S174773

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

COPY

JEWERELENE STEEN, Petitioner,	)	S174773
v.	)	(2d Dist.No. B217263; App.Div.No. BR046020; Trial Ct.No. 6200307)
APPELLATE DIVISION OF THE LOS ANGELES COUNTY SUPERIOR COURT Respondent,	)	
PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	)	

SUPREME COURT
FILED
JAN 22 2013
Frank A. McGuire Clerk
Deputy

CRC 8.25(b)

PETITIONER'S SUPPLEMENTAL TRAVERSE TO RETURN OF RESPONDENT; MOTION TO STRIKE;
and
REQUEST FOR EVIDENTIARY HEARING

From the Appellate Division, Los Angeles County Superior Court
Hon. Patti Jo McKay, Presiding Judge

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Ilya Alekseyeff,
John Hamilton Scott,
(State Bar No. 58258)
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Attorneys for Petitioner

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	)	
Respondent,	)	
	)	
PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Real Party in Interest.	)	
	)	

PETITIONER'S SUPPLEMENTAL TRAVERSE

TO RETURN OF RESPONDENT;

MOTION TO STRIKE;

and

REQUEST FOR EVIDENTIARY HEARING

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner Jewerelene Steen, by and through her attorney Ronald L. Brown, Public Defender of Los Angeles County, hereby moves to strike both the Return and the Supplemental Return filed by the Appellate Division of the Los Angeles County Superior Court. If anything, the Supplemental Return makes it even clearer that the Appellate Division has no appropriate role in this court as a litigant.

Since the Appellate Division is relying upon allegations of disputed evidentiary facts, petitioner requests that a hearing be conducted as to those allegations if this court deems them relevant. Finally, petitioner makes her Traverse to the Supplemental Return.

MOTION TO STRIKE

The Appellate Division does not appear merely to defend its ruling–even if that were appropriate for a reviewing court. The Appellate Division instead advances arguments not made by the parties either when the matter was on review before that court or in this court. Indeed, the Appellate Division goes so far as to disagree with the arguments made by the People. (Supp.Ret. App.Div., p. 34.) Thus, the Appellate Division has clearly taken on the role of advocate, which simply is not appropriate conduct by a reviewing court.

Litigants are entitled to have their matters heard by a court which acts as a neutral arbiter between the parties, and not as an advocate for either side, let alone for its own positions. Petitioner has great respect for the judges who staff the Appellate Division of the Los Angeles County Superior Court, and sincerely believes that they did not decide this case in order to advance the court's own agenda. However, allowing the Appellate Division to appear as a litigant in this court certainly gives at least the appearance of impropriety.

As petitioner has noted, the Appellate Division is constitutionally required to be independent from the superior court. Petitioner can imagine no interest of the Appellate Division, as distinguished from the superior court, which is advanced by the positions taken by that court. Indeed, petitioner cannot imagine any interest of the superior court which is at stake with regard to the statute of limitations issue.

The briefing before this court demonstrates that counsel for the Appellate Division has decided to take on the role of an additional prosecutor in this matter. That is particularly inappropriate for a

reviewing court. The Returns contain declarations setting forth facts which were never presented to the Appellate Division, and if they were considered by the Appellate Division that was done without revealing those facts to the litigants. Again, petitioner does not believe that the judges of the Appellate Division actually depended upon undisclosed evidence in making their ruling, and that this impropriety has resulted from the actions of counsel believing that it is appropriate to appear in this court as an advocate.

Even if the Appellate Division could constitutionally represent the interests of the superior court, the Supplemental Return continues in failing to advance any position which bears upon either the efficient operation of the court or financial obligations of that court. Should clerks be relieved of the responsibility for initiating criminal proceedings, no disruption of court operations would occur. The Appellate Division seems to think that this would make things more difficult for the prosecutor (Supp.Ret. App.Div., pp. 19-20), but the court is not permitted to appear in order to advance the interests of the litigants.

By referencing the funds collected from the fines imposed when a defendant fails to appear, the court seems to be indicating some financial concern. However, since the question is not whether proceedings should be initiated, but by whom, the result of petitioner prevailing in this lawsuit would not be any decrease in fines collected by the court–even if the punishment imposed upon offenders is a proper issue for a court to litigate as a party.

In sum, the Appellate Division is not properly appearing in this court as a party, and the Returns filed by that court should be stricken.

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REQUEST FOR EVIDENTIARY HEARING

The Appellate Division has chosen to submit to this court evidentiary facts which were not before the trial court, and were not considered by the Appellate Division in making its ruling. Those allegations are based upon declarations submitted by the Appellate Division. Petitioner has the right to cross-examine the maker of any declaration, and requests that a hearing be calendared where she may do so. (People v. Williams (1973) 30 Cal.App.3d 502, 510.) Moreover, petitioner strongly disputes the accuracy of many of those allegations, and thus wishes to present contrary evidence at such a hearing.

TRAVERSE TO SUPPLEMENTAL RETURN

I

Petitioner realleges as true all allegations contained in her petition for writ of mandate, and denies any contrary allegations in the Supplemental Return.

II

Petitioner admits the allegations of the Return insofar as they may be supported by the record before this court, while not admitting that all those allegations are relevant to the issues presented by this proceeding.

III

For some reason, the Appellate Division has chosen, in large part, not to address the issues specified by this court, but to argue about points made by petitioner in her reply to the Appellate Division's previous return. Those arguments appear in Paragraphs 1 through 4 of the Supplemental Return.

Petitioner denies for lack of knowledge the allegations made in Paragraph 1 of the Supplemental Return. However, petitioner affirmatively alleges that the facts therein alleged appear to be irrelevant.

IV

Petitioner denies the allegations in Paragraph 2 of the Supplemental Return, and again disputes the claim that more than 8,000 complaints are filed each week for failure to appear. Even if, as claimed, the complaints filed allege violations more than a year prior to the filing date, the question is the number of complaints filed in a year, not the date the offense is alleged to have occurred. The Appellate Division admits that all failure to appear charges are filed by the clerk as misdemeanors. The filing of 8,000 misdemeanor complaints each week (no matter what date is alleged as the date of the offense), would result in approximately 416,000 misdemeanor complaints filed each year for that offense alone. Yet the Appellate Division does not dispute that the total number of traffic misdemeanor filings reported is about half that number, and 416,000 cases would be approximately 80% of all misdemeanor filings in Los Angeles County.

The Appellate Division asserts that about 1.8 million traffic citations are issued a year. That would be about 34,615 per week. If there are 8,000 failures to appear per week, that means that over 23% of those cited are failing to appear. The Appellate Division's claim is unbelievable.

Petitioner also affirmatively alleges that the number of criminal proceedings initiated by court clerks is irrelevant to the question of whether the initiation of such proceedings by clerks satisfies the requirements of due process.

V

Petitioner denies the allegation in Paragraph 3 of the Supplemental Return that petitioner has asserted that the vast majority of violations are "treated as infractions." In fact, petitioner alleged that "the clerk invariably files charges of violating Vehicle Code section 40508 as misdemeanors." (Reply to Respondent's Return, p. 3, Para.

VI.) Petitioner affirmatively alleges that this allegation is confirmed in the declaration attached to the Supplemental Return: "When the Clerk of the Superior Court of Los Angeles issues and files a complaint electronically under section 959.1(c) for failure to appear, it does so as a misdemeanor." (Supp.Ret. App.Div., Dec. p. 3; emphasis added.)

VI

Petitioner further denies that in every case in which a misdemeanor is filed, the judicial officer advises the defendant that the prosecutor has "consented" to have the charge reduced to an infraction. [1/] Petitioner is informed and believes that this is not the case, and that many prosecutors, particularly the Los Angeles City Attorney, insist that the matter be treated as an misdemeanor and insist upon the imposition of time in custody–just as occurred in petitioner's case.

Petitioner also affirmatively alleges that if the superior court is requesting defendants to consent to having misdemeanor charges reduced to infractions when such defendants are not represented by counsel, and have not waived their right to counsel, the court is unlawfully proceeding in violation of such defendants' right to counsel.

VII

Petitioner denies the allegations in Paragraph 4 of the Return. Petitioner notes that the declaration presented in support of those allegations states merely the declarant's "belief" the fines imposed for violations of section 40508 exceed $75,000,000 a year. Petitioner noted in 2009 that if the maximum fine for an infraction, including all penalty assessments available at that time, were imposed, there would have to be over 172,000 convictions involved. Under the present

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[1/] The prosecutor's "consent" is, of course, irrelevant. It is only the court which has power to reduce a matter to an infraction, upon the consent of the defendant. (Pen. Code § 17, subd. (d)(2).)

maximum fine, including all assessments, of $480, it would take over 156,000 convictions to result in $75 million in fines and assessments. If the court imposed the scheduled infraction fine of $234 (including assessments), it would take over 320,000 cases. The court claims it is imposing a fine of $396 including assessments (well over schedule but less than the maximum). If so, it would take almost 190,000 convictions to result in a collection of $75,000,000. That would be 88% of the misdemeanor traffic filings, or 60% of the total misdemeanor filings. Again, the Appellate Division's claim is unbelievable.

Petitioner also affirmatively alleges that the amount of funds collected upon convictions for failure to appear is irrelevant to the issue of whether due process is violated when clerks initiate such charges.

VIII

The Appellate Division finally addresses the issues specified by this court in Paragraph 5. Petitioner denies the allegations in that paragraph. Petitioner's statute of limitations claim was not forfeited, and her other claims are meritorious.

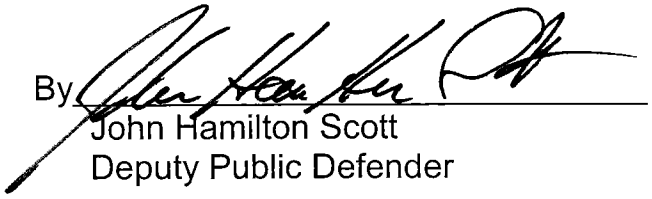
IX

Petitioner incorporates herein all allegations and argument made in her petition for writ of mandate, as well as all documents filed thereafter, including the Supplemental Traverse to the Return by Real Party in Interest filed concurrently with this document. The accompanying points and authorities are also incorporated herein by reference.

WHEREFORE petitioner renews her prayer that this court order the Appellate Division of the Los Angeles County Superior Court to recall its remittitur and to vacate and set aside its judgment of June 8, 2009, and to thereafter reverse the judgment of the trial court on the basis that the charge in this case was improperly initiated by a court

clerk, and to remand the matter for such further proceedings as may be appropriate.

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

By 
John Hamilton Scott
Deputy Public Defender

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

John Hamilton Scott declares as follows:

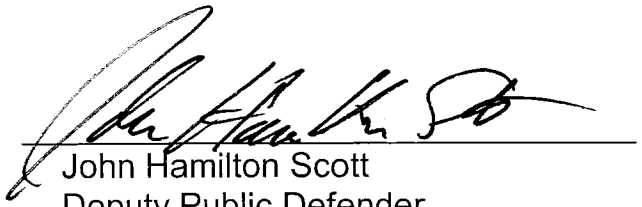
I am an attorney at law licensed to practice in all the courts of California, and I am employed as a deputy public defender for the County of Los Angeles.

In that capacity I am attorney of record for petitioner in the foregoing traverse, and I make this verification on her behalf for the reason that the facts alleged therein are more within my knowledge than hers.

I have read the foregoing traverse and the exhibits heretofore lodged with this court, and I know the contents thereof to be true as based upon my reading of true copies of court documents on file in this action and my representation of petitioner in the Appellate Division and the Court of Appeal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of January, 2013, at Los Angeles, California.



John Hamilton Scott
Deputy Public Defender

POINTS AND AUTHORITIES

I

THE AMBIGUITY IN PENAL CODE SECTION 959.1(c) SUPPORTS PETITIONER'S POSITION THAT THE LEGISLATURE DID NOT INTEND TO ALLOW CLERKS TO INITIATE CRIMINAL PROCEEDINGS

The Appellate Division includes a discussion of the meaning of Penal Code section 959.1. (Supp.Ret. App.Div., pp. 13-14.) Petitioner has demonstrated the ambiguity of that statute and the lack of any indication in the statute or its history which would lead to the conclusion that the Legislature intended to allow clerks to initiate criminal proceedings, although this court did not issue its orders to show cause on that issue. The Appellate Division admits that Penal Code section 959.1, subdivision (c), cannot be applied by its terms. Indeed, one of the arguments petitioner presented in the Appellate Division was that the "complaint" filed in this case was ineffective to commence criminal proceedings because it was not brought in the name of the People of the State of California. (Exh. "C," pp. 4-5; see Pen. Code § 684, Gov. Code § 100, subd. (b).)

The Appellate Division chooses to interpret this language in favor of clerks filing charges. However, the Appellate Division points to nothing which could be advanced as a clear legislative statement of that intent. As petitioner has discussed in her Supplemental Traverse to the Return filed by the People, the Court of Appeal has recognized that the courts should not find such a sea change in prosecutorial prerogatives and duties absent clear statutory language showing that the Legislature intended such a result: ""[E]ven assuming for the sake of analysis that the Legislature could constitutionally mandate prosecutions for one category of alleged criminal offenses, it would be remarkable if it did so without acknowledging and clearly stating that it

was making an exception to the principle of prosecutorial discretion." (Gananian v. Wagstaff (2011) 199 Cal.App.4th 1532, 1544, emphasis added.)

One may examine section 959.1 in vain for any such clear statement of the Legislature's intent to imbue court clerks with the powers of prosecutors. The Appellate Division claims that there interpretation is the "only reasonable one." (Supp.Ret. App.Div., p. 13.) Petitioner suggests that not only is the Appellate Division's construction not reasonable, it is unsupported and unconstitutional and should be rejected by this court.

II

THE APPELLATE DIVISION'S CLAIM THAT CRIMINAL PROSECUTIONS MAY BE COMMENCED BY PARTIES OTHER THAN THE AUTHORIZED PROSECUTOR IS MERITLESS

The Appellate Division claims that there are many situations in which criminal proceedings may be commenced by parties other than the authorized prosecutor and proceed without even the concurrence of the prosecutor. (Supp.Ret. App.Div., pp. 14-18.) This a remarkable claim, since not only is it wrong, but it is contrary to the law as discussed in the Appellate Division's own Memorandum Judgment. (See Exh. "F," pp. 3-4.)

The Appellate Division notes that police officers can commence prosecution for infractions by issuing a notice to appear. (Supp.Ret., App.Div., p. 14-15.) Petitioner has herself noted this in her initial petition filed in this court. (Pet., p. 15, fn. 5.) As was discussed there, Penal Code section 853.9 allows a verified citation filed by a police officer with a magistrate to constitute a complaint in infraction matters. However, this does not apply in misdemeanor cases, since citations for misdemeanors cannot ordinarily be filed with a magistrate. (Pen. Code

§ 853.6, subd. (e)(3).) There is an intriguing question involving the constitutional validity of allowing an infraction citation to be filed as a complaint without the approval of the prosecuting attorney, especially if the prosecuting attorney is without power to thereafter terminate the prosecution under Penal Code section 1385.

However, this court has recognized that there is a vast difference between infraction matters where the defendant is facing only a fine, and misdemeanor or felony prosecutions where a custodial sentence may be imposed–as it was in this case:

> "Given their nature, the high volume of infraction cases [citation] clearly necessitates simplified procedures for their fair and efficient disposition. In other contexts this court often has recognized the permissibly summary handling of infraction cases by excepting them from rules required in misdemeanor cases (Mills v. Municipal Court (1973) 10 Cal. 3d 288, 302, fn. 13 [110 Cal. Rptr. 329, 515 P.2d 273] ["on the record" waiver of constitutional rights as prerequisite to guilty plea]; Gordon v. Justice Court (1974) 12 Cal. 3d 323, 326, fn. 2 [115 Cal. Rptr. 632, 525 P.2d 72, 71 A.L.R.3d 551] [necessity of lawyer-judges for trial of offenses punishable by confinement]), by permitting minor traffic charges to be tried without a prosecuting attorney (People v. Carlucci (1979) 23 Cal. 3d 249 [152 Cal. Rptr. 439, 590 P.2d 15]), and by holding conviction of a traffic infraction not a bar to prosecution for a more serious related offense (In re Dennis B. (1976) 18 Cal. 3d 687 [135 Cal. Rptr. 82, 557 P.2d 514]). Advantages of expediting infraction cases through flexible, innovative procedures are that 'defendants gain a swift and inexpensive disposition of their cases without risk of major penalties; and the prosecution, the court system, and ultimately the public benefit because judicial and law enforcement

resources are freed to concentrate on serious criminal behavior.' (In re Dennis B., supra, 18 Cal.3d at p. 695; see too People v. Carlucci, supra, 23 Cal.3d at p. 257.)" (In re Kathy P. (1988) 25 Cal.3d 91, 98-99.)

Notably, the Kathy P. decision upheld the adjudication of traffic infractions by nonattorney referees against a due process challenge. It appears obvious to petitioner, if it is not obvious to the Appellate Division, that this does not lead to the conclusion that misdemeanor cases may be adjudicated by nonattorney appointees.

The Appellate Division states that Grand Juries can commence criminal prosecutions. (Supp.Ret. App.Div., p. 15-16.) There is another intriguing question presented whether in modern practice the Grand Jury exercises a judicial function, and if so whether that violates the separation of powers. (See Montez v. Superior Court (1970) 10 Cal.App.3d 343, 352, leaving the question open.) However, in the due process context under discussion it is clear that the Grand Jury is the "authorized prosecutor" and exercises a screening function even more extensive than that exercised by the District Attorney before initiating a criminal proceeding. It is the absence of participation by a public official charged with such screening which results in a due process violation when criminal charges are filed by clerks.

The Appellate Division goes on to claim that courts initiate criminal proceedings when they make an accusation of contempt. (Supp.Ret. App.Div. 16-18.) This is simply incorrect. "Because of the potential punishment, this type of proceeding is considered quasi-criminal, and the defendant possesses some of the rights of a criminal defendant. [Citations.]" (People v. Gonzalez (1996) 12 Cal.4th 804, 816.) But summary contempt proceedings are not attempts by the executive to vindicate the rights of the People, as is a criminal prosecution. Summary contempt proceedings are solely designed to

vindicate an affront to the court, and the contempt power is among the inherent powers of a court. (In re McKinney (1968) 70 Cal.2d 8, 10.) On the other hand, "the superior court has no jurisdiction under section 166 of the Penal Code to punish for contempts committed in its presence." (Id., at p. 14.) Thus, none of the examples presented by the Appellate Division show a situation in which a defendant may be charged with a criminal offense absent the screening by the authorized prosecutor required by due process.

The Appellate Division continues in its argument by stating that criminal prosecutions commenced by clerks are limited. (Supp.Ret. App.Div., p. 18.) However, it is no answer to the problem to say that due process is being denied only in some cases–the due process violation remains. Moreover, as petitioner has repeatedly mentioned, the statute as interpreted by the Appellate Division would give the clerk authority to initiate a felony prosecution for failure to appear in a felony case.

The Appellate Division asserts that prosecutions for failure to appear are "similar" to indirect contempt. (Supp.Ret. App.Div., pp. 18-19.) As shown above, this is simply not so. There is very little similarity between a summary adjudication of contempt with a 5-day limit on custody, no right to jury trial, and no right to appeal, and a prosecution for a misdemeanor carrying a possible 6 month jail sentence with all of the protections which apply in criminal cases.

The Appellate Division asserts that there is little possibility of a mistake. (Supp.Ret. App.Div., p. 19.) Yet the record of this case shows that the clerk is improperly joining failure to appear charges with the underlying traffic infraction. (See People v. Madden (1988) 206 Cal.App.3d Supp. 14; an opinion by the very court whose ruling is at issue.) The declaration supplied by the Appellate Division also indicates that perhaps thousands of complaints are being filed more

than one year after the failure to appear, which accusations are clearly beyond the one-year statute of limitations. Mistakes are not only possible, they are occurring. At any rate, a defendant is no less entitled to due process simply because the risks of dispensing with due process may seem slight.

The Appellate Division claims that to prohibit clerks from initiating criminal proceedings would "elevate form over substance." (Supp.Ret. App.Div., p. 19.) That was hardly the view of the Court of Appeal:

> "The due process clause of both United States and California Constitutions is a bar to the deprivation of liberty except by the regular administration of the law and in accordance with general rules designed to protect individual rights.
>
> "* * *
>
> "[T]he theme which runs throughout the criminal procedure in this state is that all persons should be protected from having to defend against frivolous prosecutions and that one major safeguard against such prosecutions is the function of the district attorney in screening criminal cases prior to instituting a prosecution." (People v. Municipal Court (Pellegrino) (1972) 27 Cal.App.3d 193, 205-206, emphasis added, footnote omitted.)

The Appellate Division "presumes" that there are no facts upon which a prosecutor might exercise "meaningful discretion" in a failure to appear matter. Again, the courts disagree. "The discretion exercised is broader than 'probable cause' and includes the opinion of guilt, likelihood of conviction, evaluation of legal issues, witness problems, whether the accused is regarded as dangerous, and the alternatives to prosecution." (People v. Gephart (1979) 93 Cal.App.3d 989, 999-1000.) The alternatives to prosecution are particularly important in a situation where there are alternatives to prosecution,

such as civil assessments, which may be far cheaper and less intrusive upon the prosecutor's time. Discretion is important when the Appellate Division itself asserts that the prosecutors always agree to have the charged reduced to an infraction once the defendant is in court. A prosecutor concerned with the costs of a prosecution may thus choose to file the charge as an infraction in the first place, rather than waste everybody's time and money with a misdemeanor prosecution involving, at least initially, the rights to jury trial and appointed counsel.

The Appellate Division notes this court's decision in Sundance v. Municipal Court (1986) 42 Cal.3d 1101. (Supp.Ret. App.Div., pp. 20-21.) Petitioner incorporates herein her discussion of that case found in her Supplemental Traverse to the Return filed by the People, pages 11 to 14. Petitioner must comment, however, that it is curious that the Appellate Division asserts that there is no problem with clerks filing charges in the "few types of prosecutions they may commence," when the Appellate Division is also asserting that clerks are filing 8,000 such charges every week!

The Appellate Division has thus completely failed in its attempt to show that the commencement of criminal prosecutions without screening or authorization by the authorized prosecutor is both commonplace and permissible in California law. Due process demands that at some point a prosecution be authorized by the prosecutor, and as Pellegino shows that point is before the initiation of criminal proceedings.

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III

THE CONFLICT BETWEEN PENAL CODE SECTION 959.1 AND GOVERNMENT CODE SECTION 26500 MUST BE RESOLVED BY INTERPRETING SECTION 959.1 TO BE CONSTITUTIONAL

The Appellate Division notes petitioner's reference to Government Code 26500, and agrees that if Penal Code section 959.1 permits clerks to file criminal charges those two statutes are in conflict. (Supp.Ret. App.Div., pp. 22-23.) The Appellate Division has itself recognized that the purpose of section 26500 is "to allow the prosecuting attorney to make decisions, traditionally within its discretion, whether to pursue prosecution." (People v. Daggett (1988) 206 Cal.App.3d Supp. 1, 4.) The resolution made by the Appellate Division is to claim that section 959.1 is a "specific" statute, that section 959.1 was enacted later in time, and that section 959.1 "displaces" section 26500.

However, it would be equally remarkable if the Legislature was intending to so alter the rules applicable to the prosecution of criminal cases without any mention of an intent to do so. (See Gananian v. Wagstaff, supra, 199 Cal.App.4th at p.1544.) Rather than finding a conflict, it is the duty of this court to harmonize the statutes and to give effect to them when possible. (City of Hayward v. United Public Employees (1976) 54 Cal.App.3d 761, 766.) It is only if the ambiguities in section 959.1 are interpreted as giving court clerks the ability to initiate criminal proceedings that any conflict with section 26500 arises. Thus, elementary rules of statutory construction call upon this court to reject the interpretation that leads to conflict (as well as unconstitutionality), and adopt that which leads to harmony: court clerks are not authorized to commence criminal prosecutions.

IV

THE APPELLATE DIVISION HAS NOT SHOWN THAT PELLEGINO IS INAPPLICABLE TO THE INITIATION OF CRIMINAL CHARGES BY INDIVIDUALS OTHER THAN THE AUTHORIZED PROSECUTOR

Petitioner incorporates herein her discussion of Pellegino as found in her Supplemental Traverse to the Return filed by the People, pages 8 to 18. Petitioner further notes that the Appellate Division claims that when the Pellegrino court stated explicitly that due process prohibits the initiation of criminal charges absent authorization by the public prosecutor, it really did not mean that, and that instead it only meant that charges could not be initiated by "one private individual" against another. (Supp.Ret. App.Div., p. 34.) Again, not only is this contrary to the ruling of the Appellate Division under litigation in this court, but it is simply untenable in light of the actual language of the Pellegrino decision.

V

SINCE NO STATUTE OF LIMITATIONS ISSUE WAS PRESENTED WHEN THE TRIAL COURT RULED THAT PROCEEDINGS COMMENCED IN 2002, PETITIONER HAS NOT WAIVED THE CLAIM THAT THE STATUTE OF LIMITATIONS BARS A PROCEEDING INITIATED IN 2007

Petitioner incorporates herein by reference her discussion of this issue as found in her Supplemental Traverse to the Return filed by the People, pages 22 to 29.

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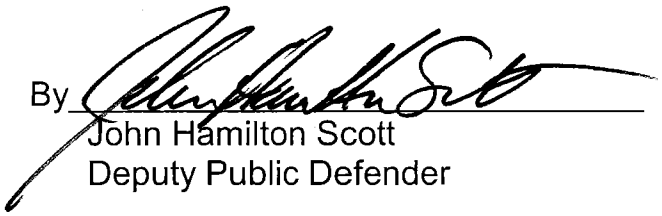
CONCLUSION

The Appellate Division, if it is allowed to continue to appear in this litigation, has failed to show that its ruling comports with due process of law. This court should reject those arguments and grant the relief requested by petitioner.

Respectfully submitted,

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Ilya Alekseyeff,
John Hamilton Scott,
Deputy Public Defenders

By 
John Hamilton Scott
Deputy Public Defender

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that the enclosed Petitioner's Supplemental Traverse to Return of Respondent; Motion to Strike; and Request for Evidentiary Hearing is produced using 13-point Roman type including footnotes and contains approximately 4,535 words, which is less than the words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

ALBERT J. MENASTER
Head Deputy

DECLARATION OF SERVICE

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on January 17, 2013, I served the within PETITIONER'S SUPPLEMENTAL TRAVERSE TO RETURN OF RESPONDENT; MOTION TO STRIKE; AND REQUEST FOR EVIDENTIARY HEARING, JEWERELENE STEEN, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

CITY ATTORNEY
APPELLATE DIVISION
500 CITY HALL EAST
200 NORTH MAIN STREET
LOS ANGELES, CA 90012

PRESIDING JUDGE
LOS ANGELES SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CA 90012

CLERK, COURT OF APPEAL
SECOND APPELLATE DISTRICT
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

CLERK, APPELLATE DIVISION
LOS ANGELES SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CA 90012

REED SMITH, LLP
PAUL D. VOGEL, ESQ.
101 SECOND AVENUE, SUITE 1800
SAN FRANCISCO, CA 94105

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

JACKIE LACEY, DISTRICT ATTORNEY
APPELLATE DIVISION
320 WEST TEMPLE STREET, SUITE 540
LOS ANGELES, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 17, 2013, at Los Angeles, California.

Edna R. Santos

EDNA R. SANTOS