

COURTS ALLOW DANGEROUS DESIGN OF BICYCLE PATHS COURTS SAY ALL BICYCLE PATHS ARE DIRT TRAILS

YOUR HELP IS NEEDED TO CORRECT THIS JUDICIAL MISTAKE

John Forester, M.S., P.E.
Cycling Transportation Engineer
Consulting Engineer, Expert Witness, and Educator in
Effective Cycling, Bicycles, Highways and Bikeways, Traffic Laws
7585 Church St., Lemon Grove, CA 91945-2306
619-644-5481 forester@johnforester.com

1 The Judicial Situation

The California courts have decided that Class One Bicycle Paths are the legal equivalent of dirt trails through unimproved lands. That means that they cannot have safety design standards and that the governments which own and operate them cannot be liable for injuries caused by physical condition of the facility. This enables government to be as careless as it chooses in design and maintenance, without any possibility of being held responsible for the dangers so created.

This situation should be particularly upsetting to those who advocate bicycle paths as facilities upon which beginning cyclists, and cycling families, and transportational cyclists, can operate safely and pleasantly.

The legal issue is simple. It is: Which set of laws governs Class One Bicycle Paths, the law for dirt trails through unimproved property or the Streets and Highways Code under which those bicycling facilities were designed, authorized, and built?

2 We Can Correct These Mistakes

We now have a good chance to overturn these judicial mistakes. That is, if we put some effort and money behind this possibility. The recent Prokop case has provided us that opportunity. The Prokop case is now up for appellate review, giving us the opportunity to get the correct arguments before the appellate court that can reverse this judicial monstrosity. But running an appellate case costs money and would also be benefited by our contribution through a friend-of-the-court brief.

It is correct that most appeals fail. In other words, most judges act properly and their rulings are upheld. However, where judges can be shown to have reached conclusions based on improper legal arguments, then appellate review is likely to succeed. The Prokop case provides just this

opportunity, because the ruling that is now up for appeal is based on a thoroughly defective legal argument. Presenting the proper legal argument can return Class One Bicycle Paths to legal status equal to other parts of the highway system.

3 Money is Needed

There is little money in the Prokop accident; no death, no paralyzed victim. The funds to carry the appellate case must come largely from the cycling community. Does the cycling community care that its Class One Bicycle Paths can legally be as dangerous and unusable as dirt trails in the wilderness? Or does the cycling community consider that its Class One Bicycle Paths ought to be safe for beginners, for families cycling for recreation, for commuters riding to work?

I start the ball rolling by putting up \$1,000 as the start of the legal fund for the Prokop Appeal.

4 Bikeway Background

I was one of those who worked out the safety design design standards for bikeways in California, the standards that then became the national standards. We did so under the direction of the California Legislature and under the authority of the California Streets and Highways Code, and our work was legally required to become part of the Highway Design Standards, where it is today as Chapter 1000. We worked according to the principle that a Class One Bicycle Path was like a small highway, but one from which motor traffic was excluded. Our standards were largely derived from recognized highway engineering principles, but sized to bicycle size and speed.

5 Consequences: the Farnham Accident

5.1 Farnham's Accident

The judicial mistake most relevant to the

present condition is the Farnham accident. Farnham and a companion were cycling along the sidewalk of Burbank Blvd, a paved sidewalk to which cyclists were diverted from the roadway by designating it as a Class One Bicycle Path on the Los Angeles Bikeway Plan. This road is not in wilderness; it is completely surrounded by the built-up Los Angeles metropolitan area. The road crosses Balboa Park, which is the Sepulveda Dam flood plain open space, and there are no houses along it and only one intersection.

As Farnham was cycling along this path, the surface of the path gave way beneath him, and he was thrown from his bicycle, to break his neck and become paralyzed. The City of Los Angeles claimed immunity against liability, referring to previous appellate opinions holding that bicycle paths are dirt trails. The City of Los Angeles then added the relevant argument, and the court agreed with it, defective though that argument is.

5.2 The Farnham Argument

The City of Los Angeles made the following argument. The law provides immunity against liability for injuries caused by the condition of trails through unimproved property. That is quite accepted; a person hiking a dirt trail must look out for the tree roots that might trip him. The City cited cases in which this principle was upheld.

But that doesn't explain how an engineered and paved bicycle path built according to safety design standards as required by the Streets and Highways Code and published in the Highway Design Manual is equivalent to a dirt trail through unimproved property. The City advanced the following argument.

The Vehicle Code defines a highway as a place improved for vehicular travel. The Vehicle Code excludes bicycles from the class of vehicles. Since a bicycle path excludes motor vehicles, a bicycle path cannot be part of the State's highway system. Therefore, the safety design standards for highways cannot apply. Therefore, no liability.

This Vehicle Code argument apparently took Farnham's attorneys by surprise and they mounted no significant defense. The very large defects in the Vehicle Code argument are discussed below.

The Farnham court also inserted the argument that maintaining bicycle paths would be very expensive; better to have the immunity against liability than to build or maintain bicycle paths in proper condition for safe use by the public.

6 The Prokop Accident

Prokop was riding his bicycle along the Los Angeles River Bicycle Path. This is actually the paved and fenced service road for the Los Angeles Flood Control District. The Bicycle Path is closed against public motor traffic by the typical pair of chain-link gates. Adjacent to this large gateway, scrunched in between the end of the gate and the Los Angeles River, is a narrow gateway for bicycle traffic that is reached by a double-curving fenced path. This gateway fails to meet the safety design standards for Class One Bicycle Paths; it is too narrow, its turns are too sharp, and the fencing is too close. The main gate could easily have been modified to provide a safe and straight opening.

Prokop attempted to ride his bicycle through this gateway at low speed, but misjudged the sharpness of the second turn and the closeness of the fence, hitting his head against the chain-link fencing, and incurring lacerations requiring significant surgery to reattach part of his scalp.

7 Prokop and Safety Standards: the Legal Issue

Prokop presented the argument that the gateway in the Los Angeles River Bicycle Path failed to meet the safety standards required by the Streets and Highways Code, this design was completely avoidable, and that this failure was the cause of his accident. So far as I can see, that argument is entirely correct, and, if the court is allowed to consider this argument Prokop will win his case. However, the City of Los Angeles presented the argument that the Farnham appellate opinion denies that Class One Bicycle Paths can be subject to safety design standards, because they are not part of the State's Highway System. The judge ruled that the Farnham opinion governs, recognizing, when he did so, that the legal issue of which set of laws governs Class One Bicycle Paths deserves to be considered at the appellate level.

The legal issue of the Prokop Appeal is just that. Which set of laws governs the status of Class One Bicycle Paths, the law for dirt trails across unimproved property, or the law in the Streets and Highway Code under which these bicycling facilities were designed and built?

8 The Prospects for Success

Unlike most appeals, the Prokop appeal has every prospect for success. This is because the

Farnham court was never presented with the legal basis of the California Bikeway System. The City of Los Angeles presented its defective argument that the Vehicle Code does not define bicycles as vehicles, and that argument succeeded only because no competent reply was made. We who have worked for thirty years on the bikeway safety standards understand what Farnham's attorneys missed. The important points are:

8.1 Streets & Highways Code

Streets and Highways Code 890 and following establishes the California bicycle transportation system consisting of bicycle paths, bicycle lanes, and bicycle routes. These S&H Code sections require safety design standards and require that all government agencies comply with those standards.

8.2 Bikeway Safety Design Standards

The bikeway safety design standards required by the Streets & Highways Code were first developed in 1976, and now exist as Chapter 1000 of the California Highway Design Manual. These include the safety design requirements that were violated at the site of Prokop's accident.

8.3 Los Angeles Claims to Obey the Standards

The Los Angeles General Plan, as quoted on the city's official website, claims that its bikeway system complies with these "mandatory" safety standards.

8.4 Los Angeles Claims that the Los Angeles River Bicycle Path is part of its Bikeway System

The Los Angeles General Plan, as quoted on the city's official website, claims that the Los Angeles River Bicycle Path is part of the Los Angeles Bikeway System, and is part of a route that will run from Canoga Park at the north end of the San Fernando Valley all the way through the city center to the Port of San Pedro, south of Los Angeles.

8.5 Weakness of the Vehicle Code Argument

The Streets & Highways Code does not bother to define vehicles or even highways. Their meanings are thought to be generally known, and,

if definition is required, the dictionary definition is legal. The Vehicle Code's peculiar definition of bicycle as a device, rather than as a vehicle, applies only to issues of traffic law and registration, not outside the Vehicle Code. This definition was adopted, long ago in the Uniform Vehicle Code, as a way of relieving child cyclists of some of the legal burdens of being drivers of vehicles. The argument that the highway system consists only of facilities for travel by vehicles is inconsistent with known facts. Sidewalks are not for vehicular travel, but they are part of the highways. Likewise for bicycle lanes, which are defined as part of the roadway, which clearly is part of the highway system. Class one bicycle paths are roads from which motor traffic is excluded, just as freeways are roads from which non-motorized traffic is excluded. The Vehicle Code argument should not have succeeded, and it will be defeated when it is reconsidered as part of the Prokop Appeal.

8.6 Other Weaknesses of Los Angeles' Arguments

There are many other errors in the legal papers submitted by Los Angeles. For example, they state that there are no bicycle facilities beyond the gateway of Prokop's accident. How then do they expect cyclists to arrive? By flying on their bicycles like witches on broomsticks?

9 Appeals Cost Money

Retaining an appellate attorney will cost about \$5,000, and there may be expenses beyond that. I have both reduced the prospective costs and increased our chance of success by preparing much of the material so it is ready for the attorney. California's cycling community deserves to have its bicycle paths returned to legal status as highways, as originally intended. It needs to provide funds to enable this return. For the moment I will administer such funds as you subscribe. Send to the address on the heading. I repeat that I have contributed \$1,000.

We who have worked on the bikeway safety standards and traffic law ought also to prepare a friend of the court brief stating our experience and intent in preparing them.

