

Oct 31, 2017, 11:49 am

RECEIVED ELECTRONICALLY

bjh

Supreme Court No. 94362-1
Thurston County Superior Court No. 16-2-03626-34

**SUPREME COURT
OF THE STATE OF WASHINGTON**

NICHOLAS CLAPHAM
Plaintiff-Appellant,
v.
WASHINGTON STATE PATROL
Defendant-Respondent.

APPELLANT'S REPLY BRIEF

Nicholas Clapham, Appellant
Pro Se

The Law Office of Nicholas Clapham
P.O. Box 50542
Bellevue, WA 98015
(407)484-9625
WSBA# 17646
Attorney for Appellant

FILED AS
ATTACHMENT TO EMAIL

 ORIGINAL

TABLE OF CONTENTS

Introduction.....	1
A. Patrols Law Enforcement Operations, Scope of PRA Review sought.....	1
B. WSP Responded Properly, Searched reasonably likely databases.....	1
C. Patrol's Public Records Manager Responds.....	20
Conclusion.....	23

TABLE OF AUTHORITIES

Table of Cases

Alpine Indus., Inc. v. Gohl, 30 Wn. App. 750,
758, 637 P.2d 998 (1981).....24
Entranco Eng'rs v. Envirodyne, Inc., 34 Wn. App.
503, 662 P.2d 73 (1983).....22
Gendler v. Bastiste, 174 Wn.2d 244, 248-49,
274 P.3d 346 (Wash. 2012).....21,22
Lockwood v. AC&S, Inc., 44 Wn. App. 330, 361-62,
722 P.2d 826 (1986), aff'd, 109 Wn.2d 235, 744 P.2d 605
(1987).....22
Radach v. Gunderson, 39 Wn. App. 392, 695 P.2d 128,
review denied, 103 Wn.2d 1027 (1985).....22

Statutes

RCW 2.06.030.....23
RCW 4.22.060.....24

Regulations and Rules

CR 60.....23
RAP 12.2.....23, 24

Other Authorities

Carlos Fields, 1999–2006 *Award-Winning
Community Policing Strategies*, U.S.
Department of Justice, Office of Community
Oriented Policing Services (September 2007).....4,5

D. Weisburd, C.W.Telep, J.C. Hinkle, J.E. Eck,
*The Effects of Problem-Oriented Policing on
Crime and Disorder*, Crime Prevention Research
Review No. 4, (June 2012).....3,4

Michael Scott, *Focused Deterrence of High-Risk
Individuals*, Office of Community Oriented
Policing Services, U.S. Department of
Justice (2017).....8,9,10,11,12,14,15

Michael Scott, *Identifying and Defining Policing Problems*, Problem-Solving Tools Series, No. 13, Office of Community Oriented Policing Services, U.S. Department of Justice (2015).....12,13,14

Christopher S. Koper, Bruce G. Taylor, and Bruce E. Kubu, *Law Enforcement Technology Needs Assessment: Future Technologies to Address the Operational Needs of Law Enforcement*, Police Executive Research Forum and Lockheed Martin Corporation(Jan 16, 2009).....23

Coombs, Casey, *Lockheed Martin in Bothell develops record-setting laser weapon for U.S. Army*, *Puget Sound Business Journal* (March 17, 2017).....25

Problem Oriented Public Safety-Washington State Patrol, W.S.P., (<http://www.wsp.wa.gov/community/pops.htm>)(last viewed Oct. 25, 2017).....2,5,6,7,14

M.S. Scott, H. Goldstein, *Shifting and Sharing Responsibility for Public Safety Problems*, Problem-Oriented Guides for Police Response Guide Series No. 3, U.S. Department of Justice, Office of Community Oriented Policing Services(August 2005).....16, 17, 18, 19, 20

Washington Appellate Practice Deskbook, §20.8(3) (Wash. State Bar Assoc. 4th ed. 2016).....23

INTRODUCTION

Appellant submits this reply.

A. Patrols Law Enforcement Operations, Scope of PRA Sought

The PRA request in this matter concerned one individual, within a specific limited date range, listing specific locations and specific activities. It is narrow with uncomplicated terminology. It was crafted to allow the agency, to quickly use plain identifiers to search available databases and employee devices. The request is minuscule in comparison to requests asking for all documents by subject matter such as dash cam footage. The perfunctory search performed by WSP took minutes, not hours and certainly not days. Requestor sought information and spent time tailoring the request to focus only on the records needed. The requestor's need for such information was vital.

B. WSP Responded Properly, Searched reasonably likely databases.

By WSP's own admission it searched only the common databases related to traditional criminal investigations. WSP frames a restricted view of its operations by directing this courts attention to the fact that it is held out as a general authority Washington law enforcement agency with investigations being performed by its Field Operations Bureau and its Investigative Services Bureau. Resp. Brief, p.2. This myopic view ignores the fact that the actions for which records are sought do not concern traditional "investigations". It also ignores the

fact that WSP may be in possession and/or use of records generated by or shared with other agencies that it operates with in joint law enforcement actions.

The agency admits that it did not search those records in possession of employees specifically held out as Problem Oriented Public Safety (POPS) troopers, employees or support staff. Those officers are clearly displayed on their web page. *Problem Oriented Public Safety-Washington State Patrol*, W.S.P., (<http://www.wsp.wa.gov/community/pops.htm>)(last viewed Oct. 25, 2017). The review of WSP records was completed without such investigation and is, by its nature, perfunctory. WSP chooses to wholly ignore the self created portion of the agency that conducts practices associated with Problem Oriented Policing (POP) otherwise known as Community Oriented Policing Services (COPS) or as the WSP calls their division Problem Oriented Public Safety(POPS). This is a group that, by its own declaration and structure does not conduct "investigations" in the traditional sense. It searches for "problems" and then crafts its own "response" without the structure, mandates, laws, court rules and case law of the criminal justice system. *Id.* This "new" system was devised by the Office of Community Oriented Policing Services, U.S. Department of Justice and is being promoted nationally at the state level through grants, paid or subsidized hires and publications that specifically instruct these departments on how to proceed. What follows is a very abbreviated synopsis of a small portion

of those publications and their doctrine. They all contain disclaimers attempting to distance the content from DOJ. The publications are tattooed throughout with logos, funding reports and citations to the Department of Justice and its Office of Community Oriented Policing Services: D. Weisburd, C.W. Telep, J.C. Hinkle, J.E. Eck, *The Effects of Problem-Oriented Policing on Crime and Disorder*, Crime Prevention Research Review No. 4, (June 2012) provides a brief background:

In an article in *Crime & Delinquency* in 1979, Herman Goldstein critiqued police practices of the time by noting that they were more focused on the “means” of policing than its “ends.”

...

Goldstein called for a paradigm shift in policing that would replace the primarily reactive, incident driven “standard model of policing” (National Research Council [NRC] 2004; Weisburd & Eck 2004) with a model that required the police to be proactive in identifying underlying problems that could be targeted to alleviate crime and disorder at their roots. He termed this new approach “problem-oriented policing” to accentuate its call for police to focus on problems instead of single calls or incidents as the unit of analysis. Goldstein also expanded the traditional mandate of policing beyond crime and law enforcement. He argued that the police had to deal with an array of problems in the community, including not only crime but also social and physical disorders. He also called for police to expand the tools of policing much beyond the law enforcement powers that were seen as the predominant tools of the standard model of policing. In Goldstein’s view the police needed to draw upon not only the criminal law but also civil statutes and rely on other municipal and community resources if they were to successfully ameliorate crime and disorder problems.

John Eck and William Spelman (1987) drew upon Goldstein’s idea to create a straightforward model for implementing POP. In an application of problem solving in Newport News, Virginia they developed the SARA model for problem solving. SARA is an

acronym representing four steps they suggest police should follow when implementing problem-oriented policing. “Scanning” is the first step, and involves the police identifying and prioritizing problems in their jurisdictions.

After potential problems have been identified, the next step is “Analysis.” This involves the police thoroughly analyzing the identified problem(s) so that appropriate responses can be developed. The third step, “Response,” has the police developing and implementing interventions designed to solve the problem(s). Finally, once the response has been administered, the final step is “Assessment” which involves assessing the impact of the response on the targeted problem(s).

Id., pages 6-7.

The magnitude of this ideology and the backing of the federal government was discussed ten years ago, when Carl R. Peed, Director, Office of Community Oriented Policing Services, U.S. Department of Justice, reported:

Since 1995, the U.S. Department of Justice Office of Community Oriented Policing Services (COPS) has worked diligently to advance the manner in which community policing is practiced at the state and local level throughout the nation. COPS has invested \$12.4 billion in support of this objective, including grants awarded to more than 13,000 state and local law enforcement agencies, training more than 500,000 law enforcement officers and local leaders, and by funding the development of numerous technical assistance resources that seek to increase the body of knowledge available on critical community policing issues.

Id.

Carlos Fields, 1999–2006 *Award-Winning Community Policing Strategies*, U.S. Department of Justice, Office of Community Oriented Policing Services (September 2007) is a COPS publication that describes the structure in

which the ideology is disseminated throughout the United States:

The International Association of the Chiefs of Police (www.theiacp.org) is the world's oldest and largest nonprofit membership organization of police executives, with more than 20,000 members in more than 100 different countries. IACP's leadership consists of the operating chief executives of international, federal, state, and local agencies of all sizes.

...

The COPS Office was established as a result of the Violent Crime Control and Law Enforcement Act of 1994 to assist law enforcement agencies in enhancing public safety through the implementation of community policing strategies in jurisdictions of all sizes across the country. COPS provides funding to state, local, and tribal law enforcement agencies and other public and private entities to train community policing professionals, acquire and deploy cutting-edge crime-fighting technologies, and develop and test innovative policing strategies. This broad range of programs helps COPS offer agencies support in virtually every aspect of law enforcement

Id., at page i.

WSP clearly has adopted and practices the methods, techniques, technology, and ideology of the Office of Community Oriented Policing Services, U.S. Department of Justice. *Problem Oriented Public Safety-WashingtonStatePatrol*, W.S.P., (<http://www.wsp.wa.gov/community/pops.htm>) (last viewed Oct. 25, 2017). WSP has formed a wholly separate entity within WSP that practices proactive police work within the State of Washington. *Id.* The WSP website states in plain terms their adoption of this alternative form of policing. *Id.* This is a section of WSP that is more expansive in its actions, not restricted by traditional law enforcement and is not focused on "investigations"

or records thereof:

Community Outreach· Problem Oriented Public Safety
POPS Mission: The Washington State Patrol, in partnership with our communities, uses problem solving, education, enforcement, and assistance activities to improve public safety.

...

What is Problem Oriented Public Safety (POPS)?

The Washington State Patrol has traditionally responded to public safety issues through random patrols and reactive responses to calls for service. However, in the 1990's the Patrol began combining the traditional concept of law enforcement with the philosophy of Problem Oriented Public Safety (POPS), which focuses on bringing the State Patrol, citizens, and other stakeholders together to work as partners to address public safety issues.

Many community and problem oriented policing (COPS/POPS) models have emerged in city, county, and state police agencies throughout the country. POPS is the Washington State Patrol's tailored approach to problem oriented policing. The two major tenets of problem oriented policing are:

Problem Solving using a model called SARA (scanning, analysis, response, assessment); and Partnerships (engaging stakeholders and citizens in the problem-solving process).

What is a problem that falls within POPS area of concern?

A problem is a series of repeat incidents occurring in a community. The incidents have related characteristics (behavior, location, people, time) that concern the community and fall within the mission and jurisdiction of the Washington State Patrol.

...

Agency POPS Coordinator:

Lieutenant Mark Tegard

PO Box 42600 - Olympia WA 98504-2600

Phone: (360) 596-4114 - Fax: (360) 586-2574

....

Criminal Investigation Division

Lieutenant Randy Hullinger

PO Box 42637 - Olympia WA 98504-2637

Phone: (360) 704-2953 - Fax: (360) 704-2964

...

Homeland Security Division

Lieutenant Troy Tomaras
1519 Alaskan Way S, Building 4 - Seattle WA 98134
Phone: (206) 389-2728 - Fax: (206) 389-2730

...

Investigative Assistance Division:
Lieutenant Chris Sweet
PO Box 42347 - Olympia WA 98504-2347
Phone: (360) 704- 2422 - Fax: (360) 704-2973

...

Special Operations Division
Lieutenant Sam Ramirez
PO Box 426 - Olympia WA 98504-2615
Phone: (360) 596-3991 - Fax: (360) 704-2399

...

Training Division
Sergeant Kent Hitchings
631 West Dayton-Airport RD - Shelton, WA 98584-8945
Phone: (360) 432-7503 - Fax: (360) 432-7642

...

District 8 - Clallam, Grays Harbor, Jefferson, Kitsap, Mason,
Pacific, and Wahkiakum.
Lieutenant Robert Brazas
4811 Werner Rd Bremerton WA 98312
Phone: (360) 473-0102 - FAX: (360) 473-0123

Id. WSP's responses to the PRA and the interrogatories herein queried none of these employees or their staff. CP 209-230. In response to interrogatories, the employees that did respond only answered a portion of the questions instead of reviewing the whole which could have produced incomplete results. CP 209-230.

POPS actions are not investigations. They are independent actions wherein law enforcement completely and purposefully avoids the criminal justice system, instead "crafting" its own "responses" to activities, whether

criminal or not. It also empowers the community to act on its own to solve what law enforcement decides is a “problem” whether criminal or not. There is no PRA exemption for such actions and such actions are unlawful under state and federal law constitutional law.

In the recently published text Michael Scott, *Focused Deterrence of High-Risk Individuals*, Office of Community Oriented Policing Services, U.S. Department of Justice (2017) it states:

This project was supported by Grant No. 2013-DP-BX-K006 awarded by the Bureau of Justice Assistance, a component of the Department of Justice’s Office of Justice Programs...Points of view or opinions in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice. References to specific agencies, companies, products, or services should not be considered an endorsement of the product by the author(s) or the U.S. Department of Justice. Rather, the references are illustrations to supplement discussion of the issues.

Id., page i.

...

In 2013 the Bureau of Justice Assistance (BJA) funded CNA to work with the Center for Problem-Oriented Policing to develop a series of Smart Policing Initiative (SPI) Problem-Oriented Guides for Police. The purpose of these guides is to provide the law enforcement community with useful guidance, knowledge, and best practices related to key problem-oriented policing and Smart Policing principles and practices. These guides add to the existing collection of Problem-Oriented Guides for Police.

SPI is a BJA-sponsored initiative that supports police agencies by helping them develop and implement practices that are informed by research conducted in partnership with external researchers. Smart Policing is a strategic approach that brings more science into police operations by leveraging innovative applications of analysis, technology, and evidence-based practices. The goal of SPI is to

improve policing performance and effectiveness

...

The Response Guides are one of three series of the Problem-Oriented Guides for Police. The other two are the Problem-Specific Guides and the Problem-Solving Tools Guides. The Problem-Oriented Guides for Police summarize knowledge about how police can reduce the harm caused by specific crime and disorder problems. They are guides to preventing problems and improving overall incident response, not to investigating offenses or handling specific incidents.

...

The Response Guides are intended to be used differently from the Problem-Specific Guides. Ideally, police should begin all strategic decision-making by first analyzing the specific crime and disorder problems they are confronting and then use the analysis results to devise particular responses. But certain responses are so commonly considered and have such potential to help address a range of specific crime and disorder problems that it makes sense for police to learn more about what results they might expect from them.

Id., page 1.

...

These guides have drawn on research findings and police practices in the United States, the United Kingdom, Canada, Australia, New Zealand, the Netherlands, and Scandinavia. Even though laws, customs, and police practices vary from country to country, police everywhere experience common problems.

Id., page 2.

...

Focused deterrence is a crime reduction strategy in which carefully selected high-risk offenders (prolific or particularly violent criminal offenders) receive concentrated law enforcement attention and, simultaneously, offers of concentrated social services through direct, persuasive communication and rigorous follow-up of these commitments. Focused-deterrence initiatives (FDIs) commonly include such aspects as identification of prolific offenders, scripted offender notification meetings, coordinated and strategic prosecution, provision of social services to individuals willing to accept them, and careful monitoring of individuals' actions. They are not merely enforcement crackdowns or a method of making life difficult for selected individuals.

Indeed, when carefully and properly implemented, FDIs have great potential to enhance the perceived legitimacy of the police and the public's trust in them in communities where these have often been lacking.

The focused-deterrence—or “pulling-levers”—strategy originated in a problem-oriented policing initiative to address youth-gang gun violence in Boston in the late 1990's. Since then, dozens of jurisdictions in the United States have adopted and adapted the model.

The focused-deterrence approach stems from the deterrence theory of crime, which asserts simply that people are discouraged from committing crimes if they believe they are likely to be caught and punished certainly, severely, and swiftly. These three punishment elements theoretically work best in concert: if any one of the elements is weak, the threat of punishment is diminished and the person is less deterred from committing the crime. Specific deterrence refers to instances when the individual punished is discouraged from offending again. General deterrence is when other people become aware of an individual's punishment and are discouraged from committing similar offenses. FDIs aim primarily to deter high-risk offenders from re-offending, but if properly publicized to offenders' associates and to the wider public, general deterrence can occur as well.

The police role in deterring crime lies principally with the first element—certainty. By law, police are not intended to have much influence on the severity of punishment, at least not official punishment meted out under the criminal law: for the most part, that is left to legislatures, prosecutors, and judges to decide. Nor do police have much say in the swiftness of punishment: that lies largely in the hands of the courts. Much of traditional police work is designed to increase the likelihood that those engaged in criminal activities are caught and brought to court...

Criminal deterrence theory is sound, with the evidence most strongly supporting the certainty of punishment rather than the severity or swiftness of it. Several factors work against the effectiveness of deterrence-based strategies. For example, not all offenses are reported to police, police do not detect or apprehend many offenders, prosecutors are not able to bring formal charges against all arrestees, judges and juries do not convict all those who are tried for crimes, punishments meted out (usually fines, jail time,

community service, or some form of conditional release) are not always perceived as sufficiently harsh, and the imposition of punishment sometimes occurs long after a crime has been committed. Sometimes, even when people will be punished harshly and quickly, they do not believe ahead of time that they will be. Ultimately, punishment deters only to the extent that people believe that they will be caught and that the punishment will be certain, severe, and swift.

...

It is easy to assume that everyone understands the risks of being caught and punished if they commit crimes, and to assume that they fear consequences. The reality in most communities, however, is that relatively few people are caught for each crime they commit and, even when people are caught, the punishments they endure are often far less severe or swiftly administered than might be expected. This means that the general threat of punishment from routine policing and prosecution is relatively weak, and more prolific offenders who have cycled through the justice system many times—know this better than most people. Thus, although prolific offenders know that their odds of getting caught and punished over time are nearly certain, their odds for any particular crime they commit are rather low.

Focused deterrence aims to address some of the weaknesses in the application of deterrence theory. As its name implies, it focuses official and community attention and resources on the relatively few individuals who commit a disproportionate number of crimes, typically violent crimes, and removes any sense of anonymity they might believe they enjoy.

...

Depending on how an FDI is designed, its effects may be operating not only through deterrence theory and situational crime prevention but also through such other theories as Broken Windows, collective efficacy, informal social control, and procedural justice. Focused deterrence is a shorthand description for a multi-faceted strategy that has many important features working simultaneously to change people's attitudes and behaviors in a variety of ways.

Id., pages 4-5.

[F]or focused deterrence to maximize its impact, the threat of enforcement sanctions should be extended beyond one high-risk offender to encompass others in the group. This is like the football

coach making the whole team run extra laps if one player makes a particular kind of mistake.

...
In 2003–2004, the Rochester, New York, FDI lost some of its effectiveness by a failure to carry out enforcement in the wake of continued violence. The swiftness and certainty of the consequences matter more than their severity, although severe consequences carry added weight to the deterrence message.

Id., page 16.

Keep in mind that FDIs are a still relatively new innovation and, as such, not all of the important issues concerning them have been thoroughly examined through careful research. Accordingly, some of the recommendations in this guide are based on a limited set of practitioner experiences rather than on firm research findings. There is much yet to be learned about FDIs through both practitioner experience and research.

Id., page 6.

These documents clearly and unequivocally spell out DOJ instructions to police to avoid the criminal justice system because it is WEAK and adopt a new system, focusing on (in the DOJ's own words) “targeted individuals.” *Id.* This is a process that by its very design avoids the court system, the legislature and the will of the people of the state. The DOJ instructs police to adopt their own system of, as they phrase it, “swift and severe punishment” that is left to the individual police to “craft” themselves. *Id.*

In Michael Scott, *Identifying and Defining Policing Problems*, Problem-Solving Tools Series, No. 13, Office of Community Oriented Policing Services, U.S. Department of Justice (2015), the DOJ funded literature uses an expansive definition to label even non-criminal conduct as “problems” which

they encourage police to oversee:

Problem-oriented policing calls for the police to organize at least part of their work around a new basic work unit: a problem. A policing problem is different from an incident or a case. Under problem-oriented policing a problem has the following basic characteristics: 1) A problem is of concern to the public and to the police; 2) A problem involves conduct or conditions that fall within the broad, but not unlimited responsibilities of the police; 3) A problem involves multiple, recurring incidents or cases, related to one another in one or more ways; [and] 4) A problem is unlikely to be resolved without special police intervention. Another way of summarizing these characteristics is by the acronym CHEERS: Community - Individuals, groups or organizations are affected by the problem; Harmful - The problem causes actual or perceived harm to community members. The harm is not necessarily the result of criminal conduct; Expectation - The public's expectation that police address the problem is reasonable; Events - The problem is experienced through discrete events that may or may not result in police calls-for-service; Recurring - The discrete events will have been recurring for some time and, importantly, are likely to continue to recur in the absence of some special police intervention; Similarity - The discrete events are similar to one another in one or more ways...

Id., page 9-10. (Numbers replacing bullet points above.)

The COPS Office defines community policing as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.

Id., page 2.

The term scanning is used in the SARA model to communicate the idea that you need to actively scan the policing environment to identify troublesome situations that might warrant addressing as problems rather than relying on conventional policing methods—i.e., preventive or directed patrol, handling incidents, investigating cases, arresting offenders—to address the situation.

Id., page 13. On the WSP website it specifically adopts the DOJ's ideology and

practices “police-problem-solving model-the SARA (Scanning, Analysis, Response, Assessment) model.” Problem Oriented Public Safety-WashingtonStatePatrol, Id.

The guide continues to explain how to disseminate the information within the community to draw the attention to the victim. Identifying and Defining Policing Problems, Id. It begins with a description of where to find the people to spread the message to and terms these people/groups as community partners. Id. In the immediate case, the WSP has claimed that the extensive property damage that I have continuously suffered from was not “done” by the WSP because they “do not” do such things. CP 25. If a state agency is disseminating rumors about an individual throughout the community that are so repugnant that the community begins to destroy the persons belongings, or acts in conjunction with another agency in doing so, that state agency is completely culpable whether they performed the destruction or not. There is even more culpability where the agency is actively engaging community members to inflame, scare or incite the community and informing them that they may act independently and on their own. Focused Deterrence of High-Risk Individuals, continues: “Focused-deterrence initiatives require a great deal of coordination and collaboration among government and non-government organizations, as well as community groups” Id., page 9. Community Partners were listed to

include: 1) Informal community leaders (i.e., citizens who have earned general respect from others in the community); 2) Neighborhood associations; 3) Local clergy; 4) Local chapters of civil rights organizations; 5) Business associations; 6) Youth service organizations; and 7) Researchers. *Id.* This publication described their role: “Non-government and non-social service community members play key roles in FDIs, particularly in expressing community values, desires, and commitments to high-risk offenders, as well as monitoring individuals’ behavior and reporting transgressions to police.” *Id.* Other publications expanded that citizen responsibility to informally adopt police roles and actions enforcing behavior.

The most disturbing aspect of the DOJ's model for FDI's is the potential length of time they are exposed to focused deterrence without ever receiving a chance to contest the allegations:

Obviously, if an individual is reincarcerated or dies, they would be removed from FDI attention, but because FDI attention entails both heightened risk of punishment as well as heightened social services, formally removing individuals from FDI attention is not always going to be in individuals’ best interests.

Michael Scott, *Focused Deterrence of High-Risk Individuals*, Office of Community Oriented Policing Services, U.S. Department of Justice (2017).

In M.S. Scott, H. Goldstein, *Shifting and Sharing Responsibility for Public Safety Problems*, Problem-Oriented Guides for Police Response Guide

Series No. 3, U.S. Department of Justice, Office of Community Oriented Policing Services(August 2005), the ideology to shift policing and police power to community members, without the safeguards of policing structure, was clearly and unequivocally set forth. It states:

The public calls upon the police to respond to an astounding range of problems and to perform an extraordinary diversity of tasks, all the while assuming that police have the expertise and resources to do so. In recent years, through a more methodical approach to policing, police are increasingly pressing for a more rational distribution of responsibilities based upon a detailed examination of the differing facets of police business. This guide details the ways in which police can persuade or coerce others to address crime and disorder problems....There is also growing evidence—much of it found in the literature on situational crime prevention—that demonstrates how public safety problems can be prevented, reduced, and controlled with little or no police involvement, a process by which police unquestionably benefit...Once the problem and a remedial strategy have been identified, it is important to determine which of the various stakeholders is in the best position to implement and enforce the proposed solution. Depending on the situation, the police, private citizens, industry, or the government may all bear some responsibility for addressing a problem...For example, where educating, warning, or advising citizens is called for, it is very much an open question whether the police or someone else should be responsible for developing and delivering the message... Until better arrangements are made within local communities and in society at large for determining and assigning such responsibilities, it will continue to fall to police to analyze public safety problems and to take the lead in apportioning responsibility for addressing them.

Methods for Shifting and Sharing Responsibility for Public Safety Problems

The police can apply a variety of methods to get others to assume greater responsibility for public safety problems... One way in which the methods differ is the degree of coercion that police apply to achieve their objective. The list begins with methods that are

generally less coercive and proceeds to those that are generally more coercive, although the degree of coercion may depend upon the specific context and not necessarily on the nature of the method applied... In its ultimate form, the police effort to shift responsibility for public safety problems entails assisting others to develop the capacity to identify and rectify problems without further police intervention. A prime example occurs where police work at the neighborhood level helps residents develop what sociologists term collective efficacy, "the ability of neighborhoods to realize the common values of residents and maintain effective social controls." Short of a complete shift in responsibility, in most instances police look to shift or share part of the responsibility with respect to a specific problem or set of problems, bounded in time and space.

Id., pages 2-6

In many instances, police and others employ a variety of methods to address a problem...The methods used are not mutually exclusive....Two important notes of caution are in order. First, many of the examples cited below are drawn from reports prepared by police agencies. Although such reports have been widely accepted and considered credible, few of these initiatives have benefited from rigorous and independent evaluation...Second, some methods that police may propose to persuade others...will undoubtedly face legal challenges.

...

The use of straightforward requests is a natural first step that police take when seeking to have specific individuals or organizations take responsibility for addressing a crime or disorder problem. Naturally, a positive response to the initial request obviates the need for any increased pressure. Here, the police are not simply broadcasting prepared advice on prevention to a large audience. Rather, they are focused upon asking citizens to resolve an immediate problem by taking a specific remedial action. Although the fact that the police are making the request may imply that consequences will follow if the request is ignored, it is often the case that police are merely informing a citizen of something of which she was not aware, and the citizen gratefully and graciously complies with the request.

...

One of the clearest results of recent changes in policing is the increased tendency of police agencies to confront aggressively

those adjudged responsible for a large volume of incidents that fall to the police to handle. Police typically resort to this more confrontational mode when straightforward requests are ignored. Typically, police document both how a problem is caused and how it is aggravated by the actions or in-actions of others. The resulting documentation is then presented to the offending party, together with a request that preventive measures be taken. The hope is that when confronted with such documentation the party will feel obliged to assume responsibility for taking the requisite preventive measures. However, depending on the specific situation, the confrontation may be bolstered by either a subtle implication or a more overt threat that failure to comply will result in more coercive measures.

...

Police in St. Louis, Missouri informed a finance company that a property it had financed was being used for illegal drug trafficking. This suggested to the company that their investment was at risk, perhaps of being seized by the government. Realizing that an outright foreclosure and eviction of the property's elderly resident might bring adverse publicity, the company instead opted to pay the offending resident to relinquish the property and move out. The finance company then took possession of the property, thereby eliminating the drug trafficking problem. In this case, police did not need to ask the finance company to take remedial measures; merely bringing the matter to its attention suggested the proper course of action.

Id. pages 8-14.

Public shaming is often an intermediate step between the type of private confrontation described earlier and resort to legal action...Public reputation is of great value to individuals, businesses, and agencies; hence, having police publicly discredit them can have significant long-term consequences...The police goal is to call to public attention the nature of the problem, the factors that cause or contribute to the problem, the reasonableness of police requests, the refusal or failure to respond to less coercive measures, and the arguments for holding others accountable for their contributions to the problem.

...

Withdrawing Police Services

Police occasionally seek to force the adoption of preventive

strategies by refusing to respond, investigate, arrest, or take other official action where an individual or organization has refused to implement measures that are designed to reduce the likelihood of victimization. If a complete service withdrawal is not feasible, police may respond with fewer resources, which can be done by lowering the priority given to certain types of incidents, by putting more of the reporting burden on the complainant, or by reducing the level of follow-up service after the taking of an initial report.

...

Charging Fees for Police Services

Some police agencies seek to recover the cost of providing a particular service from the individuals who benefit from the service. The rationale for cost recovery is that those who make excessive claims are consuming more than their fair share of public resources, or at least more than their tax payments reasonably entitle them to. ...Among the most common problems with which police deal are security alarm systems installed in homes and businesses...well over 90 percent of all such alarms are false...In response, police in many jurisdictions have arranged for the enactment of a fee schedule that escalates based upon the number of false alarms that are handled...In other areas, an annual fee is assessed in anticipation of whatever services the police may be called upon to render in connection with an alarm including simply maintaining their readiness..

Id., pages 22-25.

Bringing a Civil Action

There are several avenues by which police and others can bring legal actions to force individuals and organizations to implement measures to prevent crime and disorder... It is the threat of an abatement action that often renders targeted confrontational requests effective. In one of the more novel uses of civil actions, the Safe Streets program, based in Oakland, California, trains local citizens to acquire the evidence needed to petition in small claims court for the abatement of a drug house, without any need for a lawyer; any receipts from sale of the premises are distributed among the petitioners. Police involvement in this process is limited to cooperating with community members seeking police documentation of criminal activity occurring in or near the subject premises.

Id., pages 28-29.

Much of the body of knowledge that police rely upon to argue for shifting and sharing responsibility for addressing problems is based upon insights they have acquired through years of experience and, less commonly, upon rigorous research...Much police knowledge about the prevention and control of crime and disorder is largely untested. That does not totally diminish its value, and there remains a critical need to capture, test, and refine police expertise, thereby contributing to a more formal body of knowledge to support police practices.

..
Much of the art of policing consists of determining and applying the degree of pressure or coercion that is appropriate to a particular situation...No single factor will dictate which method or degree of coercion should be employed.

Id., pages 31-33.

This is focused deterrence that involves the community which is instructed that the victim merits being a "target." That person can not defend themselves because the matter is purposefully kept out of the court system. The victim loses the freedom to associate, to find employment, to defend against the allegations being disseminated, to determine what allegations are being disseminated under police authority. The result is the community ganging up on the victim with continuous pressure. This is exacerbated in small communities containing poor educational and economic conditions. It becomes physically unsafe for the victim.

C. Patrol's Public Records Manager Responds

Based upon WSP own description of its organization, it is reasonable to expect that the type of documents sought by the requestor could and would be in

possession of the POP, POPS and/or COPS troopers and their offices. Those individuals and their offices are clearly held out to the public on the agency website.

It is clear from case law, attorney general opinion, and statute that documents in possession of the agency from whatever source, have to be disclosed and then an exemption claimed. Otherwise it is silent withholding and this destroys the effectiveness of the PRA.

The request was clear, specifically limited by its terms, and directed to specific times and subject matter. Breath does not invalidate a PRA request.

The WSP did not invite clarification. It negated the request and instructed the requestor that a new request was necessary and that new request could only be in the limited form as set forth by WSP. This disregarded the precedent handed down in *Gendler*, wherein the agency response was almost identical, mandating repetitive review of a similar action by the same agency.

Specifically, he requested copies of police reports on all accidents on the Montlake Bridge involving bicycles. **The WSP responded that it could not provide accident reports by location and that it would provide records to Gendler only if he were able to specifically identify the person involved in the collision and the precise collision date.** Gendler was also informed that only the DOT was able to produce a historic list of traffic accidents based on physical location and referred to a "Request for Collision Data" form that would be necessary before the State would fulfill his request.

Gendler v. Bastiste, 174 Wn.2d 244, 248-49, 274 P.3d 346 (Wash. 2012)

(Emphasis added.)

E. In the event this court finds that WSP failed to search a portion of its records required by the PRA, it can issue specific direction to that agency. This court sits in the same position as the trial court in review of summary judgment.

Id. The facts/documents are before this court in the same stance they would be at the trial court level:

For reasons of economy, the appellant will want to be alert to those situations in which the case can be resolved entirely in the appellate court, without the need for further proceedings in the trial court. In an appeal from the denial of a motion to correct the name of the defendant in a default judgment, for instance, the Court of Appeals held that it had the authority to order the correction pursuant to CR 60, even though the rule only applies in superior court. The court based its authority on RAP 12.2 and RCW 2.06.030. Entranco Eng'rs v. Envirodyne, Inc., 34 Wn. App. 503, 662 P.2d 73 (1983).

...

The appellate courts have also occasionally modified the amount of damages awarded rather than remand for a new trial. Alpine Indus., Inc. v. Gohl, 30 Wn. App. 750, 758, 637 P.2d 998 (1981), 645 P.2d 737 (1982) (judgment adjusted when jury damages award slightly exceeded maximum amount supported by substantial evidence). Division I similarly concluded that it had the authority to hold a reasonableness hearing on a postjudgment settlement under RCW 4.22.060 in Lockwood v. AC&S, Inc., 44 Wn. App. 330, 361-62, 722 P.2d 826 (1986), *aff'd*, 109 Wn.2d 235, 744 P.2d 605 (1987). Alternatively, the appellate court may expressly direct a particular result in the trial. Division II called the case of Radach v. Gunderson, 39 Wn. App. 392, 695 P.2d 128, review denied, 103 Wn.2d 1027 (1985), an "appropriate case for the application of RAP 12.2," *id.* at 401, and remanded with explicit instructions for issuance of an injunction bringing the respondents' house into compliance with zoning requirements, and for entry of a judgment for the cost of complying with the injunctive relief against the city

of Ocean Shores, which had allowed the noncomplying structure.

Washington Appellate Practice Deskbook, §20.8(3)(Wash. State Bar Assoc. 4th ed. 2016)

If this court believes that the search was not preformed properly it can simply determine the divisions where no search was performed at all.

CONCLUSION

The motivation behind this PRA request was not financial. It is more probable to have an negative financial effect and grave prospects for the requestor. These actions and this treatment can not be allowed to be secreted in this country. The PRA was made, regardless of outcome, to generate a public record to allow others to bring this closer to public awareness and belief. WSP has surrounded certain terms in the PRA by quotation marks (“emissions”) for effect. CP 10. This is not a joke. The article Christopher S. Koper, Bruce G. Taylor, and Bruce E. Kubu, Law Enforcement Technology Needs Assessment: Future Technologies to Address the Operational Needs of Law Enforcement, Police Executive Research Forum and Lockheed Martin Corporation(Jan 16, 2009), states in part:

The effects of technology can be seen in almost all aspects of modern life, and law enforcement is no exception. The field of law enforcement has been altered by technology in many important ways.

...

Given the importance of technology, the Police Executive Research Forum (PERF), a membership organization of police chiefs and

sheriffs, has been actively exploring ways to harness technology to help advance the field of law enforcement. This interest has led to a new partnership for PERF. In July 2007, PERF with support from the Lockheed Martin (LM) Corporation, embarked on a project designed to gain a detailed understanding of law enforcement's perspectives and high-priority technology needs...The partnership between PERF and LM's Advanced Concepts Protection Organization (ACPO) in its Law Enforcement Support (LES) group is unique and brings together complementary expertise and skills. LM...brings engineering expertise and extensive experience developing technology for the military.

Page 3.

2.2.5. Weapons and Tactical Equipment

Besides weaponry, there are numerous technologies that have tactical uses for police, some of which have been mentioned above... In recent years, police have increasingly sought technologically advanced non-lethal weapons to replace or complement traditional weapons...Other newly emerging devices for controlling individuals or crowds include high intensity light weapons, currently used by only 1% of police agencies, and sound wave devices. An illustration of a non-lethal light weapon is the "LED Incapacitator" recently developed for the Department of Homeland Security. This device causes "flash blindness," nausea, and disorientation by flashing lights at several randomly changing frequencies. In contrast, long range acoustic devices, which can be used to amplify police orders over a long distance, can also be used as a non-lethal weapon that causes pain, nausea, disorientation, and possibly hearing damage. Reportedly, about a dozen public safety agencies nationally have purchased such equipment

Pages 18-19.

Having identified broad technology categories for law enforcement, there is now a need to better understand which specific devices will best meet these technology needs. Further, we must identify best practices for the implementation and use of these technologies. We therefore recommend case studies to examine the implementation and use of these key technologies in agencies that have applied them successfully. Such studies should examine technical and organizational issues involved in planning and implementing these technologies, everyday uses

of the technologies, and measurable outcomes associated with the uses of the technologies.

Page 73.

Sound wave incapacitation weapon: A non-lethal weapon that uses microwaves or sonic waves in order to cause pain or minor discomfort in order to regain control of a large crowd or subject.

Pages 96-97. (Citations removed.)

“Lockheed Martin's Bothell office has unveiled a world record-setting laser weapon for the U.S. Army. Lockheed successfully developed and tested the 58kW laser beam earlier this year, setting a world record for this type of laser.”
Coombs, Casey, *Lockheed Martin in Bothell develops record-setting laser weapon for U.S. Army*, Puget Sound Business Journal (March 17, 2017).

This agency may or may not have any involvement with what is occurring on a nightly basis as well as the collateral actions. However, these occurrences could only be performed with public authority and money. The WSP by its own admission is the general law enforcement agency within the state. Given the frequency of joint efforts between federal and state agencies, the use of fusion centers and the expansive sharing of operations and information, it is highly unlikely that this agency lacks records pertaining to this activity.

Respectfully submitted this 26th day of October, 2017.

Nicholas Clapham
Nicholas Clapham, *Pro Se*
WSBA #17646

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, October 31, 2017 11:50 AM
To: 'NC'
Subject: RE: Re: Electronic Filing - Document Upload for Case 94362-1 - Service

Received 10-31-17.

Supreme Court Clerk's Office

From: NC [mailto:seaseanc@gmail.com]
Sent: Tuesday, October 31, 2017 5:51 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Fwd: Re: Electronic Filing - Document Upload for Case 94362-1 - Service

----- Forwarded message -----

From: "NC" <seaseanc@gmail.com>
Date: Oct 27, 2017 6:53 PM
Subject: Re: Electronic Filing - Document Upload for Case 94362-1 - Service
To: "OFFICE RECEPTIONIST, CLERK" <supreme@courts.wa.gov>
Cc:

I can not log on and am trying to file this reply. Nicholas Clapham

On Thu, Aug 24, 2017 at 10:35 AM, <supreme@courts.wa.gov> wrote:

Court: Supreme Court
Case Number: 94362-1
From: Lucy Pippin
Organization: Washington State Attorney General's Office - Criminal Justice Division
Filed on Behalf of: Shelley Anne Williams

This is to inform you that the file(s) listed below were electronically filed for the above mentioned case by Lucy Pippin from Washington State Attorney General's Office - Criminal Justice Division, filed on behalf of Shelley Anne Williams.

Below is a link to each of the document(s) which have been filed with the court.

- [943621 Motion 20170824102727SC275196_8314.pdf](#)

Attached is a copy of the Transmittal Letter sent to the court.

The court will treat this email as proof of service on you.

If you have any questions, please contact virginia.neal@courts.wa.gov and reference Filing Id 20170824102727SC275196.

--

Nicholas L. Clapham
(407)484-9625

NOTICE- This email message may contain confidential and privileged information. It is intended only for the named recipient(s) and may contain attorney work product and/or information exempt from disclosure under applicable law. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. This does not constitute an electronic signature.

Pursuant to U.S. Treasury Department Circular 230 and other IRS regulations, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any transaction or matter(s) addressed herein.