

LAW ENFORCEMENT MANAGEMENT INSTITUTE

**FICTITIOUS DRUG CHECKPOINTS
AS A LAW ENFORCEMENT TOOL**

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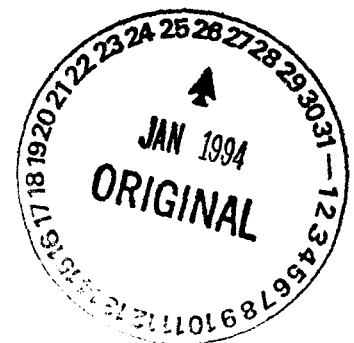
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COLLIN AREA NARCOTICS TASK FORCE

COLLIN COUNTY, TEXAS

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#145

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APPENDIX A Collin Area Narcotics Task Force Checkpoint Policy

I. Introduction

The purpose of this research paper is to document, organize and describe Fictitious Drug Checkpoints (FDCP) and their effects on narcotics enforcement. This research is a "how-to" or an operational manual to assist law enforcement agencies in the development and execution of Fictitious Drug Checkpoints.

A Fictitious Drug Checkpoint is a new and innovative method of narcotics enforcement. A law enforcement agency chooses a location on a street or highway within its jurisdiction where it is believed narcotics are being transported. A sign is erected which states, DRUG CHECKPOINT AHEAD. Vehicles are then watched to see if the vehicles or occupants perform any maneuvers which would lead a reasonable person to believe that an individual is trying to avoid the "DRUG CHECKPOINT." When the vehicle executes a u-turn (possible traffic violation) or exits the highway and stops at a stop sign, the driver and occupants are approached and a consensual interview takes place. If the occupants do not wish to be interviewed by the officer, they are free to leave providing there has been no violation of the law, i.e., traffic, plain view, etc.

The Collin Area Narcotics Task Force has executed approximately six (6) Fictitious Drug Checkpoints. The conviction rate is currently 56 percent of the 18 cases filed. Seizures of drugs has been approximately \$10,000; seizures of assets are valued at \$15,000. In addition, the acquisition of informants as a result of FDCPs, has resulted in "spin off" cases involving major drug suppliers, their arrests, as well as the seizure of additional drugs and assets.

REVIEW OF THE LITERATURE

My primary source of reference in the field of management of Fictitious Drug Checkpoints is personal experience. I have conducted six FDCPs and while operating them, I learned by trial and error the steps necessary for operating a legal and successful FDCP.

Management issues such as liability, safety and cost, while explained in the operational guideline of the policy have not presented themselves as problems. Their significance as management issues suggests that further study will be required when the specific management issues surrounding FDCPs have been more clearly identified. The policy developed by the Collin Area Narcotics Task Force for operating FDCPs has removed, at least for the time being, the opportunities for these issues to become problems. The fact that this is a brand new and innovative tool prevents further explanation of these topics. Research conducted personally and by various members of the library staffs of Texas A&M University, Texas Woman's University and the Sam Houston State University found no case law concerning FDCPs. Case law concerning various forms of border checkpoints was found and is cited on page 5.

I have personally contacted other Police agencies and have not found any that have operated a FDCP structured in a similar fashion to ours. Agencies which have attempted some form of FDCP have done so without a written policy, have had little or no success, and have not pursued the practice.

I have developed a written procedure to be used by members of the Collin Area Narcotics Task Force to conduct FDCPs.

STATEMENT OF PROPOSED METHODOLOGY

I have used the legal method to conduct my research on this subject. I have researched to find any precedent in case law in the area of FDCPs and have found none. I have cited cases concerning border checkpoints, which I believe help defend my position and practice of operating FDCPs. I have read the United States Constitution, Texas Code of Criminal Procedure, cases concerning searches and seizures in general, and have developed the Collin Area Narcotics Task Force policy to support the practice of FDCPs.

II. Checkpoints

A. Legal Issues

Checkpoints are usually used as law enforcement tools in the pursuit of illegal aliens or intoxicated drivers. Therefore, case law regarding Fictitious Drug Checkpoints or turn-arounds prior to Fictitious Drug Checkpoints (FDCPs) is essentially limited to the discussion of border and DWI checkpoints.

While the Supreme Court has examined the procedures used by the Border Patrol,¹ the court has not specifically addressed the issue of vehicles that make a u-turn to avoid a border a FDCP. The court has held that roving patrols may not be utilized to search vehicles without probable cause or a warrant other than at a border or its functional equivalent.² The court has also said that the border patrol officers on roving patrol must have reasonable suspicion that a vehicle contains illegal aliens before stopping the vehicle.³

The court has also said that even though there may be no reason to believe that a vehicle contains illegal aliens, vehicle stops at fixed border patrol checkpoints do not violate the fourth amendment.⁴ The Fifth Circuit Court of Appeals has said that the border agents may stop vehicles for brief citizenship inquiries at temporary checkpoints without reasonable suspicion.⁵ The Fifth Circuit Court has addressed the issue of turn-arounds in relation to Border Checkpoints,⁶ specifically stating:

We have also held that a u-turn or a "turn-around" in front of a checkpoint is tantamount to a stop at the checkpoint itself. Reasonable suspicion to stop the vehicle driving away from the checkpoint is

therefore unnecessary if the government observes a u-turn or "turn-around".⁷

With the findings of the Fifth Circuit and as explained by the court in United States v. Hassette,⁸ a border patrol agent who sees a vehicle approaching a border checkpoint make a turn around may stop that vehicle without reasonable suspicion.

The Supreme Court has addressed the constitutionality of DWI checkpoints in Michigan Department of State Police v. Sitz.⁹ The court has said that a Fourth Amendment "seizure" occurs when a vehicle is stopped at a checkpoint.¹⁰ In Sitz, the court looked at such seizures and specifically stated that "detention of particular motorists for more extensive field sobriety testing may require satisfaction of an individualized suspicion standard."¹¹ While reaching the conclusion that DWI checkpoints are constitutional, the court found that such stops are similar to the brief border stops to check for illegal aliens which have been upheld in United States v. Martinez-Fuerte.¹² Distinctions exist between the border patrol checkpoint cases and the method of using fictitious drug checkpoints. The most significant fact is that a lower level of suspicion is required in search and seizure cases at the borders or their equivalents. The fact that there would be no actual checkpoint should eliminate the argument that a seizure occurred at the time the individual saw the checkpoint sign.

B. Fictitious Drug Checkpoint - Definition

The main operation idea of a fictitious drug checkpoint is as follows:

Members of a law enforcement agency pick a location along a major thoroughfare or suspected smuggling route and set up sign(s) that state "DRUG CHECKPOINT AHEAD." Surveillance officers then observe the actions or reactions of the drivers and their vehicles after the drivers view the "DRUG CHECKPOINT" sign. If the vehicle is seen by the officers making a u-turn or other action which would indicate that they were trying to avoid going through the checkpoint, the vehicle can be stopped for the traffic violation observed.

III. Fictitious Drug Checkpoint Policy - Detailed Explanation

**COLLIN AREA NARCOTICS TASK FORCE
STANDARD OPERATING PROCEDURE
FICTITIOUS DRUG CHECKPOINT
(See Appendix A)**

A. Statement of Policy:

The following is the procedure to be used by any and all officers assigned to work a Fictitious Drug Checkpoint, whether the officer is assigned full time to the Collin Area Narcotics Task Force, assigned on a temporary basis by a member agency, assigned on a temporary basis by a non-member agency or assisting the Task Force as a volunteer or as part of a training exercise.

This sets the main idea of the participants of the checkpoint. It tells everyone that this procedure will be followed without exception. This idea is expounded upon throughout the procedure.

B. Location Selection

1. The location should be one that affords the maximum amount of

control, has the least amount of exposure and will benefit the operation.

This location should be carefully picked by the Supervisor and then the entire team should be taken to the site for their input and evaluation.

2. The checkpoint should be located at the site of an existing STOP SIGN.

This is very important due to the fact that the courts will view it as a seizure if members of Law Enforcement cause the vehicle to stop. It is possible to approach the driver and get a consensual interview while he is stopped at the stop sign.

3. The location will be manned by uniformed officers in addition to non-uniformed personnel.

It is important that anyone approaching a checkpoint be able to clearly identify the participants as being police officers.

4. Marked Police vehicles will also be present at the checkpoint location.

Again the immediate identification of the checkpoint participants will be made easier with the presence of the marked Police vehicles. Additionally, any vehicle which commits an offense and then fails to stop for the stop sign or under the direction of an officer after a violation may be pursued by the marked vehicles and stopped.

5. Trash will be picked up in the area of the checkpoint before the operation starts to help identify objects or evidence which may be thrown from vehicles. Periodic rechecks for contraband will be performed throughout the course of the checkpoint and recorded on the proper

form. (See Appendix A, page 8).

The first trash pick up which should be done just prior to setting up the "DRUG CHECKPOINT" signs, gives you a clean playing field. Vehicles exiting or turning around in your target area can be observed and if any items are thrown from the vehicle it allows officers to retrieve those items and in the case of evidence being found allow the officers to press charges. It is very important to remember that throwing items is littering, which gives you the authority to stop and detain that person. This removes problems with illegal stops. Officers should be reminded to handle the trash with the thought of fingerprinting the items for affirmative links to the occupants of the vehicle.

C. Preparation - Equipment Needed

- 1. Sign(s) - "DRUG CHECKPOINT AHEAD"** - with sand bags to keep the 4' by 8' signs from blowing over as the traffic passes or in high winds.
- 2. Copy of all arrest paperwork, confidential informant packets, intelligence reports** - to do the arrest paperwork at the scene and then have a marked patrol unit transport the prisoner to jail. Checkpoint officers can stay at the checkpoint and complete the book-in procedure later that day. The confidential informant packets allow officers to sign up informants on the spot. This saves time in arrest and transporting of the person to jail. People found with small amounts of drugs can be debriefed and their information put on intelligence forms, their confidential informant packets filled out, and then they can be released

at the scene to be filed on at-large or to contact their control officer the following day.

3. Physicians Desk Reference - to look up the type/brand of pharmaceutical drugs found during checkpoint operations.

4. Stapler and tape dispenser - useful during arrest procedures carried out at the checkpoint location and for sealing evidence.

5. Prisoners property bags - sturdy, large, sealable bags, in which all the prisoner's property should be placed before he/she is transported. It is best to borrow some of these type bags from the jail to which the prisoners are going to be transported. This also helps insure that each prisoner will be properly searched for additional contraband and/or weapons.

6. Polaroid camera and film - to photograph evidence found during operations. It can also be used to photograph suspects and their vehicles. Confidential informants which are signed up at the checkpoint location, and who are going to be released, can also be photographed and their photos placed in their packets.

7. Binoculars - used by the surveillance officer(s) to observe the vehicles and occupants as they notice the "DRUG CHECKPOINT" signs and by the officers at the location of the checkpoint to watch the occupants as they approach the stop sign location.

8. Radios and extra batteries - A separate channel should be used by the checkpoint officers for communication. This allows the surveillance

officer to speak very specifically as to what he observed the vehicle or the occupants do after they observed the "DRUG CHECKPOINT" sign.

9. Rope - used to tie down or secure the "DRUG CHECKPOINT" signs during high winds.

10. Flex cuffs - used if the volume of prisoners exceeds your supply of standard handcuffs.

11. Health and Safety Code law book - allows officers to cite the proper law when filling out the arrest paperwork at the scene.

12. Water cooler, ice chest, cups - Once started the checkpoint is a continual and fast-moving operation. Lunch breaks and dinner breaks usually don't happen. Persons standing outside their vehicles while the vehicles are being searched can also be offered some cool refreshment.

13. CB Radio - officers listening to CB radio can sometimes hear truck drivers or other vehicle operators admit that they are in possession of drugs or other contraband.

14. Trash bags - for the trash pick ups, the trash generated by the officers at the checkpoint and, also as evidence bags.

15. Rubber gloves - should be worn by any officer conducting searches of vehicles or prisoners. All officers handling drugs should be required to wear rubber gloves.

16. Tools, jumper cables, bolt cutters - tools and/or jumper cables will be essential if one of the vehicles that stops for the stop sign does not restart. Boxes or other items which may be found in vehicles may require

tools to open. Hidden compartments in specially adapted smuggling vehicles usually require tools to open the compartments. Bolt cutters are necessary when a lock is encountered for which the occupants of the vehicle do not have the key, and officers have permission of the person in control of the vehicle to cut the lock to gain entry. This occurs most often in the case of eighteen-wheeler type trucks.

17. First Aid Kit - for any and all minor injuries occurring to officers or persons stopped at the checkpoint.

18. Sun tan lotion/sun block - overexposure to the sun can/may cause cancer.

19. Cellular Phone - essential to keep in contact with the office, legal advisor or the District Attorney's Office.

20. Narcotics Test kits - to field test the suspected drugs at the location to prevent the arrest of someone for possession when in fact there may be no possession. Helps to positively identify the substance for proper charging; white powder can be cocaine or amphetamines.)

21. Extra pens and small tablets - used by the officers at the checkpoint to record the names and dates of birth of the people that they contact.

22. Tape recorder and tapes - used by the officers at the checkpoint to record the location of evidence during the search of a vehicle.

23. Video Camera/extra tapes - used to record the search of a vehicle, or the a suspect interview. It can also be used to video tape the roadway to attempt to catch on film the occupants of the vehicles throwing out

evidence or the vehicle committing a traffic violation.

24. Flashlights - essential equipment for conducting searches of vehicles, especially the inside of tractor trailers, trunks of vehicles and underside of vehicles.

25. Lawn chairs - giving the officers someplace to relax when not searching vehicles. They can also be used by the occupants of the vehicles while their vehicles are being searched.

26. Mobile Command Post or portable bathroom - The mobile command post gives the officers and prisoners a place to complete the arrest packet, confidential informant packet or intelligence reports. Restrooms in the mobile command post, or a portable bathroom, are very desirable, both for officers and anyone stopping at the checkpoint, when working in remote locations.

27. Canine Units - Certified drug detection dogs and trained handlers.

D. General Guidelines:

1. All personnel will attend briefing prior to working a checkpoint. The Task Force Commander will be responsible for insuring everyone's attendance at the briefing.

This helps insure that everyone is aware of the policy and accepts responsibility to follow it. It is also during this briefing that the officers read and initial a copy of the policy to be retained by the Task Force Commander and kept in a file.

2. Participation by an officer or agency is at the discretion of the

Executive Board or the Task Force Commander. Only agencies invited by the Executive Board or the Task Force Commander will participate in checkpoints conducted by the Task Force.

3. While assigned to a checkpoint, all officers will report to and take directions from the Task Force Commander.

Each officer must understand and agree to take directions and orders from the Task Force Commander due to the fact that the ultimate responsibility for the checkpoint will fall on the commander.

4. Any and all problems or questions concerning operations at the checkpoint should be brought to the immediate attention of the Task Force Commander.

Questions or problems concerning arrests, probable cause or violations of the policy by checkpoint officers must be dealt with immediately.

5. Officers participating in a checkpoint will maintain a friendly, professional demeanor whether contacting citizens or during the arrest procedure.

Officers will not engage in verbal arguments or insulting or derogatory remarks with persons they contact.

6. Medical treatment and the cost thereof resulting from any injuries sustained to the officers who have been assigned to, or have volunteered for duty at a checkpoint are the responsibility of the injured officer's agency. Non-member agency officers may be required to sign waivers

before working the checkpoint.

An officer's agency will be responsible for the cost of medical treatment should he be injured during the checkpoint.

7. Damage to equipment or property of an officer who has been assigned to, or has volunteered for a checkpoint, is the responsibility of the officer or his agency.

Each officer is responsible for his own equipment, and expenses due to damage of that equipment will be assumed by the officer's agency.

8. Officers understand that without probable cause to arrest, or otherwise detain a person, that person is free to leave and is not required to speak to or respond to an officer's questions or comments.

This will help prevent illegal search and seizure of persons or property.

9. Media or press releases concerning checkpoint operations will be made according to current Task Force policy.

Due to the fact that the Task Force is the controlling agency operating the checkpoint, the Task Force will have the only option of making releases to the media.

10. All criminal and civil cases resulting from a checkpoint operation will be filed by the Task Force, unless approved and assigned by the Task Force Commander.

The Task Force, as the lead agency, will file the criminal and civil cases in accordance with the reporting guidelines of Texas Narcotics

Control Program.

11. All prisoners will be searched, their property removed and placed in prisoners' property bags, handcuffed behind their backs, unless there is a physical or medical reason for not doing so, and mirandized before being transported to jail.

This will help insure that any contraband will be discovered during the search and that all weapons will be removed from arrested persons prior to being transported to jail.

12. All prisoners' vehicles will be inventoried per Task Force Policy.

This will safeguard the Task Force and its members from any false claims by motorists/suspects of expensive items being removed from their vehicles at the checkpoint or stolen from their vehicles while they are stored at the wrecker service.

13. Evidence collected as a result of a checkpoint operation will be handled and submitted per Task Force guidelines.

Evidence will be handled with the thought in mind of fingerprinting anything that is capable of being fingerprinted. The evidence will then be logged into the evidence vault at the location having jurisdiction over the filing of the case.

14. Any seizure made as a result of a Task Force checkpoint shall be distributed per the agreement of the Collin Area Narcotics Task Force Grant.

Seizures and distributions will be made per agreement prior to

operating the checkpoint. The Task Force Commander or the Executive Board may set the amount that the non-Task Force member agencies will receive.

15. Officers will be in uniform or in clothing which readily identifies them as police officers, Task Force officers or law enforcement personnel. The Task Force Commander must approve all non-uniform attire. Officers will be supplied with identifying clothing on a temporary basis by the Task Force.

Uniforms will be required of certain officers. The Task Force commander will determine who these officers will be. Other non-uniform personnel will wear a t-shirt with the word POLICE written on the front in large letters and TASK FORCE written on the back.

16. Officers assigned to the checkpoint will not conduct traffic stops or pursuits unless they are in marked Police vehicles.

This will remove the possibility of unmarked Police vehicles getting in pursuits.

17. Vehicles and their occupants which approach the checkpoint/stop sign are free to leave the area of the stop sign after lawfully stopping as required by the stop sign; UNLESS:

- a. They have committed a traffic violation in the view of the officer, such as failure to signal lane change, speeding, etc.
- b. There is an equipment violation present, i.e., an expired or fictitious inspection sticker, expired license plate, no front license plate

or worn tires.

These should be visible to the checkpoint officers as the vehicle approaches.

c. The vehicle's occupants commit a violation in the view of the officer, i.e., littering, driving without a seat belt, child not in a safety seat as required.

The officers should also be watching to see if the occupants throw objects from the vehicle (littering) and approximately where that object lands, as well as seat belt or child safety seat violations.

d. A controlled or illegal substance/item is in plain view of an officer when the vehicle stops for the stop sign, such as: controlled substance in plain view, pistol or handgun sticking out from under the seat, drug paraphernalia: roach clins with residue or bongs.

Officers have observed marihuana stuck in sun visors, baggies of marihuana stuck in between seats, open containers of alcoholic beverages, pistol grips sticking out from under the driver's or passengers' seats.

e. Other probable cause exists that justifies contacting or placing the person under arrest: the smell of burning Marihuana coming from inside the vehicle, an officer recognizing the driver or occupant of a vehicle as being a person with an outstanding warrant that the officer is personally aware of prior to the contact at the checkpoint.

Officers need to be alert and look inside the vehicles as they talk to

the drivers.

E. Operational Issues

1. Officers will not approach or contact a vehicle until it is at the stop sign, unless there is already a vehicle stopped in the roadway and the vehicle being contacted has come to a stop behind the first vehicle. Officer should not allow more than three vehicles to be stopped in the roadway. Vehicles should be pulled off the roadway whenever possible to keep the lane of traffic open and unobstructed.

Advise the officers to wait until the vehicle has come to a stop at the stop sign, which reduces the chance that officers will start walking toward oncoming vehicles holding up their hands to signal the vehicle to stop, and then make contact. This action would actually be considered a traffic stop on the officer's part and not a consensual type contact. Keeping the number of vehicles in line down to three, also keeps officers from contacting vehicles which may be seventh or eighth in line. It also keeps the vehicles being searched outside of the lanes of traffic, allowing an unrestricted flow of traffic. This practice also reduces the chance of an officer being struck by a vehicle which was farther back in line, but has been released and passes the vehicles in front which are still being searched.

2. Consent to search will be requested from all drivers or owners of vehicles believed to be containing a controlled substance or other illegal item. If consent is not received and there is no violation, the driver and

the vehicle are free to leave.

In the event that an item of contraband is in plain view and observed by an officer, or a drug detection dog has positively alerted on the vehicle, the driver will be asked for consent. This strengthens the case should it go to court. It also reemphasizes the fact that if no probable cause exists to detain the vehicle or occupants, the vehicle and its occupants are free to leave.

F. Initial Contact

Officers will greet the drivers of the vehicles in the following manner:
"Hello, I'm Officer ----- , do you mind if I talk to you for a minute? I'm working with the Collin Area Narcotics Task Force and we're conducting a narcotics investigation. Do you live around here?"

If the answer is yes, confirm this by asking to see their drivers' licenses. If the answer is no, ask, "Why did you get off at this exit?" (At the same time signal a canine handler to start an exterior search of the vehicle.) "Would you mind if we searched your car?" (If they don't mind, have them step from the car and let a canine unit search the car.)

These phrases will add continuity to the officers' actions and help insure that all contacts are uniformly completed by all checkpoint officers. These standard questions will also be easier to remember and repeat if the case goes to court. The questions have also been found to be the most effective while also being the least offensive.

G. Role of Surveillance Officers - Explanation of duties

1. When the checkpoint is established there should be at least one surveillance officer for each direction of traffic that may enter the checkpoint. This enables checkpoint officers to be warned when vehicles are entering the checkpoint area. This is very important if there are already vehicles stopped at the checkpoint location. The surveillance officer will advise the officers at the checkpoint that there is a vehicle entering the checkpoint area. Once the checkpoint officers have been told of incoming traffic an officer should watch the approaching vehicle enter the checkpoint area in case the occupants attempt to throw evidence or other contraband from the vehicle.

Checkpoint officers should have already performed the trash pickup which will help eliminate this type of problem from any possession cases filed. It is also during this period when the vehicle is actually approaching the checkpoint/stop sign that the suspects can sometimes be observed stuffing things under the front seat, between the seats and into the console area of the vehicle. These movements and information gathered when the surveillance officers contact a driver may help checkpoint officers establish probable cause to search a vehicle. The surveillance officer is the early-warning device for the checkpoint officers. He also is the person most likely to observe a traffic offense take place immediately after the vehicle passes the "DRUG CHECKPOINT" sign. This officer should be reliable and equipped with a good pair of binoculars.

2. The surveillance officer(s) will also watch the vehicles on any

roadways in his field of vision, which may have stopped unexpectedly, are switching drivers, have drivers or occupants throwing items from the vehicle or any other actions which the surveillance officer believes may be suspicious, exhibit odd behavior, or are any violations of the law. These vehicles and occurrences should be reported, by radio, to checkpoint officers.

Vehicles have been observed pulling off the highway onto the shoulder and the driver and an occupant switching places. This switch is usually because the driver does not have a valid driver's license or has a suspended license. Occupants will also stop on the shoulder of the road and throw contraband from their vehicles. When observed, these actions should be reported immediately so that officers from the checkpoint location can go to the stopped vehicle, contact the occupants and investigate.

3. Officers should also be observant of vehicles on the highway which may be of interest to the operation, vehicles which slow down rapidly, flash brake lights, do u-turns or commit obvious traffic violations after seeing the drug checkpoint sign.

These events should also be reported immediately so that marked units can stop the vehicles for the traffic violations. It is common for vehicles carrying large amounts of drugs to have another vehicle traveling with it as a cover car. It is in the best interest of safety to notify the other officers involved if it appears that two vehicles are traveling together.

H. Role of the Uniformed Officer

1. Uniformed officers will be present at the sight of the checkpoint/stop sign location to assist Task Force officers and to lend an obvious and visible Police presence.

The presence of uniformed officers will reduce the possibility of someone mistakenly thinking that he is about to become the victim of a crime.

2. Uniformed officers will drive marked Police units and assist on highway stops and transporting prisoners.

Marked units will reduce the frequency of pursuits and lend a positive Police presence.

3. Officers must search their marked units before and after each incident during which a suspect has been placed in the marked squad for questioning or transporting to jail. Any controlled substance or other illegal item found during the search can then be given back, in the form of a criminal charge, to its rightful owner, the suspect.

This procedure will prevent an officer who finds something in his patrol vehicle, after having transported a prisoner, from charging the wrong person with the crime. At the same time, this procedure allows officers to charge the correct person with the possession of whatever contraband was found in the vehicle.

IV. Narcotic-Related Indicators

A. Vehicles

1. 3-4 year old car
2. large road car
3. recently titled from another state
4. new license plates on an older vehicle
5. new air shocks
6. vehicle riding low in the rear
7. new tires on an old vehicle
8. multiple antennas, radar detector, cellular phone, cb radio
9. new car with high mileage
10. towing other cars, boats, trailers
11. only ignition key is present
12. top 10 -FL/TX/CA/AZ/SC/NC/NY/NJ/ANY TEMPORARY TAG
13. heavily tinted windows

B. Vehicle Interiors

1. two or more masking scents
2. strong odor of coffee
3. strong odor of marihuana
4. spare tire in back seat
5. fast food litter
6. back seat ajar
7. no/little luggage
8. air conditioning vents are closed
9. switches of no apparent use

10. door vent closed with tin
11. rivets instead of screws
12. receipts and maps
13. paper with maps/times/flights/etc.
14. loose or missing screws
15. tools on floor or under seat
16. oversprayed paint
17. weld splatter
18. large empty luggage
19. depth of trunk too shallow
20. raised floor in vans
21. overstuffed captains chairs in vans: "smugglers seats"
22. removable consoles
23. stash cans: beer, shaving creme, Pledge, oil, soft drinks
24. stereo speakers not working; hollow

C. Rental Vehicles

1. mileage inconsistent with original contract
2. Is driver's license the same as rental state?
3. Is the driver's name anywhere on the contract?
4. driver only knows the first name of lessee
5. lessee has criminal history
6. Does the contract list all authorized drivers?
7. plug-in electronics; cb radio, radar detector, cellular phone

8. Was the vehicle rented at a source or demand city?
9. occupation of driver cannot support rental
10. driver has only ignition key
11. other rental contracts in the vehicle
12. oil change sticker with mileage that doesn't correspond to odometer
13. broken or disconnected odometer

D. Driver or Occupants

1. 20-40 years old
2. unshaven, road weary
3. unemployed, just driving for a friend
4. extremely nervous/anxious
5. evasive about origin/destination
6. lots of gold jewelry
7. states that he is only paid to drive
8. does not know who owns the vehicle
9. signs of drug use
10. exits vehicle and approaches squad/officer rapidly
11. strict obedience to traffic laws
12. takes a long time to pull over
13. furtive movements
14. cover or surveillance vehicle
15. occupants try to signal a second vehicle or driver
16. driver and passengers give different stories

17. driver tries to tell officer that he doesn't understand English.

18. criminal history for narcotics

V. Effectiveness of Fictitious Drug Checkpoints

The Collin Area Narcotics Task Force working in conjunction with officers from the Plano Police Department, Collin County Sheriff's Department, Frisco Police Department and Richardson Police Department have conducted six Fictitious Drug Checkpoints in Collin County on US 75. These resulted in the arrest of 35 people, which are outlined in the following categories:

A. Arrests

In each instance that the checkpoint was set up, the number of vehicles which passed through the checkpoint varied. The minimum number was approximately 65 vehicles, resulting in three arrests. The maximum number of vehicles passing through the checkpoint was 104 from which 14 persons were arrested. These arrests were all for drug-related offenses.

The nature of the offenses were both misdemeanor and felony. Although 36 arrests were made from all the checkpoints, not all those arrests resulted in cases being filed.

B. Informant Development

Once arrested at a checkpoint location, the arrested person was given the opportunity to "work" his/her case off by becoming an informant for the Task Force. Of the 36 people arrested, 12 became informants. Two of these later changed their minds about working off their cases, and charges were filed against them. The remaining individuals successfully worked their cases off.

The following is a brief outline of the most successful of the informant-generated cases:

Suspect # 1: Richard was arrested at the checkpoint location possessing two ounces of marihuana which he had hidden in his five-year-old daughter's stuffed teddy bear. Immediately after his arrest he agreed to cooperate and gave information concerning his supplier who was a female,

Suspect # 2: Tammy. Richard and an undercover officer from the Task Force went to Tammy's the following day and purchased one-half pound of marihuana. The next day the undercover officer purchased an additional pound of marihuana from Tammy. A deal was struck to purchase five pounds of marihuana from Tammy. Richard went into the residence to see the Marihuana first and on his information a search warrant was obtained and executed and eleven pounds of marihuana was seized along with currency and a storage chest. Tammy, Suspect #2, agreed to become an informant and took an undercover officer to purchase cocaine and valium from,

Suspect # 3: Rita. Four purchases of cocaine were made from Rita and then she was arrested and her 1991 Chevrolet pick up truck was seized. Rita became an informant and introduced an undercover officer to her supplier,

Suspect #4: Angel. A total of six purchases of cocaine were made

from Angel before he was arrested. Angel did not cooperate, but the Task Force did execute two search warrants on residences used by Angel and four search warrants on bank accounts held by Angel.

C. Drug/Asset Seizures

1. The Task Force has seized three vehicles from the actual checkpoint location. A greater number of seizures have come from the "spin off" informant cases. The "Angel" case resulted in the seizure and forfeiture of Tammy's currency and storage chest. Rita's 1991 Chevrolet pick up truck proved to be lien free and was forfeited by the court and is currently being driven in an undercover operation.

2. Angel was the most unfortunate of all; the Task Force seized his 1993 Toyota Four-Runner (\$5,600.00 lien), 1985 Chevrolet, 1988 Oldsmobile, two lap-top computers, two IBM compatible computers, approximately \$ 7,500.00 in currency, one stereo, one color TV, jewelry, and a 1989 Toyota. Some of these items have already been awarded by the court. Angel has just pled guilty and the remaining items should be awarded in the near future. Seized from Angel at the time of his arrest was approximately 6-1/2 ounces of cocaine.

3. The checkpoint location has yielded marihuana, cocaine, methamphetamine, valium, steroids and assorted pharmaceutical drugs. The largest amount of drugs seized at the checkpoint was two and one half ounces of methamphetamine. The cases which have developed as a result of the informants has resulted in the seizure of approximately

fifteen pounds of marihuana, valium, heroin, cocaine and LSD.

D. Media/Public Relations Benefits

1. During the six fictitious drug checkpoints that have been conducted reaction of the public has been very positive. The citizens who have been contacted at the checkpoint location and who were not arrested praised the concept as innovative and original.

2. Likewise some of the persons that were arrested thought that it was a smart idea and congratulated us on the success of catching them. The remaining arrestees were not as enthusiastic and their comments would add virtually nothing to this paper.

3. The area of Collin County where the checkpoint was located was very rural. The area residents who drove through the checkpoint requested that we operate more often and suggested other locations nearby that they thought would result in drug related arrests.

4. Many of the residents drove through the checkpoint more than once a day, and each time had a "thank you" or some other positive comment. One resident went home, picked up her teenage son and daughter and drove back to the checkpoint location where she parked and the three of them proceeded to watch the operation for about one hour.

5. Two different television stations have done news pieces on the checkpoint and both were of a positive nature. Newspaper reporters have contacted the Task Force to request that they be allowed to observe the checkpoint operation and write a newspaper article about it.

VI. Problems

A. Location

The selection of the location is probably second in importance only to officer selection. Although more vehicles passing through your checkpoint usually equates to more arrests, it is important that the time of the delay of these vehicles is not excessive. It is also essential that the checkpoint be located at an existing stop sign. The placement of a temporary stop sign would bring the operation fourth amendment search and seizure problems.

B. Personnel

Selection of checkpoint personnel is critical to the success of the checkpoint, the validity of the contacts and searches and the testimony that will take place in court. It has been my experience that officers want to take part in the initial checkpoint, contact the drivers and ultimately search the vehicles. However, they resist the fact that reports are necessary from all checkpoint officers, and they have what I call "selective amnesia" when it is time to logging the evidence into the property room, and/or testify in court.

In short these officers want to have the fun of being there for the discovery of the drugs, guns, etc., but they want nothing to do with the real work, which is the proper logging of the evidence and case preparation.

Another personnel problem is what has come to be called the "Ant Hill" syndrome. This occurs when a vehicle pulls up to the stop sign and any and all officers who are standing around, approach the car en masse. Not only does this not give the actual team an opportunity to properly approach and

contact the occupants of the vehicle, it intimidates the occupants and could cause legal problems in the area of giving consent to search under duress.

C. Courts

Four checkpoint cases have gone to district court, and all four of these have resulted in guilty pleas or verdicts. One case has been tried in county court and the judge found in favor of the defendant. This decision is being appealed by the district attorney's office.

D. Procedural

One of the biggest problems in the area of procedure or policy compliance occurs when officers other than Task Force officers are used at a checkpoint. If the person in charge of the checkpoint, in this case the Task Force Commander, allows teams to be comprised of strictly non-Task Force officers, the probability of problems increases drastically.

It is in everyone's best interest to insure that the teams are made up of a mix of officers so that the team has someone with a vested interest in making sure that the procedure and policy are followed. The officers from other departments usually know that Task Force officers will be filing the paperwork on these cases and will probably be the only officers subpoenaed to testify in court. Therein lies the problem. These officers have in the past cut some corners during the interview or search and this has caused immense problems for the Task Force officer when the case was sent to the District Attorney for filing, when he was subpoenaed to testify at the Grand Jury, and/or when the case was prepared for trial. Problems with chain of custody

concerning evidence, and where, and by whom it was found, was a common occurrence until the teams were restructured to include at least one Task Force Officer.

VII. CONCLUSION

In conclusion, it is my personal experience that Fictitious Drug Checkpoints are a very useful tool in the War On Drugs. If we, as law enforcement personnel, want to be successful in our assigned task of enforcing the drug laws, we must remain open-minded as to how we are to achieve that goal. Violators are not restricted by their imaginations, and we should follow their example.

If followed, the Drug Checkpoint Policy enables law enforcement to fight the War on Drugs without violating anyone's rights. It places the violator in the position of determining his own fate after he has read the "DRUG CHECKPOINT AHEAD" sign. He must make the decision to exit the highway, make a u-turn, or take other action, including throwing drugs out of the window of his vehicle.

Officers involved in a FDCP acquire a considerable amount of on-the-job training in the area of search and seizure, and interviewing techniques. Equipment needed to operate a FDCP is basic, and, for the most part, in every department's inventory.

The courts, with one exception, have found that the FDCP is operated within the law, and have validated this finding with verdicts of guilty.

As Commander of the Collin Area Narcotics Task Force, I have personally observed and discussed the satisfaction of our customers -- the citizens -- concerning these checkpoints. Their response has been overwhelmingly positive. They have stated that they are glad to see a new, if not unique, method being used to stop the flow of drugs. Overall, FDCPs are effective, educational, innovative and fun.

BIBLIOGRAPHY

1. In Almeida-Sanchez v. United States, 413 U.S. 266 (1973), the court held that the use of roving patrols to search vehicles without probable cause or a warrant at points other than a border or its functional equivalent is prohibited by the Fourth Amendment.

In United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975), the Supreme Court stated that:

Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts , together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may illegally be in the country.

In United States v. Martinez-Fuerte, 428 U.S. 543, 545 (1976), the court held that vehicle stops at fixed checkpoints, are legal, even though there is no reason to believe the vehicle contains illegal aliens.

2. Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

3. United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975).

4. United States v. Martinez-Fuerte, 428 U.S. 543, 545 (1976).

5. United States v Hassette, 898 F.2d 994, 995 (5th Cir. 1990) (citing United States v Venegas-Sapien, 762 F.2d 417, 418, 419(5th Cir. 1985).

6. See, e.g., United States v. Hassette, 898 F.2d 994 (5th Cir. 1990); United States v. Abrams, 598 F. 2d 969 (5th Cir.), cert. denied, 444 U.S. 968 (1979); United States v. Torres, 590 F.2d 156 (5th Cir.1979); United States v. Macias, 546 F.2d 58 (5th Cir. 1977).

7. United States v. Hassette, 898 F.2d 994 995 (5th Cir. 1990).

8.Id.

9.____ U.S. ____, 110 S. Ct. 2481 (1990).

10. Id. at ____, 110 S. Ct. at 2485.

11. Id. at ____, 110 S. Ct. at 2485.

12. 428 U.S. 543 (1976). In Michigan Department of State Police v. Sitz, 496 U.S. 444, ____, 110 S. Ct. 2481, 2486 (1990), the Court specifically stated that:

...the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon the individual motorists who are briefly stopped, weighs in favor of the State program. We therefore hold that it is consistent with the Fourth Amendment.

Id. at ____, 110 S. Ct. at 2488.

After extensive research, no reference material, or other case law could be found regarding this subject.

COLLIN AREA NARCOTICS TASK FORCE

STANDARD OPERATING PROCEDURE #10:

DRUG CHECK POINT:

Statement of Policy:

The following is the procedure to be followed by any and all Officers assigned to work a Drug Check Point, whether the Officer is assigned full time to the Collin Area Narcotics Task Force, assigned on a temporary basis by a member agency, assigned on a temporary basis by a non-member agency or assisting the Task Force as a volunteer or as part of a training exercise.

Officers will greet the drivers of vehicles in the following manner:

Hello, I'm Officer _____, do you mind if I talk to you for a minute? I'm working with the Collin Area Narcotics Task Force and we're conducting a drug check point.

Do you live around here?

(If the answer is yes, confirm this by asking to see their drivers license.)

If the answer is no...

Why did you get off at this exit?

(At the same time signal a K-9 Handler to start an exterior search of the vehicle.)

Would you mind if we searched your car?

(If they don't mind, have them step from the car and let a canine search the car)

If they refuse to let you search the car and there is no violation, they are free to leave the area.

I. Vehicles and their occupants which approach the check point/stop sign are free to leave the area of the stop sign after lawfully stopping as required by the stop sign,

Unless: _____

A. They have committed a traffic violation in the view of an Officer.

B. There is an equipment violation present, i.e. expired or fictitious inspection sticker, expired license plates, no front license plate, etc....

C. The vehicles occupants commit a violation, in the view of an Officer, i.e., littering, driving without a seat belt, child not in a safety seat as required, etc...

D. A controlled or illegal substance/item is in plain view of an Officer when the vehicle stops for the stop sign, such as: controlled substance in plain view, pistol or handgun sticking out from under front seat, drug paraphernalia, roach clips with residue, bong, etc.....

E. Other probable cause exists that justify contacting or placing the person under arrest: the smell of burning Marihuana coming from inside the vehicle, an Officer recognizing the driver or a passenger of a vehicle as a person that has an outstanding warrant that the Officer is personally aware of prior to contact at the check point, etc....

F. Officers will not approach or contact a vehicle until it is at the Stop sign, unless there is already a vehicle stopped in the roadway and the vehicle being contacted has come to a stop behind the first vehicle. Officers should not allow more than three vehicles to be stopped in the roadway. Vehicles should be pulled off the roadway whenever possible to keep the lane of traffic open and unobstructed.

G. Officers will be in uniform or in clothing which readily identifies them as Police Officers, Task Force Officers or Law Enforcement Personnel - the Task Force Commander must approve all non-uniform attire. Officers may be supplied with identifying clothing on a temporary basis by the Task Force.

H. While assigned to a Check Point, all Officers will report to and take directions/orders from the Task Force Commander.

- I. Any seizure made as a result of a Task Force check point shall be distributed per the agreement of the Grant.
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- J. Participation by an Officer or Agency is at the discretion of the Executive Board or the Task Force Commander.
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- K. Media or press releases concerning check point operations will be made by or under the direction of the Executive Board, the Project Director or the Task Force Commander.
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- L. Evidence collected as a result of a check point operation will be handled and submitted per Task Force guidelines.
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- M. All prisoners will be searched, their property removed and placed in a prisoners Property Bag, handcuffed behind their back (unless there is a physical or medical reason for not doing so) and mirandized before being transported to jail.
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- N. All prisoners vehicles will be inventoried per Task Force Policy.
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- O. Consent to search will be requested from all drivers or owners of vehicles believed to be containing a controlled substance or other illegal item.
** If consent is not received and there is no violation the driver and vehicle are free to leave.
-
- P. Officers participating in a check point will maintain a friendly, professional demeanor whether contacting citizens or during the arrest procedure.
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Q. All Criminal and Civil cases resulting from a check point operation will be filed by the Task Force, unless approved and assigned by the Task Force Commander.

R. Medical treatment and the cost thereof resulting from any injuries sustained to Officers who have been assigned to, or have volunteered for duty at a check point are the responsibility of the injured officers agency.

** Officers may be required to sign a waiver before working the check point.

S. Damage to equipment or property of an Officer who has been assigned to or volunteered for duty at a check point is the responsibility of the Officer or his agency.

T. Officers understand that without probable cause to arrest or otherwise detain a person that person is free to leave and is not required to speak to or respond to an officers questions or comments.

U. Any and all problems or questions concerning operations at the check point should be brought to the immediate attention of the Task Force Commander.

V. All personnel will attend briefing prior to working a check point. The Task Force Commander will be responsible for insuring everyones attendance at the briefing.

W. Officers assigned to the check point will not conduct traffic stops or pursuits unless they are in a marked vehicle.

Location Selection

The location should be one that affords the maximum amount of control, has the least amount of exposure and will benefit the operation.

The check point should be located at the sight of an existing stop sign.

- ** The location will be manned by uniformed officers in addition to non-uniform personnel.
- ** Marked police vehicles will also be present at the check point location.

Trash will be picked up in the area of the check point before the operation starts to help identify objects or evidence which may be thrown from vehicles. Periodic rechecks for contraband will be performed throughout the course of the check point and recorded on the proper form.

Role of the Uniformed Officers

- A. Uniformed officers will be present at the sight of the check point (Stop sign location) to assist Task Force Officers and to lend an obvious and visible Police presence.
- B. They will drive marked units and assist on highway stops and transporting prisoners.
- C. Officers must search their marked units before and after each incident where a suspect has been placed in the marked squad for questioning or transporting to jail. Any controlled substance or other illegal item found during the search can then be given back, in the form of a criminal charge, to its' rightful owner, the suspect.
- D. Officers should also be observant of vehicles on the highway which may be of interest to the operation, vehicles which slow down rapidly, flash break lights, do U-turns or commit obvious traffic violations after seeing the drug check point sign.

Surveillance Officers - Explanation of Duties

- A. When the check point is established there should be at least one surveillance officer for each direction of traffic that may enter the check point. This enables check point officers to be warned when vehicles are entering the check point area. This is very important if there already are vehicles stopped at the check point location. The surveillance officer will advise the officers at the check point that there is a vehicle entering the check point area, once check point officers have been told of incoming traffic an officer should watch the approaching vehicle enter the check point area in case the occupants attempt to throw evidence from the vehicle. Check point officers should have already performed the trash pick up which will help eliminate this type of problem from any possession cases filed. It is also during this period when the vehicle is actually approaching the check point/stop sign that the suspects can sometimes be observed stuffing things under the front seat, between the seats and into the console area of the vehicle, these movements and information gathered when you contact the driver may help check point officers establish probable cause to search the vehicle.
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- B. The surveillance officer/s will also watch the vehicles on any roadways in the area, which are in his field of vision, which may have stopped unexpectedly, are switching drivers, have drivers or occupants throwing items from the vehicle or any other actions which the surveillance officer believes may be suspicious or odd behavior or any violations of the law. These vehicles and occurrences should be reported, by radio, to check point officers.
-

CHECK POINT

1. PREPARATION - EQUIPMENT NEEDED

- A. Signs / sand bags - (to weigh down the signs)
- B. Copy of all arrest paperwork, CI forms, Intell. Rpts.
- C. Physicians desk reference
- D. Stapler and tape dispenser
- E. Prisoners property bags
- F. Polaroid camera / film
- G. Binoculars
- H. Radios / extra batteries
- I. Rope - used to tie the signs to poles during high winds
- J. Flex cuffs
- K. Health & Safety Code Law Book
- L. Water cooler / ice chest / cups
- M. C.B. Radio
- N. Trash bags
- O. Rubber gloves
- P. Tools, *** bolt cutters ***
- Q. First Aid Kit
- R. Sun Tan Lotion
- S. Cellular Phone
- T. Test Kits
- U. Extra pens and small tablets
- V. Tape recorder / tapes
- W. Video Camera / extra tapes
- X. Flash lights
- Y. Lawn Chairs
- Z. Jumper Cables

COLLIN AREA NARCOTICS TASK FORCE

DATE: _____ LOCATION: _____

ORIGINAL TRASH PICK-UP TIME: _____

BY: _____

PERIODIC RE-CHECKS OF THE AREA FOR CONTRABAND:

1st Check / time: _____ by: _____

Items Found: _____

2nd Check / time: _____ by: _____

Items Found: _____

3rd Check / time: _____ by: _____

Items Found: _____

4th Check / time: _____ by: _____

Items Found: _____

5th Check / time: _____ by: _____

Items Found: _____

6th Check / time: _____ by: _____

Items Found: _____

7th Check / time: _____ by: _____

Items Found: _____

8th Check / time: _____ by: _____

Items Found: _____

FINAL CHECK/TIME: _____ BY: _____

Items Found: _____

(Supervising Officer)

Captain David E. Golden
Project Director

Sgt. Frank McElligott
Task Force Commander

Effective Date

Revised Date