

# Court Victory Upholds Legal Rights of Homeless People

## Arcata judge finds a homeless man not guilty on charges of illegal camping and blocking sidewalk

by Robert Norse

**R**ocked by an electoral, police, and bureaucratic backlash against homeless people last month, Arcata activists were cheered by a recent court victory. Michael Scott Porter, an environmental activist who was also homeless, was found not guilty of illegal camping and not guilty of obstructing a downtown sidewalk in a ruling by Superior Court Judge W. Bruce Watson.

Two years earlier, on June 10, 2003, police had cited Michael Porter for "camping," that is, survival sleeping in nearby Redwood Park when there was no legal shelter in Arcata. After four court appearances and nearly two years, Judge Watson held a two-hour court trial where pro bono attorney Tracy Herrin defended Porter.

After listening to testimony from two police officers, an expert witness on the availability of homeless shelter, and Porter himself, Judge Watson issued a rare written and published decision finding Porter not guilty. Porter was also found not guilty of a second citation for "obstructing movement" by sitting on a downtown sidewalk in an alcove with his guitar.

Attorney Herrin later suggested that it was Porter's beard and long hair that

inflamed the Arcata merchants and police, who recently joined forces in an anti-homeless backlash against youth who hang out in the Arcata plaza. Porter's ticket may also have been prompted by the fact that he asserted his right not to show ID when told to do so by the officer.

In the illegal camping case, Herrin relied heavily on the help of Tad, an outspoken activist with the Houseless Coalition of Arcata who had earlier won his own camping case in 2003 [see "Arcata Activist Resists 'Homeless Cleansing,'" May 2004 *Street Spirit*].

"Tad alerted me to the key Eichorn case, taught me the arguments, showed me the evidence, and brought in the witnesses," Herrin said.

Houseless Coalition activists under Tad's leadership have recently joined Arcata's Homeless Task Force to lobby for a self-run homeless campground, an end to rampant police harassment, and city-funded homeless employment programs.

In the course of this struggle, Tad was repeatedly arrested by police, and has often defended himself. He suffered a beating by police when taking part in a local "Copwatch" group to monitor police con-

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**Little money, little law.**

Poor people find it very hard to pay for lawyers and "buy justice." Doug Minkler art

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duct. There, Tad reports, a police officer said to him, "You don't have your video camera with you this time, do you?"

In mid-May, Attorney Herrin reported the use of a taser on a homeless-looking man, seen by several astonished middle-class locals. The man's crime? Declining to talk to a police officer downtown.

### NECESSITY DEFENSE

In Porter's case, Herrin mounted the complicated "necessity" defense, which has proved vital in defeating camping charges in Albany, Sacramento, Santa Barbara, and most recently in San Diego.

To prove oneself not guilty by reason of necessity, the defendant admits he violated the law but proves by a preponderance of the evidence that this happened: (1) to prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency.

In Porter's case, Michael Twombly, a member of the Arcata Night Shelter's board of directors, testified as an expert witness — apparently still a key requirement in such cases. Twombly told the court that the only shelter in Arcata was closed the night of Porter's "sleepcrime," due to a budget crisis. He also noted studies document that homeless people are victimized more often than those who have houses.

Porter testified that, although he did not attempt to personally contact the shelter, he had heard from others that shelter space was not available. He then went to the park to be near a public restroom. "I didn't want to have to pee on someone's lawn," Porter explained. Ironically, he later found authorities had closed the restroom for the night.

The Arcata Endeavor is a homeless service center recently under severe pressure from merchants, police, and reactionary city staff under the city manager. Roger Herrick, an ACLU activist and board member of the Arcata Endeavor, reported that testimony in court indicated Porter was alone, sleeping in a sleeping bag with no camping equipment other than a backpack, located away from residences, with no trash, garbage, human waste, or drug paraphernalia.

Porter slept inconspicuously in a forested area which Herrin described as large, wild, and woodsy. Porter was not the subject of any specific complaint when Officer Chase came upon him in the course of his regular beat. Nor did Chase offer Porter a warning or an alternative place to go before citing him.

### ATTORNEY PREVIOUSLY HOMELESS

This was defense attorney Herrin's first homeless case, she explained later in a radio interview. A practicing attorney in the Arcata area for five years, Herrin herself had been homeless in San Diego. One Sunday morning some years before, she had watched from the house of a friend, where she slept the night, as police pounded on the van in which she and her husband made their home.

Herrin's success in the Porter case was apparently helped by several factors, including the initial disqualification of the original judge assigned to the case, the city attorney's failure to appear in person to try the case, and the rare presence of an attorney for the defense (there is no requirement for a court-appointed attorney or a jury trial in an infraction case).

An attorney is particularly important in mounting an "affirmative defense" such as necessity. Herrin agreed to take Porter's case because she'd known him from his work as an environmental activist for some time. Most homeless people are not so lucky.

By law, the prosecution has to prove the defendant guilty "beyond a reasonable doubt." In actual practice, judges habitually defer to prosecutors and police, particularly where homeless people are involved.

Whenever the defense of necessity is used, the defendant must prove each of the six elements listed above by a "preponderance of the evidence." This is tricky, even for attorneys. It is a sobering task for those without legal training. It is nearly impossible for folks whose days are taken up with finding a place to sleep, the next meal to eat, and a place to shower. Tad's original victory, with his attorney using the necessity defense, was quite extraordinary.

Courts dealing with low-level infractions regularly grind out fines and guilty verdicts. Judges habitually believe the police and disbelieve homeless defendants even when police testimony is based on hearsay and other objectionable evidence.

Normally, no prosecutors appear for infractions; and there is no right to jury trial, nor is any public defender appointed. Nonetheless, guilty verdicts cost the poor hundreds of dollars in fines and/or dozens of hours of community service.

The case often turns on the testimony of police officers, who are supposed to be simple witnesses; but they often argue the prosecution case and present additional evidence as well as cross-examine witnesses. In the Porter case, Judge Watson went so far as to give Officer Chase the prerogative to ask questions.

Watson did not overturn Arcata's law against camping, an ordinance which

criminalizes hundreds of homeless people in a city with shelter space for, at most, 40 people. The judge did reaffirm the usefulness of the necessity defense by citing the 1999 California Supreme Court finding in the Eichorn case that the need to sleep was now a judicially noticed and acknowledged reality. It does not need to be proved again in every subsequent case by expert testimony.

Watson also took judicial notice of Tad's earlier case [People v. Theodore Lewis Robinson (2003) (Humboldt Superior Court T0304959M)].

Judge Watson wrote: "While there is no question that the reasons advanced for the City banning camping on public grounds are valid, the Defendant in this case was not... causing any of the environmental and other harm the ordinance seeks to prevent."

Kim Starr, a grassroots forest defender for Earth First!, has been houseless for 13 years and is a member of the Homeless Task Force. A friend of Tracy Herrin, Starr alerted the attorney to Porter's case. Starr organized protests against the camping ordinance in the mid-1990s, launched a homeless conference, and helped run the Arcata Endeavor for several years.

Starr said, "A breakdown of community leads into the homeless phenomenon. In the late '90s, I think, business people started 'Mainstreet Arcata.' They just decided that [some kinds of] people shouldn't come any more or be on the streets. So the City started passing these ordinances targeting transient people: dog ordinances, noise ordinances.

"Downtown Arcata was seven loud bars. It's a university town but police tar-

geted people playing drums and congregating on the plaza. There are a lot more cops around. It's made the place tense — an insidious, self-fulfilling prophecy. Now we're hearing that people are scared to go on the plaza — because the situation is tense with people getting arrested."

Michael Porter has lived in Arcata for more than two years and says he's been "houseless" for six years before that. Also known locally as "Huckleberry" for his work as an environmental activist, Porter, too, has been a forest defender in the decades-long struggle to save the redwoods in Humboldt County from both legal and illegal logging operations of the Pacific Lumber Company.

Porter now holds two jobs, as a caretaker and a janitor, and he now rents an apartment. A year after police cited Porter, he spent eight months 120 feet up in the air "tree-sitting" on a dream catcher (a hammock-like platform stretched between two limbs of old growth) in an ancient redwood with his partner Rosemary, where they conceived a son, Aspen.

"I had the money ready to pay off the fine for the ticket myself at one point, but I'm glad I fought it," Porter comments. "I'm glad Tad talked me into fighting the case. I only wish I'd had time to fight the law itself by appealing it. The right to sleep is a basic need for everybody whether you're homeless or not."

Linda Lemaster and Becky Johnson contributed to this story.

For information on the homeless in Arcata, e-mail [thehomelesscoalition@yahoo.com](mailto:thehomelesscoalition@yahoo.com) See an interview with attorney Herrin at [www.huffsan-tacruz.org](http://www.huffsan-tacruz.org); click on Bathrobespierre's BroadSides and go to May 26, 2005.

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