

I Have Two Children, but Only One Is Still Living: How Distracted-Driving Prevention Became My Life's Mission

By Joel D. Feldman



In July 2009, my wife and I buried our 21-year-old daughter Casey. She was killed by a distracted truck driver while walking in a crosswalk in Ocean City, New Jersey. The 58-year-old man was looking at his GPS and not at the road and rolled through a stop sign. He said he never saw her.

During my 40 years as a plaintiff's personal injury attorney at Anapol Weiss, P.C., in Philadelphia, I handled many distracted-driving cases for clients. Despite doing so, I frequently drove distracted, often reaching for the cell phone or some other object when I should have been looking at the road. It took me several months after Casey's death to realize that I was guilty of the same conduct that killed my daughter. It took her death for me to change the way I drive.

Prior to Casey's death, I represented many parents who had lost children.

These cases were particularly difficult for me. I thought of my children and how I could not imagine what it would be like to lose my son or daughter. I tried to be as supportive of my clients as possible, but being an observer of others' grief is vastly different from suffering that unimaginable loss oneself. The natural order of life is for us to grow old and, after having lived full lives, for our children to bury us. We are not supposed to bury our children. In the months after Casey's death, I struggled, repeatedly asking questions for which there were, and will never be, answers: "How could this have happened?" "Why Casey?" "Why my daughter?" Later, I began asking myself a different question: "How would Casey's short life be remembered?" She had not graduated from college, found a career, married, or had children. I feared she would be forgotten.

Fear and grief can be great motivators.

I couldn't change the fact that my daughter was dead, but I could work to keep other young people safe. To that end, my wife and I created EndDD.org (End Distracted Driving), a project of our nonprofit The Casey Feldman Memorial Foundation. We



Joel D. Feldman

is a lawyer with the Philadelphia law firm of Anapol Weiss, P.C., and founder of EndDD.org. Since his daughter's death

in 2009, he has given more than 1,000 distracted-driving presentations to students and adults across the country. He is a recovering distracted driver. He can be reached at info@EndDD.org.

PEW NGUYEN VIA PEXELS

have dedicated ourselves to making our roads safer by developing science-based distracted-driving presentations for elementary, middle, high school, and college students, as well as businesses.

To date, I have given more than 1,000 presentations. I know that my efforts, as well as those of our volunteer speakers, are saving lives. But there is so much more that the legal community can do to reduce

attending to toddlers can be very distracting for caregivers. A substantial percentage of caregivers give toddlers snacks or drinks, manage their entertainment, or referee arguments between siblings while driving.

About 20 years ago, I represented the family of a crash victim in central Pennsylvania. The defendant driver testified that as he was driving, he saw a “really hot girl” walking into a convenience store, and he

Studies have shown that texting or manipulating a phone while driving increases crash risk between two and six times.

distracted-driving crashes. I offer my thoughts on the magnitude of the distracted-driving crisis, why we have not been able to significantly reduce distracted driving, how we must reframe the discussion surrounding distracted driving, and what each of us can do, personally and professionally, to reduce crashes and save lives.

Distracted Driving Is Not Just Phone Use

The National Highway Traffic Safety Administration (NHTSA) defines distracted driving as “any activity that diverts attention from driving, including talking or texting on your phone, eating and drinking, talking to people in your vehicle, fiddling with the stereo, entertainment, or navigation system—anything that takes your attention away from the task of safe driving.”

When speaking of distracted driving, most of us immediately think of cell phone use. Clearly, texting, watching videos, or checking social media while driving results in many crashes. But it would be a mistake to think of distracted driving as just cell phone use. Reaching for objects like dropped food, phones, or papers while driving substantially increases crash risk. Additionally, studies have shown that

turned to his left to watch her. As he did so, he turned the wheel of his dump truck, and it crossed the center line, striking my client’s car. He killed their four-year-old son. In another case, my 17-year-old client was paralyzed from the waist down when a young woman lost control of her car while eating yogurt. I have even had students tell me their moms breastfeed their little brothers and sisters while driving, and their friends put on nail polish or change clothes while driving.

It is important for all of us to recognize that distracted driving is much more than cell phone use and that these other distractions present just as much of a hazard as using our phones while driving.

Why Is Distracted Driving So Dangerous?

Studies have shown that texting or manipulating a phone while driving increases crash risk between two and six times. Crash risk increases because of delayed reaction times, lane deviations, and increased time drivers are looking away from the road. Substantial research has demonstrated that our crash risk doubles when we look away from the road for more than two seconds. Longer off-road glances result in even greater crash risk.

Most Drivers Consistently Underestimate the Duration of Off-road Glances

Assume you are driving and your phone is in the center console charging. You hear a notification, turn your eyes away from the road to look at your phone, pick up the phone, and read the text, “When will you be home?” Then you return your glance to the road. For how many seconds do you think your eyes have been off the road? Most people guess one or two seconds. The correct answer is about four seconds. At 40 mph, in four seconds, your car will travel about 240 feet (for every 10 mph, we travel about 15 feet per second). Your stopping distance at that speed would be about an additional 140 feet. The reason why distracted driving is so dangerous is simple: We are not looking at the road while our cars are moving, often at substantial speeds and for considerable distances. As I will relate below, my daughter was killed by a driver who reportedly “only looked away from the road for a few seconds.”

“Hands-Free Is Not Risk-Free”

But distraction is not limited to occasions when we take our eyes off the road. As will be discussed below, many states have “hands-free” laws prohibiting holding phones while driving. However, even using our phones hands-free is not without risk. Some of us may recall driving while having blue-tooth conversations, arriving at our destinations, and being unable to recall precisely how we got there. While we arrived safely, we had not devoted all our cognitive resources to the task of driving. Some of us may also recall that while having that hands-free conversation, we drove past our intended exit. In my circle of grieving family members, there are several whose loved ones were killed by drivers talking hands-free, including drivers who were using voice-activated features of their phones through the infotainment system. Studies have demonstrated that while having hands-free conversations, we do not scan from side to side but rather narrowly focus only on the road directly in front of us. This phenomenon is called “tunnel vision.” Scanning is

vitality important for safe driving and a central piece of all defensive-driving training programs. When we don't scan the road, we decrease our ability to react and avoid crashes. We should be guided by the maxim "Hands-Free Is Not Risk-Free" and strictly limit the frequency and duration of hands-free conversations while driving.

Fatalities Due to Distraction Are Vastly Underreported in the United States

NHTSA's annual report of fatalities caused by distracted driving has remained around 3,000 for the last 10 years. This represents a little more than 10 percent of all fatal crashes. These numbers are compiled using police crash reports from across the country. It has been assumed that deaths attributable to distracted driving are actually much higher as there are many reasons why crashes, although caused by distraction, are not reported as such. Crash report forms vary widely across jurisdictions, specifically with respect to options for reporting distraction. Unlike impaired driving, there is no blood test for distracted driving, and, in the absence of witnesses to the "distracted driving," it is not often that drivers admit phone usage at the time of the crash. For a variety of reasons, some crashes are not fully investigated, and it is often that causes other than distraction are assigned to a crash that was likely caused by driver distraction, i.e., unsafe speed, driver inattention, vehicle struck a fixed object, vehicle ran off the road, or vehicle crossed the centerline. Even when search warrants are issued, and forensic examination of the smartphone is conducted, it can be challenging to relate phone usage temporally to the crash.

In February 2023, NHTSA released a report titled *The Economic and Societal Impact of Motor Vehicle Crashes, 2019*.¹ This report detailed an in-depth attempt to more accurately quantify these fatal crashes. The conclusion reached was that rather than approximately 10 percent of all fatal crashes being caused by distraction, a more reliable estimate would be about 29 percent. This was not surprising

to many traffic safety professionals. Thus, it is highly probable that more than 10,000 of us are killed each year by distracted driving. Distracted driving has properly been called an epidemic.

Laws Regarding Distracted Driving "Hands-Free" Laws

Currently, 30 states and the District of Columbia have laws prohibiting drivers from using handheld phones while driving. Of these, all except for Missouri and Alabama allow police to issue citations without observing any other traffic offenses, i.e., primary enforcement versus secondary enforcement. There are 36 states that prohibit all cell phone use, handheld and hands-free, by novice drivers, and 25 states and D.C. have a total ban on cell phone use for school bus drivers. The Governors Highway Safety Association (GHSA) provides a concise summary of laws for each jurisdiction.² Generally, these laws prohibit the use of "handheld interactive mobile devices" while the vehicle is moving. Some states' statutes have been interpreted so that it is not a violation to use a cell phone while temporarily stopped in traffic, i.e., for a traffic light, but most prohibit use even when temporarily stopped. Many states' statutes specifically exclude from the definition of "interactive mobile device" devices that are being used in a hands-free manner.

By way of example, the most recent state to pass "hands-free" legislation was Pennsylvania, whose law will take effect in 2025. The definition provides that an interactive wireless communication device does not include "(2) a [system or] device that is being used in a hands-free manner or with a hands-free accessory or system, including one that is physically or electronically integrated into the vehicle. ..."³

Penalties

Penalties for distracted-driving offenses vary by state, with the highest penalties for a first offense of up to \$10,000 for texting and driving in Alaska, \$1,000 in Oregon, and \$750 in Utah, while many states have

fines of \$50 or less.⁴ In Alaska, texting and driving is a misdemeanor criminal offense with possible jail time for a first offense. Most states do not assess points for a first distracted-driving violation, but a number do for subsequent violations.

With respect to distracted-driving crashes that result in serious injury or death, penalties also vary across jurisdictions. Pennsylvania, for example, provides for up to an additional five years of confinement for those whose distracted driving results in death (homicide by vehicle) and for up to two additional years for causing serious bodily injury (aggravated assault by vehicle).⁵

Why Have We Not Been Able to Significantly Reduce Distracted-Driving Crashes?

It is not uncommon for studies to show that about 90 percent of respondents describe distracted driving as dangerous or very dangerous, but more than half of the respondents admit to driving distracted themselves. That is roughly consistent with studies that find anywhere from 45 to 65 percent of U.S. drivers frequently drive distracted. In doing presentations for lawyers, judges, physicians, and employees of highway safety departments, most attendees admit they drive distracted. Thus, there is no "choir" to preach to when it comes to distracted driving.

As judges and lawyers, we have a much greater appreciation for just how dangerous distracted driving can be and the potential consequences of driving distracted. Yet, many of us drive distracted. While we know it is dangerous, we just don't think it's dangerous when we do it. We rationalize our behavior, believing we are good at driving distracted because we have not yet been in a crash while doing so. Doesn't this suggest that interventions based on educating audiences about the dangers of distracted driving are likely not to be effective?

How Do We Get People to Stop Driving Distracted?

"I couldn't live with myself if I killed someone while driving." Students and

adults often tell me that they “couldn’t live with themselves” if they killed someone while driving. It is one of the most often-cited reasons given for choosing not to drive distracted. I have worked with more than 20 people who have killed others while driving distracted. Many come to me from court systems to fulfill the community service hours of their sentences. If you met them, you would give up your driving distractions. Each of these drivers believed that nothing bad would happen. Many had never been in a crash before. They all believed themselves to be good drivers, capable of multitasking while driving. But they all wish they could go back to the day of the crash and make a different decision. In the last several months, three men in their 40s or 50s have spoken with me after my presentations. Each had tears in his eyes. Each looked at me and just said a month, day, and year, many years in the past, were the dates that they killed someone while driving. They have never gotten over it, and neither would any of us. I am grateful that I never killed someone else’s child while driving distracted.

The excuses we make for driving distracted have killed more than 150,000. I make a point to ask drivers who have killed others why they drove distracted. Before reading the list of reasons set forth below, perhaps think about some of your reasons, or excuses, for driving distracted.

- “I only looked away for a few seconds.”
- “I thought I was a good multitasker.”
- “I was a good driver and had never been in a crash.”
- “It was an important text or call.”
- “I wanted to be in contact with friends, family, or work.”

My daughter is dead because a driver only looked away from the road for a few seconds. After the driver who killed Casey was sentenced and left the courtroom, I spoke with his wife. During our conversation, she told me her husband “only looked away from the road for a few seconds.” I remember wanting to scream at her. That

excuse, and frankly all these excuses, are so trivial when used to explain the loss of life. I will often ask presentation attendees to assume they killed someone while driving and are now in court about to be sentenced. “Which excuse from this list for killing someone would you like to use?”

Using NHTSA’s estimate of about 10,000 distracted-driving deaths each year, these excuses have killed more than 150,000 people since my daughter’s death in 2009. More than 150,000 families are grieving the loss of a loved one, and there are 150,000 drivers whose lives will never be the same—all because of these excuses, some of which those reading this article routinely use to justify their distracted driving.

Describing distracted driving as “dangerous” merely describes the situation.

Describing distracted driving as “selfish” describes the person. About two years after Casey was killed, I worked with a 17-year-old to help her complete her hours of community service. She had killed a pedestrian while using her GPS. She told me that her distracted driving was “selfish driving.” It was the first time I had ever heard it described that way, and it really resonated with me. If someone had told me before Casey was killed that my driving was dangerous, I likely would have thought nothing of it because I was confident in my ability to drive distracted. However, if someone had said I was being selfish when I drove distracted, I believe that would have been very different. Describing what I was doing as dangerous is a description of my driving. Describing me as selfish for choosing to drive distracted is a description of me as a person, my character. We need to change the narrative of distracted driving and make it personal, focusing on universal values that will compel us to choose to drive without distraction.

Is being that distracted driver consistent with your values? No one likes it when they see others flying by them and looking at their phones. Before Casey’s death, when I saw other drivers looking at their

phones and not at the road, it angered me. I wanted them, when they were driving near me and my loved ones, to be looking at the road and not at their phones. At those times, I thought of myself as very different from them. But I wasn’t. I know today that distracted driving is selfish and not consistent with my values, with who I am and who I want to be as a person. I will often ask audiences, students, and adults, “Is driving distracted consistent with the type of person you want to be?”

Each of us must decide whether we will be safe drivers or lucky drivers. Before Casey’s death, I equated my lack of crashes and tickets with being a safe driver. But I was a lucky driver, not a safe driver. Everyone we share the road with has loved ones who want them to come home safely, just as we do. Being safe and selfless drivers is a choice we all can make.

Parents, Worried About Your Children and Distracted Driving?

Based on all available statistics, parents should be deathly afraid of their children’s distracted driving. Distraction is responsible for about 60 percent of teen crashes, with the frequency of texting by teens increasing from about 17 percent for ninth-grade drivers to more than 50 percent for twelfth-grade drivers. When doing presentations, I look to create opportunities for parents to reflect on their driving behaviors and, if necessary, commit to changing those behaviors. Here is an example.

“Would you do anything to keep your children safe?” I ask parents to raise their hands if they would do anything to keep their children safe. Predictably, every parent raises their hand. I then ask them to keep their hands raised and state the following: “If you have driven distracted with your children in the car, please lower your hand.” It is a rare parent who does not lower their hand. The parents’ faces are a mixture of shock, confusion, and embarrassment. Psychologists call this creating cognitive dissonance. I have pointed out to them the stark inconsistency between

their statement of the importance of keeping their children safe and their behavior of driving distracted with their children in the car.

To Keep Our Children Safe, We Must Be the Drivers We Want Our Children to Be

Why would we drive distracted with our children in the car, exposing them to a greater risk of being in a crash? We also should ask, why would we drive distracted with our children watching? Experts agree that kids as young as five or six years old are watching us and learning from us. We can tell our children not to drive distracted, but studies show that if we drive distracted, our children also will drive distracted. How effective can parents' vital safety messages to not drive distracted be when they are tainted with hypocrisy? More than 70 percent of teens report that their parents drive distracted. If we drive distracted, our children are twice as likely as their peers to also drive distracted. We must be the drivers we want our children to be.

"Do Not Disturb" Settings on Our Phones Help Us Avoid Being Tempted to Look at Our Phones While Driving

Let's face reality. If we hear our phones while driving, we will look at them. The U.S. National Distracted Driving Coalition (NDDC) promotes "Do Not Disturb While Driving Day," an effort to have drivers use settings on phones that block incoming notifications while driving.⁶

The NDDC has resources for families and businesses, including instructional videos demonstrating how to use these settings on all models of phones. Using these settings is easy and effective.

Distracted-Driving Resources Available from EndDD.org

With the help of researchers, child psychologists, and behavior change experts, we have developed presentations for elementary, middle, high school, and college students. Our network of lawyers, health care professionals, and others has given presentations to more than 535,000 high

school students, all without cost to schools. A U.S. Department of Transportation analysis found our teen presentations effective in changing attitudes and behaviors surrounding distracted driving.⁷ Teachers and volunteers also are giving our presentations to students in the second to fifth grades.

Recently, we created a K-1 distracted-driving picture book that teaches children to recognize when their drivers are driving distracted and how to effectively voice their concerns. Lawyers, parents, firefighters, and police officers are reading the book to children. It is never too early to teach children about distracted driving. We are working to create a generation of students who, when they get their licenses, will choose to drive without distraction. Our website, EndDD.org (End Distracted Driving), contains many resources, all of which are free for use.

Working Together, We Can Reduce Distracted Driving and Save Lives

My hope is that some who read this article will choose to change the way they drive so that their driving becomes congruent with their personal values. Our elementary and middle school presentations need to be given to more children. While we have more than 125 volunteer lawyer speakers delivering our program to teens, we have only had a few judges giving these presentations. Judges are held in high esteem by communities and have been incredibly effective doing teen presentations. Diversionary programs for impaired driving have been successful. We need to create similar programs for distracted driving. Teens consistently tell me that it would be very compelling for them to hear from teens whose driving had killed others. Given the right defendant, we are prepared to create public service announcements to help tell those stories.

My life, and my family's lives, changed forever because of Casey's death. Her death caused me to reevaluate my life, my priorities, and, of course, my driving. I feel very fortunate for the opportunities afforded me to work to keep others safe on our roads

and the support I have received from so many. I am more optimistic than ever that we can change driving behaviors in our country and welcome all who would like to help. ■

Endnotes

1. Press Release, NHTSA, NHTSA: Traffic Crashes Cost America \$340 Billion in 2019 (Jan. 10, 2023), <https://www.nhtsa.gov/press-releases/traffic-crashes-cost-america-billions-2019>; NHTSA, THE ECONOMIC AND SOCIETAL IMPACT OF MOTOR VEHICLE CRASHES, 2019 (REVISED), DOT HS 813 403 (Feb. 2023), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813403>.
2. *Distracted Driving*, Governors Highway Safety Admin. (June 2024), <https://www.ghsa.org/state-laws/issues/distracted%20driving>.
3. 75 PA. CONS. STAT. 102 (2024).
4. *Texting While Driving Penalties by State*, ACEABLE (2024), <https://www.aceable.com/blog/texting-and-driving-fines-by-state>.
5. 75 PA. CONS. STAT. § 3732(b)(1.1), (2).
6. *Do Not Disturb While Driving Day*, Nat'l Distracted Driving Coal. (2024), <https://usnddc.org/news/dndwd-day>.
7. D.L. FISHER ET AL., REDUCING DISTRACTED DRIVING AMONG ADULTS: CHILD-TO-ADULT INTERVENTIONS, REP. NO. DOT HS 813 328 (Aug. 2022), <https://rosap.ntl.bts.gov/view/dot/63106>.