



October 23, 2017

Theresa Eagen Executive Deputy Director
NY Dept of Motor Vehicles
Re: "Texalyzer" Technology

Dear Commissioner Eagen:

My daughter Casey was killed by a distracted driver while walking through a crosswalk in New Jersey. It was a beautiful summer day. The driver rolled through a stop sign and killed her. He said he never saw her. I founded EndDD.org (End Distracted Driving), which is a campaign of the Casey Feldman Foundation, to work to keep others safe from distracted driving.

I have spoken with more than 100,000 students and 15,000 adults across the country since then and work each and every day to keep others safe from distracted driving. I work with traffic safety professionals on the national, state and local levels, researchers, law enforcement and educators. I have been a practicing attorney for more than 35 years and received a master's in counseling after Casey's death.

As you know traffic fatalities are increasing and, according [to NHTSA, in 2015](#) fatalities attributable to distracted driving grew on a percentage basis faster than those caused by drunk driving, speeding or failing to wear seat belts. The "textalyzer," by name and intended purpose invites comparison to the breathalyzer and efforts to combat drunk driving. So how does the prevalence of distracted driving compare with that of drunk driving? While verifiable fatalities attributable to drunk driving are about three times those for distracted driving, we know that [distracted driving is vastly underreported](#). According to a [AAA Foundation for Traffic Safety study](#) we also know that more than 50% of serious teen crashes are caused by distracted driving.

So our nation's and New York's distracted driving problem is actually much worse than reported, and adversely affecting our children, the most inexperienced of drivers. Compare this lack of reliable data for distracted driving with, what most believe, is very accurate data for drunk driving. Why the difference? Safety professionals are often quoted as saying "we do not have a blood test for distracted driving." While we will never have a blood test for distracted driving, we should take advantage of technology, like the "textalyzer," which will function similar to a breathalyzer.

The distracted driving epidemic is, unfortunately, likely to be even more resistant to treatment than the drunk driving problem. Smartphone use is just much more pervasive than drinking. We check our phones before going to bed at night and many check them immediately upon waking up. Many of us also check our phones up to an additional 15 times per day according to some estimates. Few if any of



those in attendance at my presentations have driven drunk, or been a passenger in a car with a drunk driver, in the prior 30 days, but more than 75% of those asked have either driven while texting, tweeting, snapchatting, accessing FaceBook or browsing the internet, or been passengers in cars with drivers who did so within the last 30 days. As is often stated, while drunk driving is not socially acceptable the same cannot be said for distracted driving.

There is a deterrent effect for motorists with respect to driving drunk as they know blood alcohol levels can be accurately measured and refusal to submit to a breathalyzer results in a mandatory license suspension. It is my understanding that the textalyzer would only be used by police after a crash, that the motorist's smartphone would always remain in sight of the motorist even when connected to the textalyzer, that the device would not under any circumstances be able to obtain actual content, but rather, only whether or not the device had been used prior to the crash. The information attainable by the "textalyzer" would be limited to identifying specific type of use, i.e. texting, calling, tweeting, etc. This process and the identification of usage or non-usage of smartphones would be done roadside and without the need for a search warrant.

The only reasons that have been given for not utilizing "textalyzer" technology are privacy concerns. I take my personal privacy very seriously, and that includes the wealth of information contained in my smartphone. Accordingly, absent very good reason to do so, my personal information should not be subject to scrutiny by police absent a search warrant. The privacy concerns that I have heard against use of the "textalyzer" include divulging of personal information and potential abuse by police. While it would always be inappropriate for police to be able to extract actual content from our smartphones without a warrant, extraction of usage only is a sensible limitation that balances privacy needs with the needs to protect the public from distracted drivers. With respect to any potential abuse by police, I don't see that as a legitimate concern or a concern that could ever trump protection of the public.

New York has taken the lead in protecting its citizens from distracted drivers in a number of ways to date. It should continue that tradition and make "textalyzer" technology available to protect its citizens.

Respectfully submitted,

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President Casey Feldman Foundation/EndDD.org