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4 This is a preliminary version. There are statutes from Theo to be added.

5 This document is <http://www.lawyerDude.netfirms.com/7969.pdf> , <http://www.lawyerDude.netfirms.com/7969.html> and  
6 <http://www.lawyerDude.netfirms.com/7969.rtf>

7 List of Defense documents in this case is here: <http://www.lawyerDude.netfirms.com/7970.html>

8 **Superior Court of California. Kearny Mesa Division.**

[http://www.sdcourt.ca.gov/portal/page?\\_pageid=53,129603&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=53,129603&_dad=portal&_schema=PORTAL)  
9 8950 Clairemont Mesa Boulevard, San Diego, California 92123  
10 858-565-1006 - Traffic Information

11 Clerk of Court, a high school graduate,  
12 having unlawfully usurped the  
13 prosecutorial function that is solely the  
14 province of the elected prosecutor,  
dba under false color of law and  
corrupt legal fiction as "The People of  
California,"

v  
15 Forrest Bishop, a domiciliary of Washington,  
16 objecting herein to this egregious  
17 unconstitutional usurpation of the  
prosecutorial function ,  
Defendant.

Case Number:  
Ticket #

Document #7969 Version 1.001  
First Substantive Motion of Forrest Bishop.  
**Demand to Quash.**

Date: Thursday 12 October 2006  
Time: 1:30 pm  
Place: Arraignment courtroom.

18 **Demand to Quash**

19 To the clerk of court who is the prosecutor: At the venue designated in the caption  
20 or at such other venue as the court shall designate, I will demand that you dismiss this case. You  
21 are not a prosecutor. The inquisition ended some years ago.

22 Signed \_\_\_\_\_Forrest Bishop. Tuesday, September 12, 2006

23 **Contents of this Demand to Quash/ Dismiss:**

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26 **Statement of the Case** ..... Page 2 of 8

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4 **Argument** ..... Page 5 of 8  
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     **The Legislature may not give Police the Power to Summon and may not give Clerks**  
     **the power to prosecute.** ..... Page 8 of 8  
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 10 **protection.** ..... Page 8 of 8

11 **Proof of Service** ..... Page 8 of 8

12 **Notice of Concurrent Demurrer and Motion to Suppress Evidence**

13 The **Demurrer** is <http://www.lawyerdude.netfirms.com/7971.pdf> and the **Motion to**  
 14 **Suppress Evidence** is <http://www.lawyerdude.netfirms.com/7972.pdf> .

15 **Statement of the Case**

16 There was no basis for the traffic stop. If there were a prosecutor he would be required to  
 17 reject this case. However, the clerk, an uneducated person biased in this case by money to be  
 18 added to the fund that pays her. See for example: **Tumey v Ohio** (1927) 273 U.S. 510. In this  
 19 prohibition era case, the city received \$5 for each conviction. <http://www.lawyerdude.8k.com/Tumey.html>  
 20 She has usurped the prosecutorial function. Ironically the police officer usurped the clerk's function  
 21 which is to summon people to court only after there is a case filed by a duly authorized person -  
 22 which there was not when the police officer issued the faux, spurious summons to appear in court.

23 At 11 pm On the evening of Sunday 16 July 2006 I arrived in my car at Garnet Avenue in  
 24 San Diego to pick up a pizza. I dropped off my friend R and circled the block. I found a parking  
 25 spot at the curb. Before I could parallel park, R returned with the pizza and another friend KK.  
 26 They got into my car which was not "double parked" on the street in front of the pizza shop for a  
 27 matter of seconds while my passengers boarded.

28 A police officer saw my out of state license plates. He then performed a pretextual traffic  
 stop and gave me a ticket for violating the following ambiguous and overbroad statute which invites  
 the very unbridled discretion that I observed that night:

California Vehicle code section 22400. (a) No person shall drive  
 upon a highway at such a slow speed as to impede or block the

1 normal and reasonable movement of traffic, unless the reduced  
2 speed is necessary for safe operation, because of a grade, or in  
compliance with law.

3 No person shall bring a vehicle to a complete stop upon a  
4 highway so as to impede or block the normal and reasonable  
movement of traffic unless the stop is necessary for safe operation  
**or in compliance with law.** - Section 22400 in its entirety.

5 The law employs the logical fallacy of circular logic. To wit: 22400 prescribes stopping on  
6 the highway unless it is legal to stop on the highway. In other words the law prescribes that  
**stopping is illegal except when it is legal. Huh?**

7 I discuss the issue of this defective statute in my Demurrer #7971:

8 [Http://www.lawyerdude.netfirms.com/7971.pdf](http://www.lawyerdude.netfirms.com/7971.pdf)

9 To this date, I have been served neither a valid summons nor a verified complaint. I  
10 therefore demand dismissal. I demand that this court recognize that I have neither been properly  
11 summoned to court nor properly prosecuted by an authorized prosecutor. Instead a mere police  
12 officer performed the legal nullity of serving me a substitute for a summons. The officer has no  
authority to summon me to court; issuance of a summons is the duty of the clerk. The officer may  
not ordain himself a clerk even if the legislature so deems.

13 The clerk, who would ordinarily issue summonses, now elevates herself to the position of  
14 prosecutor by prosecuting this case without the formality of a complaint. Only a prosecutor can file  
a complaint. The clerk may not ordain herself to the status of prosecutor.

15 By stealthy encroachment our oppressive governments encroach. Corporations including  
16 governments enjoy eternal life and infinite wealth. They tell the lie over the course of generations.

17 My children do not know the lie that the government told my parents. This truth about the lie is  
18 most obvious regarding income taxes. They were sold to Americans around 1909 as a tax that  
would never tax the wages of the working man.

19 Every court wants to be a profit center. They presume to be working for the greater good.  
20 The city justifies traffic tickets as a means to raise revenue. In New Orleans the Public Defender  
is paid from revenue from parking meters.

21 In American the individual is king.

22 So now we have a dynamic tension: the struggle between the individual human and the  
23 corporate/ government for hegemony. Today the various governments have sent forth swarms  
of employees to eat up all our wealth.

24 This will not stand.

1 **Table of Authorities cited herein:**

2 **U.S. Constitutional Clauses Cited herein:**

3 Article IV, Section 2.: The citizens of each state shall be entitled to all privileges and immunities of  
citizens in the several states. . . . . Page 5 of 8

4 Commerce clause . . . . . Page 5 of 8

5 Due Process Clause . . . . . Page 6 of 8

6 Equal protection clause of the 14<sup>th</sup> amendment . . . . . Page 8 of 8

7 No state shall make or enforce any law which shall abridge the privileges or immunities of citizens  
of the United States; nor shall any state deprive any person of life, liberty, or property, without due  
8 process of law; nor deny to any person within its jurisdiction the equal protection of the laws. -  
Privilege and Immunities Clause of the 14<sup>th</sup> amendment. . . . . Page 5 of 8

9

10 **California Constitutional Clauses Cited herein:**

11 California constitution: Section 1. All people are by nature free and independent and have  
inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing,  
and protecting property, and pursuing and obtaining safety, happiness, and privacy.  
12 [http://www.leginfo.ca.gov/.const/.article\\_1](http://www.leginfo.ca.gov/.const/.article_1) <http://www.leginfo.ca.gov/const-toc.html>  
13 . . . . . Page 6 of 8

14

15 **Table of Statutes cited herein:**

16 California Vehicle code section 22400. (a) No person shall drive upon a highway at such a slow  
speed as to impede or block the normal and reasonable movement of traffic, unless the reduced  
17 speed is necessary for safe operation, because of a grade, or in compliance with law. No person  
shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and  
reasonable movement of traffic unless the stop is necessary for safe operation **or in compliance**  
**with law.** - Section 22400 in its entirety. . . . . Page 2 of 8

18 PC 949. The first pleading on the part of the people in a misdemeanor or infraction case is the  
19 complaint except as otherwise provided by law. . . . . Page 8 of 8

20 Penal Code§ 740 states as follows: Except as otherwise provided by law, all misdemeanors and  
infractions must be prosecuted by written complaint under oath subscribed by the complainant.  
21 . . . . . Page 8 of 8

22

23 **Cases cited herein:**

24 **People v Dragomir** Feb 14, 2006 <http://www.lawyerdude.netfirms.com/Dragomir.html>  
. . . . . Page 7 of 8

25 **People v Carlucci** 1979 <http://www.lawyerdude.8k.com/Carlucci.htm>  
<http://www.lawyerdude.netfirms.com/carlucc.html> . . . . . Page 6 of 8

26 Pousson <http://www.lawyerdude.netfirms.com/pousson.html> Not pertinent. . . . . Page 7 of 8

27 Spence <http://www.lawyerdude.netfirms.com/7968.html> Not pertinent here. . . . . Page 7 of 8

1 ***Tumey v Ohio*** (1927) 273 U.S. 510. In this prohibition era case, the city received \$5 for each  
2 conviction. <http://www.lawyerdude.8k.com/Tumey.html> The clerk has usurped the prosecutorial function -  
3 for profit. . . . . Page 2 of 8

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4 **Argument**

5 **Under U.S. Constitution IV, 2, I am entitled to California rights.**

6 All people in California are entitled to the rights of Californians, except the right to vote,  
7 which is reserved to California citizens.

8 Although the officer failed to mention it, his obvious animus was toward foreign domiciliaries  
9 which violates the constitution.

10 Article IV, Section 2.: The citizens of each state shall be entitled to  
11 all privileges and immunities of citizens in the several states.

12 The several states have unconstitutionally established compacts that violate the **commerce**  
13 **clause** and impede my rights thereunder.

14 In addition, the officer violated the Privileges and Immunities Clause of the 14<sup>th</sup> amendment  
15 which states:

16 No state shall make or enforce any law which shall abridge the  
17 privileges or immunities of citizens of the United States; nor shall any  
18 state deprive any person of life, liberty, or property, without due  
19 process of law; nor deny to any person within its jurisdiction the  
20 equal protection of the laws. - Privilege and Immunities Clause of the  
21 14<sup>th</sup> amendment.

22 A lawyer need not change his bar license upon entering a sister state and likewise I need  
23 not re-register my car every 60 days. To do so imposes an undue burden on interstate commerce.  
24 Both lawyers and drivers are subjected to ever tightening reigns of state governments.  
25 Governments by stealthy encroachment over the course of generations seek to fatten the corporate  
26 bureaucracies and extract greater percentages of the wealth of the citizenry which they view as  
27 their subjects. In the beginning we sought government to provide law and order - not to enslave  
28 and rule us.

29 Consider the flowery language of the first paragraph of our own California Constitution  
30 which is constantly under attack by Republicans shaming Lincoln and attempting to curtail our  
31 rights by, for example, limiting our own search prohibition so that it is no stronger than the 4<sup>th</sup>  
32 amendment. Here is our first flowery meaningless clause:

1 California constitution: Section 1. All people are by nature free and  
2 independent and have inalienable rights. Among these are enjoying  
3 and defending life and liberty, acquiring, possessing, and protecting  
4 property, and pursuing and obtaining safety, happiness, and privacy.

<http://www.leginfo.ca.gov/const-toc.html>

5 I was exercising my Section 1 rights as a free and natural human when the police officer  
6 unconstitutionally violated my rights to enforce his institutional corporate prejudice against out of  
7 state drivers. My remedy is dismissal. Do it.

**The clerk is acting as prosecutor; that is wrong. Dismissal is the remedy.**

8 This argument is based on the **Due Process Clause** of the U.S. constitution.

9 This argument is based on independent state grounds. The Oregon constitution makes it  
10 sound as though we created the government to serve us, not to govern us:

11 Oregon constitution: Section 10. Administration of justice. No court  
12 shall be secret, but justice shall be administered, openly and without  
13 purchase, completely and without delay, and every man shall have  
14 remedy by due course of law for injury done him in his person,  
15 property, or reputation.

16 By stealthy encroachment over the court of generation, all governments and other  
17 corporations encroach upon the personal freedoms of humans. The human lives only 75 years.  
18 The father fails to warn the grandchild of the lies of the corporation. The lie remains unchallenged  
19 generations later due to human ignorance and mortality. The immortality of the corporation gives  
20 the government opportunity to encroach as such a speed as to be imperceptible by a single  
21 generation of humans.

22 The summons was originally a document issued by a civil court only after the civil  
23 prosecutor had made a decision to prosecute. As the court corporations became fatter they  
24 ordered the litigants: "write our summonses and bring them to use for signature". Their fellow  
25 government minions in the legislature wrote the corresponding rules.

26 Then the courts saw the money flow and realized that they should promote the traffic ticket  
27 game by processing the tickets without a prosecutor.

28 The court recognized the power it wields in criminal case. If they converted a civil action  
into a criminal action they could then change their posture to an inquisitorial posture.

This is unconstitutional. The remedy is dismissal. Only a prosecutor can prosecute a  
criminal offense. This is not an administrative tribunal. If it were, there would be a hearing officer  
or administrative law judge.

The prosecution may not be done without any prosecutor. **People v Carlucci** 1979

1 <http://www.lawyerdude.8k.com/Carlucci.htm> <http://www.lawyerdude.netfirms.com/carlucc.html> **People v Dragomir**  
2 Feb 14, 2006 <http://www.lawyerdude.netfirms.com/Dragomir.html>

3 I hereby mention the cases of Pousson <http://www.lawyerdude.netfirms.com/pousson.html> and  
4 Spence <http://www.lawyerdude.netfirms.com/7968.html> which I list for completeness and to say that they  
5 are not pertinent to my case.

### 6 **Declaration of Attorney Douglas Palaschak regarding Summonses**

7 I, Douglas Palaschak, declare the following under penalty of perjury: I am an Engineering  
8 Graduate of the University of Illinois, Urbana, where I was an honors student. I marched in "The  
9 Marching Illini", the world's undisputed Premiere Marching Band. I began my career as a  
10 Registered Professional Engineer having consulted for the U.S. Navy, Mobil, and Exxon. My expert  
11 testimony resolved a personal injury case where my calculations proved that a hydraulic  
12 accumulator could not contain sufficient oxygen for combustion to have overloaded the failed bolts..  
13 This tended to prove that the cause of the explosion was a failed hydraulic safety valve.

14 I conceived and designed subsea machinery for the U.S. Navy. I performed the buckling  
15 analysis for the riser tubes and contributed to the design of the giant seafloor template for a quarter  
16 mile tall oil rig presently in service in the North Sea.

17 I have been a licensed lawyer for nearly a quarter century. I publish approximately 1200  
18 legal articles on the internet. My areas of expertise are:

19 Licenses, Rights, and Privileges, and their use as Instruments of Oppression,  
20 Criminal Defense,  
21 Internet-driven Improvements in the Efficiency of Litigation,  
22 Empowerment of Pro Se Litigants,  
23 Bankruptcy.

24 My most recent book is on the subject of Pre-trial Criminal Litigation of Malum Prohibitum  
25 Crimes. It is available by mail order via the internet.

### 26 **A ticket can never be a summons.**

27 A summons is required for the court to gain jurisdiction. A summons is a notification from  
28 the court addressed to the defendant in a pending case. A ticket is never a summons despite the  
intentions of the legislature. When a person write a ticket there is no pending case. There will be  
no pending case until a prosecutor has made a decision to prosecute. Then the prosecutor files  
a complaint. Only then is a summons possible. There is then a pending case. I would then have  
the opportunity to settle the case with the prosecutor. Most traffic courts today permit the clerk to  
prosecute the case. This practice is unconstitutional. It is an example of denial of equal protection.  
I would like the clerk to be working on my side of the case. The clerk has demonstrated a bias for  
the prosecution. Also, the clerk is paid by the money earned by the ticket that she prosecutes. No.

1 This will not stand.  
2 - Douglas Palaschak

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3 **A defendant may appear by motion.**

4 I need not appear in person but may appear by motion. I have appeared as agreed by my  
5 signature on the notice to appear by entering this motion to quash.

6 The ticket is no kind of summons. To call it a summons is to redefine fundamental terms  
7 in the middle of the game. This denies me due process. Changing the terms is a common  
8 instrument of oppression. See the entire list of Modern Day Instruments of Oppression at:

9 <http://www.lawyerdude.8k.com/5724.html>

10 **Permitting Police to Summon denies Equal Protection Under the Law**

11 When I want to sue the police I must jump through the hooks of a summons and complaint  
12 and filing fee. Conversely when he wants to "sue" me he uses his ticket book. Then the clerk  
13 prosecutes for him. Wouldst that my lawsuits against the police were that quick and easy. That  
14 difference denies me equal protection under the law. Your process violates the **equal protection**  
15 **clause of the 14<sup>th</sup> amendment.** My remedy is dismissal. Do it.

16 **The Legislature may not give Police the Power to Summon and may not give Clerks the**  
17 **power to prosecute.**

18 Penal Code § 740 states as follows:

19 Except as otherwise provided by law, all misdemeanors and  
20 infractions must be prosecuted by written complaint under oath  
21 subscribed by the complainant.

22 PC § 949 states as follows:

23 The first pleading on the part of the people in a misdemeanor or  
24 infraction case is the complaint except as otherwise provided by law.  
25 - PC 949

26 All criminal law follows the ancient common law.

27 **Special Scrutiny and Prosecution for those who know the law denies equal protection.**

28 You may not now subject me (and only me) to prosecution by a prosecutor. To do so  
would punish me with special scrutiny for having performed this public service as a Private Attorney  
General. Though your purpose be masked as efficiency it is in truth mere corruption and fraud.  
You must dismiss my case now.

Signed \_\_\_\_\_ Forrest Bishop. Tuesday, September 12, 2006.

**Proof of Service**

I, Forrest Bishop, served this document upon the prosecutor in this case by hand delivery  
to the criminal filing window on Tuesday, 12 September, 2006 at the address shown above the  
caption on page 1.