8/4/83

Memorandum 83-47

Subject: New Topics

When the Commission considers its Annual Report, it is the practice to review suggestions for new topics that have been received since the last Annual Report was approved for printing. If the Commission approves a new topic for study, it may be necessary to request authority from the Legislature. If a new topic that is approved falls within existing authority, its priority for study will need to be determined. See Memorandum 83-48 for a consideration of the priority for study of topics.

In considering whether to study any new topics, the Commission should keep in mind the major topics already under active consideration--the Probate Code revision (including probate administration and trusts), and family law. The staff concludes that there is a shortage of resources to take on any new substantial topics.

The suggestions for new topics received during the past year are discussed below. The letters suggesting the topics are attached as exhibits to this memorandum.

Mediation

Commissioner Rosenberg and Commissioner Berton have both written concerning resolution of disputes by mediation. Commissioner Rosenberg suggests that the Commission consider a scheme of compulsory mediation. (See Exhibit 1, p. 2.) Commissioner Berton suggests that discovery through court processes should be allowed only after parties have submitted their dispute to mediation. (See Exhibit 1, item 4; see also the article attached as Exhibit 3 which was forwarded by Commissioner Berton.) This subject may fall within the Commission's authority to study arbitration, so that no new authority would be needed. However, there is some feeling on the staff that this is a matter of concern mainly for the Judicial Council. The Judicial Council has a committee set up to evaluate arbitration and also has people who consider any suggestions for relieving the burden on the courts. The Judicial Council is not currently working on mediation, but they are open to any suggestions along these lines. We feel the Commission would need to hire a consultant to prepare a background study on this topic, but state agencies are not currently allowed to make new contracts. What does the Commission wish to do?

Interrogatories to Nonparties

Commissioner Rosenberg suggests in Exhibit 1 that the Commission consider permitting service of written interrogatories on nonparties to an action as a middle road between informal conversations and formal depositions. The staff thinks this is a good suggestion but believes that a consultant should be hired to analyze it. Authority to study this topic is within the Commission's authority to study discovery, so no new request for authority would be necessary, but there is a problem in hiring consultants, as discussed above.

Enforcement of Condominium Assessment Liens in Municipal Court

Mr. David H. Spencer suggests in Exhibit 4 that the jurisdiction of municipal and justice courts should be expanded to include enforcement and foreclosure of condominium assessment liens. He suggests that such liens are relatively small and thus are appropriate for municipal and justice courts. The staff thinks Mr. Spencer's suggestion has merit. Municipal and justice courts have jurisdiction to "enforce and foreclose liens of mechanics, materialmen, artisans, laborers" and others and in actions to "enforce and foreclose liens on personal property" subject to the jurisdictional amount of $15,000. We do not see any reason to force condominium assessment lien foreclosures into superior court. Code Civ. Proc. § 86(a)(5), (b). The Commission has authority to consider this subject under the authority to study creditors' remedies.

Time Limits in Code of Civil Procedure

Ms. Sue U. Malone, writing on behalf of the California Judges Association, suggests in Exhibit 5 that the Commission conduct a comprehensive review of the provisions in the Code of Civil Procedure governing the time for hearing motions, demurrers, serving notices, responding to discovery, etc. The staff thinks this may be a worthwhile project, but we do not feel the Commission has the resources to undertake such a study at this time.

Issuance of Summons in Unlawful Detainer Actions

Mr. Mark W. Lomax raises an issue concerning the last sentence of Code of Civil Procedure Section 1166 which provides that "upon filing the complaint [in an unlawful detainer action], a summons must be issued thereon." (See Exhibit 6, item 5.) This conflicts with the second paragraph of Section 1167 which provides that summons shall be issued in the same manner as summons in a civil action. The problem arises in

interpreting the last sentence of Section 1166; Mr. Lomax reports that some courts refuse to file a complaint in an unlawful detainer action unless the attorney has also prepared a summons. The staff would not make this the subject of a separate bill, but if a bill is introduced to amend Section 1166, we propose to suggest to the author an amendment that would delete the last sentence of Section 1166.

The other issues raised in Mr. Lomax's letter have already been dealt with.

County Financial Systems

Mr. Thomas C. White III suggests in Exhibit 7 that the Commission revise statutes governing county finances. The staff does not believe this is a subject within the Commission's expertise.

Civil Statutes of Limitations

Mr. Tran Tam suggests in Exhibit 8 that the statute of limitations for wrongful death be extended from one year to three years. See Code Civ. Proc. § 340(3) (one-year statute for wrongful death); see also Code Civ. Proc. § 338 (three-year statute). While Mr. Tam's suggestion arises out of his experience in a personal tragedy, the staff suggests that if this subject is appropriate for Commission study, the entire field of civil statutes of limitations should be considered at once rather than piecemeal basis. In this light, it appears to be a more substantial task than we are prepared to undertake in the upcoming year. This is not a subject covered by any existing authority.

On the other hand, with the substantial assistance of the Commission's consultant, Professor Gerald Uelman, a Tentative Recommendation Relating to Statutes of Limitation for Felonies was recently prepared without the involvement of an inordinate amount of staff and Commission time. The staff suspects that the study of civil statutes would be more involved, however, since civil actions do not fall into classes as neatly as crimes.

Misuse of Judicial Process

Mr. Lawrence R. Hawkins, Jr. suggests in Exhibit 9 that attorneys and judges be disciplined if they abuse judicial process such as discovery. The staff does not believe this subject is appropriate for Commission study.

Limitation on Appeals and Retrials After Determination of Unconstitutionality

Mr. Donald Waldo Keniston suggests in Exhibit 10 that the right to appeal or retrial should be limited where a law is held unconstitutional or invalid. He suggests that the courts are unwilling to do justice in an individual case because of the costs and burden of reopening cases settled under the suspect law. It appears to the staff that this suggestion would require amendment of the state and federal constitutions and is therefore not a subject well-suited for Commission study.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

LAW OFFICES OF
FELDERSTEIN, ROSENBERG & McMANUS
A PROFESSIONAL CORPORATION
1000 G STREET
SUITE 200
SACRAMENTO, CALIFORNIA 95814

DAVID ROSENBERG

AREA CODE 916
TELEPHONE 446-6713

February 16, 1983

Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear Nat:

Thank you for your letter dated February 4, 1983. As I mentioned to you at the January Commission meeting in San Francisco, there are two matters which, in my opinion, the Commission should consider for future study, particularly with regard to review of the law of civil discovery: (1) written interrogatories to non-parties, and (2) mandatory mediation of disputes.

Presently, if an attorney needs information from a non-party who may be a witness, the attorney will typically call that non-party and conduct an informal telephone discussion. On the other hand, an attorney could also subpoena that non-party and, in the context of a formal deposition, orally examine that person. Between these two poles, however, there is very little middle ground. Where a non-party refuses to cooperate via an informal telephone conversation, an attorney has virtually only one alternative, and that is a formal deposition, with all the costs and time attendant thereto. Further, a telephone conversation with the witness lacks, obviously, formality, and the witness can always present a "different story" at a later time. Accordingly, I think we ought to consider the "middle ground" possiblity of written interrogatories to non-parties. Such written interrogatories would be relatively easy, and inexpensive, to prepare; would provide the basis for future impeachment if the witness changes testimony; and would save the time, effort and expense of

a formal deposition. My initial thoughts on this subject would be that such written interrogatories to non-parties would be served on the non-party by way of subpoena, accompanied by a supporting affidavit or declaration, and copies of the written interrogatories would be served on counsel for all parties pursuant to a written notice.

As attorneys, I believe we have a responsibility not only as advocates on behalf of the interests of our clients, but as officers of the court and members of the Bar, to encourage a fair and efficient system of the administration of justice. Our courts are crowded and burdened. I think, further, that most attorneys will admit that a trial before the court or a jury should be the last place to resolve a dispute. Accordingly, I recommend that in the context of our discovery study, we consider the possibility of mandatory mediation of disputes. I envision that after a complaint has been filed, and during the discovery stage, any party can make a written demand for mediation of the dispute. When such demand is made, the matter must go to mediation before another, impartial attorney, agreed upon by the parties or designated by some method. This mediation does not halt the litigation, or discovery, in any way, but must be heard by the designated mediator within thirty days of the date of written demand, and a decision rendered within ten days. The party making demand for mediation must bear the expense of the mediator, unless otherwise agreed to by the parties, and the mediator's fee should be established by statute. Of course, the mediator's decision is non-binding, and the purpose and intent of the mediation process is to bring the parties together, to provide an impartial analysis of the dispute, and to seek to resolve the dispute in a helpful, but non-binding fashion.

Very truly yours,

FELDERSTEIN, ROSENBERG & McMANUS

By DAVID ROSENBERG

DR/ck

EXHIBIT 2

LAW OFFICES OF
PROCOPIO, CORY, HARGREAVES AND SAVITCH
1900 CALIFORNIA FIRST BANK BUILDING
530 B STREET
SAN DIEGO, CALIFORNIA 92101

AREA CODE 714
TELEPHONE 238-1900

December 31, 1982

William A. Yale, Esquire
Luce, Forward, Hamilton & Scripps
110 West A Street, Suite 1700
San Diego, California 92101

Dear Bill:

It was with a great deal of satisfaction that I listened to you discuss and emphasize the role of an attorney as a mediator at the recent Real Estate Section meeting. It is a role that is under-emphasized and often frowned upon. Some attorneys are so imbued with their adversary responsibilities that they cannot help but view mediation as the equivalent of treason to their profession and their responsibilities to their clients. This is most unfortunate. I agree with you that, for the good of the public and our legal profession, we need to make great strides forward in eliminating court congestion so that justice may be served far more speedily than at present. I also agree with you that this can be accomplished by some sort of effective mediation procedure outside of our court system.

From your experience and your vantage point, I am confidant you are far more aware than I am with regard to what has been done to date and what, hopefully, can be done in the future. Please let me share with you some thoughts I have with regard to the mediation concept.

1. Our law schools need to place much greater emphasis on the role that attorneys can properly serve as a mediator.

2. Our continuing education of the Bar needs to place much greater emphasis in its courses on the role that attorneys can serve as mediators.

3. Consideration should be given to whether it would be effective to provide in contracts that before either of the parties may resort to the court system, when there is a dispute between them, first they must submit their dispute to non-binding mediation by an impartial mediator.

4. Consideration should be given to amending the Code of Civil Procedure so that discovery cannot be used as quite the bludgeon as it serves today and, also, so that discovery will not be used early in the lawsuit to cause a polarization of the parties. I have in mind a requirement that no discovery can commence until the parties' pleadings are at issue. Once at issue, the parties can immediately apply for a trial date, but they could only commence discovery through the court process after all parties have filed with the court an affidavit stating that they have submitted the controversy which is the subject matter of the lawsuit to non-binding mediation before an impartial mediator and that any one or more of the parties is not satisfied with the decision made by the mediator.

Both you and I have had the privilege of serving as Commissioners on the California Law Revision Commission. Presently, I am the Chairman. Therefore, I am taking the liberty of sending a copy of this letter to the Commission's Executive Secretary, John H. DeMoully. In 1975 the California Legislature authorized the Commission to review the laws relating to discovery in civil cases. That authority from the Legislature to the Commission still exists.

Sincerely,

ROBERT J. BERTON

RJB:jb
cc: Mr. John H. DeMoully

A No-Lose Proposition

MY TURN/STANLEY J. LIEBERMAN

America is the most litigious society in the world. We are suing each other at an alarming and increasing rate, and we have more lawyers per capita than any other nation. Since 1950 the number of lawyers in America has increased 250 percent. We have well over half a million lawyers—one for every 450 people. In New York state the ratio is one lawyer for 272 people; in Washington, D.C., the ratio is one lawyer per 18. By contrast, the ratio in West Germany is one lawyer per 2,000.

I am one of the hundreds of thousands of American lawyers engaged in litigation. The client always asks, "Can I sue?" The answer is always—yes. In our system of jurisprudence anyone can sue anyone else for practically anything. The real question is, "Can I sue and win?" Increasingly, the answer to that question is—no.

From a purely financial standpoint, a claim of $1,000 or less is simply not worth pursuing. With the lawyer's retainer, fees for filing and service, costs of preliminary investigation and other typical charges, a client has to spend $1,000 just to get started. Even if the claim is a worthy one, the cost of litigation in time, money and emotional energy is enormous. The person with a small yet legitimate claim is effectively priced out of the market. Justifiably the American public is becoming increasingly distrustful of litigation as a method to resolve disputes. Unfortunately, the average private citizen is long on principle and short on principal.

Sleight of Hand: Our system allows the litigants to be mired in a procedural bog literally for years before the substantive issue ever comes up. Too often litigation works only to the economic advantage of the attorneys. The more protracted the litigation, the more hours are spent and the more fees are generated. By tacit agreement in the profession, litigation is usually conducted with the old bury-them-in-paperwork sleight of hand. Pleadings and counterpleadings, interrogatories, depositions, requests to produce documents, motions for admissions, rules to show cause, briefs—the lawyer's bag of tricks is bottomless, the delays interminable.

The larger the law firm the more high-priced the partners, the more 12-hour-a-day, six-day-a-week associates, secretaries, paralegals, bookkeepers, investigators, law librarians, courthouse runners, copy-machine operators, insurance-plan managers and other personnel. This army of retainers is a double-edged sword. While they serve the client's cause with admirable specialization, they also create the need to generate "work product," as lawyers call it. This means billable hours and paperwork, both the net result of litigation. Abraham Lincoln said, "A lawyer's time is his stock in trade." Lawyers today work hard at ensuring a bullish market for that stock.

Many kinds of disputes can and should be resolved only by litigation. I do not suggest otherwise. Too often, however, litigation is a trap that ensnares both lawyer and client.

> Too often litigation works only to the advantage of the lawyer, whose bag of tricks is bottomless.

The original claim becomes litigation for litigation's sake. At the moment the initial pleadings are filed, the switch is thrown. When responsive pleadings are filed, the trapdoor drops. Thereafter it is impossible to terminate or even change the course of litigation short of capitulation. Once conceived, litigation demands full gestation and birth—a period of as much as five years in many jurisdictions.

None of this is news to any attorney practicing for more than six months—or to anyone ever involved in a lawsuit. Warren Burger, chief justice of the United States, recognizes and has articulated the problem in his opinions and public statements. In a recent interview, he suggested that "courts should resolve only what can't be resolved in some other way . . . we must consider whether the court system is the best way to resolve many of the matters now handled in the adversary system."

There is a better way—mediation. Mediation is a dispute-resolution method that interposes a disinterested third party, the mediator, between the claimants. The mediator, selected by agreement of the disputants, acts as guide, facilitator and catalyst. At the mediation table, each party first tells his side as he sees it, without interruption. Next the exchange, the direct interplay between the parties, during which they discuss areas both of dispute and agreement. Finally the terms of settlement are agreed to, written and signed by the parties. The mediator keeps the process on track, positive and moving.

Unlike litigation, where the ultimate decision is imposed by the jury, judge or arbitrator, the mediator does not make the final decision. Rather, the terms of settlement are worked out solely by and between the disputants.

Cooperation: Mediation begins with an agreement; it is a nonadversarial, out-of-court process. The basic tenet is cooperation rather than competition: the foundation is accord, not schism. The procedural steps prior to mediation are minimal, simple and inexpensive and allow the parties to work out a solution as quickly as possible, rather than cause needless delay. Because disputes solved by mediation are never listed on a court calendar, the courts will have more time for those matters that are properly litigious.

Mediation is enormously powerful. The disputants create a workable agreement because each knows how much he is willing to concede to achieve resolution. The final terms are the result of negotiation and consensus. Because of the direct involvement of the parties, they "own" the final agreement and have a vested interest in having it work. They are always free to pursue other remedies—including litigation.

The entire process from the decision to mediate to the final agreement can be completed in a few weeks. The cost of mediation in time, money and emotion is minuscule compared with the cost of litigation. Litigation in any form aspires to a win-lose result. Mediation by contrast aspires to a win-win result.

The next time your lawyer says, "Sue the bastards," tell him you would rather mediate.

Stanley J. Lieberman, manager of the American Mediation Service, practices law in Paoli, Pa.

EXHIBIT 4

DAVID H. SPENCER
ATTORNEY AT LAW
220 STATE STREET, SUITE H
LOS ALTOS, CALIFORNIA 94022
(415) 949-1660

May 4, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Dear Commissioners:

The purpose of this letter is to propose a revision of Code of Civil Procedure Section 86(a) regarding the jurisdiction of municipal and justice courts. The proposed revision would provide for adding a new paragraph covering actions to enforce and foreclose liens arising under Title 6, Chapter Civil Code Section 1356, condominium assessments.

Most condominium by-laws provide for the recording of a lien when an owner becomes more than three months' delinquent in the payment of his homeowner's assessments, and consequently the amount of money involved is relatively small. I would think that assessment liens would probably be less than most mechanic's liens which are provided for under Civil Procedure Code Section 86(a)(6) and less than the rental charge of $1,000. per month under Section 86(a)(4).

Permitting parties to litigate enforcement and foreclosure of condominium assessment liens in municipal and justice courts would probably provide a more convenient forum for suit, would result in lower costs and filing fees, and would make available to the parties the economic litigation provisions of Code of Civil Procedure Sections 90 et. seq.

I would be happy to provide any additional information that I have and that you may require regarding this proposal.

Very truly yours,

David H. Spencer

DAVID H. SPENCER

DHS:kw

EXHIBIT 5

CALIFORNIA JUDGES ASSOCIATION

Fox Plaza, Suite 416 • 1390 Market Street • San Francisco, California 94102 • (415) 552-7660

May 13, 1983

California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94306

Gentlemen:

I am writing on behalf of the California Judges Association to recommend the undertaking of a study by the California Law Revision Commission to compile and analyze the various provisions of the Code of Civil Procedure relating to the time for hearing motions, demurrers, etc., coordinating those positions, wherever possible, with CCP Section 1005, so as to establish uniformity of application. Section 1005 provides that when a written notice of motion is necessary, 15 days' notice shall be given. However, other CCP provisions require different durations of notice (good faith settlement motions - 20 days; CCP 583(a)/Rule 203.5 motions - 45 days, etc.). Since the Legislature has not made clear where CCP Section 1005 will or will not apply, and for the benefit of all litigants, as well as the court, we believe that a comprehensive analysis by the Law Revision Commission is in order.

We also recommend a study to compile and analyze the various provisions of the Code of Civil Procedure and of the Civil Code relating to the time for serving of notices, responding to discovery, etc., and to coordinate those provisions, wherever possible, with the provisions of CCP Section 1013(a), so as to establish uniformity of application. CCP Section 1013(a) now provides, in part, that "in case of service by mail ... any prescribed period of notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such document served by mail shall be extended five days ..." The only exception set forth in the Section are notices of intention to move for new trial, notice of intention to move to vacate judgment, and notices of appeal. Despite the apparent clarity of the Section, interpretations among the courts of the state vary widely. For example, in Highlands Plastic, Inc. v. Enders (1980) 109 Cal App 3d Supp. 1, a divided court held that the Section does not apply to 30-day notices of termination under Civil Code Section 1946; in Taylor v. Jones (1981) 121 Cal App 3d 885, a divided court held that the Section does not apply to motions for summary judgment. The Legislature has not made it clear where CCP 1013 will or will not apply, and for the benefit of all litigants as well as the court, we believe a comprehensive analysis is in order. We do not recommend that all motions, notices, etc., necessarily be

subject to provisions of Section 1013, since there apparently is good legislative reason to treat some matters differently; however, the requested analysis would highlight those that should be clarified.

We appreciate consideration of this request by the Commission.

Sincerely,

Sue Malone

Sue U. Malone
Executive Director

SUM:gk

cc: Hon. Ronald M. George

EXHIBIT 6

MUNICIPAL COURT
LOS ANGELES JUDICIAL DISTRICT

COURTHOUSE, 110 NORTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90012

CLARK K. SAITO
CLERK OF COURT

GLENN A. SPENCE
CHIEF DEPUTY CLERK

TELEPHONE
(213) 974-6101

October 4, 1982

Mr. John H. DeMoully
Executive Secretary
California Law Revision
Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMoully:

Enclosed is a list defects in several Code of Civil Procedure sections that I bring to your attention pursuant to Government Code section 10330.

Very truly yours,

CLARK K. SAITO
Clerk/Administrative Officer

Mark W. Lomax

By:
MARK W. LOMAX
Senior Administrative Assistant

CKS:MWL:lll

Enclosure

DEFECTS IN THE CODE OF CIVIL PROCEDURE

1. Code of Civil Procedure section 472 provides in part:

> "Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed or entered in the docket, . . ." (Emphasis added.)

The words "or entered in the docket" refer to the former oral pleadings in justice courts. (Cf. former C.C.P. §422.20 as it read before it was repealed and reenacted in 1977. [Stats. 1977, ch. 1257, p. 4759, §10.]) All justice court pleadings are now required to be in writing. (C.C.P. §422.20.) also 472a

2. Code of Civil Procedure section 585.5, subdivision (a), refers to "subdivision 1 of Section 585." The subdivisions of Code of Civil Procedure section 585 no longer have numerical designations; the designations are now alphabetic.

3. Both paragraphs of Code of Civil Procedure section 587 refer to "subdivision (1) or (2)" and "subdivision (3)" of Code of Civil Procedure section 585. The subdivisions of Code of Civil Procedure section 585 no longer have numerical designations; the designations are now alphabetic.

4. The second sentence of subdivision (f) of Code of Civil Procedure section 690.30 provides in part:

> "The order shall state whether or not the dwelling house is exempt and, if not exempt, state that the judgment creditor is entitled only to execution against the excess over the exempt amount." (Emphasis added.)

The phrase "if not exempt" should be "if exempt," since if the property is not exempt, there is no restriction on the creditor's right to execute on the dwelling house. Only in cases when the property is exempt is the creditor limited to executing against the exempt amount. (See the first sentence of subdivision (f).) It appears that the word not was included by mistake.

5. Concerning complaints in unlawful detainer proceedings, the last sentence of Code of Civil Procedure section 1166 provides:

> "Upon filing the complaint, a summons must be issued thereon."

This sentence appears to conflict with Code of Civil Procedure section 1167.

6. Code of Civil Procedure section 1167.3 refers to "subdivision (2), (3), (5) or (6) of Section 586." The subdivision numbers of Code of Civil Procedure section 586 are not enclosed in parentheses.

MWL:lll/10-4-82

MONTEREY COUNTY

TREASURER—TAX COLLECTOR

(408) 424-1811 - P.O. BOX 891 - SALINAS, CALIFORNIA 93902-1992

THOMAS C. WHITE III, Ph.D.
TREASURER - TAX COLLECTOR

February 18, 1983

Mr. John H. De Moully
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Palo Alto, California 94306

Dear Mr. De Moully:

I have been referred to you and the services of your offices by Monterey County Counsel.

It is becoming increasingly apparent that the financial systems of California counties required by statutes are, not only, impractical in our day, but also, the expensive duplication of effort is a comfort we can no longer enjoy.

The revision of these financial statutes would require a huge effort. In direct proportion to that effort would be the savings of time and money and greater efficiency.

If you should want to discuss this opportunity, I would be pleased to drive to your office.

Sincerely,

Thomas C. White III

THOMAS C. WHITE III, Ph. D., C.P.A.

TRAN, TAM
P.O. BOX 5666
HACIENDA HEIGHTS, CA 91745

March 17, 1983

California Law Review Commission
4000 Middlefield Road, Suite D-2
PALO ALTO, CA 94306

The Honorable Chairman and members of the Commission:

I am delighted to learn that the California Law Review Commission has considered it necessary to revise and to reform the CALIFORNIA OF LIMITATIONS LAWS.

First of all, I would like to share on opinion about a Bill sponsored by Assemblyman Byon Sher, (D-Palo Alto), which extended the Statute of limitations in rape cases from three to six years.

May I take the liberty to propose that this REVISION should include the wrongful death in a traffic collision (civil action). The Statute of limitations should be extended from ONE year to THREE years. You are no doubt aware that in a traffic collision ONE year of Statute of limitations is too short. More time is needed to find out the facts. It is a lengthy process for the victim's family to prepare all the documents, especially if private investigators are hired to get more details, it depends on the validity of eyewitnesses's testimonies, the exten of which the information of each case has been concealed, and important evidence might be found.

May I take this opportunity to make some suggestions regarding the duties of Police Officer and /or California Highway Patrol Officer in charge of doing a traffic collision report, especially, when it has cost a human life. WHAT SHOULD THAY DO AND WHAT MUST THEY DO?

In my opinion, when an accident has occured and has resulted in a death, the following additional procedures should be incorporated: All scientific, criminalistic, fingerprints, filming all the facts at the scene for example: the body of the victim from all angles, degree of damages to the car of each party, special marks, signs, during the accidents and most importantly the names, addresses and phone numbers of eyewitnesses.There is no doubt that the eyewitnesses play an important role in all tragic traffic collision cases.

Another important issue is that the Police report not only should have all details as explained hereabove, but should communicate all the above information to the victim's family immediately preferably no later than 48 hrs after the occurance of the accident. All proof as evidence such as cars from both parties involved in the accident, should be kept in a safe place for at least 96 hrs while waiting the victim's family who may hire private investigators and/ or experts traffic engineers to evaluate the data and photographs, as well as the situation damages of each party's car in order to ascertain the rates of speed of two vehicles at the time of impact.

The experience that I had with the wrongful death of my unfortunate daughter (an engineer at TRW , Lawndale California) who involved in a traffic collision on April 8, 1982, on the Pomona Freeway at 19:36 hrs was bitter. I had to wait at least 10 days to get the report from CHP. When the CHP's report reached my address, as parent of the victim, I was very very disappointed, or more clearly to be in a quandary not to know what to do ! Because I ignored everything, the report led me into a new circumstances wraped in mystery about the facts of this drama... In this report, there was too much summary, with its general explanations relating to that traffic collision, without any scientific...

TRAN. TAM
P.O. BOX 5666
HACIENDA HEIGHTS, CA 91745

To the California Law Review Commission:

criminalistic reports, fingerprints or information on eyewitnesses i.e. the names, addresses and phone numbers. The photographs taken by the CHP at the scene just gave a little help. Frankly speaking, I really didn't know what to do, what should I do to find out the fact about this wrongful death, in order to help my unfortunate daughter's SOUL REST IN PEACE.

As far as the Coroner's report, my unfortunate daughter really had BAD LACK after death. Because in the Coroner's report there was the incorrect information that she had a fair amount of alcohol in her blood.. The resultd of that toxicological analysis was a complete surprise to my family and caused us great consternation and concern. I was forced to write a letter, dated Febrauary 17, 1983 to the Department of Chief Medical Examiner L.A. County Coroner's Office asking him to give an explanation on this context. On February 25, 1983, Mr Gary L. Sigler, Chief , Forensic Science Laboratories Division has replied to my letter cited above by confirming that : " the toxicologist assigned to perform alcohol analyses inadvertently rearranged the order his analytical reports and reports were kept. As a result, five other cases, besides my unfortunate daughter did not match the sample analysed and were all incorrectly reported," and sent to me a copy of revised toxicological report dated February 22, 1983 which reflects the absence of ethyl alcohol in my unfortunate daughter's blood. THANK GOD,.. but in fact, we had at least two weeks of great consternation and concern about that incorrec t report.

I do hope that you will consider carefully my suggestions as explained hereabove, and considered it as public interest in renovating something which is outdated. SOMETHING IMPERFECT IN THE PAST SHOULD BE AND MUST BE REMEDIED IN TIME. THE IMFERFECTION OF THE PAST SHOULD NOT BE CONTINUED.... Fidelity to this MAXIM is why I take the liberty of making this suggestion. I pray that this construction opinion will shared by the CALIFORNIA HIGHWAY PATROL as well as the SHERIFF DEPARTMENY in order to give a helping to all unfortunate families who may one day be invloved in a traffic collision.

Finally, I respectfully wish that you, Mr Chairman, and members of the Commission will have great success on the road to achieve your NOBLE COMMITMENT and SACRED MISSION in this context.

Respectfully submitted,

TRAN TAM

Memo 83-47 EXHIBIT 9

LAWRENCE R HAWKINS JR.
P.O. BOX 686
NIPOMO, CALIFORNIA 93444
805-481-1378

JEAN LOVE
VICE CHAIRPERSON TO
CALIF. LAW REVIEW COMMISSION
4000 MIDDLE FIELD RD.
ROOM D 2
PALO ALTO CALIF. 94306

Dear Sirs,

Here's complete set of interrogratories propound upon me as a plaintiff in an auto accident. In turn I photo copied these and sent them to the defendant to answer. Attorney Clayton U, Hall however answered these for Denise Adriane Jobe. However he has refused to answer or to even reconize Georgia Jobe as a defendant. These answers are all as you can see were drafted by his firm and he willnot give a decent answer to them. He has notioned the court in front of Judge Harry Wolpert who refuses to honor a 170.6 CCP to compell answers " to his satisfaction"("This is an impossible task") sanctions were inposed upon me at $225.00 +$12.00. My motion to compell answers was denied. A 2036 was denied " This is a one way street" with graft corruption, collusion and conspiracy. Now there is a motion to dismiss since I have honestely tried 3 times to answer to his " satisfaction". These were designed for this purpose with a crooked judge. This scheme is a disgrace to justice. This clearly allowed the discovery process to be abused. I think this state should in all fairness completely change law makers and elect some one who will after passing laws such as the discovery act, appoint a committee to get rid of the white collar crime it breeds by disbarring permanetly any attorneys who misuses the judicial process and disrobe and JAIL any judge who is found to be biased and unjust in his judicial process. Thos will get rid of thirty percent of the crime, as crime is in the judiciary not in the street as as you white ivory tower freaks think. If you are unjust and unfair to a person he then must find a way to vinicate himself so since the crooked judge allowed friend ship to prevail over justice you have created a criminal of the street type, but if he had been given a fair shake he would be Johnny Be Good. I only hope for humanitys sake you don't take this as lightly as I believe you will.

Awaiting a letter of endorsement,

Lawrence R Hawkins Jr.

EXHIBIT 10

DONALD WALDO KENISTON
47920 National Trails Higway
Newberry Springs, California, 92365
Phone: (714) 257-3492

19 October, 1982

CALIFORNIA LAW REVISION COUNCIL
4000 Middlefield Road Room D2
Palo Alto, California
94306

Les Honorables All,

Amongst the inalienable Rights which are Provided, Protected, and Guaranteed by the Constitution of the United States and by the Constitution of the State of California, is the Right of the People to petition the Government for redress of Grievances.

In consideration of the above, and in further recognition of the duty and Responsibility of each Citizen for the maintenance of all such rights, and when necessary, to endevour to correct each and any injustice or inequity in the administration thereof:

I, the undersigned DONALD WALDO KENISTON, Citizen of these United States and of the State of California, do hereby submit the attached Petition for your consideration and action.

Respectfully Submitted

Donald Waldo Keniston
Citizen

Copy to:

Office of the Supreme Court of the United States
Office of the Senate of the United States
The Honorable ALAN CRANSTON, U S Senator
(Newly Elected) , U S Senator
Office of the House of Representatives
The Honorable JERRY LEWIS, Representative
Office of the Supreme Court of California
Office of the Judical Council of California
Office of the California Law Revision Council
Office of the Senate of California
The Honorable WALTER W STIERN, State Senator
Office of the State Assembly of California
Assemblyman PHILLIP D WYMAN

"P E T I T I O N"

Under the provisions of the Constitution of the United States of America and of the State of California, I, the Undersigned DONALD WALDO KENISTON, Petitioner herein and Citizen of these United States and resident of the State of California, does respectfully submit that:

WHEREAS Petitioner recognizes that:

a. Although a particular Law or Statute has been in force and in common use for a period of years, that fact does not necessarily bestow propriety or Constitutionality on that particular Law or Statute; and further that,

b. When the provisions of such a Law or Statute are found to be unconstitutional, invalid, or out-of-date, the particular questions arise: "If such a Law or Statute is Amended or Rescinded, how many appeals and retrials will be ordered as a result of such Amending or Rescission?", and thus, "Does the resultant Cost to the Public and additional congestion of the Courts outweigh the Rights of the Individual?"; and further that,

c. More and more often Appelate and Supreme Court decisions and reports of legislative Sessions reflect and sometimes state that said consideration has formed the basis for a particular finding or action; and further that,

d. As a consequence, the Constitutional Rights of the Citizens become more and more eroded in consideration of the greater Right of the Masses. However, a more reasonable and equitable solution is possible and readily available; and,

THEREFORE: I do herewith Petition the above-addressed Official or Government entity to cause a Statute, Law, or Constitutional Amendment to be proposed or to Execute an Order with respect thereof on own initiative, if appropriate, and to provide that:

> "WHEREAS ANY (commonly applied) LAW, STATUTE, REGULATION, POLICY, OR PORTION THEREOF THAT IS FOUND TO BE UNCONSTITUTIONAL, INVALID, OR OUT-OF-DATE AND BY THE AMENDING OR RESCISSION THEREOF, WOULD CONSTITUTE AND CAUSE THE INSTITUTION OF (a disproportionate number of) APPEALS AND RETRIALS, THE ORDER AUTHORIZING SUCH AMENDMENT OR RESCISSION (may)(shall) ALSO LIMIT OR DENY RIGHT TO APPEAL OR RETRIAL FOR A CAUSE RESULTING FROM SUCH AMENDMENT OR RESCISSION IN ACCORDANCE WITH THE BEST INTERESTS OF THE CITIZENRY AFFECTED THEREBY."

NOTE: The words (commonly applied), (a disproportionate number of), and (may)or (shall), may be included or deleted depending on the desired strength of these provisions, and without loss of clarity or comprehension.

"DISCUSSION"

Petitioner further submits that:

While many long-standing Laws and Codes, or portions thereof are unjust or blatently unconstitutional, under present laws or policy, the revission thereof would generate huge numbers of appeals and further result in the inundation of the already overburdened Courts and huge cost to the Public. However, Should the proposed directive be enacted, that problem would no longer preclude and SHOULD NOT preclude revision thereto. The following California Codes and Practices are prime examples:

a. Civil Code 47, Par 2(2) with reference to Absolute Privilege Denies Equal Protection under the Law, Denies Right o. Redress for damages incurred thereby, and consequently, also Denies Due Process of Law;

b. Judgements on the Pleadings as practiced within the State of California, and in-so-far as the Motion for such judgement is applied against the Defendant, is blatently unconstitutional in that wherein the Defendant has appeared and Denied the allegations of the Plaintiff, the Court may determine the relative guilt of the Defendant on the Basis of the allegations alone even when no Evidence has been presented by the Plaintiff. Thus, the Defendant has, in effect, been found guilty by accusation alone, and as a consequence, is denied a fair and impartial hearing of the issues thereto and denied his Inviolate right to Trial by Jury; and,

c. Many of the provisions of CCP 631 for waiver of Jury Trial do blatently restrict and abridge the Citizen's Right to Trial by Jury, and thus are unconstitutional; and further that,

While it is obviously impossible to correct each and every injustice precipitated by questionable laws, the provisions of the proposed directive would help to minimize further such injustices in that the Courts and Legislative Bodies would no longer feel the need to restrict or deprive the individual of his or her rights in fear of opening the flood gates to far greater wrong to the population as a whole. The stated provisions would be totally proper by the same reasoning and justification as that considered and accepted in the matter of Eminent Domain; and further,

The proposed Directive would provide great flexibility, not only in the Amendment, Rescission, or declaration of unconstitutionality of old Laws, but also in the making of new laws in that the limitations imposed in each INDIVIDUAL Enactment could range from (as examples):

a. No limitation with respect to matters dealing with Capital and other very serious Crimes, to,

b. Absolute denial of rights of appeal or Retrial of the issues in matters of minor or lesser import and where a final Judgement in the matter had been rendered at Trial, and prior to the Enactment of the concerned

change, and where the enactment of said change would otherwise be likely to generate great numbers of appeals, and,

c. With the intermediate and most common limitation being one which would limit such appeals to actions wherein the Final Judgement at trial had been rendered subsequent to the Filing of Appeal of the Test Case or wherein Appeal of the matter had been filed prior to the Enactment of the concerned change. In short, that no appeal would be allowed simply because the change in Law had been made, and without prior consideration of the matter by the party so appealing.

<u>YOUR ACTION</u> and a reply hereto would be greatly appreciated,

Respectfully Submitted,

DATED: 19 October, 1982

Donald Waldo Keniston, Citizen,
47920 National Trail Highway,
Newberry Springs, California, 92365
Telephone (714) 257-3492