

Date of Meeting: January 22-23, 1960
Date of Memo: January 4, 1960

Memorandum No. 1 (1960)

Subject: Progress Report

This is a report of progress on the topics assigned to the Law Revision Commission. This memorandum is included on the January agenda of the Commission. If the Commission believes that it would be profitable to discuss our rate of progress at the January meeting, the material in this memorandum may prove helpful. However, after the individual members of the Commission have examined this material prior to the January meeting, the Commission may conclude that it would not be profitable to take time at our January meeting to discuss this matter.

Recommendations to be made to the 1961 Legislative Session.

(Schedule I). Thirty-five topics have been assigned to the Commission; thirteen of these are scheduled to be reported with recommendations to the 1961 legislative session.

Number of Topics	Year Assigned
1 (instructions to jury room)	1955
6	1956
6	1957

This means that for the six topics assigned in 1956, there will be a period of five years between the date of the assignment and the date of the report containing our recommendations. Note that the Commission has devoted a substantial portion of its efforts during 1959-1960 to the study of the Uniform Rules of Evidence, even though it is not planned to report on this topic until 1963.

Topics Not Scheduled for Report to 1961 Legislative Session

Twenty-two topics will not be reported with recommendations until the 1963 legislative session (at the earliest):

Number of topics	Year Assigned
5	1956
13	1957
3	1958
1	1959

This means that for the five topics assigned in 1956, there will be a period of seven years between the date of the assignment and the date of the report containing our recommendations (if reported in 1963).

Priority of Topics for Study during 1960. Schedule II indicates the priority established by the Commission for topics to be studied during the year 1960.

Schedule of Action on Topics to be Submitted to 1961 Legislative Session. Schedule III and Schedule IV indicate the type of schedule that the Commission must meet if it is to complete action on all topics presently scheduled for submission in 1961. The schedules are intended to indicate the amount of work required to be completed at each meeting but dates for any particular topic are, of course, subject to adjustment.

Reorganization of Commission's Workload and Procedures. Attached (Appendix A) are excerpts from Memorandum No. 1, February 25, 1959, prepared by Mr. McDonough, the former Executive Secretary. This memorandum contains suggestions as to ways and means of expediting the Commission's work and is included because because the Commission may want to again consider the suggestions made in the memorandum.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

12-21-59

SCHEDULE I

TOPICS ASSIGNED TO LAW REVISION

Note: Year topic assigned indicated. Topics scheduled to be reported to 1961 session indicated by *.

Summary

Topics assigned: 35

Topics scheduled for 1961 session: 13

Studies Which the Legislature Has Directed the Commission To Make:

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. (1956)
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. (1956)
- *3. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens. (1956)
- *4. Whether the various provisions of law relating to the filing of claims against public officers and employees should be revised. (1956)
5. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised. (1957)
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. (1957)

- *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. (1957)
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. (1957)
9. Whether the laws relating to bail should be revised. (1957).

Topics Authorized by the Legislature Upon the Recommendation of the Commission:

- *1. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases. (1955)
- *2. 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. (1956)
- *3. Whether the law relating to escheat of personal property should be revised. (1956)
4. Whether the law relating to the rights of a putative spouse should be revised. (1956)
5. Whether the law respecting post-conviction sanity hearings should be revised. (1956)
6. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised. (1956)

- *7. Whether the Arbitration Statute should be revised. (1956)
- *8. Whether the law in respect of survivability of tort actions should be revised. (1956)
- * 9. 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. (1957)
10. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised. (1957)
- *11. 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. (1957)
12. Whether the Small Claims Court Law should be revised. (1957)
- *13. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised. (1957)
14. Whether the separate trial on the issue of insanity in criminal cases should be abolished or 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. (1957)
- *15. 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. (1957)
16. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised. (1957)
17. Whether the provisions of the Penal Code relating to arson should be revised. (1957)
18. Whether Civil Code Section 1698 should be repealed or revised. (1957)

- *19. Whether minors should have a right to counsel in juvenile court proceedings. (1957)
20. 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. (1957)
21. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised. (1957)
22. 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. (1957)
23. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court. (1958)
24. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised. (1958)
25. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants. (1958)
26. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and 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 partition sales. (1956); topic enlarged (1959)

SCHEDULE II

PRIORITY OF TOPICS TO BE SUBMITTED TO 1961 SESSION

- (1) Study No. 32 - Arbitration
- (2) Study No. 36(L) - Condemnation
- (3) Study No. 37(L) - Claims statute
- (4) Study No. 34(L) - U.R.E.
- (5) Study No. 33 - Survival of Tort Actions
- (6) Study No. 38 - Inter Vivos Rights
- (7) Study No. 23 - Rescission of Contracts
- (8) Study No. 12 - Taking Instructions to Jury Room
- (9) Study No. 48 & 54 - Juvenile Court Proceedings
- (10) Study No. 44 - Suit in Common Name
- (11) Study No. 26 - Escheat
- (12) Study No. 40 - Notice of Alibi
- (13) Study No. 42 - Good Faith Improver

SCHEDULE III

SCHEDULE OF ACTION ON TOPICS TO BE SUBMITTED TO 1961 LEGISLATURE

<u>Topic</u>	<u>Tentative Recommendations and Statute to State Bar.</u>	<u>Returned by State Bar With Comments</u>	<u>Consider Comments of Bar and Take Final Action (To Printer)</u>	<u>Available in Printed Form For Distribution</u>
	<u>not later than:</u>	<u>not later than:</u>	<u>not later than:</u>	<u>not later than:</u>
Study No. 33 - Survival of Tort Actions	Already sent	March 1, 1960	July 1, 1960	November 1, 1960
Study No. 38 - Inter Vivos Rights	March 1, 1960	August 1, 1960	October 1, 1960	January 1, 1961
Study No. 41 - Notice of Alibi	March 1, 1960	July 1, 1960	August 1, 1960	November 1, 1960
Study No. 42 - Good Faith Improvers	March 1, 1960	July 1, 1960	August 1, 1960	December 1, 1960
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Study No. 12 - Taking Instructions to Jury Room (in annual report)	April 1, 1960	August 1, 1960	September 15, 1960	
Study No. 23 - Rescission of Contracts	April 1, 1960	August 1, 1960	September 1, 1960	December 1, 1960
Study No. 44 - Suit in Common Name	April 1, 1960	August 1, 1960	September 1, 1960	December 1, 1960

SCHEDULE OF ACTION ON TOPICS TO BE SUBMITTED TO 1961 LEGISLATURE

<u>Topic</u>	<u>Tentative Recommendations and Statute to State Bar</u>	<u>Returned by State Bar With Comments</u>	<u>Consider Comments of Bar and Take Final Action (To Printer)</u>	<u>Available in Printed Form For Distribution</u>
	<u>not later than:</u>	<u>not later than:</u>	<u>not later than:</u>	<u>not later than:</u>
Study No. 32 - Arbitration	May 1, 1960	August 1, 1960	October 1, 1960	January 1, 1961
Study No. 37(L) Claims Against Public Employees	May 1, 1960	Sept. 1, 1960	October 1, 1960	January 1, 1961
Study No. 26 - Escheat	June 1, 1960	October 1, 1960	November 1, 1960	January 15, 1961
Study No. 48 & No. 54(L) - Juveniles - Right to Counsel, etc.	June 1, 1960	October 1, 1960	November 1, 1960	January 15, 1961
Study No. 36(L) Condemnation	June 1, 1960	Sept. 1, 1960	November 1, 1960	January 1, 1961
Study No. 34(L) -				
Hearsay	---	---	December 1, 1961	April 1, 1961
Privilege	---	---	December 1, 1961	April 1, 1961

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SCHEDULE IV

LAST MEETING DATE FOR ACTION ON TOPICS TO BE SUBMITTED TO 1961 SESSION

Schedule

February meeting, 1960

- Study No. 38 - Inter Vivos Rights - Send to Bar.
- Study No. 41 - Notice of Alibi - Send to Bar.
- Study No. 42 - Good Faith Improvers - Send to Bar.

March meeting, 1960

- Study No. 12 - Instructions to Jury Room - Send to Bar.
- Study No. 23 - Rescission of Contracts - Send to Bar.
- Study No. 44 - Suit in Common Name - Send to Bar.

April meeting, 1960

- Study No. 32 - Arbitration - Send to Bar.
- Study No. 37 (L) - Claims against Public Employees - Send to Bar.

May meeting, 1960

- Study No. 26 - Escheat - Send to Bar.
- Study No. 48 & Study No. 54 - Juveniles - Send to Bar.
- Study No. 36 - Condemnation - Send to Bar.

June meeting, 1960

- Study No. 33 - Survival of Tort Actions - final action

July meeting, 1960

- Study No. 41 - Notice of Alibi - final action
- Study No. 42 - Good Faith Improvers - final action

August meeting, 1960

Study No. 12 - Instructions to Jury Room - final action

Study No. 23 - Rescission of Contracts - final action

Study No. 44 - Suit in Common Name - final action

Annual Report - final action

September meeting, 1960

Study No. 32 - Arbitration - final action

Study No. 38 - Inter Vivos Rights - final action

Study No. 37 - Claims Against Public Employees - final action

October meeting, 1960

Study No. 26 - Escheat - final action

Study No. 48 and Study No. 54 - Juveniles - final action

Study No. 36 - Condemnation - final action

APPENDIX A

Date of Meeting: March 13-14, 1959
Date of Memo: February 25, 1959

Memorandum No. 1

SUBJECT: Reorganization of the Commission's Workload
and Procedures.

Perhaps because my successor has now been selected and I have begun to think tentatively of how I will turn the "shop" over to him, I have recently been giving considerable thought to the assignments which the Commission now has and to how it is and should be proceeding to perform them. As will appear from what follows, I have come to be concerned as to whether, as the Commission is and has been operating, its performance is commensurate with the assignments which it has been given. The purpose of this memorandum is to raise that question and to make several suggestions for the Commission's consideration.

[omitted]

In Appendix A/are listed the 33 studies on which the Commission is not yet ready to report to the Legislature. Presumably, its intention is to report on these studies to the 1961 session of the Legislature. The fact is, however, that the Commission has never worked and is not now working at a rate of production which makes this goal realistic. This is demonstrated by the facts, among others (1) that the Commission reported on only 13 topics to the 1957 session of the Legislature and is reporting on only 14 topics to the 1959 session (of the latter, two reports are supplementary reports on matters originally presented in 1957 and the Commission's report on three others [narcotics, planning and appointment of

administrator in quiet title action] was that it had decided not to carry these studies forward) and (2) that for the past several months the Commission's meeting agenda have consistently contained several items that the Commission did not reach. At its current and past rate of production, there is ground for doubt that the Commission can complete and report on all of its currently assigned studies until 1965, even assuming that no additional assignments are given it in the interim. Even if this statement seems unduly pessimistic, it is quite realistic to predict that unless rather drastic changes are made, the Commission will not complete its present agenda until 1963, particularly when account is taken of the fact that our current assignments include such major assignments as the Uniform Rules of Evidence, sovereign immunity, arbitration, condemnation, the law of bail, etc.

As we have all recognized, I think, the "bottleneck" in the Commission's processes is the Commission itself -- what it can accomplish in the amount of time its members can give to meetings. This is obviously an inherent limitation and one about which no one can be critical. I for one, have little doubt that the members of this Commission give more time to nonpaid public service in a state agency than does any other comparable group in the state. Nevertheless, the "bottleneck" is there. This presents two questions: (1) can the "bottleneck" be made to accommodate a larger flow and (2) should the Commission's assignments be reduced to a number which the "bottleneck" can accommodate? I suggest that the Commission should come to grips with these questions rather than to continue to work along at a rate of production which is not realistic compared to its workload. I have some suggestions to offer on each question.

CAN THE COMMISSION'S RATE OF PRODUCTION BE INCREASED?

I think that the answer to this question is in the affirmative provided that certain changes are made. Let me suggest some possibilities:

1. Need for recognition of the problem. This is basic. If the Commission recognizes that the problem with which this memorandum is concerned exists and is serious, remedial steps will surely be taken. On the other hand, we are likely to go on doing as we have done if it is assumed that what has been done is about adequate.

2. Devote more time to Commission meetings. This is a difficult problem. Mr. Gustafson has suggested three-day meetings; others would find it more difficult than he to spare the time. Would a three-day meeting every other month be a reasonable compromise? Another possibility would be to decide to work Friday evenings at each meeting from 7 to 10. Still another would be to work regularly from 9 to 6 on both Friday and Saturday with an hour for lunch at 12 and a 15 minute break at 4:00.

3. Get better attendance at meetings. [omitted]

4. Abandon the rule of five votes for a recommendation to the Legislature. [omitted]

5. Delegate more responsibility to the staff. The Commission is a deliberative body, both as to matters of policy and as to the drafting of statutes. It is clearly to the credit of the members that they have been willing to assume responsibility for and take such interest in matters of detail. The fact is, however, that the Commission has spent many hours on the detail of statutory language which could have been spent considering questions of policy on studies on the agenda which were not reached. Let me make it clear that the statutes we have recommended have been better for the Commission's detailed consideration. Nevertheless, the question remains whether the State's best interest is better served by this use of the Commission's time than it would be if the Commission were to complete more studies less perfect in detail. Over the long haul this choice simply must be made.

6. Return to the use of committees of the Commission. This system, used by the New York Law Revision Commission, was abandoned by us for three reasons: (1) it proved more difficult to get some members to attend committee meetings than to attend Commission meetings; from the staff side it was, in calling members, more like asking a favor than determining the time for fulfilling of a predetermined obligation; (2) some members did not seem to perform with as much sense of responsibility and seriousness of purpose when the question was what recommendation to make to the Commission as they did when, sitting with the Commission, they were deciding what recommendation to make to the Legislature; thus, they

"ducked" difficult questions by referring them to the Commission and they cast votes which they reversed when the same matters were before the Commission; (3) the committee meetings imposed a heavy burden on the staff. The last of these should be a good deal less of a problem with the new Assistant Executive Secretary. The other two could be overcome if the Commission were to decide that service on the Commission imposes the same obligation to attend committee meetings as Commission meetings and were to delegate (and the committees were to accept) substantially final responsibility for action on the studies assigned. A committee system is a waste of time, of course, unless the decisions of committees are very nearly automatically endorsed by the full Commission (as the Legislature, by and large, endorses the work of its committees). This implies an important departure in substance from the "Rule of Five Votes." Perhaps the committee system would work with smaller studies even if it would not with the larger ones.

SHOULD THE COMMISSION'S ASSIGNMENTS BE REDUCED?

Unless the Commission's rate of production is increased by some or all of the expedients suggested above (or others), its workload should be reduced. Possible courses of action for consideration here are:

1. Request no new assignments in 1960 and attempt to avoid assignments sponsored by others. This needs no stronger argument, I think, than consideration of the studies listed in Appendix A and what is said above.
2. Request relief from existing assignments. The Commission could quite reasonably (though not perhaps realistically) go to the Legislature with a request that it be relieved of the obligation to complete some of

its assignments in view of the major tasks it has in the studies of the Uniform Rules of Evidence, arbitration, condemnation, sovereign immunity, etc. If this were to be done I would suggest the following as candidates simply because we have not been or are not any longer involved with an outside consultant.

- Study #12 Taking Instructions to the Jury Room.
- #21 Confirmation of Partition Sales.
- #23 Rescission of Contracts.
- #26 What Law Governs Escheat.
- #30 Custody Jurisdiction.
- #40 Notice of Alibi.
- #41 Small Claims Court Law.
- #44 Suit In Common Name.
- #47 Civil Code § 1698 (modification written contracts)
- #59 Notice by Publication.
- #60 Representation re Credit of Third Person.
- #61 Election of Remedies.

3. Set up priorities among presently assigned studies as to which shall be completed by 1961. [omitted]

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary