IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

IN RE THE MATTER OF	)	No. _ _ _ _ _ _
	)	
LINDA LEMASTER,	)	
	)	Superior Court No. M55730
Petitioner,	)	
	)	Trial Date: 9-19-2011
On Habeas Corpus.	)	
	)	9:00am
	)	
_____	)	Honorable John Gallagher

PETITION FOR WRIT OF HABEAS CORPUS
AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JOHN GALLAGHER, ASSIGNED TRIAL JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ:

Petitioner, Linda Lemaster, by and through her attorney, Jonathan Che Gettleman, respectfully petitions this court for a writ of habeas corpus, and by this verified petition sets forth the following facts and causes for the issuance of said writ:

I.

Petitioner is presently unlawfully restrained on pretrial release on her own recognizance in the County of Santa Cruz, California. Petitioner is scheduled for jury trial on September 9, 2011.

II.

This petition is being filed in this court pursuant to its original habeas corpus jurisdiction. (Calif. Const., Art. VI, sect. 10.)

III.

The facts as presented herein will come from the following exhibits and documents as listed below.

1) The Declaration of Jonathan Che Gettleman in Support of a Writ of Habeas Corpus for Linda Lemaster (Exhibit 1)

2) The Declaration of Linda Lemaster in Support of a Writ of Habeas Corpus for Linda Lemaster (Exhibit 2)

3) The Declaration of Coral Brune in Support of a Writ of Habeas Corpus for Linda Lemaster (Exhibit 3)

4) The Declaration of Becky Johnson in Support of a Writ of Habeas Corpus for Linda Lemaster (Exhibit 4)

5) The Declaration of Edwin Frey, Esq. (Exhibit 5)

6) The Record from Santa Cruz County Case number M55555 and M55730 (Exhibit 6)

7) The Legislative History of Penal Code section 647(e) (Exhibit 7)

8) Supplement to Stipulation and Order Modifying Settlement Agreement and Order Thereon. (Exhibit 8)

9) Police Report of August 10, 2010 (Exhibit 9)

IV.

Petitioner Linda Lemaster, hereinafter "Petitioner," is charged with one count of disturbing the peace pursuant to 647(e) (Illegal Lodging). (Exhibit 1A-Citation.) On March 4, 2011, after several continuances, a demurrer hearing was heard in Department 1 challenging the complaint on its face as overbroad and vague. That motion was denied. (Exhibit 1-B Open Access Records, page 4 of 6.) The case was thereafter transferred to Department 2. (*Ibid.*) On March 11, 2011, present counsel entered his appearance and made an oral request to reargue the motion on demurrer. (*Ibid.)* Counsel's request was denied. (*Ibid.*) Petitioner's case is presently set for trial on September 19, 2011 with a trial readiness

conference on September 14, 2011. Petitioner bring the present motion to challenge the constitutionality of Penal Code section 647(e) as applied to the facts of petitioner's case.

V.

On July 4, 2010, attorney Edwin Frey and other members of the Santa Cruz community initiated a protest against the Santa Cruz Municipal "Sleeping Ban" at the Santa Cruz County Courthouse, which lasted three months. (Exhibit 5.) (Exhibit 4, p. 1.) The stated purpose of the protest was to bring attention and public pressure on all those who might witness the protest in order to convince all relevant authorities that the sleeping ban is anti-human and should be terminated. (*Ibid.*) The protest hours were designed to be 8pm to 8am. Every morning protesters vacated the protest by 8am. (*Ibid.*) No business was carried on at the courthouse during scheduled protest hours. (*Ibid.*) Between the hours of 8pm and 8am a rented mobile lavatory with hand washing station was available to the public at the Courthouse steps. (*Ibid.*) This protest was commonly referred to as "Peace Camp 2010." (Exhibit 4., p. 1.)

VI.

Petitioner has been an activist concerned with homeless issues in Santa Cruz County for the past 30 years. (Exhibit 2, p.1.) (Exhibit 4, p 1.) Amongst other organizations, Petitioner is the former chairperson of the Santa Cruz City Counsel's Homeless Issues Task Force, the former chairperson of the Commission for the Prevention of Violence Against Women, former chief spokesperson for Housing Now!

and a member of the Continuum of Care alliance, a Santa Cruz county entity concerned with services for homeless persons in Santa Cruz County. (*Ibid.*)

VII.

On the night of August 9, 2010, Petitioner attended the Peace Camp protest. (Exhibit 2, p.1) (Exhibit 3, p. 2.) (Exhibit 4, p. 1.) On previous nights, petitioner had slept in her car in the courthouse parking lot to demonstrate her solidarity with the protesters who were sleeping on the courthouse steps. (Exhibit 2, p. 1.) ((Exhibit 4, p. 1.) Petitioner was not homeless the morning of her citation nor at anytime throughout the three month duration of the protest. (Exhibit 2, p. 1.) (Exhibit 4, p.1.)

VIII.

On the night of August 9, 2010, petitioner remained overnight on the courthouse steps with the other protesters. (Exhibit 2, p. 1.) Petitioner had two stated reasons for doing so: 1) to participate in the protest and 2) to assure that the spokesperson from the group, Chris Doyon, who claimed to be suffering from double pneumonia, did not need to be hospitalized. (Exhibit 2, p. 1-2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) (Exhibit 9A) Mr. Doyon refused to leave the protest for the purposes of medical treatment. (Exhibit 2, p. 1) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner at all relevant times was on state disability with severe lung problems which made her acutely aware of, and sensitive to, Mr. Doyon's condition. (Exhibit 2, p. 2.) (Exhibit 4, p. 1.)

IX.

Petitioner brought no blankets or pillows on which to sleep on the night of August 9, 2011, because petitioner had no intention of sleeping that evening for the above stated reasons. (Exhibit 2, p.2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner brought only a large cardboard protest sign with her to the courthouse steps that same evening. (Exhibit 2. p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) At approximately 11pm on the night of August 9, 2010, Becky Johnson offered petitioner a blanket as it was quite cold that night. (Exhibit 2, p. 2 (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner had to other items that would indicate an intent to convert make the court house into her personal place of residence. (Exhibit 2, p. 2.)

X.

At approximately 4:30 am on the morning of August 10, 2010, Santa Cruz County Sheriff's deputies appeared at the site of the protest on the courthouse steps. (Exhibit 2, page 2.) (Exhibit 3, page 1-2.) (Exhibit 4, p. 2.) The deputies indiscriminately handed flyers to all persons present in the area of the courthouse steps at that time. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.). The same flyer is attached hereto as Exhibit 6A. The flyer stated,

> You are lodging here without the permission of the owner or the person entitled to control this property. Therefore, you are in violation of California Penal Code section 647(e), a misdemeanor. If you continue to lodge here, you will be cited and/or arrested for this violation. This action is not intended to interfere with your non-

> lodging demonstration during business hours. Lodging at any time will not be tolerated. (Exhibit 6C.)

While the deputies were handing out the fliers they also stated aloud that anyone who did not **leave** the area of the courthouse steps would be cited and or arrested. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) No definition of lodging was given upon request to the deputies. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) The courthouse is on Santa Cruz County Property. The courthouse has no posted hours of exclusion from the grounds. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) The courthouse was not open for business at the time of citation and no business was being conducted. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) The unique nature of the nighttime protest attracted media to the event.

XI.

Upon asking a deputy why she had to leave the protest and how the deputies were defining lodging, petitioner was cited for illegal lodging. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) At the time of petitioner's citation, she possessed a blanket, a makeshift pillow, a protest sign and was seated directly besides Chris Doyon. (Exhibit 2, p. 2.)

XII.

Petitioner, declarant Becky Johnson, and declarant Coral Brune all feel that their right to protest in general has been chilled considering that a citation for illegal lodging is an offense without defined parameters that can be used to break up any First Amendment

activity that involved be sedentary for any amount of time. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.)

XIII.

Petitioner was deprived of her right to engage in protected amendment speech by the application of Penal Code 647(e), which in the context of the same protected speech activity was simultaneously over broad, void for vagueness and not factually capable under the present facts of resulting in a citeable offense.

XIV.

Habeas relief is proper in this pretrial context under *In re Cox* (1970) 3 Cal.3d 205 as will be demonstrated in the points and authorities below. No other effective pretrial procedure exists to challenge petitioner's complaint *as applied* to the facts of petitioner's case.

XVI.

Petitioner has no plain, speedy, or adequate remedy other than by this petition.

WHEREFORE, petitioner respectfully requests that this Court:

(1) Issue an order consolidating this petition with case number M55730 and staying trial proceedings until the determination of the instant petition;

(2) take judicial notice of the OPEN ACCESS computerized procedural history of case number M55573 pursuant to Evidence Code section 452©) and (d);

(3) take judicial notice of the transcripts, files, briefs, motions, and records in the sister cases of M55555 and M55567 pursuant to Evidence Code section 452©) and (d);

(4) take judicial notice that the Santa Cruz County Courthouse is on Santa Cruz County property pursuant to Evidence Code section 452(h);

(5) take judicial notice of the legislative history of 647(e) from 1961, the year the same statute was substantially revised to include the present statutory language pursuant to Evidence Code section 452©);

(6) take judicial notice of the Document entitled SUPPLEMENT TO STIPULATION AND ORDER MODIFYING SETTLEMENT AGREEMENT AND ORDER THEREON in United States District Court for the Southern District of California, Case No. 04 CV-2314 BEN (WMC) pursuant to Evidence Code section 452©) and (d);

(7) issue an order to show cause to inquire into the legality of petitioner's confinement;

(8) issue an order for the taking of such evidence at a live hearing as may be necessary for the proper consideration of the petition;

(9) issue the writ and dismiss the present action in case number M55730; and

(10) grant petitioner whatever alternative or further relief as may be appropriate in the interests of justice.

Dated:

Respectfully submitted,

_____

JONATHAN CHE GETTLEMAN

Attorney for Petitioner,

LINDA LEMASTER

VERIFICATION

I, Linda Lemaster, declare:

I am the petitioner in the above petition for a writ of habeas corpus. All facts alleged in the above petition or elsewhere in this document, not otherwise supported by citations to the record on appeal or the exhibits submitted to this court, are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California and was executed on August 30, 2011 at Santa Cruz, California.

Respectfully submitted,

_____

LINDA LEMASTER

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF FACTS

Petitioner Linda Lemaster, hereinafter referred to as "Petitioner," is charged with one count of disturbing the peace pursuant to 647(e) (Illegal Lodging). (Exhibit 1A-Citation.) On March 4, 2011, after several continuances, a demurrer hearing was heard in Department 1 challenging the complaint on its face as overbroad and vague. That motion was denied. (Exhibit 1-B Open Access Records page 4 of 6.) Considering the procedure on demurrer no facts of the present case were considered. The case was thereafter transferred to Department 2. (*Ibid.*)

On March 11, 2011, present counsel entered his appearance and made an oral request to reargue the motion on demurrer. (*Ibid.)* Counsel's request was denied. (*Ibid.*) Petitioner's case is presently set for trial on September 19, 2011 with a trial readiness conference on September 14, 2011. Petitioner bring the present motion to challenge the constitutionality of Penal Code section 647(e) as applied to the facts of petitioner's case.

On July 4, 2010, attorney Edwin Frey and other members of the Santa Cruz community initiated a protest against the Santa Cruz Municipal "Sleeping Ban" at the Santa Cruz County Courthouse, which lasted three months. (Exhibit 5.) (Exhibit 4, p. 1.) The stated purpose of the protest was to bring attention and public pressure on all those who might witness the protest in order to convince all relevant authorities that the sleeping ban is anti-human and should be terminated. (*Ibid.*) The protest hours were

designed to be 8pm to 8am. Every morning protesters vacated the protest by 8am. (*Ibid.*) No business was carried on at the courthouse during scheduled protest hours. Between the hours of 8pm and 8am a rented mobile lavatory with hand washing station was available to the public at the Courthouse steps. (*Ibid.*) This protest was commonly referred to as "Peace Camp 2010." (Exhibit 4., p. 1.)

Petitioner has been an activist concerning homeless issues in Santa Cruz County for the past 30 years. (Exhibit 4, p 1.) Amongst other organizations Petitioner is the former chairperson of the Santa Cruz City Counsel's Homeless Issues Task Force, the former chairperson of the Commission for Prevention of Violence Against Women, former chief spokesperson for Housing Now! and a member of the Continuum of Care alliance, a county entity concerned with services for homeless persons in Santa Cruz County. (*Ibid.*)

On the night of August 9, 2010, Petitioner attended the same protest. (Exhibit 2, p.1) (Exhibit 3, p. 2.) (Exhibit 4, p. 1.) On previous nights, petitioner had slept in her car in the courthouse parking lot to demonstrate her solidarity with the protesters who were sleeping on the courthouse steps. (Exhibit 2, p. 1.) ((Exhibit 4, p. 1.) Petitioner was not homeless the morning of her citation nor at anytime throughout the three month duration of the protest. (Exhibit 2, p. 1.) (Exhibit 4, p.1.)

On the night of August 9, 2010, petitioner remained overnight on the courthouse steps with the other protesters. (Exhibit 2, p. 1.) Petitioner had two stated reasons for

doing so: 1) to participate in the protest and 2) to assure that the spokesperson from the group, Chris Doyon, who claimed to be suffering from double pneumonia, did not need to be hospitalized. (Exhibit 2, p. 1-2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) (Exhibit 9A.) Mr. Doyon refused to leave the protest for the purposes of medical treatment. (Exhibit 2, p. 1) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner at all relevant times was on state disability with severe lung problems which made her acutely aware of, and sensitive to, Mr. Doyon's condition. (Exhibit 2, p. 2.) (Exhibit 4, p. 1.)

Petitioner brought no blankets or pillows on which to sleep on the night of August 9, 2011, because petitioner had no intention to sleep that evening for the above stated reason. (Exhibit 2, p.2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner brought only a large cardboard protest sign with her to the courthouse steps that same evening. (Exhibit 2. p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) At approximately 11pm on the night of August 9, 2010, Becky Johnson offered petitioner a blanket as it was quite cold that night. (Exhibit 2, p. 2 (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) Petitioner had to other items that would indicate an intent to convert make the court house into her personal place of residence. (Exhibit 2, p. 2.)

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2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.). The same flyer is attached hereto as Exhibit 6A. The same flyer stated,

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While the deputies were handing out the fliers they also stated allowed that anyone who did not **leave** would be cited and or arrested. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) No definition of lodging would be given upon request to the deputies. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) The courthouse is on Santa Cruz County Property. The courthouse has no posted hours of exclusion from the grounds. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) The courthouse was not open for business at the time of citation. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.)

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Petitioner, declarant Becky Johnson, and declarant Coral Brune all feel that their right to protest in general has been chilled considering that a citation for illegal lodging is an offense without parameters that can be used to break up any First Amendment activity

that involved be sedentary for any amount of time. (Exhibit 2, p. 2.) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.)

INTRODUCTION

Petitioner was basically cited for "illegal lodging" at a protest, that occurred on the steps of the Santa Cruz County courthouse. Petitioner asserts two major points with the present petition for a writ of habeas corpus. First, petitioner asserts that as applied to the present First Amendment context and on its face, Penal Code 647(e) is over broad, and unconstitutionally infringes on petitioner's right to engage in constitutionally protected protest activity. Second, Penal Code section 647(e) is void for vagueness both because it does not provide adequate notice to the public but also because it does not provide adequate direction to law enforcement officers regarding its appropriate use.

I.

THE FILING OF THIS PETITION PRETRIAL FOR A DETERMINATION OF CONSTITUTIONAL RIGHTS IS THE PROPER PROCEDURE.

A writ of habeas corpus is the appropriate remedy to challenge the constitutionality of statutes and ordinances. (*In re Berry* (1968) 68 Cal.2d137, 145.) In *In Re Cox* (1970) 3 Cal.3d 205, in discussing the constitutionality of a shopping center trespass ordinance, the court examined three grounds of possible invalidity: 1) conflicted with the Unrue Act forbidding discrimination by public accommodations, 2) was preempted by state criminal statutes; and 3) was void because of vagueness. *(Id.* at 209.) The Court resolved the legal questions but refused to decide whether the defendant's particular conduct was protected

by the First Amendment to the United States Constitution. The matter was referred to the trial court for the taking of evidence because the facts of the case had not been sufficiently established. *(Id*. at 224.)

The instant case is dissimilar from the procedure of *In Re Cox* only in that the instant petitioner files her petition for habeas corpus in the trial court with copious documentary evidence and a request for the taking of all necessary evidence to permit the court to make the legal determinations put in issue as follows.

Therefore, a petition of habeas corpus is the appropriate procedural device for a pretrial determination as to the constitutionality of Penal Code 647(e) as applied to petitioner's case. *(In Re Cox*, *supra,* 3 Cal.3d 205; see also *Castro v. Superior Court of the State of California for the County of Los Angeles* (1970) 9 Cal.App.3d 675, 704 (Because of the sensitive nature of constitutionally protected expression, we have not required that all of those subject to overbroad regulations risk prosecution to test their rights.))

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II.

PENAL CODE SECTION 647(e) IS OVERBROAD AS APPLIED TO PETITIONER'S FIRST AMENDMENT ACTIVITY IN VIOLATION OF ARTICLE ONE, SECTION TWO OF THE CALIFORNIA CONSTITUTION AND THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

A. Application of the First Amendment to Speech and Expressive Activities.

In *Castro*, the court conducted a thorough analysis of the doctrine of overbreadth as applied to a First Amendment situation. The Court in *Castro* held in pertinent part that the section of the Education Code prohibiting wilfully disturbing a public school is overbroad. (*Castro, supra,* 9 Cal.App.3d at 699.) The *Castro* case on its facts involved charges against several high school students and others who participated in an unauthorized school walk out to protest school conditions for Hispanic students in Los Angeles. (*Id.* at 677-681.) The factual scenario is analogous to that of petitioner's.

The *Castro* court analyzed the First Amendment in terms of both speech and expressive conduct, ruling,

> There can be no question that fundamentally the demonstrations, for that is what the walkouts were, were designed to publicize grievances, real or fancied. Although some hell was raised by some participants, hell raising as such was not the objective. Though not entitled to all the protections of 'pure speech,' a demonstration is a legitimate exercise of First Amendment rights. (*Id*. at 682.)

In the context of an attempted class action injunction on labor strikes, the California Supreme Court in *United Farm Worker v. Superior Court of Monterey County* (1976) 16 Cal.3d 499, held,

> It is well established that peaceful picketing is an activity subject to absolute constitutional protection in the absence of a valid state interest justifying limitation or restriction. Moreover, an order affecting peaceful picketing *must be couched in the narrowest terms that will accomplish the pinpointed objective* permitted by constitutional mandate and the essential needs of the public order. In this sensitive field the State may not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. (*Id.* at 505.)

Therefore, it is well established that speech, picketing and demonstrations are clearly protected by the First Amendment of the United States Constitution and can only be regulated by narrowly drawn regulations that limit no more speech than necessary. (*Id.*)

B. Petitioner Was Engaged in Protected First Amendment Conduct at the Time of Her Citation.

The stated purpose of the entire Peace Camp 2010, was to protest the use and existence of the Santa Cruz municipal camping ban. (Exhibit 5) (Exhibit 4, p. 1.) In order to do so, participants slept outside on the courthouse steps when the courthouse was closed for business. (Exhibit 2, p. 1) (Exhibit 3, p. 1.) (Exhibit 4, p. 1.) (Exhibit 5.) On the night of her citation, petitioner was present with her picket signs on the steps of the courthouse in solidarity with the other protestors engaged in protest. (Exhibit 2, p. 1-2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.)

Petitioner was not simply homeless without a place to stay. (*Ibid.*) Petitioner had a residence in addition to a long history of activist involvement in issues surrounding homelessness. (Exhibit 2, p. 1) (Exhibit 4, p. 1.) Petitioner had a long history of being an

activist for homelessness in the Santa Cruz community. (Exhibit 2, p. 1) (Exhibit 3, p. 1.) (Exhibit 4, p. 1.) Furthermore, the Peace Camp 2010 event was well publicized in the local media as a protest event.[1]

In *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 293, the United States Supreme Court followed the Court of Appeals holding that overnight sleeping in connection with the demonstration is expressive conduct protected to some extent by the First Amendment. In the present case, petitioner did not even have an intention to sleep overnight. However, even so that sleeping activity under the circumstances would be protected, along with the obvious speech related to the picket signs possessed by petitioner.

Therefore, petitioner's activity was protected by the First Amendment to the United States Constitution.

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[1] **2010 Newsmakers: Santa Cruz camping ban kept homelessness in headlines throughout the year**
Found at: http://www.santacruzsentinel.com/localnews/ci_16896091 By: J.M. Brown

Santa Cruz camping law applies to demonstration at county courthouse, officials say
Found at: http://www.santacruzsentinel.com/localnews/ci_15628303 By: Jennifer Squires

Police use state anti-lodging law on protest of city camping ban
Found at: http://www.santacruzsentinel.com/ci_15801567?source=pkg By: Jennifer Squires

Two more homeless camp protesters arrested in front of Santa Cruz County courthouse
Found at: http://www.santacruzsentinel.com/ci_15733158?source=pkg By: Jennifer Squires

Camping ban protesters cited, again
Found at: http://www.santacruzsentinel.com/ci_15758559?source=pkg By: Jennifer Squires

Homeless, their advocates sleep at county courthouse to protest Santa Cruz's camping ban
Found at: http://www.santacruzsentinel.com/ci_15446448?source=pkg By: Kimberly White

C. Overbreadth Doctrine as Applied in a First Amendment Context

The *Castro* court made clear that the fact that demonstrations are protected under the First Amendment does not clothe the petitioners with immunity from prosecution for violations of the laws which the state may legitimately enforce, even against those who are exercising such rights. *Castro*, *supra*, 9 Cal.App.3d at 683.

The *Castro* court went on to rule that,

> However, since we are dealing with First Amendment rights, broad prophylactic rules are suspect and precision of regulation must be the touchstone in an area so closely touching our most precious freedoms. Because First Amendment freedoms need breathing space to survive, government may regulate only with *narrow* specificity. Standards laid down must be in terms susceptible of objective measurement. Finally, and in this particular case, most vitally, the regulation must not be of such a nature as to frighten those coming within its sweep into limiting their behavior to that which is unquestionably safe. (*Id.* at 683; *see also Freedman v. Maryland* (1965) 380 U.S. 51, 58 (If a state law, as enforced by applicable state procedures, does not show the necessary sensitivity to freedom of expression it must fall.))

The concept of overbreadth rests on principles of substantive due process which forbid the prohibition of certain individual freedoms. (*Id.* at 699.) The issue is whether the language of the statute, given its normal meaning, is so broad that its sanctions may apply to conduct protected by the Constitution. (*Id.* at 700.) Where the statute is attacked on First Amendment grounds, the court is not limited in its examination to the application of the statute involved in the particular case, but may consider other possible applications of the statute. (*Id.*)

D. As Applied to a First Amendment Context Generally and to Petitioner Specifically Penal Code Section 647(e) is Over Broad and, Therefore, Violates Petitioner's Rights Pursuant to Article One, Section Two of the California Constitution and the First and Fourteenth Amendments to the United States Constitution.

1. Introduction to the Overbreadth Doctrine in a First Amendment Context.

A function of free speech under our system of government is to invite dispute. (*Terminiello v. Chicago* (1949) 337 U.S. 1, 4.) It may indeed best serve its high purpose when it induces unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. (*Id.*) The constitutional right to speak, demonstrate, and picket on behalf of causes known to be highly offensive to those picketed was settled in *Terminiello*. (*In re Cox*, *supra*, 3 Cal.3d at 222.) Thus the First Amendment nullifies an ordinance so loosely drawn that a police officer can construe it to mean that he can expel from public places persons whom he finds objectionable. (*Id.*) To give the police officer the ambulatory power to act as a roving legislature is to give him a license to vitiate the First Amendment. (*Id.*)

The *In re Cox* court also ruled that,

> In *Shuttlesworth v. Birmingham* (1965) 382 U.S. 87, that court [United States Supreme Court] confronted facts analogous to those here. Finding no evidence that Shuttlesworth obstructed pedestrian passage by his mere presence on the street, the Supreme Court recognized a grave constitutional defect in an ordinance which forbade 'any person to stand or loiter upon any street or sidewalk of the city after having been requested by any police officer to move on.' .... The constitutional vice of so broad a provision needs no demonstration.... Instinct with its even present potential for arbitrary

> suppressing First Amendment liberties, that kind of law bears the hallmark of a police state. (*In re Cox, supra*, 3 Cal.3d 222, *citing Shuttlesworth*, *supra*, 382 U.S. at 90-91.)

2. The History of Penal Code Section 657, subsection (e).

Penal Code section 647(e) is one of a group of laws known commonly as vagrancy laws.

Mr. Author Sherry, a law professor at the University of California Berkeley was called upon by the Assembly Interim Committee on Judiciary, Subcommittee on Constitutional Rights to testify regarding Penal Code section 647. In his law review article *Vagrants, Rogues and Vagabonds-Old Concepts in Need of Revision* he wrote the following on the history of Penal Code section 647,

> The vagrancy law of California is a direct descendent of the ancestors of the statutes of the older states. It is faithful to the concept of status as a basis for punishment, and, while its language may not be as colorful as those which are more faithful to the original models, it is just as vague, just as indiscriminate and just as subject to abuse as any of the others. (Exhibit 7D-"Vagrants, Rogues and Vagabond-Old Concepts in Need of Revision," excerpted from the *California Law Review,* October 1960, p. 562, BS 337[2])

Another guest speaker, Gregory Stout, who testified before the Assembly Interim Committee on Judiciary, Subcommittee on Constitutional Rights, wrote in a follow up letter to his testimony stating,

[2] The BS number refers to the large 6 digit sequential Bate Stamp number at the bottom right corner of the page. It will be included for ease of reference.

> Sections 647, 647a and 6501/2. Penal Code and 11721 Health and Safety Code are birds of a feather. In police parlance, they are known as "roust" sections. They permit the police to pressure people, who, for personal or ciminal [sic] economic reasons are susceptible to being pressured.
> ....
> Its history is ancient and probably goes back to the Black Plague in England when its use was to prevent "vagabondage", to wit. An unemployed person wandering about seeking the best terms for his labor from people whose state of minds caused them to cling to the good old days of feudal serfdom. *Vagrancy and Similar Offenses,* Gregory Stout, July 28, 1958. (Exhibit 7c- *Public Hearing of Assembly Interim Committee on Judiciary*, Subcommittee on Constitutional Rights, July 28 and 29, 1958., p. 265, BS 321.)

The text of Penal Code section 647(e) states the following:

> Every person who lodges in any building, structure, or place, whether public or private, without the permission of the owner or person entitled to the possession or control thereof is guilty of disorderly conduct. *Penal Code Sec. 647, subsection (e).*

The above text was revised in 1961 AB 874, Chapter 560 from the original 1872 version which stated,

> Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof is a vagrant. [Exhibit 7B- Post enrollment documents regarding Assembly Bill 874, Report on Assembly Bill No. 874 O'Connell (Departmental), May 19, 1961, p. 3, BS 37.]

In analyzing the text of this subsection related to "lodging," the legislature and its recognized commentators gave some indications as to the intended use of this subsection. For example, the vetoed predecessor of AB 874, AB 2712 included the exact same revised "lodging" language as AB 874. [Exhibit 7E- Post-Enrollment documents

regarding Assembly Bill 2712 (Bill Memorandum by O'Connell, Waldie and Burton), p.1 BS 408.] The Bill Memorandum to then Governor Brown stated that, "All subdivision 7 punished those who lodged in **buildings** without permission. New subdivision (e) of 2712 accomplishes substantially the same purpose." ([Exhibit 7E- Post-Enrollment documents regarding Assembly Bill 2712 (Bill Memorandum by O'Connell, Waldie and Burton), p.4 BS 411.] (Bold Added).

In Mr. Sherry's letter to then Governor Brown, he states,

> This is a re-draft of subsection 7 of the existing statute [AB 2712]. Its scope has been enlarged to reach the individual **who sets up housekeeping in a public park** as one who makes lodging in a farmer's barn. You may remember about a year or so ago a man was discovered **living in a cave** near on of San Francisco's beaches. This conduct is not covered by the existing subsection 7, and would be squarely within the wording of the suggested draft. [Exhibit 7E- Post-Enrollment documents regarding Assembly Bill 2712 (Appendix Letter from Author Sherry), p.2 BS 416.] (Bold Added.)

Attempts to find a working definition of Penal Code section 647(e) as applied to the instant case were even further complicated when the Superior Court of California for the County of Santa Cruz developed it own definition of the term "Lodge" in case numbers M55555 and M55567. These same two case involved other Peace Camp 2010 protestors cited and or arrested for violations of 647(e). In those case, the Court defined to lodge as, "To lodge means to settle or live in a place, including temporary living, and may include sleeping." (Exhibit 6A-C.) This altered definition of lodging appears to be a substantial broadening of the definition of lodging beyond the already broad common

dictionary definition. The court further defines lodging as a general intent crime, thus the presence of an alternative mental state, such as protesting, would not appear to be a defense. (Exhibit 6D.) This point is important considering petitioner faces a trial in the same courtroom.

3. The Application of 647(e) to Petitioner's Facts Clearly Establishes the 647(e) as Applied to Petitioner is Over Broad.

On the night of August 9, 2010 and the morning of August 10, 2010, Petitioner was clearly engaged in protected First Amendment activity. Petitioner is a long time homeless activist. (Exhibit 2, p. 1.) Petitioner was not homeless at the time of her citation. (Exhibit 2, p. 1.) Petitioner was sitting on the courthouse steps, which is a traditional public forum, engaged in protest activity. (Exhibit 2, p.2) Petitioner was sitting in front of a large picket sign. (Exhibit 2, p. 2.) Petitioner was not blocking the ordinary business of the courthouse at 4:30am, the time of her citation. (Exhibit 2, p. 2.) The sheriffs deputies indiscriminately ordered everyone present at the courthouse to leave or face citation for a violation of Penal Code section 647(e). (Exhibit 2, p. 2.)

The one police report containing any narrative regarding petitioner specifically states only that, "After approximately ten minutes, two people, identified as Linda Lemaster and Alfonso Martinez, were still lying in their respective sleeping bags. They both notified me that they intended on staying at the courthouse. I issued citation numbers for both, for violation of penal code 647(e)." (Exhibit 9A & B)

The citing deputy did not mention whether petitioner specifically was even sleeping. The citing deputy issued the citations to petitioner and others present for failure to leave the courthouse, not failure to stop "lodging." The deputies expressly told all protestors indiscriminately that if they did not leave they would be cited. (Exhibit 2, p. 2) (Exhibit 3, p. 2) (Exhibit 4, p. 2.)

While the idea of "dislodging" people from courthouse property may have been the original design, the practical application was to eject all protestors regardless of the state of their possessions, state of wakeness, or state of public disruption under the umbrella of illegal lodging. Because the illegal "lodging" conduct was not in any way separated from the legitimate exercise of First Amendment rights as it was enforced, the application of 647(e) was overbroad and unconstitutional. (*Castro,* 9 Cal.App.3d at 699.)

As indicated in Section II. D. 1. above, it seems fairly clear from the legislative history that section 647(e) was designed to prevent persons from establishing residences or living accommodations in unauthorized locations, not to break up political protests. (Exhibit 7E.)

Further, the deputies expressly cited petitioner primarily for her **failure to leave**. Under the broad definition of lodging, now made even more broad by the Court's instruction, this police behavior came within the wide parameters of Penal Code section 647(e). Restricting persons from occupying public space during First Amendment activity where the person is not otherwise disrupting the flow of human activity, and at

the whim of a police "move along" command, is exactly the type of behavior that was held to be unconstitutional in *Shuttlesworth, supra,* 382 U.S. at 90-91.

Therefore, Penal Code section 647(e) as applied to petitioner is overbroad and unconstitutional pursuant to the *First and Fourteenth Amendments to the United States Constitution and Article One, Section Two of the California Constitution*.

4. The Use of Penal Code section 647(e) in a First Amendment Speech and Expression Setting Chills Free Speech on its Face.

Under the plain wording of 647(e), and especially as broadened rather narrowed by the Court, it is clearly over broad. Restrictions on first amendment activity must be coached in the narrowest terms possible. (*United Farm Worker, supra,* 16 Cal.3d at 505.)

Under the context of the First Amendment, the Court must look beyond the immediate circumstance and determine if the legitimate application of 647(e) in other circumstances will significantly compromise recognized First Amendment protections. (*Castro, supra*, 9 Cal.App.3d at 700; *Snatchco v. Westfield, LLC* (2010) 187 Cal.App.4th 494.)

Penal Code section 647(e) is so broad that a legitimate interpretation of the statute could be used to disrupt any political protest that is not physically moving at the time of police contact. All "sit-in" participants could be charged with lodging in that place. Martin Luther King could have been charged with lodging in segregated lunch counter restaurants, picket lines and demonstrations. Picketers who are standing on a public sidewalks not blocking human traffic could be charged with lodging in that place so long

as they do not have the express permission of the public entity to conduct their First Amendment activity. Even as a time, manner or place restriction, the use of Penal Code 647(e) cannot be considered a sufficiently narrowly tailored restriction where failure to leave a protest at the whim of police is an excepted standard.

For instance, the Peace Camp 2010 protesters were given a flyer that said, "You are illegally lodging here without the permission of the owner...This action is not intended to interfere with your non-lodging demonstration during business hours. Lodging will not be tolerated at any time." (Exhibit 6E.) The legitimate question arises that if lodging can be defined so broadly as to reasonable mean to "settle or live in a place, including temporary living, and may include sleep" then when can one engage in non-lodging demonstration outside the courthouse which is a traditional public forum? During any protest the participants will be living in the space they inhabit, if only temporarily. Considering that "[l]odging will not be tolerated at any time," when and in what manner is a citizen of Santa Cruz permitted to engage in First Amendment activity outside of the public courthouse. The logical answer, in the absence of a more narrow definition is never unless the owner, who is a public political body expressly consents. The affront to the basic principles of the First Amendment is so obvious it need not be stated. (*Castro*, *supra*, 9 Cal.App.3d at 683; *Freedman v. Maryland, supra*, 380 U.S. at 58 (If a state law, as enforced by applicable state procedures, does not show the necessary sensitivity to freedom of expression it must fall.))

Petitioner, Becky Johnson and Coral Brune who are all long time activist in Santa Cruz have declared under penalty of perjury their legitimate concern that any future demonstration could result in a criminal citation at the whim of police and without explanation of the parameters of the offense. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) All three of these same people are legitimately afraid to exercise their First Amendment rights in public and feel their rights in that regard have been chilled. (Exhibit 2, p. 2) (Exhibit 3, p. 2.) (Exhibit 4, p. 2.) *Id.*

The problem with the application of the antiquated vagrancy law related to lodging in the context of a clearly defined and publicized political protest is clear. Therefore, this Court should rule that in the context of a First Amendment activity, Penal Code section 647(e) is unconstitutionally overbroad. (*Article One, Section Two of the California Constitution and the First and Fourth Amendment to the United States Constitution.*)

III. PENAL CODE SECTION 647(e) IS UNCONSTITUTIONALLY VAGUE AND FOR THAT REASON SHOULD BE VOIDED.

A law is unconstitutionally vague if it fails to meet two basic requirements: 1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and 2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement. *Snatchco, supra,* 187 Cal.App.4th at 495. The present statute fails both tests.

A. Penal Code 657(e) is Vague Because It Does Not Provide Fair Notice of the Conduct Proscribed.

The historically the term "lodger" implies a pre-existing contract or arrangement with a landlord or innkeeper. As the court states in *Roberts vs. Casey* (1939) 36 Cal. App.2d Supp.767, 774, if one is a lodger, then he has "a personal contract." The legislative history in section II D.1. above clearly demonstrates that the statute is meant to apply to someone setting up a residence or living accommodation in a public or private location.

Under *Code of Civil Procedure* section 1159, a "lodger" is a person who "hires real property." Under *Civil Code* section 1940(a), a "lodger" is someone who "hires" a "dwelling unit", and under section 1940©), a "dwelling unit" is a "structure or the part of the structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household."

A lodger is also "mere licensee." (*Edwards v. City of Los Angeles* (1941) 48 Cal.App.2d 62, 67.) In *Stowe v. Fritzie Hotels, Inc.* (19) 44 Cal.2d. 416, 421, the court distinguished between a "tenant" and a "lodger", stating that a tenant has exclusive legal possession of real property and is responsible for its care, but a lodger has merely the right to use the property. (*Id.*)

Under *Civil Code* sections 1946 and 1946.5, a lodger is a person "hiring…a room…on a periodic basis within a dwelling unit occupied by the owner…" and can only be summarily removed following a minimum of seven days written notice. Thus, the term "lodging" seems

to imply at least the existence of a physical lodge, and that the prohibited activity takes place indoors.

The notice requirement set out above is merely one of a whole panoply of statutory due process protections afforded to occupants (including "lodgers") of real property in California, which provide minimal assurance that they will not be charged with a misdemeanor and summarily ousted by the police petitioner was here, before she had her day in court. It is unlikely the Legislature intended to overthrow such protections for large numbers of real property occupants by employing the kind of antiquated vagrant move-along authority set out in *Penal Code* section 647(e) and as used in the present case.

Thus, it seems clear that Penal Code section 647(e) is aimed primarily at people sleeping outdoors who cannot claim to the traditional status of tenant or lodger. In the instant case, neither the statute nor the accusatory pleading makes any reference to a contract, a hiring, a license, any permission, any structure, any dwelling unit, any seven-day notice, any indoor habitation, or any other indices of *lodging* as defined under express California law. However, the petitioner and many other participants did have regular housing and were merely engaging in First Amendment conduct.

It follows that a person reading all the available law on the subject of lodging in California would not be reasonably informed by the text of Penal Code section 647(e) that she was prohibited from sleeping on the courthouse grounds during a well publicized political protest.

This point is made where the deputies refused to define what constituted the crime of lodging so that the specific behavior could be avoided. (Exhibit 2, p. 2) (Exhibit 3, p. 2) (Exhibit 4, p. 2). Petitioner was informed the only way to avoid being cited was to leave. (Exhibit 2, p. 2.) Petitioner was cited when she did not immediately leave and upon asking the citing deputy why she had to leave and how the deputies were defining citing. (Exhibit 2, p. 2.)

This point is similarly driven home by the trial court's perception that the term lodging required a special instruction for the jurors to understand it. (Exhibit 6C.) This is problematic where lodging is the gravamen of the crime. The instruction raises the notice problem that at the time of citation, how would a reasonable person know what was prohibited if they must be specially instructed by the court at trial?

Other questions arise: What did defendants do to earn the label "lodger"? Was it their act of sleeping? Did their sleeping somehow create a contract with the authorities who control the courthouse grounds? Does the statute also make it unlawful to *sit* on the courthouse grounds? *Lie down*? *Stand still on the steps?* Under what conditions and at what times?

Therefore, the statute is void for vagueness under the *Due Process Clause of the Fourteenth Amendment to the United States Constitution*. It is too vague for the defendant to know what is illegal. (*Snatchco, supra,* 187 Cal.App.4th at 495.)

B. Penal Code 657(e) is Unconstitutionally Vague Because It Fails to Provide Sufficiently Definite Standards of Application to Prevent Arbitrary and Discriminatory Enforcement.

A statute is void for vagueness if it does not provide sufficient definite standards of application to prevent arbitrary enforcement. (*Snatchco, supra,* 187 Cal.App.4th at 495.)

As the United States Supreme Court makes clear, "the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement.' *Smith v. Goguen* (1974) 415 U.S. 566, 574. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors and juries to pursue their personal predilections." (*Kolender*, supra, 461 U.S. at 358.)

Several cases are instructive in illuminating the types of definite standards required to save a statute from being unconstitutionally vague.

In *Kolender*, the court found a portion of Penal Code section 647 vague because it, "contained no standard for determining what a suspect has to do in order to satisfy the requirement to provide a credible and reliable identification. As such the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute." (*Kolender, supra,* 461 U.S. at 353.) The same would appear to be true in the present case.

In *Papachristou vs. City of Jacksonville* (1972) 405 U.S. 156, the Supreme Court of the United States Supreme Court struck down the City of Jacksonville's vagrancy ordinance which made illegal a litany of acts such as begging, wandering or strolling around without any lawful purpose, and disorderly persons. (*Id* at 171.) The defendants in that case were arrested for amongst other violations of the vagrancy laws "prowling by auto" and "loitering." (*Id.* at 159-160) The Court determined, "Where, as here, there are no standards governing the exercise of discretion granted by the ordinance, the scheme encourages an arbitrary and discriminatory enforcement of the law." (*Id.* at 170.) The same holding applies to the instant case where petitioner was merely present on the courthouse steps after hours engaged in First Amendment activity.

In *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, the City's camping ordinance was save from unconstitutional vagueness because the terms "camping" and other terms used in the ordinance were clearly and specifically defined so that no reasonable person would believe that a picnic would constitute camping. (*Id.* at 1167-1169.) No definition of the term "lodge" exists in Penal Code Section 647(e) or any related section.

People v. Scott (1993) 20 Cal.App.4th Supp. 5, 10 is not precedential but instructive. In *Scott*, the Superior Court determined the West Hollywood camping ordinance related to camping was not held unconstitutionally vague because the ordinance provided a clear definition of "camping" in the context of the ordinance. *Id.* The specific definition provided the required protection against arbitrary enforcement. *Id.*

In *Joyce v. City and County of San Francisco* (1994) 846 F.Supp. 843, the San Francisco matrix program (forbidding the setting up of "public living accommodations") was saved from unconstitutional vagueness only when read in conjunction with a supplemental memorandum to police which indicated clearly that "*the mere lying or sleeping on or in a bedroll of an in itself does not constitute a violation*." (*Id.* at 863.)

In *Spencer v. City of San Diego,* Civil Case No. 04-CV-2314 BEN (United States District Court) involved a civil suit regarding Penal Code section 647 (e). (Exhibit 8.) The parties in that case agreed to a four page police bulletin that clearly defined how and when 7647(e) could be constitutionally used and included a statement of purpose, specific directions and limitations to law enforcement, including such terms as: 1) Officers shall not in the ordinary course of duty issue citations between the hours of 2100 and 530 (Exhibit 8-E); 2) The necessity of determining whether individuals desire shelter and steps required to assure the presence of shelter space before citation for 647(e) (Exhibit 8-E); 3) Express information that must be ascertained by officers to prove the "illegal lodging" and the "without permission" elements of 647(e) (Exhibit 8-G).

All parties expressly agreed, "It is insufficient to support a charge of lodging if a person is sleeping with no other evidence of lodging." (Exhibit 8-G)

The instant case immediately reveals the problem with a statute that contains no definition of lodging and not express limiting instruction to law enforcement. The sheriff's deputies issued citations to anyone present at the courthouse on August 10, 2010 at 4:30am

who would not leave. (Exhibit 2, p.2) (Exhibit 3, p. 2) (Exhibit 4, p. 2). Petitioner was not determined to have been at that location multiple night, had no tent, not utensils, no cooking equipment, no flash light. Petitioner was solely present on the courthouse steps with a blanket engaging in a demonstration. (Exhibit 2, p.2) (Exhibit 3, p. 2) (Exhibit 4, p. 2).

Asa result of the vagueness, the police are free to engage in arbitrary and discriminatory enforcement activities without restriction, including disrupting protected First Amendment activity. The statute is therefore void for unconstitutionally vagueness. (*Papachristou vs. City of Jacksonville* (1972) 405 U.S. 156; *People vs. Heitzman* (1994) 9 Cal. 4th 189, 199; *First and Fourteenth Amendments to the United States Constitution.*)

CONCLUSION

For all the reasons set forth above Petitioner requests this Honorable Court hold that Penal Code 647(e) is overbroad on its face or in the alternative overbroad as specifically applied to petitioner. Petitioner also requests this Honorable Court hold the Penal Code section 647(e) is void for vagueness. Petitioner finally requests that this Honorable Court dismiss the relevant complaint with prejudice.

Dated: September ___, 2011

Respectfully submitted,

_____
JONATHAN CHE GETTLEMAN
Attorney for Petitioner,
LINDA LEMASTER

EXHIBIT 1:

DECLARATION OF JONATHAN CHE GETTLEMAN IN SUPPORT OF LINDA LEMASTER'S PETITION FOR A WRIT OF HABEAS CORPUS

I, Jonathan Che Gettleman, hereby declare:

1. I am the attorney of record for the petitioner in this matter;

2. On information and belief the following documents are true and correct copies of what they purport to be:

Exhibit 1A- The citation issued to petitioner on August 10, 2011.

Exhibit 1B- OPEN ACCESS court record from the present case.

Exhibit 2- The Declaration of Linda Lemaster in Support of Linda Lemaster's Petition for a Writ of Habeas Corpus.

Exhibit 3- The Declaration of Coral Brune in Support of Linda Lemaster's Petition for a Writ of Habeas Corpus.

Exhibit 4- The Declaration of Becky Johnson in Support of Linda Lemaster's Petition for a Writ of Habeas Corpus.

Exhibit 5- The Declaration of Edwin Frey in Support of Motion to Dismiss Charges. I personally obtained this document from the court file in case number M55567.

Exhibit 6- Court documents from Santa Cruz County Court cases M55567 and M55555. I personally obtained this document from the court file in

case number M55567 and M55555. This Exhibit contains the following documents:

Exhibit 6A- Verdict of the Jury in Case No. M55555.

Exhibit 6B- Jury Instruction Sheet for Case No. M55567.

Exhibit 6C- The Jury Instruction related to the definition of the word "Lodge" given in case numbers M55555 and M55567.

Exhibit 6D- The Jury Instruction related to a violation of 647(e) being a crime of general intent given in case numbers M55555 and M55567.

Exhibit 6E- The Lodging flyer distributed by the Santa Cruz County Sheriff's Department to Peace Camp 2010 participants prior to citation as entered into evidence in case number M55567 as People's # 6.

Exhibit 7- Legislative History of Penal Code section 647 from 1961 (Included passed Assembly Bill 874 of 1961 and vetoed Assembly Bill 2712 of 1959)

Exhibit 7A- Declaration of Jenny S. Lillge, from Legislative Intent Services, Inc.

Exhibit 7B- Post enrollment documents regarding Assembly Bill 874 Report on Assembly Bill No. 874. O'Connell (Departmental), May 19, 1961

Exhibit 7C- *Public Hearing of Assembly Interim Committee on Judiciary*, Subcommittee on Constitutional Rights, July 28 and 29, 1958.

Exhibit 7D- Article entitled "Vagrants, Rogues and Vagabond-Old Concepts in Need of Revision," excerpted from the *California Law Review,* October 1960.

Exhibit 7E- Post-Enrollment documents regarding Assembly Bill 2712.

Exhibit 8- A file stamped document from the United States District Court for the Southern District of California Memorializing a Supplement to Stipulation And Order Modifying Settlement Agreement and Order Thereon Between Private Persons and the City of San Diego and the City of San Diego Police Department.

Exhibit 9- Police reports created in the present case and disclosed in discovery by the Office of the District Attorney for Santa Cruz County.

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I do hereby declare that the foregoing is true and correct except for those facts which are stated pursuant to my information and belief and for those facts I believe them to be true. Executed this ___ day of September, 2011 at Santa Cruz, California.

_____

JONATHAN CHE GETTLEMAN,
Attorney for Petitioner,
Linda Lemaster

DECLARATION OF WORD COUNT

I, Jonathan Che Gettleman, declare:

I am trial counsel in *In re Linda Lemaster* and I have prepared this Petition for Writ of Habeas Corpus. The word count of the computer program used to prepare this brief is 10, 460 words.

I declare that the foregoing is true and correct under penalty of perjury pursuant to the laws of the State of California. Executed this 1st day of September, 2011.

_____

JONATHAN CHE GETTLEMAN
Attorney for Petitioner,
Linda Lemaster

DECLARATION OF SERVICE

I, Jonathan Che Gettleman, declare:

I am over eighteen years of age, and not a party to the within cause; my business address is 223 River Street, Suite D Santa Cruz, California 95060; I have caused to be served a copy of the within Petition for Writ of Habeas Corpus on each of the persons named below by hand delivery.

Office of the District Attorney
County of Santa Cruz
701 Ocean Street, Room 201
Santa Cruz, CA 95060

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct. Executed this ___day of September, 2011 at Santa Cruz, California.

_____

JONATHAN CHE GETTLEMAN