

Figure 49: Deceleration curve from head form drop test of ground surface in Figure 48 using head from drop mass shown in Figure 47.

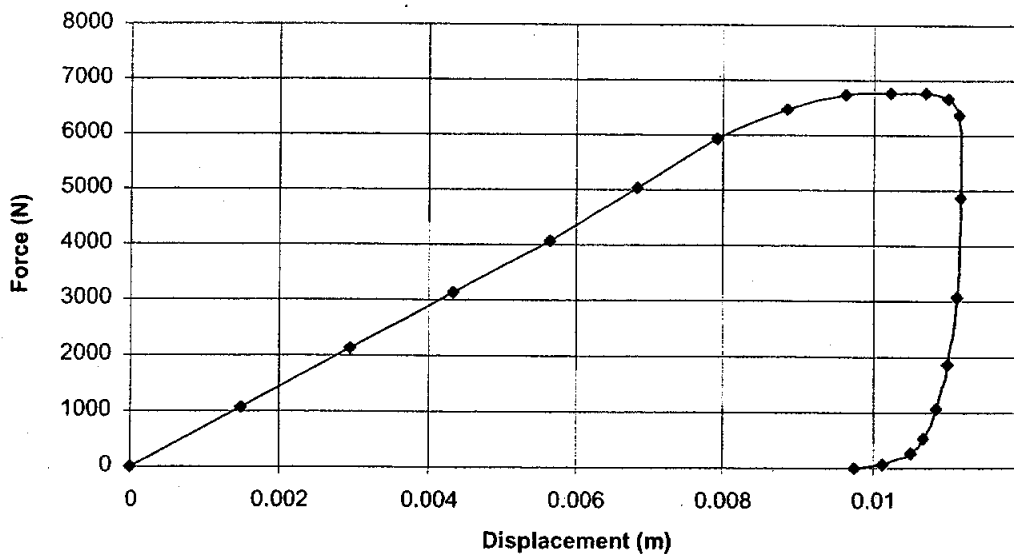


Figure 50: Force displacement curve determined from the deceleration curve shown in Figure 49.

To model the ground's compliance when the surrogate body and ATV strikes it, a test using a drop rig and a head form ball with an accelerometer inside the head form (Figure 47) was conducted on the bare ground shown in Figure 48. The acceleration versus time graph is shown in Figure 49. This acceleration versus time trace was then used to determine the soil's load-deformation behaviour as indicated in Figure 50. Ms Shauna Sherker from Monash University's Accident Research Centre carried out this test.

The Madymo Simulations

Figure 51 shows the initial conditions of the ATV travelling along the 30 degree slope, just prior to the vehicle striking the rock and rolling over (time $t = 0$ sec). The vehicle's speed was set to an initial value of either 7 km/hr, 20 or 30 km/hr, respectively.

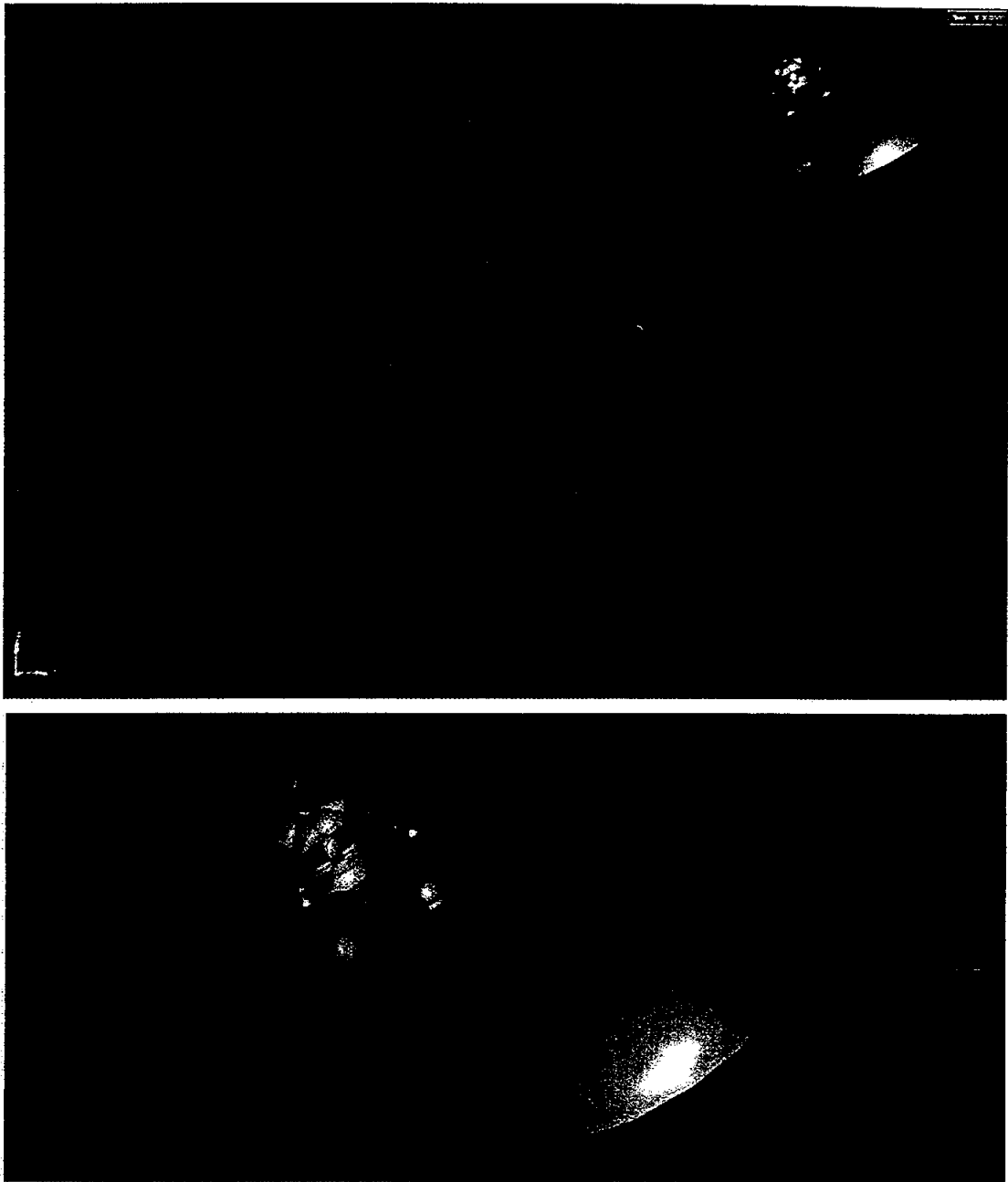


Figure 51: Graphical image from MADYMO showing how vehicle was positioned to strike rock on a 30° slope.

6.3 Results

Table 8 summarises the simulation results from each case. Visual images of the simulation for each case are shown in Figure 52 to Figure 57. The injury threshold reference values quoted have been obtained from NHTSA documentation that can be downloaded from their website and indicated in the references as mentioned above. The injury values that exceed the reference threshold are shaded red; and yellow indicates where injury levels are high but less than the tolerance criteria. It is clear that Cases 3 and 5 are not survivable scenarios. The scenario in Case 1 could result in serious neck and head injuries.

Table 8 Summary of key injury criteria from each Madymo simulation

Injury type	Reference threshold value	Case 1 (7km/h no rops)	Case 2 (7km/h with rops ⁸)	Case 3 (30km/h no rops)	Case 4 (30km/h with rops)	Case 5 (20km/h no rops)	Case 6 (20km/h with rops)
Head Injury HIC	1000	614				730	
Chest injury 3MS (G's)	60			44.5		43	
Chest Injury Def (mm)	63						
Leg Injury Left leg force (kN)	10						
Leg Femur Injury Right leg force (kN)	10						
Neck Injury Axial force F _z (N)	4000				2400		
Neck Injury							
NIJ-NTE	1.0	0.80					
NIJ-NTF	1.0	0.21					
NIJ-NCE	1.0	1.01					
NIJ-NCF	1.0	0.32					

For Case 1 (Figure 52), V=7km/h, the ATV rolls on top of the rider. At t = 1.6 to 1.7 seconds, the ATV's right handle bar strikes the rider's head hitting it into the ground. As the vehicle continues to rotate it levers itself on the right handle bar, further compressing the rider's head into the ground. This is the point at which the Head Injury Criterion (HIC) was the highest. A HIC of 614 is equivalent to a strong male swinging a rubber mallet hammer as hard as possible striking the side of the dummies head. In addition the neck injury criteria are high and close to or exceed two of the tolerance values.

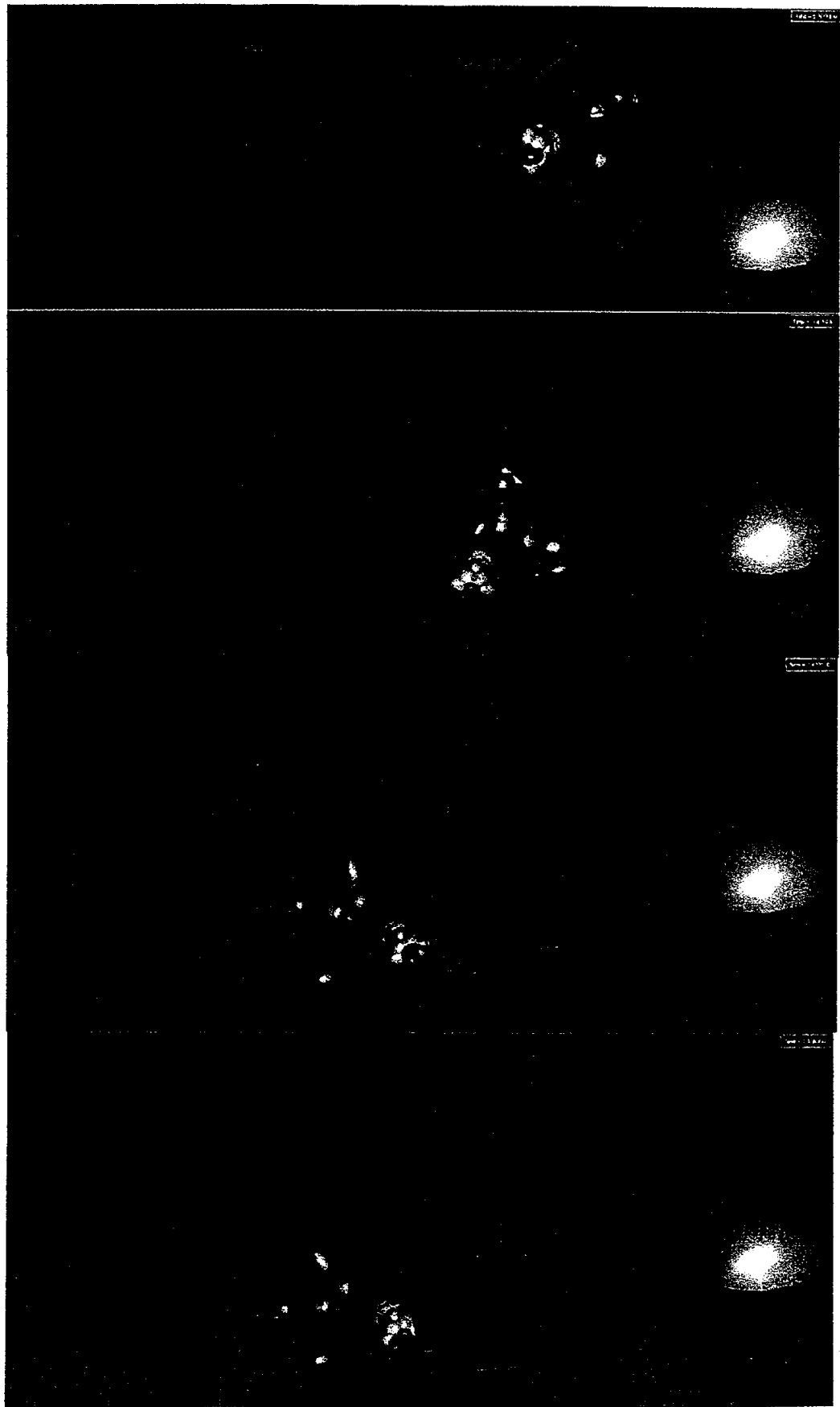
For Cases 3 and 5 (Figure 54 & Figure 56), V= 30km/h, it is clear the rider would not survive the crash with the inflicted massive HIC and Neck injuries. These injuries are the result of the rider diving into the ground head first.

For Case 2 (Figure 53), Case 4 (Figure 55) and Case 6 (Figure 57) the Rollover Protective Structure reduces the loads to non-injurious levels. The key to achieving this result is a

⁸ rops = Rollover Protective System

strong enough rollover structure that can tolerate the impact loads and a seat belt restraint system that restrains the rider within the protective structure.

It needs to be pointed out that the static images shown in Figure 52 to Figure 57, do not provide a "feel" for the severity or way in which injury occurs. This is best appreciated by viewing the animated sequence from various perspectives. The animation files are provided on the **CD ROM enclosed** with the report with instructions on how to run the animations and manipulate the images. The file names for Cases 1 to 6 on the CD ROM are "Case1", "Case2", "Case3", "Case4", "Case5" and "Case6", respectively.



t ~ 0.7 sec

t ~ 1.0 sec

t ~ 1.6 sec

t ~ 1.7 sec

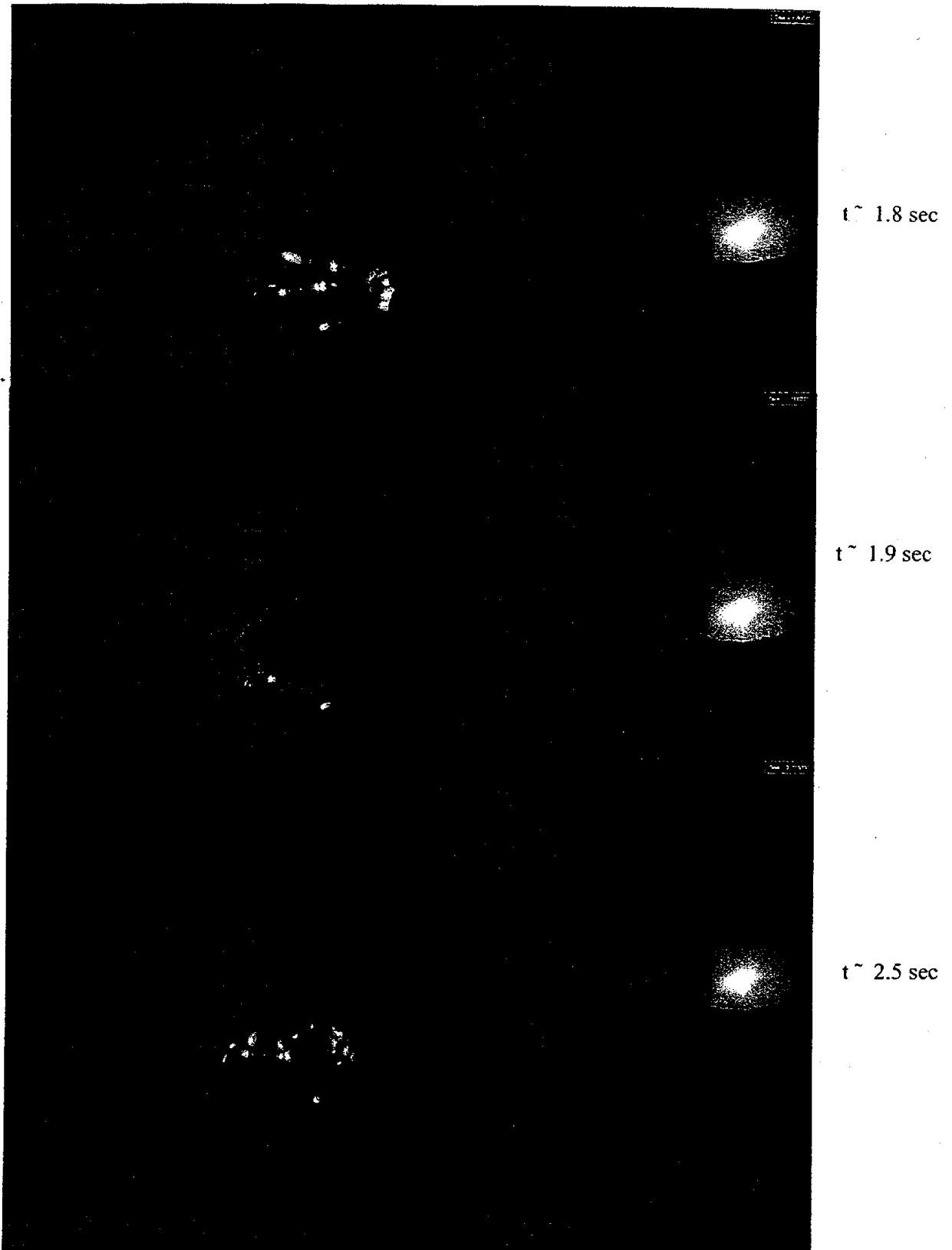
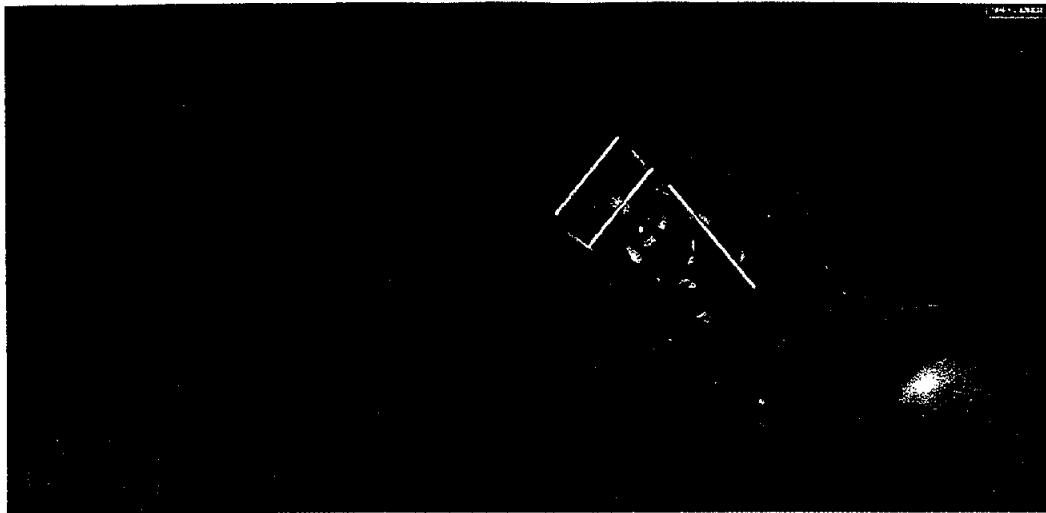


Figure 52: Kinematics of rollover for Case 1: 7 km/hr and no protective system.



$t \sim 0.7 \text{ sec}$



$t \sim 1.0 \text{ sec}$

$t \sim 1.1 \text{ sec}$

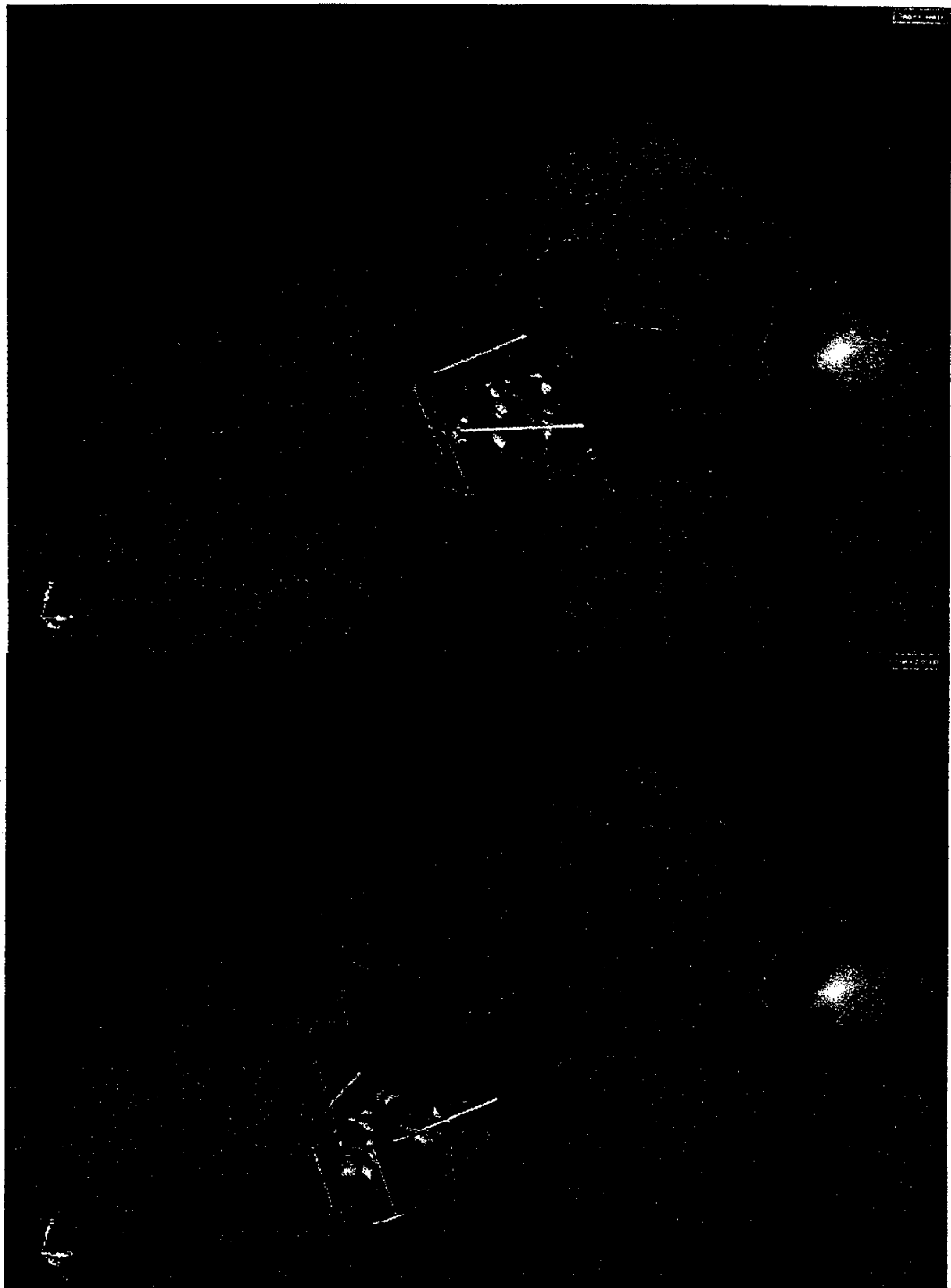
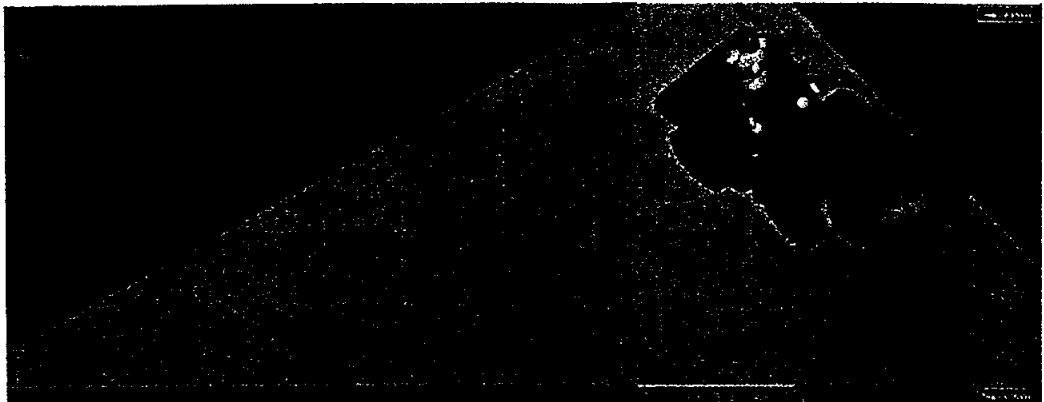


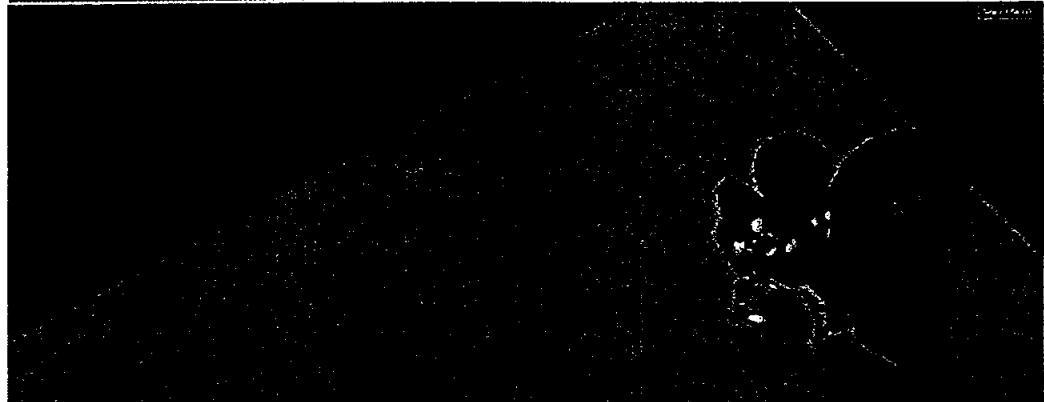
Figure 53: Kinematics of rollover for Case 2: 7 km/hr with Rollover Protective System.



$t \sim 0.16 \text{ sec}$



$t \sim 0.26 \text{ sec}$



$t \sim 0.54 \text{ sec}$



$t \sim 0.71 \text{ sec}$

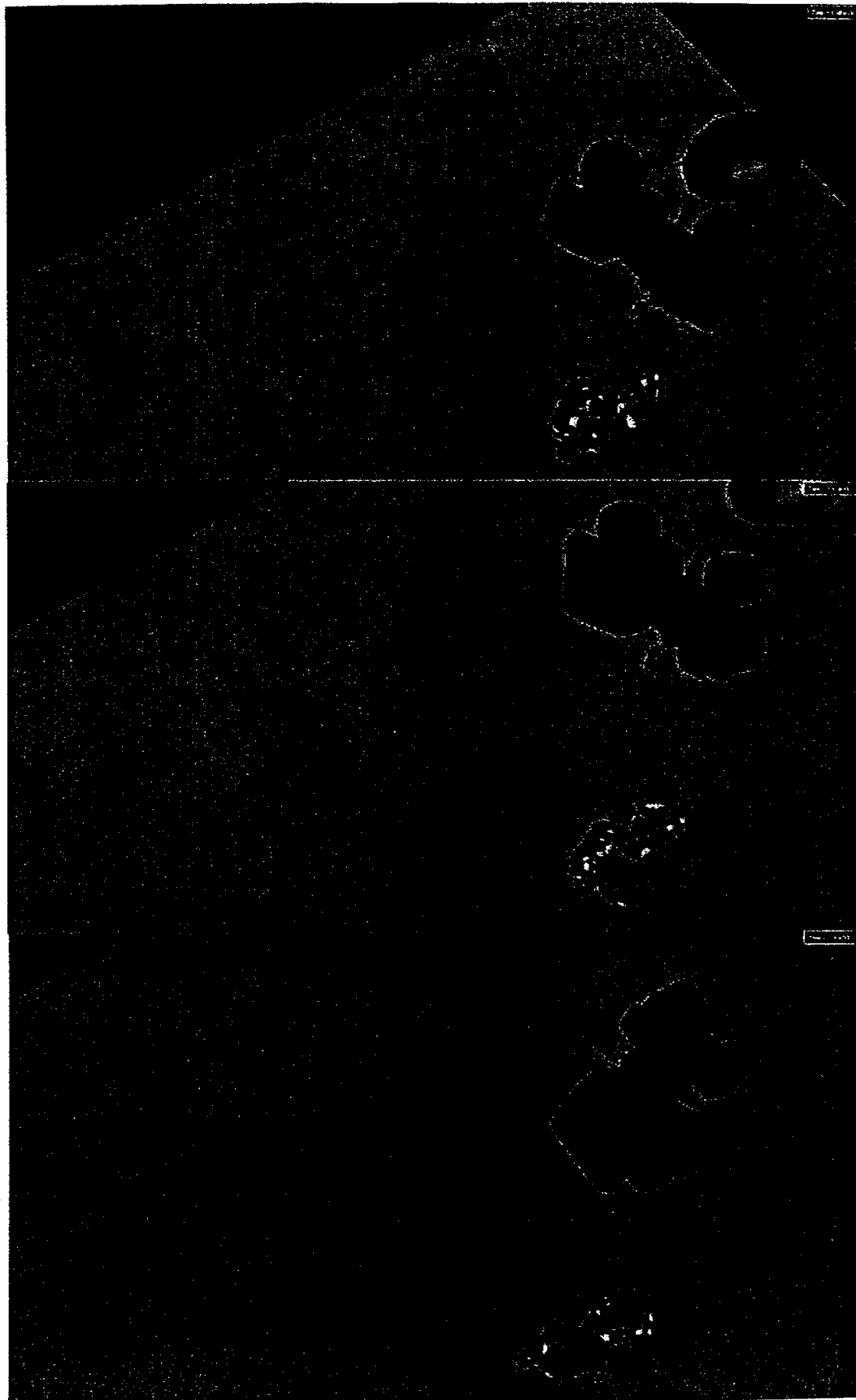
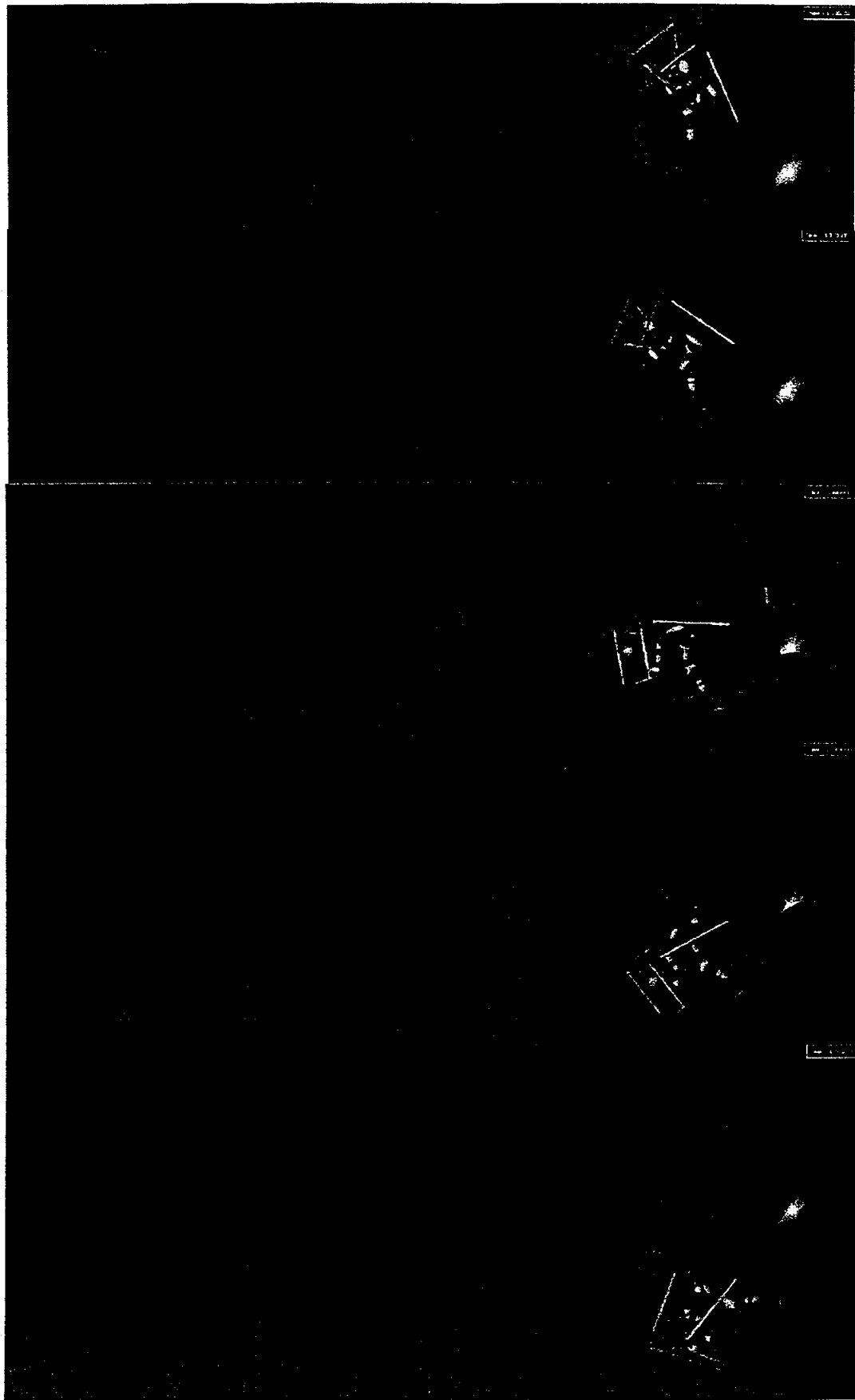


Figure 54: Kinematics of rollover for Case 3: 30 km/hr and no protective system.



t ~ 0.2 sec

t ~ 0.32 sec

t ~ 0.4 sec

t ~ 0.56 sec

t ~ 0.7 sec

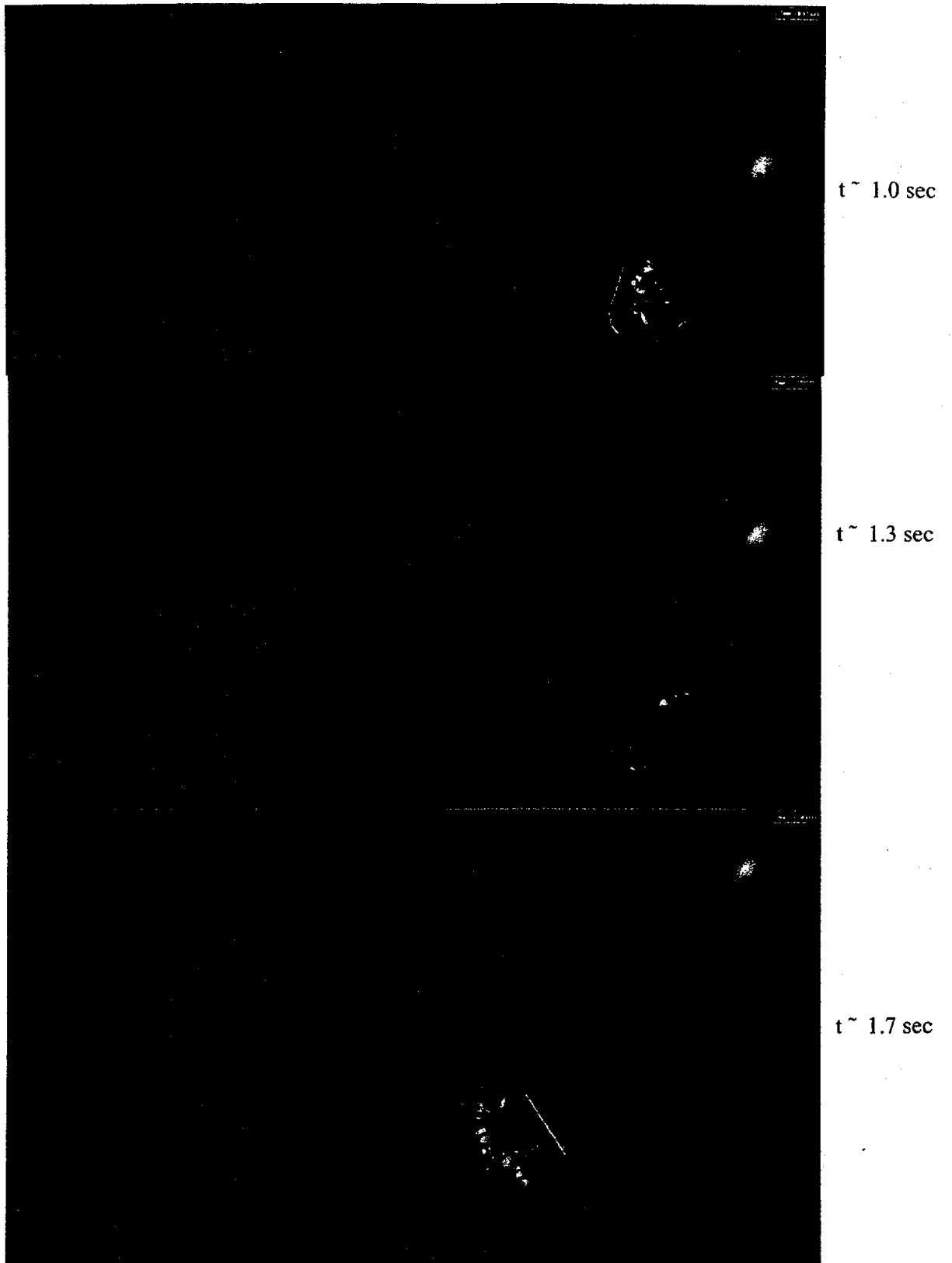
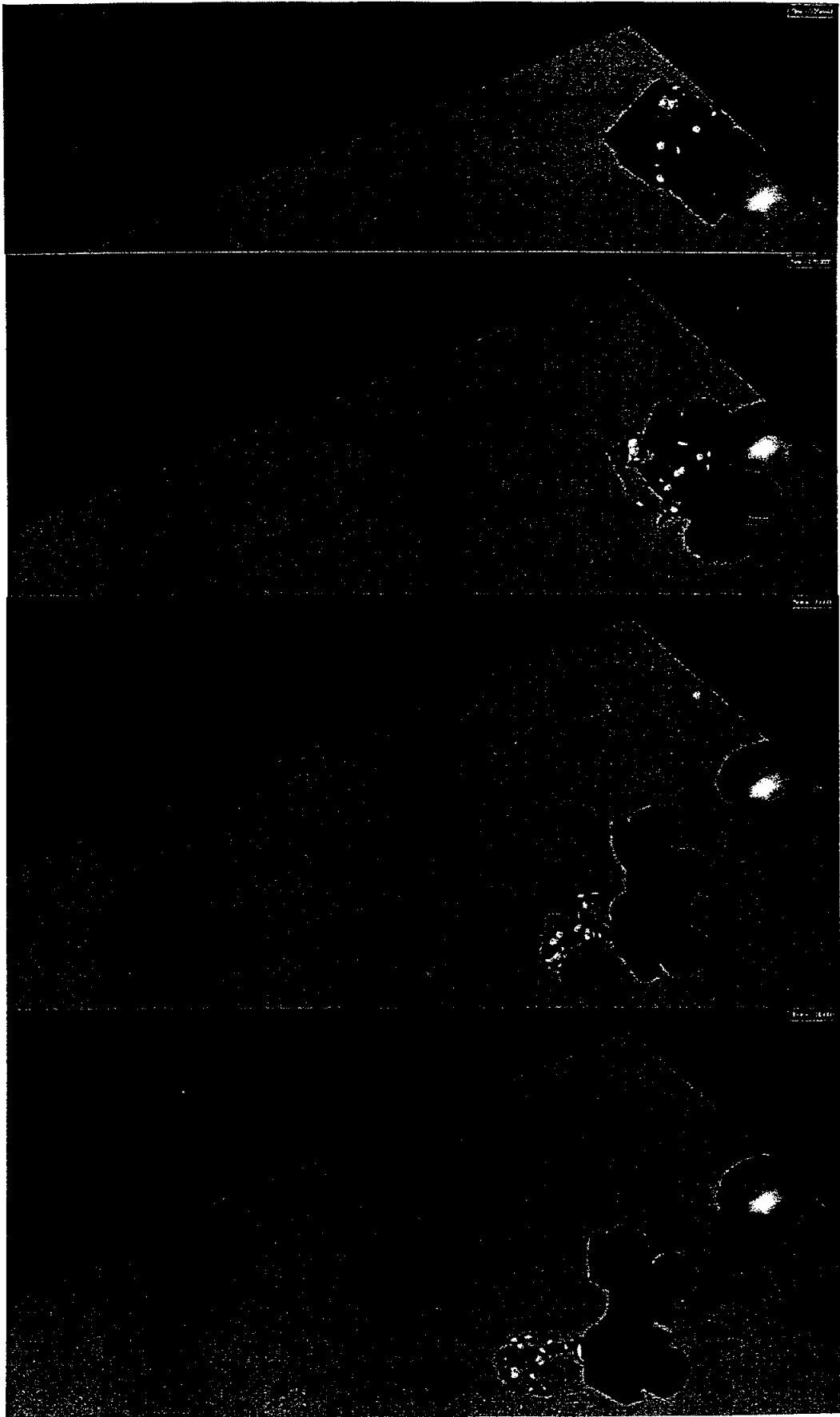


Figure 55: Kinematics of rollover for Case 4: 30 km/hr with Rollover Protective System.



$t \sim 0.7 \text{ sec}$

$t \sim 1.1 \text{ sec}$

$t \sim 1.2 \text{ sec}$

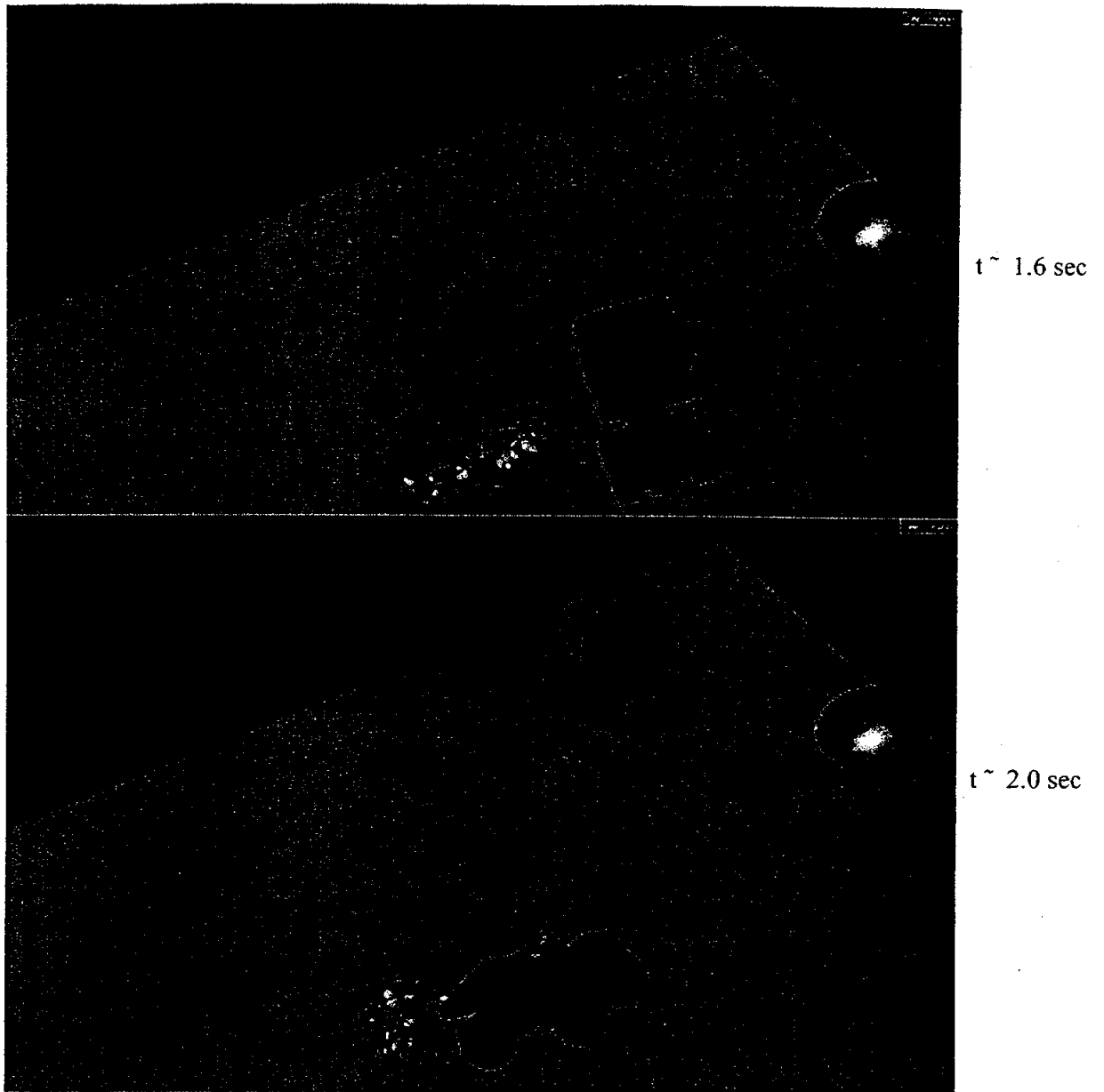
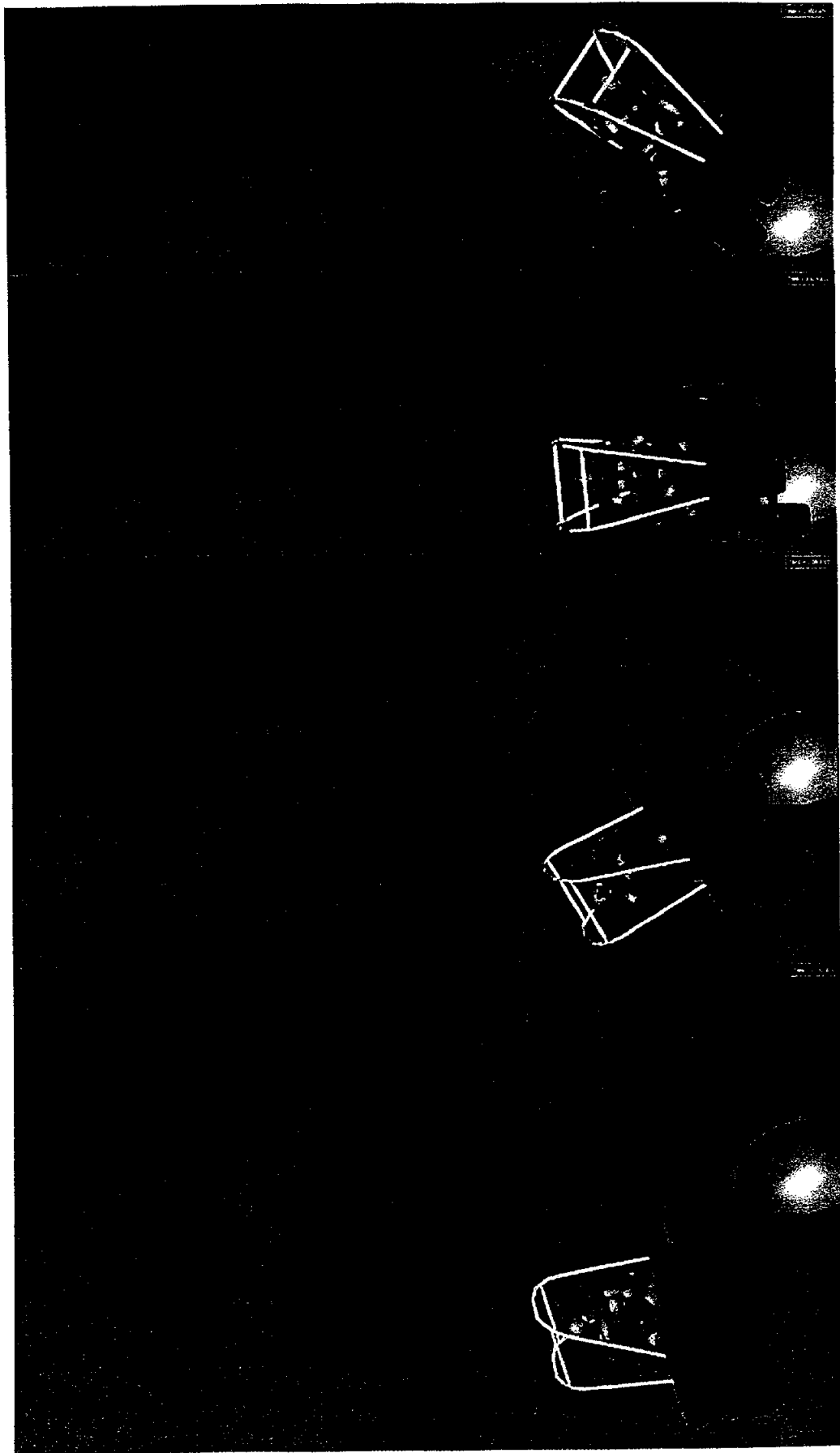


Figure 56 Kinematics of rollover for Case 5: 30 degree slope, 20 km/hr, without Rollover Protective System.



t ~ 0.4 sec

t ~ 0.6 sec

t ~ 0.8 sec

t ~ 1.1 sec

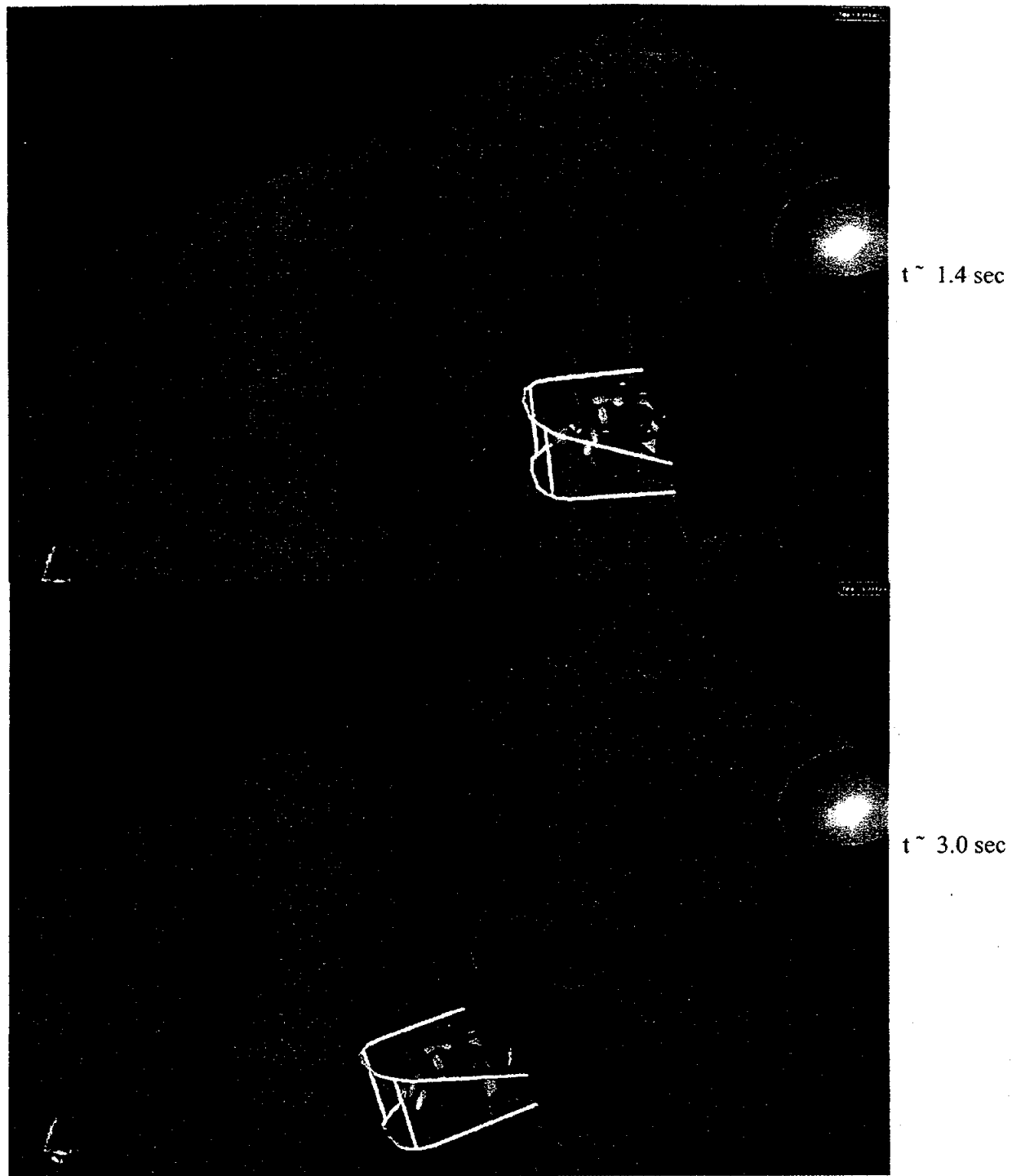


Figure 57 Kinematics of rollover for Case 6: 30 degree slope, 20 km/hr with Rollover Protective System.

6.4 Discussion

It is clear from the simulations that an unrestrained rider will be subjected to a high risk of sustaining life-threatening forces in a rollover at any speed. The simulations revealed that the risk of the ATV rolling on top of the rider is more likely when the initial speed of the ATV is slow, i.e. 10 km/hr or less. At higher speeds the rider is thrown from the vehicle, risking a lethal severe head strike into hard ground or a rock and/or severe loading of the neck resulting in either a fatality, paraplegia or quadriplegia.

On the other hand if the occupant is adequately restrained within a protective rollover structure, the severity of the rollover event is dramatically reduced. For the slow rollover, the structure comes to a stop within a half roll as shown in Figure 53, and in Figure 57 for the 20km/h scenario the ATV with the protective structure also comes to a stop within half a roll. For the higher speed of 30 km/hr, the structure continues to roll over.

There was insufficient time to investigate a system whereby the vehicle's propensity to continue rolling down the hill could be reduced so that only a few rolls occur. However, the authors believe that a simple cost effective system could be developed that minimises this effect.

7. DISCUSSION

7.1 Epidemiology of ATV injuries and deaths

In Australia there is limited information available on the population of riders and the number of ATVs in use. However the following profile has been determined:

- 24 fatalities in the 2.5 year period 1st July 2000 to 30th December 2002, an average of 10 cases per year.
- 22 of the 24 cases were male
- There are approximately 150,000 – 200,000 ATVs in Australia
- For ATVs the fatality rate of around 5-7 per 100,000 all-terrain vehicles is about half the fatality rate of 13.9 per 100,000 vehicles for motor vehicles.
- 7 of the 24 cases were aged under 16 years, and 11 were over 50 years of age.
- Location was known in 23 cases, of these 17 cases occurred on farms
- Activity was specified in 21 cases, of these 12 cases were working at the time of the incident (6 were spraying), seven were engaged in sport or leisure, two were travelling.
- Overturn of the ATVs occurred in 10 of the cases, of which 6 cases involved a slope, two involved surface irregularities (one case a rock and another case a hollow in the ground). Of the 8 cases involving overturn on slopes, in four of these ATVs were carrying a load.
- Collisions occurred in 7 cases resulting in 8 fatalities.
- In 12 cases the mechanism of injury involved the ATV falling onto the deceased. In a further 7 cases, the deceased was thrown from the ATV and collided with an object or the ground.
- In regard to injuries it is estimated that there are about 590 hospital admissions of ATV related injury in Australia.

In the USA, ATV deaths increased in the period 1985 to 2000, with the total in 2000 being around 500 fatalities.

- 56% of incidents involved collisions and 28% overturns
- Over 35% of fatalities involved children under 16 years, with over 90% of these involving adult sized ATVs.
- ATV related injuries show a significant increase from 1997, with children representing an estimated 47% of these cases.

In New Zealand ATVs are the second most common cause of work- related fatalities. Of 15 deaths 8 were classified as being crushed or pinned by the ATV, with another 4 defined as rollovers

In the United Kingdom, of 90 incidents investigated, 64% involved overturn or roll.

Overall, overturns and collisions of ATVs are commonly reported, with overturns being the most common event scenario. The head and chest are commonly injured in fatalities, with arms and legs being as involved in serious injuries.

7.2 Preventative strategies for ATVs

In Australia preventative strategies have largely related to the agricultural setting, and have primarily focussed on provision of information and on training programs. The fitment of rollover protection structures (commonly referred to as ROPS⁹) has not been recommended and the need to develop better Rollover Protective Systems for ATVs has been noted:

In the USA, a ten year preventative program included the withdrawal of 3 wheel ATVs from the market, a national training program for ATV users, public awareness campaigns, improved information to purchasers and age recommendations to prevent young children from using wrong sized ATVs. Despite these efforts some 89% of riders had not undergone training programs, by the ninth year of the program. The removal of three wheel ATVs resulted in a decrease in deaths associated with these types of ATVs. However, the rates for deaths associated with four wheel ATVs was only marginally lower at the end of the 10 year program period.

The United States example confirms one of the general principles of injury prevention: that removal or modification of a hazard will usually be more effective than encouraging protective behaviours that need to be repeated on each occasion of exposure to the hazard (National Committee for Injury Prevention and Control, 1989).

In New Zealand, guidelines have been issued setting out Safe Use of ATVs on NZ Farms. Standards have been developed for a NZ ATV helmet. Guidelines have been published for the design, construction and installation of rollover *protective structures* for ATVs for a 12 month trial, with rollover *protective structures* being neither recommended nor advised against.

7.3 Previous research on ATVs and Rollover Protective Systems

Due to the dramatic increase in ATV fatalities that occurred during the 1980's period, various researcher started looking at this problem of ATV related incidents. As the injury data identified rollover of ATVs as one of the common mechanisms resulting in severe injuries, rollover protective structures were raised by various authors as a means of reducing this risk.

In virtually all of the papers published since that time the rollover protection proposed violated the fundamental requirements for an effective Rollover Protective System: that is, the combination of a protective structure and the use of an effective occupant restraint system which comprises a suitable seat with back rest and side bolsters, and a three point or preferably a 4-point seatbelt system. It is axiomatic that if a system violates fundamental principles it can not be effective (Rechnitzer 2000). Thus it is not at all surprising that critical reviews of proposed rollover protective structures (or systems) identified either no benefit or *increased* injury risk by fitting of these ROPS to ATVs.

⁹ There is a clear need to differentiate between the traditional ROPS which is an acronym for Rollover Protective Structure, and the system advocated in this report – a Rollover Protective System which comprises a ROPS together with a full seat and seatbelt system.

In some studies that proposed rollover protective structures, the very principles that were espoused in the reports were not adhered to. Thus for example the UK HSE study (Allinson 1996, 1997) in proposing a low level rear mounted single rollover protective frame, did so almost solely on the basis of preventing continuous roll, without any validation of the effectiveness of this type of ROPS in preventing injuries that might occur.

Overall the critics (e.g Piziali et al) of ATV Rollover Protective Systems based on the previously proposed designs and criteria (NZ, UK) have a strong basis for concluding that such Rollover Protective structures should not be installed on ATVs. These conclusions however have been erroneously generalised and misinterpreted by these and subsequent researchers as categorising all Rollover Protective Systems as being inappropriate for ATVs.

What can, however, be emphatically concluded from the research to date *is that it has proven that poorly designed Rollover Protective structures (or even systems) without properly designed seat and seatbelt systems will not reduce serious and fatal injury risk associated with ATVs and are likely to even increase such risks.* None of the proposed systems (seen in the literature) for ATVs could be regarded as meeting necessary design criteria for a Rollover Protective System. The only Rollover Protective System that could be regarded as appearing to follow fundamental principles for effective ROPS is the Honda Pilot 'dune buggy'.

7.4 ATV design and active riding

ATVs are based on motorcycle structure with two extra wheels added. They are considered by the manufacturers and industry as 4-wheel motorcycles. As such ATVs maintain the philosophical and 'safety' culture associated with motorcycles and not that typically associated with 4 wheel vehicles.

As with nearly all motorcycles¹⁰, ATVs have a similar lack of focus or provision for occupant protection in a crash. Because motorcycle design has traditionally provided very little in the way of occupant protection, active safety strategies relying on rider behaviour have been promoted to mitigate serious injury outcomes.

The extrapolation of this motorcycle based 'safety' philosophy to ATVs is fraught with difficulties. ATVs have quite different handling characteristics to motorcycles and they are used in different environments and by a different cross-section of users. It is pertinent to note that ATVs were originally designed for recreational use, but because of their apparent versatility have been adopted and 'made to fit' for farm use. Thus with farm use additional items, such as spray units, are often carried on the front or rear or both. A further difference is noted for the injury mechanism, which for ATVs is mainly related to rollover, whereas no such mechanism exists for motorcycles.

In considering this background to ATV design and usage, it becomes apparent that the fundamental limitations of ATV handling characteristics are intended to be overcome by 'active riding'. Active riding essentially relies on the weight shift of the occupant to increase rollover resistance, together with simultaneous throttle control for turning manoeuvres. Interestingly the required weight shift is to opposite sides for lower level turns vs high 'g' turns.

¹⁰ The BMW CI motorcycle is the notable exception

Whereas the application of active riding may have had some credibility (albeit limited) for ATV recreational use, it would appear to be misconceived, for the following reasons, in regard to ATV use on the farm:

- Active riding would appear to offer perhaps a 20% increase in rollover stability. For lighter weight riders this decreases to perhaps about 8%.
- ATVs can have different rollover stability for the left side and right side because of an offset centre of gravity position, which for the same manoeuvre can in rolling over in one direction, but not rolling over in the other.
- Active riding depends on the skill of the rider which can vary greatly amongst the different classes of users.
- The effectiveness of active riding decreases significantly as the weight of the ATV increases and/or when they are carrying items such as sprayers or other equipment.
- Riders can be lulled into a false sense of confidence by the notion of active riding, in that they may think they have more influence and control of the ATV's stability than they actually have.
- Active riding can not help in the various circumstances which can result in destabilising an ATV such as hitting a mound or depression in the ground.
- The notion that the rider has some effective control of his trajectory if ejected from an ATV is quite spurious. The promotion by the industry that a rider can mitigate his injury risk by the way he falls or puts out his arms is quite fallacious for most situations. In any case, in most situations where loss of control occurs the time interval available would be too short for a rider to react in terms of trying to mitigate the resultant impact severity.

7.5 ATV stability characteristics

ATVs stability and handling is considered as inherently compromised due to their short wheelbase, narrow track, and high COG. In addition, the lack of a differential means that as the pairs of wheels are forced to rotate at the same speed, this makes changes in direction more difficult. To help reduce the risk associated with these adverse handling characteristics, a strategy of active riding has been promoted and emphasised (by both manufacturers and safety authorities) as the panacea.

However despite this promotion of active riding as being effective, there appears to be no definitive quantitative evaluation of the effectiveness of active riding across the population of ATV users and environments.

Both the theoretical calculations of ATV stability and tilt table tests indicate that the benefits gained by so-called active riding achieve, at most, a relatively low increase of 20% in stability for heavier riders (100kg), whereas for lighter riders (60kg) this gain drops to around 8%. Such stability analysis also highlights that for children or teenagers riding ATVs, their lower weight means that active riding techniques are likely to have very little benefit. Indeed for lower weight riders, active rider techniques may give the illusion of control while in reality offering minimal benefits, resulting in riders having a false sense of confidence. For heavier ATVs, or where they are carrying loads, the influence of active riding becomes proportionally even less.

With a 19kg mass ROPS added, for a 100kg *restrained* rider the stability factor is reduced by around 19%. To regain this stability rating with a ROPS and no active riding, the track width of the ATV would have to be increased from around 840mm to 1100mm, an increase in width of 260mm. Alternatively the centre of gravity would have to be lowered, or a combination of increased track width and reduced CG.

7.6 ATV crashworthiness and ROPS guidelines/standards

ATVs lack crashworthiness in nearly all foreseeable collision scenarios:

- Frontal impacts
- Rollover from any direction

From the considerable knowledge gained from vehicle safety and crashworthiness, and from the injury mechanisms identified in ATV fatalities and serious injury cases, we can surmise that ATVs lack the basic requirements for rider protection. That is, protection against ejection and hence impact with external objects, or being crushed or impacted by the ATV itself as it rolls.

For severe injury prevention, ATVs would require an effective Rollover Protective System which includes a protective structure and integrated seat and seatbelt system.

The NZ guidelines only provide criteria which concern the structural adequacy of a rollover protective structure for ATVs and do not include the requirements for seat belts or an appropriate seating system. As identified in Chapter 5, the NZ requirements are not adequate. The guidelines are seriously flawed in omitting occupant restraint requirements, and for this reason do not at all present a safe system.

Similarly the work of the UK HSE with its recommendations for a rollover protective structure which is less than the seated occupant's height, also omits restraint requirements, is totally inadequate, and indeed dangerous.

7.7 ATV Rollover Protective System design and Rollover modelling

The Rollover Protective System modelled comprised a suitable rollover protective structure combined with an effective seat and restraint system. The frame structure was designed to protect the occupant from impact or rollover in any direction, whilst being securely restrained with a four point harness and highback seat with side wings. The seatbelt system, seats and protective structure design were in part influenced by the well thought out and tested rider protection system used on the BMW C1 motorcycle.

It is clear from the simulations that an unrestrained rider will be subjected to a high risk of sustaining life threatening forces in a rollover at any speed. The simulations revealed that the risk of the ATV rolling on top of the rider is more likely when the initial speed of the ATV is slow, i.e. 10 km/hr or less. At higher speeds the rider is thrown from the vehicle, risking a lethal severe head strike into hard ground or a rock and/or severe loading of the neck resulting in either a fatality, paraplegia or quadriplegia.

With the occupant adequately restrained within a protective rollover structure, the severity of the rollover event is dramatically reduced. For both the low speed simulation (7km/h, 30 degree slope) and the higher severity simulations (20km/h & 30km/h, 30 degree slope), all of the injury measures were very low, reflecting a low risk of serious injury.

8. CONCLUSIONS

1. It is possible to design a practical rollover protection system for an ATV that will protect a rider against injury in a rollover, and other collision modes. Such a system requires a lightweight but high strength structure which provides the occupant with a survival space, together with a high backed seat and seatbelt system to effectively restrain the occupant within the survival space.
2. MADYMO modelling of ATV rollover for both lower severity and high severity rollovers shows that for an ATV with such a Rollover Protective System, an operator would receive minor injuries, whereas without the Rollover Protective System, the outcome would be fatal or serious injuries.
3. Virtually all of the previous international research on fitting rollover protective structures on ATVs to date has been predicated on having an unrestrained (or ineffectively restrained) rider so as to maintain active riding. This has led to ROPS designs with very poor effectiveness and in many cases designs which could well increase severe injury risk. Similarly the Rollover Protective Structure designs suggested through the NZ ROPS guide, and those of UK HSE are ill-conceived, totally inadequate, and potentially dangerous, as they provide inadequate survival space and do not require proper restraint systems.
4. Stability analysis of ATVs indicates that active riding provides generally a relatively low and quite variable level of influence on the rollover propensity of an ATV. For these reasons active riding is not a panacea at all for improving ATV safety, and indeed can give quite a false impression of control to riders.
5. The provision of Rollover Protective System on currently designed ATVs will reduce their stability. To regain the original stability ratings, such ATVs would require either a small increase in track width and/ or lowering of centre of gravity height.

9. RECOMMENDATIONS

1. That industry supported research is undertaken to design and test a Rollover Protective System based on the preliminary designs presented in this study.
2. That ATV type vehicles be developed and redesigned based on a task and needs analysis of farming communities. Such a vehicle should incorporate an effective occupant protection system for rollover and collisions.
3. That ATV recreational vehicles be further developed so that a full Rollover Protective System is incorporated, and the stability design enhanced so that active riding is not needed.

10. REFERENCES

- Allen, R. W., Szostak, H. T., Rosenthal, T. J. and Klyde, D. H., August 1988, "Man Machine Systems Analysis of ATV Stability and Control Problems", Technical Report No. 1253-1, Systems Technology, INC., California, USA.
- Allinson D. Roll-over protection for agricultural all terrain vehicles. UK Health and Safety Executive. Report FE/96/01, 1996.
- American Academy of Pediatrics, Committee on Injury and Poison Prevention, June 2000, "All-Terrain Vehicle Injury Prevention: Two-, Three-, and Four-Wheeled Unlicensed Motor Vehicles (RE9855)".
- Australian Agricultural Health Unit, 14 January 1997, "Rollover Protection Structures for All Terrain Vehicles, A Preliminary Report".
- Australian Transport Safety Bureau. 2002. Road crash data and rates Australian states and territories, 1925-2001. http://www.atsb.gov.au/road/stats/pdf/crash_rates.pdf
- David J. Report on all terrain vehicle related deaths 1985-1996. US Consumer Product Safety Commission, 1998.
- Ayers, P., Conger, J., Troutt, P. and Comer, R., "ROPS Design and Testing for Off-Road Utility Vehicles and Lawnmowers", University of Tennessee, Knoxville, USA.
- Becker, W. J. and Stephenson, W. C., 16 May 2001, "Tractors and Roll-Over Protective Structures (ROPS) and Seat Belts: Standard 1928.51", University of Florida, USA.
- Bourchier, J. and Scott, M., March 1997, "National Standard Falls on Deaf Ears", Framing Ahead No. 63.
- Boyle, S. and Walsh, P., February 1999, "Feedback Improves Bike Designs for Farm Use", Farming Ahead No. 86.
- Centre for Human Factors and Ergonomics, 2002, "Quad Bikes: Factors in Loss of Control Events on New Zealand Farms".
- Coblentz, B., 16 May 2001, "Old Model Tractors can be Made Safer", Mississippi Agricultural News, Mississippi State University, USA.
- Delisle, A., Laberge-Nadeau, C. and Brown, B., February 1989, "Les Trimotos et les Quadrimotos: des Véhicules Instables et Dangereux", Canadian Journal of Public Health.
- Cabaniss, J. C. and Gaddy, J. D., 1989, "All Terrain Vehicle (ATV) Litigation", The New Mexico Trial Lawyer.
- Department of Labour, Wellington, New Zealand. 1998. Guidelines for the design, construction and installation of rollover protective structures (ROPS) for all terrain vehicles.
- Eppinger et al, Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems - II, November 1999, <http://www-nrd.nhtsa.dot.gov/departments/nrd-51/BiomechanicsTrauma.html>

Eppinger et al, Supplement: Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems - II, March 2000, <http://www-nrd.nhtsa.dot.gov/departments/nrd-51/BiomechanicsTrauma.html>

Farming Ahead, "Go Anywhere Bikes Show their Versatility", No. 61, January 1997.

February 1997, "Review of ATV Characteristics and Roll Over Protection Systems".

Forouhar, F. A., 5-7 October 1997, "All-Terrain Vehicles Frequency Domain Response Analysis and Rider Behavior", Proceedings of the 1997 IEEE International Conference on Control Applications, Hartford, USA

Fragar L. and Franklin R. Farmsafe Australia Goals, Targets and Strategy 1996-2001. Mid-term review. Moree: Rural Industries Research and Development Corporation and Australian Centre for Agricultural Health and Safety, 1999.

Fragar L. and Franklin R. The health and safety of Australia's farming community. Moree: Rural Industries Research and Development Corporation and Australian Centre for Agricultural Health and Safety, 2000.

Harada, M. and Harada, H., 16 March 1999, "Analysis of Lateral Stability with Integrated Control of Suspension and Steering Systems", JSAE Review 20, Elsevier and Society of Automotive Engineers of Japan.

Ingle R. Annual report of ATV deaths and injuries. Consumer Product Safety Commission, 2002.

Kleinburger et al, Injury Criteria for the Assessment of Advanced Automotive Restraint Systems, September 1998, <http://www-nrd.nhtsa.dot.gov/departments/nrd-51/BiomechanicsTrauma.html>

Kvalseth, T. O., 1987, "All-Terrain Vehicles: A Human Factors and Safety Analysis", Proceedings of the Human Factors Society - 31st Annual Meeting, Department of Mechanical Engineering, University of Minnesota, Minneapolis, USA.

Langley J, Marshall S, Clarke J, Begg D, and Reeder A. Motorcycle/ATV crashes on farms. J. Occup Health Safety- Aust NZ 1995; 11(4): 387-394.

Moore D. Quad bikes: factors in loss of control events on New Zealand farms. Centre for Human Factors and Ergonomics, 2002.

Murray, C. J., 1 March 1999, "Suspension Improves Off Road Stability", Abstract from Design News, Vol 54, Issue 5, Boston, USA.

National Committee for Injury Prevention and Control (U.S). Injury prevention: meeting the challenge. Published by Oxford University Press as a supplement to the American Journal of Preventive Medicine, Vol 5 (3), 1989.

NIOSH Northeast Center for Agricultural Safety and Health, 13 February 2003, Presentation slides "Display of Stability Data for Safe Tractor Operation", The Pennsylvania State University, USA.

Occupational Safety Health Service, September 1998, "Guidelines for the Design, Construction and installation of Rollover Protective Structures (ROPS) for All Terrain Vehicles", Department of Labour, Wellington, New Zealand.

Occupational Safety and Health Service, New Zealand 2002. Safe use of ATVs on New Zealand Farms. Agricultural Guideline.

Piziali, R. L., Fowler, G. F., Merala, R., Grewal, D. S. and McCarthy, R. L., 28 February-3 March 1994, "Evaluation of a Proposed ATV Design Modification", SAE Technical Paper Servies, International Congress & Exposition, Detroit, Michigan, USA.

Powers, J. R., Harris, J. R., Etherton, J. R., Snyder, K. A., Ronaghi M. and Newbraugh, B. H., February 2001, "Performance of an Automatically Deployable ROPS on SAE Tests", Journal of Agricultural Safety and Health, New Jersey, USA.

Rains, G. C., February 2000, "Initial Rollover Effectiveness Evaluation of an Alternative Seat Belt Design for Agricultural Tractors", Journal of Agricultural Safety and Health, New Jersey, USA.

Rechnitzer G, Richardson S, Hoareau E & Deveson N., Police Vehicles: rollover Stability Analysis (Phase 1 project); Monash University Accident Research Centre Report No. 184, March 2002

Rechnitzer G, Applying First Principles For The Design Of Crashworthy Systems For Road Safety, Proceedings Road Safety Research, Policing and Education 2000 Conference, Sheraton Brisbane, QLD, November 26th -28th 2000.

Rechnitzer G., Lane J. (1994) 'Rollover Crash Study - Vehicle Design and Occupant Injuries', Monash University Accident Research Centre, Melbourne, Report No 65.

Rey, D. A. and Papadopoulos, E. G., September 1997, "On-Line Automatic Tipover Prevention for Mobile Manipulators", IEEE/RST International Conference on Robots and Systems, Grenoble, France.

Rodgers G. The characteristics and use patterns of all-terrain vehicle drivers in the United States. Accident Analysis and Prevention 1999. 31: 409-419.

Richardson, S., Grzebieta, R. H. and Rechnitzer, G. Proposal for a dynamic Rollover Protective System Test, International Crashworthiness Conference - ICrash2002, Melbourne, Australia, 25 -27 February 2002.

Safety Research Report Index - All Terrain Vehicles

Schalk, T. and Fragar, L. J., "Injury Associated with Farm Motorcycles on Farms in Australia", August 2000, Australian Centre for Agricultural Health and Safety, University of Sydney.

Stevenson, M. in Schalk T. and Fragar L. Injury associated with farm motorcycles on farms in Australia. Moree: Australian Centre for Agricultural Health and Safety, 2000.
Tractor and Machinery Association of Australia. News and Views. March 2003. Issue #38-02-03

Stockton, A. D., O'Neill, D. H. and Hampson, C. J., "Methods for Optimising the Effectiveness of Roll-Over Protective Systems", Contract Research Report 425/2002, Health and Safety Executive, Bedford, United Kingdom.

Tyler-Street, M. D., 1999, "Mathematical Modelling of an ATV and Rider in an Overturn", Contract Research Report 222/1999, Health and Safety Executive, The Motor Industry Research Association, Warwickshire, United Kingdom.

US Consumer Product Safety Commission. All-terrain vehicle exposure, injury, death and risk studies, 1998.

Van Auken, R. M. and Zellner, J. W., "Preliminary Analysis of the Effects of ATV ROPS on Rider Injury Potential, Volume 1: Technical Report, DRI-TR-96-4B", Second Revision Issued February 1997, Dynamic Research, Inc., California, USA.

Van Auken, R. M. and Zellner J. W., February 1997, "Initial Analysis of the Effects of ATV Flexible ROPS on Rider Injury Potential, Volume I: Technical Report DRI-TR-97-1", Dynamic Research, Inc., California, USA.

Weir D.H & Zellner J.W., (1986), An introduction to the Operational Characteristics of All-terrain Vehicles, SAE paper 860225

Yisa, M. G., Terao, H., Noguchi, N. and Kubota, M., 1998, "Stability Criteria for Tractor-Implement Operation on Slopes", Pergamon, Journal of Terramechanics, Japan.

Zirkle, L., 21 October 2002, "The Case of Double Jeopardy on an ATV", Design News, Boston, USA.

18

Hammond, Rocky

From: Ryan Devries
Sent: Friday, May 16, 2003 2:01 PM
To: Hammond, Rocky
Subject: Banning Of All Terrian Vehicles?

According to the ATVA (All Terrian Vehicle Association), There will be a metting with the Federal Consumer Products Safety Comission about the banning of ATV's on June 5th, 2003.

This is a large problem for us ATVer's and we are very concerned about this problem in the future. The Federal Consumer Products Safety Comission is concerened about the high number of ATV-related deaths through the years.I would like to inform you that its not just us ATVer's that are being injured and killed out there. Many people who ride/drive Off Road or On Road Vehicles are being injured/killed everyday. Somewhere in it all, it seems us ATVer's are the ones usually being penalized.

Owning and driving an ATV is a way for some of us to get away from our day jobs and enjoy life. Its also a good way to get together with the family and enjoy something they love to do. Banning ATV's from us would be an upset for everyone who has depended on them for work or play.

The ATV industry has expanded tremendously throughout the past few years. The Manufacture Companies have relized the amazingly increase of sales coming from the ATV market. It would be a shame to these Manufacture companies if they would have to face a loss like this.

I hope you understand how much this means to all of us. Expect many letters from concerned atv Enthusiasts.

Thanks for you time.

Sincerely , Ryan P. Devries.

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.

Hammond, Rocky

From: Rhonda Treadaway
Sent: Saturday, May 17, 2003 12:26 AM
To: Hammond, Rocky
Subject: ATVs and ATV Safety

Hello Rochelle,

I am writing to you as a registered nurse in the emergency room, an ATV Safety instructor of about 15 yrs, and a previous witness who testified before a CPSC committee investigating the ATV Consent Decree of 1989. I helped to set up the ATV Safety program here in Texas back in 1989. I am also an ATV enthusiast who enjoyed taking my sons ATVing as they were growing up. I found it to be an enjoyable family activity. I feel like I have a lot of experience to talk about this subject from both sides of the viewpoint.

I have been reading some of the recent articles detailing the resurgence of concerns about ATV use and activities. I am sorry to say that the problems noted are much the same as they have been before. When I went to Washington to testify concerning ATV safety in 1998, my comments then were that we had many good laws on the books but that they were not enforced. I still maintain that that is where one of our greatest problems lie. It does no good to spend more time and more money to put more laws on the books or close riding areas if laws are not enforced. Can you imagine how some people would drive their cars on the roads if traffic laws were not enforced? There would be many people speeding, running red lights, drinking and driving, etc - the equivalent of what we have with ATV recreation. It is not everyone who disobeys - it is the 5% that do not who mess up things for the other 95%. If no one is enforcing the laws, even usual law abiding citizens will not behave as well as they should.

The manufacturers have made it clear for many years that ATVs over the size of 90cc are not for use by kids younger than 16 years of age. However, I have had many parents argue with me during ATV safety classes that THEIR child is plenty capable of handling the larger machines. I explained about the weight and size ratio but some of them were very hard headed about it. I also had Dads tell me that they would not even bring their children to the ATV Safety classes because they were required to wear a helmet and that he wasn't going to buy them one, so in order to not be hypocritical he just would not even take them to the class. I feel the problem with under age kids is parents not being responsible. How do we protect the children from that? It applies to everything from Moms not watching their babies in the rolling bouncing chairs (so that kids eat poison plants or fall down stairs) to the ATV issue at hand.

When I hear statements like that injuries on ATVs that are over 400cc are increasing, that tells us nothing as there were only a couple of large ATVs of that size produced 6-10 years ago. Since that time, many new units have been produced and have been in demand by the public. With more large units being utilized there will naturally be a rise in injury rate in that category. This argument is probably more rhetoric than a valid indicator of rising injury statistics.

I feel that ATV Safety training should be mandatory to operate an ATV. If an ATV is purchased for a child, then parents should also be required to take the training so they can properly supervise the child. This is another issue that has been ignored!

These are a few of the issues that I have noted. I would be happy to discuss this issue further with someone if it could be beneficial.

To summarize, I feel that some of the things that should be considered in order to decrease injury

5/19/03

associated with ATV use is: 1) make ATV Safety training mandatory by all operators with consequences for allowing untrained operators to drive them. 2) Children should be required to always ride with an adult in attendance to supervise - never alone. 3) Laws on the books should be enforced. If we would spend this same time and money on enforcing laws we already have on the books and requiring people to take the safety training instead of investigating the same issues that have always been a problem, then we would have a greater impact on safety. When parents are finally told that they have to be responsible for their children to some degree, we will see that either the children won't be on ATVs or else they will be properly supervised, wearing appropriate safety gear, properly trained, and on an appropriately sized ATV for the child's size and skill level. Children do not have the ability to make those kinds of decisions for themselves - the parents control those issues.

ATVing can provide an opportunity to have great family experiences and bonding. It can be the tool used to teach children about proper maintenance of equipment, safety issues, proper and responsible behavior, providing the parent utilizes it for that purpose. Otherwise, if the parent is looking for a babysitter and is not willing to put the time and effort into their kids safety, it will become a problem. If the parent is drinking and riding ATVs without safety gear, without safety training, and being irresponsible, then this is partially the fault of the community for not enforcing the laws - just as operating a car would be. These types of issues will surface whether the child is riding ATV's, bicycles, sports, or other activity where the child needs proper training and safety gear - it is not just specific to ATVs. The child of this type of parent is at risk for many types of activities for the very same reasons. Until we acknowledge that it is the fact that many adults are not demonstrating responsible behavior themselves, much less toward their children, we will not make the impact toward reducing accidents that we should.

I hope that this discussion has been beneficial in some way. If I can be of further service to someone in regards to this issue, I will be happy to discuss it further.

Sincerely,

Rhonda Treadaway, RN, BSN, CEN, MSN, FNP-C

MSN 8 helps ELIMINATE E-MAIL VIRUSES. Get 2 months FREE*.

20

Hammond, Rocky

From: Phil Smith
Sent: Saturday, May 17, 2003 2:28 AM
To: Hammond, Rocky
Subject: Banning ATV's

I'm going to try to be polite here.

It seems you're concerned about the increase in ATV-related injuries and deaths. What about the deaths caused by smoking and drunk driver's? Drunk drivers have caused more deaths than ALL of the ATV injuries and deaths COMBINED! If someone rides their ATV like an idiot and they get hurt, or even killed, that's their own fault. IT'S THEIR FAULT NOT THE ATV'S!

Oh, and what about the companies that make ATV's? If ATV's get banned, MANY people will be without a job, so the economy will be even worse.

This is almost as bad as trying to ban Oreos in California!!!! Why do you care if someone stuff's their self with Oreos and doesn't get any exercise? If they get fat that's their problem!

You liberal's DON'T SEEM TO CARE ABOUT FREEDOM, JUST YOUR STUPID MONEY. 20 years from now, America won't be known for it's FREEDOM. The government will be telling us what to eat and what to drive. We will be just like any other country.

Thanks,
Eric

Hammond, Rocky

From: martin blair [hnquadin@yahoo.com]
Sent: Monday, May 19, 2003 12:16 AM
To: Hammond, Rocky
Subject: ATV band

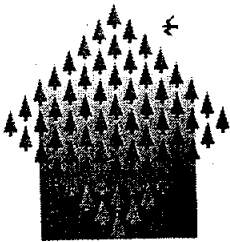
Hi, my name is Martin Blair and I live in Olathe, KS. I recently heard of your organizations hearing in June about banning atvs, I cannot make it to the hearing. However I would like to say that I am 14 and ride a honda 400ex that is made to be for 16 year olds. Whats the difference between me and my 16 year old friend? I can drive so can he, I would much rather have a 14 year old behind a atv then a car? Im sick of everyone butting in our business leave people alone and everyone would be fine, its not us who is the problem. The problem is all the parents that let the 6 and 8 year olds ride there atv that are to big. That is the parents desicition NOT yours.If there is an effective ban it will never your, everyone that rides and is under 16 will still ride, Its going to take a officer at everyones home, at every trail head, thats to much to enforce. And most kids wouldn't stop riding, I know I still would. I would just like to say that you need to mind your own business. We have the right to freedom, liberty, and the pursuit of happiness, if this makes us happy then thats our right. Spend more money on education, not banning atvs.

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.
<http://search.yahoo.com>

ATV Hearing comment
29

Pine Barrens Law Enforcement Council

Capt. Richard Otterstedt, NYS EnCon Police, Chair
Stephen Laton, Suffolk County Parks, Vice Chair



**CENTRAL
PINE
BARRENS**

JOINT
PLANNING
&
POLICY
COMMISSION

May 19, 2003

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207

Robert J. Gaffney
Chair

Patrick A. Heaney
Member

Robert F.
Kozakiewicz
Member

John Jay LaValle
Member

Dear Mr. Secretary:

Reference "ATV Hearing"

As Chairman of the Central Pine Barrens Law Enforcement Council (an organization made up of 19 law enforcement agencies in Suffolk County, New York), I am writing to the Commission to provide some information I hope you will find useful in your review of the sale and use of ATVs, particularly by minors.

This Law Enforcement Council has, for the past 10 years, struggled with the illegal operation of ATVs on public and private lands within the Central Pine Barrens. The illegal operation of ATVs causes environmental damage, creates hazardous conditions for other public land users (i.e., hikers, horse back riders, and mountain bike riders), and results in a number of accidents causing physical injury to the operators. A number of New York State and local laws have been enacted over the years, regulating the use of ATVs, requiring written permission from land owners to operate an ATV, prohibiting the operation on public lands, and providing for seizure and possible forfeiture for repeat offenders.

Although these laws have had a limited effective impact on the illegal operation of ATVs, the problem persists. Both adults and minors are apprehended operating ATVs in violation of the law. Of particular concern is the tacit permission parents give to their children to operate ATVs in spite of all these prohibitive laws. Often, the parents are cited for allowing their children to operate the ATVs, fines and redemption fees for impounded ATVs are paid, the ATV returned and operated illegally once again.

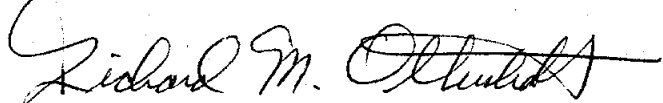
The Law Enforcement Council believes the proposed ban on the sale of adult size ATVs for use by minors may be difficult if not impossible to enforce. How will the dealer know the parent intends to allow a minor to operate the ATV

P.O. Box 587
3525 Sunrise
Highway
2nd Floor
Great River, NY
11739-0587

Phone (631) 224-2604
Fax (631) 224-7653
www.pb.state.ny.us

before and/or after the sale is made? Who will police and enforce this federal consumer product law? A better approach might be enactment of a federal law prohibiting adults from allowing minors to operate adult size ATVs, providing for stiff fines and forfeiture of the ATV upon the first conviction. In addition, a national public campaign, educating the public about the hazards associated with the operation of ATVs by minors may ultimately discourage the use of them, and result in a reduction of injuries and deaths.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard M. Otterstedt". The signature is written in black ink and is positioned above the printed name.

Richard M. Otterstedt, Chairman

RMO:rr

The U.S. Consumer Product Safety Commissions
Office of the Secretary, Room 501
4330 East West Highway
Bethesda, MD 20814

ATV Hearing
Commitment 23

May 23, 2003

Dear Mr. Stratton, Chairman:

This is in response to your letter of April 23, 2003 regarding the public hearing at the University of West Virginia, on June 5, 2003 concerning All-Terrain vehicles (ATV's). I request that my letter be read into the public record by an appropriate person because I cannot attend in person, I will be attending my granddaughters High School Graduation in Houston Texas (Summa Cum Laude prom queen & best heart in softball). We are very thankful she never rode an ATV.

I believe I can provide unique testimony on several of the areas of interest raised in your letter. First and foremost, as the chief engineer for CPSC during the many years of deliberation on the issue of ATV safety, I can assure the Commissioners that no performance standard "is feasible". In order to turn an ATV, the driver must create a "period of time" where the ATV is unstable by causing one of the rear wheels to lose frictional contact with the ground. During this "period of time" the driver is in a dangerous situation that requires expert skills. No "performance standard" can address the drivers reactions during this critical time.

No one under the age of 16 years can make the necessary decisions to safely drive an ATV, during this period of instability. Training, testing and licensing of drivers is essential to the safe operation of ATV's and only for persons over 16.

Years and years of attempts by CPSC, the states and the industry have not addressed the safety problems. And, they will not. Children are dying and suffering a life of paralysis because of this product.

Please ban this product for the use of children under 16, and require licensing in every state for persons over 16, who want to drive an ATV.

This bold action by the Commission involves some serious issues regarding States Rights, Personal Rights and Legal Enforcement.

Go for it and protect our children I am available at any time to answer questions in person or writing.

Sincerely,

William W. Walton

William W. Walton

24

Hammond, Rocky

From: larry partridge
Sent: Friday, May 23, 2003 8:00 PM
To: Hammond, Rocky
Subject: Re:

-----Original Message-----

From: larry partridge
Date: Friday, May 23, 2003 16:59:10
To: rhammond@cpsc.gov

put a ban on automobiles
they kill too leave atv,s
alone

Hammond, Rocky

From: jethro moyer [quadracer5487@hotmail.com]
Sent: Monday, May 26, 2003 4:09 PM
To: Hammond, Rocky
Subject: ATV HEARING!!!!!!

I would like you to look at this
<http://forums.bansheehq.com/viewtopic.php?t=10514&start=0>

it is a web site where atv riders talk and hang out the topic is about you
baning are sport

look at it this way yes people get hurt yes people die but look how many
people die from smoking look how many people die from drunk driving i just
turned 16 3 weeks ago i have been riding atv's sence i was 4 years old i'm
still alive and kicking and i did not ride a 90cc quad before i was 16 i'm
6'2 for crying out loud you if you ban atv's you have no idea how much
fredome you take away from us atv riders you should go to glamis on
thanksgiving weekend one time you will see how many atv riders there are it
no wonder 1 or 2 people die and people brake arms legs hey if your gona ban
atv's lets ban bikes skate bords scooters gopeds streetbikes cars airplanes
boats hell mabey even shoes how are you gona explain to a 8year old he can't
ride his bike any more that it's to dangrouse there are around 800000 atv's
sold evry year it's up to you but just rember there ae that many people out
there that own atv's and we will be pissed don't kill are sport

Tired of spam? Get advanced junk mail protection with MSN 8.
<http://join.msn.com/?page=features/junkmail>

Hammond, Rocky

26

From: jeremy and angela mccord
Sent: Tuesday, May 27, 2003 9:26 PM
To: Hammond, Rocky
Subject: CPSC ATV Safety Hearings

Dear sir,

My family enjoys riding ATV's and would hate to see the CPSC invoke any restrictions that would take away our hobby. We believe that ATV's are not inherently dangerous and that any of the CPSC's concerns about safety can be addressed through an increase in designated, as well specially designated, ATV riding areas, and through the promotion of rider safety training.

The enjoyment our family gets from riding ATV's is immeasurable. I assure you that riding ATV's is a recreational activity that allows parents to teach their children more than just riding skills. It teaches respect of self, respect of others, and respect of the land. Please listen to the suggestions and opinions of the ATVA and allow us to continue to enjoy our hobby.

Sincerely,
Jeremy McCord
209 East Chestnut St.
Puryear, TN 38251
(731) 247-5536

27

Hammond, Rocky

From: Glenda Gallimore**Sent:** Tuesday, May 27, 2003 11:12 PM**To:** Hammond, Rocky**Subject:** ATV Safety hearings

Dear Sir,

My husband and I are in our mid-forties and have enjoyed riding ATV's for over 25 years. We have raised 2 daughters who both have learned to ride ATV's while small and now have an 8 year old granddaughter who not only rides ATV's but sometimes races her ATV. Our son-in-law has ridden since childhood also and we are all safety conscious and enjoy the time we spend riding.

I am a Registered Nurse who works in an ER, and I assure you, I see more serious accidents from accidents on the highway (both ATV's and motorcycles) than I have ever seen from controlled off-road areas and race arenas. The answer it seems to me is not to control the size and/ or type of ATV's, but to provide safe place in which to ride them. I urge you to consider less restrictions on ATV's and more public use areas that allow the safe use of ATV's

Thank You For Your Consideration,

Glenda & Kenny Gallimore
Box 173
Hazel, KY 42049
731-498-8785

Stevenson, Todd A.

ATV Hearing
comment
28

From: Matt Peltzer [mattp@smhco.com]
Sent: Wednesday, May 28, 2003 5:38 PM
To: Stevenson, Todd A.
Subject: "ATV Hearing"

Office of the Secretary, Consumer Product Safety Commission,

Dear Sir

My family and I have been riding ATV's responsibly for over 20 years without any injuries. I want to convey my concerns about more government regulation intruding on our sport.

The number of ATV's sold has risen dramatically over the last few years which has also helped increase the number of injuries. With more riders your bound to have more injuries. New riders are inexperienced.

The main cause of the injuries is operator error. I have seen many times people riding double and drinking. Not a good combination. Let's not blame this on the vehicle. It's not General Motors fault when a drunk driver kills somebody driving a chevy truck. Nor should it be the ATV's fault when alcohol and drugs contribute to ATV accidents.

The problem is not the vehicle but the irresponsible rider. People have to take responsibility for themselves. Let's educate the riders more and not use the heavy hand of government to infringe on more of our rights.

Thank You

Matt Peltzer
11101 SW hwy 59
Rushville, MO 64484

29

Hammond, Rocky

From: James Chiga [jchiga@goteam.ws]**Sent:** Wednesday, May 28, 2003 2:38**To:** Hammond, Rocky**Subject:** ATV's - Informational meeting

Ms. Rockelle Hammond, Office of the Secretary:

I just wanted to wanted to take the opportunity to voice my concerns regarding the Public Field Hearing taking place on June 5th, organized by the U.S. Consumer Products Safety Commission.

I am an avid ATV rider, and I ride with my 10 year old son. As a parent, I am concerned about safety (both his and mine). We have been involved in training, we wear the proper safety equipment, and my son does not ride without adult supervision. My son rides an ATV that is appropriate for his size. ATV riding provides a very valuable opportunity for my son and I to spend time together and to enjoy the outdoors.

I am concerned when I here about meetings such as the one that you are holding on June 5th. I believe that concerns about safety can be addressed through education and individual responsibility. I am especially concerned when I hear that organizations such as the Natural Trails and Waters Coalition and the Bluewater Network are being allowed to testify at your hearing. These groups are not interested in promoting ATV safety, they are interested in eliminating ATVs in any manner possible. Your organization just happens to be a tool that they are willing to exploit to achieve their goals.

A visit to the Natural Trails and Waters Coalition's website <http://www.naturaltrails.org/> makes their agenda quite clear. Only their "brand" of outdoor enjoyment is acceptable. Their anti ORV (off road vehicle) propaganda makes this clear. They employ misleading "pseudo-science" and "spun" statistics to try to back their agenda. Their "statistics" regarding ATV safety do not address significant issues such as the increase in ridership over the time span they discuss. Also, they don't address whether those injured or killed were wearing proper safety equipment or had received safety training. They are quick to malign ATV riders for negative impact to the environment, but don't mention our positive impact. I am involved with a local ATV organization that has provided significant volunteer effort in the Public lands in our area. Our involvement in the restoration effort following the Hayman Fire received national attention.

As a citizen of Colorado, where nearly one third of our states area is publicly owned, I am acutely aware of environmental issues. I believe, however that there is enough room for all of us. Some areas of our state are open to ATV's and other off road vehicles. Other areas are not. I certainly do attempt to impose my beliefs and "agenda" on everyone else.

Do not allow these groups to use your Commission as a tool to meet their own political goals. They are not concerned about rider safety. Their goal is ATV abolishment. As a responsible ATV rider, I am concerned with safety. Let public policy decisions regarding ATV safety be made by those who understand ATVs, the ATV riders, manufacturers and dealers. Do not allow your organization to be hijacked by environmental extremists attempting to inflict their political agenda on all of us.

Sincerely,
James I. Chiga

Hammond, Rocky

30

From: Robert Birkinshaw [rbirk@utahatvtrails.com]
Sent: Thursday, May 29, 2003 9:48 AM
To: Hammond, Rocky
Subject: ATV Safety

Dear Mr. Hammond,

I would like to comment with regard to the safety of All Terrain Vehicles for your upcoming review of these products in West Virginia. As a resident of Utah I am unable to attend, but I would gladly offer the following information for consideration.

Safety can not be regulated it must be taught. Many states have successfully implemented an OHV training program that has had a significant result in decreasing the number and severity of accidents among trained individuals. The Utah State Parks and Recreation Department reports that there have been no reported deaths among those youth who have been trained under their program. This, above all else should be the focus of any outcome of your considerations.

I would submit that it would be inappropriate to attempt to regulate, legislate or eliminate youthful ATV use, simply because that fact that it is legal allows youthful participants to be trained. After all, if riding ATVs under the age of 16 was illegal, how many youth would receive safety training prior to age 16. The obvious answer: zero! Will it keep youthful riders from operating an OHV? The obvious answer: Only as long as enforcement officers are present! Parents don't tend to enforce laws that have no basic reason or logic.

Groups who raise the hew and cry about the safety of ATV's are less interested in the safety of children than they are concerned about eliminating the use of ATV's in America's back country. This sham of a safety concern is merely a veiled attempt to break up the family opportunity and thus reduce the presence of ATV's on public lands. Our Declaration of Independence promises that the pursuit of one's personal happiness should be an inalienable right. How can one eliminate a perfectly enjoyable family activity without inflicting a blow against the pursuit of personal happiness? What these groups want is for everyone to choose their form of recreation as an alternative. Many families, mine included, have legitimate health and safety concerns that prohibit strenuous physical exercise because it is literally life threatening. This is true of many common illnesses too. For example, asthma, diabetes, cancer, heart disease, lung disease, circulatory problems, etc. Should citizens with these conditions be prohibited from public land use, simply because they can not enjoy the preferred form of recreation? Absolutely NOT!

There are no fundamental flaws in the design of ATV's they all come with legitimate breaking systems and lights and four wheels are much more stable than three wheelers and

two wheelers.

Life is not risk free. There are many activities that are "potentially perilous" to life and limb. Golfers die regularly on golf courses, should we outlaw golf clubs because there is a statistical relationship between death and golf clubs? Even the "sacred" event of hiking and mountain climbing has its perils. Fools will always find a way to injure themselves no matter what their form of recreation is. You will recall the man who cut off his arm because he would not take the time to make a single phone call to solicit someone to accompany him on his trek through the back country of southern Utah. He is no hero. He is a fool.

Regulating the size of machines used by children is like regulating the size of shoes children are permitted to wear. I have a 13 year old neighbor who is 6'3" tall and weighs over 200 pounds. Should such a young man be required to ride a 90cc ATV? I don't think so. It would present a greater safety concern than if he were riding a 250cc or 300cc machine. Decisions of this type really must be left to parents to appropriately size the machine to the child in the same way they would appropriately size shoes for their child.

I have personally devoted thousands of hours in studying the safety of ATV's. I have published a web site that contains dozens of documents on many of the things that can be done to improve ATV safety. You will find it at Utah ATV Trails.com (<http://www.utahatvtrails.com>) I have contributed this information to our ATV community as a means of increasing the safety of the use of ATVs.

In my opinion, children and adults should be required to pass safety training prior to operation of an ATV. I personally did not use my ATV until I had read the complete manual from cover to cover. I approached it from the standpoint of knowledge rather than ignorance. I also enrolled and passed an ATV Safety Institute course that was offered for free. Each of the members of my family who ride ATV's have all taken and passed this or the similar course offered by the State of Utah, prior to operating an ATV on public land. This was not required by law, it was required by Dad.

I will grant you that there has been an increase in the number of injuries to children resulting from ATV operation. However, your statistics do not convincingly demonstrate how many of these injuries occurred from individuals who were appropriately trained and those who were not. If you can demonstrate a relationship in the injury rate among those individuals who have been appropriately trained in the use of ATV's then you may have a case for claiming that there is a fundamental flaw in the safety of ATV's generally. However, no such statistical data exists. Your data only reflects the raw increases in injuries. It does not even compare the increase in injuries to the increase of availability of ATV's. In the state of Utah ATV use has increased well over 20% in each of the last few years. There is no corresponding increase in the number of reported injuries.

Evidence would show that the presence of training programs has actually decreased the injuries and deaths when compared with the total population of ATV users.

I personally prefer compliance to laws and safety suggestions to be a better practice than ignorance.
May it be to this end that we encourage our Nation's citizens to strive.

Sincerely,

Robert T. Birkinshaw
5762 River Park Drive
Murray, UT 84123

Stevenson, Todd A.

From: Information Center
Sent: Friday, May 30, 2003 9:11 AM
To: 'lebfire@in-motion.net'
Subject: ATV Safety

Hello,

We have forwarded your comments to the appropriate agency personnel for thier review. If additional information is needed, someone from the agency will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 300 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----

From: Lebanon Fire Dpt. [mailto:lebfire@in-motion.net]
Sent: Thursday, May 29, 2003 5:54 PM
To: Information Center
Subject: ATV Safety

Hi my name is Mike Blume and I would like to voice in on what is wrong with ATV safety. I have three of them myself one for me and each of my daughters. We ride on private and public land and even race. I am all for safety the problem is not the size of ATV but the parent they go looking for a machine and think that it is all right to by one that they can ride . For example I was at a dealer and the man came in and asked to see a ATV and his 9 year old son was right with him they looked for a while and the dealer ask what size he was looking for the man said one that he can ride. The dealer should have told him that he couldn't sale him one if the boy was not of age but he didn't say a word and sold this man a quad that weighed around 700lb now the parent will go out and turn this kid loose on the quad and he will get hurt bar none.I was there when this happened and he didn't tell the dealer it was for his son too It is up to the parent to make the right choice on weather or not the kid is mature enough to ride . It not only go for quads but motorcycle as well I watched 4 kid the ages around 6-9 get hurt one Saturday at a motor cross race and just riding around. But anyway you can take a ATV and set it out running and it will never take off by itself and run over a person it takes a person on the seat to do that . There is all ready a law about atv size and ages they need to enforce it a lot more and not ban the atv for kids under 16 . They need to hold the parent more responsible for there action if the child get hurt on a machine that is not the right size. They are putting there child in danger if they think a small child can handle a 700-900 pound atv . Please take a closer look at what you are trying to do and don't ban the little atv's. There need's to be more atv safety courses avable to the public and I would like to see that you have to pass a course to be able to buy an atv or even issue a permit to just like when you driveif you are under the age limit. There are alot of people out there that use there atv for work play and sports. It is something that will bring the family together for a day or even a week of fun. All they really need is some safety gear, atv,place to ride and the safe working knowlge of the atv this should start with the parent and the dealer Please take a closer look at what yoyu are doing Thank Mike Blume mblume@frontiernet.net

Hammond, Rocky

From: Mark Ferran
Sent: Saturday, May 31, 2003 12:28 PM
To: Hammond, Rocky
Subject: Did ATVs bring down DA Bruno?

Did Rensselaer County DA Ken Bruno's role in perpetuating the ATV-trespass problem in Rensselaer County precipitate his sudden career change (dropping out of political office)?

The day before he announced his resignation, a Public Complaint (copied below) was emailed to every elected politician in the Town of Schodack, where the ATV-trespass problem has resulted in bloodshed.

Times Union Political Commentator Fred LeBrun warned years ago that Ken Bruno was "so dumb."

Bruno's ignorance of the Law cost a belligerent young man his ankle last November, cost a man his barn the year before, and after 2 years of misery for me and for other Rensselaer County land-owners, I was forming a conscious resolve to cost him his job, as a matter of self-defense. My venom and disgust has been backing up for so long that I could hardly contain it any longer, no matter what the cost to myself might be. I mostly vented my rage on the internet, and in Court papers, but not so explicitly on my public webpage at www.billstclair.com/ferran Even though I did not aggressively promote the idea LOCALLY that DA Ken Bruno should be removed from office, I recently did drop many hints to many important Politicians (on both sides of Lines) as to the chaos he has helped to create and sustain in Rensselaer County. (See "Public Complaint" copied below)

In my opinion, the environmental damaged caused on public and private land by ATV-trespassers in Renssealer County was significantly aided and abetted by ill-conceived policies of the Rensselaer County District Attorney and of his office.

Last August, out of disgust with a Letter that DA Ken Bruno wrote to me, threatening to "prosecute to the fullest extent possible" land-owners in the County who may dare to "confront" defiant ATV-trespassers, I wrote: "Right now, Ken Bruno, the prominent District Attorney of Rensselaer County, and the New York State Police, are attempting to exploit an ambiguity in the NY Penal Law, so that they can practically abolish the Institution of Private Property." [Note, the editor added (and misspelled) the DA's name, which I had omitted, but I did mention "Rensselaer County"
<http://www.federalobserver.com/archive.php?aid=3481>

Back in December, seeking investigation, I wrote to a remote NY Newspaper that:
 "In Rensselaer County, NY, ATV-trespassers have been emboldened by policies of the District Attorney's Office and local Police which fail to prosecute defiant trespassers for the very serious offenses they repeatedly commit, including Extortion, Criminal Coercion, Attempted Grand Larceny of Real Property, Attempted Robbery (forcible stealing) of Real Property, Arson, Assault, Attempted Assault, and other offenses against land-owners. To read about some of the previously reported ATV-trespass related crimes (e.g. Arson, Criminal Coercion, Larceny, Criminal Mischief) in Rensselaer County, NY see: The ATV-Trespass Problem, at <http://billstclair.com/ferran/atvtrespass.html>

"Rensselaer County has become Ground-Zero in New York State for the fight over control of privately-owned "terrain." It is land-owners pitted against the masked ATV-Trespassers (who are determined to use force and threats to take control over landowner's property). The local Police and DA have consistently sided with the defiant trespassers, against the land-owners, and say they are unable to catch and effectively punish ATV-related offences. (But they know where to find the landowners who tend to be easy to find and prosecute)."

In my public mini-treatise on the Rights of NY Landowners to Use Force, (which I widely distributed among NY DAs, police, and politician-judges and land-owners) I made the vague reference to Rensselaer County DA Ken Bruno that:

"Some Police Officers and District Attorneys are so poorly educated in New York state that they do not even understand that land-owners have the legal right to "approach" and "confront" defiant trespassers, let alone the affirmative legal right to push them, shove them or otherwise forcibly expel or to arrest them. Accordingly, it is important for land-owners in New York state to educate their local Police Officers, District Attorney, Justice of the Peace in advance of future problems with trespassers."

<http://billstclair.com/ferran/righttouseforce.html>

In my recent letter to the RKBA community, I explained that:

"The ATV gangs of Rensselaer County simply do not respect the land-owner's legal authority to stop and to arrest them, nor do they properly fear and respect a land-owner's conspicuously displayed shotgun. The mentality of ATV-offenders who brazenly defy the lawful orders of a gun-toting land-owners to turn off their engines, identify themselves, leave, etc. reveals a complete break-down of Respect for the Institution of Private Property and for the Right of the People to Bear Arms for Lawful defensive purposes. In Rensselaer County, this breakdown of Respect for legal institutions is due to connivance on the part of the local NY State Police and others who are themselves notorious recreational land-users who seem to think that land-owners have a duty to turn over their valuable property to any masked ATV-offender brazen enough to disregard the land-owner's legal rights."
(Copied from email message copied below the article)

And:

"The local District Attorney himself is reputed as being an ATV-rider. In the words of my neighbor, the experience of many land-owners in Rensselaer County has therefore been "like something out of 'Deliverance'. ... the State Police ... make me feel like the criminal instead of the victim. I feel like I can't get any justice."

http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfi=8

"The rational response of some landowners has therefore been a resolve to "continue to protect his land and family at all cost [even while being] afraid of what the outcome could be in this potentially dangerous situation. "It's like Dodge City out here, and ... I feel like it's not going to stop until there is a homicide," he said. "But this is my dream [to own land], and I'll never, ever give up the fight." " http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfi=8

(Copied from email message copied below the article)

In my recent message to sympathetic Arizona Sheriff Larry Dever, I finally let it all out:

"The Easterners have neglected education and morals to the extent that they have raised a crop of DAs and Police officers who have no clue at all, and they have in turn nurtured a generation of hooligans that have no respect for the law, let alone the law of property. ... I look at this situation as an experiment in what would happen if Socialists started writing laws. Actually, it's just idiots interpreting poorly written laws, but it has had the same result. We have a DA that everyone knows is "so dumb" [Quoting Political Commentator Fred LeBrun] whose daddy is a bigshot state legislator. His daddy sends millions of dollars of pork-barrel money into the county, and that "buys" votes for his boy. That is why he is in office, mucking around on his own ATV and undermining our ancient laws and upsetting our (fragile) civilization. It's a very sad commentary on the American Republican form of Government."

(Copied from email message copied below the article)

In my recent email to a Republican NY Legislator, and the New York Farm Bureau, protesting two extra words in proposed bill that could make all gun-toting land-owners who confront trespassers or thieves into "felons", I argued:

"I am writing to bring your attention to the human suffering and deprivations of Property and Liberty that loose words, (e.g., two extraneous words) in the "menacing" bill <http://assembly.state.ny.us/leg/?bn=S00562&sh=t> will create for law-abiding New York gun-owners, particularly landowners, farmers, homeowners, and property-of all types. ... Why would any non-socialist of normal intelligence and morality think it was proper to arrest and prosecute [a gun-toting] land-owner at all under circumstances where he is rightfully confronting a thief or a trespasser? The existing **problem for gun-toting land-owners in Rensselaer County**, New York is due to vagueness of the existing statutes and resulting **IGNORANCE of the law**, not bad law. This limited "from harm" exception [in a pending Menacing Bill] is clearly Bad Law that almost enacts the existing problem for landowners in Rensselaer County, NY. It is going from locally bad, to pure state-wide evil."

Maybe, somebody in Political Power decided that DA Ken Bruno and his Policies should be relegated in History to being a Transient local "bad" rather than "pure state-wide evil."

But, maybe all my objections and communications went unnoticed by the Party Bosses, and this sudden departure of the DA from political office is pure coincidence:

Rensselaer district attorney stepping down

<http://www.timesunion.com/AspStories/story.asp?>

storyID=138341&category=REGION&BCCode=HOME&newsdate=5/29/2003

Kenneth Bruno announces he will leave office June 13 to work for top lobbying firm

First published: Thursday, May 29, 2003

TROY -- Rensselaer County District Attorney Kenneth Bruno will leave office June 13 for Albany's top lobbying firm.

Bruno, who won election in 1997, will be succeeded by Patricia DeAngelis, an assistant district attorney recently promoted to deputy assistant.

Bruno scheduled a 3 p.m. press conference to discuss his decision.

"I loved this job as it has been a wonderful and truly rewarding experience," Bruno said in a statement. "However, after much thought, I have decided that my first priority should and will be with my young daughters and my wife and providing for the future. I will miss doing what I most love, but I leave the office in very capable and competent hands and with the knowledge that Trish DeAngelis will continue to make Rensselaer County a safer place to live, work and raise a family."

Bruno is going to work for Wilson, Elser, Moskowitz, Edleman & Dicker. In 2002, they were paid \$5.1 million to lobby the Legislature, the top for any Albany firm. Among their clients are Albany Medical Center Hospital, Carnegie Hall, the American Insurance Association, the Health Care Association of New York, the Greater New York Hospital Association and Niagara Mohawk.

The next closest firm, Bolton St. Johns, was paid \$3.6 million.

The firm employs 550 attorneys in 16 U.S. offices, an office in London and five European affiliates.

----- Original Message -----

From: Mark Ferran

Sent: Thursday, May 15, 2003 5:32 PM

Subject: Re: Fw: NY Troopers Disarming Land-owners

Dear Land-owners and RKBA community:

The New York ATV-lobby has a very specific agenda: To facilitate the acquisition of private land for use by their ATV-riding members. They do not teach their members to "rat" on those ATV-riders who violate the Law, let alone to grab and to arrest them. In fact, the NYSORVA has explicitly taken a position against citizen-arrest of ATV-criminals (no matter what crime is involved). The NYSORVA simply can't stand the idea that land-owners have the Right to Keep and Bear Arms for the legitimate purpose of stopping, expelling, and arresting ATV-criminals.

The NYSORVA has become the Political FRONT for a broad Terrorist network of ATV-riding criminals who are systematically using violence, arson, and threats thereof to appropriate private "terrain" for use by local ATV-gangs. See, The ATV-trespass Problem at www.billstclair.com/ferran An ATV-terrorist cell operating around my family's private land (gates stolen, barriers destroyed, life threatened) and the land of my neighbor Phil Kelly (barn burned, gates stolen, death threats See, ATV-trespass Problem at www.billstclair.com/ferran), includes about "50" members, according to one candid young ATV-gang member. These masked criminals habitually enter POSTED private land with specific intent to destroy any barriers placed in their way to stop them, and with specific intent to use whatever violence or threats thereof may be necessary to neutralize the landowner who may dare confront them, and with specific intent to use whatever criminal means are necessary to escape anonymously.

"In brief, NYSORVA's mission is to ... increase[] OHV recreational opportunities on both public and private lands in NY State. ... ("where can I ride" is the most popular inquiry we get). We hope our overall efforts will

6/2/03

create the environment for the short list to grow. " www.nysorva.org

Every Crime committed by masked ATV-trespassers against New York land-owners and every act of Terrorism, and every incidence of Police Lawlessness against Landowners who forcibly resist the violation of their rights, serves the purposes of the NYSORVA.

At one point, the NYSORVA actually encouraged its members to disregard the Registration Law, saying that its members would "want" to comply with the law "if only" the ten bucks they paid for ATV-registration bought them all the trail funding they wanted. Ten bucks is enough to buy nothing. Ten dollars is not enough money to repair the damage that even one ATV can do on its way across private land even on a single occasion. The ATV-gangs do not intend to compensate land-owners for the use and damage to their private lands. They therefore must obtain the use of private-land by other means and methods.

The masked ATV-gangs in Rensselaer County terrorize the land-owning population with threats of violence and arson, and with actual violence and arson (see The ATV-Trespass Problem at www.billstclair.com/ferran) so that individual landowners will relinquish land and trails to them, and so that the voting population may give in to their repeated demands to provide money to "maintain" a Trail System (mainly on private land). The basic premise of the ATV-lobby, that ATV-crimes should not be dealt with in the same manner as crimes generally, but should instead be REWARDED by funding, and concessions by land-owners, is offensive to many land-owners and to many observers.

As Albany, NY, Political Columnist Fred labrum stated about the ATV-lobby : "We will not give in to Terrorists." "Too often in the past, local law enforcement hasn't taken the violations of property rights committed by ATVs and snowmobiles seriously enough. That's got to change, and fast. ***No way should we be blackmailed into providing an ATV trail system for a crowd that wants to beat us up to do it.***" Albany Times Union, January 12, 2003" <http://www.swoam.com/SWOAMForum/0000003f.htm>

In the view of the NYSORVA, it is wrong for a land-owner to shoot straight down into the front tire of a ATV that is being thrusted at him in a threatening manner by a belligerent masked ATV-trespasser who has the motive, opportunity, and capacity to commit vehicular assault and leave the land-owner to bleed to death in the woods. In the eyes of the Law, the misdemeanor offense of Menacing with an ATV is no less criminal than a pedestrian menacing with a baseball bat, and is equally provoking as to justify a lawful use of deadly physical force by one who has no duty to retreat (there is No Duty To Retreat while effecting a lawful citizen's arrest). Thus, a masked ATV-offender who has been arrested, but who decides to use the physical threat of deadly physical force to make his anonymous escape, has no reason to complain when his ATV-tire is destroyed instead of himself being shot. Those in the NYSORVA who complain on his behalf are accessories to his crimes, after the fact, and are inciting and promoting similar future crimes by their members against land-owners. That comes as no surprise to me.

It is because the ATV-gangs in Rensselaer County have NO RESPECT for armed Landowners that it becomes necessary to actually shoot down into their tires. The ATV gangs of Rensselaer County simply do not respect the land-owner's legal authority to stop and to arrest them, nor do they properly fear and respect a land-owner's conspicuously displayed shotgun. The mentality of ATV-offenders who brazenly defy the lawful orders of a gun-toting land-owners to turn off their engines, identify themselves, leave, etc. reveals a complete break-down of Respect for the Institution of Private Property and for the Right of the People to Bear Arms for Lawful defensive purposes. In Rensselaer County, this breakdown of Respect for legal institutions is due to connivance on the part of the local NY State Police and others who are themselves notorious recreational land-users who seem to think that land-owners have a duty to turn over their valuable property to any masked ATV-offender brazen enough to disregard the land-owner's legal rights.

The local District Attorney himself is reputed as being an ATV-rider. In the words of my neighbor, the experience of many land-owners in Rensselaer County has therefore been "like something out of 'Deliverance'. ... the State Police ... make me feel like the criminal instead of the victim. I feel like I can't get any justice."

http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfi=8

The rational response of some landowners has therefore been a resolve to "continue to protect his land and family at all cost [even while being] afraid of what the outcome could be in this potentially dangerous situation. "It's like Dodge City out here, and ... I feel like it's not going to stop until there is a homicide," he said. "But this is my dream [to own land], and I'll never, ever give up the fight." " http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfi=8

The NYSORVA's argument, that land-owners who refuse to capitulate to ATV-terrorism are mentally ill is simply a typical form of DeFacto Socialist Propaganda. The ATV-Lobby would have people believe that private Land is not as worthy of protection and defense as other forms of private property. That is a typically Socialist distinction, and they are not at all shy about self-servingly promoting it. In the eyes of functionally Socialist ATV-riders, who view all land as being subject to control of the government (police) only, not a private individual, land-owners who Resist the forcible take-over of their land are all just "pathetic" characters clinging to delusions of moral and legal property rights in land.

Although I conscientiously chose not to participate in a legal establishment which I consider to be incompetent and fraudulent by design (See, Part 1, at www.billstclair.com/ferran), I am a highly accurate legal thinker who graduated magna cum laude (with High Honors) from Law School and summa cum laude (with highest honors) from a top engineering school. My opinions on matter of law, particularly Property Rights and the Defense thereof, are highly respected by intelligent people, including attorneys, judges, and laymen:

" Mark Ferran has written several good articles on the issue of the defense of land ownership against the state. An example is "PUBLIC COMPLAINT: NY Troopers Inciting Defiant Trespass" that includes many references to background material. (5/1/03) " <http://www.fear.org/opinion.html>

"Mark Ferran - Lawyer who has done good work on property rights. "
http://www.constitution.org/cs_peopl.htm

Arizona Sheriff Larry Dever wrote (copied below):

To: Mark Ferran

Sent: Wednesday, January 08, 2003 10:00 AM

Subject: RE: Illegals Trespass in AZ, like ATVs Trespass in NY

Sir,

I very much appreciate your perspective and comparisons regarding the trespass issue. You are absolutely correct and I can assure you my defense of privacy and property rights of the citizens of Cochise County is beyond reproach. ... Good luck with your legal and lawful pursuit of assuring the freedoms we cherish retain their value.

Sheriff Larry A. Dever

Sheriff Dever also commented on this present article about "NY Troopers Disarming Land-owners" as follows:

----- Original Message -----

From: Dever, Larry

To: Mark Ferran

Sent: Thursday, May 08, 2003 1:54 PM

Subject: RE: NY Troopers Disarming Land-owners

The more I hear and see what you guys are breeding out there, I'm thinking we have Border Patrol on the wrong river. Putting them on the Mississippi is making more sense. Good luck.

-----Original Message-----

From: Mark Ferran [mailto:mferran@nycap.rr.com]

Sent: Thursday, May 08, 2003 10:59 AM

To: Dever, Larry

Subject: Re: NY Troopers Disarming Land-owners

I get it. The Easterners have neglected education and morals to the extent that they have raised a crop of DAs and Police officers who have no clue at all, and they have in turn nurtured a generation of hooligans that have no respect for the law, let alone the law of property. It is the Western states (and everywhere other than New York) that makes an effort to write unambiguous laws, so that everyone can understand and respect them.

I look at this situation as an experiment in what would happen if Socialists started writing laws. Actually, it's just idiots interpreting poorly written laws, but it has had the same result. We have a DA that everyone knows is "so dumb" whose daddy is a bigshot state legislator. His daddy sends millions of dollars of pork-barrel money into the county, and that "buys" votes for his boy. That is why he is in office,

mucking around on his own ATV and undermining our ancient laws and upsetting our (fragile) civilization. It's a very sad commentary on the American Republican form of Government.

Regards,
Mark Ferran

----- Original Message -----

From: Dever, Larry
To: Mark Ferran
Sent: Thursday, May 08, 2003 1:16 PM
Subject: RE: NY Troopers Disarming Land-owners

And they say I live in the wild, wild west.

-----Original Message-----

From: Mark Ferran [mailto:mferran@nycap.rr.com]
Sent: Wednesday, May 07, 2003 9:24 AM
To: Dever, Larry
Subject: Fw: NY Troopers Disarming Land-owners

Obviously, people who covet their neighbors' land, who do not respect the Law, nor respect the basic purpose of the RKBA, nor respect the Institution of Private Property, are going to take the view that someone who advocates Respect for the Law, in a manner inconsistent with their covetous interests, is a "crackpot."

The NYSORVA's apparent lack of respect for armed land-owners reflects the lack of respect that their members-at-large demonstrate when they choose to willfully defy the Law, enter private lands in defiance of land-owners' POSTED signs, and defy the lawful orders of gun-toting land-owners, not to mention when they dare to physically threaten gun-toting landowners after they have been duly arrested.

As for the idea advanced by the NYSORVA that armed defense of land is the "wrong way" to deal with the problem of gangs of lawless ATV-criminals who have no fear of the local police, there is more-traditional American way to look at that issue. Sir William Blackstone's written COMMENTARIES on the Law of England informed pre-revolutionary Americans of the constitutional rights they "enjoyed as Englishmen" under the original colonial 'Charters' which the King in 1776 was "taking away" in order to "alter[] fundamentally the forms of our governments," and to "abolish[] the free system of English laws" here and in order to "introduc[e] absolute rule into these colonies." (Declaration of Independence)

Blackstone expounded the "Absolute rights" of individuals to hold their lives and property, under protection of law, and the derivative right to bear arms for defense thereof, and the relationship between these rights, as follows:

Right of Property.

This is the third absolute right, and consists in the free use, enjoyment and disposal by a man of all his acquisitions, without any control or diminution, save only by the laws of the land. ... Upon this principle, the great charter has declared, that no freeman shall be disseised or divested of his freehold [i.e., Land], or of his liberties or free customs, but by ... the law of the land. By a variety of ancient statutes, it is enacted, that no man's lands or goods shall be seized into the king's hands, against the great charter and the law of the land, and that no man shall be disinherited, or expelled from his franchises or freehold, unless dispossessed by course of law. ...

How these rights are secured.

In vain these rights would be declared, ascertained and protected, if the

constitution had not provided a mode to secure their actual enjoyment. It has therefore established certain other auxiliary, subordinate rights of the subject, which serve as barriers to protect these three great and primary rights. These are: ...

1. [The People's Legislature: It is the duty of our "representative houses" to "oppos[e] with manly firmness [all] invasions on the rights of the people." (Declaration of Independence).]
2. The limitation of the king's prerogative, by well-defined bounds, which can not be legally exceeded, except by consent of the people. ...
5. The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defense, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same statute, 1 W. & M., st. 2, c. 2, and which it is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.

Blackstone's COMMENTARIES. <http://billstclair.com/ferran/markferran1.html#Right>

The right of "good subjects" to keep and bear arms for defense of their lives and PROPERTY and civil liberty was reaffirmed in the 1689 English Bill of Rights, which was the product of a "bloodless revolution" in England when "King James the Second, by the assistance of divers evil counselors, judges, and ministers employed by him, did endeavour to subvert ... the laws and liberties of this kingdom." It was the intention of our forefathers, and the Framers of the US Constitution, and the Bill of Rights, and of the Fourteenth Amendment of the Constitution of the United States, "to give Americans at least the protection against governmental power that they had enjoyed as Englishmen against the power of the Crown." *Ingraham v. Write*, 430 U.S. 651, 672-3 (1976).

[O]ur fathers were not absurd enough to put unlimited power in the hands of the ruler and take away the protection of law from the rights of individuals. [That course would not] 'secure the blessings of liberty to themselves and their posterity.' (Preamble, US Constitution) They determined that not one drop of the **blood** which had been shed on the other side of the Atlantic, during seven centuries of contest with arbitrary power, should sink into the ground; but the fruits of every popular victory should be garnered up in this new government. Of all the great rights already won they threw not an atom away. They went over Magna Charta, the Petition of Right, the [English] Bill of Rights, and the rules of the common law, and whatever was found there to favor individual liberty they carefully inserted in their own system, improved by clearer expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the executive [or judiciary], nor ... in the legislature, could change them without destroying the government itself.

Ex Parte Milligan, 71 U.S. 2, 18 L.Ed. 281, 4 Wall. 2 (1866).

Justice Story, the late great Constitutional scholar and United States Supreme Court Justice, wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic." 3 J. Story, Commentaries s 1890, p. 746 (1833). This happens to be the principle expressed in the Second Amendment of the Constitution of the United States which states that armed citizens, "being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Notwithstanding any contention by the NYSORVA that the Constitution of United States does not secure the right of persons to keep and bear arms, for defense of their life and liberty and LAND, the Constitution of the State of New York, a "common law" state, preserves the People's common law or Due Process right of "having arms for their defense" ... when the sanctions of society and laws are found insufficient to restrain the violence of oppression." This right has not been abrogated by the Constitution or Laws of this state. The New York Penal Law, article 35, codifying the common law doctrines of self-defense and "Justification" tends to confirm the existence of the personal right to bear arms for defense of person AND PROPERTY.

See the Rights of NY Landowners to Use Force (Display Guns) to Stop, Expel and Arrest Defiant Trespassers (or Terrorists) at <http://billstclair.com/ferran/>

Regards,
Mark R. Ferran BSEE scl JD mcl
www.billstclair.com/ferran

----- Original Message -----

From: "AJ Chwick" <NCNF@TheCompleteMachine.Com>
To: <nysorva@nycap.rr.com>
Sent: Thursday, May 15, 2003 8:52 AM
Subject: [RKBA!] Re: [NCNF] Fw: NY Troopers Disarming Land-owners

> Interesting. We thank you for the input.

>

> But as long as Mr. Ferran respects the rules of the eGroup, he has the same rights as you to air his opinion.

>

> Alan Chwick, Editor

> NCNF

>

> ----- Original Message -----

> From: NYSORVA
> To: 'Walt' ; 'Brennon Miller' ; mrfabate@cs.com ; frassman@infoblvd.net
> Cc: 0-guns@yahogroups.com ; Info@Benjamin2004.com ; RKBA@yahogroups.com ;
> NCNF@TheCompleteMachine.com
> Sent: Thursday, May 15, 2003 12:28 AM
> Subject: RE: [NCNF] Fw: NY Troopers Disarming Land-owners

>

>

> Mark Ferran is a crackpot who has a law degree but not a Bar card in NY. He spams all the club addresses he can get his hands on and causes an awful fuss. He is not credible. He needs therapy in a bad way. He has some legitimate gripes about ATV trespass on his family's 400 ac of land in Rensselaer County, but he has handled it in all the wrong ways, including shooting out a rider's tire with a shotgun. My impression is that he seems to have a fantasy of killing an ATVer and is drawing people into his trap. Frankly I feel sorry for him, but I would not say you need to do the same. Just don't forward any of his pathetic drivel. DELETE is the word when a Mark Ferran article hits your inbox. I don't think this is a guy you want as your poster-boy if you are a property-rights or firearms-rights advocate.

>

>

>

> Alex Ernst

>

> www.nysorva.org

>

>
>
> -----Original Message-----
> From: Walt [mailto:wrutskijr@stny.rr.com]
> Sent: Wednesday, May 14, 2003 8:20 AM
> To: Brennon Miller; mrfabate@cs.com
> Subject: Fw: [NCNF] Fw: NY Troopers Disarming Land-owners

>
>
>
> George, Brennon

>
>
> Here's another issue going on I though you might be interested in, a member of my chapter sent this to me.

>
>
>
> Walt

> ----- Original Message -----

>
> From: Fred Rassman
>
> To: Undisclosed-Recipient;;
>
> Sent: Tuesday, May 13, 2003 6:59 PM
>
> Subject: Fw: [NCNF] Fw: NY Troopers Disarming Land-owners

> ----- Original Message -----

>
> From: Mark Ferran
>
> To: 0-guns@yahoogroups.com ; Info@Benjamin2004.com ; RKBA@yahoogroups.com
>
> Cc: NRA Cert Firearms Instructor ; NRA/ILA/RebeccaWilliams ; NRA/ILA/Randy Kozuch ;
> NRA/ILA/NYCoord/Suzie Fulks ; eList(M)/NCNF ; NassauCounty News Flash
>
> Sent: Saturday, May 10, 2003 9:29 PM
>
> Subject: [NCNF] Fw: NY Troopers Disarming Land-owners

----- Original Message -----

From: Mark Ferran
Subject: NY Troopers Disarming Land-owners

The following Complaint outlines how the New York State Police (published here: <http://www.landrights.com/NY%20Troopers%20inciting%20defiant%20trespass.htm>) are systematically unlawfully disarming New York Landowners, while unlawfully endeavoring to make private lands "safe" for recreational use by defiant trespassers. The State Police in Rensselaer County, and other parts of New York State, have adopted a policy of arresting any landowner who merely carries, holds, or "displays" a gun (even an unloaded gun, and even while hunting) on his own land while in the presence of a defiant trespasser:

----- Original Message -----

From: Mark Ferran

To: IAFFAIRS@troopers.state.ny.us

Sent: Thursday, May 01, 2003 5:19 PM

Subject: PUBLIC COMPLAINT: NY Troopers Inciting Defiant Trespass

PUBLIC COMPLAINT, on Behalf of All NY Land-owners:

To the Internal Affairs Bureau of the New York State Police:

From: Mark R. Ferran BSEE scl JD mcl; land-owner

Date: May 1, 2003:

In Rensselaer County, New York, many State Troopers in the Brunswick and Schodack Town Barracks have been promoting, inciting, aiding and abetting Trespass (e.g., ATV-trespass) by violent and belligerent people, by telling the public that Landowners do not have the right and the full authority to Stop and Arrest Defiant Trespassers. Some particularly ignorant Troopers have also been telling ATV-riders that once Posted-signs have been torn down, ATV-riders can enter private property without being subject to arrest. To the contrary, VTL section 2403(3) states that ATV-riders can be arrested (e.g., by landowners) for entering even unposted private land without permission of the landowner).

New York Penal Law section 35.10, titled "Justification; use of physical force generally," prescribes:

"The use of physical force upon another person which would otherwise constitute an offense is **justifiable and not criminal** under any of the following circumstances: ... **"6. A person may**, pursuant to the ensuing provisions of this article, use physical force upon another person in defense of himself or a third person, or **in defense of premises**, or in order to prevent larceny of **or criminal mischief to property**, or in order **to effect an arrest** or prevent an escape from custody."

<http://assembly.state.ny.us/leg/?cl=82&a=12>

Troopers in Rensselaer County New York seem to think that these general rules do not apply to land-owners. In Rensselaer County, "the State Police ... make [the land-owner who confronts a trespasser] feel like the criminal instead of the victim." http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfi=8

The Troopers in Rensselaer County have been falsely telling members of the public that the trespassing offenders may use Physical Force to forcibly resist any Expulsion, Detention, and/or Arrest attempted by landowners. The result is that trespassers in Rensselaer County are becoming extremely brazen, have been pointing guns at landowners, threatening to run-over landowners with ATVs, burning their property, and boldly daring landowners to forcibly arrest them, and do not respect the legal authority of landowners to use Physical Force necessitated by their defiance, resistance and threats.

Some Troopers also seem to think that urban landowners are the only land-owners who have the right to deploy "Severe Tire Damage" type spikes (e.g., nails-in-boards) on their POSTED land to prevent vehicular trespass. All landowners, including forestland-owners and farmers have the privilege to inactivate trespassing vehicles that defy barriers and/or Posted warnings. Troopers in Rensselaer County seem to think it is their duty to insure that private land is kept "safe" for recreational use by defiant (ATV) trespassers. Troopers in Rensselaer County have been known to tell at least one landowner that if the landowner really wants to be free of trespassers defying his POSTED signs, he just has to allow some individual Troopers to Hunt deer on his land (for free).

The public comments and conduct of Troopers in Rensselaer County have already lead one young POSTEDsign-defying ATV-trespasser to punch a 69 year-old man who tried to detain and arrest him by taking the keys to his ATV. When the landowner earlier asked the ATV-punk to leave, the punk just sat there on his ATV and threatened: "You just wait to my friends get here." (His ATV-gang was heard nearby) The result of punching the old man, because the old man had been deer-hunting (till his hunting was rudely interrupted by the ATV-trespasser) and was holding a deer rifle, was that when he involuntarily fell and hit the ground, the gun accidentally discharged, shooting the young punk in the ankle. The Punk created and assumed the risk of causing the old man's gun to accidentally discharge when the punk decided to unlawfully punch the man who was lawfully arresting him.

To aggravate the existing problem of bold and violent trespassers in Rensselaer County, these same Troopers

6/2/03

made public statements, in the form of accusatory instruments, to the effect that the young ATV-punk did NOT endanger the old man by punching a man lawfully holding a gun, but rather that the old man endangered the punk by not expecting to be punched by the punk. The State Police in Rensselaer County have no competent sense of personal responsibility, and seem to have a Socialist agenda against Land-owners.

Would the State Police charge a police officer for "reckless endangerment" when a belligerent motorist punches him, knocking him down, causing his gun to accidentally discharge? It was in the newspaper that they would not. If someone walks up to a hunter and unlawfully punches him, can he complain if he is accidentally shot when the hunter involuntarily falls down on his ass? Landowners should not be discriminated against by the State Troopers in violation of the State Constitution, which guarantees equal protection of the laws.

The Policies adopted and enforced by the NYS Troopers are characteristic of Socialist thought, in which it is presumed that "land" cannot be private "property" like other forms of property. Adolf Hitler is a leading expositor of modern socialist views on land-ownership:

"WHAT we [National Socialists] need if we are to have a real People's State is a land reform.... And land [Grund und Boden], we must insist, cannot be private property. Further, there must be a reform in our law. Our present law regards only the rights of the individual. It does not regard the protection of the race, the protection of the community of the people. ... A law which is so far removed from the conception of the community of the people is in need of reform."

Adolf Hitler, MUNICH, SPEECH OF APRIL 27, 1923 <http://www.hitler.org/speeches/04-27-23.html>

But, John Adams earlier warned Americans that:

"The moment the idea is admitted into society that *property* is not as *sacred* as the laws of God, and that there is not a force of law and public justice to protect it, *anarchy* and tyranny commence. *'Thou shalt not covet'* and 'Thou shalt not steal' were not commandments of Heaven, they must be made inviolable precepts in every society before it can be civilized or made free."

The anarchy in Rensselaer County today is a direct consequence of the idea, introduced by NYS Troopers and by others, that "land" is somehow less worthy of protection and of respect as "private property" than other forms of property. Troopers stationed in Rensselaer County, and the State itself, are going to be SUED even more than they have been sued already, (expect an avalanch of lawsuits by many landowners, particularly by forestland-owners and by farmers) if the attitude and education of the State Troopers towards the legal rights of NY land-owners is not corrected. Corrective education should be undertaken IMMEDIATELY, before NY Troopers in Renssealer County have more blood on their hands as the result of further unlawful violence initiated by defiant trespassers.

By telling prospective trespassers that Landowners do not have the right to touch, push, shove, and threaten and brandish weapons in order to forcibly expel or arrest defiant trespassers (strangers), the State Police have created a species of trespasser in Rensselaer County who are quite willing to defiantly trespass in the presence landowners and to use (Unlawful) Physical Force to overcome any lawful attempt by landowners to expel or remove or to arrest invaders. In the case of ATV-riding trespassers, these are even more bold, because they hide their identities behind their full-face masks, and their unreadable or non-existent plates.

Some State Troopers seem to think that the landowner's statutory right to Use "Physical Force" to remove or to "arrest" a trespassing stranger does not include the right to harmlessly carry and brandish (menace) a gun. These troopers are mistaken. Common-law "assault" (e.g., holding an arrested offender at gun-point for delivery to the police, or safely marching a trespasser off the premises at gun-point, is a well-established landowner's privilege. It is much safer than manually pushing or dragging a stranger.

"The ownership and possession of property confer a certain **right to defend** that possession, [including] a defense of it which results in an ASSAULT and battery...."

People v. Kane, 131 N.Y. 111 (142 N.Y. 366, 37 N.E. 104).

The Penal Law of New York does not impair the legal right to commit common-law "assault" with justification. The term, "Physical Force" includes acts of constructive force, such as brandishing or safely pointing a gun at a

person. If you doubt this, then look at Penal Law section 35.27, which prescribes:

"A person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effected or attempted by a police officer or peace officer when it would reasonably appear that the latter is a police officer or peace officer."

If pointing an unloaded gun, or brandishing a gun (which is not per se "deadly force" "capable" of causing injury) are not included within the term "use physical force", then it is still legal, under PL s 35.27 for citizens to resist "unlawful arrest" by pointing and brandishing guns at mistaken police officers. THAT RESULT was not contemplated by the writers of Article 35 of the NY Penal Law who intended the term "physical force" to include all forcible acts, including mere physical Threats of Deadly Force. Therefore, landowners have the right to brandish guns, and to hold offenders at gun-point, to deter them from violently resisting arrest (such as by punching landowners). Some NY Troopers (outside of Rensselaer County) do realize that citizens do have the legal right to hold non-violent property offenders at gun-point (if citizens follow the rules for avoiding "reckless endangerment"). See the article quoted below, from the Year 2000 Annual Report of the New York State Police.

Landowners have "property" rights, and privileges that go with property ownership:

See, Rights of NY Landowners to Use Force (Display Guns) to Stop, Expel and Arrest Defiant Trespassers (or suspected Land-Thieves, etc.) at www.billstclair.com/ferran

----- Background on The ATV-Trespass Problem -----

The ATV-Trespass Problem

[with a post-script commentary by Arizona Sheriff Larry A. Dever]

compiled by Mark R. Ferran BSEE scl JD mcl
www.billstclair.com/ferran

This essay collects articles about the ATV-Trespass problem occurring in NY and throughout the US and Canada, and about the way some landowners are lawfully resisting intrusions by ATV-trespassers.

Typical situations:

- 1) [Pittstown, Rensselaer County, NY] "Phil Kelly ... finds himself constantly chasing off and being threatened by illegal hunters and all-terrain vehicle riders on his posted property. ... [T]he landowner said ATV riders began cutting through and even stealing gates off of one section of his property ... They destroyed around \$6,000 worth of gates "I've had neighbors and people at the Country Store threaten to burn me out and put a bullet in me," Kelly said. "Little did I know serious they were." [They burned down his storage barn and attempted to enter his home] "It's like something out of 'Deliverance'. ... the State Police ... make me feel like the criminal instead of the victim." http://www.troyrecord.com/site/news.cfm?newsid=2721020&BRD=1170&PAG=461&dept_id=7022&rfl=8
- 2) A Farmer stopped a group of riders and told them to leave. He was beaten up. http://www.tribune-chronicle.com/news/story/03602002_new11.asp
- 3) "ARSON. A male on Rutland Way, Stephentown [Rensselaer County, NY], said his vehicle, which was parked along a trail to deter ATV use, was damaged by fire. Officer: Trooper Steve Kovaleski." Albany (NY) Times Union, Police Blotter (Wed. July 28, 1999 p. F2)
- 4) ATVs are frequently used by Marijuana "Farmers" and other intentionally-masked criminals. "All the dopers want is a new ... ATV to drive up to their patch." <http://www.cannabisnews.com/news/thread5944.shtml>
"Since 1998, the state line between Kentucky and Virginia has become a crisscross of trails created by all-terrain vehicles used by growers to get to their marijuana plots...."
<http://www.mapinc.org/drugnews/v00/n1430/a09.html>

<http://www.nypress.com/15/33/news&columns/feature.cfm>

<http://www.trcmaine.org/news/02/06/po-drugs.htm>

"The cultivators are 'quite frankly, very wealthy: Four-wheel drive trucks ... ATV's. They usually have expensive toys. [M]arijuana growers often carry firearms."

<http://www.cannabisnews.com/news/thread5729.shtml>

In Rensselaer County, NY, ATVs appeal to the "cultivators" and all other sorts of "recreational" criminals who can use them to trespass, commit acts of violence or arson, and escape arrest anonymously wearing full-face masks: "Members of the State Police Community Narcotics Team, the Troy Police, the federal Drug Enforcement Administration and the Rensselaer County District attorney's office [arrested] four suspects [ages 22, 24, 25, and 33] thought to be connected in a mid- to upper level cocaine-dealing operation. Authorities recovered an AK-47 rifle, a 9mm and a 45 caliber handgun [and] two ATVs and a snowmobile allegedly purchased with the proceeds from drug sales." Troy Record, Nov. 28, 2002.

This essay collects many similar articles and a discussion of the New York statutes that authorize to forcibly stop and to perform citizen's arrests of ATV-trespassers in NY. Save, and print copies of the linked articles in case they cease to be maintained online. Feel free to forward or post.

In 1988, Time Magazine described how "roaring ATVs are shattering the peace" and introduced America to a lawless subculture whose members presume that by buying (or stealing) an "all terrain" vehicle, they are entitled to intrude upon "all terrain":

"Villages on Missouri's Black River ... used to be oases of tranquillity, the destination of weekend canoeists, tube floaters and fishermen. No longer. All too often the solitude of the Ozarks wilderness is shattered these days by the whine and rumble of powerful engines. ... Locals call it "the Invasion." The ... four-wheel vehicles, running up and down the riverbed with abandon. ... For the ATV crowd, it was all just good fun. But for conservationists and others interested in keeping the river pristine, the Invasion is a nightmare ... and the law has failed to halt the nightmare. "These things destroy the ecology of the river," says Larry Koeler, a Centerville lawyer, of the ATVs. ... Horror stories abound. Former River Guide Eric Dunn recalls ... "a young boy tried to run down me and my wife and son." ... County Sheriff Gary Barton ... and his two deputies can hardly make a dent in the rampant ATV challenge. On Memorial Day weekend they wrote scores of tickets to ATV riders who trespassed on private property or were intoxicated. ... The sheriff, who owns three ATVs himself, takes no chances. "I don't equip my patrol car with a regular rifle," he says. "I have an M-16. I leave it in the patrol car where you can see it. You have to make a show of force." Although the state conservation commission sent five agents into Reynolds County to help Barton out, it was not enough of a show to make much difference. "The ATVs still go anywhere they want." ... Sierra Club Director Hattoy charges that the ATVs permanently scar the land, kill wildlife and destroy vegetation, as well as cause noise, safety and pollution problems. Says he: "... no one has the right to chase jackrabbits until their hearts explode, or roar over desert turtles." ATV Enthusiast Buddy Bray sees it differently. "I don't believe riding ATVs destroys the desert," he says. "All you kill is the bushes."

Time, 6/13/88 (Invaders on The Black River).

On the sand dunes of the Albany (NY) Pine Bush, trespassing ATVs kill the wild "bushes" called wild Blue Lupine, and so they ultimately kill the endangered Karner Blue Butterfly that depend on the bushes. In 1998, the Albany (NY) Times Union described the "serious" ATV problem in the Albany Pine Bush ecosystem:

"The Karner blue butterfly is slowly losing its fight to survive in the Albany Pine Bush Preserve, one of the species' last remaining natural habitats in the United States. The killer: humans. The latest tool of destruction: the all-terrain vehicle. The azure-winged butterflies, about the size of a quarter, are being threatened by burly ATVs illegally churning through the property, Pine Bush officials said Tuesday. As they pop wheelies and spin doughnut-shaped grooves into the earth, ATV riders are also mowing down the wild blue lupine, the only plant that Karner caterpillars eat, said Preserve Steward Joel Hecht. "If you impact the plant, you're going to directly impact the Karner blue butterfly," he said. This region was once home to hundreds of thousands of the flying blue lepidoptera... Now, there are only a few hundred in the Pine Bush. ... The species is listed by the federal government as ENDANGERED. ATVs aren't permitted in the 2,400-acre Pine Bush, said ... Ranger Joseph Hess, the lone DEC officer patrolling the preserve. But ... riders ignore posted signs. Anyone caught riding a vehicle over Pine Bush land could face a \$100 fine and up to 15 days in jail, Hess said. ... 'Without intervention, they will be lost.'"

Albany (NY) Times Union, September 2, 1998, by Paul Zielbauer. (Title/subtitle: "ATVS A MENACE IN KARNER BLUE'S BACK YARD Vehicles threaten butterfly's food source in Pine Bush, officials say")

See also "GOODBYE KARNER BLUE"

http://headlines.igc.apc.org:8080/enheadlines/992560769/index_html

("New England's only wild population" of the endangered Karner blue butterfly "appears to have died out")

The "lone ranger" in the Albany Pine Bush has not evolved the super-human ability to enforce the law in all parts of his territory at the same time. But the ATV industry has been busy flooding the land with ATVs. ATV manufacturers knowingly place ATVs into the hands of people ready, willing, and able to intrude upon any and "all" unguarded public or private "terrain".

"Industry-wide ATV retail sales increased during the first quarter [of 2001] in spite of the concerns of a slowing economic environment."

"American Honda's ATV sales also soared in 2000, ending the year at 211,152, an increase of 29.6%. Once again Honda exceeded the ATV industry's healthy growth rate of 18.8%..."

Arctic Cat Dealers advertise: "New this year!! A smaller ATV just for kids!!"

"The problem isn't the guy who rides an ATV around his yard and uses it to haul a few trees or work around the farm, it's the yahoo mentality out there that you can rip and roar with these things and the more you tear up someone's property the more fun it is. ... [T]he problem is enforcement."

http://www.canoe.ca/CNEWSLaw0107/15_off-cp.html

"The problem is ATV abuse of landowner's rights.... [T]he growing misuse of ATVs ... is the outdoor recreation issue of the decade."

http://www.theunionleader.com/articles_show.html?article=5937

New York's RULES FOR OPERATION OF ATVs are prescribed in the Vehicle and Traffic Law, including section 2403.

<http://assembly.state.ny.us/leg/?cl=128&a=82>

The NY Rules (above) and brochures distributed by the NY DOT state:

"To operate an ATV on private land, you must have permission of the land owner or lessee. If you receive permission, make sure you know the boundaries of the property, and respect any special restrictions or requests of the land owner."

<http://www.nydmv.state.ny.us/broch/c29.htm>

The laws of New York state, though sufficient on their face, have failed to curtail ATV trespass, and ATV-riding trespassers are increasing in numbers. Stopping ATV trespassers is generally not a priority of the police. The People of the state of NY simply could not afford to pay for the amount of Police time that would be necessary to control the ATV trespass problem. Not even to protect the endangered Karner Blue Butterfly has the police presence in the Pine Bush been increased. Albany's Common Council President, Helen Desfosses, explained: "In addition to Albany's important efforts to get more police onto the streets, citizen involvement is crucial to crime prevention."

(<http://www.albanycouncilpres.com/Articles/albany-future.shtml>)

It is obvious to many that if the ATV problem is to be effectively controlled, citizen-enforcement of the law must be undertaken by those nearest to the problem who recognize their civic duty, and who are informed of the privileges and risks of citizen's arrest. The risks of personal confrontations with defiant trespassers are grave. Many Police Officers have been run-over by ATVs while trying to stop or apprehend ATV offenders. Even the youngest ATV riders are fully aware that ATVs can be used as Weapons:

"Teen Arrested For Running Over Deputy: A 16-year-old accused of running over a Davidson County deputy with an all-terrain vehicle was arrested. Investigators said that Deputy Chris Stillwell was attempting to stop the teenager when he was struck by the vehicle. The teen was reportedly the driver of the ATV. There is no word on the condition of the deputy. The teen is in the Davidson County Jail under a \$75,000 bond."

Yahoo News, October 11, 2001 (No longer posted on web) ThePiedmontChannel.com

"On July 29, police officer Chad Marks was struck by an ATV while on patrol. [T]here has been damage caused by ATV's to village property, including trees with shallow root systems and creeks and waterways that the ATV's run through." http://www.the-daily-record.com/past_issues/08_aug/010820dr1.html

"Man on ATV shot after running over officer" (in Florida)
http://www.polkonline.com/stories/070600/sta_man-shot.shtml (AP 7/06/2000)

(Landowner run over by 4-wheeler)
<http://www.thesunlink.com/news/2000/april/0405code.html>

(A 19-year-old man led security on an ATV chase ...on private property.)
<http://www.poconorecord.com/1999/local/exd42284.htm>

(Blown engine ends ATV chase)
http://www.pacentral.com/lsentinel/news_01302.htm

The fact that ATV-trespassers often wear masks (on helmets) concealing their faces can embolden many of them to behave as very brazen criminals when confronted by landowners:

Audubon Magazine reported:

"The 500 combat missions flown by Colonel George Buchner over Vietnam didn't prepare him ... Buchner found trespassing ATV operators popping wheelies in his private trout stream. When he demanded their names, one rider dismounted and attacked him, breaking his nose. When he fenced his posted stream and property, ORV operators cut the wire and pulled the stakes. When he reinforced the stakes with cement, they knocked them down. [H]e received death threats, his streetlights were shot out, his mailbox smashed, his driveway seeded with broken glass, the eight-strand fence on his Christmas tree farm cut in 88 places, and his wife run over. "Robin was screaming," he said, "and the guy calmly cranked up his machine and finished running over her. He had come through multiple barriers, multiple posted signs, three fences, and a gate. She had a hematoma extending the length of her leg." In July 1996 Buchner confronted two trespassing ATV operators, one of whom knocked him down. "Basically, [ATV]s ran me out of Michigan," Buchner told me from his Arizona home."
<http://magazine.audubon.org/incite/incite0003.html>

On Dec. 26, 2002, the Albany, NY Times Union, in an article titled, "Putting the brakes on ATVs" reported: "*ATV operators are riding rampant through privately-owned fields and yards [and forestland in Rensselaer County, York]. "More and more residents are upset because of disruptions or damage to their property," Swartz said. "It's clear something needs to be done to protect property owners." Some reports have indicated that more than 50 riders at a time, in some instances, have come from out of town to take advantage of the wide, open spaces, he said. Few, if any, have permission to traverse the routes that they do. The frustration is shared by residents and police as the number of ATVs has increased in recent years, he said. ... And while most vehicles are registered, the inherent problem occurs when they are ridden on private property, Merola added: "You're not going to catch them unless you're chasing them on an ATV yourself." Incoming legislator Keith Hammond said ATV riders ... "These people ride your property like they own it." ... "ATVs are great for recreational purposes when properly and safely used," he said. "And the vast majority of riders are respectful and courteous. However, there is a small minority of riders that have little respect for other people's property."*

The full-face masks (e.g., helmets and visors) which ATV-riders wear, and which they often refuse to remove when confronted by landowners, tend to embolden them to disrespect landowner's rights, and even to threaten landowners and to commit crimes against landowners in retaliation. As the Georgia Supreme Court observed:

"We know that '[p]ublic disguise is a particularly effective means of committing crimes of violence and intimidation. From the beginning of time the mask or hood has been the criminal's dress. It conceals evidence, hinders apprehension and calms the criminal's inward cowardly fear.' M. Abram & A. Miller, "How to Stop Violence! Intimidation! In Your Community" (August 15, 1949). A nameless, faceless figure strikes terror in the human heart. But, remove the mask, and the nightmarish form is reduced to its true dimensions. The face betrays not only identity, but also human frailty.

State v. Miller, 398 S.E.2d 547, 550 (Ga. 1990). <http://www.state.wv.us/wvsca/docs%5Cspring96%5C23050.htm>

New York state statutes provide ample power to landowners to exclude and remove ATV trespassers and to volunteers to defend public and private property from damage, and to make arrests:

"6. A person may, pursuant to the ensuing provisions of this article, use physical force upon another person in defense of himself or a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody.

Whenever a person is authorized by any such provision to use deadly physical force in any given circumstance, nothing contained in any other such provision may be deemed to negate or qualify such authorization." NY Penal Law s 35.10(6)

<http://assembly.state.ny.us/leg/?cl=82&a=12>

On January 3, 2003, Albany Times Union political columnist Fred LaBrun stated that in Rensselaer County, New York, "these instruments from hell" are running amok and "cops make an all-too-infrequent stop of some yahoo churning up the landscape on somebody else's private property. ... There have been a number of testy confrontations recently in the rural parts of the county between ATV riders operating illegally and property owners. Something very bad is going to happen if this persists. Private property is, after all, private property. Owners get edgy about that."

<http://www.timesunion.com/AspStories/story.asp?storyID=88794&category=REGION&newsdate=1/3/2003>

"It's the yahoos among them that make life difficult for all of us. Those people should lose their right to continue terrorizing us. ... Riders need to show they've got the maturity to deserve something other than the yahoo label. Or they need to turn in the keys to their toys." <http://www.eastertrail.org/lib/atvart2.html> It would be ideal to have an Olde-Fashioned Forfeit-to-Landowner (or, Forfeit-to-Capturer) statute on the books in each state.

Fortunately, NY law provides alternatives to personal confrontations. The highest Court of New York has declared that landowners have a common law privilege to "destroy" the "instrument of trespass" (e.g., vehicle) used by "defiant trespassers." *People v. Kane*, 142 N.Y. 366, 37 N.E. 104 and 131 N.Y. 111 ("The ownership and possession of property confer a certain right to defend that possession, [including] a defense of it which results in an assault and battery, and that which results in the destruction of the means used to invade and interfere with that possession.") In *Reed v. Esplanade Gardens. Inc.*, 91 Misc.2d 991, 993 (1977), the court noted that when dealing with the chattel of a trespasser on the true owner's land the law is that "[I]n such circumstances THE LANDOWNER IS PRIVILEGED TO deal with the personal [property of another] in a manner which would otherwise be a trespass [to chattels, including DETENTION or DAMAGE] or a conversion [e.g., the complete destruction, distress, or disposal] IF THE ACT IS reasonably NECESSARY TO PROTECT THE ACTOR'S INTEREST [e.g., necessary to "prevent or terminate" a trespass upon his premises]. However, "the actor may be liable if he uses unreasonable un-necessary] force which causes harm to the chattel [unnecessarily]." *Reed*. Accordingly, a NY landowner is privileged to damage an ATV as "necessary" to terminate a trespass, or to effect an arrest. Further, once an ATV is discovered, and is captured trespassing on private property in defiance of conspicuous "No Trespassing" signs, the New York land-owner may be privileged to impound and detain the vehicle until his damages are paid, pursuant to the common-law remedy of "trespass damage feasant" (also known as "distress damage feasant").

<http://www.cs.tcd.ie/Proinnsias.OCillin/lawcourse/tort/trespass.htm>

<http://69.1911encyclopedia.org/T/TR/TRESPASS.htm> ; *Fieldston Prop. Owners Assn. v. City of New York*, 16 NY2d 267, 269; *Forest Hills Corp v. Kowler*, 80 AD2d 630; *Forrest Hills Corp. v. Baroth*, 147 Misc. 2d 404; *Sindle v. NYCTA*, 33 N.Y.2d 293, 307 N.E.2d 245 (1973).

Accordingly, NY Penal Law Sec. 35.05 provides: "Unless otherwise limited by the ensuing provisions of this article defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:1. *Such conduct is ... authorized by law....*"

NY statutes specifically authorize the use of non-deadly "force ... in defense of premises" (i.e., land). It is lawful for landowners in NY (and other common law states) to defend their land from trespass-by-vehicles by deploying roadspikes, nails-in-boards, caltrops, etc. as is customarily done at private parking lots in New York and many other states. Road spikes, caltrops, spiked fences, etc. deployed at a perimeter are generally considered to be "non-lethal" force:

http://www.zarc.com/english/non-lethal_weapons/nlt-usaf.html

www.geocities.com/SoHo/Gallery/3452/nonleth.htm

<http://www.dnr.state.oh.us/policy/UseOfForceWeaponsDir.htm>

http://hv.greenspun.com/bboard/q-and-a-fetch-msg.tcl?msg_id=004B4h (After "Yet another death", farmers/landowners deploy nails-in-boards to fight ATV trespass)

As noted, peaceful landowners in the US are stopping trespassing ATVs in the basically the same way that Police, parking lot owners, and drive-in movie theaters stop other types of vehicles, by lawfully placing NAILS (road spikes) in their paths. In this manner, the risks inherent in personal confrontations (between landowners and violent ATV-trespassers) can be reduced.

Farmers seemingly have perfected the technique:

"I would start by posting the property 'Danger!!-- Private Property -- Keep Out!!' (big red letters are nice...) for a week or two, and then I would proceed to sink some nice holes in the ground on either side of the roads & drive. Fill 'em with concrete and set a hasp into it. Get a nice big board, like a 2x12 cut to span between the two hasps. Drive some nice ten-pennies into them thickly, and then put screw eyes at either end. Chain the boards to the hasps with padlocks. After they've lost a few tires, they may rethink their route. You can easily unlock one end and drag it at a right angle out of the way when you want to get thru for field work, then lock it back up at night. -- Julie Froelich, December 06, 2000."

http://hv.greenspun.com/bboard/q-and-a-fetch-msg.tcl?msg_id=004B4h

Commercially manufactured Road Spikes like Antech Co's Guardian (<http://www.antech.com/Guardian/TC/IG%20CB.html>) or DeltaScientific's SabreTooth and Doorking's Model 1610 traffic spikes (which can do much more tire damage than simple round nails) are currently employed at gates of the Wichita Mountains National Wildlife Refuge campgrounds and at the Great Swamp Watershed in NJ (<http://www.greatswamp.org/gsmappg1.htm>), and at numerous parking lots, airports, and drive-in theaters and numerous private properties around the country.

See: DeltaScientific's SabreTooth http://www.deltascientific.com/gallery13A1_2.htm ("The Sabre Tooth will puncture all pneumatic tires including steel belted radial and large truck tires.")

"Provides extremely effective one-direction unmanned traffic control by puncturing the tires of errant vehicles." (<http://www.antech.com/Guardian/TC/IG%20CB.html>)

Doorking's Model 1610 traffic spikes: <http://www.agwaccess.com/doorking2.html>

PMG's "roadspike" product is marketed for "perimeter control" for security purposes:

[http://www.law-enforcement.com/buyersguide/SubcategoryPage.cfm?](http://www.law-enforcement.com/buyersguide/SubcategoryPage.cfm?MajCatCodeParam=18&MinCatCodeParam=050)

[MajCatCodeParam=18&MinCatCodeParam=050](http://www.law-enforcement.com/buyersguide/SubcategoryPage.cfm?MajCatCodeParam=18&MinCatCodeParam=050)

"The Traffic Controller ... can be used as a free entrance or exit in your parking facility ... and includes 20 steel cut blade teeth." <http://www.texassecuritygates.com/traffic.htm>

Comercially manufactured caltrops (called "PORTABLE ROADBLOCKS") are recommended for "use with extreme caution and discretion" to "protect private property." <http://www.spymall.com/catalog/gadgets-index.htm>

Good & Cheap "NAILS IN THE PATH WORK GREAT."

"The 4-wheelers are trespassing and causing damage and death to pets. Here in NC the police are slow to respond (often 2 hours later) they say its a low priority issue. I asked about the boards with nails. On your "privately" owned and "posted" land you can lay boards down and if they have nails in them well it is on your land. (officially). Unofficially if the trespassers get hurt most will sue. And with our "liberal" courts the landowner is about 75% sure to loose. Wish the odds were better."

http://hv.greenspun.com/bboard/q-and-a-fetch-msg.tcl?msg_id=004B4h

Spiked fences are common in NY cities: "Mechanical devices and animals may be used for the protection of property.... Barbed wire, fence spikes, and broken glass are reasonable since they serve to exclude....

Spring guns and traps on the other hand are dangerous weapons.... Vicious dogs, with protensities to kill or seriously injure, are generally treated like mechanical devices except that a posted warning in such cases has [in New York state] served as a defense." Rights Incident to Possession of Land, sec. 28.18 Forcible Resistance Against Intruders (KF575 M367).

Pursant to New York's Recreational Use Statute, an owner of premises, even if not "posted", "owes NO DUTY to keep the premises SAFE for entry or use by others" pursuing listed activies. The statute also states that an owner has "NO DUTY to give warning of any hazardous condition or use of or structure or activity on such premises." GOL s 9-103

"Under a Recreational Use Statute, recreational users are treated in the same manner as trespassers and thus the landowner owes them no duty of care."

<http://www.americanwhitewater.org/archive/article/124/>

"Landowners are not bound to issue warnings, inspect their property or repair dangerous conditions for trespassers. However, landowners do not have the right to intentionally injure trespassers, *except to protect themselves or their property.*"
<http://cnrit.tamu.edu/cgrm/whatzhot/liabel.htm>

A California court construing language in a landowner immunity statute similar to language in NY GOL s 9-103, concluded that a justified use of physical force against a trespasser was a lawful intentional "use of" land and therefore not a "willful" act depriving the landowner of statutory immunity. Similarly, the NY High Court declared that the placement of a cable stretched across a road to stop trespassers is a lawful condition or use of land, even if the effort to give notice of the hazard proved insufficient to prevent an injury. *Sega v State*, 60 NY2d 183.

But consider, (cable as "trap") <http://www.cwmootahwildlife.org/trespass.htm> and
<http://www.wakeweekly.com/archives/2002/Mar21-1.html>

The NY High Court has also held that: "where landowners fence or post "No Trespassing" signs on their private property or, by some other means, indicate unmistakably that entry is not permitted, *the expectation* that their privacy rights will be respected and that they will be free from unwanted intrusions is reasonable." http://www.law.cornell.edu/ny/ctap/079_0474.htm

Responsible landowners will post conspicuous "NO TRESPASSING" or "POSTED" signs, and/or signs specifically warning trespassers of hazards and/or that force will be used to repel them. In *Palumbo v. State*, 487 So.2d (Fla.App. 1986), the plaintiff was injured when he entered a lake containing alligators. He alleged that he did not see the alligators and did not read the posted warning signs. In the opinion of the court, it was irrelevant whether plaintiff had actually read the signs. As long as he was given a reasonable opportunity under the circumstances to read the warning message, he would be charged with the knowledge that "would be obvious to him upon the ordinary use of his senses."

The National Forest Service has been constructing "tank traps" to exclude trespassing motorized vehicles (e.g., ATVs) from the lands at Targhee. "[E]arth berms..., backed by pits." "The traps were [installed] to restrict [vehicular] access to public lands in the national forests." "The dangers posed by the traps were made clear [when a man] testified ... he was at the front of a small group of snowmobiles when his vehicle was violently thrust up into the air. He came to rest in a pit with a broken back."
<http://www.heartland.org/environment/may99/traps.htm>

The berms were installed after "gates" proved ineffective to prevent ATV "trespass."
<http://66.109.128.22/wildrock/wd4116/wd162/Gate-Crashing-Report.pdf>
http://www.fs.fed.us/r4/curlew/Targhee/travel_plan/code15.html

The ATV Trespass problem is serious and pervasive throughout the US:

In March of 2003, Maine's Governor acknowledged "That ATV trespass and property damage are out of control and costing fishermen, hunters, snowmobile, and other outdoorsmen loss of access to private land"
<http://www.eastertrail.org/lib/ATVconf.pdf>

(Lawsuit alleges neighbors cut an ATV trail)
<http://www.nashuatelegraph.com/Main.asp?SectionID=25&SubSectionID=354&ArticleID=55309>

Off-roader's Observation:
 "I wish [ATV riders] would realize that they are the reason so many of the trails and private lands are being closed. [A] large majority of the ATV crowd has no respect for the land that they ride."
<http://www.psychowheeling.com/custom4.html>

A responsible ATV-rider advises other ATV-riders that: "You're protecting yourself by turning in the bad guy. If you don't, then people think we're all bad guys. [T]he few bad apples need to be educated, made

to join clubs where they'll be taught how to ride responsibly." <http://www.eastertrail.org/lib/atvart3.html>

"If they were generally responsible, ATV riders would have wider access to trails There would be fewer barriers and "no-trespassing" signs. But that's a big "if" at this point." <http://www.eastertrail.org/lib/atvart2.html>

ATV rider bragged to friends about setting farmer's barn on fire.
<http://www.washingtonpost.com/wp-dyn/articles/A29962-2002Feb5.html>

Strawberry crop is burned by retaliating ATV trespassers:
"Over 99.9 percent of the snowmobile people are great. They generally police themselves. ATV users - that's a different story.' ... 'I've called several wardens in the past to report ATV-abuse problems and the response time was at least five hours.'" outdoors.maintoday.com/hunting/011128underwoo.shtml

<http://webusers.warwick.net/~u1001223/Articale1/Article1.htm> (ATVs INVADING)

<http://www.courier-tribune.com/nws/atv22.html>
(ATV rodeo wrecked lawn. "They've got no respect for people's property now.")

<http://www.pocahontastimes.com/news0426.html#7thstory> (Town overrun by ATVs)

(ATVs turning town into 'war zone')
http://www.timesleaderonline.com/local/archives4/loc_apr00.html

(EFFECTS of ATV'S on hiking TRAILS)
<http://www.go.ednet.ns.ca/~larry/ATVs/atvrally.htm>

(Nature pays the price as ATVs hit Minnesota's woods)
<http://www.startribune.com/stories/531/1633242.html>

(ATV Trespass damage in VT municipal forest)
<http://www.cybertopia.net/reporter/headlines/2851atv.html>

(Snowmobilers say ATVs are tearing up and closing trails)
<http://outdoors.maintoday.com/snowmobiling/011206atv.shtml>

(Hunting Lands closed and spoiled because "a deer can figure out that an ATV means danger" and landowners reject ATV-use by hunters.)
Peterson's Hunting Mag, (www.huntingmag.com) Mar./Apr. 2002. p18.

(trails ruined by disrespectful ATV riders)
<http://www.eastertrail.org/news/atvart.html>

CITIZENS ARRESTING ATV TRESPASSERS IN NY:

Citizen's Arrest in NY is authorized and regulated by NY Criminal Procedure Law Article 140 and the use of force and even deadly force for the purpose of effecting such an arrest and maintaining the safety of the citizen performing it, is authorized by Penal Law section 35.30(4) and 35.10(6). See statutes at: <http://assembly.state.ny.us/leg/?cl=82&a=12>

New York Criminal Procedure Law (CPL) sec. 140.30 (1) provides:
"Subject to the provisions of subdivision two, any person may arrest another person ... for any offense when the latter has in fact committed such offense in his presence."
<http://assembly.state.ny.us/leg/?cl=25&a=22>

In NY, private citizens have the "same authority" to make arrests of factually "Guilty" offenders as do police officers. Police have a legal duty to make arrests. Private Citizens have a civic and moral duty to make arrests. It is however extremely important to completely understand every limitation and all the regulations and duties applicable to arrests by private citizens as prescribed in Criminal Procedure Law

Article 140. <http://assembly.state.ny.us/leg/?cl=25&a=22>

It is very important that one undertaking a Citizen's Arrest also have a thorough knowledge of the Laws which define arrestable offenses, since private citizens may only arrest factually "guilty" offenders, and may not arrest merely upon reasonable belief nor probable cause.
<http://assembly.state.ny.us/leg/?cl=25&a=22>

See NY RULES FOR OPERATION OF ALL TERRAIN VEHICLES
<http://caselaw.lp.findlaw.com/nycodes/law128/art82.html>

A violation of these Rules is an "offense" for purposes of authorizing a private citizen to arrest an ATV operator without a warrant. See, VTL sec 155 & PL 10.00(2)
 "For purposes of arrest without a warrant, pursuant to article one hundred forty of the criminal procedure law, a traffic infraction shall be deemed an offense." VTL sec 155
<http://assembly.state.ny.us/leg/?cl=128&a=3>

" 'Offense' means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state....." PL 10.00
 The term "offense" therefore means any felony, misdemeanor, violation, or traffic infraction, unless otherwise specified in the law defining the offense. Penal Law sec 10.00 (1-6).
<http://assembly.state.ny.us/leg/?cl=82&a=5>

ATV riders who will ride on any "new trail" they hear about without even knowing the owner will usually resist arrest, and try to flee (or run over the landowner):
<http://www.atvtime.com/steelriders/Features/Others/DoWhat.html>

"Our educational system is failing. Our schools are producing students who are - to quote from the conclusion of a 858 page report recently published by a distinguished blue ribbon Presidential Task Force on Educational Quality- "stupid." The drop in our national IQ has caused many problems, including ... in the field of crime. [W]e are producing incompetent criminals...." Dave Barry, (as appropriately published in the Troy Record) July 15, 2001.

In extremely backwards places like Rensselaer County, New York, where public education (paid for at landowners' expense) systematically fails to instruct the young about peoples' rights, liabilities and responsibilities under the Law, many ATV-riders will resist arrests attempted even by Police Officers:
 "Unregistered ATV: 3:21 p.m., Brian Wescott, 17 [years old], 480 Second Street, [Troy, New York] allegedly became irate and uncooperative during a traffic [ATV-infraction] stop and struggled with police. He was also charged with no insurance, obstruction of government administration, and resisting arrest." Troy Record, Police Blotter May 8, 2001 http://www.zwire.com/site/news.cfm?newsid=1781261&BRD=1170&PAG=461&dept_id=7021&rfti=8

What happens in NY when the ATV operator who is engaged in an arrestable offense or is fleeing from the scene resists a lawful citizen's arrest?

Penal Law, sec. 35.30, titled "Justification; use of physical force in making an arrest or in preventing an escape", provides:

"4. A private person acting on his own account may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes such to be necessary to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense [in his presence] and who in fact has committed such offense; and [after giving due notice of the grounds for the arrest] he may use deadly physical force for such purpose when he reasonably believes such to be necessary to:(a) Defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force."

"The right of a law enforcement officer [or a private citizen] to make an arrest necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Frazell v. Flanigan, 102 F.3d 877 (1996), quoting Graham v. Connor, 490 U.S. 386, 396 (1989).

When arresting offenders riding ATVs, it is important to be aware that the ATV can be used as a dangerous instrument against the person making the arrest.

In NY, forcible "conduct" such as "Menacing" (PL 120.14), "which would otherwise constitute an offense is justifiable and not criminal" when committed "in defense of himself or a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody." Penal Law 35.10(6).

Penal Law s 120.14, titled "Menacing" prescribes:

"A person is guilty of menacing in the second degree when [without justification]:1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm."

<http://assembly.state.ny.us/leg/?cl=82&a=27>

However, many states, including NY, while not authorizing the USE of Deadly Force in defense of possession of land (i.e., premises), nevertheless do provide that an occupant may use necessary non-deadly force (including "threatening" to use deadly force, i.e., "menacing"). For example, Arizona's statutes explicitly authorize landowners to "threaten to use deadly physical force" in defense of land. Arizona Revised Statutes 13-407.

<http://www.azleg.state.az.us/ars/13/00407.htm>

New Jersey statutes "permit[] an individual to display or brandish a firearm or other weapon when the need for self-protection [or protection of another] is reasonably perceived and he merely intends to create an apprehension in the aggressor that he will use deadly force if necessary." *State v. Harmon*, 203 N.J. Super. 216, 223 (App. Div. 1985), *rev'd on other grounds*, 104 N.J. 189 (1986). ["A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force."

<http://www.njlaws.com/self-defense.htm>]

Similarly, New York statutes provide that a person "may USE any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for" the listed purposes e.g., defense of premises, persons, arrest.

NY Penal Law sec 10, Definition (11) provides: "'Deadly physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury."

<http://assembly.state.ny.us/leg/?cl=82&a=5>

Menacing with an unloaded gun, or with a dangerous instrument, and even firing a warning shot AWAY FROM the trespasser, and "threatening to use" deadly force, etc. are not a "USE" of Deadly Physical Force. Therefore each such act would be lawful in NY when such a use of non-deadly force is necessary and lawful under article 35 of the NY Penal Law. See:

<http://www.courts.state.me.us/01me91gl.pdf>

People v. Davis, 72 N.Y. 2d 32, 530 N.Y.S.2d (1988).

PEOPLE v. CHRYSLER, 85 N.Y.2d 413, 649 N.E.2d 1162, 626 N.Y.S.2d 18 (1995)

(http://www.law.cornell.edu/ny/ctap/085_0413.htm)

NY Case in point:

"A Canajoharie, New York, car thief's efforts were put in park after a potential victim pressed a shotgun to the criminal's throat. Daniel J. Stetin foiled the crime after awaking for work and discovering his car already running outside. He grabbed a shotgun and went to investigate, while his wife grabbed the telephone and dialed 911. Confronted by an armed and angry Stetin, the crook rested quietly on the ground and waited for police to arrive. (The Sunday Gazette, Schenectady, NY, 5/21/95)"

<http://www.objectivists.org.au/May09-1999/armed-citizen.95.htm>

There was no apparent USE of "deadly physical force" here (unless the shotgun had a hair-trigger and/or the safety was OFF), only a lawful and apparently necessary and sufficient "threat" to use such deadly force. Note: If the man who owned the car stood in front of it, and if the thief had attempted to escape by driving over the car's owner, the car's owner would have had the right to prevent that escape involving vehicular assault, by using deadly physical force (i.e., shooting). This is because the law, in support of citizens who place themselves in positions of peril to arrest guilty offenders, provides that the private citizen "may use deadly physical force for such purpose [to effect an arrest or prevent an escape] when he reasonably believes such to be necessary to:(a) Defend himself or a third person from what he

reasonably believes to be the use or imminent use of deadly physical force." There is no duty to retreat while performing a lawful citizen's arrest. PL 35.10(6); 35.30(4).

For other interesting articles about purported citizen's arrest see:

http://www.canoe.ca/CNEWSLaw0107/24_atv-par.html

(ATV posse traps man, rescues girl)

<http://www.prairiela.com/articles/article.asp?channelId=8&articleId=1329>

<http://www.thesunlink.com/news/daily/march99/0316a1d.html>

<http://www.counterpunch.org/pipermail/counterpunch-list/2000-May/000341.html>

<http://www.villagevoice.com/issues/0024/ridgeway.php>

See also, The "Rights of NY Landowners to Use Force (Display Guns) to Stop, Expel and Arrest Defiant Trespassers" at: www.billstclair.com/ferran

_____ Related Article _____

Illegals Trespass in AZ, like ATVs Trespass in NY

[Note the Reply of Arizona Sheriff Larry Dever (below)]

As a NY Landowner who must repeatedly confront and arrest gangs of ATV-trespassers riding ATVs on POSTED private land in Rensselaer County, NY (See "The ATV-Trespass Problem" at <http://billstclair.com/ferran>) I have complete empathy and understanding for the situation of the Arizona Landowners who must confront and arrest swarms of trespassing illegal immigrants. Similar to the Arizona Landowners' experience combating the AZCLU's socialist views and contempt for their property rights, I have found the NYCLU to be utterly indifferent to invasions of the property rights of NY landowners. The Trespass Problem in Arizona is similar to the ATV and Hunter trespass problem in certain parts of upstate NY, and both sets of landowners are dissatisfied with the protection provided by the local constables, and have realized the need to resort to self-defense of premises and citizens' arrest.

The following article recently appeared in the Albany, NY paper (Times Union), discussing the problem of ATV-trespass in the Rensselaer County, NY, where my family owns 600 acres.

Putting the brakes on ATVs Troy-- Proposed Rensselaer County law would fine owners of all-terrain vehicles for improper use

By MICHELE MORGAN BOLTON (mbolton@timesunion.com), Staff writer First published: Thursday, December 26, 2002

"A fresh blanket of snow on miles-long stretches of open fields and power lines is all it takes to warm the hearts and rev the motors of the state's 250,000 all-terrain vehicle owners. And while many of those operators are licensed and otherwise comply with the law -- and the good graces of private property owners -- a growing number don't, said lawmaker Ed Swartz. The Schodack Republican is proposing legislation to implement a county fine for improper use of an ATV and for operating an unregistered vehicle. Increasing registration fees could help fund enforcement efforts, he said. Swartz said he has been researching the potential legislation for about four months after receiving a number of complaints from residents in his rural district who claim *ATV operators are riding rampant through privately-owned fields and yards*. Many of those concerns have come from fellow Schodackians, he acknowledged. "More and more residents are upset because of *disruptions or damage to their property*," Swartz said. "It's clear something needs to be done to protect property owners." Some reports have indicated that more than *50 riders at a time*, in some instances, have come from out of town to take advantage of the wide, open spaces, he said. Few, if any, have permission to traverse the routes that they do. The frustration is shared by residents and police as the number of ATVs has increased in recent years, he said. Carefully regulating usage may be the only way to protect everyone's rights, he said. New York state has more than 75 organized ATV clubs, but many users prefer to

ride on their own. Owners are required to register their equipment with the Division of Motor Vehicles, paying a \$15 annual fee, Rensselaer County Clerk Frank Merola said. And while most vehicles are registered, the inherent problem occurs when they are ridden on private property, Merola added: "You're not going to catch them unless you're chasing them on an ATV yourself." Incoming legislator Keith Hammond said ATV riders from North Greenbush and East Greenbush regularly maneuver their machines through a huge gravel pit near his 100-acre Poestenkill farm and then indiscriminately cross property lines. "I have some thought about this," he said, of Swartz' proposition, which he said he also backed a number of years ago. *"These people ride your property like they own it."* Poestenkill has already implemented an ATV registration process that requires riders to not only buy licenses, but carry written permission at all times while on private property. "If they don't have it they can't be there," said Hammond. Swartz said he has asked the Legislature's lawyers to review his ideas. He also said he knows it first may require action from the state before the county can implement any independent policies. "ATVs are great for recreational purposes when properly and safely used," he said. "And the vast majority of riders are respectful and courteous. However, there is a small minority of riders that *have little respect for other people's property.*"

On January 1, 2002, the Albany Times Union noted again that Rensselaer County Landowners "want action on ATV drivers using private property without obtaining permission. Elected officials are grasping for solutions after *landowners with guns ran off trespassing all terrain vehicles twice in the last 18 months.*" TU 01/01/2002

New York and Arizona Landowners have essentially the same legal rights under state laws to use force (e.g., guns) in defense of their premises. See, e.g., "Rights of NY Landowners to Use Force (Display Guns) to Stop, Expel and Arrest Defiant Trespassers (or Terrorists) at <http://billstclair.com/ferran> .

And, on January 3, 2003, Albany TU columnist Fred LaBrun stated that in Rensselaer County, "these instruments from hell" are running amok and "cops make an all-too-infrequent stop of some yahoo churning up the landscape on somebody else's private property. ... **There have been a number of testy confrontations recently in the rural parts of the county between ATV riders operating illegally and property owners. Something very bad is going to happen if this persists. Private property is, after all, private property.** Owners get edgy about that."

<http://www.timesunion.com/AspStories/story.asp?storyID=88794&category=REGION&newsdate=1/3/2003>

The Albany TU already reported, in November of 2002, that: "A teenager [seated on a parked ATV] was shot in the ankle by a [landowner] deer hunter as they scuffled during an argument that was sparked by the boy allegedly trespassing on private land, police said." [The ATV-rider had refused to leave the land, threatened and punched the 69-year old landowner who was holding a deer rifle, causing the older man to fall down and causing the rifle to accidentally discharge, striking the trespasser in the ankle. The local police falsely arrested and charged the landowner for "recklessly endangering" the trespasser, as if the landowner was supposed to expect to be punched and knocked down while holding a rifle, and to protect the trespasser from that risk.]

The local District Attorney, who reputedly rides ATVs, has announced plans to practically abolish private property rights in the County in order to make private land completely "safe" for ATV-trespassers. See http://www.propertyrightsresearch.org/dear_fellow_property.htm

Meanwhile, the same things are happening in Arizona:

http://www.reviewjournal.com/lvrj_home/2002/Dec-23-Mon-2002/opinion/20323952.html

Monday, December 23, 2002
Copyright © Las Vegas Review-Journal

EDITORIAL: Run for the border

Private citizens perform service in rounding up illegal border crossers

A number of activist groups, including the Arizona Civil Liberties Union and the Border Action Network, are asking Arizona Gov.-elect Janet Napolitano to step in and stop private property owners along the Mexican border from engaging in "vigilantism."

At least three such property rights groups are now patrolling the Arizona-Mexico border, endeavoring to round up smugglers and other illegal alien invaders, whereupon they turn them over to local and federal police. The property owners targeted in this protest are not known to have committed any illegal violence.

This is apparently too much for Pamela K. Sutherland, legal director of the Arizona CLU, to bear.

"We are a government of law," Ms. Sutherland asserts. "The vigilantism and lawlessness they represent cannot be tolerated and we won't let their behavior go unchecked."

Jennifer Allen, co-director of the Tucson-based Border Action Network adds that the illegal aliens "have civil rights and human rights that take precedence over defending the country."

Let's stop and consider this assertion for a moment. Which is the more vital human right -- the one most deserving of defense? The right to work hard, save your earnings, and buy a piece of land, whereupon you then "own" that piece of real estate as your "private property" ... or the right to bypass proper legal procedures in order to enter someone else's country, then further to trespass on someone else's private property in the country you've entered illegally, camping there without his or her permission?

Here's a hint: The first principle -- private property rights -- was the one on which this nation was based, and which helped make it the most peaceful, free and wealth-generating society the world has ever known.

The solution is for the land owners to merely call the police or the INS, the activists say. But police and the INS admit that they're spread too thin, left to resemble small children trying to catch moths with teaspoons. And on the rare occasion when they do apprehend illegal border crossers, what is their recourse? To dump them back across the border and watch them try again tomorrow night, of course.

In fact, the property rights groups are performing a valuable public service -- and as long as they do not engage in any illegal activity while protecting their own lands, they should be encouraged to continue their patrols.

----- END OF ARTICLE -----

Similar to the Arizona Landowners' experience combating the AZCLU's socialist views and contempt for their property rights, I have found the NYCLU to be utterly indifferent to invasions of the property rights of NY landowners. The Rensselaer County District Attorney, who reputedly rides ATVs, seems to be instigating offenses against land-owners in Rensselaer County by maintaining prosecution policies that protect only ATV-riders and other trespassers, at the expense of the landowners whos tax dollars pay his salary. The DA advertises on his website that he wants to make private property in Rensselaer County perfectly "safe" for ATV-trespassers, including whole "families" of law-breakers.

Note: Adolf Hitler took the same approach to acquiring and concentrating his Political Power:

"WHAT we [National Socialists] need if we are to have a real People's State is a land reform.... And land [Grund und Boden], we must insist, cannot be private property. Further, there must be a reform in our law. Our present law regards only the rights of the individual. It does not regard the protection of the race, the protection of the community of the people. ... A law which is so far removed from the conception of the community of the people is in need of reform." - Adolf Hitler, MUNICH, SPEECH OF APRIL 27, 1923

http://www.propertyrightsresearch.org/dear_fellow_property.htm

Please choose to assist landowners to preserve their legal rights under the Law and in the Courts of Public Opinion. There is no need to change the Law in New York or Arizona, only a need to promote respect for it, and to enforce it. Some landowners are far ahead of the curve in this respect.

Mark R. Ferran BSEE scl JD mcl

<http://billstclair.com/ferran>