

I believe the court has misinterpreted the reasoning and holding of *Buhl v. Hannigan* (1993) 16 Cal.App.3d 1612, and its opinion in *Bianco v. California Highway Patrol* (94 Daily Journal D.A.R. 6038, 6041.) will create confusion regarding the enforcement of California's motorcycle helmet laws that will trouble both motorcyclists and lower courts.

### *The Statutes*

Subdivision (a) and (b) of Vehicle Code section 27803 make it unlawful to operate a motorcycle without a safety helmet "meeting *requirements* established pursuant to Section 27802." (Italics added.) However, there is contradiction between *Buhl v. Bianco* — contradiction apparently not perceived by this court — regarding what those "requirements" are.

Section 27802, subdivision (a), contains three sentences. The first sentence merely authorizes the department to adopt "reasonable regulations establishing specifications and standards for safety helmets." This first sentence, which is merely an enabling provision, does not appear to be one of the "requirements" referred to in section 27803.

The second sentence of the subdivision mandates that the promulgated state regulations include, at a minimum, "the *requirements* imposed by Federal Motor Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218)." (Italics added.) This sentence, which actually includes the word "requirement," certainly *could* be one of the "requirements established pursuant to Section 27802" referred to in section 27803, subdivision (a). If the latter statute were so construed, California law would require motorcyclists *to wear a properly fabricated helmet*, i.e., a helmet meeting federal safety standards.

The third sentence of section 27802, subdivision (a), imposes a requirement that every helmet "sold or offered for sale...be conspicuously labeled" by the manufacturer, which label shall "constitute the manufacturer's certification that the helmet conforms: to federal safety standards. This sentence requiring conspicuous labeling could also be read as one of the "requirements established pursuant to Section 27802" referred to in section 27803, subdivision (a). If the latter statute were so construed, California law would require a motorcyclist to *wear a properly labeled helmet*," i.e., a helmet bearing the manufacturer's "certification" that it meets federal safety standards (whether or not the helmet *in fact* did meet those standards). Alternatively, the third sentence could reasonably be viewed as imposing a requirement on the *sellers and/or manufacturers* of motorcycle helmets, but no on the *users* of the helmets (who have no practical control over their labeling.)

Thus, read together, sections 27803 and 27802 could reasonably be construed to require that motorcyclists wear a helmet that (1) is properly *fabricated*, i.e., meets federal safety standards, or (2) is properly *labeled*, i.e. bears the manufacturer's certification that it meets federal safety standards (whether or not the certification is correct), or (3) is *both* properly fabricated and properly labeled.

*The Holding of Buhl v. Hannigan*

As this court correctly notes, *Buhl* involved an attack on the constitutionality of California's motorcycle helmet laws. One aspect of the attack was that the laws were void for vagueness because they prescribed a standard which could not be understood by persons of ordinary intelligence. (16 Cal.App.4th a p. 1622) The first and significant component of that attack was directed at the requirement that helmets meet federal safety standards. The appellants claimed that ([t]he incorporated federal safety standards are so technical one must be a physicist or an engineer testing the product in a laboratory to ascertain whether a particular helmet complies." (*Id.*)

Significantly, the Court of Appeal rejected that argument by reasoning that it was based on the *false* premise that sections 27802 and 27803 require motorcyclists to wear a properly *fabricated* helmet. Rightly or wrongly, it characterized such a reading of the statutes as "absurd," and it held that the statutes require *only* that motorcyclists wear a properly *labeled* helmet. The court opined as follows: "underlying this [the appellants' vagueness] argument is the proposition that the statute requires the *consumer* or *enforcement officer* to decide if the helmet is properly fabricated, and such a reading of section 27803 is absurd. When sections 27802 and 27803 are harmonized, as they must be [citation], it is clear the law requires only that the consumer wear a helmet bearing a *certification* of compliance." (*ibid.*)

*The Holding of Bianco v. California Highway Patrol*

In *Bianco*, the appellant was challenging a California Highway Patrol ("CHP") information bulletin (Bulletin No. 34) issued on June 1, 1992, 13 months before the Court of Appeal filed its decision in *Buhl*. The appellant, appearing in propria persona, was apparently contending that the CHP was against the law insofar as it called for the citation of riders wearing a particular motorcycle helmet which had been improperly *fabricated* and did not meet federal safety standards, because *Buhl* had interpreted California law to require only that motorcyclists wear properly *labeled* helmets.

In rejecting that challenge, this court definitively stated:

"Section 27803 makes it illegal to drive or ride on a motorcycle without a helmet *that meets the federal standards.*" (94 Daily Journal D.A.R. 6038, 6041, italics added.)

That interpretation of the statute may be correct or it may be mistaken, but it is clearly an interpretation that is *directly contrary* to the interpretation of the statute in *Buhl*. In fact, this court's interpretation of section 27803 is the very interpretation which the Court of Appeal characterized as "absurd" in *Buhl*.

This court purports to distinguish *Buhl* as follows:

"Bianco directs our attention to *Buhl v. Hannigan* (1993) 16 Cal.App.4th 1612, 1622, wherein the Court of Appeal stated: 'When section 27802 and 27803 are harmonized, as they must be [citation], it is clear the law requires only that the consumer wear a helmet bearing a certification of compliance.' We note this statement was made in the context of refuting a constitutional attack on the helmet law as being too technical in prescribing a standard that cannot be understood by persons of ordinary intelligence. (*Ibid.*) When read in the proper context, the statement in *Buhl* does not restrict the requirements imposed by the helmet law, as Bianco urges. We also note that the court of Appeal in *Buhl* upheld the helmet law, and called the proposition underlying the challenger's argument 'absurd.' (*Ibid.*)" (94 Daily Journal D.A.R. 6038, 6041.)

This discussion of *Buhl*, I respectfully submit, will create a great uncertainty regarding the requirements of the helmet law.

In *Buhl*, the Court of Appeal held that the law was not unconstitutionally vague *because* it did *not* require riders to wear properly *fabricated* helmets meeting technical and arguably unintelligible federal safety standards; it merely required riders to wear properly *labeled* helmets. The court's characterization of the motorcyclists' interpretation of the law — an interpretation requiring the use of helmets meeting federal safety standards — as "absurd" was unwarranted hyperbole. Since section 27803, subdivision (a), refers to "requirements established pursuant to Section 27802" and section 27802, subdivision (a) mandates that California departmental regulations include "the requirements imposed by Federal Motor Vehicle Safety Standard No. 218 (49 C.F.R. Sec. 571.218)," the appellant motorcyclists could reasonably have concluded that California law requires the use of properly *fabricated* helmets meeting federal safety standards. Even if such an interpretation is mistaken, it is not "absurd." In fact, this honorable court has itself concluded that "[s]ection 27803 makes it illegal to drive or ride on a motorcycle without a helmet that meets the federal standards." (94 Daily Journal D.A.R. 6038, 6041.) That same proposition, when advanced by the *motorcyclists* in *Buhl*, was unfairly characterized as "absurd" and summarily rejected by the Court of Appeal,

which adopted a much more limited interpretation of the requirements of the helmet law to uphold its constitutionality.

If this court disagrees with the Court of Appeal's interpretation of sections 27802 and 27803 in *Buhl*, it should say so directly. If it believes that the helmet law requires the use of helmets meeting technical federal safety standards, then it should disagree with the Court of Appeal's contrary, narrow interpretation of the statute in *Buhl* by which the court disposed of the constitutional attack on the vagueness and incomprehensibility of the law.

However, it cannot fairly dismiss the *Buhl* decision as it has without creating enormous difficulty for motorcyclists, who desire to comply with the law, and for lower court which must enforce it. This court apparently does not perceive that its interpretation of section 27802 and 27803 cannot be reconciled with the court's interpretation of those statutes in *Buhl*.

### *Conclusion*

Does California law require the use of properly manufactured motorcycle safety helmets which actually meet highly technical federal safety standards? And, if so, is the law unconstitutionally vague? These questions are very important to over 800,000 licensed motorcyclists in California, and those motorcyclists are entitled to definitive answers from the courts.

In the face of a challenge to the constitutionality of the law, the Court of Appeal in *Buhl* reasoned that the answer to the primary question is "no," that the motorcyclists' contrary interpretation was "absurd," and that it was therefore unnecessary to decide the secondary question whether the highly technical federal safety standards could be understood by motorcyclists and enforcement officers of ordinary intelligence. In *Bianco*, which did *not* involve a constitutional attack on the law, this court has assumed, without a careful analysis or correct discussion of *Buhl*, that the answer to the primary question is "yes."

If this court is unwilling to follow the Court of Appeal's interpretation of sections 27802 and 27803 in *Buhl*, it may be that the intervention of the Supreme Court will be necessary to secure uniformity of decision. However, this court should, at least, forthrightly acknowledge its disagreement with *Buhl*. That case cannot be fairly distinguished. Both *Buhl* and *Bianco* involve the identical issue whether California law requires the use of properly *fabricated* motorcycle safety helmets which meet federal safety standards. CHP Bulletin No. 34, challenged by *Bianco*, is inconsistent with *Buhl*'s interpretation of the law.

In the absence of a clarifying modification of this court's opinion, the law will be intolerably unclear and inconsistently, and therefore unjustly, applied by lower courts. For example, suppose a motorcyclist is wearing a helmet that is properly labeled but which does not meet federal safety standards, and, pursuant to

CHP Bulletin 34, he or she is cited for violating section 27803. Should a trial court, on the authority of *Buhl*, acquit the defendant of the charge on the ground the statute requires only the use of a properly *labeled* helmet? Or should the trial court convict the defendant, on the authority of *Bianco*, on the ground that it is illegal to ride with a helmet that does not meet federal safety standards. If the defendant argues that the helmet law is unconstitutionally vague, how should a California trial court adjudicate such a claim? Is the answer foreordained by *Buhl* under the doctrine of stare decisis? Or may the trial court acknowledge that, since there is a conflict of Court of Appeal opinions on the preliminary issue whether California law requires the use of a helmet meeting federal safety standards, the issue is an open one that may be addressed and decided in a manner inconsistent with *Buhl*?

For these reasons, I respectfully request the court to reconsider its discussion of *Buhl* and clarify its opinion in *Bianco*. The Court of Appeal deciding *Buhl* characterized the interpretation of section 27803 adopted by this court as "absurd." That characterization was not fair, and it should not go unnoticed. This court should defend its view that "[s]ection 27803 makes it illegal to drive or ride on a motorcycle without a helmet that meets the federal standards." (94 Daily Journal D.A.R. 6038, 6041.) That holding is contrary to the holding of *Buhl*, and — though reasonable minds may disagree on what "requirements" of section 27802 the Legislature had in mind when it enacted section 27803 — that holding is not absurd. If this court's interpretation of section 27803 is correct, then the Court of Appeal's analysis of the constitutionality of the statute in *Buhl* is seriously flawed, and the issue of the statute's constitutionality should be open to re-examination in other cases by all California courts.