

The Clause

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BCABA

1996 Annual Program & Meeting Review



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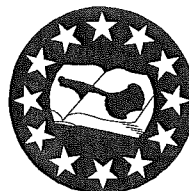
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PRESIDENT'S COLUMN

By James F. Nagle

Oles, Morrison & Rinker, Seattle, Washington



James F. Nagle

At the outset, let me publicly thank Jim Dobkin and Laura Wessells of Arnold & Porter for their Herculean efforts in organizing our superb annual meeting. Thank you also to our speakers and moderators, all of whom were outstanding!

These are exciting times to be government contract lawyers. Not since 1984-1985 have we had such fundamental shifts in our area of expertise. Back then, the Competition in Contracting Act and the inauguration of the Federal Acquisition Regulation forced us to re-think many of our old beliefs and strategies. The same thing is happening now with FASA, FARA, Reflectone, and similar developments. To say this area of the law is dynamic is an understatement. The ground is shaking beneath our feet. Not only are the rules changing, but so are the players. Jurisdiction has been taken away from the General Services Board of Contract Appeals for bid protests, but at the same time the jurisdiction in that area has been expanded for both the United States Court of Federal Claims and the U.S. District Courts. The contractors are changing, too. Mergers, acquisitions, and bankruptcies are drastically changing the competitive marketplace.

Dispute practice before the Boards of Contract Appeals has been a relative oasis of calm during all of these sea changes. Most of the congressional attention has been directed towards contract formation, and much less has been directed to contract administration and termination. Nevertheless, the underlying current that has caused many of these changes is something that all of us who practice before the boards and serve as board judges must realize. Congress recognized that many people were simply unhappy with the government contracting practice and refused to participate in it. Large, commercially successful vendors of computer equipment or other commercial supplies and services simply refused to take a government contract, and thereby expose themselves to a mass of confusing regulations, clauses, provisions, specifications which had drastic criminal, civil, administrative and contractual repercussions. Such contracts have transformed the boards into exactly what they were designed to avoid. The Boards of

Contract Appeals were created to provide quick, inexpensive methods of resolving contract disputes. Now we are as slow, expensive and wrapped with as much red tape as many courts because we can only reflect the contracts that we litigate. Those contracts which, a few decades ago, were relatively short, now have grown into behemoths with a commensurate body of jurisprudence to interpret these behemoths.

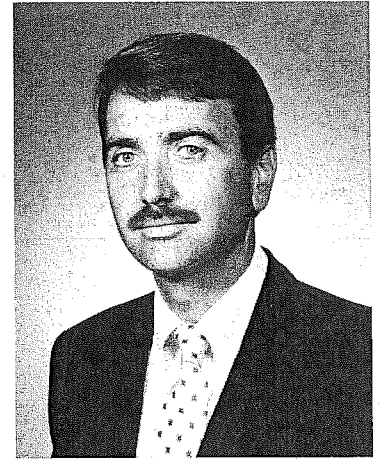
Because of that, Congress truly has streamlined the process, especially for commercial items. They have streamlined the protest system and they have provided faster tracks for small claims before the Boards of Contract Appeals. The underlying problem, however, is still up to us to solve. We must make our process (I emphasize that it is our process) more efficient. We must stop using "legal pyrotechnics" to badger the other side. We must make greater use of prehearing briefs (*see* my article in this issue) stipulations, ADR, or motions for total or partial summary judgment to force a side to take a comprehensive and logical view of the evidence and then settle the matter or discrete parts of it so that those witnesses needed for those parts or those questions to numerous witnesses become unnecessary.

Because of FASA, counsel before the Boards now will have a greater obligation to inform the Boards of the law. Traditionally, the law has been typical government contract law on which the Board judges are extremely well-versed. Now, however, with the emphasis on commercial contracting, especially the new rules in FAR part 12, state decisions interpreting the Uniform Commercial Code will be more important than ever before.

I hope that FASA and its progeny will give us an opportunity to return to our original purposes: to provide a quick, relatively informal, or relatively inexpensive method of resolving disputes based on contracts that are measured in terms of millimeters, not linear feet.

EDITOR'S COLUMN

Professor Andre Long, CPCM
Air Force Institute of Technology



Andre Long

As a Federal Government employee with a limited budget available for "professional development", I have to select my conferences very carefully. For me, this year's annual meeting and program was another outstanding value from the BCABA and well worth the trip from Dayton. Jim Dobkin of Arnold & Porter put together an excellent mix of speakers, panels, and food! We all owe our thanks to Jim, Laura Wessells, and the conference speakers for a well thought out and meaningful conference. I also owe special thanks to Rocco Maffei and his committee for their work in the selection of the "Best Article of the Year Award" which was presented at the annual meeting. The winners were Pete McDonald, Dave Metzger and Steven Gordon for their contribution in the September, 1996 issue of "The Clause" entitled The DIVAD Decision, Another Scanwell Sea Change or Merely a Torncello Ripple? The annual meeting concluded with the election of three new members to the BCBA Board of Governors. They were James Dobkin of Arnold & Porter, James Hughes of Patton & Boggs, and myself. We will all serve a term of three years.

OTHER NEWS

The Department of Energy, Board of Contract Appeals, has recently published a Notice of Proposed Rulemaking which

deals with amending its proceedings and function. For details, refer to the Federal Register, Vol. 61, No. 211, Wednesday, October 30, 1996, issue. The Board is actively soliciting comments and would welcome those of the BCABA along with those from law firms and individual attorneys associated with the BCABA. Their address is 4040 N. Fairfax Dr., Rm. 1006, Arlington, VA 22203 and can be reached at (703) 235-2700, fax (703) 235-3566.

For all you ADR fans, President Clinton signed into law on October 19, the Administrative Dispute Resolution Act of 1996. This law permanently authorizes the use of ADR by Government agencies, permits the use of noncompetitive procedures in acquiring the services of ADR neutrals, authorizes the use of donated services from local, state and tribal governments, and eliminates the certification requirement for claims under \$100,000. The Act also creates an exemption from disclosure under the Freedom of Information Act, records, documents, and other information obtained during an ADR proceeding and eliminates the right of an agency to opt out of an adverse arbitration decision.

SCANDAL!!!

At the Annual Meeting on October 23rd, the BCABA officers and Board of Governors, after considerable discussion and debate, approved the raising of the dues. The \$25 dues, which had never been raised before, will be raised starting next fiscal year (FY 98). In the opinion of the BCABA leadership, it was important that increased dues not cause us to lose our government members, a fate that has largely befallen the ABA. Accordingly, annual dues will be raised effective 1 October 1997 to \$30 for members employed by the government and \$35 for all other members.

This really isn't a scandal, but that headline was used to draw your attention to this development. However, we are very receptive to any scandalous information you can provide (particularly anything on Pete McDonald). We are so lame in that department that our last scandal was when one of our officers had some overdue library books -- and that was in 1989.

SOME THOUGHTS ON PREHEARING BRIEFS

By James F Nagle
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The rules of all the Boards address prehearing briefs. For example, Rule 9 of the Rules of Practice of the Armed Services Board of Contract Appeals states:

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any matter in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

The ENGBCA, the PSBCA, the AGBCA, the IBCA, the VABCA and the LBCA all have similar rules. The EBCA has a shortened version in its Rule II:

The Board may, in its discretion, require the parties to submit prehearing briefs in any case or motion. If the Board does not require briefs, either party may, upon timely notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be submitted so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party.

The same rule is applied at the DOTBCA. Although shorter than the ASBCA version, it does not differ in any marked substance.

The GSBCA has the most unique rule. Its Rule 110(d) states that "a party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which the first record submissions are due." So the GSBCA does not require the 15 days that the other Boards require. This makes sense, and in practice most Board judges will not demand a strict 15-day rule, primarily because no Board judge, in my experience, is checking the mail every day with baited breath for the prehearing briefs. If a judge will not get around to reading it until a day or two before the hearing, there is not much sense in requiring that it be submitted 15 days before.

However, if the judge wishes to use it as a settlement tool, the 15-day rule makes sense. If a judge requires the parties to submit their prehearing briefs 15 days before and then to meet several days before the hearing to decide upon what facts in each other's prehearing brief they agree with, and to enter that as a stipulation, that should drastically shorten the time for hearing and focus the hearing on exactly those things that are truly in dispute.

So, under the rules of the various Boards of Contract Appeals, prehearing briefs are neither prohibited nor mandatory. They are left to the discretion of the individual judge. Personally, I've never had a Board judge who has refused to accept a prehearing brief. A typical response is: "If you want to do one, counsel, fine." What they may do, however, is exact a promise that would be in lieu of an opening statement. I always happily give that concession. Since there are no juries in the Boards of Contract Appeals, I think a comprehensive prehearing brief is far more effective than an often very abbreviated opening statement. Also, a prehearing brief has the added benefit that the judge can refer back to it periodically during the hearing and, especially on the airplane flight home when I have known some judges to begin writing the decision.

Make sure, however, that the brief will be read before the hearing. Certainly any judge will at least scan the matter once they receive it, but receiving it is the issue. Don't just send a brief to the Board two or three days before the hearing date. I've had prehearing briefs that were simply sent to the file, and the judge did not see it before he or she left to travel to the hearing. Or more frequently what happens is that the judge has been on travel and may not have been at the Board for three or four weeks. So in discussing the submission requirements, find out the best way to get it to the judge in time for the judge to read it. Also, as a safeguard, find out what hotel the judge

is staying at and have a copy there waiting for him or her.

Prehearing briefs work especially well at the Boards because of the Rule 4 file. The Rule 4 file allows counsel to refer to the important documents not only by content but by tab number so the judge can easily follow the statement of facts. Although the documents in the Rule 4 file would not have been formally admitted into evidence prior to the hearing, almost certainly all but a few documents will be. If some documents are objected to and are not received into evidence, that would not affect the tab numbers for the others.

There are four advantages to preparing a prehearing brief. First, it forces you to organize your thoughts and present them in a logical, chronological manner. Second, it gives you a road map that you can provide to your witnesses so they can see where their testimony fits into the entire process. It is extremely helpful in preparing them, not only for their direct testimony, but it also enables them to understand what types of things they may be cross-examined on. If you decide not to provide a prehearing brief to the judge and the other side, make sure that you do not let the witness keep a copy; otherwise they may be forced to disclose this during the hearing. Third, it educates the judge as to the case far better than any opening statement would and far better than the pleadings would. As Judge Parrette stated in the last issue, pleadings are almost useless for giving any real understanding of what the case is about. Because pleadings are prepared so early in the process, the pleading drafters have not had the opportunity to review the other side's documents or to depose their witnesses. The fourth advantage is that often a prehearing brief will encourage settlement or severely limit the amount of items to be litigated. On two occasions I've had opposing counsel stop me before the first morning of the hearing to tell me that they were either conceding entitlement or they were now willing to admit to certain errors that they had not previously been willing to admit to.

One disadvantage is that prehearing briefs are extra work to prepare at a time when counsel will normally have enough things

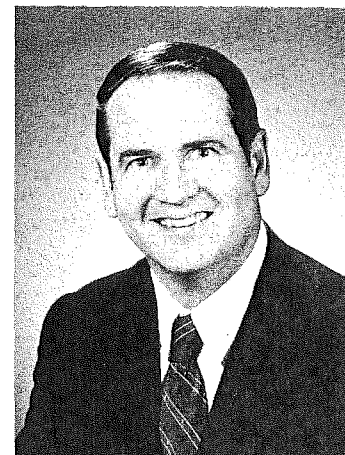
to do. Most of the effort is going to be spent anyway, just in getting witnesses ready for trial and learning what the case is all about; but writing this extra document does involve extra work. True, it will certainly give you a leg up in writing the post-hearing brief, but that may not fully counterbalance the extra work. Secondly, and this is what concerns most people, it gives the other side a preview of your case. Actually, I think this disadvantage is highly overrated. After reading the claim, looking at documents, depositing your witnesses, and reviewing your supplement to the Rule 4 file, if the other side does not already have a pretty good idea of what your evidence is going to be and your theories, then even submitting the prehearing brief in great neon lights wouldn't help. Furthermore, normally the prehearing brief will not be submitted until just a few days before the start of the hearing, so there may not be much time for them to change plans.

Two appendices you may want to consider with the prehearing brief are a cast of characters and a glossary. Board judges are the same as any judges with one major exception. They travel a lot more, so the prehearing brief, or for that matter any brief, may not be read in their chambers but on an airplane, in the airport, or in a hotel room and not all in one sitting. Furthermore, government contract cases often involve linear feet of documents covering contract matters that have gone on for years as opposed to a bank robbery that is consummated in a few minutes. For that reason, a cast of characters appendix may be helpful in which you list various individuals and their role in the process; for example, that John Smith was the initial industrial specialist and Dorothy Brown was the steel supplier. A similar appendix can be a glossary of any technical terms or places that will occur throughout the process.

In summary, a prehearing brief serves two distinct purposes. It is a disciplined method of organizing your case before hearing in the most logical and comprehensive manner. Second, it is a tremendous advocacy tool to educate the judge and to convince the other side to settle or concede errors.

THE WITNESS MATRIX

by
Peter A. McDonald



Peter McDonald

This article is written for government contract litigators. Civil litigation practices vary widely, from patent infringement to personal injury. Government contract litigation is a distinct species of civil litigation, typically characterized by a considerably larger volume of documentation, a greater number of witnesses on each side, and not uncommonly, unusual technical exhibits. These attributes place a heavier burden on the organizational skills of the litigator. It follows that the better organized government contract litigator enjoys a tactical advantage over his opponent.

All attorneys seek to get ahead and stay ahead of their opponent in mastering the evidence. So how should a litigator stay organized? Of course, there is no one way, and each attorney employs a different technique.

One organizational tool I found to be effective is the witness matrix. Discussed in greater detail below, a witness matrix enables a litigator to know at a glance while a witness is testifying the Rule 4 exhibit(s) related to that testimony.

The construction of a witness matrix is begun by listing all the witnesses on each side. (From habit, I preferred to list the contractor's witnesses first because they usually appeared first.) This list makes up the vertical axis of the matrix. The horizontal axis is a list of *each and every document* relating to that witness. This is done as part of your trial preparation, and requires a tab-by-tab, page-by-page review of the Rule 4 file. (I never said it was going to be easy.) This should result in a series of numbers after the name of each witness, each number representing a tab of the Rule 4 file. Not surprisingly, some witnesses will have more numbers after their

name than others. However, the matrix is not yet complete.

The Rule 4 documents relate to each witness in a different ways. For example, one document might be a summary of a meeting a particular witness merely attended. Another tab might have a letter authored by that witness in which an opinion was expressed on a crucial issue in the case. Still another document might pertain to the contracting officer's final decision (or the contractor's claim). To be of value to the litigator, the matrix must reflect not only which documents in the Rule 4 file relate to a witness, but how they relate.

Again, there are many ways this can be accomplished. Being a creature of habit, I developed a series of symbols and used them repeatedly. The systematic use of these symbols enabled me to know exactly what I needed to know about a particular document with just a quick look at the matrix. However, because I was the only one who understood the meaning of the symbology, my witness matrix was unusable by co-counsel (or others on my trial team) without an explanatory legend. In large cases where I had co-counsel, reviewing and understanding the witness matrix was an additional necessary step in pretrial preparation.

A simplistic witness matrix is shown in the table below. This table only shows which Rule 4 documents relate to each hypothetical witness, but it does not indicate how they relate.

Table 1
Appeal of Acme Bolt

Witness	Vol. 1	Vol. 2	Vol. 3	Vol. 4
Jim Nagle	3, 15, 16, 22	35, 38	-	-
Cheryl Rome	2, 3, 8, 9, 11, 21	-	44, 45, 53, 55, 58	63, 65, 68
Dave Metzger	-	-	44, 45, 53, 54, 58	65, 72
Barbara Wixon	2, 3, 8, 9, 16, 21	30, 32, 33, 35, 38	44, 45, 53, 55, 58	64, 65, 68, 72

Even this table reveals something about the involvement of the witnesses in this appeal. Jim Nagle (a hypothetical person) only appears to have some activity at the beginning of the dispute. On the other hand, Dave Metzger (a very hypothetical person) does not come on stage until the weeks before the final decision is

rendered. Barbara Wixon (another well-known hypothetical person) clearly is involved throughout the process. Cheryl Rome (a popular hypothetical person) appears to be a corroborative witness because her documents mirror those of the other witnesses.

To make this table a witness matrix, and thus an effective trial tool for the litigator, the significance of each document must be indicated. An elementary example of this is shown in Table 2.

In this matrix, “+” indicates that the witness authored that document. An asterisk signifies a meeting about an issue that later became part of the appeal. An exclamation point denotes a document that contradicts the position taken by that side. For example, assuming the hypothetical witnesses were government employees, Jim Nagle apparently authored a document at tab 38 that contradicts in some way the position taken by the contracting officer. It is also apparent that after he did so, he was excluded from further involvement in the dispute (so let that be a lesson to you, Jim! !!). An underlined number merely shows that the witness approved the document in question.

I eventually developed a large number of symbols, and this methodology is highly suitable for “create-your-own” styles. I always squared the tab number of the contracting officer’s final decision, and I circled the tab number of the claim. Documents that related to the final decision or the claim would have a small square or circle as an exponent. I even got into color coding various

issues, so that documents relating to one technical dispute would be in blue, another technical issue would be in red, and so on. Also, to tie in all the documents on a crucial occurrence, I would draw a continuous line connecting the numbers from one witness to the next. These lines would snake their way down the page. Practitioners will undoubtedly develop their own techniques and practices, but the witness matrix methodology is basically the same.

Trust me, a witness matrix can dramatically distinguish the presentation of your case. During one lengthy hearing with over a dozen witnesses on each side, I was repeatedly able to rapidly find pertinent exhibits during the testimony of the witnesses. My opposing counsel, who was never very organized, requested short recesses over and over again to locate a particular document. Without question, this incessant floundering impaired his presentation of his unsuccessful case. True, the case was lost on the substantive merits, but the inability to effectively present the appeal did not help.

Now that you know how to build one, you should routinely add a witness matrix to your trial preparation arsenal.

Table 2
Appeal of Acme Bolt

Witness	Vol. 1	Vol 2.	Vol. 3	Vol. 4
Jim Nagle	3*, 15+, <u>16</u> , 22	35+, 38+!	-	
Cheryl Rome	<u>2</u> , 3*, 8+, 9+, 11, 21*	-	<u>44</u> , <u>45</u> , 53*, 55*, 58*	63+, 65*, <u>68</u>
Dave Metzger	-	-	<u>44</u> , <u>45</u> , 53*, 54+, 58*	65*, <u>72</u>
Barbara Wixon	2+, 3*, <u>8</u> , <u>9</u> , 16+, 21*	30+, 32+, 33+, <u>35</u> , 40+	44+, 45+, 53*, 55*, 58*	64+, 65*, 68+, 72+

ASSOCIATE MEMBER BRIEF

by Leigh C. Martin
Chair of the Practicing Associates Committee

Paralegal Practice in Government Contracts

Paralegals, if properly utilized, represent a potential profit base and means of facilitating the growth of a practice. There are many opportunities for paralegals to expand their role through practice and training. There are also many opportunities for attorneys to take advantage of this affordable resource and offer the training and challenges necessary to develop paralegal team members to their fullest potential. The rewards of this commitment come in the ability to offer services to a wider range of government contracting clients. This article sets forth various ways which attorneys can and do use paralegals in different areas of the practice. All of the work discussed below should be performed under the supervision of an attorney.

Research

Paralegals can provide valuable assistance to the attorney in researching legal and factual issues in support of critical arguments. Paralegals can serve a dual role as capable researchers and investigators into legal and factual issues. In order for paralegals to become valuable assistants in these areas they should be trained in the utilization of computer research skills as well as traditional research skills. Using an in house resource such as a paralegal to do investigative work is also a way to insure the confidentiality of protected and proprietary information. This research and investigative work can involve simple case and statutory research, internal agency policy research, factual research of case related documents or other resources, or even more complex legal and factual research, depending on the skill level of the paralegal.

Researching the opposing parties experts is another task appropriate for paralegal assignment. Researching articles and other written work of these experts as well as researching any client work or cases in which they have been involved, will assist in determining their credibility and expertise levels and development of objections to experts. This is especially true in GAO protests where access to client proprietary information is an issue.

Formulation of Pleadings

Utilizing computer research and traditional research skills is also required when a paralegal is tasked with assisting the attorneys in the drafting, cite checking and finalizing of case pleadings. Since paralegals are billed at a lower rate than attorneys, it is effective to have the paralegal handle some of the initial drafting tasks; in the case of interrogatories and document requests it can be very cost effective to have the paralegal prepare the initial draft for attorney review and revision. Many paralegals possess superb proofing and editorial skills and can contribute an additional layer or level of quality to the work product generated. Redaction of protected documents and pleadings can be a time consuming and detailed task. Paralegals can be a very efficient resource to use in assisting to prepare the appropriate proposed and final redacted versions of pleadings, especially in protests before the General Accounting Office ("GAO").

Experts

Paralegals can also handle the investigative task of locating experts for use as witnesses and consultants. This again can involve the utilization of computerized research skills as well as traditional research skills to identify and locate the appropriate expert or consultant by accessing news databases, expert location services on the internet, publication databases, industry associations, or headhunter or consulting services that have a stable of people available. Before the paralegal contacts these resources they should be armed with enough knowledge of the legal, technical and factual information regarding the issues to be analyzed by the potential expert to allow them to communicate the case needs and make the first cut on candidate qualifications during phone interviews. The key to effective use of the paralegal in these and other areas depends on making the paralegal part of the litigation team and keeping them involved and informed of important legal and factual developments in the case.

If classified materials are part of the record it will be necessary to acquire the appropriate information from the expert(s) to reactivate prior clearances.

Discovery

For actions being pursued at the Boards of Contract Appeals or the courts, it is beneficial for the paralegal to be familiar with the appropriate rules of procedure. Discovery of documentary evidence may involve a significant amount of document review, an area of responsibility in which most litigation paralegals are well versed. It is, therefore, cost effective to tap this resource for such projects.

As mentioned earlier paralegals are an efficient choice for assisting in the drafting of discovery pleadings such as document requests and interrogatories. Another area where paralegals can be a very cost effective tool is in the review of documents and preparation of witness outlines in preparation for depositions. This also increases the paralegals knowledge and usefulness in assisting in preparing the case and case pleadings.

Deposition digesting can be a very tedious and time intensive task that is most efficiently done by paralegals. It has often been considered a drudgery task, but paralegals should realize the value of this task in growing their knowledge of the case, which can then be applied in pleading practice and trial or hearing preparation. With the advent of full text databases designed to give quick access to such materials as pleading and depositions, the job of digesting, summarizing, indexing and issue tracking have been made much easier. Paralegals should keep abreast of the developments in this area and take advantage of any training available on such databases.

Protective Orders and Classified Materials

In any matter involving a protective order, whether it be an action before one of the Boards, a GAO action or a court action, it is necessary to guard the protected materials and information to maintain that status. If classified documents are involved in the case it will be necessary to coordinate access with the agency and with the parties. Shawn Cummings, a paralegal with the Department of the Air Force, has a significant role in managing the exchange of classified materials as well as the coordination of clearances for those who need access to classified materials relative to protests involving Air Force programs. She reports that "the handling of classified materials requires a much higher level of care than that required for other types of materials."

Proper treatment of protected materials in any case involving a protective order is an appropriate task to be delegated to the paralegal since one of the main things they are responsible for is document management.

Document Maintenance

As indicated above this is an area that has traditionally been delegated to paralegals, due to the significant amounts of time and materials it involves. In larger cases a team of paralegals may be needed to manage the documentary evidence involved. Paralegals should become proficient in the use of document management databases. This will maximize their effective searching and utilization skills. Since such databases are much more affordable, user friendly and flexible, it is becoming more cost effective to use them for smaller cases, not just for the "monster" cases. There will

also need to be a manual access filing system created for these materials. As part of the paralegals role in document management they should keep track of any proprietary client materials and any additional working copies of those materials to insure the confidentiality of protected materials.

The Rule 4 file in a Board appeal or protest poses a unique challenge to the paralegal charged with knowing and managing the documents. Debra Corr, a paralegal at Holland & Knight, says that "making sure the Rule 4 file is complete is a very time consuming, detailed and necessary function in a Board protest or appeal. This can involve confirming that the file contains all documents referenced by others in the file, and all documents submitted by the parties." Since detailed indexes are not always provided, some organization and indexing may be done at the same time. Going through this confirmation process gives the paralegal an intimate knowledge of the documents and facts involved in the case, which makes them a valuable resource in preparing the case. A similar task is required in GAO protests, excluding the organization and indexing functions.

Exhibits and Demonstrative Evidence

It may be determined that exhibits and/or demonstrative evidence is an effective way to present portions of the case. To free the attorneys at hearing, the paralegal(s) can manage and run whatever system is used for demonstrative evidence. Juliet Heimberg, paralegal at Holland & Knight, commented that "[we] found the laser disk presentation and system we used in our [Board] appeal to be an effective and unintrusive method to present the complex and very visual information we needed to present to the Board." With the computer expertise and knowledge of the documents possessed by the paralegal, they represent a cost effective resource to handle the analysis of data needed to develop exhibits for inclusion with pleadings or for use at a hearing or trial.

Utilizing spreadsheets, desktop publishing and video presentation technology will assist the paralegal in preparing and creating exhibits and demonstrative evidence. Some of the more advanced presentations will have to be done using outside services, but once again, to preserve the protected or proprietary information it can be very effective to use in house resources such as paralegals for these projects whenever feasible.

Trial/Hearing Assistance

At the stage that the trial or hearing occurs the paralegal should have amassed a significant amount of knowledge about the case and therefore represents a great resource for support during this phase of the case. Since the attorneys will be occupied with their presentations at trial it is very effective to have the paralegal there to organize and maintain the exhibits designated for possible use. This will insure there is a smooth running presentation with little fumbling and searching for documents, deposition testimony and the like. Part of this support effort should be to maintain a complete log and set of the exhibits used at the hearing or trial and take notes, keeping track of hearing testimony relative to the pertinent issues.

If classified materials will be used the paralegal can insure the proper handling and access to those materials when needed.

Post Trial/Hearing

In Board appeals an appropriate party may apply for an award of costs within 30 days of final disposition, including, if applicable, an award of attorneys fees. The same is true in GAO protests where, if the decision is to sustain the protest and the client is granted protest costs or other costs, it is necessary to prepare a Certified Claim for Costs in the requisite 60 days from the date of the decision. In court actions a fee petition must be filed. In all of these cases, the paralegal can work with the client and the billing attorney to gather the required information to support the claim for costs and draft the initial claim document.

Where costs are granted, the first step is to determine what the client feels are their appropriate internal costs. The client should be made aware of the time line for developing and producing supporting documentation for the claim. A summary schedule is a useful item when filing with an agency. The legal bills should be reviewed to determine if there are areas that are not appropriate for inclusion in the claim. The paralegal should make sure that any applicable fee caps for experts and/or attorneys are applied when calculating the claim. In GAO protest matters, the earlier the claim for costs is submitted the better. This gives the agency open up negotiations well before the deadline for submission.

Compliance

When a government contract has been awarded and all protests, etc. have been dismissed or resolved, there may be the need for compliance work in order to assist the client in meeting their obligations under the contract. In such situations the paralegal

role may involve such responsibilities as: 1) reviewing the contract and proposal or Best and Final Offer ("BAFO") for compliance items; 2) charting compliance issues/promises, actions required, applicable time lines and deadlines and tying them to the contract documentation; 3) reviewing the contract(s) for subcontracting flow down clause requirements; 4) charting flow down clauses by level of requirement; 5) assisting in drafting of subcontracts with appropriate language and clauses; 6) researching cases, regulations and statutes regarding compliance questions; and 7) assisting in assembling and inventorying costs accumulated under the contract.

Legislative

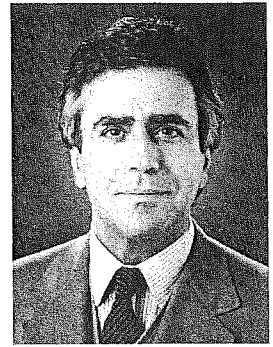
It can take significant time and persistence when tracking legislative documents and issues. The most cost effective way to handle this is assignment to a paralegal. This may also involve the analysis of proposed bills and the comparisons of bill language with former law and other proposed bills.

CONCLUSION

The more involved the paralegal is on the government contracts team the more useful and productive the paralegal will be as a team member. The proper utilization and training of a paralegal for your government contracts practice can prove a great resource to your practice from a financial and productive standpoint. The Paralegal in a government contracts practice bears the responsibility for taking advantage of training opportunities. Paralegals as much as lawyers must be ready and willing to take advantage of the great training resources available in the government contracts industry.

BCABA ANNUAL PROGRAM HIGHLIGHTS

by James A. Dobkin
Arnold & Porter



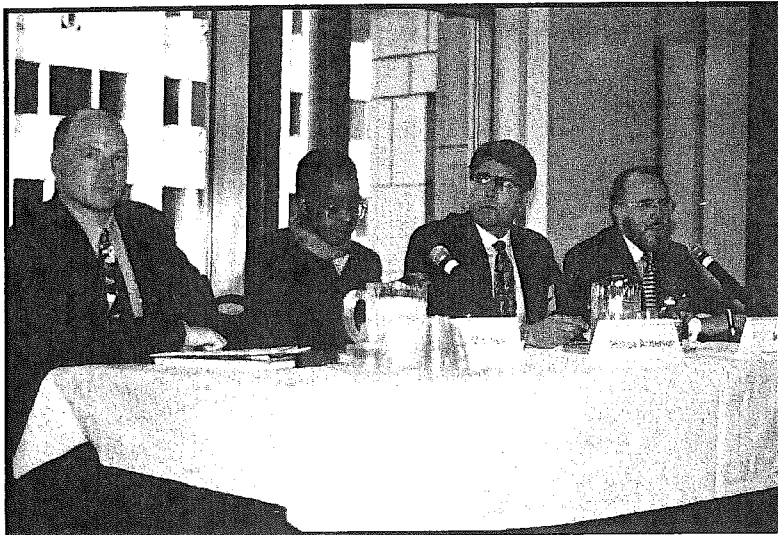
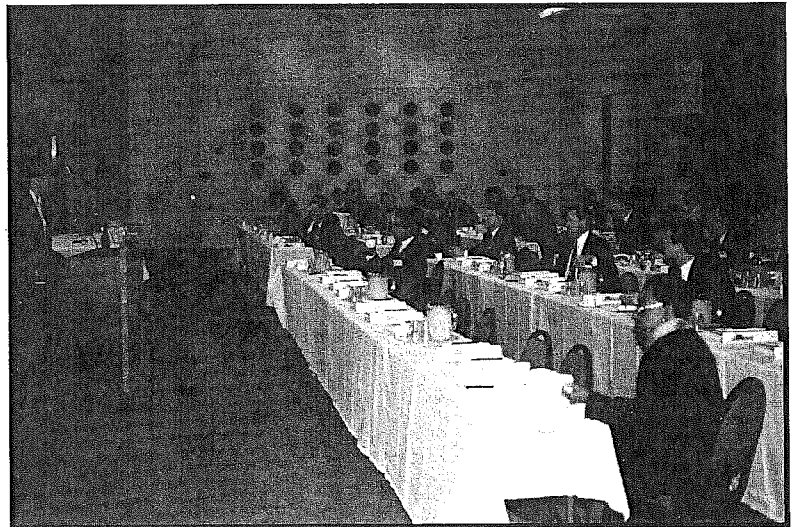
James A. Dobkin



The momentum created by Judge Daniels' remarks was maintained very well by the panel discussion that followed. Rand Allen, of Wiley, Rein & Fielding, moderated "The Dark Side: Unintended Consequences of Procurement Reform." The panel, consisting of Marshall Doke, of Gardere & Wynne, and Colonel Levator Norsworthy, Jr., Chief Counsel of U.S.

The weather was more cooperative this year for the BCABA Annual Program and Meeting held on October 23 than it was last year. The Program, which was held this year at the offices of Arnold & Porter, was designed to be provocative, if not somewhat irreverent, in challenging a number of recently generated procurement shibboleths. I believe we achieved our objective.

After a welcome by Laura Kennedy, President of the BCABA, Steve Daniels, Chairman of the GSBCA, kicked off the session with our second annual "State of the Boards" address. Judge Daniels set the tone of the program perfectly by critically examining a number of fundamental changes that were recently made to the federal procurement system.



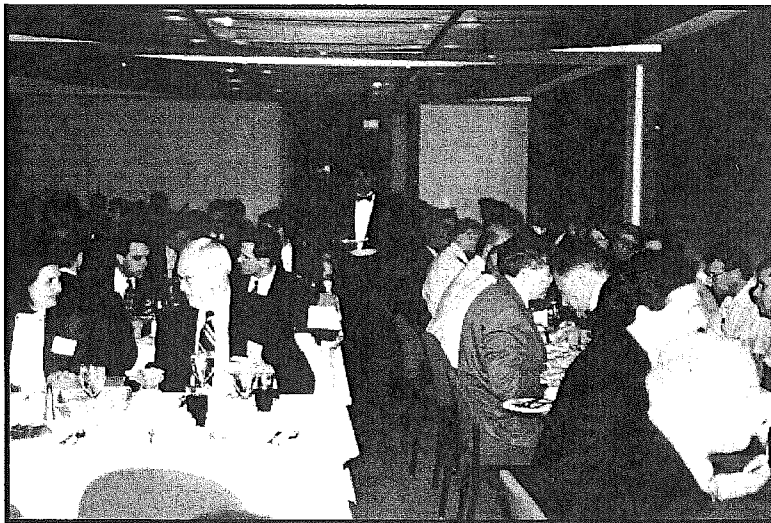
Army Information Systems Selection and Acquisition Agency, explored a number of the major procurement law reforms recently made or proposed. Marshall and Rand took issue with the philosophy underlying many of the major revisions and Colonel Norsworthy gave his own view of the changes.

The second panel examined another recent development of significance to BCABA members. Chip Mitchell, General Counsel of John J. Kirlin, Inc., moderated "Litigation Avoidance: Will the Boards -- and the Disputes Lawyers -- Suffer the Fate of the Dinosaurs?" Chip's panel, consisting of ASBCA Judge Sandy Younger, Phillipa Anderson, Assistant General Counsel, Department of Veterans Affairs, and Joe West, of Arnold & Porter, discussed dispute resolution or avoidance alternatives to litigation that construction contractors and the government agencies with whom they contract have been pursuing of late.

We then broke for lunch during which we were addressed by Circuit Judge Paul Michel of the U.S. Court of Appeals for the Federal Circuit. In a stimulating and informative presentation, Judge Michel provided his valuable insights into the appellate process and how we contracts practitioners can more effectively litigate before the Federal Circuit.

Following lunch, Dick Duvall, of Holland & Knight, moderated a reprise of the panel "Litigation Tactics, Techniques and Strategies -- What Works and What Doesn't" that he had successfully presented at the 1995 Annual Program. The members of Dick's panel this year were GSBGA Judge Mary Ellen Coster Williams and Colonel Chip Retson, Chief Trial Attorney, U.S. Army. The panel discussed techniques that have proven successful in board litigation and tactics that can be counterproductive. Among the subjects covered were the presentation of expert witnesses, effective cross-examination, and the use of demonstrative exhibits.

The Program seemed to be enjoyed by all who attended. The turnout was high and comments received afterward indicated that the Program was a success. I would like to extend my personal thanks and appreciation to all of the participants and to Laura Wessells of my office for her invaluable assistance.



TREASURER'S REPORT

Barbara E. Wixon
Williams & Jensen

November 30, 1996

BCA Bar Association Statement of Financial Condition For the Period Ending November 30, 1996

Beginning Balance	\$ 7,436.82
Fund Income:	
Dues & Annual Meeting	\$ <u>3,545.00</u>

Subtotal	\$ <u>10,981.82</u>
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Fund Disbursements:

Trophies (B. Wixon)	322.64
BCABA Stamp for Checks	10.99
Programs for Annual Meeting	<u>1,401.19</u>
Total Fund Disbursements	\$1,734.82

Ending Cash Balance	\$ <u>9,247.00</u>
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BOARDS OF CONTRACT APPEALS BAR ASSOCIATION

Application for Membership

Annual Membership Dues: \$25.00 [Note: The information you provide in this section will be used for your listing in the BCA Bar Directory. Accordingly, neatness and accuracy count.]

SECTION I

Name: _____

Firm/Organization: _____

Dept./Suite/Apt. Street Address: _____

City/State/Zip: _____

Work phone: _____ Fax: _____

SECTION II (THIS SECTION FOR COMPLETION BY NEW MEMBERS ONLY.)

I am applying for associate membership (for non-attorneys only)

I am admitted to the practice of law and am in good standing before the highest court of the:

District of Columbia: _____ State (s) of: _____

Employment: Firm _____ Corp _____ Govt _____ Judge _____ Other _____

SECTION III

Date: _____ Signature: _____

FORWARD THIS APPLICATION WITH A CHECK FOR \$25.00 PAYABLE TO THE BCA BAR ASSOCIATION TO THE TREASURER AT THE FOLLOWING ADDRESS:

Barbara Wixon
Williams & Jensen
1155 21st Street, NW
Washington, DC 20036
