

11-236

NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

ISSUED: September 18, 1980

Forwarded to:

Honorable Joan Claybrook  
Administrator  
National Highway Traffic Safety  
Administration  
Washington, D.C. 20590

SAFETY RECOMMENDATION(S)

H-80-47

About 12:45 a.m., on February 23, 1980, a two-door sedan was westbound on a two-lane section of U.S. Route 64, near Perry, Oklahoma. Traveling in the eastbound lane at an excessive rate of speed, the sedan crested a hill and collided head-on with an eastbound pickup truck. The sedan rebounded into the westbound lane and began to burn. The pickup truck was then struck by a following eastbound four-door sedan. Three of the five pickup truck occupants were ejected from the vehicle; all five suffered fatal injuries. The driver of the two-door sedan was killed. The two persons in the four-door sedan received minor injuries. 1/

The driver of the two-door sedan was 20 years old, weighed 120 pounds, and held a valid Oklahoma driver's license with no restrictions. Her driving record listed one previous accident, on May 4, 1979.

From about 6:30 p.m. until 11 p.m. on the evening preceding the accident, the driver was at a local bar. About midnight she was observed leaving the tavern, alone, in her car. No person was found who could testify to her whereabouts from midnight until the accident.

The 34-year-old, 210-lb driver of the pickup truck, was a local resident, and held a valid Oklahoma driver's license with no restrictions. He had no record of previous traffic violation convictions or accidents. He, his wife, and their three children had spent the evening playing cards at a friend's home in Perry; they arrived about 8 p.m. and left about 12:30 a.m. According to the driver's host, during the evening, the driver drank about a "six-pack of beer." His host stated that he did not appear intoxicated when the family departed and that all five occupants were riding in the front seat of the pickup truck when they left.

1/ For more detailed information, read "Highway Accident Report--Head-on Collision of Sedan and Pickup Truck, U.S. Route 64, near Perry, Oklahoma, February 23, 1980" (NTSB-HAR-80-4).

Toxicological examinations were conducted by the Office of the Chief Medical Examiner of the State of Oklahoma. The blood alcohol level (BAL) for the driver of the two-door sedan was 0.21 percent by weight with a carbon monoxide level of 9 percent carboxyhemoglobin. The BAL for the pickup truck driver was 0.15 percent by weight. No autopsy was performed on the driver of the two-door sedan, and since her body was severely burned, no injury data were obtained. The effect of alcohol impairment on the judgment and driving ability of the two-door sedan driver could explain the vehicle's excessive speed and its being in the eastbound lane of traffic as the car topped the crest of the hill. The alcohol-impaired judgment and driving ability of the pickup truck driver was not a contributing factor in this accident. Without warning, he was suddenly confronted with an oncoming vehicle 340 feet away in his lane of traffic at a closing speed of about 135 mph (199 feet per second).

Neither of the drivers killed in this accident had previous records for driving under the influence of alcohol or driving while intoxicated. It is possible that the reason the two drivers had clear records was the fact that the previous Alcohol Safety Action Project (ASAP) program emphasis was in the major cities and not in the rural areas or less populated cities. 2/ Or it may be possible that some other programs for detection is indicated.

The two drivers killed had consumed quantities of alcoholic beverages in the presence of persons who might have persuaded them not to drive. One of the owners of the bar had seen the driver of the two-door sedan in the bar for nearly 5 hours. Friends of the driver of the pickup truck were aware that he had consumed six cans of beer between 8 p.m. and 12:30 a.m.

In recent years, the Safety Board has investigated 7 major accidents resulting in 61 fatalities (see Table 1) where the drivers (with BAL ranging from 0.12 to 0.24) had been drinking in the presence of persons who might have persuaded them not to drive.

There are 21 States with laws similar to California's Dram Shop Law or other Civil Damage Laws which have changed the common law rule that the proximate cause of injury to the consumer or a third person was the consumption and not the sale of liquor. Recent court decisions in California and Oregon 3/ have held that both public tavern keepers and private hosts can be held liable for actions of persons to whom they have sold or served alcohol. Oklahoma has no such law.

NHTSA has recently published a study on State alcohol laws relating to highway safety. 4/ This study is predominantly concerned with preliminary breath tests, blood alcohol concentration, driver screening, rehabilitation, legal age for consumption of alcoholic beverages, and sanctions. The Board was not able to locate any study or research published on the relationship of highway safety and Dram Shop Laws. The Safety Board believes that NHTSA should evaluate the effectiveness of existing Dram Shop Laws with a view toward the potential benefits of amending the Highway Safety Program Standard No. 8 as a guide for the States in reducing alcohol-involved highway accidents.

2/ Results of National Alcohol Safety Action Projects, U.S. DOT, NHTSA, DOT-HS-804-033, May 1979.

3/ Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity 258 Or. 632.485 P.zd. 13 (1971); Vesely v. Sager, Supreme Court of California, June 24, 1974 Sup., 95 Cal. Rptr. 623; others.

4/ Alcohol and Highway Safety Laws: A National Overview, U.S. DOT, NHTSA, DOT-HS-805-173, February 1979.

Table 1.--Accidents involving intoxicated drivers who  
drank in the presence of someone who could  
have discouraged them from driving.

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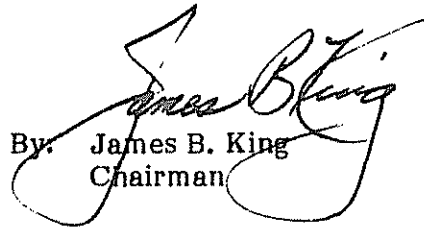
<u>Accident</u>	<u>Report No.</u>	<u>Date of Accident</u>	<u>BAL of Driver</u>	<u>Persons Killed</u>
Bus/Automobile Collision, Baker, California	SS-H-3	03-07-68	0.15	20
Grade Crossing Accident, Tracy, California	RHR-76-1	03-09-75	0.14	3
Grade Crossing Accident, Plant City, Florida	RHR-78-2	10-03-77	0.14	10
Bridge Accident, Alhambra, California	HAR-79-5	11-11-78	0.18	7
Pickup Truck Accident, Crofton, Maryland	HAR-79-6	04-23-79	0.135 (est.)	10
Median Crossover, New York, New York	HAR-79-8	06-08-79	0.12	4
Head-on Collision, Indiana, Pennsylvania	HAR-80-3	09-23-79	0.21 and 0.24	7
				<u>61</u>

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Therefore, the National Transportation Safety Board recommends that the National Highway Traffic Safety Administration:

Evaluate the effectiveness of current Dram Shop type laws in reducing the number of highway accidents involving drivers under the influence of alcohol in States having such laws. If the above evaluations prove to be positive, then incorporate the concepts of these laws into the existing Highway Safety Program Standard No. 8, Alcohol in Relation to Highway Safety. (Class II, Priority Action) (H-80-47)

KING, Chairman, McADAMS, BURSLEY, and GOLDMAN, Members, concurred in this recommendation. DRIVER, Vice Chairman, did not participate.

  
By. James B. King  
Chairman