

Date of Meeting: October 8-9-10, 1958
Date of Memo: October 3, 1958

Memorandum No. 5

Subject: 1959 Report of the Law Revision Commission

Attached is a revised draft of the Commission's 1959 Report for consideration at the October meeting. Rather extensive changes have been made in the Report. Your attention is called to the following:

- (1) The Commission's governing statute is set forth in Appendix A. Because of this we have paraphrased rather than quoted Government Code Sections 10330 and 10335 in Part I of the Report.
- (2) Reference to the procedure of sending our studies to the State Bar has been omitted from Part I.
- (3) We have, on page 7, rewritten the reference to the meetings held by the Commission during the year.
- (4) You will recall that it was decided at the September meeting to list Studies in Progress under two headings: (1) "Studies Directed by the Legislature" and (2) "Topics Authorized by the Legislature Upon the Recommendation of the Commission." This has been done in what is called Alternative A of the current draft (pages 8-A through 15-A). We have also prepared for your consideration Alternative B (pages 8-B through 17-B). This groups Studies in Progress into three lists the first of which is "Topics on which the Commission Expects to Make a Report and

Recommendation to the 1959 Session of the Legislature" and the other two of which correspond generally to (1) and (2) above.

- (5) The Commission's explanation of its decision not to request authority for additional studies from the 1959 Session of the Legislature is set forth in paragraph 2 on page 18.
- (6) Parts VI, VII, VIII, IX and X are all new and should, therefore, be considered in some detail at the meeting. Parts VI and VIII are designed to bring the "constant reader" of our reports up to date on those topics and to furnish some supplemental legislative history on these studies for future generations. Part VII is included to raise the question whether the Commission desires to make a brief formal report to the Legislature with respect to those studies which, for one reason or another, are not completed in the ordinary way. Parts IX and X constitute the Commission's formal report and recommendation on these two topics in lieu of printing separate pamphlets.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

STATE OF CALIFORNIA

Revision
September 29, 1958

REPORT OF THE
CALIFORNIA LAW
REVISION COMMISSION

To the Governor and the Legislature of the
State of California at the Legislative
Session of 1959

January 1, 1959

LETTER OF TRANSMITTAL

To HIS EXCELLENCY GOODWIN J. KNIGHT
Governor of California
and to the Members of the Legislature

The California Law Revision Commission, created in 1953 to examine the common law and statutes of the State and to recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this State into harmony with modern conditions (Government Code Sections 10300 to 10340), herewith submits this report of its transactions during the year 1958.

THOMAS E. STANTON, Jr., Chairman
JOHN D. BABBAGE, Vice Chairman
JAMES A. COBEY, Member of the Senate
CLARK L. BRADLEY, Member of the Assembly
ROY A. GUSTAFSON
BERT W. LEVIT
CHARLES H. MATTHEWS
STANFORD C. SHAW
SAMUEL D. THURMAN
RALPH N. KLEPS, Legislative Counsel, ex officio

JOHN R. McDONOUGH, Jr.
Executive Secretary

January 1, 1959

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REPORT OF THE CALIFORNIA LAW REVISION
COMMISSION FOR THE YEAR 1958

I. FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission, created in 1953,¹ consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the legislative Counsel who is an ex officio nonvoting member.

The principal duties of the Law Revision Commission are (1) to examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein, (2) to receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned body, judges, justices, public officials, lawyers and the public generally, and (3) to recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.²

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, refers to it for such study.³

¹See Cal. Govt. Code Tit. 2, Div. 2, Ch. 2, set forth in Appendix A infra.

²See Cal. Govt. Code § 10331 Appendix A infra at 00 .
The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. Cal. Govt. Code § 10331.

³See Cal. Govt. Code § 10335 Appendix A infra at 00 .

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

When a study is undertaken the Commission meets with the research consultant to discuss the problem with him. The consultant subsequently submits a detailed research study which is given careful consideration by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter a printed pamphlet is published which contains the official report and recommendation of the Commission together with a draft of any legislation necessary to effectuate the recommendation, and the research study upon which the recommendation is based. This pamphlet is distributed to the Governor, Members of the Legislature, heads of State departments, and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State.⁴ Thus, a large and representative number of interested persons is given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes which are both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

⁴See Cal. Govt. Code § 10333 Appendix A infra at 00 .

II. PERSONNEL OF COMMISSION

There was no change in the membership of the
Commission in 1958. The membership of the Law Revision
Commission as of _____ is:

		<u>Term Expires</u>	
Thomas E. Stanton, Jr.,	San Francisco	Chairman	October 1, 1961
John D. Babbage,	Riverside	Vice Chairman	October 1, 1959
Hon. James A. Cobey,	Merced	Senate Member	*
Hon. Clark L. Bradley,	San Jose	Assembly Member	*
Hon. Roy A. Gustafson,	Ventura	Member	October 1, 1961
Bert W. Levit,	San Francisco	Member	October 1, 1961
Charles H. Matthews,	Los Angeles	Member	October 1, 1959
Stanford C. Shaw,	Ontario	Member	October 1, 1959
Samuel D. Thurman,	Stanford	Member	October 1, 1959
Ralph N. Kleps,	Sacramento	Ex Officio Member	**

* The legislative members of the Commission serve at the pleasure of the appointing power.

** The Legislative Counsel is an ex officio nonvoting member of the Law Revision Commission.

III. SUMMARY OF WORK OF COMMISSION

During 1958 the Law Revision Commission was engaged in three principal tasks:

1. Work on various assignments given to the Commission by the Legislature;⁵
2. Consideration of various topics for possible future study by the Commission;⁶
3. A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.⁷

The Commission held nine two-day meetings and one three-day meeting in 1958, five in Southern California (January 24-25, May 16-17, June 13-14, October 8-10 and December 12-13) and five in Northern California (March 20-21, April 18-19, July 18-19, September 5-6 and November 7-8).

⁵ See Part IV A of this report, p. 00 infra.

⁶ See Part IV B of this report, p. 00 infra.

⁷ See Part V of this report, p. 00 infra.

ALTERNATIVE A

(Two Lists)

IV. CALENDAR OF TOPICS SELECTED FOR STUDY

A. STUDIES IN PROGRESS

During 1958 the Commission worked on the forty-four topics listed below, each of which it has been authorized and directed by the Legislature to study.

1. Studies Directed by the Legislature.⁸
 - (1) Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.⁹
 - (2) Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.¹⁰

⁸Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature any topic which the Legislature by concurrent resolution refers to it for such study.

⁹Directed by Cal. Stat. 1956, res. c. 42, p. 263

¹⁰Ibid.

- (3) Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.¹¹
- (4) Whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.¹²
- (5) Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.¹³
- (6) Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.¹⁴
- (7) Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.¹⁵
- (8) Whether a trial court should have the power to require, as a condition of denying a motion for new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.¹⁶
- (9) Whether there should be a separate code for all laws relating to narcotics.¹⁷

¹¹Ibid.

¹²Directed by Cal. Stat. 1956, res. c. 35, p. 256.

¹³Directed by Cal. Stat. 1957, res. c. 202, p. 4589.

¹⁴Ibid.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Directed by Cal. Stat. 1957, res. c. 222, p. 4618.

(10) Whether the laws relating to bail should be revised.¹⁸

(11) Whether it would be feasible to codify and clarify, without substantive change, provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code.¹⁹

2. Topics Authorized by the Legislature Upon the Recommendation of the Commission.²⁰

(1) Whether Sections 2201 and 3901 of the Corporations Code should be made uniform with respect to notice to stockholders relating to the sale of all or substantially all of the assets of a corporation.²¹

(2) Whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission.²²

(3) Whether the Penal Code and the Vehicle Code should be revised to eliminate certain overlapping provisions re-

¹⁸Directed by Cal. Stat. 1957, res. c. 287, p. 4744.

¹⁹Directed by Cal. Stat. 1957, res. c. 266, p. 4660.

²⁰Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, inter alia, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies listed is as follows:

Nos. 1 and 2: Cal. Stat. 1955, res. c. 207, p. 4207.

Nos. 3 through 16: Cal. Stat. 1956, res. c. 42, p. 263.

Nos. 17 through 30: Cal. Stat. 1957, res. c. 202, p. 4589.

Nos. 31 through 33: Cal. Stat. 1958, res. c. ____, p. ____.

²¹For a description of this topic, see 1955 Rep. Cal. Law Revision Comm'n 27.

²²Id. at 32.

lating to the unlawful taking of a motor vehicle and the driving of a motor vehicle while intoxicated.²³

(4) Whether the procedures for appointing guardians for non-resident incompetents and nonresident minors should be clarified.²⁴

(5) Whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial sales.²⁵

(6) Whether the law relating to motions for new trial in cases where notice of entry of judgment has not been given should be revised.²⁶

(7) Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.²⁷

(8) Whether the law respecting mortgages to secure future advances should be revised.²⁸

²³See 1956 Rep. Cal. Law Revision Comm'n 19.

²⁴Id. at 21.

²⁵Ibid.

²⁶Id. at 22.

²⁷Ibid.

²⁸Id. at 24.

- (9) Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the rights of nonresident aliens to inherit property in this State, should be revised.²⁹
- (10) Whether the law relating to escheat of personal property should be revised.³⁰
- (11) Whether the law relating to the rights of a putative spouse should be revised.³¹
- (12) Whether the law respecting post-conviction sanity hearings should be revised.³²
- (13) Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.³³
- (14) Whether the doctrine of worthier title should be abolished in California.³⁴
- (15) Whether the Arbitration Statute should be revised.³⁵
- (16) Whether the law in respect of survivability of tort actions should be revised.³⁶
- (17) Whether the law relating to the inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised.³⁷

²⁹ Ibid.

³⁰ Id. at 25.

³¹ Id. at 26.

³² Id. at 28.

³³ Id. at 29.

³⁴ Id. at 31.

³⁵ Id. at 33.

³⁶ Ibid.

³⁷ See 1957 Rep. Cal. Law Revision Comm'n 14.

- (18) Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.³⁸
- (19) Whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.³⁹
- (20) Whether the Small Claims Court Law should be revised.⁴⁰
- (21) Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.⁴¹
- (22) Whether the separate trial on the issue of insanity in criminal cases should be abolished and whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.⁴²
- (23) Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.⁴³
- (24) Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.⁴⁴

³⁸ Id. at 15.

³⁹ Id. at 16.

⁴⁰ Ibid.

⁴¹ Id. at 17.

⁴² Id. at 18.

⁴³ Ibid.

⁴⁴ Id. at 19.

- (25) Whether the provisions of the Penal Code relating to arson should be revised.⁴⁵
- (26) Whether Civil Code Section 1698 should be repealed or revised.⁴⁶
- (27) Whether minors should have a right to counsel in juvenile court proceedings.⁴⁷
- (28) Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.⁴⁸
- (29) Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.⁴⁹
- (30) Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.⁵⁰
- (31) Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.⁵¹

⁴⁵ Id. at 20.

⁴⁶ Id. at 21.

⁴⁷ Ibid.

⁴⁸ Id. at 23.

⁴⁹ Id. at 24.

⁵⁰ Id. at 25.

⁵¹ See 1958 Rep. Cal. Law Revision Comm'n 18.

(32) Whether Section 1974 of the Code of Civil Procedure
should be repealed or revised.⁵²

(33) Whether the doctrine of election of remedies should be
abolished in cases where relief is sought against
different defendants.⁵³

⁵² Id. at 20.

⁵³ Id. at 21.

ALTERNATIVE B

(Three Lists)

IV. CALENDAR OF TOPICS SELECTED FOR STUDY

A. STUDIES IN PROGRESS

During 1958 the Commission worked on the forty-four topics listed below, each of which it had been authorized and directed by the Legislature to study.

1. Topics on Which the Commission Expects to Make a Report and Recommendation to the 1959 Session of the Legislature.⁸

(1) Whether Sections 2201 and 3901 of the Corporations Code should be made uniform with respect to notice to stockholders relating to the sale of all or substantially all of the assets of a corporation.⁹

(2) Whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there

⁸The legislative authority for the studies listed is as follows:

Nos. 1 and 2: Cal. Stat. 1955, res. c. 207, p. 4207.

Nos. 3 through 10: Cal. Stat. 1956, res. c. 42, p. 263.

No. 11: Cal. Stat. 1956, res. c. 35, p. 256.

No. 12: Cal. Stat. 1957, res. c. 202, p. 4589.

No. 13: Cal. Stat. 1957, res. c. 222, p. 4618.

No. 14: Cal. Stat. 1957, res. c. 266, p. 4660.

⁹For a description of this topic, see 1955 Rep. Cal. Law Revision Comm'n 27.

is no planning commission.¹⁰

(3) Whether the Penal Code and the Vehicle Code should be revised to eliminate certain overlapping provisions relating to the unlawful taking of a motor vehicle and the driving of a motor vehicle while intoxicated.¹¹

(4) Whether the procedures for appointing guardians for nonresident incompetents and nonresident minors should be clarified.¹²

(5) Whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial sales.¹³

(6) Whether the law relating to motions for new trial in cases where notice of entry of judgment has not been given should be revised.¹⁴

¹⁰Id. at 32.

¹¹See 1956 Rep. Cal. Law Revision Comm'n 19.

¹²Id. at 21.

¹³Ibid.

¹⁴Id. at 22.

(7) Whether the law respecting mortgages to secure future advances should be revised.¹⁵

(8) Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the rights of nonresident aliens to inherit property in this State, should be revised.¹⁶

(9) Whether the doctrine of worthier title should be abolished in California.¹⁷

(10) Whether the Arbitration Statute should be revised.¹⁸

(11) Whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.

(12) Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.¹⁹

(13) Whether there should be a separate code for all laws relating to narcotics.

(14) Whether it would be feasible to codify and clarify, without substantive change, provisions of law and other legal aspects relating to grand juries

¹⁵Id. at 24.

¹⁶Ibid.

¹⁷Id. at 31.

¹⁸Id. at 33.

¹⁹See 1957 Rep. Cal. Law Revision Comm'n 18.

into one title, part, division, or chapter of one code.

2. OTHER STUDIES IN PROGRESS

(a) Studies Directed by the Legislature.²⁰

- (1) Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
- (2) Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
- (3) Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.

²⁰

Appendix A infra.

The legislative authority for the studies listed is as follows:

- Nos. 1 through 3: Cal. Stat. 1956, res. c. 42, p. 263.
Nos. 4 through 7: Cal. Stat. 1957, res. c. 202, p. 4589.
No. 8: Cal. Stat. 1957, res. c. 287, p. 4744.

- (4) Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
- (5) Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
- (6) Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.
- (7) Whether a trial court should have the power to require, as a condition of denying a motion for new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
- (8) Whether the laws relating to bail should be revised.

(b) Topics Authorized by the Legislature Upon the Recommendation of the Commission.²¹

- (1) Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.²²
- (2) Whether the law relating to escheat of personal property should be revised.²³
- (3) Whether the law relating to the rights of a putative spouse should be revised.²⁴
- (4) Whether the law respecting post-conviction sanity hearings should be revised.²⁵
- (5) Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.²⁶
- (6) Whether the law in respect of survivability of tort actions should be revised.²⁷

²¹Appendix A *infra*.

The legislative authority for the studies listed is as follows:

Nos. 1 through 6: Cal. Stat. 1956, res. c. 42, p. 263.

Nos. 7 through 19: Cal. Stat. 1957, res. c. 202, p. 4589.

Nos. 20 through 22: Cal. Stat. 1958, res. c. 23, p. ____.

²²See 1956 Rep. Cal. Law Revision Comm'n 22.

²³*Id.* at 25.

²⁴*Id.* at 26.

²⁵*Id.* at 28.

²⁶*Id.* at 29.

²⁷*Id.* at 33.

- (7) Whether the law relating to the inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised.²⁸
- (8) Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.²⁹
- (9) Whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.³⁰
- (10) Whether the Small Claims Court Law should be revised.³¹
- (11) Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.³²
- (12) Whether the separate trial on the issue of insanity in criminal cases should be abolished and whether, if it is retained, evidence of the defendant's mental condition should be admissible on the

²⁸See 1957 Rep. Cal. Law Revision Comm'n 14.

²⁹Id. at 15.

³⁰Id. at 16.

³¹Ibid.

³²Id. at 17.

issue of specific intent in the trial on the other pleas.³³

- (13) Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.³⁴
- (14) Whether the provisions of the Penal Code relating to arson should be revised.³⁵
- (15) Whether Civil Code Section 1698 should be repealed or revised.³⁶
- (16) Whether minors should have a right to counsel in juvenile court proceedings.³⁷
- (17) Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.³⁸
- (18) Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.³⁹

³³Id. at 18

³⁴Id. at 19

³⁵Id. at 20

³⁶Id. at 21

³⁷Ibid.

³⁸Id. at 23

³⁹Id. at 24

- (19) Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.⁴⁰
- (20) Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.⁴¹
- (21) Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.⁴²
- (22) Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.⁴³

⁴⁰Id. at 25.

⁴¹See 1958 Rep. Cal. Law Revision Comm'n 18.

⁴²Id. at 20.

⁴³Id. at 21.

B. TOPICS INTENDED FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code* the Commission reported 23 topics which it had selected for study to the 1955 Session of the Legislature; 16 of these topics were approved. The Commission reported 15 additional topics which it had selected for study to the 1956 Session, all of which were approved. The 1956 Session of the Legislature also referred four other topics to the Commission for study. The Commission reported 14 additional topics which it had selected for study to the 1957 Session, all of which were approved. The 1957 Session of the Legislature also referred seven additional topics to the Commission for study. The Commission reported five additional topics which it had selected for study to the 1958 Session of the Legislature; three of these topics were approved.

The Commission now has a full agenda of studies in progress** which will require all of its energies to complete during the current fiscal year and during fiscal year 1959-60. For this reason the legislative members of the Commission will not introduce at the 1959 Session of the Legislature a concurrent resolution authorizing the Commission to undertake any additional studies. The Commission anticipates that such a concurrent resolution will be introduced at the 1960 Session.

* Appendix A infra.

** See part IV (A) of this report, p. 00 supra.

V. REPORT ON STATUTES REPEALED BY IMPLICATION

. OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's 1958 Report was prepared.* It has the following to report:

1. Three decisions of the Supreme Court of the United States holding two statutes of the State unconstitutional have been found:

In Public Utilities Commission of California v. United States, 356 U.S. (1958), the Supreme Court held Section 530 of the Public Utilities Code invalid under the Supremacy Clause of the Constitution of the United States insofar as it prohibits common carriers from transporting property of the federal government at rates other than those approved by the California Public Utilities Commission.

In Speiser v. Randall, 356 U.S. (1958), and First Unitarian Church v. County of Los Angeles, 356 U.S. (1958), the court held Section 32 of the Revenue and Taxation Code invalid under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States because it places on applicants for tax exemptions the burden of proof

*This study has been carried through OO Advance California Reports 000, OO Supreme Court Reporter 000.

as to whether they are persons or organizations which advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means or advocate the support of a foreign government against the United States in the event of hostilities.

2. No decision of the Supreme Court of the United States holding a statute of the State repealed by implication has been found.

3. No decision of the Supreme Court of California holding a statute of the State unconstitutional or repealed by implication has been found.

VI. SUSPENSION OF THE ABSOLUTE POWER OF ALIENATION

At the 1959 Session of the Legislature Honorable Clark L. Bradley introduced A. B. 249, a bill drafted by the Commission to eliminate from the Civil Code several provisions which collectively are known familiarly as the rule prohibiting suspension of the absolute power of alienation (hereinafter referred to as the suspension rule).^{*} The bill failed to pass, principally because some Members of the Legislature were concerned as to whether it provided an adequate substitute for the suspension rule as a limitation on the duration of private trusts.^{**} The Commission has studied the matter further since 1957 and has drafted a bill which it believes will satisfy the doubts of those who voted against A. B. 249.

A. B. 249 would have provided as a substitute for the suspension rule as a limitation on the duration of private trusts a new Section 771 of the Civil Code which would have read as follows:

771. A trust is not invalid, either in whole or in part, merely because the duration of the trust may exceed the time within which future interests in property must vest under this title, if the interests of all the beneficiaries must vest, if at all, within such time.

^{*}For the Commission's recommendation and its supporting research study see Recommendation and Study relating to Suspension of the Absolute Power of Alienation, 1 Rep. Cal. Law Revision Comm'n, pp. G-1 et seq. (1957).

^{**}See discussion of the problem in the research consultant's report, id at G-18-22.

A provision, express or implied, in the terms of an instrument creating a trust that the trust may not be terminated is effective if the trust is limited in duration to the time within which future interests in property must vest under this title. But if the trust is not so limited in duration, such a provision is ineffective insofar as it purports to be applicable beyond the time within which future interests in property must vest under this title and the provision is wholly ineffective unless, consistently with the purposes of the trust, it may be given effect for some period not exceeding such time.

The concern expressed by some Members of the Legislature was that the repeal of the suspension rule and the enactment of this provision to limit to duration of trusts might result in trusts of perpetual duration or at least which would last well beyond the period which is permissible under the suspension rule today. The Commission thought that this was highly unlikely to happen because under the second paragraph of proposed new Section 771 the beneficiaries could terminate the trust by their joint action at any time after the time within which future interests in property must vest -- i.e., lives in being plus 21 years. Some Members of the Legislature suggested, however, that this is not a sufficient safeguard because of the problem of getting the beneficiaries to agree upon termination, pointing out that each beneficiary would have a veto power with respect thereto.

In the course of the Commission's further consideration of proposed Section 771 of the Civil Code a question was raised as to whether the first sentence of the second

paragraph thereof might be construed to prohibit termination of an inter vivos trust which would not endure longer than the permissible perpetuities period even though the settlor and all of the beneficiaries, being competent and of age, desired termination. This would be a departure from present law and would be undesirable. While the Commission doubts that the first sentence would be so construed, it seems best to avoid any doubt on the matter by omitting the first sentence of the second paragraph altogether and revising the paragraph to read as follows:

If a trust is not limited in duration to the time within which future interests in property must vest under this title, a provision, express or implied, in the instrument creating the trust that the trust may not be terminated is ineffective insofar as it purports to be applicable beyond such time and the provision is wholly ineffective unless, consistently with the purposes of the trust, it may be given effect for some period not exceeding such time. A provision, express or implied, in an instrument creating an inter vivos trust that the trust may not be terminated shall not prevent termination by the joint action of the creator of the trust and all of the beneficiaries thereunder if all concerned are competent and if the beneficiaries are all of the age of majority.

After giving careful consideration to the matter of providing additional safeguards with respect to the duration of trusts the Law Revision Commission decided to recommend that a third paragraph be added to proposed new Section 771 of the Civil Code to read as follows:

Whenever a trust has existed longer than the time within which future interests in property must vest under this title

(1) it shall be terminated upon the request of a majority of the beneficiaries

(2) it may be terminated by a court of competent jurisdiction upon the petition of the Attorney General or of any person who would be affected thereby if the court finds that such termination would be in the public interest or in the best interest of a majority of the persons who would be affected thereby.

This proposed solution of the problem of placing limitations on the duration of trusts would make it impossible for any beneficiary or group of beneficiaries less than a majority to veto termination. It gives a majority of the beneficiaries the absolute power to compel dissolution of the trust after it has endured for a period measured by lives in being plus 21 years. As an additional safeguard, the proposed statute empowers a court to dissolve a trust after such period upon the petition of the Attorney General or of any interested person if public or private interest so requires, even though a majority or even all of the beneficiaries desire to have the trust continued.

A bill making these changes in proposed new Section 771 of the Civil Code, but otherwise substantially identical with A. B. 249, will be introduced at the 1959 Session of the Legislature by one of the legislative members of the Commission.

VII. APPOINTMENT OF ADMINISTRATOR IN QUIET TITLE ACTION

Resolution Chapter 207 of the Statutes of 1955 authorized the Commission, inter alia, to make a study to determine whether a statute should be enacted which would make it unnecessary to appoint an administrator in a quiet title action involving property to which some claim was made by a person since deceased.

A preliminary study by the Commission's research consultant on this study, Professor Richard C. Maxwell of the School of Law, University of California at Los Angeles, raised a serious question as to the wisdom of going forward with the study. The Commission thereupon directed inquiries on the matter to title company representatives and to the State Bar. It appeared to be the view of all concerned that there is no felt need among informed persons for a change in the law and that an attempt to dispense with the appointment of an administrator in a quiet title action would raise constitutional questions of a serious nature. The Commission determined not to carry this study further.

VIII. EFFECTIVE DATE OF AN ORDER RULING ON A MOTION FOR
A NEW TRIAL

A study made by the Commission prior to the 1957 Session of the Legislature disclosed that the California decisions are in confusion as to precisely what must be done by a judge before whom a motion for new trial is pending to make an effective ruling within the 60 days in which he has jurisdiction to act under Section 660 of the Code of Civil Procedure.* The Commission proposed that the matter be clarified by amending Section 660 in relevant part to read:

A motion for a new trial is determined within the meaning of this section when (1) an order ruling on the motion is first entered in the minutes or (2) a written order ruling on the motion is signed by the judge. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

This proposal was embodied in Senate Bill No. 36 which was introduced by the late Honorable Jess R. Dorsey, Member of the Senate for the 34th Senate District, who was then the Senate member of the Commission.

As a result of objections by and discussions with the State Bar, S. B. 36 was amended to add the following sentence to Section 660 rather than the sentence originally proposed:

*See Recommendation and Study relating to the Effective Date of an Order Ruling on a Motion for New Trial, 1 Cal. Law Revision Comm'n, pp. K-1 et seq. (1957).

A motion for a new trial is determined within the meaning of this section when, within the applicable 60-day period, (1) an order ruling on the motion is first entered in either the temporary or the permanent minutes; provided, that if the order is first entered in the temporary minutes it is subsequently entered in the permanent minutes not later than five days after the expiration of such 60-day period or (2) a written order ruling on the motion is signed by the judge; provided, that the order is filed not later than five days after the expiration of such 60-day period. Such determination shall be effective even though the order directs that a written order be prepared, signed, and filed.

As amended, the bill was passed by the Legislature but vetoed by the Governor. The Commission understands that the Governor's veto was based on the advice of his staff that the reference in the amended bill to "temporary minutes" might lead to difficulty since there is no other reference in the codes to "temporary minutes."

The Commission has studied this matter further since the 1957 Session and has decided to recommend to the 1959 Session of the Legislature that substantially the following sentence be added to Section 660 of the Code of Civil Procedure rather than the language proposed in the 1957 bill in either its original or its amended form:

A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed, and filed. The minute entry shall in all cases show the date on which the order actually is

entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

The proposal now made by the Commission codifies the more recent court decisions on the subject and conforms substantially to the rule embodied in Rule 2(b) of the Rules on Appeal.

IX. CODIFICATION OF LAWS RELATING TO NARCOTICS

Resolution Chapter 222 of the Statutes of 1957 which was introduced by Honorable George G. Crawford, Member of the Assembly for the 79th Assembly District, requested the Law Revision Commission to study the advisability of a separate code for all laws relating to narcotics, with needed substantive revision from a health and a law enforcement standpoint.

Following the 1957 Session the Subcommittee on Police Administration and Narcotics of the Assembly Interim Judiciary Committee was created with Assemblyman Crawford as its Chairman. The Law Revision Commission thereupon suggested to Mr. Crawford that to avoid duplication of effort the Commission should limit its work under Resolution Chapter 222 to a study of the advisability of a separate code for laws relating to narcotics, leaving to the Subcommittee on Police Administration and Narcotics all questions relating to substantive revision of such laws. Mr. Crawford concurred in this suggestion. Pursuant to this understanding the Commission has made no study of substantive revision of the narcotics laws and makes no recommendation relating thereto.

The Law Revision Commission subsequently entered into a contract with the Legislative Counsel for the compilation of all laws relating to narcotics. From this compilation it appears that such laws include:

1. Chapter 9 of Division 2 of the Business and Professions Code, relating to pharmacy, except for Article 9 which relates to prophylactics.

2. Division 10 of the Health and Safety Code, relating to narcotics, except Section 26200.5 which relates to vitamins.

3. Chapter 2 of Division 21 of the Health and Safety Code, relating to drugs.

4. Chapter 8 of Title 7 of Part 3 of the Penal Code, relating to Medical Facility.

5. Article 1 of Chapter 3 of Division 6 of Part 1 of the Welfare and Institutions Code, relating to narcotic drug addicts.

6. Article 2 of Chapter 3 of Division 6 of Part 1 of the Welfare and Institutions Code, relating to habit-forming drug addicts.

7. Eighty-four miscellaneous sections from various codes.*

Upon receipt of the compilation the Law Revision Commission requested the Legislative Counsel to submit to the Commission his recommendation as to whether a separate code of narcotics laws would be justified. His response, dated January 30, 1958, is as follows:

*These include: Business and Professions Code §§ 10, 2137, 2140, 2384, 2390-91, 2391.5, 2394, 2616, 2670, 2685, 2762, 2878.5, 2936, 2960, 6581, 7431, 9028, 24200, 24200.5; Civil Code § 69; Education Code §§ 8255, 10191-2, 11152, 12106, 16078, 20456; Financial Code § 951; Government Code §§ 1770, 15001, 15002.5, 18935, 19572, 20013-14, 20017.7, 21020.7, 21292.7, 21363.7, 21290.7, 25480, 31726, 31726.5, 31728, 31746; Insurance Code §§ 10369.12, 10372; Health and Safety Code §§ 201, 24384, 26558; Labor Code § 2651; Penal Code §§ 171a, 222, 261, 274, 275, 337f, 337g, 337h, 380, 382, 383, 817, 1419, 2772, 2790, 4573, 4573.6, 12021; Probate Code § 1751; Public Utilities Code §§ 21254, 21407-08; Unemployment Insurance Code, § 2678; Vehicle Code, §§ 269, 292.5, 304-5, 506, 506.1, 736; Welfare and Institutions Code §§ 700, 7068, 7110.

In connection with the compilation of laws relating to narcotics, carried out by this office under contract with the California Law Revision Commission, you have asked whether a separate code of laws relating to narcotics would be justified in our opinion.

I have no hesitation in concluding that such a separate "narcotics code" would not be justified.

As you know, the California Code Commission devoted many years to the creation of our system of 25 codes. The allocation of statutory material relating to narcotics dates back to 1939 in the case of the Health and Safety Code (Secs. 11000, and following), and dates back to 1937 in the case of the Business and Professions Code (Secs. 4000, and following). In 1955, as part of a comprehensive revision of the pharmacy laws, the Legislature moved the "dangerous drug" provisions formerly located in the Health and Safety Code at Sections 29000, and following, to the Business and Professions Code (Secs. 4210, and following). Thus, although isolated provisions dealing with narcotics do exist in other codes, the statutes governing the illegal use of narcotics are now concentrated in the Health and Safety Code, and the statutes regulating the legal handling of drugs and narcotics are found in the Business and Professions Code. This allocation appears logical and it has become familiar to those who are required to deal with these statutes.

The volume of statutory material on narcotics is insufficient, in my opinion, to warrant a separate code. In addition, I see no reason to disturb a well established statutory format in the absence of compelling reasons for doing so.

The Law Revision Commission concurs in the views expressed by the Legislative Counsel and recommends that a separate code for laws relating to narcotics not be established. The compilation of narcotics laws made by the Legislative Counsel will be retained in the files of the Commission and is available to Members or Committees of the Legislature and to other governmental agencies upon request.

X. CODIFICATION OF LAWS RELATING TO GRAND JURIES

Resolution Chapter 266 of the Statutes of 1957, introduced by Honorable Walter I. Dahl, Member of the Assembly for the 16th Assembly District, directed the Commission "to consider and study the feasibility of codifying and clarifying, without making substantive change, all provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code . . ."

Pursuant to this directive the Commission has, with the assistance of the Legislative Counsel, drafted a bill which will, if enacted, place substantially all statutes relating to grand juries in a new Title 4, Part 2 of the Penal Code. Copies of this bill have been sent to district attorneys, superior court judges and jury commissioners throughout the State with an invitation to send the Commission their questions, comments, criticisms and suggestions. All responses to this invitation will be given careful consideration by the Commission before the bill is put in final form. It is contemplated that this procedure will be completed in time to permit a bill on this subject to be introduced in the 1959 Session of the Legislature by one of the legislative members of the Commission.

The bill which will be introduced will, for the most part, codify rather than clarify or improve the present law. This is because of the provision in Resolution Chapter 266

that no "substantive change" is to be made. It has been the Commission's experience that such a directive is a very limiting one because it often cannot be said with certainty that a particular change, though seemingly desirable and noncontroversial, will not make some substantive change in the law.

XI. RECOMMENDATION

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed in Part IV A of this report.

Respectfully submitted,

THOMAS E. STANTON, Jr., Chairman
JOHN D. BABBAGE, Vice Chairman
JAMES A. COBEY, Member of the Senate
CLARK L. BRADLEY, Member of the Assembly
ROY A. GUSTAFSON
BERT W. LEVIT
CHARLES H. MATTHEWS
STANFORD C. SHAW
SAMUEL D. THURMAN
RALPH N. KLEPS, Legislative Counsel, ex officio

JOHN R. McDONOUGH, Jr.
Executive Secretary

APPENDIX A

CHAPTER 2. CALIFORNIA LAW REVISION COMMISSION

Article 1. General

10300. There is created in the State Government the California Law Revision Commission.

10301. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio nonvoting member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that such participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, said Members of the Legislature shall constitute a joint interim investigating committee on the subject of this chapter and as such shall have the powers and duties imposed upon such committees by the Joint Rules of the Senate and Assembly.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the

members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any such office filled by appointment by the Governor, he shall appoint a person to such office, who shall hold office for the balance of the unexpired term of his predecessor.

10302. The members of the commission shall serve without compensation, except that each member appointed by the Governor shall be paid a per diem of twenty dollars (\$20) for each day's attendance at a meeting of the commission. In addition, each member shall be allowed actual expenses incurred in the discharge of his duties, including travel expenses.

10303. The commission shall select one of its members chairman.

10304. The commission may appoint an executive secretary and fix his compensation, in accordance with law.

10305. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

10306. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall

give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

10307. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

10308. Neither the members of the commission nor any employee of the commission shall advocate the passage or defeat of any legislation by the Legislature or the approval or veto of any legislation by the Governor or appear before any committee of the Legislature unless requested to do so by the committee or its chairman.

Article 2. Duties

10330. The commission shall, within the limitations imposed by Section 10335 of this code:

- (a) Examine the common law and statutes of the State and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.
- (b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
- (c) Receive and consider suggestions from judges, justices,

public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this State into harmony with modern conditions.

10331. The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

10333. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

10334. The commission may, within the limitations imposed by Section 10335 of this code, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

10335. The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

10336. The reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

10337. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any such committee for the rendition of service, by either for the other, in the work of revision.

10338. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this chapter.

10340. The commission may, with the approval of the Director of Finance, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.