



ACLU of Santa Cruz County

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April 4, 2012

Ashley Morris
ACLU of Northern California
39 Drumm Street
San Francisco, California 94111

Dear Ashley:

The following case summary and request for support is being submitted on behalf of the entire Board of Directors of the Santa Cruz County Chapter of the American Civil Liberties Union and its more than 2,000 members:

As you may know, several of our local activists have been charged with a variety of offenses arising from their alleged involvement with the occupation of a vacant bank building late last fall. That matter is referenced as **Santa Cruz County Superior Court Case Number F22196**. The Reporters Committee for Freedom of the Press submitted an **amicus** Letter Brief on behalf of two of the defendants in early March. I have attached a copy of that brief for your review, and the pdf may also be found online at santacruzindymedia on the Indybay.org website.

There are several reasons why we believe that Northern California should rise to the defense of these members of our community individually and as a group:

First, all of these defendants are either journalists, members of our local press, and/or activists committed to the Occupy Movement—and particularly Occupy Santa Cruz. Therefore, we believe that civil liberties are being broadly threatened by the continuing prosecution of these cases.

Secondly, none of these defendants "occupied" the premises in the same sense that those who remained on the property for several days did. (See Reporters Committee Letter Brief, page three, paragraph 4.) Indeed, these defendants were participating in constitutionally protected activities either as news gatherers or as supporters of the activists inside the occupied building.

Thirdly, in our opinion, the charges being pursued by our local District Attorney are over broad and overreaching in consideration of the facts. Each of these defendants has been charged with (1) felony conspiracy to commit a misdemeanor (Penal Code Section 182(a)(1)); felony vandalism (PC Section 594(b)(1)); misdemeanor trespass by entering and occupying (PC Section 602(M)); and misdemeanor trespass and refusing to leave private property (PC Section 602(O)). The facts in support of these charges as adduced through discovery provided by the District Attorney are both scant and unpersuasive even in the absence of any civil liberty considerations.

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Fourthly, it is also our opinion that these defendants are being selectively prosecuted in a manner directly related to the existing adversarial relationship several of these defendants have with both our local police department and the District Attorney's office. According to reports published and/or broadcast by local news media, anywhere from 150 to 300 individuals entered and exited the bank building during the 75-hour occupation, including local elected officials. And, yet, only these eleven defendants have been charged.

Fifthly, we believe that significant civil liberty issues arise on the facts of this case. Although we are mindful that the constitutional guarantees of freedom of speech and free assembly do not confer immunity from prosecution on those who choose to participate in arguably unlawful activities, it is of critical importance that clear distinctions be made between the exercise of the aforementioned rights in the context of direct political action. In our view, these defendants posed no threat to public order or private property by their actions either as chroniclers of the events or as ardent supporters of the occupiers and the occupation.

It is therefore our considered opinion, duly ratified by a unanimous vote of our Board, that an **amicus** Letter Brief appropriate to these facts and circumstances be submitted to our Superior Court on behalf and in support of the named defendants. Although the submission of an **amicus curiae** brief is procedurally unusual at the non-appellate level, it is not barred by existing case law and may serve to provide the presiding Court with relevant information.

Should Northern California agree to draft and submit such a brief, it may be addressed to:

Honorable Paul P. Burdick
Judge of the Superior Court
County of Santa Cruz
Santa Cruz Courthouse
701 Ocean Street
Santa Cruz, CA 95060

Of course, you and your staff will need to independently review and assess the merits of this case in light of our shared mission to defend civil liberties. Please feel free contact to me directly via e-mail or by phone should you have any additional questions.

On behalf of the Board of Directors, Santa Cruz Chapter ACLU, I thank you for your consideration of this matter of local importance and concern.

Very truly yours,

Peter Gelblum
Chair, Board of Directors
ACLU–Santa Cruz Chapter