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Together, We'll Save Lives: Help CATA End Distracted Driving

by Susan E. Petersen

If your deposition was taken tomorrow, how would you answer the following?

Have you ever read an email while driving? Have you ever typed a text while going down the road? Have you read a text while you are pushing on the gas pedal? How many times in the last week were you guilty of distracted driving? Have you ever lost control of your car -- even if for just a second -- because your eyes left the road to look at your phone? Were your kids ever in the car to witness any of the above? Do you know someone who was hurt as a result of distracted driving?

According to statistics provided by the U.S. Department of Transportation, we already know the probable and frightening answers . . .

- As of December 2012, 171.3 billion text messages were sent in the US (includes PR, the Territories, and Guam) every month.
- At any given daylight moment across America, approximately 660,000 drivers are using cell phones or manipulating electronic devices while driving, a number that has held steady since 2010.
- Five seconds is the average time your eyes are off the road while texting. When traveling at 55mph, that's enough time to cover the length of a football field blindfolded.
- Engaging in visual-manual subtasks (such as reaching for a phone, dialing and texting) associated with the use of hand-held phones and other portable devices increased the risk of getting into a crash by three times.

- 10% of all drivers under the age of 20 involved in fatal crashes were reported as distracted at the time of the crash. This age group has the largest proportion of drivers who were distracted.
- Drivers in their 20s make up 27 percent of the distracted drivers in fatal crashes.
- The number of people killed nationally in distraction-affected crashes was 3,328 in 2012. An estimated 421,000 people suffered injury.¹

Ohio's No-Texting Laws

Ohio's texting ban went into effect in August of 2012, but really did not begin to impact Ohio's drivers until March of 2013 when officers were permitted to issue citations rather than warnings. According to Ohio Revised Code § 4511.205, any driver younger than age 18 is banned from texting, emailing, talking on a phone (even if it has a wireless device like a Bluetooth attached), using a computer, playing video games or using a GPS (unless it is voice-operated or hands-free). For minors, the offense is a primary one, meaning that law enforcement officials can stop the driver on suspicions of distracted driving. A first violation of the texting law will result in a \$150 fine and license suspension of 60 days. A second offense is \$300 and a license suspension for a year.² For adults, § 4511.204 simply states that it is illegal to use a handheld device to write, send or read a text message. It is a secondary offense similar to the seatbelt law, meaning adults

can only be cited for texting if they were initially pulled over for a different traffic violation.³

End Distracted Driving

Despite the new laws, CATA Members reported seeing an increase in the number of new clients who suffered injury as a result of distracted driving. As part of our organization's mission to make Northeast Ohio a safer place to live and work, CATA decided it was time to get involved in a community initiative to end distracted driving. As trial lawyers, we felt we were particularly well-suited to bring this message to schools, civic groups, and other audiences in our communities.

In April (National Distracted Driving Month), the members of our Community Outreach Committee officially joined more than 850 attorneys (along with judges and other safety advocates) from all 50 states in the U.S. and Canada who have pledged to give safety presentations on distracted driving to local high schools, community groups and civic organizations. CATA hopes to educate students and other drivers in Northeast Ohio about the dangers of distracted driving and provide them with simple

solutions to keep themselves and others safe while on the road. The *60 for Safety – End Distracted Driving: Student Awareness Initiative* is a professionally produced, interactive presentation that has been developed under the direction of accredited safety and educational experts. It promotes methods proven to help increase awareness and reduce distracted driving and helps to spread the message and mission of the Casey Feldman Foundation and EndDD.org, a 501(c)(3) nonprofit organization, to local high school students and community organizations.⁴

The Casey Feldman Foundation was established by attorney Joel Feldman and his wife, attorney Dianne Anderson, in honor of their daughter, Casey Feldman, of Springfield, N.J. On July 17, 2009, Casey was a senior at Fordham University. At 21 years old, she was smart, beautiful, and looking forward to a career in journalism. She was working a summer job at a restaurant on the boardwalk in Ocean City. It was broad daylight. She was walking across the street and in a crosswalk. A driver, who was distracted, went through a couple of stop signs and fatally hit her.

A Message from Joel Feldman and the Casey Feldman Memorial Foundation

“The night before she died, I asked her if she was happy – I don't know why, but I did. She answered, “yes.” She said that she was happy not only in the moment, but also about her life as a whole. She had so much energy, excitement, vitality, compassion, love and self-confidence. She knew she would become a successful reporter. She knew she would make a positive difference in other's lives. I knew it, too. After telling me she was happy, she smiled. That is the last conversation I had with her, the last time I saw that pretty smile and the last time I saw her alive.

Casey died because a driver took his eyes off the road for just a few seconds. After it happened, I knew I could have easily been that driver. I had driven distracted many times. It took losing Casey for me to realize how lucky I was not to have killed another family's child, spouse, parent or friend. I lost Casey, and I changed the way I drive. But most people don't lose a loved one to distracted driving. Most people don't realize the chances they are taking when

In this age of technology, it should come as no surprise that there are now devices and apps that prevent mobile-device use while driving. Many of the apps are triggered when a GPS sensor detects that a vehicle is in motion. Some apps even alert parents when a user tries to beat the system. For example, Cellcontrol (<http://www.cellcontrol.com>) provides two options for connecting to a vehicle. One is a device the size of an EZpass transponder that is glued to the windshield with the same adhesive material used to secure rearview mirrors. The more sophisticated choice plugs into a vehicle's diagnostic computer port. The system works with iPhones, Androids, BlackBerrys and Windows Mobile. The software allows an authorized person (i.e., parent) to customize what the driver is permitted to do, and to monitor compliance.

For example, calls could be restricted to an emergency number. Phones can actually be pre-programmed to go into safe mode when driving, but be fully operative when handed to a passenger. TextBuster® (www.textbuster.com) is another available app for this same purpose. It requires that you install a small hardware module under the dash of your car that will prevent Android phones, and soon iPhones, from texting inside the car. The device even reports to parents attempts to tamper with it, and prevents the driver from accessing all text, email or internet functions while driving their vehicle only. It does not prevent incoming or outgoing calls. Finally, most of the companies that sell cellphone service — Verizon, AT&T, Sprint and others — now also provide apps that can limit access. ■

they multi-task behind the wheel. Our children, the least experienced of drivers, are the most at risk.

After her death, Casey's friends told me that Casey taught them that everyone has a story, a unique and beautiful story. She taught them that telling someone's story made a difference, not just for the story-teller but for the audience as well. Stories, she believed, change lives.

Parents who have lost children feel the pain every day – what we have lost, what our loved ones whose lives were cut short have lost, and what the world has lost by not having these special people here. I can't hold or hug Casey, or hear her laugh and say "Daddy." I can't comfort her when she cries, can't see her graduate from college, find a satisfying career, give her away on her wedding day, or be there when she has children. But I can tell her story.

Telling Casey's story, as well as the stories of the many others whose lives have been changed forever by distracted driving, will make a difference. Telling these stories, together, will have an even greater impact."

Together, We'll Save Lives

CATA's Community Outreach Committee, chaired by President-Elect Ellen Hirshman, gave several EndDD presentations to area high school students since its April launch. We are looking to do more. If you know of a local high school which might have an interest in allowing us to spread this message via a presentation, please contact us or pass on our information.

To help spread the story, CATA is bringing Joel Feldman of the Casey Feldman Memorial Foundation to Cleveland in June. He will join our members in giving several heart-felt presentations during his stay. CATA is extremely pleased to announce that he

has agreed to serve as the guest speaker at the Annual CATA Membership Dinner to be held on June 13, 2014 at the Club at Key Tower. For more information on the EndDD Campaign or tickets to our Annual Dinner, visit the CATA website at <http://clevelandtrialattorneys.org>.

As part of our effort, CATA asks this pledge from you: Do your part. Lead by example. Next time you get behind the wheel, put your phone away. Don't look at an email. Resist checking Facebook or your inbox. Don't contribute to the problem. Don't text and drive ... period.

Together, we can save lives. ■

End Notes

1. See <http://www.distraction.gov/content/get-the-facts/facts-and-statistics.html>.
2. **4511.205 Use of devices by persons under 18 years of age.**

(A) No holder of a temporary instruction permit who has not attained the age of eighteen years and no holder of a probationary driver's license shall drive a motor vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.

(B) Division (A) of this section does not apply to either of the following:

(1) A person using an electronic wireless communications device for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;

(3) A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.

(C)

(1) Except as provided in division (C)(2) of this section, whoever violates division (A) of this section shall be fined one hundred fifty dollars. In addition, the court shall impose a class seven suspension of the offender's driver's license or permit for a definite period of sixty days.

(2) If the person previously has been adjudicated a delinquent child or a juvenile

traffic offender for a violation of this section, whoever violates this section shall be fined three hundred dollars. In addition, the court shall impose a class seven suspension of the person's driver's license or permit for a definite period of one year.

(D) The filing of a sworn complaint against a person for a violation of this section does not preclude the filing of a sworn complaint for a violation of a substantially equivalent municipal ordinance for the same conduct. However, if a person is adjudicated a delinquent child or a juvenile traffic offender for a violation of this section and is also adjudicated a delinquent child or a juvenile traffic offender for a violation of a substantially equivalent municipal ordinance for the same conduct, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

(E) As used in this section, "electronic wireless communications device" includes any of the following:

- (1) A wireless telephone;
- (2) A personal digital assistant;
- (3) A computer, including a laptop computer and a computer tablet;
- (4) A text-messaging device;
- (5) Any other substantially similar electronic wireless device that is designed or used to communicate via voice, image, or written word.

Amended by 129th General Assembly File No. 183, HB 606, §1, eff. 3/22/2013.

Added by 129th General Assembly File No. 106, HB 99, §1, eff. 8/31/2012.

Related Legislative Provision: See 129th General Assembly File No. 106, HB 99, §3

3. **4511.204 Driving while texting.**

(A) No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(B) Division (A) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(C) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(E) This section shall not be construed as invalidating, preempting, or superseding a substantially equivalent municipal ordinance that prescribes penalties for violations of that ordinance that are greater than the penalties prescribed in this section for violations of this section.

(F) A prosecution for a violation of this section does not preclude a prosecution for a violation of a substantially equivalent

municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of this section and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two of the Revised Code.

(G) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

(a) A wireless telephone;

(b) A text-messaging device;

(c) A personal digital assistant;

(d) A computer, including a laptop computer and a computer tablet;

(e) Any other substantially similar wireless device that is designed or used to communicate text.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

(3) "Write, send, or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

Amended by 129th General Assembly File No. 183, HB 606, §1, eff. 3/22/2013.

Added by 129th General Assembly File No. 106, HB 99, §1, eff. 8/31/2012.

Related Legislative Provision: See 129th General Assembly File No. 106, HB 99, §3

4. You can view the entire presentation online at <http://enddd.org/presentation/EndDD-StudentAwareness-FinalVersion.pptx>. Make a teenager you know watch it tonight. It could prevent an injury or save a life tomorrow.