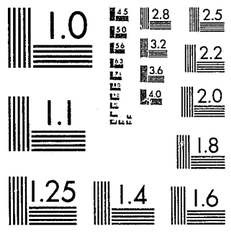

FBI LAW ENFORCEMENT BULLETIN

JULY 1984, VOLUME 53, NUMBER 7

Contents

The Cover:
Shoe and tire impression evidence, when properly collected, can be important in placing a suspect at the crime scene.
See article p. 2.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of Congressional and Public Affairs,
William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers
Reprints—Marlethia S. Black

ISSN 0014-5688 USPS 383-310

Director's Message

For the first time since 1960, this country experienced a significant decrease in crime reported to police for a second consecutive year. The 1983 decline in crime was 7 percent, the greatest in any year since 1960.

This may signal that crime, as measured by the Uniform Crime Reporting system, is being managed more effectively by our law enforcement community.

All categories of the Crime Index—murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson—decreased in 1983; violent crime declined by 5 percent, property crime by 7 percent. In contrast, the volume of reported crime reached an all-time high in 1980, which continued through the following year. But in 1982, decreases in the amount of crime reported were experienced.

During the first quarter of 1983, a decrease of 2 percent was reported. Then, in the second and third quarters, 8-percent declines were recorded. In the last quarter of 1983, there was a 10-percent drop, for a year-long average drop of 7 percent.

While there are many influences affecting the volume of crime, there are indications that the criminal justice system is beginning to function with a higher degree of effectiveness, which is reflected in our crime figures.

Especially noteworthy, too, is the fact that while crime counts for the past 2 years have diminished, the number of persons arrested for crime continues to rise. Recent efforts by law enforcement to concentrate on the "career criminal," coupled with better prosecutive and judicial handling of those who commit large numbers of crimes, whether to support narcotics habits or for other reasons, have resulted in jail populations reaching new highs, while reported crime has declined.

Increased citizen involvement in community action groups, such as neighborhood watch and similar programs, has also favorably affected these crime statistics, as have the actions of individuals concerned with their potential of becoming the victims of crime.

Attorney General William French Smith noted that today, criminals are more likely to be arrested and incarcerated than they were in 1980. He pointed out the "tighter coordination within federal law enforcement and among federal, state and local law enforcement agencies."

While these crime figures are a sign of hope—larger cities and suburban and rural areas alike recorded similar declines—this trend does not mean that the law enforcement community can relax. Even the statistically valid decline in the percentage of the arrest-prone age group of 15-24 years is not overly reassuring, as the number of older people being arrested for property crimes is increasing.

Increased emphasis, by law enforcement and community together, on successful programs that demonstrate the ability to reduce crime is still needed if we are to envisage a time when our children can live relatively free of crime.

William H. Webster

William H. Webster
Director
July 1, 1984

95350

The Constitutionality of Drunk Driver Roadblocks

"Roadblocks do withstand constitutional scrutiny when carefully conceived and implemented as a species of the administrative search authority."

By
JEROME O. CAMPANE, JR.
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, Va.

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The magnitude of the Nation's drunk driving problem threatens everyone. Drunk drivers cause 25,000 deaths per year.[1] In 1980, over 650,000 people were injured in alcohol-related traffic accidents.[2] It has been estimated that on Friday and Saturday nights, 1 out of every 10 motor vehicle operators is intoxicated.[3] In response, citizen campaigns against drunk driving[4] have encouraged police departments throughout the country to employ more effective measures to remove intoxicated drivers from the road.[5] The sobriety checkpoint or driving while intoxicated (DWI) roadblock is one such measure.

DWI roadblocks are implemented in a variety of ways. For example, officers conducting a roadblock may stop all traffic or some numerically objective number, like every fifth vehicle. After a vehicle is directed to the side of the road, an officer may request to see an operator's license and vehicle registration and may ask several questions to observe the driver's demeanor. If the officer detects signs of inebriation, the motorist may be directed to move the vehicle to a secondary area, step out, and submit to a roadside sobriety coordination or breathalyzer test.[6] The failure to pass either test constitutes sufficient probable cause for arrest.[7]

Routine license-check roadblocks, fish and game license roadblocks, and immigration checkpoints generally predate the development of DWI roadblocks. As outlined in previous issues of the *FBI Law Enforcement Bulletin*,[8] such roadblocks have been the subject of a substantial amount of inconsistent litigation in both State and Federal courts. The records in these cases generally say very little about what goes on at roadblocks, and the court decisions have been criticized for not carefully balancing the competing interests.[9] This failure to provide a uniform assessment of the reasonableness of differing roadblock programs continues today.[10] As a result, police departments employing DWI roadblocks in the past few years have done so at their peril, and when challenged, have been criticized by courts for what is perceived to be a wide variety of poorly planned and highly intrusive roadblock procedures.

The U.S. Supreme Court has not considered the constitutional propriety of DWI roadblocks. Some lower courts find that DWI roadblocks impose unreasonable fourth amendment seizures,[11] while others uphold such roadblocks when they embody specific protections against unnecessary invasions of privacy. In 1983, State supreme courts in Arizona,[12] Massachusetts,[13] and Kansas[14] examined this issue. This article reviews these and other decisions in recent DWI roadblock cases. It then provides an analysis of a specific procedure for the development of a lawful DWI roadblock program.

Special Agent Campane

Roadblocks as Fourth Amendment Seizures

The fourth amendment requires that all searches and seizures be reasonable. It is now beyond dispute that stopping a motor vehicle and detaining its occupants constitutes a seizure, even though the detention is brief and limited in scope.[15] The reasonableness of any seizure depends on a balance between the government's interest in public safety and the individual's right to privacy.[16] That balance weighs against the individual when a law enforcement officer has sufficient facts to establish probable cause to arrest.[17] It also weighs against him in an investigative detention, when the officer can point to specific and articulable facts amounting to reasonable suspicion that criminal activity is afoot.[18] A DWI roadblock causes the detention of a motorist when there is no probable cause or reasonable suspicion. If the detention is not otherwise reasonable, any evidence seized is inadmissible in a subsequent criminal prosecution.[19] In addition, there is an increased potential for civil liability.[20]

Roadblocks as Administrative Searches

Roadblocks do withstand constitutional scrutiny when carefully conceived and implemented as a species of the administrative search authority. In the administrative search area, the courts impose no requirement for individualized suspicion because the governmental interest in public safety outweighs the limited invasion of individual privacy. Searches at airports, courthouses, and in highly regulated industries fall into this category.[21] Most courts also view roadblocks as administrative searches and require no particularized reason to detain a motorist. However, in balancing governmental interest in highway safety against individual privacy rights, the following three factors have been identified as decisive when the scale is tipped in favor of the government:

1) The gravity of the public interest at stake;
2) The efficiency of the procedure in reaching its desired goals; and
3) The severity of interference with individual liberty.

Although no one factor is determinative, each should be carefully considered in the development and application of a DWI roadblock. Failure to do so may jeopardize the ability to successfully prosecute inebriated drivers.

Documenting the Government Interest

The Supreme Court has repeatedly recounted the tragedy on our highways caused by intoxicated drivers.[22] Lower court DWI roadblock decisions also point out the strong public interest served by law enforcement efforts to deter drunk driving.

". . . [roadblocks] are most effective late at night or in the early morning hours when stationed along roads where bars and taverns are located."

Yet, law enforcement agencies should still justify their own local need for a DWI roadblock at a particular time and place. Statistics should reflect that the site selected for a roadblock is a place where either a significant number of DWI arrests have previously occurred or where there has been an unusually high number of alcohol-related traffic accidents.

For instance, a 1983 Arizona Supreme Court[23] decision holding a DWI roadblock unconstitutional specifically noted that the record disclosed no statistics concerning the extent of the drunk driver problem on Arizona highways. A New Jersey court,[24] on the other hand, upheld a local police DWI roadblock program after observing that such seizures are most effective late at night or in the early morning hours when stationed along roads where bars and taverns are located. The statistics do not have to be voluminous, but they should provide a basis for the roadblock's deployment. In this regard, the New Jersey court stated:

> "Empirical data revealed that seven fatal vehicular accidents had occurred on Main Road . . . during the two years prior to the implementation of [the DWI roadblock]. In most . . . alcohol abuse . . . was a contributing factor. A reasonable conclusion to be reached from this data is that Main Road had become a dangerous thoroughfare because of the large number of intoxicated drivers using it." [25]

Achieving the Desired Results

DWI roadblocks have two purposes: 1) Apprehend drunk drivers before injury occurs; and 2) deter intoxicated individuals from driving. Even if DWI roadblocks are carefully selected with respect to time and location, it is not always true that a higher frequency of DWI arrests occur at roadblocks than at roadside detentions made by roving patrol observations. Advocates of DWI roadblocks should carefully consider their deterrent rationale. If deterrence is effective, fewer DWI arrests are made and fewer accidents occur. This puts the police in a dilemma, for there will thus be a diminishing statistical basis upon which to justify continued use of DWI roadblocks. For this reason, there is a general disagreement in the law enforcement community over whether DWI roadblock programs are sufficiently effective to justify the intrusions they entail.[26]

The courts also question the utility of DWI roadblocks by drawing a distinction between various roadblock law enforcement programs. Violations of operator's license, hunting permit, and immigration laws are not physically apparent through mere observation of traffic. But a drunk driver may exhibit signs of inebriation by the manner in which he or she drives. The courts intimate that well-trained roving patrol observations of individual vehicles may be as effective as roadblocks. At the very least, they involve far fewer detentions of innocent travelers. The Arizona Supreme Court recently noted:

> "If there is an adequate method of enforcing the drunk driving statute, there is no pressing need for the use of an intrusive roadblock device. We have no empirical data in the record before us with which to weigh the reasonableness of the roadblock intrusion." [27]

In addition, courts point to the value of advance media publicity. This should put the public on notice that roadblocks are operational and thus ease a citizen's concern when unexpectedly detained at one. But such publicity may also deter a drunk from driving and ultimately decrease the number of DWI roadblock arrests. If fewer arrests are made because of this forewarning, the justification for the numerous seizures at roadblocks likewise diminishes. Roving patrols then become a more viable alternative. Until such time as this dilemma is more fully addressed by the courts, agencies employing DWI roadblocks may be unable to obtain significant DWI arrest statistics. They should therefore be prepared to justify their procedures for the deterrent value in keeping the drunk off the road in the first place.

Interfering with Individual Liberty

The balancing of interests process can still weigh in favor of the government when the degree of interference with individual liberty is minimized. Subjectively, a motorist's perception of concern, fright, or annoyance should be eliminated by the efficiency of the roadblock's operation. Objectively, the selection and implementation of the roadblock should curtail any chance of arbitrary enforcement.

Supreme Court Roadblock Cases

The Supreme Court has addressed the propriety of roadblocks on two separate occasions. The decisions focus on the intrusive nature of the search as subjectively perceived by motorists and on the degree of discretion the procedure vests in the detaining officers. In *United States* v. *Martinez-Fuerte*,[28] decided in 1976, the Court held that roadblock investigative stops at permanent immigration checkpoints near the Mexican border are reasonable despite the absence of any particularized suspicion to believe immigration laws were being violated. The California border patrol checkpoint stop of Martinez-Fuerte occurred at a State weight station where there were adequate facilities for the temporary detention of motor vehicles. Motorists were warned and then stopped by a series of lighted signals extending a mile from the checkpoint. The officers were in full-dress uniform and visually screened all northbound vehicles. Most motorists were allowed to resume their progress without any oral inquiry or close visual inspection. Detentions at a secondary inspection area lasted on the average of 3 to 5 minutes and were designed to query occupants with respect to their citizenship and immigration status. In the balancing equation to determine whether the stop was reasonable, the Court noted:

> "Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources." [29]

Three years later, the Supreme Court commented on the propriety of license-check roadblocks in *Delaware* v. *Prouse*.[30] The Court held that random vehicle stops by police officers on patrol for the purpose of registration, license, or equipment checks must be based on reasonable suspicion of a motor vehicle code violation. The Court distinguished the permanent immigration roadblock upheld in *Martinez-Fuerte* on two grounds. First, the Court reiterated that there is a much lesser *subjective* intrusion perceived by a motorist detained at a roadblock. All vehicles are brought to a halt and subjected to a show of police authority. Each motorist is able to see the other vehicles being stopped ahead and is less likely to be frightened or annoyed by the intrusion. Second, the Court stressed police *objectivity* and expressed concern over the unbridled discretion that arbitrary stops entail. The Court did not believe such random detentions to be sufficiently productive mechanisms to justify the invasion of privacy placed on a motorist who is singled out at random.

Prouse makes clear that checkpoint or roadblock stops are not limited to enforcement of immigration laws.[31] A concurring opinion suggests that other nonrandom stops (such as every 10th vehicle to pass the checkpoint) may also be reasonable.[32] *Prouse* has been consistently cited since 1979 as the constitutional basis for the initiation of DWI roadblocks. Unfortunately, the Court did not provide any further clarification on how best to measure a roadblock in terms of the mechanics of the stop, questioning, and visual inspection, or in terms of the numerical method whereby cars are selected for detention.

Because *Martinez-Fuerte* and *Prouse* establish no more than a framework for assessing the constitutionality of roadblocks, the recent spate of State court DWI roadblock decisions become important in their analysis of the subjective-objective factors and the interference with the liberty of motorists. At the very least, these decisions make clear that DWI roadblock programs need not be permanent, nor require the detention of every vehicle, nor be disguised as routine license checks.

State DWI Roadblock Cases

The first 1983 DWI roadblock case was decided by the Arizona Supreme Court in *State Ex Rel. Ekstrom* v. *Justice Ct. of State*.[33] On two evenings, Arizona police officers stopped every passenger vehicle heading south on Highway 93 near Kingman, Ariz. The DWI roadblock was in operation for approximately 5 hours each evening at a port-of-entry. Although a command officer decided where the

". . . DWI roadblock programs need not be permanent, nor require the detention of every vehicle, nor be disguised as routine license checks."

DWI roadblocks were to be placed, no instructions were provided to the officers. They were not told what to do if a vehicle turned around to avoid detention. They were not told whether to inspect visible cans or bottles, nor whether to shine flashlights in each vehicle. They were not told whether to smell inside each vehicle. Although pylons and lighted flares were positioned 150 yards from the roadblocks to channel all oncoming traffic into the detention site, no warning signs or flashing lights announced the purpose for the detention, nor did the police department notify the public that roadblocks would be operating near Kingman. Vehicles were detained from 30 seconds to 5 minutes. At the Kingman roadblock on the two dates combined, the officers made 13 DWI arrests.

The implementation of these roadblocks was held to be unconstitutional. The court focused on the manner in which the Kingman checkpoints were operated as evidence of a failure on the part of the police to eliminate the chance of arbitrary enforcement.

> "The roadblocks were set up at the discretion of a local highway patrolman and were operated without specific directions or guidelines. Officers were uncertain whether they should simply question the occupants of motor vehicles or whether they should seize the opportunity to cursorily search the vehicles for evidence of a violation. Motorists were taken by surprise, not having had prior notice of the location and purpose of the checkpoints. We find present in the Kingman operation the grave danger that such discretion might be abused by the officer in the field, a factor which caused the Court in *United States* v. *Prouse* much concern." [34]

A concurring opinion in *Ekstrom* explored the conditions under which a roadblock checkpoint might pass constitutional scrutiny. It noted that advance warning of a roadblock by notice on the highway and publicity in the media would not only increase the efficacy of deterrence but would also limit the resulting intrusion on individual privacy because those being stopped would hopefully anticipate and understand what was occurring.[35]

The Massachusetts Supreme Court also held a DWI roadblock unconstitutional in 1983 in *Commonwealth* v. *McGeoghegan.*[36] McGeoghegan found himself 1 of 200 motorists detained late at night at a Revere Police Department DWI roadblock set up on a heavily traveled highway. The roadblock plan was formulated earlier in the day by the police chief and four subordinates. The trial judge found that the roadblock area was poorly illuminated and unsafe for motorists. The mechanics of the roadblock were left to the officers carrying it out, and the officers used their own discretion in deciding which cars to stop. Motorists were backed up on the highway for at least two-thirds of a mile.

The Massachusetts Supreme Court believed the procedure created an unreasonable seizure of McGeoghegan because of both the roadblock's subjective intrusion and objective arbitrariness:

> "[The roadblock fails] to establish sufficient police presence, and adequate lighting and warning to approaching motorists. They do not establish lack of arbitrariness and undue delay. . . . For a roadblock to be permissible, it appears that the selection of motor vehicles to be stopped must not be arbitrary, safety must be assured, motorists' inconvenience must be minimized, and assurance must be given that the procedure is being conducted pursuant to a plan devised by law enforcement supervisory personnel." [37]

In addition the court provided some noteworthy advice:

> "While we do not suggest that advance notice is a constitutional necessity, advance publication of the date of an intended roadblock, even without announcing its precise location, would have the virtue of reducing surprise, fear, and inconvenience. Such a procedure may achieve a degree of law enforcement and highway safety that is not reasonably attainable by less intrusive means. Also, while we do not suggest that roadblocks can only be constitutional if prescribed by statute or appropriate governmental regulation, we think that procedures conducted pursuant to such authorizations and standards would be more defensible than would other procedures." [38]

In 1980, a New Jersey court reached a different conclusion when it upheld the warrantless operation of a local police DWI roadblock in *State* v. *Coccomo.*[39] Written policy required the detention of every fifth vehicle on a lightly traveled road early in the morning when nearby bars and taverns were closing. The roadblock was placed on a dangerous thoroughfare that had been the scene of an unusually high number of vehicular fatalities. Numerous arrests for DWI had resulted since the program was instituted. Flares were appropriately positioned to alert drivers. A uniformed officer directed every fifth vehicle to an adjacent parking lot where a license-check was conducted. Signs of inebriation could also be observed.

In upholding the seizure of Coccomo, who was subsequently arrested for DWI, the court focused primarily on the objectivity with which the officers applied the detentions:

> "It is apparent that the Roxbury Township police follow specific defined standards in stopping motorists. Their system is completely objective in its operation. The criterion they employ is purely neutral; no discretion is involved. The evil implicit in the use by police of standardless and unbridled discretion to stop vehicles, which has been prohibited by *Prouse,* simply is not present here." [40]

State v. *Deskins,*[41] a 1983 Kansas Supreme Court decision, is significant in its approval of a Topeka police agency's DWI roadblock. One evening in 1982, approximately 40 officers from various jurisdictions set up a DWI roadblock on Topeka Avenue. Approximately 3,000 vehicles were stopped during the 4 hours the roadblock was in operation, and 15 persons, including Deskins, were arrested for DWI. The roadblock was established in a well-lit area of a four-lane highway. Several marked police cars, with flashing red lights, were located at each of the four corners of the roadblock. Sufficient officers were present to ensure that the time of each detention was minimal. All vehicles going in either direction were stopped and subjected to a license check. The officers operating the roadblock had no discretion to pick and choose who would or would not be stopped. The officers were in uniform and readily recognizable as being police officers. The location was selected by supervisory personnel and not the officers in the field.

Applying the balancing test of administrative search law, the court believed the initial stop met the minimum requirements for a constitutional momentary seizure, and based upon obvious evidence of Deskin's intoxication, held it to be lawful. The court made clear, however, that its decision applied only to the facts surrounding this particular roadblock and suggested, as had the Massachusetts Supreme Court earlier, that minimum uniform standards for the operation of vehicular roadblocks be adopted and established by the legislature or State attorney general rather than left to the determination of local law enforcement officials.

The *Deskins* decision is significant for another reason. Although courts agree that numerous conditions and factors must be considered in determining whether the operation of a particular DWI roadblock is unreasonably intrusive in its interference with individual liberty, *Deskins* is the first court to specifically point out many of those considerations. In its 11-factor analysis, *Deskins* provides a basis by which a police department can begin to design a DWI roadblock program with some assurance that if each point is addressed, the program will have a viable opportunity to pass the intrusive severity factor in the balancing test. These conditions are:

1) Advance notice to the public at large through media publicity;
2) Location selected and procedure developed by superior officers;
3) Degree of discretion left to the officer in the field;
4) Method of warning to individual motorists approaching the roadblock;
5) Reason for the location designated for the roadblock;
6) Time and duration of the roadblock;
7) Maintenance of safety conditions;
8) Average length of time each motorist is detained;
9) Physical factors surrounding the location, type, and method of operation;
10) Degree of fear or anxiety generated by the mode of operation; and
11) Any other relevant circumstances which might bear on the test.

In applying these 11 points to Deskin's detention, the court noted:

> "Not all of the factors need to be favorable to the state but all which are applicable to a given roadblock should be considered. Some, of course, such as unbridled discretion of the officer in the field, would run afoul of *Prouse* regardless of other favorable factors." [42]

"The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches."

Because *Deskins* is the first State supreme court decision upholding the reasonableness of a DWI roadblock program, its 11-step test should be seriously considered. Supervisory officers should determine a DWI roadblock's location and time of operation. The procedures employed should be drafted as department policy and written carefully in accord with formulated standards and neutral criteria. Roadblocks should be stationary but need not be permanent. When traffic flow is light, consideration should be given to stopping all vehicles. When traffic flow is heavy, vehicles should be stopped at regular intervals. In addition, executive-level officers should monitor the roadblock's operation to ensure compliance with written procedure.

Consideration should also be given to publicizing the potential for roadblock detentions. The checkpoint location should be selected for safety and visibility to oncoming motorists. Adequate advance warning signals, well-illuminated at night, should inform motorists of the nature of the intrusion. Officers should be in uniform and in sufficient quantity to prevent dangerous backups. A secondary detention location, such as a parking lot, should be nearby where further investigation can be safely pursued. The time limits on the average length of a detention should be no more than a few minutes unless reasonable suspicion is developed. Obviously, motorists should be told why they are being detained.

Conclusion

The fourth amendment requires that the seizure of motorists at DWI roadblocks be reasonable. Essentially, the test of reasonableness consists of a balancing of the legitimate State interest in highway safety against the individual's interest in privacy and freedom of movement.

The test has not, however, been easy to apply to warrantless roadblock procedures in general or to warrantless DWI roadblocks in particular. For the police agency believing in the efficacy of DWI roadblocks, the challenge is ahead. The design and implementation of roadblock procedures should be carefully tailored to address each of the three key factors in the administrative balancing test. First, document the DWI problem in the local community, particularly the DWI accident and arrest frequency at the location where a roadblock is contemplated. Second, monitor its operation carefully to ensure its effectiveness in reaching the goal of deterrence as well as detection. Roving patrols may be more efficient in detection but may not have the equivalent deterrence value. Third, and most important, the severity of the interference with individual privacy must be minimized to the extent reasonably practical. The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches.

As noted earlier, no one factor is determinative. As with any balancing test, its application to a particular set of facts is complex. Whether DWI roadblocks can withstand constitutional challenge may depend in large part on the professionalism, efficiency, and fairness demonstrated by the law enforcement officer in the field.[43] If future court decisions continue to find DWI roadblocks violative of the fourth amendment, police agencies should consider applying for area search warrants.[44] In the alternative, it may be prudent to promote the suggestion raised by the Massachusetts and Kansas Supreme Courts: A DWI roadblock is such a pervasive investigative technique that its approval requires the thoughtful consideration of the State legislature and the adoption of an appropriate statute or administrative regulation. **FBI**

Footnotes

[1] *Hearings on S. 671, S. 672, S. 2158, Federal Legislation to Combat Drunk Driving Including National Driver Register, Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science & Transportation,* 97th Cong., 2d Sess., at 65 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State,* 663 P.2d 992, 99 (Ariz. 1983) (Feldman, J., concurring); Note, *Curbing the Drunk Driver Under the Fourth Amendment: The Constitutionality of Roadblock Seizures,* 71 Geo. L.J. 1457, n.1 (1983) [hereinafter cited as Note, Geo. L.J.].

[2] *Hearings Before the Subcomm. on Surface Transportation,* cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[3] *Hearing to Examine What Effect Alcohol & Drugs Have on Individuals While Driving, Before the Subcomm. on Labor & Human Resources,* 97th Cong., 2d Sess., at 1 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[4] *See* Starr, "The War Against Drunk Drivers," *Newsweek,* Sept. 13, 1982, at 34 (discusses various activities of citizen groups against drunk driving); Note, Geo. L.J., *supra* note 1, at 1457, n.1. (summarizes the publicized citizen campaigns against drunk driving and recent State drunk driving legislation).

[5] At least 13 States are conducting or considering the deployment of drunk driving roadblocks. *See* Note, Geo. L.J., *supra* note 1, at 1460, n.16.

[6] Reasonable suspicion of intoxication justifies the detention of a vehicle at a secondary area and the removal of the driver from the passenger compartment. *See Pennsylvania* v. *Mimms,* 434 U.S. 106 (1977); *United States* v. *Miller,* 608 F.2d 1089 (5th Cir. 1979), *cert.*

"The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches."

Because *Deskins* is the first State supreme court decision upholding the reasonableness of a DWI roadblock program, its 11-step test should be seriously considered. Supervisory officers should determine a DWI roadblock's location and time of operation. The procedures employed should be drafted as department policy and written carefully in accord with formulated standards and neutral criteria. Roadblocks should be stationary but need not be permanent. When traffic flow is light, consideration should be given to stopping all vehicles. When traffic flow is heavy, vehicles should be stopped at regular intervals. In addition, executive-level officers should monitor the roadblock's operation to ensure compliance with written procedure.

Consideration should also be given to publicizing the potential for roadblock detentions. The checkpoint location should be selected for safety and visibility to oncoming motorists. Adequate advance warning signals, well-illuminated at night, should inform motorists of the nature of the intrusion. Officers should be in uniform and in sufficient quantity to prevent dangerous backups. A secondary detention location, such as a parking lot, should be nearby where further investigation can be safely pursued. The time limits on the average length of a detention should be no more than a few minutes unless reasonable suspicion is developed. Obviously, motorists should be told why they are being detained.

Conclusion

The fourth amendment requires that the seizure of motorists at DWI roadblocks be reasonable. Essentially, the test of reasonableness consists of a balancing of the legitimate State interest in highway safety against the individual's interest in privacy and freedom of movement.

The test has not, however, been easy to apply to warrantless roadblock procedures in general or to warrantless DWI roadblocks in particular. For the police agency believing in the efficacy of DWI roadblocks, the challenge is ahead. The design and implementation of roadblock procedures should be carefully tailored to address each of the three key factors in the administrative balancing test. First, document the DWI problem in the local community, particularly the DWI accident and arrest frequency at the location where a roadblock is contemplated. Second, monitor its operation carefully to ensure its effectiveness in reaching the goal of deterrence as well as detection. Roving patrols may be more efficient in detection but may not have the equivalent deterrence value. Third, and most important, the severity of the interference with individual privacy must be minimized to the extent reasonably practical. The procedure should be designed to advance a dual purpose: Avoid police discretion and minimize the psychological and physical intrusiveness of the searches.

As noted earlier, no one factor is determinative. As with any balancing test, its application to a particular set of facts is complex. Whether DWI roadblocks can withstand constitutional challenge may depend in large part on the professionalism, efficiency, and fairness demonstrated by the law enforcement officer in the field.[43] If future court decisions continue to find DWI roadblocks violative of the fourth amendment, police agencies should consider applying for area search warrants.[44] In the alternative, it may be prudent to promote the suggestion raised by the Massachusetts and Kansas Supreme Courts: A DWI roadblock is such a pervasive investigative technique that its approval requires the thoughtful consideration of the State legislature and the adoption of an appropriate statute or administrative regulation.

FBI

Footnotes

[1] *Hearings on S. 671, S. 572, S. 2158, Federal Legislation to Combat Drunk Driving Including National Driver Register, Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science & Transportation,* 97th Cong., 2d Sess., at 65 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State,* 663 P.2d 992, 99 (Ariz. 1983) (Feldman, J., concurring); Note, *Curbing the Drunk Driver Under the Fourth Amendment: The Constitutionality of Roadblock Seizures,* 71 Geo. L.J. 1457, n.1 (1983) [hereinafter cited as Note, Geo. L.J.].

[2] *Hearings Before the Subcomm. on Surface Transportation,* cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[3] *Hearing to Examine What Effect Alcohol & Drugs Have on Individuals While Driving, Before the Subcomm. on Labor & Human Resources,* 97th Cong., 2d Sess., at 1 (1982), cited in *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[4] *See* Starr, "The War Against Drunk Drivers," *Newsweek,* Sept. 13, 1982, at 34 (discusses various activities of citizen groups against drunk driving); Note, Geo. L.J., *supra* note 1, at 1457, n.1. (summarizes the publicized citizen campaigns against drunk driving and recent State drunk driving legislation).

[5] At least 13 States are conducting or considering the deployment of drunk driving roadblocks. *See* Note, Geo. L.J., *supra* note 1, at 1460, n.16.

[6] Reasonable suspicion of intoxication justifies the detention of a vehicle at a secondary area and the removal of the driver from the passenger compartment. *See Pennsylvania* v. *Mimms,* 434 U.S. 106 (1977); *United States* v. *Miller,* 608 F.2d 1089 (5th Cir. 1979), *cert. denied,* 447 U.S. 926 (1980). Reasonable suspicion also justifies the roadside sobriety coordination test. This test consists of a combination of physical activities: Walking heel to toe in a straight line, turning without staggering, touching the tip of the nose, reciting the alphabet, standing on one foot, tilting the head back with eyes closed without staggering. *See, e.g., State* v. *Little,* 468 A.2d 615 (Me. 1983); *Commonwealth* v. *Kloch,* 327 A.2d 375 (Pa. Super. Ct. 1975). *See also People* v. *Helm,* 633 P.2d 1071 (Col. 1981) (consent justifies the field sobriety test and intoxication does not subvert the voluntariness of the agreement); *cf. People* v. *Carlson,* 667 P.2d 310 (Col. 1983) (En Banc) (absent consent, probable cause required to administer field sobriety test). No decision has been found specifically litigating the prearrest justification for a breathalyzer test. *See generally Commonwealth* v. *McGeoghegan,* 449 N.E.2d 349 (Mass. 1983) (breathalyzer test performed to establish probable cause to arrest).

[7] For a more detailed description of the mechanics of DWI roadblocks, *see* Note, Geo. L.J., *supra* note 1, at 1463.

[8] *See* Schofield, "Routine License Checks and the Fourth Amendment," *FBI Law Enforcement Bulletin,* September 1976, at 27; Schofield, "The Constitutionality of Routine License Check Stops, A Review of *Delaware* v. *Prouse,*" *FBI Law Enforcement Bulletin,* January 1980, at 25.

[9] *See* Note, Geo. L.J., *supra* note 1, at 1470–82.

[10] *Compare United States* v. *Obregon,* 573 F.Supp. 876 (D. N.M. 1983) (license-check roadblock held reasonable); *People* v. *John B.B.,* 438 N.E.2d 864 (N.Y. Ct. App. 1982) (roving patrol burglary-area roadblock held reasonable); *State* v. *Shankle,* 647 P.2d 959 (Ore. Ct. App. 1982) (license-check roadblock held reasonable); *State* v. *Tourtillot,* 618 P.2d 423 (Ore. 1980) (hunting license-check roadblock held reasonable); *State* v. *Halverson,* 277 N.W.2d 723 (S.D. 1979) (hunting license-check roadblock held reasonable) *with Koonce* v. *State,* 651 S.W.2d 46 (Tex. 1983) (license-check roadblock held unreasonable); *United States* v. *Munoz,* 701 F.2d 1293 (9th Cir. 1983) (national park wood-cutting permit-check roadblock held unreasonable); *Garrett* v. *Goodwin,* 569 F.Supp. 106 (E.D. Ark. 1982) ("saturation" roadblock on interstate highway enjoined); *State* v. *Hillesheim,* 291 N.W.2d 314 (Iowa 1980) (vandalism-check roving area patrol held unreasonable).

[11] 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."

[12] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[13] *Commonwealth* v. *McGeoghegan, supra* note 6.

[14] *State* v. *Deskins,* 673 P.2d 1174 (Kan. 1983).

[15] *Delaware* v. *Prouse,* 440 U.S. 648 (1979); *United States* v. *Brignoni-Ponce,* 442 U.S. 873 (1975).

[16] *Brown* v. *Texas,* 443 U.S. 47 (1979).

[17] *Beck* v. *Ohio,* 379 U.S. 89 (1964).

[18] *Terry* v. *Ohio,* 392 U.S. 1 (1968).

[19] *Mapp* v. *Ohio,* 367 U.S. 643 (1961).

[20] *See, e.g., Garrett* v. *Goodwin, supra* note 10. Seven motorists and three passengers filed a civil suit seeking declarative and injunctive relief, alleging that the Arkansas State Police policy of "saturation" roadblocks violated the fourth amendment as conceived and as applied. Without admitting guilt, the State police entered into a consent decree regulating their use of roadblocks on interstate highways.

[21] *See, e.g., United States* v. *Davis,* 482 F.2d 893 (9th Cir. 1973) (airport search); *McMorris* v. *Alioto,* 567 F.2d 897 (9th Cir. 1978) (courthouse search); *Camera* v. *Municipal Court,* 387 U.S. 523 (1967) (building code inspectors); *See* v. *City of Seattle,* 387 U.S. 541 (1967) (fire code inspectors).

[22] *See South Dakota* v. *Neville,* 103 S.Ct. 916, 20 (1983), and citations therein.

[23] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1.

[24] *State* v. *Coccomo,* 427 A.2d 131 (N.J. Super. Ct. 1980).

[25] *Id.* at 134.

[26] *See, e.g.,* Buracker, "The 'Roadblock' Strategy as a Drunken Driver Enforcement Measure," *The Police Chief,* April 1984, at 59.

[27] *State Ex Rel. Ekstrom* v. *Justice Ct. of State, supra* note 1, at 996; *accord, State* v. *Deskins, supra* note 14 (Pruger, J., dissenting), at 1188.

[28] 428 U.S. 543 (1976).

[29] *Id.* at 559.

[30] 440 U.S. 648 (1979).

[31] *Id.* at 663.

[32] *Id.* (Blackmun, J., concurring) at 663–64.

[33] 663 P.2d 992 (Ariz. 1983).

[34] *Id.* at 996.

[35] *Id.* (Feldman, J., concurring) at 1001.

[36] 449 N.E.2d 349 (Mass. 1983).

[37] *Id.* at 353.

[38] *Id.*

[39] 427 A.2d 131 (N.J. Super, Ct. 1980).

[40] *Id.* at 135.

[41] 673 P.2d 1174 (Kan. 1983).

[42] *Id.* at 1185.

[43] *See* La Fave, *Search and Seizure—A Treatise on the Fourth Amendment,* vol. 3, section 9.5 (Supp. 1983), at 84 (suggesting warrantless roadblocks for general purposes should be upheld under some circumstances, although not specifically mentioning DWI roadblocks).

[44] *See, e.g., State* v. *Olgaard,* 248 N.W.2d 392 (S.D. 1976) (area warrant needed to operate a nonpermanent DWI roadblock); *Almeida-Sanchez* v. *United States,* 413 U.S. 266 (White, J., dissenting) (suggests the utility of an area motor vehicle stop search warrant). *See generally* Note, Geo L. J., *supra* note 1, 1484–85.

UCR Survey To Be Sent Out Soon

A joint FBI/Bureau of Justice Statistics Task Force is conducting a complete review of the UCR program through a contract with Abt Associates, Inc. As announced in the May issue of the *FBI Law Enforcement Bulletin,* a critical part of this review is a mail survey of law enforcement agencies. In a few weeks, this survey will be mailed to the heads of all law enforcement agencies serving populations in excess of 10,000 and to all other agency heads who returned the coupon included in the May issue, indicating their interest in participating. We urge those included in the survey to ensure that their views are counted by responding promptly to the questionnaire.