

## **Bike Lane Right of Way Continues Even Without Painted Line Through Intersection**

By Ray Thomas, Oregon Bicycle and Pedestrian Lawyer  
[www.stc-law.com](http://www.stc-law.com)

In June 2009, Carmen Piekarski was riding in the bike lane on SE Hawthorne at 10<sup>th</sup> Avenue when the driver next to her, according to Portland Police, admittedly made a last minute right turn and knocked her down. (See our reimagined [“right hook”](#) scenario here). She was wearing a helmet and fortunately avoided serious injury when her head slammed into the pavement. Responding police cited the driver for Failing to Yield to a Bicyclist in a bike lane ([ORS 811.050](#)).

When the traffic citation case went to trial on December 21, 2009, *pro-tem* judge Michael Zusman found the driver not guilty because, as he stated to news reporters, he felt that the Oregon requirements that a motorist yield to a bicyclist in a bike lane did not apply if the bike lane paint-marks were interrupted at the point of collision in the intersection. He stated that he felt it was his job to enforce the laws as they were written, rather than as people wished they were written, and that any solution was up to the legislature. We disagree in several respects and wonder if the result in the case would have been different if legal argument or briefing had been provided to the judge.

Although this case has understandably caused great consternation in the bike community and has the potential to sow confusion among law enforcement and drivers, it is important to understand the decision is not controlling authority for future cases or law enforcement. Because Judge Zusman did not issue a written opinion stating his legal reasoning and there is no right to appeal an acquittal in traffic court, the decision

does not create binding legal precedent.

Nevertheless, the potential for confusion and dangerous roadway conflicts compels us to set forth our view that the legal and Oregon road-design references clearly show that a bicyclist does not lose the right of way in a bicycle lane just because there is an interruption in the bicycle lane markings in an intersection.

[ORS 811.050](#) provides:

A person commits the offense of failure of a motor vehicle operator to yield to a rider on a bicycle lane if the person is operating a motor vehicle and the person does not yield the right of way to a person operating a bicycle . . . upon a bicycle lane.

“Bicycle lane” is defined in [ORS 801.155](#) as “that part of the highway, adjacent to the roadway, designated by official signs or markings for use by persons riding bicycles . . . .”

The court ruling fails to recognize that the legal existence of a bicycle lane does not end just because the paint on the road stops at an intersection. Note that the statutory definition of “bicycle lane” says it is “that part of the roadway . . . designated by official signs or markings” (emphasis added). This means that the “designation” may be by either “official signs” or “markings”. Just because the lane divider lines are interrupted in the intersection does not mean that bicyclists lose their legal right to the space legally “designated” for their use.

Bicycle lane designation by markings or signs creates a legal status for bicyclists that does not require the presence of paint on the pavement in the intersection because lanes (even motor vehicle lanes) continue even when the paint stops. It is the markings or designations visible before and after the intersection that create the legal presence of

the bicycle lane. Just because every inch of a bicycle lane is not “marked”, does not mean its legal designation has ended. When one looks at a bicycle map of Portland, the “designation” of the bicycle lane continues along the entire route. No authority suggests otherwise. If traffic lanes all ceased to exist in intersections, legal chaos would ensue and every intersection without lines painted for every lane would turn into a legal free-for-all.

Oregon’s primary reference guide for bicycle and pedestrian facilities is published by the Oregon Department of Transportation (ODOT) as part of the Oregon Transportation Plan. The [Oregon Bicycle and Pedestrian Plan](#) was updated in 2007 and a draft circulated for public comment. The section on bike lanes clearly states that

“Bike lanes are officially designated to create an exclusive or preferential traffic lane for bicyclists with the following markings:

- an eight-inch white stripe; and
  - bicycle symbol and directional arrow stencils.”
- (Page 145 of Plan; Chapter 1, Page 16 of 2007 Draft).

The rules for design and installation of bicycle lanes in the Oregon Bicycle and Pedestrian Plan suggest that the painted stripe should usually stop at the crosswalk and resume on the other side of the intersection. Interruption of the paint stripe does not interrupt the bicycle lane. Painting a dotted line through the intersection is suggested as an alternative to warn of a potential conflict area due to turning motorists.

### **Intersections.**

Bike lanes should be striped to a marked crosswalk or a point where turning vehicles would normally cross them. Marking the bike lane with eight-inch wide dotted lines prior to the intersection indicates a potential conflict area to drivers and bicyclists, as some drivers pull over to the right to make a right turn. The bike lane should resume at the other side of the intersection. Bike lanes are not normally striped through intersections; however, it may be appropriate to do so where extra guidance is needed; in this case they may be marked with eight-inch wide dotted lines, to guide

bicyclists to a long undefined area. (Emphasis added).  
(Chapter 1, page 17 of 2007 Draft; Page 146 of Plan)

No authority suggests that continuation or interruption of the painted stripe in the intersection has any legal effect whatsoever.

Thus, bicycle lanes may be designated in intersections with wide dotted lines or with no lines at all. The wide dotted lines are intended to provide “extra guidance” for bicyclists through particularly long intersections, but the norm is that the bicycle lane markings will end immediately before and resume immediately after the intersection. The language of the Oregon Bicycle And Pedestrian Plan is clear that there is no disruption of the bicyclist’s legal right of way (and right to exist) just because the paint stops. When a bicycle lane is marked or designated before an intersection, the legal right of way continues through the intersection. In our opinion, no legal or legislative “fix” is necessary because the law is clear.