Held To *Answer*

by

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RFB - Proverbs 21:31
Juneteenth 2020

Free those who are wrongly imprisoned.
Isaiah 58:6 NLT

Commentary On Second Letter To California's Governor

On June 11, 2020, I sent a letter to California Governor Gavin Newsom, following up on my April 17, 2020 letter advising him of a civil rights problem of state-wide significance and Constitutional magnitude; to which he had failed to respond.

The purpose of the second letter was to (1) remind him of the continuing problem of illegal felony prosecutions and the unlawful confinement of prisoners in California's prisons; (2) to restate the civil rights violation issue in layman's terms; (3) to demand he address the criminal conduct of the involved state law enforcement and judicial officers; and, (4) to give notice of intent to publicize any failure to act.

Reminder of the problem.

The first letter **"Newsom, we have a problem..."** brought to his attention: "CALIFORNIA'S PRISONERS' CONFINEMENT VIOLATES THE CONSTITUTION AND LAWS OF CALIFORNIA AND THE UNITED STATES **...and we the People demand release!"** (a copy is available at **www.withoutoneplea.com** (click on "state"; see "The People demand release of all unindicted prisoners")).

The essence of the problem is that the massive unlawful incarceration is derivative of the illegal prosecution by the state in almost all criminal felony cases by means of "felony complaint"[1]. The law clearly and unequivocally mandates that the manner of prosecution of felonies shall be by indictment or, conditionally, by information[2]. The state can produce neither. Without one or the other, confinement in the state prison is illegal (Fn4).

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In my April letter, I had summarized, "the state is authorized to receive and hold in the state prison system ... 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 confined."

Based on my understanding of the foregoing fact of law, I made demand for my and other unindicted persons' immediate release from confinement in the state prison.

As of this date, neither the Governor nor anyone on behalf of the government has responded to my letter; and I remain illegally confined. However, I am encouraged that, without explanation, June 17, 2020 on KCRA 3 TV News, Sacramento, California, the Governor's Office announced the release of 3,500 prisoners effective July 1, 2020. It's a start! It stands to reason that if the Governor knows he has athority to release some for any cause, he has authority to release all who are illegally confined...and the duty to do so.

Restatement of the issue in layman's terms.

Issue: Confinement in the state prison requires a judgment rendered pursuant to a prosecution by indictment or valid information. There are few indictments of record. And, an information reguires a valid complaint (by a non-government person) in order to afford due process as a condition precedent to filing by the state.

Since at least 1951, the majority of all prosecutions have been initiated by illegal felony complaints made, prepared and filed by the government. Thus, prohibiting a lawful, valid prosecution by information.

Therefore, with no indictment of record and no possibility of a valid information, punishment by confinement in the state prison is a fundamental due process violation, shameful, immoral, unethical, unprecedented, and illegal.

When will we the People say "Enough! I want my loved one home!" and demand accountability from those public servants to whom we have entrusted the duty of protecting our freedoms? If not now, then when? If not we the People, then who?

The Governor has the authority and the duty once he has been made aware of the illegality of confinement -- to enforce the freedoms guaranteed the People by both the state and federal Constitutions and, notwithstanding the courts' judgment of conviction and sentence (void and un-enforceable even prior to reversal by a higher court; Fn7), as an operation of law -- to order the immediate and unconditional release of all persons illegally confined in the state prison. We the People demand he so do.

Articulating the necessity for a paradigm shift -- when so many astute attorneys and judges, for so long, have adopted an erroneous view of justice and imposed it without objection upon the People -- is not an easy task. But, I'm up for it.

Do you remember the colloquial wisdom of Benjamin Franklin concerning the importance of small things, as expressed in the poem "For Want of a Nail"? For want of a nail, the shoe was lost, for want of a shoe, the horse was lost...the rider, battle and kingdom was lost. For want of a horse-shoe nail.

For the state seeking prosecution by information, the analogy here is: For want of a valid complaint (due process) an examination was lost, for want of examination a commitment was lost, for want of commitment an information was lost, for want of an information a sentence in the state prison was lost...and for want of expeditious remedial action, a Governorship and Democratic Presidential bid was lost.

But justice restored, indictments of the involved public officers will fill the prisons once again...and all will not be lost. While there is still opportunity for government to act, would it not be wise to heed Franklin and not forget Solomon? "Catch us the foxes, the little foxes that spoil the vines, for our vines have tender grapes." (Song of Solomon 2:15 NKJV.) Tender and precious are our freedoms.

The involved legal "professionals" (District Attorneys, Defense Attorneys and Judges) have either misunderstood or deliberately ignored the law and have precipitated and perpetuated the problem we and our Governor must now deal with.

If the problem and solution is still not quite clear, I will attempt to restate the issue in straight-forward, simple English, which the **truth** of the law and procedure support: A felony complaint is not an authorized pleading, and when used by the state in a felony case is illegal, invalid and confers no jurisdiction upon the court. An information, which requires a valid (not bogus) complaint to proceed to an examination and commitment as a condition precedent to filing, is not, has not been, and can never be, a lawful substitution for indictment when obtained by bogus complaint.

Notwithstanding and not to be detered, the state has unlawfully used bogus felony complaints to initiate felony prosecutions for many years; seeking an information in order to avoid risking a grand jury's declination to indict. And the Courts, turning a blind eye, have obliged.

Felony complaint: a little fox that gnaws on the roots of the Constitution and spoils due process...prohibiting prosecution by information. Yet, by means of unlawful prosecutions by "information" procured by illegal "felony complaints", more than a hundred and twenty thousand persons now reside in the California state prison system.

Wherefore, the **truth** is, an information being an impossibility to access by bogus instrument (felony complaint) filed by the state, an indictment of a grand jury remains the **only** option for prosecution of a felony offense...and there are precious few. Indisputable evidence is the filed Felony Complaint initiating each case filed by the state in the Superior Court. With such of record and no indictment, confinement in the state prison is illegal and the inmate is entitled, as a matter and operation of law, to immediate and unconditional release.

"The truth is incontrovertible.
Malice may attack it and ignorance may deride it,
but in the end, there it is."
Winston Churchill

A quick review for the legal professional's perusal.

There are only two possible lawful modes for the prosecution of felony offenses punishable by confinement in the state prison: indictment or information.

Under California law, prosecution of all felonies shall be either by "indictment or, after examination and commitment by a magistrate, by information." (Emphasis added.) (Cal. Const. art. I, § 14; §§ 17(a), 18, 682, 737)*.

Since at least 1951, persons accused of a felony offense have been **held to answer** to an illegal accusatory pleading termed a "felony complaint". According to Placer County Superior Court Judge J.S. Penny, almost all felony prosecutions in California have been iniiated by a felony complaint signed by a District Attorney (Fn3).

However, with such felony complaints, former Attorney General Bill Lockyer, direct supervisor of California's District Attorneys, has publicly declared government may not be involved[3]. Something's wrong. A failure to communicate? Rogue attorneys? or, is the Attorney General lying? I think not the latter. Why?

The Attorney General's statement is accepted as true and is evidence in a court of law (Evidence Code § 1280); is based upon the fact that no mode of prosecution nor form of procedure is authorized by the Constitution or the Penal Code for a "felony complaint" (Fn1); a felony complaint cannot confer jurisdiction on the court (Fn3), is not authorized as a first pleading on the part of the People in a felony case (§ 949); and, there is no plea available to a defendant accused by felony complaint (§ 1016).

Therefore, as a matter of law, no authority exists for a felony complaint's use by the state to initiate a prosecution and punish any person[4]. When such a bogus (fraudulent) instrument is used by the state, a crime is committed (§§ 115(a), 132, 134; Fn1) and the examination (§ 738)[5] and commitment[6] conducted pursuant thereto, are void.

* Undesignated statutory references are to the California Penal Code.

At such time the unlawful felony complaint is endorsed by a judge and the defendant **held to answer** to the charges on the bogus complaint, a crime is committed. The prosecutions are illegal and judgment of conviction is void[7] and no information may be filed.

It then must follow, as the night the day, that all persons prosecuted by a felony complaint made by the state and committed to the state prison based upon an "information" obtained pursuant thereto, are confined in violation of the laws and Constitutions of California and the United States.

Held by the United States Supreme Court since 1884, yet ignored by state prosecutors, defense attorneys and judges, lawful substitution of an information for an indictment has been predicated upon a valid complaint being of record.

How is it supposed to work? An information (historically used for lesser offenses than a felony (misdemeanor); see, Hurtado v. California, at 539, infra), may be initiated by the District Attorney (§ 739) but only after an examination pursuant to a valid complaint (§ 738, Fn5) and commitment by a magistrate when the accused is "**held to answer**" (§ 872, Fn6).

The United States Supreme Court in Hurtado v. California, 110 U.S. 516, 538 (1884), held that an information may be substituted for a presentment or indictment of a grand jury only if the principles of due process are afforded by a lawful complaint and valid "examination and commitment by a magistrate certifying to the probable guilt of the defendant".

Absent a sufficient complaint (which a felony complaint made by the state is NOT), an information may not be lawfully filed by the state and substituted for an indictment.

Without an information to provide jurisdiction to the court, the only remaining doorway to the state prison is the grand jury process and entry by way of indictment. According to Judge Penny, there are almost no indictments of record in California (Fn3). However, if any be found, it should be determined in each case whether a felony complaint made and filed by the state preceded the indictment. If so, the indictment is invalid.

Therefore, when examinations are conducted pursuant to a bogus "felony complaint" initiated and filed by the District Attorney, due process is denied the accused and the court lacks jurisdiction. The judgment is void. The sentence to state prison is illegal and without authority (Fn7).

The state prison custodians, once noticed of the void judgment and illegal sentence, have no choice but to confirm the felony complaint filing and/or lack of indictment: and release the inmate as an operation of law. To continue to hold the person without authority invites civil rights litigation and criminal charges for the involved public officers.

Again, in my letter I boldly stated "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."

At first blush, such statement may appear contradictory to the above referenced conditional allowance for prosecution of certain felonies by information. Nevertheless, as has been shown, for reason of the state's error of using bogus complaints, there can be no valid informations of record in any court in this state and indictment is the only alternative. And there either is or is not an indictment of record in each case.

When the dust settles, absent California Department of Corrections and Rehabilitation (CDCR) record of a True Bill of indictment being filed in court at the outset of the prosecution, all unindicted prisoners are unlawfully confined.

Addressing state officers' criminal conduct.

It is incumbent upon this administration to pursue a thorough investigation to determine the liability of all involved public officers for failure to follow the law (Fn1,7).

"He who walks with integrity walks securely, but he who perverts his ways will become known." Proverbs 10:9 NKJV.

District Attorneys who file a fraudulent felony complaint commit a crime (Fn1). Defense attorneys who fail to object to the fraudulent felony complaint are ineffective and aiding and abetting unlawful prosecution and imprisonment. Judges who entertain the fraudulent felony complaint, conduct an examination and order the defendant be **held to answer** to the bogus complaint, act without jurisdiction: an act of treason[8].

The neglect of officers to follow the law and obtain the required legal charging instrument (indictment or information) prior to causing the imprisonment of any person in the county jail and/or state prison, constitutes willful omission to perform their duty and a violation of their oath of office[9].

The government officials and state prison custodians who, after being noticed of the unlawful confinement of persons in the state prison and fail to provide remedy, must be **held to answer** for conspiracy and criminal intent of false imprisonment.

DEMAND FOR RELEASE

I made formal demand for my and other prisoners release to occur within a specified period of time. Available on-line at **www.withoutoneplea.com** (click on "state"), is an example of a "Inmate Demand Letter to Governor for Release" similar to mine. It is designed to be used by persons incarcerated in the California State Prison system. Also on the menu is "What can we do to help?" ideas for family and friends to support the inmate. Once the gravity of the injustice is understood by family and friends that their loved ones are illegally imprisoned, and, regardless of the charges or length of sentence or time served, are entitled by law to release, they can take action to bring attention to that fact.

Who do they contact? News media, Pro-Prison Reform groups, (e.g., Black Lives Matter, Reform Alliance, etc.), Senators and Representatives. Celebrities e.g., Meek Mills (he's been there), Kim Kardashian (she has a big heart for unlawfully imprisoned), Rush Limbaugh (champion of justice (50 Million radio listeners)) for starters. Any manner that our voices may be heard..."ENOUGH IS ENOUGH! NO INDICTMENT, NO CONFINEMENT!"

NOTICE OF INTENT TO PUBLISH

I gave notice, that in the event the California state government, led by Governor Newsom, failed to effect the unconditional release of my person and, publicly announce the eminent release of other wrongly imprisoned (unindicted) persons from the state prison within Ten (10) days of his receipt of my letter (received June 17, 2020)[10], he would agree to the publication of -- as his personal statement and intentions regarding this matter, and to its release to the public and to make no objection thereto -- the statement contained in the press release "Immediate Release! CALIFORNIA'S GOVERNOR ORDERS MASS RELEASE OF PRISONERS! AND IT AIN'T CORONA, SWEETHEART!" available online at **www.withoutoneplea.com.**

Stay tuned to your radio/TV for Breaking News!

Ultimate Accountability

I brought to Governor Newsom's attention that Ronald Reagan who once sat in the office he now occupies, just East of the Capitol's rotunda, prominently displayed a plaque on his desk which read "The buck stops here."

Whether he left the plaque or not, the mantle of responsibility for the lives and liberty of the wrongly imprisoned has fallen on Governor Newsom's shoulders. He now has a rare opportunity to make history by stepping through a door of divine purpose: speaking and standing up for justice.

A Higher Authority than prior Governors is concerned and watching for his response. "I looked for someone who might rebuild the wall of righteousness that guards the land. I searched for someone to stand in the gap in the wall so I wouldn't have to destroy the land, but found no one'...'Yet who knows whether you have come to the kingdom for such a time as this?'" Ezekiel 22:30 NLT; Esther 4:14 NKJV.

To remind him of the urgency for immediate and decisive action, I raised the specter of prison politics, murders, suicides and Coronavirus, asking that, in light of his knowledge of the illegality of confinement, whether these incidents might be considered by some to be cirminal negligence: wrongful deaths.

I also reminded the Governor that when we act in the interest of truth and justice we act in that which God delights (Jeremiah 9:23-24). He will teach, instruct, and guide us as we step out in faith. (Psalm 32:8 NKJV.) And therefore, since we will all eventually be **held to answer** for the deeds we've done while here on earth (Romans 14:12), he should conduct himself accordingly. I await the Governor's response.

Conclusion

The United States Constitution mandates prosecution of felonies is to be by presentment or 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.) This is a federal right only and has not been extended into California by the Fourteenth Amendment.

However, California law does require prosecution of all felonies to be by <u>indictment</u> or, upon fulfillment of conditions of due process, may be by <u>information</u>.

When a District Attorney elects to avoid indictment and proceed by information, certain conditions of due process must be met. The primary condition precedent to an information is a valid complaint; filed prior to an examination. When due process is not afforded, a commitment is not possible and the conditions for an information are not met. An information may not lawfully be filed by the state. The prosecution is void as an operation of law: the court lacks jurisdiction.

When, as has been the long-standing practice by the state, an information <u>is</u> filed without meeting the required conditions, a violation of due process occurs. Due process is both a federal and state Constitutional guarantee...without it prisoners go free.

Inasmuch as the state actors (District Attorney, Defense Attorneys and Judges) violated the law by filing and proceeding pursuant to a bogus complaint, the conviction is null and void. The unlawfully confined must be released from prison.

No indictment, no valid information...no confinement.

The state, notified of the fraudulent felony complaint, information and lack of indictment, need only confirm these facts from records in their possession or readily available and not return to the court system for blessing. Any delay of unindicted inmate release by the Governor's office by resort to the court for judicial intervention must and will be, considered a willful criminal act and intention to further violate civil rights.

Epilog

June 19, 1865 (Juneteenth) a United States Army Officer stood on a Hotel balcony in Galveston, Texas (not far from where my wife of 55 years, Connie, was born (years later of course!)) and announced that slavery in the United States was ended...and had been for over two and one-half years. How many enslaved persons died at the hands of cruel taskmasters during that lapse of time? They were free and didn't know it!

Juneteenth 2020, a United States Army Officer sat at a borrowed typewriter in CSP Solano and announced that slavery in the state prison is ended...and, due to illegal prosecutions by the state, had been for over 60 years. How many illegally confined persons have died by their own hands from despair and hopelessness with "life without parole" sentences, at the hands of others over prison politics, or old age during that lapse of time? How many more will die from Coronavirus? They were entitled to freedom all the time and didn't know it!

Two thousand years ago, on a hill far away, stood an old rugged cross and announced to the world that sin and death were conquered and eternal life was available to all. (John 3:16; Romans 10:9-13.) The evidence is an empty grave. Jesus is risen! He is the **Truth**, Life and the Way Home! (John 14:6.)

Inasmuch as I asked God to show me the truth about the judicial system (Jeremiah 33:3) and He did; and, I've freely shared with you what I've learned so you can go home, I now take the liberty (great word!) to share the above and that which follows as coming from my heart's concern for each prisoner's eternal freedom.

Someone once asked what it might profit a man if gains his freedom, home and the whole world, but loses his own soul? (Matthew 16:26.)

One day we will all be asked what we did with such a great opportunity for an abundant life here on earth and pleasures for evermore with God. What will you say?

Footnotes

1 Felony complaint: bogus (fake): there is no mode in the Constitution or form in the Penal Code (§ 948, et seq.). However, the state prosecutors have simply used the same form and format sanctioned for use for indictments and informations: § 951 (infra).
See example of those felony complaints in continued use by the state at **www.withoutoneplea.com** (click on "state") last pages of "The Truth, The Whole Truth...And Nothing But" and "Citizen Complaint, Sacramento County, December 29, 2019" (Joseph DeAngelo felony complaint).
All "felony complaints" made by a district attorney as a first pleading in a felony case; violation of §§ 948, 949, for which no plea is available (§ 1016) and the filing of which by the state is a public offense: a felony (§ 115(a)).

2 Indictment: "An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense"; "a formal written accusation charging one or more persons with the commisson of a crime, presented by a grand jury to the court when the jury has found, after examining the evidence presented, that there is a valid case." § 889; Webster's New World Dict., 1991 p. 687.

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.

Section 951 Form: "The People of the State of California against A.B. In the superior court of the State of California, in and for the county of _____. The grand jury of the county of _____ hereby accuses A.B. of a felony (or misdemeanor), to wit: (giving the name of the crime, as murder, burglary, etc.), in that on or about the ___ day of _____, 19[20]__, in the county of _____, state of California, he (here insert statement of act or omission, as for example, "murdered C.D."). §§ 951, (see, 959(2), for sufficiency.)

3 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." See, "Handling The Truth" p. 7 at **www.withoutoneplea.com** for citation.

Illegal "felony complaint": See, GROUNDS FOR RELIEF, Ground 1, Generally, pages 6.1-6.22. Specifically, pages 6.9-6.11 "The State is not authorized by law to initiate a felony prosecution by mode of complaint" at **www.withoutoneplea.com.** This prohibition on government was made abundantly clear in 2005 by then Attorney General Bill Lockyer's public statement that "the 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. However, in almost every criminal case since 1951, government was involved with the preparation, investigation and filing of a felony complaint.

A felony complaint made by a government agent is a false instrument and when filed in the court does not confer jurisdiction. "A felony complaint, unlike a misdemeanor complaint, does not confer trial jurisdiction." Serna v. Superior Court, (1985) 40 Cal.3d 239, 257.

4 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 (indictment or information). And, a person may not be punished for a crime without a formal and sufficient accusation.
"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, 8 (1927). No mode or form for felony complaint.

5 Section 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 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).)

6 Section 872: "the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: 'the offense in the within complaint...has been committed,...I order that he or she be **held to answer** to the same.'" ((Emphasis added.) Inasmuch as the felony complaint is bogus, the judge's endorsement is without jurisdiction and void. The case must be dismissed. A valid information may not be filed.

7 Under Federal law, which is applicable to all states, the United States Supreme Court has held, that if a Court is "without authority, it's judgments and orders are regarded as nullities. Continuing: "[The judgments and orders] are not voidable, but simply void; and form no bar to a recovery sought, even prior to reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law as trespassers." Elliot v. Piersol, 1 PET. 328, 340, 26 U.S. 328, 340 (1878).
"If a judge does not fully comply with the Constitution, then that judge's orders are void." In Re Sawer, 124 U.S. 200 (1881).

8 "Whenever a Judge acts where he or she does not have jurisdiction to act, the judge is engaged in an act or acts of treason." U.S. v. Will, 449 U.S. 200, 216 (1980).

"We [Judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821).

9 "I, [Governor, District Attorney, Deputy DA, et al,], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."
"The duty enjoined by law for the performance of which the officer is punishable relates to acts to be performed by the incumbent in his official capacity." Ex parte Harold, (Cal. October 1, 1873) 47 Cal. 129, 1873. Such malfeasance is a public offense punishable by imprisonment and removal from office. (§§ 182(a)(1-5), 236, 661; Government Code ("GC") § 1222; Business and Professional Code ("B&P") §§ 6068, 6128(a).)

10 June 11, 2020 letter to Governor Newsom, sent by U.S.P.S. Certified Mail, from which this Commentary is made, is available for viewing and download at **www.withoutoneplea.co.**

The Governor's agreement for his public statement as found in NOTICE OF INTENT TO PUBLISH portion of the letter, is obtained through the settled legal principle of aquiesence by silence or inaction. If he acts in a timely manner, publication will be unnecessary...mission accomplished...justice served. If he fails to act when he has the duty to do so, publication occurs. If he still fails to act...what will we the People do?