

# Challenging Collision Reports

(or)

## *When "At Fault" is Wrong*

by Nolan G. Woods

[www.trafficinvestigator.com](http://www.trafficinvestigator.com)

October 2003

There is a surprising amount of variation in style and accuracy with regard to filling out traffic accident reports. For example, while (the) Statewide Integrated Traffic Records System, or SWITRS, requires from all agencies, state, county, municipal and regional, a copy of every report of a traffic collision involving injury or death, there is no such stipulation for "Property Damage Only" reports.<sup>1</sup> This means that often critical information will be missing or at best not exist. Witnesses, scene documentation, physical evidence are among the few critical items necessary for either side of a civil or criminal action.

Apart from the variations from agency to agency in reporting style, problems with the thoroughness, reporting accuracy, and even experience of the officer can seriously compromise a traffic accident report, both injury or non-injury, in a court of law. For the legal expert, having a basic understanding of the Primary Collision Factor (PCF) can make the difference between winning or losing what might seem at first glance an obvious case or be in a better negotiating position to mitigate damages.

### **The crux of a collision report**

On the back side of the CHP form (555) is the data portion of the collision information, e.g., road conditions, **associative factors**, types of vehicles, etc. The first box for coding is the Primary Collision Factor (PCF). This is where the investigating officer assigns a party and the "primary" cause of the accident. It takes a thorough knowledge of the Vehicle Code and other resources to properly assess the correct or incorrect movements made prior to the collision. Of this collision coding section, the PCF most greatly affects the outcome of the entire report. In conjunction with PCF selection, the "Associative Factor" selection, which is much too often ignored, the second most important and often greatly mitigates the responsibility of the driver chosen as the PCF.<sup>2</sup> It also determines which party will go through the financial suffering imposed by the insurance companies, legal costs and other litigation issues: not to mention DMV sanctions.

### **Problem #1 – little training and/or experience**

Depending on the commitment to public service and/or budget constraints, parties involved in any collision type receive a variety of responses by different agencies. It might be no response by police for a "property damage only" collision, to a full police response and investigation by professionally trained multi-disciplinary investigation team.

---

<sup>1</sup> California Vehicle Code (CVC) section 20008. Although PDO reports are encouraged.

<sup>2</sup> The Associative Factor selection will be discussed in my next article.

Compounding these issues is that there is a great difference in experience and competency among those writing these reports. Basic Police Academies do not and could not spend the time needed to instruct the amount of information needed in this area for trainees to instantly become skilled traffic accident investigators. These skills are typically acquired via field training provided at the employee's department, and through experience. Alas, few take enough interest in the Vehicle Code to gain such skills and fewer still get involved with the advanced traffic collision investigation area and even fewer still get involved with traffic accident reconstruction. It seems that "chasing the bad guy" is more palatable to the new recruit than spending time, "doing the insurance company's work", as is often expressed in police circles.

## **Problem #2 – one box, numerous options**

Here are a few examples of how assigning the PCF can be challenging to the inexperienced.

### **1. *A car rear ends another on the roadway, maybe at an intersection, maybe some where else on the roadway:***

Is the PCF Following Too Closely, Unsafe Lane Change, Speed, a physical disease, purposely conducted, etc.? Without any further consideration, one would simply be convinced that the "bullet" vehicle was traveling too fast or the driver not paying attention and was not able to stop before striking the vehicle in front of it. Well, was the car that got hit stopped or was it moving? If it had been stopped prior to the collision, the original consideration may have been appropriate; maybe. If, on the other hand, the vehicle was in the process of slowing when it was struck, one should consider a Following Too Closely violation. **If there had been a lane change made by the struck vehicle just prior to the collision one might miss the Unsafe Lane Change violation and fault the incorrect vehicle altogether! This might not be a reportable collision, i.e., an assault or suicide does not qualify for traffic accident status!**<sup>3</sup> These are just a few of the many considerations that can be raised, and are often not, while deciding on a Vehicle Code violation.<sup>4</sup>

### **2. *I'll refer to those solid double double yellow lines as another example***<sup>5</sup>:

These lines, if spaced at least two feet apart, indicate that you can not drive over them to make any turning or passing movements.<sup>6</sup> You often see them less than two feet apart within 100' of an intersection. Essentially, there are four solid yellow lines side by side.

---

<sup>3</sup> HPM 40.50, Collision Investigation Manual (CIM) Page 2-1, Definitions and Classifications of Collisions, §1(a).

<sup>4</sup> Sections and causes other than Vehicle Code violations are appropriate. Vehicle Code Sections however, are preferred.

<sup>5</sup> This discussion is in reference to "surface streets" and not to be confused with those double yellow parallel lines that separate the "mixed traffic lanes" from the High Occupancy Vehicle Lanes (HOVL) found on our freeways. 21655.3 (CVC), etc.

Everything else being equal (that means you are not failing to yield the right-of-way to approaching traffic) can you cross over them? Yes! Why? Unsafe maybe, but the Vehicle Code does not prohibit the movement even though the traffic/patrol officer or the jurisdiction's traffic engineer may believe otherwise.<sup>7</sup>

### **3. *Prima facie* issues:**

- a. Who was the first to enter the intersection? Or, who had legal control of the intersection, regardless of what signals are displayed at the time. If a 96 year old woman interred the intersection legally, ala walker, and it takes her two cycles of the traffic signals before she can get to the other side, who has legal control of that intersection until she gets to the other side? **She does!**<sup>8</sup>
- b. Non-contact hit and run parties. You know those ghost vehicles that caused you to swerve and lose control of your vehicle. Some times those stories are true. They are most often summarily dismissed by the investigating officers.
- c. Vehicles passing on the right utilizing the parking lane and striking a left turning vehicle at an intersection. These are often misidentified labeling the left turning party at fault for failure to yield the right-of-way.
- d. Statistically, bicyclists are most often the party at fault when colliding with a vehicle. They are often in violation of the Vehicle Code as they ride on the wrong side of the roadway or suddenly enter the roadway from the sidewalk via handicapped ramps, etc.<sup>9</sup>

## **Accidents waiting to happen**

As an example of how traffic investigators can assume too much. During a meeting with the city engineer to discuss an improperly marked bike lane, I was informed that the council had not decided to officially install a bike lane at the subject location but that he wanted drivers to believe that there was a bicycle lane at the location. The point is there are many improper markings on the roadway for various reasons including just mistakes made by the employees who are responsible for their installation.<sup>10</sup> Markings too are to be held suspect until a proper inspection is made.

## **Summary**

There are many reasons to hold the traffic collision report suspect as to its accuracy and most importantly correctness as documented. Analyzing the report can reveal many

---

<sup>6</sup> 21651(a) CVC

<sup>7</sup> They are there to influence the driver not to pull out of or into a driveway that is close to the intersection but there is not enough room to mark the area properly.

<sup>8</sup> Although, if while she is in the process of crossing a flashing or steady "DON'T WALK" or "WAIT" or approved "Upraised Hand" symbol is shown, she is required to proceed to a place of safety; 21456(b) CVC. Her only option may very well be the other side of the street she was in the process of crossing.

<sup>9</sup> 21200 (a) CVC Every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division,....

<sup>10</sup> In one incident I found a stop sign that had attached to the pole just under the large red octagon sign, a smaller parking sign that read, "No Stopping"! A city employee had one more parking sign than he had mounting poles so he used the stop sign pole.

problems that would help the attorney develop his or her direction and approach to any particular case. This can make pre-trial negotiations much more successful and save a great deal of valuable time, effort and money.