LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

JULY 2023

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ANNOUNCEMENT: THE FOLLOWING RESEARCH MATERIALS BY JOHN WASBERG HAVE BEEN UPDATED THROUGH JULY 1, 2023, AND ARE AVAILABLE ON THE CRIMINAL JUSTICE TRAINING COMMISSION'S INTERNET LED PAGE UNDER "SPECIAL TOPICS"

The LED page is at: https://www.cjtc.wa.gov/resources/law-enforcement-digest

OUTLINE: "Law Enforcement Legal Update Outline: Cases On Arrest, Search, Seizure, And Other Topical Areas Of Interest to Law Enforcement Officers; Plus A Chronology Of Independent Grounds Rulings Under Article I, Section 7 Of The Washington Constitution"

OUTLINE: "Initiation of Contact Rules Under The Fifth Amendment"

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These documents compiled by John Wasberg (retired Senior Counsel, Office of the Washington State Attorney General) are updated at least once a year, and they are now updated through July 1, 2023. Several 2023 court decisions were added to the "Law Enforcement Legal Update Outline" (the first item).

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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: NINTH CIRCUIT ALLOWS TO STAND A 2-1 PANEL DECISION TO APPLY THE CIRCUIT'S 2018 PRECEDENT OF MARTIN V. BOISE; THE RULING IS THAT THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT PRECLUDES, WHERE

PUBLIC SHELTER IS NOT AVAILABLE, ENFORCEMENT OF A CITY ORDINANCE OF GRANTS PASS (OREGON) THAT PROHIBITS HOMELESS PERSONS FROM USING A BLANKET, PILLOW OR CARDBOARD BOX, OR THEIR CAR, AS SHELTER TO PROTECT FROM THE ELEMENTS

In Johnson v. City of Grants Pass, ___ F.4th ___ 2023 WL ___ (9th Cir., Ninth Circuit, July 5, 2023), a three-judge Ninth Circuit panel, again votes 2-1, after consideration of the panel's ruling in Johnson v. City of Grants Pass, ___ F.4th ___ (9th Cir., September 28, 2022), to affirm the merits ruling of a U.S. District Court judge. The Majority Opinion and Dissenting Opinion from the September 28, 2022, decision are revised, but the ultimate ruling remains the same.

The July 5, 2023, ruling that is reflected in the Majority Opinion is that the City of Grants Pass could not, consistent with the Eighth Amendment's prohibition against cruel and unusual punishment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their cars at night, when there was no other place in the City for them to go. The Majority Opinion's ruling on the merits is grounded in Martin v. City of Boise, 902 F.3d 1031 (9th Cir., September 4, 2018) in which review was denied by the U.S. Supreme Court in 2019.

Also on July 5, 2023, in close voting, the other 20-plus Ninth Circuit judges vote in the Grant's Pass case to deny further review of the case by a larger panel of the Ninth Circuit. This close voting may prompt the U.S. Supreme Court to accept review of the case, assuming that a request by the City of Grants Pass is made for such review. The Legal Update will report on any such appellate development in the case.

The July 5, 2023, Majority Opinion in Johnson again declares that the Ninth Circuit precedent of Martin v. City of Boise, 902 F.3d 1031 (9th Cir., September 4, 2018) applies to civil citations where, as here, the civil and criminal punishments were closely intertwined. The lengthy Majority Opinion and the lengthy Dissenting Opinion address a number of issues, including issues that do not go to the merits of the Eighth Amendment issue noted above. Those issues will not be addressed in this Legal Update entry, and the lengthy discussions in the two Opinions of the Eighth Amendment merits issue also will not be addressed in any detail.

The Dissenting Opinion in Johnson strongly criticizes the reasoning and ruling in the 2018 Martin decision, asserting that that Martin is "egregiously wrong" and misconstrues bptj the Eighth Amendment and the Supreme Court's caselaw construing the Eighth Amendment. The Dissenting Opinion in Johnson also attacks the Johnson Majority Opinion as misreading and greatly expanding the "erroneous" 2018 Ninth Circuit ruling on the merits in Martin.

Result: Affirmance for the most part of the U.S. District Court (Oregon) grant of summary judgment and injunctive relief against the City of Grants Pass (Oregon).

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: OFFICERS ARE HELD TO HAVE BEEN JUSTIFIED UNDER THE FOURTH AMENDMENT IN THEIR INITIAL DETENTION OF PARENTS (EVEN THOUGH THE PARENTS WERE NOT SUSPECTED OF COMMITTING ANY CRIME) WHERE THE DETAINEES' SON HAD THREATENED A MASS SHOOTING AT A SCHOOL; HOWEVER, SUBSEQUENT USE OF FORCE BY OFFICERS AGAINST THE FATHER IS HELD EXCESSIVE UNDER THE DEVELOPING CIRCUMSTANCES OF THE CASE AFTER THE INITIAL DETENTION

In Bernal v. Sacramento County Sheriff's Department, ___ F.4th ___ , 2023 WL ___ (9th Cir., July 7, 2023), a three-judge Ninth Circuit panel is unanimous in affirming in part and reversing in part a U.S. District Court judge's summary judgment order that was entirely in favor of Sacrament County Sheriff's Deputies.

This case includes the unusual Fourth Amendment issue of whether and to what extent law enforcement officers may detain people who are not suspected of engaging in criminal activity, but who have information that is essential to preventing a threatened school shooting. The Bernal Opinion declares that there is authority for detentions in the threatened-school-shooting circumstance, but that this authority is limited, and of course, any use of force by law enforcement must be reasonable.

A Ninth Circuit staff summary (which is not part of the Ninth Circuit Opinion) provides the following synopsis of the panel's Opinion:

> Deputies encountered Celia and William Bernal (collectively "the Bernals") at their home during the Deputies' investigation into allegations that the Bernals' son Ryan planned a shooting at his school that day. During the interaction, the Deputies held Celia's arms and used a twistlock to prevent her from leaving.
>
> The Deputies also pointed a firearm at William, forcibly restrained him, and put him in handcuffs. The district court held that the Deputies did not violate the Fourth Amendment by detaining the Bernals even in the absence of reasonable suspicion [as to any criminal activity by the Bernals]. The district court further found that the Deputies did not use excessive force during the Bernals' detention and, even if they had, qualified immunity applied.
>
> The [Ninth Circuit] panel first considered whether the initial seizure of the Bernals was reasonable. Because the Bernals were detained but not arrested, the reasonableness of their detention depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. To justify the suspicionless seizure of a material witness, there must be exigencies requiring immediate action, the gravity of the public interest must be great, and the detention must be minimally intrusive.
>
> Applying these principles, the panel held that the Deputies had limited authority to briefly detain and question the Bernals about Ryan's location due primarily to the exigencies inherent in preventing an imminent school shooting. This holding was predicated on two key facts: first, the Deputies knew the Bernals had information crucial to stopping a potential mass shooting — the suspected shooter's location; and second, there was an ongoing emergency threatening numerous lives which required immediate action.
>
> The panel further held that it need not set a definitive rule for the maximum length a non-suspect witness detention may last because the detention here lasted approximately twenty minutes, far less than previous detentions that the court has considered. The Deputies' continued detention of Celia after she informed the Deputies she did not want to speak with them did not exceed this boundary.
>
> William's initial detention was likewise permissible, up to a point.

The panel next considered the Bernals' Fourth Amendment claims of excessive force. The district court found the amount of force used against both Celia and William reasonable under the circumstances.

The panel concluded that the district court was correct in its analysis regarding Celia but erred as to William.

First, as to Celia, the panel held that the nature and quality of the Deputies' intrusion was slight because the Deputies utilized a minimal amount of force on Celia. Moreover, the Deputies utilized warnings and less intrusive means before resorting to physical coercion.

Weighing the Deputies' minimal use of force against the government's interests, the panel applied the factors outlined in Graham v. Connor, 490 U.S. 386, 396 (1989). Factors considered in analyzing the government's interest include: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect actively resisted arrest or attempted to escape.

The panel weighed the first Graham factor slightly in favor of the Deputies because, by disregarding the Deputies' commands, Celia prolonged a dire emergency situation. The panel weighed the second and most important Graham factor in favor of Celia because merely being behind the wheel of an operational vehicle does not automatically create a safety hazard; any threat to officer safety was minimal and quickly mitigated.

The panel weighed the third Graham factor in favor of the Deputies because Celia was uncooperative and refused to comply with the Deputies' requests to exit the vehicle. Only then did the Deputies restrain her, using holds on both her arms. The panel held that this type of minimal force was reasonable to prevent continued resistance or flight.

On balance, the panel concluded that the Deputies' use of force against Celia was reasonable under the circumstances.

Next, the panel concluded that the district court erred in finding that the Deputies' use of force against William was not excessive. The intrusion on William's liberty was too great in the context of detaining a non-suspect witness. According to William, the Deputies pointed a gun at him, kicked his legs apart, turned his head beyond its natural range of motion, kicked his knees to force his legs to buckle, smashed his head into the hood of the car, and tightly handcuffed him, resulting in a great deal of pain.

Applying the Graham factors, the first Graham factor weighed in favor of Deputies, but only slightly. The Deputies did not suspect William of committing a crime when they first arrived at the Bernals' home, and asserted they had probable cause to arrest William when he physically resisted their attempts to detain him.

Viewing the evidence in the light most favorable to the Bernals, the panel found a triable issue of fact regarding whether the Deputies' commands to William were lawful because verbally challenging and recording officers are not illegal actions, and thus commands to cease such actions are not lawful orders.

> Nevertheless, the unfolding emergency of a threatened school shooting must be taken into account. The second and most important Graham factor weighed in favor of William because a genuine dispute of material fact remained as to whether William reached into an unsearched bag, and the undisputed facts reflected that the Deputies knew William was unarmed, undermining their claim that they feared for their safety.
>
> On the third Graham factor, to the extent William actively resisted the Deputies' attempts to restrain him, this factor weighed only slightly in favor of the Deputies.
>
> Weighing all relevant factors, the panel found that the district court erred in granting summary judgment to the Deputies by disregarding genuine disputes of material fact. The panel also found that the Deputies used excessive force when they violently detained William despite knowing he was unarmed and posed no reasonable threat to officer safety.
>
> Having found that the Deputies violated William's Fourth Amendment rights, the panel considered whether the Deputies were nonetheless entitled to qualified immunity. The panel concluded that the Deputies violated clearly established law whether they accepted the Bernals' or the Deputies' account of events.
>
> Viewing the evidence in the light most favorable to the Bernals, William never reached into his bag, and instead yelled at the Deputies to stop assaulting his wife and attempted to record the Deputies. William's recording of the incident and his verbally challenging of the police were not only legal actions but were protected by the First Amendment.
>
> Even if the Deputies' account of events is taken as true, the Deputies were on notice that merely reaching into an unsearched bag, without more, could not reasonably lead to an inference that William was armed such that the use of force was justified. Finally, once it became apparent that William held a cell phone, and not a weapon, the officers were on notice they could not violently restrain him.
>
> Accordingly, the panel affirmed the district court's grant of summary judgment as to Celia and reversed as to William. Because the panel reversed the district court's grant of summary judgment on William's Fourth Amendment claims, it reinstated William's pendent state law claims.

[Some paragraphing revised for readability]

The Ninth Circuit Opinion describes as follows the key facts regarding what the Opinion concludes in later analysis constituted excessive use of force against William Bernal:

> As Deputies Chhlang, Kennedy, and Winkel spoke to and restrained Celia, William, standing at 6 feet 3 inches and weighing 290 pounds, was in front of Celia's car and placed a small duffel bag on the hood. The parties present differing accounts of what happened next.
>
> According to the Bernals, William did not reach into the bag and instead had his cell phone in his hands from the time he stepped out of his house until he was placed in handcuffs. When Celia told William to record the Deputies' use of force against her, William held his cell phone with both hands to record the interaction and yelled at the

officers to stop touching Celia. Celia stated that she was watching William the entire time and saw that he never reached into the bag on the car's hood.

According to Deputy Bliss, who stood at approximately 5 foot 7 inches and weighed 160 pounds, William "aggressively" reached into the bag. Worried that William could be retrieving a weapon, Deputy Bliss aimed his firearm at William, ordering him to put his hands up.

William did not comply and instead continued yelling, pulled out his cell phone from the bag, and raised it with both hands. Deputy Bliss recognized the cell phone was not a weapon, holstered his firearm, and helped Deputy Chhlang, approximately the same size as Deputy Bliss, get William's hands behind his back.

Deputy Chhlang reported a similar account of events, including that he saw William reach into the bag, heard Deputy Bliss tell William to take his hands out of the bag and raise them, and saw that William was holding a cell phone, not a weapon.

Another deputy and a third party also recalled William's use of his phone. Deputy Winkel reported hearing William say "he was going to record the whole thing." Gary Turner, a third-party witness, stated that he saw William holding his phone, filming the deputies, and yelling. Turner further recalled that the Deputies told William to put his phone away and calm down.

Importantly, the parties do not dispute that the Deputies quickly recognized the object he held was a cell phone and not a weapon. Despite acknowledging that William had not retrieved a weapon, the Deputies proceeded to forcibly restrain William.

In addition to wrenching William's arms behind his back, the Deputies pushed William's head into the hood of the car. William also stated that the Deputies kicked his legs apart and forced his knees to buckle, putting the full force of his torso on the hood of the car and forcing his head to turn past its natural range of motion. Deputies Bliss and Chhlang contended they did not touch his legs or knees.

[Some paragraphing revised for readability]

Result: Reversal in part and affirmance in part of order of U.S. District Court (Eastern District of California) that granted summary judgment to the law enforcement defendants.

CIVIL RIGHTS ACT SECTION 1983 CIVIL LIABILITY FOR LAW ENFORCEMENT: BASED ON A FIRST AMENDMENT RIGHT TO RECORD NON-PRIVATE CONVERSATIONS, A NINTH CIRCUIT PANEL VOTES 2-1 TO ENJOIN ENFORCEMENT OF AN OREGON STATUTE THAT BROADLY PROHIBITS RECORDING OF NON-PRIVATE CONVERSATIONS WITHOUT CONSENT OR AT LEAST PRIOR ANNOUNCEMENT OF THE FACT OF THE RECORDING ACTIVITY

In Project Veritas v. Schmidt, ___ F.4th ___ , 2023 WL 4308952 (9th Cir., July 3, 2023), a three-judge Ninth Circuit panel votes 2-1 to grant injunctive relief to a non-profit media organization that engages in undercover investigative journalism. The injunction precludes enforcement of an Oregon statute that broadly prohibits, with only a few exceptions, recording of non-private conversations without consent of persons involved in the conversations or at least a prior

announcement of the recording activity. The Majority Opinion and the Dissenting Opinion are lengthy, at over 30 pages each.

The Majority Opinion asserts in Footnote 1 that a total of just five states, including Oregon, have statutes that prohibit individuals from making recordings without providing notice to or obtaining the consent of the recording's subjects where the recordings occur in a place that is open to the public and the subjects lack a reasonable expectation of privacy. In an Appendix, the Majority Opinion cites to the statutes of 39 states (including the State of Washington) plus the District of Columbia that, per the Opinion, broadly allow secretive unannounced recordings of non-private conversations that occur in places open to the public.

A Ninth Circuit staff synopsis (which is not part of the Majority Opinion or Dissenting Opinion) provides the following summaries of those opinions:

> [*Majority Opinion*]
>
> Section 165.540(1)(c) of the Oregon Revised Statutes provides that a person may not obtain or attempt to obtain the whole or any part of a conversation by means of any device if not all participants in the conversation are specifically informed that their conversation is being obtained. The law provides two exceptions relevant to this appeal: (1) section 165.540(1)(c) does not apply to a person who records a conversation during a felony that endangers human life, Or. Rev. Stat § 165.540(5)(a); and (2) section 165.540(1)(c) allows a person to record a conversation in which a law enforcement officer is a participant if the recording is made while the officer is performing official duties and meets other criteria.
>
> Plaintiff Project Veritas, a non-profit media organization that engages in undercover investigative journalism, states that it documents matters of public concern by making unannounced audiovisual recordings of conversations, often in places open to the public.
>
> Applying Animal Legal Def. Fund. v. Wasden, 878 F.3d 1184 (9th Cir. 2018), the [Majority Opinion determines] that section 165.540(1)(c) regulates protected speech (unannounced audiovisual recording) and is content based because it distinguishes between particular topics by restricting some subject matters (e.g., a state executive officer's official activities) and not others (e.g., a police officer's official activities). As a content-based restriction, the rule fails strict scrutiny review because the law is not narrowly tailored to achieving a compelling governmental interest in protecting conversational privacy with respect to each activity within the proscription's scope, which necessarily includes its regulation of protected speech in places open to the public.
>
> Thus, citing Cohen v. California, 403 U.S. 15, 21 (1971), and Hill v. Colorado, 530 U.S. 703, 717 (2000), the [Majority Opinion determines] that Oregon does not have a compelling interest in protecting individuals' conversational privacy from other individuals' protected speech in places open to the public, even if that protected speech consists of creating audio or visual recordings of other people.
>
> The [Majority Opinion further determines] that section 165.540(1)(c) burdens more speech than is necessary to achieve its stated interest and there were other ways for Oregon to achieve its interests of protecting conversational privacy.

Finally, addressing the dissent, the [Majority Opinion determines] that severing the exceptions that made the general prohibition content based and extending the general prohibition to those protected First Amendment activities, would create significant constitutional issues rather than cure them. Because section 165.540(1)(c) is not a valid time, place, or manner restriction, it cannot be saved by striking the two exceptions at issue here.

[*Dissenting Opinion*]

Dissenting, Judge Christen stated that because the majority does not dispute that the State has a significant interest in protecting the privacy of Oregonians who engage in conversations without notice that their comments are being recorded, the court's analysis should be straightforward.

First, principles of federalism require that the panel begin from a premise of reluctance to strike down a state statute. Next, following Supreme Court precedent, the panel should sever the two statutory exceptions that Project Veritas challenges, apply intermediate scrutiny to the content-neutral remainder, recognize that the statute is well tailored to meet Oregon's significant interest, and uphold section 165.540(1)(c) as a reasonable time, place, or manner restriction.

[The Dissenting Opinion further states] that the purpose Oregon advances is its significant interest in protecting participants from having their oral conversations recorded without their knowledge. [The Dissenting Opinion asserts that] the majority recasts the State's interest as one in "protecting people's conversational privacy from the speech of other individuals." That reframing of the legislature's purpose serves as the springboard for the majority's reliance on an inapplicable line of Supreme Court authority that pertains to state action aimed at protecting people from unwanted commercial or political speech, not protection from speech-gathering activities like Project Veritas's, which are qualitatively different because they appropriate the speech of others.

[Bracketed language added or substituted for some of the text in the Staff Summary]

LEGAL UPDATE EDITOR'S NOTE/COMMENT: In the Appendix A list of statutes of "States allowing recording without providing notice to or obtaining consent from the recording's subjects when created in a place where the subjects lack a reasonable expectation of privacy," the Majority Opinion in Project Veritas v. Schmidt cites the relevant Washington statute and case law as follows:

> **Wash. Rev. Code Ann. § 9.73.030(1)(b); Washington v. Roden, 321 P.3d 1183, 1188 (Wash. 2014) (en banc); Washington v. Kipp, 317 P.3d 1029, 1034 (Wash. 2014) (en banc)**

The Majority Opinion in the Veritas Project case appears to rely on the discussion in State v. Kipp, 179 Wn.2d 718 (Feb. 6, 2014) and not on the direct holding in that case, which was that the Privacy Act (chapter 9.73 RCW) was violated by a man's secret audio recording of a one-on-one kitchen conversation with the man's brother-in-law where the man suspected the brother-in-law of molesting the man's underage daughters.

Similarly, the Majority Opinion in the Veritas Project case appears to rely on the discussion in State v. Roden, 179 Wn.2d 893 (Feb. 27, 2014) and not the ultimate holding

in the Majority Opinion in the case, which was that I1) a defendant's text messages to an arrestee's cellular telephone were "private" communications within the meaning of the Privacy Act, chapter 9.73 RCW; and (2) a detective's opening, reading, and responding to incoming text messages (posing as the recipient) was an "interception" in violation of the Privacy Act.

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BRIEF NOTES REGARDING A JULY 2023 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINION ON A LAW ENFORCEMENT ISSUE

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 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 generally not sufficiency-of-evidence.

The entry below addresses the only July 2023 unpublished Court of Appeals opinions that fits the above-described categories or is of particular significance to law enforcement. 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. The crime of conviction is italicized, and the description of the key ruling is bolded.

State v. Samantha Hall-Haught: On July 31, 2023, Division One of the COA rejects the defendant's challenges to her Island County Superior Court conviction for *vehicular assault*. The Hall-Haught Opinion's opening paragraph summarizes the ruling on the main issue in the case (Sixth Amendment confrontation right) as follows:

> On appeal, [Hall-Haught] contends that she was deprived of her constitutional right to confront the witnesses against her when lab results indicating THC in her system were admitted into evidence without the testimony of the technician who performed the test. **Because the supervisor who testified and was available for cross examination had independently reviewed the testing and the results and testified to her own opinions about them, we conclude that Hall-Haught's confrontation rights were not violated.**

Key excerpts from the Hall-Haught Opinion include the following:

> In Washington, expert witnesses may testify to their own conclusions, even when they rely on data prepared by non-testifying technicians. State v. Lui, 179 Wn.2d 457, 483, 315 P.3d 493 (2014). Because Harris testified to her own independent conclusion, Hall-Haught's confrontation rights were not violated."

. . . .

> While the testimony of technicians "may be desirable, . . . the question is whether it is constitutionally required." Lui, 179 Wn.2d at 480. "[A] break in the chain of custody might detract from the credibility of an expert analysis of some piece of evidence, [but] this break in the chain does not violate the confrontation clause." Lui, 179 Wn.2d at 479. Thus, only the "ultimate expert analysis, and not the lab work that leads into that analysis," is subject to the confrontation clause requirement. Lui, 179 Wn.2d at 490.
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> . . . .
>
> Here, as in [City of Seattle v. Wiggins, 23 Wn. App. 2d 401 (2022)], Harris testified that she was a supervisor and had reviewed the report prepared by a different forensic scientist, rather than being present during the testing. However, unlike in Wiggins, Harris specifically testified that she "came to [her] own independent conclusion" following her review of all the data in the file. Thus, Harris was not merely "parrot[ing] the conclusions" of her subordinates, which is not permitted by the confrontation clause. Lui, 179 Wn.2d at 483. Instead, she was "rely[ing] on technical data prepared by others when reaching [her] own conclusions," which is permitted without the testimony of each analyst. Lui, 179 Wn.2d at 483.

LEGAL UPDATE EDITOR'S NOTE: Thank you to Melanie Dane of the Traffic Safety Resource Program for her alert to TSRP stakeholders regarding this decision.

The Opinion in State v. Hall-Haught can be accessed on the Internet at:
https://www.courts.wa.gov/opinions/pdf/842471.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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