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Red light, green cash

If you think the idea of a \$351 ticket is harsh, try fighting one. Even when the law's on your side, you're bound to lose.

By [Gary Webb](#)

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Nearly two years ago, Clarksburg real-estate consultant John Alvin Bohl walked into the Carol Miller Justice Center to fight a traffic ticket. Having never challenged the People of California in court before, Bohl, a short, rotund man with thick glasses, was nervous. He also was in agony. He'd woken up that morning with an abscessed tooth, which was causing him "splitting, splitting pain," but efforts to reach his dentist had failed.

His jaw throbbing, Bohl suffered silently as traffic Commissioner Raoul Thorbourne worked his way through the crowded docket. One after another of Bohl's fellow motorists trooped before the judge and attempted to plead their cases.

"My father always said that the president could be corrupted, and the Legislature could be corrupted, but there was one place that John Q. Public always had a chance of getting a fair deal, and that was the legal system," the 60-year-old Vietnam veteran recalled. "He used to say that over and over."

But what Bohl was witnessing hardly



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seemed fair to him; it looked like an assembly line. The judge barely listened to the motorists' arguments, pronounced them all guilty and quickly trundled them off to the fines room.

"All right," the judge announced. "Then I have the matter of John Bohl."

The trial began. California Highway Patrol (CHP) officer John McCurry was sworn in and launched into the testimony he'd given hundreds of times before. This was a red-light-camera case. He'd been trained in red-light-camera technology by a company called Affiliated Computer Services (ACS), which had sold the city and county of Sacramento their red-light-camera systems. McCurry had taken a two-day course from ACS and passed a written test. He explained briefly how the camera system worked, showed Bohl three photos taken of him allegedly running a red light on Martin Luther King Boulevard and asked that they be introduced into evidence.

"All right," the judge said. "Any objection, Mr. Bohl, to the photographs being made part of the record here?"

"Actually, I do, your honor," Bohl replied. "This is hearsay evidence. I don't believe the officer who testified has any personal direct knowledge." The judge paused and then said he'd rule on that later.

McCurry brought out two maintenance log sheets from ACS, showing the red-light camera was working properly when it filmed Bohl. He asked that they be admitted into evidence, and then he rested his case. Once again, Bohl objected. McCurry didn't witness the inspection, Bohl argued. The officer didn't know what the ACS inspector had done, he hadn't seen the log sheets being filled out, and the inspector wasn't in court to answer questions or even authenticate his maintenance logs. Every bit of the state's evidence against him was hearsay and was inadmissible, Bohl claimed, and he asked the judge to dismiss the ticket.

"I'm going to find you guilty of the violation, all right?" the judge said finally. "You have a seat out in the audience. Someone's going to come and walk you over to the cashier's office."

Bohl went off with the clerk and forked over \$281. He'd lost on every point, and his tooth was killing him, but he was not unhappy. Far from it. His plan was working perfectly.

There are currently 17 intersections in Sacramento outfitted with red-light cameras. Over the past year, they generated 12,388 traffic tickets. Since red-light fines have now increased to \$351—the harshest in the country—those tickets are worth \$4.3 million. Considering that the county pays ACS roughly \$1 million a year to rent and maintain the system, the cameras seem to have been a profitable investment. The sheriff's department, which runs the county-wide system and receives a lion's share of the revenues, has plans to install more.

Sheriff Lou Blanas likes them so much, in fact, that he's teamed up with ACS to help sell red-light cameras to other cities and towns. But, for such an apparent success story, Blanas' office either doesn't have or isn't eager to share much information about the program. A Public Records Act request filed more than a month ago—seeking basic records like contract documents and monthly reports—remained unfilled at deadline.

In truth, the red-light cameras have been a legal headache for local officials since they were installed in 1999, and they remain so to this day; Bohl is merely their latest migraine. The first came the same year the cameras went in. District Attorney Jan Scully was forced to dismiss nearly 800 tickets after a traffic commissioner decided the city hadn't followed state law on notifying the public that cameras were being used. The following year, another controversy flared up, and this one was more serious.

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Because there are no eyewitnesses, the photos in red-light-camera cases—which ACS takes, digitizes and uploads to the sheriff’s office—must be like Caesar’s wife: beyond reproach. They are the only evidence a crime has been committed. But in San Diego in 2001, a judge ruled that they were “untrustworthy and unreliable.” ACS was discovered to have a contract with the city of San Diego that paid the company a kickback each time a motorist was convicted—50 percent of the fine. That, Judge Ronald Styn ruled, gave ACS a clear financial motive to issue as many tickets as possible. Because the company was operating virtually unsupervised, it tainted the photos to the degree that they were inadmissible as evidence, he decided, and he tossed out 300 tickets.

“The judge said the way the program operates in San Diego is illegal,” the motorists’ attorney, Arthur Tate, said at the time. “And it basically operates the same way everywhere across the country.”



Attorney Ed Jaszewski has seen red-light tickets from both ends of the equation. As a traffic-court judge, he was troubled by the unfairness of the trials. As a defendant, he helped pave the way for John Bohl’s successful challenge.

PHOTO BY LARRY DALTON

Until Ed Jaszewski took the bench.

Jaszewski, 54, is a civil attorney who had been volunteering his time at the Carol Miller Justice Center, hearing small-claims cases a few times a month. Because the traffic docket had become clogged, he was asked to help out for a half day on Fridays, presiding as a judge pro tem over traffic-court trials. On his first day in court, in mid-October 2001, his calendar was full of red-light cases. “I didn’t know very much about them,” he said. But what he was to learn would cause him no small amount of torment.

The policeman present knew nothing about the cases other than what ACS had told him. “He didn’t know very much about how the system worked. And no one from ACS was there to ask. The defendants really had no ability to defend themselves,” Jaszewski said. “It didn’t seem to me that they were getting a fair trial at all.”

But because it was his first day on the job, he did what the other judges did. He found the motorists guilty. Finally, he had enough.

“There was one case that was really borderline, so I acquitted him. A few minutes later, a clerk came up to the bench and told me the traffic commissioner wanted to see me.” Calling a recess, Jaszewski found Commissioner David Foos waiting for him outside the courtroom. “Apparently, word had gotten back to him that I’d actually acquitted someone. He asked me if there was something about the red-light system that I was uncomfortable with or didn’t understand.” Jaszewski explained his concerns and brought up the San Diego case, which seemed to him to be right on point. Foos, he said, told him a Los Angeles court had reached a different conclusion and suggested he

That was certainly true in Sacramento. Both the city and county had identical kickback arrangements with ACS. As in San Diego, ACS employees were running Sacramento’s system with little or no supervision. The company was reviewing the photos, deciding which motorists to cite, inspecting its own cameras and pocketing \$87 dollars each time a motorist was convicted.

The city of San Diego suspended its red-light program and was hit with a class-action suit, which it eventually settled for more than \$400,000. The ruling sent tremors through law enforcement and the red-light-camera industry. But not in Sacramento. Both the city and Blanas, whose red-light program had just begun when San Diego suspended its own, kept their cameras on, grinding out thousands of tickets. And the traffic-court judges kept returning guilty verdicts.

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familiarize himself with that case. “It was all very diplomatic, but the intimation was pretty clear. I took his comments to mean that we just don’t acquire these people.” Foos said he did not recall the conversation but said, “It would be improper for me to tell someone how to reach a decision in a case.”

Jaszewski went back to the bench and heard the last five cases on the calendar. But instead of finding them guilty, he told the motorists he wanted to research the law and would issue a ruling later. When he got home that evening, he opened his mailbox to find an ironic and unwelcome surprise: a traffic ticket, accusing him of running a red light two weeks earlier.

CHP officer McCurry could barely conceal his boredom. He’d been in traffic court since 8:30 that morning, and now it was closing in on 4 o’clock. He’d testified in 15 red-light-camera cases that day, had been asked the same questions dozens of times and had given virtually the same answers each time. It was no different this Friday, October 30, than it had been on any other Friday for the past two-and-a-half years.

McCurry, a trim, muscular man with dark eyebrows and a shaven head, has testified in more than 700 red-light cases. His conviction rate would make any prosecutor envious. Out of those 700-plus prosecutions, he’s suffered only two or three defeats. “I only lost those because some pro-tem judge really didn’t understand the program,” he said.

One of the reasons he volunteered for his admittedly less-than-thrilling job was because it offered normal working hours and a chance to spend more time with his family. But this case, his last of the day, had all the earmarks of an interminably long one.

The defendant, a short man with a strong Germanic accent, had come to court armed with a thick three-ring binder, all of it tabbed and notated. It was filled with articles he’d culled from Internet sites, the Caltrans traffic manual, court opinions, charts and photographs. For nearly 45 minutes, he worked his way through his binder, arguing in numerous ways that his ticket was illegally issued. At one point, he produced photos of the red-light-camera warning signs near the intersection of Fair Oaks Boulevard and Howe Avenue, where he’d been ticketed, and noted that on one sign, half of the letter “C” was missing. McCurry fidgeted in his seat and, very obviously, turned to look at the clock above the courtroom door. So did the judge.

“It’s getting rather late,” the judge said wearily. “Is that your argument, that the sign was illegible? Doesn’t anyone shoot at traffic signs where you’re from?”

Like everyone else who’d gotten a red-light ticket that day, the motorist was found guilty and sent to the fines room. McCurry gathered up his binders and briefcase and headed into the sunshine. “I honestly don’t have a problem with people defending themselves,” he said, as he walked through the courthouse parking lot to his car. “They have a right to do it. That guy, though ...” McCurry smiled and shook his head. “I’ve heard every single one of those arguments a hundred times. And they never work.”

McCurry, like many traffic cops, believes the cameras reduce accidents caused by red-light runners, and it’s difficult to argue that point. In study after study (most of them funded by the insurance industry), red-light accidents went down after cameras went up. But there are other studies that are cited less frequently.

In 2002, San Diego hired a traffic engineering firm and a university professor to look at accidents at the intersections where the city had installed its controversial cameras. Sure enough, the number of car wrecks attributed to red-light running dropped by 60 percent. Unfortunately, rear-end collisions skyrocketed 140 percent, due in large part to drivers making last-minute panic stops to avoid a ticket. Studies in North Carolina and Australia found the same thing happening there.

“If rear-end crashes do not decline,” the San Diego study said, “then the validity of the traffic safety justification should be questioned.” A similar study of Sacramento’s intersections has never been undertaken, according to county traffic officials, who say Sheriff Blanas has never asked for one. Given Blanas’ position as a national advocate for red-light systems, that might seem like an odd oversight. But Blanas isn’t a neutral observer.

He helps direct a self-described “advocacy group” called the National Campaign to Stop Red Light Running. That organization aggressively promotes the sale of red-light-camera systems, which might be expected since it was founded and financed by ACS—specifically, its State and Local Solutions branch, which sells red-light cameras to government agencies. The ACS executive in charge of that division is former CHP Commissioner Maurice

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Chris Galm, an executive with a Washington, D.C., public-relations firm that ACS pays to run the red-light campaign, said Blanas was asked to join the campaign's National Advisory Board "because he's been such an advocate of red-light cameras." As a board member, Galm said, Blanas "basically provides us our direction for the campaign." Blanas did not respond to questions about his role with the group.



John Bohl, a Clarksburg real-estate consultant, spent two years fighting a red-light ticket and eventually won his case on appeal. But the victory didn't temper his view of traffic court. "It's totally corrupt," he said.
PHOTO BY LARRY DALTON

In 2002, with Blanas' name on the inside cover, the campaign issued a slick 44-page promotional brochure extolling the virtues and infallibility of red-light systems and offering hints on how to respond to citizen complaints about them.

Increased rear-end collisions?

Nothing to worry about. "That isn't surprising," the brochure sniffed. "The more people stop on red, the more rear end collisions there will be ... this appears to be a temporary effect."

Blanas' group touted red-light systems as "violation-funded" moneymakers but warned that some might accuse the government of profiteering. The best way to "overcome the perception that the program is simply a revenue generator for the jurisdiction," the brochure advises, "is to dedicate all or a portion of income to traffic safety, rather than the general fund."

Traffic-court Commissioner Foos, who helps train judges to hear red-light cases, has shown a similar fondness for ACS' wares. In a training manual Foos wrote, he tells judges to give great deference to all the evidence the company (formerly called Lockheed Martin) submits. "Lockheed Martin is a reliable and large scientific and business entity and is therefore trustworthy," Foos wrote. "The private entity would not jeopardize their contract by altering the photos or allowing their mishandling. One would have to possess sophisticated equipment to do so."

Jaszewski had an ethical decision to make. He still had five red-light cases to decide, and he'd just gotten a red-light ticket himself.

"I asked some of the other traffic commissioners if I should rule on those cases, and they all laughed about the irony of it," he said. But none said they saw a problem. Jaszewski felt torn. The evidence presented, he knew, required him to find the motorists guilty. But the system that had snared them—and him—was wrong, he believed.

In a written memorandum of decision he mailed to the motorists, Jaszewski essentially apologized for finding them guilty. Sacramento's red-light system, he wrote, "fails to satisfy traditional notions of fair enforcement of the law" and its "questionable enforcement methods can only demean the public's trust in and its respect for the law." But "even though doubt exists as to the methods with which the evidence in this case was obtained, I am compelled to accept that evidence."

He then resigned as a traffic-court judge and became a traffic-court defendant. Knowing that the district attorney's office only sends prosecutors to court when a motorist hires an attorney, Jaszewski represented himself. "I didn't want them sending some wise-guy from the DA's office over. I wanted the officer to do it," he said.

His judge turned out to be one of the commissioners he'd gone to for advice. Jaszewski raised the issue of the San Diego decision, the absence of prosecution witnesses and the fact that all the evidence against him was hearsay. The judge found him guilty and sent him off to the fines room.

In his appeal, he raised the issue of the kickbacks to ACS and the fact that the officer's expert testimony came from a pre-printed script. He wasn't questioning the government's right to install red-light cameras, Jaszewski argued. What he was objecting to was the kangaroo-court nature of the trials, calling them "an insult ... to individual citizens and the legal system itself. In the name of revenue generation and streamlining legal processes, the trial court is routinely allowing time-tested and valuable legal rights to fall forfeit to saving a few minutes of time."

On April 29, 2002, Jaszewski filed his appeal and gave a copy to the district attorney's office. The next day, District Attorney Scully made a surprise announcement. The district attorney's office was halting all prosecutions of red-light traffic tickets because of unspecified "discrepancies between the manual prepared by the system's provider and the actual functioning of the system." More than 1,000 red-light tickets were dismissed, and the cameras were shut down, even though the sheriff's office and ACS insisted they'd been working perfectly. For the city of Sacramento, it was the final straw. Its cameras were turned off. But Blanas stuck by ACS and resumed issuing tickets three months later. In mid-2003, he took over the city's dormant program, as well.

A month before his appeal was to be heard, Jaszewski got a call from the district attorney's office, offering to dismiss his ticket. Jaszewski was suspicious. "I believed they were trying to avoid a decision on the merits, and I'd heard of several other cases where the same thing had happened. People appealed and got their cases dismissed before an appeal hearing. This was the way the DA was dealing with it. So, I declined. I'd written a strong brief, and I wanted to get this looked at by a higher court," he said.

He never got a chance. When his hearing came up, the district attorney's office told the judge that "in the interests of justice," they wanted to drop the ticket, but Jaszewski was being obstinate. The judge, over Jaszewski's objections, dismissed the case, never addressing his legal arguments. The system had protected itself once again.

After Bohl got his ticket, he threw himself into a frenzy of legal research. His wife, Margaret, thought he'd been possessed. He was on the Internet constantly. He walked around their house muttering about approach speeds and Caltrans manuals. He'd taken the family video camera out to the intersection and filmed the yellow light changing, returning triumphantly to announce that the light in question was a few milliseconds shorter than the law allowed. He was calling friends, lawyers and people he knew in the media. Surely, he thought, he couldn't be the only person who was outraged by this whole thing.

One day in November 2003, Bohl was doing another Internet search, and his browser turned up a week-old newspaper story about Jaszewski's unsuccessful struggle to have his case heard. Bohl had found a kindred spirit. He went to the State Bar of California's Web site, looked up Jaszewski's law license and got his number at the State Compensation Insurance Fund, where Jaszewski was now working.

Impressed by his caller's fervor, Jaszewski agreed to help Bohl fight his ticket, but only as an unofficial adviser. "He was a pretty resourceful guy. I didn't have to do much," Jaszewski recalled. "I told him not to tip off the DA's office by hiring a lawyer, object to every piece of evidence that was entered at his trial, and then I faxed him my appeal brief."

Bohl followed Jaszewski's advice to the letter. After losing in traffic court, Bohl took Jaszewski's brief, changed a few dates and names and submitted it as his own. He got what Jaszewski had been unable to get: a hearing before the appellate division of the Sacramento Superior Court.

Two months ago—more than two years after he got his ticket—Bohl finally got his answer. ACS' camera-maintenance logs were hearsay, a three-judge appellate panel unanimously agreed. They never should have been admitted. All they showed, wrote Judge Maryanne Gilliard, is that someone at some point in time did four minutes of maintenance on some cameras.

"The system appears to involve technology that has not been established as reliable in any published cases," Gilliard wrote. "It is unreasonable, as a matter of law, to assume that logs showing four minutes of weekday maintenance would be all that is necessary to ensure that the system reliably worked." Because no one from ACS bothered to appear at Bohl's trial, she wrote, he'd been deprived of his right to cross-examine his accusers. The conviction was reversed, and she ordered the ticket dismissed.

CHP officer McCurry said the decision is meaningless. "That happened two years ago, and we do everything differently now. The contract with ACS has been changed, so they no longer get paid per ticket. We lay a better foundation for the maintenance logs. And the officer who handled that case was a city policeman who really didn't



Former California Highway Patrol Trooper of the Year Robert Pacuinas was asked to leave the Carol Miller Justice Center because he was giving copies of the Bohl decision to motorists awaiting trial. "I asked them to tell me what law ... I was breaking by handing out court opinions at a courthouse," Pacuinas, a lawyer, said.

PHOTO BY LARRY DALTON

know how to present the case." (According to the trial transcripts, however, McCurry was the prosecuting officer, and the testimony he gave then is no different from the testimony he gives now. Moreover, ACS' contract had no bearing on the court's ruling.)

Private attorneys say the decision means that the prosecutor's office should be bringing ACS field inspectors to court to authenticate the evidence in red-light cases. Doing that, obviously, would increase the costs of the red-light program, so perhaps that's why nothing has changed in the two months since the decision came down.

On a recent Friday in traffic court, for instance, a burly woman in nurse's scrubs asked where the ACS technician was so she could cross-examine him about the cameras. He wasn't available, the judge informed her, because she hadn't subpoenaed him.

"Why is it my job to subpoena their witnesses?" she asked angrily. "I assumed he'd be here. Since he's not, I want a continuance until he is."

"You had your chance," the judge said and sent her to the fines room.

"This is a racket," she said loudly, storming from the courtroom.

Traffic Commissioner Foes said the appeals-court decision isn't binding on traffic judges but acknowledged that "it would be foolish for a judge not to take a look at it." However, it hasn't changed the way he has decided cases involving the admissibility of the maintenance logs. "In those cases, I think there was additional evidence that overcame the hearsay objections." Foes couldn't recall what that evidence was.

The district attorney's office says it's not too concerned with the Bohl decision, because—like the vast majority of appellate-court decisions—it wasn't ordered published in law books. "Since it's unpublished, it means it can't be cited as a precedent," said Lana Wyant, a spokeswoman for the district attorney's office. Does that mean the district attorney's office thinks the judges are wrong about the evidence problems? "I'll have to get back to you on that," Wyant said. She didn't.

Because the case is unpublished doesn't make it invalid. It makes it obscure and hard for defendants to learn about.

One judge who knew of the decision was asked how he could continue to find motorists guilty based on evidence that, according to the appeals court, shouldn't be admitted. "I can't rule on objections that aren't made," the judge said. "People don't object."

To cure that problem, attorney Robert Pacuinas was at the courthouse a few days after the Bohl decision came down, handing out copies of it to motorists awaiting trial. The ruling, according to him, was a breakthrough in the war against "the money machine they've set up at the Carol Miller Injustice Center. ... I thought people should know about it since nobody down there was going to tell them."

A deputy district attorney, Richard Clark, and a court administrator approached Pacuinas and told him to either stop handing out the opinion or leave the building.

Pacuinas, a former CHP Trooper of the Year, laughed. "I asked them to tell me what law or court rule I was breaking by handing out court opinions at a courthouse," the stocky lawyer said. Unable to think of one, the pair walked off, warning him against "soliciting."

"That's typical of their attitude down there," Pacuinas said. "They don't want motorists knowing they have any rights. They want them to come in, pay the fine and get out." Clark did not return a phone call, and the district attorney's office refused to comment.

Pacuinas' battle against red-light cameras is entering its fourth year; like Bohl, he has become something of a zealot on the issue. Some traffic judges regard him as a pest who stretches out routine cases for hours, even days, backing up the dockets and tying up courtroom personnel. He recently concluded an eight-day red-light trial, lost and promptly filed a 48-page appeal listing 46 separate reasons for reversal.

But he's won more than 20 red-light cases and slowly has forced the courts and the sheriff's office to change the way they run the system. Because of his badgering, defendants no longer are shown a court-produced videotape suggesting red-light cameras are infallible. And after Pacuinas secretly filmed an ACS technician doing a slapdash job of inspecting and calibrating the cameras, Blanas' office was forced to hire a retiree to go out with the techs occasionally and make sure they were doing what their log sheets claimed they had done.

"The thing that pisses me off is that they say it's all about traffic safety," Pacuinas snorted. "It isn't. It's about money. That's why our fines are so high. Fines on the East Coast are \$50. Does that mean we care more about traffic safety than New York City? Or do we just care more about taking people's money away from them?"

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