#34(L) 7/10/64

Memorandum 64-51

Subject: Tentative Recommendation on Burden of Proof, Burden of Producing Evidence, and Presumptions.

There is attached to this memorandum a letter from Commissioner Sato that states that the comment to Section 607 in the presumptions recommendation is inaccurate in its statement of the law of California. The letter contains an analysis by which the inaccuracy of the comment is sought to be demonstrated. This memorandum is in reply to Commissioner Sato's letter.

Commissioner Sato's letter makes the following points:

1. The Comment is inaccurate in stating or implying that when a presumption operates in a criminal case to establish an element of the offense charged, the jury must accept the presumed fact as established if it believes the underlying facts have been established beyond a reasonable doubt.

2. The Comment is inaccurate in implying that the courts and the Legislature use the language of presumptions, prima facie evidence, and burden of proof as fungible, i.e., as meaning the same thing--that the defendant has an affirmative defense in regard to the fact presumed (affirmative defense is used here and in Commissioner Sato's letter in the sense intended by the Model Penal Code, not in the sense that the defendant must plead it).

I will consider the second point first, because if the various forms of expression are in fact interchangeable methods of saying the same thing, the authorities involving all of these terms are relevant to a discussion of the effect of presumptions.

That the California courts regard the terms as interchangeable is

abundantly clear from the cases. I could cite more authority, but the following will suffice:

In People v. Bushton, 80 Cal. 160 (1889), the court was considering Penal Code Section 1105 which expressly places upon the defendant the burden of proving circumstances in mitigation, justification, or excuse after the prosecution has proven the homicide by the defendant. Said the court:

> The section casts upon the defendant the burden of proving circumstances of mitigation, or that justify or excuse the commission of the homicide. This does not mean that he must prove such circumstances by a preponderance of the evidence, [emphasis in original] but that the presumption [emphasis supplied] that the killing was felonious arises from the mere proof by the prosecution of the homicide, and the burden of proving circumstances of mitigation, etc., is thereby cast upon him. He is only bound under this rule to produce such evidence as will create in the minds of the jury a reasonable doubt of his guilt of the offense charged. . . .
>
> The section under consideration was not intended to, and does not, change this rule as to the weight of the evidence. It simply provides that, certain facts being proved, the presumption of guilt shall follow, unless [emphasis added] the defendant shall himself prove certain other facts. [80 Cal. at 164.]

In People v. Harris, 169 Cal. 53, 68 (1914), the court spoke of the fact that the defendant has the burden of proof on insanity. It said:

> The burden of proof is always on the prosecution to prove all the elements necessary to constitute the guilt of the defendant and this involves proof of a mind sufficiently sane to be capable of committing crime or any degree of crime involved in the offense charged. But the law presumes all men are sane; not some degree of sanity but that they have full mental capacity to commit any crime or degree of crime which the facts in the case establish. Express or affirmative proof of the sanity of a defendant is not required to be made by the prosecution. The presumption which the law raises is the full equivalent of proof of it as a fact, and, until the contrary is shown, the prosecution, by the presumption, has proven the sanity of the defendant beyond a reasonable doubt. This presumption is conclusive in the absence of any evidence on the part of the defendant contravening it. If none is introduced by him the presumption prevails, and the burden on the prosecution of proving beyond a reasonable doubt the capacity of the defendant to commit the crime charged which the facts and circumstances otherwise show beyond such doubt was committed by him, is sustained. [169 Cal. at 68; emphasis added.]

In People v. Howard, 211 Cal. 322, 329 (1930), the court said in regard to the allocation of burden of proof in Penal Code Section 1105:

> When the killing is proved to have been committed by the defendant, and nothing further is shown, the presumption of law is that it was malicious and an act of murder; but in such a case the verdict should be murder of the second degree, and not murder of the first degree. [211 Cal. at 329; emphasis added.]

In People v. Agnew, 16 Cal.2d 655 (1940), the court considered the effect of a common law presumption on the trial of a criminal case. The defendant argued that he was entitled to the presumption of innocence and that presumption should prevail over any contrary presumption. The defendant relied on People v. Strassman, 112 Cal. 683 (1896), which held that "all . . . disputable presumptions give way before the presumption of innocence which belongs of right to every defendant, and which remains with him until the prosecution by convincing evidence has established his guilt." See also People v. Douglass, 100 Cal. 1 (1893), to the same effect. The court held that Strassman and Douglass had been overruled and went on to consider the precise effect of the presumption. It determined the effect of the presumption by citing and relying on People v. Bushton, 80 Cal. 160 (1889), which was a statutory allocation of the burden of proof case. The court considered the following instruction that had been given in a previous case:

> While it is true that the prosecution must prove the imprisonment, it is also true that the imprisonment being proven, the law presumes it unlawful until the contrary is shown. It is for the defendant to justify it by proving that it was lawful. [Emphasis added.]

The court said in regard to this instruction:

> It therefore seems clear that the . . . instruction . . . appears substantially correct as far as it went and is sustained by reason and authority. [16 Cal.2d at 664.]

The court also considered the instruction given in the case before it relating to the common law presumption involved in the case:

> It is admitted by the defendant that he arrested . . . Prouty on the charge . . . [of] perjury . . . . If Prouty did commit such perjury, the defendant had a right to arrest him . . . . The burden is on the defendant to prove that Prouty committed perjury.

The court said in regard to this instruction--which expresses the common law presumption in terms of burden of proof:

> We are . . . of the opinion that while the . . . instruction above quoted was substantially correct as far as it went, it should not have been given without a qualifying instruction informing the jury that the burden thus placed upon the defendant could be met by evidence which produced in their minds a reasonable doubt as to whether Mr. Prouty had in fact committed perjury. [16 Cal.2d at 666; emphasis added.]

In distinguishing the case that had approved the first instruction quoted above without the qualification relating to the quantum of evidence required by the burden placed on the defendant, the court said:

> The question of the necessity for some qualification of the instruction given in People v. McGrew, supra, defining the degree or quantum of proof required of the defendant to meet the burden placed upon him [emphasis added], was not raised in that case. It is significant to note in this connection that People v. McGrew, supra, was decided in the year preceding the decision in People v. Bushton, supra, and prior to the time that the earlier decisions . . . had been overruled. Under the rule of . . . [the earlier cases], a defendant was required to meet the burden by proving justification by a preponderance of the evidence. [16 Cal.2d at 667.]

In People v. Scott, 24 Cal.2d 774 (1944), the court considered the constitutionality of a statutory presumption now found in Penal Code Section 12091. The court in discussing the effect of the presumption stated:

> Defendant challenges the constitutionality of the provision of [former] section 13 that makes possession of a firearm whose marks of identification have been tampered with prima facie evidence that the tampering was done by the possessor. . . .
>
> The rational connection required [by the Constitution]

between a proved fact and a presumed fact must be distinguished from the relation between a proved fact and an alleged fact that warrants a jury's inferring the one from the other . . . . Presumptions like that in the California statute, based on the possession of a sinister thing, are traditional in criminal legislation, which frequently imposes on the possessor or contraband goods the burden of explaining that he did not acquire or use them unlawfully. . . .

The Dangerous Weapons Control Act is designed to minimize the danger to public safety arising from the free access to firearms that can be used for crimes of violence. The identification of a person who has used a firearm criminally becomes more difficult and the attractiveness of a firearm for criminals is correspondingly increased, if its marks of identification have been tampered with. It would therefore be in the public interest to forbid the possession of firearms whose marks of identification have been tampered with. The mere threat of conviction to the possessor of such a firearm engendered by the presumption that he did the tampering is less severe than a statutory prescription of punishment of such a firearm. The imposition of punishment for the possession of such a weapon is with the power of the Legislature to regulate the traffic in firearms. . . . The protection of the public interest in eliminating firearms whose marks of identification have been tampered with by a statute that resorts to the less severe means of regulation by using the "inherent coercive power of a presumption" . . . is likewise within the power of the state. . . . There is nothing unreasonable in requiring the possessor to explain when and how he came into possession of a firearm whose marks of identification have been tampered with. The presumption does not impose on him the burden of proving who committed the crime, nor does it require him to persuade the jury of his innocence. He must merely go forward with evidence to the extent of raising a reasonable doubt that he tampered with the identification marks. When he has done so, he enjoys the presumption of innocence, and it is then incumbent on the prosecution to establish his guilt beyond a reasonable doubt. (People v. Fitzgerald, supra, at p. 195 [a statutory presumption case]; People v. Agnew, 16 Cal.2d 655, 665 [a common law presumption case]; People v. Post, 208 Cal. 433, 437 [a statutory allocation of the burden of proof case]; People v. Bushton, 80 Cal. 160, 164 [a statutory allocation of the burden of proof case].) [24 Cal.2d at 779-783; emphasis added.]

In People v. Hardy, 33 Cal.2d 52 (1948), the trial court instructed the jury that a common law presumption was controlling until overcome by a preponderance of the evidence. In the light of the foregoing authorities, this was held to be error. The court said:

> The necessary effect of the instruction given in the present case was to place on defendant not merely the burden of producing evidence which would raise a reasonable doubt as to her consciousness, but the much greater burden of proving unconsciousness by a preponderance of the evidence.
>
> The mere fact that there is a presumption which tends to support the prosecution's case does not change the amount or quantum of proof which the defendant must produce. . . . One of the factors in raising a disputable presumption . . . is that the matter relates to defendant personally and lies peculiarly within his knowledge, and hence for reasons of convenience and necessity he should have the burden of producing evidence thereon. This burden, however, involves merely the duty of going forward with the evidence and of raising a reasonable doubt, and not the duty to overcome the presumption by a preponderance of the evidence. . . .
>
> The general rule as to the quantum of proof required of a defendant applies even where a statute places on defendant the burden of proving certain facts. [Citing cases involving the statutory allocation of the burden of proof in Penal Code Section 1105.][33 Cal.2d at 64-65; emphasis added.]

Penal Code Section 270 makes proof of abandonment or desertion of a child by the father "prima facie evidence that such abandonment . . . is wilful and without lawful excuse." In the case of In re Bryant, 94 Cal. App. 791 (1928), the defendant contended the provision was unconstitutional in that it compelled him to become a witness against himself (compare the court's language in Scott). The court answered the argument and analyzed the provision as follows:

> Section 270 merely fixes the quantum of evidence which, until overcome establishes beyond a reasonable doubt the guilt of a defendant charged with a violation of that section; it does not compel a defendant to be a witness against himself.
>
> The same principle is involved in section 1105 of the Penal Code. Under that section, when the people have proved the killing, and no evidence has been given tending to prove justification, they have proved prima facie the guilt of the defendant beyond a reasonable doubt.
>
> By reason of the statutory rule of evidence laid down in

> section 1105 the prima facie case of the prosecution can be overcome only by proof of justification, excuse or circumstances of mitigation. . . . Likewise, by reason of the statutory rule of evidence laid down in section 270, the prima facie case of the prosecution can be overcome only by proof that the omission on the part of the petitioner to furnish his children with necessary food, clothing, etc., was not wilful and was excusable. [94 Cal. App. at 794; emphasis added.]

Finally, in People v. Martina, 140 Cal. App.2d 17 (1956), the court was concerned with a common law presumption--the same one involved in the Hardy case. The trial court instructed as follows:

> Since the matter relates to the defendant personally, and lies peculiarly within his knowledge, the law places upon the defendant the burden of producing such evidence thereon as will overcome the presumption and create a reasonable doubt in the minds of the jury as to whether he was in fact conscious or unconscious.

The First District Court of Appeal, First Division, said:

> That sentence [the one just quoted] did not appear in the Hardy case instruction, although the court gave as one of the reasons for raising the presumption that the matter relates to the defendant personally and lies peculiarly within his own knowledge and that "hence for reasons of convenience and necessity he should have the burden of producing evidence thereon." . . . There is nothing objectionable, however, in it. . . .
>
> Perhaps the instruction would be better if the language "overcome the presumption" were omitted. However, taking the instruction as a whole it told the jury that defendant's burden with reference to the presumption, if it arose, was to create a reasonable doubt as to whether defendant was conscious. . . . We do not see how . . . the instruction was erroneous. [140 Cal. App.2d at 26-27; emphasis added.]

The point of quoting all of the foregoing cases is that the courts do regard burden of proof language, presumption language, and prima facie evidence language as having the same meaning. They use the terms interchangeably in the cases. Burden of proof cases--such as Bushton--are cited as authority in the presumptions cases, and vice versa. Of course, this interchangeable use of the terms is understandable if it is remembered that the very purpose

of creating a presumption affecting the burden of proof is to affect the burden of proof.

So far as the effect of a presumption in a criminal case in concerned, read the quotation above from In re Bryant, a statutory "prima facie evidence" case. Read also the quotation from People v. Scott, a statutory presumption case. Read the quotations from People v. Martina, a common law presumption case. And when the Supreme Court says in presumptions cases that the rule is the same as it is in the allocation of burden of proof cases--as it did in both Hardy and Scott--it is difficult to conclude that the rule is different.

Perhaps the most important consideration in this whole discussion is the relevant statutes. Code of Civil Procedure Section 1959 has provided since 1872 that

> A presumption is a deduction which the law expressly directs to be made from particular facts. [Emphasis added.]

Despite the fact that the statute has so stated for 92 years, and there is plenty of evidence that it has been used as a basis for instruction in criminal cases during that time, there is not one case (except maybe the Strassman and Douglass cases, which were overruled) that even intimates that the section does not mean precisely what it says even in criminal cases.

In the face of the statute that by definition requires a presumed conclusion to be drawn, in the face of several cases so indicating, and in the face of several cases stating that a presumption places on the defendant the burden of producing sufficient evidence to raise a reasonable doubt as to his guilt, what authorities are marshaled to demonstrate that this is not the law.

The cases involving the issue of insanity are dismissed on the ground that the issue of insanity is unique. The quotation from Harris indicates,

however, that the only thing unique about it is that the quantum of proof necessary to overcome the presumption of sanity is different.

People v. Boo Doo Hong, and People v. Harmon, are dismissed as not involving presumptions. This is true. Boo Doo Hong was a license case and Harmon a narcotics-prescription case. But if you believe C.C.P. § 1959 and consider a presumption to be a legally required deduction, both cases do involve presumptions. Or, if the quotations from the above cases mean anything, it is that the courts regard presumption language as interchangeable with burden of proof or (as in Harmon) required assumption language; hence, the cases are relevant to the effect of presumptions in criminal cases.

People v. Scott is apparently embarrassing, for it is conceded that it does "tend to support this conclusion" stated in the comment. This alone should be sufficient to demonstrate the accuracy of the comment, for Scott was written by Justice Traynor for a unanimous (except for Justice Carter) court and is still good law. It has never been questioned or limited in any way. Apparently the failure of Chief Justice Gibson to cite it in Hardy (an opinion concurred in by Traynor) is thought somehow to overrule the case sub silentio. This is untenable, however, for the cases are not inconsistent. They involved different questions. Hardy will be discussed below.

People v. Agnew is said to be inconclusive. I cannot agree. The court specifically approved an instruction stating that the law presumes the unlawfulness of the arrest until the contrary is shown. But the court said that the instruction should be given only if the qualification is added indicating the quantum of the requisite contrary showing. The fact that Bushton is cited and relied on in the case also indicates that even though it is a presumption case, it should be handled exactly as if the statute were worded in terms of burden of proof--as is the statute considered in Bushton.

In re Bryant is dismissed as involving merely a determination that there was sufficient evidence to sustain a finding of guilt. That was the first point involved in the case. An attack was then made on the constitutionality of the presumption involved in the case and the court in considering that question spelled out quite precisely what the effect of the presumption was. The court said that, because of the presumption, the prosecution's proof beyond a reasonable doubt of abandonment "establishes beyond a reasonable doubt" the guilt of the defendant of the crime of wilful and unjustified abandonment until the presumption is overcome with contrary proof. The court pointed out that the presumption functioned in precisely the same manner that the allocation of the burden of proof under Section 1105 of the Penal Code operates, citing cases involving that section.

People v. Martina's square holding by the First District Court of Appeal (Peters, Bray, Wood, JJ.) is dismissed as an attempt (apparently mistaken) to apply People v. Hardy.

Hence, the whole authority for the argument that the comment is inaccurate is based on the analysis made of People v. Hardy. Since the analysis reaches a conclusion that is contrary to Martina and Scott, apparently those square holdings must be regarded as wrong.

The problem with this argument is that all that People v. Hardy held is that it is error to state in an instruction based on a presumption that the defendant must overcome the presumption by a preponderance of the evidence. Since this was not the issue involved in Scott, it is not surprising that Scott is not cited. Scott involved the constitutionality of a statutory presumption; and Justice Traynor in indicating what he was holding constitutional spelled out its function in the case.

The whole analysis boils down to one sentence in the Hardy case. It states:

> The rule [that the defendant is not required to prove his innocence . . . but only to produce sufficient evidence to raise a reasonable doubt] is the same whether the People rely on testimonial evidence or on presumptions, except where the presumption is conclusive.

The sentence is based on no authority and is not germane to the problem before the court. Moreover, in no other case can any intimation be found that where no burden of proof or presumption is involved the defendant has any burden at all.

The sentence cannot be accurate. As Wigmore points out, the respective evidentiary burdens are synonymous with the risk of not meeting the burden, 9 Wigmore, Evidence §§ 2485-2487. It is inconceivable that a risk of nonproduction could be in two places at once. Who loses then if nothing is produced? Unless the defendant with the burden of raising a reasonable doubt has the risk of nonproduction of sufficient evidence to raise that doubt, he has no burden. If the prosecution has the burden of proof, the defendant cannot have any burden. The prosecution always loses if the jury is not persuaded. Hence, only the prosecution has any risk.

The sentence can only be regarded as an inadvertance that was unnecessary to the case. It is difficult to believe that this sentence overrules Agnew, Scott, Martina, Bryant, et al., and at the same time holds that C.C.P. § 1959 does not mean what it says.

Finally, the logical difficulty with the whole approach suggested is revealed in the last long paragraph in the letter. In essence, rebuttable presumptions are to be treated as evidence in criminal cases. They are to be sent to the jury to be weighed against all of the other evidence and the

presumption of innocence. Smellie v. Southern Pacific Co. is repudiated only for civil cases. The logical problem here was ably pointed out by Justice Traynor in Scott v. Burke, 39 Cal.2d 388, 402 (1952). How can anyone rationally weigh one presumption against another--or a presumption against evidence? If one considers what a presumption is--a legally required deduction in the absence of the requisite contrary showing--it is absolutely impossible to weigh one against the other or against evidence. Yet this is precisely what is suggested. The presumption is to be regarded as evidence to be weighed by the jury instead of being regarded as what it actually is--a rule of law established to guide the determinations of the jury.

In conclusion, we think that the statements in the comment are supported by direct holdings in the cases, by discussions of the courts in cases not involving direct holdings, and by the existing statutes defining presumptions. We do not think that it is reasonable to say that the law is uncertain merely because of one isolated sentence not germane to the opinion in which it appears. In the absence of any contrary authority, we see no reason to question our statements of existing law.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

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July 7, 1964

Mr. Joseph Harvey
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Dear Joe:

The Comment which you prepared for Section 607 of the revised rules is not accurate in stating the existing law.

On page 32 you state:

> "The substantive effect of all of these devices has been the same. They have relieved the prosecution from the necessity of proving certain facts and made the existence or nonexistence of those facts matters of defense that must be shown by the defendant. In the absence of evidence supporting the defense, 'there is no issue on the point to be submitted to the jury.' MODEL PENAL CODE, TENTATIVE DRAFT NO. 4, Comment at 110 (1955)."

The implication arising from the above statement is that, when a presumption establishing an element of the crime operates in a criminal case, the jury must accept the existence of the presumed fact if it believes beyond a reasonable doubt the existence of facts giving rise to the presumption in the absence of any contradicting evidence in the case. For this proposition, you cite two presumption cases, People v. Harris and People v. Nash, both dealing with the issue of insanity. I do not believe that these cases can be extended to apply to all presumptions since the presumption of sanity has been unique within the criminal law, that is, the burden is placed upon the defendant to prove by a preponderance of the evidence that he was insane. Not even with respect to matters of mitigation or justification is the defendant required to fulfill such heavy burden. People v. Bushton, 80 Cal. 160 (1889). And with respect to other presumptions, the court has consistently reversed cases where the instruction to the jury placed a burden on the defendant in a criminal case to prove a matter by a preponderance of the evidence. E.g., People v. Agnew, 16 Cal.2d 655 (1940). Thus, a unique presumption with regard to sanity cannot prove a general rule.

The other cases cited by you, People v. Boo Doo Hong and People v. Harmon, did not deal with presumptions and thus do not support the proposition in question.

On page 33 is found the statement:

> "Because the precise terminology used has made no substantive difference in the disposition of the cases, these various devices for creating defenses have at times been referred to as creating presumptions even though the statute is not worded in terms of a presumption."

The implication from the above statement is that the various devices are fungible and that a presumption operating against the defendant creates an affirmative defense. In other words, the implication is that the prosecution is entitled to an instruction which requires the existence of the presumed fact in the absence of any evidence on the fact. However, the only case among these cited by you in the Comment which tend to support this conclusion is People v. Scott, 24 Cal.2d 774, 783 (1944).

People v. Agnew, 16 Cal.2d 655 (1940), is inconclusive on this point because, although the court refers to the burden placed upon the defendant, the court quotes from the Bushton case to adopt the view that "if, upon the whole case, they entertained a reasonable doubt from the evidence as to his guilt, he should be acquitted." This would appear to indicate that the jury must believe beyond a reasonable doubt that the crime has been committed regardless of the presumption involved.

In re Bryant, 94 Cal. App. 791 (1928), is not authority for your proposition. The case holds that the trier of fact was justified in finding that the abandonment was "willful and without lawful excuse" from the proof of abandonment. Nowhere is found any language that the trier of fact was required to find the ultimate fact.

People v. Martina, 140 Cal. App.2d 17 (1956), attempts to apply the holding of People v. Hardy, 33 Cal.2d 52 (1948); consequently a discussion of People v. Hardy will be dispositive of the Martina case.

People v. Hardy is the critical case. It seems that the Hardy case, rather than supporting your proposition, rejects your view. The court states:

> "The mere fact that there is a presumption which tends to support the prosecution's case does not change the amount or quantum of proof which the defendant must produce. (People v. Agnew, 16 Cal.2d 655 [107 P.2d 601].) The prosecution is required to prove the offense beyond a reasonable doubt and, in so doing, may rely on any applicable presumptions. The defendant, on the other hand, is not required to prove his innocence by a preponderance of the evidence, but only to produce sufficient evidence to raise a reasonable doubt in the minds of the jury. The rule is the same whether the People rely on testimonial evidence or on presumptions, except where the presumption is conclusive. One of the factors in raising a disputable presumption, such as the one involved here, is that the matter relates to defendant personally and lies peculiarly within his knowledge, and hence for reasons of convenience and necessity he should have the burden of producing evidence thereon. This burden, however, involves the duty of going forward with the evidence and of raising a reasonable doubt, and not the duty to overcome the presumption by a preponderance of the evidence." 33 Cal.2d at 64.

The significance of the above quotation is that the court holds that the burden of proof on the prosecution and on the defendant is the same whether or not a presumption operates in the case. In other words, the court is stating that, if the prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, the converse is that the defendant has the burden of creating a reasonable doubt. Whether we believe that it is wrong to talk about a burden on the defendant is immaterial; the fact remains that the court chooses to so characterize the defendant's role even when there is no presumption operating in favor of the prosecution.

If I am correct in my reading of the case, an explanation for the court's language dealing with the defendant's burden of going forward with the evidence and raising a reasonable doubt becomes necessary. It appears to me that the court is stating that the prosecution may rely upon a presumption to prove the presumed fact, that is, without any direct evidence on the presumed fact, but subject to its obligation to prove its entire case beyond a reasonable doubt; in other words, the jury is permitted to accept the presumed fact from the facts giving rise to the presumption. The presumption acts to supply evidence on the presumed fact where no direct evidence is introduced, and because it is merely a substitute for direct evidence, the prosecution is no more entitled to an instruction for a mandatory finding than where direct evidence is supplied. Under existing law, the prosecution is apparently entitled to an instruction in terms of a presumption but within its obligation to prove its case beyond a reasonable doubt which in effect means that the jury is entitled, but not required, to accept the presumed fact. The defendant has the burden of raising a reasonable doubt only in the sense that the defendant must suffer the consequences of failing to introduce evidence in any case, even where the prosecution does not rely upon a presumption.

It is significant to note that People v. Hardy does not even cite People v. Scott and the latter case is the only case which can be interpreted to hold that a presumption operates to require the finding of the presumed fact in the absence of any contrary evidence.

At the minimum it can safely be said that California law is ambiguous on this point.

It is suggested that the Comment to section 607 be revised so as to reflect at the least the present uncertainty in the law.

Sincerely yours,

Sho Sato

SS:cp
cc: Mr. John DeMoully
Mr. Jon Smock