



*Arizona Attorney* is proud to provide a forum for members to voice their opinions. Please limit letters to 250 words. We reserve the right to edit for length, grammar, punctuation and clarity. All letters should be signed and sent to *Arizona Attorney*, 111 W. Monroe, Suite 1800, Phoenix, AZ 85003 or by e-mail to Tim.Eigo@staff.azbar.org.

### Not Suede by Offices

I just received the September *Arizona Attorney* and was duly impressed by the fine law offices featured. However, for me, my “home away from home” has a shrine to Elvis, candy and toys for children of all ages and many other accoutrements to make my clients feel comfortable. I’m a consumer bankruptcy lawyer and trustee and, truly, the law firms featured would intimidate my clients (not to mention the children who accompany them!). So, you’re all invited to visit me and Elvis the next time you’re in Tucson.

*Sharon Maxwell,*  
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### Fourth Amendment Not Dead Yet

Diana Patton’s article “Highway Drug Courier Profiles in Y2K: Another Nail in the Coffin of the Fourth Amendment?” (*Arizona Attorney*, September 2001) focuses on *State v. O’Meara*, 198 Ariz. 294 (2000), and *State v. Magner*, 191 Ariz. 392 (Ct. App. 1998), cases addressing whether reasonable suspicion existed to support the continued detention of suspects after traffic stops. The cases break no ground in this well-trodden area, despite the article’s provocative title. *O’Meara* simply applies the 20-year-old “totality of the circumstances test” required by *United States v. Cortez*, 449 U.S. 411, 417–418

(1981), and disapproves *Magner* for departing from *Cortez*. 198 Ariz. 294, at 12.

The article asserts that courts have damaged and eroded the Fourth Amendment in an effort to win the “war on drugs” by permitting unreasonable detention of travelers based on drug courier profiling. To the contrary, drug courier profiling has not lowered the threshold for establishing reasonable suspicion. The courts continue to apply *Cortez*, requiring particularized, objective facts to establish reasonable suspicion under the totality of the circumstances. The state cannot pass the *Cortez* test by simply matching facts to a criminal profile—however empirical the

profile may be. *United States v. Sokolow*, 490 U.S. 1, 10 (1989); *United States v. Sigmond-Ballesteros*, 247 F.3d 943, 946–947 (9th Cir. 2001); *Karnes v. Skrutski*, 62 F.3d 485, n. 2 (3rd Cir. 1995) (“The profile cannot, without more, serve as a method by which innocent factors can be lifted by their own bootstraps somehow to become suspicious”).

The article also reports that “many U.S. citizens seem willing to accept governmental erosion of their right to be free from unreasonable search and seizure—gambling or hoping that relinquishing some freedoms will help win the war [on drugs].” My impression is that few citizens think about the Fourth Amendment at all, much less that the “war on drugs” has eroded their Fourth Amendment protections, or that the erosion is acceptable.

Cynicism seems to account for some

of Ms. Patton’s observations, including her statement that police officers “know [they] must somehow transform [their] inarticulate hunch[es] into reasonable suspicion” on the witness stand, and will therefore “borrow facts from recent case law and plug them into a defendant’s traffic stop, whether it (sic) existed or not.” The library where police read the advance sheets looking for good perjury material must be next door to the café where people chat about search and seizure issues, across the street from the cemetery where the Fourth Amendment lies buried in its tightly nailed coffin.

**Rob Ellman**

*Assistant Arizona Attorney General*

(The opinions expressed in this letter belong to the author and should not be attributed as the official views of the Arizona Attorney General’s Office.)

## Keep Up the Good Work

Just received the September issue of *Arizona Attorney*. I wanted to commend you on another high-quality issue. Your presence at the helm of the publication has brought it to a level of quality representative of the level of professionalism we want to maintain at the Bar. Great job! Keep up the good work.

**Nancy T. Blitz**

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*From the Editor:* The kudos are appreciated, but they must go to a great staff who helps to create the magazine; we will introduce the entire staff to readers soon. ▲