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Bike Law: Takin' It to the Streets

**By Gene Barton
and Bob Anderton**

With the sun shining and bicyclists on the road and in the news, the Bar Bulletin sat down with bike lawyer — and former Bar Bulletin editor — Bob Anderton to discuss recent events and emerging issues.



Q: A San Francisco bicyclist was recently charged with manslaughter after he ran a red light and stuck a pedestrian in a crosswalk who later died. Should bicyclists who kill pedestrians be prosecuted?

A: Of course. Especially that bicyclist, whom police say was riding as fast as 35 miles an hour and then allegedly posted online that he was "too committed" to stop at the light. But this example is an anomaly — bicyclists are more often on the receiving end of accidental deaths. There were three pedestrian deaths in a seven-block radius of that crash in less than a year.¹ The other deaths were not newsworthy because they are all too common. Countrywide statistics show that, during the period in which 63 pedestrians were killed by bicyclists, about 5,000 bicyclists and 60,000 pedestrians were killed by motor vehicles.²

Perhaps more representative than the bicyclist killing a pedestrian story is the recent charge against a San Francisco attorney for hit-and-run and vehicular manslaughter after he allegedly struck and killed a bicyclist in his new Mercedes-Benz CLS550. Video shows that the Mercedes never stopped

after the crash. The car was found in the lawyer's garage with "extensive windshield and front-end damage" and was missing the same parts found at the scene of the crash.³ When confronted, police say the lawyer "spontaneously stated" he was involved in an automobile accident. I think that we can all agree that he should be prosecuted and, if convicted, probably be disbarred as well.



Q: Well, let's stick with the bicyclists versus pedestrian issue. Even if pedestrians aren't regularly being killed by bicyclists, they are certainly at risk from them. Shouldn't the laws protecting pedestrians be strengthened?

A: The law in Seattle is already clear that bicyclists in a crosswalk "shall have all the rights and duties applicable to a pedestrian under the same circumstances, but *shall yield to pedestrians* upon and along a crosswalk."⁴ Also, while bicyclists can legally ride on sidewalks in Seattle, they must yield the right-of-way to pedestrians, and are supposed to give "an audible signal before overtaking and passing any pedestrian."⁵

The laws that should be strengthened are those protecting bicyclists on streets. I've long been a proponent of strict liability for motor vehicles that hit bicyclists or pedestrians.⁶ Just as bicyclists should yield to pedestrians on sidewalks, I believe that Washington should enact a law clearly requiring cars to yield to bicyclists, who are the ones with the most to lose in a collision — even when they have the right-of-way.



Q: Is your idea to hold drivers strictly liable where it is determined that a cyclist had zero fault for the accident?

A: Something more than that, actually. My proposed language is:

Motor Vehicles Shall Yield to Bicycles and Pedestrians. The driver of a motor vehicle who fails to yield to a bicycle or pedestrian shall be strictly liable for such damages as may be caused by the failure to yield.



Q: You don't actually think the Legislature would pass a law making drivers strictly liable for bicycle crashes, do you?

A: I do think that, just like there is a defense for harassing a dog that bites, there would need to be a defense for bicyclists or pedestrians with a death wish. I have proposed this:

Visibility or Recklessness as a Defense. Proof that a bicyclist or pedestrian intentionally or recklessly caused a collision, or that a bicyclist's failure to have required visibility equipment⁷ was a proximate cause of a collision, shall constitute contributory negligence.

I recognize that this is a long shot statewide, but I had hoped that Seattle might consider adopting strict liability in its Road Safety Summit in 2011.⁸ My impression, unfortunately, is that our city is more about talk than actual action.



Q: Really? Seattle is not pro-bike enough for you?

A: We certainly have pro-bike rhetoric. But, as far as I can tell, nothing more than talk came out of the Road Safety Summit. Actions speak louder than words anyway. Let me give you an example from the trenches.

Municipalities generally owe a duty of ordinary care to ensure that their roadways are reasonably safe for ordinary travel.⁹ Seattle’s legal department is now starting to argue that the City owes **no duty of care** to bicyclists legally riding on city streets that are not marked with bike lanes or “sharrows.”



Q: What do you think Seattle should do to make cycling safer?

A: My view is we need less talk and more action. When municipalities do act, their actions should be consistent with their rhetoric. Adding a strict liability law is my preferred approach, but simple infrastructure improvements like adding bike boxes¹⁰ at intersections can also help.



Q: There have been a number of recent bicyclist fatalities in the Seattle area, most notoriously the hit-and-run death of Mike Wang in South Lake Union in 2011. Are you encouraged by the investigation that recently led to the arrest of and resulting guilty plea by a suspect in Mike Wang’s death?

A: I’m glad that King County prosecuted him, especially since he apparently blames his victim for the crash. The Seattle Times reported that the suspect’s friend said he told him that he knew it was wrong to leave the scene, but the crash was not his fault. He claims that he had been turning when Mr. Wang ran into the back of his SUV.¹¹ This blame game is fairly typical for drivers who hit bicyclists, who are often on their way to the hospital by the time the police arrive to investigate and are unable to present their side to the story.



Q: How should drivers deal with “rogue” cyclists? There is one

I have seen in my neighborhood twice lately. The first time he blew through a stop sign doing at least 20 mph while making a left turn and inserted himself into traffic without slowing. The second time I was waiting for a left-turn signal (at the front of the line); as the light changed and I began to pull forward, he flew past me on the right, cut me off and proceeded to barrel down the street well in excess of the posted 25-mph limit. And he doesn’t wear a helmet.

A: Everyone has a story like this, but how many of us take note when, for instance, cars are speeding? Bicyclists who flaunt the rules of the road aren’t helping win over people like you, but I would argue that driving 40 mph in the city (which happens all the time) is far more dangerous than running a red light on a bike. A pedestrian hit at 40 mph has an 85 percent chance of being killed; at 20 mph the fatality rate is only 5 percent.¹²



Q: I know that drivers can be uncivil in situations like the one described above. But shouldn’t cyclists also be civil to drivers when we make honest mistakes? Not too long ago, I made a ho-hum street crossing at an intersection that was not controlled for crossing traffic. I completely did not see the cyclist who was properly riding in the bike lane on my right (I blame the tree shadows he was riding in) and I crossed the street just as he was about to enter the intersection. I got the Full Monty of yelling for that.

A: As a daily bike commuter, I have to say that “I didn’t see you” is a far scarier thing to hear than “Get out of the ***** road you *****!”

Consider this: In your car you are probably seated in plush surroundings; you control the temperature, the sounds you hear, and are in your own steel cocoon. On the other hand, you are also likely stuck in traffic. When bicyclists breeze by, it can be frustrating. But drivers shouldn’t be angry at passing bicyclists; it’s the cars in front that are holding you back.

Many almost-hit bicyclists have a

hard time not yelling at motorists. We are already alert and our blood is pumping from exercise. Even if bicyclists are rude, drivers need to remember that, with a quick turn of your steering wheel, a bicyclist can be seriously injured or killed. If you must retaliate, go ahead and yell at us; just don’t use your vehicle as a weapon.



Q: In honor of the late Rodney King, “Can’t we all just get along?”

A: Sure ... multiple studies have shown that, as more people ride, there are actually fewer bike versus car collisions.¹³ Drivers become used to interacting with (and looking for) bicyclists, and more bicyclists on the streets means fewer cars stuck in traffic. Everyone wins. ■

Bob Anderton is a daily bike commuter. His practice at Anderton Law Office-Washington Bike Law focuses on representing his fellow bicyclists. Anderton Law Office was the first law office in the country to be honored by The League of American Bicyclists as a Bike Friendly Business. Follow Anderton’s posts at [facebook.com/wabikelaw](https://www.facebook.com/wabikelaw).

¹ <http://www.sfexaminer.com/local/transportation/2012/05/three-pedestrian-deaths-elicited-varied-reactions-san-francisco>

² 4,834 bicyclists and 59,925 pedestrians were killed by motor vehicles in the U.S. between 1999 and 2009. During this same 10-year period, bicyclists were responsible for the deaths of 63 pedestrians: http://www.nytimes.com/2012/06/16/us/san-francisco-cyclist-charged-withmanslaughter.html?_r=1

³ <http://www.sfgate.com/crime/article/Lawyer-at-S-F-firm-charged-in-fatal-hit-run-3667449.pbb>

⁴ SMC 11.44.100 (emphasis added).

⁵ SMC 11.44.120.

⁶ Anderton wrote about this in The Bar Bulletin in 2009: [http://www.washingtonbikelaw.com/BicycleLeg\(1209\).pdf](http://www.washingtonbikelaw.com/BicycleLeg(1209).pdf)

⁷ RCW § 46.61.780 requires bike lighting during the “hours of darkness.”

⁸ The proposal Anderton presented at Seattle’s Road Safety Summit can be found at <http://washingtonbikelaw.com/blog/wp-content/uploads/2011/10/Strict-Liability-for-Seattle.pdf>.

⁹ See WPI 140.01.

¹⁰ Bike boxes are just painted spaces at intersections that show that bicyclists are allowed to position themselves ahead of motor vehicle traffic. More information here: <http://www.ci.seattle.wa.us/transportation/bikeboxes.htm>.

¹¹ http://seattletimes.nwsource.com/btm/localnews/2018381_987_wang08m.html

¹² U.K. Department of Transportation, *Killing Speed and Saving Lives*, London, 1987.

¹³ <http://streetsblog.net/2011/02/10/more-cyclists-safer-cycling-in-minneapolis/>

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