History Paper

On Litigation On
and
Pertinent to Speed Limits

**In Michigan,
A "Civil Infraction"
As Distinct From
A "Crime" Elsewhere**

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Readers who do an internet word search at some search engine, say, www.google.com, on the subject, "speed limits unconstitutional," will currently find over 300,000 references on the subject. This history paper and bibliography summarizes some of that information.

"Many modern cars are capable of speeds of over 200 km/h (124 mph)." On the Autobahn, "speeds exceeding 300 km/h (186 mph) are not unheard of." And: "The overall safety record of autobahns is comparable to other European motorways [freeways], and motorways [freeways] are safer than other road types. A 2005 study by the Federal Minister [Department] of the Interior indicated that there were an equal number of accidents per kilometer on the autobahn in sections without any speed limits," says the article "Autobahn" (Wikipedia).

So why don't we have this option in the U.S.? Here is an example analysis: "In Maryland, state police are trained from the beginning to regard motorists as scum. One friend of mine, a local police officer, was recruited by the state police, and the recruiter made this statement: 'Why work on the farm when you can own it.' Indeed, these officers are taught that the rest of us who do not wear the uniform of the Maryland State Police are simply servants on their plantation, and they treat us as such," says William L. Anderson, "Celebrating the Rule of Force, Not Freedom" (28 May 2007). What does this mean for motorists? especially on holidays? "Many of us will be traveling on the highways, and the [holiday]Weekend always brings out that show of force from state troopers. We can expect to see many motorists having their weekends ruined because they drove a few miles above the speed limit, or state troopers or local police are looking for a 'big score' in finding drugs inside a vehicle. I am not sure about the readers, but I cannot say I ever have felt 'protected' by the presence of state police on the highway. They do not exist to 'protect' us; they are there because [a holiday] Weekend is a big revenue time for the various agencies that receive money from fines. In other words, it is a grand time for the police to be shaking down individual drivers."

I. RIGHT TO CROSS-EXAMINE FULLY

Here is an example of what may be learned by cross-examining witnesses including traffic managers and ticketing officer. According to Michigan State Police (MSP) Lt. Thad Peterson, "We cannot enforce every speed limit." "We set speed limits in a certain way." "Police have a difficult time enforcing speed limits if the speed [limit] is too low and most motorists are speeding." "It's hard to get down to 25 miles per hour." "Low speeds create a false sense of security." "Lower speed limits do not necessarily improve safety." "There are fewer accidents when most motorists are doing the same speed."

Lt. Peterson said the foregoing at the Traffic Safety Association of Macomb (TSAM), on Tuesday, 13 September 2005. He was "speaking predominantly to police traffic personnel," says the newspaper article reporting his educational lecture published the next day under the title, "Drivers tend to set own speed limits: State cop says slow speeds can also cause havoc," by Gordon Wilczynski, *The Macomb Daily*, p 3A (14 Sep 2005). The reporter added, "Peterson said speed studies must be done carefully or the results are meaningless. . . . Unreasonable speed limits encourage disrespect for the entire traffic control system."

The article elaborated that "Peterson said speed in school zones is determined by several factors, including roadside environment, lane widths and characteristics and proximity of pedestrians to travel lanes. Also, he said, traffic experts consider road surface (new or old) and motor traffic vehicle volumes."

Lt. Peterson is referring to when "traffic experts" are allowed to decide speed limits, not to when political hacks simply make up speed limit numbers out of their heads! or in their words, they "set" "speed limits . . . legislatively."

Contact with the TSAM revealed that the MSP has this type information posted at its websites, e.g.,

- **"Establishing Realistic Speed Limits"**
- **"Speed Limits," and**
- **"Michigan Speed Measurement Task Force."**

Were the speed limits in your area set "legislatively," i.e., by political hacks? or by "traffic experts"? You won't know unless you ask! Preferably, you ask in advance, in writing, in a legal process typically called "discovery." Having the information before your court date helps you better prepare your case.

Of course, in court at the legal proceedings, e.g., pre-trial hearing, and the trial itself, you can ask the ticketing officer. There is in fact a lot you can ask.

Michigan case law, e.g., *People* v *Dellabonda*, 265 Mich 486; 251 NW2d 594 (1933) and *People* v *Bell*, 88 Mich App 345; 276 NW2d 605 (1979), provides that on cross-examination, there is a right to draw from the witness anything tending to modify, weaken, contradict, or explain testimony on direct examination, or which tends to affect the credibility of witnesses.

It has long been held that, within reasonable limits, a witness may on cross-examination be very thoroughly sifted upon his character and antecedents. *People* v *Falkner*, 389 Mich 682, 688; 209 NW2d 193 (1973).

On cross-examination, a witness for the purpose of impeachment, may be asked and compelled

- **to answer as to particular traits of character, or as to particular facts, or whether he has committed wrongful or immoral acts, even though such acts may be irrelevant in collateral to the principal controversy or issues involved in the case, and**

- **interrogated as to his occupation or vocation, habits, or associates. *People* v *Cutler*, 197 Mich 6; 163 NW 493 (1917). This is especially pertinent as police officers regularly speed (violate the law themselves)!**

A witness on cross-examination may also be asked any questions material to the issue, irrespective of the extent of the direct examination, *People* v *DuPounce*, 133 Mich 1; 94 NW 388; 103 Am St Rep 435 (1903).

All this is necessary in view of the circumstances involving "speed limits," a term having no basis in nature, nor established by medical, engineering or scientific principles, hence violative of due proces, as described herein.

And of course, pertinent case preparation means that one does pertinent research and "discovery":

- **obtaining copies of ticket, front and back**
- **device calibration records**
- **any and all pertinent ordinances/laws (to verify there is in fact such a rule or law as the ticket alleged)**
- **pertinent "Traffic Control Orders" (verifying that engineering guidance has been utilized, not political whimsy and pet peeves, etc.)**

Other precedents may also be useful in knowing the history of the extent of the historical right to cross-examine. For example, a court has upheld cross-examining to determine if the witness is under pressure from the government concerning a pending charge, *People* v *Makiel*, 358 Ill App 3d 102; 294 Ill Dec 319; 830 NE2d 731, 745 (3 June 2005) lv app den 2005 Ill LEXIS 1703 (1 Dec 2005).

The U.S. Supreme Court has made rulings such as

- ***Smith* v *Illinois*, 390 US 129; 88 S Ct 748; 19 L Ed 2d 956 (1968) (cross-examination to ascertain home address)**

- ***Alford* v *U.S.*, 282 US 687; 51 S Ct 218, 219; 75 L Ed 624 (1931) (cross-examination to determine place of employment; and to place the witness in his or her proper setting, put the weight and credibility of what they say to the test, without which, the adjudicator(s) cannot fairly appraise the testimony; and to mesh the person to the environment, as the bottom line is, cross-examination is a right).**

II. UNCONSTITUTIONAL ENACTMENTS ARE NOT LAWS

We must distinguish form and substance. Not just anything passed by legislators that has the form of a law, is in fact a law. To be a law, an enactment must be constitutional, i.e., within the actual *de jure* authority of the Legislature. This condition precedent fact is well settled.

"All laws which are repugnant to the Constitution are null and void." *Marbury* v *Madison*, 5 US (2 Cranch) 137, 174, 176; 2 LE 60 (1803).

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda* v *Arizona*, 384 US 436, 491; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; creates no office. It is in legal contemplation, as inoperative as though it had never been passed." *Norton* v *Shelby County, Tennessee*, 118 US 425, 442; 6 S Ct 1121; 30 L Ed 178 (1886).

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election." *West Virginia State Board of Education* v *Barnette*, 319 US 624, 638; 63 S Ct 1178; 87 L Ed 1628 (1943). Compare *Romer* v *Evans*, 517 US 620; 116 S Ct 1620; 134 L Ed 2d 855 (1996).

"The Bills of Rights in the American Constitutions have not been drafted for the introduction of new law, but to secure old [already existing] principles against abrogation or violation; they are conservatory rather than reformatory." *Weimer* v *Bunbury*, 30 Mich 291; 1874 Mich. LEXIS 168 (1874).

One of Americans' basic "Bill of Rights" rights is "the basic constitutional right to travel," upheld as long ago as in cases such as *Crandall* v *Nevada*, 73 US 35; 18 L Ed 745 (1868), *Pinkerton* v *Verberg*, 78 Mich 573; 44 NW 579 (1889), and once again reaffirmed by the U.S. Supreme Court in so many words, "right to travel," in *Dunn* v *Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1974). This Constitutional "right to travel" has been used to strike down a number of politician-invented laws, devised on various fraudulent pretexts.

"We are reluctant to admit that we owe our liberties to men of a type that today we hate and fear—unruly men, disturbers of the peace, men who resent and denounce what Whitman called 'the insolence of elected persons'—in a word, free men." — Gerald W. Johnson, *American Freedom and the Press*, 1958.

The "Bill of Rights," written by such type people, thus presumes that politicians will foreseeably violate people's rights. So the whole idea of the "Bill of Rights" is to forbid politicians to even vote on taking away our therein-protected rights, including the "right to travel." This right is within the penumbra of, e.g., the Ninth Amendment, on personal rights.

"No one can read our Constitution without concluding that the people who wrote it wanted

their government severely limited; the words 'no' and 'not' employed in restraint of government power occur 24 times in the first seven articles of the Constitution and 22 more times in the Bill of Rights."—Edmund A. Opitz.

"The worst forms of tyranny, or certainly the most successful ones, are not those we rail against but those that so insinuate themselves into the imagery of our consciousness, and the fabric of our lives, as not to be perceived as tyranny."—Michael Parenti.

The tyranny of unconstitutional speed limits is an example.

Judges must obey and enforce the constitution and laws themselves, e.g., *Matter of Hague*, 412 Mich 532; 315 NW2d 524 (1982); *Holman* v *Athens Empire Laundry*, 149 Ga 345; 100 SE 207; 6 ALR 1564, 1574-5 (Ga, 1919) ("Neither the opposite party nor the public has the right, legal or equitable, to invade the clear legal rights of another. . . . final settlement of . . . rights does not lie in the broad discretion of the chancellor [court], but in the clear legal and equitable rules which bind the chancellor himself.") Judges must follow the law; jurors have power to see that they do. *State of Georgia* v *Brailsford*, 3 US (Dall) 1, 4; 1 L Ed 483, 484 (1794); *United States* v *Battiste*, 24 Fed Cas 1042, 1043 (CCD Mass, 1835); *Commonwealth* v *Anthes*, 71 Mass (5 Gray) 185, 208 (1855); *United States* v *Spock*, 416 F2d 165, 181 (CA 1, 1969); *United States* v *Johnson*, 718 F2d 1317, 1322 (CA 5, 1983), etc.

Unconstitutional enactments are treated as though they had never existed. For example, in one state alone, here are examples: *Bonnett* v *Vallier*, 136 Wis 193, 200; 116 NW 885, 887 (1908); *State ex rel Ballard* v *Goodland*, 159 Wis 393, 395; 150 NW 488, 489 (1915); *State ex rel Kleist* v *Donald*, 164 Wis 545, 552-553; 160 NW 1067, 1070 (1917); *State ex rel Martin* v *Zimmerman*, 233 Wis 16, 21; 288 NW 454, 457 (1939); *State ex rel Commissioners of Public Lands* v *Anderson*, 56 Wis 2d 666, 672; 203 NW2d 84, 87 (1973); and *Butzlaffer* v *Van Der Geest & Sons, Inc, Wis*, 115 Wis 2d 539; 340 NW2d 742, 744-745 (1983).

III. EX POST FACTO LAWS ARE UNCONSTITUTIONAL

The United States Constitution, based upon the notion of due process and fairness, bans after the fact laws, i.e., "ex post facto" laws. ("No bill of attainder or ex post facto Law shall be passed." Constitution, Article I § 9). This means that, to be constitutional, a law must tell the citizenry IN ADVANCE, what act is contemplated by the prohibition of the law. It is not constitutional, to decide retroactively, after the fact, e.g., that what was done previously, was wrong. Laws must give advance notice. So when a law does not give advance notice, a citizen of course has a right to challenge and oppose it. And, if unconstitutional, he is not "bound to obey" it. 16 Am Jur 2d § 177. That principle is involved in the early history of speed laws.

IV. THE SAFETY ISSUE WITH RESPECT TO "SPEED" IS UNCONSTITUTIONAL

Americans have a right to protect themselves against and oppose unconstitutional "laws" (which are in fact, no laws at all). That's how we became a country! The Founding Fathers challenged the British tea excise tax! And did not use the "nice" "respectable people" way of filing a challenge, by writing and serving a lawsuit! Read the history of the American Revolution! The Founding Fathers gunned down thousands of would-be enforcers!

Of course, the "polite people" right to challenge suspect laws continues. That right includes

challenging vague and indefinite laws, including taffic laws.

It is a matter of simple historical fact that politicians have indeed passed, imposed, unconstitutional limits on motorists and motoring. And a number of Americans have successfully opposed such laws.

First, let's consider the issue thus. Surely everybody would agree, we ought to ban any speed that would endanger life, limb or property of any person. That sounds like such a good law!! One state thought that would be a great thing to ban: ban operating a vehicle at a speed so as to endanger life, limb, or property of any person.

An American challenged the law as unconstitutional. Imagine that!

The court agreed that the law is unconstitutional, and struck down the law. How could it do that?!!—demand the fanatics who say that every speed that endangers must be banned. The court answered. Such a law is truly meaningless because there is no such thing as a motor vehicle speed incapable of endangering life, limb, or property:

"One could go further and say that the statutory verbiage is practically meaningless. We may guess at what the draftsman intended . . . But that is not sufficient. For validity the statute must be informative on its face. It attempts to set up two prohibitions. The first is as to driving 'at such a speed as to endanger the life, limb, or property of any person.' The second prohibition is against driving a motor vehicle on any highway 'at a rate of speed greater than will permit such person to bring the vehicle to a stop without injury to another or his property.' . . . As to the second prohibition, the only possible meaning is that a speed is unlawful unless it permits the car to be stopped without injuring anyone or anything. That amounts to saying that if, under any circumstances, the driver is unable to bring his car to a stop without injuring someone or something, he is driving too fast." *People* v *Firth*, 3 NY2d 472; 168 NYS2d 949; 146 NE2d 682 (1957). Such laws are unconstitutional! The politician pretense of concern for safety got struck down. Such laws in effect, as the court realized, ban ALL driving!

Such bans grossly violate Americans' constitutional rights!

Similar cases include *Empire L Ins Co* v *Allen*, 141 Ga 413; 81 SE 120 (1914); *Ladd* v *State*, 115 Tex Crim 355; 27 SW2d 1098 (1930); *People* v *Price*, 16 Misc 2d 71; 1698 NYS2d 200 (1957) and *Armondi* v *Johnson*, 16 App Div 2d 712; 226 NYS2d 714 (1962).

Another law banned driving a motor vehicle faster than would permit the driver to bring the vehicle to a stop without injuring another person or his property. An American challenged the law as too vague and indefinite to be constitutional. The court agreed:

"The statute makes it a traffic infraction to set a vehicle in motion, even at the lowest speed possible to constitute motion, if such vehicle is thereafter involved in an accident which causes injury to another or his property. The statute imposes liability without any fault; its words constitute the operator of a vehicle the insurer of the public on a public highway . . . [and] does not set up a standard for the operation of a motor vehicle on a public highway a deviation form which can properly be made the basis for a criminal prosecution." *People* v *Gaebel*, 2 Misc 2d 458; 153 NYS2d 102 (1956).

A similar case is *People* v *Horowitz*, 4 Misc 2d 632; 158 NYS2d 166 motion gr 3 NY2d 789;

164 NYS2d 41; 143 NE2d 796 (1956).

We are all surely glad that the courts protected us from such brazenly unconstitutional and irrational "laws" as that would ban all driving!! a psychopathic reaction by politicians!

We are glad the courts made the above cited conclusions. Otherwise, all driving is illegal!! The American economy and national interest depends on the right to drive, conduct vehicular transportation of goods and persons. So it is important to understand and realize, that when some politician or law pretends to defend safety, it is committing a scam. In essence, such scam artists would ban all driving. There is no such thing as a motor vehicle speed incapable of endangering life, limb, or property.

Speed limits derive from politicians pretending, feigning, concern for our safety! The Supreme Court has struck down as unconstitutional, at least one law when the government's concern on an issue was feigned, faked. The case is *Foster Packing Co* v *Haydel*, 278 US 1; 49 S Ct 1; 73 L Ed 147 (1928) (state discriminated between an in-group and disfavored people, residents vs. nonresidents, requiring in-state processing of indigenous shrimp as a prerequisite to allowing shipments out-of-state; the state feigned a valid concern, but had a different real purpose). Here, the states feign a concern about speeding, but discriminate between people. The favored ones (roadway officers) get to speed, often at speeds far higher than the disfavored people, regular drivers, not members of the in-group. If regular drivers going five mph "over" is unsafe, surely going far more than that "over", to catch that member of the disfavored class, is even more so! But that basic logic is beyond legislators! It's about time that more laws, speed limit laws, be stricken on the basis that the concern is feigned, a pretext, a sham!

One might argue that being involved in an accident renders the speed "unsafe." No law nowadays dares to say that. But even if one were to do so, allege that being involved in an accident creates a "presumption" of unsafeness, even that would be subject to rebuttal.

Moreover, the claim that lowered speed limits are needed to save lives is inaccurate. The real truth is

> **"The opponents of higher speed limits . . . said that [repealing the 55 mph law] would cause 6,000 more deaths per year They said Republicans in Congress would have 'blood on their hands' for their callous disregard for human life. But guess what: In every year since the speed limits were raised, death rates per mile traveled on the highways have fallen."—Stephen Moore, "Untrue at Any Speed," *National Review Online* (2 December 2003).**

In the 1914-1918 World War, the French Army Comander, General Joseph Joffre (1852-1931) "was in constant and personal touch with his [subordinate] commanders. Placidly ensconced in the back seat of his car, he would be driven on his rounds at seventy miles an hour by his appointed private chauffeur Georges Bouillot, three times winner of the Grand Prix auto race," says Barbara Tuchman, *The Guns of August* (New York: Bonanaza Books, 1962), Chap 11, p. 184 (Dell Paperback, p 210). Those were 1914 roads! Can you imagine the fate of any cop trying to arrest him for speeding: perhaps shot on the spot for treason?!! (The webmaster's former Colonel, then a Captain in October 1962, the night of the "Cuban Missile Crisis," ordered his sergeant to shoot the official attempting at a train embarkation point, to enforce a departure rule, compliance with which would

have obstructed troop movement, unless the man shut up, ceased and desisted, forthwith! Troop movement thereupon proceeded unhindered, the would-be enforcer got the point!)

"In late August [2005, in a case involving motorist Diana Brown], the Appeals Court of Tennessee "ruled that while a speed limit sign is presumed to show the legal speed limit, a driver charged with speeding may challenge the legality of the posted speed limit," says the article "Foundation Victory for TN Members," *National Motorist Association Foundation News* (Nov/Dec 2005, p 4). The case is *City of Oak Ridge* v *Diana Ruth Brown* (Tenn. Ct. App., Case No. E2004-01574-COA-R3-CV, 2005 WL 1996620, 19 August 2005 lv app den 2006), and citing prior precedents such as *Johnson* v *Calfee*, 1988 WL 36472 (Tenn. Ct. App., E.S., 21 April 1988), *Bahen* v *City of Hampton*, Case No. 0436-03-1, 2004 WL 2381375 (Va. Ct. App., 26 Oct 2004), etc.

V. INDEFINITE AND VAGUE SPEED LAWS ARE UNCONSTITUTIONAL

A law can be "void for vagueness." This circumstance occurs when it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct [driving safely] is forbidden. . . . *United States* v *Harriss*, 347 US 612, 617; 74 S Ct 808, 812; 98 L Ed 989, 996 (1954)," cited in *People* v *DeFillippo*, 80 Mich App 197; 262 NW2d 921, 923 (1977).

"The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its application, it is unconstitutional.

"The concept of overbreadth, on the other hand, rests on principles of substantive due process which forbid the prohibition of certain individual freedoms [e.g., personal liberty].

"The primary issue is not reasonable notice or adequate standards, although these issues may be involved. Rather the issue is whether the language of the statute, given its normal meaning, is so broad that its sanctions may apply to conduct sanctioned by the Constitution. Frequently, the resolution of this issue depends upon whether the statute permits police and other officials to wield unlimited discretionary powers in its enforcement." *Landry* v *Daley*, 280 F Supp 938, 951 (1968). [See 45-stops-in-314-miles example in DWB Context.]

Legislators, however, insist on passing unconstitutional laws against driving, under the guise of speed limit control. For example, one state banned driving around a curve without having the vehicle under control or without reducing the speed to a reasonable and proper rate. An American challenged the "law," arguing that the law was so indefinite and uncertain as to be void, thus it violated constitutional provisions forbidding depriving Americans of life, liberty, or property without due process of law. Additionally, the Constitution also mandates that the accused must be fully and plainly informed of the character and cause of the accusation or charge against him or her. The court agreed.

"Who is to determine when the automobile is under control in going around a curve in

a particular case, or whether the speed at which it is operated is reasonable and proper? This cannot be left, or course, to the judgement of the operator, for that would result in a practical annulment of the statute.

"The court and jury trying the case, if the statute be upheld, would, of course, have to determine whether the automobile was under control, and whether the speed was reasonable and proper in each particular case. Nobody would know, until after a trial was had and a judgment rendered, what the law was. No man, in driving an automobile around a curve, would have any criterion by which he could determine at what speed the same might be operated without committing a violation of the criminal law.

"The judgement of each particular jury would be the criterion which would have to be observed, and this judgment cannot be ascertained until after the alleged offense has been committed.

"To state the case in another way, it may be said that the Legislature has not created an offense at all. It has not exercised its legislative power, but has attempted to cast the same upon the courts and juries in this class of cases. . . .

"And not only is it in effect a delegation to the courts of legislative power, but an attempt to delegate to them power to pass ex post facto laws, because the law governing in particular cases would not be declared, or would not be known, until after the offense was actually committed." *State* v *Lantz*, 90 W Va 738; 111 SE 766; 26 ALR 894 (1922).

Legislators repeatedly insist on passing unconstitutional laws against driving, under the guise of speed limits. For example, one law banned driving a motor vehicle

"at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of such highway, or so as to endanger the life or limb of any person of the safety of any property."

An American challenged the law as unconstitutional. On review, the court agreed with the American, and ruled that the law was indeed unconstitutional. Here are quotes from the court decision:

"What rate of speed is reasonable and proper? Who should determine this question? What is this test as to the rate of speed which can be employed, and how is the driver of an automobile to know when he is driving at a rate of speed prohibited by the act?

"Manifestly this question cannot be determined by the consequences which ensue from driving a machine. The law must so definitely and certainly define the offense that a person of reasonable understanding can know at the time of the commission of the act that the law is being violated.

"One jury might say that a certain rate of speed was reasonable and proper. Another jury might reach exactly the opposite conclusion from exactly the same state of facts and the same circumstances.

"One court might hold, upon a review of the facts, that the rate of speed used was in

violation of the act, and another court might rule otherwise.

"We appreciate thoroughly the difficulty in prescribing the maximum rate of speed which can be employed in all cases; but this furnishes no reason why, in the language of the Supreme Court of the United States, the Legislature should be permitted to set a dragnet and leave the courts to determine who shall be detained in the net and who should be set at liberty." *Hayes* v *State*, 11 Ga App 371; 75 SE 523 (1912).

In a parallel case, the court added to the foregoing reasoning by noting that as the law failed to define what was banned in a uniform way, the matter was left to the varying opinions of different juries. Hence, the law was not uniform in its operation. So the law was unconstitutional and unenforceable. *Carter* v *State*, 12 Ga App 430; 78 SE 205 (1913).

Another law said that

"no person shall operate a motor vehicle or motorcycle upon any public street at a greater speed than is reasonable and safe, not to exceed a speed of 30 miles per hour, having due regard for the width, grade, character, trafficy, and common use of such street or highway; or so as to endanger life, limb, or property in any respect whatsoever."

In *Howard* v *State*, 151 Ga 845; 108 SE 513 (1921), a court struck down that law as well. Once again, laws must be uniform, definite, and give advance notice, in order to provide due process and the constitutional safe guards we have a right to expect. Another similar case is *Phillips* v *State*, 60 Ga App 622; 4 SE2d 698 (1939).

One law banned speed above a designated rate whenever the land contiguous thereto was "closely built up." An American challenged the law as unconstitutionally vague, and argued that the Constitution guarantees to every citizen the right to know the nature and character of an accusation against him. The court agreed and struck down the law. The court said the ban was so vague as to make impossible any standard of interpretation which might be applied to his own acts by the driver. *Ex parte Slaughter*, 92 Tex Crim 212; 243 SW 478; 26 ALR 891 (1922).

A similar case is *Ex parte Carrigan*, 92 Tex 309; 244 SW 604 (1922).

One "law" banned passing other vehicles at a speed that would endanger life or limb of any person or the safety of any property. That wording too was held clearly unconstitutional. The court rejected the law on the basis that the law provided no standard or criteria by which a driver could determine in advance whether his speed was lawful. *Ladd* v *State*, 115 Tex Crim 355; 27 SW2d 1098 (1930).

In another case, another law restricted speed based on a purported concern for safety. Again, an American sued, challenged the law. The court upheld the challenge. It found that a person of ordinary intelligence cannot know at what speed he may drive and be within the law. The American may only guess at the meaning of the "law" and hope that a subsequently convened court and jury are in accord with his guess. This is of course unconstitutional. *State* v *Campbell*, 196 A2d 131 (RI, 1963).

Vague laws with numbers that cannot be known in advance have long been struck down, for example, a law controlling future prices. Obviously manufacturers and sellers are not gifted with magical future-casting abilities and cannot "know" future prices. *Int'l Harvester Co of America* v *Com of Kentucky*, 234 US 216; 34 S Ct 853; 58 L Ed 1284 (1914). The Court

said about the mandated numbers,

"To compel [people] to guess, on peril of indictment, what the community would have given for them [here, what the speed should be] if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers [here, other drivers], is to exact gifts that mankind does not possess."

The same concept protects drivers from vague speed laws, where speed limits, especially at speed traps, suddenly change without notice. For example, in the writer's own area, there is a 45 mph sign, followed a few feet later, by a 35 mph sign! shortly thereafter, followed by another 45 mph sign!

Don't feel that the old precedents cited here rejecting the general safety law, the so-called basic speed limit, drive safely, are just that, old. No, the concept of striking down the general vague rules is still alive and well and being used. That concept was used as recently as

- **in *State of Montana* v *Stanko*, Case No. 97-486; 1998 MT 321; 292 Mont 192; 974 P2d 1132 (23 Dec 1998) (declaring the basic speed law vague and thus unconstitutional)**
- ***State of Montana* v *Stanko*, Case No. 98-049, 1998 MT 324N (24 Dec 1998); and**
- ***State of Montana* v *Leuchtman*, Case No. 97-134. 1998 MT 325N (30 Dec 1998) (giving the benefit of the *Stanko* decision to the next litigant on the same issue).**

Note that the rights-violating police officer did not even pretend tobe following the law's criteria on factors such as vehicle condition. This is an obvious violation of one's oath of office, to respect the constitution and laws, not flout them.

Data on Montana's last 12 months WITHOUT a speed limit contrasted with its first full year of experience WITH a speed limit shows that fatalities more than doubled on rural interstates and increased on rural primary highways. This data contradicts state officials' claims that speed limits, higher fines, and more enforcement would lower traffic deaths.

VI. INVENTED NUMBERS ARE UNCONSTITUTIONAL

Legislators do include some uneducated, evil, sadistic, and malicious people. Since the early vague speed-related laws were struck down, legislators have resolved on a different approach. We'll call it the anti-Galileo approach. Invent a law that says the earth is flat! Invent a law that is not consistent with nature. Invent a number! Throw darts at a board, and say "that's the speed limit!!" Amazingly, all the darts seem to end on numbers ending with a 0 or a 5!! Call this "reasonable" (a word in law to be distinguished from "scientifically accurate"). As the range of numbers in nature is different than that, the arbitrary and capricious invented numbers are thus unconstitutional on their face! The Galileo defense.

In Montana, when its unconstitutional system was repeatedly struck down in court, the legislators did the right thing, decided to stop passing unconstitutional laws. . . . . In your dreams! . . . . . No, not a chance of that! Instead they passed a new law, an invented number. And in Nevada recently, when the speed limit issue came up, a bill was snuck through in the last hours of the adjourning Legislature, setting a non-fact-based invented number. Legislator "universal malice" and unconstitutionality still rule!

Understand that it is "reasonable" for politicians to vote to declare the earth flat.

It is just not scientifically correct.

Politicians voting to declare the earth flat is "reasonable" inasmuch as in any particular place, many places on the planet, it has that appearance, and calling it flat "works." For many practical purposes, "flat" is "reasonable." But recognize, that "reasonable" is incompetent and malicious, far too low a standard, allowing for what in science is in fact gross error.

The old flat earth argument against the round earth notion is still, to the uninformed, "reasonable." The round earth argument says the earth is about 24,000 miles around at the equator. The day is 24 hours long. Round earth advocates are claiming the earth is spinning 1,000 mph.

Said the flat earth advocates in rebuttal, 'the wind from that high a speed air blast would knock us all down. We find no such wind in nature. Wherefore the round earth advocates are in error. The earth IS flat!!'

And, 'if you drop something, it lands *beside* you, not some distance significantly behind you! So there is no such motion as round-earthers allege.'

Naturally, these arguments were, at the time, persuasive, in showing the "reasonableness" of the flat earth notion.

Some might say, since the time of Galileo and others showing the earth to be not flat, legislators, city councils, officials have gotten more sensible. Human nature among officials has magically changed. Officials are all now scientists, have a Sc.D. degree, and ALL without exception adhere rigorously, solely, and exclusively to what is scientifically determined, and that only.

Oh, is that so? You offer a rebuttal, it is untrue and foolish to think that politicans all have science degrees! and adhere strictly to science facts.

Is it really true that legislators don't just invent numbers!! Sadly, you'd be right. Nothing has changed since the Galileo case, and his investigation and observations of Nature.

Politicians still invent things, especially speed numbers, invariably slow! and stop signs where no stopping is needed. (The better approach is having roundabouts (details), but these are oft obstructed for years, decades!)

Let's do like Galileo, like scientists, let's look at nature. Let's look at a few speeds occurring in nature.

EXAMPLES FROM NATURE

Stellar Speeds

(Kilometers Per Second/Hour)

The Sun	Milky Way	Local Group	Virgo Supercluster
225	100	220	400
810,000	360,000	792,000	1,440,000

Source: Hartman, William K., and Chris Impev, *Astronomy: The Cosmic Journey*, 5th ed (Belmont, CA: Wadsworth Pub Co, 1994), p 665

"These motions are in different directions and must be added together in three dimensions."

Conversion of Kilometers to Miles Per Hour

The Sun	Milky Way	Local Group	Virgo Supercluster
503,010	223,560	305,428	894,240

Planet Speeds

(Mean Miles Per Second/Hour)

Mercury	Venus	Earth	Mars	Jupiter	Saturn	Uranus	Neptune	Pluto
29.76	21.78	18.52	15.00	8.12	6.00	4.23	3.37	2.95
107,136	78,408	66,672	54,000	29,232	21,600	15,228	12,132	10,620

Source: Rand McNally *World Atlas* (Chicago: 1965), page xxiii

Planet Earth is the third fastest planet! In this example from nature, we see that even the slowest speed (Pluto's 10,620 mph, mere rocket level!) is nonetheless moving!! Fabrications about how slow we riders on Earth must go, are contrary to nature.

See also

- **Thomas Vanderbilt, *Traffic: Why We Drive the Way We Do (and What It Says About Us)* (Random House, 2008)**

- **Anthony Bizjak, "Road safety measures can be hazardous" (*Sacramento Bee*, 15 September 2008), which says ". . . . traffic engineer Hans Monderman . . . and others in Europe are known for counterintuitive ideas on safe streets, such as removing all the so-called safety devices: signals, stop signs, street striping, warning signs. What happened? Drivers started thinking for themselves. They acted responsibly and had fewer crashes. . . . Monderman . . . famously turned one busy intersection in a town center into a mixing ground of cars, bikes and pedestrians. . . . But there was hidden order amid the seeming chaos.**

Monderman had an interesting way of showing it to visitors: He'd walk backward, eyes closed, through the intersection as cars steered calmly around him."

Politician fabrications contrary to medical, engineering or scientific fact do occur, and are regularly attempted in court. So there is a long line of anti-"junk science" case law on that subject:

- ***U.S.* v *Amaral*, 488 F2d 1148 (CA 3, 1973)**
- ***Richardson* v *Richardson* v *Richardson-Merrill, Inc*, 273 US App DC 32; 857 F2d 823 (1988)**
- ***Christophersen* v *Allied-Signal Corp*, 939 F2d 1106 (CA 5, 1991)**
- ***Brock* v *Merrell J. Dow Pharmaceuticals, Inc*, 874 F2d 307 (CA 5, 1989)**
- ***Covalt* v *San Diego Gas & Electric*,**
- **eventually reaching the Supreme Court, *Daubert* v *Merrell Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (28 June 1993), and *General Electric Co* v *Robert Joiner* (1997).**

In order to allow scientific evidence in support of a litigant, a judge must determine whether the evidence is genuinely scientific, as distinct from being unscientific speculation offered by a genuine scientist, or worse, a mere layman. As Judge Kozinski has emphasized in his opinion on remand from the Supreme Court's decision in *Daubert*, it is a daunting task for judges who do not have a scientific background (and most do not) to decide whether a scientist's testimony is real science or not. 43 F3d 1311, 1315-16 (CA 9, 1995).

The Supreme Court in *Daubert* told judges to distinguish between real and courtroom science. This is not an impossible requirement, e.g., to discover the essence of "science," if there is such an essence. The object, instead while conceding the uncertainty concerning the reach of the majority opinion discussed in the Chief Justice's separate opinion, 113 S Ct at 2799, was to make sure that when scientists testify in court, they adhere to the same standards of intellectual rigor that are demanded in their professional work. Cf. 113 S Ct at 2796-97; *O'Conner* v *Commonwealth Edison Co*, 13 F3d 1090, 1106-07 (CA 7, 1994).

If they do so adhere, their evidence (provided of course that it is relevant to some issue in the case) is admissible even if the particular methods they have used in arriving at their opinion are not yet accepted as canonical in their branch of the scientific community. If they do not, their evidence is inadmissible no matter how imposing their credentials. Regarding this test, "an expert who supplies nothing but a bottom line supplies nothing of value to the judicial process. . . . [you] would not accept from . . . students or those who submit papers to [a professional] journal an essay containing neither facts nor reasons; why should a court rely on the sort of exposition the scholar would not tolerate in his professional life?" *Mid-State Fertilizer Co* v *Exchange National Bank*, 877 F2d 1333, 1339 (CA 7, 1989).

The Constitution requires that laws be fact-based. A non-fact-based law violates due process. Why? Due process includes the notion that, on science, medince, and engineering and such type issues, only facts will be presented in court, not myth, not speculation.

Speed limits, and many traffic control devices and signs, are arbitrary fictions. There are no studies

- **determining average speeds of motorists in the area**

- **the amount of deterrence that occurs when motorists observe a motorist stopped for speeding, i.e., duration of any deterrent effect (assuming arguendo that motorists slow down when seeing such, how many minutes or seconds thereafter is it before motorists resume their prior speed?)**

- **nor trend analysis of whether speeding has increased or declined the past several years and/or is proportional to enforcement.**

Speed limits are not even set by averages of what motorists in fact do, a lay speculation of —"they do it, so it is safe." (Most people routinely do what is right, do not need to be baby-sat to guide them every foot of the way!! Our ancestors got across the ocean, the continent, without politicians' laws babysitting them every step of the way!)

You may have heard of the 85th percentile concept. That is a type of this fiction ("what people do, is ok"). And worse, the percentile concept intentionally criminalizes 15% in advance, with premeditation to do so, that group of the population who has better training and skills so are qualified and competent to drive substantially faster than the average "C student level" driver, e.g., military personnel (and of course, the police themselves!!).

Talk with military personnel, or even anyone who has traveled overseas, in a driver-freedom environment, e.g., on the Autobahn. Such individuals realize the US folly of not rewarding, but punishing, the best and brightest drivers! those who can drive, not at the 85th percentile, but at the 95th, or even the 110th, 120th or 150th.

In all other areas, we do not punish the best and brightest. We do not criminalize

- **children and students striving to get better grades than mere "C" average, 85%**
- **tall basketball players!**
- **speedy baseball players, etc!**

Only here, with the anti-competence 85th percentile dogma, do we routinely punish the best and brightest!!

The sadistic 85th percentile in essence defines 15% (one of seven) motorists as law-breakers. Such a definition is absurd and outrageous. Imagine if 15% of us were branded as murderers, thieves, or other lawbreakers.

- **Consider the massive wastage of police hours hunting "speeders"; you have seen police hiding, waiting, goofing off, non-productive. Taxpayers should demand better!**
- **Unfortunately, speed is something that can be measured, and is generally believed by uneducated and psychopathic politicians to be harmful! thus they have made it an easy target for penalties, fund-raising, under the pretense of "safety" about which politicians in fact care nothing.**

But even that 85th percentile notion of criminalizing 15% in advance, would be better than what the average "speed limit law" does—a pure fiction, an arbitrarily invented number, without even a pretense of following the 85th percentile concept. (One might also say

against the 85th percentile concept that many people have been so bullied by the system that they drive slower than they otherwise would, thereby artificially depressing the numbers on which to base the 85th percentile.)

In fact, contrary to lay myth, the "85th percentile" is not even intended to apply to freeways (where there are no problems pre-identified via the below-detailed MUTCD criteria allowing freeway speed limits in the first place. The 85th percentile concept is only for non-freeeway roads! And as this paper argues, it is never applicable anywhere, anyway!

In fact, motorists are known to ignore speed limits, according to the RDU's reference to a "Federal Study on Effects Of Raising And Lowering Speed Limits" (posted at the RDU website). See also

- **pertinent statistical data at the Michigan section of the National Motorists Association**
- **James Walker's 2008 analysis in Michigan, where the State Police are supporting some motorist rights, e.g., opposing politician contempt for motorist rights even on the the 85th percentile notion.**
- **The State Police support this scientific approach over the opposition of some flat-earther, anti-science, anti-engineering locals such as those running Shelby Township. The latter fought the scientific approach in court. On 6 October 2008, the flat-earthers lost. See the Court Order in that case, *Charter Township of Shelby* v *Department of State Police, et al*, Case No. 2007-4082-CZ (Macomb County Circuit Court, 2008).**

However inarticulately, voting with their feet, motorists by ignoring speed limits are in essence already recognizing that speed limits are inherently (always) unconstitutional, i.e., non-fact-based.

A federal law, 23 USC § 101(a), controls traffic enforcement on all federal and federally-funded highways. Pursuant to that law, there is a federal Manual for Uniform Traffic Control Devices (MUTCD) (written by the Federal Highway Administration (HHS-10), 400 7th Street, SW., Washington, DC 20590). The MUTCD sets conditions precedent for traffic control. It bans the old politically-manipulated speed-limit setting system. Now engineering studies are required. The federal law requires states and local authorities to identify pre-existing problems, do valid engineering studies, and only impose that minimal amount of traffic control as solves the pre-identified problem, without causing any new problem nor safety impairment. To date, no traffic control on freeways is known to have been imposed pursuant to these MUTCD conditions precedent requirements.

One state, Navada, sued to get the MUTCD law struck down as unconstitutional. It lost. Requiring states to respect motorist rights is constitutional. See *State of Nevada* v *Skinner*, 884 F.2d 445 (CA 9, 1989) cert den, and the federal government brief in support of the constitutionality of the federal law. "Where a state statute conflicts with, or frustrates, federal law, the former must give way." U.S. Const., Art. VI, cl. 2; *Maryland* v *Louisiana*, 451 US 725, 746; 101 S Ct 2114; 68 L Ed 2d 576 (1981).

The Supreme Court of the United States has described the preemptive effect of the U.S.

Constitution Supremacy Clause as follows:

"The Supremacy Clause of Art VI of the Constitution provides Congress with the power to pre-empt state law. Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, . . . when there is outright or actual conflict between federal and state law, . . . where compliance with both federal and state law is in effect physically impossible, . . . where there is implicit in federal law a barrier to state regulation, . . . where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, . . . or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."*Louisiana Public Service Comm.* v *F.C.C.*, 476 US 355, 368-69, 106 S Ct 1890, 90 L Ed 2d 369 (1986).

According to the Court, "[t]he underlying rationale of the pre-emption doctrine, as stated more than a century and a half ago, is that the Supremacy Clause invalidates state laws that 'interfere with or are contrary to, the laws of congress.'" *Chicago & N.W. Trans. Co. v. Kalo Brick & Tile*, 450 US 311, 317, 101 S Ct 1124, 67 L Ed 2d 258 (1981) (quoting *Gibbons v. Ogden*, 22 US (9 Wheat) 1, 211, 6 L Ed 23 (1824)).

In reality, the fact of state or local government non-compliance with the federal MUTCD is a valid defense for a motorist, to show that "a posted speed limit was not legally established." See, e.g.,

- ***State* v *Morse*, 153 Vt. 651, 572 A.2d 1342 (Vt. 1990) (where city clerk was unable to produce an engineering survey supporting the posted speed limit, the defendant's conviction for speeding was reversed)**

- ***Commonwealth* v *Kondor*, 438 Pa. Super. 147, 651 A.2d 1135 (Pa. Super. Ct. 1994) (defendant charged with speeding could prevail if the Commonwealth could furnish no justification for posting a 35 mph speed limit because the department of transportation could not set speed limits arbitrarily)**

- ***Bahan* v *City of Hampton*, No. 0436-03-1, 2004 WL 2381375, at *2 (Va. Ct. App., October 26, 2004) (city traffic engineer planning to testify that no traffic engineering investigation of the relevant street had been conducted as required by law)**

- ***City of Oak Ridge* v *Diana Ruth Brown*, Tenn. App., SW2d (Tenn. Ct. App, 19 August 2005) (absence of evidence of compliance with the MUTCD as a defense to show that "a posted speed limit was not legally established.").**

Look in your state law for a law requiring compliance, for example, in California, this law. Apparently Michigan law (MCL § ____, MSA § _____) requires local jurisdictions to comply with the MUTCD, but many (or all) jurisdictions do not comply. The MUTCD guidance emphasizes the duty of law to be "fact-based." As in the civil rights era of the 1960's, some states are obeying the Constitutional due process requirement voluntarily. With others, a court order is needed. Such a court order would enjoin (ban) enforcement of the illegal speed limits.

See this California decision: "We hold that the [prosecutor], whenever radar is involved in the enforcement of a posted speed limit, must produce, in the courtroom, either the original traffic and engineering survey for the location of the citation or a certified copy of that

survey which (1) was conducted within the five years preceding the alleged violation and (2) justifies the posted speed limit," and mere oral testimony alleging them is not adequate pursuant to "the presumption of a speed trap" says *People v Earnest*, 33 Cal App 4th Supp 18 (14 Feb 1995), in a secret decision. The court added, " the Legislature strongly disapproves of speed traps," citing *People v Sullivan*, 234 Cal App 3d 56, 58-59; 285 Cal Rptr 553 (1991).

Tennessee is "one of a growing number of states that have case law [precedents] confirming [motorists'] right to challenge a speed limit if the required engineering study has not been performed or has been disregarded. Other states where similar cases have been decided favorably . . . include California, Mississippi, Ohio, Pennsylvania, Utah, Vermont, Virginia, and Washington," says the article "Foundation Victory for TN Members," *National Motorist Association Foundation News* (Nov/Dec 2005, p 4).

The bottom line is that THE "speed limit," whatever that is, is an arbitrary invention and fiction, without any scientific, medical or engineering evidence. In fact, there is no "THE speed limit." They vary every few miles. That is why speed traps exist, taking advantage of sudden, fabricated variations. Nobody however "expert" exists to testify to establish the fabricated numbers. They vary wildly from jurisdiction to jurisdiction, and even within jurisdictions, whereas the U.S. Constitutution mandates due process worldwide for citizens in court. "Laws" with fabricated numbers -- varying repeatedly even within a jurisdiction -- are clearly unconstitutional.

Remember, politicians (nowadays, Congressmen and legislators) are NOT scientists and engineers, are not adhering to the scientific method of truth finding, and do not make their decisions based on science and engineering. Instead, they make them on political bases and biases. Such wildly-varying-among-themselves numbers lack any fact basis at all, much less, a professionally researched and verified one. Politicians do not not know of, read, much less, abide by, professional journal writings, nor even take professional under-oath testimony on the subject before they vote! The decision is wholly arbitrary and capricious. In that sense, nothing has changed since the time of Galileo, nor even since earlier this century, when they invented arbitrary and capricious general wording laws!

Enforcement is in essence the same old unconstitutional thing. Catching a speeder is on the order of being struck by lighting! The officer is following the old unconstitutional approach already rejected earlier this century. Of necessity, as violations of the arbitrary and capricious fabricated numbers are so rampant! People inherently have the sense to reject a nonsense number when they see it! That is one of the benefits of a free and open society such as ours.

Congress and Legislatures cannot constitutionally, for example, criminalize driving by the edge of the earth. Why not? Because factually (by engineering and scientific evidence), the earth is not flat. Such a "no driving by the edge" law would not be "fact-based," therefore it is on its face unconstitutional. (Judges are inherently aware of the fact the earth is not flat!! no evidence need be presented.) A 'no driving by the edge of the earth' law is unconstitutional, agreed? Fact basis is mandatory pursuant to due process requirements.

A rule (for example, a 35% rule in media context) cannot be simply invented or retained when challenged. It must be shown valid, or be struck down. *Fox TV Station, Inc v FCC*, Case No. 00-1222; _ US App DC _; 280 F3d 1027, 1034; 2002 US App LEXIS 2575; 30 Media L Rep 1705 (19 Feb 2002).

Auto manufacturers test for speed capabilities of cars. That is the issue. Whatever speed one is driving, that is what "can" be done. No law can say, contrary to that science and engineering fact, 'no it can't!" It just did! Once the actual abilities (their limits) of cars are known, the government refuses to honor those engineering findings of fact. The only "speed limit" in nature is the speed of light! What we see instead is that politicians pick a number out of a hat, or the smoke rings in a smoke-filled room (!), and say that number is law. The "posted" speed limit is thus "non-fact-based." It is simply a "made up" number. But then the Galileo defense applies!

And, following that logic (laws are unconstitutional if they are not fact based), over the years, various people have filed lawsuits on non-fact-based laws, for example, on other numerical limits. In those cases, the government had decreed some number as law: the requirement for ____ is X (a number). When the government could not prove X (the number) accurate from a science, engineering, or logic point of view, the law was struck down by the courts. When laws such as invented maximum numeric limits lack rational basis, e.g., 29 CFR § 1910.1000 (a voluminous set of "speed limits" for chemicals), they are invalid, and must be stricken. *Industrial Union Department* v *American Petroleum Institute*, 448 US 607; 100 S Ct 2844; 65 L Ed 2d 1010 (1980) (a maximum limit established without rational basis is invalid); and *Alford* v *City of Newport News*, 220 Va 584; 260 SE2d 241 (1979) (a no smoking law that does not achieve its aim is unconstitutional). As 175,000,000 traffic tickets are issued each year in America, it is obvious on its face that the law is not achieving its professed safety goal!!

A recent *Readers' Digest* magazine online survey found that 71% of respondents had "driven more than 20 m.p.h. over the speed limit or gone through a red light." "Seventy-seven percent of men and 69% of women have put the pedal to the metal or run a red light. Says an Arkansas man, 'Speed limits are guidelines.' Besides, insists another man, 34, from Virginia, stopping speeders is all part of a plot: 'Perhaps the question should be posed to the government: Do you ever enforce laws simply to generate revenue?'—Nancy Kalish, "How Honest Are You?," *Reader's Digest* 114-119 (January 2004), p 119.

When police do not issue large numbers of tickets to bring in large sums of revenue, local politicians react unfavorably. See for example, the article, "Mount Clemens manager to curtail alleged police slowdown," by Mitch Hotts, *Macom Daily* (15 December 2003). Note this statement: "'Trying to make police officers become revenue producers is not right. It's not their function in the world of law enforcement,' said James Tignanelli, president of the Police Officers Association of Michigan, the union for the police department."

Moreover, traffic rules are unnecessary. The average person wants to get where he/she is going -- contrary to politician myth that we all are too stupid to do that so need to be baby-sat, monitored, watched, and bullied every step of the way -- hence drives safely enough to arrive. That is the whole notion of the 85th percentile! that the public drives well enough without being baby-sat every step of the way! Let's leave well enough alone! Of the 300,000,000 Americans, of whom tens of millions drive daily, the statistics are, they get where they are going!

For further references, see also

- **Thomas Vanderbilt, *Traffic: Why We Drive the Way We Do* (and What It Says**

About Us) (Random House, 2008)

- Anthony Bizjak, "Road safety measures can be hazardous" (*Sacramento Bee*, 15 September 2008), which says ". . . . traffic engineer Hans Monderman . . . and others in Europe are known for counterintuitive ideas on safe streets, such as removing all the so-called safety devices: signals, stop signs, street striping, warning signs. What happened? Drivers started thinking for themselves. They acted responsibly and had fewer crashes. . . . Monderman . . . famously turned one busy intersection in a town center into a mixing ground of cars, bikes and pedestrians. . . . But there was hidden order amid the seeming chaos. Monderman had an interesting way of showing it to visitors: He'd walk backward, eyes closed, through the intersection as cars steered calmly around him." Bottom line: As aforesaid, traffic laws are not only JUNK SCIENCE and thus clearly UNCONSITITUTIONAL, but they are themselves hazardous to safety.

Alford is particularly relevant to speeding. It was a case concerning no-smoking sections. Politicians invented a fiction, here is a line. On this side, it is no-smoking; on that side, it is not. The fact is, smoke drifts. The magic line | does not work. Even children's experiments show this basic science fact. A standard child's science experiment is to take two colored liquids, and pour them into one bowl. See how they merge!! Politicians are not even as mentally alert on science as children!! So naturally, in *Alford*, the court struck down the ordinance as unconstitutional. It is sheer nonsense to say, on this side of the line / number, it is safe; on that side, it is not! There is no scientific evidence that that is so. It is pure fiction on the part of scientifically illiterate politicans, not even as well educated as children.

Michigan case law shows a proper balancing concern in this regard, analyzing jointly the twin concepts of vagueness and overbreadth, if "A conviction may have rested upon an unconstitutional basis, we are constrained to reverse and remand for new trial." *People* v *Purifoy*, 34 Mich App 318; 191 NW2d 63, 64 (1971).

The "void for vagueness doctrine" requires that a penal statute fail to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and involve a manner that encourages arbitrary and discriminatory enforcement. See *Kolender* v *Lawson*, 461 US 352, 357 (1983); *Papachristou* v *City of Jackson*, 405 US 156; 92 S Ct 839; 31 L Ed 2d 110 (1972); *Gooding* v *Wilson*, 405 US 518; 92 S Ct 1103; 31 L Ed 2d 408 (1972); and *Grayned* v *City of Rockford*, 408 US 104, 108-109; 92 S Ct 2294; 33 L Ed 2d 222 (1972). In speed limit context, a vague rule such as the "basic rule" (drive safely) "impermissibly delegates the basic public policy of how fast is too fast on . . . highways to 'policemen, judges, and juries for resolution on an ad hoc and subjective basis.' *Grayned*, 408 US at 109; 92 S Ct at 2299; 33 L Ed 2d at 228, pursuant to the well-reasoned Montana Supreme Court decisions in *State* v *Stanko*, *supra*.

VII. LAWS BURDENING INTERSTATE COMMERCE ARE VOID

See *Kassel v Consolidated Freightways*, 450 US 662; 101 S Ct 1309; 67 L Ed 2d 580 (1981) rejecting the story that 55 feet double-trailer trucks are safer than 65 foot double-trailer trucks. The Iowa Legislature had simply invented the claim that the extra 10 foot length made all the difference! The Supreme Court struck down this invented number as an unconstitutional burden on interstate commerce. “Where a state statute conflicts with, or frustrates, federal law, the former must give way.” U.S. Const., Art. VI, cl. 2; *Maryland* v *Louisiana*, 451 US 725, 746; 101 S Ct 2114; 68 L Ed 2d 576 (1981). States cannot adopt laws

or regulations affecting interstate commerce without compelling factual foundation to support said law or regulation.

All speed limits lack factual foundation! are invented numbers! All speed limit numbers burden interstate commerce.

Allowing *driver freedom* with respect to speed, as, e.g., the German autobahn does, allows one to "save substantially more money on other travel costs." For example, being able to drive 120 mph allows for being at any destination within about 720 miles to be reached, and return home, the same day. This avoids need for a forced overnight stay, and thus the costs for "a night's hotel, parking costs, and meals eaten on the road."

A trip of 1,000 miles under *driver freedom* means about eight - nine hours, vs. it being a three day trip. Driver James R. Campbell cited this type example, and actual costs, on a forced three day vs eight hours trip: "My mileage extra costs driving at 120 mph (16 mpg) versus 45 to 70 mph (25 mpg) would have been $67.50 thus my cost for driving slowly was $602.50" not the forced "$670.00 in hotel, meals on the road, and house/pet sitting costs." See said analysis in *Driving Freedom*, Vol. 18, Issue # 2 (March/April 2007, p 13).

Multiply this by the number of forced slow trips made in interstate commerce daily, and the enormous double burden on interstate commerce (greatly increased delays and costs) is clearly in the billions of dollars. This severely reduces U.S. competitiveness in world markets. This is true for many markets nearby enough for day-trips under driver freedom, but requiring more costly overnight stays under the current unconstitutional speed limit system punishing the 'best and brightest' drivers.

Major Markets: Day vs Overnight Trip Burdens

Detroit - Chicago
Los Angeles - Sacramento
Minneapolis - Milwaukee

Readers can of course cite many other such examples.

VIII. LAWS ARE VOID WHEN TOO VOLUMINOUS

It is a matter of judicial knowledge that, looking at the system as a whole, and at the reality of travel in this mobile society, that there are thousands of pages of traffic laws, and thousands of officers enforcing them, each with his own standard (generally the already unconsitutional-for-vagueness "safety" principle).

But there is a further aspect of the unconstitutionality. The sheer volume and complexity of rules has already received judicial notice in another context, in a Supreme Court decision. Note these pertinent words, "Vagueness of wording is aggravated by prolixity and profusion of statutes, regulations, and administrative machinery, and by manifold cross-references to interrelated enactments and rules," *Keyishian* v *Board of Regents of U. of St. of N. Y.*, 385 US 603, 604; 87 S Ct 675, 684; 17 L Ed 2d 629 (1967).

The sheer volume and complexity of traffic rules renders them vague and overbroad. No jurisdiction even dares to command its own residents to READ the overwhelming volume of materials, much less to command all non-residents to stop whatever they are doing in commerce, and go read all the rules at each and every jurisdiction's office, plus, of course, the administrative guidance, formal and informal, plus the published and unpublished court decisions interpreting those rules, plus, of course, the actual reality in the "as applied" situation of what the individual officers on the scene may or may not deem a violation. Such a command (to stop and read the laws) would be stricken as a brazen unconstitutional obstruction of interstate commerce, in view of the mobility of the population.

In terms of quantity alone, if each local jurisdiction in the US and all its territories were to print out all its regulations that apply to their roads and bike paths, it would take many tractor trailer loads just to carry them! and super human powers to remember what law or regulation is applicable where.

We are part of a world-class area, a cosmopolitan area, with international travelers and ramifications. Imposing arbitrary and capricious standards contrary to nature (the Galileo issue) is clearly both counter-productive and unconstitutional. The Constitution was written to PROMOTE commerce, not obstruct it. In essence, by their sheer massive, unconstitutional volume, constituting both vagueness and overbreadth, the rules constitute a sweeping delegation of authority, an "Enabling Act," a sweeping delegation of authority, to every individual officer. Sweeping delegations of legislative power to the executive branch are unconstitutional, e.g., *State ex rel. Makris* v *Superior Court*, 113 Wash 296; 193 P

845; 12 ALR 1428 (1920); *Taylor* v *Smith*, 140 Va 217; 124 SE 259 (Va App, 1924); *Ex parte Dickey*, 76 W Va 576; 85 SE 781; LRA 1915F, 840 (W Va App, 1915); *Hafield* v *Lundin*, 98 Wash 657; 168 P 516; LRA 1918B, 909, Ann Cas 1918C, 942 (1917); and *Thompson* v *Smith, Chief of Police*, 155 Va 367; 154 SE 579; 71 ALR 604 (12 Sep 1930).

Under such circumstances, sweeping delegations to individuals with differing standards, conduct legal in one jurisdiction, driving at any given speed in any given type of area (industrial, residential, rural), may be deemed illegal elsewhere, or, in the same jurisdiction, by different officiers with their varying standards pursuant to the extreme range of "enabling" occurring in reality. "This lack of specificity "enourages arbitrary and erratic arrests . . . by delegating to police officers the determination of who must be able to produce what type of identification," *People* v *DeFillippo*, 80 Mich App 197; 262 NW2d 921, 923 (1977). Significantly, it included the above-referenced 1889 analysis:

> **"Personal liberty, which is guaranteed to every citizen under our constitution and laws, consists of the right to locomotion,—to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. . . .**
>
> **"Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our Constitution guarantees." *Pinkerton* v *Verberg*, 78 Mich 573, 584; 44 NW 579, 582-583 (1889).**

What our Michigan Supreme Court is saying that, arbitrary fabricated numbers are forbidden as safety is not demonstrably involved. It forbids writing rules omitting safety ("welfare"). Unless safety ("welfare") is involved, government, stay out. In light of the subsequent case law rejecting as unconstitutional vague safety traffic rules, the combination of case law precludes any numerics. This analysis has an additional benefit, promotion of judicial economy, and reducing the burden on the taxpayers (fewer magistrates, police officers needed, system-wide).

Here is the line: | On this side, it is safe, on that side it is not. If that legislative body claim is false, as it is with smoking sections, chemical numbers, and speed limits, the rule is void. And the courts must strike it down. See *Alford, supra*.

Of course, due process requires that to defend oneself, those persons supposedly endangered must be identified, in advance, so they can cross-examined. *Mattox* v *U.S.*, 156 US 237, 242-243; 15 S Ct 337; 39 L Ed 409 (1895) (rejecting depositions in lieu of personal examination) and *Kirby* v *U.S.*, 174 US 47, 55; 19 S Ct 574; 43 L Ed 890 (1899) (in person testimony required).

As such, fabricated speed limits without scientific and engineering evidence are definitely unconstitutional. The Constitution requires due process, proof, evidence, prior to convicting somebody. There is no proof, no evidence, that some particular "posted" speed limit is actually correct as the "true" necessary maximum number. The Constitution says—prove it. Or there is no case. What the evidence actually shows is that the numbers are simply made up, like the hallucinations of an alcoholic with delirium tremens seeing pink elephants -- so to speak. One easy proof that speed limit numbers are made up, is the fact

they are repeatedly being changed, and vary wildly between jurisdictions, and all end in 0's and 5's, grossly contrary to nature. The Galileo defense again.

If the issue is safety, there are legitimate tests of PEOPLE to determine people's driving ability. Such exams have been, I understand, tested in Maryland, Pennsylvania, and California. The test examines the ability to process new information. Amidst distractions, moving vehicles are shown on the screen. The test checks for ability to identify their location. This is the way to prevent accidents, test drivers -- not the outrage of unconstitutional speed limits. Speed limits exist only to extort money from the non-resistant members of the public. Those who fight tickets, pay less. Meaning: those who don't insist on their rights, lose them.

Speed limits kill. They kill on a "universal malice" basis. Studies have shown this fact as well. Obviously they kill. The are invented, contrary to nature, contrary to science, engineering, medicine. Words constituting inventions, fabrications, when death results, are themselves criminal. *The Nurnberg Trial*, 6 FRD 69 (1946) (conviction and execution of Julius Streicher for his words that led to deaths). For a genuine case, prosecute the lawmakers who fabricate the numbers, when death results. When police do not do that (do not arrest the officials), then other prosecutions (of the little people) are obviously selective, discriminatory prosecutions. (Of course, as *The Nurnberg Trial* shows, there is no defense by the enforcing officer who refuses to arrest corrupt lawmakers, just the little people, 'I was only following orders.')

IX. SPEED LIMITS VIOLATE THE CONSTITUTIONAL "RIGHT TO TRAVEL"

Most people have heard of some of our constitutional rights, the right to freedom of speech, press, religion, vote, etc. But there is a also a lesser known right, but EQUAL in the eyes of the law to those we know, the constitutional "right to travel."

Americans' "freedom to travel throughout the United States has long been recognized as a basic right under the Constitution," according to multiple cases including *Williams* v *Fears*, 179 US 270, 274; 21 S Ct 128; 45 L Ed 186 (1900); *Twining* v *New Jersey*, 211 US 78, 97; 29 S Ct 14; 53 L Ed 97 (1908), as listed in the case of *United States* v *Guest*, 383 US 745; 86 S Ct 1170; 16 L Ed 2d 239 (1968), a case involving criminally prosecuting people for obstructing the right (obstruction is a federal crime pursuant to federal criminal law 18 USC § 241).

The Supreme Court in *Guest* says of the "right to travel" that "Its explicit recognition as one of the federal rights protected by what is now 18 USC § 241 goes back at least as far as 1904. *United States* v *Moore*, 129 F 630, 633 [Circ Ct ND Ala, 1904]. We reaffirm it now." As we see, the Michigan Supreme Court had already recognized it in 1889, and *Crandall* v *Nevada* had alluded to the concept in 1867. The earliest known case working towards developing the concept was *Smith* v *Turner*, 48 US (7 Howard) 283; 48 L Ed 702 (1849) (a case sometimes cited in precedents as the "Passenger Cases," it involving quarantining them).

The Constitution protects our "liberty." Courts often cite the Fourteenth Amendment as specifically protecting our liberty. Case law shows that the "liberty" protected by the Fourteenth Amendment extends beyond freedom from bodily restraint and includes a much wider range of human activity, including but not limited to the opportunity to make a wide range of personal decisions concerning one's life, family, and private pursuits. See *Meyer* v *Nebraska*, 262 US 390, 399; 43 S Ct 625, 626; 67 L Ed 1043 (1923), and *Roe* v *Wade*,

410 US 113, 152-153; 93 S Ct 705, 726-727; 35 L Ed 2d 147 (1973). One of these life, family, private pursuits is obviously driving.

The problem being addressed here is that malicious politicians, pandering to base motives or special interests, have repeatedly assaulted and violated our "right to travel." Numerous cases uphold the constitutional "right to travel."

To avoid getting into the situation of "use it or lose it," let's review a number of them.

The "right to travel" is general. This paper is aiming at fabricated numbers imparing the "right to travel." We must start the numbers analysis in this context, therefore, at a tangent. Let's look at "easy" precedents wherein politicians had invented a number, in these cases, a number involving number of years one must be a resident to vote or hold elective office. Courts have been quite alert to fabricated numbers obstructing these rights. Let's look at a few such cases.

The case of *Green* v *McKeon*, 468 F2d 883 (CA 6, 1972), rejected inventing a number. The City of Plymouth, Michigan, invented the number "two" as the mandatory minimum of years a person must live in the City before being allowed to run for elective office. It cited the above-referenced Supreme Court decision on "the exercise of the basic constitutional right to travel," *Dunn* v *Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1974). The pretext of the invented number was that that much time was needed "to become familiar with the local form of government and the problems peculiar to the municipality." It reminded the malicious number-inventing politicians of the *Dunn* decision words, "Statutes affecting constitutional rights must be drawn with 'precision,' . . . and must be 'tailored' to serve their legitimate objectives." The court pointed out that the arbitrary invented number "two" "permits a two year resident . . . to hold public office regardless of his lack of knowledge" while it "excludes more recent arrivals who have had experience in local government elsewhere or who have made diligent efforts to become well acquainted with the municipality."' So the court agreed with the lower court decision, 335 F Supp 630, in sricking down the politicians' pretext for the invented number "two," concluding that the invented number "two" "is too broad for the achievement of [the politicians' professed] objective."

The case of *Tennesse Governor Dunn* v *Law Professor James Blumstein*, 405 US 330; 92 S Ct 995; 31 L Ed 2d 274 (1974). Blumstein was a newly appointed law professor. He wanted to vote. Tennessee politicians said, No, we have invented a one year state and 90 day county residency rule, to prove you know what you are doing. He offered to show he was competent. The politicians said no! The courts fortunately struck down the nonsense fabricated numbers. Amazingly, the professor offered the state the opportunity to test him to verify his competence, and the politicians refused. This parallels speeding situations; speeders typically offer to show that theyw ere in fact driving safely, and politicians typically refuse to consider that offer. (If you have such a case, include in your presentation an offer to show you were driving safely.) The offer will help show that the speed limit is malicious, intended for evil, not for a safety purpose, hence obviously unconstitutional.

The case of *Bolanowski* v *Raich*, 330 F Supp 724 (ED Mich, 1971), rejected inventing a number. The City of Warren, Michigan, invented the number "three" as the mandatory minimum of years a person must live in the City before being allowed to run for the office of Mayor. The pretext of the invented number was that that much time was needed "to understand the local problems, know the people of the community and [foster awareness of his] reputation and character." Bolanowski said the invented number "is not finely enough

tailored to serve the purpose claimed." The Court agreed. It struck down the invented number as unconstitutional. It pointed out that some lifelong residents can have never been "taking any interest whatsoever in municipal problems," whereas others, short-time, can have "gathered sufficient information to be able to have a good understanding."

Likewise with speed limits, higher speeds can promote safety, while lower speeds can actually involve an increased death rate. Experience with the recently increased speed limits has shown this exact effect to be occurring. This confirms the inherent unconstitutionality of speed limits, not "finely tailored" to achieve the purported purpose. As they do not achieve the stated purpose, and cannot, they are inherently (meaning, always) unconstitutional.

Other court precedents also strike down invented numbers. (If this list of case gets burdensome, remember, the reason is that there have been a lot of malicious politicians with base motives, who passed the laws, that those on the receiving end of politicians' malice, had to defend us all from: More anti-fabricated number cases: *Shapiro* v *Thompson*, 394 US 618; 89 S Ct 1322; 22 L Ed 2d 600 (1969) (public assistance benefits); *King* v *New Rochelle Municipal Housing Authority*, 442 F2d 646 (CA 2) cert den 404 US 863; 92 S Ct 113; 30 L Ed 2d 107 (1971) (public housing); *Keenan* v *Board of Law Examiners*, 317 F Supp 1350 (ED NC, 1970) (3-judge court, issue of admission to the bar); *Vaughan* v *Bower*, 313 F Supp 37 (Arizona, 3-judge court) aff'd mem 400 US 884; 91 S Ct 139; 27 L Ed 2d 129 (1970) (medical aid). Politicians with base motives often like to attack the "right to travel," people who are poor and need welfare benefits, housing benefits, or medical help. Attacking the "right to travel" via invented, fabricated "speed limits" is just another aspect of base motives of politicians.

***Shapiro* v *Thompson*, 394 US 618 (1969), establishes that laws that interfere with "fundamental rights" are "suspect" and demand "close scrutiny" by courts. Laws cannot simply be passed on whimsy, but there must be a "compelling state interest." Any law that would "chill" exercising a right is "patently unconstitutional." It is a well-established right of the people**

> **"to be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrain this movement."**

Here's an example of how the traffic code, via its speed limits, or other unscientific commands, can kill you. The doctor is rushing to the hospital to aid a patient in desperate need of TIMELY medical attention. The doctor is speeding, not stopping for unscientific traffic control devices' demands. Yet, the "universal malice" speed limit, traffic sign, wants him to aid in killing the patient, by going slow, or even stopping, no traffic coming!. Police (in a "universal malice" act) will stop him, obstruct him (the doctor) from helping the patient, let's say it is you. And you die--thanks to the unconstitutional traffic control devices.

Or, two people are together. One is severely cut, bleeding badly, needs TIMELY medical aid. Minutes, seconds, count. Your friend speeds, doesn't stop unnecessarily at unscientific stop signs, to save your life. But some self-righteous, malicious, traffic-law enforcer in a universal malice" act, stops your friend, and you bleed to death.

Political fabricated speed limits, stop signs, unscientific traffic control devices, can, and do, kill, "universal malice" style.

"If you drive 100% legally you statistically increase your chances of getting in or causing an accident."—A quote from the RDU website.

In effect, as per the Supreme Court decision in the case of *Crandall* v *Nevada*, 73 US 35; 18 L Ed (1867), speed limits and other traffic control devices, being non-fact-based, are simply an unlawful tax or impost on travel, and thus unconstitutional for the reason cited in *Crandall*. (*Crandall* involved a tax on travelers! which is what in essence speed limits, unscientific stop signs, etc., simply are, stripped of all the phony fraudulent politician folderol pretending them to relate somehow to safety, not to mention that are extortion violating the federal anti-racketeering act (RICO), 18 USC § 1961 and the law against obstructing federal rights, 18 USC § 241).

"The rights here asserted are, like all such rights, present rights; they are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled," *Watson* v *City of Memphis*, 373 US 526, 533; 83 S Ct 1314; 10 L Ed 2d 529 (1963).

IX. EVEN ASSUMING *ARGUENDO* THE LAW TO BE CONSTITUTIONAL, THE METHODOLOGY OF ENFORCEMENT MUST ITSELF BE CONSTITUTIONAL

The Michigan Court of Appeals in *People* v *Ferency*, 133 Mich App 526; 351 NW2d 225 (1984) (a narrowly framed case in which these constitutional issues were not cited) ruled that, in order to avoid any violation of due process rights of a defendant in a speeding case involving "moving" radar, seven guidelines must be met in order to allow into evidence speed readings from a radar speed measurement device:

1. The officer operating the device has adequate training and experience in its operation.

2. The radar device was in proper working condition and properly installed in the patrol vehicle at the time of the issuance of the citation.

3. The radar device was used in an area where road conditions are such that there is a minimum possibility of distortion (to prevent spurious readings).

4. The input speed of the patrol vehicle was verified. This also means that the speedometer of the patrol vehicle was independently calibrated.

5. The speedmeter (radar) is retested at the end of the shift in the same manner that it was tested prior to the shift and that the speedmeter (radar) be serviced by the manufacturer or other professional as recommended.

6. The radar operator is able to establish that the target vehicle was within the operational area of the beam at the time the reading was displayed.

7. The particular unit has been certified for use by an agency with some demonstrable expertise in the area.

Although the Michigan Court of Appeals ruling in *People* v *Ferency* deals with the adjudication of a case involving traffic radar, the Michigan Speed Measurement Task Force is of the opinion that the principal recommendations set forth in that ruling can be

applied to cases involving laser speed measurement devices. The interim guidelines for adjudicating speeding cases involving laser speed measurement devices that have been developed by the Michigan Speed Measurement Task Force reflect this opinion:

1. The officer operating the laser speed measurement device must have adequate training and experience.

2. The particular laser device must have been certified for use in Michigan by the Michigan Speed Measurement Task Force.

3. The laser device must be verified in the same manner at the beginning and end of the shift to ensure that it is in proper working condition, and the device must be serviced by the manufacturer or other professional as recommended.

4. The officer using the laser device must be able to testify that a down-the-road speed reading was obtained at a distance that was within the operational range of the device.

5. The target vehicle must be properly identified.

6. The laser device must be in proper working condition at the time the speed measurement reading is obtained. Additionally, across-the-road laser devices must be properly positioned and aligned.

XI. OFFICERS THEMSELVES SPEED

Police officers themselves regularly exceed speed limits, for various purposes including to catch suspected speeders!! Wherefore, speed limit laws and enforcement *prima facie* do not in fact have an engineering and scientific basis, and hence, by definition, speeding per se cannot be shown to be unsafe. Obviously, enforcement by speeders themselves cannot in fact serve as a deterrent to others' speeding. Police in essence drive the same, or at higher speeds, than motorists themselves. The public reaction, as shown by 175,000,000 tickets is not, 'I'm so deterred,' but, 'hypocrites.' The unequal enforcement of the law, exempting themselves, violates the constitutional concept of "equal protection of the laws." Their attitude of disdain for the rule of law is especially clear when they practice law without a license.

For one reason officers speed, note that they know that "removing all the so-called safety devices: signals, stop signs, street striping, warning signs [means] fewer crashes." See

- **Thomas Vanderbilt, *Traffic: Why We Drive the Way We Do (and What It Says About Us)* (Random House, 2008)**

- **Tony Bizjak, "Road safety measures can be hazardous" (*Sacramento Bee*, 15 September 2008), and**

- **articles on the unsafeness of traffic rules.**

Federal law 18 USC § 241 bans obstructing federal rights, which includes the "right to travel," as per the long line of case law above cited. Federal law 18 USC § 1961 bans engaging in a pattern of crime. When state and local officials in essence extort money, they are committing federal felonies and are in essence "racketeers" as per the law. You may have heard of "forfeiture laws," taking the fruit of one's unlawfully earned income (including one's house). Here, in what is widespread extortion, is an excellent place for such

action to occur. It would help deter the making of extortionate arrests, especially when there is not even the pretense of complying with the law's criteria, e.g., vehicle condition, as in the Montana cases above cited.

When officers themselves speed to catch "speeders," the inconsistency is glaring! as well as unconstitutional. See discussion below pursuant to the anti-inconsistency Supreme Court decision, *Bush* v *Gore*, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000)

Here is the real history of why laws came to be passed creating new crimes:

> **[One] important factor [in the government deciding to begin defining crimes] was . . . to build up a strong central government. Acts [previously legal] became crimes. As the king [government] became more powerful, legislation against private crime increased and after the Norman conquest [of England, 1066] a distinct body of criminal law evolved for the first time. . . .**
>
> **As part of his policy of strengthening the central government, Henry II (1154-89) established the system [leading to modern] judges.**
>
> **[In the] reign of Henry VII . . . a strong central government [did] emerge . . . reflected by a great increase in the types of crimes against which legislation was passed. . . .**
>
> **Under the Stuarts, the need to raise money for the crown led to new crimes being defined."—"Crime," *Encyclopædia Britannica*, Vol 6, pp 754-758 (this quote, pp 756-757) (1963).**

Bottom line: Criminal laws were invented not to protect people, but rather to increase monarchy's government power and revenue! Too bad we are not routinely taught this facet of history! and so have lost that past awareness. The Founding Fathers got rid of the king, but not his system!

It is not even necessary to have traffic laws on the books at all, to "force" the public into safe driving! The average person intends to get where he is going! so the norm is that most people daily drive sufficiently well so as to get there! No babysitting laws and cops needed!

Here is an example, an experiment. It is cited by Steven D. Levitt and Stephen J. Dubner, *Freakonomics* (New York: William Morrow, 2005), pp 45-51. The example involves bringing into the office bagels and a cash basket on the honor system. Most people pay! "Can any man [person] resist the temptation of evil if he knew his acts could not be witnessed?" The answer is . . . "Yes" 87% of the time! No babysitting laws and cops needed!

Police are, in short, required by politicians to do a lot of unnecessary functions that distract off crime prevention. Enforcing laws that criminalize the majority of the adult US population is a blatant example. About 175,000,000 traffic tickets are issued annually! -- about the total of the adult population! But note the ratio to the amount of driving being done: About 175,000 X 365! Vast resources are in short, being focused on something under 1/3 of 1%, a 1/365 factor!

And as the above references show, this is the tip of the iceberg of the vast waste due to the rampant passing of egotistical laws.

XII. STATUTORY PRESUMPTIONS ARE UNCONSTITUTIONAL UNLESS THE ULTIMATE FACT CONCLUDED IS "AT LEAST MORE LIKELY THAN NOT"

Speed limits are based upon statutory presumptions (by uneducated often corrupt or racist legislators who took no testimony or evidence before voting) that a higher number than they said, means that you are driving unsafely. Speed limits are of course unconstitutional unless they promote safety.

> **"Personal liberty . . . consists of the right to locomotion,—to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. . . . Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our Constitution guarantees." *Pinkerton* v *Verberg*, 78 Mich 573, 584; 44 NW 579, 582-583 (1889).**

As the voluminous case law herein contained shows, even that general principle (safety) is unconstitutional as in essence, providing no notice in advance of what is to be later deemed unlawful.

So we are left with a presumption isue. This is a Fifth Amendment issue. Driving in excess of some arbitrarily defined number is PRESUMED to be unsafe. Constitutionally, that is an irrational conclusion.

As it happens, there have been a number of constitutional cases on the issue of presumptions. The bottom line is that the Constitution mandates that to be constitutional, a presumption must be at least more likely than not true.

Constitutionally, "a criminal statutory presumption must be regarded as `irrational' or `arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Leary* v *United States*, 395 US 6, 36; 89 S Ct 1532; 23 L Ed 2d 57 (1966) (holding invalid a statutory presumption that person found possessing marijuana had also imported the same).

To provide due process, in other words, there must be at least a "rational connection between the fact proved and the ultimate fact presumed" - a connection grounded in "common experience." *Tot* v *United States*, 319 US 463, 467-468; 63 S Ct 1241; 87 L Ed 1519 (1943). See also similar analyses in *United States* v *Romano*, 382 US 136; 86 S Ct 279; 15 L Ed 2d 210 (1965) (invalidating a presumption that mere presence at an illegal still constituted possession, custody, or control of the same, and citing a line of such cases at footnote 6 back to 1910); and *Ulster County Court* v *Allen*, 442 US 140; 99 S Ct 2213; 60 L Ed 2d 777 (1979).

Constitutionally, "a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed." *Tot* v *United States*, 319 US 463, 467; 63 S.Ct. 1241, 1245, 87 L.Ed.2d 1519 (1943).

The charge against you is not evidence. Charges are *ex parte* and do not support the presumption. See *Jim Crockett Promotion, Inc* v *City of Charlotte*, 706 F2d 486, 490-491 (CA 4, 1983) (the accusation was that the sound being made was "unnecessary" and above what was allowed; allegations that something is above some maximum are not sufficient to support a presumption!)

> **"Neither general experience nor reason nor common sense . . . suggest that merely because three persons plus a police officer complain (*not testify, merely complain*) that certain noise was 'loud' or 'disturbing' warrants an inference or presumption by a jury that their untested complaints amount to 'prima facie evidence' that the noise was 'loud' or 'disturbing.'**
>
> **"A 'complaint' is no more than a charge, made *ex parte*, without any opportunity by a defendant to confront the person making the 'complaint' or giving the 'information' or to test by cross-examination the validity of such 'complaint.' At best, it could have no greater stature than an arrest warrant or perhaps an indictment, both of which proceed *ex parte*.**
>
> **"Neither the arrest warrant nor the indictment has such standing as to support *prima facie* evidence or presumption of guilt to impose on a defendant the burden either of persuasion or production. Similarly, we do not think 'complaints,' whether from one or four complainants, can be deemed *prima facie* evidence of wrongful conduct or be given the stature of a presumption imposing any burden of persuasion or of proof on a defendant."**

The refutation of the presumption is obvious on its face. Clearly, you, not some politician or officer, are the judge of whether your speed was "necessary"! Moreover, there are (against you) no complaining witnesses, who supposedly reported your speeding to the police, then a subsequent police investigation. Instead, there is only the police, the only "crime" commonly handled *sua sponte* as speed limits derive from corruption and racism, not genuine concern for public safety. Obviously, tens, even hundreds of millions of people, drive above the limit hourly, daily. Catching a "speeder" is on the order of being struck by lightning. The public clearly does not deem the law of sufficient credibility to file complaints that you personally were speeding! The public daily deems the law "irrational," in the millions and tens of millions. There is nothing in the record, nor any testimony, that driving above the limit makes it "more likely than not" that the speed was unsafe.

But supposing that there were a private complainant. Cross-examine him or her!! If any witnesses appear to attempt to rebut your affidavit or testimony that you were driving safely, they clearly cannot offer any testimony (lay or expert) to the contrary, nor any professional studies, nor have any such data present to file as an exhibit in court.

Another obvious issue arises. If the allegation is attempted to be raised that you were endangering safety, the obvious question is: "whose?" Demand names, addresses, prior-to-trial statements! You have a constitutional right (Sixth Amendment) to confront the witnesses against you and cross-examine them on all aspects, including the nature, degree, duration, intensity, scope, and prevalence of supposed endangerment!! *Davis* v *Alaska*, 415

US 308; 94 S Ct 1105; 39 L Ed 2d 347 (1974).

Be confident. There are no private witnesses against you. The law is corrupt and corrupt only. It has no credibility, so there are no private witnesses against you, as nobody complained about your speed!

XIII. SIGNS MUST BE PROPERLY POSTED TO BE VALID.

A federal law, 23 USC § 101(a), controls traffic enforcement on all federal and federally-funded highways. Pursuant to that law, there is a federal Manual for Uniform Traffic Control Devices (MUTCD). The MUTCD sets conditions precedent for traffic control. It bans the old politically-manipulated speed-limit setting system. Now engineering studies are required. The federal law requires states and local authorities to identify pre-existing problems, do valid engineering studies, and only impose that minimal amount of traffic control as solves the pre-identified problem, without causing any new problem nor safety impairment. To date, no traffic control on freeways is known to have been imposed pursuant to these MUTCD conditions precedent requirements.

Look in your state law for a law requiring compliance, for example, in California, this law. Apparently Michigan law (MCL § ____, MSA § _____) requires local jurisdictions to comply with the MUTCD, but many (or all) jurisdictions do not comply. The MUTCD guidance emphasizes the duty of law to be "fact-based." As in the civil rights era of the 1960's, some states are obeying the Constitutional due process requirement voluntarily. With others, a court order is needed. Such a court order would enjoin (ban) enforcement of the illegal Traffic Control Devices, e.g., speed limits, stop signs, etc., installed without first obtaining an engineer's warrant. That can only be issued after a proper study has been done.

The bottom line is that THE average "speed limit," whatever that is, or the average "stop sign," is an arbitrary invention and fiction, without any scientific, medical or engineering evidence. In fact, there is no "THE speed limit," and rarely genuine need for a "stop" sign as distinct from a "yield" sign.

Note that speed limits vary every few miles. "Stop" and "yield" signs are intermingled without rhyme or reason.

Such facts explain how scams such as speed traps exist, taking advantage of sudden, fabricated variations. Nobody however "expert" exists to testify to establish the fabricated numbers and signs. They vary wildly from jurisdiction to jurisdiction, and even within jurisdictions, whereas the U.S. Constitutution mandates due process worldwide for citizens in court. "Laws" with fabricated numbers -- varying repeatedly even within a jurisdiction -- are clearly unconstitutional.

To be valid signs, signs must themselves follow the law! Their are, for example, size and height requirements for signs. For example, regulatory signs must generally be at least five feet above the surface, and generally be 12, 18, or 24 inches wide, and 24 or 30 inches tall, depending on type.

What happens if a sign is not legally designed or posted? Answer: the court can strike down the allegation of your non-compliance.

Below is an excerpt of a court decision doing just that. Note that the sign had not been

posted as per the law:

``The single issue on appeal is whether a local municipality's posted speed limit sign is unenforceable because it fails to comply with the minimum height requirements set forth in the Uniform Traffic Control Devices Manual. The trial court concluded that the manual's minimum height requirement is mandatory in order for the local posted speed limit to be enforceable. This court agrees.

"The statutory scheme is very simple. If a local authority such as the DNR wants to impose a speed restriction, it must post a speed limit sign that is both sufficiently legible to be seen by an ordinarily observant person and in a proper position. The fact that the legislature specifically joined the two requirements in Wis. Stat. § 346.02(7) with the conjunction "and" demonstrates that there are two distinct requirements to be met.

"Because it is undisputed that the signs were not in a proper position as required under the Manual's minimum height requirements, the posted speed limit was unenforceable. Therefore, the trial court had no alternative but to dismiss the citation."--*State* v. *Kay H. Dawson*, Case No. 00-3355-FT; 2001 WI App 146; 630 NW2d 277 (Wis App, 1 May 2001)

XIV. YOU MUST BE PROPERLY NOTIFIED BEFORE PLEADING

Before a person can constitutionally plead guilty, the accused must be properly informed of the charge and elements. Constitutionally, aspects of a criminal case require a defendant's knowing participation. To be valid, a guilty plea must be voluntarily made with full knowledge of its implications. *Henderson* v *Morgan*, 426 US 637; 96 S Ct 2253; 49 L Ed 2d 108 (1976) (case involving defendant not informed of the "intent" element of the crime of which accused).

***Henderson* relies on even older case law to show that his "plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" *Smith* v *O'Grady*, 312 U.S. 329, 334; 61 S Ct 572, 574; 85 L Ed 859 (1941). In law, "a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *McCarthy* v *United States*, 394 US 459; 89 S Ct 1166; 22 L Ed 2d 418 (1969).**

A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving, see, e. g., *Johnson* v *Zerbst*, 304 U.S. 458, 464-465; 58 S Ct 1019; 82 L Ed 1461 (1938), or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in this latter sense. *Smith* v *O'Grady*, 312 U.S. 329, *supra*.

Here, as the speed limit is unconstitutional, not fact-based, etc., it is inherently defective. No plea can be voluntary in the sense of constituting an intelligent admission. Clearly, nobody in the criminal justice system has informed you of the elements required to secure a conviction. They have most certainly not informed you of your constitutional protections. Instead, maliciously, they count on your NOT being informed; on committing fraud against

you by deceiving you as to same. This violates due process.

In order to keep you uniformed and deceived, they typically do not provide you an attorney. So ask for one. In writing. When refused one, likely applying *Gideon* v *Wainwright*, 372 US 335; 83 S Ct 795; 9 L Ed 2d 799 (1963), pretending that the right-to-counsel only applies to felony cases, appeal. These issues of constitutionality are such that a lawyer is of the value described herein, in aiding you in making and refining these arguments. It is outrageous that laymen should have to be making these constitutional arguments *pro se*, without counsel.

You have a Sixth Amendment right to an attorney. This constitutional mandate has been followed in the federal system since 1789! See 1 *Stat* 73, 92 (1789); 1 *Stat* 112, 118 (118 (1790), now 18 USC § 563.

You have a right to being properly informed, even if you learn of the right long after. The *Henderson* case was eleven (11) years after the initial incidents!

For those reading this material 'too late,' i.e., after your case has already started: You should ask for an attorney even if you failed to ask for one up front. The mere failure of a defendant to request counsel is not, constitutionally, a waiver of the right, *Brewer* v *Williams*, 430 US 387, 404; 97 S Ct 1232, 1242; 51 L Ed 2d 424 (1977).

The Supreme Court long ago (1938) explained the urgent need for the right to an attorney: *Johnson* v *Zerbst*, 304 US 458, 465-468, *supra*, involved a conviction in civil court (a process similar to traffic court); Johnson was not provided a lawyer. Said the Supreme Court in overturning the conviction:

". . . The Sixth Amendment . . . embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty. . . . The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel. . . . compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. [Unless obeyed], the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty."

See also *Powell* v *Alabama*, 287 US 45, 68-69; 53 S Ct 55; 77 L Ed 158 (1932): "Left without the aid of counsel [the accused] may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he is not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

Motorists need to (a) know and (b) assert their legal rights in order to protect themselves from potential abuses by law enforcement. See, e.g., *Glen Murray* v *State of Delaware*, Case #240, 2011, A.2d. (Del., 14 May 2012). 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 went on to state 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 result was "a lengthy legal battle."

While the Supreme Court did not say so explicitly, it is obvious that such travesties cannot occur unless the system includes a vast number of corrupt and malicious prosecutors and judges. In the traffic system, with 175,000,000 annual cases, the magnitude of the corruption is obvious, and clearly, beyond all doubt, not just beyond reasonable doubt, keeping tens of millions uninformed of the constitutional criteria for valid convictions.

XV. THE RIGHT TO JURY TRIAL

The federal Constitution, the Sixth Amendment, guarantees the right to jury trial "in all criminal prosecutions." States have a record of trying to undermine this right two ways: (a) by banning jury trials in some criminal prosecutions, and (b) by cutting jury size down from twelve to six. Such obstruction of the right to jury trial is supposed to be unconstitutional, as the Fourteenth Amendment requires states to honor our federal constitutional rights.

Unfortunately, the courts have been allowing states to violate the Sixth Amendment. See cases including the following

***Patton* v *United States*, 281 US 276, 288; 50 S Ct 253; 74 L Ed 854 (1930)**

***Duncan* v *Louisiana*, 391 US 145, 149; 88 S Ct 1444; 20 L Ed 2d 491 (1968)**

***Baldwin* v *New York*, 399 US 66; 90 S Ct 1886; 26 L Ed 2d 437 (1970)**
(upholding jury trial ban if penalty is under six months in prison).
***Dane County* v *McGrew*, 272 Wis 2d 856; 679 NW2d 927; 2005 WI 130 (19 July 2005)**
(anti-full jury trial on the excuse that the Constitution is old (1848)!

The *McGrew* case did say at least that "motorists *do* have a constitutional right to a jury trial in traffic ticket cases," says the *National Motorists Association Foundation News* (Sep/Oct 2005) page 7. Unfortunately, the case also said that "such a jury does not have to be made up of twelve people."

The National Motorists Association opposes this restriction of jury trial rights. See its analysis of the Sixth Amendment: "Do you see anything in here that says this right doesn't apply unless the crime can result in six months or more in jail? Me neither." Jury trials "are . . . the most important bastion for the protection of individual rights." How did the ban on jury trials come about? "When the U.S. Supreme Court [on behalf of states] could not get the interpretation it [they] wanted from the actual words in the Sixth Amendment, it chose to do a historial review [the Confederate approach refuted before the Civil War!] of the circumstances prior to the drafting of the U.S. Constitution. Sure enough, it found instances where, under English common law, persons could be tried for minor crimes without access to a jury trial. That the drafters of the Constitution were obviously aware of

this practice and chose to obliterate it by granting jury trials to *anyone* charged with a crime, as a constitutional right, did not phase the [Supreme Court judges]. This knowledge didn't fit their agenda, i.e., reducing access to to jury trials for criminal defendants." — President James Baxter, "The Courts Have Lost Their Way," 16 *National Motorists Association Foundation News* (#5) 2 (Sep/Oct 2005).

Even if "common law" trials in England could have been without a jury, that would not be a precedent for crimes defined instead by *statute*, e.g., traffic violations

In the Wisconsin case, the court's claim was "that if a crime or violation did not exist when the [1848] constitution was drafted, constitutional protections do not apply. The argument goes like this: since motor vehicle speeding tickets did not exist in [1848], the constitutional right to a jury trial does not apply."—President James Baxter, "Wisconsin Supreme Court Rules," 16 *National Motorists Association Foundation News* (#5) 4 (Sep/Oct 2005).
(Unfortunately, the motorist did not help his own case, by telling the lower courts he didn't want them to even decide the matter; he only wanted a decision by the Wisconsin Supreme Court. Asking a judge not to decide, that's an error to never make! Instead ask for a full and correct decision. If an alleged higher court precedent would supposedly constrain your judge, you may cite the precedent of *Wuebker v James*, 58 NYS2d 671, 677 (1944), showing that the oath of office is to the Constitution, not to a higher court interpretation. The judge's duty is to do right. Period.)

The narrow approach of word meaning limited to the 1848 definition, that Wisconsin's Supreme Court alleged to attack the right to jury trial, is an approach

- **they know is wrong, and**
- **one they dare not use to eliminate, for example, freedom of religion (no churches allowed except those in 1848); freedom of speech (no subjects allowed except those of that era); freedom of the press (no newspapers allowed except those that existed then)!**

Honest, rational judges know that a Cosntitution is intended, designed, made, devised, written to be a *perpetual* document; and that its wording is made to cover subsequent matters, whether new religions, subjects, newspapers, or crimes. The rights the Constitution sets up are intended and designed to be perpetual, permanent, not limited to only those on the date of ratification.

For detailed background on jury trial rights, see http://www.lysanderspooner.org/ and http://www.lawcasella.com/spooner/TrialByJury.htm .

XVI. ADJUDICATORS MUST BE IMPARTIAL

Cases have arisen due to the lack of impartiality of judges, for example, *Tumey v Ohio*, 273 US 510; 47 S Ct 437; 71 L Ed 749 (1927) and *Ward v Village of Monroeville*, 409 US 57, 60 (1972). The Supreme Court took notice of the high percentage of city revenue derived from traffic offenses.

When fines constitute a substantial portion of a jurisdiction's revenues, the "possible temptation" to convict the innocent "may . . . exist when the [adjudicator's] executive responsibility for village finances may make him partisan to maintain the high level of

contributions from the mayor's office." *Ward, supra*, 409 US 57, 60.

This issue also implicates due process. The ticket-issuing-jurisdiction budget presumes traffic offense revenue, in essence, inherently violating due process, as the number of judge positions is accordingly increased. Offering a job is a classic method of improper influence, here, the creating of excess positions, both in enforcement and in the judiciary. Lower level judges' and magistrates' lack of impartiality is especially obvious when they unethically aid and abet the unauthorized practice of law by officers, and aid in presenting the prosecution's case. Note the precedent of *U.S.* v *Singer*, 710 F2d 431 (CA 8, 1983) (a judge "helping the Government to try its case").

Judges' obsession with "helping the Government to try its case" has gone so far as with one judge, to engage in ex parte outside-the-courtroom communications with an arresting officer, after the case, to insert additional evidence into the record on appeal! See *People* v *Marcroft*, 6 Cal App 4th Supp 1; 8 Cal.Rptr.2d 544 (1992)

Judges not only may aid in presenting the elements of the prosecution case; they may, in the case of unrepresented defendants, tailor their questions so as to omit bringing out elements of the defendant's defense. Example: by failing to ask whether the officer had a warrant, meaning, was there a traffic engineer warrant for the traffic control device or speed limit. (In any other case, judges would ask whether the officer had a warrant!)

Judges may also "testify," pontificate or yammer on, as to aspects of radar operation, e.g., remarks about the officer's skill in using the radar, the ability to single out a specific car. The latter is something radar cannot do, as its beam quickly enlarges to cover the width of the road and beyond, so the issue of which car it was observing is a matter of expert analysis and opinion. Judges cannot testify as either witness, nor expert witness.

Note that the more the number of cases, the more the number of judge jobs.

This situation includes excess jobs being created due to the 90 year pattern of refusal to enforce Michigan's 1909 cigarette control law MCL § 750.27, MSA § 28.216. Cigarette smoking has long been implicated in crime, alcoholism, drug abuse, and suicide. Experienced officers recognize that alcoholism and drug abuse typically occur primarily among smokers, not nonsmokers, about 90% so. "The proof of the pattern or practice [of knowing refusal to enforce the law] supports an inference that any particular decision [including here], during the period in which the policy was in force, was made in pursuit of that policy." *Teamsters* v *U.S.*, 431 US 324, 362; 97 S Ct 1843, 1868; 52 L Ed 2d 396, 431 (1977). "Nothing can destroy a government more quickly than its failure to observe its own laws." *Mapp* v *Ohio*, 367 US 643, 659; 81 S Ct 1684; 6 L Ed 2d 1081 (1961).

By knowingly not enforcing the cigarette-ban law, and anti-poisoning and anti-murder laws, more smoking occurs, with the result that disproportionately more alcoholism, drug abuse, and crime occur. This in turn leads to an excess number of police and judiciary positions being created. While a challenge to the numbers of officers and judicial positions may seem novel, it is simply an application of what the Supreme Court has already found pertinent under Constitutional guarantees of the people's rights to a fair process, *Ryder* v *U.S.*, 515 US 177; 115 S Ct 2031; 132 L Ed 2d 136 (1995).

The non-enforcement practice of 90 years constitutes a clear-cut conflict of interest, as now enforcement of the cigarette ban, MCL § 750.27, MSA § 28.216, means lay-offs. Having an excess number of such positions both enables racism in traffic stops and grossly

disportionate focusing on traffic issues as a revenue raiser, as distinct from having a limited number of staff, restricted to genuine crime issues as a century ago, and as our 1909 ancestors intended.

The continuing pattern of enforcement misconduct, mass refusal to enforce the 1909 law, precludes prosecutions at the latter end of the cause and effect chain. By law, MCL § 750.478, MSA § 28.476, the government (law enforcers) must set an example of enforcing and obeying the laws. Case law to the same effect, e.g., *Service* v *Dulles*, 354 US 363; 77 S Ct 1152; 1 L Ed 2d 1403 (1957) and *Glus* v *Eastern District Terminal*, 359 US 231, 232; 79 S Ct 760, 762; 3 L Ed 2d 770, 772 (1959), makes clear that a plaintiff cannot rely on its own wrongdoing at the starting point of a process. "[H]e who does the first wrong is answerable for all the consequent damages," *Scott* v *Shephard*, 96 Eng Rep 525, 526 (1773).

The government cannot have the benefit of the provisions favorable to its side, while ignoring its conditions which it is to perform, obey, or enforce. Precedents show that no court should aid such a misconduct-committing party, e.g., *BTC* v *Norton CMC*, 25 F Supp 968, 969 (1938); and *Buckman* v *HMA*, 190 Or 154; 223 P2d 172, 175 (1950). "No one may take advantage of his own wrong," *Stephenson* v *Golden*, 279 Mich 710, 737; 276 NW 848 (1938). If smokers are being created, then committing 90% more alcholism, drug abuse, and crime than would otherwise be the case, in turn leading to hiring more police, prosecutors and judges, enabling vastly expanded resources beyond the "Founding Fathers'" original intent, the wrong is the government's pursuant to the 90 year pattern of refusal to enforce the crime/alcoholism/drug prevention law, MCL § 750.27, MSA § 28.216. Somebody should indeed be prosecuted--prosecutors--pursuant to MCL § 750.478, MSA § 28.476, for their protracted, brazen knowing, refusal to enforce the prevention law MCL § 750.27, MSA § 28.216.

In addition, according to Michigan Governor John Engler's email message to this web writer, "Smoking is the single most preventable cause of death and disability in America today. In fact, smoking causes over 15,000 deaths in Michigan each year and accounts for more than $800 million in a health care costs for our state. Real and long term improvements in the health status of our citizens demands a state-wide commitment to prevention." Wherefore, police focus (a grossly unscientific priority) on enforcing traffic rules for revenue reasons, while refusing to enforce the cigarette control law MCL § 750.27, MSA § 28.216, leads, as "natural and probable consequence," to the premature deaths of thousands of our residents each year. The priorities are an "order," but as *The Nurnberg Trial* shows, that is no defense when large numbers of deaths result.

The term "natural and probable consequence" relates to events that "happen so frequently . . . that . . . they may be expected [intended] to happen again."—*Black's Law Dictionary*, 6th ed (St. Paul: West Pub Co, 1990), p 1026. "A person is presumed to intend the natural and probable consequences of his voluntary acts," p 1185. The effects of misplaced enforcement priorities clearly fall within these definitions.

Governor Engler [1 January 1991 - 31 December 2002] was only citing the deaths in Michigan. The U.S. Department of Health, Education and Welfare, National Institute on Drug Abuse (NIDA), book entitled *Research on Smoking Behavior, Research Monograph 17*, Publication ADM 78-581, p v (December 1977), said of the deaths in the United States at large,

"Over 37 million people (one of every six Americans alive today) will die from

cigarette smoking years before they otherwise would."

A few years earlier, the Royal College of Physicians of London, in its book, *Smoking and Health Now* (London: Pitman Medical and Scientific Publishing Co, 1971), p 9, had already declared the smoking-caused death toll to be a "holocaust" due to the then "annual death toll of some 27,500." If 27,500 deaths is a "holocaust," and it is, 37 million is (in contrast to the Nazi 6 million holocaust), a six fold+ holocaust. That is above the World War II "crimes against humanity" level for which prosecutions occurred. Law enforcement priorities were skewed in Nazi Germany as well. Police looked the other way on that holocaust. The same is occurring here, with the same (or worse) "natural and probable consequence."

Due to cigarettes' inherently deleterious nature and ingredients, they, when lit, emit deleterious emissions. The Department of Health, Education and Welfare (DHEW), *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service*, PHS Pub 1103, Table 4, p 60 (1964), lists examples of cigarettes' deleterious emissions compared to the chemicals' "speed limits" (official term, "Threshold Limit Value" [TLV], set in the toxic chemical regulation 29 CFR § 1910.1000, including but not limited to:

Chemical	Quantity	"Speed Limit"/ TLV
acetaldehyde	3,200 ppm	200.0 ppm
acrolein	150 ppm	0.5 ppm
ammonia	300 ppm	150.0 ppm
carbon monoxide	42,000 ppm	100.0 ppm
formaldehyde	30 ppm	5.0 ppm
hydrogen cyanide	1,600 ppm	10.0 ppm
hydrogen sulfide	40 ppm	20.0 ppm
methyl chloride	1,200 ppm	100.0 ppm
nitrogen dioxide	250 ppm	5.0 ppm

Additional data of this type can be found in the book by Samuel S. Epstein, M.D., *The Politics of Cancer* (San Francisco: Sierra Club Books, 1978), p 154. The Occupational Safety and Health Act of 1970, 29 USC § 651 - § 678 forbids hazards. Here is a word picture (using the example of carbon monoxide) of what this type data means:

| 42,000 ppm - cigarettes' carbon monoxide
|
|
| 32,000 For perspective, police stop speeders going 60 in a 50 mph zone.
| Tobacco far exceeds the "speed limits." Tobacco kills precisely

| because its toxic chemicals are above the safe levels.
| 22,000
|
|
| 12,000 ppm - cars' limit "Cigarette Makers Get Away With Murder,"
| (40 CFR § 85.2203-81) says Elizabeth M. Whelan, Sc.D., M.P.H.,
| in *The Detroit News*, p 4B (3-14-93). The
| above "speed limit" numbers show why.
|
| 2,000 (*Not to scale*)
|
|
| 50 - legal amount indoors (29 CFR § 1910.1000)
| 9 - legal amount outdoors
| 0 - amount cigarette pushers allow from their personal furnaces

It is because cigarettes' emissions vastly exceed the "speed limits" that they are dangerous and so fatal as to kill millions of people. If cigarettes' toxic chemicals were under the "speed limits," they'd be safe! Example: The "speed limit" for carbon monoxide is about 100, whereas it's doing 42,000.

"The smoker of cigarettes is constantly exposed to levels of carbon monoxide in the range of 500 to 1,500 parts per million when he inhales the cigarette smoke."—G. H. Miller, Ph.D., "The Filter Cigarette Controversy," 72 *J Indiana St Med Ass'n* (12) 903, 904 (Dec 1979).

> **"The blood of cigarette smokers will contain from 2 to 10 percent carboxyhemoglobin . . . initial symptoms of poisoning . . . will result from exposures to 1,000 ppm for 30 minutes or 500 ppm for one hour. One hour at 1500 ppm is dangerous to life. Short exposures (one hour) should not exceed 400 ppm, says Julian B. Olishifski, P.E., C.S.P., *Fundamentals of Industrial Hygiene*, 2d ed (National Safety Council), pp 1039-1040.**

The hazard to smokers (need it be said?) arises as their exposure is far above these criteria. Here is another example, explaining why we see smoke clouds hanging in the air:

"[L]ittle mixing takes place, as can be seen by watching smoke plumes rise in still air. Even when the plume is disturbed, the visible core can be observed to maintain homogeneity over a distance of one to three meters . . . . the core with concentrations of tens to hundreds of parts per million of the powerful irritnats acrolein and formaldehyde can readily contact eyes or be breathed with only slight dilution. The irritant properties of these materials may be partly inferred by their occupational [speed] limits. These are 0.1 to 0.3 ppm for acrolein and 1 to 3 ppm for formaldehyde."—Howard E. Ayer, M.S., David W. Yeager, B.S., "Irritants in Cigarette Smoke Plumes," 72 *Am J Pub Health* 1283 (Nov 1982).

Officers look the other way at violation of Michigan law MCL § 750.27, MSA § 28.216, at going 42,000 in a 50 zone!

The gross disportionate focus on traffic issues lacks a scientific and engineering basis. The Surgeon General focuses on the No. 1 cause of death as—traffic violations!! Not so. There is no genuine basis for the priority given to traffic issues, rendering the matter clearly outside

the legitimate realm of genuine law enforcement. The function is revenue enhancement, transferring the tax burden off the "consent of the governed," onto artificially created violators. This is a systemic issue, but the unconstitutional aspect of the system focuses on the individual, purported offender. Such offenders are artificially created, via the mass criminalizing of tens of millions of people, alleged traffic offenders, pursuant to priorities grossly and obviously contrary to scientific and medical evidence, of which the Surgeon General is a leading exponent, but which the enforcers ignore, for revenue raising and racist motives.

As a recession, exacerbated by tobacco's huge budget costs, leads to budget crunches, police tend to write more speeding tickets for the revenue. There's now solid evidence to demonstrate this. See Mallory Hardin, "More Traffic Tickets During Recession?," KARK 4 News (14 January 2009). "A UALR study shows during a recession, police give out more traffic tickets." "Dr. Gary Wagner with UALR studied 14 years of traffic court cases in North Carolina, and he found a correlation. 'The number of cases in traffic court actually increases following a year of decline in revenue growth,' Dr. Gary Wagner said. With a one percent drop in local government revenue came a .32 percent increase in the number of traffic tickets the year following a recession." "'If a local government obtains a large fraction from ticket revenues, they have an incentive to issue tickets for revenue,'" said Dr. Wagner.

XVII. INCONSISTENCY IS UNCONSTITUTIONAL

Note key concepts cited in *Bush* v *Gore*, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000). That case concerned incosnistencies found in vote counting in Florida during the 2000 presidential election. The recount was conducted in a "standardless" manner, hence was unconstitutional, so the Court stopped, enjoined, said recount.

Note that "the standards for accepting or rejecting [ballots] might vary not only from county to county but indeed within a single county from one recount team [police officer] to another" Or "from one [jurisdiction] to another"? Or "from one [person] to another"? Each such variation renders the process unconstitutional under the Equal Protection Clause of the U.S. Constitution.

XVIII. OBEY LAW VS. CUSTOM

In law, "what ought to be done us fixed by a standard . . . whether it usually is complied with or not." *Texas & Pac Ry* v *Behymer*, 189 US 468, 470; 23 S Ct 622, 623; 47 L Ed 903 (1903). Law exists, is "designed to disrupt," nonconforming practice, *U.S.* v *City of Los Angeles*, 595 F2d 1386, 1391 (CA 9, 1979). A "practice" "not based upon any rule of law" must be reversed, *Biafore* v *Baker*, 119 Mich App 667; 326 NW2d 598 (1982); *The T. J. Hooper*, 60 F2d 737, 740 (CA 2, 1932). Such "practice" must be superseded and ended.

But sometimes, violations in disregard of the rule of law, have developed, and continued through generations. Nonetheless, the Constitution and MUTCD are "designed to disrupt" practice, so customs and usages do not define or create law, but must be superseded and ended by it, when the issue is raised. When the government breaks the law, and attempts unlawful arrests, people have been known to respond roughly, example at *John Bad Elk* v *U.S.*, 177 US 529; 20 S Ct 729; 44 L Ed 874 (SD, 30 April 1900) (a case citing even earlier precedents). Alternatively, one can sue the arresting officers for making the unconstitutional and unlawful arrest without probable cause, pursuant to precedents such as *Bivens* v *Six Unknown Fed. Narcotics Agents*, 403 US 388; 91 S Ct 1999; 29 L Ed 2d 619

(1971).

XIX. BEWARE OF POLICE PERJURY

Courts are not fussy about allowing pro-conviction perjury (lying to convict innocent people). Charles M. Sevilla, "The Exclusionary Rule and Police Perjury," 11 *San Diego Law Rev* 839 (1974), says pro-conviction perjury

> **"is recognized by the defense bar, winked at by the prosecution, ignored by the judiciary, and unknown to the general public."**

The *Knapp Commission Report on Police Corruption* (NY: 1972) says that, with rare exceptions, those officials who are not corrupt, take no steps to prevent what they know/suspect colleagues do.

Pro-conviction perjury was the subject of a Supreme Court case, *Briscoe* v *LaHue*, 460 US 325; 103 S Ct 1108; 75 L Ed 2d 96 (1983) (disregarding dissent by Thurgood Marshall, etc., the court voted 6-3 that if innocent you is convicted by perjury, you cannot get money damages for your time and pay lost while in prison).

See also

- **Irving Younger, "The Perjury Routine," *The Nation* (8 May 1967), pp 596-97 ("Every lawyer who practices in the criminal courts knows that police perjury is commonplace.")**
- **Sarah Barlow, "Patterns of Arrests for Misdemeanor Narcotics Possession: Manhattan Police Practices 1960-62," 4 *Crim. L. Bull* 549, 549-50 (1968) (presenting data showing that "dropsy testimony" (meaning police testimony that an arrestee had dropped drugs as the police came nearer to them) increased after *Mapp* v. *Ohio* imposed the exclusionary rule on state police, indicating that the "police are lying about the circumstances of such arrests so that the contraband which they have seized illegally will be admissible as evidence").**
- **Fred Cohen, "Police Perjury: An Interview with Martin Garbus," 8 *Crim. L. Bull*. 363, 367 (1972) ("[A]mong all the lawyers that I know—whether they are into defense work or prosecution—not one of them will argue that systematic police perjury does not exist. We may differ on its extent, its impact . . . but no trial lawyer that I know will argue that police perjury is nonexistent or sporadic.")**
- **David Wolchover, "Police Perjury in London," 136 *New L.J.* 181, 183 (1986) (estimating that police officers lie in 3 out of 10 trials)**
- **N. G. Kittel, "Police Perjury: Criminal Defense Attorneys' Perspective," 11 *Am. J. Crim. Just.* 11, 16 (1986) (57% of 277 attorneys believe police perjury takes place very often or often).**
- **Myron W. Orfield, Jr., "Deterrence, Perjury, and the Heater Factor: An**

Exclusionary Rule in the Chicago Criminal Courts," 63 *U. Colo. L. Rev*. 75, 107 (1992) (survey of prosecutors, defense attorneys, and judges indicates a belief that, on average, perjury occurs 20% of the time, with defense attorneys estimating it occurs 53% of the time in connection with Fourth Amendment [illegal search] issues; only 8% believe that police never, or almost never, lie in court)

- **Christopher Slobogin, "Testilying: Police Perjury and What To Do About It," 67 *U. Colo. L. Rev*. 1037 (Fall 1996) ("Police, like people generally, lie in all sorts of contexts for all sorts of reasons. This article has focused on police lying designed to convict individuals the police think are guilty. Strong measures are needed to reduce the powerful incentives to practice such testilying and the reluctance of prosecutors and judges to do anything about it.")**

Be alert.

XX. MANTLE OF THE SOVEREIGN

Federal law 18 USC § 1001 bans making false statements in any matter within federal jurisdiction, on pain of five years imprisonment. Federal law 18 USC § 241 bans obstructing federal rights, which includes the "right to travel," as per the long line of case law above cited. It is not needed that the accused, whether a private citizen, legislator, or officer, know the technical concepts involved, in order for there to be a conviction, *United States* v *Redwine*, 715 F2d 315 (CA 7, 1983). Federal law 18 USC § 1961 bans engaging in a pattern of crime. As a deterrent, the latter provides injured parties triple the normal amount of damages. When state and local officials falsify traffic requirements, in essence to extort money, they are committing federal felonies and are in essence "racketeers" as per the law.

When a citizen is attempting to enforce the Constitution, as herein shown, he is doing so "not for himself alone but also [for others] as a 'private attorney general' vindicating a policy that [the Constitution writers] considered of the highest priority." *Newman* v *Piggie Park Enterprises*, 390 US 400; 88 S Ct 964, 966; 19 L Ed 2d 1263, 1265 (1969); *Oatis* v *Crown Zellerbach Corp*, 398 F2d 496, 499 (CA 5, 1968); and *Jenkins* v *United Gas Corp*, 400 F2d 28, 33 n 10 (CA 5, 1968). In such a case, there can be no intent on the part of the accused to violate the law, as the purpose is to secure enforcement of the supreme law, the Constitution.

And to help enforce constitutional rights such as described herein, one method is to rely on the Constitution's own Seventh Amendment. That Amendment commands that courts respect the "common law." The "common law" constitute ancient rights of ours, we the people, that the Constitution meant to preserve. (The Cosntitution was not primarily to invent new rights, but to preserve already existing rights). Part of those preserved "common law " rights include tort law. Tort law is used to sue rights violators. Tort law is our friend, enabling us, "we the people," to fight back against officials and others who violate our rights.

WHEREFORE, defendant moves that the court

- **dismiss the charge with prejudice;**
- **declare the "law" unconstitutional;**
- **enjoin further enforcement;**

- **refer the matter to the area United States Attorney for prosecution for obstruction of the right to travel and/or extortion pursuant to 18 USC § 241 and/or 18 USC § 1961;**
- **award damages pursuant to federal civil rights law 42 USC § 1983 for violation of civil rights due to the stop and citation without probable cause, i.e., no legal and constitutional basis**
- **award damages pursuant to tort law; and**
- **enter a civil "forfeiture" against the arresting officer sufficient to deter him from committing hereafter the unlawful activity herein referenced.**

Respectfully,

Signature
Typed Name
Address
City, State, Zip
Telephone Number

So why do Americans accept the above-referenced abuse by government? being prohibited to use their vehicles as designed? and capable? "Most Americans aren't the sort of citizens the Founding Fathers expected; they are contented serfs. Far from being active critics of government, they assume that its might makes it right."—Joseph Sobran. See also apathy data.

"The belief is pervasive among [many Americans] that lower courts in our urban communities dispense 'assembly line' justice; that from arrest to sentencing, the poor and uneducated are denied equal justice with the affluent, that procedures such as bails and fines have been perverted to perpetuate class inequities. . . . Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders."--*Report of the National Advisory Commission on Civil Disorders* (1968), p 183.

Courts are ". . . asked to deal with the outcome of political conflict as if it were *only* a criminal matter. Under such conditions, they often became and are perceived as an instrument of power rather than of law."--Jerome Skolnick, *The Politics of Protest* (1969), p 324.

Wherefore, said the aforesaid *National Commission Report*, 'the best solution to the problems posed by the lower criminal courts would be their outright abolition,' p 129 n 29. Cited in Derrick A. Bell, Jr., "Racism in American Courts: Cause for Black Disruption or Despair?" 61 *California Law Rev* (#1) 165-203 (Jan 1973), p 176.

Be aware that an entire court system can be operated in such an egregiously corrupt fashion as to constitute a criminal enterprise in violation of federal law.

Such a situation was found by the U.S. Seventh Circuit Court of Appeals, in a decision deeming the Circuit Court of Cook County, Illinois, a criminal enterprise, *United States* v *Murphy*, 768 F2d 1518, 1531 (CA 7, 1985) cert den 475 US 1012; 106 S Ct 1188; 89 L Ed 2d 304 (1986).

Note related cases, *United States ex rel. Collins* v *Welborn*, 868 F Supp 950, 990 (ND Ill, 1994); *United States* v *Maloney*, 71 F3d 645 (CA7, 29 Nov 1995) cert den 519 US 927; 117 S Ct 295; 136 L Ed 2d 214 (15 Oct 1996), and *Bracy* v *Gramley*, 520 US 899; 117 S Ct 1793; 138 L Ed 2d 97 (9 June 1997).

In identifying a court as corrupt, note whether it adheres to the 'equality before the law' and 'impartiality' concepts (as mandated by Codes of Judicial Conduct, example, Michigan's).

- **Does it use the same or different procedures than other courts? e.g., in non-traffic courts, the litigants choose and schedule their own court dates, e.g., by 'praecipe.'**
- **Does it have a sign saying that the PUBLIC seeking ticket dismissals improperly is in criminal contempt of court, but silence on officials issuing unconstitutional / illegal tickets?**
- **Does it aid the prosecution to prove the "elements" of the offense, but not aid the defendant public similarly?**
- **Without 'equality before the law,' the court is a mere collection agent, subject to the provisos of the anti-racketeering law, RICO, 18 USC § 1961 *et seq*.**

XXI. SUBJECT MATTER JURISDICTION

No doubt the many constitutional law and other legal precedents in favor of citizens' rights (thus of motorists' rights) should be sufficient in and of themselves for an unlawfully accused motorist to prevail in court. However, judges do not always respect constitutional and other legal principles. So it is helpful for such accused motorists to be aware of what laymen may call "technicalities."

One of these "technicalities" is the legal principle that for courts to rule, they must have "jurisdiction" over a case. Such "jurisdictional" rules may seem obscure, but let's use an example: If you have a million dollar case, you wouldn't file it in a "small claims court" which can only handle cases under, say, $10,000.00. The court would lack "jurisdiction," meaning authority, to hear and rule on the case.

To find "jurisdictional" rules, it is most helpful to have a lawyer. If not, you would have to read the pertinent laws and/or court rules yourself. In this next cited winning motorist case, that is exactly what motorist Tona Monroe-Ball did. She found, then sought to invoke, the "jurisdictional" legal principle for her state. In her state, she (Tona Monroe-Ball) found them in "Court Rules of Evidence" for the ticket-issuing state (Tennessee).

Background on Monroe-Ball's Case: She had received a ticket for driving 70 mph in an area unlawfully posted for 55 mph. The lower court ignored the evidence. So she appealed. She read the Rules of Evidence of her state (Tennessee). Its Rule 202 mandates a "certified copy" of an ordinance at issue, be filed into the record on appeal. This is deemed a "subject matter

jurisdiction" issue. (Courts cannot adjudicate cases without jurisdiction to do so).

Next, Ms. Monroe Ball paid close attention to what the prosecuting office filed into the court record. She observed that the prosecuting office had failed to enter the ordinance into the record. At her appeal level proceeding, the Court was disregarding her legal arguments about the invalidity of the 70 mph speed limit she was accused of violating. So she raised the issue of the missing "certified copy," i.e., the issue of subject matter jurisdiction. Legally: "Subject matter jurisdiction can not be waived." She waited until after the prosecution had rested its case, lest by prematurely calling attention to the absent document, the prosecutor have opportunity to correct the omission and place it into the record. "After initial shock that an in propria persona litigant was sharp enough to know this, the Judge said, "for that reason and that reason alone the prosecution against the defendant will be dismissed at the cost of the City." A win is a win! Her article "Subject Matter Jurisdiction: How I Won My Traffic Ticket Case," is in *Driving Freedoms*, July/August 2008, p 9. Her case is online at speeding_ticket.htm.

In federal courts, federal subject matter jurisdiction presents an issue which [is] raiseable by a party or adjudicator at any time. *Enrich* v *Touche Ross & Co*., 846 F2d 1190 (CA 9, 1988); Fed. R. Civ. P. 12(h)(3). A challenge to subject matter jurisdiction may be made at any time, even after disposition, and even collaterally. Fed.R.Civ.P. 12(h) and 60(b)(4); *Taubman Co* v *Webfeats*, 319 F3d 770, 773 (CA 6, 2003).

This may or may not be the rule in Tennessee or other states' state courts. Thus reading the rule was essential; so hers is an example of careful research and wise timing. That wise timing was to wait until the prosecutor concluded ("rested") presenting his case, so would no longer be legal to add to his case file material. A prosecutor, once having concluded presenting the case against the accused (motorist), could not belatedly add to the record, could not thereby head off her "technicality" motion, i.e., her subject matter jurisdiction motion. She presented it verbally to the court (though could presumably have written it out in advance), to be ready for presenting to the court once the omission of the document became uncorrectable by the prosecutor having prematurely rested his case without realizing the omission error!

Sometimes the victory is to the litigant who makes the least mistakes in court!

XXII. REFERENCES

Radar-Related Cases In Other States

I. Judicial Notice of Scientific Principles Underlying Doppler Radar
Meaning That No Expert Witness Is Needed
To Prove The Theory of Radar Per Se
***State of New Jersey* v *Dantonio*,**
18 NJ 570; 115 A2d 35, 42; 49 ALR2d 460 (1955)
***Dooley* v *Commonwealth of Virginia*,**
198 Va 32; 92 SE2d 348, 350 (1956)
***Everight* v *City of Little Rock*,**
230 Ark 695; 326 SW2d 796, 797 (1959)

II. Testing The Specific Device
At The Beginning and End of Each Shift
So As To Render Its Readings Admissible

***Thomas* v *City of Norwalk*,**
207 Va 12; 147 SE2d 727 (1966)

III. On Use of Tuning Fork to Establish
the Reliability of the Radar Unit,
And Showing The Tuning Fork Itself To Be Accurate
***State of Connecticut* v *Tomanelli*,**
153 Conn 365; 216 A 625 (1966)

IV. Operator Knowledge and Training, Unit Use Only, Not Theoretical
***Honeycutt* v *Commonwealth of Kentucky*,**
408 SW 2d 421, 422 (Ky App, 1966)

IV. Guidelines for In-Motion Radar Operation
***People* v *Ferency*,**
133 Mich App 526 (1984)
listed above
***State of Wisconsin* v *Hanson*,**
270 NW2d 212 (Wis, 1978)
adequate training of the officer and experience in use
device in proper working order at the time
use in location with road conditions' minimal possibility of distortion
input or ground speed of the officer's vehicle must be verified
speed meter must be tested reasonably soon after ticketing,
with testing by methods that
do not rely on radar's own internal calibrations

V. Minimum Requirements for Admissibility
***Carrier* v *Commonwealth of Kentucky*,**
242 SW2d 633, 635 (Ky, 1951)
accuracy and reliability in speed calculating process
ability to perform the function for which designed
mechanically sufficient at time of use

VI. Case List Data for Lawyers' Reference Purposes
"Proof, By Means of Radar or Photographic Devices,
of Violation of Speed Regulations"
49 ALR 2d 469 (1956)

"Proof, By Radar or Other Mechanical or
Electical Devices of Violation of Speed Regulations"
47 ALR 3d 822-877 (1973)

Readers are urged to write their local officials,
Governors, Congressmen, Senators, and the President,
asking that they rescind speed limit laws
as unconstitutional for vagueness and overbreadth.

Judicial and Legislative Behavior Site
The DWB Issue
Alcoholism: Underlying Factor in Drunk Driving
Impartial Recommendation: No Connection To This Writer
MIT Map of Speed Limits by State
How to Fight Traffic Tickets: Secrets Revealed
Speeding Ticket Attorneys: Free consultation on how to beat your speeding tickets! No record, no insurance hikes! It's your Right to Fight!
The National Motorists Association
A June 2000 Nevada Success
"Taxation by Traffic Citations" (Video) by Bill Rhetts, a 19 year law enforcement veteran
The Family Car
List of Speeding-Related Sites
Illinois Citizens for Legal Responsibility
'Jail for Judges' Org
Supreme Court Decision *Briscoe* v *LaHue*, 460 US 325; 103 S Ct 1108; 75 L Ed 2d 96 (1983)
Mirror Site
Fully Informed Juror Information (For Jurisdictions Where You Still Get A Jury!)
How To Fight Bad Laws as a Juror

"Essay on the Right to Trial by Jury"

Clay S. Conrad, *Jury Nullification: The Evolution of a Doctrine*
(Durham, N.C.: Carolina Academic Press, 1998)

SpeedTrap.org

Fred E. Foldvary, "Get Rid of Speed Limits" (1998)

Texas Ticket Lawyer

Roadblock.com

The "Speed Humps" Issue

A Recent MUTCD Survey Requirement Case

The MUTCD On-line,
65 FR 78923 (3-23-01)

Las Vegas Red Light Cameras: Inconsistency

"Activism for Anti-Ticket Camera Activists"
(NMA, September 2009)

Am. Bar Ass'n FindLaw Site On Traffic Tickets

"Speed Traps Stir Debate in Small Towns,"
by Christopher Leonard (AP, 25 March 2006)

"*BUSTED: The Citizen's Guide to Surviving Police Encounters*" (2003)

"*10 Rules for Dealing with Police*" (2010)

Rogue Police: Canton, Ohio

Unauthorized Practice of
Law by Police Officers and
Unethical Local Court Practices

The Supreme Court decision *Kyllo* v *U.S.*, 533 US 27; 121 S Ct 2038; 150 L Ed 2d 94 (11 June 2001), bans use without a prior search warrant, of a detector allowing police to see things they otherwise could not see: "Where, as here, the government uses a [detecting] device . . . to explore details . . . that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a [prior search] warrant." The goal is "preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted."

See also the U.S. Administrative Procedure Act, 5 USC § 706.

Materials for Further Information

Dornsife, Rod, *The Ticket Book*
(La Jolla, CA: Ticket Book, 1988)
Related Federal Court Legal Brief

Garber, Nicholas J., *Speed Variance*
And Its Influence on Accidents
(Washington, DC: AAA Foundation
for Traffic Safety, 1988)

Nichols, Robert E., Jr.,
Police Radar: A Guide
to Basic Understanding
(Springfield, IL:
Charles C. Thomas Pub, 1982)

Smith, Dale, *Beating the Radar Rap*
(Chicago: Bonus Books, 1986)

Wallace, Officer Richard, II,
An Educated Guide to Speeding Tickets:
How to Beat & Avoid Them
(Worcester MA: T-Bird Books, 1996)

Urquhart, Edward F.
Police Radar: How to Beat It
(Seattle: Urquhart, 1988)

Video: *How to Beat A Speeding Ticket*
(Los Angeles: Active Home Video, 1986)

Video: Automatic License Plate Recognition System

Readers would do well to learn how to use a law library, preferably before the last minute when you have an active case and are under pressure. This includes learning law numbers and case citations.

In a case citation, example, *Georgia* v *Brailsford*, 3 US 1 (1794) or

Miranda v _Arizona_, 384 US 436 (1966), the first part is the case title; the following numbers refer to the volume and page where the case begins and the date; and the alphabeticals in-between refer to the type of lawbook.

Examples: ALR = Reference Books With Case Summaries (as distinct from full text); US = U.S. Supreme Court; F Supp = Federal District Courts; F2d = Federal Courts of Appeals; A and A2d = Atlantic States; NW and NW2d = Midwestern States; P2d = Pacific States; SE and SE2d = Southeastern States; SW and SW2d = Southwestern States, etc.

As you walk along the shelves, you'll see the abbreviation printed on each book's cover. Types of books are generally but not always organized alphabetically in the library.

Here is some background data on politicians. They are known to act on "whims, fancy, and sudden childish notions." Awareness is at ignorant level, typically "does not know about" key factors. They listen with "little attention," react with "remarkable irrelevancy" to reality due to "ignorance." There is "a special failure of communication in dealing with heads of state." "It is a feature of government that the more important the problem, the further [up the political structure] it tends to be removed from handling from anyone well acquainted with the subject."—Barbara W. Tuchman, *Stilwell and the American Experience in China* (New York: Macmillan Co, 1970), pp 241, 404, 405, 464, respectively.

This data is long known. For example, "none but unprincipled and beastly men in society assume the mastery over their fellows, as it is among bulls, bears, and cocks," says Polybius (205 B.C. - 125 B.C.), *lib*. 4.

Note pertinent medical findings on politicians' widespread mental abnormality:

- **World Health Organization, "Wide research needed to solve the problems of mental illness," *World Mental Health*, Vol 12, pages 138-141 (WHO Press Release, October 1960) ("people with psychopathic make-up often become leaders" / "les postes de commandement sont souvent assumés par des personnes à tendances psychopathiques")**

- ***Abnormal Psychology and Modern Life*, 5th ed (Scott, Foresman & Co, 1976), p 10, by James C. Coleman, Ph.D. (summarizes said 1960 data thus: "individuals with psychopathic personality makeup, who tend to exploit power for selfish purposes and have little concern for ethical values or social progress, often become leaders"); and**

- **"Political Conservatism as Motivated Social Cognition," by John T. Jost, Jack Glaser, Arie W. Kruglanski, Frank J. Sulloway, 129 *Psychological Bulletin* (#2) 339-375 (July**

2003) (cites politician symptoms).

The issue of drunk driving is one that has been analyzed in depth. Doctors have provided data on prevention. However, politicians REFUSE to act on the data, and instead focus on scam or unconstitutional reactions, vehicle confiscations, and the like. If you are interested in knowing the medical analyses on alcoholism, click here.

There is concern that some elderly drivers suffer from dementia. Talking heads in the media spout off on the subject. Mass testing programs and other scams are suggested. Again, such people show no respect for the extant medical data on the subject. If you are interested in knowing of some pertinent medical analyses, click here.

There is concern about the issue of seat belts. Again, too many in the media and among legislators show no respect for the extant medical data on the subject. If you are interested in knowing the bottom-line pertinent medical analysis, click here.

Motorist Harassment: Worldwide Data

Australia's Redflex

Britain's Speedcheck

Holland's Vialis

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