# Getting the story wrong

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"One more driver facing prison time for colliding with a Portland cyclist."

That was the headline on the website of Portland television station KATU, in an article on the arrest of a Portland driver whom police allege intentionally hit a cyclist. As BikePortland.org reported, following the incident, the driver was charged with assault in the first degree, a Class A felony. And as the KATU headline noted, this was not the first incident in which a driver was charged with intentionally hitting a cyclist. We don't know most of the details of what happened yet, but for now, the most remarkable aspect of this story is the KATU story itself.

In an article permeated with legal inaccuracies and a "persecuted drivers" slant that is all-but-guaranteed to stir up enmity against Portland cyclists, KATU suggested in its headline that merely "colliding" with a cyclist would send a driver to prison. That suggestion was asserted more directly in the article itself, which "explained" that "Within Multnomah County, any time a motorist hits a bicyclist this is classified by the district attorney's office as assault with a deadly weapon." The KATU article went on to explain that "If a driver is found to be negligent in any way in regards to a crash with a bicyclist, the charge carries a minimum prison sentence."

It doesn't take a lawyer to know that's just plain wrong. As every cyclist knows from the bitter experience of history, it's rare that drivers are even cited after colliding with a cyclist, let alone charged with the appropriate offense. And yet, as any lawyer could tell you, the KATU story is just plain wrong on the law. Neither within Multnomah County—cyclist's paradise though Portland is alleged to be—nor in any other county in any state, do District Attorneys classify your common run-of-the mill "accident" as "assault with a deadly weapon." Sorry, KATU, but that just doesn't happen. Nor do collisions in which the driver is found to be "negligent" result in "a minimum prison sentence." That just doesn't happen either.

Aside from the fact that it's easier to pull teeth than it is to get the police to issue a citation when the driver is at fault, a prison sentence requires a felony conviction, and a felony conviction—or even a misdemeanor conviction, for that matter—requires a showing of both*actus rea*, meaning an unlawful act, and *mens rea*, meaning intent. That is, the defendant must be proven to have committed an unlawful act, and to have acted intentionally in committing that act. Negligence that results in a collision is typically not a criminal act, nor does it show the requisite *mens rea* for a criminal conviction (note, however, that in a handful of states, negligence resulting in a death is chargeable as a criminal offense), and thus, accidents in which a driver is "found to be negligent" do not result in a criminal prosecution. And because these crashes do not result in a criminal prosecution, drivers "found to be

negligent" do not face "a minimum prison sentence"—despite what terrified drivers might read on the news.

Similarly, the District Attorney does not "classify" any collision with a cyclist as "assault with a deadly weapon." That just doesn't happen—again, because assault with a deadly weapon is a criminal act, requiring proof of intent. Your garden-variety collision is typically going to be unintentional—that's why we call them "accidents"—and thus, is not going to meet the definition of "assault with a deadly weapon." The only "collisions" in which drivers are charged with "assault with a deadly weapon" are those in which the driver intentionally hit somebody.

And yet, reading the news, KATU readers couldn't help but conclude that Portland had gone crazy, and was now prosecuting drivers on felony charges, and sending them to the state penitentiary to serve minimum prison terms, all for unintentionally hitting one of those crazy cyclists who throw themselves in front of the driver's car.

To be fair, after taking the KATU web editor to task for her coverage of the story, it became apparent that she was genuinely confused on the law, rather than intentionally misleading KATU readers, and after an exchange of comments on the article, she did make some minor edits to the story. Even so, the article is still mixing up laws—discussing Oregon's "vehicular assault of a bicyclist or pedestrian" law and "assault in the first degree" as if they're the same law—and still leading impressionable minds to believe that they can be sent to prison if the district attorney "classifies" a collision as "assault with a deadly weapon."

Intentional distortion of the law designed to inflame readers' passions? I don't think so. But careless reporting, with a "persecuted drivers" slant, and barely a mention of "oh yeah, the driver is alleged to have intentionally run this guy down"? Definitely.