

# The GREEN LIGHT NEWS

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## Toxicology Support via Interactive Video Testimony - The Experience

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### Introduction

The Toxicology Unit of the Michigan State Police (MSP) made yet another stride in the services it provides to support Law Enforcement initiatives in Michigan in September 2006 by successfully implementing a pilot program on interactive video testimony from toxicologists. Execution of the program by way of a mock trial had all the semblance and makings of a typical summons to court to testify as a witness. The pressure and anxiety akin to driving to court, locating the right courtroom, waiting to be called to the stand, swearing in under oath by a Judge or Magistrate, and finally, providing an opinion in the courtroom were all

present. The only difference was a physical and spatial separation between the specific courtroom in this instance and the witness. Such was my experience on Wednesday, September 6, 2006, when I was beamed into the courtroom of the 94<sup>th</sup> District Court in Escanaba, Delta County to testify via video interactive technology before the Honorable Judge Glenn Pearson.

Saddled with the task of honoring several subpoenas on a daily basis for year after year, a caseload that had skyrocketed primarily because of the

passage of the new OUIL/OUID laws, and long drives to court, scientists in the Toxicology Unit sought ways by which technical services could still be provided to various agencies, without compromising quality. The MSP Forensic Science Division management team identified one potential area that could be used to reduce some of this burden and limit disappointments to prosecutors when it comes to meeting our commitments to testify in various courts. By taking a close look at sections of the statute, specifically,



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## 2005 Drunk Driving Audit Shows Fatalities, Injuries and Arrests Continue to Decline

Michigan's drunk driving arrests, convictions and crashes, as well as fatalities and injuries involving alcohol and/or drugs, have decreased for the fourth consecutive year, according to the 2005 Drunk Driving Audit.

The audit, issued by the Michigan State Police, Criminal Justice Information Center, includes arrest activity by law enforcement agency for each county in the state as well as crash, injury and fatality information by county.

Alcohol- and/or drug-related fatalities fell 2.4 percent, from 418 in 2004 to 408 in 2005. Injuries resulting from alcohol- and/or drug-related crashes decreased by about 8 percent, from 8,667 in 2004 to 7,982 in 2005.

Drunk and impaired driving arrests totaled 54,056, a decrease from the 55,070 individuals arrested in 2004. Of the arrests in 2005, 52,235 were for

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# Did You Know?

Prosecutors, did you know Public Act 495, 2004, which went into effect October 1, 2005, was a bill designed to bring the State of Michigan into compliance with the new federal regulations involving the commercial driver? As a result, the Secretary of State worked closely with the State Court Administrative Office, Michigan State Police and PAAM to change the complaint forms used by the Prosecutors and the citations used by law enforcement agencies.

Pursuant to Section 257.732 of the Michigan Vehicle Code, an abstract of

conviction (derived from the complaint form or citation) must contain the type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle's group designation. Since major offenses for a commercial driver that happen in a non-commercial vehicle now result in licensing actions against their commercial driving privileges, it is imperative that the complaint forms new fields for license type, vehicle type and a defendant's driver's license be completed. Please be sure to transfer the information from the police reports to the charging documents.

## Analyzing the Head-on Collision

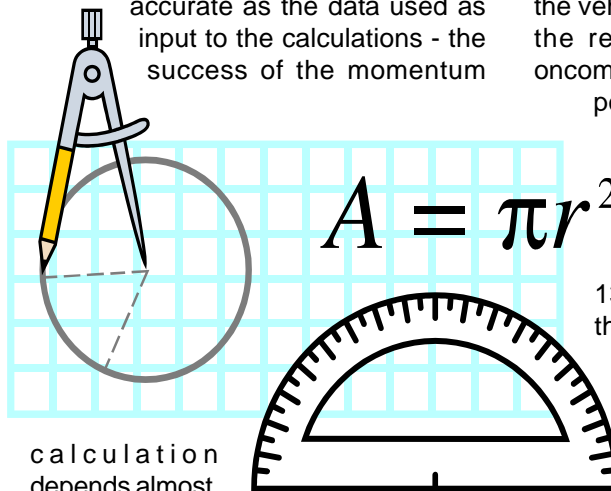
By John Kwasnoski

The momentum of a vehicle is defined by multiplying its weight by its speed, and then giving the directionality of the motion a mathematical description as well. For this reason the momentum equations look very complex and much more intimidating than most other reconstruction equations. The momentum analysis is based on a fact that is derived from Newton's Third Law of motion: the total momentum of all vehicles or objects before an impact is equal to the total momentum after the impact.

There are eight variables in the general momentum equation and six must be known to calculate the other two. Usually the two unknowns are the pre-impact speeds of both vehicles. The momentum analysis is independent of any damage or energy loss that occurs during the collision, and it is therefore a method of checking on energy calculations. If enough information has been collected at the scene to do both energy and momentum analyses, the results of the two speed calculations should be in agreement, although they rarely give exactly the same results.

It should be obvious that the numerous values needed to make the calculations

require very complete processing of the scene, and an appreciation of how the uncertainties in each of the values might affect the calculated speeds. As with every other accident reconstruction methodology the results of a linear momentum analysis are only as accurate as the data used as input to the calculations - the success of the momentum



calculation depends almost entirely on the level of investigation and how good the evidence is at the scene. When the calculation is completed the reconstructionist should go back over the calculation and do a sensitivity analysis to check if possible uncertainties in the data will produce significant changes in the calculations.

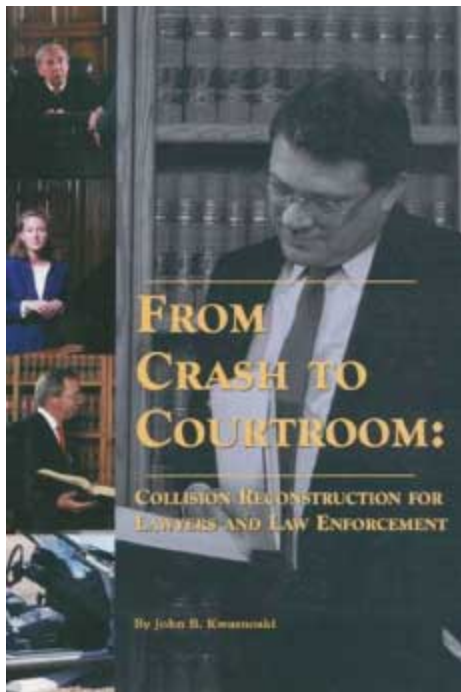
In a near head-on collision one vehicle drifts across the center line and strikes an oncoming vehicle in a violent collision that results in the deaths of two people. There is virtually no evidence of the pre-impact directions of either vehicle, but in an attempt to determine the speed of the vehicle that crossed the center line the reconstructionist assumes the oncoming vehicle to be traveling at the posted speed with a heading of 0°, and assigns an approach angle of 185° to the vehicle that crossed the center line. The momentum calculations yield a speed approximately 13 mph over the posted speed at that location, and the operator of the car that crossed the center line is charged with a MV homicide.

*Issue: Is the momentum calculation in a head-on collision a reliable means for determining the speeds of the vehicles?*

The application of the conservation of momentum theory to head-on or near head-on collisions requires very accurate approach angle data, since the

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# Announcement –The Lethal Weapon: DWI Homicide Lectures on DVD's



Legal Sciences proudly announces the production of "From Crash to Courtroom: Collision Reconstruction DVD Library", which includes six DVDs (more than seven hours) containing John Kwasnoski's Lethal Weapon lectures as delivered in the Lethal Weapon: DWI Homicide course. The lectures include live footage from

several presentations at the National Advocacy Center, presentations at state prosecutor trainings, and specially-prepared discussions with a prosecutor about additional issues in collision reconstruction. The DVD Library, which is an ideal self-study resource for prosecutors and law enforcement, includes the following topics:

- Physics Principles
- Drag Factor
- Time-Distance-Speed
- Speed from Tire Mark Evidence
- Conservation of Energy
- Speed from Yaw Marks

"Only someone with Professor Kwasnoski's background - 30 years of teaching physics in classrooms, 20 years of testifying as an expert in state and federal courtrooms, and 10 years as one of the country's premier instructors across the U.S. - could produce such a powerful and relevant resource. The DVD Library is an ideal self-study tool, and is perfect as a refresher on collision reconstruction theory."

Gerald N. Partridge,  
Retired Prosecuting Attorney,  
Adjunct Instructor at the *National College of DA's*, and Executive Director, Police Legal Sciences, Inc.

"Professor Kwasnoski makes collision reconstruction understandable. He uses the DVD medium effectively by including photos and video of the vehicular events he is discussing. The format is perfectly suited to give a disc to an Assistant for review before going over the case file with them. That way everyone, the Police Officer, the Assistant and the Supervisor are all speaking the same language"

Marcia Cunningham  
Director, National Traffic Law Center  
National District Attorney's Association

"From Crash to Courtroom: Collision Reconstruction DVD Library" is now available to prosecutors and law enforcement at a savings of \$100 off the regular price by ordering directly from the author, John Kwasnoski, 51 Nash Hill Rd., Ludlow, MA 01056. Payment of \$299 + \$10 shipping must accompany an order to receive the law enforcement discount.

## Drunk Driving Audit *(Continued from page 1)*

operating while intoxicated (OWI). Convictions for 2005, which may be from prior-year arrests, include 22,631 for OWI and 29,188 for impaired driving.

Tougher drunk driving laws and highly-visible enforcement of those laws have contributed to these decreases. Michigan's repeat offender law, which took effect in October 1999, created harsher penalties for repeat offenders in an effort to limit access to vehicles through license plate confiscation, mandatory vehicle immobilization and vehicle forfeiture. In September 2003,

the legal definition of drunk driving was changed to .08 blood alcohol content (BAC).

**Editor's Note:** Published in Safety Network, September 2006. To look at a copy of the Drunk Driving Audit for 2005 or past years, or to review an individual county on the arrest and conviction numbers go to: [www.michigan.gov/mssp](http://www.michigan.gov/mssp), then click on Publications, Forms & Statistics. Next, click Statistics, then Traffic Crash Statistics, then click Michigan Drunk Driving Audit.



## Video Testimony *(Continued from page 1)*

MCR 6.006(B) and MCL 766.11a, interactive video testimony was proposed as a technology that has come of age and a tool that could be used effectively by Law Enforcement to add scientific support and/or clarify scientific issues at trial by experts distally removed from courtrooms. Against this background, a mock trial in which testimony would be provided by a toxicologist from an MSP location via interactive video was embraced as a test case for this emergent technology.

Funding was secured from the Office of Highway Safety Planning (OHSP) to launch a pilot program to test this technology. A video conference room was established at MSP as the venue from which to transmit both image and voice of scientists and other potential witnesses to participating courtrooms during the interactive video testimony process. The selected court in this specific instance was the 94<sup>th</sup> District Court in Escanaba, Delta County. Delta County's District Court was selected because of the volume of cases it handles per year involving drunk driving and its location from the one laboratory that provides scientific support to these cases. Escanaba is approximately 370 miles by road from Lansing, and travel by car to and from this court could take two days and adversely impact both the time and cost required to support a single case in that county. Even if the travel time could be shortened by flight (which is the usual mode of transportation), the cost still remains a staggering travel expense to MSP.

### ***Dial-Up and Set Up***

Details of the interactive video testimony began with the establishment of a secure and reliable dial-up connection system between MSP and the court. Consideration was given to the following critical areas related to the mock trial: ease of dial-up into the courtroom; audio-visual reception; and overall

impact of the testimony on the court and those in attendance. Dial-up was initiated from the video conference room at MSP and the witness was successfully beamed into the courtroom in Escanaba. It is anticipated that dial-up will originate from MSP for all future interactive video testimony cases. The next area of concern was whether the audio-visual system was secure, reliable and delivered in real time. Visual images received at both locations

**Interactive video testimony is a technology whose time has probably come as a useful tool in gathering and assessing the opinions from experts in legal matters.**

were clear, satisfactory, and free of saltatory jumps or jerky robotic type movements. The quality of the sound reception was also judged to be excellent and free of echoes. There was adequate control over the cameras involved in the transmission at both locations to allow for camera rotation to focus on the individuals of interest during the trial. Thus, it was possible to view the Prosecutor, Defense counsel, and Judge as needed during the trial, and the Judge had the appropriate control over his courtroom. I was clearly visible in the courtroom without loss of details as would be expected with other potential witnesses in the future.

### ***Were Appropriate Documents and Evidentiary Materials Provided to Counsels Prior to the Trial?***

To facilitate a smooth progression of the trial, the prosecutor and I discussed the matter at length, ensuring there was proper and adequate compliance with

the new rule(s) of evidence since testimony was going to be over the airwaves. Relevant supporting data and appropriate materials impinging on the case were sent to the prosecutor and provided to defense counsel ahead of time. They were then appropriately and clearly marked for easy reference before being tendered as exhibits during the trial. Other anticipated evidentiary and reference materials were also provided to both parties prior to the trial. This preparation eliminated most of the distractions which might otherwise arise from shuffling through reams of paper documents in order to locate the right reference item by the witness during the trial.

### ***Trial Proceedings***

As is usually done during a regular trial, the prosecutor went through the normal process of direct examinations after presenting me as an expert to the court. Subsequent to that, the defense also questioned me from the same podium used by the prosecutor and which was within direct video camera coverage. Throughout the process, voice projection and video images of all participants were assessed to be clear and satisfactory. My virtual presence, yet real and factual testimony in the courtroom, ended when both parties had no further questions of me. I did not physically step down from the "witness stand" but my contribution to this trial concluded with a fade out of my image into cyber space.

### ***Areas of Concern***

An area of concern that had been raised regarding interactive video testimony by defense counsels is the idea of not being able to confront a witness in person. Some have speculated that from the comfort of a video room, critical indicators of panic, anxiety, and nervousness of the witness might be

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concealed to the jury and work to the advantage of the prosecution. For this reason, some have been resistant to the idea and did not fully embrace this technology. While it is probable that minute details of body language and certain aspects of the demeanor of the witness could be missed by the jury, there appeared to be enough avenues for the defense to mount their challenge. The clarity of the voice and image of the witness was so remarkable that nuances in tone and expression could still be discernible. Additionally, from my experience in this trial, I can testify truthfully there was neither comfort nor relaxation in the process. The beads of cold sweat may not have been immediately visible to jurors, nonetheless, they were excreted! Indeed, observers in the video conference room during the mock trial affirmed that a certain level of tension during the process was discernible. For what this may be worth to the defense, there is still probably room to wage their psychological warfare on the witness even by video, if they so desire.

Another area of concern is whether it is possible for the witness to refer to notes or documents that may not have been provided to the defense counsel prior to trial. During the mock trial, a defense counsel in attendance noticed some files and folders sitting next to me on the desk and queried if the witness was referring to secret notes and documents. Herein lay the transparent nature of the interactive video technology. Minute details and knowledge about the witness are still visible and aspects of the behavior of the witness which appear bothersome to the defense are still visible and may be explored during the trial.

### **Advantages and Disadvantages**

There are clearly many advantages to providing testimony via interactive video technology. Scientists in the Toxicology Unit are served an average of four subpoenas a day to testify in various courts across the state. In some

instances, these testimonies require only a few minutes on the stand after long drives to the courtroom. By testifying from a single secure and reliable location we are able to expand our services to several courts in a single day. A scientist may be able to provide support to two or more courts distally removed from each in a single day from a single source by this process. Additionally, this process offers tremendous monetary savings at a time of shrinking budgets and frees up time for scientists to concentrate on dealing with the large volume of casework.



How about the defense expert? Will the defense expert be able to testify by video? Theoretically, yes. However, this may not originate from the MSP facility. Supposedly, if such an expert could establish a video communication system that is acceptable to the court, then such testimony could be welcome.

Another technical advantage to this interactive video testimony is the fact that both parties are able to discuss a particular case fully, at least in the manner of its presentation, prior to trial. Since the probability is high that the witness might refer to supporting documents and other evidentiary and reference materials during the trial, the awkwardness of trying to align these items or documents in front of the video camera for beaming into the courtroom while testifying is avoided by the prior provision of these same documents to both parties. Details of the case would

have been properly “discovered” to a great extent, by both parties, through the prior submission of these documents and could eliminate trial by ambush.

### **Conclusion**

Interactive video testimony is a technology whose time has probably come as a useful tool in gathering and assessing the opinions from experts in legal matters. Contraction of temporal and spatial separation between participants engaged in a trial is easily achieved, thereby maximizing the usefulness and efficiency of witnesses to the legal system. The ease with which this mock trial was conducted to the benefit of both parties should offer tremendous opportunities to law enforcement personnel of the availability of yet another tool that could facilitate the determination of guilt or innocence of an individual. Video testimony should be seen as another application of forensics when the scales of justice are once again balanced.

### **Acknowledgements:**

Special thanks go to the following personnel and agencies for various roles played in the success of this inaugural mock trial via interactive video.

1. The Office of Highway Safety Planning for funding this project.
2. Inspector Kari Kusmierz, Assistant Division Commander of the Forensic Science Division, for coordinating the project.
3. F/Lt. Gregoire Michaud, Supervisor of the Latent Prints Unit, for working out the technical details of the project.
4. The Honorable Judge Glenn Pearson and Ms. Kim Sanville, court administrator, for making the 94<sup>th</sup> district courtroom available for the trial.
5. Attorneys Mark Esqueda and Steven Parks both of the Office of the Prosecutor, Delta County, for their participation in the trial.

# Study Reveals New Perspectives on Crashes Involving Large Trucks

By Captain Robert Powers – MSP

The Federal Motor Carrier Safety Administration (FMCSA) has published the results of an in-depth, nationwide, two-year study into causation factors of crashes involving large trucks (more than 10,000 pounds). The study, conducted during 2001-2003, shed some new light on causation factors and dispels some previously held beliefs about who and what is causing most crashes.

Prior to the FMCSA study, it was commonly accepted that in crashes involving a car and a large truck, the driver of the passenger vehicles was at fault to 70 percent of the time. The new study found passenger car drivers to be at fault in only 56 percent of the crashes.

Another important finding is that regardless of whether it is the car driver or truck driver who was at fault in the



crash, it was driver error that caused the vast majority of the crashes. Engineering issues were found in 16 percent of the

crashes and equipment failure was a factor in only 10 percent of crashes.

As expected, excessive speed and driver fatigue were found to be significant causation factors. A factor which has not received much recognition in the past, but appears as a significant factor is prescription drug use by both car and truck drivers. It is important to point out that prescription drug use did not necessarily cause the crash, but it was found to possibly be a contributing factor. Further analysis of this new phenomenon will be required before further conclusions and countermeasures can be prescribed.

In crashes in which the driver of the truck was at fault, 28.4 percent of

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## Head-on Collision *(Continued from page 2)*

calculations are extremely dependent upon the approach angles. In this particular case changing the approach angle of MV#1 by  $\pm 1^\circ$  would change the calculated speed for MV#1 by as much as 80%.

Daily <sup>(1)</sup> best warns in his text that, “we must take great care in establishing our approach angle(s).” The numerical example Daily uses shows that for a change in the approach angle of  $1^\circ$  for one of the vehicles, the speed calculated for one of the vehicles changed by 23 mph. Be very careful when applying the momentum equations to near head-on collisions, as the calculation is very sensitive to the approach angles; and without corroboration be expecting a vigorous cross examination of the estimated speed.

<sup>1</sup> Daily, Fundamentals of Traffic Accident Reconstruction, IPTM, 1988, p. 235

Editor’s Note: *This was a significant issue in a recent murder charge of an intoxicated driver in Long Island, New*

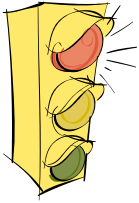
**“The application of the conservation of momentum theory to head-on or near head-on collisions requires very accurate approach angle data, since the calculations are extremely dependent upon the approach angles.”**

*York. In that case a limousine and a car were involved in a head on collision, the driver of the car going the wrong way with a .28 BAC. Some of the people in the limousine were killed. With limited information on the approach angle – close to head-on or straight into each other – the speed calculations by the State’s own experts varied significantly.*

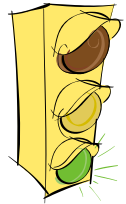
*Ultimately, no speed calculations were presented to the jury because of the difficulties of this issue.*

*John B. Kwasnoski is Professor Emeritus of Forensic Physics at Western New England College, Springfield, MA after 31 years on the faculty. He is a certified police trainer in more than 20 states and is the crash reconstructionist on the “Lethal Weapon - DWI Homicide” team formed by the National Traffic Law Center to teach prosecutors how to utilize expert witness testimony and cross examine adverse expert witnesses. He is the author of the book, “Investigation and Prosecution of DWI and Vehicular Homicide” and his recently published book and DVD “From Crash to Courtroom: Collision Reconstruction for Lawyers and Law Enforcement.” Prof. Kwasnoski has reconstructed over 650 crashes.*

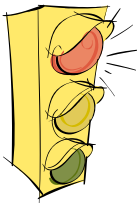
# Red Light, Green Light



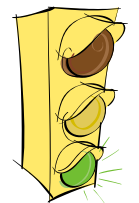
**Red Light:** A study in which both the participants and the scientists got sloshed has shown that motorists who talk on cell phones while driving are as impaired as drunk drivers. The scientists did their drinking during a pilot to the main study, which involved 40 volunteers. By participating, the researchers gained insight to what makes people think they can drive safely while using a cell phone or when drunk. They're now advocating for laws to address the growing problem. An unexpected finding: While some of the participants crashed in a virtual vehicle while sober and chatting, none of them crashed while drunk. The study supports previous research that has revealed the risks of using cell phones and also hands-free cell phones behind the wheel. "We found that people are as impaired when they drive and talk on a cell phone as they are when they drive intoxicated at the legal blood-alcohol limit," said Frank Drews, an assistant professor of psychology at the University of Utah. *Yahoo News, June 29, 2006.*



**Green Light: Fresno, California.** It's a Saturday night in Fresno, which means another "bar sting" at another nightclub. This one is at Crossroads, a red-and-white themed bar on North Cedar Street popular with bikers. As closing time nears, undercover police stake out the parking lot and look for departing customers who appear to be drunk. One officer observes a man walking unsteadily as he leaves the bar. When he gets in his SUV and starts to drive off, other officers swoop down on him. The officers find a loaded Glock handgun in the center console. The man's friend, who owns the SUV, walks over to show the police his concealed weapons permit. But he's been drinking too, and the permit is void if he's intoxicated. They arrest him, too. Fresno may be the toughest city in the nation on drunken drivers. An intoxicated motorist is more likely to run into a police checkpoint in this city of 461,000 than anywhere else in the USA, according to Fresno police. Police sneak into the driveways of convicted drunken drivers to plant Global Positioning System tracking devices on their cars and search their homes for evidence they've been drinking. *USA Today, November 6, 2006.*



**Red Light: Springboro, Ohio.** Brooke Shinkle, a senior at Springboro High School, does something while driving that would terrify most adults. She exchanges text messages on her cell phone. "I just do it. I can text without looking at my phone," she said. "Everybody texts while driving." Liberty Mutual Research Institute for Safety surveyed teens on their biggest distractions while driving and found cell phone texting at the top of the list. "It was a surprise to us and certainly something that will be considered for future surveys," said David Melton, who headed the survey. Thirty-seven percent of teens cited text messaging as extremely or very distracting; 20 percent said they were distracted because of their emotional state and 19 percent cited friends in the car. Mallory Myers, a Springboro High School, said she hates riding with other teens who text while driving. "It's scary," she said. But Shinkle insists, "I'm good at multi-tasking." That didn't reassure Carolyn Gorman, of the Insurance Information Institute in Washington. "Teenage drivers are the worst drivers on the road, and if they're text messaging, it just adds to the danger, not only to them but to the rest of us." *Detroit News, October 22, 2006.*



**Green Light: Royal Oak, Michigan.** Officer AnnMarie Gasiorek, School Liaison Officer for the Royal Oak School District, along with Sgt. Gordie Young and Traffic Safety Officers Scafone, Smith, and Maciejewski developed and implemented a simple and fun Seat Belt Campaign that had a very positive outcome for their community and department. After raising \$750 in donations from the downtown business district and the crime restitution fund from juvenile delinquency, the officers purchased 75 \$10 gift cards from their local 7-11 Store. The store also donated free slurpee, pop, and sandwich coupons to go with the gift cards. Then, before school hours on October 10th, they stopped over 50 Royal Oak High School students who, happily, were wearing their seatbelts. They were given an envelope with the gift card and coupons in it thanking them for buckling up. Many of the students were very pleased and the department was also very pleased with the seat belt law compliance.

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This material was developed through a project funded by the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation.

## Large Truck Crashes *(Continued from page 6)*

crashes involved a failure to recognize the danger, 38 percent involved in error in decision making on the part of the driver, and 11.6 percent involved an error in execution of crash avoidance actions.

Work zone crashes in Michigan have increased by 50 percent between 1997 and 2004. Large trucks are clearly overrepresented in work zone crashes. While large trucks account for only 10.3 percent of all registered vehicles, and 16.1 percent of total motor vehicle miles traveled, large trucks are involved in 24 percent of all fatal work zone crashes.

While there is much more work to be done to improve safety on our highways, there is solid success to be celebrated. In Michigan, between 2000 and 2005, the number of fatal crashes involving

large trucks decreased from 153 to 122, the number of injury crashes decreased from 3,846 to 2,823 and the total number of truck crashes dropped significantly from 20,085 to 15,641. The number of persons who died in truck crashes fell from 172 to 136 during this same period.

**The new study found passenger car drivers to be at fault in only 56 percent of the crashes.**

So what can law enforcement, prosecutors, and the judiciary do to keep these numbers moving in a positive

direction? First, complacency must be avoided at all costs. Second, more focus must be directed to driver behavior, with special emphasis on the truck driver. And, finally we must work toward a better understanding of the various factors that contribute to crashes involving large trucks.

To learn more about the FMCSA Large Truck Causation Study, and about truck safety in general, please visit the following websites:

[www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)  
[www.atrionline.org](http://www.atrionline.org)

The Michigan State Police Motor Carrier Division can also provide assistance with truck crash investigations and can provide training and consultation on matters pertaining to commercial motor vehicles.