PAY NO FINE

A User Guide to Successfully Fighting Traffic Tickets

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DISCLAIMER

The information contained in this User Guide has been derived from over 20 different industry sources. These sources include, but are not limited to, police officers, attorneys, experts in the fields of radar and laser speed detection along with other various references. Even though the methods contained herein have been effective in countless traffic ticket cases, this is NOT LEGAL ADVICE. PayNoFine assumes no liability with regard to the accuracy of the information or methods described.

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Introduction

Welcome to PAYNOFINE'S User Guide to Successfully Fighting Traffic Tickets. Since you are reading this, it can be presumed that you are one of the approximately 35 million people who received a traffic ticket this year. That actually breaks down to about 100,000 tickets a day! Our hope is that you will be one of the small and silent minority who successfully fight the system each year.

Government studies are fond of citing that 97% of all traffic tickets are successfully prosecuted. What this same research doesn't want you to know is that 95% of all these traffic tickets are not contested. Of the five percent that are actually contested, one half are dismissed. The remaining half usually enjoyed reduced fines or other plea bargain arrangements that were less than the original mail in fine amount. To understand the system you first have to examine the economics of the machine.

The most important part of the traffic ticket money making machine is to keep the fines at a generally tolerable level. The average speeding ticket cost is somewhere between $75 - $150. A quick calculation can show you that even a ten minute trial will eat the total fine in overall costs for courthouse time when you take into account the Judge, prosecutor, police office, court clerk, court reporter, etc. Therefore, it is imperative that the system make you feel like you have an impossible journey ahead of you. To put this economic formula in perspective, the City of Chicago reaps over $100 million annually from traffic ticket fines. Los Angeles amasses over $150 million and New York wins the race with over $350 million a year! These amounts do not even include the additional increases in auto insurance premiums that most speeders will enjoy for the next three years after their conviction.

There are two important facts to continually remember as you read through the methods and tactics presented in this guide:

1. Unless you are a total buffoon in court and get a contempt of court charge, your fine will be exactly what you would have mailed in originally. You will only be out your time invested. Remember, it's not just the fine but also the increased insurance premiums you're trying to save with your time investment.

2. A recent study by an attorney specializing in traffic tickets showed that 60% of his contested cases were won. Of that amount, over 40% were won by lack of prosecution - No Officer = Dismissed. An additional 25% were won through the inability to prove the charges.

As you can see, just by going to court and contesting your ticket, the odds swing in your favor. This Guide will help prepare you for your travel through the halls of justice. When you finish reading and absorbing the strategies and tactics in this book, you will know more about traffic tickets and the traffic court system than most police officers. That's because most police officers only focus on one small aspect of the process—writing the citation. You, however, will understand the *entire* process.

To ensure you get the most, this guide is actually comprised of three main Parts:

Part One - From Driveway to Court Day (Chapters 1 - 6)
Addresses everything from avoiding a ticket to the verdict

Part Two - Tools of the Trade (Chapters 7 -11)
Covers all aspects of the various types of speed detection systems

Part Three - Odds & Ends (Chapters 12 - Appendix C)
Miscellaneous items of interest including other types of traffic tickets

It is important to remember that traffic laws and codes differ from state to state and are constantly changing. You must do your homework to insure that you are current in all matters relevant to your particular situation. In addition, the information in this Guide is intended as basic strategies and tactics. Consider this Guide as your game plan, but you still need to get in there and pitch. This Guide is NOT LEGAL ADVICE. It is, however, the best thing you can get without paying major hourly fees to an attorney. Throughout the Guide we will use the generic pronoun "He" rather than He/She or some other politically correct phrasing. We hope no offense is intended to our female readers.

PART ONE - From Driveway to Court Day

Chapter 1
How to avoid a traffic ticket

This Chapter can be considered something along the lines of *preventative medicine* or starting with the basics. Unless you are one of an extremely small minority who actually slow down for more than two days after receiving a ticket, you need this Chapter to keep you out of trouble in the future. Think of your daily driving somewhat in the same context of a fighter pilot. And since maximum situational awareness is essential, the following tips should help to keep you out of harm's way:

Start with the proper equipment. A bright red high performance sports cars is extremely sexy, it also looks like it's going 90 while sitting parked at the curb. There are a wide variety of high performance cars that don't command so much attention. What ever the vehicle, you have to be equipped with electronic countermeasures. ECM for the highway consists of a good radar detector. More on this in Chapter 2.

Study the road ahead but keep an eye on "your six" as the fighter pilots are fond of saying. Terrain is crucial. Don't savor the moment and crest a hill doing 80 MPH. On-ramps are another favorite spot for police to hide. As you speed past they swoop out and sneak right up to you with a nice paced or radar verified ticket so stay alert!

Watch for a hiding police car in front of a slow moving semi-truck. The only reason a semi is doing the speed limit is because there is "trouble in the forest." If the police car is not immediately visible, he could actually be right in front of the truck waiting for some happy go lucky motorist to go zipping by the slow moving truck.

Be sure to avoid the left lane except to pass. This is the target lane for any police officer running radar in any location. You will notice that you very rarely, if ever see radar set up on the right side of the road. That's because the police know that the speeders are in the left lane. Use the left lane only when necessary, and then only as long as it takes to move over to the center or right.

In the same general concept as staying out of the left lane, don't bob & weave through traffic like some crazed skier on a wild downhill slalom run. Keep in mind that any officer finally stopping you after this performance will likely decide that you were driving recklessly as well as speeding. Double trouble. Pay attention to any car coming up fast behind you, especially at night. If you are cruising down the highway at a comfortable 75 or 80 mph and see headlights steadily gaining on you - SLOW DOWN NOW! This is either a police office about to write you a paced speeding ticket or some other speeder.

During your travels through the dark forest of the highway you will occasionally be passed by a speedy little rabbit. Feel free to accelerate and maintain about a 1/4 mile interval between you and this radar sniffer. Enjoy the small level of comfort in knowing that this rabbit will find any radar up the road before it gets to you; however, don't forget about remaining alert. You know, that area behind you where a police officer would just love to sneak up while you aren't keeping a vigilant mirror check.

Watch all cars parked on the shoulder regardless of make, model, color, etc. Any car on the side of the road should be cause for immediate reduction of speed. If it's not a police officer, it could also be another motorist in trouble, (use your own discretion) or a motorist about to pull back onto the highway.

As you can see, the underlying theme throughout all of these suggestions is situational *awareness*. Know your environment. Be one with the radar force that is lurking somewhere down the road. The only other safe option is the slow pace of the posted speed limit.

Chapter 2
Radar Detectors and Jammers

Radar Detectors

As mentioned in Chapter One, a radar detector is an essential piece of automotive equipment which will allow you to stay ahead of the radar-equipped traffic patrol officer. Before going any further, you need to know that radar detectors are illegal in Virginia and the District of Columbia. Anyone caught with a detector in the car that is accessible to the driver or passenger with available power is facing a fine of $300 in D.C. and between $25 to $100 in Virginia. In addition, the police will likely confiscate the detector as evidence until after the trial. Radar and laser detectors are also illegal nationwide for commercial vehicle drivers.

The most important thing to remember about a radar detector is that you are not invincible. You should also remember that a police officer will generally not give a warning to anyone having a radar detector. A small detail, having a detector is still the best possible equalizer on the road today.

The radar detector industry is constantly changing and improving so any specific model comparisons are usually out of date by the time they are printed. There are a few general rules of thumb to use when shopping for a detector:

1. Get the widest range of detection possible with no less than X, K and Ka.
2. Have a different light and sound for each different band.
3. Provide a good visual display and a volume control or mute button.
4. Look for at least 110 dB sensitivity.
5. Remember, the higher price doesn't always indicate the best product.

Now that you have your detector, you should mount it high on your windshield in the vicinity of your rear view mirror. This will give you the maximum possible detection range. Once you install the detector, use it all the time. Don't even think that it is just for going on trips or for highway driving. A detector can save you in the middle of the city as easily, or often easier, than on the highway. The more traffic, the m*ore* the officer has to activate the radar unit. Each and every time he activates the unit, he can be detected.

The most frequently used radar technique is the instant-on mode. In this setting, the officer pulls the trigger when you are in sight and boom he has you. Or so he thinks, you'll read more about the downfalls of this method in the later Chapters. When you get an instant on (you'll know this because the detector goes off as you actually see the officer), however, do NOT stand on the brakes. Take your foot off the accelerator but by no means do a major braking slow down. The officer will see the brake lights or severe nose down angle of the front end of your vehicle and immediately know that he has you and you have a detector. Why else would you be slamming on your brakes at the same instant he has tagged you with instant on radar?

You should also be aware that some police cars are equipped with VG2 detectors. Simply put, a VG2 detects the local oscillator (LO) output of a radar detector. This LO output could also be caused by cell phones, ham radios, satellite up links and even police radios. Newer model detectors have made a real concentrated effort on shielding the LO output. Some models are even equipped with a VG2 detector - detector which will briefly shut down the radar detector when it senses a VG2 detector.

Despite all of the technological complications, the bottom line is to get a good radar detector, mount it high on your windshield and use it constantly. The pay off will far out weigh the downfalls.

Radar Jammers

Radar jammers come in two distinct varieties: Passive or Active. The differences lie in two areas: Passive Jammers do not transmit and are legal while Active Jammers do transmit and are highly illegal. With that said, let's look at the two types in a little more depth.

Passive detectors are generally advertised as a device that will phase shift the radar beam, mix white noise in with the beam or re-radiate the beam. Phase shifting and white noise are other fancy words for give us your money. Re-radiating the beam is another phrase for you're super gullible, send a lot of money. Re-radiating the beam is the same as reflecting the beam. One other thing that is even bigger and better at this technique is your car! The bottom line on passive jammers is don't waste your money. Take that cash and get a good detector. It will actually work as advertised.

Active detectors do transmit, do work and are illegal. Anything that transmits in the radar bands requires a FCC license. Police departments and local municipalities are licensed although the actual officers do not need to be individually licensed. Current radar units can detect when they are being jammed. Imagine racing down the highway doing a comfortable 85 while your active jammer is broadcasting a steady 35 mph to the nice officer and his radar unit. As the cop in the movie once said, "Boy, you bought yourself a whole mess a trouble now." Not only does the officer know you are exceeding the posted speed limit, he now knows you are jamming him and therefore obstructing justice and interfering with a police officer in the execution of his duties.

Are you beginning to sense that the speeding ticket will be extremely secondary to the new list of charges? Again, take the money and invest in the radar detector not an active jammer.

Laser Detectors

Laser detectors are legal since laser is a light beam and not a radio frequency. The only problem with a laser jammer is that your car is still a lot bigger reflector than the small laser jammer. One good investment in the war against laser guns is the Photo Cover which is available under a variety of names. The police typically aim for your car's license plate since it is reflective and usually white. The Plate Cover is designed to reflect, absorb and refract the laser beam while not affecting the view or appearance of the license plate. These devices are effective and typically cost around $30.00 each.

Chapter 3
What to do when you are stopped

Despite all your attempts to avoid police contact, you are now staring at the flashing blue and red lights in your rear view mirror. What you do in the next five minutes is extremely crucial to successfully beating the citation you are about to receive. Let's go step by step and remember that you are already preparing your defense before you even pull your car over.

The first step is to safely pull over to the right shoulder of the road. Pull over as far to the right as conditions will allow. This will provide the officer with some measure of safety from the oncoming traffic as he approaches your car. Granted, you are likely hoping that he becomes a hood ornament for some passing semi but the key to success is to be both nice and unobtrusive. You want to be as least memorable when you get to court in a month or two; therefore, everything you do should be extremely mundane and ordinary.

Once you have stopped your car, shut off the engine, roll down the drivers window and wait with both hands on the steering wheel. Leave your seat belt on; however, if you are not wearing it in a state where it is required, don't try to put it on before the officer gets to your car. If you are stopped at night turn on the dome light. Finally, take a deep breath and calm yourself, now is not the time to get upset and loose your temper.

When the officer approaches your vehicle, he will likely ask you one of two standard questions:

1. Do you know why I stopped you? Your response is, "No officer, I don't."
2. Do you know how fast you were going? You have three levels of response:
- "I was speeding officer, I'm sorry."
- "I'm not really sure."
- Answer the officer's question wth a question such as "how fast do you have me going officer?"

The key element here is *not to admit anything*. You have a right to remain silent but the officer isn't required to advise you of this right (Mirandize). Do not respond by saying, "Well I think I was doing about 62 when you know you are in a 55 mph speed limit. This is called admitting your guilt and it can and will be used in court!

When the officer asks for your license, registration and proof of insurance (if applicable) tell him where they are located and ask to get them before reaching for anything. If you are in a state which allows concealed weapons, by all means also notify him of the weapons location. If your documents are in the glove box or console, get them and close the compartment. This way the officer isn't worried about you reaching in for an illegal weapon while he is writing your citation.

This brings us to the request for a vehicle search. If the officer asks permission to search the vehicle he doesn't have any probable cause. Under no circumstances agree to this search. If he threatens to get a search warrant, politely tell him to go ahead and get one. The crucial element here is probable cause. The officer must have probable cause prior to the search. If your vehicle has smoke pouring out and smells like a Cheech and Chong reunion, he will search without asking. The same is true if you have alcohol on your breath. In either of these cases, you have some other serious issues that you are about to come face to face with other than your speeding ticket.

It is also important to remember that this is not the time to plead your case or argue the issue. You are trying to maintain a low profile and arguing or giving some lame excuse that the officer has heard 200 times is not going to get you anywhere. You should realize that as soon as his pen hits the ticket book he is committed to issuing the citation. He can't void out the ticket and say he made a mistake. Once he starts to write, the citation is yours to keep.

While the officer is writing your citation, usually back at his vehicle, it is time to start your defense process. Begin to assimilate as much data as possible. Small details are essential. These are the kind of things that the officer will not remember when it comes time to appear in court. Some of the basic information you should be trying to gather is as follows:

1. Make, model, license plate number and unit number of the officer's car.

2. Note your exact location and try to determine the distance between where you stopped and where the violation occurred.

3. Even though your citation will list the basic weather conditions, make note of all the weather conditions such as temperature, wind, cloud cover, etc.

4. Note any passenger names and be sure that your passengers remain totally silent during the entire stop unless they are asked a specific question.

5. Make note of your shirt or coat color.

6. Make note of any distinctive characteristics about your vehicle such as any noticeable dents, two tone paint, mag wheels, etc. Again, you are after as many small details as possible.

7. You also need to remember and note everything the officer said during the stop. If he talks on his personal radio during the stop, try to note these items as well. A lot of times the officer who stops you will not be the officer who was running the radar unit. It is crucial to your case that you establish this point.

8. Note the current traffic conditions and remember the surrounding traffic at the time you were pulled over. If you were surrounded by a sea of traffic try to remember anything and everything about that sea of traffic.

When the officer returns with your citation he will generally ask you to look it over and sign it. This signature, as the officer will explain to you, is not an admission of guilt but an acknowledgment of actually receiving the citation. It's important to note that not all states require that you sign the citation, one such state is Kentucky.

After you sign the citation, you might want to ask the officer if you can see the radar read out. The officer isn't required to do this due to your own safety. The police department doesn't want you run down by a passing motorist while you were heading back to the squad car to look at the radar. If the officer allows you to view the radar, make no comments whatsoever. Do try to make a note of the manufacturer or model number. Under absolutely no circumstances should you ask to see the calibration fork. That is a major red flag that you know the ins and outs of radar and you are going to fight the citation. You have now moved into the memorable category and that's counterproductive to your case.

After the officer returns to his car, stay at the scene making notes for no more than two minutes if he remains at the scene. He will usually be making notes on the back of his copy of the citation. Again, do not make yourself memorable by staying at the scene until the officer leaves. Your fight has just begun and there will be plenty of time to prepare your case without waiting at the scene. It is accessible 24 hours a day for you to study.

As you pull away from the scene, do so calmly and safely. Spinning tires and slinging gravel across the officer's hood are not a good ideas. Head out with the confidence that you will likely never see the officer again since the odds favor him not showing up at your final court date. Then again, there is also the satisfaction of knowing that the next time you face the officer it will be in a court room with him under oath answering y*our* questions. If you adhered to the information discussed above, you will be no more than another of a string of citations he wrote in the past month. Smart money bets he darn sure won't know what color shirt you had on or how windy it was.

Chapter 4
Fight, Plea or Pay

Now that you have your citation in hand it is time to decide if you are going to Fight, Plea or Pay. As far as PayNoFine is concerned, there is really only one clear choice—Fight. Remember, even if you fight and loose, your fine is no higher than you would have paid initially. You also need to weigh the fact that you will be paying the fine plus the added insurance premiums.

If you're still in doubt, here a the most common reasons why people choose to fight their citation and have their day in court:

- I can't afford or don't want to pay the fine.
- I don't want the ticket on my record.
- I can't afford the points on my license.
- I didn't do anything.
- OK, I did do it but everyone else was doing it too.
- The officer was a major jerk and I want pay back in court.

If you fit into one of these scenarios, it's time to move forward and start your trip down the halls of justice.

What should I plead?

There are typically four types of pleas you can enter for a traffic citation:

Guilty - I'm a bad boy and here's my money. Please raise my insurance.

Guilty with an explanation - I'm a bad boy but let me tell the court why before I pay my money and you raise my insurance.

Nolo Contendere - Latin for No Contest, otherwise known as I'm guilty but don't want to say so. Here's my money, go ahead and raise my insurance.

Not Guilty - This is the plea you are interested in if you want to save money.

It is important to remember that Not Guilty, by law, does not necessarily mean you didn't commit the alleged offense. What it means is the prosecutor now has to prove beyond a reasonable doubt that you did commit the offense. The burden of proof is now on the prosecution and not you. If the officer doesn't show up at your trial, that is the prosecution's problem and your salvation. The extent of your defense is a simple motion to dismiss due to lack of a prosecution witness.

One last item concerning the not guilty plea: If you have to emotionally fight the moral issue of a not guilty plea, you don't have the conviction (no pun intended) to see the fight through to the end. You probably don't even have any real fight in you. In this case, you would be best served by paying the fine and clearing your conscious. Then again, you might want to decide if your conscious can be cleared by time spent in driving school rather than paying the fine out right.

Should you hire a lawyer?

The only true test in deciding if you need an attorney or not is whether jail time is a possibility in your sentence. Any citation, such as:

- DWI / DUI
- Driving on a suspended license
- Hit & run accident
- Any felony involving the use of your vehicle (drug or weapons possession, manslaughter, robbery, etc.)

If your case involves any of the items listed above, you definitely require the services of an attorney. If not, you then need to weigh the cost of the attorney's fee against the fine and insurance premium increase. There are some attorneys who specialize in traffic ticket dismissal and generally charge between $50 and $100 for their services. These attorneys typically specialize in obtaining continuances, arranging for probation sentences or, in a worst case, arrange for a driving school plea bargain. These are all options that you are quite capable of handling without an attorney. The advantage with these services is they have ongoing relationships with the prosecutors and are usually able to work within the system better than a stranger. If the price is right and it appears that you could get an arrangement other than driving school, you might consider one of these traffic ticket specialist for the pure convenience.

Similarly, any attorney brings with him his knowledge of the law and legal system, his trial experience and his fee. Once you hire an attorney you loose control over the case. Unfortunately you have the most knowledge of the actual particulars and details that your attorney does not possess. You also need to remember that this case is not going to land your attorney on the cover of the latest legal journal; therefore, his attention span is going to be somewhat limited. One industry statistic shows that unless you testify on your own behalf and inadvertently convict yourself during that testimony, ninety-percent of all traffic case would not have benefited from the services of an attorney.

If you still feel compelled to use an attorney, you should consider joining the National Motorist Association (http:www.nma.org). The NMA offers a variety of resources (see additional information in the section titled "Additional Resources") including an attorney referral service. This service also maintains a database of attorneys, by region, who specialize in traffic ticket defense.

Driving School and Other Pleas

The most popular form of plea bargain available is usually referred to as Driving School or some other variation of the same theme. In this situation the defendant agrees to attend and provides a certificate of completion from a school that is licensed by the local jurisdiction. In exchange for your attendance, the charges against you will be dropped. This option is generally a once a year arrangement. In some states you can even qualify for an insurance discount with your certificate of completion so long as you don't let it slip that you actually attended due to a speeding citation.

Generally speaking, this scenario is a painless way to eliminate the charges against you. Many schools work in a comedy theme and try to make the ordeal as enjoyable as possible. The only other factor is cost. A typical driving school will cost between $35 to $50, You might also have to pay a court cost charge in addition to the school's fee. The total cost is still likely to be less than your fine would have been. You might want to seriously consider this option if your case appears weak and unlikely to be dismissed. On the other hand, if you have a fairly strong case, save the driving school option for another time and place since it is usually a once a year type option.

Necessity of Speed Defense

Simply put, the Necessity of Speed defense says that while you admit that you were speeding, you had mitigating circumstances that forced you to exceed the speed limit for your own safety. One such instance might be when all the traffic around you is doing 70 mph in a 55 mph zone. To do the posted speed limit actually creates a dangerous situation while the ebb and flow of traffic attempts to go around you. Another scenario might be when you have a driver tailgating you combined with another car immediately adjacent to the left of you while yet a third car is attempting to merge into you from the right. Clearly you had to blast the accelerator up to 80 to get out of this harmful situation. The odds of the defense working are extremely small. Do not base your hopes for a dismissal solely on this defense. In fact, this defense is best left alone.

New York DMV Transit Adjudication Board

The State of New York offers a unique challenge for successfully fighting traffic tickets. Actually this challenge exists in Albany, Buffalo, Rochester and New York City. If you receive a citation in these cities you are essentially doomed. These cities utilize the DMV Transit Adjudication Bureau. This facility is not a real court. You have no right to discovery, you don't get a supporting deposition, you cannot plea bargain and you don't even get a real judge. Appeals are virtually non-existent and according to a recent report, the Bureau is required to maintain a 65% conviction rate in order to maintain revenues. The only positive is that the Administrative Law Judge doesn't have the power of incarceration so you won't end up in jail.

The only hope for a small measure of success in this venue is to file as many continuances as possible and hope that the officer finally doesn't show for your appearance date. This is the only way you will manage to beat a citation in this skewed excuse for a court system. As hard as it is to believe, this system is legal and constitutional. Continued efforts to revise this system have been vetoed by the governors at the time since it is realized that this system is a money machine. The best advice is not to get a ticket in any of these locations.

Out-of State Citations

Sometimes when a driver is in another state and receives a ticket, most people take the attitude that they can ignore it thinking it will not effect their driving record. Unfortunately, 36 states and the District of columbia have mutually

entered into an agreement called a *Driver's License Compact*. This is where the states have agreed to share information about a driver's record. For example, if you live in California and travel to Las Vegas, Nevada and on the way you get a speeding ticket in the Silver State and if convicted, the citation would be listed on your California drivering record.

The following states share driver's license information with the other states on the same list:

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine
Maryland
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
South Carolina
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

Ignoring an out-of-state ticket

Depending on your home state laws, it is considered rare that you will be arrested in your state for ignoring an out-of-state traffic citation. This is due that police from other jurisdictions cannot arrest you outside of their state and it is also unlikely that your home state police will go through the expense of having you sent (extradited) to the particular state where you ignored the ticket. But, keep in mind that if a state that has entered into the *Driver's License Compact*, it will may appear on your driving record. Also keep in mind that if you return to the state where you ignored the citation, you could be arrested or your license may be suspended.

Chapter 5
Proper Planning Prevents Poor Performance

Now that you have decided to stand up and fight, there are a few things to check on as you get started in the preparation of your defense. Some of the more important items are:

- Check with your auto insurance agent to see what effect your conviction would have on your insurance policy.

- Contact the Department of Motor Vehicles (DMV) to determine your current point status and how many points your possible conviction will carry.

- Dispense with any automotive administrative work such as registration renewal, inspection, etc. These issues should be resolved *before* the trial.

- Resolve any outstanding "Fix It" or parking tickets before your trial.

- Determine if you are eligible for Driving School.

- Review your upcoming schedule so you can have an idea about what possible conflicts might exist with your likely court date.

Finally, once these administrative matters are resolved, or in the process of being resolved, it is time to start preparing your defense strategy.

Setting the Court Date

In order to have a need for a defense strategy you first have to enter a plea and set your trial date. There are three typical methods for entering your plea with the court:

- Personal appearance at the Court Clerk's Office to request a trial date.

- Appear before the judge and enter your "not guilty" plea combined with a request for a trial date.

- Mail in a copy of the citation along with your request for a trial date.

During all three of these scenarios you will likely need to post bail in the amount of the fine. Be prepared and check with the court ahead of time to insure that you have the proper amount and proper method of payment. Now that you have posted bail in the amount of the fine, you have two things in your favor. First off, you have essentially paid your fine up front. If you lose your case in court, you have already paid your fine and will not be out any additional money. Secondly, if you are unable to appear on the trial date your bail is forfeited and there will be no additional fines. However, if you do not post bail and do not appear for your trial, in most states, a bench warrant for Failure to Appear will be issued and you could be subject to arrest. Now instead of just a simple traffic citation, you have an additional misdemeanor charge pending. Do not let a simple case turn into a complex case by missing your trial date.

Once you have a trial date, you need to be aware that the Constitution guarantees "a fair and speedy trial." Typically, a "speedy trial" is accepted to be 45 days from the date of arraignment (date which you enter your plea). It is important to monitor this time line very carefully. If the prosecution or the court contact you about changing your trial date you will have to waive your right to a speedy trial. The only advantage to waiving this right is that the longer the trial date is from the actual citation date, the better the odds are that the officer won't be able to remember the details.

On the other hand, there are several disadvantages to not waiving your right to a speedy trial. The court can now assign any date for the trial it deems appropriate within the 45-day time frame. This date might pose a real schedule problem for you and could force you into forfeiting your bail and the entire trial. In addition, the case details are likely fresher in the officer's mind and you have the added pressure of getting ready for the trial at a faster pace. If you are not ready for your trial in 30 days you will not be ready in 60 days. As for the officer, you best hope is the officer not appearing at all. His notes are the main source of his memory since he likely wrote several citations on the same day your citation was issued. The bottom line is do not waive you right to a speedy trial.

One variation to the trial date scenario occurs when your citation includes the officer's vacation dates. This information is usually included as courtesy to the court but can often be used to your advantage. The first step is to pick a date right in the middle of the vacation period. Next, count back 40 days from that date and be sure that this day doesn't fall on a weekend, court holiday or, most important, after your scheduled appearance date. Presuming you meet all those criteria, you want to use that date as your day to appear at the clerk's office and enter your not guilty plea. As you can see, this scenario relies on two

critical elements: You need to have a citation that includes the officer's vacation dates and you have to be able to just walk into the Clerk's office to enter your plea.

Now you will need to wait for your trial date to be set. The trial date is set about 40 days from the day you entered your plea in about 90% of all cases. If all goes according to plan, you will enter the courtroom for your trial about the same time that the officer is enjoying sunshine and palm trees. All that remains is a simple motion to dismiss due to no prosecution witness. This is an extremely optimistic outcome. What will likely happen is the court will notice the error and contact you to postpone the trial or simply send you a letter with a new trial date. If the court contacts you, refuse to waive your right to a speedy trial. If the court simply reschedules your trial and the date is more than 45 days from your arraignment date, you have a mistrial situation.

Before going to court on the newly assigned date, you need to research local case law. You are trying to establish that an officer's vacation time is not "good cause" for the purpose of continuance. This will prepare you for the time in court when the judge or prosecutor attempt to save face by explaining to you that the court had "good cause" to continue your trial. At that point you will politely cite your case law findings and again make a motion for a mistrial. If the judge overrules you, proceed with your case and immediately file an appeal if you are found guilty. The case will always be overturned on appeal.

Now that you have entered your not guilty plea and set the wheels in motion, it is time to start assembling the facts and data needed to build your defense case.

Department of Motor Vehicles

Every state has a Driver's License Bureau of some form or fashion. Most are known as the Department of Motor Vehicles and they control every aspect of your privilege to operate a motor vehicle in your state. These departments all have a method of monitoring your driving record and deciding when you have become enough of a hazard to the public to suspend your license. This usually involves a system that assigns points to various violations. Once you accumulate enough points, you become a pedestrian for a specified amount of time. A normal moving violation will affect your driving record for three years in most states. Some states will hold a moving violation on your record for five years and nearly all states leave a DUI / DWI on your record for a maximum of seven years.

As you start to prepare your defense you need to verify the status of your driving record. You might also obtain a list of the entire point system. Most Departments of Motor Vehicles can provide you with a print out of your driving record for a small fee. Hopefully you won't be facing a suspended license for this current citation. If so, you might want to consider your case worthy of an attorney. For those of you in a normal situation, a check of your driving record will confirm that you will be safe from suspension but will still have a three-year mark on your driving record and, more important, your auto insurance record.

Your Rights

You are probably aware that most courtrooms are, to say the least, rather ominous and oppressive. This is so you will have no doubt as to who is in charge and the seriousness of your situation. Despite this overwhelming pall of authority, you still have certain undeniable rights. The problem is that traffic court is usually a place where these rights are glazed over in an effort to get you to plead guilty and pay your fine. It is crucial that you are fully aware of your rights as you approach your trial date. These six basic rights should be ingrained in your mind as you enter the courtroom.

1. You have a right to a speedy trial. See the discussion on Court Date above.

2. You have the right to a court trial. Normally this is with a judge and not a jury. Some states will allow you to request a jury trial but you will have better luck with a judge than a jury of your peers in most traffic cases.

3. You have the right to an attorney. In traffic case you must provide the attorney at your cost unless your offense could be subject to jail time.

4. You have the right to subpoena witnesses or documents. Use this right to your advantage. Do not subpoena the officer who was in the passenger side of the police car. The only subpoena items you are interested in are those documents listed in the Public Records and Discovery sections of this Chapter.

5. You have the right to cross-examine any witnesses against you. This is typically the officer who wrote the citation. This is why no officer, no case, no conviction.

6. You have a right to remain silent. DO NOT forget this right as you get into the courtroom. You do not have to testify against yourself, therefore, unless the situation clearly warrants, do not take the stand for the defense.

As we move through the defense preparation and actual trial proceedings you will see how important these rights are to your case. Write them down in some prominent place where you will be reminded of them during your trial.

Public Records Request

The issue of public records is important in two areas. The first is to look up the actual vehicle code section your are charged with violating. You need to be aware of the exact verbiage of this code article and any relevant case law attributed to the code. Secondly, you may need to utilize the public records provision to obtain the necessary documents to help you prepare your defense.

Your local vehicle code can be reviewed at the local library or, even better, a local law library. You need to look this code up in an "annotated code" book so that you will not only get the actual code but also the relevant case law. Review the various case laws and copy anything that is supportive of your likely defense. In addition, you should also study any case laws that you would use if you were prosecuting your case. As for the actual code itself, here is an example from the California Vehicle Code with an analysis of what the prosecution will need to prove in order to obtain a conviction:

CVC 22350 - Unsafe Speed

> *"No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway and in no event at a speed which endangers the safety of persons or property."*

Now let's take a closer look at each element in the law:

"No person shall drive a vehicle" (You will need to be identified as the driver and the prosecution witness will need to have seen you actually driving the vehicle)

"upon a highway" (This is subject to a broad definition but the prosecution must establish where the violation occurred)

"at a speed greater than is reasonable or prudent" (What is reasonable or prudent? This is open to opinion.)

"having due regard for weather, visibility, the traffic on, and the surface and width of, the highway" (These are the parameters used to establish the reasonable and prudent issues)

"and in no event at a speed which endangers the safety of persons or property." (Did you endanger or run the possibility of harming a person or someone's property?)

As you can see, most codes are lengthy and grammatical nightmares. You will need to break the code down into manageable pieces and establish all the points that the prosecutor will need to prove against you. If he does not prove all of these points you should have grounds for dismissal after the prosecution rests their case. More on this in Chapter 6.

You can also use the right to public records as an avenue to obtain background documents to help in the preparation of your case. These items are listed out in the next section that discusses the Discovery process. The Public Records request is made to the Chief of Police in the form of a letter similar to the example in Appendix A. You should check with the local law library or the State's Attorney office beforehand to determine the specifics of your state's public records laws. Keep in mind that there is no specific time frame for the delivery of these materials. There is nothing to prevent a police department from delivering them after your trial date. This is why the actual request for documents should be done by subpoena as shown in the next section on Discovery.

Discovery

The Discovery process is a right of the defendant as a part of the trial procedure; however, some states severely limit this right to discovery in traffic cases. Again, this limitation is part of the court's efforts to get you to plead guilty, pay your fine and go home. You need to remember that the discovery process is a constitutional right.

The items you will need, and the actual phrasing of the request, are listed in Appendix A under the Public Records Request. You will need to check with the local court clerk's office to establish the actual procedure for the discovery subpoena. You also need to be sure that the request stipulates that the items are needed prior to trial. The list of items typically needed for a radar speeding ticket are as follows:

- Radar - Repair records, manufacturers manual and specifications, calibration log and the law enforcement department's FCC License to operate the radar unit.

- Tuning Fork - Certificate of accuracy and repair or calibration records.

- Police Officer - Arrest record (day of offense and last three months prior to your date of offense), daily log for the date of your offense, radar training record and operator's certification and copies of both sides of your original citation.

- Patrol Car - Speedometer calibration certificate, repair and maintenance records along with the repair and service records for the actual patrol car.

You need to be aware that the prosecution could counter this request with a "motion to protect" which will attempt to deny you access to the discovery documentation. If this happens, you need to appear at your trial date and make a motion to dismiss the charges. This may or may not work. At the very least you should ask just what the prosecutor is trying to hide by denying you access to these documents. This should be followed with a motion for continuance to allow you ample time to prepare your defense after the materials are delivered.

If access is still denied by the judge, you have excellent grounds for a reversal of a guilty verdict during the appeal process. The next section will discuss what to look for in the actual pieces of documentation you received in response to your request.

Review of the Evidence

In the last section we reviewed the list of documents that should be requested by subpoena for the preparation of your defense. In this section we are going to presume that the prosecution was forthcoming and has delivered all the requested materials to you. Now let's look at this big stack of papers and see if we can find anything that will help us win our case.

Radar repair records should be reviewed for frequent repairs or total lack of repair. Frequent repairs, of course, would indicate that the unit has chronic problems. A lack of any repair records would indicate that the unit's maintenance could possibly be neglected.

Radar manufacturers manual and specifications will indicate maintenance recommendations as well as operating procedures. These procedures will help to form the basis of your cross-examination. You also need to check the units frequency against the requested copy of the FCC license.

Radar calibration log will show how often and at what times the unit was calibrated or checked for accuracy. In two cases (Wisconsin v. Hanson and Minnesota v. Gerdes) it was established that calibration checking with a tuning fork should be performed "within a reasonable time" after the citation is issued.

In two other cases (Connecticut v. Tomanelli and New York v. Struck) it was further ruled that a tuning fork calibration should be performed immediately before and after a citation is issued. All of these cases have established that tuning at the start and end of the shift is not acceptable even though this is often the normal practice. See Appendix B for further discussion on Case Law.

FCC License grants a law enforcement the authority to operate the radar unit is for a specific, or range of specific, frequency. You need to compare the frequency information in the manufacturer's manual and specifications against the FCC license. This will verify that the officer was operating the radar unit legally. Keep in mind that only the department and not the actual officer will need to be licensed by the FCC.

Tuning fork calibration information is necessary to show that the radar unit has been calibrated to a "traceable standard." Without the calibration certificate the tuning fork is immediately suspect as accurate for calibrating the radar unit. Police Officer's arrest record may indicate a pattern of certain cars ticketed. It may also indicated a certain area that is a frequent target of the officer. If a favorite location is identified, this could be a location that has bad engineering, traffic control problems, bad signage, etc. which contribute to the frequent citations issued.

When reviewing a police officer's daily log will indicate all citations issued that day. You want to look for any series that are issued for the same speed in the same location which would tend to indicate that the radar unit was locked and the same reading was used for several vehicles.

A Police Officer's radar training should reflect 24 hours of classroom instruction followed by 16 hours of supervised field training. Most officers are actually department trained for a very brief period of time. The 24/16 hour criteria has been established by the National Highway Transportation Safety Administration and endorsed by the International Association of Police Chiefs.

Police Officer's copy of the citation (both sides) is informative since the officer will typically put his own notes regarding the incident on the back of his copy.

Patrol Car speedometer calibration should show that the speedometer is in proper repair and accurately calibrated. This is especially important if the patrol car was moving at the time the radar unit was used. The Officer must be able to compare the patrol car speed to a reading on the radar unit against the speedometer in order to guard against a radar shadowing error (See Chapter 7 for additional information on radar shadowing errors).

Patrol Car maintenance records will show any possible mechanical or, more important, electrical problems which could hinder the proper operation of the radar unit.

Return to the Scene

A return to the scene of your citation can serve several useful purposes. First, it may trigger some additional details that you forgot since the last time you were at the scene. Secondly, it will give you an opportunity to study the scene and situation in more detail. If you see that there are certain contributing factors at the scene, you will need to prepare full documenting evidence for the trial.

The evidence for the trial should be in the form of a large diagram of the entire scene that will document every thing that is relevant. This should include:

- All roads with lane markings and widths.
- All traffic controls (lights and signs).
- Location of the officer's vehicle and your vehicle at the time he pulled you over. Also include the final locations after both vehicles stopped.
- All buildings, fences, walls, etc.
- All trees, hedges, bushes, shrubs, etc.
- Any other signage such as billboards, street signs, advertising banners, etc.
- All power lines, antennas, etc.

In addition to the diagram, you might also take some pictures from the driver's perspective to illustrate any obstructed signage or other contributing factors.

Your diagram and pictures should be of sufficient size to be easily viewed during the trial. The diagram should be poster size and the pictures should be 8" x 10" at a minimum. Only bring these items to the trial if they have a definite bearing on your case. Do not bring a diagram that basically shows everything that is on the citation. The prosecutor will thank you for helping his case! If the diagram and pictures do in fact show some serious contributing factor, show no one until the trial when you introduce these items as evidence for the defense.

Visit the Court

If time permits, you should take an hour or two to visit the traffic court that your case has been assigned to for some observations unless your in a large metropolitan city. The judge will probably be the same for your case but the prosecutor may or may not be who you are up against. During your visit you want to pay attention to the way the judge addresses any defense motions or objections. If you are lucky, you may get to see another concerned citizen as he blazes down the same path you are soon to travel. How prepared is his case in comparison to your case and can you learn from any mistakes he makes. You might also be fortunate enough to see a seasoned traffic defense attorney in action. What can you learn from his methods that will help your case?

You also want to study the relationship between the prosecutor (also knows as an Assistant District Attorney) and the testifying officer. This relationship is usually indicative of the level of intensity that the prosecutors are used to working with. Remember, 95% of all traffic cases are paid and never see the light of the courtroom. What you see here will give a good reflection of what to expect when you step up to the plate.

Finally, if the judge has a model of the guillotine on his desk and overrules every defense objection, you might want to see how to get a continuance immediately. Anything you can do to transfer courts will only help your case if it is apparent that you are going to have to appear before a hanging judge.

Pick Your Defense

Now that you have reviewed your evidence, returned to the scene and reviewed all of the supporting documentation, it is time to form a defense strategy for the

trial. You should be aware that most traffic tickets are argued from two directions: A mistaken identity of the vehicle in question or a false radar reading.

In actuality, your defense strategy should be comprised of several elements which increase in relevance as the trial progresses. These levels, from least intense on up, are as follows:

- Lack of prosecution witness - this is your first real hope for a cakewalk. No police officer, no prosecution witness, not guilty. It doesn't get any easier.

- Prosecution fails to prove the case against you—this is where you need to be totally familiar with the specifics of the code you are charged with violating. If the prosecution doesn't prove each and every item in the code section, a motion for dismissal is in order and likely to be awarded.

Technicalities such as wrong jurisdiction, wrong code cited, wrong address on citation, etc. are worth trying but not likely to get you a dismissal except for a jurisdiction issue. The old adage of "Hey the cop spelled my name wrong so I can get off easy." is simply not true. Do not rest your entire defense on this hope since you will be ill prepared when the judge overrules your motion to dismiss for a simple error.

Finally, you come down to proving some factual error such you were not the driver, you weren't driving at an unsafe speed, the radar reading was not accurate or not of your vehicle, etc. This can be through evidence such as the radar unit wasn't calibrated or by proving an operating or procedural error on the part of the police officer.

As you can see, this overall strategy has a layer affect to it. You start easy and build up to the harder levels. You need to walk into the courtroom ready to play the entire game by yourself. Keep a checklist handy. The officer showed up for the trail, don't panic, move to the next defense level. The prosecutor has his stuff together and hit every point in the code, move to the next level.

All you can hope for is to fight the best fight you are capable of and hope that all of your preparation will pay off. The only way to prepare a defense strategy is very similar to a military operation. You have to prepare contingency plans for every possible scenario and be ready to shift tactics at a moments notice. You will have preparation and an intense level of detailed knowledge of your case in your favor. It also won't hurt to have the benefit of PayNoFine which has already prepared you for most contingencies.

Chapter 6
Show Time - The People vs. You

As you hear the bailiff announce "The People vs. Your Name Here" you realize that you are about to become a stranger in a strange land. Your mouth is dry and your palms are sweating. You begin to wonder why you didn't just pay the fine and be finished with this whole ordeal.

Just take a deep breathe and relax with the confidence that you have spent more time preparing for this moment than the prosecutor. You know the details of your case and you already have a good idea as to where the prosecution feels his case is weak. In reality, the prosecutor's only strength is that he has a better understanding of the trial process. Hopefully, this Chapter will help to balance out the scales of justice.

Appearances Count

A wise man once said that you never get a second chance to make a good first impression. Keep this in mind as you dress for your day in court. If you had a chance to visit the court before your trial, you can see the level of dress for your particular courtroom. Unless you're in an extremely small jurisdiction, the normal attire will be a suit for men and a conservative business suit for women.

Both sexes should avoid anything loud or flashy. It is just as important not to over dress as it is not to under dress. Remember, the judges first impression of you will be made before you even open your mouth. Be sure that he is impressed and not already forming a negative opinion of you based on your attire.

Who's Who in the Courtroom?

By now you should know who all the major players are in your upcoming trial. You should also have a good feel for their individual roles in the overall process. As a refresher, here are the main characters:

- Defendant - This is you, our intrepid hero.

- Prosecutor / ADA - This is the team captain for the opposition.
- Judge - The final authority on everything from objections to verdict & fines.
- Police Officer - This is the prosecution's star witness.
- Bailiff - Master of Ceremonies as well as Sergeant of Arms for the Court.
- Court Clerk - The judge's administrative assistant.

The only other likely player for the prosecution could be any additional police officer who was involved in your particular case. If you were clocked by one officer and another actually wrote the citation, they will both need to be present for the prosecutor to make his case. If you don't see the officer or officers involved in your case at the time it is called, you likely have a good chance for dismissal before you even get started. Keep in mind that the judge may decide to postpone your case until the end of the day to see if the officer shows up for the trial. Be prepared to wait the entire day.

Typical Trial Procedure

Here is the typical sequence of events for a traffic ticket trial:

Bailiff Calls the Case

Defense (that's you) and the Prosecution respond with, "Ready, Your Honor."

Opening Statement by Prosecution

Opening Statement by Defense (See the Section of Defense Case for why not to make an opening statement)

Prosecution Case
  Witness - Police Officer's Testimony
  Cross Examination by the Defense
  Re-Direct by the Prosecution
  Physical Evidence - Citation, Diagrams, etc.
  Prosecution Rests

Motion to Dismiss by Defense on applicable grounds

Defense Case
  Witness - You or passengers
  Cross Examination by Prosecution
  Re-Direct by Defense
  Defense Rests

Rebuttal Witness by Prosecution

Closing Arguments
  Prosecution
  Defense
  Prosecution (Follow up & response to Defense Closing)

Verdict

Sentencing (If Guilty)

The Prosecution's Case

The bottom line of the prosecution's case is the need to prove, through the use of evidence and testimony, that you are guilty beyond a reasonable doubt. As we previously discussed, the prosecutor must prove all the elements in the specific vehicle code section that you are accused of violating. The typical prosecution case will attempt to prove that the officer made a visual estimate of your speed and then verified that speed with radar, laser or motor pacing. The prosecution's equation is as follows: Since "A" is true and "B" is true then "C" must be true. In this example, "A" is the visual estimate of speed, "B" is the verification through mechanical means and "C" is that you are guilty.

You should be aware that the prosecution has a strong weapon in the case law of "Kentucky vs. Honeycutt" which ruled that an officer does not need to be an expert in radar operation. He only needs to be competent in the use of radar. Review Appendix B for the major elements of case law and be familiar with them as you go to trial. It would help to have notes on the cases that you feel may come into play during your trial.

Your objectives during the prosecution's presentation are two-fold. First, you need to disrupt the speedy trial flow that the prosecutor and police officer are used to. The primary method for this is through objections. Object to anything that appears to be suspect. Review the next section for all the typical objections you have available to you. Even if the objection is over-ruled, the prosecutor and

police officer have to break their rhythm while the judge makes a ruling on the objection. Your second objective is to ensure that any testimony or evidence introduced by the prosecution is admissible and relevant. Again, a review of the typical objections should give you adequate background as to what is admissible and relevant.

You should take thorough notes during the prosecution's presentation. On one side of the paper make a brief note as to what was said. Opposite this note, make a comment concerning your upcoming cross examination or list the objection you used. You also need to keep a running tally as to the specific points of the vehicle code in question. As the prosecution proves any particular point of the code, check that point off. This will make it easy to check if he has proved all points when the prosecution rests their case. If all the code issues are not checked off then your first course of action after the prosecution rests is to make a motion for dismissal. Always keep in mind that the prosecutor must prove all points in the code section beyond a reasonable doubt. Now let's review the typical objections used in a traffic ticket trial.

Typical Objections

The purpose of objections is to limit the evidence or testimony to that which is specifically relevant and admissible to the case. The judge has sole authority over what is admitted and what is not admitted to the trial; however, the judge can only invoke this authority if the evidence or testimony is challenged by objection. In other words, if you don't raise a flag the judge will not salute you.

When in doubt, object and let the judge rule as to whether the evidence or testimony is admissible. You need to walk a fine line with the objection tactic. Too many invalid objections are only going to anger the judge and put you in a position of a possible contempt of court charge. Too few objections and the prosecution will roll right over you. Don't dispair, here are the typical objections used in a traffic ticket trial, in the order you will likely have cause to invoke them:

OBJECTION: Independent Recollection
As soon as the officer begins to testify, he will likely read from his copy of the citation. You need to immediately object to this since the officer is required to testify from "independent recollection." You also need to ask to see what it is the officer is reading even if you received the officer's copy of the citation through subpoena. The judge will likely allow the officer to use his notes to refresh his memory if the officer tells the court that he will require the notes to testify. This will now start the wheels in motion for a dismissal since the 6th Amendment to

the Constitution guarantees you the right to be confronted with the witnesses against you. The officer and his testimony—not the citation, are the witnesses against you. If the officer has no independent recollection, he is considered incompetent to testify. You need to establish that the officer is unable to testify without his notes to paint him as an incompetent witness. One other important point concerning the use of the officer's notes. If his citation reads: "NBI45" then all he can testify to is NBI45 not North Bound on Interstate Highway 45. As you can see, the citation notes in this case will hurt the officer's testimony and help your case.

OBJECTION: Narrative
In this instance, the officer is telling a story (or narrative) rather than answering specific questions from the prosecutor. You have a right to decide if a particular question would have an objectionable response. By simply telling his version of the events without questions, you have no opportunity to object.

OBJECTION: Foundation
This is a situation where the officer, or any other witness, testifies to something that has not been established through evidence. For instance, if the officer testifies that his speedometer indicated a speed of 72 mph, the speedometer calibration should have been introduced as evidence in order to establish the foundation for this line of testimony.

OBJECTION: Speculation
This is a case where the prosecutor asks the witness a question and their answer brings forth a statement that they could not possible know. Such as a comment that you clearly saw the speed limit sign on the side of the road. This calls for speculation since no one can testify as to what you actually saw.

OBJECTION: Conclusion
This is when the prosecutor asks the witness for a conclusion that they have no basis to answer. For example, the prosecutor may ask the officer if the defendant saw the stop sign and chose to ignore it. This requires the officer to make a conclusion based on insufficient facts.

OBJECTION: Not Qualified
Similar to a conclusion objection but in this case the witness testifies to something that they have no expertise in. One instance would be if the officer testified that the defendant's muffler was defective. Since the officer is not a mechanic, he is not qualified to make that determination.

OBJECTION: Hearsay
This is essentially anything said or written outside of the courtroom by anyone other than the witness. The police officer can not testify as to what a witness at the scene told him. The actual witness would need to testify for those statements to be admissible. The same holds true for the officer who wrote the citation testifying on behalf of the other officer who ran the radar unit. Both officer's must testify and only to the extent of their involvement.

OBJECTION: Irrelevant
These are things that may or may not have happened but have no bearing on the application of the law. One such instance might be the officer testifying that you had a hostile attitude towards him while he was writing the citation. Your attitude at the time has no relevance in the application of the law.

OBJECTION: Immaterial
This can be considered a cousin to the previous objection. Immaterial testimony or evidence is something that has a remote connection to the facts at hand but still not close enough to be admissible. One example might be the defendant's driving record. Prior traffic convictions have no bearing since you can't be guilty of this offense simple from past performance. In other words, just because you have 12 other speeding convictions in the past three years doesn't necessarily mean you are automatically guilty of this speeding charge.

The Preemptive Objection
This is a case when you are desperate to slow down the pace of the trial or stop the officer just as he is about to drop a bomb on your case. The goal here is to stop the bulldozer from rolling over you long enough to disrupt their rhythm.

Be advised that the court will not tolerate this tactic more than one or two times. If you abuse your objections then you will be restricted once you have a significant objection. This is very similar to the boy that cried wolf syndrome.

Cross-Examination

During the cross-examination, you are functioning as the defense attorney not as the defendant. Your objective is to discredit the officer's (or any other witness the prosecution may introduce) testimony to create a reasonable doubt in the eyes of the court. Remember, the prosecution has to prove his case beyond a reasonable doubt, therefore, any discrepancies in the officer's testimony serve to undermine the prosecution's case. The key to finding any discrepancies in the officer's testimony is to focus on details that the officer can't possibly remember.

You have two criteria for every question you ask. First, you should already know the answer to the question. By knowing the answer you are prepared for whatever the officer might say. In other words, his best answer will be what you already know as the facts. For example, let's say you ask the officer the color of your car. The citation already says that your car is green, what you want to know is what shade of green. Let's presume that your car is Arctic Pea Green. The officer will likely respond in one of three ways:

- If he tells you that the car is Arctic Pea Green - Move on to another topic.
- If he tells you he doesn't know - He can't remember the facts of the case.
- If he tells you it is brown - He doesn't have a clue and can't even remember what he wrote on the citation (great for you).

In the last example, you need to remember not to argue the case with the officer. You should only ask questions. The time for arguing your case is later during your motion to dismiss.

The second criteria for cross examination questions is, will this question help my case? You don't want to ask a question that will open areas or details of the case that could hurt your defense. For example, you definitely don't want to ask the officer why he only wrote you a ticket for speeding when in fact you had also ran a stop sign! You do want to ask some specifics such as, "Did you see the UPS truck in lane two?" You don't want to ask, "Was there any other traffic around?"

The difference in these two questions is night and day. It also doesn't hurt to start most of your questions with the phrase, "Isn't it a fact . . . " This puts a huge burden on the officer since he is under oath. If he can't totally remember the question as fact he will be forced to say he can't remember. The more, "I can't recall" responses you get, the stronger your case for reasonable doubt. In addition, do not let the officer elaborate beyond the required response of the question. As soon as this starts to happen you need to cut him off and tell the judge that the officer is being non-responsive. The judge should instruct the officer to limit his responses to the specific question.

During the prosecution's direct examination, you need to pay attention to the specific strengths and weaknesses of the officer's testimony. If the officer testifies that he has had 24 or more hours of classroom instruction and 16 or more hours of field training in radar operations, leave this area alone. Similarly, if he has not met those training criteria then hit this area hard during your cross examination.

The same holds true during the prosecution's redirect questioning. The areas that the prosecution stresses during the redirect are areas he is worried about and feels need shoring up for damage control. You will get one last chance at questioning the officer after the prosecution's redirect. Go after all the areas that the prosecution tried to shore up.

Specific in depth lines of questioning will be covered in each ticket type Chapter (radar, laser and motor pacing). A few general questions that are useful during the cross examination are as follows:

- Location of the defendant when the officer first spotted his vehicle.
- Did the officer always have a clear and unobstructed view of the defendant's vehicle from the time of first contact until the defendant stopped?
- How far was the officer's vehicle from the defendant's vehicle at first contact?
- What where the traffic conditions during the entire pursuit time?
- What lane was the defendant's vehicle in during first contact?
- What was the exact time of day that the offense occurred?
- What were the specific weather conditions?
- How many passengers were in the defendant's vehicle?
- What is the color (specific) of the defendant's vehicle?
- Does the defendant's vehicle have factory hub caps or custom wheels?

As previously mentioned, the key is to discredit the officer's testimony as much as possible. If you continue to get, "I don't remember" and "I can't recall" type responses, you are steadily building up the reasonable doubt towards the witnesses' testimony. The next move by the intrepid defense team would be a motion for dismissal, which brings us to the next section.

Motions to Dismiss

A motion to dismiss your case can be requested for several issues. In this section we will cover the various motions for dismissal you might use during your trial. With any luck, this is as far as your trial will proceed.

Motion to Dismiss due to denial of a right to a speedy trial.
This would be used at the beginning of the trial if your actual trial date was more than 45 days from the date of your arraignment. Your date of arraignment is the day you appeared and pleaded not guilty. This would be a rare case and will cause great embarrassment on the part of the court and the prosecutor. Consider yourself lucky if you get to invoke this motion.

Motion to Dismiss due to denied access to evidence necessary to your defense.
This would also be used at the beginning of the trial if your subpoena was ignored by the prosecution. The likely event in this case is the judge will delay the trial and order the prosecution to provide you with the requested information. Keep in mind that you don't want to waive your right to a speedy trial but you might have to weigh that decision against getting your subpoenaed information. Chances are the judge won't let the speedy trial clause slip by.

Motion to Dismiss due to insufficient evidence.
This will occur immediately after the prosecution rests their case. This motion only applies if the prosecution failed to prove all of the required elements of the vehicle code you are charged with violating. This is why you keep a checklist of all the points that the prosecution needs to prove during the trial. The list will come in handy when you explain to the judge that the prosecution never identified you as the driver, never established what road you were on, etc.

Motion to Dismiss due to incompetent witness.
This is the culmination of all of the officer's "I don't recall" answers during your cross examination. Again, this is solely up to the judge. He is not likely to rule against the officer unless he has been shown that the officer really doesn't have a clue as to what actually happen on the day in question. This is why an extensive cross examination is necessary.

Motion to Dismiss due to inadequate procedures.
This would be an instance where the officer committed some sort of procedural error. A good example might be calibrating the radar unit at the start and end of the shift. 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 when you have a case that involved two police officers. For instance, one officer ran the radar gun while the other officer pursued the suspect and wrote the citation. Both officers need to be present since one can not testify on the behalf of the other officer. This motion would also apply if the single officer involved is not present. You usually won't have to make a motion if the primary officer is missing. Typically, the prosecution will drop the case since he knows he has no chance without the officer present.

The Defense Case

The defense strategy for a traffic ticket trial is basically a layered defense. This layered defense hopes for one of the following to occur:

- Officer, or officers, involved in the case do not appear.
- Right to a speedy trial was denied.
- Various motions to dismiss after the prosecution rests their case.

Once the above strategies play out it is time to move to the defense presentation. This is where you need to make some serious strategic decisions. First, let's review the process of introducing evidence, say for instance a diagram of the scene.

First the clerk will mark the document with a court identification usually defense exhibit "A", "B", etc. Next, the document will be shown to the prosecution so they can have the opportunity to object to this particular item. Next, you will need to identify the document as a diagram of the intersection of A and B streets. You will then proceed to explain the relevance to your case. Finally, you will need to move that defense Exhibit "A" be introduced as evidence. Just presenting the diagram or any other document does not automatically make that document evidence.

Now that you have introduced all your evidence you come to a critical crossroads in your defense. The issue at hand is do you testify or not. You need to remember that you are under no obligation to testify. By not testifying you deny the prosecution the right to cross examine you under oath. You also need to consider what you will testify to. You can't very well say you were doing 55 mph in a 70 mph zone when you a fully aware that you were doing 62 mph. To testify that you were doing 55 mph is perjury. Furthermore, you also can't testify that you were doing 62 mph and the citation says you were doing 67 mph. Regardless of what the citation says, you just admitted your guilt and are now subject to a fine.

A couple of situations where you may still want to consider testifying is when you have a jury trial (if your state allows this) or you have a strong witness against the officer's testimony. A jury will be instructed that you do not have to testify and that you can not have your lack of testimony held against you. Don't bet on it.—a jury will always want to hear your side of the story. If the prosecution gets too aggressive during the cross examination, the jury will begin to sympathize with you. As for a strong witness against the officer, this is a case where the two stories are totally opposite. Your hope is that your testimony

combined with your witness with show the truth and out weigh the prosecutions case. A third option is to testify to a specific area only. For example, you might want to add some testimony to the diagram you introduced as evidence. You will need to inform the court that you intend to testify on the limited area of, and add what specific item you will testify to. This limits the cross examination only to what you want to discuss. Be careful not to allow your testimony to wander too far off a main course or you will open the door for a more extensive cross examination. Remember, the cross examination is limited to areas that were discussed in the direct examination. If you wander too far during your testimony, you invite the prosecutor to follow up on all areas you mention.

After your evidence and testimony (if you elected to take the stand) you will be ready to rest your case. Before you rest insure that all material introduced as exhibits for the defense are introduced as evidence. This guarantees that they are taken into account by the court. Once all items are introduced as evidence rest your case.

The last procedure is the final argument. The prosecution will go first followed by the defense. The prosecution gets a final word since they have to prove their case beyond a reasonable doubt. Here are some points to remember for your closing argument:

Only argue the facts as presented. You can not, nor can the prosecution, discuss issues that were not introduced during the course of the trial.

Use a specific defense or possible two specific defenses. For example, the officer failed to properly calibrate the radar unit or the prosecution didn't establish all the required points of the vehicle code in question. A specific approach works much better than a shotgun style of defense. The shotgun approach has the look of pick something, pick anything, just don't find me guilty. Whereas the specific defense issue forces the court to look at that issue much more closely and hopefully will see you were correct in your assessment.

In the same line of thought, focus on why the prosecution failed to prove their case beyond a reasonable doubt. You need to call attention to their mistakes since they have the burden of proof. Make a strong case since the prosecution gets a final word after you finish.

Last, and most important, be brief. The longer you take, the less the judge or jury will listen. This isn't the trial of the year, it is only a traffic ticket. Simply state your arguments, thank the court and wait for the verdict.

The Verdict - Celebrate, Pay Up or Appeal

Now comes the time to see how you fared in your travels down the legal highway. If the verdict is not guilty, congratulations are in order. If the verdict is guilty, well, you win some and you lose some. Hopefully your fine will be limited to the amount you have already posted as bail.

During the sentencing phase, you need to come clean with the judge to the extent that you might have some mitigating factors which would affect his sentence. You are no longer in the trial phase so it is perfectly acceptable for you to tell the judge that you were really only doing 62 mph not 70 mph. Try not to make your mitigating circumstances so far out in left field that the judge decides you totally wasted the court's time during the trial and assesses a higher fine than you have already posted.

Finally comes the decision to appeal your guilty verdict. You need three things to appeal your case. The first is an attorney. An appeal is way out of the league of a self-represented client. This leads directly to the second thing you need for an appeal, money. An attorney will not take your case without an up-front retainer and you will still need to pay a fee at the end of the case regardless of the outcome of the appeal. The third thing you need for an appeal is a court transcript. Before your trial begins make sure that a court reporter is present and ready to take a transcript of the trial. If there is not a reporter present, ask the judge for one before the case even starts. Most judges will honor this request. If they don't you already have grounds for an appeal.

PART TWO - Tools of the Trade

Chapter 7 - Radar

Radar, which is an acronym for "radio detection and ranging," is the most frequently used method of speed detection by police departments across the country. Radar has actually been in use as a speed detection device since the late 1940s and actually started out with traffic engineers prior to use by police departments. Recent studies have shown that as much as 10 to 20% of all radar speeding tickets are issued falsely. This number increases to around 30% when the radar was used in a moving police car. In this chapter, we will cover the basics of radar operation, the fifteen major types of radar errors and typical cross examination questions for the police officer during the trial. The final section of this chapter is a list of the most common radar units in use with their beam width data.

Radar - How it Works

Without getting too scientific, this section will cover the basics of radar operation. Simply put, the principle of radar operation is based on the Doppler Shift. The classic example of the Doppler shift is similar to the sound difference in a train whistle as it gets closer to you. A radar unit sends out a pulse or continuous microwave signal and listens for a reflection of the signal. When the pulse hits a moving object, the frequency changes. A higher frequency indicates that the object is getting closer while a lower frequency indicates that the object is moving away. The exact amount of change depends on the object's size, speed and direction of travel.

There are two basic types of radar in operation today. The first is a rotating antenna system. This is the type of radar used by the military, airports, ships at sea, etc. The other type of radar is commonly referred to as traffic radar—the type most motorists should be concerned about. There are three main differences in traffic radar that result in it being significantly less accurate than the rotating antenna systems. First, the traffic radar antenna points in a single direction rather than rotating. Second, the traffic radar does not transmit a modulating beam. These two differences account for why a traffic radar unit can only determine the approximate speed of the target. Unlike rotating antenna radar, traffic radar can not determine which object is being tracked or even which direction the object is traveling. The third difference in the two systems is the digital display for the traffic radar versus the cathode ray screen display of the rotating antenna systems.

The traffic system operates in three specific band widths or frequency areas: X Band (11 GHz), K Band (24 GHz) and Ka Band (32 - 36 GHz). The single direction beam, which resembles a cone shape, radiates out from the radar unit increasing in size and decreasing in strength. A typical traffic radar unit will have a beam width of approximately two lanes of traffic at a distance of 100 feet from the unit. The beam width increases to over four lanes of traffic at a distance of 1,500 feet. In addition to the increasing beam size, the beam will detect everything in its path and since the unit can not determine between targets, it is up to the operator to determine which vehicle is actually being "painted" by the radar beam. In reality, the unit can be reading a larger vehicle further away while the operator believes the signal to be from a closer vehicle that is smaller in size. Since radar reflectivity is based on size and shape, a semi will have a much larger radar signature than a small sedan. For example, in a 1979 test by *Car and Driver Magazine*, a radar unit registered a semi at a distance of 7,600 feet while a small sedan didn't register until 1,200 feet.

Traffic radar can further be broken down into two specific types: stationary and moving. People often presume that "instant on" is another type of radar but it is really an "operating mode" than can be used with either stationary or moving radar units. A stationary radar unit is the commonly seen hand held radar gun. These units are used from traffic enforcement to measuring the speed of a baseball pitch. Moving radar units are much more complex systems and can be used while stopped or moving. In a moving radar unit the beam has two functions. First it measures the speed of the police car and then it measures the speed of the target vehicle. The strongest reflection is presumed to be the local environment (terrain, buildings, bridges, signs, the road, etc.) and is used to determine the speed of the police car. It is important to remember that the police car's speed is not checked against the speedometer by the radar system. The second strongest signal is presumed to be from the target vehicle. The unit then runs an internal calculation which compares the two speeds and gives a resulting readout for both the police car and the target vehicle.

One new aspect of moving radar systems is called a Phase Lock Loop (PLL) which interprets the microwave shift. PLL systems are smaller, cost less and can interpret the signal within a larger noise (interference) area. Unfortunately, PLL units have an excessive range, some up to on and a half miles. PLL systems also tend to lock onto the first good reflecting surface they find. PLL systems are also very prone to "harmonic errors" which are covered under the next section.

As it stands, current radar systems are extremely accurate so long as the following conditions all exist at the same time:

1. The road must be straight and flat.
2. There must be good visibility.
3. There needs to be very light traffic.
4. The operator needs to be properly trained to recognize false signals.

In the real world of traffic enforcement, these four conditions rarely exist together. As a result, there are many types of errors that can result in routine traffic radar operation.

Radar - How it Fails

In 1980, the *National Bureau of Standards* tested the six radar units most commonly used by police departments. All produced false signals from CB or police radios. All two piece units (stationary) produced panning errors when used inside or outside of the police car. All moving units had shadowing errors where part of the police cars speed was added to the target vehicle speed.

In 1983 and 1984 the International Association of Chiefs of Police tested twenty four radar unit models from five different manufacturers. The results were worse than the tests conducted by the NBS.

- 12 units failed tuning fork calibration tests.
- 12 units were out of compliance with low voltage warning requirements.
- 6 units had Doppler audio errors.
- 5 units failed speed accuracy test.
- Nearly all units were affected by temperature variations.

Despite all these errors, none of these units were banned from use. In fact, some of these same units are likely still in operation around the country.

Although radar errors can often be a combination of factors, most can be attributed to one or more of the following fifteen types of errors:

1. Panning - This is when the hand element (gun) is swept across the control unit on the dashboard.

2. Mechanical Interference - Police car air conditioner / heater fan, alternator, ignition noise, rotating signs near the roadway, etc.

3. Shadowing - This error is common to all moving radar units since the unit calculates the target speed by subtracting the police car speed from the closing speed of the target. Anything that creates a low evaluation of the police car speed results in an erroneously high target vehicle speed. For example, a police car is traveling at 60 mph behind a semi traveling at 50 mph while approaching a target vehicle traveling at 65 mph. The resulting target vehicle speed would be 75 mph since the unit adds the police car speed and target vehicle speed (125 mph) then subtracts the closing speed of the police car to the semi (60 - 50 mph = 10 mph) and adds the difference to the target vehicle's speed.

4. Batching - This is a moving radar error that occurs when a police car is accelerating or slowing down while the unit is still calculating the target vehicle speed.

5. Radio or Microwave Interference - Any outside source of electromagnetic interference such as: airport radar; CB, Ham or police radio; cellular telephones; power lines, power sub-stations and mercury vapor or neon lights.

6. Auto-Lock on Wrong Target - The National Highway Traffic Safety Administration recommends disabling auto-lock on units that still have this function and new units are no longer produced with auto lock.

7. No Tracking History - This is the most commonly ignored recommendation in radar training manuals and is impossible to avoid if operating in instant on mode. The error occurs when multiple vehicles are in the radar beam path and the operator has not observed the average speed reading nor checked for the effect of external interference.

8. Harmonic Error from Phase Lock Loop - This is another common problem with moving radar units. When the target vehicle is moving from a slow speed while the police car is accelerating. This error typically occurs when the target vehicle is traveling below 20 mph, such as pulling out of a parking lot or driveway.

9. Terrain Error - The radar reads in a straight line and can not read down a hill or around a curve. In this case, the unit can actually be reading an entirely different vehicle than the officer is observing.

10. Look Past Error - In this error the radar unit locks onto a larger target that is behind the actual vehicle being observed. This was the case in the *Car and Driver Magazine* test previously mentioned.

11. Stationary Cosine Error - This error involves trigonometry and is usually to the motorist's advantage. If the radar unit is, for example, at a 15 degree angle to the road, the target vehicle speed is multiplied by the cosine of 15 degrees. So a vehicle traveling at 60 mph would have it's speed multiplied by the cosine of 15 (60 mph x .966) and the resulting speed (57.9 mph) is displayed, without the decimal point, as 57 mph. The radar unit does not round up or down for the decimal, it simply ignores the value. As you can see, the stationary cosine error saved the target vehicle 3 mph.

12. Moving Cosine Error - This case generally favors the police car rather than target vehicle. With moving radar the unit registers the largest radar reflection as the police car speed. If that reflection is from something other than the road directly ahead of the police car, then the police car speed is reduced by the cosine factor which corresponds to the angle between the reflected item and the police car. So a police car traveling at 50 mph passes a parked car on the shoulder of the road with a 20 degree angle at the time the officer locks on to a target vehicle traveling at 60 mph. The apparent police car speed of 50 mph is modified by the cosine of 20 degrees (50 x .939) and results in a reading for the police car of 46.9 mph or actually 46 mph. The extra 4 mph is then added to the target vehicle's speed for a reading of 64 mph.

13. Multiple Bounce - Overpasses are a common source of multiple bounce errors which occur when the radar beam is reflected of multiple targets at the same time.

14. Reflection Error - If a radar antenna component is hung on the outside of the police car, the beam can actually be reflected off the side window or side mirror of the police car causing a faulty reading.

15. Arm Swing Error - This is a result of the Wyatt Earp quick draw radar gun method commonly used by motorcycle police officers on the side of the road. The gun not only reads the target vehicle speed but also adds in the speed of the officer's arm due to the motion.

In addition to the errors listed above, there are ways that police officers can actually cheat on radar readings. This is not a common practice but can be a problem when police departments use a quota system for traffic tickets. Although quotas have been outlawed, some states such as Illinois and Missouri, include statistics on an officer's citation history as part of the officer's performance evaluation process. These are some of the documented ways that officers have generated false radar readings:

- Write multiple citation from one vehicle's speed reading.
- Whistle into the CB microphone, the higher the pitch, the higher the speed.
- Aim the unit at the ground and swing arm rapidly in the air.
- Clock a low flying airplane.
- Set the car mounted unit to calibrate and the unit will read what ever the police car speed is at the time.

Please keep in mind that these are extremely isolated cases. Nearly all of the radar traffic ticket cases will nothing more in court than one or two of the main fifteen errors. You need to have some extremely solid evidence before you try to win your case based on some form of the officer cheating.

Typical Cross Examination Questions

In the Cross Examination section of Chapter Six it was pointed out that the key to a successful cross examination is to focus on as many small details as possible. This section will take the radar portion of a cross examination and break it down into manageable pieces. Not all questions may be applicable to your particular case. You should use these questions as a template for your own individual situation and not as a script in the courtroom. You will also need to gauge the judge's tolerance of your line of questioning. As a self-defended individual, rather than an attorney, you will typically not be granted as much latitude during the cross examination. Maintain a steady and logical pace and you should keep the judge content.

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

Preliminary Questions: These questions are to establish the essential facts in the case and create a friendly rapport with the officer.

1. What specific type of radar where you using when the citation was issued?
Do not accept an answer like "Doppler Radar" or "Moving Radar"

2. Would you relate the facts of the citation as you remember them?
Remember your grounds for objections concerning the officer reading directly from the citation.

3. Was your audio Doppler engaged 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 alarm set on?
If the officer claims he doesn't know what audio alarm is, remember this response when you get to the Question Section on audio alarm.

5. Was your automatic speed lock engaged?
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 conjunction with your radar unit?

7. Where you stationary or moving when your radar unit's alarm went off?

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

9. Did you see the target vehicle prior to 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. Where 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 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 24 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 you 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 he can 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 particulars 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 said except yes?

12. Do you hold a certification in the use of radar?
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 some idiosyncrasies 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 spurious or false readings?
This is a crucial question. If he says no, you can likely catch him with he 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 there isn't.

9. Does the unit give some visual indication that the reading is suspect?
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 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 read-

ing 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 dis-enable 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?
It certainly 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.

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 office 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, uncrowded 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.

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 a 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 so 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 don to a figure of some kind. Figure a traffic lane to be 12 feet. In reality, a 12 degree beam with 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 officer's 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 straight line.

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

11. If the beam bounces of 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. Where there any power lines in the area? Any cars or trucks with CB radio antennas? Where 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.

Chapter 8
Laser (LIDAR)

Laser speed detection serves the same purpose as Radar; however, the two systems are totally different beyond their common goal. Laser uses a light beam and takes the measurements based on the speed of light. On the other hand, radar uses a radio beam and measures at the speed of sound, which is substantially less than the speed of light. While radar has a wave length of anywhere from inches to hundreds of feet, laser has a wave length of only 30 millionths of an inch. A typical radar beam is 18 degrees (X - Band) to 15 degrees (K - Band) wide.

Comparatively, laser has a beam that is one sixth of a degree. The results are drastic as the beam radiates out from the laser gun. While radar can expand to over 500 feet wide at a distance of one mile, the laser beam will only expand to 19 feet wide. At a more realistic distance of 1000 feet, the radar expands to over 100' wide while the laser system only expands to 3 feet wide.

Although laser sounds like the insurmountable speed detection system, it is not infallible. In fact, Lidar is significantly affected by weather conditions. Fog and clouds will severely reduce the effective measuring distance of the laser beam. For example, the laser system can only be used from a stationary set up rather than moving like some radar systems. Furthermore, laser can not be used through a windshield and the operator must have additional training that is typically not required for radar systems. Laser also has a problem getting an accurate reading when used at a severe angle to the target vehicle such as from an overpass or the far shoulder of the road. In addition, maintenance and calibration can only be performed by a factory authorized repair facility. As you can see, laser may be tougher to beat than radar, but it can be accomplished.

The primary target for the laser beam is the vehicle's license plate. The light beam relies on a reflective surface for the successful return signal. This is why dark low slung vehicles with minimal or no chrome are so hard for laser to detect. The front license plate should be removed and the rear plate should be painted with a high gloss clear coat to help defeat the laser beam. One other option is to use a laser defeating license plate cover such as the Laser Plate by Jammers, Inc. (800-451-4477).

Prior to each use, the laser gun should be locally calibrated by using all three of the following methods:

- The self test button should be used and the reading should be 8.8.8.8.
- A measurement of a non-moving target should result in a reading of 0 MPH.
- The sight and audio tone should be tested by panning across a telephone pole. As the sight aligns with the pole, the audio tone should change indicating a positive contact between the beam and the pole itself.

Essentially, the LTI 20.20 Marksman is the only laser gun being used in the USA. The manufacturer claims a beam width of two feet at a distance of 1300 feet. The speed measurement time is one third of a second and the unit is equipped with an audio seek aid for positive target confirmation. The accuracy is alleged to be precise within 1 mph up to 60 mph and within 3% for speeds over 60 mph. Despite this impressive list of performance criteria, the Marksman has some notable downfalls.

For example, tests indicate that the Marksman lacks uniformity and has an unusual distribution of the beam intensity therefore resulting in a deviation from the aiming point. The especially high level of intensity along the right edge creates a deviation in the horizontal direction. What all this technology translates to, is the Marksman can actually detect a vehicle as close as five feet away from the actual target vehicle.

On June 13, 1996, New Jersey Superior Court Judge Reginald Stanton stated that he was not convinced of the accuracy of the LTI 20.20 Marksman. As such, he ruled that any readings taken with the LTI 20.20 would not be accepted as evidence in any pending or future speeding ticket cases.

For a defense strategy you need to be aware of laser's status in the jurisdiction where your citation was issued. Only a few states have given laser "judicial notice" which is a legal ruling that establishes specific evidence as beyond dispute. Radar has "judicial notice" in every state.

If no judicial notice has been awarded, then the prosecutor will need to have an expert witness testify to the accuracy and reliability of the laser unit. If this expert witness ends up as a manufacturer's representative, you can make a motion to disqualify the witness since he (and his company) clearly has a financial interest in the outcome of the case and therefore, the witness is not impartial.

If judicial notice has been awarded, you certainly want to utilize the New Jersey ruling in your case preparation. The remaining preparation is very similar to a radar case. You need to focus the court's attention on the officer's training, the unit calibration and self-test methods, weather conditions during the time of the citation and the proximity of surrounding traffic. As with any case, your best strategy is hoping for the officer not to appear in court followed by careful preparation in case he does appear.

Chapter 9 - Photo Radar

Photo Radar is simply a camera and computer controller attached to a standard radar speed gun. The computer controller is programmed to trigger the camera when the radar unit detects a certain speed. The photos are typically taken of the front and rear views of the vehicle. These two views provide both the license plate and the driver in the photos for identification purposes. The citation is then processed and mailed to the registered owner of the vehicle in the pictures. Nice and neat, it is also nice and very defendable for the driver.

Unless the ticket was sent with a return receipt and signature required, there is absolutely no proof that the ticket was actually delivered to you. The photo radar system relies on people simply sending in their fine with no questions asked. One other major defense is the 6th Amendment. Under it, you are guaranteed the right to due process and that includes facing your accuser. Obviously, you can not face your accuser in a photo radar ticket since the machine is the accuser. You should also be aware that the State of Arizona recently ruled that a defendant can not be forced to identify themselves in a photo radar picture since it would violate their constitutional right against self-incrimination.

Photo radar units are usually cash machines for the cities that utilize them. One important fact in this equation is the cities rarely own the equipment. The costs associated with a complete photo radar system prohibit local cities from purchasing their own systems. Luckily, most systems are owned by private companies and leased to a city. This introduces an additional layer of administration and also potential witnesses in a possible court case.

There are two simple ways to defeat a photo radar unit and render the photos useless against you. The easiest is to remove your front license plate. Even in a state where these plates are required, the violation for no front plate would be a simple repair ticket.

Another solution is PhotoBlock Licence Plate Covers. They were invented and designed by a photographer who was fed-up with the loss of privacy resulting from his automobile being photographed without authorization. According to their web site (www.photoblock.com) “the product consists of a high quality clear molded plate cover combined with a thin lens developed specifically to neutralize Photo Radar. Attaching the licence plate cover to a motor vehicle allows the driver the freedom of openly displaying their licence plate while discouraging the unauthorized photographic reproduction of same.”

Chapter 10 - VASCAR / Airplane / Visual Estimate

VASCAR is an acronym for Visual Average Speed Computer & Recorder. Basically, this system is simply a computing device that reports a vehicle's speed based on the time it takes to travel a specific distance (Distance / Time = Speed). The VASCAR system is linked to the patrol car's speedometer.

This system can be used in a stationary mode (on the side of the road) or in a moving mode (traveling down the highway). One of the more devious applications of VASCAR is an officer passing you on the highway. As he passes, he starts the VASCAR computer. He continues down the highway at a much higher speed than you are traveling and you are typically lured into a false sense of security since the officer has already passed you. About three or four miles down the highway you find the officer waiting for you. He has all he needs to write the citation since he knows the distance he has traveled and the time it took you to cover the same distance. It should be noted that VASCAR is considered a speed trap in California and Washington and as such, VASCAR is illegal in these states.

VASCAR has several problems which generally have lead to police departments abandoning this method of speed detection. The biggest problem is a visual distortion which is created depending on the officer's angle between his observation point and the subject vehicle. For example, if the officer is at an extreme angle, his timing will be thrown off. VASCAR requires that the exact same reference point on the subject vehicle be used to start and stop the timer. This is usually the front bumper and if the officer is at too sharp of an angle, he can not accurately see the exact point that the bumper crosses the VASCAR points. Ideally, the officer should be centered between the VASCAR start and stop points. He also needs to be back far enough to create a nearly perpendicular view of the timing area.

In a 1991 Department of Transportation study (DOT HS 807-748), they evaluated the VASCAR system and determined that the timing speeds should be at least 4 seconds in the stationary mode and five seconds in the moving mode. These required times lead to the following minimum observation distances at specific speeds:

Speed	Stationary	Moving
35 MPH (51 FPS)	204 Feet	255 Feet
40 MPH (59 FPS)	236 Feet	295 Feet
45 MPH (66 FPS)	264 Feet	330 Feet
50 MPH (73 FPS)	292 Feet	365 Feet
55 MPH (81 FPS)	323 Feet	405 Feet
60 MPH (88 FPS)	352 Feet	440 Feet
65 MPH (95 FPS)	380 Feet	475 Feet

As you can see, the required observation distances make VASCAR a rather hard system to properly apply on the highway. VASCAR can still lend itself to lower speed limit areas; however, most police departments prefer the more reliable radar gun for speed detection.

Airplane

Airplane speed detection is very similar to VASCAR in that and officer will time a certain vehicle as it covers a certain distance. The air officer then radios a ground unit who makes the stop and writes the citation. Marks on the ground are illegal in California since they are considered a speed trap. Most other states do not have any form of permanent setup for airplane speed detection since the associated costs are so high.

Airplane speed detection has a few problems that can work to your advantage in court. The first problem is that the aerial officer often uses the aircraft to pace the vehicle on the ground and uses the airplane's speed as the ground vehicle's speed. It is imperative that you explain to the court that aircraft speeds are measured in air speed which measures the aircraft's speed in relation to the surrounding air. If the plane is traveling into a head wind, the speed is slower than if the aircraft were producing the same amount of power in a tail wind.

The second problem is difficulty in positive identification of the specific vehicle spotted. A red convertible Porsche is easily identified (in most locations), however, a gray Ford Taurus might be one of two or three of the same style and color of vehicle within a two or three mile stretch of highway. As you can see, this is the basis for a sound defense in court.

The third, and definitely most advantageous problem, is the system relies on two officers. As a result, both officer's need to be present in court for a conviction. Since it is hard enough to get one officer into court at a specific time, the odds of both officers being in court together drop significantly. If you are faced with both officers present at your trial, request that one leave the court chamber while the other is testifying. This will help in your efforts to get the officers to contradict each other and thereby introduce the element of reasonable doubt.

Visual Estimate

Visual Estimating is a technical term for guessing. In this method the officer is relying on his authority as an officer. He will testify that he determined your speed through observation and based on his experience. This type of citation is extremely rare since the officer knows that he has minimal odds in court if you actually challenge his speed estimating abilities. To counter the officer's alleged ability, take any object and hold it straight out at arms length from your shoulder. Ask the officer to tell you how fast the object was traveling. If you want to be real nasty use a light object and a heavy object. If he gives different speeds, point out that all objects fall at the rate of 32 feet per second squared, regardless of their weight. Be sure to have the appropriate data on your note pad (based on your height) from the following table:

Distance Speed
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's say that you received a citation for 65 MPH in a 55 MPH zone. You drop an object from a height of 5.0 feet and the officer estimates 15 MPH. From the chart you can see that he was off by 2.8 MPH. You should also precalculate the ratio between your citation speed and the speed that your object will drop based on your height. In this case: 65 MPH / 12.2 MPH = 5.3 ratio factor. After the officer guesses his speed, you need to determine the amount of his error (2.8 MPH in this example) and multiply this amount by the ratio factor.

As you can see, the officer could have been off by as much as 14.9 MPH in this example (2.8 MPH x 5.3 ratio factor). At this point the officer should be suitable defeated and the judge should be awaiting your motion to dismiss.

Chapter 11 - Motor Pacing

Motor pacing is simply the police officer following your vehicle and maintaining a constant distance to determine your speed with his speedometer. Motor pacing can also occur if the officer is in front of you as well. In this instance, the calibration of the patrol car is crucial. Most defense strategies used in other types of speeding tickets can not be used for the motor paced ticket since the officer doesn't have to be trained in reading a speedometer and the officer didn't likely follow the wrong vehicle.

The basic defense strategies will be to hope the officer doesn't appear, followed by the prosecution failing to prove all points in the specific section of the vehicle code. At this point you should review the Cross Examination section of Chapter 6 as well as the list of questions for the radar ticket cross examination in Chapter 7. Even though most of the radar questions are not relevant, they will get your train of thought along the right lines as you prepare your line of questions for the motor pacing case.

Some of the key issues to remember for your cross examination are:

1. The officer reading directly from the citation. Make him remember the facts.

2. Be sure that the officer testifies that the speedometer was calibrated on a specific date and that the calibration certification is present in the court. In addition, the qualifications of the calibrating technician should be available.

3. Again, insure that you follow the officer's testimony carefully as well as the prosecutor's line of questioning. If they omit any of the points required by the vehicle code, such as identifying the road or driver, you have grounds for a motion to dismiss. Don't hold your breathe that this will succeed but you still have valid grounds even though the judge will likely allow the prosecution to re-open their case.

4. Do an in depth series of questions concerning the other traffic on the road. You are trying to establish whether he passed any other vehicles while he was pacing you. If he did not and there was other traffic on the road at the time, this would indicate that you were traveling at the same speed as the traffic around you.

5. Try to get in depth details as to the exact distances covered from the time the officer began the pace until the vehicles stopped. You also want to establish how far the officer was from your car at all times. Check the math and see if the officer actually had to speed up to close the distance between your vehicle before he pulled you over. He could have actually read a speed that was faster than you were going if he was trying to close the gap between vehicles.

These are your only real chances for a motor paced ticket. If you are found guilty you will want to make a brief statement before the court passes sentencing, review Verdict section of Chapter 6 for additional information.

PART THREE - Odds & Ends

Chapter 12 - Other Types of Tickets

Parking Tickets

This was the easiest section of the User Guide to write. PAY THE TICKET! The only time you should ever consider fighting parking tickets is when you have an excessive number of them and are facing some serious fines. Otherwise, the easiest thing to do is mail in your check and be a little more careful next time you park somewhere. You might also consider yourself lucky that you vehicle wasn't towed.

Repair or Fix-It Ticket

This was the easiest section of the User Guide to write - FIX THE PROBLEM! Most courts will either dismiss the fine or at least reduce the fine by half if you bring in proof that you have corrected the problem. Remember that one of the easiest ways to avoid a ticket is to blend in with the crowd. A vehicle spewing exhaust fumes from a bad muffler or winking with one brake light is not blending in with the crowd. Keep you vehicle in good repair. It will pay off in more ways than one.

U - Turns

This situation requires careful research prior to arriving in court. Just the same as your speeding ticket, you need to research the particular section of the vehicle code and derive all the specific aspects that must be proved against you. Again, the burden of proof is on the officer or the prosecution. A typical U - Turn vehicle code will specify the conditions where a U-Turn is illegal. This will most likely be in a residential area and within so many feet of an intersection. A check with the local zoning office will verify what type of district you were actually in at the time. Return to the scene and measure off your distance and relate it back to landmarks on the side of the road. As with all citations, your best hope is a no-show officer. After that, your best defense is to inundate the prosecution with the smallest of facts until the officer slips up and contradicts his earlier testimony.

Red Lights

These types of citations are difficult to win since it is your word solely against the officer's word as to your vehicle's position at the time the light actually turned red. The essential element which will need to be proved is that no part of your vehicle was in the intersection before the light turned red. Ideally, you need to focus on the officer's position in relation to your vehicle at the time of the citation. 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. This is the worst place for him to make an accurate assessment of where your vehicle is at the time the light changes. If the officer was approaching from a right angle to your vehicle, you might be able to argue that the officer couldn't see your vehicle and the traffic light at the same time. The only other contributing factor might be the surrounding elements which could obstruct a clear view of the intersection. These elements might be trees, hedges, fences, buildings, pedestrians, etc. Photos could be helpful to prove your theory of blocked visibility from the officer's perspective.

Stop Signs

Stop sign defenses are very similar to red light case except that you are allowed to continue through the intersection after your stop. The majority of stop sign tickets are issued for what is referred to as a "California Stop." This is where you essentially slow down quite a bit but just enough to slide through the intersection. Officers typically look for your vehicle's front end to slightly rise which indicates a full and complete stop. Again, the best place for the officer, from the defense standpoint, is behind your vehicle. Any position perpendicular to your vehicle is essential impossible to win since the officer has a view of your complete vehicle.

Chapter 13 - Does speed kill?

You often hear the expression "Speed Kills" when people or government agencies are discussing highway safety. In a manner of speaking this is true. At least one vehicle involved in a traffic accident needs to be moving in order to cause a fatal accident; therefore, speed does kill, however, there has never been a documented case of a fatal accident from two vehicles at rest. The real question is how much speed actually kills and is speed the real culprit at all?

A recent study by the Federal Highway Administration revealed some surprising statistics that weren't generally publicized. The study revealed that the slowest 5% of all drivers had the highest accident rates. In addition, the study also showed that the drivers who had speeds at 10 - 15 mph above the speed limit were the safest group of drivers with the lowest accident rate. The sole reason is that slower drivers are less attentive than faster drivers. Faster drivers realize that they are traveling faster than the speed limit legally allows and therefore they are significantly more attentive as they watch for any sign of a potential police car ready to present them with a speeding ticket. Furthermore, the same study also found that 70% of all drivers exceed the speed limit and that most current speed limits are set at least 10 mph slower than they should be. It should be noted that this study was before the change in the national 55 mph speed limit but more on the national speed limit later.

It is generally considered that the average speed of traffic, or the flow of traffic, is the speed that the majority of drivers consider to be prudent and safe for the existing conditions, regardless of the speed limit. This is the basis for what is referred to as the 85th Percentile Rule. This is a system that has been used by traffic engineers for over fifty years. Simply stated, the 85th Percentile Rule means that the safest speed for any particular road is the speed that 85% of all drivers travel at or below, under normal conditions. Remember that the Federal Highway Administration tests showed that 70% of the drivers were exceeding the posted speed limit by 10 mph. These drivers are the flow of traffic and are the majority of the drivers who make up the statistic for the 85th Percentile Rule.

The National Speed Limit was established at 55 mph in 1974 as an answer to the oil shortage. The theory was that slower speeds used less fuel and as a result, conserved energy. A noble theory at the time but why did it take over twenty-years to change this speed limit when the oil shortage ended only a few years after the 55 mph limit was established? The answer is due to the money train that was created for city and state governments as well as the insurance companies. Lower speed limits are a golden egg for some small municipalities.
In some rural areas, traffic ticket fines make up 90% of a small town government's operating budget for the entire year.

During the later period of the 55 mph speed limit, the majority of drivers on major highways usually traveled between 65 - 75 mph. As you can see the bottom end of this is the magic 10 mph that the Federal Highway Administration test referred to. In fact, the percentage of drivers traveling 70-75 mph would suggest that the 55 mph limit is really more like 15 mph lower than it should be. The original speeds on most of the major highways started at 70 - 75 mph before

the national speed limit went into effect. These speeds were set years prior by traffic engineers who used the 85th percentile rule to determine what the speed should be for these particular roads.

Now that these speeds have been increased to 65 - 70 mph, you will still find the majority of drivers traveling at the 65 - 75 mph speed. The speed limit increased but the driver's speeds did not. The reason goes back to the principle of the 85th percentile rule. Most drivers feel that the safe speed is contingent on several factors, including:

- Road conditions - dry, wet, ice, etc.
- Vehicle condition - good tires, engine in good shape, etc.
- Driver's ability - do you feel comfortable traveling at 75 mph
- Traffic conditions - is the road relatively clear or is it bumper to bumper
- Visibility - Clear and sunny or rain with fog

Common sense is what the majority of the drivers use. The same drive who will do 75 mph down the interstate highway on a clear and dry day, is likely the same driver who will do 55 mph on a rainy night.

The final verdict is that speed doesn't kill. Speed generates revenue. A real example of this is the unmarked police car. If speed is so dangerous, why are there any unmarked police cars? We all know that everyone slows down when they see a police car. Wouldn't it make sense to have all police cars marked so that more drivers would see them and as a result, slow down? The unmarked police car is proof positive the governmental agencies are aware that the speed limits are too low and people are going to exceed them. The way to capitalize on these people is the unmarked car whose sole purpose is to essentially entrap drivers who are part of the 85th percentile rule. The governmental agencies aren't the only group responsible. In the next chapter we'll see how your auto insurance company is one of the biggest behind the scene's supporter of the lower speed limits to keep revenues up.

Chapter 14 - Why Insurance Companies Love Speed

In the past, insurance companies assisted in highway safety through the sponsorship of driver training programs by conducting public information campaigns and providing grants for highway safety research. Those days are behind us now. These noble ides have been abandoned in favor of the tax exempt lobby group. The principal group of all the major insurance companies is the Insurance Institute for Highway Safety (IIHS). Quite an honorable sounding name for a well funded machine with three primary goals:

- Promote unrealistically low speed limits.
- Endorse and fund covert methods of speed detection.
- Expansion of auto manufacturing regulations.

Surprising as it may seem, speeding tickets are not about highway safety. Speeding tickets are about big income for local and state governments as well as the insurance companies. In the introduction we discussed how the major cities in the United States generate millions of dollars a year in speeding ticket fines. Some smaller, more rural towns can generate most of their annual operating budget from speeding ticket revenues.

The insurance companies are right behind them all the way as they wave the flag of highway safety while collecting an average of a 15% policy increase for three years. The insurance companies and local governments are all aware of the studies by the Federal Highway Administration that revealed the slowest 5% of all drivers on the highway accounted for the largest percentage of accidents. The same study showed that the motorist with the lowest accident rates are those who typically travel at speeds anywhere from 10 to 15 mph over the posted speed limit.

IIHS is completely aware of the 85th Percentile Rule and hopes that a very small group of the public is also aware of this rule. Simply stated, this rule shows that the safest speed for any road is the speed that 85% of the drivers would travel, under good conditions, if there were no posted speed limit. A quick proof of the 85th Percentile's accuracy is on the federal highways now that the speed limit has increase from 55 mph to 70 mph. During the days of 55 mph, drivers usually averaged between 65 and 75 mph. Now that the speed limit has been raised, the majority of the drivers still do not exceed 75 mph.

The reason isn't because they only want to travel at X miles per hour over the speed limit. These drivers realize that this speed is realistic and a speed at which they are comfortable driving.

IIHS has continuously pushed to outlaw radar detectors, and even convinced GEICO Insurance not to insure drivers with radar detectors. Their arguments against radar detectors were:

- Radar detectors increase accident rates and cause people to drive faster than they would without the detector.
- Insurance companies don't get an accurate portrayal of driver's performance since the radar detectors allow them to avoid speeding tickets.
- Since radar detector owners are the fastest drivers, the insurance companies shouldn't have to provide them with insurance.

The Insurance Commissions of both California and Maryland told GEICO and IIHS that these arguments were totally unfounded. They also pointed out that their own studies showed no correlation between radar detector use and increased accidents.

One new tactic among insurance companies is to make a major marketing production out of the local agent presenting the local law enforcement agency with a radar gun in the name of highway safety. Let's apply a little business economics to this scenario:

1. The radar gun is purchased for $2,500.00 by XYZ Insurance.
2. This radar gun will be used to write an average of 80 tickets per month (this is a very low figure, some officers write over 150 tickets a month).
3. The average XYZ auto policy costs a driver $750.00 per year.
4. XYZ insures 5% of the drivers in this state and figures that 1/3 of the tickets will be written to out of state drivers.
5. XYZ will increase a driver's premium by 15% for a speeding ticket.

80 tickets times 2/3 (for in state drivers) = 54 tickets per month

5% of these drivers are XYZ customers = 54 x .05 = 3 drivers per month

XYZ will charge these 3 drivers an extra $112.50 per year = $337.50

Over the next twelve months XYZ will gain 12 x $337.50 = $4,050.00

Wasn't it generous of XYZ to spend $2,500.00 for the radar gun donation? Remember, the increase premiums last for 3 years! You can quickly see that XYZ wasn't quite so noble.

One other big issue with IIHS is covert speed detection through the use of unmarked police cars. If the insurance companies were so concerned with driver safety, wouldn't they rather see all marked cars on the highway? What do you do when you are traveling along at 75 mph on a 65 mph highway and see a state trooper about to come down the on ramp? You slow down, that seems to support IIHS's notion of highway safety much more than an unmarked car hiding in the bushes and waiting to write a ticket. As you can see, the insurance industry might talk a big line for highway safety, but the proof is in the profits.

Appendix A - Public Records Request Form

Public Records Request

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

1. 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:

_____
_____
_____

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:

_____
_____
_____

____ 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 the 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.

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 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

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

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.
15 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