

Public Health and the Law

Using Roadblocks to Reduce Drunk Driving: Public Health or Law and Order?

TOM CHRISTOFFEL, JD

Drunk drivers are a major threat to public health. The number of motor vehicle deaths involving alcohol in the United States over the past decade totals 250,000—over four times the number of US deaths during the Vietnam War. Drunk drivers also cause about 2,000 injuries each day, of which one-tenth are serious. Motor vehicle injuries are the leading cause of death for all Americans between the ages of 5 and 35 years, and intoxicated drivers play a most prominent role in this traffic carnage: over half of all fatal motor vehicle crashes are alcohol-related.¹

This article addresses this problem and advocates the use of drunk-driver roadblocks as one way of dealing with this major public health problem.

Deterring the drinking driver is now a prominent public concern. The attention being given to this concern by citizen groups—such as Mothers Against Drunk Drivers (MADD), a Presidential Commission on Drunk Driving, and others—has led many states to enact legislation to deter people from drinking and driving. Specific measures employed include increasing the drinking and/or driving age, stiffening penalties for a drunk-driving conviction, and developing legal rules which make drunk-driving convictions easier to obtain.²

Effective deterrence depends upon at least four variables: the certainty of apprehension and of punishment and the swiftness and severity of punishment.³ For a time it was thought that greatly increasing the penalty for drunk-driving convictions was the best way to stop drunk driving. Now it is realized that, used alone, the increased penalty approach has a small or even negative effect. Penalties do not work unless and until the drunk driver is apprehended and charged. And most drivers realize the very small likelihood of their ever facing a drunk driving penalty.⁴ In most instances, the drunk driver is detected only after involvement in a collision or commitment of a traffic-law violation. Yet the chances of police detecting a drunk driver by observing erratic driving behavior are slight, since alcohol's most consistent effect on driving is to decrease the driver's ability to respond to sudden hazards. Even with special training, a law enforcement officer observing passing traffic is able to pick out, on the basis of their driving performance, only one out of every

175 legally drunk drivers—i.e., drivers with a blood alcohol concentration (BAC) greater than .10.^{5,6} The National Highway Traffic Safety Administration states that: "On a nightly basis, between one in five hundred (1/500) and one in two thousand (1/2000) drivers on the road with a BAC greater than .10 (w/v) are arrested for drunk driving."⁷

It was not until the 1970s that enforcement efforts addressed this deterrence difficulty. The "Cheshire Blitz" in England sought to increase the likelihood of apprehension of drunk drivers by routinely administering breath tests to all drivers involved in crashes or traffic-law violations between 10 o'clock at night and 2 o'clock in the morning. A similar effort was undertaken on a broader scale in New Zealand; that "blitz" was national in scope and resorted to vehicle equipment checks as a reason for stopping cars preliminary to breath testing.

More recently, enforcement emphasis has shifted even further, with vehicles being stopped at checkpoints specifically for drunk-driver screening and, when deemed appropriate, administration of sobriety or breathalyzer tests. Drunk-driver roadblocks have been used as an enforcement technique in Australia, Canada, and in a growing number of jurisdictions in the United States.⁸

Roadblocks, established in areas and at times of known high levels of drinking and driving, increase the likelihood of apprehension for all persons driving with blood-alcohol at illegal levels. In fact, roadblocks actually exaggerate the public's perception of probable apprehension.⁹ At the same time, anecdotal evidence suggests that drivers accept the disruption and delay caused by a roadblock stop with equanimity, preferring delay over drunk-driver risk (much as airport security checks are accepted as preferable to high-jacking).¹⁰

Yet drunk-driver roadblocks are not without controversy. At heart the debate balances the importance of using this particular approach against the negatives associated with roadblocks. Two main points about roadblocks are critical to that balancing. First, well-publicized roadblock campaigns currently promise to be more effective than other approaches to the drunk-driver problem. In his definitive study on *Deterring the Drinking Driver*, H. Laurence Ross notes that "there is strong support for the proposition that highly publicized enforcement campaigns effectively diminish fatal crashes."¹¹ He also notes, however, that this positive effect drops off as the public begins to realize that apprehension, even though increased, is still relatively unlikely. Over the long run, therefore, effective use of roadblocks requires creative efforts to highlight their reality and sustain their effect. Yet other approaches to deterring the drunk driver,

Address reprint requests to Tom Christoffel, JD, Associate Professor, Health Resources Management, University of Illinois at Chicago, School of Public Health, 2121 West Taylor Street, P.O. Box 6998, Chicago, IL 60680.

This guest column was invited and accepted for publication by George J. Annas, JD, MPH, Editor of the Public Health and the Law section of the Journal.

such as increased penalties or greater certainty of prosecution and conviction, hold out little promise unless the certainty of apprehension is also increased. As Ross notes:

"The accumulated knowledge in this area indicates that an important element of a deterrence-based program is the presentation to drinking drivers of a subjectively important chance of apprehension should they commit the violation. Experience shows that it is possible to increase patrol for drinking and driving and to raise the apprehension rate considerably."¹²

The second point to be considered concerns the legal issues raised by the roadblock enforcement approach. Roadblocks are intrusive in nature and might seem to circumvent the Fourth Amendment prohibition on unreasonable search and seizure. The US Supreme Court has noted that "stopping an automobile and detaining its occupants constitute a 'seizure' . . . even though the purpose of the stop is limited and the resulting detention quite brief."¹³ The major concern is that drunk-driver roadblocks could be used by the police as a pretense for carrying out otherwise impermissible searches: those conducted arbitrarily, without probable cause or individualized suspicion, but which happen to uncover evidence of crimes unrelated to drunk driving. Since the drunk-driver roadblock would be legally sound, the stolen goods, illicit drugs, or other evidence of crimes other than drunk driving so obtained could be used in criminal proceedings against the occupants of the vehicle. There is no way around this situation: public officials cannot ignore evidence of a crime once they have observed it.

But there are several responses to this concern. One involves the way in which the roadblock stop is implemented: what limits and guidelines are adhered to? The Supreme Court has rejected purely discretionary vehicle stops—in which police are free to decide which vehicles they will stop and which they will not—as being too subjective and possibly discriminatory. But roadblocks that stop all vehicles or follow an objective pattern, e.g., stopping every fifth vehicle passing a checkpoint, would appear to be free of such potential for abuse. Other mechanisms that minimize the opportunity for abuse or intrusion are feasible. One commentator suggests selection of roadblock sites by administrative officials rather than field staff, prior judicial approval of the location of each roadblock, physical arrangements such that stopped motorists realize they are part of a routine stopping of cars, short time limits on the duration of the average stop, and the requirement after a stop that "the officer have an articulable suspicion that the motorist is intoxicated before detaining the motorist for an extended DWI investigation."¹⁴

Another response to civil liberty concerns is that drunk-driver roadblocks are specifically limited and focused; they do not open the door to an expanded assault on Fourth Amendment rights. Driving on the public streets and highways is a privilege controlled by the states. Drunk-driver roadblocks are not implemented on the chance that evidence of *some* crime might be uncovered, but because they offer a very real chance of uncovering evidence of a driving-related, and particularly dangerous, crime. States exercise a similar authority when they operate truck weighing stations.

It would be naive to assume that roadblocks can or will always be carefully handled. But the key question is whether the potential for abuse is narrow and limited enough to be outweighed by the overall importance of their use. The Supreme Court has not directly considered the permissibility

of nondiscretionary drunk-driver roadblocks. The closest they have come is a decision, *Delaware v. Prouse*,¹⁵ in which they rejected a discretionary vehicle stop by police to check the driver's license and vehicle registration—a stop that uncovered illegal drugs. In its decision the Court noted that:

The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order "to safeguard the privacy and security of individuals against arbitrary invasions. . . ." . . . Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interest against its promotion of legitimate governmental interests.

In the case of drunk-driver roadblocks, the governmental interest involved is clearly significant: each year some 250,000 deaths, 700,000 injuries, and economic costs of \$21–24 billion result from drunk driving.¹⁶ The Supreme Court has repeatedly recognized government's "compelling interest in highway safety":¹⁷ "The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield."¹⁸ In *Delaware v. Prouse*, the Court, in a comment not directly related to its ruling in the case, observed that "This holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion." Such "dicta" are not considered sound precedent, but several lower courts have looked to this comment in upholding the constitutionality of drunk-driver roadblock stops.¹⁹

In a sense, the juxtaposition of the two key factors here—intrusion on the individual and promotion of governmental interest—is a classic law and order issue. Public health professionals do not usually view themselves as having a law enforcement outlook and may therefore feel somewhat uncomfortable upholding the seemingly law and order end of this proposition. But the fact is that traditional public health actions, at one time referred to as "medical police" actions, *are* a form of law enforcement, much of it based on the principle of favoring community well-being over individual freedom. The same broad Constitutional authority, the "police power," underlies both state government protection of public health and state government protection of public safety. Moreover, that broad authority has been used to support such basic public health efforts as immunization programs, fluoridation of water, and building code enforcement. The critical distinction between law and order proposals for dealing with street crime and the intrusive arsenal of public health weapons, including drunk-driver roadblocks, is not conceptual, but rather a matter of balancing the relevant facts: how severe is the need, how effective is the proposed approach, how intrusive is the enforcement action? On the basis of this type of factual balancing, which should be ongoing, roadblocks to detect and deter drunk drivers are sensible and desirable.

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Dr. Jacqueline Corn
Department of Environmental Health Sciences
School of Hygiene and Public Health
The Johns Hopkins University
615 North Wolfe Street
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