Justice Denied

New York City’s District Attorneys Plead Out of Vision Zero

DECEMBER 2015
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INTRODUCTION:
Executive Summary
Key Findings
Recommendations
As elected officials with extensive prosecutorial discretion, a prominent soapbox, and a deep stack of cases, New York City’s District Attorneys have great potential to save lives and change the culture on our streets. Simply by prosecuting reckless, negligent and careless motorists regularly, D.A.s could establish a powerful deterrent in a city where lawless driving kills or injures more than 25,000 people each year.

Unfortunately, the public’s prosecutors are currently failing to lead and rarely seek justice for constituents who have been victims of lawless driving, according to Transportation Alternatives’ report Justice Denied: New York City’s District Attorneys Plead Out of Vision Zero. After consulting with all five D.A.s’ offices over the course of six months, researchers found that prosecutors habitually fail to bring charges after traffic crashes that kill or injure New Yorkers.

These elected prosecutors are routinely dodging their responsibility to seek justice for traffic victims, which leaves thousands without a day in court and allows dangerous driving to continue unabated. The poorest New Yorkers suffer most deeply from the D.A.s’ failure to act, since they are statistically most likely to be killed or injured in traffic. For example, children in low-income areas on the Lower East Side and in East Harlem are three times as likely to be killed in traffic as children on the well-to-do Upper East Side.

So far this year, about 4,000 New Yorkers have been killed or injured in hit-and-run crashes, but less than 1% of the drivers involved have been prosecuted. Only 50 of those cases have been investigated by the NYPD’s

In the past year, at least 10,000 motorists were prosecuted for driving while intoxicated. Fewer than 40 were prosecuted for failing to yield to a pedestrian or bicyclist, even though that traffic violation contributed to more than six times as many crashes as DWI.¹

Less than 7% of drivers who cause fatal crashes are charged with homicide.¹
Collision Investigation Squad (CIS) in 2015, leading to the arrest of 28 drivers. An unknown but smaller number were ultimately charged with a crime. The report recommends that District Attorneys should allow hit-and-run victims to report incidents directly to prosecutors’ offices. D.A.s should also publicly push for additional resources to expand the NYPD’s CIS, and aggressively apply a City law allowing for civil fines against hit-and-run drivers.

From borough to borough, there is a wide disparity in how D.A.s view their role in adjudicating traffic crashes. In Brooklyn, there are promising efforts to treat victims with fairness through institutional commitments to Vision Zero like D.A. Ken Thompson’s Driver Accountability Task Force. In Staten Island, where the number of pedestrian fatalities has remained unchanged for 30 years, there has been little recognition that New Yorkers killed and injured by careless drivers are the purview of the office at all. In Manhattan, we are seeing more aggressive prosecutorial leadership from a District Attorney who is beginning to treat traffic violence as a true injustice: D.A. Cyrus Vance secured a homicide conviction against the driver who killed Jean Chambers—a rare type of conviction given the absence of key aggravating factors such as DWI or leaving the scene.

TransAlt found striking examples of District Attorneys who have used their soapbox and prosecutorial discretion to lead the way to culture change. In 30 years of prosecuting drunk driving nationwide, D.A. Vance’s recent efforts to tackle cybercrime, and even in the civil settlement involving a driver who killed a child in Queens, we see how leadership choices could map a route for New York’s top prosecutors to participate fully in Vision Zero.

In 2014 alone, more than 3,000 people were seriously injured in New York City traffic; loss of limb, traumatic brain injury and coma are common results. For children here, lawless driving remains the leading cause of death from injury. This endemic violence is practically part of the culture in New York City, where dangerous driving is as routine as it is unlikely to be punished. Changing this culture requires D.A.s who are courageous and ready to lead by sending a clear message that there will be consequences for negligent and reckless behavior at the wheel.

We will only reach Vision Zero if all of our District Attorneys embrace their prosecutorial discretion to push the envelope of traffic violence cases.
Vision Zero laws have only been used 46 times citywide in two years. The Right of Way Law was used in only 3% of the 1,157 cases where it could have been applied.

District Attorneys are bringing homicide charges against less than 7% of drivers who cause fatal crashes in New York City. In less than 2% of such crashes did D.A.s bring charges against drivers who were not intoxicated, fleeing the police or intentionally attacking the victim.

In the past year, at least 10,000 drivers were prosecuted for drunk driving, even though alcohol was a factor in 897 crashes where people were killed or injured. Fewer than 40 drivers were prosecuted for failing to yield the right of way to a pedestrian or bicyclist, which caused 5,966 crashes where people were killed or injured.

Motorists caused 25,483 fatal or injurious crashes in 2014 as a direct result of lawless driving. 70% of pedestrian fatalities are caused by dangerous driver behavior, but the four Vision Zero laws passed by the New York City Council and State Legislature to aid District Attorneys have only been used 46 times in two years.

None of New York City’s District Attorneys are tracking or documenting cases where people are killed by lawless driving. TransAlt asked D.A.s to identify the number of crashes they prosecuted involving a fatality. Not a single office responded with this data.

District Attorneys are not using the full extent of their powers. For example, prosecutors have brought charges against less than 1% of drivers involved in 4,000 fatal and injury hit-and-run crashes in 2015. D.A.s could allow victims to report incidents directly to their offices, and publicly push for more resources to expand the NYPD’s Collision Investigation Squad (CIS).
RECOMMENDATIONS

We will only reach Vision Zero if our District Attorneys embrace their prosecutorial discretion as a leadership tool to push the envelope in traffic violence cases, and make an institutional commitment to apply best known practices for lawless driving prosecution.

**District Attorneys must demonstrate prosecutorial leadership by:**

1. Taking a vocal public stance on reckless and dangerous driving
2. Leading legislative efforts that will allow for more prosecutions of dangerous drivers
3. Publishing aggregate case outcomes online
4. Supporting proactive interagency coordination between prosecutors, police and other stakeholders

**District Attorneys must make an institutional commitment to traffic safety by:**

1. Giving staff comprehensive training on Vision Zero
2. Providing comprehensive services for all crash victims
3. Offering alternatives to incarceration and restorative justice initiatives
4. Supporting a Vehicular Crimes Unit

Each of these criteria are detailed on pages 23-25.
Failing to Defend New Yorkers Against Traffic Violence

Allison Liao and a Roadmap for How District Attorneys Could Lead the Way
In New York City, a person is as likely to be killed in traffic as murdered by a gun, and far more likely to be injured. In 2014, more than 60,000 people were injured in traffic crashes. Another 249 people were killed, 60% of whom were pedestrians or bicyclists. From 2005 to 2014, pedestrians accounted for more than half of the traffic fatalities in New York City.

While data clearly shows that lawlessly wielded vehicles are more dangerous than firearms, New York’s District Attorneys do not prosecute these deadly lawless behaviors at analogous rates. In fact, while the prosecution of people who kill or injure someone with a gun is common across all five D.A.’s offices, none consistently prosecute people who violently kill or injure someone with a vehicle.

Arrests for gun violence and traffic violence are analogous despite deeply disparate effects of the crime, with traffic violence killing and injuring 33 times as many people as guns each year.

District Attorneys prioritize the prosecution of gun deaths over traffic deaths, and thus send a message to their constituents that one form of violence is worse than the other, propelling a culture where more New Yorkers are killed by lawless driving. Every death caused by reckless driving that a D.A. fails to prosecute welcomes the next fatality caused by a reckless driver.

Like purchasing an illegal gun or pulling the trigger, behind every act of dangerous driving is a deliberate choice by a driver; putting their foot on the gas pedal and speeding, turning into a crosswalk, paying attention to something other than the traffic conditions around them. When a crash occurs as an effect of such choices, it is not an accident but the result of negligence or recklessness.

Vision Zero laws have only been used 46 times citywide in two years. The Right of Way Law was used in only 3% of the 1,157 cases where it could have been applied.
A 4,000 pound vehicle is a potentially lethal instrument. Driving is a tremendous responsibility and it is a prosecutor’s role to reinforce that drivers are obligated to operate that lethal instrument with the utmost due care for human life.

In New York City, lawless driving contributes to 70% of pedestrian fatalities. 

Causes of Traffic Fatalities and Injuries in 2014

- **25,483** caused by driver
- **2,164** caused by vehicle factors
- **2,532** caused by environmental factors

*Of 38,667 total crashes, 7,738 were reported with no causal factor. The 30,929 crashes reported with a causal factor may each have more than one factor. Source: NYS DMV Crash Contributing Factors*
In October 2013, 3-year-old Allison Liao was killed by an SUV driver who turned through the crosswalk where she walked hand-in-hand with her grandmother. The tragedy set Allison’s parents on a search for justice that has become an emblematic example of how District Attorneys fail to protect New Yorkers. But the case has also drawn a clear roadmap for how these offices could be leading the way.

Allison Liao and her grandmother had the unquestionable right of way when Ahmad Abu-Zayadah struck them in the crosswalk of Main Street and Cherry Avenue in Flushing, Queens. Allison’s grandmother was injured. Allison was killed. There is clear and disturbing video evidence.

When the D.A. chose not to prosecute the man who killed Allison, he was sending the message that the driver’s actions behind the wheel were acceptable and that he could continue to drive dangerously on our city streets. We only wanted a day in court and the D.A. to say that what happened to our daughter was wrong.

- AMY LIAO, WHOSE 3-YEAR-OLD DAUGHTER ALLISON WAS KILLED BY A DRIVER IN OCTOBER 2013

D.A. Richard Brown chose not to bring criminal charges against Abu-Zayedeh. Instead, an NYPD officer wrote Abu-Zayedeh two moving violation summonses, for Failure to Yield and Failure to Exercise Due Care, to be handled by a Department of Motor Vehicles administrative court.

Abu-Zayedeh’s summonses were later thrown out by a DMV administrative law judge in a 47-second hearing. Abu-Zayedeh refused to watch the video evidence, and the Liao family was not permitted to speak at the hearing.
Desperate for some legal recognition that the violent death of their daughter mattered, the Liao family was forced to take their case to civil court. There, the family’s lawyer and Abu-Zaydeh were able to settle, and set a remarkable example. Along with a financial settlement, Abu-Zaydeh agreed to publically acknowledge complete responsibility for the crash and sign a notarized agreement that he would not drive or apply for a license for five years.

For the Liao family, like so many victims of lawless driving, the true definition of justice is recognition of the crime. It’s as simple as getting their day in court, and an official effort to prevent the next tragedy. By all accounts, New York City’s District Attorneys are failing to deliver even this modicum of justice to their constituents.

“I was not looking where I should have when I turned my car, and that is the sole reason why she is dead. I have watched the video recording of the incident and now understand that I am entirely at fault for Allison’s death.”

- LETTER FROM ABU-ZAYDEH TO THE LIAO FAMILY
RECOMMENDATIONS:

A Proposal for Prosecutorial Courage

Setting the Precedent: Evaluating District Attorneys’ Offices

Case of Prosecutorial Courage: Mothers Against Drunk Driving

Case of Prosecutorial Courage: District Attorney Cyrus Vance and Cybercrime

Criteria for Evaluation
In New York City, lawless driving contributes to 70% of pedestrian fatalities.

Today, across all five District Attorneys’ offices, we see prosecutors almost exclusively pursuing cases which they know will result in conviction. Each measures their success on cases won. On the streets of New York, where drivers injure 60,000 a year, prosecutors’ measurement of success sends a clear message: killing a person with your car is acceptable.

In the era of Vision Zero, traffic violence is a treatable epidemic. As voters, as New Yorkers, as pedestrians, drivers and public transit riders, we understand that a cure will involve the City of New York as a whole of agencies, institutions and elected officials. Each must vocally disavow the status quo. The potential to protect New Yorkers rides on many agreeing that the loss of life we currently suffer is unacceptable.

This ongoing carnage should have been a call to action for D.A.s long ago. There is no excuse for dragged heels in the face of lives lost. In just the past two years, from City Hall to the City Council, New Yorkers have seen Vision Zero embraced with this boldness: new policies, new laws, new protocols abound. It’s time for all D.A.s to follow suit.

In New York, D.A.s have tremendous prosecutorial discretion, with nearly absolute and unreviewable power to choose whether or not to bring criminal charges. In fact, New York state law defines this as a responsibility requisite to the job, assigning District Attorneys the “duty to protect the public by investigating and prosecuting criminal conduct.”

We will only reach Vision Zero if our District Attorneys embrace their prosecutorial discretion to push the envelope of traffic violence cases.
D.A.s have the power to investigate lawless driving regardless of police action. In other areas of the law, D.A.s seek out prosecutions not led by police. As elected officials observing a widespread epidemic among their constituency, prosecutors should act boldly and first.

Especially for crimes involving victims injured or killed, D.A.s should measure success by the boldness of cases prosecuted, not only by the rate of conviction. They must send a clear message. By simply showing that these crimes are worthy of prosecution, D.A.s have the power to lead the City of New York to Vision Zero.

“When someone you love is killed in traffic, you think that the District Attorney will shout from the rooftops about the injustice of it. You think that it’s their job to stand up for you. Well, it seems like no one told them.”

— GREGORY THOMPSON JR. WHOSE 16-YEAR-OLD SISTER RENEE WAS KILLED BY A TRUCK DRIVER IN 2013
In this report, Transportation Alternatives identified the key ways for District Attorneys’ offices to elevate their potential to pursue a bold brand of justice, and evaluated how each is striding toward, or shying away from, participation in the effort to save lives.

With an understanding that D.A.s simply taking a visible public stance and prosecuting traffic violence is a strong deterrent against dangerous driving, the following list of best practices from around the world adds specific steps that prosecutors can take to reach this goal. Each office was judged on these criteria, which are divided into two categories, an institutional commitment to traffic safety and leadership toward Vision Zero.

**An institutional commitment to traffic safety** is demonstrated by training of staff on Vision Zero, providing comprehensive services for crash victims or families, offering alternatives to incarceration and restorative justice initiatives, and supporting a Vehicular Crimes Unit.

**Leadership toward Vision Zero** is demonstrated by taking a vocal public stance on reckless and dangerous driving, pioneering legislative efforts that will allow for more prosecutions of dangerous drivers, publishing aggregate case outcomes online, and supporting interagency coordination between prosecutors, police and other stakeholders.

Each of these criteria are detailed on pages 23-25.

As concrete examples where District Attorneys have already elevated their role, we provide two case studies of prosecutorial courage: the campaign against drunk driving, and recent efforts to combat cybercrime.
Two decades ago, when people were killed by intoxicated drivers, it was chalked up to “accident” and rarely prosecuted with any severity. Today, in New York City, the vast majority of vehicular homicide charges brought by District Attorneys are against drunk drivers.

This is not because the majority of New Yorkers are killed by drunk drivers. In fact, far more people are killed and injured by drivers who are speeding or fail to yield the right of way. The reason that Driving While Intoxicated is so thoroughly enforced and prosecuted today is the courage of Mothers Against Drunk Driving (MADD) and D.A.s nationwide who took up drunk driving as their mantle.

In 1980, before MADD launched a victim-forward effort to eliminate drunk driving, 25,000 people were killed in drunk driving crashes nationwide every year, a full 50% of all traffic-related fatalities. In the ensuing years, advocates worked hand-in-hand with legislators, police and especially prosecutors to publicly shame drunk drivers and increase the severity and frequency of punishment. Studies show that drunk driving deterrence increases when the public believes there is a high likelihood of arrest and punishment. By 2013, the number of people killed nationwide in drunk driving crashes had dropped by more than 55%. 9

New Yorkers today are far less likely to be killed by a drunk driver than a speeding driver or a driver who fails to yield. But in the past year, at least 10,000 drivers have been prosecuted for drunk driving, while less than 40 drivers were prosecuted for failing to yield the right of way to a pedestrian or bicyclist.

Failing to yield and unsafe speed by drivers contribute to 6.5 times more fatal crashes than alcohol.10

With the remarkable life-saving effect of MADD as an example, there is a clear path forward for D.A.s who are ready to be courageous prosecutors in the name of saving New Yorkers’ lives. Aggressive, noisy, public prosecution is a radically effective deterrent. It has worked for drunk driving. It’s time for New York City’s top prosecutors to demonstrate their concern for 60,000 New Yorkers injured by reckless drivers every year by making the vocal prosecution of lawless drivers their most public stance.
After my son was killed riding his bike, I only asked that the District Attorney respect my son’s death enough to give me a day in court. That didn’t happen.

— LIZI RAHMAN, WHOSE SON ASIF WAS KILLED IN FEBRUARY 2008

### Drunk Driving vs Failure to Yield the Right of Way in 2014

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<th>Failure to Yield</th>
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<tr>
<td>9,483 prosecutions</td>
<td>5,966 injuries/deaths</td>
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<td>897 injuries/deaths</td>
<td>38 prosecutions</td>
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* Of 38,667 total crashes, 7,738 were reported with no causal factor. The 30,929 crashes reported with a causal factor may each have more than one factor. Source: NYS DMV Crash Contributing Factors

**This number only includes a single category of DWI offenses under VTL 1192 and DCJS only records the top charge in any case.

*** Prosecutions under the Right of Way Law from August 2014 to August 2015.

Sources: NYS DMV, NYS Division of Criminal Justice Services
Manhattan District Attorney Cyrus Vance has settled on a prosecutorial legacy issue, cybercrime and identity theft, and has pursued it with a doggedness that is exemplary among prosecutors.

In an article in Slate, D.A. Vance said that nearly a third of the felony cases that his office chooses to pursue are related to cybercrime. Speaking with Charlie Rose, Manhattan’s top prosecutor referred to cybercrime cases as “a tsunami,” and noted that because this is an issue of prosecutorial leadership for his office, they are pursuing cases outside of NYPD involvement.

However admirable and effective D.A. Vance’s tactics against cybercrime are, it is most notable that he chose to aggressively prosecute a crime which, unlike traffic violence, doesn’t cause irreparable damage or physical harm every hour of the day.

In The New York Times Magazine, D.A. Vance described his office’s passion for cybercrime as being inspired by the 300 complaints that his office sees each month. According to the NYPD, in the same year, an average of 656 of D.A. Vance’s constituents were injured or killed in traffic every month. In Brooklyn and Queens, that number is as high as 1,200 in each borough.

One-third of the felony cases pursued by the Manhattan District Attorney’s Office are related to cybercrime, inspired by 300 complaints to the office each month. In the same year, an average 656 people were injured or killed in traffic in Manhattan each month.
Citywide, prosecutors should follow D.A. Vance’s lead in passion, but dedicate their time to the lawless driving that causes daily irreparable harm: Seek out media to promote your aggressive prosecution stance; publicly decry the problem; host press conferences to mark your convictions; actively pursue the problem by investigating cases that the NYPD fails to; use your powerful mandate to draw a line in the sand against dangerous driving and for protecting the public from physical harm.

Imagine the lives that would be saved if D.A. Vance’s tactics and verve in combatting cybercrime were applied to these truly endemic problems.

“
I had lost my partner of 35 years. I wanted justice from the District Attorney, not punishment. The man who I watched walk away from my husband as he lay on the ground never even had to look me in the eye.

– MARY BETH KELLY, WHOSE HUSBAND DR. CARL HENRY NACHT WAS KILLED IN JUNE 2006
In conversations over six months with prosecutors and representatives from all five District Attorneys’ offices, TransAlt researchers sought to evaluate prosecutors’ participation in Vision Zero according to the following criteria. The criteria outlined herein are based on worldwide best practices shown to increase awareness of dangerous driving decisions, reduce recidivism and create truly effective deterrents to dangerous behavior.

**An Institutional Commitment to Traffic Safety**

**Comprehensive training of staff on Vision Zero includes:**

1. Training all Assistant District Attorneys on the prosecution of the vehicular offenses that cause the most injuries and fatalities, including violating pedestrians’ right of way and failing to use due care, in addition to drunk driving, hit-and-run and vehicular homicide.

2. Regularly repeating this training and modifying the curriculum to include new jurisprudence and NYPD policy changes.

3. Encouraging the use of the word “crash” or “collision” on all forms and in all procedures, as opposed to “accident.”

**Providing comprehensive services for all crash victims and their families includes:**

1. Assistance navigating the criminal justice system, resources for compensation and counseling services.

2. Regular updates about their cases.

3. In-office non-English language speakers reflective of the community.

4. The opportunity to speak at sentencing proceedings or provide victim impact statements.
Offering alternatives to incarceration and restorative justice initiatives includes:

1. Participating in a formal restorative justice program, established or operated with input from victims, families, the police, local courts and other stakeholders.

2. Seeking alternative sentencing options, including community service and using adjournments in contemplation of dismissal (ACDs) when appropriate.

3. Programs for education and monitoring of drivers convicted of DWI.

4. Impact panels for drivers who have committed non-DWI dangerous driving offenses.

Supporting a Vehicular Crimes Unit includes:

1. Focusing on the types of dangerous driving that cause the most injuries and fatalities.

2. Using data-driven principles to increase the prosecution of the driving behavior that kills and injures the largest number of people.

3. Routinely asking the court to suspend the licenses of repeat offenders and drivers who have injured or killed someone through carelessness. (Under VTL 510, any judge has the power to revoke or suspend a driving license.)

4. Using new laws including asking the court to impose civil penalties of up to $10,000 for hit-and-runs (N.Y. ADC. 19-191).
Leadership Toward Vision Zero

Taking a vocal public stance on reckless and dangerous driving includes:

1. Hosting press conferences with victims or families.
2. Making press statements and personal appearances to admonish against negligent and reckless driving.

Leading legislative efforts that will allow for more prosecutions of dangerous drivers includes:

1. Issuing statements and providing expertise in support of legislative changes.
2. Spearheading legislative initiatives that can break down obstacles to successful prosecution.

Publishing aggregate case outcomes online includes:

1. All vehicular and traffic related offenses prosecuted by the office.
2. All fingerprintable and non-fingerprintable offenses.
3. Disaggregation by top-charge and non-top-charge.
4. Information as to how many of the cases for each offense involved a fatality and serious injury.

Supporting proactive interagency coordination between prosecutors, police and other stakeholders includes:

1. Working with key stakeholders, including the NYPD, DMV and local courts on a regular basis to address procedural or policy issues.
2. Seeking tactics to expand prosecution and license suspension for the most dangerous driving offenses and repeat offenders.
3. Ensuring that victims of traffic violence have access to justice by allowing self-reporting to the D.A. where possible, particularly for hit-and-runs.
4. Directing discretionary funds to enforcement and education efforts that seek to prevent the offenses that kill and injure the most New Yorkers.
EVALUATIONS:

Evaluation: Brooklyn District Attorney’s Office

Evaluation: Manhattan District Attorney’s Office

Evaluation: Queens District Attorney’s Office

Evaluation: Staten Island District Attorney’s Office

Evaluation: Bronx District Attorney’s Office
The Brooklyn District Attorney’s office, lead by Kenneth Thompson, is a Vision Zero leader among New York’s prosecutors. In recent cases, D.A. Thompson showed noteworthy prosecutorial courage and made a successfully public display of the effort to condemn traffic crime. The Driver Accountability Task Force, an effort to bring prosecutors, police and court officials together with victims’ families and advocates, is a first-of-its-kind effort and the brainchild of the D.A. Thompson. The task force represents the type of interagency cooperation that must become standard for every D.A.’s office in the age of Vision Zero. However, we have yet to see the D.A. take a strong public stance, despite preventable fatalities on the streets of Brooklyn. Last year, the Brooklyn District Attorney’s Office prosecuted two drivers for vehicular manslaughter and criminally negligent homicide. In that time, 78 people were killed by drivers in Brooklyn.

**INSTITUTIONAL COMMITMENT TO TRAFFIC SAFETY**

Does the Brooklyn District Attorney’s Office demonstrate an institutional commitment to traffic safety by...

- training staff on Vision Zero? ✓
- offering alternatives to incarceration or participating in a restorative justice initiative? ✓
- providing comprehensive services for crash victims? ✓
- supporting a Vehicular Crimes Unit? ✓

**LEADERSHIP TOWARD VISION ZERO**

Does the Brooklyn District Attorney’s Office demonstrate leadership toward Vision Zero by...

- leading legislative efforts that will allow for more prosecutions of dangerous drivers? ❌
- publishing aggregate case outcomes online? ❌
- taking a vocal public stance on reckless driving in their borough? ❌
- supporting proactive interagency coordination between prosecutors, police and other stakeholders? ✓
The Manhattan District Attorney’s Office, lead by Cyrus Vance, is a Vision Zero leader among New York’s prosecutors. In recent cases, D.A. Vance showed noteworthy prosecutorial courage. During last year’s lobbyist-backed attempt to dismantle the Right of Way Law, a critical protection of pedestrians and cyclists, D.A. Vance stood alone among prosecutors in authoring a public opposition to the attack on the law. His website is a model for prosecutors with a wealth of relevant information for victims and the public. However, D.A. Vance, in his public appearances, places traffic violence as a priority well below cybercrime and money theft, even though traffic is the leading cause of injury-related death for New York City children. We have yet to see the D.A. take a strong public stance, despite preventable fatalities on the streets of Manhattan. Last year, the Manhattan District Attorney’s Office prosecuted three drivers for vehicular manslaughter and criminally negligent homicide. In that time, 40 people were killed by drivers in Manhattan.

INSTITUTIONAL COMMITMENT TO TRAFFIC SAFETY

Does the Manhattan District Attorney’s Office demonstrate an institutional commitment to traffic safety by...

- training staff on Vision Zero? [✓]
- offering alternatives to incarceration or participating in a restorative justice initiative? [✓]
- providing comprehensive services for crash victims? [✓]
- supporting a Vehicular Crimes Unit? [✓]

LEADERSHIP TOWARD VISION ZERO

Does the Manhattan District Attorney’s Office demonstrate leadership toward Vision Zero by...

- leading legislative efforts that will allow for more prosecutions of dangerous drivers? [✓]
- publishing aggregate case outcomes online? [✗]
- taking a vocal public stance on reckless driving in their borough? [✗]
- supporting proactive interagency coordination between prosecutors, police and other stakeholders? [✗]
The Queens District Attorney’s Office, lead by Richard Brown, has shown a middling effort to participate in Vision Zero. More New Yorkers are killed in Queens traffic, and more collisions occur on Queens streets, than any other borough, but this violence is not reflected in prosecutorial prioritization by D.A. Brown. However, above and beyond his peers, D.A. Brown’s office provides the city’s most comprehensive approach to language support for a diverse array of victims with the Office of Immigrant Services he established this year. The Queens D.A.’s Office has a narrowly focused “Vehicular Homicide Unit,” that fails to prioritize thousands of annual injury cases and suggests a lack of understanding of the role of D.A.s in Vision Zero. It is notable that, with the exception of DUI cases, D.A. Brown almost never takes cases to trial. Last year, the Queens District Attorney’s Office prosecuted three drivers for vehicular manslaughter and criminally negligent homicide. In that time, 88 people were killed by drivers in Queens.

INSTITUTIONAL COMMITMENT TO TRAFFIC SAFETY

Does the Queens District Attorney’s Office demonstrate an institutional commitment to traffic safety by...

- training staff on Vision Zero?
- offering alternatives to incarceration or participating in a restorative justice initiative?
- providing comprehensive services for crash victims?
- supporting a Vehicular Crimes Unit?

LEADERSHIP TOWARD VISION ZERO

Does the Queens District Attorney’s Office demonstrate leadership toward Vision Zero by...

- leading legislative efforts that will allow for more prosecutions of dangerous drivers?
- publishing aggregate case outcomes online?
- taking a vocal public stance on reckless driving in their borough?
- supporting proactive interagency coordination between prosecutors, police and other stakeholders?
Staten Island’s District Attorney’s Office, lead today by acting D.A. Daniel Master Jr., who recently replaced longtime D.A. Dan Donovan, has demonstrated zero effort to participate in Vision Zero. A safety course for drivers convicted of drunk driving, standard among D.A.s across the country, is the office’s only relevant commitment to programs of restorative justice or alternatives to incarceration. The inaction of the D.A.’s Office is evident in a total lack of progress on Staten Island streets. While all other boroughs have shown major declines in traffic fatalities, the number of pedestrians killed in Staten Island traffic has remained unchanged for 30 years. D.A.-elect Michael McMahon was elected to the Staten Island District Attorney’s Office in November 2015. His interest in prosecuting traffic crimes and advancing Vision Zero remains to be seen. Last year, the Staten Island District Attorney’s Office prosecuted two drivers for vehicular manslaughter and criminally negligent homicide. In that time, 11 pedestrians were killed by drivers on Staten Island.

INSTITUTIONAL COMMITMENT TO TRAFFIC SAFETY

Does the Staten Island District Attorney’s Office demonstrate an institutional commitment to traffic safety by...

- training staff on Vision Zero?
- offering alternatives to incarceration or participating in a restorative justice initiative?
- providing comprehensive services for crash victims?
- supporting a Vehicular Crimes Unit?

LEADERSHIP TOWARD VISION ZERO

Does the Staten Island District Attorney’s Office demonstrate leadership toward Vision Zero by...

- leading legislative efforts that will allow for more prosecutions of dangerous drivers?
- publishing aggregate case outcomes online?
- taking a vocal public stance on reckless driving in their borough?
- supporting proactive interagency coordination between prosecutors, police and other stakeholders?
The Bronx District Attorney’s Office, soon to be led by Darcel D. Clark, who is replacing longtime D.A. Robert Johnson, has shown little interest in growing their institutional dedication to saving lives in traffic. Assistant District Attorney and Vehicular Crimes Borough Chief Joe McCormack remains a valuable resource for disseminating vehicular legal issues to the public, and in the past has helped lead the important effort to use the word “collision” instead of “accident.” The Bronx D.A.’s Office established a Vehicular Crimes Bureau years ago but today shows little interest in making institutional changes worthy of New York City’s modern Vision Zero dedication. Last year, the Bronx District Attorney’s Office prosecuted two drivers for vehicular manslaughter and criminally negligent homicide. In that time, 29 people were killed by drivers in the Bronx.

### Institutional Commitment to Traffic Safety

Does the Bronx District Attorney’s Office demonstrate an institutional commitment to traffic safety by...

- training staff on Vision Zero?
- offering alternatives to incarceration or participating in a restorative justice initiative?
- providing comprehensive services for crash victims?
- supporting a Vehicular Crimes Unit?

### Leadership Toward Vision Zero

Does the Bronx District Attorney’s Office demonstrate leadership toward Vision Zero by...

- leading legislative efforts that will allow for more prosecutions of dangerous drivers?
- publishing aggregate case outcomes online?
- taking a vocal public stance on reckless driving in their borough?
- supporting proactive interagency coordination between prosecutors, police and other stakeholders?
CHALLENGES:

The Rule of “Two”

Racial Equity in Vision Zero
More than half of fatal crashes in New York City are caused by drivers’ dangerous choices, yet it is extremely rare for drivers to be prosecuted for homicide unless they were intoxicated, had a suspended license or fled the scene of the crash.

This trend is partly the result of a legal precedent that sets a very high burden to prove criminal negligence and recklessness, which are the standards of culpability required to prove many vehicular homicide crimes. That precedent requires prosecutors to show in court that the driver engaged in “morally blameworthy” conduct constituting a “gross deviation” from a reasonable person’s behavior and that the driver created or contributed to the dangerous situation through an “affirmative act.” The “Rule of Two” is a judge-made attempt at a guideline for applying this precedent, that a driver making a single dangerous choice, such as speeding or failure to yield, is insufficient to establish criminal negligence or recklessness, and that an additional “aggravating factor” is required. This usually holds true even if the driver’s speeding is excessive and is the direct cause of a person’s death.

This history of outdated case law is a challenge for prosecutors. However, even the “Rule of Two” is not consistently employed and drivers routinely commit more than one violation without being held fully accountable. District Attorneys must ensure that when drivers make dangerous decisions, prosecution is consistent and routine.

Research shows that the certainty of prosecution for dangerous driving behavior is more important to deterring that behavior than longer incarceration sentences.
When New York’s District Attorneys fall back on the “Rule of Two” to explain their lack of prosecuting traffic crimes, it reflects a broad societal acceptance of traffic violence as a lesser form of violence. District Attorneys are elected officials tasked with the duty to protect the public, vast prosecutorial powers and a public platform. If a D.A. fails to exhaust all opportunities to prosecute reckless drivers and use their soapbox to seek legislative changes to outdated legal precedence, then they are derelict in their duty.

In the past, when society has failed to prioritize a type of violence, D.A.s have led the way to seismic cultural shift. The prosecutorial soapbox was instrumental in causing us to despise gun violence, organized crime, domestic violence and drunk driving. It is time for D.A.s to do the same for today’s 60,000 yearly victims of traffic violence.
New York City, in tandem with much of the nation, is struggling to reform a criminal justice system that unfairly targets and affects people of color. As policymakers and politicians attempt to reduce the number of New Yorkers killed in traffic with tactics that include aggressive enforcement and prosecution of reckless drivers, the inherent bias of these systems must be taken into account.

The concept of the three “E’s” is a cornerstone of Vision Zero policies worldwide, reducing traffic fatalities through engineering, education and enforcement. Transportation Alternatives encourages the addition of a crucial fourth “E,” equity, to guide each of the other tactics.

Black and Latino New Yorkers account for a majority of the summonses for bicycling on the sidewalk. Children living in the low-income neighborhoods of the Lower East Side and East Harlem are three times as likely to be killed in traffic as children on the well-to-do Upper East Side. A recent report by The New York Times found that traffic stops are used with extreme racial bias across the nation, targeting African American drivers at a widely disproportionate rate. In New York low income neighborhoods with high concentrations of people of color are subject to alienating stop and frisk policies, notable over-policing and arrest rates that lack parity with other parts of the city. A history of draconian sentencing practices has devastated generations and entire communities.

While under the NYPD’s stop and frisk policy, New Yorkers’ sidewalk behavior has been dramatically over-policed, by contrast traffic violence is under-policed, with even the most outrageous driver behavior rarely prosecuted, despite over 60,000 people injured and killed annually by drivers, most of whom made deliberate dangerous choices.
“Stop and frisk” criminalizes non-violent, non-criminal acts while lawless driving that directly kills or injures over 25,000 every year in New York City goes largely unaddressed.

Despite this racially charged environment, enforcement remains a successful tool to deter dangerous driving. Saving lives and reducing injury is the ultimate goal. To that end, TransAlt strongly encourages the use of restorative justice and alternatives to incarceration. These tools have proven to reduce recidivism and lower crime rates.

Adding equity to Vision Zero is a challenge, but one as requisite as Vision Zero itself. As we call for increased enforcement and prosecution of drivers who make reckless decisions that result in death and injury, we must recognize that the only criteria for arrest are probable cause of involvement in a crime, or that criminal activity is likely taking place. As we call upon D.A.s to use their broad powers and public podium to address traffic violence, we urge the same fervor to ensure that the racial and socioeconomic inequities of our criminal justice system are rooted out.
APPENDIX:

Methodology

Data Reporting and Discrepancies

Footnotes
Transportation Alternatives reached out to the offices of all five New York City District Attorneys to request disposition data on their prosecutions in the past two years, relative to the most dangerous moving violations and related crimes, as well as open-ended questions about their internal practices and systems.

Over the course of six months, all five District Attorneys’ offices responded to the questionnaires that TransAlt used to compile this report. It is notable that the Brooklyn, Queens and Manhattan District Attorneys’ Offices participated substantially in this effort and devoted ample time to collecting prosecution data. The work of the Manhattan D.A.’s office was especially invaluable. The offices of the Staten Island and Bronx District Attorneys only responded in brief and declined to provide any prosecution data or substantial feedback on their commitment to Vision Zero.

TransAlt asked all offices for disposition data categorized by top charge (usually the offense carrying the most severe penalty) and non-top charge for each type of offense. Only the Manhattan District Attorney’s Office provided this data. TransAlt also asked each office to separate convictions by trial-convictions and plea-convictions. Only the Brooklyn and Queens offices provided this breakdown. No office reported prosecution data on Sect. 19-191 of the NYC Administrative Code, which allows for increased monetary penalties against hit-and-run drivers, or for Penal Law 120.00, assault in the third degree. Finally, we also asked each office to identify the number of fatalities associated with each type of offense. None of the offices provided this information.

To supplement gaps in prosecution data reported by each D.A.’s office, TransAlt obtained disposition data from the New York State Division of Criminal Justice Services (DCJS).
It is important to note that TransAlt researchers observed a significant discrepancy in the data provided by some District Attorneys’ offices and the data in the public record.

There is extreme disparity between data reported by the Manhattan D.A. and the New York State Division of Criminal Justice Services (DCJS). For example, DCJS reported 2,243 charges by the Manhattan D.A.’s Office for DWI (under VTL 1192) in 2013. The Manhattan D.A.’s own reporting revealed a total of 4,385 such charges.

The reason for this wide discrepancy is that DCJS only records the top charge of any defendant’s charges, while the Manhattan D.A.’s reporting also include non-top charges for each offense, in this case revealing nearly twice as many DWI charges as reported by DCJS. Given that none of the other offices separated top charge from non-top charge, it is likely that this discrepancy exists city-wide.

In the process of developing this report, some D.A. representatives argued that prosecution data is available through DCJS and therefore there is no burden on their office to provide any public data. The extreme underreporting of DWIs by DCJS shows the irrelevance of this argument.

TransAlt believes that all District Attorneys must ensure that comprehensive aggregate prosecution data is made available online.

Additionally, data tracked by DCJS does not include key offenses, including VTL 1146 (failure to use due care), VTL 1212 (reckless driving) and VTL 510 (unlicensed driving) because only “fingerprint-able” offenses are tracked, and those offenses are not considered fingerprint-able by the DCJS, even though reckless driving is a criminal misdemeanor offense. We also know that up to 13.7% of all NYPD misdemeanor arrests are not tracked by DCJS.17
Limited information from DCJS about case data makes it impossible to distinguish between types of offenses when they involve a vehicle and when they do not, resulting in reams of useless data. For example, none of New York’s District Attorney’s Offices provided TransAlt with prosecution data on the misdemeanor offense of Assault in the Third Degree (PL 120.00), which in theory should be widely applicable to injurious traffic crashes. DCJS provides this data but fails to show which assault charges involve a motor vehicle. Today, neither D.A.s nor DCJS is able to accurately identify how often this law is used for traffic violence.

Because DCJS only compiles data based on top charge, if a driver is charged with another more serious crime, the lesser vehicular offense would not be counted, even though it is a fingerprint-able offense. Worse, DCJS’ top-charge may not actually be the most serious offense for some cases because prosecutors often classify DWI charges as the top charge even if the same defendant is being charged with hit-and-run, for example, which carries a more severe penalty.

Individual case information is available on the online service WebCrims. It is very informative for individual cases, but not aggregated and worth very little to the public at large.

2. NYC’s Right of Way Law (ADC 19-190) was applied 38 times between Aug. 2014 and Aug. 2015.


5. New York State Department of Motor Vehicles (NYS DMV).

6. New York City Department of Transportation (NYC DOT).


8. NYC DOT


10. NYS DMV, based on annual average 2012-14.


Photos courtesy of Andrew Hinderaker.
When someone you love is killed in traffic, you think that the District Attorney will shout from the rooftops about the injustice of it. You think that it’s their job to stand up for you. Well, it seems like no one told them.

— GREGORY THOMPSON JR. WHOSE 16-YEAR-OLD SISTER RENEE WAS KILLED BY A TRUCK DRIVER IN 2013