July 2015

Seizure By Roadblock: Decisional Law on the Constitutionality of Drunk Driving Roadblocks

Scott Freed

Please take a moment to share how this work helps you through this survey. Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: https://ideaexchange.uakron.edu/akronlawreview

Part of the Constitutional Law Commons, and the Law Enforcement and Corrections Commons

Recommended Citation

Available at: https://ideaexchange.uakron.edu/akronlawreview/vol19/iss3/6

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.
SEIZURE BY ROADBLOCK: DECISIONAL LAW ON THE CONSTITUTIONALITY OF DRUNK DRIVING ROADBLOCKS

INTRODUCTION

There has recently been a tremendous increase in public awareness of the drunk driving problem.1 This increase is largely a result of efforts by lobbying organizations such as Mothers Against Drunk Drivers (MADD), Remove Intoxicated Drivers (RID) and Students Against Drunk Drivers (SADD). These organizations have pressured both elected and law enforcement officials into taking action against drunk drivers.2 State legislatures have enacted tough new anti-drunk driving laws,3 and federal law now provides supplemental highway grants to states which implement safety programs designed to reduce alcohol related accidents.4

Responding to the mounting public pressure, law enforcement officials have increased their traditional detection and deterrence efforts,5 and have also resorted to the use of drunk driving (DUI) roadblocks. Roadblocks set up for the purpose of detecting and deterring drunk drivers have been used in at least It is estimated that over 25,000 persons a year die in alcohol-related traffic accidents. Flaherty, As Roadblock Proliferate, Questions of Legality Persist, NAT'L. L.J., July 25, 1983, at 3, 39, col. 1. It is also estimated that drunk drivers cause nearly one million nonfatal injuries and five billion dollars in property damage per year. Lauter, The Drunk Driving Blitz, NAT'L. L.J., Mar. 22, 1982, at 1, col. 2.

1For an extensive review of public and governmental reaction to the drunk driving problem, See Note, Curbing the Drunk Driver under the Fourth Amendment: The Constitutionality of Roadblock Seizures, 71 GEO. L.J. 1457, 1457-58 (1983) [hereinafter cited as Curbing the Drunk Driver].

Grass roots groups such as MADD and RID have formed chapters in every state. Note, The Constitutionality of Roadblocks Conducted to Detect Drunk Drivers in Indiana, 17 IND. L. REV. 1065, 1065 n.3. (1984) [hereinafter cited as Drunk Drivers in Indiana].


In addition to stricter anti-drunk driving laws, the overall campaign against drunk driving includes: 1) new initiatives at all levels of government; 2) stricter law enforcement; 3) publicity; 4) citizens groups such as MADD and SADD; 5) National Driver Licensing and Control. National driver licensing has been accomplished by the enactment of the National Driver Register (codified at 28 U.S.C. § 408). The National Driver Register is an attempt to keep drivers with suspended licenses from obtaining licenses in other states. U.S. DEPT. OF TRANS. NHJTSA, PUB. NO. DOT HS 809 516, ALCOHOL AND HIGHWAY SAFETY: PROFESSIONAL PAPERS ON STATE AND FEDERAL DRIVER LICENSING PROGRAMS 35 (March 1984).

323 U.S.C. § 408 (1982). In order to qualify a state must adopt four minimum criteria: 1) state law must define intoxication as a blood alcohol level of 0.10%; 2) state law must provide a prompt, minimum license suspension of 90 days for first offenders and one year for repeat offenders; 3) state law must provide for a 48 hour prison term or 10 days community service for second offenders; 4) the state must increase enforcement efforts and conduct public awareness campaigns. Id.

The traditional method of detecting and deterring drunk drivers is with roving marked patrols acting on observed violations. State ex rel. Ekstrom v. Justice Ct., 136 Ariz. 1, 5, 663 P.2d 992, 996 (1983). Police may stop cars upon a reasonable articulable suspicion of a violation of some law for which either the driver or an occupant would be subject to seizure. Id. See Delaware v. Prouse, 440 U.S. 648, 663 (1979).
twenty-one states. Although there is no typical DUI roadblock, most involve police officers stopping vehicles in a non-random fashion in order to determine the driver’s sobriety. DUI roadblocks have drawn support from both governmental and private sources despite serious questions concerning their constitutionality.

The Ohio State Highway Patrol has not conducted DUI roadblocks. The only Ohio jurisdiction which has used DUI roadblocks is the City of Mentor, which only conducted a few before the program was cancelled. Telephone interview with Lt. Jack Holland of the Ohio State Highway Patrol (Dec. 31, 1985). The Ohio State Highway Patrol does not consider DUI roadblocks to be as productive as roving patrols given the same expenditure of manpower. Id. See also Buraker, The “Roadblock” Strategy as a Drunken Driver Enforcement Measure, 51 POLICE CHIEF, Apr. 1984, at 59, 49-62 (“[i]t has not been demonstrated . . . that they are especially efficacious as a drunken driver enforcement measure”).

Courts upholding DUI roadblocks have not required that police stop every vehicle. 3 W. LAFAVE, SEARCH AND SEIZURE, 10.8(g) (Supp. 1986).

The National Transportation Safety Board has recommended the following procedures for a constitutionally permissible DUI roadblock:

1) Police agencies select the times of operation and locations of checkpoints, based on empirical evidence of high DWI [driving while intoxicated] activity or alcohol-related crashes.
2) Checkpoint sites are established with high visibility, including warning signs, flashing lights, flares, police vehicles, and the presence of uniformed officers.
3) Police officers conducting the checkpoint either stop all traffic or use some preestablished, nonbiased formula to decide which vehicles to stop; for example, every tenth vehicle.
4) After being stopped, a motorist may be requested to produce a driver’s license or vehicle registration and is asked questions while the officer looks for signs of alcohol impairment. In some cases where license/registration checks are not made, the stop is very brief (fifteen to thirty seconds).
5) Based on his or her observations, the police officer either waves the motorist on or directs him or her to a secondary area for further investigation. In the latter case, a roadside psychomotor test (e.g., walking a straight line) or a breath-alcohol test is usually requested.
6) If the driver fails these tests and the officer has probable cause, the motorist is arrested for DWI.
7) The arrested driver is then transported to the station for booking and is requested to submit to an evidential breath-alcohol test. Refusal to submit to such a test invokes the State’s implied consent penalties.


Various citizens groups such as MADD and RID as well as police officials and prosecutors which comprise the New York Governor’s Alcohol and Highway Safety Task Force have endorsed the use of systematic sobriety checkpoints. Mass Investigations, supra note 3 at 597 n.4.

In 1983 The Presidential Commission on Drunk Driving endorsed the use of roadblocks as part of a comprehensive program to combat drunk driving. Id. at 597 (citing PRESIDENTIAL COMMISSION ON DRUNK DRIVING, FINAL REPORT 14 (1983)).

Public reaction to DUI roadblocks has been mixed. See Curbing the Drunk Driver, supra note 2 at 1458 n.3. However, in the long run, DUI checkpoint stops may annoy drivers, who must wait in line when they have not violated any laws. Grossman, Sobriety Checkpoints: Roadblocks to Fourth Amendment Protections, 12 AM. J. CRIM. L. 123, 135 (1984) (hereinafter cited as Sobriety Checkpoints) (citing the comments of the International Assoc. of Chiefs of Police, “Citizens . . . consider such roadblocks as a nuisance”).

The extensive use of DUI roadblocks was promoted by dictum in the United States Supreme Court's decision in *Delaware v. Prouse*. The *Prouse* Court held that the police practice of randomly stopping vehicles for license and registration checks violated the fourth amendment. However, supporters of DUI roadblocks point to dictum in the *Prouse* decision which states: "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative."

This comment will examine decisions addressing the constitutionality of roadblock stops. First, it will examine *Delaware v. Prouse* and other Supreme Court decisions which have developed what is referred to as the neutral criteria standard for judging the reasonableness of temporary automobile seizures at roadblock-type stops. Under the neutral criteria standard, law enforcement officers may conduct suspicionless seizures of vehicles at roadblocks for certain specific purposes. The neutral criteria standard requires that the seizure be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers. Second, the comment will examine decisions which have found roadblocks to be constitutional. Third, decisions will be examined which have found DUI roadblocks to be inherently unconstitutional, suggesting that the neutral criteria standard is not applicable to roadblocks conducted to enforce drunk driving laws.

**FEDERAL CASE LAW DEVELOPING A STANDARD FOR SUSPICIONLESS SEARCHES OR SEIZURES — NEUTRAL CRITERIA**

Even temporarily stopping a vehicle at a roadblock is a seizure within the

---


In the only pre-*Prouse* decision on the constitutionality of a DUI roadblock, the Supreme Court of South Dakota held that the roadblock involved did not conform to the permanent checkpoint approved in United States v. Martinez-Fuerte, 428 U.S. 543 (1976). See State v. Olgaard, 248 N.W.2d 392 (S.D. 1976).

The lack of case law or statutory law authorizing DUI roadblocks before 1979, strongly suggests that DUI roadblocks were rarely conducted. See *Sobriety Checkpoints*, supra note 9 at 132 n.64.

*Prouse*, 440 U.S. at 663.

U.S. CONST. amend. IV provides:

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.

*Prouse*, 440 U.S. at 663 (footnote omitted).


*Brown v. Texas*, 443 U.S. 47, 51 (1979). As applied to roadblock seizures of motorists, the neutral criteria standard involves "a predetermination by policy-making administrative officers of the roadblock location, time, and procedures to be employed, pursuant to carefully formulated standards and neutral criteria." State v. Hilleshiem, 291 N.W.2d 314, 318 (Iowa 1980). The *Hilleshiem* court did not consider this standard to be determinative of the constitutional issue. The court mentioned two other factors as important: 1) safety considerations relating to lighting and advance warning; 2) the level and nature of the subjective privacy intrusion. *Hilleshiem*, 291 N.W.2d at 317-18. See *Filling in the Blanks after Prouse*, supra note 14, at 249 n.68.
meaning of the fourth amendment; therefore, roadblock stops must be reasonable in order to pass constitutional muster.\textsuperscript{16} The essential purpose of the reasonableness requirement is to limit "the exercise of discretion by government officials . . . in order to safeguard the privacy and security of individuals against arbitrary invasion."\textsuperscript{17} The reasonableness of roadblock seizures, like all seizures less intrusive than a traditional arrest, is determined by balancing the importance of the public interest being pursued against the individual's right to be free from arbitrary interference by law officers.\textsuperscript{18} This section examines two areas where the Supreme Court has balanced the competing interests and found temporary roadblock-type seizures to be reasonable absent individualized suspicion: 1) border area illegal alien checkpoints;\textsuperscript{19} 2) license and registration checkpoints (\textit{Delaware v. Prouse}).\textsuperscript{20}

\textbf{Permanent Illegal Alien Checkpoints}

\textit{United States v. Brigoni Ponce}\textsuperscript{21} is the first of the so-called border search cases to apply a balancing analysis to temporary vehicle stops. \textit{Brignoni-Ponce} involved the Border Patrol practice of using roving patrols to randomly stop vehicles in order to question the vehicles' occupants about their citizenship and immigration status.\textsuperscript{22} Two Border Patrol officers pursued and stopped the defendant's car because its three occupants appeared to be of Mexican descent. The officers questioned the defendant and his passengers and learned that the passengers were illegal aliens. The officers then arrested the defendant and charged him with knowingly transporting illegal immigrants.\textsuperscript{23}


\textsuperscript{19}The \textit{Brown} Court's test for searches or seizures subject to the reasonableness-balancing approach contains three parts. "A weighing of [(1)] the gravity of the public concerns served by the seizure, [(2)] the degree to which the seizure advances the public interest, and [(3)] the severity of the interference with individual liberty." \textit{Id.} at 50-51.

\textsuperscript{20}The Supreme Court has consistently used the balancing test when judging the reasonableness of brief investigative seizures of automobiles. See \textit{Prouse}, 440 U.S. 648 (1979) (applying the reasonable suspicion standard); \textit{Martinez-Fuerte}, 428 U.S. 543 (applying the neutral criteria standard).

\textsuperscript{21}See \textit{infra} notes 21-53.

\textsuperscript{22}See \textit{infra} notes 54-63.

\textsuperscript{23}422 U.S. 873 (1975).

\textsuperscript{24}\textit{Id.} at 875. In a previous case the Court held that the fourth amendment prohibits the use of roving patrols to search vehicles, without a warrant or probable cause, at points removed from the border or its functional equivalents. \textit{Almeida-Sanchez v. United States}, 413 U.S. 266, 269-75 (1973).

\textsuperscript{25}\textit{Brignoni-Ponce}, 422 U.S. at 875.
The government contended that the requirement of individualized suspicion was not applicable because the modest intrusion involved was greatly outweighed by the seriousness of the illegal alien problem. The Court, however, rejected the notion that residents of border areas should be subject to "potentially unlimited interference... solely at the discretion of Border Patrol officers." Although rejecting the government’s contention, the Court balanced the interests involved and found that roving patrol stops could be justified by less than the traditional probable cause standard. The Court held that the reasonable articulable suspicion standard established in *Terry v. Ohio* was sufficient to justify the brief detention involved. According to this standard a Border Patrol officer may conduct a roving stop and questioning when his "observations lead him reasonably to suspect that a particular vehicle may contain aliens illegally in the country.

The Court cited three factors as justifying roving stops based on reasonable suspicion: 1) the importance of the governmental interest; 2) the minimal intrusion of a brief stop; 3) the absence of practical alternatives for policing the border. The Court also considered the *Terry* standard appropriate because "illegal alien traffic and... smuggling operations tend to generate articulable grounds for identifying violators."

*United States v. Martinez-Fuerte* is the only case in which the Court has expressly sanctioned the use of suspicionless checkpoint stops. *Martinez-Fuerte*...
Fuerte involved a permanent immigration checkpoint located on an interstate route near San Clemente, which is sixty-six road miles north of the Mexican border. All traffic passing through the checkpoint was slowed down to a virtual halt where a "point agent" would visually screen the vehicles in order to determine whether a further inquiry was necessary. Vehicles selected for a further inquiry were directed to a secondary inspection area where their occupants were asked about their citizenship and immigration status. The defendants were arrested for illegally transporting aliens after questioning at the secondary inspection area revealed that their passengers were illegal aliens. Martinez-Fuerte was convicted, but subsequently appealed contending that the operation of the checkpoint violated the fourth amendment.

The Court held that a brief stop and questioning may be made at reasonably located checkpoints absent any individualized suspicion that the particular vehicle contains illegal aliens. The Court reached this conclusion by balancing the degree of intrusion caused by the checkpoint against the government interest in preventing illegal immigration. Contrasting the privacy intrusions at checkpoint stops with the suspicionless roving stops prohibited in Brigoni-Ponce, the Court noted that:

[The] objective intrusion — the stop itself, the questioning, and the visual inspection — also existed in roving patrol stops. But we view checkpoint stops in a different light because the subjective intrusion — the generating of concern or even fright on the part of lawful travelers — is appreciably less in the case of a checkpoint stop.

The Court seems to have based this conclusion on the physical characteristics of a permanent checkpoint and also on the lower level of discretionary law
enforcement activity involved. Field officers had no discretion in choosing the location of the checkpoint and could stop only those cars passing through. According to the Court, "[t]he regularized manner in which established checkpoints are operated ... reassure[es] ... motorists that the stops are duly authorized and believed to be in the public interest."

The Court found the minimal intrusion involved to be outweighed by the important government interest in preventing illegal immigration. Specifically, the Court considered the reasonable suspicion standard required for roving patrol stops to be impractical on major routes where the traffic is heavy. Given this impracticability, border checkpoints were the only effective method of deterring the well-disguised smuggling operations known to use the major highways.

Finally, the Court considered whether advanced authorization by a judicial warrant is required for the operation of fixed border checkpoints. In holding that such a warrant is not required, the Court distinguished *Camara v. Municipal Court* as "involv[ing] the search of private residences, for which a warrant has traditionally been required." The Court also reasoned that in *Camara* the warrant served as proof of proper authorization, which is unnecessary at checkpoints given the "visible manifestations of the field officers authority."

**License and Registration Checkpoints**

In *Delaware v. Prouse*, the Court was confronted with a police practice very similar to the roving patrol stops outlawed in *Brignoni-Ponce*. In *Prouse*, a patrolman in a police cruiser stopped a vehicle in order to conduct a license and registration check. The patrolman stopped the vehicle at random as he

---

1. Id. Martinez-Fuerte, 428 U.S. at 559.
2. Id.
3. Id.
4. According to the government, the average length of an investigation at the secondary inspection area was three to five minutes. *Id.* at 547.
5. *Id.* at 557-60. See *Brignoni-Ponce*, 422 U.S. at 878. According to one study, as of 1975 "there were as many as 10 to 12 million aliens illegally in the country." *Martinez-Fuerte*, 428 U.S. at 551 (citing *Brignoni-Ponce*, 422 U.S. at 878).
7. See *Id.*
11. *Id.* at 648.
had neither probable cause or reasonable suspicion to believe that either the vehicle or any of its occupants were subject to seizure. While walking toward the stopped vehicle, the officer smelled marijuana smoke and seized marijuana lying in plain view. The defendant's motion to suppress the marijuana was granted by the trial court and affirmed by the Delaware Supreme Court.

The United States Supreme Court affirmed holding that:

[Unless] there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or its occupant is otherwise subject to seizure for violation of the law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

In reaching this decision the Court reaffirmed the balancing test used in Brignoni-Ponce and Martinez-Fuerte. The Court engaged in the same analysis of the objective and subjective privacy intrusions caused by roving patrol stops. The Court found that the roving stops involved in Prouse engendered the same subjective intrusion — the concern or even fright on the part of lawful travelers — that was fatal to the border stops in Brignoni-Ponce. In contrast, the Court noted that at traffic checkpoints the level of subjective intrusion is substantially less as "the motorist can see that other vehicles are being stopped [and] he can see visible signs of the officer's authority."

Also crucial to the Prouse holding is the Court's concern with the officer's unfettered discretion which underlies random spot checks. The Court noted that motorists are entitled to a reasonable expectation of privacy which would be seriously circumscribed "were [the motorist] subject to unfettered governmental intrusion every time he entered an automobile."

Turning to the government interests at stake, the Court agreed that Del-

57 Id. Emphasizing the discretionary nature of the stop the Court quoted the patrolman as explaining: "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." Id. at 650-51.
58 Id. at 650.
59 Id. at 651.
60 Id. at 651. The Court noted that of the jurisdictions which had considered roving license and registration checks five had held them to be unconstitutional while six had held to the contrary. Id. at 651. nn.2, 3.
61 Id. at 656-57. The Court noted that it had reserved the question of the permissibility of state officials stopping motorists for document checks in a manner similar to a checkpoint detention, see Martinez-Fuerte, 428 U.S. at 560 n.14, or roving-patrol operations, see Brignoni-Ponce, 422, U.S. at 883 n.8. Prouse, 440 U.S. at 656 n.13.
62 See supra notes 43-47 and accompanying text.
63 See Prouse, 440 U.S. at 657.
64 Id. (quoting Ortiz, 422 U.S. at 894).
65 See Prouse, 440 U.S. at 661-62.
66 Id. at 662. The Court noted that this "reasonable expectation of privacy [is not lost] simply because automobile[s] and [their] use are subject to government regulations." Id.
67 Id. at 663.
aware and other states have a vital interest in enforcing licensing and registration laws. However, the Court did not agree with Delaware’s contention that this public interest outweighed the privacy intrusion caused by discretionary spot checks. The Court articulated two reasons for its conclusion. First, there were less intrusive alternative means available for enforcing licensing and registration laws. Second, random spot checks were found to be unproductive in terms of discovering or deterring unlicensed drivers. In sum, the Court was ‘unconvinced that the incremental contribution to highway safety of the random spot check justifies the practice under the Fourth Amendment.”

Adhering to its random versus systematic stop analysis, the Court in dicta suggested that license and registration checkpoints would pass constitutional muster. In a subsequent case, Texas v. Brown, a plurality of the Court cited the Prouse dicta as authorizing license and registration checks.

Post-Prouse Issues

Although the Court’s decisions have made it clear that the permissibility of suspicionless roadblock stops hinges on adherence to “neutral criteria,” they have not articulated a clear test for when the neutral criteria standard is applicable. As a result, courts considering the constitutionality of DUI roadblocks have reached different conclusions. Since Delaware v. Prouse is the most recent Supreme Court decision regarding automobile stops, several issues left unresolved by Prouse are highlighted by subsequent decisions. Some unresolved issues relate to the use of roadblocks in general. First, the Prouse Court did not consider the nature of the state interest which might be advanced by DUI roadblocks. Second, although recognizing the need to limit police discretion and subjective intrusion, Prouse did not explain how these elements interrelate to form the necessary neutral criteria. Third, it is unclear
to what extent the checkpoints mentioned in the Prouse dicta must conform to the permanent border checkpoints approved in Martinez-Fuerte. Fourth, Prouse was unclear as to whether suspicionless roadblock stops must be necessary in the sense that they be more effective than less intrusive alternative methods. Finally, several issues are triggered by problems unique to drunk driving roadblocks.

**APPLYING THE PRECEDENT: COURT DECISIONS ON THE CONSTITUTIONALITY OF ROADBLOCKS**

In general, the Courts considering the constitutionality of roadblocks have not varied their analysis according to the purpose of the stop. In addi-

---

"Id. Another issue is whether some form of prior judicial approval should be required for the operation of DUI or other temporary roadblocks. Id. Although Martinez-Fuente rejected a warrant requirement, this may have been a result of the permanence of the checkpoint involved. See Id. See also State v. Olgaard, 248 N.W.2d 392 (S.D. 1976) (DUI checkpoint invalid without prior authorization by judicial warrant).

"See Mass Investigations, supra note 3, at 645-46. See also Commonwealth v. Trumble, 396 Mass. 81, 483 N.E.2d 1102 (1985) ("We construe the questions as not raising [the] issue ... whether, for constitutional purposes, it matters whether there be a less intrusive but equally effective means of dealing with the problem.") There is much debate over the degree of effectiveness of DUI roadblocks. Most of this debate focuses on the alleged deterrent effect because it is almost universally recognized that DUI roadblocks produce few DUI arrests. Mass Investigations, supra note 3, at 638. But see Filling in the Blanks after Prouse, supra note 14, at 252.

The reason for the debate over the deterrent effect is largely due to the lack of empirical data showing a causal relationship between DUI roadblocks and a reduction in alcohol-related accidents. Sobriety Checkpoints, supra note 9, at 162-63. Despite claims by those in favor of DUI roadblocks it has not been demonstrated that their use has reduced drunk driving in any jurisdiction. In fact the reported decreases in alcohol-related fatalities "are highly unreliable, based upon unpublished and unsubstantiated claims by agencies entrusted with the job of combating drunk driving and anxious to demonstrate success." Mass Investigations, supra note 3, at 642.

"Curbing the Drunk Driver, supra note 77, at 1470. Some of these issues are triggered by the inherently discretionary and personal nature of drunk driving investigations. It is clear that drunk driving roadblock investigations are more subjectively and objectively intrusive than the suspicionless searches and seizures that the Supreme Court has approved. See Mass Investigations, supra note 3, at 650-58. Unlike license and registration checks, which are limited and impersonal, drunk driving investigations are extensive. They require a police officer to make a highly discretionary evaluation of the driver's personal attributes and behavior. Id. at 650.

[This] discretionary assessment of the motorist's sobriety ... lends itself to nearly as much whim and caprice as the random stopping of vehicles invalidated in Prouse. This result is paradoxical, though, because the Prouse roadblock was specifically intended to eradicate such police discretion. The discretionary activities purportedly curtailed by adherence to the Prouse formula perforce reappear the instant the license and registration check is used to gauge sobriety.

Random Seizures, supra note 7, at 205.

Other unanswered issues relate to the nature and extent of a post-stop investigation where the driver does not exhibit "obvious" signs of intoxication. Should one be required to step out of his car only if there is an articulable and reasonable suspicion that he is intoxicated, or is it a reasonable seizure under the fourth amendment to require each motorist to leave his vehicle in order to judge the manner of his walk? Should some drivers be required to exit their cars while others are allowed to remain ...? Are the observation of eye movements and smelling of breath reasonable at a sobriety checkpoint? If so, what of the recalcitrant driver who refuses to roll his window beyond the few inches necessary to be audible?

tion, decisions both upholding roadblocks, and striking them down have largely focused on procedural issues regarding officer discretion and subjective and objective intrusion without analyzing the larger constitutional questions involved.

This section presents several decisions which reflect the various approaches used in evaluating the constitutionality of roadblock stops. First, decisions upholding the roadblocks are analyzed. Second, decisions holding DUI roadblocks unconstitutional regardless of the procedures are analyzed, suggesting that the neutral criteria standard is not applicable to DUI roadblocks.

**Decisions Holding Roadblocks Constitutional**

In *State v. Deskins*, the Supreme Court of Kansas upheld a roadblock ostensibly set up for the purpose of checking driver's licenses. Since the state conceded that the actual purpose for the roadblock was to catch drunk drivers, the *Deskins* court phrased the issue in terms of the constitutionality of a DUI roadblock under the factual situation before it.

The *Deskins* roadblock was conducted by a combination of thirty-five officers from three different law enforcement agencies. All vehicles proceeding in both directions were stopped and their drivers checked to determine if they were carrying valid licenses. The defendant was stopped at around 1:20 A.M. A state trooper approached the car and requested the defendant's license. At this point the officer noted signs of intoxication and asked the defendant to step out of the car. After failing a field sobriety test, the defendant was arrested for driving while intoxicated.

In reaching its decision, the *Deskins* court quoted extensively from *Delaware v. Prouse* and analyzed other federal and state court decisions relevant to the constitutionality of roadblock stops and ultimately concluded that

---


5See infra note 125.

6Mass Investigations, supra note 3, at 597-98. This fundamental question is whether a DUI roadblock is inherently unconstitutional because it involves a seizure which is not supported by probable cause or any other degree of individualized suspicion. See id. at 598.


8Id. at 531, 673 P.2d 1177.

9Id. The court notes that before the stop the officer had no reason to suspect that the defendant was intoxicated or violating any other criminal laws. Id.

10Id.

"[these] decisions . . . make it clear that not every driver's license check or DUI roadblock is constitutionally impermissible." The court considered these decisions as authorizing the use of the fourth amendment balancing test to determine the reasonableness of DUI roadblocks. Specifically, the court enumerated thirteen factors it considered necessary to determine whether a DUI roadblock meets the balancing test in favor of the state.

In applying its balancing analysis, the Deskins court first took judicial notice of the grave public concern caused by drunk driving. After noting that most courts have found the procedures used at drivers license and DUI roadblocks to violate the tests implied in Prouse, the Deskins court advanced two ways in which DUI roadblocks serve the public interest. The court stated:

[the use of a DUI roadblock has principally two purposes: (1) to apprehend and remove the drunk driver from the streets before injury or property damages results, and (2) in serving as a deterrent to convince the potential drunk driver to refrain from driving in the first place. As a fringe benefit the DUI roadblock also serves to disclose other violations pertaining to licenses, vehicle defects, open containers, etc.]

Applying its thirteen factor test to the roadblock before it, the court concluded that the initial stop of the defendant occurred under conditions which met the minimal criteria for a constitutionally permissible momentary seizure. In support of its conclusion the court recited the procedures used at the roadblock, emphasizing the constraints on officer discretion and steps taken to reduce both subjective and objective intrusion. The court then

---

92 Deskins, 234 Kan. at 542, 673 P.2d at 1184.
93 Id. The Deskins court noted that the applicable test is the three-prong balancing test set out in Brown v. Texas. Id. at 541, 673 P.2d at 1184. See supra note 18.
94 According to the Deskins court these are:
(1) The degree of discretion; if any, left to the officer in the field; (2) the location designated for the roadblock; (3) the time and duration of the roadblock; (4) standards set by superior officers; (5) advance notice to the public at large; (6) advance warning to the individual approaching motorist; (7) maintenance of safety conditions (8) degree of fear or anxiety generated by the mode of operation; (9) average length of time each motorist is detained; (10) physical factors surrounding the location, type and method of operation; (11) the availability of less intrusive methods for combating the problem; (12) the degree of effectiveness of the procedure; and (13) any other factor which might bear upon the test.

Deskins, 234 Kan. 541, 673, P.2d at 1185. The court added that not all of the factors need be favorable to the state. However a roadblock involving unbridled officer discretion would be invalid under Prouse regardless of other favorable factors. Id.

95 The court stated: "It is obvious, without resort to the record . . . that the problem of the drunk driver is one of enormous magnitude affecting every citizen who ventures forth upon the streets and highways." Id. at 536, 672 P.2d at 1181.
97 Id. at 542, 673 P.2d at 1185.
98 The Deskins court stressed that the roadblock was a joint effort of three law enforcement agencies. Id. The thirty-five participating officers were in uniform and attended a briefing given by supervisory personnel. Id.
summed up its balancing analysis by stating:

[w]hen we consider the enormity of the injury and damage caused by the drinking driver and the vital interest of every citizen in being protected so far as possible upon the streets and roadways, we find that the public interest in a properly conducted DUI roadblock containing appropriate safeguards outweighs the individual’s right to be free from unfettered intrusion upon his fourth amendment rights. 99

In dissent, Justice Prager stressed the ineffectiveness of the roadblock. He concluded that the state had failed to meet its burden in establishing that the roadblock promoted the public interest in light of the less intrusive alternatives available to combat the drunk driving problem.100 These alternatives would not have entailed the stopping of between 2,000 and 3,000 motorists.101 Because drunk drivers generate articulable cues,102 “the same or greater productivity could have been achieved by distributing the thirty-five officers throughout the city for the sole purpose of observing erratic driving and stopping and checking drivers.”103 Justice Prager also noted his concern that, by upholding this DUI roadblock, the majority had authorized other police agencies to set up roadblocks to discover violations of other criminal statutes and city ordinances.104

In State v. Coccomo105 the Superior Court of New Jersey upheld a roadblock conducted pursuant to written guidelines issued by the Roxbury Chief of Police.106 The purpose of the roadblock was to check the driver for his...
license, registration and insurance card, as well as for any signs of intoxication.\textsuperscript{107} According to the predetermined procedure, every fifth vehicle going past the checkpoint was stopped and diverted into a parking lot where the driver was asked for the required documentation.\textsuperscript{108}

After balancing the state's vital interest in detecting and prosecuting drunk drivers with the minor inconvenience which may be caused to every fifth motorist, the court concluded that the roadblock advanced the state's interest sufficiently to outweigh any privacy intrusion.\textsuperscript{109} In reaching this conclusion, the court noted that the roadblock was located in an area with several bars and a high incidence of alcohol-related accidents.\textsuperscript{110} Also important was the timing of the roadblock, which was only effected in the early morning hours coinciding with the closing hours of local taverns.\textsuperscript{111} These factors suggested a high probability of success while minimizing the number of innocent motorists stopped. The court also noted that the planned physical characteristics of the roadblock promoted safety and minimized subjective intrusion,\textsuperscript{112} while the written procedures minimized officer discretion. The court summed up its analysis by stating: "the Roxbury police follow specific, defined standards in stopping motorists . . . [t]he criterion they employ is purely neutral; no discretion is involved."\textsuperscript{113}

In a recent decision, \textit{Commonwealth v. Trumble},\textsuperscript{114} the Supreme Judicial Court of Massachusetts denied the defendant's motion to suppress the evidence obtained at a DUI roadblock conducted by State Police in Sunderland.\textsuperscript{115} The roadblock was conducted according to guidelines promulgated by the Secretary of Public Safety.\textsuperscript{116}

\textsuperscript{107}Id.

\textsuperscript{108}Id. The defendant's car was stopped according to procedure and directed to the secondary inspection area, where he was asked to produce his driving credentials. The requesting officer noticed that the defendant showed signs of intoxication and directed him to step out of the car. The defendant was arrested after he failed several field sobriety tests. \textit{Id.}

\textsuperscript{109}Id. at 583-84, 427 A.2d at 135.

\textsuperscript{110}Id. at 582, 427 A.2d at 134.

\textsuperscript{111}Id. at 583, 427 A.2d at 135.

\textsuperscript{112}Id. These characteristics were: 1) stopping every fifth vehicle only when traffic is light; 2) positioning flares on the road to caution drivers to be alert; 3) positioning a uniformed officer counting cars at the end of the line of flares under a street light; 4) positioning a marked police car at the side of the road; 5) diverting traffic to an adjacent parking lot where they were questioned by uniformed officers. \textit{Id.}

\textsuperscript{113}Id.

\textsuperscript{114}396 Mass. 81, 483 N.E.2d 1102 (1985).

\textsuperscript{115}Id. at __, 483 N.E.2d at 1108.

\textsuperscript{116}Id. at __, 483 N.E.2d at 1104. The guidelines were developed in response to the court's decision in \textit{Commonwealth v. McGeoghegan}, 389 Mass. 137, 449 N.E.2d 349 (1983), which held a previous roadblock unconstitutional. The \textit{McGeoghegan} court noted that the roadblock area was poorly illuminated and unsafe for motorists; the mechanics of the roadblock were left to field officers; field officers used their own discretion in choosing which cars to stop; motorists were backed up on the highway for two-thirds of a mile. \textit{McGeoghegan}, 389 Mass. at 142, 449 N.E.2d at 353.

The \textit{McGeoghegan} court added that a roadblock would be constitutionally permissible if: 1) the selection of vehicles to be stopped is not arbitrary; 2) safety is assured; 3) motorists' inconvenience is minimized; 4) the procedure is conducted pursuant to a plan devised by supervisory law enforcement personnel. \textit{Id.}
The *Trumble* court first took notice that the traditional methods of dealing with the drunk driving problem have failed. In this light, the court balanced the public's interest in curtailing drunk driving against the intrusion caused by a momentary seizure at the roadblock, and found that the intrusion was outweighed by the degree to which the roadblock advanced the public interest. Supporting its decision, the court first noted that the site of the Sunderland roadblock was selected by supervisory personnel for maximum safety and efficiency. According to the operational guidelines, the thirteen uniformed state troopers at the roadblock had no discretion in choosing vehicles to be stopped. Signs and flares marked the approach to the stopping area. Four cruisers were positioned close to the stopping area which was brightly illuminated by lights from a police van. "In sum, the conduct of the roadblock was most reasonable and entirely responsive to the requirements laid down in *McGeoghegan*."  

**Decisions Holding Roadblocks Unconstitutional**

Several courts have struck down roadblocks while noting that a roadblock conducted with adequate procedural safeguards would be constitutional.  

---

118 The troopers conducting the roadblock were instructed that the initial contact would be no more than one minute for each driver. *Id.* at __, 483 N.E.2d at 1105. The troopers were also instructed to observe the driver for suspicion that he had been drinking. *Id.* If the trooper suspected that the driver was intoxicated the driver was directed into a detention area where he was asked to produce a license and registration and perform three field sobriety tests. *Id.*  
119 *Id.* at __, 483 N.E.2d at 1107. The court noted that it was not deciding whether for constitutional purposes it matters whether there may be a less intrusive but equally effective means available, as the issue was not raised by the parties. *Id.* at __, 483 N.E.2d at 1105. However, the *Trumble* dissenters concluded that the Commonwealth had not met its burden of showing that "such a procedure [achieves] a degree of law enforcement and highway safety that is not reasonably attainable by less intrusive means." *Id.* at __, 483 N.E.2d at 1112 (Lynch, J., dissenting) (quoting *Commonwealth v. McGeoghegan*, 389 Mass. 137, 143-43, 449 N.E.2d 349, 353).  
120 *Id.* at __, 483 N.E.2d at 1108. Following the operational guidelines the supervisory officer in charge of the roadblock selected the site according to four criteria: 1) high accident rates; 2) high rates of drunk driving arrests; 3) safety conditions; 4) motorists convenience. *Id.* at __, 493 N.E.2d at 1104.  
121 *Id.* at __, 483 N.E.2d at 1104. The court also noted with approval the advance media attention focused on the roadblocks as a result of press releases and interviews with the roadblock supervisor. *Id.* This advance publicity "ha[s] the virtue of reducing surprise, fear, and inconvenience." *Id.* at 1106.  
122 *Id.* The roadblock supervisor instructed the troopers to stop every vehicle that approached the site and stressed that there were to be no deviations from the procedures set forth in the guidelines. *Id.* at __, 483 N.E.2d at 1104. See supra note 117.  
123 *Id.*  
124 *Id.*  
125 *Id.* See supra note 115. In a similarly reasoned opinion, the Supreme Court of Arizona upheld a DUI roadblock conducted pursuant to guidelines suggested in a concurred opinion in State ex rel. Ekstrom v. Justice Court, 136 Ariz. 1, 663 P.2d 992 (1983). See State v. Superior Court, 143 Ariz. 45, 691 P.2d 1073 (1984). Also crucial to the Arizona Court's decision was evidence of the roadblock's deterrent effect. *Id.* at 49-50, 691 P.2d at 1076-77.  
However, the decisions that follow have struck down DUI roadblocks as unconstitutional regardless of the procedures used.

In *State v. Koppel*,\(^\text{127}\) the court granted the defendant's motions to suppress evidence obtained at two different DUI roadblocks.\(^\text{128}\) In doing so, the court relied upon the independent protection against unreasonable searches and seizure provided by the state constitution.\(^\text{129}\)

The *Koppel* roadblocks were conducted by the Concord Police Department according to "Standard and Operating Procedure[s]" (SOP) drafted by a department research officer.\(^\text{130}\) Both roadblocks consisted of several officers and three or more marked police cars parked near the side of the road with their lights on.\(^\text{131}\) When traffic was light, police stopped every car approaching the roadblock.\(^\text{132}\) "If five cars were detained at the roadblock, other traffic was waived on until a car left the roadblock, at which time the next car to approach would be detained."\(^\text{133}\)

The *Koppel* court began its constitutional analysis by noting that several courts had upheld drunk driving roadblocks conducted according to similar procedures by relying on the *Prouse* dictum.\(^\text{134}\) However, the court noted "that unlike the spot checks in *Prouse*, the roadblocks here were conducted to discover evidence to be used in the prosecution of serious criminal offenses."\(^\text{135}\) Distilling its earlier decisions concerning motor vehicle seizures, the court stated:

\[\text{[t]o justify a search or seizure of a motor vehicle, absent probable cause or even a reasonable suspicion that a criminal offense is being committed, the State must prove that its conduct significantly advances the public in-}\]

---


\(^{128}\) Id. at __, 499 A.2d at 977 (1985).

\(^{129}\) Id. at __, 499 A.2d at 979. The two defendants were stopped at different roadblocks and arrested for driving while intoxicated. *Id.*

\(^{130}\) Id. at __, 499 A.2d at 981 (relying on N.H. Const. art XIX, part 1).

\(^{131}\) Id. at __, 499 A.2d at 979. The SOP stressed several points: that the roadblock should involve "minimal intrusion;" that its location should be determined by an official based on objective data (i.e. the number of accidents, injury accidents and/or DWI arrests); "that the decision as to which vehicles will be stopped (e.g. all east-bound vehicles, or every tenth vehicle) cannot be left to the discretion of the officers at the scene but must be made in advance; “and that the checkpoint must be clearly indicated and manned by uniform officers.” *Id.* (quoting the Standard Operating Procedures).

\(^{132}\) Id.

\(^{133}\) Id.

\(^{134}\) Id. at __, 499 A.2d at 981 (citing State v. Superior Court, 143 Ariz. 43, 45, 48, 49, 691 P.2d 1073, 1076-77 (1984); Little v. State, 300 Md. 485, 498, 497 A.2d 903, 909 (1984); State v. Deskins, 234 Kan. 529, 540-42, 673 P.2d 1174, 1179 (1983)).

\(^{135}\) *Koppel*, __ N.H. at __, 499 A.2d at 981.
interest in a manner that outweighs the accompanying intrusion on individual rights. It must further prove that no less intrusive means is available to accomplish the State's goal.\

Applying the above mentioned test, the court first noted that the state had failed to show that the DUI roadblocks were more effective than less intrusive alternative means. In evaluating alternative methods, the court noted that roadblocks are much less effective in detecting drunk drivers than roving patrols acting on observed violations. The court also considered the possible deterrent effect of DUI roadblocks and concluded that "there is nothing in this record, or in the decisions from other jurisdictions, to indicate that a roadblock program has any greater deterrent effect than a well-publicized program of highly visible roving patrols."

Turning to the actual degree of intrusion, the court noted that DUI roadblocks involve "a substantially greater degree of subjective intrusion - the generation of concern or even fright on the part of lawful travelers" than do roadblocks conducted to detect unlicensed drivers or illegal aliens. This higher degree of subjective intrusion is a result of the nature of DUI roadblocks which, unlike the permanent checkpoint in Martinez-Fuerte, are "temporary, . . . usually set up only at night, sometimes poorly illuminated, whose purpose becomes known only when the driver is asked for his or her license." In sum, the Koppel court found that "the state had failed to show that drunk driving roadblocks produce sufficient public benefit to outweigh their intrusion on individual rights."

In State v. Smith, the Court of Criminal Appeals of Oklahoma held the use of temporary DUI roadblocks per se unconstitutional regardless of their specific operational details. The roadblocks at issue were conducted by the Oklahoma Department of Public Safety in conjunction with three law enforcement agencies. The defendant was stopped at a roadblock in Oklahoma City,

*Id.
*Id.
*Id. The court noted that Concord police set up forty-seven roadblocks on twenty-one weekend nights. A total of 1,680 vehicles were stopped, resulting in only eighteen DWI arrests. During roughly the same six-month period, the Concord police made 175 DWI arrests using roving patrols. Id. at __, 499 A.2d at 979.
*Id. at __, 499 A.2d at 982.
*Id. at __, 499 A.2d at 983 (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 558).
*Id.
*Id.
*Id. See also State v. Olgaard, 248 N.W.2d 382 (S.D. 1980). In Olgaard the court struck down a temporary DUI roadblock as unconstitutional. Id. at 394. The Olgaard court considered Martinez-Fuerte to require permanent checkpoints. Id. The court noted that the subjective intrusion caused at a temporary checkpoint much greater "for by its very nature the roadblock [is] set up to stop without prior warning, and . . . by surprise, all motorists who happened to pass that particular point on the night in question." Id.
*See Id. at 565.
one of six conducted that night from 9:30 P.M. through 1:30 A.M.\textsuperscript{147} The roadblocks were manned by teams of ten officers, with supervisory personnel at every site.\textsuperscript{148} The officers would either stop all cars or stop cars according to an established interval. If traffic backed up, several cars would be allowed to pass through without being stopped.\textsuperscript{149}

In reaching its decision the \textit{Smith} court contrasted the Oklahoma City roadblocks with the permanent checkpoint approved in \textit{Martinez-Fuerte}. Accordingly, the court inquired as to: \textit{\"1) the type of checkpoint involved; 2) the purpose of the checkpoint; and, 3) the degree of intrusion and fright endured by individuals passing through the checkpoint.\"}\textsuperscript{150} First, the court noted that the roadblocks at issue were temporary, and not the type of permanent checkpoint approved in \textit{Martinez-Fuerte}.\textsuperscript{151} Second, the court found as a matter of fact that the roadblocks were established for the primary purpose of seeking criminal DUI offenders.\textsuperscript{152} Third, the court noted that the permissibility of the suspicionless stops in \textit{Martinez-Fuerte} hinged on the level of subjective intrusion involved.\textsuperscript{153} Subjective intrusion at the \textit{Martinez-Fuerte} checkpoints was reduced because the checkpoints \textit{\"were permanent; they were regular; they were within the everyday knowledge of the community.\"}\textsuperscript{154} Thus, those in the community were not surprised or fearful when passing through as they knew of the roadblock’s existence. The court also noted that the stop in \textit{Martinez-Fuerte} was not to seek out criminals, but to enforce immigration laws and deport those illegally in the country.

In contrast to \textit{Martinez-Fuerte}, the \textit{Smith} court stated:

\textit{\[tihe roadblocks in the present case could well act, and most likely did act, as a total surprise to those passing through. The fear factor involved in this case is heightened by the presence of at least ten officers, chemical testing equipment, and mobile booking and jail vans actually on the scene. To the individual approaching such a roadblock, it is not unlikely that he would reasonably perceive the officers as being desirous of arresting criminals and that anyone passing through could easily be arrested. The United States Supreme Court has never stretched the perma-}

\textsuperscript{147}Id. at 563.
\textsuperscript{148}Id.
\textsuperscript{149}Id.
\textsuperscript{150}Id.
\textsuperscript{151}Id. at 564. Witnesses for the state maintained that the roadblock was established to check driver’s licenses. \textit{Id.} However, the court noted that there was overwhelming evidence that the purpose of the roadblocks was to catch drunk drivers. \textit{Id.} First, the roadblocks were conducted on weekend nights. \textit{Id.} Second, statements made to the media preceding the roadblocks referred to the need to get drunk drivers off the road. \textit{Id.}
\textsuperscript{152}Id. at 564.
\textsuperscript{153}Id. at 565.
nent roadblock exception to this point. . . . The subjective intrusion . . . imposed upon the individual innocent of misconduct is simply too great.\[155\]

The Smith court also noted a more generalized concern with the use of DUI roadblocks. The court stated:

[We] find such activities by law enforcement authorities, while commendable in their ultimate goal of removing DUI offenders from the public highways, draw dangerously close to what may be referred to as a police state. Here, the state agencies have ignored the presumption of innocence, assuming that criminal conduct must be occurring on the roads and highways, and have taken an 'end justifies the means' approach. . . . Were the authorities allowed to maintain such activities as presented in this case, the next logical step would be to allow similar stops for searching out other types of criminal offenders.\[156\]

**CONCLUSION**

Roadblocks designed to detect and deter drunk drivers are in use in a number of states. These roadblocks are in large part a result of Delaware v. Prouse and other case law which develops a neutral criteria standard for judging the reasonableness of suspicionless roadblock-type automobile stops. The key to the permissibility of suspicionless roadblock stops is what the Supreme Court considers to be a lower level of subjective intrusion when motorists are stopped en masse. Thus, in certain circumstances, suspicionless roadblock stops may be reasonable.

In order to invoke the neutral criteria standard there must be: 1) a compelling government interest; 2) which cannot be achieved by less intrusive means; 3) which results in a privacy intrusion which is both objectively and subjectively minimal.\[157\] Once this is shown, a suspicionless roadblock stop is governed under the neutral criteria standard. The neutral criteria standard requires that motorists be stopped according to a plan devised by supervisory officers involving neutral and predetermined criteria.

\[155\] See People v. Bartley, 125 Ill. App. 3d 575, 466 N.E.2d 346 (1984). The Bartley court held DUI roadblocks *per se* unconstitutional. The Bartley court gave two reasons for its holding. First, the court found that Prouse and Martinez-Fuerte sanction the use of checkpoint stops only when there is no other less intrusive but equally effective means of detecting violators. Bartley, 125 Ill. App. 3d at 578, 466 N.E.2d at 348. Since there are practical alternatives (i.e. observing violations) to DUI roadblocks there use is not sanctioned. Id. Second, the degree of intrusion at DUI roadblocks is much higher than can be supported by the neutral criteria standard. See id. The Bartley court stated:

DUI roadblocks are designed to be set up at night, without warning and at locations which are constantly changing. Motorists are often unaware of the reason for the stop prior to being asked to display their driver's license. Lights are shined into their eyes and officers peer into the passenger compartment of their automobile.

Bartley, 125 Ill. App. 3d at 579, 466 N.E.2d at 348. See also State v. McLaughlin, ___ Ind. App. ___, 471 N.E.2d 1125 (1984). (DUI roadblocks unconstitutional as there are less intrusive methods for combating drunk driving.

\[156\] Smith, 674 P.2d 562, 564.

See filling in the Blanks After Prouse, *supra* note 11, at 249.
Eliminating drinking drivers from the road is no doubt a compelling government interest. However, as the Koppel and Smith courts noted, applying the neutral criteria standard to drunk driving roadblocks may not be proper. This is because of several differences between DUI roadblocks and the license and immigration checkpoints involved in Supreme Court precedents. First, driving while intoxicated is a visible offense which can be detected without resort to roadblock stops. Second, DUI roadblock investigations are personal and seek evidence of a serious crime. Third, DUI roadblocks are usually set up at night in constantly changing locations and thus involve a greater level of subjective intrusion. Finally, regardless of whether the initial stop is conducted according to neutral criteria, the determination of a driver's sobriety is an inherently discretionary action. Until the Supreme Court resolves these differences there will continue to be uncertainty regarding the use of DUI roadblocks.

Scott Freed