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NMAF NEWS (permit # 0716556-KWP) is the official publication of the National Motorists Association Foundation, Inc. NMAF NEWS is published bimonthly by the National Motorists Association Foundation, Inc., 402 W. 2nd St., Waunakee, WI 53597. (608/849-6000) Nonprofit bulk permit paid Madison, WI. Annual membership in the National Motorists Association includes subscription to NMAF NEWS.

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COVER
Summer Travel
By Eric Skrum

The Whisper War

by James J. Baxter, President, NMA

The newspapers and radio and TV news programs runneth over with anguish over state and local governments' budgetary shortfalls. What doesn't make the front pages or the six pm news hour is the unofficial "Whisper War" against the population at large.

The number one priority of all governmental entities and bureaucracies is "survival." It is imperative that the paramount essential function be maintained, collecting revenue. If the normal extraction of taxes from the populace doesn't keep up with government demands, government must find other ways to fulfill its needs. Hence the Whisper War.

You won't see Mayor Gambino, Senator Capone, or Council Woman Barker call a news conference announcing their decision to raise fines, intensify enforcement, reduce access to the courts, or pass several new ordinances with stiff forfeitures to maintain cash flow into government coffers. (I hasten to add that sacrifices will be offered, for example eliminating trash collection and road maintenance, and closing the fire department.) What will happen, and is happening, is the Whisper War from the top down. "Raise the fines, step up enforcement, no tolerance or warnings, make that common practice illegal" and "let's get some of those cameras that issue tickets."

Just to short circuit the possibility that the public might actually resist an onslaught of tickets, fines, regulations, and inspections; new procedures are instituted to divert malcontents to "administrative hearings" where real due process is extinct. All these actions are taken in the name of "protecting the children" or "making our neighborhoods safer." For good measure,

there may be a reference to "rooting out terrorists."

The biggest, most affluent, compliant, and susceptible target in the Whisper War is the American motorist. Well accustomed to pointless laws, arbitrary enforcement, rapacious fines, and a judicial system that survives by milking drivers, most motorists are conditioned to regulatory and financial exploitation. (As well they should be, given that drivers and cars and trucks are responsible for all that is wrong in the world—as evidenced every day in various public pronouncements). A 20 percent increase in fines because "we must enforce voluntary compliance" will be taken in stride. A new surcharge for head injury victims seems reasonable. Increasing court costs 50 percent to modernize the courthouse appears to have merit, even if it takes an act of Congress to get an actual trial. As long as some flimsy excuse is offered for the increased level of government sponsored extortion, 200 million American motorists "suck it up" and drive on.

Ever think about what would happen if they said "no, we're not going to take it anymore?" ☞

Visit one of the NMA web sites for more motorist information.

www.motorists.org

www.speedtrap.org

www.roadblock.org

Using The MUTCD—A Reality Check

By John Carr, Massachusetts Activist

In recent articles I wrote about the standards established by the *Manual On Uniform Traffic Control Devices* (MUTCD). The law says all traffic signs on public roads in the United States must comply with the MUTCD.

In this issue, I add some words of caution.

The reality is, you shouldn't expect to drop a copy of the MUTCD on a government official's desk and convert him to your point of view. The MUTCD is a tool, and understanding the standards and the reasons behind them can help you persuade a reluctant agency, but it is not a magic bullet.

Some engineers will honestly try to do the right thing. Others will ask themselves, "What's in it for me?" You need to understand the world from their point of view, if you are to be effective.

If an engineering study, following the MUTCD, tells the state traffic engineer that the proper speed limit on a highway is 70 mph, but the Governor says he doesn't think anything over 55 is safe, what do you think the speed limit will be?

Unwarranted stop signs,

unreasonably low speed limits, and other MUTCD violations happen for a reason. They are the easiest way to quiet complainers. People in government usually feel that more regulation is good, and if the MUTCD says otherwise, it is obviously wrong.

MUTCD compliance costs money and risks political exposure, and so, unfortunately, in the face of determined opposition there are only three things that will force a change: public embarrassment, financial cost, or a court order.

Getting any of these things to happen is a major task. To sway public opinion you need to educate people about a subject where their instincts are often wrong. Although the law threatens loss of highway funds, if a state violates the MUTCD, credible financial threats are extraordinarily rare. Getting a court order requires a huge investment of time and money, if you can manage it at all.

Two real world examples:

Example One:

Some people think beating a ticket

on the basis of an MUTCD violation will bring the system crashing down. Winning one case will rarely have a significant effect on public opinion, ticket revenue, or enforcement practices. If you can win and show others how to repeat your success, then you are on your way to having a real impact.

A few years ago the city of Boston tried to mail tickets for red light violations. Fighting such a ticket was a guaranteed win because state law generally prohibits mailing tickets. After a newspaper reported on the scam, 30% of car owners who got tickets went to court. The city would have been happy to get only 70% of the revenue but the courts did not like being overloaded with unprofitable cases. After magistrates started dismissing all of the tickets, even for people who didn't show up in court, the city finally gave in and stopped the program.

Example Two:

Some residents of my city complained about speeding cars and

Continued on page 9

Increasing Indiana Speed

In the latest legislative session, the General Assembly considered House Bill 1308.

The bill proposed a very modest five mph increase in the state speed limit to 70 mph on interstates and 60 mph on divided four-lane state roads. With the help of NMA members who contacted their representatives, and members Roger Carlson and Jim Phend who addressed the Public Policy Committee, the committee and the full House approved the bill.

Unfortunately, the Senate committee chairman refused to allow a

hearing on HB 1308. Although NMA members provided extensive, credible supporting documentation to all 50 senators, the chairman preferred to rely on his contacts at the National Highway Traffic Safety Administration and the insurance industry, both of which claimed that any increase in the limit would result in additional fatalities.

NMA members who want to do more to promote a similar bill in 2003 can contact Roger or Jim through the NMA National Office. We were close to passing it this year. With more help,

we should be able to succeed in the next legislative session in 2003. 📧

Keep "NMA NEWS" coming...

Please notify the NMA when you have an address change. The Post Office will not always send it to us (even if you've placed a "change of address" with the Post Office).

Texas Transportation Forum

By Luke Ball, Texas State Chapter Coordinator

Texas State Chapter Coordinator Luke Ball attended the Third Annual Forum on Public Health and Transportation Safety on behalf of the NMA on April 16, 2002. This is his account of his first day of this two day forum.

CARRIAGES WITHOUT HORSES SHALL GO. AND ACCIDENTS FILL THE WORLD WITH WOE.

This was the leading quote of this conference credited to Ursula Sontheil, a 16th century prophesier.

The forum kicked off at 8:30 am with a Texas State Senator giving the opening remarks. He had it about 50% right and 50% wrong. I was pleasantly surprised, as I didn't expect anyone here to be right 50% of the time. Unfortunately, this was misleading, as you will soon see.

Texas Senator Steve Ogden opened, talking about improvements in highway safety that can be significant if we are more focused in our efforts. He touched on drunk driving and the gains made due to the .08 BAC law and the recently passed transporting open container law. He talked about increased emphasis on wearing seatbelts and that the Graduated Driving License law would help by restricting younger drivers from driving during the times they have the most accidents. He did save the best for last though. He talked about the need for improved infrastructure, better and faster highway construction, shoulders on FM (farm-to-market) roads, and improved *real world* driver training.

At 9:30 David Sleet from the Centers for Disease Control (CDC) talked about the costs associated with car crashes and deaths per car owned. He talked about vectors, equating cars to diseases, and used nonsensical statistics to demonize cars. He spoke about speed controls versus the need to

share the road with all users and that we should get psychologists involved, impressing the importance of these issues.

After a short break, Christine Branch (also from CDC) talked about working with Health and Human Services on child safety seats, increasing seatbelt usage, and alcohol impaired driving. She spoke of a "Safe Community" initiative that was conducted in Dallas with an emphasis on forcing Hispanics to use child safety seats. NHTSA went in and did a number of programs attempting to "change the culture of the community" and "intervention." This program is perceived as being successful because spot-checks have documented increased use of seats, although Texas DOT has no proof of reduced morbidity. Your tax dollars at work.

During lunch, the speaker was Dr. Jeff Runge, the NHTSA Administrator, and he talked about the slings and arrows aimed his way as he has settled into his new job. After talking about "clickit or ticket" programs, he opened the floor to questions.

I took the bait and immediately stood up to ask if he was bothered that the most recent study on the causation of crashes was 23 years old. He simply stated that these studies were expensive. I replied that knowing what is causing crashes is the most important piece of the puzzle and why not funnel money from the clickit program or .08 blackmail programs as these are viewed by most people as harassment programs anyway?

His voice rose and he started talking about how 60% of alcohol related crashes are .15 and higher. I said this was my point. We have limited police resources and if they are ticketing people or arresting people that aren't impaired, they are less likely to catch the truly dangerous.

He stated that .08 people killed

people too. I said not at a rate any higher than .05 or .04 and was he advocating that? He replied that I was wrong and solicited a question from someone else. Needless to say, I was pretty much "persona non grata" for the rest of the day.

After lunch, a panel discussion on Enhancing Traffic Law Enforcement started with our favorite topic—Red Light Cameras (RLCs). The panel stated that people who oppose RLCs simply don't wish to comply with the law. End of story.

When I asked about yellow light timing, I was told that people quickly adapted to the longer time and continued to run lights. This isn't true and I tried to address this, but they wanted to "move on." 9-11 was cited to justify RLCs (I found this particularly offensive) and then, they talked about the importance of monitoring and control by any means necessary. Any theoretical discussions about constitutional rights to privacy were inconvenient and not feasible. In the panel's opinion, the North Carolina courts were showing too much sympathy toward violators. The bottom line was their planned framework, Coverage-Presence-Control.

The last speakers (Emergency Medical Services) were interesting because they were from a completely different perspective. Most of the discussion was on communications infrastructure and how they get medical attention to injured people as well as disaster response. While most of us take this for granted, it is considerably more complicated than you would guess.

This is the end of Day One. The next installment will cover Day Two with reports from the National Safety Council and the Insurance Institute for Highway Safety. 🐾

Federal Scrappage Plan Defeated

By Jack Sell, NMA Member and Government Affairs Director, Associated Car Clubs of Kansas City

The latest scheme by the federal government to round up and destroy old cars has been defeated by a unanimous vote on the floor of the U.S. Senate.

As reported in the last issue of *NMAF NEWS*, the vehicle scrappage plan was part of the Democrats' national energy proposal, introduced in the Senate first as Senate Bill No. S.1766 and later as an amendment to S.517. Included in the bill was a provision that would have made federal funds available to the states for operating programs to buy up and destroy vehicles over 15 years old—evidently on the premise that U.S. energy consumption could be reduced by eliminating all the old cars.

Led by Specialty Equipment Market Association (SEMA), along with the NMA and other national hobbyist organizations, auto

restoration enthusiasts around the country reacted to the proposal with a flood of letters and phone calls to members of the U.S. Senate.

In response to those appeals, Senators Sam Brownback (R-Kansas) and Ben Nighthorse Campbell (R-Colorado) teamed up to kill the plan. They co-sponsored a separate bill to strip the scrappage provision out of the Senate energy bill, and that measure passed in the Senate on March 12. The vote was unanimous, meaning that, in the end, not even the energy bill's sponsors, Senators Tom Daschle and Jeff Bingaman, supported the scrappage plan.

I had the privilege of speaking briefly with Senator Brownback in January and alerting him to this scrappage provision. We can all thank him for taking our concerns seriously and acting on them. I urge each of you

to now consider sending a brief letter to Senators Brownback and Campbell to express your appreciation for their support and effort on our behalf. Thanks are also in order, of course, to all of you who took the trouble to contact your Senators on the issue. It was a massive show of cooperation and effort that paid off handsomely for the entire hobby.

Contact information:

Senator Sam Brownback
303 Hart Senate Office Bldg.
Washington, D.C. 20510
Phone: (202) 224-6521
<http://www.senate.gov/~brownback>

Senator Ben Nighthorse Campbell
380 Russell Senate Office Bldg.
Washington, D.C. 20510
Phone: (202) 224-5852
<http://www.senate.gov/~campbell>

NHTSA Lowering Its Goals

The National Highway Traffic Safety Administration (NHTSA) announced early in the year that it has reduced its long-term goals on seat belt use in the United States. NHTSA Administration Chief Jeffrey Runge stated to Congress that the new standard will be 78 percent compliance with the seat belt laws by 2003 with this target number

being revised annually after that date. This is far less than the 90 percent by 2005 that was set by the Clinton administration.

"We don't have a hope of meeting that goal, so why try?" Runge said. "Let's set a realistic target."

Seat-belt use increased in 2001 to 73 percent, which is an all-time high. However, the Clinton

administration had aimed for 86 percent by that time frame.

Even though NHTSA is lowering its standards, don't expect a decline in the enforcement of seat belt laws. NHTSA will be targeting seat-belt education and enforcement efforts in 12 states, including Florida, Texas and New York.

Life Member Running For Office

Former West Virginia State Chapter Coordinator and NMA Life Member Jim Mullins is running for office. He is the Republican candidate for the House of Delegates in the 19th District, which consists of parts of Boone, Lincoln, Logan, and Putnam counties.

Jim has already indicated that if he is elected, he will be supporting motorist issues such as the setting of reasonable speed limits, proper timing of yellow lights, and prohibiting the use of unmarked cars for enforcement of speed limits. If you are interested in learning more of his campaign, you

can visit his web site at www.jimmullins.org. You can also use the site to help Jim with campaign donations. Jim can be reached via email at jim@jimmullins.org or by phone (304-752-3156).

Ontario Speeding Up?

A researcher at the University of Toronto is saying that the speed limits on Highway 401 (one of southern Ontario's busiest highways) need to be raised. Civil engineering professor Baher Abdulhai studied data from Ontario Ministry of Transportation reports and concluded that the 100 km/h speed limit does not reflect improvements in cars and the highway itself in recent years. His proposal is that the limit be raised to 130 km/h.

Needless to say, the provincial police are taking the stance that speed kills. Sergeant Dave Rektor had this to say, "Speeding has been identified as one of the critical issues

accounting for at least one-quarter of all the collisions that have happened on our highways. The faster you go, the longer it takes to stop, and the force of collision is much greater."

However, even the Canadian Automobile Association is behind the increase in the limit. David Leonhardt, spokesperson for the CAA's Ontario office stated that only one percent of motorists drive the current limit. The new speed limit increase would only conform to the reality of the existing traffic.

The NMA has long supported the establishment of rational speed limits and encourage you to contact the Ontario Ministry of

Transportation and the Legislative Assembly. If you live in Ontario, this is your chance to help make this proposal a reality.

Contact information:

Ontario Ministry of Transportation
Ferguson Block
3rd Flr
77 Wellesley St W
Toronto ON M7A 1Z8
General Inquiry: 800-268-4686

Legislative Assembly of Ontario
Legislative Bldg
Queen's Park
Toronto M7A 1A2

RLC Mistake

By Eric Skrum, Managing Editor

The National Motorists Association has often emphasized that photo enforcement systems are not infallible. The following letter is an example of one of the many mistakes that can occur due to the convoluted bureaucracy that surrounds the issuing of these tickets. Attorney Dan Zavadil wrote this letter in defense of his client, who was already cleared of charges. If you have heard similar stories, please send them to us at nma@motorists.org

The Letter

"On January 8, 2002 I represented Mr. Peterson on a Photo Red Light ticket issued in Fairfax County Virginia. At trial on January 8, 2002, Mr. Peterson was acquitted and the charge was thrown out.

"In an example of incompetence and abusive process on February 23, 2002, my client was served by a County Sheriff with a Summons to Court for the Photo Ticket he was acquitted of on January 8, 2002.

"The Summons is signed by the Court Clerk on February 7, 2002 (a month after acquittal) indicating that the Clerk found 'probable cause to believe the accused committed the offense charged.'

"The Summons was counter signed by a Police Officer also on February 7, 2002.

"Notwithstanding the fact, my client was already acquitted of the charge, the Summons directed him to appear on January 8, 2002 (a month prior to the Summons even being issued). To make matters worse, the Summons indicated my client could avoid coming to court by pre-paying the ticket before April 4, 2002 (Approx. three months *after* the scheduled trial).

"This is indicative of the sloppy and ridiculous nature of these tickets. In most jurisdictions in Virginia, pursuant to contract, the Photo Red Light Contractor gets paid for each summons prepared—without regard to the outcome of the summons. Thus the more they

produce the more they make. Creating a recipe for abuse. This ticket serves as a gross example of such abuse." 🙄

State Chapter Coordinators & Activists:

You can find a list of these volunteers on the back of the newsletter. They are a great resource for NMA members. Can't find one in your state? Would you like to become one? Contact the NMA for more information.

Have a friend join the NMA and you'll get an extra three months of membership

FREE!

NMA Mentions

This is a new section of *NMAF NEWS* that will help to illustrate that the NMA is used as an information source by many in the media. If you know of a reporter in your area who is looking for motorist information, you can refer them to your State Chapter Coordinator or Activist. If you don't have one in your state, the National Office is always available as well.

The following State Chapter Coordinators and Activists were either quoted in or had their articles reproduced in the media:

Greg Mauz (FL Activist) was used as an extensive resource for the internet magazine, *The Weekly Standard*, April 2002.

Thomas Trecker (MN Activist) was quoted in a story in the *Star Tribune*, April 14, 2002 about the

efficacy of Slower Traffic Move Right signs. In March, he was on *Channel 5 News* regarding a bill which would allow emergency vehicle crews to file reports that would result in ticketing drivers who fail to yield to the emergency vehicles.

Steve Carrellas (NJ Activist) was quoted in *The Star-Ledger* April 09, 2002 on the new bridge on the Garden State Parkway that will be funded primarily by the New Jersey Turnpike Authority. *The (Bergen) Record* April 09, 2002 also ran quotes on the same topic. And, *The Courier News* March 19, 2002 came to Steve for comments on the introduced motorist legislation for the new session.

Mike McGuire (VA Activist) had a letter to the editor in *Consumer News*, February 2002 concerning traffic tickets.

Jim Kadison (VA Activist) was also used in *The Weekly Standard*, April 2002 as a resource.

Christopher Fredette (WI Activist) was interviewed on the use of headlights for *TV 58's* (out of Milwaukee) news broadcast in April.

Eric Skrum (NMA Comm. Director) was quoted by the *Ventura County Star* March 31, 2002 on red light cameras and the NMA \$10,000 Ticket Camera Challenge. And, he gave travel tips for *The News & Record* (Greensboro, NC) on March 27, 2002. Eric was also a guest on numerous radio programs including stations in Hawaii and Kentucky.

Jim Baxter (NMA President) was interviewed by Bob Knowles of *WBTV-TV* in Charlotte, North Carolina regarding red light cameras in March. 📍

Corporate Sponsorship Run Amok

By Eric Skrum, Managing Editor

Imagine this. You are driving down the road and you see bright lights in your rearview mirror. You are busted! But then, you take a closer look at the vehicle behind you. It does have the police lights and siren. It even has the general shape and look of a police car. The only confusing item is the huge *Mountain Dew* logo that is on the hood of the car.

Yes, this is an exaggeration. However, if you look at the situation in Mooresville, North Carolina, it might not be that much of a stretch.

At the beginning of April 2002, Mooresville signed a deal to allow NASCAR sponsors to put their paint schemes on the town's police cars. This program was the brainchild of Mooresville Police Captain Leon White.

There will be limits as to who

can add their sponsorship to the police. There will be no dominant alcohol, firearms or tobacco sponsors allowed on the police cars.

Once you get beyond the laughable idea of a police car that has the logo and colors of a NASCAR race car pulling you over for speeding, you wonder how something like this is legal.

Isn't this type of sponsorship and logo placement a huge conflict of interest? What happens if the officer stops the president of a company that is sponsoring the police department? Will the officer feel that he should only give a warning in the hopes that he won't lose his corporate sponsorship?

This is the type of idea that might catch on... but then again, why would it? If I owned a business, I wouldn't want my logo

on the police car that arbitrarily pulled someone over and gave them a speeding ticket. It's almost like saying this ticket (which will cost a lot of money in fines and insurance surcharges) comes to you by special delivery from *Taco Bell*.

On the other hand, it might be interesting to have the NMA logo and contact information on a police cruiser. Maybe with the caption, "Don't like what you got? Call us for help." That might not be so bad after all... hmmm... 📍

Want to inform other motorists of a speedtrap in your area? You can post what you think is a speedtrap at:
www.speedtrap.org

Construction Zone Safety Programs Are Killing Us

By Eric Skrum, Managing Editor

The Federal Highway Administration (FHWA) has begun touting "Work Zone Safety Week" to promote their safety programs for construction zones. The only problem is that their own numbers show that these programs have caused a 38 percent increase in construction zone fatalities.

According to the FHWA, the number of people killed in motor vehicle crashes in work zones has increased from 789 in 1995 to an all-time high of 1,093 in 2000. This has occurred even after the implementation of government programs that were supposed to decrease these numbers. These programs have had time to be implemented and studied. It is now obvious that instead of saving lives, they are actually causing deaths. Government strategies including

exorbitant fines and intensive enforcement campaigns have only aggravated the problem. (The only study ever conducted on the effectiveness of fine-doubling was done by Texas A&M. It concluded that this practice did not reduce work zone accidents.)

It is time to reverse this trend and employ programs that will actually work. While construction workers certainly deserve a safe working environment, it should be recognized that for every construction worker death, nine motorists die in work zone accidents. Clearly, more attention must be directed toward making work zones safer for motorists.

How can this be accomplished? Certainly not by more fines and similar "command and control" dictates. Here are five measures that will significantly

reduce work zone accidents:

1. Shift construction and non-critical maintenance to "off peak" travel times
2. When feasible, remove all construction obstacles when construction is inactive
3. Maintain smooth traffic flow, including standard speed limits, whenever possible
4. Provide financial incentives to contractors based on the absence of work zone accidents
5. Forewarn motorists by explaining and emphasizing any special instructions applicable to a specific work zone condition.

Isn't it time to apply our limited resources to solutions that work rather than programs that are increasing deaths? 📧

Hawaii Photo Program Scrapped

The photo enforcement program (which uses photo radar in vans parked by the side of the road) in Hawaii has been under attack from all sides since it began in February 2002. It has finally been cancelled.

On April 9, 2002 the Hawaii House of Representatives voted to repeal the photo enforcement program. The very next day, Governor Ben Cayetano said, "The traffic van cam law is the creation of the Legislature, and if they want to now cancel the program it will be canceled." Cayetano will allow the repeal bill to become law without his signature.

If the governor hadn't taken this action, then Judge Leslie Hayashi's ruling the next day would have done it for him. Hawaii's photo system

did not record the face of the driver, so the courts had to assume that the registered owner of the vehicle was the driver. Hayashi ruled that this section of the law was unconstitutional in a criminal traffic case. This ruling will only affect people who fought their cases in trials. For now, the nearly 2,000 people who paid their tickets will *not* get a refund, and the tickets will stay on their records.

On top of all this, the American Civil Liberties Union (ACLU) filed a lawsuit on April 2, 2002 saying that the state violated drivers' privacy rights by giving traffic camera contractor, ACS (Affiliated Computer Services), access to their social security numbers which are listed on most drivers' licenses. On April 11, 2002 Circuit Judge Gary

Chang ruled in favor of the ACLU. He has given the state two weeks to retrieve this data from ACS.

The downside to the program being cancelled is that Hawaii taxpayers may have to pay a hefty price to cancel the contract. While the state estimates that it could cost approximately \$1.5 million, ACS believes that it will actually be anywhere from \$4 million to \$6 million, or more. This is causing members of the state legislature to consider utilizing red light cameras in order to alleviate this debt. While they may be citing safety concerns as justification for the red light cameras, it's a safe bet that the extra revenue (needed to cover the negation of their first contract) is a prime consideration. 📧

The ABC's of Arrest, Search, And Seizure Part 3

By Joe Musselwhite

The definition of what constitutes a "search" within the meaning of the Fourth Amendment was, until 1967, closely tied to property concepts. Thus, police action would be deemed a search for Fourth Amendment purposes only if it amounted to a common law trespass. *Katz v. United States*, 389 U.S. 347 (1967).

Search laws apply only when the police actually "search" an area or thing. Conversely, if officers *do not* intrude into a private area, they have not conducted a search and the search laws do not apply. A search is defined as any intrusion into an area in which a person has a reasonable expectation of privacy. *Richardson v. State* 865 S.W. 2d 944. Courts have developed a two-part test to decide whether an officer has conducted a search:

1. Did the defendant act as though he or she believed that the area was private; and if so,
2. Would other people in society reasonably agree that the area was private?

If the answer to both questions is "yes" then a search has occurred and all search laws apply. If either question is answered "no," then the officer has not conducted a search.

Examples of areas society reasonably considers "private."

In order for a search to occur, the area searched must be covered by a reasonable expectation of privacy. Here are some examples of areas society considers private, so that an officer's intrusion into these areas will constitute a search:

1. A house, connected mobile home, motel or hotel room in which the defendant is staying.
2. A person's private office, desk and file cabinets, if entry is restricted

- from the rest of the office structure.
3. The "curtilage" of a house (the land immediately surrounding and associated with the home).
4. Singer's dressing room.
5. Passenger in taxi cab.
6. A green house.
7. Travel trailer.
8. Locked containers in vehicle (such as toolbox).

Examples of areas not considered "private."

If the area into which the officer intrudes is not covered by a reasonable expectation of privacy, then the intrusion is not a search and the search laws do not apply. Here are some examples of areas not considered private:

1. A person's face or voice.
2. A public place or street, anywhere that a substantial portion of the public has access to.
3. Garbage left outside the curtilage of the home.
4. A car's Vehicle Identification Number.
5. A prison cell.
6. Public waiting room of a doctor's office.
7. Dressing room in department store where posted sign indicates that the dressing rooms are under surveillance.
8. No reasonable expectation of privacy in hotel room when the time of occupancy has expired.

Again, if the area is not covered by a reasonable expectation of privacy, then federal and state search laws do not apply. For what it's worth, if you have something in your vehicle that is illegal, it would be wise to keep it in a locked container out of your (driver's) reach. The reason for this is because an officer can search your immediate area for weapons if he has reasonable suspicion that you're armed and

dangerous. Further, if the object (contraband) in question is in plain view, then there is no reasonable expectation of privacy. A reasonable person would consider any item in a locked container to have a reasonable expectation of privacy. This is assuming that you do not consent to a search. **Never** under any circumstances consent to a search! **Never!** The above suggestion is based on my own research of the search and seizure laws, as I understand them. I'm not an attorney and this is not legal advice.

Happy driving!

In the next issue, we will discuss the definitions of an arrest and when does an arrest take place. 📖

MUTCD

continued from page 3

asked for a speed limit reduction. The Department of Public Works did a speed study and found traffic moving about 35 mph with no accident problem and no unusual conditions. The MUTCD says that the actual speed of traffic is presumed to be safe, and because the study found no dangerous conditions the speed limit should have been set to 35 or 40. Knowing that such a high speed limit would never be approved, the traffic engineer recommended 30 mph instead. The city traffic council voted in favor of a 25 mph speed limit, to match the signs that were already illegally posted. The Board of Aldermen voted to approve a 20 mph speed limit. Note that each group reduced the limit by only a little, but at the end the result was absurd. This sort of process is very common. 📖

News From Around The Country

California

After months of delays, Fresno has begun operating red light cameras. The first two will be at Herndon and Blackstone avenues and at First Street and Herndon Avenue. Fines for these violations will be \$270, and it is estimated that \$13.8 million could be generated annually.

Colorado

House Bill 1400 (sponsored by House Speaker Doug Dean, R-Colorado Springs) would limit the use of photo radar to enforce speed limits on roads in school zones and residential areas. Residential areas are defined as those with roads serving one lane of traffic in each direction limited to 30 mph.

Maryland

The bills that would have allowed photo enforcement of speed limits (House Bill 140 and Senate Bill 565) died in committee.

A House of Delegates committee defeated a proposal for a statewide ban on using cell phones while driving.

Massachusetts

The Committee on Public Safety endorsed a bill giving motorcyclists over the age of 21 the option of not wearing a safety helmet while riding.

The Senate gave initial approval to House-approved legislation increasing the fines for drivers who don't stop or slow down for pedestrians at crosswalks. The current fine is \$100 for any offense. The new bill (H2642) increases the fine up to \$150 for a second violation within two years. It also requires that a third violation within two years be reported to Registry of Motor Vehicles, which may suspend the driver's license for up to 30 days.

Michigan

Ontario and Michigan are finalizing an agreement to share motorist-

conviction data (reporting of convictions for traffic offenses for entering driver-license points). Ontario has a similar agreement with New York and is working on others with Ohio, Minnesota and Pennsylvania.

Ann Arbor officials are proposing that the city budget include the hiring of three traffic patrol officers, three more civilian parking enforcement officers, and a court clerk to handle the additional paper work. The reasons specifically cited for these new positions was to improve safety and **increase revenue**. The city projects the seven new positions would cost \$302,000 in salary and benefits but would generate \$1.36 million in fines.

Mississippi

Governor Ronnie Musgrove has signed a .08 BAC per se bill into law that will become effective on July 1, 2002.

Missouri

The Senate Transportation Committee voted 5-2 against a measure that would have allowed red light cameras to ticket motorists.

New Jersey

Governor McGreevey has signed an order that creates a commission that will tell him by August 1, 2002 if it's possible to merge the state's three toll road authorities. The commission will also tell him the best method to use to accomplish this task.

New Mexico

Governor Gary Johnson signed a bill that would require ignition-interlock devices to be installed in the vehicles of repeat drunken drivers and even first-time offenders. The locks prevent a vehicle from starting if the driver, who must blow into the device, has a blood-alcohol level of more than 0.02 percent.

New York

Since March 1, anyone caught using a hand-held cell phone while driving is ticketed, and the fine (up to \$100) is no longer waived.

North Carolina

Henry Shavitz of High Point filed a lawsuit nine months ago against that city's red light cameras. This lawsuit is just now going to trial. Shavitz will be arguing the unconstitutionality of the red light cameras.

Ohio

Officers are now being allowed to use handheld computers or other devices to issue citations instead of the usual paper pads. Some devices record data into an e-ticket with a simple swipe of a driver's license. Officers will still be required to issue a paper copy to the driver.

Wisconsin

Port Washington Road in Ozaukee County is posted at 35 mph and 45 mph. Ozaukee County officials revealed that the posted speed limits along the road, from the Milwaukee County line to Highway 57 in northern Ozaukee County, are invalid unless they say 55 mph. Port Washington Road is also County Highway W (which is under the county's jurisdiction). Since no county ordinance was ever passed setting speed limits along the road, officials said it automatically is set at the state limit of 55 mph. Mequon officials have made it clear that they wish the police to enforce the posted limits, even though the County says they are illegal.

Wyoming

Governor Jim Geringer has signed a .08 BAC per se bill into law that will become effective on July 1, 2002. 🗑️

The Experts' Corner

Do you have a question that only an expert can answer? If so, look no further. We have many NMA members with special fields of expertise. This feature was created to assist members with answers to both practical and technical questions.

This sharing of knowledge is another benefit of belonging to the NMA. Please indicate that you are an NMA member when calling a listed "expert."

Can you help? Please contact us with your field of expertise and provide us with a contact address.

A telephone number would be very helpful, but is not required. Feel free to list preferred contact times if you do provide a telephone number.

PLEASE NOTE: This is not intended for listing of commercial business services.

As an NMA member, the Experts' Corner is available to you online at

<http://www.motorists.org/join/membersonly/experts.html>



MEMBERS WRITE

Your letters are welcomed and appreciated. This is a forum for diverse opinions, different perspectives, and personal experiences. Letters may be edited for length or clarity. Letters should not exceed 300 words in length. Full-length articles will also be considered for publication in the NMAF NEWS. Articles should not exceed 600 words in length. Positions and opinions expressed in letters and member-authored articles are those of the author and do not necessarily reflect NMA policies or objectives. To submit, you can email us at nma@motorists.org or mail to our NMAF Office.

In the March/April 2002 issue you reported that the State of Connecticut had stopped Acme Rent-A-Car from charging renters \$150 for speeding in their rented cars. The message was clear: Acme should not be allowed to fleece motorists simply for driving in excess of an arbitrary posted speed limit—that privilege is reserved for the state itself.

However, a more subtle, yet more interesting message was delivered by Department of Consumer Protection Commissioner James T. Fleming, stating that the \$150 charge far exceeded the average 37 cents in auto damage caused by speeding. In my experience, 37 cents does not buy much body work, and an accident with only 37 cents worth of vehicle damage obviously would not involve any injuries. So, in other words, Commissioner Fleming is admitting that speeding, in and of itself, causes no appreciable amount of property damage nor personal injury.

Of course, we knew that.

Alan Groupe
Nashua, NH

Experience on the New Jersey Turnpike, Garden State Parkway, and bridges to Philadelphia indicates that their management imposes intentional closures of normal cash-toll lanes. More vehicles still pay cash or require receipts than subscribe to EZ-Pass (the region's

automated toll-taking facility). Of course, lack of cash-toll-taking capacity causes long backups, perhaps in an effort to induce motorists to patronize the EZ-Pass lanes.

The EZ-Pass system is supposed to be financed by violation fines and is reported to be losing money rapidly. I don't yet buy into that system, which electronically tracks your vehicle at all entrances and exits and has the ability to track your vehicle anywhere an EZ-Pass sensor might be emplaced (for "safety reasons"), not necessarily to charge a toll.

One night very recently, the Delaware River Memorial Bridge had exactly *one* cash lane open with seven other tollbooths unmanned. Dozens of vehicles were stacked in single-file and backed up on the bridge so far that you could not even see the open/closed lights above the tollbooths. When you cannot get into a cash-toll lane because of the (intentional?) congestion, you must go through an EZ-Pass lane, at the risk of a toll-taking violation. Couldn't they find a second human toll collector? Are they trying to coerce subscriptions to EZ-Pass by making cash-toll-paying onerous?

Roger L. Boyell
Moorestown NJ 08057

I received a ticket a few years ago and fought it. In hindsight, I have some regrets regarding not

fighting it hard enough.

I was driving on I-5 from Los Angeles to San Francisco. There were orange cones in the center divide and signs indicating double fine zone, despite the fact that there were no workers, no equipment, and no signs that work had been performed in months. The speed limit was 55 mph instead of the normal 65 because of the so-called construction zone.

As luck would have it, I saw a cruiser squeeze behind me and flash his lights. He cited me for doing 85 in a 55 as well as a moving violation for not having my license plates put on my car. Knowing I would fight the ticket, I stayed low-key.

Because the ticket was issued all the way in Kern County, I had no intention of driving four hours to fight the ticket (and risk another). Instead, I chose to dispute by mail.

I had not placed my plates on my car because my brackets were defective, and I had not had time to go to the dealer to get them fixed. I got a letter from the dealer verifying my statement and was able to successfully argue that the ticket should be commuted to a "fix-it" ticket.

With regards to the speeding ticket: I am now convinced that the

continued on next page

Members Write

continued from previous page

officer had access to my written statement before writing his response. I mentioned that despite the signs indicating a construction zone, there was no evidence of any work being done. In the spirit of the law, the fair limit to be used to evaluate my speed should have been 65 mph. I also questioned the accuracy of the speed assessed by the officer without acknowledging the speed I thought I was traveling. I wasn't about to perjure myself, but the officer had no such qualms. He stated that I posed a severe threat to the dozens of construction workers out that Sunday. (Come on!! Cal Trans working on Sunday?!!)

I lost the fight on the speeding ticket, but given the officer's perjury, I felt compelled to continue. After a few weeks of struggle, I managed to get a signed letter from Cal Trans indicating that no work had been performed in the alleged construction zone in months. The officer must have lied. Unfortunately, given time constraints, I decided not to make the trip down to Kern County to appeal the judgment. Given that I am still angry about this ticket several years later, I now wish I had appealed it.

To all NMA members, you owe it to yourself and your fellow motorists to fight, especially when something as atrocious as a public official's perjury is at stake.

John Harkavy
Philadelphia, PA

This is regarding a letter in the *Members Write* section of the March/April issue of the *NMAF NEWS*. It was from someone who quite adamantly believes that the **left lane is only for passing**. I try very hard to adhere to that principle, but I believe he ignores one important

issue. Often (very often in Michigan where I live) there are **exits from a roadway that come off the left lane**. Since no one in the state drives the speed limit nor leaves any space between their car and the one ahead, if you wait until you are within, say, one mile of the exit, there is no way you could ever get over to exit in time. So I drive in the left lane for a couple of miles and people blink their lights and tailgate. In the interest of *co-rodgers-understanding*, I just wanted the staunch "left-lane-for-passing-only" folks to know that sometimes there is a reason other than passing for using the left lane. Think about my letter the next time you believe someone is misusing the left lane. They may be trying to exit or they may have another unknown reason.

Name withheld by request

Thank you for having and renting the *Legal Defense Kit™* to me.

I received a radar speeding ticket here in California by the California Highway Patrol and with this ticket, I was going to lose my license.

I am a Class A commercial driver so I would have lost my job and everything I've worked so hard for.

Thanks to your *Legal Defense Kit™*, not only did I beat the ticket, but I unintentionally humiliated the officer in court because he was completely unprepared. Thank you.

David Kieffer
Ben Lomand, CA 🐾

Photo Contest

The *NMAF NEWS* is looking for interesting, motorist-related graphics or photos for its cover. If we use your entry, *NMAF NEWS* will send you **\$50**.

Here are the requirements.

- **Color:** We would prefer black and white, however we can accept color photos if there is good contrast.
- **Orientation:** It should be **vertically** oriented with the subject of the photo in the bottom two-thirds of the graphic area. Preferably the subject should also be to one side or the other to allow room for captions.
- **Topic:** Your entry must be motorist-related in its content.

Please send your entry to:

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You can also email your entry to nma@motorists.org

Please remember to include your name and address with your entry. If you wish to have your photo or drawing returned, please include a self-addressed stamped envelope suitable for that purpose. 🐾

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