

TESTIMONY OF HOWARD SEGERMARK
BEFORE THE
HOUSE TRANSPORTATION COMMITTEE
AMOS K. HUTCHINSON, CHAIRMAN
Thursday, September 10, 1987

Mr. Chairman, members of the Committee: My name is Howard Segermark, and I appear today as a proponent of H.B. 813, which amends Title 75 of the Pennsylvania statutes by providing that a motorcycle rider is not mandatorily required to wear headgear if he is 21 years or older.

Many thanks for the opportunity to present this testimony. I will be glad to answer any question during or after my remarks.

I am here as a representative of the Motorcycle Rights Fund, a national organization of motorcycle rights advocates with offices in Washington, D.C. In addition to my efforts with MRF, I administer a political action committee, a national trade association, and an economic consulting service. I commute daily on my motorcycle which is my chief form of transportation.

I wish to comment on two aspects of the issue of helmet laws: the constitutional limitations on the ability of the state legislatures to act, and (2.) other mitigating factors which would support modifying Title 75 in accordance with H.B. 813.

Of all legal reasoning that has been used to explain how the public benefits from mandatory helmet laws only two -- according to Supreme Court decisions in parallel areas -- have any realistic content (1) the asserted interest of the state in the "viability of the citizen" and (2) the interest in solving any "alarming problem which reaches such grave dimensions that it threatens the very fabric of society." Both justifications are the same

thing: the interest of the public in its own preservation and productivity. Although few would argue with this as a general matter, great difficulty arises when it is used to impose a "specific" law, with criminal penalties. To justify such interference under the Constitution, a specific law must be in the "general interest of the public." Thus it is essential that the legislature establish that other members of the public are affected in some deleterious manner by a prospective defendant's activity before such activity may be regulated.

As Judge Barham of the Louisiana Supreme Court stated in Everhardt v. New Orleans,

I cannot determine how the wearing of a helmet by a motorcyclist can be conducive to the safe operation of his motorcycle. He is as accident prone with or without the helmet in regard to both himself and to other motorists. Certainly an unhelmeted motorcyclist presents no increased danger to the rest of the motoring public. The most that can be said to support the insistence upon the wearing of the helmet is ... [the] conclusion that the helmet may mitigate the cyclists' injury after the fact, after the accident, after the breach of safety ... The assumption that the motorcyclists' lack of body protection makes other highway users more likely to be injured appears to be without foundation or logic. I find no basis for concluding that helmeting or even armouring our motorcyclists would cause fewer injuries to others ... The ordinance is simply an attempt to force one class of persons to mitigate or minimize their injuries resulting from accident without regard to causation or general highway safety [emphasis added].

A second theory to justify the public need is the welfare cost approach. The argument goes that helmet laws, by limiting the extent of motorcycle injuries, curtail public expenditures for emergency and hospital care for the cyclist and also minimize welfare costs resulting from the cyclist's post-accident inability to care for himself and his dependents.

Note carefully, however, the documentation used by those who use this argument. My research indicates that the "welfare cost" studies done relate to head injuries of all motorcyclists--regardless of whether or not they were wearing a helmet, and it is just assumed that helmets would reduce this figure.

Even if it were true that helmets reduce debilitating injuries, the theory is overinclusive as many who ride motorcycles are capable of financing their own medical costs and rehabilitation via insurance or personal resources, yet they are not exempted from the law nor are they likely to become welfare recipients. If the welfare concern is truly the problem, I suggest that proof of medical insurance as a prerequisite to motorcycle registration as a far less restrictive alternative to the current law.

The trouble with the argument that the state should prohibit behavior which might lead to added demand for state services, is that it can be used to justify almost any law--constitutional or not--against the smoker, the over-weight, the parachutist, the skin-diver, the spelunker, or skier. We must seriously question the proposition that any measure, prohibiting certain kinds of behavior in order to reduce welfare cost is a justifiable exercise of the police power.

A third justification is the liability insurance reasoning. The argument goes that liability insurance rates for all would increase without the mandatory helmet use statutes, because of alleged increase in the severity of personal injuries. In this argument, we see the same fallacies as in the "welfare costs" argument, but, it should be pointed out that in the instance of liability insurance the defense of contributory negligence is always available to an individual charged with hitting an unhelmeted cyclist. Also since there are many varied actuarial factors which contribute to the cost of liability insurance, the "helmet factor" would hardly be a significant cost item to most non-cycling insured motorists.

I will not reiterate the statistical case for making helmet use voluntary: others here will do so. But, I would like to direct your attention to the testimony of Dr. MacKenzie showing that helmets can contribute to accidents through limitations on sight and hearing and on coordination and judgment from insulating and overheating the head.

In sum, let's address a common goal: the reduction of motorcycle accidents. Clearly, helmets do not reduce accidents. In all major studies by the U.S. Department of Transportation and other agencies, there are only two variables in accident rates between various riders: experience and training. The more experience and training a cyclist has, the fewer accidents he's in. Less than 7% of all motorcyclists involved in accidents have had any formal training.

The problem with helmet laws is that they focus attention away from the real causes of accidents, and what can be done to reduce them.

Finally, helmet laws do not address the inadequacies of helmets: helmets are designed and constructed so that after one impact, their efficacy is basically eliminated. Thus, a dropped \$100 helmet is not much better than a bowl on the head. Secondly, as the Hurt Study from the University of California shows, helmets are most likely to be useful in a very small range of relatively slow accidents. At highway speeds, helmets are good for keeping off bugs. Period. A damaged helmet is about as good even at slow speeds.

Let me put it this way: if helmets, advertised as a miracle drug, had to go through the rigorous proof of efficacy that the FDA requires of drugs, you'd have to go to Mexico to get a prescription.

Thus, if helmets do not affect accident rates, and if helmets can be helpful in only a small number of accidents and if helmets may actually increase rather than decrease the range of hazards inherent in motorcycles, we must conclude that the mandatory motorcycle helmet law can no longer be regarded as a legitimate exercise of the police power of the state.

Thus, the cyclist should legitimately be free to act according to his own discretion to select his personal protective apparel.

Mr. Chairman, clearly, the state has a far greater role in the protection of minors, and minors are generally those motorcyclist with the least experience in riding. Thus, by leaving in place mandatory helmet laws for those under 21, the legislative goal of motorcycle safety would also be continued.

Pennsylvania has already taken an important step toward substantive motorcycle safety by funding rider education. The enactment of H.B. 813 would be another.

I urge your adoption of H.B. 813.