

# Resisting the Goliath of Anti-Homeless Bureaucracy

Santa Cruz is home to the infamous sleeping and sitting bans and the hideous begging ban. But it is also home to many activists who have waged valiant struggles against the Goliath of hypocritical, anti-homeless bureaucracy.

by Becky Johnson

**W**hen I was a young mother, raising small children, I remember reading in the paper about a man named Paul Lee who was opening a homeless shelter on Cedar Street in Santa Cruz. I felt a great sense of relief in that moment. After hearing about the problems of homeless people on the radio, seeing it in the papers and on TV, and observing a growing number of people in Santa Cruz who were obviously on the streets, I felt a pressure inside of me, like having a sick child, that something must be done.

Paul Lee and Page Smith opened their cold-and-rainy-night shelter on Cedar Street in the winter of 1985. They did it without permits. They did it in spite of zoning regulations. They did it because when people are cold, and getting wet, and walking with crutches, or sick, or too depressed to carry on, someone else must intervene. They were responding to the shamelessly unmet human needs of those



*"Sleep Is Not A Crime." Activist writer Becky Johnson decries the sleeping ban.*

individuals. They also acted in response to a 33-day hunger strike by Jane Imler that resulted in her permanent kidney damage — they acted to "to save her life."

In 1989, their organization, Citizens Committee for the Homeless, issued a position statement on the city's Camping Ordinance. In essence, they said that in a situation in which there is not sufficient shelter, it is unconscionable to not allow people to sleep or shelter themselves from the elements.

Civil rights are the LAW. Most civil rights are protected by the Bill of Rights

in the U.S. Constitution. Those first 10 amendments of the Constitution are our best legal protections for homeless people. They protect their rights to be in public spaces, which is a great concern to homeless people.

The San Francisco Coalition on Homelessness identified eight "quality of life" ordinances that are the source of the vast majority of citations issued against homeless people by police across the nation. That includes liberal, progressive Santa Cruz, where we think we're so different from the rest of the country.

But when it comes to civil rights violations, Santa Cruz has been a leader. Our sitting ban, a descendent of a closely watched Seattle law, has had a remarkable social cleansing effect on Pacific Avenue. While it is not illegal to sit everywhere, it does rate a \$162 ticket if your coat is too shabby, or your hair too uncombed. The law has been copied by Palo Alto and San Jose.

Some of these laws were passed by the City Council in 1994 as special-interest legislation for merchants. Neal Coonerty, owner of Bookshop Santa Cruz, was riding high back then. Under his leadership, the council passed the Downtown Ordinances, which brought Seattle bigotry and cynicism to Santa Cruz. One of those imported ordinances, dubbed the Coonerty Café law by critics, allowed owners to pick and choose who could be on the sidewalk in front of their cafés.

Another quality of life "crime" targeted by the Downtown Ordinances is begging or panhandling — a survival skill used by homeless people (and on a much grander scale by big business charities and telemarketers). Panhandling is defined by our local ordinance as asking for anything of value. That means verbally, person to person. Remember the First Amendment — freedom of speech?

This law says it is illegal to panhandle from a sitting position, or while closer than three feet from a person, or in groups of two or more. Remember that part of the constitution that guarantees the right of

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the people to peaceably assemble? It is illegal to panhandle after dark. So in the middle of winter when daylight is limited to about 10 hours, homeless people cannot ask for money, for food, or presumably for a blanket for a 14-hour period on the coldest, darkest night of the year.

As if that weren't bad enough, our local Hosts stroll about Pacific Avenue under the tutelage of Community Service Officer Malate forcing elderly men and disabled women who are silently holding up signs to stand up or face \$162 panhandling tickets. Though the City Attorney dismissed citations issued by Malate a year ago, he has resumed the practice. This town gets ready for Christmas by sweeping the streets of the poor.

The Homeless Issues Task Force will soon pass a resolution that asks Mayor Katherine Beiers to restrain her police from their traditional practice of driving homeless people away from alcoves and awnings on Pacific Avenue into the rain. Homeless advocate Sheri Conable has documented that this practice apparently swings into full gear around this time of year to "protect" local profits.

City Attorney John Barisone will claim the Downtown Ordinances simply regulate the time, place, and manner of panhandlers and don't ban them outright. But under this law, poor people cannot ask for food after dark, cannot ask for alms while sitting down, and cannot sleep outdoors at night. They cannot sit less than 10 feet from a building, even if that building is closed for the night or is vacant and no one has complained. They cannot seek shelter from the pouring rain by sitting under an awning to stay dry.

What would be the motivation for a city to issue these kinds of restrictions on the basic freedoms of the poor unless its real purpose is to drive people from public places? But it is not constitutional to do so. It is completely illegal. Santa Cruz is violating the civil rights of homeless people on a daily basis through a policy of illegal harassment by the Hosts, the police, the courts, and the jails. BIG PAY-ROLLS are being generated by these hundreds of arrests and court cases.

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Our own Sleeping Ban (section 6.36.010a of the Camping Ordinance) is the most blatant example of a civil rights abuse of homeless people in Santa Cruz. Our own City Council, led by Mayor Beiers, has upheld it as recently as last March (with lowered fines: it now costs \$54 for each ticket). The Sleeping Ban has never undergone constitutional challenge at an upper court level.

When local attorney, Kate Wells, took three tickets Dan Hopkins had been issued at the City Hall Sleepers Protest from 1996 and attempted to challenge this law's constitutionality, Hopkins was convicted of sleeping at night by Judge Thomas Kelly. Kelly ruled the law was constitutional — "Because homeless people can sleep in the day." What Kelly never proved, and the appeal that was denied never got to unfold, was the issue of why the city takes an interest at all with whether a person sleeps at night or not.

What is the harm if a person sleeps at night? Just who exactly is harmed? The reason this law is unconstitutional is both on its face and as it is enforced. On its face, it violates the right of the individual to travel. For inherent in the right to travel is the right to stay in one place; and the right to stay in one place contains the right to sit, lie down, eat, and, yes, sleep. Any fine for sleeping is an "excessive fine" prohibited by the constitution.

As enforced, the sleeping ban is unconstitutional because it is selectively enforced. Shiny, new Winnebagos can

park on West Cliff Drive all night with no fear of some officer beating dents into the back door if the owners don't answer quickly enough. Unbelievably, at trial, officers use the lag time from when they first start beating on a van or car with a suspected sleeper inside, until they respond as "evidence" the person was sleeping.

What about the right of a person to be secure in their person or effects? What about the person's right to exist? If you exist, you must, sooner or later, sleep. This law allows police to ban those they don't like from Santa Cruz by banning a function vital to human survival and sanity.

The recent Eichorn Decision offers much hope for homeless people who are criminalized for sleeping, covering up with blankets, or erecting make-shift shelters. The Eichorn decision, an appellate court decision that overturned a camping-ban conviction against a homeless man in Santa Ana, provides that a homeless person may use the necessity defense for a sleeping or camping citation.

In other words, homeless people have no other choice but to break the law, in order to prevent a greater harm, when they are forced to sleep outdoors in cities with completely inadequate shelter space. In Santa Cruz, for eight months of the year, we house only about five percent of our homeless population. Four months of the year we house twenty percent. Santa Cruz is far from the city doing the most for its homeless people. (Ironically, I believe that is Salt Lake City, Utah).

We are better than cities that do nothing — and there are plenty of cities that do nothing. But when it comes to providing shelter for the homeless in Santa Cruz, we are as bad as the rest. Santa Cruz is far from being Eichorn compliant. Yet our City Attorney has declined to issue a letter to the Courts even acknowledging that Eichorn is currently the precedent.

Open container laws are greatly abused to discriminate against poor people, as are laws against drinking in public. I spoke with one homeless woman who was trying very hard to make something of herself by taking classes at Cabrillo. She collected aluminum cans to earn extra money. A Santa Cruz police officer detained her, looked through her bag of cans and found one beer can, already crushed. He turned it over and a few drops of beer dripped out. "Open container," he said and cited her with a \$162 ticket.

For a homeless person who dares to drink a beer, there is no legal place to drink it. They usually do not have permission to be on private property. They cannot be in a vehicle. They cannot be in a park, or on a sidewalk, alley, or the beach.

When was the last time you saw a Santa Cruz police officer go up to a Yuppie picnic and sniff everyone's Pepsis and their Odwallas to see if they might be spiked with vodka? Selective enforcement is illegal. If the police are going to sniff a homeless person's Dr. Pepper, they also need to sniff the coffee of a business executive on his way to a power sales meeting. But they don't — and that selective enforcement is against the law.

Other local laws used to harass homeless people are ordinances against "scavenging" and — remarkably — recycling. Two weeks ago, a woman who works long, hard hours recycling to buy medicine for her child, testified before the Homeless Issues Task Force about the tickets she's received for retrieving cans from blue bins, even with the permission of the owner of those cans, under a new law passed by the City Council in the summer of 1998.

Selective enforcement can also be used against the activist community. Activist Bob Duran, a Free Radio Broadcaster who worked with Copwatch and Food Not Bombs, was directed by a police officer not to retrieve the letter that Duran had thrown in the post office trash a moment before or he would be ticketed for "scavenging." Robert Norse, of Homeless United for Friendship and Freedom, goes to trial this month for simply sitting on the base of the statue in front of Bookshop Santa Cruz. City Attorney Barisone admitted he has seen other people sit there regularly, but when Norse asked him to dismiss the ticket, Barisone said he wouldn't do so without the direction of the police or the City Council.

The "shoulder tap" law, coming up now before the City Council, poses civil rights concern for young people. As usual, homeless youth are on the front line. With Police Chief Belcher's 1997 youth curfew law, they were told to "go home after 11 p.m." when homeless young people had no home to go to. With Belcher's 1998 river curfew law, they were told that — forget about sleeping under a bridge — just being under a bridge after dark was now criminal behavior. Now, even though getting an adult to buy you liquor is already a crime, possessing liquor for a minor is already a crime, and buying liquor as a minor is a crime, Chief Belcher wants just asking a friend to buy a beer — even if the friend then takes no other action — to be a crime.

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The Struggle  
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Threatening youth with criminal records for simply asking for a beer is a bad idea. The City Council should see past this supposed "youth protection" measure, which criminalizes free speech, is a license for selective enforcement, and sets the stage for stay-away orders, which are now a favorite tool of the police in banning homeless people from downtown.

But one ray of light here in Santa Cruz is the case of Dennis Rehm. He is a vehicularly housed man who was cited for sleeping in his vehicle a year ago when an officer claimed he heard him snoring in his camper parked over in the industrially zoned Harvey West area of Santa Cruz. Rehm was convicted of sleeping.

He went to court and told the judge that he could not pay his fine because, being homeless, he had insufficient income. Yet even if he had the money, he said he would refuse as a matter of principle, nor would he volunteer for community service. Rehm was using a defense pioneered by homeless activists Robert Flory, Linda Edwards, and David "Won Ton" Jacobs. These activists researched case law to find that it is illegal for the courts to impose misdemeanor pun-

ishments and jail sentences on non-vehicular infractions such as the sleeping ban.

When you are charged with a misdemeanor, you face a possible \$1000 fine and/or six months in jail. You have the right to a jury trial and a public defender. With an infraction, you may only be fined, will be tried by a judge only, and have no legal right to an attorney. Rehm's non-payment of his sleeping ban fine would result in a Failure to Pay warrant issued for his arrest. That means being taken into custody, handcuffed, your vehicle impounded, your dog in the pound, booked, fingerprinted, and held in jail. But it is illegal for the courts to jail a person for a non-vehicular infraction.

But Santa Cruz County judges are slow learners. Dennis has gone to 13 court appearances with three judges. At his last court appearance in late October, Judge Arthur Danner considered Assistant City Attorney Anthony Condotti's arguments as to why the judge should not quash the warrant for Rehm's arrest even though it was for a non-vehicular infraction.

Rehm's attorney, Peter Leeming, reminded Judge Danner that the City has recourse: It can sue Rehm in civil court, attach his property, and garnish his wages. Danner, hearing no compelling argument from the City, promised at the Friday hearing to give his ruling in writing on Tuesday. Unfortunately for Rehm, he didn't say which Tuesday. We're still waiting.

Quashing Rehm's warrant would mean that all homeless people charged with non-vehicular infractions — sleeping, sitting on a planter, sparechanging in groups of two or after dark, having an open container of alcohol, et al. — may all still get convicted, and still have a criminal record. But they won't be going to jail anymore. And the feasibility of the city successfully suing a homeless person who, practically by definition, has no income to garnish, and no assets to attach, is laughable.

Perhaps in the end, we can still be proud to live here in Santa Cruz. Yes it is home to the infamous sleeping ban, the hideous sit-ban, and the horrid begging ban. But it is also the place where Lee, Smith, Imler, Flory, Edwards, Jacobs, Norse, Hopkins, Wells, Conable, Duran and Henry, and many others have waged valiant struggles to take on the Goliath of hypocritical, self-serving, anti-homeless bureaucracy: our own city government.

And maybe one of these days we will win.