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Transcript

Speaker 1

It's time for the Outspoken Cyclist, your weekly conversation about bicycles, cyclists, trails, travel, advocacy, the bike industry, and much, much more. You can subscribe to our weekly podcast at outspokencyclist.com or through your favorite podcasting app to listen anytime. Now, here's your host, Diane Jenks.

Speaker 2

Hello, and welcome to the Outspoken Cyclist. I'm your host, Diane Jenks. Thanks for tuning in today. My guest is Rachel Maney. Rachel is the managing director of Bike Law, a network of independent bicycle crash attorneys. I was supposed to speak with her last month, but as is often the case, the bike law offices are so busy, she hardly has time to turn around. Anyway, this conversation begins a series that will include Rachel, the IIHS, Insurance Institute for Highway Safety, Chuck Morrone of Strong Towns, and others. Since I spoke with Rachel on July 13th, there have been several high-profile incidents, including a road rage crash in Texas, killing Hannah Rapp, a decorated U.S. boxer. There was the tragic loss of Louisa Gagg, a long-time cycling advocate for the city of Boston, who was hit by a truck on her way to work. And a whole group of cyclists in Colorado were run down by an impaired driver. One of the riders was pinned under the truck and rushed to the hospital. These crashes resulting in injury and death are all the more poignant when the Secretary of Transportation claws back \$1.7 billion from the infrastructure bill that promised the money to hundreds, if not thousands of projects, claiming that he was going to redirect the funds to roads and bridges and not to, and I quote, DEI bike lanes. The pushback from all quarters, not just the bicycle world, was loud and long, but I doubt the administration will change its mind about reallocating the funds anytime soon. My conversation with Rachel outlined some of Bike Law's well-honed thinking when it comes to enforcement, laws, e-bikes, and more. Hi, Rachel. Welcome back to The Outspoken Cyclist. It's so good to see you and talk with you. It's been a very long time. How are you?

Speaker 3

I'm doing well. Thank you so much for having me back. Yes, it has been a long time, and I wish that we were talking about something else, but I think it's a really important conversation.

Speaker 2

It is, and there's so much going on. Before we actually started the official recording today, we were chatting about how people like you and me and most of the people we know are not at those extremes of the whatever the society. You know, you have the people who are extremely conservative, the people who are extremely liberal, and somewhere in between are most of us. But yet media seems to blow up a lot of stuff. So I want to talk about this idea that you picked up on the headline on USA Today about do cars hate cyclists? And I think a lot of a lot of us feel that that's so. But you have such an interesting perspective. So let's get going.

Speaker 3

Sure. Well, as you as you saw, right, my answer, Bike Law's answer to that question is a little bit more nuanced. Sure, it's a yes or no question. I don't think it can be answered that way. If it has to be, then our answer would be no. However, there are reasons for that. Most importantly, one cycling death is too many, right? And for obvious reasons, the number of motorists with bike biases or an animus is significant enough that we've all had numerous experiences with dangerous, aggressive, and entitled drivers. So we understand why the knee-jerk response to that question would be a blanket yes across the board. However, we still don't necessarily agree.

Speaker 2

Okay, so let's Let's kind of unpack that. And I mean, we we have all been somehow either nudged or honked at or things thrown at us or literally in your case where you've been hit by a car, Peter lost his brother to a car bike crash. I mean, it is it is endemic in every city, every state. But why would you say that? motorists in general are not hating cyclists. What is that nuance?

Speaker 3

So, well, there's a few things. The first is that to hate someone or something, right, you have to recognize and acknowledge their existence and presence. In this particular question that's been posed, These motorists would have to see us and recognize that we're sharing the same space. It's very hard to see anything or anyone when your face is in your phone, number one, right? I believe that there is a significantly greater number of distracted drivers than there are ones who hate people on bikes. Published statistics report that 30% of crashes are caused by distracted drivers. Now, we know that number is significantly underrepresentative, right, of crashes involving drivers with manual, visual, or cognitive distractions. Same goes for drivers who are under the influence of substances. So if we play the thought game through, of course, the harm to our community can be the same, but properly identifying the causation is important. Two, most cycling households are also driving households. An estimated 78 to 90% of adult cyclists in the U.S. also drive and rely primarily on their private automobile for transportation. The number of car-free households are relatively small. We wish that number was much more pervasive. But those families and those households are concentrated in high-density urban transit hubs. So the idea that drivers hate cyclists,

well, most cyclists, adult cyclists, are also drivers. So it's axiomatically impossible, right, for that to be the case. In my personal experience, drivers treat us differently depending on how we are riding, what we are wearing, and whether or not we are riding alone or in a group. Now, that doesn't mean that if you're riding by yourself, you're not going to experience a punishment pass or be harassed or assaulted or even struck. That's not what I'm saying. But on balance, if I am on a Brompton or a Grand Moi in street clothes, I am treated completely differently by motorists than if I'm kitted up and on my road bike with, you know, polarized glasses and, you know, a helmet, plastic clothes, carbon bike, different treatment from drivers. Same stretch of roadway, same time of day, assumed that the same group of drivers, and they are going to treat me differently and similar.

Speaker 2

What are those differences? What do you perceive are those differences?

Speaker 3

Less aggression. If.

Speaker 2

You're riding your Brompton.

Speaker 3

Yes, if I'm on an upright bike, if I'm on a touring bike, if I'm in street clothes, let's say I'm going to the farmer's market and coming home, the treatment and the, just the dynamic between me and motor vehicle traffic is very, very different than if I am kitted up and on my road bike. Similar studies have been conducted in the UK in which cyclists reported the exact same shift in driver interaction when they were wearing helmets versus not. Drivers were more likely to take risks when the cyclist was helmeted and on a road bike than they were when they were in street clothes without a helmet on, well, something other than a road bike. We, of course, are in no way suggesting that anyone is safer without a helmet. just to be clear.

Speaker 2

Why do you think that is? Did they give reasons? Was there rationale to that kind of a shift?

Speaker 3

I think that you can-- and of course, this is just-- this might be phony science. But if you think about the things that ignorant drivers say to us, right? Let's take out the, you know, you don't pay taxes, you belong on the sidewalk. Let's just take out the lack of understanding of how one's civic responsibility and taxes actually work. and just get to the nuts and the bolts. I can't tell you how many times people have called me or the group of cyclists I'm riding with, Lance Armstrong wannabes. I can assure you I want to be nothing like Lance, number one. Right. But #2, there seems to be this corollary

among anti-cycling or non-cycling motorists that says, if you ride a bike, you must race. right? You're out here trying to compete with motor vehicle traffic when you're on a human powered device. And that's just not true. And so I think that study in the UK around helmet usage and my own experiences and sort of testing the boundaries a little bit just to see, and this is across the country, just not in one specific place at one specific time. I think there's enough anecdotal evidence to support the idea that drivers do see us divided into subgroups within our cycling community, depending on how we're riding, what we're riding, and what we're wearing.

Speaker 2

So let me reintroduce you, and then let's get a little more into what some of the options are in terms of making change. We're speaking with Rachel Maney. She's the managing director of Bike Law. Now, Bike Law covers Florida and one of the Carolinas, as I remember. Oh, you have a network?

Speaker 3

Yeah, we have an actual network attorney in several states, but Peter and I have, we right now, we have clients in 16 states, whether or not that means that we have to associate local council or, whatever that relationship might be. But we are a national organization and we are, we split our work into two categories. And one is advocacy, right? Whether that is cultural, legislative, community education, working with law enforcement, that type of thing. And then, you know, how we keep the lights on, obviously, is our legal representation of bicyclists and their next of kin if and when someone suffers the indignity of a bike crash.

Speaker 2

Which they seem to do in increasing numbers these days. So I guess I want to know what you think some of the options are going forward. I know that legislation is sort of hit and miss state to state. Certainly law enforcement seems to be hit and miss, state to state when things do happen. What are some of the options that bike law sees as a way forward to making cycling not only safer, but more broadly embraced?

Speaker 3

Yeah. Every part of the question you just asked is so important. There are really specific ingredients that we think are non-negotiable. Some of these are pretty obvious. Infrastructure and engineering, right? Like Kevin Costner said in Field of Dreams, if we build it, they will come. It costs approximately 5 to \$50 million to build one mile of U.S. highway, depending on the size of the highway, how many lanes, that type of, and \$5 for a bucket of paint. So prioritizing one and completely ignoring the other is a cultural indicia. It's reflected in how our policymakers and current administration treats our transportation needs. And that's any administration, right? We have to consider the elements of scalable and sustainable community growth at the engineering level. That's where we begin. Once roads are built without bike lanes and communities are

developed without easements for multi-use trails and connections, it's really hard to put the toothpaste back in the tube. I think there's still a silly misconception that if we widen highways and add lanes to our arterial roads, that motor vehicle congestion will ease. Well, it may temporarily give it four to six months and then let's come back and talk about it again. It's just going to be even more congested, right? So I think ultimately, and I have to remind myself as much as others, that we can't compare any U.S. city or state to Europe in any way. But speed and distraction, at least in our experience, dealing with the aftermath of how all of these different things are done, either inadequately, improperly, or ignored altogether. Speed and distraction are bigger problems for our community than anything else when it comes to safe cycling or better biking. If we look at the places that are the best to ride, young children and the elderly are able to homogenize themselves with trucks and cars, sometimes without helmets, without incident. And that's because drivers aren't on their phones, speeds are lower, and ridership and rideshare are through the roof. So when more people ride and more trips are made by bike, then crash numbers are low. That's how it works, no matter what the infrastructure or legislative policy is.

Speaker 2

So, I mean, we did have another big blow to cycling infrastructure this past week. \$1.7 billion was clawed back by the administration for more roads and bridges with this ridiculous commentary about bike lanes being DEI. Right. I wrote a very short substack. I mean, it just blew my head apart. And it is the most read substack I have ever written. It is the most shared. It is the most interesting to our readers.

Speaker 3

Sure.

Speaker 2

So I'm wondering how to take that momentum, and it isn't just me. Every place I look, people are talking about this particular headline, Sean Duffy's headline. How we take that momentum to Washington and how we overcome some of the administration's just animus toward anything that isn't roads and bridges right now.

Speaker 3

I think there's a couple of things. One, if we look at current federal traffic regulations, they have nothing to do with cycling or human-powered transportation at all. The only thing that federal traffic laws govern or regulate are, for example, interstate trucking, the transportation of hazardous materials, maritime, air travel, things of that nature. There was a bike package introduced this year to Congress by a Florida Republican who is not running for reelection and a California Democrat that essentially was seeking to expand federal grants for local governments, to plan, build, and design connected biking and walking spaces, to encourage employers to provide more commuting benefits and increase bike safety education for schoolchildren, additionally, to bring bike

manufacturing back to the U.S. However, nothing is meant to really happen there. In all honesty, it's kind of a dead duck. But that's where we see human-powered transit at the federal level. I think what's happening right now, Diane, in all honesty, is that this E-thing emergency is taking over every state, every local government. And it's not long before it potentially reaches the federal level. We have a very simple fix in mind. It's probably unpopular with some, but...

Speaker 2

Oh, I want to hear it because it certainly needs to happen.

Speaker 3

You know, it's interesting. I sort of meandered off your original question, but... That's okay. When pediatric trauma surgeons, parents, anti-bike motorists, pro-bike motorists, teachers, schools, and kids alike and pedestrians and cyclists are all saying the same thing. That is a very compelling piece of horseshoe politics. Essentially, if we were to regulate on the consumer side, on the sales and consumer side, the types of devices that are available for people to purchase for their children and the requirements for operating them, this problem would disappear. I mean, ultimately, it's not e-bikes that are the problem. If you look at class one, two, and three e-bikes, by definition, from state to state, all of the specifications are generally the same. And we all know plenty of Rd. cyclists who can ride faster than 28 miles an hour without a motor or a battery. So it's really, we're talking about e-motos and electric motorcycles being operated by young children and people who are inexperienced or unqualified. The devices are being disguised as e-bikes and they're not. All e-bikes are bikes, but not all e-things are e-bikes, right? So that's the problem. Getting back to what you had asked, from a legislative perspective and from a federal administration perspective, we've always empowered our state authorities to decide what is best for them, right? And I think ultimately, if we look at what's causing crashes, if you look at the 10 most prolific bike crashes in the last two or three years, right? We know of, well, let's expand it, in the last five years, what happened to Magnus White, right? What happened to Lenny Antonelli and Jake Hillingriffin Tishner in Asheville last July? The five cyclists that were killed in Las Vegas. Arthur Carter, who was killed while riding single file to the right of the fog line with a group of some of the most accomplished bike advocates that Peter and I have ever worked with in the D.C.-Maryland area. If you look at these crashes, all of these drivers have something in common. They're under the influence of a substance. They're driving recklessly. The police did not conduct -- well, that's not true in every one of these crashes, but, in many of them, police did not conduct proper or adequate investigations. And all of the indicia for codified criminality already existed, right? So we're not sure that we need more laws or new laws. What we need is clarification and enforcement of the ones that we already have. Sometimes over kneading the dough and breaking it into microscopic pieces makes it harder to enforce. So what we're seeing, and I tie this back to the e-bike thing because it is such an important hot topic. It's that because states are so unclear about what needs to be done and how to define these devices, they're

leaving it up to local governments to create and enforce their own ordinances, more dangerous. in our opinion, at this point, then riding from the upstate of North Carolina, excuse me, South Carolina into North Carolina into a contributory negligence jurisdiction, that used to be a huge concern of ours. Now it's going from one city or municipality to the next on a trail, right? These local ordinances, these laws, these regulations and enforcement for the rules governing how electric devices are used are going to create significant problems. And what we're concerned about is how these new rules and laws and regulations are going to disadvantage or set us back in the progress that we've made in making. electric bikes or bikes or scooters, whatever they might be, legal ones, accessible to young people, getting them outside to play, away from devices, off of single shooter video games, and especially for older people who otherwise would have very limited access to mobility. And so I think that we're in this legislative conundrum in which We have this massive problem at the federal level. We have an administration who has essentially called not being in a car or a truck a DEI issue. And then we have state and local problems in which there is no continuity. There's lots of confusion. And the significant uptick in crashes, especially catastrophic and fatal ones, all revolve or arise from the usage of these e-devices.

Speaker 2

All of those things being true and all of them being Very worrisome. It almost feels like, which thread do you pull to start making a difference? At what point? I know that I didn't go to Bike Summit this year, and I know e-bikes were a conversation. e-motos, People for Bikes is trying very hard to get some e-moto legislation so that they have to be registered, they have to be licensed, but the bikes are coming in. Bikes. The devices, yeah. devices are coming into the country.

Speaker 3

Yeah.

Speaker 2

I mean, they're getting through customs without any scrutiny whatsoever. So it almost should begin there because most of these bikes are being bought online.

Speaker 3

And Diane, you've got a 6th grader or a 7th grader whose friends have an e-bike. And they want to play in the neighborhood, go meet at the park. They want to ride with their friends. Parents look at that as being a good thing. It is a good thing, right? The concept in and of itself is a good thing. The golden age of us as a human civilization here in this country was when kids could play outside, right, until the streetlights came on. They came inside, they went to bed. It was Much more organic. Kids knew what it felt like to walk barefoot in the grass. I remember I spent my summers playing outside and catching fireflies. I don't know if we even have fireflies anymore.

Speaker 2

Yeah, we do. They're in my backyard.

Speaker 3

Like I said, if we were to address that problem, if we made it a consumer, right, problem, if we made it a manufacturing and consumer regulation and we just stopped, we prevented parents from unknowingly purchasing motorcycles, for a 12-year-old, right? Then, number one, the ability for motorists to react properly and the ability for education to be effective, I think, goes through the roof. The problem is you put a 12, 13, 14-year-old on a 100-pound device that goes 50 miles an hour and they dart out into traffic, right? It's very, very difficult for everybody that's involved in the crash response to not see that as being an emergent issue that has to be addressed. And so what happens is when you have one city that says, well, we're going to do this and we're going to implement a no faster than 10 miles an hour on a multi-use trail, well, how is that enforceable, right? Number one. And then what happens when you cross an invisible line from that city to the next within the same county, right? And the rules are different there. Now what we're seeing is this huge push. Let's take New Jersey out as the outlier with outrageous, outrageous regulations. What we're seeing is a sweeping trend of law enforcement and local governments able to penalize minor children and their parents for violations of these new e-bike ordinances, which are so confusing and inconsistent. Our belief has always been that if we can redirect or focus the people who are responding to crashes or responsible for preventing them, to look at the existing statutes and apply them as opposed to trying to create or carve out something else that we'd be infinitely more successful. And in places that do that, we are more successful. An example would be, we see great value in the three foot passing law, or, you know, in places, you know, you ride in Pennsylvania, New Jersey, wherever, where it might be 4 feet, that's great. But we're not quite sure where that number actually came from. So the example that I use is standing on the platform of a high-speed train. The yellow line, the edge of the platform, it marks 3 feet. It's not enough, right? That is the minimum required so that something horrible probably won't happen, but riding a bike is by definition imperfect. How do you measure 36 versus 35.5 versus 37 inches with two moving devices, a motor vehicle that could be a three-ton truck and a person on a bike? South Carolina, their safe passing law just says a safe passing berth. a space wide enough to not infringe upon the safety of the vulnerable Rd. user or the bicyclist. Well, that's so much better than giving this definitive metric, right? don't risk my safety. I can't define what that distance is because it depends on the circumstances. It depends on the speed of the roadway. It depends on whether or not there's a paved shoulder, a bike lane, or rumble strips, right? So my safety is defined by the conditions in which I'm riding. And your duty not to risk my safety is objective, right? You, with greater power comes greater responsibility. So that's an example of how we try very hard in places where we have such strong language to educate and work with law enforcement and prosecutors so that they understand how to apply that when they're responding to a bike crash.

Speaker 2

So is there a way to get to every jurisdiction the law enforcement. And then beyond law enforcement, you also have to go through the court system for what you do. And get something that is codified. Is there a way to codify it at a national level so that there is a safety margin built in for everybody riding a bike?

Speaker 3

So here's the problem. There's not a single state in this country in which killing a bicyclist with your vehicle is unlawful. There has to be an element of how that crash happened that checks the box for a codified crime or a violation of a statute. It's incredibly destabilizing to recognize that. But I think that's part of where our, and justly so, outrage comes from, when something happens and there aren't any charges. Well, a lot of the times, that's lazy investigative work and a refusal to prosecute. But there are plenty of times. We've been doing this now for 29 years, exclusively representing bicyclists across the country. I can't tell you, because we dovetail the criminal silo and the civil one when we're involved. I can't tell you how many times there's just this misunderstanding or lack of knowledge that one... Number one, crash reports are generally inadmissible in court. They're hearsay. The police officer is not there to witness the crash, and they're getting statements from people who may or may not have been involved. especially in fatality cases or catastrophic bike crashes, it's very hard to get a statement from a cyclist who is unconscious or worse, right? So you're getting testimony from one person, potentially the driver, and it's very rare that they take full responsibility and accountability for what it is they were doing or not doing that caused the crash. So what we've found is that Numerous prosecutors are unaware that their state has a vulnerable road user law. And the reason that that statute is so important is because it defines the heightened duty that motorists have and defines the heightened penalties for causing cyclists, pedestrians, people not inside of car -- motorcyclists any harm. That's an example of, here's this piece of legislation we fought so hard for in so many places. And Police and prosecutors don't even know that it exists. Stop is yield. It's another great example. It's something that makes complete sense from a mechanics and physics perspective. Obviously, very different coming to a complete stop than starting again on a pedal bicycle than it is pressing a brake pedal and a gas pedal in a vehicle. But the understanding of how to apply that is almost nonexistent, right? So, at the same time, Operating your motor vehicle in a speed that is imprudent for the current conditions is illegal pretty much everywhere. That is a violation, right? So if speed is a factor in a crash, you already have something that you could charge a driver with. If the motorist is approaching the bicyclist from behind and there is a collision, but for that cyclist making some wild maneuver without signaling, which very rarely happens in our experience, then there's no question as to who's responsible. You fail to yield right of way to someone on the roadway with the right to travel safely. That's already a law. So that's sort of what we mean when we talk about what we have existing versus what we're trying to implement. We support and we advocate very aggressively for protective

legislation for cyclists. It's not that we're against it. It's just, while we're doing that at the same time, if we could redirect the focus of law enforcement and prosecutors to what we already have, we'd be so much better off. And some of those laws are stronger and have heightened or better penalties depending on the situation or circumstances. That's what makes the VRU so great. In a situation where the citation might otherwise be just a moving violation, the VRU says you got to come to court, right? You have to show up. You may lose your license, right? There is the chance that your fines will be significantly more expensive and you might even see the inside of a jail cell. So that is a law that's very important to us, but it should never prevent a prosecutor from charging with something that's already on the books. Does that make sense?

Speaker 2

It does. The question is, not everybody has you in their corner when these things happen. And so I do want to wrap up. I know you have to go and I have to go, but I want to wrap up our conversation with what to do when something does happen, because we've done this before, but I don't think there's ever a reason not to repeat it again and again.

Speaker 3

So just like with what we're seeing with e-bikes, Peter and I have been ringing this bell now for over a decade. For a lot of people, this is a new issue. It's not new for us. We've been watching this happen and build, and we've been trying to get folks' attention for a long time. The problem is until there's a catastrophe, until there's something absolutely catastrophic, that's typically what's required to inspire change. And My answer to your question about what to do is the same as it is about everything else. Reach out to us before you need us. Develop a relationship with your local law enforcement agency before you have to call 911. Speak to prosecutors, speak to policymakers, show up when you can before you have a favor that you need to ask. And if you do need something, try not to show up in plastic clothes and, you know, mirrored glasses and click, click, clicking with your bike shoes. You know, put on a collared shirt, dress appropriately and treat these people with professional respect. And you should expect the same in return, of course, but call us. We will spend the time to have thoughtful conversations about your own automotive insurance. We'll help you find non-driving coverage if it exists in your state. We'll explain to you why it's so important to max out your underinsured motorist coverage. we can help provide insight and information. And nothing that we share changes what drivers are going to do on the road. But at least being armed with information about how you can protect yourself, what active safety measures we recommend versus passive ones, and how to get in touch with us in the event that something does happen is absolutely beneficial. If you're involved in a crash, if you suffer a punishment pass, if a motorist harasses you while you are riding, give us a call, send us an e-mail. One of the important things is for cyclists to understand what police can and can't actually do, right? There's technology available that can help make it more likely that a citation or a charge after the fact will occur. And we can talk about

that another time. It can be very costly. That technology, it does exist and it is helpful. But just reach out to us, info@bikelaw.com. Visit us, our website is bikelaw.com. You can follow us on Facebook, Instagram, DM us, anything, call, fax, text, e-mail, and we're very responsive. And we would love nothing more than to empower every person in our community with as much information about how they can protect themselves and what to do in the event of a crash as we possibly can.

Speaker 2

It's always wonderful to talk with you, Rachel, it gives me hope.

Speaker 3

Thanks, Diane.

Speaker 2

We've been speaking with Rachel Maney. She is the managing director of Bike Law. Go to bikelaw.com. There's a lot of information out there to help you. Do show up to your local council meetings, talk to your local people. And if you were slated for infrastructure, that is now being taken away, we're going to get to that at another time. I know that is a big, big topic right now. And eMotos, please get involved in that particular conversation. Don't buy your kid the wrong bike. It'll be a big mistake for everybody involved. Rachel, I hope you have a wonderful week. Thank you so much, and we'll talk again soon.

Speaker 3

Thanks so much, Diane.

Speaker 2

All right, take care.

Speaker 3

Bye-bye.

Speaker 2

My thanks to Rachel for joining me today. If you have any questions or need any advice from Rachel or Peter, send a message to info@bikelaw.com. Log on to bikelaw.com to find help in your state if you find yourself in a situation where you need legal representation. I hope you enjoyed the show today. You can find photos, links, and a written transcript of every episode at outspokencyclist.com. Subscribe to the show on your favorite podcast app. Follow us on Facebook, Instagram, LinkedIn, and YouTube, and subscribe to my Substack for extended commentary. Join me next time for my conversation with Raul Avelar from the Insurance Institute for Highway Safety. Raul is a senior research transportation engineer who has done a lot of work in bicycle and

pedestrian safety. He has some interesting research and commentary. Until then, Please stay safe, stay well, and remember, there is always time for a ride. Bye-bye.

Speaker 1

Thanks for joining us today on The Outspoken Cyclist with Diane Jenks. We welcome your thoughts and contributions on our Facebook page, or visit outspokencyclist.com to leave a comment on any episode. We will be back next week with new guests, topics, conversations, and news in the world of cycling. Subscribe to the show in your favorite podcast app and you'll never miss an episode. The Outspoken Cyclist is a copyrighted production of DBL Promotions with the assistance of WJCU-FM Cleveland, a service of John Carroll University. Thanks again for listening, ride safely, and we'll see you next week.