

Impaired Driving: Why does the US Lag Other Countries? One Family's Experience and Research



Our beautiful daughter, Maegan Elizabeth Spindler, age 25, was killed by a drunk driver last July 8.

Maegan was just starting out in life... pursuing her dream as a fisheries biologist in the American West, preserving native species. She cherished all life. She was standing in a parking lot, 150' off of a highway, working on a trailered boat and was killed along with her team leader Dr. Robert Klumb, finishing a 13 hour day for the US Fish & Wildlife Service in Pickstown, SD. She was thrown 120' and there were no viewable remains.

Ronald Ray Fischer, Jr., 29, killed her. He had a BAC of 0.274 (nearly 3.5 times legal limit) and was high on marijuana and entered the parking lot at highway speed. He is in custody awaiting trial on 2 counts of first degree manslaughter and vehicular homicide, DWI and 2 drug charges. **The trial is tentatively scheduled for July 21-24.**

After her death, we felt compelled to try and prevent the pain and suffering of other people and their families which results from becoming victims of DUI. We researched and found the

United States seriously lags other advanced economies in this preventable cause of death. The crime also revealed fundamental problems with conflicting tribal and state law enforcement and woefully under-resourced local law enforcement dealing with an overwhelming problem.

We attempted to work with the South Dakota state government to improve DUI enforcement and institute reforms. We met with Governor Dennis Daugaard, senior members of his staff, the Department of Public Safety and State Highway Patrol with information on state-of-the-art research on DUI from the US National Transportation Safety Board (NTSB) and other sources. We were initially very encouraged, especially when the Governor promised a "data driven, evidence based" review of South Dakota's DUI laws and practices.

Ultimately, the Governor chose to do nothing about changing laws and said implementing the recommendations from the NTSB would not have the "intended effect" of reducing DUI¹. We were both mystified and disappointed with his conclusion. South Dakota prides itself in being a "business friendly" state, but as we document, there are fundamental problems with law enforcement, leaving some regions effectively lawless. Perhaps it is driven by a libertarian ideology that views impaired driving as a problem for individuals² – the driver and his victims – and not one for government, evidenced by the Governor's "do nothing" response to ours and the NTSB proposals.

South Dakota's practices on DUI vividly demonstrate why the United States has lagged many other industrialized economies in reducing this preventable death and injury. In South Dakota, it results from a lack of leadership, resolve and funding.

¹ http://sgsstat.com/sd_dui_pdf/Open_Letter.pdf

² South Dakota does not have "Dram Shop" or Social Host liability, which confers liability on those "overserving" a visibly intoxicated person that harms others. It specifically abrogated common law liability for these situations in 1985.

DUI kills 3.5 times as many people in the US *each year* as did the 9/11 terrorist attacks. One third of DUI deaths are innocent victims, like Maegan and Rob. *Think of 9/11 – the number of innocent victims – DUI kills more innocents every single year.* More innocent victims are killed by drunk drivers than are murdered each year in South Dakota. Each death is entirely preventable.

The US is very different from other countries, consider the UK...

Just how different? New York State (where we live) ranks 8th in the US for its DWI deaths per vehicle miles traveled; it is solidly in the top quartile of performance. Compared with other states, its laws are tougher. Yet when comparing New York State to the United Kingdom, there are 18% more DUI deaths for a population less than one third the size:

	Population	Registered Vehicles	DUI Deaths
United Kingdom	63 million	34.6 million	290 ³
New York State	19.6 million	10.8 million	344 ⁴
South Dakota	845,000		53 ⁵

If the UK had a similar DUI per capita death rate as New York State, there would have been 1105 deaths. Compared to South Dakota's, the UK would have 3951 deaths. When compared to "worst in class" DUI performance like South Carolina, Louisiana, Montana or North Dakota the differences are stunning; the UK would have 10+ fold increases or more on a per capita basis.

Would the UK public tolerate 10 fold increases in DUI death rates, as do virtually all states?

Comparable death rates to the worst US states exist in countries in the former eastern bloc or third world countries, where rule of law has broken down or is tenuous. A question is whether rule of law has broken down or ever existed in the worst US states, at least with respect to DUI?

Why are US DUI Deaths High?

- The general acceptability of DUI among the public due to weak deterrence and a culture of tolerance;
- The lack of severe consequences for DUI; and
- Spotty and reactive DUI enforcement, as opposed to DUI enforcement that is proactive and highly visible.

These facts are well-known and widely accepted by transportation safety professionals in the United States. Consider on May 14, 2013, the National Transportation Safety Board released a report, "Reaching Zero: Actions to Reduce Alcohol-Impaired Driving"⁶ which reviewed current practices in the US and abroad. The report contains a detailed set of recommendations for adoption by all states and requested facilitation by the federal government. The NTSB is a non-political, independent federal government body and is the premier organization in the world for studying and advocating transportation safety. Its recommendations do not have force of law.

While the NTSB recommendations represent "best practices" for DUI reduction, the NTSB recommendations have been largely ignored by those with direct responsibility for DUI law and policies (i.e., State Legislatures and Governors primarily, but also the US Congress and president through control of highway funding and grants to the states).

One has to wonder if NTSB recommendations to insure the safety of commercial aviation were similarly ignored by airlines or manufacturers like Boeing and Airbus, whether anyone would ever

³ 2012 UK DWI deaths, reported in <http://www.dailymail.co.uk/news/article-2382443/Shocking-spike-drink-drive-deaths-number-killed-rises-25-290-year.html>

⁴ 2012 New York State DWI deaths, reported in NHTSA Traffic Safety Facts 2012 Motor Vehicle Crashes: Overview, <http://www-nrd.nhtsa.dot.gov/Pubs/811856.pdf>

⁵ 2012 South Dakota DWI deaths, reported in 2012 South Dakota Motor Vehicle Traffic Crash Summary, Department of Public Safety Office of Highway Safety/Accident Records (NOTE: NHTSA reports 45 deaths, but we believe this is in error, as 45 is the number of alcohol-related crashes reported by the State of South Dakota resulting in 53 deaths)

⁶ National Transportation Safety Board (NTSB) report, "Reaching Zero: Actions to Reduce Alcohol-Impaired Driving", <http://go.usa.gov/TeQe>

step aboard an airliner? The carnage from DUI in the United States is the equivalent to a B737 or A320 crashing every 4 or 5 days and is tolerated by politicians.

Example of Happen-Stance DUI Enforcement in South Dakota

Lack of regular, concerted, visible enforcement is the main reason why drivers are willing to take the risk of impaired driving. The chances of getting caught are very low because enforcement is largely invisible or even nonexistent. Only through a frequent use of sobriety checkpoints and other forms of HVE is there a credible fear for drunk drivers of getting arrested and penalized.

One example of how DUI laws are not vigorously enforced is Charles Mix County, South Dakota, where Maegan died. It is a rural county in the southern part of the state, measuring over 100 miles in length and has an area of 1150 square miles. Population is approximately 9200, of which 29% is Native American. The county is a "checker board" of land under the jurisdiction of the state and Yankton Sioux tribal trust lands (not a designated reservation). The tribal lands ostensibly have sovereignty and independent law enforcement, even though they are fully contained within the state.

Law enforcement in the county consists of an elected sheriff, 4 permanent deputies, one contract deputy and a single trooper assigned to a geographically large county with a known, significant DUI problem and other crime associated with extreme poverty and high unemployment. In addition to traditional law enforcement, the sheriff's department provides security for the court house in Lake Andes and also transports prisoners. They are stretched thin.

We understand there are about 130 DUI arrests in Charles Mix County per year. Nationally, it is estimated that a DUI arrestee drives drunk approximately 80 times before arrest⁷ (perhaps rates are even higher in the county, given the demographics and lack of concerted enforcement). Using the 80:1 ratio, there would be an estimated 10,400 annual instances of drunk driving in the county, or almost 30 per day, whereas an arrest occurs approximately once every 3 days.

In the mid-2000s the state apparently had federal grant money and the Highway Patrol would perform sobriety checkpoints about once a month in the county. Reportedly, when federal funding ended, the regular checkpoints were largely abandoned and recently there are only one or two sobriety checkpoints per year. There is no state funding for DUI enforcement actions by local law enforcement, even though the state collects excise and other taxes on alcohol.

Since the virtual abandonment of concerted DUI enforcement actions, DUI arrests are happen-stance. A law enforcement officer on patrol has to witness erratic driving behavior, make a traffic stop and perform a field sobriety test. Unknown is the level of expertise and experience that deputies may possess. Advanced training is provided by the Highway Patrol, but is optional.

If there are 10,400 drunk driving trips annually in the county, does it seem to be a *reasonable* response to only have monthly (as in the mid-2000s) or semi-annual (as today) sobriety checkpoints? Is the current sobriety checkpoint policy a plausible deterrent to drunk driving in Charles Mix County? We believe the answer to that question is painfully obvious, especially to the Spindler family.

The relevant DUI enforcement question is how can the public receive needed High Visibility Enforcement (HVE) in Charles Mix County given the currently limited law enforcement resources? To reign in the problem, weekly random sobriety checkpoints might be necessary for a few years to get the message out. Regular checkpoints of 4 deputies for a 4 hour period would require the addition of approximately 1.0 FTE for a few years. Charles Mix County would be hard-pressed to organize and fund HVE and the increased adjudication costs without state funding.

We also understand that there are counties within South Dakota that have virtually no taxable property (they consist of mainly of tribal lands) and have extreme resource constraints for law enforcement. They receive no help from state coffers for DUI enforcement.

⁷ NTSB, page 6

It should also be noted that Fischer did not have a driver's license and was operating an unregistered, uninsured vehicle when he killed 2 people. This is very common situation in such locations, because state laws are routinely ignored. If there were regular DUI enforcement actions in such lawless areas, this problem could be brought into some measure of control because vehicle registration status and driver licenses are easily checked. But local law enforcement is overwhelmed and understaffed, while the state government chooses to ignore the problem and considers it a local matter.

Few Arrests, Even Fewer Convictions

In the US, it is fairly common for first-time DWI offenders to plea bargain to lesser charges. In New York State, this often takes the form of reducing a DWI arrest (BAC ≥ 0.08) to a DWAI (Driving While Ability Impaired, BAC ≥ 0.05 , < 0.08) conviction. DWAI is still a "drunk driving" offense, but is far less serious than DWI and has lower penalties.

South Dakota has many, many instances of plea bargains from DWI charges to much less severe non-"drunk driving" charges. South Dakota does not have a DWAI offense (although a law enforcement officer can charge an individual with BAC ≥ 0.05 with DWI but this seldom happens and is usually in conjunction with other offenses). Plea bargains take the form of offenders being allowed to plea for non-DWI charges such as reckless driving.

In year 2012 South Dakota had 10,487 DWI arrests but only 5,821 convictions. 45% of those arrested (4,666) for DWI were not convicted⁸. The problem apparently is the result of good defense lawyers and allowable judicial discretion as opposed to poor police work.

The result is an individual in South Dakota can be *arrested* for DWI on multiple occasions, but escape *conviction*. Because repeat offenses are treated more severely than first-time offenses, those getting plea bargains avoid serious punishment and are free to re-offend with a "clean" record.

The US Supreme Court McNeely Ruling of April 2013: Drunk Drivers have Protection Against Warrantless Blood Draws

Ronald Fischer's defense attorney has motioned to have the blood evidence in the case thrown out because law enforcement did not have a search warrant to test his blood alcohol level. This would eliminate the vehicular homicide, DWI and drug charges against him.

In April 2013 the US Supreme Court McNeely ruling reversed 47 years of legal precedence establish in 1966 in the *Schmerber v. California* ruling, which held that a State may, over the suspect's protest, have a physician extract blood from a person suspected of drunken driving without violating the suspect's rights under the Fourth or Fifth Amendment to the United States Constitution.⁹

The McNeely ruling stated that a drunk driver that either refuses or is incapable of providing consent is entitled to a search warrant prior to having a blood sample drawn to establish blood alcohol content, unless "exigent circumstances" exist. The fact that BAC declines as time elapses is not considered an exigency by the court.

Ron Fischer was injured when he hit 2 other vehicles in the parking lot after killing 2 people. He was intoxicated and semi-responsive. The scene of the incident was one of "chaos" as described by the sheriff at a November 22 hearing where the defense was asking that the blood evidence in the case been thrown out¹⁰. Recall that local law enforcement in the county consists of only 5 people; even though there was a double homicide investigation taking place, they still had responsibility to guard the jail and patrol a large geographic area. In the middle of this chaos, the defense claims that exigency didn't exist.

⁸ 2012 South Dakota Motor Vehicle Traffic Crash Summary, Department of Public Safety Office of Highway Safety/Accident Records

⁹ http://en.wikipedia.org/wiki/Schmerber_v._California

¹⁰ <http://www.mitchellrepublic.com/content/lawyer-seeks-block-blood-evidence-fatal-pickstown-dui-case>

In order for the state to try and retain the blood evidence, the November 22 hearing required it to demonstrate exigency with something like a dozen witnesses, the State's Attorney and two attorneys from the State Attorney General's office. There are a series of legal briefs due on the subject between January 31 and March 21. *It is a very complex legal issue and is very expensive. Prior to McNeely this circumstance did not exist.* South Dakota has an "implied consent" law, which says as driver on its highways, one consents to sobriety testing. But the law is open to challenge as a result of McNeely.

Anecdotally, we have heard the need for "McNeely warrants" created a disincentive for law enforcement to arrest people for DUI because of the time-consuming nature of getting a warrant. When law enforcement must get warrants, it has less time to process the arrestee or patrol to insure public safety. Most DUI arrests occur at night and it can be difficult to find on-call judges in a large, rural state like South Dakota, further complicating matters. Fischer's lawyer claims it would take only 5 minutes to get a warrant, which we consider doubtful.

The ultimate "McNeely" paradox is *drunk drivers are a clear and present danger to the public, which the Supreme Court ruling ignored.* One-third of victims are innocents – passengers in the drunk's vehicle, persons in other motor vehicles or pedestrians. DUI is clearly a threat, just like a drunk person shooting a gun in random directions in a town square. Further, can there even be such a thing as "informed consent" when a person is intoxicated? How can a person that is 2 or 3 times over the legal limit even make an informed decision about anything?

Consider the hypocrisy of the Court; over the past dozen years, out of concern of terrorism and the public's safety, courts have thrown civil liberties under the bus. Yet we know DUI has killed over 160,000 people since 9/11, one-third of them innocent victims. More every single year than were killed on 9/11. Yet the US Supreme Court sides with the civil liberties of drunk drivers, ignoring their obvious threat for public safety.

We are not sure how the damage from McNeely could be repaired. Perhaps a federal law defining an "implied consent standard" for sobriety tests as a condition from federal highway funds of something similar might work. But this requires Congressional action.

Inadequate resources for timely crime lab tests, the State didn't arrest Fischer at the scene because it didn't want to pay hospital bill

We were told that Ron Fischer could have been immediately arrested for 2 counts of vehicular homicide at the scene of incident that killed our daughter. In spite of this fact, he was not arrested until 15 days after the killings. Yet at the time we were repeatedly told he was not arrested because law enforcement had to wait for test results.

Fischer was transported by helicopter to a Sioux Falls hospital the night of the crime and we understand left the hospital as a free man after 2 days. The Sioux Falls Argus Leader quoted Lt. Alan Welsh of the Highway Patrol as saying that the state did not wish to be responsible for Fischer's hospital bill (instead the Bureau of Indian Affairs got stuck with the tab). He also stated whether a suspect was arrested at the hospital depended upon the "seriousness" of the crime (implying that killing 2 people was not serious enough for an arrest at the hospital). *This was **totally** unacceptable and caused our entire family great distress.*

It took the state laboratory 11 days to receive, test and return the results from the blood samples of Ron Fischer by US Mail (it did not provide a courier in the case of a double homicide). The reasons for these delays, Lt. Welsh said "the analyzer was out of town" (we assume he meant a person and not an instrument), as reported in the Argus Leader.

Tribal Lands, Disconnected Criminal Justice and Law Enforcement

Ron Fischer, being a member of the Yankton Sioux, returned to tribal lands on hospital discharge, a free man. We were told he was not considered a flight risk. *But fly he did – because the state cannot enforce its laws on tribal lands.* When a warrant was finally issued on July 19 (11 days after the killings), the local sheriff could not arrest Fischer because, like all state and local law enforcement, he lacked jurisdictional authority on tribal lands. The sheriff informed both the tribal

law enforcement and US Marshals that a warrant had been issued for Fischer, but neither had any legal obligation to do anything about it.

We called the sheriff's office daily to find out when Fischer would be arrested; on one call a dispatcher said that they have had fugitives remain for "months" on tribal lands. It was not until July 23 that Fischer finally turned himself in, voluntarily. We do not know what motivated Fischer, but we heard he was asked to leave tribal lands.

We did not know that a Native American that kills 2 people could be a legally remain a fugitive on tribal lands, theoretically indefinitely. Had he not turned himself in, there would have been only two complicated ways he could be apprehended. One was if the Governor could make a "special extradition request" of tribal authorities, which the tribe may or may not honor. The second method was for the state to request from the US Attorney for the State of South Dakota to issue a warrant for a flight from state prosecution, which the US Marshals could then execute. Neither would have been straight-forward or easy.

As the parents of a homicide victim, we were again mystified that such a situation can exist or be tolerated. If Fischer had been a resident of almost any other country and fled, this would not have been the case. Indeed, if he were a foreign national in a similar circumstance, we doubt he'd have been allowed to leave the hospital as a free man in the first place.

We also did not know there is a nearly complete and total disconnect between tribal law enforcement and state jurisdictions. While local law enforcement may *talk* or *meet* with tribal law enforcement, it has no official basis; it is based strictly on personal relationships.

Even more disturbing is the fact that if Fischer had any sort of criminal record on tribal lands, this is unknown and irrelevant for the state criminal justice system. We know that Fischer was convicted on state charges of obstructing law enforcement in September 2012 and was on "unsupervised probation" which forbade drug or alcohol use (reportedly resulting from a domestic violence incident in August 2012). If Fischer had a lengthy tribal "rap sheet" which included alcohol or drug convictions, and if they were recognized by the state criminal justice system, he might have been subject to more stringent probation conditions. Perhaps he would have been subject to the 27/7 sobriety program¹¹ and may not have been intoxicated on July 8.

Fischer's crime affected us personally, but it is hardly the only such incident where this monstrosity of tribal sovereignty conflicting with state jurisdiction creates lawlessness. There are many documented cases of rape and assault¹² which "fall through the cracks" of this mixed authority over criminal justice. The US federal government has done nothing to resolve this issue and it festers and only seems to get worse.

We understand and support the principle of limited self-governance for Native Americans where population and geography can support it. But if criminal justice and law enforcement are not mutually respected, then the notion of sovereignty becomes a sham for victims of crime and only benefits criminals and lawlessness.

Lastly, Maegan and Rob were federal government employees, killed at work, during the commission of a crime. At no point did any federal law enforcement become involved in the investigation or apprehension of Fischer; they never made a single inquiry of South Dakota law enforcement. When Fischer was at-large, Gregg's brother (a 38 year USFWS refuge manager in Alaska) went through the chain of command trying to get action, but he only met bureaucratic roadblocks. We made direct appeals to the Department of the Interior (of which USFWS and the BIA are part) because DOI Secretary Sally Jewell said in a condolence note "Please let us know if there is anything we can do to provide support". It was not until our daughter posted Tweets to the Secretary's Twitter account did we receive a response – after Fischer turned himself in.

The Spindler Family's South Dakota DUI Reform Website (contains information about our DUI Reform Effort, news the crime and Maegan's short life): http://sgsstat.com/sd_dui_reform.html

¹¹ <http://apps.sd.gov/atg/dui247/>

¹² <http://www.npr.org/templates/story/story.php?storyId=12203114>