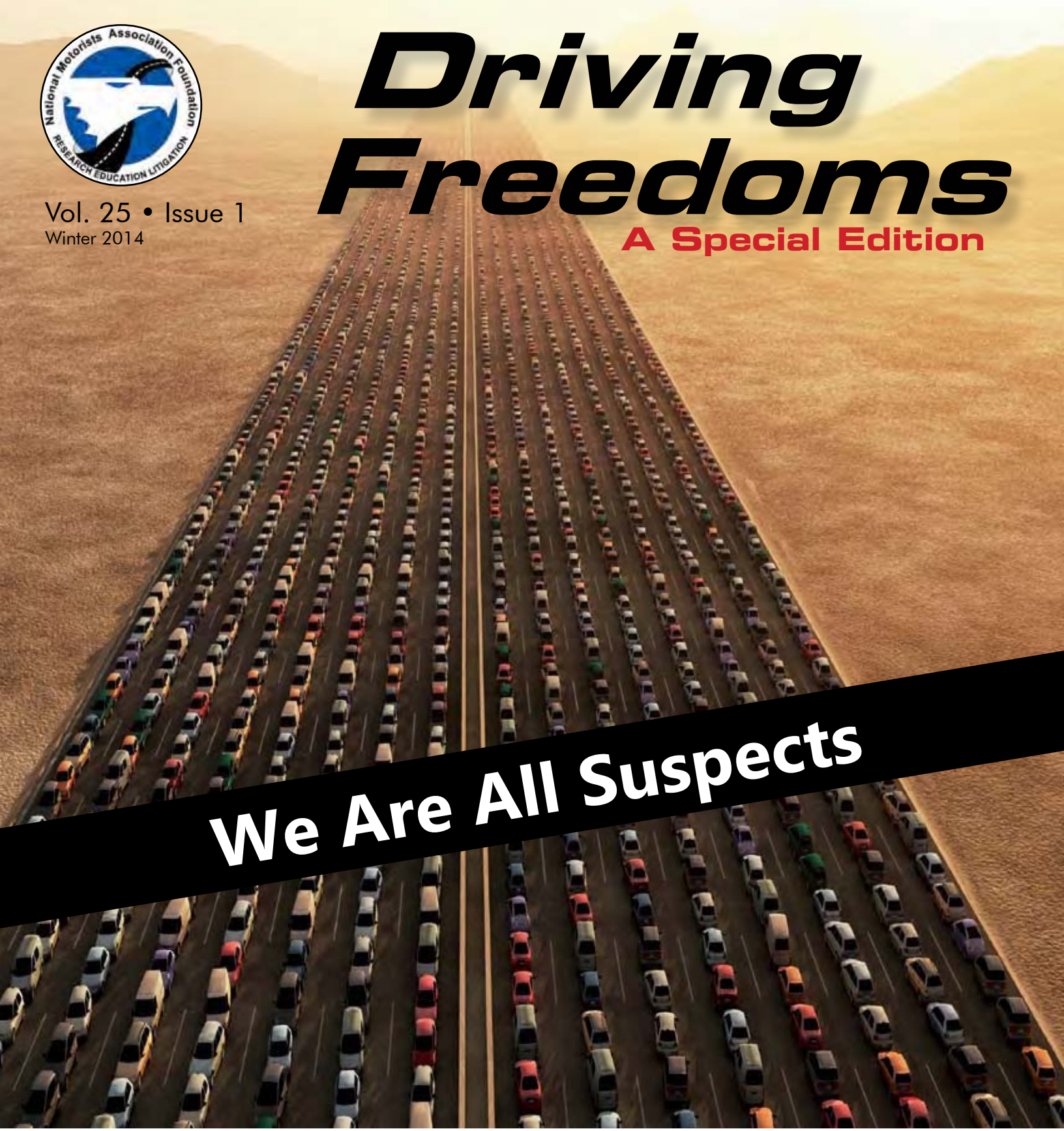
Vol. 25 • Issue 1
Winter 2014

Driving Freedoms

A Special Edition



We Are All Suspects

NMA Foundation
402 W. 2nd St.
Waunakee, WI 53597

ADDRESS SERVICE REQUESTED

Driving Freedoms

TABLE OF CONTENTS

Volume 25 • Issue 1

Driving Freedoms (permit#0716556-KWP) is the official publication of the NMA Foundation, Inc. ***Driving Freedoms*** is published quarterly 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 ..... John Bowman
Staff Writer ..... Gary Biller
Staff Writer..... Ted Levitt
Editor-at-Large..... Bill Jordan

Cover
"We Are All Suspects"

A Call to Action

by Gary Biller, President, NMA

This special edition of ***Driving Freedoms*** has a singular theme and a singular purpose. The theme, illustrated throughout the following stories and commentaries, is the alarming erosion of the fundamental right of presumed innocence in our justice system. This damaging trend affects all citizens but here our focus is on the impact to motorists. The purpose? To spark emotion, be it anger or frustration, strong enough for you to take further action with us.

For the NMA to wield enough leverage to tackle the decline of our most fundamental due process right of "innocent until proven guilty," we need to boost our resources. And that starts with recruiting new members who are fed up and won't take it anymore.

I am calling for every supporting member reading this to reach out to at least three candidates and actively recruit them to join the NMA, to join the fight against this attack on our collective individual freedoms. Make copies of the ***Eight Reasons Why Every Driver Should Join the National Motorists Association*** on page 4 and distribute the ***Join Us and Be Heard*** pamphlet stitched into the binder of this magazine. Better yet, hand out this entire issue of ***Driving Freedoms*** with its story upon story of the degradation of our civil liberties. Don't want to give up your copy of ***Driving Freedoms***? No worries; we will gladly mail you several more upon request.

When handing out NMA material, add a few of your own personal thoughts of why you belong to the only comprehensive drivers' rights organization in North America. This recruitment campaign can't stop until we triple our current number of supporting members. At a membership rate of $35 per year, isn't it worth less than 10 cents a day to belong to an organization that has put the interests of the driving public first for the last 32 years?

Get ready to be outraged as you continue reading. You might want to move any breakable items within your reach as you do so. Channel that energy into the biggest recruitment program the NMA has undertaken since the organization was founded in 1982. We need your help. Drivers everywhere need your help.

◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇◇

The disturbing phrase that comes to mind is "guilty by suspicion." How can we allow such an ugly concept to overwhelm the bedrock words of our constitutional democracy, ***Innocent Until Proven Guilty***?

If you think I'm exaggerating, read on—story after story describing the blatant subjugation of drivers' rights by the state.

I searched online for the phrase "guilty by suspicion," curious to see what other connotations might emerge. Sure enough, there was a movie released in the early 1990s starring Robert De Niro with that exact title. The production dealt with the Joseph

(Continued on Page 2)

A Call to Action

(Continued from Page 1)

McCarthy era, a time when accusations were being slung left and right about communist subversives operating through all of society, but particularly in high levels of government.

The grandstanding paranoia of Senator Joe wasn't quite the tone I'm looking for here, although a case could be made that our present-day citizenry kowtows to authority nearly as much as it did in the Red Scare days over 50 years ago. We see and hear it regularly from those who refer to the NMA and its supporters as "scofflaws" because we have the audacity to challenge traffic laws that are unfair to responsible motorists. The common refrain from those accusers is, "If you don't want a ticket, don't break the law." Little thought is given to how the game is rigged to generate revenue without corresponding safety benefits.

Thank goodness Jim Baxter and the CCRTL/NMA membership paid that attitude no heed in successfully challenging the government's misguided 55 mph limit in the 1980s and 1990s. Even then it took 15 years to repeal a bad law and several years more, continuing through today, to effect reform of the nation's speed limits.

Another movie released about ten years ago is more on point. Stephen Spielberg's *Minority Report* is a dark look at the mid 21st century where law enforcement cultivates "precogs," psychics with the precognitive ability to determine who is going to commit a crime in advance of any illegal action. Individuals fingered in this fictional world were rounded up, arrested and incarcerated in anticipation that they were going to do something wrong.

Guilty by Suspicion

With the rapid advancement of surveillance technology, fueled by the concern over terrorist attacks, this preventative enforcement is exactly what more and more drivers are encountering. I challenge you to read the stories of rights abuses in this issue and not come away with a foreboding sense that the pendulum is swinging much too far and too fast in the wrong direction.

We can only tell a small fraction of the stories here. There is David Eckert in New Mexico who was subjected to multiple enemas and even a colonoscopy because the police thought he flinched during a traffic stop, concluding that he must be a drug courier. A judge had the temerity to issue a warrant for a forced body cavity search based on the thinnest of pretenses. No contraband was found. Speaking of audacity, the hospital that conducted the invasive procedures billed Eckert for services rendered even though all was done against his will.

Then there is the recent NHTSA-funded sweep of motorists in Dallas-Ft. Worth and other metro areas where drivers, minding their own business on public roads, were diverted to a holding area and asked to provide DNA samples from their saliva, blood or urine. While the police said cooperation was voluntary, the enforcement activity funneled traffic into monitoring stations as if the motorists had no choice but to obey. The police also surreptitiously conducted breathalyzer tests to determine how many drivers had a perceptible alcohol content reading. All in the name of research. Yeah, right.

Norman Gurley of northeast Ohio was pulled over for a routine speeding stop recently. The ticketing officer noticed a few wires leading from the front seat to the back of the car. Under the auspices of a law enacted in 2012, the police searched the vehicle and found a hidden, empty compartment. The law deems it a felony to add a secret compartment to a vehicle with the intent of concealing drugs for trafficking. In Gurley's case, no intent was shown but it didn't matter. Gurley was found guilty by suspicion. His legal case is pending.

More and more, today's police blotters resemble the dark vision of *Minority Report*. Law enforcers are apparently blessed with supernatural skills and are empowered by lawmakers and judges to take action against everyday citizens.

The NMA has always been an underdog grassroots organization, relying on the strength of its membership and its platform with the national media to effect change. Unless we can dramatically increase the number of paid members, it will be difficult for the NMA to join the ranks of effective champions of civil liberty like the ACLU and The Rutherford Institute. Our position as the only advocacy organization focused solely on the rights of motorists makes our involvement all the more critical.

Ever since the 55 mph NMSL was partially repealed in 1987, our paid membership has slowly eroded at an average pace of about 100 to 200 members per year. We must reverse this trend to continue the fight for the civil liberties of motorists. Use this or past issues of ***Driving Freedoms*** (which we'll be very pleased to send you) and the comprehensive NMA website at **www.motorists.org** as recruiting tools. We must incite outrage among everyday drivers with the simple, stark truth of the erosion of their constitutional rights. If the

(Continued on Page 3)

Suspicionless Roadblock Case Heads To Appeals Court

From **www. thenewspaper.com**. *Reprinted with permission.*

An Air Force major on Tuesday asked the Fifth Circuit US Court of Appeals to reinstate his lawsuit against Border Patrol agents who stopped and detained him without any reason to suspect him of wrong-doing. Richard Rynearson was driving on Highway 90 in Uvalde, Texas on March 18, 2010 when he came upon the Border Patrol roadblock 67 miles from the border with Mexico. The entire encounter was recorded on video.

"Is this your vehicle, sir?" asked Border Patrol Agent Justin K. Lands.

"It is," Rynearson replied.

"Can you roll down your window, is that as far it will go?" Lands asked.

"No, it can go down more," Rynearson said while rolling it down more.

After the 13-second exchange, Lands ordered Rynearson to pull over into the secondary screening area. Once there, the major was told to exit his vehicle. He refused to do so without being given cause. He displayed his military ID, his passport and his driver's license to establish his citizenship and identity.

"Doing the things you're doing, I don't believe that you're being a United States citizen," Lands explained. "You're [not] rolling down your window, you won't roll it down."

After Border Patrol Captain Raul Perez established Rynearson was a citizen more than fifteen minutes into the stop, he asked for information on Rynearson's commanding officer, then left the major waiting while he called Laughlin Air Force Base to speak with Rynearson's boss. In total he was kept for thirty-four minutes.

After a video of the incident was posted on YouTube the chief Border Patrol Agent for Del Rio, Robert L. Harris, wrote a three-page letter to Lt. Colonel Richart L. Nesmith to complain about Major Rynearson and his refusal to roll down his window.

"We believe MAJ Rynearson's conduct is unbecoming of such a high-ranking officer in the United states Air Force," Agent Harris wrote.

The Border Patrol insists that the agents' actions were entirely appropriate and that no reasonable suspicion is needed to detain a motorist at a secondary inspection. A federal district court judge sided with the agency and refused to allow Rynearson's attorney access to internal reports, documents and witnesses who could have shed light on the truth of the agents' claims. On September 30, a US District Judge threw out the lawsuit on the grounds that not rolling down a window far enough can constitute evidence of criminal activity.

"Although the thirty-four minute stop of Rynearson was longer than some stops that occur at checkpoints, the length of the detention did not exceed a constitutionally permissible time," Judge Alia Moses ruled. "Rynearson's own behavior caused the delays. Agent Lands, as a result of Rynearson's abnormal behavior, developed reasonable suspicion that Rynearson was involved in some criminal activity."

The Border Patrol agents say they are just doing their duty and upholding the Constitution. In 2003, Rynearson was awarded the Distinguished Flying Cross with combat "V" for valor.

"The actions of Captain Rynearson contributed directly to the successful capture of the Al Faw petroleum pipeline intact, paved the way for the American-led ground war and ultimately saved thousands of coalition lives," the Air Force citation reads. "The outstanding heroism and selfless devotion to duty displayed by Captain Rynearson reflect great credit upon himself and the United States Air Force." ■

A Call to Action

(Continued from Page 2)

driving public doesn't take up the battle with the NMA, who will?

Identify candidates who share our concerns for protecting essential motorists' rights and help us actively recruit them to join the NMA. If a friendly push is needed, remember that the NMA gift member program enables you to purchase one-year memberships for others at a discounted rate of only $25 each.

It is nothing short of amazing what Jim Baxter and the founding members—in numbers exponentially small compared to the dimensions of licensed drivers whose rights they were fighting for—were able to accomplish during the first 30 years of the NMA. The magnitude of the fight has grown, both in terms of resources necessary to make an impact and in consequences if the civil rights of motorists continue to be chiseled away. More than ever, the NMA needs your help. ■

Eight Reasons Why Every Driver Should Join the National Motorists Association

1. The NMA helped free drivers from the shackles of 55 mph speed limits and continues to fight for speed limit reform to make our highways safer, more efficient, and more enjoyable to drive.

2. The NMA is the only civil liberties organization focused on representing and protecting the rights of 250 million drivers throughout the United States and Canada.

3. The NMA combats the neo-prohibitionist, zero-tolerance vision of organizations such as MADD by advocating DUI policies based on reasonable standards and constitutional protections.

4. The NMA offers members a comprehensive set of tools and guidance to fight unwarranted traffic tickets and encourages drivers to challenge the traffic justice system as the means to promote fairness and due process for all defendants.

5. The NMA continues to aggressively and successfully fight the spread of automated traffic enforcement. The operation of red-light and speed cameras creates false choices such as revenue over safety and presumed guilt over presumed innocence.

6. The NMA provides a powerful voice against surveillance technologies that track the specific locations and driving habits of motorists without their knowledge or permission.

7. The NMA maintains the websites SpeedTrap.org and RoadBlock.org to warn drivers about the locations of traffic enforcement actions designed to generate revenue and impede responsible motorists.

8. Through the NMA, you will join several thousand drivers who cherish their driving freedoms enough to fight for the rights of the motoring public.

How to Become a Member of the National Motorists Association

Call the NMA toll-free: 1-800-882-2785

Enroll online: https://www.motorists.org/join/

Mail a check payable to "NMA" to: National Motorists Association
402 W. 2nd Street
Waunakee, WI 5359

Join Us and be Heard!

Supporting Member Benefits: 1 year @ $35 2 years @ $60 3 years @ $85 *(each less than $3 per month)*

Dangerous Business

by John Bowman, NMA Communications Director

"It's a dangerous business, Frodo, going out your door. You step onto the road, and if you don't keep your feet, there's no knowing where you might be swept off to."
— J.R.R. Tolkien, *The Lord of the Rings (Part 1: The Fellowship of the Ring)*

I love this quote, and I think it has as much meaning in our world today as it did back in Middle Earth. As I read the news these days, I'm constantly reminded of how dangerous it is to leave your house, hop into your car and drive to your destination. Dangerous not only to your health, your civil rights and your pocket book, but to your basic human dignity as well.

The first story that got me thinking about all of this involves New Mexico driver David Eckert, who was stopped by police for what he thought was a routine traffic violation. It turned out to be anything but routine. When Eckert stepped out of his vehicle, a police officer became suspicious because he noticed Eckert appeared to be clenching his buttocks, a sure sign he was concealing drugs. Officers obtained a search warrant and transported Eckert to a nearby medical center.

Over the next 14 hours, Eckert was subjected to involuntary X-rays, multiple anal exams, three enemas and ultimately a colonoscopy in which he received anesthesia—all against his will. No drugs were found, but the hospital did bill Eckert for all of the degrading procedures he had to endure.

He has since filed a federal lawsuit against multiple parties, including the officers who the lawsuit says were involved in the stop. Some may dismiss this as an isolated incident. It makes no difference. Besides, it may not be an isolated incident as two other New

Mexico drivers have come forward with similar disturbing stories.

Police assert that Eckert had concealed drugs in this way previously, although no official record corroborating this claim can be found. Eckert's attorney acknowledges her client's past history with drugs but says this does not justify the treatment he received. Nothing can.

The second story that got me worked up happened in Fort Worth, Texas. Random drivers along a busy street were diverted into a parking lot and asked to submit to "voluntary" breath tests and to provide cheek swabs and blood samples. Drivers were offered $10 for a cheek swab and $50 for a blood sample.

This so-called study on the prevalence of impaired driving was conducted by the National Highway Traffic Safety Administration (NHTSA) using a third party research firm as well as off-duty Fort Worth police officers. While officials claimed participation was "100 percent voluntary," drivers reported that they felt "trapped" and had no choice but to pull in and submit to these searches.

Drivers were told they would not be forced to give any samples, but the fine print of the consent form disclosed that their breath was tested by "passive alcohol sensor readings before the consent process has been completed."

The sad part of all of this, aside from the trapping and tricking of innocent motorists, is that there are no reports of drivers opting out. The roadblock was designed to make participation appear compulsory, even though it wasn't. Again, this is not an isolated case. Similar roadblocks occurred in Alabama last summer, and NHTSA is conducting such trials in 30 cities around the country. We can find no mention of what those cities are.

Make no mistake, the purpose of this "study" is to gauge public acceptance of increasingly intrusive DUI screening of drivers. A compliant public will only hasten the widespread adoption of such measures. To fight back, citizens must know and assert their constitutional rights. The simple question *Am I being detained?* repeated often enough during one of these roadblocks could protect an innocent driver from "dangerous business," to borrow Tolkien's words.

The hackneyed response to these concerns is always, "If you have nothing to hide, you have nothing to fear, so what's the big deal?" That's the wrong question, posed by those who seek to justify ever greater control over our lives. David Eckert quite literally had nothing to hide, and look what happened to him.

The real question is what kind of society do we want to live in? One that can trap and trick us, or subject us to the most inhumane treatment imaginable? Or one in which we can step onto the road without the fear of being swept off.

Originally published as NMA Newsletter #255, 12/01/2013. ■

Civil Forfeiture: Shaking Down Innocent Drivers for 30 Years

by John Bowman, NMA Communications Director

I'm reminded of the story of a friend who was returning from a day trip to Mexico. He was stuck in traffic at the border crossing in Tijuana, his two young sons strapped into the backseat of his rental car. A Mexican police officer approached on-foot and gestured for him to roll down his window. The officer informed my friend it was illegal to drive a rental car into Mexico and that they'll all have to go down to the station to "sort it out."

The officer then said my friend could pay a "fine" on the spot to avoid any further inconvenience. My friend begrudgingly forked over $200, ensuring safe passage back to the United States where these kinds of roadside shake-downs don't happen. Do they?

Of course they do, and they're completely legal—thanks to federal and state civil forfeiture laws that give police the power to stop innocent motorists and seize assets like cash, vehicles or other valuables. Under such laws, law enforcement agencies can seize and retain property suspected of being connected to criminal activity. Property owners need not be found guilty of a crime—or even charged—to permanently lose their assets. To clarify, civil forfeiture operates differently than criminal forfeiture, in which assets are seized only after a criminal conviction.

In everyday terms, "forfeiting" something means the owner relinquishes it voluntarily. In legal terms however, forfeiture refers to the government taking property without consent and without compensation. To recover their assets, victims often must engage in lengthy and expensive legal fights to prove their property was legitimately obtained. Here's an example of how the scam works:

In 2007, Houston motorist Jennifer Boatright, her two young sons and her boyfriend were stopped in the tiny town of Tenaha, Texas, for a bogus traffic violation. Police then searched her car and found a large amount of cash which was to be used to purchase a new vehicle at their final destination.

Boatright and company were immediately escorted to the Tenaha police station where they were threatened with charges of money laundering and child endangerment. However, the prosecutor offered an alternative. Rather than face the prospect of jail time and turning her son over the protective services, Boatright could sign over the cash to the city and be on her way with no charges filed. She did so but eventually joined a class-action lawsuit against officials in Tenaha and Shelby County, Texas.

That case was settled in 2012. According to the ACLU, which spearheaded the lawsuit, area police seized an estimated $3 million between 2006 and 2008 in at least 140 cases. Almost all of the traffic stops involved black and Latino drivers. None of the plaintiffs in the lawsuit were ever arrested or charged with a crime.

Another telling example comes from Camden County, Georgia. Police pulled over 43-year-old Michael Annan for speeding on I-95. A vehicle search revealed no evidence of illegal activity, and a canine search found no trace of drugs. Police did find $43,720 in cash. Annan, an immigrant from Ghana, said the money was his life savings and that he was afraid to put it in the bank.

Police kept the cash and sent Annan on his way, telling him to call back in two weeks. Annan's repeated calls were ignored. He finally hired an attorney who provided the sheriff's department with financial records showing Annan earned his money legitimately. Annan got his money back, but not before incurring $12,000 in legal fees.

Annan's case sparked an investigation of the Camden County Sheriff's Department and the actions of Sheriff Bill Smith, who had overseen the seizure of approximately $20 million over 15 years. Turns out Smith had used the department's considerable forfeiture slush fund to make extravagant and questionable purchases, such as:

- A $90,000 Dodge Viper for the county's DARE program
- A $79,000 boat

(Continued top of next page)

- The services of a private attorney
- College tuition payment for favored deputies
- Gas purchases for employees' personal vehicles
- Payments to jail inmates to work at the sheriff's personal residence

Camden County voters eventually sent Smith packing after 23 years in office. This example clearly illustrates the profit motive behind such well-orchestrated forfeiture rackets. For many police agencies, civil forfeitures fund daily law enforcement operations. But given the amounts of money involved and little, if any, oversight, abuses are inevitable. Consider these other purchases financed through civil forfeiture, as reported in a 2008 National Public Radio story:

- Colorado: bomber jackets for the Colorado State Patrol
- Austin, Texas: running gear for the police department
- Fulton County, Georgia: football tickets for the district attorney's office
- Webb County, Texas: $20,000 for TV commercials for the district attorney's re-election campaign
- Kimble County, Texas: $14,000 for a "training seminar" in Hawaii for the staff of the district attorney's office
- Albany, New York: over $16,000 for food, gifts and entertainment for the police department

Civil forfeiture took off in the 1980s when government at all levels stepped up the war on drugs. Proceeds from forfeiture went to the government's general fund, not to the law enforcement agencies that seized the assets. This changed in 1984 when Congress allowed the Justice Department to retain forfeiture funds. Subsequent amendments greatly expanded what the department could do with the funds, including the purchase of new vehicles and for overtime pay. Many states followed suit and began to let local police departments retain proceeds from their forfeiture operations.

According to a recent New Yorker article, the Justice Department took in a record $4.2 billion in forfeitures for 2012, up from $556 million in 1993. At the state level, data are harder to come by. However, a study from The Institute for Justice titled "Policing for Profit: The Abuse of Civil Asset Forfeiture" does contain some telling data for selected states. Combined currency forfeiture in four states (Oklahoma, Texas, Virginia and Washington) grew from $25.8 million in 2001 to $44.7 million by 2006. In Texas alone, 8,463 vehicles were seized during the same period. The study went on to conclude:

In short, the best available data on asset forfeiture in the United States indicates that its use is extensive at all levels of government and suggests that it is growing.

Civil forfeiture was originally intended to go after high-level criminals: organized crime bosses, drug traffickers, etc. But police agencies have found it so lucrative, they now target anyone who looks "suspicious," including everyday drivers just trying to go about their business.

Based on the reports we've seen, you're more likely to get into trouble in certain parts of the country, such as east Texas, Arkansas and western Tennessee. Out-of-state drivers are particularly vulnerable.

Speaking of Tennessee, I-40 west of Nashville is known as a drug trafficking corridor. Not surprisingly, it also has a well-earned reputation as a civil forfeiture hot spot and the abuses that breeds. A series of recent television news investigative reports exposed the racket and revealed a telling aspect of the operation.

Rather than stopping suspicious vehicles traveling in the eastbound lane (the ones potentially carrying drugs into Nashville), the cops focused on stopping vehicles in the westbound lane (the ones potentially carrying the cash after the drugs had been sold). So, law enforcement officials are happy to let drugs continue to flow into Nashville as long as they get their cut of the cash flowing in the other direction.

In the face of such distorted incentives, what can you do to protect yourself? First, avoid transporting large sums of cash or other valuables, even for legitimate business. What constitutes a large sum of cash? It's hard to say, but the "Policing for Profit" report found that one-half of all Virginia currency forfeitures were for less than $614 to $1,288, depending on the year in question. That doesn't sound like a lot.

Second, don't submit to any searches without a warrant. If the officer who stops you has to ask your consent to search, he doesn't have probable cause.

Third, if the officer has no legitimate reason to detain you, assert your rights and attempt to leave. Ask ,"Am I being detained?" or "Am I free to leave?" Don't let the officer distract you. Repeat the questions until you get an answer and then leave. The less time you spend on the side of the road with a cop who is fishing for a reason to search your vehicle the better. ■

Roadblocks: Casting About for Probable Cause

by Gary Biller, NMA President

Most roadblocks are officially labeled as sobriety checkpoints. That is because the U.S. Supreme Court ruled in 1990 that a person's Fourth Amendment rights against illegal search and seizure come with a loophole.

The Constitution protects people from being stopped and searched or having property seized without a warrant or judgment of probable cause. The exception provided by SCOTUS was triggered by the case of an impaired driver, or more accurately, a driver suspected of being impaired. Chief Justice Rehnquist wrote the majority opinion in 1990, acknowledging that roadblocks violate a fundamental constitutional right but in the case of impaired driving, the ends—supposedly protecting the public—justify the means.

So while eleven states—Alaska, Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas*, Washington, Wisconsin, and Wyoming—have found the DUI exception to be unconstitutional, and therefore prohibit roadblocks within their boundaries, the other 39 states and the District of Columbia frequently set up sobriety checkpoints. The safety benefits of those checkpoints are questionable but the monetary rewards are not.

Georgia's roadblock numbers are astounding. In 2011, a spokesperson with the Georgia State Patrol confirmed to the NMA that nearly 80,000 roadblocks were set up across the state during the previous four years. Half of those were conducted by the state police and the other half by local law enforcement. An average of 55 roadblock locations were established somewhere in the state every day throughout 2007, 2008, 2009, and 2010. That resulted in an expenditure of close to 75,000 police man-hours per year, all in the name of trying to catch motorists doing something wrong, ostensibly driving while impaired.

Georgia received close to $2.5 million per year in federal funding for highway safety programs during the same period, with at least half of that going toward police time (and overtime) to conduct those roadblocks along with saturation patrols. While Georgia saw a drop in its traffic fatality rate from 2007 to 2010, the national average declined similarly and Georgia's fatality rate—deaths per 100 million vehicle miles—remained above the national average throughout the four years.

The results of a network of roadblocks set up by the Valdosta, Georgia, police earlier this year provide a microcosm of the types of offenses cited. Of the 139 tickets issued during an overnight session, 7.9 percent were for DUI or underage consumption. By contrast, 19.4 percent were issued for seat belt or child restraint violations and 18.0 percent for invalid or suspended licenses.

The big business enterprise of roadblocks just took a hit in California. Governor Jerry Brown signed legislation in late 2013 that prevents police from impounding vehicles of sober but unlicensed drivers at sobriety checkpoints. Until then, the 2,500 checkpoints conducted annually throughout the state netted up to $40 million per year in fines and charges for towing seized vehicles. For every one vehicle taken from a driver suspected of DUI, six were seized from drivers without licenses or without proof of insurance.

The California sobriety checkpoints were really multi-purpose roadblocks with revenue as the major goal. According to 2008 data, only 2.3 percent of statewide DUI arrests were made at those checkpoints. The other 97.7 percent occurred as a result of regular police patrols and citizen reports.

That is why the NMA refers to sobriety checkpoints for what they truly are: roadblocks. The most important statistic is one not readily available: the number of innocent, law-abiding motorists swept up by these roadblocks every year, subjected to the abuse of their Fourth Amendment rights. That it is measured in the millions is in itself a sobering thought.

**The fact that controversial roadblocks were recently conducted in the Dallas/Ft. Worth area as detailed on page 5 of this magazine is another illustration of how easily even a state prohibition can be bypassed. The DFW action was funded by NHTSA and was sanctioned as a research study to find out how many impaired drivers are on the road. A roadblock by any other name . . .* ■

Six Simple Words

Whenever you're subjected to a traffic stop, it's vital to know and assert your civil rights. By doing so you can potentially protect yourself from the abuses we've been discussing in this special issue of ***Driving Freedoms***.

A recent decision by the Delaware Supreme Court highlights how important this is. The court ruled that police cannot unduly detain a motorist pulled over for a routine violation in order to conduct a more extensive investigation into another crime. "An officer who pulls a car over for speeding does not thereby gain free rein to ask as many questions, for as long a time, as he might wish," the court's ruling stated. "Further investigation requires further justification."

The court also stated that once the officers concluded their investigation of the initial alleged traffic violation, they had no authority to continue detaining the car and no reason to suspect the driver of additional crimes.

Nonetheless, if the driver had known he was free to leave at this stage, he could have saved himself from a lengthy legal battle. He could have exercised his rights with these six simple words: *Am I free to go now?* But he didn't, and the officers kept pushing until they found evidence of another crime—evidence that the Delaware Supreme Court ruled inadmissible because of how it had been obtained.

The phrase *Am I free to go now?* should find its way into nearly any roadside interaction you have with police. If you choose to answer questions at a traffic stop (be careful when doing so), one strategy is to end every answer with "Am I free to go now?" It's an assertion of your rights, and it may prevent a routine stop from escalating into a more serious situation.

Countless YouTube videos show what can go wrong when a motorist doesn't assert his rights. One famous example, titled "Breakfast in Collinsville," records an officer stopping a car along a rural Illinois interstate on the flimsiest of pretenses. He then manipulates the driver into consenting to a full-on vehicle search complete with a "drug-sniffing" dog. Several times during the stop the driver could have said "Am I free to go now?" and potentially extricated himself and his passenger from a harrowing experience.

The officer also tried to manufacture reasonable suspicion by claiming the passenger appeared nervous—a ploy likewise repudiated by the Delaware decision. The whole dynamic is reminiscent of a used car salesman manipulating a buyer into a bad deal.

Another widely seen YouTube clip, titled "Homeland Security Checkpoint: Video Blog-Day 1," documents a motorist challenging U.S. Border Patrol officers at an immigration checkpoint in Arizona. His choice of phrases, "Am I being detained," differs slightly, but the intent is the same. The driver does not get distracted by the officer asking him questions. He repeats the question over and over, and accomplishes his objective: getting through a roadblock without undue harassment.

To carry the salesperson analogy a little further, this driver asserted control over the transaction and never relinquished it. If you go this route, remember to remain calm and don't provoke the officer.

Will the Six Simple Words speed you on your way every time? Perhaps not, but they will demonstrate that you have exercised your rights, which may prove valuable should your traffic stop lead to subsequent legal proceedings. Here are a few other tips for dealing with roadblocks:

You do not have to answer any questions, explain your travel plans or divulge the contents of your vehicle. You may be required to show your driver's license, vehicle registration, and proof of insurance. Always be polite and non-confrontational. Your car can only be searched under the following circumstances:

1. You voluntarily give the police permission to search your vehicle.
2. The police have a warrant to search your vehicle.
3. The police have "probable cause" or "reasonable suspicion" based on a reasonable explanation of why they believe you have illegal items in your vehicle.

In theory you can make any legal maneuver to avoid a roadblock. In reality the police deliberately locate them so it is almost impossible to legally avoid them once you're in the queue. It is also common practice for police to pursue motorists who overtly avoid roadblocks.

You cannot be detained indefinitely. Police must take formal action against you or allow you to leave. However, if you do not request to leave, the police can successfully claim you voluntarily remained under their control. If they deny your request, ask for a legitimate explanation for the delay. If none is forthcoming, persist in asking to leave. ■

ALPRs—Coming to a Street Near You

The NMA first raised the alarm on automated license plate readers (ALPRs) two-and-a-half years ago (*E-Newsletter Issue #61: Here, There, Everywhere*). With more and more police agencies throughout the country employing the technology, we thought an update was in order.

ALPRs are cameras—either stationary or mounted on patrol cars—that snap a photograph of every license plate that passes by them. The devices then check the plate number against a variety of databases searching for things like stolen vehicles, owners with lapsed registrations, outstanding fines or warrants.

By all accounts ALPRs have proliferated rapidly. But just how fast and how far this troublesome technology has spread remains an open question.

Here are a few things we do know about ALPRs: Enforcement agencies in all 50 states have adopted the technology due to its ability to efficiently process vast amounts of data. One plate reader can scan up to 3,000 license plates per minute. Patrol-based units use a laptop computer to quickly identify and pinpoint the location of a suspect vehicle in real time.

With enough cameras, ALPR systems can blanket a city and essentially track the day-to-day movements of thousands of vehicles at a time. For example, Washington D.C. has quietly installed more than 250 ALPR cameras throughout the district. That's more than one camera per square mile.

Millions in federal grant dollars have been made available to law enforcement agencies for the purchase of ALPR systems. System suppliers have been quick to facilitate the grant-making process by offering extensive assistance to agencies searching for grant money.

The result? Countless police agencies adopting a surveillance technology capable of tracking countless motorists, all with the financial support of the federal government. What can go wrong?

In an effort to target relatively few drivers for legitimate law enforcement purposes, detailed information on millions of others is swept up in the process, creating what amounts to a warrantless tracking tool. The privacy implications are staggering: How long is that information stored? Who has access to it? How can they use it? What protections exist to make sure abuses such as mistaken identification don't occur?

The length of time data are retained varies from agency to agency. Some keep data for as little as 30 days, while others, like the New York State Police, retain the data indefinitely. The potential for data sharing is huge. The ACLU has reported that states are beginning to pool their ALPR data into huge databases which are easily accessible by law enforcement officials at all levels. All with no judicial oversight. Speaking of oversight, only two states (New Hampshire and Maine) have enacted laws controlling the use of plate readers and the data they generate.

Back to our original question, how fast and how far has ALPR technology spread? To find out, local ACLU chapters recently sent public records requests to nearly 600 municipal and state law enforcement agencies seeking detailed information about their use of ALPR systems. Freedom of Information Act requests were also filed with the Department of Justice, Homeland Security, and the Department of Transportation to learn how the federal government uses the technology and how it has been funding ALPR programs around the country.

We commend the ACLU and believe its work will help protect motorists from the inevitable abuses posed by ALPRs. However, it's worth noting that some of the largest compilers of ALPR data are not public agencies but private companies.

Vigilant Solutions, a California-based company, has built what may be the largest repository of ALPR information anywhere. Using the same technology as law enforcement, the company claims to have compiled a database of more than 825 million license plate records, all of which it makes available to law enforcement agencies.

We've all seen what happens when public officials ally themselves with for-profit private firms (e.g., ticket camera vendors) in the interest of public safety. What, if any, motorist privacy policies Vigilant has put in place remain unclear. Establishing ALPR oversight in the public sector is important, but doing so in the private sector may be more critical in the long run.

Originally published as NMA Newsletter #191, 09/09/2012. ■

SCOTUS Decision Has Profound Implications for Motorists

The U.S. Supreme Court seems to be taking a schizophrenic view of the Fourth Amendment lately. For the record, here's the Fourth Amendment in its entirety:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In April, the court ruled (*Missouri v. McNeely*) that police cannot force DUI suspects to surrender blood samples without a search warrant, saying that such drastic measures can only be invoked in emergency situations. State officials unsuccessfully argued that drunk driving cases present "exigent circumstances" which allow for the extraction of blood without a search warrant.

However, in a recent five to four decision (*Maryland vs. King*), the court ruled that police do not need a warrant to take DNA samples from people arrested for serious crimes. Note that those subjected to this warrantless search have not been convicted of a crime, only suspected.

About half the states and the federal government have laws allowing DNA collection from individuals upon arrest

for certain offenses. Some states collect DNA for all felony arrests while others only do so for those arrested for serious or violent felonies. The DNA information from all of these efforts ends up in a national database where it is ostensibly available to help solve future crimes.

Civil rights groups object to such practices saying they violate Fourth Amendment protections against unreasonable searches and seizures. Supporters argue that DNA extraction is no different than lifting a fingerprint or taking a mug shot: an accepted routine even for those not convicted of a crime, used to establish identity.

But civil libertarians rightfully point out that DNA sampling can be used for much more than identity purposes and is far more intrusive than fingerprinting or photographing. They also argue that the King ruling will pave the way for widespread, intrusive, warrantless searches of the general public.

John Whitehead, founder and president of the Rutherford Institute, provides a stark and alarming assessment of *Maryland vs. King*: "Any American who thinks they're safe from the threat of DNA sampling, blood draws, and roadside strip … searches simply because they've 'done nothing wrong,' needs to wake up to the new reality in which we're now living." Note the reference to roadside searches.

Whitehead calls out the potential impact on motorists again in a radio interview, in which he states that people will be subjected to DNA sampling in their vehicles. It's already happened. In 2008, Florida police, looking for a serial killer, made headlines after taking DNA from "persons of interest" during traffic stops.

We've discussed DNA sampling of motorists in previous newsletters. We encourage you to go back and read these again to learn how to protect yourself, but here's the gist of it:

The requirements for DNA sampling during a traffic stop are greater than those for conducting a search of your vehicle. Provided you have not given your permission for your DNA to be taken, the police must show probable cause and have a warrant to do so.

If you are stopped for a routine traffic violation you are under no obligation to surrender a DNA sample. If asked, state your objection to the intrusion (be civil but firm) and refuse to comply. By doing so, you have asserted your right to privacy. No reason must be given, but you could further assert your rights by saying something like, "I do not want to give you a sample because I want to protect my right to privacy."

It comes back to the question of what kind of society do we want to live in? Some people may think, "No big deal. I haven't done anything wrong so I have nothing to hide." The answer is simple: A government that can violate your bodily integrity without cause can do anything it wants to you. Motorists' rights are already routinely violated in myriad ways; it's not a huge leap to think that drivers will be among the first targeted for more intrusive and illegal searches.

Originally published as NMA Newsletter #230, 06/09/2013. ■

Silence is no Longer Golden

by Ted Levitt, NMA Texas Member

Several years ago the NMA published an article I wrote about "Your Right to Remain Silent." Since then several U.S. Supreme Court rulings have greatly eroded that right. Remaining silent is no longer the right thing to do, in my opinion. Here's why.

In 2010 the U.S. Supreme Court decided that a criminal defendant "must make a simple, unambiguous statement that he or she wants to remain silent or that he or she does not want to talk to the police" before his or her Fifth Amendment "Miranda" right to remain silent comes into play (*Thompkins v. Michigan*). Justice Kennedy wrote, "A suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to police".

Worse yet, in February 2012 the Supreme Court refused to hear the appeal of a Florida case that allowed the state to use a defendant's pre-arrest silence as evidence of guilt.

Federal courts have been split on the use of a defendant's silence at trial. Several have ruled that the use of a defendant's silence as evidence of guilt violates the Fifth Amendment protection against self-incrimination, while others have ruled that it does not violate a defendant's Fifth Amendment rights.

Now comes *Salinas v. Texas*, in which the Supreme Court recently decided this issue for all U.S. courts. The overriding concern here was that some courts have allowed the use of a defendant's silence as proof of guilt or "having a guilty conscience" at trial. Under this construct, the state is attempting to take a barrier to prosecution (the defendant's silence) and turn it into a tool to aid conviction. I personally find this inference of guilt to be in direct conflict with our Fifth Amendment right against self-incrimination and our other constitutional due process rights.

The Supreme Court ruled the defendant's "Fifth Amendment claim fails because he did not expressly invoke the privilege against self-incrimination in response to the officer's questions. It has long been settled that the privilege 'generally is not self-executing' and that a witness who desires its protection 'must claim it' (*Minn. v. Murphy*, 465 U.S. 420, 425,427 [1984])."

Contrary to popular belief the phrase "innocent until proven guilty" does not appear in either the U.S. Constitution or the Bill of Rights. U.S. courts have embraced this concept as falling within the scope of the Fifth Amendment. The U.S. Supreme Court, in *Taylor v. Kentucky*, described this concept as "the presumption of innocence of a criminal defendant that is indulged in the absence of contrary evidence." This inference goes all the way back to Roman and English Common Law where "the burden of proof lies with he who declares, not who denies."

The Supreme Court has ruled that the Fifth Amendment requires the state to prove each and every element of the charge against the defendant beyond a reasonable doubt. Further, the court has ruled that a defendant need not put on a defense at all, and relying solely on the state's failure to meet its burden of proof beyond a reasonable doubt, the defendant must be found not guilty.

To further muddy the waters the courts have never explicitly defined what is "beyond a reasonable doubt." The accepted legal definitions follow:

- *The standard that must be met by the prosecution's evidence in a criminal prosecution: that no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty.*
- *A standard of proof that must be surpassed to convict an accused in a criminal proceeding.*
- *A reasonable doubt exists when a juror cannot say with moral certainty that a person is guilty. This definition does not require that guilt be proven to an absolute certainty.*

Another reason I find the Salinas opinion disturbing is that the Supreme Court has ruled that a jury, before retiring to deliberate, must be instructed by the judge to make no inference as to the defendant's guilt, simply because the defendant choose not to testify at trial. This instruction must contain the statement that no adverse inference may be drawn from the fact that the defendant did not testify, or that it cannot be considered in arriving at a verdict.

(Continued top of next page)

Silence no Longer Golden *(Continued)*

I find the *Salinas* ruling allowing a suspect's silence to be used against him to be in direct conflict with the Fifth Amendment as well as infringing on Fourteenth Amendment due process protections. The Supreme Court has at various times commented that these rights:

…protect the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. The reasonable doubt standard plays a vital role in the American scheme of criminal procedure. The standard provides concrete substance for the presumption of innocence…The presumption of innocence is valuable in assuring defendants a fair trial, and it operates to ensure that the jury considers the case solely on the evidence.

In light of the *Salinas* ruling I intend, if stopped by a police officer for any reason, to immediately state the following:

My attorney has advised me to invoke my Fifth and Fourteenth Amendment rights to remain silent and to not answer any of your questions unless and until my attorney is present. I will comply with any and all other lawfully required requests such as providing a valid driver's license, valid proof of insurance and/or vehicle registration, but nothing more. Further, I do not grant you the right to search my vehicle.

The bottom line is silence is no longer golden. Speak up to protect your rights!

Originally published as NMA Newsletter #246, 09/29/2013. ■

I Spy With My Little Eye

Over the last few years, the NMA has called attention to the problems associated with bans on cell phone use and texting while driving. Studies find that bans simply don't reduce accidents, and drivers don't pay attention to them. Plus there are more effective ways (and adequate laws already on the books) to address all forms of distracted driving.

Texting bans, in particular, are problematic to enforce. Consider this: While texting behind the wheel is banned in 38 states, making a phone call or looking at a map on a handheld device is not. In many places, simply holding a phone cannot be the sole basis for receiving a ticket. The old thumb has to be hard at work banging out a message. And even then, the driver could be making a call. How can police really tell what drivers are up to behind the wheel?

Increasingly, the answer is to spy on them. Thanks to a grant from NHTSA, that's exactly what police in Connecticut and Massachusetts will be doing. The money is being used to test novel ways to discourage texting while driving, including placing police spotters on overpasses to peer down into vehicles as they pass by. How on earth spotters will be able to tell if a driver's thumbs are moving in a suspicious manner (especially at highway speeds) is unclear. When in doubt, the answer will likely involve a ticket.

Officials in Bismarck, North Dakota, are trying a different approach. Police in unmarked SUVs and high-riding trucks drive around peering down into vehicles. When they spy the telltale thumb flailing, they radio a patrol car to perform a traffic stop. Interestingly, police followed one driver for 15 blocks before pulling her over. If she was posing such a threat why not pull her over on the spot?

The first two-day "texting sting" yielded 31 citations. A Bismarck police spokesperson hailed it a success, and the department is planning more such operations. But was it really that successful? Police admitted they could have potentially pulled over twice as many drivers, but they just didn't have enough evidence to make the charges stick.

Clearly, enforcing texting bans requires a more comprehensive approach. It's just too difficult to really see what drivers are up to using such outdated methods.

Perhaps law enforcement should follow the lead of ignition interlock suppliers who now include in-vehicle cameras with their systems. Requiring all cell phone users to install monitoring cameras in their cars would surely be a more effective means to detect and modify aberrant behavior behind the wheel. Or, if NHTSA felt like spreading around more grant money (lots more) it could implement the buddy system. Require a live police officer to ride in your car with you on every trip to monitor your driving behavior. That would certainly do the trick.

Or, we could try the approach the NMA has advocated for years: First, implement public awareness campaigns and enforcement efforts focused on education not punishment. Second, instead of enacting more laws and more bans, use the distracted driving laws already in place.

Originally published as NMA Newsletter #198, 10/28/2012. ■

"The best detector is not merely the one that can pick up radar from the farthest distance, although the Valentine One continues to score best." — *Autoweek*

Now V1 comes to a touchscreen *near you.*

Introducing the Threat Picture

You can see the arrows at work on your compatible iPhone® or Android™ device.

Check it out… The app is *free!*

You can download ***V1connection, the app*** for free. Go to the app store on your device.

When installed, the app automatically runs in Demo Mode. No need to link to V1.

Analyze preloaded threat situations on three different screens: on the **V1 screen**, on **Picture**, and on **List**. Then when you're ready to put the Threat Picture on duty in your car, order the Bluetooth® communication module directly from us.

- For compatible Android devices... choose **V1connection**™
- For compatible iPhone/iPad®/iPod touch® devices...choose **V1connection**™ **LE**.

Where's the radar? *It's in the Box.*

Arrow in the Box means a threat in the radar zone.

Arrow out of the Box no threat of patrol-car radar.

SEE V1connection at valentine1.com/threatvu

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
- ☐ **SAVVY®** - $69 ☐ **V1connection** - $49 ☐ **V1connection LE** - $49

Plus Shipping / Ohio residents add sales tax

30-Day Money-Back Guarantee

Valentine One® RADAR LOCATOR

Valentine Research, Inc.
Department No. YP14
10280 Alliance Road
Cincinnati, Ohio 45242

Ph 513-984-8900
Fx 513-984-8976