

SOBRIETY CHECKPOINTS: STATUTORY GUIDELINES TO CLEAR THE ROADBLOCKS TO CONSTITUTIONALITY

INTRODUCTION

During the past decade, approximately a quarter of a million people died as a result of accidents involving drunk drivers.¹ In response to alarming statistics, both federal and state legislatures adopted new laws aimed at reducing the number of alcohol-impaired drivers.² Although evidence exists suggesting that this type of legislation has reduced impaired driving,³ the menace of drunk driving still continues. In addi-

1. S. REP. NO. 594, 100th Cong., 2d Sess. 2 (1988). Additionally, the Committee on Commerce, Science, and Transportation reported that each year over 23,000 people die and 560,000 become injured in alcohol-related automobile accidents. *Id.* Drunk driving accidents cost the nation an estimated \$26 billion per year. *Id.* Another Senate committee reported that over five times the number of Americans who died in the Vietnam War die in alcohol-related crashes each year. S. REP. NO. 441, 100th Cong., 2d Sess. 2 (1988). Moreover, every 22 minutes an alcohol-related death occurs, with one-third of those fatalities being innocent victims. *Id.* The problem is so widespread that two out of every five Americans will be injured in an alcohol-related crash in their lifetime. *Id.*

2. Beginning in the early 1980s, the federal government fueled the effort against drunk driving. Congress passed legislation effectively raising the national minimum drinking age to 21 and provided incentive grants to states which toughened their drunk driving laws through stiffer penalties. See 23 U.S.C. §§ 408, 410 (Supp. 1990). Receipt of grants became contingent upon states implementing mandatory license suspension policies as well as the establishment of a maximum allowable blood alcohol content of 0.10% to name but a few. S. REP. NO. 441, 100th Cong., 2d Sess. 3 (1988). Exemplifying the ongoing congressional campaign against drunk driving, 23 U.S.C. § 410 currently authorizes basic grants to states which implement expedited license suspension programs for DWI offenders, fines and surcharges for repeat offenders, programs for the prevention of operators under 21 from obtaining alcohol, and registration programs for DWI offenders. 23 U.S.C. § 410 (Supp. 1990).

3. Researchers at the Insurance Institute for Highway Safety report that an estimated 1600 drivers avoided fatal crashes in 1985 because of new state laws aimed at

tion to stiffer penalties for repeat offenders, lawmakers have increasingly focused on preventative measures.⁴ One of the most controversial⁵ measures aimed at deterring drunk driving is the use of sobriety checkpoints or driving while intoxicated roadblocks. ("D.W.I. roadblocks").⁶

Law enforcement officials implement sobriety checkpoints pursuant to varying procedural criteria.⁷ The typical operation, however, entails officials briefly stopping each vehicle and requesting the motorist's license and vehicle registration papers. If the officer conducting the check believes the driver to be intoxicated,⁸ then he requests that the driver pull out of the line of traffic and perform a roadside sobriety test.⁹

impaired driving. *Highway Safety Issues, Hearings Before the Subcomm. on Surface Transportation of the Comm. on Public Works and Transportation, House of Representatives*, 100th Cong., 2d Sess. 360 (1988) (statement of Brian O'Neill, President, Insurance Institute for Highway Safety). The Institute concluded that another 2600 drivers probably would not have been involved in fatal crashes if all states had adopted tougher laws. *Id.* Furthermore, the Institute found that license suspension immediately after failure of or refusal to take a breath test was the most effective of the newly enacted state laws. *Id.* at 360-61. Reportedly, mandatory license suspension laws reduced driver involvement in fatal crashes by nine percent during the night and early morning hours. *Id.* at 361.

4. Congress has pushed for stiffer penalties via contingencies on supplemental grants to states. See 23 U.S.C. § 408(e)(3) (Supp. 1990).

5. One author points out that the same controversy does not exist with respect to other types of "safety" checks. Micky Sadoff, National President of Mothers Against Drunk Driving, observes that "[t]oday every U.S. airport operates baggage and passenger checkpoints to preserve the safe passage of all travelers with minimum intrusion." Sadoff, *Sobriety Checkpoints Save Lives*, St. Louis Post Dispatch, Feb. 27, 1990, at 3B, col. 2. She notes that few people object to airport checkpoints because such measures assure safety. *Id.* at col.3. Similarly, sobriety checkpoints provide a valuable service in educating the public as to the dangers of drinking and driving, while capturing offenders and deterring irresponsible behavior. *Id.* at col. 3-4.

6. The terms "sobriety checkpoints" and "driving while intoxicated" roadblocks will be used interchangeably throughout this Note.

7. Although each state or municipality employs its own methods for conducting roadblocks, most jurisdictions share in common certain basic criteria. See *infra* notes 98-112 and accompanying text for requirements for conducting roadblocks; see also *infra* notes 179-81 for minimum statutory guidelines.

8. See *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984). In order to detect intoxicated drivers, officers look for the following signs: Bloodshot eyes, clumsy movement, and the smell of alcohol. *Id.* at 523, 473 N.E.2d at 2, 483 N.Y.S.2d at 650.

9. Roadside sobriety tests include the use of heel-to-toe tests, nose-to-finger tests, and recitation of the alphabet. *Id.* See also Note, *Curbing the Drunk Driver Under the*

The widespread use¹⁰ of sobriety checkpoints raises a host of fourth amendment issues.¹¹ Of particular concern is whether detaining a motorist without probable cause or reasonable suspicion constitutes an unconstitutional search and seizure under the fourth amendment.¹²

Part I of this Note surveys the major United States Supreme Court cases addressing the constitutionality of roadblocks in the context of administrative and immigration checkpoints, and closes with a discussion of the Court's only decision concerning sobriety checkpoints.¹³ Part II of this Note examines selected state court decisions¹⁴ and state

Fourth Amendment: The Constitutionality of Roadblock Seizures, 71 GEO. L.J. 1457, 1463 (1983) (the police may also require a driver to take a breathalyzer test).

10. State courts disagree over the purpose of roadblocks. Some states see the purpose as a technique to apprehend drunk drivers. *See, e.g., State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 663 P.2d 992 (1983); *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984). Other courts view sobriety checkpoints as a deterrent to drunk driving. In *People v. Scott*, the court noted that:

[T]he Department of Transportation's National Highway Traffic Safety Administrator's Office of Alcohol Countermeasures emphasizes the importance of informing the public about DWI checkpoint operations as the chief means of deterring driving while intoxicated. We conclude that deterrence by fear of apprehension is a constitutionally proper means of keeping drunk drivers off the highways

Scott, 63 N.Y.2d. at 526-27, 473 N.E.2d at 4-5, 483 N.Y.S.2d 652-53 (citations omitted). *See also State v. Superior Court*, 143 Ariz. 45, 48-49, 691 P.2d 1073, 1076-77 (1984) (the court concluded that checkpoints are superior to roving patrols in their deterrent effect); *People v. Bartley*, 109 Ill. 2d 273, 287, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986).

11. For additional discussion on this subject, *see Bruce, Drunk Drivers, Roadblocks and the Fourth Amendment*, 57 UMKC L. REV. 29 (1988); *Jacobs & Strossen, Mass Investigations Without Individualized Suspicion: A Constitutional and Policy Critique of Drunk Driving Roadblocks*, 18 U.C. DAVIS L. REV. 595 (1985); Note, *Curbing the Drunk Driver Under the Fourth Amendment: The Constitutionality of Roadblock Seizures*, 71 GEO. L.J. 1457 (1983); Note, *Clearing the Roadblocks to Sobriety Checkpoints*, 21 U. MICH. J.L. REF. 489 (1988).

12. U.S. CONST. amend IV reads:

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.

Id.

13. *See Michigan Dep't of State Police v. Sitz*, 110 S. Ct. 2481 (1990). For a full discussion of *Sitz*, *see infra* notes 71-85 and accompanying text. Because the Supreme Court only recently addressed the issue of sobriety checkpoints, many state courts had previously relied on dicta in *Delaware v. Prouse*, 440 U.S. 648 (1979), to uphold the constitutional validity of DWI roadblock stops. *See infra* notes 51-60 and accompanying text for discussion of the dicta in *Prouse*.

14. Two-thirds of the states have ruled on the constitutionality of DWI roadblocks. Although a roadblock might be constitutional under federal standards, it might yet vio-

attempts to define a constitutional standard with which to evaluate the propriety of a particular roadblock.¹⁵ In general, state courts have experienced great difficulty in enumerating such a standard. Because only two state legislatures have enacted statutes outlining minimum procedural safeguards for the operation of sobriety checkpoints,¹⁶ the judiciary must evaluate roadblock procedures each time a particular roadblock is challenged.¹⁷

Part III of this Note proposes a model statute¹⁸ which state legislatures could follow in drafting legislation authorizing the implementation of sobriety checkpoints. This Note concludes in Part IV that a carefully drafted statute, accounting for fourth amendment constraints, would spare the judiciary the burdensome task of subjecting each challenged roadblock to a detailed constitutional analysis. Furthermore, such a statute would provide municipalities and police departments specific guidelines for setting up their own checkpoints.

I. ROADBLOCKS AND THE UNITED STATES SUPREME COURT

The fourth amendment applies to all seizures of the person, including those involving a brief detention short of a traditional arrest.¹⁹ The

late a particular state's constitution. *See, e.g., State v. Koppel*, 127 N.H. 286, 499 A.2d 977 (1985); *Pimental v. Department of Transp.*, 561 A.2d 1348 (R.I. 1989). The Supreme Court recognizes that state courts retain the power to impose higher standards on searches and seizures than those mandated by the federal constitution. Indeed, even if a state constitution contains language closely tracking that of the federal constitution, state supreme courts are free to impose more stringent standards because they function as the final arbiters of state law. *Cooper v. California*, 386 U.S. 58, 62 (1967). The federal constitution establishes only a minimum level of protection. *Oregon v. Hass*, 420 U.S. 714, 719 (1975).

15. *See infra* Part II of this Note at 154 for a discussion of state court decisions on the constitutionality of roadblocks in light of the Supreme Court's immigration checkpoint analyses.

16. HAW. REV. STAT. § 286-162.6 (1985 & Supp. 1989); N.C. GEN. STAT. § 20-16.3A (1990). *See also infra* notes 179-82 and accompanying text discussing minimum statutory requirements for establishment of DWI roadblocks.

17. Challenges to roadblocks normally occur after a motorist caught at the roadblock has been charged with a DWI violation and desires to suppress evidence at his trial. *See, e.g., Koppel*, 127 N.H. at 287, 499 A.2d at 978; *State v. Coccoma*, 177 N.J. Super. 575, 427 A.2d 131 (Super. Ct. Law Div. 1980); *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984).

18. The model statute draws upon the Supreme Court's analysis of administrative and immigration checkpoints, selected state court decisions, and state statutes establishing minimum requirements for roadblock operations.

19. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

fourth amendment, however, only protects against "unreasonable" searches and seizures.²⁰ Whether a seizure is reasonable depends upon a balance between the public interest and the individual's right to be free from arbitrary invasions of privacy.²¹ Furthermore, the fourth amendment permits certain limited "seizures" if an officer has reasonable suspicion, a standard less than probable cause.²²

The Supreme Court developed standards by which to review road-block checkpoints through a series of immigration control cases. In *Almeida-Sanchez v. United States*,²³ the Court addressed a random search of an automobile twenty-five miles north of the Mexican-American border.²⁴ The Court held the search invalid because Border Patrol agents had neither probable cause nor consent to search the defendant's vehicle for illegal drugs.²⁵ The Court held that law enforcement agents must have probable cause prior to detaining and searching a vehicle to protect its occupants' right of "free passage without interruption".²⁶

20. U.S. CONST. amend. IV. See *supra* note 12 for the text of the fourth amendment.

21. *Camara v. Municipal Court*, 387 U.S. 523, 536-37 (1967). The Court in *Delaware v. Prouse*, 440 U.S. 648, 654 (1979), stated that the essential purpose of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by public officials. *Id.* (citing *Camara*, 387 U.S. at 528). The *Prouse* Court concluded that a particular law enforcement practice should be judged by balancing its intrusion upon the individual's fourth amendment interests against the promotion of legitimate government interests. *Id.*

22. The Court in *Brignoni-Ponce* read *Terry v. Ohio*, 392 U.S. 1 (1968) to establish the proposition that the fourth amendment allows seizures on facts which do not constitute probable cause to arrest. *Brignoni-Ponce*, 422 U.S. at 880-81. *Terry* involved a police pat down of an individual reasonably believed to be armed and dangerous. The *Terry* Court upheld the seizure even though the officer neither had probable cause for an arrest, nor knew for certain that the individual was armed. *Terry*, 392 U.S. at 27. The *Terry* Court concluded that a brief stop of a suspicious individual may be most reasonable in light of the facts known to the officer at the time. *Id.*

23. 413 U.S. 266 (1973). The *Almeida-Sanchez* Court faced a Mexican citizen's challenge to a conviction for possession of marijuana obtained through a warrantless search. *Id.* at 267-68. The Court distinguished the roving search in this instance from the types of searches conducted at the border. *Id.* at 272-73. The Court suggested that a permanent vehicular checkpoint at the confluence of two or more roads extending from the border might be the functional equivalent of a border search, and thus, permissible. *Id.*

24. *Id.* at 268.

25. *Id.* at 273-75.

26. *Id.* at 270, 274-75 (citing *Camara v. Municipal Court*, 387 U.S. 523, 532 (1967); *Carroll v. United States*, 267 U.S. 132, 153-54 (1925)).

Two years later, in *United States v. Ortiz*,²⁷ the Court extended the *Almeida-Sanchez* standard to searches conducted at fixed immigration checkpoints away from the border.²⁸ The *Ortiz* Court required probable cause²⁹ to search vehicles at fixed checkpoints notwithstanding the Government's claim that such operations were less intrusive than roving stops.³⁰ Although the Court recognized that fixed checkpoints minimize official discretion to an extent, the permanent nature of such checkpoints did not justify the substantial intrusion on the privacy of motorists.³¹

On the same day that *Ortiz* was decided, the Supreme Court reviewed the constitutionality of random immigration searches near international borders in *United States v. Brignoni-Ponce*.³² The *Brignoni-Ponce* Court held that roving border patrols could stop and detain vehicles only upon "reasonable and articulable suspicion" that the vehicle contained illegal aliens.³³ The Court applied a balancing test which weighed the public interest³⁴ in preventing illegal aliens entry into the country against interference with the right to privacy.³⁵ In view of the vital governmental interest and the minimal intrusion upon the car's

27. 422 U.S. 891 (1975).

28. *Id.* at 896-97. The Court noted, however, that "different considerations might apply to routine safety inspections required as a condition of road use. *Id.* at 897 n.3.

29. *Id.* at 896-97. The Court stated that a number of factors may be taken into account when deciding whether there is reasonable suspicion to stop a vehicle. *Id.* at 897. See also *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975). Officers may consider the characteristics of the area, the proximity to the border, and previous experience with alien traffic. *Id.*

30. *Ortiz*, 422 U.S. at 894. First, the Government claimed that a checkpoint officer's discretion is limited by the location of the checkpoint. *Id.* Second, checkpoints result in less of an intrusion than patrol stops. *Id.* Finally, motorists at checkpoints can see that other vehicles are being stopped and hence are much less likely to be frightened. *Id.*

31. *Id.* at 896. Speaking for the majority, Justice Powell noted that even automobile searches result in substantial invasions of privacy. *Id.* To protect an individual's privacy from official arbitrariness, the Court referred to its consistent "minimum" requirement of probable cause before a lawful search may proceed. *Id.*

32. 422 U.S. 873 (1975).

33. *Id.* at 881, 884.

34. *Id.* at 884. The Court accepted the Immigration and Naturalization Service's estimate that as many as 10 to 12 million aliens illegally reside in the United States. *Id.* at 878. The Court also noted that "[t]he Government makes a convincing demonstration that the public interest demands effective measures to prevent the illegal entry of aliens at the Mexican border." *Id.*

35. *Id.*

occupants,³⁶ the Court concluded that an officer with reasonable suspicion may validly stop a vehicle.³⁷ The Court explained that although an officer might question a driver about his citizenship and status, any further detention should be based upon probable cause.³⁸

A year later, in *United States v. Martinez-Fuerte*,³⁹ the Court entertained yet another challenge to an investigatory stop at a permanent immigration checkpoint.⁴⁰ Immigration officials established the roadblock on a major highway near the Mexican-American border and gave motorists advance notice of the checkpoint stop.⁴¹ The Court held that routine vehicular stops at permanent roadblocks could be made in the absence of individualized suspicion if conducted at reasonably⁴² located checkpoints.⁴³ Requiring individualized suspicion before stopping a vehicle was impractical⁴⁴ because heavy traffic does not permit particularized study of vehicles to detect the presence of

36. *Id.* at 880. The Court downplayed the intrusion, stating that the typical stop by a roving patrol lasts a minute at most. *Id.* It accepted the Government's assertion that officers administering roving patrols merely ask a question or two and request evidence of United States citizenship. *Id.* (citing Brief for Petitioner at 25, *United States v. Brignoni-Ponce*, 422 U.S. 473 (1975) (No. 74-114)).

37. *Id.* at 881. An officer who reasonably suspects that a vehicle contains illegal aliens may "stop the car briefly and investigate the circumstances that provoke suspicion." *Id.*

38. *Id.* at 882. The Court in *Carroll v. United States*, 267 U.S. 132 (1925) defined probable cause as follows: "[I]f the facts and circumstances before the officer are such as to warrant a reasonable man of prudence and caution in believing that the offense has been committed, it is sufficient." *Id.* at 161 (citing *Locke v. United States*, 11 U.S. (7 Cranch) 339 (1813)).

39. 428 U.S. 543 (1976).

40. Note that the Court in *Ortiz* ruled on the constitutionality of searches at such checkpoints rather than the initial stop at issue in *Martinez-Fuerte*.

41. *Martinez-Fuerte*, 428 U.S. at 545-46. The Court explained that the Border Patrol conducts three kinds of inland checking operations to apprehend aliens: permanent checkpoints, temporary checkpoints, and roving type patrols to supplement the checkpoint system. *Id.* at 557.

42. The Court in *Martinez-Fuerte* found the roadblock reasonable and believed that it met criteria established by the Border Patrol to ensure safety and effectiveness. *Id.* at 553, 559. Included in the criteria was a requirement that the checkpoint be located on a stretch of highway compatible with safe operation and distant enough from the border to avoid interference with traffic in populated areas. *Id.* at 553. Reviewing the evidence, the Court agreed with the Government's position that this location furthered law enforcement. *Id.* at 562 n.15. The Court further reasoned that the checkpoint's permanence diminished the risk that motorists would be frightened and annoyed. *Id.* at 558-59.

43. *Id.* at 562.

44. The Court recognized that a reasonable suspicion requirement would under-

illegal aliens.⁴⁵ The *Martinez-Fuerte* Court distinguished *Brignoni-Ponce*, stating that routine checkpoints involve less discretion than roving patrols because officers in the former situation stop only those vehicles which pass through the checkpoint.⁴⁶ The Court emphasized the minimal intrusion involved in a checkpoint detention, noting that officials only detained motorists for approximately five minutes.⁴⁷ After balancing the public interest⁴⁸ in apprehending illegal aliens against the inconvenience to the motorist,⁴⁹ the Court found that the public interest outweighed the minor intrusion and upheld the stops as reasonable fourth amendment seizures.⁵⁰

In upholding the checkpoint in *Martinez-Fuerte*, the Court made note of the wide-spread use of checkpoints to enforce laws regarding licenses and safety requirements.⁵¹ The Court, however, did not review the constitutionality of such practices until 1979 in *Delaware v. Prouse*.⁵² The Court in *Prouse* examined the use of roadblocks in the context of random license and vehicle registration checks.⁵³ Although

mine a central purpose of the roadblock, namely deterring would-be smugglers known to use the highways near the border. *Id.* at 557.

45. *Id.* at 562.

46. *Id.* at 559. Furthermore, the Court reasoned that the location of a fixed checkpoint was not chosen by officers in the field, but by officers responsible for making overall decisions as to the most effective allocation of limited resources. *Id.*

47. *Id.* at 560.

48. The Court recognized the necessity of traffic-checking programs in the interior because the flow of illegal aliens cannot be effectively controlled at the border. *Id.* at 556. Placing the checkpoints on important highways blocked a quick and safe route for illegal aliens into the interior of the United States. *Id.* at 557.

49. The motorists need only respond to brief questions and produce upon request documents evidencing the right to be in the country. *Id.* at 558 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975)). The Court distinguished between objective and subjective intrusions taking place at a checkpoint stop; the objective intrusion consisting of "the stop itself, the questioning, and the visual inspection, [which] also existed in roving patrol stops." *Id.* Regarding the subjective intrusion, however, checkpoint stops fared appreciably better than roving stops. The Court enumerated various factors demonstrating the heightened subjective intrusion unique to roving patrols, including night operation on seldom travelled roads and lack of warning signs. *Id.* (citing *Brignoni-Ponce*, 422 U.S. at 894-95).

50. *Id.* at 562.

51. The Court expressly disclaimed stating an opinion on roadblocks in the context of administrative checks because the issue was not before the Court. *Id.* at 561 n.14. The Court simply noted their widespread use and acceptance. *Id.*

52. 440 U.S. 648 (1979).

53. In *Prouse*, a patrolman randomly stopped an automobile without any articulable reason. The officer then seized a quantity of marijuana in plain view on the car

the Court recognized that states have an important interest in the promotion of highway safety, it reasoned that apprehension of observed violators is a more effective and less intrusive means to accomplish the states' goals.⁵⁴ The Court found discretionary checks overly intrusive measures in relation to the public risk the checks were designed to eliminate.⁵⁵ Consequently, the Court held that the fourth amendment requires reasonable suspicion of an unlicensed motorist⁵⁶ or of some other violation of a traffic law before an officer may detain a driver.

The *Prouse* Court, however, did not foreclose the availability of spot checks involving less discretion⁵⁷ on the part of officers conducting the roadblock.⁵⁸ In dictum, the Court suggested an alternative⁵⁹ of questioning drivers of all oncoming vehicles at roadblock type stops.⁶⁰

floor. *Id.* at 650. The officer acted pursuant to no guidelines or standards in stopping the vehicle. In fact, the officer testified, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." *Id.* at 650-51 (quoting Appellate record).

54. *Id.* at 658. The Court agreed the states have a vital interest in ensuring that only those individuals qualified to operate motor vehicles do so. *Id.* It also recognized an important interest existed in enforcing vehicular inspection, regulation and licensing laws. *Id.* The Court, however, did not believe the ends of highway safety justified an intrusion upon the motorists' fourth amendment rights. *Id.* at 659. Furthermore, the Court found alternate means available to reach the state's goal. *Id.* at 660.

55. The Court compared the random administrative stops at issue in *Prouse* with the roving border patrols it held invalid in *United States v. Brignoni-Ponce*, 422 U.S. 873, 882-83 (1975). The Court found both types of stops physically and psychologically intrusive stating:

Both of these types of stops generally entail law enforcement officers signaling a moving automobile to pull over to the side of the roadway, by means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient and consume time. Both may cause substantial anxiety.

Prouse, 440 U.S. at 657.

56. *Prouse*, 440 U.S. at 663. The Court believed that police were more likely to find an unlicensed driver among those who commit traffic violations than by choosing randomly from the entire universe of drivers. *Id.*

57. The Court carefully pointed out that "[t]his 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 circumstantial." *Id.* at 661.

58. *Id.* at 663. The Court reiterated that an individual does not completely shed his expectation of privacy because he enters an automobile and because its use is subject to governmental regulation. *Id.* at 662 (citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978)).

59. *Id.* at 663. The Court did not preclude the states from developing spot checks which involve a slighter intrusion or which involve less than the unconstrained exercise of discretion. *Id.*

60. *Id.*

Shortly after *Prouse*, the Supreme Court clarified the fourth amendment balancing test, particularly with respect to the public interest prong.⁶¹ In *Brown v. Texas*,⁶² the Court articulated three factors to consider when determining the reasonableness of a seizure: (1) the gravity of the public concerns served by the seizure; (2) the degree to which the seizure advances the public interest ("effectiveness"); and (3) the severity of the intrusion.⁶³ In *Brown*, the Court held that officers could not constitutionally apprehend an individual who merely "looked suspicious."⁶⁴ The Court significantly found no evidence that the arresting officers had acted pursuant to any neutral plan or criteria.⁶⁵ Presumably, the Court's balancing test would uphold a law enforcement practice protecting a vital public interest⁶⁶ where the challenged practice better advances the state's objective than traditional means,⁶⁷ severe intrusions notwithstanding.

Through *Brown* and the immigration cases, the Supreme Court fash-

61. See *supra* notes 34-38 and accompanying text for discussion of the fourth amendment balancing test to determine the reasonableness of a seizure.

62. 443 U.S. 47 (1979). *Brown* involved two police officers who observed the defendant walking in an area known to have a high incidence of drug traffic. *Id.* at 48. The police had no reason to suspect the defendant of any misconduct but asked him to identify himself. When the defendant refused, the officers detained him and arrested him. *Id.* at 49.

63. *Id.* at 51. The Court commented that a central concern in balancing competing interests is to assure that "an individual's reasonable expectation is not subject to arbitrary invasions of privacy solely at the unfettered discretion of officers in the field." *Id.* The Court concluded that "[t]o this end, the Fourth Amendment requires that a seizure must be . . . carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Id.* (citing *Deleware v. Prouse*, 440 U.S. 648, 663 (1979)).

64. *Id.* at 52.

65. *Id.*

66. Reviewing this prong of the balancing test in the context of DWI roadblocks, a strong public interest indisputably exists in combatting drunk driving. See, e.g., *South Dakota v. Neville*, 459 U.S. 553, 558 (1983) (stating, "[t]he carnage caused by drunk drivers is well documented and needs no detailed recitation here"); *People v. Bartley*, 109 Ill. 2d 273, 486 N.E.2d 880 (1985) (claiming it is beyond dispute that drunk drivers are a grave menace to the public and that stronger measures are needed to cope with the problem); *State v. Martin*, 145 Vt. 562, 496 A.2d 442 (1985) (noting the serious threat posed to public safety by intoxicated drivers operating motor vehicles); see also *supra* notes 1-4 and accompanying text for discussion of yearly statistics on drunk driving.

67. Authorities dispute the efficacy of roadblocks. Of course, the measure of effectiveness relates to the public goal, viz. apprehension versus deterrence. For the effectiveness of roadblocks in detecting drunk drivers as compared to more traditional means, see *infra* note 141.

ioned a framework by which to analyze the constitutionality of DWI roadblocks.⁶⁸ Furthermore, dicta in *Prouse* seemed to support the propriety of DWI roadblocks, despite the Court's reluctance to set specific guidelines for the use of roadblocks outside of the immigration context.⁶⁹

Without defining the constitutional parameters of sobriety checkpoints, the Court recently held that such checkpoints will withstand fourth amendment scrutiny so long as all motorists are stopped and are only briefly detained.⁷⁰ In *Michigan Department of State Police v. Sitz*,⁷¹ a divided Court held that the initial stop and questioning of all motorists for signs of intoxication is constitutionally permissible under the fourth amendment.⁷² Relying on the *Brown* balancing test,⁷³ the Court stated that the state's interest in preventing drunk driving outweighed what the Court deemed to be a slight intrusion upon the motorist.⁷⁴ The Court in *Sitz* found the type of sobriety checkpoint at issue as indistinguishable from the immigration checkpoint upheld in

68. For general discussion of how state courts apply the immigration cases to the DWI context, see Rogers, *The Drunk Driving Roadblock: Random Seizure or Minimal Intrusion?* 21 CRIM L. BULL. 197 (1985); Comment, *The Constitutionality of Drunk Driving Roadblocks*, 58 U. COLO. L. REV. 109 (1987).

69. See *supra* note 59 and accompanying text for discussion of the *Prouse* dicta. At least one author contends that the Supreme Court's pronouncement in *Prouse* amounted to more than "mere" dicta. Referring to *Texas v. Brown*, 460 U.S. 730 (1983), the author writes, "The Court indicated that the language in *Prouse* was more than mere dicta and appears to leave little doubt that roadblocks are valid. See Bruce, *supra* note 11, at 32.

70. Stated otherwise, the Court gave but one example of how a state may implement a checkpoint program. See *infra* note 71 describing the particular procedure.

71. 110 S. Ct. 2481 (1990). The roadblock at issue in *Sitz* stopped every vehicle passing through a fixed checkpoint on a highway. *Id.* at 2484. Police officers examined each motorist for signs of intoxication. *Id.* If an individual appeared to be intoxicated, then the officer directed the motorist out of the line of traffic and checked his driver's license and registration papers. If warranted, the officer thereafter directed the individual to perform a series of field sobriety tests. *Id.*

72. *Id.* at 2488. The Court in *Sitz* decided only the constitutionality of the initial stop and questioning, and not the additional detention and administration of field sobriety tests. *Id.* See *supra* notes 84-85 and accompanying text for a discussion of what degree of suspicion might be needed for further detention of an individual.

73. See *supra* notes 61-67 and accompanying text for a discussion of the *Brown* balancing test.

74. *Sitz*, 110 S. Ct. at 2484. The Court noted that the average delay of each vehicle at the checkpoint stop was only 25 seconds. *Id.* The Court felt that the lower court misread previous decisions discussing the question of "subjective intrusion" upon the motorist. *Id.* at 2486. The Court noted that the "fear and surprise" relevant to the question does not include the fear of an individual who has been drinking. *Id.* Rather,

the *Martinez-Fuerte* case.⁷⁵

Furthermore, the *Sitz* Court stated that the "effectiveness" prong of the *Brown* balancing test was not meant to be an empirical standard requiring scientific quantification. Rather a particular law enforcement method would better combat a particular problem, as compared to its alternatives.⁷⁶ For fourth amendment purposes, the choice of a particular method need only be a choice among reasonable alternatives, to be made by the governmental officials who are better situated to allocate scarce public resources.⁷⁷

In a strongly worded dissent, Justices Brennan, Marshall, and Stevens disagreed with the majority that the intrusion upon motorists stopped at the checkpoint was slight.⁷⁸ In sharp contrast to the majority approach, the dissent focussed on the "effectiveness" prong of the *Brown* balancing test.⁷⁹ The dissent did not believe that a one percent arrest rate⁸⁰ could be viewed as an effective means of apprehending drunk drivers.⁸¹ Consequently, the dissent concluded that the roadblock procedures failed the *Brown* balancing test.⁸² Furthermore, the dissent stated that the real goal of the roadblock was to deter drunk driving and that law enforcement officials did not even attempt to justify the roadblock on the basis of the number of arrests made.⁸³

subjective fear embodies that of the law-abiding citizen who is stopped at a checkpoint. *Id.*

75. *Id.* at 2487.

76. *Id.* The Court stated that *Brown's* language discussing the effectiveness factor "was not meant to transfer from politically accountable officials to the courts the decision as to which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger." *Id.*

77. *Id.*

78. *Id.* at 2493 (Stevens, J., dissenting). The dissent focused in particular on the fact that the checkpoints were normally operated at night. The lack of guidelines utilized by the officers in their decision to detain particular motorists similarly troubled the dissent. *Id.* at 2492-93. Justice Stevens stated that a Michigan officer who detains a motorist at a checkpoint can do so on the basis of the "slightest suspicion." *Id.* at 2493.

79. *Id.* at 2492. See *supra* notes 61-67 and accompanying text for a discussion of the *Brown* balancing test.

80. *Sitz*, 110 S. Ct. at 2495 n.11 (Stevens, J., dissenting). The dissent noted that the Michigan police conceded that the arrest rate at the checkpoint was "very low." On this basis, the dissent believed that the roadblock failed the "effectiveness" prong of the fourth amendment balancing test. *Id.* at 2492.

81. *Id.* at 2495.

82. *Id.*

83. *Id.* at 2495-96. Justice Stevens characterized sobriety checkpoints as "elaborate, and disquieting, publicity stunts." *Id.* at 2498.

Interestingly, the *Sitz* Court expressly declined to resolve how much evidence would be needed in order for officials to pull a motorist out of the line of traffic and question him further.⁸⁴ Although probable cause would not appear to be required in order to further question a motorist after an initial stop, the Court intimated that some amount of "individualized suspicion" would probably be necessary.⁸⁵

Although the Court in *Sitz* stated that a Michigan state police committee sat for the purpose of drafting guidelines to implement the checkpoint program, the opinion surprisingly failed to mention what, if any, specific guidelines had been adopted.⁸⁶ Presumably, after *Sitz*, roadblocks operated pursuant to specific guidelines would be upheld to the extent that the questioning is brief and the intrusion is minimal. However, because the Court was silent as to what procedures are actually necessary for a roadblock program to survive constitutional scrutiny, state courts are left with little guidance in evaluating their own roadblock programs.

An examination of state court decisions evaluating roadblock procedures will show the types of safeguards courts require in determining the validity of a particular roadblock.⁸⁷ Similarly, examining the various procedures and the judicial responses thereto will help define the limits of permissible intrusion which a particular roadblock may have on an individual motorist.⁸⁸

A cautionary note should be registered with respect to various state court decisions. Although state courts are obligated to follow the *Sitz* decision as a matter of federal constitutional law, state courts may still find a sobriety checkpoint invalid as a matter of state constitutional

84. *Id.* at 2485. The Court noted that the action before it challenged only the use of sobriety checkpoints generally. *Id.*

85. *Id.*

86. The Court in *Sitz* mentioned how the Michigan police operated the roadblock in broad terms with little discussion of the specific procedures utilized in conducting the checkpoint. *Id.* at 2495. In contrast, most state court decisions elaborate in great detail the procedures used in conducting checkpoints to minimize the intrusion upon the motorist.

87. See generally Part II of this Note for a survey of state court decisions discussing procedures utilized in conducting sobriety checkpoints.

88. Because two-thirds of the states addressed the constitutionality of roadblocks prior to the *Sitz* decision, it is necessary to examine the factors states consider when evaluating checkpoint validity. Furthermore, state considerations are important because the states are always free to invalidate a roadblock on state constitutional grounds.

law.⁸⁹

II. STATE COURTS AND DWI ROADBLOCKS

A. *Judicial Responses to Roadblock Constitutionality*

Prior to the *Sitz* decision, over two-thirds of the states had already addressed the constitutionality of DWI roadblocks in the context of both federal and state court challenges.⁹⁰ Of the thirty-one states which have examined the issue, twenty-two⁹¹ will uphold some type of roadblock if it meets certain minimum requirements.⁹² States ruling roadblocks to be unconstitutional⁹³ often find subsequent examples

89. See *supra* note 14.

90. In addition to the 31 states that ruled directly on the constitutionality of DWI roadblocks, others indicated that they would also uphold such practices. See, e.g., *Cains v. State*, 555 So. 2d 290 (Ala. Crim. App. 1989); *State v. Aguinaldo*, 71 Haw. 51, 782 P.2d 1225 (1989). In both cases the defendant did not challenge the initial stop of the vehicle, but nevertheless, the court proceeded with a lengthy discussion of why roadblocks are constitutionally permissible if conducted properly.

91. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987); *People v. Rister*, No. 89SC212 (Colo. Dec. 7, 1990) (Westlaw, Genstate library); *State v. Golden*, 171 Ga. App. 27, 318 S.E.2d 693 (Ct. App. 1984); *People v. Bartley*, 109 Ill. 2d 273, 486 N.E.2d 880 (1985), *cert. denied*, 475 U.S. 1068 (1986); *State v. Garcia*, 489 N.E.2d 168 (Ind. Ct. App. 1986); *State v. Riley*, 377 N.W.2d 242 (Iowa Ct. App. 1985); *State v. Deskins*, 234 Kan. 529, 673 P.2d 1174 (1983); *Kinslow v. Commonwealth*, 660 S.W.2d 677 (Ky. Ct. App. 1983), *cert. denied*, 465 U.S. 1105 (1984); *State v. Church*, 530 So.2d 1235 (La. Ct. App. 1988), *rev'd*, 530 So. 2d 993 (1989); *State v. Cloukey*, 486 A.2d 143 (Me. 1985); *Little v. State*, 300 Md. 485, 479 A.2d 903 (1984); *Miller v. State*, 373 So. 2d 1004 (Miss. 1979); *State v. Welch*, 755 S.W.2d 624 (Mo. Ct. App. 1988); *State v. Cocomo*, 177 N.J. Super. 575, 427 A.2d 131 (Super. Ct. Law Div. 1980); *City of Las Cruces v. Betancourt*, 105 N.M. 655, 735 P.2d 1161 (1987); *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984); *State v. Goines*, 16 Ohio App.3d 168, 474 N.E.2d 1219 (1984); *State v. Halverson*, 277 N.W.2d 723 (S.D. 1979); *State v. Record*, 548 A.2d 422 (Vt. 1988); *Crandol v. City of Newport News*, 238 Va. 697, 386 S.E.2d 113 (1988); *State v. Marchand*, 37 Wash. App. 741, 684 P.2d 1306 (Ct. App. 1984), *rev'd*, 104 Wash. App. 434, 706 P.2d 225 (Ct. App. 1985); *State v. Frisby*, 161 W. Va. 734, 245 S.E.2d 622 (1978), *cert. denied*, 439 U.S. 1127 (1979).

92. See *infra* notes 98-109 and accompanying text for discussion of minimum roadblock requirements.

93. *State ex rel. Ekstrom v. Justice Court of Ariz.*, 136 Ariz. 1, 663 P.2d 992 (1983); *Jones v. State*, 459 So. 2d 1068 (Fla. Dist. Ct. App. 1984); *Commonwealth v. McGeoghegan*, 389 Mass. 137, 449 N.E.2d 349 (1983); *State v. Muzik*, 379 N.W.2d 599 (Minn. Ct. App. 1985); *State v. Crom*, 222 Neb. 273, 383 N.W.2d 461 (1986); *State v. Koppel*, 127 N.H. 286, 499 A.2d 977 (1985); *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984); *Nelson v. Lane County*, 304 Or. 97, 743 P.2d 692 (1987); *Commonwealth v. Slovikosky*, 374 Pa. Super. 441, 543 A.2d 553 (Super Ct. 1988); *Pimental v. Department of Transp.*, 561 A.2d 1348 (R.I. 1989); *State v. Higbie*, 780 S.W.2d 228 (Tex. Crim. App. 1989).

permissible where the police modify their practices.⁹⁴ A small number of states find roadblocks per se unconstitutional.⁹⁵ These states hold roadblocks unconstitutional under state constitutions even where the language in the state constitution copies verbatim that of the fourth amendment.⁹⁶ Some states which permit the use of roadblocks have later held them to be unconstitutional because of inadequate procedural safeguards.⁹⁷

One of the first state courts to address the use of roadblocks in the wake of *Prouse* was the New Jersey Superior Court in *State v. Cocomo*.⁹⁸ In *Cocomo*, the police maintained a roadblock designed to stop every fifth vehicle during light traffic hours.⁹⁹ The court first determined that a vital state interest existed in detecting and prosecuting drunk drivers.¹⁰⁰ The court then examined the reasonableness of the roadblock by subjecting its mechanics to a detailed analysis.¹⁰¹ In par-

94. See, e.g., *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073 (1984); *State v. Abelson*, 485 So. 2d 861 (Fla. Dist. Ct. App. 1986); *State v. Church*, 530 So. 2d 1235 (La. Ct. App. 1988), *rev'd*, 580 So. 2d 993 (1989).

In contrast, several states which found roadblocks permissible initially later found them impermissible because of the way the police conducted subsequent efforts. See, e.g., *State v. Kirk*, 202 N.J. Super. 28, 493 A.2d 1271 (Super. Ct. App. Div. 1985) (invalidating roadblock because decision to establish it was made by a field officer and not a supervisor); *Simmons v. Commonwealth*, 380 S.E.2d 656 (Va. 1989) (invalidating roadblock because state offered no evidence of procedural safeguards or advance plan of operation).

95. *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984); *State v. Boijanovsky*, 304 Or. 131, 743 P.2d 711 (1987); *Pimental v. Department of Transp.*, 561 A.2d 1348 (R.I. 1989); *City of Seattle v. Mesiani*, 110 Wash. 2d 454, 775 P.2d 775 (1988).

96. In *Pimental*, the court stated that greater protection may be given to citizens under state constitutions, notwithstanding similar language in both constitutions. *Pimental*, 561 A.2d at 1350 (citing *Cooper v. California*, 386 U.S. 58, 62 (1967)). The court noted, however, that the decision to depart from the minimum standards of the federal constitution and increase protection under the state constitution would be taken "guardedly and . . . [when] supported by a principled rationale." *Id.* at 1350-51 (quoting *Duquette v. Godbolt*, 471 A.2d 1359, 1361 (R.I. 1984), quoting *State v. Benoit*, 417 A.2d 895, 899 (R.I. 1980)).

97. See *infra* notes 98-109 and accompanying text for discussion of minimum roadblock requirements.

98. 177 N.J. Super. 575, 427 A.2d 131 (Super. Ct. Law Div. 1980).

99. *Id.* at 579, 427 A.2d at 133. The Roxbury Police Department adopted this procedure upon recommendation of the Morris County Prosecutor who modeled the procedure after suggestions in the *Prouse* dicta.

100. *Id.* at 582, 427 A.2d at 134. The court stated that drunk drivers are a threat to themselves and to other motorists. It further emphasized the need to identify and remove drunk drivers from the road. *Id.* at 582, 427 A.2d at 135.

101. The *Cocomo* court's painstaking analysis provided the starting point for other

ticular, the court emphasized the use of various procedural safeguards such as flares, marked police cars, and uniformed officers.¹⁰² The court further found that the police operated the roadblock pursuant to completely neutral and objective criteria.¹⁰³ Consequently, the court determined the roadblock to be valid.¹⁰⁴

Building upon the foundation laid by the *Coccoma* court, the Kansas Supreme Court, in *State v. Deskins*,¹⁰⁵ enunciated thirteen factors to be considered in determining whether a particular roadblock passes muster under *Brown*.¹⁰⁶ The court suggested the following factors:

1. degree of discretion left to the officer in the field;
2. location designated for the roadblock;
3. time and duration of the roadblock;
4. standards set by superior officers;
5. advance public notice;
6. advance warning to individual motorists as they approach the roadblock;
7. maintenance of safety conditions;
8. degree of fear or anxiety generated by the method of operation;
9. average length of time each motorist is detained;
10. physical factors surrounding the location, type, and method;
11. availability of less intrusive methods for combatting the problem;
12. degree of effectiveness of the procedure; and
13. any other relevant circumstances which might bear upon the test.¹⁰⁷

The *Deskins* court emphasized that not all of the enunciated factors need to support upholding a roadblock; rather, courts should consider

state courts in their own analyses of various roadblocks. See Bruce, *supra* note 11, at 37.

102. *Coccoma*, 177 N.J. Super. at 583, 427 A.2d at 135.

103. *Id.* The court stated the actual manner of stopping the vehicle was designed to promote safety and to reduce motorist anxiety. *Id.*

104. *Id.* at 582, 427 A.2d at 134. The court concluded that the procedure used was consistent with the *Prouse* dicta.

105. 234 Kan. 529, 673 P.2d 1174 (1983).

106. See *supra* notes 63-67 and accompanying text for a discussion of the *Brown* balancing test.

107. *Deskins*, 234 Kan. at 541, 673 P.2d at 1185.

each listed factor before passing on the constitutional issue.¹⁰⁸ Citing neutral criteria, minimized discretion of field officers, a well-lit location, and the presence of uniformed officers, the court in *Deskins* concluded the intrusion to be minimal and upheld the roadblock.¹⁰⁹

Numerous other courts¹¹⁰ have relied on at least some of the *Deskins* factors when analyzing the constitutionality of particular roadblocks. Depending on which combination of factors a court adopts, a roadblock may or may not be sustained.¹¹¹ This approach leads to uncertainties within a state as well as inconsistencies among the states.¹¹²

Apart from the fairly exhaustive list of *Deskins* factors, courts rely on the purposes of the roadblocks in evaluating their constitutionality. Depending on whether a state adopts the goal of deterrence or apprehension of drunk drivers, a different outcome may result.¹¹³

Recently, a Texas court focused extensively on the purpose of a DWI roadblock in *Higbie v. State*.¹¹⁴ Rejecting the state's asserted motive, the *Higbie* court concluded that the police installed a roadblock to detect and apprehend drunk drivers rather than to check drivers' licenses.¹¹⁵ It also noted that if an intoxicated motorist is stopped

108. *Id.*

109. *Id.* at 541-42, 673 P.2d at 1186.

110. *See, e.g.,* *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987); *State v. Parns*, 523 So. 2d 1293 (La. 1988); *Little v. State* 300 Md. 485, 479 A.2d 903 (1984).

111. For instance, states differ on their approaches to advance notice, a *Deskins* criteria. *Compare* *Commonwealth v. McGeoghegan*, 389 Mass. 137, 449 N.E.2d 349, 350 (1983) (stressing the lack of public notice with respect to the roadblock it invalidated) with *State v. Jones*, 483 So. 2d 433 (Fla. 1986) (advance notice not necessary if police officers conducting roadblock gave adequate notice to approaching motorists). Similarly, differences exist regarding the requisite nature of the location. *Compare* *State v. Parns* 523 So. 2d 1293 (La. 1988) (requiring evidence that site chosen for roadblock be based on studies indicating a high incidence of DWI arrests) with *Crandol v. City of Newport News*, 238 Va. 697, 386 S.E.2d 113 (1989) (upholding roadblock despite absence of evidence indicating a "fertile ground" for drunk drivers).

112. *See supra* notes 94 & 97 for states which have reached opposite outcomes regarding separate roadblocks.

113. Courts generally agree that roadblocks effectively serve the deterrence objective. However, it is difficult to statistically show how many individuals are actually deterred from drinking and driving. *See State ex rel. Ekstrom v. Justice Court of Ariz.*, 136 Ariz. 1, 663 P.2d 992 (1983) (invalidating roadblock because state offered no statistical evidence showing the roadblock's effectiveness).

114. 780 S.W.2d 228 (Tex. Crim. App. 1989) (en banc).

115. *Id.* at 230. The *Higbie* court determined the intent of the authorities in erecting what the state termed a "driver's license roadblock" by examining all the facts surrounding the case. *Id.* Because police established the roadblock less than a mile from

at a roadblock, criminal sanctions can result.¹¹⁶ Following longstanding Supreme Court precedent, the court required a standard of reasonable suspicion before any motorist could be stopped and detained for criminal, as opposed to administrative purposes.¹¹⁷

An earlier California court took an alternate view of the purpose behind sobriety checkpoints in *Ingersoll v. Palmer*.¹¹⁸ The California Supreme Court explained that roadblocks are operated not for the purpose of detecting criminal offenders, but for the regulatory purpose of keeping drunk drivers off the road.¹¹⁹ The *Ingersoll* court analogized DWI roadblocks to acknowledged regulatory procedures such as immigration and administrative checkpoints.¹²⁰ Because the police administered the checkpoint pursuant to predetermined and neutral criteria, the questioning of drivers passed the threshold constitutional barrier.¹²¹

In its analysis, the *Ingersoll* court articulated many of the same criteria outlined in the *Deskins* case.¹²² Supervisors made decisions,¹²³ field officers had circumscribed discretion, the officers chose a proper loca-

certain bars, the court concluded the purpose of the roadblock was to apprehend drunk drivers. *Id.*

116. *Id.* at 240. The court strongly emphasized the need for reasonable suspicion when criminal conduct is at issue, concluding that the state could not subvert the presumption of innocence. *Id.* at 239. To hold otherwise would be to permit the state to "tak[e] preemptive actions resulting in scenarios of the Orwellian state." *Id.* See also *State v. Smith*, 674 P.2d 564 (Okla. Crim. App. 1984) (concluding that roadblock procedures draw dangerously close to what may be referred to as police-state practices).

117. *Higbie*, 780 S.W.2d at 240. A majority of the Court of Criminal Appeals, however, declined to hold that DWI roadblocks are per se unconstitutional.

118. 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987).

119. *Id.* at 1335, 743 P.2d at 1309, 241 Cal. Rptr. at 52. The *Ingersoll* court concluded that roadblock programs inevitably deter some drunk driving. *Id.* at 1337, 743 P.2d at 1310, 241 Cal. Rptr. at 53. Citing two test areas in Maryland, the court noted a reduction in alcohol related accidents by 75%. *Id.*

120. *Id.* at 1331-32, 743 P.2d at 1306, 241 Cal. Rptr. at 49-50 *Id.* The court also noted the similarities between roadblock operations and airport searches: both are aimed to prevent and deter conduct injurious to persons and property and are not conventional searches and seizures. *Id.* See also *Sadoff*, *supra* note 5.

121. *Ingersoll*, 43 Cal. 3d at 1342, 743 P.2d at 1314, 241 Cal. Rptr. at 57.

122. See *supra* note 107 and accompanying text for the *Deskins* criteria.

123. *Ingersoll*, 43 Cal. 3d at 1342, 743 P.2d at 131, 241 Cal. Rptr. at 57. The court stated that decision-making at the supervisory level is essential to reduce the possibility of arbitrary and capricious enforcement techniques. *Id.* For other requirements of supervisory decision-making, see *State v. Golden*, 171 Ga. App. 27, 318 S.E.2d 693 (Ct. App. 1984); *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 48 N.Y.S.2d 649 (1984); *Little v. State*, 479 A.2d 903 (1984).

tion,¹²⁴ and safety mechanisms existed to minimize intrusiveness on motorists.¹²⁵ For additional authority supporting its decision, the *Ingersoll* court relied on what it characterized as law enforcement's implicit authority to enforce criminal law generally and traffic laws specifically.¹²⁶ Noting that the legislature never specifically authorized the use of sobriety checkpoints, the court nevertheless found statutory authority embodied in the California Vehicle Code as a whole.¹²⁷

As a final argument the California court addressed whether some type of tangible proof showing the success of the roadblock was necessary to uphold the roadblock.¹²⁸ The court finessed the question assuming simply that if the roadblock was serving its deterrence purpose, then little proof to substantiate actual numbers of drunk drivers would exist.¹²⁹ This reasoning eventually satisfied the court, which asserted that the potential effectiveness of the roadblock negated the need for concrete proof.¹³⁰

Further examination of state court decisions shows outcomes based in part on differing emphases on the various requirements and in part on idiosyncratic fact patterns. In *Simmons v. Commonwealth*,¹³¹ the Virginia Supreme Court examined a roadblock designed to stop all vehicles.¹³² Technically, the procedure met the criteria of the 100% roadblock advocated in *Prouse*.¹³³ The state argued that "no more

124. *Ingersoll*, 43 Cal. 3d at 1343, 743 P.2d at 1314, 241 Cal. Rptr. at 58. The court required roadblocks to be located on roads having a high incidence of alcohol-related accidents. *Id.*

125. *Id.* at 1345, 743 P.2d at 1316, 241 Cal. Rptr. at 60-61. Suggested safeguards included clearly visible warning lights, marked police vehicles, and the presence of uniformed officers. *Id.*

126. *Id.* at 1348, 743 P.2d at 1318, 241 Cal. Rptr. at 61.

127. *Id.* at 1347-48, 743 P.2d at 1310, 241 Cal. Rptr. at 60-61.

128. *Id.* at 1338, 743 P.2d at 1311, 241 Cal. Rptr. at 54.

129. *Id.* at 1339, 743 P.2d at 1312, 241 Cal. Rptr. at 55. See also 4 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT (2d ed. 1987).

130. *Ingersoll*, 43 Cal. 3d at 1339, 743 P.2d at 1312, 241 Cal. Rptr. at 55. In the court's words, "[i]t would be presumptuous in the extreme for this court to prohibit the use of an otherwise permissible and potentially effective procedure merely because its effectiveness is at the present time largely untested." *Id.*

131. 238 Va. 200, 380 S.E.2d 656 (1989).

132. *Id.* at 202, 280 S.E.2d at 657. Although the police established the roadblock to inspect drivers' licenses and equipment, the court analyzed the procedures pursuant to the same sobriety checkpoint criteria it established in *Lowe v. Commonwealth*, 230 Va. 346, 337 S.E.2d 273 (1985), cert. denied, 475 U.S. 1084 (1986).

133. See *supra* notes 57-60 and accompanying text for a discussion of the *Prouse* dicta.

neutral criteria" could have been used to conduct a roadblock operation.¹³⁴ The court, however, disagreed and invalidated the roadblock on the ground that the decision to establish the roadblock had been made by the field officers conducting it.¹³⁵ Furthermore, the police department did not determine the location and duration of the roadblock in advance, but instead left the decision to the discretion of the field officers conducting the checkpoint.¹³⁶

Less than five months later the Virginia Supreme Court again faced a challenge to a roadblock operation. In *Crandol v. City of Newport News*,¹³⁷ the court upheld a challenge to a roadblock because supervisory personnel made the operational decisions.¹³⁸ Interestingly, the court upheld the checkpoint even though the city conducting the roadblock presented neither evidence regarding the potential success of the program, nor studies indicating the site chosen had a high incidence of drunk drivers.¹³⁹ In an earlier Virginia decision,¹⁴⁰ the court cited both of these factors as constitutional necessities.¹⁴¹

Some courts consider the availability of alternate methods of enforcement crucial to establishing the constitutionality of roadblocks.¹⁴²

134. *Simmons*, 238 Va. at 203, 380 S.E.2d at 658.

135. *Id.* at 204, 380 S.E.2d at 659.

136. *Id.*

137. 238 Va. 697, 386 S.E.2d 113 (1989).

138. *Id.* at 699, 386 S.E.2d at 114.

139. *Id.* at 700-01, 386 S.E.2d at 114-155. *Cf.* *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987) (requiring evidentiary support for site chosen for roadblock).

140. *Lowe v. Commonwealth*, 230 Va. 346, 337 S.E.2d 273 (1985).

141. *Id.* at 350-52, 337 S.E.2d at 276-77.

142. *See, e.g., State ex rel. Ekstrom v. Justice Court of Ariz.*, 136 Ariz. 1, 663 P.2d 992 (1983). The court in *Ekstrom* concluded that the roadblock in question was impermissible because the state offered no statistics showing the roadblock was more effective at dealing with the problem of drunk driving than the more traditional roving patrol acting upon reasonable suspicion. The court reasoned that the state proved too much by its stipulation:

DPS officials, by observing and patrolling, regularly arrest drivers for DWI violations when there are no roadblocks. DPS officers are trained to detect drunk drivers on the road on the basis of observation. An experienced DPS officer becomes highly skilled at detecting drunk drivers by watching how a person drives.

Without roadblocks, an experienced DPS officer can detect many drunk drivers. *Id.* at 5, 663 P.2d at 996. *Cf. State v. Superior Court*, 143 Ariz. 45, 48-49, 691 P.2d 1073, 1077 (1984) (where the state offers statistics to show a drop in alcohol-related injuries during the operation of the roadblock, the roadblock will be permissible). The Arizona court further noted that the police had been unable to reduce drunk driving casualties by the more traditional roving patrol. *Id.* at 49, 691 P.2d at 1077. *See also*

This concern comports with the Supreme Court's rationale in upholding immigration checkpoints in the *Martinez-Fuerte* case¹⁴³ for the purpose of controlling the entry of illegal aliens at the border. In *People v. Bartley*,¹⁴⁴ an Illinois court emphasized fundamental differences between violations of transporting illegal aliens and violations of drunk driving laws in its invalidation of a DWI roadblock.¹⁴⁵ The court stated that less intrusive means existed to detect drunk drivers such as observing driving behavior and enacting stiffer penalties.¹⁴⁶ By distinguishing roadblock stops from immigration checkpoints, the court suggested that no alternate means existed for effectively detecting the presence of illegal aliens.¹⁴⁷

Other state courts take a different view regarding alternate means. In *State v. Superior Court*,¹⁴⁸ an Arizona court upheld a roadblock because traditional methods such as roving patrols had not proved any more effective in reducing injuries from alcohol-related accidents.¹⁴⁹ The California Supreme Court in *Ingersoll v. Palmer*,¹⁵⁰ discussed above, agreed with this proposition in upholding a sobriety checkpoint. The *Ingersoll* court noted that roving stops require some observable behavior indicating impairment.¹⁵¹ The court quoted an estimate that such methods result in arrests of between one in two hundred to one in

People v. Bartley, 109 Ill. 2d 273, 486 N.E.2d 880 (1985) (concluding that trained officers are the most effective means of apprehending drunk drivers); *State v. Koppel*, 127 N.H. 286, 499 A.2d. 977 (1985) (court remanded because state failed to show roadblocks produced a more sufficient public benefit compared to more traditional means).

143. See *supra* notes 39-50 and accompanying text for discussion of *Martinez-Fuerte*.

144. 109 Ill. 2d 273, 486 N.E.2d 880 (1985).

145. *Id.* at 273, 486 N.E.2d at 884.

146. *Id.*

147. *Id.* See also *State v. Koppel*, 127 N.H. 286, 499 A.2d 977 (1985) (invalidating roadblock because of showing that less intrusive means were available).

148. 143 Ariz. 45, 691 P.2d 1073 (1984).

149. *Id.* at 49, 691 P.2d at 1077. The court noted that alcohol-related accidents were reduced by three and a half percent during the time the roadblock operated. *Id.* More traditional methods of roving stops did not effectuate the same results. See *supra* note 142 for further discussion on the need to present evidence of less intrusive means.

150. 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987). See *supra* notes 118-30 and accompanying text for further discussion of *Ingersoll*.

151. *Ingersoll*, 43 Cal. 3d at 1340, 743 P.2d at 1312, 241 Cal. Rptr. at 55. The court stated that simply because a driver is intoxicated does not mean that he will drive erratically in the vicinity of a patrolling officer. *Id.*

two thousand drunk drivers.¹⁵² Consequently, the court reasoned that the roadblock served the deterrence rationale at least as effectively as the roving patrol.¹⁵³

As with alternate means, permanency of roadblocks is a significant factor to which courts disagree.¹⁵⁴ This requirement stems from the Supreme Court's emphasis on the permanent nature of immigration checkpoints in *United States v. Martinez-Fuerte*.¹⁵⁵ The *Martinez-Fuerte* Court cautioned that checkpoints should have some semblance of permanency to ensure that motorists would not be "taken by surprise."¹⁵⁶ In *State v. Smith*,¹⁵⁷ an Oklahoma court read *Martinez-Fuerte* as imposing a strict requirement of permanency upon the operation of roadblocks.¹⁵⁸ The *Smith* court identified the critical distinction between DWI roadblocks and immigration roadblocks as being the regularity of the operations.¹⁵⁹ In view of the facts at hand, the court classified the DWI roadblock as a "temporary checkpoint".¹⁶⁰ Although the court noted that the roadblocks in question stood at fixed locations for fixed periods of time,¹⁶¹ it concluded that they were not the type of permanent checkpoints approved for use in the *Martinez-*

152. *Id.* (citing 4 W. LAFAYE, *supra* note 129).

153. *Id.*

154. Courts which emphasize the regularity of a checkpoint do so in an attempt to accommodate the *Martinez-Fuerte* emphasis on permanency. See *supra* notes 42 & 49 and accompanying text.

155. The *Martinez-Fuerte* Court stressed the need for permanency in checkpoints so as not to take the motorist by surprise. The Court observed, "[a]t traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976) (quoting *United States v. Ortiz*, 422 U.S. 891, 894-95 (1975)).

156. *Id.*

157. 674 P.2d 562 (Okla. Crim. App. 1984).

158. *Id.* at 565. The court believed that a temporary roadblock conducted without any articulable facts for detaining an individual constitutes an unreasonable seizure under the fourth amendment. *Id.*

159. *Id.* The court noted that the checkpoints in *Martinez-Fuerte* were for a limited purpose, and the community was well aware of their purpose. *Id.*

160. *Id.* The *Smith* court pointed out that the temporary checkpoints at issue were intended to detect illicit behavior to which criminal penalties attach. The court noted that the element of fear is probably much greater at a temporary checkpoint than at a permanent one. *Id.*

161. *Id.* The court noted that although the locations were fixed, the checkpoints were not regularly established, on a daily, weekly, or monthly basis. *Id.*

Fuerte case.¹⁶²

Other state courts read the *Martinez-Fuerte* opinion differently with respect to its observations on permanency. These courts focus instead on the need to minimize the surprise experienced by motorists.¹⁶³ Consequently, some courts mandate advance public notice of the checkpoint operation in lieu of a permanency requirement.¹⁶⁴ Logically, this approach makes better sense because a permanent DWI roadblock would serve as a very poor deterrent. Other states, however, uphold temporary roadblocks even when the police give no advance notice.¹⁶⁵

Although most states carefully monitor how law enforcement officials conduct roadblocks, some states refuse to uphold roadblocks despite police compliance with strict guidelines.¹⁶⁶ In *Pimental v.*

162. *Id.*

163. See *People v. Bartley*, 109 Ill. 2d 273, 486 N.E.2d 880 (1985); *Little v. State*, 300 Md. 485, 479 A.2d 903 (1984); *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 473 N.Y.S.2d 649 (1984). In *Scott*, the court noted that a roadblock's shifting and temporary nature does not affect its validity. *Id.* at 526, 473 N.E.2d at 5, 483 N.Y.S.2d at 652. The court emphasized that the fright and annoyance of a roving stop is minimized even at a temporary checkpoint. *Id.* at 527, 473 N.E.2d at 5, 483 N.Y.S.2d at 653. It reasoned that the visible signs of authority — signs, lights, marked police vehicles — greatly diminished the intrusion upon the motorist. *Id.*

164. Courts requiring advance notice include the following: *State v. Deskins*, 234 Kan. 529, 673 P.2d 1174 (1983); *Commonwealth v. Trumble*, 396 Mass. 81, 483 N.E.2d 1102 (1985) (stressing press release prior to roadblock); *Lowe v. Commonwealth*, 230 Va. 346, 337 S.E.2d 273 (1985) (emphasizing extensive media publication).

Courts which emphasize public notification as a rule do not require announcement of the precise location of the checkpoint, but simply require the public be told of the date when the roadblock is to occur. Often these courts further require some type of signal to the approaching motorist, such as a large sign indicating that the roadblock is in operation. In addition to reducing fear and surprise for motorists, advance notice serves the purpose of deterrence. See generally 4 W. LAFAVE, SEARCHES AND SEIZURE (2d ed. 1988); Comment, *Sobriety Checkpoint Roadblocks: Constitutional in Light of Delaware v. Prouse?* 28 ST. LOUIS U.L.J. 813, 823 (1984).

165. See, e.g., *People v. Bartley*, 109 Ill. 2d 273, 486 N.E.2d 880 (1985) (lack of advance publicity alone insufficient basis for invalidation, where other measures taken by the police reduced the subjective intrusion). In *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073 (1984) the court observed that "[a]dvance notice of the exact location is not an absolute necessity for DWI roadblocks . . . [because] publishing the exact spot of the checkpoint would lessen the deterrent effect." *Id.* at 49, 691 P.2d at 1077. The court further noted that motorists who knew of such roadblocks "would simply avoid those locations." *Id.*

166. See *supra* note 95 for cases which hold roadblocks unconstitutional regardless of how conducted.

Department of Transportation,¹⁶⁷ police established a checkpoint program pursuant to strict guidelines for planning, procedure, and personnel.¹⁶⁸ A press release announcing the program took place prior to the actual implementation of the roadblock.¹⁶⁹ The court, however, held the roadblock invalid under state law.¹⁷⁰

The *Pimental* court stated that even if the roadblock could meet federal constitutional standards, the Rhode Island Constitution afforded more protection to its citizens.¹⁷¹ The court concluded that probable cause or at least some type of individualized suspicion is necessary to apprehend and detain a motorist.¹⁷² As a matter of state law, the court explained that states can impose higher standards for searches and seizures than those required by the federal constitution.¹⁷³

B. Statutory Authority to Establish Roadblocks

In light of the endemic uncertainty regarding rules for roadblocks, several state legislatures¹⁷⁴ have adopted laws authorizing their use. The Nevada legislature has authorized the establishment of temporary

167. 561 A.2d 1348 (R.I. 1989).

168. *Id.* at 1348.

169. *Id.* Although the press release indicated that multiple roadblocks would be established in high-volume traffic areas around Providence, the article did not reveal the roadblocks' precise times or locations. *Id.*

170. *Id.* at 1353. The court conceded that the roadblock at issue was conducted pursuant to strict guidelines and with minimal intrusion to motorists. *Id.* at 1352-53. Nevertheless, the court concluded that "no control or discretion can justify roadblock seizures under Rhode Island law" in view of the total absence of probable cause that the stopped motorist committed a motor vehicle violation. *Id.* at 1353.

171. *Id.* See *supra* note 96. The court found it "illogical to permit police to stop fifty or a hundred vehicles on the speculative chance that one or two might [be driven by drunk drivers]." *Pimental*, 567 A.2d at 1352. Such a stop would constitute an unreasonable search and seizure under the Rhode Island Constitution. *Id.*

172. *Pimental*, 567 A.2d at 1352. The court stated that it "would shock and offend the framers of the Rhode Island Constitution if we were to hold that the guarantees against unreasonable and warrantless searches and seizures should be subordinated to the interest of efficient law enforcement." *Id.*

173. *Id.*

174. Legislatures in four states adopted laws establishing minimum requirements for the operation of administrative and temporary checkpoints. Although these statutes do not specifically refer to DWI roadblocks, the standards established can be used in formulating a model statute for the operation of sobriety checkpoints. See IOWA CODE ANN. § 321K.1 (West 1986); NEV. REV. STAT. § 484.3591 (1985); S.D. CODIFIED LAWS ANN. § 32-33-10 (1986); WYO. STAT. § 7-17-102 (1977).

and administrative roadblocks.¹⁷⁵ The legislature also has set minimum requirements for the operation of roadblocks.¹⁷⁶ The minimum requirements focus on the use of signs, flares, and proper location to ensure adequate visibility.¹⁷⁷ These roadblocks, however, are designed for administrative checks rather than for detection of criminal activity.¹⁷⁸

Only Hawaii and North Carolina¹⁷⁹ have specifically authorized roadblocks for the purpose of apprehending drunk drivers. Of the two, the Hawaii statute provides a more detailed list of requirements for the operation of roadblocks.¹⁸⁰ Many of the procedural requirements in the statute coincide with those enumerated by state courts following the *Deskins* criteria.¹⁸¹ Legislative hearings on the Hawaii roadblock statute indicate that the legislature believed roadblock programs conducted pursuant to appropriate guidelines serve as reasonable means of protecting the vital public interest in removing drunk drivers from the roads.¹⁸²

III. MODEL STATUTE

Case law from a large majority of jurisdictions indicates that a DWI roadblock meeting certain basic criteria will survive constitutional

175. NEV. REV. STAT. § 484.3591 (1985).

176. *Id.*

177. *Id.* The Nevada statute requires that all temporary roadblocks have sufficient cones, reflectors, and flares in order to adequately identify the roadblock. *Id.* These devices must be placed at least 200 feet away from the roadblock on both sides of the road to ensure that advancing motorists have adequate warning of the oncoming hazardous condition. *Id.*

178. Although statutes setting minimum standards for administrative and temporary emergency roadblocks are helpful in determining criteria for DWI roadblocks, roadblocks designed for crime detection must contain extra safeguards. Because DWI convictions carry criminal penalties, many courts require more stringent safeguards. *See supra* notes 114-17 and accompanying text discussing a case emphasizing this extra need.

179. *See* HAW. REV. STAT. § 286-162.6 (1984); N.C. GEN. STAT. § 20-16.3A (1983).

180. Among other criteria, the Hawaii statute mandates: (1) Standard patterns for detaining vehicles; (2) fixed times and locations; (3) proper illumination; and (4) advance warning of the roadblocks' existence and purpose. HAW. REV. STAT. § 286-162.6 (1984).

181. *See supra* notes 105-09 and accompanying text discussing the *Deskins* case.

182. 1984 Haw. Sess. Laws 1629-84.

scrutiny.¹⁸³ Although statutory authority is not a prerequisite for establishing a valid roadblock, a statute would give needed guidance to municipalities and police departments intending to utilize DWI roadblocks. Furthermore, allowing the legislature¹⁸⁴ to establish guidelines and procedures would free the judiciary would be free from evaluating a roadblock once it meets the statutory requirements.

Although some advocate requiring that enforcement agents secure a judicial warrant prior to the operation of a roadblock,¹⁸⁵ a properly conducted checkpoint obviates the need for this additional safeguard. Warrant advocates contend that judicial intervention will minimize official discretion.¹⁸⁶ This argument overlooks the simple logic that appropriate statutory guidelines strictly curtail official discretion by requiring roadblocks be executed at specified times, at specified places and in a specified manner.

The top priority in drafting a "road-block" statute is to assure minimal intrusion upon the motorist.¹⁸⁷ Accomplishing this objective would require short detention periods, adequate notice of what is taking place, and sufficient safety mechanisms in operation at the checkpoint.¹⁸⁸ The second important requirement in formulating a roadblock statute is assurance that supervisory personnel¹⁸⁹ make decisions in advance with respect to the time, location, and mechanics of

183. *See supra* note 91 for courts upholding roadblocks. The Supreme Court to date has established only very broad baseline criteria. *See supra* notes 71-85 and accompanying text discussing the *Sitz* decision.

184. Allowing the legislature to set minimum roadblock standards has several advantages. First, the legislature employs standing committees familiar with the problem of drunk driving. The expertise these specialized groups could bring to bear on the issue would aid the process as a whole. Furthermore, the legislature represents the majority of citizens. Because most people are deeply troubled about the menace of drunk driving, legislation in this area could very well govern popular backing. Finally, legislative oversight would create uniform standards, thereby minimizing the risk of constitutional violations at the hands of overzealous safety officers.

185. Some argue that a judicial warrant should be secured prior to the operation of a checkpoint. *See Jacobs & Strossen, supra* note 11, at 603.

186. *Id.*

187. The guidelines originate from the various elements the states require in sustaining roadblocks. *See supra* Part II of this Note at 154.

188. *See supra* notes 125 & 163 and accompanying text discussing procedural means to alleviate intrusion upon the motorist.

189. *See supra* note 123 and accompanying text discussing requirement of supervisory decision-making.

the operation.¹⁹⁰ The proposed model statute, adopting these considerations, is as follows:

Authorization to Establish Impaired Driving Checkpoints

§ 101. Law enforcement officials are duly authorized to establish impaired driving checkpoints pursuant to the requirements in § 103. The Chief of Police or Board of Aldermen shall determine specific guidelines for all checkpoint programs pursuant to the minimum guidelines in § 103. Nothing in § 103 shall prohibit the establishment of procedures which are less intrusive than those enumerated in § 103.

§ 102. Definitions

- (1) "Impaired Driving Checkpoints" (IDCs) shall refer to any roadblock procedure established by the Department or Board of Aldermen for the purpose of checking motorists for signs of intoxication while operating a motor vehicle.
- (2) "Notice" shall consist of media publication via newspapers, radio, and/or television broadcasts.
- (3) "Fertile Field" shall designate a location which exhibits unusually high rates of alcohol-related accidents. "High" shall be defined as any road and/or area where the rate of alcohol-related accidents is double the rate of average DWI arrests for the particular municipality. Statistics determining the "fertility" of a particular location shall be compiled through past police records containing the location of arrests of individuals for driving while intoxicated.
- (4) "Articulable Suspicion" shall be determined by all factors relevant to the search. Inspecting officers shall consider factors including but not limited to: the motorists' personal appearance, redness and/or swelling of the eyes, any odor of alcohol, and any opened containers of alcoholic beverages in plain view or observation.¹⁹¹

§ 103. Minimum Standards for Roadblock Operations

- (1) Notice of all roadblock programs shall be publicly disseminated¹⁹² at least two weeks prior to actual operation. Pub-

190. See *supra* notes 51-56, 102-04 & 125 and accompanying text discussing appropriate safety mechanisms.

191. See *supra* notes 61-63 and accompanying text for discussion of neutral criteria.

192. See *supra* notes 163-65 and accompanying text discussing notice of roadblock sites.

lic announcements shall be made every hour if conducted via the medium of television or radio. The location need not be announced, but the date and hours of operation shall be disclosed to the public.

- (2) Location of the roadblock shall be determined in advance by the Chief of Police or Board of Aldermen. The site chosen shall reflect a "fertile field" for intoxicated drivers.¹⁹³ All sites chosen shall be supported by local studies and/or testimony of the local police force.
- (3) A systematic plan or pattern for stopping vehicles shall be determined in advance by the Chief of Police. The plan must provide for stopping all vehicles or every (*n*th) vehicle.¹⁹⁴
- (4) The following safety mechanisms¹⁹⁵ shall be in operation at all times during the course of the roadblock:
 - (a) A large illuminated sign to warn approaching motorists of the checkpoint's existence and purpose.
 - (b) Uniformed police officers in marked police cars carrying proper identification.
 - (c) Floodlights or flares to illuminate the checkpoint area.
 - (d) A designated holding area for those vehicles detained.
- (5) Once an officer has articulable suspicion that a motorist is intoxicated,¹⁹⁶ the officer shall direct the motorist to the designated holding area to perform a series of field sobriety tests.¹⁹⁷
- (6) Procedures shall be determined in advance to deal with heavy traffic and congestion. Officers may wave vehicles past the roadblock to avoid congestion, but shall do so at regular time intervals.
- (7) Motorists have the option of avoiding the roadblock and turning around in their vehicle to pursue another route. If a motorist pursues such a course of action, the police of-

193. See *supra* notes 107 & 137-39 discussing criteria considered in choosing roadblock site.

194. See *supra* notes 57-60 discussing *Prouse* dicta condoning a systematic plan.

195. See *supra* note 109 and accompanying text describing safety mechanisms adopted by the *Deskins* court.

196. See *supra* note 8 discussing some observations which would give rise to reasonable suspicion.

197. See *supra* note 9 discussing common sobriety tests.

fficers may only stop the vehicle upon the basis of articulable suspicion.¹⁹⁸

Adoption of a statute, modeled on the one proposed, would alleviate many of the concerns the Supreme Court in *United States v. Martinez-Fuerte*¹⁹⁹ voiced regarding checkpoint searches conducted without probable cause. Advance supervisory decision-making severely circumscribes official discretion. Furthermore, advance notice and adequate safety mechanisms diminish the intrusion upon the motorist. Finally, both the goals of apprehension and deterrence are adequately served. Because the site chosen has a high rate of alcohol-related accidents, it is more likely that drunk drivers will be apprehended. In order to best serve the deterrence goal, however, the actual location of the site, must not be publicized.

IV. CONCLUSION

No one disputes that states have a vital interest in keeping intoxicated motorists off the road. Experience indicates that DWI roadblocks can be employed effectively to combat the menace of drunk drivers. Because the fourth amendment requires that all "seizures" be reasonable, any sobriety checkpoint must have adequate safeguards. Codifying rules and criteria for conducting roadblocks would provide guidance to law enforcement officials in establishing DWI roadblocks, while minimizing discretion of officials both in the field and at the administrative decision-making level. Finally, a statutory solution would free the judiciary from evaluating particular roadblocks once a court establishes that the police conducted a stop in accordance with a constitutionally valid statute.

*Kelly M. Brown**

198. See *supra* notes 22, 33, 42-50, 62-67 and accompanying text discussing standards of articulable suspicion.

199. See *supra* notes 39-50 and accompanying text discussing the *Martinez-Fuerte* case.

* J.D. 1991, Washington University.

COMMENTS

