of a domestic violence simulation at our judicial college so that every new judicial officer can better understand the dynamics of domestic violence.

TEMPLE OF JUSTICE
415 12th Street West • PO Box 41174 • Olympia, WA 98504-1174
360-357-2121 • 360-357-2127 • www.courts.wa.gov

Again, we thank you for your support of the reauthorization of the Violence Against Women Act and urge that sufficient funding be provided to meet its goals, including the continuation of the five percent set-aside within the STOP grant for state and local courts. Thank you for your attention to this matter. Please do not hesitate to contact us if you have any questions or if we can provide any assistance or information.

Sincerely,



Barbara Madsen, Chair
Board for Judicial Administration

Christopher Wickham, Member-chair
Board for Judicial Administration

Enclosure

cc: Judge Laura Inveen, Superior Court Judges' Association
Judge Gregory Tripp, District and Municipal Court Judges' Association
Mr. Jeff Hall, State Court Administrator
Board for Judicial Administration
Ms. Myra Downing, Gender and Justice Commission

The Letter sent to Senator Murray was also sent to the following:

Honorable Jaime Herrara Beutler, US House of Representatives
Honorable Marie Cantwell, US Senate
Honorable Richard Hastings, US House of Representatives
Honorable Rick Larsen, US House of Representatives
Honorable Cathy McMorris Rodgers, US House of Representatives
Honorable Norm Dicks, US House of Representatives
Honorable James McDermott, US House of Representatives
Honorable David Reichert, US House of Representatives
Honorable Adam Smith, US House of Representatives

CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 2

In Support of Reauthorization of the Violence Against Women Act

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators have, in previous resolutions, expressed their support for efforts to address the problem of violence against women in our society; and

WHEREAS, the Conferences, by bringing together Chief Justices and State Court Administrators, have contributed to the implementation of the Violence Against Women Act (VAWA) by supporting education programs, technical assistance, and information sharing that meets the needs of individual states; and

WHEREAS, Congress has over the years authorized and appropriated federal funds to assist states in implementing the VAWA provisions; and

WHEREAS, in prior reauthorization legislation, Congress specifically recognized the important role of courts and added "state and local courts" as eligible grantees for STOP grants and grants to Encourage Arrest Policies and Enforcement of Protection Orders, established a 5% set-aside in the STOP grant for State courts, and created grant programs specifically targeted at assisting state courts to provide training for judges and court personnel and to implement court improvements; and

WHEREAS, state courts have effectively used the federal grant funds to implement improved practices and procedures and other system reforms; and

WHEREAS, while there has been improvement over time, some state courts continue to have difficulty in accessing the 5% set-aside in the STOP grant; and

WHEREAS, legislation, including the Violence Against Women Reauthorization Act of 2011 (S. 1925), has been introduced in the 112th Congress to reauthorize VAWA through fiscal year 2016;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and Conference of State Court Administrators support the continuation of the 5% set-aside within the STOP grant and the training and court improvements funds to assist state courts to more effectively address domestic violence cases; and

BE IT FURTHER RESOLVED that the Conferences encourage Congress to ensure that state courts are able to access the federal grant funds specifically targeted to assist state courts, including providing funds directly to state courts when the purpose of the funds is to assist state courts to implement the provisions of VAWA; and

BE IT FURTHER RESOLVED that the Conferences support efforts by Congress to increase collaboration by requiring grantees to consult and coordinate with stakeholders, including state and local courts, in the planning and distribution of formula grant funds; and

BE IT FURTHER RESOLVED that the Conferences urge Congress to reauthorize the Violence Against Women Act and provide sufficient federal funding to support the goals and objectives of the Act.

Adopted by the Conference of Chief Justices as proposed by the CCJ/COSCA Courts, Children and Families Committee at the 2012 Midyear Meeting on February 1, 2012 and by the Board of Directors of the Conference of State Court Administrators on February 10, 2012.

DMMCA Court Manager Training
Gender and Justice Commission Presents
Domestic Violence Training and In Her Shoes
April 2012

Western Washington:

Gig Harbor - Thursday, April 12th
DV Presentation: Judge Joan DuBuque
Facilitation of "In Her Shoes": Myra Downing
Assist: Pam Dittman

Olympia – Friday, April 13th
DV Presentation: Pam Dittman
Facilitation of "In Her Shoes": Myra Downing
Assist: Ron Miles, Monto Morton

Lake Forest Park – Thursday, April 19th
DV Presentation: Judge Joan DuBuque
Facilitation of "In Her Shoes": Myra Downing
Assist: Margaret Hobart, Pam Dittman, Monto Morton

Eastern Washington:

Ellensburg – Wednesday, April 25th
DV Presentation: Judge Joan DuBuque
Facilitation of "In Her Shoes": Ron Miles
Assist: Margaret Hobart, Justice Jane Smith, Pam Dittman, Monto Morton

Pasco – Thursday, April 26th
DV Presentation: Judge Joan DuBuque
Facilitation of "In Her Shoes": Monto Morton
Assist: Justice Jane Smith, Pam Dittman

Spokane – Friday, April 27th
DV Presentation: Margaret Hobart
Facilitation of "In Her Shoes": Ron Miles
Assist: Pam Dittman

5.8.2012

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CAROLA WASHBURN and JANET LOH, individually and on behalf of the ESTATE OF BAERBEL K. ROZNOWSKI, a deceased person,	)	No. 66534-1-I
	)	DIVISION ONE
Respondents,	)	
v.	)	
CITY OF FEDERAL WAY, a Washington corporation,	)	PUBLISHED
	)	FILED: March 26, 2012
Appellant.	)	

Cox, J. — This is a wrongful death action arising from an act of domestic violence in which Paul Kim stabbed to death Baerbel Roznowski, his intimate partner, in her home. Kim murdered Roznowski shortly after a City of Federal Way police officer served Kim with a temporary protection order restraining him from either contacting Roznowski or being within 500 feet of her residence.

Unchallenged jury instructions become the law of the case.[1] Here, the City did not object below to the substance of the trial court's instruction regarding its police department's duty to exercise ordinary care in the service and

[1] State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998); Garcia v. Brulotte, 94 Wn.2d 794, 797, 620 P.2d 99 (1980).

enforcement of court orders. Likewise, the City does not challenge that instruction on appeal. A jury could rationally find from the evidence in this record that the City breached its duty to Roznowski to enforce the protection order. Thus, the jury verdict stands to the extent of liability and damages in favor of Roznowski's estate.

The City claims that the trial court erroneously denied its first summary judgment motion. We do not generally review an order denying summary judgment after a case goes to trial.[2] Here, there were material factual issues prior to trial, and the denial of the City's first motion for summary judgment did not turn solely on a substantive issue of law. Accordingly, we do not review the denial of this summary judgment motion.

The City also claims that the court erroneously denied its Civil Rule 50(a) motion for judgment as a matter of law at the end of the plaintiff's case in-chief.[3] In order to lay a foundation for appeal, the City was required to either renew its motion pursuant to CR 50(b) or move for a new trial, claiming insufficiency of evidence to support the verdict.[4] Here, the City did neither. Accordingly, we do not review the trial court's denial of the CR 50(a) motion at the close of the plaintiff's case-in-chief.

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[2] Kaplan v. Nw. Mut. Life Ins. Co., 115 Wn. App. 791, 799-800, 65 P.3d 16 (2003), review denied, 151 Wn.2d 1037 (2004); see also Univ. Vill. Ltd. Partners v. King County, 106 Wn. App. 321, 324, 23 P.3d 1090 (2001).

[3] Brief of Appellant City of Federal Way at 24-25.

[4] Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 546 U.S. 394, 399-401, 126 S. Ct. 980, 163 L. Ed. 2d 974 (2006).

Finally, the trial court properly exercised its discretion by granting the motion for a new trial on damages to Roznowski's daughters, Carola Washburn and Janet Loh (collectively "Washburn"). We affirm the judgment on the verdict to the extent of liability and damages to Roznowski's estate and also affirm the grant of a new trial on Washburn's damages.[5]

Kim and Roznowski were intimate partners. Each had a separate residence, but Kim spent most of his time living at Roznowki's home in Federal Way.

The relationship between the two grew increasingly troubled. Several days before the events that gave rise to this action, Roznowski called 911 to report a verbal domestic situation. The police reported that Roznowski and Kim had calmed down prior to their arrival and neither of them showed any signs of injury. Nevertheless, in accordance with the City police's protocol for domestic disturbance calls, an officer left a domestic violence booklet with Roznowski. The officer also explained to Roznowski that she could obtain an anti-harassment order.

Days after this incident, Roznowski contacted a domestic violence advocate working at the King County Prosecutor's Office located in the Norm Maleng Regional Justice Center. After consultation with the advocate, Roznowski sought a protection order from the superior court to restrain Kim from

[5] Washburn moved to strike the City's late filing of its Amended Response to Brief of Amici Curiae Legal Voice and Washington Women Lawyers. We grant the motion in part and do not consider any new material in the City's amended brief.

being in her home or near her. She completed the paperwork herself and presented it for consideration by a court commissioner on May 1, 2008. The paperwork included a Petition for an Order for Protection-AH and a proposed Temporary Protection Order and Notice of Hearing-AH.[6]

Roznowski's affidavit supporting her petition for the protection order identified Kim as the person from whom she sought protection and identified him as her "boyfriend." The affidavit also stated, among other things, that his most recent acts included:

> 4/30 verbal attacks by Paul Kim because I moved wood to clean yard. He is vehement about owning this pile of wood along with a stack, 10' W x 6' H along the fence, as well as misc. supplies on side of fence. I gave him notice that I'll [sic] plan to move 2 years ago. Nothing was done.
>
> . . . .
>
> 4/29 verbal attacks about same subject. He won't commit when he'll remove items and personal belongings in crawl space. I can't put house on market for sale until done. He deliberately stalls, and the repeated answer is it takes time. . . . Paul Kim's residence is at 331 S 1st ...Federal Way but stays at [Roznowski's] home. He has violent, verbal, insulting outbursts.
>
> . . . .
>
> [l]ast year [Kim's] outburst frightened me, I called 911, he came close to hitting me. He left my place as promised. Within 15 min. I received several calls from him. I changed the locks except for one door.
>
> He is capable of physical violence. I witnessed him beating his oldest son in the past. In his present state of mind he can easily retaliate with [sic] me.[7]

A court commissioner entered Roznowski's proposed temporary protection order. By its plain terms, it restrained Kim "from making any attempts

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[6] Plaintiff's Trial Exhibit 2.

[7] Id. at 7.

to contact" Roznoswki.[8] It also restrained him "from entering or being within 500 feet" of her residence.[9] The order also stated a return date of May 14, 2008, at 8:30 a.m. for a hearing on the issuance of a permanent protection order.

Roznowski then delivered copies of her petition and the temporary protection order to the City's police department for service on Kim.[1] At the police department, she completed and submitted an additional document called a Law Enforcement Information Sheet (LEIS).[11]

The LEIS states at the top of the form:

> *Do NOT serve or show this sheet to the restrained person! Do NOT FILE in the court file.* ***Give this form to law enforcement.***[12]

Below the above directives in the LEIS, Roznowski provided additional information about Kim to the police. She stated that an interpreter who spoke Korean would be needed to serve Kim.[13] She provided his residence address, but further specified that he could be served at her residence address.[14]

Under the portion of the LEIS seeking "Hazard Information" about Kim,

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[8] Id. at 4.
[9] Id.

[1] RCW 10.14.100(2) provides: "The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party."

[11] Plaintiff's Trial Exhibit at 4.

[12] Id. at 2 (emphasis added).

[13] Id.

[14] Id.

Roznowski checked the box marked "Assault."[15] The LEIS also states that Kim is a "current or former cohabitant as an intimate partner" and that Roznowski and Kim are "living together now."[16] The LEIS states further that Kim did not know that he would be "moved out of the home."[17] The LEIS also states that Kim did not know that she was obtaining the protection order.[18]

Significantly, Roznowski also stated in the LEIS that Kim was "likely to react violently when served."[19]

Early in the morning of May 3, 2008, Officer Andrew Hensing of the City's police department picked up a folder at police headquarters in order to perform the service of the protection order on Kim that Roznowski sought. The folder included Roznowski's affidavit and petition for a protection order, the temporary protection order entered by the commissioner, and the LEIS that we described earlier in this opinion.[2]

Around 8:00 a.m. that morning, Officer Hensing arrived near Roznowski's residence and parked his vehicle. He testified at trial that he did not completely read the papers in the folder prior to serving Kim.[21] Thus, he was then unaware

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[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[2] Report of Proceedings (Dec. 9, 2010) at 6-7.

[21] Id. at 13-14.

of the information about Kim contained in the LEIS and in Roznowski's affidavit supporting her petition for a protection order. It appears that he did not read the information in the LEIS stating that a Korean interpreter would be needed because there was no interpreter with the officer.

Officer Hensing testified at trial that he knocked at the front door of Roznowski's home, and Kim answered.[22] Officer Hensing asked Kim to identify himself.[23] The officer then served the order on Kim. According to the officer, a brief conversation between the two followed.

Officer Hensing testified that he told Kim that he had been served with an anti-harassment order and that there was a hearing date stated in the order.[24] He asked Kim if he could read English and told Kim to read the order, which he testified that Kim then did.[25] Officer Hensing also testified that he asked Kim if he had any questions.[26]

Officer Hensing testified that he "saw someone in the background" during the exchange with Kim at the door of Roznowski's home, but did not know whether the person "was male or female."[27] He did not inquire further and returned to his parked vehicle. There, he completed the return of service form.

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[22] Id. at 36.

[23] Id. at 37-38.

[24] Id. at 38-39.

[25] Id. at 36, 39.

[26] Id. at 38-39.

[27] Id. at 39.

The entire interaction with Kim took about five minutes and was completed by 8:13 a.m.[28] Officer Hensing left the scene without taking any further action.

The evidence at trial showed that Kim remained at Roznowski's residence after Officer Hensing departed. This was notwithstanding the protection order's direction that Kim was restrained from either entering or being within 500 feet of the residence or from contacting Roznowski.

Less than an hour after Officer Hensing served Kim, Roznowski sent an e-mail message to her daughter, Carola Washburn. She wrote:

> Well—[Kim] was served this morning. He doesn't understand a thing and right away the blame came I am making trouble. . . . I gave him until 11 to move stuff, then I'll get the key and garage door opener.[29]

Kim called a friend and asked him to come over. Kim left the house with his friend for a brief period to go to a bank. He withdrew funds, gave them to the friend, and asked that the friend give the funds to his nephew. The friend then drove Kim back to Roznowski's residence.

The friend became concerned about Kim based on his actions and statements during the trip to the bank. The friend contacted police with these concerns. Police responded by going to Roznowski's house. They arrived at 11:55 a.m.[3]

Police discovered that Kim, in the ultimate act of domestic violence, had stabbed Roznowski 18 times with a knife. She died of her wounds at the scene

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[28] Id. at 21; Plaintiff's Trial Exhibit 2 at 9.

[29] Plaintiff's Exhibit 50.

[3] Report of Proceedings (Dec. 8, 2010) at 8.

of the crime.

Washburn, individually and on behalf of Roznowski's estate, commenced this wrongful death action against the City. The two daughters alleged negligence, negligent infliction of emotional distress, and negligent supervision and training on the part of the City. The City denied liability, asserting that the public duty doctrine was a bar to all claims.

The City's first motion for summary judgment was based solely on the defense that the public duty doctrine barred all claims. The trial court denied the motion and the motion to reconsider.

The City sought discretionary review of the denial of its summary judgment motion. A commissioner of this court denied review, and a panel of judges denied the City's motion to revise that ruling.

The City's theory of the case at trial was that the public duty doctrine was a bar to all claims. The City took the position that Roznowski's choice to seek protection from Kim by way of an anti-harassment protection order pursuant to chapter 10.14 RCW rather than a protection order under chapter 26.50 RCW relieved the City of any duty to her other than to serve the order and complete and file the return of service.

In Donaldson v. City of Seattle,[31] this court held that police officers have a mandatory duty to arrest alleged abusers if there are legal grounds to do so under the Domestic Violence Prevention Act, chapter 10.99 RCW.[32] Thus, here

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[31] 65 Wn. App. 661, 831 P.2d 1098 (1992).
[32] Id. at 669-71.

the City implicitly concedes that this case should have gone to trial if Roznowski had obtained the "right" form or order, rather than the "wrong" one.

Washburn disagreed with the City's contentions at trial. She argued that the City had a duty to enforce the protection order entered by the court on May 1, 2008. For various reasons, Washburn claimed that the public duty doctrine did not bar the claims.

At the close of Washburn's case in chief and prior to presenting its own case, the City moved for judgment as a matter of law, as provided for by Superior Court Rule (CR) 50(a).[33] The trial court denied this motion.

The jury returned a $1.1 million verdict solely in the estate's favor. It did not award any damages to either of Roznowski's daughters, individually. The court entered judgment on the verdict.

The City neither renewed its CR 50(a) motion pursuant to CR 50(b) nor moved for a new trial pursuant to CR 59. Washburn moved for a new trial solely on damages. The trial court granted Washburn's motion.

The City appeals.

LAW OF THE CASE

A primary issue on appeal centers on the effect of the City's failure to object to the substance of the trial court's Instruction 12, and its failure either to assign error to the instruction or to argue on appeal that its giving was improper. This instruction states the City's duty to exercise ordinary care in the service and

[33] Clerk's Papers at 2049-59.

enforcement of protection orders. As Washburn correctly argues, this instruction constitutes the law of the case. Thus, the only question on appeal is whether there is sufficient evidence to sustain the verdict under the instructions given.[34]

We hold that Instruction 12, to which the City did not object in substance, is the law of the case. Additionally, there was sufficient evidence for the jury to find that the City breached its duty to Roznowski, as defined by the instruction.

Under the law of the case doctrine, instructions given to the jury by the trial court, if not objected to, shall be treated as the properly applicable law.[35] State v. Hickman,[36] is particularly instructive in the application of that doctrine to this case.

There, the defendant was tried for insurance fraud in Snohomish County Superior Court.[37] The information charged him with presenting, or causing to be

[34] Hickman, 135 Wn.2d at 101-03 (citing Tonkovich v. Dep't of Labor and Indus., 31 Wn.2d 220, 225, 195 P.2d 638 (1948)); see also Noland v. Dep't of Labor & Indus., 43 Wn.2d 588, 590, 262 P.2d 765 (1953) ("No assignments of error being directed to any of the instructions, they became the law of the case on this appeal, and the sufficiency of the evidence to sustain the verdict is to be determined by the application of the instructions and rules of law laid down in the charge."); Guijosa v. Wal-Mart Stores, Inc., 144 Wn.2d 907, 917, 32 P.3d 250 (2001) (citing Ralls v. Bonney, 56 Wn.2d 342, 343, 353 P.2d 158 (1960) ("Instructions to which no exceptions are taken become the law of the case."); Chelan County Deputy Sheriffs' Ass'n v. Chelan County, 109 Wn.2d 282, 300 n.10, 745 P.2d 1 (1987).

[35] Hickman 135 Wn.2d at 102-03 (internal citations omitted); Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 113, 829 P.2d 746 (1992)) (internal citations omitted).

[36] 135 Wn.2d 97, 954 P.2d 900 (1998).

[37] Id. at 99.

presented, in Snohomish County, a false or fraudulent insurance claim.[38] The to-convict instruction at trial specified the elements of the crime of insurance fraud, but added an additional element: that the act occurred in Snohomish County, Washington.[39] The State did not object to this added element.[4] The jury returned a guilty verdict.[41]

Hickman appealed, arguing that the State assumed the burden to prove that the act occurred in Snohomish County and failed to do so.[42] This court rejected Hickman's argument and affirmed.[43] The supreme court granted review and reversed.

In discussing the law of the case doctrine, the supreme court stated that it is "an established doctrine with roots reaching back to the earliest days of statehood."[44] The court cited an 1896 decision in which it held that "whether the instruction in question was rightfully or wrongfully given, it was binding and conclusive upon the jury, and constitutes upon this hearing the law of the case ...."[45] Accordingly, the Hickman court observed that the question is whether

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[38] Id. at 100-101.

[39] Id. at 101.

[4] Id. at 100-101.

[41] Id. at 101.

[42] Id.

[43] State v. Hickman, 84 Wn. App. 646, 929 P.2d 1155 (1997).

[44] Hickman, 135 Wn.2d at 101.

[45] Id. at 102 n.2.

there is "sufficient evidence to sustain the verdict under the instructions of the court?"[46]

Applying these principles, the Hickman court examined the sufficiency of the evidence of the additional element—"[t]hat the act occurred in Snohomish County, Washington"—and determined the evidence was insufficient.[47] Despite the fact that venue is not an element of the crime of insurance fraud that the State must generally prove, Hickman held that venue became the law of the case that the State was required to prove because it failed to object to the instruction.[48] Because there was insufficient evidence of the added element, the court reversed and dismissed Hickman's conviction.[49]

The holding of Garcia v. Brulotte[5] demonstrates that the law of the case doctrine is not limited to criminal cases. In Garcia, there was a lack of agreement among the jurors on the amount of damages and percentage of plaintiff's negligence.[51] "[Ten] jurors agreed on the amount of damages, and 10 jurors agreed on the percentage of plaintiff's negligence, but each was a

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[46] Id at 103.

[47] Id. at 105-06.

[48] Id. at 102 (citing State v. Lee, 128 Wn.2d 151, 159, 904 P.2d 1143 (1995)).

[49] Id. at 106.

[5] 94 Wn.2d 794, 620 P.2d 99 (1980).

[51] Id. at 796.

different set of 10."[52] Nevertheless, because the verdict was consistent with the court's jury instructions, the supreme court held that the verdict was consistent with the law of the case.[53] In doing so, the supreme court acknowledged that the trial court's verdict instruction might be improper, stating that "[i]n the appropriate case the issues raised by an interpretation of the statute, court rules, and Washington precedent will be necessary to determine if the court's verdict instruction here was correct . . . ."[54] But in Garcia, the law of the case prevented review of that legal question.

Here, the court and counsel for the parties extensively discussed whether a duty of care instruction should be given to the jury. Near the end of this discussion, and prior to counsel stating their exceptions, the following exchange occurred:

> COURT: So the way I'm going to word it, unless someone has anything you want to say is, ***"A city police department has to exercise ordinary care . . . in the service and enforcement of court orders,"*** period, because that's really all we are talking about.
>
> MR. CHRISTIE: For the way you are presenting the case, I think that's appropriate. ***I will take exception for other reasons.***[55]

Following this exchange, the court assembled its final set of instructions. Instruction No. 12 stated:

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[52] Id.

[53] Id. at 797.

[54] Id.

[55] Report of Proceedings (Dec. 20, 2010) at 73-74 (emphasis added).

> A city police department has a duty to exercise ordinary care in the service and enforcement of court orders.[56]

The parties then stated their respective exceptions to the court's instructions to the jury:

> MR. CHRISTIE: . . . [W]e would take exception to the Court giving . . . instruction 12. . . . [I]nstruction 12 is a statement of the City's duty to exercise ordinary care for the reasons set forth before. Given that we are talking about a failure to enforce exception, we think it should be done in the manner that we have proposed by instructing on the elements and then asking specific questions.[57]

Whether the City's exception to Instruction 12 complies with the requirements of CR 51(f) is debatable. That court rule states:

> Objections to Instruction. Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. ***The objector shall state distinctly the matter to which he objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.***

It is unclear from this record whether the City's objection is anything more than an objection to the wording of the instruction, as there is no further specific explanation here of the basis of any substantive concerns of the City.

We acknowledge that the City's position below and on appeal has been that this case should have been dismissed without reaching the stages of crafting and giving instructions to the jury. But the case did result in a trial, and in instructions to the jury. Our reading of the City's only exception to Instruction

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[56] Clerk's Papers at 2179.

[57] Report of Proceedings (Dec. 20, 2010) at 80-81.

12 is that it objected to the wording only, and not to its substance.

In any event, the City neither assigned error to this instruction on appeal nor otherwise argues on appeal that giving it was improper. In fact, the City states in its Reply Brief that its failure to designate:

> Jury Instruction 12 . . . is immaterial. Because the trial court erred in ruling that the City owed [the] plaintiffs a duty of care to take enforcement action and protect Ms. Roznowski from harm, it was erroneous to give <u>any</u> instructions to a jury. The case should have been dismissed as a matter of law and never reached the instruction stage, the central argument made on summary judgment, on reconsideration, and at the close of plaintiffs' case in chief.[58]

We disagree with the City's view, as expressed in this briefing. On appeal, the City does not challenge either the substance or the wording of the instruction in any way. It plainly states that it is unnecessary to do so. Had the City made a substantive objection to Instruction 12 at trial, it could have said so on appeal. It did not.

Instruction 12 is now the law of the case for the City's duty to exercise ordinary care in the service and enforcement of the protection order that is at issue in this case. As we read the record, and in the absence of argument on appeal, the City did not object to the substance of the instruction. It only objected to the wording of the instruction. In any event, any claim to the contrary was abandoned by the City's failure to challenge the instruction on appeal.

Because this instruction is now the law of the case, the only remaining question is whether there was sufficient evidence to support the jury verdict. We

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[58] Reply Brief of Appellant City of Federal Way at 4 n.2.

hold that there was sufficient evidence for a jury to find that the City breached the duty stated in this instruction. Whether Instruction 12 is a legally correct statement of the duty owed by a City police department, an instruction that can or should be given in future cases, is a question that we do not decide in this case.

We review jury verdicts under a sufficiency of the evidence standard.[59] "The record must contain a sufficient quantity of evidence to persuade a rational, fair-minded person of the truth of the premise in question."[6] A party challenging the sufficiency of the evidence admits the truth of the opposing party's evidence and all inferences that can be reasonably drawn therefrom.[61] Such a challenge requires that the "evidence be interpreted most strongly against the moving party and in the light most favorable to the party against whom the motion is made."[62]

Here, there was sufficient evidence for the jury to find that Officer Hensing, as an agent of the City, breached a duty by failing to exercise ordinary care in the ***enforcement*** of the court order he served on Kim. He failed to read the LEIS Roznowski provided that was designed to alert law enforcement of the situation to be faced when serving Kim with the protection order. That information included the fact that Kim was to be served at Roznowski's

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[59] Winbun v. Moore, 143 Wn.2d 206, 213, 18 P.3d 576 (2001).

[6] Canron, Inc. v. Fed. Ins. Co., 82 Wn. App. 480, 486, 918 P.2d 937 (1996) (citing Bering v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)).

[61] Holland v. Columbia Irr. Dist., 75 Wn.2d 302, 304, 450 P.2d 488 (1969).

[62] Id. (citations omitted).

residence. Moreover, it expressly stated that an interpreter who spoke Korean would be needed to ensure Kim understood the provisions of the protection order. The LEIS clearly stated under its "Hazard Information" section that Kim's history included assault. Finally, the LEIS also provided additional information that indicated the domestic relationship of Kim and Roznowski and that he was "likely to react violently when served."

The temporary protection order also contained additional information that Officer Hensing failed to read. Specifically, the order restrained Kim "from making any attempts to contact [Roznowski]" and further restrained him from "entering or being within 500 feet of [Roznowski's] residence." Despite these express directives, both of which Kim violated upon being served, Officer Hensing did nothing to enforce them. Regardless of whether enforcement would have entailed either staying until Kim left Roznowski's residence or arresting him if he failed to do so, Officer Hensing failed to enforce the express provisions of the superior court's order that were intended to protect Roznowski from harm.

There was also expert testimony that the point of separation in a domestic situation could escalate to violence where an alleged abuser is separated from an alleged victim by way of a court order. That evidence supports what happened in this case: Once Kim understood that he was to leave Roznowski's residence and have no further contact with her, his behavior escalated into deadly violence.

We conclude that this evidence was sufficient to persuade a rational, fair-

minded juror that the City breached its duty to Roznowski by failing to enforce the order that Officer Hensing served on Kim. This supports the jury verdict to the extent of liability and damages in favor of Roznowski's estate.

The City maintains that it did not owe any legal duty of care and all claims are barred by the public duty doctrine.[63] It characterizes Washburn's law of the case argument as a procedural red herring that is intended to distract this court from the merits of its appeal.[64] We must disagree.

As we have explained, the law of the case doctrine is well-established. The City cites to a number of cases that hold that "technical violation of the rules will not ordinarily bar appellate review," where the nature of the challenge is clear.[65] But none of the cases the City cites address the failure of a party to object substantively to a trial court's jury instruction. Thus, the City fails to advance any argument why we should not apply the law of the case doctrine here. Moreover, it fails to explain why the evidence is insufficient to support the jury verdict on the basis of Instruction 12, which is the law of the case. Accordingly, we are unpersuaded by the City's arguments to the contrary.

DENIAL OF SUMMARY JUDGMENT MOTION

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[63] Reply Brief of Appellant City of Federal Way at 9-12.

[64] Id. at 5-6.

[65] Daughtry v. Jet Aeration Co., 91 Wn.2d 704, 710, 592 P.2d 631 (1979); see also State v. Clark, 53 Wn. App. 120, 123, 765 P.2d 916 (1988) (where Rules on Appeal not strictly followed regarding assignments of error, if claimed errors are clear then review is proper); McGovern v. Smith, 59 Wn. App. 721, 734, 801 P.2d 250 (1990) (where party fails to make proper assignment of error, court may still consider the merits of the challenge where its nature is clear).

The City primarily argues that the trial court erroneously denied its first motion for summary judgment, which it based on the public duty doctrine. At the time of this motion, exceptions to the public duty doctrine were available theories of the plaintiffs. There were then genuine issues of material fact whether such exceptions applied. Because such genuine issues of material fact existed at the time of the City's motion for summary judgment, and because the matter proceeded to trial, we decline to review the denial of the motion.

Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.[66] An appellate court reviews de novo a grant or denial of summary judgment.[67] Such an order is subject to review "if the parties dispute no issues of fact and the decision on summary judgment turned solely on a substantive issue of law."[68] But as we noted in Kaplan v. Northwestern Mutual Life Insurance Co.,[69] "'[a] summary judgment denial cannot be appealed following a trial if the denial was based upon a determination that material facts are disputed and must be resolved by the factfinder.'"[7]

[66] CR 56(c).

[67] Green v. Am. Pharm. Co., 136 Wn.2d 87, 94, 960 P.2d 912 (1998) (internal citations omitted).

[68] Univ. Vill., 106 Wn. App. at 324; Kaplan, 115 Wn. App. at 799-800.

[69] 115 Wn. App. 791, 65 P.3d 16 (2003).

[7] Id. at 799-800 (quoting Brothers v. Pub. Sch. Emps. of Wash., 88 Wn. App. 398, 409, 945 P.2d 208 (1997) (citing Johnson v. Rothstein, 52 Wn. App.

Here, the City's first motion for summary judgment was based solely on the theory that the public duty doctrine barred all claims in this wrongful death action. The trial court denied the motion on the basis that there were genuine issues of material fact for trial.

The City sought discretionary review of the denial of summary judgment. A commissioner of this court denied discretionary review, stating that "the legislative intent and special relationship exceptions arguably apply."[71] The ruling went on to explain why the then existing record arguably supported these alternative arguments.[72] A panel of judges of this court denied the City's motion to revise that ruling.

We may not review a denial of summary judgment following a trial if the denial was based upon a determination that material facts were in dispute and had to be resolved by the fact finder. The rule stated in Kaplan bars review of the denial of the City's first motion for summary judgment following the trial in this case. There were material factual issues that existed at the time of the first motion for summary judgment. Specifically, there were material factual issues whether the special relationship exception to the public duty doctrine applied to this case. This is so even if we concluded that the legislative intent exception to this doctrine did not involve material factual issues. There were material facts in dispute at the time of the first motion, facts that only a trial could resolve after

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303, 304, 759 P.2d 471 (1988))).

[71] Commissioner's Ruling Denying Discretionary Review, Clerk's Papers at 751.

[72] Id. at 758-60.

further development of the record.

The City argues that because its negligence was Washburn's sole contention, the only question before the lower court at the time of the first summary judgment motion was legal: whether the City owed Roznowski a duty of care.[73]

"In all negligence actions the plaintiff must prove the defendant owed the plaintiff a duty of care."[74] Whether a duty is owed is a question of law.[75] But duty arises from the facts presented.[76] To determine whether a defendant owes a duty to the plaintiff, appellate courts have frequently reviewed whether sufficient evidence supports a finding that the alleged duty was owed in the particular circumstances of the case.[77] Thus, a challenge to whether the defendant owes a duty to a plaintiff sometimes requires a determination whether facts can be proved that give rise to the alleged duty. In such cases, the issue

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[73] Reply Brief of Appellant City of Federal Way at 7.

[74] Donaldson, 65 Wn. App. at 666.

[75] Munich v. Skagit Emergency Commc'ns Ctr., 161 Wn. App. 116, 121, 250 P.3d 491, review granted, 172 Wn.2d 1026 (2011).

[76] Torres v. City of Anacortes, 97 Wn. App. 64, 75, 981 P.2d 891 (1999).

[77] Yankee v. APV North America, Inc., 164 Wn. App. 1, 3-10, 262 P.3d 515 (2011) ("there is insufficient evidence to create a material issue of fact that APV had a duty to warn of asbestos exposure"); Borden v. City of Olympia, 113 Wn. App. 359, 370, 53 P.3d 1020 (2002) ("These facts are sufficient to support a finding that the City actively participated in the 1995 project, and, if such a finding is made, that the City owed a duty of due care."); Moore v. Wayman, 85 Wn. App. 710, 720-21, 723, 725-26, 934 P.2d 707 (1997) (reversing plaintiff's negligence verdict because evidence was insufficient to support applicability of special relationship, failure to enforce, and legislative intent exceptions to the public duty doctrine).

of duty does not present a pure question of law.

Here, whether the City owed Roznowski a particularized duty as opposed to a general duty of care could not have been determined at the time of the first motion for summary judgment because the material facts were disputed. We reject the City's overly simplistic characterization that only a legal question existed.

For these reasons, we do not review the denial of the City's first summary judgment motion.

DENIAL OF MOTION FOR JUDGMENT AS A MATTER OF LAW

The City also argues that the trial court erroneously denied its CR 50(a) motion at the close of Washburn's case-in-chief. Washburn responds that we may not review that denial because the City failed to renew its motion, as provided under CR 50(b). Nor did the City move for a new trial based on insufficient evidence. We agree with Washburn.

The Federal Rules of Civil Procedure (FRCP), on which the state Superior Court Civil Rules are modeled, allow a party to challenge the sufficiency of the evidence prior to the submission of the case to the jury under FRCP 50(a). Such a motion may be renewed after the verdict and entry of judgment under FRCP 50(b).[78]

In Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.,[79] the United States Supreme Court addressed the implications of a party's failure to move

[78] FRCP 50(a) and (b).

[79] 546 U.S. 394, 126 S. Ct. 980, 163 L. Ed. 2d 974 (2006).

postverdict under FRCP 50(b) after denial of an initial FRCP 50(a) motion. The Court noted that "[i]n the absence of such a motion," an "appellate court [is] without power to direct the District Court to enter a judgment contrary to the one it had permitted to stand."[8] The Court cited a 1947 case in support of this proposition.[81] According to the Court, a postverdict motion is necessary because:

> [d]etermination of whether a new trial should be granted or a judgment entered under Rule 50(b) calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart. Moreover, the requirement of a timely application for judgment after verdict is not an idle motion because it is . . . an essential part of the rule, firmly grounded in principles of fairness.[82]

In Ortiz v. Jordan,[83] the United States Supreme Court recently reiterated its holding in Unitherm.[84] There, the Court noted that "although purporting to review the District Court's denial of the . . . pretrial summary-judgment motion, several times [the Court of Appeals] pointed to evidence presented only at the

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[8] Id. at 400-01 (quoting Cone v. W. Va. Pulp & Paper Co., 330 U.S. 212, 218, 67 S. Ct. 752, 91 L. Ed. 849 (1947); Globe Liquor Co. v. San Roman, 332 U.S. 571, 68 S. Ct. 246, 92 L. Ed. 177 (1948)).

[81] Id.

[82] Id. at 401 (internal quotation marks and citations omitted) (alteration in original).

[83] __ U.S. __, 131 S. Ct. 884, 178 L. Ed. 2d 703 (2011).

[84] Id. at 892.

trial stage of the proceedings."[85] According to the Supreme Court, "[o]nce the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the summary judgment motion."[86]

But the fatal flaw, according to the Supreme Court, was that the Ortiz appellants failed to renew their motion, as FRCP 50(b) specifies. This failure "left the appellate forum with no warrant to reject the appraisal of the evidence by 'the judge who saw and heard the witnesses and ha[d] the feel of the case which no appellate printed transcript can impart.'"[87]

When a Washington Court Rule is substantially similar to a present Federal Rule of Civil Procedure, we may look to federal decisions interpreting this rule for guidance.[88] We do so here.

The language of FRCP 50(b) is virtually identical to CR 50(b).[89] Karl

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[85] Id. at 889.

[86] Id.

[87] Id. (quoting Cone, 330 U.S. at 216) (alteration in the original).

[88] Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992) (citing In re Lasky, 54 Wn. App. 841, 851, 776 P.2d 695 (1989); American Discount Corp. v. Saratoga West, Inc., 81 Wn.2d 34, 37, 499 P.2d 869 (1972)).

[89] FRCP 50(b) states:

> **Renewing the Motion After Trial; Alternative Motion for a New Trial.** If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request

Tegland states the necessity for either renewing a CR 50(a) motion or moving for a new trial as a foundation for an appeal:

> **Foundation for appeal.** A party may not simply move for judgment as a matter of law before the case is submitted to the jury pursuant to CR 50(a), and then (if the motion is denied) appeal from the final judgment on the basis of insufficient evidence. In order to lay a foundation for appeal, the party must first renew its motion for judgment as a matter of law pursuant to CR 50(b) or, in the alternative, move for a new trial based upon insufficient evidence. This requirement is based upon the belief that in the post-verdict context (CR 50(b)), the trial court should make the initial determination of whether the evidence was sufficient to support the verdict. The determination should not be made in the

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> for a new trial under Rule 59. In ruling on the renewed motion, the court may:
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> (1) allow judgment on the verdict, if the jury returned a verdict;
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> (2) order a new trial; or
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> (3) direct the entry of judgment as a matter of law.
>
> CR 50(b) states:
>
> **Renewing Motion for Judgment After Trial; Alternative Motion for New Trial.** If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment—and may alternatively request a new trial or join a motion for a new trial under rule 59. In ruling on a renewed motion, the court may:
>
> (1) If a verdict was returned:
>
> (A) allow the judgment to stand.
>
> (B) order a new trial, or
>
> (C) direct entry of judgment as a matter of law . . . .

first instance by an appellate court.[9]

Tegland also cites to Unitherm and notes that, in its analysis of FRCP 50, the Supreme Court had interpreted language virtually identical to the language of CR 50. Thus, because of the similarity of CR 50(b) and FRCP 50(b), the rationale of the Supreme Court's holding in Unitherm also applies to CR 50.

Here, the City neither renewed its CR 50(a) motion pursuant to CR 50(b) nor moved for a new trial. The failure to do so is fatal to its request that we review the trial court's denial of the City's CR 50(a) motion at the close of Washburn's case-in-chief.

The City makes several arguments why we should not apply the federal construction of FRCP 50 to CR 50. They are not persuasive.

First, the City argues that adoption of the Unitherm rule would be an extremely harsh penalty because it has never before been applied in Washington. But the Supreme Court's Unitherm decision was issued in 2006, prior to the incidents at issue here. Given the accepted principle that we may look to federal decisions interpreting federal rules that are substantially similar to our state's rules,[91] the City's argument is not persuasive. Additionally, that same argument would apply equally to any adoption of a construction of a similarly worded federal rule when construing our state rules of civil procedure. We are unaware of any case that has taken that position, and the City fails to cite any

[9] 14A Karl B. Tegland, Washington Practice: Rules Practice CR 50 author's cmts. at 36 (5th ed. 2011).

[91] Bryant, 119 Wn.2d at 218-19 (internal citations omitted).

authority in support of this argument.[92]

Second, the City attempts to distinguish the federal rule on the basis that, in contrast to Unitherm, sufficiency of factual evidence is not at issue here.[93] Rather, the City claims the question before us is "the sufficiency of the evidence with respect to a legal issue: whether the City owed the plaintiffs any duty of care."[94] This claimed distinction is not material.

We explained earlier in this opinion that Instruction 12 established the law of the case regarding the City's duty. Thus, the question is whether there was sufficient evidence given the duty definition established by Instruction 12. Here, as we also explained earlier in this opinion, the evidence is sufficient to support the verdict. Accordingly, we reject this argument.

NEW TRIAL

Finally, the City argues that the trial court abused its discretion when it granted Washburn's motion for a new trial on damages. We disagree.

Determination of the amount of damages is within the province of the jury.[95] But on review of a trial court's grant of a motion for a new trial based on inadequate damages, reversal is only warranted "where the trial court abuses its

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[92] See State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) (holding that appellate courts will not review an issue unsupported by authority or persuasive argument).

[93] Unitherm, 546 U.S. at 403.

[94] Reply Brief of Appellant City of Federal Way at 8.

[95] Palmer v. Jensen, 132 Wn.2d 193,197, 937 P.2d 597 (1997).

discretion."[96] Further "[a] much stronger showing of abuse of discretion will be required to set aside an order granting a new trial than an order denying one because the denial of a new trial 'concludes [the parties'] rights.'"[97]

The supreme court's analysis in Palmer v. Jensen[98] controls here. There, Jensen argued that Palmer's special damages were still a matter of legitimate dispute because the jury could have concluded some of Palmer's treatment was unnecessary.[99] But the defense presented no evidence to call the treatment into question.[1] The supreme court held that, because the "uncontroverted evidence at trial established that all of Palmer's medical treatment was related to the accident, was necessary, and was reasonable," a new trial should be granted on the issue of damages only.[101]

Here, the City did not dispute the evidence supporting the close relationship between Roznowski and her daughters that constitutes the underpinning of their claims as individuals. Likewise, the City did not dispute that they suffered pain and suffering as a result of her death.

Furthermore, the special verdict form read "Was Defendant City of

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[96] Id. (citing Wooldridge v. Woolett, 96 Wn.2d 659, 668, 638 P.2d 566 (1981)).

[97] Id. at 197 (quoting Baxter v. Greyhound Corp., 65 Wn.2d 421, 437, 397 P.2d 857 (1964)).

[98] 132 Wn.2d 193, 937 P.2d 597 (1997).

[99] Id. at 199.

[1] Id.

[101] Id.

Federal Way's negligence a ***proximate cause*** of injury and damage to the ***plaintiffs***?" The jury responded "yes."[102] Thus, the jury determined that the City's negligence was a proximate cause of injury and damages to all three plaintiffs, not just the estate.

The City argues that the jury's decision to award nothing to Roznowski's daughters merely indicates that the jury "determined that Ms. Loh and Ms. Washburn suffered general damages all caused by Paul Kim murdering their mother, distinct from Ms. Roznowski's damages flowing from the 'foreseeable' assault."[103] However, the supreme court dismissed a similar argument in Palmer. The difficulty where a defendant argues that the jury "could have concluded" that some damages were not warranted, "'is that, carried to its logical conclusion, there never could be an inadequate verdict, because the conclusive answer would always be that the jury did not have to believe the witnesses who testified as to damages, even though there was no contradiction or dispute.'"[104] The undisputed evidence in this case of the daughters' relationship with their mother, and the determination that the City's negligence was a proximate cause of injury and damages to all plaintiffs, together support the trial court's decision to grant a new trial for damages.

The trial court did not abuse its discretion by granting a new trial on

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[102] Clerk's Papers at 2093 (emphasis added).

[103] Brief of Appellants at 49.

[104] Palmer, 132 Wn.2d at 200 (quoting Ide v. Stoltenow, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955)).

damages for Washburn.

OTHER CLAIMS AND DEFENSES

Washburn argues that we should affirm the judgment on the jury verdict in favor of Roznowski on the basis of the duty articulated in Restatement (Second) of Torts § 302B that this court applied in Robb v. City of Seattle[105] and other cases.[106] Washburn also argues that the public duty doctrine does not bar the claims in this action because the case law's failure to enforce, legislative intent, and special relationship exceptions to that doctrine apply to this case.

The City claims that Robb is inapplicable here. The City also claims that none of the case law exceptions to the public duty doctrine apply to this case.

Because we affirm on the basis of the law of the case doctrine and decline to review the denials of the City's first motion for summary judgment and the CR 50(a) motion, we decline to reach these respective arguments of the parties.

We affirm the judgment on the jury verdict, subject to the trial court's grant of a new trial on damages for Roznowski's daughters, which we also affirm.

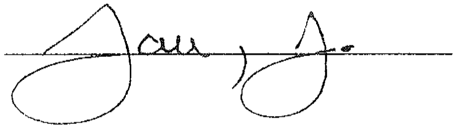
Cox, J.

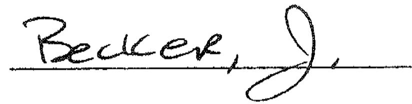
[105] 159 Wn. App. 133, 144, 245 P.3d 242 (2010).

[106] Tae Kim v. Budget Rent A Car Sys., Inc., 143 Wn.2d 190, 197-99, 15 P.3d 1283 (2001); Parrilla v. King County, 138 Wn. App. 427, 435-39, 157 P.3d 879 (2007).

No. 66534-1-I/32

WE CONCUR:





Benton-Franklin judge questions jury pool about immigration in pursuit of justice
Kristin M. Kraemer, Tri-City Herald

PASCO, Wash. "Do you believe that immigrants are causing problems in America?"
For some, the answer may be as simple as "Yes" or "No."

But when asked of 227 prospective jurors on two recent Franklin County murder trials, their responses covered the spectrum on the hot-button national issue.

It's the first time the question has been posed to a Benton-Franklin Superior Court jury pool in the hope that people would be honest with their answers, instead of a seating a biased jury and risking a conviction being overturned.

Judge Robert Swisher, who drafted the questionnaire, said it is proof the system works when potential jurors can be candid on such questions and admit they have a problem and won't be fair.

Some of the prospective jurors blame immigrants for taking jobs from Americans, bringing drugs, gangs and violent crime into the country, hiding behind a language barrier and overall "bleeding our system."

"If they are here illegally, they burden our services and cost us all, and then want full benefits of our country," wrote a 47-year-old man. "They shouldn't be here in the first place and don't deserve the same rights as citizens!"

But others pointed out that America was founded by immigrants from all over the world and "has been made great by our rich and diverse heritage."

"I feel that most are trying to better their lives and the lives of their families. There are going to be some that cause problems, but that goes for American citizens also," said a 27-year-old woman.

The topic was raised on jury questionnaires for the trials of Gregorio Luna Luna and Jose Garcia-Morales. Of the total responses for both cases, 20 percent said it's the illegal or undocumented immigrants that are the problem.

In Luna Luna's case, the jury pool was evenly split, with 49 percent believing immigrants are to blame for a part of society's ills and 50 percent disagreeing.

Garcia-Morales' jury pool felt more strongly about immigrants, with 58 percent agreeing they cause problems and 37 percent not blaming them.

"Look around you. Americans are being taxed to support illegal and even legal immigrants in this country. Where does it end? The opportunity to come to the U.S. is enough. After that, it's up to them to support themselves," wrote a 43-year-old man on Luna Luna's trial. "If the federal, state and local governments would enforce our current immigration laws, this alleged crime may not have even happened."

For years, the bicounty court and Tri-City lawyers have used lengthy questionnaires in high-profile cases to broach sensitive subjects, such as mental health and alcoholism, in an attempt

to bring any juror bias or concern to the forefront. The idea is to shorten the jury selection process by quickly eliminating a number of people based on their answers.

As Swisher prepared for Luna Luna's February trial, he remembered an incident that happened during jury selection on an unrelated federal case and decided to put the question of immigration out there.

Swisher explained to the Herald that after reviewing the Supreme Court case, Rosales-Lopez v. United States, he believed it was his responsibility to address racial or ethnic prejudice to ensure the defendant received a fair and impartial trial.

"Because he was a Mexican citizen, I put in that other question. I put the whole thing together," the judge said. "I think the court has an affirmative duty to make inquiries into that area, so I don't think there's any challenges to it."

Prosecutors and defense attorneys on the case did not object.

"I think everybody tries to make sure everybody is unbiased or would tell us they're unbiased, and the more questions we can ask of hot topics, the more chances we have of getting our client a fair trial," said lawyer Shelley Ajax, who represented Luna Luna and Garcia-Morales.

The Herald looked at the completed questionnaires -- 137 in Luna Luna's case and 90 for Garcia-Morales. Both of the men were convicted, and the general questionnaires are public record.
Both cases were in Franklin County, but the Tri-Cities has seen its share of controversy on immigration issues.

Last year, Loren Nichols unsuccessfully ran for the Kennewick City Council on the platform that anyone entering the U.S. illegally should be shot and that all illegal immigrants should be ordered out of the city and the country.

Kennewick Councilman Bob Parks has been vocal about making English the official language of Kennewick and Washington, as well as ending the practice of allowing undocumented immigrants to get Washington driver's licenses.

Washington State Patrol Trooper James E. Saunders was killed in Pasco during an October 1999 traffic stop. The suspect, a Mexican national, was a convicted drug dealer who had been deported from the United States three times before he gunned down Saunders.

And Luna Luna, whose trial led to the new immigrant questionnaire, was sent back to his native Mexico in May 2010 after repeatedly assaulting and threatening his former live-in girlfriend. He was back in Washington within 22 days, and stole a friend's car so he could drive to the Tri-Cities and kill her.

During the trials for Luna Luna and Garcia-Morales, a number of online Herald commenters questioned why Franklin County had to foot the bill, ultimately leaving taxpayers to pay for their lengthy prison terms. Some online commenters and prospective jurors suggested the criminal cases should be handled by the Mexican courts, or the men should just be dropped over the border.

"They should kick them out of the country so we can take care of the people that are legal and really need our help," said a 56-year-old male juror.

For Benton County Prosecutor Andy Miller -- whose office handled the cases because Franklin County Prosecutor Shawn Sant previously defended both men -- it was never a valid option to leave it up to Mexico's way of justice, whether in the courts or on the streets.

It's important to remember that when dealing with pending cases, the focus must be kept on legal issues and not politics, he said.

"I think if a major crime occurs in the United States, it needs to be investigated and prosecuted, and we need to see that justice is done," Miller told the Herald. "The 14th Amendment gives the right to a lawyer and a jury trial, and all those rights extend to people who are here illegally accused of a crime. That is part of our constitution, whether people agree with it or not."

On the jury questionnaires, people also were asked if they could overlook the defendant's status and treat him like any other person in this country's judicial system:
"The 14th Amendment to the U.S. Constitution as well as the State of Washington law require that you give Mr. Garcia-Morales, who is a citizen of Mexico, a fair and impartial trial. Can you fairly and impartially try this case and base any decision you make on the evidence introduced during the trial and disregard the race and nationality of Mr. Garcia-Morales?"

By the numbers, 82 percent did not have a problem with that in Luna Luna's case, and 81 percent said they could be objective if seated on the Garcia-Morales jury.

Yet, some took a hard-line stance on why they shouldn't be selected.

"He doesn't speak the English language, which tells me that he thinks he is above the law and doesn't need to leave," a 33-year-old man said in Luna Luna's case.

One woman said she's sick of illegals, while another didn't trust herself to be fair if the defendant is not a citizen.

"If he has to testify at all and it all is done through a translator, I might hold it against him," a 54-year-old man said on Garcia-Morales' case.

Both defendants required Spanish-speaking court interpreters for all hearings.

Defense attorney Karla Kane said she was on the case with Judge Swisher last year that ultimately triggered the immigration question.

Kane asked the entire jury pool if there was "absolutely anything else, any reason" why they wouldn't be able to give their full attention to the case. That's when a man raised his hand and said he needed to know if that defendant was a U.S. citizen, otherwise he did not know why he should care about the case and couldn't be fair, Kane recalled.

When the lawyer asked if any other people felt that way, several more hands went up. Her client on that case was a citizen, so it wasn't even an issue, she said.

Kane said the immigrant questions are like a double-edged sword -- it's important to get it out there and reveal what people are thinking, but it also may lead potential jurors to think there is an issue when one doesn't exist.

"I want to know all the bad things so I can at least question people. I know that they have that slight prejudice, even if it's not enough to challenge and get them booted off," said Kane, who also represented Luna Luna. She admits being shocked by some of the juror responses.

Well-known Tri-City immigration lawyer Tom Roach gives credit to Swisher for addressing the topic.

"That question on the jury form forces people to focus on their own potential biases and say to themselves, 'You know, I can't be objective about this case,' which is the way the system, the American system of jurisprudence, is designed to operate," he said.
It is irrelevant whether the defendant before them is legal or illegal; Swiss, German, Mexican or Dutch; wearing pink underwear or not, Roach said. What matters is if he committed the crime for which he is accused.

"I think it's a really important step in the right direction, especially in a community like this that we have where lots of people are either legal U.S. citizens or green card holders, or in some cases they're illegal," he told the Herald.

There are 11 million undocumented individuals, or illegal aliens, living in the United States, Roach said, noting that's equivalent to the number of people in Washington and Oregon combined. Most polls show 20 percent of Americans are in favor of immigration reform, 20 percent are against legalizing the immigrants who are here and 60 percent are in the middle, he said.

One of the biggest arguments against immigrants is they're taking up jobs in this depressed economy, yet Roach said they're doing work that Americans refuse to do. Immigrants are cutting the asparagus, picking the apples and wine grapes, and milking the cows, he said.

"Around here, it stupefies me -- we're in the middle of ag country and people don't get it. Seventy percent of the food on your plate, three meals a day, has passed through the hands of illegals," Roach said.

And as for the debate about taxes, he said everyone pays sales taxes. He acknowledged that illegal aliens may not be filing annual returns but said 72 percent of them are paying federal income taxes and into Social Security and Medicare, all of which is deducted from their wages. The only difference, he said, is that their employer doesn't know their true status and is treating them like a legal worker with a paycheck.

A 70-year-old farmer in a jury pool wrote on his questionnaire that immigrants are causing problems "no more than any other segment of the population."

And while several jurors told the court that all people should be following the law, a 29-year-old woman summed up their thoughts: "Immigrants are not the problem. There's good and bad people everywhere."

Law Society Survey Highlights Keys to Retaining Women

Suzi Ring

Flexible working and better performance assessment are key to retaining more women in law, according to a recent survey by the Law Society and LexisNexis.

The survey, published to coincide with International Women's Day Thursday, canvassed 1,144 respondents, with flexible working options and performance metrics that allow for fewer hours in the office cited as the best ways for the legal profession to retain more women

.

Respondents said the primary reason more women do not reach senior positions in law is the difficulty in balancing career and family, followed by the profession's long hours culture. Other problems highlighted include resistance to flexible working and unconscious bias.

Nearly two-thirds of respondents (64 percent) said gender diversity was an important commercial issue for their firm. While it would be unlawful for firms to operate a quota in order to improve diversity, 40 percent of respondents would personally support such a move, with nearly a third believing quotas to be necessary in order to achieve diversity in law firms.

Figures from the Law Society's annual statistical report published earlier this year show the number of women in law tails off significantly after the age of 35, despite the fact that over the last 10 years women have accounted for more than half of new entrants to the profession.

One survey respondent said: "A cultural change is required and would not happen without quotas -- the numbers coming out of law school and starting in the legal profession have been at least 50 percent female for some considerable time now, but this is not at all reflected at senior levels within the profession. It was previously thought that this would change with time but it has not done."

A number of law firms have recently made efforts to increase the number of women in their partnerships and management roles. Ashurst has introduced a target for the number of women it wants to employ in management positions, with the City firm aiming to have one quarter of its management posts filled by women within the next three years.

Meanwhile, Freshfields Bruckhaus Deringer also rolled out unconscious bias training to its partners firmwide in a bid to increase diversity within its ranks.

A Global Increase in Women on Boards of Directors, But U.S. Lags

Catherine Dunn, Coporate Counsel, March 9, 2012

Apropos to Thursday being International Women's Day, a new report shows the global outlook for the number of women serving on company boards is up overall. For the first time in corporate history, 10.5 percent of directors' seats worldwide belong to women—a slight increase of 0.7 percent from last year. But in terms of the individual rates of increase around the world, different countries are on all ends of the scale, with the U.S. nearly flat-lining compared to some other nations.

France and Australia saw the biggest increases. The percentage of women on boards in France shot up 7.5 percent from 2009 to 2011, reaching 16.6 percent. Australia's rate accelerated during that time period, too, climbing to 13.8 percent—a 5.4 percent increase. U.S. boards have experienced only a marginal increase—up half a percent, to 12.6 percent. Countries including Norway, Canada, and South Africa all have shown higher rates of women board membership.

"What jumped out at me this year is how extremely heterogeneous the progress is," says Kimberly Gladman, director of research and risk analytics at GMI Ratings, and co-author of the company's 2012 Women on Board Survey of more than 4,300 companies in 45 countries. The different rates beg questions about achieving greater representation by women, Gladman says: "What is going to work best?"

Some countries have opted for legally mandated quotas. The spike in France is tied to a law passed in 2010 requiring French boards "to be 20 percent female within three years and 40 percent female within six years," according to the report. Norway, with a 36.3 percent rate, has the largest percentage of women board members anywhere in the world—though notably still under the country's own 40 percent legal requirement.

It's possible the entire European Union will follow suit. E.U. Justice Commissioner Viviane Reding announced earlier this week that the commission is considering quota legislation in order to achieve more gender equality on boards.

Australia has no quota by law. But companies listed on the Australian Securities Exchange "are now required to report on their overall diversity policies, as well as on specific objectives for improving gender diversity," the report says. The Australian Institute of Company Directors has implemented a mentoring program, which has been "credited with bringing many more female directors into the candidate pool," according to the report.

So why are the numbers so slow to change in the U.S.?

For one thing, there's a perception that a board member has to have been a CEO, or at least a CFO, in order to serve on a corporate board, says Charlotte Laurent-Ottomane, president of the InterOrganizationNetwork (ION), which advocates for the

advancement of women in the business world. Given that only 16 women serve as CEOs in the Fortune 500, "that qualification knocks most of the women in the U.S. out of the game," she says.

Frustrated with the lack of progress in this area, in November ION and more than two dozen other industry leaders—including institutional investors and experts in corporate governance—formed a group called The 30% Coalition to push for a 30 percent rate of women serving on U.S. boards by the end of 2015.

The 30-percent mark stems from studies that indicate such a percentage equates to a "critical mass" on boards, when women cease to be "token" members, says Laurent-Ottomane. "It then becomes more of an equilibrium."

The coalition is not advocating for legislative quotas, like those in Europe, says Laurent-Ottomane, who also acts as a spokesperson for the coalition. Rather, she says, they will focus on collaborative initiatives and sharing information. "We want to educate the community at large that there is value to having women on the board," she says.

Most of the time, board members are selected based on "who you know," she says. Laurent-Ottomane believes, however, that "everyone does not need to come from the same mold" to serve on a board of directors.

Operational qualifications can be just as beneficial as a CEO title, she says. At a manufacturing company, for example, a candidate who has a "working expertise" of how to make operations more effective could be a valuable addition. That person "may have never achieved a title beyond vice president," says Laurent-Ottomane, but they'll have experience that a typical CEO does not necessarily have.
Similarly, a woman with a background in human resources could bring insights to competitive pay practices and alternative benefit schemes that would help retain top talent. Experts in marketing and investor relations also bring knowledge and skills that should be beneficial to boards, she says.

Facebook took a thrashing on this issue last month from the California State Teachers' Retirement System, after the company's pre-IPO regulatory filings revealed that the company's board would be comprised of seven men. The social network giant isn't the only company in that boat, Laurent-Ottomane says.

"We could take aim at many companies," she says. But the Facebook episode "did bring to the forefront the need for change."

ABA report finds cause for concern regarding women's role

Karen Sloan, The National Law Journal, February 6, 2012

The American Bar Association has for years advocated for greater diversity within the legal profession and more inclusion of women, but the organization's leadership remains largely male.

A report by the ABA's Commission on Women in the Profession found that women hold between 28 percent and 36 percent of leadership positions within the organization, depending on the category of the job. That's on par with the percentage of women members of the organization — about 32 percent — but the report found a few causes for concern.

The number of women in ABA leadership roles has been on the rise since 1991, but that growth has "remained relatively static or slightly decreased in recent years," the commission reported.

"The analysis of the [women in leadership] reports over the years make it clear that we cannot afford to rest on our laurels," it wrote. "We also need to renew our efforts to open doors, break down barriers, and continue to fill the pipeline of women in all arenas in the legal profession."

One of the biggest red flags raised in the report is that the percentage of women serving as section or division chairs fell by 10 percent — from 39 percent last year to 29 percent this year. Only 26 percent of the chairs elected to serve next year are women.

Women made slight improvements in other areas of ABA leadership, however. They comprise nearly 37 percent of the Board of Governors, up from 35 percent last year. They represent 33 percent of section or division officers, up from 31 percent last year — although that figure remains below the 36 percent peak seen in 2006-07.

The proportion of women in the House of Delegates, the ABA's policy-making body, ticked up by 1 percentage point, to 32 percent this year. Still, 14 ABA jurisdictions elected no women delegates this year, the report noted. Those jurisdictions include New Jersey, Ohio, Washington and Virginia.

ABA President William Robinson III has appointed a relatively high percentage of women to standing and special committees. Forty-four percent of his appointees are women, compared to 42 percent by his immediate predecessor, Steve Zack.

The report is produced annually by the ABA's Commission on Women in the Profession.

Diversity in the Legal Profession – Let's Talk about It

Michael Reilly, The Legal Intelligencer, February 13, 2012

As a general rule, attorneys are good talkers. We argue, chit-chat, joke, pontificate, try to persuade or seek to justify a position as rational. This attribute is evident in litigation, negotiation and counseling. Dialogue is what we do.

I count myself in that group, and yet, as I have been reflecting on my 20-plus years in practice and my 15 years as an in-house lawyer, there is one topic I cannot recall discussing between in-house and outside counsel. The unspoken topic is not one of the usual social taboos, but rather, it's ... diversity.

Diversity is "discussed" in conferences, it's "discussed" in firm literature and "discussed" in answers to big-matter RFPs, it's "discussed" internally within firms and companies when hiring and promotion decisions are made, but I cannot recall ever having a normal conversation between in-house and outside counsel in which the topic was raised, addressed and explored — truly discussed.

I am sure there are many other counsel more enlightened than me who have taken the initiative or interacted with someone else regarding diversity in the context of a usual legal matter. However, my experience is not so narrow as to make me believe that my perception is a rare exception. Further, even if diversity is being discussed occasionally between inside and outside counsel, it certainly does not figure prominently as part of the ordinary back-and-forth in most retention relationships.

As I reflect on this, I hold myself responsible for not having taken the initiative in the past, but I also ponder why I and the many lawyers with whom I have worked over the years never broached the issue. Our conversations have focused on legal merits and strategy, budgets and fees. Staffing is discussed in the initial stages of a matter, yet no firm has ever made a point of explaining how diversity is important or benefits the representation.

Diverse attorneys — broadly defined by the Philadelphia Diversity Law Group as being those attorneys generally underrepresented in the profession because of racial, ethnic or socio-economic background, or sexual orientation — have been regularly identified and assigned to matters, but in being so selected, they were discussed as suitable for a particular matter for reasons such as experience, education and specialized knowledge. The discussions have not addressed diversity as an additional consideration. In long-standing matters, the annual tussle over proposed rate increases and staffing changes as a result of associate or partner departures would have offered perfect opportunities for someone to talk about diversity, and yet the conversations never took place. Why?

People talk about things that are important to them: kids, hobbies, sports teams, prices, profits, winning cases, closing deals. They do not reserve discussion of those important subjects to dedicated conferences or their own internal teams; rather, views are shared

freely. In my company, we have initiated an affirmative effort to talk about safety and start every meeting with a "safety share." Extensive research on behavioral attitudes toward safety confirms that regularly discussing safety creates a safer environment.

The same should apply with diversity. Of course, we lawyers do talk about diversity: At conferences and in publications, many lawyers have expressed the need to foster and improve diversity, and statistics have been gathered showing that some progress has been made, but not enough. Those communications, however, have come in the context of talking about diversity in isolation. Failure to discuss diversity regularly in ordinary communications certainly weakens, if not belies, otherwise-stated commitments on the issue. If lawyers are serious about increasing diversity, we need to start talking about diversity in an integrated manner in everyday practice, starting with conversations between in-house and outside counsel.

There must be something holding many of us back from engaging in actual, regular verbal dialogue about diversity. Is there a perception inside firms that companies do not want to hear about diversity, and that we are only focused on results and cost control? Yes, in-house counsel are focused on good results and cost control, and selection of counsel will undoubtedly focus on experience and capabilities, but we are also concerned with broader issues, including diversity.

As was ably articulated by Sherry Lowe Johnson in last month's column in The Legal Intelligencer, Corporate America takes diversity seriously and the in-house bar has led the profession in becoming more diverse, particularly with respect to women lawyers taking senior leadership positions in corporate law departments. Many businesses, large and small, have come to recognize the value of a diverse workforce and affirmatively engage in processes to increase diversity.

The value of diverse staff increases in importance for multinational businesses with colleagues, suppliers and customers located all around the world. The perspectives and insights of people with many backgrounds do lead to improved business decision-making and performance. Therefore, most in-house counsel would welcome a chance to discuss with outside counsel the values that diverse representation brings as well as the broader question of how improved diversity is in the best interests of the legal profession.

I will not place the burden of silence on this topic solely on outside counsel, and without speaking for anyone else, I have asked myself — as an in-house counsel — why I did not initiate the dialogue. I found myself answering that diversity of outside counsel is not something in which I should get involved. In other words, it's the firm's job, not mine.

I am not happy with that answer, and so I have a belated 2012 resolution that I encourage others, both inside and outside counsel, to consider: Let's talk with each other, between in-house and outside counsel, about diversity — at the firm in general and on staffing of specific matters. In-house counsel should be open to sharing the

company's views on diversity and outside counsel should do likewise — both should talk about what they are doing to increase diversity within their organizations and how it is relevant (or not) to a particular matter.

The first conversation may be awkward, but once the ice is broken, diversity hopefully can become part of the normal flow of the regular, ongoing communications in the relationship — like fees and performance. Once it reaches that stage, both in-house and outside counsel will know diversity is important, and that, in turn, may lead to longer term changes in our profession.

Is diversity important to our profession? If so, pick up the phone and call the client or outside counsel, and talk about it.

Michael Reilly *is assistant general counsel of FMC Corp.*

Federal Employers Take On Domestic Violence in the Workplace

By Beth Mirza, 4/19/2012

By presidential memo, federal agencies were directed April 18, 2012, to develop policies to address the effects of domestic violence in the workplace and provide assistance to employees who are victims of domestic violence.

"Today, President Obama directed the federal government to become a model for all employers in providing a safe workplace and support for any employees who suffer from domestic violence," said Vice President Joe Biden in a press statement. "For the first time, all federal agencies are required to establish policies to respond to the legitimate needs of employees who are being abused and who might need help."

According to the president's memo, domestic violence causes 2 million injuries nationwide every year. Three U.S. women die each day because of domestic violence. The Centers for Disease Control and Prevention estimate $8 billion is lost each year by U.S. businesses and government due to lost productivity and health costs.

Most states have laws requiring covered private employers to allow domestic violence victims some time off to attend court functions, meet with police or seek help from victims' services programs. Some states offer more or less protections; **check the laws in the states in which you do business** to make sure your policies are up-to-date. **Experts** say employers should "have something in writing that tells employees how to take advantage of the leave available to them."

Overall, the general duty clause of the federal Occupational Safety and Health Act requires employers to take reasonable steps to ensure employees' safety, and the Occupational Safety and Health Administration has interpreted this to include protecting employees from perpetrators of domestic violence who may follow their victims to work.

The federal government is the largest employer in the nation and already has implemented, in individual agencies, enhanced security measures and employee assistance programs for domestic violence victims. Now, federal agencies are being directed to go further to protect domestic violence victims and their colleagues at work. The presidential memo gives specific instructions to the Director of the Office of Personnel Management (OPM) to consult with heads of agencies to issue guidance to the agencies on the effects of domestic violence on the federal workforce. The guidance must include:

- Steps agencies can take to intervene in and prevent domestic violence against or by employees.
- Guidelines for assisting employee victims.
- Leave policies relating to domestic violence situations.
- General guidelines on when it may be appropriate to take disciplinary action against employees who commit or threaten acts of domestic violence.
- Steps agencies can take to improve workplace safety related to domestic violence.
- Resources for identifying relevant best practices related to domestic violence.

According to the president's memo, OPM also is directed to consider whether similar guidance is needed to address sexual assault and stalking of federal employees in the workplace.

Make Jobs More Family Friendly

Unfriendly firm policies have a ripple effect, lead to low leadership roles in society.

Molly Bishop Shadel, The National Law Journal, January 23, 2012

Journalists, law students and lawyers have asked hard questions recently about whether legal education should be reformed in light of the realities of today's economy. After all, the degree is expensive, and legal jobs are less plentiful. Here is another wrinkle to consider: Many of the women who go to law school will find that they have invested in a degree outfitting them for a career that they ultimately will flee. Lawyers and law professors should care deeply about this problem, as should anyone in a profession with a similar attrition issue.

Many young lawyers hope to begin their careers at a top-tier firm that pays a top-tier salary. And many who succeed in landing those jobs quickly experience Sunday night dread because Monday morning is coming. Law firm work typically rewards the quantity of hours billed over the quality of the work. This system is profitable for a firm because it can hire fewer attorneys and demand more work from each by linking bonuses and promotions to the number of hours the attorney bills. This system does not demonstrably serve clients better and does not reveal who is the best lawyer. It tests who is able to stay at the office the longest.

And therein lies the gender problem.

Joan C. Williams, author of *Unbending Gender*, has described this traditional law firm environment as designed with an "ideal worker" in mind — one who is available to work at all hours, who will not object to having work swallow up her personal life, and who presumably has someone at home to manage the unpaid work of going to the grocery store and keeping the bathrooms clean. Male attorneys (or indeed, professional men of all stripes) are much more likely to have stay-at-home spouses than are female attorneys (or female professionals generally), who are likely to marry partners with careers of their own. Without that at-home support, many female attorneys find the juggling act of meeting professional and personal demands intolerable.

Gender pressure also results from the timing of these workplace demands. The period in which young lawyers must prove themselves typically coincides with childbearing years. Many young women become keenly aware of the price they pay when they put in those long hours — the missed hours with young children, or the fear that, because they are always in the office, they might not be able to start a family at all. The long hours place a burden on many men as well, but overwhelmingly, women lose out in this system. For the past two decades, about half of law school graduates have been women, but currently only 6 percent of managing partners at the 200 largest U.S. law firms are female. The vast majority of the women who leave law firms report that they are doing so because of family demands.

Women who leave law firms sometimes exit the practice of law altogether; others flee to more family-friendly places like academia, as I did. Here, too, you can see the effects of gender on salary and status. While 37 percent of all law school faculty are female, they disproportionately hold nontenure-track positions, which are less prestigious, offer less job security and pay less.

Taking a more family-friendly legal job has consequences: You may find that you are rewarded with a richer life, but a slimmer wallet. Currently, about 75 percent of part-time attorneys working in the 200 largest firms are female. Typically, women work part-time during the formative years of their practice, while men work part-time at the end of their careers. The result? These women make less money per hour of work than their male classmates from law school, and that gap widens over time.

Sometimes the women opt back into full-time work (if the firm permits it) or (more rarely) are considered for partnership as a part-time employee. Those who make equity partner earn 85 percent of what their male counterparts make; those without that job protection will make significantly less. They also often are given less interesting work, and have positions that are less secure.

Perhaps more troubling than the loss of talent to law firms is the ripple effect it has on the number of women in leadership roles throughout society. Lawyers are uniquely placed to step into elected posts and other influential positions in government and private industry. If women continue to leave legal practice in droves, we will continue to face a female leadership gap not only at law firms, but in academia (37 percent now are women), in the judiciary (26 percent) and in Congress (17 percent). Firms and clients certainly suffer by losing this talent; our entire nation suffers a loss of diversity of leadership if women exit the market.

Lawyers have long imposed upon ourselves professional-responsibility rules and pro bono requirements because law is supposed to be more than just a business. Under this ethic, we should adapt our workplace to encourage a diverse work force that does not have to choose a job over family. We must change the model so rewards do not revolve around long hours alone, but instead take into account talent and effectiveness.

It is past time to examine what is required to make partner. We must also challenge the assumption that the part-time positions that many women opt in to must necessarily come with lower pro-rata compensation and limited upward mobility. Questioning this model does not mean that we are giving women special favors; instead, it means noticing that we have constructed a model that gives a leg up to people who have no family demands. Without change in the legal workplace, women will continue to be poorly represented at the top of law firms and among the nation's leaders, and we all will be weaker for it.

Molly Bishop Shadel is an associate professor of law at the University of Virginia School of Law and co-author of Tongue-Tied America: Reviving the Art of Verbal Persuasion *(Wolters Kluwer Law & Business 2011).*

"The Supreme Court is a Very Great ... Institution," but Today It's "Outrageous": Interview with Anthony Lewis, Part 1

By Adam Eisenberg, HNN – History News Network

For more than fifty years, Anthony Lewis has been a keen observer of the United States Supreme Court, the First Amendment, and the critical role the press plays as watchdog for our government.

The winner of two Pulitzer Prizes, Mr. Lewis was "politely fired" from his first job as a local news desk editor for the *New York Times*. He bounced back quickly as a reporter for the *Washington Daily News*, and his reporting on abuses in the federal loyalty-security program in the McCarthy era earned him his first Pulitzer.

The *New York Times* promptly re-hired Mr. Lewis. The paper sent him to Harvard Law School on a one-year Nieman Fellowship, and then returned him to Washington, D.C., where he effectively invented modern Supreme Court reportage. Among the many landmark cases he covered was *Gideon v. Wainwright*; the decision that established state courts must provide lawyers for all indigent criminal defendants. He chronicled the case in his book, *Gideon's Trumpet*.

Mr. Lewis served as a regular columnist for the *Times* op-ed page from 1969-2001, has taught law at Columbia University and Harvard Law School, and has written additional books including *Make No Law: The Sullivan Case and the First Amendment*, and *Freedom for the Thought That We Hate: A Biography of the First Amendment*.

Now 85, Mr. Lewis recently sat down at his home in Cambridge, Massachusetts, to discuss the current state of affairs on the Supreme Court with me over the phone.

When you wrote *Gideon's Trumpet* in the early 1960s, it was obvious you had a great love for the U. S. Supreme Court.

That is true.

In fact, you wrote about the Court with a romantic sensibility. But much has changed since then. Are you still in love with the Court?

(Laughs) I'm in love with the institution, and that hasn't changed. I think the Supreme Court is a very great and essential institution for this country. I believe that if we hadn't had a supreme court and its power written into the Constitution, we would have long since fallen apart as a country because regional and other differences would have been too great to have withstood divisive impacts.

Unlike the liberal Court you covered in the 1960s, the current Court is considered to be conservative, and it has issued some highly controversial decisions, including *Bush v. Gore* (2000).

I have no difficulty telling you what I think about *Bush v. Gore*. At the time I didn't think the Supreme Court could even hear the case because I couldn't see what the federal question was. I still can't. The very issue was confined by the Constitution to the states except for a very specific procedure laid out in the Constitution. Literally laid out, not in implication, but in words about what happens if you can't get a clear decision -- all those provisions about the House voting and the Senate voting, and so on. The resolution process is legislative -- it's all up to Congress. There's no role for the courts whatsoever. So, in my naïveté, I thought the justices would say, "Well, it's pretty terrible, but it's not for us." However, they got the bit in their teeth, and they went and made fools of themselves.

The Supreme Court just took the power to decide the issue with no law at all. So patently with no law at all that the prevailing opinion, Chief Justice Rehnquist's opinion, said "Oh, you can't ever cite this case for anything from now on, this is a unique case." You can't cite an opinion of the Supreme Court? It's ridiculous. Why couldn't' you cite it? Because there's no law in it -- it's just, we like George Bush better than Al Gore.

How do you feel about *Citizens United v. Federal Elections Commission* (2010), in which the Court overturned laws designed to control corporation spending in political campaigns?

That's a stellar example of the Supreme Court as it is today in its outrageous disregard for their procedure, for precedent, for common sense. I'm very familiar with the case. The Court held that corporations have a First Amendment right to give money to political campaigns in the same way that individuals can. In doing so, it overruled a hundred years of decisions and statutes that had treated unions and corporations as something very different from individuals and restricted their spending.

Now, not only was it overruling precedent, but when the case came to the Supreme Court it didn't even raise that question. That is, when the losers in the appeals court -- the court underneath the Supreme Court -- came to the Supreme Court, they had to petition and ask to be heard. In their petition, they didn't raise the argument that corporations should be allowed to spend because they had the same First Amendment rights as individuals. The Court heard arguments on the case and then asked the parties to argue that question. In other words, the Court itself raised the question that it then decided. To my way of thinking, that's outrageous because the whole notion of courts -- any court -- is that they sit passively waiting for people to bring problems to them. They don't make up problems and decide them, and they didn't -- at least not that I've ever heard of -- until this case.

What about the recent decisions that have interpreted the Second Amendment to guarantee an individual person's right to bear arms?

Well, there again, the same five-person majority overruled or ignored -- probably ignored is closer -- many years of decisions which assumed the opposite. I wouldn't have done that. I have to say the Second Amendment is indeed very murky and badly worded; it's hard to say what it means. So, if you're arguing history, really you can argue either way, and I wasn't deeply moved by that. But the common sense of the thing tells you that, in our twenty-first-century society, legislatures should have power to lay down rules for gun ownership. Fifty years ago nobody would have dreamt of deciding such an issue the way the Supreme Court decided it.

Now, we don't yet know the end of the story because Justice Scalia said in his opinion, "This doesn't mean that everyone can carry a gun, that felons and feeble-minded people can carry guns. Those matters can still be legislated by the states and cities, and if there's some objection to them, we'll consider that when it comes up." So there's some room for legislative control, but certainly the enthusiasm for it has been dampened.

Another decision you've been critical of is *Republican Party of Minnesota v. White* (2002) in which the Court weighed in on the election of state judges. Why?

I think it's an example of overreaching in the name of the First Amendment. Nobody can be fonder of the First Amendment than I, but everything has its natural limits, and to my way of thinking this decision transgressed those limits. Let me take a minute to explain why.

The selection of state judges has been a matter of controversy for one hundred fifty years. But there are two things at stake here it. One is the idea that judges should be separate from the whole political process. That is why we appoint them and give them long terms or appoint them for life as we do in the federal system in the United States. That method of no elections has been and remains the way of selecting judges in every country in the world that we would regard as an advanced democracy. The United States is the outlier in the world league by having elections of state judges.

The other idea is the desire for popular sovereignty, for the people to elect judges. The idea of electing judges came about, starting in the mid-ninteenth century, as a populist theme, sounding a bit like Newt Gingrich -- we can't have all these appointed judges telling us what to do, we want to elect them.

Minnesota made a provision for elections but with some restrictions on the nature of the election, in particular, the "announce clause" which forbid candidates for judgeships from announcing their views on issues that might come before the courts when they're

up for election. That idea and similar ones in many other states, is a way of trying to satisfy both urges, both ideas. Separation of the judgeships from ordinary politics -- if you have an election, it's a restricted election.

Along comes the Supreme Court of the United States a century later saying, "No, no, no, if you have an election it must be exactly the same as if you elect a senator or a mayor or a president." Why does it have to be exactly the same? Where does it say that in the Constitution? I just don't get it.

What's amazing about the decision is the fact that every time a Supreme Court nominee sits before the Senate Judiciary Committee they routinely refuse to answer questions about how they might rule on a potential issue.

(Laughs) Yes, that's right. They bob and weave and don't answer the question. And the result is, at that level in our politic, we have come to a completely ludicrous view of Supreme Court appointments in which the people go there and solemnly swear that they have no ideas, and that they've never had a thought about anything. And they promise to be very good and do practically nothing, and they certainly would never be activist, and they would always simply interpret the law laid down by Congress. It's a joke, but that's the way it is.

Adam Eisenberg is a magistrate judge in Seattle, Washington, and a freelance writer. He teaches a graduate level law class at the University of Washington, has written extensively on social issues such as domestic violence and the homeless mentally ill, and is the author of the book "A Different Shade of Blue: How Women Changed the Face of Police Work." Part two of this interview will run next week.

DMCMA

2012 SUMMARY OF LEGISLATION

FINAL

All bills effective **June 7, 2012** unless otherwise noted

Prepared by:
Linda Baker, Poulsbo Municipal Court
Yvonne Pettus, Tacoma Municipal Court

CIVIL

SHB 1552 (C159, L12) Concerning Garnishment

A number of changes are made to the laws governing garnishment proceedings.

Garnishment Forms

- Separate forms are created for writs for continuing liens on earnings and writs issued for other personal property, including separate answer and exemption claim forms. The notice form to be used whenever the federal government is the garnishee is modified to reflect that the creditor's attorney may issue the notice. The creditor is no longer required to provide multiple copies of forms and envelopes to the garnishee defendant, and the garnishee defendant may use its own answer form containing specific information.
- The exemption claim form is amended to add a check box for debtors to claim an exemption for the cash amounts allowed under current law and to specify that federally qualified pensions, such as state or federal pensions, IRAs, and 401K plans are exempt when deposited into a bank account. The changes to the exemption claim form will expire January 1, 2018.

Garnishment Attorney Fee

The garnishment attorney fee is changed to a minimum of $100 or 10 percent of the unsatisfied judgment and a maximum of $300.

Exemptions

- The wage exemption for writs for continuing liens on earnings is increased to 35 times the federal minimum hourly wage.
- The statutes for certain public employee pensions are amended to provide that such pensions are exempt when in the possession of the person or deposited in a bank account.

Estimated Interest

- A writ must direct the garnishee to hold interest estimated to accrue during the garnishment process. The writ must specify a dollar amount of estimated interest that may accrue during the garnishment process per day. The amount must be based on an interest rate of 12 percent or the rate established in the judgment, whichever amount is less.

Judgment and Order to Pay

- A creditor may apply for the judgment and order to pay ex parte. Ex parte fees are added to the list of recoverable costs in a garnishment proceeding.
- When a default judgment is entered against the garnishee and the garnishee makes a motion to have this default judgment reduced, the garnishee must pay the accruing interest, costs, and attorneys' fees for any garnishment on the judgment against the garnishee.

Other

- A continuing lien on earnings has priority over any prior wage assignment, except an assignment for child support.

HB 2274 (C 18, L 12) Tow truck operator's costs

Authorizes tow truck operators to bill for ferry and toll charges they incur.

ESHB 2363 (C 223, L12) Protecting victims of domestic violence and harassment

<u>*Confidentiality in Court Proceedings Involving Domestic Violence*</u>

Non-disclosure of Victim Location Information in Dissolution Proceedings

- At the initial hearing in a dissolution action in which the court has made a finding of domestic violence or child abuse, the court may not require a victim of domestic violence or the custodial parent of a victim of child abuse to disclose to the other party information that would reasonably be expected to enable the perpetrator to obtain previously undisclosed information about the victim's residence, employer, or school. In subsequent hearings, the court must carefully weigh the safety interests of the victim before issuing an order that would require disclosure.
- In cases in which domestic violence or child abuse has been alleged but the court has not made a finding regarding the allegations, the court must give the alleging party the opportunity to prove the allegations before ordering the disclosure.

Confidentiality of Domestic Violence Program Information

- No court or administrative body is permitted to compel a person to disclose the name, address, or location of a domestic violence program unless the court finds that there is clear and convincing evidence that disclosure is necessary for the implementation of justice. In considering whether disclosure is necessary, the court must first consider the safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the parties' interests. The domestic violence program must be provided with notice of the request for disclosure and an opportunity to respond. If disclosure is ordered, the court must additionally order that there is no further dissemination and must seal the records containing the information.
- It is a gross misdemeanor to obtain access to and willfully and maliciously release confidential information regarding the location of a domestic violence program for any purpose other than required by a court proceeding.
- *Address Confidentiality Program and Family Law Proceedings.*
  Family courts must comply with the requirements of the address confidentiality program in the course of all proceedings.

<u>Antiharassment Protection Orders and No-Contact Orders</u>

- A defendant arrested for violating any civil antiharassment protection order must appear in person within one judicial day of arrest, at which time the court will determine the necessity of imposing a no-contact order or conditions on pretrial release. A defendant who is charged by citation, complaint, or information and not arrested must appear in court for arraignment within 14 days.
- An out of custody defendant who is subject to a no-contact order pursuant to a pending criminal charge for harassment violates court ordered restrictions on contact with the victim if the violation is "willful" rather than "intentional."
- The penalty for violation of a no-contact order pursuant to final disposition of a harassment case is raised from a misdemeanor to a gross misdemeanor.

<u>Domestic Violence No-Contact Orders</u>

- A no-contact order pursuant to a criminal case involving domestic violence may be issued or extended even when the defendant fails to appear at arraignment as long as the court finds probable cause.
- No-contact orders that are issued prior to charging and expire at arraignment, or within 72 hours in absence of charging, can no longer qualify for exemption from entry into the criminal intelligence information system.

Domestic Violence Fatality Review Panels

- Statewide review panels are subject to the same confidentiality standards and are allowed the same immunity as regional review panels.

Washington State Institute of Public Policy Study

- The Washington State Institute of Public Policy shall conduct a study to assess recidivism by domestic violence offenders and assess domestic violence perpetrator treatment. The study provision becomes null and void in the event that funding is not appropriated.

SSB 5627 (C 24, L 12) Concerning service members' civil relief

- Military service includes National Guard members under a call to service authorized by the Governor for a period of more than 30 consecutive days.
- Protection against default judgments is provided to service members, service members' dependents, and National Guard members under a call to active service authorized by the Governor of the state of Washington.

SSB 6005 (C 27, L 12) Exempting certain vehicles from the written estimate requirement for auto repair facilities

Effective 1/1/2013

- An exception to the written estimate requirement is provided for vehicles that qualify for a horseless carriage license plate as defined in RCW 46.04.199 or a collector vehicle license plate as defined in RCW 46.04.1261. The exception also extends to parts cars and street rod vehicles as defined in RCW 46.04.572 and custom vehicles as defined in RCW 46.04.161.
- A customer seeking repair services for one of the vehicles listed under this subsection may still request a written estimate from the auto repair facility, which may be provided at the discretion of the automotive repair facility, and in which case the repair facility shall provide notification and documentation advising the customer that the requested repairs will be furnished on a time and materials basis, to be billed at least every two weeks.

SSB 6403 (C 156, L 12) Removing financial barriers to persons seeking vulnerable adult protection orders

A public agency may not charge a filing fee or a fee for service of process to a vulnerable adult seeking relief from abandonment, abuse, financial exploitation, or neglect. Vulnerable adults must be provided the necessary number of certified copies at no cost.

CRIMINAL – NEW

SSB 2570 (C233, L12) Addressing metal property theft

- Creates a task force to formulate suggestions for state policy regarding regulation of commercial and nonferrous metal property theft.
- Amends the offenses of theft from a public service company:
    - Theft in the first and second degree so that theft of metal wire is a class B felony
    - Theft in the first degree, if the cost of the damage is over $5,000 and a class C felony

- Theft in the second degree, if the cost of the damage is over $750 but not over $5,000

CRIMINAL – AMENDED/REVISED

SHB 1194 (C 6, L12) Continuing to determine bail for the release of a person arrested and detained for a felony offense on an individualized basis by a judicial officer

Bail for the release of a person arrested and detained for a class A or B felony offense must be determined on an individualized basis by a judicial officer.

ESHB 1983 (C 134, L12) Increasing fee assessments for prostitution crimes

Indecent Exposure and ProstitutionFees

- Increases the amount of fees imposed, in addition to criminal penalties or other fees, on an individual in connection with a conviction, deferred sentence or prosecution, or entry into a statutory or non-statutory diversion agreement in connection with an arrest for one of the subset of offenses under chapter 9A.88.
- The additional fees imposed are as follows:
    1. In connection to a prosecution from Promoting Prostitution in the first or second degree, the fee is increased from $300 to $3,000 if the defendant has no prior convictions for this offense, $6,000 if the defendant has one prior conviction for this offense, and $10,000 if the defendant has two or more prior convictions for this offense.
    2. In connection to a prosecution for Permitting Prostitution or Patronizing a Prostitute, the fee is increased from $50 to $1,500 if the defendant has no prior convictions for this offense, $2,500 if the defendant has one prior conviction for the offense, and
    $5,000 if the defendant has two or more prior convictions for this offense.
- The revenue raised from this fine is collected by the clerk of the court and remitted to the county where the offense occurred for the county general fund, except if the offense occurred within a city or town which provides for its own law enforcement, in which case the funds will be deposited in the city or town general fund.
- The funds must be used for local efforts to reduce the commercial sale of sex including prevention and increased enforcement of commercial sex laws. Specifically, at least half of the funds must be spent on prevention, including education programs for offenders, such as john schools, and rehabilitative services such as: mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, drop-in centers, and employment counseling, to help individuals transition out of the commercial sex industry.
- Typically, a certain percentage of the fines, fees, penalties, and costs collected by the courts must be remitted to the state. The revenue from the fines imposed under this bill is not subject to this requirement.

Sex Offender Registration

If an offender has a prior conviction for Promoting Prostitution in the first or second degree,
a subsequent conviction is considered a sex offense, requiring the offender to register as a sex offender.

ESHB 2302 (C 42, L12) Concerning being under the influence with a child in the vehicle

- When a person is arrested for a violation of RCW 46.61.502 or 46.61.504, the officer shall make a notation if a child under the age of sixteen was present in the vehicle.
- Changes the definition of "child" from under the age of thirteen to under the age of sixteen years.
- The officer shall notify child protective services whenever a child is present in a vehicle being driven by his/her parent, guardian, legal custodian, or sibling or half-sibling and that person is being arrested for DUI.

If a child under the age of sixteen was present in the vehicle upon conviction of DUI:

- Changes the order for an ignition interlock or other device from sixty days to six months.
- If defendant has no prior offenses within seven years, except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by fine of not less than $1,000. $1,000 of the fine may not be suspended or deferred unless the court finds the offender to be indigent.
- If defendant has one prior offense within seven years, except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty by fine of not less than $2,000 and not more than $5,000. $1,000 of the fine may not be suspended or deferred unless the court finds the offender to be indigent.
- If the defendant has two or three prior offenses within seven years, except as provided in RCW 46.61.502(6) or 46.61.504(6), order a penalty of a fine of not less than $3,000 and not more than $10,000. $1,000 of the fine may not be suspended or deferred unless the court finds the offender to be indigent.
- An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while DUI or for vehicular assault committed while under the influence of DUI, or for any felony driving DUI, or felony physical control under the influence for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may be not reduced.

ESHB 2347 (C 179, L12) Concerning spring blade knives

- Exemption allowing law enforcement officers to possess, transfer, and store spring blade knives for purposes of official duty is expanded to include firefighters and other rescue members, Washington State Patrol (WSP) officers, and military members, and to facilitate actual use of spring blade knives. Spring blade knives may also be manufactured, sold, transported, transferred, distributed, or possessed pursuant to contracts with these actors' agencies. Manufacturer contracts with other manufacturers and commercial distributors are exempt from the prohibition against spring blade knives. Trials, testing, and other uses related to evaluation and assessment of spring blade knives by permitted users, companies, and agencies are also exempt.

- The general term "spring blade knife" is to be used to describe the various kinds of knives prohibited in the dangerous weapons statute. Knives with a mechanism designed to create a bias toward closure of the blade that must be overcome by physical exertion are not spring blade knives.

2SHB 2443 (C 183, L12) Increasing accountability of persons who drive impaired
Effective 8/1/2012

Definition of Drug for Driving Related Offenses

The term "drug" is amended to include any chemical inhaled or ingested for its intoxicating or hallucinatory effects. Thus, a person may commit DUI or negligent driving in the first degree if the person is under the influence of a chemical inhaled or ingested for its intoxicating or hallucinatory effects.

Superior Court Jurisdiction

Superior courts have jurisdiction for up to five years over a defendant convicted of DUI whose sentence has been suspended. A defendant who has a suspended sentence and who fails to appear for any hearing to address the defendant's compliance with the terms of probation will have the term of probation tolled until the defendant makes his or her presence known to the court.

Ignition Interlock Licenses and Requirements

- Courts must require a DUI defendant to comply with the rules and requirements of the DOL regarding the installation of an IID, rather than requiring the defendant to apply for an IIL. Courts are given discretion to order the defendant to submit to alcohol monitoring.
- A person convicted of reckless driving, when the original charge was DUI, may apply for an IIL. The DOL must grant the person credit on a day-for-day basis for any portion of a suspension already served under an administrative action arising out of the same incident.
- A person who has never been licensed by the DOL, but who would otherwise be eligible to apply for an IIL, may apply for an IIL. The DOL may require the person to take any driver's license exam and may also require the person to apply for a temporary restricted license.
- A person required to have an IID installed after reinstatement of his or her driver's license must pay an additional fee of $20 per month to be deposited into the Ignition Interlock Device Revolving Account. The Washington State Patrol (WSP) must create a fee schedule by rule and collect fees from IID manufacturers, technicians, providers, and users. Fees must be set at a level to support the effective operation of the Ignition Interlock Device Program and report back to the Transportation committees and the Office of Financial Management annually on the fees adopted. Fees are to be deposited into the Highway Safety Account.
- When reasonably available in the area, IIDs must include technology capable of taking a photo identification of the person giving the breath sample.

Vacating Records of Convictions

A record of conviction for felony DUI may not be vacated. A record of conviction for a gross misdemeanor that is a "prior offense" may not be vacated if the person has had a subsequent alcohol or drug violation within 10 years of the date of arrest for the prior offense.

Consent for Breathor Blood Test

When a person is arrested for felony DUI, a breath or blood test may be administered without the person's consent.

Emergency ResponseCosts

The limit on a defendant's liability for the cost of an agency's emergency response is increased from $1,000 to $2,500. Prior to sentencing, the prosecutor may present the court with information regarding the expenses incurred by the public agency. If the court finds the expenses reasonable, it must order the defendant to reimburse the agency and include the reimbursement in the sentencing order.

Other Changes

Other changes are made, including:

- o specifying that courts may impose jail time in lieu of mandatory EHM at a ratio of no less than one day in jail for 15 days of EHM; providing that plea agreements and sentences for felony DUI must be kept as public records;
- o providing that a deferred prosecution for DUI granted in another state is a "prior offense" if the out-of-state deferred prosecution is equivalent to Washington's deferred prosecution;
- o specifying that the employer exception does not apply if the employer's vehicle is used exclusively by the defendant solely for commuting to and from work; and
- o allowing municipalities to enter into cooperative agreements with counties that have DUI courts to provide DUI court services.

ESHB 2692 (C 136, L12) Concerning the reduction of the commercial sale of sex

Fines

- The substitute bill increases the fine to be paid by an individual who has been convicted, given a deferred sentence or prosecution, or entered into a statutory or nonstatutory diversion agreement as a result of an arrest for patronizing a prostitute, in addition to the criminal penalties and the currently existing additional fees.
- The additional fine is $1,500 for a first offense, $2,500 for a second offense, and $5,000 for a third or subsequent offense. These fines may not be reduced, suspended, or waived unless the court finds, on the record, that the offender is unable to pay, in which case, the fees may be reduced by up to two-thirds. The revenue raised from this fine is collected by the clerk of the court and remitted to the county where the offense occurred for the county general fund, except if the offense occurred within a city or town which provides for its own law enforcement, in which case the funds will be deposited in the city or town general fund.
- The funds must be used for local efforts to reduce the commercial sale of sex including prevention and increased enforcement of commercial sex laws. Specifically, at least half of the funds must be spent on prevention, including education programs for offenders, such as john schools, and rehabilitative services to help individuals transition out of the commercial sex industry such as: mental health and substance abuse counseling, parenting skills training, housing relief, education, vocational training, drop-in centers, and employment counseling.
- Typically, a certain percentage of the fines, fees, penalties, and costs collected by the courts must be remitted to the state. The revenue from the fines imposed under this bill is not subject to this requirement.

Nonmonetary Penalties

- First-time offenders are required to fulfill the terms of a program, such as a "john school," designed to educate offenders about the negative costs of prostitution. The specific program will be designated by the sentencing court.

SB 6108 (C 30, L12) Clarifying the location at which the crime of theft of rental, leased, lease-purchased, or loaned property occurs

The location at which a person is deemed to have committed the crime of theft of rental, leased, lease-purchased, or loaned property is either at the: (1) physical location where the written agreement was executed; or (2) address at which the proper notice may be mailed to the renter, lessee, or borrower.

SSB 6135 (C 176, L 12) Regarding enforcement of fish and wildlife violations

WDFW Law Enforcement

- *Peace Officers Given Authority to Briefly Detain a Person Being Issued a Notice of Infraction (NOI).* Peace officers are allowed, when issuing an NOI, to detain a person long enough to identify the person, check for outstanding warrants, and complete and issue NOI. The person receiving NOI must also provide the officer with his or her name, address, and date of birth, including reasonable identification upon officer request. Failure to identify oneself is an infraction.
- *Ex Officio Officers Defined and Given Authority to Check Licenses and Equipment.* The definition of an ex officio fish and wildlife officer is expanding, thereby adding new options for satisfying the requirements for becoming an ex officio officer for the purposes of enforcing fish and wildlife laws. In addition to being a commissioned general law enforcement officer, a person may become an ex officio officer by:
  - being a limited authority officer with another state or federal agency that is operating under a mutual law enforcement assistance agreement with WDFW;
  - being a qualified fish and wildlife officer from another state if the other state's agency is operating under a mutual law enforcement assistance agreement with WDFW; or
  - being a tribal police officer in Washington who successfully meets the state's requirements for law enforcement certification if there is a mutual law enforcement assistance agreement with WDFW and the employing tribe and the tribe's law enforcement meets the state's requirements for general authority law enforcement status.
  - Additionally, ex officio officers, such as park rangers and DNR officers, have authority to temporarily stop people engaged in fishing, harvesting, or hunting activity to check for valid licenses, tags, permits, stamps, catch record cards, and to inspect people's fish, shellfish, seaweed, wildlife, equipment, and watercraft for compliance.
- *Minimum Qualifications for WDFW Officers Defined.* WDFW officers must pass a psychological and polygraph exam.

WDFW Crimes in the Courts

- The Sentencing Reform Act is Amended to Rank Certain WDFW Felonies.
- *Activities not Involving High Stakes Resources are Decriminalized.* Fifteen new infractions are added to the current three based on activities that do not involve

protected or endangered species, big game, or other high stakes resources. Examples of new infractions include:

- wasting fish and wildlife valued at less than $250;
- failing to have a fishing license on a person when one is owned;
- taking seaweed unlawfully, but having less than double the daily personal collection limit;
- maliciously taking the eggs of a protected bird;
- attempting, unsuccessfully, to hunt wildlife that is not classified as game;
- failing to report trapping activity;
- posting "no hunting" signs on property not owned by the poster;
- violating the terms of scientific collection permits; and
- holding a hunting or fishing contest using live wildlife.

- Corresponding changes are made to the relevant criminal statutes to reflect the civil nature of certain acts. This includes the revocation of four statutes.

The Definition of Conviction is Clarified, and Other Statutes are Amended to Reflect the Change. In order to reflect a recent court decision, the definition of "conviction" is changed from including unvacated paid bail forfeitures to final conviction.

Seizure and Forfeiture *When WDFW Can Seize Unlawfully Taken Fish And Wildlife Amended.* WDFW is allowed to seize fish, shellfish, or wildlife unlawfully taken to be forfeited to the state upon any finding by a Washington court, except direct dismissals or exonerations. Upon forfeiture, WDFW may retain the fish and wildlife for official use, release the property to another law enforcement agency, donate the property, or sell the property and deposit the proceeds into the Fish and Wildlife Enforcement Rewards Account.

- If a court outcome does not allow seized fish and wildlife to be forfeited to the state, then WDFW must either return the seized fish or wildlife or return the value of the fish or wildlife if it has been donated or sold.
- A new section is added to allow WDFW to seize any animal unlawfully hunted or retrieved from the property of another if the person trespassed on the premises.

Wildlife Issues *Penalties for Taking Protected Birds are Strengthened.* Criminal wildlife penalty assessments and two-year license revocations are created for a person convicted of unlawfully taking protected fish or wildlife. In addition to the underlying criminal sanctions, a $2,000 assessment is required if certain species are killed, including the ferruginous hawk, common loon, bald eagle, or peregrine falcon. The assessment must be doubled if the person kills one of the identified species within five years of conviction of another significant wildlife-related crime or if the person killed the animal with the intent of deriving economic profit. The assessment money is dedicated to the Fish and Wildlife Enforcement Reward Account.

Unlawful Hunting On, or Retrieving Wildlife From, the Property of Another is a New Crime. This new crime, prosecutable as a misdemeanor, applies if a person knowingly enters onto or remains unlawfully on the premises of another for the purpose of hunting or retrieving hunted wildlife. A person cited for this violation may use a defense that the premises in question was open to the public when the hunting occurred, that the person reasonably believed the landowner would have allowed the access, or the person

reasonably believed that the lands in question were public lands. A person cited for this violation may also use a defense that the intent was to retrieve wildlife in order to avoid a violation of the unlawful waste of fish or wildlife statute. In addition to prosecution for a misdemeanor, a person convicted of this new crime faces license revocation and the suspension of hunting privileges for two years.

The Crime of Unlawful Use of a Dog is Expanded. The crime includes using a dog to harass, kill, or attack wildlife, in addition to pursuing. The species protected from unlawful dog use is expanded from just deer and elk to include moose, caribou, and mountain sheep. WDFW is now required to base its actions on a reasonable belief that a dog is pursuing, harassing, attacking or killing a snow bound deer in which case it may (1) lawfully take a dog into custody; or (2) if necessary to avoid repeated harassment, injury or death to the specified wildlife listed, destroy the dog.

Hunting Licenses may be Revoked for Shooting a Person or Livestock While Hunting. If a hunter shoots another person or domestic livestock with a firearm, bow, or crossbow in a manner likely to injure or kill – or who does injure or kill – another person or domestic livestock, the director of WDFW must revoke the hunting privileges of the shooter for three years for a shooting that could or does result in an injury. The privilege revocation must be extended to ten years if the shooting results in a human death. Additionally, the language allowing for suspension-appeal hearings is made identical to language in other WDFW statutes.

Unlawful Possession of a Rifle or Shotgun in a Motor Vehicle is Amended. Unlawful possession of a rifle or shotgun in a motor vehicle includes unlawful possession of a rifle or shotgun upon an off-road vehicle and allows for a rifle or shotgun to be discharged upon a motor vehicle or an off-road vehicle if the engine is turned off and not parked on or beside the maintained portion of a public road.

Unlawful Intentional or Negligent Feeding of a Large Wild Carnivore is Added as a New Crime. A civil infraction is created for any person whom a WDFW enforcement officer or local animal control authority has probable cause to believe is negligently feeding; attempting to feed; or attracting bears, cougars, or wolves by placing food, food waste, or any other substance in a manner that may cause a public safety risk. Similar activity done intentionally is a misdemeanor. It is also a misdemeanor to fail to correct an issue giving rise to a negligent civil infraction within 24 hours.

- The prohibition on animal feeding is not enforceable against a person engaged in forest practices, hunting, trapping, or farming using generally accepted farming practices. Also exempt are scientific permit holders, fish and wildlife enforcement officers conducting authorized wildlife capture activities together with fish and wildlife employees acting under WDFW's authority, and waste management facilities.

Fisheries Issues *A New Act is Added to the Crime of Unlawful Recreational Fishing in the First Degree.* The new act, which can trigger prosecution, is possession of a salmon or steelhead during a closed season. The same crime in the second degree can be prosecuted if a person pursues fish without first obtaining the proper license and catch reporting documentation.

The Crime of Unlawful Use of Fish Buying and Dealing Licenses is Renamed. The new name is unlawful fish and shellfish catch accounting. In addition to the new name, a new act is added to the list of prosecutable acts. The new act is the failure to sign a fish receiving ticket or failure to provide the required information on the ticket.

- The existing crime of unlawful purchase or use of a license in the second degree is expanded to include the act of purchasing a Washington resident license from the WDFW while holding a resident license from another state or country.

Resident Orca Whales *Distance Requirements and Exemptions are Amended to Match Federal Law.* It is unlawful to cause a vessel or other object to approach within 600 feet (200 yards) of a southern resident orca or to position a vessel to be in the path of a whale within 1200 feet (400 yards). Vessel is defined and includes aircraft, canoes, fishing vessels, kayaks, tour boats, and whale watching boats among others. It is also unlawful to feed a southern resident orca.

- There are several exemptions to the distance requirement, including the following: a federal government or state, tribal, or local vessel engaged in official duties involving law enforcement, search and rescue, or public safety; operation of a vessel in conjunction with a vessel traffic service under federal law; lawful engagement in a treaty Indian or commercial fishery; emergency situations that pose an imminent threat to persons, the vessel, or the environment; or engaging in activity pursuant to a permit, including scientific research and rescue or cleanup efforts overseen, coordinated, or authorized by a volunteer stranding network.

Technical Changes Several technical changes are made including:

- The definition of "ex officio fish and wildlife officer" is clarified to show when the definition applies to commissioned officers of the federal government, other states, counties, municipalities, and tribes.
- The following terms are also defined: "anadromous game fish buyer," "fish buyer,""fur dealer," "natural person," "taxidermist," and "wildlife meat cutter."
- The term "license, permit, tag, or approval" rather than just "licenses" is used throughout the Unlawful Purchase or Use of a License statute for consistency.
- Under the Unlawful Purchase or Use of a License statute, it is prima facie evidence of a violation if a person buys or possesses a WA resident license when that person already has a resident license from another state or foreign country.

ESSB 6252 (C 139, L 12) Addressing commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting prostitution in the first degree

Commercial sexual abuse of a minor and promoting commercial sexual abuse of a minor are added to the list of criminal offenses that may constitute a pattern of criminal profiteering activity. A single act of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting prostitution may trigger the criminal profiteering act remedies.

SSB 6253 (C 140, L 12) Concerning seizure and forfeiture of property in commercial sexual abuse of a minor and promoting prostitution in the first degree crimes

- Civil forfeiture may be sought against the proceeds or property and instrumentalities used to facilitate the crimes of commercial sexual abuse of a minor, promoting sexual abuse of a minor, or promoting prostitution in the first degree. A conviction is required. The property is not subject to forfeiture to the extent of the interest of an owner used or acquired without the owner's knowledge or consent. Seized property is subject to the interest of a secured party without knowledge or who did not consent. A landlord may also assert a claim against the proceeds of the forfeiture.
- The property may be seized pursuant to an arrest, or upon probable cause. The hearing regarding the forfeiture is before the chief law enforcement officer of the seizing agency, but may be removed to a court upon motion by any person asserting a claim or right to the property. The burden of proof is on the agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture. A claimant who prevails in recovering seized property is entitled to reasonable attorney's fees. When property is forfeited, it must be sold and the proceeds deposited in the prostitution prevention and intervention account.

ESB 6254 (C 141, L 12) Changing promoting prostitution provisions
Promoting prostitution in the first degree may also be committed if an individual knowingly advances prostitution by compelling a person with a mental or developmental disability to engage in prostitution or profits from that act. The disability must be one that renders the person incapable of consent.

ESB 6255 (C 142, L 12) Concerning victims of human trafficking and promoting prostitution

- In any prosecution for prostitution, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons under the Trafficking Victims Protection Act. Documentation that the defendant is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons creates a presumption that the person's participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons.
- Every person convicted of prostitution, who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons under the Trafficking Victims Protection Act may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:
    1. there are any criminal charges against the applicant pending in any court of this state, another state, or in any federal court;
    2. the offender has been convicted of another crime in this state, another state, or federal court since the date of conviction; or
    3. the applicant has ever had the record of another prostitution conviction vacated.

SSB 6492 (C 256, L 12) Improving timeliness, efficiency, and accountability of forensic resource utilization associated with competency to stand trial

The following performance targets are established for completion by the state hospital of competency services:

- seven days for admission to a state hospital for evaluation, treatment, or civil conversion;
- seven days for completion of an evaluation and report for a defendant in jail; and
- 21 days for completion of an evaluation and report for a defendant in the community who makes reasonable efforts to cooperate with the evaluation.

These performance targets run from the date the state hospital receives the referral, charging documents, discovery, and criminal history information and do not create any new entitlement or cause of action related to the timeliness of competency services. The bill states the Legislature recognizes that the performance targets may not be able to be achieved in all cases without compromise to the quality of evaluation services, but intends for DSHS to manage, allocate, and request appropriations for resources to meet these targets whenever possible without sacrificing the accuracy of the evaluation.

The court is limited to the appointment of one state forensic evaluator. The evaluator must assess whether commitment to a state hospital for up to 15 days is necessary in order to complete an accurate evaluation. The court may commit the defendant to a state hospital for an inpatient evaluation without an assessment if the defendant is charged with murder in the first or second degree, or if the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation. The court may not order an inpatient evaluation for any purpose other than a competency evaluation.

The order for evaluation or competency restoration must indicate whether the parties agree to waive the presence of the defendant or agree to the defendant's remote participation in a future competency hearing if the recommendation states that the defendant is incompetent to stand trial and the hearing is held prior to the expiration of the statutory authority for commitment.

The competency evaluation report must include a diagnosis or description of the current mental status of the defendant. An evaluation for criminal insanity or diminished capacity must not be performed unless the evaluator is provided with an evaluation by an expert or professional person finding that criminal insanity or diminished capacity is present. An evaluation of future dangerousness is not required until the end of the second felony competency restoration period unless the evaluation is for criminal insanity or the defendant has a developmental disability or it is determined that competency is not likely to be restored and the defendant has completed the first felony competency restoration period.

The first competency restoration period for a felony defendant whose maximum charge is a class C felony or a nonviolent class B felony is shortened from 90 to 45 days. When a felony defendant is committed to a state hospital for civil conversion after charges are dismissed based on incompetency to stand trial, a civil commitment petition must be filed within 72 hours excluding weekends and holidays

following the defendant's admission to the facility. Time for trial on such a petition is extended from five to ten judicial days.

The Joint Legislative Audit and Review Committee must independently assess the progress of DSHS with performance measures and monitoring activities both six and eighteen months following the effective date. The Washington State Institute for Public Policy must study effective time periods and protocols for competency restoration treatment.

The crime of custodial assault is expanded to include an assault on a full- or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent of a state hospital who was performing official duties at the time of the assault.

A jail may not refuse to book a patient of a state hospital based solely on the patient's status as a state hospital patient, but may consider other relevant factors which apply to the individual circumstances of the case.

A state hospital may administer antipsychotic medication without consent to a person committed as criminally insane by following the same procedures that apply to the involuntary medication of a person who has been involuntarily committed for 180 days under the Involuntary Treatment Act. The maximum period during which the court may authorize medication is 180 days or the time remaining in the person's order of commitment, whichever is shorter. The petition for involuntary medication may be filed in either the superior court that ordered the commitment of the person or the superior court of the county in which the individual is receiving treatment, provided that a copy of any order which is entered is forwarded to the superior court of the county that ordered the commitment, which must retain exclusive jurisdiction over all hearings concerning the release of the patient.

The state has a compelling interest in providing antipsychotic medication to a patient who has been committed as criminally insane when refusal of antipsychotic medication would result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of the patient.

DOL/TRAFFIC

SHB 2252 (C 68, L 12) Transportation fare payment

Permits certain transit agencies to require passengers to produce proof of payment in a manner determined by the transit agency. Requires certain transit agencies, when collecting fares before passengers board a transit vehicle, to place conspicuous signage regarding fare payment in order to issue infractions for failure to pay the required fare. Defines personally identifying information, in the context of fare media, to include purchase and use data, and limits the disclosure of that data. Failure to pay the fare, failure to produce proof of payment, and failure to leave the bus or transit when requested are all civil infraction.

E2SHB 2373 (C 261, L 12) State recreational resources
Includes additional land and land types managed by the Washington State Department of Natural Resources (DNR), other than aquatic lands, for which a Discover Pass or day-use permit is required. Modifies the validity of the Discover Pass to begin when the pass has been marked for activation. Allows for the single purchase of a Discover Pass or Vehicle Access Pass to be valid for two license plate numbers. Allows for the Discover Pass and day-use permit to be obtained by retailers. Expands the options of where a Discover Pass and day-use permit can be purchased and authorizes the Washington State Parks and Recreation Commission (State Parks) to utilize unstaffed collection stations. Requires free access days at state parks and suggests they be timed with National Park Service free days. Adds exemptions for certain circumstances from requiring the Discover Pass or day-use permit. Adds to the types of vehicles for which the owners are given the opportunity to donate to state parks upon vehicle registration. Creates an up to $50 Family Discover Pass that is transferable among any vehicle. Requires the agencies to develop proposals for finding consistent state recreational policies where inconsistencies exist and to report findings to the Legislature.

HB 2459 (C 70, L 12) Commercial vehicle license plates
Provides authorization to the Washington State Patrol or other law enforcement agencies to confiscate license plates from a motor carrier who operates a commercial motor vehicle with a revoked registration.

E2SSB 5188 (C 85, L 12) Traffic control signals
Requires the applicable jurisdiction to conduct an analysis of the proposed camera locations. Requires annual reports regarding traffic accident rates where a camera is located and the number of infractions issued for each camera. Requires signage regarding the location of a camera to be posted at least 30 days before activation of the camera. Standardizes the signage requirements for camera locations.

SSB 5246 (C 73, L 12) Driving record abstracts
Allows DOL to enter into contractual agreements with an employer or the employer's agent to review the driving records of existing employees during specified periods of time for changes to the records. DOL must establish a fee for this service such that there is no net revenue loss to the state.

SB 6030 (C 28, L 12) License suspension errors
If a court finds that the required notice to DOL has been delayed for three years or more due to a clerical or court error, the court may order that the person's driver license not be revoked, suspended, or denied for that offense. Upon receipt of the order, DOL must not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

SSB 6112 (C75, l 12) Alternative traction devices
Allows alternative traction devices on tires, in addition to tire chains and metal studs, to prevent a vehicle from skidding in slippery conditions, subject to conformance with rules adopted by the WSP.

SSB 6138 (C 79, L 12) Vehicle maximum lengths
Exempts auto recycling carriers up to 42 feet in length, that were manufactured prior to 2005, from the state maximum vehicle length limit.

ESSB 6150 (C 80, L 12) Facial recognition matching
Effective date for section 5 through 13 is 10/01/2012
Authorizes DOL to implement a facial recognition matching system for all driver licenses, permits, and identicards. Beginning July 1, 2013, driver licenses will be valid for up to six years. Increase various fees for obtaining and renewing driver licenses.

ESSB 6284 (C 82, L12) Civil traffic infractions
Effective date for section 4 is 6/7/2012 unless funding is not provided. The remainder of the bill is effective 6/1/2013.
Whenever any person served with a traffic citation willfully fails to respond to a notice of traffic infraction for a moving violation, fails to appear at a requested hearing for a moving violation, violates a written promise to appear in court for a notice of a moving violation, or fails to comply with the terms of a moving violation, the court in which the defendant failed to appear promptly gives notice of such fact to the department. Whenever the same happens for a non-moving violation, the court in which the defendant failed to appear is no longer required to give notice of such fact to the department.
Whenever a monetary penalty or other monetary obligation is imposed, it is immediately payable and is enforceable as a civil judgment. If a payment required to be made under the payment plan is delinquent, the court may refer the unpaid monetary penalty or other monetary obligation for civil enforcement until all monetary obligations have been paid. For those infractions (moving violations) subject to suspension under the department's authority, the court notifies the department of the person's failure to meet the conditions of the plan, and the department suspends the person's driver's license or driving privileges.
An applicant for an occupation license whose driver license is suspended for failure to respond, pay, or comply with a notice of traffic infraction or conviction, is no longer required to enter into a payment plan with the court.
The department in consultation with the Administrative Office of the Courts, must adopt and maintain rules by November 1, 2012, that define a moving violation pursuant to Title 46 RCW. Upon adoption of these rules, the department must provide written notice to each of the following:
- affected parties;
- Chief Clerk of the House or Representatives;
- Secretary of the Senate;
- the Office of the Code Reviser; and
- anyone else deemed appropriate by the department.

SSB 6423 (C 130, L 12) Farm vehicle
Revises the general definition of farm vehicle applicable to the Motor Vehicles code to conform with the use of that term within the specific CDL exemption provided for farmers operating farm vehicles.

MISCELLANEOUS/HOUSEKEEPING

ESHB 2190 (C 86, L 12) Transportation supplemental 2011-13 budget
Effective 3/23/2012
Provides funding to continue Target Zero Program in fiscal year 2013. Provides funding for additional troopers to provide oversight of the ignition interlock industry. Provides funding to DOL for implementation of legislation passed during the session. Provides funding to train an additional trooper cadet class.

ESHB 2233 (C 48, L 12) Indian country and tribes
Creates a procedure by which the state may retrocede to the federal government criminal and/or civil jurisdiction over Indian tribes located in the State of Washington. Requires the state to retain the civil jurisdiction necessary for the civil commitment of sexually violent predators. Establishes that retrocession will not abate any action or proceeding filed with any court or agency of state or local government preceding the effective date of the retrocession.

SHB 2357 (C 180, L 12) Sales and use tax for chemical dependency, mental health treatment and therapeutic courts
Extends the partial suspension of the non-supplant restriction for the county mental health/chemical dependency sales and use tax.

SB 5913 (C 26, L 12) Public funds/credit unions
State and federally chartered credit unions are public depositaries only for the purpose of receiving public deposits, which may total no more than the federal deposit insurance limit. The maximum amount of deposit applies to all funds attributable to any one depositor of public funds in any one credit union. Credit unions are subject to the Public Deposit Protection Commission's regulatory authority and reporting requirements when acting as a public depositary.

SSB 6100 (C 29, L 12) Sexual assault grants
References are updated to standardize and remove outdated or redundant language describing OCVA's mission and activities providing services for victims of sexual assault. Language requiring formation of a peer review committee to advise OCVA about eligibility for services is removed. New practice principles are articulated for professionals who work with sexual assault victims.

SSB 6167 (C 44, L 12) Criminal ID system information
WSP is authorized to disclose conviction records of a prospective client or resident at no cost upon the request of a business or organization that qualifies as a nonprofit organization under the internal revenue code and that provides emergency shelter or transitional housing for children, persons with developmental disabilities, or vulnerable adults. A client or resident is defined as a child, person with developmental disabilities, or vulnerable adult applying for housing assistance from a business or organization.

ESB 6296 (C 125, L 12) Background checks
Individuals may retain a copy of their personal non-conviction data information on file if the criminal justice agency has verified the identity of the person making the request. Criminal justice agencies may impose additional restrictions, including fingerprinting, as are

reasonably necessary to assure the record's security and to verify the identity of the requester. The agency may charge a reasonable copying fee. The definition of criminal history record in RCW 10.97 is clarified to exclude police incident reports. An entity conducting a background check pursuant to RCW 10.97 will receive information about any incident that occurred within the last 12 months for which the person is currently being processed by the criminal justice system.

ESB 6608 (C 199, L 12) Judicial stabilization trust account
Increases the surcharge on civil filing fees in district court from $20 to $30 until 7/1/2013.

PERSONNEL

ESSB 6239 (C 3, L 12) Civil marriage and domestic partnerships
Marriage is a civil contract between two persons who are at least 18 years old and who are otherwise capable. A person cannot marry if that person has a spouse or registered domestic partner living at the time of such marriage, unless the registered domestic partner is the other party to the marriage. The list of officers and persons, active or retired, who are authorized to solemnize marriages is amended to include imams, rabbis, or similar officials of any religious organization.

2ESB 6378 (C 7, L 12) State retirement plans
Effective 7/10/12
Closes alternate early retirement benefits to new members of the Public Employees' Retirement System (PERS), the Teachers' Retirement System (TRS), and the School Employees' Retirement System (SERS). Creates a new subsidized early retirement benefit for members joining PERS, TRS, or SERS Plans 2 and 3 on or after May 1, 2013, that provides a 5 percent per year reduction in benefits from age 65 for members retiring with 30 or more years of service. Changes the investment rate of return assumption used for calculating contribution rates in the state retirement systems on July 1, 2013, to 7.9 percent, on July 1, 2015, to 7.8 percent, and on July 1, 2017, to 7.7 percent. Requires the Select Committee on Pension Policy to study risk classifications of employees in the Washington state retirement systems that entail either high degrees of physical or psychological risk.

PROBATION/JAIL

2ESSB 6204 (C 6, L 12) Community Supervision
Sections 1, 3 through 9, 11 through 14 effective 6/1/12
Section 9 expires 8/1/12, Section 10 effective 8/1/12
A new violation process for offenders on community custody is outlined. DOC will adopt rules creating a structured violation process that includes presumptive sanctions, aggravating and mitigating factors, and definitions for low-level violations and high-level violations. DOC must define aggravating factors that may present a current and ongoing foreseeable risk and therefore elevate an offender to a high-level violation process. DOC is not civilly or criminally liable for a decision to elevate or not to elevate an offender's behavior to a high-level violation unless it acted with reckless disregard. For low-level

violations, DOC may sanction an offender to one or more non-confinement sanctions. For second and subsequent low-level violations, DOC may sanction the offender to not more than three days in total confinement. For high level violations, DOC may sanction an offender to not more than 30 days in total confinement per hearing. An offender accused of committing a high-level violation is entitled to a hearing. When an offender on community custody commits a new crime in the presence of a community corrections officer, the officer may arrest the offender and report the crime to local law enforcement or local prosecution. DOC will not hold the offender more than three days from the time of notice to law enforcement. As part of its implementation of the new sanctioning system, DOC must establish stakeholder groups, communicate with law enforcement, and periodically survey community custody officers for ideas and suggestions. DOC must report back to the Legislature at the end of 2012 and 2013.