

*An in-depth biker profile*

## The Remarkable Mr. Quigley

### Living on the cutting edge of freedom

by Michael King

It's a good day for riding in the bucolic town of Santa Cruz, California, and a biker is tooling down an autumn road, his long beard blowing in the wind.

A police officer sees the biker ride by. Something catches his eye. The biker is wearing something on his head that the police officer believes does not constitute a legal helmet. He fires up the light show, and pulls him over.

He asks the biker where his helmet is. The biker chuckles, and replies, "Don't they test you guys—test you guys before they give you a gun? I'm wearing *two*."

"You're wearing *two* helmets?" asks the officer.

"Yeah," says the biker, and he removes his headgear, which looks suspiciously like a baseball cap, and hangs it on his mirror. Lo and behold, beneath it is a comically small, hard plastic helmet that looks like a sort of biker yarmulke. He takes that one off, and puts it on his mirror, too.

The police officer picks up the tiny plastic helmet, takes a look at it, then asks a question that the biker has worked for years to eradicate from the legal parlance of officers all over California and beyond, but which keeps coming back to haunt him, like a goblin.

The officer, indicating the little plastic helmet, asks, “Is this DOT-approved?”

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Health advocates often say “Use it or lose it,” meaning if you don’t exercise, your health will suffer. The same can be said of the mind: If you don’t challenge yourself intellectually, your mental faculties will suffer. The same is also said of human rights. If you don’t use them, your freedoms will suffer. A law can exist on the books, but unless it exists on the streets, it might as well not exist at all.

The biker in the above scenario is Richard Quigley, and he has been exercising his civil rights like an Olympian athlete for a long, long time. Though he’s fought for civil liberties regarding other issues, his most extensive and famous battle has been his 15-year fight against the California helmet law. Run-ins with police like the one just described are common fare for him, and it doesn’t take much more than hearing the term “DOT-approved” to send him into a ruthless roadside cross-examination of the officer daring to use the term. He’s been stopped by officers at least 170 times, and accumulated at least 34 tickets, most of which he’s beaten. In fact, he’s studied the helmet law so thoroughly that generally, he knows it better than the police who cite him. He’s proven

this by carrying a tape recorder with him, taping his conversations with the officers, and using this evidence to great effect when fighting his tickets in court—another setting he finds quite familiar.

Many of you who follow helmet law issues have heard of Mr. Quigley. He received a great deal of attention last year when, after arguing persistently and eloquently in court, he convinced Santa Cruz Superior Court Judge Michael Barton to declare the California helmet law unconstitutional as it's currently being enforced by the CHP. This significant blow looks to be the first in a series that might well bring the whole helmet law giant that has irked California bikers since 1992 toppling down. What's more, he's already launched the next salvo, which is considerably more aggressive than the first: Quigley and four other bikers have joined forces and jointly filed a lawsuit against the CHP that, if won, would forbid them from writing helmet tickets on the grounds that the helmet law is unconstitutionally vague. On February 13 of this year, the court ruled that the plaintiffs have a good case against the CHP, thus the case will continue to the next level, and bikers' rights advocates throughout the state will be watching closely to see how it plays out.

Richard Quigley has been a major force in combating California's helmet law, but he's also been much more than that. He effectively defeated the helmet law in Oregon and Washington (by discovering a convenient legal loophole that rendered it toothless), and he's worked to help bikers in Nevada fight the law there. He was awarded ABATE's lifetime achievement award last year, and he's the co-founder and senior deputy director of the Helmet Law Defense League, and the state director of Bikers of Lesser Tolerance (BOLT) of California, which aims to rid

California not only of helmet laws, but of all California laws that encroach on civil rights. For a time he hosted a political commentary radio show, and he even ran for sheriff, and for Congress on the Libertarian ticket. We've written about him in this paper before, but in surveying the whole scope of his struggles and his life, we felt it high time to bring you an in-depth profile of this remarkable champion of civil liberties.

### **Keeping cops honest**

A Highway Patrolman once stopped Quigley when he was driving his truck in San Jose. He asked permission to search the cab of the truck, though to this day, Quigley does not know why.

"Well, why do you want to do that?" asked Quigley. "You got a warrant?"

"No, I don't," said the officer. "I don't have to have a warrant if I have your permission."

"Why would I give you my permission?"

"Well, if you don't have anything to hide. Do you have something to hide?"

That stopped Quigley in his tracks. He looked at the officer without saying anything, and thought about it long and hard. It was an interesting quandary. On the one hand, the officer had a point: If he didn't have

anything to hide, why not let him look? On the other hand, what if the officer was trying to plant some evidence in the cab to frame him?

Finally he said, “You know, you’re right. I understand. If I have something to hide, I guess if you asked to search my truck, then I would not want you to do that. So I guess it’s a reasonable conclusion. Tell you what: I don’t know why you want to go in there. I know what’s in there, which is nothing of interest to you, and just on the off chance... How about if I just pat you down, and make sure that you’re not taking anything in there that I didn’t leave home with? And just make sure that you haven’t got anything, and then you can go in there and search away.”

The officer looked like he was going to have a heart attack. “I’m not going to let you pat me down,” he said gruffly.

Quigley got an impish smile on his face and said, “Why? You got something to hide?”

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Quigley has long made a point of emphasizing that he’s not against *all* cops. In fact, he’s a hearty advocate of the good ones—but he’s also a virulent foe of the bad ones, and he’s dedicated years of effort, on the airwaves, on the roadside, and in court, to combating them, correcting them, and doing what he can to keep them honest. His battle against the helmet law is just one facet of this larger mission.

This unusual avocation, along with his bearded biker persona, might lead some to suppose that he was always a natural rebel who bristled at all forms of authority, but such is not the case. In his younger days, Richard Quigley was not the firebrand he later became. He was, by his own description, an average citizen. Born in Santa Ana on Christmas Day, 1943, Quig's family moved to Arizona when he was about 5 years old. He served in the Navy from age 17 to 21, dabbled in college with a view toward becoming a music teacher (he had a gift for playing the piano and the cornet), and later went on to work a variety of jobs, including bartender, car salesman, and furniture salesman. He eventually joined the upscale world of crisp suits, briefcases, and six-figure salaries working as a marketing director in Los Angeles and Silicon Valley.

In 1977, he moved to the Santa Cruz mountains, and has called it home ever since. It was in Santa Cruz County that he had a run-in with a police officer that changed the course of his life, and provided the catalyst for his transformation from an average citizen into the self-proclaimed freedom fighter he is today.

In January of 1985, Richard Quigley was driving with a friend in his truck in Santa Cruz county, in the town of Capitola. Up until this time, Quigley had never had any direct experience with bad cops. Like many, he dismissed talk of corrupt police as the dark imaginings of lunatic fringe conspiracy theorists. But that soon changed.

There was a problem with his registration, and when the police officer saw him pass by, he lit up his lights to signal Quigley to pull over. Apparently, Quigley did not pull over fast enough for the officer's

satisfaction (though Quig says he was just looking for a safe place to stop). Quigley stepped out of the truck. When asked why he was stopping him, the officer merely ordered him to present his vehicle registration. When Quigley turned to get it, the officer grabbed him and pushed him toward the truck.

He wrote Quigley a ticket for the expired registration. Quig signed it, then asked to see the officer's supervisor. "I don't know what's going on here," he said, "but I promise you one thing, young fella: You're going to learn to keep your hands to yourself."

When Quigley makes a promise, he means to keep it. He filed a complaint against the officer with the Internal Affairs of the Capitola Police Department. Internal Affairs said the complaint was unfounded. Quigley went to the District Attorney. The DA said that according to the official report, the officer had put his hands on Quigley to ward off his advance. Quigley knew that was a lie, and he had a witness (his friend in the truck). The DA admitted that some police officers do lie, but did nothing, so Quigley filed a lawsuit against the officer for excessive use of force.

Three and a half years after the incident, he won the judgment. Upon giving his ruling, Judge Bill Kelsey said, "Obviously, Mr. Quigley, you march to the beat of a different drummer. But I believe you, and I don't believe the officer." Judge Kelsey awarded Quigley the case—but he awarded him just one dollar.

It was a victory in principle, but that wasn't enough for Richard Quigley. Figuring that a one-dollar slap on the wrist was not enough to teach an officer to keep his hands to himself, he decided he needed to do more to keep the local police force honest and honorable, so he got politically active—so active, in fact, that in 1993, he ran for the 17th Congressional seat vacated by Leon Panetta, as a Libertarian. He didn't win, so the next year, he sought to unseat local sheriff Mark Tracy by running for office against him in a campaign that, according to one local reporter, resembled a World Wrestling Federation smackdown. "He made the proceedings fun," said Joe Henard, a district attorney inspector who was also in the running. "You had four stiff candidates and one guy who was animated and told it like it was." Quigley lost the race, but amassed 150 write-in votes.

He also amassed several warrants for his arrest. At one time there were as many as seven warrants out for him simultaneously. According to both Quigley and his attorney, Kate Wells, shortly after his run for sheriff, deputies started harassing him and trying to intimidate him. Not that this deterred him. Far from it: In December of 2002, he started "The United States Freedom Fighter Forum," a weekly radio show that aired on Santa Cruz station KSCO. Its scope was general political commentary, and its purpose was to raise awareness of and promote public dialog about local and state politics with a focus on civil rights. It also featured no shortage of Quigley going after bad cops and any other law enforcement or judicial personnel he deemed to be rotten apples, and he made no bones about naming names (such as Mark Tracy's) and dredging up all manner of ugly details. Quigley had turned the tables: His run-ins with the police now merely provided fodder for his show.

This showdown came to a head when Sheriff Tracy's police department delivered a letter to KSCO saying that unless they took Quigley's show off the air, they would refuse to give any news to the station's newsroom. Quigley retaliated by filing a lawsuit against Tracy and the county for violating his First Amendment right to free speech. KSCO suspended his talk show until the lawsuit was settled, so in the short term, Quigley's voice was silenced, but about a year and half later, he won the suit, was awarded \$47,500 in damages, and returned to the airwaves.

But the story doesn't end there. The lawsuit that Quigley filed also sued for violating his 14th Amendment right to due process and protection from undue police action. According to his suit, the police had filed false reports alleging he had violated various laws, thus giving them false pretense for all manner of harassment and intimidation. While the suit was still pending, Sheriff Tracy, to the surprise of the law enforcement community, opted for a conveniently timed "early retirement" (*wink, wink*). Quigley declared victory on yet another score.

### **The ring in the tub**

"So I call down there and I talk to the Lieutenant," said Quigley to Judge Barton, "and I asked him, 'Who approves helmets?' And it's no surprise, Your Honor: 'The United States Department of Transportation approves helmets.' The man is a lieutenant in the California Highway Patrol, he's competent and qualified in every aspect of law, no question to do his job, and doesn't understand that DOT doesn't approve helmets. So how do you scrub that ring out of the tub, you know? There ain't no cleanser that strong."

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Of all the causes he's championed, battling the helmet law is perhaps the one toward which Quigley has devoted the most time and passion. From day one, he refused to wear a "normal" helmet after California passed its helmet law in 1992. He started out by wearing little beanies, then later adopted his trademark baseball cap with "DOT" printed on the back.

He's certainly done his share of public protesting and speaking, but one could argue that his most significant contributions to the cause have been his head-on battles in court. Initially, he didn't always win against every ticket he fought, but if he lost, rather than paying a fine, he would perform community service for the Santa Cruz Law Library, wherein he learned enough to represent himself handily in court, and to become a formidable gadfly to the local judges.

Among those judges was Judge Michael Barton, and since Quigley's two most significant court victories to date regarding the helmet law occurred under Barton's gavel, it's worth a look at the relations these two had. The first time Quigley encountered Judge Barton in his courtroom, the exchange was so incendiary that the lawyers present looked like they wanted to duck under the tables to take cover from the fallout. But over time, the two gained a mutual respect that served them both in good stead. Barton turned out to be the kind of judge that Quigley had always hoped to find in a courtroom: someone who was truly open minded, and honorable enough to do the right thing and follow the law wherever it led him. In the case of the helmet law, it led him to some surprising places.

And it's no wonder when you look at the confusing tangle known as the California helmet law. The crux of the matter is that in effect, there are two helmet laws: the one that exists on the books, and the one that's being enforced on the streets. The difference between the two, and the vagueness of them both, have caused considerable confusion. The law on the books was determined in a prior case to be constitutional *as written*. Essentially, it states that it's up to the helmet manufacturer to make their helmet legal, and they do that by putting a little sticker on it that says "DOT." This seems to imply that they have tested their own product according to guidelines described in Federal Motor Vehicle Safety Standard 218, and made sure it passes muster, but technically, the law does not state that they must actually test the helmets, but only that they must certify that the helmet did (or could) pass the test.

(Note that nowhere in this process does the Department of Transportation even look at the thing, let alone test and approve it. The DOT does not approve helmets. Why not? Why doesn't the CHP? The answer, it seems, is a hundred-pound gorilla called liability. Nobody wants to get sued by someone who gets hurt while wearing an "approved" helmet, so everybody stays out of the business of approving them. In fact, the DOT is not legally allowed to take on liability, nor is the CHP.)

The law that's being enforced on the streets is a different matter. It's based on an interpretation by the CHP, issued in a bulletin in 1992, that says that the DOT does in fact approve helmets. It also asserts that a police officer can merely visually inspect a helmet, and by noting the materials and construction, determine if it would pass the FMVSS 218 test. If their opinion is that it would not, then you get a ticket.

After Quigley made more than 30 court appearances over more than a year, Judge Barton ruled that a helmet citation is a correctable offense, and thus can be remedied just like a “fix-it” ticket you get for a burnt-out taillight. This ruling was so foreign to the CHP’s way of thinking that they objected to it, and refused to sign off on the tickets. Quigley filed a motion to find the CHP in contempt of court, and the Attorney General filed a stay order which halted the progress of Quigley’s motion. The fix-it ticket solution had reached a stalemate.

Quigley then made a new motion contending that the helmet law is unconstitutional as it’s being applied to him. About 18 months and a series of further eye-opening court exchanges later, Quigley’s exhaustive research and compelling court presentations eventually won Barton over to the view that the interpretation of what constitutes a helmet is unfairly left up to the CHP officer’s subjective opinion, thus he ruled that the CHP must define what a helmet is or any citations written by officers are unconstitutional.

This was a substantial victory, but two things threatened to take the wind out of its sails. Firstly, the ruling applied only to Quigley, not to all bikers in California, and secondly, the Attorney General wrote a letter to the Sixth Appellate Court asking it to overturn Barton’s ruling. Note that this unorthodox written request would not put the case formally and officially before the court. Challenging Barton’s ruling openly in appellate court would allow Quigley to defend it, and if it were upheld, this ruling would have repercussions throughout the state—which is exactly what Quigley has been after all along.

Since the Attorney General would not challenge Barton's ruling openly, and since the CHP in the meantime was not abiding by the ruling and continued to write helmet tickets, Quigley decided he needed to press the issue. He joined forces with four other bikers, and jointly filed an injunction against the CHP that, if won, would force them to follow the law as it's written, and as interpreted by Judge Barton, which would apparently mean no more writing tickets for helmet violations. The Attorney General is currently employing various legal maneuvers which are slowing the case's progress into the court, but so far, it looks as though the case is on track to appear before the Sixth Court of Appeals.

The question is when. And the question is pressing one, for a very personal and poignant reason: Richard Quigley is dying. He has stage four lymphoma, and is not expected to live much longer. In November of 2005, he even threw a "living wake" so that his friends could have the opportunity to say good-bye to him. (See *Thunder Press* January 2006.)

There is a legal foundation for expediting cases wherein the party at interest has a terminal illness, and Quigley has requested expedition on that ground, but even so, the wheels of justice throughout these whole proceedings have turned painfully slowly. For this reason, Quigley had the forethought to bring four other bikers to the suit, all of whom have considerable experience and expertise in combating the helmet law: Steve Bianco, Don Blanscet, Steve "Red" Barron, and Pat Holmes are also named as plaintiffs in the case, and will continue the fight as long as need be to bring it to its conclusion.

### **The Quigley factor**

Everyone cherishes freedom, but how many of us are willing to invest so much time, effort, and money in a multitude of court face-offs to protect it? Quigley is a man ignited by his mission, and plenty of others have gathered round that fire. There are some people who can bring tremendous energies to bear on the cause they choose to champion. Quigley is such a person. Ray Henke, a lawyer and friend of his, said of him, “There is a wonderful environment of legal thinking that centers around Richard Quigley.... But he also has the wonderful ability to attract and inspire others to stand up for their rights.”

“I guess what distinguishes him is his passionate devotion to being a free and liberated human being,” said Kate Wells, his attorney and longtime friend. “He’s fearless in his pursuit of freedom for himself and others. No arena has been too large or too small for Richard to enter.”

Even now, while terminally ill, Richard Quigley continues to fight the helmet law, and invest much of his time in litigation that will not bring much benefit to him personally, as he’s now too ill to ride. It seems clear, then, that he’s doing this for the biker community, and, more broadly, because he sees intrinsic value in championing this cause. In other words, he’s living true to his ideals, as he always has.

“I hope if anybody has gained anything from me, it’s the value of life,” said Quigley himself.

At his “living wake,” some friends of Quigley’s wore T-shirts they had made that read, “The Quigley Factor — WWQD. Translation: What

Would Quigley Do?” It’s a question many are sure to ponder for years to come.

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*If you believe in Quigley’s campaign against the helmet law and wish to lend financial support to the lawsuit that he and his cohorts are waging against the CHP, make your checks out to “Judicial Fund” and send them to: Judicial Fund c/o ABATE of California, 10240 Seventh Avenue, Hesperia, CA 92345. You can follow the progress of the lawsuit at either [usff.com/calbolt](http://usff.com/calbolt) or [bikersrights.com](http://bikersrights.com).*