DWI Journal

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De Facto Roadblocks: Toll Booths Can Violate the Constitution

By JOHN A. TARANTINO
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We know from the United States Supreme Court's decision in Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) that suspicionless checkpoints can be constitutional if they meet the balancing test set forth in that decision, where courts are to balance the promotion of legitimate governmental interests against the intrusion (both subjective and objective) that is occasioned by the suspicionless stop. Generally, the "subjective intrusion" of a stop as referenced in Sitz is the stop's potential to generate fear and surprise on the part of motorists. See also United States v. Trevino, 60 F.3d 333 (7th Cir. 1995) where the court instructed that "[t]he critical factors in assessing a checkpoint's 'subjective intrusion' are, first, whether it is set up in a manner which informs incoming motorists that this is an official stop and, secondly, whether it gives the officers conducting the stop unbridled discretion to randomly target individual motorists."

The "objective intrusion" of a stop is determined by evaluating the duration of the stop, as well as the nature and intensity of any questioning or visual examinations.

Courts have also struck down roadblocks that were conducted as pretexts (for example, drug or DUI roadblocks conducted under the pretext of checking licenses and registrations). *See e.g.*, United States v. Huguenin, 154 F.3d 547 (6th Cir. 1998); Garcia v. State, 853 S.W.2d 157 (Texas Ct. Crim. App. 1993); and United States v. Morales-Zamora, 973 F.2d 149 (10th Cir. 1992) (because of the pretext, the guidelines that govern the roadblocks did not specifically address the issues related to the drug or DUI investigations, thus ending up giving too much discretion to the officers).

In addition to the balancing test set forth in Sitz, where "subjective intrusion" and "objective intrusion" need to be analyzed, as well as the possibility of challenging any guidelines that govern

base and its metabolites, THC and its metabolites such as THCacid, Aka THC-COOH, etc.

Fat deposits can attribute to 50% of an obese person's body weight, or 20% in a lean athletic individual. We are all familiar with the female form, taking on more body fat curves at puberty, due to her sudden hormonal changes. Losing body weight for health reasons is currently very popular. All that one has to do to release some sequestered drug or drug metabolite that may have been inhaled or ingested long ago, is to lose a few pounds of body weight, just before one is asked to urinate into a specimen jar.

After about six hours of starvation, the body starts looking for something else other than sugar for its energy. It has some glycogen, stored in its liver and muscle that can be converted into temporary energy, but after about 18 to 24 hours it must switch from carbohydrate to fat metabolism, bringing about the liquefaction of the body's solid fat deposits. Note: under these conditions acetone will be more apt to be on one's breath. It could cause some breath detectors to give higher results.

If your client has been eating only one meal a day for weeks to save money, or to lose weight,his sugar and glycogen deposits will be very thinned out. After his daily regimen, it would not take much starvation to quickly switch to fat metabolism.

Curiously enough, many clinical and a few forensic labs will still report a drug level in your client's blood or in his urine as being "positive' or a "trace" but not quantify it. This type of drug use or abuse reporting has no toxicological significance at all. It is no more forensically useful than a blood alcohol level coming back to you as being "positive" for alcohol. This is due to zero tolerance, now adopted as politically correct, but it often is not scientifically correct at all.

One of the reasons that one can get into legal jeopardy very easily is that the forensic methods of analysis being used today, (GC/MS and immunological methods, etc.) can detect nanogram per milliliter (ng./ml.) or parts per billion amounts of drugs or drug metabolites in the body fluids. Ten parts per billion of THC metabolite would be 0.00000001 % of THCacid metabolite in your client's urine specimen, something detectable.

It would not take much adulteration to get an "incriminating amount" of drugs in one's blood or urine.

One body parameter that is not often quoted on forensic urine assays for drugs is the suspects pH or his urine's acidity/alkalinity, which can vary from a pH of about 5.0 to a pH of 8.0. A pH of 7.0 is neutral, but from 7.1 to 8.0, this can cause weak acids such as THC-COOH to be excreted 50 to 100 times more efficiently than if the pH was 5.0. The opposite would be true for weak bases such as: amphetamine, methamphetamine, cocaine, PCP metabolite and morphine or codeine, when the urine specimen assayed is acidic rather than when it is more alkaline. All this will do is create another false or forensic artifact making it appear as if your client was 'recently' abusing higher amounts of these forbidden drugs, when actually only a small amount was being used; but it was eliminated more quickly or efficiently from the kidneys because the client's urine was optimal for this drug disposal.

Finally, remember that a false random drug urine screen can cause one to get terminated from a good job, be deprived from taking on a new job, and to experience legal trouble for "violating" terms of probation from previous assumed drug use.

Stanley J. Broskey, Ph.D., is a forensic chemist, toxicologist and criminalisin private practice. He has testified in hundreds of DWI and DUI trials. He can be reached at 26 E. Robin Road, Holland, Bucks County, Pa 18956. Telephone: 215-355-8061; fax: 215-357-6369; e-mail:docsjb@aol.com.

Letters to the Editor

Credentials

Editor, DWI Journal: Law & Science:

I am writing in reference to "It's Okay to Lie as Long as You're the State," (DWI Journal: Law & Science, May 1998) by Rick Swope.

While Mr. Swope and your readers are entitled to their opinions concerning law enforcement use of the Intoxilyzer 5000, he should not represent himself as an instructor for the Institute of Police Technology and Management. Mr. Swope taught at ITPM five times, with Sept, 21, 1990, being the last.

Mr. Swope mentions his next article. We would appreciate you not misrepresenting Mr. Swope as an instructor with IPTM.

L.R. "BOB" JACOB,
Coordinator, Traffic Training Programs
Institute of Police Technology and Management
University of North Florida

Rick Swope replies:

I did not indicate I was currently an adjunct

faculty member, but had been. In reviewing the listing below my authoring of the articles, it could be inferred that I am currently an adjunct faculty member, which I am not and have not been since some time in 1990.

At no time have I represented that I am currently a member, nor have I testified to this either. My curriculum vitae indicates that I have taught on several occasions for IPTM, with no dates given.

I have taught specifically for the University five times. Numerous other times I assisted with classes, either in my geographical area or in Jacksonville, where I assisted with the first DUI Seminar ever held. I also assisted in setting up a second class in Hollywood, Florida, as to numbers of students, locations, etc.

It was my decision not to teach for IPTM. My position and decision is well known in the instructional community, as countless other instructors have taken the same position.

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