



No more bike or pedestrian cases? Where do I sign up?

Vision Zero and the idea that we can do a better job for everyone on our streets by reducing fatalities and injuries

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There's a video short that made the Internet rounds titled, "I'm on a M-Fing bike." It is a tongue-in-cheek portrayal of hipsters and other overly self-important cyclists, including one very angry bike commuter. As I ride to work, I sometimes identify with that anger. Drivers encased in steel frames seem to either not notice me or are purposefully out to get me, not to mention the hell-bent-on-the-schedule Muni drivers and dart-out texting-instead-of-watching pedestrians.

I identify with that rider until I hop into my car. Then, I switch into my driver mentality and despise the cyclists. Their arrogance – the few but memorable ones blowing through stop signs, scooting between traffic, and startling me when they appear out of nowhere. The pedestrians are not much better.

Then there are the times when I walk. I find the distracted drivers, weaving cyclists, and schedule-chasing buses obnoxious and dangerous.

Finally, I sometimes take the bus and my attitude again changes – to see all the cars, pedestrians, and cyclists interfering with onward progress.

Cars, bikes, pedestrians, buses, trucks – we're all busy trying to make our way. We're human, hence not perfect. We're not Google-guided machines (although some of us are looking at Google maps while we go – part of the problem).



Our cars and streets were constructed with the idea that we are perfect. Thus, when something goes off the wire – a sneeze, a distraction, or a blown tire – there is little elasticity in the system to prevent error.

I glance down from the windshield to look at my phone for a moment, expecting those around me to follow the rules. If everyone does, it is likely that everything will be okay. But not everyone does all the time. Assume that, at the same time, a pedestrian looks at his phone. He doesn't see the light turn from yellow to red. We're both in the wrong. My car strikes him, my windshield (and his bones) shatters. In that moment, I recognize that the road system we've accepted, the one where I've now catastrophically injured someone due to momentary inattention, is flawed.

The system's premise is that everyone will behave perfectly and that the

default transport method is a car. If someone makes a mistake, the system breaks down. Someone gets injured, or even worse, dies. That someone is usually not the person in the powered steel cage known as a car.

Enter Vision Zero, a holistic approach to road-user interaction. As consumer lawyers, we should be aware of and support a program aimed at reducing injuries and death. We should be aware of it because we can be instruments of change to help

implement it. Our road design cases improve safety for users out there. Our notable verdicts remind drivers that there's a cost associated with bad driving.

What is Vision Zero?

Vision Zero is a broad approach to traffic interaction built with that issue in mind – that people are not perfect. Its goal – zero traffic fatalities. Its approach? That traffic is a system that needs elasticity built in for human error. Here are some of its key components:

Street design, including traffic calming

Better streets start with better interaction. One of the ways to do this is by providing safe havens for those not protected by steel. In urban environments, a phrase frequently used is "traffic calming." What does this mean? Slowing vehicle traffic down where it directly engages the unprotected. We're not talking about freeways. But what about a four-lane-



wide city arterial near an elementary school where the road has a theoretic 35 mile-per-hour speed limit but is actually driven at 45-55? Perhaps the road design – for what has become a de facto freeway – should be revisited.

How is that done? A variety of ways. One example that is becoming increasingly common is the bulb-out. This is a sidewalk extension from a corner into a roadway – a bulb – that usually extends as far out as the parking along the road. Drivers still have the same amount of road available. But the psychological pressure of the bulb – something that has to be navigated – slows down traffic. It also shortens crossing distances and reduces the speed at which a right turn is navigated.

Another example is called “daylighting.” This involves extending the open area around a corner so pedestrians and drivers have longer sight lines and can see each other with more time to react. Daylighting has its detractors since it usually means removing the closest parking space to the corner.

These two examples are simple. Busy cities have been looking at other more involved measures, including protected bike lanes. Protected bike lanes separate the cars from bikes with physical barriers. A distracted driver or cyclist can drift into or out of an unprotected bike lane with catastrophic consequences. But a physically separated bike lane means someone drifting bumps a curb or other barrier instead of causing a car-bike tangle.

Education

Educating road users is another important area. One example: the educational programs offered by the San Francisco Bicycle Coalition to cab, shuttle, and truck drivers in San Francisco. Most people, professional drivers included, spend the majority of their road time behind the wheel. Helping them shift their focus – by looking at how a pedestrian or bicyclist uses a road – helps prevent incidents. Some programs even get professional drivers out on the road as cyclists so they can shift their focus.

Changes to the law

Statutory changes also help. Unfortunately, carrots only yield so much change – sticks are needed as well. California’s Legislature is looking at two statute changes this year that fall within this realm. One is a vulnerable road-user law. The idea is that cyclists and pedestrians are more exposed to injury than car drivers, thus drivers who strike them must face higher penalties. The second is increasing the penalty for hit-and-run drivers, including automatic drivers’ license suspensions. Cities are also taking action. Los Angeles is experimenting with an anti-harassment ordinance for cyclists – you can read more about this in Josh Cohen’s piece in this issue.

Enforcement

This is another stick category. Data-driven enforcement is critical to reducing incidents. What does this mean? Cities lack the resources to place a traffic officer at every intersection. Cities collect injury and fatality data though. Side note – if you’re curious about past reported incidents for a location, you can use the Statewide Integrated Traffic Records System. Veteran lawyers may remember having to send a letter requesting data. The data is now accessible online, although it can be cumbersome to tailor to your needs. More at iswitr.chp.ca.gov.

Cities collect this data for many reasons. One is to identify and improve the locations with the greatest number of traffic injuries and fatalities. Enforcement at those locations is the best way to use the limited traffic enforcement resources available. People are quick to spread the word that bad behavior will result in substantial fines.

Vehicle design changes

Car companies design two different cars: One for the European market; the other for the U.S. One of the differences – the European Union is mandating changes to cars to make pedestrian-auto collisions survivable when they occur at 25 mph or slower. If I had to pick between being a pedestrian struck by a U.S.

car and a European car, I’d pick the European car any day. The nose and bumper have more give. I’m more likely to walk away from the incident.

Despite the safety advantage, U.S. regulators have not embraced this change. In a parallel situation, window glazing, it took products-liability actions by skilled products-liability lawyers to force carmakers to move what they knew about vehicle safety into the U.S. market. The time is ripe for similar action. When a badly injured pedestrian case shows up on your doorstep, consider whether the car design played a part in the injury.

Implementing Vision Zero

Cities are adopting Vision Zero by resolution. Politically it is a no-brainer – what politician is in favor of people dying from traffic accidents? By voting to support a Vision Zero principle, cities are taking major steps toward protecting their citizens.

There are limits though. Cities lack the authority to mandate vehicle design changes. Some major cities like San Francisco have not let the lack of federal legislation capacity interfere in their actions. San Francisco is known for enacting legislation on toys in Happy Meals and evaluating efforts to mandate kill switches for cell phones sold in San Francisco. Efforts to effect change on car design fall within that area.

How we can help

We’re consumer lawyers. Most readers will rally behind the flag. We got into this field because we want to protect consumers. So how do we help? Get behind the Vision Zero concept. Suggest its implementation if your politicians have not already implemented it.

But there’s a broader impact available for us. Every case you take has consequences. We are another enforcement avenue. Cars are safer because of the products-liability actions we pursued. Why shouldn’t we consider products-liability actions for those injured by them



when we know there are safer bumpers and hoods in Europe? Roadway design improves and responds to cases we present when we identify dangerous roadways. Automotive design can similarly be improved.

How it helps us

A very select minority might say to themselves, “Cooper, what are you suggesting? This will mean fewer injured people, fewer cases for us. You can’t intend that.”

It is exactly what I intend. Think about the last trial where you talked about your client and the notion that the client would not want to trade dollars for the pain and loss that client suffered. There

are many legal fields available to us. If no pedestrian or cyclist would ever be injured again because of this change, I’d happily sign on and switch fields.

But the unfortunate fact is that this is a long battle. In the interim, the underpinnings of Vision Zero help us advance our cases. Imagine the impact in the courtroom when you can describe your client as a legally vulnerable road user struck by an inattentive driver.

The end

Whether you are primarily a driver, cyclist, walker, or public transit taker, there will be times when you use other modes of travel. The implementation of Vision Zero helps us all by reducing the

tensions created by multi-modal interaction. It is something we should all strive for and embrace.



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