

KS Trooper Magazine
Spring 2004 Issue

The Call To Serve

By Amy Claycamp, KS Trooper Editor

This may come as a shock to those of you who know me: Sometimes, I am at a loss for words in my position with the *KS Trooper*. It isn't always easy to pull together a publication like this one, especially since I am not a trooper, have never been in law enforcement, and cannot relate to many of the issues and situations that each of you faces on a daily basis. I don't always have my finger on the pulse of your interests and which topics might catch your attention.

Instead, I have to rely heavily on each of you. Each quarter I solicit articles and I gather subject ideas from many KSTA members and association officers. I seek advice from troopers who are also my friends about what articles to include and which I should avoid, because I trust their judgment and I know they will assist me in making this magazine a quality publication.

I rely most heavily on my regular contributors, the ones that make up the core of this magazine. Like me, they sometimes struggle through their articles. Many of them hate the process, feeling uncomfortable because they are not writers by nature. However, they know that there is so much that needs to be said. I don't think they know it, but I appreciate my regular contributors greatly.

So it is always gratifying when an issue pulls together with a mostly unplanned theme, when many of my contributors have written about a similar interesting idea or submitted articles in the same vein. Last quarter, in the Winter 2003 issue, the theme was community and the trooper's role in the local, regional, and state community.

This quarter, the theme is that of service. For instance, Trooper Jeff Norling submitted, "The Trooper Wears Many Hats," a look at the many roles a trooper takes on not only while on duty but also in life. Lobbyist and Executive Director Steve Kearney submitted "Service Above Self," about those who are willing to step up and serve the Association and its mission.

Chaplain Tom Shane has dedicated his life to service. In this quarter's article, Chaplain Shane writes about one of the hardest functions of his job, consoling strangers who have suffered great grief. And, as we do in every issue, we acknowledge those who have served on the Patrol and who are now retiring into the next phase of their lives.

Keep the articles and the ideas coming. I welcome thoughts from every direction – active troopers, retired troopers, state officials, etc. Send me an email at amyclaycamp@yahoo.com anytime. Thank you for helping me with this magazine, and thank you for being willing to serve.

Communication and Joint Efforts Can Bring About Change
By Trooper Jeff Dietz, KSTA Treasurer

KSTA President Eric Haskin has asked that I write the Executive Committee's message to the membership for this issue of the *KS Trooper*. Eric feels that getting the perspective of other Board members' thoughts out to the membership can help with the exchange of ideas.

During this last quarter, I had the honor of attending a meeting between the KSTA Executive Board and Colonels Seck and Maple, along with all of the Regional Commanders. Also present were Troop C Director J.L. Riedel and Troop H Director Jeff Norling.

Colonel Seck had requested after our quarterly meeting that we all get together and work out any perceived problems. I have to commend Colonel Seck for this new approach to working out our differences. This is a new avenue to opening the communication lines between the Command staff and the Association. During this meeting, many issues were discussed and I couldn't help but feel that progress was being made. Do I think that we reached our desired end to all of the issues? No. We cannot see eye-to-eye on every issue. However, the door has been opened to understanding each side's point of view, a door that had remained closed in the past.

During the meeting, one issue that was discussed was seatbelt enforcement. Colonel Seck believes strongly that the Patrol has not only the legal obligation, but more importantly, the moral obligation to actively enforce the seatbelt law. Colonel Seck feels that the Highway Patrol, as the primary agency in the state for traffic safety, needs to lead the charge in the effort to convince legislators to enact a primary enforcement seatbelt law. He also has asked the Association for their support in educating legislators and the public about the importance of seatbelt usage.

This is where we as individual members come in. Your Executive Board and Board of Directors cannot possibly make all of the contacts at the local level that you as individuals can. Please, try to find time to visit with your legislators and talk with them about the importance of primary seatbelt law specifically and traffic enforcement in general.

The 2002 KDOT statistics show that over 500 people died on Kansas roadways that year. Nationwide, there were over 42,000 traffic-related deaths in the same period. I'm sure we all know that some of those deaths could have been avoided had they been using their safety restraints.

Think about it, these **one-year** nationwide numbers are nearing the total number of soldiers killed during the **entire** Vietnam War. Kind of a sobering thought, isn't it? That many deaths are occurring on our nation's highways while very few politicians seem to give traffic safety and its enforcement nary a second thought.

Give some thought to these things as we go through the 2004 Legislative Session. Try to make some local impact on the political side. At the state level, you have the assistance of your Association and a great resource in our Lobbyist / Executive Director, Steve Kearney.

In closing, I hope all KSTA members will try to make it to a meeting and see firsthand what is happening in the Association. We will be more successful if all of you get involved and provide some input and guidance in the future. I wish all of you well and please take care.

Written Policy to Address Important Issue By Colonel William Seck, KHP Superintendent

As I write this in December, the Patrol has only recently begun systematically discussing racial profiling publicly. On November 21, community leaders from across Kansas joined the KHP command staff and me at the Training Academy in Salina for the first of many workshops and discussions on biased-based policing. We organized the workshop after the state's racial profiling study indicated some issues exist within our agency, as well as in the other agencies in the study.

While I do not believe there is an institutionalized problem of blatant racial profiling inside the KHP, some troopers seem to be stopping some vehicles because of racial biases, perhaps subconsciously, rather than for legitimate reasons. I must stress that there is no place for racial discrimination on the job.

This is such an important issue that the Patrol is adopting a written policy that racial profiling cannot be condoned or tolerated. The Academy is also reviewing its training courses to see if it can more specifically deal with biased-based policing. Most successful, cutting-edge law enforcement agencies are taking similar

steps, and Governor Kathleen Sebelius and I are pleased that the Patrol has the initiative to join them. If we are to live up to the agency's historic reputation and our potential (our pledge to provide service, courtesy, and protection on a completely equal basis), we cannot ignore this sensitive, difficult issue.

To fully understand what problems may exist and the public's perception of the KHP, our agency must work closely with Kansas' minority communities. At the same time, we must maintain, and in some instances regain, their trust. The November meeting was only the first step toward those goals. By the time this issue of [The Kansas Trooper](#) is published, larger public meetings on racial profiling should have occurred in Kansas' major metropolitan areas, and the attendees of the November 21st meeting should have reconvened (or we will soon) at the KHP Training Academy to assess our progress. I would like to thank everyone who has helped organize these workshops and meetings.

There should be several side benefits of these workshops and of developing better relationships with minority communities. First is the potential for better, more diverse recruitment for the KHP and the general law enforcement community. Also, gaining more and closer community contacts may mean enlarging our network of allies in safety and enforcement campaigns. Simply put, it means better "community policing," or communication and sharing. In addition, if the Patrol can ensure that each of its traffic stops is made for the right, legitimate, legal reasons, it will regain the trust of the Kansas population at large.

Again, I believe we have made a good start in dealing with this issue, but more work lies ahead. Thank you for joining me in this effort to maintain the Patrol's respectable reputation, which honors past, present, and future Patrol personnel.

Service Above Self

By Steve Kearney, KSTA Executive Director and Lobbyist

The strength of any organization is only as good as the dedication and enthusiasm of its leadership. An Association like the Kansas State Troopers Association is formed to pursue the collective interests of the members, to protect the well being of a profession, to provide safe haven in the strengths of a group not available to each member individually.

To accomplish these goals however, there must be from the membership those willing to serve as leaders, as Board members, as Officers of the Association, to tend to the day-to-day business of protecting their brothers and sisters in the Association. Service as Troop Directors, Executive Committee members and as Troop Representatives is an additional commitment shouldered on behalf of the rest of the membership willingly, but not without some personal sacrifice by those that step up on behalf of the membership of the KSTA.

At the January Board meeting I attended this week, during the reports of the Troop Directors, I was struck by the time spent not just at the Board meetings given freely by these Troopers, but also their involvement in their Troop during the weeks between meetings. Their involvement in protecting the rights of their fellow Troopers during the intervening weeks, their comprehensive reports on the details of anything impacting the well being of our members in their Troops from working conditions, to needs of members families who have fallen on difficult times, shows a level of commitment to their fellow Troopers not often seen in our instant gratification, "what about me?" society.

At this same meeting the attendance of Troopers beyond just the Board was way up. It has been creeping up each meeting. If you have never been to a meeting, as a member you should come. To a person, each new attendee comes away with an understanding of the depth of commitment this organization has for its members and the work involved in sustaining the well being of our members. In those attending for the first time I see not just the understanding of purpose, but a willingness to take the time from the other demands of their lives to find out more. The beginning of the infectious enthusiasm for their brothers and sisters in uniform beyond the road, realizing the needs of our members do not stop when the shift ends, breeds new

leaders. Each time they come back after the first, they take another step toward Service Above Self.

We should all be grateful there are those willing to Serve, because without them there would be no KSTA and none of the accomplishments from years past would ever have occurred. Service Above Self is more than a catch phrase when I observe the Association activities with the KSTA; it is a standard borne by the leaders proudly.

PROMOTIONS

Captain John R. Gaunt, Jr. was promoted to Major and Central Region Commander on November 23, 2003.

Gaunt began working for the Patrol as a messenger in Topeka in September 1974. He became a trooper in October 1976 and was assigned road patrol duties in Topeka. He was promoted to sergeant and became a first-line supervisor in Belleville in October 1982. In July 1988, he was promoted to lieutenant and began serving as Assistant Troop F Commander in Wichita. He became the Troop F Commander in September 1992. In February 1998, he was promoted to captain.

While with the Patrol, Gaunt has also served as a field-training officer and a labor negotiator. Since 1993, he has been on the DUI Victim Center of Kansas' Advisory Committee.

Gaunt is a graduate of Mount Vernon High School in Alexandria, Va. He received his bachelor's degree in sociology from Washburn University, and he became a certified public manager through the KU Public Management Center.

RETIREMENTS

Master Trooper Marion "Pete" Peterson retired from the Patrol on December 6, 2003, after serving the citizens of Kansas for over 25 years.

Peterson became a trooper on June 18, 1978, and he began patrolling the roads in the Garden City area. In June 1996, he was promoted to master trooper, transferred to Kansas City, and was assigned road duties on the Kansas Turnpike. During his career with the Patrol, he also served as a field-training officer, and he received two certificates of achievement, each for administering CPR.

Peterson is a graduate of Hutchinson High School, and he attended Dodge City Community College. He served in the United States Marine Corps. from 1970 to 1974, achieving the rank of sergeant and specializing as an instructor.

Master Trooper James F. Theis, Jr. retired from the Patrol on March 13, 2004, after serving the citizens of Kansas for over 31 years.

Theis joined the Patrol on November 1, 1972, and began road patrol duties in the Chanute area. He became a district trooper and was assigned to the Paola area in August 1973. On June 18, 1996, he was promoted to master trooper. Theis transferred to Wyandotte County and began serving as a court liaison on August 1, 2000.

During his career with the Patrol, Theis received two certificates of achievement, one for an auto theft apprehension and the other for apprehending an armed bank robber. He also received two division commendations, one for capturing three burglary suspects and the other for capturing two Crawford County Jail escapees who were subsequently involved in a burglary, kidnapping, and auto theft. In

addition, the Paola Rotary Club presented him with the Merit Award for his apprehension of a bank robber.

This is a graduate of Hayden High School in Topeka, and has attended Washburn University, Barton County Community College, and Johnson County Community College. Between March 1968 and January 1972, he served in the U.S. Army, achieving the rank of Specialist 4 in Artillery.

The Trooper Wears Many Hats

By Trooper Jeff Norling

We all chose this line of work to be troopers, probably having just one thing in mind. But what that one thing was - whether it was to help people, fight crime, or educate the public - quickly evolved into a broader line of work as we have become exposed to more situations on a daily basis.

It occurred to me about one year into being a law enforcement officer back in 1997, when I was a deputy for the Franklin County Sheriff's Department, that I was not just a law enforcement officer. After the first domestic disturbance, first child-in-need-of-care, first fight call involving young brothers, I learned that the law enforcement officer plays many roles in people's lives. In these roles, I was quick to learn that the only way to survive in this line of work was to be flexible in the way I looked at each situation I was faced with.

Take that domestic violence call, for instance. In one call, you may play several parts to the people involved. First, you become a referee: breaking up the fight, and sternly telling each party that they have to "go to their corners." It takes some bargaining, or negotiating, to get compliance. In that, we are salesman trying to sell the people their choices - go quietly and in compliance, or fight your way and be treated a bit differently.

Once we start the transport to the jail or shelter house or family member's house, we change our hats again, becoming a listening post to the suspect, victim, or ten year-old witness who has seen his/her share of parents fighting. Our being there could be the first step in their healing, and our listening to what they have to say can be the first time they have opened up, much like one does with a counselor or therapist.

I guess the best way to put it, during that call you wear that hat of the law enforcement officer, but you "cover up" that hat with the referee cap, salesman hat, and counselor/therapist hat in gaining compliance, information, and the beginning to a solution.

We all remember the times working that horrendous traffic crash, when family comes to the scene, even before you have positively identified the person who perished in the crash. You know the crash; one of the local people recognizes the vehicle, drives into town, and starts to tell everyone in town that the person in the vehicle is expired. Well, while you are busy working the crash wearing that trooper hat, you see the family arriving, and you have to quickly switch to another mode. Depending on the situation, you become friend, family, chaplain, grief counselor, bearer of the bad news, or you decided to step back, and in total shock, not know what to say or do. Sometimes, you do more than one of these. The latter has happened to probably all of us at one time. In these times, as we know, there is often not a lot you can say or do, other than go back to work.

The common hat we often wear during our time as a law enforcement officer is that of mechanic, or service man. In speaking with a few of the troopers on the Kansas Turnpike, they are all familiar with this hat. Some have changed over 100 tires in a year, some have poured a thousand gallons of gas to the folks failing to check their gas gauges before entering the 'pike, and some have had to help motorists solve a

small problem with the vehicle to get them going once again. Jump starts, tire changes, re-latching hoods, and doing those duct tape-and-bailing wire repairs to get someone going are some of our specialties on the roads of Kansas.

And speaking of duct tape-and-bailing wire, how many of us stop to speak to the farmer at his field entrance, and just ask him how the crops are going? In relating to the farmer, or rancher, and giving your two cents worth about the rainfall, soil, fertilizer, etc., are we not a farmer with them? I have had the farmer actually ask me, "So how would you do it?" When that happens, I have to explain that in the suburbs of Chicago, I grew up with no more experience in growing anything other than the weeds in my dad's yard, or feeding nothing more than the fish in my aquarium.

Anyone of us who steps into a service station, convenience store, or restaurant, has had the young boy or girl look up to us with stars in their eyes, with gaping mouth, in awe of the man or woman with all of the neat, shiny stuff on their shirts or belts. In looking around, you find that they are with either a man, or a woman, and often not both. In that moment you stand looking back at that child, and speak to that child, you become that child's uncle, father, or big brother, aunt, mother, or big sister. The short time you may spend saying a mere ten words to the child may have an impact on that child for the rest of his/her life.

While in that service station, convenience store, or restaurant, you meet the truck driver lost because he took I-35 instead of I-135. It is time to be the source of information, with maps to give out and directions to give. Being a tourism guide for the State of Kansas is somewhat rewarding, since most of us get to drive around and get paid for it, and at the same time, do some "sight seeing." Most of us at least know where the best places are in the state to eat, right?

During that period of the year those mean storms brew up, some of us decide to become weather people, attempting to sum up the weather situation in our areas. Some of us become physicists during our shifts, working reconstructions of crashes or assisting those who are. We have a few who become chemists as part of working a methamphetamine lab seizure. With modern technology and the computers in every office, we often become our own IT help, attempting to fix the locked-up computers.

I would say that the wearing of many hats, the constant change in how we have to approach our work, is what makes this line of work great. There is never a day that passes that is anything like the day before it, or any day to come. You could say we are the jacks-of-many-trades. It is the constant changing of the hats that helps us master them all. Not knowing what to expect each day one of us goes to work is what keeps us going.

What Matters Most

By Trooper Jeff Norling

When we decide to take up a career in law enforcement, most of us probably do not consider the type of person it takes to work in the field, or the type of person it takes to LIVE with one of us. That means your spouse, children, and even parents. After a few years in the career field, it has come to my attention that the stresses of being a Trooper can and do put a burden on those who are around us, day in and day out.

I, for one, have been married to the same woman for thirteen years. She was there before I went into law enforcement, and she will be there long after I retire. She has taken up the responsibility to become my sounding board and active listener to me when I need it, all while not getting too involved in my work. This type of support is priceless. It seems that it does take a special person to live with the officer coming home from work, the kind of person who knows the right time to "make the approach" to converse. Some days are worse than others. We all know what those days are.

Unfortunately, every day I see the toll that being a Trooper, Deputy, or Police Officer takes on marriages all over. You read about it in the news, see it on television, or hear it at coffee breaks. Another cop has

become a victim, be it divorce, suicide, arrest, alcoholism, or just leaving the law enforcement career field. We all know the ones, and probably work directly with someone who has been through the toils of any one of the above, if not more than one of the above.

In many of the situations mentioned, those with marital strife tend to have had those troubles because they could not relate to the stress, or their spouse may have refused to attempt to understand the stress. It took my wife some time to get used to rotating shifts, me coming home several hours after my shift was supposed to end, and missing family events. It was also difficult for her to adjust to the occasional irritability I presented when I was dealing with a tough case or a bad wreck. Shelly knew after a while when it was safe, and the time was right, to make conversation. She also understood the general idea of what my work was like without getting too involved, so that she could better read my body language or listen to my verbal language to know if I was stressed.

I am not here to lay blame on anyone or anything in particular as to why LEO's tend to have a higher-than-average divorce rate in comparison to that of other middle-class professions. I am saying that we could do better at saving some of our relationships. That does not only include relationships with our wives or husbands, but our children, parents, and especially co-workers. Thankfully, in recent years, there have been better efforts at teaching the valuable lessons in stress management. Yeah, listening to whale music and ocean sounds was pretty strange during the first couple of weeks at the Kansas Highway Patrol Academy, and I still cannot imagine popping in a CD of whales talking while I'm working out, but the foundation is there to show the importance of stress management.

It can be one's personal decision to choose to not deal or not know how to deal with stress. How many of you have had that time where you have dealt with a multiple fatality crash, not had anyone to "decompress" with (EMS/FIRE, fellow Trooper, other LEO, a family member of the deceased, a preacher) and come home with the heavy heart and confusion? In a situation like this, where our professional selves try to block out our personal selves, our minds can clutter and we can forget the most important thing – to take care of ourselves. Some of us tend to let ego, peer pressures, and our "work" get in the way of dealing with our problems, especially when they could be work-related.

One of the most important things we Troopers, Deputies and Officers all can learn from each other is to try to deal with our problems constructively. We need to know how to communicate with each other, communicate with our spouses and significant others, and know our limits when we may need to get professional help. It could be as simple as taking much needed time off, or asking for a shift re-assignment. When time permits it for me, I try to change up my patrol routine, working different areas or roads to get my mind set right. And as anyone who has worked around me knows, I talk about what is on my mind. Just ask Trooper Elwood Phelps. There have been many meal breaks when he has sat silent while I talked the entire break.

We have a valuable resource available to us at the Kansas Highway Patrol. The Peer Support Team has been there to assist us in those tough times, and the Team is there to help keep ourselves from letting stress get the best of us. Your own preacher, or a chaplain, can be one of the best sources of counseling. Parents can be a good resource, and after all, who would know better how to help than Mom and Dad? In those large-scale incidents, agencies may have a "Critical Incident Stress Debriefing" to let all those involved talk about their respective roles in the incident, and to help those to cope with the stress and confusion.

Our spouses are valuable to us, but equally as important in some people's lives are their children. Make sure to not bring work home. We all know children can be more perceptive than they seem, and this is more true for children of LEO's. They see us working, they see us when we come home, or leave for work, and so do their friends. I know my kids look at me head-to-toe when I am coming or going to work, and usually their first questions are "Get any drunks?" or "Work any bad wrecks?" They have been asking these questions of me for as long as they could talk. Not if that is not being tuned-in with what I do, I don't know what is.

I am not saying shelter the family from the stresses of work. I am saying to constructively deal with the stress. I try to explain to them what it is I do, and when I have to miss the ball games, school programs, or

just dinner, they have an understanding of the reasons.

In talking with several Troopers and other LEO's, the main point I hear when it comes to dealing with stress and the success or failure of family relationships is that we could all do better in handling our personal lives versus our professional lives. Learn your limits, and take the time to deal with whatever stresses you are under. It could be the difference in your relationships with those around you, at home and at work.

Man's Life Saved by Quick Thinking of Retired Trooper

From the Council Grove Republican

On Thursday, January 8, retired Trooper Henry Wessel saved the life of John Hanson of Council Grove. Hanson fell through the ice at Council Grove City Lake while attempting to rescue his dog.

Hanson's dog had fallen through the ice and Hanson also ended up in the frigid water while attempting to save the animal. Hanson lives on the lake.

Wessel, who also lives on the lake, was in his garage. He happened to look through the window and spotted Hanson in the lake. Wessel grabbed a rope from his garage, but it was too short to reach out to Hanson. A stick was tied to the rope, but it was still too short; Wessel then cut loose a nearby canoe, tied the rope to it, and went out on the lake in the canoe to rescue Hanson while Mrs. Wessel held onto the rope.

Emergency Medical Service personnel arrived shortly after Wessel had Hanson out of the water and on the dock. Hanson was transported to the Morris County Hospital. It was not known how long Hanson had been in the water before he was spotted by Wessel.

After rescuing Hanson, Wessel went back out in the canoe and retrieved the dog. The animal was taken to Jernigan Veterinary Clinic.

Ministry to Strangers **By Chaplain Tom Shane**

"Chaplain Shane, this is dispatch." It was Sandy from the 911 system. Before I had any information about what she wanted I guessed the news would be grim. Dispatch never calls me at the hospital unless something of significance has happened. She continued, "606 we need you to respond to West Lake south of the ranger station. We have a Code Black, probable suicide. We believe family has been told and are en route. Are you available?"

Chaplaincy is a specialized ministry and it is often a ministry to strangers. People experience major life crises and in their desperation, our paths cross. Though it involves as much celebration as sorrow, it is in times of distress and broken dreams when chaplaincy is most helpful. In that wretched moment when life seems utterly barren of hope or possibility, the task of the chaplain is to represent and re-present the hope of the Good News. It is less what we do and more what we stand for that matters.

It is unlikely that we can make things right again. It is rarely possible that we restore life to its wholeness again. Lives get lost and broken dreams remain as shattered as ever. What we offer is a redemptive pastoral presence in which we stand with people in their time of trial believing that there is comfort and healing in this holy presence. We are a shoulder to lean on and someone who will stand with them in this barren of all moments.

Sandy filled me in on the details, at least as well as was known. A young man broke up with his girlfriend. More to the point, his girlfriend left him for someone else, and the pain of rejection blinded him to all hope. He was last seen when he borrowed his parent's truck and said he needed a few days to collect his thoughts. He was going camping. Three days later, two boys at a local lake told their parents, "Something smells really bad in that truck down the road." The boys showed their father the truck. In a thick grove of trees nearly out of sight, the blue Ford sat silently. The boy's dad could see that the windows to the topper were blocked with cardboard and a hose from the exhaust pipe was taped into a side window with the

opening sealed tight with black duct tape. He called 911.

I thought about what I would experience as I drove west on US 50 to the scene. I monitored the radio traffic on my walkie-talkie. How strange that was. As I was hurrying to an unfolding suicide scene, other units went about the most ordinary events of the summer. A barking dog complaint. Someone parking in a handicapped space without a handicapped tag. It was a microcosm of life itself. Moments of anguish exist beside the most ordinary of human experiences. I tried to prepare myself as I drove to the scene.

I am a father, too, and I have a lifetime of dreams for my adult children. And now I have dreams for my grandchildren as well. I would spare them from every heartbreak of life if I could. I pray for their health and well being. I know the sound each of their voices and imagine each one of them talking to me. I know the sound of their laughter. I know how each one calls me by name. As we've grown older and tasted the bitter fruit of some of life's moments, we have learned how to turn to each other for help. In my recent health crisis, every one of them stood by me. The thought of a tragedy harming them is too painful to consider.

I know deep within my heart that I would soon be with a family who loved their adult child as much as I love mine. I knew I would be with them as they experienced the worst tragedy a parent can imagine: their beloved child took his own life.

Because of that fateful decision on his part, their own lives were as shattered as their son's life, only they would have to live with the pain of this moment forever.

"909 to Newton." It was the on-scene deputy. I ride with him a lot. He's a friend as much as a colleague. His voice betrayed his anxiety.

"Go ahead, 909."

"Newton, if you can get 606, ask him to expedite. Family's here. We're keeping them at the ranger station, but they have figured out what's happened and we need him here now."

"Ten-four, 909."

"606 to 909 direct," I responded. "I'm about ten miles out."

It was a long ten minutes. I tried to center my own spirit so I could be available to the parents in the most comforting way I could. Soon enough I arrived, met the deputy and was told a few incidental details. The real truth was still unchanged: a mother and a father were waiting to confirm what they already suspected. The coroner was already there, standing by the truck with an open tailgate. So was the ambulance, only this time it was here for a body removal and not to transport a patient. I walked with 909 to the parents who stood expectantly not far away. There was no false hope to buoy their spirits. Without any facts, they expected the worst.

The deputy was kind, but even so, some information hurts to tell no matter how deftly and compassionately it is revealed.

"It's better if you wait here. We can confirm that it is your son, and we have every reason to believe he took his life. He left a note. Technically it is a crime scene, so we'll need to officially investigate just to rule out foul play." He paused, not knowing how to continue with the rest of the story. I knew his dilemma and I detested it, too. I've worked other summer suicides and I know what happens to bodies left unattended for days. It is a nasty, rarely spoken part of law enforcement responsibility which must be addressed but it is an unpleasant element. Death is always sad. Some deaths are gruesome.

Their son was dead by his own initiative and he had lain in the back of the pickup truck for three days in the August heat. The natural consequences of such a death and the decomposition left him very disfigured.

The deputy continued, "You must understand that he has been here for several days and that has left him..."

He paused, trying to find the right words.

"I can imagine," said the father, interrupting the deputy. "I understand." Some truths are self evident. "We'll remember him as he was, not as he is now."

From a distance we watched as the coroner removed the body from the truck, zipped the black body bag shut, and loaded it into the ambulance. Both parents watched with sorrow etched in their faces and their spirits.

Quietly I walked with them back to their car. My heart was sad. "I'm so sorry," I said.

They shook their heads and said simply, "Thank you."

They asked a few procedural questions like where the body would go and would there be an autopsy. I tried to determine what kind of support they had to rely on in the grief filled days to come.

Two more strangers. There are occasions in which people's lives are radically transformed and there is nothing we can do to alter that bitter reality. But we can be present and stand with them. I think of it as a theology for the empty spaces. Some moments are so sad that the most we can do is to be their companion as they cope with the overwhelming sorrow. Words are less important than listening to the silence of their lives.

The grieving parents got in their car and drove away into the steamy August afternoon.

Taking Care of Business

By Alan W. Foust

*Editor's Note: This article was submitted by Master Trooper Marc McCune. The article was published several years ago on a website maintained by former trooper Ian Benney. Benney received the article as a forwarded email. Attempts to locate the author were unsuccessful.

The 11-year-old boy struggles to keep up with the farm hand as they hoe cotton under the hot August sun. The warm dirt feels good under the boy's bare feet as he diligently works on cleaning his row of cotton; the more experienced farm hand is cleaning two rows. All around them are fields of cotton and soybeans.

The nearest house is his uncle's about a mile to the south, and there is no one, not even a farm tractor, working within sight. The sound a screaming engine causes the boy to look up and see a jacked-up hot rod speeding down the blacktop road, but what really catches the attention of the impressionable boy is the Highway Patrol car that is giving chase. It is right off the hot rod's bumper with red lights revolving and siren wailing.

The cars turn east on a gravel road just north of the boy, and the dust rolls. The boy watches for several minutes as the dust trail speeds away across the flat farmland, and he wonders: **"What would it be like to drive a patrol car with flashing red lights and wailing siren?"**

Two years later, the boy is traveling to his grandparents' when his father calls attention to several Highway Patrol cars parked on the shoulder ahead. The boy's eyes wander to a nearby house, where he sees four State Troopers, each standing behind a tree and each with a shotgun trained on the house. The image is burned into his mind with unwavering attention, leaning into their shotguns. They definitely mean business, and the boy wonders: **"What does a person do to get a trooper's shotgun pointed at him?"**

The boy is 16, driving to town on a Friday night when two cars pass him, obviously in a race. He watches them dart in and out of the heavy traffic on the two-lane highway and contemplates entering the race. He is surprised when a Chrysler patrol car rockets by, gently rocking his pickup as it passes. The dual exhaust is loud and two tiny spirals of smoke are coming from the pipes, which means the Trooper is slowing down, although, the boy realizes, the cruiser is traveling well over 100 mph. Awesome! Two miles down the road the cruiser is parked behind the two cars that were racing and the Trooper is taking care of business. The boy wonders: **“How fast do those State Patrol cars go?”**

It is three years later and the boy is at a party at the lake. There are kids, cars, and beer. It is a Saturday night when the two large sedans pull into the lot and stop. From the unmarked car, like apparitions out of the dark, the Troopers appear. It is the first time he has seen one up close, and they are BIG, at least 6 ½ no...7 FEET TALL! Even though he is not drinking beer and has done nothing wrong, he is scared to death. The Troopers are courteous and confident and take care of business. They disperse the party in short order and the boy wonders: **“Where do they find people big enough to be Troopers?”**

The boy is 22 now and sitting in a bar south of town with a friend when a car slides up outside. A small, unkempt man gets out, enters the bar, and – obviously drunk – weaves his way to the rear. No sooner than he sits down does a Trooper enter, survey the occupants, and start to the rear towards the drunk. A big, fat bartender blocks the Trooper’s path and tells him that he is not welcome in the bar. The Trooper immediately jabs a finger in the bartender’s chest and advises him in a quiet, even tone that if he doesn’t want to be arrested, too, he should move aside. The bartender complies and the Trooper handles business, efficiently herding the drunk from the room and to his Patrol car. The boy wonders: **“Do all Troopers have that much courage?”**

It’s 15 years later, and the boy has been a Trooper almost as many years. In that time, he has seen a lot and is not easy to impress anymore. He knows what it is like to drive fast and has witnessed firsthand how it can kill.

He knows how to use his weapons, how they command respect and how they can protect.

He knows how big Troopers are, and how that “largeness” comes from stature and bearing.

He knows what courage is and that it sometimes takes more to “always do right” than to handle a mean drunk or an unruly crowd.

He’s bored to tears and terrified in the same shift.

He’s been shot at and missed, and spit at and hit.

Sometimes he feels appreciated, more often he does not. But he is satisfied and a little proud of the business he does, not only because he enjoys helping other people, but because the man knows: **“Out there somewhere, there just might be an 11-year-old watching.”**

U.S. v. BANKS

U.S. Supreme Court
December 2, 2003

(A unanimous Supreme Court holds that the 4th Amendment and a federal statute were not violated by law enforcement officers when they forcibly entered a small apartment, in the execution of a federal search warrant for narcotics, only 15-20 seconds after "knocking and announcing". Reversing a holding of the very

reversible U.S. 9th Circuit Court of Appeals.)

Lashawn Lowell Banks was in the shower of his very small one bathroom -two bedroom North Las Vegas apartment at 2 o'clock in the afternoon when he heard a loud commotion at his front door. He emerged from the shower, dripping wet, covered with soap, and nude. (There goes any hope of a concealed-carry charge.)

The first thing he noticed, in addition to the significant draft, was that many law enforcement officers, many of them hooded, all armed, some with words like "FBI" and "POLICE" and "SWAT" on their attire, were dominating the small hallway between his bathroom and the front door. Then he noticed that some of the officers were holding a battering ram and that his front door was no longer vertical.

He was first forced to the floor and handcuffed. Then, still slippery, he was lifted up and placed, naked as a jailbird, as we used to say in western Kansas (maybe it was "jaybird", come to think of it) on a chair at the kitchen table.

Now, no doubt, he is starting to regret having eleven ounces of crack cocaine, three handguns, a drug scale and \$6,000 in cash in his tiny apartment. And, oh yeah, having sold crack to an undercover officer earlier.

Shortly thereafter, after two agents sat down to interrogate him at the table, and the other officers searched the apartment, finding the drugs and guns he wasn't supposed to have, Banks was permitted to put on underwear (I presume with the handcuffs removed) and then interviewed for approximately 45 minutes.

The results of that interrogation, and what Banks did or did not say, are not relevant in this appeal. Banks raised Miranda and 5th and 6th Amendment issues, but the district court, and even the 9th Circuit Court, paid little attention to those concerns, dismissing Banks' arguments quickly.

The sole issue here is a 4th Amendment issue relating to the law enforcement entry into Banks' apartment.

What happened prior to the interruption of Banks' shower was that the joint search team of FBI agents and North Las Vegas police officers appeared at the front door and back door of the apartment with a search warrant. Officers followed the federal statutory (Title 18 U.S. Code 3109) "knock and announce" procedure by knocking loudly on the front door and announcing "Police! Search Warrant!" After 15 to 20 seconds, with no response from within, the armed SWAT officers made a forced entry into Banks' apartment.

Officers later testified that they had not heard any noises from within during the 15 to 20 second-waiting period, and one officer at the back door even testified that all he heard was the loud knocking at the front door and the shouts of "Police! Search Warrant!"

Banks complained that the police entry, only 15-20 seconds after the "knock and announce", violated the 4th Amendment and the federal statute, and that, therefore, the evidence should be suppressed.

Basically, the defense argued that the evidence must be suppressed because the officers failed to wait a reasonable period of time before forcefully entering the residence of Banks, search warrant or no search warrant. The defense claimed such a quick entry can only follow exigent circumstances or a refusal of admittance, after the officers announce their identity and purpose, and demand entry.

The U.S. District Court denied Banks' motion to suppress. Banks, reluctantly, pled guilty to possession of a controlled substance with intent to distribute and also to being a drug user in possession of a firearm. He reserved his right to appeal and did appeal.

The famous U.S. Court of Appeals for the 9th Circuit (pledge of allegiance - under God) reversed Banks' conviction, holding that there were no exigent circumstances in this situation and/or no refusal of admittance by Banks. There simply was no justification of the quick entry by law enforcement.

The court emphasized there was no response of any kind by Banks, let alone a refusal of admittance.

"Our task is to determine what constitutes a reasonable waiting period before officers may infer that they have been denied admittance." (And, obviously, 15-20 seconds is not a reasonable waiting period.) "In assessing the reasonableness of the duration of the officers' wait, we review all factors that an officer reasonably should consider in making the decision to enter without an affirmative denial. Those factors include, but are not limited to: (a) size of the residence; (b) location of the residence; (c) location of the officers in relation to the main living or sleeping areas of the residence; (d) time of day; (e) nature of the suspected offense; (f) evidence demonstrating the suspect's guilt; (g) suspect's prior convictions and, if

any, the type of offense for which he was convicted; and (h) any other observations triggering the senses of the officers that reasonably would lead one to believe that immediate entry was necessary."

Here, in a wonderful opinion, the Big Court dismisses the 9th Circuit's strange four-part scheme for "knock-and-announce" search warrant entries and upholds the Banks' entry and seizures.

Rightfully worrying about destruction of the evidence, given Banks' indoor plumbing, and officer safety, as the seconds ticked off, Justice Souter, writing for the unanimous court, said, "*Though we agree ... that this call is a close one ... we think that after 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer ... time will vary with the size of the establishment, perhaps 5 seconds to open a motel room door, or several minutes to move through a townhouse ... Police seeking a stolen piano may be able to spend more time to make sure they really need the battering ram.*" (Is this a wonderful country or what?)

"Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one. But in a case like this, where the officers knocked and announced their presence, and forcibly entered after a reasonable suspicion of exigency had ripened, their entry satisfied (the statute) as well as the Fourth Amendment, even without refusal of admittance."

(Bottom line? And you can easily recite the Pledge of Allegiance in less than 15-20 seconds! Try it.)

FELLERS v. UNITED STATES

U.S. Supreme Court

January 26, 2004

(The Big Court agreed to decide the appeal of an 8th Circuit Court opinion that held a confession obtained in the jailhouse, with Miranda warnings duly given, was not tainted by an interview of the indicted defendant shortly before in the arrestee's home, without Miranda warnings, that had also resulted in incriminating statements. But, here, 9-0, they defer the important question and tell us only that following arrest, and before questions, you must give the guy Miranda warnings! Let this startling news go out across the land!)

Two law enforcement officers went to the Lincoln, Nebraska, home of John J. Fellers to arrest him for conspiracy to distribute methamphetamine. They told him they had a federal warrant for his arrest. They told him they were with a federal task force. They told him he had been federally indicted on "meth" charges. They told him they wanted to discuss his involvement in the distribution of "meth". They told him they wanted to discuss his association with certain other individuals similarly involved in that "meth" conspiracy. They told him everything; everything except his Miranda rights.

The three visited for 15 minutes in his living room. He sat on his couch and talked freely about the failures of his marriage and his business that led to his drug use. He admitted specific use of methamphetamine and told the nice officers he knew each of the 4 people they named to him and considered them "meth" associates. He was arrested and taken to jail.

At the jail the two officers advised Fellers of his Miranda rights. He waived those rights, signed the Miranda form, agreed to speak to them, repeated his earlier incriminating statements and added the names of several more co-conspirators in this conversation.

Fellers moved to suppress both statements. The one at home, sans Miranda, and the one at the jail, with Miranda.

The U.S. Magistrate ruled both statements inadmissible because he was in custody at home and not given Miranda, and because police would not have obtained the confession at the jail, with Miranda, without the previous ill-gotten statement without Miranda.

The U.S. District Judge agreed the home statement was inadmissible, but held the jail statement admissible, saved by Miranda.

The jury found Fellers guilty of conspiracy to possess and distribute methamphetamine and he was sentenced to 12 years and 7 months in federal prison.

He appealed to the U.S. Court of Appeals for the 8th Circuit and that court affirmed the district court conviction, finding nothing wrong with the jailhouse confession, voluntary and preceded by Miranda warnings as it was, in their opinion. That court found, strangely in my opinion, that Fellers was actually not interrogated at his home.

Anyway, Fellers, serving as his own attorney sitting in prison (not that there are no lawyers in federal prison) appealed his conviction, and very substantial sentence, to the U.S. Supreme Court.

The two questions presented by Fellers' appeal to the highest court were: (1) Did the 8th Circuit err when it held that Fellers' 6th Amendment right to counsel was not violated in the interview at home because he was not "interrogated" by police, when the true test is whether police "deliberately elicited" incriminating information from him? (2) Should the second confession, at the jail, preceded by Miranda, be suppressed as tainted fruit of the illegal post-indictment interview without an attorney?

The Big Court spends considerable time distinguishing between Fellers' 6th Amendment right to an attorney, following his federal grand jury indictment, and his 5th

Amendment custodial-interrogation right to remain silent, with a healthy infusion of Miranda law and what actually constitutes interrogation.

This Court seems to agree that whatever happened at Fellers' home didn't rise to an "interrogation", but "...*there is no question that the officers in this case deliberately elicited information from (Fellers).*" And concluded that, at least, his 6th Amendment right to counsel was violated in his home.

So, the Big Court says, as it reverses the 8th Circuit Court opinion, the case must go back to that lesser court to decide whether the 6th Amendment in-home violation polluted, tainted and contaminated the subsequent in-jail confession as well. Which is what Fellers and we thought the U.S. Supreme Court was poised to decide.

(Bottom line: Very narrow ruling. Because of the federal indictment, the officers should have obtained a waiver of counsel before they "deliberately elicited" incriminating information from him in his home. Did that foul the subsequent warning and waiver confession at the jail? I don't know yet. And Andy Sipowicz doesn't care.)

ARIZONA v. GANT
Docket No. 02-1019.

U.S. Supreme Court granted review April 21, 2003. Argued November 5, 2003. Not yet decided. Not a final decision.

(When we arrest the very recent occupant of a vehicle outside his vehicle, can we still search the interior of that vehicle incident to that arrest, pursuant to New York v. Belton, 453 U.S. 454,1981?)

Tucson police responded to the report of drug activity at a residence. Rodney Joseph Gant answered the door. Everything seemed in order and they left.

They ran a computer check on Rodney, however, and learned he was wanted on a failure-to-appear warrant and also was wanted for driving on a suspended driver's license.

So, back they go to the residence. This time Rodney wasn't there. But a man and a woman, the latter holding a crack pipe, were present. (The officers suspect drug activity!)

At that precise time Rodney pulled into the driveway in his vehicle. An officer started walking toward the now-defendant's car, shining his flashlight into the car. (Forgot to tell you that this all happened after dark.) Rodney exited the vehicle, as we say in law enforcement, and the officer and he continued walking toward each other. The officer arrested him, having seen him driving without a license, and for the failure-to-appear charge. The defendant was handcuffed and placed in the police car.

So far, the defense has nothing to complain about. And, indeed, Gant never contested the lawfulness of his arrest.

The issue is that, after placing Rodney in the police car, the officers then went to Rodney's car and searched the interior, finding a handgun and a jacket. Cocaine is found in the jacket pocket.

The defense screamed Fourth Amendment violation and illegal search of the car.

The prosecution countered with the argument that the search and seizure were justified on 2 grounds, i.e., search incident to lawful arrest and probable cause under the Carroll Doctrine. Take your pick the prosecutor said.

The trial judge ruled that the Carroll Doctrine argument wouldn't fly, but found the search of the car lawful because it was a search incident to his arrest.

Rodney, therefore, was found guilty of unlawful possession of cocaine for sale and unlawful possession of drug paraphernalia. (She said it was his crack pipe.) And he was sentenced to 3 years in prison. (Time enough to locate a new girlfriend probably.)

The Arizona Court of Appeals ruled, on appeal, that the cocaine should have been suppressed, because the search was illegal both as search incident to arrest and as a Carroll Doctrine - probable cause search. That court reversed Gant's conviction.

The Arizona Court of Appeals made short work of the Carroll Doctrine argument. *"The state asserts that, because Gant was present at a house where narcotics trafficking was suspected to be occurring and where the police had found a person with drug paraphernalia, the police had probable cause to search Gant's vehicle under the automobile exception to the warrant requirement. Police may search a vehicle without a warrant if the vehicle is readily mobile and if they have probable cause to believe it contains contraband. That exception, however, is inapplicable here ... we must conclude that the police did not have probable cause to believe that Gant's vehicle contained contraband."*

Most of the discussion, however, related to New York v. Belton (1981). That case gave us our current search incident to arrest law for vehicles. You will recall, I hope, the New York State trooper in an unmarked car. The speeding car passed him and he pursued and stopped it. He then smelled the odor of marijuana coming from the car as he questioned the 4 occupants, still inside the car. Then he observed the envelope of marijuana on the floorboard, ordered all 4 from the car, arrested them, secured them and then returned to the car, where he removed cocaine from Belton's jacket in the back seat. Good search and seizure. Incident to arrest.

The Arizona Appeals Court disagreed with the prosecution that New York v. Belton upheld the seizure of Gant's cocaine.

"The search of Gant's vehicle was outside the scope of Belton ... Because (unlike Belton) the passenger compartment of his vehicle was not within his immediate control (like Belton) at the time of his arrest ... the search was not conducted as an incident to his arrest."

Unlike Belton the court here could find no legitimate concern for officer safety and evidence preservation.

(Bottom line? In Belton the defendant was in the car at the time of the arrest. Gant was not. We'll see.)

HIIBEL v. NEVADA
Docket No. 03-5554.

U.S. Supreme Court granted review of this Nevada Supreme Court opinion October 20, 2003. To be argued in 2004. Not yet a final decision.

(A Nevada law requires folks reasonably-suspected of criminal activity to identify themselves to police, or face arrest. But does the Constitution give a person the right to refuse to identify himself to police? Does compelling an individual to identify himself violate the 4th Amendment? The Big Court will hear the arguments and make its decision in 2004.)

The dispatcher advises a deputy sheriff that a call has been received from a concerned citizen advising that a truck driver was striking a female passenger inside a truck.

The deputy sheriff proceeded with haste to the scene and spoke with the concerned citizen. The concerned citizen directed the deputy to a nearby parked truck.

As the deputy approached the truck he noticed skid marks in the gravel, indicating the truck had been parked in a "sudden and aggressive manner". He observes an individual who will, eventually, turn out to be Larry D. Hiibel, a Nevada ranch hand, standing next to the truck. Hiibel appears intoxicated to the deputy and smells of alcohol. Hiibel's minor, but full-grown daughter was in the passenger side of the truck.

The deputy asked Hiibel to identify himself. Hiibel refused, advising he had done nothing wrong, and placed his hands behind his back while daring the officer to take him to jail. (Misdemeanor Stupid is only slightly less baffling than Felony Stupid.)

Eleven times the nice deputy asked Hiibel for identification. And eleven times Hiibel refused. (That's ten more times than Detective Andy Sipowicz would have asked.)

Nevada has a Terry v. Ohio statute which requires a person stopped with reasonable suspicion by a law enforcement officer to identify himself or herself. Or be prepared to go to jail.

The deputy arrested Hiibel for resisting a police officer and obstructing an investigation by refusing to give his name. Prosecutors later dropped a misdemeanor domestic battery charge and he was never charged with DUI.

Hiibel was convicted of violation of the required-identification statute in the justice of the peace court for his silence and fined \$250. The district court affirmed the conviction, as did the Supreme Court of Nevada in a 4-3 vote.

The defense claimed Nevada's statute is unconstitutional and that, "*It is inimical to a free society that mere silence can lead to imprisonment.*" (For those of you from Palm Beach County, inimical means injurious or harmful.)

The prosecution successfully argued that the identification requirement helps police avoid wrongful arrests and, after all, it only applies when officers have reasonable suspicion that there is a crime.

Chief Justice Cliff Young of the Nevada Supreme Court added, "*We are at war against enemies who*

operate with concealed identities and the dangers we face as a nation are unparalleled." The good justice also pointed out that the police and public would be placed in danger if officers could not require people behaving suspiciously to identify themselves. *"The suspect may be a felon or wanted for an outstanding arrest warrant. Perhaps that person is a sex offender."* (I like that guy.)

(Bottom line? So, the U.S. Supreme Court will decide whether or not the identification statute violates the 4th Amendment. For whatever it's worth, the U.S. Circuit Court of Appeals for the 10th Circuit, covering Kansas, has previously found a similar Utah statute constitutional. On the other hand, the 9th Circuit Court, covering California and the pledge of allegiance, has ruled to the contrary. Of course.)

ILLINOIS v. LIDSTER
Docket No. 02-1060

U.S. Supreme Court granted review May 5, 2003. Argued November 5, 2003. Not yet decided. Not a final decision.

(Recalling that in Indianapolis v. Edmond, 531 U.S. 32, 2000, the U.S. Supreme Court attempted to define the constitutional standards of vehicle roadblocks, this case will turn on the eventual interpretation of that ruling. There may also be some importance in the difference between a roadblock (as the defense here describes the police tactic in Lidster) and a checkpoint (the prosecution's description). Basically, Edmond held there must be individualized suspicion of wrongdoing for the police to use such a tactic.)

In Lombard, Illinois, there was a fatal hit-and-run accident and the police were seeking the full-sized pickup truck, possibly a Ford Bronco, believed to be implicated in the accident.

Wisely, I would have thought, the police decided they would place an informational roadblock at the precise point of the accident, exactly one week later. The time coincided with people leaving work at a site near the scene of the accident. Each motorist is stopped for 10 to 15 seconds and given a prepared flyer reflecting information regarding the accident and the suspected vehicle, seeking the public's help and providing officers' names and phone numbers that can be called. Between 6 and 12 police vehicles participated in the roadblock, or checkpoint. The roadblock, or checkpoint, was neither advertised nor videotaped.

Detective Ray Vasil was wearing an orange reflective vest with "police" thereon and standing 15 feet from the roadblock, or checkpoint. A line of cars formed at the roadblock, or checkpoint, and, as each vehicle pulled up to Detective Vasil, he handed the informational flyer to the driver.

Everything went well until Robert S. Lidster, intoxicated and driving his Mazda minivan, almost hit our detective. So, with this motorist, Detective Vasil goes a bit further and asked for a driver's license and proof of insurance. Lidster's speech is slurred and the detective smells alcohol on his breath. He is turned over to another officer who administers a variety of sobriety tests. Lidster fails them all, is arrested for DUI and convicted thereof.

An Illinois appellate court, in effect, says, "Not so fast", and reversed the conviction, holding that the roadblock, or checkpoint, violated the 4th Amendment and was contrary to what the U.S. Supreme Court said police could do with roadblocks, or checkpoints, in Indianapolis v. Edmond. The Illinois Supreme Court agreed the police were wrong and that Mr. Lidster was wronged. The U.S. Supreme Court granted certiorari on May 5, 2003, and agreed to clarify vehicle roadblocks, and/or checkpoints. Whatever.

The problem is that the Big Court, in Indianapolis v. Edmond, held that the 4th Amendment's requirement of individualized suspicion for seizure does not allow police to conduct suspicionless roadblocks designed primarily to serve general interest in crime control.

By the way, the Illinois Association of Chiefs of Police joined with the Illinois Attorney General in this appeal, urging the reversal of the Illinois Supreme Court and the approval of the roadblock , or checkpoint. Whatever.

"The Illinois Supreme Court called the operation a roadblock. This was inaccurate. A roadblock is the complete blocking of a road in order to prevent any traffic from continuing on the path. It is a barricade or an obstruction across a road set up to prevent the escape or passage, as of a fugitive or enemy troops. What was done in this case was not a roadblock, as passage through the obstruction was possible after dealing with the authorities. It was a checkpoint. The complete blocking of passage makes a roadblock a more intrusive seizure than a checkpoint. Calling checkpoints roadblocks inaccurately prejudices them and should be avoided." (Quoted from the brief of the Criminal Justice Legal Foundation, who also joined with the state in this appeal.)

You recall that the purpose of the roadblock, or checkpoint, in Edmond was *"the discovery and interdiction of illegal narcotics."* That one was held unconstitutional, of course.

(Bottom line? Is it legal to use a roadblock, or checkpoint, to investigate a recent crime? Are police prohibited from using such tactics to investigate prior criminal offenses? I have no clue. I do have a fear or two.)

U.S. v. PATANE
Docket No. 02-1183.

The U.S. Supreme Court granted review April 21, 2003. Argued December 9, 2003. Will be decided in 2004. Not a final decision.

(Arresting officer is interrupted by the defendant during an attempt to give him Miranda warnings. Without Miranda he admitted illegal possession of a gun in his house and gave consent for its seizure. Without Miranda his verbal admissions are inadmissible, but is the physical fruit of the Miranda violation, the .40 caliber Glock he wasn't supposed to have, admissible in court?)

Samuel Francis Patane had a prior felony conviction for drug possession and a misdemeanor third degree assault conviction. He's also the subject of a domestic violence restraining order (ex-girlfriend) and the target of no less than 2 separate criminal investigations. (Nobody is perfect.)

One of the two independent, pending investigations targeting him relates to his suspected unlawful possession of a .40 caliber Glock pistol. That investigation is a joint effort by the Bureau of Alcohol,

Tobacco and Firearms and a Colorado Springs detective, named Josh Benner, assigned to a local drug interdiction unit. The other investigation, relating to violation of the domestic violence restraining order, is being conducted by Officer Tracy Fox of the Colorado Springs Police Department.

Patane had been arrested for harassing and menacing his ex-girlfriend, Linda O'Donnell. And threatening to kill her. He was released on bond on June 3, subject to the restraining order. On June 6, ATF called Detective Benner and advised him of Patane's unlawful possession of the Glock. Benner called O'Donnell to ask about the gun. She telephonically informed Detective Benner that absolutely Patane had such a weapon. She was scared to death of him, she noted, and said he kept a list of people he wanted to kill and usually had the Glock on his person. Then she asked Detective Benner if he'd also like to speak to Detective Fox, who was then in her living room interviewing her about Patane's violation of the restraining order.

Thus, Benner and Fox learned of each other's interest in Patane. Fox informed Benner that, as a matter of fact, she was headed to Patane's residence to arrest him for the restraining order violation. Benner thought that would be fun, since he wanted to speak to Patane about the gun anyway, and agreed to meet her at Patane's house.

Fox went to the front door and Benner to the back door. Patane came to the front door, pursuant to Fox's knocking thereon, and was arrested and handcuffed.

Then Detective Benner came to the front and began advising Patane of his Miranda rights. Patane quickly interrupted him and said he knew his rights. Benner asked him about his Glock and Patane eventually responded, after other comments, "The Glock is in my bedroom on a shelf. On the wooden shelf." Benner asked for consent to go get the gun. Patane granted permission and the gun was seized.

Patane was indicted by the Federal Grand Jury for possession of a firearm by a convicted felon. The U.S. District Court ordered the gun suppressed, as fruit of the Miranda violation. The U.S. 10th Circuit Court of Appeals affirmed that ruling. The gun is out, due to no Miranda warning.

The government had argued that they conceded Patane's admissions in response to the questioning were inadmissible due to the lack of complete Miranda warnings, but that the physical fruit of the Miranda violation, the Glock, should still be admissible.

In rejecting the government's position, the 10th Circuit relied heavily on Dickerson v. U.S., 530 U.S. 428 (2000). *"In Dickerson the Supreme Court declared that Miranda articulated a constitutional rule rather than merely a prophylactic one. Miranda announced a constitutional rule that Congress may not supersede legislatively."*

And quoting Miranda itself, *"unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."*

The 10th Circuit concludes, *"we see little difference between the confessional statement, 'The Glock is in my bedroom on a shelf', which even the Government concedes is clearly excluded under Miranda ... and the Government's introduction of the Glock found in the defendant's bedroom on the shelf as a result of his unconstitutionally obtained confession."*

(Bottom line? Doesn't look good. But, hopefully the ex-girlfriend can keep him in the jug anyway.)

MARYLAND v. PRINGLE
U.S. Supreme Court
December 15, 2003

(In a unanimous decision, the Big Court rules that a police officer who obtained permission to search a car during a traffic stop, and who found cocaine in the back seat and cash in the glove compartment, had probable cause to arrest all 3 occupants of the car, including the front-seat passenger, and let God and the courts sort it out.)

Joseph Jermaine Pringle was a front seat passenger in a car owned by, and driven by, his friend, Donte Carlos Partlow. Another friend, Otis Calvin Smith, was a back seat passenger. It was 3:00 a.m. and they were in Baltimore County, Maryland, headed for Westminister, Maryland, for a party.

Officer Jeffrey Snyder of the Baltimore County Police Department, on, as we always say, routine patrol, stopped the car for a traffic violation. He asked Partlow for license and registration, and, when Partlow opened the glove compartment to obtain those documents, the officer observed a large roll of cash therein. The officer said nothing about the money.

The officer ran a computer check on the car and driver. Nothing. He returned to the car, asked Partlow to step out and issued him an oral warning for his driving deficiencies. He then inquired of Partlow whether or not he had "anything in the vehicle, any drugs, weapons, narcotics in the vehicle?" Partlow replied that he did not. Well then, the officer asked, could he search the vehicle? Partlow, then obviously intending to use the "TS" defense (Temporarily Stupid), gave permission to search his car.

Officer Snyder asked the defendant and Smith to step out of the car. He patted them down and then had all 3 sit on the curb while he searched the vehicle. (Meanwhile, the party was already starting, no doubt.)

During the consensual search Officer Snyder found \$763 in the glove compartment and 5 baggies of cocaine in a back seat armrest.

The officer then asked all 3 who owned the money and coke. No answer. Then he told them he'd arrest all 3 if one didn't own up to ownership. None claimed ownership and, sure enough, all 3 were arrested and transported to the police station. (There goes the party.)

Finally, between 4:00 a.m. and 5:00 a.m., following a waiver of his Miranda rights, Pringle did the honorable thing. He gave oral and written confessions admitting the coke and money were his and that neither Partlow or Smith had known anything about the stuff. He explained he had intended to use the coke for sex at the party, not sell it. Partlow and Smith were released and never charged.

Pringle was convicted of possession with intent to distribute cocaine and possession of cocaine. He was sentenced to 10 years, without possibility of parole.

On appeal, he argued simply that there was no probable cause to arrest him. He did not complain of the search, acknowledging the owner-driver's consent was properly given. His contention was that his confession followed an illegal arrest and should have been suppressed.

The Court of Special Appeals for Baltimore County affirmed the conviction and upheld the arrest. But the Court of Appeals of Maryland reversed, holding there was not probable cause to arrest the defendant when he had not admitted ownership of the cocaine. Money in the glove compartment and drugs in the back seat didn't provide probable cause for his arrest. The Maryland state court explained, "*Simply stated, a policy of arresting everyone until some somebody confesses is constitutionally unacceptable.*" (Who wants to tell Detective Andy Sipowicz?)

Here the Big Court reverses the Maryland court and dismisses Pringle's "simply guilt-by-association" defense.

"It is uncontested in the present case that the officer, upon recovering the five plastic

baggies containing suspected cocaine, had probable cause to believe a felony had been committed ... The sole question is whether the officer had probable cause to believe that Pringle committed that crime.... We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly... Pringle and his two companions were in a relatively small automobile (Nissan Maxima) ... a car passenger ... will often be engaged in a common enterprise with the driver and have the same interest in concealing the fruits or the evidence of their wrongdoing... Here we think it was reasonable for the officer to infer a common enterprise among the three men. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him."

(Bottom line? Gee, what if it had been a 12 passenger van with full occupancy?)

MISSOURI v. SEIBERT
Docket No. 02-1371.

U.S. Supreme Court granted review of this opinion of the Supreme Court of Missouri on May 19, 2003. Argued December 9, 2003. Not yet decided. Not a final decision.

(When the police intentionally fail to provide Miranda warnings at the outset of a custodial interrogation, as part of a plan to elicit an initial confession before providing such warnings, is the repeated confession, following the tardy Miranda warnings, admissible?)

Patrice Seibert lived in a mobile home in Rolla, Missouri, with five sons and Donald Rector, age 17, who was on medication for a mental disorder. One of her sons, Jonathan, age 12, was severely handicapped with cerebral palsy and unable to walk, talk or feed himself. He died in his sleep and Seibert decided to not report his death. The boy had bedsores and she was afraid she would be accused of neglect of the child.

The group, obviously of extraordinary intellect, goes to Plan B. In Seibert's presence, 2 of her teen-aged sons and 2 of their friends discussed a plan to set the mobile home on fire to cover up Jonathan's death. These masterminds decided it would not look good if it appeared Jonathan had been left home alone, so they elected Donald Rector to die in the fire.

Accordingly, Seibert's son, Darian, age 17, her oldest and brightest, no doubt, and his friend, Derrick, were assigned to the arson and murder. Darian would later testify that Derrick poured gasoline throughout the trailer, hit Donald as he was having a seizure and in convulsions, and then set the fire. Darian experienced serious burns to his face. Derrick did not. (Go figure.) Donald died in the fire, as planned by the Seibert "thinktank".

Five days after the trailer fire, a St. Louis County officer awakened Patrice Seibert as she slept at a St. Louis hospital where Darian was hospitalized with serious burns. (Where else is she going to be? Her house burned up.) The St. Louis officer was there at the request of the Rolla officer handling the case to arrest her. And with specific instructions from the Rolla officer to not advise Seibert of her Miranda rights.

At the police station, the Rolla officer questioned her, intentionally without Miranda warnings, for 30 to 40 minutes. During this unrecorded interview, sans Miranda, the officer continually squeezed Seibert's

arm for effect and repeatedly said to an emotional Seibert, "Donald was to die in his sleep." He continued that statement until she finally agreed that, indeed, Donald was supposed to die in the fire. Then the interview was stopped for 20 minutes for coffee and a cigarette for Seibert.

The officer then resumed the interview, now with Miranda warnings and a tape recorder and a signed waiver form. The tape-recorded interview, repeating her incriminating statements, was later played to the jury and she was convicted of second-degree murder and given the life sentence she had earned. She appealed to the Missouri Supreme Court.

The Missouri Supreme Court said of the officer's interrogation tactic, "*This was undeniably an end run around Miranda*" and reversed the conviction, ordering a new trial without benefit of the confession.

"Seibert's second, recorded statement clearly was the product of the invalid first statement and it should have been suppressed. ... The interrogation was set up to violate Miranda to secure a confession."

The U.S. Supreme Court granted certiorari on May 19, 2003, to decide whether or not the second custodial statement had to be suppressed, even though the defendant had belatedly waived her Miranda rights, because the defendant's statement 20 minutes earlier was deliberately not prefaced by Miranda.

By the way, the officer had candidly testified that he made a conscious decision to withhold Miranda in order to make it easier to obtain a confession. Quoting the Missouri Supreme Court, "*He testified that an institute from which he has received interrogation training has promoted this type of interrogation numerous times and that his current department, as well as those he was with previously, all subscribe to this training ... as evidenced by the testimony of officer officers not only have incentive to intentionally interrogate suspects without administering Miranda - they are being trained to do so.*"

(Bottom line? Detective Andy Sipowicz, who only recently learned of Miranda v. Arizona, is watching this one closely.)