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State v. Pinkham: Erosion of Meaningful Forth Amendment Protection For Vehicle Stops In Maine?

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STATE v. PINKHAM: EROSION OF MEANINGFUL FOURTH AMENDMENT PROTECTION FOR VEHICLE STOPS IN MAINE?

In *State v. Pinkham*,[1] the Maine Supreme Judicial Court, sitting as the Law Court, held that a police officer's stop of a motorist to inquire and advise about the motorist's improper — but not illegal — lane usage did not necessarily violate the fourth amendment's proscription against unreasonable seizures.[2] The *Pinkham* decision is the first time that the Law Court has validated the stop of a moving vehicle in the absence of either a suspected violation of law or an imminent, ongoing threat to highway safety.

This Note considers whether the Law Court was correct in sustaining the police officer's stop of Ronald Pinkham. The Note reviews the history of judicial treatment of motor vehicle stops to identify both the safeguards that courts have erected to protect motorists from "unreasonable" seizures, and the principles underlying those safeguards. Analysis of contemporary rulings reveals that federal and Maine courts have carefully delineated the limits of valid vehicle stops. Only in special, narrow circumstances have the courts upheld vehicle stops in the absence of a suspected violation of law. After considering whether *Pinkham* fits into any of the established categories of legitimate vehicle stops, this Note contends that the standard promulgated in *Pinkham* is a departure from previous case law and substantially expands the authority of law enforcement officials to stop motorists.

I. THE DEVELOPMENT OF VEHICLE STOP CASES

Vehicle-stop cases represent a narrow wedge in the circle of fourth amendment decisions. Vehicle-stop cases typically invoke only the fourth amendment's proscription against unreasonable "seizures." It would be impossible, however, to identify the principles underlying the fourth amendment without examining a number of "search" cases. Since both the language of the fourth amendment and the case law hold searches and seizures to the same standard—"reasonableness"—search cases can help to illuminate the principles underlying vehicle-stop (i.e., seizure) cases. A distinction can be found in the case law between the right of a person to be secure from unreasonable searches and seizures of his person and that person's right to be secure from unreasonable searches and

1. 565 A.2d 318 (Me. 1989).
2. *Id.* at 319, 320. For discussion of the facts of *Pinkham*, see Part II, *infra*.

seizures of his "houses, papers, and effects."[3] This distinction, properly identified, does not militate against using both kinds of cases in a search for the underlying principles of the vehicle-stop cases. The distinction, in and of itself, helps to illuminate the underlying principles of the fourth amendment generally, and of vehicle-stop cases in particular.

Appellate courts generally analyze the validity of vehicle stops by considering one or more of the three kinds of circumstances under which stops are legal under the fourth amendment. Those three kinds of circumstances, in the order in which they developed as legal doctrines, are where, prior to the stop, (1) probable cause for suspecting criminal activity and a warrant existed, (2) the requirements of *Terry v. Ohio*[4] existed, or (3) the requirements of a valid "quasi-criminal" stop or a "civil" stop existed.[5]

This Note will analyze each of these three kinds of circumstances in an attempt not only to present the ostensible verbal standards that accompany each, but also to identify the principles that operate to achieve the purposes of the fourth amendment. Since the actual language of, and the purposes sought to be achieved by, the fourth amendment are common and critical to the analysis of all three kinds of circumstances, they are addressed at the outset.

All of the principles that operate to achieve the purposes of the fourth amendment can be traced, sometimes circuitously, to the language of the amendment. 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 the persons or things to be seized.[6]

The fourth amendment protects people only from *"unreasonable* searches and seizures."[7] Federal,[8] Maine,[9] and other state courts[10]

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3. U.S. CONST. amend. IV.

4. 392 U.S. 1 (1968). For discussion of the *Terry* requirements, see Part II B., *infra.*

5. *See* Note, *The Emergency Doctrine, Civil Search and Seizure, and the Fourth Amendment,* 43 FORDHAM L. REV. 571, 572 (1975) (discussing civil and quasi-criminal searches; the "civil" and "quasi-criminal" concepts are used herein to describe a category of stops). *See infra* text accompanying notes 121-68.

6. U.S. CONST. amend. IV (emphasis added).

7. *Id.* (emphasis added). *See* Carroll v. United States, 267 U.S. 132, 147 (1925) ("The Fourth Amendment does not denounce all search or seizures, but only such as are unreasonable.").

8. Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481 (1990); United States v. Cortez, 449 U.S. 411 (1981); Delaware v. Prouse, 440 U.S. 648 (1979); United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); United States v. Ortiz, 422 U.S. 891 (1975); United States v. Dunbar, 470 F. Supp. 704 (1979).

have decided a considerable number of fourth amendment vehicle-stop cases in order to define the boundaries of a reasonable seizure. The "essential protection of the 'warrant' clause is an attempt to ensure that reasonableness will be adjudged, prior to the intrusion of a search or seizure[11] by a "neutral and detached magistrate" rather than by "the officer engaged in the often competitive enterprise of ferreting out crime."[12] The "probable cause" requirement obligates the warrant magistrate to consider the likelihood that a legitimate governmental interest is at risk.[13] The "oath or affirma-

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9. State v. Fuller, 556 A.2d 224 (Me. 1989); State v. Carsetti, 536 A.2d 1121 (Me. 1988); State v. Jarrett, 536 A.2d 1111 (Me. 1988); State v. Lewry, 550 A.2d 64 (Me. 1988); State v. Modery, 549 A.2d 741 (Me. 1988) (mem. dec.); State v. Palmer, 550 A.2d 66 (Me. 1988) (mem. dec.); State v. Pelletier, 541 A.2d 1296 (Me. 1988); State v. Caron, 534 A.2d 978 (Me. 1987); State v. Currier, 521 A.2d 295 (Me. 1987); State v. Peaslee, 526 A.2d 1392 (Me. 1987); State v. Russo, 531 A.2d 1022 (Me. 1987); State v. Richford, 519 A.2d 193 (Me. 1986); State v. Chapman, 495 A.2d 314 (Me. 1985); State v. Cyr, 501 A.2d 1303 (Me. 1985); State v. Garland, 482 A.2d 139 (Me. 1984); State v. Wentworth, 480 A.2d 751 (Me. 1984); State v. Thurlow, 485 A.2d 960 (Me. 1984); State v. McKenzie, 440 A.2d 1072 (Me. 1982); State v. Rowe, 453 A.2d 134 (Me. 1982); State v. Sawyer, 382 A.2d 1051 (Me. 1978) (per curiam); State v. Fitzherbert, 361 A.2d 916 (Me. 1976); State v. Johnson, 365 A.2d 497 (Me. 1976). *See also* State v. Fillion, 474 A.2d 187 (Me. 1984) (car already stopped); State v. Griffin, 459 A.2d 1086 (Me. 1983) (car already stopped). *Compare* State v. Laplante, 534 A.2d 959 (Me. 1987) (police officer's approach, for purposes of inquiry, of a lone car already stopped beside the highway did not constitute a "seizure" and hence failed to invoke the protections of the fourth amendment).

10. *See, e.g.*, State v. Harrison, 111 Ariz. 508, 533 P.2d 1143 (1975); State v. Puig, 112 Ariz. 519, 544 P.2d 201 (1975); Brownstein v. State, 521 So.2d 371 (Fla. Dist. Ct. App. 1988); Doheny v. Commissioner of Public Safety, 368 N.W.2d 1 (Minn. Ct. App. 1985) (summ. opin.); State v. Oxley, 127 N.H. 407, 503 A.2d 756 (1985); State v. Goetaski, 507 A.2d 751 (N.J. Super. App. Div. 1986); People v. Joe, 405 N.Y.S.2d 295, 63 A.D.2d 737 (1978); Viveros v. State, 799 S.W.2d 458 (Tex. Civ. App. 1990).

11. *See, e.g.*, Illinois v. Gates, 462 U.S. 213, 236 (1983) (The fourth amendment has a "strong preference for searches conducted pursuant to a warrant."); United States v. United States District Court, 407 U.S. 297, 317-18 (1972) ("The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised . . . . Prior review by a neutral and detached magistrate is the time-tested means of effectuating Fourth Amendment rights.") (citations omitted); State v. Richards, 296 A.2d 129, 135-36 (Me. 1972) ("[A]ny search is *per se unreasonable* if it lacks . . . the prior determination of . . . probable cause by a neutral and detached magistrate whose determination is reflected in the issuance of a search warrant . . . .").

12. Illinois v. Gates, 462 U.S. at 240 (quoting Johnson v. United States, 333 U.S. 10, 14 (1948)). *See also* Delaware v. Prouse, 440 U.S. 648, 661 (1979) (Spot checks made "at the unbridled discretion of law enforcement officials" are unjustified. Furthermore, "the discretion of the official in the field [must] be circumscribed, at least to some extent.").

13. *See* Illinois v. Gates, 462 U.S. at 236. There, the Court stated that "the traditional standard of review of an issuing magistrate's probable-cause determination has been that so long as the magistrate had a 'substantial basis for . . . conclud[ing] that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more.' " (quoting Jones v. United States, 362 U.S. 257, 271 (1960)). In State v. Rich-

tion" language requires magistrates to consider the veracity of the available information that they must rely upon to determine whether the person to be searched or seized is threatening a governmental interest.[14] Finally, the "particularity" requirement limits the breadth and scope of a search or seizure to the minimum necessary to vindicate the interest of the government. This includes the concept of "individualized suspicion."[15]

The Law Court has cogently described the central thrust of the fourth amendment: "to protect the privacy interest of individuals against intrusive incursions of agents of government, including the police."[16] The fourth amendment "marks the right of privacy as one of the unique values of our civilization and, with few exceptions, stays the hands of the police unless they have a search warrant issued by a magistrate on probable cause supported by oath or affirmation."[17] Furthermore, in Maine, a person has "a legitimate expectation of privacy, whether he [is] traveling on foot on a public street or . . . [is] seated in his automobile parked on the street."[18] In 1979, in its most significant statement on vehicle stops, the United States Supreme Court articulated the contours of an individual's fourth amendment rights while in a vehicle:

> An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. . . . Undoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian and other modes of travel. Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.[19]

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ards, 296 A.2d at 136-37, the Law Court found that a warrant magistrate cannot properly find probable cause unless a legitimate governmental interest is an issue, whether it be the "penological police power interest of government" or "some other legitimate police power governmental interest."

14. *See generally* 2 W. LAFAVE, SEARCH AND SEIZURE § 4.3 (2d ed. 1987 & Supp. 1990); Illinois v. Gates, 462 U.S. at 276-77.

15. United States v. Martinez-Fuerte, 428 U.S. 543, 560 (1976) ("[T]o accommodate public and private interests some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure."). *See also* Delaware v. Prouse, 440 U.S. 648, 662 (1979).

16. State v. Griffin, 459 A.2d 1086, 1089 (Me. 1983). *See* Camara v. Municipal Court, 387 U.S. 523, 528 (1967) ("The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."); Olmstead v. United States, 277 U.S. 438 (1928) (recognizing the right of individuals "to be let alone").

17. McDonald v. United States, 335 U.S. 451, 453 (1948).

18. State v. Griffin, 459 A.2d at 1089. *See also* Delaware v. Prouse, 440 U.S. 648 (1979).

19. Delaware v. Prouse, 440 U.S. at 662-63 (footnote omitted). *But see* United States v. Martinez-Fuerte, 428 U.S. at 561 ("[O]ne's expectation of privacy in an au-

A. Probable Cause

As a general proposition, prior to the 1968 Supreme Court decision in *Terry v. Ohio*[20] government searches and seizures were only reasonable if probable cause existed.[21] Furthermore, the probable cause had to be substantiated by a warrant, unless exigent circumstances were present.[22] Although the probable cause and warrant tests are rooted in the language of the fourth amendment, they require considerable interpretation.[23] A court must answer a series of probing questions in determining whether a search or seizure was unreasonable.

First, the court must decide whether the actual intrusion in a given case was of the sort that the fourth amendment seeks to protect, i.e., whether the intrusion rose to the level of a "search" or "seizure." Prior to *Terry v. Ohio*, it was clear that a "traditional" arrest[24] constituted a "seizure"[25] and that a full-scale search constituted a "search" under the fourth amendment. In *Beck v. Ohio*,[26] for example, in which police stopped a motorist and placed him under arrest, the Court found that the arrest was an unreasonable seizure, but failed to decide whether the stop was a fourth amendment seizure.[27] Accordingly, the Court never addressed the novel issue of whether the stop itself was a "seizure" protected by the fourth amendment.[28] *Terry v. Ohio* and its progeny ended the uncertainty

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tomobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence.").

20. 392 U.S. 1 (1968).

21. *See, e.g.*, Almeida-Sanchez v. United States, 413 U.S. 266, 274 (1973) ("[T]hose lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.") (quoting Carroll v. United States, 267 U.S. 132, 153-54 (1925)).

22. *See, e.g.*, Preston v. United States, 376 U.S. 364, 367-68 (1964); Chapman v. United States, 365 U.S. 610, 615-16 (1961); McDonald v. United States, 335 U.S. 451, 454-56 (1948); Johnson v. United States, 333 U.S. 10, 13-15 (1948).

23. *See* 1 W. LAFAVE, *supra* note 14, § 1.1(a), at 5 ("The Fourth Amendment . . . has 'both the virtue of brevity and the vice of ambiguity.' It does not define the critical word 'unreasonable' nor does it indicate what the relationship is between that part prohibiting unreasonable searches and that part setting forth the conditions under which warrants may issue.") (footnote omitted).

24. *Terry v. Ohio*, 392 U.S. at 16. The Court noted that " 'arrests' in traditional terminology" are those that "eventuate in a trip to the station house and prosecution for crime." *Id.*

25. *See* Dunaway v. New York, 442 U.S. 200, 208 (1979) (noting that before *Terry v. Ohio* "[t]he term 'arrest' was synonymous with those seizures governed by the Fourth Amendment.").

26. 379 U.S. 89 (1964).

27. *Id.* The evidence which the defendant sought to suppress at trial was obtained by the police as a result of the *arrest* and not of the stop. *Id.* at 90.

28. In the prohibition-era case of Carroll v. United States, 267 U.S. 132 (1924), the Supreme Court ruled that federal prohibition agents were authorized to conduct

by making it clear that automobile stops constituted seizures.[29] If a court concludes that an intrusion rises to the level of a "search" or "seizure," then it must, under the language of the fourth amendment, inquire into the "reasonableness" of the intrusion. The Law Court has recognized a "governing principle" for determining reasonableness. In *State v. Richards*,[30] the court stated "any search is *per se unreasonable* if it lacks two essentials[:] (1) the existence of probable cause, and (2) the prior determination of such probable cause by a neutral and detached magistrate whose determination is reflected in the issuance of a search warrant."[31] These two "essentials" are considered in turn.

Probable cause is indispensable to reasonable arrests or searches.[32] Before a court can test for the existence of probable cause, however, it must answer the question: probable cause to believe *what*?[33] Since the language of the fourth amendment is silent on the question, courts are left to struggle with it.[34] The governmental interest in "having its laws obeyed"[35] predominates in fourth amendment decisions which turn on the existence of probable cause.[36] Alternatively described, the government has an interest in

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an extensive search of the defendant's vehicle. The Court did not have occasion to decide whether the stop constituted a "seizure." The language of the *Carroll* decision implies that a government official "seizes" a person or a thing when he takes him or it into custody for some length of time. This notion of "seizures" does not appear to include automobile stops. *Id.* at 155-56.

Inherent in *Beck v. Ohio* and *Carroll v. United States* is the idea that the legality of automobile stops is directly determined by the legality of the purpose behind the stop. A stop is legal if it is made to execute a legal arrest or to conduct a legal search. Conversely, a stop is illegal if not made for a proper purpose. *Carroll* confirms this latter proposition by stating, "[i]t 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." Carroll v. United States, 267 U.S. at 153-54.

29. *See supra* note 9 and accompanying text, and *infra* note 73.

30. 296 A.2d 129 (Me. 1972). The *Richards* decision involves the reasonableness of an officer's search of the defendant's jacket, which had been left in the defendant's car following an accident. The search occurred shortly after the accident and while the car was still on the highway. *Id.* at 130, 138.

31. *Id.* at 135-36. The quote continues: "[T]his latter requirement of a search warrant [is] expendable only if there are exigent circumstances in which procurement of a warrant would have strong likelihood of frustrating the fulfillment of the governmental interest conferring the probable cause to intrude upon the privacy of property." *Id.* at 136.

32. *See* Dunaway v. New York, 442 U.S. 200, 208 (1979); Almeida-Sanchez v. United States, 413 U.S. 266, 269 (1973); Beck v. Ohio, 379 U.S. 89, 91 (1964).

33. *See* State v. Richards, 296 A.2d 129, 131 (1972).

34. *Id.*

35. Terry v. Ohio, 392 U.S. 1, 26 (1968).

36. Almeida-Sanchez v. United States, 413 U.S. at 271-72 (Search was improper where there was no probable cause to believe that the defendant motorist was "guilty of the commission of an offense."); State v. Currier, 521 A.2d 295, 298 (Me. 1987)

"enforcing the law in the community's protection"[37] and in "crime prevention and detection."[38] Hence, appellate courts have held that arrests and searches are only reasonable if they are based upon probable cause to believe a statute has been or is being violated.[39] As the tangible, objective, and quantifiable will of the people, the laws provide a governmental, or societal, interest against which the existence of probable cause can be measured. By using "society's interest in having its laws obeyed" as the object of the probable cause requirement, courts have endowed fourth amendment protection with predictability.[40]

If a court decides that society's interest in having its laws obeyed is threatened in a given case, then it next must determine if there is cause to believe that the governmental interest at risk rises to the level of "probable." The Supreme Court has attempted to define "probable cause" in at least two cases involving vehicle stops.[41]

(Stop was valid where the officer "clearly had probable cause to believe that a crime had been committed."); State v. Richards, 296 A.2d at 131-32 ("Since 'probable cause' has been so frequently utilized in the law in relationship to arrests by police for the commission of crimes and judicial determinations concerning charges of criminal conduct, there is a natural tendency for lawyers and judges to supply an exclusively criminal model.").

37. Dunaway v. New York, 442 U.S. 200, 208 (1979) (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)).

38. *Id.* at 209.

39. *See, e.g.*, Dunaway v. New York, 442 U.S. 200, 208 n.9, 216 (1979); Almeida-Sanchez v. United States, 413 U.S. 266, 269, 274-75 (1973); Beck v. Ohio, 379 U.S. 89, 91 (1964); Carroll v. United States, 267 U.S. 132, 153-54 (1925); State v. Boilard, 488 A.2d 1380, 1385-86 (Me. 1985); State v. Anderson, 447 A.2d 827, 828-29 (Me. 1982).

40. *See* Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2490 (1990) (Brennan, J., dissenting) ("The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards.") (quoting Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973)).

41. In Beck v. Ohio, 379 U.S. 89 (1964), law enforcement officers were held to have probable cause to arrest if "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed, or was committing, an offense". *Id.* at 91. In order to rise to the threshold of "probable," the "cause" must be based on reliable, factual information that criminal activity has occurred or is occurring. Additionally, that information must meet an objective test: that a "prudent man" would draw a causal link between the information and the conclusion that society's interest in having its laws obeyed was at risk. The Court held that an arrest was unlawful because the information upon which it was predicated was neither "specific" nor "credible" enough to meet the "probable cause" requirement. *Id.* at 97. One of the officers involved testified that he had performed the stop and arrest because someone he knew gave him "information" regarding Mr. Beck. The officers neither identified the informant nor articulated what "information" he had given. *Id.* at 94.

The essence of the probable cause definition in *Beck* was set forth nearly forty years before in Carroll v. United States, 267 U.S. 132, 162 (1925). In both cases the defendants challenged a search or seizure that came after a vehicle stop. Hence the

More recently, in *Illinois v. Gates*,[42] in a case involving the search of a home and a vehicle, the Court attempted to reduce the probable cause concept, stating that the appropriate probable cause inquiry was whether a "magistrate had a 'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing . . . ."[43]

In *State v. Currier*,[44] the Law Court held that a vehicle stop was reasonable since the officer "was 'able to point to specific and articulable facts which, taken together with rational inferences from those facts' warranted the intrusion."[45] A reliable informant had given the officer a prearranged signal indicating that the defendant had, moments before, delivered marijuana to a certain address.[46] Furthermore, the officer who had orchestrated the stop had seen the defendant drive recklessly. These facts gave the officer "probable cause to believe that a crime had been committed."[47]

Each of the requirements for a reasonable stop, as defined by *Currier*, were met in *State v. Seavey*,[48] decided only one month before *Pinkham*.[49] In *Seavey*, however, the court declined to set forth any verbal formulation for a valid vehicle stop, choosing instead merely to recite the facts and reach a conclusion of reasonableness. An officer waiting to make a left turn at an intersection witnessed a motorist, who was traveling in the opposite direction, make a right turn at the same intersection without using his turn signal.[50] It appears from the opinion that the driver's failure to signal did not create an unsafe condition. The court held the stop was valid on the ground that the motorist had violated a statute requiring the use of a turn signal in such situations.[51] The court simply ignored the suggestion that the motorist did not violate the spirit of the statute, choosing instead to interpret the statute strictly.[52] Although the court failed to articulate the authority for its holding that the stop in *Seavey* was reasonable, the stop appears to have satisfied the *Currier*[53] no-

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probable cause analysis was not directly applied to the stop in either case.

42. 462 U.S. 213 (1983).

43. *Id.* at 236 (quoting Jones v. United States, 362 U.S. 257, 271 (1960)).

44. 521 A.2d 295 (Me. 1987).

45. *Id.* at 298.

46. *Id.* at 297.

47. *Id.* at 298.

48. 564 A.2d 388 (Me. 1989). The court never actually uses the term "probable cause" in this one page decision. It is clear, nonetheless, that the officer had probable cause to arrest or to issue a summons for a traffic law violation.

49. 565 A.2d 318 (Me. 1989).

50. State v. Seavey, 564 A.2d at 388.

51. *Id.* The statute in question, ME. REV. STAT. ANN. tit. 29, § 1191 (1978), says that motorists must use directional signals "whenever other traffic may be affected."

52. *Id.*

53. State v. Currier, 521 A.2d 295 (Me. 1987).

tion of probable cause.[54] The information relied on by the officer was even more reliable than that in *Currier*, since it was based entirely on his own observation. Furthermore, a prudent person in the officer's position would conclude that society's laws were not being obeyed, based on a specific Maine statute.[55]

The final step in the reasonableness analysis for cases where probable cause of criminal activity is required is to determine whether the warrant requirement has been fulfilled. Essentially, the warrant requirement answers the question: "By whom and when must the foregoing analysis be done?" Judges can validate a search or seizure ahead of time by issuing either a search warrant[56] or an arrest warrant.[57] Two principles are embodied in the warrant requirement. First, a warrant guarantees that the probable cause analysis will be performed *prior* to the intrusion.[58] Second, it guarantees that the probable cause analysis, including the weighing of governmental interests, will be performed by a member of the judiciary—"a neutral and detached magistrate,"[59] and will not be subject to the unfettered discretion of the officer in the field.[60]

Exceptions to the requirement of search warrants[61] as well as arrest warrants[62] abound in fourth amendment case law.[63] The Su-

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54. *See supra* text accompanying note 45.

55. The Law Court has relied on rather minor statutory violations to uphold stops in other cases. *See, e.g.*, State v. Lewry, 550 A.2d 64 (Me. 1988) (officer's stop of defendant's vehicle was justified by defendant's statutory violation occurring when he failed to dim his headlights despite officer's repeated signals to do so); State v. Johnson, 365 A.2d 497, 498 (Me. 1976) (where police officers observed defendant's vehicle double parked on a public street, in apparent violation of parking regulations, and where defendant's face appeared flush and defendant's hair was disheveled, such facts justified officers in stopping defendant).

56. *See generally* 2 W. LAFAVE, *supra* note 14, § 4.

57. *See* 2 W. LAFAVE, *supra* note 14, § 5.1(g).

58. *See supra* note 11 and accompanying text.

59. *See supra* note 12.

60. *Id.*

61. *See* Note, *supra* note 5, at 571. The Note lists the recognized situations where the "exigencies make it imperative to proceed without a warrant." These are: "a search incident to an arrest; the stop and frisk exception; the automobile or moving vehicle exception; the doctrine of hot pursuit; the seizure of evidence or contraband that is subject to removal or destruction; and the emergency doctrine exception." (footnotes omitted).

62. *See generally* 2 W. LAFAVE, *supra* note 14, § 5.1(b), at 395-96. Some warrantless arrests are authorized by statutes and common law. *Id. See* Carroll v. United States, 267 U.S. 132, 156-57 (1925). In addition, the Supreme Court has "never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." Gerstein v. Pugh, 420 U.S. 103, 113 (1975). Most states have statutes that authorize warrantless arrests for any misdemeanor committed in the arresting officer's presence. 2 W. LAFAVE, *supra* note 14, § 5.1(b), at 395-96. *Cf* ME. REV. STAT. ANN. tit. 29, § 2121 (1978).

63. Courts have recognized that in certain "specifically established and well-delineated" circumstances, Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971), "pro-

preme Court has made clear that a law enforcement officer does not need a warrant to legally stop a vehicle.[64] Despite the frequent exceptions to the warrant requirement, the case law negates neither the principle that a *judge* should perform the ultimate probable cause analysis,[65] nor its corollary that a *judge* should ultimately determine whether the governmental interest[66] which purports to authorize the intrusion is, indeed, legitimate. If police perform a search or seizure without a warrant, then a judge still performs the probable cause analysis, albeit at a subsequent trial rather than before the arrest.

B. Terry v. Ohio

In 1968, the Supreme Court, in *Terry v. Ohio*[67] addressed the "narrow" issue of "whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest."[68]

Chief Justice Warren first determined that the intrusions of an investigatory stop and a pat-down for weapons (a "frisk") were a "seizure" and a "search," respectively, under the fourth amendment.[69] A "seizure" occurs "whenever a police officer accosts an individual and restrains his freedom to walk away. . . ."[70] Furthermore, "a careful exploration of the outer surfaces of a person's clothing all over his or her body" is a search.[71] The *Terry* decision has spawned a vast body of case law which rests on the presumption that vehicle stops, as "seizures," are protected by the fourth amendment.[72] Because of *Terry*, the Maine Law Court, when confronted with cases involving the stop of a moving vehicle, has always found that the motorist is entitled to the fourth amendment's protection against unreasonable seizures.[73]

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curement of a warrant would . . . frustrat[e] the fulfillment of the governmental interest" in having its laws obeyed. State v. Richards, 296 A.2d 129, 135-36 (Me. 1972).

64. Almeida-Sanchez v. United States, 413 U.S. 266, 269 (1973) ("It is settled . . . that a stop . . . of a moving automobile can be made without a warrant. . . . [A] moving automobile on the open road presents a situation 'where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.' ") (quoting Carroll v. United States, 267 U.S. 132, 153 (1925)).

65. *See supra* notes 8-11 and accompanying text.

66. For a discussion of governmental interests, see *supra* notes 32-40 and accompanying text.

67. 392 U.S. 1 (1968).

68. *Id.* at 15.

69. *Id.* at 16.

70. *Id.*

71. *Id.*

72. *See supra* notes 1-9.

73. *See, e.g.*, State v. Pelletier, 541 A.2d 1296 (Me. 1988); State v. Carsetti, 536 A.2d 1121, 1122 (Me. 1988); State v. Jarrett, 536 A.2d 1111, 1112 (Me. 1988); State v.

Having determined that the intrusion was of the sort that the fourth amendment sought to protect, the *Terry* Court next turned to the "reasonableness" analysis.[74] Rather than employ the probable cause and warrant procedure tests,[75] the Court determined reasonableness by balancing the governmental interest against the intrusion suffered by Mr. Terry.[76] Both the stop and the frisk for weapons were reasonable if the officer had sufficient cause[77] to believe that a legitimate government interest was threatened.[78] The Maine Law Court has routinely decided fourth amendment vehicle-stop cases by using the balancing test promulgated by *Terry*.[79]

Essential to the performance of the *Terry*-type balancing test is the determination of the legitimate governmental interests that validate a stop. Like the decisions that turn on a probable cause analysis, the *Terry* decision affirmed the governmental interest in "crime prevention and detection."[80] This same interest has been the cornerstone of Maine vehicle-stop cases.[81] In *State v. Caron*,[82] the court

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Caron, 534 A.2d 978 (Me. 1987); State v. Richford, 519 A.2d 193, 195 (Me. 1986); State v. Cyr, 501 A.2d 1303, 1305-1306 (Me. 1985); State v. Chapman, 495 A.2d 314, 316-18 (Me. 1985); State v. Garland, 482 A.2d 139, 142 (Me. 1984); State v. Thurlow, 485 A.2d 960, 963 (Me. 1984); State v. Wentworth, 480 A.2d 751, 755 (Me. 1984); State v. McKenzie, 440 A.2d 1072, 1075 (Me. 1982); State v. Rand, 430 A.2d 808, 819 (Me. 1981).

74. Terry v. Ohio, 392 U.S. at 20.

75. *Id.* Instead, it would test the conduct of the police officer "by the Fourth Amendment's general proscription against unreasonable searches and seizures." Despite this new approach, the Court proclaimed that "the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context." *Id.*

76. *Id.* at 20-21 ("[T]here is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' ") (quoting Camara v. Municipal Court, 387 U.S. 523, 534-35, 536-37 (1967)).

77. Sufficient cause is defined as "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. The cause test is determined with respect to an "objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22.

78. *Id.* at 21-24.

79. *See supra* note 73.

80. Terry v. Ohio, 392 U.S. at 22. *See supra* notes 33-40 and accompanying text for discussion of governmental interests in probable cause cases.

81. *See, e.g.*, State v. Seavey, 564 A.2d 388 (Me. 1989) (reasonableness of stop hinged on whether facts observed by officer constituted a violation of law); State v. Pelletier, 541 A.2d 1296, 1297 (Me. 1988) (stop was reasonable because officer "clearly had 'more than speculation or an unsubstantiated hunch' that the driver was operating under the influence") (quoting State v. Caron, 534 A.2d 978, 979 (Me. 1987)); State v. Carsetti, 536 A.2d 1121, 1122 (Me. 1988) (stop was reasonable because officer had observed that vehicle "had a partially obstructed license plate and an expired registration sticker in violation of 29 M.R.S.A. sections 106 and 381"); State v. Palmer, 550 A.2d 66, 67 (Me. 1988) (stop was reasonable because "officer testified to

invalidated a stop based on a vehicle's one-time straddling of the center line for twenty-five to fifty yards. Because this fact failed to "give rise to an objectively reasonable suspicion that criminal activity was involved," the court held the stop unreasonable.[83] Stops made even on rather picayune or technical infractions of motor vehicle statutes have been upheld by the federal courts[84] and the Law

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specific and articulable facts with regard to excessive speed"); State v. Jarrett, 536 A.2d 1111, 1112 (Me. 1988) ("An investigatory stop of a motor vehicle meets constitutional requirements if it is based upon a '. . . reasonable suspicion of criminal activity, grounded in specific and articulable facts . . .' ") (quoting State v. Chapman, 495 A.2d 314, 316 (Me. 1985)); State v. Caron, 534 A.2d at 979 ("The intrusion [of a stop] is justified if the officer has suspicion of 'criminal conduct which has taken place, is occurring, or imminently will occur' and the suspicion is reasonably warranted, i.e., a person of 'reasonable caution' would believe that criminal activity was afoot.") (quoting State v. Garland, 482 A.2d 139, 142 (Me. 1984)); State v. Peaslee, 526 A.2d 1392 (Me. 1987) ("To justify an investigatory stop of an automobile the officer must be able to point to specific and articulable facts that, taken together with rational inferences therefrom, reasonably warrant suspicion of unlawful conduct on the part of the occupant of the automobile."); State v. Richford, 519 A.2d 193, 195 (Me. 1986) (officer was justified in approaching defendant, who was seated in a vehicle, because officer had "reasonable grounds to believe that criminal conduct was about to be committed"); State v. Chapman, 495 A.2d at 316-18 (stop was unreasonable where officer lacked a reasonable suspicion of criminal activity, grounded in specific and articulable facts at the time of the initial stop); State v. Cyr, 501 A.2d 1303, 1305 (Me. 1985) ("An investigatory stop is lawful if police can point to specific and articulable facts which, taken together with the rational inferences drawn from those facts, give rise to a reasonable suspicion that an individual may be engaged in criminal activity."); State v. Garland, 482 A.2d at 142 (stop is unreasonable unless officer can point to specific and articulable facts warranting suspicion of criminal conduct which has taken place, is occurring or imminently will occur); State v. Wentworth, 480 A.2d 751, 755 (Me. 1984) (purpose of *Terry*-type reasonableness test is "to protect the legitimate governmental interest in crime detection without subjecting members of the public to arbitrary detention"); State v. Thurlow, 485 A.2d 960, 963 (Me. 1984) ("For . . . an investigatory stop without a warrant to be 'reasonable' under controlling constitutional mandates, the police . . . need have only an articulable suspicion that criminal activity is afoot."); State v. Griffin, 459 A.2d 1086, 1089 (Me. 1983) (stop is unreasonable unless "officer's objective observations, coupled with any relevant information he may have, together with the rational inferences and deductions he may draw and make from the totality of the circumstances, be sufficient to 'reasonably warrant suspicion of criminal conduct' on the part of the party or parties subjected to the investigatory stop or detention") (quoting State v. Rowe, 453 A.2d 134, 136 (Me. 1982)); State v. McKenzie, 440 A.2d 1072, 1075 (Me. 1982) (investigatory stop is justified only if officer, on basis of specific, articulable facts, suspects criminal conduct); State v. Rowe, 453 A.2d at 136 ("An officer may stop a moving automobile if he has specific and articulable facts that, when combined with rational inferences from those facts, reasonably warrant suspicion of criminal conduct by the occupants."); State v. Fitzherbert, 361 A.2d 916, 919 (Me. 1976) ("officer was justified in stopping the vehicle because of his reasonable suspicion that its occupants were involved in violation of laws relating to intoxicating liquors").

82. 534 A.2d 978 (Me. 1987).

83. *Id.* at 979.

84. *See, e.g.*, United States v. Neu, 879 F.2d 805, 807 n.3, 808 (10th Cir. 1989) (stop of suspected "Hell's Angel" motorcyclist after he had decelerated abruptly to

Court.[85] Whether the officer had a different motive for a stop is irrelevant as long as a reasonable officer would have made the stop based on the reason articulated.[86] The Law Court has further held, in *State v. Griffin*,[87] that a stop based on the apparent driver's "furtive behavior" is reasonable if such behavior gave the officer "reasonable suspicion that the subject [was] involved in *unlawful conduct*."[88] The governmental interest in crime prevention and detection does not, however, justify the stop of a moving vehicle merely for "generalized criminal inquiries."[89] Nor does it justify "random stops of . . . drivers of motor vehicles . . . for purposes of identification and checking of drivers' licenses and auto registrations . . . ."[90] Prior to *State v. Pinkham*, only one Maine decision — *State*

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between ten and fifteen miles per hour was proper because officer had probable cause to believe that driver had violated a Colorado statute making it illegal to drive so slowly "as to impede or block the normal and reasonable forward movement of traffic").

85. *See, e.g.*, State v. Seavey, 564 A.2d 388, 389 (Me. 1989) (stop was proper where officer had reason to believe that motorist had violated a Maine statute making it illegal to "turn any vehicle without giving an appropriate signal"); State v. Carsetti, 536 A.2d 1121, 1122 (Me. 1988) (stop of van driven by defendant was justified by police officer's observance of partially obstructed license plate and expired registration sticker, both in violation of Maine statutes); State v. Lewry, 550 A.2d 64 (Me. 1988) (stop was justified by motorist's violation of a Maine statute making it illegal not to dim headlights when approaching oncoming traffic). *Compare* State v. Johnson, 365 A.2d 497, 498 (Me. 1976) (officer who observed "a person evidencing two of the classic symptoms of intoxication, being alone in a motor vehicle, on a public highway, and in apparent violation of parking regulations" was justified in stopping that person's vehicle).

86. United States v. Neu, 879 F.2d 805, 808 (10th Cir. 1989). The *Neu* Court stated: "It . . . does not matter what lingering suspicions [the officer] in fact might have harbored against the [suspected Hell's Angel] 'biker.' We only ask whether a reasonable officer would have stopped a motorist under the same traffic circumstances as involved here."

87. 459 A.2d 1086 (Me. 1983).

88. *Id.* at 1090 (emphasis added). In *Griffin*, the officer saw a vehicle pull over to the side of the road. *Id.* at 1088. When the officer pulled his marked patrol car along side the stopped vehicle, he saw the person in the driver's seat slide into the back seat. *Id.* The court held that, under these circumstances, "it was reasonable for him to undertake a brief and limited investigation and explore, without searching, the significance of the driver's furtive conduct." *Id.* at 1090 (footnote omitted). The court did not create a governmental interest in preventing furtive conduct, however. Instead, it affirmed the traditional standard used to judge the reasonableness of an investigatory (i.e., "*Terry*-type") stop or detention: "that the . . . facts do give rise to a reasonable suspicion of criminal activity and that an investigatory stop or detention of the individual is appropriate to clear up the suspicion . . . ."

89. United States v. Ward, 488 F.2d 162, 169-70 (9th Cir. 1973) (en banc).

90. State v. Garland, 482 A.2d 139, 142 (Me. 1984). The court does suggest that stops for the foregoing reasons would be reasonable if the "*Terry* requirements that the officer be able to point to specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant suspicion of criminal conduct on the part of the party subjected to the investigatory stop" are met. *Id.* A stop that complies with the *Terry* requirements, however, cannot be a "random" stop.

v. Fuller[91] — had upheld a moving vehicle stop based on a governmental interest other than crime prevention and detection.[92]

The *Terry* Court added a new dimension—safety—to the established governmental interest in crime prevention and detection. The officer's concern for his own safety and the safety of "other prospective victims of violence" constituted the governmental interest;[93] however, this governmental interest in the officer's safety does not authorize an unbridled search. Far from espousing a general governmental interest in disarming people, or in safety, the *Terry* Court limits the governmental interest in safety to those instances where the "officer is justified in believing that the individual whose suspicious behavior he is investigating *at close range* is armed and *presently* dangerous to the officer or to others . . . ."[94] The qualifications that the suspect be "at close range" and "presently dangerous" limit the governmental interest in safety to those circumstances where imminent danger exists.

Such was the unarticulated governmental interest in *State v. Fuller*,[95] in which the Law Court upheld an officer's stop of a vehicle whose headlights had flicked on and off five times in a quarter mile. Although the court declined to clearly articulate the governmental interest at risk prior to the stop,[96] in fact, the stop eliminated the imminent and ongoing threat to safety posed by the driver proceeding into the night with defective headlights.[97]

After considering the particular intrusion suffered by Mr. Terry, the governmental interests involved, and the likelihood that Mr. Terry posed a threat to these governmental interests, the Court held that the limited frisk for weapons was reasonable.[98] The Court concluded probable cause was unnecessary because of the limited intrusion upon the rights of the individual.[99] As a result of *Terry*, an officer could, by stopping a vehicle or otherwise briefly detaining a person, investigate potential criminality or danger, despite the ab-

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Hence, the Law Court's statement that "[r]andom stops . . . , absent compliance with *Terry* requirements, are unreasonable under the Fourth Amendment" is somewhat illogical. *Id.* at 142-43.

91. 556 A.2d 224 (Me. 1989).

92. In *State v. Fuller*, the court sustained a stop made on the officer's suspicion that the motorist "may have been in trouble." *See infra* notes 95-97 and accompanying text. In State v. LaPlante, 534 A.2d 959 (Me. 1987), the court acknowledged the same interest, but did not have to decide whether it justified the stop of a moving vehicle.

93. Terry v. Ohio, 392 U.S. 1, 23-24 (1968).

94. *Id.* at 24 (emphasis added).

95. 556 A.2d 224 (Me. 1989).

96. *Id.* The court merely stated that the driver "may have been in trouble."

97. *Id.*

98. Terry v. Ohio, 392 U.S. 1, 15 (1968).

99. *Id.* at 26-27.

sence of probable cause for arrest.[100] As the probability that a government interest is at risk rises, so rises the extent of a justifiable intrusion.[101]

In *State v. Laplante*,[102] the Law Court introduced the governmental interest in allowing for a police officer's "inquiry" to see if "[a] lone car pulled over to the side of a major highway at night" contains "a driver in some sort of trouble."[103] While the court ruled that the inquiry was allowable under the *Terry* balancing test, it held that since no detention or seizure occurred, the intrusion did not have to meet the *Terry* requirements.[104] It can be inferred from *Laplante* that this more general and vague governmental interest justified the intrusion only because the intrusion was so slight. The court compares the officer's approach of the already stopped vehicle to "merely approaching an individual on the street or in another public place."[105] Nowhere in *Laplante* does the Law Court suggest that the governmental interest in inquiring whether the driver was in trouble would justify a seizure, such as a roving patrol stop of a moving vehicle. In *State v. Caron*,[106] decided three weeks after *Laplante*, the court rejected a stop on the ground that the officer lacked reasonable suspicion of criminal activity.[107] Although the driver had straddled the center line, and the officer suspected that the driver may have been asleep, the court refused to consider any governmental interest except the prevention of criminal activity.[108] It wasn't until one year later, in *State v. Fuller*,[109] that the court cryptically upheld a stop of a moving vehicle made for a reason other than the suspected violation of a statute.

To prevent abuses of the "balancing" approach, the *Terry* Court erected limitations which preserve the predictability of the probable cause and warrants clauses.[110] First, the Court gave no indication

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100. The court stated its logic for discarding probable cause as the *sine qua non* of reasonableness:

> It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest.

Id. at 26.

101. *Id.* at 22.

102. 534 A.2d 959 (Me. 1987).

103. *Id.* at 962.

104. *Id.*

105. *Id.* (quoting Florida v. Royer, 460 U.S. 491, 497-98 (1983)).

106. 534 A.2d 978 (Me. 1987).

107. *Id.* at 979.

108. *Id.*

109. 556 A.2d 224 (Me. 1989). *See infra* notes 128-32 for a discussion of *Fuller*.

110. The Court stated: "the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this [balancing] context." Terry v. Ohio, 392 U.S. at 20.

that valid governmental interests would vary from case to case. Crime prevention and detection, and safety from a threat of immediate, life-threatening danger are the only governmental interests acknowledged by the Court.[111] Crime prevention and detection, the only traditional valid governmental interests, firmly represent the collective will of the people, as manifested in statutes. Protection from immediate, life-threatening danger is such a compelling interest, one might speculate, that people impliedly consent to intrusions made under these circumstances.[112]

Another limitation placed on the balancing test is rooted in the warrant requirement. Recognizing the tremendous discretionary power in the balancing analysis, the *Terry* Court carefully bestowed that power on the "detached, neutral scrutiny of a judge,"[113] rather than on the "discretion of the police."[114] The roving patrol stop of a moving vehicle represents one constant level of intrusion in the strata of fourth amendment intrusions.[115] Such a stop is only reasonable when a judge finds both that a legitimate governmental interest existed and that a certain threshold of cause existed to warrant the officer in believing that the particular motorist in question constituted a threat to the governmental interest.[116] In *State v. Caron*,[117] for example, the Law Court failed to find that a police officer had sufficient suspicion that a driver was violating the operating under the influence of intoxicating liquor statute, when the officer's suspicion was based merely on the driver's brief, one-time crossing of the center line.[118] Significantly, the court did not address the officer's suspicion that the driver was asleep.[119] For a given level of intrusion, then, a judge has to determine only if the amount of cause present is sufficient to balance that intrusion against a previously established valid governmental interest. This approach preserves some of the predictibility and stability of the "probable cause" test for reasonableness.[120]

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111. *Id.* at 22-24, 27.

112. *Cf.* State v. Richards, 296 A.2d. 129, 137-38 n.7 (Me. 1972) (consent to emergency medical treatment for automobile accident victim may be implied).

113. Terry v. Ohio, 392 U.S. at 21.

114. *Id.* at 22 (quoting Beck v. Ohio, 379 U.S. 89, 97 (1964)).

115. *Cf.* State v. LaPlante, 534 A.2d 959 (Me. 1987) (involving an officer's approach of an already stopped vehicle).

116. *See, e.g.*, State v. Griffin, *supra* notes 87-88 and accompanying text. Although *Griffin* did not technically involve the stopping of a moving vehicle, the Law Court applied the *Terry*-type investigatory stop analysis.

117. 534 A.2d 978 (Me. 1987).

118. *Id.* at 978-79.

119. *Id.* at 979.

120. *See supra* notes 32-40 and accompanying text.

C. Civil and Quasi-Criminal Stops

The third kind of circumstance under which a vehicle stop can be valid under the fourth amendment is where the requirements of a valid "civil stop" or "quasi-criminal stop" exist.[121] As used in this Note, a civil stop is one ostensibly unconnected with criminal activity, and connotes benevolent motives.[122] A quasi-criminal stop is one made without cause to believe that the motorist being stopped is threatening a governmental interest, but nonetheless made for the general purpose of vindicating society's interest in having its laws obeyed.[123]

The first step in analyzing the reasonableness of a civil or quasi-criminal intrusion is to determine whether it qualifies for fourth amendment protection by falling within the definition of either search or seizure. Both the Maine and federal courts have held that fourth amendment protection extends to vehicle stops where no quantum of individual suspicion of criminal activity exists.[124]

If a court determines that the intrusion at issue qualifies for fourth amendment protection, then it must next determine if the intrusion was reasonable.[125] To be reasonable, a stop must balance the promotion of a valid governmental interest and the extent of the

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121. *See* Note, *supra* note 5.

122. *Id.*

123. *Id.*

124. United States v. Martinez-Fuerte, 428 U.S. 543 (1976); Delaware v. Prouse, 440 U.S. 648 (1979); State v. Fuller, 556 A.2d 224 (Me. 1989). The fourth amendment protections do not apply, however, when a police officer merely makes an inquiry of occupants of a lone car on the side of a major highway at night. In *State v. Laplante*, the Maine Law Court found that:

> [L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, [or] asking him if he is willing to answer some questions . . . If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.

State v. LaPlante, 534 A.2d 959, 962 (Me. 1987) (quoting Florida v. Royer, 460 U.S. 491, 497-98 (1983)).

Courts have also applied the protections of the fourth amendment to: noncriminal searches of persons, Skinner v. Railway Labor Executives' Ass'n, 109 S. Ct. 1402 (1989); dwellings, Camara v. Municipal Court, 387 U.S. 523 (1967); businesses, Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); and clothing, State v. Richards, 296 A.2d 129 (Me. 1972).

125. Some courts have employed the traditional probable cause and warrants tests to ascertain the reasonableness of noncriminal searches and seizures. *See, e.g.*, Camara v. Municipal Court, 387 U.S. 523 (1967); State v. Richards, 296 A.2d 129 (Me. 1972). The prevailing approach, however, is more akin to the *Terry v. Ohio* balancing test. *See, e.g.*, Delaware v. Prouse, 440 U.S. 648 (1979); United States v. Brignoni-Ponce, 422 U.S. 873 (1975); Cady, Warden v. Dombrowski, 413 U.S. 433 (1973); Almeida-Sanchez v. United States, 413 U.S. 266 (1973). An analysis of which is the sounder intellectual approach is beyond the scope of this Note. For a thorough discussion of this topic, see Note, *supra* note 5. The fourth amendment principles which underlie both approaches, however, help to illustrate the limits of legal vehicle stops.

intrusion upon the individual.[126] The *mere existence* of a valid governmental interest is never enough to justify a roving patrol stop. Weight is only given to the governmental interest if the stop will promote that interest. Hence, a stop is only reasonable if some degree of individualized suspicion exists.[127]

In only one case prior to *Pinkham* has the Law Court found a governmental interest important enough to validate a roving patrol stop not involving the violation of a statute. In *State v. Fuller*,[128] decided only six months before *Pinkham*, the Law Court upheld the stop of a vehicle in the early evening hours after an officer had witnessed the vehicle's headlights blink on and off several times within a quarter mile.[129] *Fuller* falls into line within an established category of vehicle stop cases based on mechanical defects or dangerous conditions. In addition to *Fuller*, such stops include ones based on a suspicion of a defective turn signal,[130] a bouncing tire,[131] and furniture about to fall out of a car.[132]

Aware that an expansive concept of governmental interest could destroy the substance of the fourth amendment, courts have narrowly defined the governmental interests, other than the violation of a statute, that can justify vehicle stops. Narrowly defining valid governmental interests, without more, fails to sufficiently limit the universe of reasonable stops since law enforcement officials can almost always articulate at least an attenuated link between a motorist and a valid governmental interest. The intrusion of a random or of a roving patrol stop is unreasonable unless an officer can articulate a close link between the motorist's vehicle stop or actions and a threat to a governmental interest.[133] If the intrusion is a stop at a temporary sobriety checkpoint, as in *Michigan Department of State Police v. Sitz*,[134] then the stop can be reasonable even without a specific link between a motorist and a governmental interest.[135] To incorporate these rules into practice, courts have chosen carefully circumscribed limitations on vehicle stops. Not surprisingly, these limitations are generally rooted in the principles that underlie the language of the fourth amendment. One such limitation is that all roving patrol, civil, and quasi-criminal stop cases involve "some quantum of individualized suspicion" that the object of the intru-

126. Delaware v. Prouse, 440 U.S. 648, 654-55 (1979).
127. *Id.*
128. 556 A.2d 224 (Me. 1989).
129. *Id. See also supra* notes 95-97 and accompanying text.
130. State v. Puig, 112 Ariz. 519, 544 P.2d 201 (1975).
131. State v. Harrison, 111 Ariz. 508, 533 P.2d 1143 (1975).
132. State v. Oxley, 127 N.H. 407, 503 A.2d 756 (1985).
133. Delaware v. Prouse, 440 U.S. 648 (1979); Almeida-Sanchez v. United States, 413 U.S. 266 (1973).
134. 110 S. Ct. 2481 (1990).
135. *Id.*

sion is threatening a valid governmental interest.[136] This limitation guards the principle behind the warrant requirement (rooted in the "particular" language of the fourth amendment) that a person will not suffer the indignity of a search or seizure unless there is a showing that he specifically constitutes a threat to a governmental interest. Hence, in every judicial approval of a roving patrol vehicle stop, the stop was reasonably related to some quantifiable and immediate termination of threat to a governmental interest. Mechanical-defect and dangerous-condition cases turn not on the violation of a statute, but instead on the judge-made governmental interest of protecting people from imminent and ongoing danger. Motorists have been denied the predictability of a system where they would suffer the intrusion of a stop only if they violated a statute. An important but unarticulated limitation has emerged to counter this threat to predictability: all valid roving patrol stops based on mechanical defects or dangerous conditions promise to terminate the threat to the governmental interest in some immediate and quantifiable way.[137] Moreover, none of the mechanical-defect cases indicate that a generalized governmental interest in highway safety can authorize a stop unless the stop promises to terminate an imminent and ongoing threat to highway safety. An imminent and ongoing threat to highway safety would have existed, for example, in *Fuller*[138] if the officer had allowed the motorist to drive off into the evening without properly working headlights. Furthermore, the officer's stop of the motorist promised to eliminate the threat, either by precipitating a repair or by forbidding after-dark driving. When either no valid governmental interest is at risk or when an intrusion does not promise to terminate a threat to a governmental interest in some immediate and quantifiable way, courts have invalidated vehicle stops and other intrusions, despite the presence of a valid governmental interest.

Courts have further circumscribed reasonable roving patrol stops by requiring that the officer particularly suspect that the motorist is

136. Delaware v. Prouse, 440 U.S. at 654-55. The dissenting opinions in both United States v. Martinez-Fuerte, 428 U.S. 543, 570 (1976) (Brennan, J., dissenting) and Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2489 (1990) (Brennan, J., dissenting), argued that this same limitation should render checkpoint stops illegal.

137. The Law Court hinted at this limitation in State v. Griffin, 459 A.2d 1086 (Me. 1983). In setting forth the standards of a *Terry*-type stop the court stated that such a stop is only reasonable if it "is appropriate to clear up the suspicion." *Id.* at 1089. This appears to implement a requirement that the stop be likely to vindicate the governmental interest. Since the governmental interest in *Griffin* was the prevention of criminal activity, the court required that the stop be appropriate to either confirm or reject the officer's suspicion. This test is easily transferred to cases where the governmental interest lies in eliminating mechanical defects and dangerous conditions.

138. *See supra* text accompanying notes 128-32.

an ongoing threat to a valid governmental interest. In *Delaware v. Prouse*,[139] the Court invalidated a random stop to check a motorist's license and registration.[140] While acknowledging the valid governmental interest in highway safety, the Court held that a stop violates the fourth amendment unless it is rooted in reasonable suspicion that *the particular* motorist suffering the intrusion had violated a governmental interest.[141] The *Prouse* decision is significant because it firmly rejects any notion that the general governmental interest in highway safety justifies the random stopping of motorists, even if the intrusion is small.[142] Inherent in the *Prouse* decision is the concept that the *general* governmental interest in highway safety is manifested in vehicle laws.[143] Thus, except in cases of an imminent and ongoing threat to safety, the legislature, not the court, defines the governmental interest in highway safety. With this framework, people can predict that their freedom from searches and seizures will yield to governmental interests only if they violate a statute or pose an imminent and ongoing threat to highway safety.

The Supreme Court, however, has created a second framework which validates carefully defined intrusions even in the absence of some quantum of individualized suspicion. The Supreme Court has held that intrusions can be valid, despite the absence of a particularized suspicion, to check for driver sobriety,[144] to check for compliance with immigration laws at stationary border patrol checkpoints,[145] to search dwellings[146] and businesses[147] to check for compliance with statutes and ordinances dealing with housing standards, and to conduct "inventory searches" of vehicles already in police custody or control.[148] Commonly called "regulatory inspections," these intrusions "must be undertaken pursuant to previously specified 'neutral criteria.' "[149] These neutral criteria are simply limitations that preserve the principles which underlie both the warrant and probable cause requirements.

One such limitation is that the instrusion must be minimal. For example, a primary rationale behind the Supreme Court's approval of stationary border checkpoints and temporary highway sobriety

139. 440 U.S. 648 (1979).
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481 (1990).
145. United States v. Martinez-Fuerte, 428 U.S. 543 (1976).
146. Camara v. Municipal Court, 387 U.S. 523 (1967).
147. Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).
148. South Dakota v. Opperman, 428 U.S. 364 (1976); Cady, Warden v. Dombrowski, 413 U.S. 433 (1973).
149. Delaware v. Prouse, 440 U.S. 648, 662 (1979) (quoting Marshall v. Barlow's, Inc., 436 U.S. 307, 323 (1978)).

checkpoints is the limited nature of the intrusion that such a stop entails.[150] Approving of warrantless stationary border checkpoint stops in *United States v. Martinez-Fuerte*, and of warrantless temporary sobriety checkpoint stops in *Michigan Department of State Police v. Sitz*,[151] the Supreme Court stated

> [W]e view checkpoint stops in a different light [than roving patrol stops] because the subjective intrusion — the generating of concern or even fright on the part of lawful travelers — is appreciably less in the case of a checkpoint stop. . . . '[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop.'[152]

The intrusion of a checkpoint stop is less than that of a roving patrol stop in part because the motorist knows, prior to the intrusion, the probable scope of the instrusion and the authority under which the intrusion will be conducted.[153]

In contrast, the Supreme Court, in at least four cases, has invalidated stops made in the absence of any individualized suspicion that the motorist was engaged in unlawful activity.[154] In *Delaware v.*

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150. In United States v. Martinez-Fuerte, 428 U.S. 543, 566- 67 (1976), the Court stated that "[t]he principle protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop." The minimal intrusion of the checkpoint stop was also important to the Court's finding that temporary sobriety checkpoint stops were reasonable in Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481, 2486-87 (1990).

151. 110 S. Ct. 2481 (1990).

152. United States v. Martinez-Fuerte, 428 U.S. at 558 (quoting United States v. Ortiz, 422 U.S. 891, 894 (1975)); Michigan Dep't of State Police v. Sitz, 110 S. Ct. at 2486 (citation omitted). Although the *Martinez-Fuerte* Court carefully limited its decision to stationary checkpoint border stops, it raises two issues that could have presaged the judicial authorization of other suspicionless stops. First, the Court mentioned in a note that suspicionless checkpoint stops routinely occur in order "to enforce laws regarding drivers licenses, safety requirements, weight limits, and similar matters." United States v. Martinez-Fuerte, 428 U.S. at 560-61, n.14. Furthermore, the Court eschewed the reasonable suspicion requirement, in part, on the lesser expectation of privacy that one has when in an automobile. *Id.* at 561.

A three justice dissent in *Sitz* even thought the intrusion of stops at temporary checkpoints were too great to justify the eschewal of particular suspicion. The dissenters strongly disagreed with the majority's finding that "[t]he intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in *Martinez-Fuerte*." Michigan Dep't of State Police v. Sitz, 110 S. Ct. at 2487. The dissent argued that temporary sobriety checkpoints frequently involve darkness and surprise, two factors which add to driver distress. *Id.* at 428-30. Furthermore, argued the dissent, officials at stationary border checkpoints can easily check for compliance with immigration laws in a standardized manner, unlike checks for sobriety. *Id.* at 429-30.

153. United States v. Martinez-Fuerte, 428 U.S. at 565. The Court raised these issues in reference to the warrant requirement. While the Supreme Court has required search warrants for a regulatory searches of homes, *Martinez-Fuerte* makes clear that warrants are unnecessary for checkpoint auto searches.

154. Delaware v. Prouse, 440 U.S. 648 (1979); United States v. Brignoni-Ponce,

Prouse,[155] the Court invalidated a random stop to check license and registration not simply because the officer lacked particularized suspicion but also because the intrusion of a random stop is serious.[156] In light of the absence of particularized suspicion, the high level of intrusion was unjustified.[157] Describing the intrusion, the court explained:

> [T]hese stops generally entail law enforcement officers signaling a moving automobile to pull over to the side of the roadway, by a means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient, and consume time. Both may create substantial anxiety. For Fourth Amendment purposes, we also see insufficient resemblance between sporadic and random stops of individual vehicles making their way through city traffic and those stops occasioned by roadblocks where all vehicles are brought to a halt or to a near halt, and all are subjected to a show of the police power of the community.[158]

The Supreme Court's vehicle-stop decisions leave no doubt that stops of vehicles are invalid unless: (1) some quantum of individualized suspicion exists that the motorist threatens a legitimate governmental interest[159] and the stop promises to end the threat, or (2) the stop is made at a checkpoint.

A further limitation inherent in the regulatory inspection scheme of intrusions stems from the warrant clause. A principle behind the warrant clause is that the determination of cause to believe that a

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422 U.S. 873 (1975); United States v. Ortiz, 422 U.S. 891 (1975); United States v. Almeida-Sanchez, 413 U.S. 266 (1973).

155. 440 U.S. 648 (1979).

156. *Id.* at 657.

157. *Id.* at 661, 663.

158. *Id.* at 657.

159. Most regulatory inspections seek to vindicate the government's fundamental interest in having its laws obeyed. In both searches of buildings for housing and safety violations and in stops of vehicles to check for illegal aliens, the governmental interest is defined by legislatively determined, written codes or statutes. A notable exception is found in police inventory searches of vehicles under their control. The following governmental interests were advanced by the Court in South Dakota v. Opperman, 428 U.S. 364, 378 (1976), to support inventory searches: "(i) protection of the police from danger; (ii) protection of the police against claims and disputes over lost or stolen property; and (iii) protection of the owner's property while it remains in police custody."

While the governmental interests which support inventory searches by police clearly lack the predictability of governmental interests tied to statutes or to notions of safety from imminent and ongoing danger, a number of separate limitations helped to prevent "unreasonable" intrusion on the rights of individuals. Judicial approval of these inventory searches only extends to *limited* searches of the *vehicles* which are already in the legal and legitimate control or custody of the police. *See, e.g.*, Cady v. Dombrowski, 413 U.S. 433 (1973). These limitations prohibit the rather amorphous governmental interests cited by the *Opperman* Court from authorizing intrusions upon *vehicles* which are not already under legitimate police control or upon *persons* in any situation.

particular person or thing threatens the governmental interest shall not be left to the discretion of the individual officer in the field.[160] Regulatory inspections offer this protection. Since the choice of a road on which to stop motorists is either limited by law[161] or regulated by an agency,[162] officials in the field have limited discretion as to *who* will suffer an intrusion.[163]

A *prior* judicial determination of the governmental interest and of cause was not required, however, by the *Martinez-Fuerte* Court to validate a vehicle checkpoint stop.[164] Instead, the Court found that the visible manifestations of the field officer's authority at a stationary checkpoint, through which *all* traffic passed, provided motorists with the necessary assurances of the validity of the stop.[165] Furthermore, the warrant clause principle of "prevent[ing] hindsight from coloring the evaluation of the reasonableness of a search or seizure" is not applicable to stationary checkpoint cases.[166] This is because the reasonableness of checkpoint stops "turns on factors such as the location and method of operation of the checkpoint, factors that are not susceptible to the distortion of hindsight."[167] The Court did, however, affirm the fundamental warrant clause principal of a person's right to judicial review of an intrusion, albeit after the seizure.[168]

Both Maine and federal courts have defined the *language* and distilled the principles of the fourth amendment. While courts continuously explore its contours and refine its principles, they have carefully observed certain limits in order to preserve the integrity of the fourth amendment. United States Supreme Court and Law Court

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160. Delaware v. Prouse, 440 U.S. 648, 661; United States v. Martinez-Fuerte, 428 U.S. 543, 566 (1976); Almeida-Sanchez v. United States, 413 U.S. 266, 270 (1973); Camara v. Municipal Court, 387 U.S. 523, 532-33 (1966).

161. The border checkpoint operations in United States v. Martinez-Fuerte, 428 U.S. at 543, were performed pursuant to federal statutes and regulations. *Id.* at 553, n.8.

162. The sobriety checkpoint operation in Michigan Dep't of State Police v. Sitz, 110 S. Ct. 2481 (1990), was conducted pursuant to guidelines established by an "Advisory Committee" "comprising representatives of the State Police force, local police forces, state prosecutors, and the University of Michigan Transportation Research Institute." *Id.* at 2483-84.

163. United States v. Martinez-Fuerte, 428 U.S. at 559 ("[C]heckpoint operations . . . involve less discretionary enforcement activity [than roving patrol stops]. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources.").

164. *Id.* at 565-66.

165. *Id.* at 565.

166. *Id.*

167. *Id.*

168. *Id.* at 565-66.

cases have consistently held that a roving-patrol stop is unreasonable unless the officer had a certain quantum of individualized suspicion to believe that a valid governmental interest was at risk. Consistent with the warrant clause principle, courts shall determine what governmental interest will validate a stop. Starting with "crime prevention and detection," courts have gradually expanded the universe of valid governmental interests by including the prevention of imminent and ongoing danger. A stop made for this somewhat more subjective purpose is only reasonable if the stop promises to terminate the danger in some immediate and quantifiable way. Only by keeping a tight rein on the definition of a valid governmental interest have the courts been able to prevent the degradation of the fourth amendment into a toothless, fail-safe verbal test giving officers *carte blanche* to stop motorists at will.

Each of the three major Supreme Court cases that expanded the range, either directly or indirectly, of reasonable automobile stops — *Terry*, *Martinez-Fuerte*, and *Sitz* — rested primarily on the limited nature of the intrusion. Because of *Terry*, stops could be reasonable even if made upon less than probable cause to believe that a crime had occurred. Investigative stops, which need only be based on reasonable suspicion to believe that a valid governmental interest is at risk, now account for a large portion of all vehicle stops.

While *Terry* lowered the necessary level of cause and expanded the definition of valid governmental interest, it erected careful limitations to preserve the essence of the fourth amendment. *Terry*'s primary limitation was that the intrusion be the minimum intrusion necessary to vindicate the governmental interest. The minimal nature of the intrusion also justified the *Martinez-Fuerte* and *Sitz* courts in allowing checkpoint stops despite the lack of *any* particularized cause to believe that a motorist threatened a governmental interest. Because the intrusion occasioned by roving-patrol stops is considerably more severe, the *Prouse* Court ruled that they are unreasonable unless based on particularized suspicion that governmental interests are at risk.

II. THE LAW COURT'S DECISION IN *STATE V. PINKHAM*

At about 2:00 a.m. on a clear summer Sunday morning a police officer observed Ronald Pinkham drive down Russell Street in Skowhegan to its intersection with Madison Avenue.[169] Russell Street was divided into three traffic lanes, each clearly marked by arrows on the pavement, at its intersection with Madison Avenue.[170] The right lane was for traffic turning right onto Madison Avenue, the middle lane was for traffic proceeding straight through the inter-

169. State v. Pinkham, 565 A.2d at 318.
170. *Id.*

section, and the left lane was for traffic turning left onto Madison Avenue. With no other vehicles around, Mr. Pinkham entered the right lane of Russell Street at the intersection.[171] Rather than turn right, however, he passed straight through the intersection.[172] The police officer stopped Pinkham "merely for safety reasons," and "to inquire about the improper lane usage and to inform him that in the future, should he use the lanes, to be sure to advise other drivers of his intentions."[173] The court used the district court's words to summarize the reason for the stop: the police officer was "performing an informational function."[174] As a result of the stop, the police officer observed circumstances that ultimately led to an arrest for operating under the influence.[175] The district court granted Mr. Pinkham's motion to suppress evidence resulting from the stop.[176] Citing *State v. Caron*[177] as authority, the district court ruled that a stop is unreasonble under the fourth amendment unless the police officer had "grounds for believing that a violation of law had occurred."[178] Since Mr. Pinkham violated no law, the district court reasoned, the stop was unreasonable.[179]

The Law Court analyzed the *Pinkham* appeal only in terms of the "safety issue."[180] By first alluding to language from criminal stop cases, the court included this safety stop under the umbrella which justifies warrantless stops made upon suspicion of criminal activity.[181] The "clear" fourth amendment standard used by the *Pinkham* court originated with *Terry v. Ohio*: "[i]n order to initiate an investigation involving brief detention short of a formal arrest, a law enforcement officer must act on the basis of 'specific and articulable facts which, taken together with rational inferences from those facts,

171. *Id.* at 318-19.

172. *Id.*

173. *Id.* at 319.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* (citing State v. Caron, 534 A.2d 978 (Me. 1987)). *Caron* involved a one-time straddling of the center line for 25 to 50 yards with no oncoming traffic early in the morning. *Id.* at 978-79. The court held that the stop violated the fourth amendment because the single incident of lane straddling "did not give rise to an objectively reasonable suspicion that criminal activity was involved." *Id.* at 979. *See supra* text accompanying notes 82-83.

178. *Id.*

179. *Id.*

180. *Id.* The court stated: "[t]his record presents only the safety issue. The Skowhegan police officer had no suspicion of criminal activity, but simply observed improper lane usage and pulled the driver over to warn him about improper driving behavior. Thus, we must decide whether safety reasons alone can ever justify a stop."

181. The court points to State v. Griffin, 459 A.2d. 1086 (Me. 1983) and Terry v. Ohio, 392 U.S. 1 (1968), as authority. Both of these cases involved a suspicion of criminal activity.

reasonably warrant that intrusion'."[182]

The court noted that "[n]othing in the Fourth Amendment requires that the 'specific and articulable facts' relate to suspected criminal activity, although that was the factual context of both *Terry* and *Griffin*."[183] Furthermore, if the *Terry/Griffin* standard were limited to cases of suspected violations of law "we would be overlooking the police officer's legitimate role as a public servant to assist those in distress and to maintain and foster public safety."[184]

To buttress the concept of the police officer as a "public servant" the court cites a number of cases where public safety reasons provided ample justification for stops and searches. First, in *Cady v. Dombrowski*,[185] the United States Supreme Court upheld the duty of police officers to "investigate vehicle accidents in which there is no claim of criminal activity and [to] engage in what . . . may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[186] Second, a group of three cases are cited to support the proposition that police officers may legally stop motorists solely on the basis of suspected mechanical defects, irrespective of infractions of law.[187] Third, the court cites a treatise as support (by analogy) for the proposition that "[p]olice officers do not violate the Fourth Amendment if they stop a vehicle when they have adequate grounds to believe the driver is ill or falling asleep."[188] Finding that "the facts available to the officer at the mo-

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182. State v. Pinkham, 565 A.2d at 319 (quoting State v. Griffin, 459 A.2d 1086, 1089 (Me. 1989)).

183. *Id.* (referring to Terry v. Ohio, 392 U.S. 1 (1968), and State v. Griffin, 459 A.2d 1086 (Me. 1989)).

184. *Id.*

185. 413 U.S. 433 (1973) (upholding, for public safety reasons, search of out-of-state police officer's abandoned vehicle before leaving it unattended, on the belief that it may contain his service revolver).

186. State v. Pinkham, 565 A.2d at 319 (quoting Cady v. Dombrowski, 413 U.S. 433 (1973)).

187. *Id.* at 319-20. The court cites State v. Fuller, 556 A.2d 224 (Me. 1989) (blinking headlights provide sufficient suspicion of safety threat to justify an officer's stop of a vehicle); State v. Puig, 112 Ariz. 519, 544 P.2d 201 (1975) ("suspicion of defective turn signal justifies stop"); and State v. Harrison, 111 Ariz. 508, 533 P.2d 1143 (1975) (bouncing left rear tire justifies stop).

188. State v. Pinkham, 565 A.2d at 319. The court cites 3 W. LAFAVE, *Search and Seizure* § 7.4(f), at 123-24 & n.114 (2d ed. 1987 & Supp. 1989). The cited subsection addresses the issue of police *entry* into vehicles "to aid a person in apparent distress." A case representative of those cited by W. LAFAVE, *supra* note 14, is Anchorage v. Cook, 598 P.2d 939 (Alaska 1979) ("[O]fficer found one car accident with driver asleep or unconscious; it was 'entirely reasonable for the officer to open the door' because the driver 'could have been a person suffering from a serious heart attack, a stroke victim, or someone suffering from some other condition, such as carbon monoxide poisoning, which if not quickly diagnosed and treated could result in irreparable harm or death.' "). None of the cases cited by LaFave involve a law enforcement

ment of the seizure . . . [could] 'warrant a man of reasonable caution in the belief' that the action taken was appropriate," and that "a civil or criminal violation is not always a prerequisite to a stop," the court remanded the case to the district court for reconsideration of whether the stop violated the fourth amendment's proscription against "unreasonable" seizures.[189]

In her dissenting opinion, Justice Glassman argued that the majority decision "establishe[d] a new and different standard to govern the legality of a stop for safety reasons."[190] Justice Glassman stated that, prior to *Pinkham*, the Law Court had analyzed stops made for safety reasons in one of two contexts. One method, patterned after the *Terry v. Ohio* decision, was to find a stop reasonable only if "the specific and articulable facts when viewed objectively . . . form a basis for a reasonable belief that criminal activity [or a civil infraction] *had taken place, was taking place or imminently would occur.*"[191] The Law Court used this approach in *State v. Griffin*. A second method, not inconsistent with *Terry* and *Griffin*, was appropriate in defective-equipment cases. Stops were reasonable in such cases only if a "specific observable defect would warrant a reasonable belief that there was a present or imminent risk to the safety of persons or property."[192] This test was met in *State v. Fuller*,[193] where the Law Court upheld a stop based on a vehicle's blinking headlights.[194] Since the *Pinkham* case involved neither a violation of law, nor a mechanical defect, Justice Glassman reasoned that the stop could not be validated based on case law dealing with those situations.[195] Furthermore, the majority opinion cited no authority to support its tacit legal proposition "that the intrusion of a stop can be justified on the basis of a *possible future* risk to the safety of persons or property."[196]

On remand, the district court found that the "stop was legitimate and good and the officer violated no law by stopping the vehicle."[197] Interpreting the Law Court's ruling on the stop in *Pinkham*, the district court stated: "The Court believes that the officer at the scene must make the decision, some officers might decline to stop. It is up to the individual as he sees it."[198]

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official's *stop* of a vehicle.

189. State v. Pinkham, 565 A.2d at 320 (quoting Terry v. Ohio 392 U.S. 1, 21-22).

190. *Id.* at 321 (Glassman, J., dissenting).

191. *Id.*

192. *Id.*

193. 556 A.2d 224 (Me. 1989).

194. *Id.*

195. State *v. Pinkham*, 565 A.2d at 321 (Glassman, J., dissenting).

196. *Id.*

197. State v. Pinkham, No. CR-88-5452 (Me. Dist. Ct. 12, Som. Cty., Mar. 1, 1990).

198. *Id.*

In the appeal of this decision,[199] the Law Court upheld the district court's ruling, stating that "the [district] court was aware of the necessity to determine whether the officer was justified in making the stop."[200]

III. ANALYSIS

The *Pinkham* decision does not honor the limitations that both the Maine and federal courts have placed on noncriminal vehicle stops. It further fails to preserve the principles that underlie the "probable cause" and "warrants" language of the fourth amendment. In light of these departures from established fourth amendment principles, the court's rationale for validating the *Pinkham* stop is problematic.

By overturning the trial judge's ruling to suppress the evidence gained as the result of this stop, the Maine court has either incorrectly applied a previously established governmental interest or it has created an entirely new one. The previously established governmental interest which most closely resembles the governmental interest proposed by the *Pinkham* court is highway safety. The new governmental interest might be in having police officers make inquiries of, or disseminate information to, motorists.[201]

Courts have carefully limited the circumstances under which the governmental interest in highway safety can be employed to authorize the stop of a moving vehicle. To prevent this governmental interest in highway safety from being arbitrarily and conveniently applied by police officers as a pretext for a stop, the courts have recognized the governmental interest in highway safety in only two circumstances. The first is when the governmental interest in highway safety is evidenced by a statute.[202] The second is when an imminent and ongoing threat to safety exists.[203]

Statutes reflect the collective will of the very people the fourth amendment protects. The people, through the legislative process, decide which interests of the greater good of society are exalted enough to sacrifice the "freedom to be let alone." Defining the governmental interest in highway safety in terms of statutes wholeheartedly embraces the fourth amendment virtues of predictibility (as opposed to arbitrariness) and pristine logic. A system which links governmental interest to statutes does not unduly hamstring the efforts of police to fight crime and foster public safety. Indeed, the Maine court has quite correctly authorized a number of stops for

199. State v. Pinkham, 586 A. 2d 730 (Me. 1991).
200. *Id.* at 731.
201. *See supra* notes 32-40, 80-92 and accompanying text.
202. *See supra* notes 93-97, 137-38 and accompanying text.
203. *See supra* notes 83-86 and accompanying text.

rather picayune and technical violations of motor vehicle statutes.[204] A failure to dim headlights,[205] a partially obstructed license plate and expired inspection sticker,[206] and a failure to use a turn signal[207] provide grounds for an officer to stop a vehicle in Maine. Such stops, even if used as pretexts to stops for reasons unrelated to an observed violation or suspicion of criminal activity, preserve the predictability and logic of the fourth amendment. Courts have largely allowed people to guarantee themselves freedom from governmental intrusion by conforming to all written laws. In *State v. Caron*,[208] for example, the court invalidated a stop based on the technically improper act of crossing the center line on the ground that the crossing failed to generate "objectively reasonable suspicion that criminal activity was involved."[209] Such predictability is an underlying principle of the fourth amendment. Indeed, the court could have decided the *Pinkham* case on the governmental interest in having its laws obeyed. In its brief, the State based its argument that the stop was valid entirely on the proposition that Mr. Pinkham had violated a motor vehicle statute.[210] While the court adopted the defendant's position that he had broken no law, it found for the State on entirely different grounds. Hence, the court overtly rejected the opportunity to decide the case based on a statutory violation, and instead deliberately chose to rely on "highway safety" and "community caretaking."

Perhaps most troubling about the Law Court's eschewal of statutory violations as a parameter for reasonable stops in *Pinkham* is that, only one month before, the court closely adhered to a technical statutory violation to *uphold* the reasonableness of the stop in *State v. Seavey*.[211] In neither *Seavey* nor *Pinkham* did the officer articulate that the driver was an imminent and ongoing threat to highway safety. The *Pinkham* decision could only have been consistent with *Seavey* if the former had based its conclusion of reasonableness upon the existence of a statutory violation. Having articulated no

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204. State v. Lewry, 550 A.2d 64 (Me. 1988).

205. State v. Carsetti, 536 A.2d 1121 (Me. 1988).

206. State v. Seavey, 564 A.2d 388 (Me. 1989).

207. 534 A.2d 978 (Me. 1987).

208. *Id.* The *Pinkham* majority summarily rejected the trial court's reliance on *Caron*, stating that "[i]n *Caron*, we had no occasion to focus on the adequacy of a safety justification." State v. Pinkham, 565 A.2d at 319. This assertion seems to ignore the *Caron* officer's testimony that he suspected the driver to be either intoxicated "*or asleep*." State v. Caron, 534 A.2d at 979 (emphasis added). It is difficult to understand why a technically improper lane usage in *Pinkham* provided an occasion to test the safety justification and the suspicion of a sleeping driver in *Caron* did not.

209. Brief for Appellant at ii, State v. Pinkham, 565 A.2d 318 (Me. 1989) (No. SOM-89-38).

210. 564 A.2d 388 (Me. 1989).

211. State v. Caron, 534 A.2d 978, 979 (Me. 1987); State v. Chapman, 495 A.2d 314, 317 (Me. 1985).

violation of the statute, the *Pinkham* court could not, and did not, look to *Seavey* to support its holding. While the driver in *Seavey* violated a statute and the driver in *Pinkham* did not, the two decisions are factually identical in one aspect. In both cases the drivers were found, *subsequent* to their stops, to be operating under the influence of alcohol. Fourth amendment reasonableness, however, depends on a police officer's observations made *before* a search or seizure.[212]

Only once prior to the *Pinkham* decision has the Maine court upheld a stop of a moving vehicle for a governmental interest other than the prevention or detection of criminal activity. In *State v. Fuller*,[213] decided only six months prior to *Pinkham*, the Law Court carved out the one exception to the violation of law requirement. The facts in *Fuller* represent the second kind of circumstance in which courts have recognized the governmental interest in highway safety: when an imminent and ongoing threat to safety exists, and when the stop offers to terminate the threat in some objective and quantifiable way.[214]

In *Pinkham*, no imminent and ongoing threat to highway safety existed. The officer at trial elucidated no evidence that Mr. Pinkham's driving was, in fact, an imminent and ongoing threat to highway safety. No evidence implied that the one-time improper lane usage, admittedly not a dangerous act in itself, would be followed by other acts that *were* dangerous. Indeed, had the officer observed dangerous driving he may have been able to stop Mr. Pinkham legitimately on either the ground that he had violated a statute or that, because the driver may commit a dangerous act again, he constituted an imminent and ongoing threat to highway safety. Clearly, if no such threat to highway safety existed, then the second prong of the governmental interest test, that the stop will terminate that threat, is irrelevant.

By allowing the trial court to authorize a stop based on a one-time incident of technically improper driving, which rose to the level of neither lawlessness nor danger, the court has departed from the principles underlying the "probable cause" language of the fourth amendment. The officer did not point to "specific and articulable facts" which would lead a prudent man to conclude that a valid governmental interest was at risk.[215] His failure to cite the defendant's violation of a statute as a "specific and articulable" reason for the stop may have forced the Law Court into the delicate areas of general safety and community caretaking to justify the stop. Had the officer testified at trial that he had stopped the vehicle because he

212. 556 A.2d 224 (Me. 1989).
213. *See supra* notes 128-32 and accompanying text.
214. *See supra* notes 44-47 and accompanying text.
215. 564 A.2d 388 (Me 1989).

suspected a violation of a specific, improper lane usage statute, then the case would have fallen into line with *State v. Seavey*,[216] *State v. Johnson*,[217] and *State v. Lewry*,[218] where technical violations of statutes authorized stops.

If the *Pinkham* court did not apply an established governmental interest, perhaps it created an entirely new one. This new interest might be described as the governmental interest in having police officers disseminate information to motorists. This may be what the court refers to as "community caretaking functions" of police officers, "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[219]

The courts, however, have erected carefully circumscribed boundaries to limit vehicle stops based on anything but a particularized suspicion that the driver is, or has been, involved in unlawful activity or that an imminent, ongoing threat to safety will go unmitigated without the stop. Stops outside these categories have been traditionally authorized only at stationary national border checkpoints.[220] Recently, however, the Supreme Court has extended the category to include temporary roadblocks on state roads.[221] The Supreme Court has only validated such suspicionless stops because the intrusion is significantly less severe than the intrusion of a roving-patrol stop.[222] The governmental interest in apprehending law-breakers is substantial enough to make sobriety and border checkpoint stops reasonable under the fourth amendment only if the intrusion is kept to a minimum.[223] Checkpoints also have won judicial support because they do not leave the question of probable cause or reasonable suspicion to the officer in the field.[224] The Supreme Court has required that all checkpoint operating procedures be established administratively.[225] In essence, a prior administrative determination of which vehicles will be stopped helps to fulfill the warrant clause principle that probable cause (or reasonable suspicion) shall not be determined by the officer in the field.[226]

The *Pinkham* decision abandons the principles set out in previous suspicionless stop cases. First, checkpoint cases all clearly have crime prevention and detection as the governmental interest. Sec-

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216. 365 A.2d 497 (Me 1976).

217. 550 A.2d 64 (Me. 1988).

218. State v. Pinkham, 565 A.2d 64 (Me 1989) (quoting Cady, Warden v. Dombrowski, 413 U.S. 433, 441 (1973)).

219. *See supra* note 145 and accompanying text.

220. *See supra* note 145 and accompanying text.

221. *See supra* notes 150-53 and accompanying text.

222. *Id.*

223. *See supra* notes 150-58 and accompanying text.

224. *See supra* notes 160-68 and accompanying text.

225. *See supra* notes 11-12 and accompanying text.

226. *Id.*

ond, the intrusion attendant upon a checkpoint stop is significantly less than that of a roving patrol stop, as in *Pinkham*. And third, checkpoint stops leave much less discretion to the officer in the field than did the stop in *Pinkham*.[227]

The *Pinkham* court found that the vehicle stop fell within a category of exalted governmental interest where criminal activity is not present.[228] Intrusions have only been approved by courts if either imminent danger exists or if the intrusion is less severe than the roving-patrol stop of a vehicle. An officer's good faith belief that a stop is in the public's or the motorist's best interest is insufficient to justify a stop. Even where an officer stops a vehicle based on his good faith belief that the driver is lost, the stop is invalid absent a showing that a legitimate governmental interest was at risk.[229] Assisting the driver with information in these circumstances is not a legitimate governmental interest of sufficient weight to justify the intrusion of a stop.[230] Only when the intrusion is significantly less severe than the roving-patrol stop of a moving vehicle have the courts recognized a more generalized interest in public safety.[231] The courts have affirmed such a generalized and amorphous governmental interest only for searches of vehicles that are already under legitimate police custody or control. Searches of vehicles already in police custody are distinguishable from roving-patrol stops, like *Pinkham*, because the former invokes the fourth amendment "right of the people to be secure in their . . . *effects*" while *Pinkham* invokes the right to be secure in their "*persons*."[232]

The *Pinkham* stop was "reasonable" under *Terry* only if the facts "available to the officer at the moment of the seizure" would " 'warrant a man of reasonable caution in the belief' that the action taken was appropriate."[233] Assuming that the improper lane usage in *Pinkham* was a no-more egregious driving error than the twenty-five to fifty yard straddling of the center line in *State v. Caron*,[234] the officer had no legitimate basis for stopping Mr. Pinkham for operating under the influence of alcohol.

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227. The district court's application, on remand, of the *Pinkham* decision leaves little doubt that *Pinkham* places not only the decision whether to stop, but also the determination of whether the stop is reasonable, to the discretion of the officer in the field. *See supra* text accompanying notes 198-99.

228. United States v. Dunbar, 470 F. Supp. 704 (D. Conn. 1979); Brownstein v. State, 521 So. 2d 371 (Fla. App. 1988); Doheny v. Commissioner of Public Safety, 368 N.W. 2d 1 (Minn. App. 1985); People v. Joe, 405 N.Y.S. 2d 295, 63 A.D.2d 737 (1978).

229. *Id.*

230. *See supra* notes 93-97 and accompanying text.

231. *See supra* note 150-53.

232. State v. Pinkham, 565 A.2d at 320 (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968)).

233. *Id.* (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)).

234. 543 A.2d 978 (Me. 1987).

It is with regard to the *Caron* decision that *Pinkham* most boldly breaks with the established fourth amendment principle, rooted in the warrant clause, that the "cause" analysis, whether it be probable cause or a reasonable suspicion, shall be determined by a detached, neutral magistrate and not by an officer in the field. If, under the exact same facts as *Caron*, the officer testified that he performed the stop merely to inquire about the center-line straddling and warned against it, the stop would be reasonable under *Pinkham*. Similarly, had the officer in *Pinkham* testified at trial that he had stopped Mr. Pinkham because of a suspicion of operating under the influence of intoxicating liquor, the Law Court, in light of *Caron*, would have had to sustain the district court's holding that the stop violated the fourth amendment.

It quickly becomes apparent that officers now have *carte blanche* to make what, prior to *Pinkham*, were unreasonable stops. Officers need only cite the "inquiry" motive to transform unreasonable stops into reasonable ones. A close reading of *Pinkham* suggests that the Law Court has abolished the fundamental fourth amendment requirement that judges determined what governmental interest justifies the intrusion of a search or seizure. If vehicle stops are justified based on an officer's desire to "inquire" or to "disseminate information," then the governmental interest has been reduced to such a token level that an officer can hardly fail the "reasonableness" test. At best, *Pinkham* reserves for judges a case-by-case analysis of the circumstances preceding the inquiry or dissemination of information. Such a case-by-case analysis destroys the predictability that has been a critical principle of fourth amendment case law. Under *Pinkham*, Maine motorists are no longer assured that they will be free from the governmental intrusion of a roving-patrol stop simply by obeying all statutes, and by maintaining and operating their vehicles properly. In addition to reducing motorists' fourth amendment protection from unreasonable stops, *Pinkham* threatens to reduce the level of scrutiny which the legal system has customarily given to detection from unreasonable stops. The *Pinkham* decision expands the governmental interests that can justify a stop from the prevention and detection of criminal activity and the termination of imminent and ongoing highway danger to include inquiries of and dissemination of information to motorists. Stops made for these reasons will inevitably result in many stops that fail to result in arrests and trials. Few motorists, however, will spend the considerable time and money to initiate lawsuits to vindicate their fourth amendment rights. The increased number of vehicle stops, then, under *Pinkham*, will result in many stops that fail to undergo legal scrutiny.

The *Pinkham* decision is correct in asserting that "a civil or criminal violation is not always a prerequisite to a stop." To remand this case, however, is to ignore the carefully circumscribed safeguards which preserve the principles which underlie the fourth amendment.

The ultimate danger in disregarding these time-proven safeguards is that the discretion to decide what governmental interests are legitimate will move beyond both the collective will of the people and the judiciary, and will repose permanently with those charged with *enforcing* the laws. At that point the rule of law will have been eroded.

CONCLUSION

In *State v. Pinkham*, the Law Court has threatened motorists' comprehensive, predictable fourth amendment protection. The court has parted from judicially developed limits to vehicle stops that have slowly evolved to preserve the essence of the fourth amendment. To broaden the scope of stops that can meet the reasonableness test without erecting careful limits is to ignore the principles, rooted in the language of the Constitution itself, that underlie the fourth amendment.

The motorist in *Pinkham* did not threaten an established governmental interest. Nor did he threaten a heretofore unidentified governmental interest. The governmental interest in having laws obeyed is sufficient to allow the "probable cause" language to operate effectively in almost all situations. Traditionally, motorists have had the right to be free from the intrusion of a stop unless a law enforcement officer had reasonable suspicion to believe that a law had been, was being, or was about to be broken. Realizing that strict adherence to the foregoing rule allowed a few legitimate intrusions to slip through the cracks, courts have added safety to the list of governmental interests that can justify a vehicle stop. Stops of vehicles for safety reasons are limited, however; to be reasonable, such a stop must promise to terminate immediately an imminent and ongoing threat to highway safety.

Eventually, a third governmental interest strong enough to warrant a stop arose from the institution of regulatory inspections, such as checkpoint stops. Nevertheless, regulatory inspections are limited, too; they must be based on enforcement of particular laws or codes. Moreover, the regulations for the stops are established in advance at the administrative level of government rather than by the individual officer in the field. Finally, since checkpoint stops are stationary, they offer sufficient visible manifestations to assure motorists that the intrusion is authorized. Both of these last points are limits that allow regulatory stops to comply with the principle behind the warrant clause, that the "cause" analysis be performed by a neutral, detached magistrate.

A familiar limit which courts have erected to ensure that stops are reasonable under the fourth amendment is to circumscribe carefully the scope of the intrusion. The intrusion of a roving patrol stop is only reasonable if at least reasonable suspicion exists to believe that the person stopped is involved in criminal activity or if imminent

and ongoing danger exists. Roadblock and checkpoint stops are only reasonable because the intrusion is less than that of a roving-patrol stop.

The *Pinkham* stop neither obeyed the established limitations on stops nor erected any of its own. Although the intrusion was quite high (only a full-scale search or arrest could be higher), it was not justified by any particularized suspicion that a legitimate governmental interest was at risk. The police officer did not suspect that Mr. Pinkham violated a law or posed an imminent and ongoing threat to highway safety. He merely wished to "perform an informational function." Such a governmental purpose is analogous to that sought to be vindicated in regulatory inspections, such as checkpoints. None, however, of the limitations attendant upon intrusions for regulatory inspections were present in the *Pinkham* facts. Whether "informational stops" will gain widespread law enforcement use as a pretext to stop motorists will now depend largely on the *self*-control and *internal* limitations of the executive branch. If such stops begin to pervade Maine's highways, however, the Maine Law Court or, ultimately, the United States Supreme Court can be expected to invalidate informational stops and restore traditional meaning to the fourth amendment.

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