

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MASSEY HARAGUCHI,,  
Petitioner,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
BARBARA COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

2d Civil No. B191161  
(Super. Ct. No. 1203536)  
(Santa Barbara County)

ORDER MODIFYING OPINION  
(No Change in Judgment)

THE COURT:

It is ordered that the opinion filed herein on October 5, 2006, be modified as follows:

1. On page 8, line 5 of the second full paragraph delete the citation "*Id.*, at p. 478) and insert in its place: (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

2. On page 9, line 11 of the second full paragraph after the word "income." insert the following: where such will inure to the detriment of the employer. The sentence will then read: No current public employee should be permitted to exploit his or her official position as a lever to earn extra private income where such will inure to the detriment of the employer.

3. On page 10, line 2 after the citation "[64 L.Ed.2d 182, 193.]" add as footnote 4 the following footnote, which will require renumbering of all subsequent footnotes:

4/ The title of this case in the superior court shows whose rights are being litigated: the People of the State of California and the defendant, Massey Haraguchi. The reader will search in vain for a holding or discussion of the First Amendment rights of a prosecutor to write a book. A prosecutor's personal rights, if any, are irrelevant to the proper resolution of the only dispute which we have decided, i.e. should this particular prosecutor be recused from further participation in this criminal case. (Compare *Garcetti v. Ceballos* (2006) \_\_\_ U.S. \_\_\_ [164 L.Ed.2d 689].) "[C]ases are not authority for propositions not considered. (Citations.)" (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

Here there was no First Amendment issue tendered for our resolution. We will decide such a dispute when we are called upon to do so. "'Wise adjudication has its own time for ripening." (Citations.)' " (E..g. *People v. Duran* (2004) 124 Cal.App.4th 666, 669.)

[There is no change in judgment,]

CERTIFIED FOR PUBLICATION