



# HOW TO BEAT A SPEEDING TICKET

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## INTRODUCTION

The most important aspect to consider in avoiding a traffic ticket is to be aware of where you are in the current traffic pattern. Many people will tend to slow down for the first two days after receiving a ticket. But a lot of people don't. This chapter is designed to assist you in keeping out of trouble in the future.

Make sure that you are driving the proper type of car. If you've got a really brightly colored car such as a red sports car, it looks like it's doing a hundred miles an hour even when it is standing still. There are a great number of quality fast vehicles that don't draw as much attention. In order to be safe in any case, make sure that you have the proper electronic equipment to protect you from any further ticketing. Make sure that you are aware of your situation on the road. Be alert at all times. Keep your eyes on the on ramps on the major highways, because they are a favorite spot for the Police. Try not to come up on a hill at 80 to 90 miles an hour because you have no way of seeing what's over the hill and if there is a patrol car there with a radar unit, you're going to be nailed before you even see him. Be on the alert for any hiding places that a patrol car may be, behind trees, around bends, or even in front of a large truck that's driving in the right hand lane. That truck is going the speed limit because there's usually a patrol car right in front of him, waiting for you to pass.



Try to keep your driving in the right hand lane as often as possible. The police know that speeders are in the left hand lane, so make your pass in the left and get back into the right hand lane as soon as possible. Try not to weave through traffic because you will draw attention to yourself. The patrol people will stop you for reckless driving as well as speeding. That could be double the problem. Keep your eye on your rearview mirror, especially at night, for any car that may be approaching from the rear very quickly. If you're cruising at 75 or 80 miles an hour down the highway and a car is creeping up on you, it's entirely possible that it's a patrol car doing a "Paced Speeding Ticket," or it's another speeder who can act as a "Rabbit." A "Rabbit" will be explained shortly.

Occasionally as you're driving down the highway, you will be passed by someone that we will refer to as a "Rabbit". You should have no problem following this rabbit at a reasonable distance, a quarter mile or so, because they will act as a target for the radar trap and will get stopped prior to you even arriving at the scene. Just don't forget about your rearview mirror because the patrol car may have spotted him from the distance and is going to follow behind you to try and overtake him. And he could get to you first.

Make sure that you keep an eye on what cars are parked on the side of the road, regardless of their make, model, or color. If it's not a police car, or an unmarked car, it could be another motorist in trouble, or it could be somebody who's just about to pull

onto the highway. Be ready to move out of their way.

Know where you are at all times. It can be your best defense in avoiding a speeding ticket.

## **JAMMERS AND DETECTORS**

A radar detector is a very important piece of equipment which will allow you to stay one step ahead of the traffic officer. First off, you need to know that radar detectors are illegal in Virginia and the District of Columbia. In those two areas of the countries, anyone who has a radar detector accessible to the driver or the passenger with available power is facing a \$300 fine in the District of Columbia, and between \$25 and \$100 in Virginia.

You may have the other consideration that police in those areas will probably confiscate the evidence until your trial. Radar and laser detectors are not legal ANYWHERE in this country for commercial vehicle drivers. Remember that a radar detector does not make you invincible. You are still subject to the laws of this country, and a patrol officer usually will not give a warning to someone if they have a radar detector. The detector however, is your best defense against getting a ticket.

Radar detectors are changing on a weekly to monthly basis nowadays, and being upgraded periodically. They are getting better. When shopping for a radar detector, there are several factors that you should consider. First, get the widest range of detection that you possibly can, and try to include XK and Ka bands. Have different indicators for each one of these bands. A separate light or sound for each. Make sure that the unit has a good visual display and either a mute or volume button so that you can adjust it according to the ambient sounds in your vehicle. Try to find a unit that has at least a hundred and ten decibels (dB) sensitivity. And remember that the most expensive unit is not always the best. Your unit should be mounted on your windshield in a high position, near the vicinity of your rearview mirror. This gives you the widest possible detection range. Use your detector at all times. It's not just for that long trip, or for highway driving. A speed trap can be set up in the city just a block or two from your home, so be prepared for any eventuality.

One nice thing about keeping your radar detector on in the city is that the more traffic there is, the more often the police officer has to activate his unit. Every time he activates his unit you should be able to know that he is around. Police officers nowadays are moving more and more to the instant on type of radar detector. Using this piece of equipment, the officer just has to pull this trigger when you're in sight and he gets an instant reading on what your speed is. He feels that this is accurate, but we'll show you later as you read on in this manual that there are some pitfalls with this method.

If you do get caught in an instant on situation, don't slam on the brakes. You can take your foot off the accelerator and decelerate slowly. If the officer notices that you are screeching to a halt he'll know that you've been speeding. And he's got you! He'll also know that you have a detector and if you're in one of these areas of the country where it is

not permitted, he's got you for that ticket also.

The most important consideration is the fact that you should get a good radar detector; place it high up on your windshield, and use it at all times. The benefits of the utilization of your radar detector will be far greater than any of the subsequent pitfalls that may occur.

## JAMMERS

There are two types of jammers available on the market today. *Passive* and *Active*. There are two main areas of differences in these two types. Passive jammers are legal because they do not transmit any radio frequencies, and active jammers do transmit and are quite illegal.

Let's look at these two types a little bit more. The bottom line on passive jammers is, don't waste your time or your money with them. They are not going to be as effective as active jammers. Take money that you would have spent and get a good detector. Get one that you feel will work as advertised.



Active jammers transmit, they work, and they are illegal. If you are transmitting a radio beam you must have an FCC license. Your police departments and your local townships are licensed, but the officers don't actually need to be individually licensed. The radar units that police are using can tell when they are being jammed. Imagine racing down a highway and you're doing 85 to 90 and your jammer is showing a steady 35 to 40 to the officer in his unit. The officer knows that you're speeding. He knows that you're jamming him. You are obstructing justice and breaking the law at the same time. Are you getting the feeling that perhaps your speeding ticket will be a lot less important to him than all the other laws you're breaking at the same time?

Laser detectors are legal. Since laser is a form of a light beam and not a radio frequency. One good investment for your car would be a laser license plate cover. The police generally aim for your license plate since that is an excellent reflector for their radar unit. Usually your license plate is white and it is highly reflective, giving them a good readout. You can typically buy one of these laser plate covers for about \$30.

## WHAT DO I DO WHEN I'M STOPPED?

Regardless of how good your efforts are in trying to avoid a ticket, one of these days the boys in blue are going to get you. You're going to look in your rearview mirror, you're going to see the flashing lights, and what you do in the next very few minutes may be a tremendous determining factor in whether or not you beat the ticket. Pull off to the side of the road as far as is possible to allow the officer to approach your vehicle after he pulls

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up behind you. Try not to do anything that might be out of the ordinary, or to make your appearance before the officer, memorable. You don't want him to remember you. That way, if any specific details are asked in court later, he'll have no idea and it may blow his credibility in front of the Judge. Once your car is safely pulled off the side of the road shut the engine off, roll your window down, and keep both hands on the wheel. **DO NOT** remove your seat belt at this time. If you're not wearing your belt, it's too late to put it on. Don't bother.

If it's during the evening or darkness hours, make sure that you have your flashing lights on. Relax, calm yourself, and wait for the officer to approach your vehicle. If you get upset now, you'll cause undue attention to yourself, and you certainly do not want to do that. Generally, an officer will ask you one of two questions. It's either, "Do you know how fast you were going?", and your response should be, "No, I'm not really sure." Or, "I think I was doing the speed limit." Or, "I know I wasn't speeding, I looked at my speedometer right before you stopped me." The other question that you may be asked is, "Do you know why you were stopped?" Your response is, "No Officer, I don't." The most important factor to consider at this point is, **DO NOT ADMIT ANYTHING**. Your Constitutional rights allow you to remain silent, but the officer doesn't have to let you know that. If you tell the officer you were doing about 62 or 63 and you know that you're in a 50 mile speed limit, you've admitted your guilt.

When the officer requests your credentials such as driver license, insurance, and registration, tell him where they are located in the car and ask for permission to retrieve them before going for them. This will relieve the officer's suspicion that there may be a concealed weapon in the car. If the officer decides that he wants to search your vehicle do not agree to this search under any circumstances. If the officer asks you to exit your vehicle do not argue with the office and exit your vehicle. Inform the officer that you do not consent to a search of your vehicle. In the past the police were required to have probable cause to search your car, now all they need is Reasonable Suspicion that a crime has been committed to search the interior of your car. The police can also do a cursory search of the interior of your car for weapons. If he can smell smoke from Marijuana or alcohol, he has probable cause. And those are things that are more important right now to you than the speeding ticket you're about to get. This is not the time to try to argue with the officer, or see if you can beat the ticket. Give him as little as possible to remember you by because he's heard of all of the excuses hundreds of times before. Once he starts writing that ticket, you're going to get it, period. There's no turning back for the officer or for you. He can't void it and say he made a mistake. He's got to write it. And it's yours.

While the officer is writing your ticket back at his vehicle, look over your surroundings and make notes of as much data as you possibly can. Small details can be very important. Some of the information that you should be on the lookout for is the type of vehicle, the license plate, and the unit number of the police officer's car that stopped you. Know the exact location of where you were stopped, and the distance between where you were stopped and where the violation occurred.

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Write down the weather conditions. Cloud cover, rain, no rain, sunny, overcast, snow, whatever it may be. Write down a list of anyone who's traveling with you in your vehicle and please ask them to remain quiet during the entire time that you are with the officer, unless they are asked a question by the officer. Write down the color and the type of clothing that you are wearing. Make note of any noticeable characteristics of your vehicle. Different colors of paint, dents, aluminum wheels, hubcaps, anything that are small details which would be difficult for the officer to remember later. Make sure you try to remember everything the officer says during the traffic stop. If he has to talk on his radio, or direct another driver during the stop, make a note of that. Many times the person who's writing the ticket is not the one who is using the radar unit. He's basically the chase car. Find out if he's the one because it's very important to your case that you know if the officer was the one using the radar unit. Observe the traffic in the area during your stop and remember what the traffic was like when you were pulled over. If you can, remember everything humanly possible about the cars in your area during your stop.



After the officer writes your citation he will bring it back to you and ask you to sign. By signing you are merely acknowledging receipt of the citation. At that point in time, ask the officer if you can have your court appearance moved to the county seat. If he refuses, please have him indicate on the back of the ticket that he refused to allow you this consideration. If he does not want to indicate that on the back of the ticket, don't worry about it; just make a note of it in your notes. It may be important later on. Tell the officer after you have signed the citation that you would like to see the readout on the radar. He's not really required to do this for you because it would involve your safety. They would not like to see you run down by another motorist while you are walking back to the patrol car. If he does allow you to see the radar, don't make any comments at all. Just make a note of who manufactured the unit or a model number. At this point in time, don't mention the calibration fork. We'll explain that later on in the book, but don't ask to see it. If the officer knows that you are aware of the calibration fork, it would tell him that you know a bit more about the type of equipment that he's using, and he'll remember you in court. And that's not going to help you later on down the road. After the officer returns to his patrol car, stay there for another one or two minutes and jot down any other notes that may come into your head at the time. The officer will usually be making notes on the back of the ticket so that he can recall them later on in court. Don't stay too long at the scene because that will be memorable to the officer and you don't want him to remember any aspects of this particular traffic stop. You've got plenty of time to prepare your case between now and the time your set to appear in court. All of the information is available to you twenty four hours a day. When you leave the scene of the citation, pull away safely. Don't spin your tires; don't send rocks up into the air or a cloud of dust. Go out with the confidence that you probably will never see the officer again. There's also the extreme possibility that the next time you see the officer, he's going to be in a courtroom, under oath, answering your questions. If you follow the directions previously noted, you are just going to be another face in the crowd out of the hundreds of citations he wrote in

the past month. There's a good chance that he won't remember you, and he certainly won't remember what color shirt you had on, or what the weather condition was like.

## **FIGHTING, PLEA BARGAINING, OR PAYING THE FINE**

This book is designed to show you that there's only one choice in the three options that are available to you.... **FIGHT THE TICKET**. Even if you go to court and lose, your fines still will be no higher than they would be if you did not contest it. The important aspect to consider is that your insurance premiums are going to go up for years. This will be far greater than the amount of your ticket.

### **HOW SHOULD I PLEAD?**

There are four types of pleading available to you that you can enter for your ticket.

**Guilty**. I made a mistake, here's my money, raise my insurance.

**Guilty with an explanation**. I made a mistake, but let me tell you why, before I give you my money, and you raise my insurance.

**Nolo Contender**. It's the Latin translation for "No Contest". All right I'm guilty, but I just don't want to tell you. Here's my money, raise my insurance."

**NOT Guilty**. This is what you should be interested in.

Not guilty does not necessarily mean that you did not commit the crime. All it means is that the Prosecutor now has to prove beyond a reasonable doubt that you DID commit the crime. The Prosecution has the burden of proof, not you. If the citing officer does not show up for the trial, that's not your problem, it's the prosecution's. All you have to do is, enter a simple motion to dismiss due to the lack of prosecution's witness.

### **DO YOU NEED A LAWYER?**

You're only going to need a lawyer if jail time is possible with your sentence. Some of the citations that could involve jail time would be a DUI or a DWI. Driving a vehicle on a suspended license, an accident involving a hit and run, or if a felony was committed while you were using your vehicle. Drug or weapon possession, robbery, manslaughter, hit and run, anything along those lines. If your case involves any of these points, a lawyer is definitely recommended. If not, figure out the cost of the attorney's fees and weigh them against the fine and how much you'll be paying in insurance premiums. Some attorneys specializing in traffic tickets will charge between fifty and one hundred dollars for their services. You may be able to plea bargain for a driving school certification in lieu of a larger fine.

You really can't handle the above without the use of an attorney. Secure one for these purposes. Most attorneys have a pretty good relationship with prosecutors, and they know their way around the court system far better than you possibly can. If you feel that the pricing is okay, and the services that you will be retaining will assist you in making a good settlement, consider one of these people and utilize their specialties to help you out,

simply because it's easier on you in the long run.

Once you hire an attorney, you have lost control over how your case will be handled because he will be the one taking care of it for you. However, you do gain the advantage of his knowledge of the legal procedures and you're the one with the most detail as to the events surrounding the particular citation.

Industry statistics states that if you do testify on your own behalf and you ultimately convict yourself by stating the wrong thing, about 9/10ths of all traffic cases would not have benefited from use of an attorney.

### **DRIVING SCHOOL**

One of the most popular forms of plea bargaining available to you is referred to as driving school or, another variation of the same thing. You, the Defendant agree to attend a driving school and they provide a completion certificate from a school that's licensed in your local jurisdiction. If you attend and pass, the charges against you will be dropped. Usually you're allowed to participate in this program, once yearly. Sometimes you can get a discount on your car insurance by mentioning that you have successfully completed driving school. Just don't tell them that you went because of a speeding ticket. Usually, this is the most painless way to get rid of the charges that are against you. Driving schools normally cost \$35 to \$50 to attend. It's possible that a court cost will also be included or added to this fee. Usually, the total cost will be less than your speeding fine. You might want to consider this possibility, if you feel that your case is weak and you may not have a chance of winning. If you've got a good case built up, save the option of the driving school for another time when you may need it.



### **SPEED DEFENSE**

Speed defense implies that your need to speed was a determining factor in protecting yourself. Perhaps you were doing 55 in a zone where everyone else was doing 70, and in order to avoid the potential of an accident, you had to accelerate to match the speed of the surrounding traffic.

You might also have a tailgater behind you who is coming up rather quickly and you had to accelerate to get out of their way, in order to protect yourself. These defenses don't usually work. Don't feel that your case will be dismissed simply on the evidence that you may present about these particular situations. It's not a good option for you to pursue this type of defense.

There are some areas in New York State that give you an unusual opportunity to beat your speeding ticket. The cities of Albany, Buffalo, Rochester, and New York City are four of these cities that give you the opportunity that we were speaking about earlier. In

general, if you receive a ticket in those cities, there is no way of fighting it. You don't get to see a real Judge, you don't get a chance to appeal, you can't plea bargain, and you don't have any right to discovery. The courts are required by law to maintain a 65% success rate on convictions in order to maintain the revenues. The only good part of this whole system is that since you won't be seeing a Judge, but rather an Administrative individual, they don't have the power to put you in jail. Your only hope for success in this type of situation is to continue to postpone your appearance as many times as possible and hope that the officer who issued the speeding citation does not show up on the appearance date. That's the only way you can possibly manage to win in a situation like this. The system is legal, it's constitutional, and efforts to change this system have been vetoed by the Governors for years. Simply because they know that it generates a lot of cash flow. Just try not to get a ticket in any of these locations.

## **PLAN AHEAD**

Since we have now determined that you are going to take your case to court, there are a few things that you should prepare for your defense. Some of these items are: Call your auto insurance agency; find out how much your premiums will be affected by being convicted on the ticket that you have received. Check with Motor Vehicles and see how many points you have on your license, and how many your possible conviction may add to that. Make sure that the registration is up to date, your insurance is up to date, inspections, etc. Take care of them before you walk into court. If you have any outstanding tickets, take care of them before your trial. Find out if you're eligible for a driving school. Check your work schedule to see if you have any conflicts that may facilitate changing your court date. Once you've taken care of all these matters, or, if they are in the process of being taken care of, it's time to prepare your defense.

### **SET THE COURT DATE**

First thing to consider is entering a plea and try to set a trial date. Here are three ways to enter your plea with the traffic court. First, going to the County Clerk's office to request a trial date in person. Secondly, stand before the Judge, enter your "not guilty" plea and then ask for a trial date. Third, mail a copy of your citation and request a trial date.

There's a possibility with all three of these approaches that you will have to post bail in the amount of the citation. Check with the court in advance to find out, so that you do have the proper amount should it be required. After you have posted bail, if it's required, you've got two things that are going for you. First, you've paid your fine already. If you lose your case, your fines paid and it's not going to cost you any more money. Second, if you can't make it to your trial and they forfeit your bail, there will be no additional fees. But if you don't post bail, and don't appear for your trial, a warrant can be issued for your arrest for failing to appear. Now instead of just a simple traffic citation, you've got a misdemeanor charge pending against you. Don't let something simple get complicated by not showing up at your trial.

You are guaranteed by the constitution to a fair and speedy trial. That means that

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within 45 days of the day that you entered your plea; you should be attending your trial. Watch this time very carefully. If anyone contacts you about changing the date of your trial, you are going to have to waive your right to a speedy trial. The only thing in your favor is that the longer the trial date is from the actual date that you got your ticket, the better the odds are that the officer who wrote the ticket will not be able to remember the details. The disadvantages include the fact that the court can pick any date it chooses within the forty five day time frame. It could be that you are not available on that day and you could forfeit your bail and the whole trial. You may have to prepare for your trial at a faster pace if it's less than the 45 days that you would normally allocate. Also the details would be clearer in the officer's mind than you might want them to be. If you can't get ready for a trial in 30 days, you're probably not going to be ready in sixty anyway. Your best bet is that the officer does not appear at all. The most important thing to consider is the fact that you don't want to waive your rights to a speedy trial.



Another little trick to remember when you're trying to set your trial date is to find out when the officer's vacation time is due. Usually this time is extended as a courtesy to the court, but you can usually use it to your advantage. If you know the officer's vacation time, pick a day right in the middle of his time off and try to make your court appearance to request your trial date about 40 days previous to that. Make sure that you skip over holidays and it doesn't include a weekend. If you follow these guidelines, try to use a day that you select as your date to appear to enter your not guilty plea and request a trial. This scenario depends upon two criteria, one that includes the officer's vacation dates, and secondly that you are able to walk into the Clerk's office and enter your plea. At this point, it's time for you to wait for your trial date to be set. Usually it's somewhere around 40 days after you've entered your first plea, in most cases. You should be able to enter the courtroom right while the officer who wrote the citation is enjoying his vacation. This doesn't happen in most cases. Usually the courts notice the error and they try to schedule a date for you. Under no circumstances should you waive your 45 day right to speedy trial. If they reschedule your trial without your consent and it's more than 45 days from the date that you appeared in court originally, you have an excellent chance for a mistrial. Go to your local library, research the case laws. Try to find out if an officer's vacation time is not good cause for continuance of your trial. This will give you some counter measures if the Prosecutor attempts to claim that the court did have good cause to continue your trial. Just tell them what you found out in your reading, and make a motion for a mistrial. If you're overruled, just go on with your case and file an appeal if you're found guilty. Usually the case will be overturned on an appeal. Now that you've entered your not guilty plea and you've gotten the court moving, it's time to put all of all your facts together and build your defense.

## DMV

Every state has a division of Motor Vehicles. Their job is to control all facets of your privilege to drive a motor vehicle. They are able to monitor your driving record and decide when and if it is necessary to suspend your privileges. Usually they use points to determine whether or not you have committed enough violations to suspend your license. If you do accumulate enough points, you may have your license suspended and you may not be unable to operate a motor vehicle during that period of time. Some states will keep the violation records on your license for five years. Most states leave a DUI or a DWI on your record for seven years. When you're preparing the defense for your trial, make sure to check on your driving record. You might also like to have a list of all the different points that can be earned on you license. Most of the DMV's will be able to provide you with that record on your license for nominal fee. Let's hope that you will not be facing a potential suspension of your license for this current driving infraction. If you are, it might be a good idea to retain an attorney. If your situation falls in the norm, you'll probably be safe from suspension but you may still have a mark on your license for three years from the date of conviction and that will increase your insurance premiums.

## YOUR BASIC RIGHTS

If you've entered into a courtroom prior to today, you know that they are rather impressive and they leave no doubt in your mind who is in charge. Regardless of that fact you are still entitled to certain rights. Unfortunately your rights may be overlooked in court, in an effort to get you to plead guilty so that the court gets your money. Be aware of your rights as you are approaching the date of your trial. Make sure to remember the following rights and keep them in your mind as you enter into the courtroom.

\*You are entitled to a speedy trial.

\*You may request and are entitled to a court trial. Usually the only ruling body is the Judge. You may have the option in some states to request a jury. You'll probably have better luck with a Judge than a jury of your peers in most cases.

\*You are entitled to the use of an attorney. In traffic court you will usually have to pay for this service, you won't get one for free unless your offense could be subject to jail time.

\*Do not attempt to subpoena the officer who was riding along in the police car when you were stopped. The only thing that would be of interest to you are documents listed in the public records in discovery sections here previously.

\*Any witnesses brought into court are subject to cross examination by you. Usually it would be the officer who wrote the ticket. That's why if the officer does not show up, there's no case against you and no conviction.

\*You have the right to remain silent. Don't ever forget this as you go into the courtroom. You never have to testify against yourself and try not to take the stand for the defense.

Later on in this manual you'll see how important these rights are to assist you in fighting your cause. Make a note of them and keep them handy so that you'll be reminded of them during the course of the trial.

## REQUEST PUBLIC RECORDS

This area is important for several reasons. First of all, look up the actual violation that you were charged with. Be aware of how it's worded and any relevant laws that may pertain to that particular code. You might need to access the public records provisions to obtain necessary documentation to help you prepare your defense. You can either go to your local library or a local Law library. Try to look at the different case laws that relate to your particular violation and copy down any references that support your potential defense. Presume that you are going to prosecute your own case, and write down any laws that you would use. I shall take an example from the California Motor vehicle code to illustrate what the prosecution will need to prove in order to get a conviction against you. The traffic violation code that we shall use is CVC22350 Unsafe Speed. "No person shall drive a vehicle (you have to be identified as the driver and the witness for the prosecution needs to have observed you actually driving the vehicle) upon a highway." (The prosecution has to establish where the violation occurred). "At a speed greater than is reasonable or prudent." What do you consider reasonable or prudent? It's merely someone's opinion. "Having due regard for weather visibility, the traffic on and the surface and width of the highway." These are the factors used to establish reasonable and prudent issues "and in no event at a speed which endangers safety of a person or property." Are you guilty of endangering the person or of endangering someone's property? Try to break down the codes into bits and pieces that you can manage and figure out all the points that the prosecution needs to prove against you. If he does not prove all these points, you have grounds for dismissal after they rest their case.



## DISCOVER

One of the rights of the defendant as part of the trial is the discovery process. Some states try to limit this right in traffic cases. The reason is they want you to pay your fine and go home. Try to remember that it is your constitutional right for utilization of the discovery process. You are going to find a list of the items you need, how to write your request, and who to send it to under the Public Records Request. Talk to your local county clerk's office and find out how to issue a discovery subpoena. Make sure that you indicate that any items on the discovery subpoena are necessary prior to the trial date. The items you might normally need for a radar speeding ticket are the following; repair records, manufacturers manual and specifications, a log of the calibrations, and a copy of the departments FCC license to operate a radar unit, a copy of the repair calibration, and accuracy of the tuning fork. The arrest record of the police officer for three months prior to the date of your offense. His log for the day of your citation. Both copies of your original citation. A speedometer calibration certificate, all the maintenance and the repair records and the service records for the patrol car that was used in stopping you for your violation. Please be aware that the prosecution can stop this request with a motion to protect. Don't let that bother you because if this occurs just appear at your trial and make a motion to dismiss the charges. It might work, it might not. If it doesn't work, ask what

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the prosecution is trying to hide by denying you the information that you need to build your case. Immediately after that, file for a motion for continuance to give you enough time to get your defense ready after the materials are delivered. If the Judge still denies you access to the information that you want, you have an excellent basis for a not guilty plea during the appeals process, and reversal of a guilty verdict. Now we're going to tell you what to look for in this documentation, so that you can use it at your trial.

**REVIEWING EVIDENCE**

The repair records for the radar unit will give indication as to the dependability of the unit. If it has frequent repair records, you'll find that it may have a chronic problem. If there are infrequent repairs it could mean that the unit has not been serviced properly and may not be accurate. The manufacturers manual and specifications will tell you at what frequency maintenance is suggested on the unit. This information should assist you with your cross examination. Check the unit's frequency against the FCC also. The radar calibration log shows what time and how often the unit was calibrated, which means how often it was checked for accuracy. There are two court cases you can refer to; Wisconsin versus Hanson and Minnesota versus Gerdes. During those cases the Judge determined that calibration checking with a tuning fork should be performed within a reasonable time after the citation is issued. In two other cases; Connecticut versus Tomanelli, and New York versus Struck, it was ruled that a calibration by tuning fork should be performed immediately before and after a citation is issued. All four of these cases have shown that tuning at the start and at the end of the shift is not acceptable, although this is the norm. The FCC license is granted for a specific frequency or a specific range of frequencies. Check the information in the manufacturers manual and specifications against the FCC's license. This should prove whether the officer was operating the unit legally. Calibration by tuning fork information is necessary to show that the unit had been calibrated to what we call a "traceable standard." Without the certificate of calibration, the tuning fork is immediately suspect as being accurate enough to calibrate the radar unit.

The daily log record of the police officer may indicate that he prefers to ticket cars of a specific color, make, model, or year. If there is a pattern, there may be a particular location that he writes more of his tickets. It could be that location has bad engineering, problems with traffic control, or visibility of the signs are bad. That could contribute to the amount of citations that are issued. Basically it introduces doubt into the minds of the court. The daily log of the police officer will list all of the citations that were issued on the day that you received yours. Check for a listing of citations that are similar to yours such as, same speed, same location. That would tend to indicate that perhaps the radar unit was locked in and the same reading was used for more than one vehicle.

The police officer's radar training should show 24 hours of classroom instruction and that followed by 16 hours of supervised field training. Most of the time the officers are trained for a very brief period of time. The National Highway Transportation Safety Administration has endorsed and established the 24/16 hour criteria for training. The police officer's copy of the citation, meaning both sides, can be informative because the officer usually writes down his own notes to refresh his memory and if you know what he

is going to be remembering, you can bring up other factors that he may not. The calibration of the speedometer on the patrol car should show that it has been repaired properly and is accurate. This is extremely important, if the patrol car was moving when the radar unit was used. Maintenance records of the patrol car may possibly show any mechanical or electrical problems which could interfere with the proper operation of the radar unit.

### **GO BACK TO THE SCENE WHERE YOU GOT YOUR TICKET**

Returning to the area where you got your ticket can have several purposes. You may remember some additional details that you forgot to write down on the day that the citation was issued, and will also give you a chance to look at the situation and the scene in a bit more detail. If you find that there are some factors that may sway the decision of the court at the scene, you'll need to prepare documentation to prove them for the trial. Your best evidence to present at the trial about the scene would be a large diagram that documents everything that's relevant. Try to include the following; all the roads, with the markings on the roads and their widths, and all traffic signals that includes signs or lights. The location of your vehicle and the officer's vehicle at the time that you were pulled over. Also include the locations after you both stopped. Put down any structures in the area such as walls, buildings, fences, etc. Note any foliage, brush, shrubs, hedges, trees. Any other structures around the area such as billboards, advertising banners, street signs, anything that might distract. Put down any power line antennas, that sort of thing. It might be important for you to take some pictures from the drivers view point to illustrate any obstructing signage which may have caused you to miss seeing a speed sign.

The size of your diagram should be the size that will be easily viewed by anyone in the courtroom. Keep it at a minimum of 8 x 10. Just bring these reference materials to court if they will have a direct bearing on your case. If what you have described on your diagram is basically what is described on your citation, it won't be necessary to bring it in because it will only be helping the Prosecutor with his case. If it does show some kind of some serious contributing factor, don't show these items until the trial when you introduce them as evidence for the defense.



### **CHECK OUT THE COURTROOM AHEAD OF TIME**

If you've got time, spend a couple of hours in traffic court to get a general lay of the land. Usually the Judge will be same as for your case, but the Prosecutor may be different. Pay attention during your visit to the way the Judge addresses the defense, motions, or objections. You might even be lucky enough to see another citizen try to defend their own case, and see how he fares going down the paths of justice. Is he as prepared as you are in your case? And, if he made any mistakes, can you learn from them? If you're lucky there will also be a defense attorney there and you may also be able

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to learn from his methods. Study the relationships between the assistant district attorney, who is the Prosecutor, and the officer who is testifying. Usually this will give you some kind of indication of how comfortable they are working together, and also the amount of detail that they require during a normal preceding. Remember 95% of all traffic violations are paid without question. This will give you some kind of expectation of what you can look forward to before you have your moment in court.

Finally, if you find that the Judge is overruling any defense objections, you might want to file for a continuance immediately. It can only help your cause if you transfer to another court, if it appears that you are going to appear before a Judge that will not be beneficial to your case.

**PLAN YOUR DEFENSE**

Now that you've gone over all the evidence that you are going to review, you've looked at the scene for the second time and you've checked out all of the documentation that you need to support your case. It's time to think of a defense strategy for your trial. Be aware that most traffic tickets are argued from two different areas; a false radar reading, or a mistaken identity of the vehicle. Your defense strategy should be comprised of several elements. They include some of the following, Lack of a prosecution witness. This is your best chance for a mistrial. If there's no police officer, then there's no witness, and you're not guilty. It can't get any easier than that. Prosecution doesn't prove the case against you. You should be familiar with all of the specifications of the code that you are charged with violating. If the prosecuting attorney doesn't prove each and every item in the section of code, you should file a motion of dismissal and it is likely that you will win. If there are technicalities, such as the officer was out of his jurisdictional area, he cited the wrong code, or the address is wrong on the ticket. They are worth trying but don't expect them to get you a dismissal except for a jurisdictional issue. If you plan on using this as your sole form of defense, you may be caught unaware when the Judge over rules on your motion to dismiss, simply because of a simple error.

The next item could be an error on the ticket, a factual error on the ticket, whereby you were not the driver, or you were not driving at an unsafe speed, the calibration of the unit was inaccurate, or, it was not your vehicle that was targeted by the radar. You'll need specific evidence, such as the unit was not calibrated, or you'll have to prove a procedural error on the part of the police officer. Make sure that you keep a check list handy of everything that you want to cover during your time in court. If the officer shows up for the trial don't worry about it, just move on to your next defense level. If the prosecutor has covered all of his bases, move on to the next level after that. All that you can hope for is the best job that you can possibly do in your own defense.

Prepare an alternative plan for every single scenario. Being prepared will give you your best advantage. Be ready to change your tactics at any time and have a good knowledge of your case.

## YOUR TIME IN COURT

The first time you hear the Bailiff announce, "The people versus you"; it kind of sends a little chill down your spine. You're entering a strange arena that you really don't have any knowledge about, and you're wondering to yourself why you didn't just pay the fine and be finished with the whole ordeal. Relax, take a deep breath and be confident in the fact that you have spent more time preparing for this case than the prosecution has. His only advantage is that he knows how the procedure works. We'll try and balance that out for your in this chapter.

### LOOK GOOD IN COURT

If you have had a chance to visit a courtroom before your trial, observe how people are dressed, so that you may dress accordingly. Normal attire will be a suit for men, and a conservative business suit for woman. Don't wear anything loud, flashy, or attention getting. The Judges first impressions of you are extremely important and you want it to be lasting and favorable. Don't let him form a negative opinion of you before you even get started simply because of the way you are dressed.

### THE PLAYERS

People that you will contend with in your trial are listed below:

**Defendant** - that's you (Sometimes the Police Officer will also be the Prosecutor)

**The Prosecutor/ADA** - he's the guy in charge of the opposing team.

**The Judge** - Basically he's the referee, he's the one who is the final authority on anything from the final objections, the verdicts, or the fines.

**The Police Officer** - He's the star witness for the prosecution.

**The Bailiff** - Think of him as the Master of ceremonies, and he's also Sergeant of Arms for the court.

**The Court Clerk** - that is the Administrative Assistant to the Judge.

The only additional players in the scenario may be another police officer who was at the scene, during the time that your citation was written. If it turns out that one officer worked the radar unit and another one wrote the citation, then both of them need to be present for your case, in order for the prosecutor to make his case. If you don't see the other officer or officers involved in you case, at the time you case is called for trial, you've got a good chance for dismissal even before you get started.



Just remember that the Judge being the final ruling authority can postpone you case until the end of the day to see if the officer shows up for the trial. Be prepared to wait that amount of time.

## PROCEDURES AT THE TRIAL

Below you'll see a listing of typical events in the order that they will happen during your trial:

The Bailiff calls the case.

The defense, that's you, and the Prosecution both reply with "Ready your Honor."

The Prosecution will give their opening statement.

The Defense will give their opening statement.

The Prosecution will present their case; they will have the police officers testimony.

There will be cross examination by the Defense.

There will be a re-direct by the Prosecution.

Any physical evidence that happens to be available will be brought to light at this time.

Any diagrams, citations that sort of thing, then the Prosecution will rest.

If you have the grounds, you will make your motion to dismiss, on non-applicable grounds at this point in time.

The defense case will include your witness, either you or your passengers.

Cross Examination by the prosecution.

Re-Direct by the defense, and you as the defense, will rest.

Next will follow the rebuttal of the witness by the prosecution.

The closing arguments by the prosecution, by the defense, and then the Prosecution gets another chance to make a follow up and respond to the Defense closing. The verdict will be issued shortly thereafter, and then you will get sentenced if guilty.

## THE CASE FOR THE PROSECUTION

The Prosecution's job is to prove beyond a reasonable doubt through the use of testimony and evidence that all the vehicle code sections that you're accused of violating, had in fact been violated. Typically, the Prosecutor will attempt to prove that the ticketing officer made a visual estimate of your speed and then verified that speed with his laser detector or, by following you with his vehicle. Make a note of the fact that the Prosecution has a case law which supports their side of the story and that would be the State of Kentucky versus Honeycutt which ruled that an officer does not need to be an expert in radar operation, he only has to be competent in the use of radar. The purpose of your objections during the trial procedure and the prosecutions presentation do have two purposes. First of all, you want to break up the pace that the Prosecutor and the arresting officer or the ticketing officer are accustomed to. Primarily you can do that through objections. Anything that appears to be subject should be objected to. Take a look at what follows, for some of the typical objections that you have available to you. Even if you are overruled, the police and the Prosecution have to break up their rhythm in order to wait for the Judge to make a ruling.

While the Prosecution is presenting their case you should be making notes as to what was said. Make comments concerning your upcoming cross examination so that you are prepared before you get up to talk. Keep a tally, a running record of the various points of the vehicle code in question. As the Prosecution proves that point of your case, check it off. This will be able to give you a record as to whether or not he has covered all of the

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points in the case law. If all of the code issues are not checked off and you know that they have not been covered by the Prosecuting attorney, you have reason to make a motion for dismissal. Keep in mind that the Prosecutor must prove all the points in the code beyond a reasonable doubt.

Now let's take a look at some of the typical objections that are used in a traffic ticket trial.

**TYPICAL OBJECTIONS**

The entire purpose of the objections is to keep the evidence limited to specific testimony which is specifically relevant and admissible to the case. The only one who has authority over this is the Judge. He can say nothing about evidence that is produced in the case unless it is objected to. There is a fine line between how many times you can object and not be reprimanded by the Judge and also how few times you can successfully defend your case without being run over by the Prosecuting attorney.

Here are some of the objections that you may come across in a typical trial.

**OBJECTION, INDEPENDENT RECOLLECTION** When the officer begins his testimony, more than likely he's going to read from the copy of his citation. You should immediately object to this since the officer is required to testify from independent recollection. You should also ask to see what the officer is referring to even though you have received a copy of the citation through subpoena. More than likely the Judge will allow the officer to use his notes to refresh his memory, if the officer indicates to the court that he requires the notes to testify properly. This starts everything for dismissal because the sixth amendment to the Constitution guarantees you the right to be confronted with the witnesses against you. In this case, the officer and his testimony, not the citation, are the witnesses against you. If the officer can not recollect the circumstances of your ticket, he may be consider incompetent to testify. You have to prove that the officer is unable to testify without his notes to make him an incompetent witness. If the back of the citation and the officer's notes signifies SB 124, then all he can testify to is SB 124, not Southbound on highway 124. As you'll soon see the notes on the back on the officer's citation can hurt the officers' testimony and help you greatly.

**OBJECTION, FOUNDATION** A situation arises when any witness testifies to something that has not been previously established as evidence. For example, the officer states that the speedometer on his police vehicle read 70 miles per hour. It is inadmissible in court unless the calibration for the speedometer had been entered prior to that point in time.

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**OBJECTION, SPECULATION** This type of objection occurs when a question is asked of a witness and they introduce evidence that they could not possibly know. For example, they introduce the fact that you could clearly see a street sign or a speed limit sign and there's no way that they could know that. Only you could be aware of that fact.

**OBJECTION, CONCLUSION** In this case the Prosecution would ask the officer to draw a conclusion based on an insufficient amount of facts. For example, the officer volunteered that you saw a stop sign and chose to ignore it. He cannot make that decision because he does not have the facts.

**OBJECTION, NARRATIVE** The officer is allowed to testify in the form of a story rather than a question and answer procedure. He has given a narrative. You have a right to decide if a particular question would have an objectionable response. If he tells the events without questioning, you have no opportunity to object.

**OBJECTION, NOT QUALIFIED** It's similar to the previous objection, but in this instance the witness testifies to something that they have no expertise in. If the officer were to testify that your muffler was defective, he doesn't have the expertise to make that determination since he's not a muffler mechanic.

**OBJECTION, HEARSAY** In essence this is anything said outside of the courtroom by someone who's not a witness. The officer may not state what a witness told him at the scene. The actual witness would have to appear in order for that testimony to be entered into the court record. If one officer wrote a speeding ticket for a radar violation for another officer, both officers must testify, only to the extent of how much they were involved in that particular incident.

**OBJECTION, IRRELEVANT** These are events that may or may not have happened and have no bearing on the particular law that you are accused of violating. The officer may state that you have had a hostile attitude towards him, which has no bearing on the ticket. Your attitude is not relevant in the speedy fulfillment of the law.

**OBJECTION, IMMATERIAL** It's very similar to the previous objection. It may be closely related to the previous facts at hand, but it's really not close enough to remain admissible. Perhaps the officer would bring up your driving record. Your prior traffic convictions have no influence and should have no relevance to the ticket that you were fighting at the present. You cannot be judged on your past performances. If that were the case and you've had 12 speeding violations in the past three years, they would be assuming that you would be guilty of this violation.

**THE PREEMPTIVE OBJECTION** This is when you realize before the fact that the officer is going to drop some bit of information that could be damaging to your case. In this case, you would object prior to the officer even mentioning it, just to disrupt their rhythm enough so that it would throw them off. Be advised that you are only permitted to be able to use this once or twice during the course of the trial because you are going to aggravate the Judge. If you abuse this type of objection, when you have a real objection

the Judge will just overrule automatically without hearing your case.

### **CROSS EXAMINATION**

During the cross examination period you're acting as your own defense lawyer and your main purpose is to discredit any witness's testimony. In order to create a reasonable doubt in the eyes of the court, remember your opponent, the Prosecution has to prove beyond any reasonable doubt that you are guilty of the infraction that you are accused of. The key to succeeding in this type of examination is to find the details that the police officer can't possibly remember and focus in on them. You should always be prepared for this type of questioning and the best means of being prepared for that would be by knowing the answers to the questions that you are going to ask. You should be prepared for any answer that the officer gives. His best answer will be the facts that he already knows. Let's say you ask the officer the color of your car. On the back of your citation he may have it indicated that your car is blue. What you want to know is what shade of blue. If he tells you the proper shade of blue on your car, move on to another subject. If he tells you he doesn't know, he can't remember the facts of his case, and if he tells you its white, he hasn't a clue and can't remember what he wrote on the citation. That happens to be great for you. Don't ever argue the case with the officer. Just ask questions. You'll have your chance in your case later in your motion to dismiss. The next criteria for cross examining questions is whether or not the questions will help your case. Don't ever open up areas or details of an investigation that could hurt your defense. You don't want to ask a police officer why he didn't write you a ticket for a broken tail light and only one for speeding. It would be in the best interest to ask specific questions such as; did you see the oil tanker truck in lane two? You don't want to ask him whether there was any other traffic around because it would be too easy for him to get around that question. If you ask him specifics he has got to remember specifics. It's also good idea to start all of your questions with "Isn't it a fact?" Simply because the officer is under oath and must tell the truth. If he can't remember, he must state, "I can't recall". The more responses like that you get, the stronger your case. If the officer can't recall the details then he certainly does not rule out reasonable doubt. Covering the Prosecution's examination of the officer's testimony, note the strong points and the weak points of the officer's testimony. If he states that he has the required 24/16 hour training in radar, leave that alone. If he does not have the required training and was trained by another officer attack that very hard. There are a number of general questions that may be advantageous to be asked during the cross examination. Some of them should include the location of the defendant when the officer first spotted his vehicle. Did the officer always have the defendant's car in site with an unobstructed view from the first contact, until the defendant stopped? What was the distance between the officer's vehicle and the defendant's vehicle at first contact? What was the weather like during the entire pursuit time? What kind of traffic was encountered during the entire pursuit time? In what lane was the defendant's car during the first contact? What was the exact time of day when the offense occurred? How many passengers were there in the defendant's vehicle? What is the specific color of the defendant's vehicle? Did the defendant's vehicle have any noticeable structural differences? Perhaps custom wheels instead of factory hubcaps. The whole point of these questions is to discredit the officer's testimony as much as possible. If he continues to say

I don't remember and I can't recall, you are building up a reasonable doubt towards the witness' testimony. The next bright move would be to move for a dismissal. You may request a motion for dismissal for several issues. We are going to try to cover the different motions for dismissal you might want to try to use during your trial. If you're lucky, this is as far as your trial will proceed.



### **Motion to Dismiss**

Due to the denial of a right to a speedy trial. This should be used at the beginning of your trial if your actual trial date was more than 45 days from the time of your original arraignment. Your date of arraignment is determined by the date you stood up in court and pleaded not guilty. This is a very rare instance and would cause great embarrassment on the part of the court and the prosecutor. If you get to invoke this motion consider yourself very lucky.

#### **Motion to Dismiss due to denied access to evidence necessary to your defense.**

Again this would be used in the beginning of the trial if your subpoena was ignored by the prosecution. In most instances the judge will delay the trial and order the prosecution to provide you the information you requested. You don't want to waive your right to a speedy trial, but you may have to decide if it is worth getting your subpoena information. It's a pretty fair guess that the judge will not let the speedy trial clause slip by.

#### **Motion to Dismiss due to insufficient evidence.**

The time for employing this particular strategy is immediately after the prosecution rests his case. If the prosecution did not prove all of the required elements of the vehicle code you are charged with violating, then you may invoke this motion. That's why we suggest that you keep a check list of all relevant points that the prosecution needs to prove during the trial. It will be a handy reference chart when you explain to the judge that you were never identified as the driver, what road you were on, or any other relevant factors to the vehicle code.

#### **Motion to Dismiss due to incompetent witness.**

An extensive cross examination is necessary in order to prove that the prosecution's witness, mainly the police officer, does not have the recollection necessary to bring back the details of the day in question when you received your citation. If you can get him to state numerously that he does not recall, it is up to the judge in his infinite wisdom to decide whether or not the officer really remembers what happened on the day in question.

#### **Motion to Dismiss due to inadequate procedures.**

This may be utilized if the officer does not follow proper procedures, such as calibrating the radar unit before and after his shift instead of before and after the issuance of the citation. Use the case law to back up your claim of inadequate procedures.

**Motion to Dismiss due to insufficient evidence, specifically a missing officer.**

This is used in a case where you have two (2) police officers. One is manning the radar and the other is issuing the citation after the chase. Both officers must appear in court since one cannot testify for the other. This would also apply if the single officer not only monitored the radar, but was in pursuit at the same time. If he does not attend the trial or show up you may move to dismiss. You usually won't have to make a motion if a primary officer is missing. The prosecution will generally drop the case because he knows he has no case without the officer present.

**The layered defense.**

The strategy for beating a speeding ticket basically follows a layered defense. In a layered defense you will want one of the following to occur. The officer or officers do not appear. Your right to a speedy trial was denied, or you employed various motions to dismiss after the prosecution rested their case. After these strategies have been exhausted, it time to move to the defense presentation.

The following will serve as an example of how to introduce evidence. Let's say that we are going to utilize the introduction of a diagram of the scene of the crime. The clerk of the court will mark the document with an indicator. Usually exhibit A, B, C etc. It will then be shown to the prosecution so that they have the opportunity to object to the presentation of the materials. You will have to identify the document as a diagram of the intersection of X & Y streets. At this point proceed to explain how this diagram will relate to your case. After you have done this, you must move that Exhibit A be introduced as evidence; otherwise, that document or any other document does not automatically become evidence. Once you have introduced all of your evidence, you have a decision to make. Are you going to testify on your own behalf or not. You do not have to testify and you are under no obligation to do so. If you do not testify, you deny the prosecution their right to interrogate you under oath. You also have to consider what you're going to testify to. If you know you were going 62 miles an hour in a 55 mph zone you certainly cannot testify that you were doing 55 mph in that zone because you would be committing perjury, and that's another crime you don't want to be involved with. Regardless of what the crime is, you've admitted your guilt and you're now subject to another fine. Your only salvation when you take the stand in your own defense is that your testimony and your witness will outweigh the prosecutions case and cause them to lose. After you have testified and your evidence has been presented, if you elect to take the stand, you are ready to rest your case. Make sure that the exhibits that you wanted to be brought out into the trial as evidence are taken into account by the court. Once all those items are introduced, you can rest your case.



Bring up their mistakes because they have to prove that their case is correct. Stay strong in your presentation because the prosecution will get one more final word after

you are done. Try to be brief in your presentation. If you take far too long, the judge and the jury will stop paying attention to you. State your case, sit down and wait for the verdict. If you find at the end of your trial, that you are found guilty anyway, it's time to begin your appeal. First of all, an appeal is a bit more complicated than a self represented client defending themselves in court. Hire an attorney. An attorney is going to want one thing out of you, and that's money. You're going to have to give him money up front, he's going to represent you during your case and when the trial is over, win or lose you're going to have to pay more money. Court transcript will be necessary for the lawyer to go over to review all the facts of the case. When you do go in for your appeal make sure that there is a court reporter present in order to take a transcript of your trial. If there's none there, request one from the judge. He will provide a court reporter for you. If he does not, you already have your grounds for an appeal.

## **RADAR UNITS**

Today most radar units are extremely accurate. There are some conditions that must be met however, and the conditions are as follows:

The road must be flat and straight. There has to be good visibility, there needs to be a minimum of traffic and the officer has to be properly trained to interpret false signals generated by the equipment. It's very rare to find these four conditions existing at the same time. There are a lot of errors that can happen in routine traffic radar operations.

### **How the system fails**

The national Bureau of Standards tested the six radar units most often used by police departments. All of them produced signals that were false from police radios or CD units. All of the units produced panning errors, when used either out or in of the police cars. There were shadowing errors that appeared on all the units when the police cars speed was added to the targeted vehicles speed. 24 models were tested by the International Association of Chief's of Police for five different manufacturers. Those results were even worse than that conducted by the National Bureau of Standards. In spite of the errors found, none of these units were dropped from use. Some of these units are still probably in operation around the country today. Radar errors can be a combination of many factors but are all linked to one of the following 13 types of errors found.

1. Panning - This happens when the hand held unit is swept across the dashboard of the car or the control unit mounted to the dash of the car.
2. Mechanical interference - the a/c or heating fan in the police car, alternator, ignition noises, rotating signs near the roadway, anything mechanical that is operating in the vicinity of the roadway can throw off the readings.
3. Shadowing - all moving radar units have this problem since the targeted speed is calculated by subtracting the speed of the police car from the closing speed of the target.
4. Batching - this error is caused when the police car is either slowing down or accelerating when the radar unit is still calculating the speed of the targeted vehicle.
5. Radio or Microwave interference - any outside source of a frequency transmission such as a CB radio, Ham or police radio, radar from a local airport, cell phones, power lines, neon or mercury vapor lights, power sub stations, etc., any one of these interference's can

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throw off the calculations of the radar unit.

6. Auto lock on wrong target - The National Highway Traffic Safety Administration suggest that you disable the auto lock on units that have this function and the newer units no longer have this capability.

7. No tracking history - this recommendation is most often ignored. It's one that is stressed in the operational manual and it's impossible to avoid if you are using the unit in the "instant on" mode. The errors occurs when there are multiple targets in the path of the radar beam and the police officer has not observed the average speed reading nor has he checked for any external interference.

8. Harmonic Error from Phase Lock Loop - This problem is common with moving radar units when the police car is accelerating and the target vehicle is moving at a slow speed, typically under 20 mph and an error can occur in the reading.

9. Terrain error - One common factor in radar units is that they always read in a straight line. They cannot read around a turn or the other side of a hill. In this case, the radar unit may actually be reading another vehicle farther up the road rather than the target vehicle that is going to be issued a citation.

10. Look past error - in this case the radar unit finds a larger vehicle between the patrol car and the targeted vehicle and locks on that one and gives an entirely different reading for an entirely different vehicle.

11. Multiple bounce error - These occur usually when there is an overpass in the vicinity of the chase and the radar beam is reflected off of multiple targets at the same time. The vehicle in question, an overpass, a sign, etc. will result in an improper reading.

12. Reflection error - If the antenna part of a radar unit is hung on the outside of the police officer's car , the beam can actually hit a side window or part of the window and a false reading results which will throw off the actual reading for the targeted vehicle.

13. Arm Swing Error - When the officer swings the unit up to point at the targeted vehicle, the speed of his arm is added to the speed of the vehicle and throws off the reading generated by the vehicle.

In addition to these errors listed above, there are several ways that police officers can actually cheat on the reading. This has come about because some smaller communities have found that traffic tickets are an extremely effective way to raise money for their budget. These intentional errors may include the following:

1. Target one vehicle that is speeding and give out many speeding tickets to other people.

2. Whistle into the CB on the patrol car which will give out a high frequency pitch and will alter the speed that shows up on the radar unit.

3. Aim the unit at the ground and swing the unit up into the air.

4. Clock an airplane that's flying very low.

5. Set the car mounted unit to calibrate and the unit will register whatever the patrol car vehicle's speed is at the time.



## TYPICAL CROSS EXAMINATION QUESTIONS

In the Cross Examination section it was pointed out that the most important factor to a successful cross exam is to concentrate on as many of the small details as possible. This section will take the questioning for the radar portion of a cross examination and take it apart so that it will be easier to follow. All of the questions may not apply to your particular case. Just use these questions as an outline for your own particular direction and not as a script for use in the courtroom. You will also need to analyze the judge's feelings as far as your line of questioning. Since you are defending yourself, you will not likely be granted as much freedom during the cross examination. Maintain a steady and rational pace and you should keep the judge satisfied.

The following line of questioning has been derived from the "Attorney's Deposition Guide" which is available from the National Motorists Association.

**Introductory Questions:** These questions are formulated to establish the relevant facts in the case and to create a friendly atmosphere with the ticketing officer.

1. What specific type of radar were you using when the ticket was issued?

*Do not accept an answer like "Doppler Radar" or "Moving Radar"*

2. Would you please tell the facts of the ticket as you remember them?

*Remember your grounds for objections concerning the officer reading directly from the citation.*

3. Was your audio Doppler working at the time the citation was issued?

*If the officer claims he doesn't know what audio Doppler is, remember this response when you get to the question section on audio Doppler.*

4. What speed was your audio warning set on?

*If the officer claims he doesn't know what audio warning is, remember this response when you get to the question section on audio alarm.*

5. Was your automatic speed lock working?

*A crucial response. If yes, you have started building your case for operational error. If no, don't worry, there's a lot more opportunities.*

6. Were you using a manual on-off switch or other radar detector defeating mechanism in association with your radar unit?

7. Were you stationary or moving when your radar unit's alert went off?

8. Was the target vehicle coming towards you or moving away from you?

9. Did you see the target vehicle preceding at the time your radar unit's audio alarm went off?

*Another crucial answer. You have essentially asked the officer if he took a traffic history before issuing the citation. If he indicates that he did see you, ask the next three questions. If he did not see you, stop your preliminary questions here.*

10. Were you able to determine the target vehicle's speed from a visual observation?

11. What was the apparent speed of the target vehicle?

12. About how many seconds elapsed between the time you first observed the target vehicle and the time your audio alarm went off?

Establish the officer's qualifications: These questions are directed towards the officer's training on the operation of the radar unit. Keep in mind the national standard of

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24 hours of classroom time followed by 16 hours of field training.

1. How many years have you been a police officer?

*This is just a set up for questions to follow.*

2. How long have you operated radar units?

*Again, a set up question.*

3. Have you received formal instruction and training in the operation of radar?

*If he says no, contain your smile with your best poker face!*

4. Under what circumstances did you receive your training?

*This will likely have a variety of responses. A home run for you would be training received from his own department by another officer.*

5. How many hours of classroom instruction did you receive?

*A crucial response. No officer generally has 14 hours of classroom. Remember Kentucky v. Honeycutt is going to be used by the prosecution to justify the officer having less than the 24 hours. If the officer has less than three or four hours he is likely not qualified. This will become painfully obvious to the officer as you continue your line of questioning.*

6. How long ago did you receive this training?

*If it was several years ago it could indicate that he is not current in the proper operation of the specific unit. It could also indicate that he was trained on a different unit than was used for the citation.*

7. How many officers took this training with you?

*If it was an extremely large class, try to downgrade his level of training by asking additional questions such as: Was the training a lecture? Were you seated auditorium style? Where were you seated? Did you have any other classes that day? Were questions allowed? Did you ask any questions? If the officer can't recall the particulars of his radar training class, ask how can he remember the subject taught?*

8. Who taught this classroom portion of the radar course?

*If it was another officer, question that officer's training credentials and ask for the trainer's certification. If it was the manufacturer, you have a potentially biased source of training.*



9. Since your initial training, have you had any additional radar course work?

*He likely has not. If he has, find out the circumstances just the same as you questioned for the initial classroom training.*

10. How many hours of one-on-one field training with a professional instructor have you had in the operation of radar units?

*If he rode along with another officer, again ask for that officer's training credentials. If it was a factory representative, it was likely for thirty minutes or less with multiple officers in the car at the time. Keep pressing for an accurate answer.*

11. Do you believe yourself to be a competent radar operator?

*What else can he say except yes?*

12. Do you hold a certification in the use of radar?

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*Not likely but doesn't matter either way.*

13. When was your initial training in the use of the (fill in the actual unit used)?  
*If he hasn't received specific training in the actual unit, remember your need for a poker face.*

14. Did your training include the use of other radar units?  
*The goal is to subdivide his training and show that he has had little or no training in the specific radar used in our case.*

Establish the officer's trust in the radar unit: This is a faith check for the officer. He likely isn't aware that you know some of the downfalls of the particular unit involved in your case.

1. Do you believe the (fill in actual unit used) to be a good radar unit?

*What do you think the answer will be?*

2. Have you ever encountered any problems with the unit?

*Not likely, but if so, get the specifics.*

3. Are you permanently assigned to one specific radar unit?

*Again, not likely since most departments move units around.*

4. Do you believe that there are individual differences among radar units of the same model? Will one unit have an idiosyncrasy that another might not have?

*Likely answer is they all work alike. If he has noticed differences, get the specifics.*

5. Do you believe the (actual unit used) gives deceptive or false readings?

*This is a crucial question. If he says no, you can likely catch him with the manufacturer's documentation (remember your subpoena). He will likely reply that he has never seen any false readings. If so, skip the next question.*

6. About what percent of the time does your radar unit give these false readings?

*Make a note of the percentage.*

7. Do you believe that you can always tell when the unit is giving a false reading?

*He will likely say that he can always tell, which sets up your upcoming reasonable doubt argument later in your presentation.*

8. Is there a special number or symbol that appears on the readout to indicate a false reading?

*Of course not.*

9. Does the unit give some visual indication that the reading is questionable?

*No it doesn't.*

10. How, then, can you tell that the reading you are getting is false?

*He will likely say that there is no target in sight or the target is clearly not speeding. If he says that false readings only occur when there is no target present, then that is essentially saying that the unit never gives false readings. If he says that he can always tell that the target vehicle isn't doing the speed indicated, finish this section with the remaining series of questions.*

11. Since there are no special indications of a false reading, does that mean that all 82 mph readings aren't false?

*Of course not.*

12. So the false reading could be 20 mph or 70 mph?

*It certainly can be. If he says anything other than yes he is either trying to evade the questions or technologically incompetent.*

13. The radar could give a reading of say 70 mph, but you could clearly see, for

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example, that the target vehicle was only going 30 mph?

*He should agree with this question.*

14. What if the speed limit is 55 mph, and the same 70 mph false reading shows up. Is that possible?

*He should say that this could happen. You should use the speed limit of your particular case in all questions.*

15. Presuming the car approaching you was going 55 mph, could you recognize that the radar was malfunctioning?

*If he says yes, press on with the remaining questions. If he says no then end this section with this question.*

16. If an approaching car is traveling at 55 mph and the radar gives a false reading of 56, could you recognize that?

*Not on his best day.*

17. If an approaching car is traveling at 55 mph and the radar gives a false reading of 57, could you recognize that?

*Keep going until he commits to a specific speed he could recognize or until it becomes obvious that he actually can't recognize the actual speed. If he commits to a speed within the range of your citation, you have established reasonable doubt.*

Audio Doppler, audio alarm and automatic speed lock: These are special features that most radar units incorporate to make the officer's job a little easier. Audio Doppler is on every radar unit except the Speedgun Series. If audio Doppler is used, it will aid the officer in confirming that the target vehicle is speeding. The common problem is that the audio Doppler can be turned down or completely off, thereby contributing zero to the unit's reliability. The audio alarm is a preset speed that the radar unit will sound the alarm to let the officer know he has a fish on his line. The only way to disable the alarm is to dial in a very high setting such as 99 mph. The automatic speed lock is the worst feature of any radar unit. Once the unit reads a specific speed the unit then locks that speed in on the display. The officer then has no way of knowing if the reading is false or a momentary reading. This section should establish the officer's normal operating methods.

1. Does your radar unit have an audio Doppler? That is, a continuous audio signal tone that converts the radar unit's Doppler shift into an audible tone?

*This answer should be yes unless the radar unit is a Speedgun. If it is a Speedgun, skip to question 13.*

2. Does the audio Doppler have a volume control?

*It does.*

3. Do you ever use your audio Doppler?

*If no, ask the question one more time and skip to question 13. If he says yes, press on.*

4. About what percent of the time do you use the audio Doppler?

*Make a note and subtract from 100 % for question 10.*

5. When you operate your radar unit with the audio Doppler on, do you operate at full volume?

*Unless he can't hear at all, he should say no.*

6. At what volume do you normally operate the audio Doppler?

*This is important if it is a very low setting.*

7. Do you ever turn it off?

*Unless he answered question 4 with none, he will likely say yes.*



8. Why do you turn it off?

*It is extremely annoying; any other answer is a cover up.*

9. Does the audio Doppler ever interfere with your use of the police radio or conversation with other officers?

*Of course it does.*

10. So you operate your radar unit with the audio Doppler turned off about (fill in the number from question 4) percent of the time.

11. During the remaining time, how often do you operate the radar unit with the volume on soft?

*Note this percent amount.*

12. Do you consider the audio Doppler a valuable tool to prevent operator errors?

*This is important if he replies "no" and it ends up that he didn't use it during your citation.*

13. Is your radar unit equipped with a dial which will allow you to select a speed above which an audio alarm will sound if a violation speed is detected?

*All radar units have this feature.*

14. Let's refer to that feature as an audio alarm. Do you commonly use this feature of the radar unit?

*He has to unless he sets it so high as to never work.*

15. About what percent of the time do you use the audio alarm?

*If he doesn't say 100%, then ask him how he disengages the alarm.*

16. If the speed limit is 55 mph, what speed do you normally dial in as the pre-set violation speed?

*Note the speed, but this answer isn't crucial.*

17. Do you find the audio alarm to be beneficial?

*He will likely say that it is sometimes useful.*

18. If a violation speed causes the alarm to sound, you only need to flip a switch to lock in that speed on the radar unit?

*That's how the unit operates.*

19. Does the radar unit also have a mode which will allow the unit to automatically lock in the violation speed?

*Yes, it does.*

20. Do you ever use the automatic speed lock function?

*If he says "no": ask the question again and emphasize the word "ever" while giving the officer a skeptical look. If he still says no, end this question section here. If he says yes, press on.*

21. About what percent of the time do you use the automatic speed lock function?

*Note the amount.*

22. Do you find the automatic speed lock convenient?

*Of course it is.*

23. Do you use the automatic speed lock for any other reasons?

*This should be interesting.*

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24. Was the use of the automatic speed lock included in your training?

*This answer doesn't really matter.*

Determining if the officer uses a visual backup: The typical officer has a standard pattern of testimony. This pattern normally indicates that the officer observed the defendant's vehicle doing approximately X mph and he then used the radar unit as a backup to his visual estimation of the speed. This is pure fantasy since the maximum distance a highly trained officer can make a visual identification from is approximately 500 feet. The radar unit can make the same identification for up to 5,000 feet. As a result, the audio alarm will sound before the officer can make the visual identification. This section is designed to verify this fact and try to get the officer to make a statement that will come back to haunt him later in your presentation.

1. Are you familiar with the term "traffic history?" I want to verify that this term refers to the continuous observation of the traffic by an officer.

2. With regard to speeding tickets, it is normal for an officer to observe the traffic patterns for several seconds - usually three to five - before he sees what he believes to be a speeding violation. In other words, three to five seconds before the radar unit sounds the audio alarm. Do you agree with this assessment?

*He will have to in order to keep up the fantasy of the radar for backup.*

3. With this definition in mind, have you EVER taken a traffic history prior to issuing a speeding citation?

*He should say yes. If he says no, refer to the answer to question 5.*

4. What percentage of the time would you say that you take a traffic history?

*This number will likely be very high.*

5. Do you feel that it is important to take a traffic history in speeding cases?

*He will likely say yes. If he says no, then you have a valid argument that he was relying solely on the radar unit.*

6. At what approximate distance can you determine the exact speed of a target vehicle?

*Most officers will say about 500 feet. If he doesn't give you a real answer, set up a specific scenario, such as, in the median of a level and straight, un-crowded highway. If he still doesn't answer suggest the 500 foot figure. If he doesn't accept 500 feet, adjust the number until he agrees to a specific distance.*

7. When you take a traffic history and make the visual estimate of speed, do you do so before the radar unit sounds the audio alarm?

*This is a very crucial question. If he says yes, he's had it since the radar unit has a range of at least 1000 feet. Proceed with questions 8 and 9. If he says no, then he hasn't taken a traffic history. Finish all the rest of the questions in this section.*

8. What is the approximate range of your radar unit?

*He will likely say he doesn't know. Toss him a high figure in the range of 3,000 to 5,000 feet. If he still doesn't know ask if he would be surprised to know that the radar unit has a range of at least 3,000 feet. If he says yes he would be surprised, you just caught him in a crucial technical question.*

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9. Despite knowing this range you still contend that the radar unit does not sound the audio alarm before you are able to identify the speed of a vehicle?

*The real escape for him is the answer "no". He won't say that, he will most likely say sometimes it does and sometimes it doesn't.*

10. If the radar unit sounds the audio alarm before you have determined that the target vehicle is speeding, how can you say that you have taken a traffic history?

*He will have to say that the alarm alerts him to the presence of a potential speeder.*

11. Do you look at the radar unit to see what the reading is?

*He will likely say that he looks. If he denies looking he has to admit that he knows the vehicle is going at least as fast as the audio alarm setting.*

12. Does the fact that the audio alarm has sounded influence your judgment as you make your visual estimate of speed? In other words, are you more likely to agree that a target vehicle is traveling a certain speed since the audio alarm has already acknowledged this fact?

*He should agree. If he doesn't ask him why he doesn't just run the audio alarm setting up so high that it will never go off?*

Determining knowledge of beam width and range: Remember that Kentucky v Honeycutt will be used to show that the officer does not need to be an expert in the field of radar. You are trying to demonstrate to the court that the officer lacks certain basic knowledge that he should have.

1. Do you know what the normal range of your radar unit is?

*Get him to give you a figure of some sort. Then give the manufacturer's data if you have it. If not it will likely be at least 3,000 feet.*

2. At a distance of 1,000 feet, how wide is the radar beam?

*Again, try to pin him down to a figure of some kind. Figure a traffic lane to be 12 feet. In reality, a 12 degree beam will measure 287 feet at a distance of 1,000 feet while a 24 degree beam will measure 574 feet.*

3. How far away from the unit will the beam travel before it covers one lane?

*Again, get a figure. The true amount is about 50 feet but most officers will guess around 500 feet.*

4. With what degree of confidence can you aim your antenna at a specific lane of traffic at a distance of 500 feet?

*The answer is no confidence at all.*

5. In the stationary mode, you can operate to record traffic going away from you or coming towards you, is that correct?

*This is correct.*

6. Can the radar unit distinguish between traffic directions?

*It will pick up traffic in either direction.*

7. In the moving mode, can the radar unit pick up traffic in both directions?

*The Speedgun 8 unit can, most all others can only pick up traffic coming towards the radar unit.*

8. What types of things will stop the radar beam? For example, will the radar read through bushes and tall grass?

*Radar can pass through light brush*

9. Can you get the speed of a vehicle around a curve or over a hill?

*Not even possible. Remember, the beam travels in a straight line.*

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10. Will the beam bounce off a metal building or sign?

*Certainly.*

11. If the beam bounces off something could it pick up the speed of another vehicle at an angle to the radar unit?

*Absolutely.*

12. Can a high-voltage power line interfere with the radar beam?

*Again, absolutely.*

13. What about neon signs or street lights, can they cause interference?

*Notice a pattern here?*

Final questions: These are designed to apply the specifics of your case against the answers the officer gave for the typical operation of the unit.

1. Could you again recall the facts of this particular citation?
2. Was your audio Doppler on at the time and if so how loud?
3. What speed was the audio alarm set for? Did you make any adjustments to it during your shift?
4. Was the radar unit's automatic speed lock engaged?
5. Were you using a manual on-off switch?
6. Were you in a stationary or moving mode at the time?
7. Was the defendant approaching you or traveling away from you?
8. Did you see any other traffic around the defendant's vehicle? If so, what types and where were they located?
9. Was there any traffic moving in the same direction as you?
10. Did you see the defendant before your audio alarm sounded?
11. Did you determine an estimated speed of the defendant's vehicle based on your visual identification? If so what was your point of reference?
12. How many seconds passed between the time you first saw the defendant and the time your audio alarm sounded?
13. Were there any power lines in the area? Any cars or trucks with CB radio antennas? Were you using your police radio at the time? Was your police car's engine running at the time?
14. As for the calibration of the radar unit, at what times before and after you wrote the defendant's citation did you use the radar unit's internal calibration function?
15. At what times before and after you wrote the defendant's citation did you use an external tuning fork for calibration?
16. In your opinion, what is the difference between the internal calibration and the tuning fork calibration methods?
17. Do you feel that one calibration method is more accurate than the other?

Questions 14 through 17 are critical to establish the calibration procedure followed by the officer. Remember that case law has shown that the officer should calibrate, with tuning forks, prior to and immediately after writing a citation.



## LASER

Laser and radar serve the same purpose but they are really different entities, which are achieving a common goal. Radar uses a radio beam and measures at the speed of light while laser uses a light beam and takes measurement based on the speed of light. A typical radar beam is between 15 and 18 degrees wide. Laser is considerably more precise with a beam width of one sixth of one degree. At a distance of 1 mile a radar beam can expand to over 500 feet wide. A laser beam will only expand to 19 feet wide. At a more common distance of 1000 feet radar will expand to over 100 feet wide, while laser expands to only 3 feet wide. Despite its accuracy, laser is not unbeatable. It is affected by weather conditions. Fog, clouds and rain can significantly reduce the operating range. You may not use it through a windshield, and it must be used as a stationary set up. Calibration and maintenance may only be done by a factory trained specialist at an authorized repair facility. Laser beams usually target a vehicles license plate. In order to work properly, light must reflect off the surface of the vehicle and the license plate is designed to be highly reflective for that purpose. If you have a low vehicle with little or no chrome, it is difficult for a laser to detect you. In order to avoid a laser, you should coat your license plate with a high gloss clear coat so as to deflect the beam.

Before using a laser beam, it should be calibrated by using all three of the following methods: The self test button should be used and the resultant should be 8.8.8.8. Pointing the unit at a stationery target should result in a reading of 0 mph. The audio and sight tones should be tested by sweeping across a telephone pole.

In this country, the most commonly used laser detector is the Marksman LTI 20.20. The manufacturer says that they will have a beam width of two feet at a distance of 1300 feet. The accuracy is claimed to be precise within 1 mph up to 60 mph and within 3 % for speeds over 60 mph. This unit does have some downfalls. The Marksman has an unusual distribution of beam intensity which gives you changes in the aiming point. The Marksman can actually detect another vehicle within five feet of the target vehicle. In order to prepare against a laser defense you have to know what the jurisdiction for laser cases is in the area that your citation was issued. There are only a few states that have given laser judicial notice, which basically is a legal ruling that establishes specific evidence as beyond dispute. Radar has judicial notice in every state. If there is no judicial notice entered in the state in which you are appealing your ticket, the prosecutor needs to have an expert witness testifying to the accuracy and reliability of the unit. If that witness is the manufacturer's representative you can have him disqualified since his company has a financial interest of that particular case, and he may be impartial. New Jersey Superior Court Judge Reginald Stanton stated in his June 13, 1996 ruling that he was not convinced of the accuracy of the LTI Marksman. He ruled that any readings taken with that unit would not be accepted as evidence in any pending or speeding ticket cases. If the state in which you are appealing your ticket has been awarded judicial notice you might want to review the New Jersey case when you prepare. The rest of the case is very similar in how you would handle a radar defense. Concentrate on the training of the officer, the self test methods and the calibrations of the unit, what the weather conditions were, and the amount of traffic that was traveling at the time the citation was issued. Your best bet

still is that the officer does not show up in court. You should however, be properly prepared in case he does.

## **PHOTO RADAR**

Photo radar is basically a computer system hooked up to a radar speed gun, with a camera attached. What happens is when the radar gun detects a certain speed the computer triggers the camera to take a picture of the front and rear of the vehicle aiming at the license plate and the driver. Afterwards, the citation is written up and mailed to the driver at their registered address. It's all very neat and simple for the law enforcement agency. However, it is extremely easy to beat this type of ticket in court. Your easiest defense is to simply throw the ticket away. If it does not come with a return receipt that requires a signature, there is no proof that you actually got the ticket and they cannot prosecute you on that. What the legal system wants you to do is just send in the fine and not ask any questions. This can be a big money maker for some communities.

One other form of defense to utilize on your behalf is the fact that when you are accused in court you must be faced by your accuser. Obviously the computer cannot appear in court as a defense method for the prosecution. Also, you do not have to identify yourself as the driver of the vehicle because it would violate your Fifth Amendment rights against self incrimination.

There are two ways to beat a photo radar unit, and basically make the photos useless in a court of law. First, remove your front license plate. At the worst you could get a minor repair ticket, which would be very easily corrected. Or you could put a clear coat of paint over the license plate. The coat allows you to read the license plate with the naked eye, but causes an extremely high glare on the camera lens and therefore the numbers underneath the glare are indistinguishable. Potential sources of defeating the ticket are usually not needed simply because statistics show that most of the radar photo pictures are not legible because either the license number cannot be clearly read, or the make and/or model cannot easily be determined, and the driver is obstructed and therefore cannot be identified. The photo radar speeding ticket is one of the easiest to defend against; most cities and states have abandoned the system all together.

## **VISUAL ESTIMATE, AIRPLANE RADAR AND VASCAR**

VASCAR is an acronym for Visual Average Speed Computer & Recorder. This is simply a small computer that will compute the vehicles speed based on the time it takes to travel a specific distance. Basically its distance divided by time equals speed. It's usually hooked into the patrol car's speedometer. One of the more devious applications of VASCAR is when an officer passes you on the highway at a significantly higher rate than you are traveling, it gives you a false sense of security. A few miles down the road, you will find the police officer waiting for you, since he knows the exact distance he has traveled, and the exact distance that you have traveled, he can compute your speed and issue you a speeding ticket. This is considered a speed trap in Washington and California and as such is illegal in those states.



Plane speed detection - This is very similar to VASCAR as the officer in the airplane measures the amount of time it takes a vehicle to cover a certain distance. The officer then computes the speed of the vehicle and radios it to a patrol officer on the ground who stops the car and writes a ticket. Having marks on the ground or highway are considered illegal in California as they are considered a speed trap. There are a few disadvantages to airplane speed detection which can work to your benefit in court. Usually the officer uses the airplane to pace the vehicle on the ground and get their speed. You must explain to the courts that the airplane speeds are measured in air speed which is relative to the surrounding air. If the airplane is traveling into the wind, the speed is slower than if the aircraft was producing the same amount of power with a tailwind. Also, it may be difficult to determine whether it was actually your vehicle that was spotted from the air, since many cars look alike from such a great distance. This could be the basis for a sound defense in court. A most advantageous problem is that this system relies on two different officers. Consequently, both officers need to be in court for a conviction. It's difficult enough to get one officer there at a specific time and the odds of bringing both into court at the same time are slim. If both officers do happen to attend your trial, request of the court that one officer be removed from the courtroom so that each may be interrogated individually, and possibly contradict each other which would give you the basis for a defense of reasonable doubt.

Visual Estimate - Basically this is another term for guessing. The officer is relying on his training as a police officer in order to convict you. It can be extremely easy to defeat this type of ticket. It is very rare that you are going to encounter this type of citation because the officer and the court know they have only a minimal chance of defeating you if you challenge his ability to visually estimate speed. If you do have to counter his abilities to visually estimate speed, take any object and hold it straight out from you at arms length from your shoulder. Drop the object from that point, and ask the officer to tell you how fast the object was traveling before it hit the ground. To make it harder, use two different items, a heavy one and a light one and repeat the test. If you receive two different answers, you know he is guessing because all items will fall at the same rate of 32 feet per second squared, regardless of their weight. Make sure you have that data available to you so that you will remember it. If you measure the distance from the floor to your outstretched arm, the following table will give you a listing of the actual mph that particular object was traveling just prior to it hitting the ground.

If the distance traveled is: The speed would be:

3.5 feet 10.2 mph  
4.0 feet 10.9 mph  
4.5 feet 11.6 mph  
5.0 feet 12.2 mph  
5.5 feet 12.8 mph  
6.0 feet 13.4 mph

Let us presume that you received a ticket for going 65 mph in a 55 mph zone. If you

drop the item from a height of five feet, and the officer estimates that the item was traveling at a speed of 15 mph, you can see from the chart above that he was off by 2.8 mph. Before you enter into court, figure out the ratio factor between the speed that you were alleged to have traveled, which would be 65 mph, and divide that by the actual speed of the item that you had dropped from 5 feet which is 12.2 mph. This gives you a ratio factor of 5.3. Since the officer estimated that the object dropped was traveling at 15 mph he was off by 2.8 mph. Multiply 2.8 times the 5.3 ratio factor and you will find that the officer was off by as much as 14.9 mph in his visual estimate. At this point, the officer will know he is defeated and the judge will just wait for your motion to dismiss.

## **PACING WITH ANOTHER VEHICLE**

Pacing simply means that the officer followed you with another vehicle, attempting to maintain a constant distance and referring to his speedometer to gauge your speed. In this case, the calibration of the police car is critical to your defense. The defense strategies that we outlined earlier may not all apply since the officer does not have to be specifically trained in reading a speedometer, and it is unlikely he was following the wrong vehicle. Your best bet is that the officer does not appear in court and that the prosecution fails to prove all the points in the specific section of the vehicle code. Review the cross examination sections that we have discussed earlier and also the radar ticket cross examinations. These questions should get your thinking on the right track in order to prepare the questions for the motor pacing case. Some of the more important items for you to remember are the following:

Make sure the officer is giving recollection of the incident and not reading directly from the back of the citation.

Make sure that the officer testifies that the unit was calibrated at a certain date, and that the calibration certificate is present in court. Also, the qualifications of the technician that calibrated the unit should be available. Review the officer's testimony carefully and also the prosecutor's line of questioning. If they leave out any of the points covered in the vehicle code, you have grounds for motion to dismiss. Don't expect that this will automatically happen, because the judge may allow the prosecution to reopen their case if they do omit something. Ask the officer a series of questions concerning the other traffic on the road. Ask him if during the time he was pacing you, he passed any other vehicles. If not, that would indicate that you were traveling at the same speed as the other vehicles at that time of day on that section of road.

Ask the officer as to the exact distances covered from the time the officer began to pace the speed of your vehicle until you were stopped. You would also want to know the estimated distance between the two vehicles at all times. Review the math and see if the officer actually had to speed up in order to close the distance between your vehicles before he pulled you over. It's possible he could have used the accelerated speed and used that speed as the basis for the ticket.



## BONUS - OTHER TYPES OF TICKETS

### **Parking Tickets:**

If you get a parking ticket, pay it. If you have an exorbitant number of tickets you may consider fighting them, but you may be better off just paying them. Also, consider yourself lucky that your car was not towed.

### **Repair Ticket:**

If you get a ticket for a minor repair such as a rear tail light lens that is broken, a head light that is out, fix the problem; it will take care of the ticket. The easiest way to avoid getting a ticket is to blend in with the crowd. Keep your car in good repair. It will pay off in the long run.

### **U turns:**

You should prepare before you arrive in court in order to defend this type of situation. Research the vehicle code and look for the particular section of code that gives all the details that must be proved against you. The prosecution and the ticketing officer have the burden of proof in order to prove you guilty. Most vehicle codes will specify when a U - turn is illegal. Usually it is within a residential area and within so many feet of an intersection. Check with your local zoning office and see what type of district you are in and then return to the scene, measure off the distance from the corner where you made the U - Turn and refer to different land marks on the side of the road. Your best hope is for an officer that does not show up in court. Should he show up, you can give the prosecution the tiniest details and hope that these smaller known facts will cause the officer to slip up and contradict his testimony.

### **Red Lights:**

These types of tickets are difficult to beat simply because it is your word against the officer's as to the position of your vehicle at the time that the light actually turned red. The most important thing that you will have to prove is the position of your vehicle at the point that the light turned red. You have to be able to prove that you were not in the intersection at that time. The best location for the officer in this type of case, as far as you are concerned, is behind you or at least parallel to you. That would make it difficult for the officer to assess the exact position your car was in at the point that the light turned red. If the officer was approaching from a right angle, it may be difficult for him to give an accurate view of your vehicle and you may even state that he was not able to see your vehicle and the traffic light at the same time. There may also be some obstructions that may prevent him from having a clear view of the intersection such as hedges, fences or buildings that may be in the way. This could bring up the possibility of a theory of blocked visibility which may assist you in defeating the ticket.

### **Stop Signs:**

Stop signs are very similar to red lights in the fact that you have to defend them in about the same way. If the officer is directly behind you, it's difficult to assess the exact position of your vehicle in relation to the stop sign. When an officer is checking to see if your car actually stopped at a sign, the nose of your car will actually elevate slightly

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when it comes to a complete rest. The best place for an officer to observe this is from a 90 degree angle to your vehicle. If it is behind your car, he obviously can't see the hood of your car and make the determination. Basically any position that's perpendicular to your vehicle is impossible to win, since the officer has a complete view of your vehicle.

## **Appendix A Public Records Request Form**

In accordance with State Statute / Code \_\_\_\_\_, I am requesting access to \_\_\_\_\_ copy / copies of the following records:

Officer \_\_\_\_\_'s training records that pertain to his / her instruction / certification and continuing education of traffic speed enforcement and to the use of the speed detection device that was used to ascertain the speed of the vehicle described in citation # \_\_\_\_\_.

2. Officer \_\_\_\_\_'s daily log for the day of \_\_\_\_\_.

3. Officer \_\_\_\_\_'s radar log for the day of \_\_\_\_\_.

4. The name, model and serial number of the speed measuring device used to ascertain the speed of the vehicle described in citation # \_\_\_\_\_ and the serial numbers of the tuning forks used to test the speed measuring device.

5. Copies of maintenance and / or certification records, for the last twelve months, of the speed measuring device that was used to ascertain the speed of the vehicle described in citation # \_\_\_\_\_.

6. A copy of the FCC (Federal Communications Commission) license that authorized the issuing police agency and operator of the speed measuring device to lawfully operate the device on a specific frequency and / or range of frequencies.

7. A copy of both sides of the officer's copy of citation # \_\_\_\_\_.

8. Other record(s) needed:

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The records that I am requesting DO / DO NOT need to be certified or their authenticity verified. If there is an additional charge for this, I understand that I must pay for that charge.

I am requesting that the requested records be mailed to me at the following address:

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I will pick up the records upon notification that they are available.

Signed \_\_\_\_\_

Date \_\_\_\_\_



## Appendix B Notable Case Law for Radar Tickets

Listed below are ten significant case law examples which pertain to the use of radar in speed enforcement by police departments. The first two cases deal primarily with the reliability and accuracy of radar. The next six cases all deal with the various aspects of police officer training and field testing of the radar units. The last two cases specifically address the K-55 model radar gun by M.P.H. Industries, Inc. of Chanute, Kansas.

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 43 mph 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.



Commonwealth of Kentucky v. Honeycutt (1966). This case is a very common prosecution weapon against the 24 hours of classroom and 16 hours of field training requirement. In this case the court ruled that an officer should not be required to know the scientific principles of radar. The court also ruled that the officer only needs to know how to properly set up, test and read the radar unit. As such, a few hours of instruction should be enough to qualify an officer to operate the radar unit.

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State of Connecticut v. Tomanelli (1966). In the case, which is the same year as the Honeycutt 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.

State of Ohio v. Oberhaus (1983). The court sustained a Motion to Suppress the results of a K-55 moving radar unit. The court further ruled that the K-55 unit was only acceptable in the stationary mode.

## Appendix C United States Radar Speed Guns

Listed below are the major radar units, along with their manufacturers, encountered in the United States. These units account for approximately 90% of all units in use today. Remember that every unit is equipped with an audio alarm and all but the Speedgun series have audio Doppler.

Broderick Enforcement Electronics (B.E.E.)  
7155 Antigua Place  
Sarasota, FL 33581

BEE- 36 K-Band Moving  
Beam: 15 Degree Range: N/A

BEE- 36 X-Band Moving  
Beam: 18 Degrees Range: N / A

CMI, Incorporated  
P.O. Box 38586  
Denver, CO 80238

Speedgun 1 & 3 X-Band Stationary  
Beam: 16 Degrees Range: 1,500 Feet  
Note: Lacks audio Doppler

Speedgun 5 & 6 X - Band Stationary / Moving  
Beam: 16 Degrees Range: 1,500 Feet  
Note: Lacks audio Doppler

Speedgun 8 X - Band Stationary or Moving  
Beam: 18.6 Degrees Range: N / A  
Note: Lacks audio Doppler

Decatur Electronics, Inc.  
715 Bright Street  
Decatur, IL 62522

**iHostKing.com** As low as \$25.00 per year!!  
**Affordable Website Hosting without Hassles!**



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Rangemaster- 715 X-Band Stationary/ Moving  
Beam: 24 Degrees Range: 7,500 Feet  
Note: Longest range & widest beam on market

MVR-715 X-Band Moving  
Beam: 17.5 Range 2,500 Feet

MVR- 724 K-Band Moving  
Beam: 15 Degrees Range 2,500 Feet

RA-GUN KN - 1 K - Band Stationary  
Beam: 15 Degrees Range 2,500 Feet

Kustom Electronics, Inc.  
8320 Nieman Road  
Lenexa, KS 66214

MR - 7 & MR -9 X - Band Moving  
Beam: 12 Degrees Range: 1,800 Feet  
Note: Over 15,000 units in use

TR-6 X-Band Stationary  
Beam: 12 Degrees Range: 1,800 Feet

MR-9 X-Band Stationary  
Beam: 13.3 Degrees Range: N/A

KR - 10 & KR - 11 K - Band Moving  
Beam: 12 Degrees Range: 1,800 Feet  
Note: KR - 10 is stripped down version of \$3,600 KR-11

KR - 10 SP K-Band Stationary  
Beam: 15 Degrees Range: N/A

KR-11 K-Band Stationary  
Beam: 15 Degrees Range: 4,100 Feet

HR - 4 & HR - 8 K - Band Stationary  
Beam: 12 Degrees Range: 2,000  
Note: Similar to KR - 11 unit

HR- 12 K-Band Moving  
Beam: 12 Degrees Range: 2,000 Feet

Falcon K-Band Stationary  
Beam: 15 Degrees Range: 2,500 Feet

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Road Runner K - Band Stationary  
Beam: 15 Degrees Range: N/A  
Trooper K-Band Moving

Beam: 15 Degrees Range: N / A

H.A.W.K. X-Band Moving  
Beam: 12 Degrees Range: 1,500 Feet  
Note: Forward & Rear facing antenna

M.P.H. Industries, Inc.  
5 S. Highland  
Chanute, KS 66720

K-15 K-Band Stationary  
Beam: 15 Degrees Range: N/A

K-15&K-35 X-Band Stationary  
Beam: 15 Degrees Range: N/ A

K-35 K-Band Stationary  
Beam: 18 Degrees Range: N / A

K- 55 &K- 80 K-Band Moving  
Beam: 15 Degrees Range: N/A

K-55 X-Band Moving  
Beam: 20.4 Degrees Range: 5,200 Feet  
Note: Cheapest unit sold (\$375 in NJ in 1978)

S - 80 MC X - Band Moving  
Beam: 18 Degrees Range: N / A

## **Other Resources**

The following organizations and WEB locations are recommended for additional information concerning traffic tickets:

National Motorists Association  
402 W. 2nd Street  
Waunakee, WI 53597  
608-849-6000  
<http://www.motorists.com>



The NMA is an organization focused on drivers' rights and speeding tickets. For an annual fee of \$35.00, members receive extensive information, support and additional benefits. After you first dues renewal, NMA will pay one speeding ticket per year for a member who fights a speeding ticket in court and is found guilty. They also offer a variety of reading materials and legal services.

RADAR (Radio Association Defending Airwave Rights)  
4949 South 25 A  
Tipp City, OH 45371  
513-667-5472

RADAR is an organization who focuses more on issues involving the use of radar speed measuring devices. For an annual fee of \$29.00, members receive a variety of information concerning the use of radar. Unlike NMA, RADAR does not offer legal services or offer to pay convicted tickets. RADAR is an excellent resource for all information concerning the use of radar.

The Speedtrap Exchange  
<http://www.speedtrap.org/>

The Speedtrap Exchange is a state by state, and city by city listing of known speedtraps. Users are able to view listings by state, and by city, and are encourage to submit any new speedtraps not currently listed. There is no fee for this service. This site is sponsored by the National Motorist Association.

