

“Closed By Exceptional Clearance”

In 1917 the first superintendent of the New York State Police, Colonel George F. Chandler, issued some guidelines to the members of his fledgling organization setting forth exactly what he expected of them. One in particular pretty much summed up his vision for his new troopers and his new agency:

"Common sense is a virtue. Exercise it in all your dealings. Put yourself in the other fellow's place. Deal with him as you would wish a member of your own family to be dealt with."

I'm guessing much of the public's understanding of what police officers do has nothing to do with Colonel Chandler's vision. Instead it is based on what they see on television shows, supplemented by "twenty-four hour news" reports of the law enforcement "Incident je Jour". In my experience day-to-day police work was, for the most part, not the glamorous stuff of TV shows, but nevertheless pretty satisfying. Furthermore, most days we were able to comply with the Colonel's directive. Here are a couple of examples which I recall from my long ago uniform trooper days:

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Recently there was some public discussion of the United States Department of Justice's Crime Statistics. Most citizens probably never give a thought to how this information is compiled. These days computerization of law enforcement records undoubtedly helps a lot, but maintaining crime statistics predates computerization by a long shot.

Those of you who were station sergeants or senior investigators in the dark ages may recall the Genl. 59 UCR, the *Uniform Crime Report*. It was a giant paper form which was covered with dozens of boxes which you filled with numbers. At the end of the month these numbers had to add up correctly in several directions, plus the starting numbers had to agree with the ending numbers you provided the month before. And the number of "pending cases" - cases which were still open - at the end of

the month better agree with the number of “pending” investigative reports in the station files. It was an easy pinch when the Division Inspection Team arrived.

There were several ways that cases could be closed. One doesn’t have to be a rocket scientist - or a criminologist - to guess what “Closed/unfounded” or “Closed by arrest” mean. One which might not be so obvious is “Closed by Exceptional Clearance”

The FBI, which collects UCR information, provides the following guidelines as to when and how a case may be closed by Exceptional Clearance:

In certain situations, elements beyond law enforcement’s control prevent the agency from arresting and formally charging the offender. When this occurs, the agency can clear the offense exceptionally. Law enforcement agencies must meet the following four conditions in order to clear an offense by exceptional means. The agency must have:

- 1.) Identified the offender.*
- 2.) Gathered enough evidence to support an arrest, make a charge, and turn over the offender to the court for prosecution.*
- 3.) Identified the offender’s exact location so that the suspect could be taken into custody immediately.*
- 4.) Encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender.*

More often than not, the reason a suspect wasn’t charged was that he was longer among the living, or, in other words, he would be appearing before a higher court. Other reasons included: the suspect was already being charged by another agency for the same crime, or the victim refused to cooperate

with police, or the suspect fled to some country from which we couldn't get him back. All of these pretty clearly fulfilled the definition of "circumstances beyond our control"

But, as was sometimes the case, we did not always agree one hundred percent with the FBI; in this case, with one of their criterion for not charging someone, the one about encountering circumstances outside our control. There were times when a decision was made not to charge someone for reasons which were *within* our control. Look at it as thinking outside the Criminal Justice box.

The following are two stories about cases which were "Closed by Exceptional Clearance" which fit our guidelines, not the Fed's.

One June evening in the late 1960s I was dispatched to a criminal mischief and trespass complaint at a small golf course located in the western end of SP Middletown's patrol area. When I got there the owner, Mr. Harris, took me by golf cart to a fairway far removed from the clubhouse.

We were accompanied on the ride by Mr. Harris' son, who was about my age. We'll call him "Sonny". Sonny related that he had just graduated from the academy of a federal law enforcement academy and was spending a week with his parents before he reported to his first assignment at the agency's field office located in Corncob Center, Kansas. I didn't know much about the frequency of federal crimes in Corncob Center - actually I didn't know anything about it - but it seemed likely he would be spending the next year or two looking under hay bales for federal felons. My job sounded a lot more interesting than his was going to be, but he was enthusiastic, so I didn't say that. Better he than I.

When we arrived at the far side of the golf course it was apparent that at least one and probably two cars had done several "donuts" in the middle of the fairway, tearing up the sod in large circles. It seemed likely that the damage wasn't very old since the clumps of sod were still fairly moist. Fortunately the damage hadn't extended to the greens.

At the far edge of the fairway was a wide dirt path leading to a clearing where the grounds keepers dumped grass clippings. I walked down the path a ways and found tire tracks leading through the clippings to a point where the path morphed into a wood road. Through the dense foliage I could just make out the glint of the afternoon sun reflecting off what was probably a vehicle quite a distance down the road.

In the 1960's personal, hand held police radios were unheard of. Even communicating with the troop car radio was kind of iffy in the area where the golf course was situated. Nevertheless, it seemed likely that I might need a radio and/or a car, so I had the owner take me back to the parking lot to retrieve my troop car. Once in the car I followed the cart paths to a point where I could cross over the fairway to the wood road, resisting any temptation I might have had to do a few donuts in the fairway as I did so. Besides, Dad and Sonny were trailing me in the golf cart.

I followed the wood road and came upon two cars, both of which were unoccupied. Looking to impress Sonny with the extensive crime stoppers training I had received at **my** academy, I placed my hand on the hood of one of the cars and found it hot to the touch. Of course with the June sun beating down on the dark blue car, every part was hot to the touch, but hey, it worked for Broderick Crawford on *Highway Patrol* and Sonny didn't break out laughing at my conclusion that the occupants were probably close by. I did look at the tires and fender wells and both cars showed some possible evidence of having been involved.

The cars were locked. The blue one was a four door Buick and there wasn't much in the way of personal belongings visible inside; it was probably a family car. The other was an older two door Ford. Visible in the back seat were a first baseman's mitt, a baseball bat, a three ring binder or two and some other junk - all the things you might expect to find in a teenager's car. This was the car I was interested in.

Today a trooper would go back to his car and call up the registration data on his video terminal, or at least call the barracks for the information via his personal radio. From there he would obtain the

DMV data on the registered owner and by the time he was done he would have all sorts of information including the date of the owner's last flu shot - far more information than I needed. I just wanted a name.

For those of you who don't date back that far, you're probably asking "Why not just go back to your troop car and radio the barracks asking for the license plate data?" Two reasons: First, as previously mentioned, there was some question as to whether I could raise the barracks from my location. Second, even if I did succeed in communicating with the barracks, the process of obtaining even rudimentary registration data in those days was pretty much of a crap shoot.

In the late 1960s both the New York State Police teletype system and the New York State DMV records became automated. (I would say "computerized", but that would probably be a stretch.) Better yet, the two systems were linked, so the deskman at your station could call up registration or drivers' license information via teletype in a matter of minutes.

But this was prior to the automation the process. The drill for getting registration information using a license plate number was for the deskman to call up the county jail where a deputy would dive into a large cardboard tray full of registration stubs issued by the local county clerk's office. If all went well, he got the registered owner's name and address and a description of the vehicle. But, if the registration application had been processed in some other county or if the previous night shift hadn't gotten around to filing the most recent updates or if perchance one was misfiled, he - and you - got nothing. As I said, I just wanted a name, not the whole record, so I went with Plan B.

I went to my troop car, returned to the Ford with a wire coat hanger and started to fish for the passenger door lock button. Sonny was appalled. He must have graduated summa cum laude from his academy because he proceeded to quote the entire Fourth Amendment from memory. Based upon my failure to look at him in awe after he recited it, he must have then concluded that I wasn't capable of understanding so many multi-syllable words in a row, so he reverted to the more simplistic "You can't do that!" When I continued "to do that", he turned to his dad and said "He can't do that!"

(For those who are wondering why I maintained I could unlock the car, the Fourth Amendment notwithstanding, it was my position that I wasn't looking for evidence to be used in a criminal prosecution, only a name so I could help the owner avoid a costly impound fee. On top of that, there was, and is, the *Inevitable Discovery* doctrine. [You can look it up.] It seemed pretty clear that even with the archaic record keeping system of that era, I could have come up with the name eventually. I rest my case. Read on.)

I got the door unlocked and retrieved the first basemen's mitt, which had a "Bill Benson" written across the back strap. I also found Bill's name on some papers in the three ring binders.

I faced the woods, formed my hands into a crude megaphone and yelled "Bill Benson, this is the Troopers. We know you're out there. Come out before we have to come in and get you." I realize there was only one trooper, not "troopers", but hey, if you've seen one trooper you've seen 'em all.

There was some snapping of branches and rustling of dead leaves and Bill eventually emerged. Thereafter, one by one, after being subjected to a few minutes of my dazzling interview techniques - also learned at our academy - I had four boys and four girls standing in front of me. All were seniors who were about to graduate from the local high school. Not only weren't these kids hardcore miscreants, they appeared to be pretty good kids. Two of the boys were going into the military soon and the rest were planning on attending college in the fall, one of them an Ivy League school. They were celebrating what was the high point of their lives, at least to that point, and things had gotten slightly out of hand.

I had the kids standby while I had a brief private conversation with the golf course owner during which he concurred with my suggested plan of attack, then I returned to the kids. Sonny somehow missed our conversation.

I started by giving them their Miranda Warnings. (The *Miranda v. Arizona* decision had recently been handed down and our bosses were trying to beat into our heads that this was not a joke, we really did have to advise defendants that they didn't have to talk to us. Not only did we have to

advise them of their Fifth Amendment rights, we had to include in our arrest reports exactly what we had said, word for word. Since we all had to type our own arrest reports, this made a long job even longer.) In this case, I thought the warnings might actually work in my favor if things went as planned.

Sonny was noticeably confused. Although I had abysmally failed *Fourth Amendment 101*, I seemed to have a pretty good grasp of the Fifth and Sixth Amendments.

I went on to tell the kids that I was sure that they would want to discuss the hiring of attorneys - at great expense - with their parents, so I wouldn't be questioning them at this point. I would however be impounding their cars and having them flat-bedded to our lab in Albany so a scientific comparison could be made of the mud and grass stuck in their tires vis-a-vis the mud and grass of the fairway. (These days that might actually be possible using plant DNA; back then I'm not so sure, but it did sound very scientific and the name of the lab was *The New York State Police Scientific Laboratory*.)

I added: "I understand that things are a bit backed up at the lab, so it might take several months." I could envision the two drivers, especially the one using the family car, going home and saying "Gee, Dad, a funny thing happened to the car."

I then went on to tell them they would be transported to the barracks in Middletown. (How I was going to transport eight people I have no idea. It would look like a clown car had pulled up in front of the barracks.) Once there they would be fingerprinted and photographed, after which their parents would be called to pick them up. I did not get into the nuances of who might or might not get charged with what crime depending on who said what.

(For those of you of that era, I probably should have added that getting arrested for trespass and/or criminal mischief might well result in them ending up on the *Group W Bench* next to Arlo.)

Having just received Mr. Harris' acquiescence to my plan, I went on: "**OR**, if you want to be here at eight thirty tomorrow morning with rakes and shovels, this can all go away once Mr. Harris advises me that he is one hundred percent satisfied with your efforts to make it right." The kids liked the idea a whole lot. At this point I think they would have agreed to add on a back nine if Mr. Harris wanted it.

Sonny was clearly confused. Apparently they didn't teach informal "Exceptional Clearance" at his academy. He said "You can't do that!" Getting the same response he had gotten to the coat hanger incident, he then turned to his father and said "He can't do that!" Dad turned to Sonny and said "Shut up!"

Come to think of it, I don't recall that they got into "Exceptional Clearance" at our academy either, but my Senior Trooper and the many other older troopers we admired during our formative recruit days had done their best to show us the way.

There would be a little creative writing required in my return blotter entry, but that's where a helpful sergeant comes in. Whatever the kids did and how long it took I have no idea; Mr. Harris was happy so I was happy and, I'm guessing, so were the kids.

Over the coming years I frequently witnessed, or participated in, countless other examples of "Exceptional Clearance". I don't recall any which worked out badly, but there is one other one that stands out in my mind, even though the entire event took about three minutes.

One day I rolled up to the stop sign at the end of the Exit 114 ramp off of Route 17 westbound. Those of you who are familiar with the area may recall that there is an open expanse a hundred feet or so west of the intersection where the county DPW stores gravel when they are paving in the area. The clearing is about the size of a baseball infield and, when it's not full of gravel, is used by commuters, truckers and others as an informal parking area. Sometimes in the summer there's even a hot dog wagon set up there.

As I was coming to a stop I glanced down toward the clearing and saw an arm appear out of the open driver's door window of a parked pickup truck. A soda bottle arched up over the truck's roof and into the weeds. (For you "A" and "E" Troopers, that's a "pop bottle".) Within thirty seconds I was stopped, driver's door window to driver's door window, next to the offending litterbug's truck. The conversation went something like:

"I bet you wish you hadn't done that."

"God, do I wish I hadn't done that!"

"The fines are pretty hefty for littering."

"I know, (head dropped in resignation) I've seen the signs."

I looked around and said "It doesn't look like you're the only person to have littered here." He looked around and nodded in chagrined agreement.

I said "I bet you can't get all the liter in this area into the back of your pickup truck."

A lightbulb went off in his brain and he replied "I bet I can."

I jotted down his information and told him I'd be checking back in a day or two. He'd be hearing from me if I wasn't happy with the results. When I did check there wasn't a bottle cap to be found.

It wasn't the greatest crime in the world, but it was probably one of the best instances of instant and appropriate justice I've experienced. Kind of like being sentenced to community service without all the intermediate steps and with the full acquiescence of the defendant. Plus, I'd like to think he became a reformed litterbug.

Hopefully we did, and today's troopers are doing, just what the Colonel had in mind.