

In the
Supreme Court
of the
State of California

SUPREME COURT
FILED

APR 16 2013

Frank A. McGuire Clerk

Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

PAUL BIANE, MARK KIRK, JAMES ERWIN, JEFFREY BURUM,

Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION TWO
CASE No. E054422,
SAN BERNARDINO COUNTY SUPERIOR COURT
CASE No. FSB 1102102
HON. BRIAN MCCARVILLE, JUDGE

JEFFREY BURUM'S MOTION FOR JUDICIAL NOTICE

ARENT FOX LLP
STEPHEN G. LARSON (SBN 145225)
MARY CARTER ANDRUES (SBN 138486)
JONATHAN E. PHILLIPS (SBN 233965)
555 WEST FIFTH STREET, 48TH FLOOR
LOS ANGELES, CALIFORNIA 90013-1065
TELEPHONE: (213) 629-7400
FACSIMILE: (213) 629-7401

ATTORNEYS FOR DEFENDANT AND RESPONDENT,
JEFFREY BURUM

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ATTORNEYS FOR DEFENDANT AND RESPONDENT,
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MOTION FOR JUDICIAL NOTICE

**TO THE HONORABLE PRESIDING JUSTICE AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:**

Petitioner Jeffrey Burum, through his attorneys, Arent Fox LLP, requests that this Court take judicial notice of the following documents as they relate to the issues set forth in his Answer Brief. Authority for this request is found in California Evidence Code §§ 450, 451(a), 452(a), (c), 453, and 459(d).

The documents submitted for judicial notice that are attached to this Motion include the following:

Exhibit A: Judgment of Validation dated March 29, 2007 filed in California Superior Court, County of San Bernardino, Case No. SCVSS 146272.

Exhibit B: Legislative Counsel's Digest for AB 3326.

Exhibit C: CALCRIM Jury Instruction No. 2600.


Exhibit D: CALCRIM Jury Instruction No. 2603.

Exhibit E: April 12, 1943 letter by R.H.C. to Gov. Warren regarding Senate Bill No. 928.

Exhibit F: Excerpt of July 3, 1951 Report on Assembly Bill No. 1785.

Dated: April 15, 2013

ARENT FOX LLP

By: 
Stephen G. Larson
Mary Carter Andrues
Attorneys for Defendant and
Respondent **JEFFREY BURUM**

MEMORANDUM IN SUPPORT OF MOTION
FOR JUDICIAL NOTICE

The California Evidence Code allows California courts to take judicial notice of appropriate matters. (See Evid. Code § 450 *et seq.*) This authority extends to appellate courts as well as to trial courts. (See Evid. Code § 459, subd. (a).)

Section 451(a) lists those matters of which a court is required to take judicial notice, which includes the laws of this State. Section 452(a) permits courts to take judicial notice of any aspect of the law of the State that is not covered by section 451. Section 453, in turn, requires courts to take judicial notice of any matter included in Section 452 at the request of a party to an action, if that party gives the opposing party sufficient opportunity to respond.

The Judgment of Validation from the proceedings in the San Bernardino County Superior Court action filed by the San Bernardino County Flood Control District provides necessary context for understanding the actions taken by the prosecutors and related state and county agencies in this matter. Judgments entered in related state court proceedings have long been afforded judicial notice as an aid to understanding the context of the facts in a case. (See Evid. Code § 452, subd. (d) [noting “records of any court of this state” may be judicially noticed]; *People v. Lee* (2011) 51 Cal.4th 620; *Rosen v. St. Joseph Hosp. of Orange County* (2011) 193 Cal.App.4th 453; *City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109 Cal.App.4th 1668; *Day v. Sharp* (1975) 50 Cal.App.3d 904.) Therefore, this Court should take judicial notice of Exhibit A, attached hereto.

The proper construction of several statutes forms a critical role in resolving the issues raised in Mr. Burum’s Answer Brief. Specifically, the legislative history of California Government Code Sections 1090 and 9054

are relevant to the arguments raised in the Answer Brief. A statute's legislative history has long been afforded judicial notice as an aid to construe the statute's meaning. (See *St. John's Well Child and Family Ctr. v. Schwarzenegger* (2010) 50 Cal.4th 960; *Martin v. Szeto* (2004) 32 Cal.4th 445; *Hughes Elec. Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251.) As the Law Revision Commission Comment to Section 450 makes clear, the legislative history materials for which Petitioner requests judicial notice are among those matters subject to mandatory judicial notice:

Under the Evidence Code, as under existing law, courts may consider whatever materials are appropriate in construing statutes, determining constitutional issues, and formulating rules of law. That a court may consider legislative history, discussions of learned writers in treatises and law reviews, materials that contain controversial economic and social facts or findings or that indicate contemporary opinion, and similar materials is inherent in the requirement that it take judicial notice of the law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids. *Cf. People v. Sterling Refining Co.* (1927) 86 Cal. 558, 564 (statutory authority to notice 'public and private acts' of legislature held to authorize examination of legislative history of certain acts).

Therefore, this Court should take judicial notice of Exhibits B, E, and F, attached hereto.


Likewise, the "California jury instructions approved by the Judicial Council are the official instructions for use in the State of California." (Cal. Rules of Court, Rule 2.1050, subd. (a).) The purpose of those jury instructions is to "improve the quality of jury decision making by providing standardized instructions that accurately state the law in a way that is understandable to the average juror." (*Id.*) California courts are "strongly encouraged" to use the Judicial Council's jury instructions, as the Judicial

Council “makes every effort to ensure that they accurately state existing law.” (*Id.* at subds. (b) & (e).) It is appropriate for this Court to take judicial notice of the rules of court and the wording of the CALCRIM jury instructions. (See *People v. Torres* (2011) 198 Cal.App.4th 1131, 1142, fn.6 [taking judicial notice of rules of court and “the wording of the CALCRIM publication, as it is not reasonably subject to dispute”]; *People v. Cahan* (1956) 141 Cal.App.2d 891 [taking judicial notice of records of the judicial council].) As such, this Court should take judicial notice of Exhibits D and E, attached hereto.

In sum, Mr. Burum respectfully requests that this Court take judicial notice of the materials attached hereto as Exhibits A through F.

Dated: April 15, 2013

ARENT FOX LLP

By: 
Stephen G. Larson
Mary Carter Andruess
Attorneys for Defendant and
Respondent **JEFFREY BURUM**

1 GREG HARRINGTON (STATE BAR NO. 93839)
NORMAN C. HILE (STATE BAR NO. 57299)
2 DONALD S. FIELD (STATE BAR NO. 168832)
MICHAEL C. WEED (STATE BAR NO. 199675)
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
4 Sacramento, CA 95814-4497
Telephone: 916-447-9200
5 Facsimile: 916-329-4900
Email: mweed@orrick.com

6 MICHELLE D. BLAKEMORE (STATE BAR NO. 110474)
Deputy County Counsel
7 MITCHELL L. NORTON (STATE BAR NO. 167018)
Deputy County Counsel
8 RUTH E. STRINGER (STATE BAR NO. 103563)
9 County Counsel
385 North Arrowhead Avenue, 4th Floor
10 San Bernardino, CA 92415-0140
Telephone: (909) 387-5445
11 Fax: (909) 387-5462

12 Attorneys for Plaintiff,
San Bernardino County Flood Control District

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
MAR 29 2007
BY W. Robert Fawke
CLERK

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN BERNARDINO

16 SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT,
17
Plaintiff,
18
v.
19
ALL PERSONS INTERESTED IN THE MATTER
20 OF THE VALIDITY OF PROCEEDINGS
RELATING TO THE AUTHORIZATION AND
21 ISSUANCE OF SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT JUDGMENT
22 OBLIGATION BONDS TO BE ISSUED WITH
RESPECT TO CERTAIN OBLIGATIONS OF THE
23 DISTRICT ARISING UNDER A JUDGMENT,
AND THE EXECUTION AND DELIVERY OF AN
24 INDENTURE, A SWAP AGREEMENT, AND
ANY OTHER RELATED CONTRACTS OR
25 AGREEMENTS AUTHORIZED BY THE BOARD
OF SUPERVISORS OF THE SAN BERNARDINO
26 COUNTY FLOOD CONTROL DISTRICT, AND
CERTAIN OTHER MATTERS PERTAINING
27 THERETO,
28
Defendants

Case No. SCVSS 146272

[PROPOSED] JUDGMENT OF
VALIDATION

Date: March 29, 2007
Time: 8:30 a.m.
Dept.: S9
Judge: Hon. W. Robert Fawke

EXEMPT From Filing Fees Per Govt.
Code § 6103.

1 The Application for Judgment of Validation and supporting papers filed by plaintiff San
2 Bernardino County Flood Control District (the "District") came properly before the Court for review and
3 determination. The Court having reviewed the application, the supporting papers, the other papers and
4 pleadings on file in this action, and good cause appearing, hereby ORDERS, ADJUDGES AND
5 DECREES as follows:

6 1. The District has complied with this Court's order providing for publication and
7 service of the summons (the "Order for Publication") in accordance with the applicable provisions of
8 California Code of Civil Procedure Sections 860 *et seq.* Jurisdiction over all persons interested in the
9 subject matter of this action was established by the publication of the summons in THE SAN
10 BERNARDINO COUNTY SUN once each week for three successive weeks pursuant to California
11 Government Code Section 6063, by posting the summons in multiple public locations within the
12 District, and by mailing a copy of the summons and complaint to those persons who contacted the
13 District's counsel and expressed their interest in this matter. The only interested party to timely appear
14 in this action appeared in support of validation.

15 2. The notice procedures in accordance with California Civil Procedure Code
16 Section 860 *et seq.*, and the notice provided by the District in this action as described above, provide
17 under all applicable laws adequate notice to all persons interested in the subject matter of this action, and
18 pursuant to such notice, this Court has jurisdiction over all persons and the subject matter of this action.

19 3. This action is properly brought under California Civil Procedure Code Section
20 860 *et seq.* and Government Code Sections 53510 *et seq.* and 53589.5, and is entitled to expedited
21 treatment under Civil Procedure Code Section 867.

22 4. All proceedings by and for the District in connection with the Resolution, the
23 Bonds, the Indenture, the Swap Agreement, and any other related contracts or agreements authorized or
24 contemplated by the District, and the District's obligation under the Settlement Agreement and the
25 Judgment, all as defined in the Complaint, were, are and will be valid, legal and binding obligations of
26 the District, and were, are and will be in conformity with the applicable provisions of all laws and
27 enactments at any time in force or controlling upon such proceedings, whether imposed by law,
28 constitution, statute or ordinance, and whether federal, state, or municipal.

1 5. All conditions, things and acts required by law to exist, happen or be performed
2 precedent to the adoption of the Resolution, and the terms and conditions thereof, including the
3 authorization for the issuance and sale of the Bonds, and the execution and delivery of the Indenture, the
4 Swap Agreement, and any other contracts and agreements in connection therewith, have existed,
5 happened and been performed in the time, form and manner required by law.

6 6. The Settlement Agreement is a contract that is subject to validation under
7 California Code of Civil Procedure Section 860 *et seq.* The Settlement Agreement and the terms thereof
8 were properly considered and approved at a regularly-scheduled noticed meeting of the Board of
9 Supervisors of the District, and the Settlement Agreement was duly executed and delivered by the
10 District and constitutes a valid and binding obligation of the District.

11 7. The District has the authority under California law to (i) issue the Bonds;
12 (ii) apply the proceeds of the Bonds to the refunding of the District's obligation under the Settlement
13 Agreement and the Judgment, and to fund the reserve fund, pay capitalized interest, and pay the
14 associated costs of issuing the Bonds, all as identified and approved in the Resolution; (iii) execute and
15 deliver the Indenture, the Swap Agreement, and any other contract or agreements in connection with the
16 issuance of the Bonds; and (iv) use any legally available District revenues, including all *ad valorem*
17 taxes levied and allocated to the District or any zone of the District, to pay the principal of and interest
18 on the Bonds and to replenish or fund the reserve fund, as authorized in the Resolution.

19 8. The District's obligation to pay Colonies Partners L.P. under the Settlement
20 Agreement and the Judgment constitutes an obligation imposed by law, and that the Judgment, and the
21 District's obligation under the Judgment, constitute evidence of indebtedness that the District is
22 authorized to refund by issuing the Bonds pursuant to California Government Code Section 53570 *et*
23 *seq.* and Section 53580 *et seq.*

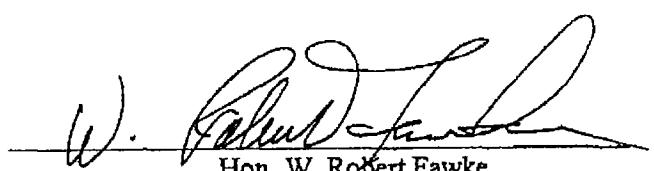
24 9. The Settlement Agreement, the Judgment, the Bonds, the Indenture, the Swap
25 Agreement, and any other contracts or agreements entered into by the District in connection therewith,
26 constitute or will upon execution and delivery constitute valid, legal and binding obligations of the
27 District enforceable pursuant to their respective terms and under the applicable provisions of all laws and

28 ///

1 enactments at any time in force or controlling, whether imposed by law, constitution, statute, or
2 ordinance, and whether federal, state, or municipal.

3 10. This judgment binds and permanently enjoins and restrains all persons or entities,
4 public or private, from the institution of any action or proceeding or maintaining any action or
5 proceeding challenging, *inter alia*, the validity of the Settlement Agreement, the Judgment, the Bonds,
6 the Indenture, the Swap Agreement, and any other contracts or agreements entered into by the District in
7 connection with this transaction, or any matters herein adjudicated or which could have been adjudicated
8 in this action.

9
10 Dated: 3-29-07

11 
12 Hon. W. Robert Fawke
13 Judge of the Superior Court
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1992 Cal. Legis. Serv. Ch. 1146 (A.B. 3326) (WEST)

CALIFORNIA 1992 LEGISLATIVE SERVICE
1992 Portion of 1991-92 Regular Session
COPR. (C) WEST 1992 No Claim to Orig. Govt. Works

Additions are indicated by <<+ Text +>>; deletions by
<<- Text ->>. Changes in tables are made but not highlighted.

CHAPTER 1146
A.B. No. 3326
CRIMES—RECEIVING STOLEN PROPERTY—PRINCIPAL OF THEFT

AN ACT to amend Section 496 of the Penal Code, relating to crime.

[Approved by Governor September 29, 1992.]

[Filed with Secretary of State September 30, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3326, Boland. Crimes: receiving stolen property.

Under existing law, every person who buys or receives any property that has been stolen or obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained in that manner, or who conceals, sells, withholds, or aids in concealing, selling, or withholding the property from the owner with the requisite knowledge is guilty of a misdemeanor or felony, punishable as specified.

This bill would provide that a principal in the actual theft of the property may be convicted under these provisions, except as specified. By increasing the scope of an existing crime, the bill would constitute a state-mandated local program.

The bill would also contain a declaration of legislative intent to provide for the prosecution of principals in the actual theft of property who continue to possess that property after the statute of limitations has run on the theft of the property.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 496 of the Penal Code is amended to read:

<< CA PENAL § 496 >>

496. <<(a)>> Every person who buys or receives any property <<that>> has been stolen or <<that>> has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds<<,+>> or aids in concealing, selling, or withholding any << * * * >> property from the owner, knowing the property to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year << * * * >><<+. However, if>> the district attorney or the grand jury determines that <<this>> action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars (\$400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

<<A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.>>

<<(b)>> Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code<<,+>> and every person whose principal business is dealing in<<,+>> or collecting<<,+>> used or secondhand merchandise or personal property, and every agent, employee<<,+>> or representative of <<that>> person, who buys or receives any property <<that>> has been stolen or obtained in any manner constituting theft or extortion, under << * * * >> circumstances <<that>> should cause <<the>> person, agent, employee<<,+>> or representative to make reasonable inquiry to ascertain that the person from whom <<the>> property was bought or received had the legal right to sell or deliver it, without making <<a>> reasonable inquiry, shall be presumed to have bought or received <<the>> property knowing it to have been so stolen or obtained. This presumption may, however, be rebutted by proof.

<<(c)>> When in a prosecution under this section it shall appear from the evidence that the defendant was a swap meet vendor or that the defendant's principal business was as set forth in << * * * >> <<subdivision (b)>>, that the defendant bought, received, or otherwise obtained, or concealed, withheld<<,+>> or aided in concealing or withholding<<,+>> from the owner, any property <<that>> had been stolen or obtained in any manner constituting theft or extortion, and that the defendant bought, received, obtained, concealed<<,+>> or withheld <<that>> property under << * * * >> circumstances <<that>> should have caused him or her to make reasonable inquiry to ascertain that the person from whom he << or she>> bought, received, or obtained <<the>> property had the legal right to sell or deliver it to him or her, then the burden shall be upon the defendant to show that before << * * * >> buying, receiving, or otherwise obtaining <<the>> property, he or she made a reasonable inquiry to ascertain that the person << * * * >> selling or delivering the same to him or her had the legal right to << * * * >> sell or deliver it.

<<(d)>> Any person who has been injured by a violation of << * * * >> <<subdivision (a)>> may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit<<,+>> and reasonable attorney's fees.

<<(e)>> Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a state prison, or in a county jail for not more than one year.

<< Note: CA PENAL § 496 >>

SEC. 2. It is the intent of the Legislature to provide for the prosecution of principals in the actual theft of the property who continue to possess that property after the statute of limitations has run on the theft of the property.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CA LEGIS 1146 (1992)

CA LEGIS 1146 (1992)

END OF DOCUMENT

A. BRIBERY OF OFFICIAL

2600. Giving or Offering a Bribe to an Executive Officer (Pen. Code, § 67)

The defendant is charged [in Count _____] with (giving/ [or] offering) a bribe to an executive officer [in violation of Penal Code section 67].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (gave/ [or] offered) a bribe to an executive officer in this state [or someone acting on the officer's behalf];

AND

2. The defendant acted with the corrupt intent to unlawfully influence that officer's official (act[,]/ decision[,]/ vote[,]/ opinion[,]/ [or] _____ <insert description of alleged conduct in other proceeding>).

As used here, *bribe* means something of present or future value or advantage, or a promise to give such a thing, that is given or offered with the corrupt intent to unlawfully influence the public or official action, vote, decision, [or] opinion, [or] _____ <insert description of alleged conduct at other proceeding>] of the person to whom the bribe is given.

A person acts with *corrupt intent* when he or she acts to wrongfully gain a financial or other advantage for himself, herself, or someone else.

The official (act[,]/ decision[,]/ vote[,]/ opinion[,]/ [or] proceeding) the defendant sought to influence must have related to an existing subject that could have been brought before the public officer in his or her official capacity. It does not have to relate to a duty specifically given by statute to that officer.

An *executive officer* is a government official who may use his or her own discretion in performing his or her job duties. [(A/An) _____ <insert title, e.g., police officer, commissioner, etc.> is an executive officer.]

[The executive officer does not need to have (accepted the bribe[,]/ [or] performed the requested act[,]/ [or] deliberately failed to perform a duty).]

[*Offering a bribe* does not require specific words or behavior, as long as the language used and the circumstances clearly show an intent to bribe. [The thing offered does not need to actually be given, exist at the

time it is offered, or have a specific value.]]

New January 2006

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The statute applies to giving or offering a bribe to “any executive officer . . . with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer” It is unclear what “other proceeding” refers to and there are no cases defining the phrase. If the evidence presents an issue about attempting to influence an officer in any “other proceeding,” the court may insert a description of the proceeding where indicated.

Give the bracketed sentence that begins with “The executive officer does not” if the evidence shows that the executive officer did not accept the bribe or follow through on the action sought.

Give the bracketed definition of “offering a bribe” if the prosecution is pursuing this theory. Give the bracketed sentence that begins, “The thing offered does not need to actually,” on request.

AUTHORITY

- Elements. Pen. Code, § 67.
- Bribe Defined. Pen. Code, § 7(6).
- Corruptly Defined. Pen. Code, § 7(3).
- Executive Officer Defined. *People v. Strohl* (1976) 57 Cal.App.3d 347, 361 [129 Cal.Rptr. 224].
- Corrupt Intent Is an Element of Bribery. *People v. Gliksman* (1978) 78 Cal.App.3d 343, 351 [144 Cal.Rptr. 451]; *People v. Zerillo* (1950) 36 Cal.2d 222, 232 [223 P.2d 223].
- Subject Matter of Bribe. *People v. Megladdery* (1940) 40 Cal.App.2d 748, 782 [106 P.2d 84], disapproved on other grounds in *People v. Posey* (2004) 32 Cal.4th 193, 214–215 [8 Cal.Rptr.3d 551, 82 P.3d 755] and *People v. Simon* (2001) 25 Cal.4th 1082, 1108 [108 Cal.Rptr.2d 385, 25 P.3d 598]; *People v. Diedrich* (1982) 31 Cal.3d 263, 276 [182 Cal.Rptr. 354, 643 P.2d 971].
- Offering a Bribe. *People v. Britton* (1962) 205 Cal.App.2d 561, 564 [22 Cal.Rptr. 921].
- Bribery and Extortion Distinguished. *People v. Powell* (1920) 50 Cal.App. 436, 441 [195 P. 456].
- No Bilateral Agreement Necessary. *People v. Gliksman* (1978) 78 Cal.App.3d 343, 350–351 [144 Cal.Rptr. 451].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Governmental Authority, §§ 32–55.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.10 (Matthew Bender).

RELATED ISSUES***Entrapment***

The crime is complete once an offer is made. Accordingly, subsequent efforts to procure corroborative evidence do not constitute entrapment. (*People v. Finkelstein* (1950) 98 Cal.App.2d 545, 553 [220 P.2d 934]; *People v. Bunkers* (1905) 2 Cal.App. 197, 209 [84 P. 364].)

Accomplice Liability and Conspiracy

The giver and the recipient of a bribe are not accomplices of one another, nor are they coconspirators, because they are guilty of distinct crimes that require different mental states. (*People v. Wolden* (1967) 255 Cal.App.2d 798, 804 [63 Cal.Rptr. 467].)

Extortion Distinguished

Extortion is bribery with the additional element of coercion. Accordingly, the defendant cannot be guilty of receiving a bribe and extortion in the same transaction. (*People v. Powell* (1920) 50 Cal.App. 436, 441 [195 P. 456].)

2603. Requesting or Taking a Bribe (Pen. Code, §§ 68, 86, 93)

The defendant is charged [in Count _____] with (requesting[,]/ taking[,]/ [or] agreeing to take) a bribe [in violation of _____ <insert appropriate code section[s]>].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant was (a/an) (executive officer/ministerial officer/ employee/appointee/legislative officer/judicial officer) of the (State of California/City of _____ <insert name of city>/County of _____ <insert name of county>/ _____ <insert name of political subdivision from Pen. Code, § 68>);
2. The defendant (requested[,]/ took[,]/ [or] agreed to take) a bribe;
3. When the defendant (requested[,]/ took[,]/ [or] agreed to take) the bribe, (he/she) represented that the bribe would unlawfully influence (his/her) official (act[,]/ decision[,]/ vote[,]/ [or] opinion). The representation may have been express or implied;

AND

4. The defendant acted with the corrupt intent that (his/her) public or official duty would be unlawfully influenced.

As used here, *bribe* means something of present or future value or advantage, or a promise to give such a thing, that is requested or taken with the corrupt intent that the public or official action, vote, decision, or opinion of the person to who is requesting, taking, or agreeing to take the bribe, will be unlawfully influenced.

A person acts with *corrupt intent* when he or she acts to wrongfully gain a financial or other advantage for himself, herself, or someone else.

[An *executive officer* is a government official who may use his or her own discretion in performing his or her job duties. [A _____ <insert title, e.g., police officer, commissioner, etc.> is an executive officer.]]

[A *ministerial officer* is an officer who has a clear and mandatory duty involving the performance of specific tasks without the exercise of discretion.]

[A *legislative officer* is a member of the (Assembly/Senate/ _____ <insert name of other legislative body specified in Penal Code, § 86>) of this state.]

[A *judicial officer* includes a (juror[,]/ [or] judge [,]/ [or] referee[,]/ [or]

commissioner[,]/ [or] arbitrator [,]/ [or] umpire[,]/ [or] [other] person authorized by law to hear or determine any question or controversy).]

[Requesting or agreeing to take a bribe does not require specific words or behavior, as long as the language used and the circumstances clearly show that the person is seeking a bribe from someone else. [The People do not need to prove that the other person actually consented to give a bribe.]]

[The People do not need to prove that the defendant made any effort to follow through on the purpose for which the bribe was sought.]

New January 2006; Revised June 2007

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give the bracketed definition of “requesting or agreeing to take a bribe” if the prosecution is pursuing this theory.

Give the bracketed sentence that begins with “The People do not need to prove that the defendant made any effort to follow through” if there is no evidence that the defendant took any action based on the alleged bribe.

AUTHORITY

- Elements. Pen. Code, §§ 68, 86, 93.
- Bribe Defined. Pen. Code, § 7, subd. 6.
- Corruptly Defined. Pen. Code, § 7, subd. 3.
- Executive Officer Defined. *People v. Strohl* (1976) 57 Cal.App.3d 347, 361 [129 Cal.Rptr. 224].
- Ministerial Officer Defined. Gov. Code, § 820.25(b); *People v. Strohl* (1976) 57 Cal.App.3d 347, 361 [129 Cal.Rptr. 224].
- Legislative Member. Pen. Code, § 86.
- Judicial Officer. Pen. Code, § 93.
- Corrupt Intent Is an Element of Bribery. *People v. Gliksman* (1978) 78 Cal.App.3d 343, 346–350 [144 Cal.Rptr. 451]; *People v. Zerillo* (1950) 36 Cal.2d 222, 232 [223 P.2d 223].
- Meaning of Understanding or Agreement. *People v. Pic'l* (1982) 31 Cal.3d 731, 738–740 [183 Cal.Rptr. 685, 646 P.2d 847]; *People v. Diedrich* (1982) 31 Cal.3d 263, 273–274 [182 Cal.Rptr. 354, 643 P.2d 971]; *People v. Gliksman* (1978) 78 Cal.App.3d 343, 346–350 [144 Cal.Rptr. 451].
- Bribery and Extortion Distinguished. *People v. Powell* (1920) 50 Cal.App.

436, 441 [195 P. 456].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Governmental Authority, §§ 32–55.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.10 (Matthew Bender).

RELATED ISSUES

See the Related Issues section of CALCRIM No. 2600, *Giving or Offering a Bribe to an Executive Officer*.

2604–2609. Reserved for Future Use

1. GOVERNOR WARREN

2. FROM

3. BILL NO.

4. SUBJECT MATTER

5. GENERAL LAW

6. OPERATIONAL STATE GOVERNMENT

7. OFFICERS

8. AUTHOR

9. VOTE

10. LEGALITY

11. (a) LEGISLATIVE COUNSEL

12. (b) ATTORNEY GENERAL

13. 6. SPONSORSHIP

14. 7. OPPOSITION

15. 8. DEPARTMENTAL REPORTS

16. 9. COMMENTS

17. 10. COMMENTS

18. 11. COMMENTS

19. 12. COMMENTS

20. 13. COMMENTS

21. 14. COMMENTS

22. 15. COMMENTS

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50. 43. COMMENTS

51. 44. COMMENTS

1976 2:28 AM
LEGISLATIVE OFFICE

MEMORANDUM

GOVERNOR'S OFFICE

To: GOVERNOR WARREN

PLACE Sacramento, Calif.

From: R. H. C.

DATE April 12, 1943.

1. BILL NO. Senate Bill No. 958
2. SUBJECT MATTER Establishes a Government Code, incorporating a great many general laws and code sections relating to the organization and operation of State government and the general qualifications of public officers. Prepared by the Code Commission.
3. AUTHOR Fletcher and Burns
4. VOTE Unanimous in both houses.
5. LEGALITY
 - (a) LEGISLATIVE COUNSEL Form, title and constitutionality approved.
 - (b) ATTORNEY GENERAL No legal objection.
6. SPONSORSHIP California Code Commission.
7. OPPOSITION None.
8. DEPARTMENTAL REPORTS
9. COMMENTS This bill (and Senate Bills 912-920) are part of the long-term codification program of the California Code Commission. No change in the substance of the existing law is made. I recommend approval of the bill.

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LEGISLATIVE INTENT SERVICE



RALPH N. KLEPS
LEGISLATIVE COUNSEL
CHARLES W. JOHNSON
CHIEF DEPUTY
JOSEPH L. KNOWLES
J. D. STRAUSS
PRINCIPAL DEPUTIES
OWEN K. KUNS
DEPUTY IN CHARGE
LOS ANGELES OFFICE
HARRIETT R. BUNLER
DEPUTY IN CHARGE
SAN FRANCISCO OFFICE



STATE OF CALIFORNIA
Office of Legislative Counsel

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W. E. PRINGLE
VIRGINIA STEPHENS
RAY H. WHITAKER
DELBERT E. WONG
DEPUTIES

July 3, 1951

REPORT ON ASSEMBLY BILL NO. 1785. BROWN, ROSENTHAL AND MUNNELL.

SUMMARY: Amends, adds and repeals various Secs., Gov. C., to conform provisions to inferior court reorganization program.

Substitutes "judicial district" for "township", "judge of justice court" for "justice" and "justice of the peace", "justice court" for "justice's court", and deletes references to city courts and judges and attaches thereof.

Makes other technical and conforming changes.

FORM: Approved. TITLE: Approved.

CONSTITUTIONALITY: Approved.

COMMENT: This bill is in conflict with Senate Bill No. 1708 insofar as they would both amend Sections 1090 and 1091 of the Government Code.

The latter bill would substantially incorporate the present provisions of Section 1091 into Section 1090 and enact a new Section 1091 to create exceptions to the provisions prohibiting enumerated public officers to have anything to do in a personal capacity with transactions with which they were concerned in their official capacities.

If the Governor signs both bills and Senate Bill No. 1708 is signed first the subsequent amendment by this bill will substantially nullify the changes provided in the above mentioned bill. If this bill is first signed it may not be effective as to Section 1090 only, insofar as officers of judicial districts, instead of townships are concerned, after the operative date of the municipal

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Report on Assembly Bill No. 1785 - p. 2

court reorganization program. However, it is probable that the courts would construe the bill, if enacted, as applicable to officers of judicial districts when it could no longer apply to townships by reason of their abolishment.

Ralph N. Kleps
Legislative Counsel

By *W. E. Pringle*
W. E. Pringle
Deputy

WEP:TG

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LEGISLATIVE INTENT SERVICE



People v. Biane, et al.
California Supreme Court Case No. S207250

PROOF OF SERVICE

I am a citizen of the United States. My business address is ARENT FOX LLP, 555 West Fifth Street, 48th Floor, Los Angeles, CA 90013. I am employed in the county of Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the within cause.


On the date set forth below, according to ordinary business practice, I served BY U.S. MAIL the following document described as:

JEFFREY BURUM'S MOTION FOR JUDICIAL NOTICE

I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document in envelopes addressed to the persons stated on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 15, 2013, at Los Angeles, California.


Kimberly Bardales

SERVICE LIST

| | |
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| <p>Melissa Anne Mandel OFFICE OF THE ATTORNEY GENERAL P.O. Box 85266 San Diego, CA 92101</p> <p>(619) 645-2224 (619) 645-2191 fax melissa.mandel@doj.ca.gov</p> | <p>Counsel for Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA</p> |
| <p>Deputy D.A. Richard Lewis Cope SAN BERNARDINO COUNTY DISTRICT ATTORNEY 303 W. 3rd Street, 5th Floor San Bernardino, CA 92415</p> <p>(909) 382-7609 (909) 388-6721 fax rcope@sbcda.org</p> | <p>Counsel for Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA</p> |
| <p>David M. Goldstein LAW OFFICE OF DAVID M. GOLDSTEIN 10535 Foothill Boulevard, Suite 300 Rancho Cucamonga, CA 91730</p> <p>(909) 466-4757 (909) 980-5525 fax Dave@daveglaw.com</p> | <p>Counsel for Defendant PAUL BIANE</p> |
| <p>Paul Grech, Jr. Chad Firetag LAW OFFICES OF GRECH & FIRETAG 7095 Indiana Avenue, Suite 200 Riverside, California 92506</p> <p>(951) 682-9311 (951) 682-4289 fax firetag@yahoo.com paulgesq@pacbell.net</p> | <p>Counsel for Defendant MARK KIRK</p> |

| | |
|---|--|
| <p>Rajan R. Maline LAW OFFICE OF RAJAN MALINE 3750 University Ave., Suite 680 Riverside, CA 92501</p> <p>(951) 779-0221 (951) 779-0229 fax rajmaline@aol.com</p> | <p>Counsel for Defendant JAMES ERWIN</p> |
| <p>Steven L. Harmon Law Offices of Harmon & Harmon 7095 Indiana Ave., Suite 200 Riverside, CA 92506</p> | <p>Counsel for Defendant JAMES ERWIN</p> |
| <p>Clerk of the Court Criminal Division Attn: Hon. Brian McCarville SAN BERNARDINO COUNTY SUPERIOR COURT 351 N. Arrowhead San Bernardino, CA 92415</p> | |
| <p>Clerk of the Court Criminal Division Attn: Hon. Michael A. Smith SAN BERNARDINO COUNTY SUPERIOR COURT 351 N. Arrowhead San Bernardino, CA 92415</p> | |
| <p>Clerk of the Court California Court of Appeal Fourth Appellate District, Division Two 3389 Twelfth Street Riverside, CA 92501</p> | |