

March 07, 2003

Santa Cruz County District Attorney  
Bob Lee  
701 Ocean Street  
Santa Cruz, CA

re: requirements for compliance with CVC §27803(b).

Mr. District Attorney:

Well, the motorcycle riding season is upon us, and I am stuck with the possibility of not being able to reduce my travel expenses with the use of my motorcycle because of the handling of previous tickets I have received for alleged violations of California's mandatory helmet use law – CVC §27803(b).

Since a meeting to discuss the problems with enforcement and compliance seems out of the question, I would appreciate it if you would answer my question by mail:

**How can a motorcyclist comply, with certainty,  
with the provisions of CVC §27803(b)?**

So far, since 1999, out of nineteen citations I received in Santa Cruz County, nine convictions have been had by the District Attorney's office, and no one has yet been able to answer that question – not the police, not the courts, not the people who prosecuted the citations. No one.

Assuming you have no answer, what is the justification for not either helping me find it, or suspending enforcement of the statute until such time as you can?

Example: How would you prosecute speed limit citations issued to drivers on the freeway when the speed limit signs said only "NO SPEEDING"? That the same thing as with §27803 – there is no objective criteria; e.g.: "Speed Limit 65". Why am I being prosecuted for, in essence, *speeding*, when no one will specify the limit? Once you wrap yourself around the inescapable fact that there is no such thing as an "approved helmet," much less a "list of approved helmets," maybe you'll begin to understand that the statute is vague and unenforceable.

I realize that it all seems very simple to you, "just wear a helmet." But you see, it is and was my belief that that's exactly what I was doing (up until last year, when I just gave up, then, even trying to comply behind Danner's creation and declaration of a "common objective experience" standard – the very standard the CHP, and the law enforcement agencies in Santa Cruz County for that matter, were forbidden from adopting over six years ago by the Federal Court). I want to comply with the statute, and be able to *prove* I'm in compliance, which I can't.

## Exhibit “W”

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Moreover, Vehicle Code Section 40303.5 makes it mandatory for helmet tickets to be treated as correctable equipment violations – up to and including the part where the citing officer (not the prosecutor or the courts) must either determine the presence of, and allege, one of the disqualifying conditions of §40610(b), or issue the citation as a correctable offense. Why does your office refuse to accept the plain language of the statute in that regard?

If you'd just follow the law, and apply §40303.5 as written, then there's a good chance the courts would be allowed to understand what so many law enforcement officers already understand, and that is how signing off such a ticket would put the liability for a helmet's construction right back on the government – an avoidance which is at the very core of why the statute was written the way it was, relying on a self-certification process which (if I'm willing to take the product liability) I could do myself.

Besides just taking advantage of the courts' predisposition to find against motorcyclists (or is it just me) on these matters, what reason is there for the District Attorney's office to refuse to abide by the law? Isn't it your responsibility to seek justice under the law, by following the law?

Although some of the questions in this letter may be rhetorical, the main question (centered and bolded on page #1) is the one which I need for you to answer, so that I may apply my otherwise clearly lawful use of my motorcycle, to my right to use the roadways – subject to "reasonable regulations," in which vague statutes have no part.

I believe I have acted in good faith to find an answer to this (these) question(s). I believe, especially in light of the energy put into prosecuting these citations by the District Attorney's office, that you have a responsibility to inform me as to what specifically I can do comply, with certainty, with the provisions of CVC §27803.

I look forward to your prompt response. Thank you.

Sincerely,

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