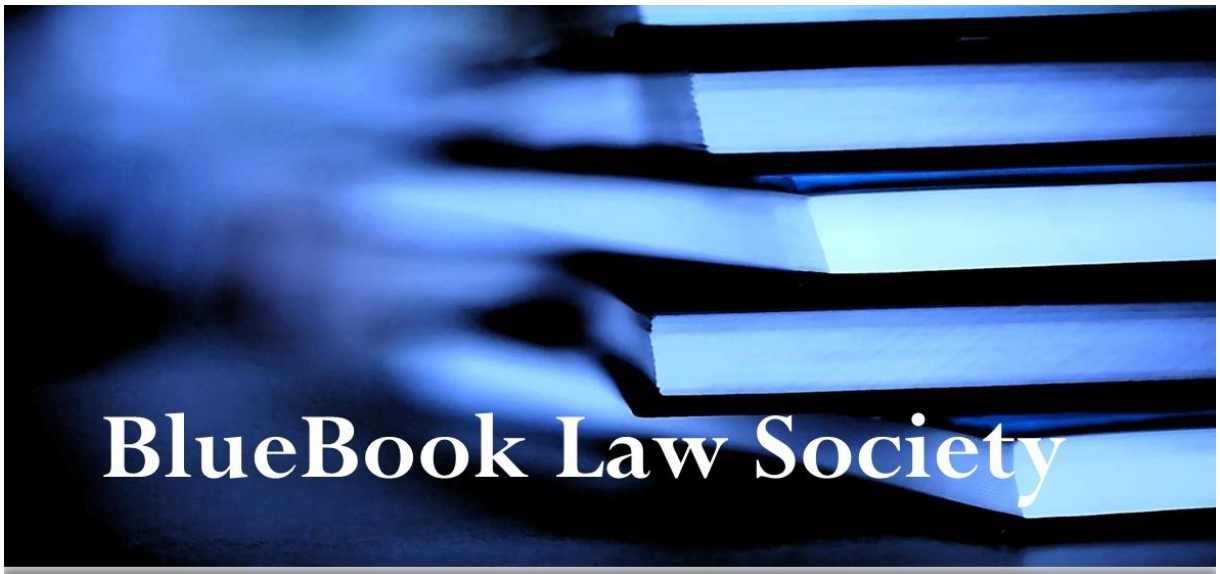

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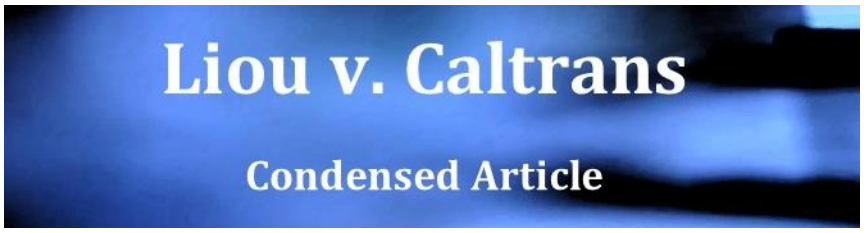

A Catastrophic Pedestrian Accident in a Marked Crosswalk at an Uncontrolled Intersection—In a San Francisco Suburb

Attorneys: Rich Schoenberger, Doug Saeltzer Firm: Walkup, Melodia, Kelly & Schoenberger
Verdict: $12.2 million dollars

When attorney Rich Schoenberger, of Walkup, Melodia, Kelly & Schoenberger sat down at his computer one long night in 2010, he was frustrated and discouraged. The case he and his firm had been working on for three years was slowly going nowhere, and if something didn't change, his client—Emily Liou—would lose the case against Caltrans (California's Transit authority). If this happened, her parents would not have the money they desperately needed in order to take care of her for the rest of her life.

There are many varying characteristics of brilliant trial lawyers—of which Rich is one, being one of the very best in San Francisco, the Bay Area, and in fact, all of northern California—but the one thing they all have in common is a highly developed sense of intuition, and the ability to rely on their gut instincts. Rich's instinct from years of practicing law told him that there was much more to this case than they were seeing. He was going to have to find out exactly what that was and then he was going to have to prove it. However, another common characteristic of brilliant trial lawyers is they don't like to lose—nor do they often—and Rich had resolutely decided that he was just not going to lose this case. Furthermore, his firm—Walkup, Melodia & Schoenberger—included some of the state's most highly respected and successful trial attorneys and they were all as equally committed. The quality of Emily's life simply depended on it. Losing was not an option.

The Accident at Ludeman Lane in Milbrae:

Unless you have been involved in a pedestrian accident, or you know someone who has, you have probably never pondered the dangers in simply crossing a street. The same probably could be said of Emily Liou, who on the night of March 28, 2006, at approximately 8 pm, was crossing El Camino Real (also known as State Route 82 or SR-82) at Ludeman Lane in Milbrae. Emily was a smart, engaging, responsible young woman—a senior at the local High School—with big dreams and a bright future. She had promised her father she would not be out late but would be home early enough to finish the day's homework assignment. She had almost successfully crossed the street on her way home when a driver hit her in what is known as a "marked" or designated crosswalk, in an uncontrolled intersection—those intersections without traffic signals or pedestrian activated controls. For southbound vehicles, such as the one that hit Emily, the intersection sits just over the crest of a hill—making it not only difficult for drivers to see the intersection itself, but also making it quite impossible to see the crosswalk markings on the street at the intersection. Drivers actually become aware of the traffic light at Center Street—the next intersection—before they notice the Ludeman Lane intersection. This is especially true at night. The driver who hit Emily was driving under the 35 mph speed limit and was not drinking. Emily was knocked violently to the ground and suffered massive brain damage. The driver later testified that she had not seen Emily—who was wearing dark clothing at night—until it was too late. We will never know what ran through Emily's mind at that time, as she was catastrophically injured and has remained in a vegetative state ever since. As a result of that night, her life was irrevocably altered and most tragically shortened. Emily was only 17 years old at the time. Rich said of the case, "Every day this case was an enormous effort and an enormous challenge, but it was also a labor of love. We were committed to obtaining the results that were needed in order to provide Emily's parents with the critical finances necessary to enable them to take the very best possible care of her for the rest of her life—however long that might be."

Pedestrian Traffic Accidents in San Francisco and in the Surrounding Suburbs:

In California, being a pedestrian is particularly dangerous. According to the California DMV, pedestrian accidents account for only 3% of all traffic accidents, though they account for 23% of all traffic fatalities. The stark reality of these stats means that almost a quarter of the people killed in traffic accidents are pedestrians. This is considerably higher than the national average which hovers around 13-14%. There are many factors that contribute to these statistics; i.e., California is a heavily populated state; there are also a great number of cars in the state; typically a great number of miles are driven by each driver; and a great number of people walk, run, and sightsee, etc. Furthermore, San Francisco is one of the country's most dangerous cities for pedestrians, as is the entire Bay Area. The Bay Area is the largest urban area in California with approximately 7.44 million people. It is also the 5th largest urban area in the entire country, and ranks as the 43rd largest urban area in the world. The greatest numbers of pedestrian accidents in California occur in Bay Area cities. These areas are all connected by roads, highways, railroads, bridges, tunnels, and commuter railways which are all owned, operated, and maintained by the State of California Department of Transportation—otherwise known as Caltrans. In 2014, 21 people were hit and killed by drivers while walking the streets of San Francisco; close to 800 pedestrians are hit and

injured, on average, each year. While 11% of traffic deaths nationally involve pedestrians, 50% of traffic deaths in San Francisco [and Bay Area] involve people who are walking around on the city's streets. Furthermore, the majority of pedestrian deaths occur on what are known as "arterial" roadways that were specifically designed, planned, and engineered to enhance traffic flow. This means that they are generally built wide, straight, and flat—in other words—fast. Over 60% of pedestrian deaths occur on only 6% of San Francisco's roads, and these are roads that had speed limits of 40 mph or faster. Arterial roads have become the main thoroughfares in most communities—communities that are bordered by schools, parks, businesses, homes, and apartment buildings. Therefore, there is an unavoidable conflict between people and roadways that lead to confusion, injury, and death.

El Camino Real—State Route 82:

The major arterial streets in the city and surrounding Bay Area have extremely high traffic volumes, severe congestion, and not surprisingly, very high rates of pedestrian deaths and injuries. One such arterial street is SR 82, also commonly referred to as El Camino Real, which is a heavily travelled road running from San Jose all the way down into San Francisco—following the length of the San Francisco Peninsula. It passes through many downtown neighborhoods such as Burlingame, San Mateo, Redwood City, Menlo Park, Palto Alto, Mountain View, Sunnyvale, and Milbrae—and is considered to be a major transportation route for the communities all along the Peninsula. Milbrae, in particular, is a city of approximately 22,000 people located in San Mateo County. It lies south of San Bruno, and north of Burlingame. Much of El Camino Real is highway, but the area running through Milbrae has approximately 25-26,000 cars travelling through it daily. The average speed is higher than 35 mph and there are 6 lanes of traffic—3 each on either side of a raised median, with left turning pockets on each side—therefore, basically an 8-lane highway.

A number of roads intersect with El Camino Real in that area, but 4 particularly dangerous intersections were all within 4/10ths of a mile from each other: Santa Helena, San Diego, Millwood, and Ludeman Lane. The worst of these was Ludeman Lane. This very short stretch had an unusually high rate of pedestrian accidents. In the 10 years prior to Emily's accident in March 2006, there had been 3 pedestrian accidents—some including fatalities—at Ludeman Lane. The other 3 intersections had a similar number of pedestrian accidents during that same 10 year period. Ludeman Lane, however, was of particular concern to neighborhood residents—many being afraid to use that intersection to cross that street. People who lived and worked near the intersection testified that it was dangerous and that they warned others not to use it. What made Ludeman and the other intersections so dangerous were their "marked crosswalks" or designated crosswalks at "uncontrolled intersections." Uncontrolled intersections are those intersections without traffic signals, in-ground pavement lighting, pedestrian activated controls, or basically those things considered to be "traffic calming devices" designed to enhance pedestrian safety. Ludeman did have a recently painted crosswalk, but that marked crosswalk had been initially placed there in 1961, with no substantial crossing improvements ever since, other than a simple pedestrian warning sign.

Pedestrian Traffic Accidents, Fatalities & Lawsuits in San Francisco and in the Surrounding Suburbs

It might surprise you to learn that pedestrian traffic accidents are not easy to prove. In many of the accidents in San Francisco and surrounding areas, because of the sheer number of pedestrians, drivers try to blame the pedestrians for these accidents—claiming that a pedestrian's own negligence was to blame and therefore they are at fault for their own injury. The crosswalk laws in California require that drivers must always yield the right-of-way to pedestrians in a crosswalk, whether a marked crosswalk or an unmarked one. However, pedestrians might be distracted by cell phones, tablets, texting, or music. They may fail to use a crosswalk, cross illegally, fail to pay attention to traffic or oncoming vehicles etc., and generally not be aware and cautious regarding their own surroundings—basically, failing to exercise

what is referred to legally as "due care" with regard to their own safety. Lawyers representing injured pedestrians—or their families for wrongful death lawsuits—try to prove that the driver was at fault. A long list of reasons exist for why drivers may be at fault, which may include: a driver failing to check for pedestrians in crosswalks; failing to stop at stop signs or stop lights; texting; talking on a cell phone; making illegal turns; driving under the influence; driving aggressively; or speeding, etc. The list is ripe with possibilities, unfortunately. A good lawyer or law firm will go to great lengths to discover what really happened, who is to blame, and skillfully make their case in favor of their client's best interest and best possible outcome. This can be rather tricky in California however, because California is what is known as a "Comparative Fault" state. What this means essentially, is that that both driver and pedestrian can be found to be partly at fault, and therefore, whatever amount the jury awards as a verdict to a plaintiff is reduced by the percentage of fault directly attributed to that plaintiff—or injured party.

Caltrans and the Question of Liability:

The unusual aspect to this case, lie in the fact that Rich and his law partner, Doug Saeltzer, felt the primary fault of the accident should be directly attributed to Caltrans, not the driver, due to Caltrans placing the marked crosswalk at the uncontrolled intersection. By doing so, they had created a false sense of security for pedestrians and had masked a highly dangerous set of circumstances—particularly in view of how hilly the area surrounding Ludeman Lane was. Earlier that day, Rich's firm had conducted a mock jury in order to better evaluate the strengths and weaknesses of their case prior to trial. It did just that, as it became quite evident that the "jurors" were far from convinced that Caltrans was in any way responsible for the accident. Rich and Doug just weren't making their case, and Rich had gone home saying to himself, "This is crazy; here is an intersection with no controls whatsoever, and it is like a turkey shoot for pedestrians to get across." Furthermore, soon the case was going to trial, and it was going to be an extremely difficult case to win. That night, sitting at his desk, trying not to give in to his deep sense of frustration—Rich went online. In his words, "Miraculously, I found this study. It was a sidewalk study done in 2000, by the Federal Highway Administration. It was called, 'The Safety Effects of Marked v. Unmarked Crosswalks at Uncontrolled Locations'. It was executive summary with recommended guidelines and it was right in our wheelhouse, because Ludeman Lane, had exactly that—a marked crosswalk in an uncontrolled intersection. We had been trying to say that having a crosswalk is dangerous because it lulls pedestrians into this false sense of security, and then all of a sudden here was this study, and it revealed our exact argument in a way that enabled us to completely change our entire approach to the case—for it gave us everything we needed. That was the night everything changed."

The Study:

The Federal Highway Administration's (FHWA) Office of Safety is an agency within the U.S. Department of Transportation whose main aim—for many years—has been to develop projects and programs that reduce pedestrian and bicyclist fatalities. One of these programs is known as the FHWA's Pedestrian and Bicycle Safety Research Program, which studies ways to increase pedestrian and bicycle safety. In 2002, The FHWA commissioned a federal study that would, among other things, specifically examine crosswalk safety at uncontrolled intersections, and provide recommended guidelines. This crosswalk study was entitled, *Safety Effects of Marked Versus Unmarked Crosswalks at Uncontrolled Locations: Executive Summary and Recommended Guidelines.* It was included within a much broader FHWA study known as "*Evaluation of Pedestrian Facilities*." Over a five year period, accident data from 1000 marked and 1000 unmarked crosswalks in 30 cities was analyzed. All of the sites in the study were at uncontrolled intersections.

The Findings & Recommendations:

On high-speed, high-volume, and multi-lane roads, with average daily traffic greater than 15,000 vehicles such as Ludeman Lane—painted white lines were not enough to reduce pedestrian accidents or crashes or otherwise enhance pedestrian safety. Furthermore, marked crosswalks alone—without "traffic

calming" devices—at uncontrolled intersections, would not lower pedestrian crash rates. In fact, marked crosswalks without traffic calming devices were found to have higher pedestrian crash rates than those sites with unmarked crosswalks. More substantial improvements therefore needed to be provided such as installing traffic signals and/or pedestrian activated signals, installing in-ground pavement lighting, implementing measures for reducing the speed of traffic, etc. Furthermore, marked crosswalks at uncontrolled intersections should be routinely monitored to determine whether improvements are needed.

The Trial:

The case had been ongoing for close to three years when Rich found the FHWA study. Trial was impending—and there were three main challenges that he faced: First, the accident history at Ludeman Lane; second, getting the study admitted into evidence, which was critical to establishing liability; and third, proving why Caltrans' own monitoring system that accumulates and monitors all accidents on California roads, had not flagged Ludeman Lane as a problem area.

The First Challenge: Past Accident History of Ludeman Lane

Prior to March 2006, there had been only four pedestrian accidents—three deaths and one injury—at the intersection of Ludeman Lane and El Camino Real, although approximately 90 million cars had passed through there during that time period. Therefore, the percentage of accidents that had happened with respect to the number of cars going though was infinitesimally small and there had not been a big history of problems at this intersection. The jury instructions state that you have to prove that the condition is one that causes a substantial risk of harm to those using the area with due care; in other words, that even to reasonable people, it is still substantially dangerous. Public entities rely on the past with regard to assessing liability and responsibility—"What has gone on here with respect to the past?" On the surface, it didn't look as though there had really been a problem. However, there were three other intersections within a quarter of a mile from that intersection—Santa Helena, San Diego, and Millwood—and they all had similar numbers to Ludeman Lane. Rich had to get the judge to allow the injuries at those intersections as well, in order to prove that all of them were dangerous and that there was a systemic problem within Caltrans with regard to accessing and implementing pedestrian safety measures. That was a big challenge. In his words:

> "Finding these studies caused us to turn our lens and look at everything much differently. We saw in these studies that if you look at the accident statistics from the viewpoint of the cars that had gone by, that was one thing, but if you looked at it though from the standpoint of pedestrian traffic, than the entire paradigm changes. We had never looked at it from that perspective. And what we didn't have, and what the State didn't have, was a pedestrian volume count. And so we actually commissioned a pedestrian volume count because that was a stat that the FHWA study really paid close attention to. The pedestrian count for Ludeman Lane showed 70 pedestrians crossing per day. They had a grid that said, 'If you have a certain number of injuries for pedestrians—depending on how many pedestrians there are, and at certain kinds of roads, mainly those that have speed limits greater than 35 miles per hour with an average daily traffic of 'X' vehicles per day, with this number of lanes and with this number of pedestrians—you are in a completely different ballgame. So our pedestrian volume studies, which we were able to get admitted, actually demonstrated that this roadway was in fact dangerous according to this grid, from the year 2000. So what we spent a lot of time doing, was replacing the notice of actual number of accidents with the notice mainly the knowledge—constructive or actual—of the folks at the State of California of this study. Think about the State. The State is mostly focused on highways. They don't deal a lot with pedestrians, and so their focus isn't on pedestrians—it is on vehicles. So in essence, we accused them of just paying lip service to pedestrian safety in some of their articles or directives because they weren't implementing any traffic safety procedures that would have actually affected

that. So here we had a study that basically said, 'If you have a roadway like El Camino Real, you should not have a crosswalk if certain criteria are met'. And the criteria were met here with respect to the pedestrian volume and all the other characteristics of this roadway. Caltrans then was in the awkward position of saying, 'We didn't know this study existed', and then our proving that they should have known this study existed and that they did in fact know this study existed, because they had reproduced sections of it in their own synthesis in 2005. Therefore, they should have acted upon it by removing the crosswalk because there were alternative intersections that people could have crossed that were safer, where there was a traffic signal, or they could have put in a traffic signal. But what we wanted to argue was that the fix was easy—it wouldn't have cost them anything to just take a sign away and take a crosswalk away and say, 'Don't Cross Here'.

The Second Challenge:
The Issue of Liability—Proving Actual or Constructive Knowledge of the Study

The 2002 FHWA study led Rich to other studies which cast light on the dangers of marked crosswalks at uncontrolled intersections. These studies, along with the 2002 FHWA study, were well known and discussed among traffic engineers across the country. Consequently, getting the FHWA study admitted into evidence was integral to the success of the case. The study would prove that Caltrans knew marked crosswalks at uncontrolled intersections such as Ludeman Lane, Santa Helena, San Diego, and Millwood were highly dangerous to pedestrians. Therefore, they should have inspected these four intersections more carefully, monitored them routinely, and taken action as a result of those inspections. Regardless, Caltrans never acted on the studies' guidelines. Had Caltrans followed the studies' recommendations—which provided notice to Caltrans of reliable and authoritative safety recommendations—the crosswalk at Ludeman Lane in Milbrae would have been removed or significant "traffic calming" improvements to increase the safety of the crosswalk would have been installed. Emily's tragic accident could have been avoided.

The FHWA & Caltrans Connection:

One of the most critical points that Rich made at trial was that Caltrans works closely with the FHWA, the FHWA has offices in California, and there are liaisons that exist between Caltrans and the FHWA. Furthermore, the results of the FHWA study had been summarized and distributed to transportation engineers, including Caltrans, by 2002—four years before Emily's accident. Therefore, Caltrans had not only known about the 2002 study conducted by the FHWA, but they had trusted it enough, recognizing its reliability and authoritative nature, to "adopt" it by including portions of it in the synthesis that they themselves published in 2005 entitled, *Pedestrian and Bicycle Facilities in California: A Technical Reference In Technology Transfer Synthesis for Caltrans Planners and Engineers*. This synthesis had been distributed to their own transportation engineers in California. The FHWA Crosswalk Safety Study is cited in the synthesis in the section titled, *Pedestrians: Crossings: Uncontrolled Crosswalk Siting Guidelines*, and actually reproduced Table1 from this Crosswalk Safety Study. This table was included among the exhibits presented at trial.

Getting the study admitted into evidence, along with the synthesis, was critical to proving Caltrans knew of the study and had, in fact, incorporated it into their own publication, yet failed to act on its recommendations. This was critical to establishing liability—the key issue in any personal injury or negligence case. For a lawsuit to be successful, several of the things that a plaintiff must prove, is that the defendant owed a duty of care to the plaintiff, and that there was a breach of that duty. As Caltrans owns the roadways in California, it falls within their responsibility to maintain them properly—doing their best to ensure the safety of those who use them. By failing to take action to remedy a known unsafe situation at Ludeman Lane and El Camino Real in Milbrae, they were responsible or liable for Emily's catastrophic injuries. The crosswalk safety study was highly relevant to show Caltrans' knowledge that marked crosswalks were dangerous. California law states a public entity has to have "actual or constructive

notice" of the dangerous condition—in this case, having been notified directly or indirectly concerning the dangers of unmarked crosswalks—for a sufficient amount of time prior to the accident or injury, in order to fix or remedy the dangerous condition. Failure to do so makes them liable for that resulting injury or accident.

In the case of Emily Liou, the uncontrolled intersection of Ludeman Lane and El Camino Real, created a highly dangerous situation for pedestrians on March 28, 2006, due to the existence of the marked crosswalk—exactly as detailed in both the FHWA study and Caltrans' own synthesis. The Crosswalk Safety Study clearly advised against placing marked crosswalks at such intersections under the theory that they presented an increased safety risk to pedestrians.

The Third Challenge: Caltrans' Monitoring System—TASAS

TASAS stands for "Traffic Accident Surveillance and Accounting System," and is a computer database system that accumulates and monitors all the accidents on California roads. It gathers information with respect to how, when, and where accidents happen as well as how often at a given location. Every potential type of accident is identified and tracked in the TASAS system; however, Caltrans seemed oblivious to not only the number of pedestrian accidents that were happening at their intersections, but how inherently dangerous these intersections were. Rich had to dig deep and show the jury why this was so.

The Trial: Answering the Question of Why

If Caltrans knew of the study, and had in fact incorporated it into its own synthesis which it had distributed to its own engineers, why hadn't they followed those recommendations? There had to be an answer to this question. During the trial and the cross examination of the Field Traffic Investigator, and the Senior Traffic Engineer responsible for that District—San Mateo and Solano Counties and all the roadways within—the answers eventually became apparent to the jury.

The Scene of the Accident—an On-Site Visit:

Rich and Doug felt that the jurors needed to experience first-hand the conditions surrounding Ludeman Lane and El Camino Real, so they arranged a scene visit. This was almost unprecedented in civil trials. They piled the jury into cars and had them transported to the intersection, driven through the intersection, and then had them cross the intersection themselves—after having had Caltrans close the intersection for an hour in order to ensure their safety. It was the first time Rich had ever done such a thing for a case, but Rich is known for his originality and out-of-the-box thinking, and his instinct told him it needed to be done. It proved to be highly effective; regardless of how skillfully the defense team tried to convince the jury that the intersection wasn't dangerous, they were able to see for themselves that it was, which significantly impacted the outcome of the case.

Key Revelations:

Caltrans' Monitoring System:

Rich felt it imperative that the jury understand how Caltran's computer monitoring system—TASAS—worked. He detailed through testimony, how the TASAS office received all the collision reports from Headquarters; however, explaining that according to policy, only the fatal collision reports were sent to all the Senior Traffic Engineers—not the non-fatal ones. Those were kept in a file room that they had access to. Most importantly, he was able to make the point that many pedestrian accidents were not fatal, yet they were still catastrophic and life altering, as was the case for Emily; the critical issue therefore being—no one was seeing these reports.

Furthermore, based on the type of roadway, TASAS had what was called an expected accident rate, meaning on any certain road type, there would most likely be 'X' number of accidents per year. TASAS

compared different locations to that expected average. There was an average number of accidents expected for two-lane, three-lane, etc., and the system kept track of it all. TASAS identified and tracked pedestrian accidents, along with everything else, and when the actual number of accidents exceeded what was the expected number of accidents, it got flagged. Then TASAS produced what was referred to as a "Table C" report. The serious problem with this process was however, that pedestrian accidents were never included as a separate category within those reports—they were never singularly identified—but rather, were incorporated within the following categories: Total number of accidents, property damage only, fatality + injury, fatality only, and injury only. The critical issue being therefore, pedestrian accident information was contained **within** TASAS, but rarely generated **from it**—and it was never individually identified within Caltran's reports. Furthermore, pedestrian data needed to be specifically requested by someone in order to be made available. The "concept" of pedestrian safety apparently had not yet permeated the labyrinth of Caltran's corporate mentality, nor did it seem to have trickled down to their traffic safety engineers.

Table C Reports:

Table C reports alerted Caltrans Headquarters that a problem might exist at a certain location because the number of accidents occurring there was much higher than what it was expected to be. Those were referred to as "HCCL," or High Concentration Collision Locations. The accuracy and reliability of those reports was crucial, as they formed the basis for follow-up field investigations leading to—or not—critical safety improvements. More specifically, if the right data was not utilized for, or "inputted" into those complex statistical formulas, the results were skewed, producing "false positives" or "false negative." This would result in locations that had been improperly identified as needing, or not needing, safety improvements.

Caltrans's Employees:

Two of the key witnesses that Rich called to the stand were Caltrans' employees, The Senior Traffic Engineer, Ms. Yim, and the Traffic Field Investigator, Mr. Caldwell. During the trial, Rich repeatedly called into question Ms. Yim's job performance—had she done her job responsibly and fulfilled its requirements—but, first and foremost, was she even qualified for the position she held?

The Lack of Qualifications of the District 4 Senior Traffic Engineer:

Prior to her position as Senior Traffic Engineer for District 4—San Mateo and Solano counties, Ms. Yim had not held any Traffic Safety positions. She had only had one week of formal traffic safety training provided by Caltrans **once** she had already been given the job. Furthermore, through Rich's cross examination, it became quite apparent that Ms. Yim was rather unfamiliar with the standard traffic manuals which were commonly referred to by Traffic Safety Engineers—particularly with regard to marked crosswalks at uncontrolled intersections. She testified that she had neither heard of the study conducted by the FHWA, nor in fact, ever seen it. She also was unfamiliar with the synthesis or with its recommendations. She seemed to be vaguely aware of some discussion regarding marked crosswalks creating a false sense of security for pedestrians, but could not recall any further details or when that might have been discussed. To call into question her qualifications and her job performance, Rich pointed out that during her tenure she had never added any pedestrian safety improvements whatsoever to the intersections along that short stretch of El Camino Real—not one single improvement had been made.

Lack of Pedestrian Counts

During the course of the trial, it was also surprisingly revealed that what Caltrans—or Ms. Yim—had **not ever** done, was pay attention to the actual number of pedestrians that were crossing Ludeman Lane—or had crossed it—during the previous 10 year period. Nor, had she ever even pulled the accident statistics from TASAS to see how many pedestrian accidents there had been. This was also true with regard to the intersections of Santa Helena and San Diego as well. The numbers that the FHWA Study paid very close

attention to were pedestrian counts. When asked about the failure to do this, Ms. Yim testified, “We don’t monitor accident locations like that.”

Traffic Accident Rate v. Pedestrian Accident Rate:

Rich established through cross examination of both Ms. Yim and Mr. Caldwell that Caltrans arrived at their traffic accident rates by measuring the number of accidents that had occurred at an intersection or location as compared to the number of vehicles passing through that intersection. To simplify, the total number of accidents at an intersection—as a numerator, was placed over the total number of vehicles crossing through that intersection—otherwise the denominator—in order to arrive at a percentage. However, without knowing the number of pedestrians that had crossed Ludeman prior to Emily’s accidents, Caltrans had never arrived at a true pedestrian rate—because they had been using the wrong numbers. They had only simply looked at the 4 accidents that had occurred over a 10 year period, and compared that to the 90 million **vehicles** that had travelled through that intersection during that period of time—not the **pedestrians** who had crossed it. The resulting percentage was so inconsequential, that was easily understood how Ludeman Lane was never flagged as a “high concentration accident area” that would generate concern. For all of its sophisticated stats, reports, and criteria, Caltrans had gotten the numbers wrong.

Doing the Math:

Once Rich had established how the study defined a pedestrian accident rate, and established the importance of knowing the number of pedestrians crossing an intersection over a given number of years, and established that Caltrans did not in fact have those numbers for Ludeman Lane or any other intersection for that matter, he revealed that his firm had an official pedestrian count conducted at Ludeman. It was determined that Ludeman had a daily pedestrian count of 70 pedestrians crossing that intersection. Then Rich set about showing the court what the pedestrian accident rate was for Ludeman. The study had utilized a 10 year period of time as a measurement; so in calculating the pedestrian accident rate for Ludeman Lane, Rich did likewise. The shocking truth at the end of all these calculations was—based on pedestrian crossings of 70—that the pedestrian crash rate at Ludeman Lane for the ten years prior to March 2006, was 21.6 times higher than the pedestrian crash rate that led to the recommendation **not** to put marked crosswalks at uncontrolled intersections.

Key Revelations: Answering the Questions

When closing arguments had finally been made by both sides, the jury had quite a few questions that needed to be answered in order to arrive at the truth. Why had Emily Liou’s tragic accident happened? Had Ms. Yim been too inexperienced for her Senior Traffic Engineering position? Had she been derelict in her duties or had she followed the policies and procedures set in place by Caltrans all too well? Had she really known about the study and simply ignored it or did Caltrans fail to impress upon their own employees the importance of their own studies—failing simply to follow through with their own recommendations—or perhaps they were just giving lip service to the notion of pedestrian safety? There seemed to be a rather shocking, rampant, and flagrant failure to recognize pedestrians—as they were routinely overlooked or considered—with minimal effort ever made to obtain critical information regarding them.

Through skillful cross examination, Rich was able to expose a fundamental flaw at the heart all of Caltrans’ policies and procedures. His succinct summation was this, “You can never adequately monitor pedestrian safety if you're not actually monitoring pedestrians. And Caltrans has never systematically measured pedestrian crossing rates." Furthermore, this flaw set in motion a lengthy chain reaction which ultimately led to the highly noticeable lack of improvements at marked crosswalks at uncontrolled intersections—creating subsequent injuries and fatalities. Failure to do pedestrian counts, failure to determine the number and types of pedestrian accidents, failure to monitor intersections for safety

concerns, failure to conduct engineering studies in order to determine pedestrian accident rates, all suggested that Caltrans seemed rather unconcerned about the plight of pedestrians on their streets and roadways. It seemed quite evident that Caltrans knew of the FHWA Study, as they had incorporated sections of it within their own publication. It also seems entirely plausible that "Headquarters" failed to sufficiently impress upon their own engineers the importance of the study. Caltrans inexplicably failed to recognize that pedestrians and pedestrian data were integral and absolutely essential to the accuracy of all of their sophisticated mathematical formulas, computations and statistics.

Consequently, that oversight had residual repercussions. High Concentration Collision Locations or HCCL's were not identified—for pedestrians. Critical reports were not generated nor distributed to Caltrans Engineers—for pedestrians. Accidents were not investigated and crucial safety measures were not identified—for pedestrians. As a result, it was virtually impossible to meet the established criteria necessary for obtaining funding approval for safety projects, which in turn, led to an utter failure to implement those life protecting safety measures—thereby ensuring the likelihood of future accidents, injuries and fatalities. There was basically a deep rooted, fatal flaw within Caltrans—as well as a gross miscalculation in judgment and a continual compounding of error that rendered pedestrian safety almost an impossibility—regardless of what Caltrans' publications, directives, or mouthpieces said to the contrary. Unacknowledged, this flaw would always dramatically distort the guidelines, priorities, policies, procedures and criteria they had in place—absolutely corrupting any necessary sequence of events—and inevitably, ultimately, and repeatedly produce tragic and catastrophic outcomes.

The Verdict:

On July 3, 2010, the Jury reached a verdict of $12.2 million for Emily. However, that amount was reduced by 20%—her degree of fault for the accident—the jury determination because she was wearing dark clothing and not exercising due care with regard to her own safety. The driver of the car was also found to be 30% at fault; Caltrans—it was determined—was 50% at fault due to placing a marked crosswalk at an uncontrolled intersection, completely failing to monitor pedestrian safety, or making any attempt whatsoever to study the safety risks of that intersection. Caltrans blamed Emily for the accident, and they blamed the driver, and refused to take any responsibility for their own intersection. The Jury just didn't see it that way.

The outcome of this case was highly significant because it was one of the very first times that Caltrans had such a verdict against them for a pedestrian traffic accident. Because of this verdict, Caltrans has had to rethink and re-evaluate the very serious issue of pedestrian safety. Rich said this about the case and the trial:

> I felt like we were one step ahead of them the entire time. We put them very much on the defensive—virtually the whole trial. We were really well prepared. Doug and I worked really well together and we were like-minded in how we were going to approach things. The case just went on smoothly. You look at trial days and you try to win more than you lose, and in cases that I've won, you usually have to win most of them. In this case, I feel like we won most days—even days when the Defense was "on," we were able to cross examine the witnesses in ways that made us feel good about it. It was just one of those cases where it was evident it was all going well, and you kept your fingers crossed. It had been such a difficult case in the beginning, but once we got to court, logic was winning and the jury was interested and it just kept going well. It is difficult to win these types of cases, but as a result of this verdict, it established some things that needed to be established, to make it easier to win these types of cases moving forward. It is not every day that Caltrans gets hit with this type of verdict; and when it does, the legal community sorts of sits up and takes notice. My Mom always quoted a man named Joseph Campbell who said to 'Follow your bliss.' And this is my bliss… I get to help people. I get to learn incredibly interesting things. I get to persuade and think critically and—most importantly—employ empathy, respect and kindness every day. "

As a result of this trial, Rich and his law partner Doug were awarded the 2011 San Francisco Trial Lawyer of the Year Award. Rich's final comments on the case were these:

> The comingling of cars and people is so potentially dangerous that we as a society, especially one that is trying to reduce our reliance on oil and increase health that we have to include pedestrians and cyclists in the triad of transportation and that means making sure that everybody is safe and as safe as can be—to the extent that that costs money for facilities, that is unquestionably money worth spending.