

April 17, 2020

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Gavin Newsom, Governor
State Capitol
Capitol Mall
Sacramento, California 95814
U.S.P.S. Certified Mail RRR No.: 7002 0510 0003 4495 4006

Re: **Newsom, we have a problem...**
CALIFORNIA'S PRISONERS' CONFINEMENT VIOLATES
THE CONSTITUTION AND LAWS OF CALIFORNIA AND
THE UNITED STATES...and we the People demand release!

Dear Governor Newsom:

Congratulations on your tremendous effort to safeguard all of California from the spreading Coronavirus. Thank you.

I bring to your attention another insidious virus long in incubation and far more destructive than the current one you are dealing with...the unlawful confinement in the state prison of the majority, if not all, inmates.

I am sure you are unaware of this problem, as if aware, you would have implemented corrective measures by this time. Hindsight evidences you have demonstrated exceptional foresight in halting death-row executions...perhaps for just such a time as this revelation.

For the past three years, I've done all in my power to bring this problem to the state's attention but, to no avail.

In March of 2020, I wrote a "Breaking News!" press release "District Attorney Blows DeAngelo Case!" At last some interest!

I followed up with an "Analysis" which provides a layman's view of the government debacle. Analysis and legal argument "Grounds For Relief" (as presented for the legal community's comprehension) are available on-line at www.withoutoneplea.com.

I now give you a synopsis of the problem for your review, understanding and action. Grab a cup of coffee, relax and be advised of the burgeoning tidal wave of interest in justice and true prison reform.

The import of "Breaking News!" (enclosed), is that the illegal prosecution of notorious Joseph DeAngelo is indicative of a greater problem: the consequences of the longstanding practice of this state's District Attorneys' failure to follow the law and prosecute infamous¹ crimes by mode of indictment.

What are the consequences? Illegal convictions...false imprisonment...prison violence, suicides...unquantifiable state financial liability...and no justice for the victims.

After almost two years in the Sacramento County Jail, Mr. DeAngelo, accused of multiple murders and rapes in various counties, is not indicted. Why? How many other unindicted persons have been, are being and will continue to be illegally prosecuted and confined in the state prison?

The United States Constitution is the supreme law of the land and requires as a condition precedent to confinement in the state prison, that prosecution of an infamous (felony) crime be commenced by indictment of a **Grand Jury**.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," (U.S. Const. amend. V.)

California law requires that a felony² prosecution for confinement **in the state prison**³ commence by indictment of a grand jury.

"Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information." (Cal. Const. art. I, § 14.)

As a matter of California and U.S. Constitutional law, only an indictment is authorized for use by the state for prosecution of an infamous crime and is required for entry into the state prison enterprise. No indictment...no prison.

A felony charge requiring confinement **in the county jail**⁴ requires prosecution to commence by information⁵. Contrary to popular belief and practice by the state for many years, an information filed by a district attorney is not an authorized alternative to indictment of a grand jury nor is it sufficient for confinement in the state prison.

Perhaps a review of how a prosecution for confinement in a county jail is intended to proceed will put a spotlight on the state's error, i.e., prosecuting all "felonies" by a "felony complaint" filed by the government. Thus, disregarding the statutory mandate governing prosecution, i.e., "in the state prison" (indictment required) or "in a county jail" (information required).

An information may not be utilized by the state unless a complaint is first made by a private (non-government) person to an officer charging a violation of law⁶ and the offense is determined to be chargeable as a misdemeanor; and, after a preliminary hearing, a complaint charging a misdemeanor is filed by the state⁷ and prosecuted by information as a misdemeanor, or, as a felony at the request of the defendant⁸. However, the charge remains a misdemeanor for all purposes and upon conviction, time is served in the county jail⁹.

A complaint is not authorized for government usage to charge a felony. This was made clear in 2005 by then Attorney General Bill Lockyer's public statement "the government may not even be involved in the preparation, investigation and filing of a felony complaint."¹⁰ The only complaint the government may bring before the magistrate is one charging a misdemeanor¹¹.

In sum, an indictment is required for lawful prosecution of infamous crimes and for confinement in the state prison.

Notwithstanding the Attorney General's prohibition, District Attorney Anne Marie Schubert, a government person, procured the felony complaint to be filed by her Deputy in the Superior Court of Sacramento County against Joseph James DeAngelo. Subsequent proceedings, such as a plea of guilty or preliminary hearing (currently scheduled for May 12, 2020) pursuant to the felony complaint, are a nullity. Any resulting judgment of conviction is void. Confinement in the state prison is unlawful. Remedy is release. Unless sooner indicted in another interested county, **DEANGELO WILL WALK!**

The California Penal Code gives the county grand jury authority to investigate and indict public and private persons for violations of law within the county. (§§ 888, 911, 917(a), 919(c)*.) And, to inquire into the case of every person imprisoned in the county jail and not indicted. (§ 919(a).)

Q. Why has the Attorney General been requested to investigate the District Attorney's Office in all counties?

A. There are so few indictments of record.

Why? According to the Honorable J.S. Penny, Superior Court Judge, 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."¹²

Ms. Schubert and district attorneys who, in the absence of a private person's complaint do not seek indictment of a person they wish to accuse of a capital or infamous crime, but instead file a felony complaint, violate the law and their oath of office. And deprive the state of authority to confine persons convicted thereby in the state prison.

This conduct constitutes willful misconduct in office which must be investigated when evidence is presented to the county grand jury. The evidence is the "felony complaint" filed in the superior court which is an unauthorized accusatory pleading on the part of the people and the filing of which is a felony. An officer of the law is not above the law and cannot violate the law in order to enforce the law.

See "Citizen Complaint, Sacramento County Grand Jury" (DeAngelo felony complaint and April 28, 2018 notice to DA attached), "Attorney General Complaint", "Handling The Truth" and "Grounds For Relief" for points, authorities and more information at www.withoutoneplea.com.

* Undesignated statutory references are to the California Penal Code.

SUMMARY

The state is authorized to hold in the state prison system (California Department of Corrections and Rehabilitation (CDCR)) only persons prosecuted and convicted pursuant to an indictment of a grand jury. All other persons held by the state in CDCR prisons are unlawfully confined¹³.

DEMAND FOR RELEASE

On behalf of, as one of, and by authority of, the People of the United States and the Constitution of the United States, specifically the Fifth Amendment, wherein it is mandated that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," and as Captain in the United States Army Reserve, Citizen of California, Resident of Sacramento County and Victim Aggrieved as one confined in the state prison and not indicted:

I, Lonnie Glenn Schmidt, hereby demand that you, Gavin Newsom, in your official capacity as Governor of the State of California, order CDCR Secretary Ralph Diaz, to effect the immediate cessation of intake into CDCR of all persons remanded to CDCR custody by the California Courts who are not indicted by a grand jury; and, order the immediate and unconditional release of myself as a person not indicted; and to effect the release of all persons confined for whom a True Bill of Indictment by a grand jury cannot be produced.

CONCLUSION

Now that you are aware, it would be easier to hide an elephant under a rug than to avoid confronting and resolving this problem¹⁴.

Failure on your part to take immediate action may be considered by some to be a violation of your oath of office and to knowingly and willfully participate in the continuing unlawful imprisonment of myself and other persons not indicted, yet, confined by the state in the state prison¹⁵.

"Hate evil, love good; establish justice in the gate...
let justice run down like water, and righteousness like a
mighty stream...Free those who are wrongfully imprisoned"
Amos 5:13, 24 NKJV; Isaiah 58:6 NLT.

Therefore and otherwise, conduct yourself accordingly¹⁶.

Respectfully,



Lonnie G. Schmidt

Encl.: Breaking News! DA Blows DeAngelo Case!

Cc: Ralph Diaz, Secretary, CDCR
Xavier Becerra, Attorney General (File No.: 184136)
Elaine Howle, Auditor (Case No.: 12019-1960)
Mike Pence, Vice President of the United States
Dave Patterson, Pastor, The Father's House
Carl Specht, Chaplain, Chapel of the Good Shepherd
Lisa Gonzales, KCRA 3 News

Footnotes

1 Infamous: "punishable by imprisonment in a penitentiary (said of certain crimes, usually felonies)" Webster's New World Dict., 1991 p. 691.
"Conduct punishable in the state prison." Black's Law Dict., Fourth Pocket Ed. 2011 p. 380.

Penitentiary: "a prison, a State or Federal prison for persons convicted of serious crime." Webster's New World Dict., 1991 p. 999.

2 Felony: § 17(a) "A felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170."

The place of confinement is established in each penalty portion of the Penal Code. §17(a) definition of "felony" includes both places of confinement, the state prison and county jail.

3 Punishment in the state prison for serious crime requires prosecution by mode of indictment.

For example: Crimes Against the Person - §§ 187, 190 Murder, mandate punishment "in the state prison": CSP Solano, Gary Eberly AZ2842 (not indicted, but confined in the state prison).

Crimes Against Property § 451(c) Arson, mandates punishment "in the state prison": CSP Solano, Kenneth Jackson AU4656 (not indicted, but confined in the state prison)(3 years eligible Prop. 57).

4 Punishment in the county jail for minor offenses and brief terms (one year - misdemeanors; felonies 16 month - 3 years) requires prosecution by mode of information.

§ 17(a) definition of "felony" also includes those crimes where the term "in the state prison" does not appear in the code section and the term of sentence shall be served in "a county jail". These crimes are to be prosecuted by information. See § 17(a) reference to § 1170(h)(1) "where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail...".

For example: § 115(a), Filing false instruments, is punishable by a term of imprisonment "in a county jail": CSP Solano, Lonnie Schmidt AZ3544 (not indicted, but confined in the state prison (not a county jail) (3 years eligible Prop. 57).)

§ 1170(h)(2) "a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense."

For example: § 422, Criminal threats, punishable by term described "in a county jail not to exceed one year,": CSP Solano, Wayde Harris G36394 (not indicted, but confined in the state prison (not in a county jail)).

Neither Gary Eberly, Kenneth Jackson, Wayde Harris, nor myself should be in the state prison...felony complaints all: none indicted.

5 Information: "A formal accusation of a crime made by a prosecuting officer as distinguished from an indictment presented by a grand jury" Webster's New Collegiate Dict., 1999 p. 599.

6 "The term 'complaint' is a technical one descriptive of proceedings before magistrates. It is and has been defined to be the preliminary charge

or 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, 120 Cal.App.2d 548, 552 (1953); 22 C.J.S. Criminal Law, § 303 [pages 456, 457]. (Construction of § 806.)

7 "Before an information is filed there must be a preliminary examination of the case against the defendant and an order holding him to answer under Section 872. The proceeding for a preliminary examination must be commenced by written complaint, as provided elsewhere in this code." (Emphasis added.) (§§ 738, 740; (806).)

8 §§ 17(b)(4), 806.

9 § 17(b).

10 People v. Viray, (2005) 134 Cal.App.4th 1186, 1201.

11 § 740.

12 For citation, see "Handling The Truth" p. 7.

13 Notwithstanding § 1170(h)(3); which requires for enforcement a prior indicted offense and valid prosecution and confinement pursuant thereto.

14 Don't think this can be left to the courts...they have NOT addressed this issue: either on Direct Appeal or 21 Habeas Corpus petitions to the California Supreme Court; the court citing irrelevant procedural bars in order to avoid reaching the merits. No surprise as it is the courts and the judges thereof the "gatekeepers" of our liberty, who have permitted the illegal prosecutions to proceed and sentence all who appeared before them to the state prison...in the absence of all authority. So please, handle this problem at the Executive level. You are the holder of the keys to our freedom...inasmuch you don't hold the necessary papers...True Bills of Indictment...nor can the courts produce them for you...to justify or confinement. You've got trouble, right here in River City!

15 Those of us non-violent, several years qualified for Prop. 57 release, elderly (like me; 75) and all threatened by the Coronavirus, would benefit, as would the state, from your public announcement of our immediate release. Delay only increases criminal and financial liability for the state.

May I suggest you give first live media coverage to Lisa Gonzales, KCRA 3 TV News, since I've sent her most of my correspondence for 3 years.

16 This problem is presented and pursued for resolution in loving memory of my best friend, the finest man I'll ever meet, Daniel Glenn Schmidt July 24, 1969 - April 17, 2018, my son. Dan said to me concerning this matter of injustice a few days before stepping into the presence of the Lord, "Dad, you're right, but they don't care, they just don't care." I assured him that there are those honorable persons in government who do care, they just don't know the truth and it's our duty as the People to see to it that they are informed and given opportunity to perform their sworn duty. I love you son...you didn't give up on me...and I won't give up until justice is done: in honor of you, our Country and our God.

BREAKING NEWS!

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DISTRICT ATTORNEY BLOWS DEANGELO CASE! SPOTLIGHT ON ILLEGAL PROSECUTIONS STATEWIDE! AG INVESTIGATES DA IN ALL COUNTIES! Tomorrow's Headlines: DEANGELO RELEASED, DA INDICTED.

Sacramento, CA. In spite of repeated warnings to seek indictment of Joseph James DeAngelo, alleged East Area Rapist aka Golden State Killer, Sacramento County District Attorney Anne Marie Schubert stubbornly refused and chose rather to file charges via "felony complaint", a common practice of District Attorneys in this state.

According to public statements by California's Attorney Generals Bill Lockyer and Xavier Becerra, "government may not even be involved in the preparation, investigation and filing of a felony complaint"... "a felony complaint does not confer trial jurisdiction."

As early as the day following Mr. DeAngelo's much publicized arrest on April 27, 2018, Ms. Schubert was given actual notice of the illegal charging by felony complaint and foreseeable consequences. Information and evidence just released as submitted to the Sacramento County Grand Jury confirms notification and that the filing of a felony complaint by the government in a Superior Court is not authorized by law, deprives the court of jurisdiction, voids the conviction, violates due process and requires release of the accused.

The Attorney General has been notified to convene a grand jury in order to obtain indictments against Jeff Rosen, District Attorney of Santa Clara County and his Deputies for just such illegal prosecutions and, has been asked to extend the investigation to all California counties.

Charges of obstruction of justice, filing false and forged documents with the Court, false imprisonment, conspiracy and violation of oath of office are among the many violations of law by public officers which must be considered by the grand jury. See, withoutoneplea.com "Citizen Complaint, Sacramento County"; "Attorney General Complaint". 3/08/2020