LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

Law Enforcement Officers: ***Thank you for your service, protection and sacrifice***

OCTOBER 2021

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UNITED STATES SUPREME COURT

CIVIL RIGHTS ACT SECTION 1983 LIABILITY FOR LAW ENFORCEMENT: SUPREME COURT GRANTS QUALIFIED IMMUNITY TO LAW ENFORCEMENT IN TWO CASES WHERE THE COURT EXPLAINS THAT CASE LAW HAD NOT CLEARLY ESTABLISHED THAT IT CONSTITUTED EXCESSIVE FORCE: (1) IN ONE CASE, TO KNEEL ON THE BACK OF A CONTEMPORANEOUSLY KNIFE-POSSESSING DV SUSPECT FOR EIGHT SECONDS; OR (2) IN THE SECOND CASE, TO SHOOT AND KILL A TRESPASSING EX-HUSBAND WHO WAS IGNORING OFFICERS' ORDERS AND HAD A HAMMER IN HAND AND OVER HIS HEAD, POISED TO THROW IT AT OFFICERS WHO WERE SIX TO TEN FEET AWAY

In Rivas-Villegas v. Cortesluna, ___ S.Ct. ___ , 2021 WL ___ (October 18, 2021), the Supreme Court makes a 9-0 ruling (issued without waiting for briefing or oral argument) that the Ninth Circuit Court of Appeals erred in a 2-1 ruling that denied qualified immunity to a law

enforcement officer. The Ninth Circuit majority's 2020 ruling in Cortesluna appeared to be close to taking the view that case law has clearly established that whenever a suspect has been brought to the position of lying face-down on the ground and is not presently resisting either physically or verbally, a law enforcement officer categorically violates the Fourth Amendment bar to using excessive force if the officer leans on the prone suspect for eight seconds or more and causes allegedly significant injury.

The U.S. Supreme Court's ruling in Cortesluna is not an endorsement of law enforcement officers kneeling on the backs of non-resisting suspects. Rather, the ruling is a message to federal circuit courts that the clearly-established-case-law standard for denying qualified immunity to law enforcement requires prior case law that is very closely on-point to the facts of the case at hand such that reasonable officers would have had notice that the level of force was excessive under the factual circumstances of the case:

The facts in Cortesluna are described in the Supreme Court ruling as follows:

> Petitioner Daniel Rivas-Villegas, a police officer in Union City, California, responded to a 911 call reporting that a woman and her two children were barricaded in a room for fear that respondent Ramon Cortesluna, the woman's boyfriend, was going to hurt them. After confirming that the family had no way of escaping the house, [Officer] Rivas-Villegas and the other officers present commanded Cortesluna outside and onto the ground. Officers saw a knife in Cortesluna's left pocket.
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> While Rivas-Villegas and another officer were in the process of removing the knife and handcuffing Cortesluna, Rivas-Villegas briefly placed his knee on the left side of Cortesluna's back. Cortesluna later sued [in a section 1983 Civil Rights Act lawsuit], as relevant, that Rivas-Villegas used excessive force. At issue here is whether Rivas-Villegas is entitled to qualified immunity because he did not violate clearly established law.
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> The undisputed facts are as follows. A 911 operator received a call from a crying 12-year-old girl reporting that she, her mother, and her 15-year-old sister had shut themselves into a room at their home because her mother's boyfriend, Cortesluna, was trying to hurt them and had a chainsaw. The girl told the operator that Cortesluna was " 'always drinking,' " had " 'anger issues,' " was " 'really mad,' " and was using the chainsaw to " 'break something in the house.'" The dispatcher relayed this information along with a description of Cortesluna in a request for officers to respond.
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> [Officer] Rivas-Villegas heard the broadcast and responded to the scene along with four other officers. The officers spent several minutes observing the home and reported seeing through a window a man matching Cortesluna's description. One officer asked whether the girl and her family could exit the house. Dispatch responded that they "'were unable to get out'" and confirmed that the 911 operator had "'hear[d] sawing in the background'" and thought that Cortesluna might be trying to saw down the door.
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> After receiving this information, [Officer] Rivas-Villegas knocked on the door and stated loudly, "'police department, come to the front door, Union City police, come to the front door.'" Another officer yelled, "'he's coming and has a weapon.'" A different officer then stated, "'use less-lethal,'" referring to a beanbag shotgun. When Rivas-Villegas ordered Cortesluna to "'drop it,'" Cortesluna dropped the "weapon," later identified as a metal tool.

> Rivas-Villegas then commanded, "'come out, put your hands up, walk out towards me.'" Cortesluna put his hands up and [Offier] Rivas-Villegas told him to "'keep coming.'"
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> As Cortesluna walked out of the house and toward the officers, [Officer] Rivas-Villegas said, "'Stop. Get on your knees.'" Plaintiff stopped 10 to 11 feet from the officers. Another officer then saw a knife sticking out from the front left pocket of Cortesluna's pants and shouted, "'he has a knife in his left pocket, knife in his pocket,'" and directed Cortesluna, "'don't put your hands down,'" "'hands up.'" Cortesluna turned his head toward the instructing officer but then lowered his head and his hands in contravention of the officer's orders. Another officer twice shot Cortesluna with a beanbag round from his shotgun, once in the lower stomach and once in the left hip.
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> After the second shot, Cortesluna raised his hands over his head. The officers shouted for him to "'get down,'" which he did. Another officer stated, "'left pocket, he's got a knife.'" [Officer] Rivas-Villegas then straddled Cortesluna. He placed his right foot on the ground next to Cortesluna's right side with his right leg bent at the knee. He placed his left knee on the left side of Cortesluna's back, near where Cortesluna had a knife in his pocket.
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> [Officer Rivas-Villegas] raised both of Cortesluna's arms up behind his back. [Officer] Rivas-Villegas was in this position for no more than eight seconds before standing up while continuing to hold Cortesluna's arms. At that point, another officer, who had just removed the knife from Cortesluna's pocket and tossed it away, came and handcuffed Cortesluna's hands behind his back. [Officer] Rivas-Villegas lifted Cortesluna up and moved him away from the door.

[Citations, all of which are to the Ninth Circuit's 2020 Cortesluna decision, omitted; some paragraphing revised for readability]

In the 2020 Cortesluna decision below, the Ninth Circuit reversed a District Court ruling that Officer Rivas-Villegas was entitled to qualified immunity. The Ninth Circuit relied on a prior Ninth Circuit decision in LaLonde v. City of Riverside, 204 F.3d 947 (9th Cir. 2000), citing LaLonde as clearly established case law that barred kneeling on the back of the prone, at-that-moment-non-resisting suspect (plaintiff LaLonde) for eight seconds. In reversing the Ninth Circuit ruling, the U.S. Supreme Court explains as follows that the Ninth Circuit's LaLonde decision does not provide a sufficiently similar fact pattern to the fact pattern in LaLonde to constitute clearly established law under the qualified immunity test:

> Even assuming that Circuit precedent can clearly establish law for purposes of §1983 [**LEGAL UPDATE EDITOR'S COMMENT: The U.S. Supreme Court has never stated whether or how Circuit precedents can be "clearly established law"]** LaLonde is materially distinguishable and thus does not govern the facts of this case.
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> In LaLonde, officers were responding to a neighbor's complaint that LaLonde had been making too much noise in his apartment. When they knocked on LaLonde's door, he "appeared in his underwear and a T-shirt, holding a sandwich in his hand." LaLonde testified that, after he refused to let the officers enter his home, they did so anyway and informed him he would be arrested for obstruction of justice. One officer then knocked the sandwich from LaLonde's hand and "grabbed LaLonde by his ponytail and knocked him backwards to the ground." After a short scuffle, the officer sprayed LaLonde in the

face with pepper spray. At that point, LaLonde ceased resisting and another officer, while handcuffing LaLonde, "deliberately dug his knee into LaLonde's back with a force that caused him long-term if not permanent back injury."

The situation in LaLonde and the situation at issue here diverge in several respects. In LaLonde, officers were responding to a mere noise complaint, whereas here they were responding to a serious alleged incident of domestic violence possibly involving a chainsaw. In addition, LaLonde was unarmed.

Cortesluna, in contrast, had a knife protruding from his left pocket for which he had just previously appeared to reach. Further, in this case, video evidence shows, and Cortesluna does not dispute, that Rivas-Villegas placed his knee on Cortesluna for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving. LaLonde, in contrast, testified that the officer deliberately dug his knee into his back when he had no weapon and had made no threat when approached by police. These facts, considered together in the context of this particular arrest, materially distinguish this case from LaLonde.

. . . . On the facts of this case, neither LaLonde nor any decision of this Court is sufficiently similar. For that reason, we grant [Officer] Rivas-Villegas' petition for certiorari and reverse the Ninth Circuit's determination that Rivas-Villegas is not entitled to qualified immunity.

[Citations, all of which are to the Ninth Circuit's 2020 LaLonde decision, are omitted; some paragraphing revised for readability]

Result in Rivas-Villegas v. Cortesluna: Reversal of 2-1 ruling by Ninth Circuit Court of Appeals that reversed a U.S. District Court's grant of qualified immunity to the law enforcement officer; thus, the District Court's grant of qualified immunity to the officer is reinstated by the U.S. Supreme Court.

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In City of Tahlequah v. Bond, ___ S.Ct. ___ , 2021 WL ___ (October 18, 2021), as in Cortesluna, the U.S. Supreme Court rules 9-0 that a federal circuit court (in this case the 10th Circuit) failed to recognize that the clearly-established-case-law standard for denying qualified immunity to law enforcement requires prior case law that is very closely on-point to the facts of the case at hand such that reasonable officers would have had notice that the level of force was excessive under the circumstances of the case:

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In Bond, the U.S. Supreme Court describes the facts and the 10th Circuit decision as follows:

On August 12, 2016, Dominic Rollice's ex-wife, Joy, called 911. Rollice was in her garage, she explained, and he was intoxicated and would not leave. Joy requested police assistance; otherwise, "it's going to get ugly real quick." The dispatcher asked whether Rollice lived at the residence. Joy said he did not but explained that he kept tools in her garage.

Officers Josh Girdner, Chase Reed, and Brandon Vick responded to the call. All three knew that Rollice was Joy's ex-husband, was intoxicated, and would not leave her home.

Joy met the officers out front and led them to the side entrance of the garage. There the officers encountered Rollice and began speaking with him in the doorway. Rollice expressed concern that the officers intended to take him to jail; Officer Girdner told him that they were simply trying to get him a ride. Rollice began fidgeting with something in his hands and the officers noticed that he appeared nervous. Officer Girdner asked if he could pat Rollice down for weapons. Rollice refused.

Police body-camera video captured what happened next. As the conversation continued, Officer Girdner gestured with his hands and took one step toward the doorway, causing Rollice to take one step back.

Rollice, still conversing with the officers, turned around and walked toward the back of the garage where his tools were hanging over a workbench. Officer Girdner followed, the others close behind. No officer was within six feet of Rollice. The video is silent, but the officers stated that they ordered Rollice to stop.

Rollice kept walking. He then grabbed a hammer from the back wall over the workbench and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point the video is no longer silent, and the officers can be heard yelling at Rollice to drop the hammer.

He did not. Instead, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. He then raised the hammer higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers. In response, Officers Girdner and Vick fired their weapons, killing Rollice.

Rollice's estate filed suit against, among others, Officers Girdner and Vick, alleging that the officers were liable under [section 1983 of the federal Civil Rights Act] for violating Rollice's Fourth Amendment right to be free from excessive force. The officers moved for summary judgment, both on the merits and on qualified immunity grounds. The District Court granted their motion. The officers' use of force was reasonable, it concluded, and even if not, qualified immunity prevented the case from going further.

A panel of the Court of Appeals for the Tenth Circuit reversed. The Court began by explaining that Tenth Circuit precedent allows an officer to be held liable for a shooting that is itself objectively reasonable if the officer's reckless or deliberate conduct created a situation requiring deadly force.

Applying that rule [in which one looks to an earlier point in the chronology to create a Fourth Amendment violation], the [10th Circuit] concluded that a jury could find that Officer Girdner's initial step toward Rollice and the officers' subsequent "cornering" of him in the back of the garage recklessly created the situation that led to the fatal shooting, such that their ultimate use of deadly force was unconstitutional. As to qualified immunity, the Court concluded that several cases, most notably Allen *v.* Muskogee, 119 F. 3d 837 (CA10 1997), clearly established that the officers' conduct was unlawful.

[Some citations omitted; some paragraphing revised for readability]

The U.S. Supreme Court then explains as follows that the 10th Circuit's ruling is wrong because there is not well-established case law that is close enough on the facts to have given reasonable officers notice that deadly force could not be used in the circumstances of the Bond case:

> We need not, and do not, decide whether the officers violated the Fourth Amendment in the first place, or whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. **[LEGAL UPDATE EDITOR'S COMMENT: The U.S. Supreme Court ruling here thus does not address whether the Tenth Circuit precedent is correct on this idea of moving the facts backward in the chronology to create a Fourth Amendment violation tied to officers' acts or omissions that arguably led to the circumstances existing at the time of actual application of force.]**
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> On this record, the officers plainly did not violate any clearly established law.
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> The doctrine of qualified immunity shields officers from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Pearson *v.* Callahan, 555 U. S. 223, 231 (2009). As we have explained, qualified immunity protects "'all but the plainly incompetent or those who knowingly violate the law.'" District of Columbia *v.* Wesby, 583 U. S. ___, ___ –___ (2018) (slip op., at 13–14) (quoting Malley *v.* Briggs, 475 U. S. 335, 341 (1986)).
>
> We have repeatedly told courts not to define clearly established law at too high a level of generality. See, *e.g.*, Ashcroft *v.* al-Kidd, 563 U. S. 731, 742 (2011). It is not enough that a rule be suggested by then-existing precedent; the "rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Wesby, 583 U. S., at ___ (slip op., at 14) (quoting Saucier *v.* Katz, 533 U. S. 194, 202 (2001)). Such specificity is "especially important in the Fourth Amendment context," where it is "sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." Mullenix *v.* Luna, 577 U. S. 7, 12 (2015) (*per curiam*) (internal quotation marks omitted).
>
> The Tenth Circuit contravened those settled principles here. Not one of the decisions relied upon by the Court of Appeals—Estate of Ceballos *v.* Husk, 919 F. 3d 1204 (CA10 2019), Hastings *v.* Barnes, 252 Fed. Appx. 197 (CA10 2007), Allen, 119 F. 3d 837, and Sevier *v.* Lawrence, 60 F. 3d 695 (CA10 1995)—comes close to establishing that the officers' conduct was unlawful.
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> The [Tenth Circuit] relied most heavily on Allen. But the facts of Allen are dramatically different from the facts here. The officers in Allen responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands.
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> [In City of Tahlequah v. Bond] Officers Girdner and Vick, by contrast, engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer. We cannot conclude that Allen "clearly

established" that their conduct was reckless or that their ultimate use of force was unlawful.

The other decisions relied upon by the Court of Appeals are even less relevant. As for Sevier, that decision merely noted in dicta that deliberate or reckless pre-seizure conduct can render a later use of force excessive before dismissing the appeal for lack of jurisdiction. To state the obvious, a decision where the court did not even have jurisdiction cannot clearly establish substantive constitutional law. Regardless, that formulation of the rule is much too general to bear on whether the officers' particular conduct here violated the Fourth Amendment. See al-Kidd, 563 U. S., at 742. Estate of Ceballos, decided after the shooting at issue, is of no use in the clearly established inquiry. *See* Brosseau *v.* Haugen, 543 U. S. 194, 200, n. 4 (2004) (*per curiam*).

And Hastings, an unpublished decision, involved officers initiating an encounter with a potentially suicidal individual by chasing him into his bedroom, screaming at him, and pepper-spraying him. 252 Fed. Appx., at 206. Suffice it to say, a reasonable officer could miss the connection between that case and this one.

Neither the panel majority nor the respondent have identified a single precedent finding a Fourth Amendment violation under similar circumstances. The officers were thus entitled to qualified immunity.

[Some citations omitted; some paragraphing revised for readability]

Result in City of Tahlequah v. Bond: Reversal of ruling by Tenth Circuit Court of Appeals that reversed a U.S. District Court's grant of qualified immunity to the law enforcement officers; thus, the District Court's grant of qualified immunity to the officer is reinstated by the U.S. Supreme Court.

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WASHINGTON STATE COURT OF APPEALS

FORFEITURE OF VEHICLE HELD TO BE SUPPORTED UNDER RCW 69.50.505 BUT TO VIOLATE THE EXCESSIVE FINES CLAUSE OF THE FEDERAL CONSTITUTION'S EIGHTH AMENDMENT BECAUSE THE VEHICLE OWNER IS INDIGENT

In Hernandez v. City of Kent, ___ Wn. App. 2d ___ , 2021 WL ___ (Div. I, October 25, 2021), Hernandez conceded that where he used his vehicle to deliver methamphetamine, the vehicle was subject to forfeiture under RCW 69.50.505. But he argued that the Excessive Fines Clause of the Eighth Amendment of the US Constitution requires a court to consider an individual's financial circumstances prior to a forfeiture determination. The Court of Appeals agrees, ruling that because the defendant was found to be indigent "in this and the related criminal proceedings, the forfeiture of his only asset is grossly disproportionate and therefore unconstitutional."

Result: Reversal of King County Superior Court judgment that affirmed a City of Kent hearing examiner's ruling that upheld the forfeiture of the vehicle of Jacobo Hernandez.

WSP PARTICIPANTS IN "NET NANNY" STING OPERATION DID NOT VIOLATE DEFENDANT'S RIGHTS UNDER CHAPTER 9.73 RCW (THE PRIVACY ACT) BECAUSE THE SENDER OF A TEXT MESSAGE RUNS THE RISK THAT THE RECIPIENT WILL SHARE THE CONTENTS OF THAT MESSAGE WITH ONE OR MULTIPLE OTHER PERSONS

In State v. Bilgi, ___ Wn. App. 2d ___ , 2021 WL ___ (Div. II, October 19, 2021), Division Two of the Court of Appeals affirms defendant's convictions for attempted rape of a child in the second degree and communication with a minor for immoral purposes. The convictions arose from the "Net Nanny" sting operation in which detectives assume false identities on the internet to offer under-age children for sex to would-be predators.

The Court of Appeals holds that an undercover detective did not unlawfully intercept the defendant's communications in violation of The Privacy Act (chapter 9.73 RCW) where the detective pretended to be a 13-year-old boy. Also, the Court holds that the Privacy Act was not violated when multiple law enforcement officers shared access to the electronic messaging service and had access to the communicated messages. The basic rationale for the rulings under the Privacy Act is that it is generally understood in our modern world that multiple people may use the same username and password to online accounts.

Some of the key legal analysis is as follows:

> Washington courts have held that a person impliedly consents to the recording of their communications on an electronic device when they communicate through e-mail, text messaging, and some online instant messaging software. State v. Townsend, 147 Wn.2d 666, 675-77, 57 P.3d 255 (2002) . . . . "[A] communicating party will be deemed to have consented to having his or her communication recorded when the party knows that the messages will be recorded." Townsend, 147 Wn.2d at 675.
>
> When the sender of a written electronic message impliedly consents to the message's recording, they bear the risk that the intended recipient will share the message with others. In [State v. Glant, 13 Wn. App. 2d 356 (2020)] we reasoned that when a person sends e-mail or text messages, "they do so with the understanding that the messages [will] be available to the receiving party for reading or printing." 13 Wn. App. 2d at 365. In our view, it is logical to assume they do so with the additional understanding that the messages will be available to the receiving party for forwarding or sharing electronically.
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> In [State v. Roden, 179 Wn.2d 893 (20140} the intercepted communications were recorded on the recipient's phone, and the supreme court explained that "the privacy act was violated because the detective intercepted [ ] private communications without [the sender's] or [the recipient's] consent and without a court order." 179 Wn.2d at 906-07 (emphasis added). This conclusion suggests that the outcome could have been different if the recipient had willingly shared the recorded messages with the detective.
>
> **. . . .**
>
> Bilgi . . . . argues that [the undercover detective] unlawfully intercepted his communications because she, in particular, was not his intended recipient. Second, he argues that the officers with whom [the detective] shared Bilgi's communications as they were being received unlawfully intercepted his communications because even if [the detective] had been his intended recipient, he did not consent to [the detective] sharing his communications with others.

> With respect to Bilgi's first argument, we disagree that [the undercover detective] unlawfully intercepted Bilgi's communications because she was not actually a 13-year-old boy named Jake. Bilgi willingly communicated with the person controlling the account purporting to be Jake, and thus there was no unlawful interception of his messages by the person behind the account. Bilgi's displeasure with the ruse he failed to detect does not constitute a redressable legal harm. . . .
>
> Additionally, the viewing of the electronic communications by other officers who, like [the undercover detective], made up the law enforcement team in control of the account posing as Jake did not constitute an unlawful interception of Bilgi's communications. The officers did not covertly receive messages that were directed elsewhere. Nor is there evidence that other officers "manipulated" [the undercover detective's] device or opened the messages before they were received by [the undercover detective]. Bilgi sent messages to a fictitious child, and his messages were received by the account behind that fictitious child. When an account is held by multiple people, the account holders do not violate the privacy act by simultaneously receiving messages sent to that account.
>
> Jake's phone number, which was associated with MECTF's Callyo account, was Bilgi's intended recipient. The messages were received by the intended recipient. The fact that multiple officers were authorized to access the account does not change this conclusion.
>
> It is commonly understood that a written communication, once sent to its intended recipient, can be passed on or shared by the recipient. See Glant, 13 Wn. App. 2d at 365. With the prevalence of web-based software such as e-mail accounts and Apple IDs, there is also a general recognition that usernames and passwords may be shared and that multiple people may log in to the same account at the same time. Even if the person controlling the account in this case had actually been a 13-year-old boy named Jake, Bilgi had no ability to restrain Jake from sharing his communications with anyone Jake so chose.
>
> Likewise, whether [the undercover detective] shared the communications she received from Bilgi with other officers as she received them, or the other officers with access to the account were logged in and read them on their own devices as they were received, there was no violation of the privacy act.
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> . . . .
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> "Generally, two people in a conversation hold a reasonable belief that one of them is not recording the conversation." State v. Kipp, 179 Wn.2d 718, 732 (2014). In contrast, when a written communication is recorded by a recipient's device, there is a general understanding that the recipient could share it

[Some citations omitted; some paragraphing revised for readability]

Result: Affirmance of Pierce County Superior Court conviction of Mehmet Bilgi for (A) attempted rape of a child in the second degree, and (B) communication with a minor for immoral purposes.

IMPLIED CONSENT STATUTE: TIMELINE FOR DOL'S STATUTORY DUTY TO HOLD A HEARING ON SUSPENSION OR REVOCATION DOES NOT START TO RUN UNTIL AFTER DOL HAS RECEIVED BOTH (1) AN OFFICER'S SWORN REPORT AND (2) A TIMELY HEARING REQUEST FROM THE DRIVER

In Smith v. Washington DOL, ___ Wn. App. 2d ___ , 2021 WL ___ (October 18, 2021), and Dyson v. Washington DOL, ___ Wn. App. 2d ___ , 2021 WL ___ (October 18, 2021), two drivers argued that DOL missed the deadline for scheduling an implied consent hearing. In each case, the drivers had requested hearings prior to the point when DOL received a sworn report from a law enforcement officer. Division One of the Court of Appeals holds that until DOL received a sworn report, which is jurisdictional, the time period for DOL to schedule a hearing does not begin to run even if the driver has previously requested a hearing.

Result: Reversal of King County Superior Court ruling that reversed DOL's revocation of the driver's license of Joshua C. Smith; affirmance of King County Superior Court ruling that affirmed DOL's revocation of the driver's license of Matthew B. Dyson

COURT OF APPEALS UPHOLDS SUPERIOR COURT ORDER FOR RENEWAL OF AN EXTREME RISK PROTECTION ORDER REQUESTED BY THE SEATTLE POLICE DEPARTMENT

In Seattle Police Department v. Demetrius Jones, ___ Wn. App. 2d ___ , 2021 WL ___ (Div. I, August 3, 2021 unpublished Opinion ordered published on October 15, 2021), Division One of the Court of Appeals upholds the renewal of an Extreme Risk Protection Order requested by the Seattle Police Department.

The ruling in this case is highly fact-based, and the Legal Update will not address the facts or fact-based analysis by the Court of Appeals. But I thought that some readers would like to read the description of the statutory scheme by the Court of Appeals. The Court explains:

> In November 2016, Washington voters passed Initiative No. 1491, known as the Extreme Risk Protection Order Act, now codified at RCW 7.94.010-.900.
>
> [Court's footnote: *The Extreme Risk Protection Order Act, ch. 7.94 RCW, was repealed and recodified in January 2021. LAWS OF 2021, ch. 215. The relevant sections of the act remain unchanged*.]
>
> The purpose of the statute is to "temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms" by allowing family members or the police to petition a court for an order prohibiting a person from purchasing or possessing any firearm for a one-year period. RCW 7.94.010, .040(2).
>
> RCW 7.94.040(2) provides that "the court shall issue an extreme risk protection order for a period of one year," when, after a hearing, the court finds by a preponderance of the evidence "that the respondent poses a significant danger of causing personal injury to self or others" by having a firearm in his or her custody or control. In determining whether grounds for an ERPO exist, the court "may consider any relevant evidence including, but not limited to" the following:
>
> > (a) A recent act or threat of violence by the respondent against self or others, whether or not such violence or threat of violence involves a firearm;

(b) A pattern of acts or threats of violence by the respondent within the past twelve months including, but not limited to, acts or threats of violence by the respondent against self or others;

(c) Any behaviors that present an imminent threat of harm to self or others;

(d) A violation by the respondent of a protection order or a no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW;

(e) A previous or existing extreme risk protection order issued against the respondent;

(f) A violation of a previous or existing extreme risk protection order issued against the respondent;

(g) A conviction of the respondent for a crime that constitutes domestic violence as defined in RCW 10.99.020;

(h) A conviction of the respondent under RCW 9A.36.080;

(i) The respondent's ownership, access to, or intent to possess firearms;

(j) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(k) The history of use, attempted use, or threatened use of physical force by the respondent against another person, or the respondent's history of stalking another person;

(l) Any prior arrest of the respondent for a felony offense or violent crime;

(m) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent; and

(n) Evidence of recent acquisition of firearms by the respondent.

RCW 7.94.040(3).

The court's order must state a basis for the issuance of the order and indicate whether a mental health evaluation is required. RCW 7.94.040(7). If the court issues an ERPO, it "shall order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any concealed pistol licenses issued under RCW 9.41.070." RCW 7.94.090(1).

The statute sets out a procedure for conducting compliance review hearings to verify that a respondent has fully complied with the court's order. RCW 7.94.090(6). Law enforcement may seek a search warrant if there is probable cause to believe a respondent has failed to surrender all firearms as required by the ERPO. RCW 7.94.090(4). It is a gross misdemeanor for a person to possess a firearm with knowledge that he or she is prohibited from doing so by an ERPO. RCW 7.94.120.

The respondent may submit one request to terminate the ERPO during any 12-month period the ERPO is in effect. RCW 7.94.080(1). If the respondent seeks to terminate, he or she has the burden of proving by a preponderance of evidence that he or she does not pose a significant danger of causing personal injury to self or others. RCW 7.94.080(1)(b). The court may consider any relevant evidence, including the considerations listed in RCW 7.94.040(3).

Before the ERPO is due to expire, the court must notify the petitioner of the impending expiration of the order. RCW 7.94.080(2). The petitioner may move to renew the ERPO any time within 105 days of its expiration. RCW 7.94.080(3). Under the renewal provisions,

> (b) In determining whether to renew an extreme risk protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in RCW 7.94.040.
>
> (c) If the court finds by a preponderance of the evidence that the requirements for issuance of an extreme risk protection order as provided in RCW 7.94.040 continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

RCW 7.94.080(3)(b), (c)

Result: Affirmance of King County Superior Court ruling that renewed an extreme risk protection order against Demetrius Jones, as requested by the Seattle Police Department.

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BRIEF NOTES REGARDING OCTOBER 2021 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

Under the Washington Court Rules, General Rule 14.1(a) provides: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

Every month I will include a separate section that provides very brief issue-spotting notes regarding select categories of unpublished Court of Appeals decisions that month. I will include such decisions where issues relating to the following subject areas are addressed: (1) Arrest, Search and Seizure; (2) Interrogations and Confessions; (3) Implied Consent; and (4) possibly other issues of interest to law enforcement (though probably not sufficiency-of-evidence-to-convict issues).

The three entries below address the October 2021 unpublished Court of Appeals opinions that fit the above-described categories. I do not promise to be able catch them all, but each month I will make a reasonable effort to find and list all decisions with these issues in unpublished

opinions from the Court of Appeals. I hope that readers, particularly attorney-readers, will let me know if they spot any cases that I missed in this endeavor, as well as any errors that I may make in my brief descriptions of issues and case results. In the entries that address decisions in criminal cases, the crimes of conviction or prosecution are italicized, and descriptions of the holdings/legal issues are bolded.

1. State v. Seth Tyrone Crum: On October 11, 2021, Division One of the COA rejects the challenge of defendant to his Asotin County Superior Court convictions for (A) assault in the second degree (domestic violence), (B) unlawful imprisonment (domestic violence), (C) felony harassment (domestic violence), (D) malicious mischief in the third degree (domestic violence), and (E) interfering with the reporting of domestic violence (domestic violence). Defendant made Miranda-based arguments on appeal. He argued that he was in "custody" and therefore should have been Mirandized before officers, who were responding to a DV call and contacted him on his front porch, asked briefly and non-accusatorily (1) whether he had fought with the complainant, (2) the nature of any such fight, and (3) whether he would permit the officers to enter the house to investigate further. The Crum Court correctly explains that the question as to Miranda custody is "whether a reasonable person in the same situation would feel that his or her freedom was curtailed to the degree associated with a formal arrest" (note that, although the Crum Court does not say so, this standard was expressly established by the U.S. Supreme Court, and the Washington constitution does not differ from the federal constitution on this issue). The Crum Court rules that this was brief Terry stop questioning, and that the defendant was not in "custody" for Miranda purposes.

The unpublished Opinion in State v. Crum is accessible on the Internet at:
https://www.courts.wa.gov/opinions/pdf/827642.pdf

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LEGAL UPDATE EDITOR'S COMMENTS ON CRUM

Unfortunately, the Crum Court's relies in part on State v. France, 129 Wn. App. 907, 910 (2005), a Division Two decision that incorrectly declared to be relevant to the "custody" analysis the question of whether the officers had probable cause to arrest the suspect prior to questioning. As the Brief of Respondent for the State of Washington ably pointed out in the Crum case (see Division One briefing under case # 82764-2), the France decision's consideration of officers' probable cause (sometimes referred to as the "focus" factor) as a factor in "custody" analysis was wrong because, under both the U.S. Supreme Court and Washington State Supreme Court precedents, the fact-based legal question regarding "custody" is, as noted above, purely objective and is viewed from the perspective of the suspect. The question is whether a reasonable person in the same situation as the suspect would perceive that his or her freedom was "curtailed to the degree associated with a formal arrest."

Thus, what officers have in their thought processes but do not disclose to the suspect is not relevant to this objective, reasonable-suspect-focused test (note, however, that if the officers describe their probable cause to the suspect, this disclosure may be a factor in determining custody under the objective standard).

This "Miranda custody" question and related matters are discussed at pages 10-14 in "Confessions, Search, Seizure and Arrest: A Guide for Police Officers and Prosecutors," May 2015, a collection of case law by Pamela Loginsky, former staff attorney for the

Washington Association of Prosecuting Attorneys. That collection of case law and discussion of cases is accessible both on the website of WAPA and on the Criminal Justice Training Commission's internet LED page. The discussion in the article of "Miranda custody" has not been undercut by any case law developments since 2015. The Brief of Respondent for the State of Washington in the Crum case cited Pam Loginsky's discussion of France in her Guide (see Division One briefing under case # 82764-2),

Also, about 15 years ago, I wrote a training article that has not been undercut by any subsequent case law developments. I last updated my article about 10 years ago. There have not been any published decisions of relevance on this issue in the past decade. Below is the memorandum. Again, the memorandum is still current on the law because the Washington appellate courts have not issued a relevant decision addressing the incorrect "probable cause = focus = Miranda custody" argument that was relied on by the defendant in the Crum case.

M E M O R A N D U M

TO: **Law Enforcement Investigators**

FROM: **John Wasberg, [Former] Senior Counsel, Washington AGO**

SUBJECT: **Miranda: "custody" and "focus"**

I am occasionally asked for my personal view as to whether police investigators and other governmental investigators must routinely Mirandize before asking accusatory questions of any suspect on whom the investigators have focused, even if the suspect is not then in custody that is the equivalent of an arrest. Though answering the question requires a careful explanation, I believe that the short answer to the question is "No." That is because I believe that, under well-established case law, the sole trigger mandating Mirandizing, is "custody plus interrogation."

This question concerns a longstanding concern of mine as a law enforcement trainer. Some police trainers, policy-makers, lower court judges, and even a few prosecutors are under the misimpression that, as a general rule, "focus" (or probable cause) automatically triggers the requirement for Miranda warnings. In fact, however, with one arguable exception that I will discuss in the last two paragraphs of this memo, Miranda warnings are required only when there is: (1) interrogation plus (2) custody. "Custody" under this test is defined as "an arrest or the functional equivalent of an arrest." Admittedly, it is not easy to precisely define this Miranda "custody" test because the test requires consideration of the "totality of the circumstances" of any given case. This difficulty of definition may lead some trainers, policy-makers and others to be very conservative, and hence over-inclusive, in describing the trigger to Miranda. But the case law does not support a general advisory to investigators that they should always give Miranda warnings whenever they have focused on a suspect, whenever they have probable cause, or whenever they ask accusatory questions.

It is true that, if investigators disclose their focus to the suspect and ask accusatory questions, particularly when the questions are put in an aggressive manner, these facts, *together with the other attendant facts that suggest arrest-like custody*, may establish that the suspect is in a situation that was the functional equivalent of an arrest. But that

does not justify a broad-based advisory to give *Miranda* warnings *whenever* focus or probable cause exists.

Washington case law regarding Miranda rules, unlike Washington case law regarding search & seizure rules, generally follows federal constitutional case law. That is because the Washington appellate courts have to date found no basis in the Washington constitution for making "independent grounds" rulings on Miranda questions. *See generally*, State v. Earls, 116 Wn.2d 364 (1991). The *Earls* case involved the question whether 3rd parties can assert Miranda rights of suspects and held they could not, based on federal constitutional case law. Earls did not involve the custody/focus issue, but it does appear to establish in general terms that the Washington constitutional Miranda protections are no broader than the federal. But see the discussion of deceptive questioning in the last two paragraph of this memo. Key Washington cases addressing the Miranda custody test over the past 15 years or so (and explaining that the test is an objective one) are as follows --

Heinemann v. Whitman County, 105 Wn.2d 796 (1986) (DUI stop)
State v. Harris, 106 Wn.2d 784 (1986) (various settings)
State v. Hensler, 109 Wn.2d 357 (1987) (traffic stop)
State v. Short, 113 Wn.2d 35 (1989) (undercover contacts)
State v. Denton, 58 Wn. App. 251 (Div. I, 1990) (telephone questioning)
State v. Walton, 67 Wn. App. 27 (Div. I, 1992) (MIP questioning)
State v. Pejsa, 75 Wn. App. 139 (Div. II, 1994) (barricade, telephone)
State v. Ferguson, 76 Wn. 560 (Div. I, 1995) (MVA scene)
State v. Warness, 77 Wn. App. 636 (Div. I, 1995) (home contact)
State v. Mahoney, 80 Wn. App. 495 (Div. III, 1996) (telephone questioning)
State v. D.R., 84 Wn. App. 832 (Div. III, 1997) (school office, student)
State v. Staudenmaier, 110 Wn. App. 841 (Div. III, 2002) (DUI stop)
State v. Lorenz, 152 Wn.2d 22 (2004) (questioning on porch of home)

Each of these Washington decisions expressly and uniformly rejects the idea (which had been entertained in earlier Washington cases that had misread the *Miranda* decision) that undisclosed focus (or probable cause) is an alternative trigger to Miranda.[1] Note, however, that Division Three of the Court of Appeals in the D.R. case cited above, while following the objective test, held that an officer's un-Mirandized questioning of a 14-year-

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[1] Criminal defense attorneys sometimes have cited State v. Dictado, 102 Wn.2d 277 (1984) as legal authority for their "focus" argument. However, in its 1986 decision in Harris (cited above), the Washington Supreme Court implicitly disavowed the PC/focus test suggested in Dictado, and the Supreme Court then expressly disavowed the PC/focus test in its 1989 decision in Short (cited above). The Supreme Court in Short cited State v. Watkins, 53 Wn. App. 264 (1989), a decision from Division One of the Court of Appeals expressly declaring that Harris had rejected Dictado's suggestion of a PC/focus test. Throughout the 1990s and up to the present time, the Washington appellate courts have consistently followed, without exception, the U.S. Supreme Court's "custody" standard in this regard. The U.S. Supreme Court has explicitly and completely rejected the Dictado-type PC/focus theory. The most recent pronouncement of the U.S. Supreme Court expressly rejecting PC as a trigger to Miranda is Stansbury v. California, 511 U.S. 318 (1994). In State v. Lorenz, 152 Wn.2d 22 (2004), the Washington Supreme Court expressly disavowed the Dictado "focus" approach, citing Harris.

old student in the assistant principal's office was "custodial." Although the officer told the student (D.R.) that the student did not have to answer questions, the officer did not tell the student he was free to leave, and the officer's questions were pointedly accusatory. The D.R. Court took into account the age of the suspect in ruling that the questioning session was "custodial."[2] Also note that there is a troubling passage in the opinion of Division Two of the Court of Appeals in State v. France, 129 Wn. App. 907 (Div. II, 2005) Dec. '05 LED:17. The France Court found custody where an officer told a domestic violence suspect during a roadside Terry stop that the suspect would not be allowed to leave until the officer "clear[ed] it up." Whether these facts meet the objective test for custody is debatable, but more problematic is some language in the opinion that suggests that the Court of Appeals panel in France was thinking that there is some validity to the PC/focus test rejected by the Washington Supreme Court and by all other appellate court decisions of the past two decades.

As noted above, an officer's accusatory questions that disclose the officer's focus to the suspect can be *a factor* in establishing custody. Disclosing to a suspect that he or she is the focus of an investigation will not by itself establish custody. But if such a disclosure of focus to a suspect is accompanied by aggressive accusatory questions, then, unless these factors are counter-balanced by an express assurance from the investigator to the suspect that the suspect can stop the questioning and may leave at any time, or otherwise terminate the encounter at any time, then there is a good chance that a court will find "custody" (the functional equivalent of arrest) for Miranda purposes.

One troubling qualifier to all of the foregoing attacks on the would-be "focus" test is that some of the Washington cases on my list, with no support in modern case law from other jurisdictions that I can find, have indicated in dicta (discussion not central to the decisions in the cases) that an investigator with probable cause or focus may be required to precede non-custodial questioning with Miranda warnings *if the investigator uses deceptive means of questioning*. See, for example the discussion in the Washington decisions in Heinemann, Hensler, Walton, and Ferguson in my list above. These cases leave some room for the Washington courts to depart from federal case law by relying on criminal rules issued by our State Supreme Court, particularly CrRLJ 3.1 (criminal rules for courts of limited jurisdiction) and CrR 3.1 (superior court criminal rules). However, not one of these Washington cases has excluded a statement based on deception by an officer, and these cases provide little explanation as to the kind of deception the courts are talking about. And in two other Washington Miranda cases, Short and Harris, where there were in fact forms of deception (in Short, an undercover operation, and in Harris, officers apparently pretending that they thought the suspect was a mere witness), the Washington Supreme Court did not even mention the deception issue. I believe that there is a reasonable chance that the Washington Supreme Court will some day disavow this dicta about deception discussed in this paragraph of my memo.

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[2] In State v. Heritage, 152 Wn.2d 210 (2004) Sept. '04 LED:12, the Washington Supreme Court stated that it would not make a ruling one way or the other in that case on the question of whether the age of a suspect can be a relevant factor in determining whether the suspect is in custody. The legally safest approach for investigators is to assume that age of a suspect is relevant both for determining whether "Miranda custody" exists and for determining whether a valid waiver of Miranda rights can be given by a youthful suspect.

Nonetheless, I suggest that, if, for tactical reasons, officers are trying to establish a non-custodial setting so that they can forgo Miranda warnings, they should: (A) tell the suspect he or she is free to stop the questioning and to leave at any time, and (B) not use forms of deception that are generally permissible in Mirandized interrogation (e.g., lying about what crime they are investigating, lying about the existence or nature of physical evidence, or lying about what other suspects or witnesses have told the investigators). Thus, while these and other forms of non-outrageous deception are generally acceptable in the questioning of a properly Mirandized suspect, there is greater risk in using such deception with non-Mirandized suspects for the reasons I've outlined in the paragraph immediately above in this memo.

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2. State v. Curtis Charles Johnson, Jr.: On October 19, 2021, Division Two of the COA rejects the challenge of defendant to his Pierce County Superior Court conviction for *unlawful possession of a stolen vehicle*. The Court of Appeals rules, among other things, that the defendant did not invoke his right to silence where the Mirandized defendant answered most of an interrogating officer's questions but did not answer two of the officer's questions. The Court of Appeals notes that "'Silence in the face of repeated questioning over a period of time may constitute an invocation of the right to remain silent' when the invocation is clear and unequivocal. State v. Hodges, 118 Wn. App. 668, 673 (2003)." But there was not silence in the face of repeated questioning in the Johnson case.

The unpublished Opinion in State v. Johnson is accessible on the Internet at:
https://www.courts.wa.gov/opinions/pdf/D2%2054336-2-II%20Unpublished%20Opinion.pdf

3. State v. Dario Martinez Castro: On October 25, 2021, Division One of the COA rejects the challenge of defendant to his King County Superior Court conviction for *first degree murder*. The Court rules in favor of the State on fact-specific issues relating to (1) the "independent source doctrine" that allows evidence seized in a re-do of a search warrant in this case to be admitted into evidence, and (2) the requirement for voluntariness of waiver of rights under Miranda. The Court of Appeals briefly summarizes in the following conclusory paragraphs its rulings on these issues:

> Dario Martinez-Castro challenges his conviction for first degree murder, arguing that the trial court erred in admitting his deleted text messages under the independent source doctrine. Illegally obtained evidence can be admitted if discovered through a source independent from the initial illegality. The doctrine requires that the illegally obtained information not affect the magistrate's decision to issue the independent warrant or the state agents' decision to seek the independent warrant. Because sufficient evidence supports the trial court's findings that the illegally obtained deleted text messages uncovered on the 2018 warrant did not affect the magistrate's decision to issue the 2019 warrant, and that the messages did not affect the state agent's unchanged motivation in requesting the 2019 warrant, the court properly admitted the messages under the independent source doctrine.
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> Martinez-Castro also contends he was coerced into giving incriminating statements to law enforcement. Sufficient evidence supports the trial court's findings that law

enforcement officers complied with Miranda, and under the totality of the circumstances, his statements were not coerced.

For space reasons, the Legal Update will not excerpt from or try to provide detailed descriptions of the facts and lengthy legal analysis on these issues. But the Legal Update does provide here the following explanation from the Court of Appeals that Miranda standards are the same under the Washington and Federal constitutions:

> Martinez-Castro contends that because article I, section 9 of the Washington Constitution provides more protection than the Fifth Amendment, we should engage in a State v. Gunwall analysis and find that article I, section 9 requires that an "intelligent waiver of rights required giving Martinez-Castro some indication of the suspected offense." But in State v. Wheeler, [108 Wn.2d 230, 240 (1987))] our Supreme Court held that article I, section 9 of the Washington Constitution is "identical in scope to the Fifth Amendment." The trial court correctly noted that article I, section 9 "does not lend additional expanded protections above and beyond what are lent by the Fifth Amendment." We need not engage in another Gunwall analysis.

[Some citations omitted]

The unpublished Opinion in State v. Castro is accessible on the Internet at:
https://www.courts.wa.gov/opinions/pdf/809636.pdf

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LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT IS ON WASPC WEBSITE

Beginning with the September 2015 issue, the most recent monthly Legal Update for Washington Law Enforcement is placed under the "LE Resources" link on the Internet Home Page of the Washington Association of Sheriffs and Police Chiefs. As new Legal Updates are issued, the three most recent Legal Updates will be accessible on the site. WASPC will drop the oldest each month as WASPC adds the most recent Legal Update.

In May of 2011, John Wasberg retired from the Washington State Attorney General's Office. For over 32 years immediately prior to that retirement date, as an Assistant Attorney General and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014 due to variety of concerns, budget constraints and friendly differences regarding the approach of the LED going forward. Among other things, Mr. Wasberg prefers (1) a more expansive treatment of the core-area (e.g., arrest, search and seizure) law enforcement decisions with more cross references to other sources and past precedents; and (2) a broader scope of coverage in terms of the types of cases that may be of interest to law enforcement in Washington (though public disclosure decisions are unlikely to be addressed in depth in the Legal Update). For these reasons, starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update for published decisions from Washington's appellate courts, from the Ninth Circuit of the United States Court of Appeals, and from the United States Supreme Court.

The Legal Update does not speak for any person other than Mr. Wasberg, nor does it speak for any agency. Officers are urged to discuss issues with their agencies' legal advisors and their

local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

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INTERNET ACCESS TO COURT RULES & DECISIONS, RCWS AND WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [http://www.courts.wa.gov/]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [http://legalwa.org/] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [http://www.ca9.uscourts.gov/] and clicking on "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [http://www.law.cornell.edu/uscode/].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. For information about access to the Criminal Justice Training Commission's Law Enforcement Digest and for direct access to some articles on and compilations of law enforcement cases, go to [cjtc.wa.gov/resources/law-enforcement-digest].

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