

# **The California Speeding Ticket**

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Note: Within a week of receiving this download you should read section 18 for the unlikely event that you would lose in court and request a refund. Stay in email contact with us if you need help at any point. When you are almost ready for court, email us and schedule a weekend phone consultation with an expert.

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## **1) How to Use This System**

This document is designed to take with you to court. There will be an explanation of each of the common illegalities of radar tickets. Then, there will be a question after each explanation. The explanation is to satisfy your curiosity. Only the question is meant to be used in court. You may highlight it if that helps you.

We want you to know that in most California courts, the Trial by Declaration/Mail is allowed and you can win or lose. However if you lose (found guilty) you can simply request a Trial de Novo and you restart your process as if the Trial by Mail (and it's verdict) never took place. Below we give you two sample trial by Mails from former clients who won their cases. We urge you to consider this "free swing at the ball".

To understand how radar tickets can be beaten, a citizen first needs to understand how the officer tries to avoid many separate court appearances. Radar speed traps are generally conducted a full day or more at a time, sometimes involving more than one officer. Even if your ticket came from a single officer using radar for just a few hours, this first technique may beat your ticket. It is common for a radar speed trap to generate several dozen or even a hundred tickets in one or more days of ticketing. Many of these tickets will be given the same court appearance date. This first appearance date is called "arraignment". It is the date where a citizen pleads guilty or not guilty. If you want a trial with the officer present (our recommendation), your actual trial cannot take place on this first appearance day since the officer won't be there (check your ticket to be sure your 1st date isn't your trial date). Often, the judge will take all the citizens who appear on the

same arraignment date and lump them together with the same trial date. This is a great convenience for the officers. The officers can appear in court on a single day and testify against several citizens who may fight their tickets. The first thing you can do to increase your chance of beating your ticket is to avoid going to trial on this "day of convenience" for the officer.

## **2) How to Schedule Your Trial to Increase Your Chance of an Officer "No Show" and Thus a Dismissal.**

There are some techniques to dramatically increase the likelihood of the officer not showing up for your court trial. In the past we described and taught a technique whereby a citizen could attempt to arrange their court date on the officer's day off or even during the officer's vacation time. While this technique yielded hundreds of dismissals, many customers found the technique difficult so we have abandoned teaching this tactic. Instead we now suggest that you can more than double the odds of an officer no-show. By simply changing your court day from whatever day it is on the ticket to any other day of the month and especially to a different day of the week.

We won't get too long winded about the reasoning on this but we will tell you that police officers, especially traffic officers write many tickets and have weeks of discretion as to which day they choose to send all their accused citizens to court. The most common method used by them is to select a day each month or two and use that day for every person who they issue tickets to. This allows him/her to show up in court on only a single day for every person who chooses to fight his/her ticket. We call this the officer's "day of convenience". Just moving your ticket away from that day will often mean that the officer (who might dislike going to court at all) now has to go to court (taking off yet another day from his ticket writing scam.... I mean duties) just for you. Maybe you're thinking "what if he gets mad at me"? Ask yourself this, do you really care? Did he care about you when he wrote you a two hundred dollar speeding ticket and ruined your driving record for three years and maybe even caused a rise in your insurance rates? We doubt that he lost any sleep over what he did to you.

Here are a few things to consider:

If you ask for and get a continuance (change the court date to the future at your arraignment), it gives the judge or prosecutor more of an excuse to ask for a continuance later.... say for instance if the officer does not show up. This is a possibility but we say it is worth the risk. We don't suggest asking for a date further into the future than the original court date. Instead, go to court early and ask for a date that is earlier than the original date and thus the court cannot look at the change as a "continuance", now it is just a change. You have to give the judge a good reason for the change and this reason cannot be, "cuz I think the cop may not show up on this new date". Do you get the point?

In the event that you get a continuance, and not a change and the officer no-shows, the judge may indeed tell you (or comply with the prosecutor's request for a second continuance.... after all, you got one). Then they are going to reschedule a date that will

allow the officer to be present.

Here is what we would do:

1) Keep in mind that the court cannot violate your right to a speedy trial (without your permission). The judge is an expert at getting your permission without you even knowing it happened. He may say something like: "The court will move this matter to \_\_\_\_\_ date.... is that alright with you Mr. or Ms. \_\_\_\_\_? Keep in mind that this is a question to which you can say yes or no. We always say "no, I am sorry your honor but today is the only day I will be able to appear". At this point we might go on about my boss being about to fire me (or some such thing) for taking all this time off work.

We then would then go on to say:

"I had a subpoena to appear TODAY and I had to move mountains with my work, babysitting, finding a substitute for my job and to convince my boss that this was a one time deal. Now, I see that the officer did not even show up which is a violation of his subpoena. I also believe your honor that If I had not shown up and the officer was here waiting for me, the court would not tell the officer and prosecutor "well he/she was probably busy; after all it is hard to make appointments with life's busy schedules. Let's all be patient and see if he/she shows up to court a different day or let's try subpoenaing him/her and try again in a few weeks." No, your honor this is not what would happen. A bench warrant would immediately be issued for my arrest and I would now have a new charge to deal with (failure to appear) in addition to the speeding accusation. My time is no less valuable than the officer's or the courts. If the officer chose not to obey his subpoena then I should not be punished and waste my day here in court for which I was prepared for trial. I do not want a court trial (a trial with no officer present) because I have questions for the officer. I cannot come in another day. I am prepared for my trial now as I was ordered by the court to be. A traffic ticket is not a murder your honor and the court can certainly dismiss this case in the furtherance of justice due to the officer's disregard of his court obligation". The refusal to allow the continuance provides another avenue to get your ticket dismissed.

**What if I have never asked for a continuance and the officer no shows at the trial date, but then the prosecutor asks for a continuance to make sure the officer is there to testify?**

This is an important question. We are glad you asked it. First of all understand that the granting of a continuance is discretionary on the part of the judge and continuances are not to be granted for casual reasons. The court should understand that appearing in court may cost you a lot of money or trouble at work and that because of this, your trial should be held on your court day if at all possible. If the judge does not understand this, you should be prepared to help him understand. Since you aren't allowed to whack him on the head with a baseball bat, here is a sample scenario with some suggested comments that have worked for us personally. Let's say you find yourself facing an officer no show and the prosecutor asks for a continuance. You should immediately "object" you have to let yourself be heard *before* the judge grants the continuance.

**You should say something like:**

"Your honor, the officer who wrote my ticket was subpoenaed to be here in court today as I was. The officer is sworn to his paid duties and knows the weight of the court order to be here. I don't know why the officer has shirked his duty today. I don't know why the officer has ignored the subpoena today. I don't know why the officer would ignore the court order to be here to state his case to the court. I just know that this is the what has happened. I had extreme hardship to deal with to be here both from my family, day care, babysitting (what ever is appropriate here) and my work which is not very understanding about such things. They let me know that this better be a one time absence. I have lost my pay for today which will also cause me hardship later this month. I did all this because I honored the court order and I believe that I am not guilty and I am prepared to prove this to the court. Today is my court day, not a future day. I assured my boss that my trial was today and that since it is a short matter it would be over with today. Now, because the prosecution's only witness has failed or refused to do his duty and appear as he is sworn and subpoenaed to do, a continuance is being considered which would penalize me further and possibly cause me to lose my job. Your honor a traffic matter seems to be a small matter to the officer but it is a big matter to me. I showed up on my court date prepared. I ask that this court dismiss the minor traffic allegation against me and penalize me no further for this officer's failure to appear. Furthermore I know that if I had failed to appear and the officer was sitting here waiting, the case would not simply be continued as a courtesy to me. Your honor we all know that I would quickly have a bench warrant issued for my arrest and could be arrested as well. Let's not treat the court officer with one standard and citizens with a different standard. I respectfully ask your honor, to dismiss my case in the interest of justice. Thank you your honor.

Perhaps you find this "speech" too lawyerly for you. If so, leave out what you need to but this little talk is based on solid legal truths, many of which will strike chords with any honest judge. Don't take things out that you don't have to if you find yourself in this predicament.

In California you are given the right to a "speedy trial". In court, this is defined as 45 days. This means that if the court takes longer than 45 days to provide you with your trial, and you know when and how to object to it (you will in a minute) your ticket has to be dismissed.

The first step in paving the way for such a dismissal is to REFUSE to allow the continuance offered by the judge. Remember, the judge is an expert at smoothly and quickly skimming over this question without even looking at you.... and asking it as if you don't really have the right to answer. *You have to be listening for the question and say something very similar to "NO"*. At this time the judge may set a new date anyway without your permission but now it is on the record that he did so without your permission, and in fact against your will.

Since court is a busy place, the odds are good that your trial date was at or very near to 45 days between your arraignment (first appearance to plead guilty or not guilty) and your trial date (this is the window of time that the "speedy trial" refers to). Now the judge has little or no time, a refusal by you to extend and no officer present. to reschedule will normally take one to two weeks to allow for the subpoena process. In other words you have the judge right where you want him (with his black robes beginning to tighten around his neck). If he is honest he will dismiss your case now. If he is an arrogant jerk who will not be bested by a lowly commoner he will reset your court date when he has to. If he does this, one of two things will happen:

- 1) You show up on the second date and proclaim at your earliest opportunity "your honor I believe my right to a speedy trial has been violated" and you explain it to him (speak slowly since he may not be the law school valedictorian), again a dismissal.
- 2) The judge will pretend that you "waived time" which is demigod talk for, "you agreed to allow the continuance and to not claim your right to a speedy trial". You would then point out that you adamantly refused the continuance but the court set the date against your will. The judge will or at least should dismiss. If however, he is the arrogant pig you are hoping he's not, he will simply say that he made a note in the record that you waived time and your right was not violated. Of course, you have to actually have exceeded 45 days from arraignment to trial date for this argument to hold. Some courts record or transcribe all that is said, in which case you just demand a copy of the transcript. These are excellent techniques and we have to admit that fully 15 to 20% of our clients beat their tickets using this section alone.

*What a great feeling it is to win in court because you never had to fight at all.  
Sweet!*

### **3) Where to Find and How to Dissect Your Survey**

Below is a detailed description of the five discrepancies you are most likely to find when examining your speed survey

First, obtain a copy of the speed survey (may be called a speed study or engineering study depending on your location) for the specific location where you got your ticket. Speed surveys are normally found at the Department of Transportation office nearest the location where you received your ticket. This "DOT" office will normally be listed in the phone book under DOT or Department of Transportation. In some locations you can also get the speed survey at your local Highway or Road Department. If you don't find it at either of these locations (please call around instead of actually going on a search), they may also be found at the city hall in the engineering department or in some backwoods jurisdictions, they may only be found at the police department (for the most part we have only seen this in Pennsylvania). If DOT tells you that there is no survey for the location you asked for you will need to document this fact. The only method that a judge may accept is a DOT letter on their letterhead that states that there is no survey for your

specific street or ticket location. If this is the case with your ticket, keep this letterhead note after court since you will also need it if you are one of the 5% to 20% who lose their cases and request a refund from us.

Following is a list of the most common discrepancies found between the speed survey and the posted speed limit or enforcement location and an overview of how to spot them and why they are important.

- 1) The topography or grade of the survey location is different from the location where you received your ticket. For instance, if the speed survey was done on a hill or slope especially on the upward side, it will show a slower speed than the average speed on the road in general and the resulting posted speed limit will be artificially low.
- 2) The character of the road varies from the ticket location. For example: was the survey done immediately before, during or after a curve or on a narrower section of road, or on a section of the road that is more residential in nature than where you were actually ticketed? Drivers normally slow in these types of locations. Again, the survey has given a falsely low 85th percentile speed and the posted speed is under posted. At first glance we may sound like we are being overly technical. In fact it is not a coincidence that the survey locations are almost always in the slower sections of the road and that enforcement is almost always in the fastest section of the same road. The jurisdiction wants to appear to be complying with the Federal mandates, but what they really want is to be able to continue with the heavy and lucrative enforcement. This is how they accomplish it.
- 3) The survey was done within a quarter mile of an intersection, stop sign, signal, or any other traffic control sign or device that slows or even periodically stops traffic. To give an example of one of these issues, imagine that the survey was done four or five hundred yards after an intersection (one of the most common tricks), the speed of passing cars is measured from cars in three categories: a) cars that went through the signal on a green light (no speed variance) b) cars that had to stop for a red light and then go through the survey location starting from zero miles per hour and accelerating gradually until their speed was read by the survey radar. c) cars that slowed for the intersection cross traffic, or changing light but made it through without stopping completely. In this example the reasonable 85th percentile speed on the road might be 55mph but cars surveyed include speeds from all three categories that falsely change the "average" speed survey speed to read ...say 35mph. The cops can sit there all day and write tickets to good safe drivers and it all appears legal. You have to play detective and figure out what trick they played on your survey. This is one of the most common ploys.
- 4) The time of day. In many locations high traffic and arterial roadways become congested at certain times of day or night. Many roads or highways become routinely congested during morning and evening rush hour and at a one to two hour block of time around noon. Surveys done during these congested times show artificially low speed limits and yield inaccurate surveys. Some roads are periodically congested at other times such as school zones, work zones and during sporting events etc. Be sure your survey

isn't on such a road and if it was, that the survey was not conducted during a congested time. If it was, you have a strong argument that your survey is fatally flawed and deceitful.

5) The survey was not done or supervised by a licensed engineer. This is a mandatory MUTCD requirement for a survey to be a legitimate and binding survey. Almost all jurisdictions are aware of this requirement and so in most cases they will at least have an engineer's signature at the bottom of a survey. Don't let this fool you. An engineer is a highly paid city employee and in fact some cities can't even afford an engineer.

This is addressed by the MUTCD which states that if a city does not have an engineer on staff that they can have an engineer from a neighboring city supervise or conduct the survey. In other words a city cannot skip the "done by an engineer" part of doing a survey. We have already told you that most surveys will have an engineer's signature at the bottom. So, where are we going with this? It is our experience that over 75% of all surveys have not been done or at least supervised by an engineer. It is one more big lie that the ticket mill forces on us. They make it appear that the surveys are done or supervised by engineers so they don't get caught in the lie that the surveys are instead done by non-engineers in such a way as to reduce the speed limit to allow the most income to be generated by the police and the court. Even in such jurisdictions they usually know enough to have the surveys signed by an engineer.

This leaves us with the question: What constitutes being "supervised by an engineer"? It is simply the minimum requirement per the MUTCD to make the survey speed enforceable. The real answer is a legal issue that will vary by the integrity of the judge deciding individual cases. Personally, we argue that unless the engineer was actually involved in the survey, both in choosing the location (to avoid issues 1-4) and in interpreting the results from the survey equipment, or that he/she at the very least personally oversaw and directed the specific survey involved to the point that he could testify that none of the issues above were problems inherent with this specific survey, then the survey was not supervised or overseen by an engineer.

In real life, most surveys are conducted by non-engineer underlings or other city employees who in some cases even interpret the results and complete the surveys themselves. We are telling you that most of the time surveys are done by DOT or Highway Department Employees whose main job description might be road repair and maintenance or even tree trimming. Then the survey is signed by some engineer as if he had done it himself. In many cases the survey and the choosing of its location are conducted by city or county employees and then the results are interpreted and the survey document itself is completed and signed by an engineer. We consider this to be an illegal and improper survey to the extent that an engineer has not supervised the survey to the point that his engineering knowledge and judgment prevented any of the 1-4 issues from contaminating the survey legitimacy.

Since the survey consists of two parts:

1) the choice of physical location and application of speed measurement equipment and

2) the statistical interpretation and document preparation; and since neither of these parts are of any value without the other part being accurate and proper, we argue that even if an engineer conducted the second part of the survey personally, if he was not present at all during the first part of the survey then the survey is improper and unenforceable. Supervision is not the same as telling someone to do something a certain way and then hoping that it gets done properly.

If that was the requirement the MUTCD would simply say that surveys could be done in any way that was convenient and by virtually anyone the city chose as long as they were first told what to do by someone who knew what he was doing. That is not the wording. The survey is to be supervised or done by an engineer.

If your survey (as in the example below) shows that one person conducted the survey, and a second person (an engineer) only signed the survey, We strongly suggest either subpoenaing one or both of the employees involved for court or at the very least preparing a detailed list including the above arguments showing that the engineering supervision was not done properly. The danger in not getting one or both of the employees to appear is that the judge will probably be perfectly willing to assume that the survey was done with engineer supervision as long as you can't prove otherwise.

Remember the constitutional description of innocent until proven guilty... We think they meant "everywhere but traffic court". An additional benefit to subpoenaing the engineer and underling is that if either of them fails to show up and you show relevance with the above references and arguments, you should have a dismissal since the "no show" is a city employee whose testimony would have tended to show that the survey was not properly done.

We should mention here that a speed survey is basically a measuring of a certain number of vehicles traveling on a section of roadway during a specific time of day. Normally the minimum number of vehicles sampled is 100, but in rural areas a survey may be acceptable if the traffic is monitored for one hour or more even if less than 100 vehicles have been checked. The speed of vehicles is normally measured by radar. The radar unit can be handheld by the engineer or an employee or it can be a stationary unit or trailer. Other methods can be used such as pneumatic devices where two black pressure hoses are stretched across the section of road. It is arguable that these measuring devices should be calibrated for accuracy.

If you live in the city you have probably seen what you thought was a friendly radar readout trailer parked alongside the road. As you drove by you saw your speed in large digital numbers displayed from the trailer. Did you ever wonder why they show you your speed readout as you drive by? If you were to ask, the government spokespersons involved would probably claim that it serves as a reminder or warning of your speed. We would say that you get that every time you glance at your speedometer. We are also convinced that the motive for the speed display is far more sinister. We believe that most people drive about the same, and slow down for the large radar trailer showing our speed in bold two foot tall numbers for everyone to see. If you are driving on a 50mph posted

road and your speed is 53mph when you suddenly see the radar readout from the survey device, you will probably slow several miles per hour as you wonder if a cop is also a part of this setup or if there is construction crew nearby etc. For this example let's say you slow to 40mph while you consider the motive for the trailer. Depending on how much of the time you were at 53 and how much of the time you were at 40, you have assisted the survey employee in falsely reducing the average speed that the survey will show as the 85th percentile speed on the road. By slowing you may have reduced your average speed by 5mph or even 10mph or more. When enough people do this (and they will) the survey gets the falsely reduced 85th percentile reading due to the presence of the trailer and readout alone not to mention the possibility of issues 1-4. Now you know why they make these survey trailers so big and the readout so large....and you thought they were just being nice.

The examples we are giving are very obvious. In real life about 25% of all radar sites have been surveyed in one of these extremely devious manners and the survey vs. enforcement location discrepancies will be immediately obvious. The rest of the surveys will have what appear to be less flagrant violations of common sense and engineering malpractice, but in the end almost all surveys are flawed one way or another.

In helping thousands of citizens beat tickets we have accumulated a great deal of feedback and our estimate is that fully 80% of all roads are either not surveyed or are improperly surveyed. In truth the percentage of tickets reflect an even worse situation than the 80% problem mentioned.

Since roads are to be surveyed and posted at the speeds that most people would drive the road (this is the basis of the MUTCD 85th percentile requirement), virtually every location where an officer can sit and write ticket after ticket is an under posted road that is either not posted according to a survey, or where an improper survey was performed to yield an artificially low speed limit. These are the locations where most tickets are written and are most likely where your ticket was written. This 80% estimate does not even include the surveys which are flawed due to the engineering supervision problems mentioned above. If you include all these factors you will see that when tickets are routinely written on a given stretch of road, virtually 100% of them were tickets based on an improper or illegal speed limit.

Some have approached us with the theory that whatever speed limit is posted should be obeyed. This is backwards thinking and is how the government wants us to think. It is proven that if a street is under posted, drivers will divide themselves into two categories: a: drivers who drive the posted speed no matter how unreasonable it seems and b: drivers who drive the reasonable and safe speed regardless of what is posted.

This situation of drivers traveling at two different speeds on the same roads has been proven by the MUTCD and the Federal Highway Association and all major traffic institutions in the country to actually increase and to even cause accidents. To summarize: artificially reducing or under posting the speed limit causes accidents. This is an undisputed fact documented in the MUTCD.

So that you are not intimidated by this whole survey issue, we have included two surveys below this paragraph. These are real surveys which (as most do) have fatal flaws. First of all you will notice that the engineer who signed the survey is not the "employee" who conducted the survey. The engineer that signed says that the survey was done "under his supervision". It says this because they know that this is the legal requirement. Under scrutiny, we believe that there is a greater than 75% chance that the engineer did not supervise the survey at all (see issue #5) and this fact alone would justify dismissal of any radar ticket issued on this road. You will also note that the 85th percentile speed was 44 miles per hour so the only proper speed to post on this road is 45mph. After a bit of gobbledegook the survey recommends that the speed (also the current posted speed) should be posted at 40mph. In other words they have done almost everything right until it came to posting the legal speed limit. To an uninformed citizen the survey appears quite legal. The facts of the survey when combined with the MUTCD references and case law show that the posted speed on this road is illegally under posted and any tickets based on the 40mph limit should be dismissed. The question of someone who is ticketed for a speed higher than 45mph on this road, or anyone who asks the question "what if I was ticketed for a higher speed than the road should have been posted at had the survey been done properly" is answered later in this document. Here is your first real survey from an actual customer:

Sample survey:

**CITY OF SANTEE**

**CITY MANAGER** George E. Tockstein

**MAYOR CITY OF SANTEE**

**DEVELOPMENT SERVICES** - Jim Bartell

**ENGINEERING AND TRAFFIC SURVEY FOR SPEED ZONING** Randy Voepel

**LOCATION** - Mission Gorge Road:  
Carlton Hills Boulevard to Fanita Drive

**SPEED DATA**

CITY OF SANTEE DEVELOPMENT SERVICES

**Date of Survey: 12/09/97**

**Existing Posted Speed Limit: 40 MPH** Surveyed by: R. Llantero **Critical Speed (85th percentile): 44 MPH** 10 MPH

Pace Range: 35-44 Average Speed: 39.4 MPH

**ACCIDENT RECORD REVIEW**

Number of Accidents: 21 (Does not include intersection accidents) Accident

Period: 30 Months (4/95 to 10/97)

**ROADWAY GEOMETRIC**

Length of the Roadway: 1,540' Roadway Type: Major Arteria Roadway width: 82'

Sidewalk: Yes

Significant Horizontal Vertical Curves: No Is this section of the roadway

Crosswalks: (School) No adjacent to school: No

**TRAFFIC VOLUME DATA**

Daily Traffic Volume: 37, 710 (1994)

**UNUSUAL CONDITIONS AND COMMENTS** Minor disruption to traffic due to freeway construction.

## **RADAR ENFORCEMENT SPEED LIMIT**

This Traffic and Engineering Survey indicates that the appropriate speed limit for Mission Gorge Road between Carlton Hills Boulevard and Fanita Drive is 40 MPH.

**Surveyed by: R. Llantero**  
**10 MPH Pace Range: 35-44**

**Roadway Type: Major Arterial**

## **MPH CERTIFICATION**

.Dehllis ]). fIA.mes declare: that I am employed by the City of Santee, 10601 Magnolia Avenue, Santee, CA 920711 as City Traffic Engineer; and, that the attached Traffic and Engineering Survey was prepared for the City of Santee under my supervision; and, is a true copy of the Traffic and Engineering Survey presented to the City Clerk for their files.

**I declare under penalty of perjury that the foregoing is true and correct.**  
**Executed at Santee, California on this 28<sup>th</sup> day of January 1998.**  
Cj-- CJJ-. ~ Declarant

**10601 Magnolia Avenue. Santee, California 92071-1266 .(619) 258-4100**

Here is a portion of a second survey so you can really understand the fleecing of Americans. This is a common example

Below, in the engineering study, the line that I printed in bold type shows the 85th percentile (to be exact, the 86.1 percentile but close enough). It also shows the average driver traveling at 45.83 MPH. Even if they round down to the nearest 5 mph, this should have been posted at 45 MPH and rounding up would yield a posted speed of 50 MPH. In this example they are giving tickets out for going 45 and 50 mph in a 45 or 50 MPH zone! The street was posted at 40 MPH. If you look at the graph (I know it is difficult) you will see that the posted speed limit of 40 made "speeders" out of all but 38% of the slowest drivers on this street. To put this in perspective for you: By posting this road at 40 instead of 45 or 50 where it should have been, the DOT made 62% of all safe and sane drivers on that road instantly "criminal speeders" who needed to be ticketed and fined. There was no accident problem on this road. See what 5 mph can do? If you knew what we knew about this 5 MPH here and 10 MPH there corruption and how much money they make off of it, you would want to burn your ticket.... oops, you already do. For those of

you who are thinking that a driver should "drive at whatever speed limit is posted", congratulations you are beginning to think exactly the way they want you to think. The law states differently. They have to post the speed limit according to how the majority of people drive on that road. Anything else is illegal..... for them. Stop thinking like sheep, fight, don't pay.

Speed Zone Survey:

f (x) (x) SPEED SPEED NO. OF PERCENT ACC. f (x)

RANGE (mph) (X) VEH (n) TOTAL PERCENT

0 < 15-15	0	0.0%	0.0%	0
0 15-16.9	16	0	0.0%	0
0 17-18.9	18	0	0.0%	0
0 19-20.9	20	0	0.0%	0
0 21-22.9	22	0	0.0%	0
0 23-24.9	24	0	0.0%	0
0 25-26.9	26	0	0.0%	0
0 27-28.9	28	0	0.0%	0
0 29-30.9	30	0	0.0%	0
1024 31-32.9	32	1	0.9%	0.9%
2312 33-34.9	34	2	1.7%	2.6%
9072 35-36.9	36	7	6.1%	8.7%
21660 37-38.9	38	15	13.0%	21.7%
30400 39-40.9	40	19	16.5%	38.3%
52920 41-42.9	42	30	26.1%	64.3%
19360 43-44.9	44	10	8.7%	73.0%
<b>31740 45-46.9</b>	<b>46</b>	<b>15</b>	<b>13.0%</b>	<b>86.1%</b>
18432 47-48.9	48	8	0.7%	93.0%
10000 49-50.9	50	4	3.5%	96.5%
5408 51-52.9	52	2	1.7%	98.3%
2916 53-54.9	54	1	0.9%	99.1%
0 55-56.9	56	0	0.0%	99.1%
0 57-58.9	58	0	0.0%	99.1%
3600 59-60.9	60	1	0.9%	100.0%
0 61-62.9	62	0	0.0%	100.0%
0 > 63	63	0	0.0%	100.0%

208844 SUM 115 100.0% 4874

f (x) (x) (n) f (x)

50th PERCENTILE SPEED = 40.90

85th PERCENTILE SPEED = 45.83

MEAN SPEED = 42.38

VARIANCE = 19.92

STANDARD DEVIATION = 4.46  
STANDARD ERR. OF MEAN = 0.42

LOCATION -----ROCK RD. @ POLO  
DIRECTION -----NB & SB  
DATE OF SURVEY ---3/11/91 8:39 - 8:55 PM

Your access to engineering studies is protected under the Freedom of Information Act. If you want to read the FOIA, simply type "FOIA" or "FOIA along with the name of your state", into any search engine on your internet connected computer. You should be able to find the procedure for filing a complaint of a FOIA violation the same way. We believe (we am not an expert in this) that it involves a form being filled out and sent to the Governor's office of your state.

Note: In California the accusing officer is supposed bring the speed study to court with him/her. If he did not ask for a dismissal "lack of foundation per 40802 cvc. The reason you should have your own copy is to dissect it in advance of court so you can ruin the voracity of the document using our strategies. If you wait until court to see the study for the first time this will be impossible.

#### 4) The Script for Questioning the Officer

Note here that this script assumes that you are fighting a radar based speeding ticket. This is because most of the tickets we help with fall into this category. If your ticket was not a radar ticket, use the supplemental information found later in the document to modify these questions for your officer. Many issues can vary slightly from State to State and court to court. For instance some judges will throw out a ticket if the radar unit was not calibrated before and after each ticket while other judges don't seem to care if the unit was calibrated at all. This is one of the benefits to a script such as this. If a judge, prosecutor or cop throws you a "curve" on an issue you thought was in "concrete" you can just move on and continue with the script instead of becoming frustrated and feeling that you have nowhere else to go. Feel free to modify, or delete portions of the script in any way that suits your intended situation, planned defense, or manner of speaking. Once you know what you are going to ask, we suggest that you highlight the questions you are going to use so you don't have to hunt for them during stressful moments in court.

1) Officer \_\_\_\_\_, was the radar gun that you used on, \_\_\_\_\_ (ticket date), calibrated that same day?

If "no", request immediate dismissal stating that the gun was not calibrated.

If "yes", ask: **By whom?** If the answer is, someone other than the officer who issued your ticket, request immediate dismissal.

If the issuing officer calibrated the gun personally, that same day, move on to the next

question.

**FYI** - Most radar guns require daily, tuning fork calibration. Before a radar gun can be used, it must be calibrated, it must be calibrated each day that it is used, and it must be calibrated by the officer who used it to write a given ticket. It is common in some departments, for a day shift traffic officer to calibrate the gun at the beginning of the shift, and then hand the gun over, to the afternoon shift officer. The gun is handed over with a card or log, showing that it was calibrated that day. To a layperson, the fact that the gun was calibrated the day that it was used, seems to be enough to show that the gun was accurate. Legally however, this is not true. If the officer who issued your ticket, did not personally calibrate the gun, the day you got your ticket, then he/she cannot personally testify that the gun was calibrated at all. An officer cannot testify at a trial (even a traffic trial) about what another officer saw, or did (this is called hearsay). If this is the case, the ticket must be dismissed.

Before radar can be used on a city street, the street must first be surveyed, by the city, with special equipment (usually radar). This survey must be less than five years old (as of the date on your ticket), and the officer (in some jurisdictions) must bring this survey to court. If you are not sure if the officer will bring the survey to court in your area, assume that he/she won't bring it and get a copy well in advance for yourself. In fact you can only really be prepared for survey discrepancy issues if you have gotten your survey in advance and studied it for weaknesses. Don't let the officer be the only one who is prepared for your trial.

**2) Officer \_\_\_\_\_, has \_\_\_\_\_ street (Ave. rd., etc.) been surveyed within the last 5 years?**

If "no" ask for dismissal.

If "yes" ask: **Did you bring a copy of that survey to court with you?**

If "no" ask for dismissal, since the officer cannot prove that the survey exists, (note recent exceptions listed below just prior to survey examples at bottom of this document) and it cannot be scrutinized.

If "yes" move on, to the next question.

**FYI** - The purpose of the survey is to estimate the average speed that 85% of the vehicles travel at on the road, and to compare that speed, with the "posted" speed, to make sure the posted speed is reasonable and legal. The "posted" speed (speed limit), must be within 5 miles an hour (rounded up or equal to) , of the speed driven by 85% of the vehicles who were clocked during the speed survey.

**3) Officer \_\_\_\_\_, what is the "85th percentile" average speed of vehicles on \_\_\_\_\_ street, according to the speed survey?**

Now, you must listen to the officer's answer, and compare it to the posted speed limit on the street where you got your ticket. The posted speed limit should be the same or higher than the survey average, but only to the nearest five miles per hour. If this is not the case, ask that your ticket be dismissed since the speed limit is not justified by the speed survey. If the speed limit is correct move on to the next question.

As discussed previously, it is a very common practice for the survey to be done in a section of a street that will give a falsely low average speed that vehicles are traveling. For instance, if the **survey** was done on the up side of a hill, or just after an intersection, or near a curve, then later, when radar is used, the traffic officers will choose an area where drivers travel the fastest, for instance, on the down side of a hill, away from, or in front of an intersection, or on a strait section of the road. Even though, (on paper), the survey may sound like it was done in the same area of the street, or even the same hundred block, it may be invalid for the section where the radar was actually used.

A good example of this involves a real radar site that we have personal knowledge of: There is a favorite radar "trap", where the speed limit is 45 mph, at the bottom of a long hill, just prior to an intersection. Since the city made so much money on this "trap", they made sure that it was always currently surveyed. However, they always conducted the survey on the opposite side of the road, from where radar traffic enforcement was used. This survey location was just after an intersection, and at the base of a big hill. Many of the drivers, whose speed was surveyed, had just come through the intersection after stopping for a red light. This gave an artificially low average speed, allowing the posted speed to be 45 mph. When they ran radar for ticketing, they went to the opposite side of the street, far enough from the intersection that cars were not yet slowing for the light. Citizen driver speeds were further increased, by coming down, off the hill. This allowed the radar officers to "duck shoot" nearly everyone who came through the "trap". We know it sounds underhanded, but it is the truth. Many radar sites are set up this way. The police term for a place where many tickets can be written like this is a "cherry patch." To a judge, who only sees the survey and ticket in court, it all sounds quite legitimate, but it is not.

**To properly handle question #4, you must be at least somewhat familiar with the street where you got your ticket, and the hundred blocks near the area where you were ticketed.** This is much easier if you will get a copy of the speed survey before to going to court. City Hall, or the police department should give you a copy of the survey upon request .

Tell them that you want a copy of the "Traffic Speed Survey" for \_\_\_\_\_ (St. Ave. etc) in the \_\_\_\_\_ (address or hundred blocks on your ticket). They have the right to charge a reasonable copy fee, but due to a law called the "Freedom of Information Act" they cannot refuse to give you a copy of it.

Find out exactly where the survey was conducted, including the hundred block, and which side of the street. Then compare the survey site to the radar site (the place the

officer was using radar when you got your ticket). If there is even one substantial difference, the survey is invalid, and your ticket should be dismissed.

Remember, the reason that the law requires a survey, is to show the court, that the person who received a ticket, was a speeder, traveling faster than the average driver. If you were traveling with the flow of traffic around you, and got a ticket, chances are, that your ticket was illegal, because of one of the survey contradictions above.

It is impossible for us to include one exact question for you that would cover all possible survey condition and location issues. Look over your survey, and compare it to the exact location and conditions where the officer was using radar. Find the discrepancy, and point it out with your questions to the officer. For instance, in the example I gave above, your questions would go like this. For greater detail refer to the "How to dissect your survey" chapter above.

**4) Officer \_\_\_\_\_, according to the survey, what was the exact location where survey equipment was used to check motorist speeds on \_\_\_\_\_ Street?**

Answer: In the 1000 block.

**5) What was the exact direction of the survey? (north, south, east or westbound)**

Answer: Northbound.

**6) Officer \_\_\_\_\_, what direction was I traveling when you gave me a ticket.**

Answer: Southbound.

**7) Officer \_\_\_\_\_, are there any traffic devices, such as a traffic signal, which might cause the average \_\_\_\_\_ bound driver to be going slower than the \_\_\_\_\_ bound drivers in the same block of \_\_\_\_\_?**

Answer: Yes, there is a traffic light there.

**8) Officer, why would a signal light, slow many of the Northbound drivers during the survey?**

Answer: I guess some of the drivers would have been at a stop just before the survey equipment checked their speed.

**9) Officer \_\_\_\_\_, weren't you were using radar on the opposite side of the street from where the survey was conducted?**

Answer: "Yes".

**10) So none of the drivers that you clocked, could have just come through the intersection on a red light, is that correct?**

Answer: No, I guess not.

**11) So the speed survey was really only accurate for Northbound traffic, wasn't it**

**officer?**

**Answer:** Well, I guess so.

This survey does not apply to westbound 1000 elm, however because the conditions differ from eastbound elm, due to the traffic signal mentioned by Officer Jones. In fact, it is inherently dishonest for a survey to be placed within a quarter mile of an intersection to begin with, because drivers passing through the intersection either “made” the green light, or got “caught” at the red light. The speeds measured by the survey represent drivers in these two categories, i.e.: normal speed (let’s say 55mph for drivers who went through a green light), or very slow, maybe 15 mph for drivers just leaving a red light. The survey equipment averages these two speeds, and “believes” the average driver travels at 35 mph. This allows the city to post the speed limit for radar enforcement, at 35mph. Then as you come through a green light, or approach a green light from the opposite side of the street, you are traveling at a safe and “normal” average speed of 55 mph. You get a radar ticket from Officer Jones, who tells you that you were doing 55 in a 35 mph zone. In reality, an honest and fair street survey would have forced the city to post the speed limit at 55mph, and you never would have gotten a ticket. Briefly, in Officer Jones defense, he is probably unaware of all the details of speed surveys. My knowledge of surveys, court and policing are based on a great deal of research, along with my police and courtroom experience. Jones is probably a good man, or woman, who believes in what he/she is doing. Usually, the real villain is the city, or county who handles these surveys, and makes sure they get the speed limits as low as possible, especially in key radar areas. Remember, for them, it is not driving safety that they are concerned about; it is the collection of revenue...period.

*At this point, I would ask that my ticket be dismissed on the basis that the officer used a speed survey that was invalid and inaccurate for the location where he chose to use radar.*

**Your questions for 4 -11, should match the circumstances of your ticket, compared to the survey location. We strongly recommend that you do not skip this step; this is the single most powerful tool in beating your radar ticket.**

In most cases, the speed survey will not specify which direction of travel was checked, such as North or Southbound. This is even better for you, because no matter where the equipment was actually put, you can say that it **may** have been placed in the spot that would have shown a false or low average speed. Look over the street, and find a location which would have caused some of the traffic to slow.

You can ask the officer if the speed survey specifies the exact location where the survey equipment was placed, for instance, does it specify the side of the street, or direction of travel? Does it specify the exact address, or just the hundred blocks? If the survey is lacking any of these details, you can always ask the officer:

**12) Officer Jones, is it possible that the survey equipment was placed at or about**

**this location? \_\_\_\_\_ (give location which would give the lowest speed average in the general area of the survey).**

When the officer admits that it is possible, I then ask that my ticket be dismissed, since as far as the city has chosen to inform the court, the survey equipment may have been placed in a curve, on the uphill side, after the intersection, or stop sign etc, (whatever is applicable). This means that the survey would not have been valid or accurate for the location where the radar was used. It is not your fault that the city did not give an exact location. The ticket should be dismissed at this point.

Whatever your specific survey discrepancy is, you must point it out to the judge. You can do this as above by questioning the officer, or during your own testimony or comments. The most important point is that there is **almost always** at least one significant difference between the conditions of the survey location, and the radar location (where you got your ticket). After this discrepancy is pointed out, you must ask that your ticket be dismissed due to a traffic survey that was invalid for the section of road where radar was used. For example, you could say:

**The reason for the survey is to make sure that the posted speed, is reasonable for the actual driving conditions, and must be proven reasonable, by measuring the speed of the average driver. In this case however, the survey average is valid only for the exact survey location, which was**

\_\_\_\_\_.

#### **Additional questions you may use regarding Calibration, Certification, and Training.**

You may assume from the questions that these issues are State requirements and most of them can be backed up by cases in the Case Law Library. Some of them are simply common sense arguments such as being trained on the exact piece of equipment the officer used when measuring your speed. Some of these questions might seem too “lawyerly” for some of our customers. If that is the case with you, simply leave them out of your plan. We give you enough information so that even the not so very bold will be disappointed with the quality of their preparation:

**13) Officer \_\_\_\_\_ . Are you aware of \_\_\_\_\_ 's (your ticket State) training requirement for a police officer to be allowed to use an electronic speed measuring device such as \_\_\_\_\_ (radar or whatever was used in your case)?**

**14) Have you completed that course?**

**15) Did you pass the course?**

**16) Have you had any refresher courses since then?**

**17) When did you go through the course?**

**18) How many hours of supervised training did you receive?**

**19) How many officers were there in the class?**

**20) How many instructors.**

**21) How much of the course was actual hands on, outdoor measuring the speed of actual vehicles where the estimation of the unit was verified by a certified speedometer?**

**22) Of that \_\_\_\_\_ hours, how much time did you personally receive in the supervised hands on use of the unit (radar or whatever)?**

**At this point you can say something like:**

**23) "So you only have 15 minutes of practical training on the use of radar?"**

During your questioning make it clear to the officer that he/she is not to count time he was present or watching someone else being trained. You want to know how many minutes or hours he/she personally operated the unit and was being supervised by a certified instructor. Believe it, you will be amazed at how little time they spend getting actual training. Then ask the question that tends to make them all blush.

**24) Was this entire \_\_\_\_\_ minutes (or hour or whatever) devoted to the use of the same exact make and model that you used on the day you issued my ticket?**

We won't elaborate on this further right here but you see where we are going. Basically it is very common for a traffic officer to be issuing tickets based on a specific make or model of electronic speed measuring device that he/she has never been trained on at all. If he/she starts to volunteer information on some in house training on the unit that they used for your ticket, you can shut them up saying something like:

**"I haven't asked you anything yet officer" or if you want to be lawyerly you can use the legal terminology which is "objection your honor, no question pending". This ends the officer's testimony for that moment because witnesses are only allowed to answer questions not simply start talking at will.**

If the officer is allowed by the judge to say something or you weren't quick enough.... let's say he says something like "I was trained at the department by a senior traffic officer in the use of the unit", then I would follow with something like:

**"Oh, I see, and what is this officer's name?**

**What certification does he have to be an instructor for this unit?**

Do you see the direction you need to be going?

All states have standards in training. For example Oregon has the Department of Public

Safety Standards and Training or DPSST. California has the Police officers standards and training or P.O.S.T and so forth. **If this "guy" who taught them to use a radar device for instance was not a certified instructor, then the court must assume that he was not teaching the proper method of using the device, so as far as the court is concerned, no training took place or at least none has been proven.**

Once you demonstrate a complete lack of training for the specific unit (this is the case more than half of the time) then begin referring to the device as **"the device that you now admit that you were not officially or properly trained on"**. Again, this may seem argumentative to the layperson. Believe it when we tell you that this entire speeding ticket setup is a scam on the American people. Yes, the judge and cop would rather that you be meek and lowly and pay your fine and refer to the officer as "sir" and the judge as "your honor". The problem is that they are part of a city or county or state that is stealing from you illegally and in most cases while avoiding all the due process they are sworn to uphold. In other words we have an understanding of this system and therefore we have a larger degree of contempt for it than you might. **This portion of the script is not for the faint of heart.** It is for those who are **sick and tired** of being ripped off by those who are sworn to be our protectors and servants (referring to public servants as employees not as slaves).

**25) Calibration: Officer \_\_\_\_\_ did you calibrate the \_\_\_\_\_ unit before and after using it to issue a ticket to me?**

Note the answer and continue as appropriate.

**26) What form of calibration did you use?**

If the answer is "self calibration" or "internal calibration" or anything to do with a button on the unit showing you that the device calibrated itself.

**Say: "Are you aware that this method of calibration has been disapproved by scientific evidence and provides no calibration evidence or check whatsoever (this is true, see your Case Law).**

**If he is now trapped in this and also has little or no training from #24 above you could give him a right jab now and ask;**

**Could it be that you did not know how to legally and properly calibrate the unit because you were never properly trained in the use and maintenance of this specific unit?**

If he answers regarding a tuning fork, again referring to Case Law which you have from the Case Law package.

Say something like this:

**Was that tuning fork provided from the manufacturer along with this radar unit?**

If "yes" say:

**Did you know that the supreme court has already decided that the tuning fork supplied by the manufacturer of a radar unit is as ineffective as internal calibration**

**to determine accuracy or calibration of a unit?**

**27) Certification: Officer \_\_\_\_\_ did you bring an original calibration certificate with you today that specifically refers to the calibration of the exact radar unit that you used when issuing my ticket?**

**28) What serial number is on the certification?**

**29) What serial number is on the device?**

**30) How do you know? (see next question)**

**31) Is that documented in your notes?**

(If not, don't let this lie, ask the officer questions about memory and the reasons for notes and documentation such as why did he fill in the blanks on the ticket, why does he take notes etc.). If he says he always uses the same vehicle or speed measuring unit (he is lying). I would ask him about vehicle service days, and unit certification days where either the vehicle or unit is unavailable for days at a time. You will find here that there are always exceptions. You could also ask if he documented in his notes that he was driving his normal car and using his normal unit. If not, I say "hummm, no documentation of which unit you were using that day". I bring this up later in my closing statement.

These questions will show any thinking judge that if the officer did not note the unit serial number on his notes then it can't be shown that the certification is for the unit that he is trying to prove was accurate at the time of your ticket.

**32) Was the certificate issued in the past 12 months?**

**33) Does it bear the State Seal of California?**

**34) Is it signed by an authorized state technician?**

**35) Is this document an original or at least a certified copy as required by law?**

## **5) The Script for a Typical Closing Statement**

This is an actual closing statement prepared by a previous client who won his case in a Georgia courtroom. The script is specific to issues that came to light as this citizen dissected his speed survey and found the discrepancies listed in the Speeding Ticket documents. Although your closing statement cannot match this statement exactly since your ticket and discrepancies will be different, you can use this as a guide for what to include in a winning closing statement. You should also be aware that claims made during the closing statement must have been shown or proven with legal reference or case

law during your questioning of the officer or during your testimony. You cannot bring up new unproven issues in your closing statement and expect them to be taken seriously by the judge.

The Manual on Uniform Traffic Control Devices (MUTCD) issued by the Federal Highway Administration (US Dept. of Transportation) is “recognized as the national standard for all traffic control devices”.

Section 2B.13 of the MUTCD states “After an engineering study has been made in accordance with established traffic engineering practices, the Speed Limit sign shall display the limit established by law, ordinance, regulation, or as adopted by the authorizing agency.” It also goes on to say “When a speed limit is to be posted, it should be within 10km/hr or 5 mph of the 85<sup>th</sup>-percentile speed of free flowing traffic.”

The State of Georgia has established certain basic Prima facie speed limits that are reasonable and prudent under normal driving conditions. These limits are listed in GA Statute 40-6-181.

GA Statutes 40-6-182 and 40-6-183 state that speed limits are not to be higher or lower than the basic lawful speed limit unless a traffic investigation has justified the change.

The GA DOT has adopted the above regulations in determining speed zones. The Georgia DOT states “A speed trap occurs on a road segment where normal conditions are adequate for a higher speed than the official posted speed limit selected and where enforcement activity is high”. The GA DOT also states “An appropriate, just right, speed limit will result in the maximum number of vehicles traveling at about the same speed,..... “. It goes on to say “The 85<sup>th</sup> percentile speed, that speed at or below which 85% of the traffic is moving, is widely accepted as being closest to that, just right, speed”.

On February 18, 2004 I requested from the GA DOT speed survey data for the section of road where the ticket was issued. I am submitting to the court a letter from the District Administrative Officer with the Office of Traffic Operations that speed survey data does not exist.

There are a number of appeals cases that support my defense that in the absence of an engineering study or speed survey that justifies the posted speed limit “any evidence concerning the vehicle’s speed is inadmissible unless an adequate survey is introduced” and “it was the People’s duty to establish that the survey justified the posted speed limit”.

Your honor, the purpose of the speed survey requirement, is to insure that the posted speed limit represent reasonable safe speeds. This prevents radar enforcement in a spot where the posted speed limit is dropped without engineering justification, for the purpose of creating a speed trap and ticketing safe and reasonable drivers. In this case, I have showed that survey data does not exist and therefore the posted speed limit cannot be justified. This is in direct violation with both Federal and State regulations and I have

provided the court with copies of all the pertinent references.

I respectfully ask that this ticket be dismissed since the rules of the use of radar, and the principles of the speed survey and its application to establish speed limits that are reasonable and prudent have clearly not been met.

Thank you your honor.

## **6) Calibration Issues for the More Common Police Gadgets and Speed Measuring Techniques and Photo Radar Issues:**

The regulations regarding the use of speed enforcement methods by cities and the police are nearly identical. The balance of this document will address a variety of ticketing illegalities and how you can use them to fight your ticket in court.

The following calibration information applies to radar/photo radar only, since the other devices will generally withstand calibration scrutiny.

In section 1, we covered some details of radar unit calibration. If nothing opens up here, there is another tactic which may be used.

Most types of radar guns are calibrated with a tuning fork. Even if the unit was calibrated before use, by the ticket issuing officer, it should be noted that the tuning fork itself is a weak spot in proving the accuracy of the unit. The radar unit, and therefore the tuning fork, is used by one officer after another. They are taken out and put away, hundreds of times over their lifetime. If the tuning fork has ever been dropped, even once, it is probably no longer properly "in tune". This means that the radar unit is being taken out of calibration each time an officer tries to calibrate it with the faulty tuning fork. No single officer will be able to testify that the tuning fork has never been dropped by one of the other officers who have used it. This is not a strong argument, but it can sometimes beat a ticket if nothing else opens up and the judge is feeling generous about your exceptional knowledge and preparation.

These issues and more are covered in some detail in section 4 "Questioning the Officer". Use this section if you plan on preparing your own defense and use the script in section 4 if you would like to use our suggestions for questions to the officer.

**Photo radar issues:** Although soundly whipped in court in the original test markets of San Diego and Denver, it appears that photo radar is here to stay. The reasons for this are simple. One initial investment for equipment and a slice of the financial pie to the private

company that oversees the tickets and then PR and you have an endless and lucrative cash cow for a cities budget.

For those of you who have missed our dry sarcasm to this point..... This cash income is the only reason for most of the traffic enforcement in this country. Many, if not most cities in the U.S. have become miserably addicted to the traffic enforcement revenue they have been collecting for years.

Individual officers still believe in what they do (even in regard to traffic enforcement) but they are deceived. We could go on to offer many proofs but let's just get on to the "Photo Radar Ticket".

The "Photo Radar Ticket" has very few differences when compared to other tickets. However, as with the Vascar and Pace tickets, we get occasional comments bordering on complaints from "Photo Radar" ticket holders requesting equal time.

The truth is that following the basic "Radar System" strategy of survey issues will generally be sufficient to beat a Photo Radar ticket.

The choice of placement for the expensive equipment required for the Photo Radar enforcement predetermines underhandedness in most cases. These units can cost huge sums of money. The only example we could easily find was for British Columbia which said the tab for their photo radar program was over \$35 million per year. Of course the income from the same campaign dwarfs that amount and remains a secret number. When these types of numbers are involved you can be sure the city footing the initial bill is not concerned about traffic safety, they are really only concerned about getting their money back and lots of profit on top of it. It is for this reason that we make the statement that the location they choose will not be a location that only a few people are going to "speed" through. If many people "speed" at a given location, then the speed limit is incorrect as you should have learned by now.

Remember, that all speed limits are supposed to be designed around the driving habits of those who use the road. This is the contradiction of every speed trap and of photo radar locations in particular. They can't install a device that won't make a fortune since it costs a fortune to install and maintain the unit.

**No city in this country will spend hundreds of thousands of dollars in the vague name of safety. You can bet that they will do it for revenue.**

**Now you have their scent!**

Because of this limitation you will have a bad survey one way or another. Just follow the system. Compared to the calibration issues of a normal mounted or hand held radar unit, our advice when it comes to Photo Radar is to forget it. We say this because the percentage of photo radar units that are out of calibration or uncertified are very small. To spend time and question someone about this in court is usually futile and will serve to strengthen the opposition's case. It may also annoy the judge to hear the issue again since

the officer or civilian representative of the company involved will normally have already gone over this issue in the beginning of the trial.

**The issue of changing the trial date is often of value however.** Regardless of the witness (civilian or police officer) who represents the "state" against you, they appear endlessly in court on behalf of the city in photo radar tickets. After a person has been doing this a while believe me the thrill of court and the hours of waiting around for cases to be called comes to an end. Any opportunity to reduce the number of court appearances is welcome.

These cases like other traffic cop cases will be lumped together to what has been called previously the "day of convenience". To simply get a judge or clerk to allow you to switch to another day puts a "kink" in the works and creates a much greater chance of the representative not showing up for court. We always try and go for a different day of the week. For instance if you were cited into court for trial on a Wednesday, and ask for a continuance the judge or clerk will often try to schedule you for another Wednesday. This will usually be to simply change you to another "day of convenience" for the representative. They may be in court every Wednesday and this is known by the court. Try to have a good reason to change the day, not just the date. To make a representative show up for a single ticket will often be more than they are willing to do.

You should go to the location described on the back of the ticket to get a copy of the photo that will be used against you. Perhaps 25% of the time the photo will not clearly show the driver to the point that they (you) could be readily identified by a reasonably objective person. If this is the case you can do one of a few things.

If the photo is not distinct, you should do your best to make sure you don't help the prosecution by looking the same as you did in the photo.

Women can alter their daily appearance to change their "look" especially when being compared to a blurry photo. A note of caution here: the judge may ask to see your driver's license. Seriously altering your hair color etc could be looked at as subversive or even contemptuous. This is not what we are suggesting. We are suggesting that you not help the prosecution.

Secondly, although it is backwards compared to the U.S. Constitution, you will be assumed guilty until you prove innocence and (even more illegal) often found guilty until you provide the judge with the name and address or other contact information of the person who was driving your car on the "ticket day".

Remember photo radar tickets are issued to the registered owner of the vehicle, not necessarily to the person who was driving the vehicle at the time of the violation. This can be a huge weak spot in your favor. If the photo is not distinct and you are going to say that it "wasn't you" in the photo, the judge may ask you who was driving that day. You must be prepared to answer. "I don't know" will not go over well. A client was in this predicament recently and she used the following nearly true story:

- 1) The photo was not her and she was not driving that day at that location.
- 2) She has several girlfriends who occasionally drive her car.
- 3) She does not log or write in her diary each time someone drives her car, nor does she remember the specific times when someone borrows her car. This problem was amplified because a period of almost a month passed between the day of the alleged speeding ticket and her notification in the mail of a speeding violation. Because of this delay she had no way of knowing or remembering who she had lent her car to on the specific day.
- 4) The photo could be one of two different friends of hers but she hesitates to give their names because she isn't positive which of them may have been driving her car at the specific time of the ticket (she had the names to give if necessary) with the permission of the friends if the judge pursued this. He can't give tickets from one event to two people, nor can he accuse either of them. She also said that she had asked both friends and both said that they had not sped in her car during the day of the ticket.

We don't know if her story was completely true or not, but it was nearly perfect legally. She had to win because the photo was blurred. Her story generated enough doubt to not allow the prosecution and yet did not give enough specifics (two alternative suspects) to allow any follow up or prosecution of another person.

There are judges now who will find you guilty unless you give them an alternative suspect. Because of this it is better to have two suspects to give the judge so that they can't legally do anything with the information. It is common to have at least two drivers from a family occasionally drive the same car. If the photo is very blurry remember that a person can't be forced to testify against their own spouse. For a couple of reasons this is riskier, but in some circumstances it can be helpful. Use your judgment both ethically and morally when deciding on issues like this. The truth is always best. Along this line of thinking, if you successfully attack the speed limit itself, the issue of "who was driving" should never be before the court.

## **7) Preparation for Court**

Dress for court! We don't want to debate if you should or shouldn't have to dress up for court, to get a fair trial. But in our opinion you do.

You should have a clean, businesslike appearance. Perhaps carry a satchel or briefcase. Be organized and prepared. Be polite to the judge and the doughnut monster who is trying to convict you.

The judge has probably seen him or her, many times, and already has a favorable opinion of them. If you are overly aggressive or rude, it will not serve you well. Some people wait until the last minute to order the system or to begin preparing for court. If you have done this, please consider getting a continuance to give yourself more time to properly prepare.

Winning in court is not easy. Just ordering the system will not save you. You must be familiar with the system and use it. It is nearly impossible to properly prepare in less than 48 hours. A judge is more likely to grant you a continuance if you explain that a city document is critical to your defense and they require a few more days to provide you with a copy of it.

**In regard to the above sections, you will see that we suggest that you do a little homework.**

**Please don't skip this important step. This is where most of the tickets are won.**

Read over the material several times, until you are familiar and comfortable with it. Do the same thing with the speed survey. We suggest getting the speed survey at least a week before your trial date. In reviewing the speed survey, make sure:

- 1) The speed posted on the road, is rounded up from the speed survey 85th percentile average to the nearest 5mph (if the survey came out to an even 5mph, then the posted speed doesn't have to be rounded up.
- 2) The survey is no more than 5 years old, at the time of your ticket.
- 3) The location and conditions of the survey, match the location and conditions where you got your ticket. If any of these conditions are not met, your ticket should be dismissed as long as you properly prepare.

The more time you have to review this material, and the speed survey, the more discrepancies you will find. This dramatically increases your chances of beating your ticket. Fewer than 5% of all our clients have ever requested a refund. Of those who do, we have found that almost all of them failed to get the speed survey in advance or bring case law with them to court.

Our strong advice is that you do not testify against yourself. It is common for a judge or magistrate to ask you a couple of questions about your speed, or speedometer, etc. during the trial. In our opinion, this is another illegal practice. The rules of the court specifically prohibit a judge or magistrate from acting as a prosecutor in a traffic case. But citizens don't know the law, and are taken advantage of in court. If you confront the judge on this point, he/she will just tell you (falsely) that they are not acting as prosecutor, they are just asking a couple of questions. The judge will forget to inform you that, the questions are meant to convict you. It will also annoy the judge if you quote the law against him/her. Don't do it. Instead, just say that you prefer not to testify against yourself. Say this politely. The judge will have no choice, but to let it go. Along this same line of legality is the question of "were you speeding", this should never be before the court if the ticket should never have been written. There is no such thing in America (legally at least), as: Well yes, the ticket is illegal, but as long as we have you here, lets find you guilty anyway so we can get a couple hundred bucks out of you. If the ticket is found to be faulty by any of the above points, the issue of speeding is never to be brought up.

A known fact about radar is that it extends slightly farther than line of sight. Technically this is because radar emanates in a conical (cone) shape from the narrowest point at the gun into an ever widening fan shape towards the target. This is a fact which all legitimate traffic officers are aware of. If they are using a non-trigger unit (the type that stays on, pointed in a certain direction) they will frequently get a speed reading on the screen before they can actually see a vehicle coming around the curve or over the horizon of a hill. This sounds innocent enough, until you know how you got your ticket. The radar unit does not tell the officer which vehicle is speeding. It tells him that a vehicle is speeding. Let's say that you and a car behind you are both traveling toward the radar location. One of you will always be traveling slightly faster than the other. As you come into the officer's view, even if the other vehicle is slightly out of view, the officer's radar unit will read out a speed in red numbers. This speed will be the faster of the two cars.

Radar units only "show" the fastest vehicle in range, they don't show the speed of the closest vehicle as some people think. There is a period of up to several seconds, where you may be the only car in view of the officer, but his radar unit is beeping and showing the speed of the other vehicle, which may be traveling faster than you. The officer sees you, and sees the readout on his unit. A few seconds later, the second car comes around the curve, but chances are, the officer has already made up his/her mind. You get the ticket, and actually may have never been speeding.

In court, it is common for the officer to "not recall" any second vehicle or worse yet, to use the famous traffic officer phrase: "I visually estimated his speed at....." This is a totally bogus statement that only sounds good in court. In court, officers take the liberty of claiming to be able to visually estimate your speed, and then to "compare" it to the radar readout. These two speeds are always astonishingly similar. The truth is that if police officers could accurately estimate speed by their visual estimation, we would not require them to use radar or laser units to prove this mysterious and unproven talent.

**The typical order of a traffic court trial is:**

1) The officer will explain why he wrote you a ticket, and what he saw you do. They may also include some information about the radar unit and its calibration etc. It will all sound very professional and intimidating. Remember you are ready for this. If you use the system as outlined, this officer and judge will probably have never seen anyone come to court so prepared.

**2) The judge will ask you if you have any questions for the officer.**

This is the time for you to use all the sections of the system. You should walk methodically through the system from top to bottom. If you did not get the speed survey in advance or you have trouble reading it, you can use this part of the trial to get the officer to describe the important survey details to you (and to the judge) so that you can check for discrepancies. You only have to find one small discrepancy to win. Don't skip steps unless they don't apply. There may also be questions you want to ask the officer based on the specifics of your ticket. By all means, do so.

**3) When you tell the judge that you have finished questioning the officer it is now time for you to testify or make a statement.**

Never combine part two and part three. For example, if the officer makes an untrue statement, you don't say "that's not true". You wait for part three of the trial to testify on your behalf or make statements. Remember, you do not have to testify about the ticket at all if you choose not to. Your statements can all be related to discrepancies that you have uncovered during your homework, and in questioning the officer. Always point out all discrepancies during your final statement.

It is best to point out discrepancies as if they were accidental, even though we are convinced that cities intentionally use radar and surveys illegally, so they can make more money. When you tell the judge that you are finished questioning the officer, always say that you have a final statement. We have seen judges take this "finished questioning" statement to mean that you are done altogether and end the trial. Make yourself clear. Once the judge smacks his gavel....trial is over.

**Here is an example of a final statement example in section 4.**

"Your honor, the purpose of the speed survey requirement, is to insure that our city's posted speed limits represent reasonable safe speeds. This prevents radar enforcement in a spot where the posted speed limit is dropped for the purpose of creating a radar trap and ticketing safe and reasonable drivers. In this case, I have showed that the average driver's speed on \_\_\_\_\_ (where the survey was conducted) is almost certainly lower than on \_\_\_\_\_ (where radar was used), due to the presence of a traffic signal near the speed survey location. I am not claiming that the city or officer \_\_\_\_\_ intentionally created this discrepancy, however it is an unfair, and illegal discrepancy nonetheless."

"I respectfully ask that this ticket be dismissed since the rules of the use of radar, and the principles of the speed survey have clearly not been met. Thank you your honor."

Of course this is just an example of what could be said. If you are ever questioned as to your source for the listed federal regulations, state that they come from the "millennium edition" of the **Manual on Uniform Traffic Control Devices**, or for California tickets, the **Cal Trans State Traffic Manual**. A judge will be impressed that you even know of the existence of the manual.

Your final statement will vary depending on the details of your ticket. Again, as with the questions to the officer section, add any questions which would bring out any other points which may help your case.

Prepare these details in advance.

Highlight all questions and statements that you intend to use, so that you won't have to look for them in court.

Using this system will give you a better than 80% chance of beating your ticket.

\*Note: Laser units do not require daily calibration. These units have a certificate of accuracy or calibration which the officer brings to court. In these cases, I suggest that you ask for proof of accuracy. If the officer did not bring it to court, ask for dismissal based on a lack of proof of accuracy, for the unit which the officer used to issue your ticket. If the officer did bring it to court with him, you can look at it and see if the unit was calibrated or accuracy verified prior to or since receiving your ticket. The only ironclad accuracy verification is that which was done shortly before and shortly after your ticket thus showing that the unit was accurate at the time your ticket was written. Some judges won't allow this much in depth verification. Do it if it is allowed, if not or if the verification is complete move on to the next question.

For units that do not use tuning fork calibration, this paragraph is to be used instead of section 1 which covers tuning fork and radar unit calibration. Many Radar units have a "self check" feature for calibration that is activated by pushing a button on the front of the unit. This "self check" uses the same frequency device that is the internal calibration unit's functioning device for speed measurement. In other words, a radar unit that is out of calibration will "see" itself as "in" calibration since it is using the same device for both measurement and self check. If an officer attempts to claim that he checked the unit with the "internal calibration" or a "self calibration", this is a falsehood. If this is done instead of a tuning fork or State approved calibration it is invalid per the case law you have found in the library, and is grounds for dismissal.

## **8) Information On a Good Old Fashioned Pace Speeding Ticket:**

Our systems do make use of a key question or two regarding Radar or Laser (etc.) calibration because this is a 10% category. In other words about 10% of the time our clients can easily and quickly win a case by the simple fact that the calibration isn't always done or proven in court. This also holds true for the pace ticket as you will see in a minute. However, the calibration issue is such a small part of our system that we don't spend much time on it nor do we put any great expectation on winning the case on that point alone. It is simply worth taking a "shot" at.

**Our system basically attacks the posted speed limit and the 80% chance that they were not properly surveyed or justified according to engineering standards.**

None of this has anything to do with the method the officer used to measure your speed for the ticket. However to give equal time for those with a "Paced Ticket", we will tell you this:

**1) A pace ticket is a ticket where an officer uses his/her speedometer to estimate your speed. The officer will attempt to match his/her speed with yours and estimate your speed by looking at their speedometer. This system has many weaknesses:**

**a) The speedometer is a mechanical device that in the field of speed measurement is the most antiquated, out of date, and inaccurate method still in use. Because of these weaknesses it has been replaced by a host of modern day technologically advanced and**

proven methods including Radar, Laser, and Lidar. In fact these technologies with proven accuracy were invented to fill the accuracy gap of the worst system imaginable... the speedometer pace.

**b)** The cop must estimate your speed (sometimes from another lane or a distance behind you or even both) and then match that speed (to the speed of his vehicle) using no special technology or ability whatsoever.

**c)** The cop must maintain this estimated speed for the entire distance of the pace. If this distance varies (even once) during a pace, the results are totally subjective and therefore inaccurate. The maintaining of a consistent distance between two cars traveling at high speed (most pace tickets are highway or freeway tickets) involves the use of depth perception because the officer must not let the distance vary between his/her car and the car ahead (sometimes quite a distance ahead) of them. Officers are not trained or tested regarding the ability to gauge consistent distance between two vehicles over varying speeds and road contours. This is highly subjective and therefore inaccurate.

It is possible to get a pace ticket from a cop that "paced" you from ahead of you. This is not completely illegal by any means but is much more inaccurate due to the officer having to use the rear view mirror to determine all the above factors and gauge distance. Many rear view and side view mirrors are magnified and further distort the cop's ability to use depth perception.

**d)** The cop must also somehow estimate the distance between your vehicle and his/hers. This is also without any special equipment to accurately estimate distance or speed. This distance must remain very constant between the two vehicles or the pace is entirely inaccurate.

**e)** Even with all the variables above the worst is yet to come. Although the cop may have a speedometer that has been "checked" for accuracy, a speedometer is the most inaccurate method of estimating speed of all the enforcement tools and because of that isn't used as a primary or trusted method by any traffic unit in the country (a traffic unit is a division or officer that specializes in traffic tickets and traffic enforcement). The desire to be fair and accurate has overruled the speedometer pace over the years and is the primary motivation for the implementation of the new hi-tech and accurate speed measuring devices mentioned above.

**f)** A speedometer is a mechanical device that runs off a gear on or in the transmission (often a plastic or nylon gear) that spins a cable that is connected to the speedometer. The speedometer is another plastic gear box prone to wear and not designed, intended or manufactured for speed enforcement as Radar and other units are. They are not intended for this purpose and they are not accurate enough for this purpose. Even the owner's manual of many autos says that the speedometer can be 5 mph or more off, and that is when it is new and perfectly lubricated. Add this to the officer's inaccuracies of matching speed to yours and estimating the distance between his/her vehicle and yours and you have the most inaccurate method of speed measurement ever invented.

g) If it makes you happy you can ask the officer for a certificate of accuracy from a State approved facility. The problem is that he may have it and delete some of your arguments above. We would probably leave this alone but it is up to you. The speedometer is legally to be certified at a State approved facility every six months, although this can vary somewhat from state to state.

h) Most speedometers don't even have single digits listed or a hash mark for each single mph. Some of them only have a hash mark for every 10 mph, but the most common is a mark for every 5 mph. You might like to ask the officer if his speedometer has marks for each mile per hour (very rare) or just a mark for each 5 mph. This is especially valuable when the officer has written you a ticket for a speed that is not in an even five mph increment. This single fact alone almost makes a liar out of the officer. Of course the officer will try to counter with terms like "estimate" or "approximate". Some of us are a little more confrontational than you should probably be but a good come back to this is: "Officer, if the law allowed you to guess or estimate the speed of the driving public and then prosecute for that, we could do away with your speedometer altogether. If you are going to accuse me of a crime, I would prefer that your testimony be accurate and based on truth and fact."

i) The average traffic court judge in this country has already convicted thousands of citizens who used their own speedometer as their defense against a police officer who claimed to have measured their speed by a more accurate method. Judges love to throw out the accuracy of your speedometer when it puts \$\$\$ into the city coffers. Now the tables are turned and the only evidence against you is this piece of junk that the judge and officer already know is not accurate to a reliable degree. Police cars are standard fleet vehicles that have the same speedometer found in any family car, but usually with a lot more miles on them. How can a judge who refused to listen to a speedometer related defense now suddenly claim that a speedometer is so accurate that he/she can in good conscience convict you beyond a shadow of a doubt? They can't have it both ways.

Now you know the truth about paced speeding tickets, which are the worst speeding ticket known. Use the above info for your questioning of the officer or preferably as part of your closing statement or defense arguments.

## **9) Trailer Speed Limit Issues:**

### **Also Applies to Truck and Night Speed Limits:**

The trailer speed limit issue is not specifically addressed by the MUTCD. This leaves the posting of a special or reduced trailer limit arbitrary by nature. In general, arbitrary speed limits are probably legal to post but not legally enforceable as a crime (or infraction) since they are not based on engineering studies or factual research.

The entire purpose of the MUTCD is to make all traffic regulations standardized throughout the country and to make them all based on fact and engineering knowledge as

opposed to the whim and fancy of revenue collecting municipalities.

Since the trailer issue is virtually impossible to survey as opposed to general traffic, these special postings are unsupported, and therefore arguably illegal and unenforceable. There has never been a study that we know of that shows that vehicles pulling trailers are more prone to accidents than those not pulling trailers. Common sense would seem to indicate that trailers are more dangerous in hard braking and swerving situations and this is certainly the basis for the reduced speed limit.

This all seems well and good except for two things: First of all, this theory does not take into account that drivers pulling trailers may be conscious of their special condition and may increase their attentiveness and alertness in staying away from other vehicles and situations that lead to swerving and hard braking and as such may not be at any extra risk for an accident at all. Since this may be the case, it is the prosecution's burden to prove that the special speed limit was the proper speed limit for trailers on a specific road and this reduced speed limit must be based on engineering judgment and research, or accident statistics (accidents involving trailer vehicles vs. accidents involving non-trailer vehicles) and not an arbitrary reduction "just because it sounds good" or "seems to make sense on the surface".

This argument would hold water since other categories of vehicles or drivers are more high risk and are documented as such but do not have special speed limits. I am referring to young and new drivers who have just received a full unrestricted drivers license... elderly drivers, and vehicles such as jeeps or legally "lifted" vehicles which are known to be a rollover risk in a hard swerving maneuver... just to name a few.

To make the argument even more obvious, perhaps we should not let teenage boys drive over 25mph at all since they are the single biggest threat on the road.

Secondly, all engineering studies and the MUTCD make known and document that one of the most hazardous conditions on any roadway and a condition that absolutely causes accidents is to create a circumstance whereby vehicles travel at two different speeds on the same road.

The MUTCD recommends that a maximum speed variance of 10mph be used as a rule of thumb when changing the speed limit... even when a city is altering the speed limit for ALL vehicles such as in a work zone. This is because it is proven that drivers divide themselves into two groups when a special speed limit is posted:

- 1) Those who ignore the limit unless they perceive a safety related reason to slow down.
- 2) Drivers who slow down regardless of whether it is necessary for safety reasons and slow because it is posted. Once you create a situation where drivers are driving at two different speeds on the same road, you cause accidents. A posting of a 10 mph reduction is considered a reasonable risk as long as ALL drivers are being asked to slow to the reduced speed. In the case of the trailer speed issue, all drivers are not asked to slow

down... just some of them.

This is the worst case scenario for accidents i.e.: forcing drivers to drive at two different speeds on the same road. We believe that this is very hazardous and probably illegal since it isn't within the statutes or engineering sanctions of the MUTCD. It also doesn't make sense when you look at it from an accident perspective. We are confident that reduced "trailer speed limits" aren't backed by sound research, study or engineering judgment. Below are the two MUTCD quotes from our "Work Zone" system that back up portions of what we are talking about here:

**MUTCD Page 6C-2 Section 6C.01 paragraph 5** "Reduced speed zoning (lowering the regulatory speed limit) should be avoided as much as practical because drivers will reduce their speeds only if they clearly perceive a need to do so.

**MUTCD Page 6C-2 Section 6C.01 paragraph 6** "Research has demonstrated that large reductions in the speed limit, such as: (30mph) reduction, increase speed variance and the potential for crashes. Smaller reductions in the speed limit of up to (10mph) cause smaller changes in speed variance and lessen the potential for increased crashes. A reduction in the regulatory speed limit of only up to (10mph) from the normal speed limit has been shown to be more effective.

Keep in mind that although the quote above seems (on the surface) to support a 10mph speed reduction, but it does not. This is given as the recommended reduction for a work zone reduction where ALL vehicles are being asked to lower their speed. Even in this case, the requested reduction is kept to 10mph since the MUTCD is aware that drivers will now be traveling at two different speeds with an "original" and a "reduced" speed, each being followed by a percentage of the drivers using the road.

We are not lawyers, but the above represents our opinions of a trailer speed limit ticket situation. Use what you (or if you have an attorney, both of you) agree with. You could attack the legality and reasonableness of the trailer speed limit along with any other system arguments that match your circumstances. Be certain to use our case law library for backup on your main issues. Without it you have little chance.

## **10) MUTCD References:**

Since the publication of the MUTCD millennium edition the MUTCD is constantly updated and revised. All the references below are directly from the millennium edition. Most of the recent changes involve issues such as the "round up rule" but have not yet been tested in court. This initially makes it seem like we are behind the times for updating however, we do not post the updates for a good reason:

The recent changes to the wording of the MUTCD have not affected the case law interpretation of the basic claims of the MUTCD and our claims. The round up, and 85th percentile and the 5 year rule etc. etc. are not derived from the MUTCD alone, they are a

combination of the MUTCD references and the case law interpretation of the references and how they apply to the law.

The hard fought case law issues are all won by citizens or activist groups such as the auto club, who sponsored ticket court appeals on key issues. These issues cost upwards of \$100,000.00 each and sometimes much more to take to the supreme courts as some have done to set in "stone" the laws and claims we have given you. You will find proof of this in the case law package which you should have taken a look at by now.

If at some point, the wording changes are to be ratified by the appellate court interpretation and legal effect, let the State or District Attorneys spend the vast amounts of money that citizens and activist groups have already invested and see if they can get them reversed. Until then they stand as you have them.

On another note, most judges don't even know what the MUTCD is, much less that there are updates to it. In general they will only know about an update if you tell them. This is a moral issue and is up to you. We would choose not to supply them with anything that might hurt our case, but you can decide for yourself. Look up the issues in your case law package and you will see that you are in the right using the references as we gave them to you. In a large city they may be aware of the updates but our experience is that fewer than 5% of courts or prosecutors are aware of them.

The newest address for confirming MUTCD references and updates from the 2003 edition is: **HYPERLINK "http://mutcd.fhwa.dot.gov/kno-2003.htm" \o "http://mutcd.fhwa.dot.gov/kno-2003.htm" <http://mutcd.fhwa.dot.gov/kno-2003.htm>**

References from the MUTCD millennium edition, hard copy (printed and released in 2001):

- 1) Page 1A-16 section 24, An engineering study shall be conducted by an engineer to determine the appropriate speed limits and traffic controls and this study shall be documented.
- 2) Page 2B-13 section 2B.11 The posted speed limit shall be in accordance with the engineering study and shall be posted at the 85th percentile speed of free flowing traffic rounded up to the nearest 5mph increment.
- 3) Page 1A-6 section 1A.10 Adoptions of traffic control devices other than as described in this manual are prohibited.
- 4) Page 1A-6 section 1A.09 Jurisdictions without engineers on staff must seek assistance from engineering consultants or nearby jurisdictions with qualified engineers on staff, or the State Transportation Agency.
- 5) Page 1A-4 section 1A.07 When any local or State jurisdiction uses any manual or supplement for determining traffic controls, that manual or supplement must conform to the MUTCD.
- 6) Page 1-1 introduction: Standard, Paragraph 2: The MUTCD is authorized by 23 Code of Federal Regulations (CFR), part 655, Subpart F (and 655.603) and is the national standard for all traffic control devices on all public roads in accordance with 23 U.S.C. 109(d) and 402(a). These are the policies of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices as described.

**Reference #1**, means that an engineering study (speed survey) is not optional if a speed limit is to be posted and enforced. It must be done. It must be done by an engineer, and the survey must be documented and therefore available to the public. This is obviously so that agencies can't just create false low speed limits (speed traps) and then milk the public for all the money they want in illegal revenue.

**Reference #2**, means that part of every legal engineering study is to determine the 85th percentile speed, or the speed of the average driver, then the road which was surveyed must be posted at that presumptively safe 85th percentile speed rounded up to the nearest 5mph.

**Reference #3**, means cities and towns can not choose whether they obey these Federal regulations or not

**Reference #4**, means that small towns or any agency that does not have or cannot afford a traffic engineer (not just a job title, but someone with a traffic engineering degree) must hire an engineering firm or arrange for an out of town engineer to conduct the traffic engineering studied. Small towns are never exempt from compliance with every regulation of the MUTCD.

**Reference #5**, means that cities, counties and towns cannot create their own manual or supplemental or municipal codes and say "we go by our own little book". The only way a city can follow any other publication no matter the source is if that publication conforms to the MUTCD. There are a couple of states that use their own book and usually call it the "State Traffic Manual". However, as in the above federal reference, these books are legal only as long as they conform to the MUTCD. Why do they print them, you ask? Usually to try and bend they federal regulations and claim that it is ok, because it is authorized in their own book. Remember, Federal supersedes the State. Anywhere they differ, the State book is in error. In other words they have to follow the federal regulations period.

**Reference #6**, gives the federal code book references that any judge or police officer can look up as well as the references given from the MUTCD, and see that the MUTCD is the bible of traffic law and traffic enforcement. There is no other book that supersedes the MUTCD. The MUTCD supersedes all other publications in regard to traffic controls and enforcement. This includes the CVC.

**The five year rule:**

**Speed surveys have a five year lifespan**, but this is not mentioned specifically in the MUTCD. Instead the valid length of the speed survey or engineering study is defined in two other government reference manuals.

Here is the basis of where the five year term originates. The five year rule is an engineering standard and can be stated as such to the judge. It has been upheld both by case law and the two traffic engineering manuals from which traffic engineers must

derive their standards in conducting engineering studies (aka speed surveys). These manuals are: "Manual of Transportation Studies" and the "Traffic Engineering Handbook". Both of these books are used and well known by any and all municipality traffic engineers. It can also be confirmed in your case law package.

In our experience however, Judges will almost never admit ignorance any more than cops will, so if you quote the proper regulations at the proper time from the proper manual and show that the radar site was not legal, even an ignorant judge will sometimes find you not guilty.

Keep in mind that reference #6 above gives a reference that uses a code book that any judge with a minimal law library will have on hand and shows them that the MUTCD is the national traffic authority. Be sure to use your case law package to copy a "stale survey" case for your judge if this is one of your defense issues.

### **11) What To Do If The City That Did My Survey Rounds Down Instead of Up and Claims That This Is Legal:**

In about 20% of the surveys that we have seen, the city acknowledges that the surveys must be done, but claim that a rounding down is allowed by the MUTCD. This is false.

It is only true that if engineering justification, accident levels or pedestrian traffic are such that the engineering survey justifies it, then the speed limit can be rounded down instead of up. What you will find however is that "revenue collection" cities that round down instead of up, just call every location an exception under this loophole and don't justify the loophole through engineering procedure at all, ever. In this case, you must simply point out that the rule is to round up as stated in the MUTCD reference #2, and any variation from this rule must be justified by a special circumstance and proven by an engineering study. Lastly on this point, stating an accident rate in the study does not justify a lowered speed limit. An engineer must state an accident rate and compare it city wide to other roads of similar size and traffic volume. If not, he is blowing smoke.

For your peace of mind, we have done this process hundreds of times and have never seen such an exception justified even once. They just don't do it. A trick they might try in court is to say: "It is a high accident area" or "it is a high pedestrian traffic area".

Your answer is: "Officer if this is so, then in addition to the survey which proves that the posted speed limit is improper, surely you brought the additional survey that shows that the first survey is wrong and the justification you speak of is the correct survey". This will end the incredible flow of manure by the officer and allow dismissal based on failure to obey MUTCD reference #2.

Another strong argument against rounding down is found in simple logic and statistics. You can argue that since the 85th percentile round up rule already predetermines that between 1% and 5% of drivers speed routinely; if we round down instead of up we are reducing the reasonable average another 1 to 4 miles per hour. In most surveys this creates

the condition where 15% to 20% of all drivers using the road are now suddenly declared speeders even though they are driving safely and near the average speed range. By rounding down we are effectively criminalizing safe and reasonable drivers. This is not the intent of the 85th percentile rule and the survey requirement. In fact the 85th percentile rule which was created and documented to be the safest speed possible was created under the round up only intent of the MUTCD millennium edition and to vary from that or to do the opposite by rounding down is certainly not in substantial compliance with the manual or reasonable safety practices.

## **12) What If I Have Proven That the Speed Limit Was Illegal But My Accused Speed Was Higher Than the Proper Speed Limit? Will They Still Find Me Guilty?**

If you prove via the survey that the speed is improperly posted, but your accused speed is higher than the speed that should be posted.....what happens? The answer is, it depends.

The proper and fair procedure where the State is found to have committed a speed trap violation and improperly posted a speed limit, would be to throw out the conviction, dismiss the ticket, censure the city, advise the police department and the prosecutor to stop writing, and stop prosecuting ticketed citizens from that location etc. etc. etc. We can all dream on! Remember, these carnivores that are doing all this illegally are the same bunch of guys who decide what to do with you after you catch them doing it.

Sometimes they dismiss and do some of the above, but worst case scenario is: they can still amend the charge and continue prosecuting you. This "amendment" can be formal where the judge or prosecutor states that the citation is being amended, or it can be very discrete where the judge basically decides to amend and doesn't say anything about it.

Let's say that you were originally charged with going 70 mph in a 60 mph zone. You have shown that the speed limit should have been posted at 65mph and not 60mph as it was posted. The judge will want to continue the prosecution saying out loud or to himself that "the guy was still speeding". If this is the case in your situation we always suggest an objection, stating: "Your honor, my charge was not speeding per se. I was charged specifically with speeding 70 mph in a 60 mph zone. We have proved that the State acted improperly by circumventing the law and federal regulations and engineering judgments authorized by the MUTCD. There could be a presumption made that to have done all this and later to have followed it by electronic speed measurement enforcement was a premeditated speed trap for exacting illegally gained revenue out of an uninformed innocent public. If the speed limit was properly posted I might never have been stopped and if I had been stopped may have been given a verbal or written warning. For me to continue to be punished and fined after this inappropriate activity has been discovered and proven could be viewed as condoning the behavior of an illegal speed trap since the specific charge against me was 70 in a 60 and that charge has been disproved. It would be appropriate for the court to exercise it's option to dismiss at this point. For the court to go out of it's way and amend or create a new charge to find me guilty of or exact a fine, is certainly making it evident that although citizens are to be held to an exact standard, the

State can do things illegally and improperly and all will be well with them. Your honor I request that the court dismiss this minor traffic matter in the interest of justice and in the interest of showing municipalities that illegal tactics in traffic enforcement will not be tolerated".

There is a legal doctrine here that should be mentioned to the judge. It is called the "fruit of the poisonous tree". This doctrine states (loosely applied) that if the government or one of it's representatives (such as an engineer or police officer) acts improperly during their duties (such as surveys or radar enforcement) and this improper action substantially led or likely led to your accusation on criminal or an infraction level charge, then once this improper action is made known to the court, the accusation and all information arising from the improper action is not to be allowed as evidence against you. This is the evil doctrine that allows murderers and rapists to go free on technicalities and we abhor it completely in those cases, however, in the case of being illegally and improperly accused of a speeding ticket, the intent of which is not public safety but government revenue collection ... causes us to bend our judgment and invoke the doctrine.

Remind the judge if necessary that if the survey was done improperly, then the speed limit which arose from the survey, and the radar traffic stop that arose from the speed limit are all moot based on the fruit of the poisonous tree doctrine and the ticket should be dismissed. Some judges won't allow a rebuttal of this type after they move to amend the charge. If your judge seems like a jerk, a statement like this could be part of a closing statement or part of your case to avoid the possibility of the quickly smacked gavel and "case over" possibility.

### **13) What If I Got a Ticket On a Freeway or Highway or Toll-Road? Does This Type of Road Need a Survey?**

Please read the system carefully. It tells you that not all roads are surveyed. It tells you what to do if there is no survey. The following information applies to freeways, highways, interstates and toll roads... even if someone such as a DOT official or city clerk told you otherwise. Such city employees are trained in the misconceptions that are designed to ignore the fact that most speeding tickets are illegal.

There is a new trick in some States that we want you to be aware of. There are some roads in California (we will use California as an example to give real numbers, but New York now does this also) with a posted speed limit of 70 mph. This is important to you because this makes the State max speed in CA 70 mph.

There is no survey requirement for a road that is posted at the State max speed.

We recently researched and discovered that they are calling the 70 mph roads "exceptions" to the State maximum speed rule. In other words CA and NY and possibly other States are trying to have their cake and eat it too. They want to be able to post some roads at speeds higher than say... 65 mph, but they want the freedom to call the 65 mph roads "posted at the State maximum speed, thereby making it appear to citizens who don't

know any better, that they don't have to do a survey. This is a falsehood.

In your case law package you will find more than one case that confirms this State max speed rule by reference. There is no exception in case law where they can have two speeds and call the lower one the "Max" speed to avoid their Federal duty to survey those roads. This trick may be pulled on you, so we wanted you to know.

**Another note about the State Maximum:** The speed case law cases presented in the library, indicate that many of them are from the 70's when the National Maximum Speed law was 55 mph and all such cases were adjudicated. This 55 mph limit no longer applies of course, but you can just substitute your State's maximum speed, for the 55 mph referred to in those cases and all the other information still applies.

If your accused speed is higher than the State maximum speed, but you were charged with either "prima facie" "prima facia" "exceeding the posted speed", "speeding" etc. etc. you still have near our 80% chance of winning if you go to court with all your references and case law copies for the judge (if anyone using the system skips the case law step, they will almost certainly lose their case).

If your charge is "exceeding the State Maximum speed limit", you will be less likely to win your case, but in using all the references and calibration and certificate of accuracy, and rescheduling techniques from the system you will still have a fair chance, and your win is still guaranteed or your money back.

#### **NOTES**

1) We are assuming that from reading on the site that you understand the nature and importance of the MUTCD as it applies to a ticket. As an example a person accused of driving 75 mph in a 55 mph zone who proves that the legally posted speed should have been 60 mph, will usually beat their ticket if you use all the tools we have given you.

Again, the doctrine behind this (even lawyers will know this one) is called the "fruit of the poisonous tree". This doctrine which is a famous and universally accepted doctrine states (as it applies in this example) that if the speed limit was wrong to begin with and the speed limit was the basis for a stop and citation, the whole ticket including the speed limit, traffic stop and speeding ticket is tainted and legally should be dismissed. We don't just acknowledge the States improper and illegal speed trap and move on to prosecution of the speeding ticket. The matter is to be dismissed. Remember that this issue on a greater scale is what gets national publicity in major cases for horrible crimes. We personally disagree with the doctrine on important matters such as rape or murder. However, when we are talking about an inherently illegal revenue collection game sponsored by the State, we don't care how we swing the pendulum back to center.

2) To find the State maximum speed limit for your State, check the internet by "(name of your State) + maximum speed limit" Again we must emphasize that being accused of a speed higher than the State max limit and being charged with exceeding the State max speed limit are not the same thing. It is being charged with the very specific and fairly rare "exceeding the State maximum limit" that lowers your chances of winning. Of

course when you're accused speed is above 25 mph or so above the posted speed limit or more, or your accused speed was 90 mph or more, some judges won't give you a fair shake either. Keep preparing to fight and you could still win.

#### **14) What If In My Area They Claim That "Local Roads" Do Not Have To Be Surveyed?**

First of all we are looking at this backwards. The MUTCD refers to all roads and highways. Why some judges separate local and non-local roads is beyond us, but it is not based on any law or rule.

We do know that in some of the case law, they mention the local road issue, but you need to know that this distinction is not part of the MUTCD. In fact the definition of a local road..... or the term "local road" does not exist in the MUTCD. Why? Because, the rules of the MUTCD cover all roads, big, small, and in between. So the real question is who is claiming that local roads are exempt from the speed survey and engineering study and how do they arrive at that conclusion?

We know it is a common conception, but it is without foundation. The only time a road is too small to survey is if it is a road that does not even connect to a "travel" road or an arterial or main road. We are assuming that a road of this size would be almost impossible to survey since the number of cars surveyed would be very small and too many cars would be "surveyed" coming out of driveways etc. thus, the survey would not have any validity. This issue would only apply to a road that for instance is not a through street or a cul-de-sac as an example.

The MUTCD and the survey rules apply to everything else. I believe that the origin of this misconception is from State Traffic Manuals and Vehicle Codes that often have statutory preset speed limits for roads of certain sizes or configurations. The term "local road" is found in some State Traffic Manuals and Vehicle Codes along with preset speed limits that do not mention the need for a speed survey. To disprove this you simply use the MUTCD references which show that the MUTCD supersedes State Traffic Manuals and Vehicle Codes. You can also use appropriate case law if you feel that this may be an issue in your case.

#### **15) A Note about All Those Evil City Employees and Police Officers:**

As you read this document you will begin to perceive the magnitude of the illegal traffic revenue situation in this country. This problem could not continue without large numbers of people participating and contributing to the ongoing gouging of citizens. Since some of us used to be police officers we have a unique perspective on the why and how of this problem perpetuating itself.

The answer is simple: For the most part, city employees, police officers, prosecutors and yes, even judges are nice hard working people who do their best to do their job to the best

of their abilities. The level of "conspiracy" necessary to accomplish the bilking of millions of dollars out of citizens pockets does not have to do with one job description or one type of person. In fact we didn't know what a speed survey was when we were cops. Most cops do not know what a speed survey is. Most judges have never heard of the MUTCD, much less believe they are required to enforce city and police obedience to it.

The problem lies with State and Local Government Leaders who promote traffic enforcement and turn their back on obedience to the Federal guidelines. The situation persists because very few people know what you now know about this huge problem of illegal ticket writing.

Most of the people involved along your path to defense are ignorant of these facts and virtually all of them are unaware of the big picture involved. In the writing of this document we do not intend to defame any category of individual, from engineers to police officers or judges. We simply have researched more than they have and know some things that they don't.

We speak specifically to police officers, troopers and deputies when we say that as a group, individual weaknesses aside, you are one of the finest groups of men and women we have ever had the pleasure to associate with and we stand beside your courage and integrity as a group without reservation.

## **16) Some Recent Information about Speed Surveys:**

As of 9-13-02, we have learned that some courts are using a new tactic regarding the use of a speed study. Officers in counties/cities where it has been mandatory to bring the study to court with them on speed violations are beginning to cease this practice and when requested to produce it by the accused citizen during the trial, either the prosecutor (if there is one) or the judge will claim that it is not the officers duty to bring the survey to court unless it was requested by petition or motion at an earlier date or hearing. We could show you how to make this motion or petition, but do feel it is more prudent to keep the system from becoming any more cumbersome than necessary. Please make sure to get a copy of the survey yourself ahead of time from the Highway Department. If there is no survey, document (On Department Letterhead) for court use later, the name, and title of the person who confirmed to you that it didn't exist along with the date you attempted to obtain a copy.

Note: One person at a police station saying they don't know about a survey will not be sufficient. Confirm the non-existence of the survey at both the police station, and the Highway Dept., city hall and DOT. In cities where there is a city engineer, you should check there also, you don't want a surprise. Then you have proof you don't need to run all over town if there is no survey. If these agencies claim that it doesn't exist, at least get names and titles by phone. Many judges will require absolute proof that a survey does not exist if its non-existence is part of your strategy. The simplest way to accomplish this is to get a letter from the local DOT clerk or engineer stating that the survey you are requesting does not exist. In the event that you lose your case and request a refund, we

will take the same letter as proof that you could not get your survey, but attempted to do so. If you do locate a survey for the street in question, use the system to shred it's validity before you go to court.

## **17) I Lost in Court and the Judge Told Me That This Type of Strategy You Sold Me is Wrong**

We understand that a judge, police officer, city engineer, DOT employee etc. carry a lot of clout with the average person. When someone in a position of respect like that tells you that the defense strategy you are using or planning on using is incorrect and they give you what seems to be a logical sounding reason for their claim you may be left wondering if you are doing the right thing or if you really might be going in front of a judge with an internet scam.

Virtually every claim or technique we employ or suggest is backed up by Federal References, Case Law, and/or a State specific file that you were should have received shortly after ordering and receiving your system. Your references are from the hard copy of the Federal Manual, the Case Law is from the U.S. State and Federal Supreme Courts. The speed surveys lie in file cabinets waiting your request. Why do you think they are there? Why do these manuals exist? Is it so that local authorities and judges can intentionally ignore them and generate lots of cash from speed enforcement? Certainly not!

These materials exist because they are meant to protect us from what is happening now in traffic courts across this country. This does not however, force any individual judge from ruling the way he wants to anyway and exacerbating the problem. This type of ruling does not mean that we did not tell you the truth or that our defense systems were "wrong".

In general we lose cases for two reasons only. The most common is when a person skips acquiring the speed survey or copying case law for court. The second is when a judge is so entrenched in his revenue mill that he either honestly believes that what he is doing is okay, or he just doesn't care if it is legal or not. None of these situations are our fault. We offer a near perfect defense strategy which has been and is applied by many different types of people before many different types of judges. Much as we would like to we simply can't win every case.

We do win the vast majority of our cases and even though our systems are applied by lay persons, our feedback shows that we have a much higher win ratio than any attorney or attorney service that we know about to date. If you fall into the 15% to 20% of people who lose their case, please do not assume that this means that you were cheated by us.

We have the most researched, high percentage, legitimate, and guaranteed system available anywhere at any price. You can independently confirm most of our claims at the National Motorists Association website at this address: <http://www.motorists.org/>

this is a large independent organization which researches traffic defenses and is politically active in promoting fair traffic related legislation and competent attorney referrals. We are not affiliated with them. It is just one more place where you will learn that what judges and traffic courts are doing now is illegal and improper.

## **18) What is the refund policy and exactly what do I have to do to qualify for a refund?**

### **There are two simple requirements.**

Our refund policy is simple and easy to complete. We believe in being fair and in being treated fairly. In the past we have had customers order and at a much later date request a refund. In follow up we found in some cases that customers had beaten the ticket for which they ordered, but had lost on some later ticket. One customer beat four tickets using our system but lost on a fifth ticket (yes we suggested that he slow down) he demanded a refund. It became obvious to us that we had to guarantee the system buy back for a single ticket. Because of this a customer who wants to stay eligible for a refund needs to send us his/her name, ticket number, and order number or order date in a one sentence email within a week of ordering. This couldn't be simpler but saves us from refunding for non-guaranteed tickets.

The second and last requirement is to snail mail the system you printed to take to court and the original court receipt showing a conviction for speeding. If you think we are just being difficult I would love to explain. Like the ticket number above, this is learned behavior from being taken advantage of. I used to email or phone consult with anyone who lost that would agree to talk to me to find out "what went wrong". I quickly found out the four main reasons people lose in court are:

- 1) They didn't copy or use the system at all but "winged" it in court.
- 2) They didn't take case law to court but simply "told" the judge about the law
- 3) They didn't go to court at all or if they did they plea bargained to a lesser offense.
- 4) They never got their speed study prior to court.

While any of these courses may suit you, they are certainly not what we call "using the system in court" especially #3 which is pleading to a smaller fine, points or lesser charge. We do not discourage this practice if you feel it is in your best interest but it means you did not use the system and therefore did not defend yourself and cannot blame the system for "failing" you. The two items we have you send back to us represent a small degree of evidence that you at least tried to use the system and were unsuccessful. We can't and don't ask more than that. The original court receipt (this means no copies) will show your name, charge, conviction and fine. For our tax purposes we are required to show an original receipt from anyone who refunds. For that reason we cannot accept a copy. The best way to handle the refund is that as you leave court if you lost, you already have your system copied and your court receipt in hand. Simply email us for the refund address and send both to us at that time. There is no time limit on our refund because we know the ticket number and only guarantee one ticket. We will give you the mailing address for refunds on request. If we did not help you win, I would personally like to apologize to you first. We really do our best to help everyone of our customers win in court.

## 19) What is case law and why should I use it?

**Do not skip this important step or you are very likely to lose your case.**

Case law is the single most important part of our strategy. It is legal proof from higher courts that a municipal court or traffic court judge should or in many cases must follow the legal precedent you are handing him/her in the form of case law. Without case law, your legal issues are open to the whim of the judge and whether he believes your claim. Case law is supposed to be ironclad evidence that if the judge rules against the case law on a similar issue that he risks being overturned by an appellate court. Being overturned is the ultimate embarrassment to a judge second only to being embarrassed in his own court by a non-lawyer (which to a degree is what you are doing by directing him with case law).

Judges don't like case law especially when presented to them by a lay person, but 90% of the time you will lose your case without it. Our case law library represents thousands of dollars worth of research and legal service downloads. **Do not waste this valuable resource.** Copy cases law that is pertinent to your issues and bring them to court with you. During your testimony tell the judge that you have case law references copied for him and that you want them entered into the court record.

If the trial is being recorded I would name them by reference so they are on the record. Sometimes a judge will refuse case law out of apathy or arrogance. You should always make it official on the record of the trial that the judge is acknowledging that you have pertinent case law as a critical part of your defense and he/she is refusing to read it, consider it or enter it into evidence in your traffic matter. If he still refuses at this point you should almost automatically win your appeal if you don't win your case. Remember, there are some judges that simply convict everyone no matter what, day in and day out. The solution is to set yourself up for a win on appeal or to make the notice of case law so official and obvious that the judge sees that you are heading down the road to appeal and hence his embarrassment. Some of the time this will turn him around and get a dismissal just to get rid of you quickly instead of having to hear about you winning your appeal later.

Here are two cases that show that a speed study is required even in "State Max" cases. The cases are virtually identical. One is from Nebraska and the other from Michigan. I include them as potential templates for similar issues in California. The cases basically prove that the MUTCD and the federal regulations are superior (overrule) the state regulations when they differ. Important issues when a judge squeaks at federal regulations and says "that is not the way we do it around here boy".

[http://www.hwysafety.com/brief\\_ne\\_hickman\\_appealpts.htm](http://www.hwysafety.com/brief_ne_hickman_appealpts.htm)  
[http://www.hwysafety.com/brief\\_mi\\_phillips\\_pleading.htm](http://www.hwysafety.com/brief_mi_phillips_pleading.htm)

## 20) The Trial by Mail and Trial by Declaration

California offers a trial by mail option. TBM's clear up the court calendar, may avoid the stress of a court appearance and it can be the only way that an "out of town" can reasonably fight a ticket that is far from where he/she lives.

Regardless of your reason for doing so, this document will assist you in preparing your defense as a trial by mail format. The terms "Trial by Mail" and "Trial by Declaration" are two terms for the same thing from different locations.

From this point on we will refer to this option as a Trial by Mail. Basically a trial by mail differs from a typical "in person" trial in many ways which are obvious.

Before we begin teaching you how to win a Trial by Mail we want to give you the forms for using the trial by mail option:

- 1) The instructions for requesting and filling out, and turning in a California Trial by Mail <http://www.courtinfo.ca.gov/forms/documents/tr200.pdf>
- 2) The actual court approved form you fill out to do a TBM: <http://www.courtinfo.ca.gov/forms/fillable/tr205.pdf>
- 3) If you are found guilty, here is the form to request a new trial (a trial de novo) <http://www.courtinfo.ca.gov/forms/fillable/tr220.pdf>

### **From a practical standpoint the key points are as follows:**

You will have to prepare for anything the officer might say or claim since his comments (in most jurisdictions) will not be available for you to view before preparing and mailing your defense. If you are in the rare category of having the officer's declaration mailed to you before having to prepare, you are living a blessed life and have the highest chance of winning your case.

You will not be able to ask questions of the officer, nor to use him/her to bring up points about your survey, calibration etc. It is appropriate for you to comment or ask for proof of these issues as part of your declaration. You can simply say that "you insist that the officer lay a complete foundation including his training for speed measurement device used, engineering justification for the speed limit, calibration for instrument used, and any other issues you decide to add, as part of your written defense.

You will not be able to alter the court day to avoid the "convenience day."

Except as in #1 above you will not be able to take advantage of comments or mistakes

made by the officer during testimony.

All these differences aside, it is often a higher percentage win situation to file a trial by mail as opposed to having a court trial. The truth is that most officers who go to court are relatively competent compared to the average citizen in court. They know the few details the judge is waiting to hear and they make sure they put those issues into their testimony.

If the citizen brings up a strong issue in their defense, the officer will almost always counter with contradictory testimony. In a court trial, even when a citizen is fighting a clearly substandard "bad" ticket, they lose over 90% of the time because they don't know the one or two key issues that legally cause the judge to have to dismiss the ticket. This is why you need our system.

Without telling you all the legal reasons behind every suggestion or defense strategy offered, we give you the legal preparation necessary to win in most cases. The above is our main "Radar Plus" system as you were promised. At the end of this section is a complete Trial by Mail from a previous client. This trial by mail is fully based on the strategies put forth in the Radar Plus system. This client won his case and graciously provided the document to us to pass on to you. Use this document as you see fit. Some of you will be able to use almost all of it as is. Others will use it as a guide or outline to draw up your own defense.

Our strong suggestion is that you still read and use the entire Radar Plus system and only then fill out your trial by mail with this example as your guide. Remember, the example is for a specific set of circumstances and a specific ticket. It may or may not be totally applicable to your ticket and situation.

### **The first sample Trial by Mail**

Name:  
Address:  
Citation #:

#### **Summary**

The posted speed limit of 35MPH, East Bound in the 4500 block of Home Ave, San Diego, California does not meet the standards of section 2B.13 of the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, published by the Federal Highway Administration. Due to this, the posted speed limit of 35MPH is an illegal speed trap per California Vehicle Code 40802. Per California Vehicle Code 40803 and 40805, evidence obtained via an illegal speed trap can not be used in prosecution. Please dismiss citation number <citation number>.

#### **My Case**

The Manual on Uniform Traffic Control Devices for Streets and Highways 2003 edition, afterwards referred to as the MUTCD, states in section 1A.07 that “23 CFR 655.603 adopts the Manual on Uniform Traffic Control Devices as the standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. When a State or other Federal agency manual or supplement is required, that manual or supplement shall be in substantial conformance with the national Manual on Uniform Traffic Control Devices.”

Section 2B.13 of the MUTCD states “When a speed limit is to be posted, it should be within 10 km/h or 5mph of the 85<sup>th</sup>-percentile speed of free-flowing traffic”. In addition, the MUTCD states “The speed limits shown shall be in multiples of 10 km/h or 5 mph”.

The enclosed speed survey dated on 5/13/2003, which was obtained from the City of San Diego Engineering and Traffic Survey, for Home Ave Block Range 04400 to 04749, East Bound, shows that the 85<sup>th</sup>-percentile is 44 MPH. Based on the MUTCD section 2B.13, the speed limit for the 4400 block of Home Ave should be set between 39MPH and 49MPH at multiples of 5MPH. Therefore the legal speed limit would be 40MPH or 45MPH. The posted speed limit is 35MPH.

I declare under penalty of perjury that this statement is true and correct.

<name>

<date>

<name>

<address>

<citation number>

### **My Case – continued**

The City of San Diego Engineering and Traffic Survey did not comply with the MUTCD section 2B.13. In the case County of Cass, MI v. Floyd L. Phillips, it was determined that States must follow the MUTCD and can't make exceptions when setting speed limits or when setting is own laws. The State of California does not have the justification to set the posted speed “6-10 MPH below the 85<sup>th</sup>-percentile per Caltrans Manual and CVC 22358.5” as stated on the speed survey under Authority for setting of posted speed.

In addition, in the case of The People of CA v. Judith Ann Goulet “Speed traps – reduced speed zones not justified by the conditions – bring disrespect [13 Cal.App.4<sup>th</sup> Supp. 15] to law enforcement and the courts. We have discussed the requirements and consequences at length because it must be clear to traffic engineers, local authorities, and law

enforcement officers that if a prima facie speed limit is set without being justified in fact by the engineering and traffic survey, the speed limit cannot be enforced by any means involving the use of radar. Local authorities must set prima facie speed limits carefully, as justified by appropriate factors, to avoid making use of radar unavailable for speed enforcement.” There is not overwhelming evidence on the Engineering and Traffic survey that a speed limit “6-10 MPH below the 85<sup>th</sup>-percentile” is justified and the speed limit should be posted at 40MPH or 45MPH.

### Summary

The posted speed limit of 35MPH, East Bound in the 4500 block of Home Ave, San Diego, California does not meet the standards of section 2B.13 of the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, published by the Federal Highway Administration. Due to this, the posted speed limit of 35MPH is an illegal speed trap per California Vehicle Code 40802. Per California Vehicle Code 40803 and 40805, evidence obtained via an illegal speed trap can not be used in prosecution. Please dismiss citation number <citation number>.

I declare under penalty of perjury that this statement is true and correct.

<name>

\_\_\_\_\_ <date>

end of trial by mail example

### **Trial by Mail sample #2**

Wai-Yi Winnie (deleted for privacy)  
(deleted for privacy) Massachusetts Avenue  
La Mesa, CA 91941  
Case# LJ30152

Specifics: VC 22350, Unsafe Speed - 43 mph on posted 25mph Construction Zone

Declaration Summary:

**The posted speed limit of 25mpr, West Bound in the 7800 block of University Avenue, La Mesa, California did not meet the standards of The Manual on Uniform**

**Traffic Control Devices (MUTCD) for Streets and Highways, published by the Federal Highway Administration. California has adopted the MUTCD in exchange for its annual Federal Matching Highway Funds.**

1) MUTCD Page 6B-4 Section: Standard: "All temporary traffic control devices shall be removed as soon as practical when they are no longer needed. When work is suspended for short periods of time, temporary traffic control devices that are no longer appropriate shall be removed or covered."

**The speed sign was improperly posted because it was not a legally necessary work zone. There was no active construction in process. There were no construction workers present. California and Cal Trans agree that a posted work zone is no longer a work zone when no workers are present and work has ceased. The MUTCD quote above states that when a temporary speed zone is no longer needed "even for short periods of time" the devices (such as reduced speed postings) "shall be removed".**

2) MUTCD Page 6C-2 Section 6C.01 paragraph 5 "Reduced speed zoning (lowering the regulatory speed limit) should be avoided as much as practical because drivers will reduce their speeds only if they clearly perceive a need to do so.

The reduced speed sign was posted at the far right of a two lane road AFTER a strip of orange cones closed the right lane. Most vehicles on the left lane increased speed at that point, interpreting it as a construction end sign, since both lanes were opened again. Two officers were stationed at a road section that was set up as a speed trap (CA Vehicle code 40802). **The speed limit was posted improperly and the speed was reduced below the speed of the average driving public.** To prove this, there were two vehicles being ticketed when I was stopped and two more after me, all within a few minutes. The average drivers clearly did not perceive a need to reduce their speeds anymore. The fact that so many drivers were being ticketed shows that the way the zone was laid out made drivers think that the zone had ended. Instead of correcting the problem, the police used the opportunity to write tickets as fast as possible. It would have been more appropriate to have informed Cal Trans and have the work zone remarked or at least made the end of the work zone made clear so safe and reasonable drivers who always obey traffic laws to the best of their ability and perception were not being ticketed due to a poorly marked location.

3) MUTCD Page 6C-1 Section 6C.01 "Temporary traffic control plans should be prepared by persons knowledgeable (for example, trained and/or certified) about the fundamental principles of temporary traffic control and work activities to be performed. The design, selection and placement of temporary traffic control devices for a temporary traffic control plan should be based on engineering judgment".

According to the City of La Mesa Traffic Division, **there was no work zone survey prepared for the 7800 block of University Avenue. This is a violation of MUTCD policy and regulation. Since no work zone study was done it is therefore also clear that no engineer designed the work zone or determined that a reduction of speed**

**was necessary. This makes the speed reduction arguably illegal and unenforceable since it now fits the definition of a speed trap per 40802 CVC making the officer an incompetent witness and the ticket, testimony etc. inadmissible.**

4). MUTCD Page 2B-13 section 2B.11 specified that the posted speed limit shall be in accordance with the engineering study and shall be posted at the 85<sup>th</sup> percentile speed of free flow traffic rounded up to the nearest 5mph increment.

The City of La Mesa has a regular speed survey (not work zone survey) for the general area of University Avenue between Baltimore Dr. and West of 70<sup>th</sup> Street. The 85<sup>th</sup> percentile speed was at 40 mph. The regular speed limit should be 40 or 45, but not 35mph.

### **California Vehicle Code 40802 - Speed Traps - Radar Calibration and Training**

CVC40802(c)(1)(A) states: When radar is used, the arresting officer has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training (POST).

The officer's declaration should provide documentary proof to the court that he successfully completed this radar operator course certified and approved by the Commission on Peace Officer Standards and Training. If the officer does not submit proof with his declaration that he successfully completed this minimum 24 hour course in accordance with CVC40802(c)(1)(A), my case should be dismissed. His use of RADAR is not legal without this course, and his RADAR evidence is inadmissible. I urge the court to not accept hearsay testimony in lieu of documentary evidence to verify course completion. If the course was completed, documentary proof should be provided.

CVC40802(c)(1)(D) requires that: The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

The Officer's declaration should provide documentary proof that his RADAR meets or exceeds National Highway Traffic Administration Standards in accordance with CVC40802(c)(1)(D). At minimum, the officer should provide documents to the court proving that his RADAR has been calibrated within 3 years by an independent certified testing or calibration facility pursuant to CVC40802(c)(1)(D). If the officer cannot provide this evidence to the court, his RADAR evidence is inadmissible and my case should be dismissed. I urge the court to not accept hearsay testimony in lieu of documentary evidence to verify required radar calibration. If the calibration was completed, documentary proof should be provided. Further, the officer should prove that the testing facility was certified and independent from the police department.

Finally, the officer must have proven, pursuant to 40802 (c)(1)(C)(i) that he established prior to issuing my citation that his RADAR was properly calibrated within three years to

NTSHA standards.

This standard is stated clearly in the code which establishes that a conviction is not warranted unless “The prosecution proved that, prior to the officer issuing the notice to appear, the arresting officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).” If the officer does not prove this standard, my case should be dismissed.

The purpose of the strict legal standards in police use of radar is to prevent abuse of this technology through poorly trained operators or defective uncalibrated equipment. These should be considered minimum standards by the court in protecting defendants against the power of the state. I respectfully ask the court to uphold these minimum standards of protection.

**The officer must provide documentary proof to verify the required standards of his radar equipment and operator training. If these legal standards are not each properly and fully documented, I urge the court to dismiss my citation in the interest of justice. Please do not accept hearsay statements in lieu of documentary evidence.**

I would, however, like to add a more human perspective to this declaration by submitting the following facts regarding the incident for which I was cited.

**Within the previous 300 feet prior to receiving this citation, I reduced speed to 20 mph where the right lane was blocked by orange cones. I was on my way home, with my 6 year old at the back seat, from her swimming lesson at the La Mesa Recreation Center. I was driving at compatible speed with other vehicles. I was driving a Toyota Matrix, which is practically a station wagon. It is not necessarily the vehicle of choice for a NASCAR driver. I have not had any speeding violation in my driving record. To this statement, I would swear an oath, if necessary.**

I have posted applicable references to case law regarding radar calibration at the end of this declaration.

#### **Case Law References**

State of Florida v. Aquilera (1979). This famous case is known widely as the Miami Radar Trial. After a local television reporter showed a house clocked at 28 mph and a palm tree clocked at 86 mph, the story broke nation wide and radar was quickly shown to be less than accurate. In this particular case the Dade County Court sustained a Motion to Suppress the results of radar units in 80 speeding ticket cases. The court's opinion stated that the reliability of radar speed measuring devices as used in their present modes and particularly in some cases, has not been established beyond and to the exclusion of every reasonable doubt, nor has it met the test of reasonable scientific certainty.

United States v. Fields (1982). The District Court in Ohio ruled that it was impossible to determine from the radar results whether the defendant was traveling at the alleged speed or whether the Speedgun Eight radar unit was measuring the rotation of the ventilation fan at the sewage pumping station next to the officer's car. The court also found that the officer was not qualified to operate the radar unit since he did not know the requirements

for correct operation of the unit. In addition, the officer did not calibrate the unit before its use.

State of Connecticut v. Tomanelli (1966). In the case, the Supreme Court of Connecticut ruled that "outside influences may affect the accuracy of the recording by a police radar set sufficient to raise a doubt as to the reliability of the speed recorded." The court also stated that tuning forks must be proved to be accurate to be accepted as valid tests of a radar unit. In order to establish the accuracy of the radar unit the operator must testify to the following:

1. That he made tuning fork tests before and after the defendant's speed was recorded.
2. That the tests were made by activating 40, 60 and 80 mph tuning forks and by observing that the unit responded correctly in each case.

State of Minnesota v. Gerdes (1971). The Supreme Court of Minnesota ruled that where the only means of testing the accuracy of a radar unit is an internal mechanism within the unit, and there is no other evidence of the motorist's speed other than the radar reading, the conviction cannot be sustained. The court also established the following conditions for proving the accuracy of the radar unit:

1. The officer must have adequate training and experience in the operation of the radar unit.
2. The officer must testify as to how the unit was set up and the conditions the unit was operated under.
3. It must be shown that the unit operated with a minimum possibility of distortion from external interference.
4. The unit must be tested with an external source, such as a tuning fork or an actual test run with another vehicle that has an accurately calibrated speedometer.

People of New York v. Perlman (1977). The Suffolk County District Court ruled that the radar device was not proved to be accurate since no external test had been performed before or after the arrest. This case is significant since it established the criteria of testing before and after a citation is issued.

State of Wisconsin v. Hanson (1978). In this landmark case, the Supreme Court of Wisconsin set minimum conditions for the use of radar as evidence. Sufficient evidence to support a speeding conviction with moving radar will require testimony by a competent operating officer that:

1. He had adequate training and experience in radar operation;
2. The radar unit was in proper working condition at the time of the arrest;
3. The radar unit was used in an area where there was a minimum possibility of distortion;
4. The input speed of the officer's car was verified, the car's speedometer was expertly tested within a reasonable period after the citation was issued; and
5. All testing was done without the use of the radar unit's own internal calibration device.

State of Florida v. Allweiss (1980). The Pinellas County Court ruled that the testing methods for radar equipment are legally insufficient. "The use of such a tuning fork furnished by the manufacturer in this court's opinion is tantamount to allowing the machine to test itself. A tuning fork furnished by the manufacturer is but an extension and part of the total speed measuring apparatus which is furnished by the manufacturer upon delivery.

State of Delaware v. Edwards (1980). The court found that evidence based solely on the reading from a K-55 moving radar unit was not sufficient for a conviction since the unit has not been proven to be reliable.

I declare under penalty of perjury that this statement is true and correct.

Wai-Yi Winnie (deleted for privacy)

### **21) If I don't win my case but I feel that I was in the right, what can I do? Appeal.**

Nothing feels worse than preparing well and believing that you are in the right, legally and then the judge finds you guilty. If you feel that your case was legally sound and the judge did not care about the law, evidence or the rules of court or case law, you may appeal your case. An appeal is not a new trial. It is a review by a higher court, (normally in CA. it will be the Ninth District Court of Appeals) of your original trial. You have to be in the right but if you were and you got a bad decision this may be the solution for you. These district court judges are real judges who know the law and know they have to follow the case law of higher courts. If this option is for you, here is where you start:

1) Here are the official instructions to appeal:

<http://www.courtinfo.ca.gov/forms/documents/tr150.pdf>

2) Here is the actual form you need to fill out and file your appeal:

<http://www.courtinfo.ca.gov/forms/fillable/tr155.pdf>

If you are going to appeal we will send you a free example of the legal brief (filled out form TR155) of a previous customer who used our strategy in court, lost, then won on appeal in California. Just email us for this bonus at no charge.

#### **Legal Disclaimer:**

The owner of California Speeding Tickets is not an attorney and makes no claims as such. The suggested defenses are based on generic legal issues which you are to select based on your individual circumstances. A person should always include any statements, questions or specifics in their trial or defense that they believe may help them. Although I have great faith in this system, it would be foolish of me, to suggest that you avoid using true specifics of your ticket situation which could help you win your case. I am not doing that. Use everything at your disposal to win in court, including this document, where applicable, as part of your defense strategy. As you were told before you purchased this system, we are not attorneys, nor an attorney service. This system is not a substitute for attorney representation. If your situation justifies the use of an attorney, then you should seek one out. This system is not to be used in any criminal matter of a misdemeanor or

felony nature, for example, where a traffic stop was made, which led to the search and seizure of contraband, or a D.U.I., or any other traffic or non-traffic, criminal offense. People in these situations need to seek out a qualified attorney. People who have a great deal to lose in a traffic case, such as assigned risk drivers, or professional drivers who may lose their license if convicted, should also seek out a qualified attorney. For a person who has purchased this system, who also hires an attorney to represent them, I hereby give permission for this person's attorney to use this document as they see fit to assist in the defense process, of this person only. Other use, or continued use, of all, or part of this system or document, by a non-purchasing party, constitutes a copyright violation. This system is to be used as an educational tool and a reference material to assist a person in preparing to go to court and know as much as possible about winning their traffic case.

**Spam Blockers:** If you have any spam blocker or firewall that might prevent you from receiving follow up information from us you should change your settings to allow emails from us. You could miss critical information otherwise.

**Privacy policy:** The above brings up the policy of our company regarding the use of your information. Our policy is this: We use your information to conduct our very limited business of downloading purchased information to you and in most instances emailing you with follow up information such as the California case law package. Other than this, we do not use, give away, provide, sell or otherwise use your information ever again. You will not receive solicitations from a third party company or us after a purchase. No company or person will ever get your information from us, period. In over ten years of business we have never had a single complaint regarding this issue.

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