

# He Passed Me Going 90 MPH...

In just about every motorcycle case we have there are allegations that our client was speeding.

There are a couple of important things to know about the issue of motorcycle speed. The first relates to the reliability of witness observations. The second deals with the way courts deal with favored drivers exceeding the speed limit.

## Witnesses Almost Always Get it Wrong

Witnesses are almost always wrong about motorcycle speed.

It may be based on the relatively small size of motorcycles compared to other vehicles. It may be based on the fact that they are often louder than other vehicles. Or it may be based on acknowledged (or unacknowledged) witness bias.

Studies have been conducted to evaluate the accuracy of eyewitnesses' estimates of motorcycle speed (specifically as related to eyewitness legal testimony). Experiments have been conducted including subjects of various age, gender, eyesight, hearing, motorcycle riding ability and self-perceived speed estimation ability. The results show an overall large standard deviation in speed estimate errors. Witnesses almost always over-estimate motorcycle speed. Usually by 30 to 50 percent.

## In Most Cases Speed Shouldn't Matter

In most cases the speed the rider was going shouldn't matter. That's recognized by Washington courts.

Many courts have held that the speed of the favored driver is irrelevant and should be excluded by the trial court.

(Washington uses this convention of "favored" and "disfavored" drivers. Basically a disfavored driver has to yield to the favored driver.)

The leading case about speed is *Channel v. Mills*, 77 Wn. App. 268, 890 P.2d 535 (1995). It held (1) excessive speed which does no more than bring favored and disfavored drivers to same location at same time is a remote rather than proximate cause of a collision and (2) testimony which was offered to establish speed of driver for purposes of establishing that excessive speed brought him to same location at same time as the motorist was irrelevant and was properly excluded.

To establish an exception to the rule from *Channel*, "a claimant must produce evidence from which the trier of fact can infer the approximate point of notice." *Mills*, 77 Wn. App. at 279. (The point of notice is the point in time at which a reasonable person exercising ordinary care would realize that the disfavored driver is not going to yield.).

If the point of notice was far enough back that the rider could have had adequate time to do the following, then speed does come into the case:

- See the disfavored driver.
- Appreciate the danger.
- Initiate and complete a responsive movement so as to avoid the collision.

But even then, Washington isn't an "all or nothing" state. Even if the rider was speeding, and speed is relevant, the jury still has to allocate fault for the wreck between the speeding favored rider and the disfavored driver who failed to yield.



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