

## **Have you been the Victim of an Unlawful - HYPERLINK**

["http://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Police\\_man\\_ganson.svg/361px-Police\\_man\\_ganson.svg.png"](http://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Police_man_ganson.svg/361px-Police_man_ganson.svg.png) INCLUDEPICTURE

["http://tbn1.google.com/images?q=tbn:AYVxfS46762yzM:http://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Police\\_man\\_ganson.svg/361px-](http://tbn1.google.com/images?q=tbn:AYVxfS46762yzM:http://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Police_man_ganson.svg/361px-Police_man_ganson.svg.png)

[Police\\_man\\_ganson.svg.png"](http://tbn1.google.com/images?q=tbn:AYVxfS46762yzM:http://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Police_man_ganson.svg/361px-Police_man_ganson.svg.png) \\* MERGEFORMATINET **Traffic Court Prosecution?**

If you have ever received a traffic ticket and decided to "have your day in court," chances are you were the victim of one of the biggest legal scams ever perpetrated on the American people. In fact, this scam is so monumental that there should be a class action lawsuit against every traffic court judge and municipality in the United States that has participated in these unlawful prosecutions.

When you receive a traffic ticket, you have just been charged with a supposed "crime" or "public offense". Thus, if you decide to contest the ticket, the case is supposed to be prosecuted under the basic rules of criminal procedure. If your State is like California, those rules went out the window long before you ever walked into the courtroom. Below are two examples of how traffic ticket cases are generally prosecuted in California. In both cases the defendant is not represented by an attorney. See if you can identify the illegalities of these proceedings.

In case number 1, after pleading "not guilty" to a speeding ticket, the defendant is asked by the judge to come forward and give his or her side of the case. After the defendant completes his testimony, the court asks the officer if he or she wants to rebut the defendant's testimony. The entire case is handled by the judge. Other than court staff, no other government official is present in the courtroom. At the conclusion of the case, the judge either issues a ruling and pronounces sentence or takes the case under consideration.

In case number 2, after pleading "not guilty" to a speeding ticket, the court calls the officer to the stand and has the officer give testimony for the prosecution. The officer does not take the witness stand as he would in a normal criminal prosecution but stands in the area designated for the prosecution. In some cases, the court questions the officer about various aspects of the case. As in a normal criminal prosecution, the defendant is allowed to cross-examine the officer and put on a defense. The entire case is handled by the judge. Other than court staff, no other government official is present in the courtroom. At the conclusion of the case, the judge either issues a ruling and pronounces sentence or takes the case under consideration.

The first thing you probably noticed about both examples is no attorney for the government was present in the courtroom to prosecute the case. California law requires that in every criminal prosecution, the people, as the complaining party, must be represented by an attorney for the government. California Government Code section 26500 states:

*"The district attorney is the public prosecutor, except as 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."*

In order for this section to be applicable in a traffic court case, a traffic ticket must be a public offense. Pursuant to section 15 of the California Penal Code, an act committed "in violation of a law forbidding or commanding it, and to which is annexed, upon conviction a fine," is a public offense. Since the penalty for most traffic tickets is a fine, these tickets fall within the definition of a public offense. Many times a judge will attempt to down play this by stating that a traffic ticket is merely an infraction and not a serious criminal matter. This assertion, in the author's opinion, is merely an attempt to mislead the defendant because section 16 of the California Penal Code defines an "infraction" as a crime or public offense.

Since a traffic ticket is a public offense, the public prosecutor is vested with the discretion to initiate and conduct the prosecution. If the public prosecutor does not appear at trial, then it can be concluded, absent evidence to the contrary, that prosecutor exercised his discretion not to initiate a criminal prosecution. This is even true in the arraignment; the prosecutor must show up for there to be any controversy. Because the public prosecutor almost never appears in court for traffic ticket cases, the court, if it was following the law, would immediately dismiss the case on its own motion for failure to prosecute. Unfortunately, this is not the case. In most cases, if the public prosecutor fails to appear, the judge takes over the case and vests himself with the discretion to initiate and conduct the prosecution. Not only is this unethical, but it's unlawful as well.

When a judge takes over a criminal prosecution in a traffic ticket case, not only has he violated his oath of office, but he has also violated the separation of powers doctrine that is the foundation of our system of government. Section 3 of the California Constitution states:

*"The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the other powers except as permitted by this Constitution."*

The public prosecutor is a member of the executive branch of government while the judge is a member of the judicial branch. Thus, the discretion to initiate and conduct a criminal prosecution is vested solely in the executive branch of government. The judicial branch is constitutionally barred from exercising this discretion in traffic ticket prosecutions because the California Constitution does not authorize the judicial branch to exercise this power.

The second thing wrong in these traffic ticket prosecutions can be found in the first case example referenced at the beginning of this commentary. In a criminal prosecution, the accused is presumed innocent. The prosecution, not the defendant, puts on its case first

and attempts to establish guilt. The defendant is not required to testify or even offer a defense. These traffic court prosecutions are unlawfully shifting the burden of proof to the defendant. Not only is the court requiring the defendant to establish his innocence, but is it also requiring the defendant to be a witness against himself. This is a gross violation of Article 1, section 15 of the California Constitution and Amendment 5 of the Constitution for the United States.

The third thing wrong can be found in the second case example. In that case, the officer was basically standing in as the defacto prosecutor in the absence of the lawful one. Sometimes an officer even attempts to ask questions of the defendant. Potential witnesses do not have the authority to ask questions of a defendant in any courtroom proceeding. An officer is merely a witness (see; People v. Marcroft (1992) 6 Cal.App.4th Supp. 1, 8 Cal.Rptr.2d 544 “...*the citing officer who testifies as to the circumstances of the citation is a witness, no more, no less.*”) who may or may not be called to testify by the prosecution. The court is structured in this manner to give the illusion that the victim is receiving a fair trial.

Because traffic tickets are a cash cow for municipalities throughout the United States, and these unlawful traffic ticket prosecutions save them vast sums of money because they don't have pay prosecutors to sit in courtrooms all day, don't look for them to stop these fake show trials anytime soon... That is unless you learn your rights, what the Common Law is, you're 7<sup>th</sup> Amendment rights that protect your right to a jury trial anytime the controversy exceeds \$20 and much, much more we don't have the room to discuss here. Remember, if don't know your right's; **YOU DON'T HAVE ANY!**

**Internet resources:**

**Law Notes**

<http://www.1215.org/>  
<http://ticketslayer.com>

**Ticket Slayer** **HYPERLINK "**<http://www.1215.org/>**"**  
**HYPERLINK "**<http://ticketslayer.com>**"**

**State Citizen Center**

**"**<http://www.state-citizen.org/>**"** <http://www.state-citizen.org/>  
**"**<http://www.liberty4free.com>**"** [www.liberty4free.com](http://www.liberty4free.com)

**Right to Travel**

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**Sue The DMV**

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**"**<http://www.suethedmv.com/>**"** <http://www.suethedmv.com/>

