

# Attorneys Must Learn to Serve the Homeless Movement

by Robert Norse

The recent trial of the Santa Cruz Lockdown defendants teaches again how crucial it is to honor a central principle of political movements: **activists must direct the strategy at their own trials.** Court-appointed defense lawyers and particularly public defenders need to be educated about this cardinal rule whenever they represent activists in court.

The activist/attorney split recurs like clockwork. As activists, we go into protests and subsequent court trials with our own agenda, hoping usually to beat the charges, but more concerned to use the courts to pressure public officials to change conditions and to dramatize injustice. We face ingrained and intractable attorney practices that are too often elitist and narrowly legalistic — practices so ingrained that even the attorneys themselves may be unaware of how they can be obstacles to the activist's cause.

The Lockdown defendants took the actions they took (chaining and chanting during a Santa Cruz City Council meeting) to bring public attention to the Sleeping Ban because it threatens the health, safety, liberty, and dignity of poor people. Their protest happened in the context of a larger, ongoing demonstration in front of City Hall that ultimately involved more than 370 citations and arrests, most still to go to court. This trial, then, is only one in a long string of trials about which the public needs to be educated.

Trials and demonstrations are intended to educate the public, expose the injustice of the City Council, and pressure the courts as part of a multi-pronged attack on an unjust law. There is little hope that any one strategy alone can reverse the nationwide tide of anti-homeless laws.

Homeless people need to organize and demonstrate. They need to find colorful and unconventional ways of using their ace-in-the-hole — the power to peacefully delay and disrupt institutions that otherwise

routinely deny such elementary human necessities as public bathrooms at night, a legal place to sleep without being arrested or accosted, and representation on boards and bodies that control their destiny.

## ACTIVISTS: LEARN TO MANAGE YOUR ATTORNEYS

What is for us a life choice, is for attorneys another case. The broader activist objective of using the court process for public education requires actively managing intractable, biased, or over-trained attorneys in a forum where the attorneys are accustomed to exercising power as experts and authorities.

Protesters need to insist that attorneys take orders from them, after outlining the legal options. Legal conferences should be open to activists — which may mean waiving confidentiality. In the long run, attorneys need to show activists how to research and defend themselves — though that is a broader objective.

Grant them their due, the Lockdown attorneys were sincere advocates. They made passionate and often eloquent presentations to the jury, particularly in the closing arguments. They were hamstrung by a judge who didn't want the broader issues to reach the jury and by a jury afraid to consider what broader issues leaked through. That those broader issues got out at all is a tribute to attorney effort. In the end, attorneys, clients, and supporters all celebrated the victory over conviction — they were released due to a hung jury on every count. The activists gained valuable time to prepare future trials and to educate the public on the issues of Jury Nullification and the Sleeping Ban.

## A THREE-TIERED HIERARCHY

But it is equally important to examine mistakes made. Opposing the Lockdown attorneys was a lackluster, outnumbered, unsupported district attorney, who hadn't done his homework. The attorneys did not win this trial; rather, the jury hung primarily because of one juror, Jim Cohen.

Cohen, like the activists that defense attorneys excluded from their conferences and from the witness stand, concluded that attorneys were pursuing too narrow a legal strategy to empower the jury to say no to the prosecution/judge juggernaut.

Most defense attorneys began work on the case late in the day. Understaffed and overworked, most did not maintain adequate contact with their clients. All but one made no attempt to familiarize themselves with past trials of Sleeping Ban protesters. Protesters like myself, Robert Flory, and others who had faced similar trials were not consulted. Instead of mobilizing our resources together, we were divided into a three-tiered hierarchy of attorneys, clients and supporters — each with successively fewer privileges.

After declining to contact his client for many months, one of the appointed attorneys refused to seek a continuance for his client or appear for him in absentia, but reported his client was AWOL, letting the judge put out a warrant for him. This lawyer apparently lied about being unable to reach his client and lied about his client not wanting me as a witness.

## ATTORNEYS EXCLUDE DEFENDANTS FROM PRIVATE STRATEGY SESSIONS

Most of the attorneys held private conferences. Defendants were generally not invited to the basic strategy sessions which set the agenda of the trial. Defendants were excluded from motions hearings with the judge. Supporters were neither informed of what was going on, nor was their input sought.

Many of us felt that the attorneys misunderstood the basic nature of the trial: to follow the lead of their clients, to generate a community of understanding and resistance to oppression, to educate the public. The overarching aim was not simply to get the defendants off on technicalities. Instead of putting out press releases and working as a team with the activists, the attorneys generally held closed meetings

that pressured and manipulated clients — first to take a deal, then to sever their connections with "controversial activists," then to limit their witnesses.

The effect of this kind of insulation and isolation became clear in the trial when one defense attorney gave a garbled and grossly false history of the Sleeping Ban — the law which the defendants were risking jail to expose and overturn. Only the district attorney's deeper ignorance saved the day. Equally important was attorney failure to present the simple

arithmetic of justice to the jury: fewer than 100 sleeping spaces for at least five times that many homeless people in Santa Cruz. That homeless people must face exposure, violence, and/or police harassment every night under the Sleeping Ban was an argument barred by the judge.

One supporter appeared in the courtroom hallway with a sign, "Legalize Sleep." She was ganged up on and harassed by defense attorneys for her perfectly proper, legal, and relevant message — a message utterly faithful to the spirit of the protest for which the Lockdown defendants were now on trial. Organizing a "don't rock the boat" conference, the attorneys then proceeded to scare some of the defendants to pressure the removal of the sign — further weakening the call to conscience necessary to stiffen the spine of jurors otherwise inclined to vote "Guilty" and go home. Many of the attorneys were unwilling to treat supporting activists as equals, giving them the traditional "too busy" brush-off and ostracizing those (like myself) they disliked.

In the trial itself, they did not get important specifics of the homeless situation to the jury, fearful of censure by the judge. Crucial witnesses like David Silva and Free Radio reporter Bob Duran were not called to the stand. Silva could have impeached the testimony of the chief prosecution witness, Sgt. Andy Crain, and the revealed the police-created climate of fear

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