

No Homeless Parking

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Justice, successfully represented dozens of homeless people, showing that they had no alternative housing other than their vehicles. The problem became especially acute when the shelter was closed in summer months. Mowrer's arguments overturned sloppily written police tickets by using the legal requirement in criminal cases that proof be "beyond a reasonable doubt." He used the necessity defense to challenge charges for living in a vehicle.

Defendants who use the necessity defense in court admit the crime, abandon any technical or substantive claims of innocence and don't challenge the constitutionality of the bans. Yes, she slept in her vehicle (or outside) as charged. Yes, that is legally a crime. But the evil she acted to avoid — the threat to her health and survival by not sleeping at all — profoundly outweighed the "crime." Hence, her actions were "a necessity." [See "Taking Bigoted Laws to Court in Santa Barbara," *Street Spirit*, April 2003.]

The necessity defense arose as a shield in defending the homeless right to survive in the wake of the 1994 Tobe case. There, the California Supreme Court overturned a lower court's decision that would have struck down camping bans statewide. It held that such bans might be a reasonable restriction on some (non-homeless) people. Hence they were not always or facially unconstitutional as written. Instead, homeless people with severe needs could try to raise the necessity defense.

In the 1999 Eichorn case, a homeless man named James Eichorn was charged with violating Santa Ana's anti-camping law. The high court ruled that the necessity defense, normally an option which the judge could grant or deny, *must* be allowed in "sleep crime" or camping cases, particularly in cities with too few

At trials in Albany, Santa Cruz, Sacramento, and Santa Ana, attorneys for homeless people raised the necessity defense with varying levels of success, clogging up the well-oiled, anti-homeless, city attorney machines and attracting the sympathetic interest of the media.

In Santa Barbara, Mowrer won the Ridley case in 2002. An inadequate Rescue Mission shelter with its sexual segregation, pet banning, health risks, drug trafficking and mandatory religious instruction was ruled to not be an acceptable alternative to a legally-parked RV. [See "Defender of the Homeless Wins Important Court Ruling," *Street Spirit*, February 2002.]

Santa Barbara's homeless-hostile bureaucracy struck back with two new laws. One prohibited recreational vehicles (and *only* recreational vehicles) from parking more than two hours at a time on city streets. A second banned them entirely between 2 a.m. and 6 a.m. [See "Taking Bigoted City Laws to Court in Santa Barbara," *Street Spirit*, April 2003.]

Mowrer diligently fought every "homeless parking" case that came along. A master at arguing both arcane technicalities and profound constitutional issues, he successfully claimed that the city did not provide accurate or adequate signage warning to the public. His legal assault stalled enforcement of Santa Barbara's new "get out or lose your vehicle" campaign.

Parking citations are particularly difficult to fight. They are civil rather than criminal. The initial appeal is to the police department, then to a referee appointed by the police department. After that, one must pay a \$25 fine or file a forma pauperis, which finally — 10 weeks later — lands the defendant before a civil judge.

There the prosecution has an easier job. The city attorney only needs to prove the vehicular camper guilty by "preponderance of the evidence" rather than the higher "proof beyond a reasonable doubt" of criminal trials. Police officers are not auto-

Defendants may have to pay the cost of getting police or other testimony if they choose to subpoena it.

Instead of a necessity defense, the traffic code has a provision that requires the judge to consider whether the ticket is "in the interests of justice." This special "justice consideration" also applies to the initial police investigator and the police hearing officer — but they routinely ignore it. Mowrer uses this provision as a hook to require the judge to consider whether a defendant really had other alternatives for his vehicle at a completely new trial.

Receiving four unpaid \$65 tickets means the vehicle can be towed with hundreds of dollars in towing and storage charges — essentially seizing the vehicular home of a person, often permanently. In the rivalry between city and county governments to distance themselves from homeless needs, yet appear liberal, the County has designated a government parking lot where 5 RVs can legally house homeless inhabitants overnight — within several blocks of City Hall!

In Santa Cruz, the entire city was made into a potential Permit Parking area, where parking without a specific permit is allowed only for two hours, and in the downtown is banned from midnight to 6 a.m. entirely. The permit must be purchased. It is available only to residents or their guests and some workers at their street of residence or work.

According to Santa Cruz Public Works Department's own on-line figures, the projected cost of the permit parking program citywide (\$213,495) significantly exceeds the permit income (\$175,082). To balance the books, the program backers expect the police to be issuing 175 parking citations per week. Public transit advocate Paul Marcelin-Sampson, adds, "People who live in other parts of the city pay 1100% more than downtown residents and still can't park here overnight — ever."

Homeless vehicle storage is bureau-

lives in a vehicle does when she parks on the streets at night. In a special merchant-funded program, rubberstamped by the City Council, all vehicles less than 12,000 pounds are now banned from a dozen streets in outlying industrial areas from 10 p.m. to 6 a.m. No input was sought from homeless service providers or advocates.

Scott Kennedy, the same mayor who gave Santa Cruz the 1994 Sitting Ban, which provoked riots, has backed the current process, cutting off and occasionally arresting critics at City Council. [See "Santa Cruz Mayor Banishes Peaceful Protest," *Street Spirit*, February 2004]. He only allowed homeless advocates public comment on the item because several merchants also wanted to speak.

The seizure of vehicles can be followed by gross denial of due process and police violence. This happened in the case of former city employee Jhon Golder, who lives in his van. After being forced out of his booted vehicle with threats to his dog's life, Golder was jailed for weeks in a bogus arrest at City Hall, where he had tried to arrange a meeting with City Manager Dick Wilson, the real power behind the mayor.

Wilson issued a trespass letter ordering Golder to stay away from all city employees and offices, and subsequently tied him up in a year and a half of court trials. In the course of researching information with this author this spring on the exclusion of homeless vehicles from Santa Cruz's Lighthouse Field area, the peaceful Golder was again falsely arrested for violating an expired stay-away order.

Doug McGrath lives in his vehicle with his wife Marilyn. He summed up the repeated 4 a.m. wake-ups and vehicle seizures: "Vehicle abatement should deal with abandoned vehicles. They don't deal with stolen cars, broken-down cars, cars for sale, cars there for months. But if someone lives there, they immediately move in, ticket 'em, and then, if they