LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT

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

JUNE 2025

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UNITED STATES SUPREME COURT

CIVIL RIGHTS ACT CIVIL LIABILITY UNDER SECTION 1983 FOR LAW ENFORCEMENT: SUPREME COURT RULES IN EXCESSIVE FORCE CASE THAT UNDER THE TOTALITY-OF-CIRCUMSTANCES STANDARD FOR REVIEWING USE-OF-FORCE CASES, THE LOWER COURT SHOULD HAVE CONSIDERED A LENGTHIER TIME FRAME OF THE EVENTS TO ASSESS WHETHER AN OFFICER'S ASSESSMENT OF THE NEED FOR DEADLY FORCE WAS REASONABLE; CASE IS REMANDED FOR RECONSIDERATION; COURT DECLINES TO ADDRESS OFFICER-CREATED-DANGER THEORY OF LIABILITY

[LEGAL UPDATE EDITOR'S PRELIMINARY NOTE: My practice is to address all of the relevant appellate court decisions that are issued in a particular month in the Legal Update *for that month*. Thus, under my consistent practice for the past decade, May 2025 decisions were to be addressed in the May 2025 Legal Update. However, last month I overlooked the U.S. Supreme Court's May 15, 2025, decision in Barnes v. Felix. So, I am addressing that May 2025 U.S. Supreme Court decision in the June 2025 Legal Update.

In Barnes v. Felix, 145 S. Ct. 1353 (May 15, 2025), the U.S. Supreme Court unanimously holds that the totality-of-the-circumstances reasonableness standard for judging an officer's decision to use deadly force does not have a narrow moment-of-the-threat time window. Instead, the reasonableness standard takes into account relevant events over time that led up to the point when the officer used deadly force.

The Fifth Circuit of the U.S. Court of Appeals (and several other Circuit courts, though not the Ninth Circuit) had developed a "moment of threat" rule that had an extremely narrow time window. That rule necessarily led to the Fifth Circuit's ruling below in this case that the officer's use of deadly force was reasonable in light of events that occurred in the few seconds before he used deadly force. The U.S. Supreme Court rejects the Fifth Circuit's extremely narrow "moment of threat" rule in Barnes v. Felix, and the Supreme Court remands the case to the lower federal courts for reconsideration in light of the totality of the circumstances – including a more extended time window – relating to the need for use of deadly force.

The U.S. Supreme Court Reporter of Decisions summarizes the Barnes v. Felix Majority Opinion in the following syllabus (which is not part of the Supreme Court's Opinions):

> Respondent Roberto Felix, Jr., a law enforcement officer, pulled over Ashtian Barnes for suspected toll violations. Felix ordered Barnes to exit the vehicle, but Barnes began to drive away.
>
> As the car began to move forward, [Officer] Felix jumped onto its doorsill and fired two shots inside. Barnes was fatally hit but managed to stop the car. About five seconds elapsed between when the car started moving and when it stopped. Two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot.
>
> Barnes's mother sued Felix on Barnes's behalf, alleging that Felix violated Barnes's Fourth Amendment right against excessive force. The District Court granted summary judgment to Felix, applying the Fifth Circuit's "moment-of-threat" rule.
>
> The Court of Appeals affirmed, explaining that the moment-of-threat rule requires asking only whether an officer was "in danger at the moment of the threat that resulted in [his]

use of deadly force." Under the rule, events "leading up to the shooting" are "not relevant."

Here, the "precise moment of threat" was the "two seconds" when Felix was clinging to a moving car. Because [Officer] Felix could then have reasonably believed his life in danger, the panel held, the shooting was lawful.

Held:

A claim that a law enforcement officer used excessive force during a stop or arrest is analyzed under the Fourth Amendment, which requires that the force deployed be objectively reasonable from "the perspective of a reasonable officer at the scene." [Graham v. Connor, 490 U. S. 386, 396 (1985)]. The inquiry into the reasonableness of police force requires analyzing the "totality of the circumstances." [County of Los Angeles v. Mendez, 581 U. S. 420, 427–428 (2017)]; [Tennessee v. Garner, 471 U. S. 1, 9 (1985)]. That analysis demands "careful attention to the facts and circumstances" relating to the incident. [Graham, 490 U. S., at 396].

Most notable here, the "totality of the circumstances" inquiry has no time limit. While the situation at the precise time of the shooting will often matter most, earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones. Prior events may show why a reasonable officer would perceive otherwise ambiguous conduct as threatening, or instead as innocuous. [Plumhoff v. Rickard, 572 U. S. 765, 777 (2014)] well illustrates this point. There, an officer's use of deadly force was justified "at the moment" partly because of what had transpired in the preceding period.

The moment-of-threat rule applied below prevents that sort of attention to context, and thus conflicts with this Court's instruction to analyze the totality of the circumstances. By limiting their view to the two seconds before the shooting, the lower courts could not take into account anything preceding that final moment.

So, for example, [the lower courts] could not consider the reasons for the stop or the earlier interactions between the suspect and officer. And because of that limit, they could not address whether the final two seconds of the encounter would look different if set within a longer timeframe.

A rule like that, which precludes consideration of prior events in assessing a police shooting, is not reconcilable with the fact-dependent and context-sensitive approach this Court has prescribed. A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders.

The [Supreme Court Majority Opinion in Barnes v. Felix] does not address a separate question about whether or how an officer's own "creation of a dangerous situation" factors into the reasonableness analysis. The courts below never confronted that issue, and it was not the basis of the petition for certiorari.

[Bolding of the final paragraph of the syllabus was added by the Legal Update Editor; some paragraphing was revised for readability; some citations were omitted and others were revised for style]

A Concurring Opinion authored by Justice Kavanaugh is joined by Justice Thomas, Alito, and Barrett. That Opinion provides discussion that recognizes the dangers for officers making traffic stops, as well as the dangers to the public, thus recognizing the difficult decisions that officers must make when a driver unlawfully pulls away from a traffic stop that was in process. After that discussion, the concurring Opinion concludes with the following thoughts that the four concurring Justices suggest that other judges should keep in mind:

> Of course, when an officer uses force against a fleeing driver, the judiciary still must assess any resulting Fourth Amendment claim under the standard of objective reasonableness. Under this Court's precedents, that inquiry involves "a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." Graham v. Connor, 490 U. S. 360 (1989)] (quoting Tennessee v. Garner, 471 U. S. 1, 8 (1985)).
>
> In conducting that analysis, judges should keep in mind that it is one thing to dissect and scrutinize an officer's actions with the "20/20 vision of hindsight," "in the peace of a judge's chambers." [Graham] It is quite another to make "split-second judgments" on the ground, "in circumstances that are tense, uncertain, and rapidly evolving." [Graham]
>
> In analyzing the reasonableness of an officer's conduct at a traffic stop, particularly traffic stops where the driver has suddenly pulled away, courts must appreciate the extraordinary dangers and risks facing police officers and the community at large.

[Paragraphing revised for readability; some citations omitted, others revised for style]

LEGAL UPDATE EDITOR'S COMMENTS REGARDING THE OFFICER-CREATED-DANGER THEORY OF LIABILITY THAT THE U.S. SUPREME COURT DECLINED TO ADDRESS IN BARNES v. FELIX

The officer-created danger theory of Fourth Amendment liability that the U.S. Supreme Court declined to address in Barnes v. Felix seems to me to be destined to be addressed by the U.S. Supreme Court in the next decade. My guess is that the theory will be rejected or at least given a much more restrictive reading than is promoted by the Civil Right Act plaintiffs' bar.

In Barnes v. Felix, at least one of the briefs in the U.S. Supreme court addressed whether, under the Fourth Amendment "totality of the circumstances" analysis for assessing the reasonableness of force used against a suspect who attacks law enforcement officers, a court must take into account any earlier unreasonable police conduct that foreseeably created the need to use that force. As noted above, the U.S. Supreme Court's Majority Opinion in Barnes v. Felix declined to address this officer-created-danger theory.

I note that a "provocation" theory of Fourth Amendment liability was rejected by the U.S. Supreme Court in County of Los Angeles v. Mendez, 581 U.S. 420 (2017). But I recognize that the officer-created-danger issue is a closer call, and that rejection of the *officer-created-danger* theory will require somewhat different reasoning than was employed by the U.S. Supreme Court in rejecting the *provocation* theory in Mendez.

In Mendez, the U.S. Supreme Court rejected the application by the Ninth Circuit of a "provocation" rule. The Mendez Court held that "once a use of force is deemed

reasonable under Graham v. Connor , it cannot be found to be unreasonable by reference to some separate constitutional violation. The Mendez Court called the provocation rule "an unwarranted and illogical expansion of Graham."

The Ninth Circuit's rejected provocation rule would have allowed courts to hold law enforcement officers liable for an otherwise reasonable defensive use of deadly force if the officers had earlier violated the constitution in some other way. In Mendez, the earlier violation was a "knock and announce" violation at a makeshift shack/residence. Under the Ninth Circuit approach, officers could be deemed to have thereby "provoked" the violent encounter by ending up, in simplistic terms not used by the U.S. Supreme Court, in the wrong place at the wrong time.

The U.S. Supreme Court's Mendez Majority Opinion thus declared that officers cannot be held liable for excessive force under the Fourth Amendment solely due to an earlier "different Fourth Amendment violation." Such an earlier violation "cannot [automatically] transform a later, reasonable use of force into an unreasonable seizure."

For two articles, one pro and one con, addressing the officer-created-danger theory of officer liability for excessive force under the Civil Rights Act section 1983, see the following:

- **Cynthia Lee, Officer-Created Jeopardy: Broadening the Time Frame for Assessing a Police Officer's Use of Deadly Force, 89 Geo. Wash. L. Rev. 1362, 1431 (2021). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778289**

- **Officer-Created Jeopardy: A Legal Theory That Threatens Effective Policing—Will the Supreme Court Restore Limits? By Von Kliem, JD, LL.M Force Science News [https://www.police1.com/legal/officer-created-jeopardy-a-legal-theory-that-threatens-effective-policing].**

See also a recent article "Barnes v. Felix Exposes the False Dichotomy of 'Moment of Decision' vs. Totality of the Circumstances," By Von Kliem, JD, LL.M Force Science News 3
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NINTH CIRCUIT OF THE UNITED STATES COURT OF APPEALS

CIVIL RIGHTS ACT CIVIL LIABILITY UNDER SECTION 1983 FOR LAW ENFORCEMENT: VIEWING THE VIDEO EVIDENCE OF AN OFFICER-INVOLVED FATAL SHOOTING OF A KNIFE-WILDING MAN IN THE BEST LIGHT FOR THE PLAINTIFFS, A 6-5 MAJORITY OF A PANEL DENIES QUALIFIED IMMUNITY TO AN OFFICER BASED ON THE CONCLUSION THAT A JURY COULD CONCLUDE (CONSISTENT WITH NINTH CIRCUIT CASE LAW) THAT, ALTHOUGH THE ENTIRE TOTAL OF SIX SHOTS OCCURRED OVER JUST SIX SECONDS, A REASONABLE OFFICER WOULD HAVE STOPPED SHOOTING AFTER THE FOURTH SHOT, AT WHICH POINT THE MAN HAD COLLAPSED ON THE GROUND AND WAS ON HIS BACK WITH HIS KNEES CURLED UP TO HIS CHEST, ROLLING AWAY FROM THE OFFICER

In Estate of Hernandez v. City of Los Angeles, __ F.4th _ , 2025 WL __ (9th Cir. June 2, 2025)……, viewing the video evidence of the officer-involved fatal shooting of a knife-wielding man (Hernandez) in the best light for the Plaintiffs, the Majority Opinion denies qualified immunity to Officer Hernandez. The rationales for denying qualified immunity are:

(1) that Hernandez was no longer a viable threat after Officer McBride fired four shots, and therefore shooting the man two more times could be reasonably be determined by a jury to be unjustifiable application of deadly force; and
(2) that the Ninth Circuit's decision in Zion v. County of Orange, 874 F.3d 1072 (9th Cir. 2017), clearly established that continuing to shoot a suspect who appears to be incapacitated and no longer poses an immediate threat violates the Fourth Amendment.

The Hernandez Majority Opinion focuses on the video recordings that lead the six judges to conclude that, although the entire shooting occurred over the brief period of just six seconds, the officer fired three distinct volleys of two shots, pausing after each. And the video evidence supports a conclusion, the Majority Opinion concludes, that the officer fired the final volley—shots five and six—after Hernandez had collapsed on the ground and was on his back with his knees curled up to his chest, rolling away from her.

The Ninth Circuit staff summary (which is not part of the Ninth Circuit Majority Opinion or Dissenting Opinions) provides the following brief synopses of those Opinions (note that references in the staff summary to "the panel" are references to determinations made in the Majority Opinion; subheadings have been added to the staff summary by the Legal Update editor):

> Majority Opinion
>
> The en banc [11-judge] court [voted 6-5 to affirm] in part and reverse[d] in part the district court's summary judgment for the City of Los Angeles, the Los Angeles Police Department, and Officer Toni McBride in an action alleging that [Officer] McBride used excessive force when she shot Daniel Hernandez six times, the final round killing him, after he ignored her repeated commands to stop moving toward her and drop his knife.
>
> Although the entire shooting occurred over just six seconds, McBride fired three distinct volleys of two shots, pausing after each. She fired the final volley—shots five and six—after Hernandez had collapsed on the ground and was on his back with his knees curled up to his chest, rolling away from her.
>
> The district court granted defendants summary judgment, finding that McBride did not violate Hernandez's Fourth Amendment rights and that any such violation was not clearly established. The district court further granted defendants summary judgment on plaintiffs' state law, municipal liability, and familial integrity claims.
>
> Reversing the district court's summary judgment on the Fourth Amendment excessive force claim, the en banc [11-judge] court held [in the Majority Opinion] that although, under the circumstances, McBride acted reasonably when firing the first two volleys of shots, there was a triable issue of fact as to whether continuing to fire thereafter became unreasonable.
>
> Given that Hernandez was rolling away from her and balled up in a fetal position, a jury could reasonably find that Hernandez no longer posed an immediate threat. McBride

could have and should have first reassessed the situation to see whether he had been subdued.

McBride was not entitled to qualified immunity because this court's decision in Zion v. County of Orange, 874 F.3d 1072 (9th Cir. 2017), clearly established that continuing to shoot a suspect who appears to be incapacitated and no longer poses an immediate threat violates the Fourth Amendment. A fallen and injured suspect armed only with a bladed instrument does not present a continuing threat merely because he makes non-threatening movements on the ground without attempting to get up.

The en banc [11-judge] court reversed the district court's grant of summary judgment to defendants on plaintiffs' state law claims because the district court based its ruling solely on the lack of a Fourth Amendment violation.

Finally, the en banc [11-judge] court agreed with and adopted the three-judge panel's discussion affirming the district court's summary judgment in favor of defendants on plaintiffs' Fourth Amendment claim for municipal liability and Fourteenth Amendment claim for violating plaintiffs' right to family integrity.

[Concurring/Dissenting Opinion authored by Judge Nelson]

Concurring in part and dissenting in part, Judge R. Nelson, joined by Judges Bress and Bumatay, and joined by Judge Bade as to Parts I-III, IV.A and V, agreed with Judge Collins that McBride was entitled to qualified immunity. But in Judge R. Nelson's view, McBride never violated the Fourth Amendment in the first place. Contrary to the majority's conclusion, McBride's six shots over six seconds did not trigger a duty to reassess the risk Hernandez posed, particularly where he remained armed and in motion during that entire time.

For similar reasons, Judge R. Nelson would affirm the district court's dismissal of the state-law claims. He agreed to affirm the district court's dismissal of plaintiffs' Fourteenth Amendment substantive due process claims because directing lethal force toward an armed and persistent threat does not shock the conscience and the record does not support the claims under this court's precedent. Given, however, that the Supreme Court has admonished courts to be wary of recognizing new substantive due process rights, this court needs to reexamine its unreasoned decisions which recognize the substantive due process rights of parents to the companionship of their adult-children and of children to the companionship of their parents.

[Concurring/Dissenting Opinion authored by Judge Collins]

Concurring in part, concurring in the judgment in part, and dissenting in part, Judge Collins, joined by Judges R. Nelson, Bade, Bress and Bumatay as to Part II(B), concurred in the judgment to the extent that the majority concluded that the district court erred in holding that no rational jury could find that the final volley of shots fired by McBride was unreasonable under Fourth Amendment standards; and (2) the district court erred in granting summary judgment on that basis as to certain of plaintiffs' state law claims.

He concurred in Part IV(B) of the majority's opinion to the extent that it adopted the panel opinion's discussion affirming the dismissal of plaintiffs' claim of municipal liability

> and plaintiffs' claims under the Fourteenth Amendment. But he dissented from the majority's conclusions that McBride's final volley of shots violated clearly established law, and that McBride therefore was not entitled to qualified immunity with respect to plaintiffs' Fourth Amendment excessive force claim. [Judge Nelson's Opinion asserts that the case relied on by the Majority Zion v. County of Orange, 874 F.3d 1072 (9th Cir. 2017)], is materially distinguishable and does not establish a broad general rule that places the outcome of this case beyond debate.
>
> Dissenting, Judge Bumatay wrote that under the totality of the circumstances, McBride didn't use excessive force in stopping an obvious threat. She had no reasonable opportunity to ensure her safety or the safety of the many civilians surrounding Hernandez in the short time. Moreover, [Judge Bumatay argues that] though distinguishable from this case, the court should have taken this opportunity to overrule [Zion v. County of Orange, 874 F.3d 1072 (9th Cir. 2017)].

[Some paragraphing revised for readability; bracketed language inserted; some paragraphing revised for readability]

The Majority Opinion in Hernandez begins its discussion of the facts with the following footnote noting that the description of the facts is drawn primarily from videotape recordings:

> In setting forth the facts, we rely primarily on video recordings from the defendant officer's body-mounted camera, her vehicle-mounted camera, and a bystander's cell phone, because the parties do not dispute that these videos accurately portray the events at issue. See Scott v. Harris, 550 U.S. 372, 380–81 (2007) (admonishing courts to "view[] the facts in the light depicted by the videotape" when unchallenged). Where the video recordings leave factual ambiguity, however, we follow the usual practice of drawing reasonable inferences in the light most favorable to the party opposing summary judgment—here, plaintiffs. See Scott v. Harris, at 378.

The Hernandez Majority Opinion describes the facts as follows:

> Late in the afternoon on April 22, 2020, Los Angeles Police Department ("LAPD") officers Toni McBride and Shuhei Fuchigami drove past a multi-vehicle collision on San Pedro Street near the intersection of East 32nd Street. The uniformed officers were in a patrol SUV en route to a different incident but decided to respond to the collision instead. As they approached from the north, Fuchigami activated the SUV's overhead lights, and McBride asked several bystanders to tell her who had been hurt.
>
> When the officers arrived at the collision, Fuchigami parked facing traffic in the number one northbound lane, to the left and rear of a Toyota Camry stopped in the number one southbound lane. Four vehicles had visible damage — two on the west side of the street, beyond the Camry, where a black truck facing the oncoming (southbound) traffic had collided with an RV parked at the curb, and two sedans on the sidewalk of the east side of the street. At least 25 people had gathered along the sides of the street, several of whom were screaming and yelling.
>
> As the officers exited their vehicle, the police radio broadcasted that "the suspect's vehicle is a black Chevrolet truck" and "the suspect is male, armed with a knife." Five or six bystanders approached the officers, pointing at the black truck. Officer Fuchigami asked: "Where is he? Where is he at? Is he in the truck?"

The bystanders told the officers that a “crazy guy with a knife” was in the truck, threatening to kill himself. The officers directed the bystanders to move back, and McBride drew her service weapon — a Glock 17 handgun — to the “low-ready” position, i.e., trained on the ground between her feet and potential targets.

The Camry occupant told the officers that the man in the truck “has a knife.” McBride asked: “Why does he want to hurt himself?” The Camry driver replied: “We don’t know. He’s the one who caused the accident.” McBride directed Fuchigami to call for backup. She then ordered the Camry driver to exit her vehicle and move to the sidewalk. McBride observed that the man in the truck — later identified as Hernandez —appeared to be rummaging around in the middle console.

McBride asked Fuchigami if they had “less lethal” force options. She was armed with pepper spray and a taser, and knew that a 40-millimeter rubber projectile launcher — an option for using less lethal force against individuals with bladed weapons — was in the patrol SUV.

Observing Hernandez climb out through the window on the far side of the truck and disappear from view, McBride called out to Fuchigami that Hernandez “might be running.” She then called out to Hernandez: “Hey man, let me see your hands. Let me see your hands, man.”

After about six seconds, Hernandez emerged from behind the rear of the truck, approximately 43 feet from McBride. He was shirtless and sweating profusely.

As he rounded the truck, Hernandez began walking in McBride’s direction. He was holding something in his right hand — McBride could not tell what — that turned out to be a box cutter.

McBride backed up 10 feet along the side of the Camry. As she did so, she gestured with her hand for Hernandez to stop and ordered: “Stay right there. Drop the knife.” Hernandez continued to advance. McBride again ordered: “Drop the knife. Drop the knife.

Hernandez, still approaching, raised his fully extended arms to each side at roughly a 45-degree angle. He did not say anything. McBride pointed her gun at him. Hernandez took three more steps toward her, closing the distance between them to approximately 36 feet. McBride yelled “Drop it!” and without pausing fired two rounds at him.

Hernandez fell to the ground on his right side and yelled out something. He then rolled to the left into a position with his knees, feet, and hands on the pavement, facing down, and started to push himself up, though he did not continue walking toward McBride.

McBride again yelled at Hernandez to “drop it” and without pausing fired another two rounds. This second volley caused him to fall onto his back and curl up into a ball with his knees against his chest and his arms wrapped around them.

As he rolled away from McBride onto his left side, she fired two more rounds. The third volley caused Hernandez to collapse on the ground and remain down.

> The entire shooting sequence lasted approximately 6.2 seconds. Roughly 2.5 seconds elapsed between the first and second volleys and 1.4 seconds between the second and third volleys. Other officers arrived on the scene only after McBride had begun shooting.
>
> Hernandez died from his injuries. The sixth shot caused an immediately fatal wound to his head. The next most serious injury, from the fourth shot, damaged his lung and liver but may have been survivable with immediate medical treatment.
>
> The Los Angeles Board of Police Commissioners found that McBride acted outside of the LAPD's policy on lethal force when firing the fifth and sixth rounds. The policy permits officers to use lethal force only when necessary, based on the totality of circumstances, "[t]o defend against an imminent threat of death or serious bodily injury to the officer or another person."
>
> The Board found that it was unreasonable to think Hernandez posed such a threat after the second volley because he "did not reposition himself from laying on his side to being" in a position "from which he could resume an advance toward [McBride] or others."

[Footnote omitted; some paragraphing revised for readability]

LEGAL UPDATE EDITOR'S NOTES: 1. The June 2, 2025, decision in Hernandez digested above replaces a March 21, 2024, 2-1 decision by a 3-judge panel that would have granted qualified immunity to Officer McBride.

2. Of no legal significance is the fact that the six Ninth Circuit judges who joined the June 2, 2025, Majority Opinion in Hernandez were appointed to the Ninth Circuit by Democratic presidents, and the five Ninth Circuit judges who signed onto one or the other of the Concurring/Dissenting Opinions (or both) – and who all would have ruled that Officer McBride should be given qualified immunity – were appointed to the Ninth Circuit by President Trump.

IN A FEDERAL PROSECUTION FOR OVERPRESCRIBING CONTROLLED SUBSTANCES, NINTH CIRCUIT RULES THAT A SEIZED JOURNAL FALLS WITHIN THE SCOPE OF THE SEARCH WARRANT, AND THAT THE JOURNAL'S SEIZURE IS SUPPORTED BY PROBABLE CAUSE PROVIDED IN THE SEARCH WARRANT AFFIDAVIT

In U.S. v. Keller, ___ F.4th ___ , 2025 WL ___ (9th Cir., June 27, 2025), a 3-judge Ninth Circuit panel affirms U.S. District Court conviction of Thomas Keller, a former medical doctor of four counts of prescribing controlled substances outside the scope of professional practice. The panel rejects defendant's argument that a journal found at his residence during execution of a search warrant was unlawfully seized. The Ninth Circuit panel rules that the seized journal fell within the scope of the search warrant, and that the journal's seizure was supported by probable cause provided in the search warrant affidavit.

Some of the relevant facts from the trial of defendant Keller are described in the Keller Opinion as follows:

> Between beginning his practice in 2011 and surrendering his license in 2018, Keller was in the 99th percentile of pain specialists "in terms of the amount [of opioids] he [was] prescribing per patient per day." Keller was known by local pharmacists for prescribing

> "only narcotics," as well as for prescribing opiates in exceptionally large quantities. One pharmacy eventually refused to fill prescriptions written by Keller.
>
> . . . .
>
> [I]n 2017, federal agents began to investigate Keller on suspicion of over-prescribing medications. Besides monitoring Keller's office with a pole camera and utilizing an undercover officer to pose as a potential patient, law enforcement agents executed a search warrant at Keller's personal residence. Among other items, agents seized a journal that contained handwritten notes regarding Keller's "patient information" and "medical information."

The Keller Opinion notes that the search warrant included authorization to seize from defendant's residence "journals, books, [and] records . . . that refer or relate to . . . the ordering, prescribing, or dispensing of any controlled drug." The Opinion also sets forth language from the search warrant affidavit describing evidence of Keller's suspected over-prescribing practices. In addition, the Opinion describes as follows provisions in the warrant affidavit that support the seizure of the journal that contained handwritten notes regarding Keller's patient information and medical information:

> The DEA agent's affidavit in support of the search warrant on Keller's residence highlighted that Keller prescribed a "surprisingly" high number of controlled substances; received various professional documents at his home address, including both financial and medical licensure documents; and was seen traveling between his home and office carrying a briefcase.
>
> The DEA agent also stated in the affidavit that based on her extensive experience with similar investigations, practitioners "often retain personal and business notes, letters, and correspondence relating to their narcotics/prescription orders at their residences."
>
> Thus, both direct surveillance of Keller and the agent's expertise in comparable investigations provided probable cause that documents relevant to the crimes being investigated would be located at Keller's residence. And as the district court found, it is also a "commonsensical" fact "that doctors, and perhaps especially doctors who commit crimes and wish to shield their activities from their colleagues or potential inspectors, bring medical records home."

Accordingly, concludes that Ninth Circuit panel in Keller, the seizure of the journal was lawful because the search warrant affidavit provides probable cause to believe that the incriminatory documentary evidence described in the warrant would be found at Keller's residence.

Result: Affirmance of conviction of Thomas Keller by U.S. District Court (Northern District of California).

LEGAL UPDATE EDITOR'S RESEARCH NOTE: Beware of the Washington Supreme Court decision in State v. Thein, 138 Wn.2d 133 (1999), holding that an officer-affiant's statement about experience and training regarding habits of drug dealers was not sufficient alone to link the defendant's residence to the mere fact that defendant sold a large quantity of marijuana at an undisclosed location. The Keller facts are readily distinguishable.

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WASHINGTON STATE COURT OF APPEALS

DEFINITION OF "INTERROGATION": BOOKING QUESTION POSED TO MIRANDA-INVOKING ARRESTEE WAS "INTERROGATION" WHERE THE OFFICER ASKING THE BOOKING QUESTION KNEW ENOUGH ABOUT AN INVESTIGATION – OF A SHOOTING RELATING TO A TWO-MEN-PURSUING-ONE-WOMAN-LOVE-TRIANGLE – THAT, IN THE VIEW OF THE APPELLATE COURT, THE OFFICER "SHOULD HAVE KNOWN" THAT IF THE ARRESTEE – AS THE SHOOTING SUSPECT – ADMITTED LIVING AT THE HOME OF THE WOMAN INVOLVED, THIS WOULD LIKELY BE INCRIMINATING INFORMATION

In State v. Butler, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. III, June 10, 2025), Division Three of the Court of Appeals rules that the arresting officer in this case should have been aware that a booking question regarding the address of an arrestee (defendant Austin James Butler) was likely to produce an incriminating answer. The Butler Court rules that: (1) defendant's answer regarding his address on the booking form was inadmissible under the Miranda rules against questioning of a Miranda-invoking arrestee, but (2) the error of the trial court in admitting the evidence was harmless in light of the strength of the lawfully-admitted evidence of defendant's guilt.

The case involved a heterosexual love-triangle circumstance involving one female and two male suitors. Thus, each of the men did not want the other man to be in a relationship with the woman. Butler was known by police as being one of the two male suitors, and police suspected him of having shot the other male suitor who was (or had been) in a relationship with the woman.

The arresting officer knew that his agency's investigation had determined that Butler should be arrested for shooting the other man. In the assessment of the record by the Court of Appeals, the officer "should have known" (1) that Butler lived with the woman who was involved in the love triangle, and (2) that Butler had access to two cars of the woman, including the car Butler was driving when the officer stopped him and arrested him for the shooting.

The following is part of the analysis in the Butler Opinion in support of the Court's conclusion that the officer's posing of the booking question violated Miranda:

> To counter the inherent compulsion of custodial interrogations, police must administer Miranda warnings. Miranda warnings are required when the questioning of a defendant is a custodial interrogation by an agent of the State. . . . Once a suspect invokes his right to remain silent, the interrogation must cease. . . .
>
> Here, [the arresting officer] questioned Butler one month after the shooting. There is no question that Butler was in custody, was questioned by an agent of the State, and had invoked his right to remain silent. The issue is whether the booking question of Butler's address was an interrogation.
>
> An "interrogation," for Fifth Amendment purposes,
>
> > "refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.

The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police." [State v. Sargent, 111 Wn.2d 641, 650 (1988)] (quoting Rhode Island v. Innis, 446 U.S. 291, 301 . . . (1980)).

Generally, routine booking questions do not violate the prohibition against interrogations because such questions rarely elicit an incriminating response. . . .Nevertheless, simply because booking questions typically are non-incriminating does not shield incriminating questions from Miranda protections. State v. Denney, 152 Wn. App. 665, 670 (2009). The focus is not on the nature of the question but whether the question was reasonably likely to elicit an incriminating response.

This is an objective test where the subjective intent of the questioner is relevant but not conclusive. This will turn on the particular facts of each case, and questions that "relate, even tangentially, to criminal activity" are interrogations. United States v. Avery, 717 F.2d 1020, 1024 (6th Cir. 1983).

Courts "should carefully scrutinize the factual setting of each encounter of this type" because even a "relatively innocuous series of questions may, in light of the factual circumstances and the susceptibility of a particular suspect, be reasonably likely to elicit an incriminating response." [Avery at 1025]. Even answers in response to standard booking questions are subject to Fifth Amendment protections. State v. DeLeon, 185 Wn. App. 171, 199 (2014), rev'd on other grounds, 185 Wn.2d 478, 374 P.3d 95 (2016).

[The officer] knew, at the time he was booking Butler, that the person who drove the black Jeep and took the white Camry in the early morning hours of March 4 was the person who shot Lopez. He knew that Bailon owned both vehicles and likely allowed the shooter to use one or both vehicles. Therefore, any fact that more closely tied Butler to Bailon was likely to elicit an incriminating response.

> [Court's footnote 4: [The officer] *did not arrest Butler for possession of a stolen vehicle. We may infer from this that Bailon did not report the Camry as stolen*.]

During the motion to suppress the booking form, [the officer] testified he had no reason to believe Butler lived at the Browne Avenue address. Although [the officer's] purpose for asking Butler for his address is relevant, it is not dispositive.

[The officer] had early responsibility for investigating this case and spoke with Lopez before the ambulance arrived to take him to the hospital. After this, [the officer] was the first officer to arrive at Bailon's apartment. In addition, he had received an e-mail from the detective to be on the lookout for Bailon's white Toyota Camry. Given the nature of his involvement with the investigation, [the officer] should have known that questioning Butler about his address was reasonably likely to elicit an incriminating response tying Butler to Bailon.

We conclude that the booking question in this particular case was an interrogation and that the trial court erred by admitting the booking form.

[Some citations omitted, others revised for style; some paragraphing revised for readability]

The Butler Opinion goes on to explain in detailed fact-based analysis "there is overwhelming untainted evidence of Butler's guilt, and the State has proved beyond a reasonable doubt that

any reasonable jury would have reached the same result, absent admission of the booking form."

Result: Affirmance of Yakima County Superior Court conviction of Austin James Butler for attempted first degree murder, drive-by shooting, and unlawful possession of a firearm in the first degree

IN A CIVIL/ADMINISTRATIVE CASE, WISHA DLI INSPECTORS WHO IN 2020 WERE CHECKING FOR BUSINESSES OPERATING CONTRARY TO PANDEMIC RESTRICTIONS ARE HELD TO HAVE VIOLATED FEDERAL AND STATE CONSTITUTIONAL PRIVACY PROTECTIONS IN "TAILGATING" A 24-HOUR-FITNESS-CLUB MEMBER WHO USED A MEMBERSHIP KEY CARD TO GAIN ACCESS THROUGH THE LOCKED OUTSIDE ENTRANCE DOOR

In Bradshaw Development, Inc. d/b/a Anytime Fitness v. WDLI, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. III, June 26, 2025), on June 15, 2020, two Washington Industrial Safety and Health (WISHA) inspectors for the Washington Department of Labor and Industries' were checking for businesses that were operating contrary to pandemic restrictions. The Court of Appeals holds that on that date the WISHA inspectors violated federal and state constitutional privacy protections when they "tailgated" a 24-hour-fitness-club member who used a membership key card to gain access through the locked outside entrance door of the club.

At the time of the inspectors' entry into the business premises, the club was in operation with customers present and working out. However, the outside entry door was locked, subject to allowing entry of members with key cards. The "tailgating" consisted of the WISHA inspectors catching the entry door before it closed after a fitness club member had used a customer key card to open the locked door in order to enter the premises.

In a lengthy Opinion, Division Three of the Court of Appeals relies on Fourth Amendment and article I, section 7 Washington State constitutional provisions to support the Court's conclusion that the "tailgating" was unlawful, and that the observations by the WISHA inspectors should not have been admitted as evidence in the administrative proceedings against the fitness club for violating the pandemic restrictions. Accordingly, the Court of Appeals directs that the civil citation against the Fitness Club must be dismissed.

The lengthy constitutional analysis by the Court of Appeals includes the following:

> The Fourth Amendment and article I, section 7 only preclude searches and seizures of property. DLI suggests that its inspectors engaged in no search. Our ruminating whether a search occurred harms DLI more than benefits it. According to the United States Supreme Court, a search occurs when the government obtains information by physically intruding on persons, houses, papers, or effects. Florida v. Jardines, 569 U.S. 1, 5 (2013). Entering a locked door without a key and without consent constitutes an intrusion.
>
> Our resolution of this appeal does not come easy. Sound arguments support DLI's position that its inspectors possessed authorization to enter the locked door by tailgating and whatever the inspectors saw while awaiting consent is admissible under the open view or plain view doctrine. The COVID-19 pandemic was a disaster unlike any the citizens of Washington have seen before. . . . The disease constituted a potentially fatal

workplace hazard. The Washington State Constitution mandates that the Legislature adopt workplace safety protections for Washington workers. . . .

On June 15, 2020, the Anytime Fitness Selah facility displayed an open sign. Anytime Fitness proudly flaunted its violation of COVID-19 restrictions based on its belief in the unconstitutionality of the restrictions. Anytime Fitness took no steps to prevent tailgating by outsiders. Locked doors at a 24/7 fitness club serve to protect the physical safety of club members who enter the club at odd night or early morning hours, not necessarily to protect the privacy of members. [The WISHA inspectors] entered during normal business hours.

DLI emphasizes that members of the public sat in the office to apply for a membership. We do not know how these individuals entered the fitness club. They likely gained consent to proceed beyond a locked door. When Jeff Mercer came to the fitness club and objected to DLI's search of the premises, the parties moved their discussion outside. We also observe that the locked doors serve the purpose, during normal business hours, to preclude trespassers that would otherwise be tolerated in another business fully open to the public.

We recognize, as argued by DLI, that RCW 49.17.070(1)(a) directs that L&I inspectors enter jobsites "without delay." Nevertheless, we emphasize that the DLI inspectors could have applied for a warrant to enter and search the Selah facility. RCW 49.17.075. They could have garnered the search warrant without having tipped off employees of Anytime Fitness that they sought to search the premises. No emergency excused the failure to apply for a warrant.

Police officers generally need a warrant to search a place in which a person has a reasonable expectation of privacy. . . . The bulwark of Fourth Amendment protection is the warrant clause, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search. . . . Under Article I, section 7 of the Washington Constitution, the authority of law required by that article is satisfied by a valid warrant. . . .

The United States Supreme Court has noted some pervasively regulated industries wherein Fourth Amendment protections loosen because the government needs unannounced inspections to secure compliance with extensive regulations. These industries include alcohol and firearms. . . . No court has considered the fitness club industry to qualify for special search and seizure rules.

DLI encourages us to defer to the Board's finding of fact that the DLI inspectors entered a reasonably recognizable entry point. We consider this finding more in the nature of a conclusion of law. More importantly, assuming we accepted the finding, we would still conclude that entry through the locked door violated Bradshaw Development's rights under the Fourth Amendment and article 1, section 7.

The APA provides that the presiding officer of an adjudicatory hearing shall disregard evidence excludable on constitutional or statutory grounds. RCW 34.05.452(1). The exclusionary rule requires suppression of evidence obtained as the result of an unconstitutional search. . . . The ALJ, and in turn the Board, should have rejected any testimony of the DLI inspectors as to their observations inside the Selah facility.

[Some citations omitted, others revised for style]

Result: Affirmance of Yakima County Superior Court decision that reversed a decision in favor of DLI by the Board of Industrial Insurance Appeals.

IN A CIVIL CASE THAT DEVELOPED INTO A DOMESTIC VIOLENCE PROTECTION ORDER, THE RESPONDENT ON THE ORDER LOSES ON HIS FOUR CONSTITUTIONAL CHALLENGES TO THE STATUTORY WEAPONS SURRENDER PROVISIONS

In Montesi v. Montesi, ___ Wn. App. 2d ___ , 2025 WL ___ (Div. I, 2025), Division One of the Court of Appeals rejects the constitutional challenges by Brandon Montesi to the requirements in a Domestic Violence Protection Order that he surrender any weapons that he possessed. The Legal Update will not summarize or provide excerpts from the legal analysis of the Court of Appeals in support the Court's rejection of Montesi's arguments that the relevant statutory provisions are unconstitutional under one or more of the following constitutional protections: (1) the Fifth Amendment, (2) the Fourth Amendment, (3) the Second Amendment, and/or (4) the separation of powers doctrine.

Result: Affirmance of the King County Superior Court order that rejected the constitutional challenges raised by Brandon Montesi in opposition to an order that he surrender his weapons.

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BRIEF NOTES REGARDING JUNE 2025 UNPUBLISHED WASHINGTON COURT OF APPEALS OPINIONS ON SELECT LAW ENFORCEMENT ISSUES

Under the Washington Court Rules, General Rule 14.1(a) provides: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

Every month, I will include a separate section that provides brief issue-spotting notes regarding select categories of unpublished Court of Appeals decisions that month. I will include such decisions where issues relating to the following subject areas are addressed: (1) Arrest, Search and Seizure; (2) Interrogations and Confessions; (3) Implied Consent; and (4) possibly other issues of interest to law enforcement (though generally not sufficiency-of-evidence-to-convict issues).

The three entries below address the June 2025 unpublished Court of Appeals opinions that fit the above-described categories. I do not promise to be able to catch them all, but each month I will make a reasonable effort to find and list all decisions with these issues in unpublished opinions from the Court of Appeals. I hope that readers, particularly attorney-readers, will let me know if they spot any cases that I missed in this endeavor, as well as any errors that I may make in my brief descriptions of issues and case results. In the entries that address decisions in criminal cases, the crimes of conviction or prosecution are italicized, and brief descriptions of the holdings/legal issues are bolded.

1. State v. Gilberto Ibarra-Aldaco: On June 12, 2025, Division Three of the COA affirms the Yakima County Superior Court convictions of defendant in relation to crimes against his

wife, for *(A) felony harassment – DV; (B) second degree assault – DV; and (C) fourth degree assault – DV.*

The Court of Appeals rejects defendant's argument that the trial court erroneously prevented him for presenting evidence that his wife had sought U-visa status and was motivated by that status in seeking requesting law enforcement investigation. The Court of Appeals rejects that argument because there is no evidence that the wife knew, at the point when she reported the assault by Ibarra-Aldaco to law enforcement, about the opportunity to gain permanent legal status in the United States by applying for a U-visa. Thus, the Court of Appeals rules that Ibarra-Aldaco cannot meet his requirement to show prejudice under the ineffective assistance of counsel test.

Here is a link to the Opinion in State v. Ibarra-Aldaco:
https://www.courts.wa.gov/opinions/pdf/401260_unp.pdf

2. State v. Yusuf Mohammed Abdullahi: On June 23, 2025, Division One of the COA affirms the King County Superior Court conviction of defendant for *felony physical control of a vehicle while under the influence*. **One of the issues in the appeal was whether the trial court erred in admitting statements of the defendant during the part of law enforcement pre-Mirandized questioning of him.**

Police initially questioned defendant at the scene after the two officers (1) turned on their emergency lights, (2) boxed in his car with their two patrol vehicles after they saw that he was apparently sleeping behind the wheel of is parked car, (3) directed him to get out of his vehicle, and (4) handcuffed him. Case law establishes that Miranda warnings are required where a Terry seizure develops into circumstances where a reasonable person in the individual's position would believe that he or she was in police custody to a degree associated with formal arrest. The Abdullahi Opinion concludes that defendant was not in Miranda custody for the following part of the questioning:

> **Upon exiting, Abdullahi stated he had "run out of gas." The officers met him on the driver's side of the vehicle, placed him in handcuffs, and moved to the sidewalk. As this series of events took place, [One of the officers] asked about how Abdullahi ran out of gas and who, if anyone, was going to retrieve more. [The officer] also asked about the "crack pipe" in the center console and inquired if Abdullahi "had done any drugs." As [the officer] asked Abdullahi questions, he clarified the pipe was for methamphetamine and claimed to have smoked "last night."**

Part of the lengthy Miranda analysis includes the following:

> Abdullahi analogizes to [State v. Pines, 17 Wn. App. 2d 483 (2021)] where this court held a seizure and subsequent search of a defendant went beyond a valid Terry stop and constituted custodial arrest. In Pines, the defendant was recognized by a passing officer who was aware of a warrant for his arrest. After following the defendant to a restaurant, three uniformed officers entered the building after the defendant and tackled him to the ground, held him down by the neck and head, and handcuffed him. As they were handcuffing him, a different officer yelled out, "you're under arrest for your felony warrant." While being held on the ground and prior to being provided Miranda warnings, the defendant admitted in response to police questioning that he had a gun on his person.

> The [Pines] court held under these circumstances, an individual would consider themselves under custodial arrest. It reasoned that arresting officers did not observe the defendant carrying a weapon, and no officer testified they feared for their safety prior to the defendant's seizure or that they had seen a weapon prior to their search, countering the State's argument that this could qualify as a lawful Terry stop. Furthermore, there were three uniformed police officers along with another detective at the scene, and they forcefully took the defendant to the ground and handcuffed him, while another officer yelled the defendant was under arrest.
>
> Though officers' actions need not be as egregious as those in Pines to exceed a valid Terry stop, the circumstances here were not such that a reasonable person under the circumstances would believe they were under custodial arrest.
>
> Unlike the officers in Pines, who could not testify to any safety concern prior to the defendant's seizure, the officers here enunciated a reasonable fear of danger for themselves and others once Abdullahi exited the vehicle. [The two officers] can be heard on the body camera footage discussing boxing the vehicle in to avoid being exposed to traffic on Rainier Avenue and to address concerns that Abdullahi might attempt to drive away.
>
> The police emergency lights also aided in addressing the potential safety hazard from the stopped cars blocking traffic. While handcuffing Abdullahi may not have been necessary, as both [officers] confirmed Abdullahi had complied with commands, it was in keeping with a reasonable concern for safety as they were moving Abdullahi from a vehicle in the middle of a busy street.
>
> **Considering all of the circumstances, the officers' actions while initially detaining and questioning Abdullahi were justified as part of a valid Terry stop. Therefore, the trial court did not err in admitting Abdullahi's pre-Miranda statements during the "initial phase" of questioning.**

[Some paragraphing revised for readability; some citations omitted, others revised for style]

The Abdullahi Court also rules in the alternative, that, assuming solely for the sake of argument that there was error by the trial court on the Miranda issue, the other lawfully admitted evidence is sufficient under the standard for harmless error analysis to support the conviction.

Here is a link to the Opinion in State v. Abdullahi:
https://www.courts.wa.gov/opinions/pdf/858742.pdf

3. State v. James Gregory Jackson, Jr.: On June 26, 2025, Division Three of the COA affirms the Yakima County Superior Court conviction of defendant for (A) first degree robbery; (B) obstructing a law enforcement officer; and (C) resisting arrest.

On appeal, defendant raised issues concerning a show-up identification procedure conducted by law enforcement in the field. The Court of Appeals holds that that the show-up procedure was flawed and suggestive, but that the show-up identification of defendant by the alleged victim was nonetheless reliable. This Legal Update entry will not address the "reliability" analysis by the Court of Appeals or the explanation by the Court of Appeals that the trial court identification of Jackson was not tainted by the show-up identification procedure.

The alleged victim, Ms. Hoffman, called 911 to report that she had just been mugged. She described her two muggers as being dressed all in black, wearing hooded jackets, wearing masks, and riding long skateboards. 11 minutes later, a patrol officer saw a man, subsequently identified as Jackson, riding a skateboard). The man's clothing and mask and skateboard met the victim's description, and he was less than a mile from the scene of the reported attack of Ms. Hoffman. When the officer attempted to stop him, Jackson fled on foot and subsequently resisted arrest. He was brought under full control and arrested with the help of a second officer.

The Court of Appeals describes as follows the following facts related to a show-up procedure the was led by a third officer:

> **During the pursuit and arrest, [the third officer] provided [Ms. Hoffman] with updates [presumably by phone], telling her that officers were "hopefully out with him now" and later that they were "literally on top of him right now." [The third officer] eventually informed Hoffman that an officer had caught up with "at least one of them."**
>
> . . . .
>
> Given Hoffman's proximity to the scene and the short time that elapsed since the crime, officers decided to conduct a show-up identification. [The third officer] transported Hoffman to the location where Jackson was detained. Before walking Jackson to a place where Hoffman could view him from her vantage point in the police car, **[the third officer] informed Hoffman that he was going to show her the "suspect" and ask if she recognized him, adding "[n]o pressure either way."** [The third officer] walked Jackson approximately 20 feet away from Hoffman and shined his flashlight on Jackson. As soon as [the third officer] returned to his car to ask Hoffman if she recognized Jackson, she responded, "[t]hat's the guy that pushed me first. Yeah, that's him." **After the identification, [the patrol officer who had earlier arrested Jackson] spoke with Hoffman and said something along the lines of "I got to chase [or tase] the bad guy."**

[Bolding added by Legal Update editor; bracketed language provided by Legal Update editor]

Among the facts noted by the Court of Appeals in support of its suggestiveness determination are the following:

> **When [the third officer conducting the show-up ID procedure] took Hoffman to Jackson's location, he advised Hoffman that there was "[n]o pressure either way," but this admonishment did not convey to Hoffman that Jackson might or might not be the "suspect." Moreover, this came after [that same third officer conducting the show-up ID procedure] informed Hoffman that they had caught up with one of her attackers. Following Hoffman's identification, [the officer who had initially seized Jackson] provided feedback [to Hoffman] that could have inflated Hoffman's confidence in her identification by commenting along the lines of "I got to chase [or tase] the bad guy."**

LEGAL UPDATE EDITOR'S RESEARCH NOTE: For an article address identification procedures see "Eyewitness Identification Procedures: Legal and Practical Aspects"

(updated through July 1, 2024) by John Wasberg on the LED page of the Criminal Justice Training Commission at https://www.cjtc.wa.gov/resources/law-enforcement-digests

Here is a link to the Opinion in State v. Jackson:
https://www.courts.wa.gov/opinions/pdf/401928_unp.pdf

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LEGAL UPDATE FOR WASHINGTON LAW ENFORCEMENT IS ON WASPC WEBSITE

Beginning with the September 2015 issue, the most recent monthly Legal Update for Washington Law Enforcement is placed under the "LE Resources" link on the Internet Home Page of the Washington Association of Sheriffs and Police Chiefs. As new Legal Updates are issued, the three most recent Legal Updates will be accessible on the site. WASPC will drop the oldest each month as WASPC adds the most recent Legal Update.

In May of 2011, John Wasberg retired from the Washington State Attorney General's Office. For over 32 years immediately prior to that retirement date, as an Assist ant Attorney General and a Senior Counsel, Mr. Wasberg was either editor (1978 to 2000) or co-editor (2000 to 2011) of the Criminal Justice Training Commission's Law Enforcement Digest. From the time of his retirement from the AGO through the fall of 2014, Mr. Wasberg was a volunteer helper in the production of the LED. That arrangement ended in the late fall of 2014. Starting with the January 2015 Legal Update, Mr. Wasberg has been presenting a monthly case law update for published decisions from Washington's appellate courts, from the Ninth Circuit of the United States Court of Appeals, and from the United States Supreme Court.

The Legal Update does not speak for any person other than Mr. Wasberg, nor does it speak for any agency. Officers are urged to discuss issues with their agencies' legal advisors and their local prosecutors. The Legal Update is published as a research source only and does not purport to furnish legal advice. Mr. Wasberg's email address is jrwasberg@comcast.net. His cell phone number is (206) 434-0200. The initial monthly Legal Update was issued for January 2015. Mr. Wasberg will electronically provide back issues on request.

The Criminal Justice Training Commission continues to publish monthly issues of the Law Enforcement Digest (LED). Monthly LEDs going back to 2009 can be found on the CTJC's website at https://www.cjtc.wa.gov/resources/law-enforcement-digests.

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

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

superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules].

Many United States Supreme Court opinions can be accessed at [http://supct.law.cornell.edu/supct/index.html]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [http://www.supremecourt.gov/opinions/opinions.html]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [http://www.ca9.uscourts.gov/] and clicking on "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [http://www.law.cornell.edu/uscode/].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's, is at [http://www.leg.wa.gov/legislature]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [http://access.wa.gov]. For information about access to the Criminal Justice Training Commission's Law Enforcement Digest and for direct access to some articles on and compilations of law enforcement cases, go to [https://www.cjtc.wa.gov/resources/law-enforcement-digests].