

BOLO

Be On the Lookout

The Newsletter for The Los Angeles Airport Peace Officers Association



www.laapoa.com



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AUGUST 2013

State of the Union Address

Presented July 25, 2013, at the LAAPOA General Membership Meeting

I am proud to stand before you tonight to announce that the state of our union is strong and growing stronger every day.

Over the last few years, your LAAPOA Board has worked tirelessly to ensure our members have a seat at the table, and more importantly, a voice at the table to impact the outcome whenever issues affecting our existence arise. These efforts have helped raise LAAPOA's profile at the local, state and national levels and we have made great strides forward in ensuring we have the respect, resources and authorities to perform our duties.

At the local and state level, AB 128, introduced by Assembly Member Bradford, overwhelmingly passed the State Assembly under his leadership. The bill, which has received numerous endorsements — including support from Mayor Garcetti and Chiefs Gannon, Beck and Boyd — awaits consideration by the California Senate Appropriations Committee when they reconvene next month. With the support of Assembly Member Bradford and Mayor Garcetti, 2014 will be the year we officially receive 830.1 status. We already do the work; let's get the respect that comes with it.

At the national level, congressional language on revenue diversion has been added to this year's appropriations bill, which hasn't happened since 1996. The U.S. Department of Transportation's Inspector General is investigating and auditing LAWA's diversion of policing funds to the City of L.A. for contracted officers. It took 20 letters from our local members of Congress, most notably from Congressmen Gary Miller and Buck McKeon and Congresswoman Maxine Waters, to make this happen. As a result of this oversight and investigation, LAWA updated the MOA language for contracted police officers at LAX. That is the first of many steps to make the necessary changes to end the prevailing culture that has lessened our ability to do our jobs. It is important that we continue to do what we can to make sure Congress and the D.O.T. get to the truth so change happens. Positive change will not happen unless we make it.

We have effected some change operationally with new equipment and cosmetic enhancements to our facilities. Small steps, I know. Much work remains to be done, including additional new vehicles; a new, not hand-me-down, mobile command post; and new police and fire stations for our officers, complete with new technology that represents the policing force we can be, not

what we were. We need more officers to replace those we have lost along the way, whether it was to retirement, another agency or death. We can handle whatever comes our way, as long as we are not set up to fail. It is evident LAWA management considers policing as an afterthought. We must change their way of thinking or demand that LAWA management itself be changed.

Like the New York/New Jersey Port Authority Police who patrol J.F.K., LaGuardia and Newark Airports and the Dallas/Fort Worth Airport Police, which comprise our newly created national airport police association, the American Alliance of Airport Police Officers, we all must fight — even in the face of retaliation by management and efforts to outman us. We must hold our ground and drive on, no matter the resistance. NYPD, a formidable force of 40,000, continues to try to take over some P.B.A. facilities — including the hallowed ground of the World Trade Center — yet the Port Authority police continue to fight on. The president of the Dallas/Fort Worth police association was recently reassigned when he challenged management, but they continue to fight even when the cards are stacked against them in a right-to-work state like Texas. We are learning from their experiences and they are learning from ours. You all may or may not know the details of the

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Los Angeles Airport Police Athletics and Activities League (LAAPAAL) presents

Mistletoe Memories

December 7, 2013
7 p.m.

You are invited to celebrate the holidays with us!
Come out with friends and family to enjoy this festive season and good company. With a live DJ, casino games and free raffle, you are sure to have a great time!

For more information, please call
(310) 242-5218 or visit laapoa.eventbrite.com.



STATE OF THE UNION ADDRESS

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retaliation your Board of Directors has faced from reassignments, suspensions and terminations, but this has only strengthened our resolve, and our days of vindication and retribution are near — and know that we, too, will continue to fight on.

Yes, we are the underdogs, and yes, we are challenging the status quo. I am here to tell you the tide is turning. No example of this is better than that of our new district attorney, new mayor and Assembly Member Bradford, who has pushed for our status change not once, but twice. When others called LAAPOA crazy and didn't believe Jackie, Eric or Steve stood a chance against the overwhelming odds of money and political influence, they continued to push forward. We recognized their fighting spirit early on and chose to support them then, now and in the future as they continue to support us. Let's continue encouraging D.A. Lacey, Mayor Garcetti and Assembly Member Bradford to continue pushing forward in a new era of accountability and oversight to ensure our great airports excel under their leadership in the months and years ahead.

As president of this organization, I have a duty to advocate and advance our members' interests. While I take great pride in this honor, there will be times when I and your Board will need your help. There will be times when we will need to call upon each of you for a "show of force." This will not happen often, but when asked, I trust you all will be prepared to make that stand. I am proud to represent the men and women of LAAPOA and I will continue to fight to ensure we receive the respect, the resources, and the occasional accolades to continue performing our duties effectively. I welcome your input and want to work with each and every one of you to bring about the changes we all desire and rightfully deserve.

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

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Number: 2013-15 Date: 06-17-13
 By: Devallis Rutledge Topic: Use of Non-custodial Silence

Issue: Can a suspect's silence in response to non-custodial questioning be used in trial as evidence of his consciousness of guilt?

Griffin v. California (1965) 380 US 609, 615, prohibits comment on a defendant's silence **at trial**; *Doyle v. Ohio* (1976) 426 US 610, 619, prohibits impeachment of a testifying defendant with evidence of his silence **following Miranda warnings**. *Doyle* error is not committed by evidence or argument as to defendant's **pre-arrest**, pre-*Miranda* silence, *Jenkins v. Anderson* (1980) 447 US 231, 238, nor as to **post-arrest** silence **before Miranda** warnings, *Fletcher v. Weir* (1982) 455 US 603, 607, or **after** warning and **waiver**. *Anderson v. Charles* (1980) 447 US 404, 408 (see 1MB 2005-05).

Doyle considered a 14th Amendment **due process** issue. But does the same result follow under the Fifth Amendment right against compelled self-incrimination?

Genovevo Salinas shot-gunned two brothers to death in their Houston home, leaving shell casings and pellets as evidence. Later, Salinas's father turned over a shotgun to police, and Salinas agreed to accompany officers to the station for voluntary questioning (no *Miranda* warnings given). He answered several questions but didn't reply when asked whether his shotgun would match the recovered evidence. This failure to respond was admitted in evidence in his subsequent trial and argued by the prosecutor as evidence of a consciousness of guilt.

Salinas was convicted and he appealed to the U.S. Supreme

Court, arguing that his silence was, in effect, a Fifth Amendment invocation that should have been off-limits to prosecutorial use at trial. The Supreme Court has now rejected this contention.

A three-justice plurality opinion said that merely **remaining silent** in the face of non-custodial police interrogation is **not sufficient to invoke the Fifth Amendment**:

"[I]t would have been a simple matter for him to say that he was not answering the officer's question on Fifth Amendment grounds. Because he failed to do so, the prosecution's use of his noncustodial silence did not violate the Fifth Amendment. ...

"[T]he Fifth Amendment guarantees that no one may be 'compelled in any criminal case to be a witness against himself;' **it does not establish an unqualified 'right to remain silent.'** ...

"Before petitioner could rely on the privilege against [compelled] self-incrimination, he was **required to invoke it.**" *Salinas v. Texas* (2013) 570 US ___, WL 2922119.

Concurring separately, two justices opined that there is no Fifth Amendment protection **to invoke** for non-custodial silence. So, there were five votes for **the rule** that a prosecutor may introduce evidence that a defendant was silent in the face of non-custodial police interrogation, and may argue that this conduct shows a consciousness of guilt.

Language in some California opinions suggests that where "the circumstances" imply that silence is probably in reliance on the Fifth Amendment, the privilege may apply. See, e.g., *People v. Riel* (2000) 22 Cal.4th 1153, 1189. This was the position taken by the four dissenters in *Salinas*. The plurality opinion **expressly rejects** adoption of an approach focusing on "the most likely explanation" for the suspect's silence, requiring instead an **unambiguous, express invocation**: "[T]he **express invocation requirement** applies even when an official has reason to suspect that the answer to his question would incriminate the witness. ... [W]hatever the most probable explanation [for the suspect's silence], such silence is 'insolubly ambiguous.'" *Salinas, supra*.

Bottom Line: Absent express invocation of a privilege not to answer, evidence of non-custodial silence may be used to show guilt. (Emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.



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Please visit us online and read the Law Enforcement Legal Reporter at <https://laapoa.com/membersonly/officer-safety.php>





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Short Term Disability Insurance Special Enrollment Program Starts Oct. 1, 2013



AVAILABLE TO ALL ACTIVE CITY EMPLOYEES*

▶ The Club's Special Enrollment program will guarantee you coverage for Short Term Disability Insurance without having to complete any medical exams*.

Why You Need a Short Term Disability Plan

Should you get injured from a covered injury or illness outside of work, your short term disability insurance will pay you a cash payment to spend on day-to-day expenses like housing, food, car payments, and even additional medical costs not covered by your health insurance. You won't have to worry about using your savings or incurring additional debt.

*Enrollee must be an actively working City Employee and a City Employees Club Member in good standing as of September 9, 2013.

Benefits of Short Term Disability Insurance

- ▶ No medical exams to complete
- ▶ Receive a cash benefit paid directly to you
- ▶ Covers off-the-job injuries and illness
- ▶ Guaranteed renewable to age 70
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- ▶ 12 month benefit after 14 day elimination period
- ▶ Cover you up to 60% of your monthly income



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