On the afternoon of October 2, 1997, Dante Curry was playing on the sidewalk across from the sign shop where his stepfather worked. It was a quiet street in a school zone, and six year-old Dante was playing with a friend and her dog. The rottweiler startled him, and he ran across the street to his father. A speeding driver struck Dante head-on; he was taken to Columbia-Presbyterian Medical Center where he slipped into a coma. He died two days later.

Dante’s killer, 26-year-old Jacob Rivera of Newark, New Jersey, admitted to police officers that he was driving his car at 65 miles per hour in the school zone, more than twice the 30-mile-per-hour speed limit.

Despite Rivera’s own testimony and tests on the car’s skid marks confirming he was speeding, the crash was ruled an accident by police investigators and Jacob Rivera was let go with only a $60 speeding ticket. Assistant Bronx District Attorney Edward Talty would not press charges, “We reviewed the police reports and … it was an accident. There were no criminal acts involved.”

Dante’s family was devastated. “A $60 ticket? That’s all my son’s life is worth?” asked his mother, Evelyn Cancel. “Where is the justice in that?”

Had Rivera driven the legal speed limit on October 2, 1997, he would have had more time to avoid the crash, and Dante would have had a much greater chance of surviving. But neither prosecutors nor the police would admit that Rivera’s speeding and reckless driving had taken a life. Evelyn Cancel, stunned, still recalls the D.A.’s words: “Get over it.”

More than 150 pedestrians and cyclists were killed on New York City streets last year. These family, friends and neighbors are taken from us every year, and the people responsible for their deaths are seldom, if ever, held accountable. With the exception of those who drive drunk, drivers who kill pedestrians or cyclists through negligence or recklessness are rarely investigated, prosecuted or sentenced.

The Rule of Two

“Because of the way laws are written and interpreted, and because of societal attitudes, it is easier to convict deadly drivers who are drunk or drugged,” admits an exasperated former Brooklyn prosecutor, Maureen McCormick. Jurors identify with speeders and red light runners, and are hesitant to convict them when they kill. But the primary challenge is the “rule of two” which requires that a motorist must be committing at least two traffic violations, such as speeding and red light running, before they will be charged for killing a pedestrian or cyclist. This standard makes it difficult for prosecutor’s to establish negligence and shields deadly drivers from accountability.

The “rule of two” is not written in law. It is a rule of thumb used by prosecutors to determine the successful prosecution of a deadly drive. The prosecutor’s burden lies in proving the driver acted recklessly without reasonable caution and put another person in danger of injury.
or death, McCormick says, “When D.A.’s can’t show that the driver’s acts were more than careless or inadvertent, and criminal assault or manslaughter cannot be charged, jail time is unlikely.” Although a driver who kills a pedestrian while committing one traffic crime should be presumed negligent by reason that he or she is knowingly breaking a law designed to protect the safety of road users, a single violation is still not enough for prosecutors to feel confident bringing the case before a judge and jury that do not take traffic crimes seriously. That’s why a motorist like Jacob Rivera, driving twice the speed limit in a school zone when he struck and killed young Dante Curry, got off with only a speeding ticket.

The contrast with drunk drivers is stark. On January 3rd, 2008, Eugenio Cidron was sentenced to 3 1/2 to 10 1/2 years in prison for killing bicyclist Eric Ng while drunkenly speeding down the Hudson River Greenway. Cidron’s intoxication was emphasized as the primary factor and cause of the crash, disregarding his negligence in speeding and driving on the car-free Greenway. In fact, if Cidron had been sober and sped down the Greenway to kill Eric Ng, it is unlikely the same charges or sentence would have resulted. Eric is one of the few NYC cyclists whose death prompted the successful prosecution of a killer driver.

A Broken Process

So much of Transportation Alternatives’ work focuses on fixing streets and advocating for better engineering. But a broken legal process that’s powerless against killer drivers, and a culture that sustains and accepts reckless driving are crying out for change. The same lack of respect that results in narrow sidewalks and double-parked bike lanes is also at work in the lack of justice accorded bicyclists and pedestrians who have been struck by cars.

“This city cares a whole lot about vehicles and not a whole lot about people that are walking,” cried Jimmy Crouch to a rapt crowd at this January’s Memorial Bike Ride and Walk. Jimmy’s 24-year-old son Josh was killed by a hit-and-run driver while walking near the West Side Highway in 2006. Josh grew up in North Carolina, and Jimmy makes the trip to New York every fall to lead his own memorial walk, on the anniversary of his son’s death. The perpetrator of the hit-and-run has never been found.

Jimmy’s ordeal has continued in the years and months since the crash. He has criticized the New York City Police Department for closing the case prematurely and with inaccurate information. The police report officially classified the charge as a misdemeanor for leaving the scene of an accident, although vehicular homicide is a felony. Additionally, there were inconsistencies, such as a sergeant’s report that Josh was beaten and dumped from a moving vehicle, then his later denial of that claim. Similarly, police told paramedics that an S.U.V. was involved in the crash, but never included this in police reports. Finally, Josh’s body was reported as being found at two different intersections along the West Side Highway: Little West 12th Street and with West 12th Street, five blocks away.

Jimmy joined eight of Josh’s close friends in retracing the last steps of that fateful evening, trying to get answers for a case on which the police have simply given up. And while Jimmy has found strength in T.A.’s work and in the hundreds of New Yorkers who have expressed their support at memorial events, the system’s failure to bring justice and closure to Josh’s death has proved overwhelming. His words to the assembled crowd this January were as much a censure as they were a plea, “The justice that was there wasn’t justice.”

Bicyclists pay their respect to Donna Goodson’s ghost bike in 2007. Setting up memorials has because a powerful way to remind all street users to respect one another.
The Tenets of Traffic Justice

1. Zero Tolerance for Killer Drivers
Traffic fatalities should be prosecuted as rigorously as other violent crimes. District Attorneys must abandon guidelines that shield dangerous and deadly drivers from being held accountable, such as the “rule of two.” The public must be educated on the importance of holding motorists responsible for the consequences of their driving behavior so that juries are willing to convict.

2. Vision Zero Policy for Traffic Fatalities
All traffic fatalities are preventable. Speaking for all pedestrians and cyclists at the memorial rally, Ellen Foote demanded “that city and state officials and the police know that even one more death is too many.” A Vision Zero policy would force the hand of government to use engineering and enforcement to drastically reduce traffic deaths.

3. Effective Enforcement of the Law
Traffic law is not effectively enforced in NYC, a problem that tacitly promotes speeding, red light running, reckless driving and a host of other traffic crimes endangering pedestrians and cyclists. New York City gathers no substantial data on the state of traffic crime. The city measures only the number of tickets written, but not the underlying level of infractions. The city must reduce the occurrence of traffic crimes through smarter data collection, additional red light cameras, speed cameras and other improved traffic enforcement strategies.

4. Complete Investigations of All Crashes
It is vital that all fatal crashes are thoroughly and consistently investigated by the City and concluded with a formal finding of cause and culpability. Currently, only when the victim lives to provide his or her account is the report likely to acknowledge driver responsibility. The NYPD needs to follow the established procedures for handling crashes involving cyclists and pedestrians, including the administering of breathalyzer tests for all motor vehicle drivers involved in crashes. The street locations and conditions of the crash must be investigated with an eye towards improving them to prevent similar crashes.

5. Accurate Reporting on All Crashes
The City must improve crash reporting for consistency and accuracy. Currently, NYPD officers are reluctant to report a bicycle or pedestrian crash they did not witness or where only light injuries were sustained. This prevents those injured from obtaining no-fault insurance coverage. Moreover, inconsistent or incomplete reports skew crash data and undermine the efforts of city agencies to improve the safety of our streets.

6. Build Complete Streets, Safe for All Users
Pedestrians and cyclists, the most vulnerable road users, must receive justice on the streets through better street designs that prioritize their safety. As Ellen Foote says, “New York City streets must safely accommodate the gentle, health-minded, environmentally conscious, non-polluting travelers.”

Fighting for Traffic Justice
It is our goal to ensure that no victim of a crash, nor any of their loved ones, are ever left feeling powerless under the law. For anyone who has felt justice miscarried after a crash, the experience is heart-wrenching.

True justice extends beyond holding killer drivers accountable; it’s also about ensuring the equal safety, respect and treatment under the law of every user on the street. In 2006, T.A. began reaching out to the families of pedestrians and cyclists killed on NYC streets. This past December, we brought together a group of people who have suffered the loss of a loved on the streets to sit down and get to know one another as a network for mutual support. Collectively, we are pushing for legislative and policy changes to bring justice to all street users. With these families behind us, T.A. has launched a new campaign: Traffic Justice.

T.A. will push for the Tenets of Traffic Justice (see sidebar) in three ways. Firstly, T.A. staff will continue to bring together friends and families of pedestrians and cyclists killed in traffic. And by organizing memorials and rallies, we will work together to overturn the cultural hurdles that allow such unfair treatment of bicycles and pedestrians, and make it so difficult to hold drivers accountable. The campaign will also tie together our efforts against speeding and reckless driving, coordinate public awareness about safety and lobby for further deployment of automatic enforcement devices. Lastly, we will focus on enforcement of existing laws and the setting of new legal precedents to protect street users, hold drivers accountable, thoroughly investigate all crashes and make necessary improvements to prevent others.

While grief and anger are responsible for bringing many New Yorkers to reexamine the justice accorded to bicyclists and walkers, this is at the core a hopeful campaign—as much about respectful, livable streets as any project T.A. has undertaken in the past. Ellen Foote, whose son Sam Hindy died bicycling on the Manhattan Bridge this past December, best describes our efforts. She has called on New York City to create a “living memorial, a city that values the rights of walkers and cyclists at the memorial rally, Ellen Foote demanded “that city and state officials and the police know that even one more death is too many.” A Vision Zero policy would force the hand of government to use engineering and enforcement to drastically reduce traffic deaths.

Fighting for Traffic Justice
It is our goal to ensure that no victim of a crash, nor any of their loved ones, are ever left feeling powerless under the law. For anyone who has felt justice miscarried after a crash, the experience is heart-wrenching.

True justice extends beyond holding killer drivers accountable; it’s also about ensuring the equal safety, respect and treatment under the law of every user on the street. In 2006, T.A. began reaching out to the families of pedestrians and cyclists killed on NYC streets. This past December, we brought together a group of people who have suffered the loss of a loved on the streets to sit down and get to know one another as a network for mutual support. Collectively, we are pushing for legislative and policy changes to bring justice to all street users. With these families behind us, T.A. has launched a new campaign: Traffic Justice.

T.A. will push for the Tenets of Traffic Justice (see sidebar) in three ways. Firstly, T.A. staff will continue to bring together friends and families of pedestrians and cyclists killed in traffic. And by organizing memorials and rallies, we will work together to overturn the cultural hurdles that allow such unfair treatment of bicycles and pedestrians, and make it so difficult to hold drivers accountable. The campaign will also tie together our efforts against speeding and reckless driving, coordinate public awareness about safety and lobby for further deployment of automatic enforcement devices. Lastly, we will focus on enforcement of existing laws and the setting of new legal precedents to protect street users, hold drivers accountable, thoroughly investigate all crashes and make necessary improvements to prevent others. Families and friends of those lost to the street will continue working to inform our agenda and change public opinion with their powerful and moving voices.

While grief and anger are responsible for bringing many New Yorkers to reexamine the justice accorded to bicyclists and walkers, this is at the core a hopeful campaign—as much about respectful, livable streets as any project T.A. has undertaken in the past. Ellen Foote, whose son Sam Hindy died bicycling on the Manhattan Bridge this past December, best describes our efforts. She has called on New York City to create a “living memorial, a city that values the rights of walkers and bikers to travel safely.”