

And That Was That

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Related Categories: Cyclist fatalities

2008 was a good year for cyclists in Portland, Oregon. The [number of cyclists increased](#), while the number of cyclists injured in traffic decreased. Even better, there were [no cycling fatalities](#). For Portland cyclists, this was a welcome change from the terrible news of 2007, when six cyclists died on Portland streets.

While 2009 shows every indication that the number of cyclists is continuing to rise, the respite from traffic fatalities has not continued. Already this year, there have been two cycling fatalities on the streets of Portland, before the surge of the summer season has even begun.

Portland's first cycling fatality of 2009 occurred on April 27th, when 49-year-old [Cary Bernick](#) collided with a pickup truck, reportedly while riding against traffic on a one-way street. Although there was a bike lane on the right-hand side of the street, [Bernick was reported](#) to be riding in the far left lane, and, according to police, "edging deeper into traffic."

It seemed to be an open-and-shut case for most people—it was clearly the fault of the cyclist, who, salmon-like, had been riding "upstream."

But was it an open-and-shut case? Clearly, if the cyclist had indeed been riding against traffic—"if"—then he was riding in violation of the law, and bore some of the fault for the collision. But the fact that a cyclist was riding the wrong way on a one-way street doesn't in and of itself explain how the collision occurred—after all, weren't there two vehicles involved in the collision? And given that there were two vehicles involved, why was the cyclist at fault, but not the driver? The driver had a duty to keep a proper lookout, and to exercise due care to avoid hitting the cyclist, even if the cyclist was riding in violation of the law—and yet, most people pronounced the cyclist to be at fault, and that was that.

Except that "that" didn't explain why there was a collision. Of course, it was possible that the cyclist rode into the path of the driver so suddenly that neither of them had time to react. But based on what we know of the collision—i.e., almost nothing—it was equally possible that the driver drove into the path of the cyclist so suddenly that neither of them had time to react. If that were the case, it wouldn't absolve the cyclist of his liability for riding against traffic, but it would place some of the liability on the driver for his role in the crash.

Or suppose instead that the cyclist was riding against traffic, and the driver simply wasn't watching the road ahead—again, the cyclist bears some of the fault for riding against traffic, but the driver also bears some of the fault, for

failing to keep a proper lookout.

In the end, it was unclear exactly what happened, but because the cyclist was allegedly—and absent any definitive statements from witnesses, I do mean “allegedly”—riding against traffic, most people, cyclists and non-cyclists alike, decided that he was at fault, and never stopped to ask whether the driver might also be negligent.

And that was that.

Echoing the [close timing](#) between the October 2007 deaths of Tracey Sparling and Brett Jarolimek, the second cycling fatality of 2009 happened just 17 days later, on May 14, when 36-year-old [Sandy Bass, Jr.](#) was struck by an automobile and killed.

Bass, [a single parent raising a school-age son](#), had just left his apartment moments earlier, and was on his bike heading west to pick his son up after school. He exited the driveway of his apartment complex, crossed the eastbound lane of NE Prescott Ave., and was struck by a westbound car moments after entering the westbound lane. Police reported that it “appeared” that the driver had the right of way, and concluded that there were no signs of impairment, and speed was not a factor in the collision.

The knuckle-draggers commenting on the Oregonian’s online article immediately and gleefully concluded that Bass had [run a stop sign and caused his own death](#). Despite repeated pleas from the Oregonian’s more sane readers to remember that Bass’ family might be reading the comments, the knuckle-draggers only amped up the venom, openly wishing that the driver would sue Bass’ estate to pay for the damage to the automobile, and even arguing that Bass had committed suicide, the “goal” of cyclists being [“to commit enough suicides so that cars will be illegal in Oregon.”](#)

Lost in all of the foregone conclusions and foolishness was one simple fact: Nobody really knew much about what had happened.

Bass had exited the driveway of his apartment complex—a driveway that is not controlled by a stop sign, meaning that Bass could not possibly have run a stop sign—crossed the eastbound lane of NE Prescott, most likely intending to turn left and proceed west on Prescott (or, alternatively, intending to proceed directly north on NE 57th, and then proceed west at the next street). As he entered the westbound lane, or shortly after, he was struck by an automobile and killed.

These are the known facts; everything else is speculation.

And the known facts leave us with more questions than answers. There were two vehicle operators involved in this collision, but only one of them lived to tell his side of what happened. Despite this lack of information, the Portland Police felt comfortable reporting that it “appeared” that the driver had the right of way. Note the word the Portland Police used—it “appeared” that the driver had the right of way. Under the theory the Portland Police were peddling, the cyclist rode across the street, directly into the path of a car that was so close as to constitute an immediate hazard, and did this so suddenly

that a collision was unavoidable.

While that's certainly one way to interpret a collision as puzzling as this, it's not the only way. In fact, it's not even the most likely explanation for what happened. Yes, we've all heard about cyclists who take foolish risks stealing right of way, but those cyclists are in a very small minority—the vast, vast majority of cyclists are more careful, because they value their lives, and their lives depend upon them being careful. The fact that Bass was on his way to pick up his son also argues against his taking reckless risks with his life along the way—for most people, parenthood has a calming effect on the youthful excesses of wild behavior, when they realize that a young life they've brought into the world depends upon them coming home safely every day. These facts don't mean that Bass wasn't taking reckless risks with his life that day—they just mean that it's the least likely explanation for what happened, and that more likely explanations need to be explored and ruled out first, before conclusions are reached.

So what are those more likely explanations for what happened? Impaired driving, speeding, and inattention would be the three most likely explanations that come to mind. Police investigators have already ruled out impaired driving and excessive speed as being factors in the collision; significantly, inattention hasn't been ruled out. This raises questions that need to be answered. For example:

- What was happening that the driver, the cyclist, or both, didn't notice that a collision was imminent?
- Was the driver using a cell phone immediately before the collision?
- Where was the cyclist positioned in the westbound lane at the moment of impact? For example, was the cyclist still attempting to cross the lane when he was hit, or had he already crossed the lane and made his turn, heading west when he was hit?
- Why was the driver unable to avoid hitting the cyclist? Was the driver keeping a proper lookout? Was the driver exercising due care to avoid hitting the cyclist?
- The driver was westbound; where was the driver coming from? Had the driver been westbound for one or more blocks? Or had the driver been proceeding south on 57th, and then turned right at 57th—without first looking right—driving directly into the cyclist? If so, neither vehicle operator would have seen the other until the moment of impact.

Of course, those questions place the presumption of liability on the driver—right where they belong. Here's why that presumption belongs there. The cyclist has already been presumed to be at fault in this collision, while the driver has already been presumed to be without fault. But there were two vehicle operators involved, and only one of them has lived to tell their version of what happened. The cyclist can't tell his side of things, so before we accept the driver's explanation for what happened and presume the driver to be without fault, it's essential that we test the truth of that presumption by asking questions on behalf of the cyclist.

Had this collision occurred in the Netherlands, the presumption of liability would, by law, be placed on the driver—the driver would be presumed to be at fault in the collision, but could rebut that presumption with evidence. This

rebuttable presumption of liability completely dispenses with the two “get out of jail free” cards drivers use—“I didn’t see him” and “He swerved into me”—whenever they collide with cyclists. Of course, in the Netherlands, a driver could still rebut that presumption of liability by claiming “I didn’t see him,” or “He swerved into me,” but the driver would have to provide some evidence that he couldn’t have seen the cyclist, despite keeping a proper lookout, or that the cyclist swerved into him—merely making the claim, as drivers do every day in the United States, would not suffice to shift liability for the crash onto the cyclist. If the crash that claimed Sandy Bass’ life had happened in the Netherlands, the driver would be presumed liable for the crash, and to shift that presumption, the driver would have to provide evidence that the cyclist was solely responsible for the collision, and that the driver met all of his or her duties toward the cyclist.

But that’s the law in the Netherlands; it’s not the law in the United States. In the United States, a driver can claim “It wasn’t my fault,” and it’s up to the cyclist to prove that the driver’s negligence caused the collision. And because Sandy Bass can’t tell us what happened, it’s incumbent upon all of us to ask the hard questions for him. Until we have the answers to those questions, there’s no reason to believe that he was at fault, and the driver wasn’t.