

EICHORN DECISION: NEW TOOL TO RECLAIM OLD LIBERTIES

In San Diego, when four slumber-felons told the judge they were fighting their cases with the Eichorn right to use the necessity defense, the court dropped the cases. A new defense was in town.

by Robert Norse

There isn't much in the way of new shelter or truly affordable housing in San Diego, as city officials continue to keep the homeless from their legal right to use the Naval Training Center for housing (as provided by the federal Stuart McKinney Act giving homeless people first priority for abandoned military facilities). But human rights activists are successfully attacking the City's Sleeping Ban through an old court tool given new life in a recent Appellate Court decision.

Street Light writer and homeless advocate Roger Scott is distributing a simple flyer downtown that is, by his report, already making large ripples in the court and on the street. The flyer reads:

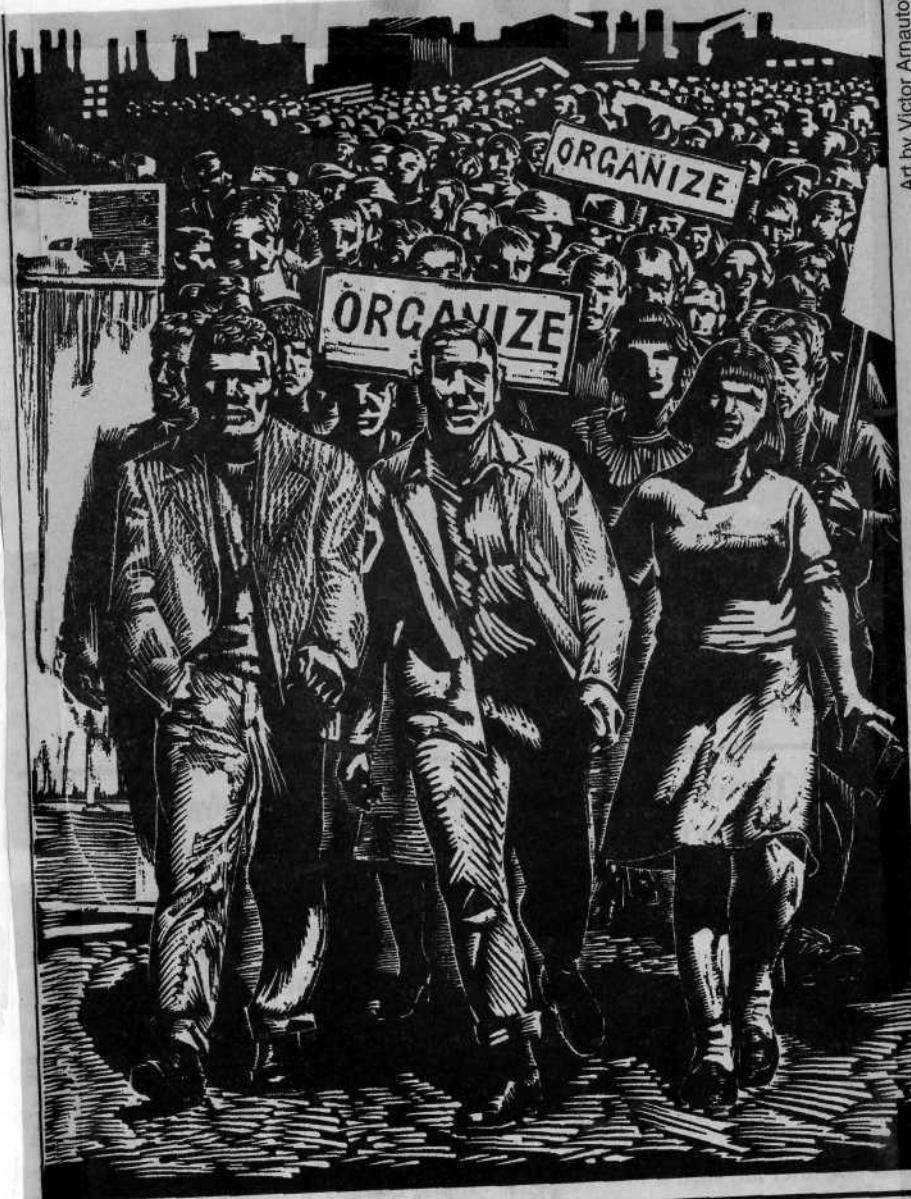
"Call Info Line 1-800-227-0997 before you go to sleep at night to verify that there are no emergency shelter beds available. If you receive a citation from the police for illegal camping, do not admit guilt for anything. Merely state that you contacted Info Line and were told that there was no shelter available. When you go to court (a) plead not guilty, (b) ask for legal representation, (c) ask for a jury trial, (d) tell your attorney to assert the necessity defense as stated in the Eichorn decision."

The recent Eichorn decision does not actually overturn outright any of the many California municipal sleeping bans. But it makes prosecution of such so-called "quality of life" misdemeanors very hard, time-consuming, and expensive.

On January 25, the Fourth Appellate Court ruled that "sleep is a physiological need, not an option for humans," and "necessity is a valid defense to the charge of violating a city ordinance banning sleep in public areas." ["Eichorn Decision Upholds Sleep as a Human Right," March, 1999, *Street Spirit*.]

On May 12, the California Supreme Court upheld Eichorn by refusing to review the City of Santa Ana's appeal. They further declined to decertify it, thereby making it binding precedent statewide, which all state courts are required to follow.

Defendants can cite Eichorn to force local judges to allow them to argue the "necessity defense" in any camping case. The necessity defense requires a rather complicated and extensive showing by the defendant that she or he had to break the



Art by Victor Arnautoff

When police found Roger Scott sleeping down at the Concourse to kick off a new round of the People's Establishment protest, they arrested and jailed him. But this time, after four hours of screaming "lawsuit" and "Eichorn," they released him without charges.