

The Traffic Justice Policy Project

Prospectus

Prepared for

The National Center for Bicycling and Walking

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“The wrongdoer is brought to justice because his act has disturbed and gravely endangered the community as a whole, and not because damage has been done to individuals who are entitled to reparation. It is the body politic itself that stands in need of being repaired, and it is the general public order that has been thrown out of gear and must be restored.” — Hannah Arendt¹

*“Great causes — they still exist — nourish themselves on firm, sharp awareness of the substance of injustice. The country’s very foundations, indeed, lie in clearly defined understanding of injustices.”
— Benjamin DeMott²*

The Problem

We often speak of “road danger,” less often of road violence; and we almost never treat it as a matter of systematic injustice. Yet the profoundly wrong-headed road regime of contemporary America is more than an engineering problem; it constitutes a deeply violent and anti-social assault on life, health and community.

Car and truck crashes kill more than 40,000 people and injure several million in America each year. One in ninety Americans will meet his or her death in a road crash, and one in three will suffer serious injury.³ Motor vehicle crashes are the Number One killer of children and young adults into their 30’s.⁴ Measured by *years of potential life lost*, road crashes in the U.S. are topped only by cancer and heart disease.⁵

¹ Hannah Arendt, *Eichmann in Jerusalem*, New York: Viking Penguin, 1977. The full quote reads: “The wrongdoer is brought to justice because his act has disturbed and gravely endangered the community as a whole, and not because, as in civil suits, damage has been done to individuals who are entitled to reparation. The reparation effected is of an altogether different nature; it is the body politic itself that stands in need of being ‘repaired,’ and it is the general public order that has been thrown out of gear and must be restored, as it were. It is, in other words, the law, not the plaintiff, that must prevail.”

² Benjamin DeMott, “Junk Politics,” *Harper’s Magazine*, Nov. 2003.

³ Figures are based on crash data in NHTSA, *Traffic Safety Facts*, 2002, accessed at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2002EE.pdf>; 42,815 fatalities, 356,000 persons suffering “incapacitating” injuries, and 813,000 with “non-incapacitating” injuries (Table 53). Another 1,757,000 persons with “other” injuries (*Ibid.*) were not included here, nor were an additional 190 fatalities in the FARS database for that year. To calculate the risk factors in text we use CDC’s most recent estimate of life expectancy at birth, 77.2 years; and U.S. population of 290 million.

⁴ <http://www.nhtsa.dot.gov/people/Crash/LCOD/RNote-LeadingCausesDeath2001/pages/page2.html> Motor vehicle crashes are the leading cause of death for every age through 33, save for ages zero (0-12 months), 1 and 3. Source: National Center for Health Statistics (NCHS) CDC, *Mortality Data 2001*.

⁵ *Ibid.*

But there's more. Our road regime discourages walking and bicycling, depriving children of independent mobility, stifling their cognitive and physical development, and making them fatter and less healthy with each passing year. Fear of coming off second-best in crashes has spawned an automotive arms race in which Americans are "bulking up" to ever-more menacing sport utility vehicles and passenger trucks. Driver cell-phone use is both a gross hazard and a harbinger of new in-car electronics certain to distract drivers and further imperil other travelers.

The ubiquity of automotive death, equivalent to losing several fully-loaded jumbo jets each week, cannot be rationalized as the ineluctable price of our ever-increasing "mobility." Over the past thirty years the U.S. has fallen from first to ninth place among the industrial countries in miles driven between road deaths⁶ — a metric which compensates for any increase in distances covered. By the more tangible measure of traffic-caused funerals per million people, the U.S. scores 5th worst in a 30-nation industrialized-countries road-crash database, with at least twice the per-capita automotive death rate of Sweden, Switzerland, the Netherlands, Norway, and the U.K.⁷ Yet just a few decades ago the U.S. population-based fatality rate was close to the middle of the pack in relation to other highly motorized societies.

The human consequences, the trauma and tragedy visited upon countless families and communities, are dismayingly familiar.⁸ Indeed, in their suddenness and randomness, road deaths may be said to resemble homicides, which they outnumber even in gun-happy America. But there is an important difference: homicides not involving cars are universally regarded as a rending of civil society, and no effort is spared to track down and punish the murderer; but with the important but sole exception of drunk driving, it is a rare road death that leads to arrest, much less conviction and punishment, or even to a formal finding of culpability.

Over the past decade, stirrings have appeared of a movement to confront and curtail traffic danger, violence and injustice. In New York, St. Louis, San Francisco and other U.S. cities, "street memorials" to pedestrians and bicyclists killed by motorists have drawn attention to the ongoing carnage and created pressure for change. Demands are mounting to hold drivers to account for dangerous behavior. Whether for deterrence, or retribution, or both, citizens are decrying the "no-fault" system that lets drivers kill with impunity, so long as they drive sober. Activists are examining European vehicle codes

⁶ *The New York Times*, Nov. 27, 2003, "Once World Leader in Traffic Safety, U.S. Drops to No. 9."

⁷ OECD, International Road Traffic and Accident Database (IRTAD), 2002 data accessed at <http://www.bast.de/htdocs/fachthemen/irtad/english/we2.html>.

⁸ *World Transport Policy & Practice*, 9:3, (2003), editorial, <http://www.eco-logica.co.uk/WTPP09.3.pdf>

and jurisprudence that explicitly favor “vulnerable” road users. And the current U.S. traffic-safety philosophy based on mitigating injuries rather than making streets safer in the first place — on coping with danger rather than eliminating it — is increasingly seen as both amoral and ineffectual.⁹

The TJPP Vision

We want to banish road-crash death and the attendant misery and fear from America. While this objective is not literally achievable, at least not so long as cars and trucks are part of the transportation landscape, it is worth enunciating as the goal toward which the Traffic Justice Policy Project will strive.

We cannot eliminate heedlessness or recklessness, but we can diminish their presence on our roads and their impact on our lives. TJPP will do this by making ours a culture in which opportunities for driving dangerously are curtailed, dangerous driving is stigmatized as the antisocial act it is, and perpetrators are held to account.

Measurable Outcomes from Our Work

The Traffic Justice Policy Project will reach for these outcomes:

- U.S. road-crash deaths plummet from the current 40,000-45,000 a year to 30,000 by 2010 and 20,000 by 2015; serious-injury accidents decline similarly.
- Equivalently, the U.S. population-based traffic fatality rate (currently ~15 / 100,000) falls to the same level as Canada and Australia (~9 / 100,000) by 2010, and to the same level as the U.K., Scandinavia, and The Netherlands (~6 / 100,000) by 2015.
- The share of U.S. children who get to school each day under their own power doubles from its current 10% level to 20% by 2010, and doubles again by 2015.
- The percentage of U.S. road-traffic fatalities that are adjudicated with someone held accountable doubles by 2010, and doubles again by 2015.¹⁰

Less-statistical, more-programmatic indicators of progress could be as follows:

⁹ See, for example, essays by Malcolm Gladwell in *The New Yorker* in 2001 and 2004: “How the fight to make America’s highways safer went off course” (http://gladwell.com/2001/2001_06_11_a_crash.htm), and “Big and bad” (http://gladwell.com/2004/2004_01_12_a_suv.html).

¹⁰ We were unable to determine the applicable percentage now or at any prior time. From anecdotal evidence we believe it is currently 10-15%, and no more than 5% for incidents not involving DWI.

- At least half the states amend their motor vehicle codes by 2010 to significantly restrict use of distracting in-car electronic devices such as cell phones, faxes and computers while driving.
- At least a quarter of the states adopt procedures by 2010 to formally assess culpability in all vehicle crashes causing death or incapacitating injury.
- Vehicle “black boxes” (also called event data recorders; see discussion further below) are required in all new vehicles sold after 2008, and use of their data is standard practice in adjudicating criminal and civil penalties for road crashes by 2010.

Changes to Legal, Behavioral and Cultural Norms

The following changes in prevailing norms will contribute to the above outcomes and be significant in their own right:

Legal System: Traffic fatalities and serious injuries are adjudicated as rigorously as other violent occurrences. Each case is closed with a formal finding of causes(s) and culpability.

Cultural Climate: Crashes are regarded as departures from a norm of zero crashing, and fatalities are similarly deemed aberrations from an expected rate of zero.

“*Safety*” is regarded as an attribute of the community rather than individual property.

Automobiles are re-contextualized as functional transport machines rather than pleasure palaces, mobile offices or living rooms, and projections of personal power.

“*Due care*” regains its central role in traffic law and driving practice. Drivers, police, courts and the culture fully grasp that operator responsibility is linked to vehicle size, weight and power.

The U.S. Traffic-Safety “Establishment” is Part of the Problem

Official response to public calls for traffic justice has been paltry at best, and the reason is not far to seek. Discourse on “traffic safety” in the United States is dominated by up to a dozen governmental agencies and NGO’s, all of which appear comfortable with (or constrained by) a traffic paradigm that prioritizes motorists’ right to drive above society’s right to hold drivers accountable.¹¹ From NHTSA to public-interest organizations and

¹¹ These agencies and organizations include: the federal National Highway Transportation Safety Administration (NHTSA) and Centers for Disease Control (CDC); the auto-industry-backed National Safety Council (NSC) and its subsidiaries such as the Air Bag and Seat Belt Safety Campaign; the insurance industry’s Insurance Institute for Highway Safety; Advocates for Highway and Auto Safety, a coalition of insurance and self-identified consumer groups including insurance corporations Allstate,

medical associations, there is an unspoken consensus to seek safety without challenging the basic prerogatives of the auto industry to create and market dangerous designs and devices, and of drivers to employ them.

From time to time, these agencies and groups may differ over fine points in matters such as SUV “incompatibility” with sedans, or, previously, the efficacy of air-bags. Yet at a deeper philosophical level, the organizations share basic premises that frame public discussion of traffic safety. These include:

- emphasizing crash mitigation over crash prevention
- downplaying behavioral factors affecting safe streets
- overlooking safety issues particular to pedestrians and bicyclists
- accommodating (“regulating”) potentially dangerous devices (e.g., car phones, SUV’s) rather than challenging drivers’ right to use them in the first place
- conflating endangerment (imposing danger on others) with risky behavior (imposing danger on oneself) — a construct that historically has impeded holistic approaches to road safety and diffused motorists’ responsibility to exercise due care¹²
- ignoring new safety-enhancing technologies (e.g., event data recorders)
- ignoring “ecological” (public) safety in pursuit of “individual” safety
- treating driving as a right, and implicitly accepting the view that constraints on driving are infringements
- employing biased or incomplete “metrics” to assess road safety policies and assign priorities

These premises are seldom explicitly articulated or even, perhaps, consciously acknowledged, and they are all the more powerful as a result. Consider some of their implications:

Kemper, Liberty Mutual and State Farm, among others, and NGO’s such as the American College of Emergency Physicians, the American Public Health Association, Mothers Against Drunk Driving (MADD), and the Ralph Nader-founded Center for Auto Safety. Medical associations such as the American Medical Association and the American Academy of Pediatrics also sometimes speak on traffic safety matters. Of course the auto manufacturers make sure their point of view is heard via the NSC, or through other industry-funded groups such as the National Safe Kids Coalition, or directly.

¹² A textbook case of conflating risk with endangerment is The Surface Transportation Policy Project (STPP)’s *Mean Streets* report issued in December, 2004 (available at www.transact.org). The executive summary calls walking “by far the most dangerous mode of travel, by mile,” and the lead of the press release says the report “reveals that walking remains the most dangerous mode of transportation.” Of course, walking may be the most risky form of travel (as far as risk to the walking individual), but something is only dangerous — able to do harm — if it *causes* danger, which makes driving the most dangerous travel mode. (Thanks to Mighk Wilson, Bicycle & Pedestrian Co-ordinator for Metroplan Orlando (FL), for this insight.) That the ardently pro-walking and –cycling STPP could exhibit this confusion between danger and risk is testament to its cultural prevalence.

- The traffic-safety establishment has largely been “missing in action” on important initiatives such as: proposals to make information on pre-crash behavior publicly available from event data recorders (“automotive black boxes”); efforts by municipalities to deploy automated red-light cameras and speed-violation detectors; campaigns to require auto-insurance providers to sell insurance by the mile; and transportation reforms to promote transit, ridesharing, walking and cycling. (Further below we discuss how these and similar measures promote safe streets.)
- The traffic-safety establishment has failed to support restricting or even regulating in-car information and communication technologies such as cell phones and e-mail that distract drivers from the road environment. As a result, driver cell-phone use has skyrocketed — an estimated 3% of vehicles in motion are driven by cell-phone users¹³ — and suppliers are investing billions in next-generation car e-devices, even as epidemiologists, psychologists and other researchers outside the safety establishment warn of rising crash rates.¹⁴
- Similarly, although some elements of the traffic-safety establishment now — finally! — are willing to point out the dangers of sport utility vehicles, they largely waited to speak up until SUV’s had taken over America’s roads; even now they tend to focus on individual safety (e.g., high rollover rates) rather than on public safety (danger to other vehicle occupants or road users).
- The traffic-safety establishment has supported (and in some cases spearheaded) legislation requiring cyclists to wear crash-helmets and prohibiting bareheaded cycling, skating and scootering by children, despite unimpressive life-saving and injury-reduction benefits from helmet use.¹⁵ It has done so, moreover, without seriously weighing whether helmet laws discourage cycling and related activities and thus adversely affect user safety and public health.
- Few elements of the traffic-safety establishment can be heard protesting the low status of traffic violence in U.S. jurisprudence, or the correspondingly low conviction rates in fatal and serious-injury crashes.¹⁶

¹³ U.S. DOT press release, “NHTSA Reports on Major Survey Of Cell Phone Use by Drivers,” July 23, 2001. See <http://www.dot.gov/affairs/nhtsa3601.htm>. The survey likely underestimated current (2004-05) usage because it was conducted four years ago (in Oct-Nov 2000) and counted only hand-held phone use.

¹⁴ See for example, “Hi, I’m Your Car. Don’t Let Me Distract You,” by Jeremy Peters, *The New York Times*, Nov. 26, 2004, p. C-1.

¹⁵ See Rivara FP, Thompson DC, Thompson RS. Epidemiology of bicycle injuries and risk factors for serious injury. *Injury Prevention* 1997;**3**:110-4. The authors redid their widely cited 1989 study of helmet efficacy (which purported to demonstrate an 85% reduction in head and brain injuries from helmets) and found that helmet-wearing was associated with a 69-74% reduction in head injuries, and only a 10% (and not even statistically significant) reduction in *all* serious injuries.

¹⁶ The lone vocal dissenter to mainstream safety dogma (sometimes characterized as “booze, belts and [air]bags”) is the Partnership for Safe Driving (<http://www.crashprevention.org/>), which we discuss in the last section of this paper. Theirs is a relatively weak voice, however.

The Traffic Justice Credo

Our credo rests on five explicit principles. These principles are grounded in considerations of elementary justice and obvious social benefit:

1. Accountability: motorists are responsible for the consequences of their driving behavior
2. Hierarchy of endangerment: although dangerous driving is always unacceptable, endangering other road users is more objectionable than endangering oneself
3. Hierarchy of responsibility: the required degree of due care rises with the capacity to endanger others (and, hence, with vehicle size, weight and power)
4. Prevention via safe streets takes precedence over injury mitigation
5. Roads, vehicles and people constitute an ecological system, in which safe streets are paramount

Accordingly, our credo is the mirror-image of the traffic-safety establishment's:

- we will emphasize safe streets over injury prevention
- we will emphasize behavioral road-safety factors over engineering factors, except insofar as engineering affects behavior
- we will champion the needs and rights of pedestrians and bicyclists for a safe and respectful road environment
- we will question drivers' automatic right to employ dangerous vehicles and in-car devices
- we will distinguish between endangering others and endangering oneself
- we will vigorously promote new safety-enhancing technologies and paradigms, particularly the primacy of public over individual safety
- we will treat driving as a privilege, and support constraints on driving as necessary to maintain system safety
- we will endeavor to employ unbiased and comprehensive "metrics" to assess road safety policies and assign priorities

Six Issue Areas

Our mission is to improve road safety dramatically and across-the-board. We aim to transform America's road environment and traffic culture through an array of synergistic initiatives and campaigns. Here we discuss half-a-dozen issue areas that could serve as springboards for campaigns. They are as follows:

1. Transforming Public Discourse on Road Safety
2. Prosecuting and Convicting Killer-Drivers

3. Harnessing “Automotive Black Boxes” for Accountability and Safety
4. Curtailing Driver Use of Distracting Electronic Devices
5. Cutting SUVs Down to Size
6. Targeting Dangerous Driving

Issue Area #1: Transforming Public Discourse on Road Safety (and Reclaiming the Moral High Ground of Traffic Justice)

Our opening epigraphs suggest, and our proposed name makes explicit, that the core mission of the Traffic Justice Policy Project is to enhance justice. Of course the work of this project will be to promote safe streets, but a prerequisite of safe streets is to establish *traffic justice* by fostering equality among road users and insisting on fairness in adjudicating rights and responsibilities.

The fundamental TJPP paradigm is the “Due Care” doctrine from Common Law: those who create danger are held responsible for its harm. The five “bedrock principles” stated earlier all flow from this doctrine: Accountability, Hierarchy of Endangerment, Hierarchy of Responsibility, Prevention before Mitigation, and Public (Ecological) Safety.

Allied with “due care” is this moral principle: all people have the right to travel using light or no vehicles as well as the right to go out in public without armor. As a corollary, all of us have the right to voluntarily assume risks — to travel in a vehicle or not, with or without airbags, seat belts and the other accoutrements of injury mitigation — so long as others aren’t endangered as a result.

Our emphasis on justice is pragmatic as well as philosophical. As noted in the passage from Benjamin DeMott quoted at the start, American history and progress are rooted in struggles to overcome injustice. The struggle for traffic justice, while not as profound as, say, the civil rights revolution, is nevertheless based on the same aspirations for equality and equity that have resonated with Americans for over two hundred years.

This emphasis is important because opposition to traffic-justice measures is often couched in terms of “competing” rights. For example, a lone New York State legislator has for years blocked New York City from deploying more red-light cameras and speed cameras, arguing that the devices violate motorists’ right to privacy.¹⁷ Similar appeals to privacy rights in Great Britain led the national government to water down its ambitious plans for speed cameras, reducing the penalties and acceding to painting the cameras

¹⁷ State law requires New York City to obtain legislative approval to deploy more than 50 red-light cameras and any speed cameras. Despite widespread support, Assembly Transportation Committee Chair David F. Gantt has blocked floor votes. See <http://www.transalt.org/campaigns/reclaiming/redlightcameras.html>.

bright yellow so that motorists know where they are.¹⁸ In the racially polarized U.S., efforts by police to crack down on dangerous driving are often disparaged as subterfuges for conducting racial profiling of minority motorists.

Traffic-justice initiatives such as event-data recorders (discussed further below), traffic cameras and more-vigorous enforcement can and should be scrupulously tailored to respect privacy and racial concerns. Even under optimal circumstances, however, interests will inevitably clash, and priorities will need to be set. Propounding and defending the right to participate equably and safely in traffic will be necessary to ensure that opposing concerns do not automatically win out.¹⁹ Indeed, standing up for traffic justice is essential to combat the apathy that presently consigns traffic enforcement and prosecution of killer-drivers to the bottom of the priority stack.

Several paradigms being pursued in Europe might prove useful in advancing the concept of traffic justice while also achieving concrete changes in jurisprudence. One is the development in Sweden of “Vision Zero” — a new approach to road safety based on the precept that one casualty, even an injury, is one too many. Advocates say that this approach is already the norm in industry and other transport sectors such as rail and aviation, making it ripe for adoption in road transport.²⁰

Another is the “home zone” — a residential district in which any motorist colliding with a child is presumed to have been at fault, and in which streets have been re-engineered so that drivers intuitively travel at safe speeds. A third paradigm is holistic health promotion, which embeds pedestrian and cyclist safety amidst policies to encourage and increase walking and cycling along with universal road safety.

¹⁸ One acerbic U.K. road-safety campaigner writes that the public’s right for protection against lethally speeding drivers has been trumped by motorists’ right for protection from the risk of being found guilty of breaking the law. See *World Transport Policy & Practice*, 9:3, (2003), editorial by John Whitelegg, <http://www.eco-logica.co.uk/WTPP09.3.pdf>. Another campaigner bemoans that “vociferous minorities perceiving state interference with civil liberties have played a large part in delaying, preventing, or even overturning major injury prevention policies... Despite numerous surveys showing widespread support for speed cameras in the United Kingdom and the support of the select committee on transport, the acceptability of cameras is still being questioned in the media by a vociferous, highly active minority.” Jeanne Breen, “Road Safety Advocacy,” *British Medical Journal*, April 10, 2004, <http://bmj.bmjournals.com/cgi/content/full/328/7444/888>.

¹⁹ Consumers Union recently filed comments with the federal government warning about possible violations of privacy, reports *The New York Times*, “This Car Can Talk. What It Says May Cause Concern,” Dec. 29, 2003, p. C1. Ironically, Consumers Union is a co-chair of Advocates for Highway and Auto Safety, which we characterized above as part of the U.S. “traffic-safety establishment.”

²⁰ *World Transport Policy & Practice*, 9:3, (2003), Traffic without violence: the path to a vision, by Helmut Holzapfel, 5–8 6 <http://www.eco-logica.co.uk/WTPP09.3.pdf>.

All three paradigms run directly counter to U.S. thinking about traffic, which accepts a high level of casualties as statistically inevitable (while grieving over individual cases); promotes banishment of children from roadways (to ballfields, backyards or basements — anywhere but the street) as necessary for safety; and compartmentalizes “injury prevention” apart from both individual wellness and social health. Which is precisely why it is vital to press ideas like Vision Zero, home zones and holistic health promotion. At the same time that we work for incremental reform and concrete change, we need to be pushing the envelope of cultural thinking on traffic justice.

An important aspect of changing traffic discourse in America is victim-blaming, and its “flip side,” exculpating motorist behavior. When a driver runs over a child, the child is almost invariably said to have “darted out” into traffic, and, thus, to have caused his own death. Whether the driver should have been traveling more slowly or been more attentive to the possible presence of children is never discussed. The onus is always on vulnerable road users — children, the elderly, people in smaller vehicles or not even in cars — to protect themselves, regardless of the danger created by others on the road. Indeed, it sometimes appears that the greater the danger created by drivers in the road environment, the greater is the rhetorical abuse of everybody *but* drivers.

While no single example is momentous, cumulatively they convey a pattern by which the prevailing ideology of motorist entitlement justifies and perpetuates itself. An ongoing agenda item for our project should be to monitor public discussion of road crashes, highway safety, insurance reform, rights of motorists vis-à-vis non-motorists or of some classes of drivers vis-à-vis others, and so forth, and to present (and insist on) a more rational and fair view of the matter. This could be done via standard advocacy tools such as Web sites, press releases, media “awards” for “good” and “bad” reportage, private communications with journalists and opinion leaders, etc.

Issue Area #2: Prosecuting and Convicting Killer-Drivers

A central TJPP objective must be to raise conviction rates for drivers who, through negligence or aggressiveness, kill or seriously injure others. With the exception of drunk driving, few fatal crashes lead to felony convictions; although, significantly, the exact percentage isn't known, it is almost certainly less than one percent. Yet it seems likely that, even leaving aside drunk drivers, gross negligence is a contributing factor in a third or more of serious crashes.²¹

²¹ Right Of Way's study of 1999 pedestrian fatalities in New York City, *Killed By Automobile*, which the author directed, concluded that of 189 cases where culpability could be determined, the driver was “largely or strictly culpable” in 140, or 74%. While that figure may be an overestimate, since all hit-and-runs (49 cases) were automatically coded as driver-culpable, it suggests a high degree of motorist responsibility. Interestingly, only 5 cases were coded as DWI.

Aggressively prosecuting and convicting killer-drivers is crucial for several reasons: First, it is simply the right thing to do. As Hannah Arendt points out, in the epigraph to this essay, “It is the body politic itself that stands in need of being repaired, and it is the general public order that has been thrown out of gear and must be restored.” Second, it will help deter dangerous driving: Third, it will upgrade and promote traffic-law enforcement. Fourth, it will strengthen the paradigm of motorists’ accountability for the consequences of their actions — our first bedrock principle.

To date, efforts to convict killer-drivers have been largely scatter-shot and ineffectual. Despite intermittent high-profile successes such as the manslaughter conviction last year of South Dakota Rep. (and former Gov.) William Janklow, who struck and killed a motorcyclist by speeding through a stop sign, there has been little if any carryover. It is doubtful that the occasional victory leads to increased conviction rates.

Because criminal-justice administration is a state function, it may be prudent to launch this campaign in just one or two states, with the objective of establishing a beachhead for aggressive prosecution and ultimately extending it to all fifty states. For a possible template we might look to California, where a state-chartered unit of roving prosecutors, specially trained in workplace safety, is teaming up with local district attorneys to bring criminal cases against employers who kill workers by violating occupational safety laws.

This “circuit-riding” prosecutorial unit reportedly is succeeding where D.A.’s alone have usually failed, by bringing to bear not just expertise but also the political will to seek convictions.²² According to a recent report, the director of California’s aptly named Circuit Prosecutor Project, which operates from the offices of the California District Attorneys Association in Sacramento, sees his mission as not only to vindicate the rights of powerless workers, but also to “nudge and shape the legal values of communities that resist thinking of workplace deaths as potential crimes.”²³

The parallel is clear: we aim to reshape the societal mentality that accepts road deaths as natural tragedies rather than as reprehensible and preventable acts in which intention and/or negligence play a major role. The obvious approach is to deploy a crack team of traffic-law prosecutors to bring criminal cases against drivers who through negligence cause death or serious injury to other road users.

²² The *New York Times* reported on this circuit-rider program in a Dec. 23, 2003 front-page story, “When Workers Die: California Leads in Making Employer Pay for Job Deaths,” part of a series on job dangers that won a Pulitzer Prize.

²³ The quoted phrase is by the *Times* reporter (see prior footnote) rather than the circuit project director.

Marshaling popular and political support for a state-level traffic-crime prosecutorial team even in just one or two states will be no small task. Grassroots and legislative organizing will be required to amend traffic and criminal codes that define dangerous behaviors and prescribe penalties, and to pry open budgets. Advocacy research will be needed to detail the extent of the problem, to dispel myths such as driver remorse,²⁴ and to delineate the benefits of tougher measures. The team itself will need to be trained in traffic law and forensics and possibly backed up by a cadre of expert witnesses.

The circuit-rider approach is not necessarily the only path for prosecuting killer-drivers, though we think it is particularly promising. Other potential avenues include:

- ascertaining and documenting “best practices” in state motor vehicle codes
- ascertaining and documenting “best practices” in state or county crash jurisprudence
- ascertaining and documenting “best practices” in municipal traffic-law enforcement
- lobbying district attorneys, particularly state and national associations, to abandon antiquated guidelines that bend over backwards to protect drivers (e.g., NY State’s “Rule of Two,” which requires a driver to have violated at least two separate traffic laws to face possible prosecution)

Finally, as Peter Jacobsen points out, each state’s vehicle code is continually being compared against a “model” code developed by safety-engineering specialists. Indeed, NHTSA has done so for traffic laws affecting pedestrian and bicyclist rights and safety.²⁵ The same could and should be done for legal codes that govern criminal prosecution of killer-drivers.

Issue Area #3: Harnessing “Automotive Black Boxes” for Accountability and Safety

Even where there are witnesses to a car crash, events unfold so rapidly that it is difficult to reconstruct the driver actions that immediately preceded the crash in a reliable way. This fact has made it easier for prosecutors to shirk their duty. Again with the notable exception of DWI, which can be clearly demonstrated in a roadside breathalyzer test,

²⁴ See Baker SP, Robertson LS, O’Neill B. Fatal pedestrian collisions: driver negligence. *Am J Public Health*. 1974 Apr; **64**(4):318-25. Regarding child pedestrian collisions, see Lightstone AS, Peek-Asa C, Kraus JF. Relationship between driver’s record and automobile versus child pedestrian collisions. *Inj Prev*. 1997 Dec;**3**(4):262-6.) Both studies establish that (i) drivers who kill pedestrians have a higher prior rate of traffic citations, and (ii) their citation rates remain elevated after the fatalities.

²⁵ The NHTSA *Resource Guide on Laws Related to Pedestrian and Bicycle Safety* may be downloaded from <http://www.nhtsa.dot.gov/people/injury/pedbimot/ped/resourceguide/>.

irrefutable evidence implicating negligent drivers has been expensive or impossible for the state to obtain. Indeed, the difficulty of conclusively assigning responsibility for vehicle crashes helped give rise to the advent of no-fault insurance in the 1960s which in turn paved the way for the no-fault ethos that has undermined road safety in America.

Improving the evidentiary base for the authorities to assign fault for crashes is key to instilling accountability in U.S. road culture. Fortunately, in-car technology has been developed that can serve this purpose. “Event data recorders” are now available at reasonable cost that can continuously record vehicle parameters such as speed and acceleration as well as driver behavior such as braking, turning and cell-phone use.²⁶ This simplified version of the “black boxes” used in commercial airliners offers great potential to put crash investigations on a firm evidentiary footing and help authorities hold motorists legally and financially responsible for their actions.²⁷

Equally important is the deterrent effect that automotive black boxes could exert on drivers. In a study conducted in the Netherlands in the late 1990s, commercial fleet vehicles equipped with event data recorders reduced crashes by 20 percent,²⁸ presumably due to drivers’ understanding that it will be difficult for them to evade responsibility for carelessness behind the wheel. Because these devices could also help exonerate non-culpable drivers, they might be accepted, indeed welcomed, by car manufacturers, insurance companies, fleet owners and even many drivers themselves (most drivers regard themselves as safer than average).²⁹

²⁶ Siemens Corp.’s VDO division touts its UDS accident data logger as “an effective means of recording crashes and critical driving events. Inside the vehicle, a series of high-precision sensors are used to measure longitudinal and lateral acceleration, as well as any change in direction. The speed of the vehicle is also recorded, along with the use of vehicle systems such as the brakes, indicators and lights, on the basis of over 10 status inputs.” See http://www2.vdo.com/vdo/business_customer/bc_product_range_ext&fza=&ID=51.aspx

²⁷ See, for example, *Toronto Globe & Mail*, “Air-bag speed sensor catches deadly driver,” April 15, 2004: “In a legal first, the air bag that was designed to save Éric Gauthier’s life instead helped convict the 26-year-old on two counts of dangerous driving. A data recorder in the Chevrolet Sunfire’s air-bag system proved in court that he was driving at three times the 50-kilometre speed limit when he hit another car, killing the driver. As a result, Quebec Court Judge Louise Bourdeau yesterday sentenced Mr. Gauthier to 18 months in prison... What undid Mr. Gauthier was that, unbeknown to him, the air bag’s black box showed that he was driving up to 157 kilometres an hour on a Montreal street when he slammed into the other car.” A second-degree manslaughter conviction of a speeder in Rochester, NY in Oct. 2004 has similarly been attributed to evidence obtained from a black box in the speeder’s car; see *The New York Times*, “Does Your Car Have a Spy in the Engine,” by Matthew L. Wald, special “Cars” section, Oct. 27, 2004.

²⁸ http://www-nrd.nhtsa.dot.gov/edr-site/uploads/Black_box_study_shows_a_reduction_in_the_number_of_accidents.pdf.

²⁹ The vice chairman of General Motors expressed strong support for the use of automotive black boxes in a 2000 interview. “The next step quite frankly would be to use actual on-board recorders to record data just prior to and in the course of an accident,” said Harry Pearce, a veteran litigation attorney who was once GM’s general counsel. “Black boxes, in effect,” Pearce said. “There are privacy issues that we want to

As of 2004, 15% of the 200 million U.S. passenger-vehicle fleet was estimated to be equipped with an automotive black box that can be read easily, and the technology reportedly was factory-installed on 65-90% of new vehicles.³⁰ However, car manufacturers originally intended them as a proprietary diagnostic tool (to assess airbag deployment in crashes, for example). Controversies over privacy and data-ownership must be resolved for the devices to be routinely used in tort, criminal and insurance cases.

It should be noted, however, that equal or greater encroachments on driver privacy are already well tolerated in cases where they increase driver convenience; automated toll collection systems like EZ-Pass, for example, make it possible for the authorities to monitor a vehicle as it travels around the region. The “driver privacy” argument against black boxes thus appears to be a “driver impunity” argument in sheep's clothing.

In 1998 and 1999, NHTSA rejected petitions from two private individuals to conduct a formal rulemaking to consider developing a Federal Safety Standard mandating data recording devices for new vehicles. In denying the petitions, the agency cited ongoing work by “a working group on event data recorders” along with “the fact that the motor vehicle industry is already voluntarily moving in [this] direction.”³¹ Presumably a new petition by the Traffic Justice Policy Project (and allies), noting improvements in technology and reporting reductions in crash rates where the devices have been deployed, while citing the absence of progress both at NHTSA and in the private sector, would receive a more substantive hearing.

While preparing such a filing is a relatively straightforward matter, it will be a major undertaking to conduct the supporting research, public advocacy, and discussions with stakeholders to carry the proposal through the administrative and political process. By the same token, the petitioning process itself could have tremendous value by creating a national platform from which to discuss the problem of vehicular endangerment and the inadequacy of current models and approaches.

Issue Area #4: Curtailing Driver Use of Distracting Electronic Devices

thoughtfully address with our customers, but on the other hand, if there is a serious accident, everyone wants to understand why, what caused it.” “GM Urges Expansion of Accident Database,” *The New York Times*, Oct. 5, 2000, p. C-8.

³⁰ The 65-90% penetration rate in new vehicles has been widely reported; *The New York Times*' Wald attributes the figure to NHTSA in his Oct. 27, 2004 article, *op. cit.*

³¹ *Federal Register*, Vol. 64, No. 105, June 2, 1999, pursuant to Docket NO. NHTSA-99-5737. NHTSA does maintain an Event Data Recorder Web site, <http://www-nrd.nhtsa.dot.gov/edr-site/index.html>.

In early 1997, the *New England Journal of Medicine* released a bombshell, a paper that found that cellphone-using drivers have the same fourfold-elevated crash propensity as drunk drivers.³² Yet despite extensive coverage of this and similar research findings, as well as a number of proposed laws and legislative hearings, only one state (New York) and a handful of small cities and towns have banned driver use of cell phones, and most bans are limited to hand-held phones.³³ Absent an organized campaign to counter the powerful telecommunications industry, cellphone use by drivers has mushroomed and now accounts for an estimated 3% of all driving.³⁴ And cellphones are only the beginning; in-car electronic distractions appear to be the cup-holders of 21st-century auto *luxe*, with in-car e-mail and Internet, dashboard road maps,³⁵ cellphone screen displays of highway conditions,³⁶ text messaging,³⁷ and video (both large-screen and mini),³⁸ all of which will command driver attention and add to road distraction and danger.

Driving is, fundamentally, a very boring activity, and this disamenity is one of the few things that currently operate to discourage it in any way. Making the driver's seat into an entertainment center will certainly encourage more driving, not to mention making it more unsafe for the driver and everybody else.

We propose a nationwide campaign to limit driver use of telephones and other distracting electronic devices in moving vehicles. The campaign could gain a toehold by first

³² "Association between cellular-telephone calls and motor vehicle collisions," D.A. Redelmeier, MD, and R.J. Tibshirani, PhD, *New England Journal Of Medicine* **336**:7, Feb. 13, 1997, p. 453. The authors studied 26,798 cell-phone calls including 699 collisions, and used "case-crossover" sampling to ensure against bias. The risk of a collision when using a cell phone was found to be elevated by a factor of four — the same risk as when a driver's blood alcohol level is at 0.10% (or one-fourth greater than many states' DWI limit of 0.08%). Hands-free units did not improve the numbers, apparently because it is driver inattention and distraction that compromise safety rather than problems with physically handling a cell phone.

³³ As this paper was being finalized, New Jersey was enacting a "secondary" ban that allowed police to cite a driver only if another traffic law was being violated.

³⁴ NHTSA Press Release 36-01, "NHTSA Reports on Major Survey Of Cell Phone Use by Drivers," July 23, 2001, <http://www.nhtsa.dot.gov/hot/PressDisplay.cfm?year=2001&filename=pr36-01.html>.

³⁵ *The New York Times* cites a J.D. Power & Associates finding that 550,000 new vehicles were sold in America in 2003 (accounting for 3-4% of the total of 16.7 million sales) with factory-installed navigation systems. In addition, nearly 30% of new car models now offer the systems, vs. 1 percent in 1998. See "Go Off the Beaten Path? Not Likely With G.P.S.," April 30, 2004 ("Escapes" section). The *Times* reporter described being "mesmerized by the dashboard computer."

³⁶ See *The New York Times*, "That's the Weather, and Now, Let's Go to the Cellphone for the Traffic," by John Markoff, March 1, 2004.

³⁷ *The New York Times* reports that "Marketers are preparing radio commercials that also send text messages to car dashboard displays." Advertising column, Dec. 31, 2003, p. C5.

³⁸ *The Times* reported that the number of vans, SUVs and light trucks sold with DVD video systems grew almost six-fold from 2002 to 2004. "When the Car Beside You Is an XXX Theater," special "Cars" section, Oct. 27, 2004.

seeking bans in school zones, in residential neighborhoods, and on other local roads. The scope of the restrictions would be based on local conditions, both because vehicle and traffic law is a state or municipal function and to reflect environmental variations. The campaign will require many steps large and small, from legislative enactment to inserting check-off boxes in crash reports for police to note if any of these devices was in use before or during a crash. (The link to event-data recorders for crash analysis is obvious.)

Even more than the “black box” federal safety standard, this initiative will cut against ingrained attitudes by impinging on driver prerogatives and subjecting communications to social control. In so doing, it will provide opportunities to convey key concepts such as the social costs of personal convenience, the distinction between imposing and bearing risk, and the need for social interventions to ensure public safety. Hopefully the campaign will help forestall next-generation devices such as in-car e-mail before they have been adopted by elite users and contextualized as not only “cool” but inevitable.

Issue Area #5: Cutting SUVs Down to Size

Sport utility vehicles are heavier, taller, and more rigid than ordinary cars and inflict more damage in a collision. When an SUV and a car collide, the car occupants are several times more likely to die than when two cars crash.³⁹ When a passenger vehicle and a person walking collide, the person walking is two to three times more likely to die when the vehicle is an SUV than when it is a sedan.⁴⁰ The director of NHTSA estimated in 1998 that the height and stiffness of SUVs, apart from their considerable weight, were causing an extra thousand deaths a year in cars.⁴¹

Yet these and other so-called “light trucks” compromise their own occupants’ safety as well, due to their higher center of gravity (which makes them more likely to roll over), substandard braking capability, and generally reduced roadworthiness, making them statistically no safer for their occupants than cars on average, and far less safe than equally heavy sedans. Moreover, with their sheer bulk SUVs have made our roads even more jam-packed while crowding out sightlines for smaller vehicles, cyclists and pedestrians, making traffic more perilous for everyone.

³⁹ Keith Bradsher, *High And Mighty*, Public Affairs, New York, 2002, p. 188.

⁴⁰ D.E. Lefler, H.C. Gabler, “The fatality and injury risk of light truck impacts with pedestrians in the United States.” *Accident Analysis & Prevention* 2004, **36**:295-304.

⁴¹ Bradsher, *High And Mighty*, p. 169 and p. 193. The NHTSA analysis also attributed 1,000 excess deaths to the design of pickup trucks. Ford Motor Corporation’s top safety researcher, Priya Prasad, acknowledged the phenomenon of light truck “crash incompatibility” although he estimated its impact at half the levels reported by NHTSA. *Ibid.*, p. 192.

These facts are well known by safety regulators and the insurance industry and have been repeatedly reported in high-profile media outlets.⁴² Yet they are barely if at all reflected in American traffic-safety governance. Police do not specifically target SUVs or light trucks for traffic infractions, despite the fact that red-light running, excessive speed and distracted driving by these vehicles can be particularly unforgiving for other road users. Few insurance carriers charge different liability premiums depending on vehicle model; most simply spread the extra damage burden from light trucks among all drivers, essentially making car drivers subsidize owners of SUVs and pickups and thereby missing an opportunity to internalize the extra risk among those creating it.⁴³ No state motor vehicle department has proposed separate, stiffer licensing requirements for SUV and pickup drivers, or restricting use of light trucks by novice drivers.

Indeed, to the extent that SUVs are criticized in public discourse nowadays, it is for their favored tax status and of course their outsized gas consumption — a defect likely to be cured soon by “hybrid” engine technology. The recent highly publicized “What Would Jesus Drive” campaign faulted SUVs as polluters and gas guzzlers but not for endangering others.⁴⁴ Based on an Internet search in early 2004, “Green Hummers” may have eclipsed “crash compatibility” as a conversation topic, particularly now that the auto corporations are standardizing bumper heights and introducing other minor design modifications to reduce crash impacts of light trucks on ordinary motorists.

There is no silver bullet or other quick fix for the SUV plague. Their use long since passed the point of cultural critical mass, abetted by an insidious “market coercion” that compelled individuals to adopt an arguably inferior product as a means of social self-defense.⁴⁵ The antidote, as we see it, is to painstakingly knit a web of incremental, mutually-supporting reform and control measures, such as these:

- more vigorous police enforcement and judicial prosecution of SUV driving infractions

⁴² Much of Bradsher’s analysis (see prior footnote) appeared in front-page articles in 1998-2000 in *The New York Times*, when he was the paper’s Detroit bureau chief. *New Yorker* writer Malcolm Gladwell deconstructed light-truck dangers in “Big and Bad: How the S.U.V. Ran Over Automotive Safety, Jan. 12, 2004.

⁴³ In a Feb. 15, 1998 editorial keyed to Bradsher’s reportage, *The New York Times* urged insurance companies to “raise liability rates for light trucks that tend to inflict heavy damage on others during collisions.” This would “sensitize drivers of bulkier vehicles to their real costs,” opined *The Times*. There is no indication that the insurance industry heeded this suggestion, and *The Times* has dropped the matter.

⁴⁴ The Web site of the Evangelical Environment Network states, “We want more choices for individuals and families (e.g. more fuel-efficient minivans and SUVs for those who need them), not fewer choices.” See <http://www.whatwouldjesusdrive.org/opinion.php>

⁴⁵ Termed “path dependence,” this phenomenon has been widely studied in arguably suboptimal technological choices such as the QWERTY typewriter (over the Dvorak keyboard), the VHS video recorder (over Betamax), and Windows computers (over the Macintosh).

- class-action lawsuits against SUV manufacturers and retailers for imposing danger on other road users as well as for defects affecting driver and passengers, such as rollovers
- cost-based differential insurance rates for “light trucks” vis-à-vis sedans
- more stringent road tests and graduated licensing requirements for SUV use
- prohibiting heavy vehicles from bridges and parkways expressly designed for cars
- debunking “Green SUVs” and broadening anti-SUV environmental campaigning to include endangerment issues
- publicizing SUVs’ and pickups’ poor handling characteristics
- initiating or supporting efforts to charge light trucks higher parking fees and road tolls (e.g., weight-distance charges)
- supporting ongoing efforts to eliminate tax-breaks for extra-large SUVs
- levying increased fuel taxes such as gasoline taxes and/or carbon charges that will exert a “market pull” away from gas-guzzling light trucks
- restricting or discouraging teenagers from driving SUVs

None of these steps are simple, and no single one will turn the tide. However, several or more in combination might, over time, help steer “marginal” car-purchasers away from SUVs and back toward smaller, lighter vehicles, helping to slow and eventually reverse the ongoing vehicular “arms race.”⁴⁶

Issue Area #6: Targeting Dangerous Driving

Most U.S. traffic-safety programs are aimed at one of three targets: drunk driving, failure to use seat belts, and helmetless kids. The Traffic Justice Policy Project will make the case that this focus is almost comically narrow, and that lives could be saved and equity enhanced by re-assigning some of the resources invested in these areas to dangerous driving behaviors, whether by drunk or sober drivers. (During preparation of this paper, a front-page article in the *Wall Street Journal* claimed that the head of NHTSA backed away from a crackdown on driver cell-phone use in part “because he ... thought NHTSA had bigger priorities such as combating drunk driving and promoting seat belts.”⁴⁷)

The campaign against drunk driving is a success story for both public health and grassroots activism, making it critical to state our point clearly: society has responded

⁴⁶ In a possible sign of a cultural shift against SUVs, the Mini division of BMW placed advertisements in *The New York Times* in late 2004 showing a shadowy figure identified as “‘Mike.’ Former SUV owner. Recovering Big-aholic,” and declaring “One parking space was never enough. It was obnoxious. I can see that now.”

⁴⁷ *The Wall Street Journal*, “Warning Call: As Industry Pushes Headsets in Cars, U.S. Agency Sees Danger,” by Jesse Drucker and Karen Lundegaard, July 19, 2004.

effectively to the menace of DWI at all levels — in jurisprudence, law enforcement, technology (e.g., breathalyzers, B.A.C. meters, ignition locks), and culture — and it is time to move on to higher-hanging but no-less rewarding fruit.

A similar point applies in promoting and enforcing seat belt use. Enforcing “primary” seat belt laws (which let police pull over motorists and ticket them for not wearing a seat belt) is almost certainly a suboptimal use of scarce law-enforcement resources. Some legislators and civil-rights groups (probably with reason) view such laws as a tool for police to harass minority drivers, and this view often carries over to other, more important traffic-safety initiatives (see discussion below). More broadly, in accordance with the fundamental distinction between transitive and intransitive risk, reducing endangerment of others should have precedence over reducing endangerment of self. Clearly there is an opportunity cost of enforcing seat belt laws: namely that driving behaviors that place others at risk are not addressed. For this reason, TJPP should stand squarely against narrowly focused seat-belt enforcement efforts.

There is certainly no shortage of dangerous driving behaviors that law enforcement could usefully target: speeding, red-light running, tailgating, turning into pedestrians in crosswalks, passing bicyclists too closely, driving while cell-phoning or otherwise distracted, etc. Moreover, the vast majority of traffic patrolling takes place on highways, leaving cyclists, pedestrians, playing kids, and local drivers to fend for themselves.

As for kids and helmets: this topic is one where feelings run high and rational thinking is rare. Nonetheless, our project should have a presumption of opposition, absent a very compelling case, to measures that would restrict children’s physical activity and anyone’s self-powered mobility. We should draw attention whenever possible to the “safety-in-numbers” principle, holding that an increasing presence of cyclists and pedestrians on the road adds to cyclist and pedestrian safety (i.e., reduces their per-person risk).⁴⁸ Indeed, under current conditions, it is no exaggeration to say that it is *only* the presence of other cyclists and pedestrians that makes cycling and walking even as safe as it is in many U.S. cities and towns.

Possible Campaigns

It’s premature to design specific campaigns; when TJPP is up and running, we will want to take advantage of current and emerging opportunities. But it may be useful at this point

⁴⁸ Peter Jacobsen, “Safety in numbers: More walkers and bicyclists, safer walking and bicycling.” *Injury Prevention* 2003, 9:205-209. See also this paper’s footnote 12 concerning the limited efficacy of helmets in preventing injuries.

to sketch a handful of possible campaigns to convey a sense of the kinds of initiatives TJPP could undertake.

We divide these into campaigns that TJPP would initiate and lead, and areas where activities already underway could benefit from TJPP involvement and support.

Campaigns to be led and initiated by TJPP

1. Robo-Cops “R” Us
2. Stop Killer-Cells
3. Send Killer-Drivers to Jail
4. Existing Rights in Law: Make Them Real

Campaign #1: Robo-Cops “R” Us

This campaign would document, publicize, and advocate new and emerging electronic and/or automated technologies for improving driver accountability. The campaign would work to establish:

- broad access to data from electronic in-car black boxes (“event data recorders”) following crashes, in both criminal and civil cases;
- wide use of speeding and red-light cameras;
- widespread (and eventually universal) dissemination of seamless electronic technology for toll collection and odometer reading (the latter is pivotal to efforts to levy “VMT” fees or charge insurance by the mile)
- support for other new technologies that support road safety⁴⁹

This campaign would be both offensive, pro-actively publicizing the tremendous safety- and justice-related advantages of these technologies, and defensive, rebutting objections raised by self-styled guardians of privacy (in reality, of course, guardians of impunity). It would function primarily at the national level but would also intervene in ongoing state or local battles (e.g., to help unblock efforts to expand use of speeding and red-light cameras in New York City).

Campaign #2: Stop Killer-Cells

This campaign will work to “de-glamorize” and eventually criminalize driver use of inherently distracting communications devices such as cell phones, e-mail, text-messaging, and real-time screen-based navigation. Advocacy will range from high-profile efforts to legislate bans on driver cell-phone use in many more states (perhaps eventually adding a federal component, e.g., reduced safety grants to states that haven’t enacted

⁴⁹ For example, *New Scientist*, **156**, 6 Dec. 1997, p. 12, reported on Tokyo police use of video technology that responds to telltale crash sounds to record video footage of crashes for diagnostic purposes.

bans), to nuts-and-bolts activities such as adding a cell-phone-in-use “check box” to police crash accident reports.

Note: Campaigns #1 and #2 both involve high technology, but from opposite stances. The “pro” campaign seeks the social use of electronic tools to advance safety, while the “con” campaign seeks to limit the private use of communication devices that undermine it. Merging the two campaigns might optimize resources while also putting the lie to charges of “Luddism” often hurled at opponents of unfettered uses of technology.

Campaign #3: Send Killer-Drivers to Jail

As discussed earlier, TJPP would seek out one or two states in which conditions look promising for prosecuting all killer-drivers, rather than simply DUI cases. Priority would be given to developing and demonstrating new approaches for “export” to other jurisdictions. Among the candidates would be legislating district attorneys’ access to pre-crash driver data from in-car black boxes, and deploying circuit-riding prosecutors of killer-drivers, à la California’s workplace-safety crimes task force. (See Campaign Area #1, Prosecuting and Convicting Killer-Drivers, in prior section.)

Campaign #4: Existing Rights in Law: Make Them Real

Existing law contains a surprising number of provisions which, in principle, protect the rights of road users from abuse by drivers. Not surprisingly, however, these provisions are seldom if ever enforced. Examples from New York State’s Vehicle & Traffic Law include:

- §1122 and §1129, protecting vehicle operators (including, importantly, bicyclists) from unsafe passing and tailgating, respectively;
- §375-30, forbidding drivers from papering over their rear (or other) window;
- §1151, requiring drivers to yield to pedestrians in crosswalks, both marked and unmarked.

The other 49 states have similar laws which are similarly unenforced, and many other statutes could be identified as well. This campaign could target a handful of states or municipalities — preferably areas with established advocacy groups — for researching, monitoring and ultimately demanding routine enforcement of such laws. These efforts might also identify current enforcement programs that are arguably less effective (e.g., seat-belt use, juvenile helmet use), both to rebut the argument that police resources are unavailable and also to highlight the differences between individual (and “intransitive”) safety and public (and “transitive”) safety.

TJPP should research European traffic codes and law to determine the state-of-the-art of both legal protection accorded to “vulnerable” road users and legal sanction imposed on injury-causing drivers. Advocates here have been pointing increasingly to European road-

safety jurisprudence as a possible model for the U.S., but much of the discussion remains frustratingly vague. TJPP should publish a report documenting best practices in Europe and outlining steps for applying them here.

Ongoing campaigns to which TJPP could contribute strategic resources

VMT-based campaigns

Environmental organizations historically have devoted far less advocacy to reducing driving (vehicle miles traveled, or VMT) than to improving automobiles' fuel efficiency. Yet while both approaches are important for diminishing oil dependence and reducing greenhouse gas emissions, only the VMT approach (reducing driving) reduces road crashes and casualties (not to mention traffic gridlock and sprawl growth). Indeed, reduced use of cars contributes disproportionately to creating a safer and less oppressive road environment, by virtue of the “safety-in-numbers” phenomenon.⁵⁰ For these reasons, TJPP should add its voice to ongoing efforts to reduce driving, including:

- Efforts to increase taxes on gasoline specifically
- Efforts to impose carbon taxes on fossil fuels in general (including gasoline)
- Efforts to charge driving on a VMT basis, e.g., via road tolls, weight-distance taxes, etc.
- Efforts to require car-insurance providers to offer insurance on a per-mile basis.⁵¹
- Pressuring environmental groups to embrace VMT approaches as well as fuel-efficiency standards in their oil-reduction campaigning

Notwithstanding the enormous benefits from reducing VMT, TJPP's activities in these areas should be primarily supportive and strategic, so as to avoid diluting our resources.

TJPP Structure

Personnel / Resource Needs

TJPP should eventually have a minimum of four full-time staff: an executive director, a research director with a strong legal/legislative background, a campaigner-organizer and an office manager, possessing among them the following skills:

- Legal expertise — TJPP must have an ongoing capability to research and analyze case law pertaining to road crashes. Hopefully, much of this work could be contracted pro bono to interested academics — law professors, law students, legal clinics — overseen by our in-house research director.

⁵⁰ This “virtuous cycle” operates via the “safety in numbers” phenomenon noted earlier, in the discussion of dangerous driving (Issue Area #5).

⁵¹ Note that per-mile insurance would induce the most accident-prone drivers to reduce their miles driven the most, since their actuarially-based per-mile rates would tend to be the highest.

- Legislative expertise — TJPP must also have the capacity to:
 - research state statutes pertaining to reckless endangerment, criminally negligent homicide, manslaughter; etc.
 - research state vehicle and traffic laws
 - research analogous laws and codes in Europe and Canada
 - draft legislation and model codes

While much of the detailed research might also be undertaken by concerned academics, managing and advancing it will require considerable in-house work.

- Organizing & Advocacy Campaigning — this is the heart of TJPP’s work, and will require at least one creative and dynamic staff member, under the direction of the executive director.
- Fundraising — managed by the executive director
- Communications — Web site, e-communications including newsletter, press releases, handling inquiries from the public, managing information
- Office Management — bookkeeping, payroll, general office support

Budget

Comparable NGO’s with four full-time staff and an office typically have annual expenses of \$250,000 - \$300,000 a year.

Affiliates

- Cycle and pedestrian advocates — TJPP’s affinities with these advocates are obvious, and we should partner with them as fully as possible.
- Mothers Against Drunk Driving — Our common interest with MADD is obvious, in both accident prevention and post-accident justice. Although MADD has historically resisted embracing non-DUI issues, the group’s prominence and success warrant reaching out to them to the greatest extent possible.
- Partnership for Safe Driving — This group maintains a Web site, publishes a bimonthly newsletter, *Crash Prevention News*, and espouses a similar philosophy to ours.⁵² Indeed, PSD has prioritized both a federal ban on driver use of cell phones (including hands-free), and adoption of photo-enforcement technology in “every community in the nation” to deter speeding and red-light running.
- Livable Communities groups — the shared interests are obvious.

⁵² From their home page: “The Partnership for Safe Driving is a non-profit, non-partisan grassroots organization dedicated to eliminating all forms of dangerous driving and preventing car crashes. Through education, research, and grassroots activism, we are working to change the driving culture in America.” See <http://www.crashprevention.org/>.

- Sympathetic public health professionals — With obesity overtaking tobacco as the acknowledged leading preventable cause of premature death in the U.S.,⁵³ the public health profession has another compelling reason (in addition to road crashes) to seek roads that are not just safe but “just” so that Americans can integrate walking, cycling and play into their daily lives. TJPP should seek out sympathetic health professionals who, like us, are eager to overturn the prevailing paradigms of individual safety and crash mitigation in favor of system safety and crash prevention.
- Robert Wood Johnson Foundation — maintains a major philanthropic program aimed at making the built environment more conducive to physical activity.

Possible Funding Sources

The list of potential beneficiaries of TJPP’s work is long:

- Pedestrians / walkers / transit users
- Bicyclists
- Advocacy groups representing cyclists and pedestrians
- Bicycle dealers / manufacturers
- Owners / operators of conventional passenger vehicles (sedans rather than SUV’s)
- Safe drivers
- Parents and other child caregivers
- Children’s advocates
- Insurance providers
- Public-health professionals
- Urban advocates
- People injured by driver negligence (includes victims’ families)
- Trial lawyers
- Truckers and other classes of drivers with particular interests in on-time travel and/or avoiding scapegoating (disproportionate blame for road accidents)⁵⁴
- Manufacturers and suppliers of electronic / automatic safety technologies and systems
- Environmentalists
- Police
- Ordinary citizens outraged by traffic injustice (per epigraph by Benjamin DeMott)

⁵³ See CDC Fact Sheet, “Physical Inactivity and Poor Nutrition Catching up to Tobacco as Actual Cause of Death,” March 9, 2004, <http://www.cdc.gov/od/oc/media/pressrel/fs040309.htm>. In the text we use obesity as a proxy for physical inactivity and poor nutrition.

⁵⁴ The Web site of the Partnership for Safe Driving lists the American Trucking Association as a contributor.

The range of constituencies is heartening, since it suggests our support can be broad-based and therefore robust, but it also suggests we will have to tailor our fundraising efforts to several disparate audiences.

Governance

TJPP could be constituted as either a stand-alone venture or a project hosted and governed by one or more existing organizations. It may be prudent to launch it as the proverbial “one person plus a desk and a phone” for 6-12 months to see if it can develop traction without first committing enormous resources (which might not be available before the fact).