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Police Evidence and Court Outcomes for Drunk-Driving Cases

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As the severity of penalties for drunk driving has increased in recent years, there has been a corresponding increase in suspects contesting the evidence. For example, after California introduced tougher laws in 1982, there was a sharp reduction in guilty pleas and an increase in jury trials, postponements, dismissals and acquittals.¹ Defense attorneys argue that the police lacked "probable cause" to arrest the driver, or challenge the accuracy of field sobriety tests or blood alcohol concentration (BAC) tests. In this context, the evidence in police arrest reports has taken on new importance. To assess how the information in police reports is related to court outcomes, we examined court documents and the corresponding police records for a sample of 617 drunk-driving cases from three metropolitan areas: 246 cases from Los Angeles, 157 from Denver and 214 from Boston. By design, the sample from each city included approximately equal numbers of "found not guilty" jury verdicts, "found guilty" verdicts and guilty pleas.

From police arrest records and case narratives, we collected information on the evidence reported from each of four phases of a drunk-driving arrest:

1. Driving behavior of the suspect before the stop, coded for any of 20 standard visual detection cues (e.g., weaving, driving into cross traffic).

2. General appearance and behavior of the driver immediately after the stop, coded for any of 13 attributes (e.g., odor of alcohol, slurred speech, bloodshot or watery eyes). The presence of such cues is used by the officer to justify a decision to conduct more formal testing for intoxication.

3. The driver's performance on any of seven standard field sobriety tests. Laboratory and field studies have demonstrated the validity of various field tests, including the walk-and-turn test, on-leg-stand and gaze nystagmus.

4. Blood alcohol concentration, as measured by a blood, urine or breath test.

Evidence in Police Reports

Involvement in an accident drew police attention to drunk-driving suspects for about one-third of the cases in Denver and Boston, but only about one-tenth of the cases in Los Angeles. Sig-

nificantly more of the Los Angeles cases were spotted by means of one of the standard visual detection cues, while significantly more of the Boston cases were detected in the course of other types of traffic violations, such as speeding. The most frequent visual detection cue in all three cities was "weaving" and the five most frequent cues overall involved the driver's ability to maintain a steady course. Following the stop, almost all suspects were described as having alcohol on their breath, and the great majority were reported to have bloodshot or watery eyes and slurred speech.

For suspects who received any field sobriety tests, Los Angeles police administered the most tests (3.3 on average) followed by Denver (2.5) and Boston (1.6). All three areas made heavy use of the walk-and-turn test, along with a second test that was a "specialty" of the area—that is, the one-leg-stand test in Los Angeles, the sway test in Denver and the alphabet test in Boston. A BAC test was subsequently given to 375 suspects.

The level of performance recorded in police reports predicted subsequent BAC readings with fair consistency for only three of the tests: walk-and-turn, one-leg-stand and sway. Recorded performance on the other four tests—finger-to-nose, alphabet, gaze nystagmus and finger-touching—showed little correlation with BAC. This may seem surprising since each of the seven field sobriety tests has been validated in careful laboratory and field studies. The problem seems to be that, in practice, officers usually do not report test results with much technical detail. For example, the results were often described in vague terms such as "did not respond well" to the nystagmus test. Examination of the 54 reports in our sample that included mention of the angle of the nystagmus onset revealed a significant correlation with the BAC level, though somewhat weaker than has been found under more controlled conditions.²

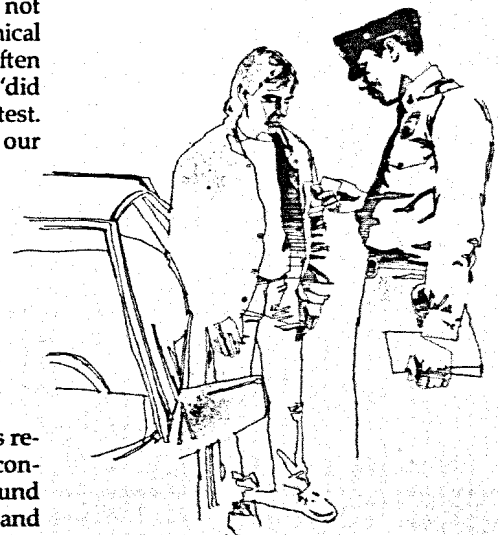
Case Outcomes and Police Evidence

A convenient and simple index of the overall strength of the evidence as reflected by the judicial outcome was constructed by assigning the values "found not guilty" = 1, "found guilty" = 2 and

"guilty plea" = 3. We expected that the existence of each form of evidence would add weight to the case for conviction, and that cases with stronger evidence for guilt would more likely be found among those actually convicted. In fact, four categories of evidence predicted case outcome with reasonable consistency: the existence of prearrest DWI cues, the strength of field sobriety test evidence and the existence and strength of BAC evidence. Of these, the strongest predictor in all three cities was strength of BAC evidence. Only 12 percent of the "found not guilty" cases had a reported BAC level of .15 percent or higher, compared to 29 percent of the "found guilty" cases and 43 percent of the "guilty plea" cases. Further analysis with combined cases showed no additional contribution of the suspect's sex, minority status, DWI priors or type of defense attorney.

This overall pattern was descriptive of Los Angeles and Denver, with the exception that in Denver the strength of sobriety test evidence did not help in predicting outcome. The Boston findings were distinctive in some respects. As might be expected for a state with no *per se* law, the existence of BAC evidence was not related to judicial outcome. However, for Boston cases where BAC evidence was available, those with higher BAC levels were much more likely to be convicted.

For the two *per se* states, the existence of BAC evidence was



very important. BAC evidence was available for 88 percent of the "guilty plea" cases, 69 percent of the "found guilty" cases and only 55 percent of the "found not guilty" cases. The combination of sobriety test information and BAC evidence was especially likely to be associated with conviction in Los Angeles and Denver. In these cities, supplementary sobriety test information was available for virtually all (97 percent) of the "guilty plea" cases that had BAC evidence.

Implications

As we interpret these findings, it is important to recognize that we cannot rule out the possibility that apparent differences between cities were really due to differences in completeness of the court records. It is impossible to compare conviction rates for the approaches taken by the different cities since the samples were chosen to have equal proportions of "found not guilty," "found guilty" and "guilty plea" cases. The sensitivity of our measures was also limited by ambiguity in many case narratives, which made it difficult for coders to agree on some measures. Further, the police reports did not include information on extenuating circumstances or arguments presented by the defense attorneys.

Finally, we were dealing with a limited range of BAC, in that we had no sober

drivers in the sample. All drivers showed sufficient signs of impairment to warrant arrest and prosecution. Thus, the low level of relationships between BAC and the occurrence of some standard DWI cues does not necessarily mean that the cues are not useful for distinguishing intoxicated drivers from nonintoxicated drivers; all of the drivers in the current sample were intoxicated to some degree. Nonetheless, the weak relationship between actual BAC level and the reported performance on some of the standard field tests of sobriety suggests it would be useful to review reporting practices to assure that the descriptions of performance on the field tests are complete and accurate.

One goal of the *per se* laws is to reduce the burden on police for collecting evidence, since blood alcohol over a specified level provides conclusive evidence for alcohol-impaired driving. In practice, our research shows that *per se* evidence often is "conclusive" only within a broader framework of credible procedures and evidence. Defense lawyers may attempt to raise a "reasonable doubt" about the meaning of BAC evidence by challenging the test procedures, the competency of testers or even whether or not police had "probable cause" for testing a driver. Supplementary evidence from police reports can be crucial to the prosecutor's case.

Overall, our examination of court outcomes and evidence in police reports for drunk-driving cases shows a pattern of consistency among the various measures of impaired driving, behavior and appearance of the suspect, performance on field sobriety tests, blood alcohol tests and court outcomes. Strength of BAC evidence was the most important predictor of court outcomes in all three cities, including Boston, which does not have a *per se* law. Yet, even in the two *per se* jurisdictions, the context in which BAC evidence is presented is important—police reports of erratic driving and poor performance on field sobriety tests contributed significantly to the case outcome, and cases with both BAC and field sobriety test evidence were especially likely to be convicted. Finally, it was reassuring to find that the court outcome was not affected by the defendant's minority status, gender, prior record or whether or not the defense attorney was private or public. ★

¹ S.A. Bloch and R.A. Aizenberg, "The Effects of Tough Drinking and Driving Laws: An Examination of the Judicial and Traffic Safety Experience of California." Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Las Vegas, NV, April 1985.

² V.K. Tharp, "Gaze Nystagmus as a Roadside Sobriety Test," *Abstracts and Reviews in Alcohol and Driving*, 1981, Volume 2, pp. 5-8.



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