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In Pro Per
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Superior Court of California

County of Ventura, 800 S. Victoria, Ventura CA 93002

County of Ventura dba
People of California,

plaintiff

v

Douglas Palaschak,

defendant.

Case #2001 554 887 I A

Memorandum #5067v 2 of Authorities Supporting Demurrer to the Complaint on the Basis that the Underlying Statute is Facially Overbroad, constitutes invidious wealth-based discrimination and is otherwise Unconstitutional.

Motion to Recuse Ventura District Attorney and the California Attorney General on the basis that the withholding of exculpatory evidence by their Kitzmann and their violation of the 14th amendment proscription against enforcing any law that abridges my privileges and immunities, namely my right to write petition #2871, resulted in my false arrest and my 4 month imprisonment and my being brought into the state of California (where a jury found me innocent) from Illinois resulting in my suing Kitzmann which lawsuit is current in Los Angeles case 00-10510 RSWL. The DA and AG offices are both witnesses in the federal case and this Vagrancy case - and defendants in the federal case.

Date: Thursday 16 August 2001

Time: 9 a.m.

Courtroom: #14

20 **"The law, in its majestic equality, forbids the rich as well as the poor to sleep**
21 **under bridges, to beg in the streets, and to steal bread."** - Anatole France (1844-
22 1924)1894 as quoted in Bartletts Familiar Quotations, 16th edition, page 550, #13.

23 It results in a regime in which the poor and the unpopular are permitted to **"stand on a public**
24 **sidewalk . . . only at the whim of any police officer."** *Shuttlesworth v. Birmingham*, 382 U.S. 87,
90 . Link to *Shuttlesworth* case: <http://laws.findlaw.com/us/382/87.html>

Notice of Demurrer

25 To Ventura District Attorney: Please note that as announced in court 10 on 19 July 2001 in the
26 presence of DDA Wold, Douglas Palaschak will Demur to the complaint in this case at the venue shown in
27 the caption. Palaschak demands the recusal of the Ventura District Attorney and the California Attorney
28 General.

PALASCHAK'S DEMURRER #5067 TO UNCONSTITUTIONAL VAGRANCY STATUTE.

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Memorandum of Authorities supporting Demurrer to Unconstitutional Vagrancy Statute 1

Procedural Status 1

There is no complaint on file. 1
Complete Text of the Offending Statute 1
A comparison to PC 647 f (drunk in public) demonstrates that a valid statute addressing problems
of presence in public can be written. 1

**Enforcement here chills my right to sleep and travel. Where a statute on its face forbids
activities that are clearly protected by the constitution, such as sleeping on private
property in a car (or a waterbed or a lunar landing module) and enforcement of that
statute would tend to chill and impede enjoyment of fundamental rights such as the
right to speak, to sleep, to pursue happiness, to awake refreshed, and to be left
alone, then that statute fails in its entirety. The right to sleep is like the right to
breathe; it is essential to life which is indeed specifically enumerated in the
constitution. Overbreadth is not limited to speech! 1**

Overbreadth is not new nor limited to free speech. 1

A statute as broad as Ventura's have never been upheld and has always been overturned. 2

Ventura's statute is broader than Santa Barbara's or San Francisco's 2

Demurrer is the proper vehicle 2
This statute constitutes invidious wealth based discrimination. *Williams v Illinois* 3
It violates the commerce clause and the 14th amendment. *Edwards v California*. 3
I have a right to locomotion, to privacy, and a right to sleep. I need not give up one for the other.
. 4

**The ordinance is deceptively written to give the appearance of equal protection. In fact
sleeping in a car is a proxy for the status of being poor. Similarly California in about
1963 created the bogus crime of "being under the influence" H&S 11550 to use as a
proxy for "being an addict" which was declared a status and therefore note
punishable. 4**

Ventura's statute speaks in terms of "living" or "residing" (which it does not define - but rather
delimits) but forbids also the essential human act of sleeping. 4
Similar statute in Florida was declared unconstitutional in *Pompano v Capalbo* (1984) 5
A narrower statute was upheld in *(Santa Barbara) v Davenport* (1985) 176 Cal App 3d Supp 10
. 5

Santa Barbara Statute is not binding precedent. It was upheld only by the county court sitting as the
judge of its own decision. 6

PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

1

2 What is the purpose of this statute? Vesting of unbridled discretion. 6

3 Example #1: UPS Driver stops at depot at noon. 6

4 Example #2: Driver feeling high blood alcohol. 6

5 Example #3: Bowler is tired. 6

6 Example #4: Earthquake. Pinned under a fallen overpass. If you sleep 5 hours, you get a

7 ticket. 6

8 This law abridges the right to sleep in your own property 7

9 The Ventura statute draws no distinction between harmful and innocent conduct 7

10 Adequate Notice is an element of Due Process. Strict scrutiny Analysis applies here. The statute

11 is presumed invalid absent compelling state interest if it covers protected activity such as

12 speech or sleep. There is no state interest in preventing people from sleeping in their car

13 on their own property - or other private property where they had permission to be - which is

14 what the Ventura statute permits the police to do. The only state interest is here is obvious:

15 Keep the poor people moving on. Don't let them rest. 7

16 Thou shalt not walk at night while being a Negro 8

17 Private agendas and personal predilections 8

18 Unfettered discretion fosters invidious private agendas. - Palaschak. 8

19 The poor and the unpopular are permitted to "stand on a public sidewalk . . . only at the

20 whim of any police officer. - *Shuttlesworth v Birmingham* 9

21 The 14th amendment prohibits Ventura from enforcing this statute 9

22 Overbroad ordinances are calculated to give unbridled discretion and are unconstitutional. . . . 9

23 Ventura's ordinance fosters arbitrary and erratic action in violation of *Papachristou* 9

24 A statute that permits unfettered police discretion is unconstitutional. *Lanzetta v N.J.* 9

25 Ventura's statute fails to give notice to police - who are not required to perform remedial interpretation on

26 the statute in the field; where, as here, a statute on its face abridges a fundamental right, such as

27 the right to sleep on private property, without compelling state interest, that statute fails totally and

28 is void ab initio regardless of the ability of a constitutional scholar to remedially interpret it. . . 10

What do you get when you cross the right to privacy with the right to pursuit of happiness? A

penumbra! 10

Effective Law Enforcement Can Be Had Without Resort to a Police State. *Brinegar v U.S.* . . . 10

Summary 10

Ventura's statute fails to give notice to police - who are not required to perform remedial

interpretation on the statute in the field; where, as here, a statute on its face abridges a

fundamental right, such as the right to sleep on private property, without compelling state

interest, that statute fails totally and is void ab initio regardless of the ability of a

constitutional scholar to remedially interpret it. 10

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1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 **Tables of Authorities Cited Herein:**

3 **Cases cited herein:**

4 Batts v Superior Court (1972) 23 Cal App 3d, a pathetically empty opinion citing only 4 cases - all low level
5 appellate decisions 5

6 Brinegar v U.S. (1949) 93 L Ed 1879, 338 US 160, 69 S Ct 1302. Officers whim or caprice. 10

7 City of Pompano Beach v Capalbo (1984) 455 S 2d 468. Of all the challenges to statutes, this statute most
8 resembles the Ventura statute at issue in today's case. 5

9 Colautti v Franklin (1979) 58 L Ed 2d 596, 606, 439 US 379 @ 390-91, 99 S Ct 675 @ 683. 8

10 Douglas v California (1963) 9 L Ed 2d 811, 372 US 353, 83 S Ct 814 says that equal protection demands
11 that an indigent be provided counsel on appeal. In other words, wealth based discrimination is
12 unconstitutional. 3

13 Edwards v California (1941) 86 L Ed 119, 314 US 160, 62 S Ct 164. California's law forbidding the
14 importation of an indigent was ruled unconstitutional on the basis of the commerce clause . . . 3

15 Gibbons v Ogden 9 Wheat 1 2 196, 6 L Ed 23 @ 70. Overbreadth? Cited in Howard v Illinois Central.
16 2

17 Gideon v Wainwright (1963) 372 U.S. 335. Henry Fonda portrayed Gideon in the movie **Gideon's Trumpet**.
18 Defendants are entitled to appointed counsel even in non-capital cases. The court extended this
19 right even further in **Argersinger**. They are founded on Equal Protection. 3

20 Grayned v City of Rockford (1972) 33 L Ed 2d 222, 408 US 104 @ 108, 109, 92 S Ct 2294 @ 2298-99. Giving
21 unfettered discretion is unconstitutional 10

22 Griswold v Connecticut (1965) 14 L Ed 2d 510, 381 U.S. 479, 85 S. Ct. 1678 Penumbra. Relaxed standing.
23 Vicarious standing 7, 10

24 Howard v Illinois Central Railroad (1908) 207 US 463. Overbreadth. Cites Gibbons. 2

25 Keyishian v Board of Regents (1967) 17 L Ed 2d 629, 385 US 589 @ 603, 604, 87 S Ct 675 @ 683-684 a
26 case striking down an ordinance inhibiting the right to sell door to door. 8

27 Lanzetta v New Jersey (1939) 83 L Ed 888, 306 US 451 @ 453, 59 S St. 618 @ 619. A statute that permits
28 unfettered police discretion is unconstitutional. 10

29 Marbury v Madison (1803) 2 L Ed 60, 5 U.S. 137. A void act is void ab initio - from the start. . . . 10

30 Papachristou v City of Jacksonville 31 L Ed 2d 110, 405 US 156, 92 S Ct 839. An ordinance which "**as**
31 **written, may result in arbitrary and erratic arrest and convictions**" must be stricken, as cited
32 in State v Penley in striking down the similar St. Petersburg Ordinance. 9

33 People (Santa Barbara) v Davenport (1985) 176 Cal App 3d Supp 10 Not binding precedent. Poor decision
34 5

35 Shuttlesworth v Birmingham (1965) (There are 4 Supreme Court cases with this same name) 15 L Ed 2d
36 176, 382 US 878, 86 S Ct 211. Unfettered discretion results in a regime in which **the poor and the**
37 **unpopular are permitted to "stand on a public sidewalk . . . only at the whim of any police**
38 **officer."** 2, 9

39 Smith v Goguen (1974) 39 L Ed 2nd 605, 415 US 574, 94 S Ct 1247-48 warns that where a legislature fails
40 to provide adequate guidelines, a criminal statute has the unconstitutional effect of fostering "a
41 standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal
42 predilections." Smith was accused of flag desecration. 8

43 Spann was the pro-drug opinion that said that "use is not possession" It was found in Deerings annotations
44 but not in the Pro-Establishment West publications. 6

45 State v Penley (1973) 276 So 2d 180 struck down St. Petersburg public sleeping ordinance. 2, 8

46 Thornhill v. Alabama, 310 U.S. 88, 97 -98 "harsh and discriminatory enforcement by local prosecuting
47 officials, against particular groups deemed to merit their displeasure." 9

48 U.S. v Harris (1954) 98 L Ed 989 @ 996, 347 U.S. 612 @ 617, 74 S Ct 808 @ 812. A statute fails
49 constitutional muster if it "fails to give a person of ordinary intelligence fair notice that his

PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

1

2 contemplated conduct is forbidden by the statute" 8

3 Vehicular Residents v Agnos (1990) 222 Cal App 3rd 996 San Francisco upheld its own statute but it did not

4 pertain to: 1. Cars;2. Parking on private property; 3. Daytime parking. 2

5 Williams v Illinois (1970) 26 L Ed 2d 586, 399 US 235, 90 S Ct 2018. Indigent cannot be ordered to "work

6 off" a fine if the imprisonment will extend the imprisonment beyond the maximum sentence. This

7 was the key case in Palaschak's brief #2871 for Melvin Looser, the smoking gun on which his

8 extradition was based. 3

9 Williams v. Fears (19000 45 I Ed 186, 179 U.S. 270, 274 , 21 S.Ct. 128, 129. "Undoubtedly **the right of**

10 **locomotion, the right to remove from one place to another according to inclination, is an**

11 **attribute of personal liberty, and the right, ordinarily, of free transit from or through the**

12 **territory of any state is a right secured by the 14th Amendment and by other provisions of**

13 **the Constitution."** Ventura's statute abridges my right to travel. 3

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PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

Statutes and Ordinances Cited Herein:

PC 647 f (drunk in public) Proof that a statute can be drafted constitutionally. 1

Pompano Beach Municipal code §31.66: It shall be unlawful for any person to lodge or sleep in, on, or about any automobile, truck, camping or recreational vehicle or similar vehicle in any public street, public way, right of way, parking lot or other public property, within the limits of the city. 5

Santa Barbara Municipal Code §15.16.085: It shall be unlawful for any person to sleep in: (1) Any public park during the period of time from 10:00 p.m. to 6:00 a.m.; (2) Any public street; (3) Any public parking lot or public area, improved or unimproved; or (4) Any public beach during the period of time from 10:00 pm to 6:00 a.m. 5

St. Petersburg, Florida, ordinance that was struck down: No person shall sleep upon or in any street, park, wharf or other public place. 7

Ventura City Ordinance §10.150.070 was written in 1971 - before the completion of the U.S. Supreme Court's era of enlightenment: It shall be unlawful for any person to park a motor vehicle or a transportable living facility on **any** street, highway, or public **or private property** for purposes of living or residing or sleeping therein, **except as otherwise permitted by law**. "Living" or "residing" as used herein shall include use of a facility as living or sleeping quarters for a single day or night. This section shall not apply to registered guests, campers or residents at mobile home or recreational vehicle parks validly existing pursuant to city zoning requirements. In addition, sleeping in a parked vehicle for a limited time, not exceeding four hours, under bona fide conditions of emergency, or in the interest of public safety, shall not constitute a violation of this section. 1

PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

Constitutional Provisions cited herein:

14th amendment:, in part: No state shall make or enforce any statute that abridges the privileges or immunities of citizens of the several states. 2, 9

California constitution Equal Protection clause. 3

California constitution, Article 1 gives us the right to pursue happiness - which seems to imply the right to sleep. 10

Commerce clause of the U.S. Constitution. 3

Due Process Clause. Adequate notice is an element of due process 7

Equal protection clause of U.S. constitution. 3

Right of locomotion, the right to remove from one place to another according to inclination. 3

PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

Treatises Cited herein:

Amsterdam, *Federal Constitutional Restrictions on the Punishment of Crimes of Status* 9
Brief #2871 Melvin Looser traffic brief citing Williams and the Equal Protection Clause. 3
Brief #3789 entitled *Free Speech for Lawyers* is at <http://lawyerdude.50megs.com> 3
Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like, 3 Criminal L. Bull.
205, 226 (1967). 9

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1 **Memorandum of Authorities supporting Demurrer to Unconstitutional Vagrancy Statute**

2 **Procedural Status**

3 On 16 August 2001 I waited for this case to be called. It was called last called. The court had no
4 copy of the motion in its file. I filed on time on August 2 and served the district attorney on the same day.
5 The district attorney had no comment in court although they appeared previously and have not substituted
6 out - which is why I served them. The case is captioned "People v Palaschak". The DA represents the
7 people.

8 There is no complaint on file.

9 **Complete Text of the Offending Statute**

10 The defendant was ticketed by Ventura Police for violating Ventura City Ordinance §10.150.070
11 which reads as follows:

12 It shall be unlawful for any person to park a motor vehicle or a transportable living facility
13 on **any** street, highway, or public **or private property** for purposes of living or
14 residing **or sleeping** therein, **except as otherwise permitted by law.** "Living" or
15 "residing" as used herein shall include use of a facility as living or sleeping quarters for a
16 single day or night. This section shall not apply to registered guests, campers or residents
17 at mobile home or recreational vehicle parks validly existing pursuant to city zoning
18 requirements. In addition, sleeping in a parked vehicle for a limited time, not exceeding
19 four hours, under bona fide conditions of emergency, or in the interest of public safety, shall
20 not constitute a violation of this section. - Ventura City Ordinance Emphasis has been
21 added by Palaschak to illustrate the over-reaching aspect of this statute.

22 **A comparison to PC 647 f (drunk in public) demonstrates that a valid statute addressing**
23 **problems of presence in public can be written.**

24 This is a minor point.

25 **Enforcement here chills my right to sleep and travel. Where a statute on its face forbids activities**
26 **that are clearly protected by the constitution, such as sleeping on private property in a car (or a**
27 **waterbed or a lunar landing module) and enforcement of that statute would tend to chill and impede**
28 **enjoyment of fundamental rights such as the right to speak, to sleep, to pursue happiness, to awake**
refreshed, and to be left alone, then that statute fails in its entirety. The right to sleep is like the right
to breathe; it is essential to life which is indeed specifically enumerated in the constitution.
Overbreadth is not limited to speech!

Overbreadth is not new nor limited to free speech.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 **Shuttlesworth v Birmingham** ¹ demonstrates that overbreadth is not limited to speech. Prior to
3 Shuttlesworth, overbreadth was the basis for the decisions in **Howard v Illinois Central Railroad** (1908) 207
4 US 463 and also perhaps **Gibbons v Ogden** 9 Wheat 1 2 196, 6 L Ed 23 @ 70. Shuttlesworth was accused
5 of failing to disperse from the sidewalk. The statute permitted unfettered discretion. Ventura's statute
6 pertains to anybody who parks on any **private** property (or public) to sleep in his car at any time of day or
7 night.

8 **A statute as broad as Ventura's have never been upheld and has always been overturned.**

9 The florida statute in **State v Penley** ²(1973) is closest in similarity to Ventura's overbroad statute.
10 It was overturned.

11 **Ventura's statute is broader than Santa Barbara's or San Francisco's**

12 San Francisco upheld its own statute in **Vehicular Residents v Agnos** (1990) 222 Cal App 3rd 996
13 but it did not pertain to:

- 14 1. Cars;
- 15 2. Parking on private property;
- 16 3. Daytime parking.

17 By comparison, Ventura's statute pertains to parking at all times (day or night) on all private property
18 in all cars.

19 Similarly the statute upheld in Santa Barbara in **People v Davenport** ³(1985) did not pertain to

- 20 1. Cars;nor
- 21 2. Parking on private property; nor
- 22 3. Daytime parking.

23 Ventura's overbroad statute is broader than the one upheld in Santa Barbara which was limited to
24 certain public areas and only at night time and did not pertain to cars. The Santa Barbara case is not binding
25 precedent. It was simply a Superior Court decision reported in the supplement to the appellate reports.

26 **Demurrer is the proper vehicle**

27 A demurrer was the vehicle used in **Howard v Illinois Central Railroad** to deal with overbreadth.

28 ¹*Shuttlesworth v Birmingham* (1965) (There are 4 Supreme Court cases with this same name. Shuttlesworth was a busy dissident - like Palaschak.) 15 L Ed 2d 176, 382 US 878, 86 S Ct 211. Unfettered discretion results in a regime in which the poor and the unpopular are permitted to "stand on a public sidewalk . . . only at the whim of any police officer."

²State v Penley (1973) 276 So 2d 180 struck down St. Petersburg public sleeping ordinance.

³People (Santa Barbara) v Davenport (1985) 176 Cal App 3d Supp 10 Not binding precedent. Poor decision.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 **This statute constitutes invidious wealth based discrimination. *Williams v Illinois***

3 Ordinance §10.150.070 is designed to chase away 21st Century Okies from landing in
4 Ventura. The U.S. Supreme Court in ***Douglas v California***⁴ , ***Gideon v Wainwright***⁵ , and ***Williams v***
5 ***Illinois***⁶ has ruled against statutes that deny equal protection regardless of wealth. The equal protection
6 clause is an important part of U.S. law. The California constitution also mandates equal protection under
7 the law. Palaschak discussed the concept in his brief #2871 which was the smoking gun upon which his
8 unconstitutional extradition was based. Palaschak was acquitted and is now litigating in federal court against
9 Ventura County and others who conspired to violate Palaschak's right to petition. See brief #2871 and the
story of Palaschak's illegal extradition at <http://lawyerdude.50megs.com> . See Palaschak's brief #3789
entitled ***Free Speech for Lawyers*** at the same website.

10 **It violates the commerce clause and the 14th amendment. *Edwards v California.***

11 Ventura's law writers desire that wealthy people come to Ventura (and leave their money with the
12 probation department) but they don't want poor folks - Okies. Okies are discussed in ***Edwards v California***
13 (1941) 86 L Ed 119, 314 US 160, 62 S Ct 164. In ***Edwards***, California's law forbidding the importation of
14 an indigent was ruled unconstitutional on the basis of the commerce clause - and more. In ***Edwards***, Justice
Douglas quoted Former Chief Justice Fuller in ***Williams v. Fears***, 179 U.S. 270, 274 , 21 S.Ct. 128, 129,
stated:

15 Undoubtedly **the right of locomotion, the right to remove from one place to**
16 **another according to inclination, is an attribute of personal liberty, and the**
17 **right, ordinarily, of free transit from or through the territory of any state is a**
18 **right secured by the 14th Amendment and by other provisions of the**
Constitution. - Chief Justice Fuller in ***Williams v Fears***

19 This situation is all the more ironic considering that Douglas Palaschak was plucked from his corn
20 and soybean farm in Illinois by FBI agents duped by the Ventura District Attorney's Investigator Kitzmann
21 who failed to reveal that he possessed a tape that proved that his main witness, Deputy Vido was lying when
he said that Palaschak practiced law and spoke in court for Melvin Looser. Palaschak is here without money

22
23 ⁴***Douglas v California*** (1963) 9 L Ed 2d 811, 372 US 353, 83 S Ct 814 says that equal
protection demands that an indigent be provided counsel on appeal.

24 ⁵***Gideon v Wainwright*** (1963) 372 U.S. 335. Henry Fonda portrayed Gideon in the movie
25 ***Gideon's Trumpet***. Defendants are entitled to appointed counsel even in non-capital cases. The court
26 extended this right even further in ***Argersinger***. They are founded on Equal Protection.

27 ⁶***Williams v Illinois*** (1970) 26 L Ed 2d 586, 399 US 235, 90 S Ct 2018. Indigent cannot be
28 ordered to "work off" a fine if the imprisonment will extend the imprisonment beyond the maximum
sentence. This was the key case in Palaschak's brief #2871 for Melvin Looser, the smoking gun on
which his extradition was based.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 because **he lost his farm home in Illinois due to the dishonesty of the very prosecutor's office who**
3 **prosecutes him now** (unless they have recused themselves).

4 It was the lies of former Ventura Police officer David Matz which convinced sleeping just McNally
5 to deny Palaschak's suppression motion. Palaschak will attempt to reopen that case on the basis of Matz's
6 having been caught shoplifting.

7 **I have a right to locomotion, to privacy, and a right to sleep. I need not give up one for the other.**

8 Therefore I have a right to sleep in my car on private property without being roused by the police
9 until I find a home - especially where the district attorney brought me here and kept me here until I lost my
10 home in Illinois.

11 **The ordinance is deceptively written to give the appearance of equal protection. In fact sleeping**
12 **in a car is a proxy for the status of being poor. Similarly California in about 1963 created the bogus**
13 **crime of "being under the influence" H&S 11550 to use as a proxy for "being an addict" which was**
14 **declared a status and therefore note punishable.**

15 You are punishing me for my status of being poor and using the proxy of sleeping in my car. You
16 don't care if the rich sleep in their cars in their driveway but you make the law overbroad to give the illusion
17 of equal protection. The rich would be sleeping in your overpriced motels.

18 **Ventura's statute speaks in terms of "living" or "residing" (which it does not define - but rather**
19 **delimits) but forbids also the essential human act of sleeping.**

20 Sleeping is a necessary function. If you don't sleep, then you die - after first becoming very cranky.
21 The Pompano Beach statute cited herein was declared unconstitutional because although the court could
22 accept a statute that forbade "lodging" in a vehicle, it could not tolerate making it illegal to simply sleep.
23 Implicit in this argument is that "lodging in a public place" has as its essence the usurpation of public property
24 for a private home. By comparison, mere sleeping is, well, mere sleeping. A properly written statute might
25 set out some indicia for lodging - and everybody sorta knows that. However, enforcement would then entail
26 gathering more evidence. Mere sleep is easier to prove - and that virtue is also its fatal flaw, because in
27 making the statute so easy to enforce, Ventura has vested unbridled discretion in its police. Unbridled
28 discretion is used to enforce other agendas - and this type of case demonstrates that the drug war is the
other agenda that is fostered by unbridled discretion.

 Palaschak has suffered 3 unconstitutional raids of his law office since 1991. All of them were without
probable cause. All of them resulted in no valid conviction - albeit the 1991 raid resulted in a misdemeanor
conviction unconstitutionally affirmed on appeal by the California Supreme Court in retaliation for
Palaschak's having sued them for a client. That case is not yet in repose. In 1999 Ventura duped the FBI
into raiding Palaschak's Illinois farm house alleging that Palaschak had written a petition illegally in
California. Palaschak was held on \$250,000.00 bail, extradited to California, and imprisoned for 4 months.
A jury took only 2 hours to find him not guilty. In 1993 Palaschak's law office was raided by Glen Kitzmann.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 This time Palaschak promptly convinced Kitzmann that Kitzmann was mistaken. The district attorney had
3 never filed a criminal complaint and did not ever file a criminal complaint in that case. They simply kept all
4 Palaschak's computers, printer, and office equipment, money, and files for over a year. They also issued
5 a lying press release saying that Palaschak had committed 7 felonies - the very felonies that they rejected
6 for prosecution - because the accusation was that Palaschak had performed bankruptcies without a license,
7 when in fact Palaschak had cleared his federal license prior to ever engaging in the bankruptcy practice.
8 His state license suspension was unconstitutional. **Consider how much different would have been the
9 outcome had Kitzmann or the FBI found drugs in any of the raids.** Although it is patently
10 unconstitutional to justify a raid on what was found in the raid, it happens all the time. **Unbridled discretion,
11 which is the result of overbroad statutes, fosters raids which promote hidden agendas - such as the
12 drug war - or selecting outspoken anti-police spokespersons for stricter scrutiny.**

13 **Similar statute in Florida was declared unconstitutional in Pompano v Capalbo (1984)**

14 The offending statute in City of Pompano Beach v Capalbo (1984) 455 S 2d 468 was Pompano
15 Beach Municipal code §31.66 which reads in its entirety as follows:

16 It shall be unlawful for any person to lodge or sleep in, on, or about any automobile,
17 truck, camping or recreational vehicle or similar vehicle in any public street, public
18 way, right of way, parking lot or other public property, within the limits of the city. -
19 Pompano Beach, Florida, statute.

20 This statute was held unconstitutional for essentially the same reasons that I challenge the Ventura
21 statute today. Notice that this Pompano Beach statute does not prevent sleeping on private property. The
22 Ventura statute prohibits sleeping in a car on private property even with permission of the owner of the
23 property - which is precisely the situation of Defendant Palaschak in today's case.

24 **A narrower statute was upheld in (Santa Barbara) v Davenport (1985) 176 Cal App 3d Supp 10**

25 The statute at issue in *Davenport* (1985) was Santa Barbara Municipal Code §15.16.085 which reads
26 in its entirety as follows:

27 "It shall be unlawful for any person to sleep in: (1) Any public park during the period
28 of time from 10:00 p.m. to 6:00 a.m.; (2) Any public street; (3) Any public parking
lot or public area, improved or unimproved; or (4) Any public beach during the
period of time from 10:00 pm to 6:00 a.m. - Santa Barbara Ordinance.

29 *Davenport* is not even an appellate court decision. It is founded in part on *Batts v Superior Court*
30 (1972) 23 Cal App 3d, a pathetically empty opinion citing only 4 cases - all low level appellate decisions.
31 Although this statute should have been overturned on proper appeal, it is nonetheless narrower than the
32 Ventura statute in question today. This Santa Barbara statute permits street people to sleep on the beach
33 or in the park 16 hours per day. Presumably during the other hours one may be there at the park but one
34 must be awake - although generally parks and beaches "close" at night. (This type of ordinance reveals the

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2 omnipotence of our legislators in being able to "close" a beach. I propose legislation to mandate a low tide
3 during daylight hours to facilitate shell collecting.)

4 Where do the homeless people go at night? If they had a car they couldn't sleep there either if they
5 were in Ventura - unless of course they did not park the car there - or if they did not intend to sleep when they
6 parked the car.

7 **Santa Barbara Statute is not binding precedent. It was upheld only by the county court sitting as
8 the judge of its own decision.**

9 I have long said that the corporate instruments of oppression recognize each other and give each
10 other preference over humans. I have also said that West Publishing is an instrument of corporate
11 oppression - and their books are biased in that they feature cases where the instruments of oppression win.
12 Example: In my LSD case, the *Spann* opinion was not mentioned in West's annotated California statutes,
13 but it is mentioned in Deerings. The Judicial Council is an instrument of oppression and that is why they
14 published this *Davenport* decision which is not even from a court of appeal. Had the decision gone the other
15 way they would not have published it. Example: My LSD appellate victory was decertified - until I sued the
16 California Supreme Court in federal court. Then they took the case up to their own court, reversed it - and
17 suddenly the more oppressive decision was suitable for reading in the opinion of the Supreme Court.

18 **What is the purpose of this statute? Vesting of unbridled discretion.**

19 Its purpose is to vest complete discretion to police to roust people sleeping in their cars for any
20 reason.

21 **Example #1: UPS Driver stops at depot at noon.**

22 This driver discovers that the office has closed for an hour. He leaves his truck parked on private
23 property at the UPS depot. He waits for 10 minutes and drifts off to sleep. One minute later the police
24 arrive. He can be rousted and ticketed under this statute.

25 **Example #2: Driver feeling high blood alcohol.**

26 This statute forbids sleeping for almost any reason short of a bona fide emergency. Thus, a patron
27 of the bowling alley who may have an elevated blood alcohol level, could not sleep in the parking lot to
28 permit the alcohol to leave his central nervous system.

Example #3: Bowler is tired.

 If a bowler tires but his friends want to continue to bowl, this tired bowler may go to the parking lot
and sit in the car but if he falls asleep he can get a ticket.

Example #4: Earthquake. Pinned under a fallen overpass. If you sleep 5 hours, you get a ticket.

 If there is an earthquake and a bridge falls on your car in Ventura, you had better stay awake. Even
in a bona fide emergency, you may only sleep 4 hours. Otherwise you will be given a ticket. Oh, the police
would not give a ticket in such a situation? Well, this is exactly the unbridled discretion that makes this
Ventura statute unconstitutional.

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2 **This law abridges the right to sleep in your own property**

3 By pertaining to all **public and private** property, this statute forbids both the rich and the poor from
4 sleeping in their cars. In doing so, it vests excessive discretion in the police to investigate anybody in a car -
5 even those persons on private property. Palaschak was on private property with permission of Palaschak's
6 friends, John and Kathy, owners of the bowling alley. Palaschak also had permission of the custodian of the
7 space who obtained custody of that space (and 5 other spaces) from John and Kathy by granting to John and
8 Kathy permission and right to park their trash dumpster on the premises of the auto repair shop adjacent to
9 the bowling alley - thereby freeing up several parking spaces that would otherwise be blocked by the trash
10 dumpster.

11 Furthermore, Palaschak is a patron of the bowling alley as are many of his friends from the car shop.
12 In particular, Palaschak's mechanic friend Jeff celebrates Thanksgiving with John and Kathy.

13 However, Palaschak need prove none of this because a statute that fails constitutional muster is void
14 ab initio. This is not merely an affirmative defense. Under theory of jus tertii the Supreme Court announced
15 long ago in ***Griswold v Connecticut***⁷ that persons in the situation of Palaschak may assert vicariously the
16 rights of others who may be affected by a statute that abridges fundamental rights as does
17 this overbroad statute.

18 **The Ventura statute draws no distinction between harmful and innocent conduct**

19 An earlier statute from St. Petersburg, Florida was even simpler:

20 No person shall sleep upon or in any street, park, wharf or other public place. - St.
21 Petersburg Statute.

22 **Adequate Notice is an element of Due Process. Strict scrutiny Analysis applies here. The statute**
23 **is presumed invalid absent compelling state interest if it covers protected activity such as speech**
24 **or sleep. There is no state interest in preventing people from sleeping in their car on their own**
25 **property - or other private property where they had permission to be - which is what the Ventura**
26 **statute permits the police to do. The only state interest is here is obvious: Keep the poor people**
27 **moving on. Don't let them rest.**

28 The St. Petersburg statute failed for lack of adequate notice. Implicit in the logic of that case is that
everybody knows that you really can't forbid a person from sleeping in general. Some years ago a truck
driver fell asleep on highway 101 near the Holiday Inn. The ensuing crash snarled traffic for the entire day
but the driver received no ticket. You can't fairly prosecute a person for falling asleep. I thought that the
driver should have been ticketed for something - but that is not my point here. When you are making laws
abridging a fundamental or essential human right such as speaking, writing, eating, breathing, or sleeping,

⁷Griswold v Connecticut (1965) 414 U.S. 456, 381 U.S. 479, 85 S. Ct. 1678 Penumbra.
Relaxed standing. Vicarious standing.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 you must do so carefully. The first amendment needs room to breathe. Humans need to sleep. A law that
3 abridges a basic human right or need is presumed invalid absent compelling state interest. Authority:
4 **Keyishian v Board of Regents** (1967) 17 L Ed 2d 629, 385 US 589 @ 603, 604, 87 S Ct 675 @ 683-684
5 a case striking down an ordinance inhibiting the right to sell door to door; **Colautti v Franklin** (1979) 58 L
6 Ed 2d 596, 606, 439 US 379 @ 390-91, 99 S Ct 675 @ 683;

6 **Thou shalt not walk at night while being a Negro**

7 In **Kolender v Lawson** (1983) 75 L Ed 2d 903 @ 909-910, 461 US 352 @357-58, 103 S Ct 1855 @1858-59
8 the court struck down a vague California statute requiring people to produce "credible and reliable"
9 identification to any police officer who had an articulable suspicion. The decision to arrest was left to the
10 whim of the officer. Such unbridled discretion resulted in the repeated arrest of a person who liked to walk
11 at 3 a.m. - and was a Negro. The private agenda in that case may have been racism - but we need not
12 prove some private agenda. The unbridled discretion is the flaw in the statute - and that flaw exists in the
13 Ventura ordinance before us today.

12 **Private agendas and personal predilections**

13 **Smith v Goguen** (1974) 39 L Ed 2nd 605, 415 US 574, 94 S Ct 1247-48 warns that where a
14 legislature fails to provide adequate guidelines, as Ventura failed to provide adequate guidelines here, a
15 criminal statute has the unconstitutional effect of fostering "a standardless sweep [that] allows policemen,
16 prosecutors, and juries to pursue their personal predilections." We suspect that the police do not ticket the
17 wealthy parked on their own driveway. Palaschak could simply not sleep in his car in Ventura. Stay clear
18 out of prudence. Be intimidated by the police state. This is similar to the solution proposed by the
19 prosecutors in **Smith v Goguen**, a flag desecration case involving a statute that trampled on rights vaguely.
20 In Goguen prosecutors argued

19 [Anyone who] wants notice as to what conduct this statute proscribes . . . ,
20 immediately knows that it has something to do with flags and if he [415 U.S. 566,
21 579] wants to stay clear of violating this statute, he just has to stay clear of doing
22 something to the United States flag. - Losing proposition in **Smith v Goguen**.

22 A Florida court struck down the St. Petersburg statute in **State v Penley** (1973) 276 So 2d 180 based
23 on vagrancy laws that draw no distinction between harmful and innocent conduct. In the words of the
24 Supreme Court in **U.S. v Harris** (1954) 98 L Ed 989 @ 996, 347 U.S. 612 @617, 74 S Ct 808 @812 the
25 Ventura statute "**fails to give a person of ordinary intelligence fair notice that his contemplated**
26 **conduct is forbidden by the statute.**" A legislature will not be heard to say "you know what we mean".
27 If the statute can be construed as forbidding conduct that is clearly protected by the enumerated or
28 unenumerated rights then the constitution forbids the law.

27 **Unfettered discretion fosters invidious private agendas. - Palaschak.**

28 **The poor and the unpopular are permitted to "stand on a public sidewalk . . . only at the whim of**

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 **any police officer. - *Shuttlesworth v Birmingham***

3 The following excerpt from *Papachristou* is pertinent to the offending Ventura statute.

4 Those generally implicated by the imprecise terms of the ordinance - poor
5 people, nonconformists, dissenters, idlers - may be required to comport
6 themselves according to the lifestyle deemed appropriate by the Jacksonville
7 police and the courts. Where, as here, there are no standards governing the
8 exercise of the discretion granted by the ordinance, the scheme permits and
9 encourages an arbitrary and discriminatory enforcement of the law. It
10 furnishes a convenient tool for "harsh and discriminatory enforcement by local
11 prosecuting officials, against particular groups deemed to merit their
12 displeasure." *Thornhill v. Alabama*, 310 U.S. 88, 97 -98. It results in a regime
13 in which the poor and the unpopular are permitted to "stand on a public
14 sidewalk . . . only at the whim of any police officer." *Shuttlesworth v.*
15 *Birmingham*, 382 U.S. 87, 90 . Under this ordinance,
16 "[If] some carefree type of fellow is satisfied to work just so much, and no
17 more, as will pay for one square meal, some wine, and a flophouse daily, but
18 a court thinks this kind of living subhuman, the fellow can be forced to raise
19 his sights or go to jail as a vagrant." *Amsterdam, Federal Constitutional*
20 *Restrictions on the Punishment of Crimes of Status*, [405 U.S. 156, 171] *Crimes*
21 *of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like*, 3
22 *Criminal Law Bull.* 205, 226 (1967).

18 **The 14th amendment prohibits Ventura from enforcing this statute**

19 "No state shall make or enforce any statute that abridges the privileges or immunities of citizens of
20 the several states"

21 **Overbroad ordinances are calculated to give unbridled discretion and are unconstitutional.**

22 **Ventura's ordinance fosters arbitrary and erratic action in violation of *Papachristou***

23 An ordinance which "as written, may result in arbitrary and erratic arrest and convictions"
24 must be stricken. Authority: *Papachristou v City of Jacksonville* 31 L Ed 2d 110, 405 US 156, 92 S Ct 839
25 as cited in *State v Penley*⁸ in striking down the St. Petersburg Ordinance.

26 **A statute that permits unfettered police discretion is unconstitutional. *Lanzetta v N.J.***

27
28

⁸State v Penley 276 S. 2d 180 was cited in *City of Pompano Beach v Capalbo* 455 So 2d 468 @469.

1 **PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.**

2 A statute that permits unfettered police discretion is unconstitutional. Authority: **Lanzetta v New**
3 **Jersey** (1939) 83 L Ed 888, 306 US 451 @453, 59 S St. 618 @619. See also **Grayned v City of Rockford**
4 (1972) 33 L Ed 2d 222, 408 US 104 @108, 109, 92 S Ct 2294 @2298-99.

5 **Ventura's statute fails to give notice to police - who are not required to perform remedial**
6 **interpretation on the statute in the field; where, as here, a statute on its face abridges a fundamental**
7 **right, such as the right to sleep on private property, without compelling state interest, that statute**
8 **fails totally and is void ab initio regardless of the ability of a constitutional scholar to remedially**
9 **interpret it.**

10 Void ab initio is that wonderful concept given to us in **Marbury v Madison** (1803) 2 L Ed 60, 5 U.S.
11 137.

12 **What do you get when you cross the right to privacy with the right to pursuit of happiness? A**
13 **penumbra!**

14 Justice Douglas in **Griswold v Connecticut** (1965) 14 L Ed 2d 510, 381 U.S. 479, 85 S. Ct. 1678
15 announced that a combination of rights produced a penumbra. In California, Article 1 of our California
16 constitution grants Californians the right to pursuit of happiness. Douglas also stated that:

17 [We each have a right] "as against the government . . . to be let alone - the most
18 comprehensive of rights and the right most valued by civilized men." - Justice
19 Douglas in **Griswold v Connecticut** (1965) 14 L Ed 2d 510 @521, 381 U.S. 479
20 @ 494, 85 S. Ct. 1678 @ 1687.

21 **Effective Law Enforcement Can Be Had Without Resort to a Police State. Brinegar v U.S.**

22 We have a right to be free of dependance on the "mercy of the officers' whim or caprice".
23 **Brinegar v U.S.** (1949) 93 L Ed 1879, 338 US 160, 69 S Ct 1302.

24 **Summary**

25 **Ventura's statute fails to give notice to police - who are not required to perform remedial**
26 **interpretation on the statute in the field; where, as here, a statute on its face abridges a**
27 **fundamental right, such as the right to sleep on private property, without compelling state**
28 **interest, that statute fails totally and is void ab initio regardless of the ability of a**
constitutional scholar to remedially interpret it.

Surely Ventura's lawyers can draft a more narrowly construed statute to achieve their goals. If their
goal is to prevent people from ever sleeping in any motor vehicle on private property then they may have
some difficulty - but we need not speculate. We have the current statute. If fails constitutional muster.

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2 There is a plethora of sound ancient venerated decisions of the U.S. Supreme Court supporting my
3 propositions in this demurrer.

4 _____ 2 August 2001

5 Douglas Palaschak
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PALASCHAK'S DEMURRER #5067 To UNCONSTITUTIONAL VAGRANCY STATUTE.

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