

Crosswalk Collision

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I went for a cup of coffee this morning. I walked down to the corner crosswalk, and waited for the light to change so I could cross. It would have been a shorter trip to just jaywalk across the street, but it seemed safer to use the crosswalk. So I waited for the light to change, and it did, but not before one last motorist rushed to get through before the light changed. And then another motorist blew through the red light—blew, not rolled, through the red light—and turned right. This motorist probably never even saw me waiting to step into the crosswalk, because although she was turning right, she was looking left, over her shoulder, for oncoming traffic. I waited for her to finish her illegal move, said “nice stop” to no one in particular, and stepped into the crosswalk.

I didn't get hit by this driver, because I've come to expect that behavior from motorists. Virtually every driver I've ever seen waiting at a stop to make a right turn looks over their left shoulder for an opening in traffic, and when there is an opening, the driver turns right, still looking over their left shoulder. They never look right to see if a pedestrian is in the crosswalk, approaching from their right.

Well, almost never. Some drivers do look right as a kind of afterthought, but clearly their minds are focused on not getting hit by oncoming traffic. It almost never really occurs to drivers that there might be somebody legally in the crosswalk—somebody who has the legal right of way, and to whom they must yield before turning. And because this never even occurs to most drivers, it never occurs to them that they are required by law to look in the direction they are turning. Sure, they might give a quick glance to the right, before turning back to oncoming traffic with a laser-like focus. And then they turn, without ever having checked to see if they're turning into a pedestrian who is on their right.

I know this, so I never assume that they will look. Instead, I delay crossing in front of these drivers until they have indicated that they see me and are yielding the right of way. I don't do this because I have a legal obligation to stay out of their way; I do it because I know with virtual certainty that they will not observe their legal duty to look in the direction they are turning.

Well, that's me, but what about a child who is legally crossing in a crosswalk? Should we expect them to do this ridiculous “do you see me” dance with drivers? Or should we expect drivers to do their legal duty and look in the direction they are turning? I was reminded of this by a brief news item out of Middle Valley, Tennessee, where it was [reported](#) that a young cyclist was hit by a vehicle while crossing in the crosswalk. According to the report, the driver stopped at an intersection, and “after looking both ways, he turned

right and struck a juvenile rider.”

Here’s the thing about this collision: I believe that the driver didn’t intentionally turn into the young cyclist. I believe that he didn’t see the child, and I believe that he looked both ways. What I question is whether he was looking in the direction of his turn when he made his right turn. If he had been looking right, he would have seen the child enter the crosswalk. He saw one other cyclist cross before he made his turn, but then, inexplicably, when he turned right, he hit a young cyclist he never saw. Based on my own experiences in crosswalks, I’m guessing the driver did what virtually every driver does—he turned right while looking for oncoming traffic over his left shoulder. And then he hit a child who doesn’t have the traffic experience to know that drivers always do this.

Of course, cyclists (and pedestrians) also have a duty not to enter the crosswalk when it would be impossible for a driver to yield the right of way. So, for example, if the driver has already proceeded to turn, it would not be legal to suddenly dart into the crosswalk, on foot or on bike. However, despite this duty for cyclists and pedestrians, the driver still has the duty to look in the direction he is turning while making his turn.

Thus, even when the cyclist has a duty to be careful entering the crosswalk, the driver still has a duty to be careful when turning. Nevertheless, regardless of whether the cyclist was riding lawfully, some will attempt to [blame blame the cyclist](#). It happened in 2009 in Los Angeles when a cyclist entered a crosswalk and was [killed by a driver](#) making a right turn. The conclusion of the LAPD accident investigator was that the cyclist was the “primary cause” of the collision because it is against the law for cyclists to ride on the sidewalk against traffic, and it is against the law for cyclists to ride in crosswalks. The only problem with that conclusion is that [the LAPD officer was wrong on the law](#) on both counts. In California, it is perfectly legal to ride against traffic while on the sidewalk (although local law may prohibit sidewalk riding), and it is perfectly legal to ride in the crosswalk, unless local law prohibits it. The result of this erroneous understanding of the law was that the driver who apparently failed to look right while turning was let off scot-free, while the blame for the collision was shifted to the cyclist who had broken no laws.

And it’s not just law enforcement officers who blame cyclists for the carelessness of drivers. Many cycling safety advocates maintain that it is unsafe to ride on the sidewalk, particularly against traffic at intersections. Whether one agrees or disagrees with this advice, I think to the extent that some advocates seek to shift the blame to the injured cyclist, that’s missing the point. There’s nothing wrong with advocating for safe riding practices. There is something wrong with shifting the blame from a driver who has not observed his legal duty, to a law-abiding cyclist. It comes back to this: Do I have a duty to wait until a driver has seen me before I cross in the crosswalk? Of course not, and if the driver isn’t looking and turns into me, it’s the driver’s fault, not mine. Of course, it’s to my advantage to anticipate that drivers are generally not paying attention, but that still doesn’t absolve the driver of his legal duties to me. And it doesn’t mean that others (including cyclists) who are legally in the crosswalk should be blamed for the

carelessness of the drivers who hit them—particularly when that person on a bike is a child who has little real world experience with the actual careless behavior of drivers. Is that what happened here? It's not clear from the news, but what is clear to me is that there needs to be a careful investigation of the cause of this collision. We need to ask whether the cyclist suddenly darted into the crosswalk while the driver was turning, and we also need to ask whether driver was looking in the direction of his turn as he was turning. The answers to these questions will tell us what really happened.

By Rick Bernardi, J.D.