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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF  
CALIFORNIA,  
Plaintiff,

vs.

STANLEY GOLDBLUM, et al,  
Defendants.

No. BA109376

**DEMURRER**

[Assigned to Judge Ito]  
[Indictment filed May 20, 1996]

Date November 15, 1999  
Time 1:30 p.m.  
Department 110  
Trial

TO EACH PARTY AND ATTORNEY OF RECORD:

PLEASE TAKE NOTICE at the place, time and date above or as soon thereafter as counsel may be heard defendant Stanley Goldblum will and hereby does demur to Count 2 of the indictment.

The demurrer to Count 2 is made on the ground the prosecution is barred by the running of the statute of limitations.

The demurrer is based on the memorandum of points and authorities, the facts and records of this case, and whatever argument and evidence may be presented to the court at the time of the hearing.

Dated October 29, 1999, at Malibu, California.

LAW OFFICES OF EDWARD MURPHY

By \_\_\_\_\_  
Edward Murphy  
Attorney for Defendant

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## Memorandum of Points and Authorities

THE PROSECUTION OF COUNT 2 IS BARRED BY THE RUNNING OF THE STATUTE OF LIMITATIONS; THEREFORE THE DEMURRER TO COUNT 2 SHOULD BE SUSTAINED.

### Introduction

A demurrer is proper if the accusatory pleading contains matter which, if true, would bar the prosecution. Penal Code § 1004(5). An example is when the prosecution is barred by the statute of limitations. *People v. Ayhens* (1890) 85 Cal. 86, 89. The court is without jurisdiction to proceed in any criminal action after expiration of the statute of limitations for an alleged offense. *People v. Chadd* (1981) 28 Cal.3d 739, 756-757. “Adoption of a period of limitation represents a legislative recognition that for all but the most serious of offenses (such as murder or kidnaping) a never-ending threat of prosecution is more detrimental to the functioning of a civilized society than it is beneficial.” *People v. Zamora* (1976) 18 Cal.3d 538, 547.

In Count 2 of the indictment, returned and filed May 20, 1996, defendant is charged with violating Corporations Code § 25541, securities fraud, “on and between December 8, 1987, and January 21, 1993.” The indictment is silent as to why it was returned and filed almost three years and four months after the alleged offense was committed.

Subject to specific exceptions, the general statute of limitations for felonies in California is and has been at all times relevant to this demurrer three years. Penal Code

§ 801. In 1986 the Legislature enacted Penal Code § 801.5. Originally Penal Code § 801.5 did not extend the three-year period; it just specified that for violations of Insurance Code § 556, the three-year statute of limitations did not commence running until “after discovery of the commission of the offense.” West’s Ann.Cal.Penal Code §801.5 Historical and Statutory Notes. In 1990, Penal Code § 801.5 was amended in that Insurance Code § 556 was changed to Insurance Code § 1871.1. In 1994, Penal Code § 801.5 was again amended in that Insurance Code § 1871.1 was changed to “former” Insurance Code § 1871.1, Insurance Code § 1871.4 and Penal Code § 550. And in 1995, Penal Code § 801.5 was again amended in that former Insurance Code § 1871.1, Insurance Code § 1871.4 and Penal Code § 550 were changed to any offense “described” in Penal Code § 803(c). The 1995 amendment also changed the period from three years to four years. West’s Ann.Cal.Penal Code §801.5 Historical and Statutory Notes. Since it was enacted in 1984, Penal Code § 803(c) has always “described” a violation of Corporations Code § 25541.

This all means that when defendant allegedly violated Corporations Code § 25541 on January 21, 1993, the prosecution had until January 20, 1996, to file an indictment. But on January 1, 1996, twenty days before the statute of limitations expired, the 1995 amendment became operative, increasing the statute of limitations for violations of Corporations Code § 25541 from three to four years.

Issue Is Statutory Construction



The issue for this court then is one of statutory construction. Recognizing the general rule in California that a provision in the Penal Code must explicitly declare itself to operate retroactively (*People v. Frazer* (1999) \_\_\_ Cal.4th \_\_\_), did the Legislature intend the 1995 amendment to Penal Code § 801.5 to operate retroactively, increasing the period from three to four years for offenses committed in 1993? As will be seen there is no indication in the 1995 amendment that the Legislature intended anything but to apply the new statute prospectively and not retroactively; there is no reason not to apply the rule prohibiting retroactive construction; the statute of limitations for a violation of Corporations Code § 25541 on January 21, 1993, was and is three years; and an indictment filed May 20, 1996, is barred by the statute of limitations and subject to a demurrer.

#### Statutes of Limitations Operate Prospectively

Penal Code § 3 states no provision of the Penal Code “is retroactive, unless expressly so declared.”<sup>1</sup> In *People v. Hayes* (1989) 49 Cal.3d 1260, 1274, the court stated the basic rule of statutory construction that new statutes are “generally presumed to operate prospectively absent an express declaration of retroactivity or a clear and compelling implication that the Legislature intended otherwise.” In *People v. Daniels* (1963) 222 Cal.App.2d 99, the court stated, “It is a cardinal rule of statutory construction that every statute will be construed to operate prospectively unless the

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1. “This Act shall be known as THE PENAL CODE OF CALIFORNIA... No part of it is retroactive, unless expressly so declared.” Penal Code §§ 1-3.

contrary legislative intention is clearly expressed. This rule is particularly applicable to Penal Code statutes.” In *People v. Fork* (1965) 233 Cal.App.2d 725, the court said, “[I]t is a general rule of construction, applicable to codes and other statutes alike, that, unless the intention to make it retrospective clearly appears from the act itself, a statute will not be construed to have that effect.” The law is quite clear that statutes, particularly Penal Code statutes, generally operate prospectively unless the Legislature clearly states the statute is to operate prospectively.

Moreover, the courts have repeatedly held a law is retroactive, regardless of whether the law is labeled a “procedural” or a “substantive” law, when the impact of the law would substantially change the legal consequences of events occurring, or interfere with rights or obligations existing, before the law became effective. *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1205-1207; *United States v. Security Industrial Bank* (1982) 459 U.S. 70, 79-80, 74 L.Ed.2d 235, 243-244, 103 S.Ct. 407; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 391.

Thus the basic rule of statutory construction specifically applies to the statute of limitations. “[A]s a rule of statutory construction, it is established that an enlargement of limitations operates *prospectively* unless the statute expressly provides otherwise.” *Gallo v. Superior Court* (1988) 200 Cal.App.3d 1375, 1378-1379 (emphasis added). Also see *Mudd v. McColgan* (1947) 30 Cal.2d 463, 467-468; *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465; *Carr v. State of California* (1976) 58 Cal.App.3d 139, 147; 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 332, pp. 361-363. All the

authority prohibits the 1995 amendment to Penal Code § 801.5 be construed to operate retroactively because the statute does not expressly so provide. Penal statutes should be construed as favorably to a defendant as the statutory language and circumstances may permit. *People v. Fenton* (1993) 20 Cal.App.4th 965, 968; see also *Toussie v. United States* (1970) 397 U.S. 112, 115 25 L.Ed.2d 156, 161, 90 S.Ct. 858. “[C]riminal limitations statutes are ‘to be liberally interpreted in favor of repose.’”

### California Follows Other Jurisdictions

The California rule that statutes of limitations operate prospectively unless the statute expressly provides otherwise conforms with the holdings in the federal courts and most other states.<sup>2</sup> American Jurisprudence 2d states:

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2. See *Schuman v. Walthour*, 204 Ark. 634, 163 SW2d 517; *Denver v. Dunning*, 33 Colo. 487, 81 P. 239; *Bussey v. Bishop*, 169 Ga. 231, 150 SE 78, 67 ALR 287; *Hathaway v. Merchants’ Loan & T. Co.* 218 Ill. 580, 75 NE 1060; *First Nat. Bank v. Gray*, 151 Kan. 558, 99 P2d 771; *Lawrence v. Louisville*, 96 Ky. 593, 29 SW 450; *McKisson v. Davenport*, 83 Mich. 211, 47 NW 100; *State ex rel. Anderson v. General Accl. F. & L. Assur. Corp.*, 134 Minn. 21, 158 NW 715; *Dyer v. Wittler*, 89 Mo. 81, 14 SW 518; *Moore v. State*, 43 NJL 203; *Orman v. Van Arsdell*, 12 N.M. 344, 78 P 48; *Vanderbilt v. Atlantic Coast Line R. Co.*, 188 N.C. 568 125 SE 387, 32 ALR 287, error dismd 276 US 625, 70 L Ed 767, 46 S Ct 204; *Adams & F. Co. v. Kenoyer*, 17 N.D. 302, 116 NW 98; *Re Mosher*, 24 Okla. 61, 102 P. 705; *Fullerton v. Lamm*, 177 Or. 655, 163 P2d 941, 165 P2d 63; *Heyward v. Farmers’ Min. Co.* 42 S.C. 138, 19 SE 963, 20 SE 64; *Slover v. Union Bank*, 115 Tenn. 347, 89 SW 399; *Richardson v. Cook*, 37 Vt. 599; *Duffy v. Hartsock*, 187 Va. 406, 46 SE2d. 570; *Thomas v. Higgs*, 68 W. Va 152, 69 SE 634; *Cannon v. Johnson, Lane, Space, Smith & Co., Inc.*, D.C. S.C., 460 F.Supp. 724, affirmed 638 F.2d 12; *Meyring Livestock Co. v. Wamsley Cattle Co.*, 687 P.2d 955; *Department of Transp. v. Soldovere*, App. I Dist., 452 So.2d II, petition for review denied 458 So.2d 272, quashed 519 So.2d 616; *Yamaguchi v. Queen’s Medical Center*, 648 P.2d 689, 65 Haw. 84; *Martin v. Clements*, 575 P.2d 885, 98 Idaho 906; *Shaw v. Seward*, 689 S.W.2d 37; *State by Abrams v. Solil Management Corp.*, 491 N.Y.S.2d 243, 128 Misc.2d 767, affd. 495 N.Y.S.2d 161, 114 A.D.2d 1057, app. den. 492 N.E.2d 1233, 67 N.Y.2d 606, 501 N.Y.S.2d 1025; *Cutter v. Seamandel*, 308 N.W.2d 403, 103 Wis.2d 1; 36 ALR 1316, s. 133 ALR 384; 67 ALR 297. Penal Code § 3 “is but a restatement of a general rule of statutory construction.” *People v. Harmon* (1960) 54 Cal.2d 9,

Where the legislature has not sufficiently manifested its intent whether a statute of limitations should apply retrospectively or should apply prospectively only, the question is passed on to the courts to determine, as a matter of construction, in which of these ways the statute should apply. In most jurisdictions, in the absence of a clear manifestation of legislative intent to the contrary, statutes of limitation are construed as prospective and not retrospective in their operation, and the presumption is against any intent on the part of the legislature to make such a statute retroactive.<sup>3</sup>

Corpus Juris Secundum states the same rule slightly different:

Statutes of limitations generally operate prospectively, unless there is an expressly stated legislative preference for retroactive application.<sup>4</sup>

*People v. Frazer*

Although in the recent California Supreme Court case of *People v. Frazer*,  
*supra*,

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25; *Russell v. United States*, 278 U.S. 181, 73 L.Ed. 233, 49 S.Ct. 121; *United States v. St. Louis, S. F. & T. R. Co.*, 270 U.S. 1, 70 L.Ed. 433, 46 S.Ct. 182; *Von Schmidt v. Huntington* (1850) 1 Cal. 55, 65.

3. 51 Am Jur 2d, Limitations of Actions § 57
4. 54 Corpus Juris Secundum, Limitations of Actions § 7.

statutory construction was not the issue,<sup>5</sup> *Frazer* is instructive in two regards. *Frazer* reaffirms Penal Code § 3, *Hayes*, and the other cases expressing the rule that new statutes are presumed to operate prospectively absent an express declaration of retroactivity or a clear and compelling implication that the Legislature intended otherwise. And *Frazer* offers an example of what the courts mean by the Legislature explicitly declaring a statute to operate retroactively.

An earlier version of the statute in question in *Frazer*—Penal Code § 803(g)—stated that where certain serious sex offenses were allegedly committed against a victim who was under age 18 at the time, and where the “limitation period specified in Section 800 or 801 has expired,” a criminal complaint is nonetheless timely if it is filed “within one year of the date of a report to a law enforcement agency” by the victim about the crime. As the court in *Frazer* pointed out

in opinions that were originally published in 1995 and 1996, several Courts of Appeal held that section 803(g), as first enacted, did not apply where prosecution of the crime was otherwise time-barred as of the statute’s effective date. This line of cases invoked the general rule disfavoring “retroactive” application of statutes in the absence of a clear

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5. “As a threshold matter, the parties assume here, as on appeal, that section 803(g) applies in the present case as a matter of statutory construction. Under this reading of the statute, a felony prosecution which otherwise complies with the requirements of section 803(g) is timely whether or not the crime occurred before January 1, 1994, and whether or not the statutory period otherwise applicable under section 800 or 801 expired before January 1, 1994. Based on the “express language” of the statute, and ‘extrinsic’ evidence in the legislative record, we have no doubt the statute operates in this manner. (*Evangelatos v. Superior Court* [1988] 44 Cal.3d 1188, 1209.)” *People v. Frazer, supra*, \_\_\_ Cal.4th \_\_\_, \_\_\_ The two claims made by the defense in *Frazer* were ex post facto law and deprivation of due process, neither of which are made by the defense in this demurrer.

contrary intent. These decisions relied primarily on the absence of explicit language in the 1994 law stating that it “revived” the state’s ability to prosecute defendants against whom the fixed statute of limitations had run before 1994.

As a result of these decisions, the Legislature amended the statute, effective January 1, 1997, adding provisions that had not previously appeared in the statute.

Critical here is new language which, as explained later in the opinion, targeted the line of Court of Appeal cases declining to apply section 803(g) in molestation cases that were time-barred before the law came into existence. Specifically, the 1996 version made clear that the one-year limitations period set forth in section 803(g) “applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision.” (Former § 803(g)(3)(A) & (3)(B).) The 1996 amendment also made explicit the Legislature’s intent to “revive any cause of action barred by Section 800 or 801” where the complaint is filed within one year of the time the victim reported the crime to law enforcement officials, as otherwise required by the statute. (Former § 803(g)(3)(A) & (3)(B)(i).)

All this illustrates the requirement in California, because of Penal Code § 3 *per se* and as a codification of common law principles of statutory construction, that a statute explicitly declare itself to operate retroactively. The early version of Penal Code § 803(g) stated where the “limitation period specified in Section 800 or 801 has expired,” and even that was found insufficiently explicit. It was necessary for the Legislature to amend Penal Code § 803(g) and state *it was the legislative intent to revive any cause of action barred by Penal Code § 801*. This is what the courts mean by

explicitly declaring a statute to operate retroactively. Unlike the statute in *Frazer*, Penal Code § 801.5 is silent about operating retroactively.

### Legislative History

Nothing in the legislative history of Penal Code § 801.5 indicates it was intended to operate retroactively. “As we have often noted, our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent.” *Laurel Heights Improvement Assn. v. Regents of U.C.* (1993) 6 Cal.4th 1112, 1127. If anything, comments by the proponents of Penal Code § 801.5 suggest prospective application:

If adopted, the attached change to Penal Code section 801.5 would extend the current statute of limitations on crimes involving fraud or breach of a fiduciary duty by one year. *That change would not endanger the rights of criminal defendants.* [Arguments in Support of SB 734, Senate Criminal Procedure Committee, May 9, 1995; emphasis added.]

“Statements in legislative committee reports concerning the statutory objects and purposes which are in accord with a reasonable interpretation of the statutes are legitimate aids in determining legislative intent.” *National R. V., Inc. v. Foreman* (1955) 34 Cal.App.4th 1072, 1083. Careful examination of a thick package of materials supplied by Legislative Intent Service revealed no indication the Legislature intended Penal Code § 801.5 to apply retroactively. “Nothing in the history, context, wording or purpose of the legislation suggests that the Legislature intended the new provisions to apply retroactively.” *People v. Hayes, supra*, 49 Cal.3d 1260, 1274. Nothing in the history, context, wording or purpose of Penal Code § 801.5 suggests it applies retroactively.

## Conclusion

Clearly the statute of limitations for a violation of Corporations Code § 25541 on January 21, 1993, was and is three—not four—years, and the statute of limitations expired January 21, 1996, for an alleged violation of Corporations Code § 25541 on January 21, 1993. An indictment filed May 20, 1996, charging a violation of Corporations Code § 25541 on January 21, 1993, is barred by the statute of limitations and subject to a demurrer. “A never-ending threat of prosecution is more detrimental to the functioning of a civilized society than it is beneficial.” The defense respectfully submits its demurrer to Count 2 be sustained.

Dated October 29, 1999, at Malibu, California.

LAW OFFICES OF EDWARD MURPHY

By \_\_\_\_\_  
Edward Murphy  
Attorney for Defendant



## Proof of Service by Mail

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, state of California. I am over the age of 18 and not a party to the within action. My business address is:

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On \_\_\_\_\_ I served the foregoing document described as a demurrer addressed as listed below on the other parties to this action by:

- United States mail
- Hand delivery
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I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed this \_\_\_\_\_ at Malibu, California.

\_\_\_\_\_  
  
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