

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 02–1183

UNITED STATES, PETITIONER *v.* SAMUEL
FRANCIS PATANE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[June 28, 2004]

JUSTICE BREYER, dissenting.

For reasons similar to those set forth in JUSTICE SOUTER’s dissent and in my concurring opinion in *Mis-souri v. Seibert*, *ante*, at __, I would extend to this context the “fruit of the poisonous tree” approach, which I believe the Court has come close to adopting in *Seibert*. Under that approach, courts would exclude physical evidence derived from unwarned questioning unless the failure to provide *Miranda* warnings was in good faith. See *Seibert*, *ante*, at __ (slip op., at 1) (BREYER, J., concurring); cf. *ante*, at 1, n. 1 (SOUTER, J., dissenting). Because the courts below made no explicit finding as to good or bad faith, I would remand for such a determination.