

Biker Rights & Motorcyclist Safety Advocacy in a Political Milieu Characterized by Government Dishonesty & Hypocrisy.

A Political Manifesto by "Madd Ray" Henke

<http://www.motorcyclists-against-dumb-drivers.com/bikers-rights-18.html>

It challenges our assumptions about the sincerity of our legislators, governors and other political policy makers when we examine their approach to road safety. Even when the science is uncontrovertible, our policy makers will engage in the most absurd contortions of logic and flagrantly misrepresent the science to avoid facing the political consequences, particularly when the scientific facts would require action which is not likely to sit well with the majority of their constituencies. As mature biker rights and motorcycle safety advocates we must also see that as a small minority we are "easy targets" for politicians who want to achieve the "appearance" of caring about motorcyclist safety, by taking the cheap shot instead of confronting the real safety issues which account for the vast majority of the landscape of our road injuries and deaths.

Helmet laws are the "cheap shot," meaning that these politicians can stand on their soap boxes and lament the obscene incidence of motorcyclist injury and death, but at the same time pretending that motorcycle safety problem is limited to the small numbers of our brothers killed each year allegedly as the result of our refusal to use of helmets. Or, they will stand on their soap boxes and lash out at bikers for a contrived "state fiscal crisis" supposedly resulting from the combination of biker unwillingness to wear helmets and our unwillingness to purchase insurance sufficient to pay our medical bills. The politicians ignore that it is the inattentive auto drivers who are maiming and killing us, and it is they, not us, who fail to meet their legal responsibility to pay our medical bills. But as patently dishonest as these positions certainly are, these are the most common "rational bases" urged by these politicians to overcome our biker rights position that we should be permitted the freedom to live our lives as we wish as long as we hurt no one but ourselves.

We are the victims of the "cheap shots" because we don't "cost" the politicians many votes. Indeed, these politicians may figure that they gain votes both from the "good folk" out there who succumb to the misinformation that helmets provide a real safety advantage to their "two-wheeled friends," or that they will gain votes from the auto driving ass holes out there who, for whatever reason, just don't like the kind of bikers who are likely to want to ride without helmets.

The fact is that the public health and state fiscal crises upon which these politicians ground their "rational bases" for helmet legislation are plainly false, and decades of experience with helmet laws in half the states informs us only that this myopic, paternalist "motorcycle safety" policy has everywhere only utterly failed.

The policy has failed in part because helmets are simply not the panacea

they have been misrepresented to be as competent to overcome what surely is an obscene incidence of motorcyclist injury. Helmets have limited utility to reduce the severity of head injury, and head injuries are only one small aspect of the landscape of injuries we suffer in motorcycle accidents. Quadriplegia, paraplegia, other spinal cord injuries, debilitating internal injuries, catastrophic orthopedic injuries, limb amputations; these are the injuries which comprise the biggest part of the motorcyclist injury "public health" and consequent "state fiscal" crises, and helmet laws can provide absolutely no amelioratory effect to reduce their incidence or severity.

Motorcycle rights advocates see these political "cheap shots" in every state, as we engage in the perpetual tug-of-war over helmet legislation. Most recently we see that bikers continue to be the "easy political target" for state legislators, such as Betsy Hands of Montana and Barbara Marumoto of Hawaii, Governors such as Michigan's Jennifer Granholm, and now even one Mayor, Rocky Anderson of Salt Lake City. It is plain that politicians will indeed take these cheap shots just for the political boost, even in states where they have no hope of succeeding, as Representative Barbara Marumoto acknowledged in a candid note to me earlier today: "... You may draw some comfort from the fact that I do not believe that my bill will receive a hearing... Aloha, Barbara Marumoto"

Viewed from the other side of the coin, to make it obvious that these politicians are all a bunch of hypocrites, please consider the posting referred to below in which it is described that state politicians are unanimous nationwide in their resistance to enacting any useful cell phone legislation reasonably calculated to curtail the epidemic incidence of driving under the influence of cell conversation. Indeed, they insist that it is a "great idea" to have 511 numbers so that drivers can use their cell phones while driving to get up to date information in order to avoid the traffic resulting from accidents that other cell phone impaired drivers ahead of them have caused!

<http://pub42.bravenet.com/forum/3562429698/fetch/779666>

In this article it is acknowledged that "Driver inattention is a factor in nearly 80% of crashes and 65% of near-crashes, according to a study last year by the National Highway Traffic Safety Administration and the Virginia Tech Transportation Institute. The study also revealed that cellphone use is one of the primary causes of driver inattention."

The article also acknowledges that only handheld cell phone laws have thus far been enacted, in Connecticut, New Jersey, New York and the District of Columbia, with California's new handheld cell ban slotted to come into effect in 2008. And indeed, this is the ultimate in political hypocrisy because these state legislators can have no illusion at all that bans on handheld cell phone use will provide any degree of relief at all from the epidemic incidence of traffic accidents resulting from the epidemic of DUI driving under the influence of cell conversation. The scientific evidence is crystal clear that it is not holding a cell phone that results in the DUI level impairment or 4 fold increased incidence of accidents; it is the

conversation. It is the diversion of limited conscious attention to the internal-cognitive tasks associated with the cell conversation away from the external-visual tasks essential for safe driving. See our M-A-D-D Scientific Review Article on the Epidemic Rise in Use of Cell Phones While Driving and the Safety Implications of DUI Level Driving Under the Influence of Cell Phones.

Handheld cell phone bans are WORSE than no ban at all, because drivers will merely switch to hands-free cell phones while driving, completely depriving the handheld law of any positive effect, and handheld cell phone bans will certainly have the negative effect to misinform the public that driving under the influence of hands-free cell conversation is somehow "safe." I will repeat, the science has demonstrated without any controversy that the use of handheld and hands-free devices while driving result in precisely the same DUI level driving impairment and 4 fold increased incidence of accidents over those who are not engaged in cell conversation while driving. Id.

So what is it that leads our legislators, Governors, Mayors and other politicians to spend their political resources taking their helmet law cheap shots at bikers while at the same time refusing to enact effective cell phone legislation which would have a hugely greater effect to reduce the incidence of the full landscape of motorcyclist injury, and at the same time have the beneficial effect to similarly reduce the full landscape of injury suffered by bicyclists, pedestrians and auto drivers sustained in the epidemic of accidents resulting from this epidemic of DUI driving under the influence of cell phones? (Id. NOPUS One in ten motorists on the road now driving DUI under the influence of cell conversation at any given daylight moment in time.)

Answer: They are all a bunch of forking hypocrites, political animals with only one objective, and that is to get reelected. They will not take a road safety position to effectively ban cell phone use while driving, despite that it is obvious that this is the only solution to this epidemic of DUI driving under the influence of cell conversation. They are afraid of the public backlash if they take cell phones away from the "majority" of their auto driving constituents. Instead they take cheap shots, such as by introducing laws mandating the style of hats to be worn by our small two-wheeled minority. We complain and the public applauds.

Do you know what Rocky Anderson thinks about all of our good biker lobbying efforts? The folks at ABATE Utah sent me an AP article in which Anderson is quoted as follows:

"The opponents 'are, more or less, road warriors,' Anderson said. 'They like to get out and mix it up with traffic. Some brag they never wear helmets. Those aren't the people I really look to for advice.'"

We make assumptions about what will impress our politicians. In the case of Salt Lake City we were asked to write letters telling the Mayor that we will take our tourist dollars elsewhere if the helmet legislation is enacted. I

made just the opposite recommendation when West Hollywood enacted its noise enforcement policy. I suggested that we all ride into West Hollywood, take over all the parking places along the Sunset Strip, and while we're at it, take up all the "industry reserved" tables outside the strip's swank outdoor restaurants. I assume that the last thing that the West Hollywood mayor and city council wants is our "tourist dollars" if it means an influx of Harley riders coming into the neighborhood. Indeed, since the city noise enforcement policy is only enforced on Sunset Boulevard, I suspect that the deterrence of bikers, Harley riders to be specific, was the true motivation for the City noise enforcement policy in the first place. Does Utah want our biker tourist dollars? Who knows. Apparently Mayor Anderson wasn't impressed.

Does this mean that we should give up attempting to persuade the politicians? No, of course not. ABATE and other biker advocacy groups have accomplished much by their intelligent lobbying efforts, both in resisting helmet legislation and in obtaining the repeal of helmet laws. It just means that we need to understand who we are dealing with. It is plain that the majority of these politicians don't give a flying fork about the truth, let alone the safety of any of their constituents, motorcyclists, bicyclists, pedestrians and auto drivers alike, or we would have seen laws long ago prohibiting the use of cell phones while driving instead of this obsession with cheap shot helmet legislation. We just need to open our eyes and recognize that the vast majority of the politicians we encounter will be morally empty, just a bunch of politically motivated dishonest hypocrites.

Does this mean that we should question our historical focus on lobbying? Again, No. We just may want to consider some of us taking less polite positions, and we need to make better use of our court system, also as an adjunct to our traditional bikers rights strategy.

I think, for example, that it is very important that some of us take the impolite tack to explicitly put the politicians "on notice" that they will be held accountable for the decisions they make. We do that, in part, by providing them written notice of the scientific facts which should determine the productive foci of their road safety policies. As one example, I think that the politicians who would sponsor or vote for bullshit handheld cell phone bans must be made to see that their political gain will be short-term, as the public will be certain in time to become fully informed that hands-free cell conversation results in the identical driving impairment as handheld cell phone conversation, and precisely the same 4 fold increased likelihood that the phone conversation impaired driver will cause an accident. We need to make these politicians see that one day soon enough the public will ask, "What in the hell were you thinking about when you enacted this stupid handheld cell legislation?"

It is my conclusion that our informational campaigns and lobbying are indeed important to the extent that we can impress these politicians that we are "putting them on notice" of the scientific facts, so that their actions now can be accurately assessed by the public later; and when I say assessed, I mean assessed in terms of the count of body bags, the numbers of

convalescent home beds filled, and the full extent of the state fiscal consequence of the decisions they make now.

Don't attempt to pull the "public health" and "fiscal crisis" arguments in public debate with us. We are the ones holding all the cards, and you are the ones over the barrel.

When these numbers are calculated, what will become abundantly obvious, at least in time, is that these politicians' refusal to enact comprehensive cell phone legislation will have led to the deaths and catastrophic injuries of thousands upon thousands of motorcyclists, bicyclists and pedestrians, those who are most at risk of the cell phone impaired driver, as well as the deaths and catastrophic injuries of thousands upon thousands auto drivers. In perspective, these politicians obsession with helmet legislation will be demonstrated way off base, both when compared with the public health and fiscal consequence of the greater landscape of motorcyclist death and injury which clearly could not be altered by helmet use, and by contrasting huge numbers motorcyclist deaths and injuries which might have been avoided instead by comprehensive cell phone bans.

However, given the foregoing proposition that these politicians appear destined to favor their shortsighted political strategies at least in the short term, I suggest that we must not restrict ourselves to lobbying. We need to recognize that we are likely to be the focus of helmet law cheap shots by our state government representatives with mind sets like Mayor Anderson's, and we need to consider other means of countering paternalistic political oppression, including the use of our court system to vindicate our constitutional rights.

In the case of Salt Lake City, I have been corresponding with ABATE Utah on the subject of my proposal, set forth a number of times below, that the Mayor and City Council should be advised that any ordinance they pass requiring the use of helmets by persons over the age of 18 years old will be void as a matter of law, "preempted" by the state law. Generally speaking, a municipality may not enact legislation in conflict with state law, and Utah already has a state law in place providing for the right of those 18 and over to ride free. If a municipality enacts an ordinance in conflict with state law, then the municipal ordinance is preempted and void. I am concerned about the Salt Lake City law because this is the first time a municipality has attempted to enter the helmet arena, and we should be reminded that it was just one city, Beverly Hills, which enacted the first no public smoking ordinance. The ABATE Utah representatives have indicated that Mr. Anderson is a prick and a lawyer, perhaps a redundancy, the upshot being that he is not likely to be intimidated by lawyers or legal arguments. They know Mr. Anderson best, but my guess is the opposite, that a lawyer would likely be most impressed with this legal argument, just because he will be certain to understand its implications. I've had some correspondence with the Salt Lake City Council members, one of whom is a biker himself, and promises to raise the argument if and when Mayor Anderson proposes the helmet ordinance to the City Council. I initially urged ABATE Utah to call on a Utah lawyer to present a fully briefed legal position paper on the

preemption issue, and then offered to do it myself (without charge), and I assume they are considering the proposal. They are the leaders and soldiers on the ground, so I don't want to interfere with what they consider will be the best tactic. But just for the purposes of the above discussion of the range of biker rights options that can and should be availed generally, my point is that we should look more actively to legal challenges to frustrate every effort to deny us our dignity of free adult choice.

Another example of effective legal challenge to helmet legislation is what our American Biker Folk Hero, Richard Quigley, has done in obtaining the California Superior Court ruling that the California helmet law is unconstitutional as enforced. As I've suggested before, we need one Quig in every lid state to effectively challenge the helmet laws both as written and as enforced. Helmet tickets will need to be defended on constitutional grounds and civil declaratory relief and injunction actions must be brought against the state highway patrol and law enforcement agencies for orders that these agencies cease and desist further unconstitutional enforcement of these vague laws. These lawsuits should be handled competently, brought perhaps by new BOLT chapters formed in lid states or by existing ABATE chapters or by some other organization which may arise to accept the responsibility for appropriately funding and managing the litigation. But particularly as we acknowledge that our state politicians are mostly a bunch of dishonest political hypocrites, as is the thesis of this article, I say it becomes even more important that we seize this legal opportunity to defend our rights and freedoms in the courts.

Finally, we should consider the common wisdom of BOLT, the Hells Angels, Martin Luther King and Gandhi, and that is when faced with intolerable oppression, respond with nonviolent civil disobedience. Yeah, not just Gandhi and Martin Luthur King - the Hells Angels too. When faced with the enactment of an LA City ordinance which sought to restrict bikers to parking one bike to a parking space, legend has it that the Southern California Chapters of the Hells Angels all came in one early morning and took over every parking space in downtown Los Angeles. The next day the LA City Council revoked its ordinance.

From our M-A-D-D perspective, it is obvious to us that until the politicians are deprived their cheap shots, it seems we will be endlessly caught in this helmet law tug-of-war, forever deprived the opportunity to gain the attention of those who would otherwise be forced instead to focus on motorcyclist safety strategies actually calculated to reduce the incidence of motorcycle accidents, and hence effectively reduce the incidence of the full panoply of motorcyclist injury.

All we want is the dignity of adult choice generally accorded to everyone else, and to be able to ride our bikes without the constant threat of being maimed or killed by an inattentive auto driver.

I say to the politicians, we are putting you on notice, and we are taking the motorcycle safety offensive. Motorcyclist safety is our issue, not yours. Enough of this unproductive helmet law tug-of-war, enough of your

false framing of the public health and state fiscal arguments for helmet legislation. For once and for all, enough of our having to run this gauntlet of auto driver weapons of our destruction at every damn intersection every time we set out to ride..

As "outlaw bikers," just for the purpose of this piece, and meaning only in this context, bikers unwilling anymore to live by your offensive, overbearing, paternalistic laws, and unwilling to tolerate anymore your lies and indifference to our health and safety, we turn away from our politicians and look to fellow outlaw Willie Sutton for our inspiration and insight. When asked once "Hey Willie - Why is it you rob banks?" Sutton replied: "Because that's where the money is." The "money" is not in helmet laws. Everyone knows that. Proportionally significant numbers of motorcyclist injuries, in the context of the panoply of injuries we suffer in motorcycle accidents, cannot be averted by helmet laws. Helmet laws are nothing more than a political distraction, a slight of hand, a deceit to permit the politicians to avoid doing what is more politically difficult, but essential to significantly reduce across the board the landscape of motorcyclist injury. The common denominator as the cause of all motorcyclist injury is motorcycle accidents, and the only solution is the to reduce the incidence of motorcycle accidents. That is where the bank is located. Helmet laws rob only the local liquor store. Willie Sutton spits.

Others may differ in arriving at a motorcyclist safety approach, but from our M-A-D-D perspective, the big "money" is first in comprehensive cell phone bans with severe penalties reasonably calculated to effectively curtail all cell phone use while driving. Politicians take notice: we are counting the body bags. And listen carefully: nothing short of a comprehensive ban, meaning a ban on use of handheld and hands-free cell phone use alike is acceptable. The experience in other states with handheld bans enforced by fines has demonstrated that nothing short of severe penalties will be effective at curtailing the use of even handheld cell phones even where the motorists had the option to switch over to hands-free devices. The obscene incidence of death and injury resulting from what is now a literal epidemic of DUI driving under the influence of cell conversation will not be achieved without unforgiving legislation. Severe penalties, such as lengthy drivers license suspension should hardly be seen as disproportionate to the crime, indeed drivers license suspensions would merely be consistent with the penalties which would result from the analogous crime of DUI driving under the influence of alcohol.

And while we are removing those suffering from auditory/visual inattentional blindness, let's also do something about the traditional visual-visual inattentional blindness which even before the common use of cell phones accounted for the 50 percent of multi-vehicle motorcycle accidents occurring as auto drivers violated our rights of way when entering or turning left at intersections. Enough of your "lack of conspicuity" deceit to blame the size of our bikes for auto driver inattention to motorcyclists. Auto drivers don't consciously "see" us because they have not been trained to "expect" us, because the don't consider us as "relevant" as oncoming cars, trucks or busses, and because the detection of oncoming motorcycles has not be made a

part of the auto driver's cognitive set of driving "tasks." Enough of "lack of conspicuity" as an excuse for doing nothing to modify the inattention of auto drivers for motorcyclists. Well funded motorcycle awareness programs, or creative awareness programs such as those suggested by others, e.g., to place "Watch for Motorcyclists" signs at strategic intersections are worth giving a try. We urge strongly mandatory auto driver education on the driving strategies which auto drivers must use for the protection of motorcyclists. And we urge ROW violation laws with motorcyclist-specific penalty provisions providing for severe penalties, such as drivers license suspensions and 16 hours of auto driver motorcycle safety education, for those who violate the right of way of a motorcyclist and injure or kill the biker. These are the motorcyclist safety strategies we urge to rob the motorcycle accident "banks."

To our state legislators and Governors, this is our message: Enough of your political hypocrisy, and enough of your dishonesty when it comes to our lives and health. Your short term political deceit will be your ultimate political undoing. You can continue to be part of the problem or rise to take your place as part of the solution. But enough of your failed myopic focus on paternalistic helmet legislation; lets move forward with a new motorcyclist safety agenda. No more small time jobs robbing liquor stores, damn it, lets start robbing banks. Do it because you fear ultimate public reprisal for the failure of your shortsighted political decisions. Do it because you don't want to be embarrassed when your laws are declared unconstitutional by the courts. Or do it because you figure it is in your long term political interest. Just do it. Lets just put an end once and for all to the carnage, the body bags, and the broken lives.

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