July 2018

The BACKUP Newsletter

The Official Publication of the California Reserve Peace Officers Association

ARPOC 2018 August 15th -18th DoubleTree by Hilton

Late Breaking Development: Two New Courses Added!

Crisis Intervention and De-escalation

CHP Sergeant John Wilson and his staff will present an 8-hour course entitled, "Crisis Intervention and De-escalation" on Friday, August 17. Sergeant Wilson is the supervisor of the California Highway Patrol's Mental Illness Response Program/ Crisis Intervention Training Unit.

Sergeant Wilson has over 25 years of military and law enforcement experience and a Bachelor of Science degree in General Psychology. He has served in the U.S. Army's Special Operations Command, the Merced Multi-Agency Narcotics Task Force, the CHP Valley Division Investigative Services Unit, multiple road patrol areas, and at the CHP Academy as an instructor. He is a police shooting survivor and has been shot in the line of duty. Sergeant Wilson has presented at numerous Annual Reserve Peace Officer Conferences for CRPOA and has been awarded the "Best Class" for his Body Language course presentation.

This course covers officer and subject stress responses, impulse control physiology and decisions under stress, mental illness stigma reduction, three practical de-escalation/communication models, and live Force Option Simulation exercises. The course ends with a deadly critical incident debriefing, employee assistance/peer support program overview, and officer wellness. This course will be very practical, make the most of your time, and could save a life, or a career.

Sergeant Wilson requests (but does not require) that you bring your police utility belt to the second half of the course during the Force Option Simulation period (1330- 1530 hours). ***No firearms will be permitted in the classroom training space.***

If your spouse or significant other will be registered to attend, Sergeant Wilson suggests that they consider attending this class as the information will be equally valuable for them and will provide important insights.

Apple for Law Enforcement

Our own Kevin Bernzott will present this new 4-hour course on Friday afternoon. Learn what data is available to law enforcement from Apple – and how to get it during the course of an investigation; tips, notes and nomenclature on Apple products and services; how to navigate Apple's centralized process for receiving, tracking, processing, and responding to requests from law enforcement from receipt until a response is provided; and the proper way to transmit data requests and search warrants including general inquiries, routine data requests, data preservation requests, and emergency requests.

Attendees will receive contact information for Apple personnel interfacing with law enforcement, including Apple's Global Security Operations Center.

We've Lost One Class on Friday Due to last minute instructor unavailability, we've had to cancel "Use It, Write It, Tell It: A Cops Primer on Use of Force." Please contact Janet@crpoa.org and let her know your preference for a replacement class.

Boston Marathon Bombing Investigation and Successful Prosecution

On April 15, 2013, two pressure cooker bombs exploded in the vicinity Boston Marathon finish line. Three people died, including an eight-year-old boy, and over 260 people were injured. Eighteen people suffered amputations as a result of the blasts. The perpetrators then went on to murder a police officer before being captured by law enforcement officials. **FBI Special Agent David Bell** will provide a detailed timeline of events, beginning with the response to the bombings and concluding with the successful prosecution of the surviving terrorist. SA Bell will speak about the challenges associated with conducting complex terrorism investigations, the importance of inter-agency cooperation, and the lessons learned during the Boston Marathon Bombing investigation and successful prosecution.

Below 100

This course is intended to provide officers with an overview of the national Below 100 campaigns. Provides details on the five tenets with the goal of providing practical information and safety reminders in a more powerful way. That will improve officer safety and reduce the number of deaths and injuries in the law enforcement community. Powerful videos are used to make an emotional connection with the audience and help make material more impact-full. The course will cover issues not necessarily addressed in manuals or policy. This will include an overview of trends and examples of officers killed in the line of duty with emphasis on practical steps to avoid these circumstances. **Instructor: Mike Mitchell – CHP Winner Best Class Award**

Marijuana Update: A Look at Recreational and Medical Cannabis and the Changing Laws

This class will provide an update on issues pertaining to marijuana and Proposition 215 and Senate Bill 420. Recent court decisions highly recommend that officers have specific training in these laws to qualify as an expert when arresting person(s) in possession of marijuana and are claiming the protections under Proposition 215. Training in this area is also highly recommended for successful arrest and prosecution of medical marijuana cases. The course will also provide information on the latest trends in marijuana use and cultivation, contacting and questioning those who claim, "Prop 215 privileges" the Butane Honey Oil THC extraction process and the marijuana store front activities. **Instructor: Seth Cimino -- Citrus Heights PD**

Major Crime Scene Investigations for First Responders

This course will discuss major crime scenes (Homicides, Rapes, Robbery and Suspicious Deaths) and what first res-ponders need to consider. These considerations include the search for additional victims, suspects, loss of evidence due to weather or other exigent circumstances the victim's family and the media. The L.I.N. (Locate, Isolate and Neutralize) theory of crime scene investigations and other theories related to crime scenes will be discussed. Graphic photographs will be presented during this course of instruction. **Instructor: Tim Morgan (Ret.) Lt Palo Alto PD - Professor West Valley College**

Surviving Your Attacker: Law Enforcement Officers Killed and Assaulted

"Is today your day?" Inspiring true stories from shooting survivors. On-duty and off-duty safety. Preparing to win in deadly encounters. Overcoming the mindset of your attacker. Wy do things go right and wrong in police work? Lessons Learned - Before, During, & After a Critical Incident. The instructors: Rich Wemmer, Captain, Los Angeles Police Department (Ret.); Stacy Lim, Sergeant, Los Angeles Police Department -- SURVIVOR; Marcus Young, Sergeant, Ukiah Police Department (Ret.) -- SURVIVOR

Full Conference Registration is online for all current members Here !

CRPOA General Counsel

LEOSA 2018

Recently I asked our members to inform us of their agencies' approaches to CCW per the Law Enforcement Officers Safety Act of 2004 (18 U.S. Code Sections 926B and 926C, "LEOSA"). Unfortunately, too many agencies continue to refuse to acknowledge the obvious: federal law guarantees a legally protectable right for qualified reserve officers to carry concealed weapons while off-duty and any policy which forbids CCW by qualified reserve officers is unenforceable and remediable under the civil rights statute (42 U.S. Code Section 1983). This continues to be a major focus of our efforts on behalf of our members whose agencies continue to violate their LEOSA rights. Let's review the law on this important topic.

Prior to the enactment of LEOSA, California law was the sole legal source to determine when off-duty reserve officers were authorized to carry concealed weapons. Except for Designated Level 1 reserves, who have the same authority as full-time PC 830.1(a) officers, agencies typically required that all other levels of reserves obtain a CCW license, a situation which was facilitated per the provisions of Penal Code Section 26170 providing for the issuance of CCW's to California reserve peace officers.

With the passage of LEOSA in 2004, federal law provided authorization for all qualifying peace officers to carry concealed weapons while off-duty, including reserve officers. Many agencies recognize that LEOSA applies to their reserves and unfortunately many still do not. Many agencies continue to require CCW licenses for their reserves to carry concealed while off-duty; others, by policy, prohibit concealed carry by their reserves under all circumstances.

Recall the history of LEOSA: In 2004, after many years of legislative wrangling and numerous failed attempts, Congress passed House Resolution 218, now codified in the federal Gun Control Act of 1968 as Title 18, United States Code Sections 926B and 926C. The underlying philosophy of LEOSA is to enable qualified active and honorably separated law enforcement officers to carry a concealed firearm in all 50 States (with limited exceptions), free of the patchwork of state and local laws governing concealed carry and, quite frankly, free of the control of law enforcement agencies who disagreed with the concept of off-duty CCW by their officers or off-duty officers from other States. Since that time, LEOSA has been widely recognized throughout the country, including legislatively at state and local levels and by policy and practice in countless federal, State and local law enforcement agencies.

CRPOA has closely monitored the implementation and acceptance of LEOSA regarding California reserve peace officers for the past 14 years. We characterize the acknowledgment by law enforcement agencies that LEOSA applies to their reserve peace officers as mixed. As a result, we published a detailed legal analysis of LEOSA in 2013 which can be found on our website. That legal analysis thoroughly explains the LEOSA legislative and case law landscape and nothing in the case law since the date of that memo has affected its conclusions.

The applicable statutory and case law leads to the inescapable and obvious conclusion that LEOSA applies to California reserve peace officers on the same basis as full-time officers. Importantly, a 2016 federal appeals court ruling in the District of Columbia has even strengthened the legal claim to LEOSA coverage for reserve peace officers by providing a mechanism to bring federal litigation against agencies which violate LEOSA (namely, Section 1983, the civil rights statute). See *Duberry v. District of Columbia*, 824 F.3d 1046 (2016 D.C. Circuit).

My analysis of *Duberry* can be found in the article I wrote in the September 2016 issue of the BACKUP: interesting that the *Duberry* decision was reached by a 2-1 majority with one of the judges in the majority being Brett Kavanaugh, whose nomination to the Supreme Court as of the date of this writing is awaiting Senate confirmation.

Following the enactment of LEOSA, numerous themes have emerged from the legislative history of LEOSA, as well as the case law and the observations of the legal experts who have followed LEOSA's trek through the legal system since 2004:

1. LEOSA is a self-executing statute which does not require the approval of law enforcement agencies for it to be effective; quite the opposite. LEOSA works on its own free of the constraints or restrictions of law enforcement agency policy makers who may have a different view of the wisdom or risks associated with the law.
2. LEOSA was meant to, and in fact does, apply to a broad range of law enforcement officers. The key attributes defining who is a "qualified law enforcement officer" and a "qualified retired law enforcement officer" are straightforward and elegantly simple. One either meets the definition or one does not. Among the many categories of peace officers in California and elsewhere, California reserve peace officers who are authorized to carry a firearm while on-duty satisfy LEOSA's definition of a "qualified law enforcement officer" assuming compliance with LEOSA's other requirements (for example, current with firearms quals, not the subject of an investigation, and so on). That very point was affirmed in a position paper published by a California task force formed by Cal DOJ to study LEOSA shortly after it was enacted and the LEOSA case law overwhelmingly supports that notion.
3. Similarly, reserve peace officers with more than 10 years of aggregate service, who separate from their departments in good standing, fall within the definition of "qualified retired law enforcement officers" under LEOSA as amended in 2010 when Congress eliminated the receipt of a pension as a necessary element of the definition.
4. LEOSA applies in every state, including the home state of each officer. It is not restricted only to interstate travel.
5. LEOSA is a "categorical" exemption from concealed carry laws and defines who is eligible under it by reference to *on-duty* status as law enforcement officers without regard to the ability to take peace officer action off-duty. Notably many states have not adopted the "24/7" peace officer authority construct of California law relative to PC 830.1 and similarly situated officers. In fact, LEOSA presumes that an officer who is off-duty in another state has no status as a law enforcement officer for any purpose whatsoever, thus eviscerating any argument that off-duty authority plays any role in the LEOSA analysis of eligibility under the statute – on that point the case law has been clear and is described in detail in our legal memo.
6. The argument that LEOSA carry for reserves must be "controlled" for liability reasons is ridiculous. It would assume that liability attaches to the agency because it is following federal law. Because LEOSA, a federal law, pre-empts state and local laws, thus removing the discretion of the agency to supplant LEOSA with its own restrictive policy on concealed carry, an agency's liability risks for following LEOSA are non-existent. We recognize the reality that "anyone can sue anybody for anything," but note that there is no case law whatsoever on a claim that an agency is legally responsible for an incident involving LEOSA concealed carry. Because federal law defines the right to concealed carry and not the agency, claims by agencies that they are managing liability by forbidding CCW by reserves are what we call "red herrings" (simply meant to avoid their obligations without any legal or logical foundation whatsoever). Furthermore, if risk of liability is the concern, then law enforcement executives should ban LEOSA for <u>all</u> of its officers, not just its reserves, yet we know that federal law pre-empts and in fact renders completely unenforceable an agency rule which would purport to do via policy what LEOSA prohibits by federal statutory law (as *Duberry* confirms).

As reserves, we recognize we provide a service to our law enforcement agencies and the citizens of California, and in most cases do so without any expectation of financial gain. However, the deprivation of what we view as a right provided and guaranteed by federal law, and a fundamental concern of officer safety

(particularly in today's dangerous times for law enforcement officers), is a situation which should not stand and needs to be corrected.

CRPOA wishes to emphasize the relationship of trust which underlies our service as law enforcement officers. That trust manifests itself every day when our agencies appoint us, deploy us in uniform with full police equipment, including a badge, firearm and marked police vehicle and with the immense responsibility of enforcing our State's laws. Yet that trust, in far too many cases, seems to end at the station's doors when our members leave their shifts and go home. We are unable to reconcile the trust our agencies place in us when they allow us to perform our duties with the seeming lack of trust that surfaces in some agencies when we go end of watch, especially since federal law guarantees us the right to protect ourselves and our families when off-duty.

We will continue to press hard on LEOSA. At its core this is an officer safety issue for us. As an organization, in many ways it has become CRPOA's *raison d'etre* – to protect you and ensure your safety.

Stay safe everyone.

Jim Rene, General Counsel

If you have a question or comment for Jim, please email Jim at rene@crpoa.org. Jim René is the General Counsel for the California Reserve Peace Officers Association and a reserve police sergeant for the San Fernando Police Dept. He previously was an LAPD reserve police officer for 15 years.

Making A Difference - think about it

"This nation will remain the land of the free only so long as it is the home of the brave."

— Elmer Davis

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

THE CRIMINAL JUSTICE INSTITUTE
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

JACKIE LACEY
DISTRICT ATTORNEY

NUMBER: 2018-10 **DATE: 06-20-18** **BY: Devallis Rutledge** **TOPIC: Help Serving a search Warrant**

ISSUE: Who can assist peace officers in serving a search warrant?

Search warrants are directed to **peace officers** for service. PC §§ 1523, 1528(a), 1530. *"[T]he reasons for requiring a search warrant only be served by a peace officer are obvious…." People v. Bell* (1996) 45 Cal.App.4th 1030, 1055. However, when the help of non-peace officers is needed, serving officers can employ assistance from others ***"in aid of the officer"*** in conducting the search. PC § 1530.

*"[I]t is generally left to the **discretion of the executing officers** to determine the details of **how** to proceed with the performance of a search authorized by warrant—subject of course to the general Fourth Amendment protection against unreasonable searches and seizures." Dalia v. US* (1979) 441 US 238, 257.

Examples:

● *Wilson v. Layne* (1999) 526 US 603, 611-12: *"Where the police enter a home under the authority of a warrant to search for **stolen property**, the presence of third parties for the purpose of **identifying the stolen property** has long been approved by this Court and our common-law tradition." Accord, People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 70 (OK for a burglary **victim** to accompany officers with valid warrant to identify stolen property).

However, if an *invalid* warrant does not describe the sought evidence with sufficient **particularity**, a victim or other third-party may **not** be relied on to "fill in the blanks" as the search progresses. *People v. Tockgo* (1983) 145 Cal.App.3d 635, 645 (the theft victim cannot cure an *inadequate* description of "stolen property" in the warrant by pointing to items).

● *People v. Superior Court (Moore)* (1980) 104 Cal.App.3d 1001, 1008 (OK for a **technical expert** to accompany officers to identify proprietary data-base tapes for semiconductors).

● *People v. Russell* (1987) 195 Cal.App.3d 186, 190 (OK to bring a **narcotics-detection K-9** when serving a warrant to search for narcotics).

● *People v. Carrington* (2009) 47 Cal.4th 145, 167: *"**Officers from another jurisdiction** may accompany officers conducting a search pursuant to a warrant … even when the officers lack probable cause to support issuance of their own search warrant"* (upholding **plain-view** seizures of evidence not listed in the warrant but connected to other crimes). See 1MB 2009- 12.

● When the property to be seized consists of records maintained by a lawyer, doctor, psychotherapist or member of the clergy, the search **must** be conducted by a court-appointed **special master**, ***except*** where the listed professional is a **target** of the investigation. PC § 1524(c); *Brillantes v. Superior Court* (1996) 51 Cal.App.4th 323, 33

● Police may make themselves subject to potential **civil liability** by allowing media representatives, civilian "ride-alongs" or other third parties to enter the premises (including the curtilage) during service of the warrant. *"We hold that it is a violation of the Fourth Amendment for police to bring **members of the media** or **other third parties** into a home during the execution of a warrant when the presence of the third parties in the home was **not in aid of the execution of the warrant."** Wilson v. Layne* (1999) 526 US 603, 614; *accord, Hanlon v. Berger* (1999) 526 US 808, 809.

However, the exclusionary rule **does not require suppression of evidence** properly seized by officers within the scope of the warrant, merely because unauthorized third parties were present. *Wilson v. Layne* (1999) 526 US 603, 614, fn. 2; *US v. Duenas* (9th Cir. 2012) 691 F.3d 1070, 1083.

BOTTOM LINE: Search warrants must be served by peace officers, who may enlist the necessary assistance of others (including victims, experts and "special masters") in aid of execution of the warrant, but may not admit third-party "lookie-loos."

(Bold emphases added and citations omitted from 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.

The California Reserve Peace Officers Assoc. would like to thank the Los Angeles County District Attorney's Office and Devallis Rutledge for the permission to reprint the One Minute Brief.

Plan on great training and networking

ARPOC 2018

DoubleTree Hotel, Sacramento August 15th - 18th, 2018

WELCOME NEW CRPOA MEMBERS

Between 6/16/2018 and 7/15/2018

Fred Hatch Palos Verdes Est. PD
Jeffrey Grave San Francisco PD
Gregory Jacobson San Mateo PD
Ray Ramirez San Bernardino SO
Michael Wilson Concord PD
Antonio Cortez San Diego SD
Greg Cowart Citrus Heights PD
Kristen Rankin Sacramento PD
Craig Collins Marysville PD
Catherine Riggs Los Angeles SD
Rudy Castillo Foothill – DeAnza PD

Jon Lopey Siskiyou SO
Kevin Swift Tiburon PD
Ken Sporer Bakersfield PD
Maura Monroe Orange SD
William Monroe Orange SD
Kenneth Wright Redlands PD
Dan Buttler Sutter SO
Michael McIntyre San Diego SD
Kenneth Alva El Monte PD
Walter Shadle Fremont PD

Paul Smith Redlands PD
Kevin Krallman Newport Beach PD
Michael Martinez El Camino College PD
Sean Washington Fremont PD
Steve Rettinger Broadmoor PD
Raymond Abe Sacramento PD
Buck Ledford Merced SO
Ty Cavanaugh West Covina PD
Gary Ross Irvine PD
Patrick Akana Foothill -DeAnza PD
Roy West Inglewood PD

Assembly Bill 1192 Becomes Law!

Thanks to diligent work by CRPOA's Legislative Committee, headed by Vice President Pete Downs, talent from our advocates in Sacramento, Political Solutions, LLC, and great support from a number of law enforcement organizations, especially PORAC, which actively supported our bill, AB 1192 (Lackey) passed both houses of the state legislature and was signed into law by Governor Brown on July 9, 2018.

Passage of this bill amends Penal Code §16690 by adding to the definition of "honorably retired" those retired Level I Reserves (both designated and non-designated) who meet the requirements of Penal Code §26300(c)(2). That section, added in 2013 by AB 703, requires law enforcement agencies to issue CCW-endorsed ID cards to those Level I Reserves who honorably retire or separate with a minimum of 10 years of service (but up to 20 years of service if required by their department's policy).

AB 1192 additionally authorizes retired Level 1 reserves to retain their large-capacity magazines (as defined by California law) after retirement on the same basis as honorably retired full-time peace officers.

We note that the prohibition on the possession of large-capacity magazines pursuant to Proposition 63 (PC Sections 32310(c) is currently on hold (i.e., subject to a preliminary injunction) pending the resolution of current litigation, as most recently addressed in *Duncan v. Becerra*, 2018 U.S. App. LEXIS 19690 (July 17, 2018).

Note: All **active** Reserves **of all levels** are legally entitled to acquire and possess large-capacity magazines per PC section 32405.

Here is the Legislative Counsel's digest and the final bill, as enrolled:

"Assembly Bill No. 1192

CHAPTER 63

An act to amend Section 16690 of the Penal Code, relating to firearms.

[Approved by Governor July 09, 2018. Filed with Secretary of State July 09, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1192, Lackey. Firearms: retired peace officers.

Existing law defines "honorably retired" for purposes of certain exceptions to the law involving the carrying of firearms by a retired peace officer. The existing Safety for All Act of 2016, approved as an initiative statute at the November 8, 2016, statewide general election, makes it a crime for a person, commencing July 1, 2017, to possess a large-capacity magazine. Proposition 63 exempts from that prohibition the possession of a large-capacity magazine by honorably retired sworn peace officers. The existing act authorizes the Legislature to amend its provisions by statute approved by a 55% vote of each house if the amendments are consistent with, and further the intent of, the initiative statute. This bill would amend that act by redefining the definition of "honorably retired" to include a retired reserve officer who has met specified length of service requirements.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
SECTION 1.

Section 16690 of the Penal Code is amended to read:
16690.
(a) As used in Sections 25650 and 26020, Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4, Article 3 (commencing with Section 25900) of Chapter 3 of Division 5 of Title 4, and Section 32406, as added by Chapter 58 of the Statutes of 2016 and as added by Proposition 63, "honorably retired" includes:

(1) A peace officer who has qualified for, and has accepted, a service or disability retirement.
(2) A retired level I reserve officer who meets the requirements specified in paragraph (2) of subdivision (c) of Section 26300.
(b) As used in this section, "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination."

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

JACKIE LACEY
DISTRICT ATTORNEY

NUMBER: 2018-11 DATE: 06-22-18 BY: Devallis Rutledge TOPIC: Cell-site Surveillance

ISSUE: Does law enforcement access to historical data from cell-phone sites constitute a Fourth Amendment "search," requiring a warrant or recognized exception?

Whether in use or not, cell phones continually scan ("ping") for the nearest cell tower, and as the phone moves with its user, connectivity is relayed from tower to tower. A record of the dates, times and locations of cell-phone pinging allows law enforcement officers to derive the past movements of individuals, thereby placing them in the vicinity of a crime, or not. Records produced by this constant tracking process are sometimes called "cell-site location information," or CSLI. Are such records subject to Fourth Amendment protection, requiring a warrant or recognized exception for investigative access?

● Timothy Ivory Carpenter was part of a criminal gang that robbed nine stores in Michigan and Ohio. The FBI learned Carpenter's name and cell-phone number from an accomplice, obtained his CSLI for the dates of the robberies, and established his location in the vicinity of six of the robberies. After Carpenter's motion to suppress the evidence resulting from the warrantless access to his historical CSLI was denied, he was convicted, and he appealed.

Lower courts held that suppression was not required, on the grounds that Carpenter voluntarily revealed his cell activity to the service provider and therefore lost any legitimate expectation of privacy, and that agents had obtained a court order for the CSLI under the Stored Communications Act, 18 USC § 2703(d). On *certiorari,* the US Supreme Court has now reversed (5-4):

"[W]e hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI. The location information obtained from Carpenter's wireless carriers was the product of a search." Carpenter v. US (2018) 585 US _. Slip opn. at 11.

The court also held that the court order, not satisfying the requirements of sworn probable cause necessary for a search warrant, could not be relied on to justify the search: *"Before compelling a wireless carrier to turn over a subscriber's CSLI, the Government's obligation is a familiar one—get a warrant." Id.,* Slip opn. at 19.

● Calling its decision *"a narrow one"* (Slip opn. at 17), the court said that its ruling **did not affect** real-time "tower dumps" (which reveal information on **all** the devices pinging on a certain site at a particular time), nor security-camera evidence. The court also reaffirmed that **exceptions** to the warrant requirement could permit access, suggesting warrantless access could be justified where information was needed immediately in such cases as bomb threats, active-shooter situations, child abductions,
pursuit of dangerous suspects, preventing imminent danger, or preventing the imminent destruction of evidence. Slip opn. at 21-22.

● Law enforcement officers in California already routinely apply for search warrants to obtain CSLI, as **BOTTOM LINE: Accessing historical cell-site location information is a Fourth Amendment "search," requiring a warrant or recognized exception.** generally required by the California Electronic Communications Privacy Act. PC §§ 1546-1546.4. See 1MB *Extra* 2016-X1.

● In a series of cases, the Supreme Court has ruled that other kinds of businesses may voluntarily share with law enforcement officers their business records and other information about customers, subscribers, depositors, *etc.*, on the ground that an individual may no longer maintain a legitimate expectation of privacy after voluntarily disclosing information to a third party, knowing that the third party may reveal that information to police. *US v. Miller* (1976) 425 US 435, 443 (bank records); *Smith v. Maryland* (1979) 442 US 735, 741 (phone company call records); *US v. Jacobsen* (1984) 466 US 109, 121 (open FedEx package). **These authorities remain valid:** *"We do not disturb the application of Smith and Miller…."* Slip opn. at 18.

<u>BOTTOM LINE:</u> Accessing historical cell-site location information is a Fourth Amendment "search," requiring a warrant or recognized exception.

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.

The California Reserve Peace Officers Assoc. would like to thank the Los Angeles County District Attorney's Office and Devallis Rutledge for the permission to reprint the One Minute Brief.

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

JACKIE LACEY
DISTRICT ATTORNEY

NUMBER: 2018-13 DATE: 07-09-18 BY: Devallis Rutledge TOPIC: Auto Exception: Where and When?

ISSUE: Where and when may police make a warrantless search of a vehicle on the basis of *probable cause* and *lawful access?*

Each standard exception to the warrant requirement for searches and seizures has its own conditions. Analyzing warrantless search-and-seizure issues requires identifying all recognized exceptions that may apply, and evaluating official conduct under the particular principles applicable to each exception.

The "fleeting targets," or "automobile exception," has two—**and only two**—conditions: (1) police must have **probable cause** to believe the vehicle contains something seizable (contraband or the fruits, instrumentalities or evidence of a crime), *US v. Ross* (1982) 456 US 798, 824; and officers must have **lawful access** to the vehicle (no unlawful entry into a garage or area of the curtilage would be necessary to get to the vehicle), *Collins v. Virginia* (2018) 138 S.Ct. 1663, 1672. **As long as these two conditions are present, police may search any parts of the vehicle and its containers that might conceal the objects of the search.** *Ross, supra,* at 824.

● Defendants routinely object to proper searches on improper grounds, such as delay before searching, removal of the vehicle to the police station or impound lot under exclusive police custody, lack of exigency, opportunity to obtain a warrant, previous search, *etc.* The courts have repeatedly declined to add any of these considerations as relevant to the validity of a warrantless search supported by probable cause and lawful access. *Examples:*

• *Chambers v. Maroney* (1970) 399 US 42, 52 (after arrest and impound of vehicle at the station, police with PC could search it).

• *Texas v. White* (1975) 423 US 67, 68 (following 45 minutes of questioning at the station, police with PC could lawfully search the arrestee's impounded vehicle).

• *Michigan v. Thomas* (1982) 458 US 259, 261 (**after impound inventory** had been completed, officers with PC could return and **search again** for overlooked evidence).

• *Florida v. Meyers* (1984) 466 US 380, 382 (**eight hours after impound inventory,** officers with PC could search the vehicle for additional evidence at the impound lot).

• *US v. Johns* (1985) 469 US 478, 484 (**three days** after impounding a truck and storing closed containers taken from it, officers with PC could search the containers, and no exigency was required).

• *People v. Superior Court (Overland)* (1988) 203 Cal.App.3d 1114, 1119-20 (despite the fact that police had ample time to get a warrant to search a vehicle in their exclusive custody and control, a warrantless search based on PC and lawful access was reasonable).

• *Pennsylvania v. Labron* and *Pennsylvania v. Kilgore* (1996) 518 US 938, 939 (delayed warrantless searches were lawful under *Ross,* despite ample time to get warrants).

• *Maryland v. Dyson* (1999) 527 US 465, 467 (warrantless search with PC was OK, because *"the automobile exception does not have a separate exigency requirement.").*

• *People v. Panah* (2005) 35 Cal.4th 395, 469 (**after cursory search at the scene,** a **further search** at the impound lot was permissible, because *"The probable cause to search had not dissipated, even after the vehicle had been impounded.").*

● Cases such as these may be useful in opposing motions to suppress evidence brought **after** a warrantless search has occurred, but they are **not** always sensible justification for dispensing with search warrants in situations where warrants could be obtained. See 1MB 2013-24, listing **eight significant advantages** of searches conducted under judicial warrant.

BOTTOM LINE: Under the "automobile exception," police may make a warrantless search of a vehicle whenever and wherever they have (1) *probable cause* to suspect the presence of sizeable material and (2) *lawful access* to the vehicle.

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