

Automated Enforcement Myths

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Background

Traditional traffic law enforcement relies exclusively on the presence of an officer to observe violations and identify and cite offenders. Obviously, this limits the effectiveness of traffic law enforcement because police cannot be everywhere. Even when they observe violations, it is not always possible to safely stop the violator because to make the stop, the officer may have to speed or run a red light.

Red light cameras and other photo-enforcement systems are designed to identify traffic law violators without depending on the presence of police officers. Red light camera systems are connected to traffic signals and to sensors buried in the pavement at the crosswalk or stop line. The system continuously monitors the traffic signal and triggers the camera to photograph the tags of vehicles entering the intersection after the light has turned red. In most cases, a second photograph is taken to show the offending vehicle in the intersection. The camera records the date, time, and speed of the vehicle; a clear image of the vehicle is produced under a wide range of light and weather conditions. Images are carefully reviewed, and citations are mailed to the registered owners of the vehicles for which there is unambiguous evidence of a violation.

Although courts have repeatedly upheld photo enforcement, opponents often claim that it violates a variety of constitutional and other legal protections. The following is a list of some of the objections that are most often raised and responses to those objections. For additional information on photo enforcement, see the Insurance Institute for Highway Safety's website, www.highwaysafety.org.

Myth: Like old-fashioned speed traps, photo enforcement is designed to make money, not protect the public.

Each year crashes involving red light running claim the lives of more than 800 people and injure another 200,000 people.¹ More than half of the deaths in red light running crashes are other motorists and pedestrians, so there should be no debate about the fact that red light runners are dangerous drivers who put other road users at risk. A recent Insurance Institute for Highway Safety study in Oxnard, California, showed that red light running violations dropped a total of 42 percent after well publicized photo enforcement was introduced.² Another study in Fairfax, Virginia, showed that violations declined about 40 percent after one year of photo enforcement.³ A key to all effective traffic law enforcement is publicity; without it there is no deterrent effect, and the purpose of red light cameras is deterrence.

Photo enforcement has such a strong deterrent effect precisely because it is *not* like so-called "speed traps." The old image of a speed trap was that of "secret" enforcement at a location where almost every driver speeds. Officers could pick and choose whomever they wished to cite, even drivers who barely exceeded the limit.

The objective of photo enforcement is to deter violations, not to surreptitiously catch violators. The more public the enforcement is, the better. Photo-enforcement cameras are in plain view, not hidden. There typically are signs and publicity campaigns warning drivers that photo enforcement is in use. And unlike speed traps, photo enforcement is fair. The cameras are programmed not to photograph vehicles turning right on red or caught in the intersection when the light changes. Only violators who meet objective criteria specifically designed to omit minor, unintended infractions are photographed. There is no potential for impermissible profiling or discriminatory enforcement where photo enforcement is in use.

Myth: Photo enforcement allows police to act as “Big Brother,” continuously spying on law-abiding citizens.

Photo-enforcement cameras are not general surveillance cameras that observe everyone within range, but are designed only to capture photographic evidence of traffic law violations. Thus, red light cameras are triggered solely by vehicles that enter an intersection on a red light. They do not photograph vehicles being driven less than minimum speeds (e.g., 15 mph), thereby assuring that drivers executing turns or stopping in intersections on yellow or green signals are not cited. In other words, photo enforcement is designed to collect no more information than is necessary for law enforcement purposes.

The Fourth Amendment to the U.S. Constitution protects our right to privacy from unreasonable intrusion by law-enforcement agents. In 1967, in a landmark case, *Katz v. United States*, the U.S. Supreme Court established that the Fourth Amendment protects our right to privacy in those things that we actually keep private and those which society generally regards as private. “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection” *Katz v. United States*, 389 U.S. 347, 351 (1967).

A photo-enforcement camera photographs a vehicle, including its rear license tag. In states that require identification of the driver, photo-enforcement cameras photograph the driver as well as the license tag. No one can reasonably argue that a driver or registered owner of a vehicle has a privacy interest in the driver and/or license tag of a vehicle being driven on a public road if the driver has violated the law.

If there were such privacy interests in license tags, it would be violated through traditional enforcement. Every time an officer stops a vehicle, he or she calls in the tag number to verify registration, thereby making a record of when and where the vehicle was seen. Officers routinely request driver’s licenses when they conduct stops and visually inspect drivers to see that licenses match the drivers submitting them.

Opponents of photo enforcement raise the privacy issue with the general public, but not in court. This is very likely because the law is well settled that there is no privacy interest in what is routinely and regularly displayed in public.

Myth: With photo enforcement, owners are guilty until proven innocent.

Opponents of photo enforcement raise this issue frequently. At first blush, it has strong appeal because the presumption of innocence is one of our most treasured constitutional rights. However, photo enforcement does not violate the presumption of innocence, which attaches at trial, not before. Police and prosecutors are not bound by a presumption of innocence. To the contrary, ethics prevent them from charging a person unless there is sufficient evidence.

Laws authorizing photo enforcement provide that photographic evidence of a violation is sufficient to issue a citation to a registered owner. The citation is merely a summons. Photo-enforcement laws always make it clear that the photographic evidence creates only a rebuttable presumption. The registered owner may present a defense in person or, in Virginia, by mailing in an affidavit stating under oath that he or she was not the driver at the time of the offense (Va. Code Ann. § 46.2-833.01(D)). In other states, an owner only has to identify the driver to rebut the presumption. It is difficult to imagine a presumption that is easier to rebut.

Myth: Photo enforcement violates the Fourteenth Amendment because it does not provide immediate notice that an offense is alleged.

Opponents of photo enforcement argue that traffic offenders are entitled to immediate notice when they commit offenses. Otherwise, the opponents claim, it is not possible to defend against a charge.

The Fourteenth Amendment of the U.S. Constitution provides that when a state seeks to take action against a person or property, that person or property owner must be given due process of law. Fundamental fairness requires that when a person is charged with an offense, he or she be given notice of exactly what offense is being charged and when and where it was allegedly committed. Statutes of limitations dictate the time within which the notice of the offense must be given. Absent a violation of any statute of limitations, there is absolutely no guarantee that a person will be charged contemporaneously with an offense.

Traditional enforcement methods almost always provide relatively immediate notice of an offense during the stop and citation process, but there is nothing in the law providing traffic law offenders with special rights to notice. Furthermore, in some circumstances traditional enforcement methods do not provide immediate notice. An officer who observes a violation can cite the violator at a later time. In crash situations, citations often are issued after the investigation is completed, days or weeks after the crash.

Myth: Photo-enforcement cameras make too many mistakes.

Every technological and every human system can make mistakes. However, photo enforcement has been in use in Europe for more than 20 years and in the United States for more than 10 years and has

proven extremely accurate and reliable. Photo-enforcement laws require the cameras to meet specified standards and to be well maintained. Persons defending citations generated by photo enforcement have the same ability to test whether the state has properly used and maintained the equipment as any offender facing any other technological evidence.

The law guarantees persons fair trials. This is no more or less true in traffic than in other cases. All scientific evidence is subject to rigorous testing in court; if it is based on sound scientific principles, it is admissible. An offender always has the right to show the possibility of error, and it is up to the judge to determine whether that possibility is sufficient to create reasonable doubt.

References

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2. Retting, R.A.; Williams, A.F.; Farmer, C.M.; and Feldman, A.F. 1999. Evaluation of red light camera enforcement in Oxnard, California. *Accident Analysis and Prevention* 31:169-74.
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