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Attorney for GARY ALLEN JOHNSON

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CRUZ

THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
  
Plaintiff,

Case No. M64170

DEFENDANT'S REPLY TO OPPOSITION  
TO DEMURRER

vs.

Date: February 17, 2012  
Time: 1:30 P.M.  
Dept: 2

GARY ALLEN JOHNSON,  
  
Defendant.

I. NINTH AMENDMENT

The District Attorney seems to know better than Theodore Sedgwick what the Ninth Amendment protects. Congressman Sedgwick participated in House debates over the proposed Ninth Amendment in 1790, and expressed his concern that, if the Ninth Amendment were not adopted, Government might try to prohibit citizens from sleeping. The District Attorney, ignoring this explicit legislative history, blandly concludes that "There is no right to sleep, either enumerated or unenumerated, granted by the Ninth Amendment ..." Opposition, 2:23-24.

The District Attorney may be free to suppress the obvious truth, but this Court must not evade its duty to enforce the

1 document it has sworn to uphold. That duty includes making a  
2 coherent response to Defendant's contention that the Ninth  
3 Amendment was designed to protect (among many other rights) the  
4 natural, unavoidable need for sleep, regardless of whether the  
5 sleeper has previously obtained a property right to her sleep-  
6 site.

7 The District Attorney appears to contend that, if at  
8 least one appellate judge has not endorsed a right, that right  
9 simply does not exist. That is not the law. The law, the  
10 supreme law of the land, is the text of the Constitution. That  
11 is the document this court has sworn to uphold, and where, as  
12 here, a Congressional author of that document expresses the  
13 intent of the law in undeniably clear language, sweeping the  
14 matter under the rug and pretending that the constitutional  
15 author's words carry no authority would amount to a gross dis-  
16 regard of this Court's highest duty.

17 Nor can this Court merely dismiss the Defendant's  
18 contention on the grounds that (1) Defendant can not arbitrarily  
19 choose a particular site on public property, and therefore  
20 (2) Defendant had no right to sleep on the Courthouse grounds.  
21 If the right to sleep exists, then the State has a duty to dés-  
22 ignate at least one place where that right can be exercised.  
23 Otherwise there is not a single square inch available in the  
24 entire state, and the right would be wrongfully denied. In the  
25 absence of such a designation, the Defendant made a reasonable  
26 choice, where his activity does not interfere with any other  
27 person, and the State has no countervailing interest that defeats  
28 the Defendant's right.

1           The California Constitution's analogue to the Ninth  
2 Amendment simply fortifies the Defendant's contention as to his  
3 unenumerated right to sleep.

4  
5                           II. ARTICLE ONE, SECTION ONE OF  
6                           THE CALIFORNIA CONSTITUTION

7           The District Attorney argues that, even though a person  
8 has the explicit right to seek and obtain happiness, this right  
9 does not include the right to sleep. The deprivation of sleep  
10 causes physical and mental problems, but this pursuit of happi-  
11 ness must be disregarded because no judge has held that such a  
12 right includes the right to sleep and because some unidentified  
13 but compelling interest of the State has been compromised by  
14 Defendant's act of sleeping.

15           The District Attorney similarly rejects Defendant's  
16 right to pursue and obtain privacy, to pursue and obtain safety,  
17 to enjoy and defend life and liberty. All these rights are  
18 expressly provided in Art. I, sec. 1 of the California Consti-  
19 tution.

20           Here again, this Court is duty-bound to apply this law  
21 and explain its reasoning. It is Orwellian for the District  
22 Attorney to issue a blanket dismissal of these basic rights on  
23 the ground that (1) none of them mentions the word "sleep", and  
24 (2) no appellate judge has held that these rights to include  
25 the right to sleep. This Court must recognize and acknowledge  
26 that the District Attorney's approach leads to a suppression of  
27 basic rights and a criminalization of the status of poverty.

28           If this judicial system is anything other than a hand-

1 maiden to Commerce and Finance it must forthrightly reject this  
2 class warfare imposed from above.

3 The statutory prohibition against "unlawful lodging"  
4 is interpreted as a prohibition against sleeping, and therefore,  
5 in light of all the bedrock constitutional rights set out above,  
6 the statute must be struck down as invalid on its face.

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III. FIRST AMENDMENT

10 The Defendant was obviously engaging in expressive  
11 activity at the County Government Center, as indicated in the  
12 Complaint as the locus of the activity. Camping, lodging, sleep-  
13 ing is a legitimate form of First Amendment protest activity.  
14 Clark v. Community for Creative Non-Violence (1984) 468 US 288,  
15 82 L.Ed.2d 221. The District Attorney misconstrues that Court's  
16 denial of the right to sleep, or camp out, in that case. There,  
17 the sleepers' activity conflicted with and obstructed the  
18 millions of tourists and sight-seers who flock to the park  
19 space that lies directly across the street from the White House  
20 in Washington, D.C., and that was the basis for the Court's  
21 denial of the right to camp out. 468 US at 296. In the instant  
22 case, there is no such obstruction. Therefore, as applied to  
23 Defendant's First Amendment-protected activity, the "unlawful  
24 lodging" statute is invalid.

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IV. FOURTEENTH AMENDMENT - VOID FOR VAGUENESS

The District Attorney cites People v. Scott (1993) 20 Cal.App.4th Supp.5 to support their contention that there is no vagueness problem here. That case indicates just the opposite. As the court there said: "If the West Hollywood ordinance did not provide a definition of what conduct is to be considered camping, the ordinance might be considered unconstitutionally vague." Id., at p. 11.

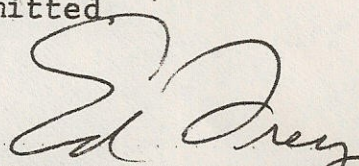
The instant statute, Penal Code sec. 647(e), contains no definition or explanation as to what constitutes "lodging", and hence is vague on its face and must be struck down.

V. CONCLUSION

For all the reasons set out above and in Defendant's two other filings in this case, this case must be dismissed as constitutionally flawed.

Dated: February 15, 2012

Respectfully submitted,



Ed Frey, Attorney for Defendant  
GARY ALLEN JOHNSON

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PROOF OF PERSONAL SERVICE

I, Ed Frey, declare the following:

I am over the age of 18 and am not a party to the within action.

My business address is:

4630 Soquel Dr., Ste. 12  
Soquel, CA 95073

On Feb. 15, 2012 I served the following described document  
Defendant's Reply to Opposition to Demurrer

by personally delivering it to:

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

I declare the above to be true under penalty of perjury. Executed  
this 15th day of February, 2012, at Santa Cruz, CA

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