

Memorandum 73-76

9/7/73

Subject: New Topics

We received two suggestions for new topics since the last Annual Report. One of these--videotape use in the courts--was previously considered and it was decided that the Judicial Council was a more appropriate body to study the matter.

The other topic is suggested in Exhibit I attached. The suggested topic is class actions. The Commission previously has decided not to study this topic. We have a substantial agenda of large topics. We do not need any more large topics at the present time. The person who suggested the topic offers his services as a consultant for a study of class actions if the Commission decides to undertake the study.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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May 31, 1973

Mr. John H. DeMouilly
 Executive Secretary
 California Law Revision Commission
 School of Law
 Stanford University
 Stanford, California 94305

Dear Mr. DeMouilly:

Pursuant to our telephone conversation of yesterday, I am writing to suggest that the Commission undertake a comprehensive study of class actions in California courts, and to offer my services as a consultant for such a study.

The increasing use of the class suit in an increasing variety of contexts makes desirable a systematic and disinterested examination of the procedural and administrative problems associated with this type of suit. The California Supreme Court has given considerable encouragement to class actions, but has expressly left unresolved problems of implementation of the class suit. (Vasquez v. Superior Court [1971] 4 Cal.3d 800, at 820). The Consumer Legal Remedies Act (CC §§ 1750-1784) provides some guidance for the management of class suits in the substantive realm with which that statute is concerned. In Los Angeles, there is now in use a Manual for Conduct of Pretrial Hearings on Class Action Issues, a document that might afford a firm foundation for a sound administration of class action issues, but which expressly disavows taking positions on "issues of law concerning class actions which are in dispute." (Foreword, p. i). Rule 23 of the Federal Rules of Civil Procedure, from which our state courts may and do seek guidance, is subject to considerable controversy among federal judges with respect to such crucial questions as the viability of the class suit in a particular case, the requirements of notice, and the nature of the allowable recovery. (See Eisen v. Carlisle & Jacquelin, Second Circuit Court of Appeals, May 1, 1973, 41 L.W. 2586): I believe the courts and the Legislature have had sufficient experience with class actions in their modern usages, that the time is now appropriate for a thorough examination of the problems involved.

Thank you for your consideration.

Very truly yours,

Dov M. Grunshlag
 Dov M. Grunshlag
 Professor of Law

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