



Law Enforcement

DECEMBER 2008

Digest

633rd Basic Law Enforcement Academy – June 16, 2008 through October 21, 2008

President: Scott Miller – Seattle Police Department
Best Overall: Seth Huber – Pierce County Sheriff's Office
Best Academic: Seth Huber – Pierce County Sheriff's Office
Best Firearms: Seth Huber – Pierce County Sheriff's Office
Tac Officer: Paul Dudley – Bellevue Police Department

DECEMBER 2008 LED TABLE OF CONTENTS

2008 LED SUBJECT MATTER INDEX.....	2
WASHINGTON STATE SUPREME COURT	18
ARRESTEE’S AMBIGUOUS MID-INTERROGATION MENTION OF THE POSSIBILITY OF HIS NEED TO CONFER WITH AN ATTORNEY DID NOT REQUIRE THAT DETECTIVES CLARIFY HIS EARLIER <u>MIRANDA</u> WAIVER - - U.S. SUPREME COURT’S <u>DAVIS</u> DECISION IS HELD TO CONTROL <u>State v. Radcliffe</u> , ___ Wn.2d ___, 194 P.3d 250 (2008).....	18
BRIEF NOTES FROM THE WASHINGTON STATE SUPREME COURT.....	21
IDENTITIES OF TEACHERS ACCUSED OF SEXUAL MISCONDUCT WITH STUDENTS, AND IDENTITIES OF TEACHERS WHO RECEIVED “LETTERS OF DIRECTION,” ARE EXEMPT FROM PUBLIC DISCLOSURE UNDER CURRENT RCW 42.56.230(2) WHERE MISCONDUCT IS UNSUBSTANTIATED - - DISCLOSURE WOULD VIOLATE THEIR RIGHT TO PRIVACY <u>Bellevue John Does v. Bellevue School District</u> , 164 Wn.2d 199 (2008)	21
HOMEOWNER’S LAWSUIT FOR CIVIL TRESPASS AGAINST LAW ENFORCEMENT FOR BREAKING DOORS IN SEARCH WARRANT EXECUTION FAILS BECAUSE OFFICERS WERE JUSTIFIED IN THE DESTRUCTIVE ACTIVITY UNDER THE CIRCUMSTANCES; HOMEOWNER’S “UNCONSTITUTIONAL TAKING” THEORY FAILS AS WELL <u>Brutsche v. City of Kent</u> , ___ Wn.2d ___, 193 P.3d 110 (2008)	22
BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS.....	23

METADATA CONTAINED IN E-MAIL FROM CITIZEN TO DEPUTY MAYOR IS A PUBLIC RECORD AND SUBJECT TO DISCLOSURE

O'Neill v. City of Shoreline, 145 Wn. App. 913 (Div. I, 2008) 23

2008 LED SUBJECT MATTER INDEX

2008 LED SUBJECT MATTER INDEX -- LED EDITORIAL NOTE: Our annual LED subject matter index covers all LED entries from January 2008 through and including this December 2008 LED. Since 1988, we have published an annual index each December. Also, since establishing the LED as a monthly publication in 1979, we have published several multi-year subject matter indexes: a 10-year index of LEDs from January 1979 through December 1988; a 5-year subject matter index from January 1989 through December 1993; a 5-year index from January 1994 through December 1998; a 5-year index from January 1999 through December 2003; and, coming soon, a 5-year index from January 2004 through December 2008. The 1989-1993, 1994-1998, 1999-2003 indexes, and soon the 2004-2008 index, as well as monthly issues of the LED starting with January of 1992, are available on the “Law Enforcement Digest” internet page of the Criminal Justice Training Commission (CJTC) – go to CJTC Home Page at: <https://fortress.wa.gov/cjtc> and click on “Law Enforcement Digest”.

ACCOMPLICE LIABILITY (RCW 9A.08.020)

Evidence that (1) defendant knew - - and other participant did not know - - target home’s security code, and (2) defendant was one of three persons seen running from burgled premises, sufficient to support convictions for burglary and theft based on accomplice theory; Court rejects defendant’s claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

Where motor vehicle passenger was injured in a DUI crash, she was a “victim” under RCW 9A.08.020(5), and therefore she could not lawfully be convicted of DUI as an accomplice. State v. Hedlund, 137 Wn. App. 494 (Div. I, 2007) – January 08:22

ARMED CRIME SENTENCE ENHANCEMENT (RCW 9.94A.602) (See also “Sentencing”)

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being “armed” for purposes of either (1) burglary-in-the-first degree statute, or (2) “armed crime” sentence enhancement under RCW 9.94A. 533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

ARREST, STOP AND FRISK

Probable cause to arrest: Totality of circumstances gave officer probable cause to believe that front-seat passenger constructively possessed cocaine found in back seat area of car. Maryland v. Pringle, 124 S.Ct. 795 (2003) – Feb 04:02. Note that in State v. Grande, 164 Wn.2d 135 (2008) September 08:07, the Washington Supreme Court applied a more restrictive rule against law enforcement on analogous facts; see below, this topic.

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

Two of three judges on Court of Appeals panel agree seizure of a probable witness to reckless driving was not justified, but separate opinions of the three judges on the panel give mixed signals. State v. Carney, 142 Wn. App. 197 (Div. II, 2007) – February 08:17

False arrest civil suit must go to trial on question of whether officer had PC to arrest for obstructing. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

Totality-of-the-circumstances standard held to limit Terry stops for “previously committed” gross misdemeanors and misdemeanors that do not have potential for ongoing or repeated danger or any risk of escalation. U.S. v. Grigg, 498 F.3d 1076 (9th Cir. 2007) (decision filed August 22, 2007) – April 08:06

Court holds in civil rights lawsuit that officers lacked probable cause to arrest man suspected of passing counterfeit bills. Rodis v. City and County of San Francisco, 499 F.3d 1094 (9th Cir. 2007) (decision filed August 28, 2007) – April 08:10

In internal affairs investigation following use-of-force incident, officers’ Fourth Amendment and Fifth Amendment rights were not violated. Aguilera v. Baca, 510 F.3d 1161 (9th Cir. 2007) (decision filed December 27, 2007) – April 08:13

Reasonable suspicion supported Terry stop of possible prowler who was found inside storage unit area at 2:30 a.m., was driving without car lights, and was known from past contacts not to be a renter; also, duration of Terry detention was reasonable. State v. Bray, 143 Wn. App. 148 (Div. III, 2008) – April 08:16

Brief expansion of duration of traffic stop to ask about possible illegal drugs held ok under Fourth Amendment despite officer’s lack of reasonable suspicion regarding drugs - - Washington constitution might require a different result in light of officer’s expansion of scope of investigation. U.S. v. Turvin, 517 F.3d 1097 (9th Cir. 2008) (decision filed February 26, 2008) – May 08:07

Probable cause to arrest long-time fifth grade teacher for sexual assault on student precludes teacher’s civil rights suit that challenged her being arrested and taken out of the school in handcuffs. John v. City of El Monte, 505 F.3d 907 (9th Cir. 2007) (decision filed September 26, 2007; amended opinion filed February 5, 2008) – May 08:11

Bench warrant for failure to appear for post-conviction probation court review justifies arrest despite lack of court finding of probable cause as to probation violation. State v. Erickson, 143 Wn. App. 660 (Div. I, 2008) – June 08:21

Suspect’s 1) eyes getting big at seeing police, 2) furtive gesture, and 3) walkaway as officer’s came back toward him do not add up to reasonable suspicion for Terry stop; Supreme Court does not address the fact that his walkaway from the officers was jaywalking in their presence. State v. Gatewood, 163 Wn.2d 534 (2008) – July 08:04

Officer could not lawfully frisk a lawfully seized man based solely on fact that the man was nervous and fidgeting. State v. Setterstrom, 163 Wn.2d 621 (2008) – July 08:06

Frisk of mere passenger in stolen car held not supported by trial court's findings of fact that did not show any danger presented by the passenger. State v. Adams, 144 Wn. App. 100 (Div. III, 2008) – July 08:14

Officer's late-night social contact of pedestrian, followed by officer's patdown of pedestrian's pockets when pedestrian kept putting his hands in and out of his pockets, held lawful. State v. Harrington, 144 Wn. App. 558 (Div. III, 2008) – July 08:17

Late night stop of fast-moving unlit bicycle heading away from area of "shots fired" reports held lawful Terry stop based on reasonable suspicion. State v. Rowell, 144 Wn. App. 453 (Div. III, 2008) – July 08:19

Pretext stop ruling is based on officer's mere hunch and his hunch-inspired surveillance, followed by his stop of the suspect van, purportedly for driving a short distance without headlights. State v. Montes-Malindas, 144 Wn. App. 254 (Div. III, 2008) – July 08:21

Officer's request for voluntary production of ID from person who had just parked and gotten out of his car was not a seizure. State v. Vanderpool, 144 Wn. App. 254 (Div. III, 2008) – August 08:06

Officer's seizure of potential witness was not justified where there were no exigent circumstances, not even a recent report of a crime. State v. Dorey, 145 Wn. App. 423 (Div. III, 2008) – August 08:08

Officers acted lawfully in continuing contact with would-be victim-witness who alleged that he had been robbed, but who himself became a suspect for drug possession. State v. Mitchell, 145 Wn. App. 1 (Div. I, 2008) – August 08:11

Moderate odor of marijuana coming from vehicle during traffic stop did not provide probable cause to arrest passenger under article 1, section 7 of the Washington constitution. State v. Grande, 164 Wn.2d 135 (2008) – September 08:07

Traffic stop held not justified where driver crossed 8-inch-wide exit-lane divider by 2 tire lengths for 1 second. State v. Prado, 145 Wn. App. 646 (Div. I, 2008) – September 08:16

Extending detention of protestors while waiting for a supervisor to help officers interpret law not reasonable. Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff's Department, 533 F.3d 780 (9th Cir. 2008) (decision filed July 2, 2008) – October 08:11

Six-pack of photos police used for ID held to be sufficiently questionable to help support civil rights plaintiff's claim he was arrested without probable cause. Torres v. City of Los Angeles, 540 F.3d 1031 (9th Cir. 2008) (decision filed August 26, 2008) – October 08:12

Court upholds multi-million dollar verdict for LAPD officers in their civil rights lawsuits against agency for arresting the officers without probable cause. Harper v. City of Los Angeles, 533 F.3d 1010 (9th Cir. 2008) (decision filed July 14, 2008) – October 08:14

Delayed frisk of handcuffed, cooperative brother of warrant subject (in mistaken-identity seizure) held not supported by reasonable belief that detainee was presently armed and dangerous. State v. Xiong, ___ Wn.2d ___, 191 P.3d 1278 (2008) – November 08:02

Citizen's report of man 1) acting bizarrely and erratically, 2) possibly "on drugs," and 3) possibly dangerous to others or himself justified officer's Terry stop of the man; also, even if Terry stop was not justified, that would not provide a defense for the detainee's first degree assault on officer with a screwdriver. State v. Kolesnik, ___ Wn. App. ___, 193 P.3d 937 (Div. I, 2008) – November 08:06

ASSAULT AND RELATED OFFENSES (Chapter 9A.36 RCW)

Court rejects 1) claim of constitutional right to jury trial in juvenile court, and 2) constitutional challenge to legislature's use of common law definition of assault. State v. Chavez, 163 Wn.2d 262 (2008) – October 08:16

ATTEMPT (Chapter 9A.28 RCW)

Attempted burglary conviction upheld: evidence of intent to commit crime within building by forcibly taking son from estranged wife held sufficient to prove that necessary element. State v. Powell, 139 Wn. App. 808 (Div. II, 2007) – January 08:10

There is no such crime as "attempted felony murder" under Title 9A RCW. In re Personal Restraint of Richey, 162 Wn.2d 865 (2008) – May 08:17

BURGLARY (Chapter 9A.52 RCW)

Attempted burglary conviction upheld: evidence of intent to commit crime within building by forcibly taking son from estranged wife held sufficient to prove that necessary element. State v. Powell, 139 Wn. App. 808 (Div. II, 2007) – January 08:10

Evidence that (1) defendant knew - - and other participant did not know - - target home's security code, and (2) defendant was one of three persons seen running from burgled premises, sufficient to support convictions for burglary and theft based on accomplice theory; Court rejects defendant's claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

Where there was evidence that defendant used a machete to break into a home, and that he took the machete into the premises, the evidence was sufficient to support his first degree burglary conviction; from this evidence, the jury could conclude that he was "armed" with a machete when he burglarized the house. State v. Gamboa, 137 Wn. App. 650 (Div. III, 2007) – January 08:16

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being "armed" for purposes of either (1) burglary-in-the-first degree statute, or (2) "armed crime" sentence enhancement under RCW 9.94A.533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

CHILD PORNOGRAPHY (RCW 9.68A.070)

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional PC and particularity requirements; also, State wins on sufficiency of evidence issue; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Child pornography conviction overturned where defendant had taken pictures of his 15-year-old stepdaughter without her knowledge - - this was voyeurism, not child pornography. State v. Whipple, 144 Wn. App. 654 (Div. II, 2008) – August 08:20

CITIZEN'S ARREST AND MERCHANT AUTHORITY TO DETAIN SHOPLIFTING SUSPECT

Shoplifter's act of pushing away neighboring store's employee who was attempting to detain him was not assault three, because the employee lacked authority to detain the shoplifter per statute or as "citizen's arrest." State v. Garcia, ___ Wn. App. ___, 193 P.3d 181 (Div. III, 2008) – November 08:20

CIVIL LIABILITY

WSP may be liable for damages based on former policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 161 Wn.2d 335 (2007) – February 08:09. Note that in May of 2008 the Washington Supreme Court re-heard oral argument in order to consider the issue of whether the "conversion" theory of the lawsuit is barred on grounds that the exclusive remedy for wrongful impound is under RCW 46.55.120.

False arrest civil suit must go to trial on question of whether officer had PC to arrest for obstructing. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

Probable cause to arrest long-time fifth grade teacher for sexual assault on student precludes teacher's civil rights suit that challenged her being arrested and taken out of the school in handcuffs. John v. City of El Monte, 505 F.3d 907 (9th Cir. 2007) (decision filed September 26, 2007; amended decision filed February 5, 2008) – May 08:11

No civil rights act liability under Fourteenth Amendment's due process protections even assuming for the sake of argument that the officer's decision to join a high speed chase and his method of execution in doing so showed poor judgment. Bingue v. Prunchak, 512 F.3d 1169 (9th Cir. 2008) (decision filed January 15, 2008) – May 08:14

Residential arrest under the Fourth Amendment - - panel of fifteen to rehear the Fisher case in which a 3-judge panel applied the Payton rule to a barricade/standoff circumstance. Fisher v. City of San Jose, 519 F.3d 908 (9th Cir. 2008) (9th Circuit order to rehear case filed March 14, 2008) – May 08:16

Officer's inadvertent use of Glock instead of Taser, a fatal error for the detainee, will be reviewed for reasonableness by fact-finder in section 1983 civil rights action. Torres v. Madera, 524 F.3d 1053 (9th Cir. 2008) (decision filed May 5, 2008) – July 08:03

Strip search ruling in section 1983 civil rights lawsuit withdrawn; panel to rehear case involving strip search of trespasser at station. Edgerly v. City & County of San Francisco, 527 F.3d 841 (9th Cir. 2008) (order for rehearing filed May 22, 2008) – July 08:04

Sergeant had privacy interest in text messages viewed in audit - - agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in the past; also, agency was not justified in conducting full search on grounds that the agency was merely trying to determine whether to raise texting limits. Quon v. Arch Wireless Operating Company, Inc., 529 F.3d 892 (9th Cir. 2008) (decision filed June 18, 2008) – September 08:03

Section 1983 civil rights case jury upheld on its reasonableness finding where officers waited 5 to 8 seconds, after knocking and announcing, before beginning their efforts to force home's steel security door to execute narcotics search warrant. Howell v. Polk, 532 F.3d 1025 (9th Cir. 2008) (decision filed July 16, 2008) – October 08:03

Satirical message – “I am a . . . suicide bomber terrorist” on van of mild-mannered, anti-government “nut” was protected as “free speech” under the First Amendment. Fogel v. Collins, 531 F.3d 824 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:09

Extending detention of protestors while waiting for supervisor to help officers interpret the law not reasonable. Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff's Department, 533 F.3d 780 (9th Cir. 2008) (decision filed July 2, 2008) – October 08:11

San Francisco jail policy of strip searching without reasonable suspicion all pre-trial detainees who are to be placed in general population held to violate Fourth Amendment. Bull v. City and County of San Francisco, 539 F.3d 1193 (9th Cir. 2008) (decision filed August 22, 2008) – October 08:11

Six-pack of photos police used to ID suspect were questionable and help support civil rights plaintiff's claim he was arrested without probable cause. Torres v. City of Los Angeles, 540 F.3d 1031 (9th Cir. 2008) (decision filed August 26, 2008) – October 08:12

Court upholds multi-million dollar verdict for LAPD officers in their civil rights lawsuits against agency for arresting the officers without probable cause. Harper v. City of Los Angeles, 533 F.3d 1010 (9th Cir. 2008) (decision filed July 14, 2008) – October 08:14

Civil rights lawsuit will go forward on plaintiffs' allegations that officers looking for a parole violator unlawfully forced a warrantless entry of their home without probable cause to believe that the parolee lived there. Cuevas v. De Roco, 531 F.3d 726 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:15

“Public duty doctrine” precludes negligence-based lawsuit for arrest on quashed warrant. Vergeson v. Kitsap County, 145 Wn. App. 526 (Div. II, 2008) – October 08:22

Judge's order to deputy sheriff to escort prisoner from courtroom to jail did not give the deputy “judicial immunity” from a civil suit for negligence when the prisoner escaped en route and caused injury to a courthouse security guard. Lallas v. Skagit County, 144 Wn. App. 114 (Div. I, 2008) – October 08:23

Homeowner's lawsuit for civil trespass against law enforcement for breaking doors in search warrant execution fails because officers were justified in the destructive activity under the circumstances; homeowner's theory of “unconstitutional taking” theory also fails. Brutsche v. City of Kent, ___ Wn.2d ___, 103 P.3d 110 (2008) – December 08:22

CIVIL SERVICE AND EMPLOYMENT LAW

Arbitrator's award reinstating deputy set aside where, among other things, deputy's record of dishonesty prevented useful service by the deputy. Kitsap Cty Deputy Sheriff's Guild v. Kitsap Cty, 140 Wn. App. 516 (Div. II, 2007) – February 08:24

CORPUS DELICTI RULE (Common law and RCW 10.58.035)

Corpus delicti for “driving” element of DUI established by proof that wrecked car was registered to defendant and he was the only person found in the area of the one-car accident. State v. Hendrickson, 140 Wn. App. 913 (Div. II, 2007) – January 08:08

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

RCW 10.58.035’s relaxing of corpus delicti rule held constitutional, but holding may reduce statute to little effect. State v. Dow, 142 Wn. App. 971 (Div. II, 2008) – May 08:22. Note that the Washington Supreme Court is reviewing this decision of the Court of Appeals.

DISCOVERY OF EVIDENCE UNDER COURT RULES

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional PC, particularity requirements; also, State wins on sufficiency of evidence; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

DOMESTIC VIOLENCE (INCLUDING PROTECTION ORDERS)

DVPA prosecution – evidence sufficient to prove that defendant knew where protected person resided. State v. Vant, 145 Wn. App. 592 (Div. II, 2008) – October 08:23

ELECTRONIC SURVEILLANCE (Chapter 9.73 RCW)

King County Jail phones provided a clear, recorded notice that all inmate calls are recorded, and so did a posted written notice, and therefore jail’s recording of inmate calls was lawful because any expectation of privacy was not reasonable for purposes of chapter 9.73 RCW. State v. Modica, 164 Wn.2d 83 (2008) – September 08:05

EMPLOYMENT STANDARDS FOR HOURS AND WAGES

Security company installation and service technicians were “on duty” at a “prescribed work place” when driving company trucks from their homes to first jobsite and back from last jobsite, and thus were entitled to compensation for drive time under Minimum Wage Act (MWA). Stevens v. Brink’s Home Security, Inc., 162 Wn.2d 42 (2007) – February 08:09

ESCAPE AND RELATED OFFENSES (Chapter 9A.76 RCW)

It was first degree “escape” for the defendant to run from the courtroom moments after the defendant heard the trial judge’s post-verdict oral order to “have (defendant) taken into custody.” State v. Eichelberger, 144 Wn. App. 61 (Div. II, 2008) – September 08:22

EVIDENCE LAW

Forfeiture-by-wrongdoing hearsay exception held limited by the U.S. constitution’s Sixth Amendment confrontation clause to circumstance where defendant had motive to make declarant unavailable. Giles v. California, 128 S.Ct. 2678 (2008) – September 08:02

FIREARMS LAWS (Chapter 9.41 RCW) AND OTHER WEAPONS LAWS

Juvenile court's failure at time of earlier adjudication to notify defendant of bar to firearms possession precludes his subsequent conviction for gun possession under RCW 9.41.040. State v. Minor, 162 Wn.2d 796 (2007) – April 08:15

Second Amendment of U.S. Constitution applied to strike down broad D.C. ban on handgun possession. District of Columbia v. Heller, 128 S.Ct. 2783 (2008) – August 08:03

Version of RCW 9.41.040 that was in effect when the person petitioned for restoration of firearms rights, not the earlier version of the statute that was in effect when the crime was committed and sentence was imposed, governs on the restoration of firearms rights. State v. Rivard, __ Wn. App. __, 193 P.3d 195 (Div. III, 2008) – November 08:23, revising Division Three's earlier decision in this case reported in the September 2008 LED.

FISH AND WILDLIFE CRIMES, VIOLATIONS, ENFORCEMENT (Title 77 RCW)

Burden-shifting jury instructions were required in order to protect orchardist's constitutional right to protect his trees from marauding/foraging elk. State v. Vander Houwen, 163 Wn.2d 25 (2008) – May 08:16

FREEDOM OF SPEECH (FIRST AMENDMENT)

Court rejects a variety of theories argued by an officer who challenged being fired for maintaining a sexually explicit website. Dible v. City of Chandler (Arizona), 515 F.3d 918 (9th Cir. 2008) (decision filed September 5, 2007; amended February 1, 2008) – April 08:12

Defendant's statements to mental health provider that he wanted to kill neighbors pass "true threat" standard for First Amendment free speech protection; statements were harassment. State v. Schaler, 145 Wn. App. 628 (Div. III, 2008) – September 08:21

Satirical message – "I am a . . . suicide bomber terrorist" on van of mild-mannered, anti-government "nut" was protected as "free speech" under the First Amendment. Fogel v. Collins, 531 F.3d 824 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:09

"Criminal libel" statute ruled unconstitutional based on free speech protections of First Amendment. Parmelee v. O'Neel, 145 Wn. App. 223 (Div. II, 2008) – October 08:24

HARASSMENT (Chapter 9A.46 RCW) (See also "Telephone Harassment")

Defendant's statements to mental health provider that he wanted to kill neighbors pass "true threat" standard for First Amendment free speech protection; statements were harassment. State v. Schaler, 145 Wn. App. 628 (Div. III, 2008) – September 08:21

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

The State lacks criminal jurisdiction over tribal member if the alleged non-traffic criminal violation is unrelated to an exception to RCW 37.12.010(1)-(8). State v. Pink, 144 Wn. App. 945 (Div. II, 2008) – October 08:19

INTERROGATIONS AND CONFESSIONS

No Miranda custody in phone conversation between jailed suspect and police where suspect initiated the phone call. Saleh v. Fleming, 512 F.3d 548 (9th Cir. 2008) (decision filed January 3, 2008) – April 08:03

Officer should have clarified suspect's ambiguous response of "I'm good for tonight" that immediately followed question whether just-Mirandized suspect wished to talk. U.S. v. Rodriguez, 518 F.3d 1072 (9th Cir. 2008) (decision filed March 10, 2008) – April 08:08

After two attempts during custodial interrogation to assert his right to silence, suspect told interrogating officer: "I plead the Fifth" - - Ninth Circuit holds that, at that point, the questioning should have stopped and that the officer's response of "Plead the Fifth! What's that?" was not a clarifying question. Anderson v. Terhune, 516 F.3d 781 (9th Cir. 2008) (decision filed February 15, 2008) – April 08:09

In internal affairs investigation following use-of-force incident, officers' Fourth Amendment and Fifth Amendment rights were not violated. Aguilera v. Baca, 510 F.3d 1161 (9th Cir. 2007) (decision filed December 27, 2007) – April 08:13

"Death notification" to in-custody murder suspect shortly after she invoked her right to counsel was impermissible "interrogation." State v. Wilson, 144 Wn. App. 166 (Div. III, 2008) – September 08:18

In-home questioning, with child porn suspect surrounded by officers in a storage room, held "custodial" under totality of circumstances per Miranda rule despite facts that the interrogating officer told suspect that suspect 1) would not be arrested that day, 2) did not have to answer questions, and 3) was free to leave. U.S. v. Craighead, 539 F.3d 1073 (9th Cir. 2008) (decision filed August 21, 2008) – October 08:04

Division One again rejects argument that due process protections require electronic recording of interrogations. State v. Turner, 145 Wn. App. 899 (Div. I, 2008) – October 08:22

Arrestee's ambiguous mid-interrogation mention of the possibility of his need to confer with an attorney did not require that detectives clarify his earlier Miranda waiver - - U.S. Supreme Court's 1994 Davis decision is held to control. State v. Radcliffe, ___ Wn.2d ___, 194 P.3d 250 (2008) – December 08:18

JUVENILE LAW

Court rejects 1) claim of constitutional right to jury trial in juvenile court, and 2) constitutional challenge to legislature's use of common law definition of assault. State v. Chavez, 163 Wn.2d 262 (2008) – October 08:16

KIDNAPPING (Chapter 9A.40 RCW)

Evidence held sufficient to support kidnapping convictions as to two children despite defendant's status as a custodial parent of one child and arguable status as a guardian of the other child. State v. Lopez, 142 Wn. App. 341 (Div. I, 2007) – April 08:21

LEGISLATIVE UPDATES

2008 WASHINGTON LEGISLATIVE UPDATE – PART ONE – May 08:02; PART TWO (WITH INDEX) – June 08:02; CORRECTION NOTICE RE EFFECTIVE DATE OF CHAPTER 230, LAWS OF 2008 – July 08:02

LIBEL (CRIMINAL) (RCW 9.58.010)

“Criminal libel” statute ruled unconstitutional based on free speech protections of First Amendment. Parmelee v. O’Neel, 145 Wn. App. 223 (Div. II, 2008) – October 08:24

LURING (RCW 9A.40.090)

It was not “luring” where (1) adult stranger gestured to an 11-year-old girl to come over to his car, and (2) after the girl kept walking and did not approach the stranger’s car, he then continued a short distance in his car in the same direction as the girl was walking. State v. McReynolds, 142 Wn. App. 941 (Div. III, 2008) – May 08:20

MALICIOUS MISCHIEF (RCW 9A.48.070–100)

Vandalizing a police vehicle was not “use” of the vehicle in a felony, and therefore the driver’s license of the vandal may not be revoked under RCW 46.20.285(4). State v. B.E.K., 141 Wn. App. 742 (Div. II, 2007) – April 08:24

MURDER AND OTHER NON-TRAFFIC CRIMINAL HOMICIDES (Chapter 9A.32 RCW)

There is no such crime as “attempted felony murder” under Title 9A RCW. In re Personal Restraint of Richey, 162 Wn.2d 865 (2008) – May 08:17

Evidence of premeditation sufficient to support attempted murder convictions related to shoot-out with law enforcement officers where evidence showed (1) motive to avoid arrest, (2) procurement of gun, (3) shooting to kill, and (4) stealth during shootout. State v. Barajas, 143 Wn. App. 24 (Div. III, 2007) – October 08:18

Evidence in first degree murder case supports conviction, including premeditation element. State v. Sherrill, 145 Wn. App. 473 (Div. III, 2008) – October 08:23

Premeditation evidence was sufficient where it showed that the attempted-murder defendant 1) brought a loaded gun on a night out with his friends, 2) provoked a confrontation with a stranger, and 3) fired multiple shots at the stranger, with pauses in between shots. State v. Ra, 142 Wn. App. 868 (2008) – November 08:18

NECESSITY DEFENSE (See also “Uniform Controlled Substances Act, Other Drug Laws” for cases on medical use of marijuana)

Burden-shifting jury instructions were required in order to protect orchardist’s constitutional right to protect his trees from marauding/foraging elk. State v. Vander Houwen, 163 Wn.2d 25 (2008) – May 08:16

OBSTRUCTING (RCW 9A.76.020) AND RELATED OFFENSES

False arrest suit must go to trial on question of whether officer had obstructing PC. Bishop v. City of Spokane, 142 Wn. App. 165 (Div. III, 2007) – February 08:22

POSSESSING STOLEN PROPERTY (Chapter 9A.56 RCW) (See also “Theft”)

A credit card may be an “access device” regardless of whether the intended user has activated the card, so long as the evidence supports a finding that the card could be used in the manner described by RCW 9A.56.010(1). State v. Clay, 144 Wn. App. 894 (Div. I, 2008) – August 08:23

PRISONER RIGHT TO STARVE SELF

Prisoner held not to have constitutional right to starve himself. McNabb v. DOC, 163 Wn.2d 393 (2008) – October 08:16

PUBLIC RECORDS ACT (Chapter 42.56)

Administrative inconvenience for a very small city does not excuse city's failure to strictly comply with the Public Records Act. Zink v. City of Mesa, 140 Wn. App. 328 (Div. III, 2007) – April 08:24

DOC's authority to screen prisoner mail trumps Public Records Act. Livingston v. Cedeno, 164 Wn.2d 46 (2008) – September 08:13

Identities of teachers accused of sexual misconduct with students, and identities of teachers who received "letters of direction," are exempt from public disclosure under current RCW 42.56.230(2) where misconduct is unsubstantiated - - disclosure would violate the right to privacy under the statute. Bellevue John Does v. Bellevue School District, 164 Wn.2d 199 (2008) – December 08:21

Metadata contained in e-mail from citizen to deputy mayor is a public record and subject to disclosure. O'Neill v. City of Shoreline, 145 Wn. App. 913 (Div. I, 2008) – December 08:24

PUBLIC RESOURCE USE RE ELECTION, BALLOT PROPOSITION (RCW 42.17.130)

School teachers' use of e-mail and school mailboxes to promote ballot measure punishable by Public Disclosure Commission civil penalty under RCW 42.17.130 – "de minimis" use defense and constitutional challenges rejected. Herbert v. Washington PDC, 136 Wn. App. 249 (Div. I, 2006) – January 08:23

RAPE AND OTHER SEX OFFENSES (Primarily Chapter 9A.44 RCW)

When man ejaculated onto his stepdaughter's face while she slept, he committed child molestation by "touching" her with his penis even though his penis itself did not touch her body. State v. Jackson, 145 Wn. App. 814 (Div. I, 2008) – September 08:22

Under second degree rape statute, a victim is not "physically helpless" if able to communicate vocally. State v. Bucknell, 144 Wn. App. 524 (Div. III, 2008) – September 08:22

ROBBERY (Chapter 9A.56 RCW)

Robbery evidence held sufficient to support convictions – written demands for money to bank tellers implied a threat in each case. State v. Shcherenkov, __ Wn. App. __, 191 P.3d 99 (Div. II, 2008) – November 08:15

SEARCHES (See also "Arrest, Stop and Frisk")

Airport searches

After passenger places items on the conveyor belt and walks through the magnetometer, the passenger cannot choose to leave the airport to avoid a search. U.S. v. Aukai, 497 F.3d 955 (9th Cir. 2007) (decision filed August 10, 2007) – April 08:12

Community caretaking exception to warrant requirement

Mutual consent rule of Morse not met where two persons with equal authority were both on the premises and only one - - not defendant - - was asked for consent; also, community caretaking rationale for search not met because purpose of search was criminal investigation. State v. White, 141 Wn. App. 128 (Div. III, 2007) – January 08:05

Late-night presence of persons in house that neighbor “thought” was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Consent search exception to warrant requirement

Mutual consent rule of Morse not met where two persons with equal authority were both on the premises and only one - - not defendant - - was asked for consent; also, community caretaking rationale for search not met because purpose of search was criminal investigation. State v. White, 141 Wn. App. 128 (Div. III, 2007) – January 08:05

Where 1) tenant of storage unit was allowing Murphy to live there and 2) Murphy had refused to consent to a search, the tenant could not lawfully consent to a search against Murphy’s interest two hours later. U.S. v. Murphy, 516 F.3d 1117 (9th Cir. 2008) (decision filed February 20, 2008) – April 08:13

Correctional officer searches

DOC’s authority to screen prisoner mail trumps Public Records Act. Livingston v. Cedeno, 164 Wn.2d 46 (2008) – September 08:13

Emergency, exigent circumstances exception(s) to warrant requirement

Late-night presence of persons in house that neighbor “thought” was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Employer (public) authority to search for non-criminal investigation reasons

Sergeant had privacy interest in text messages viewed in audit - - agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in the past; also, agency was not justified in conducting full search on grounds that the agency was merely trying to determine whether to raise its texting limits. Quon v. Arch Wireless Operating Company, Inc., 529 F.3d 892 (9th Cir. 2008) (decision filed June 18, 2008) – September 08:03

Entry of private premises to arrest (Payton/Steagald rules)

Forcible warrantless entry to arrest ok under Payton v. New York based on bench warrant issued to defendant for his failure to comply with the terms of probation following his misdemeanor conviction. U.S. v. Gooch, 506 F.3d 1156 (9th Cir. 2007) (decision filed November 1, 2007) – February 08:02

Residential arrest under the Fourth Amendment - - panel of fifteen to re-hear the Fisher case in which 3-judge panel applied Payton rule to barricade/standoff circumstance. Fisher v. City of San Jose (9th Circuit order for rehearing filed March 14, 2008) – May 08:16

DOC felony probation arrest warrant would have justified entry of mom's house if officers had developed reasonable suspicion to believe house was the warrant subject's current residence; but entry of a shed in the backyard did not meet this standard because officers had no grounds to believe suspect stayed there. State v. McKague, 143 Wn. App. 531 (Div. II, 2008) – June 08:19

Exclusionary Rule

Evidence that was suppressed because State's warrantless-emergency-search rationale was rejected may be admissible based on affidavit's information that was not obtained in the unlawful first search. State v. Leffler, 142 Wn. App. 175 (Div. II, 2007) – April 08:25

Execution of search warrant

Child porn search warrant execution held timely despite long delay in completion of computer search. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Officers executing search warrant at residence were not justified by objective safety concerns when they seized a non-resident who arrived at the scene just as the search was about to begin. State v. Smith, 145 Wn. App. 268 (Div. III, 2008) – August 08:18

Fourth Amendment standards' independence from state law

Virginia officers' search incident to custodial arrest for crime that was not subject to custodial arrest under Virginia law was valid search under the U.S. Constitution's Fourth Amendment standards. Virginia v. Moore, 128 S.Ct. 1598 (2008) – July 08:02

Franks challenge to misstatement by affiant

Search warrant upheld - - no Franks hearing is needed to test truthfulness of affiant-officer. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Identity of confidential informant (disclose or protect)

Marijuana grower loses search warrant challenge - - (1) identity of citizen informant (CI) is protected; (2) no Franks hearing is needed to test truthfulness of affiant-officer; and (3) probable cause was established in officer's affidavit describing CI's information, plus corroboration. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Impound/inventory exception to warrant requirement

WSP may be liable for damages based on former policy of mandatory impound of vehicles of suspended drivers. Potter v. Washington State Patrol, 161 Wn.2d 335 (2007) – February 08:09. Note that in May of 2008 the Washington Supreme Court re-heard oral argument to consider the issue of whether the "conversion" theory of the lawsuit is barred on grounds that the exclusive remedy for wrongful impound is under RCW 46.55.120.

Incident to arrest (motor vehicle) exception to warrant requirement

Where, after being stopped for DWLS, driver was told by officer that pickup would be towed, and driver got out and locked pickup before officer placed him under arrest, pickup was not subject to search incident to arrest under article 1, section 7 of Washington constitution. State v. Quinlivan, 142 Wn. App. 960 (Div. III, 2008) – March 08:02

State v. Parker's article 1, section 7 Washington constitutional rule for vehicle search-incident regarding containers possibly owned by non-arrested persons applies similarly whether the arrest is of driver or passenger; Court rejects driver's theory that, as to non-arrested driver, the entire cab of the vehicle was off limits as a container known to belong to the driver. State v. Bello, 142 Wn. App. 930 (Div. I, 2008) – March 08:07

Because arrest process began when arrestee was two houses away from car he had just parked, car could not be lawfully searched incident to arrest. U.S. v. Caseres, 533 F.3d 1064 (9th Cir. 2008) (decision filed July 21, 2008) – October 08:09

After officer pulled in behind DWLS suspect's parked car and turned on her emergency lights, the suspect could not lawfully thwart a search incident to arrest by getting out of the car and, after officer ordered him to get back in car, locking the doors. State v. Adams, ___ Wn. App. ___, 191 P.3d 93 (Div. I, 2008) – November 08:11

Incident to arrest (non-vehicle search) exception to warrant requirement

Search of DWLS detainee's pants pocket held to have been incident to arrest, even though officer did not at the time say the words, "you are under arrest." State v. Gering, ___ Wn. App. ___, 192 P.3d 935 (Div. III, 2008) – November 08:09

Knock and Announce (RCW 10.31.040 and constitutional requirements)

Section 1983 civil rights case jury upheld on its reasonableness finding where officers waited 5 to 8 seconds, after knocking and announcing, before beginning their efforts to force home's steel security door to execute narcotics search warrant. Howell v. Polk, 532 F.3d 1025 (9th Cir. 2008) (decision filed July 16, 2008) – October 08:03

Particularity requirement

Affidavit meets particularity requirement, but discovery issue requires reversal on child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Privacy expectation, scope of constitutional protections

"No trespassing and" "keep out" signs, plus closed gate at entrance of long driveway and secluded, remote location of home add up to conclusion that the access route to the front door of the home were not impliedly open to the public under state or federal constitution. State v. Jessen, 142 Wn. App. 852 (Div. III, 2008) – March 08:12

Under former WSU residence halls rule, WSU students held to have a shared privacy right against warrantless, unconsented, non-exigent police entry into residential floor hallways. State v. Houvener, 145 Wn. App. 408 (Div. III, 2008) – August 08:14

Sergeant had privacy interest in text messages viewed in audit - - agency policy stated that agency would monitor electronic communications, but 1) policy did not expressly address text messages, 2) by practice, officers were allowed to simply pay for excess pager usage, and 3) no pager audits had occurred in past; also, agency was not justified in conducting full search on grounds that agency was merely trying to determine whether to raise texting limits. Quon v. Arch Wireless Operating Co. and City of Ontario, California, 529 F.3d 892 (9th Cir. 2008) (decision filed June 18, 2008) – September 08:03

No privacy right in computer file-sharing system that was accessible to others on a peer-to-peer network. U.S. v. Ganoë, 538 F.3d 1117 (9th Cir. 2008) – October 08:07

“Private search doctrine”

Washington constitution’s article 1, section 7 does not include Fourth Amendment doctrine that permits law enforcement officers to search without a search warrant those objects and areas that a private person has already searched; note that this ruling does not affect the Exclusionary Rule doctrine, applicable in Washington as it is elsewhere, that generally allows evidence that is obtained and brought to the police or prosecutors by private citizens acting on their own initiative (even if unlawfully) to be admitted, because no government wrongdoing is involved in the obtaining of the evidence. State v. Eisfeldt, 163 Wn.2d 628 (2008) – July 08:09

Probable cause to search

Marijuana grower loses search warrant challenge - - (1) identity of confidential citizen informant protected; (2) no Franks hearing needed to test truthfulness of affiant-officer; and (3) PC established in officer’s affidavit describing informant’s information, plus corroboration. State v. Atchley, 142 Wn. App. 147 (Div. III, 2007) – February 08:10

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit meets constitutional PC and particularity requirements; also, State wins on sufficiency of evidence issue; but discovery issue requires reversal of child pornography counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

Officers lawfully obtained search warrant even though defendant had showed them a medical marijuana authorization; also, medical marijuana defense based on anger and anxiety conditions failed at trial because these medical conditions do not come within the “qualifying patient” definition. State v. Fry, 142 Wn. App. 456 (Div. III, 2008) – March 08:22. Note that the Washington Supreme Court is reviewing this decision.

Probationer, parolee searches

Probation officers investigating suspected violation had PC to believe probationer lived at a residence, so it was lawful for the officers to force entry without a search warrant. U.S. v. Mayer, 530 F.3d 1099 (9th Cir. 2008) (decision filed June 30, 2008) – October 08:15

Civil rights lawsuit will go forward on plaintiffs’ allegations that officers looking for a parole violator unlawfully forced a warrantless entry of their home without probable cause to believe that the parolee lived there. Cuevas v. De Roco, 531 F.3d 726 (9th Cir. 2008) (decision filed June 27, 2008) – October 08:15

Scope of search under search warrant

Child porn found during search under warrant to search computer for evidence relating to ID-documents-crimes held admissible because the officer was not intentionally searching for the porn, and the officer did not conduct an intentional search for that evidence until after he obtained a second search warrant. U.S. v. Giberson, 527 F.3d 882 (9th Cir. 2008) (decision filed May 30, 2008) – August 08:03

Strip search

Strip search ruling in section 1983 civil rights lawsuit withdrawn; 3-judge panel to rehear case involving strip search of trespasser at stationhouse. Edgerly v. City and County of San Francisco, 527 F.3d 841 (9th Cir. 2008) (rehearing order filed May 22, 2008) – July 08:03

San Francisco jail policy of strip searching without reasonable suspicion all pre-trial detainees who are to be placed in general population held to violate Fourth Amendment. Bull v. City and County of San Francisco, 539 F.3d 1193 (9th Cir. 2008) (decision filed August 22, 2008) – October 08:11

Timing of execution of search warrant

Child porn search warrant execution held timely despite long delay in completion of computer search; affidavit held to meet constitutional PC and particularity requirements; also, State wins on sufficiency of evidence; but discovery issue requires reversal of child porn counts. State v. Grenning, 142 Wn. App. 518 (Div. II, 2008) – March 08:15

SENTENCING (See also “Armed Crime Sentence Enhancement”)

RCW 9.94A.533(5) drugs-in-jail sentencing enhancement does not apply to arrestee who had methamphetamine in his sock that was discovered in search when he was booked into jail. State v. Eaton, 143 Wn. App. 155 (Div. II, 2008) – April 08:24

Moving rifle onto a bed, but not taking it, during an interrupted burglary does not constitute being “armed” for purposes of either (1) burglary-in-the-first degree statute, or (2) “armed crime” sentence enhancement under RCW 9.94A.533(3). State v. Brown, 162 Wn.2d 422 (2007) – August 08:04

SEX OFFENDER REGISTRATION (RCW 9A.44.130–145)

Sex offender’s conviction for failure to register upheld - - evidence on 1) change-of-residence and 2) knowledge elements of crime held sufficient to support conviction. State v. Shoemaker-Castillo, 144 Wn. App. 584 (Div. III, 2008) – October 08:17

SIXTH AMENDMENT RIGHT TO CONFRONTATION

Under Crawford-Davis right-of-confrontation test, excited utterances that victim made to investigating officer were not “testimonial” when considered in light of the totality of the circumstances of the case. State v. Ohlson, 162 Wn. App. 1 (2007) – February 08:05

Forfeiture-by-wrongdoing hearsay exception held limited by the U.S. Constitution’s Sixth Amendment confrontation clause to circumstance where defendant had motive to make declarant unavailable. Giles v. California, 128 S.Ct. 2678 (2008) – September 08:02

STALKING (RCW 9A.46.110)

Stalking’s “intentionally and repeatedly harassing or following another person” receives pro-State interpretation. State v. Kintz, 144 Wn. App. 515 (Div. I, 2008) – August 08:24

Stalking statute itself includes acting through other persons, so stalking conviction stands even though jury was not instructed on accomplice liability. State v. Becklin, 163 Wn.2d 519 (2008) – October 08:16

TELEPHONE HARASSMENT (RCW 9.61.230) (See also “Harassment”)

To establish telephone harassment, State must prove intent to harass victim was formed when defendant initiated call. State v. Lilyblad, 163 Wn.2d 1 (2008) – April 08:14

THEFT (Chapter 9A.56 RCW) (See also “Robbery,” “Possessing Stolen Property” above)

Evidence held sufficient to support conviction for attempted first degree theft in case involving police sting of defendants who told significant lies in attempting to sell used truck to officers. State v. George (and George), 161 Wn.2d 203 (2007) – January 08:02

Evidence that (1) defendant knew - - and other participant did not know - - target home’s security code, and (2) defendant was one of three persons seen running from burgled premises, sufficient to support convictions for burglary and theft based on accomplice theory; Court rejects defendant’s claim that he was a non-participant who just happened to be at the scene. State v. B.J.S., 137 Wn. App. 622 (Div. II, 2007) – January 08:12

TRAFFIC (Title 46 RCW)

“Reckless manner” means the same under felony eluding statute as it does under vehicular homicide and vehicular assault statutes. State v. Ratliff, 139 Wn. App. 1015 (Div. III, 2007) – January 08:19

Despite failure of hospital to follow strict procedures of RCW 46.61.506 for testing and preserving blood, because sample was taken at hospital for medical purposes, it can be admitted as “other evidence” of DUI; but results of law enforcement testing of second such hospital sample subsequently obtained by law enforcement for investigative purposes cannot be admitted in DUI prosecution. State v. Charley, 136 Wn. App. 58 (Div. III, 2006) – January 08:21

Where motor vehicle passenger was injured in a DUI crash, she was a “victim” under RCW 9A.08.020(5), and therefore she could not lawfully be convicted of DUI as an accomplice. State v. Hedlund, 137 Wn. App. 494 (Div. I, 2007) – January 08:22; note that the Washington Supreme Court is currently reviewing this Court of Appeals decision.

Vandalizing a police vehicle was not “use” of the vehicle in a felony, and therefore the driver’s license of the vandal may not be revoked under RCW 46.20.285(4). State v. B.E.K., 141 Wn. App. 742 (Div. II, 2007) – April 08:24

UNIFORM CONTROLLED SUBSTANCES ACT (Chapter 69.50 RCW), OTHER DRUG LAWS

Corpus delicti, sufficiency of evidence, and ID-request-to-passenger questions addressed in prosecution for robbery, possession of ephedrine with intent to manufacture meth, and attempted manufacture of meth. State v. Brockob, 159 Wn.2d 311 (2007) – February 08:08

Officers lawfully obtained search warrant even though defendant had showed them a medical marijuana authorization; also, medical marijuana defense based on anger and anxiety conditions fails at trial because “qualifying patient” definition not met. State v. Fry, 142 Wn. App. 456 (Div. III, 2008) – March 08:22. Note that the Washington Supreme Court is currently reviewing this Court of Appeals decision.

Evidence held sufficient to prove use of drug paraphernalia where there was marijuana in baggie, plus apparent drug residue in pipe and tin, all of which were in backpack searched incident to arrest. State v. O'Meara, 143 Wn. App. 638 (Div. II, 2008) – August 08:22

Late-night presence of persons in house that neighbor “thought” was vacant, plus likely stolen truck in driveway, were not exigent circumstances justifying a non-consenting police entry of house; but evidence of un-dusty bindle convicts another defendant. State v. Ibarra-Raya, 145 Wn. App. 516 (Div. III, 2008) – September 08:13

Crime of “involv[ing]” a person under age 18 in a drug transaction does not cover merely allowing a minor to be present during a drug deal. State v. Flores, 164 Wn.2d 1 (2008) – September 08:11

Defendant’s fingerprints on items in pickup cab and in pickup canopy area in which he was found hiding held in 2-1 ruling not sufficient evidence of “constructive possession” to support methamphetamine manufacturing conviction. State v. Enlow, 143 Wn. App. 463 (Div. III, 2008) – September 08:19

VIENNA CONVENTION AND CONSULAR NOTIFICATION

Texas courts are not required to comply with President Bush’s memorandum directing the states to give effect to international court’s ruling under the Vienna Convention on Consular Relations. Medellín v. Texas, 128 S.Ct. 1346 (2008) – June 08:18

VOYEURISM (RCW 9A.44.115)

Voyeurism statute held not vague in case involving “upskirt” photographing by high school custodian. State v. Boyd, 137 Wn. App. 910 (Div. II, 2007) – May 08:23

Child pornography convictions overturned where defendant had taken pictures of his 15-year-old stepdaughter without her knowledge - - this was voyeurism, not child pornography. State v. Whipple, 144 Wn. App. 654 (Div. II, 2008) – August 08:20

WAPA SUMMARY ON CONFESSIONS, SEARCH, SEIZURE AND ARREST

Article notes that WAPA staff attorney Pam Loginsky’s 2008 summary on confessions, search, seizure and arrest is accessible on the CJTC’s internet LED page. – July 08:02

WASHINGTON STATE SUPREME COURT

ARRESTEE’S AMBIGUOUS MID-INTERROGATION MENTION OF THE POSSIBILITY OF HIS NEED TO CONFER WITH AN ATTORNEY DID NOT REQUIRE THAT DETECTIVES CLARIFY HIS EARLIER MIRANDA WAIVER - - U.S. SUPREME COURT’S DAVIS DECISION IS HELD TO CONTROL

State v. Radcliffe, ___ Wn.2d ___, 194 P.3d 250 (2008)

Introduction: (Excerpted from Washington Supreme Court’s opinion)

When a police detective first questioned James Radcliffe about claims that he molested his girl friend's young daughter, Radcliffe was read his Miranda rights and expressly waived them, going on to deny all allegations of sexual abuse. When a second detective took over the questioning, Radcliffe said something like, "I didn't know how much trouble I'm in, and I don't know if I need a lawyer." The second detective offered to read Radcliffe his rights again. Radcliffe said no, he understood his rights. He then confessed. This confession is valid and properly admitted into evidence under the United States Constitution.

In 1982, this court, applying the United States Constitution's Fifth Amendment, stated that a suspect's equivocal request for an attorney forbids any further police questions except to clarify the request. State v. Robtoy, 98 Wn.2d 30 (1982). Twelve years later, the United States Supreme Court clarified otherwise; under the Fifth Amendment, once a suspect has knowingly waived his right to an attorney, he must explicitly ask for an attorney or the police may continue questioning. Davis v. United States, 512 U.S. 452 (1994). **Sept 94 LED:02**. Radcliffe argues that Robtoy requires excluding the confession here and reversing his conviction. We disagree and affirm the Court of Appeals, which upheld admission of the confession and affirmed his convictions.

Facts and Proceedings below: (Excerpted from Washington Supreme Court's opinion)

Radcliffe lived with his long-term girl friend and her three daughters in the city of Lacey. The oldest child (S.K. for anonymity) went to live with her grandmother in her mid-teen years. In November 2004, when S.K. was 16 years of age, she traveled to Lacey to visit her mother. Radcliffe picked up S.K. and took her to the house of a friend of Radcliffe's. There, Radcliffe grabbed S.K., tried to take her clothes off, rubbed his penis against her buttocks, and ejaculated.

Apparently, this was not the first time Radcliffe had engaged in such conduct. According to S.K., Radcliffe had begun touching her inappropriately when she was 12. Ultimately, this abuse would include oral sex about once a month and, on two occasions, sexual intercourse. S.K. kept silent after all the preceding events, but this time was different. Whatever the reason, S.K. became determined to reveal Radcliffe's activities. S.K. told her school counselor, who immediately informed the Lacey police.

The police picked up Radcliffe the next day. They took him to the Lacey police station for questioning. Detective [A] immediately read Radcliffe his Miranda rights, and it is agreed Radcliffe voluntarily, knowingly, and intelligently waived his rights at that time. Under her questioning, Radcliffe denied the allegations of sexual abuse. Detective [A] was pregnant and keen to avoid stressful situations, so she handed the continued questioning over to Detective [B] in the same room.

When Detective [B] offered to read Radcliffe his Miranda rights again, Radcliffe declined further Miranda repetition and stuck to his denial. Detective [B] then told Radcliffe about some of the State's significant evidence the police had, such as S.K.'s pants that were semen-stained (and could be tested for DNA (deoxyribonucleic acid)). At that point, Radcliffe made a statement that is at the center of this case.

There was no recording of that statement; Detective [B] did not tape his interview with Radcliffe nor did he take contemporaneous notes. Detective [B] did, however, write a report immediately after the interview concluded. According to Detective [B], Radcliffe said he “didn't know how much trouble he was in and he did not know if he needed a lawyer.” Radcliffe later claimed he explicitly asked for an attorney. The trial court made a factual finding resolving any dispute, finding Radcliffe “made an equivocal reference to his right to an attorney, stating that the [sic] maybe he should contact an attorney.”

In response, Detective [B] then told Radcliffe that he could not offer legal advice and that the ball was in Radcliffe's court. The detective also offered to read Radcliffe his rights again. For the third time, Radcliffe knowingly waived his right to an attorney. Radcliffe then confessed, not only to the incident with S.K. the week before, but to the entire sexual relationship with S.K. over the preceding several years.

Before trial, Radcliffe moved to suppress the confession in pretrial motions. The trial court first granted the motion, relying on Robtoy. However, as part of a motion to reconsider, the State pointed out the United States Supreme Court's decision in Davis. The trial court then reconsidered and entered an order denying the motion to suppress the confession.

The case went to trial, the confession was admitted, and a jury convicted Radcliffe of two counts of third degree rape and one count of indecent liberties. The trial court gave Radcliffe a sentence of 114 months to life in prison. Radcliffe appealed and Division Two of the Court of Appeals affirmed. State v. Radcliffe, 139 Wn. App. 214 (Div. II, 2007) **Aug 07 LED:10**.

ISSUE AND RULING: Were the detectives required to stop the questioning and clarify whether Radcliffe was invoking his right to an attorney after Radcliffe ambiguously mentioned the possibility that he might need to confer with an attorney? (**ANSWER:** No)

Result: Affirmance of Court of Appeals decision that affirmed the Thurston County Superior Court convictions of James D. Radcliffe for third degree child rape (two counts) and for indecent liberties with forcible compulsion (one count).

ANALYSIS: (Excerpted from Washington Supreme Court opinion)

Miranda rights, of course, may be waived. The government bears the burden of showing, by a preponderance, that the suspect understood his rights and voluntarily waived them. Radcliffe agrees he understood his rights and voluntarily waived them, at first, in the interview at the police station.

Once waived, a suspect may ask for an attorney at any time. If he requests an attorney, all questioning must stop until he has an attorney or starts talking again on his own. The issue here is how explicit a suspect must be when asking for an attorney after he has already waived his Miranda rights.

Radcliffe claims that our decision in Robtoy controls the issue under the Fifth Amendment. In that decision, we held that an equivocal request for an attorney by a suspect who has been read his Miranda rights foreclosed police questions on anything but clarifying the request. We made the decision based only on the

Fifth Amendment and in the absence of a direct United States Supreme Court ruling on the issue.

That United States Supreme Court ruling came 12 years later in Davis. The Court held that the later request must be explicit if the right to counsel has once been waived; an equivocal request will not do. When the United States Supreme Court decides an issue under the United States Constitution, all other courts must follow that Court's rulings. As far as the Fifth Amendment is concerned, Davis states the law, not Robtoy.

We faced this issue once since 1994. In State v. Aten, 130 Wn.2d 640 (1996) **March 97 LED:06**, the court faced five issues, and like many five issue cases, the court was unevenly split. Eight justices agreed that the State failed to prove the corpus delicti of the crime charged. Four reached further and, without citing Davis, applied Robtoy. Four others refused to reach the issue and pointed out that Davis abrogated Robtoy.

The split resulted in conflict at the Court of Appeals. Division Two applied Davis in State v. Copeland, 89 Wn. App. 492 (1998), but then held, in passing, that Washington does not follow Davis. State v. Jones, 102 Wn. App. 89 (2000) **Oct 00 LED:16**. Five years later, Division One held that Davis controls in Washington. State v. Walker, 129 Wn. App. 258 (2005) **Nov 05 LED:19**. Division Two in this case held that Davis, not Robtoy, is the Washington rule.

The issue is now squarely before us. Our answer is clear: the United States Supreme Court has decided the issue and we must follow its holding as it applies to the Fifth Amendment. Davis is the law under the federal constitution.

Radcliffe argues here that article I, section 9 of Washington's constitution provides greater protection than its federal counterpart. However, he failed to argue the issue at trial or in the Court of Appeals and did not raise the issue in his motion for discretionary review. We therefore do not address it. RAP 13.7(b) ("the Supreme Court will review only the questions raised in the motion for discretionary review . . .").

Applying the law to the facts, the trial court properly admitted Radcliffe's confession. The trial court heard testimony from Radcliffe and from both detectives who interviewed him. Radcliffe agrees he waived his rights to silence and an attorney. He claims that later he explicitly asked for an attorney. Detective [B] testified that Radcliffe's request was equivocal at best. The trial court found that Radcliffe said, "maybe [I] should contact an attorney." Substantial evidence supports this finding, so we must uphold it. The statement is clearly equivocal. Davis ("Maybe I should talk to a lawyer" is equivocal.) Therefore, Radcliffe's confession was properly admitted.

[Footnote and some citations omitted]

LED EDITORIAL COMMENTS: In our September 1994 editorial comment on U.S. Supreme Court's Davis decision, we noted that the U.S. Supreme Court majority opinion in Davis emphasized that there is a risk in not clarifying a suspect's apparently ambiguous reference to the attorney right during interrogation. The risk is that, in later review of a suppression motion, a trial judge or appellate court will determine that what the

interrogating officer felt at the time was an ambiguous reference to the attorney right was actually a clear invoking of the right. An officer's act of stopping to clarify may help convince a reviewing court that the statement was indeed ambiguous.

A further risk in not clarifying the suspect's seemingly ambiguous, mid-interrogation mention of Miranda rights is that a future defendant may timely raise and preserve the argument, waived here by Mr. Radcliffe, that the Washington constitution provides greater protection of the right against self incrimination than does the federal constitution. While the Washington appellate courts have never so held, the possibility remains that this could happen in a future case. Thus, the safest legal approach when a suspect makes a statement that mentions the attorney right is to stop and clarify.

We also believe that if the suspect makes an equivocal statement about the attorney right at the point when the officer initially Mirandizes and requests waiver (i.e., unlike here, where the suspect had already waived), then the officer is required to obtain a waiver before proceeding with questioning.

Finally, as noted, the Radcliffe opinion expressly declines to address an argument by the defendant that article I, section 9 of the Washington constitution provides an independent ground for his argument. The Court states that the defendant was not timely in raising the argument. We are hopeful that the Washington Supreme Court will reject this argument if posed in a future case. The Court has consistently held, though in somewhat different categorical factual or procedural contexts than here, that the Washington constitution's protection against self-incrimination is no broader than the protection in the federal constitution's Fifth Amendment. See State v. Russell, 125 Wn.2d 24 (1994) Feb 95 LED:08 (physical evidence is admissible where derived from un-Mirandized but voluntary custodial statements); State v. Earls, 116 Wn.2d 364 (1991) (Miranda waiver by suspect is valid even though an attorney or other third party has tried to invoke on the suspect's behalf); Dutil v. State, 93 Wn.2d 84 (1980) (minors of age 12 or over may waive their Miranda rights); State v. Moore, 79 Wn.2d 51 (1971) (Washington traffic code's "implied consent" provisions do not violate the state constitution's protection of the right against self incrimination).

BRIEF NOTES FROM THE WASHINGTON SUPREME COURT

(1) IDENTITIES OF TEACHERS ACCUSED OF SEXUAL MISCONDUCT WITH STUDENTS, AND IDENTITIES OF TEACHERS WHO RECEIVED "LETTERS OF DIRECTION," ARE EXEMPT FROM PUBLIC DISCLOSURE UNDER CURRENT RCW 42.56.230(2) WHERE MISCONDUCT IS UNSUBSTANTIATED - - DISCLOSURE WOULD VIOLATE THEIR RIGHT TO PRIVACY - In Bellevue John Does v. Bellevue School District, 164 Wn.2d 199 (2008), the Washington State Supreme Court holds that the identities of public school teachers who are accused of sexual misconduct with students are exempt from public disclosure where the misconduct is unsubstantiated; and that the identities of public school teachers who receive "letters of direction" are exempt from public disclosure where a letter simply seeks to guide future conduct, does not mention substantiated misconduct, and a teacher is not disciplined. The decision turns on interpretation of current RCW 42.56.230(1), which exempts "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." The Court holds that the teachers' right to privacy under the statute would be violated by the disclosure of their identities in relation to unsubstantiated allegations.

Four justices join the majority opinion authored by Justice Mary Fairhurst. Justice Tom Chambers concurs in only the result and does not author or join in any opinion. Justice Barbara Madsen writes a dissent that is joined by Justices Richard Sanders and Charles Johnson.

Result: Reversed in part and remanded to King County Superior Court for further proceedings.

LED EDITORIAL COMMENTS: The public records request at issue in Bellevue John Does was for the “names of teachers alleged to have committed sexual misconduct against students.” Because the school district had already disclosed “numerous records documenting the nature of the allegations, types of investigations conducted, and any resulting disciplinary actions” with names and identifying information redacted, the Court does not consider whether the entire investigation would be exempt from disclosure. The Court also does not consider whether the outcome would be different if the request was for records relating to a specifically named teacher, e.g., all allegations of sexual misconduct by Ms. Smith, as opposed to all teachers (as was the case in Bellevue John Does). In the former case, redacting the teacher’s identity would accomplish little in protecting the teacher’s right to privacy since the requestor would already know the name of the teacher whose records were being requested.

Law enforcement agencies typically rely on a different exemption from public disclosure when withholding or redacting internal administrative investigations into employee misconduct. Law enforcement agencies typically rely on the investigative records exemption, RCW 42.56.240(1), which exempts “. . . specific investigative records compiled by . . . law enforcement, . . . the nondisclosure of which is essential to effective law enforcement or for the protection of any person’s right to privacy.” (Emphasis added.)

As always, law enforcement should check with agency legal advisors for guidance on applying exemptions from public disclosure.

(2) HOMEOWNER’S LAWSUIT FOR CIVIL TRESPASS AGAINST LAW ENFORCEMENT FOR BREAKING DOORS IN SEARCH WARRANT EXECUTION FAILS BECAUSE OFFICERS WERE JUSTIFIED IN THE DESTRUCTIVE ACTIVITY UNDER THE CIRCUMSTANCES; HOMEOWNER’S “UNCONSTITUTIONAL TAKING” THEORY FAILS AS WELL - - In Brutsche v. City of Kent, __ Wn.2d __, 193 P.3d 110 (2008), a 5-4 majority of the Supreme Court rejects a homeowner’s lawsuit against law enforcement agencies for destruction of doors and door frames when officers executed a search warrant for a suspected methamphetamine lab on his property.

The Brutsche majority opinion authored by Justice Madsen addresses what is known as a *civil trespass* theory for recovery of damages. The theory derives from the *common law*, i.e., court-made, as opposed to statutory, law. Brutsche holds in a case of first impression that the common law of Washington allows a lawsuit against law enforcement if law enforcement officers exceed the scope of their lawful authority under a search warrant by unnecessarily destroying property. But the Brutsche majority opinion goes on to conclude that there was no trespass - - under the record in this particular case - - because the destruction of property was reasonable as a matter of law. The majority opinion’s analysis of the reasonableness issue is as follows:

[T]he City contends that summary judgment was proper because reasonable minds cannot differ on the evidence submitted and there was no trespass as a matter of law. We agree.

Mr. Brutsche contends that the officers exceeded the privilege to be on his land executing the search warrant. He points out that he offered his keys to the officers and offered to escort them around his property and open all doors. He maintains use of his keys would have been quicker and quieter, making entry safer for the officers while avoiding damage to the doors and frames. He states that he knew there were no illegal drugs or weapons on the property and that he offered to accompany the officers because there were no genuine concerns for officer safety.

However, the evidence submitted by the City establishes that the search was authorized for evidence of methamphetamine manufacture and that such searches are often dangerous. There was also the risk of harm to Mr. Brutsche if he accompanied the officers, as well as the possibility that his presence would hamper or limit the search. The declarations of SRT [officers], which are largely uncontroverted, show that it was necessary to breach the doors and that James Brutsche's (Mr. Brutsche's son's) actions dictated the need for the officers' actions. These declarations describe the high risk associated with search warrants for methamphetamine manufacture and the apprehension of individuals in the methamphetamine trade. They explain that James Brutsche was suspected of being involved in the methamphetamine trade, that he tried to barricade himself and another suspect in the mobile home by using a dowel to bar a sliding glass door, and that the officers did not know whether he was arming himself or attempting to rally unknown persons in the home to engage in a fight with police. Further, the declarations describe the danger that evidence would be destroyed before they could search the premises. Villa's declaration also explains that standard operating procedure is to bar access to search scenes during a search, in part to protect innocent bystanders.

Under these facts, reasonable minds could not differ. The officers did not engage in unreasonable conduct in exercising their privilege to be on the property. We hold that the trial court properly granted summary judgment on the trespass claim.

The majority opinion also holds that the plaintiff could not pursue a claim - - regardless of the facts - - that the damage to his property was an unconstitutional taking of his private property for which the City must pay just compensation. On the latter point, the Court declines to overrule Eggleston v. Pierce County, 148 Wn.2d 760 (2003) **May 03 LED:11**.

Justice Chambers authors a partial dissent, joined by Justice Stephens, arguing that the Supreme Court should have remanded the case to the trial court to let a jury decide whether the officers acted reasonably. Justice Sanders authors a broader dissent, joined by Justice James Johnson, arguing not only that the trespass issue should have been submitted to the jury, but also that the Eggleston case was wrongly decided on the constitutional takings issue and should be overruled.

Result: Affirmance of unpublished Court of Appeals decision that affirmed the summary judgment ruling of the King County Superior Court in favor of King County and the City of Kent.

BRIEF NOTE FROM THE WASHINGTON STATE COURT OF APPEALS

METADATA CONTAINED IN E-MAIL FROM CITIZEN TO DEPUTY MAYOR IS A PUBLIC RECORD AND SUBJECT TO DISCLOSURE - In O’Neill v. City of Shoreline, 145 Wn. App. 913 (Div. I, 2008), the Court of Appeals, Division I, holds that the City of Shoreline complied with the Public Records Act (PRA) by providing a printed copy of an e-mail in response to original request for the e-mail, but that the City failed to comply with the PRA in response to subsequent request for metadata associated with the e-mail.

During a city council meeting a deputy mayor referred to an e-mail that she had received from citizens on her home computer. One of the citizens orally requested a copy of the e-mail. However, prior to providing the e-mail, the deputy mayor deleted the first four lines of the e-mail. The City subsequently provided a printed copy of the entire e-mail, including the previously deleted lines. The Court holds that the City complied with the first request by ultimately providing a printed copy of the complete e-mail.

The citizen then made a subsequent request for “[a]ny and all correspondence (including memos) relating to this [e-mail] and COMPLETE transmission/forwarding chain AND ALL metadata pertaining to this document.” The Court concludes that on the record before it, the metadata associated with the e-mail is a public record, it was specifically requested, and the City had not disclosed the requested metadata.

The PRA defines a public record as “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” RCW 42.56.010(2).

Result: Affirmed in part, vacated in part, and remanded to King County Superior Court for further proceedings.

Status: A petition for discretionary Washington Supreme Court review is pending.

LED EDITORIAL COMMENTS: In O’Neill the requestor specifically requested metadata. The Court does not consider whether metadata must be disclosed as a matter of course when not specifically requested.

The O’Neill Court defines metadata as “‘data about data,’ or more specifically, ‘information describing the history, tracking, or management of an electronic document.’” However, even with the definition it is not entirely clear exactly what metadata the Court refers to – whether it is simply the “to, from, date, time, subject” information in electronic format, or whether it is something more. Most definitions of metadata do not include the information that can normally be seen on the face of the email, e.g., to, from, date, time and subject. Rather, for most businesses and people involved in the handling of electronic information, metadata is generally considered the electronic information contained behind the face of the email that cannot be seen. For example, one definition of metadata is “‘hidden’ or ‘embedded’ information that is stored in electronically generated materials, but which is not visible when a document or other materials are printed.” In O’Neill, the court may not have been properly informed about the more commonly understood definitions of metadata. Thus, this case may cause confusion regarding the requirements to disclose metadata. Accordingly, when processing public records requests for metadata, public records officers may want to clarify exactly what information is being requested.

This case also serves as a reminder that work-related e-mails sent to or from home computers are public records and subject to the requirements of the PRA (as well as

records retention rules) the same as e-mail sent to or from work computers. (The same is true for other work-related documents created on home computers.)

As always, law enforcement should check with agency legal advisors for guidance on applying exemptions from public disclosure.

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

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

Many United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/index.html>]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's website at [<http://www.supremecourtus.gov/opinions/opinions.html>]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since January 2000 can be accessed (by date of decision only) 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. 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 current through 2007, is at [<http://www.leg.wa.gov/legislature>]. Information about bills filed since 1991 in the Washington Legislature is at the same address. "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's home page is [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>], while the address for the Attorney General's Office home page is [<http://www.atg.wa.gov>].

The Law Enforcement Digest is co-edited by Senior Counsel John Wasberg and Assistant Attorney General Shannon Inglis, both of the Washington Attorney General's Office. Questions and comments regarding the content of the **LED** should be directed to Mr. Wasberg at (206) 464-6039; Fax (206) 587-4290; E Mail [johnw1@atg.wa.gov]. Questions regarding the distribution list or delivery of the **LED** should be directed to [ledemail@cjtc.state.wa.us]. **LED** editorial

commentary and analysis of statutes and court decisions express the thinking of the writers and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The **LED** is published as a research source only. The **LED** does not purport to furnish legal advice. **LEDs** from January 1992 forward are available via a link on the Criminal Justice Training Commission's Internet Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
