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**CRIMINAL PROCEDURE—Search and Seizure—Random
Stop of a Motorist for a License Check in the Absence
of Reasonable Suspicion Is Violative of the Fourth
and Fourteenth Amendments.**

Delaware v. Prouse,
____U.S.____, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

During the evening of November 30, 1976, William Prouse's automobile was stopped by officer Avena of the New Castle County, Delaware Police Department for the purpose of checking whether the driver had a valid license and whether the vehicle was properly registered. Prior to the stop the officer had not observed any traffic offenses, safety violations or suspicious activity.¹ While approaching Prouse's automobile the officer detected the smell of burning marijuana and subsequently seized marijuana in plain view on the car floor. Prouse was indicted under a Delaware statute for possession of a Non-Narcotic Schedule 1 Substance.² The trial court granted a motion to suppress evidence seized as a result of the license stop, finding the stop to have been "wholly capricious and therefore violative of the fourth amendment."³ On appeal to the Delaware Supreme Court the State argued that the practice of randomly stopping vehicles was necessary to enforce motor vehicle regulations and to ensure safe roadways.⁴ The Delaware Supreme Court affirmed, stating that non-systematic police stops without reasonable suspicion violate federal and state constitutional guarantees.⁵ The United States Supreme Court granted certiorari. Held—

1. *Delaware v. Prouse*, ____U.S.____, ____, 99 S. Ct. 1391, 1394, 59 L. Ed. 2d 660, 665 (1979). The patrolman described the stop as "routine . . . I saw the car in the area and was not answering any complaints so I decided to pull them off." *Id.* at ____, 99 S. Ct. at 1394, 59 L. Ed. 2d at 665. The stop was not pursuant to any departmental or state district attorney standards or procedures for conducting document spot checks. *Id.* at ____, 99 S. Ct. 1394, 59 L. Ed. 2d at 665.

2. DEL. CODE ANN. Health and Safety 16, § 4754 (Supp. 1978).

3. *Delaware v. Prouse*, ____U.S.____, ____, 99 S. Ct. 1391, 1394, 59 L. Ed. 2d 660, 665 (1979).

4. See *State v. Prouse*, 382 A.2d 1359, 1362 (Del. 1978), *aff'd sub nom. Delaware v. Prouse*, ____U.S.____, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). Such regulations included: DEL. CODE ANN. Motor Vehicles 21, § 2713 (1974) (operator's license exams); DEL. CODE ANN. Motor Vehicles 21, § 2707 (1974) (prohibiting or suspending licenses of minors, incompetents, and controlled substance abusers); DEL. CODE ANN. Motor Vehicles 21, §§ 2101-02 (1974) (registration of vehicles); DEL. CODE ANN. Motor Vehicles 21, §§ 2142-43 (1974) (requiring compliance with safety and fitness regulations). All states have some statutory provision for enforcement, express or implied, of licensing and registration regulations. See, e.g., CAL. VEH. CODE §§ 4454(a), 4462(a), 12951(a) (West 1971); ILL. ANN. STAT. ch. 95½ § 6-112 (Smith-Hurd 1971); TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977). See generally Note, 1960 WASH. U. L. Q. 279, 279 (citing licensing and registration statutes from all states).

5. *State v. Prouse*, 382 A.2d 1359, 1361 (Del. 1978), *aff'd sub nom. Delaware v. Prouse*,

Affirmed. A random stop of a motorist for a license check in the absence of a reasonable suspicion that the operator is unlicensed, the vehicle is not registered, or that an occupant has committed an offense, is violative of the fourth and fourteenth amendments of the United States Constitution.⁶

The extensive use, availability, and inherent mobility of motor vehicles have combined to necessitate special interpretations of fourth amendment protections in connection with automobiles.⁷ While the basic requirement of reasonableness under the fourth amendment must still be fulfilled before any confiscated evidence is admissible,⁸ the Supreme Court has recognized that the search of an automobile does not require the constitutional safeguards afforded homes, stores, and businesses.⁹ As an exception to the judicial preference for search warrants issued on probable cause,¹⁰ the automobile search has evolved to allow searches and seizures under a less stringent showing of probable cause coupled with exigent circumstances.¹¹

The Supreme Court has thus permitted warrantless search and seizure of a vehicle where the operator is placed under custodial arrest for committing certain traffic violations,¹² or when a permissible stop results in a

____ U.S.____, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979); U.S. CONST. amend. IV.; DEL. CONST. art. 1, § 6 (1897). The state court stressed that its decision did not affect the validity of road-block type stops. *State v. Prouse*, 382 A.2d 1359, 1362 (Del. 1978).

6. *Delaware v. Prouse*, ____ U.S.____,____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979).

7. See, e.g., *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973) (border patrol exception); *Chambers v. Maroney*, 399 U.S. 42, 52 (1970) (automobile exception); *Carroll v. United States*, 267 U.S. 132, 153 (1925) (automobile exception). See generally Note, 24 WAYNE L. REV. 1123, 1128-32 (1978).

8. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) (fourth amendment requires seizure to be reasonable); *Ker v. California*, 374 U.S. 23, 32 (1963) (fourth amendment forbids unreasonable searches); *Taylor v. State*, 421 S.W.2d 403, 406 (Tex. Crim. App. 1967) (fourth amendment protects individuals against unreasonable search and seizure); U.S. CONST. amend. IV.

9. See *Carroll v. United States*, 267 U.S. 132, 158-59 (1925). Compare *Agnello v. United States*, 269 U.S. 20, 33 (1925) (officer's reasonable belief furnishes no justification for warrantless search of dwelling) with *Carroll v. United States*, 267 U.S. 132, 158-59 (1925) (right to search automobile determined by officer's reasonable belief car contains contraband). See generally *Wilson*, *Warrantless Automobile Searches*, 1 SEARCH & SEIZURE L. REP. 11, 12 (1974).

10. See, e.g., *Katz v. United States*, 389 U.S. 347, 356 (1967); *United States v. Ventresca*, 380 U.S. 102, 105-06 (1965); *Beck v. Ohio*, 379 U.S. 89, 96 (1964). The Supreme Court has expressed strong preference for search warrants. See generally Comment, *Warrantless Searches—The Worm Has Turned . . . Again*, 22 BAYLOR L. REV. 39, 40 (1970).

11. See, e.g., *Chambers v. Maroney*, 399 U.S. 42, 50-51 (1970) (exigent circumstances plus probable cause validates car search); *Brinegar v. United States*, 338 U.S. 160, 176-77 (1949) (automobile search with probable cause); *Kay v. State*, 489 S.W.2d 861, 864 (Tex. Crim. App. 1973) (automobile can be searched without warrant if there exists probable cause it contains contraband). See generally *Moylan*, *Automobile Exception: What It Is and What It Is Not—A Rationale in Search of a Clearer Label*, 27 MERCER L. REV. 987, 987 (1976).

12. See *United States v. Robinson*, 414 U.S. 218, 235 (1973) (custodial arrest for driving

plain-view seizure.¹³ If the car is left unattended due to abandonment, arrest, or incapacity of the owner,¹⁴ the officer may search the vehicle for impoundment, inventory, and caretaking purposes.¹⁵ Finally, if the owner or operator consents, the officer may proceed to search the vehicle without probable cause.¹⁶

Further exceptions to the necessity of probable cause have been allowed in border searches and seizures,¹⁷ administrative searches,¹⁸ and "stop and frisk" police encounters.¹⁹ Under these circumstances the Court uses a balancing test in determining the reasonableness of the search.²⁰ Cause to search under this test is established by balancing the need to search against the invasions of privacy which the search entails.²¹ Applying the balancing test to administrative searches the Court, in *Camara v. Municipi-*

without a license, arrest gives right to search without need for probable cause); *Gustafson v. Florida*, 414 U.S. 260, 266 (1973) (stop for erratic driving, operator had no license); *Alberti v. State*, 501 S.W.2d 654, 656 (Tex. Crim. App. 1973) (switched license plates, gives right to search). See generally, Note, 10 TULSA L.J. 256, 256 (1974).

13. See, e.g., *Harris v. United States*, 390 U.S. 234, 236 (1968) (car stopped leaving scene of robbery); *Hampton v. State*, 511 S.W.2d 1, 4 (Tex. Crim. App. 1974) (car stopped for traffic violation); *Onofre v. State*, 474 S.W.2d 699, 701 (Tex. Crim. App. 1972) (search and seizure upheld if officer was where he had a right to be).

14. See, e.g., *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976) (illegally parked car impounded and searched); *Cady v. Dombrowski*, 413 U.S. 433, 446-47 (1973) (car searched when off-duty policeman had accident); *Cooper v. California*, 386 U.S. 58, 61 (1967) (car taken into custody for forfeiture after owner arrested on narcotics).

15. See *Cooper v. California*, 386 U.S. 58, 61 (1967). Impoundment and other caretaking functions fulfill three distinct needs: the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). See generally Note, 6 CAP. U. L. REV. 315, 322 (1976).

16. See *Schneekloth v. Bustamante*, 412 U.S. 218, 219 (1973); *Sutton v. State*, 519 S.W.2d 422, 424 (Tex. Crim. App. 1975); *Boatright v. State*, 472 S.W.2d 765, 768 (Tex. Crim. App. 1971).

17. See, e.g., *United States v. Ramsey*, 431 U.S. 606, 616-19 (1977); *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). See generally Comment, *Almeida-Sanchez and its Progeny: the Developing Border Zone Search Law*, 17 ARIZ. L. REV. 214, 216-17 (1975); 13 HOUS. L. REV. 200, 203 (1975).

18. See, e.g., *Marshall v. Barlow's Inc.*, 436 U.S. 307, 323-24 (1978) (O.S.H.A. regulations); *See v. Seattle*, 387 U.S. 541, 544 (1967) (commercial business inspection); *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967) (housing code inspection). See generally Note, 50 U. COLO. L. REV. 231, 233-37 (1979); Note, 5 N. KY. L. REV. 219 (1978).

19. See *Terry v. Ohio*, 392 U.S. 1, 22-24 (1968); *Wood v. State*, 515 S.W.2d 300, 305-06 (Tex. Crim. App. 1974); *Brown v. State*, 481 S.W.2d 106, 110 (Tex. Crim. App. 1972). See generally Bogomolny, *Street Patrol: The Decision to Stop a Citizen*, 12 CRIM. L. BULL. 544, 545-46 (1976).

20. See *Camara v. Municipal Court*, 387 U.S. 523, 537-38 (1967); LA FAVE, *Administrative Searches and the Fourth Amendment: the Camara and See Cases*, 1967 SUP. CT. REV. 1, 13-15; Comment, 47 NEB. L. REV. 613, 623, 625 (1968).

21. *Camara v. Municipal Court*, 387 U.S. 523, 537 (1967).

pal Court,²² considered factors such as the minimal intrusiveness of the search, the long history of judicial and public acceptance of inspection programs, and the public interest in abating or preventing dangerous conditions.²³ These state interests were weighed against a possible violation of the fourth amendment.²⁴ Such considerations led to the conclusion that administrative searches predicated by areawide warrants comply with the protections guaranteed by the fourth amendment.²⁵

One year after the decision in *Camara* the balancing test was again applied to a search and seizure situation.²⁶ In *Terry v. Ohio*²⁷ the Court considered whether the police practice of stopping suspicious individuals in order to question, investigate, or "pat down" was a violation of fourth amendment safeguards.²⁸ Instead of requiring probable cause for an officer to conduct a "stop and frisk," the Court balanced the nature and extent of the governmental interest²⁹ against the stigma of a public detention and search.³⁰ A showing by the officer that he had a "reasonable suspicion," drawn from the facts and in light of his experience, was adequate to satisfy the requirements of the fourth amendment.³¹

The reasoning in *Terry* strongly influenced the third category in which the balancing test is applied—border searches and seizures.³² Searches conducted at the territorial borders of the United States have traditionally been considered an exception to fourth amendment protections.³³ The

22. 387 U.S. 523 (1967).

23. *Id.* at 537-38.

24. See *Camara v. Municipal Court*, 387 U.S. 523, 537-38 (1967).

25. See *id.* at 537-38; See *v. Seattle*, 387 U.S. 541, 544 (1967). Warrants could be issued "on [the agency's] appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building." *Camara v. Municipal Court*, 387 U.S. 523, 536 (1967).

26. See *Terry v. Ohio*, 392 U.S. 1, 9 (1968).

27. 392 U.S. 1 (1968).

28. See *id.* at 9-10; *Baity v. State*, 455 S.W.2d 305, 308 (Tex. Crim. App. 1970); *Wimberly v. State*, 434 S.W.2d 857, 860 (Tex. Crim. App. 1968).

29. *Terry v. Ohio*, 392 U.S. 1, 22-24 (1968). The government interests included effective crime prevention, detection of crime, protection of police officers and bystanders. *Id.* at 22-24.

30. *Id.* at 24-25. "Even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." *Id.* at 24-25.

31. *Id.* at 27; see U.S. CONST. amend. IV; Note, 47 TEXAS L. REV. 138, 138 (1968).

32. See, e.g., *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *Terry v. Ohio*, 392 U.S. 1, 9-10 (1968); Comment, *Almeida-Sanchez and its Progeny: the Developing Border Zone Search Law*, 17 ARIZ. L. REV. 214, 225 (1975).

33. See, e.g., *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973); *United States v. Bowman*, 502 F.2d 1215, 1218-19 (5th Cir. 1974); *United States v. Warner*, 441 F.2d 821, 832 (5th Cir. 1974). Customs agents need no warrant, the mere suspicion of possible illegal activity is sufficient cause to justify a border search. See *United States v. Warner*, 441 F.2d 821, 832 (5th Cir. 1974).

Court has established search and seizure requirements under border situations by utilizing the balancing test of *Camara* in conjunction with the reasonable suspicion requirement of *Terry*.³⁴ Border authorities need not show probable cause to search a person, his vehicle, or his baggage at the border or its functional equivalent.³⁵ Nonetheless, some evidence short of probable cause must exist for more intrusive searches.³⁶ Varying degrees of probable cause are necessary to investigate or search a vehicle at or in close proximity to the border.³⁷ The stop of a vehicle and selective referral to a secondary inspection requires no showing of probable cause if conducted at a fixed checkpoint.³⁸ A roving border patrol, however, must have a "reasonable suspicion" based upon "specific articulable facts" before it can stop and search a vehicle.³⁹ Thus, the necessity for probable cause in near-border situations is a variable standard, with the border search re-

34. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (balancing test plus reasonable suspicion applied); cf. *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (officer's reasonable suspicion based on experience and circumstances); *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967) (balancing need to search against intrusion on the individual). *But see* Comment, *Area Search Warrants in Border Zones: Almeida-Sanchez and Camara*, 84 YALE L.J. 355, 360-62 (1974).

35. See *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) (functional equivalent). While searches at the functional equivalent of the border are authorized, criteria for establishing a functional equivalent are in dispute. *Almeida-Sanchez* provides two examples: customs checks at international airports and crossroads leading from the border. *Id.* at 273. The Ninth Circuit interprets this as requiring that the location be fixed so as to stop only those who have crossed a border, whereas the Fifth Circuit allows the stopping of domestic vehicles at functional equivalents. Cf. *United States v. Bowman*, 502 F.2d 1215, 1218-19 (5th Cir. 1974) (border search); *United States v. Warner*, 441 F.2d 821, 832 (5th Cir. 1971) (border search). Compare *United States v. Bowen*, 500 F.2d 960, 965 (9th Cir. 1974), *aff'd*, 422 U.S. 916 (1975) (no stopping of domestic travelers) with *United States v. Alvarez-Gonzales*, 561 F.2d 620, 624-25 (5th Cir. 1977) (approximately forty percent of travelers stopped are domestic).

36. See *Henderson v. United States*, 390 F.2d 805, 808-09 (9th Cir. 1967). A "real suspicion" is necessary to conduct a strip search, while a "clear indication" must be present for an examination of body cavities. *Id.* at 808.

37. See, e.g., *United States v. Martinez-Fuerte*, 428 U.S. 543, 563-64 (1976) (fixed checkpoint stop requires no probable cause); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (roving patrol stop requires reasonable suspicion); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) (border search requires no probable cause).

38. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 566-67 (1976). Secondary inspections are constitutional even if stops are based only upon alien appearance. *Id.* at 563. See also *United States v. Ortiz*, 422 U.S. 891, 896-97 (1975). Checkpoint searches are constitutional only if justified by consent or probable cause.

39. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975). The Court gave numerous examples of factors to be considered in determining whether reasonable suspicion existed for a stop, including: characteristics of the area; proximity to the border; normal traffic patterns on the road; officer's experience with alien traffic; recent reports of illegal border crossings; driver's behavior; erratic or evasive driving; type of vehicle and weight of load; as well as appearance of the occupants. *Id.* at 884-85.

quiring the lowest degree of probable cause;⁴⁰ the roving patrol stop a moderate degree of "reasonable suspicion";⁴¹ and a search at a fixed check-point the highest degree.⁴²

Subsequent decisions have extended the balancing test applied in inspection, "stop and frisk," and border searches to the stop of a vehicle on a domestic thoroughfare.⁴³ Lower federal and state courts, however, have delivered divergent opinions concerning the constitutionality of license spot checks.⁴⁴ In these decisions the balancing test has been applied both for, and against, spot checks.⁴⁵ Virtually all states have adopted legislation requiring every motorist to carry a driver's license and a valid registration while operating a vehicle, and to produce both upon demand by an authorized official.⁴⁶ Only a minority of states, however, statutorily authorize the stopping of motorists merely to check their license,⁴⁷ yet, the custom of detaining motorists for such purposes has become common practice in most states.⁴⁸

40. *See, e.g.*, *United States v. Ramsey*, 431 U.S. 606, 612-13, 618-19 (1977) (search of international mail); *United States v. Lincoln*, 494 F.2d 833, 836-38 (9th Cir. 1974) (car search at border); *United States v. Chavarria*, 493 F.2d 935, 937 (5th Cir. 1974) (car search at border).

41. *See, e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975); *United States v. Lara*, 517 F.2d 209, 210-11 (5th Cir. 1975); Note, 24 WAYNE L. REV. 1123, 1127 (1978).

42. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 567 (1976); *United States v. Ortiz*, 422 U.S. 891, 896-97 (1975); Note, 24 WAYNE L. REV. 1123, 1127 (1978). *See also Almeida-Sanchez v. United States*, 413 U.S. 266, 269-70 (1973).

43. *See, e.g.*, *Adams v. State*, 552 S.W.2d 812, 814-15 (Tex. Crim. App. 1977) ("reasonable suspicion" required for stop); *Mann v. State*, 525 S.W.2d 174, 176 (Tex. Crim. App. 1975) ("articulable facts" required for stop); *Hernandez v. State*, 523 S.W.2d 410, 411 (Tex. Crim. App. 1975) (requirement of "reasonable suspicion" and "articulable facts" for valid stop).

44. *Compare United States v. Cupps*, 503 F.2d 277, 280 (6th Cir. 1974) (license spot checks without reasonable suspicion are unconstitutional) *and United States v. Nicholas*, 448 F.2d 622, 624 (8th Cir. 1971) (reasonable suspicion is necessary to conduct spot checks) *and Commonwealth v. Swanger*, 307 A.2d 875, 877-78 (Pa. 1973) (necessity for reasonable suspicion) *with Myricks v. United States*, 370 F.2d 901, 904 (5th Cir.), *cert. dismissed*, 386 U.S. 1015 (1967) (spot license checks without reasonable suspicion of an offense are constitutional) *and State v. Holmberg*, 231 N.W.2d 672, 675 (Neb. 1975) (reasonable suspicion is not necessary) *and Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973) (statute precludes a finding of suspicion).

45. *Compare United States v. Cupps*, 503 F.2d 277, 280-81 (6th Cir. 1974) (balance is in favor of individual fourth amendment rights) *with Myricks v. United States*, 370 F.2d 901, 904 (5th Cir.), *cert. dismissed*, 386 U.S. 1015 (1967) (balance in favor of enforcing licensing regulations).

46. *See, e.g.*, CAL. VEH. CODE §§ 4454(a), 4462(a), 12951(a) (West 1971); ILL. ANN. STAT. ch. 95½ § 6-112 (Smith-Hurd 1971); TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1973). *See generally* 1960 WASH. U. L.Q. 279, 279 (citing all state statutes).

47. *See, e.g.*, FLA. STAT. ANN. § 321.05(1) (West 1975); TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1973); VA. CODE § 46-1-8 (1974).

48. *See, e.g.*, *State v. Ream*, 505 P.2d 569, 571 (Ariz. Ct. App. 1973); *People v. Andrews*, 484 P.2d 1207, 1209 (Colo. 1971); *Palmore v. United States*, 290 A.2d 573, 581-82 (D.C. App.

Document checks are accomplished through various means, including setting up a roadblock and screening all vehicles which pass through;⁴⁹ checking each motorist who has committed a traffic offense;⁵⁰ or, more commonly, the random stop of a vehicle by a roving patrolman.⁵¹ Considerable case law exists indicating that random stops by police officers to examine driver and registration credentials without prior observance of an offense is lawful.⁵² Heretofore, the Supreme Court has never ruled upon the constitutionality of license spot checks.

In *Delaware v. Prouse*⁵³ the United States Supreme Court considered the constitutionality of license spot checks conducted without probable cause or articulable suspicion.⁵⁴ Applying the balancing test, the Court held that the State's interest in protecting motorists, enforcing licensing laws, and promoting public highway safety is not of sufficient import to outweigh the intrusions upon the privacy, security, and emotional state of mind of the motorist stopped.⁵⁵ The Court determined there are less intrusive mechanisms available; such as stopping drivers after observed violations,⁵⁶ stopping vehicles with obvious safety and equipment defects, enforcing annual safety and registration inspections, and utilizing road-block type stops.⁵⁷

1972; Comment, *United States v. Jenkins: Driver's License Inspections and the Fourth Amendment*, 1975 UTAH L. REV. 982, 983.

49. See, e.g., *United States v. Croft*, 429 F.2d 884, 886 (10th Cir. 1970) (roadblock license check); *People v. Andrews*, 484 P.2d 1207, 1209 (Colo. 1971) (fixed checkpoint); *Commonwealth v. Mitchell*, 355 S.W.2d 686, 687 (Ky. 1962) (roadblock stop).

50. See, e.g., *Black v. State*, 491 S.W.2d 428, 429-30 (Tex. Crim. App. 1973) (out of date license plate); *Wallace v. State*, 467 S.W.2d 608, 610 (Tex. Crim. App. 1971) (speeding); *Denham v. State*, 428 S.W.2d 814, 816 (Tex. Crim. App. 1968) (speeding).

51. See, e.g., *United States v. Jenkins*, 528 F.2d 713, 714-15 (10th Cir. 1975); *United States v. Cross*, 437 F.2d 385, 387 (5th Cir. 1971); *State v. Ream*, 505 P.2d 569, 570-71 (Ariz. Ct. App. 1973).

52. See, e.g., *United States v. Jenkins*, 528 F.2d 713, 715 (10th Cir. 1975); *United States v. Cross*, 437 F.2d 385, 387 (5th Cir. 1971); *Myricks v. United States*, 370 F.2d 901, 904 (5th Cir. 1967). See generally Note, 14 Hous. L. REV. 936, 938 (1977); Note, 55 NEB. L. REV. 316, 318 (1976); Note, 25 STAN. L. REV. 865, 870 (1973).

53. ___ U.S. ___, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

54. *Id.* at ___, 99 S. Ct. at 1401, 59 L. Ed. 2d at 673.

55. *Id.* at ___, 99 S. Ct. at 1398, 59 L. Ed. 2d at 670-71. The Court noted the state's interests in drivers being physically qualified, in vehicle registration and safety inspection, insurance requirements, and in highway safety. *Id.* at ___, 99 S. Ct. at 1398, 59 L. Ed. 2d at 670.

56. *Id.* at ___, 99 S. Ct. at 1399, 59 L. Ed. 2d at 671. The Court reasoned that law enforcement officers stop numerous motorists daily on a myriad of traffic violations, providing a suitable opportunity to require the driver to display valid license and registration papers. *Id.* at ___, 99 S. Ct. at 1399, 59 L. Ed. 2d at 671. The Court further presumed that the unlicensed driver is apt to be the unsafe driver. Thus, it would be more expedient to check traffic violator's licenses than to randomly stop motorists on the highway. *Id.* at ___, 99 S. Ct. at 1399, 59 L. Ed. 2d at 671.

57. *Id.* at ___, 99 S. Ct. at 1401, 59 L. Ed. 2d at 674. The Court specifically noted that

Recognizing the broad discretion afforded the officer in the field to make random stops, the Court cited both *Terry* and *United States v. Brignoni-Ponce*⁵⁸ in deciding that law enforcement officers must have at least articulable and reasonable suspicion of a license violation before stopping a vehicle.⁵⁹ The majority, therefore, held that persons in automobiles on public roadways may not have their freedom of travel and privacy interrupted at the unbridled discretion of police officers.⁶⁰

In a strongly-worded dissent, Justice Rehnquist criticized the majority for erring in its application of the balancing test.⁶¹ The dissent contended that empirical data did not suggest that random stops are ineffective,⁶² and that there is no practical substitute for the spot check.⁶³ Further, the state has a major compelling interest in removing the unlicensed driver from the highway before he proves his incompetence.⁶⁴ Thus, the dissent argued, while the majority proposes to protect citizens' interests by prohibiting discretionary spot checks, it favors roadblocks which interfere with all citizens' rights rather than with the rights of only a few.⁶⁵ Finding no violation of equal protection, the dissent concluded the weight of necessity

this decision did not preclude states from developing less intrusive methods such as roadblock-type stops. *Id.* at ____, 99 S. Ct. at 1401, 59 L. Ed. 2d at 674.

58. 422 U.S. 873 (1975).

59. *Delaware v. Prouse*, __ U.S. ____, ____, 99 S. Ct. 1391, 1397, 59 L. Ed. 2d 660, 668-69 (1979), see *United States v. Brignoni-Ponce*, 442 U.S. 873, 881 (1975); *Terry v. Ohio*, 392 U.S. 1, 10-11 (1968). A person's fourth amendment protection does not "fall away" simply because he enters a car, nor does a passenger in an automobile lose all expectation of privacy because an automobile is subject to government regulation. *Delaware v. Prouse*, __ U.S. ____, ____, 99 S. Ct. 1391, 1400-01, 59 L. Ed. 2d 660, 673 (1979).

60. *Delaware v. Prouse*, __ U.S. ____, ____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 674 (1979). In a concurring opinion two justices endorsed the majority's reasoning but also approved a purely random stop, such as every 10th car to pass a given spot, as a less intrusive mechanism. Further, the concurring justices regarded the majority's decision as not affecting the largely random inspections conducted by game wardens. *Id.* at ____, 99 S. Ct. at 1401, 59 L. Ed. 2d at 674 (Blackmun, J., Marshall, J., concurring).

61. *Id.* at ____, 99 S. Ct. at 1402, 59 L. Ed. 2d at 675 (Rehnquist, J., dissenting).

62. *Id.* at ____, 99 S. Ct. at 1402-03, 59 L. Ed. 2d at 675-76 (Rehnquist, J., dissenting) (majority quoted no data indicating license checks had not curbed unlicensed drivers). "The Court would apparently prefer that the State check licenses and vehicle registrations as the wreckage is being towed away." *Id.* at ____, 99 S. Ct. at 1402, 59 L. Ed. 2d at 675 (Rehnquist, J., dissenting).

63. See *id.* at ____, 99 S. Ct. at 1403, 59 L. Ed. 2d at 676 (Rehnquist, J., dissenting). The dissent argued that a fixed roadblock is not less intrusive than the spot check. It questioned why an officer needed no "probable cause nor articulable suspicion" to stop *all* motorists on a road, yet articulable suspicion is required to stop *less* than all motorists. *Id.* at ____, 99 S. Ct. at 1402, 59 L. Ed. 2d at 674 (Rehnquist, J., dissenting).

64. *Id.* at ____, 99 S. Ct. at 1402, 59 L. Ed. 2d at 675 (Rehnquist, J., dissenting).

65. *Id.* at ____, 99 S. Ct. at 1403, 59 L. Ed. 2d at 676 (Rehnquist, J., dissenting). "To comply with the Fourth Amendment, the State need only subject *all* citizens to the same 'anxiety' and 'inconvenien[ce]' to which it now subjects only a few." *Id.* at ____, 99 S. Ct. at 1403, 59 L. Ed. 2d at 676 (Rehnquist, J., dissenting).

balanced in favor of spot checks.⁶⁶

Any assessment of whether the Court has consistently applied the balancing test to the spot license check⁶⁷ requires a comparison with the various balancing factors set out in *Camara*.⁶⁸ Three factors which are particularly applicable in evaluating license stops are: (1) the amount of public interest in the governmental intrusion; (2) the inability to accomplish the results by following the standard probable cause criteria; and (3) the extent of the intrusion into individual privacy as a result of the act.⁶⁹ Considering *Prouse* in light of the first criterion, the necessity of enforcing motor vehicle standards is equally compelling as the public's interest in enforcing the housing inspections tested in *Camara*.⁷⁰ Secondly, *Camara* and *Prouse* necessitated amended requirements to determine what constitutes probable cause.⁷¹

Regarding *Prouse*, the probability that a driver is operating a vehicle without a license is extremely difficult to detect.⁷² Similarly, as noted by the Court in *Camara*, there is generally no effective way to spot housing violations from outside the structure.⁷³ Finally, in applying the third factor of *Camara*, intrusiveness, the license check is a relatively limited intrusion upon the motorist.⁷⁴ A document check is a brief detention which ceases

66. *Id.* at ____, 99 S. Ct. at 1403, 59 L. Ed. 2d at 676 (Rehnquist, J., dissenting).

67. Cases pre-dating *Terry v. Ohio* were inclined to say the license stop was not a seizure, therefore no constitutional issue was raised. *Compare* *Rodgers v. United States*, 362 F.2d 358, 362 (8th Cir. 1966) (stop of vehicle not a seizure or arrest) and *State v. Fish*, 159 N.W.2d 786, 787, 791 (Minn. 1968) (license stop not considered a seizure) with *United States v. Mallides*, 473 F.2d 859, 861 (9th Cir. 1973) (stop of a car is temporary arrest) and *United States v. Nicholas*, 448 F.2d 622, 623-24 (8th Cir. 1971) (vehicle stop is a seizure due to restraint of freedom of movement).

68. See *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967); 3 W. LA FAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 382-83 (1978).

69. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975) (Court uses same three factors in similar fact situation); *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967) (balancing factors set out); 3 W. LA FAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 382-83 (1978) (discussion of three factors).

70. *Compare* *Delaware v. Prouse*, ____, U.S. ____, ____, 99 S. Ct. 1391, 1398, 59 L. Ed. 2d 660, 670 (1979) with *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967). See also *City of Miami v. Aronovitz*, 114 So. 2d 784, 787 (Fla. 1959). While the original purpose was primarily for revenue, licenses are now essential for control and prevention of traffic accidents. *City of Miami v. Aronovitz*, 114 So. 2d 784, 787 (Fla. 1959). See generally 3 W. LA FAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 383 (1978); Note, 60 VA. L. REV. 666, 685 (1974).

71. See *Delaware v. Prouse*, ____, U.S. ____, ____, 99 S. Ct. 1391, 1398, 59 L. Ed. 2d 660, 670 (1979); *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).

72. See *Delaware v. Prouse*, ____, U.S. ____, ____, 99 S. Ct. 1391, 1398, 59 L. Ed. 2d 660, 670 (1979).

73. *Camara v. Municipal Court*, 387 U.S. 523, 537 (1967).

74. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976) ("quite limited"); *Myricks v. United States*, 370 F.2d 901, 904 (5th Cir.), cert. dismissed, 386 U.S. 1015 (1967) ("momentary"); *State v. Holmberg*, 231 N.W.2d 672, 675 (Neb. 1975) ("relatively slight").

when the driver displays a valid operator's permit;⁷⁵ no search is involved and ordinarily the driver is not required to leave his vehicle.⁷⁶ By applying these three factors it appears that the license check in *Prouse* met the more liberal probable cause requirements of *Camara* and that the Supreme Court's application of the balancing test is questionable.

An additional factor not directly included in the balancing test influenced the decisions in both *Camara* and *Prouse*.⁷⁷ The Supreme Court expressed a major concern in limiting and defining the amount of discretion afforded a police officer in the field.⁷⁸ As a result, the fourth amendment was interpreted in both cases as circumscribing the discretion permitted the officer.⁷⁹ Thus, when applying the balancing test to search and seizure, the Court has indicated a tendency to consider with equal import the mode, mechanism, and party entrusted with the responsibility for protecting the state's interest.⁸⁰ The Court devoted a major portion of its opinion in *Prouse* to the necessity of limiting the discretion of the roving patrolman.⁸¹ In determining that a policeman must have a "reasonable suspicion" rather than a mere "inarticulate hunch" before stopping a vehicle, the Court relied upon the rules established in *Brignoni-Ponce* and

75. See *Palmore v. United States*, 290 A.2d 573, 582 (D.C. App. 1972); *State v. Holmberg*, 231 N.W.2d 672, 675, 677 (Neb. 1975). *But see* *United States v. Montgomery*, 561 F.2d 875, 880 (D.C. Cir. 1977) (stop is not momentary; but leads to several minutes delay to complete a radio check for outstanding warrants); Note, 60 VA. L. REV. 666, 672 (1974). Stops are rarely limited to mere document checks. Note, 60 VA. L. REV. 666, 672 (1974). See also *Faulkner v. State*, 549 S.W.2d 1, 4 (Tex. Crim. App. 1976) (search invalid where officer continued detention and search after license displayed).

76. See *United States v. Harflinger*, 436 F.2d 928, 933 (8th Cir. 1970), *cert. denied*, 402 U.S. 973 (1971). *But see* *Pennsylvania v. Mimms*, 434 U.S. 106, 121 (1977) (driver ordered to exit vehicle).

77. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979) (fear of unbridled discretion of law enforcement officials); *Camara v. Municipal Court*, 387 U.S. 523, 532-33 (1967) (fear of leaving homeowners subject to discretion of field officers).

78. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543, 559 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 882-83 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973); *Camara v. Municipal Court*, 387 U.S. 523, 532-33 (1967).

79. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979) (patrolman may not exercise unbridled discretion to stop vehicles); *Camara v. Municipal Court*, 387 U.S. 523, 532-33 (1967) (officer in the field cannot search without area-wide warrant).

80. See, e.g., *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979) (spot license checks); *United States v. Martinez-Fuerte*, 428 U.S. 543, 559 (1976) (check-point stops); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973) (roving patrol stop). The Court has discerned in previous cases that the discretion of the official in the field must be circumscribed, at least to some extent. *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672 (1979).

81. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400-01, 59 L. Ed. 2d 660, 672-73 (1979).

Terry.⁸² The tenor of the decision in *Prouse* indicated a marked predilection for the standardization of the various guidelines which permit a police officer to detain an individual on less than probable cause.⁸³ Prior to *Prouse*, the license check procedure did not comport with the Court's rulings in *Brignoni-Ponce*, *Almeida-Sanchez v. United States*,⁸⁴ and *Terry* because it was so susceptible to abuse by providing a subterfuge for pretext stops or investigations based upon officer's "hunches."⁸⁵ *Prouse* brings the spot license check into conformity with similar situations involving detention and seizures by law enforcement agents.⁸⁶ Such continuity provides established criteria by which future confrontations between patrolmen and motorists shall be examined.⁸⁷ The Court will balance the intrusiveness of the search and seizure, and then determine the extent of the fourth amendment protection by the degree of discretion exercised by the state.⁸⁸

Despite the significance of *Prouse*, an important question is left unanswered: the manner in which license checks will be performed in the future. While ruling out the spot check in the absence of articulable suspicion, the *Prouse* Court authorized states to develop alternative, less intrusive, and less discretionary methods for checking licenses.⁸⁹ Some lower courts have adopted the rule that a systematic inspection system⁹⁰ such as a roadblock

82. *Id.* at ____, 99 S. Ct. at 1397, 1400, 59 L. Ed. 2d at 668, 672; see *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (articulable facts and rational inferences that merit reasonable suspicion of illegality); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (articulable facts with rational inferences reasonably warrant intrusion).

83. *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979) (requirement of articulable and reasonable suspicion).

84. 413 U.S. 266 (1973).

85. See *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973); *Terry v. Ohio*, 392 U.S. 1, 21 (1968). *But see* *United States v. Robinson*, 414 U.S. 218, 223 (1973) (license stop search described as valid). See generally 3 W. LA FAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT 387 (1978).

86. *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979); see, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (roving patrol stop requires reasonable suspicion); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973) (roving patrol stop requires probable cause); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (pedestrian stop requires reasonable suspicion).

87. See *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 673 (1979).

88. See, e.g., *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1400, 59 L. Ed. 2d 660, 672-73 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *Terry v. Ohio*, 392 U.S. 1, 21 (1968). See generally Note, 25 STAN. L. REV. 865, 869 (1973).

89. *Delaware v. Prouse*, __U.S.____, ____, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979).

90. See *People v. Ingle*, 369 N.Y.S.2d 67, 72, 330 N.E.2d 39, 44 (1975) (stop cannot be arbitrary or a pretext); *Commonwealth v. Swanger*, 307 A.2d 875, 877 (Pa. 1973) (roadblocks). Systematic stops mean the officer in the field alone does not select the vehicles to be stopped. *Commonwealth v. Swanger*, 307 A.2d 875, 877 (1973).

checkpoint is a constitutionally valid substitute for the spot check.⁹¹ Similarly, it was suggested in *Prouse* that a roadblock-type checkpoint was one possible alternative, although the Court failed to elaborate upon the proper procedure for conducting such a roadblock check.⁹² The Court, for example, neglected to state whether and to what degree prior scrutiny by an uninvolved magistrate was necessary for the proper execution of a roadblock-type checkpoint.⁹³ In *Camara* the Court ruled that a housing inspector must obtain prior judicial approval in the form of an area-warrant before conducting a search.⁹⁴ In *United States v. Martinez-Fuerte*,⁹⁵ however, the Court required only that a checkpoint site be determined by a "ranking official."⁹⁶ In contrast, a minority of jurisdictions have invalidated roadblock-type stops altogether because they lack the traditional safeguards associated with judicial oversight.⁹⁷ Thus, in *Prouse* the Court failed to determine whether a roadblock license check will require a prerequisite warrant.

Additionally, there is disagreement over whether a roadblock checkpoint is substantially less intrusive or less discretionary than the spot check.⁹⁸ As the dissent in *Prouse* noted, the method of checking licenses does not become less intrusive merely because more than one motorist at a time is inconvenienced.⁹⁹ Indeed, it is more logical to conclude that a roadblock

91. See, e.g., *United States v. Montgomery*, 561 F.2d 875, 883 (D.C. Cir. 1977) (roadblock); *State v. Bonds*, 577 P.2d 781, 784 (Hawaii 1978) (roadblock); *People v. Ingle*, 369 N.Y.S.2d 67, 69, 330 N.E.2d 39, 40 (1975) (roadblock); *Commonwealth v. Swanger*, 307 A.2d 875, 877 (Pa. 1973) (roadblock). See also Comment, *Interference with the Right to Free Movement: Stopping And Searching Vehicles*, 51 CALIF. L. REV. 907, 915 (1963); Note, 25 STAN. L. REV. 865, 869 (1973).

92. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed. 2d 660, 673 (1979).

93. See *id.* at ___, 99 S. Ct. at 1401, 59 L. Ed.2d at 673.

94. *Almeida-Sanchez v. United States*, 413 U.S. 266, 283 (1973) (Powell, J., concurring). It is not unfeasible that an area warrant could be obtained for a particular road for a reasonable amount of time. *Id.* at 283; see *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).

95. 428 U.S. 543 (1976).

96. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 562 (1976).

97. See *State v. Olgaard*, 248 N.W.2d 392, 395 (S.D. 1976) (roadblock designed to detect liquor law violators held invalid). *But see Swift v. State*, 206 S.E.2d 51, 52-53 (Ga. Ct. App.), *rev'd*, 207 S.E.2d 459 (Ga. 1974) (roadblock established at the entrance to rock festival held valid). See also *United States v. Montgomery*, 561 F.2d 875, 888 (D.C. Cir. 1977) (roadblocks must be prescribed in advance).

98. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401-02, 59 L. Ed.2d 660, 674-76 (1979) (Rehnquist, J., dissenting); *United States v. Ortiz*, 422 U.S. 891, 895-96 (1975). In *Ortiz* the Court found the roadblock stop to be as arbitrary as a stop by a roving patrol. The roadblock official had unfettered discretion to decide which of the cars passing will be subjected to an intrusion. See *United States v. Ortiz*, 422 U.S. 891, 895-96 (1975). See generally 3 W. LA FAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, 314 (1978).

99. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed.2d 660, 674 (1979) (Rehnquist, J., dissenting).

checkpoint is a greater intrusion upon the public's right to be left alone, while being no less of an invasion of each individual motorist's fourth amendment protections.¹⁰⁰ The notion advanced in some decisions, that a checkpoint is less intrusive upon an individual than a random stop, simply because he is forewarned of the impending detention, is little more than a superficial distinction.¹⁰¹ The fourth amendment was designed to protect the public from the unreasonable invasion of personal liberty.¹⁰² An intrusion is really no less an affront to the individual merely because he has a few moments prior notice. Moreover, if a roadblock is understaffed and traffic is heavy, the check point will be incapable of stopping *all* cars, thus returning the decision of which vehicle to check to the discretion of the officer.¹⁰³ In *United States v. Ortiz*¹⁰⁴ the Supreme Court noted that the fixed checkpoint designed to detect aliens did not limit "to any meaningful extent the officer's discretion to select cars for search."¹⁰⁵ In fact, the roadblock stopped only three percent of all cars passing northward.¹⁰⁶

Texas law enforcement officers have long had the express right to stop vehicles merely to check the operator's license.¹⁰⁷ Section 13, article 6687b of the Texas Revised Civil Statutes authorizes a peace officer to stop and detain any vehicle to ascertain if the motorist is properly licensed.¹⁰⁸ In sustaining the statute, the Texas Court of Criminal Appeals in *Leonard v. State*¹⁰⁹ held that detention of an individual for this purpose does not

100. *Id.* at _____, 99 S. Ct. at 1391, 59 L. Ed.2d at 675 (Rehnquist, J., dissenting).

101. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 562-63 (1976); *United States v. Ortiz*, 422 U.S. 891, 895-96 (1975).

102. See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968); *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967). The right of the people to be secure in their ". . . persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV.

103. See *United States v. Ortiz*, 422 U.S. 891, 895-96 (1975); *United States v. Montgomery*, 561 F.2d 875, 888 (D.C. Cir. 1977).

104. 422 U.S. 891 (1975). *Ortiz* involved a vehicle search for aliens at the San Clemente fixed checkpoint located approximately 66 miles from the border. The checkpoint operated continuously except when closed due to bad weather, excessive traffic or personnel shortages. *Id.* at 893. The checkpoint procedure entailed screening all northbound vehicles, and any motorists which aroused an official's suspicion were referred to a secondary inspection. *Id.* at 893: If suspicion persisted, and probable cause was established, the vehicle and its occupants were searched. *Id.* at 893.

105. See *id.* at 895-96.

106. *Id.* at 895-96.

107. See TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977) (article 6687b, § 13 has existed since 1941).

108. See, e.g., *Leonard v. State*, 496 S.W.2d 576, 577 (Tex. Crim. App. 1973); *Wallace v. State*, 467 S.W.2d 608, 609 (Tex. Crim. App. 1971); *Oliver v. State*, 455 S.W.2d 291, 293 (Tex. Crim. App. 1970); TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977). The statute reads in pertinent part: "Any peace officer may stop and detain any motor vehicle operator for the purpose of determining whether such person has a driver's license as required by this Section." TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977).

109. 496 S.W.2d 576 (Tex. Crim. App. 1973). In *Leonard* the court dismissed the defen-

constitute an arrest, moreover the state has a legitimate interest in regulating and licensing both driver and vehicle on public roads.¹¹⁰ The decision in *Prouse*, however, will change the Texas court's interpretation of the state license-check statute.¹¹¹ Texas courts have already tempered the officer's discretion by invalidating pretext license stops which appear to have been predicated upon an improper ulterior motive.¹¹² The general tendency has been to sustain the broad power to make unqualified license-check stops, but with the proviso that such stops are unconstitutional whenever initiated by a mere suspicion or inarticulate hunch on the part of the officer.¹¹³ In effect, the Texas standard places the burden upon the defendant to prove that the license check was motivated by a bias, ruse, or pretext in order for the stop to be declared invalid.¹¹⁴

In light of the *Prouse* decision, the application of article 6687b poses a constitutional challenge. An encounter between the police and a motorist under the Texas statute would not survive the rigors of the balancing and discretion limiting tests as applied by the Supreme Court.¹¹⁵ The importance of the state's interests that justified the stop in *Leonard* has since been diminished.¹¹⁶ Numerous decisions have determined that the detention of a motorist for a license check is in all respects an arrest, albeit temporary in nature.¹¹⁷ *Prouse* has cautioned that spot license checks initi-

dant's claim that he was stopped because of his "hippie-looking" appearance, rather the court relied upon the officer's statutory right to make license stops. *Id.* at 578.

110. *Leonard v. State*, 496 S.W.2d 576, 577 (Tex. Crim. App. 1973); see TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977).

111. Compare *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed.2d 660, 673 (1979) (no stop unless a reasonable, articulable suspicion the motorist is unlicensed) with *Myricks v. United States*, 370 F.2d 901, 904 (5th Cir.), cert. dismissed, 386 U.S. 1015 (1967) (mere license check stop, without cause, is reasonable) and *Leonard v. State*, 496 S.W.2d 576, 577 (Tex. Crim. App. 1973) (state statute allows license check stop without cause). See generally Note, 14 Hous. L. Rev. 936, 938-39 (1977).

112. See, e.g., *Fatemi v. State*, 558 S.W.2d 463, 465 (Tex. Crim. App. 1977); *Dillard v. State*, 550 S.W.2d 45, 50 (Tex. Crim. App. 1977); *Faulkner v. State* 549 S.W.2d 1, 2 (Tex. Crim. App. 1977). The license check cannot be used as a pretext for a "fishing expedition" to satisfy a policeman's curiosity. *Faulkner v. State*, 549 S.W.2d 1, 2 (Tex. Crim. App. 1977).

113. See *Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973) (examining the record for evidence of a pretext stop); cf. *Milton v. State*, 549 S.W.2d 190, 193 (Tex. Crim. App. 1977) (officer must have specific articulable facts which warrant the intrusion); *Talbert v. State*, 489 S.W.2d 309, 311 (Tex. Crim. App. 1973) (inarticulate hunch, suspicion or good faith of the officer is insufficient).

114. See *Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973).

115. Compare *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed.2d 660, 673-74 (1979) (necessity to demonstrate articulable suspicion to justify stop) with *Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973) (statute alone justifies stop).

116. Compare *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1399, 59 L. Ed.2d 660, 671 (1979) (state interests of vehicle safety and highway regulations do not justify spot checks) with *Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973) (state has legitimate interest in vehicle, driver safety).

117. See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *United States*

ated at the unqualified discretion of the patrolman without justification will not be sanctioned.¹¹⁸ The mere fact that Texas spot license checks occur under the authority of an express statute does not exempt such activity from the fourth amendment requirement set out in prior case law.¹¹⁹ Texas requires a showing of articulable suspicion for the *Terry*-type stop and frisk of a pedestrian,¹²⁰ for the warrantless arrest of a person in a suspicious place,¹²¹ and for the detention of a car to investigate criminal activity.¹²² *Prouse*, however, necessitates that henceforth the spot license check must also be interpreted as requiring articulable suspicion.¹²³ Nonetheless, such an interpretation does not obligate invalidation of the Texas license-check statute. Article 6687b is not unconstitutional on its face.¹²⁴ The language is broad and as previously evidenced, lends itself to interpretation.¹²⁵ Thus, in order to bring Texas law into compliance with the Supreme Court's decision in *Prouse*, the Texas court must interpret the license-check statute as requiring a showing of articulable suspicion that a motorist is unlicensed.¹²⁶

Prouse represents an attempt by the Supreme Court to standardize various rulings by lower courts concerning the validity of the license-check stop.¹²⁷ The decision foreshadows a trend towards requiring a reasonable,

v. Mallides, 473 F.2d 859, 864 (9th Cir. 1973); *United States v. Nicholas*, 448 F.2d 622, 624 (8th Cir. 1971); cf. *Terry v. Ohio*, 392 U.S. 1, 16 (1968) (to stop a pedestrian is also an arrest).

118. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1400, 59 L. Ed.2d 660, 673 (1979).

119. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 876-77 (1975). The Supreme Court held that roving patrols could only stop cars based upon an articulable suspicion regardless of the Immigration and Nationality Act to the contrary. *Id.* at 877.

120. See, e.g., *Milton v. State*, 549 S.W.2d 190, 193 (Tex. Crim. App. 1977); *Wood v. State*, 515 S.W.2d 300, 305-06 (Tex. Crim. App. 1974); *Brown v. State*, 481 S.W.2d 106, 110 (Tex. Crim. App. 1972).

121. TEX. CODE CRIM. PROC. ANN. art. 1403 (Vernon 1977) (permits peace officers to arrest persons under suspicious circumstances); see, e.g., *Perez v. State*, 548 S.W.2d 47, 49 (Tex. Crim. App. 1977); *Hernandez v. State*, 523 S.W.2d 410, 411 (Tex. Crim. App. 1975); *Lara v. State*, 469 S.W.2d 177, 179 (Tex. Crim. App. 1971).

122. See, e.g., *Luera v. State*, 561 S.W.2d 497, 499 (Tex. Crim. App. 1978); *Imhoff v. State*, 494 S.W.2d 919, 920 (Tex. Crim. App. 1973); *Sanchez v. State*, 438 S.W.2d 563, 564 (Tex. Crim. App. 1969).

123. See *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed.2d 660, 673 (1979).

124. See, e.g., *Dillard v. State*, 550 S.W.2d 45, 50 (1977); *Faulkner v. State*, 549 S.W.2d 1, 2 (Tex. Crim. App. 1977); *Tardiff v. State*, 548 S.W.2d 380, 382 (Tex. Crim. App. 1977); TEX. REV. CIV. STAT. ANN. art. 6687b, § 13 (Vernon 1977).

125. See *Tardiff v. State*, 548 S.W.2d 380, 382 (Tex. Crim. App. 1977) (6687b does not authorize pretext stops); *Pruitt v. State*, 389 S.W.2d 475, 476-77 (Tex. Crim. App. 1965) (6687b does not authorize "fishing expeditions").

126. Compare *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1401, 59 L. Ed.2d 660, 673 (1979) with *Leonard v. State*, 496 S.W.2d 576, 578 (Tex. Crim. App. 1973).

127. See *Brown v. Texas*, ___ U.S. ___, ___, 99 S. Ct. 2637, 2641, 61 L. Ed. 2d 357, 381 (1979); *Delaware v. Prouse*, ___ U.S. ___, ___, 99 S. Ct. 1391, 1395, 1401, 59 L. Ed. 660, 666, 673-74 (1979).

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articulable suspicion for stopping an individual under any circumstance. *Prouse*, thus, eliminates some of the multiple exceptions which surround the fourth amendment warrant requirement. Remaining undetermined is how Texas courts will interpret 6687b in the future, and more generally, how the states will develop less intrusive methods for checking motorists' credentials.

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