



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Solicitor General Division
PO Box 40100 · Olympia · WA 98504-0100 · (360) 753-6200

May 19, 2005

The Honorable John E. Bridges
Chelan County Superior Court
Department No. 3
401 Washington Street
Wenatchee, WA 98807

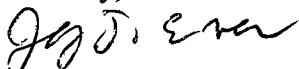
Re: *Borders v. King County*
Chelan County Superior Court No. 05-2-00027-3

Dear Judge Bridges:

By a series of letters to the Court, Intervenor and Petitioners have expressed various views as to the timing of a "Frye" hearing into the admissibility of expert testimony at trial. Intervenor urge this Court to schedule the hearing at the beginning of trial, "even before opening statements." Letter from Kevin Hamilton to the Court, dated May 13, 2005. Intervenor reason that such a hearing may affect the presentation of subsequent evidence, and "reflects the possibility that it will make the rest of the trial unnecessary." Letter from David J. Burman to the Court, dated May 17, 2005. Petitioners respond that conducting a hearing at the commencement of trial would necessitate requiring experts to travel to Wenatchee twice and testifying twice. Petitioners therefore suggest that any challenge to the admissibility of expert testimony should be brought at the time of their testimony during trial.

Respondent Secretary of State respectfully concurs with the views of Petitioners. Time for conducting this trial is limited, and Petitioners' approach would make the most effective and efficient use of that time. The Court should, to the extent possible, avoid requiring witnesses to testify more than once. This observation applies to lay witnesses as well as to experts but supports Petitioners' view that any challenge to the admissibility of expert testimony should be considered when those witnesses testify.

Sincerely,


Jeffrey T. Even
Assistant Attorney General

Thomas F. Ahearne
Special Assistant Attorney General

Counsel to Respondent
Secretary of State