

7/21/72

First Supplement to Memorandum 72-54

Subject: Suggestions for Topics to Be Added to Calendar of Topics

We have received four suggestions for new topics to be added to our agenda during the time since we last considered suggestions. Exhibits I-IV, attached, are the topics suggested. In view of the number of topics on our agenda already, the staff recommends that no request be made to the 1973 Legislature to add additional topics to our agenda.

The following is a listing of the topics suggested in the attached letters:

(1) Summary Judgment. The Board of Governors has a revision of the summary judgment law (drafted by the State Bar Committee on the Administration of Justice) under consideration. See Exhibit V attached. It would not be profitable to duplicate the work of the State Bar on this matter.

(2) Inheritance Taxes. Not an appropriate subject for Law Revision Commission study.

(3) Evidence Code Section 919. No additional authority required to study the problem presented by Exhibit III. However, a background study would be necessary to determine what, if anything, is needed in the nature of clarifying legislation. With the pressure of other work, the staff does not believe it would be desirable at this time to devote staff and Commission resources to the problem presented. At some future time, if staff resources permit, we will investigate further the matter presented in Exhibit III.

(4) Peace Bonds. The Penal Code is now being revised by a special joint legislative committee. Moreover, the staff does not believe that the problem

of whether the peace bond legislation should be repealed is an easy one to resolve. Accordingly, we do not believe it would be desirable to request authority to study this additional topic.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

1st Supp Memo 72-54



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
ROBERT A. WENKE, JUDGE

TELEPHONE
(213) 628-3414

March 27, 1972

John D. Miller, Esq.
555 E. Ocean Blvd., Suite 610
Long Beach, Cal. 90802

Dear Jack:

Re: Summary Judgment

I imagine that you already have enough items on the agenda relative to law revision to occupy your staff's time for the foreseeable future. Nevertheless, I know your capacity for work so I am taking the liberty of suggesting your consideration of summary judgments.

Enclosed is a copy of Judge Zack's definitive article re California Summary Judgment Law. Perhaps you are familiar with it. In any event, his proposals for legislative reform commence on page 474.

As you know, the business of the courts is constantly expanding. We need better tools for the disposition of meritless contentions, whether made by plaintiff or defendant. I believe Judge Zack's proposals would be helpful.

I have not discussed this with Judge Zack but I know this subject is of keen interest to him. I am confident he would be happy to cooperate with the Law Revision Commission if you should decide to pursue the matter.

Kindest regards.

Sincerely,

Robert A. Wenke

RAW/fv

Encl.

1st Supp Memo 72-54

EXHIBIT II

THOMAS L. LORD
ATTORNEY AT LAW

2352 PASADENA BLVD SUITE 104
LAGUNA HILLS, CALIFORNIA 92653
(714) 837-6030

February 23, 1972

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Inheritance Taxes

Gentlemen:

The California inheritance tax system is a nightmare, with many traps for the unwary.

I believe the present system is unfair to many persons and is unnecessarily complicated.

Many people are clearly not paying their fair share of taxes. By this, I am referring to the fact that the transfer of community property, or quasi-community property which has been converted into community property, is not taxable. In other words, a California resident whose estate consists entirely of community property can leave all of his assets to his spouse tax free, no matter how large his estate.

I believe the system is so complicated and difficult that many persons are in effect "cheated" by the state and pay much more in inheritance taxes than they are liable for. With regard to this, you should carefully analyze the Form IT-3.

I could go on in detail, but rather than waste my time and yours, I would first want to find out whether there is any prospect of your commission investigating the situation.

Yours very truly,

Thomas L. Lord

Thomas L. Lord

TLL:vtr

1st Supp Memo 72-54 EXHIBIT III

Superior Court of the State of California
County of Orange
Santa Ana, California

Chambers of
HERBERT S. HERLANDS
Judge of Superior Court

April 19, 1972

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

Dear Professor DeMouilly:

Since you are continuously working on the Evidence Code, I should like to present a problem to the Commission that, in my opinion, needs clarification.

Evidence Code § 919 provides that "disclosure of privileged information is inadmissible against a holder of the privilege if . . . a person authorized to claim the privilege claimed it but nevertheless disclosure erroneously was required to be made" (underlining added).

Suppose, in an action, that a defendant is erroneously ordered, during discovery proceedings, to reveal, over his objection, relevant but privileged statements to his attorney. Suppose, further, that the defendant neither takes any steps in a higher court to challenge the erroneous order nor risks citation for contempt by refusal to obey. He discloses the privileged matter to plaintiff.

Suppose, further, that during the trial of the action, plaintiff offers to introduce such statements and defendant objects, citing Section 919. Plaintiff counters by citing Markwell v. Sykes, 173 C.A. 2d 642, 649-650 (1959), and by arguing that, since defendant did not take steps to challenge the erroneous order and since defendant disclosed the privileged matter, defendant had "waived" his objection.

Superior Court of the State of California
County of Orange

Professor DeMouilly

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April 19, 1972

Plaintiff also argues: (1) that defendant was not "required" to make disclosure within the meaning of Section 919 because defendant did not pursue his remedies in higher courts to invalidate the order; (2) that the Law Revision Commission Official Comment, original report and research study all refer to erroneous orders in a "prior" proceeding, whereas this erroneous order was issued in the same proceeding; and (3) that Section 919 purports to state existing law, makes no mention of Markwell v. Sykes, supra, and, therefore, may not be interpreted to overrule that case.

If there is a ready answer in the Code or its Comments, I would be grateful for your informing me of it. If the matter is confused, I hope the Commission will be able to eliminate the confusion.

Sincerely,


Herbert S. Herlands
Judge of the Superior Court

HSH:pas

cc: Hon. Bernard Jefferson
Los Angeles Superior Court

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EXHIBIT IV
Morris L. Davidson

ATTORNEY AT LAW
SUITE 340, UNITED CALIFORNIA BANK BUILDING
6601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA
BRADSHAW 2-6327 · CRESTVIEW 4-6271

June 5, 1972

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: "Civil Arrest"

Gentlemen:

I suggest that at a later date the "Civil Arrest" study be extended to cover comparable harsh and obscure statutes of the Penal Code, Section 701 to 714, pertaining to "Peace Bonds".

A couple of years ago a client of mine was having some problems with high school students who were molesting her son. She told me that a neighbor who came from out of State suggested that she go to the judge and have the judge arrest these neighboring students and put them in jail, unless a bond was posted for them to keep the peace. Unwittingly, I told my client that I did not know of any procedure of this nature in California.

However, recently, in skimming through the Penal Code, I "discovered" Sections 701 to 714 and I was amazed at the apparent evils lurking in these sections of the Code. Everything dire about what was stated on "Civil Arrest" is contained in these obscure Penal Code Sections.

I would be willing to do a background study on the derivation of these Sections of the Penal Code through the common law, if you deem it worth while.

Sincerely yours,


Morris L. Davidson

MLD:mc

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