

**SMITH, RODGERS & STRICKLAND, PLLC**

**SR&S ILLUSTRATIVE CASE CONSULTATION**

**(BASED ON AN ACTUAL POLICE RESPONSE)**

**FACTS:**

Saturday, 2130 hours – Officer Young responds to 410 Elwell Street in response to a radio call. A neighbor's complaint is that five male subjects have been staying at this address in recent days, possibly selling drugs. Officer Young arrives and manages to make a questionable entry into the house (with valid consent?), and thereupon finds four males and several open suitcases, strewn with clothes, plainly visible in the front room.

Officer Young is uncertain about his authority to search the suitcases, and radios his supervisor, Lt. Wise. Wise arrives, and without consideration of Young's authority to be in the house in the first place (he is already inside, after all), authorizes a search of the suitcases seen in "plain view." Suitcase A yields 168 grams of cocaine; suitcase B yields 219 grams of cocaine. Upon approaching suitcase C, suspect Jones resists by trying to stand in front of Officer Young, blocking the Officer's access. A scuffle ensues, and quickly escalates into a use of force. Several assist units arrive. Six arrests follow a wild melee.

**Court Outcome / Criminal** – All cocaine evidence is deemed inadmissible due to problems with the officer's initial entry, and more significantly, the "immediately apparent" probable cause component of the supervisor's "plain view" seizure. All criminal charges are dismissed.

- Cost to the police department: dozens of hours of police and supervisor "down time," administrative personnel time, case management, records section, evidence processing, etc., ***ALL WITHOUT A CONVICTION!***
- Cost to the community of having six dangerous felons returned to neighborhoods to commit and foster additional crimes and investigations: incalculable.

**Court Outcome / Civil** – Unlawful searches, seizures, and "uses of force" resulting from errant 4th Amendment analysis, are costly to law enforcement. Average jury awards in police liability lawsuits are \$251,456.00; the average costs of merely defending police liability lawsuits are from \$45,000 to \$75,000 (not including police personnel downtime; figures based on a study of cases from 1978 to 1996). Here, multiply these values by a factor of six—six separate plaintiffs.

**SR&S CLIENT / SAME RADIO CALL**

Lt. Wise arrives on the scene. With everything under control, but faced with legal uncertainty, Lt. Wise phones SR&S directly from the front porch.

Following a quick phone analysis, and sensing a possible "bad entry," our attorney recommends that all parties (including Officer Young) be counseled to "come back outside" to discuss the radio complaint. Lt. Wise succeeds in this task, and in a series of three additional cell phone conversations with our attorney (a total of 10