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THE USE OF SOBRIETY CHECKPOINTS TO COMBAT DRUNK DRIVERS: KNOWING WHEN TO SAY WHEN

*State v. Welch*¹

To combat the tragedy drunk drivers cause on this country's roadways, governmental bodies and groups at the grassroots level have established a wide range of measures.² These efforts are obviously directed at a worthwhile cause.³ However, the use of sobriety checkpoints to promote this cause is the subject of a great deal of controversy.⁴ A sobriety checkpoint is a roadblock law enforcement officials set up to detect and deter drunk drivers. After a car is stopped at the roadblock, an officer generally will ask the driver to produce a valid driver's license and vehicle registration form. During this brief encounter, the officer will check for outward signs of intoxication, such as slurred speech by the driver or an odor of alcohol. If the officer has reason to believe the driver is intoxicated, she directs the driver to a secondary location where the driver takes a field sobriety test.⁵ Of course, this could eventually result in the driver's arrest. Since the initial stop of the vehicle is not based on probable cause, or even reasonable suspicion, a sobriety checkpoint raises serious fourth amendment questions.⁶ With the decision in *State v. Welch*,⁷ Missouri joined twenty-

1. 755 S.W.2d 624 (Mo. Ct. App. 1988).

2. Ifft, *Curbing the Drunk Driver under the Fourth Amendment: The Constitutionality of Roadblock Seizures*, 71 GEO. L.J. 1457, 1457-58 (1983).

3. See *infra* notes 88-92 and accompanying text.

4. See, e.g., Comment, *Sobriety Checkpoint Roadblocks: Constitutional in Light of Delaware v. Prouse?*, 28 ST. LOUIS U.L.J. 813 (1984).

5. Jones, *The Constitutionality of Sobriety Checkpoints*, 43 WASH. & LEE L. REV. 1469, 1469 (1986); Comment, *Sobriety Checkpoint Roadblocks: Constitutional in Light of Delaware v. Prouse?*, 28 ST. LOUIS U.L.J. 813, 813 (1984); Note, *Exploring the Constitutional Limits of Suspicionless Seizures: The Use of Roadblocks to Apprehend Drunk Drivers*, 71 IOWA L. REV. 577, 600 (1986) [hereinafter *Constitutional Limits*].

6. 4 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8(d) (1987 & Supp. 1988); Ifft, *supra* note 2, at 1458. The fourth amendment to the United States Constitution reads as follows:

The right of the people to be secure in their persons, houses, papers, and

eight states that have addressed these difficult constitutional considerations.⁸

This Note will discuss the court's rationale in *Welch*. It will show which questions the decision answered about the use of sobriety checkpoints in Missouri and which questions remain for future consideration. In addition, the Note will examine the various constitutional issues surrounding a state's use of a sobriety checkpoint.

THE WELCH CASE

On July 5, 1986, the Missouri Highway Patrol conducted a sobriety checkpoint⁹ and detained Gary Dean Welch.¹⁰ After checking Welch's driver's license, a state trooper noticed a strong odor of beer and observed signs of intoxication.¹¹ During field sobriety tests, Welch had difficulty walking and reciting the alphabet.¹² He also displayed poor responsive eye movement.¹³ The patrolmen arrested Welch and took him to the county jail.¹⁴ A breathalyzer test showed his blood alcohol content (BAC) level to be 0.17%¹⁵ and he was charged with driving while intoxicated. At trial, Welch moved to suppress all evidence obtained as a result of the sobriety checkpoint,¹⁶ claiming the checkpoint violated his fourth amendment rights.¹⁷

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.

U.S. CONST. amend. IV.

7. 755 S.W.2d 624 (Mo. Ct. App. 1988).

8. Courts in twenty-one states, including Missouri, have upheld the constitutionality of sobriety checkpoints. Seven of these twenty-one states have also found that certain checkpoints were not conducted in a constitutionally permissible manner. Eight other states have ruled that sobriety checkpoints are unconstitutional, but only three have found them to be unconstitutional per se. For additional information, see *infra* notes 24-27 and accompanying text.

9. *Welch*, 755 S.W.2d at 625.

10. *Id.*

11. *Id.*

12. *Id.* at 626.

13. *Id.*

14. *Id.*

15. *Id.* Legal intoxication in Missouri can be predicated upon a BAC level in excess of 0.10%. MO. REV. STAT. § 577.012 (1986).

16. *Welch*, 755 S.W.2d at 626.

17. Welch also claimed similar rights under the Missouri Constitution were violated as well as four state statutes. *Id.* This Note does not address the statutory arguments. Concerning Welch's claim relating to the Missouri Constitution, it is clear that both state and federal constitutional considerations apply, at least to the extent of the fourth amendment, to protect an individual during a sobriety checkpoint. *Sibron v. New York*, 392 U.S. 40, 60-61 (1968); *Cooper v. California*, 386 U.S. 58, 62 (1967). While a state has the power to grant more protection under its own constitution than what is provided under the fourth amendment, it may

The Court overruled his motion and used the evidence to convict him.¹⁸ The court of appeals affirmed the conviction,¹⁹ noting that this was the first case in Missouri to address the constitutionality of sobriety checkpoints.²⁰ It held that sobriety checkpoints are not unconstitutional per se,²¹ and that the conduct of this particular checkpoint was constitutionally permissible.²² The Court emphasized that this checkpoint proceeded pursuant to a predesigned plan which supervisory personnel established to govern the procedure of the checkpoint, that motorists were warned in advance of the checkpoint, and that the detention of the drivers was minimal.²³

The manner in which police conduct a particular checkpoint is certainly relevant to its constitutionality. This is evident from an analysis of decisions from states that have ruled on the constitutionality of sobriety checkpoints. Courts in twenty-one states have upheld sobriety checkpoints,²⁴ while fifteen

not provide less protection. *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980); *Cooper v. California*, 386 U.S. 58, 62 (1967). However, since the Missouri Constitution grants the same protection as that afforded by the fourth amendment, *Welch*, 755 S.W.2d at 632, it was not necessary to consider differences that might exist between state and federal constitutions in deciding *Welch*.

The states of Oklahoma, Oregon, and Washington have determined that sobriety checkpoints are unconstitutional per se. *State v. Henderson*, 114 Idaho 293, ____, 756 P.2d 1057, 1063 (1988). It is interesting to note that the constitutions of Oregon and Washington both provide greater protection to individuals than the fourth amendment. *State v. Parms*, 523 So. 2d 1293, 1303 (La. 1988); *City of Seattle v. Mesiani*, 110 Wash. 2d 454, ____, 755 P.2d 775, 776-77 (1988) (en banc). By contrast, New Jersey has upheld the constitutionality of sobriety checkpoints despite a state constitution that grants greater protection than the fourth amendment. *State v. Kirk*, 202 N.J. Super. 28, ____, 493 A.2d 1271, 1274 (1985).

18. *Welch*, 755 S.W.2d at 626.

19. *Id.* at 633.

20. *Id.* at 626.

21. *Id.* at 633.

22. *Id.*

23. *Id.*

24. *Stark v. Perpich*, 590 F. Supp. 1057 (D. Minn. 1984); *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073 (1984); *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 743 P.2d 1299, 241 Cal. Rptr. 42 (1987); *State v. Abelson*, 485 So. 2d 861 (Fla. Dist. Ct. App. 1986); *State v. Golden*, 171 Ga. App. 27, 318 S.E.2d 693 (1984); *People v. Bartley*, 109 Ill. 2d 273, 486 N.E.2d 880 (1985), *cert. denied*, 475 U.S. 1068 (1986); *State v. Garcia*, 489 N.E.2d 168 (Ind. Ct. App. 1986), *aff'd*, 500 N.E.2d 158 (Ind. 1986), *cert. denied*, 481 U.S. 1014 (1986); *State v. Riley*, 377 N.W.2d 242 (Iowa Ct. App. 1985); *State v. Deskins*, 234 Kan. 529, 673 P.2d 1174 (1983); *Kinslow v. Commonwealth*, 660 S.W.2d 677 (Ky. Ct. App. 1983), *cert. denied*, 465 U.S. 1105 (1984); *Little v. State*, 300 Md. 485, 479 A.2d 903 (1984); *Commonwealth v. Shields*, 402 Mass. 162, 521 N.E.2d 987 (1988); *State v. Welch*, 755 S.W.2d 624 (Mo. Ct. App. 1988); *Opinion of the Justices*, 128 N.H. 14, 509 A.2d 744 (1986); *State v. Cocomo*, 177 N.J. Super. 575, 427 A.2d 131 (1980); *City of Las Cruces v. Betancourt*, 105 N.M. 655, 735 P.2d 1161 (Ct. App. 1987); *People v. Scott*, 63 N.Y.2d 518, 473 N.E.2d 1, 483 N.Y.S.2d 649 (1984); *State v. Alexander*, 22 Ohio Misc. 2d 34 (1985); *Commonwealth v. Tarbert*, 517 Pa. 277,

states have found certain checkpoints unconstitutional.²⁵ However, only three of these fifteen states have found sobriety checkpoints unconstitutional per se,²⁶ and seven have found checkpoints operated under different circumstances to be valid.²⁷

A review of United States Supreme Court opinions also provides guidance in this area. *Delaware v. Prouse*²⁸ outlines the analysis to use in determining the constitutionality of a roadblock. It requires balancing the individual's fourth amendment concerns against the promotion of legitimate governmental interests which the roadblock serves.²⁹ The factors involved in this balancing are the gravity of the public concern that is the purpose of the roadblock, the degree to which the roadblock advances that concern, and the severity of the intrusion upon motorists stopped at the roadblock.³⁰ To minimize the intrusion on motorists, the court in *Prouse* required law enforcement personnel to establish "neutral criteria" to limit the discretion of officers who perform the stops.³¹ Therefore, the *Welch* court correctly pointed out the important role of supervisory personnel in selecting the site of a sobriety checkpoint, establishing guidelines for its operation,³² and

535 A.2d 1035 (1987); *State v. Martin*, 145 Vt. 562, 496 A.2d 442 (1985); *Lowe v. Commonwealth*, 230 Va. 346, 337 S.E.2d 273 (1985), *cert. denied*, 475 U.S. 1084 (1986).

In *Welch*, it is noted that Pennsylvania found sobriety checkpoints unconstitutional in deciding *Commonwealth v. Tarbert*, 348 Pa. Super. 306, 502 A.2d 221 (1985). *Welch*, 755 S.W.2d at 629. However, the Pennsylvania Supreme Court reviewed this decision two years later and concluded that sobriety checkpoints could be conducted in compliance with the Pennsylvania state constitution. *Commonwealth v. Tarbert*, 517 Pa. 277, —, 535 A.2d 1035, 1043 (1987).

25. *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 663 P.2d 992 (1983) (en banc); *State v. Jones*, 483 So. 2d 433 (Fla. 1986); *State v. Henderson*, 114 Idaho 293, 756 P.2d 1057 (1988); *State v. Parmis*, 523 So. 2d 1293 (La. 1988); *Commonwealth v. McGeoghegan*, 389 Mass. 137, 449 N.E.2d 349 (1983); *State v. Muzik*, 379 N.W.2d 599 (Minn. Ct. App. 1985); *State v. Crom*, 222 Neb. 273, 383 N.W.2d 461 (1986); *State v. Koppel*, 127 N.H. 286, 499 A.2d 977 (1985); *State v. Kirk*, 202 N.J. Super. 28, 493 A.2d 1271 (1985); *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984); *State v. Boyanovsky*, 304 Or. 131, 743 P.2d 711 (1987); *Commonwealth v. Leninsky*, 360 Pa. Super. 49, 519 A.2d 984 (1986); *State v. Olgaard*, 248 N.W.2d 392 (S.D. 1976); *Webb v. State*, 739 S.W.2d 802 (Tex. Crim. App. 1987); *City of Seattle v. Mesiani*, 110 Wash. 2d 454, 755 P.2d 775 (1988).

26. *Henderson*, 114 Idaho at —, 756 P.2d at 1063.

27. States which have found sobriety checkpoints constitutional under one set of facts and unconstitutional under another include Arizona, Florida, Massachusetts, Minnesota, New Hampshire, New Jersey and Pennsylvania.

28. 440 U.S. 648 (1979).

29. *Id.* at 654.

30. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979).

31. *Prouse*, 440 U.S. at 662. *See also Brown*, 443 U.S. at 51 (neutral limitations control conduct of officers performing roadblock).

32. *Welch*, 755 S.W.2d at 632. The roadblock is to be established at a site

not permitting officers in the field to randomly select which vehicles to stop.³³

The United States Supreme Court also stressed the importance of reducing the fear and annoyance to motorists detained at a roadblock. The considerations taken into account are illustrated by comparing cases which involve roving patrols to detect illegal aliens with a case that involves a checkpoint set up for the same purpose. Roving border patrol stops in *United States v. Brignoni-Ponce*³⁴ and *Almeida-Sanchez v. United States*³⁵ were held to be unconstitutional. However, in *United States v. Martinez-Fuerte*,³⁶ the Court upheld a checkpoint used to detect illegal aliens. The Court distinguished *Martinez-Fuerte* from *Brignoni-Ponce* and *Almeida-Sanchez* by pointing out that the fear and concern caused to individuals as a result of being detained is appreciably diminished at a checkpoint stop.³⁷ In *Welch*, the manner in which the roadblock was operated clearly diminished the fear that may accompany a roadside stop. In addition to stopping other vehicles, police placed a sign on the roadway to tell drivers the purpose of the stop before they were detained.³⁸ Further, patrol vehicles had flashing lights and officers wore reflective vests to indicate the official nature of the operation.³⁹

A third criteria which the *Welch* court considered important is the length of time each driver is detained at the roadblock. This is a relevant factor in determining the degree of intrusiveness on motorists who are stopped at the checkpoint.⁴⁰ Officers are to detain drivers only to briefly

where a large number of alcohol-related arrests or accidents have occurred. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1343, 743 P.2d 1299, 1314, 241 Cal. Rptr. 42, 58 (1987); *State v. Kirk*, 202 N.J. Super. 28, ___, 493 A.2d 1271, 1288 (1985); *Commonwealth v. Tarbert*, 517 Pa. 277, ___, 535 A.2d 1035, 1043 (1987). *But see State v. Webb*, 739 S.W.2d 802 (Tex. Crim. App. 1987) (checkpoint established near drinking establishment held invalid); *City of Seattle v. Mesiani*, 110 Wash. 2d 454, ___, 755 P.2d 775, 776-78 (1988) (checkpoint designed to stop maximum number of drunk drivers held invalid). It is to be conducted at a time when a significant number of drunk drivers are expected to occupy the roads. *Palmer*, 43 Cal. 3d at 1345, 743 P.2d at 1315, 241 Cal. Rptr. at 59; *State v. Deskins*, 234 Kan. 529, 541, 673 P.2d 1174, 1185 (1983); *City of Las Cruces v. Betancourt*, 105 N.M. 655, 659, 735 P.2d 1161, 1165 (Ct. App. 1987); *Tarbert*, 517 Pa. at ___, 535 A.2d at 1043.

33. *Welch*, 755 S.W.2d at 633.

34. 422 U.S. 873 (1975).

35. 413 U.S. 266 (1973).

36. 428 U.S. 543 (1976).

37. *Id.* at 558. This results from the fact that motorists at a checkpoint can see other vehicles being stopped as well as visible signs of the officer's authority. *Id.*

38. *Welch*, 755 S.W.2d at 632.

39. *Id.*

40. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1346, 743 P.2d 1299, 1316, 241 Cal. Rptr. 42, 59 (1987); *State v. Jones*, 483 So. 2d 433, 439 (Fla. 1986); *State*

explain the purpose of the stop and to check for signs of intoxication.⁴¹ To justify a more extensive intrusion, such as conducting a field sobriety test, an officer must have articulable suspicion that the motorist is drunk.⁴² The officer may request that an individual submit to a chemical analysis test only when there is probable cause to believe that the person is drunk.⁴³ The roadblock in *Welch* complied with these standards.⁴⁴

BEYOND THE *WELCH* CASE

While the criteria considered by the court in *Welch* are relevant issues in a constitutional analysis of a sobriety checkpoint, several issues that pertain to the conduct of a checkpoint were not decided. These include whether law enforcement officers may use a systematic formula that does not stop all traffic, whether advance publicity is necessary prior to conducting the checkpoint, and whether law enforcement officers need a search warrant to operate a checkpoint. Additional issues include the non-permanent nature of a checkpoint, and safety aspects of a sobriety checkpoint.

The *Welch* court pointed out that a roadblock which is designed to stop all vehicles may be permissible.⁴⁵ However, it is not clear from the

v. Deskins, 234 Kan. 529, 541, 673 P.2d 1174, 1185 (1983); City of Las Cruces v. Betancourt, 105 N.M. 655, 659, 735 P.2d 1161, 1165 (Ct. App. 1987); Commonwealth v. Tarbert, 517 Pa. 277, —, 535 A.2d 1035, 1043 (1987); State v. Martin, 145 Vt. 562, 571, 496 A.2d 442, 448 (1985). Courts generally do not establish a specific length of time in helping to determine the severity of the intrusion. The standard is one of "reasonableness." Brown v. Texas, 443 U.S. 47, 50 (1979). Roadblocks have been upheld where drivers were detained for only 30 seconds. Little v. State, 300 Md. 485, 506, 479 A.2d 903, 914 (1984); Lowe v. Commonwealth, 230 Va. 346, —, 337 S.E.2d 273, 277 (1985), cert. denied, 475 U.S. 1084 (1986). The United States Supreme Court upheld a border patrol checkpoint in which the defendant was subjected to a three to five minute detention. United States v. Martinez-Fuerte, 428 U.S. 543, 547 (1976). By comparison, in *Welch*, a majority of drivers were detained less than a minute. *Welch*, 755 S.W.2d at 632.

41. *Palmer*, 43 Cal. 3d at 1346, 743 P.2d at 1316, 241 Cal. Rptr. at 59; *Betancourt*, 105 N.M. at 659, 735 P.2d at 1165.

42. *Palmer*, 43 Cal. 3d at 1346, 743 P.2d at 1316, 241 Cal. Rptr. at 59; 4 W. LAFAYE, *supra* note 6, § 10.8(d), at 69; Ifft, *supra* note 2, at 1486.

43. *Palmer*, 43 Cal. 3d at 1346, 743 P.2d at 1316, 241 Cal. Rptr. at 59; Ifft, *supra* note 2, at 1486.

44. A majority of vehicles were detained less than a minute. *Welch*, 755 S.W.2d at 632. A field sobriety test was not given unless an officer suspected that a driver was intoxicated. *Id.* at 633. A breathalyzer test was only conducted if the driver showed signs of intoxication during the field sobriety test. *Id.* at 626.

45. *Id.* at 627, 633.

opinion whether this is required.⁴⁶ The majority opinion in *Prouse* indicated that a roadblock which stops all traffic may be constitutional since this type of stop prevents the unconstrained discretion of officers in the field to randomly stop whichever vehicles they choose.⁴⁷ In a concurring opinion, Justice Blackmun suggested that a predetermined system, such as stopping every tenth car, might be used.⁴⁸ If supervisory personnel establish such a system before conducting the checkpoint, it also prevents officers who perform the roadblock from using their discretion to single out which vehicles to stop. Therefore, a plan that does not provide for directing all traffic into the checkpoint seems to be in compliance with *Prouse*, so long as officers use some formula which prevents them from deciding which cars to stop.⁴⁹

When a plan for conducting a roadblock does provide that officers must stop all traffic, officers in the field can not be expected to comply with this rule in all situations. If traffic flow becomes heavy and all vehicles are stopped, a longer detention for each driver and safety hazards from cars lined up along the road could result. To avoid this problem, officers need limited discretion to allow them to pull over all vehicles when traffic is light, and to use regular intervals at other times.⁵⁰ It is also appropriate for officers to wave traffic through the checkpoint when a predetermined number of cars are lined up.⁵¹ The officers conducting the *Welch* roadblock used this procedure.⁵²

Advance publicity of a sobriety checkpoint is frequently considered in determining its constitutionality.⁵³ This serves two purposes. First, drivers

46. One factor that the court stressed is that supervisory personnel in this case had put together a plan prior to conducting the checkpoint. *Id.* at 632. As part of this plan, there could be no random selection by officers in the field regarding which vehicles to stop. *Id.* at 633. Since the plan in *Welch* provided for stopping all vehicles, *id.*, it is not clear whether the court would give approval to a plan that provided for stopping, *e.g.*, every third car or every blue car.

47. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

48. *Id.* at 664.

49. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1342, 743 P.2d 1299, 1314, 241 Cal. Rptr. 42, 57 (1987); *State v. Jones*, 483 So. 2d 433, 438 (Fla. 1986); *People v. Scott*, 63 N.Y.2d 518, 526, 473 N.E.2d 1, 4, 483 N.Y.S.2d 649, 652 (1984).

50. *See* 4 W. LaFAVE, *supra* note 6, § 10.8(d), at 79.

51. *Id.* at 79. LaFave recommends that officers keep a log of what measures are taken at the roadblock in order to defend their activities in a judicial setting. *Id.* at 80.

52. *Welch*, 755 S.W.2d at 633.

53. *Palmer*, 43 Cal. 3d at 1346, 743 P.2d at 1316, 241 Cal. Rptr. at 60; *State v. Deskins*, 234 Kan. 529, 541, 673 P.2d 1174, 1185 (1983); *Commonwealth v. McGeoghegan*, 389 Mass. 137, 143, 449 N.E.2d 349, 353 (1983); *State v. Kirk*, 202 N.J. Super. 28, ___, 493 A.2d 1271, 1288 (1985); *City of Las Cruces v. Betancourt*, 105 N.M. 655, 659, 735 P.2d 1161, 1165 (Ct. App. 1987); *Commonwealth v. Leninsky*, 360 Pa. Super. 49, ___, 519 A.2d 984, 992-93 (1986) (footnote omitted). *But see Jones v. State*, 483 So. 2d 433, 439 (Fla. 1986) (public dissemination of roadblock information not required).

are less likely to be afraid or surprised if they have been made aware before they stop that a roadblock will be conducted in the community.⁵⁴ The second purpose advance publicity serves concerns the distinction between the uses of sobriety checkpoints as a means of deterring drunk drivers as opposed to detecting drunk drivers. This is important in that it is easier to justify the use of a checkpoint as a deterrent to would-be drunk drivers than as a means of detecting drunk drivers.⁵⁵

Where advance publicity is lacking, it is only logical to conclude that the sole purpose of the checkpoint is to detect drunk drivers.⁵⁶ A checkpoint can only be effective in deterring a drunk person from driving if he or she is made aware that the checkpoint is in operation prior to getting behind the wheel.⁵⁷ Informing the public that a checkpoint will be conducted, but not disclosing where, creates the greatest deterrent effect.⁵⁸ If they know the location, drunk drivers are encouraged to take a different route to their destination so as to avoid the checkpoint.⁵⁹

States may require law enforcement officers to obtain a search warrant before conducting a sobriety checkpoint.⁶⁰ This idea is based on the "area

54. *Leninsky*, 360 Pa. Super. at ____, 519 A.2d at 993 n.16; see 4 W. LAFAYE, *supra* note 6, § 10.8(d), at 81-82.

55. *State v. Muzik*, 379 N.W.2d 599, 603-04 nn. 2 & 4 (Minn. Ct. App. 1985). This conclusion is reached by considering the second element of the constitutional analysis for roadblocks (*i.e.*, the degree to which the seizure advances the public interest). *Brown v. Texas*, 443 U.S. 47, 51 (1979). Sobriety checkpoints may not be as effective as other means of detecting drunk drivers and therefore they may be an inefficient use of police manpower if detection is their only purpose. See *infra* notes 98-99 and accompanying text. However, sobriety checkpoints primarily promote the public interest through their use as a deterrent to prevent those who are drunk from driving. See *infra* notes 107-16 and accompanying text.

56. *Muzik*, 379 N.W.2d at 603 n.2.

57. *Cf. State v. Koppel*, 127 N.H. 286, 293, 499 A.2d 977, 982 (1985) (publicity of sobriety checkpoint is chief means of deterring drunk drivers); *Kirk*, 202 N.J. Super. at ____, 493 A.2d at 1288 (advance publicity acts as substantial deterrent to would-be drunk drivers); *Betancourt*, 105 N.M. at 659, 735 P.2d at 1165 (deterrent value of roadblock enhanced by widespread publicity); see 4 W. LAFAYE, *supra* note 6, § 10.8(d), at 81-82 (deterrent value of roadblock heightened by publicity).

58. *Commonwealth v. McGeoghegan*, 389 Mass. 137, 143, 449 N.E.2d 349, 353 (1983); *Leninsky*, 360 Pa. Super. at ____, 519 A.2d at 993 n.16. It may be effective, however, if the public is simply made aware that the police conduct checkpoints without giving out the date or time they are to be performed. If the public is aware that checkpoints might be conducted on any given night, the publicity could create a deterrent effect even on nights when checkpoints are not being operated.

59. *State v. Superior Court*, 143 Ariz. 45, ____, 691 P.2d 1073, 1077 (1984).

60. *Opinion of the Justices*, 128 N.H. 14, 509 A.2d 744 (1986); *State v. Olgaard*, 248 N.W.2d 392, 395 (S.D. 1976). One year before *Opinion of the Justices*, the New Hampshire Supreme Court invalidated a checkpoint operated without a warrant. *State v. Koppel*, 127 N.H. 286, 499 A.2d 977 (1985).

warrant" which the United States Supreme Court approved in *Camara v. Municipal Court*.⁶¹ In *Camara*, the Court held that probable cause was a prerequisite to justify housing inspections for compliance with municipal codes.⁶² It stated, however, that a warrant could be issued based on the condition of the area to be inspected and that probable cause did not need to be directed at an individual structure.⁶³

In applying this logic to a sobriety checkpoint, a neutral magistrate would review a plan established by law enforcement personnel to ensure that the location of the roadblock would promote the public interest without being discriminatory and that the procedure to be followed would not constitute a serious intrusion to individual travelers.⁶⁴ Justice Powell suggested this procedure, albeit in the context of a concurring opinion involving an unconstitutional border patrol stop.⁶⁵

There are several advantages to this approach. First, a neutral magistrate and law enforcement officials could review decisions concerning the location and procedures of a checkpoint.⁶⁶ While police officers could still conduct efficient roadblocks, the chance for abuse would be minimized.⁶⁷ The second advantage to this approach is that it furthers the goals of the fourth amendment without seriously impeding the legitimate goals of law enforcement.⁶⁸ A third advantage to a warrant requirement is that it strengthens the state's chance of winning in a suit to determine the constitutionality of a particular checkpoint. In a suppression hearing for evidence obtained without a warrant, the burden of proof is on the state;⁶⁹ while the burden rests with the defendant when a warrant is obtained.⁷⁰ Thus, when police

61. 387 U.S. 523 (1967).

62. *Id.* at 538.

63. *Id.*

64. *Ifft, supra* note 2, at 1484-85; Jones, *supra* note 5, at 1491-92.

65. *Almeida-Sanchez v. United States*, 413 U.S. 266, 283 (1973) (Powell, J., concurring).

66. *Ifft, supra* note 2, at 1484-85; Jones, *supra* note 5, at 1491-92.

67. *See* 4 W. LAFAVE, *supra* note 6, § 10.8(d), at 78.

68. The United States Supreme Court has stated that:

The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.

Terry v. Ohio, 392 U.S. 1, 21 (1968) (footnote omitted). While the process of obtaining a warrant may produce some inconvenience to law enforcement officers, this is not enough, by itself, to dispose of the warrant requirement. *Almeida-Sanchez*, 413 U.S. at 283 (Powell, J., concurring).

69. *Commonwealth v. Antobenedetto*, 366 Mass. 51, 57, 315 N.E.2d 530, 534-35 (1974); Jones, *supra* note 5, at 1470.

70. *United States v. Henry*, 763 F.2d 329, 331 (8th Cir. 1985); *People v. Wilson*, 256 Cal. App. 2d 411, 417, 64 Cal. Rptr. 172, 176 (1967), *cert. denied*, 391 U.S. 903 (1968); *Antobenedetto*, 366 Mass. at 56, 315 N.E.2d at 534.

conduct a checkpoint pursuant to an "area warrant," the burden of proof shifts from the state to the defendant in a suppression hearing.

Despite this rationale, courts generally have upheld sobriety checkpoints operated without a warrant.⁷¹ The defendant in *United States v. Martinez-Fuerte*,⁷² raised the issue in the context of border patrol checks. The United States Supreme Court held that the requirement of a warrant to conduct the checkpoint would serve no legitimate purpose.⁷³ The *Martinez-Fuerte* Court distinguished *Camara* by pointing out that the search in *Camara* was of a residence, where a warrant is traditionally required.⁷⁴ The *Martinez-Fuerte* Court also suggested that an officer's authority to conduct a roadside checkpoint is clearly visible to motorists, where such authority is not evident in the case of a housing inspector.⁷⁵ Furthermore, the Court added that the decision to stop a car (*i.e.*, seize) at a checkpoint is made by supervisory personnel, not the officer in the field.⁷⁶

While the *Martinez-Fuerte* decision focused upon the distinction between an immobile house and a mobile vehicle, other courts have considered the mobility of the checkpoint. The rationale for performing a roadblock at a permanent location is that its function is more likely to become common knowledge to motorists and therefore they will not be as frightened or surprised by the detention.⁷⁷ At least one court has found a sobriety checkpoint to be unconstitutional, due in part to the fact that it was not conducted at a permanent location.⁷⁸ However, other courts have been unpersuaded by this argument.⁷⁹ If a checkpoint is to be held at a permanent location, drivers will avoid that particular road, and thus the roadblock will lose its deterrent effect and ability to detect drunk drivers.⁸⁰ Therefore, a permanent checkpoint established to combat drunk driving does not

71. 4 W. LAFAYE, *supra* note 6, § 10.8(d), at 77; *Little v. State*, 300 Md. 485, 509, 479 A.2d 903, 912 (1984); *State v. Kirk*, 202 N.J. Super. 28, —, 493 A.2d 1271, 1280 (1985).

72. 428 U.S. 543, 564-66 (1976).

73. *Id.* It is interesting that the Court's opinion was written by Justice Powell, who originally proposed the idea of obtaining an "area warrant" for roving patrols in *Almeida-Sanchez v. United States*, 413 U.S. 266, 283 (1973) (Powell, J., concurring).

74. *Martinez-Fuerte*, 428 U.S. at 565.

75. *Id.*

76. *Id.* at 566.

77. *State v. Koppel*, 127 N.H. 286, 293-94, 499 A.2d 977, 983 (1985).

78. *State v. Olgaard*, 248 N.W.2d 392, 394 (S.D. 1976).

79. *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1343, 743 P.2d 1299, 1314, 241 Cal. Rptr. 42, 58 (1987); *People v. Bartley*, 109 Ill. 2d 273, 284, 486 N.E.2d 880, 885 (1985), *cert. denied*, 475 U.S. 1068 (1986); *Little v. State*, 300 Md. 485, 507, 479 A.2d 903, 914 (1984); *People v. Scott*, 63 N.Y.2d 518, 527-28, 473 N.E.2d 1, 5, 483 N.Y.S.2d 649, 653 (1984); 4 W. LAFAYE, *supra* note 6, § 10.8(d), at 76.

80. *Scott*, 63 N.Y.2d at 527, 473 N.E.2d at 5, 483 N.Y.S.2d at 653.

advance the public interest in such a manner as to outweigh the level of intrusion on individual motorists.⁸¹

A final factor to consider in analyzing the conduct of a sobriety checkpoint is motorists' safety while detained at the stop.⁸² Such consideration includes providing proper lighting as well as protecting motorists from traffic dangers while they are entering and exiting the roadblock.⁸³

While each of the foregoing criteria are important in analyzing the constitutionality of a sobriety checkpoint, they are considered as elements in a balancing test. Accordingly, some elements, such as limiting the discretion of officers in the field, are more important than others.⁸⁴ Further, the state is not required to fulfill each element of the test.⁸⁵

The opinion in *Welch* focused almost entirely on the way in which a sobriety checkpoint was conducted. Its analysis did address the degree of intrusion on individual motorists, one of the elements of the balancing test.⁸⁶ Focussing only upon the conduct of the checkpoint, however, fails to consider other elements of the test, *i.e.*, the gravity of the public concern and the degree to which the checkpoint advances that concern.⁸⁷

The gravity of the public concern served by sobriety checkpoints is very high. Drunk drivers cause approximately 25,000 deaths each year in this country.⁸⁸ This represents about 55% of all traffic fatalities.⁸⁹ Drunk drivers are expected to cause 708,000 injuries each year, 74,000 of which

81. While a permanent checkpoint such as the one described in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), may promote the public interest in preventing illegal immigrants from crossing the border, it does not necessarily follow that a permanent checkpoint will likewise promote the interest in combatting drunk drivers.

82. *Bartley*, 109 Ill. 2d at 291, 486 N.E.2d at 888; *State v. Deskins*, 234 Kan. 529, 541, 673 P.2d 1174, 1185 (1983); *Little*, 300 Md. at 506, 479 A.2d at 914; *State v. Kirk*, 202 N.J. Super. 28, _____, 493 A.2d 1271, 1288 (1985); *City of Las Cruces v. Betancourt*, 105 N.M. 655, 659, 735 P.2d 1161, 1165 (Ct. App. 1987).

83. *State v. Jones*, 483 So. 2d 433, 439 (Fla. 1986); *Betancourt*, 105 N.M. at 659, 735 P.2d at 1165; *Webb v. State*, 739 S.W.2d 802, 810 (Tex. Crim. App. 1987).

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

85. *Id.* Cf. *Bartley*, 109 Ill. 2d at 292, 486 N.E.2d at 888 (lack of advance publicity alone did not render checkpoint invalid).

86. *Brown v. Texas*, 443 U.S. 47, 50-51 (1979).

87. *Id.*

88. *Commonwealth v. Leninsky*, 360 Pa. Super. 49, _____, 519 A.2d 984, 988 (1986) (citing H.R. REP. NO. 867, 97th Cong., 2d Sess. 7 (1982); *Federal Legislation to Combat Drunk Driving, Hearing on S. 671, S. 672, S. 2158 Before the Subcomm. on Surface Transp. of the Senate Comm. on Commerce, Science & Transportation*, 97th Cong., 2d Sess. 65 (1982); Fell, *Alcohol Involvement in Traffic Accidents* (May 1982); NHTSA, *Fatal Accident Reporting System: 1980 Report* (Oct. 1981)).

89. *Little v. State*, 300 Md. 485, 504, 479 A.2d 903, 912 (1984).

will be serious.⁹⁰ The economic loss attributable to drunk drivers ranges from \$21-24 billion annually.⁹¹ In addition, it is estimated that 1/10 of all motor vehicle drivers on a weekend night are drunk.⁹² Obviously, the state has a great interest in keeping drunk drivers off the road.

In discussing the degree to which sobriety checkpoints advance the public interest, courts most often address two issues. The first is whether the court should consider that additional means which involve less of an intrusion on motorists are available to enforce the same interest, *i.e.*, roving patrols that pull over motorists based on probable cause to believe that the driver is intoxicated. Some courts have found sobriety checkpoints unconstitutional based in large part on this argument.⁹³ Other courts have either given little weight to this factor or have not considered it at all in their constitutional analysis.⁹⁴ Proponents of the position that a public interest can be enforced by roadblocks only when there is no less intrusive means to do so argue that lack of such an alternative distinguishes the border patrol checkpoint upheld in *Martinez-Fuerte* from sobriety checkpoints.⁹⁵ Despite this argument, the fact that the public interest may be accomplished by a less intrusive means is not enough, by itself, to invalidate a roadblock.⁹⁶

The second issue concerning the role of sobriety checkpoints in advancing the public interest is whether they are an effective means of

90. *Leninsky*, 360 Pa. Super. at ____, 519 A.2d at 988.

91. *Id.*

92. Westendorf & Westendorf, *The Prouse Dicta: From Random Stops to Sobriety Checkpoints?*, 20 IDAHO L. REV. 127, 149 (1984).

93. *State v. Koppel*, 127 N.H. 286, 292, 499 A.2d 977, 981 (1985); *City of Seattle v. Mesiani*, 110 Wash. 2d 454, ____, 755 P.2d 775, 778 (1988) (en banc). See also Comment, *The Constitutionality of Drunk Driving Roadblocks*, 58 U. COLO. L. REV. 109, 115 (1986).

94. *People v. Bartley*, 109 Ill. 2d 273, 286-87, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986); *State v. Garcia*, 489 N.E.2d 168, 170 (Ind. Ct. App. 1986), *aff'd*, 500 N.E.2d 158 (Ind. 1986), *cert. denied*, 481 U.S. 1014 (1986); *Commonwealth v. Shields*, 402 Mass. 162, ____, 521 N.E.2d 987, 990 (1988).

95. *Koppel*, 127 N.H. at 293, 499 A.2d at 983 (checkpoint is only effective means of detecting illegal aliens).

96. *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973). Authority for this proposition is also found in *Delaware v. Prouse*, 440 U.S. 648 (1979). In *Prouse*, the United States Supreme Court held that states may perform roadblocks to enforce their interest in seeing that drivers of motor vehicles comply with license and vehicle registration laws so long as they properly limit both the intrusion on motorists and the discretion of officers in the field. *Id.* at 663. It was also the impression of the Court that less intrusive means existed to enforce the state's interest. As an example, the Court rationalized that an unlicensed driver is more likely to commit a traffic violation and therefore will be more apt to come into contact with law enforcement officials. *Id.* at 659. The Court also mentioned that police officers may enforce the public interest by observing license plates to see that they are updated. *Id.* at 660.

combatting the damage drunk drivers cause. While the existence of roving patrols (*i.e.*, a less intrusive means than a roadblock) does not make sobriety checkpoints unconstitutional by itself,⁹⁷ this does not mean the use of a checkpoint actually promotes the public interest. A good argument can be made that sobriety checkpoints actually hinder the efforts of law enforcement to detect drunk drivers since they require an inefficient expenditure of resources and personnel.⁹⁸ It is likely that far fewer DWI arrests will result from a checkpoint than from a roving officer.⁹⁹ A typical checkpoint also produces a low number of arrests in comparison to the number of vehicles stopped.¹⁰⁰

The low number of arrests likely to result at a sobriety checkpoint in comparison to those from a roving officer does not necessarily lead to the conclusion that checkpoints are counterproductive. Sobriety checkpoints can be successful in detecting a certain percentage of drunk drivers whom roving patrols would not otherwise apprehend.¹⁰¹ This is illustrated by comparing

97. See *supra* note 96 and accompanying text.

98. *State v. Henderson*, 114 Idaho 293, ___, 756 P.2d 1057, 1060-61 (1988) (same number of officers at roadblock would make more arrests of drunk drivers if they were on roving patrol).

99. *State v. Superior Court*, 143 Ariz. 45, ___, 691 P.2d 1073, 1076 (1984); *Henderson*, 114 Idaho at ___, 756 P.2d at 1060-61; *State v. Koppel*, 127 N.H. 286, 288, 499 A.2d 977, 979 (1985).

100. In *State v. Deskins*, 234 Kan. 529, 673 P.2d 1174 (1983) (Prager, J., dissenting), fifteen DWI arrests resulted from a sobriety checkpoint in which 2,000 - 3,000 cars were stopped. *Id.* at 545, 673 P.2d at 1187. Statistics from other jurisdictions show somewhat comparable figures. In *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 663 P.2d 992 (1983) (en banc), a total of fourteen DWI arrests were made out of 5,763 vehicles that were detained. *Id.* at ___, 663 P.2d at 993. Sobriety checkpoints in New Hampshire produced eighteen arrests out of 1,680 motorists that were stopped. *Koppel*, 127 N.H. at 288, 499 A.2d at 979. The success rate of detecting drunk drivers in these cases ranges from 0.24% to 1.07%, with an average success rate of about 0.5%. *But see State v. Garcia*, 500 N.E.2d 158, 161 (Ind. 1986), *cert denied*, 107 U.S. 1889 (1986) (seven percent of drivers stopped at checkpoint were intoxicated).

It seems fair to conclude that a very large number of innocent travelers will be detained at a sobriety checkpoint for every one that is arrested. The United States Supreme Court, however, upheld a border patrol checkpoint that resulted in illegal immigrants being found in 171 vehicles at a checkpoint where 146,000 were stopped, a success rate of only 0.12%. *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976). See also 4 W. LAFAVE, *supra* note 6, § 10.8(d), at 74.

The court in *Welch* did not consider it to be relevant that a low number of arrests take place for the total number of drivers that are detained at the checkpoint. *Welch*, 755 S.W.2d at 633. It was correctly pointed out by the court that it only takes one drunk driver to extinguish lives and destroy property. However, this point addresses the gravity of the public concern, not the degree that checkpoints advance that concern.

101. *Commonwealth v. Leninsky*, 360 Pa. Super. 49, ___, 519 A.2d 984, 990 (1986); *Lowe v. Commonwealth*, 230 Va. 346, ___, 337 S.E.2d 273, 277 (1985).

the Blood Alcohol Content level of drunk drivers arrested at sobriety checkpoints in Delaware with the Blood Alcohol Content level of drivers arrested by roving patrols.¹⁰² Those arrested at checkpoints had an average BAC level of 0.14%, while drunk drivers apprehended by roving patrols have an average BAC of 0.169% - 0.20%.¹⁰³ The strong inference these findings suggest is that some intoxicated drivers who escape detection by roving patrols can be discovered at checkpoints. This is important since a driver with a Blood Alcohol Content level in excess of 0.10% is six times more likely to cause a traffic accident than a sober driver.¹⁰⁴ A drunk driver may elude roving patrols since the driver does not necessarily show signs of intoxication at all times he is on the road.¹⁰⁵ Furthermore, a drunk driver may be involved in an accident before a roving officer can stop her.¹⁰⁶

Sobriety checkpoints also promote the public interest by deterring drunk persons from driving¹⁰⁷ or encouraging one who will be driving from having "one more for the road."¹⁰⁸ The deterrent effect is enhanced by promoting the checkpoint to the community prior to its operation so that potential drunk drivers are aware of its existence before they enter their vehicles.¹⁰⁹ Intoxicated persons who feel they can drive in a manner that will not arouse suspicion from a roving patrol officer are more likely to change their attitude about getting behind the wheel if they are aware that a sobriety checkpoint is being conducted.¹¹⁰ They may ask a spouse or com-

102. *Leninsky*, 360 Pa. Super. at _____, 519 A.2d at 990.

103. *Id.* at _____, 519 A.2d at 990.

104. *Id.* at _____, 519 A.2d at 990-91; see also W. BORKSTEIN, PROBLEMS IN ENFORCEMENT, ADJUDICATION, AND SANCTIONING 655-62 (1983)).

105. *Commonwealth v. Tarbert*, 517 Pa. 277, _____, 535 A.2d 1035, 1044 (1987); 4 W. LAFAVE, *supra* note 6, § 10.8(d), at 72-73; *Ifft*, *supra* note 2, at 1471.

106. *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, _____, 691 P.2d 992, 999 (1983) (en banc) (Feldman, J., specially concurring); *People v. Bartley*, 109 Ill. 2d 273, 286, 486 N.E.2d 880, 886 (1985), *cert. denied*, 475 U.S. 1068 (1986); 4 W. LAFAVE, *supra* note 6, § 10.8(d), at 73.

107. *State v. Superior Court*, 143 Ariz. 45, _____, 691 P.2d 1073, 1076 (1984); *Ingersoll v. Palmer*, 43 Cal. 3d 1321, 1339-40, 743 P.2d 1299, 1309-10, 241 Cal. Rptr. 42, 53 (1987); *Bartley*, 109 Ill. 2d at 287, 486 N.E.2d at 886; *State v. Garcia*, 489 N.E.2d 168, 169 (Ind. Ct. App. 1986), *aff'd*, 500 N.E.2d 158 (Ind. 1986), *cert. denied*, 481 U.S. 1014 (1986); *People v. Scott*, 63 N.Y.2d 518, 526-27, 473 N.E.2d 1, 4-5, 483 N.Y.S.2d 649, 654 (1984); *Lowe v. Commonwealth*, 230 Va. 346, _____, 337 S.E.2d 273, 277 (1986); *Ifft*, *supra* note 2, at 1457-58; MISSOURI DEPARTMENT OF PUBLIC SAFETY, MISSOURI DWI SOBRIETY CHECKPOINT 13 (1986). *But see State v. Henderson*, 756 P.2d 1057, 1061 (Idaho 1988); *Constitutional Limits*, *supra* note 5, at 594-95.

108. 4 W. LAFAVE, *supra* note 6, § 10.8(d), at 81-82.

109. *State v. Muzik*, 379 N.W.2d 599, 603 n.2 (Minn. Ct. App. 1985). See also *supra* notes 57-59 and accompanying text.

110. *Bartley*, 109 Ill. 2d at 287, 486 N.E.2d at 886; *Garcia*, 489 N.E.2d at 169; *Commonwealth v. Leninsky*, 360 Pa. Super. 49, _____, 519 A.2d 984, 990 (1986).

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panion to drive instead or they may call for a taxi to avoid the risk of being pulled over at a checkpoint.¹¹¹ Several courts have recognized a reduction in alcohol-related traffic accidents after the establishment of sobriety checkpoints.¹¹² While it may be difficult to determine the precise cause and effect relationship between these two events,¹¹³ on the basis of common sense one can conclude that sobriety checkpoints possess a strong deterrent value for potential drunk drivers.¹¹⁴

It is probably easier to justify the use of sobriety checkpoints for their deterrent value than for their contribution to apprehending drunk drivers. For example, in Arizona, a sobriety checkpoint that the state promoted for its effect in detecting drunk drivers was held unconstitutional.¹¹⁵ Yet, a similar checkpoint was upheld where the state emphasized its value as a deterrent to would-be drunk drivers.¹¹⁶ The *Welch* court made no attempt to address the distinction between deterring and detecting drunk drivers at a sobriety checkpoint. Therefore, it is unclear whether a checkpoint that is conducted solely to detect drunk drivers (*i.e.*, with no advance publicity) would be upheld in Missouri.

Despite the fact that sobriety checkpoints seem to be effective in helping to reduce the damage caused by drunk drivers, a checkpoint still constitutes a seizure under the Fourth Amendment.¹¹⁷ Therefore, courts must analyze the conduct of a particular checkpoint to determine if that conduct was reasonable.¹¹⁸ It is necessary to ensure that checkpoints can promote the public interest in the greatest possible manner while also limiting the degree of intrusion on motorists.¹¹⁹ Although the *Welch* court did not consider

111. *Little v. State*, 300 Md. 485, 505-06, 479 A.2d 903, 913 (1984).

112. *State v. Superior Court*, 143 Ariz. 45, ___, 691 P.2d 1073, 1076-77 (1984) (roadblocks resulted in significant decrease in alcohol-related collisions, an effect roving patrols couldn't produce); *State v. Church*, 530 So. 2d 1235, 1241 n.5 (La. Ct. App. 1988) (reduction of 100 alcohol-related serious injuries during nine month roadblock trial period); *Little*, 300 Md. at 505, 479 A.2d at 913 (seventeen percent decrease in alcohol-related traffic accidents after checkpoints started). *See also Leninsky*, 360 Pa. Super. at ___, 519 A.2d at 991 (citing short-term and long-term studies that show significant decreases in alcohol-related accidents after sobriety checkpoint programs instituted).

113. *Jones*, *supra* note 5, at 1485.

114. *Bartley*, 109 Ill. 2d at 287, 486 N.E.2d at 886.

115. *State ex rel. Ekstrom v. Justice Court*, 136 Ariz. 1, 663 P.2d 992 (1983) (en banc). The court did not consider whether or not a sobriety checkpoint may be effective in detecting a certain percentage of drunk drivers that would not be detected by roving patrols.

116. *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073 (1984) (en banc).

117. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979).

118. *Brown v. Texas*, 443 U.S. 47, 50 (1979).

119. *Cf. Brown*, 443 U.S. at 50-51 (two of the three factors to consider in the constitutional analysis of a roadblock are the degree to which the seizure advances the public concern and the severity of the interference on individual liberties).

all of the issues which other states address about the conduct of sobriety checkpoints, it did provide some guidance to law enforcement officials who are to perform future checkpoints, as well as to courts which will decide their constitutionality.¹²⁰

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120. Shortly after *Welch*, the Eastern District Court of Appeals reversed a lower court ruling which had invalidated a sobriety checkpoint. The court relied almost exclusively on the holding in *Welch*. *State v. Payne*, 759 S.W.2d 252 (Mo. Ct. App. 1988).