

RADAR DETECTORS: ACCESSORIES TO THE CRIME?

by LAWRENCE E. SAVELL

Perhaps you have seen the advertisements for them in the pages of your favorite sports or electronics magazine. Maybe a friend has told you he has one. Maybe you have one. By whatever chain of events, nearly every driver knows of the existence of these electronic gizmos called "radar detection devices" or "radar detectors." What the average driver may not know, however, is that these devices are illegal to possess and/or operate while driving in a number of states and municipalities, and that authorities are continually endeavoring to lessen their conceded effectiveness.

Understanding the Technology

The irony of radar speed monitoring by police and radar detecting by motorists is that each side is continually and feverishly working to improve its technology faster than the other. Nevertheless, some basic concepts can be noted.

Radar is an acronym for "Radio Detecting and Ranging." Police monitoring the speed of vehicles use "Doppler" radar, named after Christian Johann Doppler, who, in 1842, proposed the underlying theory. Specifically, a radar antenna is used which launches a continuous radio wave of a certain frequency. When this microwave strikes an object, such as a moving car, it is reflected at a different frequency. A radar set

measures the difference between the two wave frequencies and computes from such measurements the speed of the object. Of course, the accuracy of police radar is dependent upon two factors: the reliability of the functioning of the equipment and the training and ability of the operator.

A radar detector is, in essence, a radio, tuned to the two microwave frequencies assigned to police radar by the federal government. When a radar detector senses the presence of these microwaves, it issues a warning, generally in the form of a light or an audible sound. Obviously, the key to a successful and effective radar detector is its ability to detect the police wave before the wave detects the vehicle, and, ideally, to give the motorist time to decelerate to a legal speed.

Radar is a critical weapon used by police in their war against speeders. As a recent court opinion noted, in a seven-month period in Virginia, 115,195 or 86.6 percent of the 133,015 arrests for violations of that state's speed limits resulted from the use of radar. [The remaining 17,820 resulted from the use of the more conspicuous "pace method," whereby authorities follow a suspect vehicle at a uniform distance, measuring the vehicle's rate of speed from the speedometer on the following car.]

Radar detectors are big business: reports indicate Americans spend over \$100 million annually on such devices.

State Laws

At the time this article is being prepared, radar detection devices are illegal under state law in at least two states: Connecticut and Virginia. Such devices are also illegal throughout the district of Columbia. The validity of such statutes and regulations has been upheld in the face of challenges that they violated the Federal Constitution.

Connecticut law provides that "[n]o device designed to give advance information to a motorist of the use of a radar speed-indicating instrument in the area of the highway which such motorist is approaching may be installed or used in any motor vehicle operating on the highways of Connecticut." Interestingly, this provision appears to render unlawful only the installation or use of such a device; presumably, the mere possession of an unplugged model would be permissible. At least one court has so ruled, and went so far as to order the authorities to return the device to its owner.

The Virginia statute has a similar provision. Under Virginia law, "[i]t shall be unlawful for any person to operate a motor

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vehicle upon the highways of this State when such vehicle is equipped with any device or mechanism to detect the emission of radio microwaves . . . employed by police to measure the speed of motor vehicles upon the highways of this State . . ." The same section of the law notes, however, that "[n]o person shall be guilty of a violation of this section when the device or mechanism in question, at the time of the alleged offense, had no power source and was not readily accessible for use by the driver or any passenger in the vehicle . . ." Nevertheless, one should not presume that, given this language, merely unplugging a radar detector when a police car is spotted approaching will enable a violator to avoid prosecution. In one case, a Virginia court affirmed the conviction of a motorist where it clearly appeared that the detector had been in use by the driver, based on evidence that the driver had applied his brakes immediately when the police radar was activated, and then undertook to disconnect and conceal the device, denying its presence in the vehicle.

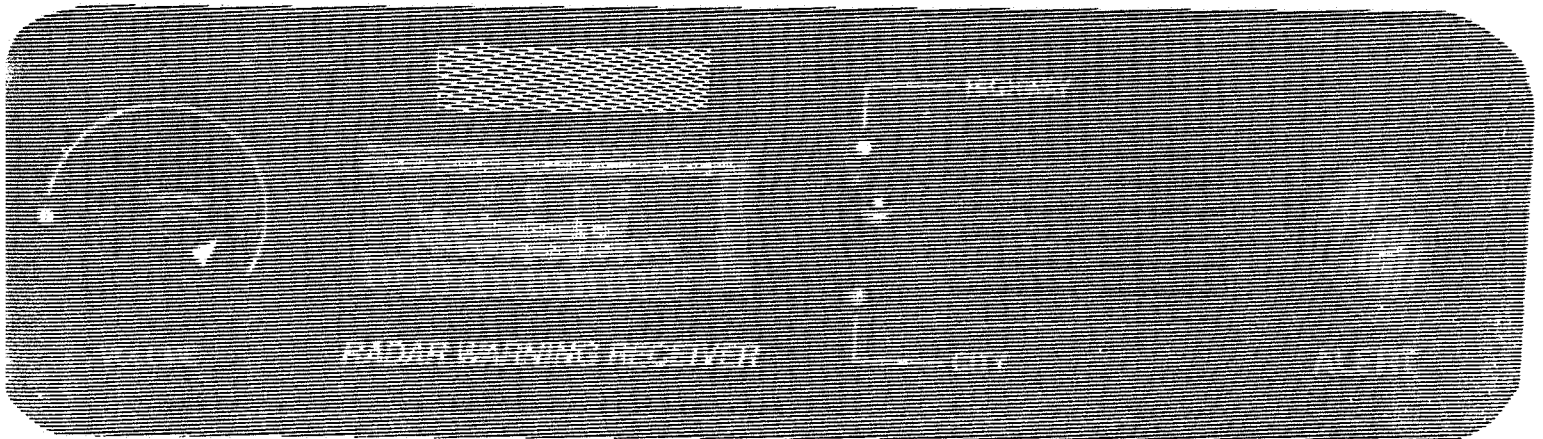
The District of Columbia statutory provision appears to be stricter than those of Connecticut and Virginia, announcing that "[n]o person shall use or have in his possession in an automobile in the District any device used to detect or counteract police radar." [Emphasis added.] Presumably, and assuming the courts interpret the phrase "used to detect or counteract" to refer to the ability of the device to so function whether or not it was so employed on a particular occasion, carrying a sealed, gift-wrapped box containing a radar detector could constitute a violation.

which have banned the use of radar detectors appears unlikely. In April, the Maine legislature killed a bill which would have barred the use of such devices on that state's highways. Although the vote in the Maine Senate was by the smallest of margins, 14-13, the Maine House rejected the bill the next day by a greater than 2-1 margin, 92-41. Statements by supporters of the bill that the only purpose of such devices is to permit motorists to violate speeding laws were drowned out by the arguments of the opposition. Among the observations which carried the day were the right of people "to be left alone" and the virtual unenforceability of such legislation given the perfecting of smaller or hidden radar detectors. One legislator, admitting he owned a device, said a ban on the detectors would require a ban as well on Citizen's Band ("C.B.") radios, which are often used to alert other motorists to radar traps.

Local Laws and Ordinances

Even if there is no state law on the books banning the use of radar detection devices, a given locality may have passed its own law rendering such use illegal. Although a review of every municipality's legislation would obviously be beyond the scope of this article, it can be noted that research sources indicate that such laws exist, at the very least, in several counties of at least two states: Georgia and Kentucky.

Moreover, even the absence of any ordinance barring the use of radar detectors is no guarantee against a penalty for a discovered use. In Luverne, Alabama, where no law makes the use



At least one state, although allowing the use of radar detection devices, has prohibited the use of radar interference or jamming equipment. Under Oklahoma law, "[i]t shall be unlawful for any person to operate a motor vehicle upon any public road, street, highway or turnpike of this state when such vehicle is equipped with any device designed for the purpose of, or capable of . . . [j]amming or distorting signals received by radar . . ."

Pending Legislation

The prospect of other states adding their names to the handful

of such devices improper, a Crenshaw County District Judge reportedly assesses an additional penalty on speeders who are caught with a radar detector. Specifically, the Judge adds a \$50 fine on top of the standard \$25 fine plus \$42 court costs. The Judge apparently initiated his practice after seeing an advertisement wherein a radar detector manufacturer promised to pay a purchaser's first speeding ticket. There is an exception to the Judge's practice: he will waive the extra penalty for those drivers who promise to quit using their device. The legality of the Judge's policy is currently the subject of debate among local legal scholars.

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A word for those who plan accelerated travel among our neighbors to the north: radar detection devices are reportedly now illegal in no less than eight provinces and territories in Canada.

Human "Radar Detector"

Even as scientists and engineers work around the clock to improve the technology behind today's radar detectors, one man has shown that no machinery at all is required to undermine the efforts of police. A federal trial was recently conducted to determine the remedy of a man who sued the City of El Paso, Texas for arresting him because he warned motorists about the existence of a radar trap. Specifically, the man had drawn and displayed a "Radar Trap" sign in a neighbor's yard a few feet away from a police radar unit. He was arrested for posting an illegal sign. [Charges of illegal parking and interference with an officer in the performance of his duty were dropped in municipal court.] His federal court suit seeks recovery of a half a million dollars for the alleged violation of his constitutional right of freedom of speech.

Alternative Methods of Catching Speeders

As its name indicates, a radar detector will help a speeding motorist evade authorities only if radar is the sole means by which the authorities monitor traffic. Given this limitation, police in a number of states have turned to alternative surveillance methods. Several of them have risen above the norm and taken to the skies.

Pennsylvania's five-year-old "Bear in the Air" program consists of using single-engine airplanes and helicopters to identify speeders. These aircraft, flying up to 4,500 feet above the ground, are virtually impossible to detect by motorists. An officer in the craft clocks the time it takes a particular vehicle to travel a set distance, as marked by white lines painted on the surface of major thoroughfares, and thereby computes the speed of the observed vehicle. The airborne officer then contacts police on the ground by radio, maintaining surveillance until the vehicle has been stopped. The program has been tremendously effective: in the period from October, 1978 through February of this year, 40,317 motorists have been caught and approximately 98 percent of them have been convicted. The state's efforts have also proven financially remunerative: Pennsylvania earns \$500 per hour profit when its craft are in the air.

A similar program has also proven to be effective in Connecticut, where two single-engine state police airplanes patrol above major highways. Since the program began in October, 1984, the police have issued over 2,200 speeding tickets per week, far above the 1983 rate of 1,500 per week. On an average day, the two-man crew of each plane catches at least 40 speeders. According to state police records, approximately 95 percent of all speeding tickets result in convictions, with an average fine of \$70.

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Aerial surveillance is also reportedly conducted by New York (one plane) and New Jersey (helicopters) state police.

What Should the Law Be?

It is clear that the question of whether radar detection devices should be made illegal is one subject to considerable debate. But let's look at the facts. We will assume that speeding is an evil that society has an interest in combatting. We will also assume that radar is among the most effective means of detecting a speeding vehicle.

This author submits that radar detectors have no other purpose than to enable their owners to exceed the speed limit and then decelerate when they approach police radar in order to avoid prosecution. They serve no other function. They are not works of art. They do not help a driver drive better. They are accessories to a crime.

So what are the arguments commonly advanced in opposition to such legislation? Here are a few.

Argument one: drivers, like all people, have the right to be let alone and free from surveillance. The response: what kind of an "intrusion" is created by radar (for it is the radar, and not the anti-detector legislation, that is truly the focal point of this argument upon close inspection? Is the speed of a person's vehicle the kind of information he or she has a burning desire to protect? And what about the invasion of the privacy of someone who becomes the victim of an accident caused by speeding?

Argument two: if society bans radar detectors, it must then also ban C.B. radios, rear-view mirrors, and the like because they can also be used to help evade the efforts of police to catch speeders. The response: what is the sole or overriding purpose of the object? A C.B. radio has many purposes, including keeping drivers awake, entertained, aware of road dangers, and able to summon help in an emergency. A rear-view mirror is obviously designed and used to enable a driver to watch for dangers from behind and to help him or her take evasive action to avoid a tragedy. But, as noted above, the only purpose of a radar detector is to help a driver break the speeding laws. It does not avoid or lessen the effects of accidents; it increases their likelihood.

Argument three: the law would be unenforceable given increasing miniaturization and concealment. The response: if this is the case, why do so many owners (and manufacturers) of the devices oppose the legislation? They should have nothing to fear. It is because they do that this argument fails by their own implied admission.



NOTE FROM THE EDITOR: Mr. Savell has expressed his opinion. Now we would like to hear from owners and users of radar detectors or those who agree that they should be outlawed. We will publish all views in upcoming issues. - Thank you for your anticipated participation.