

Reasons for Non-use of Sobriety Checkpoints

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Although there is ample survey evidence¹⁰ that the public is concerned about the drunk-driving problem, this concern may be viewed as shallow, resting on an unrealistic stereotype concerning the behavior of impaired drivers. Despite the fact that drunk driving is ranked in such surveys as a crime comparable in seriousness to rape and murder, proposals to raise property taxes in order to provide for more detention facilities for drunk drivers or to increase the cost of alcoholic beverages to reduce consumption and fund treatment frequently fail to be adopted by the electorate. Although at times mayors, governors, councils and legislatures have proven valuable resources for the implementation of such plans, at other times they have established themselves as genuine obstacles.

This points to the need for further education—directed beyond police officials to government policy makers and the public at large—emphasizing the costliness of drunk driving, estimated by NHTSA at \$38 billion a year. (This is approximately double the costs related to victims of all other crime, estimated at \$19 billion.) Sobriety checkpoints, performed with sufficient frequency and intensity, are an effective tool in reducing these costs.

Although a dissenting police chief can probably veto checkpoints and an enthusiastic one can probably obtain sufficient resources to mount a limited effort, a truly effective sobriety checkpoint program depends on the ability to create both the demand for reducing drunk driving (among policy makers and the general public alike) and an appreciation for checkpoints' capabilities as a response to this demand. ★

¹H. Laurence Ross, *Confronting Drunk Driving: Social Policy for Saving Lives* (New Haven, CT: Yale University Press, 1992) and H. Laurence Ross, *Deterring the Drinking Driver: Legal Policy and Social Control* (Lexington, MA: D.C. Health Lexington Books, 1982).

²Carroll D. Buracker, "The 'Roadblock' Strategy as a Drunken Driver Enforcement Measure," *Police Chief*, April 1984, p. 62.

³H. Laurence Ross, *The Deterrent Capability of Sobriety Checkpoints: Summary of the American Literature*, Technical Report (Washington, DC: National Highway Traffic Safety Administration, 1992).

⁴R. Voas, E. Rhodenizer and C. Lynn, *Evaluation of Charlottesville Checkpoint Operations*, Technical Report (Washington, DC: National Highway Traffic Safety Administration, 1985).

⁵S. Mastrosky and R.R. Ritti, *More Effective DUI Enforcement in Pennsylvania*, Technical Report prepared for the Pennsylvania Department of Transportation (University Park, PA: Pennsylvania State University, 1990).

⁶"Mothers Against Drunk Driving: Executive Summary," Survey Report, Insurance Research Group (Princeton, NJ: The Gallup Organization, Inc., 1991).

⁷Buracker, p. 59.

⁸Mastrosky and Ritti, p. 117.

⁹*Ibid.*, pp. 118-121.

¹⁰Gallup.

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Reasons for Nonuse of Sobriety Checkpoints

By H. Laurence Ross, Professor / Chairman, Department of Sociology, University of New Mexico

Although both theory and experience point to the deterrent potential of sobriety checkpoints as a drunk-driving law enforcement practice, use of checkpoints by American police is sporadic and, in many cases, perhaps unenthusiastic.

There is a good theoretical basis for believing that properly conducted sobriety checkpoint campaigns may be capable of reducing drunk driving. The large numbers of police-citizen interactions produced by checkpoints promises to affect public perception of the certainty of punishment for law violators—perhaps the key variable in deterrence theory. Moreover, checkpoint enforcement has the potential to overcome the technique of threat neutralization, whereby the potential offender reasons that his excellent driving would protect him from the attention of traditional police patrol.

This theoretical expectation is supported by evidence from actual checkpoint programs conducted in the United States as well as foreign jurisdictions.¹ Although the literature is not extensive and the various studies all have problems of measurement or design, the cumulative experience provides strong evidence of at least a short-term deterrent impact for a diverse array of checkpoint techniques, provided the programs receive ample publicity.

Furthermore, although enthusiasm for checkpoints may have previously been restrained by concern about potential unconstitutionality, the question on the federal level was definitively decided in their favor by the U.S. Supreme Court in 1990. Libertarian concerns may still be raised, but they are narrower than those previously argued.

Despite their promise and judicial approval, two years after the Supreme Court decision, checkpoints appear to be underused by U.S. police. In a few states, judicial or administrative rulings inhibit their use, but in the bulk of jurisdictions police have the discretion to make the decision.

Although checkpoint programs are employed in many jurisdictions, few communities appear to have adopted them with enthusiasm.

Point: Lack of Fruitfulness

The standard criterion of police performance is arrests. By this measure, checkpoints appear to be an inefficient use of police resources. For example, Carroll Buracker, former chief of police in Fairfax County, Virginia, describes the results of a checkpoint program that "processed" 15,000 drivers and made only 35 arrests:

This "success" amounts to a fraction over two-tenths of 1 percent. The figures speak for themselves. An average of six police officers per roadblock, who are relatively unavailable for other than emergency assignments, seems an unacceptable level of manpower commitment for the results achieved, especially when these results are invariably achieved at the expense of other problems and involve the apprehension of the low-BAC driver rather than the higher ones (.15 and above) who constitute a greater threat.²

In brief, not only are the arrests low in quantity, but they are low in quality as well.

This view proved fairly common. In a medium-sized city in New York, it was observed that 20 officers and 10 vehicles stopped 600 cars and made two arrests. The same number of arrests was said to have been achieved by 2,000 man-hours in Maryland and 1,600 vehicle stops in California. A Colorado police department mounted an extensive checkpoint effort with no arrests, and dropped the program.

Counterpoint:

Other Measures of Success

The most fundamental argument against this criticism of checkpoints is that it misconceives the goals of law enforcement. The conventional wisdom among police and the public is that the success

of police activity can be judged in terms of criminals apprehended—that is, the number of arrests. As shown, this is a modest number when judged in terms of resources invested in sobriety checkpoints.

However, if we accept the premise that the ultimate purpose of law enforcement is deterrence of potential law violators, then the value of checkpoints lies in the support they give to the public perception that violators are likely to be caught. Numerous arrests may be one means to this end, but they are certainly not the *only* means, and increasing arrests may even be a relatively inefficient way to enhance risk perception. Indeed, when the arrest rate is very low, as is the case for drunk driving (perhaps 1 in 1,000 offenders are caught under normal conditions), even a doubling or tripling of arrests is unlikely to create an impression of certain punishment for potential offenders.

An alternative opportunity for enhancing the perception of relatively certain punishment lies in increasing the number of citizen-police encounters. Checkpoints are designed to multiply contacts between police and the public. Scores of drivers can be checked per hour. Moreover, checkpoint contacts are magnified by word of mouth—drivers who tell others of the experience—as well as by incidental viewing such as among passengers in the check car, drivers and passengers of vehicles passing through the checkpoint but not selected in a systematic sample or those traveling either in the opposite lane or on a nearby cross street. Those who experience or view the checkpoint contact can surmise that intoxicated drivers run a significant risk of apprehension.

In short, the important number for assessing law enforcement impact is not the arrest rate but the contact rate, which is indisputably higher in checkpoints than in traditional law enforcement based on probable-cause stops.

This perspective characterizes those police who most enthusiastically support checkpoints. As one officer noted:

We're glad to get drunks off the road by arresting them, but our main purpose is impressing a thousand people with the chance of punishment for drunk drivers. . . . We're creating the perception that it is dangerous to drink and drive in the community.

The empirical finding that checkpoint programs tend to be associated with reductions in indexes of drunk driving³ is consistent with this understanding. Numerous studies in the United States and abroad find that well-publicized and energetic police activity has a general deterrent effect.

However, deterrence is often hard to demonstrate for individual programs, especially in local communities. Such drunk driving indexes as fatal crashes are statistically unstable in small jurisdictions and changes in them cannot be relied on to produce convincing proof of an effect. There are some potentially useful, albeit unorthodox, measures that can be argued as evidence of deterrent effects even in small communities. Among those suggested by police officers in interviews are numbers of cars parked overnight in tavern parking lots during checkpoint campaigns, numbers of calls to "safe rides"

programs or from bars to taxi companies, public inquiries concerning the time and location of forthcoming checkpoints and complaints from tavern owners that patrons who drive are drinking less.

A different kind of counterargument attacks the premise that checkpoints inevitably produce fewer arrests than traditional patrol operations. A major reason for the relatively small number of drunk-driving arrests in checkpoints is that the interviews are too brief and superficial to detect many actual law violators passing through. In a study in Charlottesville, Virginia,⁴ it was found that the use of passive breath analyzers could double the number of law violators discovered in brief driver interviews, yielding even more arrests per officer-hour than traditional patrol. Although present technology is possibly strained to support the routine use of such devices, foreseeable improvements should permit an even higher arrest rate for resources invested in checkpoints than for those invested in traditional patrol.

Point: Inadequate Resources

Not only are checkpoints allegedly inefficient, but they are seen as demanding unrealistically large quantities of resources. In West Virginia, for example, half

of all counties have fewer than four full-time state police officers. Under these circumstances, it is hard to conceive of a major statewide checkpoint program. An officer in an Ohio city with 28 sworn officers finds it impossible to mount checkpoints conforming to the standard of at least 27 officers said to be recommended by the state patrol.

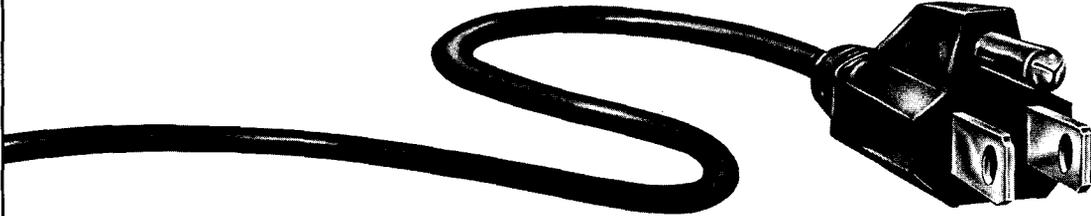
Even more modest recommended personnel resources may be hard to find. The Pennsylvania Department of Transportation recommends about 12 officers to mount a checkpoint, yet 80 percent of the local police forces in the state number fewer than 10 officers.

Checkpoints also require nonpersonnel resources, possibly including vehicles, special lighting and signing, preliminary breath test devices and so on. The most elaborate checkpoint operations have used specially equipped buses providing evidentiary testing and holding facilities. Without large numbers of personnel and appropriate equipment, checkpoint operations may have to be shut down when an impaired driver is to be charged.

Counterpoint:

Maximizing Available Resources

The notion that checkpoints require more resources than most departments



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can afford, especially in competition with other demands on the police, is based on an image of checkpoints as massive operations. To be sure, it is possible to mount impressive operations with large numbers of personnel and batteries of equipment on heavily traveled roads, utilizing all available resources. The disproportionate media attention given to these operations enhances the image of checkpoints as inherently big and expensive.

However, some innovative police agencies, including Redding and West Sacramento, California, have found it possible to mount checkpoints with as few as two or three police officers. Just as the media-event operations are suitable for some traffic situations, so the modest ones fit other opportunities. They can take place on two-lane roads with consistent but light traffic and low legal and actual speeds. Stopping drivers is facilitated by locating the checkpoints in the vicinity of stop signs and traffic signals. To avoid the need to shut down the operation with every drunk-driving arrest, it is helpful to have an additional officer on call to take charge of arrestees, and civilian employees or volunteers can enhance the operation by taking responsibility for such routines as counting cars or entering license plate numbers on a computer keyboard. "Mini-checkpoints" can be highly mobile, able to counter drinkers' information networks and to create the impression of "universal" presence at minimal cost.

Furthermore, police resources for checkpoints need not be constrained by department size. Numerous positive experiences have been reported nationally with checkpoints mounted cooperatively by more than one department. In Bergen County, New Jersey, Cumberland County, Pennsylvania, and the vicinities of Farmington, New Mexico, and Roseville, California, for example, checkpoints have been launched by as many as seven co-operating departments, each contributing one or a few officers to the cause. The locations and potential deterrent benefits can be rotated among the cooperating jurisdictions, generating a halo effect extending to the entire region.

The competition for resources between checkpoints and other police functions may be addressed by pointing to the fact that traffic law enforcement in general and checkpoints in particular are capable of saving lives. Their claim for resources may best be protected by the formation of special traffic or DWI units whose principal mission is understood to include checkpoint operations. In New York and West Virginia, for example, special levies on alcohol or on convicted drunk drivers can be used to support sobriety checkpoints without the need for allocations from general law enforcement budgets.

Although we do not yet have sufficient information concerning the optimum employment of checkpoint resources, relevant research is being sponsored by the National Highway Traffic Safety Administration (NHTSA) and the results should be useful for planning enforcement programs.

Point: Boredom for Police, Danger for Police and Motorists

Processing hundreds of motorists through superficial interviews strikes some police as a boring and thankless job. Its appeal is diminished further by inclement weather. Most departments refrain from running checkpoints in the rain and many abandon them in cold weather. A California chief who conducted one on a mountain pass on New Year's Eve will not repeat the experience.

Checkpoints also present the risk of injury to police and other motorists. Vehicles are stopped in unaccustomed places, usually at night, and officers stand on the street next to traffic lanes at times and places where impaired drivers are expected. A Virginia chief put the issue this way:

Checkpoints are not a bad tactic for law enforcement in general, but they are bad for our community. The main issue is officer safety in heavy traffic. . . . A drunk will run into the back of a line of traffic and will hurt, maim or kill someone else. Because of my tactics I'm the cause . . . and where do I stand civilly (in terms of liability)?

Another police officer expressed concern over the possibility of assault on officers by angry motorists when making the vehicle inspections (of tires, turn signals, etc.) that were part of his department's checkpoint procedure.

Counterpoint: Boredom, Danger Mitigated

The view of checkpoint work as boring is plausible if it is seen as pointless routine, perhaps undertaken merely to earn overtime pay. But although it may lack the variety of circumstances encountered in traditional patrol, checkpoint work can be interesting to those officers who support the concept and believe it is effective in reducing crashes and saving lives.

Some officers feel that interaction with members of the public in a relatively favorable context is an unusual and likable aspect of checkpoint work. In any event, many police tasks, including routine speed checks, can be defined as boring but they are performed in conformity with orders from a hierarchy that sees benefits from the tasks.

The issue of danger is potentially more serious, both because of the direct ex-

posure of officers to the risk of hit and the indirect exposure of departments to civil liability. Sobriety checkpoints almost always take place at night and are held in locations where the presence of impaired drivers is expected. However, much of police work is inherently risky. Ample signing, illumination and aids to visibility, as recommended by NHTSA, may reduce the risk experienced in checkpoints, and it is possible to station patrol cars in such a way as physically to barricade the police from the risk of being run over by an errant car. Perhaps the best response to the criticism is that the critics were unable to provide examples of actual injuries, and visits to numerous communities found no reports of serious accidents involving police experienced at sobriety checkpoints.

Point: Public Relations Damage

Some police conceptualize the driving public in their area as "innocent operators, generally in a hurry," who are likely to be alienated by being delayed. The head of a California police traffic bureau stated:

Checkpoints are distrusted by the general public. . . . If there is an odor of alcohol or a positive reading on a passive sensor, the driver is detained for a long time. Even given a delay of only one or two minutes, the public at large sees this as a kind of police state. We don't believe the claims of polls to the contrary.

Another officer made the point that the police cannot enforce the criminal law by themselves; they depend on public cooperation, which is potentially eroded by the checkpoint experience.

These opinions are not without an objective basis. Although surveys based on cards mailed back by motorists passing through checkpoints usually find strong support for the procedure—the Arizona Highway Patrol, for example, claims a 95 percent favorable response—a study by S. Mastrofsky and R.R. Ritti, which surveyed the general public in six Pennsylvania communities, found a considerably lower degree of support—55 percent in favor and 39 percent opposed.⁵ The more favorable results from the mailed cards are possibly due to self-selection of the respondents.

Counterpoint: Improving Public Relations

The critics are correct in their assertion that successful law enforcement requires good public relations. Traffic stops, being the most frequent form of interaction between the police and the public, do have the potential to alienate. However, they also have the potential to improve police public relations, and this is especially

true of checkpoints, where the interaction does not occur in the context of suspicion that the driver has committed a violation of the law. The public approves efforts to reduce drunk driving,⁶ and drivers passing through checkpoints can be rewarded with cheery greetings, information leaflets, lottery tickets or fast-food coupons for safety belt wearers.

The main threat to public relations in checkpoints, beyond bad manners, probably lies in delays. However, these are more likely to be experienced in checkpoints that include or focus on matters other than sobriety—for instance, driver's licenses, registration documents, insurance cards and vehicle conditions. Narrowly purposed sobriety checkpoints, concerned only with screening drivers for evidence of alcohol consumption, require minimal time. For instance, observations of checkpoints in some localities showed that the total delay imposed on motorists by checkpoint activities could be less than a minute. Assuming the availability of appropriate passive breath-testing technology for screening drivers, even briefer delays could be expected. Only those drivers who have recently consumed any alcohol need to delay their journeys for more than a traffic-light cycle.

Point: Objection in Principle

Buracker's main objection to checkpoints, under the heading of "Philosophical Considerations," is expressed this way:

Police enforcement measures should be effective (and cost-effective) but these measures should also intrude upon the activities of law-abiding citizens to the least extent possible. . . . Our activities should be conducted with restraint and respect for individual rights. Roadblocks seem to us to affect the innocent citizen more than the drunken driver.⁷

Mastrofsky and Ritti provide a more academic statement of this position based on questionnaires filled out by more than 1,000 residents of six communities and nearly 1,000 police officers:

Norms of "fair play" are shared by both the community at large and police officers. There is an underlying feeling that driving while drinking is not a serious crime unless it results in a significant injury, and that extraordinary methods used to ensnare drivers—such as sobriety checkpoints—are not fair.⁸

The "unfairness" perceived by the police is related to penalties that they judge too severe for the law violation in question. Thus, the charge of unfairness would seem to apply to all vigorous drunk-driving law enforcement, especially as it pertains to drivers with relatively marginal BACs. Beyond their special characteristics, checkpoints are symbolic of dedicated enforcement in general.

Counterpoint:

Principle Upheld by Courts

The charge of unfairness in the application of the law is a very serious one, which—if proved—can warrant a finding that a procedure is unconstitutional. However, the principles involved in checkpoints have been considered by several courts, including the U.S. Supreme Court in the 1990 case of *Michigan Department of State Police v. Sitz*. The reasoning in this case may be raised in responding to the objection in principle.

The basis of the Supreme Court's finding that sobriety checkpoints were a constitutional means of enforcing drunk-driving law was: ". . . the balance of the state's [great] interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the [small] degree of intrusion upon individual motorists . . ." The state's interest in preventing drunk driving is uncontested and there is adequate reason to believe that properly conducted sobriety checkpoints can be effective in realizing this interest.

The issue of intrusion is probably crucial for the objection being considered. The objection can be seen as less valid to the degree that signs and police behavior inform the driver of the nature of the stop and that delay is minimized. On this basis, signs and greetings emphasizing that "this is a sobriety checkpoint" are to be preferred to notices that there is a "license check" or a "roadblock," along with demands to produce driver licenses and other documents. Delays on the order of a typical traffic light cycle can be considered minimal. Some existing checkpoint programs may fail to comply with these standards, but to raise an objection in principle to all checkpoint programs constitutes an overreaction.

It should be noted that the majority in the *Sitz* opinion consisted of the most conservative Supreme Court justices, and three liberal dissents supported the prior decision of the Michigan Court of Appeals that checkpoints constitute unreasonable seizures. Moreover, courts in a handful of states have found, notwithstanding *Sitz*, that checkpoints violate procedural guarantees in their state constitutions. These minority findings, and police officials who argue along with them, cannot be dismissed as irrational and unfounded. However, the majority on the Supreme Court and those state courts that have considered the matter have rejected the claim that checkpoints are bad in principle.

Point: Lack of Political Support

According to the former chief of a major metropolis, "The basic problem is that sobriety checkpoints are not politically pop-

ular—not with the chief, and not with the mayor or the council he reports to." This opinion does not seem to be limited to the large cities, although in smaller, more peaceful jurisdictions, Mastrofsky and Ritti demonstrate that drunk-driving enforcement is more popular because of a lack of competition for police attention from street crimes. On the other hand, some officers in small departments noted discomfort with having to inconvenience and even arrest their own citizens, something not heard in the larger departments.

The problem is put rather poignantly by a traffic police supervisor who previously mounted a nationally known checkpoint program, now shelved in a period of tight budgets:

I don't know that people care about drunk driving. It is so ingrained in society that people don't get worked up about it. It is built in, like guns. The problem is in the chief, the mayor, the council and, most importantly, the citizens [who] are much more likely to demand action on speeding, stop-sign violations and ripoffs of car radios. . . . The police department is committed to stopping drunk driving, but the council is indifferent, even hostile. Nobody asks us when we're planning the next roadblock. No one gives a damn about the lives and money lost in accidents. . . . This is a citizen problem, not a police problem.

This view, which applies not only to checkpoints but to drunk-driving patrol work generally, is supported by the Pennsylvania surveys of police and the public.⁹ Police officers do not like stopping and arresting drivers who "otherwise would have had no problem." Police chiefs are far more enthusiastic about enhanced patrol (87 percent positive) than roadblocks (57 percent), and citizens exhibit parallel feelings. Although they favor increased penalties for repeat-offender drunk drivers (by 89 to 7 percent), stake-outs at bars and roadblocks (checkpoints) achieve only modest margins of approval over disapproval.

Counterpoint:

Creating Increased Awareness

Although law enforcement policy is to some degree autonomous and subject to priorities developed within the police organization, practices that are both highly visible and resource intensive must survive scrutiny from the broader political leadership. Some police officials whose personal views support the establishment and maintenance of checkpoint programs report that they are hampered by local politicians' unwillingness to provide the necessary resources. This may be due as much to disaffection with the enterprise of controlling drunk driving as with skepticism concerning the ability of checkpoints to function in efficient and effective ways.

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