A roadblock is a deliberate obstruction by physical means at one or more selected points on a roadway. Law enforcement agencies employ roadblocks for a number of different purposes — for example, to check drivers’ licenses, to detect and apprehend drunk drivers, or to prevent the escape of a fugitive from a given area.

It is this latter type of roadblock — the block designed to prevent the escape of a fugitive being pursued by police — that is most likely to result in vehicle crashes, property damage and/or personal injury as well as civil liability for the law enforcement officers and agencies involved.

Such liability usually arises when the fleeing suspect (a) crashes into the roadblock, or (b) loses control of his or her vehicle while attempting to avoid the roadblock. In either of these instances, injury or death frequently results to the fleeing suspect, passengers in the suspect’s vehicle, officers on the scene or innocent bystanders. A civil suit is almost inevitable when this occurs, and the outcome is very likely to be a hefty award of damages to the injured persons or their survivors.

Bad publicity is also a common result of roadblock crashes. Media accounts of such incidents tend to present a picture of deliberate disregard by the police for the consequences of the establishment of the roadblock. However unfair this portrayal may be, the department must bear the burden of it.

If it is later found that the officers involved acted with “deliberate” or “knowing” disregard for the safety of those concerned, it is possible that criminal charges may result.

Therefore, roadblocks must be established in a professionally accepted manner that will minimize the risk of these undesirable consequences. This Training Key® does not deal primarily with tactics, procedures, and techniques of roadblock operation; these are dealt with through local training and are often governed in specific terms by the local environment (e.g. police vehicles employed, road conditions, enforcement priorities, terrain and state law). This document is meant to familiarize police officers with the legal issues that arise when roadblocks are employed and the procedures that need to be considered when roadblocks are deployed.

Applicable Law

The landmark court decision dealing with police roadblocks is the 1989 U.S. Supreme Court case of Brower v. County of Inyo.1 The basic concepts applicable to roadblock liability were set forth in this opinion, and an understanding of these principles will enable police officers to employ procedures that will comply with existing law and minimize liability exposure.

In Brower, the suspect was killed in a collision with a police roadblock after driving a stolen car at high speed for some 20 miles in an effort to elude pursuing officers. Brower’s heirs filed a civil rights suit under 42 U.S.C. § 1983, alleging that the actions of the police in establishing the roadblock deprived Brower of his civil rights. The plaintiffs’ contention was that under circumstances in which the roadblock was established, the roadblock and Brower’s subsequent crash into it constituted an unlawful “seizure” of Brower’s person by the police. According to the allegations in the suit, police (1) caused an 18-wheel tractor-trailer to be placed across both lanes of a two-lane highway in the path of Brower’s flight, (2) “effectively concealed” this roadblock by placing it behind a curve and leaving it unilluminated and (3) positioned a police car, with its headlights on, between Brower’s oncoming vehicle and the truck, so that Brower would be “blinded” on his approach.

Roadblocks: Limiting Risks and Liabilities

While roadblocks are necessary at certain times to apprehend persons fleeing from the scene of a crime or attempting to evade arrest, departments utilizing roadblocks must do so in a well-disciplined manner to avoid unfavorable public sentiment and exposure of the agency to civil or criminal liability.
The Court said:

as to the outcome of the use of the roadblock is not at issue.

Court in for the purpose of stopping the fugitive that makes the road-

cept of “seizure” and the concept of “reasonableness.”

1. Roadblocks as a “seizure.” There can be no liability for

violation of a suspect’s Fourth Amendment right to be free of

unlawful seizures of the person unless there is a “seizure” in

the legal sense. According to the Supreme Court’s opinion in

Brower v. County of Inyo, a seizure occurs when there is “a

governmental termination of freedom of movement through

means intentionally applied.” Because a roadblock is estab-

lished for the specific purpose of depriving the fleeing suspect

of his/her freedom of movement, its very use constitutes a

seizure” of the suspect’s person.

2. Roadblocks as “deadly force.” In assessing the liability

potential associated with the use of roadblocks, it is helpful to

remember that a roadblock is usually considered to be an

application of deadly force. The injuries and deaths that have re-

sulted from roadblocks used to apprehend suspects who are

being pursued by police (as in Brower v. County of Inyo and

other roadblock-injury cases) clearly demonstrate that death

or severe injury may be expected in a significant proportion of

the instances in which a physical roadblock is used. Conse-

quently, the courts have tended to equate roadblocks with

other forms of deadly force, and to analyze the propriety of the

use of roadblocks using principles similar to those found in

other deadly force cases. Departments should therefore re-

gard the use of a roadblock as a potential deadly force situa-

tion, and regulate the employment of roadblocks accordingly.

3. Effect of suspect’s own actions. In Brower v. County of

Inyo, the Supreme Court rejected the contention that there

should be no liability on the part of the police because the sus-

pect had ample opportunity to stop his vehicle prior to arrival

at the roadblock and failed to do so. The Court analogized the

situation to that found in Tennessee v. Garner, the 1985 case

in which the Court ruled that it was improper for a police offi-

cer to shoot a fleeing felon. As the Brower Court put it,

“Brower’s independent decision to continue the chase

can no more eliminate [police] responsibility for the

termination of his movement effected by the roadblock

than Garner’s independent decision to flee eliminated

the Memphis police officer’s responsibility for the termi-

nation of his movement effected by the bullet.”

4. Intent of police. It is the intent to establish the roadblock

for the purpose of stopping the fugitive that makes the road-

block a “seizure” and leads to possible liability. The Supreme

Court in Brower held that the subjective intent of the officers

as to the outcome of the use of the roadblock is not at issue. The

Court said:

“It may well be that [the police] preferred, and indeed

earnestly hoped, that Brower would stop on his own,

without striking the barrier but we do not think it practi-
cable to conduct such an inquiry into subjective in-
tent.... Nor do we think it possible ... to distingui-

sh between a roadblock that is designed to give the oncom-
ging driver the option of a voluntary stop (e.g., one at the end

of a long straightaway), and a roadblock that is de-

signed precisely to produce a collision (e.g., one located

just around a bend).... We think it enough for a seizure

that a person be stopped by the very instrumentality set

in motion or put in place in order to achieve that result.

It was enough here, therefore, that ... Brower was meant

to be stopped by the physical obstacle of the roadblock

—and that he was so stopped.”

In summary, under the principles announced by the

Supreme Court in the Brower case, the establishment of a

roadblock of any type constitutes a seizure of a suspect whose

“freedom of movement” is subsequently terminated by that

roadblock.

Although under the principles set forth in Brower v. County

of Inyo the establishment of a roadblock constitutes a seizure,

the mere fact that there is a seizure does not mean that there is

liability. The Fourth Amendment does not guarantee freedom

from seizures; it guarantees only the right to be free from un-

reasonable seizures. Therefore, the establishment of a road-

block does not in and of itself constitute a violation of the sus-

pect’s civil rights or create any police liability. Liability

attaches only if the actions of the police in establishing and

conducting the roadblock were unreasonable. As the Supreme

Court pointed out in Brower, the issue of the right to recover

for Brower’s death arose, not because police set up a road-

block, but because the police allegedly set up the roadblock

“in such manner as to be likely to kill him.”

Factors Determining the Reasonableness of Roadblocks

Based on the above factors, police will be held liable for in-

juries or death resulting from the establishment of a roadblock

if, and only if, it was (1) unreasonable to employ a roadblock,

or (2) the manner in which the roadblock was conducted was

unreasonable. In determining “reasonableness,” the courts

will take into consideration a number of factors. These and

other factors should be taken into consideration by police ad-

ministrators when developing roadblock policies and proce-

dures and by individual police officers who are faced with de-

cisions about if and how they should implement a roadblock

in a given situation. These factors and considerations include

the following.

1. Nature and seriousness of the offense. The more seri-

ous the offense, the greater the justification for the roadblock

and therefore the more reasonable its use. This factor ad-

dresses both the reasonableness of the decision to employ a

roadblock and the reasonableness of the type of roadblock

used.

2. Probability of success of the roadblock. In some in-

stances, the use of a roadblock may be of little use in appre-

hending a suspect. Whether the probable results will justify

the establishment of a block will depend on many factors, in-

cluding such matters as the extent of the information available

to the police, e.g., the specificity of the description of the

wanted person and vehicle, the closeness of the pursuit, etc.

3. Danger posed to the public by the suspect’s actions.

One of the factors that will determine (a) whether the road-

block was necessary and (b) the reasonableness of the manner

in which it was conducted will be the degree to which the fail-

ure to apprehend the suspect will pose a threat to the safety

of the public. This obviously relates both to the nature of the of-

fense for which the suspect is being sought and the extent of
the risk presented by the continuance of the high-speed chase if an apprehension is not immediately effected. Any high-speed chase presents a danger to the public; the degree of that danger in the particular case will be a major element in the decision as to whether the roadblock should or should not have been employed.

It is the interplay of these factors that will determine whether or not the establishment of the roadblock was “reasonable” and, therefore, whether or not there is potential liability for any injuries incurred as the result of its employment.

4. Methods of blocking. Methods of blocking that are acceptable in various circumstances must be considered. The use of police vehicles to form a roadblock, while common, entails a high risk of (a) damage to departmental equipment and (b) injury to the suspect or others. Other, less risky methods may be available and should be used where feasible.

5. Location. The locations within the department’s jurisdiction where roadblocks may be employed should be identified. A supervisor or group of supervisors should be tasked with identifying such locations and planning the type of block appropriate to each point. Factors to be considered will include terrain, man-made and natural obstructions (such as hills, curves, bridges, tunnels, etc.), and other circumstances affecting the suitability of the site.

6. Conditions. The conditions under which roadblocks may be implemented are important considerations. Departments may wish to place limitations on roadblock use as to time of day, weather and road conditions, etc. A nighttime roadblock is not per se unreasonable provided that adequate warning of the presence of the block is given. (See below.) However, departments should avoid the use of roadblocks in weather conditions in which visibility or road surface conditions are inadequate to permit the fleeing suspect (or others) to bring a vehicle to a stop safely.

7. Warning. Roadblocks should be located, illuminated, and identified in a manner that will ensure that any approaching motorist, including a suspect approaching at high speed, will have adequate warning of the barrier and be able to stop safely, without colliding with the block or losing control of the vehicle. While it is true that advance warning may in some instances enable the suspect to evade the roadblock, the primary consideration here is the safety of other motorists, the officers involved, and, as required by the courts, the suspect himself.

For this same reason, it should be required that roadblocks be in position a sufficient amount of time prior to the anticipated arrival of the suspect that the necessary advance warning will be possible. The last-minute creation of an obstacle in the path of an oncoming vehicle (e.g., by driving a police vehicle across a traffic lane directly in the path of an approaching suspect) creates a high risk of (a) injury and (b) liability.

Warning may be provided by stop signs, flares, reflective barrels or barricades, or by other means. In addition, the block itself, whatever the physical objects employed, should be sufficiently illuminated so that oncoming motorists can clearly see it in time to stop safely. Flashing lights on police vehicles should not be relied upon to provide such illumination. Although extremely helpful in giving warning, in many instances such lights may merely confuse oncoming drivers. Where possible, the barrier itself should be illuminated by headlights, floodlights or other means, so that the nature of the obstacle is apparent to drivers of oncoming vehicles.

To ensure that adequate warning will be possible, the equipment necessary to provide adequate marking and illumination of any future roadblock should be (a) carried in all police vehicles and/or (b) stored at locations within the jurisdiction that are known to, and easily accessible by, all officers.

8. Alternatives to traditional roadblocks. Just as the availability of other options will affect the decision as to whether or not it was reasonable to set up a roadblock at all, so also the existence of alternatives may determine whether the choice of method, location, warning, etc. was reasonable. Police must be prepared to show that they had no viable alternatives to the method, location, etc., employed, or, at least, that there were no alternatives that would have involved a lower risk of injury or death to the fleeing suspect or to others.

Serious consideration should be given to the employment of alternate means of apprehending the suspect. The traditional roadblock is a high-liability activity, and that liability exposure is greatly increased if alternate methods of apprehension are available but are not used.

Alternatives are, today, often available both as to method of apprehension and equipment to be used. Not all jurisdictions will have the good fortune to possess the necessary equipment to implement these alternatives, but where they are available, they can substantially reduce the risk associated with conventional pursuit and apprehension methods.

For example, departments that have the ability to call upon helicopters or other aircraft may track a fleeing suspect to a final destination without needing a physical roadblock. Indeed, this type of equipment may make a surface pursuit unnecessary. Aerial surveillance capability, especially when enhanced by high-intensity lights or infra-red devices, involves far less risk of injury to suspects, officers, or bystanders than the traditional roadblock, and should be employed wherever possible.

Even where aerial surveillance is not feasible, improved communications capabilities and cooperation between neighboring jurisdictions may make it feasible to track a suspect across a considerable distance without engaging in a full-fledged, high-speed, high-risk pursuit.

Where a surface pursuit and/or some form of roadblock must be undertaken, equipment is now available that may make the traditional use of police vehicles or heavy barricades to form a block unnecessary. For example, devices have been developed that may be placed across the roadway in the path of the pursued vehicle to deflate the vehicle’s tires. This technique has, of course, been available for many years, but the use of conventional “spike strips” involves a very high risk of injury to the suspect or others because the spikes may cause immediate, total deflation of the target vehicle’s tires. When this occurs to a vehicle traveling at high speed, the outcome is almost inevitably loss of control of the vehicle and a resultant crash. However, newer devices are on the market that are designed to produce only a slow, controlled deflation of the target vehicle’s tires. When placed in the path of the suspect’s approaching vehicle, these devices are designed to let the air out of the fugitive’s tires over a short but significant period of time, thus bringing the vehicle to a gradual, and therefore far safer, stop.

Still another device has been developed that, when placed in the road in the path of the target vehicle, will deliver a charge of electricity to the target vehicle as the vehicle passes over the device. This charge is designed to interrupt the opera-
tion of the target vehicle’s engine and bring the vehicle to a safe halt.4

These examples are not intended as an endorsement for the particular products mentioned; rather, they are offered merely to demonstrate that, in many instances at least, there are alternatives available that involve less risk than the traditional fixed roadblock using vehicles, barriers, or other means that involve risk of high-speed impact and resultant injury. Such alternatives should be evaluated by each department and, where appropriate, incorporated into the department procedures regarding roadblocks.

The use of these alternatives may not long remain optional. As safer alternatives to the traditional fixed roadblock become more readily available, and as the courts become more aware of the existence of these alternatives, their use may become legally mandatory.

Departmental Policy Issues

The use of roadblocks by departmental personnel should be governed by a written departmental policy that should cover all types of roadblocks, including license checks, DUI checkpoints, and roadblocks established for the purpose of apprehending a fleeing suspect. The Fourth Amendment is implicated by any type of roadblock, but checkpoint blocks generally give rise only to questions of the admissibility of evidence.

By contrast, any roadblock employed for the specific purpose of stopping a fleeing offender necessarily involves a high risk of civil liability. That risk will escalate significantly if the department does not provide its personnel with adequate guidelines for the creation and operation of roadblocks of this type. This is due to two factors.

First, without policy guidelines and proper training, departmental personnel may lack the necessary knowledge to employ and execute roadblocks correctly, thereby causing unnecessary injuries and incurring lawsuits that might have been avoided.

Second, should litigation arise, the failure to establish a departmental roadblock policy may render the jurisdiction and departmental executives liable under tort law or § 1983 of the Civil Rights Act. (Under civil rights law, the lack of a policy may, in itself, constitute an informal “policy” of indifference to civil rights that may result in a finding of liability on the part of the jurisdiction and all those involved.)

Roadblock policies and procedures must be drafted to meet the individual department’s own circumstances. In general, however, the departmental roadblock policy should address the issues previously reviewed as well as the following matters:

1. Supervisory approval. No roadblock of any type should be implemented without the express approval of departmental supervisors.4 Obviously, this presents a problem where the object of the roadblock is the apprehension of a suspect who is already the subject of a high-speed pursuit. The lack of time in such situations makes it essential that the procedure for obtaining supervisory approval for the establishment of a roadblock be as streamlined as possible. It may well be that even the most expeditious procedure for obtaining approval is not sufficiently rapid where a pursuit is already underway, and this in turn may mean that in some situations a roadblock cannot be established.

In addition, a properly trained field supervisor should be present at any roadblock. Even if time does not permit a field supervisor to reach the site of the block before the confrontation with the suspect’s vehicle, a supervisor should be dispatched to the site as soon as possible. Pending the arrival of a supervisor, or if a number of blocks are to be put into effect simultaneously (as in the “circle system” of roadblocks), an experienced officer, properly trained in roadblock techniques, should be designated as the officer-in-charge at each location. Where it is not possible to have a supervisor present at each site, a supervisor should continuously monitor the various locations by radio to the greatest extent possible.

2. Training. Adequate training for all personnel in the use of roadblocks must be assured. This should include training for field personnel in procedures to be followed to obtain approval for the employment of roadblocks, and techniques for executing a roadblock properly once supervisory approval has been obtained. It also includes training for supervisory personnel in the circumstances under which approval should be granted, the procedure for granting approval and the proper supervision of the conduct of the roadblock once the approval has been given.

“Failure to train” is a common basis for civil liability. Proper training (a) helps to ensure that no injuries result from the operation of a roadblock, and (b) provides legal protection for the department if an injury does occur.

3. Situations in which roadblocks are permitted. As noted above, the use of a roadblock is considered to be, potentially at least, an application of deadly force. Roadblocks should therefore be authorized only in situations where the use of deadly force would be permissible. The courts have not definitively stated the circumstances under which the use of a roadblock is proper or improper; apparently, this is to be determined in light of the circumstances of the individual case. However, the Supreme Court has set forth in the 1985 case of Tennessee v. Garner the requirements for the employment of deadly force by the use of firearms against a fleeing felon, and it appears that the use of roadblocks will be judged by similar standards.

4. Actions of individual officers. While the positioning and subsequent actions of the officers present at the block will be dictated by circumstances, it is highly desirable that specific guidance be given to the extent that such advance guidance is possible. Officers should be advised as to where to position themselves in relation to the block, the actions to be taken during the approach and apprehension of the suspect, etc. For example, no officer should be permitted to remain in any vehicle that is forming any portion of a roadblock or that is in sufficient proximity to the block to place the occupants of the vehicle in danger. In this as in other matters, officer safety should be a major concern. Therefore, officers should receive appropriate policy guidance and training as to where to place themselves and how to approach any vehicle stopped by the roadblock.

5. Use of firearms. The use of firearms at the site of a roadblock may be controlled by the department’s general firearms policy or by the provisions of the roadblock policy itself. In either case, specific guidelines should be included for the use of firearms at a roadblock. Generally, firearms should be made ready for use, but the discharge of firearms at oncoming vehicles should normally be prohibited except to return fire or in similar cases where deadly force is permitted.
6. Reporting and accountability. Upon completion of the operation of a roadblock, a proper report should be made by the officer in charge to the appropriate departmental officials. Any incidents occurring during the existence of the block, including injuries to a suspect or anyone else, should be reported. Irregularities in the operation of the roadblock should be addressed by command personnel, and the necessary steps should be taken to prevent similar problems in the future. Where an injury has occurred, legal counsel (e.g., the city or county attorney or other legal advisors) should be notified. Supervisors and officers-in-charge should be made fully aware during their training that they are accountable for the operation of the roadblock and any consequences of it.

Endnotes

2 See e.g., Tennessee v. Garner, 471 U.S. 1 (1985) (officer shot fleeing suspect. Supreme Court struck down common-law “fleeing felon rule” and announced new rule regarding applications of deadly force.
3 See Buckner v. Kilgore, 36 FM 536, 540 (6th Cir. 1994) (officer allegedly drove police vehicle across path of oncoming suspect without providing suspect time to stop).
4 The device, known as the Road Sentry™, was demonstrated at a recent Law Enforcement Technology Conference in Washington, D.C. It is produced by Non-Lethal Technologies, Inc., of Sleepy Hollow, Illinois. A related device known as the Road Patriot™, also produced by Non-Lethal Technologies, Inc., is intended to accomplish a similar result when launched from underneath a police vehicle located behind the fleeing suspect.
5 The Supreme Court has expressly imposed this requirement on, e.g., DUI checkpoints. See Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990).
questions

The following questions are based on material in this *Training Key®*. Select the best answers.

1. Which of the following statements is false?
   (a) Roadblocks constitute a “seizure” in the legal sense.
   (b) *Brower v. County of Inyo* was a civil rights case under 42 U.S. C. Section 1983.
   (c) Roadblocks are potentially dangerous but are not considered an application of deadly force.
   (d) The Fourth Amendment does not guarantee freedom from seizures, only the right to be free from unreasonable seizures.

2. Which of the following factors should be considered when determining the reasonableness of establishing a roadblock?
   (a) The nature and seriousness of the offense.
   (b) Danger posed to the public by the suspect’s actions.
   (c) The availability of alternatives to the use of a roadblock.
   (d) All of the above.

3. Which of the following statements is false?
   (a) “Spike strips” may be a viable alternative to the use of a roadblock.
   (b) Failure to train officers in the use of roadblocks may constitute grounds for civil litigation where injuries from roadblocks are incurred by suspects.
   (c) Individual officers should be permitted to make independent decisions concerning the setting up of roadblocks.
   (d) Firearms should not normally be used at the site of roadblocks.

answers

1. (c) Roadblocks should be considered a use of deadly force and should be governed by agency policy on the use of deadly force.
2. (d) All of the factors noted should be regarded as valid considerations when determining whether it is reasonable to establish a roadblock.
3. (c) Individual officers should gain approval from a supervisor prior to establishing a roadblock.

have you read...?


This document provides an overview of the basic procedures to be followed in the physical establishment of roadblocks designed to stop and capture fleeing suspects.