Fatal Jurisdictional Defect

District Attorney Fundamental Error In Felony Prosecutions

California law requires the District Attorney (DA) to follow specific procedures when initiating a felony prosecution. If the DA does not, a court has no jurisdiction to try the accused. The law requires an **indictment** or an **information** to be the **first** pleading filed in a felony case. This has not been the DAs' practice for decades. Upon discovery of this jurisdictional defect in any case, the prisoner must be released.

In 98% of felony cases since 1951, DAs have chosen neither indictment nor information, but a complaint to be the **first** pleading filed. A **complaint** may not be filed by the DA in a felony case.

The confusion arises when reading California Penal Code (PC) § 691(c) wherein Indictment, Information and Complaint are all defined as accusatory pleadings. In a criminal action, a complaint is only authorized for use to prosecute misdemeanors and infractions. The law requires that only one of the two remaining accusatory pleadings —either an indictment or an information— be the **first** pleading filed on behalf of the people in a felony prosecution.

California Law

The California Legislature is the legislative branch of the state government, responsible for making laws. The Penal Code of California is law, an Act of the Legislature comprising several sections declaring certain crimes to be punishable as therein mentioned, and devolve a duty upon the Court authorized to pass sentence to determine and impose the punishment prescribed. PC §§ 1, 12.

As stated above, felonies must be prosecuted by **indictment** or **information**.

> PC § 682: In pertinent part: Every public offense must be prosecuted by indictment or information, except: 3. Misdemeanors and infractions; 4. A felony to which the defendant has pleaded guilty to the complaint before a magistrate, where permitted by law.
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> PC § 684: A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense.
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> PC § 737: All felonies shall be prosecuted by indictment or information, except as provided in Section 859a.
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> "The California Constitution specifies that felonies [shall] be prosecuted either by 'indictment or, after examination and commitment by a magistrate, by information.' (Cal. Const., art. I, § 14.) Penal Code section 949 reads in pertinent part, 'The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under [Penal Code] Section 859a.' The People of the State of California are the plaintiff in every criminal proceeding (Pen. Code, § 684), and the public prosecutor has the sole responsibility to represent the People of the State of California in the prosecution of criminal offenses. (*Dix v. Superior Court*, (1991) [supra,] 53 Cal.3d 442, 451 [279 Cal.Rptr. 834, 807 P.2d 1063].) 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) Pretrial Proceedings, § 169, p. 374, italics added." *Guillory v. Superior Court*, 31 Cal.4th 168, 173-174 (Cal. 2003). (Emphasis added.)

As indicated above, an indictment or information must be the **first** pleading on the part of the people filed by the DA in order to lawfully begin the prosecution of a felony offense. A complaint cannot be used.

As indicated below, as a practical reality, an information cannot be the first pleading filed by the DA, inasmuch as PC § 738 requires a preliminary examination of the case and an order to hold the accused, before filing the information.

> PC § 738: Before an information is filed there must be a preliminary examination of the case against the defendant and an order holding him to answer made under Section 872. The proceeding for a preliminary examination must be commenced by written complaint, as provided elsewhere in this code.

Unless a **private person** complainant and guilty plea, it is not possible for the complaint referenced above in PC §§ 682(4), 737, 949 as "certified to the superior court under PC § 859a", to be the first pleading filed on the part of the people. Research shows that none such have been filed for decades.

In any event, either an indictment or information is the only accusatory pleading which may be lawfully filed in the name of the people by the DA in order to initiate a felony prosecution.

If an indictment or information is not the first pleading filed by the prosecution in a felony case —as required by the California Constitution, Penal Code, interpreted and held by the California Supreme Court, e.g., *Guillory v. Superior Court*, supra— ***any other pleading*** filed by the prosecution is fraudulent, an illegal filing, confers no jurisdiction upon the court, is a violation of the State and Federal Constitutions' guarantee of due process, and, exposes the People and the Peoples' representatives to harm, the State to civil liability and the District Attorney and involved public employees to both civil and criminal liability.

Confusion Explained

The following is a discussion regarding the DAs' use of false documents to institute felony criminal proceedings —under color of law— which has resulted in the illegal imprisonment of hundreds of thousands of persons. Research show that this practice has been ongoing for decades and involves legal professionals misinterpreting or ignoring the law.

In Penal Code § 738 supra, the "elsewhere" requirement for a written complaint to commence the examination proceeding, is located at PC § 806, infra, which requires a "complainant" to provide authority for the examination.

DAs have believed and become loyal to a misinterpretation of law; believing that they can be the "complainant" described in PC § 806, infra, authorized to commence a preliminary examination by filing with the magistrate a criminal complaint charging a felony. The DAs err in their belief.

The **complaint** in PC § 806 gives authority to the magistrate for purpose of commencing a proceeding for an examination of the case; to establish whether there exists probable cause to believe that the defendant has committed a felony (PC § 866(b)). The **complainant** is, always has been and must be, a **private person** who suffers injury in person or property, and as a prosecuting witness, instigates the prosecution.

> PC § 806: A proceeding for the examination before a magistrate of a person on a charge of a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant **pleads guilty under Section 859a** of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations. (Emphasis added.)

The complainant can only be a private person, not a person holding public office.

The seminal case interpreting PC § 806 is *Rupley v. Johnson*, citing the California Supreme Court holding in *In re Williams*, which defines the term "complaint" to mean a complaint made by a private person or an informer (complainant):

> "As was stated in *Ralph* v. *Police Court,* 84 Cal.App.2d 257, 259 [190 P.2d 632]: "Thus it is quite apparent that whether the arrested person is taken immediately before a magistrate, or is given a five-day notice to appear and pleads not guilty and does not waive the requirement, a complaint under section **1426 of the Penal Code** `must' be filed. Unless waived, as provided by statute, the filing of such complaint is essential to the jurisdiction of the police court.
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> That has been the law of this state for many years. It was stated as follows in the case of *In re Williams,*(1920) 183 Cal. 11, 12 [190 P. 163];``It goes without saying that it is essential to the jurisdiction of a police court to put a person upon trial for a public offense that there should be on file therein a complaint charging such person with the commission of such offense.' (See, also, *People v. Brussel*, 122 Cal.App.Supp. 785 [7 P.2d 403].) It is also the law in other jurisdictions. [2] The rule, supported by many authorities, is stated as follows in 22 Corpus Juris Secundum, pages 456, 457, section 303: `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 accused has violated the law. It has also been defined as a preliminary charge before a committing magistrate; . . . The complaint is the foundation of the jurisdiction of the magistrate, and it performs the same office that an indictment or information does in superior courts.' (See, also, cases collected 16 C.J. § 492 p. 286.)" *Rupley v. Johnson*, 120 Cal.App.2d 548, 552-53 (Cal. Ct. App. 1953). (Bold emphasis added; § 1426 now **§ 740.**)

The term "private person" is defined in Black's Law Dictionary as a person other than one holding public office (e.g., District Attorney) upon whose complaint a criminal accusation is founded and who instigates the prosecution.

> Black's Law Dictionary 6th Edition (1990), page 1196: **Private person.** Term sometimes used to refer to persons **other than those holding public office** or in military services;
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> page 1221: **Prosecuting witness. The private person upon whose complaint or information a criminal accusation is founded** and whose testimony is mainly relied on to secure a conviction at the trial. In a more particular sense, the person who was chiefly injured, in person or property, by the act constituting the alleged crime (as in case of robbery, assault, criminal negligence, bastardy, and the like), and **who instigates the prosecution** and gives evidence. (Emphasis added.)

The DA, holding public office, is not a private person injured in person or property. DAs lack standing and/or statutory authority (§ 806) to instigate or execute a complaint as a complainant. They cannot file a **complaint charging a felony** as a pleading in the name of the People of the State of California in a felony case. **For decades, the DA has, is now, and unless corrected, will continue instigating felony prosecutions by this unlawful practice.**

A Complaint Cannot Be The First Pleading

Erroneously, the first pleading on the part of the people in felony prosecutions has been a felony complaint, with the DA serving as both prosecutor and complainant[1] and not the legislatively mandated indictment or information (PC §§ 682, 737).

A "complaint" is not included in the class of authorized accusatory pleadings available to the prosecutor for felony prosecutions as commanded in CGC § 26502 and as outlined in the California Constitution, Penal Code or California Supreme Court holdings (*Guillory*, supra).

The rule for interpreting statutory law is the Latin term *expressio unius est exclusio alterius*: "A principle in statutory construction: when one or more things of a class are expressly mentioned others of the same class are excluded." *Webster's Dictionary; Thomas Reuters Practical Law.*

The impeccable law of physics states that two objects can't cohabitate the same space. Likewise, an indictment, an information and a complaint cannot all be the ***first*** pleading filed with the court in a felony case; nor can a DA be both the prosecutor and the prosecuting witness in the same case.

Further compounding the DA's error when filing a felony complaint, is the fact that not only is there no statutory authority to do so, **government prosecutors are forbidden to file felony complaints**.

District Attorneys are directly supervised by the Attorney General (AG) (Cal. Const. art. V § 13). In 2005, AG Bill Lockyer clearly affirmed the law when stating before the Appellate Court: "government may not even be involved in the preparation, investigation and filing of a felony complaint." (*People v. Viray* (2005) 134 Cal.App.4th 1186, 1201).

Reasoning supporting the AG's statement of prohibition:

- The AG correctly understands that: the term "complaint" and "complainant" mean a **private person** making a **preliminary** charge or accusation to a justice of the peace or other officer that the accused has violated the law; as defined in PC § 806's controlling case, *Rupley v. Johnson*, supra: such a complaint being a necessary condition precedent to court jurisdiction and DA potential involvement by filing an information (PC § 738);
- common sense dictates the DA cannot be both the prosecutor and the complainant;
- the **first** pleading on the part of the people in a felony case must be an **indictment** or **information**, not a complaint;
- there is **no** plea available to a defendant named in a felony complaint brought on behalf of the people:

[1] An example of a criminal complaint as referenced is attached hereto and incorporated herein as Exhibit A.

PC § 1016: There are six kinds of pleas to an indictment or an information, or to a complaint charging a misdemeanor or infraction:

1. Guilty
2. Not guilty
3. Nolo contendere
4. A former judgment of conviction or acquittal of the offense charged
5. Once in jeopardy
6. Not guilty by reason of insanity

A defendant who does not plead guilty may enter one or more of the other pleas;

- a felony complaint does not confer trial jurisdiction on the superior court:
  "A felony complaint, unlike a misdemeanor complaint, does not confer trial jurisdiction. It invokes only the authority of a magistrate, not that of a trial court. (**§ 806**.)" *Serna v. Superior Court* (1985) 40 Cal.3d 239, 257; 22 C.J.S Criminal Law, 324, p. 390. (Emphasis added.); and,
- a complaint is only authorized for use to prosecute misdemeanors and infractions:
  PC § 740: Except as otherwise provided by law, all **misdemeanors** and **infractions** must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief. (Emphasis added).

For decades the DA has filed a fraudulent document, i.e., felony complaint, in the superior court. The filing is felonious (violation of PC § 115(a)); therefore, the prosecution and conviction is void, and the corrupt conduct results in confusion and chaos as evidenced in California's superior courts.

The DA, improperly relying on PC § 806 for authority, commits a crime when preparing and filing a false document (felony complaint) in a superior court (public office).

PC § 115: (a) 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.

(b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section.

The DA does not enjoy immunity from liability resulting from the filing of the false document: false arrest/imprisonment (California Government Code (CGC) § 820.4); civil and criminal (PC §§ 236, 237) liability for which there is no statute of limitations.

PC § 236: False imprisonment is the unlawful violation of the personal liberty of another.

PC § 237: (a) False imprisonment is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170.

The DA is committing a felony in the process of prosecuting a felony. And by committing a felony, due process guarantees that the accused must go free. If California law was properly upheld, the prosecutor would take the accused's place as a felony defendant.

Clearing the Confusion

The following discussion is how I understand the legislature intended the process for the DA's reaching a valid information to work. I am open to, and welcome, correction.

The DA may lawfully proceed toward securing an information when there **is** a private person complaint charging a felony (PC § 806) referred to the DA's office by a law enforcement officer or justice of the peace.

Upon receiving such a complaint, the DA now having information that offenses have been committed, may make application for an arrest warrant (PC § 813) and, at arraignment, if a **not guilty** plea is entered (PC § 859b) **and** the magistrate requires the DA's assistance (CGC § 26501), the DA becomes involved in assisting the magistrate; *but not in the name of the people as a prosecutor (CGC § 26502).*

> CGC § 26500: Generally. The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.
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> CGC § 26501: Proceedings before magistrates. The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed. **For that purpose**, when not engaged in criminal proceedings in the superior court or in civil cases **on behalf of the people**, he shall attend upon the magistrates in cases of arrest when required by them and shall attend before and give advice to the grand jury whenever cases are presented to it for its consideration. (Emphasis added.)
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> PC § 813: (a) When a complaint is filed with a magistrate charging a felony originally triable in the superior court of the county in which he or she sits, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued.
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> PC § 859b: At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with **Section 859a**, the magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time therefor as provided in Section 859, **shall set a time for the examination** of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. (Emphasis added.)

After the defendant has been examined by the magistrate and is ordered held to answer the charges in the complaint, the DA may prosecute the felony by creating (draw) and filing an "information" (CGC § 26502; PC § 739).

> CGC § 26502: Indictments and informations. The district attorney shall draw all indictments and informations.

Note: The district attorney has not been given authority to draw (create) a complaint.

PC § 739: When a defendant has been examined and committed, as provided in Section 872, it shall be the duty of the district attorney of the county in which the offense is triable to file in the superior court of that county within 15 days after the commitment, an information against the defendant which may charge the defendant with either the offense or offenses named in the order of commitment or any offense or offenses shown by the evidence taken before the magistrate to have been committed. The information shall be in the name of the people of the State of California and subscribed by the district attorney.

"Timely filing of the valid information gives the superior court jurisdiction to try an accused. (*Rogers v. Superior Court* (1955) 46 Cal.2d 3, 7 [291 P.2d 929]; *Greenberg v. Superior Court* (1942) 19 Cal.2d 319, 321 [121 P.2d 713]; *People v. Nation* (1952) 108 Cal.App.2d 829, 831 [239 P.2d 891]; Witkin, Cal. Criminal Procedure (1963) § 180, pp. 170-171.) 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 [62 Cal.Rptr. 1, 431 P.2d 625].) The superior court did not have jurisdiction to accept appellant's guilty plea or to enter judgment against him. The judgment is reversed." *People v. Smith* (1986) 187 Cal.App.3d 1222, 1224-1225.

Historically, the DA has filed **an information** only after the court was deprived of jurisdiction when the DA **first** filed an unlawful felony complaint (See Exhibit A). The information, being filed second, is untimely. An untimely information filing functions as if none had been filed at all.

The exception stated in PC § 949 (PC § 859a), is that the accused person can avoid a preliminary examination and information by entering a guilty plea to the complaint at time of arraignment.

The accused, arraigned on the prosecuting witness' complaint, is now termed a "defendant". However, unlike a defendant in an indictment or information brought on behalf of the people with benefit of six pleadings available (PC § 1016, supra) the defendant here has a choice of only two pleadings "guilty" or "not guilty".

At this time the defendant may plead guilty to the charges, avoid preliminary examination, information, trial and proceed to sentencing and prison. It is important to understand that this amounts to a contractual settlement between the parties (accuser and accused) approved and accepted by the court which is a relinquishment of all of the defendant's rights.

PC § 859a: **(a)** If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him or her whether he or she pleads **guilty or not guilty** to the offense charged therein and to a previous conviction or convictions of crime if charged. While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead **guilty** to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere. ...

Upon accepting the plea of guilty or nolo contendere the magistrate **shall certify the case**, including a copy of all proceedings therein and any testimony that in his or her discretion he or she may require to be taken, **to the court in which judgment is to be pronounced** at the time specified under subdivision (b), and thereupon the proceedings shall be had as if the defendant had pleaded guilty in that court.

(b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt of a plea of guilty or nolo contendere and upon the performance of the other duties of the magistrate under this section, **immediately appoint a time for pronouncing judgment in the superior court** and refer the case to the probation officer if eligible for probation, as prescribed in Section 1191. (Emphasis added.)

Contrasting Pleadings

Proper Pleading: Up to this point of appearance before the magistrate —the plea of guilty— if the proper proceedings were being followed, the magistrate has conducted the examination without requiring the attendance of the DA The plea of guilty —accepted and certified to the superior court— becomes the first pleading on the part of the people (PC § 949). There is no prosecution involved by the DA. Interestingly, the defendant has now agreed to punishment pursuant to a **felony complaint** made by a **private person**, as the statute (PC § 859a) provides.

Improper Pleading: Erroneously, without a private person complainant (prosecuting witness), the DA files a felony complaint —as complainant— in the name of the people. In this case, at the arraignment, the DA —as prosecutor— coerces the defendant to enter —and the court accepts— a plea of guilty or nolo contendere, and thus —without authority— certifies the case under PC § 859a, to the superior court for sentencing. Consequently, the defendant has been prosecuted —arrested, arraigned, sentenced and imprisoned— pursuant to a fraudulent document (felony complaint).

The Court Lacks Jurisdiction To Try The Accused

Arraignment or arrest pursuant to the illegal felony complaint commenced a criminal prosecution, and made subsequent filing of an information void; the court lacks jurisdiction.

The filing of an unauthorized pleading (complaint) by the DA charging a felony as the first pleading on the part of the people, albeit unlawful, still initiated a criminal prosecution (PC § 804(c) and (d)) and thereby deprived the court of subject matter jurisdiction.

PC § 804: Except as otherwise provided in this chapter, for the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs: (a) An indictment or information is filed. (b) A complaint is filed charging a misdemeanor or infraction. **(c)** The defendant is arraigned on a complaint that charges the defendant with a felony. **(d)** An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint. (Emphasis added.)

"In this jurisdiction, in contrast, a complaint does not merely operate to secure a warrant of arrest; indeed it may not have that function at all where, as here, no warrant is sought. 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. It thus solidifies the adverse position between the prosecutor and the defendant and marks the commencement of the prosecutorial, as distinct from investigative, phase of the criminal justice process. *People v. Viray*, 134 Cal.App.4th 1186, 1205 (Cal. Ct. App. 2005). (Italics in original.)

> Under California and federal law, no court can acquire jurisdiction to try a person for an offense unless he is charged in the particular form and mode required by law. And, a person may not be punished for a crime without a formal and sufficient accusation. *Albrecht v. United States*, 273 U.S. 1, 8 (1927); *People v. Vasilyan*, (2009) 174 Cal.App.4th 443, 449-450.

There is no statutory or other lawful authority for the DA to institute a proceeding before a magistrate for the arrest of any person pursuant to a DA's complaint charging a felony.

In the absence of a private person complainant ((PC § 806) instigating the prosecution, a complaint —made in the name of "the People of the State of California" and signed by the DA as complainant— filed by the DA in a Superior Court is unlawful.

But, DAs in this State have been doing so since at least 1951, thereby committing criminal violations of constitutional magnitude and statewide significance.

We the People know and must agree with what the United States Supreme Court has observed:

> "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 indeed predates it." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 678 (1970).

A necessary step in restoring law and order in California, is bringing the State's 58 District Attorneys into compliance with the law by demanding that this unlawful practice stop now!

The Prisoner Must Be Released

Release is the proper remedy —for violation of due process guarantee of the California Constitution, art. I, Sec. 7(a)— for lack of jurisdiction in the trial court and no judgment of conviction on superior court record: unlawful arrest/imprisonment.

In the absence of a sufficient authorized accusatory pleading (indictment, information) initiating the felony prosecution and providing the court with subject matter jurisdiction, there **can be no lawful judgment of conviction** entered on the court's record. And, in accord with this obvious defect, there are few, if any, judgment of convictions entered on any Superior Court's record.

> California Code of Civil Procedure § 664: "In no case is a judgment effectual for any purpose until entered."

> PC § 681: No person can be punished for a public offense, except upon a legal conviction in a Court having jurisdiction thereof.

A judgment of conviction is required for imprisonment in the State prison.

> PC § 1202a: "If the judgment is for imprisonment in the state prison **the judgment** shall direct that the defendant be delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place for the reception of persons convicted of felonies, except where the judgment is for death in which case the defendant shall be taken to the warden of the California State Prison at San Quentin." (Emphasis added.)

The California Legislature's intent is clearly drafted at Penal Code, Title 8, Chapter 1, mandating that loss of personal liberty is possible ONLY where a superior court criminal trial judge personally signs a "judgment of conviction" for certification and immediate entry on record by the court clerk. (Penal Code §§ 1202a, 1207; Code of Civil Procedure §§ 635, 664.)

Our courts agree, there are no legislative or judicial shortcuts, excuses, creations, loop-holes, exceptions, deviations by which to imprison any sane adult citizen in the absence of a "judgment of conviction". *People v. Banks* (1959) 53 Cal.3d 370, 383; *People v. Crow* (1971) 4 Cal.3d 613, 618; *People v. John* (2019) 36 Cal.App.5th 168, 175.

> "Judgment of conviction is one signed by the judge." *Payne v. Madigan*, (1960 CA 9 Cal.) 274 F.2d 702, affmd (1961) 366 U.S. 761, 6 L.Ed.2d 853, 81 S.Ct. 7, re. den. (1961) 368 U.S. 871, 7 L.Ed.3d 72, 82 S.Ct. 2 et seq.
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> "What shall be final process in criminal actions is prescribed in the four hundred and sixty-third section of the Act which regulates proceedings in criminal cases. It is a certified copy of the judgment as entered in the minutes of the court." *Ex parte Gibson*, 31 Cal. 619, 622 (Cal. 1867);
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> "'when a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.' ... 'the writ does not contain a certified copy of the judgment, nor does it appear that such copy was furnished to the officer whose duty it was to execute the judgment. The prisoner is therefore entitled to his discharge, and it is so ordered.'" Id. *Gibson*, 623.

With no judgment of conviction existing, the Director of Corrections has no authority to accept and imprison the defendant. The defendant must be released.

SUMMARY

I have clearly shown that the DA, for several decades, has failed to follow the law in prosecuting felonies; not representing and acting in the best interests of the People. It is not in anyone's best interest for the DA to expose the People to harm and themselves to civil and criminal liability by prosecuting and imprisoning citizens through the use of fraudulent documents.

Summarizing, the law requires the DA to file either an indictment or an information to initiate a felony prosecution. The DA has consistently filed a false document (complaint) to initiate a felony prosecution. The law requires a judgment of conviction to conclude a criminal proceeding and imprison a person. Research has shown that there are few, if any, judgments of conviction on any superior court record.

Consequently, individually or severally, the DAs' errors constitute a procedural defect fatal to every felony prosecution and to the jurisdiction of the State's criminal justice system.

Ultimately, the law requires those persons unlawfully imprisoned to be released.

Free those who are wrongfully imprisoned. Isaiah 58:6

Lonnie G. Schmidt, Advocate - Legal Researcher

LonnieGSchmidt@mail.com July 24, 2024

EXHIBIT A

COMPLAINT – CRIMINAL, San Joaquin County Superior Court, **CR-2021-0009356**, PEOPLE v. BUCK EUGENE MARCHAND, **August 27, 2021**. Seven Counts: "I, the undersigned, say, on information and belief, that in the County of SAN JOAQUIN, State of California:" (pages 1,8).

INFORMATION – San Joaquin County Superior Court, **CR-2021-0009356 (DA Case: 2021-4254078)**, PEOPLE v. BUCK EUGENE MARCHAND, **March 1. 2022.** Nine Counts: ". The said defendant(s) is/are accused by the District Attorney of the County of San Joaquin, State of California, by this Information".

Following are court clerk certified copies of the first pleading on the part of the People filed by the District Attorney in the Buck Marchand case:

- Complaint - Criminal charging a felony, Penal Code (PC) § 806;
- signed by an unidentified individual, signature unintelligible, as complainant (no authority available);
- used as probable cause for the District Attorney (DA) to obtain an arrest warrant, PC § 813;
- instigated the criminal prosecution without a prosecuting witness (no authority), and
- used to prosecute the case, sentence and imprison the defendant.

A "Not guilty" plea was entered at arraignment on the Criminal - Complaint (PC § 859b).

The government instigated the prosecution via felony complaint. This is not legally allowed, see Fatal Jurisdictional Defect.

- Felony prosecutions must be initiated by Indictment or Information, as there is no constitutional or statutory authority for the State to initiate a felony prosecution by complaint, Calif. Const. Article I, § 14; PC §§ 948, 949;
- the government may not even be involved in the preparation, investigation and filing of a felony complaint." California Attorney General Bill Lockyer, in *People v. Viray*, (2005) 134 Cal.App.4th 1186, 1201; and
- a "felony complaint… does not confer trial jurisdiction" *Serna v. Superior Court*, (1985) 40 Cal.3d 239, 257.

Seven months later, following a preliminary examination held pursuant to the illegal criminal complaint filed by the DA, an information was filed (PC § 739):

- Same case number;
- Signed by a Deputy District Attorney, signature appears same as that of complaint;
- same Counts and allegations as Complaint – Criminal plus more added; and
- "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.

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FILED
SUPERIOR COURT-LODI
AUG 27 2021
BRANDON E. RILEY, CLERK
BY [signature] DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Lodi Branch LOD-CR-FECOD-2021-9356

The People of the State of California,

Plaintiff,

v.

BUCK EUGENE MARCHAND ✓ 2ND STRIKE
KARLIE KATHLEEN SCOTT

Defendant(s).

No. MP21-26936
MPD CASE
DA Case: CR-2021-4254078

COMPLAINT

2ND STRIKE CASE

STATE PRISON [illegible]

Marchand
Booking# 2112397

9/3/21 830 C-Scott O'RD

9/1/21 8:30 C-Marchand-Bonded

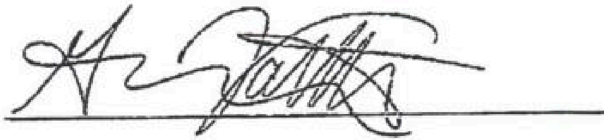
I, the undersigned, say, on information and belief, that in the County of SAN JOAQUIN, State of California:

COUNT 1: FELON/ADDICT POSSESS/ETC FIREARM PC.29800(a)(1)

On or about August 19, 2021, in the County of San Joaquin, California, BUCK EUGENE MARCHAND ✓ did commit the crime of FELON/ADDICT POSSESS/ETC FIREARM, in violation of Section 29800(a)(1) of the Penal Code, a FELONY, who at the time and place

I declare under penalty of perjury that the foregoing is true and correct except for those things stated on information and belief and those I believe to be true.

Executed on 8/21/2021, at Stockton, California.



bx