Handling The TRUTH

by

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RFB - Proverbs 21:31
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And you shall know the truth, and the truth shall set you free.
John 8:32 (KJV)

"You can't handle the truth!" Jack Nicholson's character, Colonel Nathan R. Jessep, screamed from the witness stand in a scene from the movie "A Few Good Men." A memorable phrase from an Academy Award winning actor. And can we forget Jack Webb's "All we want are the facts, ma'am" admonishment in his role as Sgt. Joe Friday in Radio and TV's "Dragnet"? Both characters sought the truth based on facts. Sometimes the truth hurts ... sometimes it heals, but it is still the truth. The manner in which you, the reader, receives and handles the true facts about to be revealed, will determine whether you, your loved ones, family or friends remain in prison or seize the opportunity to be set free.

Want to go home? The next 15 minutes provides guidance in the way to get there ... are you willing to invest it? Now, grab a cup of coffee, pull up a chair, and let me share with you what I have learned. Hit the law library and check the facts out for yourself. It's all in the "book", the California Penal Code ... or it isn't; authority for the state to legally prosecute via felony complaint.

And if you, like myself, can't find authority, remedy is yours for the asking and you could be home for Christmas!

The Superior Court in every county in California, in every felony prosecution initiated by the district attorney via <u>complaint</u>, has no jurisdiction (authority) to hold an accused for trial, ask for and accept a plea, or enter judgment of conviction. Any judgment issuing pursuant to a felony complaint is void and may be challenged at any time. As a matter of law, regardless of the crime charged, violent or not, or length of sentence or when imposed, the prisoner is entitled to immediate and unconditional release. No re-trial is permitted. Senate Bill 1134 provides $140 per day compensation for each day of the unlawful imprisonment.

So, what is a "complaint" and why is it important? It is the document charging the offense in which the person accused of an offense is named as a "defendant". It is the document which gives the court authority to proceed and upon which the entire case rests. It is usually the first document in the superior court record. It is used by persons in the private sector or informer (Qui Tam Action - private person authorized to sue for a penalty, part of which the government will receive).

> "The term 'complaint' is a technical one descriptive of proceedings before magistrates. It is and has been defined to be the preliminary charge of accusation against an offender, made by a private person or an informer to a justice of the peace or other officer, charging that the accused has violated the law. (Emphasis added.) Rupley v. Johnson, (1953) 120 Cal. App. 2d 548, 552.

The function then of the private person felony complaint is that of preliminary accusation. "The felony complaint functions to bring the defendant before a magistrate for an examination into whether probable cause exists to formally charge him with a felony." Serna v. Superior Court, (1985) 40 Cal. 3d 239, 257. However, a felony complaint cannot confer jurisdiction on the superior court. "A felony complaint, unlike a misdemeanor complaint, does not confer trial jurisdiction." Serna, id.

The complaint is not authorized for government usage to charge a felony. This was made clear in 2005 when then Attorney General Bill Lockyer publicly stated "the government may not even be involved with the preparation, investigation and filing of a felony complaint." People v. Viray, (2005) 134 Cal.App. 4th 1186, 1201.

Notwithstanding the chief law enforcement officer's prohibition and supreme court's holding, the state's district attorneys have been initiating criminal actions by felony complaint for in excess of 60 years. None are valid, no not one.

It may not be disputed that there exists no Constitutional provision, statute or other authority which authorizes the state's prosecution of a felony offense by form and mode of a complaint. To the contrary, the law is firm and settled that felonies must be prosecuted by either one of two authorized forms or modes, indictment or information. "Felonies shall be prosecuted by indictment or, after examination and commitment by a magistrate, by information." (California Constitution Article I, § 14.)

The California Supreme Court has held that felonies shall only be prosecuted by indictment or information:

> "Prosecution for felonies in this state, so far as the mode of prosecution is concerned, are governed by the constitution of the state, which in section 8 [14] of article I provides for prosecution either by information or indictment. The Penal Code, in conformity with the constitution, outlines the procedure of prosecution by indictment as well as by information.' People v. Wallach, (1926) 79 Cal.App. 605, 608. 'Accordingly, the first pleading by the prosecution, in felony cases may be either an indictment or an information.' (4 Witkin & Epstein, Cal.Criminal Law (3d Ed. 2000) Pre-trial Proceedings, § 169, p. 374; emphasis in original.)" Guillory v. Superior Court, (2003) 31 Cal. 4th 168, 173-174.

The California Penal Code states in Section 737[1] that "All felonies shall be prosecuted by indictment or information, except as provided in Section 859a." and "The first pleading on the part of the people in the superior court in a felony case is the indictment or information, or the complaint in any case certified to the superior court under Section 859a." (§ 949.) (Case "certified to the superior court" is a guilty plea to the complaint under § 806 made before the magistrate in the municipal court prior to 1998. The district attorney then had 15 days to file a formal "information" § 739.) In 1998, with the unification of the two court system, the Municipal and Superior Courts became one in form and function known as the Superior Court. Certification of a complaint "to the superior court" was a non sequitur ... as all filings were now in the superior court in the first instance. In any event, a felony complaint, filed by a private person or in error by the district attorney, conferred no jurisdiction upon the superior court and any judgment is void. See Serna, supra, at 257.

Prosecution by information is governed by § 738 and requires the filing of a valid complaint as a condition precedent to a preliminary examination. "Before an information is filed there must be a preliminary examination of the case against the defendant and an order holding him to answer. The procedure for a preliminary examination must be commenced by written complaint, as provided elsewhere in this code." (§ 738, underline added.) This requirement is reiterated and enlarged upon by § 806 which is restricted for use

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1 References are to the California Penal Code.

to the private sector when complaining to government for redress of criminal conduct against their person or property. In the event the magistrate finds probable cause exists to hold the accused to answer the complaint following the examination, the district attorney makes a first appearance in the case and may file an information (§ 739), which becomes the first pleading on the part of the people in the superior court in a felony case (§ 949). It is the filing of an information that gives jurisdiction to the superior court. See, People v. Leonard, (2014) 228 Cal.App. 4th 465, 482.

Thus, while the provisions of law indeed condition the prosecutor's power to seek a conviction upon the securing of an information or indictment, those provisions overlooked by district attorneys past and present, condition the filing of an information on the filing of a valid complaint by someone other than a government person. The district attorneys thus solve the riddle of the chicken and the egg by simply ignoring the egg.

The requirement for a valid complaint presents a legal conundrum for the prosecutor. The felony complaint not being sufficient to confer jurisdiction upon the superior (trial) court, and the information requiring a valid complaint prior to its filing (§ 738), prosecution by information appears to be procedurally barred.

Absent the filing of an information, the court lacked authority to accept a guilty plea from the accused (defendant) or enter judgment against him.

> "Here, there is no argument a valid information was not filed at the outset of the case. ... Failure to file an information is an irregularity of sufficient importance to the functioning of the courts that the parties cannot cure the irregularity by their consent to the proceedings. (See, In re Griffin, (1967) 67 Cal. 2d 343, 348.) The Superior Court did not have jurisdiction to accept appellant's guilty plea or enter judgment against him. The judgment is reversed." People v. Smith, (1986) 187 Cal.App. 3d 1222, 1224.

Absent the filing of an information or indictment, the court lacked authority to hold the defendant for trial, enter judgment against, sentence and imprison him. "If a conviction is secured by means not sanctioned by law, the conviction cannot and should not stand." People v. Talle, (1952) 111 Cal.App. 2d 659, 678.

There being no express law in the land authorizing the state (government) to file a felony complaint or for the court to proceed by mode of felony complaint, the court acquired no jurisdiction to try and punish a person charged by felony complaint.

> "A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged ... in the particular form and mode required by law.' ... 'A person may not be punished for a crime without a formal and sufficient accusation even though he voluntarily submits to the jurisdiction of the court. Such is the undisputed law in all jurisdictions.'" Albrecht v. United States 273 U.S. 1, 1, 8 (1927).

The judgment obtained by the prosecutor pursuant to a felony complaint is void and may be challenged at any time. "A judgment rendered by a court wholly lacking jurisdiction may be challenged at any time." In re Harris, (1993) 5 Cal. 4th 813, 836. "When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and such judgment is vulnerable to direct or collateral attack at any time." People v. Vasilyan, (2009) 174 Cal.App. 4th 443, 450.

The government must, as all public servants know, have written authority to take any action (going by the book) and particularly when such action may infringe upon a person's liberty.

> "No individual or body of men has a discretionary or arbitrary power to commit any person to prison; no man can be restrained of his liberty, be prevented from removing himself from place to place as he chooses, be compelled to go to a place contrary to his inclination, or be in any way imprisoned or confined, unless by virtue of the express laws of the land." Hurtado v. People of California 110 U.S. 516, 537 (1884).

A "quick peek" into the California Penal code, the "book" law enforcement (district attorneys) and courts are required to follow for authority in the prosecution of criminal actions (§ 948), evidences a lack of authority to prosecute via felony complaint. For example, the state may initiate a felony case only by indictment or information (§ 949). A defendant has no plea available to a felony complaint. "The only pleading on the part of the defendant is either a demurrer or plea" (§ 1002). "There are six kinds of pleas to an indictment or an information, or complaint charging a misdemeanor or infraction: Guilty, Not Guilty, etc." (§ 1016).

Long standing practice notwithstanding, the prosecution of felonies by the courts and officers thereof by means of complaint, is not authorized by law. Such practice violates the due process provisions of both the state and federal constitutions. "It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire National existence and even predates it." Walz v. Tax Commission of City of New York 397 U.S. 664, 678 (1970).

Without any written authority to prosecute via felony complaint, how has this violation of the fundamental constitutional rights by the state's district attorneys and courts of hundreds of thousands of persons continued unabated for so long? It appears at some distant point in time, prosecutors in California began to follow the practice of foreign jurisdictions ... filing felony complaints solely for the purpose of securing arrest warrants from the court. In their opinion filing did not initiate a criminal prosecution. The Attorney General was forced to make and defend this argument before the court in 2005, and it was soundly rejected.

> "In this jurisdiction [California], in contrast, a criminal complaint does not merely operate to secure a warrant of arrest ... But whether it is filed for that purpose or not, in this state it commits the prosecutor to pursue a criminal conviction ... a commitment from which only a court can grant relief." People v. Viray, (2005) 134 Cal.App. 4th 1186, 1205.

Upon filing of the felony complaint the state initiated a prosecution and the bogus charging document (complaint) constituted an unauthorized "first pleading on the part of the people in the superior court in a felony case" per § 949. Apparently the Viray decision debunking the prosecutors' practice did not filter down to the elected district attorneys in California's 58 counties: the practice continuing until this day. This unlawful government activity is in direct violation of the district attorneys' oath of office to support and defend both state and federal constitutions.

Why have the judges of those 58 counties failed to object to the practice? Is it not their duty, as gatekeepers of our liberties, to sua sponte determine in each case whether the court has jurisdiction to proceed pursuant to the mode and form of accusatory pleading presented? Are they not required by law to dismiss the bogus complaint

and release or discharge the person being held or imprisoned? Are they not required to act and correct the constitutional error when it is brought to their attention? These rhetorical questions can only be answered in the affirmative. Is there any statute of limitations on fraud? No.

In reality, how many persons are affected by this error? According to the Honorable J.S. Penny, Superior Court of California, Placer County, California in May 2018:

> "It should be pointed out that as a practical matter almost all felony prosecutions in the state are initiated through the filing of a complaint signed by a deputy district attorney. According to the petitioner's argument, virtually every felony conviction and every pending felony prosecution in the state is invalid." In re Brooks, (May 18, 2018) Case WHC-1611, Order Denying Habeas Corpus, page 3, lines 6-10.

It is clear that the error revealed herein, prosecution of felonies by the state via complaint, has enormous implications that are unquantifiable: impacting hundreds of thousands of persons who have been, are being and who will continue to be, unlawfully imprisoned, absent intervention. This practice must stop, now!

The imprisonment of persons pursuant to a felony complaint, absent any and all authority, may be considered by some as criminal conduct under color of law and actionable under §§ 661 (removal from office), 115(a) (filing false and forged instruments),182(a)(1-5) (cospiracy to pervert or obstruct justice, etc.) and federal law, Title 18 U.S.C. §§ 241, 242 (conspiracy to violate civil rights).

Since March 2018, letters have been sent by U.S.P.S. Certified Mail to various District Attorneys, Senator Kamala Harris (former Deputy District Attorney, District Attorney, Attorney General) with certified copies to Governor Newsom and President Trump, outlining the issue and demanding cessation of prosecution via felony complaint. No response; prosecutions continue.

So how do we obtain a remedy? The first course of action is one expected by all ... the courts. Under both state and federal law Habeas Corpus (§ 1473, et seq.; 28 U.S.C. § 2254) is the preferred way to challenge unlawful imprisonment. In our cases, the judgment is void, which means the sentence violates our Constitutional rights. And when the merits of our claim are heard, we go home.

"Habeas Corpus will lie whenever one is held under a sentence which violates his fundamental constitutional rights." In re Smiley, (1967) 66 Cal. 2d 606, 614.

So how is this working out? It appears the task, when bringing an issue of statewide significance and such Constitutional magnitude, is obtaining a hearing on the merits in the courts. Since March 2018, more than a dozen applications for a writ of Habeas Corpus have been made to various Superior Courts. All have been denied on procedural grounds; none have addressed the merits of the claim. These and other applications have been submitted to the Appellate Courts in each District and then to the California Supreme Court. Four have been denied on procedural grounds without comment on the merits of the claim. The rest remain pending. Three have been submitted to federal courts. The federal magistrates have ordered the Attorney General of California to show cause why the writs should not be granted (release petitioner). The first petition to reach the federal court has received a response from Attorney General Xavier Becerra, (Respondent): Motion to Dismiss on procedural grounds. Petitioner has filed an Opposition to the Magistrate's Report and Recommendation to the Judge.

Interestingly, out of 13 pages of the Respondent's motion, only four lines are devoted to commenting on petitioner's claim. "Moreover, Petitioner's claim that the trial court lacked jurisdiction is patently meritless. Petitoner contends that the trial court did not have jurisdiction because the accusatory pleading was a felony complaint." Immediately following comment, Respondent declares "Under California law, a felony complaint does not confer trial jurisdiction" citing Serna v. Superior Court, 40 Cal. 3d 239, 257 (1985). In re Bush, United States District Court, Central District of California, Case No. CV 19-391 (DSF(JC) page 5, lines 21-24, Document 13 Filed 03/07/19, Page 7 of 13, Page ID#209. An apparently incongruous remark, yet making peititoner's point. Petitioner's actual claim? "A complaint charging a felony is not a mode of prosecution authorized by law and is insufficient to initiate a prosecution when brought by the public prosecutor. (§ 949.) The court in which such pleading is filed is lacking subject matter jurisdiction and the judgment of conviction is void per se." Bush, petitioner Ground 1, page 6.3 [3.3 on state Habeas petition, see sample at withoutoneplea.com]; the identical claim as raised in all petitions filed with the above referenced

courts. No substantive response to the claim ... no authorities to support Mr. Becerra's comment. Respondent continued to prove petitioner's claim correct "Here, a felony complaint was filed against petitioner, then a magistrate found probable cause that he committed a felony, and then an information was filed in the superior court. Because an information was filed, the trial court had jurisdiction." Bush, Id. page ID #10, lines 3-6. A valid complaint (private party; not state) must preceed filing of an information. See People v. Smith 187 Cal.App. 3d 1222 at 1224, supra. And, by Respondent's own admission, a felony complaint does not confer trial jurisdiction. Mr. Becerra is still hunting for eggs. The filing of the bogus felony complaint required that all Constitutional provisions and guarantees due the accused be supported and defended. "In light of California law ... the full panoply of rights Californians have come to expect as their due ... applies once a criminal complaint is filed." Serna at 257, citing People v. Hannon, (1977) 19 Cal.3d 588, 608. In Mr. Bush's case, as in all our cases (felony complaint filed), the act of filing the action violated Mr. Bush's due process rights, constituting fundamental constitutional error: creating irreparable harm and a miscarriage of justice. The state court's failure to honor Habeas Corpus raising issue of void judgment for lack of jurisdiction in the trial court, is the epitome of miscarriage of justice and an exception to any procedural bar. The miscarriage of justice exception is rooted in an even more basic principal, which Justice Kennedy described in the following way in another context: "Our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress from the latter." ABF Freight System v. NLRB, 114 S.Ct 835, 840 (1994)(Kennedy, J., concurring).

Would it not be legally, ethically and morally right, if such authority exists, to simply produce it? But no one has ... they cannot ... there is none. And they remain silent. And we remain in prison. A fraud and conspiracy between the Executive and Judicial branches of government of major proportions? "Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading." U.S. v. Tweel 550 F.2d 297, 300 (1977).

Solomon was right when he said "A servant will not be corrected by mere words; for though he understands, he will not respond." Proverbs 29:19[2].

What then can we, as one of the People unlawfully imprisoned, do, to hold government accountable and effect our release and the cessation of lawlessnes? All citizens of California have access to the Grand Jury in each county for the presentment of requests for inquiry into public offenses committed or triable within the county. (§ 917(a).) If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county has been committed, he may declare it to his fellow jurors, who may thereupon investigate it. (§ 918.) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county. (§ 919(c).) The filing of a false instrument with the court is a public offense (felony). (§ 115(a), (b).)

> "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony." (§ 115(a).)
>
> Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constiute a separate violation of this section." (§ 115(b).)

When a charge against or involving the district attorney, or assistant district attorney, or deputy district attorney, or anyone employed by or connected with the office of the district attorney, is being investigated by the grand jury, such district attorney, or assistant district attorney, or deputy district attorney, or all or anyone or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity, but only as a witness, and he shall only be present as a witness and after his appearance as such witness shall leave the place where the grand jury is holding its session. (§ 935.) The grand jury may request the presiding judge of the superior court in the county to employ special counsel and investigators when a conflict exists that would prevent the local district attorney, county counsel and the Attorney General from performing such investigations. (§ 936.5 (a), (b).)

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2 References are to the Bible, New King James Version

We all have fond memories of the "good old days" and some of ours go back to the 50's with "Dragnet", "I Love Lucy" and "Leave It to Beaver". Even the courts recognized honesty and zeal in the district attorneys' pursuit of convictions ... but also the propensity for abuse of power ... and cautioned against a "win at any cost" philosophy being violative of the accused's Constitutional rights in the seminal Talle case:

> "District Attorneys are, of course, to be commended for investigating crime and in prosecuting, with vigor, those accused of crime. But prosecutive zeal and honesty in belief of guilt are not substitutes for the orderly, lawful and Constitutional process and guarantees ... Constitutional guarantees are not arbitrary pronouncements adopted to protect the guilty, and to make it difficult for sincere hardworking prosecutors. They are the result of hundreds of years of struggle in fighting governmental oppression. They are necessary to protect the innocent. If an accused, even a guilty accused, cannot be convicted except by violation of these principles, then he should not and cannot be lawfully convicted ... District Attorneys are not the arbiters of guilt or innocence ... If a conviction is secured by means not sanctioned by law, the conviction cannot and should not stand." People v. Talle, (1952) 111 Cal.App. 2d 659, 678.

My how things have changed in the hallowed halls of justice and the District Attorneys' chambers! Election by promises to be tough on crime and re-election by touting a 98% conviction rate! District Attorneys demonstrate zeal in prosecuting those accused of crime but depart from honesty when the District Attorney is the one accusing them by filing false documents with the court. And when questioned about their conduct they rely on their basic training law school "never admit you're wrong" and remain silent. Silence, from those with duty to speak, is intentionally misleading and constitutes fraud.

Daring to peek behind the curtain of silence, we research the law and confirm our suspicions: there is no lawful authority for the state to prosecute and imprison pursuant to a felony complaint; a felony complaint confers no jurisdiction upon the trial court; government may not even be involved with the filing of a felony complaint; the filing of a felony complaint by a district attorney is a felony; any judgment of conviction issuing pursuant to a felony complaint is **void** and may be challenged at any time; any person

imprisoned pursuant to a conviction obtained by a felony complaint is entitled to immediate and unconditional release and compensation; and, if the government (district attorneys, judges, et al.) fail to act on behalf of the unlawfully imprisoned and correct their error when noticed of their violation of the civil rights of those they've imprisoned, the county Grand Jury just might be interested in investigating. Prosecution of public officials via indictment might just come back into vogue. Enjoy!

For more information on this fascinating and liberating topic, such as how to get a copy of your felony complaint, a sample Habeas Corpus form (HC-001) with Grounds 1, points and authorities, letter "On Your Watch" to Kamala Harris, articles "The Truth, The Whole Truth ... And Nothing But" "Without One Plea" and Press Release, go online to withoutoneplea.com. (Click on "state".)

EPILOG

In my search for the truth, I chose to ask for help from the ultimate legal counsel Who said "Call to Me, and I will answer you, and show you great and mighty things, which you do not know." Jeremiah 33:3. Now you, the reader, are the beneficiary of this revelation of truth and fact, kept hidden for decades, so remember Who to thank. He will help you too in your understanding and guide you in the direction to take in applying these facts and truths to your quest for freedom. "For the Lord hears the poor, and does not despise His prisoners' 'Let the groaning of the prisoner come before Him' 'I will instruct you and teach you in the way you should go; I will guide you with My eye." Psalms 69:33; 79:11; 32:8.

God is not a respecter of persons. What He's done for me when I asked for help in getting home, He will do for you. Just ask and believe His promises. "Call upon Me in the day of trouble; I will deliver you, and you shall glorify Me." Psalm 50:15. He doesn't lie and He never fails. He loves you; He always has, He always will ... and He wants you home with your family.

I leave you with two immutable facts:

1) **Felony Complaint** is your Golden Ticket to freedom;

2) TRUTH is a person, His name is Jesus.

"I am the way, the truth, and the life. No one comes to the Father except through Me." Jesus (John 14:6.)

How will you handle the truth?