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SUPREME COURT  
STATE OF WASHINGTON

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BY RONALD R. CARPENTER

NO. 82194-1

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of:

JAMES W. GRANTHAM,

Petitioner.

SECOND STATEMENT  
OF ADDITIONAL  
AUTHORITY

Pursuant to RAP 10.8, the State of Washington Department of Corrections (DOC) provides the following second statement of additional authority. This authority is submitted with regard to questions during oral argument about whether the intercepted telephone conversation between Mr. Grantham and his brother could have been made available to him at his disciplinary hearing.

1. RCW 9.73.095 (2) to (5)

(2) (a) All personal calls made by offenders shall be made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.

(b) The calls shall be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison offender, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when

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intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all offenders, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of October, 2009.

ROBERT M. MCKENNA  
Attorney General



PETER W. BERNEY, WSBA #15719  
Assistant Attorney General  
JAY D. GECK, WSBA # 17916  
Deputy Solicitor General  
Attorneys for Respondent  
PO Box 40116  
Olympia WA 98504-0116  
(360) 586-1445

**CERTIFICATE OF SERVICE**

I certify that on the date below I served a copy of the SECOND STATEMENT OF ADDITIONAL AUTHORITY on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by \_\_\_\_\_

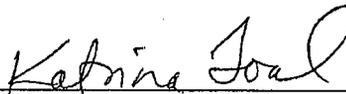
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TO:

NANCY COLLINS  
WASHINGTON APPELLATE PROJECT  
1511 3RD AVENUE SUITE 701  
SEATTLE WA 98101-3635

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 14<sup>th</sup> day of October, 2009, at Olympia, Washington.

  
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**To:** Berney, Peter (ATG)  
**Cc:** Geck, Jay (ATG); nancy@washapp.org  
**Subject:** RE: Grantham, No. 82194-1

Rec. 10-14-09

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**From:** Berney, Peter (ATG) [mailto:PeteB@ATG.WA.GOV]  
**Sent:** Wednesday, October 14, 2009 11:34 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Geck, Jay (ATG); nancy@washapp.org  
**Subject:** Grantham, No. 82194-1

Please file the attached Second Statement of Additional Authority in PRP of Grantham, No. 82194-1.

Peter Berney

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<<Second Statement of Additional Authority.pdf>>