No. S174773

In the Supreme Court of California

Jewerelene Steen,
Petitioner,

vs.

Appellate Division,
Superior Court of Los Angeles County,
Respondent,

People of the State of California,
Real Party in Interest.

RESPONDENT'S RETURN TO SEPTEMBER 12, 2012 ORDER TO SHOW CAUSE

Original Writ Petition Following A Judgment Of The Appellate Division,
Superior Court Of Los Angeles County, No. BR046020
Hon. Debre K. Weintraub, Hon. Patti Jo McKay, Hon. Fumiko H. Wasserman

---

Appeal From A Judgment Following A Guilty Plea
Los Angeles County Superior Court, No. 6200307
Honorable Elizabeth Munisoglu, Commissioner

Service On The Attorney General Pursuant to Cal.R.Ct. 8.29(c)(1)

Paul D. Fogel, SBN 70859
Dennis Peter Maio, SBN 99894
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659
Telephone: 415.543.8700
Facsimile: 415.391.8269

Attorneys for Respondent Appellate Division, Superior Court of Los Angeles County

TABLE OF CONTENTS

TABLE OF CONTENTS
(CONTINUED)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

Constitutions and Statutes

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES (CONTINUED)

Page(s)

Other Authorities

I
BACKGROUND AND SUMMARY OF ARGUMENT

A. Factual And Procedural Background

On June 8, 2002, Jewerelene Steen was cited in the City of Los Angeles for driving a motor vehicle with an expired registration, Veh. Code § 4000(a)(1), driving a motor vehicle without a valid driver's license, *id.* § 12500(a), and failing to provide evidence of financial responsibility for a motor vehicle on request of a peace officer, *id.* § 16028(a). Pet., Exh. A.[1] She signed a written promise to appear before the Clerk of the Superior Court of Los Angeles County by July 23, 2002. *Id.*

Steen failed to appear as promised. *Id.* Accordingly, by a complaint filed in the Superior Court of Los Angeles County on August 13, 2002, Steen was charged with failure to appear as a misdemeanor, Veh. Code § 40508(a). Pet., Exh. A. The complaint was issued and filed by a court clerk electronically under Penal Code section 959.1(c), using data contained in county computer systems

---

1 We use the following abbreviations throughout: "Pet." for the petition for writ of mandate filed by Steen; "Pet., Exh. __" for the exhibits accompanying Steen's petition; "Resp. Ret." for the return to the September 9, 2009 order to show cause that Respondent Appellate Division, Superior Court of Los Angeles County filed; "Blair Decl." for the declaration of Greg Blair attached to the Resp. Return; "Reply to Resp. Ret." for the reply Steen filed to the Appellate Division's return; and "Second Blair Decl." for the Second Declaration of Greg Blair attached to this return.

indicating that Steen was required to appear by July 23, 2002, but failed to do so. Pet., Exh. A; Resp. Ret., Second Blair Decl. ¶¶ 1, 4-5.[2] (All further unspecified statutory references are to the Penal Code.)

On July 27, 2007, some five years later, Steen appeared before the superior court (the record does not indicate how she happened to appear). She was then represented by the Los Angeles County Public Defender, while the People were represented by the Los Angeles City Attorney. Pet., Exh. B at 1-10. At the hearing, Steen demurred to the complaint on the grounds that section 959.1(c) violates the California Constitution's separation of powers doctrine and the federal and state Constitutions' due process clauses. *Id.*, Exh. B at 8. The superior court overruled Steen's demurrer and then accepted Steen's no contest plea to the failure-to-appear complaint, convicted her as charged, denied probation, and sentenced her to 50 days in the county jail with credit for 6 days. *Id.*, Exh. B at 8-9. The court presumably entered an order and a judgment accordingly. *Id.*, Exh. B at 8-9.

Steen appealed the judgment of conviction to the Appellate Division, Superior Court of Los Angeles County. *Id.*, Exh. F at 2.

---

2 Steen claims that the complaint was not issued or filed electronically on the ground that it was "signed." Reply to Resp. Return at 2 (underscoring omitted). The complaint, however, was signed *electronically*. Second Blair Decl. ¶ 5. The signature on the complaint is an electronically generated one. *Id.*

Following briefing and oral argument, in June 2009, the Appellate Division upheld both the order overruling Steen's demurrer and her failure-to-appear conviction. *Id.*, Exh. F at 1-6.

After Steen unsuccessfully petitioned the Court of Appeal to accept a transfer of the matter, *id.*, Exh. J, in July 2009, she filed an original petition for writ of mandate in this Court. Dkt. Entry 7/20/09. She claimed that section 959.1(c) violates the separation of powers doctrine, Pet. at 19-22, 28, and due process, *id.* at 12-18, 24-28; she also claimed her prosecution was not commenced within the statute of limitations, *id.* at 22. She prayed for an order directing the Appellate Division to vacate its judgment upholding the order overruling the demurrer and her conviction and to enter a new judgment sustaining the demurrer and reversing her conviction. *Id.* at 9-10. This Court elected to retain the matter, and requested and received an informal response from the People, as real party in interest, and a reply by Steen. Dkt. Entries 7/28/09, 7/29/09, 8/17/09, 8/27/09.

In September 2009, this Court ordered the People, as real party in interest, and the Appellate Division, as respondent, to show cause why the Court should not grant Steen relief on the ground that section 959.1(c) violates the separation of powers doctrine. Dkt. Entry 9/9/09. Both the Appellate Division and the People filed returns, and Steen filed a reply to the Appellate Division's return and a traverse to the People's return. Dkt. Entries 10/5/09, 10/19/09, 11/23/98, 12/8/09. The Court then permitted the Los Angeles County District

Attorney to file an amicus curiae brief in support of the People. Dkt. Entry 1/12/10. Steen and the People both filed answering briefs. Dkt. Entries 1/28/10, 2/23/10.

In September 2012, this Court issued another order directing the Appellate Division and the People to show cause why the Court should not grant Steen relief on the grounds that section 959.1(c) violates due process and her prosecution was not commenced within the statute of limitations. Dkt. Entry 9/12/12. The Appellate Division thus submits this return.[3]

B. Summary Of Argument

In its return to the September 2009 order to show cause, the Appellate Division established that Steen was not entitled to relief on separation of powers grounds. Resp. Ret. at 12-15. An action by one branch of government violates the separation of powers doctrine only when that action "necessarily results in a material impairment" of another branch's "inherent power[.]" *Obrien v. Jones*, 23 Cal.4th 40, 50 (2000). Thus, even if the executive branch has the inherent power

---

[3] On November 16, 2012—more than three years after the Appellate Division filed its first return (as this Court had directed) and more than two months after this Court ordered the Appellate Division to file a second return, Steen moved to "Exclude The Appellate Division As A Party Litigant In This Action," claiming it is improper for the Appellate Division to participate as a party. The Appellate Division filed an opposition to Steen's motion on November 28. As of this writing, the motion is still pending.

to commence criminal prosecutions, the Legislature's enactment of section 959.1(c) and the judicial branch's implementation of the statute do not materially impair that power. That is because criminal prosecutions that court clerks commence under section 959.1(c) are:

- *limited in kind*, authorized only for the offenses of failure to appear, pay a fine, or comply with a court order;

- *traditional in character*, similar to the prosecutions that courts have commenced for indirect contempt since California's admission to the Union in 1850; and

- *supported by probable cause*, set in motion by court clerks, who have actual or constructive knowledge of the relevant facts in the form of data contained in county computer systems.

See, *post*, at 18.

In this return, the Appellate Division shows that Steen is also not entitled to relief on the ground that section 959.1(c) violates due process. That is because the statute does not offend any "fundamental principles of justice"—i.e., those that "lie at the base of our civil and political institutions" and "define the community's sense of fair play and decency." *City of Los Angeles v. Superior Court*, 29 Cal.4th 1, 11 (2002) (quoting *Dowling v. United States*, 493 U.S. 342, 353 (1990) (internal quotation marks omitted)). As explained more fully below, the statute's authorization of court clerks to commence criminal prosecutions that again, are limited in kind, traditional in character,

and supported by probable cause does not offend any such principle.

The Appellate Division also establishes that Steen is not entitled to relief on statute of limitations grounds. Assuming Steen did not forfeit that claim by failing to raise it during the proceedings leading up to her conviction, the claim fails on the merits. To be timely, the prosecution had to commence within one year of Steen's failure to appear. It was commenced *within three weeks*, with the court clerk's electronic filing of the complaint. The fact that the People did not authorize, approve, or concur in the prosecution until years later (after Steen had failed to appear and during which time her whereabouts were unknown) does not undermine this conclusion. That is because, as noted, the court clerk, consistent with section 959.1(c) (and without offending any constitutional principle), initiated the prosecution well within the statutory period.

Because Steen is not entitled to relief, this Court should discharge its orders to show cause and deny her petition.

II
RETURN

Respondent Appellate Division, Superior Court of Los Angeles County, incorporates by reference the admissions, denials, and allegations in its October 2009 return to this Court's September 2009 order to show cause. In addition, the Appellate Division makes the following admissions, denials, and allegations (and also incorporates by reference the entirety of the Second Blair Declaration, attached to

this Return):

1. Contrary to Steen's allegation, Reply to Resp. Ret. at 2, the complaint charging her with failure to appear was issued and filed by the Clerk of the Superior Court of Los Angeles County electronically under section 959.1(c). Second Blair Decl. ¶ 5. The complaint attached to the petition, Pet., Exh. A, is a reproduction of the electronic original, but in physical form. Second Blair Decl. ¶ 5. Complaints such as the Steen complaint are generated in "portrait" format, i.e., tall and narrow like a letter page. *Id.* ¶¶ 4-5. The complaint Steen attached to her petition, however, was printed in "landscape" format, i.e., short and wide, causing the data fields to be placed one-half inch off-center, to the left, as to the corresponding "template" (or subject heading) areas. *Id.* ¶ 6. When the complaint is printed in portrait format, however, the data fields fit in the corresponding template areas. *Id.* & Exh. A.

2. Contrary to Steen's allegation, Reply to Resp. Ret. at 3, in the 2007-2008 Fiscal Year, the Clerk of the Superior Court of Los Angeles County electronically issued and filed more than 8,000 complaints under section 959.1(c) for failure to appear each week. Second Blair Decl. ¶ 7. The fact that the Superior Court of Los Angeles County reported that, in Fiscal Year 2007-2008, it had 215,165 traffic misdemeanor filings and 322,474 non-traffic misdemeanor filings does not mean that the Clerk could not have electronically issued and filed more than 8,000 failure-to-appear complaints per week under section 959.1(c). *Id.* The Superior Court

of Los Angeles County files about 1.8 million traffic citations from over 150 law enforcement agencies every year. *Id.*. The Clerk electronically issues and files complaints under section 959.1(c) for failure to appear not only for recent violations but also for violations going back five or even ten years. *Id.*

3. Contrary to Steen's allegation, Reply to Resp. Ret. at 3, the vast majority of the violations charged by complaints issued and filed by the Clerk of the Superior Court of Los Angeles County electronically under section 959.1(c) are treated as infractions rather than misdemeanors. Second Blair Decl. ¶ 8. When a defendant comes to court for arraignment on such a complaint, the judicial officer advises the defendant that he or she has been charged with a misdemeanor and that the prosecutor has already consented to have the violation reduced to an infraction. *Id.*. The judicial officer attempts to obtain the defendant's consent to the reduction. *Id.* The defendant almost always consents. *Id.* But if the defendant does not consent, the judicial officer immediately transfers the case to a criminal arraignment court where a prosecutor is present. *Id.*

4. Contrary to Steen's allegation, Reply to Resp. Ret. at 5, in the 2007-2008 Fiscal Year, the fines, forfeitures, and assessments related to the more than 8,000 complaints issued and filed each week by the Clerk of the Superior Court of Los Angeles County electronically under section 959.1(c) for failure to appear did apparently exceed $75 million. Second Blair Decl. ¶ 9. Although it is true that not every such complaint results in a payment, a forfeiture, or

civil assessment income, Steen fails to take account of the funds collected when a defendant pays the amount ordered—$75 as a Base Fine, $232 as a Penalty Assessment, $40 as a Court Security Fee, $15 as a Criminal Surcharge Fee, $30 as a Criminal Conviction Assessment Fee, and $4 as an Emergency Medical Air Transportation Fee, for a total of $396. *Id.*

5. Steen claims that section 959.1(c) violates due process and that her prosecution was not commenced within the statute of limitations. The statute of limitations claim was forfeited below and both the statute of limitations and due process claims lack merit, for the reasons explained in the Appellate Division's accompanying argument, which appears after the Verification and which the Appellate Division incorporates here by reference.

WHEREFORE, Respondent respectfully prays as follows:

1. That this Court issue an opinion holding that section 959.1(c) does not violate the separation of powers doctrine or due process and that Steen's prosecution was commenced within the statute of limitations;

2. That this Court discharge its orders to show cause;

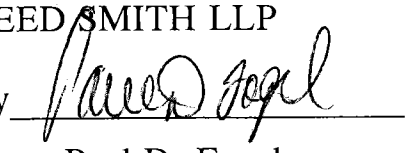
3. That this Court deny the petition for writ of mandate; and

4. That this Court award Respondent such other relief as the Court deems just and proper.

DATED: December 12, 2012.

Respectfully submitted,

REED SMITH LLP

By 

Paul D. Fogel

Attorneys for Respondent
Appellate Division, Superior
Court of Los Angeles County

III
VERIFICATION

I, Paul D. Fogel, declare as follows:

1. I am an attorney admitted to practice before all of the courts of this state and am a partner in the law firm Reed Smith LLP, which represents Respondent, Appellate Division, Superior Court of Los Angeles County, in this proceeding. I make this verification because I am familiar with the facts reflected in this return.

2. I have read this return, and either know its allegations to be true or believe them to be true based on the attached declaration of Greg Blair and on the documents filed in this Court in this proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that it has been executed in San Francisco, California, on December 12, 2012.

Paul D. Fogel

IV
PENAL CODE SECTION 959.1(C) PASSES DUE PROCESS MUSTER

This Court must, of course, presume that section 959.1(c) passes due process muster. *See, e.g., City of Los Angeles*, 29 Cal.4th at 10 (" 'courts will presume a statute is constitutional' "). Thus, to rebut that presumption of constitutionality, Steen must carry a "heavy burden" to prove that the statute violates due process "clearly, positively, and unmistakably." *Id.* (internal quotation marks omitted). To do so, as noted, Steen must show that the statute "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.... Fundamental principles of justice are those that lie at the base of our civil and political institutions and define the community's sense of fair play and decency." *Id.* at 11 (internal quotation marks and citation omitted).

As will appear, Steen cannot make this showing.

A. Section 959.1(c) Is Consistent With Fundamental Principles Of Justice

In 1990, the Legislature added section 959.1(c) to the Penal Code, in part, to "increase court efficiency by streamlining the filing of pleadings." Resp. Ret., Att. A. Section 959.1(a) states that, "[n]otwithstanding ... any other law to the contrary, a criminal prosecution may be commenced by filing an accusatory pleading in electronic form ... in a court having authority to receive it." Section 959.1(c) goes on to state that a "court is authorized to receive and file

an accusatory pleading in electronic form if": (1) the "accusatory pleading is issued in the name of, and transmitted by, a public prosecutor or law enforcement agency filing pursuant to [specified provisions], or by a clerk of the court with respect to complaints issued for the offenses of failure to appear, pay a fine, or comply with an order of the court"; (2) the "court has the facility to electronically store the accusatory pleading for the statutory period of record retention"; and (3) the "court has the ability to reproduce the accusatory pleading in physical form upon demand and payment of any costs involved." *Id.*

Before discussing whether section 959.1(c) is consistent with due process, we address an issue raised by a slight ambiguity in the statute's language—whether the "accusatory pleading" to which the statute refers must be issued "in the name of, and transmitted by" a clerk.

The statute states that the electronic "accusatory pleading" must be "issued [1] in the name of, and transmitted by, a public prosecutor or law enforcement agency ..., or [2] by a clerk of the court ...." The statute's language and punctuation support the interpretation that the "pleading" need only be *issued* by a clerk, *not* that it must *also* be "issued *in the name of, and transmitted by*" a clerk.

Indeed, this interpretation is the only reasonable one. *See People v. Sinohui*, 28 Cal.4th 205, 211-12 (2002) (courts should give statutes a reasonable interpretation that avoids "absurd consequences").

There is no need for a clerk to issue the "accusatory pleading" in the clerk's name since the clerk's issuance of the pleading within the court computer system indicates its source. Nor is there any need for a clerk to "transmit" the pleading since the clerk issues the pleading within the court computer system, where it presumably becomes part of an electronic case file. While prosecutorial agencies typically need to "transmit" complaints to a clerk's office for filing, a clerk need not "transmit" the pleading to its own office, since the pleadings is already there, even virtually. To interpret the statute to require a clerk to "transmit" a pleading to himself or herself would create an absurdity. *See id.*

We thus turn to the due process issue.

First, section 959.1(c) is hardly unusual in permitting clerks to issue complaints and commence criminal prosecutions. After all, even though "ordinarily," prosecutors alone possess the authority to commence criminal prosecutions, *Manduley v. Superior Court*, 27 Cal.4th 537, 552 (2002), they do not enjoy a monopoly.

For example, section 853.9(a) gives law enforcement officers the authority to commence criminal prosecutions for infractions, independently of prosecutors, by issuing notices to appear. As that statute states, "[w]henever written notice to appear has been prepared, delivered, and filed by an officer ... with the court pursuant to the provisions of Section 853.6 ..., an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified

complaint, *shall constitute a complaint to which the defendant may plead 'guilty' or 'nolo contendere.'*" (Ital. added.) The Court of Appeal in *Heldt v. Municipal Court*, 163 Cal.App.3d 532 (1985), recognized this authority, which has existed since 1963 when section 853.9 was enacted. *Id.* at 539 ("[S]ections 853.6 and 853.9 provide for circumstances ... where the notice to appear may be used in lieu of a formal complaint to invoke the jurisdiction of the court in a misdemeanor prosecution."); *see* Stats. 1963, ch. 1569, § 1.

Grand juries also possess the authority to commence criminal prosecutions, independently of prosecutors, by way of indictment. *See* Cal. Const., Art. I, § 23; Pen. Code § 917. Indeed, grand juries have had such authority since California's admission to the Union in 1850. *See* Cal. Const., Art. I, § 8 (1849) ("No person shall be held to answer for a capital or otherwise infamous crime ... unless on presentment or indictment of a grand jury"); *see generally* Michael Vitiello & J. Clark Kelso, *Reform of California's Grand Jury System*, 35 Loy. L.A. L. Rev. 513, 519-25 (2002).

A grand jury must be "drawn and summoned at least once a year in each county," Cal. Const., art. I, § 23, by the superior court, § 914(a). The grand jury thus drawn and summoned is thereupon "impaneled," "sworn," and "charged" by the superior court. *Id.* In view of its genesis, the caselaw recognizes the grand jury as a "judicial tribunal" "exercising judicial functions." *Chronicle Pub. Co. v. Superior Court*, 54 Cal.2d 548, 564 n.8 (1960) (internal quotation marks omitted).

Once impaneled, sworn, and charged, the grand jury "may inquire into all public offenses committed or triable within the county and present them to the court by indictment." § 917. To commence a prosecution following such inquiry, the grand jury must find an indictment with the concurrence of the requisite number of grand jurors, must "endorse[ ]" the indictment as "A true bill," and must have its foreperson "sign[ ]" the "endorsement." § 940. To do so, the grand jury needs neither the advice nor the consent of a prosecutor. "There is no requirement ... that it is the duty of the grand jury to request or accept [the] advice" of a prosecutor. *People v. Coleman*, 83 Cal.App.2d 812, 817-18 (1948). Likewise, "there is no requirement that an indictment be signed" by a prosecutor. *Id.* at 817.

In addition—and of particular significance—courts possess the authority to commence criminal prosecutions, independently of prosecutors, by way of contempt. *See, e.g., In re Michael G.*, 44 Cal.3d 283, 295-96 & n.10 (1988) (describing the "inherent contempt power of the courts"); *In re Buckley*, 10 Cal.3d 237, 247-48 (1973) (same). Indeed, courts have always, and necessarily, had such authority: It is the "inherent right of a court ... to punish as a contempt an act, whether committed in or out of its presence, which tends to impede, embarrass, or obstruct the court in the discharge of its duties.... It is founded upon the principle—which is coeval with the existence of the courts, and as necessary as the right of self-protection—that it is a necessary incident to the execution of the powers conferred upon the court, and is necessary to maintain its

dignity, if not its very existence." *In re Shortridge*, 99 Cal. 526, 532 (1893).

Acts punishable as contempts encompass any conduct that may interfere with the "process or proceedings of a court," such as "[d]isobedience of any lawful ... order ... or process of the court." Civ. Proc. Code § 1209(a)(5), (9); *see id.* § 128; *see also id.* § 177.5 (courts have power to impose up to $1500 in sanctions "for any violation of a lawful court order by a person done without good cause or substantial justification."). Persons subject to punishment for contempt include anyone who commits a contemptuous act. *See In re Coleman*, 12 Cal.3d 568, 573 (1974).

In view of the potential for punishment by fine and/or imprisonment, contempt proceedings are "criminal in nature." *Id.* at 572; *accord People v. Gonzalez*, 12 Cal.4th 804, 816 (1996). When a person commits a contemptuous act in the immediate view and presence of the court, the person commits a "direct contempt" and may be punished summarily. *Hanson v. Superior Court*, 91 Cal.App.4th 75, 81 (2001). By contrast, when a person commits a contemptuous act outside the court's immediate view and presence, the person commits an "indirect contempt," and may be punished only after notice and an opportunity to be heard. *Id.*[4]

---

[4] It is true that prosecutors have statutory authority to commence criminal prosecutions for contempt. *See* §§ 166, 657. But the

(fn. continued on following page)

In none of these situations—where criminal prosecutions have been commenced by law enforcement officers, grand juries, and courts—has any reported decision ever upheld any due process challenge to the exercise of the "commencement" power by such persons or entities. Nor has any such decision ever held that the exercise of that power offends any fundamental principles of justice.

So, too, therefore, prosecutions commenced by court clerks under section 959.1(c) cannot and do not offend any such principle.

First, criminal prosecutions commenced by court clerks under section 959.1(c) are, by the statute's terms, limited to the offenses of failure to appear, pay a fine, or comply with a court order. It would be quite different if the statute gave court clerks authority to commence a wide range of prosecutions, usurping or duplicating in large part the role of prosecutors. But the Legislature narrowly prescribed the authority of clerks to initiate prosecutions to the three types of offenses listed.

Second, such prosecutions are traditional in character to those that courts commence, such as for indirect contempt for disobeying a court order. These types of court-commenced prosecutions are as old as California. *See, e.g., People ex rel. Field v. Turner*, 1 Cal. 152,

---

(fn. continued from previous page)

authority of prosecutors is merely "additional" to that of courts, and does not supplant it. *In re Morris*, 194 Cal. 63, 69 (1924).

154-56 (1850) (a person who commits an indirect contempt may be punished after notice and an opportunity to be heard). And they concern conduct linked to court processes themselves rather than conduct that occurs in a non-court environment and that bears no direct relationship to court procedures.

Third, the probable cause basis for such prosecutions is likely less of an issue than with other types of offenses, so there is less of a risk of a mistake, selective prosecution, or abusive use of the complaint-filing process. This is because a clerk has actual or constructive knowledge of the facts constituting the failure to appear, pay a fine, or comply with a court order—knowledge that derives from information contained in county computer systems. *Cf. People v. Superior Court*, 262 Cal.App.2d 283, 285 (1968) (arrest warrant issued by court clerk for failure to appear for traffic violation was valid). This distinguishes the offenses listed in section 959.1(c) from other offenses, where the evidence giving rise to the complaint might come from third party witnesses and/or the decision to prosecute is arguably based on a number of sensitive judgment calls.

Moreover, to hold that fundamental principles of justice require only prosecutors to commence criminal prosecutions for failure to appear, pay a fine, or comply with a court order would elevate form over substance and achieve no practical benefit. Clerks issue and file complaints for these offenses by using data contained within county computer systems. That data indicates that the defendant was required to, but did not, appear, pay a fine, or comply with a court order by a

specified date. Blair Decl. ¶¶ 2-4; Second Blair Decl. ¶ 3. To require prosecutors to commence such prosecutions would simply increase workload and processing costs. Prosecutors would use the same data that clerks use, at a greater cost, since they would need to obtain the data from court computer systems, issue complaints within prosecutorial computer systems, and transmit those complaints to court clerks for filing in court computer systems.

At the same time, transferring the responsibility to prosecutors would not achieve any significant benefit in the form of the exercise of prosecutorial discretion. Violations for failure to appear, pay a fine, or comply with a court order involve few facts on which prosecutors could or would exercise meaningful discretion. They would presumably examine little more than whether the defendant was under an obligation to appear, pay a fine, or comply with a court order and whether the defendant failed to do so. These are the same facts that court clerks currently examine in deciding whether to issue a complaint. At the same time, because such violations number into the thousands per week, Second Blair Decl. ¶ 7, it is unlikely that prosecutors would exercise any *meaningful* discretion.

Moreover, the absence of discretion by court clerks in commencing prosecutions for failure to appear, pay a fine, or obey a court order does not create a due process infirmity in the complaints that a clerk issues. In *Sundance v. Municipal Court*, 42 Cal.3d 1101 (1986), this Court held that the Los Angeles City Attorney's Office's routine filing of drunk-in-public complaints (§ 647(f))—i.e., the

"systematic failure to exercise prosecutorial discretion"—did not constitute a denial of due process that warranted injunctive relief against such prosecutions. *Id.* at 1132 (lead op.) ("Plaintiffs cite no authority for the proposition that the prosecutor's failure to exercise sufficient, or indeed any, discretion in determining whether to file charges constitutes a denial of due process. Therefore, this court affirms the trial court's decision not to grant injunctive relief against the Los Angeles City Attorney's office."); *see id.* at 1140 (Grodin, J., conc.) ("I agree that the law is constitutional and that the validity of the statute is not called into question by the procedures through which it is implemented.").

If due process does not demand the exercise of discretion by prosecutors generally, it does not demand the exercise of discretion by court clerks in the few types of prosecutions they may commence under the statute. The absence of any exercise of discretion is, therefore, not a basis on which to conclude that section 959.1(c) violates due process.

In short, in line with the presumption of constitutionality, section 959.1(c) is consistent with due process.

B. Steen Cannot Rebut The Presumption That Section 959.1(c) Is Consistent With Due Process

In an attempt to rebut the presumption of constitutionality, Steen relies primarily on *People v. Municipal Court (Pellegrino)*, 27 Cal.App.3d 193, 206 (1972), and Government Code section 26500

(section 26500). Pet. at 12-22. Neither provides support for the notion that section 959.1(c) violates fundamental principles of justice.

Steen's argument proceeds as follows: (1) *Pellegrino* holds that due process requires instituting criminal prosecutions through the "regular processes of law"; (2) under *Pellegrino* and section 26500, only prosecutors in the exercise of their discretion may commence criminal prosecutions; (3) consequently, a criminal prosecution that a court clerk commences under section 959.1(c) without prosecutorial screening and approval has not been instituted through the "regular processes of law"; so (4) section 959.1(c), which authorizes a clerk-initiated prosecution, violates due process. Pet. at 12-18. This argument does not withstand scrutiny.

1. Government Code Section 26500 Does Not Rebut The Presumption Of Section 959.1(c)'s Constitutionality

We first address the argument that section 26500 permits only prosecutors, in the exercise of their discretion, to initiate criminal prosecutions. Section 26500 states:

> The district attorney is the public prosecutor, except as otherwise provided by law. [¶] The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.

By its terms, the statute does not restrict the initiation of prosecutions of public offenses to district attorneys. To the extent it could be read

to do so, it would conflict with section 959.1(c), which by its terms, permits court clerks to commence criminal prosecutions electronically for failure to appear, pay a fine, or comply with a court order. As a matter of statutory interpretation, that conflict would have to be resolved in favor of authorizing court clerks to commence such prosecutions, for three reasons:

First, section 959.1(c) is a specific provision, limited to three types of offenses, while section 26500 is more general. The general provision is thus "controlled by one that is special," with section 959.1(c) "being treated as an exception" to section 26500. *Ordlock v. Franchise Tax Bd.*, 38 Cal.4th 897, 910 (2006) (internal quotation marks omitted).

Second, section 959.1(c) was enacted in 1990, *see* Stats. 1990, ch. 289, § 1, while section 26500 was enacted in 1980. *see* Stats. 1980, ch. 1094, § 1. The "latest legislative expression"—section 959.1(c)—controls over the earlier one. *City of Petaluma v. Pacific Tel. & Tel. Co.*, 44 Cal.2d 284, 288 (1955).

Third, by its own terms, section 959.1(c) displaces section 26500. Section 959.1(c) applies "[n]otwithstanding ... any other law to the contrary." § 959.1(a). "Those six words have special interpretative importance. This statutory phrase has been called a 'term of art' ... that declares the legislative intent to override all contrary law." *Faulder v. Mendocino County Bd. of Sup'rs*, 144 Cal.App.4th 1362, 1373 (2006). It is therefore indisputable that the

Legislature intended section 959.1(c) to override all contrary law, including, of course, section 26500.

All of this shows, in short, that, notwithstanding section 26500, section 959.1(c) authorizes court clerks to commence criminal prosecutions for failure to appear, pay a fine, and comply with a court order.

2. *Pellegrino* Does Not Rebut The Presumption Of Section 959.1(c)'s Constitutionality

Neither does *Pellegrino* rebut the presumption that section 959.1(c) is consistent with due process. This is clear from a careful analysis of that decision and a comparison between that decision and section 959.1(c).

a. The *Pellegrino* Decision

The *Pellegrino* case began when Pellegrino, Stromstad, and others gathered to shoot fireworks in the street in front of their homes. 27 Cal.App.3d at 195-96. During the "festivities," Bishop drove a car down the street, honking its horn and flashing its lights. *Id.* at 196. Believing Bishop was driving too fast and endangering children in the area, Pellegrino and Stromstad ran after him and accosted him when he stopped at the end of a block. *Id.* Police officers were summoned and made reports. *Id.*

Bishop then signed a complaint that the District Attorney filed against Pellegrino and Stromstad for battery and disturbing the peace. *Id.* Through counsel, Pellegrino asked the District Attorney to also file a complaint against Bishop, but the District Attorney refused. *Id.*

When Stromstad was arraigned, at Pellegrino's request, the municipal court entered orders (1) accepting for filing two complaints signed by Pellegrino charging Bishop with assault, battery, and various traffic violations, (2) disqualifying the District Attorney, and (3) appointing Pellegrino's counsel as "Special Prosecutor." *Id.* at 196-97. The District Attorney and Attorney General, however, filed a writ of mandate petition, asking the superior court to direct the municipal court to (1) vacate its orders disqualifying the District Attorney and appointing the "Special Prosecutor," and (2) dismiss the prosecutions commenced against Bishop or refrain from conducting further proceedings against him. *Id.* at 195, 197. The superior court granted the petition. *Id.* at 197-98. Pellegrino's counsel then appealed, purportedly as the municipal court's "Special Prosecutor." *Id.* at 198.

As pertinent here, the question for the Court of Appeal was whether private individuals may commence criminal prosecutions by filing complaints without the District Attorney's "authorization or approval." *Id.* at 198. The Court of Appeal's answer was "no." *Id.* at 199-206. Because its reasoning is essential to understand its answer and relevance to this case, we set it forth in detail below.

The Court of Appeal began by noting that "police officers and, to a somewhat lesser degree, private citizens are empowered to make arrests, without warrants, for violations of criminal statutes. [¶] The power to transmute an arrest into a full blown criminal prosecution, whereby the person arrested may be required to stand trial, is a significantly greater power and does not flow automatically from the power to arrest. [¶] This greater power is exercised ... by the filing of a complaint ...." *Id.* at 199.

The Court of Appeal continued, explaining that, although the power to dismiss a criminal proceeding at common law was vested in the prosecutor, by enacting sections 1385 and 1386, "such authority in California was taken from the prosecutor and placed with the court." *Id.* at 200 (fn. omitted).[5] Thus, "[o]nce a complaint is filed and the jurisdiction of the court ... invoked, the power to dismiss is vested in the [court]. At that point the prosecution may only move the court for a dismissal. The court is not required to grant such motion. This shift of authority and control made important the answer to the question of where the power to control the initial filing of complaints does or should reside." *Id.*

---

5 In pertinent part, sections 1385 and 1386 stated, and still state, as follows. Section 1385: A court may, on its "own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." Section 1386: The "entry of a nolle prosequi is abolished."

The Court of Appeal went on to state that a "tandem of a constitutional provision and a statute has found application in a number of cases which under varying circumstances appear to recognize albeit obliquely, the requirement that criminal prosecutions require the district attorney's approval for their institution." *Id.* The "statute" the Court was referring to was section 26500, which at the time stated: "The district attorney is the public prosecutor. [¶] He shall attend the courts, and conduct on behalf of the people all prosecutions for public offenses." Stats. 1947, ch. 424, § 1. And the "constitutional provision" the Court was referring to was California Constitution, article VI, section 20—which, unbeknownst to the Court of Appeal, had been repealed some six years earlier, and had read: "The style of all process shall be 'The People of the State of California,' and all prosecutions shall be conducted in their name and by their authority." Repealed by Assem. Const. Amend. No. 13 (Stats. 1966, 1st Ex. Sess.), adopted by the people at the Nov. 8, 1966 general election.[6]

Although noting the absence of clear authority, the Court of Appeal acknowledged that a "literal reading" of sections 740 and 806 "would seem to lead to the conclusion that any person could, without approval of the district attorney, institute a criminal proceeding ... against another by the filing of a ... complaint." *Pellegrino,* 27

---

6 That repealed constitutional provision continues in effect in Government Code section 100, which the Legislature enacted when the constitutional provision was repealed. Stats. 1966, 1st Ex. Sess., ch. 161, § 8, operative Nov. 8, 1966.

Cal.App.3d at 201.[7] But the Court rejected such a reading. *Id.* at 201-03. As it stated:

> Since all criminal proceedings must be brought in the name of the People of the State of California ..., such procedure, if it in fact exists, has the potential for permitting any person in the name of the People of the State of California to redress a personal grievance by way of a criminal prosecution against his adversary.
>
> When it is remembered that crimes are considered to be offenses against the body politic for which the punishment is fine or imprisonment as distinguished from civil wrongs where private redress is obtained through individually prosecuted lawsuits for damages, the need to scrutinize this procedure in the light of the intent and indeed the power of the Legislature becomes apparent.
>
> * * *
>
> The vice of such procedure is ... graphically demonstrated by what occurred in the instant case, not only in its impact upon Bishop, the named defendant in the questioned complaints, but in its practical effect on the operation of the court and the office of the district attorney.

---

[7] In pertinent part, sections 730 and 806 then stated, and still state, as follows. Section 730: "Except as otherwise provided by law," misdemeanors and infractions "must be prosecuted by written complaint ...." Section 806: A preliminary examination "of a person on a charge of" a felony "must be commenced by written complaint ...."

> Here a ... complaint, approved by the district attorney, was filed against Pellegrino .... In an apparent attempt to frustrate the prosecution, [Pellegrino] sought to prosecute the complaining witness. As a result, Bishop stands charged with several criminal offenses in spite of the fact that the district attorney has determined that the charges lack merit.

Id. at 201-03.

Anticipating that the municipal court would deny the District Attorney's motion to dismiss Pellegrino's complaints, the Court of Appeal proceeded to decide that *it* should order dismissal, given the "doctrine of separation of powers and the role of the district attorney" and Bishop's "right ... to due process of law." *Id.* at 203.

As for separation of powers, the Court of Appeal read this Court's decisions as "clear and explicit authority for the proposition that the decision of when and against whom criminal proceedings are to be instituted is one to be made by the executive, to wit, the district attorney." *Id.* at 204. "The procedure permitting private individuals to institute criminal proceedings without approval of the district attorney when coupled with the prosecutor's inability, because of sections 1385 and 1386, after the complaint is filed to control when and if the prosecution should proceed, improperly impairs the discretion of the district attorney and encroaches upon the executive power ...." *Id.* "In fact," the court said, "the existence of a discretionary power in the district attorney to control the institution of criminal proceedings is a necessary prerequisite to the constitutional

validity of the requirement that the district attorney seek court approval for abandoning a prosecution as required by sections 1385 and 1386 ...." *Id.*

As for due process, the Court of Appeal declared that the "theme" running throughout California criminal procedure "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." *Id.* at 205-06.

For this proposition, the Court of Appeal relied on the ABA's Standards Relating to the Prosecution Function (ABA Standards) and its Commentary (Commentary). The Court of Appeal quoted the ABA Standards: "Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required to present his complaint for prior approval to the prosecutor and the prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury." *Id.* at 206 n.8. The Court of Appeal also quoted the Commentary: "The idea that the criminal law, unlike other branches of the law such as contract and property, is designed to vindicate public rather than private interests is now firmly established. The participation of a responsible public officer in the decision to prosecute and in the prosecution of the charge gives greater assurance that the rights of the accused will be respected than is the case when the victim controls the process." *Id.*

Relying on the ABA Standards and Commentary, the Court of Appeal thus concluded that due process requires criminal prosecutions to be instituted through "the regular processes of law." *Id.* at 206. Those "processes" include "the requirement that the institution of any criminal proceeding be authorized and approved by the district attorney." *Id.* Because the District Attorney had not authorized Pellegrino's complaints against Bishop, her complaints were "nullities," and the municipal court "lacked discretion and in fact jurisdiction to do anything ... except to dismiss." *Id.*

The Court of Appeal added that it did "not mean to imply that criminal complaints need take any different form than they presently do." *Id.* Rather, it stated "only that their filing must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual." *Id.*

b. *Pellegrino* Is Irrelevant Here

Does *Pellegrino* mean that only prosecutors may commence criminal prosecutions in the exercise of their discretion, to the exclusion of a court clerk under section 959.1(c) for failure to appear, pay a fine, or comply with a court order? It does not.

"Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered." *Ginns v. Savage*, 61 Cal.2d 520, 524 n.2 (1964); *accord Elisa B. v. Superior Court*, 37 Cal.4th 108, 118 (2005). *Pellegrino* involved whether and

under what conditions, due process and the separation of powers doctrine permitted a *private individual* to commence a criminal prosecution. Before *Pellegrino,* the answer was unclear. What *was* clear, however, was that such individuals could misuse such prosecutions in an attempt to "redress" a "personal grievance" against an "adversary" and thereby undermine the fairness and efficiency of the criminal justice system. *Pellegrino*, 27 Cal.App.3d at 201. To guard against such "misuse," the Court of Appeal held that a private individual *could* file a complaint and commence a criminal prosecution against another individual but that the complaint would not become "effective in instituting criminal proceedings" unless a prosecutor "approved, authorized or concurred in" it. *Id.* at 206.

Pellegrino did not involve section 959.1(c), let alone whether or under what conditions due process and the separation of powers doctrine permit a court clerk to commence a criminal prosecution based on a defendant's failure to appear, pay a fine, or comply with a court order. Indeed, *Pellegrino* was decided in 1972, eighteen years before section 959.1(c) authorized such conduct. Stats. 1990, ch. 289, § 1. *Pellegrino* thus does not speak to the issue of whether due process permits the procedure that the statute permits.

Perhaps more to the point, nothing in *Pellegrino* suggests that a court clerk violates due process or the separation of powers doctrine in commencing such a prosecution. Nor does the decision suggest that for due process purposes, the complaint becomes "effective in instituting criminal proceedings" only after a prosecutor approves,

authorizes or concurs in it. Indeed, unlike in *Pellegrino*, there is no evidence that court clerks routinely or indeed ever "misuse" such prosecutions to "redress" any "personal grievance" against any "adversary" and thereby undermine the fairness and efficiency of the criminal justice system. And there is no reported decision that even hints at the potential for such "misuse."

It is no doubt true that, as *Pellegrino* states, "[d]ue process of law requires that criminal prosecutions be instituted through the regular processes of law." 27 Cal.App.3d at 206. It may also be true, as *Pellegrino* also states—and as a general matter—that "[t]hese regular processes include the requirement that the institution of any criminal proceeding be authorized and approved" by a prosecutor. *Id.* But it is also true that, with section 959.1(c), enacted almost 20 years after *Pellegrino*, one of the "regular processes" for instituting prosecutions for failure to appear, pay a fine, or comply with a court order is for a court clerk to institute the prosecution, without prosecutorial authorization or approval. Because *Pellegrino* had no opportunity to pass on the propriety of a court clerk acting in that regard, this Court cannot read *Pellegrino* as prohibiting such conduct.

In short, notwithstanding *Pellegrino*, section 959.1(c) does not violate due process.

We offer one additional observation. In her Supplemental Return to Petition for Writ of Mandate (filed Nov. 14, 2012) ("RPI Supp. Ret."), the City Attorney, on behalf of the People, takes the

position that the filing of a complaint under section 959.1(c) without prosecutorial approval renders the complaint a nullity and any prosecution based on that complaint subject to dismissal. RPI Supp. Ret. at 20 n.3 ("[I]f a prosecutorial agency ... refused to approve, authorize, or concur in complaints filed under [§ 959.1(c)], then, as in *Pellegrino*, those complaints would be nullities and the trial court would have no option but to dismiss them.")

With respect, the Appellate Division disagrees. In making that statement, the City Attorney assumes that *Pellegrino*'s holding is not limited to criminal complaints that one private individual files against another; rather, the City Attorney assumes that *Pellegrino* applies, beyond its facts and issues, to complaints filed by a court clerk electronically under section 959.1(c). That assumption is unsound. By its facts, *Pellegrino is* restricted to complaints that one private individual flies against another. Additionally, as explained, *Pellegrino* was intended to remedy a "misuse" of the criminal justice system by private parties who initiate criminal proceedings for improper purposes.

This case presents a different issue, however, and, of course, under a statute the Legislature enacted well after (and presumably with knowledge of) *Pellegrino*. As noted, there is no hint here, much less evidence, that the kind of "misuse" that was at issue in *Pellegrino* (evidence that may have contributed to its holding) occurs by clerk-initiated prosecutions for failure to appear, pay a fine, or obey a court order.

c. Even If *Pellegrino* Were Relevant, It Would Not Benefit Steen

Let us assume, however, that under *Pellegrino*, the court clerk's electronic filing of the complaint against Steen under section 959.1(c) had to be "approved, authorized or concurred in" by the City Attorney before it became "effective in instituting criminal proceedings against" her. *See Pellegrino*, 27 Cal.App.3d at 206. In that event, Steen would still have no cause to complain.

Nothing in *Pellegrino* states that complaints "must be approved, authorized or concurred in" by a prosecutor before they are *filed.* Rather, as noted, *Pellegrino* states that a prosecutor must approve, authorize, or concur in their filing "*before they are effective* in instituting criminal proceedings against an individual." 27 Cal.App.3d at 206 (italics added). Here, however, a prosecutor *did* "approve, authorize, or concur" in the filing of the clerk's complaint: At the hearing on Steen's demurrer, the City Attorney stated: "[W]e explicitly approve and concur in" the filing of the complaint. Pet., Exh. B at 7. The City Attorney's action complied with *Pellegrino* and thereby gave Steen everything she might have been entitled to under that decision.

3. None Of Steen's Other Authorities Rebut The Presumption That Section 959.1(c) Is Consistent With Due Process

In addition to section 26500 and *Pellegrino*, Steen relies on other authorities in an attempt to rebut the presumption that section 959.1(c)

is consistent with due process. Pet. at 12-22. Her reliance is misplaced.

Most of Steen's authorities state or imply that, *generally*, prosecutors have the discretion to commence criminal prosecutions, negotiate dispositions, and move for dismissal.[8] And some of Steen's

---

8 *See Manduley*, 27 Cal.4th at 556 (prosecutor has discretion to commence criminal prosecution against specified minors under Welf. & Inst. Code § 707(d)); *People v. Birks*, 19 Cal.4th 108, 134 (1998) (court may not instruct on charge unrelated to charge alleged by prosecutor); *People v. Lucas*, 12 Cal.4th 415, 477 (1995) (prosecutor generally has discretion to commence capital criminal prosecution); *Hoines v. Barney's Club, Inc.*, 28 Cal.3d 603, 611-12 (1980) (prosecutor has discretion to agree to move to dismiss criminal prosecution commenced by one private individual against another); *People v. Vargas*, 91 Cal.App.4th 506, 534-35 (2001) (prosecutor has discretion to move to vacate guilty plea based on breach of underlying plea agreement); *People v. Mikhail*, 13 Cal.App.4th 846, 852-59 (1993) (prosecutor generally has exclusive authority to negotiate disposition); *People v. Morris*, 97 Cal.App.3d 358, 363-64 (1979) (prosecutor has discretion to commence criminal prosecution for failure to appear following own-recognizance release); *People v. Gephart*, 93 Cal.App.3d 989, 999-1000 (1979) (prosecutor's discretion to commence criminal prosecution supports conclusion that one court's order suppressing evidence does not bind another); *People v. Andreotti*, 91 Cal.App.4th 1263, 1267-74 (2001) (court may not defer entry of judgment for child molestation without consent of prosecutor); *People v. Andrade*, 86 Cal.App.3d 963, 976 (1978) (prosecutor has discretion to commence criminal prosecution with one or more charges supported by the evidence); *People v. Superior Court (Felmann)*, 59 Cal.App.3d 270, 276 (1976) (same as *Mikhail*); *People v. Smith*, 53 Cal.App.3d 655, 659 (1975) (prosecutor's exercise of discretion to commence criminal prosecution on one charge deprives court of authority to allow guilty plea to another); *People v. Adams*, 43

(fn. continued on following page)

authorities state or imply that, *generally*, courts may not control prosecutors' exercise of their discretion.[9] And a few of Steen's authorities state or imply that, *generally*, private individuals may not commence criminal prosecutions against other private individuals.[10]

(fn. continued from previous page)

Cal.App.3d 697, 707 (1974) (prosecution has discretion whether, and with what charge, to commence criminal prosecution); *People v. Daggett*, 206 Cal.App.3d Supp. 1, 4 (1988) (prosecutor may exercise discretion in favor of *not* conducting criminal prosecution commenced by law enforcement officer); *but see People v. Eubanks*, 14 Cal.4th 580, 589-90 (1996) (prosecutor must exercise discretion solely in the interests of the people at large); *People v. Superior Court (Greer)*, 19 Cal.3d 255, 267 n.8 (1977) (same as *Eubanks*); *People v. Shults*, 87 Cal.App.3d 101, 106-07 (1978) (prosecutor's discretion to commence criminal prosecution against person on a charge does not preclude the person from elevating seriousness of the charge); 63 Ops.Atty.Gen. 861, __ [1980 WL 96928, at *4] (1980) (same as *Eubanks*).

9 *See State of California v. Superior Court*, 184 Cal.App.3d 394, 397-98 (1986) (court may not control prosecutor's exercise discretion in criminal prosecution); *Salcido v. Superior Court*, 112 Cal.App.3d 994, 1001 (1980) (same, in narcotic-addiction-commitment prosecution); *Hicks v. Board of Supervisors*, 69 Cal.App.3d 228, 240 (1977) (same as *State of California*); *People v. Cimarusti*, 81 Cal.App.3d 314, 323-24 (1978) (court may not compel prosecutor in consumer protection action to stipulate to penalties without a hearing); *but see Bradley v. Lacy*, 53 Cal.App.4th 883, 890-91 (1997) (court may compel prosecutor to prosecute grand jury accusation of misconduct to remove elected official from office pursuant to Gov't Code § 3063).

10 *See Dix v. Superior Court*, 53 Cal.3d 442, 451-53 (1991) (crime victim generally does not have any legally enforceable interest in criminal prosecution); *People v. Viray*, 134 Cal.App.4th 1186, 1204 (2005) (private individual generally may not commence criminal

(fn. continued on following page)

As noted, the Appellate Division has no quarrel with these general propositions. None, however, speaks to whether due process prohibits court clerks from commencing prosecutions by electronically filing complaints for failure to appear, pay a fine, or obey a court order. Consequently, none prohibits court clerks from doing so, on due process or any other ground. In short, although Steen's list of authorities is long and impressive, none suggests, much less holds, that section 959.1(c) violates due process.

V

STEEN HAS FORFEITED HER CLAIM THAT HER PROSECUTION WAS NOT COMMENCED WITHIN THE STATUTE OF LIMITATIONS BUT IN ANY EVENT, HER CLAIM LACKS MERIT

Steen also claims that her prosecution was not commenced within the statute of limitations. Pet. at 22. This claim fails for two reasons.

First, Steen has forfeited the claim by failing to raise it in the trial court, by demurrer or otherwise.

When an accusatory pleading "alleges facts indicating that the prosecution" was commenced within the statute of limitations, a defendant forfeits any claim to the contrary unless he or she raises the

---

(fn. continued from previous page)

prosecution); *People v. Abraham*, 185 Cal.App.3d 1221, 1227 (1986) (same as *Dix*).

claim in the trial court. *People v. Simmons*, 210 Cal.App.4th 778, 793 (2012) (defendant forfeited statute of limitations argument against charges of commission of lewd or lascivious act, forcible sexual penetration, forcible oral copulation against a minor by failing to raise claim in trial court).

The documents the parties have filed in this Court, and those that this Court has judicially noticed or ordered for its own review, see Dkt. Entries 8/28/12, 9/13/12, 9/25/12, do not include any written demurrer filed by Steen. It appears, however, that Steen did file a demurrer, since references to it appear in documents filed in the Appellate Division. Pet., Exh. D at 3 n.2 (Respondent's Brief; City Attorney notes that Steen "filed a written demurrer"); *id.*, Exh. F at 1 (Appellate Division decision noting that Steen "filed a written demurrer").

That said, it also appears that Steen's written demurrer did not raise any statute of limitations claim. In her Appellant's Opening Brief in the Appellate Division, Steen claimed that the prosecution was not commenced within the limitations period. *Id.*, Exh. C at 19-21. But in the Respondent's Brief, the City Attorney argued that Steen had raised the claim for the first time on appeal. *Id.*, Exh. D at 17. In her Appellant's Reply Brief, Steen did not dispute this assertion—i.e., she did not claim that she had raised any such claim in her written demurrer. Rather, she argued only that that: (1) she raised the claim by stating at the hearing on her demurrer that it was "too late for the City Attorney to concur" in the filing of the complaint; (2) "this was

not actually an issue below, since the court's ruling was that the complaint was valid when filed by the court's clerk"; and (3) "an issue regarding the statute of limitations, when the face of the pleading does not show a timely filing, is not waived (or forfeited) by failing to object in the trial court on that ground." Id., Exh. E at 11-12 (underscoring orig.).

At the hearing on her demurrer, Steen stated only that, under *Pellegrino*, it was "too late for the City Attorney to concur" in the filing of the complaint. Pet., Exh. A at 7. But her reference to *Pellegrino* could not reasonably be understood as a reference to the statute of limitations. "Too late" is not a synonym for "outside the limitations period" or "time-barred." A Westlaw search of reported criminal decisions discloses more than 800 containing some claim that something was "too late"—but not one linking the phrase to the statute of limitations.

What is more, *Pellegrino* does not address the statute of limitations, but instead the effectiveness of a complaint that one private individual files against another expressly or by implication. If it was indeed "too late for the City Attorney to concur" in the filing of the complaint under *Pellegrino*, the upshot would not be that the prosecution was time-barred. Rather, the conclusion would be that the prosecution was never commenced in the first place because the complaint was a "nullit[y]." *Pellegrino*, 27 Cal.App.3d at 206.

Second, and in any event, Steen's statute of limitations claim fails on the merits.

A prosecution for misdemeanor failure to appear must commence within one year of the failure to appear. § 802(a) ("Except as provided in subdivision (b), (c), or (d) [which do not apply here], prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense."). Such prosecution commences with the filing of a complaint. § 804(b) ("Except as otherwise provided in this chapter, for the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs: [¶] ... [¶] (b) A complaint is filed charging a misdemeanor or infraction.").

Steen's prosecution had to commence on or before July 22, 2003—one year after her failure to appear. With the court clerk's electronic filing of the complaint on August 13, 2002, Steen's prosecution commenced less than three weeks after she failed to appear. This was well within the one-year statute of limitations.

Steen's sole argument is that, under *Pellegrino*, the complaint did not become "effective" until July 27, 2007, when, at the hearing on her demurrer, the City Attorney stated that "we explicitly approve and concur in" the filing of the complaint. Pet., Exh. B at 7. According to Steen, because more than a year elapsed between the date on which she failed to appear (July 23, 2002) and the date on when the complaint purportedly became "effective" (July 27, 2007), the prosecution was time-barred. But as shown, *Pellegrino* applies only to

complaints signed by one private individual against another, not to complaints, like that here, issued and filed electronically by court clerks under section 959.1(c). As a consequence, Steen's argument collapses.

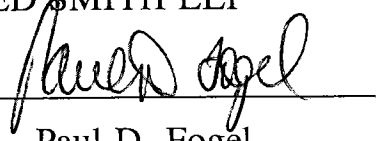
VI
CONCLUSION

In authorizing court clerks to commence criminal prosecutions for failure to appear, pay a fine, or comply with a court order by issuing and filing complaints electronically, section 959.1(c) is consistent with the separation of powers doctrine and due process. In addition, even assuming Steen did not forfeit her statute of limitations claim, her prosecution was commenced within the statute of limitations. For these reasons, this Court should discharge its orders to show cause and deny Steen's petition.

DATED: December 12, 2012.

Respectfully submitted,

REED SMITH LLP

By 

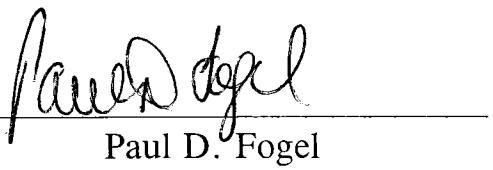
Paul D. Fogel

Attorneys for Respondent
Appellate Division, Superior
Court of Los Angeles County

WORD COUNT CERTIFICATE

This Return to September 12, 2012 Order to Show Cause contains 9,867 words (including footnotes, but excluding cover, tables, and this certificate). In so stating, I have relied on the word count of Microsoft Office Word 2010, the computer program used to prepare the return.

Executed on December 12, 2012 at San Francisco, California.



Paul D. Fogel

SECOND DECLARATION OF GREG BLAIR

I, Greg Blair, declare:

1. I am the Senior Administrator for the Metropolitan Courthouse of the Superior Court of Los Angeles County. As such, I am responsible for, among other things, supervising both Criminal and Traffic Operations within the Metropolitan Courthouse. In the course of my duties, I am required to be knowledgeable, and am in fact knowledgeable, both about the Los Angeles Expanded Traffic Records System (ETRS), Traffic Records Imaging System (TRIS), and the Automated Pull for Warrant Program, and also about the procedures by which complaints are issued and filed electronically by the Clerk of the Superior Court of Los Angeles County under Penal Code section 959.1(c) (section 959.1(c)).

2. The Clerk of the Superior Court of Los Angeles County issues and files complaints electronically under section 959.1(c) by using ETRS, TRIS, and the Automated Pull for Warrant Program.

3. The data required for the electronic issuance and filing of such complaints—including, for example, that any given person was required to appear but failed to do so—is input by deputy clerks employed by the Los Angeles County Superior Court or staff whom such clerks oversee.

4. The Automated Pull for Warrant Program runs weekly and identifies all cases that are delinquent. That Program takes data from ETRS, populates the data into a template (i.e., subject matter) form for the complaint in a portrait (i.e., tall and narrow like a letter page) rather than landscape (i.e., short and wide) format, and saves the form as an electronic document. Indeed, all documents pertaining to traffic cases in the Superior Court of Los Angeles County are stored as electronic documents. There are no hardcopy files stored on shelves or in file cases. When documents are needed in court, they are printed out of TRIS, stapled together, and sent to the courtroom.

5. The complaint against Jewerelene Steen that appears among the exhibits she filed in support of her petition for writ of mandate is a printed reproduction of the original complaint. The original complaint was issued and filed electronically by the Clerk of the Superior Court of Los Angeles County under section 959.1(c). The original complaint is stored as an electronic document in TRIS. The original complaint was signed electronically, meaning that the signature that appears on the complaint is an electronically generated one. As stated, the Automated Pull for Warrant Program populates data from ETRS into a template form for the complaint in a portrait format. If the complaint is printed in a landscape format, the data will be printed one-half inch off-center, to the left.

6. So it was with the Steen complaint. On December 5, 2012, I reviewed the electronic original of the Steen complaint on

TRIS. It appears in a portrait format, and all of the data fields fit in the corresponding template areas of the complaint. *See* Exh. A.

7. In the 2007-2008 Fiscal Year, the Clerk of the Superior Court of Los Angeles County electronically issued and filed under section 959.1(c) approximately 8,000 complaints for failure to appear per week. The fact that the Superior Court of Los Angeles County reported that, in Fiscal Year 2007-2008, it had 215,165 traffic misdemeanor filings and 322,474 non-traffic misdemeanor filings does not mean that the Clerk could not have electronically issued and filed under section 959.1(c) approximately 8,000 complaints for failure to appear per week. The Superior Court of Los Angeles County files about 1.8 million traffic citations from over 150 law enforcement agencies every year. The Clerk electronically issues and files under section 959.1(c) complaints for failure to appear not only for recent violations but also for violations going back five or even ten years.

8. When the Clerk of the Superior Court of Los Angeles County issues and files a complaint electronically under section 959.1(c) for failure to appear, it does so as a misdemeanor. The vast majority of the violations charged by such complaints, however, are treated as infractions rather than misdemeanors. When a defendant comes to court for arraignment on such a complaint, the judicial officer advises the defendant that he or she has been charged with a misdemeanor and that the prosecutor has already consented to have the violation reduced to an infraction. The judicial officer attempts to obtain the defendant's consent to the reduction. The defendant almost

always consents. But if the defendant does not consent, the judicial officer immediately transfers the case to a criminal arraignment court where a prosecutor is present.

9. When the Clerk of the Superior Court of Los Angeles County issues and files a complaint electronically under section 959.1(c) for failure to appear, it triggers a base fine of $75 per the Bail Schedule, which is then augmented by various legislatively mandated penalty assessments and fees, including $232 as a Penalty Assessment, $40 as a Court Security Fee, $15 as a Criminal Surcharge Fee, $30 as a Criminal Conviction Assessment Fee, and $4 as an Emergency Medical Air Transportation Fee, for a total of $396. Although not every such a complaint results in a payment, a forfeiture, or civil assessment income, I continue to believe that, in the 2007-2008 Fiscal Year, the fines, forfeitures, and assessments related to the more than 8,000 complaints electronically issued and filed each week by the Clerk of the Superior Court of Los Angeles County under section 959.1(c) for failure to appear did indeed exceed $75 million.

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

Executed this 6th day of December, 2012, at Los Angeles, California.

Greg Blair

PROOF OF SERVICE

Jewerelene Steen vs. Los Angeles Superior Court, Appellate Division (People of the State of California, Real Party in Interest),
Supreme Court No. S174773,
Los Angeles Appellate Division No. BR046020,
Los Angeles Superior Court No. 6200307

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, California 94105-3659. On December 12, 2012, I served the following document(s) by the method indicated below:

RESPONDENT'S RETURN TO SEPTEMBER 12, 2012 ORDER TO SHOW CAUSE

☑ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

John Hamilton Scott, Esq. Office of the Public Defender 320 W. Temple Street, Room 590 Los Angeles, CA 90012	Attorneys for Petitioner Jewerelene Steen
Albert J. Menaster, Esq. Los Angeles County Public Defender, Appellate Division 320 W. Temple Street, Room 590 Los Angeles, CA 90012	Attorneys for Petitioner Jewerelene Steen

Frederick R. Bennett, Esq. Los Angeles County Superior Court 111 North Hill Street, Room 546 Los Angeles, CA 90012	Attorneys for Los Angeles County Superior Court, Appellate Division
Charles W. McCoy, Esq. Los Angeles County Superior Court 111 North Hill Street, Room 546 Los Angeles, CA 90012	Attorneys for Los Angeles County Superior Court, Appellate Division
Katharine Helen S. MacKenzie, Esq. Eris Shannon, Esq. Los Angeles County Superior Court 200 N. Main Street, 500 City Hall East Los Angeles, CA 90012	Attorneys for The People of the State of California
Carmen A. Trutanich, Esq. Office of the Los Angeles City Attorney 200 N Hill Street, 800 City Hall East Los Angeles, CA 90012	Attorneys for The People of the State of California
Attorney General Los Angeles Office Office of the Attorney General 300 South Spring Street, 5th Floor Los Angeles, CA 90013	Attorneys for The People of the State of California
Phyllis Chiemi Asayama Deputy District Attorney Los Angeles County District Attorney Office 320 W. Temple Street, Suite 540 Los Angeles, CA 90012	Attorneys for Amicus Curiae Los Angeles County District Attorney

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 12, 2012, at San Francisco, California.

Eileen Kroll