

Case No. S221852

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**IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

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**PEOPLE OF THE STATE OF CALIFORNIA,**  
Plaintiff and Respondent,

SUPREME COURT  
**FILED**

v.

OCT 30 2015

**PAUL MACABEO,**  
Defendant and Appellant.

Frank A. McGuire Clerk

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Deputy

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After a Decision of the Court of Appeal, Second Appellate District,  
Division Five, Case No. B248316, from Superior Court of California,  
County of Los Angeles, Case No. YA084963, Hon. Mark Arnold

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**APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

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Attorneys for PAUL MACABEO

## REQUEST FOR JUDICIAL NOTICE

Pursuant to California Evidence Code section 459 and California Rule of Court 8.252, subdivision (a), Mr. Macabeo requests that the Court take judicial notice of the following documents (collectively, Law Enforcement Training Materials):

- (1) California Commission on Peace Officer Standards and Training (POST), Case Law Today Program Guide (Nov. 2014) [EXHIBIT A];
- (2) POST, Case Law Today, "Search Incident to Infraction Arrest" (Nov. 2014) (Video) [EXHIBIT B];
- (3) POST, Case Law Today, "Search Incident to Infraction Arrest" (Nov. 2014) (Transcript) [EXHIBIT C].

### **I. The Law Enforcement Training Materials are Relevant.**

The Law Enforcement Training Materials are relevant because they specifically discuss the court of appeal's ruling in this case and instruct officers about the decision. They were published by the California Department of Justice's law enforcement training body, the California Commission on Peace Officer Standards and Training (POST). Exhibit A is POST's description of a training video it produced for police officers in late 2014, Exhibit B is the video itself, and Exhibit C is a transcript of the video. Through the video, POST instructs officers that probable cause for any infraction is sufficient to conduct a full custodial search, and that officers

may wait to see the results of the search before deciding whether to arrest the subject.

The Law Enforcement Training Materials are directly relevant to the issues before the Court. In Appellant's Opening and Reply Briefs on the Merits, Mr. Macabeo explained how the decision below would expand the search incident to arrest warrant exception and increase the incidence of indiscriminate, exploratory searches by police. (See AOB 40-46; ARB 2-9.) In the Respondent's Brief on the Merits, the prosecution has given its interpretation of the court of appeal's opinion, and has argued that the decision below does not expand police authority. (See RB 29-36.) The Law Enforcement Training Materials will advance this Court's understanding of the practical consequences of the court of appeal's ruling. They show how the Department of Justice's POST has actually explained the court of appeal's opinion to law enforcement officers throughout California, and what officers have been trained they may do.

**II. The Law Enforcement Training Materials are Subject to Judicial Notice.**

The Law Enforcement Training Materials were not the subjects of judicial notice in the courts below because they did not exist until after the court of appeal issued its decision. It would be appropriate to take judicial notice of them now under California Evidence Code section 452, subdivision (c) because their preparation and publication are "official acts"

of the executive department of California. Alternatively, this Court may take judicial notice of the training materials under section 452, subdivision (h) because the accuracy of these government documents is capable of immediate determination and not reasonably subject to dispute, and this Court has taken judicial notice of similar documents in the past.

**A. This Court may take judicial notice of the Law Enforcement Training Materials pursuant to Evidence Code section 452, subdivision (c).**

This Court has discretion to take judicial notice of the Law Enforcement Training Materials. Evidence Code 459, subdivision (a) provides that reviewing courts may “take judicial notice of any matter specified in Section 452.” Section 452, subdivision (c) provides in turn that court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.” POST prepared and issued the training materials as official acts of the executive department of the State of California.

POST is within the executive department, and is directed by statute to provide training to law enforcement agencies. POST was established by the Legislature as an agency within the California Department of Justice. (Pen. Code, § 13500, subd. (a).) POST has 15 commissioners appointed by the Governor, after consultation with the Attorney General, and with the advice and consent of the Senate. (*Ibid.*) The Attorney General is an ex officio member of the Commission. (*Id.*, subd. (c).) The Commission is

charged with developing and implementing programs “to increase the effectiveness of law enforcement . . . .” (Pen. Code, § 13503, subd. (e).) It is obliged to devote as many resources as possible to the core mission of “providing training and other services to local law enforcement agencies.” (Pen. Code, § 13505.)

The Law Enforcement Training Materials were produced as official acts of POST and the Department of Justice. POST placed Exhibit A on its website to describe its “Case Law Today” training videos for November 2014. Case Law Today is a long-running monthly video series that explains court rulings and legal developments to police officers. (See Declaration of Charles D. Weisselberg [attached], ¶ 4.) Exhibit B, the “Search Incident to Infraction Arrest” training video, was released by POST to officers throughout California to train them about *People v. Macabeo*, and what the court of appeal’s decision permits police to do. The preparation and release of the Law Enforcement Training Materials were thus official acts of the executive department. They were taken by an executive agency within its statutorily-mandated function of “providing training and other services” to law enforcement officers.

California courts regularly take judicial notice of agency publications and other “official acts” under Evidence Code section 452, subdivision (c). (See, e.g., *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374, fn. 4 [87 Cal.Rptr.2d

654, 981 P.2d 499] [transcripts of public hearings]; *Harris v. Alcohol Bev. Appeals Bd.* (1965) 62 Cal.2d 589, 595 [43 Cal.Rptr. 633, 400 P.2d 745] [agency bulletin (judicially noticed under predecessor to section 452)]; *Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1137 [69 Cal.Rptr. 445] [article issued by agency about the passage of a new law]; *People v. Crusilla* (1999) 77 Cal.App.4th 141, 147 [91 Cal.Rptr. 415] [publication of the California Attorney General’s Office].) In addition, “official acts” include creating and publishing materials on agency websites. (See, e.g., *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 417 fn. 25 [145 Cal.Rptr.3d 567] [school site guidelines published on the agency’s website]; *Shaw v. People ex rel. Chiang* (2014) 175 Cal.App.4th 577, 606 fn. 10 [96 Cal.Rptr.3d 379] [definition of a term contained on a governmental department’s website].)

This Court should take judicial notice of the Law Enforcement Training Materials pursuant to Evidence Code section 452, subdivision (c). They are “official acts” of the executive department.

**B. This Court may take judicial notice of the Law Enforcement Training Materials pursuant to Evidence Code section 452, subdivision (h).**

Alternatively, the Law Enforcement Training Materials may be judicially noticed under section 452, subdivision (h), which states that judicial notice may be taken of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate

determination by resort to sources of reasonably indisputable accuracy.” Exhibit A is publicly available on POST’s website; its accuracy is capable of immediate determination and is not subject to dispute. (See <[https://www.post.ca.gov/Data/Sites/1/post\\_docs/caselawguides/2014/Nov2014.pdf](https://www.post.ca.gov/Data/Sites/1/post_docs/caselawguides/2014/Nov2014.pdf)> [as of October 27, 2015]; Weisselberg Decl., ¶ 6.) While Exhibit B is on a password-protected portion of POST’s website (available only to law enforcement officers), it was produced to counsel by POST and matches the video description in Exhibit A. (Weisselberg Decl., ¶¶ 4, 6-10.) Exhibit C is simply a transcript of Exhibit B, and can be compared to Exhibit B. (*Id.*, ¶ 11.)

This Court routinely takes judicial notice of documents published on government websites. In *People v. Seumanu* (2015) 61 Cal.4th 1293, 1372-1373 [192 Cal.Rptr.3d 195, 355 P.3d 384], this Court cited Evidence Code section 452, subdivision (h) when taking judicial notice of documents on “sites maintained by California’s Department of Corrections and Rehabilitation and the Office of the Attorney General.” This is consistent with the Court’s reliance, in other contexts, on materials presented on government websites. (*See also Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1203-1204 fns. 3 & 4 [185 Cal.Rptr.3d 538, 345 P.3d 896] [citing an on-line manual from the Utah Prosecution Council to help explain the field sobriety tests performed by officers during a traffic stop]; *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 717-718 & fns. 15 & 16 [168 Cal.Rptr.3d

440, 319 P.3d 201] [considering internal guidelines of the Cal. Dept. of Alcohol Beverage Control, as expressed in a 2009 trade enforcement information guide]; *People v. King* (2006) 38 Cal.4th 617, 626 [42 Cal.Rptr.3d 743, 133 P.3d 636] [utilizing a firearms discussion contained “on the Attorney General’s own Web site” to counter its assertions about the use of certain weapons].)<sup>1</sup>

Evidence Code section 452(h) thus provides an alternative basis for this Court to notice the Law Enforcement Training Materials. Given their source, their accuracy is not reasonably subject to dispute.

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<sup>1</sup> Appellant does not seek judicial notice as to the truth or correctness of factual or legal assertions within the training materials. Rather, Appellant seeks judicial notice of the existence of the training materials on POST’s web page and on-line Learning Portal, and what they communicated to officers. (See *Ragland v. U.S. Bank Nat. Assn.* (2012) 209 Cal.App.4th 182, 193 [147 Cal.Rptr. 41] [taking judicial notice of audit report, Web sites, and blogs, without accepting their contents as true].)



## CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court take judicial notice request of the Law Enforcement Training Materials, Exhibits A, B, and C.

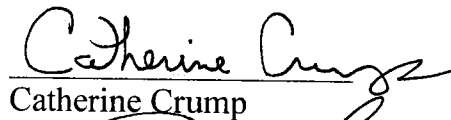
Respectfully submitted,



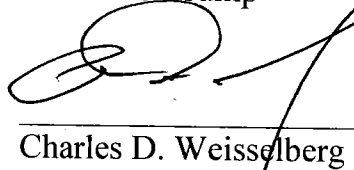
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Attorneys for Appellant  
Paul Macabeo

**DECLARATION OF CHARLES D. WEISSELBERG IN SUPPORT  
OF APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

I, Charles D. Weisselberg, declare:

1. I am a member of the California Bar. I am one of the attorneys for Appellant Paul Macabeo, and I make this Declaration in support of Appellant's Request for Judicial Notice.
2. I am also a law professor at the University of California, Berkeley, School of Law. I teach Criminal Procedure and study police practices. As part of my research, I regularly examine police training materials, especially those relating to judicial decisions. These materials help me understand how court rulings are explained to police officers, most of whom are not lawyers.
3. One source of police training materials is the California Commission on Peace Officer Standards and Training (POST), an agency with the California Department of Justice. POST produces standard curricula for the basic training academies that prospective law enforcement officers attend. POST also supports a variety of in-service or advanced training courses and programs, and produces training materials for police officers throughout the State of California.
4. Until June 2015, POST produced a video series called "Case Law Today" (the series was once called "Case Law Updates"). For years, POST released monthly Case Law Today or Case Law Updates, videos of

approximately an hour in length. Each video was comprised of a number of segments devoted to a recent case or a developing area of the law. In recent years, monthly releases typically contained five or six segments, considered to be of suitable length to show officers during “roll-call” sessions. Each segment typically featured a prosecutor or judge explaining the holdings of relevant cases and the implications of these holdings for law enforcement officers and their activities. POST used to distribute the videos via a monthly satellite broadcast, and later by DVD. Beginning in July 2012, POST distributed the videos to law enforcement exclusively on the POST Learning Portal, its on-line training hub for officers. I am informed and believe that POST ceased producing its Case Law Today videos after June 2015.

5. I am personally familiar with Case Law Today. I have obtained Case Law Today videos periodically under the California Public Records Act. I discussed the videos in articles published in 2001 and 2008. For my 2008 article, I spent several days at POST’s Library in Sacramento, personally reviewing training videos and other materials, including 53 Case Law Today segments on statements and interrogation law. The Berkeley Law Library received the monthly Case Law Today DVDs from January 2008 through June 2012, and I regularly viewed them. After July 2012 (when POST shifted to on-line distribution), I also occasionally read POST’s Case Law Today Program Guides, which describe the video

segments in the monthly Case Law Today releases. Program Guides are currently available on-line on POST's web page, here:

<https://www.post.ca.gov/case-law-today-guides.aspx>.

6. In May 2015, I reviewed a number of POST Case Law Today Program Guides, including the Program Guide for November 2014. A true and correct copy of the November 2014 Case Law Today Program Guide is attached as Exhibit A. Exhibit A describes a video segment titled "Search Incident to Infraction Arrest," and references *People v. Macabeo* (2014) 229 Cal.App.4th 486. The Program Guide also indicates that the November 2014 videos were released by POST on the POST Learning Portal on December 19, 2014.

7. I submitted a Public Records Act Request for eight specific video segments that were of interest to me, including "Search Incident to Infraction Arrest." A true and correct copy of my Public Records Act Request, which I mailed to POST on May 18, 2015, is attached as Exhibit D. I also emailed my Request to a POST employee. A true and correct copy of my May 18, 2015 email is attached as Exhibit E.

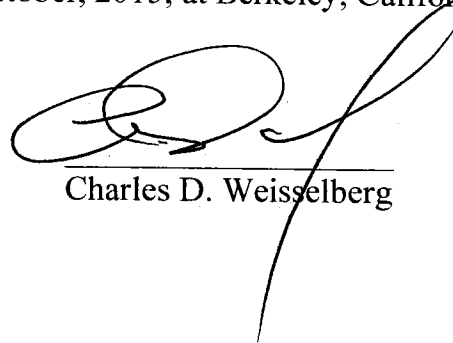
8. I received an email response from POST's Linda Thach on May 19, 2015, granting my request and requesting payment of \$39 for duplication of the segments. A true and correct copy of Ms. Thach's email is attached as Exhibit F. I mailed a check to POST for \$39 shortly thereafter.

9. I subsequently received a mailer from POST, postmarked May 28, 2015. The mailer contained a cover letter and a DVD. True and correct copies of the mailer, cover letter, and label from the DVD are attached collectively as Exhibit G.

10. The DVD produced by POST has the eight Case Law Today video segments I requested. They are in mp4 format. A DVD with a true and correct copy of the "Search Incident to Infraction Arrest" segment in mp4 format is attached as Exhibit B.

11. A true and correct copy of a transcript of "Search Incident to Infraction Arrest" is attached as Exhibit C. Exhibit C was prepared at my request. I have personally compared Exhibits B and C, and I believe that Exhibit C is an accurate transcript of Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of October, 2015, at Berkeley, California.



Charles D. Weisselberg

**EXHIBIT A**

California Commission on Peace Officer Standards and Training (POST),  
Case Law Today Program Guide (Nov. 2014)



# November 2014

## Online Video

Online at [www.lp.post.ca.gov](http://www.lp.post.ca.gov)

Multimedia I.D. Number: NA

CPT Hours: NA

Release Date: 12/19/14

### Unsafe Lane Changes and Unsignalled Turns

With William W. Bedsworth, Appellate Court Justice, State of California

California case law includes numerous cases having to do with rape, robbery and burglary-- with many more about murder. But what about unsafe lane changes and unsignalled turns and all of the things most officers deal with a thousand times more often? Justice Bedsworth discusses unsafe lane changes and unsignalled turns. *Cases/Statutes Cited: People v. Logsdon (2008) 164 Cal.App.4th 741; VC §§ 22107. (6:42) Category: Codes*

### Bicyclists Can Be Charged with Reckless Driving

With Jeff Rubin, Senior Deputy District Attorney, Alameda County, CA

A bicyclist who recklessly rides his bicycle may properly be charged with violating Vehicle Code section 23103, which makes it unlawful to drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. *Cases/Statutes Cited: Velasquez v. Superior Court (2014) 227 Cal.App.4th 1471; VC §§ 23103, 670, and 21200. (3:43) Category: Codes*

### 148 at School

With Devallis Rutledge, Special Counsel – Los Angeles County District Attorney's Office

Discusses a case where the court upheld conviction for 148 by student who refused an officer's order to sit down and calm down, and tried to evade the officer's grasp. The student was also convicted of violating Education Code § 32210, disturbing a public school. *Cases/Statutes Cited: PC 148; In re J.C. (2014) 228 Cal.App.4th 1394; EC § 32210. (5:01) Category: Codes*

### Are Persons Detained During Warrant Service "In Custody" Under Miranda?

With Jeff Rubin, Senior Deputy District Attorney, Alameda County, CA

Considering that police have a right to detain and handcuff residents of a home during service of a search warrant, and that a resident so detained and cuffed is not deemed to be under arrest (especially where the detaining officers tell the resident he is not under arrest), such persons are also not deemed to be in custody for Miranda purposes. Thus, no Miranda warnings were required before officers executing a warrant asked a cuffed and detained resident if he was responsible for the home and property in the home. *Cases/Statutes Cited: People v. Castillo (2014) 228 Cal.App.4th 414. (4:03) Category: Interrogations & Miranda*

### Search Incident to Infraction Arrest

With Devallis Rutledge, Special Counsel – Los Angeles County District Attorney's Office

In the Macabeo case, the California Court of Appeal applies Atwater (OK to arrest for minor offenses), Moore (state law cannot invalidate arrest with PC), and McKay (search incident to arrest for bicycle infraction OK) to deny suppression of evidence from a search incident to arrest for bicycle infraction, even if the grounds for justification were not relied on by the searching officer. Key points include: Probable cause to arrest for an infraction justifies a search incident to arrest, under the 4th Amendment; if the search yields evidence of a bookable offense, the suspect can be arrested for both the infraction and the bookable offense; if nothing is found during the search, the suspect may be released from arrest on citation, or without further action, per PC § 849(b)(1). *Cases/Statutes Cited: Atwater v. Lago Vista (2001) 532 US 318; Virginia v. Moore (2008) 553 US 164; People v. McKay (2002) 27 Cal.4th 601; People v. Macabeo (2014) 229 Cal.App.4th 486. (6:14) Category: Vehicle Stops/Searches*

This video series is only offered as streaming video exclusively on the POST Learning Portal. Visit the portal at [www.lp.post.ca.gov](http://www.lp.post.ca.gov)



## Video Program Guide

California Commission on Peace Officer Standards and Training

**EXHIBIT B**

POST, Case Law Today, "Search Incident to Infraction Arrest"  
(Nov. 2014) (Video)



**EXHIBIT C**

POST, Case Law Today, "Search Incident to Infraction Arrest"  
(Nov. 2014) (Transcript)

Transcript, “Search Incident to Infraction Arrest”

California Commission on Peace Officer Standards and Training  
*Case Law Today* (November 2014)  
With Devallis Rutledge, Special Counsel – Los Angeles County  
District Attorney’s Office  
[discussing *People v. Macabeo* (2014) 229 Cal.App.4th 486]

Hello, welcome back. This week we have a California Court of Appeal decision that builds on two prior U.S. Supreme Court decisions and one prior California Supreme Court decision to reach a conclusion that may be surprising to some folks but it’s consistent with the direction the law has been going. This is *People v. Macabeo* —I don’t know how you say that, but I’m gonna say “Macabeo” — *People v. Macabeo* from the Court of Appeal.

What happened is Paul Macabeo was riding his bicycle and he went right through a red light or a stop sign, I forget which it was — and it was a stop sign. And so the police officer stops him, because he’s violated 22450A, he didn’t stop at the stop sign, and those rules—even though the bicyclists don’t all seem to know it — those rules apply to them when they’re out there on the road. So there’s this stop of Macabeo with a bicycle infraction. And then there’s the police officer trying to establish some means for searching him. He asks him about probation and the guy was on probation but now he’s off. He asks for consent but he limits it to just searching the pockets. And he gets consent, but in the pocket he finds

a cell phone. And according to the facts at least, he doesn't ask for consent to search the cell phone, he had just asked for consent to search the pockets to see what was in there. So it's kind of difficult to justify — and then he pats him down and then searches the cell phone and finds child pornography on it.

The question is does the evidence of the child pornography come in under these circumstances. And so, you know, everybody here, the prosecutor, the magistrate who's hearing the motion, everybody's scratching around trying to come up with the right way to justify the search. And there is a right way. And they find it.

It begins with a 2001 decision from the U.S. Supreme Court called *Atwater v. Lago Vista*. That case said, "A custodial arrest may be made for a traffic violation without violating the United States Constitution." They said we don't care what the state court may say, we don't care what the state statutes may say about arresting. You can arrest under the Fourth Amendment if you have probable cause to believe the person committed any offense. In that case, it was driving with no seat belt on. That was an offense, the officer had probable cause because he saw it, therefore the arrest was good under the Fourth Amendment, said *Atwater*.

Seven years later, in *Virginia v. Moore*, U.S. Supreme Court said, and like we said in *Atwater*, the arrest doesn't have to be authorized by some state statute to be lawful under the Fourth Amendment. "An arrest

need not be authorized by state law to be constitutional under the Fourth Amendment,” they said, because the Fourth Amendment, the U.S. Constitution is the supreme law of the land, it’s not subject to amendment by state statutes. State legislatures cannot amend the U.S. Constitution, the Fourth Amendment means what we say it means and we already told you in *Atwater*, it means an officer can arrest with probable cause for any offense.

So in *People v. McKay*, the California Supreme Court faithfully applied the *Atwater* rule and upheld a search incident to arrest for a bicycle infraction. Guy was riding his bicycle the wrong way, on the wrong side of the road. Supposed to stay on the same side as the traffic, on the right side. He was on the wrong side. So the officer stopped him, searched him, found drugs. The drugs come in, said *People v. McKay*. Arrest for riding a bicycle on the wrong side of the street justified the search, which yielded admissible narcotics.

Okay, then we come to *Macabeo*. So the court here says, the trial court hearing the motion, the defense attorney’s saying, “well, that’s not what the police officer said in his report, he didn’t say it was a search incident to arrest, he said it was either probation or consent or something, he never tried to justify it on the basis of search incident to an arrest.” The trial court said this, which was quoted in the Court of Appeal opinion: “What was going through the officer’s mind does not have any bearing on the legality of what the officer did.” It’s not a question of the officer’s

analysis, it's a question of objectively can we justify what the officer did. And the court said yeah, "Under *Atwater*, all that's needed to justify a custodial arrest is a showing of probable cause." We had probable cause. He went right through the stop sign. And the court said, "There's nothing inherently unconstitutional about effecting a custodial arrest for a fine-only offense." Although ordinarily you might just give a warning or cite and release, there's nothing unconstitutional about making an arrest, and if you have the PC to make an arrest, then you have the right to make a search incident to arrest either before or after making the arrest.

So *Macabeo* said, "Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." Therefore, even though subsequently the U.S. Supreme Court came down and said you cannot search a cell phone incident to arrest, at the time this search occurred the rule under *People v. Diaz* was yes, you can. And so you can't blame the police officer for not anticipating that the U.S. Supreme Court three years later is going to reverse that. So the evidence came in.

The takeaway:

—PC to arrest for an infraction justifies a search incident to arrest, under the Fourth Amendment.

—If the search yields evidence of a bookable offense, suspect can be arrested for both the infraction and the bookable offense. Don't forget the infraction. Dance with the girl that brung you.

—And if nothing is found during the search, the suspect could be released from arrest, either on citation, or with no citation, no further action, under 849(b)(1) of the Penal Code.

So those are your options when you have somebody who commits an infraction in front of you. You have PC to arrest him for that, which gives you the right to search. And what that search yields will determine whether you book him or release him on citation or with no further action.

You're up to date on the rules of *Macabeo*. I'll see you next time.

**EXHIBIT D**

Public Records Act Request, dated May 18, 2015

May 18, 2015

Ms. Alexis Blaylock, Public Information Officer  
California Commission on Peace Officer  
Standards and Training  
860 Stillwater Road, Ste. 100  
West Sacramento, CA 95605

University of California, Berkeley  
School of Law  
Berkeley, California 94720-7200  
Tel 510-643-8159  
Fax 510-642-3856  
cweisselberg@law.berkeley.edu

By U.S. Mail and by pdf to Ron.Crook@post.ca.gov

Re: Public Records Act Request

Dear Ms. Blaylock:

I am writing to request release of public records pursuant to the Public Records Act, California Government Code §§6250, *et seq.*

I have previously conducted research at POST's Library and, pursuant to the Public Records Act, POST used to provide my own Law School's Library with DVDs of POST's "Case Law Today" series. The series is particularly helpful in understanding how rulings in appellate cases are explained to law enforcement officers. However, when "Case Law Today" went from release on DVDs to release only on POST's Learning Portal, my Library no longer received the series, which thus requires me to submit this request. I specifically request copies of the "Case Law Today" videos for the four months listed below. If it is easier to produce individual segments (rather than the entire months), I would also accept the eight individual segments I have identified below.

I ask that you please provide copies of the following:

1. Case Law Today (August 2014) – the entire video or these segments: (a) Searches of Cell Phones Incident to Arrest: *California v. Riley*; and (b) Post-California v. Riley Issues Arising in Searching Cell Phones.
2. Case Law Today (October 2014) – the entire video or these segments: (a) Use of Suspect's Post-Arrest/Pre-Miranda Silence; and (b) Miranda: Invocation of Right to Counsel.
3. Case Law Today (November 2014) – the entire video or these segments: (a) Are Persons Detained During Warrant Service "In Custody" Under Miranda; and (b) Search Incident to Infraction Arrest.





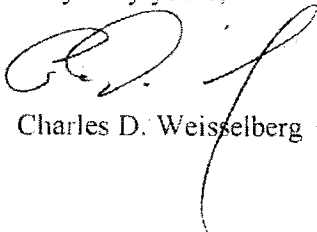
Commission on Peace Officer  
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4. Case Law Today (March 2015) – the entire video or these segments: (a) Only *Express* Refusal of Consent By One Occupant Overrides Consent of Other Occupant; and (b) Juvenile's Ambiguous Miranda Invocation.

I request that you determine whether you will comply with this request within ten days, as required by Cal. Gov. Code §6253(c). Please tell me whether there is any duplication fee for these materials, and I will promptly provide payment. Finally, should you determine that any materials fall within exceptions to disclosure under the Public Records Act, I request that you indicate which items you will not turn over for inspection and specify the reasons, pursuant to Cal. Gov. Code §6255.

Thank you very much for your assistance. Please feel free to call me with any questions.

Very truly yours,



Charles D. Weisselberg

cc: Mr. Ron Crook, POST (via email and pdf)

**EXHIBIT E**

Email to POST, dated May 18, 2015

Subject: Case Law Today; Public Records Act  
From: Charles Weisselberg <cweisselberg@law.berkeley.edu>  
Date: 5/18/15, 2:55 PM  
To: Ron.Crook@post.ca.gov  
CC: Charles Weisselberg <cweisselberg@law.berkeley.edu>

Dear Mr. Crook:

I hope this finds you well.

A number of years ago, we were in communication with respect to my efforts to obtain POST training videos under the California Public Records Act. For a while, our Law Library received the monthly videos. But when the Series was no longer distributed on DVDs, we stopped receiving them.

I have just mailed the attached Public Records Act request to POST. I'm seeking Case Law Today videos for 4 select months (8 specific segments). I'm taking the liberty of sending a copy of the request to you, as I assume you may be the person who will fulfill the request.

I do not wish to put you to too much trouble, but I would very much like your assistance in obtaining the videos. I'm happy to work with you to obtain them in whatever way is easiest for you. And of course I'll cover any duplication costs.

Many thanks for your assistance.

With best regards,  
Chuck

--

Charles D. Weisselberg  
Associate Dean, J.D. Curriculum and Teaching  
& Shannon C. Turner Professor of Law  
U.C. Berkeley, School of Law  
Berkeley, CA 94720-7200  
Tel: 510-643-8159  
Fax: 510-642-3856  
cweisselberg@law.berkeley.edu

Attachments:  
Public Records Act Request 18 May 2015.pdf 36.2 KB

**EXHIBIT F**

Initial Public Records Act Response from POST, dated May 19, 2015

**Subject:** CPRA Request

**From:** "Thach, Linda@POST" <Linda.Thach@post.ca.gov>

**Date:** 5/19/15, 4:21 PM

**To:** Charles Weisselberg <cweisselberg@law.berkeley.edu>

Hello Charles,

The Commission on Peace Officer Standards and Training (POST) is in receipt of your California Public Records Act (CPRA) request dated May 18, 2015. You requested for Case Law Today for the months of August 2014, October 2014, November 2014, and March 2015, total of eight segments. The duplication cost is \$39. Please make the check payable to Commission on Peace Officer Standards and Training (POST) and mail to the following address:

Commission on POST  
Attn: Linda Thach  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

Please contact me at the number below if you have any questions.

Thank you,  
Linda Thach  
Associate Analyst  
POST Human Resources

(916) 227-4854 (desk)  
(916) 227-3931 (fax)  
[linda.thach@post.ca.gov](mailto:linda.thach@post.ca.gov)

Commission on Peace Officer  
Standards and Training (POST)  
[www.post.ca.gov](http://www.post.ca.gov)



-----Original Message-----

From: Charles Weisselberg [<mailto:cweisselberg@law.berkeley.edu>]

Sent: Monday, May 18, 2015 2:55 PM

CPRA Request

To: Crook, Ron@POST  
Cc: Charles Weisselberg  
Subject: Case Law Today; Public Records Act

Dear Mr. Crook:

I hope this finds you well.

A number of years ago, we were in communication with respect to my efforts to obtain POST training videos under the California Public Records Act. For a while, our Law Library received the monthly videos.

But when the Series was no longer distributed on DVDs, we stopped receiving them.

I have just mailed the attached Public Records Act request to POST. I'm seeking Case Law Today videos for 4 select months (8 specific segments). I'm taking the liberty of sending a copy of the request to you, as I assume you may be the person who will fulfill the request.

I do not wish to put you to too much trouble, but I would very much like your assistance in obtaining the videos. I'm happy to work with you to obtain them in whatever way is easiest for you. And of course I'll cover any duplication costs.

Many thanks for your assistance.

With best regards,  
Chuck

--

Charles D. Weisselberg  
Associate Dean, J.D. Curriculum and Teaching  
& Shannon C. Turner Professor of Law U.C. Berkeley, School of Law Berkeley, CA 94720-7200  
Tel: 510-643-8159  
Fax: 510-642-3856  
[cweisselberg@law.berkeley.edu](mailto:cweisselberg@law.berkeley.edu)

**EXHIBIT G**

Final Public Records Act Response from POST, dated May 28, 2015

↓ FOLD ON SCORE ↓

**Floppy Disk/CD Mailer**



**FROM:** Commission on Peace Officer Standards and Training  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

**TO:** Charles Weisselberg  
UC Berkeley  
School of Law (Boalt Hall)  
Berkeley, CA 94720

**DO NOT BEND OR FOLD  
AVOID EXPOSURE TO ALL MAGNETIC FIELDS**



COMMISSION ON  
PEACE OFFICER STANDARDS AND TRAINING



May 28, 2015

EDMUND G. BROWN JR.  
GOVERNOR

KAMALA D. HARRIS  
ATTORNEY GENERAL

Charles Weisselberg  
UC Berkeley  
School of Law (Boalt Hall)  
Berkeley, CA 94720

Dear Mr. Weisselberg:

In a California Public Records Act (CPRA) request dated May 18, 2015 to the Commission on Peace Officer Standards and Training (POST), you requested eight segments of the Case Law Today: August 2014, October 2014, November 2014, and March 2015.

Pursuant to your request, enclosed is the DVD with the requested segments.

You may contact me at (916) 227-4854 if you have any questions.

Sincerely,

A handwritten signature in cursive script, which appears to read "Linda Thach", is written above the typed name.

LINDA THACH  
Associate Analyst  
Administrative Services Bureau

**Case Law**  
**TODAY**

**DVD-ROM**  
MPEG-4  
Video Files



Copyright 2014-2015  
California Commission on Peace  
Officer Standards and Training

Searches of Cell Phones Incident to Arrest (08/4)  
Post-California v. Riley Issues Arising in Searching Cell Phones (08/14)  
Use of Suspect's Post-Arrest/Pre-Miranda Silence (10/14)  
Miranda: Invocation of Right to Counsel (10/14)  
Are Persons Detained During Warrant Svc "In Custody" Under Miranda? (11/14)  
Search Incident to Infraction Arrest (11/14)  
Only Express Refusal of Consent By One Occupant... (03/15)  
Juvenile's Ambiguous Miranda Invocation (03/15)

**PROOF OF SERVICE BY EXPEDITED DELIVERY**

Re: *People v. Macabeo*, No. S221852, Court of Appeal Case No. B248316,  
Los Angeles County Superior Court Case No. YA08496

I declare that at the time of service I was at least 18 years old and not a party to this legal action. My business address is University of California, Berkeley School of Law (Boalt Hall), Clinical Program, 353 Boalt Hall, Berkeley, CA 94720-7200. On October 30, 2015, I sent copies of the above **APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by enclosing them in sealed envelopes and depositing the sealed envelopes with FedEx, fully prepaid for standard overnight delivery. The envelopes were addressed as follows:

Attorney General's Office  
300 S. Spring Street, 1<sup>st</sup> Floor  
Los Angeles, California 90013

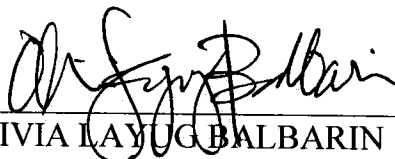
Paul Macabeo  
17007 Wilton Place  
Torrance, California 90504

Karen Hunter Bird  
Bird & Bird, A Law Corporation  
3424 Carson Street, Suite 460  
Torrance, California 90503

I am employed in the county where the delivery occurred. The document was sent from Berkeley, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Berkeley, California, on October 30, 2015.

  
OLIVIA LAYUG BALBARIN