

THE FIGHT TO OPEN VIRGINIA'S HOV LANES

by Bob Higdon

The Topic

Chiseled in the stone facade of the building which houses the Virginia Department of Transportation at 1201 E. Broad Street in Richmond are these words: "Dedicated to the comfort and safety of those who travel the highways of the Commonwealth of Virginia." In the ten years following the enactment of a federal highway bill in 1982, commuting motorcyclists in Virginia found little comfort in that noble pronouncement.

The Surface Transportation Assistance Act of 1982 was supposed to have changed the way motorcyclists could commute to work in major metropolitan areas. George Brosseau of the BMW Bikers of Metropolitan Washington, working closely with AMA representatives, lobbied to have §163 inserted into the Act. It states:

"Notwithstanding any other provision of this Act or any other law, no funds apportioned or allocated to a State for Federal-aid highways shall be obligated for a project for construction, resurfacing, restoring, rehabilitating, or reconstructing a Federal-aid highway which has a lane designated as a carpool lane unless the use of such lane includes use by motorcycles. Upon certification by the State to the Secretary of Transportation and acceptance of such certification by the Secretary, the State may restrict such use by motorcycles if such use would create a safety hazard."

Given such straightforward language, most states immediately complied. Others, which then had no high-occupancy vehicle (HOV) lanes, would be required to permit motorcycle usage when such lanes were constructed or certify that a safety hazard was presented. No one in 1982 seriously believed that the Virginia Department of Transportation (VDOT) would attempt to file such a certification or refuse to comply.

But in 1982 we didn't understand VDOT very well.

The Opening Salvo

The agency ignored the law from the first day, stating that in its opinion the highway bill was

not retroactive. Even if such an argument were valid, it was obvious that day-to-day maintenance on federal-aid highways was being undertaken with the use of federal monies. That should have prompted VDOT immediately to file a request for an exemption. It did not, preferring merely to ticket motorcyclists who tried to use the existing HOV lanes.

On August 15, 1985, when Virginia sought additional funds to begin construction on some new interstate roads, it wrote to the division administrator of the Federal Highway Administration (FHWA). Attaching a report which claimed to show that bikes posed a safety hazard on commuting lanes, it asked for FHWA's concurrence in banning motorcycles on the new roads. Within twelve business days, Virginia's request was approved.

Not a single word of the request or subsequent approval was leaked to the public. The entire process was shrouded in absolute secrecy.

Clearly, this promised to be a long fight.

The Battle Is Joined

At first motorcycle opposition to VDOT's position was scattered and ineffective. AMA's requests for meetings and alternative resolutions were shunted aside. Agitation by AMA members grew, however, as rush hour congestion in the Washington metropolitan area increased during the next several years.

In early 1991 AMA's government relations department, working with key staffers in the Public Works and Transportation Committee of the House of Representatives, devised a master stroke: An amendment would be written into the 1991 highway bill, striking down all prior bans against motorcyclists on HOV lanes and requiring that any future requests to bar bikes from commuter lanes be published in the Federal Register. The requested language was inserted as an amendment to §163. The amended language could not have been more clear.

On December 18, 1991 President Bush signed

the Intermodal Surface Transportation Efficiency Act (ISTEA). Our amendment had escaped the joint conference committee intact. The next morning motorcyclists in Virginia were commuting to work, legally in our view, for the first time in nine years on HOV lanes. It looked as if the Promised Land had suddenly arrived.

A Sleeping Bear

Virginia did not react immediately to the passage of ISTEA, but at least the state police were not issuing tickets to bikers. We treated that as a sign, however temporary, that VDOT might be willing finally to accept language that was too plain to ignore. Inquiries to the agency were met with statements that it was studying the matter and awaiting a federal response to its own questions.

Storm clouds slowly began to appear on the horizon. On January 5, 1992 a VDOT spokeswoman said in a television interview that VDOT fully intended to move to ban bikes from HOV lanes because "they weave in and out of traffic."

On January 14 I wrote to Linda T. Puller, a member of the Virginia House of Delegates, expressing my concerns: "VDOT's aim is transparent. At issue is a grant of some \$30 million to complete and extend the Springfield interchange on I-395. Virginia's receipt of those funds is dependent upon its compliance with existing federal regulations. Thus it does not ban motorcyclists at present. However, once the highway funds are in hand, I predict with a level of assurance that rises to near certainty that VDOT will recertify to FHWA that motorcyclists should again be prohibited on HOV lanes."

Delegate Puller, known to all as "Toddy," was a great friend of ABATE in northern Virginia. Their members had worked selflessly to help secure her election just a few months earlier. She had promised to help our efforts in opening HOV lanes to bikers permanently.

Our efforts to meet with the Virginia transportation secretary, John Milliken, met with stony silence. In the meantime hundreds of concerned motorcyclists were scattering letters like snowflakes to Virginia legislators, state and federal. The results were depressingly predictable: The

correspondence would routinely be forwarded by the legislator to Milliken, whose staff would respond with bureaucratic evasion and duplicity.

Federal monies for highway construction were delivered to Virginia in January, 1992. On the last day of the month FHWA issued a strange order. It said that states could continue to ban bikes on HOV lanes under the state's own authority until it requested additional money for another "project" on that road. Otherwise, it would have to let bikes on the highway or move to classify them as safety hazards.

The word "project" was bothersome. For example, there is a single interstate highway from Richmond, VA to Washington, D.C., but it changes its route number from I-95 to I-395 once it intersects the southern arc of the Washington beltway. Could FHWA's order mean that bikes would be permitted on the I-95 section, where new money was being spent, but banned from I-395 northward? Even though it was only one road, could they consider this more than one "project?"

On February 20, VDOT answered that question affirmatively. Motorcycles could use the diamond HOV lanes on I-95 south of the beltway; when the same highway turned into I-395 and dedicated lanes, virtually empty of traffic, continued on into Washington, D.C., bikers had to exit. It was literally an accident waiting to happen.

Meetings

Jim Bensberg and I met twice with FHWA officials. We had hoped that by some miracle reason might prevail. Our pleas fell on deaf ears. Congressmen and senators in Virginia had proven useless. The lame-duck governor merely referred angry letters by constituents to VDOT where the correspondence disappeared without a trace.

Then Toddy Puller offered to set up a meeting with VDOT officials. On February 25 Jim Bensberg, Rebecca Simmons of ABATE, and I met with Richard Lockwood and his subordinates in Richmond. They said that they were commencing a study of whether motorcycles posed a safety hazard on HOV lanes. These were the same people who had been in charge of proving that point affirmatively in 1985. During the course of

the meeting it became clear that they had never heard of the Hurt Report. None of us believed that the VDOT "study" would have a scintilla of credibility.

The next day I wrote a lengthy memo to the board of directors of the BMW Bikers of Metropolitan Washington. I noted that we had two courses: Apply pressure to VDOT from elected officials or file suit against FHWA. I concluded the memo:

"What we do during the next sixty days will affect the future of motorcycle commuting throughout this country for the next ten years. Other states, given the slightest encouragement, will follow Virginia's lead. We have an obligation to ourselves, to our brother and sister riders, and to an army of motorcyclists who may never know our names, to assert our rights under federal law as vigorously and as conscientiously as any oppressed minority ever has. For a wretched minority is truly what we are and always shall be until the Millikens of this world are driven from our midst."

Toddy Puller again came to our aid, arranging and attending a face-to-face meeting on March 16, 1992 with John Milliken and his staff. Appearing for our group were Jim Bensberg, Tom McGrath (an attorney and ABATE member from Richmond), and myself. We were promised that the study then underway would take into account the experience of other jurisdictions with motorcycle safety on HOV lanes and other limited access highways. If that promise was fulfilled, our troubles were over.

The Shoe Drops

It was not to be. On June 10 the long-awaited study by VDOT, authored by the venal Lockwood, appeared. It was everything we had feared and much, much more. The list of errors, omissions, distortions, and outright lies in the report would take a paper of this length to detail.

Motorcyclists were aghast. In a covering letter Lockwood asked "... interested parties to comment prior to its finalization and submission to the U. S. Secretary of Transportation." Since it was clear that Virginia was determined to certify motorcycles as being unsafe in an HOV environment,

the general feeling was that any comment was completely pointless. Minds that leaden were not going to be changed.

But in their eagerness to poison the well, VDOT employees made a fatal mistake: They lied to Toddy Puller. On June 29 she wrote a scathing, angry letter to Lockwood. She commented acidly: "The report appears to be based on a beginning premise that motorcycles are unsafe on HOV lanes or anywhere else and only statistics which supported that theory were included."

She then reminded Lockwood that his assistant had promised the attendees at the March 16 meeting with the secretary of transportation that data from other states was to be included. Indeed, the positive experience from other jurisdictions (California, Washington, and Minnesota, for example) was utterly ignored. "I would like to know why this data was not obtained and included in this report," Mrs. Puller demanded. She noted that bikers had been on the HOV lanes for nearly seven months. "Has a safety record for this period been recorded?" she asked. She concluded by requesting that a one-year trial period be ordered.

With a single letter, from the most junior member of the Virginia assembly and one who was admittedly not eager to take on the largest, richest, and most powerful agency in the state, the worm began to turn.

"The Right Thing To Do"

VDOT was theoretically supervised by a civilian oversight group, the Commonwealth Transportation Board (CTB). In ordinary circumstances CTB acted merely as a rubber stamp for VDOT's whims. After all, Milliken himself sat as a member ex officio on the panel. Would it too be cowed by VDOT's tenacity?

Prior to its next scheduled meeting on August 19, the chairman of the board, Mark Warner, made a call to Mrs. Puller. "Toddy," he is reported to have asked, "What do you want me to do with these motorcyclists?"

"Just read the VDOT report," she responded. "You'll know what to do."

Bensberg and McGrath appeared at the meeting. It was short and sweet. Chairman Warner

bluntly told Lockwood to return in one month with an objective, unbiased report. Warner knew that Texas and Pennsylvania, the only other states to bar bikes from commuter lanes, had folded during the summer in the face of pressure from AMA and local biker organizations. Virginia now stood alone.

On September 17, 1992 Bensberg, McGrath, and I appeared at the CTB meeting in Richmond. Lockwood quietly said that he had discovered no new data. Intransigent to the end, he resubmitted the original report in final form, not having altered a single, mean-spirited statistic. Warner then moved to permit riders on HOV lanes for a two-year study. He asked for comments.

Milliken, his voice dripping with cold irony said, "It's the right thing to do."

The vote was unanimous. A VDOT press release that afternoon, issued by the same woman who nine months earlier had told television reporters that motorcyclists soon would be banned for good on commuter lanes, advised that on "Monday, September 21, motorcycles can legally travel any HOV facility in Virginia . . ."

On the local motorcycle computer bulletin board that night, I left a brief message: "It's over."

Sifting Through The Ashes

We learned a number of lessons in this war.

First, and most pleasant, it is much easier to recruit motorcyclists to fight for, rather than against, an issue. Motorcyclists who did not use commuter lanes, who lived in other states, or who normally remained happily passive, could all become excited about the struggle. If Virginia could succeed in knocking bikes off limited-access highways, citing corrupt statistics, why wouldn't it next simply ban motorcycles from the congested streets where motorcyclists really did have safety problems?

Second, what we did in 1992 had positive and far-reaching consequences. In the following year, when the neighboring state of Maryland was considering opening up HOV lanes on I-270, we were able to point to the Virginia experience. After a single public hearing, we secured the rights of bikers to travel on Maryland's restricted lanes, without another shot being fired and without so

much as one mile of HOV pavement then being in existence in the state.

Third, the use of a local computer bulletin board was of the greatest assistance in keeping riders in the metropolitan area advised of the lengthy proceedings. We traded information, plotted strategies, suggested letter campaigns, and stoked the fire on dark, cold nights.

Fourth, motorcyclists sympathetic to our position in FHWA were frequently helpful. We could avoid wasting time and energy when our "moles" warned that we were approaching a blind alley.

Fifth, the true reasons for VDOT's position were never voiced, which made the battle more difficult—we spent months arguing with shadows. In truth Lockwood was proud that he had never lost a request for exemption. He numbered among his victims the most senior politicians in Washington, two-seat sports car owners, utility vehicles returning from emergency calls, and paraplegics who required medication during rush hour. If his bureau had won those cases, he wasn't about to lose to a bunch of grumbling motorcyclists, federal law notwithstanding.

Last, one local politician can turn the trick. In this case it was Toddy Puller. She accomplished more with one letter than the rest of us managed in a geologic epoch. Of course, the labors of hundreds of riders paved the way, gave her the evidence that she needed, and convinced her that our cause was legitimate. But VDOT had spent ten years spitting on motorcyclists; when Toddy showed up on the sidelines, the white flag began to wave.

And it should have.

It was the right thing to do.