

To: Chief Jeremy Clark

From: Lt. Steve Taylor

Date: October 21, 2013

Subject: Yearly Legal Update Training for Officers of the Searcy Police Department

Chief Clark,

Please find the attached proposal to implement annual legal update training for all officers and supervisors of the Searcy Police Department.

I am confident that we can implement this policy at a relatively low cost, as we will be able to facilitate most, if not all of the training in-house at our facility.

Please look over the proposal and get back to me with any questions or concerns you may have regarding the logistics of implementing the training program.

Thank you,

Lt. Steve Taylor

INTRODUCTION:

Providing relevant, high quality training for police officers is an important function for any law enforcement agency. If money was no object, and agencies were adequately staffed, most agencies would have no trouble fulfilling this critical mission. However, as you know, such is not the case with most agencies, and the Searcy Police Department is no exception.

With increased costs in everything from gasoline to ammunition, many agencies are discovering that they simply cannot afford to send their officers to all of the various training options out there, especially if the officers have to travel to the location where the training is being offered.

In these days of razor thin budgets and ever increasing costs, it is more important than ever that law enforcement agencies focus their training budgets in those critical areas in which the failure to train officers can and does frequently result in liability for the agency.

With that in mind, we need to examine those “high liability” areas within our profession, and focus our training efforts with aims to reduce our agency’s exposure to civil litigation.

I. WHAT ARE THE “HIGH LIABILITY” FUNCTIONS FOR POLICE AGENCIES?

Jack Ryan of the Legal and Liability Risk Management Institute has identified twelve “high risk critical tasks” that impact law enforcement operations and create exposure to liability litigation for police agencies. (Ryan, 2010).

As you may have guessed, use of force, emergency vehicle operations, and firearms training all made Mr. Ryan’s list of high liability functions. However, also making the list were the areas of laws of arrest, laws regarding vehicle and residential searches, as well as laws related to search and seizure of individuals. Other liability prone areas are mainly related to care and custody of inmates in correctional settings such as a jail.

As you know, the Searcy Police Department does an excellent job in the areas of firearms training, as well as use of force and emergency vehicle operations. Our officers receive updated training in these areas at least annually (with the exception of firearms training which is conducted quarterly). As you are also aware, the Searcy Police Department does not operate a jail or similar facility, so regular training in correctional issues would be largely meaningless to our officers.

If there is an Achilles’ heel in our training program, it can be found in the lack of regularly updated legal training on the laws of arrest, and search and seizure that our officers should be getting.

II. PERIODIC UPDATES ARE NEEDED TO KEEP OFFICERS ABREAST OF CHANGES TO BOTH THE STATUTORY AND DECISIONAL LAW.

More so than any of the other “high risk” areas of law enforcement operations, the laws of arrest and search and seizure are subject to evolution through both statutory and judicial alteration. Two fairly recent examples of these types of changes can be seen in in the passage of Act 570 by the Arkansas General Assembly in July of 2011 (Arkansas Act 570 of , 2011) (legislative change), and the decision of the Supreme Court of the United States in *Arizona v. Gant*, (Arizona v. Gant, 2010) (judicial change).

Act 570 made numerous changes to wide variety of criminal statutes in Arkansas. These changes primarily focused on drug laws, and property crimes, and were aimed at lessening penalties in an attempt to ease prison overcrowding. One can debate the merits of these measures in a different forum, however the changes can and do impact the officer on the street in very important ways.

As an example, prior to passage of Act 570, theft of property was a felony offense if the value of the property stolen was more than \$500. Since passage of Act 570, the dollar value of stolen property must exceed \$1,000 before the offense is considered a felony.

Under the Arkansas Rules of Criminal Procedure (Rule 4.1) an officer has the authority to arrest a person, without a warrant, for any misdemeanor offense

committed “in the officer’s presence”, or for any felony offense based on “probable cause to believe that such person has committed said felony offense.”

Imagine a scenario in which a police officer, unaware that the dollar threshold for the felony theft offense has changed, makes a physical arrest of a theft suspect not committed in his presence, but based on probable cause. Under the law prior to passage of Act 570, this is a perfectly legal and proper arrest. Any evidence flowing from that arrest, including physical as well as testimonial evidence would be properly admitted at any subsequent trial. However, after July 1, 2011 this is an illegal arrest. Not only would any evidence acquired incident to that arrest be inadmissible at trial, but the officer as well as the police department could be subject to civil liability for false arrest.

In an example of changing judicial decisions which impact street officers, the Supreme Court of the United States recently overturned a long standing practice in the area of vehicle searches, upon which officers had relied since 1981. In *Belton v. New York*, the Supreme Court established a bright line rule which held that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile”. *New York v. Belton*, 453 U.S. 454 (1981).

And so, for nearly 30 years it was the law of the land that whenever an officer made a lawful arrest of the occupant of a vehicle, the passenger compartment of that vehicle could be searched without a warrant. In 2010, the Supreme Court

changed course, and would restrict the scope of permissible searches under *Belton* when they considered the case of *Arizona v. Gant*.

In *Gant*, the Court restricted the search of a passenger compartment of a vehicle incident to arrest to allow such search “only where there is probable cause to believe that evidence **relevant to the crime of arrest** might be found in the vehicle” *Arizona v. Gant*, 556 U.S. 322 (2010).

Since the *Gant* decision, the officer must now make a determination on the fly as to whether there is probable cause that evidence relevant to the offense for which the individual is being arrested will be found in the vehicle. For example, if the occupant of the vehicle is being arrested on a warrant for failure to appear in court, there is virtually no reason to believe that a search of the vehicle will yield evidence that the suspect failed to appear in court. Therefore, no search of the vehicle is permitted without a warrant (or one of the exceptions to the warrant requirement).

An officer unfamiliar with the implications of the *Gant* decision, and relying on his outdated understanding of the rule he learned and relied upon for years under *Belton*, now finds himself in the same predicament as the officer in the previous example that was unfamiliar with the legislative changes under Act 570. Both of these scenarios expose both the officer, as well as the police department to civil liability under federal law.

III. FAILURE TO ADEQUATELY TRAIN OUR OFFICERS EXPOSES US TO LIABILITY UNDER 42 U.S.C. §1983, WHICH PROVIDES FOR UNCAPPED DAMAGES, AS WELL AS ATTORNEY FEES

In a nutshell, U.S.C 42 §1983 provides a civil remedy in federal court for violations of an individual's civil rights by someone "acting under color of law". As a practical matter, virtually any allegation involving the violation of a person's civil rights by a police officer will satisfy the "under color of law" requirement of §1983.

It is important to note that while §1983 provides for a civil remedy against the individual officer, several decisions in which courts have interpreted §1983 have found that the employing agency can also be subject to liability under §1983 if it can be shown that they failed to train the officer, and that this failure to train was the cause of the violation.

In *City of Canton v. Harris*, the Supreme Court of the United States held that if a municipality demonstrated "deliberate indifference" towards their efforts to train its police officers in these critical civil rights issues (laws of arrest, use of force, search and seizure etc.), that liability under §1983 could also apply to the municipal employer, as well as the individual officer. *City of Canton v. Harris*, 489 U.S. 378 (1989).

Given a choice between suing an individual police officer for a violation, or digging into the training records to find deficiencies which would then make the city itself amenable to suit, where do you think the Plaintiff's lawyer will spend most of his effort? Even the most cash strapped of cities will likely have deeper pockets than

any individual police officer. This is why it is critical to have quality training that is regularly reviewed and updated as needed. It is equally important that we document and record such training, and ensure that our officers understand the material thoroughly by testing their comprehension at the conclusion of each training session.

IV. LEGAL TRAINING MOST OF OUR OFFICERS RECEIVED IN THE POLICE ACADEMY IS NO LONGER CURRENT

A quick look at the Searcy Police Department seniority list reveals information relevant to the need for periodic legal update training. Of our current staff of 47 sworn officers, 30 have had no formal, documented legal update training since 2010. This means that those 30 officers have never received any formal training in which the changes brought about by Act 570 and the *Gant* decision were addressed.

What has been allowed to pass for legal update training in our previous administration has been little more than the occasional memorandum from our prosecutor's office, which was then hastily thumbtacked to a bulletin board with no more than a naïve hope that someone might endeavor to read it. This is not a "training program" I would want to defend in the face of a §1983 lawsuit. I submit that we can do better. Moreover, we owe it to our officers, and our community to do so.

V. WHERE DO WE GO FROM HERE?

As noted above, the Searcy Police Department already has in place an excellent ongoing system of training in the areas of firearms and use of force. Officers receive annual updates and training in use of force policies and procedures, and quarterly firearms training. Both of these protocols go a long way towards insulating the City of Searcy from exposure to liability in a §1983 lawsuit based on the deliberate indifference standard established in the *City of Canton v. Harris* case. I am simply suggesting that we provide our officers with at least an annual legal update training session, primarily focused on constitutional criminal procedure issues such as laws of arrest, and search and seizure requirements.

As you know, this has always been an area of particular interest to me, and has been a major component of my duties in the Criminal Investigation Division. I have developed an even greater interest and understanding in this area since beginning law school in 2011. I am asking that you allow me to take on the responsibility of developing and implementing an ongoing legal update training program for our department.

HOW WILL THIS PROGRAM WORK?

Regulation of law enforcement practices and procedures in Arkansas are largely governed by the Arkansas Rules of Criminal Procedure, which are promulgated by the Arkansas Judiciary. Law enforcement practices are also subject to rules and

decisions of Arkansas State Courts, as well as decisions of the Federal Court of Appeals for the 8th Judicial Circuit, and the Supreme Court of the United States.

Notices of the decisions of Arkansas Courts are available online through the Arkansas Judiciary website (rules and decisions, 2013). Decisions of the U.S. Courts are available through the Federal Judiciary website (opinions, 2013).

I make it a practice to read through the decisions relevant to issues of criminal procedure on a regular basis. I also receive electronic updates of relevant criminal procedure decisions from both the American Bar Association, and Arkansas Bar Association.

I can formulate the legal update training for our officers in large measure by combing through these decisions and ensuring that our policies are in accord with the current state of the law. If they are not, I can propose necessary changes to our policies to bring us into compliance with the latest legislative and judicial changes. Then it is simply a matter of condensing the relevant information into a simple “nuts and bolts” block of instruction I can present to our officers. If law school has taught me nothing else, it has taught me how to read a rambling 35 page judicial decision, and “boil it down” to the two paragraphs of information which the officer on the street absolutely needs to know.

I have spoken with our Prosecutor, Chris Raff about my intention to put this program together. He was very receptive to the idea, and has offered to review any

materials I submit to him to ensure that my legal analysis is in synch with his prior to my presenting the material to our officers.

As you know, I have conducted training sessions for our officers, as well as officers from other agencies on a variety of topics over the last several years. I am confident that I can put together a program of instruction that not only meets the needs of our officers, but that we would be proud to offer to other agencies as well. All of this training can be conducted in our training room, which would eliminate travel costs.

HOW OFTEN SHOULD WE CONDUCT THIS TRAINING?

I think that an annual training session in which a summary of substantive changes to laws and procedures is presented would be more than adequate, and certainly better than what we are doing now.

Of course, should changes of a significant nature such as the *Gant* case, or Act 570 come up between annual sessions, I could put together quick updates summarizing the important information that officers needed to know. I could present these quick summaries at shift briefings as needed, to ensure that all of our officers are as current as possible on all legal decisions that impact their day to day operations.

CONCLUSION

Police work is a complicated business. Officers are frequently called upon to perform risky, often dangerous tasks. Many of these duties can expose an officer to the risk of personal harm as well as civil liability, especially if not executed properly. While it would be impossible to eliminate all risks in our field, there are steps we can take to minimize our exposure to civil liability. Quality training in those high risk areas of police operations is essential in achieving that goal.

The Searcy Police Department currently provides excellent training for our officers in all but one of the twelve “high liability risk” tasks identified by risk management experts. Our vulnerability lies in the area of legal update training, which we currently do not regularly provide.

The law is constantly evolving, especially in the realm of criminal procedure. Legislative changes as well as judicial decisions which alter police procedure are commonplace. Police officers need to stay abreast of these changes in order to effectively perform their duties. Officers also need to be aware that failure to comport with rules effecting criminal procedure can not only result in their cases being thrown out of court, but also expose themselves and their agencies to civil liability under federal law.

I am proposing that I be allowed to develop, and implement regular legal update training for our officers on at least an annual basis. Periodic updates on critical

matters that arise between annual updates can be addressed in patrol shift meetings as needed.

The Searcy Police Department can offer this training in house, so that costs can be kept to an absolute minimum. Considering the potential costs in liability for failing to provide this training, I am convinced that we cannot afford to NOT provide this training.

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