



Driving Freedoms
NMA Foundation

TABLE OF CONTENTS
Volume 17 • Issue 1

Us And Them2
Is It Time For Canadians To Slow Down?3
Beating Insurance Premiums
With Traffic School.. The Catch.....3
NMA Washington Report.....4
Driving Freedoms.....4
NMA Members Gets To See
"Ireland At Its Best"6
Road Rule Through Lawyers6
The Visual Speed Estimate In Traffic
Speed Enforcement7
A Report On The State Of DUI/DWI Laws8
Ohio's Ticket Cameras10
What Are You Afraid Of?11
News From Around The Country12
Members Write13
The Experts' Corner.....14
NMA Items For Purchase15
State Chapter Coordinators and Activists. 16

Copyright © 2006 by NMA Foundation.
All rights reserved.

Driving Freedoms (permit # 0716556-KWP) is the official publication of the NMA Foundation, Inc. *Driving Freedoms* is published bimonthly by the NMA Foundation, Inc., 402 W. 2nd St., Waunakee, WI 53597. (608/849-6000) Email: nma@motorists.org Web site: www.motorists.org. Nonprofit bulk permit paid Madison, WI. Annual membership in the National Motorists Association includes a subscription to *Driving Freedoms*.

Editorial Staff

Managing Editor:.....Eric Skrum
Staff Writer:.....John Holevoet
Staff Writer:James J. Baxter
Staff Writer:Robert Talley
Guest Writer:Dan J. Gardner
Guest Writer:Paul Sharp
Guest Writer:Henry Roberts

COVER
"DWT"

Us And Them

by James J. Baxter, President, NMA

Recently, my wife and I made a trip to the Detroit area to visit our son and his family. This jaunt had us traveling the Illinois Tollway (a vibrant example of why toll roads should be abolished) and I-90 through Chicago. Our rote refrain every time we drive through there is, "I can't believe people do this every day."

When we arrived in Southeastern Michigan, an urbanized area about the size of Connecticut, we decided to experiment with a new route comprised of several side roads. We were rolling along, quite pleased with our choice of highways and byways, when traffic just stopped. It stopped for no apparent reason. The traffic lights would turn green and no one would move. Finally, some of the more creative types escaped by turning into a strip mall lot and circumventing the plugged intersection.

Not wishing to starve to death in a traffic jam, we followed suit and worked our way to the forbidden intersection through a variety of alley runs, lefts, rights and U turns. Only then did we discover two squad cars, on opposite sides of the intersection, blocking the eastbound and westbound lanes of traffic on the road we had been travelling. And, the north/south lanes were virtually empty of all traffic in both directions.

Later, we learned that Vice President Cheney was in town for a political function, and the traffic was blocked for the "safety" and convenience of his motorcade. People driving in the Washington D.C. area put up with this nonsense on a regular basis. Our anointed "servants of the people" can't be troubled and inconvenienced with traffic congestion, arbitrary speed limits, or traffic lights timed by Mrs. Johnson's kindergarten class. Those are pleasures reserved for the general tax-paying public.

The people who set this country afloat in the 1700s realized that there should not be an officially privileged

status for elected leaders, and for good reason. They understood that if you don't live it, you can't understand it, and you have no empathy for those who do. That doesn't mean every elected and appointed official has to be immersed in every facet of American life. However, it does require that they not use their position and influence to avoid the realities of their constituents' lives. That's why legislators are supposed to live in the districts they represent. It's a tough act to live in Arlington, Virginia ten months of the year and then have a lot of empathy for the GM line workers in Michigan or raisin farmers in California.

In this same vein; bad highways, exploitive traffic enforcement, populist traffic regulations, and incessant congestion are not hot button issues for officials who are chauffeured to work, have traffic blocked for their motorcades, and are more-or-less immune from traffic laws. They don't live it, they can't understand it, and they don't have any empathy for their constituents who, for all practical purposes, live in a different world.

The standard excuse is that the business of the federal government is just so overwhelming that we have to have a full-time Congress, and a bureaucracy that grows by a factor of ten every time a new administration comes to power promising "smaller government." However, I'm convinced that if Congress confined itself to dealing with issues for which there is a general public consensus and for which there is a legitimate federal role (this excludes about 80 percent of its current tasks), its members could spend ten months in their home districts and get a little empathy for the people they represent. That might include sitting in a traffic jam because the roads are blocked for a visiting dignitary who is attending a local political fundraiser. ■

Is It Time For Canadians To Slow Down?

You would think that motorists would reject the idea of an electronic back-seat driver that forcefully discourages them from driving faster than the speed limit. Yet, Transport Canada isn't convinced, and they are currently working on a trial of technology that would do just that.

The new device combines global positioning satellite (GPS) technology and a digital speed limit map. Once the car reaches the speed limit, it will become much more difficult to press down the accelerator. This is the first test of this type of device in North America, although similar devices have already been used in Sweden, the Netherlands, and the United Kingdom.

Ten cars, driven by volunteers, have already been equipped with the speed-limiting system, and are being tested in and around Ottawa. By spring, researchers hope to have collected enough data to see if the system

actually changed the volunteers' driving habits. If they are successful, a larger trial is planned.

Another ten volunteer drivers will also test the Otto Driving Companion, a slightly less invasive, yet still annoying, speed-limiting technology developed by Persentech, a Winnipeg-based firm. This device also uses GPS technology and a digital speed limit map. The distinction is that the unit does not hinder a person's ability to accelerate. Instead, when a driver exceeds the speed limit, a light flashes on the dash-mounted unit and a voice warns them that they are going too fast.

At present, the Otto Driving Companion is available commercially for \$290 and are on sale in Winnipeg, Ottawa, Edmonton, Calgary, and Red Deer. It is doubtful, however, that many of this publication's readers will rush out to purchase one.

Not surprisingly, proponents of

speed-limiting devices are already discussing the possibility of making their use mandatory. At the same time, little attention is paid to the fact that limiting someone's ability to accelerate can contribute to accidents. When questioned about the expanded use of GPS to control speeds, Peter Burns of Transport Canada's road safety directorate noted that he and his colleagues are already "trying to assess the operational acceptance issues."

This is, of course, an understatement. The greatest challenge to such technology is the willingness of a public to accept it. As we drive today, comfortably above the speed limit, it is hard to imagine a device in our vehicles that would prohibit such "speeding." Let's hope it remains an abstract concept—something difficult to believe—in either Canada or the United States. ■

Beating Insurance Premiums With Traffic School... The Catch

by Dan J. Gardner, NMA California Activist

We've all heard that traffic school is a way to "erase" an infraction from our driving record. For some, eliminating the points against one's driver's license is the main reason to tolerate the time and money involved in going to traffic school. For most of us, though, traffic school means a clean slate so our automobile insurance premiums don't creep (or drastically ramp) up.

Yes, it's true that in California, and a few other states, you can have a citation wiped from your DMV record by attending an authorized traffic school class. In some areas, you can even take the course from the privacy of your own home on the Internet. There is a catch for making sure that your insurance company doesn't hike your rates.

Imagine the following scenario: You have just been awarded traffic school, have signed up for the course, and in two weeks will complete the required program. Now, in those two weeks your insurance company can and may

decide to do their "periodic driving record check." What they'll find at that time is a conviction posted to your DMV record. They'll have no idea that you're planning on taking traffic school, or that the court even granted it to you.

The next time you receive your policy packet, you'll notice that your premium has jumped. In one scenario, a driver saw an annual increase of \$300. Insurance companies typically charge a premium for a moving violation for three years, so that \$90 ticket just turned into a \$990 fine, not to mention whatever dollars you forked out for the traffic school fee.

So what do you do to ensure that your traffic school actually does what it is intended to do? Well, first, make sure to always pay attention to your policy packet (usually sent out every six months). If you notice a premium hike, call your insurance provider and find out why. If it's for a citation that you went to traffic school for, you're going to have to explain the situation to them.

Some may want a fax of your traffic school completion certificate, while others will want to pull a new DMV report. Still others may want both.

Your insurance company may even try to convince you that it's your responsibility to wait for four hours in line at the DMV and pay the fee for a new report. Explain to them the situation, and firmly insist that they pull another report for you. It is, however, your responsibility to let the company know that you did complete traffic school. They have no way of knowing in most cases, and may be charging you a hefty premium because you failed to present proof that, indeed, the course was completed.

Traffic school can be a good decision and can indeed save you money on your insurance rates, but only if you stay on top of it, and make sure your insurance company knows the real deal. ■



NMA Washington Report by Robert Talley, NMA Lobbyist

Congress finished 2005 without addressing a number of transportation issues. Perhaps the most interesting is the effort to construct new oil refinery capacity. Hurricane Katrina became the catalyst for the House to pass legislation encouraging new refinery construction but the bill remains stuck in the Senate.

In addition to a renewed focus on high gasoline prices, there are several other issues that are likely to be discussed next year that are specifically of interest to NMA members. One of these areas is Event Data Recorders (EDRs), also known as black boxes, which are prevalent in most new cars. Some states have passed legislation regulating how the data from an EDR can and cannot be used as it pertains to the rights of the vehicle owner. Insurance companies and the National Highway Traffic Safety

Administration (NHTSA) have started to take notice.

At issue is your right to privacy and your protections against self-incrimination. Who owns the data, and at what point it can be accessed, remains very unclear. To further complicate matters, there is a whole slew of agencies (NHTSA, police departments, insurance agencies, and car manufacturers) that are salivating to have access to this information.

Black boxes represent the first step in a whole new approach to law enforcement, taxation and vehicle use monitoring. For example, a driver could eventually be convicted of speeding by his or her own car. This isn't fear mongering, since it has already been done by at least one car rental company through GPS tracking. Congress will ultimately take a closer look at these and other issues and we are

prepared to intervene to protect your privacy and access to our roads.

Another area of interest is the annual spending by NHTSA to aid states in enforcement activities, such as automated speed enforcement and red light cameras. This is an area where we have an opportunity to restrict or lower this type of funding. A great point in our favor is that, given the poor state of fiscal affairs for the federal government, why should they aid states in funding enforcement mechanisms that are known profit centers? The cameras literally pay for themselves. We will seek to limit the options for NHTSA to provide grants to law enforcement and localities for these types of programs.

The year ahead is filled with opportunities for the NMA to affect policy in D.C. and elsewhere. As we continue to set priorities for this year and beyond, we need your feedback. Please look for the **2006 Legislative Priorities Survey** in March. When you receive it, please return it promptly. I look forward to hearing your responses. ■

Driving Freedoms by Eric Skrum, Managing Editor

You may have noticed that your newsletter has had a face-lift. What you may not realize is the reason for the change. It goes beyond the desire for an updated look, although that certainly is a factor.

The NMA Foundation was first formed in 1999 to address motorist issues through education, litigation, and research. Early on, we spent a lot of time and effort in the plans for what the NMA Foundation would accomplish.

Since that time, the NMA Foundation has developed in line

with our vision. We are creating and distributing a variety of educational materials, which provide a unique perspective on issues affecting motorists. These include this publication, our *Legal Defense Kit*, *Seven Sensible Signals*, and our new Lane Courtesy web site. We've also grown our *Legal Aid Grant Program* into a success. Last year alone, we helped secure victories in Wisconsin, Tennessee, and New Mexico.

When the NMA Foundation began, these projects were only plans. Now, they are a reality.

The NMA Foundation has achieved its own distinct identity and thus, the new logo and new look. We have even given the newsletter a new name: *Driving Freedoms*, one, which we believe better reflects the foundation's goals and ambitions:

This is a new year for the NMA Foundation. As we continue to travel down our current road, we're confident that 2006 will be another year of challenges and accomplishments. And, *Driving Freedoms* will be there to report it. ■

Advertising Space

NMA Member Gets To See "Ireland At Its Best"

Back in June, NMA member John Miller was selected as the winner of the **NMA's 2005 European Driving Tour Sweepstakes**. John and his wife, Eva, were thrilled when they learned they had been selected to travel to Europe. The couple had recently been to France and Germany, but had never been to Ireland, so that made their choice of tours easy. The couple decided to travel in late September, which gave them more time to prepare for their trip.

Following an uneventful flight over, they arranged to pick up their rental car, an Opel Vectra Hatchback. John described the Vectra as spacious with decent seating, which is certainly important given the amount of time they had to spend in it. The Vectra served as a more than adequate "home base" for the couple's sightseeing around the Emerald Isle.

Even though John and Eva had primarily chosen Ireland because it was somewhere they hadn't been, they were pleasantly surprised by what they found. "We would happily go back,"

John said, "There's a little of everything there, historical and modern, peaceful and busy, and it's generally pretty easy to get around."

John praised Reise-Profi Travel, who graciously provided the trip, and



John at Kylesmore Abbey. Its grounds, beautiful gardens, and most of its first floor are open to the public.

said that all of the arrangements went pretty smoothly. The couple would start off each morning by pulling out the relevant maps, route information, and pamphlets for the day, and then

supplementing those with other maps or tour books as needed. "We're firm believers in too much information," John explained.

The couple's primary complaint was that they wished the trip could have been longer. "The trip itinerary may be optimal for someone coming in on an hour-and-a-half flight from the continent, but for jet-lagged Americans, the pace, particularly early on, is a little hectic," John said. Knowing what they do now, the couple would have opted to add a couple days to the overall tour. "Certainly one advantage of Reise-Profi's packages is that they provide the flexibility to accommodate this," said John.

To read a detailed description about John and Eva's entire trip, visit www.motorists.org/drivingtour.html. For more information about the "Ireland at its Best" tour and other tour offerings from Reise-Profi Travel, you can visit www.driveeurope.com. Watch the mail in March for a chance to win *your* very own European driving tour. ■

Road Rule Through Lawyers

by Paul Sharp, NMA Member

In his book *The Rule of Lawyers: How the New Litigation Elite Threatens America's Rule of Law*, Walter Olson, a leading legal scholar, outlines the process by which lawyers are becoming a "fourth branch" of government. They do this through lawsuits in our nation's free-for-all tort atmosphere. An extension of this "Rule of Lawyers" is "Rule Through Lawyers," by which those with enough money can utilize the legal system to bring about their "rule."

An example of rule through lawyers is a 14-mile stretch of badly needed highway north of Salt Lake City. For years, growth along I-15, the only north-south highway, drove planning by the Utah DOT for a new north-south route to alleviate some of the congestion. This relief was necessary not only for convenience,

but also for safety.

The public support for the project was great. Yet, out-of-state environmentalists joined some locals in suing over the construction of the new road known as "The Legacy Parkway." This small coalition sued to halt construction because they claimed that mitigation of the road's impact was inadequate. Their complaint focused on 200-odd acres of marshy swamp along the outer edges of the Great Salt Lake. Though they lost their legal battle in Utah, an environmentally-tilted 10th circuit court in Denver handed them a reversal victory. The whole process cost the state 200-300 million dollars and years of delay.

In exasperation, state road department officials and some local politicians settled on an "agreement"

that would result in a lawsuit being withdrawn. This was actually nothing more than legal extortion. Utah agreed to provide millions for environmental research; impose restrictions such as a 55-mph speed limit; constrain the number of lanes and their widths; and ban large truck traffic and billboard advertising. The process is exactly the type of corruption against legislative powers and the democratic process that lawyers have wielded on their own, only this time the extortion was accomplished through the funds of others who hired the lawyers to foment their undemocratic blackmail.

So we see how anti-auto measures can haunt us in a new and frightful manner, even without any legislative action, or while altogether ignoring the normal law-making process. ■

The Visual Speed Estimate In Traffic Speed Enforcement by Henry Roberts, Radar/Laser Expert and NMA Member

Virtually all Doppler radar and laser (lidar) operator manuals include a page or two of "model testimony" that a police officer *needs* to deliver in order to sustain a speeding conviction. This testimony contains a declaration that the operator made a visual estimate of the target vehicle's speed and *then* corroborated this estimate with a radar or laser speed reading.

He might also add that he was trained and tested to a speed-estimation accuracy of one mph, which places his capability on par with the accuracy of the speed measuring device itself.

Not only does this testimony sound impressive; it also drapes the police officer in a "Superman cloak" of speed-estimation invincibility, which is far from the actual truth. Most states do not train or test operators in visual speed estimation, since formal training and testing is expensive. From a legal perspective, the officer's statements are opinion, not fact, unless a proper foundation can be laid to support it.

Textbooks dealing with the eye point out that "unaided human beings are poor 'seeing meters' and with all our learning, seeing is still deceiving. We are more likely to see what we expect to see or more used to seeing."¹

Despite this fact, defense attorneys rarely contest visual speed estimates vigorously, if at all, and thereby forgo any chance of winning their case. Defense lawyers involved in speeding cases will often hire expert witnesses with backgrounds in radar and/or laser, but rarely ever with backgrounds in optics or the physiological aspects of the human eye.

Courts recognize that police officers in speeding cases are expected to be able to testify as to distance and times.² So a good defense tactic would be to ask the police officer the following basic questions:

1. How far from you was the oncoming target vehicle when you made the visual speed estimate?
2. How far from you was the target

vehicle when you took the speed measuring device reading?

3. How much time elapsed between these two events?

Using the answers, a target speed can be calculated by subtracting the two distances and dividing the result by the time. Based upon this writer's 20 years of dealing with speeding cases, this calculation never closely matches the officer's visual speed estimate or the speed measuring gun reading; Most calculations yield speeds below 15 or 20 mph or above 200 mph.

If the accepted definition of speed is the change in distance divided by time, why don't observers' distances and times ever seem to produce correct



speeds? Is it due to the fact that a speed determination based on three estimates, two of distance and one of time can lead to unrealistic, widely inaccurate results? Is it reasonable to expect police officers to be able to estimate distances and times to tight tolerances? Is it unreasonable for courts to expect police officers to *accurately* cite distance and times? Or is it that the human eye has great difficulty in estimating distances and the mind difficulty in estimating time? Or is it just that police officers need to make speed estimates so quickly that the process is flawed?

Bear in mind that many police officers, when asked how long it takes them to make a visual speed estimate, claim to be able to do it instantly. However, if they are furnished with a

photograph of a vehicle in motion and asked to estimate its speed, they would say that it's not possible to estimate the speed from a snapshot, which is, after all, an instantaneous record.

When a very distant oncoming vehicle traveling at a constant speed is first viewed, the target appears to be small and not moving at all, but the closer the vehicle gets to the observer, the larger and faster it appears to be moving. Hence, the human eye, which is capable of sensing an object's size, shape, motion, and color, is limited to sensing the changing size of the target vehicle over time when it is directly approaching or departing.

When targets are moving in a transverse direction to the observer, the size tends to appear constant, but the motion of the target relative to certain landmarks is useful in estimating speed. However, Doppler radar and laser devices are not capable of being used in this transverse manner.

The fact is, the human eye senses the change in target size over time to be speed. Given that, what relevance should it have in a court of law when speed is clearly defined as the change in distance over time, not the change in apparent size over time?

Now, consider the ability of the human eye, which is often measured against a Snellen eye chart in an optometrist's office. Good visual acuity, (e.g. 20/20 vision), is limited to about two minutes of subtended arc. This means that a person with good vision would just barely be able to see a six-inch-high license plate viewed at a distance of 855 feet.

Consider the case of a laser speed enforcement wherein a laser gun, which provides no image magnification for the operator, is used. Can the operator testify in court that he aimed his laser gun at a six-inch license plate (designated as the proper aiming point in his operator-training manual) at distances in excess of the limiting eye resolution of 855 feet?

continued on page eleven

A Report On The

Breath-Alcohol Analysis On Trial

by John Holevoet, Director Of Development

Over the years, there have been numerous discussions of the accuracy of breath-alcohol analysis in this publication. The underlying opinion is that *breath* alcohol analysis is a poor way to determine what a person's *blood* alcohol level is. This problem is compounded by the fact that even reliable blood-alcohol levels do not measure driver impairment.

Recently, there has been a flurry of decisions from Florida, Texas, and New Jersey that have all called the accuracy of breath-alcohol analysis into question, and have granted the driving public some limited protection from its often heavy-handed use.

Lawyers for 150 Floridians accused of drunk driving have asked a court to order the disclosure of the source code for software running the Intoxilyzer 5000 breath-alcohol analyzer. The defendants logically said that they should have the right to examine the machines that accused them, and that a meaningful examination requires access to the machines' software.

Prosecutors claimed that the code is a trade secret and that the machine's technical manuals convey enough information. However, there are already practices in place for handling trade-secret information. Furthermore, having read various radar and laser manuals, I know that the manufacturer's description of how a device works is a poor substitute for knowing in detail how it actually works.

A panel of judges in the Sarasota County agreed, and granted the defendants' request "The defendants have established that the source code is material to their theory of defense in these cases," judges David Denkin, Kimberly Bonner and Judy Goldman wrote in their ruling.

The state is unable to comply with the ruling because it does not own the source code and the manufacturer is refusing to hand it over. In effect, the ruling has

suppressed all the breath tests until this matter is resolved.

Texas Defense attorney Troy McKinney has helped lead the charge against the scientific integrity of the Intoxilyzer 5000; a machine widely used throughout the state to gage a person's breath-alcohol level. During his defense of a client accused of DWI, it was revealed that Texas disregards the Intoxilyzer's manufacturer guidelines for operation, which could affect thousands of cases throughout the state as authorities and defense lawyers debate



the credibility of breath tests.

McKinney argues that the program lacks adequate quality controls for calibrating breath-test devices, which compute a DWI suspect's breath-alcohol level. After hearing the argument, Court at Law Judge Jay Karahan refused to allow the head of the Houston Police Department breath-testing training program to testify against McKinney's client, and prosecutors dropped the charge.

McKinney became suspicious after he found that the Intoxilyzer in this case was being used with its voltage meter registering a current outside that recommended by the manufacturer. The Department of Public Safety's (DPS's) approved version of the Intoxilyzer operator's manual is available on the agency's Web site, but it does not include voltage parameters. The department does not make the manufacturer's version,

which includes voltage range recommendations, available.

McKinney also obtained a letter written by Richard Baxter, the head of DPS's breath test program, in which Baxter writes, "We have our own operator's manual that is used exclusively in our program and we routinely discard the CMI [manufacturer] manual when we unpack a newly arrived Intoxilyzer."

The top judges for three New Jersey counties ruled that municipal prosecutors cannot try DUI cases using readings from the Alcotest 7110, a machine that is supposed to replace Breathalyzers until the units are proven to be accurate.

The decisions by Theodore Bozonelis follow an appellate court ruling in a Middlesex County case about these devices. The appeals panel said the state must prove that the Alcotest is reliable. The appeals panel upheld Superior Court Judge Jane Cantor's order that halted the prosecution of Middlesex County drunk driving cases in which the new detector was used.

Like the Breathalyzer, the Alcotest measures a motorist's alcohol level after he or she blows into a plastic tube. But the Alcotest uses infrared and fuel cell technology, while the Breathalyzer relies on photometric technology and requires recalibration each time it is used.

Currently, cases are proceeding without the Alcotest results. The New Jersey Supreme Court has announced that it has appointed a retired judge to hold hearings on the accuracy of the Alcotest 7110 and make a recommendation on whether results from the device should be admissible.

Unfortunately for motorists accused of drunk driving because of this questionable technology, these cases may only provide temporary relief. You can count on the NMA and NMA Foundation to monitor these cases closely, and keep you informed of any future developments. ■

State of DUI/DWI Laws

Virginia Bucks DWI System

Judge Ian M. O'Flaherty made it known in July that he felt Virginia's DWI law unfairly deprived defendants of the presumption of innocence if breath tests showed that they had a blood alcohol content of .08 or higher. The Fairfax County judge has since begun dismissing charges against those accused of DWI if he believes their constitutional rights have been violated.

As it does in all other states, Virginia's drunk driving law reads that whenever someone has a .08 or higher reading on a breath test, "it shall be presumed that the accused was under the influence of alcohol intoxicants at the time of the alleged offense."

Prosecutors defend the law saying defendants still have the opportunity to prove the presumption wrong, but O'Flaherty says it wrongly shifts the burden of proof from the prosecution to the defense. "The Fifth Amendment," said O'Flaherty, "is an absolute protection against requiring the defendant to say or do anything in the course of a trial." This alone makes the idea that the defendant should have to fight off the presumption of his or her guilt untenable.

No other judge in Virginia has joined O'Flaherty, but he has said that some other jurists have told him they agree with him. "I had one judge tell me, 'I'd rule that way, but I don't have the guts to,'" O'Flaherty said. Prosecutors cannot appeal a case that they have lost at trial at the General District Court level, so they began requesting that charges be dropped before cases went to trial in O'Flaherty's courtroom. O'Flaherty has since begun denying those requests.

After O'Flaherty dismissed one drunk driving case last July and another in early August, Fairfax prosecutors began dismissing the cases themselves before trial and then indicting the drivers in Circuit Court. In October, however, when veteran prosecutor Kathryn Swart tried to do that, O'Flaherty would not allow it. Shortly thereafter, another prosecutor, Jenna Sands, asked

O'Flaherty to recuse himself from a DWI case, and when he refused, she asked him to allow her to dismiss the case so it could be indicted in Circuit Court. O'Flaherty denied the dismissal, saying that it was unethical and an example of so-called "forum shopping."

O'Flaherty explained that he had allowed prosecutors six dismissals without cause, so those cases can rise through the system and possibly to the appeals courts, where a formal opinion could be issued. "Half a dozen seems like a reasonable number," the judge said. "After that, there's no reason not to proceed in a regular manner."

O'Flaherty also believes it is unfair to presume that a breath test taken 90 minutes or more after a traffic stop is an accurate reflection of a driver's blood alcohol content at the time the person was driving. Defense lawyers have argued that the blood alcohol content of someone who drinks immediately before driving could still be rising when the person was tested later.

Critics, including those associated

with MADD, have accused O'Flaherty of not caring about the public's safety. Yet, there are many within the legal community that support the judge's decision and say that the judge is making a valid argument and protecting the constitutional rights of all motorists.

Ronald Bacigal, a criminal law professor at the University of Richmond, said of O'Flaherty: "I think he's exactly right. There are U.S. Supreme Court cases saying you can't relieve the government of proof beyond a reasonable doubt, which is what a presumption does."

Steve Oberman, a Tennessee lawyer and head of the National Association of Criminal Defense Lawyers' DUI committee, said similar arguments about presumptions in the law had been successful in various courts across the country over the years. He noted that state supreme courts in Massachusetts and Colorado have ruled exactly as O'Flaherty has on presumptions in drunken driving cases. ■

N.H. Judge Rules DWI Checkpoint Illegal

Portsmouth District Court Judge Sharon DeVries dismissed "driving while intoxicated" charges against five people arrested at sobriety checkpoints, after she deemed the stops unconstitutional. She said that city police failed to give advance notice, as required by New Hampshire law, which makes random searches and seizures illegal.

She cited two state Supreme Court rulings and sobriety checkpoint guidelines issued by the state Attorney General's office that say advance notice and "aggressive public information efforts" are essential to making the checkpoints effective and legal.

The Portsmouth police asked a

Rockingham County Superior Court judge to approve the checkpoints on July 5. The judge approved the petition July 7 and the roadblocks started operating the next day, the ruling said. The only advance publicity was a news release, which the newspaper published the day the roadblocks went up.

"The state could have postponed the checkpoint date," DeVries ruled, "It failed to do so."

Rockingham County Attorney Jim Reams said he would ask the Attorney General's office to appeal the ruling and argued that DeVries was wrong to rely on the attorney general's guidelines. "They're guidelines, not mandates," he said. ■

Ohio's Ticket Cameras

Ohio is a hotbed of ticket camera news. Recently in the state, there have been stories about ticket camera abuse, ticket programs operating incorrectly, and even a lawsuit relating to cameras.

The latest example of the unethical use of ticket-cameras comes from Akron's photo radar program. Over a 19-day period, from late October through November, photo radar was set up as a pilot project in the various school zones. The number of tickets issued was 2,676 and generated over \$450,000.

Once the results of this pilot project were reported, the complaints swamped the city council. The council held a special session to determine what to do with the program. Rather than disband the program, the decision was made to reduce the ticket fines to \$35. Their hope is that a smaller fine will diminish the number of complaints.

The vast majority of the complaints from ticket recipients to Akron officials was due to lack of signs and/or no children being present at the time of the citation. In short, most of the drivers who were cited had no knowledge the lower limit was in place at that time.

Also, the city reported that over

forty percent of the tickets were issued to drivers who fell in a category of exceeding the speed limit by ten mph or less. Reports show that tickets were issued for anyone traveling as little as five mph over the limit.

Another story regarding an Ohio ticket program running incorrectly comes to you courtesy of Ohio State Representative Jim Raussen. The name may be familiar to NMA members

The same abuses and arguments are playing out in every community that uses ticket-camera technology.

because he is the sponsor of House Bill 56, which would strictly limit photo enforcement in Ohio.

The *Cleveland Plain Dealer* reported that Cleveland police officers had reviewed only 230 of 700 photographs that were taken as part of Cleveland's new photo-enforcement program.

"Earlier this fall, Cleveland officials testified before the Senate Highways and Transportation Committee that Cleveland officers would review *all* citations and that the officers would be

making the decisions about whether or not a motorist should be cited. In the first week of the program, they are already failing to live up to the comments they made to the committee" Raussen said. "This is exactly why I will continue to push legislation in the Ohio Senate to ban the use of photo enforcement unless an officer is present."

The last bit of news concerning ticket cameras in Ohio is positive. The camera program in Steubenville has been put on hold. According to *TheNewspaper.com*, Jefferson County Common Pleas Judge David E. Henderson issued a preliminary injunction against the speed camera program due to a class-action suit filed by Attorney Gary Stern.

Stern filed the lawsuit on November 23, after his wife was mailed a pair of \$85 speed camera citations. She was not driving the vehicle at the time of the alleged offense. Stern charges that the city failed to follow the terms of its own ordinance, which required fourteen days of advance notice before installing the cameras.

Stern also cites constitutional problems with the ordinance: "Persons who wish to contest their citations are limited to a hearing that is not subject to any prescribed rules of procedure or evidence, and is not heard by an impartial tribunal, but is decided by a police officer employed by the very department that issued the citation, whose decision is final and not subject to judicial review or further appeal, all of which violate the due process rights guaranteed by the Ohio and the United States constitutions."

What is occurring in Ohio is actually happening across the United States. The same abuses and arguments are playing out in every community that uses ticket-camera technology. It is heartening to see the media beginning to report on problems associated with the technology, rather than printing press releases from ticket-camera companies. ■



Saab Club
OF NORTH AMERICA
www.saabclub.com



Nines

Membership fee for the Saab Club of North America includes a subscription to the bi-monthly NINES magazine, two SCNA decals, and a membership card valid for discounts at participating dealers and independents.

MEMBERSHIP/SUBSCRIPTION INFORMATION

NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

HOME PHONE _____ WORK PHONE _____

E-mail address _____ Fax # _____

SAABS CURRENTLY OWNED:

Example: Year 1968 Model & trim 95 Body style Wagon
Engine V4 Transmission 4-spd VIN# (for vintage Saabs) _____

Year _____ Model & trim _____ Body style _____

Engine _____ Transmission _____ VIN# _____

Please include additional vehicles on separate paper.

UNITED STATES

One year \$40.00US

Two years \$75.00US

INTERNATIONAL (including Canada)

One year \$45.00US

Two years \$85.00US

*** SUBSCRIPTION ONLY ***

NINES Magazine is available separately as follows:

UNITED STATES

One year (6 issues) \$30.00US

Two years (12 issues) \$58.00US

INTERNATIONAL (including Canada)

One year \$34.00US

Two years \$66.00US

(NOTE: International and Canadian subscriptions — Money order or check payable on a U.S. bank only.)

Please check the appropriate box. Thanks!

YOU CAN ENTER A NEW SUBSCRIPTION OR RENEW YOUR OLD SUBSCRIPTION BY CREDIT CARD SECURELY ON THE INTERNET THROUGH THE SAAB NETWORK (TSN)!

Point your browser to <http://www.saabnet.com/tsn/forms/>

MAKE CHECKS PAYABLE TO "SB Productions"

Mail to: NINES Membership
30 Puritan Drive
Port Chester, NY 10573-2504

Phone: 914-937-6075 9 to 7 EST
Fax: 914-937-6075
E-mail: nines@earthlink.net

What Are You Afraid Of?

by John Holevoet, Director Of Development

I don't know about you, but I'm far more fearful of a cop with a Taser than I am a motorist with some cough medicine. A recent story out of Indiana justifies my position, and points out just how out-of-control DUI enforcement has become.

Jennifer Marshall had the flu and decided to drive to a nearby convenience store to pick up some medicine. A sheriff's department patrol pulled in behind her and the two officers accused her of running a stoplight, an accusation that Marshall denies.

After cooperating with a series of physical sobriety tests and giving inconclusive breath tests, one of the deputies told her that she would have to go to jail unless she submitted to a chemical test. Marshall, unsure of what that meant, insisted on calling her attorney and reached inside her car for a cell phone.

The officers denied her permission to make a call, and when she persisted, one of the deputies declared it "Taser time" and reached for the weapon. The deputies, who were both much larger than 5-foot-5, 110-pound Marshall, had a firm grip on her as they pulled her out of her car and to the back of her vehicle. Yet, she was still tased. The entire surreal incident was captured on the cruiser's video camera, including the petite Marshall writhing on the ground yelling, "Oh, my God! Oh, my God!"

Last summer, with Ralph Tambasco as her defense attorney, Marshall was found guilty of operating a vehicle while her blood-alcohol content was 0.08 or more. However, Tambasco and Marshall both maintain that any alcohol in her system was the result of medicine she had been taking and, perhaps, a

flawed analysis because of the lengthy delay in testing and questionable test-control procedures.

Sheriff Doug Carter disregards Marshall's suit, claiming that her conviction demonstrates that it is without merit. Carter stands by deputies named in the suit, despite the fact that his own orders regarding the use of Tasers state that the devices should "only be used as a means of averting a potentially injurious or dangerous situation." As for the Marshall incident, Carter could only find fault with the use of the phrase "Taser time," which he admits was inappropriate.

Marshall said she is determined to see the case through to the end. "I was tasered for trying to call my attorney," she said, "I did not resist arrest in any way." ■

Visual Speed

continued from page seven

Recognize also that radar and laser speed enforcement are performed against moving targets. Hence dynamic visual acuity comes into play, rather than the static visual acuity associated with eye charts. Therefore, the apparent change in size of the approaching or departing target is even more complex. The officer needs to resolve the degree to which the eye and mind can retain the target image's apparent changing size during the estimation timeframe.

Bear in mind that if visual speed estimation is very difficult in stationary radar enforcement (when the officer is not moving), then visual speed estimation is downright impossible in the moving radar mode when the target vehicle and the patrol vehicle are closing in on each other.

Under these circumstances, the officer must perform two visual speed

estimates simultaneously, one estimate of the closing speed of the two vehicles, another of the speed of his own patrol vehicle. Then he/she must subtract his speed from the closing speed to come up with the target vehicle's speed. As a matter of fact, that is exactly the process used by moving radar instruments. They measure the closing of the two vehicles and the speed of the patrol vehicle; Then, they calculate the difference speed to be that of the target vehicle. In practice, the Doppler radar works well, but humans are just not up to the same task.

It is important to acknowledge the complexity of visual speed estimation. Up to this point, the discussion has been limited to what the eye can discern under the best viewing condition, but certainly we can anticipate that under adverse conditions the ability to see clearly will be reduced. This is key, given that police officers often perform visual speed estimates under poor conditions caused by weather, time of

day, or visual obstacles.

Similarly, the discussion regarding other aspects of the human eye (depth perception, binocular vision, eye accommodation, image retention, age of the viewer, contrasts, glare, night vision, light adaptation, perceptual latency time, etc.) may also come into play. Textbooks on the subject point out that it is clear "whether the estimation of a velocity is more accurate at low or high speeds" and "that estimates of speed are generally inaccurate."³

With all of this to consider, it is clear that visual speed estimates should be challenged more often.

1. Matthew Luckiesh and Frank K. Moss, *The Science of Seeing* (New York: Van Nostrand, 1938), 119.
2. *State v. Wojtkowiak*, 174 N.J. Super. 460, 1980. *State v. Wojtkowiak*, slip opinion, APP. 81-78, 170 N.J. Super. 44, 1979. See slip opinion for emphasis.
3. Paul L. Connolly and Ingeborg Schmidt, *Visual Considerations of Man, the Vehicle, and the Highway* (New York: Society of Automotive Engineers, 1966): 12 and 17. ■



News From Around The Country

Colorado

A report from Fort Collins suggests that the city's red-light cameras have not been effective in reducing the number of accidents at a problematic intersection. In fact, the number of red-light violations at the city's lone camera-monitored intersection have jumped 64 percent. This hasn't stopped some city officials from pushing for more cameras to be installed.

Illinois

Tollway officials are attempting to pass several new penalties for I-PASS users, including revoking transponders for traffic tickets and charging \$25 for drivers who forget the device. The rules won't take effect until a legislative panel approves them months from now, and the public can submit comments in writing until that point. The NMA is working to have a public hearing, so commuters can comment directly on these controversial changes.

Indiana

When Indiana raised its speed limit on rural expressways to 70 mph, many opponents claimed Hoosiers would face carnage on their highways. As usual these baseless claims have been proven wrong. Sergeant Joe Watts with the Indiana State Police says, "Crash rates, the fatalities in Indiana, compared to this time in 2004, are down about 10 percent. The total crashes in Indiana, compared to this time in 2004, have dropped 10 percent also."

Kentucky

There is a possible compromise that could raise the state's interstate speed limit to 70 mph. Acknowledging it is difficult to enforce the current speed limit, Transportation Secretary Bill Nighbert says he supports the higher speed limit. Unfortunately, he is insisting that it be tied to a law

allowing police officers to stop drivers solely for not wearing a seat belt.

Maryland

A Canadian company has been hired to monitor the flow of traffic in metropolitan Baltimore by using an emerging technology that tracks the constant stream of data generated by drivers' cell phones as they communicate with towers in the network. The plan is to use the technology to help keep traffic moving smoothly, although there are also obvious privacy concerns associated with it.

Massachusetts

The state has a new, stricter DUI law that requires an immediate lifetime license revocation for refusal of a breath test after three prior convictions for unauthorized use of a vehicle, loaning a driver's license, negligent/reckless driving, or DUI. In addition to license revocation, these motorists will also have their vehicles impounded. Another aspect of the law calls for the seizure of all vehicles owned by someone convicted of DUI for the fourth time.

New Jersey

Currently, New Jersey law only allows police to charge a driver for using a hand-held phone if they've already been stopped for another moving violation. Legislation to change the law so that police can write tickets for hand-held phone usage alone is making its way through the legislature. Such a bill passed the Senate by a 39-0 vote. A similar, but slightly different bill is currently before the State Assembly.

North Carolina

The North Carolina Governor's Highway Safety Program paid the Institute for Transportation Research

and Education (ITRE) \$141,102 to produce a study supporting the use of speed cameras in Charlotte. A press release related to the study proclaimed, "Automated enforcement of speed improves safety." A closer examination of the results revealed a number of questionable claims that suggest the study was purchased, rather than commissioned. The authors' bias is glaringly obvious.

Rhode Island

The state Department of Transportation has established rules for the use of red light cameras (RLCs). These new regulations require that local officials meet a variety of technical standards and that they allow for a modest grace period. Officials in Warwick, Cranston, Providence, and Middletown have all expressed an interest in using RLCs, although no community has filed a request with DOT to do so.

Texas

San Antonio officials recently asked the Texas Department of Transportation to consider raising speed limits on several freeways throughout the city. TxDOT studied the matter and is moving forward to raise the speed limit by ten mph on some stretches of road. This change helps to bring these speed limits in line with the 85th percentile of free-flowing traffic.

Washington

Adams County Prosecutor Randy Flyck made headlines for his policy of offering traffic ticket defendants dismissals of their tickets if they give "donations" to a local museum. Flyck formerly employed Ann Olsen, the curator of the museum in question. Traffic fine money has also been diverted to a local animal shelter and the county's D.A.R.E. program. ■

As of this printing, this information is current. For more information on this and other motorist news, visit www.motorists.org.



Members Write

"The Cosine Effect can set you Free" in the November/December 2005 issue discusses the cosine effect on motorists' speed. It can also effect the speed-reading of the patrol car. I've seen patrol cars with the radar antenna turned, not pointing accurately in the direction the patrol is traveling. Typically pointing toward the motorist. This is fine if speed is being observed while the patrol car is stationary. But if it's moving it will cause the patrol speed to register lower, thus calculating the motorist's speed higher. It's possible the differences would offset each other, but it could be a factor to argue in court. Proper operation of moving radar requires the antenna be aligned with the patrol car.

Roy Smith, Jr.
New Bern, NC

Wow! The November/December issue was the greatest ever!

Joan Claybrook has never come close to receiving what she deserves as perhaps the worst administrator of a federal agency!

Robert Talley's *Washington Report* was exceptional as well.

Kyle Tarpoff
Granite City, IL

Enjoyed the newsletter, as always. Reading about the history of NMA made me think back to the CCRTL days. I didn't remember CCRTL started in 1982 (the years fly) and it made me wonder—in what year did I join?

It's been a long, long time with you, Mr. Baxter (still have the ban 55 sticker on the back of the bike, remember those?) and I have always enjoyed your ability to leave the emotion out and the facts in. Sad thing is, most of the so-called safety zealots won't listen to the facts.

Mathematics-based information is only pertinent when it comes to revenue generation.

Scott Stradley
Burluson, TX

I would like to clarify the intent of the national 35 mph speed limit of WWII. This was instituted by a President Roosevelt Executive Order along with gasoline rationing to allay the panic that a *tire confiscation* program would have caused.

Although there was plenty of gasoline, our country was faced with severe shortages of blockaded supplies of *rubber* for the war effort.

FDR's advisors wanted to confiscate all the privately owned tires in the country in the name of National Defense, but would settle for just taking the spares. Roosevelt declined both ideas. Instead, he proposed a national speed limit of 35 mph and gasoline rationing!

The speed limit and rationing

scheme meant many cars would be put into storage or used far less, thus preserving the precious rubber tires should their taking later prove necessary.

Unfortunately, the myth of gasoline conservation speed limits hangs on, inviting those who feel they must control others by hook or by crook, such as President Nixon's twisting the intent of the WWII need for gas rationing!


These same people turn to lobbying for "feel-good" useless laws by asserting falsehoods and half-truths which a sensationalist and biased news media vigorously promote!

Roadblocks, motorcycle helmets, and the "double-nickel" are just a few of such sorry overzealous examples.

Raymond A. Saquet
Stoughton, MA ■

Your letters are welcomed and should not exceed 300 words. They may be edited for length or clarity. Full-length articles will also be considered for publication and should not exceed 600 words. Submissions may be emailed to nma@motorists.org or mailed to us.

The **DOUBLE ZAP TRAP**...no other detector will find IT



ZAP 1: Coming at you is a radar patrol


ZAP 2: Another radar just over the hill

Your Warning from an Ordinary Detector: "Beep!"
Your Warning from Valentine One: "Two radars, one ahead, one behind."

V1 play-by-play: First, you see a red arrow. It points ahead. The Bogey Counter shows two radars. As the patrol car goes by, an arrow follows to point behind. Another arrow points ahead; it flashes to indicate the greater threat.

See how V1 beats the Double Zap:
<http://DoubleZap.valentine1.com>

"Once you live with the arrows, you'll wonder how you ever managed without them."
 — Car and Driver



Mike Valentine:
Radar fanatic

Call toll-free 1-800-331-3030


Valentine One Radar Locator with Laser Detection - \$399

Carrying Case - \$29 / Concealed Display - \$39


Plus Shipping / Ohio residents add 6.5% sales tax

30-Day Money-Back Guarantee

Valentine One is a registered trademark of Valentine Research, Inc.



Valentine Research, Inc. Ph 513-984-8900
 Department No. XPN5 Fx 513-984-8976
 10280 Alliance Road
 Cincinnati, Ohio 45242





The Experts' Corner

If you have a question that only an expert can answer, the NMA can help. The experts here have volunteered to help you. Please mention that you're an NMA member you contact them.

If you would like to join this list, contact us with your field of expertise, contact address, and preferably a telephone number. This is not intended for listing of commercial business services.

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

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

• **Motorist Marketplace** •

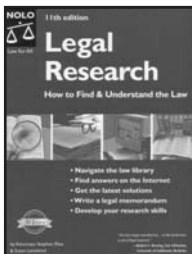


NMAF Legal Defense Kit™

Represent yourself in traffic court and **win!** In addition to covering court procedures and strategy, this nine-pound kit includes technical information on speed enforcement devices. It also contains state-specific information on Discovery and Public Records Laws (this is how you get information from the police on your case!). Remember, this resource is being constantly updated and improved.

Call 800-882-2785 to order the Kit and tailor it specifically to your ticket!

Member Rental Price:
 \$30.00 per month rental
 \$13.00 S&H (9# box)
 \$155.00 refundable security deposit.



Legal Research: How To Find & Understand The Law

Many laws and statutes that you need to prepare your case are state specific, which means that you will have to do the research. This book gives you the basic understanding of how to conduct legal research. The book explains everything in easy-to-understand terms. It also uses many examples to explain its points. The examples are issues that most people have heard of and can relate to such as wills, small claims, and fighting tickets.

Member Price: \$34.95
 Non-Member Price: \$44.95
 Quantity _____
 \$ Amount _____



Guerilla Ticket Fighter

Now, while you're driving, you can learn how to fight traffic tickets and win. By purchasing this tape package, you will make an important first step toward being a victor instead of a victim. **Guerilla Ticket Fighter** will tell you how to defend yourself against traffic tickets using strategies that have proven successful for other motorists, just like you.

Member Price: \$15.95
 Non-Member Price: \$19.95
 Quantity _____
 \$ Amount _____



Every Woman's Car Care

Many motorists don't have useful knowledge about the vehicles they drive. This book can help. While it was written by and for women, this book is an asset for anyone. Its 262 pages cover everything from how to read gauges to "jump starting" and trouble shooting. Its convenient size means you can easily keep it in the car for quick reference, if the need arises.

Member Price: \$14.95
 Non-Member Price: \$19.95
 Quantity _____
 \$ Amount _____

This is a brief list of products available to you. For a complete list, visit our Motorist Marketplace at www.motorists.org or call 800-882-2785.

Subtotal _____
S/H (see chart below) _____
Total _____

• Please Print Clearly • • Make checks payable to: NMA Foundation • • CANADA: Visa or MasterCard ONLY

NMA MEMBER: yes no **MEMBER #** _____

NAME _____

ADDRESS _____

ADDRESS _____

CITY _____ **STATE** _____ **ZIP** _____

DAYTIME PHONE (____) _____ **E-MAIL** _____

I prefer to use my: VISA MasterCard _____

Signature

Credit Card Account Number: _____

Expiration Date _____

MAIL TO: NMA Foundation, 402 West 2nd Street, Waunakee, WI 53597

• Order toll free: 1-800-882-2785 • FAX: 1-608-849-8697 • Web Site: www.motorists.org

U.S. Shipping & Handling Charges

If your merchandise total is:	Please add:
Up to \$5.00	S/H incl
5.01 - 15.00	4.00
15.01 - 25.00	5.00
25.01 - 35.00	6.00
35.01 - 50.00	7.00
50.01 - 75.00	8.00
75.01 - 100.00	9.00
over 100.00	10.00

NMA State Chapter Coordinators and Activists

Dedicated volunteers who monitor, publicize, and lobby critical motorists' issues, for you, within your state. They can also provide insights on how to best fight a traffic ticket in your state.

As an NMA member, the State Chapter Coordinators and Activists are available to you online at <http://www.motorists.org/join/membersonly/sccact.html>



NMA Foundation
402 W 2nd St
Waunakee WI 53597

Non-Profit Org.
U.S. Postage
PAID
Madison, WI
Permit No 168

ADDRESS SERVICE REQUESTED

If your NMA membership expiration date is on (or before) 01/01/06,
this is your last issue of *Driving Freedoms*.

PLEASE RENEW NOW TO AVOID ANY LAPSE!