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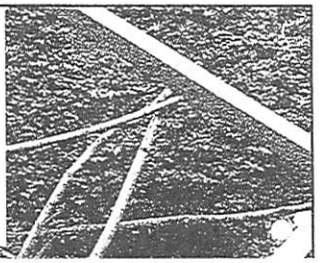

Update: U.S. Supreme Court Denies Petition for Certiorari Filed by City of Seattle Regarding Plaintiff's Nominal Damages Victory in Section 1983 Police Misconduct Case Against Seattle Police Department

In the case of *Andrew Rutherford v. Jason McKissack et al.*, hot off the press, the United States Supreme Court, on Monday, June 17, 2013, denied the City of Seattle's petition for a *writ of certiorari* to the Ninth Circuit Court of Appeals. In effect, the U.S. Supreme Court affirmed the decision of the Ninth Circuit Court of Appeals, which, in a memorandum decision, affirmed the Jury Verdict, as well as the award of nominal damages and attorney's fees issued by U.S. District Court Judge Marsha Pechman, involving important limitations regarding when police officers may use a firearm during the course of an investigatory stop (See "Nominal Damages Victory - Section 1983 Police Misconduct Case Against Seattle Police Department Has Value in Teaching Police a Lesson About Important Limitations in Terry Stops," WSAJ *Trial News*, March 2013). The plaintiff, Andrew Rutherford, who was represented at the trial level, by Jay Krulewitch and Michael Kolker, had the additional excellent assistance of Leonard Feldman and Sara Berry, of Stoel Rives, who managed and directed the appellate response on behalf of Mr. Rutherford. Mr. Feldman and Ms. Berry did an outstanding job, first in directing this case to victory in the Ninth Circuit Court of Appeals, and then in opposing the City's petition for review before the U.S. Supreme Court. Clearly, their appellate prowess was extremely helpful and effective. As a result, all of us on the Plaintiff team were gratified with the final result, which, in effect, was a major victory, not only for our client, Mr. Rutherford, but also for the Fourth Amendment.

Initially, we won a small victory in this civil rights case, i.e. one dollar in damages and a fee award of just over $90,000. But the City of Seattle attempted to use our client's case to argue to the U.S. Supreme Court that *Washington v. Lambert*, 98 F.3d 1181 (9th Cir. 1996), should be reversed. Thus, while the damages and fee award on our behalf was small, the case grew in stature and importance given the appellate strategy of the City of Seattle, which tried very hard to get the Ninth Circuit, and then the U.S. Supreme Court, to reverse the decision in *Washington v. Lambert*. Thankfully, they failed in their attempt. As a result, it should be clear to all police officers and law enforcement departments, especially those within the Ninth Circuit, that a police officer should not pull a firearm and point it at a citizen during a normal misdemeanor traffic stop absent some special and compelling circumstances. We are fortunate that the Ninth Circuit Court of Appeals found that such a limitation makes common sense and is appropriate under the Fourth Amendment and that the U.S. Supreme Court wisely agreed with them. As we noted previously, to do otherwise, to allow police officers the broad, unhampered discretion to pull their firearm during regular, ordinary misdemeanor traffic stops, would be to increase the likelihood of armed confrontations between police offices and citizens of our community, something which no modern civil society should wish for, and which any rational and just society should take affirmative steps to avoid.

—Jay Krulewitch and Michael Kolker