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COVER
"Red Light Camera Scofflaw"

The Decline Of An Empire
by James J. Baxter, President, NMA

MA member John Gorman is a
writer and his most recent effort
King of the Romans has been
released by Blackstone Audiobooks,
Inc. (www.Blackstoneaudio.com).
This is a historical fiction about a
dying empire, rotted out by corrupt
institutions and failed leadership.
Reading the promotional material
for John's book caused me to reflect
on why successful societies decay
and fail. I'm sure there are as many
reasons as there are failed societies,
but my favorite hypothesis is that
these societies fail to protect, honor,
and adhere to the principles upon
which they were
founded. It was
those principles
that led to their
greatness, and the
abandonment of
those principles that
led to their collapse.

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their greatness, and the abandonment
of those principles that led to
their collapse.

Lest this seem a little far afield from
motorist issues, I should circle back to
the here and now. One of the founding
principles of our country is that all
people, under similar circumstances,
are treated equally by the government.
It was not intended that we have
multiple sets of rules for multiple
classes of citizens. There is not to be a
set of rules for the rulers and another
set of rules for the ruled. (I'm setting
aside the charade that our elected and
appointed officials are tirelessly
working away at our behest and on our
behalf. They make and enforce the
rules and therefore it is not improper to
refer to them as "rulers.") This
principle has been seriously eroded,
along with many others, in a manner
that is all too familiar to members of
this organization.

Public officials speed to meetings
and exploit their authority with sirens
and emergency lights, because they're
"important." Meanwhile, the private
business person who is late to a
meeting and driving 70 mph in a 55

mph zone (that should be posted 75
mph) gets a ticket for \$300 and a
thousand dollars worth of surcharges
on his mandatory insurance policy.

The sheriff is pulled over while
ricocheting off both sides of the road in
his personal vehicle and he blows a .22
BAC. He's packed off to his home to
sleep it off and has to suffer ribbing
the next day at the coffee shop. The
same night a local college student
has too much to drink and decides to
sleep it off in his car parked in the
tavern parking lot. At 3:00 AM
he's roused out by the local police,
charged with drunk driving, spends
the night in jail,
loses his license,
is hammered with
\$3000 in fines,
and loses his
scholarship.

One of our
Maryland members noted a Mercedes,
with state legislator plates, parked
illegally. Later on, he discovered that
other illegally parked cars were
ticketed, but the Mercedes was not. A
little investigation found that the
Baltimore Parking Authority made an
"administrative decision," following
complaints from ticketed legislators,
not to ticket cars with legislative
plates. They also used one of my
alltime favorite euphemisms, they
were extending "professional courtesy"
to the legislators.

This duel system of rules corrupts
our society and is corrosive to the
public ideals that we hold by
consensus. If that consensus collapses,
so does our civil society.

Ancient Rome declined because it
had a Senate; now what's going to
happen to us with both a Senate
and a House?

—Will Rogers

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## Long Reach Of The Law

**F**or twenty-two years, James Baxter, President of the National Motorists Association, has railed against arbitrary speed limits and their enforcement. He has been especially strident in his condemnation of automated enforcement devices such as red light cameras and photo radar. He lumps them together as "ticket cameras" and claims they have one purpose, raising revenue.

Recently the cameras had their revenge. An official-looking letter arrived at Baxter's home in Wisconsin. The letter was from Germany and although it was written entirely in German, it was obviously concerning a photo radar speeding ticket, dated April 2, 2004, and taken in Neuss, Germany. The ticket specifies that a Mr. John Baxter was traveling 66 kilometers per hour in a 50 kilometer per hour zone (8 kph above the speed

limit). The fine for this infraction is 25 Euros.

The Germans have a long history with photo enforcement and proponents of automated enforcement often cite their experience. The technology is promoted as foolproof, unbiased, and effective. To prevent any error, the photos are each inspected by "trained professionals" before being processed and mailed out. In this case there are clear photos of the driver and the vehicle license plate, neither of which have any connection to James Baxter, President of the National Motorists Association. Furthermore, Baxter hasn't been in Germany for at least a decade. Still, the ticket came to Baxter at his home address in Wisconsin.

It remains unclear how German authorities obtained Baxter's address, and the irony of one of the world's

most vociferous critics of photo enforcement getting a bogus speeding ticket hasn't escaped him. "There's a possibility that someone is just having fun at my expense, or I'm the victim of identity theft, or this is just your standard government blunder. Still, this just shows yet another way that automated enforcement devices, like ticket cameras, have the potential to make life miserable for innocent motorists."

When asked what he intends to do, Baxter replied, "Other than not paying the ticket, I'm not quite sure. I just hope the Germans aren't renting space at Guantanamo Bay, Cuba." 🐾

## Police Challenge DUI Checkpoints

**P**olice officials in Ohio have come forward criticizing the effectiveness of traditional sobriety checkpoints. State Highway Patrol records show that the 96 checkpoints that the agency staffed between 2001 and 2003 netted an average of five DUI arrests per checkpoint. Of the 75,930 drivers stopped at police roadblocks, fewer than one percent were actually arrested for drunken driving.

Highway Patrol Superintendent Paul McClellan openly admitted that the checkpoints were not a good method for catching "drunk" drivers, while at the same time he defends the flawed system saying that they do serve to raise awareness about drinking and driving.

McClellan was co-chairman of the Governor's Task Force on Impaired Driving that issued a report earlier in the year on the need to change DUI checkpoints. The task force's findings

stated, "smaller enforcement groups patrolling in identified (drunken-driving) areas may be more effective than current large-scale, stationary checkpoints."

Lyons continued by lamenting the ineffectiveness of the current strategy, in which large checkpoints staffed by 10 to 20 officers result in a mere handful of arrests, but costs valuable man-hours. "If you take that amount of officers for six hours and put them on patrol doing strictly DUI enforcement, you'll more than likely have better results," Lyons said.

Checkpoint advocates are hesitant about the proposed changes because they believe checkpoints have a benefit that goes beyond the arrest numbers. They think checkpoints deter motorists from drinking and driving. So the lone redeeming quality of checkpoints in the minds of their supporters is to

*continued on page thirteen*

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- ❖ Return the gift membership form on **page nine**
- ❖ Visit our web site at **[www.motorists.org/join/index.html](http://www.motorists.org/join/index.html)**
- ❖ Call us at **1-800-882-2785**

## Supreme Court Allows Searches Of Parked Cars

by John Holevoet

**M**otorists received another blow to their rights on May 24th, when the Supreme Court handed down its 7-2 decision in the controversial case, *Thornton vs. United States*. Their ruling affirmed that police may search a parked vehicle for drugs, guns, or other evidence of a crime while arresting the vehicle's driver or passengers.

The case involved the 2001 search of Virginia resident, Marcus Thornton's car. Thornton had been driving in Norfolk, Virginia, when a local police officer noticed his gold Lincoln Town Car. The officer, who described the car as "flashy," ran Thornton's plates and found that the tags were issued for a late-model Chevrolet. The officer proceeded to follow Thornton, but before he could pull him over, Thornton pulled into a shopping center parking lot and got out of his car.

The pursuing officer hopped out of his cruiser and accosted Thornton, finding marijuana and crack cocaine in his pocket. After handcuffing

Thornton, the officer searched the Town Car and found a gun. Thornton was later charged with both federal drug and firearms violations. Thornton's attorneys argued that the charge relating to the gun be dismissed because it was found as the result of an unconstitutional search. Regardless, he was convicted, but he appealed the court's decision.

The high court had already ruled that it was constitutional to conduct a vehicle search following the arrest of someone, driver or passenger, within a car. Their 7-2 ruling in this case extended the police's ability, allowing for the search of a vehicle whether the person arrested was inside or away from the car at the time. The ruling addressed a common situation, in which police pull over a "suspicious" (or in this case "flashy") car or come upon it while it is parked. Often the motorist gets out of the vehicle before the officer approaches. Until now, it was not clear whether police had the right to search the car in these cases.

The court has once again ruled in favor of heavy-handed tactics when it comes to the vehicle searches.

Chief Justice William H. Rehnquist wrote in the majority opinion, "In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle." He continued by stating that once under arrest, a suspect outside a car could still lunge inside for a weapon. Although it is somewhat unclear how this could be done when the suspect is several feet away on the ground in handcuffs, but Rehnquist does not directly address the situation in which Thornton found himself.

Justices Sandra Day O'Connor, Anthony M. Kennedy, Clarence Thomas, Stephen Breyer, Antonin Scalia, and Ruth Bader Ginsburg agreed with Rehnquist's findings. Justices John Paul Stevens and David Souter dissented. ☞

## Oregon Limit Increase Hits Speed Bump

**T**he Oregon Transportation Commission has been involved in a long and drawn-out process to evaluate speed limits on the state's rural interstates. The Oregon Department of Transportation (ODOT) plans to release all the materials from various engineering studies sometime this month. It seems all but certain, that Oregon will eventually opt to raise its limits on select rural portions of interstate 5 and 84, but ODOT is once again dragging its feet during the already long review process.

State transportation officials have again put on the breaks before the rural interstate speed limit is raised to 70

mph. The state says it needs more time to map trauma care locations, and to consider any potential impacts on air quality and fuel efficiency.

Representative Randy Miller, the author of the 2003 legislation calling for the increases, has described the further delay as being both frustrating and suspicious. "I think there is no doubt that some of the active staff members at the department don't want to raise the speed limit," Miller said. "The evidence is mounting on the highway, and people are voting with their foot on the pedal that they want a faster speed limit, and this doesn't help government because it shows once

again that the bureaucracy does not give a rip what people think."

When lawmakers authorized the higher speed limits, they put the transportation agency in charge of deciding where it was appropriate for faster travel. This process was to include a comprehensive safety study. The most recent delays are made in the name of "safety" as well. This claim comes despite the fact that only four percent of serious or fatal accidents occur on rural interstates nationwide. Furthermore, ODOT's own research demonstrates that the fatality rate on Oregon's rural interstates is about half that of all other roads. ☞

## Safe Routes To School

In early June, the U.S. House named its 50 delegates to the conference committee that will write federal highway law for the next six years. The House gave the conferees just one instruction: Make sure you insist on our version of the "Safe Routes to School" Program. The instruction passed 377-30.

"Safe Routes to School" is a perfect illustration of how the "dedicated" Highway Trust Fund has decayed into a gift shop for non-highway interests. This program will award a billion gas-tax dollars for sidewalks, bike paths, pedestrian facilities, education programs, and grants to non-profit groups. This includes bicycle advocates who will use the money to lobby for still more diversion of road-

user fees to non-road uses. It will also include anti-obesity crusaders waging war on fat kids.

And, while kids may get leaner, local budgets will get fat by tapping motorists' pocketbooks in two different ways. "Safe Routes to School" funds will use road funds to pay police to write speeding tickets anywhere within a mile of any school (whether school's in session or not). If they want, local agencies can devote all their "School's" funds to police overtime, and then watch the money roll in from traffic fines.

Along with "Safe Routes to School," the House highway bill has a record 3,300 pork-barrel projects for legislators to take credit for before this fall's elections. Often these are projects

that state highway officials don't want to devote scarce funds to, and which motorists have little use for, but which benefit land developers and campaign contributors.

Over the last 15 years or so, each big "highway bill" has had a longer Christmas list than the one before, of special-interest programs and projects. Unless motorists stand up and defend their gas-tax dollars by contacting their U.S. Congressman, the Highway Trust Fund will soon be devoted to a bundle of non-highway handouts with irresistible, but dishonest, names like, "Safe Routes to School."

You can find your legislator's contact information at [www.house.gov](http://www.house.gov) or by visiting your local library. 📖

## It's Fun And It's Good Overtime

Few parts of the country escaped "seat-belt enforcement zones" last Memorial Day weekend. Funded by federal grants from the Highway Trust Fund (and ultimately from motorists' gasoline taxes), hundreds of police agencies joined together for a ticket blitz of unprecedented size. In one Midwestern county, police operated 44 enforcement zones within two weeks. Here's how these enforcement zones work, and how police agencies view them.

The typical enforcement zone consists of an officer with a police car parked by the side of a main road, usually with lights flashing and a portable sign announcing "seat belt enforcement zone" or some similar message. The officer looks into each passing car, notes whether the 3-point belt is in use, and radios ahead to several patrol cars waiting to pull over drivers whose belts are dangling unused. Traffic safety officials say the purpose of the zones isn't to generate tickets, but business is usually brisk, and often officers and cars from

several jurisdictions may combine to provide enough teams to pull over the 15 or 20 percent of motorists not using belts.

The enforcement zones are descended from drunk-driving checkpoints that are still operating in many places. The police are careful to point out that the new "enforcement zones" are *not* checkpoints. Instead, they're designed to get only positive publicity, not the bad press and legal problems that were associated with drunk-driving checkpoints, which involved stopping all traffic on a road, or pulling over drivers without probable cause. Police agencies sometimes instruct officers to suspend operations on busy commuter routes if the traffic stops produce congestion, lest the operation be said to constitute a checkpoint. Officials maintain that the goal is to operate high-visibility zones in which motorists can see other drivers getting tickets for not wearing belts, and which will plant the notion that you can get a ticket for seatbelt violations. "The media love it," say

several traffic-safety officials.

So do police officers. "It's fun and it's good overtime," said one enthusiastic policeman at a recent traffic-safety conference. The extra federal money for the Memorial Day operations pads officers' paychecks in time for summer vacations. (Plus, Thanksgiving and other holiday overtime helps pay for Christmas presents come January.) And of course the thousands of tickets won't hurt local budgets either. 📖



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# Fund Off To A Great Start—Better Things Ahead

**T**wenty-two years ago, the National Motorists Association was formed to fight the 55 mph National Maximum Speed Limit. The fight wasn't an easy one. However, the NMA succeeded in fully repealing this ridiculous law, which wasted both time and money. Now, states can once again set their own speed limits.

In 1995, when the dreaded "Double Nickel" was done away with, the NMA won a victory for all motorists, but much more remains to be done. Every year in state and provincial capitals from Tallahassee, Florida to Victoria, British Columbia, lawmakers continue a constant onslaught against motorists' rights. This doesn't include the nonsense that takes place in both Washington D.C. and Ottawa.

The NMA remains committed to

fighting for motorists' rights and we're often the lone organization standing against entrenched establishment views. We have a proven track record of results and we want to be more effective for you on a variety of key motorist issues. To do this we need professional representation in Washington D.C. That's the goal of this year's Legislative Fundraiser: to preserve our successes and build upon them. We cannot accomplish this goal without your help.

It will cost approximately \$60,000 a year to obtain a professional lobbyist to fight for us in D.C. Our war chest has grown to over \$25,000 because of the generous donations of five percent of our membership. We're almost halfway there, but still have much to do. I hope we can count on your

support today. If five percent of our members can get us halfway to our goal, I'm sure that the remaining majority can far surpass the amount raised by a dedicated handful. I hope that each and every one of you will make a contribution to the NMA's Legislative Fund. Your donation of \$50, \$75, \$100, or more could make all the difference.

Plus, thanks to the generosity of our supporters at [www.driveeurope.com](http://www.driveeurope.com), you'll be automatically entered to win a fantastic European Driving Tour for each increment of \$35 that you donate. That means the more you give, the greater your chance of winning! Don't delay—the drawing for the trip will take place on July 25. You only have a few weeks left to guarantee your entry! 🍀



**Yes! I'll do my part to help the NMA better represent all motorists in Washington D.C. I'd like to make the following contribution:**

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  \$1,000   
  \$500   
  \$250  
 \$100   
  \$50   
  \$35\*   
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I prefer to use my credit card

**-OR-**

I would like to make the following monthly donation\* to the legislative fund using my credit card or automatic bank withdrawal, and I have completed the boxes below in A and B:

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 \$500   
 \$250   
 \$100   
 \$50  
 \$35   
 \$25   
 \$10   
 Other \_\_\_\_\_

I would like to give the above amount for the following duration:

- B.**   
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 6 months   
 9 months   
 1 year  
 Until further notice

\* You will automatically be entered to win a fantastic European Driving Tour for every increment of \$35 you donate. The more you donate, the greater the chance you'll win!

### Your Information

Name \_\_\_\_\_ Member No. \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### Credit Card Information

Card Type:     Visa     MasterCard

Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Name On Card \_\_\_\_\_

Signature of Card Holder \_\_\_\_\_

## Win Your Choice Of Three Great European Driving Tours



Donate to the NMA Legislative Fund at the \$35 level or above and you'll be automatically entered to win one of three fantastic European Driving Tours provided courtesy of [www.driveeurope.com](http://www.driveeurope.com). In fact, you'll receive an entry for each increment of \$35 you contribute; The more you give, the greater your chance of winning!

**Act today! Contest ends July 25th!**

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**For more information about the tours listed above visit our web site [www.motorists.org/jointhefight.html](http://www.motorists.org/jointhefight.html).**

No purchase is necessary to win. To enter without making a donation or for full contest rules, send a SASE to National Motorists Association, 402 W. Second Street, Waunakee, WI 53597.

## Fast In Sask.

Over a year ago, Saskatchewan moved to raise the speed limit on rural four-lane highways to 110 km/h (roughly 66 mph). The move left Manitoba as the last prairie province that still has a 100 km/h limit on such roads.

The move in Saskatchewan came as part of the provincial government's broader vision to improve infrastructure throughout the province, which included improving four-lane highways to accommodate higher speeds.

The new speed limit was applied only to divided sections of Highways 1, 11 and 16. The lower speed limits will be maintained in so-called high-risk sections, such as the Grasswood

intersection on Highway 11 south of Saskatoon.

Initially, the increase in limits met with protest from a variety of "safety" organizations and public policy groups that predicted the change to a higher limit would result in dramatic increase in highway fatalities. A year after the change, the scare tactics of these opponents to higher limits have been totally discredited.

A new study conducted by the Saskatchewan Government Insurance (SGI) found no increase in fatalities since the speed limit was increased from 100 to 110 km/h. By all accounts, drivers in Saskatchewan are cruising along as safely as ever. SGI's Kwei Quaye admits that speed may be

a factor when road conditions are less than ideal. "One type of speed-related collision that tends to be more problematic is driving too fast for road conditions," says Quaye. "The road might be slippery, the visibility may not be that great, and that tends to be more of a problem for us than the mere fact of speeding in excess of the speed limit."

The Royal Canadian Mounted Police has concurred with SGI's finding, and issued a statement that echoed other government sources, which said that in the past year since the increase, no observable decrease in safety has taken place on Saskatchewan's highways. ☺

## Costa Mesa Refunds Erroneous Tickets

The good folks at **Highway Robbery.net** sent us the news that Costa Mesa, California will be refunding 579 red light camera tickets issued at the northbound Newport Boulevard at 17th street.

In April 2004, a person who received a red light camera ticket at that location contacted Highway Robbery.net to share his story. The defendant had taken the time to research his ticket and discovered that the yellow light time, which was 3.6 seconds, should have been 4.3 seconds in order to correspond with the 45 mph speed limit. (California law regulates the yellow light time at intersections where red light cameras have been placed.)

On May 27th, the defendant had his case dismissed by the police before it even went to trial. HighwayRobbery.net asked Sergeant Andersen what Costa Mesa was going to do about the other tickets previously issued there. Anderson replied that any

action would be up to his supervisors.

By June 7, there was no official reply so HighwayRobbery.net contacted city officials. On June 9, HighwayRobbery.net was contacted and told that a decision would come within two weeks.

The next day, the city issued this release:

"On February 11th, 2004 the City of Costa Mesa became aware that the yellow light phase at the signal located at Northbound Newport Blvd at 17th Street, was shorter than required by state law based upon the posted speed limit. The yellow light phase had erroneously been set at 3.6 seconds rather than a minimum of 4.3 seconds. As soon as the City of Costa Mesa became aware of this error, the City immediately stopped issuing citations based upon recorded red light violations for that approach to the intersection. The red light camera enforcement was operational at this intersection since October 3, 2003 until it was shut down for this one approach to the intersection on February 11, 2004. There were 579 citations issued during this five month time period involving the shortened yellow phase at this particular approach. Of this number, approximately 200 of these citations have already been paid, approximately 100 of them were dismissed, and the remainder are still pending.

The City of Costa Mesa will be contacting the Harbor Justice Center to request that the red light camera citations for this approach and time period that have resulted in convictions be reversed and that the unresolved citations be dismissed. Additionally, the City of Costa Mesa will be providing refunds of the fines for the red light camera citations that have already been paid."

The release goes on to reassure the public that the yellow light time is now correct, as are all the other intersections with red light cameras. It should be noted that the refund does not apply to southbound tickets as there is a lower speed limit on that side and the yellow light interval was within compliance.

The press release did not mention refunds for Community Service, traffic school fees, increased insurance premiums, or lost wages. Highway Robbery.net has suggested that drivers who did Community Service can file a claim with the City for at least the \$326 value of their labor, plus the Community Service registration fee. If they went to traffic school, lost time from work, or experienced higher insurance premiums as a result of their ticket (and their insurer will not refund the increase), they can file a claim for these expenses with the city as well. ☺

### Paris Against SUVs

The Paris City Council passed a resolution asking Mayor Bertrand Delanoe to consider banning SUVs from the city.

Officials claim that Paris couldn't out-and-out ban SUVs. "Our idea is to limit the circulation of the most polluting vehicles," Deputy Mayor Denis Baupin said. "That means SUVs and lots of other vehicles that don't meet European pollution standards."

Baupin also called SUVs a caricature of a car.

"Let's be logical and only allow into the city cars that are adapted to it." ☺

Toll Free: 1-888-DUI-ATTY (384-2889) [www.GeorgiaCriminalDefense.com](http://www.GeorgiaCriminalDefense.com)  
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## Call For Standardized Black Boxes

The National Highway Traffic Safety Administration (NHTSA) has proposed standard requirements for Event Data Recorders (EDRs). These devices are also known as black boxes as they essentially perform the same function as the black box of an airplane (i.e. they record information from your vehicle before, during, and after an accident).

By September 2008, NHTSA wants to:

- *Require* that EDRs voluntarily installed in light vehicles record a minimum set of specified data elements useful for crash investigations
- *Specify* requirements for that data
- *Increase* the survivability of the EDRs and their data by requiring that they function during and after front, side and rear crash tests
- *Require* vehicle manufacturers to make publicly available information that would enable crash investigators to retrieve data from the EDR
- *Require* vehicle manufacturers to include a brief, standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing the purposes of EDRs.

None of this addresses the concerns that are being raised on this issue. Currently it is extremely difficult to get an exact answer as to which vehicles have black boxes and what exact information is being recorded. Even the car's owner (if he or she even realizes the car has a black box) cannot easily determine what information is being recorded.


Nor is there any indication by NHTSA that EDR information should be used strictly for accident research. Black box technology was originally introduced for this purpose (although it has never been explained sufficiently how this information helps

researchers), and yet it is being used less and less for this. More frequently, the information is being used by law enforcement and prosecuting attorneys to convict people for offenses ranging from reckless driving to vehicular manslaughter.

The more likely scenario behind NHTSA's push for standardization is that agencies that can use a black box's information against you want easier access. Police, courts, and insurance companies all would benefit at *your* expense.

Out of the approximately 200 million light vehicles in the United States, NHTSA estimates that 15 percent of the vehicle fleet (30 million cars, pickups, vans, sport utility vehicles, and multi-purpose vehicles) are equipped with EDRs that can be easily read, and that between 65 and 90 percent of new light vehicle models will be equipped with EDRs.

The issue of black boxes is not a passing fad, but a growing problem.

NHTSA is accepting comments on their black box proposal until August. Now is the time to contact them with concerns on how this data is being used. Written comments should be sent to the DOT Docket Facility, Attn: Docket No. NHTSA 2004-18029, Room PL-401, 400 Seventh St., S.W., Washington, D.C., 20590-0001, or faxed to (202) 493-2251. The notice also will be available for viewing at <http://dms.dot.gov/> and comments may also be submitted electronically via this web site. 

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# The Fallacy Of Breath Alcohol Analysis, Part I

by John Holevoet

This is the first in a three-part series on the fallibility of breath alcohol measurement. Over the past several years, research findings have made it clear that breath testing is not a valid method for determining illegal intoxication.

The work of three researchers, Michael Hlastala, G. Simpson, and Dominick Labianca, has been particularly valuable in debunking the "solid accuracy" of Alcohol Breath Test (ABT). This column will draw on the work of Dr. Hlastala, a professor of physiology and biophysics at the University of Washington Medical School. His research undermines the very notion that breath alcohol can be used as a measurement of intoxication.

Breath tests were first introduced in the 1950s. For the past 50 years, the large degree of variation among breath alcohol concentrations obtained through the ABTs has raised doubts about the technique. The ABT is built upon the theory that the level of ethyl alcohol (ethanol) in the blood is in balance with the ethanol level in "alveolar air" (breath coming from small air sacs in the lungs called alveoli). This led to scientists' belief that by measuring the concentration of ethanol in a person's breath, the amount of alcohol in a person's blood can be determined.

Viewed through the lens of 1940s physiological knowledge, the breath alcohol test seemed to be a sound method. More recent research has provided numerous problems with this 1940s perception. Hlastala has shown that no such equilibrium exists, and therefore, an accurate determination of blood alcohol level could not be obtained from a breath test.

Currently, methods depend on the blood-breath ratio (BBR), the ratio between blood alcohol concentration (BAC) and breath alcohol concen-

tration (BrAC) to calculate BAC from breath tests. The BBR has been assigned an average value of 2,100, which is then used to calibrate most breathalyzers. The problem is that contemporary measurements have shown the average BBR value to be 2,407, with a typical range of variation between 1,981 and 2,833.

Clearly, this can cause test results to be extremely skewed, and the degree of variance is all the more troubling given that this technology is used to obtain criminal convictions against motorists. Researchers first reported this drastic variability in the blood-breath ratio in 1978, but in the name of "legal expediency" this flaw has been purposely buried.

Problems with ABTs go well beyond the variation in the blood-breath ratio. During a breath test, a person's BrAC reading will steadily increase as a person exhales before leveling off at what has long been erroneously called the "constant BrAC." This constant has been presented by Breathalyzer manufacturers as proof that a reading from the all-important alveolar air can be obtained at the end of exhalation.

What these self-interested manufacturers fail to point out is that this important leveling-off, which is often referred to as the "alveolar plateau," is affected by numerous external factors, and is therefore highly variable. Key factors to be considered are the amount of air exhaled, temperature (both internal body temperature and external environmental temperature), as well as breathing patterns, all of which can produce radical variations in breath alcohol results. Therefore, the so-called "constant BrAC" is really anything but.

To deal with the inconsistencies involved with the "alveolar plateau,"

the increasingly popular method of "rebreathing" was developed. This method involves a person breathing in and out of a bag several times, until the air within the bag is thought to reach equilibrium with the alveolar air within a person's lungs.

This technique, however, also has its share of problems. For example, complete equilibrium may not be reached unless the "rebreathing" is strictly timed and monitored. Furthermore, as is the case with the single-breath ABTs described above, external factors can play a role in invalidating test results. One unexpected byproduct of the increasing use of the "rebreathing" method is that results from this type of breath test strengthens the argument against the commonly held view that the blood-breath ratio consistently hovers at or around 2,100.

The fact is the ABT is invalid; it is based on outdated scientific principles from the 1940s and 1950s, the majority of which were discredited over twenty years ago. Dr. Hlastala's research illustrates that ABT results, by their very nature, can vary dramatically from one test to another because of external influences. Despite this fact, results from ABTs still find their way into courtrooms, where they are used against motorists.

Recognition of the findings of Hlastala and his colleagues opens up the ABT to a series of legal challenges. This research strikes at the core foundation upon which these tests are based. Furthermore, it is just one research approach that has been taken, which now calls into question the effectiveness of breath alcohol analysis. In the next newsletter, we will look at the research of chemist G. Simpson whose research has examined the over-all margin of error associated with breath test results. 📖

# News From Around The Country

**A**t the time of printing, the legislative information is 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).

## California

The Assembly rejected a bill that would make it illegal to smoke in cars that were carrying young children. Motorists caught violating the proposed law would have been subject to a \$116 fine. The bill received 36 votes, five short of the bare majority needed to move the measure to the Senate. Thirty Assembly members voted against it.

The City Council of Los Angeles is considering vehicle forfeitures for anyone arrested (not convicted of) for DUI in the City of Los Angeles.

## Florida

Manalapan will soon have a city-wide system of surveillance cameras. This small town will be using the cameras and state-of-the-art computers to run background checks on all vehicles and drivers that pass through the community.

## Hawaii

SB 2344 failed to pass. This bill would have allowed counties to install stationary speed cameras and red light cameras.

## Michigan

Ann Arbor's Police Chief Oates admitted that he erred in judgement when he ordered a police officer to use the patrol car's lights and sirens to get

him to Detroit Metro Airport in time for a flight. Under Michigan vehicle laws, a person who operates emergency lights at any time other than responding to an emergency call is guilty of a misdemeanor. As of the printing of this newsletter, there has been no decision as to whether charges will be brought against the chief.

Early this spring, the Michigan Department of Transportation tried to raise underposted speed limits on two state highways through the residential enclave of East Lansing. Although these 35 and 25 mph limits are routinely ignored by up to 50,000 drivers a day, local residents and politicians went nuts over the change, and recruited local legislators to pressure MDOT into retaining the too-low (and possibly illegal) limits.

## Minnesota

The Minnesota Court of Appeals recently upheld a trial judge's decision to accept laser as accurate: Visit <http://www.minnlawyer.com/opinions/040517/a03806.htm> for additional information on this court case.

## New Jersey

AB 2228 would authorize the forfeiture of a person's motor vehicle if that person is convicted of driving with a revoked license, and the revocation was based on a conviction of drunk driving or refusal to consent to a breathalyzer test. Currently, persons who commit this offense may have their motor vehicle registration privileges revoked.

## Ohio

Toledo city leaders are considering using their red light cameras as speed enforcement devices as well. The fine would be \$95.

## Pennsylvania

State police have put a new spin on an old tactic. Rather than dressing as

construction workers and hiding in construction zones, officers have begun dressing in camouflage to ticket motorists. They are currently focusing their efforts on I-80.

Governor Ed Rendell has been caught speeding again. Earlier, a Philadelphia newspaper reported that his car had been clocked at speeds in excess of 100 mph nine different times. Rendell responded that his behavior was wrong and he wouldn't speed again. A *Times Leader* reporter has since caught Rendell's bus going over the speed limit on two more occasions.

## South Carolina

The bill that would have enacted a primary enforcement seatbelt law has died. This bill would have allowed the police to stop motorists solely for not wearing their seatbelts.

## Virginia

Effective July 1, the speed limit may be increased to 65 mph on any limited access divided highway in Virginia, and to 60 mph on divided sections of U.S. 360. Under previous law only certain classes of limited access highways were authorized for 65 mph.

## Washington DC

The District collected \$2.3 million in fines from its photo enforcement program in April. This set a record as the biggest revenue month in the program's two-and-a-half year history.

## Wisconsin

Despite the fact that Governor Doyle vowed that Wisconsin will not have tolls on their roads as long as he is in office, the Metropolitan Milwaukee Association of Commerce is putting together a statewide summit on toll roads to be held this summer. 🐾



## 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.

I just read the May/June issue. An article pertaining to Photo Radar on page five prompted me to contact you. A local (and well-listened to) radio talk host (Spike O'Dell, WGN, out of Chicago) interviewed the inventor/developer of a product called "Photo Fog" a number of weeks ago. I searched the web and located a supplier. When I received the product (\$40 for an eight-ounce spray bottle), the instructions indicated that a "weekly" application was recommended. This was not mentioned on the web site and certainly not mentioned on the interview. This "weekly" application is definitely not acceptable. There was no shipping/sales receipt of any sort in the box, and therefore no return instructions. I have made four attempts to contact the shipper and/or vendor. The vendor is "Bread Upon The Waters" whose payment collector is [service@paypal.com](mailto:service@paypal.com), but the return address on the shipping carton is "Dragon's Hoarde Studio, Minga Dotson, 600 N. Hwy 99, #141, Meminnville, OR, 97128."

Maybe you should consider printing a "buyer beware" about this concern. "Weekly" application, and complete abandonment after the sale.

**Art Reed  
Schaumburg, IL**

Your article on machine-readable license plates in the May/June 2004 issue missed the fact that as of September 1, 2003, it has

been illegal in Texas to have any type of cover over the license plates that would/could obscure any portion of the letters, numbers or characters on the plate. This includes transparent or opaque covers. Many auto dealers complained that they had thousands of dollars worth of these covers on hand that they used to advertise the dealership. When the law went into effect, no mention was made related to the true reason for the law, which I believe is as a revenue generator for the local governmental agencies.

Keep up the good work.

**Ted Levitt  
Plano TX**

To NMA members:

If you read, see, or hear about anti-motorist legislation or regulations in states other than the one you live in, ask your legislator if there is similar legislation pending in your own state. Each state watches every other to see what taxpayer-fleecing laws get passed, and if it works, then they try the same scam.

When these anti-motorist laws get passed, it is almost impossible to repeal them. If you find out about a bill that is in committee, it is much easier to put a stop to it by voicing your opposition to the bill. You will have time to inform others about the bill and hopefully start a ground swell of opposition to it.

I found out about gasoline minimum-price laws in an article by economist Walter Williams in the conservative newspaper, *Human*

*Events*. I called my state senator who found a bill to set a minimum price for gasoline in my state. The bill is now in the House Consumer Affairs Committee. I then contacted all the print, radio, and TV reporters I could to make this bill news, and eventually got on a radio station and a webcast supported by Dave Soloman and *Nutz and Boltz Magazine*. I also called a nationally syndicated radio talk show about gasoline minimum-price laws. Sixteen states now have these laws, and it raises the price of gas for everyone in those states. The technical term for this is seller collusion.

It is sad that politicians spend their time servicing special interest groups, and hang the average motorist out to dry. It takes some time and effort, but if we don't try to stop this stuff, we will lose all our rights and freedoms.

Happy motoring!

**Tom McCarey  
Berwyn, PA**

I feel that I must make a slight correction to an otherwise excellent article by Eric Peters "Hybrid Vehicles, Pros and Cons." Eric repeats the common misconception, that it is "torque not horsepower that gets a vehicle moving." As an automotive powertrain engineer for the past couple of decades, I can assure you that Automotive Engineers, in general, cringe

*continued on page thirteen*

## Members Write

*continued from page twelve*

whenever we hear that. Vehicle performance is proportional to the available power at any time, not the torque at the engine. The confusion arises from the difference between torque at the engine and torque at the driving wheels. Acceleration is proportional to torque at the driving wheels, which is proportional to power at the engine.

Also his assertion that electric motors are capable of greater torque than an engine is not true. The maximum torque and power available from an internal combustion is just a function of the size and the amount of boost. Want more torque (or power)? Just add more displacement and/or boost.

**David B. Roth**  
Auburn Hills, MI

I was shocked to read in your

June 2004 issue that New Jersey AAA (Automobile Association of America) clubs had urged the state to adopt stricter hands-free laws for cell phones while driving a vehicle. The AAA is supposed to champion the rights of drivers, not impede them.

I live in New York, where the restrictions have been applied. I can report empirically that I have had only dangerous encounters trying to fiddle with awkward ill-fitting headsets (of which I've owned about eight pairs in search of panacea since New York's law was enacted), versus no problems putting a small phone to my ear. I wonder how many accidents have been caused by attempts at complying with the ban.

Moreover, my latest headset has an earpiece that hangs outside my ear (hence no pain in my ear), but requires physical pressure in order for me to hear properly. I end up

pressing it towards my ear with my hand anyway—a hand that might as well be holding a cell phone without headset.

Many of my prior headsets of various types and brands have had failure. Indeed, my latest phone has been returned twice to the manufacturer—first the headset connection stopped working, and then, after the repair, the phone started going crazy and dialing random phonebook numbers when the headset was plugged in (a friend had a similar problem with her phone). The loaner phone provided by my cell dealer was a different brand and old model, for which they didn't even have a headset. No wonder New York drivers have resumed using hand-held cell phones at nearly pre-ban levels, as you report.

**Brian D. Graifman, Esq.**  
Spring Valley, NY

## Checkpoints

*continued from page three*

serve as a scare tactic to frighten responsible people from drinking socially. This is indeed a benefit if your goal is to scare people into avoiding a glass of wine with dinner, not necessarily if your sole concern is addressing the problem of those motorists who are actually impaired behind the wheel.

Despite criticism for the proposed changes, McClellan still stands by the task force's recommendations. He said that relying on raising public awareness isn't enough to justify current tactics. He said fewer officers should staff checkpoints and more should be assigned to saturation patrols, where they cruise surrounding roads looking for drunken drivers.

Such patrols were started in Franklin County in March. So far after devoting 110 hours to saturation patrols (the approximate amount of

man-hours needed for just one DUI checkpoint) 18 arrests have been made. This is still a fairly poor showing given the tens of thousands of dollars spent on such patrols, which rely predominantly on dubious pretextual traffic stops to be effective.

McClellan wants to see better results by implementing more alternatives to checkpoints in the

future. "If we're still sitting here in ten years doing sobriety checkpoints the way we do them now, I'm not convinced we'll have attained our goal for reducing traffic fatalities," he said. The irony of course being that it's taken police agencies this long to realize what is so patently clear, DUI checkpoints don't reduce drunk driving fatalities. ☹

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**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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