

October 1996

HONOR ROLL

Correction: The honor roll for the 447th BLEA session at Seattle was erroneously identified in the July '96 LED as the honor roll for the "445th" session. Also, the honor roll for the 448th BLEA session at Seattle was erroneously identified in the August '96 LED as the honor roll for the "446th" BLEA session.

445th Session, Basic Law Enforcement Academy (Spokane) - March 4 through May 23, 1996

Class Speaker: Officer James W. Erickson - Spokane Police Department
Outstanding Officer: Officer James W. Erickson - Spokane Police Department
Highest Scholarship: Officer Loren A. Erdman - Stevens County Sheriff's Office
Highest Night Mock Scenes: Officer Kevin W. Morris - Brewster Police Department

446th Session, Basic Law Enforcement Academy (Seattle) - March 6 through August 16, 1996

President: Officer Bryan E. Clenna - Seattle Police Department
Best Overall: Officer Rik H. Hall - Seattle Police Department
Best Academic: Officer Kolette E. Monner - Seattle Police Department
Best Firearms: Officer Chad D. Zentner - Seattle Police Department

450th Session, Basic Law Enforcement Academy - June 6 through August 28, 1996

President: Officer Richard A. Jones - Kirkland Police Department
Best Overall: Officer Christopher D. Green - Kirkland Police Department
Best Academic: Officer Chase K. Kellogg - Union Gap Police Department
Best Firearms: Officer Richard A. Jones - Kirkland Police Department

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BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT

(1) **GOOD FAITH OMISSION OF NECESSARY LOCATION INFORMATION IN APPLICATION FOR AGENCY-AUTHORIZED TAPE RECORDING MAY NOT REQUIRE BLANKET SUPPRESSION UNDER 9.73 RCW** -- In State v. Tommy Quenton Smith, 129 Wn.2d __ (1996), the State Supreme Court reverses a Court of Appeals ruling which earlier had suppressed all evidence relating to certain drug investigation conversations between law enforcement officers and Smith. The Supreme Court remands the Smith case back to the Court of Appeals for further review in light of a ruling on a similar exclusionary issue under RCW 9.73.230 in the case of State v. Jimenez, 128 Wn.2d 720 (1996) **May '96 LED:03**.

Section 230 of chapter 9.73 allows single-party consent recording of certain types of drug-related conversations based on the approval by an officer above the level of first-line supervisor following his or her review of an application meeting the requirements of the statute. The application must set out probable cause and it also must set out certain other information, including but not limited to: (1) the identity of officers who will be involved the recording and interception activity, and (2) the location of the activity, if known.

In the Jimenez decision, the State Supreme Court noted with apparent approval that the Court of Appeals (see **June '95 LED at 18**) held that failure to list the specific names of all officers to be involved in the recording and interception activity invalidates the application under RCW 9.73.230. The Supreme Court in Jimenez then turned to the remedy to be applied for the violation. Ordinarily, if tape recording or interception occurs in violation of chapter 9.73 RCW, then, not only the tape recordings, but also all officer testimony recalling the taped conversations, must be suppressed under the broad suppression provisions of chapter 9.73 RCW.

However, in Jimenez the State Supreme Court held that, where there has been a good faith but unsuccessful effort to comply with the requirements of section 230, while the tape recordings themselves will be inadmissible, the officers' testimony about the conversations will be admissible so long as such testimony is based upon independent memory (i.e. memory not based upon or affected by the recordings). The question in the Tommy Quenton Smith case was whether the same approach should be taken to suppression where the omission in the section 230 application relates to the location of anticipated drug conversations.

In Smith, the investigators knew the specific location (an apartment at a known address) where the next drug deal conversations were to occur, but instead they gave the location as "the greater Seattle-King County area." The Court of Appeals had held that this boiler-plate information in the section 230 application was inadequate; if a specific location is known, that location information should be included in the section 230 application. Turning to the remedy, and not anticipating the State Supreme Court's "good faith" rule later announced in Jimenez, the Court of Appeals ruled in Smith that the inadequate location information required blanket suppression of not only the tape recording at issue but also the participating officers' independent recollections of the conversations.

Now, the State Supreme Court has sent the Smith case back to the Court of Appeals for consideration in light of the Jimenez "good faith" rule. A review of the facts in Smith suggests a close analogy to Jimenez, and hence a strong likelihood that the Court of Appeals will find good faith in Smith. It is thus probable that the Court of Appeals will remand Smith to superior court for a determination of whether any of the officers participating in the conversations at issue have an independent recollection of the conversations (see **May '96 LED at pages 4-5**, discussing the requirement in this context that such testimony not be aided in any way by the recording). Result: remand to the Court of Appeals for a further decision in light of Jimenez.

(2) ADULT DIVISION OF SUPERIOR COURT HAS AUTHORITY TO ISSUE WARRANT FOR JUVENILE'S ARREST -- In State v. Werner, 129 Wn.2d 485 (1996), the State Supreme Court reverses a Court of Appeals decision which had invalidated an arrest on a warrant. The Court of Appeals had relied on statutes relating to juvenile court in holding that the issuing superior court judge had erred because the arrest warrant had not recited that it was issued by the juvenile division of superior court. See Court of Appeals decision at 79 Wn. App. 872 (Div. II, 1995) **April '96 LED:13**. However, the Supreme Court rules unanimously that the superior court is a constitutional court, and that legislation creating juvenile courts could not limit the authority of a superior court in this way. The Supreme Court further notes in a closing footnote that, because it resolves the case on other grounds, it does not reach the "good faith exception to the exclusionary rule" issue addressed by the Court of Appeals. Result: vacation of Grays Harbor Superior Court order of suppression, reversal of judgment dismissing the information, and remand of the case for trial on charges of manufacturing a controlled substance and possession with intent to deliver a controlled substance.

(3) "THREE STRIKES AND YOU'RE OUT" LAW GETS CONSTITUTIONAL WALK -- In State v. Thorne, 129 Wn.2d__ (1996), and two companion cases decided the same day (State v. Manussier and State v. Rivers), the State Supreme Court votes, 6-3, to uphold the "Three Strikes And You're Out" law against a broad-based constitutional attack.

The majority opinion authored by Justice Guy rejects numerous federal constitutional grounds of attack. The majority opinion also rejects several state constitutional grounds on their merits, and it declines to address several other state constitutional grounds (i.e. right to jury trial re: prior convictions, right to due process, and right against cruel punishment). The majority declines to address these "independent grounds" issues based on the failure of the challenging parties to properly brief these issues.

Justices Madsen and Johnson dissent in two of the cases on the basis of procedure-based theories on right to jury trial and due process. Dissenter Sanders agrees with Madsen and Johnson, but he writes a separate dissent to explain that he would have stricken the statute for violating the state constitution's cruel punishment prohibition.

Result: Superior court sentences -- life without parole -- of Rivers (King County), Thorne (Snohomish County) and Manussier (Pierce) affirmed.

WASHINGTON STATE COURT OF APPEALS

VIOLATION OF SIXTH AMENDMENT "INITIATION OF CONTACT" RULE REQUIRES SUPPRESSION OF STATEMENT, EVEN THOUGH DETECTIVE WAS NOT AWARE OF DEFENDANT'S EARLIER COURT APPEARANCE TRIGGERING THE SIXTH AMENDMENT BAR

State v. Valdez, 82 Wn. App. 294 (Div. III, 1996)

Facts and Proceedings:

Early on a Friday morning, Valdez was arrested and charged with second degree rape. At 9 a.m. the same day, Valdez appeared in court in a preliminary hearing, and the judge appointed a lawyer to represent him. That afternoon, a detective went to the jail to try to get a statement from Valdez. At that point the detective did not know of that morning's preliminary hearing; instead, the detective assumed that Valdez would not get his hearing until the following Monday.

The detective Mirandized Valdez, who voluntarily waived his rights. Valdez then gave a written statement, admitting that he had had sexual intercourse with the victim, but claiming that sex had been consensual. Prior to trial, Valdez moved to suppress the statement, asserting that his Sixth Amendment rights had been violated. The trial court denied the motion, and Valdez was ultimately convicted in a trial in which the written statement was admitted in evidence.

ISSUE AND RULING: Did the detective violate the Sixth Amendment "initiation of contact" rule in making an initiation of contact with a charged defendant who had already been assigned counsel in a preliminary hearing on the matter charged? (ANSWER: Yes) Result: Yakima County Superior Court conviction for second degree rape reversed; case remanded for re-trial.

ANALYSIS:

In Michigan v. Jackson, 475 U.S. 625 (1986) **May '86 LED:04**, the United States Supreme Court held that, once a charged defendant has appeared in court and has had counsel assigned or otherwise has asserted his right to counsel on the matter charged, the Sixth Amendment of the U.S. Constitution prohibits police from initiating contact with the defendant on the matter charged. Here, the Court of Appeals rules, the defendant asserted his right to counsel when the judge assigned him an attorney in the preliminary hearing.

The fact that the detective was unaware of the earlier proceedings in the preliminary hearing was irrelevant, the Court states. The prosecutor was aware of the fact that defendant had been assigned an attorney, and that knowledge is imputed to all players for the State. Accordingly, the Court of Appeals rules, the "initiation of contact" rule of Michigan v. Jackson was violated in this case.

LED EDITOR'S NOTE: See the April 1993 LED for our comprehensive article addressing the separate Fifth and Sixth Amendment bars on "initiation of contact." The May 1993 LED contains a flow chart illustrating the double-filter restrictions of the Fifth and Sixth Amendment "initiation of contact" rules. We have just completed the process of updating the research in that article, and we are confident that the "initiation of contact" law has not changed in any significant way since 1993. The Court of Appeals ruling in Valdez is consistent with our analysis of the Sixth Amendment "initiation of contact" bar in the April 1993 LED article and with our updated research.

NO KNOCK AND WAIT REQUIRED FOR ENTRY INTO UNOCCUPIED BACK YARD

State v. Schimpf, 82 Wn. App. 61 (Div. III, 1996)

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

Early in the morning of July 13, 1992, [two deputy sheriffs] went to Mr. Schimpf's Spokane home to execute two misdemeanor warrants for Mr. Schimpf's arrest. Deputy [One] walked down the driveway so he could watch the rear door. Deputy [Two] went toward the front door.

The backyard of the house was enclosed by a four- or five-foot-high fence. A fence gate, low enough for the deputy to see into the backyard, was attached to a corner of the house. Standing outside the gate, Deputy [One] saw a marijuana plant in a pot in the backyard. He saw dogs in the yard, but no people. The deputy opened the unlocked gate, walked into the backyard, and seized the marijuana plant.

The gate was two feet, two inches from a window on the rear of the house, and ten feet, nine inches from a side window. Both windows were open, and the trial court found that a knock and verbal announcement by Deputy [One] at the gate would have been audible inside the house.

Mr. Schimpf was charged with possession of marijuana with intent to manufacture, RCW 69.50.401(a). He moved to suppress the evidence. After two separate evidentiary hearings, the trial court concluded that, while the backyard was the curtilage of Mr. Schimpf's home, the "knock and wait" rule did not apply to the deputy's entry through the unlocked gate. The court declined to suppress the evidence, and entered a guilty verdict on stipulated facts.

ISSUE AND RULING: Were the officers required under RCW 10.31.040 or the Fourth Amendment to knock at the fence gate before entering the unoccupied backyard? (ANSWER: No) Result: affirmance of Spokane County Superior Court conviction for possession of a controlled substance with intent to manufacture.

ANALYSIS: (Excerpted from Court of Appeals opinion)

Mr. Schimpf contends on appeal that the trial court erred in declining to suppress evidence seized as a result of Deputy [One's] unannounced entry into the backyard of Mr. Schimpf's home. RCW 10.31.040 provides: "To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance."

This statute is a codification of the common law "knock and wait" rule, which requires that officers knock, announce their identity and purpose, and wait a reasonable period before entering premises without permission. . . . The purposes of the rule and the statute are (1) to reduce the potential for violence in an unannounced entry by police; (2) to prevent unnecessary damage to property;

and (3) to protect occupants' privacy. . . . The remedy for violation of the rule or the statute is suppression of the evidence. . . .

Mr. Schimpf argues Deputy [One's] unannounced entry through the backyard gate violated both RCW 10.31.040 and the Fourth Amendment. He contends the backyard was "curtilage," which he argues is a protected area for the purpose of both constitutional and statutory analysis. . . .

However, "[e]ven as to dwellings, it is of no consequence that the police failed to announce their authority and purpose prior to entry if no one was present therein at the time. . . . Therefore, even if a fenced backyard is subject to the "knock and wait" rule, the absence of any person in Mr. Schimpf's backyard, which Deputy [One] could confirm from his vantage point at the gate, would have made an announcement at that point an "empty gesture."

A knock and announcement at the gate in these circumstances would serve none of the purposes of the rule and statute. Because no one was present in the backyard, there was little risk of violence. The unlocked gate permitted the deputy to enter the area without damage to property. And the deputy was able to look easily into the yard over the relatively low gate and fence, suggesting there were no significant, legitimate privacy interests involved. . . .

. . . Certainly before entering the residence itself, the deputies were required to comply with the constitutional and statutory "knock and wait" requirements.

Deputy [One's] entry into the unoccupied, fenced backyard area of Mr. Schimpf's residence did not violate the "knock and wait" rule or statute. There was no error.

[Citations, footnotes omitted]

LED EDITOR'S COMMENT: The deputy prosecutor on this case has informed us that the trial court did not address the issue of whether the entry into the fenced backyard was an illegal search into the protected curtilage of the property. Even though the officers were authorized under the rule of Payton v. New York, 445 U.S. 573 (1980)[June '80 LED:01; Aug. '92 LED:19] to make a nonexigent entry of Schimpf's home and yard based solely on: (1) the arrest warrant plus (2) reason to believe Schimpf was at home, we think there is a close privacy question where the officer's detour to the garden following entry of the fenced back-yard area was totally unrelated to the arrest process. Officers spotting a marijuana patch in a fenced backyard in non-exigent circumstances such as here may wish to consider seeking consent or a search warrant before entering the garden and seizing the evidence.

LANDLORD ASSISTANCE CASE MUST GO TO JURY AS CIVIL RIGHTS ACTION

Kalmas v. Wagner, 82 Wn. App. 105 (Div. II, 1996)

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

Taken in the light most favorable to the plaintiffs, the facts are as follows: On September 17, 1990, James Kalmas and Kyra Sharpe rented a house in Tacoma.

They also signed a written rental agreement that included the following provision:

Lessor hereby reserves, and the Lessee hereby grants to the Lessor or his agents, the right to enter said leased premises at reasonable times, for the purpose of making repairs or to inspect the premises, [or] to show the dwelling to prospective tenants after notice of termination.

On May 10, 1991, the landlord gave Kalmas and Sharpe a "20-Day Notice to Terminate Tenancy." On May 14, the landlord notified Kalmas and Sharpe that she wanted to show the house the next day between 1:30 and 3:30 p.m. The same day, Kalmas called the landlord and said he would not allow the proposed entry.

The next day, May 16, the landlord came to the home with a realtor and a prospective new tenant. Kalmas answered the door and refused entry. He also told Sharpe to call the sheriff. The realtor and prospective tenant left, but the landlord remained.

Two deputies soon arrived. After speaking with the parties and examining the landlord's "paperwork," they told Kalmas that the landlord had a legal right to enter, and that he would be arrested if he persisted in refusing entry. To avoid arrest, he said the landlord could enter, but only if accompanied by one of the officers. The landlord and one deputy entered and made an "inspection" which, according to the defendants, lasted for "no more than one minute."

Kalmas and Sharpe sued for damages under 42 U.S.C. § 1983. Both sides sought summary judgment on liability, and the trial court granted summary judgment to the defendants.

[Footnotes omitted]

ISSUES AND RULINGS: Did the plaintiff/tenants present sufficient evidence to entitle them to a trial on their federal civil rights suit on the following questions: (1) Was there an unlawful search by the deputies? (ANSWER: The evidence presents a fact question on this issue); (2) Was the search reasonable? (ANSWER: There is a fact question here too); (3) Were the deputies acting under "color of law" within the meaning of that phrase in the Civil Rights Act? (ANSWER: The deputies were acting under color of law; there is no fact issue here); (4) Are the deputies immune from suit under the Act? (ANSWER: The evidence presents a fact question on this issue) Result: Pierce County Superior Court summary judgment order for the defendant officers reversed, and case remanded for trial.

ANALYSIS:

(1) SEARCH?

After addressing the pertinent case law on what constitutes sufficient evidence of "search" assisted by law enforcement officers, the Court of Appeals concludes on this issue:

Here, a jury could find that there was a Fourth Amendment search. Taking the evidence in the light most favorable to plaintiffs, it could find that the defendants

went beyond mere peacekeeping and threatened Kalmus with arrest if he persisted in denying entry to the landlord; that the landlord was able to enter the home due to that threat; and thus that the defendants participated in the landlord's entry of the home.

(2) REASONABLE SEARCH?

The Court of Appeals discussion of whether there was a factual question on the lawfulness of the search is as follows:

Rephrased, the next question is whether a jury could find that the search was unreasonable. Appropriately, the defendants do not contend it was justified by either the parties' rental contract or Washington's landlord-tenant statute. Assuming the plaintiffs breached the parties' rental contract, the remedy was to sue for breach of contract. Assuming the plaintiffs breached the landlord-tenant statute, the remedy was to sue for the relief described in the statute. In neither case was the remedy an immediate warrantless search of the plaintiffs' home, even though the home was rented rather than owned.

The defendants do make two contentions regarding justification. First, they argue the search was justified by the existence of an emergency. Second, they argue the search was justified because the plaintiffs consented to the landlord's entry.

The first argument fails as a matter of law. Even assuming that an emergency existed because the landlord and tenant were arguing at the door, no reasonable person could find that it required entry into the house.

The second argument raises a question of fact for trial. Consent must be voluntary, and voluntariness depends on all the circumstances. One relevant circumstance is the existence of a threat, and consent can be involuntary if obtained by threat. Here, a jury could find that Kalmus admitted the landlord not because he wanted to, but because he thought he would be arrested if he did not. Such a finding would connote a lack of consent, an unjustified search, and a violation of the Fourth Amendment. We conclude that the first element of the plaintiffs' cause of action presents questions of fact that cannot be resolved on summary judgment.

[Footnotes, citations omitted]

(3) COLOR OF LAW?

The Court quickly disposes of the color of law question as follows:

"The traditional definition of acting under color of state law requires that the defendant in a 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" Thus, it is generally true that "a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." Here, then, the defendants were acting under color of law.

[Footnotes, citations omitted]

(4) IMMUNITY?

The Court's analysis of whether there was a factual question on civil rights act immunity of the deputies is as follows:

According to the defendants, they are immune as a matter of law. As they correctly point out, police officers performing discretionary functions "generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Beyond question, however, it was clearly established at the time pertinent here that an officer may arrest or threaten to arrest for crime, but not for breach of contract. Similarly, it was obvious from RCW 59.18.150 that arrest was not a remedy for violating that statute. Because a jury could find that an objectively reasonable officer would have known of these provisions, the defendants are not immune as a matter of law, and summary judgment was improvidently granted.

[Footnotes, citations omitted]

BROKEN WING WINDOW DOESN'T ESTABLISH UNDER-AGE DRIVER'S KNOWLEDGE VEHICLE TAKEN WITHOUT PERMISSION -- EVIDENCE INSUFFICIENT TO CONVICT

State v. L.A., 82 Wn. App. 275 (Div. I, 1996)

The owner of the car testified that it had been taken without his permission. Police officers saw L.A. driving the car the next day. The officers followed her for a few blocks and then activated their emergency lights. L.A. pulled over and did not flee. The officers observed the broken rear wing window, but did not testify as to any other defects or damage to the car. Police took a statement from L.A., but the contents of her statement were not offered [at trial].

ISSUE AND RULING: Should the Court of Appeals accept the State's concession of error that the presence of a broken rear wing window was insufficient evidence to prove beyond a reasonable doubt L.A.'s knowledge that the vehicle was stolen? (ANSWER: Yes) Result: reversal of King County Superior Court (Juvenile Court) adjudication of guilt of taking a vehicle without the owner's permission.

ANALYSIS:

The Court of Appeals first notes that the State had conceded, after the appeal from juvenile court was taken, that the juvenile court judge had erred in finding L.A. guilty. The Court of Appeals then explains why it accepts the State's concession:

In the absence of corroborative evidence such as a damaged ignition, an improbable explanation or fleeing when stopped, there is not sufficient evidence to support the finding that L.A. knew the vehicle was taken unlawfully. Contrary to the finding by the court, there is no evidence that the vehicle had been driven for a lengthy period of time. The mere fact that L.A. was 14 years old at the time she

was stopped and that a rear wing window was broken is not sufficient evidence to establish that she knew the car had been taken without the owner's permission.

The State's concession of error is accepted and the conviction of L.A. is reversed.

[Some citations omitted]

LED EDITOR'S COMMENT:

It is important to note that the L.A. decision addresses only the question of the sufficiency of evidence to convict under a "beyond a reasonable doubt" standard. L.A. thus holds only that a 14-year-old caught in a stolen vehicle with a broken wing window cannot be proven guilty beyond a reasonable doubt without some additional incriminating evidence showing knowledge of lack of permission or knowledge that the vehicle is stolen (e.g. admissions, a long period of driving the vehicle, a forced ignition or other damage of a similar sort, or other incriminating evidence).

No doubt, some criminal defense attorneys will argue that L.A. bears on the issue of "reasonable suspicion" to make a Terry stop, but the decision should have no relevance there. That is because when one is evaluating evidence to see whether it meets Terry v. Ohio's reasonable suspicion standard, the evidence must be viewed in its totality *through the eyes of a reasonable officer with the knowledge, training, and experience of the particular investigating officer.*

The officer's suspicions based on his or her knowledge, training and experience thus are often of great importance in a suppression hearing addressing the reasonable suspicion issue. However, the officer's personal suspicions based on these or other factors are of little relevance in the trial itself, because at trial the officer's suspicions based on training and experience generally will be held to be personal opinions which are inadmissible evidence.

Cases from courts in other states which have looked at a broken wing or vent window as a stolen vehicle reasonable suspicion factor, all of which cases factor in the officers' training and experience, include the following:

Logan v. Commonwealth, 452 S.E.2d 364 (Va.App. 1994) (ruling that reasonable suspicion present where experienced Richmond, Virginia officer observed broken rear window vent, and there had been several reports of thefts of similar vehicles during that evening)

In re C.A.P., 633 A.2d 787 (D.C. App. 1993) (ruling that smashed rear vent window plus officer's past training and experience justified stop)

People v. Brown, 627 N.E.2d 340 (Ill. App. 1993) (ruling that broken vent window on late-model car, while such could have any number of innocent explanations, was reasonable suspicion that car stolen because the officer was aware through training and experience that this is a frequent method of breaking into cars)

Note that while two of the three above cases from other jurisdictions suggest that a broken vent window on a late-model car alone can be reasonable suspicion when considered in

light of the officer's training and experience, this will be a close question for the suppression judge. The case for reasonable suspicion will be much stronger if the officer is able to observe other suspicious circumstances (for example, a mismatch between the information about the registered owner and the appearance of the driver) before making a stop.

EXECUTION OF WARRANT FOR BANK RECORDS WITHOUT NOTICE TO SUSPECT LAWFUL

State v. Kern, 81 Wn. App. 308 (Div. I, 1996)

Facts:

As district manager for a company known as Thorn Automated Systems (Thorn), Michael Kern had authority to employ subcontractors for Thorn. Purportedly on behalf of his employer, Kern entered into fraudulent transactions with a separate company, ASC, owned solely by himself. Under these fraudulent contracts, Kern's company, ASC, was paid by Thorn but failed to provide any services or equipment to Thorn.

Investigating this scheme, a Snohomish County deputy sheriff obtained a search warrant for ASC's bank records for the relevant time period. In accordance with the pertinent criminal rule, the warrant commanded that the "premises" be searched within 10 days." The Court of Appeals describes as follows the pertinent facts relating to service and execution of the warrant, as well as the filing of the inventory:

[The deputy] served the search warrant on the bank on the same day it was issued. [The deputy] included with the warrant an inventory and return form, on which [the deputy] had typed the following: "Documents to be provided as soon as possible, within thirty (30) days, to SCSO." On the same day, despite the fact that no records had yet been seized, [the deputy] filed with the court an "Inventory and Return of Search Warrant," describing the items purportedly seized.

[The deputy] was not present during the search. The bank mailed the records to [the deputy], who received them 17 days after the date of issuance of the warrant. Kern was not given notice of the search until charges were filed some nine months later.

Proceedings:

Kern was charged with first degree theft. Prior to trial, he moved to suppress the bank records on the basis of several claimed procedural defects in the execution of the warrant (apparently, he did not challenge probable cause). Kern's motion was denied, the bank records were admitted into evidence, and he was convicted.

ISSUES AND RULINGS: (1) Was the search timely under the court rules? (ANSWER: Yes); (2) Did the officer improperly delegate execution of the search warrant to bank employees? (ANSWER: No); (3) Did the officer improperly change the terms of the warrant by asking for return of bank records within 30 days, rather than 10 days? (ANSWER: No); (4) Was Kern entitled to contemporaneous notice of the search? (ANSWER: No); (5) Was the error of the deputy sheriff

in filing the inventory *before* the bank records had been obtained harmless error? (ANSWER: Yes) Result: Snohomish County Superior Court conviction for first degree theft affirmed.

ANALYSIS:

(1) Timeliness of search.

Kern argued that, because the warrant was required under Criminal Rule (CrR) 2.3(c) to be executed within 10 days, and the bank records were not delivered to the investigating deputy until 17 days after service on the bank, the search was invalid under the constitution and the court rules. However, the Court of Appeals declares that the *constitutional* rule here is that a search under a warrant is constitutionally timely, so long as the search begins before expiration of the applicable period (here, 10 days). So long as probable cause continues through completion of the search, even if completion of the search goes beyond the time period specified in CrR 2.3(c), the search is valid. These constitutional standards were met here, the Court holds. Moreover, there was no *rule* violation here, the Court holds, concluding that the same analysis applies under CrR 2.3(c) as applies under the constitution.

(2) Delegation of search function to non-officers.

Kern argued that the deputy impermissibly delegated his responsibility to supervise the bank employees when the deputy handed them the warrant and asked to them to find the specified records and transmit them to him. However, the Court of Appeals disagrees, holding that in this context police presence is not necessary for the search by the bank employees to go forward. The Court of Appeals also notes that any assumed error here would not have been of constitutional magnitude, and that Kern could not show any prejudice in any ministerial error under the court rule, CrR 2.3.

(3) Modification of terms of search warrant.

Kern next argued that the investigating deputy impermissibly changed the terms of the warrant by directing that the bank provide the records ASAP or "within 30 days." Noting that the deputy's instructions did not have any legal force to change the judicially authorized 10-day period for the officer to begin execution of the warrant, the Court of Appeals finds no legal significance in the deputy's instructions to the bank personnel.

(4) Lack of notice.

The Court of Appeals rejects Kern's assertion that he had a right to notice at or about the time of the search under the warrant, not nine months later as happened here. Neither the constitution nor the applicable Washington court rule requires contemporaneous notice to the subject of records that a search of such records in the possession of a third party is going to be or has been conducted under a search warrant.

(5) Premature filing of inventory.

Finally, the Court holds that, although the investigating deputy violated the applicable Washington court rule by filing the inventory and warrant return *before* defendant's bank records had actually been retrieved by bank employees and returned to the deputy, this error was not of constitutional magnitude. And, as a mere rule violation under CrR 2.3, defendant was required to show

prejudice in the error. The ministerial violation by the deputy was harmless error and did not require reversal of the conviction, the Court of Appeals rules.

BRIEF NOTES FROM THE WASHINGTON STATE COURT OF APPEALS

(1) "SEXUAL EXPLOITATION" EVIDENCE SUFFICIENT BECAUSE "POSING" OCCURRED -- In State v. Myers, 82 Wn. App. 435 (Div. II, 1996), the Court of Appeals upholds a sexual exploitation conviction against a sufficiency-of-the-evidence challenge.

The facts in Myers are described by the appellate court as follows:

At a family picnic, Myers videotaped the clothed buttocks and genital regions of adults and children. When he returned home from the picnic, he told his daughter to take a bath and, over her request not to, videotaped her in the bathtub. He used the camera's zoom feature to zoom in on her vagina, and held the camera's focus on that part of her body for extended periods of time. When she moved in a way that prevented the camera's view, he would coax her back into a position that exhibited her vagina and would zoom in again. She was seven years old. He edited the tape so that the new version repeated some of the children's genital scenes taken at the picnic, including a young girl in a bathing suit spreading her legs; and he edited out his daughter's protestation. He claimed the tape was not for sexual stimulation but was made to anger his girlfriend.

The Court of Appeals sets out and describes the pertinent statutory provisions as follows:

The relevant portion of the statute states the following:

(1) A person is guilty of sexual exploitation of a minor if the person:

. . .

(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance. . .

RCW 9.68A.040(1)(b). Under the definitions statute, RCW 9.68A.011(3)(e), "[s]exually explicit conduct" can mean actual or simulated "[e]xhibition of the genitals or unclothed pubic or rectal areas of any minor, . . . for the purpose of sexual stimulation of the viewer."

In pertinent part, the Court's analysis on the sufficiency-of-the-evidence issue is as follows:

Here there was evidence that he posed his daughter, and facts contradicting his alleged motivation to offend his girlfriend; he never expressed anger to her and did not show the videotape to her, but added the tape to his collection of videotapes. In Bohannon [State v. Bohannon, 62 Wn. App. 462 (Div. II, 1991) [**Dec. '91 LED:19**], we held that posing was sufficient; in the instant case there is even more,

including posing and focusing; and the picnic videos reveal motive. There was sufficient evidence to convict Myers under this statute.

In a concurring opinion, Judge Turner agrees with the result in this case, but he asserts as follows that the majority's requirement that there be posing or inducement by the videotaping adult is not found in the statute:

To the extent that the majority requires that a defendant pose the victim or intend to alter her behavior in order to support a conviction under RCW 9.68A.040(1)(b), I disagree. A minor can be invited or caused to engage in an exhibition of genitals for the purpose of a viewer's sexual stimulation without any posing of the child or altering of her behavior on the part of a defendant.

Exhibition means "an act or instance of showing." Websters Third New International Dictionary 796 (1968). The definition of "invite" includes "to provide opportunity or occasion for: increase the likelihood of: open the way to." By filming his daughter's genitals for his later viewing and sexual stimulation, Myers caused, or at least invited, his daughter's "exhibition." This court said in State v. Bohannon that "an individual could take sexually explicit photographs of a child at a time when the child is unaware that the pictures were being taken. Under those circumstances, the photographer could still be found guilty of sexual exploitation of a minor . . . if he were to use . . . the photographs 'for the purpose of sexual stimulation of the viewer.'"

Result: Thurston County Superior Court conviction for sexual exploitation of a minor affirmed.
CROSS-REFERENCE: Compare the result in Myers with the result in the case digested in the next LED entry, State v. Chester.

(2) **"SEXUAL EXPLOITATION" REQUIRES INDUCEMENT OF SEXUAL CONDUCT BY MINOR; HIDDEN CAMERA ACT DID NOT CONSTITUTE SEXUAL EXPLOITATION** -- In State v. Chester, 82 Wn. App. 422 (Div. II, 1996), the Court of Appeals rules 2-1 that sexual exploitation of a minor under RCW 9.68A.040 requires that the perpetrator take an affirmative act to induce a minor to engage in sexually explicit conduct. Accordingly, the Court of Appeals reverses defendant's conviction under the following facts (excerpted from Court's opinion):

While his 14-year-old stepdaughter was in the shower, Chester concealed a videocamera beneath her bed. The camera filmed her nude body as she dressed, unaware of the camera. The stepdaughter discovered the videocamera, the mother viewed the tape and called the police, and Chester was arrested. Chester told police that he videotaped his stepdaughter as a "dumb joke," and that he did not consider her as a sex object. Chester later indicated he knew the tape would record her in an undressed state.

Under these facts, the majority holds, there was no inducement of the child's sexual conduct. Some direct act of "posing" the child would be necessary for a conviction under these facts, the majority declares. Judge Turner dissents, making the point that he made in State v. Myers (see LED entry immediately above).

Result: Pierce County conviction for sexual exploitation of a minor reversed.

Status: State's petition for review pending in the State Supreme Court.

(3) SECURITIES FRAUD LAW INTERPRETED; ALSO, "LULLING" RULE FOR FRAUD LIMITATIONS PERIOD APPLIED -- In State v. Argo, 81 Wn. App. 552 (Div. I, 1996), the Court of Appeals interprets the term "securities" under the securities fraud statute, chapter 21.20 RCW. The Court of Appeals reviews a case involving defendant's "Ponzi scheme" involving: (1) notes issued to unsuspecting investors, and (2) options to purchase limited partnership units given to unsuspecting investors in exchange for loans to defendant. The Court of Appeals rules that both the notes and the options to purchase were "securities" under chapter 21.20 RCW, and hence that defendant Argo could be prosecuted for securities fraud under chapter 21.20 RCW.

Also, the Court of Appeals applies what is known as the "lulling" exception to the statute of limitations for prosecuting Argo's crime. Where, as here, a defendant's fraudulent scheme prevents discovery of his fraud, he will be held to have "lulled" his or her victims, and in that circumstance the statute of limitations does not begin to run on the fraudulent scheme until the activities under the scheme ends. Hence, Argo was subject to prosecution for all of his fraudulent activities.

Result: affirmance of King County Superior Court convictions for first degree theft (6 counts) and securities fraud (11 counts).

(4) LEGISLATION INCREASING LIMITATIONS PERIOD APPLIES TO ALL PRIOR CRIMES NOT YET TIME-BARRED -- In State v. Foster, 81 Wn. App. 508 (Div. I, 1996), the Court of Appeals affirms the rule that, when the Legislature enacts an amendment increasing a statutory limitations period, the new limitations period applies to all crimes not yet time-barred under the former limitations statute at the effective date of the amendment. See the State Supreme Court decision in State v. Hodgson, 108 Wn.2d 662 (1987). Accordingly, the Foster court rules in James G. Foster's appeal from an indecent liberties conviction that the 1989 amendment to the limitations statute (RCW 9A.04.090) applied to make timely a 1993 filing of charges against Foster for indecent liberties crimes committed between 1982 and 1986. Result: affirmance of King County Superior Court convictions for indecent liberties (five counts).

(5) NO IN CAMERA HEARING TO REVIEW PRIVILEGED COUNSELING RECORDS UNLESS DEFENDANT MAKES SPECIAL SHOWING OF LIKELY RELEVANCE OF RECORDS -- In State v. Demel, 81 Wn. App. 464 (Div. I, 1996), the Court of Appeals rejects a third degree rape defendant's request that the trial court hold an in camera hearing (a hearing outside the presence of defendant and his counsel) to review the privileged counseling records of a therapist who had counseled defendant's alleged victim.

The Court of Appeals declares that a defendant requesting an in camera hearing must make a special preliminary showing that privileged records are likely to contain evidence relevant and favorable to the defense. Because defendant Demel did not make such a showing, the Court of Appeals rejects his request that an in camera hearing be held to review the privileged records to determine whether an exception to privilege might be established.

Result: affirmance of King County Superior Court conviction for third degree rape.

(6) CLOSED CIRCUIT TV TESTIMONY BY DISTRESSED CHILD WITNESS OK -- In State v.

Foster, 81 Wn. App. 444 (Div. I, 1996), the Court of Appeals rejects defendant's appeal based on his constitutional "right of confrontation." Boyd Allen Foster's appeal followed his conviction for first degree child molesting. Foster challenged RCW 9A.44.150, which permits a child witness to testify by means of one-way closed circuit television under certain circumstances. The Court of Appeals rules, however, that the statute does not violate a criminal defendant's federal or state constitutional right to confront witnesses face to face if the State adequately shows that the procedure is necessary to protect the child from the trauma of testifying.

To find necessity, the trial court must: (1) determine that use of one-way closed circuit television is necessary to protect the child's welfare; (2) find that the child would be traumatized by the presence of the defendant; and (3) find that the emotional distress suffered by the child in the presence of the defendant is more than mere nervousness, excitement, or some reluctance to testify. Based on substantial evidence, the trial court must determine that the child witness is "unavailable" in the sense that, although the child is present and can testify outside the presence of the defendant via closed circuit television, the child cannot reasonably testify in the presence of the defendant due to serious emotional or mental distress caused by the defendant's presence.

To meet the emotional distress element under RCW 9A.44.150, the State need not show the likelihood of permanent psychic scarring to the child, only that the child's emotional distress is sufficiently serious that it prevents the child from reasonably communicating at trial while in the physical presence of the defendant. This third element is met where a child cannot promise to tell the truth due to emotional distress caused by the physical presence of the defendant. Such a child is per se unable reasonably to communicate in the defendant's presence at trial.

Result: King County Superior Court conviction for first degree child molesting affirmed.

(7) MONEY LAUNDERING EVIDENCE SUFFICIENT TO SUPPORT CONVICTION -- In State v. Casey, et. al., 81 Wn. App. 524 (Div. I, 1996), the Court of Appeals upholds the convictions of the asphalt-scamming Casey family on multiple counts of theft by deception, money laundering and leading organized crime.

Among the issues raised by one of the Caseys in the appeal was that there was insufficient evidence to convict of money laundering. The Caseys' scam was: (1) to approach unsuspecting homeowners to try to sell them asphalt paving by tricking them into thinking that they were getting a significant discount on "leftover" asphalt; and (2) to do much more paving than agreed to, and then to negotiate payment on the bigger job. The Court holds that the evidence in relation to this scam was sufficient to establish theft by deception under chapter 9A.56 RCW and to support convictions for leading organized crime.

The Court then turns to an aspect of the money laundering convictions, the defendant's argument for a strict tracing rule. RCW 9A.83.020(1)(a) defines one of the alternative means of committing the Class B felony of money laundering. The statute provides that a person is guilty of this crime:

- (1) . . . when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:
 - (a) Knows the property is proceeds of specified unlawful activity.

The Court's analysis of Casey's tracing argument is as follows:

Casey's money laundering convictions were based in part on the several payments made on his trucks. In order to convict Casey of laundering money, the jury had to find that he knowingly conducted a financial transaction involving the proceeds of theft by deception. The State presented evidence that in each case Casey either took the customer to his or her bank to immediately obtain cash payment, went directly to the bank himself to cash the check, or had the customer purchase a cashier's check before Casey left the property that day. During their investigation, the police discovered \$79,000 cash in a safety deposit box and \$10,736 cash in a purse belonging to one defendant's wife. Most of the truck payments were made with cash or with money orders, which are purchased with cash.

Casey argues that the State did not establish that all of the payments made on his trucks came from the thefts. Although no Washington case addresses the issue, persuasive federal cases hold that the prosecution need not trace all funds used to criminal activity. To require such proof would allow launderers to avoid prosecution by commingling funds. The State's evidence supports a finding that the cash transactions involved at least some funds derived from theft, and we hold that such evidence is sufficient to support the conviction for money laundering.

Result: affirmance of King County Superior Court convictions for multiple counts of theft by deception, money laundering, and leading organized crime.

(8) WITNESS TAMPERING EVIDENCE SUFFICIENT TO SUPPORT CONVICTION-- In State v. Lubers, 81 Wn. App. 614 (Div. II, 1996), the Court of Appeals rejects defendant's argument, among others, that the evidence was insufficient to support his conviction for witness tampering in relation to a rape investigation. The factual basis for the tampering charge is described by the Court of Appeals as follows (note that the LED Editor has provided the bracketed identifying information):

The Puyallup police arrested Lubers [the defendant] after S [the victim] identified him from a photographic montage. On October 1, 1993, in the course of his investigation, Puyallup detective Matison took a statement from Joseph [the defendant's accomplice-turned-State's-witness], which was similar to his [Joseph's] later trial testimony. A few days later, Lubers called Joseph from jail and asked him to write a letter to Lubers' lawyer saying that Joseph had lied to Detective Matison. Lubers [the defendant] told Joseph [the accomplice] to say that another man, a fictitious person named "Danny Cortez," was really the rapist, that "Cortez" had initially promised to pay Joseph \$10,000 to name Lubers, and that later "Cortez" had threatened to kill Joseph's family unless he falsely accused Lubers.

The Court of Appeals then analyzes the issue of the sufficiency of the tampering evidence as follows (bracketed information inserted by LED Editor):

The elements of [witness tampering] are set forth in RCW 9A.72.120:

(1) A person is guilty of tampering with a witness if he . . . attempts to induce a witness or person he . . . has reason to believe is about to be called as a witness in any official proceeding or a person whom he . . . has reason to believe may have information relevant to a criminal investigation. . . to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony . . .

Lubers argues that he is not guilty of witness tampering because the basis for the charge, Joseph's testimony that Lubers asked him to write a letter to Lubers' defense counsel saying that Joseph had lied in his statement to the detective and that "Danny Cortez" was really the rapist, did not describe an inducement of false testimony, but only of a false out-of-court statement.

The witness tampering statute requires that Lubers induce a "witness" or a person "about to be called as a witness" to give false testimony or withhold testimony.

Joseph testified that Lubers asked him to write a letter recanting information that he had given the police as part of a rape investigation, and stating that "Danny Cortez" committed the rape. Taking the evidence in the light most favorable to the State, Joseph was about to be called as a witness and he had information relevant to a police investigation. Lubers asked Joseph to make a false statement, effectively recanting a prior signed statement to the police, and thereby, to withhold information necessary to a criminal investigation. Joseph's testimony provided sufficient evidence for a rational trier of fact to find the statutory requirements for witness tampering beyond a reasonable doubt.

Result: Pierce County Superior Court convictions for first degree rape and witness tampering affirmed.

(9) CLAIMANT OF PROPERTY HAS RIGHT TO RETURN OF PROPERTY UNLESS: (1) HE OR SHE IS NOT RIGHTFUL OWNER, (2) THE PROPERTY IS CONTRABAND, OR (3) THE PROPERTY IS SUBJECT TO FORFEITURE -- In State v. Angulo, 77 Wn. App. 657 (Div. I, 1995), the Court of Appeals looks at the issue of whether defendant had a right to have returned to him certain cash lawfully seized from him at the time of his arrest. The State had apparently sought to have the cash applied to defendant's restitution obligation under his sentence. However, the Court of Appeals rules that Angulo had a right to return of the cash and any other seized property unless one of the following circumstances were present: (i) he was not the rightful owner of the property; (ii) the property was contraband; or (iii) the property was subject to forfeiture, and forfeiture proceedings were being diligently pursued. None of these circumstances were present in this case, so Angulo's cash was ordered returned to him.

Result: King County Superior Court order relating to restitution and disposition of cash reversed, and case remanded to trial court for further proceeding on these matters. (Note: this appeal did not affect Angulo's convictions for first degree assault and possession of a controlled substance.)

REQUESTING CONSENT TO SEARCH DURING OR AFTER TRAFFIC STOP -- IS IT A SEIZURE?

We have gotten several inquiries in recent months as to the limits, if any, on asking for consent to search from a driver who has been lawfully stopped for a traffic infraction. The questions are

sparked in large part by conflicting views as to the import the Division Two Court of Appeals decision in State v. Cantrell, 70 Wn. App. 340 (1993) **Oct. '93 LED: 21-22**.

An aspect of this issue is currently before the U.S. Supreme Court in the case of Ohio v. Robinette, Sup. Ct. No. 95-891. The Ohio Supreme Court announced a "bright line" rule in Robinette that, before attempting to engage in consensual interrogation after the completion of a traffic stop, a police officer must make a clear break by telling the detainee that he or she is free to go. Presumably, the Ohio Supreme Court would follow a similar "bright line" rule for consent requests in this context; the Ohio Supreme Court's Robinette "bright line" clear-break rule is consistent with the restrictive holding in Cantrell by our Division Two of the Court of Appeals (though the Court of Appeals in Cantrell did not expressly address what additional facts might end a traffic stop "seizure" and yet allow a continuing contact).

Based on these cases, and on the cases on the "contact vs. seizure" question discussed in our State Supreme Court's recent decision in State v. Thorn, 129 Wn.2d 347 (1996) **August '96 LED:13**, it is our view that the following two alternatives are available as constitutionally lawful consent-request approaches in this context:

(1) CLEAR-BREAK APPROACH

Upon completion of the ticketing process, the officer expressly informs the detainee after the detainee signs the ticket that he or she is (a) free to go, and (b) need not talk further, but that the officer is concerned about certain other matters and would like to ask a question or two. Then, posing questions in a non-coercive manner, the officer asks whether there are drugs, alcohol, or weapons in the vehicle (or the like), and then proceeds to a consent request if suggested by the answers or other circumstances. **[OR]**

(2) IN-THE-PROCESS APPROACH

During the process of inquiry on the infraction matter and before completion of the ticketing process, the officer expressly informs the detainee that a ticket will be issued for a particular violation (this helps preclude argument later that the consent was leveraged by the implication that the ticket could be avoided by cooperation), and then says that the officer wishes to ask a few questions about certain other matters. Then, posing questions in a non-coercive manner, the officer asks whether there are drugs, alcohol, or weapons in the vehicle (or the like), and then proceeds to a consent request if suggested by the answers or other circumstances. Regardless of what is found in the consent search, the officer should process the traffic infraction to completion (maybe by submitting a report on the infraction to the prosecutor).

The discussion in the State Supreme Court's recent decisions in Thorn strongly suggests that no prior level of suspicion as to criminal activity is necessary as a prerequisite to asking questions in a non-coercive manner and requesting consent in this traffic stop context or in other citizen contact situations.

Our analysis takes into account the recent Division Three Court of Appeals decision in State v. Henry, 80 Wn. App. 544 (Div. III, 1995) **Aug. '96 LED:19**. In our August 1996 LED entry on Henry, we provided only a brief note on a "frisk" issue in Henry, and we did not even address the

"stop" issue. That is because we see the Terry stop issue in Henry as being highly fact-specific and of limited precedential value.

Having recently re-read Henry, however, we must admit that it could be read by some lawyers and judges in a broad way to undercut the above-stated view of the law. We should have given Henry more thorough treatment in the August LED.

Admittedly, the Henry Court does address a consent search request in relation to a seizure-of-the-person issue, as well as a frisk issue (as noted above, our August LED entry on Henry addressed only the frisk issue). Division Three ambiguously asserts at the conclusion of its discussion of the seizure-of-the-person issue in Henry that "*without sufficient justification, police officers may not use routine traffic stops as a basis for generalized, investigative detentions or searches.*"

We do not believe that Henry renders unconstitutional the two above-described alternative approaches to requesting consent to search in the traffic stop setting. We believe further that if Henry is inconsistent with the above-described alternative approaches, then Henry is wrong, because it is inconsistent with the State Supreme Court's approach in the Thorn case, a case decided after Henry was decided. Arguably, Henry is also difficult to square with the view of Division One of the Court of Appeals in State v. Rife, 81 Wn. App. 258 (Div. I, 1996)[**Aug. '96 LED:17**]. In Rife, Division One held that officers making traffic stops may extend such stops for a reasonable period of time to check for outstanding warrants. One must ask why it is permissible to briefly prolong a traffic stop to check for warrants, but not permissible to briefly prolong a traffic stop to ask for voluntary consent to search, particularly where the guidelines suggested above are followed.

We note further that in the Thorn case noted above, the State Supreme Court reversed a 1994 unpublished opinion of Division Three, the same court that decided Henry. In its unpublished 1994 opinion in Thorn, Division Three had taken an erroneously broad view of what constitutes a seizure of the person under the Federal constitution's Fourth Amendment. In overruling the Division Three unpublished opinion in Thorn, the State Supreme Court relied heavily on a U.S. Supreme Court decision in Florida v. Bostick, 501 U.S. 429 (1991) **Sept. '91 LED:06** (which held that police did not necessarily seize a seated bus passenger by asking him for ID, explaining that they were narcotics officers, and requesting consent to search his luggage).

While the facts in Thorn and Bostick did not involve traffic stops, we see nothing in the Fourth Amendment caselaw which would call for a "bright line" "seizure" rule whenever consent is requested in this factual setting. To the extent that the ambiguous rule in the italicized quote from Henry set out above is to the contrary, we think the Division Three panel failed there, as it did in Thorn, to understand the U.S. Supreme Court's Bostick decision. We are certainly willing to consider contrary readings of the Henry decision, and we will revisit the subject in a future LED if we receive written analysis to the contrary.

Having stated our personal views as to this sub-area of constitutional law, we must acknowledge that, purely as a matter of policy (perhaps for purposes of enhancing community relations, perhaps to put a check on overzealousness or other bad judgment, perhaps for other policy reasons), police agencies may choose to require that officers use a threshold "reasonable suspicion" standard as a trigger to requesting consent during such citizen contacts....As always, we remind our readers that our personal opinions are only that, and we recommend that agencies check with their respective prosecutors, city attorneys and/or legal advisors....

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