



Years after MADD woke the public to DUI deaths, punishment for drivers in Washington state who kill while under the influence is still negligible. As families mourn the loss of loved ones, they also wonder why the killers are free after a few short years to drive-and drink-again

By Carol Tice

# IS THERE A ROAD

PHOTOGRAPHS BY BRIAN SMALE



# TO JUSTICE?

JO INGALSBE STANDS BY I-405, NEAR THE  
SPOT HER SISTER AND SISTER-IN-LAW WERE  
KILLED BY A DRUNK DRIVER IN 2001





MELISSA CORTÉS KNOWS THAT HER BROTHER'S KILLER WILL LIKELY RECEIVE A JAIL SENTENCE OF 31 TO 41 MONTHS



Last August, 30-year-old **ZACHAREY COX** of Issaquah was at a motorcycle rally in Biggs, Oregon. He called home, complaining about “bad mojo”—riders who were driving crazy and wiping out, recalls his sister, Melissa Cortes.

So although Cox—whom Cortes describes as a motorcycle nut—was not known for leaving a rally before the end, he did on that fateful day. His family and friends will forever see this as a tragic irony. His schedule change meant that the fun-loving, redheaded Cox was near milepost 92 on Chinook Pass Highway, not far from Yakima, at 4:30 p.m. on August 5, at the moment that Scott Edwin Bradford pulled an illegal U-turn in his blue Subaru Justy. Bradford, 39, had been camping nearby and had two teenage boys riding with him; his blood alcohol level was .18, police say, more than twice the legal limit.

The police report indicates that Cox braked hard and steered toward the centerline to try to avoid the car, to no avail. He died there on the road, by his trashed, beloved bike. Bradford and his passengers were unharmed.

Two months after the crash, Cox’s family and friends were still stumbling through their days. Cortes says her father can’t discuss Cox’s death yet (her mother had been out of contact with Zach for some years). Cortes doesn’t just miss the brother she was close to, but also the uncle who was her 4-year-old son Pablo’s favorite.

Friend Lisa Retchless keeps waiting for the longtime Microsoft computer repairman to knock on the door of her Kirkland home, cracking his goofy smile and cheering everyone up. He often stuck around for dinner with Retchless and her husband, Nathan; the two men grew up together.

“Me and my dad think about him constantly, all day,” Cortes says. “No matter what I say or do, there’s nothing to bring him back. I feel so helpless. And this guy [Bradford] gets to go on living, and live the rest of his life.”

For families like Cox’s, the pain of losing a loved one to the preventable crime of drunk driving is exacerbated by the knowledge that the person responsible for his death will spend little time in jail.

As of last October, Bradford was in jail on \$50,000 bail, awaiting a scheduled January trial in Yakima. For Cox’s family, there’s very little suspense as the wheels of justice slowly turn. They know that, as an offender with no previous felonies, Bradford, if convicted, will be sentenced to between 31 and 41 months in jail.

Yakima county deputy prosecutor Christine Baker says she’s found no evidence of past felonies or previous drunk-driving convictions. But with no unified database of arrests across the state or country, the process of researching Bradford’s record is hit and miss. Bradford’s court-appointed attorney, Jeff West, says he can’t comment on the ongoing case.

So Bradford stays in the lowest possible sentencing range for a crime that’s quite commonplace in Washington state: getting drunk and killing someone with a car.



**GRIEF IS KEEPING RON COX, ZACHAREY'S FATHER, FROM SPEAKING ABOUT HIS SON'S DEATH. BELOW, A FAMILY SNAPSHOT SHOWS YOUNG PABLO WITH HIS FAVORITE UNCLE, ZACHAREY**

**THERE'S BEEN A LOT** of progress in the fight against drunk driving in the 26 years since the national advocacy group Mothers Against Drunk Driving (MADD) was formed by California mother Candy Lightner, after her daughter, Cari, was killed by a serial drunk driver who got just two years in jail. Especially in the early years, MADD activists were successful in changing laws and attitudes and reducing drunk-driving deaths. The federal blood-alcohol standard for drunk driving was lowered from .10 to .08, and the phrase “designated driver” has become part of our lexicon. Nationally, drunk-driving deaths declined nearly 31 percent between 1986 and 1994 (from more than 25,000 to 17,300), according to the National Highway Traffic Safety Administration.

But progress stalled in the next decade, with drunk-driving fatalities declining just 2.4 percent between 1994 and 2005. In Washington, there were 296 such fatalities in 1994 and 294 last year.

Local headlines occasionally bring news of a particularly heinous vehicular homicide involving drugs or alcohol—as with Mary Jane Rivas, who, with a DUI charge pending, allegedly used cocaine and then barreled through a red light at 80 mph in Seattle's Central District last August, killing Seattle rookie cop Joselito Barber. Or when repeat drunk driver Susan West, who served six years in jail for killing Sammamish wife and mother Mary Johnsen in a drunk-driving crash in 1997, was arrested for DUI again last June in Bellevue.

In Washington state, where almost 300 people were killed by impaired drivers last year, the media cover only the most shocking cases, usually those that involve prominent citizens or repeat offenders.

Alcohol and drugs play a greater role in Washington crashes than in impaired driver fatalities nationwide. Nationally, 39 percent

convictions, without a time limit. Former state representative Luke Esser (he was defeated in last November's elections), a supporter of the new DUI felony law, was hoping to make it four DUIs in 10 years or five in a lifetime. "The new law is just a baby step," Esser says. "To me, it's still way too soft."

One proposed house bill that may see some action in 2007 would make three convictions in seven years a felony. Other bills under consideration include one that would compel drunk drivers to install a special license plate on their cars to alert other drivers, something 20 states already require. Including the plate law, MADD notes seven drunk-driving laws Washington state lacks. Among them: a mandate for sobriety checkpoints on key holidays, mandatory hospital reporting of drunk drivers to law enforcement and an anti-plea-bargaining law that would stop drunk drivers from negotiating their offenses down to non-DUI convictions.

MADD's Eakin says her group is waiting to see what new laws are proposed for 2007 before determining where MADD will focus its legislative advocacy efforts.

There are several hurdles in passing legislation that impacts drunk driving, according to MADD. One is the cost of housing inmates; another is the continued perception by social drinkers, including state legislators, that drunk driving isn't a major problem. Eakin says many people still view DUI as a fairly harmless mis-

take, not the kind of offense that should land one in a prison cell with rapists and thieves. So given that state budgets are always tight, sentences for drunk drivers tend to stay light.

"We're caught between wanting to jail more drunk drivers and not wanting to build more jails," Eakin says.

Some other states are getting tougher on DUI killers and beginning to charge them under manslaughter or even murder laws, exacting harsher penalties. In a New York case decided last October, a 25-year-old man was convicted of second-degree murder for killing two people in a head-on, drunk-driving collision. His possible sentence is at least 15 years; at most, 25 to life.

Nothing like this has yet been tried in Washington.

In 1998, Washington state legislators did pass a law intended to make it more difficult for drunks to wind up behind the wheel.

## IN 27 STATES, A DRIVER'S SECOND OR THIRD DRUNK-DRIVING OFFENSE RANKS AS A FELONY. IN WASHINGTON, ALL DUIS ARE MISDEMEANORS...THAT WILL CHANGE IN JULY WHEN A FIRST-EVER FELONY DUI LAW TAKES EFFECT

of auto fatalities in 2005 were linked to impaired drivers; in Washington, it was 45 percent—something that Judy Eakin, Pacific Northwest regional executive director of MADD, attributes to the state's relatively weak drunk-driving laws.

"I think Washington falls sort of near the bottom third among states in terms of having comprehensive and really tough laws," she says.

In 27 states, a driver's second or third drunk-driving offense ranks as a felony. In Washington, all DUIs are misdemeanors, punishable by up to a year in jail. That will change in July when a first-ever felony DUI law takes effect—but observers don't expect it to have much impact. The new law will mean that an offender with five DUIs within 10 years will be charged with a felony, punishable by up to 29 months in jail for a first felony.

This change will affect relatively few drivers—about 200—according to a study of state DUI charges done recently by *The Seattle Times*. The law would have more impact if it included those with three DUI charges—more than 4,000 Washington drivers have had three DUI charges since 2000.

The new law will likely be difficult to enforce, says Dan Satterberg, chief of staff for King County prosecutor Norm Maleng. It will mean a lot of legwork for investigators who will have to scour state and municipal courts to find previous DUI convictions and then prove they were done by the same person. With no statewide or national database that compiles such court information, these charges can be hard to prove. Since DUIs are misdemeanors, the perpetrator may not be fingerprinted or photographed.

"It has some practical challenges for us to implement," he says.

Meanwhile, activists such as Eakin would like to see the law changed to three DUI

## BACK ON THE STREET

Average sentences for DUI homicide perpetrators in Washington state. Up to one-third of their sentences can be reduced for good behavior.

CHARGE	# OF OFFENDERS SENTENCED TO JAIL		AVERAGE SENTENCE IN YEARS	
	2004	2005	2004	2005
<b>VEHICULAR HOMICIDE: DRUNK</b>	42	34	4.43	4.89
<b>VEHICULAR HOMICIDE: RECKLESS MANNER</b> (sentenced under post '96 law)	14	10	2.50	2.99
<b>VEHICULAR HOMICIDE: DISREGARD FOR SAFETY OF OTHERS</b>	9	12	1.78	3.68

SOURCE: Washington State Sentencing Guidelines Commission. All figures are for fiscal years ending in June.





WEARING SLEEVELESS SHIRTS ISN'T A FASHION STATEMENT FOR KIM DWYER WHOSE INJURIES—THE RESULT OF AN ACCIDENT INVOLVING A DRUNK DRIVER—HAVE CONFINED HER TO A WHEELCHAIR AND LEFT HER WITH CONSTANT PAIN IN HER ARMS

Named for Susan West's victim, the Mary Johnsen Law requires that drivers convicted of DUI install an interlock device, which prevents drunk drivers from operating their car. These drivers cannot regain their driver's license until the device is installed.

Though well intentioned, the law appears to be ineffective. As of September 2006, 38,600 people have been ordered to install the device, but only 4,459 have done so.

That leaves more than 34,000 people with drunk-driving convictions who don't have interlocks. More study is planned by the state Senate Republican caucus and the state Department of Licensing to learn the status of these drivers. The fear: Thousands of them are likely driving without a license and without the device.

**KING COUNTY SENIOR DEPUTY** prosecuting attorney Amy Freedheim spends her days dealing with the results of Washington's lax drunk-driving laws. In her downtown Seattle office there is a wall covered with snapshots of people young and old, of every race and economic bracket. Their common link? They're all dead, and their killers have been prosecuted by Freedheim in her seven years working DUI-related vehicular homicides.

In decades past, Freedheim says, penalties for drunk-driving deaths in Washington more closely tracked those for manslaughter, for which a first offender's sentencing range is 6.5 to 8.5 years. But over the years, that changed, in part spurred by concern about the costs of housing the state's soaring inmate population.

Now, the highest possible sentence for a first-time DUI vehicular homicide offender—like Scott Bradford—is less than 3.5 years, less than half that of the comparable manslaughter. With good time, a first-time offender is typically out in around two years. The energetic prosecutor's many years on the job haven't dimmed her outrage and frustration at how little jail time she is able to obtain for drunk drivers who've killed.

"The most difficult part of my job is telling families the ranges for these crimes," she says. "They always say the same thing: 'Are you kidding?'"

In Kim Dwyer's case, the drunk driver got even less time—because Dwyer survived her encounter. When Dwyer thinks back on her crash, she ticks off the many points at which she might have changed her fate.

She should have stuck with her original plan not to attend a co-worker's Halloween party in 2002. She did go, dressed as a frog.

She should have driven her own car as she'd planned, rather than piling into a Honda Civic with three girlfriends. She should have kept closer tabs on how much driver Amir Clyde Suleiman was drinking, should have insisted she drive home, should have grabbed the wheel. Or maybe jumped out the sunroof of the speeding car as it barreled down the Renton-Maple Valley Highway in Renton at 70 miles an hour.

Dwyer, now 35, has lots of time to think since that October night when Suleiman rolled the Civic as it neared the I-405 freeway entrance. She was thrown through the back window into

**"I TOLD THE JUDGE, 'I THINK THIS GUY DESERVES A MURDER CHARGE MORE THAN A DUI,' " HE SAYS.**  
**"PEOPLE NEED TO GET MORE INVOLVED WITH MADD, SO THEY CAN CHANGE THE LAWS."**



**JO INGALSBE'S RELATIVES, KATRINA NGHE (LEFT) AND MICHELLE HUANG, WERE KILLED BY A DRUNK DRIVER IN 2001. THE DRIVER SERVED 3.5 YEARS**

a ditch, damaging her spine. Suleiman's blood-alcohol level two hours after the crash was .12, 50 percent above the legal limit.

Doctors say it's unlikely Dwyer will walk again, and she's regained only limited use of her neck and arms. The state's Crime Victims Assistance fund paid to modify a home in Kirkland for her, where she lives with help from round-the-clock caregivers. On a chilly day last fall, she could warm herself only with a sleeveless zip-up red fleece vest. She can't wear anything on her arms, which are racked with constant pain that makes it impossible to wear even a T-shirt.

Dwyer felt some measure of justice when Suleiman got an exceptional jail sentence—four years for three counts of vehicular assault, along with nearly \$42,000 in restitution.

"I felt really, he should be in jail as long as I am in this chair," she says. "But the jail time he got was good."

Then came *Blakely v. Washington*. In this case, a man who kidnapped his estranged wife charged that the exceptional sentence he was given was unfair. The U.S. Supreme Court, in 2004, agreed with him and ruled that exceptional sentences imposed by judges, without a jury finding of aggravated circumstance, violated defendants' right to a jury trial. The decision had immediate repercussions for scores of cases, many of which were resentenced back to their standard ranges.

Suleiman successfully appealed his exceptional sentence, and in early 2005, with several months remaining to serve, he was freed.

Prosecutor Freedheim says that decision is being appealed. The case will likely grind its way through the courts until late this year (2007). Dwyer hopes that Suleiman will be returned to jail to serve out the rest of his sentence. The shortness of his remaining time is beside the point, she says.

"Because, where's my justice?" she says. "That was stripped away, the little bit I had."

(Attorneys for Suleiman say he can't comment on the ongoing case.)

Freedheim says vehicular homicide drunk-driving cases are among the categories that have been most affected by *Blakely*. Because standard ranges for those cases are so low, in the past prosecutors frequently argued for, and got, exceptional sentences.

If Suleiman had beat Dwyer in an alley with a baseball bat instead, Freedheim notes sadly, she could have argued for more jail time, because the bat would have been considered a weapon.

**TOM HAYES OF SPOKANE** tries not to think about the man who killed his son in 2005. In a conversation last fall, he couldn't immediately recall Charles Wesley Ferguson's name.

He does remember, though, learning in the wee hours of August 9, that Ferguson, drunk and on cocaine, had barreled down Highway 64 near Aberdeen and hit his son Jared's stalled car, which was on the shoulder of the highway, as Jared sat buckled inside, awaiting help. The impact spun Jared's car 360 degrees, collapsed the trunk and back seat, and popped the tires off their rims.

He also recalls that Ferguson, despite his own head injury, had the presence of mind to switch on the flashers of his smashed-up blue '96 Pontiac Grand Am before running and hiding in the darkness, rather than seeking help for Jared. With one previous DUI on his record, Ferguson got 6.5 years for vehicular homicide DUI and hit and run. Sentenced in January 2006, he will likely be out in about four years. (Ferguson's attorney did not return calls.)

Hayes also remembers his son's swollen head, and that he never woke from a coma. Three days later—when Jared's brain stem ruptured and he was deprived of oxygen—Hayes and his ex-wife made the wrenching decision to disconnect their son's life support. He remembers how he and other family members said their goodbyes and watched his 6-foot, 7-inch son, a University of Washington senior full of promise, take his last breath. More than a year later, Hayes still cries as he relates Jared's last hours.

"I told the judge, 'I think this guy deserves a murder charge more than a DUI,'" he says. "People need to get more involved with MADD, so they can change the laws."

Like Tom Hayes, Jo Ingalsbe still cries when she talks about the early-morning phone call she got back in May 2001. A relative broke the news that her 35-year-old sister, Katrina Nghe, and 26-year-old newlywed sister-in-law, Michelle Huang, had been killed by a drunk driver.

Ingalsbe, who's a civilian worker at the U.S. Naval Submarine Base in Bangor, Washington, begins talking with an almost military detachment. She describes how Deanna Murphy, 31, barreled the wrong way down I-405 just south of the 520 bridge at 60 mph, obliviously munching an apple at approximately 2:30 a.m., as she plowed into the car driven by Nghe's fiancé, Kien Ba Lu.

But her resolve cracks, and the pretty, petite black-haired woman wipes away tears as she says that the reality of her sister's death finally sank in when she identified her body at the King County medical examiner's office. She tells this story on a lunch break near the base and decides to take the rest of the afternoon off, too emotionally drained to go back to her desk.

"When your family came over as Vietnamese boat people and survived that, you think that's going to be the pinnacle, the worst thing ever," she says. "Now we are serving a life sentence of grief."

She's still angry that, at sentencing, Murphy wouldn't even look her in the eye. Prosecutor Freedheim says lack of regret is typical in DUI killers. "There have been only a very small handful of sentencings I've

seen," she says, "where I felt the defendant was truly remorseful."

These days, Ingalsbe has reason to think about her sister's killer at least once a month, when she walks to the mailbox at her Poulsbo home and takes out a restitution check from Murphy. It's for \$11,250.

It used to be for about \$4, but that changed in April 2006, when Murphy was released from prison, after serving 3.5 years of her 6-year sentence, and got a job. (Attempts to reach Murphy through her probation officer were unsuccessful.)

Ingalsbe thinks about calling Murphy or maybe meeting with her. She wants to hear that Murphy won't drink anymore. She wants to tell her that Lu died just a few years later, in his mid 30s, likely from his crash injuries and the stress of the multiple surgeries that followed.

"I want her to know she really killed three people," Ingalsbe says.

Ingalsbe has joined a sad and growing club that, in the next few years, Tom Hayes and Melissa Cortes will join, too. With Washington's brief DUI sentences, she is among the many people who have to live not just with the loss of a family member killed by a drunk driver, but also with the idea that just a few short years later, the killer is free to walk. Most try not to dwell on this. Zach Cox's friend Lisa Retchless says she's channeling her energy into positive things. She's thinking of starting a chapter on the Eastside of the Medina-based charity Anna's Ride Home, which provides free rides home from participating bars. She writes her legislators to advocate passage of tougher drunk-driving laws and penalties.

"I don't want to waste my anger on Scott Bradford," she says. "It's not ever going to be okay, or right, that Zach's gone. But Scott Bradford has already taken enough from me. I try to focus on changing the laws." **S**

## A BETTER WAY

### INNOVATIVE PROGRAMS ATTACK DUIS IN NEW WAYS

Two innovative new programs in Washington state are aimed at cutting DUI homicides by attacking the root of the DUI problem—alcohol abuse.

In January 2006, Spokane County opened a DUI court. A growing trend in criminal justice over the past decade, DUI courts allow drunk drivers to forgo jail time in exchange for an intensive program of intervention, meeting frequently with a team of judges, counselors and others in an effort to end their substance abuse. There is also a combined drug-DUI court in Clark County, begun in 1999.

National studies have shown DUI courts to be more effective at preventing repeat DUI offenses. Washington State Traffic Safety Commission impaired driving program manager Angie Ward is hoping there will be more DUI courts in the state soon. Nationally, there were more than 130 in 2006, with more planned.

"They're expensive," she notes. "But if people reoffend and go to jail, or kill someone, what's the cost to society?"

Another program uses hospital emergency room visits as an opportunity to intervene and change a drinker's behavior. First piloted at Harborview Medical Center in Seattle, the program—known as the Washington State Screening, Brief Intervention, Referral and Treatment Project—received a \$16 million, five-year grant from the federal Substance Abuse & Mental Health Services Administration/Center for Substance Abuse Treatment. The program began in the spring of 2004 and is now running at nine emergency rooms in the state.

Project director Stephen O'Neil of the state Department of Social and Health Services says he's hoping to see more emergency rooms adopt the brief-intervention model, in which chemical dependency professionals screen patients for substance abuse problems and, if necessary, provide intervention or referral for treatment.

An initial study of the program's results indicates the intervention is highly successful. Patients who received a five-minute intervention reported a 26 percent reduction in the number of days they drank per month, when asked six months after their hospital visit. Those who were referred for treatment reported a 77 percent reduction in drinking. *C.7.*