IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN,
Petitioner,

vs.

APPELLATE DIVISION OF THE LOS ANGELES COUNTY SUPERIOR COURT,
Respondent,

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

Case No. S174773

(Ct. of App., 2nd Dist., Div. 4, Case No. B217263)
(Willhite, Acting P.J., Manella, J., Suzukawa, J.)

(Appellate Div. Sup. Ct. No. BR046020)
(Weintraub, J., McKay, P.J., Wasserman, J.)

(Trial Ct. No. 6200307)
(Munisoglu, C., Dept. 66)

RETURN TO PETITION FOR WRIT OF MANDATE

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RETURN TO PETITION FOR WRIT OF MANDATE

Petitioner, Jewerelene Steen, filed a Petition for Writ of Mandate on July 20, 2009 ["Petition"] requesting that this Court vacate her misdemeanor conviction for her failure to appear in court on a traffic infraction. This Court subsequently ordered respondent and real party in interest "to show cause before this court why the relief prayed for in the petition for writ of mandate filed July 20, 2009, should not be granted on the ground Penal Code section 959.1, subdivision (c), violates the separation of powers doctrine."

The People of California are responding as real party in interest, by its attorney, Carmen A. Trutanich, City Attorney of Los Angeles. Real party in interest ["real party"] hereby files this return to the Petition and alleges as follows:

1

Real party makes the following statement of fact based in the record provided by petitioner and denies all allegations in the Petition that are inconsistent with the following statement of fact[1]:

2

On June 8, 2002, petitioner was cited for driving a motor vehicle with an expired registration, driving a motor vehicle without a valid driver's license, and failing to provide evidence of financial responsibility. (Petition, Exhibit D, Respondent's Brief in the Appellate Division ["Respondent's Brief"], p. 2.) On the Citation, petitioner signed and declared, "Without admitting guilt, I promise to appear" on or before July 23, 2002, at the Clerk's Office of the Superior Court at 1945 South Hill Street, Los Angeles, California, 90007. (*Ibid.*)

3

On August 13, 2002, a misdemeanor complaint was issued electronically charging petitioner with a violation of Vehicle Code section 40508, subdivision (a), willfully violating her written promise to appear in court. (Petition, Exhibit A, Misdemeanor Complaint filed in the Los Angeles County Superior Court in case no. 6200307 ["complaint"].)

4

On July 27, 2007, petitioner's case was called before the Honorable Elizabeth M. Munisoglu, Commissioner presiding. (Petition, Exhibit B, Reporter's Transcript of the Proceedings of July 27, 2007 ["RT"] 1.) Petitioner was represented by Deputy Public Defender Ilya Alekseyeff, and the People were represented by Deputy City Attorney David Bozanich.

---

[1] All exhibit references by letter, specifically Exhibits A through J, are references to the exhibits attached to the Petition.

5

Petitioner's counsel made an oral demurrer to the charges and objected to the participation of the City Attorney in the proceedings. Counsel argued that the complaint in this case was invalid because it was issued solely by the Clerk of the Superior Court, not the City Attorney, and that the prosecutor was "the only entity that is authorized to prosecute people in this state." (RT 1-4.) Defense counsel claimed that the court lacked jurisdiction to hear the case, and that allowing the prosecution to go forward violated California constitutional separation of powers doctrine and due process. (RT 2-4.) Counsel additionally argued that Penal Code section 959.1, subdivision (c)(1), also violated the separation of powers doctrine under the California Constitution "to the extent that the clerk signed this complaint pursuant to" that section. (RT 4.)

6

The court found that the complaint was valid as long as it was "approved, authorized, or concurred in" by the prosecutor. (RT 4-5.) Accordingly, the court asked the prosecutor whether he authorized or concurred "in the complaint as presently constituted," and Deputy City Attorney Bozanich answered yes. (RT 5.) Bozanich added that the City Attorney's Office:

> approve[s] and concur[s] [with] this complaint as well as all the other complaints that are filed in all the other cases in this courthouse. We know the practice exists where a complaint is generated via a notice to appear in which a person cited in the notice to appear has failed to appear. We have not asked the Court and/or its clerk to stop. [¶] Moreover, we have not filed a motion to dismiss in this case. Additionally, when the case was presented to our office [on July 27, 2007], we reviewed the complaint and made an offer on that particular case. Therefore, based upon all those actions, we not only explicitly approve and concur in this complaint, but our actions in this case and in all other cases demonstrate, unless otherwise indicated, that we approve and concur in these complaints.

(RT 6-7.)

7

Defense counsel responded that "even if it's approved ultimately, [it] has to be timely." (RT 7.) He argued that, "[i]t is too late for the City Attorney to concur" in the complaint because "[o]therwise . . . this Court will invite private parties to file criminal complaints against individuals en mass . . . ." (RT 7-8.)

8

The court overruled the demurrer and concluded "that there is no basis to find that the complaint is invalid on its face." (RT 8.) Specifically, the court found that there was no separation of powers problem in this case because court clerks "do not exercise judicial functions," but instead "[t]heir functions are ministerial," and because "[t]he Supreme Court has never applied rigid interpretations to the divisions between executive, legislative, and judicial powers." (RT 5.) The court additionally found that "one could realistically say that the Court clerk is the witness to the violation and, therefore, is the appropriate party to initiate the complaint as approved, concurred in by the City Attorney." (RT 5.)

9

With respect to the constitutionality of Penal Code section 959.1, the court ruled that it was "assumed to have been enacted by the Legislature with a full understanding of prior case law and other statutes, including Government Code [section] 100 which vests the power to prosecute in the District Attorney or the City Attorney." (RT 5-6.) In "attempt[ing] to harmonize those statutes with the facts before it and the arguments made," the court ruled that "the fact that the prosecution in this matter has concurred in the complaint as it stands is sufficient to render it constitutional and provide the Court with [an] adequate legal basis for denying your demur[rer]." (RT 6.)

10

After the demurrer was overruled, petitioner entered a plea of no contest to the "misdemeanor charge of 40508 of the Vehicle Code." (RT 8-9.) The court then denied probation and sentenced petitioner to serve 50 days in the county jail against 6 days of credit, and gave her notice that her driver's license was suspended. (RT 9-10.)

11

Petitioner timely appealed her conviction to the Appellate Division of the Los Angeles Superior Court, the named respondent in this matter.

12

On appeal, petitioner filed an opening brief containing several claims of error attacking the validity of the complaint. Specifically, petitioner argued that: (1) the complaint was not sufficient to confer jurisdiction on the court because it was not brought in the name of "The People of the State of California," (2) any complaint filed by a court clerk instead of a prosecutor violates due process and the separation of powers doctrine, (3) Penal Code section 959.1, subdivision (c)(1), which permits a court to receive a complaint in electronic form if it "is issued in the name of, and transmitted 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," was not actually intended to allow a clerk to issue and file a complaint, (4) if section 959.1, subdivision (c)(1) did, in fact, authorize court clerks to issue and file electronic complaints for failures to appear, it would have to be struck down as unconstitutional, and (5) even if it is permissible for a clerk to issue and file an electronic complaint for a failure to appear where authorized by a prosecutor, the statute of limitations expired before the complaint was authorized in this case. (Petition, Exhibit C, Appellant's Opening Brief in the Appellate Division, pp. 4-21.)

13

After reviewing petitioner's claims and the record on appeal, real party moved pursuant to rules 8.783(a)(7) and (10), 8.784, 8.788, and 8.791 of the California Rules of Court, to remand the matter to the trial court for proper settlement, certification, and augmentation of the record on appeal. No formal hearing to settle the statement on appeal had been held in this case, and real party discovered that the record transmitted to the Appellate Division did not include all the documents in the trial court's file.[2]

14

Noting that "[i]n addition to her constitutional arguments, appellant also challenges the validity of the complaint on statute of limitation grounds," real party identified one known omission to the record: the "Expanded Traffic Record System" ("ETRS"), which included a notation on the issuance of a warrant. (See Pen. Code, § 804 [prosecution for an offense is commenced when ... "[a]n arrest warrant or bench warrant is issued...."].) Real party requested a remand so the trial court could "settle and certify its ETRS records as part of the record on appeal, and, if necessary, explain any notations or abbreviations contained within them." Real party also requested a remand so the court could settle and certify "any other documents, statements, or evidence relevant to the issues raised on appeal regarding the court's process of filing failures to appear." (Motion to Remand To Augment Record on Appeal and to vacate Briefing Dates; Declaration of Katharine H. Mackenzie; Memorandum of Points and Authorities attached to Opposition as "Real Party's Exhibit A.")

---

[2] Real party also requested proper certification of the reporter's transcript because it had not been given the opportunity to review it for corrections.

15

On September 2, 2008, the Appellate Division denied real party's motion. (Appellate Division Order of September 2, 2008, attached to Opposition as "Real Party's Exhibit B.")

16

Real party subsequently filed a responsive brief addressing each of petitioner's claims, and petitioner filed a reply. (Respondent's Brief; Petition, Exhibit E, Appellant's Reply Brief in the Appellate Division.)

17

On June 8, 2009, in a memorandum judgment,[3] the Appellate Division rejected petitioner's claims of error and affirmed the judgment of conviction. (Petition, Exhibit F, Appellate Division's Memorandum Judgment ["Judgment"].) The Appellate Division ruled that the plain language of Penal Code section 959.1, subdivision (c)(1), "allows a court to receive a complaint in electronic form issued in the name of, and transmitted by, a clerk of the court for certain offenses, including the offense at issue here," and therefore the statute "authorized the electronic issuance of the instant complaint." (Judgment, pp. 4-5.) Although the court found that, "[o]n review of the appellate record, it is less than clear whether the complaint was electronically issued by a court clerk," the court nevertheless held that "a complaint issued by a court clerk is not restricted to electronic form, but may be issued by other means, such as on paper" because "[n]owhere in the statute does it specify that such a complaint is valid only if issued electronically." (Judgment, p. 5.)

[3] The Appellate Division did not issue a published opinion.

18

The Appellate Division held that there was no due process violation because the prosecutor "approved and authorized the initiation of criminal proceedings," and that there was no separation of powers violation because the City Attorney's Office "at all times retained the authority to dismiss the complaint by objecting to its issuance," thus retaining its prosecutorial discretion. (Judgment, pp. 3-4.) As to petitioner's argument that the complaint violated the statute of limitations, the Appellate Division held that "the action was commenced on August 13, 2002, upon the filing of the complaint as authorized by the city attorney's office," and therefore, "the statute of limitations did not bar prosecution of the offense." (Judgment, p. 6.) Finally, the Appellate Division ruled that the failure of the complaint to expressly state "The People of the State of California" did not deem it to be a deficient pleading because that defect did not prejudice any substantial right on the part of petitioner. (Judgment, p. 6.)

19

On June 19, 2009, pursuant to California Rules of Court, rules 8.1005 and 8.889, petitioner filed in the Appellate Division a petition for rehearing and/or certification to the Court of Appeal. On June 30, 2009, the Appellate Division issued an order denying rehearing and certification. (Petition, Exhibits G & H.)

20

On July 6, 2009, pursuant to California Rules of Court, rule 8.1008(b), petitioner filed a petition for transfer with the Court of Appeal, Second Appellate District, Division 4 (case no. B217263). On July 16, 2009, that Court denied transfer. (Petition, Exhibits I & J.)

21

On July 20, 2009, petitioner filed the instant petition with this Court.

22

On July 29, 2009, the Clerk of this Court served real party by U.S. mail with a letter requesting an informal response to the petition, to be served and filed on or before August 18, 2009, addressing "the merits as well as any procedural issues that real part[y] wish[es] to raise."

23

Real party filed an informal response on August 17, 2009, and petitioner filed a reply on August 27, 2009.

24

On September 9, 2009, the Court issued an Order to Show Cause which provided as follows:

> Respondent and real party in interest are ordered to show cause before this court why the relief prayed for in the petition for writ of mandate filed July 20, 2009, should not be granted on the ground Penal Code section 959.1, subdivision (c), violates the separation of powers doctrine. (Cal. Const., art. III, § 3.) The returns are to be filed within 30 days of this order.

25

On October 5, 2009, respondent filed its return to the Petition.

26

On October 14, 2009, on application of real party, "and good cause appearing," this Court ordered that the time to serve and file real party's Return was extended to and including November 23, 2009.

27

On October 19, 2009, petitioner filed a Traverse.

In this Return, real party prays:

1. That the request for writ of mandate be denied;

2. For such other relief as this Court may deem just and proper.

DATED: November 23, 2009

Respectfully submitted,
CARMEN A. TRUTANICH, City Attorney
DEBBIE LEW, Assistant City Attorney
Supervisor, Criminal Appellate Division

By _____
ERIC SHANNON
Deputy City Attorney

Attorneys for Real Party in Interest
PEOPLE OF THE STATE OF CALIFORNIA

VERIFICATION

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

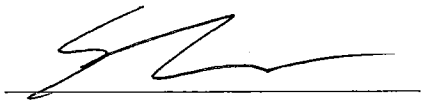
Eric Shannon declares as follows:

I am an attorney at law licensed to practice in the State of California. I am employed as a deputy city attorney for the Los Angeles City Attorney's Office. In that capacity, I am attorney of record for Real Party in *Jewerelene Steen v. Appellate Division of the Los Angeles County Superior Court*, California Supreme Court No. S174773. I make this verification on behalf of Real Party, the People of the State of California.

I have read the pleadings, record and all pertinent documents in the case at bar. I have also read the pleadings, record and all pertinent documents in all related cases. I know of my own personal knowledge that the matters in the above document not otherwise supported by citations to the record, exhibits, or other documents are true and correct, based upon my representation of Real Party and my reading of all pertinent documents in connection to this matter.

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

Executed this 23rd day of November 2009, at Los Angeles, California.



ERIC SHANNON
Deputy City Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Penal Code section 959.1, subdivision (c)(1), authorizes a court to receive a complaint in electronic form issued by a clerk "with respect to complaints issued for the offenses of failure to appear, pay a fine, or comply with an order of the court." This Court has ordered real party and respondent to show cause as to whether section 959.1, subdivision (c), violates the separation of powers doctrine.

Petitioner argues that the power to initiate criminal charges is vested exclusively in the public prosecutor, thus, section 959.1, subdivision (c)(1), cannot authorize a clerk of the court to issue complaints in any circumstances. (Petition, pp. 12-22.) However, in arguing that placing the responsibility for filing a complaint in the hands of a court clerk is a *constitutional* concern, petitioner does not address this Court's separation of powers jurisprudence or discuss whether allowing a clerk of the court to file a complaint in the limited circumstances circumscribed by Penal Code section 959.1 materially infringes upon a core executive function. Instead, petitioner's separation of powers argument is essentially that if *anyone* other than a prosecutor files any complaint, it violates a defendant's due process, and that, based on the same authority, it also violates the separation of powers doctrine if the individual improperly filing charges is a member of another branch of government, here a clerk of court. (Petition, pp. 19-22.) Petitioner's assertion incorrectly assumes that the function at issue in this case -- the issuance of a complaint -- is so fundamentally an executive function that the Legislature may never permit anyone other than an executive to issue any complaint. However, initiating a criminal charge has never been a core executive function; neither the office associated with it, the public prosecutor, nor the function itself has historical roots in the executive branch. Further, even if charging was a core executive function, the procedure set forth under section 959.1, subdivision (c)(1), permits the filing of complaints in unique circumstances which do not materially impair

that function. Section 959.1, subdivision (c)(1), does not violate California's separation of powers doctrine.

ARGUMENT

PENAL CODE SECTION 959.1, SUBDIVISION (C), DOES NOT VIOLATE CALIFORNIA'S SEPARATION OF POWERS DOCTRINE.

Article III, section 3, of the California Constitution -- the state constitutional separation of powers clause -- provides: "The powers of State government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 463.) As this Court has held:

> Although the language of California Constitution article III, section 3, may suggest a sharp demarcation between the operations of the three branches of government, California decisions long have recognized that, in reality, the separation of powers doctrine does not mean that the three departments of our government are not in many respects mutually dependent (citation omitted), or that the actions of one branch may not significantly affect those of another branch.

(*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 52-53, internal quotations omitted.) The separation of powers doctrine does not command "a hermetic sealing off of the three branches of Government from one another" (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 338), but instead it "recognizes that the three branches of government are interdependent...." (*Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 298.)

As a result, the separation of powers doctrine only "limits the authority of one of the three branches of government to arrogate to itself the *core functions* of another branch." (*Carmel Valley Fire Protection Dist., supra*, 25 Cal.4th at p. 297, italics added; *Marine Forests Society v.*

California Coastal Com. (2005) 36 Cal.4th 1, 25.) In fact, even as to those core functions, "in certain situations one branch of government properly can exercise a function that only incidentally affects a power vested primarily in another branch of government." (*In re Rosenkrantz* (2003) 29 Cal.4th 616, 662.) "[W]ith regard to functions over which one branch of government possesses primary and inherent power, the other branches do not necessarily violate the separation of powers doctrine simply because they undertake actions that affect those core functions." (*Ibid.*, citing *Obrien v. Jones* (2000) 23 Cal.4th 40, 48.) Instead, "the separation of powers doctrine is violated only when the actions of a branch of government defeat or materially impair the inherent functions of another branch." (*Ibid.*) The issue presented in this case, therefore, is whether the legislative decision to allow court clerks to issue electronic complaints in three narrow and unique circumstances materially impairs a core or inherent function of the executive branch of government.

Finally, in considering the constitutionality of section 959.1, we begin with the well-settled rule of law that legislative enactments must be interpreted to avoid any unconstitutionality.

> In considering the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the Act. Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the Act. [Citations.] Thus, wherever possible, we will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statute. [Citation].

(*California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594.)

I

Filing a Criminal Complaint Is Not a Core Executive Function.

A. A Public Prosecutor Is Historically Not Exclusively An Executive.

Petitioner's argument that this state's separation of powers doctrine is implicated when someone other than a prosecutor files a criminal complaint overlooks the fact that the duties of a public prosecutor, as well as the office of the prosecutor itself, are not core components of the executive branch. While California cases have held that the current-day office of the district attorney is part of the executive branch,[4] the California Constitution has never mandated that. In fact, the evolution of this state's Constitution suggests that California's view of the office of the district attorney was consistent with the rest of the nation, which has never easily categorized the public prosecutor into any single role or branch of government. "Prosecutors ... are not only unique to the United States but somewhat unique unto themselves." (Douglass et al., The Prosecutor in America (1977) p. 2.)

The American prosecutor first emerged as an officer of the judicial branch:

> Although today the local prosecuting attorney is considered an executive officer and the primary law enforcement official in his or her district, in the early republic the prosecutor was viewed as a minor figure in the court. The position was primarily judicial and only quasi-executive. As a subsidiary of the courts, the prosecutor was considered an adjunct to the real powers of the courts, the judges.
>
> There is much evidence to support this thesis. Most telling is the fact that the prosecuting attorney, whether district attorney, county attorney or attorney general, was originally mentioned in the judicial article of the constitution. Even in states where separate articles were written for local and county officers, the

[4] See *Singh v. Superior Court* (1919) 44 Cal.App. 64, 67; *County of Yolo v. Joyce* (1909) 156 Cal. 429, 432.

> prosecuting attorney, for the first half-century at least, was relegated to a subsection of those articles establishing the structure and officers of the state court system. Never was the prosecutor listed as a member of the executive branch, nor described as an officer of local government. The prosecutor was, in the eyes of the earliest Americans, clearly a minor actor in the court's structure.

(Jacoby, *The American Prosecutor in Historical Context* (2005) vol. 39, No. 2, The Prosecutor (American Prosecutor's Research Institute) 34; see also Kadish et al., Encyclopedia of Crime and Justice (1983) vol. 3, 1287-1288 ["In the early years of the republic, the prosecuting attorney was a minor judicial official."]; Douglass, *supra*, pp. 1-2 ["Most often, the office of the prosecutor is considered to be part of the executive branch of the government and there have been countless opinions discussing the role of the prosecutor in terms of the separation of powers. Nevertheless, much of the literature of the law speaks of the prosecutor as being an officer of the court."]; see also *Griffith v. Slinkard* (1896) 146 Ind. 117, 121 [a prosecuting attorney in Indiana "is a judicial officer, created by the constitution of the State."]; *Cawley v. Warren* (1954) 216 F.2d 74, 76 [state's attorneys in Illinois are judicial officers].)

In California, as will be discussed further below, the office of the district attorney was created, not by the Constitution, but by statute. (Gov. Code, § 26500; see also former Pol. Code 4256.) Consistent with the evolution of the public prosecutor nationwide, the office of the district attorney in California appears to have first been associated with the judicial branch, but in any case appears to have been an office not easily categorized. While no version of the California Constitution specifically assigns the office of the district attorney to any branch of government, the original state Constitution, adopted in 1849, provides in section 7 of Article VI, which is entitled "Judicial Department," that "The Legislature shall provide for the election, by the people, of a Clerk of the Supreme Court, and County Clerks, District Attorneys, Sheriffs, Coroners, and other necessary officers; and shall fix by law their duties and compensation."

(Cal. Const. of 1849, art. VI, § 7.) Additionally, during the session of the first California Constitutional Convention in which section 7 was proposed, delegate McDougal stated, "I propose that the Legislature shall provide for the election of all officers of their courts by the people." (Browne, Rep. of Debates in Convention of Cal. on Formation of State Const. (1850) pp. 233-234.)

When the California Constitution was comprehensively revised in 1879, the clause referencing the district attorney was modified slightly and moved to Article XI, entitled "Cities, Counties, and Towns." (Cal. Const. of 1879, art. XI, § 6.) While that shift appears consistent with a historical, gradual separation of the office of the district attorney from the judicial branch, as well as more independence for local public prosecutors, it also suggests that the function of the district attorney was not one which the drafters of the 1879 revision viewed as particular to any branch of government. In fact, as of 1861, this Court viewed the district attorney, at least for certain purposes, as an office created by the Legislature, to be a subordinate of the Legislature. (*People ex rel. Smith v. Judge of Twelfth Dist.* (1861) 17 Cal. 547, 561 ["By the act and orders of the Legislature, the District Attorneys appear to prosecute and are paid. These attorneys are but subordinate representatives of the State, but they are controlled by and are responsible to the Legislature, who are the primary and original representatives of the sovereign power."].)

It was not until Former Constitutional Article V, section 21, as adopted in 1934, that reference to the district attorney was moved to the Article setting forth the executive branch. (See Former Const. Art V, § 21, as adopted November 6, 1934; see also Current Art. V, § 13.) Yet, even the current version of our state Constitution does not expressly delegate the district attorney to the executive branch. Historically, the public prosecutor in California cannot be assumed to be a part of the executive branch for all purposes.

B. There Was Never a Constitutional Mandate That Only a Prosecutor May Initiate a Criminal Charge.

Placed in the proper historical context, it is clearer that a public prosecutor serves an amalgam of roles. (See Douglass, *supra*, p. 2 ["The prosecutor in America wears three hats. He is a lawyer, an administrator, and a public official with policy-making responsibilities."]; p. 9 ["There exists no single, comprehensive and fully accurate description of the diverse and interrelated roles of the prosecutor. In fact, given the disparities in staffing, office structure and jurisdiction that prevails among current prosecution offices, any attempt at a statement of the prosecutor's role necessarily results in over-generalization and oversimplification."].) Petitioner nevertheless assumes that the "power and authority to bring criminal charges" rests exclusively with a public prosecutor and can never be delegated to any other entity without infringing on the "exercise of *executive* discretion...." (Petition, pp. 12, 22, italics added.) In making that assertion, petitioner chiefly relies on a Court of Appeal case, *People v. Municipal Court for Ventura Judicial Dist. (Pellegrino)* (1972) 27 Cal.App.3d 193, and the Government Code. (Petition, pp. 12-22.)

In *Pellegrino*, three private citizens (Pellegrino, Stromstad, and Bishop) were involved in a neighborhood dispute. Bishop, who was the victim of a battery, signed and filed a misdemeanor criminal complaint naming Pellegrino and Stromstad as defendants, and the district attorney's office reviewed and approved the filing. Pellegrino, in turn, signed and attempted to have the district attorney file a criminal complaint naming Bishop as defendant. However, the district attorney refused to approve the filing of her complaint. So, Pellegrino filed the complaint herself, had her personal attorney appointed as "special prosecutor," and the district attorney was disqualified. As a result, Bishop was charged with several criminal offenses that the district attorney determined lacked merit. (*Id.* at pp. 195-197.) The Court of Appeal ordered Pellegrino's complaint dismissed, holding that "[t]he complaints filed by Pellegrino against Bishop without the district attorney's authorization were nullities. The municipal

court lacked discretion and in fact jurisdiction to do anything in the matter except to dismiss." (*Id.* at p. 206.)

Petitioner argues that *Pellegrino* rejected the notion that anyone other than a prosecutor could file a criminal complaint because it is fundamentally a prosecutor's role. (Petition, pp. 12-14.) However, the court's holding was not based on the fact that the complaint was issued and filed by Pellegrino rather than by the prosecutor. Instead, the court determined the complaint filed by Pellegrino was a nullity because it was issued and filed without authorization by the prosecuting attorney. Conversely, the complaint issued and filed under Bishop's signature was not a nullity because its issuance and filing were done with the prosecutor's approval. (*Pellegrino, supra*, 27 Cal.App.3d at p. 196.) In fact, it does not appear that the *Pellegrino* court entirely disapproved the procedure by which private citizens filed complaints, but instead merely required the additional step of prosecutorial approval of private criminal complaints. As explained by the *Pellegrino* court:

> By this holding we do not mean to imply that criminal complaints need take any different form than they presently do, but 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.* at p. 206.)[5] Even more important, the private-citizen complaint procedure at issue in *Pellegrino* is consistent with other California case law which shows that the authority to initiate a prosecution did not historically rest exclusively with the district attorney. (See *People v. Bird* (1931) 212

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[5] Petitioner also cites *People v. Viray* (2005) 134 Cal.App.4th 1186, as further supporting petitioner's interpretation of the holding in *Pellegrino*. But, *Viray* was not a separation of powers case. The *Viray* court held that a lengthy interrogation of a defendant on the morning of her arraignment violated her Sixth Amendment right to counsel because that right attached at the point the prosecutor filed a felony complaint against her. (*Viray, supra*, 134 Cal.App.4th at pp. 1194-1206.) *Viray* did not discuss or make any determination whether the filing of a felony complaint was a core executive function.

Cal. 632 [holding was necessary to authorize a district attorney to lawfully file an information charging an offense different from that named in a magistrate's order of commitment].)

In fact, it was not until 1980 that the additional authority relied upon by petitioner, Government Code section 26500, was amended to authorize a prosecutor to initiate a prosecution. That section provides, "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." Yet, the words "and within his or her discretion shall initiate" were added by amendment in 1980. (Stats 1980 ch. 1094 § 1.)

Petitioner relies on Government Code section 26500 for the proposition that "[t]he Legislature has also firmly [placed the responsibility for commencing criminal actions upon the prosecuting attorney." (Petition, p. 14.) But, Government Code section 26500 is precisely that – a legislative enactment, which is subject to exceptions. For example, one significant exception is the grand jury, which "is a judicial tribunal" of citizens, and has the authority to issue an indictment, which is "[t]he first pleading on the part of the people in the superior court in a felony case...." (Pen. Code, §§ 917, 949; *Greenberg v. Superior Court* (1942) 19 Cal.2d 319, 323; see also *People v. Anthony* (1912) 20 Cal.App. 586, 589 ["The constitution contemplates that an indictment shall be found and presented by a grand jury ... and to permit the district attorney to amend an indictment in matters of substance would in effect render the indictment no longer the finding of the grand jury."]; Cal. Const, art. I, § 14 ["Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information."].) Not only is that judicial body authorized to initiate the first pleading in a felony case, but "there is no requirement that an indictment be signed by the district attorney," and despite the district attorney's statutory duty to "attend before and give advice to the grand jury whenever cases are presented to it for their consideration," there is "no requirement, however, that it is the duty of

the grand jury to request or accept that advice." (*People v. Coleman* (1948) 83 Cal.App.2d 812, 848; Gov. Code, § 26501.) As another example, Penal Code sections 853.6 and 853.9 permit an officer to initiate an action against a misdemeanor defendant by issuing a notice to appear. (*Heldt v. Municipal Court* (1985) 163 Cal.App.3d 532, 539 ["[Penal Code] sections 853.6 and 853.9 provide for circumstances, as in this case, where the notice to appear may be used [by the arresting officer] *in lieu of* a formal complaint to invoke the jurisdiction of the court in a misdemeanor prosecution." (Original italics.)].)

Penal Code section 959.1, subdivision (c)(1), is merely another limited legislative exception to the general provision authorizing prosecutors to initiate criminal charges. Contrary to petitioner's suggestion, Government Code section 26500 does not create a constitutional requirement that criminal charges must be filed by a prosecutor, as an executive. (See *County of Mendocino, supra*, 13 Cal.4th at pp. 63-64 [no separation of powers violation where "nothing in the current provisions of the California Constitution indicates that the Legislature lacks authority to enact statutory provisions" governing the function at issue, and where there was evidence that "the drafters of the 1966 revision [to the California Constitution] were of the view that the subject was more appropriate for statutory enactment than for inclusion in the Constitution."].)

C. Charging Is Quasi-Judicial And Not a Core Executive Function.

Even more significant, neither the Petition nor the authority it cites address the fundamental *separation of powers* issue presented in this case: whether the charging function is a core executive function. As discussed above, a prosecutor serves a number of roles, not all of which are executive. This Court has held that a prosecutor's executive functions include the *prosecution* of a case. (*Esteybar v. Municipal Court for Long Beach Judicial Dist.* (1971) 5 Cal.3d 119, 127.) Additionally, it appears that investigating criminal activity, a function performed by prosecutors and

members of law enforcement, is also an executive task. (See *In re Manuel G.* (1997) 16 Cal.4th 805, 819.) However, the decision to *initiate* a prosecution is considered something quite different. Charging decisions are often labeled "quasi-judicial" because they:

> are no more intricate than others routinely dealt with by judges. They are probably less so because they are made in contexts with which judges are familiar and involve questions that are integral to the judge's function – weight and sufficiency of evidence, correctional considerations, statutory interpretation, and constitutional law. In cases that begin with an arrest, it is the police who gather the facts and make the principal judgments on investigative methods and enforcement priorities; the prosecutor's role is almost judicial in nature and consists of screening witness statements and assessing their sufficiency. There is nothing inherently executive in the skills he uses in weighing credibility and appraising the weight of evidence. There is even less that is inherently executive in deciding which statute has been violated or whether correctional considerations are relevant. Even when a prosecutor uses an investigative grand jury, a distinction must be made between his role in leading an investigation and in appraising its product as a basis for indictment. Only when the investigative role is dominant – when he is allocating resources, emphasizing one strategy of enforcement rather than another, choosing a particular method of investigation – can the prosecutor be said to have special competence and to deserve unusual deference. Otherwise, he is merely the first law-trained official to determine whether there is enough evidence to warrant a charge, but one who is deprived by his role of the judicial attributes of neutrality and impartiality.

(Goldstein, The Passive Judiciary: Prosecutorial Discretion and the Guilty Plea (1981) pp. 55-56; see also Felkenes, The Criminal Justice System: Its Functions and Personnel (1973) pp. 153-154, 158-160 ["The dominant characteristic of the prosecutor's decisions is their quasi-judicial nature; when he analyzes evidence and the suspect's personality traits to determine both the chances of conviction and how the suspect will respond to punitive

or therapeutic measures, he is considering matters commonly associated with judicial responsibilities...."].)[6]

Accordingly, in many jurisdictions, including California, prosecutorial immunity is tied specifically to the fact that the prosecutor is functioning in a quasi-judicial capacity *when making charging decisions*, and therefore the same policy considerations underlying *judicial* immunity apply to the prosecutor who is deciding how and whether to initiate criminal charges. (See *Imbler v. Pachtman* (1976) 424 U.S. 409, 422-423 ["The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties."]; see also *Yaselli v. Goff* (2d Cir. 1926) 12 F.2d 396, 404 ["A United States attorney, if not a judicial officer, is at least a quasi judicial officer, of the government."]; *Watts v. Gerking* (1924) 111 Ore. 641, 657 ["The district attorney, in determining whether to institute a prosecution, is a *quasi*-judicial officer, who possesses a certain discretion as to when, how, and against whom to proceed."]; *Pearson v. Reed* (1935) 6 Cal.App.2d 277, 286 ["A prosecutor is called upon to determine, upon evidence submitted to him, whether a criminal offense has been committed by the person accused -- exactly the same question that is presented to a court or jury upon trial."].)

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[6] One former United States Attorney characterized the unique nature of the prosecutor's charging decisions as follows: "It is essentially true that a prosecutor is a 'quasi-judicial officer.' But the reference is usually made as a term of criticism thrown up during a trial when the prosecutor is fighting his hardest to protect the government's case. At this time, most of the prosecutor's quasi-judicial functions have long since passed, and he is an eager lawyer trying to protect his client's interest. [¶] We believe that our primary duty is not to convict, but to seek justice. This definition principally comes into play, however, when a case is first brought into the office and is being readied for Grand Jury presentation. This is where we exercise our judicial role in making our decisions as to whether to prosecute or decline. [¶] When we decide to prosecute, it is because we decide that this is how justice will be done. The decision is reached only after we have satisfied ourselves of the defendant's actual guilt." (Seymour, *Why Prosecutors Act Like Prosecutors*, Record of the Association of the Bar of the City of New York, II (June 1956) pp. 312-313.)

> Courts that have extended the same immunity to the prosecutor have sometimes remarked on the fact that all three officials - judge, grand juror, and prosecutor - exercise a discretionary judgment on the basis of evidence presented to them. (Citations.) It is the functional comparability of their judgments to those of the judge that has resulted in both grand jurors and prosecutors being referred to as "quasi-judicial" officers, and their immunities being termed "quasi-judicial" as well.

(*Imbler, supra*, 424 U.S. at p. 424, fn. 20; see also *Hannum v. Friedt* (1997) 88 Wn.App. 881, 886-887 ["The charging function is so intimately related to the judicial process that prosecutorial immunity must apply." (Internal quotation omitted)]; *Smith v. Parman* (1917) 101 Kan. 115, 116-117.) Further, a prosecutor is not immune merely because a particular duty is associated with a court. Immunity stems from the fact that the charging function makes the prosecutor *like a judge*. (See *McCray v. Maryland* (4th Cir. 1972) 456 F.2d 1, 3-4 ["The immunity of 'quasi-judicial' officers such as prosecuting attorneys and parole board members derives, not from their formal association with the judicial process, but from the fact that they exercise a discretion similar to that exercised by judges. Like judges, they require the insulation of absolute immunity to assure the courageous exercise of their discretionary duties. Where an official is not called upon to exercise judicial or quasi-judicial discretion, courts have properly refused to extend to him the protection of absolute judicial immunity, regardless of any apparent relationship of his role to the judicial system. For example, a defense counsel, a court stenographer, and a jailer all have important duties in the judicial process, but none is afforded judicial immunity because none exercises judicial or quasi-judicial discretion which requires the protection of absolute judicial immunity." (Footnotes omitted.)].)

Petitioner apparently assumes that the initiation of criminal proceedings is a core executive function simply because it is routinely performed by a prosecutor. However, the initiation of criminal proceedings is not a core executive function. Among a prosecutor's amalgam of roles, it is the most judicial function he or she has.

D. Based On The Same Separation Of Powers Principles And a Similar History Regarding The Prosecutor And The Charging Function, The Supreme Court of Wisconsin Held That The Judiciary Was Permitted To Initiate Criminal Charges.

The Supreme Court of Wisconsin addressed the same separation of powers question presented in this case and found no separation of powers violation *because the judiciary could initiate criminal proceedings*. (*State v. Unnamed Defendant* (1989) 150 Wis.2d 352, superseded on another ground by amendment to Wis. Stat. § 968.26.) In *Unnamed Defendant*, the Wisconsin high court considered whether that state's statute governing John Doe criminal proceedings violated its separation of powers doctrine by allowing the judiciary to infringe on the executive branch of government. (*Unnamed Defendant, supra*, 150 Wis.2d at p. 355.) The John Doe statute at issue provided that a private individual could complain directly to a judge if he or she had "reason to believe that a crime has been committed...." (*Id.* at p. 355, fn. 1.) The judge was then authorized to examine the complainant, witnesses and, at the request of the district attorney, subpoena and examine additional witnesses "to ascertain whether a crime has been committed and by whom committed." (*Ibid.*) The statute also provided that "[t]he extent to which the judge may proceed in such examination is within his discretion." (*Ibid.*) Ultimately, if the judge determined that "it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused." (*Ibid.*)

The Supreme Court of Wisconsin had previously declared a similar provision to be unconstitutional (see *State ex rel. Unnamed Petitioners v. Connors* (1987) 136 Wis.2d 118) "because it violated the separation of powers doctrine by unduly impinging on the powers of the executive branch of the government." (*Unnamed Defendant, supra*, 150 Wis.2d at p. 357.) Therefore, the defendant in *Unnamed Defendants* relied "heavily on the opinion in *State v. Connors* for the proposition that discretion to charge

or not in a criminal case is exclusively an executive power." (*Id.* at p. 358.) However, in revisiting the issue, the Wisconsin Supreme Court concluded "that the premise of *Connors* -- that initiation of criminal prosecution is an exclusively executive power in Wisconsin -- is erroneous." (*Ibid.*)

Like California, Wisconsin's "[s]eparation of powers prevents one branch of government from exercising the powers granted to other branches," but that "[n]ot all governmental powers, however, are exclusively committed to one branch of government by the Wisconsin Constitution." (*Id.* at p. 360.) Also like California, "[t]hose powers which are not exclusively committed may be exercised by other branches," and "[i]n areas of shared power, however, one branch of government may exercise power conferred on another only to an extent that does not unduly burden or substantially interfere with the other branch's essential role and powers." (*Ibid.*) In addition, like California, the Wisconsin separation of powers doctrine "serves to maintain the balance between the three branches, preserve their independence and integrity, and to prevent the concentration of unchecked power in the hands of one branch. (*Id.* at pp. 360-361; see also *Carmel Valley Fire Protection Dist., supra*, 25 Cal.4th at p. 298 ["The purpose of the [California separation of powers doctrine] is to prevent one branch of government from exercising the *complete* power constitutionally vested in another (citation); it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch." (Internal quotations and citation omitted.)].)

The Wisconsin Supreme Court applied those principles to the John Doe statute and found it to be constitutional. The court held that the statute required "a judge to assume two functions: investigation of alleged violations of the law and, upon a finding of probable cause, initiation of prosecution," and "no participation by the district attorney." (*Unnamed Defendant, supra*, 150 Wis.2d at pp. 358-360.) And, the court found that procedure consistent with a history in Wisconsin of allowing the judiciary to initiate criminal prosecutions. (*Id.* at p. 362 ["The instant attack on the

propriety of judicial initiation of criminal prosecution comes to this court now for the first time after nearly one hundred and fifty years of usage."].) In that state, until 1945, the "initiation of prosecution was an exclusively judicial power," which cast historical doubt on that court's prior holding "that forty years later the charging power was, as a matter of constitutional law, exclusively within the province of the executive." (*Id.* at pp. 362-363.)

More specifically,

> [f]rom the days of the Wisconsin Territory until 1945, the statutes allowed only magistrates to issue criminal complaints. From 1945 to 1969, either a magistrate or a district attorney could charge. Only in 1969 did section 968.02(3) give district attorneys the primary power to charge criminal offenses.

(*Id.* at p. 363.) Additionally, "[t]he salient aspect of the John Doe proceeding for the purpose of this case -- judicial initiation of criminal prosecution -- has never appeared to be considered to be inconsistent with the doctrine of separation of powers." (*Id.* at pp. 363-364.)

"On the other hand," the court found:

> [b]efore 1945, however, there was no statutory authorization for a district attorney to issue a complaint. Thus, it appears (footnote omitted) that prior to 1945, the filing of a criminal complaint was not only allowable as a judicial prerogative, it was probably exclusively a judicial responsibility.

(*Unnamed Defendant, supra*, 150 Wis.2d at p. 364.)

Therefore, "[g]iven the strong evidence of the long-standing acquiescence in the constitutionality of this statute, from before the adoption of the Wisconsin Constitution to today," the Wisconsin Supreme Court concluded "that the statute does not impermissibly delegate exclusive powers of the executive branch to the judiciary" and "does not violate the constitutional doctrine of separation of powers." (*Unnamed Defendant, supra*, 150 Wis.2d at p. 365.)

Like Wisconsin, the prosecutor's authority to initiate criminal charges in California is a legislative enactment -- the same Legislature that created a limited exception to that authority with Penal Code section 959.1, subdivision (c)(1) -- not a constitutional mandate based on the prosecutor's role as an executive. Further, in light of similar history in California, the Wisconsin court's reasoning is instructive in this case, particularly since our Legislature has created a far more limited statutory procedure, as compared to the John Doe statute, which allows a court clerk to initiate an electronic complaint under only three specific circumstances, a failure to appear, failure to pay a fine, and the failure to obey a court order.

Because it does not infringe upon a core executive function, the exception carved out by Penal Code section 959.1, subdivision (c)(1), allowing a clerk of court to initiate a criminal complaint in three limited circumstances, does not violate the separation of powers doctrine.

II
Even Assuming Prosecutorial Discretion Is a Core Executive Function, The Limited Legislative Authority To File An Electronic Complaint Under Section 959.1 Does Not Materially Impair It.

As discussed above, even as the "core functions" of one branch of government are concerned, "the other branches do not necessarily violate the separation of powers doctrine simply because they undertake actions that affect those core functions." (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 662.) Instead, "the separation of powers doctrine is violated only when the actions of a branch of government defeat or materially impair the inherent functions of another branch." (*Ibid.*) Moreover, in California, as this Court has consistently held, the *interrelationship* of the three branches of government "lies at the heart of the constitutional theory of 'checks and balances' that the separation of powers doctrine is intended to serve." (*Mendocino, supra*, 13 Cal.4th at p. 53; *Strauss, supra*, 46 Cal.4th at p. 463; *People v. Standish* (2006) 38 Cal.4th 858, 879 ["The separation-of-powers doctrine recognizes the significant interrelationship and mutual dependency among the three branches of government."].)

> As this court explained over a half century ago: "The courts have long recognized that [the] primary purpose [of the separation-of-powers doctrine] is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government. [Citations.] *The doctrine has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another. . . .*" (Italics added.) (*Parker* v. *Riley* (1941) 18 Cal.2d 83, 89-90 [113 P.2d 873, 134 A.L.R. 1405].) Indeed, as a leading commentator on the separation-of-powers doctrine has noted: "From the beginning, each branch has exercised all three kinds of powers." [Citation.]

(*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76.)[7]

"[F]or the offenses of failure to appear, pay a fine, or comply with an order of the court," the Legislature has prescribed that someone other than a prosecutor, specifically a clerk of the court, has the authority to issue the charging complaint. Even assuming that the prosecutor's authority to exercise discretion in filing charges is an inherent, core executive function, Penal Code section 959.1, subdivision (c), does not "defeat or materially impair" it. The procedure at issue instead serves the Legislature's effort to increase court efficiency while preserving the prosecutor's ability to exercise discretion.

It is undisputed that the prosecutor "ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. [Citation.]" (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.) But, Penal Code section 959.1 simply allows a clerk to electronically file a complaint; it does not accord a court clerk any

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[7] Section 959.1 is not unique in allowing an entity other than a prosecutor to perform traditionally-prosecutorial tasks. (See *People v. Carlucci* (1979) 23 Cal.3d 249, 256 ["the trial court at a traffic infraction hearing may call and question witnesses in the absence of a prosecutor. Such actions constitute neither a per se denial of due process nor transmute the judge into prosecutor."].)

discretionary decisionmaking authority that should be left to a prosecutor. Prosecutorial discretion typically includes an analysis of complex factors such as the prosecutor's "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, citation omitted.) However, those complex factors simply do not exist when the offense is a failure to appear as it was in this case. At the point the charge is filed, there is no "opinion" of guilt or any legal issues to evaluate; the evidence is indisputable because the defendant has either honored his or her promise to appear, or has not. There are also no witness problems to evaluate because the court clerk is the solitary witness. The issuance of an accusatory pleading in these limited circumstances merely requires a review of the court file to determine whether the defendant in fact complied. (See *People v. Superior Court (Copeland)* (1968) 262 Cal.App.2d 283, 285 [a magistrate is not required to determine whether "an offense occurred" or if reasonable grounds implicate a defendant when the defendant fails to appear].) Under these unique circumstances, the clerk exercises a limited, ministerial function and not broad authority usurping executive power. (See *Copley Press v. Superior Court* (1992) 6 Cal.App.4th 106, 155; *Riley v. Superior Court* (1952) 111 Cal.App.2d 365, 367; see also Gov. Code, § 71280.1 [clerk to keep minutes and records of court]; Gov. Code, § 71280.4 [clerk endorses date on each piece of paper filed with the court].) By issuing an accusatory pleading, the clerk is merely the complaining witness who has personal knowledge of the offense. Prosecutorial discretion is still left to the prosecutor. This procedure does not usurp any part of the prosecutor's chief duty in *deciding* whom and how to prosecute, because this can only occur once the defendant surrenders and avails himself or herself of the jurisdiction of the court.

Even assuming prosecutorial discretion is a core executive function, the issuance of a complaint by a court clerk under the circumstances permitted by Penal Code section 959.1, subdivision (c)(1), is not an

unconstitutional delegation of that function to the judiciary because it does not "defeat or materially impair" it. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 662.)

CONCLUSION

Penal Code section 959.1, subdivision (c)(1), is a legislative effort to increase court efficiency with a resource-saving procedure for a very narrow class of offenses of a special nature: failures to appear, pay a fine, or comply with a court order. The Legislature's decision to carve out this limited exception to Government Code section 26500, and allow clerks to issue complaints in these circumstances, is consistent with the history of both the filing function and the public prosecutor. The filing of charges is a unique duty which has been previously delegated by the Legislature in other limited circumstances to entities other than a prosecutor. As a result, Penal Code section 959.1, subdivision (c)(1), does not materially infringe upon a core executive function, and does not violate California's separation of powers doctrine. Real party urges this Court to deny the petition for writ of mandate.

DATED: November 23, 2009

Respectfully submitted,

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By _____
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PROOF OF SERVICE BY MAIL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JEWERELENE STEEN V. APPELLATE DIVISION
Case No. S174773

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the above-referenced action. My business address is 200 North Main Street, 500 City Hall East, Los Angeles, California 90012.

I am readily familiar with the practice of the Los Angeles City Attorney's Office, City Hall East, for collection and processing correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On **November 23, 2009,** I served the following document

RETURN TO PETITION FOR WRIT OF MANDATE

by placing a true copy in a sealed envelope(s) for collection and mailing, following ordinary business practice, at 200 North Main Street, 500 City Hall East, Los Angeles, California 90012. The person(s) served, as shown on the envelope(s), are:

Attorney General
State of California
Department of Justice
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Clerk, Court of Appeal
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Clerk, Appellate Division
Los Angeles Superior Court
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Honorable Charles W. McCoy Jr.
Presiding Judge
Los Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

John Hamilton Scott, Public Defender
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I declare under penalty of perjury that the foregoing is true and correct. Executed on **November 23, 2009**, at Los Angeles, California.

YOLANDA FLORES, Secretary