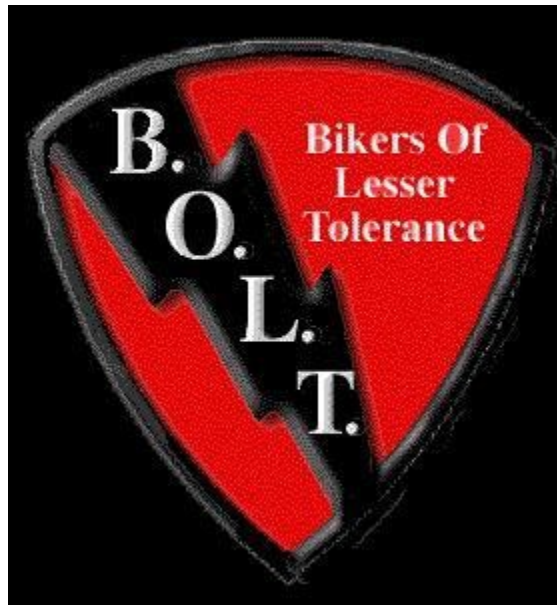


**Richard Quigley, et al. vs.  
California Highway Patrol,**



**the Constitutional Case Poised to  
Bring Down the California Helmet Law**

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This article by Ray has also been published in MRF Reports, May/June 2008

For information about Bikers of Lesser Tolerance (B.O.L.T) please see any of the following BOLT sites:

[BOLTofCA.com](http://BOLTofCA.com)  
[BOLTUSA.org](http://BOLTUSA.org)  
[USFF.com/bolt/](http://USFF.com/bolt/)

As Don Blancet, the Executive Director of ABATE of California, has correctly observed is a press release graciously disseminated by our friends at the Motorcycle Rights Foundation, the instant Quigley et al. v. California Highway Patrol case will pound the final nail in the coffin of the California helmet law. But in order to appreciate why this case is the undertaker that will place the helmet law 6 feet under, you will need to understand the constitutional defect that this helmet law was born with - the same defect present at the heart of the helmet law recommended to all states by the NTSB - and how our California freedom fighters have constructed the law's coffin, a labor of 17 years, in the state and federal courts, to lay the constitutional predicate to finally put the helmet law in its grave.

The constitutional defect in both the California helmet law and that proposed by NTSB is that these laws require motorcyclists to wear helmets compliant with the federal motorcycle helmet performance standard set forth at FMVSS 218. The defect is that neither the ordinarily intelligent biker nor the law enforcement officer could possibly have any clue what FMVSS 218 requires. The rider can't read the law and know how to comply with it; and the law enforcement officer likewise cannot possibly apply it, except arbitrarily. Section 218 states nothing about helmet fabrication or what a helmet should look like. It merely describes some laboratory procedures and some arbitrary impact criteria. Indeed, to determine whether a particular helmet complies with FMVSS 218 requires the essential laboratory equipment and appropriately trained engineers to operate it, and in the process of testing the helmet you also destroy it.

The constitutional defect is the law's "vagueness" and the legal challenge derives from the due process clause of the United States Constitution. As explained by the United States Supreme Court:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1971).

The road to demonstrate that the California helmet law is unconstitutional has been a tortuous one, beginning with a challenge that the law was unconstitutional as written. In *Buhl v. Hannigan*, the California Court of Appeals agreed that it was "absurd" to posit that the ordinary biker or law enforcement officer could examine a helmet's fabrication and apply FMVSS 218 to determine if it complied with the California helmet law.

The Buhl case was followed by Bianco v. California Highway Patrol in which the California Court of Appeals held that where a helmet bears a "DOT" label it creates a presumption that the helmet complies with FMVSS 218, and that the presumption can be rebutted only if (1) the helmet was recalled by the manufacturer for failure to comply with FMVSS 218 or determined by NHTSA to be noncompliant with FMVSS 218, AND (2) the biker as "actual knowledge" of a recall or determination of noncompliance.

At this point California law enforcement should have recognized that the constitutional restraints on application of the law had rendered it unenforceable. The California Highway Patrol's response to the foregoing Court of Appeals decisions, however, was to ignore them and to continue to enforce the law arbitrarily based upon the law enforcement officer's incompetent assessment of the fabrication qualities of the helmet.

Richard Quigley and Steve Bianco then initiated litigation which would later be funded by Easyrider magazine. The bikers established in the federal district court that the California Highway Patrol had a policy and practice of illegally enforcing the law, in violation of the Court of Appeals decision in Bianco v. CHP. The federal district court issued a scathing opinion condemning the CHP for its illegal helmet law enforcement policies and the United States Court of Appeals affirmed an injunction ordering the CHP to cease and desist issuing helmet tickets unless the officer has "probable cause" to believe that the rider has "actual knowledge" that his headgear has been recalled or determined by NHTSA to be noncompliant with FMVSS 218.

Again, the CHP should have just laid down their ticket books, but again, the CHP determined instead to continue on with its illegal enforcement policy. Riders with Bikers of Lesser Tolerance in California like Richard Quigley and Steve Bianco tested the resolve of the California Highway Patrol, accumulating hundreds of helmet tickets, some for wearing the B.O.L.T. "Ill Eagle" helmet, with the Chinese manufacturer's "DOT" label embroidered on the back, others wore sunglasses with DOT labels, or itsy bitsy teenie weenie helmets, beanie helmets, helmets looking similar to what some refer to as "novelty helmets," and many manufactured their own smaller-than-watermelon-sized hard-shell helmets, as specifically authorized in a legal opinion authored by CHP legal counsel, appending their own DOT labels.

Quigley challenged his last dozen helmet tickets, this time urging that the California helmet law was unconstitutionally vague "as applied" by the California Highway Patrol. He interrogated the highway patrol officers and introduced the internal CHP policy memoranda and bulletins making plain the CHP's intent to skirt the Court of Appeals decisions that defined the California helmet law; documents he'd accumulated over a dozen years fighting the CHP in court.

Ten years to the day after the United States Court of Appeals for the Ninth Circuit had upheld the injunction against the CHP's illegal helmet law enforcement policies, Judge Barton, for the California Superior Court for the County of Santa Cruz found that the California Highway Patrol had engaged in a policy and practice of illegal helmet law enforcement, now not only in violation of the California Court of Appeals decision in Bianco, but also in violation of the Easyriders

federal court injunction. The Court issued a several page, highly reasoned constitutional opinion holding that the California helmet law was unconstitutionally vague as applied.

As the Court transcripts reflect, the Court's purpose in setting forth its reasoning in the opinion was to permit the case to be taken up to the Court of Appeals, and the California helmet law might have been laid to rest in that case. However, the California Attorney General, less concerned with upholding the California and United States Constitution than with preserving the ability of the CHP to continue to enforce the helmet law illegally, declined to appeal the case. Parenthetically, in another Quigley case which resulted in a decision by the California Court of Appeals that helmet law violations come within the California fix it ticket statute, the Court in "dicta," meaning without either the AG or Quigley having briefed it, stated that law enforcement can conclude that a fabric helmet violates the law, but agreed again with the previous court decisions that it is well beyond the qualifications of the ordinary biker or law enforcement officers to determine if helmets manufactured out of hard materials comply with FMVSS 218 and the California helmet law. And it is the Plaintiff's evidence that the California Highway Patrol has had the policy and practice to illegally ticket California bikers, including the Plaintiffs, arbitrarily and discriminatorily, for the entire spectrum of fabric and hard-shell helmets despite that every court has agreed that CHP officers plainly lack the ability to discern whether a helmet meets FMVSS 218 standards, the sole standard set forth in the California helmet law.

The instant litigation was initiated by Richard Quigley and several other members of Bikers of Lesser Tolerance, California, including Quig's good friend Steve Bianco, with the intent this time to put on at trial not only the same evidence of illegal highway patrol helmet law enforcement practices as previously adduced by Quig, but the hundreds of illegal citations issued to the other B.O.L.T. Plaintiffs involving an entire spectrum of different types and construction of headgear illegally issued by the California Highway Patrol in violation of the Bianco and Easyriders constitutional decisions. Prior to his death Quig's video deposition was taken and his testimony preserved for the trial. The other members of Bikers of Lesser Tolerance including Steve Bianco will also testify in the case, describing their several hundred citations illegally issued by the California Highway Patrol. Don Blancet, Executive Director of ABATE of California and Assistant Director of B.O.L.T. of California will testify, describing his greater than 60 helmet citations, all but three of them thrown out of court by the Judges specifically on the grounds that the citations were illegally issued in violation of the constitutional law of Bianco v. CHP. The CHP officers who issued the citations will be interrogated, making plain that they do not understand and cannot conform to the constitutional requisites of the California and federal constitutional decisions which restrain the strict limits of legitimate application of the California helmet law. And what this evidence will amply demonstrate, is that the California helmet law isn't being enforced in conformity with the California and federal constitutional decisions, and that, as a practical matter, it cannot be enforced constitutionally. The case is framed as an injunction and declaratory relief case to assure that it will reach the Court of Appeals. If the B.O.L.T members succeed in the trial court, we

anticipate that the Court will declare that the helmet law unconstitutionally vague as applied and issue an injunction against its further enforcement; so the Attorney General will be forced to appeal. If the Court fails to enter a decision that voids the California helmet law then the Plaintiffs can then appeal and we would expect that the Court of Appeals will have no choice but to recognize that the defect in the law is its unconstitutional vagueness and that the law as reinterpreted cannot be applied constitutionally.

The litigation represents the culmination of the courageous and determined work of the Plaintiffs and other B.O.L.T. members like Richard Quigley and Steve Bianco who have fought the good fight on the streets and in the courts for the past 17 years. The significance of the litigation extends beyond voiding the California helmet law because the due process deficiencies in the law will certainly undercut the NTSB's efforts to impose the same law on every other state. It will also provide the precedent for freedom fighters in every lid state to take into their state courts. Yes, this will be California appellate law. But in most states the constitutional arguments that will be upheld in this case will be "issues of first impression," meaning issues not yet decided by the courts of the other states. When faced with an "issue of first impression" the Court's always look to the decisions of the other states which have faced and decided the issue. And here on the issue of due process "vagueness," this case will be the only relevant constitutional precedent in point.

As Don Blancet points out, this is indeed historic litigation. It is an honor for all involved in the case to be a part of it, and we reach out to all who would join us in this historic opportunity to take your place at the forefront of this fight. We can overturn the California helmet law. We can make plain that the law urged by NTSB is unconstitutionally vague and incapable of constitutional application. We can render NTSB's recommendations to the states inert, undercutting the efforts of NTSB, the insurance and medical lobbies underway to obtain helmet laws in the free states. We can shortcut by 17 years the constitutional court battles in every other lid state, and provide you the opportunity to void your helmet law decisively. Please accept this opportunity to join with ABATE of California and Delaware and Michigan and Northern Nevada as our partners in achieving freedom.

*Ray Henke is a California trial lawyer, a former Governor of the Los Angeles Trial Lawyers Association and LATLA's nominee for the "Trial Lawyer of the Year" Award. Mr. Henke served as legal consultant to Richard Quigley. He is a made member of B.O.L.T., proud to have been nominated by Quig for B.O.L.T. membership, seconded by Steve Bianco, and currently, B.O.L.T. of California, legal advisor.*

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