



Helmet Law Defense League  
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## Exhibit "J"

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HONORABLE MALCOLM M. LUCAS  
Chief Justice of California and  
Chair of the Judicial Council  
303 Second Street, South Tower  
San Francisco, California

Mr. Chief Justice:

Enclosed, please find just some of the input you appear to have ignored in acceding to the demands of the California Highway Patrol – letters from members of the Legislature submitted to give you some guidance in helping you understand the “intent” of the Legislature with regard to CVC § 27803 as a correctable equipment violation. Also included is the CHP “correction” of your 1993 Bail and Penalty Schedule, *CHP Bulletin #42*.

First, we want to make it clear that we are aware that your “ruling” of November 30, in relation to the correctable nature of CVC §27803 violations, does not have the weight of law. Although it is true that when your determinations were a reflection of the law, as in the 1993 bail schedule, by virtue of their conformity with the law, they did have the weight of law. But that is not the case here.

When this issue is challenged in court, as it will now seemingly have to be, the courts will undoubtedly point to your “ruling” as their authority to ignore the provisions of CVC §40303.5 – even those courts which ignored your previous determination in favor of following the “demands” of the CHP. But you know, and we know, that this is no safe haven. You don’t have any more authority (as the Judicial Council) to make law than does the California Highway Patrol. Even when the CHP issues edict such as Bulletin #42, and that edict is subsequently ratified by the California Judicial Council; if that edict and ratification are contrary to statutes created by the Legislature, it still lacks the weight of law.

The fact that the Legislature is hampering the desires of the California Highway Patrol by not writing law in a way that suits them may be a problematic for the CHP, and may even warrant some type of complaint (or even suit) against the Legislature to force them to correct or otherwise change their legislation. But, the fact that the CHP challenged both the Legislature and the CJC by issuing Bulletin #42 is and was of great concern to us. The fact that this challenge has proven to be so successful borders on distressing.

Now we have to deal with the fact that you have ratified not only this one act, but an entire process enabling the CHP to make law, or edict having the force of law, at will, without the benefit of the Legislature. Some would say even in defiance of the Legislature.

Justice Broussard in *King v. Meese* stated the obvious, as obvious, when he pointed out that it is not the responsibility of the Judiciary (referring to the Supreme Court) to second guess the reasoning of the Legislature much less to replace the wisdom of the Legislature with their own. To do so, as he put it, “would be an egregious violation of the separation of powers”; i.e. *treason*.<sup>1</sup>

We realize that you are not necessarily ill-willed, at least we live in that hope; but, what you have done nonetheless smacks of treason, or at the very least perfidy – an observation neither put forth, nor to be taken, lightly. The way the German citizens lost control of their government was through adopting and expounding an “end justifies the means” philosophy. Those leaders were, likewise, not ill-willed; however, their compromises in the name of the “greater social good” resulted in circumstances which must be avoided at all costs. When the separation of powers is not strictly regarded, it opens the door for a myriad of unwanted possibilities, not the least of which is the formation of a police state. The denial of this dynamic would mean to ignore the lessons provided by history.

Your concerns for the safety of motorcyclists is admirable; however, if your “ruling” is representative of your belief that you are helping protect motorcyclists,<sup>2</sup> allow us to offer the following:

1. The 17 to 24 age group racing-style motorcyclists constitute the majority of victims in fatal motorcycle accidents. This group of riders has received, however, virtually none of the citations issued in the past two years for violations of the helmet law. Rather, the group least likely to be involved in fatal accidents, Harley Davidson riders, have been the primary focus of police attention. It is therefore obvious that safety concerns are not the primary reason for all this attention.
2. The vast majority, over 90%, of the citations written since June of 1992 have been issued to motorcycle riders for **wearing a helmet**, albeit a helmet that the CHP didn't like. The “beanie ban” by the CHP came in the form of an earlier *CHP Bulletin #34*<sup>3</sup> (an edict similar to *Bulletin #42*) which had, and has, the impact of law. There is not one case where “wearing an unapproved helmet”<sup>4</sup> can be shown to have caused harm to anyone, yet, on the basis of *Bulletin #34*, tens of thousands of citations have been written naming this charge. This is clearly not a matter of attempting to assure motorcycle *safety*, certainly not as it emanates from the CHP.

While challenges to all this have been working their way up through the courts – impeded by the foot-dragging shyster chicanery of the Attorney General's office – the \$10 fix-it “safety valve” built in to this law by the Legislature was first missed, found and corrected, imprudently challenged by the CHP, and now essentially nullified by the CJC.

It is unreasonable for the Judicial Council to ignore the possibility that the Legislature intended a helmet law violation to be a correctable violation; that they, in their infinite wisdom, foresaw the problems resulting from the fact that neither they nor anyone could provide motorcyclists with a list of helmets which comply with the law. Perhaps, just perhaps, they knew what they were doing.

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<sup>1</sup> In as much as we see the CHP as an “enemy” of the Constitution, giving “aid and comfort to the enemy” is not an unreasonable assessment of your conduct.

<sup>2</sup> In response to Floyd's now legendary fraudulent testimony, the helmet law was passed on a financial burden theory, nothing to do with *safety*.

<sup>3</sup> The CHP got the DMV similarly involved in this fiasco, but they figured out early on how they were being used and pulled out immediately.

<sup>4</sup> It is important to note that this language – “wearing an unapproved helmet” does not appear in any statute generated by the Legislature, just in the language of *CHP Bulletin #34*. Similarly, “uncorrectable” is not a part of the Vehicle Code as it relates to violations of CVC §27803; rather, merely, the opinion of the CHP, and now of the Judicial Council.

Wouldn't it make sense to conclude that the Legislature would have provided some sort of relief for those who attempted to comply with the law, and failed in the absence of a list, until such time as some device for determining a means of compliance were clear? Now, the Council appears to claim that the Legislature failed on two counts instead of none.

If one were to follow the CJC's stated logic, the Legislature not only did not have the "wisdom" to foresee the current problems facing those forced to wear a "safety helmet" with no clear definition of what constitutes a "safety helmet", but they didn't have enough of a sense of justice to provide some fairness to motorcyclists while the problems were ironed out. It would be neither unwise, nor unjust, and certainly not unsafe, to allow the written will of the Legislature to have prevailed on this fix-it ticket issue until such time as their actual intent is made clear.

If, on the other hand, the Legislature was neither wise nor reasonable then it is not up to the Judicial Council to attempt to fill the void. If the Legislature got it wrong, send it back to the Legislature to be corrected. You could have done that. In fact, that was the exact recommendation that you seemingly ignored. The law gives the Council absolutely no authority, as the Council, to "correct" deficient legislation, only to see that it is applied in a consistent manner throughout the state.

Besides, we're not sure that the Legislature is going to have the patience with your public insult of their intelligence that you have apparently had with the CHP's public insults of yours. We would prefer to believe that the Legislature is both wise and thorough – that they meant what they wrote, and knew what they were doing when they wrote it (at least in light of the information they were provided).

It is the CHP that is out of line and out of control here. Granted, the reputation of the CHP is virtually beyond challenge. But, that opinion is based on a reputation that the department earned over the past half century. Today, sadly, the CHP has not only strayed from their previous reputation, but are building a new reputation which will be the bane of the existence of every quality officer they have left, and seriously impair the quality of the newer officers that they will now attract. It is a repugnant shame that the current CHP administration has been allowed to do the damage to the reputation of the Patrol to the extent that they have. A repugnant shame to be sure, but the fact remains that they are not to be believed, and their recent motives certain to be ultimately condemned.

One more point we would like you to ponder is the underlying thinking of the members of the Judicial Council. Along with the attached opinions of some of the members of the California Legislature (and ourselves in a letter to the AOC) we have included two editions of our newsletter, the *Helmet Law Defense League REPORT*.<sup>5</sup>

As we consider the "unprecedented security" that was ordered for this meeting of the Judicial Council, it is hard to ignore the reasons for this security. Somebody has been watching too many movies, or too much television. The ability to believe that "bikers"<sup>6</sup> constitute any type of threat to such a prestigious body, if it were not a reflection of an unfortunate type of bigotry, would be silly.

The part that would be most amusing, if it were not such a reflection, is the fact that our Senior Deputy Director, Richard Quigley, was perceived as the only person present "fitting the description of a 'biker'." Although Richard Quigley is a United States Freedom

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<sup>5</sup> The pagination of the First Edition is horrible, and for that we apologize; however, if you can survive the hunt, we believe that you may learn something about this whole matter that the CHP would just as soon you did not know.

<sup>6</sup> not in the pejorative sense

Fighter and serious American Patriot, he does not even own a motorcycle. On the other hand, there were at least two actual “biker” types (in that they do at least own and ride motorcycles) in the gallery, and at least two more on the Council; none of whom were recognized as such by the press, much less their professional peers. We believe that if you will think about it, and are honest with yourself about it, you will discover that it is the “description of a ‘biker’” that is at the root of your decision. It is most certainly at the root of the “demand” for your “ruling” by the California Highway Patrol.

So that this communication cannot be dismissed on the basis of your misunderstanding of our motives, we will close by saying that we, Steve Bianco and Richard Quigley, share a life-long obligation to the Oath that we swore when entering the military service – to defend this Country, its people and its Constitution, from all enemies foreign and domestic, in this case with the emphasis on defending against *enemies domestic*.

The ball is now in your court, so to speak. We are anxious to see what, if anything, you are now prepared to do in support of your Oath.

Sincerely,

Richard J. Quigley, Senior Deputy Director  
Helmet Law Defense League

Steve Bianco, National Director  
Helmet Law Defense League

enc: Copy of the letter to AOC from California Senator Phil Wyman  
Copy of the letter to AOC from California Assemblyman Charles W. Quackenbush  
Copy of the letter to AOC from California Assemblyman Ted Weggeland  
Copy of the letter to AOC from California Assemblyman Paul A. Woodruff  
Copy of the letter to AOC from the Helmet Law Defense League  
Copy of CHP Bulletin #42  
*Helmet Law Defense League REPORT*, First and Second Editions

cc: ABATE of California  
BOLT of California  
Modified Motorcycle Association of California  
Motorcycle Riders Foundation  
Riders for Justice  
All members of the California State Senate  
All members of the California State Assembly  
California Governor Peter Wilson  
California Attorney General Dan Lungren  
Department of the California Highway Patrol  
Gary Cramer  
Sierra Club Legal Defense Fund  
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