Third Supplement to Memorandum 90-22

Subject: Study L-3013 - Uniform Statutory Rule Against Perpetuities (Reactions of Professor Dukeminier)

Attached to this supplement is a letter from Professor Jesse Dukeminier expressing his unhappiness with USRAP and with Memorandum 90-22. Time does not permit a detailed consideration of his letter, but a few points should be made.

Professor Dukeminier argues that USRAP will make trust termination by consent of all beneficiaries more difficult in cases of trusts that violate the Rule. (See Exhibit 1, at 4-5.) This is correct. But we should not be mislead into thinking that it is a defect in USRAP. The difficulty of obtaining the needed consent involves virtual representation of unknown or unascertained beneficiaries or appointment of a guardian ad litem at the time termination is sought. The scheme preferred by Professor Dukeminier involves resort to court proceedings at the outset to reform the disposition and then later when termination is sought. When termination of this trust is sought, it most likely will also require use of virtual representation or appointment of a guardian ad litem. It is also worth noting that some people do not favor easy trust termination, and would judge the supposed defect of USRAP to be a benefit. Finally, the magnitude of this defect is small ~~if Professor Dukeminier is correct that there are very few violations~~ of the Rule under existing law.

Professor Dukeminier discusses a "tax trap" involving ungrandfathering of pre-1986 trusts so that they are subject to the generation skipping tax. (See Exhibit 1, at 6-8.) We are not in a position to estimate the number of cases where this would be a problem or the percentage where the result would be an unjust "trap." However, a potential tax problem is not a sufficient reason to reject perpetuities reform. We are not convinced that California law should be controlled by temporary tax regulations that may affect a small

number of cases. We wonder whether this problem has surfaced in Wisconsin, Idaho, and South Dakota, which do not have the Rule.

The "Dynasty Trust" discussed by Professor Dukeminier is a potential concern. However, he can't pin this rap on USRAP. As argued in Professor Waterbury's unpublished article (see Second Supplement to Memorandum 90-22), this type of trust is feasible now. We can speculate on the effect USRAP might have on those wishing to establish Dynasty Trusts, but the main players in this story are not perpetuities laws but the federal generation-skipping tax.

Professor Dukeminier is concerned with the potential flourishing of honorary or "noncharitable" trusts under USRAP. (See Exhibit 1, at 9-10.) The staff does not believe this is a serious obstacle; it is one of the minor technical problems that we will deal with if the Commission decides to proceed with the act. It seems simple to handle such trusts specifically by statute. Nor is it clear to the staff that perpetuities rules are the appropriate way to resolve the issues raised by honorary trusts.

Incidentally, the count of scholarly articles for and against USRAP (Exhibit 1, at 2) should be adjusted to reflect Professor Fellows' forthcoming article in favor of USRAP. (See Second Supplement to Memorandum 90-22.)

Respectfully submitted,

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February 23, 1990

Mr. John H. DeMoully
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California Law Revision Commission
4000 Middlefield Road, Ste. D-2
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RE: Uniform Statutory Rule Against Perpetuities

Dear John,

I have the Law Revision Commission Staff Memorandum 90-22 recommending the adoption of the Uniform Statutory Rule Against Perpetuities (USRAP). I remain strongly opposed to USRAP.

The staff memorandum unhappily does not exhibit the masterful command of the subject and the incisive analysis so characteristic of most staff memos. The memorandum never bites hard into the issues. It contains no analysis of the interaction of USRAP and the Internal Revenue Code.[1] It does not discuss several arguments made by USRAP's opponents and ignores potential problems suggested by these persons. Surely these matters deserve discussion. Instead of digging into the issues, the memorandum too often resorts to generalities and to quotations from interested persons, not distinguishing between puffing testimonials, people wrapping themselves in the Uniform flag, and hard analysis.

At bottom the staff memorandum rests on a belief that USRAP is a Uniform statute and uniformity is desirable. It is important, I think, that the Commission give USRAP the most careful scrutiny because, while USRAP was in the drafting stage, the drafters did not have the benefit of criti-

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1. It does not mention the tax trap USRAP creates. See page 6 infra.

cism from outspoken critics of the 90-year wait-and-see period.

Professor Waggoner, the principal drafter of USRAP, first floated the idea of a 90-year wait-and-see statute in three pages at the end of an article in the December 1985 issue of the Columbia Law Review. This was a novel idea which no one had theretofore considered. Before other scholars could give this idea careful thought, the drafting committee wrote it into the Uniform statute (USRAP) and had it approved by the National Conference of Commissioners on Uniform State Laws in August of 1986. Subsequent approval by the House of Delegates of the ABA, the Board of Regents of the American College of Probate Counsel, and the Board of Governors of the American College of Real Estate Lawyers was swift and routine. Exactly eight months passed between the time this 90-year idea was first suggested and its approval by NCCUSL. During the eight months before this novel idea was given the imprimatur of a Uniform statute no draft of the 90-year wait-and-see statute was furnished me nor, I presume, other known or probable critics outside the Uniform establishment who had written on perpetuities. (Compare the procedures of the American Law Institute in adopting wait-and-see for lives in being, where known and probable opponents were invited and given full hearings.)

When scholars had time to give careful attention to a proposed 90-year wait-and-see statute, it had already been approved as a Uniform statute. Not surprisingly then, in view of the defective hearing procedures which deprived the drafters of useful criticisms that might have produced a very different kind of Uniform statute, scholars subsequently found many things wrong with USRAP -- in its principle, in its muddled rationalization, and in its execution. As I pointed out in my June 9, 1989, letter to the Commission, after USRAP was promulgated <u>every published article</u> (save those of the reporter, Professor Waggoner) was negative or unenthusiastic about USRAP. Since then I have seen drafts of two more critical articles, one by Professor Thomas Waterbury of Minnesota and the other by Professor Jeffrey Stake of Illinois. Professor Waterbury finds previously unnoticed flaws in USRAP and demonstrates quite convincingly that uniformity of state law on perpetuities is an illusion without Congressional legislation. Waterbury, who some years ago published an analysis of wait-and-see highly praised by Professor Leach, strongly advocates cy pres (the California scheme).

My point is simple. It is ordinarily assumed that a Uniform statute has been carefully drafted like an act of Congress (with hearings) or with the opportunity given to

opponents to present their case. This Uniform statute, on the contrary, was whipped out in eight months with no opportunities given to opponents to examine it and no time to debate it in the law reviews. In view of that, I suggest that USRAP is not entitled to the presumption ordinarily given to Uniform statutes that this is carefully thought-out legislation where all the objections have been considered. It is, I submit, the obligation of the California Law Revision Commission to examine the statute on its merits and not to assume that it is meritorious because it carries the Uniform label.

This brings me to the issues that deserve discussion.

1. USRAP puts the common law Rule against Perpetuities in abeyance for 90 years. For 90 years after USRAP is enacted, the common law Rule cannot be used to strike down any future interest created after USRAP is enacted. What is likely to happen in that 90-year period? I think it is clearly predictable that the Rule against Perpetuities will be taught less and less in law schools, and after a generation or so it will be relegated to legal history. As a teacher, I see no way of motivating students to learn a difficult rule, while at the same time telling them this Rule cannot invalidate any future interest you draft during your entire career at the bar.[2]

Can anyone think of a single other prohibitory legal rule that is put in abeyance for 90 years? I cannot. The principle underlying USRAP is bizarre.

The staff memorandum does not discuss what is likely to happen to teaching and knowledge of the Rule during its 90 years in the deep freeze. It ought to. We ought to have a pretty good idea of what we are getting into before adopting this radical legislation.

2. USRAP abolishes attorney malpractice for violating the Rule. It is generally assumed in most states today that the attorney who drafts an instrument violating the Rule against Perpetuities is liable to the bereft intended beneficiaries for malpractice. Cf. Millwright v. Romer, 322 N.W. 2d 30 (Iowa 1982). In Lucas v. Hamm, 56 Cal. 2d 583, 364 P. 2d 685, 15 Cal. Rptr. 821 (1961), it was held that the attorney was not negligent for violating the Rule on the specific facts of the case. Lucas, however, is a shaky

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2. USRAP does provide at least one malpractice tax trap they can fall into, however. See page 6 infra.

precedent. It has been criticized by the Vice Chancellor of England as an embarrassment to the profession in not holding lawyers responsible for their work. Note, 81 L. Q. Rev. 465, 478-81 (1965). The California Court of Appeal has warned that, in view of the widespread use of saving clauses, the ultimate conclusion of Lucas is of doubtful validity today. Wright v. Williams, 47 Cal. App. 3d 802, 809 n. 2, 121 Cal. Rptr. 194, 199 n. 2 (1975). I believe prudence and sound public policy require us to assume that there is potential malpractice liability for perpetuities violations.

Under USRAP no instrument drafted by a lawyer can violate the Rule for 90 years. At the end of 90 years the drafter will be dead, his or her estate will be closed, and the statute of limitations will have run. The testator's family -- and not the lawyer -- will have to pay for the cost of a lawsuit at the end of 90 years to determine what should be done with the trust property.

I believe it is highly objectionable to have a rule of public policy, a Rule against Perpetuities, and exempt lawyers from malpractice liability when they violate it. But that is the effect of USRAP. The effect on malpractice liability is not discussed in the staff memorandum.

3. USRAP, by leaving the validity of future intersts undetermined for up to 90 years, may have inconvenient and disadvantageous consequences. I note only two here. First, USRAP makes it more difficult to terminate trusts when the beneficiaries want to. Termination may be very desirable for tax or other reasons. Skilled estate planners often put a power to terminate the trust in a "trusted uncle" or someone else. The enactment of the federal generation-skipping transfer tax makes it even wiser to provide for a trust termination power so that the testator's descendants can choose to terminate the trust and pay an estate tax or leave the capital in trust and pay a generation-skipping tax. Tax writers are now stressing the wisdom of permitting each generation to decide which of these federal taxes to pay. See, e.g., Blattmachr & Pennell, Adventures in Generation-Skipping, or How We learned to Love the "Delaware Tax Trap", 24 Real Prop. Prob. & Tr. J. 75 (1989). The power to terminate the trust is highly desirable for tax reasons.

Families benefitting from trusts not containing special trust termination powers must rely upon general trust termination law to try to gain the tax and other advantages of flexibility. Under current law, if all the beneficiaries consent, the trust can be terminated unless termination

would defeat a material purpose of the settlor. Under the common law Rule against Perpetuities, as amended by California's cy pres statute, the beneficiaries of a trust violating the Rule will be ascertained in many more cases than under USRAP, for USRAP postpones the ascertainment of beneficiaries for up to 90 years. Under USRAP it will be more difficult than under present California law for beneficiaries of a Rule-violating trust to terminate the trust and save taxes (or eliminate expensive and undesirable trust management), because the beneficiaries will not be ascertained for a longer period of time.

Second, because USRAP keeps perpetuities-violating trusts going longer, more litigation will probably result from unforeseen problems that arise. In my letter of July 12, 1989, I mentioned In re Trust of Criss, 213 Neb. 379, 329 N.W. 2d 842 (1983), where there was a trust "for the issue of Nina." I suggested that litigation would likely arise during the 90-year period allowed by USRAP over who came within the class of issue, as well as over other matters. Under present California law, the court would close the class of issue (beneficiaries) at the testator's death, whereas under USRAP it could stay open for 90 years. Professor Waggoner argues in reply that under USRAP a court would construe the trust in favor of validity and close the class of issue at the testator's death. Perhaps it would, but Professor Waggoner's answer is beside the point. He has missed the difference between construction and reformation. The point is: If the instrument cannot be construed in favor of validity, under California cy pres the instrument can be reformed to make it valid by closing the class as of the testator's death whereas under USRAP the class may stay open for 90 years. This would be the result if the testator's will had said "for the issue of Nina now living and born after my death." Here the testator clearly intends to include afterborn issue; they can be excluded only by reformation, not construction. By lengthening the duration of these usually poorly drafted trusts, USRAP has the potential of breeding more litigation.

We have experience on this matter. In some jurisdictions in the East, a court will not decide who is entitled to the principal of a trust until the valid life estates expire. (This resembles what will happen under USRAP, though the USRAP waiting period is even longer.) Long term trusts in these states have been litigation breeders. See Loring v. Marshall, 396 Mass. 166, 484 N.E. 2d 1315 (1985) (1898 trust went four times to the Supreme Judicial Court because of constructional problems arising during the term of the trust and because of court's refusal to give an opinion on who was entitled to the principal); Fleet Nat'l Bank v.

Colt, 529 A. 2d 122 (R.I. 1987) (1921 trust violating Rule went four times to Rhode Island Supreme Court for similar reasons); American Security & Trust Co. v. Cramer, 175 F. Supp. 367 (D.C. Cir. 1959) (1902 trust violating Rule was litigated three times for similar reasons). See also Dewire v. Haveles, 404 Mass. 274, 534 N.E. 2d 782 (1989), where a 1941 trust violating the Rule against Perpetuities, but saved for another generation or more under wait-and-see, is beginning to throw up litigation construing who comes within the class of beneficiaries. That litigation develops in long term trusts is not surprising. No drafter can foresee what will happen within the family so far in the future -- certainly not for 90 years.

The only part of the staff report that touches on USRAP's potential as a litigation breeder is a general dismissal of any problems resulting from title uncertainty. On page 13 the staff report concludes -- on the basis of an "interesting analysis" in a Prefatory Note of USRAP -- that uncertainty of title will not be "a significant problem." The Prefatory Note may be "interesting", but it is surely not convincing. Underneath an almost impenetrable thicket of words, all the Note says is that the claim that potentially invalid contingent interests may give rise to serious practical difficulties is "shown to be false" by a demonstration that similar, but valid, contingent interests can be created. This is a non-sequitur, and itself is shown to be false by the generation-skipping tax trap USRAP creates, discussed below.

4. The staff report does not discuss the effect of USRAP on the application of the federal generation-skipping transfer tax enacted in 1986. Under that tax, USRAP contains one very expensive trap for lawyers and their clients not existent under our cy pres statute. USRAP also authorizes easy Dynasty Trusts, with potentially harmful consequences.

a. First, the USRAP tax trap. The generation-skipping tax of 55 percent does not apply to irrevocable trusts created before 1986. These trusts can go on and on until the perpetuities rule calls a halt, escaping both federal estate taxes and generation-skipping taxes. They are called "grandfathered trusts." To prevent the extension of these trusts for unlimited periods, the Treasury Department has taken the position that all interests in them must vest not later than 21 years after lives in being at the creation of the trust. Thus,if the donee of a special or testamentary power of appointment in a grandfathered trust exercises the power "in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in

property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years," the trust is "ungrandfathered" and becomes subject to generation-skipping taxes. Temp. Treas. Reg. § 26.2601-1 (b)(v)(B)(2).

Under USRAP if a donee of a power in a grandfathered trust exercises the power so as to violate the Rule against Perpetuities the trust will lose its generation-skipping tax exemption.[3] This is so because the exercise may postpone vesting beyond the "lives in being" referred to in the Regulations. Under USRAP an invalid exercise may postpone vesting for 90 years, long after all relevant lives are dead. Thus:

> In 1970 T creates a trust of $5 million to pay the income to her daughter, A, for life, remainder as her daughter A appoints by will. In 1977 a child, B, is born to A. In 1990 USRAP is adopted. In 1995 A dies, appointing to B for life, remainder to B's issue. Under the common law Rule, the appointment to B's issue is void since it may not vest until B's death, and B was not in being in 1970. However, under USRAP (§21202 (a) of Calif. proposal) the remainder is valid if it vests within 90 years after 1970. Because, under USRAP, exercise of the power by A may postpone the vesting beyond any life in being in 1970 plus 21 years, T's trust now loses its tax exemption from generation-skipping taxes.

Under our California cy pres statute, A's appointment would be reformed so as to vest the remainder within 21 years after the death of a person in being in 1970. The trust would not lose its exemption from generation-skipping tax. This USRAP tax trap does not exist in California with cy pres.

This tax trap created by USRAP is also a potential malpractice trap for lawyers. The malpractice liability of the lawyer-drafter whose unskilled work lost the tax exemption on a grandfathered trust could be considerable. See Bucquet v. Livingston, 57 Cal. App. 3d 914, 129 Cal. Rptr. 514 (1976), imposing malpractice liability upon lawyer who

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3. The USRAP tax trap was first called to my attention by Professor Ira Bloom, a specialist in the generation-skipping tax and opponent of USRAP.

did not know the tax consequences of powers of appointment.

Although USRAP's supporters have extolled its virtues in eliminating perpetuities traps (which don't exist anymore in California), they have not mentioned this costly tax trap hidden in USRAP. This tax trap vividly illustrates that a 90-year wait-and-see period is not the equivalent of a saving clause using measuring lives in being.

Traps like this may escape the attention of extremely knowledgeable lawyers. Study Team #1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, composed of highly skilled practitioners, reported that if USRAP were enacted they would draw a saving clause that would terminate the trust "either (1) twenty-one years after specified lives in being or (2) at the expiration of ninety years from the creation of the interest, whichever occurred last." (Letter of William V. Schmidt, Exhibits, p. 297, at 301.) If such a saving clause were used in a will exercising a testamentary power in a grandfathered trust, which exercise violated the Rule apart from the saving clause, the trust would lose generation-skipping tax exemption. When our top-flight practitioners stumble as a result of hidden USRAP consequences on the tax laws, there is a lesson: We ought not to enact this complicated legislation, with unexamined and hidden tax consequences.

b. Dynasty Trusts. The staff report contains no discussion of Dynasty Trusts. A "Dynasty Trust" is the new name being given to a trust for the settlor's descendants that is free from federal estate tax and federal generation-skipping tax for its duration. Under I.R.C. §2631(a), an individual has an exemption from generation-skipping taxes of $1 million ($2 million per married couple) settled in a trust for as long as the local perpetuities period allows. Dynasty Trusts are now recommended in the recent professional estate planning literature and in popular magazines targeted to the rich. Here is a pitch from Boca Raton Magazine, Winter 1990, at page 230:

> [A Dynasty Trust] allows the trust to avoid estate, gift and GST taxes for several succeeding generations. For example, $1 million left in a long-term GST-exempt Dynasty Trust without transfer taxes until the 100th year (compounded monthly at a 7 percent annual interest rate) will be worth over $1 billion, and assuming it would be subjected to estate tax in the 100th year, it would still be worth over $483 million. That same amount subjected to transfer taxes at successive generations will grow to only $44 million....

> If you are at all interested in providing wealth which can grow transfer tax-free for your future generations, you must consider the establishment of a GST-exempt Dynasty Trust. Regardless of whether or not your family will be "honored" with a prime-time television series, you will have, in fact, established a "dynasty."

It is my belief that Dynasty Trusts will become popular among millionaires. If they are drafted by skilled lawyers, the settlor's family has little to worry about. But if they are drafted and marketed by financial advisors, probably on stock forms, the settlor's family may have much to worry about. If the duration of the trust can be 90 years (rather than having to comply with the Rule against Perpetuities), it will be easier for tax and financial advisors (without knowledge of perpetuities law) to market Dynasty Trusts. I have many doubts whether it is in the public interest to make it easier to market long term trusts, but in any case this matter deserves serious consideration by the Commission.

5. <u>The staff report makes no mention of the application of USRAP to honorary trusts and noncharitable purpose trusts</u>. The Rule against Perpetuities controls more than the duration of private trusts for private beneficiaries. It also controls the duration of honorary trusts and noncharitable purpose trusts. If a trust of either type can extend beyond the perpetuities period, it is void.

Under USRAP presumably these trusts are valid for 90 years. See Scott on Trusts §124.1 (W. Fratcher 4th ed. 1987), suggesting that these trusts are valid for the wait-and-see period.

The following cases are a sample of honorary or noncharitable purpose trusts which were ruled invalid under the Rule against Perpetuities but which presumably would endure for 90 years under USRAP. Foshee v. Republic Nat. Bank of Dallas, 617 S.W. 2d 675 (Tex. 1981) (perpetual trust to maintain family burial space in mausoleum); In re Burnham, 17 D.L.R. 2d 298 (B.C. 1958) (testator directed that a part of his land should be cared for by his executor for all time as a Shrine of Remembrance); Lyon Estate, 67 D. & C. 2d 474 (Pa. 1974) (trust for keeping all dogs and horses on testator's farm until their deaths, remainder to Princeton); Shenandoah Valley Nat. Bank v. Taylor, 192 Va. 135, 63 S.E. 2d 786 (1951) (trust to give school children gifts at Christmas and Easter); In re Swayze's Estate, 120 Mont. 546,

191 P. 2d 322 (1948) (trust to erect and maintain a hotel in town as a memorial to testator); Meehan v. Hurley, 51 R.I. 51, 150 A. 819 (1930) (bequest in trust to be used for purchasing flowers for testator's grave in perpetuity); Detwiler v. Hartman, 37 N.J. Eq. 347 (1883 (bequest to hire a band to play dirges and other appropriate music on the grave of the testator on each anniversary of his death and other occasions).

Other examples of noncharitable purpose trusts can be given, suggested by actual cases. These include trusts for a private-profit-making retirement home, or for a private-profit-making vocational school, which would be validated for 90 years under USRAP. Courts have long thought a perpetual trust for the benefit of a political party was against public policy, but apparently a perpetual trust for the Republican Party or the Peace and Freedom Party, now invalid because it can endure beyond the perpetuities period, would be valid for 90 years under USRAP.

Surely, before these usually ill-thought-out trusts are legitimated in California for 90 years, and resources devoted for such a long time to purposes of marginal social value, they should be discussed.

6. Minnesota may repeal USRAP. Minnesota is listed in the staff memorandum as a state that has adopted USRAP. Minnesota was one of the first states to adopt USRAP, but because of opposition from the Probate and Trust Committee of the Minnesota Bar the effective date has been postponed by the legislature annually until 1991. The Probate and Trust Committee of the Minnesota Bar is opposed to USRAP, and has introduced a bill in the Minnesota legislature this spring which would adopt cy pres in place of USRAP. It is too early to know how this scrap will turn out, but it is interesting to note that when the trusts and estates specialists in Minnesota took a hard look at USRAP they didn't like what they saw.

7. USRAP is a terribly complicated statute, which has been given inadequate detailed consideration by the Bar. I return to a complaint I voiced in my letter on June 9, 1989. USRAP is written in excessively turgid, complex prose -- prose that makes the Internal Revenue Code look like a model of clarity by comparison. USRAP and its explanation would not pass muster if we required statutes to be written in plain English. It requires 66 single-spaced typed pages to state and explain! There is no reason for such verbosity and such involuted prose. Professor Leach, who wrote on perpetuities with grace, clarity, and brevity, demonstrated that.

Any statute that the average lawyer cannot understand ought not to be enacted. It is very troubling that so few members of the Bar responded to the first staff report recommending USRAP in the summer of 1989. In the exhibits are only letters from William V. Schmidt and Kenneth G. Petrulis, representing two groups of lawyers. Mr. Schmidt's letter states frankly that no member of his team read all the materials furnished; they made only a "superficial study." His team is of several minds about USRAP's soundness and believes it "needs more time and information before it feels it can make a meaningful recommendation." The Beverly Hills Bar Association lawyers in Mr. Petrulis's group "agree with the commentators who find the flat 90 year period both unreasonable and unworkable. The present system of allowing reform of an offending instrument works, but can be improved upon." Perhaps the small response from the Bar is due to the tabling of the staff's recommendation last summer, which may have lulled the Bar into believing there would be a later opportunity to respond after the staff's new recommendation was made and before the Commission decided on a recommendation. In any case, I do not see how, in view of this small and mainly negative response from the Bar, the Commission can recommend this little understood, technicality-ridden statute, which has so much potential for real harm to Californians.

8. Conclusion. The California cy pres statute -- a simple, easily understood solution to perpetuities problems -- was acclaimed by both Professors Simes and Leach. It is viewed by many perpetuities scholars as model legislation. Of the professors in California who teach the Rule against Perpetuities and who responded to the first staff recommendation, five (Bird, Dukeminier, Niles, McGovern, and Whitebread) opposed USRAP. So did Richard Maxwell, the long-time dean of UCLA Law School, now teaching at Duke. The only California professor to support it was Halbach, who favors it largely on the ground that it is a Uniform statute and uniformity is desirable.

The California cy pres statute was enacted in 1963. In the 27 years since we have had only two reported cases involving the Rule against Perpetuities. By any criteria the statute has worked well.

The move to repeal our statute does not come from the California Bar or California professors, most of whom are quite satisfied with it. The pressure comes from persons desiring us to enact a Uniform statute for the sake of uniformity. But what is the price of this illusion of uniformity? More litigation, more uncertainty, more dead hand control, and more taxes.

I hope the Commission will not recommend this immensely controversial and highly risky legislation, many consequences of which cannot be foretold. This is not a case where "Damn the torpedoes, full speed ahead" is good advice.

Sincerely,

Jesse Dukeminier
Visiting Professor of Law

JD:dw