



**TABLE OF CONTENTS**

VOLUME 14 • ISSUE 3

**Educational Loss** .....2  
**Email!**.....3  
**Camera Effectiveness Inconclusive**.....3  
**Indiana Triumphs** .....4  
**Colorado Wins!**.....4  
**It Sees All** .....5  
**Good News For Georgia** .....6  
**Smart Growth Conference** .....6  
**The Eyes And Ears Of The NMA**.....7  
**The Arms Gap**.....8  
**Driver Distractions** .....8  
**Fraudulent Data Leads To Overly Harsh  
 DWI Penalties**.....9  
**News From Around The Country** .....10  
**The Experts' Corner**.....11  
**Members Write** .....12  
**NMA Items For Purchase** .....15  
**State Chapter Coordinators and Activists**. 16

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**COVER**

“Georgia Jury Trials”

**Educational Loss**

by James J. Baxter, President, NMA

**L**osing a battle isn't a total waste of time or necessarily a completely negative experience. At least that's what we try to rationalize. Losing isn't fun, but it certainly can be educational.

Over the past three years, the NMA has been fighting with the State of Wisconsin's Insurance Commission over the status of the NMA's **Pre-paid Traffic Ticket Program (PTTP)**. Wisconsin's *Office of Commission of Insurance, OCI*, claimed that the NMA's ticket payment program was insurance and therefore NMA should be licensed and regulated as an insurance company. We argued that the PTTP was not insurance, at least not a form that required licensing and regulation by the OCI.

It would take the next ten newsletters to even begin describing this epic three-year legal battle, and that is not my intent. Rather, I want to impart some of the lessons learned while challenging a governmental institution through the legal system.

Long ago, I recognized that the judicial system and the "rule of law" are a pretty messy array of opinion, bias, prejudice, and vested interest. The "rule of law" concept implies a fixed standard, consistency, equal application, and given like circumstances, predictable outcomes. This is a fiction. Two attorneys could argue the same case in exactly the same way in two different courts and the plaintiff could win in one court and the defendant could win in the other. The difference being the predisposition of the judge or the jury.

Publicity, public opinion, political momentum, appearance, race, religion, or profession of the defendant can determine the outcome of a trial. The reputation and track record of the prosecutor can weigh heavily on the final decision. Then there are the more mundane considerations of who plays golf with whom, family relationships,

and business connections. As much as juries are maligned for making bad decisions and granting outsized awards to undeserving plaintiffs, my bet is that they, as a whole, are no more inconsistent in their decisions than are the population of judges. True, a given judge may be relatively consistent, but his decisions may consistently be at odds with the decisions of other judges.

Another illusion I have had to abandon is that the three branches of government are independent of one another. Actually, the opposite is more the rule. The three branches of government are highly interdependent and they will quickly join ranks to defend and protect any branch under attack. When the NMA challenged the authority of the OCI (an executive agency), the courts, as a matter of policy, started with the assumption that the agency properly interpreted the law, acted within the bounds of its authority, and commands unquestioned expertise in its regulatory field. Evidence to the contrary was not discussed and dismissed by the court, it was simply ignored. This was a new lesson.

I had operated under the assumption that if court precedents addressed the issue at hand, and they were offered up in argument, the court would evaluate their relevancy and shape the final decision in recognition of the offered precedents. What I had not anticipated was the court's decision to simply ignore State Supreme Court decisions that were clearly directed at similar circumstances. Nor did I expect total silence from the court when we presented certain contradictions in state statutes that should have nullified their constitutionality.

When the OCI defense was hard pressed to come up with a convincing rebuttal to one of our arguments, the

*continued on page seven*

## Email!

by Eric Skrum, Managing Editor

**E**mail addresses. We want yours!

Now before you start jumping to conclusions, please hear me out. The reason we want your email address is because it gives us the ability to deliver time-sensitive materials that may be important to you. There are instances when an item or an alert is so time-sensitive that it isn't possible to send it via regular mail and still have it be relevant.

***We don't sell your information. We don't rent or give it to anyone. You won't receive any SPAM from us and you won't receive it because you gave us your email! We treat your information as if it were our own.***

And, quite frankly, I don't want anyone doing those things to my information, so I'm not going to do it to yours (The *Golden Rule* at work.).

What you *will* receive is timely motorist information that affects you. A good example of this is public hearings. In some instances, we receive the notice only a week (or days) before the public hearing is to be held. That isn't enough time to draft an alert, send it through the mail, and still allow you time to react to the notice. With an email notice, you can attend that meeting (if you want to), contact your legislator if he/ she is on the committee, or do nothing at all. The point is that email allows us to give

you the time to choose whatever action you deem appropriate.

By sending us your email address (or even checking to ensure we have the correct address), you are enabling us to help you keep current on motorist issues. Please consider sending us your email address. If you think we already have it but you haven't received an email notice from us recently, it may be a good idea to double-check that we have the correct address on file.

You can call our Membership Office at **800/882-2785** or email us at **[nma@motorists.org](mailto:nma@motorists.org)** to report an address or verify our records. Thanks. ☺

## Camera Effectiveness Inconclusive

**A** recent study by the Transportation Research Board (TRB) illustrates the lack of evidence supporting the effectiveness of red light cameras. The TRB's National Cooperative Highway Research Program Synthesis 310, ***Impact of Red Light Camera Enforcement on Crash Experience-A Synthesis of Highway Practice*** was meant to support the use of red light cameras, but in reality it undermined the credibility of the devices.

The authors attempted to support the devices by speaking of the "preponderance of evidence" that the cameras equaled safety. However, any time this was stated, the authors were honest enough to admit that none of the information was conclusive.

In the second paragraph of the summary, the study even states, "For a variety of reasons the use of automated enforcement systems has not been widespread. One relates to the lack of convincing evidence that

these systems improve safety, not only at the signalized intersections where they are used, but also throughout the jurisdiction that uses them."

In fact, the study shows, "Nearly every study and crash analysis reviewed had some experimental design or analysis flaw. In many cases the flaw in the analysis was because of the lack of a proper control group, which would allow a valid comparison of the observed changes..."

On the other hand, many of the engineering changes (such as an increase in the yellow light time) that the NMA has supported have been proven to reduce violations and increase safety. In fact, the Federal Highway Administration recently released a report entitled, "Guidance For Using Red Light Cameras" that shows the effectiveness of this engineering strategy.

The report states, "Changes in the yellow times... will affect the number of photographed violations,

increasing the number of violations when yellow times are shortened and reducing the number of violations when yellow times are lengthened."

The only appeal that cameras have for various jurisdictions is the amount of revenue that can be generated. And, this is a lot of incentive. Even so, many states had bills that would have allowed the use of red light cameras in the past legislative sessions and most didn't pass. Why? Because other than revenue, the cameras don't have a leg to stand on. Even the studies that are meant to support them aren't able to do so in a convincing manner.

For those of you who wish to view the TRB study, check out **[http://gulliver.trb.org/publications/nchrp/nchrp\\_syn\\_310.pdf](http://gulliver.trb.org/publications/nchrp/nchrp_syn_310.pdf)**. The Federal Highway Administration report can be found at **<http://safety.fhwa.dot.gov/rlcguide/index.htm>** ☺

## Indiana Triumphs

by James Phend, NMA Foundation Executive Director

**A**lthough the legislature had the average motorist in its gunsights, we managed to dodge most of the bullets. Through member alerts, hearing testimonies, and working directly with legislators, we kept the worst at bay.

House Bill 1793 was defeated. This would have required every vehicle to have a front license plate. We haven't had these for decades, so why was it pushed? One of the reasons is revenue. Front license plates are very important in the use of handing out tickets based on laser speed devices. The plates are used as a reflective surface for a more accurate

reading of the beam which means that police are able to hand out more tickets.

HB 1418 failed as well. It would have removed the exemption for seatbelt use for drivers of light trucks. This is the last group not subject to the pattern of police harassment promoted throughout Indiana by the federal government through its funding of the seatbelt roadblocks.

While Senate Bill 3 did pass the Senate, it subsequently died in the House. This bill would have permitted towns, cities and the state to operate red light cameras.

This was a successful legislative

session for the NMA due to the efforts of our members. Thank you for your help and support.

As a side note, we are already preparing for the next legislative session. We will be working on a bill to ban red light cameras permanently. If we don't do this, we will have to fight against pro-red light camera bills every year.

We will also be helping Representative Neese with his proposal to raise the state speed limit on all state highways to 65 mph. As you can see, we have our work cut out for us. 🙏

## Colorado Wins!

By Alvin Arrowood, Colorado Activist

**C**olorado Motorists dodged two bad bills this year. Legislation was initiated in the House to lower the BAC to .08 percent. Fortunately, that bill didn't even make it through the first committee.

I thought we were home-free. Then a Colorado NMA member emailed me and told me that there was a Senate version that was even worse (SB 03-0125). With his and another member's help, we tracked its progress. We also sent alerts to Colorado members to contact their legislators. SB 03-0125 in the State Senate was a bill that had a three-fold purpose:

- It would have created a Primary Enforcement Seat belt law, which would have given the police the ability to stop you solely because you weren't buckled up.
- It would have made it a class A offense for the driver to have an open alcoholic beverage container or have it even be present anywhere in the passenger compartment while on a public highway or the right-of-way of a public highway.

- It would have reduced the Blood Alcohol Content level from .10 percent to .08 percent.

The official name of the bill was "Concerning the Enactment of Certain Traffic Measures to Maximize Highway Safety" but it was listed on the Colorado State Legislative web site as the "Traffic Law Changes for Federal Moneys," which illustrated the true purpose of the bill (blackmail by the Federal Government). This was the tactic used to pass the 55 National Maximum Speed Limit years ago. Unfortunately, SB03-125 passed the Judiciary committee by a 6 to 1 vote. It then went to the Appropriations Committee.

Colorado Senate Bill 03-125 was the first up for consideration in the Appropriations Committee at 7:30 am, April 11, 2003. I arrived early and spoke with some of the Senators and staff beforehand (I wasn't allowed to testify because this was the second committee for the bill.) The bill's sponsor, Senator Arnold, (a retired Major in the State Patrol) explained his

bill to the committee and received some tough questioning from the chairman (Senator Owen) about how the bill's enforcement was to be funded. The chairman moved the bill to the end of the calendar to give Senator Arnold more time to prepare. It was quite obvious that, although "Safety" was touted, the real important item was the possibility of losing Federal Transportation Funds.

When the bill finally came up for a vote, it was 5 - 5. That was close!

***This bill has been placed on PI (Postponed Indefinitely) status. It's dead for this session!***

If we want to protect our rights, we need to stay involved and Colorado NMA members stepped up to this challenge. Thanks go out to those who were at the hearings, and those who contacted their legislators. And, thanks to a couple of the Colorado Motorcycle Riders groups for their invaluable aid in this year's Colorado legislative sessions. Great job everybody! 🙏

# It Sees All

**T**here is a little-known device in your vehicle that is just waiting to tattle on you. It's officially called an Event Data Recorder (EDR), but those few who know about these devices call them "black boxes." They are similar to the recording devices found on airplanes. These black boxes are able to record information seconds before any crash in your vehicle. What is recorded depends on the type of vehicle you drive and the type of black box used. This information could include:

- Vehicle speed (five seconds before impact)
- Engine speed (five seconds before impact)
- Brake status (five seconds before impact)
- Throttle position (five seconds before impact)
- State of driver's seat belt switch (On/Off)
- Passenger's airbag enabled or disabled state (On/Off)
- Time from vehicle impact to airbag deployment

The push for these devices in your vehicle began in 1997 when the National Transportation Safety Board (NTSB) issued recommendations to "pursue crash information gathering using EDRs." In 1998, the National Highway Traffic Safety Administration's (NHTSA) Office of Research and Development (R&D) jumped onto the bandwagon as well. The rationale behind utilizing these devices was that by obtaining crash data from vehicles, accident experts could analyze the data for safety purposes.

What began as an idealistic approach is slowly sliding down the slippery slope as the list of those who have access to the black box grows. This list includes:

- NHTSA/ NTSB
- Law Enforcement
- Insurance Adjusters
- Accident Reconstructionists
- Automobile Manufacturers
- Vehicle Fleet Managers
- Car Rental Agencies

And this list is growing as courts begin to realize the untapped potential of the information in these boxes. Currently, there is a case in Massachusetts where a driver is being charged with vehicular homicide by negligence and speeding solely on the information obtained from the car's black box. And, in South Carolina, a motorist is being charged with reckless homicide and the black box information is the key component of the case.

These may only be two cases, but you can be sure they won't be the last. The disturbing part of this is that most drivers and even (surprisingly) some dealers have no idea this device even exists in their vehicles. The next few years will see this technology become more prevalent as the questions revolving around this issue develop. For instance, if you are leasing a vehicle, do you own the information that is in the black box or does the company you are leasing from own it? Can you legally destroy the information if you are in an accident so that it can't be used against you or could that be seen as tampering with evidence? These are issues the NMA is exploring and we will keep you updated on our progress.

For more information on this technology, you can visit <http://www.accidentreconstruction.com/research/edr/index.asp>

**Visit the NMA Web Site at [www.motorists.org](http://www.motorists.org) for more motorist information!**

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## Good News For Georgia

The Georgia Supreme Court has ruled that motorists have the right to a jury trial. Before this, many courts were not allowing motorists this right, but in a 5-2 decision, the Georgia Supreme Court declared that traffic violations are misdemeanors, thus motorists have the right to be judged by their peers.

The decision involved a case concerning John Geng Jr. of Norcross who was given a traffic violation for 80 mph in a 55 mph zone in Atlanta. He requested a jury trial, but was denied and found guilty by a judge. Due to the Supreme Court's Decision in his favor, Geng will have the

opportunity to retry his case with a jury present.

It is important to note that Geng was given a traffic violation, not a misdemeanor. This is important because Justice Hugh Thompson (writing for the majority) specifically stated that, "Simply changing the characterization of the offense is of no consequence."

"The offense of speeding is a misdemeanor under state law, and we do not believe the constitutional right to a jury trial can be eradicated simply by allowing the judges of the City Court of Atlanta to give it another designation."

But not everyone is happy with the decision. Atlanta Traffic Court

Solicitor Joseph Drolet was the prosecuting attorney for this case. Drolet said, "This could tend to clog the courts. If you have people charged with a seat belt violation or an HOV violation who face a fine of \$15 to \$75 and are asking for jury trials, is that a good idea for the criminal justice system?"

Drolet will be asking the State Supreme Court to reconsider their decision or to limit the right to juries to those offenses that would result in more than six months in jail time.

It is important to note that if you have already been found guilty for a traffic offense in Georgia, you will not have the opportunity to appeal based on a lack of a jury trial. 🙄

## Smart Growth Conference

by Kathleen Calongne

The Thoreau Institute ([www.ti.org](http://www.ti.org)) invited me to speak about my research on traffic calming projects in the United States and abroad at their conference, "Preserving the American Dream of Mobility and Home Ownership" held in Washington DC February 23 - 25, 2003. The Thoreau Institute is concerned about the determination of many city planners and local governments to impose high density growth on our communities. It is the belief of radicals in the "new urbanist" movement that only by modeling cities after densities similar to Europe will they achieve mainstream shift away from the automobile. Part and parcel of this dogma is the emphasis on heavily subsidizing the building of light rail lines at the expense of overlooking badly needed road improvements across America.

Traffic calming is an element of the new urbanist's plan to force people onto other modes of transportation by increasing congestion and making

driving difficult. Literature from Europe, where traffic calming first emerged, quite openly supports the building of devices such as speed humps to make travel by car slow and uncomfortable. Not only is it believed that the implementation of slowing devices on city streets will make public transport more attractive, but that the resulting labor of travel will socially engineer people away from the mobility to which they have become accustomed. (See: *The Greening of Urban Transport* by Rodney Tolley, United Kingdom, 1990)

*The Vanishing Automobile and Other Urban Myths*, by Randal O'Toole, Director of the Thoreau Institute is a book I highly recommend for a clear and well researched portrayal of the political movement behind new urbanism and traffic calming. I think you will be quite surprised to become acquainted with the hidden agendas of local officials, planners and engineers intent upon imposing calming projects in our

communities. The book can be purchased on the Thoreau website at [www.ti.org/va.html](http://www.ti.org/va.html).

Kathleen Calongne, NMA Member, has researched traffic calming projects in the US and abroad since 1996 and has compiled her research into a report, *Problems Associated with Traffic Calming Devices*, which she offers to all interested individuals at her cost. She can be reached at [CalongneK@aol.com](mailto:CalongneK@aol.com) 🙄

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

[www.motorists.org](http://www.motorists.org)

[www.speedtrap.org](http://www.speedtrap.org)

[www.roadblock.org](http://www.roadblock.org)

# The Eyes And Ears Of The NMA

by Eric Skrum, Managing Editor

**T**ake a look at the back of your newsletter. You'll see 30 individuals who are taking an active role in representing your rights and your interests as motorists. These are 30 individuals who have decided they won't take the attacks on motorists' rights anymore. They are the *NMA State Chapter Coordinators (SCCs)* and *NMA Activists*.

In the last issue of *NMAF NEWS*, we explained the role and duties of SCCs. However, Activists play a vital role in helping the NMA affect motorist issues in the various states as well. For example, in this issue of the *NMAF NEWS*, you will notice articles by NMA Activists reporting activities in their states. Their efforts greatly contributed to the death of several bills that would have been nothing but trouble for motorists. If they hadn't been there, I doubt if a motorist perspective would have been in evidence at any of the hearings.

It's great that we have these individuals who are helping the NMA make a difference in the lives of motorists. But quite frankly, they can't do it all. We need more Activists to

help inject a little sanity into motorist issues. Have you thought about taking a more active role with the NMA?

Activists are our representation in their state. They are our voice to the media, the legislature, potential members, and current members. This is why they need to have a working knowledge of the NMA, its positions, and its policies. This doesn't mean that you need to be an expert on all things NMA. If an Activist can't answer a member's question, they can refer them to the NMA National Office. If an Activist is not familiar with a topic the media wants information on, we can coach them through the main points. And, if an Activist wants to speak to the legislature, we can help them with their presentation. We have a great support system in place to help Activists.

Activists also collect and forward information to the NMA National Office. Our ability to influence public policy is largely dependent on our ability to gather and process information. Our members, in particular our Activist members, can be our best source of information. Newspaper

articles, research reports, and trade journals are often the source of information on important trends, policy changes, and legislation that can (or will) affect our members. With this information in hand, we can alert our members to potential problems and opportunities, develop counter-arguments, broadcast favorable items, and directly intercede with information of our own.

Seem like a lot? It is. SCCs and Activists are the ears and eyes of the NMA. Helping them is helping yourself.

If you'd like more information about becoming an Activist, contact the NMA National Office via telephone, e-mail or letter. We can answer your questions and provide materials that explain these positions in detail. Please consider lending a more active hand in the fight for motorists' rights. Thanks. 

## NMA Contact Information

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## Educational Loss

*continued from page two*

court would chime in, trying to bolster the state's argument. When we took exception to the OCI's claim that words that weren't in the state statutes should be "assumed" to be there, the court was again silent, or even supportive of the OCI position.

So why this hostile reception? We were bucking the "system." Not only were we challenging the authority of a state agency, we were attacking the judicial system. How were we attacking the judicial system? Remember what started all this; Pre-paid Traffic Tickets. We were seen as undermining the premise that traffic

tickets serve a legitimate purpose. We were also seen as using PTTTP to encourage motorists to fight traffic tickets; an absolute anathema to the court system.

We raised important and unique questions of statewide importance. We pointed out serious contradictions in state law. We presented several high court precedents that supported our position. And, we provided compelling evidence of a state agency exercising its authority in an arbitrary and capricious manner. All this and the Wisconsin Supreme Court refused to review our case. Why? Because unlike the lower courts that issued unpublished decisions, the Supreme Court could not just ignore the arguments and precedents we

presented. And, despite their illustrious positions, Supreme Court Judges know full well the havoc that would befall the court system if significant numbers of traffic ticket recipients went to court to challenge those tickets.

The main lesson to gather from this experience is the realization that using the courts to confront governmental abuses is fraught with monumental obstacles. The vested interests inherent in both the governmental agencies and the court system make for a very hostile arena in which to raise our issues. I'm not saying we should never do it, but when we do we should realize that the merit of our legal argument alone will *not* carry the day. 

## The Arms Gap

by Casey Raskob III, Esq.

**E**very day, I go to traffic court and see first hand what the local constabulary use for speed trapping. Likewise, I walk through the civilian parking lot and see what defenses are attempted.

There is an "arms" gap. It isn't in your favor.

**Out front**, the local police are more and more often using Ka band radar (noticeable by the soda can sized antenna). **Gone**, in most states, are X band radars and becoming fewer are the K band units. The revolution in electronics applies to police radar as well with things like "same lane moving mode" and "target discrimination by fastest/largest." All the radar used by the New York State Police utilizes digital signal processing. A typical car has two antennas (one front and one rear) with a central control unit and large display.

**In back**, the civilians try many items, but most of them are merely a

clove of garlic. There's the five-year-old \$69 bargain store gadget, usually with coffee stains on it. What this can detect is currently on display at the museum of microwave technology.

The person with the classic Escort or Passport always makes me nostalgic for the days before instant-on-radar or K band. But, on your dash today, it's a really bad idea because it is usually blind on Ka.

Next are the deflectors attached to the "matching" detector that are usually sold for a high price. This is always on a Jag or Mercedes high-end car. These are an absolute consumer fraud. They don't work and the matching \$400 detector has the insides of the \$69 special noted above.

The knowledgeable stealth driver is aware of what the hunter uses. Take a look (discreetly, of course) at what your local troop or agency uses. The name is usually on the side, and the internet is helpful for obtaining

information on each unit. Generally, a soda can antenna is Ka, an oil can antenna is K or X, and a really big antenna is X.

A modern detector can be an aid, but only if you drive like you don't have one. Actively scan for police as well as be aware of the traffic flow. (There's usually a reason that the traffic around you is hitting their brakes.) A faster driver (used as a rabbit or bait) plus a detector will make your travel faster and safer. But if your detector is obsolete or junk, you lose any advantage.

Check your box today and keep in mind that "Ka" is the real threat. Evaluate your choice with that in mind.

*Casey Raskob III is a New York attorney who specializes in fighting traffic tickets. He has also been an NMA Activist for many years and is listed in the Experts' Corner of this newsletter.* 🐾

## Driver Distractions

**I**nattentive driving is one of the most overlooked causes of accidents and fatalities, yet it is one of the most prevalent in accidents. The reason for this may be because it isn't as easy to patrol and give tickets for. Speeding and alcohol are easier to point fingers at, issue tickets for, and sit back to collect revenue on. The few times that you do hear of inattentive driving, it is only referenced with the evils of driving with a cell phone. However, a recent study by the Virginia Department of Motor Vehicles (DMV) and Virginia Commonwealth University (VCU) showed that when it comes to driving, cell phones are not even in the top five distractions.

"Rubber necking" was the

number one cause of driver distraction. The study defined this as "looking at accidents or other activity on the roads."

According to this study, here are the ranked causes of driving distractions that cause inattentive driving:

1. Rubbernecking: 16 percent
2. Driver fatigue: 12 percent
3. Looking at scenery or landmarks: 10 percent
4. Passenger or child distraction: 9 percent
5. Adjusting radio or changing CD or tape: 7 percent
6. Cell phone: 5 percent
7. Eyes not on the road: 4.5 percent
8. Not paying attention, daydreaming: 4 percent
9. Eating or drinking: 4 percent

10. Adjusting vehicle controls: 4 percent
11. Weather conditions: 2 percent
12. Unknown: 2 percent
13. Insect, animal, or object entering or striking vehicle: 2 percent
14. Document, book, map, directions, or newspaper: 2 percent
15. Medical or emotional impairment: 2 percent 🐾

**This country has come to feel the same when Congress is in session as when a baby gets hold of a hammer.**

—Will Rogers

# Fraudulent Data Leads To Overly Harsh DWI Penalties

by Jeanne M. Pruett, Responsibility In DUI Laws (RIDL) President

**T**he *National Highway Traffic Safety Administration (NHTSA)* has created a fraudulent impression of drunk driving in the United States. Falsification of data, misrepresentation of the facts, and misleading terminology have all been foisted upon an unsuspecting American public. The result of this travesty has been media and public acceptance of Draconian laws against supposed "drunk drivers." Thus we have 1.6 million drivers per year converted into humiliated criminals.

## Falsification Of Data

The Fatal Analysis Reporting System (FARS) contains pertinent information regarding all fatal traffic accidents in the United States. NHTSA publishes annual reports on traffic safety based on FARS data. Closer review of this data shows many anomalies regarding alcohol involvement in fatal accidents. NHTSA excuses these anomalies as the result of their application of a "statistical imputation model." However, analysis of this model and related data demonstrates that NHTSA's implied estimate of alcohol *caused* fatalities is grossly exaggerated.

For instance, in the year 2001, 42,116 people died in motor vehicle accidents. NHTSA would have us believe that 17,228 (41 percent) of these deaths are "alcohol-related." NHTSA uses the term "alcohol-related" but leaves it to the media and the unsuspecting public to jump to the conclusion that "alcohol-related" equals "drunk driving." Little does the public know that these "alcohol-related" fatalities include accidents where passengers, pedestrians, bicyclists and other non-drivers were the ones who were drinking and (in many of the cases) the driver was not. In addition, there are thousands of examples where NHTSA lists a driver

as "drunk" even though test results showed the driver to have 0.00 BAC (Blood Alcohol Content) or was within the legal limit. In all, NHTSA listed 7,306 drivers as "drunk" when there was no proof or evidence that the driver was in fact "drunk."

## Misrepresentation Of Facts

Using the number of fatalities as a measure of the drunk driving problem only serves to confuse and overstate the problem. A more accurate measure of the magnitude of drunk driving *caused* fatalities is to look at the total number of *drivers* involved in fatal accidents, then separate out the number of drivers that had BACs over the legal limit. In 2001 there were 57,480 drivers involved in fatal accidents, and 7,400 of those drivers

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*In all, NHTSA listed 7,306 drivers as "drunk" when there was no proof or evidence that the driver was in fact "drunk."*

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had BAC levels over the legal limit. That's 12.9 percent, a far cry from the bloated figure of 41 percent we hear from NHTSA.

In addition, the FARS database does not assign "fault" to an accident. That's because NHTSA would like us to believe that if a driver had any alcohol in his/her blood, that automatically means "at fault." However, any reasonable person can easily see that if 12.9 percent of the drivers were over the legal limit, that means 87.1 percent were under the legal limit or sober. In fact, drivers with BAC limits greater than zero but below the legal limit comprise less than 5 percent of all drivers involved in fatal accidents. That means approximately 83 percent of all accidents were **caused** by drivers with *no* alcohol in their systems. It doesn't take a statistical genius to

understand that if 83 percent of ALL fatal accidents are caused by sober drivers, then it's likely that a high percentage of the fatal accidents involving drivers over the legal limit were actually **CAUSED** by a sober driver. Even a conservative estimate of 50 percent would lower the number of accidents actually caused by drivers over the legal BAC limit to around 6 percent, and the number caused by those with legal BACs to around 2.5 percent. These numbers hardly justify the outcry and insistence on lower BAC limits and harsher penalties that we've been bombarded with these past 20 years.

Another area where NHTSA misleads the public is the number of drinks a person can have before reaching a certain BAC level. NHTSA and MADD (Mothers Against Drunk Driving) both claim that a 170lb. man can drink four drinks in an hour before reaching a BAC level of .08. The fact is only two drinks in an hour can result in a .08 BAC for an average man of 170 pounds, and *only one drink* for a small woman. As a result, many people (thinking they are doing the right thing limiting themselves to two or three drinks over a period of hours) are shocked to find themselves handcuffed and sitting in a jail cell with a BAC over the current legal limit, knowing full well that they are not drunk.

These honest and responsible citizens are shamed, humiliated, and subjected to the rigors of a system that essentially ignores their constitutional rights. They are presumed guilty until they can prove themselves innocent. They are then buried in an avalanche of threats, fines, fees, and legal costs.

Switching tactics, NHTSA publishes "studies" that show people to be impaired at extremely low levels of alcohol intake. What they say is that

*continued on page 13*

## News From Around The Country

At the time of printing, the following legislative information was correct. To track the progress of these bills or for contact information for your legislators, you can visit the *Speak Out!* section of the NMA web site at [www.motorists.org/speakout/state.html](http://www.motorists.org/speakout/state.html)

You can also find NMA positions on any of these topics as well as talking points that you can use when contacting your legislators on these issues at [www.motorists.org/issues/index.html](http://www.motorists.org/issues/index.html).

### Arizona

SB 1055 would make it illegal for teens to be behind the wheel from 1 am to 5 am.

### Georgia

Senate Bill 138 would exempt those who are 21 or over and have either passed the Georgia Motorcycle Safety Program, or have held a motorcycle license for two years from wearing a helmet.

### Illinois

SB 50, if passed, would change the seat belt law into a *Primary Enforcement* law. This means the police can stop you solely because you aren't wearing your seat belt.

HB 1186 has passed the House. This bill would eliminate the truck speed limit.

HB 1574 has passed the House. This bill would let motorists use the left lane *only for passing*. They would not be allowed to stay in the lane and block other drivers.

### Iowa

The Attorney General will ask the Iowa Supreme Court to review a judge's decision to block breath test results in drunk driving cases in Johnson County. Iowa law requires that specific guidelines and procedures must be in place in order to utilize breath test equipment. District

Associate Judge Stephen C. Gerard II ruled that these guidelines and procedures were not in place for the DataMaster cdm, and thus the results cannot be used in court.

### Kentucky

HB 246 would require all drivers involved in an accident that resulted in a serious injury or death to submit to a field sobriety test. If the driver refuses, his/ her license would be suspended.

### Missouri

HB 265 would allow counties to set county-wide speed limits *without* the prerequisite of conducting an engineering study beforehand.

SB 495 would lower truck speed limits from 70 mph to 65 mph on rural interstates and freeways, 65 mph to 60 mph on rural expressways, and 60 mph to 55 mph on urban interstate highways, freeways, and expressways. SB 148 carries the same speed provisions as well.

### Montana

HB 259 would raise the speed limit to 70 mph during the day on US 93.

### Nebraska

LB 401 would reduce the speed limit on I-80 from 75 mph to 70 mph while at the same time LB 502 would double the fines for speeding on the interstate.

### Nevada

Senate Bill 220 would allow Nevada to use *both* photo radar and red light cameras.

### New York

The New York State Senate passed a bill (S01690) that would allow the speed limit to be raised to 65 on any "state roadway" and make the 65 mph speed limit permanent. The state speed limit is currently 55 except on limited access highways where the legislature has explicitly authorized 65 mph.

### North Dakota

HB 1046 passed the legislature and was signed into law by the Governor. This increases speed limits to 65 mph on paved roads and also eliminates the night-time speed limit.

### Oklahoma

SB 331 would set the speed limit for trucks at 10 mph less than the posted limit on all highways.

### Oregon

HB 2501 which would increase interstate speed limits to 70 mph passed the floor with a vote of 43-14.

### Saskatchewan

Since 1977, when Canada began posting speed limits in kilometers per hour, the highest posted speed limit in Saskatchewan has been 100 (62 mph). Beginning June 1, however, Saskatchewan will join Alberta, British Columbia, New Brunswick and Nova Scotia in posting some four-lane highways at 110 (68 mph). The change will affect portions of the Trans-Canada, Regina to Saskatoon and Yellowhead highways. The top posted speed in Manitoba, Ontario, Quebec and Newfoundland will remain 100 kilometers.

### Texas

Senate Bill 540 would allow county commissioners to lower speed limits to 20 mph. Currently, they are allowed to lower them to 30 mph.

Senate Bill 660 would increase speeding fines. For those who exceed the speed limit by 25 mph or more, they would pay fines up to \$500.

### Virginia

Virginia Beach may be installing red light cameras. If the City Council approves the use of the cameras, five intersections will be selected to receive them. 📍

## The Experts' Corner

**D**o 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.

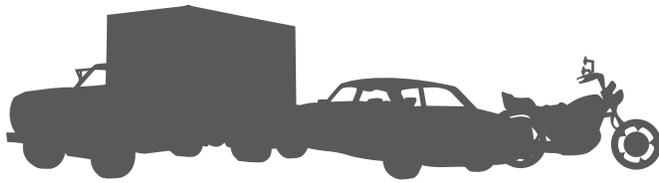
A telephone number would be very helpful, but is not required. Feel free to list preferred contact times if you do provide a telephone number.

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

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**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](mailto:nma@motorists.org) or mail to our NMAF Office.*

Why waste a page of our newsletter on cyberjunk like dihydrogen monoxide? Can't you tell you're being had? Better to expand on real threats, as outlined in Sleeping It Off. Instead of staying at the wheel with doors locked, keys in place, you suggest climbing into the back seat with them in your pocket. Or what, lay down on the shoulder? Wobble around in a deserted rest stop, begging to mugged?

I'm glad you air this scary issue, but rather than wasting space on bad jokes, why not use it to mention that giving up control of your only escape on some dark highway is dangerous to one's health?

I was also shaken by James Campbells' diabetic nightmare. He was just lucky to get his record expunged. Had it been the FBI, he wouldn't. And sadly, with "Homeland Security," such police abuse will soon be our way of life.

**David Carroll**  
Lexington, MA

Eric Peters, you know I really agree with you in the article in the March/April 2003 *NMAF NEWS*. First, let me say that this issue of the newsletter was chuck full of meaningful articles. A small magazine with big content. Sure, seat belts are great, it should be my choice whether I wear one or not. Safety that affects myself, I want control of, and should remain my right as an American.

Piece by piece this is being taken away from us all. How do we fight this?

**David Coe**  
Danbury, CT

*Editor's Note: This is why we constantly promote membership recruitment. It is when we have significant numbers of members that we can more effectively protect motorists' rights!*

In the January/ February 2003 *NMAF NEWS*, you said that Rhode Island "House Bill 5613 would tax vehicles upon original registration \$50 for every mile per gallon they average over 25 mpg." Shouldn't that be under 25 mpg? I would want to know why, if you bought a car that averages 30 mpg, you would be penalized \$250, while someone buying an H2 getting 13 mpg would go scott free?

**Jeff Taylor**  
Woodbury, NJ

*Editor's Note: You are indeed correct, Jeff. Thanks for catching this mistake.*

The article on page 5 of the March/April 2003 *NMAF NEWS* regarding the effects of passing time on BAC (Blood Alcohol Content) was particularly interesting. Was it written by an M.D. or toxicologist?

I also hope that James R. Campbell is bringing a multi-million dollar lawsuit against the town, police department, and the

ignorant, uncaring and arrogant police officer whose negligence could have killed. The loss of the officer's house and bank accounts should "sober up" policemen in future traffic stops.

**William Brennan**  
Cedar Grove, NJ

*Editor's Note: James J. Baxter wrote the article. However, if you are interested in this type of information, you can check out the study, The Flawed Nature of the Calibration Factor in Breath-Alcohol Analysis by Dr. Labianca (probably one of the leading national experts on this subject). It can be found on the NMA site at <http://www.motorists.org/issues/dwi/flaws.html>.*

I think I have a good solution to the problem of red light cameras and running red lights.

How about momentary 4 way red? If both lights stayed red for a split second, no one would move right out, and if someone was distracted, or not paying attention, they would be through the intersection before the cross traffic moved.

**Tom Schneider**  
Palm Coast, FL

*Editor's Note: Many jurisdictions use an all-red time for this purpose. An "all red" setting, used in combination with proper yellow light timing, will virtually eliminate all but the most flagrant violations and resulting accidents. ☺*

## ***Fraudulent Data***

*continued from page nine*

people show impairment at levels as low as .07. What they don't say is that 50 percent of the people who had difficulty putting together highly complex electronic equipment at that level did just fine in a driving simulator. In fact, it wasn't until people got to .10 BAC that half of them exhibited even the very earliest signs of impairment. Those signs were generally a slight modification of mood and relaxed attitude, hardly serious enough impairment to warrant arrest and jail. It wasn't until the test subjects reached BAC levels of .14 and above that they actually had difficulty performing the motor skills needed to drive a vehicle.

NHTSA would have us believe that the breathalyzer tests used by the police accurately measure the level of alcohol in blood. However, a recent study completed by the State of Wisconsin Hygiene Lab showed that in 66 percent of the cases, when breath and blood tests were taken simultaneously and compared, the breath tests were highly inaccurate and did not match the actual blood alcohol content.

### **Misleading Terminology**

"Alcohol-related" is the term we hear most often from NHTSA and MADD. Alcohol-related means that **any** person involved in a motor vehicle accident, not necessarily a driver, had **some** measurable amount of alcohol on their breath. This means that someone involved in a fatal accident while coming home from a religious ceremony that involved a sip of wine would be cast in NHTSA's statistics as a "drunk driver." And, if someone sitting at a sidewalk cafe enjoying a wine spritzer gets hit and killed by an out-of-control sober driver, that accident will be included in NHTSA's statistics as "alcohol-related." Then MADD picks up the chant and "alcohol-related" becomes

"fatalities caused by drunk drivers."

"Multiple imputation methodology" sounds like some kind of scientific/mathematical computation. This is NHTSA's method of adding in "alcohol-related" fatalities for cases where they *don't know* if a person has been drinking, which they refer to as "unknowns." A quick glance in the dictionary shows that the word "imputation" means "to point a finger at." NHTSA created this "statistical" model in order to add more "alcohol-related" fatalities so they can "point the

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***Bloated numbers, innuendo, and propaganda are not the tools we need to improve highway safety.***

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finger" at alcohol as being the culprit. And, they do it "multiple" times! NHTSA claims that unknowns account for over 60 percent of all fatalities. If the police state that a driver was drinking, NHTSA takes that as proof positive that there was a drunk driver even if no test was performed or the test results are unknown. However, if the police state that a driver was NOT drinking, but there had been no test or the results of a test are not known, then NHTSA doubts the word of the police and applies their "multiple imputation methodology." This works in just one direction, to increase the number of alcohol-related fatalities.

Looking closely at the data, we find that the drinking status for 12 percent of the drivers was not determined (10.3 percent of fatalities). Given that percentage, it's reasonable to expect NHTSA to assign drinking/non-drinking status according to the distributions determined by the drinking status data it does have, in order to accurately account for unknowns. However, this isn't the case. NHTSA's "multiple imputation methodology" creates drunk drivers out of nearly 70 percent of the unknowns, and this formula is applied to "unknowns" even where the police

have explicitly stated that the person involved was NOT drinking. And, it is applied to pedestrians, bicyclists, passengers and other non-drivers as well. It is easy to see how NHTSA's "multiple imputation methodology" succeeds at taking a problem that represents approximately 6 percent of all drivers and "points the finger at" alcohol to make it look like 41 percent. Perhaps it's time the much maligned, but responsible population of drinking drivers started to do a little finger pointing of its own? For starters, it could target those agencies and organizations that are using distorted data and tortured terminology to mislead the general public as well as elected officials. Bloated numbers, innuendo, and propaganda are not the tools we need to improve highway safety.

*Jeanne Pruett is President and CEO of Responsibility In DUI Laws, Inc. (R.I.D.L.) a non-profit organization comprised of citizens dedicated to educating the public and lawmakers about the misdirection of the current DUI laws. Visit R.I.D.L. at <http://www.ridl.us> or send email to [info@ridl.us](mailto:info@ridl.us) or call 734-306-7883.* 📧

### **Reality Check**

A study by The National Academy of Sciences' Institute of Medicine estimated that nearly 100,000 patients each year are killed in hospitals by medical errors. In fact, the study found that a person is twice as likely to be killed by a preventable medical error than in an automobile accident. 📧

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