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Constitutionality of Drug Enforcement Checkpoints in Missouri, The

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The Constitutionality of Drug Enforcement Checkpoints in Missouri

State v. Damask[1]

I. INTRODUCTION

In the past several years, law enforcement officials have increasingly utilized checkpoint programs as a means of combating drug trafficking.[2] Because the United States Supreme Court has upheld suspicionless seizures only for regulatory or safety purposes,[3] lower state and federal courts have reached inconsistent results in deciding whether roadblocks designed to detect or deter criminal activity are constitutionally valid.[4] In *State v. Damask,* the Missouri Supreme Court became the first court to uphold the use of roadblocks designed solely to intercept drug trafficking.[5] This Note examines the problems resulting from the court's further departure from the requirement that searches and seizures be made with individualized suspicion.

II. FACTS AND HOLDING

This case stems from the operation of separate highway checkpoints by the Franklin County and Texas County sheriffs' departments.[6] At these checkpoints, police arrested defendants Richard Damask, Linda Alvarez and Maximo Garcia for possession of drugs.[7] On November 22, 1994, in an effort to discourage illegal drug trafficking, the Franklin County Sheriff's Department set up a checkpoint along I-44.[8] The sheriff's department operated the checkpoint based on guidelines prepared by a corporal from the sheriff's department.[9] The department designed the guidelines to curb the officers' discretion in making the initial stop.[10] The checkpoint was in operation from 4:00 a.m. until 12:00 p.m. the following day.[11] Although drivers approaching the area observed a large

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1. 936 S.W.2d 565 (Mo. 1996).

2. *See, e.g.*, Sherri Edwards & Rodger Birchfield, *Police Dogs Sniff Out Drugs at Traffic Stops*, INDIANAPOLIS STAR, Sept. 23, 1995, at A1.

3. *See infra* note 42.

4. *See infra* notes 74-95.

5. *Damask*, 936 S.W.2d at 567.

6. *Id.* The supreme court consolidated the two cases because they presented similar legal issues. *Id.*

7. *Id.* at 565.

8. *Id.* at 568.

9. *Id.* The dissent pointed out that the department did not reduce the plan to writing for approval by the sheriff until after the seizure occurred. *Id.* at 577.

10. *Damask*, S.W.2d at 568.

11. *Id.*

sign that read "Drug Enforcement Checkpoint 1 Mile Ahead," the police located the actual checkpoint at a remote exit approximately one quarter mile away from the sign.[12]

All travelers exiting I-44 were met by a uniformed police officer as they reached the stop sign at the top of the exit ramp.[13] The officer informed the motorists that the sheriff's department was conducting a drug enforcement checkpoint, checked for valid driver's licenses and registration and then asked the drivers' reasons for exiting there.[14] If the officer became reasonably suspicious that the motorist was engaged in drug trafficking, he asked permission to search the vehicle and its contents.[15] If the driver refused to consent to a search, the officer used a police dog to conduct an olfactory examination of the rear of the vehicle.[16]

At approximately 4:20 a.m., on November 22, Richard Damask was stopped at the checkpoint and questioned by a uniformed officer.[17] Because Damask appeared nervous, the officer asked permission to search the car.[18] When Damask refused, another officer approached the rear of the car with a drug-sniffing dog.[19] The dog alerted the officers to the trunk, where the officers found a duffle bag containing packages of marijuana.[20] The officers then arrested Damask.[21]

The state charged Damask with a felony count of possession of marijuana with the intent to distribute, deliver, or sell.[22] Damask filed a motion to suppress the evidence, and, after a preliminary hearing, the trial court sustained the motion.[23] The state then brought an interlocutory appeal, and the Court of

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12. *Id.* Because the exit offered no gas, food, or lodging services to travelers, there would be little reason to leave the exit unless that traveler was a local resident. *Id.*

13. *Id.* Fully marked police vehicles were clearly visible to the motorists as they approached the checkpoint. *Id.* The dissent noted that there was conflicting testimony as to this fact. *Id.* at 577.

14. *Damask*, 936 S.W.2d at 568.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* The U.S. Supreme Court has held that because a canine sniff indicates only the presence or absence of contraband, the canine sniff is only minimally intrusive, and is therefore not a "search" for purposes of the Fourth Amendment. U.S. v Place, 462 U.S. 696 (1983).

20. *Damask*, 936 S.W.2d at 568.

21. *Id.* The entire stop lasted approximately five minutes. *Id.* In all, sixty-six vehicles passed through the checkpoint, and of these, ten vehicles were searched. Damask was the only person arrested. *Id.*

22. *Id.*

23. *Id.*

Appeals, Eastern District, affirmed, holding that the checkpoint operation violated the Fourth Amendment.[24]

Meanwhile, the Texas County sheriff's department conducted a checkpoint on an exit ramp along U.S. 60 to U.S. 63 in Texas County.[25] Because this was the first checkpoint operated by the sheriff's department, the department consulted with, and relied, on procedures developed by the sheriff of a neighboring county.[26] Under the plan, a "Drug Checkpoint Ahead" sign was placed 250 yards in front of the U.S. 63 exit ramp on U.S. 60.[27] Drivers who wished to avoid the checkpoint could take this exit, whereupon they were met by the actual checkpoint at the bottom of the exit ramp.[28]

According to the plan, two officers were to approach the vehicle, explain the purpose of the checkpoint, and briefly question the driver.[29] An officer was to ask for the driver's license and registration only if, after observing the driver, he became reasonably suspicious of criminal activity.[30] If the officer developed reasonable suspicion, he was to ask the driver whether he had any drugs in his possession.[31]

Linda Alvarez and Maximo Garcia arrived at the checkpoint during its operation.[32] Alvarez appeared nervous in response to the questioning, and when she could not produce a driver's license, the officer asked her to pull over to the side of the road.[33] Alvarez later consented to the officer's request to search the vehicle, whereupon the officers discovered thirty-seven pounds of marijuana hidden in the truck Alvarez was driving.[34]

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24. *Id.* at 568-69.

25. *Id.* The sheriff's department selected the checkpoint site from U.S. 60 to U.S. 63 based on information that it was an alternative route favored by drug traffickers trying to avoid I-44. *Id.*

26. *Id.* The Texas County sheriff approved the plans before implementation of the checkpoint, and the neighboring sheriff was asked to observe and offer advice on the operation of the checkpoint. *Id.*

27. *Damask*, 936 S.W.2d at 568-69.

28. *Id.*

29. *Id.* All officers at the checkpoint wore uniforms, with the exception of an officer dressed in camouflage. *Id.*

30. *Id.* The officers were instructed to allow any driver who refused to talk to them to pass. *Id.*

31. *Id.* The officers questioned all motorists who exited, and the stops lasted approximately sixty seconds. *Id.*

32. *Id.*

33. *Id.* For example, Alvarez first stated that she was driving to Branson. *Id.* When told she was going the wrong way, Garcia explained to the officer that they were actually driving to Bertrand, Missouri, and that Alvarez was merely tired and confused. The officers also became suspicious when they noticed a strong smell of deodorant or perfume as they reached the vehicle. *Id.*

34. *Id.* at 570. The officers also discovered a loaded .380 caliber semiautomatic pistol under the dashboard, which Alvarez claimed was hers. *Id.* at 570.

Both Alvarez and Garcia were charged with felony possession of a controlled substance with intent to distribute.[35] The trial court sustained the defendants' motion to dismiss, holding that the checkpoint violated the Fourth Amendment.[36] The Missouri Court of Appeals, Southern District, affirmed the trial court's decision.[37]

The Missouri Supreme Court consolidated and reversed both cases. The court analyzed the validity of the roadblocks by balancing the public interest in preventing drug trafficking with the individual's Fourth Amendment rights.[38] Because the court determined that the checkpoints were operated in a nondiscriminatory fashion as to the initial stops, and because the checkpoints effectively advanced an important state interest with minimal intrusion to motorists, the checkpoints were held constitutional.[39]

III. LEGAL BACKGROUND

A. Supreme Court Roadblock Jurisprudence

Roadblocks are considered seizures within the meaning of the Fourth Amendment.[40] Because the Fourth Amendment proscribes only unreasonable seizures, the Supreme Court traditionally has required the police have either probable cause or individualized suspicion that the person seized is involved in criminal activity.[41] However, the Court has determined that certain types of roadblocks and administrative searches[42] do not require individualized

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35. *Damask*, 926 S.W.2d at 570.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 567.

40. United States v. Martinez-Fuerte, 428 U.S. 543, 556 (1976). The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

U.S. CONST. amend. IV.

41. Terry v. Ohio, 392 U.S. 1, 20-21 (1968).

42. *See* Camara v. Municipal Court, 387 U.S. 523 (1967) (upholding administrative searches conducted for the purpose of detecting housing violations). The Court determined that in the administrative context, the government can conduct searches without any individualized suspicion if the government's need to search outweighs the level of intrusion upon the individual's privacy interest. *Id.* at 536-37. *See also* Frank v. Maryland, 359 U.S. 360 (1959) (upholding administrative searches for the purpose of detecting fire and health code violations).

suspicion.[43] The Court has analyzed the constitutionality of these suspicionless searches by balancing the individual's Fourth Amendment interest against the legitimate interests of the government.[44]

In *United States v. Martinez-Fuerte*,[45] the Supreme Court upheld, for the first time, suspicionless seizures of motorists stopped at checkpoints. In this case, the United States Border Patrol set up permanent checkpoints to detect the illegal entry of immigrants into the country.[46] The Court first found that preventing the importation of illegal aliens was an important governmental interest.[47] Next, the Court determined that requiring individualized suspicion would be impractical given the heavy flow of traffic at the United States and Mexican border.[48] Finally, the Court concluded that the intrusion on the individual's privacy was minimal based on the following factors: the checkpoint operation did not take the motorist by surprise, it involved less discretion than other types of stops, and the location of the checkpoint was determined by "officials responsible for [deciding] . . . the most efficient allocation of limited enforcement resources."[49]

The Court has, on the other hand, taken a different approach towards the use of random, roving spot checks by police officers. In *Delaware v. Prouse*,[50] the Court held that absent articulable and reasonable suspicion, the Fourth Amendment prohibits an officer from stopping a motorist to check his driver's license and registration.[51] Because such stops were more likely to frighten motorists, the Court felt that in such instances the privacy interest of the motorist outweighed the government's interest in promoting traffic safety.[52] In particular, the Court was concerned that such stops involved the "unbridled discretion of law enforcement officials."[53] The Court also suggested that police officers must

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43. *See* David A. Thatcher, Michigan Department of State Police v. Sitz: *A Sobering New Development for Fourth Amendment Rights*, 20 CAP. U.L. REV. 279, 281 (1991).

44. Delaware v. Prouse, 440 U.S. 648, 653-54 (1979).

45. 428 U.S. 543 (1976).

46. *Id.* at 546.

47. *Id.* at 561.

48. *Id.* at 557.

49. *Id.* at 559. For example, the Court pointed out that the checkpoint was announced one mile ahead by a large sign with flashing yellow lights, followed by other signs as the motorist approached. *Id.* at 546. In addition, the Border Patrol agents wore full uniforms, a permanent building was located at the sight, and flood lights were used at night. *Id.*

50. 440 U.S. 648 (1979).

51. *Id.* at 663.

52. *Id.* at 656-57.

53. *Id.* at 659. The Court felt the nature of these stops involved the "kind of standardless and unconstrained discretion [which] is the evil the Court has discerned when in previous cases it has insisted that the discretion be circumscribed at least to some extent." *Id.* at 661.

have individualized suspicion before seizing someone for general law enforcement purposes.[54] In this respect, the governmental interest in automobile thefts "is not distinguishable from the general interest in crime control."[55] However, in important dictum, the Court suggested that states were not precluded from developing methods for spot checks that "involve less intrusion or that do not involve the unrestrained exercise of discretion," such as roadblocks in which police question all oncoming traffic.[56]

Following *Prouse*, the Court did not address under what circumstances roadblocks would be deemed constitutional until 1990, when it decided *Michigan Department of State Police v. Sitz*.[57] In this case, the Court upheld a sobriety checkpoint operated by the Michigan state police. In analyzing the constitutionality of the checkpoint, the Court relied on the balancing test developed in *Brown v. Texas*.[58] The *Brown* test requires courts to weigh the gravity of the public interest, the degree to which the seizure advances that interest, and the severity of interference with the individual's liberty.[59] The Court had little difficulty determining that the gravity of the state's drunk driving problem satisfied the first prong.[60] In turning to the "effectiveness" prong of the *Brown* test, the Court deferred to the expertise of "politically accountab[le] [law enforcement] officials."[61] The court stated that it is not the Court's task to determine "which among reasonable alternative law enforcement techniques should be employed to deal with a serious public danger."[62] Therefore, although the checkpoints led to the arrest of only one percent of all motorists stopped, the majority of the Court found this to be sufficient evidence that the checkpoint advanced the public's interest in combating drunk driving.[63]

Finally, the Court divided the "severity of interference" prong into the categories of objective and subjective intrusion. With respect to objective intrusion (measured by the duration of the seizure and the intensity of subsequent investigations), the Court found no difference in the level of

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54. *Id.*

55. *Id. See also* Carroll v. United States, 267 U.S. 132, 153-54 (1926) ("It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search.").

56. *Prouse*, 440 U.S. at 653-54.

57. 496 U.S. 444 (1990).

58. 443 U.S. 47, 48-49, 52 (1979). In *Brown*, decided around the same time as *Prouse*, the Court held that the individual's Fourth Amendment rights were violated when officers stopped him in a known drug area and asked what he was doing, without any reasonable suspicion that he was engaged in criminal activity. *Id.* at 48-49.

59. *Id.* at 50-51.

60. *Sitz*, 496 U.S. at 451.

61. *Id.* at 453.

62. *Id.*

63. *Id.* at 455.

intrusion between the sobriety checkpoints and the checkpoints used to detect illegal aliens.[64] The level of subjective intrusion (measured by the fear and surprise experienced by law-abiding motorists) also was minimal.[65] Because the motorist "could see other vehicles are being stopped, [and] can see visible signs of the officer's authority," it is less likely the motorist would be frightened by the intrusion.[66] The Court also emphasized the necessity of carrying out such stops "pursuant to a plan embodying explicit, neutral limitations on the conduct of officers."[67]

In dissent, Justice Brennan criticized the majority for ignoring the obvious differences between a fixed border checkpoint and a temporary, nighttime sobriety checkpoint.[68] The Court in *Martinez-Fuerte* did not require reasonable suspicion only because it would be "impractical" to detect illegal aliens in a moving car.[69] Justice Brennan argued that states should be required to prove it would be too difficult to detect drunken drivers in the absence of suspicionless seizures.[70]

Justice Stevens also refused to adopt the majority's deferential attitude towards law enforcement officials.[71] In addition to the element of surprise necessary to the success of a sobriety checkpoint,[72] he also was concerned with the level of discretion the officers were given when questioning motorists, choosing the site location, and determining the time of the checkpoint operations.[73] Finally, he criticized the majority's willingness to defer to the expertise of government officials, arguing the state should be required to produce evidence comparing the sobriety checkpoints to alternative law enforcement methods.[74]

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64. *Id.* at 451-52.

65. *Id.* at 452-53.

66. *Id.* at 453.

67. *Brown v. Texas*, 443 U.S. 47, 51 (1979). In this case, the test was satisfied because the checkpoint was established according to guidelines developed by an advisory committee on site selection, guidelines designed to leave very little discretion to the officers.

68. *Sitz*, 496 U.S. at 458.

69. *Id.*

70. *Id.*

71. *Id.* at 461-62.

72. *Id.* at 463.

73. *Id.* at 464. Justice Stevens felt that "unannounced investigatory seizures are, particularly when they take place at night, the hallmark of regimes far different from ours; the surprise intrusion upon individual liberty is not minimal." *Id.* at 468-69.

74. *Id.* at 462.

B. Lower Courts' Jurisprudence for Checkpoint Programs Designed to Prevent Drug Trafficking

Because the Supreme Court has not addressed the constitutionality of drug checkpoints, lower federal courts and state courts have struggled in applying the *Brown* balancing test to checkpoints of this type. For example, in *Galberth v. United States*,[75] the court struck down a police roadblock established to disrupt the drug market in a high-crime neighborhood.[76] "It is clear," declared the court, that "police may not use a roadblock in order to seek evidence of drug-related crimes."[77] Pointing out that the Supreme Court had approved the use of roadblocks in only two sharply limited instances,[78] the court relied on language in *Prouse* that suggested police must have individualized suspicion in all matters relating to "the general interest in crime control."[79] The court reasoned that suspicionless roadblock seizures had been upheld by the Supreme Court only in those cases where the roadblock was targeted to "problems predictably associated with persons who are stopped at a roadblock."[80] The court also questioned whether the roadblock effectively advanced the government's interest in deterring drug trafficking. The government failed to rebut the "common sense notion" that "highly visible patrols" present at the roadblock accounted for the success of the roadblock, and thus *any* law enforcement technique involving a "substantial police presence" would have had a similar effect.[81] The court concluded that the government's general deterrence interest did not outweigh the individual's liberty interests.[82] Thus, the *Galberth* court stated that the principal

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75. 590 A.2d 990 (D.C. 1991).

76. *Id.* at 997.

77. *Id.* at 998. The court stated that for multi-purpose checkpoints, the police may "constitutionally benefit from the 'spin-off' effect of an otherwise constitutional law enforcement program." *Id.* at 997.

78. *See, e.g.*, Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (upholding constitutionality of sobriety checkpoints); U.S. v. Martinez-Fuerte 428 U.S. 543 (1976) (upholding the constitutionality of permanent immigration checkpoints). *See also supra* notes 45-49 and 56-72.

79. *Galberth*, 590 A.2d at 997 (quoting Delaware v. Prouse, 440 U.S. 648, 659 n.18 (1979)). *See also* 3 W. LAFAVE, SEARCH AND SEIZURE; A TREATISE ON THE FOURTH AMENDMENT § 9.5(b), at 551 (2d ed. 1987) ("[A] general roadblock . . . established on the chance of finding someone who has committed a serious crime" would "quite clearly" be unconstitutional.). *See also* Ingersoll v. Palmer, 743 P.2d 1299, 1303 (Cal. 1987); Meeks v. State, 692 S.W.2d 504, 508 (Tex. Crim. App. 1985).

80. *Galberth*, 590 A.2d at 998-99. For example, the court noted that in *Martinez-Fuerte*, border checkpoints could reasonably expect to uncover illegal aliens, and furthermore, it was the only effective way to control the influx of illegal aliens. *Id.* Similarly, in *Sitz*, an advisory committee designed the sobriety checkpoints specifically to prevent and apprehend drunk drivers. *Id.*

81. *Id.* at 999.

82. *Id.*

purpose of the roadblock could not be a subterfuge for detecting crimes unrelated to that purpose.[83]

However, some courts allow states to conduct "mixed-motive" roadblocks as long as one purpose presented could validly justify the roadblock, even if the state's principal purpose is to locate drugs.[84] In *Merrett v. Moore*, for example, law enforcement officials set up temporary, unannounced roadblocks on the pretext of ensuring compliance with traffic-related laws, but the roadblocks were actually designed to detect drug trafficking.[85] In adopting an objective test, which requires only one lawful purpose, the court distinguished roadblocks from the roving traffic patrols at issue in *Prouse*.[86] Because roadblocks are designed to limit the individual discretion of officers in the field, and no selective targeting occurs, pretextual analysis is not appropriate.[87] The court then examined the reasonableness of the roadblock seizures by focusing exclusively on the legitimate purpose of the roadblock; that is, on the public's interest in ensuring compliance with license and registration laws, and on the roadblock's effectiveness in advancing that interest.[88] In upholding the roadblock, the court found that the state's interest in enforcing these laws outweighed the individual's liberty interests.[89]

In *State v. Everson*[90] on the other hand, the court emphasized the similarities between drunk driving and drug trafficking in upholding the constitutionality of the roadblock. In this case, police set up a multi-purpose checkpoint on a major interstate highway to coincide with a motorcycle rally.[91]

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83. *Id.* at 997 (citing United States v. McFayden, 865 F.2d 1306, 1312 (D.C. Cir. 1989)). *See* Thomas Dilenge, *Fourth Amendment Law After* Michigan Department of State v. Sitz: *Removing Judicial Roadblocks to Discretionless Seizures*, 9 J.L. & POL. 561, 582-83 (1993). The author suggests this is an unsatisfactory test, because courts faced with identical facts can reach opposite results, depending on what each court determines the principal purpose of the test to be. *Id.* This is in fact what occurred in *Galberth* and *MacFayden*. *See also* United States v. Morales-Zamora, 974 F.2d 149 (10th Cir. 1992).

84. Merrett v. Moore, 58 F.3d 1547, 1550-51 (11th Cir. 1995), *reh'g denied*, 77 F.3d 1304 (11th Cir. 1996).

85. *Id.* at 1549. The Eleventh Circuit was the first federal circuit court to legalize roadblocks designed to intercept illegal drugs. Merrett v. Moore, 77 F.3d 1304 (11th Cir. 1996).

86. *Merrett*, 58 F.3d at 1550-51. The court stated, "No question is presented about whether a state can lawfully conduct a roadblock solely to intercept illegal drugs; and we leave that question open." *Id.* at 1551 n.3.

87. *Id.* at 1551 n.2.

88. *Id.* at 1551.

89. *Id.* at 1553. Because the duration of the stop is an important factor in determining the reasonableness of the seizure, the court conceded that in the case of one motorist, who was not permitted to turn around and therefore had to wait twenty minutes, the level of intrusion was unreasonable. *Id.*

90. 474 N.W.2d 695 (N.D. 1991).

91. *Id.* at 696. The checkpoint was located in a small valley so that it could not

During the operation of the checkpoint, a "point man" determined which vehicles to send to a search area for further investigation.[92] Officers also relied on a drug courier profile to help judge whether motorists were likely drug traffickers.[93] The court concluded the intrusion was minimal.[94] In upholding the roadblock, the court stated that "the purpose of apprehending drug traffickers [is] a societal harm at least equal in magnitude to drunk driving."[95] Furthermore, the true purpose of the roadblock is not entitled to significant weight because the "subjective reaction of the drivers would not have been substantially different," whether the primary purpose was to check for license violations or drunk drivers.[96]

C. *Missouri Roadblock Jurisprudence*

Prior to the case at issue, Missouri courts relied on *State v. Welch*,[97] a pre-*Sitz*[98] case issued by the Missouri Court of Appeals, Western District, to analyze the constitutionality of a checkpoint operation. This case involved a sobriety checkpoint established by the Missouri Highway Patrol. The court prefaced its analysis by declining to extend the scope of protection of the state constitution beyond that of the Fourth Amendment to the United States Constitution.[99]

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seen from a long distance. *Id.* However, the operation was conducted in the daytime, all vehicles were stopped, and law enforcement officials were visible to vehicles as they approached. *Id.* The inspections were conducted pursuant to written guidelines developed by the North Dakota Highway Patrol Policy Patrol Manual. *Id.* at 701.

92. *Id.* at 697. The use of a point man (who was in fact a criminal investigator rather than a police officer) in this case has been criticized on the grounds that it violated the *Sitz* admonition against "standardless and unconstrained discretion . . . of the official in the field." *See* Chris Braeske, *The Drug War Comes to a Highway Near You: Police Power to Effectuate Highway "Narcotics Checkpoints" Under the Federal and State Constitutions*, 11 LAW & INEQ. 449, 459 (1993).

93. *Everson*, 474 N.W.2d at 697. For a criticism of the use of drug courier profiles in this and other cases because the use of profiles allows officers "to validate the investigation of any vehicle or individual which the officer wishes to investigate," see Braeske, *supra* note 92, at 459-60. For example, as to the profile used by the highway patrol, an officer can justify investigating a vehicle based on whether the vehicle has luggage on the back seat or no luggage in the vehicle. *Id.*

94. *Everson*, 474 N.W.2d at 702.

95. *Id.* at 701.

96. *Id.* (quoting People v. Bartley, 486 N.E.2d 880, 888-89 (N.D. 1985), *cert. denied*, 475 U.S. 1068 (1986).

97. 755 S.W.2d 624 (Mo. Ct. App. 1988).

98. *See supra* notes 57-74.

99. *Welch*, 755 S.W.2d at 631. The court relied on the Missouri Supreme Court's analysis of Article 1, section 15 of the Missouri Constitution, which is identical to the Fourth Amendment, and which the court interpreted to "provide essentially the same protection found in the Fourth Amendment to the United States Constitution." *Id.*

Therefore, the court rejected appellant's argument that roadblocks were per se unconstitutional.[100]

The court applied the traditional balancing test to determine if, in conducting the roadblock, the intrusion upon individual rights outweighed the legitimate interests of the state.[101] The court had little difficulty deciding that the state has a legitimate interest in removing drunk drivers from the roadways.[102] The court then relied on a number of factors in approving the level of intrusion on the motorists.[103] First, the roadblock was operated according to a plan "developed in advance with field personnel and supervisory personnel."[104] Second, the plan sharply limited the amount of discretion given to the field officers.[105] Third, motorists were given notice that they were approaching a roadblock.[106] Fourth, the roadblock operation utilized procedures designed to minimize the delay to motorists.[107] Given the dangers of even one impaired driver, the court also discounted the low number of intoxicated motorists actually intercepted.[108] Because the state has a legitimate interest in combating drunk driving, and the intrusion upon the individual rights of motorists was minimal, the court concluded the roadblock was constitutional.[109]

In *State v. Canton*,[110] the Missouri Court of Appeals, Eastern District, relying on the analytical framework set forth in *Welch*, held that the roadblock at issue was unconstitutional.[111] The purpose of the roadblock was to check for

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(quoting State v. Sweeney, 701 S.W.2d 420, 425 (Mo. 1985)).

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

101. *Id.* at 633.

102. *Id.*

103. *Id.* The court examined factors used by other states in determining whether the particular roadblock met the balancing test. *Id.* at 627. The court also relied on *Prouse* and *Martinez-Fuerte* in applying the balancing test. *Id.* at 626-27.

104. *Id.* at 632.

105. *Welch*, 755 S.W.2d at 632. The operation was conducted pursuant to specific guidelines setting forth the locations and times to be followed by field personnel. *Id.* The particular location was chosen by the staff of the general headquarters based on data of alcohol related accidents in the area. Furthermore, the roadblock was authorized by the commanding officer of the troop. *Id.*

106. *Id.* For example, officers posted a large sign notifying approaching motorists of the roadblock, flares were placed along the road to guide motorists, police vehicles were stationed with lights flashing, and officers wore reflective clothing. *Id.*

107. *Welch*, 755 S.W.2d at 632. Most of the motorists were detained no longer than sixty seconds, and vehicles were waved through if congestion occurred. *Id.*

108. *Id.* The court's analysis that there is "no necessity of numbers to establish the constitutional validity of roadblocks," foreshadowed the reasoning of the Supreme Court in *Sitz* two years later.

109. *Id.*

110. 775 S.W.2d 352 (Mo. Ct. App. 1989).

111. *Id.* at 354.

vehicle defects, driver's licenses, intoxicated drivers, and drugs.[112] Although the court noted that apart from sobriety checks, no court had approved roadblocks for these other purposes, the court concentrated primarily on the level of intrusion and the lack of planning by the law enforcement officials.[113] In particular, the court noted that because the roadblock was situated in a rural area, without adequate lighting, flares, or other warnings, approaching motorists would not know why they were being stopped.[114] The roadblock also was conducted "without the approval of the chief of police of this small police force."[115] Finally, the officers did not rely on any specific data when determining the location of the roadblock.[116] The court concluded that it was "not prepared to relax the standards established" in past Missouri cases in this area.[117]

IV. INSTANT DECISION

A. Majority Opinion

In *State v. Damask*, the Missouri Supreme Court began its discussion by stating that the checkpoint at issue was a seizure under the Fourth Amendment.[118] The court then set forth the relevant law governing the Fourth Amendment as it relates to seizures.[119] Because the Fourth Amendment protects only against "unreasonable" searches and seizures, the court framed the question in terms of whether the initial stop at the checkpoint was reasonable under the Fourth Amendment.[120]

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112. *Id.* at 353.

113. *Id.*

114. *Canton*, 775 S.W.2d at 354.

115. *Id.* The court stated, "this is not to say that every checkpoint must have the approval of the highest ranking officer in the department, but there should be evidence that such authority has been vested or delegated to the officer who establishes the location and procedure at the roadblock." *Id.*

116. *Id.*

117. *Id. See, e.g.*, State v. Payne, 759 S.W.2d 252 (Mo. Ct. App. 1988); State v. Vanacker, 759 S.W.2d 391 (Mo. Ct. App. 1988).

118. State v. Damask, 936 S.W.2d 565 (Mo. 1996). The court distinguished the initial stop from any subsequent detentions and searches, pointing out that only the initial stop was at issue in this case. *Id.* The Fourth Amendment requires that any subsequent detentions and searches be based upon "reasonable individualized suspicion." *Id.*

119. *Id.* at 571. The court noted that both the Fourth Amendment and Article I, section 15 of the Missouri Constitution provide the same guarantees against unreasonable searches and seizures, and its analysis will therefore apply to both laws. *Id.* at 570.

120. *Damask*, 936 S.W.2d at 570.

The court stated that to meet this reasonableness requirement, seizures generally must be based upon individualized suspicion.[121] However, the court noted that under certain conditions, law enforcement officials may stop motorists on public highways even when individualized suspicion is lacking.[122] In such cases, the deciding court must determine the reasonableness of the seizure by balancing the public interest in preventing criminal activity with the individual's Fourth Amendment interests.[123] The majority relied on the balancing test derived from *Brown v. Texas,*[124] which focuses on three factors: (1) the gravity of the public concerns served by the seizure, (2) the degree to which the seizure advances the public interest, and (3) the severity of the interference with individual liberty.[125] The court stated that the Fourth Amendment also requires that in the absence of individualized suspicion, seizures must be made pursuant to a plan that provides "explicit, neutral limitations" on the conduct of the individual officers.[126]

In applying the *Brown* test, the court first considered the gravity of the public interest.[127] The court decided with little analysis that the state's interest in preventing drug trafficking was a legitimate governmental interest.[128] Next, the court examined the degree to which the checkpoint advanced this governmental interest.[129] The court noted that the Supreme Court in *Sitz* did not require states to prove that checkpoints were the most effective means of decreasing drunk driving.[130] The court need only conclude, after performing the balancing test, that checkpoints are at least "reasonably effective" in advancing that interest.[131]

The court noted that neither it nor the United States Supreme Court had specifically addressed the issue of whether drug interdiction was a sufficient purpose to support a roadblock operation.[132] Similarly, no courts had upheld the constitutionality of roadblocks established to intercept drug trafficking, although

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121. *Id.* at 571.

122. *Id.*

123. *Id.*

124. 443 U.S. 47, 50-51 (1979). The Supreme Court used the *Brown* balancing test to analyze the constitutionality of sobriety checkpoints in *Sitz.*

125. *Damask,* 936 S.W.2d at 571 (citing Brown v. Texas, 443 U.S. 47, 50-51 (1979)).

126. *Id.* (quoting *Brown,* 443 U.S. at 51).

127. *Id.*

128. *Id.*

129. *Id.* Relying on *Galberth,* the court framed this question in terms of whether "the checkpoint addresses problems predictably associated with persons who are stopped at the roadblock." *Id. See* Galberth v. United States, 590 A.2d 990, 999 (D.C. 1991).

130. *Damask,* 936 S.W.2d at 571.

131. *Id.* at 572.

132. *Id.*

several courts had upheld "dual-purpose" checkpoints.[133] The court addressed the *Galberth* court's finding that drug interdiction, unlike sobriety and immigration control, was not considered a sufficient public interest because it failed to "promote a governmental interest separate from that of general law enforcement."[134] While conceding the direct relation between sobriety checkpoints and highway safety, the court rejected the notion that efforts to stem the flow of illegal immigration were fundamentally different from efforts to prevent drug trafficking.[135]

Relying on the Supreme Court's reasoning in *Sitz,* the court emphasized that the state is not required to produce statistical evidence of its arrest ratios at the checkpoint in order to demonstrate its effectiveness.[136] Instead, the state need only show that the roadblock in question is "substantially similar to prior successful checkpoints."[137] The court found that both roadblocks were modeled after successful drug enforcement checkpoints in other counties.[138] The court's conclusion that these drug enforcement checkpoints were reasonably effective was bolstered by evidence which showed they were designed to "increase the likelihood of discovering drug trafficking predictably associated with persons stopped at this type of focused roadblock."[139]

Turning to the final prong of the *Brown* balancing test, the court examined both objectively and subjectively the degree to which the checkpoint intruded upon the individual motorist. The court found the degree of objective intrusion was minimal based on the limited questioning by the officers, as well as the fact that motorists were detained, on average, only two minutes.[140] Furthermore, because the checkpoints were based on plans which circumscribed the officer's discretion and were designed to eliminate any fears or safety concerns motorists might experience, the subjective intrusion also was minimal.[141] Based on its conclusion that the checkpoints were reasonably effective in advancing the state's interest in combating drug trafficking, the court held that the checkpoints

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133. *Id.*

134. *Id.*

135. *Id.* The court stated, "[t]he flow of illegal drugs presents a law enforcement problem easily as important as that posed by the passage of illegal aliens into this country." *Id.*

136. *Id.*

137. *Damask,* 936 S.W.2d at 573.

138. *Id.* at 573. The court noted that the checkpoints at issue were modeled after a Phelps County checkpoint program, which was responsible for the seizure of more than thirty "loads" of contraband. *Id.*

139. *Id.* For example, the Franklin County checkpoint was set up along a road "known as a popular route for the transport of narcotics." *Id.* Furthermore, the remoteness of the exit increased the likelihood that only local residents or those attempting to avoid the roadblock would exit at that point. *Id.*

140. *Id.* at 574.

141. *Id.*

did not violate either the Fourth Amendment of the United States Constitution or Article 1, section 15 of the Missouri Constitution.[142]

B. Dissenting Opinion

Judge White, writing in dissent, concurred with the majority view that drug trafficking is an important national problem.[143] He also conceded that under certain conditions, the use of roadblocks to prevent drug trafficking could be constitutionally permissible.[144] His primary concern was the discretion given to the officers.[145] He felt the checkpoints at issue resembled the roving traffic stops struck down in *Prouse* more than the "well-planned, well-controlled, non-threatening checkpoints upheld in *Sitz* and *Martinez-Fuerte*."[146]

Although Judge White recognized that the *Sitz* court had arguably transferred the authority for defining the reasonableness of checkpoint operations from the courts to "politically accountable officials," he still felt the majority should perform an independent inquiry into whether the checkpoint was reasonable.[147] In doing so, he distinguished between the "articulated and accountable decision-making process" envisioned by the *Sitz* Court and the evidence presented by the state.[148] For example, "two low level officers" made the decision to conduct a checkpoint operation, and law enforcement officials did not formalize the plan until after the arrests occurred.[149]

Judge White also was concerned with the level of intrusion experienced by the motorists.[150] Relying on *Prouse,* he noted that under ideal conditions, "the motorist can see that other vehicles are being stopped, [and] he can see visible signs of the officer's authority . . . ."[151] In contrast, he characterized the checkpoint operations at issue as occurring late at night, and situated in a poorly lighted and completely isolated area.[152] The presence of armed officers wearing

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142. *Id.* at 575.

143. *Id.*

144. *Id.*

145. *Damask*, 936 S.W.2d at 576.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* In other words, the same officers who operated the checkpoint also organized the operation and developed the plan for the other officers' conduct, without the input or approval of any higher-ranking officials. *Id.* at 577-78. Judge White felt this clearly violated the Supreme Court's admonition against the "'unfettered discretion of officers in the field.'" *Id.* at 577 (quoting Brown v. Texas, 443 U.S. 47, 51 (1979)).

150. *Id.* at 577.

151. *Damask*, 936 S.W.2d at 577.

152. *Id.* In reference to the subjective prong used to measure the level of intrusion, Judge White stated, "it is difficult to envision a scenario more likely to engender fright or confusion in an innocent highway traveler than the Franklin County checkpoint." *Id.*

fatigues and shining flashlights into the faces of motorists also was likely to frighten motorists.[153] Finally, it was unclear whether the motorists could see other motorists being pulled over, or whether marked cars were visible to the motorists.[154] Because the state could not show either that the roadblock was effective, or that the field officers followed explicit, neutral guidelines, Judge White concluded that the officers operated the checkpoints in violation of the Fourth Amendment.[155]

V. COMMENT

The Missouri Supreme Court's decision to sanction the use of roadblocks conducted solely to combat drug trafficking is cause for concern, especially in light of the procedures utilized by law enforcement authorities in operating the checkpoint operations. While past state court and U.S. Supreme Court decisions do not rule out the constitutionality of drug enforcement checkpoints under certain limited circumstances, the court, in applying the *Brown* balancing test, ignored factors necessary to constitutionally validate the use of roadblocks.

A. State Interest

While no one disputes the magnitude of drug trafficking problems in this country, by enlisting the use of roadblocks in the continuing war on drugs, the court further expanded the parameters of accepted purposes to include general crime control.[156] The U.S. Supreme Court has never approved a roadblock for purely criminal law enforcement purposes.[157] Furthermore, dictum in *Prouse* suggests that the Fourth Amendment always requires individualized suspicion for those seizures which have a general law enforcement purpose. Although *Prouse* can be distinguished on the grounds that it dealt with roving patrols rather than roadblocks,[158] the Court has, to this point, allowed suspicionless stops only when the governmental interests are "unique,"[159] such as for safety and regulatory purposes.[160] Although the Court has carved an exception to the safety

153. *Id.*

154. *Id.*

155. *Id.* at 578.

156. The dissent in *Everson* wrote, "in this case, the roadblock was implemented to discover evidence of drugs. Next time, under the rationale of the majority, the roadblock may be designed to discover evidence of stolen property, illegal guns, transportation of underage females for purposes of prostitution, or violations of any other criminal law." State v. Everson, 474 N.W.2d 695, 704-05 (N.D. 1991).

157. Galberth v. United States, 590 A.2d 990, 997 (D.C. 1991).

158. *See* Dilenge, *supra* note 83 at 574.

159. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 453-55 (1990).

160. *See* Jonathan A. Block, *Please Stop: The Law Court's Recent Roadblock Decisions*, 44 ME. L. REV. 461, 462-64 (1992). While sobriety checkpoints may indirectly

and regulatory requirements by upholding the immigration checkpoints in *Martinez-Fuerte*, in that case a higher degree of necessity was required by the state.[161]

The Missouri Supreme Court's failure to explain why preventing drug trafficking is an important governmental interest, as distinguished from other general interest in crime control, invites law enforcement officials to establish roadblocks for practically any reason related to crime control.[162] The concern that officers will utilize roadblocks as a means of evading the Fourth Amendment requirement of individualized suspicion helps explain why some courts have struck down roadblocks where the primary purpose is general crime control.[163]

B. The Issue of Discretion

Both the U.S. Supreme Court and Missouri courts have sought to prevent the "standardless and unconstrained exercise of discretion" by law enforcement officials that is of fundamental concern when analyzing the constitutionality of a roadblock.[164] Some courts ignore the risk that inherent biases and prejudices will influence the field officer when searching for drug traffickers, as opposed to drunk drivers, because the officer relies on an entirely different set of indicia when making this determination.[165] To minimize the risk of unbridled discretion, the Supreme Court always has required the state to adopt plans which carefully circumscribe the conduct of the officers when stopping motorists on public highways.[166]

The *Damask* majority cited evidence to support its conclusion that the officers' discretion was properly limited. However, this evidence falls short of what the U.S. Supreme Court has traditionally required in this area. In *Martinez-*

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result in arrest, even the Missouri Supreme Court has acknowledged that "[o]ne can argue persuasively that sobriety checkpoints relate directly to highway safety." State v. Damask, 936 S.W.2d 565, 572 (Mo. 1996).

161. *See* Brown v. Texas, 443 U.S. 47, 51 (1979). The Court stated that roadblocks were "necessary" because the influx of illegal aliens cannot be controlled effectively "using any other law enforcement mechanism." *Id.*

162. *See Galbreath*, 590 A.2d at 997.

163. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990) (upholding the constitutionality of sobriety checkpoints); U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976) (upholding the constitutionality of permanent immigration checkpoints).

164. *See* Delaware v. Prouse, 440 U.S. 648, 661 (1979).

165. *See* Braeske, *supra* note 92, at 461-62. The author points out that "[w]hile an investigation can easily be confined to the indicia of alcohol intoxication, the drug checkpoint opens up the scope of the operation to the discretion of the individual officer. This discretion invites the individual officer to investigate those who 'look like' drug users or traffickers." Braeske, *supra* note 92, at 461.

166. *See* Braeske, *supra* note 92, at 467.

Fuerte, for example, high ranking officials determined the location and timing of the checkpoints based on concerns of safety and effectiveness, and written guidelines circumscribed the types of questions field officers could ask.[167] In *Sitz*, the Court noted that an advisory committee was formed by the director of the state police department to develop written guidelines.[168] Missouri courts similarly have placed great importance on the amount of discretion placed in the officers at the checkpoint.[169] In *Canton*, the court struck down a roadblock in part because of the extensive level of discretion low-level employees were given, as well as the lack of written procedures in operating the checkpoint.[170]

The evidence in *Damask* indicates that in the case of the Texas County checkpoint, the same deputy who formulated the guidelines was in charge of the checkpoint operation, which certainly raises questions about the neutrality of the plan.[171] Furthermore, in the Franklin County operation, the sheriff's department did not reduce the guidelines to written form until after the completion of the operation.[172] Politically accountable officials did not participate in the formulation of the plan in either checkpoint operation, nor were they involved in choosing the location of the site.[173] Taken as a whole, the evidence indicates a substantial departure from the level of discretion allowed in prior roadblock jurisprudence. The Missouri Supreme Court overlooked the lack of discretion in an area of the law where courts have previously required individualized suspicion.

C. The Issue of Intrusion

Under the *Brown* balancing test, courts also must examine the level of intrusion from an objective and subjective perspective.[174] As with the issue of discretion, when the object of the roadblock is to detect drug traffickers, the risk of objective intrusion is greater than with other types of roadblocks.[175] In

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167. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 559 (1976).

168. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 447 (1990).

169. *See, e.g.*, State v. Welch, 755 S.W.2d 624, 632-33 (Mo. Ct. App. 1988). The court felt there was a low level of discretion because of its findings that the plan was based on specific data concerning alcohol related accidents in the area, the checkpoint was established by written order of a command officer and supervised by high ranking officials, and field officers were fully instructed. *Id.*

170. *See* State v. Canton, 775 S.W.2d 352, 353-54 (Mo. Ct. App. 1989).

171. *See* State v. Bishop, Nos. 20296, 20387, 20389, 20385 1996 WL 97417, at *7 (Mo. Ct. App. Feb. 27), *reh'g denied sub nom.* State v. Damask, 936 S.W.2d 565 (Mo. 1996).

172. State v. Damask, 936 S.W.2d 565, 574 n.36 (Mo. 1996). The majority, apparently untroubled by this evidence, relegated its analysis to a footnote.

173. *Id.* at 576 (White, J., dissenting).

174. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 452 (1990).

175. *See* Braeske, *supra* note 92 at 464 ("Where the goal of a checkpoint is the

analyzing multi-purpose roadblocks, many courts have recognized the possibility that the roadblock will be used as a pretext to look for "plain view" evidence of more serious crimes.[176] Similarly, even when the sole purpose of the roadblock is to detect drug traffickers, there is always the danger that police will impermissibly expand the seizure into a search without any individualized suspicion.[177]

The *Damask* majority was willing to tolerate a high level of subjective intrusion in both roadblocks. In contrast to the trial courts and appellate courts of both the Southern and Eastern Districts, the majority determined that the subjective intrusion generated by the roadblocks was minimal.[178] For example, the court failed to address police efforts to disguise the existence and location of the roadblock in order to surprise drug traffickers, even though past decisions had listed surprise as an essential element in determining the level of subjective intrusion.[179] The majority also found that the checkpoint operation provided enough notice to the motorists based on the "large illuminated" signs along the main highway.[180] However, the majority ignored the conditions found at the actual site of the checkpoint, which, according to the appellate court, had few visible signs of authority.[181] Many of the visible manifestations of authority at which the U.S. Supreme Court looked to determine subjective intrusion, such as

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interdiction of drug traffic . . . , the outcome of the checkpoint will certainly be thorough searches of selected automobiles. However, an alcohol checkpoint need only conduct conversations and field tests of individual drivers.").

176. *See* Texas v. Brown, 460 U.S. 730, 743 (1982); *See also* U.S. v. Morales-Zamores, 974 F.2d 149, 152 (10th Cir. 1992); U.S. v. McFayden, 865 F.2d 1306, 1311 (D.C. Cir. 1989).

177. For example, the Missouri Court of Appeals, in examining the objective level of intrusion in the Texas County checkpoint operation, pointed to testimony by the ranking deputy, who remarked that questions asked of the motorists "depended on your suspicions you developed while talking to the people." State v. Bishop, Nos. 20296, 20387, 20389, 20385 1996 WL 97417, at *6 (Mo. Ct. App. Feb. 27), *reh'g denied sub nom.* State v. Damask, 936 S.W.2d 565 (Mo. 1996).

178. For the Missouri trial court analysis of this issue see *State v. Damask*, No. ED68793 1996 WL 45063, at *4 (Mo. Ct. App. Feb. 6), *reh'g denied*, 936 S.W.2d 565 (Mo. 1996), and *Bishop*, 1996 WL 97417, at *6.

179. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 460-63 (1990).

180. State v. Damask, 936 S.W.2d 565, 575 (Mo. 1996). While testimony conflicted surrounding the level of subjective intrusion, the dissent pointed out that in a prior checkpoint case, the Missouri Supreme Court held that "[o]n review, the appellate court considers the facts and the reasonable inferences of those facts in the light most favorable to the trial court's ruling." *Id.* (quoting State v. Rodriguez, 877 S.W.2d 106, 110 (Mo. 1994)).

181. *Damask*, 936 S.W.2d at 576.

flashing lights, flares, and uniformed police officers,[182] were missing from these checkpoints.[183]

D. The Future of Roadblock Operations in Missouri

The court only briefly examined the final prong of the *Brown* balancing test, which scrutinizes the effectiveness of the roadblock operation.[184] The court's analysis, which requires only that the checkpoint be "reasonably effective" in advancing the government's interest,[185] is consistent with the deference given by the Supreme Court in *Sitz* to "politically accountable" officials.[186] In other words, courts are not required to consider less intrusive methods, nor must any showing be made that the checkpoint operation was more successful than stops based upon probable cause.[187] Prior to *Sitz*, when weighing the state interest in a particular intrusion, the Court had required that the state show a high level of effectiveness to justify the intrusion.[188] And while the Court in *Martinez-Fuerte* partially rejected the requirement that the state undertake a least restrictive means analysis, it did, in fact, examine other methods before concluding that individualized suspicion would be "impractical" in that particular situation.[189] The most likely explanation for the Court's wholesale departure from this requirement was the recognition that drunk drivers pose an immediate threat to highway safety.[190] However insidious drug trafficking may be, it does not trigger the same concerns for highway safety. As a result, courts should hesitate before applying such a deferential level of scrutiny when a checkpoint operation is used solely for criminal law enforcement purposes.

Many commentators have criticized this deferential approach by the Supreme Court as an abdication of its traditional role as protector of the

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182. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 546 (1976).

183. *See Damask*, 936 S.W.2d at 576-77 (White, J. dissenting).

184. *See* Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 453 (1990).

185. *Damask*, 936 S.W.2d at 573.

186. *Id.* at 572-73.

187. *See Sitz*, 496 U.S. at 451-55.

188. *See* John M. Copacino, *Suspicionless Seizures After* Michigan Department of State Police v. Sitz, 31 AM. CRIM. L. REV. 215, 243 (1994). For example, in *Prouse*, while acknowledging the state had a "vital interest in regulating highway safety," the Court stated that the law enforcement method must be a "sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests which such stops entail." Delaware v. Prouse, 440 U.S. 648, 659 (1979).

189. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 557 (1976).

190. Justice Stevens observed, "Perhaps this tampering with the scales of justice can be explained by the Court's obvious concern about the slaughter on our highways and a resultant tolerance for policies designed to alleviate the problem by 'setting an example' of a few motorists." *Sitz*, 496 U.S. at 473 (Stevens, J., dissenting).

individual's Fourth Amendment rights against unreasonable searches and seizures.[191] Like the *Sitz* Court's recital of the destruction caused by drunk driving on the nation's highways,[192] the court in *Damask* appears to justify its impairment of individual liberties, at least in part, on the necessity to effectively combat drug trafficking, which has become a "veritable national crisis."[193] However, because "[t]he needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power,"[194] the court's decision to defer to government officials increases the likelihood that law enforcement methods will infringe upon an individual's rights.[195]

VI. CONCLUSION

The court's decision in *Damask* helps confirm the fears of those judges and commentators who felt that *Sitz* would lead to the expansion of police roadblocks in other areas, further eroding the individual's Fourth Amendment rights. The Missouri Supreme Court's decision to carve another exception to the requirement of individualized suspicion in search and seizure cases ignores the fundamental differences between roadblocks operated for safety and regulatory purposes, and those operated for general criminal law enforcement purposes. Finally, the specific facts under which the court upheld the roadblocks at issue indicate the court will be very deferential to law enforcement in determining whether the checkpoint operation violates the Fourth Amendment.

SCOTT A. WHITE

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191. *See, e.g.*, Copancino, *supra* note 187, at 246; Braeske, *supra* note 92 at 462; Nadine Strossen, Michigan Department of State Police v. Sitz: *A Roadblock to Meaningful Judicial Enforcement of Constitutional Rights*, 42 HASTINGS L.J. 285, 300 (1991); *The Supreme Court, 1989 Term-Leading Cases*, 104 HARV. L. REV. 266, 267 (1990); Thatcher, *supra* note 43, at 299.

192. *See Sitz*, 496 U.S. at 451. The majority referred to the "mutilation on the Nation's roads" as well as the "increasing slaughter on our highways . . . [reaching] the astounding figures only heard on the battlefield." *Id.* (quoting Breithaupt v. Abram, 352 U.S. 432, 439 (1957)).

193. State v. Damask, 936 S.W.2d 565, 571 (quoting United States v. Montoya de Hernandez, 473 U.S. 531, 538 (1985)).

194. Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973).

195. *See* Thatcher, *supra* note 43, at 299.