



PAY NO MORE UNDESERVED SPEEDING TICKETS

By Paul Bezaire

Fighting and Contesting Speeding Tickets

**Don't pay your underserved speeding ticket.
Learn how to fight speeding tickets in court!**

It has been many years now since cities across the nation have realized the financial bonanza available to them by enacting laws concerning rules of the road. The city of Los Angeles alone raises over 110 million dollars a year from parking tickets alone.

Figures are not available to tell me how much money is raised each year by local jurisdictions. But, you can bet the farm that everything is done to allow them to slide their hands into your pockets. This document will give you pointers on what you should **not** do when caught speeding. It also tells you from personal experience what I did to get out of my speeding ticket. I believe that many of the things I did can also work for you in much the same way it has for many people. This is not supposed to be complete directions on what you should do or not do when stopped for speeding. It is not supposed to be complete instructions on how to try your case in court. There are a great many books available that will tell you those things in more detail than I have here. I simply want to give you an overview of what can happen in court so you can feel more comfortable. From letters I receive, people don't want to know but one thing: How can I get out of paying my ticket when I don't deserve it in the first place?

Today, laws concerning speeding are not enacted to only provide safety on the road. It's about revenue for the government. And even more money for insurance companies. Over 115,000 speeding tickets are issued each day across the country! It has become a multi-billion dollar business pushed along by local governments and insurance companies. A speeding ticket can end up costing you over \$1,000 between the fine and raises on your insurance rates. And don't forget that the "point system" can jeopardize your license if you get too many tickets.

If you received a speeding ticket should you fight or pay? Since I am not an attorney I can't answer that. I can only point you in the right direction by supplying you with information that will help you decide. You can learn from reading about my experience. In the same way, I turned the law against the government by rebelling against unjust laws in my book **The Rebel**.

What to Do If You Get Stopped for Speeding

Pull over as far off the road as you can. (The officer will appreciate that), put your car in park and stop the engine. Turn off your radio and remove any sunglasses. Lower the window and place both hands on the steering wheel and wait for him to approach the car. If it is night, turn on your overhead lights. Sometimes, courtesy can go a long way.

What NOT To Do If You Get Stopped For Speeding

DO NOT look for your license or registration until requested to do so.

DO NOT say anything. If you're asked about the speed you think you were driving, **NEVER** admit to it. Just say you don't know but that you think you were driving at a safe speed. (I really don't know officer but I think I was driving at a safe speed) Whatever you say to the officer can be used against you in court. If you try to be honest with him by being honest and say your were traveling 55 while you are in a 35 zone, you just confessed to speeding and he can testify to that in court? Read below how at my trial, the officer used a statement I made about my hurrying home.

DO NOT do or say anything that can help the officer remember you in court. Try to avoid any conversation with the officer.

To Pay Or Fight Your Speeding Ticket?

The National Motorist Association estimates that over 50% of people who fight their tickets win. And most of those who do not fight their tickets have their charges dropped, get them reduced, or get to attend traffic school. Think about that. If you contest your ticket by simply showing up in court, you have a 50/50 chance of walking away without a ticket.

Personally, I would always take time off from work and go to court. I want to put the odds in my favor which means **getting the best information** I can get.

What to plead. Guilty or Not Guilty?

When you get a ticket you can just send in your money and that's that. But think of the consequences. The cost of the ticket does not stop there. Once you figure in insurance surcharges for a few years, and the points added to your license, it can become very expensive *not* to fight. In May of 2002, CNN/Money Magazine Online stated that the average cost of a speeding ticket nationwide was \$450.00. That was in 2002.

Fight Speeding Tickets in Court

First Things First

The first thing you want to do is to keep a calendar of dates you **MUST** keep. Read the ticket, front and back, and write down the time, place and date you **MUST** appear in court. Some courts require that you make at least 3 appearances. The 1st requires you to show up and post bail and make an appointment to see the judge. The 2nd requires you to show up to enter a plea of guilty or not guilty. This is called the Arraignment: <http://helpigotaticket.com/proc/arraign.html> The 3rd is the trial. <http://helpigotaticket.com/proc/trial.html> That is one way to discourage people from fighting their ticket. They are more interested in raising revenue than administering justice. **Why not show up for the 1st, post bail and enter a plea of guilty or not guilty?** The state legislature can certainly make this arrangement possible. If you get a date to see the judge **BE THERE** at the appointed time.

Pre-Trial Strategy

At this time I can go into many things to prepare you for your appearance in court. But instead of doing that I want my friend George McCalip to guide you through pretrial steps. George is a consultant that many attorneys turn to for advice. I really believe that no single person can talk about speeding problems more than he can. He has the sharpest mind of anybody I have ever met when it comes to discussing traffic laws. He is very expensive and feels as I do that the system is stacked against the honest law-abiding citizen. With that in mind he gave me permission to link from here to his tutorial for fighting undeserved speeding tickets. Go to <http://helpigotaticket.com/tut/index.html> and <http://helpigotaticket.com/sitemap.html> then come back to here.

You can get forms to get evidence that can prove to be in your favor at <http://helpigotaticket.com/proc/discover.html>

You can learn about making pre trial motions at <http://helpigotaticket.com/proc/motions.html>

You can make a motion to dismiss your ticket at the Arraignment (When you plead guilty or not guilty) <http://helpigotaticket.com/proc/1385.html>

You can request a trial by declaration <http://helpigotaticket.com/declar/index.html> This will keep you from showing up in court for a while. If you lose you can still have a trial later on.

Now You're in Court

1. Go check in with the clerk
2. Wait for the judge to call your case
3. The officer testifies first and tells his story. He will read from a script he brought with him. **DO NOT INTERRUPT. YOU WILL GET YOUR CHANCE WHEN HE FINISHES.** Listen to him carefully. Take notes
4. When the officer finishes testifying you have the opportunity of asking him questions. See <http://helpigotaticket.com/proc/crossxp.html>
5. You can then call witnesses you brought along.
6. The prosecutor can make a closing statement. In California and other states, they do not have enough prosecutors to try every speeding ticket. Keep this in mind because you can use this very important bit of knowledge to help win your case. I will tell you about that later.
7. Then you can make your closing statement.

The Appeal

Be prepared for one thing. Since the government and the courts rely on money raised by speeding tickets, **some judges will do all they can to assure that you don't win**. Just be patient because the first thing to do is set up a situation that will, or should, hold up on appeal where the appellate court can reverse the lower court decision. In my case the judge the judge was completely ignorant of the law. After he found me guilty and assessed me \$180 dollars I filed my appeal. Read about appeals at <http://helpigotaticket.com/appeal/index.html>

File a Notice of Appeal <http://helpigotaticket.com/appeal/notice.html>

Prepare your Proposed Statement on Appeal
<http://helpigotaticket.com/appeal/proposed.html>

The Settled Statement on Appeal <http://helpigotaticket.com/appeal/hearing.html>

Next is Engrossed Statement on Appeal
<http://helpigotaticket.com/appeal/engrossed.html>

Below is a copy of the ENGROSSED STATEMENT of my trial that went up to the appellate department. I show you this so you can be prepared if you go to trial. I have interjected **comments in red** as my way of pointing out why I asked certain questions and made certain objects during my trial. There could have been more objections but I felt I had enough going for me on the matter of the **traffic survey**.

The Opening Brief <http://helpigotaticket.com/appeal/opening.html>

The Response Brief <http://helpigotaticket.com/appeal/response.html>

The Reply Brief <http://helpigotaticket.com/appeal/reply.html>

Oral Arguments <http://helpigotaticket.com/appeal/argument.html>

The Decision <http://helpigotaticket.com/appeal/decision.html>

Engrossed Settled Statement on Appeal

(After your trial you will prepare your version of what happened at the hearing. This is submitted to the clerk of the court who presents it to the judge who heard your case. The judge then prepares a document called the Settled Statement On Appeal. This is the document that is sent to the Appellate Court. The following statement was prepared by the judge who heard my case. My comments are in red)

Appellant, Paul Bezaire, was cited by Officer Smith* of the California Highway Patrol, on July 2,2002, for violating Section 22350 of the California Vehicle Code, unsafe speed. The citation required the appellant to appear in court at 4130 Overland Avenue, Culver City, California on or before December 30,2003. *(The officers name was changed to Smith.)

The Appellant requested an extension through the automated traffic response system and the appearance date was continued to March 1, 2004. The Appellant appeared at the clerk's window on March 1, 2004 and the case was set for arraignment on March 26, 2004 in Division 3. Appellant appeared for arraignment on March 26,2004 and was advised of his right to a speedy and public court trial by a judge or commissioner of the Court within 45 days of his arraignment, to confront and cross-examine witnesses called to testify against him, to subpoena witnesses on his behalf at no cost to him, to be represented by an attorney paid for at his own expense, at all stages of the proceedings, not to be a witness against himself. At that time, Appellant was arraigned and entered a plea of not guilty to the charge. The Court set bail at \$50.00 plus the penalty assessment. Appellant posted bail in the amount of \$180.00 and May 6,2004 was set for trial. On May 6, 2004, Appellant appeared for trial in Division 3 of the Superior Court in the Culver City Courthouse.

At the trial the Appellant objected to the officer reading from his citation and requested a copy of any notes the officer had made. **The officer cannot read from and document other than refresh his memory as to certain facts. He does not enjoy any right not enjoyed by all other witnesses. He is there simply as a witness so don't allow him to read from anything. Object as he starts to read. He is entitled only to use his notes to refresh his memory.** The Court had a copy of the back of the officer's citation and notes made and given to the Appellant and requested that the officer testify from his independent

recollection unless he needed to refresh his recollection from the citation. Officer Smith of the California Highway Patrol was sworn and testified as follows:

This occurred on November 11, 2003 at approximately 11 :55 A.M. At the time I was in full uniform as a California Highway Patrol officer I was on a marked black and white police motorcycle. This occurred on Admiralty Way East of Palawan. At the time I was operating a radar unit. The radar unit that I was using was attached to my motorcycle and the license number of my motorcycle 89A59. The serial number of my radar unit I will need to refer to my notes. With the Court's permission the witness referred to his notes to refresh his recollection. The witness continued, the serial number is ZMO 44700. This occurred in the County of Los Angeles in Marina Del Rey. At the time I was positioned in a parking lot on the North side of the street, a public parking lot, observing traffic traveling Westbound toward my location. I observed the Defendant's vehicle, which was a silver Lincoln Town Car traveling Westbound towards me. I was observing this at about 500 feet away from me, He was in the number 2 lane and he was pulling away from a group of vehicles. Initially I visually estimated his speed at 55 miles per hour, when he got a little bit closer I activated the radar unit and I received a reading of 57 miles per hour. After he drove past me I pulled out behind him, followed him, there's a hotel right there at Palawan and Admiralty and he pulled into that, right behind the hotel there is an alley behind it and advised him that he was going 57. He told me at the time he was coming from the dentist office, that he had had a tooth extracted and that he was in a hurry to get home to take his pain medication. **Remember what I said at the beginning. Don't talk to the officer except for replying yes or no when asked a question.** As far as my training with the radar unit, I attended a 38 hour CHP radar class in June of 1998, I have been an officer for 21 years, as part of my visual estimation of speed, I am accurate to plus or minus 2 miles per hour. This area is covered by a traffic survey dated June of 1998 and it's good for 7 years. **This survey good for 7 years is not an accurate statement of fact but a conclusion of law that only the courts can determine. I jumped all over this because that was going to be my whole case.**

The court ordered the officer to show the survey to the appellant and admitted a copy of the survey as People's 1 in evidence. The Court asked the officer, in his opinion, based on his 21 years as a traffic officer, and the conditions on that particular day, November 11,2003 at 11 :55 A.M. and all of the factors set forth in 22350, the width of the roadway, the condition of the roadway, the surface of the roadway, the traffic on the roadway, etc what, in your opinion, was the maximum reasonable and safe speed. In My opinion the maximum speed is 40 miles per hour and I base that on a park running along the North side of the street, it's a 2 lane roadway in each direction it is an area heavily traveled by tourists, there's hotels, restaurants all with driveways leading out to the street and because of

that the maximum reasonable and safe speed is 40 miles per hour. There is also a curve as you approach Palawan Road. The Court, and what is the 85th percentile. The Officer, Actually the critical speed is 41 miles per hour.

Cross Examination of The Witness

(Here is a transcript of my hearing. You can always order a transcript should you need one. My comments are in red)

Mr. Bezaire: Have you ever seen a motorcycle officer or a police car traveling faster than the posted speed limit? **Here I was attempting to establish that an officer needs to obey rules of the road just as much as any other motorist. In my case I saw the officer was parked in a red zone as he took off after me.**

Officer Smith Have I ever?

Mr. Bezaire: Urn hum.

Officer Smith Yes.

The Court inquired into the relevance of the Appellant's question and the Appellant replied that he was going to show that if the officer committed an illegal act in gathering evidence that the citation must also be illegal and be thrown out and that the officer was parked in the red and therefore the case must be dismissed.

The Court inquired if the Appellant had any authority for that proposition. Appellant replied that he had read a case where a defendant was cited by an officer in a brown car where the law stated it must be white or black and the court dismissed that case. The Court stated that this was based of a section in the Vehicle Code and again asked for authority as to an officer parking in the red. The Court ruled that Appellant could ask where the officer was parked but under 352 of the Evidence Code could not ask if the officer had ever seen another officer do something illegal.

Mr. Bezaire: Officer where were you parked on the day you issued me the citation?

Officer Smith There's a public parking lot on the North side of Admiralty Way and the exit to the parking lot is to the west side of the parking lot. I was still in the parking lot facing out of the driveway but still in the parking lot and not on Admiralty Way.

Mr. Bezaire: Is it not true that you were parked in this area here? (Showing the officer a photo.)

Officer Smith That is not true. **Note that I do not argue with him. It is not my time to dispute his testimony. NEVER argue with a witness as he is testifying.**

Mr. Bezaire: You said that you followed me to Palawan and Admiralty Way?

Officer Smith Yes, the hotel just before you get there,

Mr. Bezaire: It didn't appear to you that I was trying to get away or anything, did it?

Officer Smith Well, I probably didn't even activate my lights until we got there because there's no place to stop there unless you're blocking traffic, so as a normal practice I wait until there is a safe place to stop.

Mr. Bezaire: Did it appear to you that I was trying to get out of traffic to make it safe for you and me?

Officer Smith Sure, Yes.

Mr. Bezaire: But that is not Palawan and Admiralty way, is it?

Officer Smith Yes it is.

Mr. Bezaire: I show you a picture here, and I'm showing the officer a picture of Palawan and Admiralty Way, Your Honor, Is this Admiralty Way and Palawan, Officer?

Officer Smith Yes.

Mr. Bezaire: Did you follow me all the way to Palawan?

Officer Smith No, the hotel itself is on the corner of Palawan and Admiralty, and on the East side of the hotel there is a little alley and that's where we stopped.

Mr. Bezaire: Is this where we pulled in?

Officer Smith Yes, the alley just on the East side of the hotel.

Mr. Bezaire: I'd like to move for a dismissal on the grounds that the prosecutor has not established that this was not a speed trap. **If radar was used to measure the speed of the motorist, under California law the state MUST prove that you were not caught in a speed trap.**

<http://helpigotaticket.com/speed/basic.html>

The Court: Overruled. The court is familiar with the speed trap law and the Court denies your motion. **Apparently this judge was not.**

Mr. Bezaire : And the Court is also aware that a survey has to be done within 5 years prior to the issuance of the ticket. **The survey was more than 5 years old so I objected to it being in evidence.**

The Court: It does not have to be within 5 years, there are several laws that extend it and this is within the seven years required. Your objection is overruled. **I actually told the judge that the exceptions to the rule had not been established.**

Mr. Bezaire: And you base your opinion on the fact that 40 miles per hour would be a safe speed.

Officer Smith: Yes,

Mr. Bezaire: What do you base that on?

Officer Smith: Actually a few different factors, there's a park as I said before on the North side of Admiralty there's pedestrians, there's bicyclists, there are driveways that lead out to Admiralty, there's a curve in the road as you come up to Palawan and Admiralty.

Mr. Bezaire: You said you used Radar to track my speed.

Officer Smith: Yes, first I visually estimated your speed, and then I used radar to get a reading.

Mr. Bezaire: And did you take notice of the big moving truck behind me?

Officer Smith: I don't believe I did, no.

Mr. Bezaire: Did you take notice of the three other cars all in a group traveling behind me?

Officer Smith: I saw a group of vehicles that you were pulling away from, that you were traveling faster than, basically I was watching the fastest vehicle, which was your vehicle.

Mr. Bezaire: And were there any vehicles that I was catching up to? **At this point all I want to do is to establish that I was not endangering any person or property as required by the California speed trap law.**

Officer Smith: There were no vehicles ahead of you.

Mr. Bezaire: Was there anyone crossing the street at that time?

Officer Smith: There may have been, I don't recall if there were any or not. I don't recall.

Mr. Bezaire: Were there any cars pulling out from the parking lot?

Officer Smith: They do it on a regular basis, from all the restaurants, from the Ritz Carlton, from the hotels that are there.

Mr. Bezaire: Was I endangering anybody?

Officer Smith: You could have...

Mr. Bezaire: No no no, the question is, Was I endangering anybody?

Officer Smith: No I don't believe you were. **BINGO!**

Mr. Bezaire: So if I wasn't endangering anybody, how could I be...

The Court: The next question, sir, is not going to be a proper question, I know exactly your question and it is not a proper question, it calls for an opinion as to whether or not you were violating the law, and that is the province of the Court

and not the officer. Go ahead and ask your question. **I felt like asking the court where he took his mindreading lessons. God how belligerent he was.**

Mr. Bezaire: Was I driving at a speed that was greater than reasonable?

Officer Smith: Yes I believe you were.

Mr. Bezaire: What do you base that on?

Officer Smith: Just because someone was not actually crossing the street, or pulling out of a driveway or wasn't actually on the street, there was always the possibility that someone was going to pull out.

Mr. Bezaire: But at that moment I was not endangering anyone right?

Officer Smith: I don't believe you were. **BINGO AGAIN!**

Mr. Bezaire: And the weather was good?

Officer Smith: Yes

Mr. Bezaire: The visibility was good?

Officer Smith: Yes

Mr. Bezaire: And the traffic was light would you say?

Officer Smith: Light to moderate.

Mr. Bezaire: And there was nobody ahead of me you said?

Officer Smith: Correct.

Mr. Bezaire: So, at that very moment was I endangering anybody? **Trying to get another BINGO**

The Court sustains it's own object to asked and answered. The question has been asked and answered several times now.

Mr. Bezaire: Defendant rests your honor.

The Court: All right, is there anything further you want me to know?

Mr. Bezaire: I just want you to know that I travel that road almost daily and I can't say for sure what speed I was going at the time but I watch carefully as I go down the road, and I didn't see anybody, there was nobody there, and I didn't feel I was endangering anybody by hurrying home.

The Court: I think at 57 miles an hour that that is an unsafe speed for that particular area based on all the testimony that I have heard. **What did he hear than made him think that I was driving at an unsafe speed?** You can't tell when something is going to happen. You can't tell when someone is going to pull out of a driveway, or when any accident is likely to occur at 57 miles per hour, that's just too fast for that area. The court is going to find you guilty of the offense and cash bail applies to the fine.

Appellant requested traffic school and the Court denied the Appellant's request. **Some judges just hate when anyone knows anything about the law.**

Appellant appealed from the judgment of the court and a conference for the preparation of an Engrossed Settled Statement was scheduled for Division 3 at 3:30 P.M Appellant appeared in Propria Persona.

Appellants grounds for appeal are incorporated herein in haec verba from the Appellant's proposed statement on appeal as though set forth in full at this point

The Court does now settle and allow the foregoing Engrossed Settled Statement on Appeal and certifies that the same is a true and correct statement of proceedings had in the above entitled action.

Signed by California Commissioner **Ralph A Amado** **What a jerk**

The text above should give you an idea of what can happen in court. Read all you can on the subject of speeding tickets so you feel comfortable in knowing what you are talking about. (For a non-lawyer I think I did pretty good for my first trial). There are a lot of good books available. I suggest you read some to get an understanding of what you can and cannot object to in court. (It's very important to make certain objections if you need to appeal) After familiarizing myself with the basic speed law in California (**VC 22350**) I felt comfortable in questioning the officer about weather, visibility, road conditions, and other matters. I do not pretend to be an expert on speeding tickets but neither was the judge in my case. I can only give you a few pointers that I used to win my case. I zeroed in the fact

that the traffic survey was more than 5 years old. With help of my friend George McHail I was able to raise issues that I would never have dreamed of.

If you are found guilty and refused traffic school, go directly to the clerks office and file your appeal

My Speeding Ticket Appeal

In a few months after filing my appeal I received a letter from the court to file my opening brief. The following is a copy of that brief. I hope it will help you.

Opening Brief

Paul Bezaire
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Pro Per Defendant/Appellant

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

Paul Bezaire,

Defendant and Appellant.

Case Number

Trial Court No. 95

OPENING BR

STATEMENT OF FACTS

Appellant incorporates by reference the Settled Statement on Appeal {and transcript of the trial] that is included in the record on appeal.

GROUND FOR APPEAL

I. **Judicial Error:** Commissioner Amado erred in ruling that Vehicle Code section 40803(b) does not require the act of a prosecutor.

On page 5, lines 1 and 2 of the Engrossed Statement, the Appellant is recorded as moving for dismissal on the grounds that the prosecutor has not established that the case did not involve a speed trap. Commissioner Amado responded that the court was familiar with the speed trap laws and denied the motion.

Since this case prosecution under Vehicle Code § 22350, which involves the speed of the Appellant's vehicle, and the officer used radar, this case obviously comes under the requirement imposed by Vehicle Code section 40803(b). Specifically, that section requires, "*the prosecution shall establish*, as part of its prima facie case, that the evidence or testimony presented is not based upon a speedtrap as defined in paragraph (2) of subdivision (a) of Section 40802." (emphasis added)

Commissioner Amado is obviously not the prosecution.

...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*. (emphasis added) (*People v. Carlucci*, 23 Cal.3d 249)

The prosecution of a case by the district attorney involves an exercise of executive power, ...(*Esteybar v. Municipal Court*, 5 Cal.3d 119, 127, 95 Cal.Rptr. 524, 485 P.2d 1140)

The powers of the government of the State of California shall be divided into three separate departments -- the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted. – California Constitution, art. III, § 1.

The officer is not the prosecution, either.

Whether or not the People provide a prosecuting attorney, the citing officer who testifies as to the circumstances of the citation is a witness, no more, no less. (*People v. Marcroft* 6 Cal.App.4th Supp. 1, 8 Cal.Rptr.2d 544)

Carlucci (supra) says that not having a prosecuting attorney present in the courtroom does not constitute a denial of due process. It does not say that there is no prosecuting attorney in an infraction case, nor does it rule out

the possibility of the Legislature requiring the prosecuting attorney to appear in court.

Ruling on the prosecution of infractions in *People ex rel. Kottmeier v. Municipal Court* (220 Cal.App.3d 602, 269 Cal.Rptr. 542) the court held that:

The municipal court may properly require the District Attorney to supply a list of witnesses for each case, for example; the court should then permit the witnesses to give a narrative recital. The court has no obligation, however, to assist the People's witnesses in presenting the case...

This decision, based in large part on Government Code 26500, firmly establishes the fact that infractions do have a prosecuting attorney.

Let us note:

The prohibition against appointed counsel in infraction cases (Pen. Code, § 19c) ensures that the majority of defendants will be unrepresented, and the presence of a prosecutor would be "hardly to defendant's advantage." (*Kottmeier, supra*)

However, let us also note:

First, it goes without saying that the People may not suppress material evidence, for to do so hinders the search for truth which is the goal of our system of criminal justice. To further this goal the

courts have recognized that it is the duty of the People to disclose substantial material evidence favorable to the accused upon request, for otherwise a defendant is denied a fair trial. (*In re Ferguson* (1971) 5 Cal.3d 525, 532 [96 Cal.Rptr. 594, 487 P.2d 1234] and cases cited.) Thus, if a defendant in a speeding case asks about relevant engineering and traffic survey evidence, as defendant tried to do here, such evidence must be disclosed. But the Supreme Court has gone further. It has said, "to condition the duty to disclose upon request would provide a trap for the unwary and place substantial additional burdens on our busy trial courts." (*In re Ferguson, supra*, at p. 532.) It is consonant with this policy to require the People to disclose without request that radar was used and to produce the engineering and traffic survey or declare their inability to do so. The prosecution will always know when radar has been used to apprehend a speeder. The defendant and the court may or may not be aware of that fact. Simple fairness, and ease of procedure, dictate that the prosecution make the fact known. (*People v. Halopoff*, 60 Cal.App.3d Supp. 1.)

And:

[T]he function of a [prosecutor] is largely judicial, and ... he owes to the defendant as solemn a duty of fairness as he is bound to give to the state full measure of earnestness and fervor in the performance of his official obligations." (*People v. Tufts*, 167 Cal.

266, 273, 274 [139 P. 78]) as quoted in *People v. Ruhl* , 63 Cal.App.3d Supp. 6

Given these conflicting points – the advantage of a professional prosecutor vs. a pro per defendant, and the fact that the prosecutor might have access to exculpatory evidence unknown to the defendant – the legislature has the final say. With their “antipathy toward any radar-based prosecution of any speed law” (*People v. Studley* 44 Cal.App.4th Supp. 1, 52 Cal.Rptr.2d 461, see also *Halopoff* (*supra*); *People v. Flaxman*, 74 Cal.App.3d Supp. 16; *People v. Goulet*, 13 Cal.App.4th Supp. 1) it is not surprising that the legislature would place a special requirement on the prosecution of radar (laser, etc.) cases. Since they added paragraph (b) to section 40803 of the Vehicle Code in 1981, we have to believe that the legislature was aware of both the *Halopoff* (1976) and *Carlucci* (1979) decisions.

Since the survey in this case was dated June 1998 and is more than five years old, the prosecution must show that all of the criteria listed in Vehicle Code section 40802(c)(1) are met. Note the phrase, “The **prosecution** proved,” occurs three times in section 40802(c)(1)(C).

The phrase, “the prosecution proved,” requires an act of prosecution. By including the formulation of strategy and presentation, the phrase, “**the**

prosecution shall establish, as part of its prima facie case,” is even more obvious in its requirement of an act by a prosecutor. As noted in the earlier cites from *Esteybar* and the California Constitution, Commissioner Amado could not perform any such acts, nor, given his presence as, “a witness, no more, no less,” (*Marcroft, supra*) could Officer Ortiz.

Appellant correctly moved for dismissal and Commissioner Amado erred in denying the motion.

II. **Judicial Error:** Commissioner Amado erred in allowing the survey into evidence.

As noted above, the phrase, “The *prosecution* proved,” occurs three times in section 40802(c)(1)(C).

The Engrossed Statement does not show anywhere that Officer Ortiz testified to the fact that:

The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

This is required in in section 40802(c)(1)(C)(i).

Failure to meet this requirement negates Officer Ortiz's testimony that the survey is "good for 7 years." (page 2, line 1 of the Engrossed Statement)

Having a prosecutor present in the court would have avoided this problem; as the court has stated:

It is far more easy and realistic in this connection to place the burden on the People, who are in the best position to supply the evidence, since they will always know whether such a survey exists, and if it does, will have it in their possession. *Halapoff, supra*.

Failing to have met the requirements for a survey greater than five years old, the survey obviously should not have been allowed, contrary to Commissioner Amado's ruling.

III. **Judicial Error:** Commissioner Amado erred in allowing the survey into evidence.

The survey was not an original or certified copy as required by Evidence Code § 1531, *People v. Flaxman*, 74 Cal.App.3d Supp. 16, and *People v. Earnest*, 33 Cal.App.4th Supp. 18. Once again, having a prosecutor present in the court would have avoided this problem.

IV. **Judicial Error:** Commissioner Amado erred in ruling this was not an illegal speed trap.

Given the failure of the prosecution to prove that this was not an illegal speed trap, as shown in the two previous points, this is obvious. Once again, having a prosecutor present in the court would have avoided this problem.

V. **Insufficient Evidence:** Given that this case was an illegal speed trap, the officer's testimony and any other evidence he had were not admissible.

Vehicle Code sections 40804 and 40805 make this very clear.

Once again, having a prosecutor present in the court would have avoided this problem.

VI. **Lack of Jurisdiction:** Given that this case was an illegal speed trap and the court admitted the officer's testimony as evidence, the court was without jurisdiction to render a verdict of conviction.

Vehicle Code § 40805 clearly states:

Every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of this code involving

the speed of a vehicle if the court admits any evidence or testimony secured in violation of, or which is inadmissible under this article.

Once again, having a prosecutor present in the court would have avoided this problem.

VII. **Insufficient Evidence:** Even if the case was not a speed trap, the People did not present sufficient evidence to prove their case.

Officer Ortiz at no time testified to a condition at the time and place of the alleged violation that would support a conviction. Indeed, his testimony as to the weather, visibility and traffic (lines 1 through 6, page 7 of the Engrossed Statement) would tend to prove that the Appellant was not guilty. So would his statements that he did not believe the Appellant was endangering anyone (lines 12 and 27, page 6 of the Engrossed Statement).

Vehicle Code § 22351(b), allows the defendant to establish, “by competent evidence that the speed in excess of said limits did not constitute a violation of the basic speed *law at the time, place and under the conditions then existing.*” (emphasis added) (Of course, the question as to whether the officer’s testimony is admissible as competent evidence depends on whether or not the case is a speed trap.)

Even more applicable to this case, since the survey was greater than five years old, is Vehicle Code § 40802(c)(1)(C)(ii):

The prosecution proved the speed of the accused was unsafe for *the conditions present at the time of alleged violation* unless the citation was for a violation of Section 22349, 22356, or 22406. (emphasis added)

The citation in this case was for violation of Section 22350, not Section 22349, 22356, or 22406, therefore, Officer Ortiz's testimony as to any danger that *could have possibly occurred* was not germane and should not have been admitted.

No conviction can be sustained unless the record contains substantial evidence supporting each element of the charged offense. (*People v. Johnson* 26 Cal.3d 557, 576-577.) In a prosecution under Vehicle Code section 22350, the record must contain substantial evidence from which a fact finder could conclude that the defendant drove at a speed that either endangered people or property or was unreasonable for the driving conditions. (*People v. Huffman*, 88 Cal.App.4th Supp. 1, 106 Cal.Rptr.2d 820)

Once again, having a prosecutor present in the court would have avoided this problem.

CONCLUSION

Considering the evidence (or lack of it) in this case, it probably should not have gone to trial. A competent prosecutor would have recognized this and not wasted the (lower and Appellate) Courts' time, the Appellant's time and the officer's time. Alternatively having a prosecutor in the court could have assured that the People's case met the standards necessary for a conviction. However, there was no prosecutor and the case as presented has numerous fatal flaws.

Given the above, Appellant respectfully requests a reversal of the lower court's decision.

Dated this (date) day of (Month), (year).

Paul Bezaire
Pro Per / Appellant

NOW, read what the Appellate Department said about my conviction:

"REVERSE: The judgment is reversed, and the matter is remanded to the trial court with instructions to dismiss the charge. The record on appeal includes an engineering and traffic survey dated May 28, 1998, and certified by an engineer on June 3, 1998. The survey further indicates that actual field data was taken in April 1998. Appellant's alleged violation occurred on November 11, 2003. The survey was conducted more than five (but less than seven) years prior to the date of the violation. Accordingly, the prosecution was required, among other things, to show that the radar unit was calibrated within three years of the date of the alleged violation and was calibrated by an independent agency, and met or exceeded "the minimum operational standards of the National Traffic Highway Safety Administration" as required by Vehicle Code section 40802, subdivision (c)(1)(D). It did not do so. Retrial is prohibited by the double jeopardy clause of the Fifth Amendment. (Burks v. United States (1978) 437 U.S. 1, 11.)"

I hope this will give you an idea of how a trial can go. But PLEASE read in [other books](#) about what objections you can make, what the officer can and cannot testify to, and other matters that will help you win your case.

Please visit George's gift shop at <http://www.helpigotaticket.com/giftshop.html> where you will find many interesting items for purchase and that help keep his site running.

Good luck and don't let the judge intimidate you. Know your stuff so you can stand up to him/her if need be. But always be courteous.