Dear Readers:

The expanding population of Prisons in California represent a growing quantity of citizens experiencing denials and violations of their State and Federal Constitutional Rights during their trials. Unaffected citizens ignore or 'deny' the occurrence of constitutional errors, until the errors affect them directly. If left unchecked, much like the purge of the Jews in Nazi over-sighted lands during WW-II, after your fellow citizens are gone, you will be next.

In 1996, subsequent to the O.J. Simpson trial, California enacted Evidence Code section 1370, hereafter called 1370. The legislators state the purpose of 1370, "to allow admission of hearsay evidence that meets specific criteria (Evid. Cd. 1370)." The evidence code functions as an exception to the California and U.S. Constitutional Right of Confrontation.

The U. S. and State Constitutional declare these Constitutional Rights articulated as "Unalienable Rights" of all citizens. Fundamental to a Fair Trial, Due Process, Equal Protection of the Laws and Liberty of all Citizens, these rights must receive vigorous protection. Denial of these rights approaches and affords tyranny.

I have experienced a trial without vigorous protection of the Constitutional Rights of the accused. During my trial damaging Hearsay testimony gained admission absent confrontation, in violation to the mandatory language of the Constitution and statutory language of Evidence Code section 1370. The result of the trial, a conviction of the accused and a sentence of Life Without the possibility of Parole-the "Walking Death" Sentence.

It is not a "harmless error" when there occurs a violation of the Constitutional Rights in an accused's trial and the trial ends in the conviction of the accused.

I will address some of the U.S. Constitution's 6th and 14th Amendment's Rights due an accused in a trial, the most recent change in the protection of these rights by the Justice System, and the fact of this change not applied retroactively. Let us see what the U.S. Constitution says about the 6thAmendment's "unalienable right" in the trial process.

In the Declaration of Independence (1776) exist the words,

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights…"

The Declaration of Independence, as the preamble to the Constitution of the United States, adopted July 4, 1776, not abrogated since. The Rights it references find enumeration in the U.S. Constitution's "Bill of Rights".

The 6th Amendment speaks to the Mode of trial in criminal proceedings. Ratified December 15, 1791, it has one section, which states, in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the rights … to be confronted with witnesses against him."

The 14th Amendment, certified July 28, 1868, specifies, in section 1,

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U. S., nor shall any state deprive any person of Life, Liberty, or Property, without Due Process of Law; nor deny to any person within its jurisdiction Equal Protection of the Law."

We have identified some of the unalienable rights of the accused, according to the wording of the U.S. Constitution. Now, let us look at the failure of vigorous protection of these rights, until the decision of Crawford v Washington (Case # 02-9410 (2004).

In 2004, the United States Supreme Court decision, in Crawford v Washington, affected the observance of the rights of confrontation enumerated in the 6th amendment, until 2004 routinely denied the accused. Prior to Crawford, the USSC ruled, through reliance upon the precedential decision of Ohio v Roberts (448 U.S. 56), "the rights of confrontation does not bar admission of an unavailable witness's statement against a criminal defendant if the statement bears an 'adequate indicia of reliability'." The test for reliability required the evidence to either "'fall within a firmly rooted hearsay exception' or bear 'Particularized guarantees of trustworthiness' (Id. At 66)."

On March 8, 2004, the USSC decided Crawford v Washington. In the decision, at (d), the court specifies,

"The confrontation clause commands that reliability be assessed in a particular manner: by testing in the crucible of cross examination."

The decision in Crawford replaced the decision of Ohio v Roberts, saying that

"Roberts replaced constitutionally prescribed methods of assessing reliability with a wholly foreign one (Crawford, pp. 25-27)" and the "Robert's decision admitted core testimonial statements that the Confrontation Clause plainly meant to exclude (Crawford, pp. 27-30)."

Unfortunately, the Crawford decision did not stipulate retroactive application. It clearly indicated the intentions of the framers of the 6th amendment "would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had prior opportunity for cross-examination."

We now know the 6th Amendment's Rights as unalienable, how the judicial decisions denied these rights, and the decisions that corrected the denial of Confrontation. Let us look at California's resistance to protection of the 6th Amendment's Rights and what the California Courts say about the 6th Amendment's Rights.

Legislators of California did not intend by Evidence Code 1370, to circumvent the 6th Amendment of the U.S. Constitution. In the second sentence of the 3rd paragraph, Evid. Cd. 1370 states: "*Any statement made more than 5 years before the current action or proceeding shall be inadmissible under this section.*" Notice the mandatory language. Any statement admitted under Cal. Evid. Cd. 1370, which does not meet the admission criteria gains admission in violation of the language of the statute and in violation of the 6th Amendment of the U.S. Constitution. When the result of the trial is conviction, the constitutional violations are not harmless. The harm done is a conviction effected via inadmissible testimonial evidence. Nevertheless, the courts of California rule any violations prior to Crawford as Harmless errors, and refuse to apply Crawford retroactively, in spite of the declaration by the USSC that the framers intended in the confrontation clause, *"testing of testimony in the crucible of cross-examination.*"

I have shown you:

The wording of the 6th and 14th Amendments of the United States Constitution, the position of the Courts relative to Ohio v Roberts, the changes implemented via Crawford v Washington, and how the courts refuse to apply Crawford's revelation retroactively.

You may ask, "What are we to do?"

Write your State and Federal Congressional representatives, write other media outlets and ask, no demand, there be legislation applying vigorous retroactive protection of the Constitutional rights of an accused. It may be you or someone very close to you, effected by a denial of their constitutional rights, convicted of a crime because of the denial, and suffering irreparable harm.

Remember the events of WW-II, where the people ignored the denial of fellow citizen's rights, until they were helpless to defend themselves. Do not let this happen in this land. Act now to prevent a continuation of the violation of citizen's constitutional rights.

It is ***not Harmless Error***, when a trial ends with conviction and there exists a denial of the U.S. Constitutional Rights during trial.

I remember hearing Dr. Martin Luther King say,

"There comes a time when silence is betrayal."

Let us not betray the constitution of the United States, our progeny, our fellow citizens, and ourselves. Write your Congressional Representatives and anyone else you are able. Ask them to advocate for the retroactive application of all improved protections of U.S. Constitutional Rights of Citizens.

Also, contact me at, Robert Mosley, P.O.Box 4430, A-1-122, Lancaster, California 93539, and continue to read these web pages.