# LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

**Law Enforcement Officers: Thank you!**

**December 2017**

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## NINTH CIRCUIT, UNITED STATES COURT OF APPEALS

### NOTICE OF DELAY IN THE LEGAL UPDATE'S REPORTING OF THE NOVEMBER 27, 2017 NINTH CIRCUIT DECISION IN UNITED STATES V. JOHNSON

In the November 2017 Legal Update for Washington Law Enforcement, I announced that the December 2017 Legal Update for Washington Law Enforcement would include entries on two November 2017 Ninth Circuit decisions. I briefly summarized the ruling in the one of those two decisions along the following lines:

In United States v. Johnson, ___ F.3d ___ , 2017 WL ___ (9th Cir., November 27, 2017), a three-judge panel holds that under the facts of that case the Fourth Amendment permits the warrantless, non-consenting, non-exigent search of a parolee's cell phone. The Ninth Circuit panel distinguishes case law that greatly restricts warrantless searches of cell phones (A) of arrestees (Riley v. California, 134 S.Ct. 2473 (2014)), and (B) of probationers (United States v. Lara, 815 F.3d 605 (9th Cir. 2016)). The panel rules that privacy rights of those on parole status are significantly more limited than privacy rights of those being arrested or being under probation status. The Ninth Circuit panel also rejects the defendant's Fourth Amendment attacks on law enforcement delays in searching the phone, ruling that under the circumstances of the case, the delays were reasonable under the Fourth Amendment.

I have decided to delay by a few months my report on the November 27 decision in Johnson. I need more time to research and think about how that Ninth Circuit decision affects law enforcement officers and community corrections officers operating in the State of Washington. Any suggestions from readers would be greatly appreciated.

**PROBATIONER AND PAROLEE SEARCHES: WHERE CALIFORNIA OFFICERS HAD PROBABLE CAUSE (1) THAT AN OFFENDER ON PROBATION IN CONNECTION WITH SERIOUS OFFENSES HAD JUST PARTICIPATED IN A VIOLENT FELONY AND WAS STILL AT LARGE, AND (2) THE HOME THAT WAS THE TARGET OF THEIR SEARCH WAS THE CURRENT RESIDENCE OF THE PROBATIONER. THE OFFICER LAWFULLY CONDUCTED A WARRANTLESS SEARCH – OVER THE OBJECTION OF A PRESENT AND OBJECTING CO-OCCUPANT – OF THE RESIDENCE OF THE PROBATIONER**

Smith v. City of Santa Clara, ___ F.3d ___ , 2017 WL ___ (9th Cir., November 30, 2017)

**LEGAL UPDATE EDITOR'S INTRODUCTORY COMMENT: The Smith case was decided under the Fourth Amendment and under the California statutory scheme that (1) limits the privacy and liberty rights of offenders who are in community custody status, and (2) empowers government agents, including law enforcement officers, in relation to such offenders. Under that law governing the Smith case, local and state law enforcement officers in California generally have the same power to detain, arrest, and search persons on community custody as do community custody officers.**

**The law governing Washington law enforcement officers appears to differ, however. While the issue is debatable, I believe that it is generally agreed among Washington legal experts that Washington law enforcement officers do not have the increased authority to detain, arrest or search persons under community custody, solely by virtue of their persons' community custody status, that do community custody officers (CCO). See State v. Simms, 10 Wn. App. 75 (1073). Washington law enforcement officers do, however, have enforcement authority to assist CCOs, upon CCO request safety reasons, when CCOs are exercising their expanded authority over offenders who are in community custody status.**

**So, the Smith decision is instructive state and local Washington law enforcement officers only to the extent that it guides CCOs and Washington law enforcement officers who are assisting CCOs upon CCO request.**

**As always, I urge that Washington officers/agencies consult their own legal advisors and local prosecutors for guidance regarding the applicable law.**

Facts: (Excerpted from Ninth Circuit opinion)

> On October 4, 2010, Vahid Zarei reported to the San Jose Police Department that his car had been stolen. Zarei told police that he had just given Justine Smith a ride in the car and discovered that his spare key to the vehicle was missing. On October 7, 2010, Zarei's friend found the car in Santa Clara, California. Zarei and his friend then drove to Santa Clara to retrieve the car. When they arrived, but before they could get to the car, Justine and an unknown male entered the car and drove away. Justine was the driver. Zarei and his friend followed the car in the friend's car. At some point the cars stopped and the unknown male exited Zarei's vehicle and stabbed Zarei in the stomach. The male got back into Zarei's car, and Justine drove away. Zarei was taken to the hospital with life-threatening injuries.
>
> Santa Clara police officers investigated both the car theft and the stabbing. While at the hospital, they showed Zarei's friend a picture of Justine, and he identified her as the driver of the stolen car. The police then learned that in December 2009, a California

court had placed Justine on probation for three years in connection with felony convictions for grand theft and forgery. As a condition of her probation, Justine agreed to warrantless searches of her residence.

The police contacted the probation department to determine Justine's whereabouts. On December 22, 2009, Justine reported her address to probation as 940 Gale Drive. This was the address of her mother's unit in a small, two-unit duplex. On January 6, 2010, Justine reported to the California Department of Motor Vehicles that her address was 942 Gale Drive, which was the address for the other unit in the duplex. In addition, two entries in a county database, one dated January 27, 2010, and the other dated May 14, 2010, listed Justine's address as 940 Gale Drive. Finally, on June 2, 2010, Justine once again reported to probation that her residence was 940 Gale Drive, but this time she added that she was in the process of moving out of her mother's house.

On October 10, 2010, officers began surveilling the Gale Drive duplex but did not see Justine. After waiting awhile, they knocked on the door to 940 Gale Drive and announced, "Probation Search. Open the door." Josephine opened the door, stated that Justine did not live at the residence, and demanded that the officers produce a search warrant. When the officers explained that they needed to conduct a probation search for Justine, Josephine became angry and refused to allow them to enter.

The officers entered the home despite Josephine's objections. They did not find Justine, but they found in the garage a sofa with sheets lying on it, female clothing, and an unopened envelope addressed to Justine at the 940 Gale Drive address. Officers then told Josephine that they needed to search the 942 unit of the duplex, which was locked and, according to Josephine, rented to another tenant. When officers indicated that they might need to force entry, Josephine directed them to the key. Officers then searched the 942 unit but did not find Justine.

Proceedings below:

Josephine and her minor granddaughter, A.S., sued several police officers and the City of Santa Clara, alleging that the search for Justine violated their constitutional rights under state and federal law. The jury returned a verdict for the government defendants.

ISSUE AND RULING: The trial record establishes that California law enforcement officers had probable cause to believe that the probationer, who was on probation in connection with serious offenses, had just participated in a violent felony and was still at large. The trial record also supports the jury' s finding that there was probable cause that the home that was the target of their search was the current residence of the probationer. Did the officers lawfully conduct a search – over the objection of a present and objecting non-probationer, co-occupant – of the residence of the probationer? (ANSWER BY NINTH CIRCUIT: Yes, rules a unanimous 3-judge panel.)

Result: Affirmance of judgment of the U.S. District Court (San Jose) on a jury verdict for the City of Santa Clara and its officers.

ANALYSIS: (Excerpted from Ninth Circuit opinion)

> "It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." . . .One exception to this

principle is that the police generally may search a home without a warrant if they have obtained voluntary consent from the individual whose home is searched. . . . Under this "voluntary consent" rationale, a search will also be valid against an "absent, nonconsenting person" so long as the police obtain the consent of a person who possesses common authority over the home with the absent person. . . . In [Georgia v. Randolph, 547 U.S. 103 (2006)], the Supreme Court recognized a limitation on warrantless consent searches of a home. In that case, the Court held that even if a person who apparently possesses common authority over a home consents to a warrantless search, the search is not reasonable as to a second occupant if that occupant is physically present and refuses permission to search.

Another exception to the principle that warrantless searches of a home are unreasonable relates to persons who are on probation or parole. In Griffin v. Wisconsin, the Supreme Court found a search of a probationer's residence reasonable even though it was conducted without a warrant. 483 U.S. 868, 880 (1987). The search in that case was conducted pursuant to a state regulation that permitted any probation officer to search a probationer's home without a warrant as long as his supervisor approved and as long as there were "reasonable grounds" to believe that contraband would be found in the home. In upholding the search, the Court noted that although a warrant was normally required to search a home, the state's interest in supervising a probationer gave rise to "special needs" that permitted "a degree of impingement upon privacy that would not be constitutional if applied to the public at large." The Court then found that these special needs made the warrant requirement impracticable.

[Court's footnote: *The Court also found that the special needs relating to the probation regime justified replacing the normal requirement of probable cause to believe that contraband would be found in the probationer's home with the lesser standard of reasonable grounds.*]

The Court stated:

> A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires. Moreover, the delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct, and would reduce the deterrent effect that the possibility of expeditious searches would otherwise create.

Some years later, the Supreme Court, in [United States v. Knights, 534 U.S. 112 (2001)] found a warrantless search of a California probationer's home reasonable even though it was conducted by a sheriff's deputy rather than a probation officer and the purpose of the search was not to supervise the probationer but to investigate a specific crime. The Court began by noting that, in Griffin, it analyzed the reasonableness of a warrantless search by a probation officer under its "special needs" cases. In Knights, the Court declined to use the special-needs approach used in Griffin. The Court also declined to analyze the reasonableness of the search under the "consent" rationale . . . .

Instead of using either the special-needs rationale or the consent line of cases, the Court in Knights examined whether the search "was reasonable under [the Court's] general Fourth Amendment approach of 'examining the totality of the circumstances,' with the probation search condition being a salient circumstance." . . . . Under this approach, the

reasonableness of a search is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. The Court determined that "Knights' status as a probationer subject to a search condition" informed both sides of the reasonableness balance.

On the individual-privacy side of the balance, the Knights Court found that the probation condition significantly diminished Knights' reasonable expectation of privacy. On the governmental interest side of the balance, the Court recognized that "the probationer 'is more likely than the ordinary citizen to violate the law." The Court also found that "probationers have even more of an incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal because probationers are aware that they may be subject to supervision and face revocation of probation, and possible incarceration, in proceedings in which the trial rights of a jury and proof beyond a reasonable doubt, among other things, do not apply." The Court reasoned that the state's "interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen." After balancing these respective interests, the Court concluded that a warrantless search of the home of a probationer subject to a search condition is reasonable as to the probationer if there is reasonable suspicion that criminal conduct is occurring.

[Court's footnote: The Court in Knights left open the possibility that the police can search a probationer's residence on less suspicion or even none at all. We have since held that "a suspicionless search, conducted pursuant to a suspicionless-search condition of a violent felon's probation agreement, does not violate the Fourth Amendment." United States v. King, 736 F.3d 805, 810 (9th Cir. 2013) (leaving open whether the same is true for "probationers who have not accepted a suspicionless-search condition, or of lower level offenders who have accepted a suspicionless-search condition").

The [Knights] Court determined that the governmental interests were sufficiently weighty to justify "an intrusion on the probationer's significantly diminished privacy interests."

Randolph was a consent case. The Court held that when the only justification for a search of a residence is the consent given by a person with common authority over the premises, the search is unreasonable as to a second person who is physically present and refuses permission to search. **But the Supreme Court's probation-search cases do not rest on a consent rationale**. . . .

Under the Supreme Court's cases, probation searches are not analyzed as consent searches. Thus, Randolph, which creates an exception to the consent rule, is not directly applicable. Instead, the question is whether a warrantless probation search that affects the rights of a third party is reasonable under the totality of the circumstances. To answer this question, we balance the degree to which the search intrudes upon the third party's privacy against the degree to which the search is needed for the promotion of legitimate governmental interests. A non-probationer, of course, has a higher expectation of privacy than someone who is on probation, and therefore the privacy interest in this case is greater than it would be if the search affected only the probationer. But we conclude that, under the facts of this case, the governmental interests at stake

were sufficiently great that the warrantless search of the duplex over Josephine's objection was reasonable.

It is undisputed that the police knew, at the time of the search, that Justine was serving a felony probation term for serious offenses. It is further undisputed that the police had probable cause to believe that Justine had just been involved in the theft of an automobile and a stabbing, and that she was still at large. As the Court recognized in Knights, one of the governmental interests justifying warrantless probation searches is the need to protect the public from the probationer, who is more likely than the ordinary citizen to reoffend. Obviously, once the government has probable cause to believe that the probationer has actually reoffended by participating in a violent felony, the government's need to locate the probationer and protect the public is heightened. This heightened interest in locating the probationer is sufficient to outweigh a third party's privacy interest in the home that she shares with the probationer. Therefore, under the undisputed facts of this case, we conclude that the warrantless search of the home over Josephine's objection was reasonable as a matter of law.

[Court's footnote: *In our discussion so far, we have assumed that the police had probable cause to believe that the Gale Drive duplex was Justine's residence. However, this was a disputed issue at trial, and we note that a probation search of a residence is unreasonable if the police lack probable cause to believe that the probationer actually resides there. See Motley v. Parks*, 432 F.3d 1072, 1080 (9th Cir. 2005) (en banc), *overruled on other grounds by United States v. King*, 687 F.3d 1189 (9th *Cir. 2012) (en banc). Here, the jury was correctly instructed to find the search of the duplex reasonable only if the police had probable cause to believe that Justine resided there. Josephine contends that the evidence did not support the jury's conclusion that the police had such probable cause, but as we discuss below, the evidence was sufficient to support the verdict on this issue.*]

**We stress that our conclusion is limited to the facts of this case, where the police had probable cause to believe that the probationer, who was on probation in connection with serious offenses, had just participated in a violent felony and was still at large. We express no view as to what would happen in a case in which the police conduct a search – over the objection of a present and objecting co-occupant – of a probationer's residence who is on probation for offenses that are neither violent nor serious, and who is not suspected of involvement in a subsequent offense.**

. . . .

As we mentioned above, an additional requirement for a warrantless probation search is that the police have probable cause that the home they are searching is actually the home of the probationer. . . . In her reply brief, Josephine contends that the evidence at trial was insufficient to permit the jury to reasonably conclude that the officers had probable cause to believe that Justine resided there. This argument . . . is a potential alternative ground for reversing the district court's denial of the plaintiff's motion for judgment as a matter of law. But Josephine did not raise this alternative ground for reversing the denial of the motion in her opening brief, and thus we are inclined to consider it waived. . . .

In any event, the evidence at trial was sufficient to permit the jury to find that the officers had probable cause to believe that Justine resided at the duplex. The evidence allowed

> the jury to find that, on the morning of the search, officers retrieved records from three separate sources – the probation department, county databases, and the state DMV – indicating that Justine lived at the duplex. Most of these documents listed her address as 940 Gale Drive, but 942 Gale Drive was also listed once. Josephine argues that Justine's listing both addresses required the police to believe that Justine moved back and forth between both addresses in a short period of time, which Josephine thinks is incredible and prevented the police from having probable cause to believe that Justine lived at either address. However, because both addresses belonged to the same duplex, the jury could have reasonably concluded that Justine's having used both addresses did not cast doubt on whether she lived at the duplex. It is not as though the different addresses were for different homes in different parts of town.
>
> Josephine also points to a police warrant report involving Justine that contains a note stating that, as of June 1, 2009, Justine was "not living on Gale." But this report was created before Justine was even placed on probation in December 2009 or reported to the probation department that she lived at the duplex. This report also predates the entries in the DMV and county databases listing the Gale Drive addresses as her residence. Thus, while the report might have cast doubt on whether Justine lived at the duplex in June 2009, it did not prevent the jury from finding that the officers had probable cause to believe that she lived at the duplex at the time of the search in October 2010.

[Emphasis added; some citations omitted, others revised for style; some paragraphing and footnotes placement changed for readability]

**LEGAL UPDATE EDITORIAL COMMENT: Note also that under a Washington statute community corrections officers, in order to justify a warrantless search based solely on their community custody over a person on community custody, must have a reasonable suspicion based on articulable facts that the property or effects of the person contains evidence of past, present or future criminal conduct or violations of conditions of community custody. See State v. Jardinez, 184 Wn. App. 518 (2015).**

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## WASHINGTON STATE SUPREME COURT

### IMPLIED CONSENT WARNINGS UNDER RCW 46.20.308: SUPREME COURT DECLINES FOR STATUTORY PROCEDURAL REASONS NOT TO CONSIDER WHETHER THERE WAS IMPACT ON THE DUI DEFENDANT IN AN OFFICER'S ERRONEOUS ADDITIONAL STATEMENT TO THE DUI ARRESTEE THAT THE BAC TEST IS VOLUNTARY

In State v. Chelan County District Court, ___ Wn.2d ___ , 2017 WL ___ (November 16, 2017), the Washington Supreme Court rules, 7-2, that a "writ of review" under RCW 7.16.040, was not available to the State to seek review of a trial court order suppressing a breath test refusal.

At the time of arrest, in response to something that the arrestee said, the officer in the case erroneously added to the implied consent warnings a characterization of the breath test as "voluntary." The DUI defendant later alleged that this erroneous characterization deprived the defendant of the defendant's right to make a knowing and intelligent decision about taking or refusing the breath test.

The majority opinion is authored by Justice Gordon McCloud. The context in which the officer made the erroneous statement is described in the Supreme Court majority opinion as follows:

> In 2015, a Chelan County deputy sheriff arrested Robert James Bowie for driving while under the influence (DUI). Bowie received appropriate ROW 46.20.308 warnings about his right to refuse a breath test, signed the implied consent form, and agreed to take that breath test. But 20 minutes later, just before administering the test, the deputy asked Bowie if he would provide a "voluntary" sample. This time Bowie declined. The State charged Bowie with DUI plus a refusal enhancement.

Justice González dissented in part. Justice Wiggins also signed the dissent. The dissent argues that that Supreme Court should have reversed the suppression order and remanded the case for the District Court to determine whether the officer was in fact misled or prejudiced by the officer's erroneous statement about voluntariness of BAC testing under the implied consent statute.

Result: Affirmance of Chelan County Superior Court decision that rejected the State's petition for a writ of review of the Chelan County District Court order suppressing a BAC result on grounds that the officer gave an erroneous implied consent warnings that was "potentially" misleading.

**LEGAL UPDATE EDITORIAL COMMENT: The Supreme Court's analysis underlying its procedural ruling in this case is not addressed in this Legal Update entry. That is because analysis of the procedural issue concerning the State's right to seek appellate review is not instructive for law enforcement officers. But what is instructive is the agreement in the opinions of the Supreme Court Justices that the officer was mistaken in characterizing as "voluntary" a BAC test conducted under the Implied Consent statute. Officers should not refer to or think about the test as voluntary in this context.**

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## WASHINGTON STATE COURT OF APPEALS

**CIVIL LIABILITY OF DOC IN ITS TAKE-CHARGE RESPONSIBILITY IN SUPERVISING OFFENDERS UNDER COMMUNITY SUPERVISION: ISSUES OF FACT HELD TO EXIST, REQUIRING TRIAL ON WHETHER DOC EXERCISED LESS THAN SLIGHT CARE IN SUPERVISING A MISDEMEANOR DOMESTIC VIOLENCE VIOLATOR WHO MURDERED A WOMAN PROTECTED FROM HIM UNDER A DV NO-CONTACT ORDER**

Harper v. Department of Corrections, ___ Wn. App. ___ , 2017 WL ___ (Div. I, December 4, 2017)

INTRODUCTION: (Excerpted from Court of Appeals opinion)

> Cathy Harper, personal representative of the estate of Tricia Patricelli, appeals from the trial court's order granting summary judgment to the Department of Corrections (DOC) and dismissing her lawsuit. On appeal, Harper contends that the trial court erred because genuine issues of material fact exist as to whether DOC breached its take charge duty owed toward Patricelli in its supervision of Scottye Miller [who murdered Patricelli].

We conclude that genuine issues of material fact remain for trial as to whether DOC exercised less than slight care in its supervision of Miller.

Accordingly, we reverse.

Facts and Proceedings below: (Excerpted from Court of Appeals opinion)

DOC was assigned to supervise Miller during his term of community placement to begin on October 15, 2012. Prior to this term of community placement, Miller had a lengthy criminal record, much of it involving crimes of domestic violence against Patricelli, Harper's daughter. Specifically, Miller had been convicted of 4 domestic violence felonies, 2 of which were against Patricelli, and 18 domestic violence misdemeanors, 4 of which were against Patricelli.

In addition, multiple no-contact orders had been issued against Miller, barring him from interacting with Patricelli. In the past, Miller had repeatedly violated these no-contact orders and lied to his community corrections officers when asked whether he was residing with Patricelli.

Upon his release from incarceration on October 15, Miller was placed under the supervision of DOC community corrections officer [A]. At the time of his release, Miller was to be supervised by DOC as a misdemeanor domestic violence offender. [Court's footnote*: Miller's misdemeanant supervision was in part due to a prior conviction for violation of a no-contact order prohibiting him from contacting PatriceIli.*] A no-contact order in place at the time of Miller's release effectively prohibited him from having physical contact with Patricelli but permitted him to have telephone contact with her.

On October 16, Miller reported to [CCO A] at her Auburn office. While there, Miller was subjected to a urinalysis test to monitor his drug and alcohol use. The test results were negative, indicating that Miller had not used drugs or alcohol since his release from incarceration the day before.

Pursuant to DOC policy, [CCO A] asked Miller where he would be residing. Miller indicated that he was homeless but that he would be staying with his mother, . . . , as well as with nearby relatives. [CCO A] required that Miller report to her office weekly and complete a housing report log, a form document listing where he resided each night to be verified by the signature of the person with whom he had resided. Because Miller was subject to community placement pursuant to a misdemeanor conviction – rather than a felony conviction – DOC's policy did not require that Miller establish an approved address upon his release from incarceration.

Over the next two days, [CCO A] made several telephone calls. First, she contacted Miller's previous mental health counselor, who told her that Miller would be required to sign up for mental health services and to schedule an intake appointment. [CCO A] then contacted . . . a King County probation officer who had supervised Miller in 2010 and 2011, to inform him of the community custody conditions that were imposed on Miller and of her assignment as supervisor of Miller's community placement. [CCO A] telephoned Patricelli and left a message for her, requesting a return call. [CCO A] did not again attempt to contact Patricelli.

> [CCO A] also contacted [another DOC employee], who was currently assigned to Patricelli as a DOC community victim liaison due to Miller's prior crimes of domestic violence against Patricelli. In the time leading up to [CCO A's] supervision of Miller, [the DOC liaison] had successfully contacted Patricelli using a different telephone number than the number dialed by [CCO A]. [The DOC liaison] told [CCO A] that she had spoken with Patricelli and that Patricelli said that she had changed residences, believed that Miller did not know where she would be living, and was aware that she could contact DOC or the police if she saw Miller.
>
> On October 23, seven days after his initial visit, Miller again reported to [CCO A's] office. He was subjected to another urinalysis test, the result of which was negative for drug or alcohol use. He gave [CCO A] a completed housing report log with [his mother's] signature placed thereon, suggesting that he had been residing with [his mother] for the past week. Miller also brought [CCO A] verification of food assistance benefits and acknowledged that he had a psychological examination scheduled for October 24. [CCO A] directed Miller to report to her again on October 30.
>
> On October 29, [Miller's mother] contacted [CCO A] and indicated that she would be willing to let Miller live with her at her residence going forward. [CCO A] did not inquire of [Miller's mother] as to whether Miller had been staying at her residence for the past two weeks. {CCO A] thereafter sent an e-mail to [the DOC liaison officer] inquiring into whether the area surrounding [the address of Miller's mother] was associated with any of Miller's past domestic violence victims. [The DOC liaison] responded that there were no known security concerns regarding [the address where Miller's mother lived].
>
> On October 30, Harper [<u>the mother of Miller's past DV victim, Patricelli</u>] visited Patricelli's apartment. Inside the apartment, she found Patricelli near death, the victim of multiple stab wounds. Patricelli died shortly thereafter. Miller was later convicted of Patricelli's murder.
>
> Harper sued DOC alleging gross negligence and negligent infliction of emotional distress. DOC moved for summary judgment as to both claims. The trial court granted summary judgment of dismissal.

[Some footnotes omitted]

<u>ISSUE AND RULING</u>: DOC records showed a long history of Miller violating no-contact orders prohibiting him contacting the ultimate victim, as well as lying to CCOs upon inquiry about compliance. In the two weeks prior to the murder, CCO A made only one attempt to contact the ultimate victim's mother, was unsuccessful, and did not try to contact the mother using another, arguably better, phone number that was in DOC records. When the murderer had earlier contacted CCO A, CCO A did not inquire as to whether had been living with the mother during community placement.

Taking all inferences from the record in favor of the plaintiff mother of the murder victim, are there genuine issues of material fact as to whether DOC exercised less than slight care in its supervision of the community placement of misdemeanor domestic violence violator Scottye Miller? (<u>ANSWER BY COURT OF APPEALS</u>: Yes)

<u>Result</u>: Reversal of King County Superior Court order of summary judgment for DOC; case remanded for trial.

ANALYSIS: (Excerpted from Court of Appeals opinion)

DOC's community corrections officers have a "take charge" duty over the offenders they supervise. Taggart v. State, 118 Wn.2d 195, 219 (1992). Our Supreme Court announced the existence of this duty with reference to the special relationship provision in the Restatement (Second) of Torts, § 319 (1965), which reads: "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm." Taggart, 118 Wn.2d at 219.

Applying this duty to parole officers, our Supreme Court in Taggart held that, parole officers have a duty to protect others from reasonably foreseeable dangers engendered by parolees' dangerous propensities." "When a parolee's criminal history and progress during parole show that the parolee is likely to cause bodily harm to others if not controlled," the court continued, "the parole officer is under a duty to exercise reasonable care to control the parolee and to prevent him or her from doing such harm." Thus, DOC's duty when supervising offenders is the "take charge" duty set forth in Taggart.

. . . .

The statutory provision guiding whether DOC and its community corrections officers breached their take charge duty while rendering community placement activities is set forth in RCW 72.09.320. The statute provides:

> **Community placement - Liability.**
>
> The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program *are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence.*

RCW 72.09.320 (emphasis added).

Thus, DOC and its correctional officers breach their take charge duty when they are grossly negligent in rendering community placement activities.

. . . .

The relevant Washington Pattern Jury Instruction defines "gross negligence as follows:

> Gross negligence is the failure to exercise slight care. It is negligence that is substantially greater than ordinary negligence. Failure to exercise slight care does not mean the total absence of care but care substantially less than ordinary care.

. . . .

In summary, . . . . the sufficiency of evidence of gross negligence is not merely a function of the quantity of evidence presented, it is also a function of the significance the jury

could give to that evidence in light of the foreseeable danger. It is in this latter respect that the distinction between ordinary negligence and gross negligence will often be manifest. But the drawing of such distinction will almost always require the fact-finding judgment of a jury, as opposed to the legal analysis of a court.

. . . .

We must next determine whether genuine issues of material fact exist as to whether DOC breached its take charge duty owed to Patricelli.

Our analysis necessarily focuses on the sentencing condition most pertinent to Patricelli's safety – the no-contact order. . . . [T]hat DOC may have exercised the appropriate care with regard to other factors does not, as a matter of law, "cancel," . . . the evidence of gross negligence regarding the enforcement of the no-contact order.

First, [CCO A] attested during her deposition that she possessed a physical copy of Miller's field file and had access to DOC's electronic offender management system. This is significant because these records detailed that Miller had a long history of violating no-contact orders prohibiting him from contacting Patricelli [the ultimate victim] and of lying to community corrections officers when asked if he was contacting or residing with Patricelli.

Next, [CCO A] attested in her deposition that, in determining whether Miller had truthfully filled out his housing report log, "I can't assume that he's always lying to me, but I can't always assume that he's telling me the truth." Accordingly, viewed in the light most favorable to Harper, [CCO A] reviewed Miller's housing report logs in the same manner as she would have with any other offender, notwithstanding Miller's clear record of violating no-contact orders so that he could reside with Patricelli and lying to DOC officers about whether he had been residing with her.

Furthermore, the parties do not dispute that [CCO A] made only one attempt to contact Patricelli by telephone in the two weeks of her supervision of Miller – an attempt that was unsuccessful. This is significant because available to [CCO A] in DOC's electronic records system was another telephone number for Patricelli at which she had been successfully contacted in the weeks leading up to her murder. However, [CCO A] did not make any attempt to contact Patricelli using the alternative telephone number.

Lastly, when [Miller's mother] called [CCO A] to indicate that Miller could reside with her going forward, [CCO A] did not ask [Miller's mother] whether Miller had, in actuality, been residing with her during his community placement, as Miller's housing report logs suggested. If [CCO A] had the requisite level of familiarity with Miller's record of lying about where he had been residing, she would have been more likely to inquire into whether he had actually been staying with [his mother] during his term of community placement. This is significant because it would have given [CCO A] a basis on which to inquire into whether Miller had violated the no-contact order.

Taking all reasonable inferences in favor of [the victim's mother], a jury could find that, notwithstanding the steps that were taken in discharge of the take charge duty, . . . . these facts support a conclusion that, with regard to the no-contact order, DOC exercised less than slight care in its supervision of Miller, thereby breaching its applicable duty.

Accordingly, the trial court erred by granting summary judgment of dismissal.

[Footnote omitted]

**HONORING ATTORNEY-CLIENT PRIVILEGE IN JAIL CELL SEARCH: DEFENDANT IS ENTITLED TO HEARING ON WHETHER OFFICERS VIOLATED ATTORNEY-CLIENT PRIVILEGE IN THEIR HANDLING OF PAPERS FOUND IN HIS JAIL CELL UNDER A SEARCH WARRANT**

In the Matter of the Personal Restraint of Forrest Amos, ___ Wn. App. ___ , 2017 WL ___ (Div. II, December 12, 2017)

Facts and Proceedings below: (Excerpted from Court of Appeals opinion)

> Amos was charged with the following felonies: leading organized crime, tampering with a witness, computer trespass, possession of marijuana with intent to manufacture or deliver, introducing contraband, one count of attempted theft, three counts of possession of a controlled substance with intent to manufacture or deliver, four counts of delivery of a controlled substance, and one count of identity theft. In addition, he was charged with two gross misdemeanors: attempted possession of marijuana with intent to manufacture or deliver and attempted forgery.
>
> While Amos was being held in the Lewis County Jail on these charges, [an officer] obtained a warrant to search Amos' jail cell for evidence that Amos was tampering with witnesses related to these pending charges. In his declaration in support of the search warrant, [the officer] averred that Amos had been using legal mail, which may be protected by attorney-client privilege, to disguise his criminal conduct. [The officer's] declaration stated that he would inspect all mail addressed as legal mail to 'confirm the authenticity of whether o[r] not Defense Attorney . . . was the actual sender/recipient.'
>
> On June 18, 2014, [the officer] executed a search of Amos' cell and what happened during the search is disputed. In his declaration of March 22, 2016, [the officer] states that he put all of the recovered items, including the legal mail, into a trash bag and placed it in an evidence facility. Amos states in his declaration attached to his reply brief that [the officer], along with [a detective] and "a number of jail staff," executed the search of his cell. Amos describes the claimed violation of his attorney-client relationship in the following way:
>
>> 6.) While in my cell . . . [the officer and the detective] read through all my privileged communications. I observed this while standing in the dayroom of D2 unit. I observed . . . [the detective] sitting at my cell table reading through my legal paperwork and when he s[aw] something he would point it out to . . . [the officer] who would place it [in] a clear plastic bag. About thirty minutes later I was allowed back into my cell.
>>
>> 7.) All my legal mail was taken. This included a letter from [prior defense counsel] regarding conversations we had about [a] State witness . . . contacting me using fake names and how we would communicate. This fact known by the

> State could have been used to impeach my testimony if I were to take the stand in my defense.
>
> 8.) All my legal materials, case narratives, and defense strategies, and witness questions were taken. I was asked by my attorney . . . to write questions and fact sheets as I went through my case discovery in order to aid him in my defense and witness interviews. These writings contained vital strategies outlin[]ing facts that ruined the State's case. It took me months to prepare these writings and before I could give them to my counsel they were read and seized.
>
> 9.) My case discovery was taken so I could not assist my attorney in preparing my defense.

At subsequent status hearings in July 2014, Amos' defense counsel confirmed that the search had taken place. Counsel told the trial court that he was having trouble retrieving the legal documents and that Amos' ability to prepare a defense was being hampered because of it. The deputy prosecutor . . . suggested that the court conduct an in camera review of the legal documents retrieved from the search of Amos' cell, but the court declined to do so because defense counsel had not prepared a motion.

At the July 24 hearing, defense counsel expressed concern about the search of Amos' cell, stating that Amos had informed him that jail staff had looked through all of Amos' legal paperwork. At this hearing, a different deputy prosecutor stated that before the search of Amos' cell, he advised [the officer] not to look at any of the materials and to give them to a judge so that the judge could review it to see what was privileged before he looked at it, and I made that request to him specifically out of concern that it otherwise might be considered eavesdropping on attorney-client privileged materials.

The prosecutor stated that after the search, [the officer] told him that jail staff had "very cursorily, very briefly just flipped through things to find stuff." However, the prosecutor stated that he thought that there still needed to be a hearing on the issue. The trial court expressed concern with the search and recommended that defense counsel set a hearing regarding these issues.

According to Amos, the week before the July 24 hearing defense counsel informed him that he was preparing a CrR 8.3(b) motion to dismiss Amos' charges based on the jail staff's violation of his confidential attorney-client relationship. Amos further contends that on July 24, defense counsel incorrectly informed him that he had to prove prejudice and that counsel refused to file the motion for that reason.

At the next hearing, on July 31, Amos agreed to a plea deal. In exchange for dropping the charges for leading organized crime and one count of identity theft, Amos pled guilty to the remaining charges. Amos' guilty plea states that he "waives rights to file appeals and pers[onal] rest[raint] petitions in this matter." [After sentencing and a variety of other procedural developments at superior court and in the Court of Appeals, Amos filed a Personal Restraint Petition raising the attorney-client issue that he apparently abandoned when he entered his guilty plea.]

<u>ISSUE AND RULING</u>: Officers searched the jail cell the jail cell of Forrest Amos under a search warrant. Forrest Amos alleges that he observed the officers looking through written legal materials in his cell, including case narratives, defense strategies and witness questions. He

subsequently pleaded guilty to a number of charges without fully pursuing a hearing on whether his attorney-client rights were violated by the search.

In his challenge to his guilty plea, is Forrest Amos entitled to a hearing at in Superior Court to determine whether officers violated the attorney-client privilege in a search of his jail cell, and, if so, the State can establish beyond a reasonable doubt that any such violation was not prejudicial to Amos? (ANSWER: Yes, Amos is entitled to a hearing)

Result: Reversal of Lewis County Superior Court judgment on guilty plea of Forrest Amos to tampering with a witness, computer trespass, possession of marijuana with intent to manufacture or deliver, introducing contraband, one count of attempted theft, three counts of possession of a controlled substance with intent to manufacture or deliver, and four counts of delivery of a controlled substance; remand of case to Superior Court to conduct a factual hearing to determine (1) the nature of the search of the jail cell of Amos, (2) whether officers or other State officials seized or reviewed documents, (3) what were the nature and contents of those documents, (4) if a violation of the attorney-client relationship did occur, whether the State can show beyond a reasonable doubt that Amos was not prejudiced (5) whether Amos would not have pled guilty but for his attorney's deficient actions or advice; and (6) any other factual questions the trial court deems necessary to make a determination.

ANALYSIS: (Excerpted from Court of Appeals opinion)

> Amos argues that he received ineffective assistance of counsel, undermining the voluntariness of his plea, because he lost all faith in his attorney after officers read through his legal documents and that he was left only to plead guilty to the charges. He also contends that his attorney should have moved to dismiss the charges under CrR 8.3(b).
>
> Under CrR 8.3(b):
>
>> The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial.
>
> "A defendant's constitutional right to the assistance of counsel unquestionably includes the right to confer privately with his or her attorney." State v. Fuentes, 179 Wn.2d 808, 818 (2014) **April 14 LED:20**. "Even 'high motives and zeal for law enforcement cannot justify spying upon and intrusion into the relationship between a person accused of [a] crime and his counsel.'" State v. Granacki, 90 Wn. App. 598, 602 (1998) **Aug 98 LED:19** (quoting State v. Cory, 62 Wn.2d 371, 374-75 (1963)). As relevant to this appeal, prejudice from violating the attorney-client relationship can arise
>
>> from the prosecution's use of confidential information pertaining to the defense plans and strategy, from government influence which destroys the defendant's confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial.
>
> United States v. Irwin, 612 F.2d 1182, 1187 (9th Cir. 1980) (footnote omitted); *see also* State v. Garza, 99 Wn. App. 291, 301 (2000). A violation of a defendant's attorney-client relationship will result in dismissal of his charges, unless the State can prove beyond a

reasonable doubt that the violation did not result in any prejudice to the defendant. Fuentes, 179 Wn.2d at 819-20.

In several appellate decisions, violation of a defendant's attorney-client confidentiality resulted in the dismissal of the criminal charges against him. Examples include Cory, where the police installed a microphone in a room where the defendant discussed privileged information with his attorney; and Granacki, where a police detective, who was assisting the prosecution, read defense counsel's legal pads containing trial strategy and tactics. Most similar to the present case is [State v. Perrow, 156 Wn. App. 322 (Div. III, 2010) **July 10 LED:26**], where the police recovered a document that the defendant's defense attorney had asked him to prepare. A detective subsequently analyzed that document's contents, prepared a report, and forwarded it to the prosecutor's office.

The question before us is whether the purported violation of Amos' attorney-client relationship resulted in Amos receiving ineffective assistance of counsel which may have undermined the validity of his plea and waiver. Under Rules of Professional Conduct 1.1, a lawyer shall provide competent representation to a client, which requires thoroughness and preparation reasonably necessary for the representation. Before allowing a defendant to plead guilty, "counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty." . . . . A guilty plea is only valid when it "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant."

If the actions of the State violated Amos' attorney-client relationship, then the charges should have been dismissed, unless the State proved beyond a reasonable doubt that the violation did not result in any prejudice to the defendant. Fuentes. If defense counsel had informed Amos of this and filed a CrR 8.3 motion to dismiss, citing Perrow, Granacki, and Cory, Amos would likely have not pled guilty to myriad charges which could have potentially been dismissed before the plea was struck. Thus, if a reasonable investigation would have revealed the violation of the attorney-client relationship, Amos could show that he received ineffective assistance of counsel before the plea deal was struck undermining the validity of his consent to waive his collateral attack rights.

. . . .

[T]he merits of whether Amos validly waived his right to collateral attack cannot be determined on this record. Amos submitted a declaration that averred (1) his prior defense counsel asked him to prepare documents for his defense, (2) he prepared "case narratives, witness questions" and "defense strategies," and (3) he "observed" [the officer and the detective] "read[ing] through all [his] privileged communications" for approximately 30 minutes. His declaration also states that (4) his defense counsel told him he was preparing a CrR 8.3(b) motion to dismiss, but informed him of the incorrect prejudice standard and did not submit the motion, and (5) he lost all confidence in his attorney and would not have pled guilty if the State had not intruded into his attorney-client relationship. The State submitted its own evidence, which rebuts Amos' claim that officers looked through his privileged materials.

. . . .

> On this record, it cannot be determined whether Amos received ineffective assistance of counsel that undermined the validity of his plea and waiver. However, because Amos made "a prima facie showing of actual prejudice, but the merits of the contentions cannot be determined solely on the record," we remand the petition for a full hearing on the merits . . . . The trial court will conduct a factual hearing to determine (1) the nature of the cell search, (2) whether officers or other State officials seized or reviewed documents, (3) what were the nature and contents of those documents, (4) if a violation of the attorney-client relationship did occur, whether the State can show beyond a reasonable doubt that Amos was not prejudiced (5) whether Amos would not have pled guilty but for his attorney's deficient actions or advice; and (6) any other factual questions the trial court deems necessary to make a determination.
>
> This remand is not for a reference hearing, but rather for a determination of the PRP on the merits pursuant to RAP 16.11(a) and 16.12. Amos may not raise any new issues not already raised in the PRP or this opinion. At the conclusion, the trial court shall enter findings of fact, conclusions of law, and an order deciding the petition consistently with this opinion.

[Footnotes omitted; some citations omitted, other citations revised for style]

**LEGAL UPDATE EDITORIAL COMMENT: For more reading and a discussion of Washington cases on court protection of the constitutional right to an attorney and of the attorney-client relationship, see the February 2013 Law Enforcement Digest article (starting at page 2): "Inadvertent Recording of Attorney Telephone Calls In Violation Of Attorney-Client Privilege." The LED article is available on the Criminal Justice Training Commission's Internet LED page.**

**COURT REJECTS AS NOT SUPPORTED BY LAW THE NEGLIGENCE-BASED CIVILIAN VS. CIVILIAN LAWSUIT AGAINST TWO RESTAURANTS BY THE VICTIM OF A SHOOTER WHERE THE SHOOTER WAS ALLEGEDLY OVERSERVED ALCOHOL BY THE RESTAURANTS**

In Mortenson v. Moravec, ___ Wn. App. ___ , 2017 WL ___ (Div. II, December 12, 2017), Division Two of the Court of Appeals rules that a person may not sue restaurants under circumstances where he was accidentally shot by another person who allegedly was overserved alcohol by the bars. The Court of Appeals summarizes its ruling as follows:

> A commercial seller of alcohol has a duty to not serve alcohol to an apparently intoxicated person. The question in this case is to whom that duty is owed; specifically, whether a commercial alcohol seller owes a duty to a person who is accidentally shot by an intoxicated customer after the customer leaves the seller's premises.
>
> Robert Moravec accidentally shot and seriously injured Nicholas Mortensen after an evening of drinking alcohol at two establishments: Main Street Station Bar & Grill, owned by Drew James Corporation (Main Street), and Rancho Viejo Sports Bar, owned by Guitron Estrada, II, Inc. (Rancho Viejo). Mortensen filed a lawsuit against Main Street and Rancho Viejo, alleging that they each were negligent in serving alcohol to Moravec when he was apparently intoxicated.

> The trial court granted summary judgment in favor of Main Street and Rancho Viejo, ruling that they were not liable as a matter of law because they owed no duty to Mortensen. Mortensen appeals the trial court's summary judgment order.
>
> RCW 66.44.200(1) prohibits a person from selling alcohol to any person apparently under the influence of alcohol. The Supreme Court in Christen v. Lee established the general rule that an alcohol seller's duty not to serve an intoxicated customer does not extend to the customer's criminal assault of a third person because such an assault is unforeseeable as a matter of law. 113 Wn.2d 479, 498, 501-03 (1989). The court held that an alcohol seller's duty is limited to persons injured by the intoxicated customer's driving error. Mortensen claims that the RCW 66.44.200(1) duty extends to any third person who is accidentally injured because of the criminal conduct of a customer who is served alcohol while apparently intoxicated, and that in this case the foreseeability of injury is a question of fact that cannot be decided on summary judgment.
>
> We hold that (1) Christen compels the conclusion that an alcohol seller's duty under RCW 66.44.200(1) to not serve a person who is apparently intoxicated generally does not extend to a third person injured by the apparently intoxicated person's criminal assault, even if the injury was accidental; (2) because Moravec's shooting of Mortensen constituted a criminal assault, the general rule applies here; and (3) the exception to the general rule recognized in Christen for when the alcohol seller had some notice of the possibility of harm based on the intoxicated person's actions is inapplicable because Mortensen presented no evidence that Main Street and Rancho Viejo had notice of the possibility that Moravec would shoot him. Therefore, we hold that Main Street and Rancho Viejo owed no duty to Mortensen.

[One citation omitted; another citation revised for style.]

Result: Affirmance of Clark County Superior Court order dismissing the lawsuit.

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## SUBJECT MATTER INDEX FOR 2017 LEGAL UPDATES

I have compiled a Subject Matter Index for the 12 monthly Legal Updates for January 2017 through December 2017. I will email a copy of the index on request.

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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 current and 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 past LED treatment of these core-area cases; 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/] in cludes 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]. The internet address for the Criminal Justice Training Commission (CJTC) Law Enforcement Digest (LED) is [https://fortress.wa.gov/cjtc/www/led/ledpage.html].

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