

Eichorn Decision Vindicates Right to Sleep

Judge Brooks ruled that Eichorn had violated the Camping Ban and also said that he could have walked to an adjacent city that didn't have a camping ordinance.

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trol, Eichorn, a 49-year-old Marine Corps veteran and 14-year resident of Santa Ana, had been unable to find work as a manual laborer that paid enough to allow him to find an alternative place to sleep.

Police found Eichorn on the ground in his sleeping bag, using his clothes as a pillow, at 10:30 p.m. outside a county office building in the Santa Ana Civic Center. He was photographed, cited, and asked to move on — which he did.

Eichorn originally moved to Santa Ana in search of an ice-cream truck-driving job, which he held for a year while living in a motel. When he lost that job, he frequented the casual labor office until it closed, relying on general relief and food stamps. With less expensive motel rooms torn down, he couldn't get shelter and slept in the Civic Center, close to services, including restrooms, and where there was "safety in numbers," that is, where it was less likely someone would steal or attack you while you slept.

Eichorn did not like living outside, worked every chance he got, and had been turned away from the Armory in the past. On January 25, 1993, he didn't remember whether he had tried to find a spot at the Armory or had heard all the spaces were filled. His mother and stepfather lived in Long Beach, but staying with them was not an option because he was "an adult responsible for himself."

UC Irvine Professor of Criminology James Meeker testified that his 1993 survey of homelessness in Orange County found 3000 homeless people, mostly

longtime residents living there an average of 14 years, who had lost jobs and could not afford housing. Orange County had relatively little affordable housing and it had been decreasing.

Single men had a particularly difficult time because they were less likely to receive support from family, friends, or government agencies. They slept outside because they had no choice. They were 10 times more likely to be crime victims than average people. Many homeless people stayed in urban areas because of proximity to shelter and assistance providers, day jobs (only eight percent were unemployed and not looking for work), and public transportation.

Santa Ana, according to Timothy Shaw, executive director of the Orange County Homeless Issues Task Force, had about 1500 homeless people in 1993 with 118 shelter beds available for single men. The Armory could accommodate an additional 125. As was routine, these shelters were full on the night Eichorn was cited.

June Marcott, Orange County program manager for food stamps and general relief, testified that Eichorn participated in a work program (working nine days out of the month) and also actively looked for work, making four job applications per day. He last received general relief in November, 1990, and applied for relief in March and June, 1992, but was denied.

Still, Judge Brooks ruled that Eichorn had violated the Camping Ban and was not involuntarily homeless. Brooks declared — in the face of both hard evidence and expert witnesses to the contrary — that Eichorn somehow chose not to go

to the Armory, and that he should have sought out familial or government relief. Brooks also suggested that Eichorn could have slept in or in front of other non-public buildings nearby and also said he could have walked to an adjacent city without a camping ordinance.

The Fourth Appellate Court disagreed with Judge Brooks, ruling: "There was substantial if not uncontradicted evidence that defendant slept in the civic center because his alternatives were inadequate and economic forces were primarily to blame for his predicament. Neither trespassing on private property nor walking to a different city are adequate alternatives. Simply put, Santa Ana may not 'solve' its social problems by foisting them onto nearby localities; an individual who has no reasonable alternative to sleeping in a public place in Santa Ana need not travel in search of streets and other public places where he can catch his 40 winks."

Now that the appellate court has upheld the use of a defense of necessity for those arrested under the Santa Ana ordinance, time will tell if homeless people in the many California cities which have similar sleeping bans will begin to challenge those arrests in court. It is impossible to foretell what the California Supreme Court will make of this ruling by the appellate court.

However, one thing is sure: the claim by homeless advocates all over the state that police have no right to arrest homeless people for the supposed "crime" of sleeping or camping has been vindicated by a California court. A just society would end, once and for all, the judicial travesty of making criminals out of people who must sleep somewhere, given that it is essential to human survival.

For more information on the Eichorn case, see the Daily Appellate Report of the *California Daily Journal*, Friday, January 22, 1999, pp. 659-662.