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No. 62774-1-1

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION ONE

King County No. 06-1-06165-5 SEA

STATE OF WASHINGTON,

Respondent,

v.

THOMAS DELANTY,

Appellant.

APPELLANT'S OPENING BRIEF

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**I. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

**A. Assignments of Error**

1. The trial court erred by excluding the most critical defense Exhibits, which contained a compilation and summary of records to prove that the Defendant performed the work for which he was paid to refute the State's claim that his payments constituted theft.

2. The trial court erred in pressuring the defense to conclude quickly, cutting witnesses short and rushing through testimony after the prosecution case had taken much longer than anticipated and the court was committed to ending the trial due to vacation schedules of two jurors.

3. The trial court erred in refusing to allow the defense to rebut numerous uncharged allegations of theft that the State had raised through the direct testimony of the alleged victim and prosecution experts.

**B. Issues Pertaining to Assignments of Error**

1. Whether a defendant has a due process right to present crucial evidence relevant to the central contention of a valid defense.  
[Assignment of Error 1.]

2. Whether financial analysis and summaries are admissible to document the fact that the Defendant performed work for which he was paid and to rebut the prosecution theory that the work was never

performed and that his payments constituted theft. [Assignment of Error 1.]

3. Whether the State opened the door to the Defendant's exhibits and analysis by presenting its own voluminous phone records and other documents through prosecution witnesses who had analyzed the same data. [Assignment of Error 1.]

4. Whether it violates Due Process to pressure the defense to move quickly because the State's case has taken too long to present and jurors indicated they were unable to serve beyond a certain date. [Assignment of Error 2.]

5. Whether it violates the appearance of fairness for the trial judge to repeatedly cut defense witnesses short, tell the defense to move more quickly and to stop asking questions on certain subject in front of the jury. [Assignment of Error 2.]

6. Whether it constitutes a comment on the evidence for the judge to openly and repeatedly express his exasperation and impatience with the defense in the presence of the jury. [Assignment of Error 2.]

7. Whether the defense has the right to rebut uncharged allegations of theft and dishonesty raised by the prosecution in its case-in-chief. [Assignment of Error 3.]

8. Whether the defense has the right to attack the credibility of key prosecution witnesses by proving they have made false allegations of theft and dishonesty against the Defendant. [Assignment of Error 3.]

9. Whether it violates Due Process for the judge to refuse crucial defense exhibits to rebut false allegations of theft and dishonesty by prosecution witnesses, including the case detective. [Assignment of Error 3.]

## **II. STATEMENT OF THE CASE**

### **A. Procedural Background**

The Defendant was charged with 28 counts of First and Second Degree Theft and Attempted Theft in the Third Amended Information. CP 598-610. After numerous pretrial motions, the case finally proceeded to trial on October 23, 2008 but, following jury selection, testimony did not actually begin until October 29, 2008.

The State had advised the court that the trial would probably last two weeks and no more than three weeks so the court assured the jury that the case would be completed by Thursday, November 13. RP (10/23/08) at 47-48. However, the State took much longer than anticipated to present its case and did not rest until Thursday, November 6, 2008.<sup>1</sup> Since there

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<sup>1</sup> The State's case included 17 witnesses and 37 voluminous exhibits and document summaries. See Appendix 2 to this brief (exhibit list).

was no court on Fridays and Tuesday, November 11 was a holiday, this left only three days for the defense.

By the time the defense began its case the court became very concerned about its self-imposed deadline of November 13 and began proactively interfering with the defense, cutting off the testimony of a defense forensic accounting expert and refusing to admit defense exhibits that proved that the Defendant had, in fact, performed all the work for which he was paid.

The case was submitted to the jury by the court's deadline at the end of the day on Thursday, November 13, and the jury returned at 9:00 the next morning to begin deliberations. An hour later, at 10:00 a.m., the jury sent out a note requesting the key defense exhibit (Ex. 376) that the judge had refused to admit. The judge refused the jury's request at 11:00 a.m. and at 1:30 p.m. the jury again requested another critical defense exhibit (Ex. 355) that the judge had refused. At 2:05 the judge denied this second request. An hour later the jury returned a verdict of guilty on 26 counts and acquitted the Defendant on two counts. CP 740-743. It also returned special verdicts finding aggravating circumstances. CP 736-737, 738-739.

The Defendant filed a Motion and Memorandum for Arrest of Judgment and a New Trial based upon the trial court's exclusion of nearly

the entire defense case. CP 748-749 (Motion); 750-884 (Supporting Memorandum). The court denied the motion (CP 922-23) and sentenced the Defendant to an exceptional sentence of 60 months incarceration. CP 929-941. The Defendant filed a timely Notice of Appeal. CP 952-966.

Defendant's repeated motions to be released on bail pending appeal were denied by the court, despite the fact that the court reporter took nearly one year to prepare the transcript of the trial after being paid in advance and estimating it would take 45 days to transcribe the record.<sup>2</sup>

**B. Factual Background**

The Defendant's wife, Vida Delanty, grew up next door to Betty Huegli, the alleged victim, and her husband Doug in Bellevue, Washington. The Hueglis attended Vida and Tom Delanty's wedding in the mid-1980s and Tom and Vida became partners with the Hueglis and eleven other couples in a Hawaiian condominium which Tom managed.

Doug Huegli died in 1992, leaving Betty with approximately 20 rental houses, and Tom began preparing her annual income tax returns from that date forward through his company, Tax Solutions, Inc. He charged a reasonable fee of \$800 to \$1,200 for Betty's tax returns until the

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<sup>2</sup> In fact, this Court has held several contempt hearings that the court reporter refused to even attend, which has delayed the processing of this appeal by more than eight months while the Defendant remains in custody.

blowup in late 2005 that led to his being sued civilly by the Hueglis, and prosecuted criminally in this case.

During the course of this relationship, Betty Huegli became very close to the Delanty's, including their adopted daughter Emily. Jim Huegli testified that his mother "had a picture of him [Delanty] on her mantle. She thought of him as a son. She talked about him in very glowing terms." RP (10/29/08) at 21. Her son, Jim Huegli, a trial lawyer who lived in Portland, rarely visited his mother and embarked on a seven year sailing voyage around the world in 1998. Because of this he never had any involvement helping his mother with her finances, paying her bills, or otherwise. RP (10/29/08) at 9.<sup>3</sup>

In 1998 Betty visited Jim in Florida before he left and she took a fall down a flight of stairs, suffering a serious fracture to her wrist. She visited Jim again in Portland in 2002, and "fell and broke her ankle," while Jim was home for awhile taking a break from his voyage. *Id.* at 18. According to Jim Huegli's testimony, "From the time she broke her ankle in 2002 until today . . . she was unable to walk without assistance . . . She needed her walker or wheelchair. . . . She got very depressed. . . ." *Id.* at

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<sup>3</sup> Jim Huegli left on his cruise "in the summer of 1998 . . . We didn't return until 2005 on a permanent basis." RP (10/30/08) at 50. Whenever he returned to the United States, he stayed in Portland, two and a half hours from his mother's house in Bellevue. *Id.*

20. Jim returned to his sailboat in Thailand and Tom Delanty's responsibilities in caring for Betty Huegli dramatically increased.

Betty's daughter Susan Boyer lived an hour away from Betty's Bellevue home in Gig Harbor but described her relationship with her mother Betty as "difficult" and claimed Betty was "abusive" and "controlling." RP (11/3/08) at 33-34. She testified that Betty became "pretty depressed" after her husband Doug died in 1992. RP (10/30/08) at 167-70. Jim Huegli described his mother Betty as "snippety" and "short tempered." RP (11/3/08) at 43. He also "had a rocky relationship" with his sister Sue. RP (10/29/08) at 13-14.

In an email, Jim Huegli told Delanty that Sue "does ask me every time I see her how much my mother is worth and even when I think she is going to die." He warned Delanty that "Susie has a mental illness." *Id.* at 69. He stated "Honestly, Tom, she [Betty] is scared to death of Susie, had told me many times of her fears. She's like a beaten, abused puppy and when Susie comes over she's fearful of being mentally abused." *Id.* at 88. Because of this, Jim urged Delanty to get involved as Betty's "personal representatives" to administer her estate. RP (10/30/08) at 65-67.

Jim Huegli testified that, by 2004, Betty's health "was very poor. She was housebound. She couldn't walk . . . She'd spend most of her time in the chair in her living room in her nightgown. She was not eating

. . . her mental status was deteriorating rapidly.” *Id.* at 29. Betty Huegli’s eyesight was rapidly deteriorating, according to her optometrist. RP (11/3/08) at 94-100. In her testimony, Betty stated “I couldn’t walk, I couldn’t drive, there was very little I could do, and it got worse, and so I just couldn’t, it wasn’t worth it.” RP (10/31/06) at 28.<sup>4</sup>

By the latter part of 2004, Tom Delanty was exchanging numerous emails overseas with Jim Huegli, advising Jim that Delanty “was becoming involved in everything.” *Id.* at 31. Jim Huegli was well aware that Tom Delanty “was beginning to pay her bills” and helping her with her stocks and finances. RP (10/29/08) at 27-28. In 2005 Delanty began paying himself \$500 a month to manage her rental properties and declared all of this on his income tax returns. RP (11/12/08) at 88-89.

Sue Boyer testified she was aware that Tom Delanty was going “over to my mom’s house numerous times a month.” RP (11/3/08) at 29. Sue also knew that, as Betty’s condition deteriorated, Tom Delanty became increasingly involved in her affairs. *Id.* at 180-86. Sue’s husband Ralph similarly testified that Delanty visited Betty’s house “once or twice a week” to help her with her affairs. RP (11/3/08) at 65. Ralph estimated that Delanty must have visited Betty 100-200 times during the charging period. RP (11/3/08) at 85. A neighbor, Pamela Watson, personally

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<sup>4</sup> Due to concerns about her declining competence and failing health, Betty Huegli’s

observed Delanty at Betty's house "quite frequently . . . two or three times a week." RP (11/3/08) at 146.

Tom Delanty became involved in the minutiae of Betty's life simply because there was no one else to take care of her as her health declined. In her direct testimony, Betty explained: "I was not in good health, I had a broken ankle, I had a bad hip which I've had replaced, I was very sick, and that's why I hired Tom to help me." RP (11/1/06) at 97. She testified he would take all of her checks to the bank for deposit and bring her back \$100-\$200 in cash. *Id.* at 69-70. He took over management of her stocks in 2001. *Id.* at 91. She agreed to a joint bank account with Tom "because I couldn't walk, I could hardly get up out of a chair, and that he might have to go and pay a bill and that he needed an account to write the check on." *Id.* at 113-14. He also continued preparing her income tax returns. *Id.* at 118-19. He took out her garbage; brought her food from Costco; deposited her rent checks; brought her take-out food from Angelo's, her favorite restaurant; he brought her mochas; made arrangements for a new shake roof on her house; found her a new gardener and replaced her dishwasher. *Id.* at 119-30.

Delanty testified that Betty called him on nearly a daily basis on his cell phone, which was recorded on his phone bill simply as an

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testimony was preserved and presented to the jury by videotape deposition. CP 23-24.

anonymous incoming call and not at all on her phone bill because it was a local call. RP (11/12/08) at 41. Betty's neighbor, Pamela Watson, verified that Betty would call frequently and keep her on the phone for 45 minutes at a time, which corroborated Tom Delanty's testimony. RP (11/3/08) at 147.

In an email dated November 9, 2005, Delanty advised Jim Huegli "the sooner I'm extricated from this situation the better," and discussed his billing rate and all the activities he had been performing for Betty that he never billed for such as countless hours of travel time to and from her house. RP (10/30/08) at 126-127. He complained in another email to Jim Huegli "I'm not a social worker or a psychologist. I'm having to sort out the problems between a mother and sister that have been going on for fifty plus years." RP (11/12/08) at 124. He repeatedly expressed concern in these emails that he was "going to become a scapegoat." *Id.* at 130. Jim Huegli responded with an email stating "I know full well you are charging for your service and well you should." *Id.* at 133.

Delanty's work on behalf of Betty Huegli saved her many thousands of dollars. For example, by switching her stock account from Dain Rauscher to Schwab he saved her \$6,000 in fees annually. RP (11/12/08) at 44-46. Between the date of this transfer and the breakup in 2005, this change saved her a total of \$29,000 because there were only 24

trades and Dain Rauscher was charging two percent of the value of her account annually, regardless of whether she made any trades or not. *Id.* at 49. By placing her very expensive jewelry in a safety deposit box he was able to obtain a “vault rate” which saved her 90 percent, or “about \$1,200 a year” in insurance premiums, according to David Cox, Betty’s insurance agent with All State. RP (11/4/08) at 77. This also kept it safe from her daughter Sue, whom Betty did not trust. RP (11/1/06) at 133.

Ed Gardner, President of Guardianship Services, testified as an expert for the defense that his company would have charged between \$7,000 and \$15,000 a month for the services Tom Delanty was providing to Betty Huegli. RP (11/6/08) at 63-65. Preparing her tax returns would cost an additional \$2,000-\$4,000 per year. *Id.*

Delanty had emailed Jim Huegli expressing his concerns about a 1991 Cadillac in the garage because Betty could no longer drive. RP (11/12/08) at 133. When Jim returned to Seattle near the end of July, 2005, he stayed for just a couple of days, then “took the Cadillac and they went off around the western United States.” *Id.* at 142. Jim did not return to Seattle “for three months until October 22 or 23 when he brought the Cadillac back.” *Id.* Delanty sent Jim Huegli an email stating that he did not want the car back in the garage because he had transferred title to

Jim's name and it would be dangerous for Betty to try driving it. *Id.* at 55-56.<sup>5</sup>

Delanty ended his relationship with the Huegli family on October 25, 2005, when he came to her house and found the Cadillac back in Betty's garage. She was threatening to drive it and wanted to buy a house in Arizona. RP (10/29/08) at 53. Delanty was upset because he had personally transported Betty to "Bell-Red Auto Licenses" to transfer ownership of the Cadillac to her son Jim. RP (11/4/08) at 67.<sup>6</sup> He testified it was a "huge procedure" to get Betty out of the house because he had to help her get dressed, she could barely get out to the car even with a walker, and he had to "lift her into my car." RP (11/12/08) at 153-54.

On the day of the blowup, he told Betty "your driving days are over" and saw the presence of the car as "a safety issue for her because I wasn't sure what she might do." RP (11/12/08) at 148. He was very frustrated that Jim had left the car with Betty after Delanty had gone to the trouble of personally taking her to a title transfer company to put the title in Jim's name, and he concluded that Jim "was irresponsible." *Id.* at 149.

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<sup>5</sup> All of these indisputable communications were contained in email correspondence between Delanty and Jim Huegli.

<sup>6</sup> Delanty also had Betty's signature on the amendment to her living trust notarized during this visit and the notary, Dara Harlan, testified that she would not have notarized Betty's signature if she seemed confused or disoriented. RP (11/4/08) at 66.

Delanty decided “I can’t deal with this anymore. So I tried to give her a hug. I told her you’re not driving. You’re not buying a house.” *Id.* at 149.

Betty claimed “he was really upset about my car . . . I was so sick of hearing about the car.” RP (11/1/06) at 141-42. She testified that “he got really upset” and said “I’m worried about this, and blah, blah, blah. He just absolutely went berserk about” the car. *Id.* at 146-48. She said that Tom Delanty “almost had a fit seeing that car in the garage.” RP (10/31/06) at 38. This was the last time she ever saw him. *Id.* Betty then instructed her daughter Sue to send Tom Delanty an email terminating his services. RP (10/29/08) at 64-65.

It is no small irony that, immediately after Delanty quit on October 25, 2005, Betty’s daughter Sue and her husband Ralph “retained a CPA, a bookkeeper, . . . a property management firm” to take over his responsibilities. RP (10/30/08) at 107-108. They then gave Betty an ultimatum of “two choices or she is going to end up in a nursing home. Those will be her only two choices. She can’t kick and scream any longer,” according to a voicemail from her son Jim that was played in court. RP (10/30/08) at 119. Jim and Sue forced Betty into Willow Gardens, an assisted care facility, within two weeks of Delanty’s departure. RP (11/3/08) at 45-46.

Delanty was asked to present a final invoice, which he did, crediting Betty for \$77,000 in payments over the previous 20 months and showing an additional balance owed of \$22,500. *Id.* at 72-73; Ex. 10. The invoice “was seven pages long and covered the period of time from January of 2004 through October of 2005.” *Id.* at 74. In his final invoice, Delanty credited back a gift that Betty had given to his daughter Emily “because my wife and I decided we wanted to be done with this family. We were finished. Emily didn’t need the benefit of a gift from Betty Huegli.” *Id.* at 181-82.<sup>7</sup>

Jim Huegli and the Boyers were upset by Delanty’s bill, so they promptly hired an attorney and sued him. *Id.* at 82-84. Jim Huegli was “flabbergasted” to see that Delanty had been billing at \$125 an hour for his services, even though Jim charged \$450 an hour for his work as an attorney. RP (10/30/08) at 129.<sup>8</sup> Jim Huegli then aggressively urged the King County Prosecutor and Bellevue Police Department to prosecute Delanty for theft. *Id.* at 93-98. The case detective agreed that Huegli

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<sup>7</sup> Betty Huegli, her son Jim and her daughter Sue Boyer all confirmed that Betty Huegli’s signature on this letter was genuine. RP (10/30/08) at 14; (11/3/08) at 21-22. So did a defense document examiner, James Green. RP (11/6/08) at 129-140; Ex. 331. Betty also admitted that she thought Emily to be “a sweet, darling child” and discussed giving between \$1,000 and \$5,000 to Emily, whom she felt very close to, but she denied that she ever agreed to a \$25,000 gift. RP (10/31/06) at 40. In any event, as noted above, Tom Delanty credited all of the approximately \$15,000 paid to Emily back to Betty Huegli in his final invoice, Ex. 10.

contacted him so much that he was “a bit of an annoyance.” PR (11/4/08) at 182.

The State’s computer expert determined that Delanty spent approximately seven hours on a single day preparing his final invoice. RP (11/12/08) at 89; Ex. 10. Delanty explained that his final invoice was based upon estimates and prepared “in a hurried manner.” RP (11/12/08) at 176-78. He admitted it was not very accurate because he “had to sort of recall how many times did I go to Betty’s house. . . . The home visits were off. I think I probably underestimated the home visits and other work.” *Id.* at 178.

He explained that the defense expert, Dan Ring, had performed a far more thorough analysis based on actual records. *Id.* at 180. This was the exhibit that the court excluded for totally arbitrary reasons because the State’s case took much longer than the prosecutor predicted. Ex. 376.

### **III. SUMMARY OF ARGUMENT**

The State presented 17 witnesses, including several experts, who testified that Tom Delanty did not earn the fees he was paid and that he charged too much. Specifically, the State alleged that all 28 payments to

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<sup>8</sup> In the civil case, Jim Huegli was claiming \$450 per hour for his time conducting his own analysis, and \$200 an hour for his sister’s time. *Id.* at 45. He claimed “to date my family has incurred almost \$130,000 in costs” in the civil case against Delanty. *Id.* at 47.

Mr. Delanty, totaling approximately \$85,000 over a period of two years, constituted theft.

The defense to these charges was based on the fact that everyone agreed Delanty did a great deal of work for Betty Huegli, preparing her income tax returns every year and other functions as she became increasingly disabled. In fact, prosecution witnesses reluctantly admitted that Delanty made more than 200 trips to her house over the two year charging period.

In support of its case, the State presented detailed financial analysis based on “hundreds and hundreds of hours” analyzing records by Betty’s son, Jim Huegli, a trial attorney. Other prosecution witnesses, including the Hueglis’ civil attorneys, Renea Saade and Wes Edmunds, also testified in response to prosecution questions about the importance of documentation to determine the validity of these payments.

The State presented extensive financial analysis by its accounting expert, James Hardtke, who introduced numerous thick binders of records he had collected as the basis for his opinions. These included two binders full of phone records (Ex. 26 & 27), a thick binder of documents found on computers seized from Delanty’s house (Ex. 31), a summary of telephone records (Ex. 33), a bar chart of telephone calls (Ex. 34), and a binder containing numerous checks that were at issue in the case (Ex. 2).

However, the State's case took much longer than anticipated and, by the time the State rested, both the prosecutor and the trial judge began cutting off defense witnesses and interjecting comments in front of the jury that the defense had to go faster and stop asking relevant questions. The judge began cutting witnesses short, and refused virtually all of the most critical defense exhibits which were offered to rebut precisely the same kind of documentary evidence and analysis presented by the State experts and supported by the voluminous exhibits discussed above.

During the State's case, prosecution witnesses had also testified about numerous checks outside the charging period and put them into evidence as exhibits, allegedly to show a pattern of previous thefts and false statements by the Defendant. However, when the defense attempted to rebut this evidence with its own expert and exhibits the judge cut the expert short and refused the defense Exhibit 355. In front of the jury he stated "we have to finish today" and "my decision is to try to keep the paperwork for the jury at a minimum."

The jury began its deliberations at 9:00 a.m. on Friday, November 14, and at 10:00 sent out its first inquiry, requesting Exhibit 376 prepared by defense witness Dan Ring which contained well organized and summarized documentary evidence of all the work Tom Delanty did for Betty Huegeli in order to document his right to be paid. The judge refused

this request and, an hour after the refusal, the jury sent out a second request for Exhibit 355, a 17 page document that formed the basis of testimony by defense expert Margy Brouns Eaton, but the judge again denied this request. The jury returned with a verdict of guilty on 26 out of 28 counts within an hour. They acquitted the Defendant on two counts.

Clearly, all of these actions violated the Defendant's due process right to present a defense, and created an atmosphere of bias and prejudice by the judge that denied the Defendant his right to a fair trial before an impartial tribunal. The judge's actions, by interfering with defense counsel and his witnesses, also constituted an unconstitutional comment on the evidence, all of which requires a reversal of the Defendant's convictions and a new trial.

#### **IV. ARGUMENT**

##### **A. The Trial Court Erred in Refusing to Admit Defense Exhibits Documenting the Work He Performed to Justify the Payments He Received**

The key exhibit for the defense consisted of approximately 4,600 pages of chronologically organized and summarized checks, emails, deposit slips, calendar entries, and travel records covering the two year charging period from 2004-2005. The defense expert, Dan Ring, laid the foundation for Exhibit 376(A), (B) and (C), describing how all of those

documents “cover the same time period as Exhibit 10, the invoice that Mr. Delanty submitted.” *Id.* at 25-26. Those documents consisted of

redacted phone records of Mr. Delanty, phone information from Mrs. Huegli’s phones, bank statements, copies of cancelled checks, emails and other material that were provided to me either by the State in discovery or retrieved by subpoena. . . . They all relate to the work that Tom Delanty performed for Betty Huegli.

*Id.* at 26. The entire exhibit was organized chronologically with weekly summaries backed up by documentary evidence to prove that Tom Delanty performed the work for which he was paid. *Id.* at 32. Nearly all the underlying records were either received from the prosecution or by subpoena to banks, Charles Schwab and other similar institutions. *Id.* at 45-46.

The defense argued for the admission of Exhibit 376(A), (B) and (C), three notebooks that constituted

a summary of documents that includes all the documentary evidence of the activity that Tom Delanty did on behalf of Betty Huegli such as phone records, check paying, correspondence. It also includes his email exchanges with Ralph and Sue Boyer, Jim Huegli both to and from him.

RP (11/10/08) at 1. This exhibit was offered to establish “the various activities he did to validate his bills and the amount of money he was paid, which, of course, goes to the heart of the case.” The prosecutor objected because the summary contained “hearsay.” *Id.* at 2.

Defense counsel strenuously argued that the Defendant

had a due process right to present evidence of my client's innocence and having a document is the best way to do that. The State is going to claim that my client is a liar. I have the right to document the truth of what he is saying with the fact that an email was in fact sent to Jim Huegli. In fact, there were numerous emails sent to Jim Huegli a year before this problem developed. . . . What we have here are documents to document, corroborate and show my client's state of mind and prove that he is telling the truth when he says 'I told them over and over and over again a year before this that Betty is totally disabled. She cannot manage her affairs. I am spending huge amounts of time and money on this.' That's exactly what these emails say. It's to corroborate his testimony like any document does, like a check does, like these billing statements and invoices do.

*Id.* at 8. The Court seemed to accept the defense argument:

THE COURT: And aren't they further evidence that he did it, especially in a case where it's not disputed that these emails were received. It seems to me to in some way to enhance or verify the fact that this actually occurred, particularly since one of the disputes in this case is whether or not Mr. Delanty is to be believed. This substantiates that he is saying he did by some effort being made to convey that to the other side which exists and which is not disputed. . . . My sense is this is important for a person who is charged with a crime to be able to say I'm telling you that I did it and here are some examples of me having taken this position two years ago and not just on the stand to try to defend myself.

*Id.* at 14-15. The Court also recognized that the exhibit would "show Mr.

Delanty's state of mind that he believed that he had an understanding that

he was being paid for or was going to be compensated for his services.”  
*Id.* at 17.

However, the trial judge later changed his mind and excluded the exhibit because of time constraints. This is the first exhibit requested by the jury a mere hour into deliberations.

Moreover, the defense exhibits and expert testimony were also necessary to refute the forensic examination by prosecution witnesses. Jim Huegli claimed to “have spent hundreds and hundreds of hours” analyzing records in an attempt to refute Delanty’s final invoice. RP (10/30/08) at 25-27, 44. He testified: “I have spent hundreds of hours trying to find out anything that he did to justify that bill at any time and I have been unable to determine or locate a single solitary piece of paper or record that supports anything on that bill.” RP (10/30/08) at 162.<sup>9</sup>

The State also elicited detailed testimony from two civil attorneys hired by the Hueglis about the relevance and the importance of collecting and analyzing documents, such as those contained in Exhibits 376 and 355, to support Delanty’s final billing and recap the previous billings contained in Exhibit 10. Renea Saade testified about the need for “any backup documentation.” RP (11/4/08) at 88-90. She explained: “We

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<sup>9</sup> Jim Huegli’s analysis of phone records was based solely on long distance calls between Betty’s house in Bellevue and Tom Delanty’s house in Everett. RP (10/30/08) at 28.

needed to get Mrs. Huegli's phone records so there could be some cross-reference being done to determine whether or not she was calling Mr. Delanty and, if so, how often or how long did they speak so that we could do our own accounting." *Id.* at 100.

In the civil case, Ms. Saade sought discovery of "all time records kept or retained in any form evidencing or reflecting time that he allegedly spent providing any services to her that were outlined in the November 8, 2005 invoice," and Delanty responded that "he wasn't in possession because they were in the control of the Bellevue Police Department," following the search of his residence. *Id.* at 106; Ex. 28. The State elicited testimony that she had sought

all invoices, bills, statements of work or other communication or documents from the Defendant . . . generated at any time between the years 1999 and 2005 in which the Defendant, Mr. Delanty, requests payment for services allegedly rendered and where it advises the plaintiffs what fees that the Defendant would or may charge for said services.

*Id.* at 109-110. She herself had collected "probably three or four banker's boxes of documents" by subpoenaing records from stock brokerage firms, banks and phone companies. *Id.* at 141.

Delanty had responded to these discovery requests in the civil case that most of this information was in the possession of the police

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Thus, his analysis did not include any of the lengthy and numerous calls Betty made to

department following the search of his home. *Id.* at 111. Even when Delanty and his civil counsel were allowed to visit the Bellevue Police Department they were prevented from making copies and Delanty was not allowed to get physically close to the documents so that he could examine them. *Id.* at 121-32.<sup>10</sup>

Wes Edmunds, another attorney hired by the Hueglis, testified for the State that:

I wanted all the backup, the detailed billing that would justify the billing that he created, the \$73,000 and the \$23,000 that had been paid. I wanted all the documents. I wanted everything.

RP (11/4/08) at 9. According to his testimony, the relevant records included “phone records, daily logs of time and the like. . . . I wanted to look at those phone records to see what had been accomplished. . . . And then there seemed to be a high number of home visits also. I needed to learn more about that. . . . So I wanted backup.” *Id.* at 11.

This is precisely the information contained in Defense Exhibits 376 and 355, which the trial judge excluded “to keep the paperwork for

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Delanty’s cell phone. *Id.* at 30-31.

<sup>10</sup> Detective Cate, who participated in the search of the Delanty home, estimated that the police took 24-28 banker’s boxes of records and a number of computers. *Id.* at 151-53. He testified that Delanty’s large, four-story house was filled with stacks of paper everywhere, from the basement to the attic, stating “there was records stacked everywhere.” *Id.* at 167-81.

the jury at a minimum.” This is precisely the documentation that the jury twice requested during deliberations.

Mr. Edmunds billed \$275 an hour for his work, and conceded that somebody like Betty needed a fiduciary to handle her affairs, and that it was better that the person not be a family member if there was conflict amongst the children. *Id.* at 24-28. On cross-examination, he conceded that charging \$125 an hour (Delanty’s billing rate) was not unreasonable. *Id.* at 31. He also agreed it would have been appropriate to bill for travel time, which Tom Delanty did not. *Id.* at 34-35.<sup>11</sup>

Edmunds testified “I couldn’t analyze the billing and whether or not he was owed money and how much without first seeing the backup and also getting the materials.” *Id.* at 44. He needed “to get records to show whether he did those things.” *Id.* at 59. Defense Exhibits 375 and 355, and related testimony which the court excluded, did precisely this.

The State called a forensic accounting expert, James Hardtke to testify in detail about thousands of pages of phone and bank records which he “analyzed for this case.” RP (11/5/08) at 120. He “was looking to see if the phone records justified the invoice records.” *Id.* The State was allowed to introduce four separate exhibits constituting “a summary of the

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<sup>11</sup> The undisputed testimony, even from prosecution witnesses, established that Delanty made more than 200 visits to Betty’s house during the charging period, and he lived more than an hour away in Everett.

examination of the phone records” that Hardtke performed. *Id.* at 127. He found that Delanty’s final invoice, Exhibit 10, was accurate for some months, was not accurate for others, and that Delanty’s errors worked both to his detriment and in his favor. *Id.* at 138-40. He testified it was “absolutely” essential to get all the backup records when performing this kind of analysis. *Id.* at 157-58. His most recent, voluminous analysis, Exhibit 268, had been completed the same day he testified and was admitted into evidence. *Id.* at 153-54.

In order to rebut this evidence and prove that Delanty earned the money he was paid, the defense also offered Exhibit 355, a copy of all the invoices he had prepared for Betty Huegli that the Defendant could locate including checks that matched up with these invoices to corroborate his testimony that Betty had given him permission to pay his taxes out of her account to compensate him for work he had done, which was reflected in these invoices. RP (11/12/08) at 25-26; Ex. 355. He paid his own estimated income taxes at the same time he paid hers and she even signed the checks. *Id.* at 36-37. The invoices in this exhibit reflected these payments and Betty personally signed the checks. *Id.* at 39-40. But when the defense again offered Exhibit 355, the Court refused it, reasoning “My decision is to try to keep the paperwork for the jury at a minimum.” *Id.* at 40.

During the hearing on Defendant's Motion for a New Trial the judge claimed that the jury's second request, for Exhibit 355 (consisting of the invoices and checks pertaining to all the charged counts against Mr. Delanty), was properly refused "because there were just too many of them and there was no direction for the jury as to what was to be done with them." *Id.* at 9-10. However, defense counsel pointed out

it's a stack of paper about three-eighths of an inch thick. It was not a lot of paper. It goes to the heart of the defense. It is the documentation that shows he billed her for the time and work he performed. The time period that the jury is asking about is the charging period, 2004 to 2005. There is nothing more relevant or germane than these invoices. Any person of average intelligence could look at these invoices and see that Tom Delanty was billing for work that he performed, that he is charged with not having performed and having billed her for.

*Id.* at 10. The judge responded "I don't think that everything that is testified to during a trial, particularly documentation, necessarily then becomes an exhibit for the jury to examine during its deliberations. I think in many cases it would become overly burdensome to have that many pieces of paper and documents for the jury." *Id.* at 10-11. Defense counsel responded:

Your Honor, if forty sheets of pages is overly burdensome, then why did the Court permit the State to produce binders of telephone records that are hundreds of pages long?

*Id.* at 11.

In fact, Exhibit 355, which is attached to this brief as Appendix 3, is only 17 pages long and consists of invoices and checks showing that the Defendant openly and avowedly billed and accounted for all the money he was accused of stealing. Most importantly, it provides documentary proof that he had performed work to justify those payments.

**B. The Trial Court Erred in Denying the Defendant's Constitutional Right to Rebut False, Uncharged Allegations of Theft by the Prosecution**

The State introduced evidence of uncharged payments that were alleged to be thefts, and Detective Hardtke testified about:

checks dated from as early as June 6, 2001 to as late as October 25, 2005 that were written on an account of Nancy Huegli or Betty Huegli that were for the benefit of Thomas Delanty or his company and that were not charged in the charges.

RP (11/5/08) at 141. The “grand total” of these checks was determined to be “\$9,131.50.” *Id.*

In presenting her direct testimony, the prosecution asked Betty Huegli about these numerous checks dating back many years before the charging period. RP (10/31/06) at 19-22, 43-58; Ex. 1-10, 12. She was specifically asked about a very large, uncharged check in the amount of \$15,622, which she claimed was a theft. *Id.* at 45, 154-55; Ex. 6.

She testified that State’s Exhibit 5, an \$8,000 check, was forged and constituted a theft as well. *Id.* at 152-55.

Betty stated in her direct testimony that she did not sign or fill out the check and she had no idea where the \$8,000 went. RP (10/31/06) at 43-44. She insisted under oath “it’s not my signature,” and asserted that Tom Delanty “stole the money.” *Id.* at 153-54. Jim Huegli similarly testified “there was another \$8,000 check that was completely forged by Mr. Delanty that is outside the statute of limitations,” which he “discovered . . . in 2005 for the first time.” RP (10/30/08) at 54.

Out of the presence of the jury, the defense sought to question Detective Cate about this same \$8,000 check with Betty’s forged signature

to bring that out to show that both Jim and Betty Huegli were making false allegations against [Tom Delanty] with the police. The same with the \$15,600 . . . check. He was accused of stealing that money from Betty Huegli when in fact he acquired a municipal bond for her. . . . The bond was worth exactly that amount of money. I think it is relevant under the confrontation clause to prove that they’re making false allegations. These are two of the biggest ones they brought against my client. Obviously they are not thefts.

RP (11/5/08) at 46. Detective Cate had included “both of those checks specifically in the Certification for Determination of Probable Cause.” *Id.* at 49-50.

When the defense offered Exhibit 317, to prove that a prior, uncharged theft of \$8,000 was actually just a transfer of money from one of the victim’s accounts to another account in order to cover real estate tax

payments while she was hospitalized in Portland, the judge refused the exhibit, reasoning “needless to say we are not going to put every piece of paper that is being testified to into evidence for the jury’s perusal during deliberations.” RP (11/12/08) at 24-25. The defense objected “well, she accused him under oath of stealing the money,” but the judge refused, stating “needless to say we are not going to put every piece of paper that is being testified to into evidence for the jury’s perusal during deliberations.” *Id.* at 25.

During his testimony, Delanty tried to explain that Betty had Tom write the \$8,000 check to cover her real estate taxes while Betty was hospitalized in Portland. The court pressured defense counsel again, stating “I know it’s hard . . . I don’t think that was the deal . . . How much more do you have?” When Delanty again tried to explain the allegation that he was falsely accused of stealing \$8,000, but the judge pressured defense counsel to hurry up at this juncture. RP (11/12/08) 168-71.

His credibility was aggressively attacked by numerous prosecution witnesses. Therefore, Tom Delanty needed to corroborate his testimony with bank records to prove he did not receive this money.

C. **The Legal Standard for the Admissibility of Defense Evidence Requires that a New Trial be Ordered**

It is fundamental that

The Due Process clause of the Fourteenth Amendment requires that criminal prosecutions comport with prevailing notions of fundamental fairness, and that criminal defendants be given a meaningful opportunity to present a complete defense.

*California v. Trombetta*, 467 U.S. 479, 485 (1984). *Accord: Crane v. Kentucky*, 476 U.S. 683, 690 (1986). The Supreme Court has made clear that a defendant's right to present exculpatory evidence will even override the rules of evidence, which would ordinarily require the exclusion of that evidence. *Chambers v. Mississippi*, 410 U.S. 284 (1973); *Taylor v. Illinois*, 484 U.S. 400 (1988). *See also Gomez v. Greer*, 896 F.2d 252 (7<sup>th</sup> Cir. 1990). This includes the right to present otherwise inadmissible evidence (such as testimony that has been affected by the improper use of hypnosis) where essential to the defense case. *Rock v. Arkansas*, 483 U.S. 44 (1987).

Both the Sixth Amendment to the United States Constitution and article 1, Section 22 of the Washington State Constitution require that courts allow defendants to present evidence that is relevant to their case. *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983). Washington cases have clearly held that it is an abuse of discretion to exclude evidence that is "crucial to the central contention of a valid defense." *State v. Brown*, 48 Wn.App. 654, 660, 739 P.2d 1199 (1987) (reversing rape

conviction for the improper exclusion of evidence that the victim had taken LSD).

For example, in *State v. Young*, 48 Wn.App. 406, 413, 739 P.2d 1170 (1987), the Court reversed a vehicular homicide conviction due to the trial court's exclusion of "evidence that on prior occasions Mr. Setzer [the victim] had interfered with other drivers' ability to control their vehicles." The Court reasoned:

The court excluded the proffered evidence on the basis of ER 403. Weighing the probative value of evidence under ER 403 against the dangers of confusion or prejudice, the general rule requires the balance be struck in favor of admissibility. *United States v. Dennis*, 625 F.2d 782 (8<sup>th</sup> Cir. 1980). **ER 403 does not extend to the exclusion of crucial evidence relevant to the central contention of a valid defense.** 5 K. Tegland, Wash. Prac. at § 105; *United States v. Wasman*, 641 F.2d 326 (5<sup>th</sup> Cir. 1981). Here, evidence of Mr. Setzer's conduct on the night of the accident was highly probative and crucial to Mr. Young's theory of defense, that it was Mr. Setzer and not he that caused the accident. Nor is its probative value "substantially outweighed" by the dangers enumerated in ER 403. The balance should have been struck in favor of admissibility. Under these circumstances the court's failure to do so was an abuse of discretion.

*Id.* at 414 (emphasis added). *Accord: State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006); *State v. Watkins*, 136 Wn.App. 240, 148 P.3d 1112 (2006).

In *State v. King*, 71 Wn.2d 573, 429 P.2d 914 (1967), the court reversed the defendant's indecent liberties conviction because of the trial

court's improper exclusion of a defense exhibit consisting of copies of notes of a study of homosexuality as an explanation for possession of nude pictures, and to counteract the dangerously inflammatory effect of nude pictures found in the defendant's possession. As in this case, the State objected that defense exhibit 376A-C contained hearsay which did not fit into any recognized exception but the *King* court reasoned that the exhibit "was not offered for that purpose. The exhibit was offered only for the purpose of showing that the notes were in fact made by the defendant." *Id.* at 577. In this case, the defense evidence was offered to corroborate the Defendant's claim that he performed the work for which he was paid. Obviously, the jury wanted to see this evidence – in fact they asked to see it twice – so the defense was severely prejudiced by excluding it.<sup>12</sup>

Again, in *State v. Maupin*, 128 Wn.2d 918, 913 P.2d 808 (1996), the court reversed the defendant's conviction for kidnapping and murdering a child based upon the exclusion of evidence from a defense

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<sup>12</sup> It is ironic that the State was allowed to submit voluminous checks, invoices, and emails to prove its case while the Court rejected similar evidence offered by the defense to rebut these allegations.

As already noted, the State's evidence far exceeded the charged counts and included dozens of alleged thefts beyond the statute of limitations and for smaller amounts than those charged in the 28 counts. *See* State's Exhibit 37.

The Court also admitted State's Exhibit 31, which contained numerous documents recovered from the Defendant's computer, including his and his wife's income tax returns, various invoices and other documents only tangentially related to the case whereas the supporting documentation for the Defendant's payments contained in Defendant's Exhibit 376(A)-(C) were crucial to the defense, yet the Court refused to admit them into evidence.

witness who would have testified that he had seen the child alive after the time that the defendant had supposedly committed the murder. In *State v. Roberts*, 80 Wn.App. 342, 908 P.2d 892 (1996), the court also held that the exclusion of testimony blaming another suspect violated defendant's constitutional right to present a defense and to a fair trial, applying the "more probable or less probable" test for relevance from ER 401.

In this case, the proffered evidence was clearly "crucial evidence relevant to the central contention of a valid defense" within the meaning of *State v. Young, supra*, 48 Wn.App. at 414. The court's reasoning in excluding this evidence because it was too voluminous is simply not a tenable ground.

**D. These Errors Were Each Highly Prejudicial and Require a New Trial**

The exclusion of these exhibits was highly prejudicial error as evidenced by two written inquiries from the jury during deliberations seeking the very documents from Exhibits 355 and 376(A)-(C) that the Court refused to admit into evidence.

The first inquiry, just one hour after deliberations began on Friday, November 14, 2008, asked:

Can we please have copies of checks Mr. Delanty filled out for Mrs. Huegli's household expenses (utilities) 2004-2005.

CP 181 and Appendix 1 to this brief (copy of jury inquiries and responses). The Court responded “you will need to rely on the evidence that was admitted into evidence and which you have at this time.” *Id.*

An hour after the judge refused this request, the jury sent out a second inquiry asking for the Ex. 355, the invoices and checks which the Court had also refused to admit during trial. CP 182 (also included in Appendix 1 to this brief). Again, the Court responded that the jury would “need to rely on your examination of the exhibits admitted at trial and the testimony admitted at trial.” *Id.* At this point, defense counsel advised the Court verbally and by email “that the jury should be given additional evidence.” (This email is also included with Appendix 1.) However, the Court refused to admit these exhibits.<sup>13</sup>

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<sup>13</sup> Post-verdict interviews have also confirmed that the jury wanted, needed, and had a legitimate interest in reviewing this documentation in support of Mr. Delanty’s claim that he had performed the work for which he was paid and claimed it openly by submitting invoices, which is a complete defense to the charge of theft. In an interview with the defense investigator, Stephen Robinson, Juror Michael Becke:

said they saw a lot of documentation, but that it was all from the prosecution. Becke said the absence of defense documents hurt the defense. “The defense played a lot on emotion, the feelings of the matter, but didn’t really refute or try to refute any specific charges,” Becke said, “The defense talked that they had a lot to show [during opening], but the defense didn’t talk about those things [during the trial]. They talked, but didn’t produce.” Upon learning that the judge excluded defense exhibits, Becke said, “That may have hurt them. Of course I can’t know for sure, but I don’t know what they are.”

See CP 750-884 at p. 3, fn. 1. Juror Jeanne Tombarge commented that Mr. Delanty “had no backup that she owed these things to him.” *Id.*

At the hearing on the new trial, the court claimed that only “one juror” made the request for the excluded exhibits and defense counsel responded that “the foreman said that on behalf of the entire jury.” RP (12/11/08) at 8. The court responded “I don’t believe that he said that on behalf of the entire jury,” and defense counsel responded that the signature line was solely for the “foreman” and that the note was written in terms of “can we please have” the exhibits. *Id.*

**E. The Trial Court Improperly Commented on the Evidence, Violated the Appearance of Fairness Doctrine, and Violated the Defendant’s Due Process Rights by Repeatedly Interfering with Defense Witnesses, Cutting Off Defense Counsel and by Pressuring the Defense to Go Faster and Stop Asking Relevant Questions**

At the outset of the case, the prosecutor estimated the trial would last no more than three weeks, and the Court advised the jury that the case would be completed by Friday, November 14. RP (10/23/08) at 47-48. A jury was selected, and testimony than began six days later, on October 29, 2008, with the testimony of James Huegli, the alleged victim’s son.

**(1) Factual summary**

Even during his own case the prosecutor expressed concern about getting finished, stating “I don’t think we are going to get to deliberations by Friday,” and noting that a juror needed to attend a dental appointment

on Friday. RP (11/3/08) at 79-80. Juror number 5 then indicated the need to catch a 4:15 bus. *Id.* at 171.

On Thursday, November 6, after seven days of testimony from prosecution witnesses, the defense called its first witness and the prosecutor immediately expressed concern, stating “I’m just looking at the clock and I am concerned we are going to finish this.” RP (11/6/08) at 19. There was no court on Friday, November 7 or the following Tuesday, November 11, which was a court holiday. This left the defense only Monday, Wednesday and Thursday to present its entire case.

By the time the Defendant took the witness stand on Wednesday, November 12, the Court dramatically increased pressure on the defense to go faster and cut its case short. Later that same day, in the course of the Defendant’s testimony, the court interjected “How much longer do you have?” in front of the jury.

The judge continued to interrupt the Defendant’s testimony, directing him to “give a number if you know a number. If you don’t know a number say you don’t know” and lectured him, stating that the Defendant should “leave it to your attorney to decide whether or not he wishes to follow up with these questions.” *Id.* at 196. A few pages later, the Court instructed counsel: “Last question. We need to break.” *Id.* at 208. The judge then told the jury: “Ladies and gentlemen, we do intend

to conclude testimony tomorrow. . . . I say that to remind counsel --.” *Id.* at 209. Juror No. 3 asked “Do we come Friday or do we come Monday?” And the judge answered “Don’t make me go there, only if I have to.” The juror then complained “I have a lot of stuff on my calendar Friday.” *Id.* at 209.

At this point in Delanty’s testimony, the Court interjected “How much longer do you have?” RP (11/12/08) at 160. In the course of his testimony, the prosecutor cut him off, stating “We are short on time, Your Honor,” to which the Court responded “I know.” RP (11/12/08) at 187. When defense counsel asked for a sidebar the prosecutor again complained in front of the jury: “We have wasted so much time” and the judge directed counsel to “go on to the next subject or some subjects.” *Id.* at 195.

The next day, Thursday November 13, the court began instructing Delanty: “You should answer yes or no” to the questions. RP (11/13/08) at 34. The court repeatedly interrupted his testimony, telling Delanty “The question is did you draft that document on a home computer,” (*id.* at 36); “Mr. Delanty, we are going to get through this a lot faster if you just answer the question. You don’t need to explain yourself,” (*id.* at 37); “Mr. Delanty, just limit yourself to responding, actually answering the

question” (*id.* at 39-40); and a few minutes later the court inquired “Is there going to be a lot more questions about this?” *Id.* at 44.

The defense cut its questioning short and called an expert witness, Margy Brouns-Eaton, an accountant to testify about her analysis. But only eight pages into her testimony the judge inquired: “How much longer do you think you’ll be?” *Id.* at 58-59. A few pages later, defense counsel responded “I’ll get through this very quickly, but it’s my discretion what I ask my own witness,” and the judge responded, in front of the jury, “We do have to be mindful of the time,” to which defense counsel responded “I will, I promise.” *Id.* at 62.

The prosecutor then complained that the witness “can testify without having another piece of paper in evidence. We are trying to go faster,” to which defense counsel responded that it was only a one page document, Exhibit 312, a “Table of Errors and Omissions” of Mr. Delanty’s accounting for his time that formed the basis of his billing. *Id.* at 68. The court responded by interjecting “What’s the relevance of this witness’ correction of what has happened?” To which the defense responded “Your Honor, she’s also verifying the accuracy of the most critical exhibit in the case. . . . She’s verifying that the final invoice accurately reflects almost entirely the previous invoices, gives credit for all the payments including the cash payments and shows that more money

is owed at the bottom.” The judge conceded that the testimony was “relevant” but nevertheless kept pressure applied to the defense and defense counsel responded “I will try to move quickly. I promise.” *Id.* at 69. The prosecutor then stated “Let me finish up since I’m the one who’s in a big hurry.” RP 87.

When the defense called the Defendant’s wife, Vida Delanty, to testify about her personal observations of the amount of work Tom was performing for Betty Huegeli, the court interrupted the direct examination only thirteen pages into her testimony, stating: “Mr. Hansen, how many more questions? . . . I am committed as long as it works out to actually finish this case, the testimony, the instructions and argument today. . . . **So we have to finish today**, over the lunch hour if need be.” *Id.* at 111 (emphasis added).

When the defense asked questions that would corroborate the Defendant’s testimony about the length of conversations he had with Jim Huegeli the court again interrupted, stating “Is it any different from what the jury has heard?” from the Defendant himself, and defense counsel answered “No, Your Honor,” and the judge responded: “Let’s go on then” and cut the witness short. *Id.* at 120. The defense immediately rested. *Id.* at 122.

(2) **Legal discussion**

A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial and neutral hearing. *State v. Bilal*, 77 Wn.App. 720, 722, 893 P.2d 674 (1995) (quoting *State v. Ladenburg*, 67 Wn.App. 749, 754-55, 840 P.2d 228 (1992)). Evidence of a judge's actual or potential bias is all that is required to find a violation of the "appearance of fairness" doctrine. See *State v. Post*, 118 Wn.2d 596, 826 P.2d 172 (1992).

Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned. *State v. Ra*, 144 Wn.App. 688, 175 P.3d 609 (2008); *State v. Perala*, 132 Wn.App. 98, 110-11, 130 P.3d 852, review denied, 158 Wn.2d 1018, 149 P.3d 378 (2006).

In *Ra*, the court found troubling the trial court's suggestions that Ra was "some distorted character who breeds and lives violently" and scolding him for apparently nodding "as if you are agreeing with me." These actions of the trial court were inappropriate, did not show proper restraint and should not have been made. *State v. Ra*, 144 Wn.App. at

705. Furthermore, the court's proposal of theories for the State to use in admitting improper ER 404(b) evidence was inappropriate. *Id.*

A trial court should not enter into the "fray of combat" or assume the role of counsel. *Egede-Nissen v. Crystal Mountain, Inc.* 93 Wn.2d 127, 141, 606 P.2d 1214 (1980). Because *Ra* was reversed for other reasons, the Court did not consider whether the appearance of partiality alone would warrant dismissal. *State v. Ra*, 144 Wn.App. at 705. However, the Court directed that on remand the case be assigned to another judge. *Id.*

It is permissible for the court to question witnesses. However, the court's questions may not be phrased in a manner indicative of the court's attitude towards the merits of the cause or it will constitute an impermissible comment on the evidence. *Egede-Nissen v. Crystal Mountain, Inc.* 93 Wn.2d 127, 140, 606 P.2d 1214 (1980); *Dennis v. Mcarthur*, 23 Wn.2d 33, 38, 158 P.2d 644 (1945); *Risely v. Moberg*, 69 Wn.2d 560, 419 P.2d 151 (1966).

During trial, the Court in *Crystal Mountain* allegedly usurped the questioning of witnesses, both when the jury was present and in its absence. *Egede-Nissen v. Crystal Mountain*, 93 Wn.2d at 140. The Court's concern that the jury had been presented an orchestrated set of defense witnesses was evident and the court conducted its more rigorous

interrogation of witnesses in response to this concern. *Id.* The cumulative effect of repeated interjections by the court may constitute reversible error. *Egede-Nissen v. Crystal Mountain*, 93 Wn.2d at 141.

Here, the court's repeated interruptions and admonitions regarding limited time, and its refusal to admit critical defense exhibits, severely undermined the ability of the defense to present its case. Furthermore, these comments, often in response to a remark by the prosecutor regarding limited time, gave the appearance of collusion between the prosecution and the court to ration the time permitted for the defendant to present his case. Whether such collusion existed is immaterial as the mere appearance violates the appearance of fairness doctrine and demands a new trial. *Cf.* Judicial Canon 3(A)(3) and (4):

(3) Judges should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials and others subject to their direction and control.

(4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, ...

## V. CONCLUSION

In every way, this case presents a shocking "rush to injustice." The defense spent two years preparing expert testimony and document

summaries to rebut the State's similar expert testimony and voluminous exhibits but, simply because the trial was taking too long, the trial judge determined to exclude the most critical defense evidence "to keep the paperwork for the jury to a minimum."

The judge's actions violated Tom Delanty's due process rights to defend himself, and violated his right to a fair trial before a fair and impartial tribunal. The judge's comments and actions are especially indefensible since they occurred in the presence of the jury, conveying the judge's impatience and disdain for the Defendant and his counsel. The court's actions go far beyond a violation of the appearance of fairness doctrine and the prohibition against commenting on the evidence.

Finally, the prejudice to the Defendant is undeniable. Despite being prevented from presenting a defense the jury acquitted him of two of the counts and sent out two requests for the documents and exhibits that the judge had excluded. In post-trial interviews, jurors complained that "they saw a lot of documentation, but it was all from the prosecution."

Perhaps the worst injustice has been the denial of bail for this Defendant pending appeal by the trial court, especially in light of the court reporter's failure to produce the trial transcript in a timely fashion despite four or more contempt hearings in this Court. Accordingly, the defense again urges this Court to release the Defendant on appeal before he serves

his entire sentence in vain due to the obvious invalidity of these convictions.

In effect, the jury convicted this Defendant of paying himself for work he was forced to do because Betty Huegli's own children were unwilling to assist their mother, and because of all the controversy and mistrust within the family. Mr. Delanty's concerns were expressed in an email to Jim Huegli that he was going to become "a scapegoat" were prophetic in hindsight. His incarceration is totally unjust and should be remedied as promptly as possible by this Court.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of February, 2010.

  
RICHARD HANSEN, WSBA #5650  
Attorney for Appellant

**PROOF OF SERVICE**

Richard Hansen swears the following is true under penalty of perjury under the laws of the State of Washington:

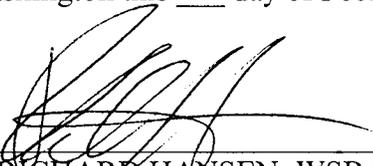
On the 24<sup>th</sup> day of February, 2010, I sent by U.S. Mail, postage prepaid, one true copy of Appellant's Opening Brief directed to attorney for Respondent:

Economic Crimes Unit  
King County Prosecutor's Office  
516 Third Ave., W554  
Seattle, WA 98104

And mailed to Appellant:

Thomas Delanty, , #326288  
Airway Heights Corrections Center  
P.O. Box 2049  
Airway Heights, WA 99001

DATED at Seattle, Washington this \_\_\_ day of February, 2010.

  
\_\_\_\_\_  
RICHARD HANSEN, WSBA #5650  
Attorney for Appellant

# APPENDIX 1

**FILED**  
KING COUNTY WASHINGTON

NOV 14 2008

SUPERIOR COURT CLERK  
*Andrew Hawley* DEPUTY

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

*State*

Plaintiff/Petitioner

No. *06-1-06165-5 Sen*

vs.

*Thomas Delanty*

INQUIRY FROM THE JURY  
AND COURT'S RESPONSE  
(JYN)

Defendant/Respondent

JURY INQUIRY: *CAN WE PLEASE HAVE*

*COPIES OF CHECKS MR. DELANTY FILLED OUT FOR  
MRS. HUEWEL'S HOUSE HOLD EXPENSES (UTILITIES) 2004-2008*

*M. Lewis*

FOREMAN

*11/14/08 10:01 AM*

DATE AND TIME

DATE AND TIME RECEIVED: \_\_\_\_\_

\*\*\*\*DO NOT DESTROY- LEAVE IN JURY ROOM\*\*\*\*

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES OPPORTUNITY TO BE HEARD):

You will need to rely on the evidence that was admitted into evidence and which you have at this time.

  
\_\_\_\_\_  
JUDGE

DATE AND TIME RETURNED TO JURY: 11:10 AM 11-14-08

\*\*\*\*DO NOT DESTROY- LEAVE IN JURY ROOM\*\*\*\*

**FILED**  
KING COUNTY WASHINGTON

NOV 14 2008

SUPERIOR COURT CLERK  
*Andrew Harli* DEPUTY

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

*State*

Plaintiff/Petitioner

No. *06-1-06165-5 Jen*

vs.

INQUIRY FROM THE JURY  
AND COURT'S RESPONSE  
(JYN)

*Thomas Delanty*

Defendant/Respondent

JURY INQUIRY:

*In what exhibit is the invoice dated 1/23/05  
in reference to court 17? Do we have it?  
Do we have  
same for invoice of 11/21/04 ~~and~~ in reference to court 16-7*

*Al Lami*  
\_\_\_\_\_  
FOREMAN

*11/14/08 1:30 PM*  
\_\_\_\_\_  
DATE AND TIME

DATE AND TIME RECEIVED: \_\_\_\_\_

\*\*\*\*DO NOT DESTROY- LEAVE IN JURY ROOM\*\*\*\*

COURT'S RESPONSE: (AFTER AFFORDING ALL COUNSEL/PARTIES  
OPPORTUNITY TO BE HEARD):

You will need to rely on your examination of  
the exhibits admitted at trial and the testimony  
admitted at trial.



JUDGE

DATE AND TIME RETURNED TO JURY:

02:05 PM

\*\*\*\*DO NOT DESTROY- LEAVE IN JURY ROOM\*\*\*\*

## Todd Maybrow

---

**From:** Todd Maybrow  
**Sent:** Friday, November 14, 2008 2:17 PM  
**To:** Richard Hansen  
**Subject:** FW: Please call Todd Maybrow

Answer to question 2

**Todd Maybrow**  
**Allen, Hansen & Maybrow, P.S.**  
**One Union Square**  
**600 University Street, Suite 3020**  
**Seattle, Washington 98101-4105**  
**(206) 447-9681 - Phone**  
**(206) 447-0839 - Fax**

[www.ahmlawyers.com](http://www.ahmlawyers.com)

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**From:** Havlis, Andrew [mailto:Andrew.Havlis@kingcounty.gov]  
**Sent:** Friday, November 14, 2008 2:08 PM  
**To:** Peterson, Scott; Todd Maybrow  
**Subject:** RE: Please call Todd Maybrow

Hi Todd and Scott,

Judge Washington responded in writing as follows: "You will need to rely on your examination of the exhibits admitted at trial and the testimony admitted at trial."

-Andrew

---

**From:** Peterson, Scott  
**Sent:** Friday, November 14, 2008 2:01 PM  
**To:** 'Todd Maybrow'; Havlis, Andrew  
**Subject:** RE: Please call Todd Maybrow

Pam,

I agree.

Scott

---

**From:** Todd Maybrow [mailto:Todd@ahmlawyers.com]  
**Sent:** Friday, November 14, 2008 2:01 PM  
**To:** Havlis, Andrew; Peterson, Scott  
**Subject:** RE: Please call Todd Maybrow

Andrew:

I just got off the telephone with Scott Peterson. We both agree that the Court cannot provide a substantive response to this second question without potentially making a comment upon the evidence. Accordingly, we think that he needs to say something like: "Please review all of the evidence that has been admitted at trial."

Todd

**Todd Maybrow**  
**Allen, Hansen & Maybrow, P.S.**  
**One Union Square**  
**600 University Street, Suite 3020**  
**Seattle, Washington 98101-4105**  
**(206) 447-9681 - Phone**  
**(206) 447-0839 - Fax**

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---

**From:** Havlis, Andrew [mailto:Andrew.Havlis@kingcounty.gov]  
**Sent:** Friday, November 14, 2008 11:16 AM  
**To:** Peterson, Scott  
**Cc:** Todd Maybrow  
**Subject:** RE: Please call Todd Maybrow

Hi Scott and Todd,

Judge Washington decided to respond in writing as follows:

"You will need to rely on the evidence that was admitted into evidence and which you at this time."

This written response just went back to the jury.

Thanks,

Andrew

---

**From:** Peterson, Scott  
**Sent:** Friday, November 14, 2008 11:02 AM  
**To:** Havlis, Andrew  
**Cc:** 'todd@ahmlawyers.com'  
**Subject:** RE: Please call Todd Maybrow

Andrew,

I just spoke to Todd Maybrow. I don't agree with him that the jury should be given additional evidence. My position is that the court should inform them that they have all of the evidence that was admitted.

Please let me know what the court would like me to do.

# APPENDIX 2

COP

Exhibits as of 11-13-08, 1pm

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## LIST OF EXHIBITS

(EXLST)

CAUSE NO. 06-1-06165-5 SEA

CAPTION:

---

State of Washington

Plaintiff / Petitioner

VS.

---

Thomas J. Delanty

Defendant / Respondent

---

LEGEND:

Π= Plaintiff/Petitioner  
Δ= Defendant/Respondent  
A = Admitted  
AN = Admitted but not to go to jury  
R = Refused  
Re-O&A = Re-offered and Admitted  
ID = For Identification Only  
Rtn'd = Returned

CODES:

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
1	X		Summary of Embezzlement Checks	A	11-05-08				
2	X		<b>BINDER:</b> Embezzlement Checks COUNTS 1 - 28	A	10-29-08				
3	X		12/23/04 eMail "Sawyer Development and Investment Co. Inc."	A	10-29-08				
4	X		8.5 x 11 Plastic sleeve containing 3 Photographs of DELANTY and his Family	A	10-29-08				
5	X		10/26/05 eMail "I was a little tough on her"	A	10-29-08				
6	X		10/30/05 eMail "Dear Saint Tom"	A	10-29-08				
7	X		11/6/05 eMail "retained a CPA"	A	10-29-08				
8	X		11/7/05 eMail "offensive and laced with innuendo"	A	10-29-08				
9	X		11/9/05 eMail "perplexed by" "devastated"	A	10-29-08				
10	X		11/8/2005 Invoice for 2004-2005	A	10-29-08				
11	X		11/10/05 eMail "HEUGLI family responsibilities"	A	10-29-08				
12	X		11/2/05 Deeds of Trust Against Mrs. Heugli's Home	A	10-29-08				

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
13	X		11/21/05 Letter from WES EDMUNDS to DELANTY	A	10-29-08				
14	X		12/8/05 Letter from DELANTY to EDMUNDS	A	10-29-08				
15	X		12/13/05 Letter from EDMUNDS to DELANTY	A	10-29-08				
16	X		12/16/05 Letter From DELANTY to EDMUNDS	A	10-29-08				
17	X		Schwab One Check #142 marked "STOLEN"	A	10-29-08				
18	X		PLASTIC SLEEVE containing Carbon Copy of Check #172	A	10-29-08				
19	X		Schwab Power of Attorney	A	10-29-08				
20	X		CHECK REGISTER Containing entry for Check #3255	A	10-29-08				
21	X		9/14/05 Amendment to Living Trust	A	10-30-08				
22	X		7/6/01 Letter to BILL BREDICE	A	10-30-08				
23	X		Deposit Slips Showing Cash Back Thefts	A	10-30-08				
24	X		4/20/06 Declaration of THOMAS DELANTY	A	11-04-08				

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
25	X		Documents attached to 4/20/06 Declaration of THOMAS DELANTY	A	10-30-08				
26	X		BINDER: DELANTY'S Telephone Records	A	10-30-08				
27	X		BINDER: MRS. HEUGLI's Telephone Records	A	10-30-08				
28	X		Plaintiff's First Set of Interrogatories and DELANTY'S Response	A	11-04-08				
29	X		BINDER: Search Warrant Photographs (Mrs. HEUGLI's records)	A	10-29-08				
30	X		Invoices Discovered During the Search	A	11-04-08				
31	X		BINDER: Documents found on Computers Seized from DELANTY'S Home	A	11-05-08				
32	X		BINDER: Invoices found on Computers Seized from DELANTY'S Home	A	11-05-08				
33	X		Summary of HEUGLI/DELANTY Telephone Records	A	11-05-08				
34	X		Bar Chart of HEUGLI/DELANTY Telephone Records	A	11-05-08				
35A	X		Pocket Calendar/DayTimer - DELANTY'S (2004)	A	11-05-08				
35B	X		Pocket Calendar/DayTimer - DELANTY'S (2005)	A	11-05-08				

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
36	X		Comparison of DELANTY'S 2004 and 2005 Calendars/DayTimers and 11/8/05 Invoice	A	11-05-08				
37	X		Additional Checks Payable to DELANTY	A	11-05-08				
38	X		<b>Kraft Envelope</b> containing manila envelope containing examples of Known Signatures used in Comparison by WA State Patrol Crime Lab				X		
39	X		<b>BOARD:</b> Blow Up of Examples of Known, Forged, and DELANTY'S Signatures				X		
40	X		WA State Patrol Crime Lab Reports				X		
41	X		USSS Crime Lab Reports						
42	X		Exhibits to Deposition						
43	X		<b>Manila Envelope</b> containing checks analyzed by WA State Patrol Crime Lab Reports				X		
44	X		<b>BOARD:</b>						
45	X		<b>Plastic Case containing DVD:</b> Video Deposition of Nancy Heugli	A	11-06-08	Illustrative Only Not to go to Jury			
46	X		<b>BOARD:</b>						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
47	X		BOARD:						
48	X		Transcript of Betty Elizabeth Heugli Vol I				X		
49	X		Transcript of Betty Elizabeth Heugli Vol II				X		
50	X		Photograph						
51	X		Estate Tax Return						
52	X		Power of Attorney for Charles Schwab Account-- Photocopy	A	11/13/08				
53	X		Power of Attorney for Charles Schwab Account-- Original	A	11/13/08				
54	X		Resume of Thomas J. Delanty (Exhibit G)						
55	X		Deposition of Thomas Delanty, 02-3-05567-6 November 17, 2003						
56-199			NO EXHIBITS						
200		X	Invoice from DELANTY to HEUGLI 11/08/05						
201		X	Affidavit of NANCY HEUGLI 02/19/06						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
202		X	WAMU Letter to NANCY HEUGLI 10/29/04						
203		X	Charles Schwab Statements, Power of Attorney						
204		X	Schwab Acct Verification 5129-0927						
205		X	Schwab Stmt & Acct Verification 3141-4264						
206		X	Letter to DAYTON from HEUGLI 09/14/05						
207		X	HEUGLI Plaintiff Cert, US District Court						
208		X	US District Court InfoSpace Claim						
209		X	Letter to PRUNER from HEUGLI 7/6/01						
210		X	Gift Statement, HEUGLI to EMILY DELANTY						
211		X	Schwab1 Check #130, \$3,450 1/10/04						
212		X	Check Register, Marital Trust						
213		X	Check Register, WAMU Joint Account						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
214		X	Check Register, Credit Shelter Trust						
215		X	Restatement of Trusts 11/14/05						
216		X	NO EXHIBIT						
217		X	NO EXHIBIT						
218		X	NO EXHIBIT						
219		X	NO EXHIBIT						
220		X	JAMES HEUGLI Interview 10/16/07						
221		X	JAMES HEUGLI Affidavit 05/22/06						
222		X	Documents from Computer Diskettes						
223		X	Signed Indemnification from JIM HEUGLI						
224		X	Schwab Power of Attorneys						
225		X	Voicemail Transcripts of JIM HEUGLI Messages						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
226		X	CD ROM Containing Voicemails						
227		X	eMails between J. HEUGLI and T. DELANTY						
228		X	JIM HEUGLI Phone Analysis						
229		X	Advertisement for Sailboat Jubilaem						
230		X	JIM HEUGLI calls to EMILY DELANTY						
231		X	Declaration of JAMES HEUGLI 03/29/07				X		
232		X	Declaration of JAMES HEUGLI 02/20/06						
233		X	eMail correspondence between JAMES HEUGLI & TOM DELANTY 10/04 - 11/05				X		
234		X	Affidavit of JAMES HEUGLI 2/20/06				X		
235		X	NO EXHIBIT						
236		X	NO EXHIBIT						
237		X	Voicemail Transcript, S. BOYER to DELANTY						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
238		X	CD ROM containing S. BOYER Voicemail						
239		X	eMails between S. BOYER and DELANTY						
240		X	Checks written by S. BOYER in 2006						
241		X	Additional Statement of S. BOYER, Undated						
242		X	SUE BOYER Deposition 09/15/08						
243		X	eMail, SUE BOYER to DELANTY 05/22/05						
244		X	eMail, SUE BOYER to JIM HEUGLI 12/21/04						
245		X	eMail, SUE BOYER to JIM HEUGLI 12/22/04						
246		X	Two check to IRS for PERSONS UNKNOWN						
247		X	Affidavit of SUE BOYER 02/21/06						
248		X	eMail, R. BOYER to DELANTY 11/06/05						
249		X	Statement of RALPH BOYER 8/28/07						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
250		X	Deposition of RALPH BOYER 9/15/08						
251		X	Invoice for Gifts 03/11/05						
252		X	RALPH BOYER email to TOM DELANTY 11/08/05						
253		X	NO EXHIBIT						
254		X	Bellevue PD Case Report 2005-01645				X		
255		X	Bellevue PD Supplementary Report 2005-01645						
256		X	Interview of MICHAEL CATE, 10/13/08						
257		X	29 pgs. of Photos (A-Z.c.) of DELANTY Residence During Search	A	11-04-08.				
258		X	Det. Cate's Certification for Determination of Probable Cause; 06-2-01926-1 SEA; Heugli v. Delanty				X		
259		X	NO EXHIBIT						
260		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
261		X	2005 IRS DRAFT Return for T&V DELANTY						
262		X	2004 IRS DRAFT Return for T&V DELANTY						
263		X	NO EXHIBIT						
264		X	NO EXHIBIT						
265		X	NO EXHIBIT						
266		X	Comparison of Calendar Notes, Travel & Invoice						
267		X	Comparison of Invoice and Pocket Calendar						
268		X	Phone Records, DayTimer & Travel Combined RPT of Det. Hardtke 11/05/08	A	11-05-08				
269		X	All Phone Records Combined Report						
270		X	Phone Summary 1				X		
271		X	Phone Summary 2				X		
272		X	Phone Summary 3						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
273		X	Defense Interview of JIM HARDTKE						
274		X	HERB DUNCAN Phone Summary – 3,500+						
275		X	NO EXHIBIT						
276		X	NO EXHIBIT						
277		X	Letter, R. SAADE to M. LARRANGA 4/11/06						
278		X	Letter, R. SAADE to T. MAYBROWN 12/29/06						
279		X	Billing Detail for RENE SAADE						
280		X	NO EXHIBIT						
281		X	NO EXHIBIT						
282		X	NO EXHIBIT						
283		X	WSP Crime Lab Report						
284		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEA

Caption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
285		X	NO EXHIBIT						
286		X	Letter, N. HEUGLI to R. PRUNER 7/6/01						
287		X	DAIN RAUSCHER Investment Choice Agreement						
288		X	DAIN RAUSHER Commission Report and Notes						
289		X	WILLIAM BREDICE Deposition 04/10/08						
290		X	NO EXHIBIT						
291		X	NO EXHIBIT						
292		X	NO EXHIBIT						
293		X	MIKE FELDMEN Letter to N. HEUGLI 10/06/04						
294		X	Allstate Policy Change						
295		X	DAVID COX Deposition 04/10/08						
296		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
297		X	NO EXHIBIT						
298		X	NO EXHIBIT						
299		X	US Secret Service Lab Report re: Calendar Ink						
300		X	NO EXHIBIT						
301		X	NO EXHIBIT						
302		X	Letter Describing NANCY HEUGLI Vision 6/9/06						
303		X	NO EXHIBIT						
304		X	Letter From PAMELA WATSON re: DELANTY 12/9/05						
305		X	PAMELA WATSON Deposition 04/10/08						
306		X	NO EXHIBIT						
307		X	NO EXHIBIT						
308		X	WA DOL Report of Sales Receipt for Cadillac	A	11/04/08				

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
309		X	DARA HARLAN Deposition 04/10/08						
310		X	NO EXHIBIT						
311		X	BROUNS-EATON Summary of her Analysis						
312		X	BROUNS-EATON Errors/Omissions Report	A	11/13/08				
313		X	BROUNS-EATON Invoices and Payments						
314		X	BROUNS-EATON Final Invoice Report						
315		X	BROUNS-EATON IRS 2002-2005 Report						
316		X	Source Documents for EMILY Gift Analysis						
317		X	Source Documents for \$8,000 Deposit 03/02	Re- fused	11/12/08				
318		X	Source docs for 15K Muni Bond Purchase						
319		X	NO EXHIBIT						
320		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
321		X	NO EXHIBIT						
322		X	DAN RING 2004/2005 Phone Call Detail Report						
323		X	DAN RING Graph Summary of Calls	A	11/13/08				
324		X	Photographs of HEUGLI Neighborhood	A	11/10/08				
325		X	NO EXHIBIT						
326		X	NO EXHIBIT						
327		X	NO EXHIBIT						
328		X	JAMES GREEN Handwriting Report re: Gift						
329		X	JAMES GREEN Qualifications & Training						
330		X	Known Comparison Signatures used by GREEN	A	11/10/08				
331		X	Cut & Paste examination by Green	A	11/10/08				
332		X	Examination notes by Jim Green						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
333		X	HARRIETT OAKLEY Defense Interview						
334		X	OAKLEY Phone Calls with DELANTY						
335		X	NO EXHIBIT						
336		X	NO EXHIBIT						
337		X	ROBERT McCOY Undated Handwritten Statement						
338		X	ROBERT McCOY Statement to Police 7/12/06						
339		X	ROBERT McCOY Deposition						
340		X	NO EXHIBIT						
341		X	NO EXHIBIT						
342		X	Willow Gardens Client Form	A	11/10/08				
343		X	Willow Gardens Record of HEUGLI Visit 11/04/05	A	11/10/08				
344		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
345		X	Amendment of Living Trust						
346		X	N. HEUGLI Deposition Excerpt re Trust						
347		X	NO EXHIBIT						
348		X	NO EXHIBIT						
349		X	Photocopies of 2 Diskettes	A	11/10/08				
350a		X	Letter dated April 20, 2002						
350b		X	Letter dated April 24, 2002						
350c		X	Will of Nancy E. Heugli						
351		X	Documents Retrieved from Hard Drive						
352		X	NO EXHIBIT						
353		X	NO EXHIBIT						
354		X	NO EXHIBIT						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
355		X	All Recovered DELANTY/HEUGLI Invoices	Re- fused	11/12/08				
356		X	Documents Relating to Gifts						
357		X	Two IRS Payments for Persons Unknown						
358		X	Dallas/FT. Worth Trip, November, 2005						
359		X	Related to Amended Living Trust						
360		X	Miscellaneous Work Documents						
361		X	Schwab Check #142 & Related Docs						
362		X	DELANTY Check Registers						
363		X	HEUGLI 2004 Estimated Tax Payments and Credits						
364		X	Coopers & Lybrand W2 Forms for DELANTY						
365		X	DELANTY Passport Issued April 24, 1998						
366		X	Whitworth Related Documents						

Cause No. 06-1-06165-5 SEACaption: State of Washington vs. Thomas J. Delanty

No.	Π	Δ	Description	A AN R	Date	Re-O & A	I D	R et	EXHIBIT ROOM USE ONLY
367		X	Will, Trust & Codicils for BETTY HEUGLI						
368		X	Email from Susan Boyer to T. Delanty 9/08/05						
369		X	Delanty Notes used to prepare Final Invoice						
370		X	Order on Civil Motion: 06-2-01926-1 SEA Heugli v. Delanty 08/18/06				X		
371		X	Declaration of Def's Attny Scott C. Breneman re Motion /Bellevue PD re-inspection of docs. 06-2-01926-1 SEA; Heugli v. Delanty 06/08/06				X		
372		X	Defendant's Motion to Continue Deadline for Providing Accounting - 06-2-01926-1 SEA; Heugli v. Delanty 05/25/06						
373		X	Plaintiff's response to Def's Motion to Continue Deadline for Providing Accounting - 06-2- 01926-1 SEA; Heugli v. Delanty 05/30/06						
374		X	Declaration of Thomas Delanty 06/08/06 06-2-01926-1 SEA; Heugli v. Delanty						
375		X	Judge Armstrong Civil Case Stay Order 8/17/06 06-2-01926-1 SEA; Heugli v. Delanty						



# APPENDIX 3

# TAX Solutions

NEW ADDRESS:

1200 WESTLAKE AVENUE NORTH #505  
SEATTLE, WA 98109

XXXXXXXXXX  
10655 N.E. AED  
Suite 801  
Bellevue, WA 98004  
XXXXXXXXXX  
206/451-8485  
XXXXXXXXXX

DIRECT PHONE LINE: 206-298-2850

NOVEMBER 8, 1997

NANCY E. HUEGLI  
13037 N.E. 10TH STREET  
BELLEVUE, WA 98005-2604

### STATEMENT OF ACCOUNT

PREVIOUS BALANCE:	\$ 868.00
Received on Account:	(868.00)
Balance:	\$ 0
Preparation of 1995 individual Federal income tax return:	\$ 625.00
Preparation of Trust tax return for Douglas Huegli Marital Trust:	\$ 275.00
Discussions, conferences during 1996 - tax planning, estimates:	\$ 185.00
Preparation of 1996 individual Federal income tax return:	\$ 665.00
Preparation of Trust tax return for Doug Huegli Marital Trust:	\$ 295.00
Discussions, conferences during 1997 - tax planning, estimated tax payment calculations, Microsoft transfer from IRA to regular account, estate gifting, other matters:	<u>\$ 425.00</u>
Balance on Account:	<u>\$ 2,470.00</u>

002526 DSW

Thank you for your continued patronage.

Please make all checks payable to: TAX SOLUTIONS

*8/5/98 500.00*  
*7/10/98 \$1000.00*

*9*  
*500.00 total*

*6/10/98 - 420.00 pd.*  
*2000.00*  
*7/10/98 1000.00 7/10*  
*1000*  
*500.00*  
*total \$1000.*

# TAX Solutions

NEW ADDRESS:

1200 WESTLAKE AVENUE NORTH #502  
SEATTLE, WA 98109

XXXXXXXXXX  
10655 N.E. 4TH  
SUITE 801  
BELLEVUE, WA 98004  
206/451-8495  
XXXXXXXXXX

DIRECT PHONE LINE: 206-298-2850

APRIL 8, 1998

NANCY E. HUEGLI  
13037 N.E. 10TH STREET  
BELLEVUE, WA 98005-2604

## STATEMENT OF ACCOUNT

For professional services rendered including, but not limited to the preparation of your 1997 individual Federal income tax returns; calculation of your 1998 Estimated quarterly tax payments to the Internal Revenue Service; discussions concerning tax planning for 1998--Roth IRA, gifts to heirs, loans, etc.

FEE: \$ 795.00

Thank you for your continued patronage.

Please make all checks payable to: TAX SOLUTIONS

### 1997 Tax Summary:

1997 Tax Liability: \$ 48,450  
1997 Tax Withheld: - 1,197  
1997 Estimated Payments: 13,050

1997 Tax Underpayment: \$ 34,203  
1997 Underpayment Penalty: 59  
1997 Tax to Pay: \$ 34,262

### 1998 Estimated Tax Payments:

Payable each quarter:

April 15, 1998: \$4,000  
June 15, 1998: 4,000  
Sept. 15, 1998: 4,000  
Jan. 15, 1999: 4,000

DEF008310

002525 DSW



DOUGLAS P. HUEGLI  
CREDIT SHELTER TRUST  
NANCY E. HUEGLI, TRUSTEE  
13037 NE 10TH ST.  
BELLEVUE, WA 98005-2604

19-7076/3250  
1943866369

2061

DATE Dec. 31, 1999

PAY TO THE  
ORDER OF

*Prop. Solutions*

\$1245.00

*Twelve hundred - forty - five & 00/100*



Washington Mutual

Washington Mutual Bank  
Bellevue Financial Center  
P.O. Box 3707  
Bellevue, WA 98009

1-800-756-8000  
24 hour Customer Service

NOTES

*Nancy E. Huegli*

⑆ 3 2 5 0 7 0 7 6 0 ⑆ 1 9 4 ⑆ 3 8 6 6 3 6 ⑆ 9 ⑆ 2 0 6 ⑆ ⑆ 0 0 0 0 ⑆ 1 2 4 5 0 0 ⑆

BANK OF AMERICA, N.A. SEA  
125000244

0412000

5305355

⑆ 1 2 5 0 0 0 ⑆

*FOR DEPOSIT ONLY  
THE SAVINGS  
62564810*

NANCY E. HUEGLI  
13037 NE 10TH ST. 425-454-3626  
BELLEVUE, WA 98005-2604

19-7076/3250  
5033068942

2477

DATE Dec 13, 2000

PAY TO THE  
ORDER OF

Pay Solutions

\$ 1835.00

Eighteen hundred thirty five and 00/100

DOLLARS



**Washington Mutual**

Washington Mutual Bank  
Bellevue Financial Center  
P.O. Box 3707  
Bellevue, WA 98009

1-800-756-9000  
24 hour Customer Service

NOTES

Nancy E. Huegli MP

⑆ 3 250 70760 ⑆ 503 ⑆ 306894 ⑆ 2 ⑆ 2477 ⑆ 0000 ⑆ 83500 ⑆

NANCY E. HUEGLI  
13037 NE 10TH ST. 425-454-3626  
BELLEVUE, WA 98005

19-7076/3250  
5033068942

2644

DATE Jun 6, 2001

PAY TO THE  
ORDER OF

TAX SOLUTIONS

\$ 2500.<sup>00</sup>

Two Thousand Five Hundred and <sup>NO</sup> / 100

DOLLARS



**Washington Mutual**

Washington Mutual Bank  
Bellevue Financial Center  
PO Box 3707  
Bellevue, WA 98009  
1-800-756-9000  
24 hour Customer Service

NOTES

Progress Billing

Nancy E. Huegli

MP

⑆325070760⑆503⑆306894⑆2⑆2644⑆0000250000⑆

TAX SOLUTIONS  
1200 Westlake Avenue North  
Suite 502  
Seattle, WA 98109  
425-643-4100

# ( -45-

December 20, 2001

NANCY E HUEGLI  
13037 NE 10<sup>th</sup> Street  
Bellevue, WA 98005-2604

STATEMENT OF ACCOUNT

For professional services rendered including but not limited to, the following: assistance with Dain Rauscher matters and switching accounts to Charles Schwab; opening credit shelter brokerage account at Charles Schwab; analyzing capital gains and losses for 2001, assisting with executing appropriate security trades; tax planning for credit shelter and marital trusts, additional estate planning discussions over several sessions and lengthy phone conferences during the period from July to December, 2001.

29 Hours at \$195.00/Hour \$ 5,655.00

Discounted by 33% - 1,845.00

FEE: \$ 3,810.00

Please make all checks payable to: TAX SOLUTIONS

Thank you for your continued patronage.

# 2154 - C. Sch. Trust  
12-18-2001  
\$ 1410.<sup>00</sup>  
# 2809 to IRS  
1-15-2002  
\$ 2400.<sup>00</sup>

2001 EST TAXES

DOUGLAS P. HUEGLI  
CREDIT SHELTER TRUST  
NANCY E. HUEGLI, TRUSTEE  
13027 NE 10TH ST.  
BELLEVUE, WA 98005-2604

19-7076/3250  
1943866369

2154

DATE December 18, 2001

PAY TO THE  
ORDER OF

TAX SOLUTIONS

\$ 1410. ✓

One Thousand Four Hundred Ten and no

10/100 DOLLARS



**Washington Mutual**

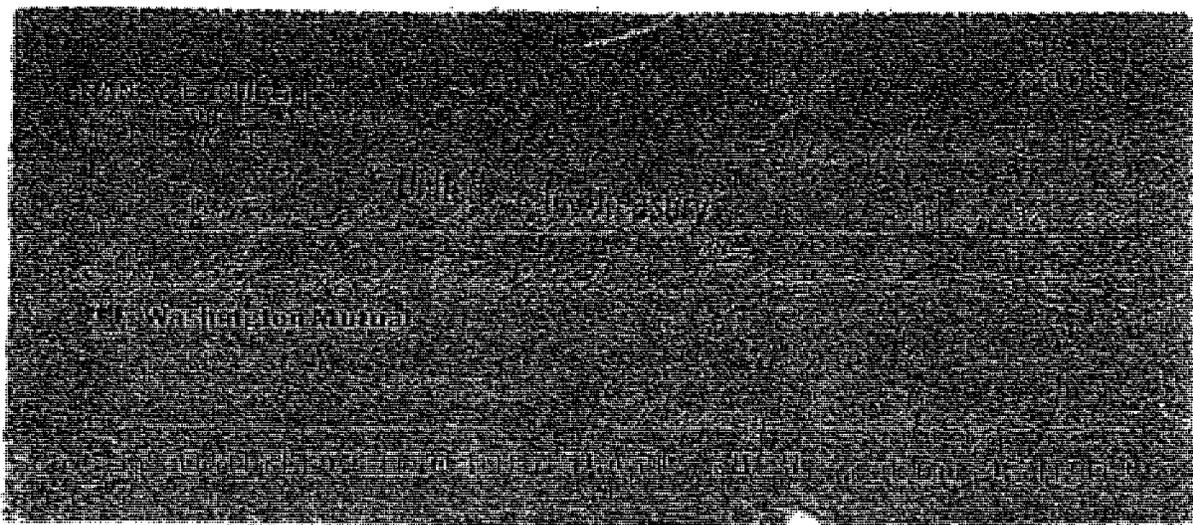
Washington Mutual Bank  
Bellevue Financial Center  
P.O. Box 3707  
Bellevue, WA 98009

1-800-756-8000  
24 hour Customer Service

NOTES

Nancy E. Huegli

⑆3 250 70760⑆ ⑆194⑆ ⑆386636⑆ ⑆9⑆ 2154 ⑆0000⑆ ⑆41000⑆



FBI SALT LAKE CITY  
0122002-1200013  
00276671001  
012402  
410200101

FBI SALT LAKE CITY  
01/25/62 1200013  
DELA2922002401500243030541726135  
200112 01172092 4471555

51166444  
Washington Mutual Bank  
Seattle, Washington  
0122002  
FBI SEATTLE  
1250-0001-1  
01/25/62

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
JAN 25 1962  
FBI - SALT LAKE CITY

55474791

TAX SOLUTIONS  
1200 Westlake Avenue North  
Suite 502  
Seattle, WA 98109  
425-643-4100

# 2 -48-

June 13, 2002

NANCY E HUEGLI  
13037 NE 10<sup>th</sup> Street  
Bellevue, WA 98005-2604

STATEMENT OF ACCOUNT

For professional services rendered including but not limited to the following matters: investment assistance for first half of 2002, assistance with banking deposits, reconciling checking accounts and investment statement, organize den office files, supervise and instruct Mary Ellen with paper filing, numerous phone conferences regarding your personal health and welfare, financial issues and estate planning, meeting and discussions with Jim.

27.5 Hours at \$195.00/Hour	\$ 5,362.50
Discounted by 33%	<u>- 1,769.63</u>
	\$ 3,592.87
Office Depot: Hanging Folders and Rack	<u>+ 12.13</u>
TOTAL DUE:	<u>\$ 3,605.00</u>

Please make all checks payable to: TAX SOLUTIONS

Thank you for your continued patronage.

6/13/02  
\$ 875.<sup>00</sup> w/ Wally  
+ 1230.<sup>00</sup> w/ Charles Schuch  
\$ 2105.<sup>00</sup> w/  
+ 1500.<sup>00</sup> w/ IIR w/ w/ (2<sup>nd</sup> Q 02)  
\$ 3605.<sup>00</sup> w/

2002 EST TAXES

DOUGLAS P. HUEGLI  
CREDIT SHELTER TRUST  
NANCY E. HUEGLI, TRUSTEE  
13037 NE 10TH ST. 425-454-3626  
BELLEVUE, WA 98005-2604

19-7076/3250  
1943866369

2215

DATE JUNE 13, 2007

PAY TO THE  
ORDER OF

TAX SOLUTIONS

\$ 875.

Eight Hundred Seventy Five and no/100

DOLLARS

**Washington Mutual**

Washington Mutual Bank  
Bellevue Financial Center  
P.O. Box 3707  
Bellevue, WA 98009

1-800-750-8000  
24-hour Customer Service

Nancy E. Huegli

NOTES

⑆325070780⑆194⑆386636⑆9⑆2215⑆0000007500⑆

12/13/2005 10:18 AM

**NANCY E. HUEGLI**  
13037 NE 10TH  
BELLEVUE, WA 98005

**SchwabOne** 112  
J-6370 150

DATE June 15, 2002

PAY TO THE ORDER OF INTERNAL REVENUE SERVICE \$ 1500.00

One Thousand Five Hundred and No/100 DOLLARS

Charles Schwab  
PNC BANK, N.A.  
Philadelphia, PA

FOR SSA-77-6135

Nancy E. Huegli

⑆031000053⑆ 7027649240⑈ 20112 ⑈0000150000⑈

FRB-PHILADELPHIA CITY  
080340788 0310-0004-0  
080340788 06-24-02

⑆12200066141⑈  
ENCREDITED TO THE ACCOUNT OF  
OF THE UNITED STATES TREASURY  
⑆SOURCE OF ENDORSEMENT GUARANTEE  
⑆MUST BE ACCEPTED WITHOUT PREJUDICE  
MILLION FINANCIAL SERVICES  
LOS ANGELES CA, MF04160

BB 2 20 172 176 91 2 341726135 017L30200212 0420

PROCESSED 3-5  
06/24/02 PK:0124261

2900552538 3702005340

Account	Serial	Sequence	Paid Date	Amount
7027649240	20112	29552538	06/24/2002	\$1,500.00

NANCY E. HUEGLI  
13037 NE 10TH  
BELLEVUE, WA 98005

**SchwabOne**

113

J-5710  
150

DATE June 17, 2002

PAY TO THE  
ORDER OF

Tax Services

\$ 1230.

On Thousands & 274/100 Dollars

Charles Schwab  
FNC BANK, N.A.  
Philadelphia, PA

FOR

Pay to her order before Nancy E. Huegli

⑆031000053⑆ 7027649240⑆ 20112 ⑆0000123000⑆

TAX SOLUTIONS  
1200 Westlake Avenue North  
Suite 502  
Seattle, WA 98109  
425-643-4100

EST  
TAXES -52-  
2002  
3Q  
#3

September 14, 2002

NANCY E HUEGLI  
13037 NE 10<sup>th</sup> Street  
Bellevue, WA 98005-2604

STATEMENT OF ACCOUNT

For professional services rendered including but not limited to the following matters: continued investment assistance, assistance with banking deposits, reconciling checking accounts and investment statements, discussions concerning Scudder and Alliance investments, assistance with Midland Bank payoff for Redmond rental house, numerous phone conferences regarding your health and welfare, financial issues and estate planning from late May through mid-September, 2002.

19 Hours at \$195.00/Hour \$ 3,705.00

Discounted by 33% - 1,205.00

TOTAL DUE: \$ 2,500.00

Please make all checks payable to: TAX SOLUTIONS

Thank you for your continued patronage.

#2223 Credit Sh. Trans  
\$2500.00 ✓  
9-15-2002

DOUGLAS P. RUEGLI  
CREDIT SHELTER TRUST  
NANCY E. RUEGLI, TRUSTEE  
13007 NE 10TH ST. 424-451-7629  
BELLEVUE WA 98005-2104

2223

September 15, 2002

Indian River Service S.I. Sta. 2  
Two Thousand Five Hundred and 1/100

Washington Mutual

541-72-6135

Nancy E. Ruegli

1:3250707601:94-38863E-98 2223 0000 250000

CREDIT TO THE ACCOUNT OF  
FEDERAL RESERVE BANK  
RESERVE OF FEDERAL RESERVE BANK  
PAID TO THE ORDER OF THE  
WESTERN FINANCIAL SERVICES  
LOS ANGELES CALIF 9001100  
(2200061)

4307641  
Washington Mutual  
Seattle, WA

TAX SOLUTIONS  
1200 Westlake Avenue North  
Suite 502  
Seattle, WA 98109  
425-643-4100

# 454-

November 11, 2001

2002

Betty Huegli  
13037 N.E. 10th Street  
Bellevue, WA 98005

INVOICE

For professional services related to the preparation and calculation of your 2001 personal Federal income tax returns, related schedules relating to the Credit Shelter Trust and the Marital Trust; other matters from August 1, 2002 through November 11, 2002.

Fee: \$845.00

Please make all checks payable to: TAX SOLUTIONS

2001 Tax Summary:

Tax Refund: \$248.00

000357 DSW

DOUGLAS P. HUEGLI  
CREDIT SHELTER TRUST  
NANCY E. HUEGLI, TRUSTEE  
1801 NE 10TH ST. 425-454-3626  
BELLINGHAM, WA 98005-2604

19-7076/3250  
1943866369

2232

DATE ~~November~~ 12, 2002

FOR THE TAX SOLUTIONS \$ 845.<sup>00</sup>  
OF Eight hundred forty five <sup>no</sup> / 100 DOLLARS

Washington Mutual

Washington Mutual Bank  
Seattle Financial Center  
PO Box 3707  
Seattle, WA 98103  
1-800-156-8000  
24 Hour Customer Service

*Nancy E. Huegli*

NOTES

⑆ 3 250707601 194 386636 9 2292 ⑆ 0000084508 ⑆