

# Santa Barbara's Sleeping Ban Stumbles in the Courts

## New legal strategy challenges police harassment of vehicle dwellers and homeless campers

by Robert Norse

**S**anta Barbara, a wealthy seaside community of 90,000 located about 100 miles north of Los Angeles, has a homeless population estimated at 2000; in the county, 3000 of the 185,000 residents are homeless, with 60-120 RVs and cars housing folks living in vehicles.

"In Santa Barbara now and for the foreseeable future, affordable housing for many poor people is and will be a car. And that's illegal," says Peter Marin, homeless advocate, poet, and writer, who has struggled to restore civil rights to people in poverty there for two decades.

Santa Barbara was in the center of the nation's homeless rights struggle in the 1980s. Attorney Will Hastings successfully established the right for homeless people to vote, taking the case all the way to the U.S. Supreme Court after Santa Barbara's militant Homeless People's Association blocked Highway 101. The City's Sleeping Ban was suspended for three years following a high-profile homeless organizing campaign, protests at President's Reagan's summer White House, and a "Come to Santa Barbara to Go to Sleep, Go to Jail" campaign by activist Mitch Snyder and his Washington, D.C.-based Community for Creative Non-Violence.



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On August 16, 1997, Linda Archer, a homeless woman, was found stabbed to death with a citation for "illegal sleeping" in her hand [see "How Many More Must Die?" *Street Spirit*, October, 1997]. She had moved from a safer more visible area after police harassment. A year later, young activists persuaded the Santa Barbara City Council to put repeal of its Sleeping Ban law on the agenda, but it died in committee. More recently Peter Kreuzlich, another homeless person, was murdered near the Rescue Mission, dramatizing the perils of sleeping in solitary places that happens when homeless people try to avoid sleeping ban tickets.

In recent years, Santa Barbara has largely stopped using the Sleeping Ban, which explicitly criminalizes sleeping in public (Municipal Code 15.16.085). Instead, authorities use the catchall "Camping Ban" (15.16.070) and the ban on "Recreational Vehicles" in "Unlawful Areas" (15.16.080). The Camping Ban makes it unlawful for any person to camp in any public park, any public street, any public parking lot or public area, improved or unimproved, and even any public beach. The ban on Recreational Vehicles makes it unlawful to use any vehicle for "sleeping or human habitation" in any of the areas cited above.

Last year, reported the *Washington Post*, Santa Barbara city police issued 200 anti-camping citations and roused many others from their parking spaces.



He next confronted Cooper on the street as she returned. In the course of an argument, Hove took Cooper down to the ground and put her in handcuffs. Hove testified he is 6 feet tall and weighs 180 pounds and that Cooper is 4'9" and weighs 90 pounds. Cooper had a seizure while being handcuffed. Witnesses say Hove refused to loosen the handcuffs and they had to pressure the police officer to let them get an inhaler to her.

In arguing the necessity defense, Mowrer had to show that no reasonable alternatives to sleeping outdoors were open to Mobley and Cooper. The homeless shelter was closed, but the Rescue Mission was open. However, had they gone to the Rescue Mission, they would have been required to separate and listen to religious propaganda as a condition of entrance. The couple also had a dog which would have been left untended in the vehicle. The vehicle itself, they argued, was more likely to be vandalized if no one was there.

Commissioner Talmadge's final decision was to find Mobley not guilty, since he worked as a security guard at night and, by Talmadge's reasoning, would have not been able to use the Rescue Mission. Talmadge found Cooper guilty since she supposedly could have used the Mission. Had Cooper used the Mission and exited at 7 a.m., however, she could still have been back in the vehicle at 7:30 a.m. when Hove came upon them.

Mowrer is appealing the Cooper verdict. Mowrer estimates the bill for the case (including upcoming appeal) at 20-30 hours of city attorney time — which, at \$100 per hour, is a tidy sum.

Mowrer will argue on appeal that Officer Hove made a prejudicial assumption that anyone who inhabits an RV and parks it on the streets of Santa Barbara at any time violates the law. Mowrer also will argue that state law preempts the city anti-camping law and that the camping law is unconstitutional in denying people the right to intrastate travel. Moreover, requiring the couple to go to a religious shelter violates the First Amendment as well as their right to privacy.

A second case on appeal involves David Ridley, a street juggler, who Commissioner Talmadge concluded (without confirming evidence) could rent a room in Santa Barbara because he makes good money at the peak of the summer season (up to \$300 per week).

The fact that he makes much less during other months did not persuade her. "I'd like to be able to live in Montecito [a wealthy suburb]," Talmadge told a Camping Ban victim in another case, "but I can't." In other words, don't be caught living outdoors or in an RV on the streets of Santa Barbara unless you can afford its rapidly rising housing costs.

The appeal process may take two months, but Mowrer's steady, methodical,

legal assault seem to be producing a de facto change in police policy. "Once you get the necessity defense in," notes Marin, "the prosecution position is deeply undercut. The policy has changed because it's such a hassle to enforce it. It's too time-consuming and too costly. They know that each time they write one of those tickets, the cost will be several hundred to a thousand dollars (if you add up court costs, attorney's fees, etc.)." For a \$25 ticket, which was what the \$72 tickets are often reduced to, this is too much for too little.

Over the last two decades, the movement to decriminalize homeless survival has moved from the bushes into the streets into the City Council chambers and finally into the courts. "Glen (Mowrer) is a more experienced lawyer who knows the issue better than the young city attorneys," concludes Marin. "They didn't dream of becoming prosecuting attorneys to fight homeless tickets in court. Their heart isn't in it, and Glen's is."

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In response, Marin drew lawyers and activists together to form the Committee for Social Justice to diplomatically press for legislative change for legal sleeping areas. Out of that committee came the Legal Project, led by volunteer Glen Mowrer, who had been head of the entire Public Defender's office. Mowrer, the top man in the Public Defender's office the year before, took on this job for no money whatsoever and puts in an estimated 15-20 hours per week on it.

His self-imposed task is to challenge infraction charges against the homeless. He has taken on each camping ticket on a case-by-case basis. His job is to restore justice to infraction law, where the defendant has no right to a jury trial or a court-appointed lawyer, and through asserting those rights, encourage the City to take the legislative steps to end bad laws and spare itself and its victims the time, the trouble, and the cost.

As of the end of April, 2001, Mowrer had taken 35-40 tickets to court, won all but two cases, and was appealing those two. Successful in persuading city prosecutors to drop cases against two dozen folks living full-time in their campers before they even reached the judge, Mowrer explained that most people living in campers on the street are not transients but longtime residents on fixed incomes or with low-wage jobs. Buying an old camper can be cheaper than two-months rent.

Mowrer has used a variety of defenses to dismiss the \$72 tickets, which come from city, county, and state authorities. Inappropriate use of city law on private property, manifest lack of evidence in the prosecution case, and failure to meet the evidentiary burden of "beyond a reasonable doubt" disposed of some of the cases.

In a few key cases, Mowrer presented the necessity defense based on the Tobe case out of Santa Ana, which requires courts to hear the argument that though defendants may be technically guilty, they had no adequate alternatives but sleeping outdoors, had to respond to a greater evil, did not create a greater danger, didn't create the predicament, had a good faith belief the "crime" was necessary, and had a belief that was objectively reasonable. [see *Eichorn* 69 Cal App 4th 382, citing *People v. Pepper* 41 Cal App 1029, 1035]

Last August, Commissioner DeCaro upheld the necessity defense in the case of Linda Miller, a 44-year-old woman sleeping in her Winnebago after she and her children had lost their subsidized housing when the building was sold. She had taken medication for a sore tooth which made it difficult to drive. Homeless shelters and state beaches were full. Deputy City Attorney Bill Carroll suggested that those who can't afford to live in Santa Barbara move to cheaper places like Bakersfield.

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Mowrer notes that at least 80 percent of his clients have a specific disability and a fixed income of about \$750 per month. Many are longtime Santa Barbara residents, have kids in school, jobs in the area, and identify Santa Barbara as their home. The recently opened homeless shelter operates only between December and April and serves only a fraction of those forced to live outside. The National Guard Armory, a winter option for some communities, has been closed in Santa Barbara for years.

The city's rental vacancy rate is a harsh one percent with one-bedroom units going for \$1100. The City's 450-500 SRO units (single room occupancies) have shrunk in the last five years to about 120, according to sworn testimony from Housing Authority Executive Director Robert Pearson. Rent increases by 20 percent per year. The working homeless, reports L.A. Times reporter Veronique de Turenne, earn minimum wage staffing the city's restaurants, private homes, and resorts, making \$11,000 per year.

Mowrer's victory in the overwhelming majority of camping cases he's taken on may have prompted perhaps an unofficial police moratorium on sleeping tickets, and certainly a significant drop in ticketing. The two cases he has not won, he is appealing. One of these gives both a sense of the typical "camping case," exposing the kind of survival issues and institutionalized police misconduct at stake.

Last September, Officer Hove cited Julie Cooper and Brian Mobley for violating Santa Barbara's Camping Ban. Officer Hove knocked on their legally parked, legally registered vehicle at 7:30 a.m. on September 30, then, when they didn't respond, began jumping up and down on their bumper. In testimony at a preliminary hearing, the couple said they were having sex and so didn't hear the officer.

Later he came back to the vehicle, staking it out, and confronted Mobley, sticking his foot in the camper door, entering without permission or warrant, and finally giving Mobley a ticket for illegal camping in a vehicle.

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## Santa Barbara Sleeping Ban Is Challenged

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While Mowrer is fighting to uphold basic rights in court, the Committee for Social Justice has gone to the County and City with several legislative proposals. One is to open up a distant "gone-by-dawn" parking lot for use at night as a legal sleeping zone. Another is to let churches and businesses open their parking lots at night, given adequate toilets, as is done in Eugene, Oregon, and Santa

Cruz respectively. A third is to take on the Eugene system of sending in a social worker rather than a police officer to deal with "problem" camping situations.

As he waits for these proposals to get through committee, Marin wonders at the progress he's made, trying to argue for an incremental approach. "The problem," says Marin, "is not to get police to treat people differently, but to recognize that this is a matter of housing. Even the recent Housing Conference left out SROs and people using vehicles as shelter. Perhaps the solution is embarrass them when they don't listen to reason. When you tell them they're fucking over the poor, they point to the shelter. Perhaps mockery is a better answer. It keeps truth in the air. If you accommodate the fiction that they're generous people, it can

become so frustrating you have to fight the impulse to say, 'No, you're still behaving like assholes.'"

Downtown on State Street, in-your-face activists like "Protest" Bob Hansen and James McGruder have begun a vocal "Boycott State Street" campaign, urging shoppers to take their cash elsewhere until the Santa Barbara City Council rescinds its Sleeping Ban and opens up publicly accessible restroom facilities. Activist Nancy McCradie's group, HOW (Homes on Wheels), has been urging the city to decriminalize vehicular sleeping for years. And every week in Santa Barbara, Glen Mowrer and a few volunteer attorneys raise the legal issues that may one day force city authorities to wake up.

For more information, contact The Legal Project in Santa Barbara: 805-560-6062.