



1-1-2009

Identity Thieves Get More than They Bargained for: Victim's Venue

Nathaniel H. Clark

Pacific McGeorge School of Law

Follow this and additional works at: <http://scholarlycommons.pacific.edu/greensheet>

Recommended Citation

40 McGeorge L. Rev. 476

This Article is brought to you for free and open access by the Law Reviews at Scholarly Commons. It has been accepted for inclusion in Legislative Review by an authorized administrator of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Identity Thieves Get More than They Bargained for: Victim's Venue

Nathaniel H. Clark

Code Section Affected

Penal Code § 786 (amended).

SB 612 (Simitian); 2008 STAT. Ch. 47.

*As the power and self-confidence of a community increase, the penal law always becomes more moderate; every weakening or imperiling of the former brings with it a restoration of the harsher forms of the latter.*¹

I. INTRODUCTION

Forget flesh-eating zombies; a real horror flick would feature the deceased opening credit lines six-feet under.² But modern “grave robber” Tracy June Kirkland is far from the walking-dead.³ When federal investigators apprehended Tracy, she was perfecting the exploitation of on-line genealogy sites by extracting social security numbers to pilfer the identities of the departed.⁴

Identity theft is a generally detached crime because eighty-four percent of perpetrators have no personal relationship with their victims.⁵ Many incidents go unprosecuted because they occur in large urban areas where there are a magnitude of other crimes.⁶ This geographic disconnect between the impact and commission of the crime leaves prosecutors in paralysis.⁷ Authorities in the victim's jurisdiction are often legally unable to prosecute in that venue.⁸ Furthermore, authorities in the jurisdiction of the commission of the crime may have too many pending cases, or little incentive, to press charges because the

1. FRIEDRICH NIETZSCHE, *GENEALOGY OF MORALS II* § 10 (Walter Kaufmann ed., trans., Random House 1989) (1887).

2. See Kevin Poulsen, *Feds Charge California Woman with Stealing IDs from the Dead*, WIRED, Apr. 17, 2008, <http://blog.wired.com/27bstroke6/2008/04/feds-charge-cal.html> (on file with the *McGeorge Law Review*) (reporting the arrest and grand jury indictment of a woman charged with stealing identities of deceased victims).

3. *Id.*

4. Indictment at 2, *United States v. Kirkland*, No. 08-cr-00448-UA (C.D. Cal. filed Apr. 15, 2008) (alleging that defendant used www.rootsweb.com to identify the social security numbers of the deceased for the purpose of activating credit lines under their names).

5. SYNOVATE, *FEDERAL TRADE COMMISSION—2006 IDENTITY THEFT SURVEY REPORT 28* (2007), available at <http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf> (on file with the *McGeorge Law Review*) (official report prepared for the Federal Trade Commission based on nation-wide survey).

6. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, *COMMITTEE ANALYSIS OF SB 612*, at 4 (June 10, 2008).

7. *Id.*

8. *Id.*

citizens they represent have been relatively unaffected by the crime committed on their own soil.⁹

With individuals like Tracy robbing the dead from the comfort of their homes via the Internet, it is easy to see why identity theft is the fastest growing crime in the country.¹⁰

California has been on the forefront of improving identity theft statutes, as Chapter 47 illustrates.¹¹ If Tracy's victims were alive today, she could be tried at the venue of their respective residences—a new precedent in prosecuting identity thieves.¹²

II. LEGAL BACKGROUND

A. Definitions Under Prior Law

Section 530.55 of the Penal Code¹³ defines “personal information” as “any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver’s license, or identification number, social security number, place of employment,” as well as a litany of other sensitive information.¹⁴ Section 530.5 prohibits the willful unlawful use of personal information.¹⁵ Such uses include the perpetrator’s efforts “to obtain, or attempt to obtain credits, goods, services, real property, or medical information without the consent of that person.”¹⁶ Section 530.5 further prohibits unauthorized acquisition, retention, sale, transference, and

9. See *id.* (noting that the impact of the crime is often felt in the locality of the victim, where property concerns must be addressed).

10. Identity Theft Is America’s Fastest Growing Crime, http://www.usps.com/postalinspectors/idthft_ncpw.htm (on file with the *McGeorge Law Review*) (noting that last year alone, over 9.9 million Americans were victimized at a cost of roughly \$5 billion).

11. See Kathleen Hunter, *California Law on ID Theft Seen as Model*, STATELINE.ORG, Apr. 4, 2005, <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=22828> (on file with the *McGeorge Law Review*); CAL. PENAL CODE § 786(b)(1) (amended by Chapter 47) (amending code to include the county where the victim resided at the time of the commission of the offense).

12. CAL. PENAL CODE § 786(b)(1) (amended by Chapter 47).

13. Absent clarification, all statutory references are to the California Penal Code.

14. CAL. PENAL CODE § 530.55(b) (West Supp. 2008). The section goes on to define “information” as: employee identification number, professional or occupational number, mother’s maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification.

Id.

15. CAL. PENAL CODE § 530.5(a) (West Supp. 2008).

16. *Id.*

conveyance of personal information with the intent to defraud.¹⁷ In the context of identity theft, “person” is defined as “a natural person, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity.”¹⁸

B. Constitutional and Statutory History

1. Reasonable Relationship or Nexus

Penal Code Section 777’s general rule of territorial jurisdiction states that “except as otherwise provided by law[,] the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed.”¹⁹ However, when the Legislature makes an exception to section 777, the statute is construed liberally to match the legislative purpose of expanding criminal jurisdiction.²⁰ In *Price v. Superior Court*, the California Supreme Court held that the Legislature’s power to designate venue is limited by the requirement of a reasonable relationship or nexus between the venue and the commission of the offense.²¹

2. Venue and Vicinage

The *Price* court’s reasoning concurred with the appellate court’s assertion that the “contemporary right to trial by jury no longer contemplates jurors who are familiar with the parties and the locality and therefore are able to supply their own personal knowledge.”²² That feature has been replaced with a right to jury members who do not have independent knowledge of the incident or parties.²³ The court weighed the value and legitimacy of “vicinage” rights, which pertain to the area from which a jury is drawn and is distinct from, but closely related to, venue—the location of the trial itself.²⁴ Although venue is a statutory concept and not a constitutional right,²⁵ the defendant argued that vicinage rights derive from

17. *Id.* § 530.5(c)-(d).

18. *Id.* § 530.5(f).

19. *Id.* § 777.

20. *Price v. Superior Court*, 25 Cal. 4th 1046, 1055, 25 P.3d 618, 623 (2001) (interpreting section 781 of the California Penal Code as “remedial” and construing the statute to expand criminal jurisdiction beyond common law standards); *People v. Bismillah*, 208 Cal. App. 3d 80, 85, 256 Cal. Rptr. 25, 28 (1st Dist. 1989) (same).

21. *Price*, 25 Cal. 4th at 1075, 25 P.3d at 636; see also ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 4 (June 10, 2008) (“Federal and state courts have ruled that pursuant to the right of vicinage there must be a reasonable nexus between the crime and the county of trial.”).

22. *Price*, 25 Cal. 4th at 1052, 25 P.3d at 621.

23. *Id.*

24. *Id.* at 1054-55, 25 P.3d at 623; *People v. Guzman*, 45 Cal. 3d 915, 934, 755 P.2d 917, 927 (1988).

25. See *People v. Sering*, 232 Cal. App. 3d 677, 684-86, 283 Cal. Rptr. 507, 511-13 (4th Dist. 1991) (“*Locus delicti* is the statutory (not constitutional) concept of a right to be tried in the county in which the crime

the U.S. and California Constitutions.²⁶ Consequently, any changes in the venue statute are further limited to the extent they are circumscribed by vicinage and due process provisions in the U.S. and California Constitutions.²⁷

3. Constitutional Background

In 1774, the Declarations and Resolves of the First Continental Congress asserted that the law, beyond the common law of England, entitled the American colonists to “the great and inestimable privilege of being tried by their peers of the vicinage.”²⁸ Geographic concerns over vicinage rights originated in prior centuries when American colonists were frequently hauled across seas to England to be tried criminally.²⁹ Article III, section 2 of the U.S. Constitution eliminated this practice.³⁰ The section states, in part, that “[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held *in the State* where the said Crimes shall have been committed.”³¹ The Constitution did not specify any other geographic requirements beyond state boundaries until the adoption of the Sixth Amendment, which states that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury *of the State and district* wherein the crime shall have been committed, which district shall have been previously ascertained by law.”³²

The California Constitution states that “[t]rial by jury is an inviolate right and shall be secured to all.”³³ Although the California Supreme Court failed to recognize this as an express vicinage right, the court has repeatedly interpreted article I, section 16 of the California Constitution to include an implicit vicinage right.³⁴ Further decisions have found that the Sixth Amendment applies to California and preserves vicinage rights by guaranteeing defendants of state

was committed.”).

26. *Price*, 25 Cal. 4th at 1056, 25 P.3d at 623-24.

27. *Id.* at 1056, 25 P.3d at 624.

28. Address to the Inhabitants of the British Colonies (Oct. 14, 1774), in 1 J. CONTINENTAL CONGRESS, 1774-1789, at 69 (1904).

29. *Price*, 25 Cal. 4th at 1054-55, 25 P.3d at 623.

30. *Id.* at 1055, 25 P.3d at 623.

31. U.S. CONST. art. III, § 2, cl. 3 (emphasis added).

32. *Id.* amend. VI (emphasis added).

33. CAL. CONST. art. I, § 16.

34. See *Price*, 25 Cal. 4th at 1071, 25 P.3d at 634 (acknowledging history of recognizing implicit vicinage rights in article I, section 16 of the California Constitution); *People v. Hill*, 3 Cal. 4th 959, 984, 839 P.2d 984, 996 (1992) (holding that in California, the common law right to a jury selected from the vicinage or county is implicit in the California Constitution and that county lines are coterminous with vicinage lines); *People v. Danielson*, 3 Cal. 4th 691, 704, 838 P.2d 729, 734 (1992) (recognizing Sixth Amendment federal vicinage rights to jury selection from county of commission of crime and implicit vicinage rights in California Constitution); *Hernandez v. Municipal Court*, 49 Cal. 3d 713, 716, 720, 781 P.2d 547, 549, 551 (1989) (denying defendant’s vicinage petition because jury selection was drawn from county of the commission of the crime, leaving defendant’s Sixth Amendment rights un-violated and further distinguishing that county lines, not judicial districts, constitute the vicinity).

criminal prosecution “the right to be tried by an impartial jury comprising a representative cross-section of, and selected from residents of, the judicial district where the crime was committed.”³⁵ California has historically upheld vicinage rights to ensure defendants avoid “systematic or intentional exclusion of cognizable economic, social, religious, racial, political and geographical groups.”³⁶ Such precedent dates back to 1891.³⁷

Departing from these previous assumptions, the *Price* court ruled that the vicinage clause in the Sixth Amendment does not apply to California under the Fourteenth Amendment, and there is no implicit vicinage right in the California Constitution.³⁸ Consequently, under *Price*, California is not necessarily bound to allow jury selection from the county where the crime was committed.³⁹

C. *Price v. Superior Court*

Before *Price* excluded the Sixth Amendment’s vicinage clause, it deemed that clause unnecessary to uphold the fundamental right to a fair jury trial under article III of the U.S. Constitution.⁴⁰ However, even if the Sixth Amendment’s vicinage clause applied to California, the *Price* court held it would not require jury selection from the county where the crime was committed.⁴¹ To reach this conclusion, the *Price* court delved the annals of history to discern the intended definition of “district” in the Sixth Amendment’s vicinage clause.⁴² The analysis sought to clarify the fact that the Sixth Amendment specifically calls for jury selection from the “state *and* district” where the crime was committed.⁴³ Initial

35. *People v. Jones*, 9 Cal. 3d 546, 556, 510 P.2d 705, 712 (1973); *see also Danielson*, 3 Cal. 4th at 704, 838 P.2d at 734 (“Included in this [Sixth Amendment] guarantee is the right to a trial by a jury residing in the vicinage, applicable in state courts through the Fourteenth Amendment.”); *People v. Bismillah*, 208 Cal. App. 3d 80, 87, 256 Cal. Rptr. 25 (1st dist. 1989) (emphasizing that the district “*must* include the area where the crime was committed” (quoting *Jones*, 9 Cal. 3d at 554, 510 P.2d at 711) (emphasis added and omitted)); *Jones*, 9 Cal. 3d at 551, 510 P.2d at 709 (finding it “abundantly clear” that a trial by jury of the district wherein the crime was committed is an “essential feature of jury trial preserved though changed by the Sixth Amendment and made binding upon the states by the Fourteenth Amendment”).

36. *Hernandez*, 49 Cal. 3d at 716, 781 P.2d at 548.

37. *See People v. Powell*, 87 Cal. 348, 355-56, 25 P. 481, 483-84 (1891) (holding that article 7 of the California Constitution contains an implicit vicinage right to jury selection from the county where the crime was committed). The court found that there was “little doubt” that the common law right to a jury trial is as defined in Blackstone’s commentaries:

“When, therefore, a prisoner on his arraignment has pleaded not guilty, and for his trial hath put himself upon the country, which country the jury are, the sheriff of the county must return a panel of jurors, *liberos et legales homines, de vicineto*; that is, freeholders, without just exception, and of the *visne* or neighborhood; which is interpreted to be of the county where the fact is committed.”

Id. (quoting WILLIAM BLACKSTONE, 2 COMMENTARIES *350) (emphasis in original).

38. *Price*, 25 Cal. 4th at 1059, 25 P.3d at 626.

39. *Id.* at 1060, 25 P.3d at 626.

40. *Id.*

41. *Id.*

42. *Id.* at 1059-60, 25 P.3d at 626.

43. *Id.* at 1061, 25 P.3d at 627.

readings of this language may accordingly lead some courts to conclude that because both geographic indicators were listed, the intention was for jury selection to be from a more specific proximity than the entire state.⁴⁴

Congress enacted the Federal Judiciary Act of 1789 a day before the Bill of Rights was submitted to Congress for ratification.⁴⁵ The *Price* court concluded that the concurrence of these doctrines was sufficient contextual evidence indicating that Congress intended “district” to pertain to the federal judicial districts then in existence and, accordingly, only in federal cases.⁴⁶ The federal judicial district lines drawn by Congress coincided with state borders with the exceptions of Massachusetts and Virginia, which were split into two separate judicial districts.⁴⁷ The Act only mandates jury selection from the county of the commission of the offense for capital crimes.⁴⁸ Finding no persuasive holdings in either federal or state trials addressing the incorporation of the Sixth Amendment’s vicinage clause, the *Price* court concluded that there is no constitutional vicinage right to a jury trial in the county of the commission of the crime.⁴⁹

D. Federal Court Treatment

The United States Supreme Court has never held that the Sixth Amendment’s vicinage clause applies to the states through the Fourteenth Amendment and has never defined the word “district” explicitly.⁵⁰ However, some federal circuits have held that the term “district,” as used in the Sixth Amendment, pertains only to federal judicial districts.⁵¹ Although the Ninth Circuit has declined to address whether the Sixth Amendment’s vicinage clause is incorporated in the Fourteenth Amendment, other federal circuits have concluded that it is not.⁵² Ultimately, only those aspects of the Sixth Amendment essential to preserving fair jury trials

44. *Id.* at 1062, 25 P.3d at 627-28.

45. *Id.* at 1061, 25 P.3d at 627.

46. *Id.* at 1061-62, 25 P.3d at 627; Federal Judiciary Act of 1789, 1 Stat. 73 (1789) (there were to be thirteen judicial districts for the eleven colonial states; two in both Massachusetts and Virginia).

47. *Price*, 25 Cal. 4th at 1061, 25 P.3d at 627.

48. *See* Federal Judiciary Act of 1789, 1 Stat. 88 § 29; *Price*, 25 Cal. 4th at 1062, 25 P.3d at 628.

49. *Price*, 25 Cal. 4th at 1059, 1068, 1075, 25 P.3d at 626, 632, 636 (holding that the California Legislature’s power to designate location of trial is limited only by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense).

50. *Hall v. McKee*, No. 1:05-cv-142, 2008 WL 1808810 (W.D. Mich. Apr. 21, 2008); *see also* *Stevenson v. Lewis*, 384 F.3d 1069, 1072 (9th Cir. 2004) (“[T]he Supreme Court has not decided whether the Sixth Amendment’s vicinage clause applies to the states.”). *But see* *Williams v. Florida*, 399 U.S. 78, 96 (1970) (indicating that Congress has the power to define vicinage through the creation of judicial districts).

51. *See, e.g.*, *Caudill v. Scott*, 857 F.2d 344, 346 (6th Cir. 1988) (finding that “district” pertains only to federal judicial districts); *Zicarelli v. Dietz*, 633 F.2d 312, 325 (3rd Cir. 1980) (same).

52. *Stevenson*, 384 F.3d at 1072 (declining to answer incorporation issue); *Cook v. Morrill*, 783 F.2d 593, 595 (5th Cir. 1986) (holding that the Fourteenth Amendment does not extend the Sixth Amendment vicinage clause to the states); *Zicarelli*, 633 F.2d at 325-26.

under article III extend to the states through the Fourteenth Amendment.⁵³

III. CHAPTER 47

Chapter 47 amends the jurisdictional provisions of section 786 to include the crimes of unauthorized retention or transfer of personal information as defined in section 530.55, and provides that a criminal action for these crimes may be brought in the county of the victim's residence at the time of the commission of the offense.⁵⁴

Upon filing such a criminal action in the county where the victim resided at the time of the commission of the offense, the court or defendant shall file a motion for a hearing to determine whether such venue is proper.⁵⁵ In deciding the issue, the court shall consider the rights of the parties, access to evidence, convenience to witnesses, and the interests of justice.⁵⁶

IV. ANALYSIS OF CHAPTER 47

A. Chapter 47: Within the Confines of Price?

Chapter 47 represents the limits of the Legislature's power to designate venue conferred by the *Price* holding.⁵⁷ Defendants charged under Chapter 47 will now be tried in the victim's venue; potentially far away from the locality of the commission of the offense.⁵⁸ This standard yields the possibility of criminal proceedings in counties never before traversed, seen, or contemplated by defendants.⁵⁹ Unlike prior statutes, Chapter 47 does not require that defendants

53. See generally *Williams*, 399 U.S. 78 (holding that Florida's notice-of-alibi rule did not deprive defendant of a fair trial or due process). But see *Adamson v. State of California*, 332 U.S. 46, 89 (1947) (Black, J., dissenting) ("I fear to see the consequences of the Court's practice of substituting its own concepts of decency and fundamental justice for the language of the Bill of Rights as its point of departure in interpreting and enforcing that Bill of Rights. . . . I would follow what I believe was the original purpose of the Fourteenth Amendment—to extend to all the people of the nation the complete protection of the Bill of Rights.").

54. CAL. PENAL CODE § 786(b)(1) (amended by Chapter 47).

55. *Id.* § 786(b)(3) (amended by Chapter 47).

56. *Id.*

57. See *Price v. Superior Court*, 25 Cal. 4th 1046, 1075, 25 P.3d 618, 636 (2001) ("The Legislature's power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place and the commission of the offense."); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 5-6 (June 10, 2008) (discussing the jurisdictional recommendations of the L.A. District Attorney's Office and the California Public Defender's Association Office).

58. CAL. PENAL CODE § 786(b)(1) (amended by Chapter 47).

59. *Id.*; ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 6 (June 10, 2008) (noting that the California Public Defender's Association Office (CPDA) opposes the jurisdictional provisions of Chapter 47 because potentially innocent defendants will be forced to travel long distances and entered into custody). The CPDA further argues that trials should be at least limited to where the victim resided at the time of the commission of the offense, a reasonable waiver of venue rights. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 6 (June 10, 2008).

commit actions requisite for accomplishing the offense in the county of such proceedings.⁶⁰

The entirety of the California case history cited in *Price*, and the fact pattern of *Price* itself, demonstrate that in all of those decisions, the defendant had, at the very minimum, partially committed at least one of the charged crimes in the county in which the defendant was tried.⁶¹ The *Price* court cites many California statutes as examples of the Legislature permitting proceedings outside of the county where the crime was committed.⁶² But with the exception of the treason statute,⁶³ they all require either that the defendant be apprehended in, or at least partially consummated the illegal act in, the jurisdictional territory where he or she is tried.⁶⁴ Yet even the treason statute is distinguishable because it only pertains to acts committed outside of California.⁶⁵

Chapter 47 goes farther than any of the venue statutes exemplified in *Price*.⁶⁶ It is the only statute that does not, at a minimum, require that the defendant be apprehended in, or commit at least part of the offense in, the county of the venue of the trial.⁶⁷ Chapter 47 stretches the boundaries of the reasonable relationship or nexus standard of the *Price* holding because it challenges prior assumptions of defendant rights.⁶⁸ But under the *Price* holding, Chapter 47 is a valid use of the Legislature's power to designate venue.⁶⁹

60. CAL. PENAL CODE § 786(b)(1) (amended by Chapter 47).

61. See *Price*, 25 Cal. 4th at 1055, 1075, 25 P.3d at 623 (citing numerous cases in which defendant at least partially committed the crime in the county where he was tried); *Hernandez v. Municipal Court*, 49 Cal. 3d 713, 715-16, 781 P.2d 547, 548 (1989) (holding vicinage lines coterminous with county lines); *People v. Jones*, 9 Cal. 3d 546, 551, 510 P.2d 705, 709 (1973) (trying defendant in different police precinct, but same county, as commission of crime); *People v. Prather*, 134 Cal. 386, 389-90, 66 P. 483 (1901) (where defendant transported stolen goods from one county to another); *People v. Powell*, 87 Cal. 348, 25 P. 481 (1891) (holding that the jury must be selected from county where crime was committed); *People v. Bismillah*, 208 Cal. App. 3d 80, 86-87, 256 Cal. Rptr. 25, 28-29 (1st Dist. 1989) (noting that although the assault was committed entirely in Alameda County, the court found ample acts in San Francisco to justify prosecution for the assault).

62. *Price*, 25 Cal. 4th at 1075, 25 P.3d at 636.

63. See CAL. PENAL CODE § 788 (providing jurisdiction for criminal action of treason when the overt act is committed out of state in any county within California). Cf. *id.* § 790 (providing jurisdiction for murder and manslaughter in the county where the fatal injury was inflicted, the victim dies, or body is found).

64. *Price*, 25 Cal. 4th at 1075, 25 P.3d at 636; see also CAL. PENAL CODE § 784.7(a) (providing jurisdiction in any territory where at least one enumerated offense committed); *id.* § 777(a) (providing jurisdiction for failure to provide charges in jurisdictional territory where minor child is cared for or where parent is apprehended); *id.* § 777(b) (providing jurisdiction for perjury committed outside of state in any competent court within jurisdictional territory where acts necessary for commission occurred); *id.* § 778 (providing jurisdiction for public offenses committed through an agent by an out of state defendant in jurisdictional territory where agent committed acts); *id.* § 778 (where defendant partially commits act in more than one territory, jurisdiction is appropriate in any such territory); *id.* § 784.5 (child abduction cases triable in county where victim or custodial agency resided at the time of abduction, or where child is taken or found).

65. CAL. PENAL CODE § 788.

66. See *supra* note 64.

67. See *id.*

68. See generally *Price*, 25 Cal. 4th at 1055, 1075, 25 P.3d at 623 (citing numerous cases in which defendant at least partially committed the crime in the county where he was tried).

69. See *id.* at 1075, 25 P.3d at 636 (requiring a reasonable relationship or nexus).

B. Victim's Justice versus Innocent Defendant's Jury Rights

The detached nature of identity theft makes the jurisdictional provisions of Chapter 47 very appealing to prosecutors.⁷⁰ Why should the perpetrator, who is intentionally creating great hardship for the victim, benefit from antiquated venue laws that fail to address the exploitation of modern technology?⁷¹ The Internet permits much abuse by the malicious and savvy user—and allows such users to touch the lives of individuals irrespective of location.⁷² It is unjust to allow perpetrators to escape the presentation of the most effective evidence: the victim's testimony—which is easier for prosecutor's to obtain in the victim's venue.⁷³ What is a mere “click of the mouse” for the perpetrator severely burdens the victim in efforts to restore his or her shattered credit or reputation.⁷⁴

But by enacting Chapter 47, does the Legislature lack peripheral vision in attempting to eliminate such a disparity? The presumption of innocence, a fundamental aspect of criminal proceedings, is preempted by the law because the burden of travel is automatically fixed upon the defendant before the prosecution proves any culpability.⁷⁵ Under Chapter 47, an innocent defendant incurs similar hardships to those eliminated for victims of identity theft: an unreasonable burden if required to attend trial hundreds of miles away.⁷⁶

V. CONCLUSION

Identity theft is a crime that exploits the power of communication technology,⁷⁷ but Chapter 47 mitigates this advantage.⁷⁸ The Penal Code must

70. CAL. PENAL CODE § 786(b)(1).

71. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 4 (June 10, 2008) (“The impact of the crime is often felt at the victim's residence, where credit card electronic theft, pretexting, or other theft of intangible property must be addressed. This bill would allow local prosecutors to help local victims.”).

72. *Id.* at 5 (noting that the crimes addressed by SB 612 are commonly committed over computer transactions).

73. See *id.* at 6 (“SB 612 allows local prosecutors the opportunity to bring charges in a county with better access to the victim and important evidence.”).

74. *Id.* at 4.

75. See CAL. PENAL CODE § 786(b)(3) (amended by Chapter 47) (enabling judiciary discretion to permit trial at the venue of the victim).

76. *Id.*

77. See Indictment at 2, *United States v. Kirkland*, No. 08-cr-00448-UA (C.D. Cal. filed Apr. 15, 2008) (alleging that defendant used www.rootsweb.com to identify the social security numbers of the deceased for the purpose of activating credit lines under their names).

78. See CAL. PENAL CODE § 786(b)(3) (amended by Chapter 47) (enabling judiciary discretion to permit trial at the venue of the victim). On-line hacking and phishing clearly enables the savvy identity thief to exploit victims far away from his or her own locality making prosecution unlikely. By allowing prosecutorial flexibility, Chapter 47 mitigates this geographic advantage. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 6 (June 10, 2008) (discussing the need to expand prosecutorial reach).

adapt to match the clever, ever-evolving mind of the modern criminal.⁷⁹ Chapter 47 reduces identity thieves' incentive to choose detached and distant victims, a choice that is all too simple in the Internet age.⁸⁰ Prior to Chapter 47's enactment, the larcenist's wise decision was to select victims in far away counties, thereby lowering the chances of prosecution.⁸¹ But now identity pilferers will get more than they bargained for: the victim's venue.⁸² The law empowers prosecutors across California to defend their jurisdictions from previously illusive and remote criminals.⁸³ But Chapter 47 challenges defendant venue rights more aggressively than any of the prior statutes cited in the *Price* decision—the primary legal basis cited by the Legislature.⁸⁴

Chapter 47 is a powerful yet blunt tool. When incorrectly accused, innocent defendants may incur the burden of traveling hundreds of miles across one of the largest states in the country—placing life on hold for trial.⁸⁵ Identity theft beckons a response from the Legislature, but a harsher Penal Code reflects a weaker society—we must act carefully when editing ancient precedent to accommodate modern crime.⁸⁶

79. Indictment at 2, *United States v. Kirkland*, No. 08-cr-00448-UA (C.D. Cal. filed Apr. 15, 2008); see also IDENTITY THEFT TECH. COUNCIL, ONLINE IDENTITY THEFT: PHISHING TECHNOLOGY, CHOKEPOINTS AND COUNTERMEASURES 6 (Oct. 3, 2005), available at <http://www.antiphishing.org/Phishing-dhs-report.pdf> (on file with the *McGeorge Law Review*) (defining phishing as “online identity theft in which confidential information is obtained from an individual” with deceptive means. The report estimates phishing related losses to US banks and credit cards in 2003 to be \$1.2 billion, but much higher with in-direct losses in the form of “customer service expenses, account replacement costs, and higher expenses due to decreased use of online services in the face of widespread fear about the security of online financial transactions”).

80. See IDENTITY THEFT TECH. COUNCIL, *supra* note 79 (noting prevalence of on-line fraud); ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 4 (June 10, 2008) (discussing necessity of enabling prosecutors to bring charges at venue of victim because of geographic disconnect between victim and perpetrator).

81. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 4 (June 10, 2008).

82. See CAL. PENAL CODE § 786(b)(3) (amended by Chapter 47) (enabling judiciary discretion to permit trial at the venue of the victim).

83. *Id.*; ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 4 (June 10, 2008).

84. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 612, at 5 (June 10, 2008).

85. See CAL. PENAL CODE § 786(b)(3) (amended by Chapter 47) (enabling judiciary discretion to permit trial at the venue of the victim).

86. NIETZSCHE, *supra* note 1, § 10.