

# **Time, Position & Visibility**

in Disputed Auto  
Versus

**Pedestrian  
Accident**

Cases



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# Case study



In San Francisco how often have we heard some incarnation of the following: “I just didn’t have time to avoid her” or “I just didn’t see him until it was too late” and my personal favorite, “she just came out of nowhere?”

Statements of this nature, attributed to the driver, regarding the unfortunate pedestrian they just ran down, in my world as a personal injury lawyer and CHP trained accident reconstructionist, speaks volumes to causation and my decision making process to take on a car versus pedestrian injury case on a contingency fee.

Consider the following facts. A family arrives at my office door with grandma in tow. She reports that she was walking in a crosswalk when she was struck and severely injured. Sounds good, right? Surely, I momentarily ponder, I could litigate such a case from a



county jail cell whilst substantially inebriated, but wait. Ominous dark clouds begin to form over my desk as the police investigation is handed over my heavily creamed coffee. In a flash, I take in that granny is party-one on the police report and dreams of a Ferrari are rapidly defaulting back to my 88' Honda.

Moments later I am on page nine and speed-reading causation. Sure enough, the police department determined that granny had stepped into the intersection a significant distance away from the closest crosswalk, and that the driver of the commercial truck had no time to safely avoid her. There is no associated factor, all the fault is placed on granny.

In the litigation world, this case is, at best, severely compromised, and for many a non-starter.

Let's continue. Grandma is elderly, over 80, a late-in-life arriving immigrant, does not speak English, her faculties are in question and she is a poor historian to the events leading up to the incident. All of which was further complicated by missing time due to an apparent collision-sequence concussion. The witnesses are mixed, generally unfavorable, and significantly, grandma's path of travel to the approximate area of impact is in question due to the lack of photographs or physical evidence in the roadway.





Though my coffee had run inextricably cold, undeterred, I was already visualizing my ace-in-the-hole and the next 18 months of litigation against State Farm. By what method could I have conjured such confidence? Am I crazy, or are there some basic issues present that assures me of factual issues, yet revealed, that are game changers to this fact pattern?

Here, is the first question that is the building block of all things that follow. How did granny get from a place of safety at the curb to the alleged area of impact without the driver ever having seen her? Second, how long did it take granny to get from the place of safety (the closest curb in this instance) to the area of impact? Finally, what was the driver's perspective of what he could see during this window of time?

For the rest of this discussion think of the area of impact as the zero-point both in terms of time and distance. As we proceed to do a bit of number crunching, we are going to work with granny as a base-line. Adult pedestrians usually cover three to four feet per second while walking at a leisurely pace. Granny, in this instance, was in fairly good health, was a walker, and the family reported that when they walk with her they do not feel like they have to slow down for her to keep pace. With that, I proceed to work with a 3 ft.-per-second walking pace. The area of impact was



approximately 15 ft. into the intersection so I was now working with a (curb to area-of-impact time) of approximately 5 seconds. Stated differently, it took granny approximately 5 seconds to get from the place of safety at the curb to the alleged impact location in the intersection.

The next part is just as easy. The truck's path of travel was not in dispute; and rarely is in these cases, but speed was at issue. As you might expect, the defendant driver testified on the low side and granny was on the high. Nonetheless, for the purpose of this exercise if I simply took an average of all the available testimony on speed, the average calculated to 10 mph. Stated in feet per second, the truck was traveling at 14.67 feet per second in those 5 seconds of granny's walking time.

Here is the fun part. I then multiply 14.67 times 5 seconds and I get the approximate distance that the truck is from granny when she first steps off the curb, which calculates to just over 73 feet or a  $\frac{1}{4}$  length of a football field! Now, I then walk out the 73 feet downstream from the area of impact and put my eyes where the truck driver's eyes would have been to see what the truck driver should have been able to see at 5 seconds to impact.

Sure enough, and to no surprise, the truck driver, so long as he is looking, should have seen granny at the curb and at every location along her path of travel as he closed in on her to the zero-point at the area of impact. No obstructions existed.

The result is definitive. The driver could see granny, so long as he is looking out the windshield, and he has time to take appropriate actions, so long as he is processing what is in front of him. In these cases, it does not matter if you change the variables within acceptable and logical parameters. Here, if either granny or the truck is slower or faster it still comes back to the simple issue. There is still time to avoid granny if the truck driver was paying attention.



The final step is video and photography that memorializes the visibility reconstruction outlined here. As an example photographs depicting the truck driver's perspective of the 5-4-3-2-1 seconds to impact perspective, fundamentally rocks the core of "I did not see her" or "there was no time to react" or in this specific case, "she came out of nowhere."

Doing the same for all the speed and distance variables serves to kill the backup argument that plaintiff has manipulated facts to suit their needs and belays the objections at trial. What you are left with is the following. What was the driver doing for those 5 seconds given that granny is clearly visible to the driver; so long as he is looking ahead? In this case, and every case of its kind, there simply is no good answer to cure this fatal flaw.



In sum, this case went from, how fast could I say "no thanks", to settling the case in the high six figures despite a poor police report and a compromised client. It can be done. You just need to understand the tools that exist and how to effectively apply them in your next automobile versus pedestrian injury case.



## About the **Author:**



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