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Reply to: TAMPA

May 19, 2011

Ms. Jeannette Rouse
Department of Transportation - District 7
11201 N. McKinley Drive
MS 71300
Tampa, FL 33612

RE: Recent Proposed Campaign for Bicycling Safety

Dear Ms. Rouse:

I have been advised by my SWFBD representative, Alan Snel, that the latest cycling safety campaign is entitled "Watch Out for the Blind Spots." The image to go along with this copy is a picture of a tank next to a bicycle. Mr. Snel has advised me the agency hired to design this campaign was informed that bicyclists are "responsible for the majority of accidents" with motor vehicles. This is incorrect. If this faulty premise is the basis of the campaign, then the campaign is of little value for accomplishing the goal of safer cycling. Please allow me to explain.

As you can tell from my letterhead, I am a personal injury lawyer. I have a several years of experience with bicycling accidents. I have been helping bicyclists ride on the roads of Florida since 1969 when I was a tech and a manager at The Great Bicycle Shop in Tallahassee. In those capacities, I talked to all the bicyclists, including the crash survivors. When I became an attorney 25 years ago, I started doing personal injury law and my brother's injured customers would call me. I am still helping bicyclists today. I've heard a lot about bicycle crashes, investigated them, read many crash reports, talked with the bicyclists and deposed the motorists who've hit them and the sheriffs and troopers who investigated.

What I learned was startling. As a bicycle tech and shop manager, I was baffled as to why to the bicyclist got blamed for the crash though from what I heard, it was the motorist's fault or at best "50/50." I couldn't understand why the motorists were not ticketed. Eventually it became apparent. What I have I heard for forty-one years as typical defense of the motorist is "the bike swerved into my lane." Forty-one years later, that is still the excuse given the investigating officer. It was false then and it's false now. Those crash statistics blaming bicyclists are wrong and it is easily proven so.

If one reviews the sequence and logistics of how a crash happens, how the bicyclist is

struck and hurt and how the traffic crash investigation is done, it becomes readily clear that there is something badly wrong with this investigation "system." First, when those officers/deputies/troopers arrive post-crash and they interview the "witnesses." Just who are the witness(es) still at the scene? Just one: the motorist. Why? A car just hit a bicyclist-- the bicyclist is gone in the ambulance, on her way to the hospital. Who *else* saw the crash? Usually, no one for two reasons. On a busy urban road, witnesses keep going; on a lonely stretch of rural road, there are no other cars around. So, law enforcement talks to the nervous, worried, guilt-ridden motorists. The officer may be sympathetic to the driver seeing their unease. The motorist may be a young mother, a pretty, teenage girl, or an earnest young man. Perhaps, the officer may think: "It would be a shame for them to have a traffic violation," *wouldn't it?* I mean, "this road is dangerous for bicyclists, what was that girl thinking? Riding out here." The bicyclist is a non-participant, so for law enforcement, these are like one-car crashes; easy to investigate only one witness.

Secondly, these statistics are wholly faulty when the physical injuries of the crash are considered. Invariably a bicyclist struck by a motor vehicle is thrown from her bicycle onto either a 1. hard packed shoulder, 2. sidewalk, 3. asphalt road or 4. a combination thereof. She's fallen from at least seven (7) feet at a speed of at least fifteen (15) miles per hour (or more if she's pushed or thrown by the motor vehicle (a change in speed known as "DeltaV" in crash reconstruction terminology). If she's hit her head, *maybe* the helmet stops a fracture of the skull and loss of cerebrospinal fluid, but it *doesn't* stop the shifting of the brain tissue against the inside of the skull resulting in contact with the meninges (lining the bony cranium) thereby causing a traumatic brain injury of some degree. What is the immediate result? A *contré coupe* injury (see attached illustration), a concussion, knocked-out, semi-consciousness, dazed, confusion and sometimes a sub-dural (in the brain) bleed. From one of those types of brain injuries you get a bicyclist with poor or no memory of the crash. The motorist, protected in the crash by a 3,500 lb. steel cage, remembers *clearly* ("She swerved officer"). The bicyclist at the hospital had only a \$70 helmet on her head and the traffic laws that should have protected her. What happens when law enforcement asks her what happened? "I'm not sure/don't know/don't remember" is the usual answer. So whose story is recorded? The driver's who's "absolutely sure." You don't need to be Sherlock Holmes to figure out why the bicyclist's perspective never ends up in the report.

It's the In fact, my last brain injury case was a motorist who struck my 77-year old bicyclist/client breaking seven of his ribs causing a traumatic brain injury (TBI). What was the motorist's excuse? "He swerved into my lane officer." He got away with no ticket: my client had no memory of the crash nor of the next three days. However, the "swerved" excuse rang rather hollow, since the motorist was on a four-lane road, on a bright, clear day, on a one mile straight away, driving in the bicyclist's lane, though the inside lane was clear of traffic for at least a half mile each way, driving his van with two cell phones, a customer sheet clip board, a cup of coffee, and a radio. My 77-year old client confirmed he was 18" from the side of the white line, following single file *up a hill* with a day glow vest and a bright white helmet on. Too much for the trooper to figure out. No ticket for the motorist: "Bicyclist swerved" was the conclusion.

Thirdly, it's even worse to get a reliable witness in the typical bicycle crash. A witness' "opportunity to observe" is critical to law enforcement. A witness has to have that or he's excluded by the judge at trial. In the typical bicycle/car crash, a motorist hits a bicyclist from behind. First, the bicyclist is not looking at the crash when she's hit from behind. She's looking **forward**. What "opportunity to observe" does she have right before the crash? The officer thinks: "Why interview someone who was looking in the *literally* opposite direction of the crash?" For a third party witness (not the bicyclist or motorists), this isn't like cars where you can tell where one was coming from because of their size. This is a bike less than six feet long, these crashes happen quickly. If it's another motorist who's there, what's the likelihood he was at the right angle and close enough to see whether the cyclist swerved? Unless that third party is directly behind and to the side, (driving on the shoulder?) he's got not much of an opportunity to observe. If the third-party witness wasn't looking directly at the crash, he misses it and his version is inadmissible. The officer concludes the offending motorist has the best opportunity to observe, since he was (supposed to be) looking ahead. Though the motorist has "motivated reasoning" telling him he didn't do anything wrong, he's all the officer has for the report the officer *must complete*. So, what's the motorist's version when he's asked by officer? He's got two options: Choose guilty, get a ticket, have your insurance increase, admit the guilt of possibly badly injuring someone? Or not guilty? He picks **not** guilty and announces: "The bike just swerved into my lane officer/deputy/trooper." When the trooper arrives at the hospital, *if* he goes, the bicyclist is unconscious or lacking any memory and was looking forward when hit from behind. One witness only, one suspect set of the facts, one faulty report.

Fourth, and the final nail in the coffin of this bicyclist's fault myth, is the existence of "three feet rule." Florida Statutes §316.083(1) says motorists "**must pass the bicycle . . . at a safe distance of not less than 3 feet between the vehicle and the bicycle . . .**" As a personal experience to test this safety bumper for bicyclist, Ms. Rouse when you go home today, get your bicycle out and try to swerve three feet while staying upright. Let me know how that works for you. It's not possible. Do you really believe a bicyclist, legally on the road, riding any distance is swerving three feet from the straightest line to her destination? Do you think, if these motorists are following this **Florida law** and their motor vehicle is **three feet** away from that bicyclist, they could avoid the bicyclist *even if she swerved three feet*? Why, yes, they **could**. That's the basis of the law and why three feet was chosen by the drafters of that law. The fact is these motorists **are not three feet away**, they are distracted and drift into the bicyclist. Bicyclists don't swerve three feet. That's absurd to the point of laughter, except people are dying and it's not remotely humorous to the orphaned children, bereaved spouses, devastated moms and dads or other loved-ones left by these murdered bicyclists. The "swerve" excuse is one the motorist can use because *they are the only ones left to tell the tale*.

Thus, this myth is based on one version of the crash, the lack of investigation by law enforcement, the lack of opportunity to see the crash by the bicyclist or other witnesses, and the bicyclists' brain injury which cause a faulty memory. Law enforcement then creates this very faulty, poorly researched, one-sided traffic crash report which becomes a record and a basis for

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dead-wrong traffic statistics. And this is on what you base this fallacious, incongruously named campaign for “bicycle safety.”

For forty-one years I have watched this travesty play out in each crash about which I have learned. These are flawed statistics and this is a misguided bicycle “safety” campaign. We do not need an increased awareness for bicyclists that cars are dangerous. That is like saying Wal-Mart products are cheaply made in China. My clients, my bicycling clubs, my bicycling friends, and I know cars are tanks and blind spots are bad. Message received, *decades ago*. You are speaking to the wrong audience. This campaign is fatuous and axiomatic and a waste of the tax payers’ money. If you want bicycle safety please attack the number one cause of injury to bicyclists in the State of Florida: **distracted drivers**.

The latest case I have was a young man who was driving to work on his bicycle on the *right* side of the white line road edge, thus off the road, was killed by a **distracted driver**. There is the also tragic case of a well-known cancer researcher killed on her way to University of South Florida when she was struck by a **distracted driver**. There was the case of the beloved middle school math teacher, killed by a young mother, a **distracted driver** who turned to see what her baby was crying about. Another loss was a father and husband, a veterinarian candidate was killed while cycling on the side of the road within 1 ½ feet of the edge of the road wearing lights and reflective clothing at night by a **distracted driver** a victim of hit and run. Finally, fifteen years ago, my brother, the bicycle shop owner, was cycling on North Meridian in Tallahassee and was hit by a **distracted driver** reading the *Tallahassee Democrat* on the way back to breakfast.

Who’s killing and injuring bicyclists? **Distracted drivers**. Every single one of these incidents where someone was badly injured or killed is a result of **distracted driving**. Not blind spots and *certainly* not tanks. None of these dead people nor their families, nor the orphaned children, nor the bereaved middle school students who lost their beloved math teacher, nor the potential patients cured of cancer that these dead bicyclists have left behind believe the bicyclist wasn’t aware of “blind spots.” The holes left in our community by the death of these fine people will not be replaced or prevented from happening again by telling bicyclist watch out for “blind spots” **and telling motorists nothing**. Want a campaign that will save lives and improve cycling safety? **Do one about distracted driving**.

I am extremely disappointed that despite the SWFBD director’s knowledgeable and experienced input and advice, you persist in pursuing this patently useless campaign. We are paying with our lives for everyday motorists are uninformed of distracted driving danger. Where are *those* campaigns?

I will not be critical without suggesting solutions. Several useful campaign possibilities exist. How about a “moment of distraction is death” to a bicyclist (with a picture of a cell phone) or “give bicyclists three feet” or “bicycles are vehicles,” “bicyclists have a right to use the full lane” or my pet peeve “TXTNG KLLS” like the Allstate Insurance Company’s or, finally,

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“bicyclists have the right of way” when on a lined crosswalk or on a sidewalk. These could all be useful.

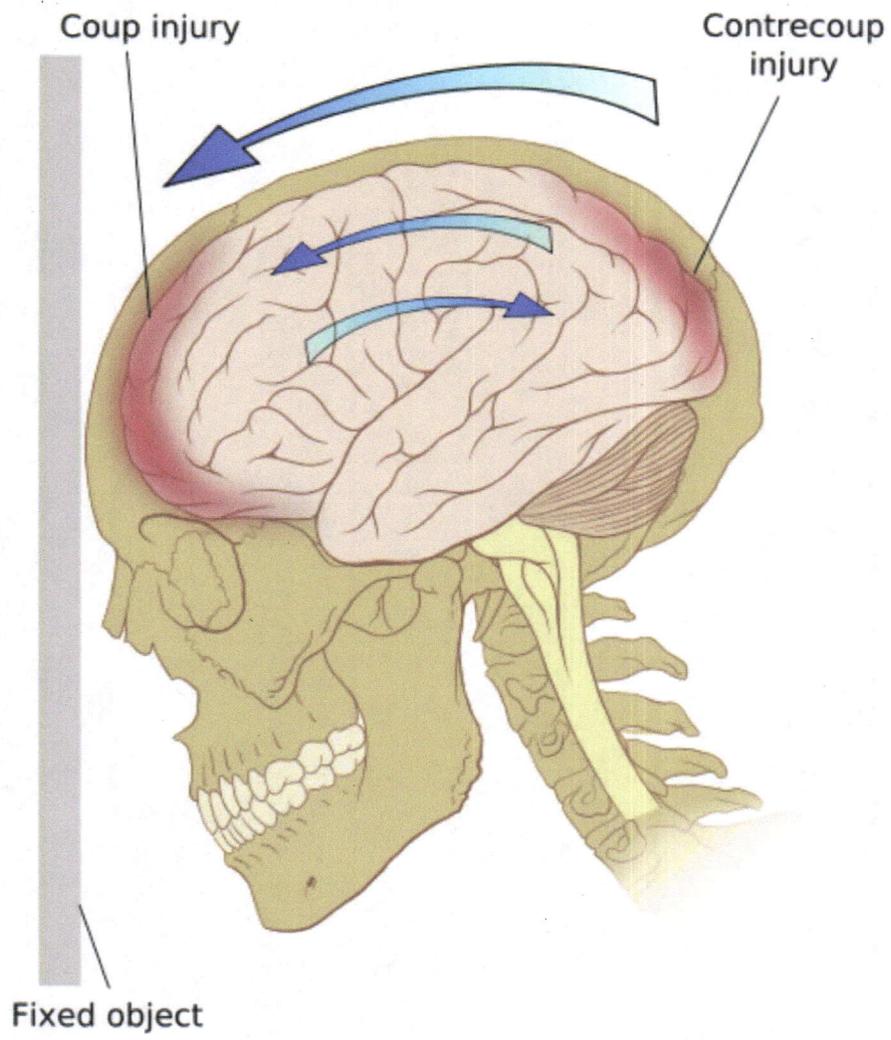
DOT should retool this campaign and inform the *motorists* of something that will be useful. I have included a discussion from the Insurance Safety Institute in this letter. Additionally, go to this link and you’ll see a dramatization of what is going on with **distracted drivers** who text. It’s a dramatization with a lot of blood. This is not far from the truth for my fellow cyclists.

http://www.dailymotion.com/video/xa9cgm_texting-while-driving-kills_lifestyle

I would be happy to help with this campaign.

Very truly yours,

J. Steele Olmstead
JSO/rad
Enclosures
cc SWFBD - Alan Snel



From the website **TextingKills.net**

Cell Phones, Text Messaging, and Car Accident Information for All Drivers

Talking on a cell phone causes nearly 25% of car accidents.

One-fifth of experienced adult drivers in the United States send text messages while driving.

In 2008 almost 6,000 people were killed and a half-million were injured in crashes related to driver distraction.

At any given time during daylight hours in 2008, more than 800,000 vehicles were driven by someone using a hand-held cell phone.

4 out of every 5 accidents (80%) are attributed to distracted drivers. In contrast, drunk drivers account for roughly 1 out of 3 (33%) of all accidents nationally.

Texting while driving is about 6 times more likely to result in an accident than driving while intoxicated.

People who text while driving are 23% more likely to be in a car accident.

A study of dangerous driver behavior released in January 2007 by Nationwide Mutual Insurance Co. found that of 1,200 surveyed drivers, 73% talk on cell phones while driving. The same 2007 survey found that 19% of motorists say they text message while driving.

In 2005, the National Highway Traffic Safety Administration found that 10% of drivers are on handheld or hands free cell phones at any given hour of the day.

A study conducted by the Insurance Institute for Highway Safety Motorists found that motorists who use cell phones while driving are four times more likely to get into crashes serious enough to injure themselves.

In 2002, the Harvard Center for Risk Analysis calculated that 2,600 people die each year as a result of using cellphones while driving. They estimated that another 330,000 are injured.

According to the Human Factors and Ergonomics Society, drivers talking on cell phones are 18% slower to react to brake lights. They also take 17% longer to regain the speed they lost when they braked

Of cell phone users that were surveyed, 85% said they use their phones occasionally when driving, 30% use their phones while driving on the highway, and 27% use them during half or more of the trips they take.

84% of cell phone users stated that they believe using a cell phone while driving increases the risk of being in an accident.

The majority of Americans believe that talking on the phone and texting are two of the most dangerous behaviors that occur behind the wheel. Still, as many as 81% of drivers admit to making phone calls while driving.

The number of crashes and near-crashes linked to dialing is nearly identical to the number associated with talking or listening. Dialing is more dangerous but occurs less often than talking or listening.

Studies have found that texting while driving causes a 400% increase in time spent with eyes off the road.

Statistics

Information provided below by Edgar Snyder & Associates. Visit their website at:
<http://www.edgarsnyder.com/car-accident/cell/statistics.html>.

Data regarding car accidents involving cell phone use and/or texting while driving has been

limited in the past, but it's slowly becoming available to the public. The information on this page reflects the most current 2007 and 2008 statistics regarding cell phone usage and text messaging during car accidents.

While the popularity of mobile phones has grown enormously in the past two decades, it's still unclear how greatly cell phone calls and texting contribute to car crashes. What is clear is that talking on the phone and texting behind the wheel both lead to distraction, and driver inattention is the leading cause of car accidents.

In 2008, at any given moment, over 800,000 Americans were texting, making calls, or using a handheld cell phone while driving during the daytime. With distracted driving killing nearly 6,000 Americans in the same year, it's no mystery that cell phone use is risky for driver.

Teen Driver Cell Phone and Texting Statistics

Despite the risks, the majority of teen drivers ignore cell phone driving restrictions.

Talking on a cell phone while driving can make a young driver's reaction time as slow as that of a 70-year-old.

56% of teenagers admit to talking on their cell phones behind the wheel, while 13% admit to texting while driving. (Note: Because this information was given voluntarily by teens, actual cell phone use numbers may be much higher.)

48% of young Americans from 12-17 say they've been in a car while the driver was texting.

52% of 16- and 17-year-old teen drivers confess to making and answering cell phone calls on the road. 34% admit to text messaging while driving.

In 2007, driver distractions, such as using a cell phone or text messaging, contributed to nearly 1,000 crashes involving 16- and 17-year-old drivers.

Over 60% of American teens admit to risky driving, and nearly half of those that admit to risky driving also admit to text messaging behind the wheel.

Each year, 21% of fatal car crashes involving teenagers between the ages of 16 and 19 were the result of cell phone usage. This result has been expected to grow as much as 4% every year.

Almost 50% of all drivers between the ages of 18 and 24 are texting while driving.

Over one-third of all young drivers, ages 24 and under, are texting on the road.

Teens say that texting is their number one driver distraction.

Cell Phones, Text Messaging, and Car Accident Information for All Drivers

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Study Reveals the Dangers of Texting While Driving

The following statistics come from a study conducted by the Virginia Tech Transportation Institute:

Of all cell phone related tasks - including talking, dialing, or reaching for the phone - texting while driving is the most dangerous.

Teen drivers are four times more likely than adults to get into car crashes or near crash events directly related to talking on a cell phone or texting.

A car driver dialing a cell phone is 2.8 times more likely to get into a crash than a non-distracted driver.

A driver reaching for a cell phone or any other electronic device is 1.4 times more likely to experience a car crash.

A car driver talking on their phone is 1.3 times more likely to get into an accident.

A truck driver texting while driving is 23.2 times more likely to get into an accident than a trucker paying full attention to the road.

A truck driver dialing a cell is 5.9 times more likely to crash.

A trucker reaching for a phone or other device is 6.7 times more likely to experience a truck accident.

For every 6 seconds of drive time, a driver sending or receiving a text message spends 4.6 of those seconds with their eyes off the road. This makes texting the most distracting of all cell phone related tasks.