When The Law Doesn't Say What The Court Thinks It Should Say...

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In a companion piece to this article, I posed this scenario:

> Imagine you're driving your car on a road with multiple lanes. You're in the right lane, and for some reason, the lane to the left of you backs up, and traffic stops. No problem, your lane is still open, so you continue driving, passing all of the cars stopped in the lane to your left.
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> Then you see the lights in your rearview mirror—you're pulled over by a law enforcement officer, who issues you a citation for passing on the right. Later, in traffic court, you explain to the Judge that traffic in the lane to your left was stopped, while your lane was open, and that is why you were passing on the right. Despite your defense, the Judge decides that you were in violation of the law, and tells you that you should have either merged into the left lane, or stopped in your lane and waited for traffic in the left lane to begin moving again.
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> An absurd interpretation of the law? Absolutely. The decision is not only contrary to what the law actually says, it also leads to a result so absurd that any Judge should realize that it is obviously not the law.
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> Now imagine that you're on a bike.

Now, let's imagine a slightly different scenario. Suppose that you're driving your car on a road with multiple lanes, and the lane to your right is backed up with stopped traffic. You pass this stalled traffic on the left, as the law generally requires. And this time, a law enforcement officer pulls you over and cites you for passing on the left.

Surely the Judge will understand that under state law, you are generally allowed—required, even—to pass on the left. But when you get to Court, the Judge insists that you should have passed all the other traffic *on the right*.

Well, you know that generally that is not the law.

Now imagine—again—that you're on a bike.

What gives? First you can't pass on the right, and now you can't pass on the left? Is there any situation in which you can pass?

As I noted in the companion post on this issue, a cyclist in Logan, Utah was convicted this month on a misdemeanor charge of improper passing on the right of a vehicle. A few months before, in August, a cyclist in San Diego, California who passed a lane of traffic on the left was convicted for the infraction of not riding as close to the right as practicable. This case is a mirror image of the case in Utah, and like the Court in Utah, the California Court got the law wrong on several points.

Let's take a look at what happened to see why.

In March of this year, cyclist Andrew Woolley was stopped by a San Diego police officer, who observed Woolley passing between two lanes of traffic that had stopped. The officer later testified that Woolley was splitting the lanes, riding on the broken white line between the lanes; Woolley disagreed, testifying that he had in fact been riding within the right lane, to the left of the automobiles in his lane that were stalled in traffic. Regardless of where he was riding, Woolley was cited for a violation of the statute requiring him to ride as close to the right as practicable.

Now, before we get to the statute which Woolley was charged with violating, let's touch upon this issue of lane splitting—is that legal in California? The law is not explicit on this point. It is not prohibited in California, so it should be legal. Furthermore, California law implicitly contemplates that motor vehicles and bicycles will share the same lane when conditions permit. And finally, California explicitlyallows motorcycles to split lanes. Considered in context, it is clear that lane-splitting is legal for cyclists in California.

However, Woolley was not cited for lane-splitting; instead, he was cited for not riding as close to the right as practicable. So a good starting place for this discussion is to examine what the California statute requires.

In California, as in other states, the general rule is that cyclists are required to ride as close as "practicable" to the right. This means that they must ride as close to the right "as can reasonably be accomplished under the circumstances." Another way to think of this is that the statute is saying you must ride as close to the right as is reasonably safe. This is the general rule. However, as is always the case, when you have a general rule, there will be exceptions to the rule. And in California, there are a number of exceptions. The first exception is that the general rule is only applicable when the cyclist is traveling at "less than the normal speed of traffic moving in the same direction at that time."

That's a pretty specific exception—it doesn't mean some theoretical speed of traffic, it doesn't mean the maximum speed of traffic, and it doesn't mean the speed of the fastest vehicle on the road. It means the actual speed of traffic at that time and place.

And in this case, traffic was heavily backed up and slowly creeping forward. But Woolley was not creeping forward; because he was sharing the lane with motor vehicles, rather than taking the lane, he was traveling at a higher rate of speed. That should have been the end of it—under California law, Woolley was not required to ride as close as practicable to the right.

But the Judge wasn't applying California law. Instead, he was applying his

personal opinion of what the law *should* be. Instead of asking whether Woolley was traveling, as the law specifies, at a speed less than the normal speed of traffic moving in the same direction at that time," the Judge asked a different question of the officer:

> The Çourt: "What is the speed limit on that—posted on the street?"
> Officer: "Thirty-five, Your Honor."
> Woolley: "The normal speed of traffic was not 35 as he stated. It was…"
> The Court: "No, I asked…"
> Woolley: "The speed limit"
> The Court: "I asked him what the posted speed limit is."

Given that the speed limit is irrelevant in determining the "normal speed of traffic moving in the same direction **at that time**," it is clear that the Judge was throwing out the law, and substituting his own personal opinion of what the law *should* be. And because Woolley was not traveling at the speed limit, the Court found that he was required to ride as close as practicable to the right.

So, aside from the fact that under California law, he was not required to do so, why didn't Woolley just ride as close as practicable to the right? Because as Woolley noted,

> I was on the right-hand side, saw the cars backing up, and knowing where the safest place for a bicycle to ride is to the left of cars making a right-hand turn.

In other words, Woolley was choosing not to ride to the right of the cars he was passing, because he was approaching an intersection where some of those cars were turning right. Under California law, Woolley's choice on lane position was lawful, because another one of the exceptions to the requirement to ride as close as practicable to the right is "when approaching a place where a right turn is authorized." By the Officer's own testimony, Woolley was approaching an intersection:

> I was approaching 44th Street. I was a couple -- three or four car lengths back from the intersection of 44th Street that goes north off of El Cajon Boulevard…As I was creeping my way through traffic, traffic was backed up in both lanes. The Defendant pedaled by me on his bicycle between the number-1 and the number-2 lanes of traffic, between the cars in this lane and this lane (indicating). He pedaled right past me right here and was pedaling down the center of the roadway, right along the dotted line.

So according to the Officer, Woolley was three or four car lengths away from an intersection—in other words, he was approaching a place where a right turn is authorized—as he was riding to the left of the vehicles in the right lane…Exactly where California law says he can be.

Now, just to be clear on this point, California law does not say that a cyclist can travel in any lane simply because there is a right turn authorized somewhere along the road. The law is very specific—a cyclist is not required to ride as close as practicable to the right when *approaching* a place where a right turn is authorized. This means that although a cyclist is *generally* required to ride as close as practicable to the right, that requirement is not in effect when the cyclist is approaching a place where a right turn is authorized. This exception to the rule is intended to allow cyclists to make reasonable decisions about their safety at intersections and driveways, in order to avoid being right-hooked.

So what does "approaching" mean? The law isn't specific, but a reasonable reading of the law would be 200 feet before an intersection or driveway. Why 200 feet? Because under California law, motorists are permitted to enter a bicycle lane to prepare for a turn within 200 feet of an intersection. It stands to reason, therefore, that at 200 feet, the cyclist is also approaching an intersection. Thus, a reasonable reading of the law would be that 200 feet before an intersection, motorists preparing to turn may enter a bicycle lane, while cyclists continuing through the intersection may move left.

Of course, the Judge dispensed with California law altogether, explaining that with regard to moving left when approaching a place where a right turn is authorized, "I don't think it's appropriate."

Now, the Court did not say that Woolley couldn't pass traffic on the right. Presumably, had he been traveling as close as practicable to the right, he would not have been cited, nor convicted, for passing traffic on the right. Well,*presumably*. After all, a Utah court did just reach the bizarre conclusion that cyclists can not pass on the right. Nevertheless, the issue was not raised in California, so we may presume that Woolley would not have been cited and convicted simply for passing on the right.

But Woolley also argued that under California law, cyclists are not required to ride to the right when overtaking and passing another bicycle or vehicle proceeding in the same direction. And in fact, Woolley *had* been passing a line of vehicles when the officer pulled him over; by passing those vehicles on the left, Woolley was operating lawfully under California law. However, despite what California law clearly allows, the Court didn't see it that way. Asked for an explanation, the Court replied

> Sir, I am not going to argue with you. I have made a ruling.

And because the Judge was not basing his ruling on California law, as he is required to do, silence was perhaps his wisest choice.