



Speed kills

The road to stopping pedestrian fatalities begins with the speed limit

BY SHAANA A. RAHMAN

We are all multi-modal commuters. Since 100 percent of commutes include walking, we're all pedestrians, right? Oddly enough, many people don't self-identify as "walkers" or "pedestrians." Bicyclist, yes. Driver, sure. Motorcyclist, hell yeah. Pedestrian...hmmm, I guess so. This lack of awareness that when we leave the house we have an instant-shared common experience has made it difficult to get State and Local agencies to shift focus from the car-driving public or public transit to the safety of pedestrians.

In California, with the proliferation of non-profit pedestrian advocacy groups and the public outpouring for projects like Vision Zero, pedestrian safety is now front and center of a new debate about making roads safe, efficient and accessible for all modes of transport.

And before you read any further: No, this is not going to be a step-by-step guide on how to crush it on your next "ped" case. The point of this article is to build awareness around the issue of pedestrian safety with the hope of getting our community of plaintiffs' lawyers involved in the advocacy work that is needed to help our future clients not become clients. The idea is that the true goal of a civilized society is to protect the weak, or unrepresented, or unprotected, or the general population, from harm.

"Blame the victim" in pedestrian collisions

The fact is one case in particular has stuck with me over the years and caused me to re-examine pedestrian cases. It was a case in which I represented the family of a 13-year-old child hit in a crosswalk on his way to school. The boy, hit by a young driver coming off a late shift at a Krispy Kreme, lived but suffered irreparable brain damage that left him in a persistent vegetative state. The first thing that struck me were the initial whispers in the media and from locals speculating that the child was wearing headphones, or may have been a foot or so outside the



crosswalk, or perhaps darted out into the street. None of those things were true, of course, but it was interesting to witness the subtle bias we have in urban areas against pedestrians, despite the fact we are all pedestrians at some point or another. For a long time, we have had a very "blame-the-victim" mentality when it comes to pedestrian collisions.

Also, despite the clear responsibility of the driver for the collision, my clients insisted that their son wouldn't have been hit if there had been a stop sign at the intersection, like the residents of the neighborhood had been demanding. This led me down a road of many, many public records act requests and fights with the City Attorneys' office. The evidence I uncovered was really astounding.

Basically, citizens groups had made repeated complaints to the City that the intersection needed a stop sign because children and the elderly crossed there and cars went too fast. When they were ignored, the residents employed the voice of their City Supervisor, who was also ignored by the City. The City did manage to have a summer intern go to the intersection to perform a stop sign warrant. The intern's work, unchecked, determined that no stop sign was needed.

But here's the really amazing part that was at the root of the problem with the City's intractability when it came to roadway safety improvements throughout the City – the City had long ago adopted what they called their "Transit First" policy which in essence enabled the City to say no to any roadway change, e.g. stop

signs, stop lights, yield signs, traffic calming measures, if the change impeded the flow of the City's public transportation. Now, not one City Engineer or City employee would admit that the Transit First policy placed bus schedules over the safety of pedestrians but that is exactly what it did. Ultimately, the City installed a stop sign at the intersection. Sadly, it was too little, too late for my clients.

During the case, it seemed that the whole attitude of the City and the public was wrong somehow. It was as if in an urban area, anything that wasn't a car or a bus was expected to fend for themselves in some sort of Darwinian experiment. But, what really was happening was public entities weren't holding up their end of the bargain – they weren't providing safe streets for pedestrians either with infrastructure or enforcement. That led me down a winding path to taking on public entity and dangerous condition cases and fighting with public entities to effectuate changes to their policies.

What public entities should have been doing all along

In 2000, in acknowledgement that pedestrian injuries and fatalities had become a public health crisis, the California Legislature enacted the Pedestrian Safety Act of 2000. The Legislature's intention to guard pedestrian safety can be seen throughout California Vehicle Code sections 21949-21970. In Vehicle Code section 21949 the Legislature "declares":

[I]t is the policy of the State of California that safe and convenient pedestrian travel and access, whether by foot, wheelchair, walker, or stroller, be provided to the residents of the state...it is the intent of the Legislature that all levels of government in the state, particularly the Department of Transportation, work to provide convenient and safe passage for pedestrians on and across all streets and highways, increase levels of walking and pedestrian travel, and reduce pedestrian fatalities and injuries.

(Cal. Veh. Code, § 21949(a)(b).)



Similarly, Vehicle Code sections 21950-21954 provide all kinds of legal protection for pedestrians such as requiring drivers to yield to pedestrians in marked and unmarked crosswalks, placing restrictions on the removal of a marked crosswalk, giving pedestrians the right of way while on sidewalks, and providing that drivers have a higher duty of care than pedestrians. While these laws and the intent of the Legislature make it clear that pedestrians are vulnerable roadway users and as such need special protections, laws without clear enforcement and coordination with existing infrastructure have done little to decrease pedestrian deaths or fatalities.

Public entities failed: The result has been death

The statistics in urban areas like San Francisco are brutal: Sixty percent of all traffic-related deaths involve pedestrians (75 percent of all traffic deaths in San Francisco are either pedestrians or cyclists) and three pedestrians are hit by cars EVERY DAY. San Francisco currently is the number one ranked city in the Bay Area for pedestrian fatalities. Nationwide, speeding was a contributing factor in 30 percent of traffic collision deaths in 2013; in San Francisco it is the *leading* cause. (sfmta.org/visionzero; SFPD Crossroads Database 2010-2014.)

This means that all the “yield” laws in the world will not, alone, decrease pedestrian deaths and injuries. The issue of roadway speed must be addressed, by both lowering speed limits and enforcing speed limits. A recently published study found that drivers are nearly four times more likely to yield for pedestrians at travel speeds of about 20 miles per hour than when traveling at 40 miles per hour. (Bertulis, Tomas, Dulaski, Daniel “Driver Approach Speed and Its Impact on Driver Yielding to Pedestrian Behaviour at Unsignalized Crosswalks, Transportation Research Board, Journal of the Transportation Research Board.)

One of the reasons for this is that a driver’s field of vision decreases at higher speeds – while at 20 miles per hour you are noticing the entire roadway, parked cars, and sidewalk activity, as your speed increases your focal point narrows to the area immediately in front of you.

So speed matters. This is where it gets real. Research also shows that the risk of a pedestrian dying after being struck by a vehicle dramatically changes within a 20 mile per hour variance. For instance, a pedestrian struck by a car travelling 20 miles per hour has only a 10 percent chance of death; at 30 miles per hour that increases to 40 percent and at 40 miles per hour, the fatality rate for pedestrians is 80 percent (and actually over 90 percent for seniors).

So how do we change?

Advocate for change. In 1997, Sweden adopted a road safety project called Vision Zero, which was a policy initiative to achieve the goal of no roadway fatalities or injuries. In 2012, Chicago became the first city in the U.S. to adopt Vision Zero and since then 14 cities have adopted Vision Zero including San Francisco, San Mateo, San Jose, Santa Barbara and San Diego.

I was fortunate to experience firsthand San Francisco’s adoption of the policy in 2014 as a Board Member of Walk San Francisco, a non-profit pedestrian advocacy group. The adoption of Vision Zero by San Francisco came from pressure from the community and community groups, Walk San Francisco and the San Francisco Bicycle Coalition, after San Francisco hit a record high of 21 pedestrian deaths in 2013. It was only through the tireless efforts of these individuals and groups that the City adopted the policy. When San Francisco adopted the policy, it committed to building better and safer streets, educating the public on traffic safety, enforcing the most dangerous traffic violations and adopting policy changes to eliminate traffic deaths by 2024.

As a result of the press from Vision Zero, groups are now taking the fight to the State level to try to implement Automated Speed Enforcement (ASE) – a safety technique that uses cameras and vehicle speed sensors to capture images of cars traveling at excessive speeds. In California, we are all used to the “red light cameras;” however ASA is not yet legal in California, although some cities like San Jose used it briefly and found a 15 percent decline in the proportion of drivers traveling 10 miles over the speed limit. Other cities like Portland, Washington, D.C., Scottsdale and Chicago have reported significant reductions in fatalities, collisions and vehicles traveling ten miles or more over the speed limit.

Nicole Ferrara, the Executive Director for Walk San Francisco, has a mantra for the end of traffic fatalities – engineering, education, and enforcement. These are the pieces that need to be worked on to reach the Vision Zero goal.

What can we do as trial lawyers?

You, of course, can do what we do and take on tough cases against public entities for infrastructure defects. You can also lend a hand to the non-profits leading the charge. Get involved, volunteer your time, and donate.



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