

# University of Michigan Journal of Law Reform

---

Volume 21

---

1988

## Clearing the Roadblocks to Sobriety Checkpoints

Mark R. Soble

*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Constitutional Law Commons](#), [Law Enforcement and Corrections Commons](#), and the [Transportation Law Commons](#)

---

### Recommended Citation

Mark R. Soble, *Clearing the Roadblocks to Sobriety Checkpoints*, 21 U. MICH. J. L. REFORM 489 (1988).  
Available at: <https://repository.law.umich.edu/mjlr/vol21/iss3/5>

This Note is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mLaw.repository@umich.edu](mailto:mLaw.repository@umich.edu).

## CLEARING THE ROADBLOCKS TO SOBRIETY CHECKPOINTS

---

In 1986, approximately 24,000 people died in alcohol-related car accidents in the United States, a seven-percent increase over 1985.<sup>1</sup> An additional 650,000 individuals are injured in alcohol-related motor vehicle accidents each year.<sup>2</sup> This tragedy translates into economic costs to the American taxpayer that exceed \$24 billion annually.<sup>3</sup>

The average length of detention at a sobriety checkpoint<sup>4</sup> is approximately fifteen to thirty seconds.<sup>5</sup> During that momentary detention, law enforcement officials observe the motorist for signs of intoxication. Studies conducted in California have shown that the overwhelming majority of drivers stopped at sobriety checkpoints found this delay insignificant.<sup>6</sup> Although the

---

1. See NATIONAL COMM'N AGAINST DRUNK DRIVING, PROGRESS REPORT ON RECOMMENDATIONS PROPOSED BY THE PRESIDENTIAL COMMISSION ON DRUNK DRIVING 6 (1987). The National Center for Statistics and Analysis of the National Highway Transportation Safety Administration (NHTSA) estimated that 23,990 people died in alcohol-related motor vehicle accidents in 1986, compared to 22,360 people in 1985. *Id.*

2. Stacey, *Drunken Driving Arrests Have Dropped Since '83*, USA Today, Feb. 29, 1988, at 5A, col. 1.

3. *Id.* These costs include property damage, medical treatment, and legal costs.

4. The term "sobriety checkpoint" is interchangeable with driving-while-intoxicated (DWI) roadblocks and driving-under-the-influence (DUI) roadblocks. This Note will use the label "sobriety checkpoint."

5. See, e.g., *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1327, 743 P.2d 1299, 1303, 241 Cal. Rptr. 42, 46 (1987) ("The average detention periods for those cars stopped was [sic] 28 seconds."); *People v. Bartley*, 109 Ill. 2d 273, 279, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986) ("[M]otorists were detained for only 15 to 20 seconds, as long as there was no need for additional questioning.").

6. D. Montagner, Operational Planning Section, Cal. Highway Patrol, Memorandum to Planning and Analysis Division (October 9, 1985) (copy on file with U. MICH. J.L. REF.). The memorandum reports results of a survey conducted from May through August 1985, indicating strong public support for sobriety checkpoints. Table I shows the results of the survey, tabulating the responses on the 2,473 survey cards that were returned by drivers of vehicles that had been stopped at sobriety checkpoints in Bakersfield and North Sacramento.

TABLE I

Did the sobriety checkpoint cause a significant delay to your journey?

Yes	No	Don't Know	Unknown
8.2%	90.7%	0.8%	0.2%

inconvenience is very small, courts have found that the deterrent effect of sobriety checkpoints is very great.<sup>7</sup>

This Note examines the constitutional and policy implications of sobriety checkpoints. Part I discusses the competing interests involved in implementing sobriety checkpoints. Part II presents an appropriate constitutional standard for judging sobriety checkpoints. Part III proposes reform-oriented measures that conform to constitutional guidelines. This Note concludes that properly conducted sobriety checkpoints are constitutional.

## I. COMPETING INTERESTS

Sobriety checkpoints have proponents and detractors. Proponents of sobriety checkpoints usually point to statistics showing that drunk driving is a serious problem.<sup>8</sup> They argue that sobriety checkpoints effectively deter and detect drunk drivers.<sup>9</sup>

Although opponents of sobriety checkpoints concede that drunk driving is a serious problem, they argue that the roadblocks violate the fourth amendment prohibition against unreasonable searches and seizures.<sup>10</sup> This Section examines the factors emphasized by both proponents and opponents of sobriety checkpoints.

---

Do you approve of sobriety checkpoints as an enforcement measure to detect and remove drunk drivers from the highway?

Yes	No	Don't Know	Unknown
87.1%	9.3%	3.0%	0.6%

*Id.* at 4.

7. See *infra* notes 21-22.

8. See *supra* notes 1-3, *infra* notes 11-19, and accompanying text.

9. For example, Mothers Against Drunk Driving (MADD) contends that sobriety checkpoints are particularly effective at *detering* drunk drivers. Mothers Against Drunk Driving, Sobriety Checkpoints 2 (undated position paper) (copy on file with U. MICH. J.L. REF.). The reason for this, MADD posits, is that community awareness of the risk of arrest for drunk driving is heightened in those locales where sobriety checkpoints are implemented. As a result, the fear of arrest deters people from drinking and driving. MADD further cites the experiences of Delaware, Virginia, and the District of Columbia to show that the arrest "yield" of sobriety checkpoints can be equal to or exceed that of comparable resources used in traditional patrols. *Id.*

10. U.S. CONST. amend. IV. The fourth amendment states:

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.

The fourth amendment applies to the states through the fourteenth amendment. *Mapp v. Ohio*, 367 U.S. 643, 660 (1961).

### A. *The State Interest in Preventing Drunk Driving*

The state has an overwhelming interest in eliminating drunk drivers from public roads.<sup>11</sup> Courts have described this interest as "compelling"<sup>12</sup> and of "enormous magnitude,"<sup>13</sup> and have recognized the problem of drunk driving as one of "epidemic proportions."<sup>14</sup> Statistics demonstrate that the courts have good reason to use such strong language. In each year from 1982 through 1986, the National Highway Transportation Safety Administration (NHTSA) estimates that over half of all fatal car accidents were alcohol-related.<sup>15</sup>

One study analyzed over one million accidents and concluded that the proportion of fatalities among drunk drivers is 3.8 times greater than that among sober drivers.<sup>16</sup> Another report estimates that one out of every two people will be involved in an alcohol-related accident in his lifetime.<sup>17</sup>

Alcohol-related motor vehicle accidents are characterized by certain patterns. Eighty-two percent of all fatal accidents occur between 6 p.m. and 6 a.m.<sup>18</sup> In some areas, it has been estimated that one out of every ten drivers is legally impaired or drunk on the typical weekend night.<sup>19</sup> These factors demonstrate the existence of an opportunity to target specific times when the need to deter and detect drunk driving is greatest.

Advocates of sobriety checkpoints argue that the roadblocks can and will reduce the casualty rate.<sup>20</sup> Many courts agree that sobriety checkpoints are an effective tool to combat drunk driving.<sup>21</sup> In particular, the courts have found that the deterrent ef-

---

11. *State v. Deskins*, 234 Kan. 529, 536, 673 P.2d 1174, 1181 (1983); *see also* *South Dakota v. Neville*, 459 U.S. 553, 558 (1983) ("The carnage caused by drunk drivers is well documented and needs no detailed recitation here.").

12. *People v. Bartley*, 109 Ill. 2d 273, 279, 486 N.E.2d 880, 885 (1985), *cert. denied*, 475 U.S. 1068 (1986).

13. *Deskins*, 234 Kan. at 536, 673 P.2d at 1181.

14. *State v. Superior Court*, 143 Ariz. 45, 48, 691 P.2d 1073, 1076 (1984).

15. NATIONAL COMM'N AGAINST DRUNK DRIVING, *supra* note 1, at 6 (citing the estimates of NHTSA's National Center for Statistics and Analysis).

16. Findlay, *Drunks, Accidents: Fatal Mix*, USA Today, Sept. 19-21, 1986, at 1A, col. 3.

17. Mothers Against Drunk Driving, A Summary of Statistics Related to the National Drunk Driving Problem 1 (Aug. 1986) (unpublished collection of statistics) (copy on file with U. MICH J.L. REF.).

18. *Id.*

19. *Id.*

20. *See* Mothers Against Drunk Driving, *supra* note 9, at 1.

21. *See, e.g.*, *Little v. State*, 300 Md. 485, 505-06, 479 A.2d 903, 913 (1984) ("[T]he pilot program had a substantial impact on the drunk driving problem. . . . The prospect

fect of sobriety checkpoints is singularly robust.<sup>22</sup> A survey of motorists stopped at two sobriety checkpoints in California shows that drivers believe that checkpoints increase the likelihood of detecting and arresting drunk drivers.<sup>23</sup> Public perception is important because people who believe that drunk drivers will be caught are less likely to take the chance of driving while intoxicated.

### B. *The Individual's Privacy Interest*

The fourth amendment to the United States Constitution protects individuals from "unreasonable searches and seizures."<sup>24</sup> A seizure occurs when a person reasonably believes that he is not free to act as he chooses, taking into account the totality of the circumstances.<sup>25</sup> Although this criterion appears straightforward, it nonetheless causes the courts some difficulty.<sup>26</sup> For the pur-

---

of being stopped at a roadblock thus convinced some intoxicated individuals to find alternate means of transportation.").

22. See, e.g., *State v. Superior Court*, 143 Ariz. 45, 48-49, 691 P.2d 1073, 1076-77 (1984) (concluding that sobriety checkpoints might be no more efficient than roving patrols at detecting drunk drivers, but finding that sobriety checkpoints were superior in deterring drunk driving); *People v. Scott*, 63 N.Y.2d 518, 527, 473 N.E.2d 1, 4-5, 483 N.Y.S.2d 649, 652-53 (1984) ("[T]he systematic, constitutionally conducted traffic checkpoint is the single most effective action in raising the community's perception of the risk of being detected and apprehended for drunk driving." (quoting the report of the Governor's Alcohol and Highway Safety Task Force)).

23. D. Montagner, *supra* note 6, at 4. Table II shows the survey results that were tabulated from 2,473 drivers that had been stopped at sobriety checkpoints.

TABLE II

Do you believe that sobriety checkpoints will increase a drunk driver's risk of being detected and arrested?

Yes	No	Don't Know	Unknown
87.1%	7.7%	4.7%	0.5%

Do you believe that sobriety checkpoints will deter some people from driving while intoxicated?

Yes	No	Don't Know	Unknown
79.6%	13.5%	6.5%	0.4%

*Id.*

24. U.S. CONST. amend. IV.

25. See *Florida v. Royer*, 460 U.S. 491, 503-04 (1983) (applying the standard used by Justice Stewart in *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). In *Mendenhall*, Justice Stewart stated: "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." 446 U.S. at 554.

26. See, e.g., *INS v. Delgado*, 466 U.S. 210 (1984) (holding that when one member of a large group of INS agents approached a factory worker and began to ask two or three

pose of argument, this Note will assume that sobriety checkpoints ordinarily result in fourth amendment seizures. The seizure occurs when a law enforcement official requires a vehicle to stop because he has arguably "seized" both the car and its occupants.<sup>27</sup>

The resulting question is whether the "seizure" of a vehicle at a sobriety checkpoint is a "reasonable" seizure under the fourth amendment.<sup>28</sup> The traditional standard for measuring the reasonableness of interfering with an individual's right to privacy is the demonstration of probable cause.<sup>29</sup> Probable cause exists only when a law enforcement officer, using reasonable caution, confronts someone she believes is engaging in criminal activity.<sup>30</sup> The officer must know facts or circumstances that justify her belief that the person either has committed, or is committing, a criminal offense.<sup>31</sup>

Without probable cause, only a brief and limited detention is authorized.<sup>32</sup> Such a detention must be no longer than necessary under the circumstances,<sup>33</sup> and must be no more intrusive than necessary to achieve its purpose.<sup>34</sup> Accordingly, it is important to measure the extent to which sobriety checkpoints intrude upon accepted boundaries of privacy.

Law enforcement procedures are not all equally intrusive upon privacy or individual liberties. For this reason, some seizures are constitutionally permissible although others are not. For example, traffic signals cause the involuntary detention of motor vehicles, resulting in delay and inconvenience to the driver. The constitutional validity of traffic signals remains uncontested, however, because signals do not intrude upon individuals' rights to privacy. Moreover, because traffic signals cannot distinguish among motorists, they ensure a fair and impartial distribution of inconveniences.

---

questions, the agent's behavior would not have led a reasonable man to believe that he was not free to leave without responding).

27. *Cf.* *United States v. Nicholas*, 448 F.2d 622, 624 (8th Cir. 1971) (holding that a seizure occurred although a driver was physically free to drive away, because the police showed sufficient authority to cause a reasonable driver to feel obliged to stop).

28. *See* U.S. CONST. amend. IV.

29. For a discussion and definition of the probable cause standard, see *Carroll v. United States*, 267 U.S. 132, 161 (1925).

30. *Id.* To detain an individual, an officer is required to have reasonable grounds for her act. The officer's suspicion can be based either upon personal knowledge or upon information communicated to the officer by third parties. *Id.*

31. *Id.*

32. *United States v. Place*, 462 U.S. 696, 703 (1983).

33. *United States v. Lockett*, 484 F.2d 89, 90-91 (9th Cir. 1973).

34. *Id.*

Toll booths at bridges and expressways also result in the involuntary detention of motor vehicles. When a driver stops to pay a nominal sum for using a particular road segment, she may be subjected to the glances and surveillance of the booth attendant. The attention paid to particular motorists is unlikely to be systematic. Nonetheless, the state does not stigmatize motorists by forcing them to stop at toll booths. The reason for this is twofold. First, the driver is secure in the knowledge that the booth attendant will treat each motorist similarly; toll booth attendants rarely have discretionary powers. With this equal treatment, no reasonable driver would feel stigmatized. Second, toll booths have gained wide public acceptance.<sup>35</sup> Sobriety checkpoints can be administered analogously to toll booths.<sup>36</sup>

Courts also have noted that, because an automobile's occupants and contents are at least partially visible to others on the roadway, a driver has a lower privacy expectation in his car than in his home or office.<sup>37</sup> It is unreasonable for someone driving on public roads to expect people to avert their eyes at the sight of an oncoming vehicle.

## II. MATCHING SOBRIETY CHECKPOINTS WITH AN APPROPRIATE CONSTITUTIONAL STANDARD

This Section examines the constitutional tests courts employ to determine the appropriateness of various regulatory procedures. These tests balance competing interests and investigate reasonableness. Using this approach, the United States Supreme Court has upheld some searches even where probable cause was conspicuously absent. The use of balancing was also a resonant feature in the Court's decision to uphold fixed border checkpoints. That decision upheld searches that were conducted in the absence of individualized suspicion. Among the balancing tests articulated by the Court is the administrative-search framework. The Section concludes that sobriety checkpoints meet the requirements for classification as administrative searches.

---

35. In this respect, they are similar to sobriety checkpoints. *See supra* note 6 and accompanying text.

36. "[T]he humiliation implicit in being singled out as an object of suspicion is absent [from roadblocks]." 3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 9.5(a), at 549-50 (2d ed. 1987) (quoting MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE 266 (1975)).

37. *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

### A. *Balancing the Competing Interests*

Given the significant interests of both individual privacy and public safety, courts have suggested possible methods for choosing between the competing interests. The United States Supreme Court suggests one possible framework in *Terry v. Ohio*.<sup>38</sup> In *Terry*, the Court held that probable cause is not a constitutional prerequisite for conducting a stop-and-frisk.<sup>39</sup> Even though a stop-and-frisk is unquestionably a seizure under the fourth amendment, the Court found that such a seizure might not be unreasonable.<sup>40</sup> The Court further held that the reasonableness of police conduct is a function of balancing the need to search or seize against the intrusion that such a search or seizure would cause.<sup>41</sup> If the need to search or seize outweighs the corresponding intrusion, then such a search or seizure is constitutionally permissible.<sup>42</sup> The two key elements weighed in the balance were the protection that a stop-and-frisk affords a patrolling officer and the intrusiveness of a seizure used only to find weapons.<sup>43</sup>

A drunk driver behind the wheel of a two-ton automobile is a person with a formidable weapon. Moreover, the goal of sobriety checkpoints is not only to protect patrolling officers, but also to protect the public in general. The problem with using the *Terry* rationale to justify sobriety checkpoints is that the checks are conducted in the absence of the requisite particularized facts and exigencies germane to a *Terry* frisk. For this reason, the fact pattern of sobriety checkpoints suggests that an alternative

---

38. 392 U.S. 1 (1968). The *Terry* Court examined the constitutional standard governing the manner in which a police officer conducts a stop-and-frisk. The term "stop-and-frisk" refers to limited protective searches conducted when an officer believes that a suspect might be armed. An example of a stop-and-frisk would be if an officer patted an individual's clothing in an attempt to discover dangerous weapons. See *id.* at 26.

39. *Id.* at 27 ("[T]he issue is [instead] whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.").

40. *Id.* at 26-28. The Court found that the officer's decision to conduct a stop-and-frisk was reasonable based upon the officer's suspicion that the suspects were about to commit a robbery. This was so even if the officer did not have adequate information to take the suspects into custody for the purpose of prosecution. *Id.*

41. *Id.* at 21.

42. *Id.*

43. *Id.* at 26. Searches must be "strictly circumscribed by the exigencies" that justify their initiation. Thus, in the case of the stop-and-frisk, the search "must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search." *Id.*

standard to the traditional *Terry* test might be more appropriate.

In addition to *Terry*, the Court announced another fourth amendment test that fits the sobriety checkpoint situation more squarely. In these cases, courts look beyond the situation directly visible to the government agent engaging in a search and consider the net gain or loss to society that would result from using the specific search method.<sup>44</sup> Thus, when evaluating the need for sobriety checkpoints at a particular location, it would be appropriate for a government official to consider empirical evidence that illustrates the extent of the drunk driving problem in the community. In these situations, courts look first to the amount of delay involved in the search.<sup>45</sup> Next, the courts look to the amount of discretion accorded the government agent making the search.<sup>46</sup> Under this general societal balancing, the Court, in *United States v. Martinez-Fuerte*, upheld fixed border checkpoints for immigration control.<sup>47</sup> This method of analysis has also led the Court to invalidate roving checks for valid driver's licenses in *Delaware v. Prouse*<sup>48</sup> as creating great potential for abuse.<sup>49</sup>

This standard appears to be a sensible method by which to judge the constitutionality of sobriety checkpoints. In fact, the Court specifically stated that "[q]uestioning of all oncoming traffic at roadblock-type stops is one possible alternative" to the roving checks invalidated in *Prouse*.<sup>50</sup> The Court reached this conclusion notwithstanding a simultaneous finding that stopping a vehicle and detaining its occupants was a "seizure" within the

---

44. See, e.g., *Adams v. Williams*, 407 U.S. 143, 147 (1972) ("[W]e reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation . . .").

45. *United States v. Martinez-Fuerte*, 428 U.S. 543, 566 (1976). In considering the question of whether permanent border checkpoints are consistent with the fourth amendment, the Court noted that border checkpoints resulted in only minimal interference to legitimate traffic. *Id.* at 559.

46. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) ("[Our] 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.")

47. 428 U.S. 543, 562-63 (1976) ("[W]e hold that the stops and questioning at issue may be made in the absence of any individualized suspicion at reasonably located checkpoints. . . . [T]he intrusion here is sufficiently minimal that no particularized reason need exist to justify it . . .").

48. 440 U.S. 648 (1979).

49. *Id.* at 662-63.

50. *Id.* at 663. The *Prouse* case specifically deals with checks for driving licenses. The government interest in ensuring safe roadways, however, is served at least as well by preventing drunk driving as it is by keeping unlicensed drivers off the roads.

meaning of the fourth amendment.<sup>51</sup> The Court upheld the fixed checkpoint in *Martinez-Fuerte*, noting that, although the checkpoints operated without individualized suspicion and without advance judicial authorization, "the need to make routine checkpoint stops is great, [and] the consequent intrusion on Fourth Amendment interests is quite limited."<sup>52</sup> The Court noted that the checkpoint stops were principally limited to a brief question or two directed at the vehicle's driver, and that the level of visual inspection was significantly less than in a roving patrol stop.<sup>53</sup> As the next section of this Note will argue, this analytical approach fits comfortably into the administrative search framework.

### B. *Sobriety Checkpoints as Administrative Searches*

In *Camara v. Municipal Court*,<sup>54</sup> the United States Supreme Court held that general-area building inspections require warrants, but that obtaining a warrant need not "depend upon specific knowledge of the condition of the particular dwelling."<sup>55</sup> Accordingly, health and safety inspectors were allowed to make routine inspections of various structures and dwellings.<sup>56</sup> The Court found that such inspections were necessary to achieve widespread compliance with municipal codes.<sup>57</sup>

Because it recognized the government's stake in preventing conditions that might endanger public health and safety,<sup>58</sup> the Court found that the traditional test of probable cause was best viewed as a test to determine whether a particular general-area inspection was reasonable.<sup>59</sup> Thus, the *Camara* majority described the need for inspection in terms of the reasonable goals of code enforcement.<sup>60</sup> As the Court noted, balancing the overall

---

51. *Id.* at 653.

52. 428 U.S. 543, 557 (1976).

53. *Id.* at 558.

54. 387 U.S. 523 (1967).

55. *Id.* at 538.

56. *Id.* ("[T]he area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment . . .").

57. *Id.* at 535-36 ("[T]he only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures.").

58. *Id.* at 537.

59. *Id.* at 538 ("[I]t is obvious that 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.").

60. *Id.* at 537.

need to search against the invasion necessitated by such a search is the only appropriate test.<sup>61</sup> Finally, the *Camara* Court concluded that "reasonableness is still the ultimate standard"<sup>62</sup> and stated, "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant."<sup>63</sup>

The reasoning set forth in *Camara* has been used to analyze the constitutionality of a wide variety of general regulatory schemes designed to protect the public. For example, airport searches and screenings have been justified using the *Camara* rationale.<sup>64</sup> In *People v. Hyde*, routine antihijack screening procedures were found reasonable despite the fact that probable cause was conspicuously absent.<sup>65</sup> Although probable cause did not exist for each individual who passed through the airport, the court was able to balance the competing interests and found that the public's right to safe travel prevailed.<sup>66</sup>

Application of the *Camara* holding has not been limited to airports. The administrative search rationale has been applied to food establishments,<sup>67</sup> premises licensed to sell alcoholic beverages,<sup>68</sup> and pharmacies.<sup>69</sup> In addition, inspections without individualized suspicion have been upheld for junkyards,<sup>70</sup> coal mines,<sup>71</sup> and stores licensed to deal in sporting weapons.<sup>72</sup> Fi-

61. *Id.* at 536-37.

62. *Id.* at 539.

63. *Id.*

64. See *People v. Hyde*, 12 Cal. 3d 158, 524 P.2d 830, 115 Cal. Rptr. 358 (1974) (upholding predeparture screening of all passengers and carry-on baggage).

65. *Id.* at 165, 524 P.2d at 834, 115 Cal. Rptr. at 362.

[S]earches conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime, may be permissible under the Fourth Amendment though not supported by a showing of probable cause directed to a particular place or person to be searched.

*Id.* (citing *United States v. Davis*, 482 F.2d 893, 908 (9th Cir. 1973)).

66. *Id.* at 167, 524 P.2d at 835, 115 Cal. Rptr. at 363.

67. *State v. Phelps*, 12 Ariz. App. 83, 467 P.2d 923 (1970).

68. *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970).

69. *United States ex rel. Terraciano v. Montayne*, 493 F.2d 682, 685 (2d Cir. 1974) (upholding inspections expressly limited to business hours, where health officials' authority is not extended to forcible entry).

70. *State v. Wybierala*, 305 Minn. 455, 459, 235 N.W.2d 197, 199-200 (1975) (holding that, where defendant is a licensed junk and secondhand dealer, regulations are particularly needed because such shops are the places where thieves usually attempt to dispose of stolen property).

71. *Youghiogheny & Ohio Coal Co. v. Morton*, 364 F. Supp. 45, 51 (S.D. Ohio 1973) ("The governmental interest in promoting mine safety, it might be concluded, far outweighs any interest the mine operators may have in privacy.").

72. *United States v. Biswell*, 406 U.S. 311, 315 (1972).

nally, courts have approved administrative searches at truck weigh-stations and inspection checkpoints.<sup>73</sup>

The United States Supreme Court concluded that where "regulatory inspections further [an] urgent . . . interest, and the possibilities of abuse and the threat to privacy are not of impressive dimensions, the inspection may proceed."<sup>74</sup> The key to a *Camara*-type administrative search is whether the particular government interest can be protected adequately by limiting searches solely to cases of individualized suspicion.<sup>75</sup> In *People v. Hyde*, the fact that "airline officials may have no particularized suspicion [that] a prospective passenger is armed or dangerous does not operate to vitiate the search."<sup>76</sup> The airport screenings are generally conducted with courtesy and expediency, and alternative techniques are unlikely to yield much success.<sup>77</sup>

The *Camara* Court examined three principal criteria to determine the appropriateness of an administrative inspection. First, the Court stated that such programs must have public acceptance.<sup>78</sup> In the case of sobriety checkpoints, the evidence suggests that drivers stopped at sobriety checkpoints approve of their use.<sup>79</sup> When this fact is combined with the burgeoning number of groups that vocally oppose drunk driving,<sup>80</sup> and with the legislative response to that public outcry, measures to combat drunk driving seem to have gained public acceptance.

The second criterion developed by the *Camara* Court is whether an alternative canvassing technique that would achieve acceptable results is available.<sup>81</sup> The almost 24,000 drunk-driving fatalities estimated to have occurred in 1986 demonstrate that acceptable results are not being achieved.<sup>82</sup> Accordingly,

---

73. See *Delaware v. Prouse*, 440 U.S. 648, 663 n.26 (1979) (noting that the Court's holding does not cast doubt "on the permissibility of roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention").

74. *United States v. Biswell*, 406 U.S. 311, 317 (1972).

75. See *Camara v. Municipal Court*, 387 U.S. 523, 537 (1967). As an example, the Court noted the difficulty of observing faulty wiring from outside a building. The Court found administrative inspections reasonable only when no other technique can achieve acceptable results. *Id.*

76. *People v. Hyde*, 12 Cal. 3d 158, 167, 524 P.2d 830, 835, 115 Cal. Rptr. 358, 363 (1974).

77. *Id.* Moreover, "it [is] impracticable, if not impossible, for airline officials to seek a search warrant for individual passengers." *Id.* at 168-69, 524 P.2d at 836, 115 Cal. Rptr. at 364.

78. 387 U.S. at 537.

79. See *supra* note 6 and accompanying text.

80. Typical examples of those groups are Mothers Against Drunk Driving and Students Against Drunk Driving.

81. 387 U.S. at 537.

82. See *supra* notes 1-3 and accompanying text.

there is a need to implement new measures to ensure compliance with laws that require motorists to act safely.

The third criterion used by the *Camara* Court is that inspections must not be personal in nature.<sup>83</sup> For example, in *People v. Hyde*, everyone entering the airport was equally subject to weapon screening.<sup>84</sup> *Camara* further stated that such inspections must be aimed at preventing crimes rather than at their discovery.<sup>85</sup> Unfortunately, this requirement is somewhat ambiguous. The *Camara* Court applied it to building inspections despite the attachment of criminal sanctions to exposed violators.<sup>86</sup> Similarly, individuals who bring weapons into an airport in violation of the law face prosecution. Nonetheless, most courts have found sobriety checkpoints more effective at deterring drunk driving than at detecting drunk drivers for the purposes of arrest and prosecution.<sup>87</sup>

Sobriety checkpoints are closely analogous to other searches that the Court has subjected to administrative-search scrutiny. It is thus appropriate to apply the administrative-search framework to sobriety checkpoints. Sobriety checkpoints meet each of the criteria delineated in *Camara*. As a consequence, sobriety checkpoints qualify as constitutional administrative searches.

### III. PROPOSALS FOR REFORM

New strategies are necessary because of the inability of current law enforcement methods to curtail drunk driving sufficiently. Sobriety checkpoints alone will not solve the problem. Rather, a comprehensive program designed to reduce drunk driving must be enacted. Although sobriety checkpoints are only one aspect of such a program, they are nevertheless an important component.

The Constitution requires more than merely demonstrating a great state interest to override fourth amendment concerns. Even demonstrating that a particular law enforcement technique results in social gain, as measured by a cost-benefit test, is insufficient to secure its constitutionality. Instead, the fourth amendment requires that the government use the least intrusive means

---

83. 387 U.S. at 537.

84. 12 Cal. 3d at 169, 524 P.2d at 837, 115 Cal. Rptr. at 365.

85. 387 U.S. at 537.

86. 387 U.S. at 531 (noting that discovery of a violation during an administrative search often leads to a criminal complaint).

87. See *supra* notes 21-22 and accompanying text.

available to correct the problem in question. When implementing sobriety checkpoints, binding guidelines are necessary to minimize checkpoint variation and officer discretion. Similarly, the Constitution requires minimal inconvenience to the motorist. Only with such restrictions can courts find sobriety checkpoints constitutional.

### A. *Use of Alternative Programs*

Sobriety checkpoints are needed to achieve "acceptable results" in the fight against drunk driving<sup>88</sup> because roving patrols and other enforcement mechanisms have failed to reduce sufficiently the dangers created by drunk driving.<sup>89</sup> One argument favoring the use of checkpoints emphasizes that the drunk and erratic driver may cause injury before he is spotted by a roving patrol car. Another is based on the claim that it is difficult to spot a drunk driver. This difficulty may increase in heavy traffic or at night. Many drunk drivers, although able to avoid conspicuously erratic movements, are nonetheless driving with an impaired ability so that they do not have the necessary reflexes to respond adequately to the sudden changes in the environment that drivers regularly face.<sup>90</sup>

As a result of the difficulty in spotting drunk drivers, it is necessary to implement a host of auxiliary programs to detect and deter drunk driving. A program may limit the availability of alcohol by increasing age restrictions on alcohol purchases and

---

88. See *supra* note 81 and accompanying text.

89. See *supra* notes 1-3 and accompanying text.

90. *People v. Bartley*, 109 Ill. 2d 273, 287, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986).

[T]he ability of a drunk driver to avoid erratic movements along a roadway does not mean he will be able to respond to an emergency where prompt reflexes may be of great importance. . . . [Given that] the carnage caused by drinking and then driving is so serious it warrants resort to both types of apprehension — stopping automobiles which are being driven erratically and roadblocks to detect drunken drivers before they drive in an erratic manner.

*Id.*

Professor LaFave has noted that:

[E]ven if a patrolling officer is fortunate enough to be in the vicinity where a drunk driver is operating his vehicle, it does not necessarily follow that the driver will at that particular time drive his car in such a fashion as to create a reasonable suspicion justifying a stop. And the chances of such observation in the first place are rather slight, given the substantial number of intoxicated drivers on the roads.

3 W. LAFAVE, *supra* note 36, § 10.8(d), at 72-73.

thereby reducing drunk driving among youths.<sup>91</sup> Similarly, dramshop and social-host liability legislation may encourage those who serve alcohol to act responsibly.<sup>92</sup> It is also necessary, however, to deter those individuals who have ready access to alcohol. When such individuals decide to drink and drive, the decision usually involves some consideration of the risk involved. Although typical drivers may conclude that "they can handle it," drivers may be less sure they can avoid detection by government authorities if an effective checkpoint program exists.

As part of a comprehensive program to combat drunk driving, sobriety checkpoints serve to deter and detect drunk drivers. The fear of arrest often reduces the frequency with which occasional offenders drive under the influence of alcohol. One reason that the driver may be less willing to drive drunk is the likelihood of heavy punishment if convicted. Thus, stiff sentences will, to an extent, help reduce the number of individuals who drive while inebriated. For this reason, fourteen states impose mandatory sentences on first-time drunk drivers.<sup>93</sup> Eighteen states even refuse to permit plea-bargaining in driving-while-intoxicated cases.<sup>94</sup> Individuals may fear exposure and conviction almost as much as the criminal penalty itself, particularly if the penalty for first-time offenders is less severe. As educational programs become more effective and social mores change, it is probable that communities will take drunk driving more seriously. Perhaps then drunk drivers will be treated like other violent criminals. Still, the number of arrests resulting from a particular measure should not be the sole criterion used to gauge the success of the technique or methodology employed.<sup>95</sup> Rather, it is at

---

91. See NATIONAL COMM'N AGAINST DRUNK DRIVING, *supra* note 1, at 4. Forty-nine states now require purchasers of alcohol to be at least 21 years old. *Id.* See also Mothers Against Drunk Driving, Research on Teens — Drinking & Drugs & Driving 1 (Aug. 1986) (citing NHTSA statistics showing that driving while alcohol-impaired is the leading cause of death for individuals aged 16 to 24).

92. See NATIONAL COMM'N AGAINST DRUNK DRIVING, *supra* note 1, at 4. Twenty-five states have dramshop statutes. *Id.*

93. *Id.*

94. *Id.*

95. See *People v. Bartley*, 109 Ill. 2d 273, 287, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986).

The National Transportation Safety Board's Safety Study on deterrence of drunk driving recognizes the deterrent potential of drunk-driving roadblocks. The study points out that they preclude drunk drivers from assuming they will escape trouble simply by driving cautiously. In addition, the study points out that sobriety checkpoints are visible aspects that drunk driving is being combated and they afford police the opportunity to observe a larger number of motorists than would be possible during typical patrol procedures. Admittedly the possibility that a driver will face a roadblock on his way home will not discour-

least as important to deter drunk drivers in the first place. To this end, sobriety checkpoints will "preclude drunk drivers from assuming they will escape trouble simply by driving cautiously."<sup>96</sup> Moreover, sobriety checkpoints reinforce the message that government takes drunk driving seriously because checkpoints serve as a visible warning to both drunk drivers and sober drivers who contemplate driving in an impaired state.

### B. *Minimizing Discretion and Variation*

The United States Supreme Court has stated that "[w]here a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause, we have not hesitated to adopt such a standard."<sup>97</sup> However, as the Court suggested in *Delaware v. Prouse*, one condition on which reasonableness may depend is the level of unbridled discretion attaching to a particular checkpoint program.<sup>98</sup>

In a recent case, *Ingersoll v. Palmer*,<sup>99</sup> the California Supreme Court upheld the use of sobriety checkpoints.<sup>100</sup> The court held that, "while the intrusiveness of a sobriety checkpoint stop is not trivial, the enumerated safeguards [in the case] operate to minimize the intrusiveness to the extent possible."<sup>101</sup> Thus, the court declared that, "[o]n balance, the intrusion on Fourth Amendment interests is sufficiently circumscribed so that it is easily outweighed and justified by the magnitude of the drunk driving menace and the potential for deterrence."<sup>102</sup> For the balance to tilt in favor of sobriety checkpoints, the *Ingersoll* court

---

age all drunk driving, but on the basis of common sense alone one must conclude that many persons aware of that prospect will have second thoughts about [drinking and] driving.

*Id.*

96. *Id.*

97. *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (discussing the application of the fourth amendment to school search cases).

98. 440 U.S. 648, 661 (1979).

99. 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987).

100. *Id.* at 1350, 743 P.2d at 1319, 241 Cal. Rptr. at 62. The California Supreme Court subsequently used *Ingersoll* as its basis for vacating a 1986 California appellate opinion that found sobriety checkpoints unconstitutional. In *Re Richard T.*, 44 Cal. 3d 775, 750 P.2d 297, 244 Cal. Rptr. 655 (1988), *cert. denied sub nom. Richard T. v. California* 57 U.S.L.W. 3392 (U.S. Dec. 6, 1988) (No. 88-318). See also *Savage, Roadblocks to Check Driver Sobriety OKd*, Los Angeles Times, Dec. 6, 1988, at 1, col. 3 (discussing the United States Supreme Court's decision to deny certiorari in the *Richard T.* case).

101. 43 Cal.3d at 1347, 743 P.2d at 1317, 241 Cal. Rptr. at 60.

102. *Id.*

emphasized two essential factors: (1) decisionmaking must be made at the supervisory level, and (2) discretion of field officers must be limited.<sup>103</sup> These factors decrease the danger of arbitrary and capricious enforcement.<sup>104</sup> Most other states upholding the constitutionality of sobriety checkpoints have also emphasized the need for checkpoint operations to follow a plan drafted in advance by supervisory personnel.<sup>105</sup>

Perhaps of paramount importance is eliminating officer discretion with regard to selectivity in stopping motorists. Discretion allows roadblocks to act as the functional equivalent of roving patrols. To this end, the California Supreme Court mandated that sobriety checkpoints either stop all motorists or every motorist at a fixed interval (e.g., every fifth car).<sup>106</sup> Similarly, field officers must be required to treat all motorists equally until probable cause of an offense is established.<sup>107</sup>

Courts should review the promulgated guidelines.<sup>108</sup> This is consistent with the theory that field officers should follow carefully drafted guidelines delineating checkpoint procedures, including substantial planning and briefing. An administrative warrant from a neutral and detached magistrate or judge should be required in advance of implementing a sobriety checkpoint. The magistrate or judge should ensure that both officer discretion and motorist inconvenience are minimized. Since the sobri-

---

103. *Id.* at 1341-42, 743 P.2d at 1313-14, 241 Cal. Rptr. at 56-57.

104. *See id.* at 1342, 743 P.2d at 1313, 241 Cal. Rptr. at 57.

105. *See, e.g.,* *Little v. State*, 300 Md. 485, 490, 479 A.2d 903, 905 (1984). In *Little*, comprehensive regulations were reviewed first by the Superintendent of the Maryland State Police and then by the Attorney General and the Governor. *See also State v. Superior Court*, 143 Ariz. 45, 46-47, 691 P.2d 1073, 1074-75 (1984) (including a detailed command directive prepared by the Commander of the Traffic Enforcement Division of the Tucson Police Department outlining guidelines for officer behavior and procedures for operating the checkpoint); *Commonwealth v. Trumble*, 396 Mass. 81, 89, 483 N.E.2d 1102, 1107 (1985) (holding that the guidelines for officer behavior contained ample provisions to ensure safety and minimal inconvenience to motorists and also clearly proscribed the arbitrary selection of vehicles); *Lowe v. Commonwealth*, 230 Va. 346, 351, 337 S.E.2d 273, 276-77 (1985), *cert. denied*, 475 U.S. 1083 (1986) (finding that officers assigned to roadblocks were given 24 hours of training and a manual signed by the Chief of Police listing checkpoint locations, assignment of personnel, safety provisions, interviewing procedures, and other aspects of a detailed routine).

106. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1342, 743 P.2d 1299, 1314, 241 Cal. Rptr. 42, 57 (1987) (holding that a "neutral mathematical selection criteria" should be employed).

107. *See United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). "[A]ny further detention . . . must be based on consent or probable cause." *Id.* at 567 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975)).

108. *See Opinion of the Justices*, 128 N.H. 14, 509 A.2d 744 (1986) (answering a request of the New Hampshire House of Representatives and holding constitutional sobriety checkpoints that were subject to a system of independent review by a neutral and detached magistrate).

ety checkpoint is, by definition, implemented without individualized suspicion, the same exigency as often exists in other cases is not present. Thus, subjecting sobriety checkpoints to the delays involved in obtaining an administrative warrant will not detract from their effectiveness.

### C. *Minimizing Inconvenience*

In *Ingersoll v. Palmer*, the California Supreme Court identified several factors essential to the smooth administration of a sobriety checkpoint.<sup>109</sup> The constitutionality of a sobriety checkpoint depends in part upon the checkpoint's performance in these categories, as the Constitution requires that the government not interfere with individuals' lives any more than is necessary. The factors cited by the California Supreme Court are: (1) the checkpoint must be reasonably located; (2) the time and duration of the checkpoint must be set in good judgment; (3) indications of the official nature of the roadblock must be present; (4) the average time each motorist is detained must be minimized; and (5) advance publicity must accompany the institution of each checkpoint.<sup>110</sup>

The smooth operation of sobriety checkpoints requires trained officers. The training may involve drills where officers practice asking brief questions to stopped drivers. It may also include teaching officers how to offer literature to passing drivers<sup>111</sup> or how to shine a flashlight in the vicinity of the driver to determine the driver's condition.<sup>112</sup> To ensure the constitutionality of the seizures, the supervisory guidelines must place adequate restrictions both on how the field officers observe the drivers and on how they question them.<sup>113</sup>

The location of the checkpoint is important for two reasons. First, the checkpoint should not unduly interfere with the safe flow of traffic.<sup>114</sup> This consideration also requires other features,

---

109. 43 Cal. 3d at 1342-47, 743 P.2d at 1314-1317, 241 Cal. Rptr. at 57-60.

110. *Id.*

111. See *Lowe v. Commonwealth*, 230 Va. 346, 351, 337 S.E.2d 273, 276 (1985), *cert. denied*, 475 U.S. 1083 (1986); see also *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1327, 743 P.2d 1299, 1303, 241 Cal. Rptr. 42, 46 (noting that the screening officer handed each driver stopped an information flyer).

112. See *People v. Bartley*, 109 Ill. 2d 273, 288, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986).

113. See *supra* note 111.

114. See *State v. Coccoma*, 177 N.J. Super. 575, 583, 427 A.2d 131, 135 (1980).

such as adequate lighting.<sup>115</sup> Second, the government interest in implementing sobriety checkpoints is strongest on those roads known to have high accident rates resulting from drunk driving.<sup>116</sup>

Sobriety checkpoints should be clearly marked as official police stopping points to reduce potential fear and anxiety of passing motorists. Uniformed officers should be visible to approaching motorists to assure drivers that the checkpoint is legitimate.<sup>117</sup> In addition, advance publicity on the general use of sobriety checkpoints will prevent unnecessary surprise and confusion to motorists.<sup>118</sup> The publicity will also have the valuable side-effect of deterring drunk driving.<sup>119</sup>

#### IV. CONCLUSION

The average length of detention at a sobriety checkpoint is approximately fifteen to thirty seconds.<sup>120</sup> Drunk driving results annually in thousands of deaths, hundreds of thousands of injuries, and billions of dollars in property damage.<sup>121</sup> These competing interests must be balanced in order to assess the desirability of sobriety checkpoints. These are also the factors weighed in the constitutional balancing test of the fourth amendment.

The application of a warrant-based administrative search must be limited to an evenhanded, uniformly administered inspection. Where unnecessary police officer discretion or checkpoint variation exists, the checkpoint cannot survive constitutional objections. This means that if an officer asks a motorist to pull to the side, or to step outside of his car, the officer is obliged to demonstrate probable cause based on individualized circum-

---

115. See *Commonwealth v. Trumble*, 396 Mass. 81, 90, 483 N.E.2d 1102, 1109 (1985) (discussing the need for signs, flares, and flashing lights).

116. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1343, 743 P.2d 1299, 1314, 241 Cal. Rptr. 42, 58 (1987); see also *People v. Bartley*, 109 Ill. 2d 273, 288, 486 N.E.2d 880, 887 (1985), cert. denied, 475 U.S. 1068 (1986). The time that the checkpoint operates is also important. The court notes that "the frequency of violations is known to increase at night and particularly as patrons return from drinking establishments which have just closed." *Id.*

117. 43 Cal. 3d at 1345, 743 P.2d at 1316, 241 Cal. Rptr. at 59; see *People v. Peil*, 122 Misc. 2d 617, 617, 471 N.Y.S.2d 532, 533 (1984) (discussing use of uniformed deputy sheriff).

118. 43 Cal. 3d at 1346, 743 P.2d at 1316, 241 Cal. Rptr. at 60.

119. *Id.*

120. See *supra* note 5 and accompanying text.

121. See *supra* notes 1-3 and accompanying text.

stances.<sup>122</sup> Similarly, inconveniences to motorists must be minimized.

The ultimate decision whether to implement sobriety checkpoints must be based on their effectiveness. The degree of effectiveness is a critical factor in assessing both policy and constitutional considerations. In measuring effectiveness, however, it is important to remember that the appropriate variable is not the number of arrests made, but rather the number of lives saved.<sup>123</sup>

—*Mark R. Soble*

---

122. See *supra* note 107 and accompanying text.

123. See *supra* notes 9, 22, 95, and accompanying text.

