

BOLO

Be On the Lookout

The Newsletter for The Los Angeles Airport Peace Officers Association



www.laapoa.com



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MAY 2013



2013 CALIFORNIA PEACE OFFICERS' MEMORIAL CEREMONIES

HONORED OFFICERS

Deputy Robert Lee Paris, Jr.
Stanislaus Co. Sheriff's Dept.
EOW: April 12, 2012

Officer Kenyon M. Youngstrom
CHP – Contra Costa
EOW: September 5, 2012

ENROLLED FROM PRIOR YEARS

Officer Daniel C. Clark
San Bernardino Police Dept.
EOW: November 3, 2011

Inspector Brian D. Olcomendy
San Francisco Police Dept.
EOW: July 26, 2003

Officer Robert J. Quirk
CHP – Red Bluff
EOW: April 11, 1971

Sheriff William Elam
Placer Co. Sheriff's Dept.
EOW: October 1, 1951

Dep. Constable Arthur D. Miner
Butte Co. Sheriff's Dept.
EOW: October 24, 1934

Officer Timothy Duane
Oakland Police Dept.
EOW: April 18, 1930

Dep. Constable J. Edward Brown
Los Angeles Co. Sheriff's Dept.
EOW: September 14, 1924

Deputy Ray C. Bogart
Lassen Co. Sheriff's Dept.
EOW: January 11, 1915

Dep. Constable Charles A. DeMoranville
Los Angeles Co. Sheriff's Dept.
EOW: January 4, 1909

Deputy William F. Edwards
Mono Co. Sheriff's Dept.
EOW: April 29, 1907

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President's Message

I want to take a moment to update you on the work that your union has been doing on behalf of our membership over the last several months.

The Board of Directors and I started our efforts to seek a federal audit last year. So far, a total of 18 letters have been sent by eight members of Congress to the Department of Transportation Office of Inspector General (DOT-OIG), Government Accountability Office (GAO), Federal Aviation Administration (FAA) and/or the appropriations subcommittee on Transportation, Housing and Urban Development (THUD) on this matter. In fact, the chairman of the House THUD appropriations subcommittee questioned the DOT Inspector General on diversion at LAX during a hearing last year, during which he admitted to the City being cited for previous diversion of policing funds, which I wasn't even aware of, and just recently questioned him again during a hearing last week. In addition, report language was included in last year's House THUD appropriations bill reinforcing the prohibition against diversion and urging the FAA to review its oversight of airport revenue diversion.

The City of L.A. has a long history of airport revenue diversion. You may recall that in the 1990s, Mayor Riordan proposed increasing airport landing fees to fund City police, fire and rescue services and that LAX reimbursed the City \$8.7 million for retroactive newly calculated indirect costs. As a result, language was included in both authorization and appropriations bills rebuking the City and withholding federal transportation funds.

It is worth noting, you all should know, that the airport police are funded solely by passenger and other fees associated with the airport, as designated by federal law, and no City or local tax funds sustain our duties. It is vital to our mission that officers have the necessary resources and reinforcement to support our safety and security efforts at the expanding, complex and unique airport system we serve.

Although our opinions and ideology may differ from that of management's from time to time, the safety and security of our airports and the well-being of our members has always been, and will continue to be, LAAPOA's No. 1 priority.

All of the above-mentioned correspondence can be found on the laapoa.com website under the Members Only Area titled Diversion.

Thank you for your continued support.

Sincerely,
BOARD OF DIRECTORS
Los Angeles Airport Peace Officers Association



MARSHALL E. MCCLAIN
President



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BOLO is a publication of the Los Angeles Airport Peace Officers Association (LAAPOA). Opinions expressed by individual Board members or contributing authors in this publication do not necessarily reflect the opinions of the entire Board.

The Board of Directors meets on the third Thursday of each quarter at the LAAPOA Headquarters.

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Issue: Does a law enforcement officer's subjective intent bear
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 (drutledge@da.lacounty.gov).

Number: 2013-08 Date: 03-22-13
By: Devallis Rutledge Topic: Subjective Intent

**on whether a warrantless search or seizure is “unreasonable”
 under the Fourth Amendment?**

Official **purpose** is relevant in certain **suspicionless** activities designed to serve some purpose **other than criminal investigation**. “[P]rogrammatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion.” *Indianapolis v. Edmond* (2000) 531 US 32, 45 (traffic checkpoints for drug detection not permissible). Examples: *New York v. Burger* (1987) 482 US 691 (administrative inspections OK); *Treasury Employees v. Von Raab* (1989) 489 US 656 (employee drug screening OK for sensitive positions); and *Florida v. Wells* (1990) 495 US 1 (vehicle inventory is **not a search for criminal evidence** but an administrative accounting of property — though contraband or evidence coincidentally discovered in the standardized inventory process is seizable).

However, an officer's subjective intent or motivation is **irrelevant** to the validity of **investigative** search-and-seizure activity, which is evaluated on an **objective** basis:

- “[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for his actions **does not invalidate the action taken** as long as the circumstances, viewed **objectively**, justify that action.” *Scott v. US* (1978) 436 US 128, 138.
- “Whether a Fourth Amendment violation has occurred turns on an **objective** assessment ... and not on the officer's actual state of mind at the time the challenged action was taken.”

Maryland v. Macon (1985) 472 US 463, 470-71.

- “An officer's evil intentions will not make a Fourth Amendment **violation** out of an objectively reasonable use of force... [T]he subjective motivations of the individual officers ha[ve] **no bearing** on whether a particular seizure is ‘unreasonable’ under the Fourth Amendment.” *Graham v. Connor* (1989) 490 US 386, 397.
- “[E]venhanded law enforcement is best achieved by the application of **objective** standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.” *Horton v. California* (1990) 496 US 128, 138.
- “Not only have we never held, outside the context of inventory search or administrative inspection ... that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment, but we have repeatedly held and asserted the contrary. ... **Subjective intent alone does not make otherwise lawful conduct illegal or unconstitutional.** ... We have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers. ... [T]he Fourth Amendment's concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, **whatever the subjective intent.**” *Whren v. US* (1996) 517 US 806, 812-14.
- Motive for **probation search** is irrelevant. *US v. Knights* (2001) 534 US 112, 122.
- If an officer has PC to arrest for Crime A but mistakenly arrests for Crime B, **the arrest is good.** *Devenpeck v. Alford* (2004) 543 US 146, 153. (See 1MB 2005-04.)
- If an officer has reasonable suspicion to detain for Crime A but mistakenly detains for Crime B, **the detention is good.** *In re Justin K.* (2002) 98 Cal.App.4th 695, 699.
- “The officer's subjective motivation [for justifiably entering a residence during exigency] is irrelevant.” *Brigham City v. Stuart* (2006) 547 US 398, 404.
- An officer searching incident to arrest need not subjectively suspect weapons, nor claim to have been in fear for his/her safety. *US v. Robinson* (1973) 414 US 218, 236.

Bottom line: “[T]he subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment.” *Bond v. US* (2000) 529 US 334, 338, **fn. 2.**

(Emphases added; citations omitted in quoted material.)



Please visit us online at
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²APR = Annual Percentage Rate. Member must have Member Benefits to receive reductions. Reductions of up to 0.50% include a consumer loan interest rate reduction of 0.15%, an automatic payment rate reduction of 0.25%, and an online consumer loan application rate reduction of 0.10%. Any loan rate reduction will remain in place for the term of the loan. Actual APR offered may vary depending upon applicant's credit rating and other underwriting factors. Go to <http://memberbenefits.lapfcu.org> for complete details. Member Benefits incentives may not be used to refinance an existing LAPFCU vehicle loan. All rates, terms, and promotional offers are subject to change without notice. Cannot be combined with any other offer. ³Number of total payments on your loan remains the same, and interest continues to accrue during deferred payment months. Deferring a payment may void your GAP insurance during the month(s) you defer. Please consult your insurer for complete details. 0413-43

