

# WSACE 2020 Conference

## Road Design Liability

### 101

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# Crosswalk verdicts in Washington

- ▶ Incomplete database.
- ▶ 1992 - 2019 (25 years)
- ▶ 19 verdicts or settlements involving government in pedestrian crossing cases.
- ▶ Three defense verdicts.
- ▶ Total: \$41,494,000      Avg: \$2,440,125

# Road Design Verdicts

- ▶ Tapken v. Spokane: \$12,500,000
- ▶ Hu v. WSDOT: \$35,000,000
- ▶ Merdes v. WSDOT: \$5,400,000
- ▶ Sharkey v. WSDOT: \$18,130,000
- ▶ Monzon v. Kitsap County: \$5,600,000
- ▶ Barnum v. WSDOT: \$5,350,000
- ▶ Whitmer v. Pierce County: \$6,350,000

# Basics of Negligence

- ▶ Tort Law
- ▶ Negligence is the “failure to exercise ordinary care.”
- ▶ “Ordinary care is the care a reasonable person in the same or similar circumstances would exercise.”
- ▶ Driving example: Observations of other; Driver’s Manual



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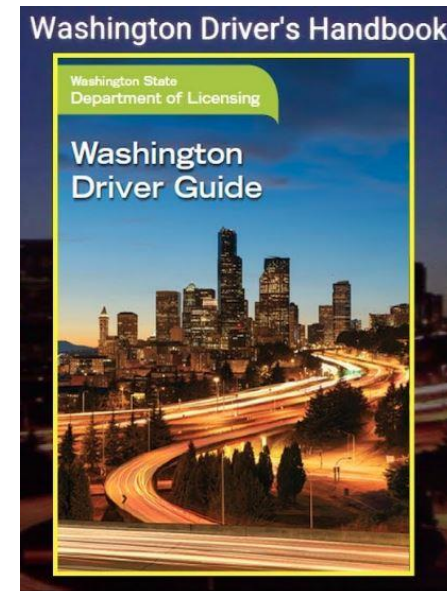
Your peers:  
Others “in the same or similar circumstances”

## Road Test Prep



## Following Distance

What do the written authorities  
Say?



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# Tapken v. Spokane (2019)

Speed Limit = 45 MPH

Safe Speed for Curve = 20MPH



# Tapken v. Spokane County

- ▶ First, the warning signs to slow down on the preceding eight curves created the expectation that all significant curves would have similar signs.
- ▶ Second, Spokane County placed the first yield-ahead sign too far in advance of the intersection.
- ▶ Third, the hawthorn bush obscured the curve's sharpness to the right.
- ▶ Fourth, the same bush obscured the yield sign on the right.
- ▶ Fifth, Spokane County located the directional sign in the middle of the “Y,” indicating Waverly to the left and Spangle to the right, beyond, rather than preceding, the intersection.
- ▶ 5 prior accidents



# The Importance of Policy

- ▶ “Tapken made an offer of proof that the County's own road standards manual required the County to study any location with a history of road departures and mitigate the problem.”
- ▶ *Tapken v. Spokane County.*, 192 Wn. App. 1012 (2016), review denied, 185 Wn.2d 1040, 377 P.3d 767 (2016)



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# Tapken v. Spokane County

- ▶ “The County had a duty to exercise reasonable care, to design, build and maintain its roads in a reasonably safe condition for ordinary travel.”
- ▶ What would a government agency do in the “same or similar circumstances.”

# Tapken v. Spokane County

- ▶ Gross verdict: \$12,500,000
- ▶ 60% County = \$7,500,000
- ▶ 30% Driver
- ▶ 10% Plaintiff
- ▶ Joint and Several Liability

# Basics of Negligence: Case Study

## Xu v. City of Issaquah



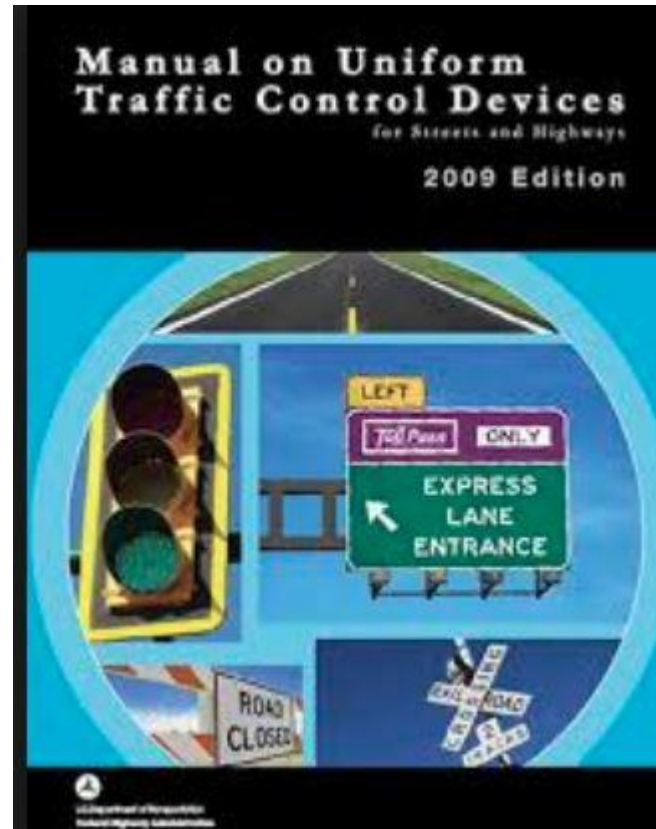
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# Xu v. City of Issaquah

- Was the City negligent?



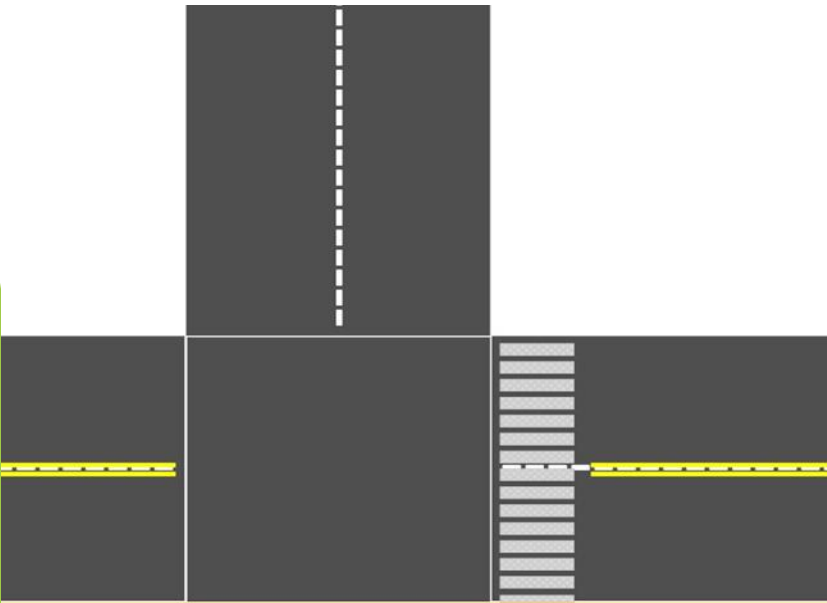
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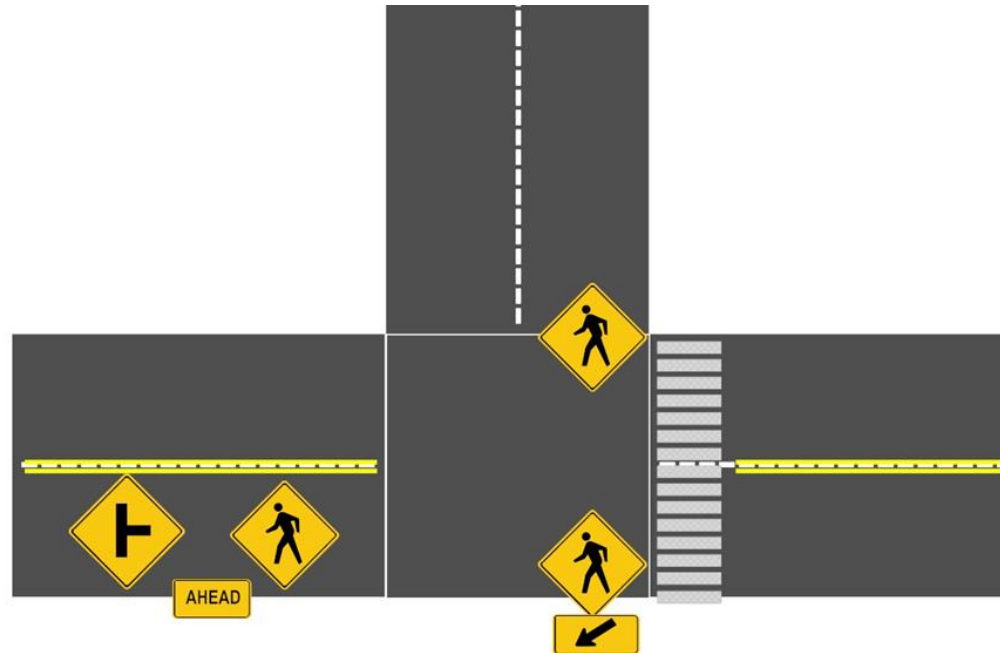
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# Xu v. City of Issaquah

WHAT THE MUTCD  
REQUIRES



WHAT THE CITY  
PROVIDED



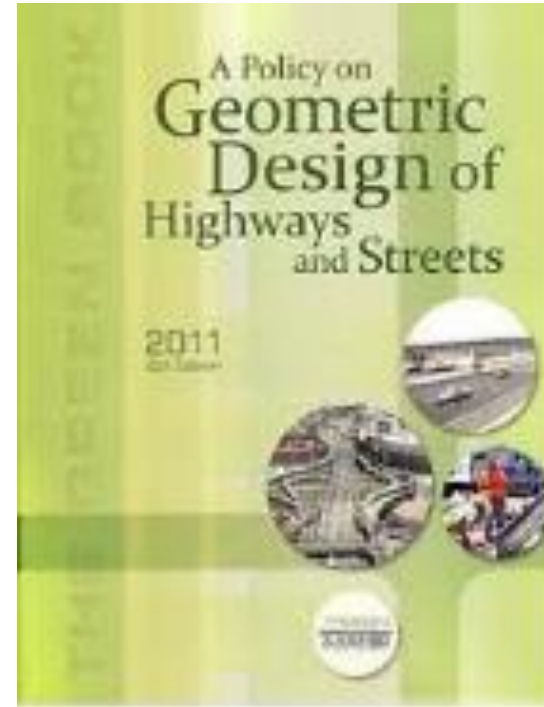
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# The Importance of Policy

- ▶ Driver's Guide is a Policy
- ▶ MUTCD is a Policy
- ▶ AASHTO is a “Policy”



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# Fite v. Puyallup





# Fite v. Puyallup





# Fite v. Puyallup -- 10 years No complaints No accidents



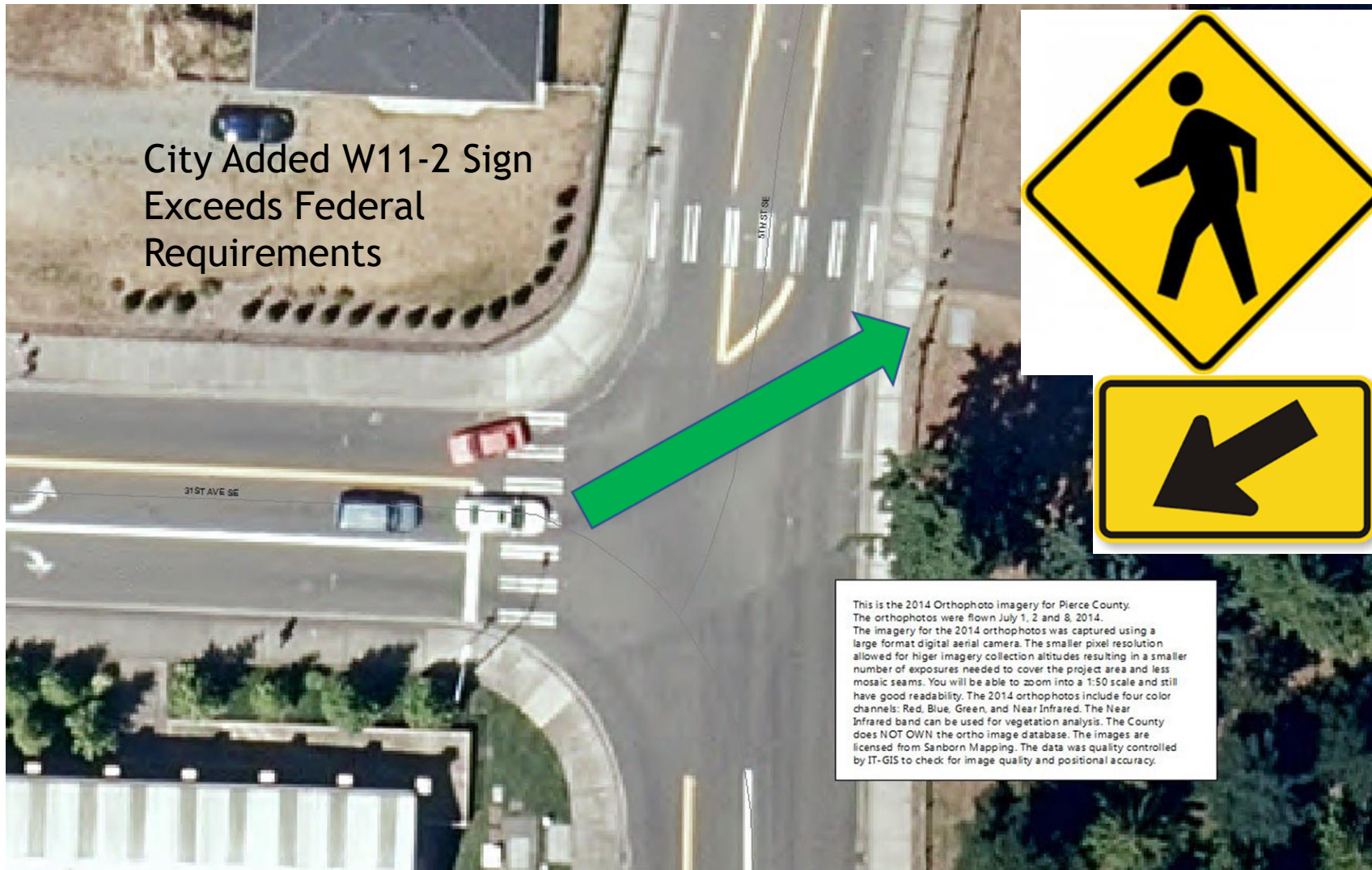
# Fite v. Puyallup

Federal Highway Administration  
Requires 6 feet. City of Puyallup  
Installed 10 foot.





# Fite v. Puyallup



# Fite v. Puyallup

- ▶ Gross Verdict: \$6,500,000
- ▶ City: 66% Fault
- ▶ Driver: 34% Fault
- ▶ Plaintiff: 0% Fault

# The Importance of Policy: Where to Get Them

- ▶ Your peers
- ▶ APWA, AASHTO, FHWA, NACE
- ▶ Self- made



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# The Importance of Policy: Pitfalls

- ▶ “may”, “should”, and “shall”
- ▶ Avoid “shall” Tension for supervisors



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# The Importance of Policy: Pitfalls

Hull Board Policy #1

Revised 11/03/2003

Revised 08/03/2009

## ROADWAY VEGETATION & MAINTENANCE POLICY

▶ THEREFORE: be it resolved the Town of Hull Board does authorize the town road crew to cut vegetation that encroaches in the following clear zone:

1) Collector roads (through roads, non subdivision roads) **shall** have a horizontal clear zone of the paved driving surface and five feet from the edge of the paved driving surface...

5) Road crew **will** cut vegetation at all intersections and on roads in Hull that impede driver vision and create dangerous conditions



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# Vegetation Maintenance

- ▶ “A municipality's duty to maintain its roadways in a reasonably safe condition for ordinary travel is not confined to the asphalt. If a wall of roadside vegetation makes the roadway unsafe by blocking a driver's view of oncoming traffic at an intersection, the municipality has a duty to take reasonable steps to address it.”
- ▶ *Wuthrich v. King Cty.*, 185 Wn.2d 19, 23, 366 P.3d 926, 928 (2016)



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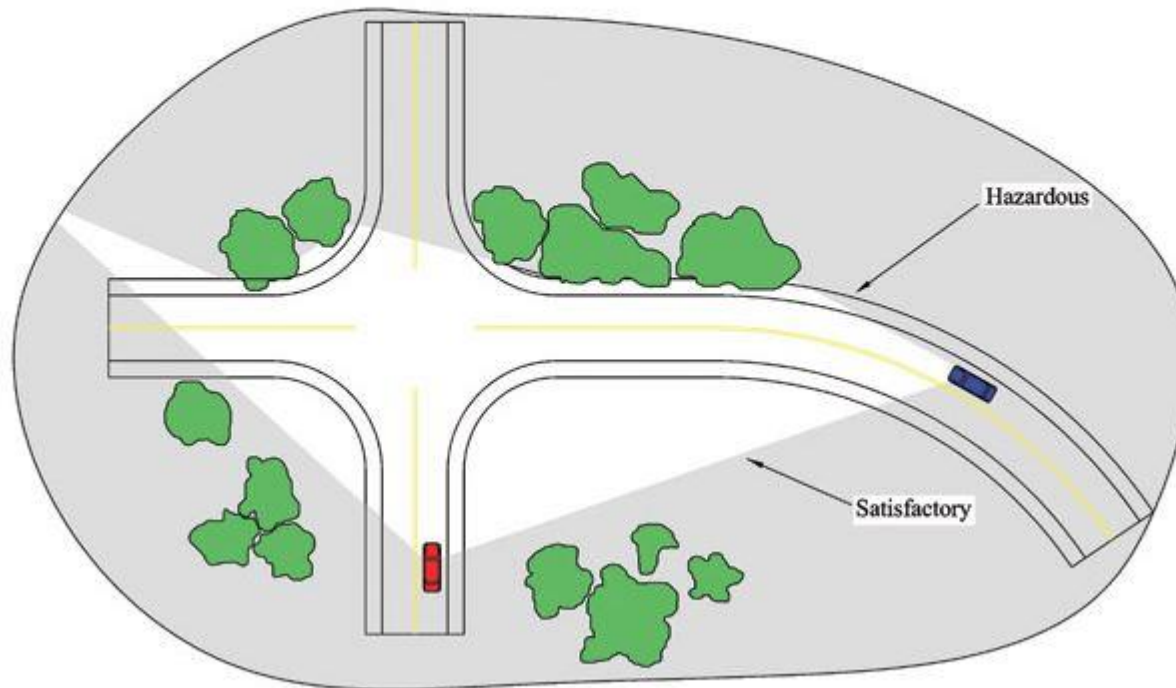


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# Vegetation Maintenance

## V. Intersection Sight Distance

Another important sight distance requirement that can be affected by vegetation is intersection sight distance. Drivers approaching an intersection need a clear line of sight to the intersection and along the crossroads early enough to see any conflicting vehicles, bicyclists and pedestrians to avoid a collision. Together these sight lines provide a sight triangle. These sight triangles can be limited by the presence of horizontal and/or vertical curves, buildings and other physical objects, and vegetation. Providing adequate clear sight triangles is critical for safety of all road users, so you want to make sure that vegetation overgrowth is not limiting the sight distance at intersections.



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# Vegetation Maintenance

- ▶ Evergreen State
- ▶ Private Property
- ▶ AASHTO
- ▶ WSDOT Design Manual Intersection Sight Distance



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# Vegetation Maintenance

- ▶ Step 1: Review your vegetation policy. Remove all “shalls” or “wills”
- ▶ Step 2: Check to see if your county adopted AASHTO or WSDOT Design Manual
- ▶ Step 3: Consider the following:
  - ▶ “Drivers in this County are expected to position their vehicles so that they have sufficient sights distance to enter a roadway. This County does not remove or maintain vegetation to create sight distance at a stop bar or stop sign. This County does not remove or maintain vegetation that exists on private property, even where that vegetation interferes with sight distance.”



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# Snow and Ice Maintenance: Do's and Don'ts

- ▶ “The rule is that a city must have (a) notice of a dangerous condition which it did not create, and (b) a reasonable opportunity to correct it before liability arises for negligence from neglect of duty to keep the streets safe. *Niebarger v. Seattle*, 53 Wash.2d 228, 332 P.2d 463. Here, the evidence was that the snow had been on the ground no more than two days, and the most recent crust of ice had formed only a few hours earlier. It is plain that the city had not had a reasonable opportunity to remove it.
- ▶ *Wright v. City of Kennewick*, 62 Wn.2d 163, 167, 381 P.2d 620, 623 (1963)



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# Snow and Ice Maintenance: Do's and Don'ts

- ▶ And, this general awareness persisted for about three and one-half hours, during which the school district actively complied with its snow removal policy. The snow concealed the dangerous ice. The staff parking lot never presented major concerns before and, throughout the morning, the school district received no reports of ice from the 65 to 70 employees who parked vehicles there.
- ▶ A rational jury could reasonably conclude the dangerous ice beneath the snow had not been called to the school district's attention and knowledge
- ▶ *Biorn v. Kennewick Sch. Dist. No. 17*, 178 Wn. App. 1007 (2013)



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# Snow and Ice Maintenance: Do's and Don'ts

- ▶ Do: Have a policy
- ▶ Do: Follow your policy
- ▶ Don't: Set unreasonable goals
- ▶ Don't Do more than you can reasonably accomplish



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# Keeping A Healthy Relationship with Law Enforcement

- ▶ Why have a partnership?
- ▶ What are the mutual benefits?
- ▶ A tradition of verbal communication.
- ▶ Stay in your lanes
- ▶ Example: *Monzon v. Kitsap County*
- ▶ Example: *Tapken v. Spokane County*
- ▶ Example: *Fite v. Puyallup*



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# Key Risk Management Steps

- ▶ Pay attention to all accidents a little -- Pay attention to big accidents a lot.
- ▶ When you have that big accident -- Take action
- ▶ Crosswalk accidents are different.
- ▶ Quadriplegia is different.
- ▶ Have a process that shows you care.