Ex parte	**IN THE «Court»**
«First» «Middle» «Last»	**«County» COUNTY, TEXAS**

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

Filed this Day_____

To the Honorable Judge of Said Court:

Now comes «First» «Middle» «Last», hereinafter referred to as "Relater," acting under authority of Article 11.12 Texas Code of Criminal Procedure:

> Art. 11.12. WHO MAY PRESENT PETITION.
>
> Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

and files this petition and application for writ of habeas corpus and would show the court due cause by the following.

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CONTACT INFORMATION

Relater in the instant cause may be contacted at

«First» «Middle» «Last»
«Address»
«City», «ST» «Zip»
«Phone»

Respondent may be contacted at the location indicated below:

«First» «Last»
«Address»
«City», «St» «Zip»

«Phone»

RELATER IS ILLEGLLY CONFINED

Relater, is illegally confined and restrained at liberty by the «County», hereinafter referred to as "Respondent." Relater, having been arrested and confined in the «County», hereinafter referred to as "jail," is currently restricted at liberty awaiting adjudication of criminal accusations.

STATEMENT OF CAUSE

Relater was arrested and subjected to a series of schemes carefully crafted by police, magistrates, prosecutors, and Judges toward the outcome of denying those accused of crime in the due course of the laws in order to extort monies from same under the guise of fines and fees, in contravention to the due course of the Constitution and laws of the State of Texas. The practices and procedures herein demonstrated constitute a criminal connivance, which amounts to an ongoing conspiracy to disenfranchise citizens of the basic fairness intended by the body of the laws. By this document, Relater will demonstrate that Relater is being restricted at liberty subject to the above alleged improper practices.

By the following, Relater will demonstrate with specificity and particularity how each act of abuse has been designed to interrupt those accused of crime in their natural expectation of fundamental fair treatment. They are then Subjected to treatment intended to use said interruption as an opportunity to frighten, intimidate, and subjugate the accused in order to suppress the expression and demand of rights considered waived if not expressed or demanded.

ALLEGATIONS OF ORGANIZED CRIMINAL ACTS

Relater was seized and wrongfully held by arresting officer toward the furtherance of the commission of felony crimes to the detriment of Relater. Relater, after arrest, was improperly secreted from the nearest magistrate as a matter of policy, taken by force by an officer displaying

a deadly weapon, and improperly confined in jail in order that Relater could subjected to punishment by jail personnel. Relater was then brought before a magistrate who continued the improper and abusive treatment of Relater by holding an examining trial in ex parte and in secret wherein the liberty interest of Relater was determined by the magistrate in the form of a determination of probable caus. Relater was then Subjected to prosecutorial tactics designed and intended to continue the abuse initiated by the arresting officer and supported and continued by the jailer and magistrate.

It is the specific accusation and allegation of Relater that all the above was perpetrated in order to facilitate the extortion of monies from Relater in the form of fines and fees levied in furtherance of an ongoing criminal enterprise. Said criminal enterprise is accomplished through the perpetration of multiple schemes, engaged in by numerous functionaries, occurring over time, toward a common and continuing elicit outcome. It is not the position of Relater that Relater has been singled out for special persecution. It is the specific accusation and allegation that the above improper practices are part and parcel to an ongoing pattern of improprieties perpetrated on every person taken into custody by the policing agency.

Relater further alleges, the extortion of funds form Relater, et al, is but a secondary consequence of the primary outcome intended by the schemes. It is the specific assertion and allegation of Relater that Relater was exposed to punishing intimidation, subjugation, and humiliation, in order to so psychologically inhibit Relater and others accused of crime as to quell any expectation of fundamental fairness, or common civility at the hands of the police and courts. This has been done in order to create an expectation of abusive treatment at any attempt to assert rights assumed waived if not asserted or demanded, and thereby, facilitate the avoidance of a fair trial through the implementation of an improper plea agreement.

> "There are few more horrifying experiences than that of being suddenly snatched from a peaceful and orderly existence and placed in the helpless position of having one's

liberty restrained, under the accusation of a crime." *Halliburton-Abbott Co. v Hodge, 172 Okla 175, 44 P2d 122, 125*

CAREFULLY CRAFTED CRIMINAL CONSPIRACY

America is steeped in traditions of freedom, justice, and the rule of law. From the time we can learn all are indoctrinated in the righteous rhetoric extolling the sanctity of inalienable rights, sovereign individual freedoms, and the fundamentally fair application of the rule of law. Having been so exposed from first learning's, people, including Relater, are lead to expect treatment from their public employees to reflect a fundamental fairness, common dignity, reasonable deference, and a modicum of respect.

Grifters, con artists, and unscrupulous scoundrels tend to be well aware of those aspects of the cultural psyche driven by deeply engrained expectations of common civility and adherence to the cultural norms. They are also well aware of how those mostly unstated pre-suppositions render the average person vulnerable to contrived interruptions of those expectations. Ordinary people simply do not expect their public servants to treat their sovereignty with a total disregard for well-established norms of civility and due course of law. Neither do ordinary persons of reasonable prudence expect those in positions of public trust to outrageously betray that trust.

When a person has everything they have come to expect ripped from under them, they are left in a state of disorientation, psychologists call “pattern interruption.” They are without any available behavior. If you can remember a time when something totally unexpected happened and you found yourself with no way to respond, stuck, then you recognize how psychologically devastating that can be and how vulnerable you become.

This very circumstance is actively cultivated by the actions and behaviors of the actors presented below. The arresting officer has been trained to conduct himself in a manner as to take total control through a posture which allows absolutely no resistance. By interrupting the accused expectation of civil treatment, initiates the interruption of the expectation of treatment.

The jailers to whose custody the officer renders the accused continues the pattern of punishment and abuse. This pattern is followed by the magistrate and prosecuting attorney in their turn. Even the Judges follow along without interruption or intervention of the mistreatment they have to know is improper.

The particular expectation of the American citizen is no mere minor unstated presupposition. People are actively taught and trained from birth and through school to hold this expectation above most all others. Texas House Bill 72, passed in 1984, the Education Reform Bill pushed through the Legislature by Ross Perot was touted as being about eliminating social promotions, but that was the second mandate in the bill. The first was so normal to our way of thinking that it never once got mention in any press. The first mandate was that the school shall instill in the child a deep and abiding faith in and respect for the American form of government. To their credit, the schools in America, and especially in Texas do just exactly that.

This brings us to the audacity of the corrupt, conniving, conspiracy presently practiced by Prosecutors and those acting under their direct advice to police and inferior courts. Our Legislature, in its wisdom, found it expedient to take advantage of learned counsel already in its employ and directed prosecutors to render legal advise to the police and lower courts. In ordinary circumstances it would be unconscionable to allow an attorney to render advice to officials in matters in which the attorney would have a professional interest. What would you expect of a harried prosecutor rendering advice to those involved in the handling of cases s/he must prosecute? This notion of allowing prosecutors to advise the police on matters of practice and procedure toward cases ultimately handled by the prosecutor was a prescription for just the sort of disaster we now experience. Instead of rendering legal advice, prosecutors have entered into a criminal conspiracy with police, jailers, magistrates, and Judges toward easing the prosecutorial burden, maintaining a high conviction rate, and securing funds for the State.

Prosecuting attorneys, acting in concert and collusion with police officers, jailers, magistrates, and Judges have carefully crafted a set of practices and procedures intended to place persons accused of crime in such a position of psychological disruption that they have little reasonable alternative to entering into a plea bargain with prosecutors. In order to accomplish this, most every right of the citizen is not only violated, but violated in a so contrived, aggressive, and blatant a manner as to completely interrupt any expectation of justice and fair treatment. The accused are put in a seemingly impossible position wherein the most reasonable solution is to take a deal to put an end to the torture and torment intentionally perpetrated on them toward just that reaction and outcome.

The following is complex and convoluted. When considered individually, in isolation, the individual acts alleged appear little more than a series of minor adjustments toward administrative convenience and adjudicative expediency, however, when more carefully examined in pari materia, the effect is glaring and undeniable. Likewise, the underlying law so blithely abated by the actors indicated, when considered from the perspective of the corpus juris, demonstrate a well crafted body of law, a body of law which anticipated the very violations indicated and included specific statutes enacted to prevent just the result demonstrated herein.

What immediately follows is a demonstration of a set of practices specifically designed to render citizens unable to object to the improper practices they are Subjected and how the practices have been finely focused toward the facilitation of the implementation of a plea bargain. Subsequently, Relater will demonstrate a second conspiracy, separate, yet specifically intended to facilitate the first. The second conspiracy presented will demonstrate how all these public officials can perpetrate the alleged crimes with virtual impunity and how prosecutors violate very specific statutory requirements in order to protect members of the alleged conspiracy from the criminal consequences of their participation in acts orchestrated by prosecutors.

STATEMENT OF FACTS

On the «DateOfArrest»complainant was arrested by «ArrOffFrist» «ArrOffLast», hereinafter referred to as "defendant." Complainant was searched, handcuffed, and placed in a patrol car. After making the arrest of complainant, defendant took complainant directly to the «County» County Jail, in accordance with established department policy, having made no due diligent effort to locate a magistrate, in violation of Article 14.06 Texas Code of Criminal Procedure rendering said act against complainant an act in violation of Section 20.04 Texas Penal Code.

At the «County» County Jail, complainant was transferred to the custody of jailers who, acting in accordance with established policy, complainant held «Hrs» hrs/days before being brought before a magistrate. During the period of incarceration, complainant was subjected to a coercive, intimidating, humiliating, and subjugating booking procedure that would have been a clear violation of law had complainant been brought before a magistrate and no probable cause found. Said act was committed in violation of Section 39.03 Texas Penal Code.

Complainant was brought before a magistrate who advised complainant of rights under the auspices of Article 15.17 Texas Code of Criminal Procedure, of the charges against complainant, and of the bail already set in the matter. Inasmuch as bail may only be set by a magistrate after an examining trial, according to Article 17.05 Texas Code of Criminal Procedure, and complainant, although in jail and under the complete control of jailers, was not present at said examining trial as specifically made complainant's right under Article 16.01 Texas Code of Criminal Procedure, complainant has reason to believe and does believe that the hearing wherein magistrate was presented with evidence against accused, a probable cause determination was made, and bail set, was held in a secret hearing from which complainant was forcibly denied access in violation of Article 1.24 Texas Code of Criminal Procedure.

The jailer and magistrate had ex parte communication wherein the magistrate received evidence into the court in violation of Texas Rules of Evidence, and made a determination of probable cause in secret based on said evidence.

Complainant was denied opportunity to secure counsel in violation of Article 16.02 Texas Code of Criminal Procedure.

Complainant was denied opportunity to enter a voluntary statement in violation of Article 16.04 Texas Code of Criminal Procedure.

Complainant was denied in his right to question the witness in violation of Article 16.06 Texas Code of Criminal Procedure.

Magistrate received evidence in violation of the Texas Rules of Evidence in violation of Article 16.07 Texas Code of Criminal Procedure.

Magistrate examined witness outside presence of complainant in violation of Article 16.08 Texas Code of Criminal Procedure.

Testimony was not proper certified by magistrate in violation of Article 16.09 Texas Code of Criminal Procedure.

Magistrate failed to prepare an order, committing complainant to the jail within 48 hours, as required by Article 16.17 Texas Code of Criminal Procedure.

The acts alleged in paragraphs 4 through 12 have the effect of subjecting complainant to improper prosecution, in violation of the due course of the laws, to the detriment of, and deprivation of the rights of complainant in violation of Section 39.03 Texas Penal Code.

After the hearing wherein a finding of probable cause was made, the magistrate failed to seal all the documents, had in the hearing, in and envelope, causing his name to be written across the seal, and forward them to the clerk of the court of jurisdiction as commanded by Article 17.30 Texas Code of Criminal Procedure. Said act had the effect of secreting the records used by the magistrate to make the probable cause determination from the court, placing complainant in a

state of legal limbo, wherein complainant was restricted at liberty with no cause in the court where complainant could file motions in complainant's behalf. Said act also hid from the court the fact that a prosecution had commenced with the arrest of complainant. It is the contention, assertion, and specific allegation of complainant that the magistrate returned the records to the jailer who forwarded same to the prosecuting attorney to the exclusion of the clerk of the court, in violation of Section 37.10 Texas Penal Code.

Complainant asserts and alleges, the arresting officer, and jailers were acting in accordance with accepted policy established and enforced by the director of the agency having authority over the jail facility. It is the further contention and allegation of complainant that said policies have been adopted and promulgated in concert and collusion with the advice of the prosecuting attorney. Therefore, in as much as the arresting officer committed a crime upon arrest of the accused, and the jailers continued the abusive treatment of complainant and added criminal acts against complainant, as well as the magistrate who found probable cause, and all the aforementioned acted in accordance with policy established and enforced by the director of the jail facility upon advice and counsel with the prosecuting attorney, it must be construed the acts being in harmony, one with the other, were committed as the result of a criminal conspiracy engaged in by all the above alleged actors, and therefore, all are culpable for the acts of all the others as if each committed each act personally.

NO REASON TO FEAR FROM RELATER

Relater, at the time of arrest, gave police no reason to fear for their safety from Relater. A search of Relater was made subsequent to arrest where no weapons were found; Relater's hands were cuffed with no effort to resist; neither did Relater offer any verbal threat of any physical

resistance or retaliation. When directed to the police car, Relater complied without physical resistance.

RELATER SECURED AFTER ARREST

After the arrest was made and Relater was placed in the back of the patrol car, arresting officer had no objective reason for concern for his/her safety or that Relater would escape.

NO INTERVENING CIRCUMSTANCES NECESSITATING DELAY

In the instant cause, there was no flood, storm, riot, or any other intervening circumstance to necessitate the officer's immediate attention, which would justify a delay in bringing Relater before a magistrate. Neither did Relater observe the officer, through the use of his police radio or cell phone, make any attempt to locate a magistrate for the purpose of securing jurisdiction to continue to hold Relater.

> In endeavoring to take the arrested person before the magistrate, the officer must expend all the effort that a highly cautious person would employ in the same circumstances.[FN85] *Robinson v. Lovell, 238 S.W.2d 294 (Tex. Civ. App. Galveston 1951), writ refused n.r.e.*

DUTY TO TAKE BEFORE MAGISTRATE WITHOUT UNNECESSARY DELAY

Article 14.06 Texas Code of Criminal Procedure directs the arresting officer to take the person arrested, with or without a warrant to the nearest magistrate.

> Art. 14.06. Must take offender before magistrate
> "Except as provided by Subsection (b), in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in a county bordering the county in which

> the arrest was made. The magistrate shall immediately perform the duties described in Article 15.17 of this Code."

Without considering the lawfulness of the warrantless arrest, for the purpose of jurisdiction, this particular argument will only consider the actions subsequent to arrest. The immediate issue addresses the duty of the arresting officer to take the accused before a magistrate to secure jurisdiction such that the State may rightfully continue to restrict Relater at liberty.

> [28] Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while the Court has expressed a preference for the use of arrest warrants when feasible, Beck v. Ohio, at 96; Wong Sun v. United States, 371 U.S. 471, 479-482 (1963), it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. See Ker v. California, 374 U.S. 23 (1963); Draper v. United States, 358 U.S. 307 (1959; Trupiano v. United States, 334 U.S. 699, 705 (1948).
>
> [29] Under this practical compromise, a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the State's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly. The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. See R. Goldfarb, Ransom 32-91 (1965); L. Katz, Justice Is the Crime 51-62 (1972. Even pretrial release may be accompanied by burdensome conditions that effect a significant restraint of liberty. See, e. g., 18 U. S. C. 3146 (a)(2, (5). When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. *GERSTEIN v. PUGH ET AL, 95 S. Ct. 854, 420 U.S. 103, 43 L. Ed. 2d 54, 1975.SCT.40602*

The arresting officer failed to take Relater directly to the nearest magistrate. While certain delays can be expected in certain circumstances, simple failure to seek the authority envisioned by Gerstien v Pugh above, may not be construed as a proximate cause of reasonable delay. The seminal case on this Relater under Texas State Law is *Heath v Boyd, 141 Tex. 569; 175 S.W.2d 214; 1943 Tex. LEXIS 370*.

> "Moreover, if Heath's arrest had been authorized by the statutes, his subsequent detention as pleaded proved would make a case of false imprisonment against Boyd. The undisputed facts are that after his arrest Heath rode with the sheriff to the former's car,

> which he then entered and drove several miles to the courthouse, followed by Boyd. There he was detained in Boyd's office from one to three hours, while Boyd was seeking advice by telephone as to what to do, in the face of a plain statutory command as to [***13] what must be done in all cases of arrest without warrant. Art. 217, C.C.P., 1925, provides, "I each case enumerated in this chapter, the person making the arrest shall immediately take the person arrested * * before the nearest magistrate where the arrest was made without an order." Substantially the same requirement appears in Art. 325, C.C.P., 1925, and Art. 487, P.C., 1925. Presumably, there was a magistrate in Mertzon, the county seat. Yet Boyd offers no reason why he did not take Heath before that official. Neither in his pleadings nor in his testimony does he suggest that a magistrate was not reasonably available, although the arrest and detention all occurred between 8 o'clock in the morning and noon. If he had taken Heath to that official, he could have gotten the information and assistance he was seeking by telephone. He was under no obligation to seek advice or aid from Johnson. He was under a positive duty immediately to seek a magistrate. That such failure, unexcused, makes a case of false imprisonment, as a matter of law, is held by all the authorities. Newby v. Gunn et al, 74 Texas, 455, 12 S.W. 67; McBeath v. Campbell, 12 S.W. (2d) 118; Alamo Downs, Inc., et [***14] al v. Briggs (Civ. App.), 106 S.W. (2d) 733 (er. dism.); Box v. Fluitt (Civ. App.), 47 S.W. (2d) 1107; Maddox v. Hudgeons (Civ. App.), 72 S.W. 414 (er. ref.); [**218] Karner et al v. Stump (Civ. App.), 34 S.W. 656; **Petty v. Morgan** et al (Civ. App.), 116 S.W. 141; Bishop v. Lucy et al (Civ. App.) 50 S.W. 1029; 35 C.J.S., p. 546, sec. 31." *Heath v Boyd*, *141 Tex. 569; 175 S.W.2d 214; 1943 Tex. LEXIS 370*

The arresting officer in this case made no due diligent effort to locate a magistrate.

> "Although the failure to take the plaintiff before a magistrate would have been excused if good grounds had existed for the belief that a magistrate was not available, such was not the case since the Relater **officers made no attempt to determine whether the magistrate was or would make himself available."** ***Roberts v Bohac, 574 F2d 1232***

Irrespective of any other states, Texas has specific legislation concerning this requirement to take the accused before a magistrate. Not only must the arresting officer exhaust the available magistrates in the county, the consideration of the availability of a magistrate must be extended to include every surrounding county (see Texas Code of Criminal Procedure Article 14.06 supra).

> The record offers, as the government's only justification, evidence that the magistrate, who issued the warrants, advised of his unavailability after the early evening of Friday, September 8, 1989. There are three other magistrates in the District. The record is bereft of any evidence as to their availability. Likewise, the record is bereft of any evidence as to the availability of any of the district Judges. n5 Absent evidence of other than the unavailability of the duty magistrate (the propriety of which is not here questioned), there is no basis to find that the delay for the entire period from [*20] the arrest to presentment was necessary. To be sure, it was a weekend. The court was closed. But those facts do not entitle the government to presume the absence of an obligation to try to arrange the appearance of an arrestee before one of the other possible judicial officers. The law remains a force in life even outside usual business hours and all judicial officers have the obligation to respond to the needs of parties as they are mandated by the law. Relater to their reasonable non-judicial activities, all judicial officers stand ready to fulfill that obligation. Here, the government has not shown the unavailability of all the

> possible judicial officers. The obligation of complying with the law lies with the government, which thus has the burden of proving that an arrestee was brought before a judicial officer without unnecessary delay. Its proof of the unavailability of one judicial officer does not prove that the delay to the next regular business hours, some sixty to sixty-five hours later, did not constitute unnecessary delay if it does not exhaust the possibility of an appearance before one of the other judicial officers in the district. See United States v. Colon, 835 [*21] F.2d 27, 30-31 (2d Cir. 1987). *UNITED STATES v. MORGAN, et al. 1990 U.S. Dist. LEXIS 6206*

The arresting officer, acting in accordance with established police policy, took Relater directly to jail having made no effort to locate a magistrate for the purposes stipulated by Article 14.06 and the federal requirement articulated by *Gerstien v Pugh* supra.

SUBJECT PUHISHED AS INTENTIONAL INTIMIDATION

Relater was taken to jail, not because the arresting officer was unable to locate a magistrate in the county or any surrounding county, but as a matter of police policy. Arresting officer was acting in furtherance of an ongoing set of schemes intended to punish, coerce, and intimidate Relater in order to suppress any dissent or objection.

> Merely being arrested is for most persons an "awesome and frightening" experience, an invasion of considerable proportion. ALI, Model Code for Pre-Arraignment Procedure, Commentary 290-91 (1975); *see Foley v. Connelie , 435 U.S. 291, 98 S. Ct. 1067, 55 L. Ed. 2d 287, 46 U.S.L.W. 4237, 4239 (1978)* ("An arrest . . . is a serious matter for any person. . . . Even the routine traffic arrests made by the state trooper . . . can intrude on the privacy of the individual."); *United States v. Watson, supra, 423 U.S. at 428 (Powell, J., concurring).* ("A search may cause only annoyance and temporary inconvenience to the law-abiding citizen, assuming more serious dimension only when it turns up evidence of criminality. An arrest, however, is a serious personal intrusion regardless of whether the person seized is guilty or innocent."); *Chimel v. California, supra, 395 U.S. at 776* (White, *J*., dissenting) ("the invasion and disruption of a [**30] man's life and privacy which stem from his arrest are ordinarily far greater than the relatively minor intrusions attending a search of his premises."). *United States v. Reed, 572 F.2d 412; 1978 U.S. App. LEXIS 11727; 3 Fed. R. Evid. Serv. (Callaghan) 155*

The personal intrusion referenced by United States v. Reed supra is exactly the effect intended by the policy to arrest and transportation directly to the jail.

> In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. n16 For (HN4Go to the description of this Headnote.under the Due Process Clause), a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law. n17 [*536] See Ingraham v. Wright, 430 U.S. 651, 671-672 n. 40, 674 (1977); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 165-167, 186 (1963); Wong Wing v. United States, 163 U.S. 228, 237 (1896). A person lawfully

> committed to pretrial detention has not been adjudged guilty of any crime. He has had only a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." Gerstein v. Pugh, supra, at 114; see Virginia v. Paul, 148 U.S. 107, 119 (1893). And, if [***467] he is detained for a suspected violation of a federal law, he also has had a bail hearing. See 18 U. S. C. §§ 3146, 3148. n18 Under [**1873] such circumstances, the Government concededly may detain him to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions [*537] do not amount to punishment, or otherwise violate the Constitution. *Bell v. Wolfish, 441 U.S. 520*

In the instant cause, Relater has not been found guilty of any crime; Relater has not yet even been accused of any crime. Relater was merely being held awaiting a judicial determination as to rather or not Relater will be accused. By the instant cause, it is asserted and alleged, Relater has been deliberately secreted form a magistrate who could make a determination of probable cause which would authorize the pre-trial restriction at liberty envisioned by *Bell v Wolfish* supra. It is further alleged Relater was secreted form said magistrate for the express purpose of exposing Relater to the punishing treatment of the booking process and creation of a permanent criminal record.

PRESUMPTON OF INNOCENCE DENIED

In the event Relater had been taken to the nearest magistrate and an examination held into the sufficiency of the allegation resulting in a determination of no probable cause, it would have been patently illegal for the police to book the accused into jail. Note, Texas Code of Criminal procedure Article 14.06 Supra, wherein there is a clear stipulation to, if necessary; take the person to a magistrate in an adjoining county. It can hardly be construed that the Legislature intended the accused be booked into the jail as if already an inmate, then taken to another county to be brought before a magistrate absent a due diligent effort to locate a magistrate in an adjoining county in the first instance.

While the arresting officer may have had jurisdiction to arrest Relater, at the point at which Relater was secured in custody, arresting officer's jurisdiction "evaporated" and s/he had authority only to detain the accused for as long as it reasonably took, considering all the

immediate circumstances, to bring the accused before a magistrate for an examination into the sufficiency of the allegation and a proper warrant could be secured.

Absent a showing that the booking procedure was reasonably necessary in order to protect the safety of the arresting officer or jail officials, or that the booking procedure was necessary to secure the accused from escape, there is no legal necessity for subjecting Relater to the humiliating and punishing treatment involved in booking. Neither would such procedures be allowed where a probable cause determination found no probable cause. Therefore, the booking procedure, which would be a clear violation of the due course of the laws where no probable cause was found, does not become valid or proper where the accused was deliberately secreted from a magistrate.

DELAY CONTRIVED TO FACILITATE PUNISHMENT OF ACCUSED

It is the contention and allegation of Relater that the arresting officer failed to make any attempt to locate a magistrate in order to use the pretense of an inability to locate same in order to justify exposing Relater to the humiliation and punishment of the booking procedure and an extended period of incarceration. Said treatment has the effect of denying Relater in the presumption of innocence and increases the inhibiting effect intended to suppress the expression of rights by Relater.

ACCUSED PUNISHED BY JAILERS

It is the further contention that, while the jail may detain the accused until such time as a magistrate can be located in the event a due diligent effort has been made to locate same, any use of the time as an opportunity to punish Relater must be considered an intentional violation of the due course of the laws and a violation of the rights of Relater to same.

> [*343] The purpose of this impressively pervasive requirement of criminal procedure is plain. A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance [***826] of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against

the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication. Legislation [*344] such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard -- not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the "third degree" which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. It reflects not a sentimental [**615] but a sturdy view of law enforcement. It outlaws easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection. n8 A statute carrying such purposes is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application.

n8 "During the discussions which took place on the Indian Code of Criminal Procedure in 1872 some observations were made on the reasons which occasionally lead native police officers to apply torture to prisoners. An experienced civil officer observed, 'There is a great deal of laziness in it. It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence.' This was a new view to me, but I have no doubt of its truth." Sir James Fitzjames Stephen, A History of the Criminal Law of England (1883), vol. 1, p. 442 note Compare § § 25 and 26 of the Indian Evidence Act (1872. U.S v McNabb, 318 U.S. 332,343 *; 63 S. Ct. 608, **;87 L. Ed. 819, ***; 1943 U.S. LEXIS 1280

BOOKING AS PLOY TO INCREASE JAIL HEADCOUNT

It is the specific allegation of Relater that the booking process is practiced by the jail toward two purposes. The first is to continue the abusive and intimidating psychological intimidation of the accused in order to prevent any defense against the allegations made. The second is to increase the average head count at the jail in order to allow the jail to show an increased population and thereby petition for greater budgets and higher reimbursements from governmental agencies.

ARRESTING OFFICER AS TRESSPASSOR AB INITO

It is the specific allegation of Relater that the moment the arresting started the engine on the patrol car, put it in gear and headed toward the jail instead of toward the nearest magistrate, the crime was complete. From that point onward, all the time Relater was held in custody was in violation of law and an act of Kidnapping.

(a) A person commits an offense if he intentionally or knowingly abducts another person.
(b) It is an affirmative defense to prosecution under this section that
(1) the abduction was not coupled with intent to use or to threaten to use deadly force;
(2) the actor was a relative of the person abducted; and
(3) the actor's sole intent was to assume lawful control of the victim.
(c) An offense under this section is a felony of the third degree.

It is the further contention of Relater that, as the alleged act of kidnapping was committed in furtherance of an ongoing criminal conspiracy to extort funds from Relater in for form of fines and fees collected in violation of the due course of the laws of the State of Texas and that the alleged schemes included felony acts to the detriment of Relater, the act of kidnapping is more specifically defined as Aggravated Kidnapping.

20.04. AGGRAVATED KIDNAPPING.

(a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:
(1) hold him for ransom or reward;
(2) use him as a shield or hostage;
(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
(4) inflict bodily injury on him or violate or abuse him sexually;
(5) terrorize him or a third person; or
(6) interfere with the performance of any governmental or political function.
(b) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.
(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.
(d) At the punishment stage of a trial, the Relater may raise the issue as to whether he voluntarily released the victim in a safe place. If the Relater proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

All who participated with the arresting office in the confinement of Relater are likewise trespassers on the law and violators of Texas Constitutional provisions, and therefore, cannot claim to be acting under any jurisdiction as no jurisdiction allows for criminal acts to be committed under color of any official authority.

> Under the doctrine of trespass ab initio, where a party exceeds an authority given by law, the party loses the benefit of the justification and is considered a trespasser ab initio, although to a certain extent the party followed the authority given. The law will then operate retrospectively to defeat all acts done under the color of lawful authority. *American Mortg. Corp. v. Wyman 41 S.W.2d 270 (Tex. Civ. App. Austin 1931* Thus, a person who enters on real property lawfully pursuant to a conditional or restricted consent and remains after his or her right to possession terminates and demand is made

> for his or her removal becomes a trespasser from the beginning, and the law will then operate retrospectively to defeat all acts done by him under color of lawful authority. *Williams v. Garnett, 608 S.W.2d 794 (Tex. Civ. App. Waco 1980).*
>
> The rule applies to the acts of sheriffs and other officers, as well as to the conduct of private individuals. *American Mortg. Corp. v. Wyman*

Attached and included by reference, the court will find a verified criminal affidavit alleging the act of Kidnapping by the arresting officer. While the act is more commonly referred to as "false imprisonment" there is no such statute in Texas. In Texas, the proper citation is kidnapping. Further, as the act was aggravated by the fact that the arresting officer was displaying a deadly weapon at the time eliminating any possibility of resistance by Relater of the criminal act and the act was committed in order to facilitate the commission of the felony act of Tampering With a Government Document, Article 37.10 Texas Penal Code (full explanation below).

ARRESTING OFFICER RETAINS RESPONSIBILITY

All this begs a question: "If the practice of taking people straight to jail instead of seeking a magistrate, may well be unnecessary, why would the department go to all time, trouble, and cost?"

It is the contention and specific allegation of Relater that the current practice of taking those persons arrested, with or without warrant, straight to jail is but one step in a set of procedures intended to harass and intimidate the accused and place the accused in a position such that they have little reasonable alternative but to taking a plea bargain when it is subsequently offered by the prosecuting attorney. This is some time know as “the deal.”

By this document, the Motion to Disqualify Magistrate, Motion to Quash Orders by Magistrate, and Motion to Dismiss Allegations, Relater will show that the policy of taking a person to jail with no due diligent effort to locate a magistrate is but one step on a set of illegal practices, orchestrated by prosecutors for the purpose of coercing a plea bargain from the accused.

The officer making the arrest has a non-transferable duty to bring the accused before a magistrate for an examination into the sufficiency of the allegations made. The arresting officer may not transfer this responsibility to another. The officer may transfer the prisoner to the control of another but the duty to ensure a proper examining trial still rests with the arresting officer.

It may not be construed the arresting officer is somehow unaware that everyone s/he arrests is Subjected to a set of outrageously improper practices. The officer had the duty to ensure the accused is brought before a magistrate for a proper examination hearing. Failing in said duty, the arresting officer becomes a criminal trespasser on the law s/he is sworn to uphold and protect.

Thereby, the arresting officer is liable for the criminal conspiracy to which Relater has been Subjected.

PROSECUTORIAL PURPOSE FOR DENYING TIMELY EXAMINING TRAILS

Subjecting a citizen to unnecessary and humiliating procedures when a probable cause hearing could render them unnecessary has been done for a number of reasons. One is the jail needs to maintain as high a headcount as possible so as to secure greater budgeting funds (this will be treated in greater detail in the next chapter.) Or in the alterative jailers would petition for such funds from county, state, and federal funding sources.

Another purpose serves the prosecutor's interest. By facilitating coercive practices during booking, the jail psychologically softens up the accused for "the deal" by leaving them exhausted and intimidated. The necessity of this will become apparent when we get to the prosecutorial practice of secreting the records from the clerk of the court below.

CRIMINAL PRACTICES AS A MATER OF POLICY

It must be construed that Relater was Subjected to imprisonment after arrest as a matter of policy and not necessity. Therefore, the act wherein Relater was abducted at constructive

gunpoint by the arresting officer and taken straight to jail instead of some magistrate is an act of Aggravated Kidnapping as defined by PC Article 20.04 supra (see verified criminal affidavit alleging same attached).

In as much as the rights of Relater were violated as a matter of policy, Relater asserts, the arresting agency, by not seeking the proper authority became a trespasser ab inito as with all others who participated in the confinement of Relater, and the court is thereby left without jurisdiction in the instant cause.

> Where several people act together in pursuit of unlawful act, each one is liable for collateral crimes, even though unplanned and unintended, if those crimes are foreseeable, ordinary and probable consequences of preparation or execution of the unlawful act. *Curtis v. State (Cr.App. 1978) 573 S.W.2d 219. Criminal Law 59(4)*

~~ On showing that all persons arrested by the agency are taken directly to jail and no due diligent effort is made by the arresting officer to locate a magistrate, it must be construed the practices are participated in by more than one person. It must further be construed those involved had to interact with one another in an effort to standardize and co-ordinate the procedures practiced. It must thereby be construed all participants conspired with one another toward the furtherance of the above indicated conspiratorial relationship.

> Texas Penal Code § 15.02. CRIMINAL CONSPIRACY.
> 15.02. Criminal Conspiracy
> (a) A person commits criminal conspiracy if, with intent that a felony be committed:
> (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
> (2) he or one or more of them performs an overt act in pursuance of the agreement.
> (b) An agreement constituting a conspiracy may be inferred from acts of the parties.
> (c) It is no defense to prosecution for criminal conspiracy that:
> (1) one or more of the coconspirators is not criminally responsible for the object offense;
> (2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;
> (3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;
> (4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor.

In the event Relater has been subjected to a deprivation of rights subsequent to a criminal conspiracy by those officials responsible for the arrest and subsequent deprivation of liberty of Relater, all are disqualified, declared not credible persons, and rendered without jurisdiction to act in the instant cause.

COURT PROCEEDINGS HELD IN SECRET

Relater, after being arrested, booked into the jail, and held overnight was brought before a magistrate the next day. At said appearance criminal charges were read to Relater wherein Relater was officially charged with committing criminal acts against the laws of the State of Texas, then Relater was notified of the amount of bail, which had been set. At said hearing, when Relater first observed magistrate, the court was in possession of a file from which magistrate read the allegations against Relater. This raises a question: Where, how, by what legal mechanism did the court accept into evidence, allegations against Relater outside the presence of Relater who was under the absolute control of the State?

> The Texas Code of Judicial Conduct further provides that, except as authorized by law, a judge shall not directly or indirectly initiate, [**46] permit, or consider *ex parte* or other private communications concerning the merits of a pending or impending judicial proceeding. TEXAS SUPREME COURT, *CODE OF JUDICIAL CONDUCT, Canon 3A(5)*. *Ex parte* communications are "those that involve fewer than all of the parties who are legally entitled to be present during the discussion of any matter. They are barred in order to ensure that 'every person who is legally interested in a proceeding [is given the] full right to be heard according to law.'" JEFFREY M. SHAMAN, ET AL., JUDICIAL CONDUCT AND ETHICS, § 6.01 at 145 (1990). The principle underlying such prohibition, as it regards the disposition of criminal matters is quite simple: the disposition of criminal matters is the public's business and ought to be conducted in public in open court. n14 *See Tamminen v. State, 644 S.W.2d 209; 217 (Tex.App.--San Antonio 1982), aff'd in part and rev'd in part, 653 S.W.2d 799 (Tex.Crim.App. 1983); TEX. CODE CRIM. PROC. ANN. art. 1.24 (Vernon 1977)*
>
> Private adjudication's fly in the face of our judicial system's abiding commitment to providing public access to civil and criminal proceedings and records. *See Gannett Co. v. DePasquale, 443 U.S. 368, 61 L. Ed. 2d 608, 99 S. Ct. 2898 (1979)*. Our form of government is rooted in a recognition of the importance of open and public proceedings. Subjecting judicial proceedings to public scrutiny accomplishes two important goals.

> First, it provides the public with an opportunity to exercise its right to monitor and evaluate its judicial system. Second, and equally important, a judge's knowledge that his or her actions are not shrouded in secrecy fosters a stronger commitment to strict conscientiousness in the performance of judicial duties. Our courts have recognized that secret tribunals exhibit abuses that are absent when the public has access to judicial proceedings and records. *See Express-News Corp. v. Spears, 766 S.W.2d 885, 890 (Tex.App.--San Antonio 1989, orig. proceeding [leave denied]) (Cadena, C.J. dissenting*. The judiciary has no special privilege to suppress or conduct in private proceedings involving the adjudication of causes before it. [**48] In fact, such secrecy frustrates the judiciary's responsibility to promote and provide fair and equal treatment to all parties. Individual Judges are charged with the task of adjudicating claims in a manner that protects the rights of both parties. A judge's private [*497] communications with either party undermine the public's right to evaluate whether justice is being done and removes an important incentive to the efficient resolution of cases. *IN RE JOHN M. THOMA, JUDGE, COUNTY COURT AT LAW NO. 1 GALVESTON COUNTY, TEXAS, Respondent, 873 S.W.2d 477; 1994 Tex. LEXIS 159*

In Texas, notwithstanding practices in other states, probable cause is only found and bail set by a magistrate through an examining trial the procedures for which are laid down in Chapter 16 Texas Code of Criminal Procedure. The chapter has been carefully crafted by the Legislature to insure the rights of the accused are upheld and that the accused is protected from abuses by the governmental instruments the people have created to enforce the criminal laws. Nothing in Chapter 16, or any other chapter, authorizes examining trials to be held in secret.

The first thing that must happen is the convening of a hearing by the magistrate is that all parties must be present. In order for the magistrate to be in possession of a file containing details of a criminal allegation against Relater, magistrate had to receive that file from somewhere. So, where and how did the magistrate get the file, and how did the documents in the file get entered into evidence against Relater if not in a public hearing?

> Art. 16.07. SAME RULES OF EVIDENCE AS ON FINAL TRIAL.
> The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Either there are some secret practices and procedures not codified into law, or the magistrate came into possession of evidence outside the legal structures put in place to protect the accused from just the sort of abuse in this instance.

At the hearing wherein bail was set, no plea was requested or accepted by the court, neither was Relater given opportunity to be faced with accuser nor was Relater afforded

opportunity to present exculpatory evidence and Relater was not present at the hearing where probable cause was determined and the evidence was presented to the court and was accepted into evidence and a probable cause determination made in secret.

> **OVERVIEW:** Relater was convicted of aggravated rape by a jury, based on evidence that included the testimony of the victim and her companion, who were held at gunpoint, raped, and beaten by Relater and other members of a motorcycle gang. During trial, the prosecutor gave the sentencing judge a "secret" police intelligence report about the gang, ex parte. Defense counsel was not allowed to see it. The court affirmed the conviction, finding that the evidence was overwhelming. Most errors were not preserved, either by failure to object in a timely manner or by objection on a ground different from that raised on appeal. The court vacated the sentence because the ex parte tender of the report violated Relater 's rights to confrontation and due process under U.S. Const. amend. VI and U.S. Const. amend. VI. The ex parte tender also constituted prosecutorial misconduct in violation of *Tex. Code Crim. Proc. Ann. art. 2.01* and the state ethics rules, judicial misconduct under the Rules and Code of Judicial Conduct, and deprived Relater of a public trial under *Tex. Code Crim. Proc. Ann. art. 1.24* (1977). *TAMMINEN v State 644 S.W.2d 209; 1982 Tex. App. LEXIS 5561*

The above is not a difficult concept, neither is it an obscure consideration. Evidence presented ex parte while a party is being physically restrained from appearance, determinations made in secret, confrontation denied, and opportunity to rebut not availed goes to the heart of our legal system. No right-minded magistrate, in good faith, can consider such behavior anything but the most outrageous abuse.

ARTICLE 15.17 AND SHARP PRACTICE BYPASS OF DUE COURSE

Article 14.06 supra refers to Article 15.17 Texas Code of Criminal Procedure (please don't try to read this mess, I have it outlined below). .

> Art. 15.17. DUTIES OF ARRESTING OFFICER AND MAGISTRATE
>
> (a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the

> appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent Relater s in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the Relater may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this subsection, "electronic broadcast system" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

The above is paragraph (a) of Article 15.17 Texas Code of Criminal Procedure. If ever there was a statute enacted which was designed to be misread and misinterpreted, this is the one. Below you will find the statute outlined for reference:

Art. 15.17. DUTIES OF ARRESTING OFFICER AND MAGISTRATE.

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested,
  - (1) take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state.
  - (2) he arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system.
  - (3) the magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial.
  - (4) The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel.

(5) The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate.

(6) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent Relater s in the county, the magistrate shall appoint counsel in accordance with Article 1.051.

(7) If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

(8) The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him.

(9) The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law.

(10) A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates:
(A) the date on which the pretrial hearing ends; or
(B) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony.
(C) The counsel for the Relater may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction.

(11) For purposes of this subsection, "electronic broadcast system" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

If you read this statute, it gives the impression of covering all those things, which must be done subsequent to the arrest of an accused, however, that consideration would be deceiving. Article 15.17 is a special statute, intended to apply to a special and relatively rare circumstance, not to the general procedures subsequent to arrest.

> Article 15.17, V.A.C.C.P., contemplates [**33] that there will be occasions where no formal charges have been filed when the accused is taken before the magistrate. *Harris v State, 457 S.W.2d 903; 1970 Tex. Crim. App. LEXIS 1304*

Please notice Paragraph 9, and the highlighted section where it speaks of setting bail if allowed by law.

When a person is arrested on a formal criminal allegation, bail may not be set unless there is a finding of probable cause. If no probable cause if found in the examining trail under the provisions of Chapter 16 Texas Code of Criminal Procedure, the magistrate will have no

jurisdiction over the accused and my not set bail, but rather, must release the accused at his/her liberty.

It is conceivable that a person can be held on suspicion in order to prevent escape, or simply as a material witness, in which case formal charges would not be contemplated. In this case, probable cause is not an issue, however, even if this were the case in the instant cause, Article 15.17 supra alone is not sufficient to meet the legal requirements for setting bail. The law in this matter is clear, if totally ignored. Chapter 17 Texas Code of Criminal Procedure at Article 17.05 clearly states the Legislative intent in these matters:

Article 17.05 WHEN BAIL IS TAKEN

> A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or is taken from the Relater by a peace officer if authorized by '‘Article 17.20, 17.21, or 17.22.

In the instant cause, Relater was not arrested on suspicion; neither was Relater being held as a material witness. Even if such were the case, before the magistrate can set bail, an examining trial must be held.

By the instant cause Relater had been arrested subsequent to a formal criminal allegation and brought before a magistrate. This circumstance is contemplated by Article 2.10 Texas Code of Criminal Procedure

Art. 2.11. [35] [62] [63] Examining court

> When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

Article 15.17 supra may seem long, however, it is an attempt to cover those things that are normally covered in an examining trial. In one statute the Legislature tried to cover those things covered in a whole chapter dedicated to examining trials. While I will refrain from quoting the whole chapter here, it is enough that Chapter 16 Texas Code of Criminal Procedure, entitled COMMITMENT OR DISCHARGE OF THE ACCUSED, is in place.

While the magistrate had a duty to read Relater his/her rights under Article 15.17, there was no provision there to determine probable cause, which would render lawful the setting of bail. Absent a finding of probable cause, bail could not be set as in the absence of an examining trial; the presumption must be that the arrest without a warrant of Relater was unreasonable.

~(find arrest without warrant presumed unreasonable)

Back to the question: How did the criminal allegations against Relater get submitted to the magistrate outside a proper examining trial before which Relater, subsequent to the immediate restraint on his liberty, had a right to attend?

PROBABLE CAUSE DETERMINATION MADE BY INFORMAL METHOD

The magistrate in the instant cause accepted into evidence allegations of criminal wrongdoing against Relater while Relater was being held without warrant in the «County». Someone appeared before the magistrate and presented the court with evidence apparently sufficient to give a reasonable person cause to believe Relater had committed the crimes alleged.

Assuming the arresting officer went before some magistrate and presented the magistrate with a criminal allegation against Relater, under what provision of law was this done in the absence of Relator? This would assume the magistrate was present the night before, before the arresting officer left for the day. If that was not the case, then who presented evidence to the court in the accuser's stead and what legal authority did that person have to represent accuser before a court?

While a third party may have authority to present the complaint to the court notifying same that a crime had been committed, at the examination into the sufficiency held by the magistrate subsequent to the arrest of the accused, any supporting testimony as to the facts supporting the criminal allegation had to be reduced to writing and certified by the court.

Art. 16.09. TESTIMONY REDUCED TOWRITING.

> The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. In lieu of the above provision, a statement of facts authenticated by State and defense counsel and approved by the presiding magistrate may be used to preserve the testimony of witnesses.

Nothing exists in the court record to authenticate the testimony of the complainant to support the criminal allegation. Therefore, the complaint is insufficient on its face for lack of verified supporting affidavit.

> In an examining trial, the truth of the accusation may not be based on the accusation alone; such conclusion, if valid, would render the examining trial a useless thing, a mere re-enactment of the earlier determination of whether an arrest warrant should issue. *Ex parte Garcia, 547 S.W.2d 271 (Tex. Crim. App. 1977).* Rather, the state must show that there is a reason to believe that an indictment will be preferred for some violation of the law. *Ex parte Martin, 119 Tex. Crim. 141, 45 S.W.2d 965 (1932).* Thus, the state has the burden of proving that there is probable cause to believe the accused committed the offense charged against him or her. *State ex rel. Holmes v. Salinas, 784 S.W.2d 421 (Tex. Crim. App. 1990).*

In either case, a hearing of some type was convened at which evidence was presented to the court ex parte when Relater was present in the building but physically restrained from being present.

It is the specific allegation and contention of Relater that, some person employed of the arresting agency presented criminal allegations to the court and supporting evidence alleging criminal acts by Relater. It is further, the contention of Relater, that said presentation occurred outside a proper hearing to which Relater had a statutory right.

Art. 16.01. EXAMINING TRIAL.

> "When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if a bailable case. If the accused has been transferred for criminal prosecution after a hearing under Section 54.02, Family Code, the accused may be granted an examining trial at the discretion of the court."

At said hearing wherein magistrate engaged in an ex parte hearing secreted from Relater who had a Constitutional and statutory right to attend.

Art. 16.08. PRESENCE OF THE ACCUSED.

The examination of each witness shall be in the presence of the accused.

Relater alleges this act was committed in violation of Section 39.03 Texas Penal Code:

§ 39.03. OFFICIAL OPPRESSION.

(a) A public servant acting under color of his office or employment commits an offense if he:
  (1) intentionally Relater's another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
  (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
  (3) intentionally subjecting another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor.

NO ORDER CONFERRING JURISDICTION ON COURT

That the magistrate advised Relater of an amount of bail having already been set, by the only method available to the magistrate to set bail, had to have found probable cause prior to the setting of bail. Having found probable cause, which gave the magistrate authority to set bail, the magistrate also had a duty to prepare an order committing Relater.

Art. 16.17. Decision of judge

> After the examining trial has been had, the judge shall make an order committing the Relater to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged.

Gerstien v Pugh supra is clear on this point. The primary reason for taking the person before the magistrate is to secure this order so that the State may retain jurisdiction over Relater. An examination of the court record will find no order committing Relater to the jail or setting bail

prepared by magistrate within 48 hours of the preliminary hearing. Therefore, Relater contends the bail required of Relater is an illegal taking of Relater's property.

NO WARRANT GIVING COURT JURISDICTION

An examination of the court record will show no warrant issued by any magistrate subsequent to the hearing wherein probable cause was found as required by Article 16.17 supra. Therefore, the court has no jurisdiction of any kind over Relater as a finding of no probable cause is had as a matter of law, and all acts by the court are acts committed without jurisdiction which are, therefore, void.

NO CRMINAL ALLEGATION IN THE COURT RECORD

In order for the court to have jurisdiction some credible person must present a complaint to some magistrate. By the above Relater addressed arguments under the presumption of the existence of a criminal complaint. It is entirely possible that a valid criminal complaint did exist when Relater placed in the jail. It is possible the arresting officer prepared just such a document. However, if such a document was prepared and even if such a document was presented to the magistrate, said document does not appear in the court record. If said document does exist, it has not been placed within the protection of the clerk of the court of original jurisdiction. An examination of the court record will find no record of a criminal complaint, which was presented by anyone to any magistrate alleging a criminal act by Relater.

NO COURT RECORD

Subsequent to the hearing wherein probable cause was determined, magistrate was directed by Article 17.30 Texas Code of Criminal Procedure as follows:

Art. 17.30. Shall certify proceedings

> The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the Relater may be tried, writing his name across the seals of the envelope. The voluntary statement of the Relater , the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

There in nothing in the court record to indicate the magistrate complied with the requirement of Article 17.30 supra. In point of fact, there is nothing in the court record at all. There is no court record. Therefore, it must be presumed magistrate did not forward all the records of the hearing, sealed up, to the clerk of the proper court. Said act is in direct violation of Section 37.10 Texas Penal Code:

§ 37.10. TAMPERING WITH GOVERNMENTAL RECORD.

(a) A person commits an offense if he:
(1) knowingly makes a false entry in, or false alteration of, a governmental record;
(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

MAGISTRATE CONSPIRED WITH JAILER TOWARD TAMPERING WITH A GOVERNMENT DOCUMENT

It is the contention and specific allegation of Relater that, after the hearing wherein Relater was set to bail, magistrate did not forward the records of the hearing to the clerk of the proper court, but rather, returned them to the jailer. It is the specific allegation of Relater that magistrate acted in concert and collusion with jailer to deny Relater in the due course of the laws by secreting the charges against Relater from the clerk of the proper court, thereby, placing Relater in a state of legal limbo, wherein Relater finds his liberty restricted by being bound to the court, his property improperly taken by being forced to render it to a bondsman in order to secure release from jail, yet unable to render actions in his/her behalf as there is no record of the above proceedings. It is as if Relater exists in a state of limbo between arrest and trial.

PROSECUTORIAL INVOLVEMENT

It is the contention and specific allegation of Relater that the jailer at the jail where Relater was being held is the person who presented criminal allegations to the magistrate in a secret

hearing where the magistrate found probable cause. After the magistrate held the public hearing the magistrate returned the file containing all the records referenced by Article 17.30 Supra to the jailer. The jailer then forwarded said records to the prosecuting attorney in whose files said records now reside.

It is therefore the contention and specific allegation of Relater that the prosecuting attorney now holds said records to the exclusion of the clerk of the proper court in violation of Section 37.10 supra. The reason prosecutors have the records forwarded to their department to the exclusion of the clerk of the court having original jurisdiction is multifarious as will be shown below.

RELATER DENIED ACCESS TO THE COURTS

By directing magistrates to forward records, by way of jailers, to the prosecuting attorney, the prosecutor manages to interrupt the prosecution and stop the speedy trial clock by placing the prosecution in pendency.

> This case presents the issue of whether a complaint, filed in a justice court, will toll the running of the statute of limitations in a felony case. This question appears to be one of first impression. We hold that such a complaint does not toll the running of the period of limitations.
>
> Article 12.05, supra, provides that the period of limitations will be tolled only after the "indictment, information, or complaint is filed in a court of competent jurisdiction . . . ." In Hultin v. State, 171 Tex.Cr.R. 425, 351 S.W.2d 248, 255, this Court [*662] stated: "A court of competent jurisdiction means a court that has jurisdiction of the offense."
>
> In Hultin, it was further stated that jurisdiction "includes the three essentials necessary to the jurisdiction of a court; the court must have authority over the person and the Relater matter, and it must have power to enter the particular judgment rendered." See 16 Tex.Jur.2d, Criminal Law, Sec. 200. In 15 Tex.Jur.2d, Courts, Sec. 45, it is written: "Jurisdiction is the power to hear and determine issues of law and fact involved in a case, and to render a judgment thereon, after deciding the existence [**6] or non-existence of material facts and applying the law to the findings."
>
> V.T.C.A., Penal Code, Sec. 21.03, classifies aggravated rape as a felony of the first degree. Article 5, Sec. 8, Vernon's Constitution of Texas Annotated, provides, in pertinent part: "The District Court shall have original jurisdiction in all criminal cases of the grade of felony . . . ." This provision is also incorporated in Art. 4.05, V.A.C.C.P. Article 5, Sec. 19, Vernon's Constitution of Texas Annotated, provides, in pertinent part: "Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than two hundred dollars . . . ." This provision is also incorporated in Art. 4.11, V.A.C.C.P.
>
> While the justice court had authority to take a complaint and issue a warrant of arrest, we find that such court did not have jurisdiction of the felony offense charged

> herein so as to come within the ambit of Art. 12.05, supra. To hold to the contrary would be to allow a "credible person" to file a complaint in the justice court charging an accused with a felony offense without inquiry being made about the nature of the knowledge upon which [**7] an affiant bases his factual statements, and thereby toll the statute of limitations forever. See Art. 15.05, V.A.C.C.P.; Wells v. State, Tex.Cr.App., 516 S.W.2d 663. *Ex parte Ward, 560 S.W.2d 660*

In the instant cause is somewhat different from the example in Ex parte Ward, supra as in this instance, Relater has been arrested. Due to the fact Relater was arrested and remains bound at liberty, the contrived state of pendency works a specific deprivation of the rights of Relater. It is the specific allegation and assertion of Relater that such deprivation is exactly the point of the process by which Relater was arrested and Subjected to continual mistreatment.

After Relater was arrested and psychologically conditioned to feel helpless before the system, and completely at the mercy of the prosecutor, Relater was rendered to a state of legal limbo in order to stop the speedy trial clock by rendering the cause to a perpetual state of pendency and give the pressures brought to bare time to mature and morph from anger and indignation, to anxiety, to fear, to mortification and dread.

SHARP PRACTICE TO DENY APPEAL

> Deferred adjudication has long been the Relater of plea bargaining in Texas. Prosecutors and defense lawyers have found that they can settle more cases without the necessity of a trial if they consider conditioning a Relater 's plea of guilty or nolo contendere on a recommendation that he be placed on probation without an adjudication of guilt. But, although the availability of this option has been useful during plea negotiations, it has raised difficult problems at later stages of the criminal prosecution. *Watson v. State, 924 S.W.2d 711.*

As stated above, prosecutors have so manipulated the system in order to render those accused of crime amenable to a plea bargain in order to end the torture they have been Subjected to. However, as often happens, the resulting probation restrictions are often violated in which case the accuse stands facing often significant jail time and is Relater to attempt to appeal. In order to prevent this, prosecutors have the records of the examination hearing forwarded to the him/her department to the exclusion of the clerk of the court having original jurisdiction as prescribed by Article 17.30 supra.

You will notice that it appears Relater is given the right to appeal under Article 44.01(j) Texas Code of Criminal Procedure.

Art. 44.01. Appeal by state

(a) The state is entitled to appeal an order of a court in a criminal case if the order:
  (1) dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;
  (2) arrests or modifies a judgment;
  (3) grants a new trial;
  (4) sustains a claim of former jeopardy;
  (5) grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case; or
  (6) is issued under Chapter 64.

(b) The state is entitled to appeal a sentence in a case on the ground that the sentence is illegal.

(c) The state is entitled to appeal a ruling on a question of law if the Relater is convicted in the case and appeals the judgment.

(d) The prosecuting attorney may not make an appeal under Subsection (a) or (b) of this article later than the 15th day after the date on which the order, ruling, or sentence to be appealed is entered by the court.

(e) The state is entitled to a stay in the proceedings pending the disposition of an appeal under Subsection (a) or (b) of this article.

(f) The court of appeals shall give precedence in its docket to an appeal filed under Subsection (a) or (b) of this article. The state shall pay all costs of appeal under Subsection (a) or (b) of this article, other than the cost of attorney's fees for the Relater .

(g) If the state appeals pursuant to this article and the Relater is on bail, he shall be permitted to remain at large on the existing bail. If the Relater is in custody, he is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would terminate the prosecution, in which event the Relater is entitled to release on personal bond.

(h) The Texas Rules of Appellate Procedure apply to a petition by the state to the Court of Criminal Appeals for review of a decision of a court of appeals in a criminal case.

(i) In this article, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of prosecuting cases in the court hearing the case and does not include an assistant prosecuting attorney.

(j) Nothing in this article is to interfere with the Relater 's right to appeal under the procedures of Article 44.02 of this code. The Relater 's right to appeal under Article 44.02 may be prosecuted by the Relater where the punishment assessed is in accordance with Subsection (a), Section 3d, Article 42.12 of this code, as well as any other punishment assessed in compliance with Article 44.02 of this code.

(k) The state is entitled to appeal an order granting relief to an Relater for a writ of habeas corpus under Article 11.072.

(l) The state is entitled to appeal an order entered under:
  (1) Subchapter G or H, Chapter 62, that exempts a person from complying with the requirements of Chapter 62; and
  (2) Subchapter I, Chapter 62, that terminates a person's obligation to register under Chapter 62.

However, if you consider carefully the ramifications and actions of the prosecuting attorney, it becomes clear there is a malignant calculus at work here. The prosecutor, by secreting the

records from the clerk of the court until such time as a deal can be negotiated, effectively eliminates the possibility of the filing of any defense motions prior to the ten day deadline after arrest imposed by Article 27.11 Texas Code of Criminal Procedure.

Art. 27.11. TEN DAYS ALLOWED FOR FILING PLEADINGS.

> In all cases the Relater shall be allowed ten entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

After the deal is made, in the event the accused violates probation, the option of appeal is left completely up to the caprice of the judge. The record will reflect no effort at defense prior to adjudication as planned by the prosecution.

THE CORPUS JURIS

The current cause goes to the integrity of the corpus juris. By the instant motion, Relater restricted argument to the matters of jurisdiction, however, the actions of the officials involved implicate much more than jurisdiction. In Relater's MOTION TO DISMISS SPEEDY TRIAL, MOTION TO DISMISS DUE COURSE, MOTION TO DISQUALIFY MAGISTRATE, REQUEST FOR PETITION FOR COURTY OF INQUIRY, and PETITIONS IN QUO WARRANTO, other more disturbing aspects of the present prosecutorial procedure are presented. When all are considered in concert, the value of in pari materia considerations of the corpus juris become apparent.

It is specifically alleged, the above criminal acts to the detriment of the rights and liberties of Relater are more than singular and isolated liberty infringements. They portend hubris, a conniving malignant calculus, carefully crafted toward the administrative convenience and adjudicative expediency of official conspirators.

ONGOING CRIMINAL CONSPIRACY

Relater makes no assertion that s/he has been singled out by the above public officials for special persecution. If that were all, things would be less serious. Relater alleges that the

arresting officer, jailer, magistrate, and prosecuting attorney have engaged in an ongoing criminal conspiracy to deny all persons accused of crime within the jurisdiction in the due course of the laws. Relater further alleges said violations of law and Constitution were not merely minor adjustments toward administrative convenience and adjudicative expediency, but rather, are dastardly deeds, a consciously conceived, low down, dirty rotten, criminal connivance intended to disenfranchise citizens in order to serve professional considerations of prosecutors, Judges, defense counsel, et al.

ARRESTING OFFICER NOT CREDIBLE PERSON

Arresting officer in the immediate cause, had a duty as prescribed by

Article 2.03 (b):

Art. 2.03. NEGLECT OF DUTY.

> It is the duty of the trial court, the attorney representing the accused, the attorney representing the state and all peace officers to so conduct themselves as to insure a fair trial for both the state and the Relater, not impair the presumption of innocence, and at the same time afford the public the benefits of a free press.

Relater asserts, the arresting officer, by acting in accordance with standing policy, without regard to existing circumstances, denied Relater the right to be taken before a magistrate without unnecessary delay. Said denial was committed in furtherance of the on-going criminal conspiracy alleged above and thereby had the effect of denying Relater in the right to a fair examining trial before a neutral magistrate. Relater, subsequent to the illegal acts of arresting officer, was Subjected to trespass on Relater's liberty by extended detention in jail, humiliating booking procedures, and treatment by jailers clearly intended to coerce and intimidate Relater. Said intimidation and denial of rights were perpetrated in order that Relater would rendered be more compliant and likely to accept the plea bargain when offered by prosecutor.

By said act, arresting officer became a criminal trespasser on the laws, thereby disqualifying himself as a credible person under the law and subsequently disqualifying same from presenting a criminal allegation to the court against Relater.

JAILER ESTOPPED FROM REPRESENTING ARRESTING OFFICER IN COURT POCEEDING

While any credible citizen is authorized to present a criminal complaint to some magistrate alleging a criminal act by another, nothing in law allows a third party to present the supporting affidavit of probable cause in place of the complainant. Unless jailer, or whomever it was who initiated the criminal proceeding before the magistrate wherein a determination of probable cause was made binding Relater to the court, had personal and not hearsay knowledge of the facts tendered, no authority existed for the presentation of the facts supporting the complaint to the court.

Said act by jailer had the effect of denying Relater in a fair hearing before a neutral magistrate in violation of Article 2.03(b) supra. Specifically, by the above-alleged criminal act, jailer acted in concert and collusion with magistrate, in felony violation of state law, for the purpose of denying Relater in the right to a fair examining trial.

MAGISTRATE IS DISQUALIFIED

Magistrate in the instant cause, by convening a hearing in secret, by accepting evidence in a court hearing ex parte, by accepting evidence into the court record without proper certification of said evidence, by setting bail informally, by failing to seal all documents had in the hearing and forwarding them to the court of original jurisdiction, and my improperly binding the accused to the court, committed numerous crimes against the peace and dignity of the State of Texas to the detriment of the rights of Relater. By said acts, magistrate denied Relater in a fair hearing before a neutral magistrate in violation of Article 2.03(b) above and therefore, is disqualified to act in any official capacity in the immediate cause.

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law." *Murdock v. Penn., 319 US 105*

PROSECUTOR DISQUALIFIED

The prosecuting attorney in the immediate cause, having to duty as indicated above by Article 2.03(b) supra, acted in concert and collusion with arresting officer, jailer, and magistrate toward the furtherance of an on-going criminal conspiracy designed and intended to disenfranchise Relater of the rights guaranteed by the Constitution and laws of the State of Texas. By the above, the prosecuting attorney is disqualified for the purpose of representing the state in the instant prosecution.

JURSIDICTION MUST BE PROVEN

By the above, jurisdiction is challenged. It has been clearly and plainly alleged that public officials have acted in violation of the limits of their authority and bounds of their duty. Relater puts to their proof those alleged above and demands they show as to why each in their turn should be free from criminal prosecution and impeachment in the current cause, and removal quo warranto from their current positions for violations of state law and the public trust.

Abraham Lincoln was touted to consider; it would be better that ten guilty be set free than one innocent person be wrongly condemned.

The Texas Constitution was prepared by our founders to protect me against you. Yes, not to protect me against my fellow citizen, but rather to protect me from the very governmental instruments I helped create and empower. The Texas Code of Criminal Procedure was prepared specifically to protect me from my protectors, to protect the citizens from excesses by the very individuals empowered to protect us from the criminals. It is a paradox that we must be protected from our protectors but such is the nature of the human animal.

H.G. Wells, in his OUTLINE OF HISTORY, on speaking to the excesses of the Popes during the Dark Ages aptly observed:

"The giver of the law most owes the law allegiance. He of all beings should behave as if the law compels him. But it is the universal failing of mankind that what we are given to administer, we promptly presume we own."

Absent a showing if just cause for every assertion and allegation made above, Relater moves the court to rule the due course of the law to have been abridged and jurisdiction thereby lost to the State.

PRAYER

Affiant prays of the court a ruling of the court dismissing all allegations against Affiant for cause and an order to Respondent to release Affiant from custody.

(a) Affiant further moves the court to convene a court of inquiry to investigate into the sufficiency of the allegations made in the writ above to include the allegations that:

(b) Arresting officer committed the act of Aggravated Kidnapping against Relater by secreting Relater from the nearest available magistrate having made no due diligent effort to locate same;

(c) Arresting officer rendered himself disqualified as a credible witness against Relater for the purpose of presenting a criminal complaint to a magistrate by committing criminal acts against Relater ;

(d) Arresting officer, by falsely arresting Relater then secreting same from the magistrate, enabled the commission of other criminal acts to the detriment of Relater , in furtherance of an ongoing set of schemes designed and intended to dis-enfranchise Relater of his rights to the due course of the laws and Constitution of the State of Texas;

(e) Jailers subjected Relater to physical and emotional punishment at the jail while holding Relater secret from some magistrate in furtherance of the above alleged criminal

enterprise designed and intended to render Relater physically and psychologically unable to resist the continual abuse and, thereby, render Relater amenable to an improper plea bargain wherein Relater would be forced to waive all the rights already abridged and abated;

(f) Magistrate held an examining trial in secret wherein the liberty interest of Relater was determined subsequent to the ex parte presentment of hearsay evidence by a jailer having no personal knowledge of the facts alleged in support of the criminal complaint filed with the magistrate;

(g) Magistrate denied Relater in his right to confront the witness against him at the secret examining trial;

(h) Magistrate denied Relater in his right to be heard at the secret examining trial;

(i) Magistrate denied Relater opportunity to examine the witness against him at the secret examining trial;

(j) Magistrate denied Relater in his right read the statement presented against him at the examining trial;

(k) Magistrate failed to certify testimony in support of the criminal complaint filed by the jailer at the examining trial held in secret in the jail thereby rendering the warrant prepared and presented two months later void;

(l) Magistrate failed to prepare a proper warrant within 48 hours of the examining trial, thereby mandating a ruling of no probable cause in the matter;

(m) Magistrate secreted the records from the clerk of the court, rendering Relater to a state of legal limbo from October 5, 2004 until December 1, 2004;

(n) Magistrate secreted from the clerk of the court the complaint presented at the secret examining trial such that it is not available to the court rendering the court without jurisdiction;

(o) Prosecutor violated his oath of office and specific requirement to act as a neutral arbitrator to insure Relater in his rights;

(p) Relater moves the court to consider the laws listed above in para materia, giving full faith and credit to the intent of the Legislature and the long history of common law going all the way back to and beyond the Magna Carta, concerning the matter of the liberty of a free citizen. Relater moves the court to dismiss all charges against Relater and set him to his liberty.

Respectfully,

_____

«First» «Middle» «Last»
«Address»
«City», «ST» «Zip»
«Phone»

Jurat

Signed and sworn before me _____, on this day, the _____ day of _____, 2008.

Notary Signature: _____