

A New Tool to Reclaim Old Liberties

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lic defender), but rather an infraction (where you get neither).

What can homeless people do if prosecuted for an infraction? Use the Flory-Edwards-Jacob defense, named after three legendary Santa Cruz homeless activists who went to jail dozens of times to support the civil rights of the poor. This defense relies on the fact that infractions, because they are so minor, do not allow jail as a penalty. Hence, if you go to trial and are found "guilty" of sleeping, you refuse to do community service or pay a fine.

Instead you point out that the court does have the power to enforce a judgment of a fine by execution as in the case of a civil judgment (e.g., confiscate and sell your blanket or backpack for the amount owed). It could also, in the case of a violation of the Vehicle Code, try and jail you for the separate misdemeanor of Failure to Pay. But, alas for the authori-

ties, sleeping ban infractions are not vehicle code violations, so there is no Failure to Pay law that pertains to them!

Defendants can cite Attorney General's Opinion 63 Att Gen Op. 418 (1980) which holds, "the power of the court to enforce payment of fines is regulated by those sections which do not authorize imprisonment for nonpayment." Hence, judges — if they follow the law — cannot hold you in contempt or simply order you on pain of jail to pay sleeping ban fines.

Santa Cruz courts have divided evenly on whether defendants can apply this Flory-Edwards-Jacob defense. Most recently, van-dweller Dennis Rehm refused to pay a fine for sleeping in his vehicle, declaring he would rather go to jail. After Attorney Kate Wells presented the F-E-J defense on Rehm's behalf, the judge suppressed the warrant, though warning that another would soon issue. Four weeks later, none had. Rehm had quietly won his case.