

10/8/62

Memorandum No.70(1962)

Subject: 1963 Annual Report

Attached is a draft of a proposed 1963 Annual Report. We would like to send this to the printer now.

We have prepared the attached draft using pages of the 1962 Annual Report. We have done this so that you can see the changes we propose to make. The following are significant matters you should consider in connection with the attached draft:

(1) The letter of transmittal is on our letterhead. We believe that this is a desirable improvement. In this connection, note that not only are the Commission Members listed on the letterhead and at the bottom of the letter of transmittal, but also their names are listed on the last page of the report.

(2) On page 7 (number on upper right hand corner of page), note that we have indicated we have engaged in two principal tasks. We deleted the item "Consideration of various topics for possible future study by the Commission." We do not believe that this has been a principal task during the past year.

(3) The Report on Study of Condemnation Law and Procedure on page 13 is new. We believe that this report is desirable. We have many communications concerning the action that the Commission is planning to take on Senate Bill No. 205 and on other condemnation matters. I am sure that this report will also be of interest to the Legislature.

(4) The Report on the Study of the Uniform Rules of Evidence on page 15 is new. This is in the nature of a progress report on this study and we believe that the very brief report is desirable.

(5) The Report on Statutes Repealed by Implication or Held Unconstitutional is in the same form as contained in the 1962 Annual Report. We suggest that you read the cases Jon Smock has listed to determine whether you are in accord with this portion of the report.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

[Cover and Inside Title Page]

STATE OF CALIFORNIA

REPORT OF THE
**CALIFORNIA LAW
REVISION COMMISSION**

To the Governor and the Legislature of the
State of California at the Legislative
Session of ██████ 1963

~~January 1963~~
██████████

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California



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CALIFORNIA LAW REVISION COMMISSION

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- JOSEPH B. HARVEY**
Assistant Executive Secretary
- JON D. SMOCK**
Assistant Counsel
- GEORGE S. GROSSMAN**
Administrative Assistant

LETTER OF TRANSMITTAL

January 2, 1963

To HIS EXCELLENCY EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission herewith submits this report of its activities during the year 1962.

- HERMAN F. SELVIN, *Chairman*
- JOHN R. McDONOUGH, JR., *Vice Chairman*
- JAMES A. COBEY, *Member of the Senate*
- CLARK L. BRADLEY, *Member of the Assembly*
- JOSEPH A. BALL
- JAMES R. EDWARDS
- RICHARD H. KEATINGE
- SHO SATO
- THOMAS E. STANTON, JR.
- ANGUS C. MORRISON, *Legislative Counsel, ex officio*

Office of Commission and Staff
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Stanford, California

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1962

FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission 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 ex officio a nonvoting member.¹

The principal duties of the Law Revision Commission are to:

- (1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies, judges, public officials, lawyers and the public generally.
- (3) 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, authorizes it to study.³

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.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered 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 that contains the research study and the official report and recommendation of the

¹ See CAL. STAT. 1962, Ch. 1445, p. 2026; CAL. GOV'T. CODES §§ 10300-10340. And see CAL. STAT. (1st Ex. Sess.) 1960, Ch. 61, p. 411, which revises Section 10308 of the Government Code.

² See CAL. GOV'T. CODES § 10330. 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. GOV'T. CODES § 10331. See also pp. 10332-10333 *infra*.

³ See CAL. GOV'T. CODES § 10335.

Commission together with a draft of any legislation necessary to effectuate the recommendation.⁴ 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.⁵ Thus, a large and representative number of interested persons are 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 that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

In 1955, 1957, 1959 and 1961, the Commission submitted to the Legislature recommendations for legislation accompanied by bills prepared by the Commission. The Commission also submitted a number of reports on topics as to which, after study, it concluded that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Thirty-one of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ and eight in 1961.⁹ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.

- ⁴ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.
- ⁵ See CAL. GOV. CODE § 10338.
- ⁶ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)
- ⁷ Cal. Stats. 1957, Ch. 1188, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)
- ⁸ Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1877 and 1878.)
- ⁹ Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)
- Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)
- Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)
- Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)
- Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)
- Cal. Stats. 1957, Ch. 1498, p. 2824. (Bringing new parties into civil actions.)
- ¹⁰ Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)
- Cal. Stats. 1959, Ch. 483, p. 2403. (Effective date of an order ruling on motion for new trial.)
- Cal. Stats. 1959, Ch. 469, p. 2404. (Time within which motion for new trial may be made.)
- Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)
- Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)
- Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)
- Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)
- Cal. Stats. 1959, Ch. 1716, p. 4116 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)
- ¹¹ Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)
- Cal. Stats. 1961, Ch. 589, p. 1732. (Rescission of contracts.)
- Cal. Stats. 1961, Ch. 626, p. 1838. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)
- Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)
- Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)
- Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)
- Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

PERSONNEL OF COMMISSION

~~Mr. George G. ... resigned from the Commission effective March 1961 following his appointment by Governor Brown as a member of the California Public Utilities Commission. Mr. James R. Edwards of San Bernardino was appointed by the Governor to fill the vacancy. Mr. Joseph A. Ball, Professor Sho Sato and Mr. Thomas E. Stanton, Jr. were reappointed to the Commission by the Governor upon the expiration of their terms on October 1, 1961.~~

~~Mrs. Vaino H. Spencer resigned from the Commission effective October 1961 after her appointment by Governor Brown as judge of the Los Angeles Municipal Court. Mr. Richard H. Keatinge of Los Angeles was appointed to the Commission in November 1961 to fill the vacancy.~~

~~Mr. Ralph W. Kleps, Legislative Counsel and ex officio nonvoting member of the Commission, was appointed in October 1961 as Administrative Director of the Courts. Mr. Angus C. Morrison succeeds Mr. Kleps as Legislative Counsel and is a member of the Commission.~~

As of the date of this report the membership of the Law Revision Commission is:

	<i>Term expires</i>
Herman F. Selvin, Los Angeles, <i>Chairman</i> -----	October 1, 1963
John R. McDonough, Jr., Stanford, <i>Vice Chairman</i> -----	October 1, 1963
Hon. James A. Cobey, Merced, <i>Senate Member</i> -----	*
Hon. Clark L. Bradley, San Jose, <i>Assembly Member</i> -----	*
Joseph A. Ball, Long Beach, <i>Member</i> -----	October 1, 1965
James R. Edwards, San Bernardino, <i>Member</i> -----	October 1, 1963
Richard H. Keatinge, Los Angeles, <i>Member</i> -----	October 1, 1963
Sho Sato, Berkeley, <i>Member</i> -----	October 1, 1965
Thomas E. Stanton, Jr., San Francisco, <i>Member</i> -----	October 1, 1965
Angus C. Morrison, Sacramento, <i>ex officio Member</i> -----	**

- * The legislative members of the Commission serve at the pleasure of the appointing power.
- ** The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

~~Mr. ... was appointed ... the vacancy created by the ...~~

SUMMARY OF WORK OF COMMISSION

During 1962 the Law Revision Commission was engaged in ~~two~~ ^{two} principal tasks:

~~(1) The Commission's 1961 legislative program to the Legislature.~~

(2) Work on various assignments given to the Commission by the Legislature.¹⁰

~~(3) A study of the effect of the 1961 legislative program on the Government Code.~~

(4) 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.¹¹

The Commission held ~~two~~ ^{seven} two-day meetings and ~~three~~ ^{five} three-day meetings in 1962.

10 See p. [redacted] of this report *infra*.
11 See p. [redacted] of this report *infra*.

CALENDAR OF TOPICS SELECTED FOR STUDY

STUDIES IN PROGRESS

During 1962 the Commission's agenda consisted of the ~~studies~~ 28 studies listed below, each of which it had been authorized and directed by the Legislature to study.

Studies on Which the Commission Expects To Submit a Recommendation to the 1963 Legislature

2. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.

1. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

12 The legislative authority for the studies in this list is as follows:

No. 1: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

No. 2: Cal. Stats. 1956, Res. Ch. 42, p. 263.



Other Studies in Progress

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.
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 [unclear] should be revised [unclear] the property rights of private [unclear]~~
- ~~4. Whether the [unclear] provisions of [unclear] relating to the filing of claims against public officers and employees should be revised~~
- ~~5. Whether the [unclear] of [unclear] [unclear] [unclear]~~
3. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
4. Whether a trial court should have the power to require, as a condition of denying a motion for a 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.
5. Whether the laws relating to bail should be revised.

3 - Section 10835 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.

The legislative directives to make these studies are found in the following:

Nos. 1 through 5, Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 1 through 5, Cal. Stats. 1957, Res. Ch. 202, p. 4589.

No. 5, Cal. Stats. 1957, Res. Ch. 387, p. 4744.

and 2:
5
3 and 4:



Studies 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. *15*
2. Whether the law relating to escheat of personal property should be revised. *16*
3. Whether the law relating to the rights of a putative spouse should be revised. *17*
4. Whether the law respecting post conviction sanity hearings should be revised. *18*
5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised. *19*
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised. *20*
7. Whether the Small Claims Court Law should be revised. *21*
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised. *22*
9. 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. *23*
10. 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. *24*
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised. *25*
12. Whether the provisions of the Penal Code relating to arson should be revised. *26*

14 Section 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 in this list is:
 No. 1: Cal. Stats. 1955, Res. Ch. 207, p. 4207.
 Nos. 2 through 7: Cal. Stats. 1955, Res. Ch. 42, p. 263.
 Nos. 8 through 16: Cal. Stats. 1957, Res. Ch. 202, p. 4589.
 Nos. 17 through 19: Cal. Stats. 1958, Res. Ch. #1, p. 135.
 No. 20: Cal. Stats. 1959, Res. Ch. 218, p. 5782; Cal. Stats. 1956, Res. Ch. 42, p. 263.

- 15* For a description of this topic, see 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 Report at 28 (1957). For the legislative history, see 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 Report at 13 (1959).
- 16* See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 Report at 25 (1957).
- 17* *Id.* at 26.
18 *Id.* at 28.
19 *Id.* at 29.
20 See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 Report at 15 (1957).
21 *Id.* at 16.
22 *Id.* at 17.
23 *Id.* at 18.
24 *Ibid.*
25 *Id.* at 19.
26 *Id.* at 20.

No. 21: Cal. Stats. 1962, Res. Ch. 23.

- 13. Whether Civil Code Section 1698 should be repealed or revised. ²²
- 14. 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. ²³
- 15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised. ²⁹
- 16. 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. ³²
- 17. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court. ³¹
- 18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised. ³³
- 19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants. ³³
- 20. 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. ³⁴

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21. ³⁵ A study to determine whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner. ³⁵

27 ³⁵ Id. at 21.
 28 ³⁵ Id. at 23.
 29 ³⁵ Id. at 24.
 30 ³⁵ Id. at 25.
 31 ³⁵ See 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 Report at 18 (1959).
 32 ³⁵ Id. at 20.
 33 ³⁵ Id. at 21.
 34 ³⁵ See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 Report at 21 (1957).
 35 See 4 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1962 Report at 20 (1963)

STUDIES FOR FUTURE CONSIDERATION

58) Pursuant to Section 10335 of the Government Code the Commission has reported 27 topics that it had selected for study to the Legislature since 1955. Forty-seven of these topics were approved. The Legislature also has referred 11 other topics to the Commission for study.

Eight

23

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission also has submitted four reports on topics which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

37

The Commission now has an agenda consisting of 26 studies in progress, some of substantial magnitude, that will require all of its

[REDACTED SECTION]

49

36) Although 27 topics actually have been approved by the Legislature at the request of the Commission, one of these topics was consolidated with a topic which the Legislature later directed the Commission to study. See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 Report at 12, n. 31 (1957).
37 • For a complete list of these studies, see pp. supra.

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~~CALIFORNIA LAW REVISION COMMISSION~~

energies during the current fiscal year and during the fiscal year 1964-65. For this reason the Commission will not request authority at the 1963 legislative session to undertake additional studies.

REPORT ON STUDY OF CONDEMNATION LAW AND PROCEDURE

The Commission was authorized by Resolution Chapter 42 of the Statutes of 1956 to make a study to determine whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens. Pursuant to this legislative directive, the Commission has engaged in a continuing study of this field of law.

In 1961, a number of bills relating to condemnation law and procedure were introduced at the request of the Commission. Two of these bills were enacted as law,³⁸ Senate Bill No. 205 relating to evidence in eminent domain proceedings was vetoed by the Governor,³⁹ and Senate Bill No. 203 relating to reimbursement for moving expenses was referred to interim⁴⁰ study.

The Commission plans to make a recommendation to the 1963 Legislature⁴¹ concerning discovery in eminent domain proceedings. The Commission will not, however, recommend that legislation relating to evidence in eminent domain proceedings or to reimbursement for moving expenses be enacted by the 1963 Legislature.

The Commission has concluded that Senate Bill No. 205 (evidence in eminent domain proceedings) requires further study. However, because the

38. Senate Bill No. 204 (Cal. Stats. 1961, ch. 1612, p. 3439);
Senate Bill No. 206 (Cal. Stats. 1961, ch. 1613, p. 3442).

39. See 3 Cal. Law Revision Comm'n Rep., Rec. & Studies, 1961 Report at 13.

40. Ibid.

41. See 4 Cal. Law Revision Comm'n Rep., Rec. & Studies, Recommendation and Study at *** (1963).

Commission has devoted substantially all of its time during the past two years to the study of sovereign immunity, the Commission will not have an opportunity to study the bill prior to the 1963 legislative session.. The Commission does plan, however, to review the bill after the 1963 legislative session and to make a recommendation relating thereto in 1965.

Legislation pending in the United States Congress would provide for federal assistance to states for payment of moving expenses.⁴² It may be necessary to conform state legislation on this subject to the federal law. After the 1963 legislative session, the Commission plans to review its recommended legislation on moving expenses in light of any federal legislation relating thereto that may be enacted.

42. See H.R. 12135, 87th Cong., 2d Sess. (1962); S. Rep. No. 1997, 87th Cong., 2d Sess. (1962).

REPORT ON STUDY OF UNIFORM RULES OF EVIDENCE

The Commission was authorized by Resolution Chapter 42 of the Statutes of 1956 to make a study to determine whether the California 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.

The Commission will not recommend that legislation on this subject be enacted in 1963. The Commission has, however, published a preliminary report containing its tentative recommendation concerning Article VIII (Hearsay Evidence) of the Uniform Rules of Evidence and the research study relating thereto prepared by its research consultant, Professor James H. Chadbourn of the School of Law, University of California at Los Angeles. ⁴³

This preliminary report was published so that interested persons would have an opportunity to study the tentative recommendation and give the Commission the benefit of their comments and criticisms. These comments and criticisms will be considered by the Commission in formulating its final recommendation.

43. See 4 Cal. Law Revision Comm'n Rep., Rec. & Studies, Recommendation and Study at 301 (1963).

**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 1962 Report was prepared. It has the following to report:

44. This study has been carried through 58 Adv. Cal. 423/and 370 U.S. (1962)
728 (1962).

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

(2) One decision of the Supreme Court of the United States holding a statute of the State unconstitutional has been found. In Robinson v. California,⁴⁵ the United States Supreme Court held Section 11721 of the Health and Safety Code unconstitutional on the ground that the imposition of criminal punishment for being addicted to the use of narcotics constitutes cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States as applied to the states through the Fourteenth Amendment.

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

(4) One decision of the Supreme Court of California holding a statute of the State unconstitutional has been found. In Elumenthal v. Board of Medical Examiners,⁴⁶ the California Supreme Court held subdivision (a) of Section 2552 of the Business and Professions Code unconstitutional on the grounds (1) that it contravenes the constitutional requirement that regulatory legislation avoid arbitrary and unreasonable classifications, and (2) that it constitutes an unlawful delegation of power to an administrative agency in that it fails to provide an ascertainable standard for the guidance of the persons to whom the power is delegated.

45. 370 U.S. 660 (1962).

46. 57 Cal.2d , 18 Cal. Rptr. 501, 368 P.2d 101 (1962).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages [redacted] of this report, and to study the topic listed described [redacted] of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of [redacted] to the extent that they have been held unconstitutional.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*
JOHN R. McDONOUGH, JR., *Vice Chairman*
JAMES A. COBEY, *Member of the Senate*
CLARK L. BRADLEY, *Member of the Assembly*
JOSEPH A. BALL
JAMES R. EDWARDS
RICHARD H. KEATINGE
SHO SATO
THOMAS E. STANTON, JR.
ANGUS C. MORRISON, *Legislative Counsel, ex officio*

~~JOHN H. DUMMERY~~
~~Executive Secretary~~

Section 11721 of the Health and Safety Code and subdivision
(a) of Section 2552 of the Business and Professions Code