

Hung Jury in Santa Cruz Trial

from page one

Accustomed to silencing homeless speakers at the mike with a hasty gavel and speedy use of the police, Rotkin jumped the gun in ordering the meeting recessed before it was actually disrupted. Defense attorneys also pointed to Rotkin's refusal to accept Cosner's petitions as evidence of his bias. His was also the directive that barred sympathetic news media at the City Council door (*Free Radio Santa Cruz* and *Street Spirit*). On the stand, Rotkin testified that he hoped the protesters got double sentences.

The sequence of events during the protest was important in jury deliberations. In response to audience chanting at the end of the public comments period, then-Mayor Rotkin told the assembly to "go ahead and use the last five minutes to chant if you want." Cosner then rose with a sheaf of petitions and waited to present them to the council through the city clerk. Rotkin demanded Cosner sit down and, with no further warning, had him arrested a few seconds later. Cosner clung to a light fixture rather than be dragged out.

About the same time, six other protesters chained themselves to City Hall furniture. Police began to clear the chambers, when, without warning, Sgt. Crain hurled Silva out the door. Within eight minutes, all protesters had been removed from the furniture with bolt cutters and arrested. Police declined to take protesters to the adjacent police station, but kept them in the Chambers with alternate media excluded while 30-50 protesters chanted outside and banged on the windows. The council meeting resumed an hour after Rotkin recessed it, with homeless advocates — protesters and non-protesters alike — barred from the session.

Defendants agreed they had brought chains and locks to the protest, but testified that these were used only as a last resort when Rotkin acted to eject Cosner and end the meeting. The defense argued that protesters chaining themselves to furniture, though a dramatic visual statement to the council, was not in and of itself "trespass" or "disrupting a meeting." Did protest during a recess constitute "disruption?" The jurors could not agree. Or did Rotkin abort the democratic process in his determination to run roughshod over the homeless issue? In a post-trial interview, juror Jim Cohen told *Street Spirit*:

"The reason they were arrested was because they were protesting a very serious problem in Santa Cruz County. It was the content and not the activity itself that caused the arrest. That came out very, very clearly. People are not so naive as to buy the argument that it didn't really matter what they were saying, it was just a disruption. There is a conflict in this town and, in fact, in towns all over the United States between people who are concerned with issues of homelessness versus those who just wish homelessness would disappear."

Cohen and another juror also described Rotkin as "autocratic" and "disingenuous."

Attorney Kate Wells, who represented Dan Hopkins, Shawn Nichols, and Lucas Stickney, suggested the council meeting itself may have lacked legality. By barring members of the public unconnected with the protest long after the prisoners were led away to jail, Rotkin raised the issue of Brown Act open-government provisions. Attorney Layne Goldman, speaking for protester Sandra Roth, challenged Sgt. Crain's politically-motivated selection process of who would be allowed back into the council meeting. David Uthmann, Brandy Bourgon's lawyer, got a rise from the court by aptly referring to Crain as a "bouncer with a badge."

Attorney Wells also pointed out that the Sleeping Ban law itself was something

Rotkin would not allow the council to debate. Last December, Rotkin enraged fellow councilmembers by tabling debate on a Winter Shelter Emergency proposal minutes after it was introduced [see January *Street Spirit*, "Santa Cruz City Council Silences the Public, Censors Dissent, Upholds Camping Ban"].

Street Spirit has chronicled the intransigence of Santa Cruz's "progressive" City Council majority in maintaining the anti-homeless Sleeping Ban (sections MC 6.36.010 of the Camping Ban). The Sleeping Ban mandates fines of \$70 to \$162 against those who sleep outside or in their vehicles. In the grip of an officially declared Shelter Emergency, Santa Cruz has 500-1500 homeless people on any given night, but fewer than 200 in the winter, and fewer than 30 the rest of the year have access to any legal place to sleep. Covering up with blankets and camping during the day costs a similar fine.

Crucial to the defense was getting the jury to understand that basic human rights were being routinely treated as criminal offenses in Santa Cruz at the time the defendants held their colorful protest. The Geneva Conventions aptly describe sleep deprivation as torture. How then would the International Court of Justice look on routine enforcement of a law against a whole population of people (the homeless community) that specifically prohibits them from sleeping outside and hence from sleeping at all within the City limits?

Also crucial was educating the jury about the legitimacy and importance of civil disobedience. Ted Meneice used protester Jim Cosner's words in his eloquent summation: "Women wouldn't have the right to vote if it wasn't for civil disobedience; black people would be drinking out of segregated water fountains."

JUDGE KEEPS THE JURY IGNORANT

Municipal Court Judge Tom "Kangaroo" Kelly presided over the trial. Personally friendly but judicially unrelenting, Kelly had dismissed a constitutional facial challenge to the Sleeping Ban out of hand last August. He refused to allow a necessity defense in the Lockdown case (the argument that a lesser law was broken to prevent a greater evil). He cautioned the defense to avoid discussing specifics of the Sleeping Ban law being protested. He moved to dismiss jurors from the jury pool who indicated they would follow their conscience or had sympathies with the homeless. He bent over backwards to retain jurors who had connections with police agencies.

Most significantly, Kelly directed that all issues of homelessness and the Sleeping Ban be excluded from the jury — the content of the protest and its necessity were not to be allowed to reach the jury's eyes in any detail. Juror Cohen later reported that he didn't know (and was prevented from hearing at the trial) that it was illegal in Santa Cruz to sleep outside, or to pull over to sleep in your car even if exhausted. Kelly worked to keep the jurors ignorant, controlled, and divorced from elementary considerations of justice.

Defendants reported that Kelly also had pressured them, through their compliant court-appointed public defenders, to accept a deal or a court trial without a jury or face a minimum of 90 days in jail if they were found guilty. The jury never heard the kind of punishment the defendants faced if they were found guilty.

Judge Kelly also denounced those who had placed jury nullification literature on the windshields of vehicles in the courthouse parking lot. Jury nullification is a dreaded taboo in many courtrooms, though the Indiana and Maryland State Constitutions both acknowledge it in stat-