

REDDI or Not, Here They Come ...

Some time not too long ago, I made one of those huge mistakes. I drank and then I got behind the wheel. I wasn't drinking heavily, but I'm sure I didn't have as much control as I imagined. And I got caught. Sure, I had some bad sushi that night; and it probably amplified the effects by messing with my liver and other parts of the old digestive tract. But that's not an excuse. No crashes, no one was injured, and that's about the only thing I can be thankful for. I got lucky.

Just in case you're feeling lucky, let me tell you how I was caught. It's a disturbing story, one of those tales that makes it hard to sleep. On the night in question, after traveling too many miles without incident, an alert member of the REDDI program ("Report Every Drunk Driver Immediately") caught me swerving, had to avoid me, and then dropped a dime on me using the old cell phone. Vigilant city police picked it up from there, followed and caught me in their snare. Disaster averted, the miscreant placed in the capable hands of Johnny Law, etc.

On the surface, deputizing citizens to report these kinds of offenses seems to make sense. After all, their necks are on the line, too. But there are serious consequences to setting up such a program – many risks, both to the participants and the citizens they report on. The crime of DUI is serious; and the penalties are, as they should be, correspondingly severe. In our effort to create justice, to make the punishment fit the crime, the penalty has grown to the point that it undoubtedly changed the course of my life, and probably not in a good way.

Now, this is **not** an argument for leniency. Given the nature of our legal system, the people who report DUI drivers through the REDDI program cannot remain anonymous. That's right, I have their names, addresses, the works. And that's a scary thing. Not because I wish them any harm, but because there may be others out there who do. Or will, eventually.

I'll have to pray for them, my witnesses. God forbid, should someone less civilized take their actions personally, I could get a knock on *my* door. And *arrested* ... and *held*, at least until the police sort out *who else* decided to take justice into their own hands. It's not a happy thought, this notion that I am forever linked to these random, sort-of-deputized citizens. Presumably, I'll always have a motive to wish them harm, as will everyone else who has been arrested on the basis of one of their "reports." I suppose I'll need a perpetual alibi as well, just to be safe. And obviously, I'll have to consider every vehicle on the road a potential "deputy" should I ever try to drink and drive again. Or commit any other sort of crime. I guess that's one way to attack the problem.

Too bad it didn't work for Stalin, or Hitler, or any other despot in the historical record. Unless you're prepared to argue that ordinary citizens can be trained to a sufficient depth to replace officers, you've got a witch hunt, escalating fascism, or, at the very least, a massive potential for lawsuits on your hands. If we're lucky, someone will win a big enough case to convince everyone that deputizing citizens in this fashion is a *bad idea*. More likely, the wrong person will get the right information, and a tragedy will have to make the point. History, and the despots, have already illustrated the effects of a police state on the body politic – do we really need to repeat those lessons?

When the police use confidential informants, they are bound by certain rules. These rules are intended to account for conflicts of interest, witness reliability, and other potential abuses of the system. The REDDI program introduces all the issues associated with using informants, but it fails to account for them in any structured way. Essentially, the risks, the liabilities, and the potential for abuse are transferred from trained officers to a largely unprepared citizenry. At it's worst, the REDDI program may be characterized as an institutionally supported form of vigilantism. To ignore the fact that the program's participants carry their own prejudices, likely read and write at the 10th grade level, and may in fact have a variety of axes to grind, is to suppose that all participants should be nominated for honorary degrees, not to mention canonization. We've tried this before – last time, we called it McCarthyism. And we've obviously forgotten the lessons learned from that unpleasant chapter in American history.

Ultimately, the REDDI program substitutes risk for procedural integrity. The reporting system, when used as an end-run around the presumption of innocence and probable cause, gives those caught in its snare a powerful motive for considering retaliation. As presently constituted, the program offers no meaningful protection from attacks on the letter or spirit of the 4th, 5th and 14th amendments, decentralizing the key judgment calls as it does. It also contributes to building a climate of fear and paranoia – "are you now or have you ever considered drinking and driving" just spills effortlessly from the lips of a zealot, armed with a cell phone and a license to accuse anyone at all.

Amateur law enforcement, like pop psychology, fallacious reasoning and easy credit, seduces us with its simplicity. The U.S. legal system is a highly complex affair, and cannot be simplified without causing it to seize or abandoning its central tenets. And that's tough to take if you've lost a loved one to a drunk driver. However, at some point, we need to recognize that the easy solutions are often worse than the original problem.

Everyone understands risk management at some level. We all use it in our daily affairs to reach decisions. By this point, I hope I've managed to illustrate the magnitude of the risks posed by the REDDI program. Having identified them, I'll offer a tentative strategy for mitigating those risks. Briefly stated, the program should be reconstituted to allow for anonymous tips. The police, due to rulings in the system, cannot act directly on those tips, but may use them to identify and trail suspects until such time that they have met the burden posed by the presumption of innocence and probable cause.

I believe there are few cases the police would lose due to a suspect's perfect performance behind the wheel following a valid report (i.e., rather than pull over the suspect immediately, the police would be obligated to follow and monitor until they had sufficient cause to pull them over and make a case based on their own first hand observations). Such a strategy, which could be effected at little or no cost, would restore a great deal of procedural integrity to the system while reducing the various risks to the participants and the public at large. And it would place Sen. McCarthy's shadow back where it belongs: in the crypt of history.

Author's Note: After further consideration, I recommend a quick reading of Shirley Jackson's short story "The Lottery" and, of course, a deep reading of the U.S. Constitution for those who are interested.



– Steven Peterson, 2011