

law to avert a worse evil; that is, they had to break the law in order to sleep because no other legal options were available.

Since no city of any size in the U.S. has adequate shelter for their local homeless population, Eichorn puts a powerful tool in the hands of homeless people with enough strength, savvy, and support to wind their way through the court process.

Last year, San Diego homeless activists launched and sustained the largest and longest homeless protest on the West Coast in years: the three-month-long, 200-person-strong, City Center Sleep-In at the Concourse. Police succeeded in dispersing "The People's Establishment" protest with threats to arrest and prosecute sleepers for illegal "lodging" — a misdemeanor with penalties of up to \$1000 and/or six months in jail.

But this year, with Eichorn on the books, things are different. When police found Roger Scott sleeping down at the

Concourse to kick off a new round and a second year of the People's Establishment, they arrested and jailed him. But this time, after four hours of screaming "lawsuit" and "Eichorn," they released him without charges.

When Scott began distributing his "Call the Info Line" flyer, urging people to take their cases to trial with the Eichorn defense, police spread the word that Scott's action was prompting the cops to crack down. But 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.

Attorney Kate Wells has represented over 100 Sleeping Ban cases in Santa Cruz stemming from the seven-month City Hall Sleepers Protest — a peaceful civil disobedience challenge to the harsh law that declares, "Go to sleep after 11 p.m., go to jail." Judge Tom Kelly told

Wells that the Sleeping Ban was constitutional because "homeless people can just as well sleep during the day."

"Now that argument won't fly," Wells says. "Since there's never adequate shelter space in Santa Cruz, defendants can always argue that health and safety are a necessity that requires them to sleep, even though City Council would prefer that people without money move on."

"Back in January I tried to get City Council to open an emergency sleeping zone for homeless people being beaten by sadistic so-called trollbusters. I was shown the door. They added insult to injury by reaffirming the Sleeping and Blanket Bans. ["Activists Charge Bad Faith as Santa Cruz Upholds Sleeping Ban," April, 1999, *Street Spirit*.] Now they may have to listen at last and provide safe sleeping spaces or face substantial lawsuits."

Cities eager to engage in "homeless cleansing" must pay for police, prosecutor, public defender, and jury trial in an extended trial process that provides for a lengthy hearing of the necessity defense, a nightmare for judges used to quick convictions of homeless "sleep-criminals."

Eichorn is similar in spirit to the 1992 Pottinger ruling by Florida Federal Judge Clyde Atkins. That decision struck down and enjoined Miami, Florida's anti-homeless police behavior. The 1998 court settlement there immunized Miami's homeless from arrest for "life-sustaining" misdemeanors unless shelter beds were available. "Crimes" such as sleeping, setting up a tent in a park, public urination or defecation were no longer arrestable offenses until a legal sleeping area was available.

San Diego's homeless newspaper, *Street Light*, reports that only one of the reactionary City Councilmembers supports opening a women-and-children's shelter during the summer. Mayor Susan Golding has no interest in opening up any additional (much less adequate) emergency shelter for that city's 5000 downtown homeless. With Eichorn established law, she must now either do just that, tell her police to lay off, or face a round of lawsuits that might relieve the City of surplus funds.

The Pottinger settlement brought \$1.5 million to Florida attorneys and homeless people as damages for civil rights violations and property losses. The threat of a similar blow to the pocketbook in San Diego may shake loose a few shekels for basic needs, even as street activists use the law to protect their right to sleep without midnight police interruption.

The Eichorn decision isn't of much use if you can't get a jury trial. The main point of arguing a "necessity" defense is to appeal to a jury's basic conscience and common sense. Some cities, including Santa Cruz, have sleeping bans where the "crime" of sleeping is not a misdemeanor (where you get a jury trial and a free pub-

*See New Tool to Reclaim Liberties page 15*