

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

3060 Willamette Drive NE Lacey, WA 98516 ~ Phone: (360) 486-2380 ~ Fax: (360) 486-2381 ~ Website: www.waspc.org

Serving the Law Enforcement Community and the Citizens of Washington



July 25, 2018

Greetings from your Executive Director:

I will start this week with a few comments on **the death of Kent Police Officer Diego Moreno**. Some of you know that I served as Kent's Chief from 2006-2011 and I hired Diego while I was there. WASPC's Professional Services Director, Mike Painter, was the Deputy Chief at the time, and WASPC's President, Ken Thomas, was a longtime Kent PD team member and Chief as well. All of us worked with current Kent Chief Rafael Padilla, and we also worked with Diego while he worked with KPD. Along with many of our members, these incidents hit us all hard.



One of the things I have been discussing with people, including in media requests this week, is that when they talk about what a great individual Diego was, it is important to note that he is not the exception in law enforcement. People who pay attention to their families, who save lives, who connect with the community, and who are willing to run toward danger and even make the ultimate sacrifice- that is the norm, not the exception. I have always been amazed at the number of compassionate and humble people with whom I have had the privilege to serve, and as you read this, I bet you are thinking the same thing... law enforcement is full of great people, like Diego. They are not the ones who are the subjects of viral videos and the sensationalized news stories, but they are the ones working all night, taking calls and solving problems, treating people with respect while trying to bring some resolution and safety and calm when things all around them are out of control. Diego gave his life serving his community and his death is the direct result of the violent choices of an armed gunman who fled police and placed everyone in danger.

When Diego was first hired, what I remember most distinctly is the pride he took in wearing the uniform and serving as a law enforcement officer in the country where his family chose to move from Venezuela. I encourage you to listen to these very thoughtful and moving comments on the officers who are continuing to be out there, serving the community, at this difficult time, by Kent Chief Rafael Padilla:

President KEN THOMAS <i>Chief—Des Moines</i>	President Elect JOHN SNAZA <i>Sheriff—Thurston County</i>	Vice President CRAIG MEIDL <i>Chief—Spokane</i>	Past President BRIAN BURNETT <i>Sheriff—Chelan County</i>	Treasurer BRIAN WINTER <i>Sheriff—Yakima County</i>
STEVE CROWN <i>Chief—Wenatchee</i>	RONNIE ROBERTS <i>Chief—Olympia</i>	Executive Board GARY JENKINS <i>Chief—Pullman</i>	BILL BENEDICT <i>Sheriff—Clallam County</i>	MARK NELSON <i>Sheriff—Walla Walla County</i>
RICK SCOTT <i>Sheriff—Grays Harbor County</i>	MARK COUEY <i>Director—OIC</i> <i>Criminal Investigations Unit</i>	JOHN BATISTE <i>Chief—WA State Patrol</i>	JAY TABB <i>SAC—FBI, Seattle</i>	STEVEN D. STRACHAN <i>Executive Director</i>

<https://www.king5.com/video/news/kent-police-chief-remarks-on-staffing-issues/281-8198054>

On other topics this week, I have been asked by several of our members about **new rules being proposed by the criminal defense bar to the State Supreme Court**. If you take a look, clearly they would create significant impediments and onerous requirements. I also don't like the continuing theme of "if it's not on tape it never happened". **We intend to strongly oppose these changes**, and will work with WAPA (the Prosecuting Attorneys Association) to provide comments and input to that effect to the Court. We will keep you in the loop- below is a summary of the proposed changes:

(New) CrR 3.7/ CrRLJ 3.7 Recorded Interrogations - REQUIRES AN AUDIOVISUAL RECORDING OF ALL CUSTODIAL AND NON-CUSTODIAL INTERROGATIONS. THERE ARE FIVE EXCEPTIONS, INCLUDING (1) A SPONTANEOUS STATEMENT NOT IN RESPONSE TO A QUESTION, (2) THE SUSPECT'S REFUSAL TO BE RECORDED (WHICH MUST BE RECORDED), (3) MALFUNCTIONING EQUIPMENT, (4) SUBSTANTIAL EXIGENT CIRCUMSTANCES, OR (5) ROUTINE BOOKING STATEMENTS WHEN THE INTERROGATION IS IN ANOTHER JURISDICTION. NON-RECORDED STATEMENTS, AND ANY LATER SUSPECT STATEMENTS (INCLUDING LATER STATEMENTS THAT COMPLY WITH THE RULE), ARE PRESUMED INADMISSIBLE, EXCEPT FOR IMPEACHMENT PURPOSES. THE PRESUMPTION OF INADMISSIBILITY MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE THAT THE STATEMENT WAS VOLUNTARILY GIVEN AND IS RELIABLE, BASED ON THE TOTALITY OF THE CIRCUMSTANCES. RECORDINGS MUST BE PRESERVED FOR 99 YEARS FOR A CLASS A FELONY CONVICTION, AND FOR ALL OTHER CRIMES UNTIL THE CONVICTION IS FINAL AND ALL APPEALS EXHAUSTED, OR UNTIL THE PROSECUTION IS BARRED BY LAW.

(New) CrR 3.8 / CrRLJ 3.8 Recording Eyewitness ID Procedures - AN OUT-OF-COURT ID PROCEDURE RESULTING FROM A PHOTO ARRAY, LIVE LINEUP, OR SHOW-UP, IS INADMISSIBLE UNLESS A RECORD OF THE IDENTIFICATION PROCEDURE IS MADE. THE ID PROCEDURE SHOULD BE VIDEO-RECORDED WHEN PRACTICABLE, AUDIO RECORDED IF NOT, AND AS A LAST RESORT, SUMMARIZED IN A DETAILED WRITTEN REPORT IMMEDIATELY FOLLOWING THE ID. A "CONFIDENCE STATEMENT," MEANING THE WITNESS'S EXACT WORDS WHEN MAKING A DECISION, SHOULD BE OBTAINED IMMEDIATELY AFTER THE PROCEDURE. THE RECORD OF THE ID MUST INCLUDE MANY THINGS, INCLUDING (1) THE LOCATION, (2) DIALOGUE BETWEEN THE WITNESS AND OFFICER, (3) RESULTS OF THE PROCEDURE, (4) A PHOTO OF A LIVE LINEUP, (5) A VIDEO OF A LINEUP INVOLVING MOVEMENT, (6) AN AUDIO RECORDING OF A LINEUP INVOLVING SPEAKING, (7) THE PHOTOS USED FOR A PHOTO LINEUP, (8) THE IDENTITY OF OTHER PERSONS WITNESSING THE ID AND WHETHER THE WITNESS MAKING THE ID COULD SEE THOSE WITNESSES, AND (9) THE IDENTITY OF ANYONE THE WITNESS SPOKE TO BEFORE, DURING, OR

IMMEDIATELY AFTER THE PROCEDURE. THE REMEDIES FOR A RECORDING LACKING "IMPORTANT DETAILS" WHEN IT WAS FEASIBLE TO OBTAIN AND PRESERVE THOSE DETAILS INCLUDE SUPPRESSING THE ID, REDACTING PORTIONS OF THE ID TESTIMONY, ADMITTING EXPERT TESTIMONY, OR PROVIDING A JURY INSTRUCTION ABOUT THE RELIABILITY OF THE ID.

(New) CrR 3.9 / CrRLJ 3.9 In-Court Eyewitness ID - IN-COURT IDS ARE INADMISSIBLE IF THE PERPETRATOR WAS UNKNOWN TO THE WITNESS AND THERE WAS NO PRIOR OUT-OF-COURT EYEWITNESS ID PROCEDURE. (DO WE DO THIS?)

(Amended) CrR 4.7 / CrRLJ 4.7 Discovery - IN ADDITION TO OUR REGULAR OBLIGATIONS, DPAS MUST PRODUCE (1) ALL RECORDS RELATING TO AN IDENTIFICATION PROCEDURE, AND (2) ANY MATERIAL OR INFORMATION THAT TENDS TO IMPEACH A STATE'S WITNESS (NOT JUST MATERIAL OR INFO THAT TENDS TO NEGATE A DEFENDANT'S GUILT). A DPA'S DISCOVERY OBLIGATIONS ARE NO LONGER "LIMITED TO MATERIAL AND INFORMATION WITHIN THE KNOWLEDGE, POSSESSION, OR CONTROL OF MEMBERS OF THE PROSECUTING ATTORNEY'S STAFF." (THIS PHRASE WOULD BE DELETED.) INSTEAD, A DPA'S OBLIGATION INCLUDES MATERIAL AND EVIDENCE FAVORABLE TO THE DEFENDANT'S GUILT OR PUNISHMENT, AND/OR WHICH TENDS TO IMPEACH A STATE'S WITNESS THAT IS "KNOWN TO OTHERS ACTING ON THE STATE'S BEHALF," INCLUDING THE POLICE. THE DPA'S DUTY IS NOT CONDITIONED UPON A DEFENSE REQUEST, AND IS ONGOING, EVEN AFTER PLEA OR SENTENCING. FURTHER, A DEFENSE ATTORNEY MAY PROVIDE A REDACTED COPY OF DISCOVERY (NOT APPROVED BY THE DPA OR ORDERED BY THE COURT) TO THE DEFENDANT. THE DEFENSE ATTORNEY MUST MAKE ALL OF THE REDACTIONS WE USUALLY REQUIRE, INCLUDING DOB, SSN, FINANCIAL INFO, PASSPORT & DRIVER'S LICENSE NUMBERS, HOME ADDRESSES, PHONE NUMBERS, AND INITIALS FOR MINOR CHILDREN, AND KEEP A COPY OF THE REDACTED DISCOVERY, AND PROVIDE IT TO THE COURT UPON REQUEST.

(New) CrR 4.11 / CrRLJ 4.11 Recording Witness Interviews - ANY PARTY MAY audio record witness interviews. Copies and transcripts of the interview shall be provided to all other parties in accordance with CrR 4.7. At the start of the audio recorded interview, the person conducting the interview must confirm that the witness has been provided with the interviewer's contact information, the identity of the party represented by the interviewer, and the possibility of receiving a copy of the interview and transcript, if made. If a witness refuses to be recorded, and there's a dispute about the witness's statement, "the jury should be instructed to examine the statement carefully in light of any reasons for the refusal and other circumstances RELEVANT TO THAT WITNESS'S TESTIMONY," INCLUDING BIAS AND MOTIVE.

Our Policy Director, James McMahan, has been facilitating the **Mass Shootings Work Group** meetings across the state, and our WASPC representatives on this group are Chelan County

Sheriff Brian Burnett and Oak Harbor Chief Kevin Dresker. TVW covered the most recent meeting, held at the Clark County Sheriff's Office West Precinct, and here is a link if you are interested:

<https://www.tvw.org/watch/?eventID=2018071006>

Finally this week, I am attaching a link to a great story in the Tri-City Herald celebrating the **40 year mark of Kennewick Chief Ken Hohenberg's law enforcement career**. Many of you know that Chief Hohenberg is a past WASPC President, and has been a friend and mentor to many of us, including me. He exemplifies servant leadership. The article is worth reading also for the great 1970's era photos, complete with long hair and aviator glasses!



<https://www.tri-cityherald.com/news/local/article214908245.html>

Congratulations Chief Hohenberg and thank you for your continued service!

Officer Moreno's memorial service information was sent out earlier today in a GTWO- let us know if you have any questions-

WORK HARD- HAVE FUN- STAY SAFE

Steven D. Strachan, Executive Director
Washington Association of Sheriffs & Police Chiefs
3060 Willamette Drive NE
Lacey, WA 98516
steve@waspc.org
360-486-2380