CASE COMMENTS

RANDOM LICENSE AND VEHICLE REGISTRATION STOPS DECLARED UNREASONABLE UNDER THE FOURTH AMENDMENT
Delaware v. Prouse, 99 S. Ct. 1391 (1979)

In *Delaware v. Prouse*[1] the Supreme Court resolved a conflict among jurisdictions[2] concerning the constitutionality[3] of random[4] license and vehicle registration checks.[5]

Defendant, indicted for possession of a controlled substance, moved to suppress evidence seized from his automobile by a police officer during the course of a stop and detention[6] conducted to check his license[7] and vehicle registration.[8] Finding that this procedure violated the

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1. 99 S. Ct. 1391 (1979).

2. *Compare, e.g.,* United States v. Montgomery, 561 F.2d 875 (D.C. Cir. 1977), State v. Ochoa, 23 Ariz. App. 510, 534 P.2d 441 (1975), *rev'd on other grounds*, 112 Ariz. 582, 544 P.2d 1097 (1976), People v. Singleton, 41 N.Y.2d 402, 361 N.E.2d 1003, 393 N.Y.S.2d 353 (1977), People v. Ingle, 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975), *and* Commonwealth v. Swanger, 453 Pa. 107, 307 A.2d 875 (1973), *with* United States v. Jenkins, 528 F.2d 713 (10th Cir. 1975), United States v. Kelley, 462 F.2d 372 (4th Cir. 1972), United States v. Turner, 442 F.2d 1146 (8th Cir. 1971), Myricks v. United States, 370 F.2d 901 (5th Cir.), *cert. dismissed*, 386 U.S. 1015 (1967), State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973), *and* Leonard v. State, 496 S.W.2d 576 (Tex. Crim. App. 1973). *See also* United States v. Cupps, 503 F.2d 277 (6th Cir. 1974); Palmore v. United States, 290 A.2d 573 (D.C. 1972), *aff'd on jurisdictional grounds only*, 411 U.S. 389 (1973); State v. Holmberg, 194 Neb. 337, 231 N.W.2d 672 (1975); notes 72, 75, 78 *infra*.

3. *See* U.S. CONST. amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

4. The Court's use of the word "random" connotes arbitrariness, unbridled discretion, or lack of administrative and procedural guidelines. *See* Lukoff, Delaware v. Prouse: *Supreme Court Halts Random Automobile Stops*, 6 SEARCH AND SEIZURE L. REP. 1 (May 1979).

5. The Court's holding in *Prouse* is limited to passenger vehicles. The permissibility of truck weigh-stations and checkpoint operations was not at issue. 99 S. Ct. at 1401 n.26. The Delaware vehicle licensing statute similarly exempted operators of farm equipment, road machinery, and members of the armed services. DEL. CODE ANN. tit. 21, §§ 2705(a), (b) (1975).

6. After halting the automobile, the police officer approached the car and noticed the scent of marijuana emanating from the car. While observing the occupants step out of the automobile, the officer noticed a cellophane bag protruding from beneath the front seat. The bag was later found to contain marijuana. State v. Prouse, 382 A.2d 1359, 1361 (Del. 1978).

7. *See* DEL. CODE ANN. tit. 21, § 2707 (1975 & Supp. 1978) (licensing qualification).

8. *Id.* § 2109 (Supp. 1978) (motor vehicle registration requirement). *Id.* § 2110(b) (1975) (periodic renewal of registration required). The Delaware Supreme Court referred to defendant as the operator of the vehicle. 382 A.2d 1359, 1361 (Del. 1978). The trial court referred to defendant as one of four occupants of the vehicle. The arresting officer did not know if defendant was

fourth amendment,[9] the trial court granted the motion to suppress,[10] and the Delaware Supreme Court affirmed.[11] The United States Supreme Court granted certiorari[12] and *held:* To stop an automobile solely to conduct a check of the driver's license and the vehicle's registration, the fourth amendment requires a law enforcement official to have at least an articulable and reasonable suspicion that the motorist is unlicensed, the automobile is not registered, or the vehicle or an occupant is otherwise subject to seizure for a violation of law.[13]

The fourth amendment of the United States Constitution protects persons against unreasonable searches and seizures.[14] Except for a few specifically established and well-delineated exceptions,[15] warrantless

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the driver or a passenger in the vehicle. 99 S. Ct. at 1394 n.1. Petitioner referred to defendant as the registered owner and operator of the vehicle. Petitioner's Brief for Certiorari at 3, Delaware v. Prouse, 99 S. Ct. 1391 (1979).

9. 99 S. Ct. at 1394.

10. Petitioner's Brief for Certiorari at 3-4.

11. 382 A.2d 1359 (Del. 1978). The Delaware Supreme Court found that the stop violated the fourth and fourteenth amendments to the United States Constitution and article I, § 6 of the Delaware Constitution. 99 S. Ct. at 1394. *See* note 71 *infra*.

12. 439 U.S. 816 (1978).

13. 99 S. Ct. at 1401.

14. The Supreme Court applied the fourth amendment to the states through the due process clause of the fourteenth amendment in Wolf v. Colorado, 338 U.S. 25 (1949), although the Court refused to apply the federal exclusionary rule. In Mapp v. Ohio, 367 U.S. 643 (1961), the Court applied the exclusionary rule to state criminal proceedings. *See generally* Stanford v. Texas, 379 U.S. 476, 481-85 (1965); Marcus v. Search Warrant, 367 U.S. 717, 724-29 (1960); Frank v. Maryland, 359 U.S. 360, 363-65 (1958); Boyd v. United States, 116 U.S. 616, 621-22 (1886); R. DAVIS, FEDERAL SEARCHES AND SEIZURES, § 7.8 (1964); N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION (1937); Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349 (1974); Bacigal, *Some Observations and Proposals on the Nature of the Fourth Amendment*, 46 GEO. WASH. L. REV. 529 (1978). For a discussion of the relationship between the two clauses of the fourth amendment, see J. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 42-43 (1966); Player, *Warrantless Searches and Seizures*, 5 GA. L. REV. 269 (1971).

15. "The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.' " Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971) (quoting McDonald v. United States, 335 U.S. 451, 456 (1948)). The recognized exceptions to the warrant requirement are (1) hot pursuit, Warden v. Hayden, 387 U.S. 294 (1966) (search in quest of fleeing felon); *cf.* Hester v. United States, 265 U.S. 57 (1924) (admission of testimony on occurrences while in hot pursuit), (2) plain view, Harris v. United States, 390 U.S. 234 (1968) (discovery of evidence in impounded vehicle), (3) emergency situation, Wayne v. United States, 318 F.2d 205 (D.C. Cir.), *cert. denied*, 375 U.S. 860 (1963) (emergency search to protect health and life); People v. Smith, 47 Ill. 2d 161, 265 N.E.2d 139 (1970) (same); *see* Cady v. Dombrowski, 413 U.S. 433 (1973) (search of automobile subsequent to accident); Schmerber v. California, 384 U.S. 757 (1966) (emergency search to prevent destruction of evidence); People v. Clark, 547 P.2d 267 (Colo. App. 1975) (same), (4) automo-

searches and seizures[16] are "per se unreasonable" under the fourth amendment.[17] Evidence obtained as a result of an unreasonable search or seizure is inadmissible in a criminal prosecution against the victim of that constitutional violation.[18]

The search of automobiles by law-enforcement officials is one exception to the warrant requirement.[19] In *Carroll v. United States*[20] the

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bile search, *see* cases cited at note 19 *infra*, (5) consent, United States v. Matlock, 415 U.S. 164 (1974) (third-party consent search); Frazier v. Cupp, 394 U.S. 731 (1969) (warrantless search of jointly held property), and (6) searches incident to arrest, United States v. Robinson, 414 U.S. 218 (1973) (warrantless search incident to arrest for traffic violation); Chimel v. California, 395 U.S 752 (1969) (limits on scope of warrantless search incident to arrest); United States v. Rabinovitz, 339 U.S. 56 (1950) (right to search immediate surroundings at time of arrest).

See generally J. LANDYNSKI, *supra* note 14, at 87-117 (1966); Haddad, *Well Delineated Exceptions, Claims of Sham, and Fourfold Probable Cause*, 68 J. CRIM. L. & CRIMINOLOGY 198 (1977); Player, *supra* note 14; Williamson, *The Supreme Court, Warrantless Searches, and Exigent Circumstances*, 31 OKLA. L. REV. 110 (1978).

The arresting officer's discovery in *Prouse* of the marijuana while defendant stepped out of the automobile, *see* note 6 *supra*, raised an issue concerning the applicability of the plain view exception to this case. The Court did not reach this question in *Prouse*, however, because all courts ruling on the case had recognized that the initial detention was unreasonable; thus, the plain view exception was unavailable, *see* Coolidge v. New Hampshire, 403 U.S. 443 (1971), and the Court did not need to discuss the issue. *See* 99 S. Ct. at 1394. *See generally* Williamson, *supra*, at 131-38.

16. The stop in *Prouse* was a seizure cognizable under the fourth amendment. 99 S. Ct. at 1396. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 556 (1976) (checkpoint stop by border patrol is seizure within scope of fourth amendment); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (stop by roving border patrol is seizure within scope of fourth amendment). *See generally* United States v. Mallides, 473 F.2d 859 (9th Cir. 1973); United States v. Nicholas, 448 F.2d 622 (8th Cir. 1971); 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8, at 381 n.16 (1978); *see also* Adams v. Williams, 407 U.S. 143 (1972); Davis v. Mississippi, 394 U.S. 721 (1969); Terry v. Ohio, 392 U.S. 1 (1968); note 48 *infra*.

17. *E.g.*, Katz v. United States, 389 U.S. 347, 357 (1967); Stoner v. California, 376 U.S. 483 (1964); Rios v. United States, 364 U.S. 253 (1959). The concept underlying the traditional warrant requirement is a fundamental distrust of official discretion. Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L.J. 1161 (1966). The warrant procedure limits government intrusion and officer discretion by requiring prior approval of a neutral and detached magistrate. *See* Camara v. Municipal Court, 387 U.S. 523, 532 (1967).

18. If the initial detention is unreasonable, subsequent discoveries of evidence are inadmissible against the defendant. *See* United States v. Ceccolini, 435 U.S. 286 (1978); Wong Sun v. United States, 371 U.S. 471 (1963); 1 W. LAFAVE, *supra* note 16, at §§ 1.1-.11. The exclusionary rule bars admission at trial of materials obtained as a direct result of an unlawful invasion. *See* Katz v. United States, 389 U.S. 347 (1967) (exclusionary rule extends to intangible items); Mapp v. Ohio, 367 U.S. 643 (1961) (exclusionary rule applies to state criminal proceedings); Elkins v. United States, 364 U.S. 206 (1960) (exclusionary rule applies to all federal criminal proceedings); Weeks v. United States, 232 U.S. 383 (1914) (fourth amendment bars evidence illegally secured from use in federal prosecution). *See also* Boyd v. United States, 116 U.S. 616 (1886).

19. *See, e.g.*, United States v. Chadwick, 433 U.S. 1 (1977); Cardwell v. Lewis, 417 U.S. 583 (1974); Almeida-Sanchez v. United States, 413 U.S. 266 (1973); Coolidge v. New Hampshire, 403

Supreme Court upheld automobile searches because of the exigent circumstances[21] resulting from the mobility of vehicles.[22] Later decisions added, as an additional rationale for the exception, that automobile travelers have lower expectations of privacy than those of persons involved in other areas protected by the fourth amendment.[23] Despite the exigent circumstances and lower expectations of privacy, the Court generally requires that a warrantless detention and search of an automobile meet the reasonableness requirement of the fourth amendment through a showing of probable cause.[24]

Traditionally, proof of reasonableness required a full showing of probable cause to justify issuance of a warrant or to vindicate a warrantless search.[25] In several recent search and seizure cases, however,

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U.S. 443 (1971); Chambers v. Maroney, 399 U.S. 42 (1970); Preston v. United States, 376 U.S. 364 (1964); Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925). *See generally* Williamson, *supra* note 15; Note, *Warrantless Searches and Seizures of Automobiles*, 87 HARV. L. REV. 835 (1974) [hereinafter cited as *Warrantless Searches*]; Note, *Mobility Reconsidered: Extending the* Carroll *Doctrine to Movable Items*, 58 IOWA L. REV. 1134 (1973) [hereinafter cited as *Mobility Reconsidered*]; Note, *Misstating the Exigency Rule: The Supreme Court v. The Exigency Requirement in Warrantless Automobile Searches*, 28 SYRACUSE L. REV. 981 (1977).

20. 267 U.S. 132 (1925).

21. *Id.* at 153. "[I]t is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id. See Warrantless Searches*, *supra* note 19, at 836-37.

22. *See, e.g.,* United States v. Chadwick, 433 U.S. 1, 12 (1977); Almeida-Sanchez v. United States, 413 U.S. 266, 269 (1973); Carroll v. United States, 267 U.S. 132, 153 (1925). The Court in *Carroll* listed ships, motorboats, and wagons as other mobile vehicles, but left unclear the degree of mobility necessary to permit a warrantless search. *See generally* Murray & Aiken, *Constitutional Limitations on Automobile Searches*, 3 LOY. L.A.L. REV. 95, 100-01 (1970); *Warrantless Searches*, *supra* note 19, at 839 n.24; *Mobility Reconsidered*, *supra* note 19, at 1149-60.

23. *See, e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543 (1976); South Dakota v. Opperman, 428 U.S. 364 (1976); Cardwell v. Lewis, 417 U.S. 583 (1974); Cady v. Dombrowski, 413 U.S. 433 (1973); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Chambers v. Maroney, 399 U.S. 42 (1970); Brinegar v. United States, 338 U.S. 160 (1949). *See* Williamson, *supra* note 15, at 128-42. *See generally Mobility Reconsidered*, *supra* note 19.

24. Reasonableness demands that the searching officer have probable cause to believe either that the vehicle contains contraband or other evidence of a particular crime or that the automobile is involved in the commission of a crime. *See, e.g.,* United States v. Chadwick, 433 U.S. 1 (1977); South Dakota v. Opperman, 428 U.S. 364 (1976); Cardwell v. Lewis, 417 U.S. 583 (1974); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Chambers v. Maroney, 399 U.S. 42 (1970); Brinegar v. United States, 338 U.S. 160 (1949); Carroll v. United States, 267 U.S. 132 (1925).

25. "Probable cause exists where 'the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in belief that an offense has been or is being committed." Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)); *see* Spinelli v. United States, 393 U.S. 410 (1969); Terry v. Ohio, 392 U.S. 1, 35 (1968)

the Court has allowed exceptions to the probable cause requirement by using a more flexible balancing test.[26] Under this test the Court weighs the need for the governmental activity[27] and the availability of less intrusive means to satisfy that need[28] against the resulting intrusion on individual rights[29] to determine the degree of cause or suspicion neces-

(Douglas, J., dissenting); Beck v. Ohio, 379 U.S. 89, 91 (1964); Wong Sun v. United States, 371 U.S. 471 (1963).

26. The confusion surrounding the terminology "probable cause" and "reasonable cause" or "suspicion" results in part from the Court's and commentators' use of the two concepts interchangeably. *See* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) (for purposes of administrative search, probable cause justifying issuance of warrant may be based on showing that reasonable legislative or administrative standards are satisfied). *See also* Camara v. Municipal Court, 387 U.S. 523, 538 (1967); Draper v. United States, 358 U.S. 307, 312-13 (1959); Armentano, *The Standard for Probable Cause Under the Fourth Amendment*, 44 CONN. B.J. 137, 179 (1970); Haddad, *supra* note 15; Note, *Scope Limitations for Searches Incident to Arrest*, 78 YALE L.J. 433, 438 n.28 (1969).

Probable cause and reasonable suspicion are theoretically and practically distinguishable. *See* Terry v. Ohio, 392 U.S. 1, 20-22 (1968); 1 W. LAFAVE, *supra* note 18, at § 3.2. Both probable cause and reasonable suspicion must meet a test of reasonableness, but the Court defines reasonable suspicion in terms of a more flexible balancing process. *See, e.g.,* Draper v. United States, 358 U.S 307, 313 (1959); Brinegar v. United States, 338 U.S. 160, 175 (1949); 45 TEMPLE L.Q. 610, 615 (1972). *See* Player, *supra* note 14, at 276 (1971). Thus, in application the reasonable suspicion standard for measuring the requisite quantum of evidence is less rigorous and demands a lesser showing of evidence. *See, e.g.,* Terry v. Ohio, 392 U.S. 1, 20-22 (1968); Camara v. Municipal Court, 387 U.S. 523 (1967); 1 W. LAFAVE, *supra* note 18, at § 3.2. *See* MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 3.01 & Commentary 1-8 (Tent. Draft No. 2, 1969). *See generally* Amsterdam, *supra* note 14, at 390; Bacigal, *supra* note 14; Weisgal, *Stop, Search and Seize: The Emerging Doctrine of Founded Suspicion*, 9 U.S.F. L. REV. 219 (1974). The evidence justifying an administrative safety inspection, for example, may be a characteristic of the buildings in the area (such as age and condition of repair) rather than information on a violation in the target building. Camara v. Municipal Court, 387 U.S. at 538.

27. The Court has acknowledged governmental interests in (1) public health and safety, *e.g.,* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); United States v. Biswell, 406 U.S. 311 (1972); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970); Camara v. Municipal Court, 387 U.S. 523 (1967), (2) crime prevention, detection, and investigation, *e.g.,* Adams v. Williams, 407 U.S. 143 (1972); Terry v. Ohio, 392 U.S. 1 (1968), (3) police safety, *e.g.,* Adams v. Williams, 407 U.S. 143 (1972); Terry v. Ohio, 392 U.S. 1 (1968), and (4) control of smuggling and illegal immigration, *e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Ortiz, 422 U.S. 891 (1975); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Almeida-Sanchez v. United States, 413 U.S. 266 (1973). *See* 24 WAYNE L. REV. 1123, 1130 (1978).

28. *See, e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543, 556-57 (1976); United States v. Biswell, 406 U.S. 311, 316 (1972); Camera v. Municipal Court, 387 U.S. 523, 537-38 (1967).

29. The intrusion element has included consideration of the following: (1) the extent of the search, *see* cases cited note 20 *supra*, (2) the nature of the premises searched, residential, *e.g.,* See v. City of Seattle, 387 U.S. 541 (1967); Camara v. Municipal Court, 387 U.S. 523 (1967) or commercial, *e.g.,* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); United States v. Biswell, 406 U.S. 311 (1972); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970), (3) the extent to which the search is personal, *e.g.,* Adams v. Williams, 407 U.S. 143 (1972); Terry v. Ohio, 392 U.S. 1, 17

sary to assure the reasonableness of a search and seizure.[30]

The Court has applied this balancing test in administrative search cases,[31] "stop and frisk" cases,[32] and border patrol cases.[33] In one group of administrative search cases, for example, the Court recognized the considerable need for physically sound residential and commercial buildings to protect the public health and safety[34] and noted the virtual impossibility of conducting interior inspections by less-intrusive

(1968), (4) the length of delay resulting from the search or seizure, *e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976); United States v. Brignoni-Ponce, 422 U.S. 873, 880 (1975), (5) the existence of broad congressional power to regulate the area searched, *e.g.,* United States v. Biswell, 406 U.S. 311 (1972); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970), (6) the history of regulation, *e.g.,* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Biswell, 406 U.S. 311 (1972); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970), (7) the degree to which the intrusion should be expected, *e.g.,* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Biswell, 406 U.S. 311 (1972); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970); Camara v. Municipal Court, 387 U.S. 523 (1967), (8) the subjective responses of the persons affected by the intrusion, *e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976); United States v. Ortiz, 422 U S. 891, 894 (1975); Terry v. Ohio, 392 U.S. 1, 25 (1968), and (9) the discretion of the officers engaged in the fourth amendment activity, *e.g.,* United States v. Martinez-Fuerte, 428 U.S. 543 (1976); Camara v. Municipal Court, 387 U.S. 523 (1967). *See* 24 WAYNE L. REV. 1123, 1131 (1978).

30. 24 WAYNE L. REV. 1123, 1125 (1978). *See* 3 W. LAFAVE *supra* note 18, at § 10.8, 382-83. In discussing the balancing test in the context of vehicle regulation, the author states that judicial analyses weigh three elements: (1) a strong public interest in maximum effectiveness in combating the problem at hand; (2) the inability of the government to achieve acceptable results by following the usual probable cause limitation; and (3) the degree of intrusion upon the victim's reasonable expectations of privacy. *Id. See also* Note, *Elimination of Arbitrary Automobile Stops: Theory and Practice*, 4 FORDHAM URB. L.J. 327 (1976); Note, *Automobile License Checks and the Fourth Amendment*, 60 VA. L. REV. 666 (1974) [hereinafter cited as *Automobile License Checks*].

31. Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) (inspection of business premises under OSHA); United States v. Biswell, 406 U.S. 311 (1972) (regulation and inspection of premises of firearms dealers); Wyman v. Jones, 400 U.S. 309 (1971) (search of residential premises of welfare recipients); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (regulation and inspection of premises of liquor dealers); See v. City of Seattle, 387 U.S. 541 (1967) (search of business premises for fire code violations); Camara v. Municipal Court, 387 U.S. 523 (1967) (inspection of residence to determine compliance with building code).

32. Adams v. Williams, 407 U.S. 143 (1972) (investigatory stop and frisk of motorist); Terry v. Ohio, 392 U.S. 1 (1968) (stop and frisk of pedestrian). *See also* Sibron v. New York, 392 U.S. 40 (1968); Peters v. New York, 392 U.S. 40 (1968).

33. United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (border patrol checkpoint stop); United States v. Ortiz, 422 U.S. 891 (1975) (search and seizure at checkpoints removed from border); United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (roving border patrol stop); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (roving border patrol stop).

34. See v. City of Seattle, 387 U.S. 541, 543 (1967); Camara v. Municipal Court, 387 U.S. 523, 535-38 (1967). *See* Marshall v. Barlow's, Inc., 436 U.S. 307, 316 (1978) (OSHA inspection aimed at detection of safety hazards and regulatory violations).

means.[35] Against this need, the Court balanced the intrusion upon the sanctity and security of the premises involved in interior administrative inspections[36] and concluded that "administrative reasonableness"[37] is sufficient to justify an interior inspection of residential[38] or commercial[39] premises under the fourth amendment.[40]

The Court determined the constitutionality of "stop and frisk" encounters between police and citizens by balancing the governmental interests in crime prevention and detection[41] and in police safety[42] against a severe but limited intrusion on individual rights.[43] Such encounters are reasonable if the officer possesses a "reasonable suspicion"[44] of wrongdoing before initiating the encounter.[45]

In *United States v. Brignoni-Ponce*[46] and *United States v. Martinez-*

35. See v. City of Seattle, 387 U.S. 541, 545 (1967); Camara v. Municipal Court, 387 U.S. 523, 537-38 (1967). In *Marshall* the Court did not consider the availability of less-intrusive means.

36. See v. City of Seattle, 387 U.S. 541, 543 (1967); Camara v. Municipal Court, 387 U.S. 523, 531 (1967). *See* Marshall v. Barlow's, Inc., 436 U.S. 307, 312-14 (1978) (intrusion upon proprietor's reasonable expectation of privacy).

37. "Administrative reasonableness" differs from traditional probable cause in that interior inspections within a particular area may be justified by a lesser quantum of evidence. *See* note 26 *supra*.

38. Camara v. Municipal Court, 387 U.S. 523 (1967).

39. Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); See v. City of Seattle, 387 U.S. 541 (1967).

40. *See generally* 24 WAYNE L. REV. 1123, 1125 (1978). Certain administrative searches of federally licensed business such as gun and liquor dealers are exceptions to the warrant requirement. United States v. Biswell, 406 U.S. 311 (1972) (search of premises of firearms and ammunitions dealers); Colannade Catering Corp. v. United States, 397 U.S. 72 (1970) (inspection of premises of liquor dealers). The Court upheld warrantless administrative inspection because of the industry's history of broad congressional regulation, *id.* at 77, and viewed consent to regulation as concomitant to participation in the regulated industry, 406 U.S. at 316. *See also* note 69 *infra*.

41. Adams v. Williams, 407 U.S. 143, 145-47 (1972); Terry v. Ohio, 392 U.S. 1, 17-18 (1968).

42. 407 U.S. at 146; 392 U.S. at 23-24 & n.21. *See also* Pennsylvania v. Mimms, 434 U.S. 106 (1977).

43. Terry v. Ohio, 392 U.S. 1, 24-25 (1968). The *Terry* Court did not consider whether less burdensome alternatives were available to achieve the governmental interest. *See generally* LaFave, *"Street Encounters" and the Constitution*: Terry, Sibron, Peters *and Beyond*, 67 MICH. L. REV. 40 (1968); Shea, *Cars, Cops and Custody—Stopping and Searching Motorists in New York*, 24 N.Y.L. SCH. L. REV. 405 (1978); Note, *Nonarrest Automobile Stops: Unconstitutional Seizures of the Person*, 25 STAN. L. REV. 865 (1973).

44. 392 U.S. at 27. The majority in *Terry* stated that reasonableness in a stop and frisk encounter is based on "specific reasonable inferences [the officer] is entitled to draw from the facts in light of his experience." *Id.* This standard has been rephrased as "reasonable suspicion." *Id.* at 37 (Douglas, J., dissenting). *See* United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1972); note 26 *supra*.

45. *See* text accompanying notes 41-43 *supra*.

46. 422 U.S. 873 (1975).

Fuerte,[47] the Court applied the balancing test to determine the reasonableness of border patrol stops of automobiles.[48] Roving patrol stops[49] serve an important governmental interest in restricting the influx of illegal aliens; less intrusive practices cannot adequately serve this need.[50] At the same time, even though such stops result in only a "modest" intrusion upon the motorist,[51] they allow unlimited discretion to border

47. 428 U.S. 543 (1976). In *Martinez-Fuerte* the United States Government established fixed checkpoints along major highways in southern California. Officers detained all motorists at an initial checkpoint and selected a small percentage (one percent) of all passing vehicles for more detailed investigation at a secondary detention point. Approximately twenty percent of the motorists directed to the second detention point were illegal immigrants. *Id.* at 546. *See generally* Note, United States v. Martinez-Fuerte: *The Fourth Amendment Close to the Edge?*, 13 CAL. W.L. REV. 333 (1977); Note, *The Alien Checkpoints and the Troublesome Tetralogy:* United States v. Martinez-Fuerte, 14 SAN DIEGO L. REV. 257 (1976).

48. The border patrol maintains three types of surveillance along inland roads in the interest of detecting the illegal importation of aliens and contraband goods: (1) permanent checkpoints at certain nodal intersections; (2) temporary checkpoints at various times and places; and (3) roving patrols. 428 U.S. at 552; Almeida-Sanchez v. United States, 413 U.S. 266, 268 (1973).

The transition from the seizure of a pedestrian in *Terry* to the detention of a motorist as a "seizure" is not clear from the Court's opinions, but the logical nexus is set forth in United States v. Mallides, 473 F.2d 859 (9th Cir. 1973):

> Although a pedestrian and an automobile driver are not in identical circumstances, we see no reason why similar Fourth Amendment standards should not apply in both situations. A person whose vehicle is stopped by police and whose freedom to drive away is restrained is as effectively 'seized' as is the pedestrian who is detained.

Id. at 861. The Court in United States v. Brignoni-Ponce, 422 U.S. 873 (1975), left no doubt that stopping a mobile vehicle constitutes a "seizure" for purposes of the fourth amendment. *Id.* at 878. *See also* United States v. Martinez-Fuerte, 428 U.S. 543 (1976); Davis v. Mississippi, 394 U.S. 721 (1969); United States v. Nicholas, 448 F.2d 622 (8th Cir. 1971). *Cf.* Palmore v. United States, 290 A.2d 573 (D.C. 1972), *aff'd on jurisdictional grounds only*, 411 U.S. 389 (1973) (use of balancing test implies recognition of the stop as a seizure under the fourth amendment); State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973) (routine stop of vehicle accompanied by seizure of bag of money in plain view is seizure under fourth amendment); Commonwealth v. Swanger, 453 Pa. 107, 307 A.2d 875 (1973) (police officer stopping vehicle has seized the vehicle and fourth amendment protections must be observed). *But see* Byrd v. State, 13 Md. App. 288, 283 A.2d 9 (Ct. Spec. App. 1971); State v. Valstead, 282 Minn. 301, 165 N.W.2d 19 (1969); State v. Fish, 280 Minn. 163, 159 N.W.2d 786 (1968); People v. Frank, 61 Misc. 2d 450, 305 N.Y.S.2d 940 (Sup. Ct. 1969). *See generally* Weisgall, *supra* note 26; *Automobile License Checks*, *supra* note 30; 4 FORDHAM URB. L.J. 327, 329-30 (1976); note 69 *infra*.

49. *See* note 48 *supra*. *See also* United States v. Ortiz, 422 U.S. 891 (1975) (border officers not entitled to search vehicles without consent or reasonable suspicion at traffic checkpoints removed from border or functional equivalent); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (roving patrol automobile stop violates motorist's fourth amendment rights).

50. 422 U.S. at 878-79.

51. *Id.* at 882-84 & n.8. The intrusion was upon "the individual's right to personal security free from arbitrary interference by law officers." *Id.* at 878 (citing Terry v. Ohio, 392 U.S. 1, 20-21 (1968); Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967)). *See generally* Note, *supra* note 43, at 872-78; note 29 *supra*.

patrol agents.[52] Thus, border patrol officers must have at least "reasonable suspicion" to meet the fourth amendment reasonableness requirement.[53] Checkpoint stops also fulfill the important governmental interest in restricting the flow of illegal aliens into the country.[54] Furthermore, checkpoint stops are less intrusive than roving patrol stops because they offer visible signs of governmental authority[55] and limit the discretion of border patrol agents.[56] Finally, no less-intrusive means of satisfying the governmental interest is available. For these reasons no showing of cause is necessary to justify a checkpoint stop under the fourth amendment reasonableness standard.[57]

In *Brignoni-Ponce* and *Martinez-Fuerte* the Court stated that its decisions in the border patrol cases had no bearing upon the constitutionality of random license checks.[58] Numerous lower courts, however, have

52. 422 U.S. at 882-83 & n.8.

53. "Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts . . . that reasonably warrant suspicion that the vehicle contains aliens who may be illegally in the country." *Id.* at 884.

Courts applying the reasonable suspicion standard after *Terry* have not agreed upon the facts necessary to establish reasonable suspicion. *Compare* United States v. Brignoni-Ponce, 422 U.S. 873, 885-86 (1975) (apparent Mexican ancestry of motorist stopped near border does not reasonably warrant suspicion of immigration violation), *with* United States v. Granado, 453 F.2d 769 (10th Cir. 1972) (Mexican ancestry of occupants of automobile stopped over 800 miles from border will support reasonable suspicion of immigration violation). Courts may consider the following factors in determining the presence of reasonable suspicion: partially obscured license plates; condition of the license plates as compared to that of the vehicle; number of persons in the vehicle; driving behavior; appearance of the driver and passengers; ability to speak English; responses given to the officer's questions; and indications that the vehicle may be heavily loaded. *See* United States v. Ortiz, 422 U.S. 891, 897 (1975); United States v. Brignoni-Ponce, 422 U.S. 873, 884-85 (1975); United States v. Montgomery, 561 F.2d 875, 879-80 (D.C. Cir. 1977).

54. 428 U.S. at 551.

55. *Id.* at 558; United States v. Ortiz, 422 U.S. 891 (1975). "The circumstances surrounding a checkpoint stop are far less intrusive than those attending a roving patrol stop . . . . At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officer's authority, and he is much less likely to be frightened or annoyed by the intrusion." *Id.* at 894-95.

56. 428 U.S. at 559. Although they exercise discretion in selecting the checkpoint location, "officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists." *Id. But see* note 47 *supra* and accompanying text. Officers exercise discretion in the checkpoint stop (1) in selecting the location for the stop, 428 U.S. at 559, and (2) in selecting motorists for inspection at a second detention point. *See generally* notes 93-95 *infra*.

57. 428 U.S. at 562.

58. *Id.* at 560 n.14; 422 U.S. at 883 n.8. "Our decision . . . does not imply that state and local enforcement agencies are without power to conduct such limited stops as are necessary to enforce laws regarding drivers' licenses, vehicle registration . . . and similar matters." *Id.* at 883 n.8.

The phrase "license check" denotes any police stop made on a routine basis for the purpose of

confronted the issue,[59] and their decisions can be classified into three general groups.[60]

A first group of cases[61] focuses on the stopping procedure. Roving license checks, in which selection is based on observation, are valid only if the officer has a "reasonable suspicion" of some safety or crimi-

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enforcing motor vehicle licensing and registration laws. *See* 24 WAYNE L. REV. 1123, 1130 n.52 (1978).

All states have vehicle licensing and registration statutes. *See Automobile License Checks, supra* note 30, at 670 n.18; 1960 WASH. U.L.Q. 279, 279 n.1; 24 WAYNE L. REV. 1123, 1131 n.59 (1978). Many statutes expressly authorize law-enforcement officials to stop cars for the purpose of examining driver's license and vehicle registration. *See, e.g.,* FLA. STAT. ANN. § 321.05(1) (West 1975); N.C. GEN. STAT. § 20-183 (Repl. Vol. 1965); VA. CODE ANN. § 46.1-8 (Repl. Vol. 1972). *See also Automobile License Checks, supra* note 30, at 670 n.22. Nearly all states whose statutes fail to provide express authority for license checks have found the power to conduct such stops implicit in their provision that permits officers to demand to see a motorist's driver's license. *See, e.g.,* United States v. Lepinski, 460 F.2d 234, 237 (10th Cir. 1972) (New Mexico law); State v. Cobuzzi, 161 Conn. 371, 288 A.2d 439 (1971), *cert. denied*, 404 U.S. 1017 (1972); State v. Frizzell, 207 Kan. 393, 485 P.2d 160 (1971); State v. Rankin, 477 S.W.2d 72 (Mo. 1972); State v. Braxton, 111 N.J. Super. 191, 268 A.2d 40, *rev'd on other grounds*, 57 N.J. 286, 271 A.2d 713 (1970); State v. Maloney, 109 R.I. 166, 283 A.2d 34 (1971). *See also Automobile License Checks, supra* note 30, at 670-71 n.24; 24 WAYNE L. REV. 1123, 1131 n.59 (1978).

Despite attempts to analogize state licensing statutes to federal regulatory statutes authorizing search and seizure on a showing of cause, *see* note 40 *supra*, the courts have rejected this argument. *E.g.,* Almeida-Sanchez v. United States, 413 U.S. 266, 270-72 (1973); United States v. Montgomery, 561 F.2d 875, 881 (D.C. Cir. 1977); Commonwealth v. Swanger, 453 Pa. 107, 114, 307 A.2d 875, 879 (1973). "We reject any implication . . . that because an individual engages in a regulated activity he thereby forfeits his Fourth Amendment rights." *Id.* The *Prouse* Court similarly found inapplicable to the license check situation those cases in which consent to regulatory restrictions is viewed as concomitant with participation in the regulated industry. 99 S. Ct. at 1400.

59. *See* notes 62, 65, 68 *infra*.

60. *See Automobile License Checks, supra* note 30, at 673; 24 WAYNE L. REV. 1123, 1130 (1978). *See generally* 3 W. LAFAVE, *supra* note 16, at § 10.8; Note, *Warrantless Searches, supra* note 19; 4 FORDHAM URB. L.J. 327 (1976); 55 NEB. L. REV. 316 (1976).

61. *E.g.,* United States v. McLeroy, 584 F.2d 746 (5th Cir. 1978); United States v. Montgomery, 561 F.2d 875 (D.C. Cir. 1977); United States v. McDevitt, 508 F.2d 8 (10th Cir. 1974); State v. Ochoa, 23 Ariz. App. 510, 534 P.2d 441 (1975), *rev'd on other grounds*, 112 Ariz. 582, 544 P.2d 1097 (1976); People v. McGaughran, 22 Cal. 3d 469, 585 P.2d 206, 149 Cal. Rptr. 469 (1979); Punch v. United States, 377 A.2d 1353 (D.C.), *cert. denied*, 435 U.S. 955 (1977); People v. Estrada, 68 Ill. App. 3d 272, 386 N.E.2d 128 (1979); People v. Singleton, 41 N.Y.2d 402, 361 N.E.2d 1003, 393 N.Y.S.2d 353 (1977); People v. Ingle, 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975); Commonwealth v. Swanger, 453 Pa. 107, 307 A.2d 875 (1973); *cf.* United States v. Mallides, 473 F.2d 859 (9th Cir. 1973) (license check issue not addressed, investigatory stop without reasonable suspicion forbidden); United States v. Nicholas, 448 F.2d 622 (8th Cir. 1971) (license check issue reserved, investigatory stop without reasonable suspicion forbidden); Commonwealth v. Pollard, 450 Pa. 138, 299 A.2d 233 (1973) (order to exit automobile invalid without reasonable suspicion).

nal violation.[62] Checkpoint stops, as a less-intrusive means of satisfying the state interest in highway safety, are valid without any showing of cause.[63]

A second group of cases permits random license checks at the officer's discretion if his motivation in stopping a motorist is solely to determine compliance with licensing[64] and registration regulations.[65] To conduct a license check for the purpose of investigating a related criminal activity, however, the officer must have a reasonable suspicion.[66] The courts in these cases attempt to maintain the license check as a means of ensuring traffic safety, yet they recognize the possibility of official abuse of discretion if motorists can be stopped as a pretext for investigation.[67]

A final group of decisions extends absolute authority to law-enforce-

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62. *Cf.* Terry v. Ohio, 392 U.S. 1, 21 (1968) (officer must point to specific and articulable facts that reasonably warrant intrusion).

63. *E.g.,* United States v. Montgomery, 561 F.2d 875 (D.C. Cir. 1977); People v. Ingle, 36 N.Y.2d 413, 330 N.E.2d 39, 369 N.Y.S.2d 67 (1975); People v. Bennet, 47 A.D.2d 322, 366 N.Y.S.2d 639 (1975). *See generally* Note, *supra* note 43, at 875 n. 58; 24 WAYNE L. REV. 1123 (1978).

64. *See* City of Miami v. Aronovitz, 114 So. 2d 784, 787 (Fla. 1959) ("[T]he driver's license requirement was enacted primarily as a source of revenue . . . . Time has proven, however, that . . . this requirement has become an essential segment of our laws for the control and prevention of traffic accidents and fatalities."); note 58 *supra* and accompanying text. *But see* 6 RUT.-CAM. L.J. 85, 91, 115-16 (1974) (criticizing the view that licensing and registration play a substantial part in traffic safety, the author argues that licensing and registration serve the purposes of raising public revenue and facilitating the return of stolen property).

65. *E.g.,* United States v. Carrizoza-Gaxiola, 523 F.2d 239 (9th Cir. 1975); United States v. Cupps, 503 F.2d 277 (6th Cir. 1974); United States v. Lepinski, 460 F.2d 234 (10th Cir. 1972); Amador-Gonzalez v. United States, 391 F.2d 308 (5th Cir. 1968); Lipton v. United States, 348 F.2d 591 (9th Cir. 1965); United States v. Bell, 383 F. Supp. 1298 (D. Neb. 1974); State v. Smolen, 4 Conn. Cir. Ct. 385, 232 A.2d 339 (1967); Christmas v. United States, 314 A.2d 473 (D.C. 1974); Palmore v. United States, 290 A.2d 573 (D.C. 1972), *aff'd on jurisdictional grounds only*, 411 U.S. 389 (1973); Mincy v. District of Columbia, 218 A.2d 507 (D.C. 1966); City of Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959); State v. Bonds, 59 Hawaii 130, 577 P.2d 781 (1978); People v. Francis, 4 Ill. App. 3d 65, 280 N.E.2d 49 (1972); Commonwealth v. Mitchell, 355 S.W.2d 686 (Ky. 1962); State v. Holmberg, 194 Neb. 337, 231 N.W.2d 672 (1975).

66. *See* note 65 *supra* and accompanying text.

67. *See, e.g.,* United States v. Carrizoza-Gaxiola, 523 F.2d 239 (9th Cir. 1975); United States v. Cupps, 503 F.2d 277 (6th Cir. 1974); United States v. Bell, 383 F. Supp. 1298 (D. Neb. 1974); Palmore v. United States, 290 A.2d 573 (D.C. 1972), *aff'd on jurisdictional grounds only*, 411 U.S. 389 (1973); State v. Holmberg, 194 Neb. 337, 231 N.W.2d 672 (1975). The use of the license and registration check as a pretext for investigation is not uncommon. *See* 3 W. LAFAVE, *supra*, note 16, at § 10.8, 386-92. It is difficult for a defendant-motorist to expose an officer's unlawful motive in a pretext stop situation. *See* Note, Commonwealth v. Swanger—*Spot Checks Eliminated*, 47 TEMP. L.Q. 640, 645 (1974); *Automobile License Checks*, *supra* note 30, at 687-88; 55 NEB. L. REV. 316, 327 (1976). *But see* Montana v. Tomich, 332 F.2d 987 (9th Cir. 1964) (auto stop found uncon-

ment officials to stop motorists for both investigatory and license-check purposes.[68] These cases place considerable emphasis on vehicle regulation statutes that allow law-enforcement officials to stop motorists to examine their driver's licenses and vehicle registrations.[69]

In *Delaware v. Prouse*[70] the Supreme Court acknowledged that stopping and detaining a motorist to examine his license and vehicle registration constitutes a seizure within the meaning of the fourth and fourteenth amendments.[71] The Court determined the reasonableness of random license checks by balancing the intrusion upon the individual's fourth amendment interests[72] against the need for the intrusion in promoting legitimate governmental interests.[73]

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stitutional on grounds that stop was pretext or ruse). *See also* Byrd v. State, 80 So. 2d 694 (Fla. 1955); State v. Shoemaker, 11 Wash. App. 187, 522 P.2d 203 (1976).

68. *E.g.,* United States v. Jenkins, 528 F.2d 713 (10th Cir. 1975); United States v. Kelley, 462 F.2d 372 (4th Cir. 1972); United States v. Turner, 442 F.2d 1146 (8th Cir. 1971); Myricks v. United States, 370 F.2d 901 (5th Cir.), *cert. dismissed,* 386 U.S. 1015 (1976); Berger v. Cantor, 13 Ariz. App. 555, 479 P.2d 432 (1970); State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973); Leonard v. State, 496 S.W.2d 576 (Tex. Crim. App. 1973).

69. *See* note 58 *supra* and accompanying text. One of the most frequently invoked justifications for reliance on vehicle regulatory statutes is the need for highway safety. *See* Petitioner's Brief for Certiorari at 6-11, Delaware v. Prouse, 99 S. Ct. 1391 (1979); 3 W. LAFAVE, *supra* note 16, at § 10.8, 383-84; note 64 *supra.* It is also argued that license checks are the only effective means of enforcing driver's license and vehicle registration laws. Petitioner's Brief for Certiorari at 9-11; *see* Lipton v. United States, 348 F.2d 591 (9th Cir. 1965); State v. Allen, 282 N.C. 503, 194 S.E.2d 9 (1973).

There are a number of arguments against application of the fourth amendment to the license-check stop. First, the license-check stop is analogous to inspections of commercial industries with a long history of governmental regulation. *See* note 40 *supra.* Second, driving is not a right but a privilege granted to citizens by the state. *See* Commonwealth v. Mitchell, 355 S.W.2d 686 (Ky. 1962). The Supreme Court, however, has rejected the right-privilege argument. *See* Graham v. Richardson, 403 U.S. 365, 374 (1971); 3 W. LAFAVE, *supra* note 16, at § 10.8, 381-82. Third, before *Terry,* various courts had found that random license checks did not fall within the purview of the fourth amendment. *See* Rodgers v. United States, 362 F.2d 358 (8th Cir. 1966). *See generally* 3 W. LAFAVE, *supra* note 16, at § 10.8, 381 n.14.

70. 99 S. Ct. 1391 (1979).

71. *Id.* at 1396. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 556-58 (1976); United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975); Terry v. Ohio, 392 U.S. 1, 16-19 (1968).

The Delaware Supreme Court's finding that the stop violated article I, section 6 of the Delaware Constitution raised the jurisdictional issue of whether the lower court judgment rested on an adequate and independent state ground. *See* 99 S. Ct. at 1395-96. The United States Supreme Court found, however, that the Delaware Supreme Court had rested its decision on its interpretation of the fourth amendment to the United States Constitution, thus providing the Court with jurisdiction over the case. *Id.*

72. *Id.* at 1396.

73. *Id.* (citing Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); United States v. Ramsey, 431 U.S. 606, 616-19 (1977); United States v. Martinez-Fuerte, 428 U.S. 543, 555 (1976); United States

Analogizing random license-check practices to roving border patrol activity,[74] the Court found these stops at least as intrusive, both physically and psychologically, as roving border patrol stops.[75] Law-enforcement officials conducting random license-check stops have unbridled discretion.[76] Allowing this discretion without providing an objective standard to govern its use invites intrusion on constitutionally guaranteed rights.[77] Additionally, motorists do not forfeit their expectations of privacy simply because the vehicle is subject to governmental regulation.[78]

The Court balanced the governmental interest in traffic safety against this intrusion on individual rights.[79] Although traffic safety is a legitimate governmental interest,[80] existing vehicle licensing, registration, and safety inspection requirements, when combined with police action on observed violations, provide an adequate means of promoting that interest.[81] Because of the availability of the less-intrusive roadblock stop and other systematic means for determining motorist compliance with licensing and registration statutes, the contribution of the random license check to traffic safety is "marginal at best."[82]

The Court thus concluded that random license-check stops, like roving border patrol stops, are unreasonable under the fourth amendment unless there is at least reasonable and articulable suspicion of a violation of law.[83]

In a concurring opinion, Justice Blackmun, joined by Justice Powell, asserted that checkpoint stops and other "not purely random stops" do

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v. Brignoni-Ponce, 422 U.S. 873 (1975); Cady v. Dombrowski, 413 U.S. 433 (1973); Terry v. Ohio, 392 U.S. 1 (1968); Camara v. Municipal Court, 387 U.S. 523 (1967)).

74. 99 S. Ct. at 1397-98.

75. *Id.* at 1398. *See* United States v. Brignoni-Ponce, 422 U.S. 873 (1975). The intrusion in the roving border patrol case was "modest." *Id.* at 880. By implication, the intrusion in *Prouse* also is modest.

76. 99 S. Ct. at 1400. "This kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." *Id.* (citing Almeida-Sanchez v. United States, 413 U.S. 266, 270 (1973); Camara v. Municipal Court, 387 U.S. 523, 532-33 (1967)).

77. *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 22 (1968)).

78. *Id.* at 1400-01.

79. *Id.* at 1398.

80. *Id.*

81. *Id.* at 1398-1400.

82. *Id.* at 1401.

83. *Id.*

not fall within the scope of the majority's holding.[84] In addition, the concurring justices maintained that the majority opinion was inapplicable to random automobile examinations by game wardens in the performance of their duties.[85]

Justice Rehnquist, dissenting, applied the balancing test to the facts, but reached a contrary conclusion[86]—that the state interest in traffic safety allows it to employ the means necessary for the removal of unlicensed drivers from the road.[87] He contended that the evidence before the Court failed to show that an abuse of discretion had occurred or was likely to occur in the future.[88] In the absence of evidence that an abuse of discretion was likely, the presumption of constitutionality accorded acts of the state should stand.[89]

The Court's refusal to allow random license checks without an objective showing of reasonableness is commendable. The decision in *Prouse*, which requires that an officer's motives for detaining a motorist be articulable and premised on a reasonable suspicion of a violation of law,[90] lessens the defendant's burden of attempting to prove that an unlawful motive lay behind the detention.[91] By compelling the articulation of an objective motive for the detention of a motorist, the decision in *Prouse* hampers the use of a license-check pretext in law enforcement.

The Court's use of the roving border patrol cases as a guide is persuasive. The possibility of official abuse of discretion is identical whether the authority to detain motorists is granted to local law-enforcement officials or to agents of the border patrol.[92] Less persuasive, however, is the Court's reliance on the border patrol cases to suggest[93] traffic checkpoints as an alternative to random stops. The border patrol cases granted officials absolute discretion to detain motorists for a sec-

84. *Id.*
85. *Id.*
86. *Id.* at 1401-03.
87. *Id.* at 1402.
88. *Id.* at 1403.
89. *Id.*
90. *Id.* at 1401.
91. *See* 3 W. LAFAVE, *supra* note 16, at § 10.8.
92. *See* United States v. Ortiz, 422 U.S. 891, 894-95 (1975); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Terry v. Ohio, 392 U.S. 1, 25 (1968); 24 WAYNE L. REV. 1123, 1135 (1978).
93. The Court did not rule upon the constitutionality of the traffic checkpoint stop. 99 S. Ct. at 1401.

ondary inspection.[94] A traffic checkpoint modeled upon the alien checkpoint would, no doubt, raise further issues in the aftermath of *Prouse*.[95] A traffic checkpoint prejudicially located to further the detection of crimes unrelated to licensing, for example, would present problems of subterfuge and abuse of discretion.[96] Official action based on an officer's observation of a traffic violation or other situations raising a reasonable suspicion that a vehicle is either unsafe or unregistered or that the motorist is unlicensed provides a less objectionable means for removing the unsafe or unregistered vehicle and the unlicensed driver from the highway.[97]

The imposition of a standard of reasonableness on the actions of law-enforcement officials conducting random automobile stops is not unduly burdensome.[98] The decision in *Prouse* eliminates pretext and arbitrariness in random license checks and offers guidance for future attempts to identify less-intrusive methods of traffic regulation.

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94. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 558-60 (1976); note 47 *supra*.

95. *See generally* Note, United States v. Martinez-Fuerte: *The Fourth Amendment Close to the Edge?*, 13 CAL. W.L. REV. 333, 351 (1977); Note, *The Alien Checkpoints and the Troublesome Tetralogy:* United States v. Martinez-Fuerte, 14 SAN DIEGO L. REV. 257 (1976).

96. 3 W. LAFAVE, *supra* note 16, at § 10.8, 391-92.

97. 99 S. Ct. at 1399. *See also* 55 NEB. L. REV. 316, 332-34 (1976) (observable traffic violations provide means to inspect licenses and vehicle registration).

98. *See* United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Almeida-Sanchez v. United States, 413 U.S. 266 (1975). *See generally* Lukoff, *supra* note 4. The International Association of Chiefs of Police stated that the *Prouse* decision would not pose "insurmountable difficulties" for the police. *Id.* at 6.