



## A CITIZEN'S PROJECT TO REMOVE INTOXICATED DRIVERS

P.O. Box 520, Schenectady, New York 12301

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## THE PRESIDENT'S LETTER

### STAYING ENGAGED IS KEY TO SUCCESS

Technology has changed the way in which anti-drunken driving advocates plan their strategies to make the roads and highways we travel safer for everyone. Social media and twitter have become integral in organizing and getting out our message. The internet allows anyone to research data and write their own analysis on what campaigns or policies have worked best toward achieving that goal.

Despite these advances, the old school networking approach is still useful and in some cases more effective than posting something on Facebook. Take the case of Tyler Pascuzzi, where the defendant was allegedly speeding up to 150 mph before he crashed his VW on the New York State Thruway, killing his two passengers, Cody Veverka and Alicia Tamboia.

There's a facebook page; Justice for Cody and Alicia, where family members and friends of the victims can express their condolences and anger regarding this tragedy and the frustrating lack of action in the case moving forward. So in this case, social media has been a tool to help facilitate paying tribute to the victims.

A family member of a victim who survived the crash contacted RID. He expressed frustration that the case was going nowhere. Seven months had passed since the crash.

I organized RID members (some of who had lost loved ones to drunken drivers) to contact the ADA in Albany County to get some answers. She mentioned that the case couldn't move forward until a crash reconstruction was completed. Four months later it was done.

So six months later when a Grand Jury still haven't been convened, I urged my members again to follow up with calls to the ADA. We didn't get any new information as why the case was dragging on. However, the ADA heard our concerns loud and clear.

On December 12, 2015, the "Lights for Life Motorcade" was held to raise awareness of drunken driving during the holidays. I joined county leaders such as Rensselaer District Attorney Joel Abelove and County Executive Director Kathleen Jimino as part of a motorcade that begin at the Schodack Police Station. Over twenty vehicles rode with a police escort up to the Rensselaer County Public Safety Building. A press conference followed that was covered by the local media.

Taking part in these events is a necessary part of being an effective activist. I don't discount the importance of social media as real time live events can be promoted, discussed and debated by blogging about them. This marriage is essential to utilize reaching the public to get your message out. Having a victim as the focal point of an event can inspire elected leaders and the media to come out and report on the issue of drunken driving. I urge activists interested in reducing drunken driving to take note.

As our newsletter was going to print, the Albany District Attorney's office announced that it handed down a 14 count indictment against Tyler Pascuzzi including two counts of vehicular homicide. Through updating the media about this case as well as placing personal calls to the ADA, RID proved to be effective in putting pressure right up to this indictment.

On a sad note RID is mourning the loss of long-time member, Natalie Yepson, who recently passed away at the age of 89. Natalie played an instrumental role in getting RID started with her boundless energy, charming wit and contagious enthusiasm. She will be sorely missed.



Bill DiKant, Dean Bognar and Doris Aiken take part in the Lights On for Life Motorcade last December in Schodack, NY.

*all best,*  
**Doris Aiken**  
RID President

P.S.: Please send me your feedback and comments by going to our website at RID-USA.org.



# DWI Lawyers challenge the science used to convict their clients

By William Aiken Jr.

Lawyers go to great length in representing drunken drivers. They find new and creative ways to debunk the latest scientific evidence against their clients, no matter how that strategy flies in the face of common sense.

Retrograde extrapolation is a mathematical process, based on sound scientific principles, that is used routinely in pharmacology, toxicology, and clinical medicine. In circumstances where a driver involved in an automobile crash is tested some time later after the crash, retrograde extrapolation is used to determine the BAC of the driver at the time of the crash, based on the BAC test results recorded after the crash and the time that elapsed since the crash occurred.

Experts say the intoxicating effects of alcohol are not experienced until it is absorbed into the bloodstream. After a person stops drinking, the blood alcohol level peaks when the most alcohol has been absorbed and the least amount of alcohol has been eliminated. Defense attorneys argue alcohol absorption and elimination rates vary widely depending on a person's gender, drinking habits, the type of beverage, what a person ate and how much, and whether a person had experienced trauma, which sometimes slows the rate.

Prosecutors in many states, including New York, North Carolina, Michigan, Colorado and Illinois, have offered evidence of estimated intoxication levels at trial. However, courts in some other states have severely restricted its use, requiring prosecutors to use only the blood

alcohol readings taken at the time of a person's arrest.

Another argument by defense lawyers for this restriction is that juries can take into account the theory of retrograde extrapolation on their own estimation considering the other factors mentioned above. It should be noted that in the states that have permitted the use of retrograde extrapolation, the appeals have been upheld by the higher courts.

While these mitigating factors cited by defense attorneys may have a minuscule effect on the actual BAC level, the fact remains that a person's BAC level will decline as their liver processes the alcohol in their bloodstream. The most significant factor in determining the accuracy of retrograde extrapolation is the time period that has elapsed from the actual time of the crash to when the BAC test is administered.

The use of retrograde extrapolation shouldn't be an all or nothing proposition. Prosecutors should be permitted to present Juries with an estimation of the BAC when retrograde extrapolation is being applied, not a hard number. There are many circumstances as to why a BAC test can't be administered at the time of the crash, some where the drunken driver actively seeks to avoid being tested. If the use of retrograde extrapolation can help to close this loophole commonly used by defense lawyers, victims and their families have a better chance of receiving justice.

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## The Most Dangerous Kind

By William Aiken Jr.

The profile of the drunken driver has many different economic and social backgrounds. But Michele Moyer represents the most dangerous profile; someone who is determined to get behind the wheel, highly intoxicated, ignoring the past punishments for her conduct. Moyer, who had been previously convicted of six DWIs, including four felonies, will spend the next 2-1/3 to 7 years in state prison after being convicted of driving the wrong way down one-way Caroline Street in Saratoga Springs in August 2014.

One of RID's biggest achievements was changing the law that eliminated the practice of allowing people charged with drunken driving to plea bargain out of alcohol offenses. This law significantly cut down on the ability of drunken drivers to breeze through the courts like a revolving door with their license in-tact. The old law also effectively hid their record of drunken driving as in one case, the defendant; a retired judge was able to plead down to bald tires 18 times. Defense lawyers and their clients took advantage of this loophole at the peril of the public at-large. Columnist Fred Lebrun of the Times Union wrote that over 6,000 lives were saved in a fifteen year period

in New York State as a result of RID's efforts.

The fact that Ms. Moyer was allowed to continue to get behind the wheel after her third offense is troubling. But RID is glad to see the courts finally treating her as the serious threat she represents to the public. The legal system is often too slow to recognize dangerous drunken drivers, like Ms. Moyer. Thankfully there weren't any serious injuries or death due to Moyer's repeated flaunting of the law. But there's no question that allowing her to remain free puts the rest of society at risk.

In New York State between the years, 2008 to 2012, drunken drivers killed more than 1,690 New Yorkers, accounting for 30 percent of all traffic fatalities in the state during that time. (1) Repeat drunk drivers like Moyer are the most dangerous. Drivers with a previous DWI are four times more likely to be involved in a fatal crash than first-time offenders, and each successive DWI arrest increases the likelihood of being involved in a fatal crash.(2)

In 2013, Governor Andrew Cuomo made it easier for the Department of Motor Vehicles to revoke the licenses of repeat DWI offenders through executive action. Defense lawyers

argued that the Governor was denying their clients their due process. But those concerns have to be weighed against the safety of the public.

RID has actively supported legislation to suspend licenses and require ignition interlock devices on vehicles. Ms. Moyer's case is different. She is representative of many DWI offenders who fall through the cracks of our legal system. A prison sentence is the only remedy to put an end to her track record of reckless behavior.

The fact that Moyer was permitted to accumulate so many DWI convictions without a prison term reveals a flaw in our DWI laws. Often it takes a tragedy to spur lawmakers and the courts to do the right thing. This sentence—the maximum allowed by law for a non-fatal DWI conviction—sends a strong message to drunk drivers. However, Ms. Moyer is proof that some in our society will never get that message no matter what. That mindset is most dangerous and in these cases, justice requires a loss of their liberty.

1. 2013 Highway Safety Annual Report

2. Daily Gazette, March 9, 2016

## Couch Case Will Have Ripple Effect

By William Aiken Jr.

After being on the run, Ethan Couch was caught in Mexico. Texas authorities have charged his mother, Tonya Couch with aiding in his escape. Couch along with his mother fled the country after he failed to meet with his probation officer. Questions arose after a video was posted on twitter showing Couch at a beer pong party in violation of his probation.

Beyond the embarrassment of the criminal justice system for granting Probation to Couch, Judges and Prosecutors across the country will have severe doubts about granting any offenders a second chance when they are sentenced.

Authorities said Couch, (16 )was partying the night of June 15, 2013, when he struck and killed a 24-year-old woman who's SUV had broken down and three people who stopped to help her. He also seriously injured two others.

During his trial, Couch's lawyers argued that due to his parents' enormous wealth and the lack of discipline of their son, Couch didn't realize the consequences of his reckless behavior. The term "affluenzia" was coined by a defense expert witness to summarize how Couch was a victim of his parents' bad choices.

On December 12, 2013, Judge Jean Boyd stunned the families of the victims in the court with her ruling. She clearly bought into the defense's perplexing theory as she sentenced Couch to 10 years probation and a stint at the swanky rehab facility that his rich parents paid for. Prosecutors and many victims had asked for the maximum sentence of 20 years in prison.

For a long time, mandatory minimum sentences and sentencing guidelines have limited the ability of judges to use their discretion. So when there are mitigating circumstances during the sentencing phase, judges shouldn't be prejudiced by the lamentable outcome of the Couch case. But the ripple effect here is inevitable.

Ethan Couch has proven himself to be the wrong person for the court to give a second chance. Four months before the deadly drunken crash caused by Couch, a police officer warned him that if he didn't change his behavior, he was going kill himself or someone else. He had been ticketed numerous times for speeding violations. His parents permitted Couch to drive himself to school when he was 13. When the school's principal notified his parents, they threatened to buy the school if Couch

wasn't allowed to drive himself. When the principal stood his ground, Couch's parents took him to another school. Their long history of coddling and enabling Couch should have been a red flag for Judge Boyd.

Even if the judge believed Couch was a "victim" of Affluenzia, it made no sense for her to allow his parents to continue to be involved as decision makers in his upbringing. Obviously, Judge Boyd didn't think through her decision. Couch's parents have continued to enable their son to violate and flaunt his probation restrictions. If it's proven that Couch's mother aided in his escape, law enforcement needs to hold her accountable as well. There should be legal consequences for her actions as well.

Judges and Prosecutors don't want to risk putting themselves in the same position Judge Boyd is in today. The easiest way to avoid such an embarrassing predicament is to deny defendants probation when given that as an option to prison. Judge Boyd exhibited poor judgment with her decision to cut Couch a huge break, one which never should have happened.

Many people who might be deserving of a second chance will pay the price for Judge Boyd's misguided decision and Ethan Couch thumbing his nose at the law. Long after Ethan Couch is brought to justice, this case will linger in the minds of those who are elected to make the tough calls when the time comes to mete out justice for all.

Let's not forget the victims of Ethan Couch's recklessness who lost over 180 years of potential life with one single act of selfish stupidity. Hollie Boyles, her daughter, Shelby, Breanna Mitchell, and Brian Jennings have left behind many brokenhearted friends and families. Judge Boyd denied justice for all those affected by this tragedy the first time around. Now that Couch has been captured, the families of the victims' can finally get some relief. After fighting extradition, Couch is back in an adult jail facility in Texas. His mother is also in Texas facing 10 years for her role in her son's escape.

As this saga continues its worth noting that there hasn't been a peep from the person responsible for this predicament; Judge Boyd. She quickly retired after making this absurd ruling and has declined repeated requests from the media to explain herself.

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## Victim Impact Panels Still Going Strong

By Jane Aiken

The implementation of victim impact panels in the tri-city area began in 1988, when Doris Aiken, President of RID and Bill Dikant, a victim, were among those giving the first panel. It was attended by just three people, but the tradition continues as a powerful program in the fight against drinking and driving. A VIP is a panel of victims who speak to a group of convicted DUI drivers which are mandated by the court to attend. Victims share their stories of the tragic damage, family loss, grief and pain that resulted from a drunken driver's mistake in judgment. A victim's pain often lasts a lifetime. Afterward the audience fills out evaluations so their reactions are registered and statistics can be tracked.

I recently had the chance to speak with Dean Bodnar of Troy, NY whose young daughter was killed by a drunken driver in Troy years ago. Bodnar speaks regularly on the Panels in the Rensselaer County VIP program, sometimes with Bill Dikant. He expressed concern that although these panels were good at heightening awareness and remorse

for their crimes, many drivers would continue to drink and drive.

In an interview with Jim Gordon of Rensselaer Co. STOP-DWI, I learned that the VIPs have remained well attended over the last years. Since 2011 there has been an average of 436 DUI offenders attending VIPs every year. Estimates of 1/3 of the attendees have multiple DUI offenses. There are currently 6 VIPs held every year.

In addition to this important intervention, the police force is also funded with a special grant to do extra patrol on 8 special crack-down periods per year such as St.Patrick's Day and holidays like New Year's Eve and Thanksgiving.

The VIP program is just one piece of the puzzle needed to reduce the destruction caused by drinking and driving, but it is a critical one. We are lucky to have victims, police and administrators working together toward reducing the danger on our roads.



**Summary.** Four indicators of the failure of the general deterrence approach to reducing DUI driving have been presented.

1. No decrease in the percentage of DUI fatalities for 14 years, stuck at 30%.
2. 5 states averaging over 40% of fatalities DUI related for the latest 3 years.
3. An increased average BAC of DUI drivers since the program started, now at a BAC of 0.19.
4. An increased percentage of drivers DUI under age 35 and in most age groups.

**No progress in 14+ years, 10,000 lives lost a year to drunk driving, with 31 % of fatalities DUI related and 6 states averaging over 40% DUI fatalities** in the last 3 years is unacceptable. Especially when compared to the success in increasing occupant restraint use and reducing overall fatalities. This should set off alarms at both the National and local level of those groups responsible for and interested in reducing the nation's No. 1 traffic safety problem.

It may not be the general deterrence approach that is not working. It may be other factors that have made it more difficult to apprehend DUI drivers on the road, and especially at night. Perhaps the 0.08 level is too high, or that "friends" intervention was a key element in past success and should be tried again. Whatever the reason, isn't it time to take another look at our approach to solving the Nation's No. 1 traffic safety problem?

1/ Public Health Model of Disease Prevention, <http://www.iwh.on.ca/wrmb/primary-secondary-and-tertiary-prevention>

2/ CREATING IMPAIRED DRIVING GENERAL DETERRENCE: DOT HS 809 950 March 2006

NHTSA Data : <http://www-fars.nhtsa.dot.gov/QueryTool/QuerySection/SelectYear.aspx>

<http://www-fars.nhtsa.dot.gov/Trends/TrendsAlcohol.aspx>

**For more information about this report and how you could help please contact:**

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## RID Honors Three Victims with Safety Tree Lighting Ceremony

A brisk, cool spring day served as a backdrop to the first ceremony honoring victims with the Safety Tree Lighting Event at Ellis Hospital. In 2008, RID president, Doris Aiken conceived the idea of having a Safety Tree as a way to pay tribute to those who lost their lives to drunken drivers. RID Vice President, William Aiken, Schenectady Mayor Gary McCarthy and Schenectady District Attorney Robert Carney all spoke at the event, delivering passionate speeches on the importance of driving sober while still acknowledging the enormity of the problem.

On September 4, 2015 in Duaneburg, NY, Betty Brockhum, Vanessa Cohn and Summer Penney were returning from a back-to-school shopping trip when their vehicle was struck head on by an SUV driven by Joseph Duffy, 27 who was attempting to pass several cars ahead of him. Cohn was killed instantly, her daughter Penney died soon after while Brockhum died two weeks later from her injuries. A grandmother, mother and daughter representing three generations in the same family are gone today because someone refused to obey the law to driver sober.

Three red lights replaced white ones on the safety tree to symbolize the deaths of these three women. A second Safety Tree was established in Hudson, NY where six victims who lost their lives to drunken drivers have been honored since 2011. The Hudson Safety Tree represents Columbia and Greene counties.



Photo: Steven Cook of the Daily Gazette

# National Drunk Driving Program fails with 5 states having 40% of all fatalities DUI related.

By Al Crancer & Doris Aiken

There has not been a single year since 1998/1999 that the percentage of fatalities related to DUI has been less than 30%, according to recent published national data from the **National Highway Traffic Safety Administration (NHTSA)** website in regards to DUI and alcohol trends.

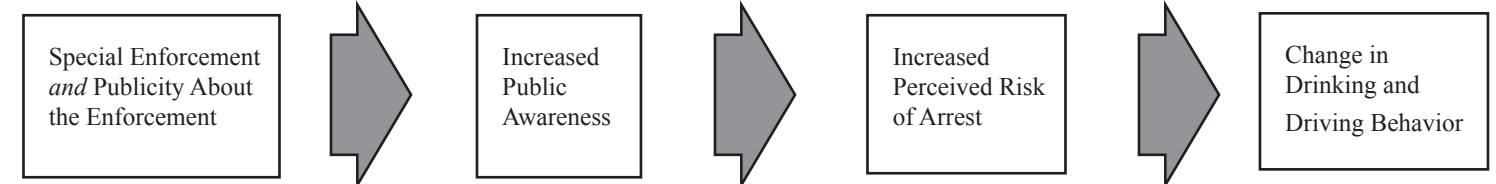
**Background:** 1998 was the last full year of the national public information campaign of "Friends Don't let friends drive drunk" a much celebrated and effective campaign that was prominent in steadily lowering the percentage of DUI fatalities since it was started in 1982. From a public health disease prevention perspective 1/ the "friends" message was to promote primary prevention, deterring persons impaired from driving. The key to the approach was to involve millions of "friends and significant others" to help and participate in deterring DUI driving. Further, law enforcement increased activity in arresting DUI drivers with DUI arrests reaching a high of 1.5 million arrests in 1999.



In December 1999 NHTSA started the general deterrence approach to reducing impaired driving, with the public information slogan, "You drink and drive you lose". This campaign and its new enforcement approach has been in effect ever since December 1999 and now uses slogans such as "Over the limit under arrest", "Drive sober or get pulled over", and "Drunk driving is buzzed driving". The public information messages were to increase public awareness and the risk of arrest. From a disease prevention perspective, the approach was a concentration on secondary prevention, apprehending persons who drove impaired.



The following figure illustrates the theory of general deterrence 2/ as it was to be applied in special enforcement programs to influence drinking and driving behavior. The figure illustrates the expected sequence of events, beginning with special police enforcement activity and publicity about the special enforcement. 1)



**Trend data showing no progress.** Table 1 below the documents the failure of the general deterrence approach to reduce the percentage of alcohol related fatalities, never less than 30%, the level in the last two years before the start of the new general deterrence approach. Also shown in the table is the overall national success in reducing total fatalities, down 22%, and increasing driver occupant restraint use up 25%.

Not only has the percentage of DUI fatalities not decreased, but the table shows that total arrests have declined 23% and arrests per licensed drivers decreased 31%. The decline in arrests and arrests per licensed drivers could only be viewed in a positive light if the percentage of DUI fatalities were decreasing, which did not happen.

Enforcement Approach & Message	Year	Total	BAC = .08+ Fatalities		DUI Arrests*	DUI Arrests/ 1000 Lic. Drivers	% Driver Occupant Restraint Use	No. of Years 08+ Higher than 1999
			Number	Percent				
Increased DUI Enforcement with Message Friends don't let friends drive drunk	1994	40716	13390	32.9	n.a.	n.a.	49.1	
	1995	41817	13478	32.2	1436000	8.1	50.1	
	1996	42065	13451	32.0	1467300	8.2	51.7	
	1997	42013	12757	30.4	1477300	8.1	52.3	
	1998	41501	12546	30.2	1402800	7.6	53.7	
	1999	41717	12555	30.1	1511300	8.1	53.4	
GENERAL DETERRENCE Approach with Message Over the limit, under arrest! and Drive sober or get pulled over. Etc.	2000	41945	13324	31.8	1471289	7.7	55.5	1
	2001	42196	13290	31.5	1434852	7.5	56.5	2
	2002	43005	13472	31.3	1461746	7.5	57.0	3
	2003	42884	13096	30.5	1448148	7.4	59.3	4
	2004	42836	13099	30.6	1433382	7.2	60.6	5
	2005	43510	13582	31.2	1371919	6.8	61.1	6
	2006	42708	13491	31.6	1460498	7.2	60.9	7
	2007	41259	13041	31.6	1427497	6.9	62.1	8
	2008	37423	11711	31.3	1483396	7.1	62.4	9
	2009	33883	10759	31.8	1440403	6.9	63.4	10
	2010	32999	10136	30.7	1412223	6.7	64.7	11
	2011	32479	9865	30.4	1215077	5.7	65.0	12
	2012	33561	10322	30.8	1282957	6.1	66.4	13
	2013	32609	10076	30.9	1166824	5.6	66.6	14
Change from '99		Dn 21.8%	Dn 19.7%	Up 2.7%	Dn 22.8%	Dn 30.9%	Up 24.8%	

Source: NHTSA FARS <http://www-fars.nhtsa.dot.gov/Trends/TrendsAlcohol.aspx>; DUI arrests FBI/UCS

**10 Highest States by Percentage of DUI Fatalities.** The latest available trend data from NHTSA for the years 2011-13 allows us to determine the ten states with the highest average percentage of DUI fatalities. With the average of all states at 30.9%, the top 10 states averaged 39.1% with 5 states averaging 40% or higher for the 3 year period, and 8 of the 10 had one or more years of 40% DUI fatalities. The 5 states with a 3 year average of 40+% DUI fatalities are CT, RI, SC, MT, and ND. This is further evidence that the National approach to reduce drunk driving is not working.

State	Rank	2011	2012	2013	3 yr Ave.
WA	41	35	33	34	34.0
MA	42	34	34	36	34.7
DE	43	41	31	39	37.0
HI	44	45	38	33	38.7
TX	45	40	38	40	39.3
CT	46	42	38	41	40.3
RI	47	39	44	38	40.3
SC	48	37	40	44	40.3
MT	49	39	43	40	40.7
ND	50	42	43	42	42.3
Ave. of 10 Highest		39.4	38.2	38.7	38.8
States with 40+		5	4	5	
USA		30	31	31	30.7

**Average DUI Driver BAC increasing.** Further evidence of the failure of the general deterrence approach to impact DUI driving is shown in the Table 3 below. The data shows that the average BAC of 0.08+ drivers in fatal crashes has not decreased since 1999 and has actually increased slightly for both male and female involved drivers.

Year	Total	Male	Female
1999	0.187	0.186	0.188
2013	0.191	0.191	0.193

Also note that the average BAC of female DUI drivers is slightly higher than males in both years.

**Percentage of drivers DUI by age group increasing.** If the general deterrence approach was working, not only would the overall percentage of 08+ fatalities have decreased, but the perceived fear of arrest expected in the program would be reflected by a lower percentage of DUI drivers in each age group, not a higher percentage. The percentage of DUI drivers under age 35 and in almost all of the age groups actually has increased since the program started.

Age	Drivers 1999			Drivers 2013			Change
	All Drivers	08+ Drivers	%	All Drivers	08+ Drivers	%	
<21	7946	925	11.6%	3613	398	11.0%	even
21-24	5042	1165	23.1%	3963	970	24.5%	up
25-34	9735	2040	21.0%	7030	1606	22.8%	up
<35	22723	4130	18.2%	14606	2974	20.4%	up
35-44	8665	1672	19.3%	5257	953	18.1%	dn
45-54	5973	794	13.3%	5030	768	15.3%	up
55-64	3706	291	7.9%	4165	396	9.5%	up
65+	6313	178	2.8%	5141	177	3.4%	up
Total	47380	7065	14.9%	34199	5268	15.40%	up

\*Statistically higher in 2013, p=.0001