



Case Law Update 2018

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Agenda

- Current Tort Caps
- Law Enforcement Cases
- Recent Member Jury Trials
- Municipal & Employment Cases
- Q & A



Current Tort Caps



Local Government Lobbied to Raise Caps

Previous Caps:

- Property damage: \$50,000
- Economic damages: \$100,000
- Non-economic damages: \$100,000

New Caps (adjusted annually):

- State & local property damage: \$115k / \$579k
- Local personal injury/death: \$706k / \$1.41 mil
- State/OHSU personal injury/death: \$2.12 mil / \$4.24 mil



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New Case Law on Law Enforcement



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Court of Appeals & Supreme Court Decisions

- *County of Los Angeles v. Mendez*
 - Supreme Court rejected 9th Circuit's "provocation" rule.
- *White v. Pauly*
 - Supreme Court affirmed Qualified Immunity for officer who arrived late and shot plaintiff because officer was entitled to assume that earlier officers had followed proper procedures.
- *Carpenter v. United States*
 - Awaiting Supreme Court decision on whether warrant is needed to seize and search cell phone tower data.



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Court of Appeals & Supreme Court Decisions

▪ *Entler v. Gregoire*

- Ninth Circuit ruled that prisoner's 1st Amendment rights violated when disciplined for threatening prison official with criminal charges.

▪ *Crime Justice & America, Inc. v. Honea*

- Ninth Circuit ruled that jail could ban paper magazine where the jail presented actual evidence non-personal paper created security problems and jail had 31 electronic kiosks throughout the jail to access electronic version of magazine.



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Court of Appeals & Supreme Court Decisions

▪ *United States v. Sanchez-Gomez*

- Ninth Circuit ruled that criminal defendants have constitutional right to be free from shackles in courtrooms absent individualized decision of compelling government purpose and shackles were the least restrictive means of courtroom security. (*U.S. Supreme Court accepted review.*)

▪ *Jones v. Las Vegas Metro Police Dept.*

- Ninth Circuit ruled that repeated and simultaneous use of tasers (dart and drive stun) for over 90 seconds was unconstitutional.



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Court of Appeals & Supreme Court Decisions

▪ *Sharp v. County of Orange*

- Ninth Circuit ruled that arrest warrants don't create categorical authority to detain home occupants like search warrants.
- Ninth Circuit also ruled that an otherwise lawful detention violated the 1st Amendment where the detention was prolonged because of plaintiff's argumentative speech.

▪ *Zion v. County of Orange*

- Ninth Circuit denied Qualified Immunity to officer who continued to shoot prone suspect and then stomped on him.



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Court of Appeals & Supreme Court Decisions

■ *Longoria v. Pinal County*

- Ninth Circuit ruled that officer cannot use a single frozen frame from an iPhone video to justify a use of force where the officer would not have perceived the danger in real time.



ACLU v. City of Eugene



- Disclosure of police excessive force documents where no discipline imposed; ORS 181.854(3) exception and balancing



Recent Member Jury Trials



Recent Member Jury Trials

- *Slaughter v. City of Tigard*
 - Jury verdict for officers who took disgruntled 75 year-old bank customer to the floor after negotiating with him for 30 minutes to leave the bank premises



Slaughter v. City of Tigard: Good Police Work

- The police officers exercised restraint and great patience in dealing with elderly disgruntled bank customer who was verbally abusive and physically threatening to both bank employees and the officers, and who refused to leave the bank despite multiple requests to do so.
- Situation provides a good example of de-escalation techniques and progressive use of force tactics.



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New Municipal & Employment Cases



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Ninth Circuit Court of Appeals

- *Guido v. Mount Lemon Fire Dist.*
 - Age Discrimination: ADEA applies to all government employers no matter how many people it employs.
- *Zetwick v. Co. of Yolo*
 - Hostile Workplace: Cumulative effect, not final event



Oregon Supreme Court & Court of Appeals

- *Skille v. Oregon State Hospital*
 - Tort Claim Notice Period: Period extended where security transport employee groomed inmate with mental impairment to provide sexual favors.
- *OHSU v. Oregonian*
 - Public Records Request/HIPAA: Providing *The Oregonian* a list of tort claims filed against OHSU would have required disclosing patient names and the medical services received. Disclosure not required.



Oregon Supreme Court & Court of Appeals

- *Multnomah County Sheriff's Office v. Edwards*
 - Veterans' Preference: If a public employer does not give applicants numerical scores, the entity still must create a "discernible plan" for providing a preference to veteran applicants. "Ad hoc" system does not suffice.
- *Folz v. ODOT*
 - Whistleblower: HR representative did not engage in whistleblower activity by recommending lesser discipline for intoxicated employee





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