12/9/68

Memorandum 69-17

Subject: Agenda Topics

There are several matters relating to the topics on the Commission's agenda that the staff wishes to present for your consideration.

Study on Condemnation Law and Procedure

After the last meeting, the California State Chamber of Commerce sent us a copy of the Chamber's "Policy Statement on Government Acquisition of Private Property." A representative of the Chamber called to indicate the interest of the Chamber in our study on condemnation law and procedure and to encourage us in our efforts to prepare a comprehensive revision of the law in this area. He recognized that, because of its complex, controversial nature, the subject will require study for a number of years before a comprehensive statute can be recommended to the Legislature. We suggest that you read the "Policy Statement" which is reproduced on the attached yellow pages. You will note that reference is made to the Law Revision Commission in the Policy Statement.

This also seems to be an appropriate time to bring to your attention a letter we received last summer from Roy A. Gustafson, former Chairman of the Commission who was recently appointed to the Superior Court by Governor Reagan. This letter is reproduced as Exhibit II. Mr. Gustafson states that the law relating to condemnation and inverse condemnation "is in a hopeless mess and one can find just about any statement for which he is looking if he reads enough cases. And it is certainly true that both the decisional and the statutory law heavily favor the condemnor." He suggests that what is needed is "a massive project which

starts from scratch" and further points out that eminent domain cases are frequent in the courts. We suggest you read his letter. The "comprehensive study" approach he suggests is the one that we are following. The difficulty with a project which does more than "patch up the law here and there" (to use the phrase of Mr. Gustafson) is that it requires a massive effort that takes time. However, we are fairly confident that the next major study in the condemnation area--the right to take--will be ready for Commission consideration at the February 1969 meeting.

Arbitration of Small Claims

Attached as Exhibit I are letters sent to us by the counsel for the Assembly Judiciary Committee describing a possible topic for Commission study. Examination of the letters gives me the impression that the Assembly Judiciary Committee is not particularly interested in this topic. (When the Committee is interested in the Commission's studying a topic, the Committee ordinarily makes that fact clear.)

The suggested topic is compulsory arbitration of small claims. The suggestion is that a study be made of a statute enacted in Pennsylvania in 1952 with a view to possible adoption of similar legislation in California.

The Pennsylvania legislation permits the court of common pleas in each county to provide by rule of court for compulsory arbitration in cases involving no more than $2,000 ($3,000 in Philadelphia by a 1968 amendment) in claimed damages. Actions involving title to real estate are not included. A survey made in 1961 indicated that approximately 51 of the 67 courts of common pleas had adopted the arbitration rule. In

addition, the Municipal Court of Philadelphia and the County Court of Allegheny County (Pittsburgh) had also adopted the system.

Under the statute, each claim is heard by a panel of three arbitrators who are members of the bar in the judicial district. They are appointed by a county clerk (the prothonotary) from a list of consenting attorneys, within 10 days after the case is at issue. Fees ranging from $10 to $50 per case (as of 1961) for each arbitrator have been set by the courts and are paid by the county. Hearings generally take place within a few weeks after appointment and awards are to be filed within 20 days of hearing. The day, hour, and place of meeting of the arbitrators are fixed by agreement of the parties or, on their failure to agree, by the prothonotary. Commonly, hearings are held in the offices of the chairman of the arbitration board, but the practice seems to vary from county to county. In certain counties, local rules of court direct that arbitrators follow the "established" rules of evidence; in others, that they give them liberal construction; the rules of still other counties are silent on the subject. No record need be kept of the proceedings.

The arbitration award, arrived at by majority vote, has the effect of a final judgment. Either party has a right of "appeal" as a matter of course--meaning that the appellant has a right to a trial de novo in court. However, the right to appeal is contingent upon the appellant's repaying to the county the cost of the arbitration proceedings, not to exceed 50 percent of the amount in controversy. This payment is not a recoverable item of costs even if the appealing party prevails.

Although the jurisdiction of the small claims court in California is only $300, it serves the same purpose and at far less expense to the parties than the Pennsylvania procedure. However, the plaintiff determines whether the action is to be brought in the small claims court; the defendant has no right to remove an action brought in municipal court to the small claims court. Hence, the defendant does not have the benefit of a procedure that permits him to avoid the cost of defending a small claim in municipal court. The Pennsylvania procedure, on the other hand, is compulsory--the claim must be submitted to arbitration; neither party has a right to a court trial until the arbitration is completed and the right to a court trial thereafter is contingent on paying the arbitrators' fees without any right to recover those fees even if the appellant prevails.

We do not know whether the Pennsylvania procedure would be constitutional in California as against an objection that it deprives both the defendant and the plaintiff of the right to a jury trial. We have not investigated this problem.

The Pennsylvania procedure has been justified as a means of eliminating court congestion, not as a means of reducing the defendant's costs. In fact, arbitration is not necessarily an inexpensive procedure. If there is any merit to Mr. Park's suggestion that a procedure is needed to protect defendants against the cost of having to defend against small claims in a "court" procedure, the staff wonders if it might not be more likely that a procedure could be devised to permit the defendant to have a small case heard in the small claims court even though the plaintiff has brought the case in municipal court. Of course, the defendant can defend a small claim in a "court" case in pro per and avoid the expense of an

attorney. Also, in this connection, see the California Law Review Note on the Small Claims Court (attached).

We have attempted merely to outline the nature of the suggested topic so that the Commission may determine whether it wishes the staff to investigate the topic more completely. What disposition does the Commission wish to make of the suggested topic?

Small Claims Court Law

Resolution Chapter 202 of the Statutes of 1957 authorizes the Commission to make a study whether the Small Claims Court Law should be revised. The statement as to the reason this topic was authorized for study, taken from the Law Revision Commission's 1957 Annual Report, is reproduced as Exhibit III (attached).

The Commission should determine whether it wishes to undertake a study of this topic or to drop it from the Commission's agenda. The Legislature, each session, considers bills proposing various changes in small claims court procedure but such bills usually fail to be enacted. A bill to raise the jurisdictional dollar limit for small claims courts is considered each session and the trend is to gradually increase that limit. In connection with the action the Commission might take on this topic, the Commission may find the article from 52 California Law Review 876 (1964)(copy attached) of interest. What action does the Commission wish to take with respect to this topic? If the topic is to be continued on our agenda, the Commission may wish to obtain a research consultant since the topic has been on our agenda for approximately 10 years without any action by the Commission.

Additional Topics

At the October 1968 meeting, the Commission considered 31 topics that had been suggested for study, primarily as a result of our request to law reviews and members of law faculties for suggested topics. The staff had recommended that 5 of the 31 topics appeared to merit Commission study, and the Commission determined to request authority to study three of the topics.

The staff believes that it would be desirable to have a few more relatively narrow topics for study. The topics that remain on our agenda that are suitable for study in the future are almost all of substantial magnitude. See Exhibit IV attached. If the Commission agrees, what procedure does it wish to follow in obtaining suggestions for new topics?

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 69-17 EXHIBIT I

SACRAMENTO ADDRESS
STATE CAPITOL
95814
445-8492

LEGISLATIVE OFFICE
225 ALBERT BUILDING
SAN RAFAEL
94901
454-3423

Assembly
California Legislature

COMMITTEES
Government Organization
Judiciary
Revenue and Taxation

MEMBER
The Judicial Council
Council on
Criminal Justice

WILLIAM T. BAGLEY
MEMBER OF ASSEMBLY, SEVENTH DISTRICT
MARIN-SONOMA COUNTIES
CHAIRMAN
COMMITTEE ON JUDICIARY

TO: John DeMoully

FROM: Jim Reed

Here is some suggested legislation which might be of interest to you. The correspondence is self-explanatory.

November 25, 1968

Mr. Donald S. Park
Don Park Associates
14615 San Esteban Drive
La Mirado, California 90638

Dear Mr. Park:

In discussions with the office of Assemblyman Gonsalves, I find that the Committee has been negligent in informing you of steps taken on a letter you wrote to Mr. Gonsalves during the last legislative session. The letter contained suggestions regarding the arbitration of certain types of contracts, and you offered to assist in any study which might be undertaken.

Following normal procedure Mr. Gonsalves referred your letter to this Committee for appropriate action. We, in turn, asked the Law Revision Commission to look at your suggestion and, if appropriate, use its research facilities and draft legislation. That Commission was established by the Legislature for that very purpose; hence, there is no need for outside contact help to aid in the study.

It was my impression that we had informed you of these steps, but our files contain no records to support that belief. So I apologize for any inconvenience we may have caused you. Please feel free to contact me at anytime if I can provide additional information.

Sincerely yours,

WILLIAM T. BAGLEY

WTB:ar
cc: Honorable Joe Gonsalves

DON PARK ASSOCIATES
14615 San Esteban Drive
La Mirada, California 90638
Telephone 521-7999

Computer Consultants

April 12, 1968

Mr. Joseph Gonsalves
Assemblyman
State House
Sacramento, California

Dear Mr. Gonsalves:

I attend evening school at the School of Law of Loyola University and have entered an essay contest supported by the American Arbitration Association. During my research, I discovered a set of laws which have been enacted in Pennsylvania and New York and which, I believe, would be worthy of the consideration of the California assembly. These laws deal with the arbitration of claims where the injury or damage does not exceed one thousand dollars. The procedure which seems to have been adopted by Pennsylvania and New York is this. Each court of the state which would have jurisdiction over such claims is given the option of adopting or not adopting the legislation, but once adopted the legislation becomes binding upon the court. If an adopting court is confronted by such a claim, it must determine whether there are any issues of law which must be decided by that court. If there are no significant issues of law, the court will then appoint an arbitration board with duties to resolve the problem. Once the board has made its decision, it will present the resolution to the court which is bound to adopt it. In Pennsylvania, the board is composed of lawyers who have agreed to serve as arbitrators. No records of the arbitration are maintained, but the proceedings are controlled by the arbitration law of the state.

The article which I read (Trial by lawyer: compulsory arbitration of small claims in Pennsylvania, Rosenberg, M., and Schubin, M., 74 Harvard Law Review 448 (1961)) was oriented toward the problem of court congestion, but the characteristic of the plan which intrigued me was the opportunity that the plan presented for social justice. Since arbitration does not concern itself with the strict formalities of contract law but rather looks to fair exchange and value, such a plan could go directly to the heart of a bargain and resolve the problems with this in mind.

How severe the problem of oppressive contracts is, I don't know. I do know that when CBS presented a documentary dealing with the experience of the poor with the law, they saw fit to include a segment which dealt with an agreement that a poor woman made with a furniture dealer in which she agreed to pay $300.00 for a sofa, plus carrying charges, plus various types of insurance until her debt exceeded $1000.00. The story went that within three months a spring had punched itself through the upholstery. Either in that same program or someplace else, I have heard that when Negroes riot, one of the first objects of their attention are the credit files of stores. It does seem to me that the legislature should attempt to correct the kind of

oppression of the poor that is innate in the contracts foisted upon poor and ignorant people. I think that the Pennsylvania plan is well adapted to the correction of such practices. (I would suspect that the fact that the plan is used in Philadelphia and New York City is related to the fact that there were no riots in those cities when Dr. King was murdered.)

As I see the Pennsylvania plan, the principal beneficiary would be the poor. But, I think that all of us would be the final beneficiaries. As the authors of the Harvard Law Review article indicate, there would be a lessening of court congestion which must mean that there would be less likelihood that litigants would surrender their valid rights because of the duress that delay imposes and which should mean that there would be a reduction in the pressure that long calendars must exert on judges. I assume that most of the people who enter into these unfair contracts are either welfare recipients or are in such circumstances that they could be forced into welfare if they suffered any amount of monetary pressure. If the Pennsylvania plan operates as I believe that it does and would force contractors to surrender unwarranted charges, it seems to me that the money that these people do have could be put to more beneficial use by these people than the support of gougers. Insofar as welfare money is concerned, I understand the "welfare" concept is a pump priming concept oriented toward the stimulation of business rather than a dole concept. It would seem that the gougers would be getting more than their share of pump priming and placing more than their share of stress upon the system. At the same time, they would be the ones who were insuring the continuance of the welfare system by increasing the likelihood that the present recipients could not overcome their present adversity. I would hope that this argument would appeal to the true conservative, who recognizes that there are problems to be solved even though he does not agree with the manner in which solutions are presently sought, even though it would have no effect on the reactionary, who doesn't believe that there is a problem but simply an attack upon his status.

I like the Pennsylvania small claims plan. I hope that you do too. Perhaps some similar legislation can be generated California.

What follows is personal in its nature. If what I suggest seems worthwhile to you and some of your colleagues, I am sure that it would require preliminary study. I would like to take part in it (commercially). I don't understand how grants of study are solicited or authorized but I am sure that the legislature does have power to make these types of contracts. If possible, I would like to qualify myself for a grant for the study of the use of arbitration in settling small claims and the collection of material related to the subject. If this can be done, I would appreciate it if you would give me the guidance necessary so that I might make a proper application.

Sincerely,

/s/ Donald S. Park

Memo 69-17 EXHIBIT II

Gustafson & Cohen
ATTORNEYS AT LAW
200 NORTH C STREET
OXNARD, CALIFORNIA 93030

ROY A. GUSTAFSON
STANLEY E. COHEN
ANSON M. WHITFIELD
THOMAS B. OSBORNE
MICHAEL MILLER
THEODORE J. ENGLAND

TELEPHONES:
(805) 487-3843
FROM VENTURA
(805) 644-1233

August 12, 1968

John H. DeMoully, Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

In your letter of February 14, 1967, you said that the "Commission is now working on eminent domain law with a view to preparing a comprehensive statute on this subject and we are also studying the problems involved in inverse condemnation together with various other assorted topics." For your information, I sent you a copy of my brief in the case of Pierpont Inn, Inc. v. The State of California in the Court of Appeal. While the Court of Appeal opinion was in my favor, the Supreme Court granted a hearing and I am enclosing a copy of my brief before the Supreme Court.

You will note that on page 55 I comment about a confusing statute which originated from the California Law Revision Commission. I am acutely embarrassed about this because it went to the Legislature by my own signature as chairman.

I note that in his three articles on inverse condemnation, Arvo Van Alstyne at several places criticizes the decisions of the courts on inverse condemnation. In the latest issue of the State Bar Journal, a professor of law from the University of Wyoming notes that the decisions are slanted in favor of the condemner. The fact is that the law in this area is in a hopeless mess and one can find just about

any statement for which he is looking if he reads enough cases. And it is certainly true that both the decisional law and the statutory law heavily favor the condemner.

When I was on the Commission, studies on eminent domain had already begun. I had great misgivings about approaching the matter on the basis that the existing law was generally satisfactory and that it needed to be patched up only here and there. Now I am convinced that this was the wrong approach and that what is needed is a massive project which starts from scratch.

The frequency of eminent domain cases is indicated by the fact that in Los Angeles County when one appears for a trial setting conference, he is required to fill out a form on which he designates the nature of the case under the headings "personal injury, eminent domain or other."

Sincerely yours,

ROY A. GUSTAFSON

RAG:le
Enc.

Topic No. 4: A study to determine whether the Small Claims Court Law should be revised.

In 1955 the commission reported to the Legislature [42] that it had received communications from several judges in various parts of the State relating to defects and gaps in the Small Claims Court Law.[43] These suggestions concerned such matters as whether fees and mileage may be charged in connection with the service of various papers, whether witnesses may be subpoenaed and are entitled to fees and mileage, whether the monetary jurisdiction of the small claims courts should be increased, whether sureties on appeal bonds should be required to justify in all cases, and whether the plaintiff should have the right to appeal from an adverse judgment. The commission stated that the number and variety of these communications suggested that the Small Claims Court Law merited study.

The 1955 Session of the Legislature declined to authorize the commission to study the Small Claims Court Law at that time. No comprehensive study of the Small Claims Court Law has since been made. Meanwhile, the commission has received communications making additional suggestions for revision of the Small Claims Court Law: *e.g.*, that the small claims court should be empowered to set aside the judgment and reopen the case when it is just to do so; that the plaintiff should be permitted to appeal when the defendant prevails on a counterclaim; and that the small claims form should be amended to (1) advise the defendant that he has a right to counterclaim and that failure to do so on a claim arising out of the same transaction will bar his right to sue on the claim later and (2) require a statement as to where the act occurred in a negligence case.

This continued interest in revision of the Small Claims Court Law has induced the commission again to request authority to make a study of it.

[42] 1955 REP. CALIF. LAW REV. COMM'N 25.
[43] CAL. CODE CIV. PROC. § 117.

EXHIBIT IV

STUDIES ON CURRENT AGENDA

Topics Under Active Consideration

36 - Condemnation
  (1) Possession Prior to Judgment
  (2) The Right to Take
  (3) Compensation
  (4) Apportionment of the Award
  (5) Procedural Aspects
  (6) Comprehensive Statute
44 - Fictitious Business Name Statute
47 - Contracts in Writing (CC § 1698)
52 - Sovereign Immunity
60 - Representation as to Credit (CCP § 1974)
63 - Evidence Code
65 - Inverse Condemnation
70 - Arbitration

Topics Continued on Agenda for Further Study

Recommendations submitted and enacted

26 - Escheat
42 - Rights of Good Faith Improver
53 - Personal Injury Damages
55 - Additur and Remittitur
62 - Vehicle Code Section 17150 and Related Statutes
66 - Quasi-Community Property
67 - Unincorporated Associations

Recommendations to be submitted in 1969

45 - Mutuality re Specific Performance
50 - Leases of Real Property
69 - Powers of Appointment

Recommendations submitted but not enacted

12 - Taking Instructions to Jury Room

Other Topics Authorized for Study

23 - Confirmation--Partition Sales
30 - Custody Jurisdiction
39 - Attachment, Garnishment, Execution
41 - Small Claims Court Law
59 - Service by Publication

Topic to Be Dropped in 1969

49 - Rights of Unlicensed Contractor

THE CALIFORNIA SMALL CLAIMS COURT

> For ordinary causes, our contentious system has great merit as a means of getting the truth. But it is a denial of justice in small causes to drive litigants to employ lawyers, and it is a shame to drive them to legal aid societies to get as a charity what the state should give as a right.
>
> *Roscoe Pound*[1]

More than half of all civil cases filed in municipal and justice courts in California are small claims cases.[2] Nevertheless, little has been written concerning the nature and operation of the small claims court.[3] There has been almost no empirical research directed at determining the types of cases filed, the nature of the plaintiffs and defendants, the amounts of the judgments rendered, the number of defaults, the average time to trial, the costs involved, and other pertinent information. It is surprising that so little is known about the workings of a judicial mechanism which accounts for a substantial number of trial cases in California's lowest courts.[4] Evaluation of the utility and efficiency of the small claims court and determination of whether the original goals of the small claims movement[5] are being achieved are impossible without current data on the functioning of the court.[6]

The small claims movement began in England in 1605.[7] The establishment of small claims courts was intended to provide speedy, inex-

[1] Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 318 (1913).

[2] The annual report of the Judicial Council of California for 1961-62 shows that 55.7% of the 589,378 civil cases filed in municipal and justice courts were small claims cases. Small claims cases comprised a greater percentage of justice court civil cases (76,513 of 95,930, or 79.7% of the cases filed) than of municipal court civil cases (251,778 of 493,448, or 51% of the cases filed). Small claims represented 7.5% of the total non-parking filings (civil and criminal) of the municipal and justice courts. See JUDICIAL COUNCIL OF CALIFORNIA, NINETEENTH BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 156-66 (1963).

[3] An excellent bibliography of the pre-1940 material on the small claims courts is contained in Northrop, *Small Claims Courts and Conciliation Tribunals*, 3 LAW LIBRARY J. 39 (1940). For a list of more recent published material, see LOUISELL & HAZARD, CASES AND MATERIALS ON PLEADING AND PROCEDURE 111 (1962).

[4] The dearth of material might be attributable to a lack of general interest in the workings of such low level courts; in addition, attorneys may be less interested in the small claims courts because they are barred from such proceedings in California, although this fact would seem to warrant periodic scrutiny of the small claims mechanism; finally, the procedural and administrative problems of higher level courts may simply have preempted the interests of researchers in the field of judicial administration.

[5] See text accompanying notes 8-10 *infra*.

[6] Of particular significance is the fact that the great bulk of the material available on the small claims courts dates from the period 1913-1940; very little material has been published since 1940. See the bibliographic references cited in note 3, *supra*.

[7] 8 MINUTE BOOK 11 (Special Issue, Jan. 1962).

pensive, and informal disposition of small actions through simple proceedings conducted with an eye toward compromise and conciliation.[8] The court was to be designed particularly to help the "poor" litigant.[9] An informal court procedure was thought to reduce expense and delay "in cases involving small amounts and often no real issue of law."[10] Further, it was believed that by securing justice to ordinary citizens in small cases, the integrity of our judicial system would be meaningfully demonstrated.[11]

The small claims movement led to the statutory creation of a small debt court in London in 1606.[12] In 1846, the new county courts were created in England to provide speedy and informal disposition of small causes.[13] The first American small claims court was established in Cleveland in 1913, in response to criticism of the judicial system typified by the quoted statement of Dean Pound; the court was called the "conciliation branch" of the municipal court.[14] In 1920, Massachusetts became the first state to pass a state-wide act of general application to small claims actions.[15] California passed a similar statute in 1921.[16]

This Comment will review briefly the California procedure for small claims actions, present the methodology and results of an empirical study of the Oakland-Piedmont-Emeryville small claims court, and draw conclusions and make suggestions for reform based upon an examination of the procedural requirements and the results of the study. The discussion proceeds upon the premise that the historical goals of the small claims

---

[8] See Sanderson v. Neimann, 17 Cal. 2d 563, 110 P.2d 1025 (1941); SMITH, JUSTICE AND THE POOR 52-3 (1940); Scott, *Small Causes and Poor Litigants*, 9 A.B.A.J. 457 (1923).

[9] Scott, *supra* note 8.

[10] INSTITUTE OF JUDICIAL ADMINISTRATION, SMALL CLAIMS COURTS IN THE UNITED STATES 1 (1955). The quoted phrase may not be valid insofar as it implies that small claims usually involve uncomplicated matters of law. No correlation between jurisdictional amount and case complexity has been established. "It is superficially said that . . . larger claims . . . are more complicated. Every lawyer knows that in contract and debt actions the size of the claim has little relation to the complexity of the issues or the difficulty of the proof." Smith, *op. cit. supra* note 8, at 55. It has been stated that the average small claim is likely to be more complex than the average non-small claims case. Speech by Judge Swan of the Benicia (California) Justice Court to the *Seminar in Court Administration*, Boalt Hall, University of California, Berkeley, November 10, 1963. It would seem that the intention in creating small claims courts was to eliminate cases under a specified dollar amount from the dockets of the formal courts, irrespective of case complexity.

[11] Smith, *supra* note 8, at 252-53.

[12] Comment, 34 COLUM. L. REV. 932, 933 n.7 (1934).

[13] 1 HOLDSWORTH, HISTORY OF ENGLISH LAW 188, 190-91 (1927). See also Smith, *op. cit supra* note 8, at 42, 52-53 (1940).

[14] Northrop, *Small Claims Courts and Conciliation Tribunals: A Bibliography*, 33 LAW LIB. J. 39 (1940).

[15] Mass. Stat. 1920, ch. 553, § 1 (now MASS. ANN. LAWS ch. 218, § 21 (1953)).

[16] Smith, *Small Claims Procedure is Succeeding*, 8 J. AM. JUD. SOC'Y 247 (1924).

movement are today's goals. Consideration of whether the original goals ought to be replaced by others is beyond the scope of this Comment.

I

PROCEDURE

The small claims court is not a separate and independent judicial tribunal existing apart from the other California courts; it is an adjunct of all municipal and justice courts of the state and is "in the nature of a special procedure"[17] employed to adjudicate claims small in amount. All justice court judges sit as small claims judges, and any municipal court judge may do so.[18] Generally, the court specifies particular days or times during the week for the hearing of small claims matters.[19]

Corporations as well as natural persons may appear as plaintiffs in California small claims actions;[20] this is contrary to the practice of a number of states which restrict small claims plaintiffs to natural persons.[21] Assignees of claims are prohibited from filing or prosecuting small claims.[22] The California courts have interpreted this prohibition broadly, refusing to restrict the proscription to assignees for collection or for purposes of suit.[23] Although the purpose of forbidding suits by assignees is to prevent the use of the court as a collection agency, California places no limit upon the extent to which a particular plaintiff may use the court.[24]

Litigants in small claims actions may not be represented by attorneys.[25] Two reasons underlie this prohibition: the parties' costs of litigation are minimized and procedure is simplified.[26] In *Prudential In-*

---

[17] 8 MINUTE BOOK 4 (Special Issue, Aug. 1962).

[18] CAL. CODE CIV. PROC. § 117.

[19] Interview with Mr. J. R. McCloskey, Clerk of the Municipal Court, Oakland-Piedmont-Emeryville Judicial District, October 9, 1963.

[20] Prudential Ins. Co. v. Small Claims Court, 76 Cal. App. 2d 379, 173 P.2d 38 (1946).

[21] See, *e.g.*, N.Y.C. CIV. CT. ACT art. 18, § 1809 (1962), banning corporations, partnerships, or associations from the court.

[22] CAL. CODE CIV. PROC. § 117(f).

[23] See Merchants Serv. Co. v. Small Claims Court, 35 Cal. 2d 109, 216 P.2d 846 (1950). It is permissible in California, however, to assign a right after it has been reduced to judgment. 28 OPS. CAL. ATT'Y GEN. 359 (1956).

[24] Although Minnesota had such a provision at one time, see Minn. Laws 1929, ch. 242, § 3, discussed in Comment, 4 STAN. L. REV. 237, 242 (1952), the provision is absent from the present statutes. New Hampshire formerly limited the number of claims which could be brought to not more than 5 in one week or 20 in one month; this provision was repealed in 1955. Maine repealed a numberical limitation in 1957. See INSTITUTE OF JUDICIAL ADMINISTRATION, SMALL CLAIMS COURTS IN THE UNITED STATES 2, 7, 10 (Supp. 1959).

[25] CAL. CODE CIV. PROC. § 117(g).

[26] INSTITUTE OF JUDICIAL ADMINISTRATION, *op. cit. supra* note 10, at 9.

surance Company v. Small Claims Court,[27] a due process-based objection to denial of the right to counsel in the small claims court was unsuccessful because a trial de novo with counsel may be had on appeal to the superior court.[28] Although the prohibition against representation by counsel applies to corporate litigants, a corporate officer who is also an attorney is not prohibited from representing the corporation.[29]

Jurisdiction of the small claims court is limited to actions for the recovery of money;[30] no action may be brought for specific performance, declaratory relief, or any other non-monetary remedy.[31] The jurisdictional amount of small claims is two hundred dollars.[32] Mandamus will lie as a means to compel a small claims court to entertain a proceeding over which it has jurisdiction.[33] With the exception of change of venue motions, the general rules with respect to venue apply in small claims actions.[34] Although change of venue motions are generally considered inapplicable,[35] some judges entertain them in hardship cases.[36]

A prospective plaintiff initiates a small claims action by filing with the

---

[27] 76 Cal. App. 2d 379, 173 P.2d 38 (1946).

[28] See CAL. CODE CIV. PROC. § 117(j).

[29] 76 Cal. App. 2d at 386, 173 P.2d at 42.

[30] CAL. CODE CIV. PROC. § 117. Both contract and tort claims are thus allowed. Miller v. Municipal Court, 22 Cal. 2d 818, 142 P.2d 297 (1943); Leuschen v. Small Claims Court, 191 Cal. 133, 215 P. 391 (1923). CAL. CODE CIV. PROC. § 117 was amended in 1955 to provide that unlawful detainer actions may be heard in small claims courts where the amount claimed is than $200 and the tenancy is no greater than month to month; this provision has been declared unconstitutional by the California Supreme Court. Mendoza v. Small Claims Court, 49 Cal. 2d 668, 321 P.2d 9 (1958). The court held that denial of the right to counsel at a hearing prior to dispossession constituted deprivation of property without due process of law in violation of the state constitution. The unconstitutional unlawful detainer provision has not been removed from § 117.

[31] Shontz, *Speedy, Informal Justice of Small Claims Court Described by Judge*, 15 CAL. S.B.J. 273 (1940).

[32] CAL. CODE CIV. PROC. § 117. An attempt was made to raise the limit to $300 during the 1963 legislative session. See A.B. 1191 (1963). The bill was not passed.

[33] Miller v. Municipal Court, 22 Cal. 2d 818, 142 P.2d 297 (1943).

[34] *Compare* CAL. CODE CIV. PROC. § 117 *with* CAL. CODE CIV. PROC. § 395.

[35] While there is no statutory prohibition against changes of venue in small claims actions, and while no appellate court has held such motions inappropriate, judges generally do not allow the motions. Interview with Mr. J. R. McCloskey, Clerk of the Municipal Court, Oakland-Piedmont-Emeryville Judicial District, October 9, 1963. The rationale is that since the statutory procedure for the small claims court is "complete," motions not specifically provided for in the procedure are excluded. See note 69 *infra*, discussing the *Spiegelman* case, which employed this reasoning to exclude a motion for a new trial in third party proceedings under CAL. CODE CIV. PROC. § 689. A.B. 1191 (1963) included a provision for change of venue in the discretion of the trial judge. The measure was not passed, possibly because it was linked with a provision raising the jurisdictional limits of the court to $300.

[36] Interview with Mr. J. R. McCloskey, Clerk of the Municipal Court, Oakland-Piedmont-Emeryville Judicial District, October 9, 1963.

clerk an unsworn declaration under penalty of perjury,[37] or an affidavit,[38] and paying the one dollar fee.[39] The declaration or affidavit must be substantially in the form set forth in Section 117(b) of the California Code of Civil Procedure: that the defendant is indebted to the plaintiff in the sum of *X* dollars, that demand has been made upon the defendant, and that the defendant has refused to pay.[40]

General practice is to allow the plaintiff to choose, at the time he files his declaration or affidavit, a trial date convenient for him. The date chosen must be within the limits set by the statute.[41] The plaintiff also decides at that time whether the defendant is to be served personally or by mail.[42] The court has no jurisdiction to render judgment unless proof of service is filed with the court;[43] however, a defendant who appears at trial where no proof of service has been filed waives this defect.[44]

A plaintiff unable to effect service may apply to the court for a continuance which, if granted, is in the form of an order setting a new trial date. Either party can obtain a continuance for reasons other than failure to obtain service.[45] The party requesting a continuance for other reasons must either file a written stipulation that both parties agree to a new date or appear and request a continuance at the time set for trial.[46]

California, in accord with the majority of jurisdictions, does not require the defendant to answer.[47] This rule is based on the desire to keep pleadings at a minimum and the feeling that an answer is not necessary because in the majority of small claims cases there is no defense.[48]

The usual procedures with respect to counterclaims apply in the

---

[37] See CAL. CODE CIV. PROC. § 2015.5.

[38] See CAL. CODE CIV. PROC. § 117(a).

[39] A procedure is available whereby indigent plaintiffs may commence an action without paying the prescribed fees. See 8 MINUTE BOOK 15 (Special Issue, Aug. 1962).

[40] Many courts require the plaintiff to fill out a "Plaintiff's Statement" prior to filing the declaration or affidavit. This document is essentially a draft of the declaration or affidavit and is prepared in longhand by the plaintiff. It serves both as a guide to the clerk in preparing the declaration for the claimant and as documentary support in the event the claimant later charges that the declaration was incorrectly prepared. This statement is required by the Oakland-Piedmont-Emeryville Judicial District.

[41] Section 117(d) limits this choice as follows: if the defendant resides within the county where the action is brought, the date of trial may be not less than 10 nor more than 30 days from the date of the order to defendant to appear; if the defendant resides outside the county, the trial date may be not less than 30 nor more than 60 days from the date of the order.

[42] CAL. CODE CIV. PROC. § 117(c).

[43] CAL. CODE CIV. PROC. § 117(d).

[44] *Ibid.*

[45] 8 MINUTE BOOK 18 (Special Issue, Aug. 1962).

[46] *Ibid.*

[47] CAL. CODE CIV. PROC. § 117(h).

[48] INSTITUTE OF JUDICIAL ADMINISTRATION, *op. cit. supra* note 10, at 5.

small claims court.[49] If the defendant's demand is in excess of two hundred dollars, he may, as an alternative to a counterclaim, file an action in another court.[50] If he does so, the small claims court must, upon defendant's fulfillment of the procedural requirements,[51] order a transfer to the other court for trial of the consolidated action.[52]

The trial of a small claims action is short and uncomplicated.[53] There is no jury—the plaintiff is deemed to have waived his right to a jury trial by his choice of the forum;[54] the defendant's jury trial right is deemed satisfied by his right to a trial de novo on appeal.[55] The court is not bound by technical rules of evidence; it is limited only by substantive rules of law.[56] When the case is called, the plaintiff is asked by the judge to state all the facts he knows; he may thereafter present demonstrative evidence and testimony on his behalf.[57] The defendant is then asked to present his side of the case. Since cross-examination need not be allowed in the small claims court,[58] the judge may require questions to be channeled through the court; some judges, however, permit the parties to question witnesses and each other directly.[59] The keynote throughout is simplicity.[60] Many judges decide small claims cases from the bench; others take them under submission,[61] notifying the litigants of the

---

[49] CAL. CODE CIV. PROC. § 117(h). However, it has been held that failure to counterclaim does not bar defendant's claim under CAL. CODE CIV. PROC. § 439 if the defendant's claim is above the jurisdictional limits of the small claims court. Sanderson v. Niemann, 17 Cal. 2d 563, 110 P.2d 1025 (1941); Thompson v. Quan, 167 Cal. App. 2d Supp. 825, 334 P.2d 1074 (1959).

[50] CAL. CODE CIV. PROC. § 117(r).

[51] These requirements are specified in CAL. CODE CIV. PROC. § 117(r).

[52] CAL. CODE CIV. PROC. § 117(r).

[53] See INSTITUTE OF JUDICIAL ADMINISTRATION, *op. cit. supra* note 10, at 10-11.

[54] Comment, 11 CALIF. L. REV. 276, 279 (1923); Comment, 34 COLUM. L. REV. 932, 939-40 (1934).

[55] *Ibid.*

[56] See CAL. CODE CIV. PROC. § 117(b).

[57] 8 MINUTE BOOK 14 (Special Issue, Jan. 1962).

[58] Section 117(g) of the Code of Civil Procedure, dealing with presentation of evidence, is silent on the point and there appear to be no California cases raising the issue. As a matter of practice, cross-examination is permitted or denied at the discretion of the small claims judge. Interview with J. R. McCloskey, Clerk of the Municipal Court, Oakland-Piedmont-Emeryville Judicial District, Oct. 9, 1963.

[59] See Shontz, *op. cit. supra* note 31, at 274-75.

[60] Simplified rules of practice and procedure have been called "the greatest single factor in the success of these courts." INSTITUTE OF JUDICIAL ADMINISTRATION, *op. cit. supra* note 10, at 6.

[61] Some judges prefer submission in order to maintain dignity and decorum in the courtroom, particularly in rural areas where cases are more likely to become very heated. Address by Judge Swan of the Benicia (California) Justice Court to the *Seminar in Court Administration*, Boalt Hall, University of California, November 1963. Bitterness appears greatest when the litigants are personally acquainted, more likely to be true in rural areas.

outcome by mail.[62] The prevailing party is entitled to costs of suit.[63]

No attachment or garnishment may issue from the small claims court,[64] but a writ of execution may be obtained upon the payment of a one dollar filing fee.[65] Money or wages owing and unpaid to a small claims judgment debtor by the state or a county or municipality may be levied upon after judgment by filing an abstract of judgment with the appropriate agency or official.[66] An abstract of judgment filed with the county recorder may be used to impress a lien on real property located in the county.[67] As in other civil cases, the prevailing claimant may initiate a supplementary proceeding or examination after judgment to discover the other party's assets.[68]

The Code of Civil Procedure does not contain a provision for new trials in small claims actions; apparently new trial motions are not entertained.[69] While the plaintiff is bound by the decision of the small claims court,[70] the defendant may contest the decision by filing an appeal to the superior court within the prescribed period[71] after the entry of judgment. An appeal requires the payment of various fees,[72] and either filing an undertaking on appeal[73] or making a cash deposit. After

---

[62] STATE OF CALIFORNIA CONSUMER COUNCIL, HOW TO USE THE SMALL CLAIMS COURT 7 (1962); 8 MINUTE BOOK 14 (Special Issue, Jan. 1962).

[63] CAL. CODE CIV. PROC. § 117(g). Costs include court costs, such as fees paid to subpoena witnesses, service costs, and cost of issuing the writ of execution. See STATE OF CALIFORNIA CONSUMER COUNCIL, *op. cit. supra* note 62, at 9. Costs incurred after judgment for any of the items allowed in CAL. CODE CIV. PROC. § 1033.7 can be collected by a special procedure involving a "Cost Bill After Judgment," described in 8 MINUTE BOOK 37 (Special Issue, Aug. 1962).

[64] CAL. CODE CIV. PROC. § 117(ha).

[65] CAL. CODE CIV. PROC. § 117(p).

[66] 8 MINUTE BOOK 31 (Special Issue, Aug. 1962). See CAL. CODE CIV. PROC. § 710.

[67] CAL. CODE CIV. PROC. § 674.

[68] CAL. CODE CIV. PROC. § 714-15; 8 MINUTE BOOK 33 (Special Issue, Aug. 1962).

[69] See 2 MINUTE BOOK 123 (1956). In Spiegelman v. Boulus, 15 Cal. App. 2d Supp. 765, 59 P.2d 225 (1936), the appellate department of the superior court held that where a statute provides a complete scheme of procedure for a particular action or proceeding, and expressly provides for appeal but not for a new trial, the latter remedy is unavailable. Wilson v. Dunbar, 36 Cal. App. 2d 144, 97 P.2d 262 (1939), is in accord with *Spiegelman*.

[70] CAL. CODE CIV. PROC. § 117(j). The predecessor of this section, giving defendant but denying plaintiff the right to appeal, was held by the appellate department of the superior court to violate the 14th amendment by denying equal protection of the laws. Donohue v. Baker, 2 Rag. 19 (1929). Section 117(j) was held valid, however, in City v. Alturas v. Superior Court, 36 Cal. App. 2d 457, 97 P.2d 816 (1940).

[71] Effective July 1, 1964, the time for appeal is that prescribed in rules adopted by the Judicial Council. Prior to that date, defendant had 30 days from the entry of judgment to appeal. See CAL. CODE CIV. PROC. § 117(j) (old and new text).

[72] The fees required are a filing fee of $10, county law library fee (varies), and a transmittal fee of $1. 8 MINUTE BOOK 25 (Special Issue, Aug. 1962).

[73] This bond must be filed with two or more sureties and substantially in the form specified in CAL. CODE CIV. PROC. § 117(l).

service of notice of the appeal on plaintiff,[74] a trial de novo is held in the superior court.[75] The parties may be represented by attorneys. If the defendant is unsuccessful, he is required to pay to the plaintiff an attorney's fee of fifteen dollars in addition to the amount of the judgment.[76]

II

RESULTS OF AN EMPIRICAL STUDY

In order to gain insight into the operation of the California small claims court, an empirical study of the court for the Oakland-Piedmont-Emeryville judicial district was undertaken. A pilot study[77] was first conducted to determine what information was available from court filing records.[78] From an analysis of the results of the pilot study, a master key for procedure was developed for use with the main sample.[79] Fiscal year 1963[80] was chosen as the time period for the study because this was the most recent period for which complete records existed. Data were compiled for 386 cases.[81]

---

[74] Plaintiff must be served with notice of the appeal and the undertaking on appeal within 5 days of the filing of the appeal. CAL. CODE CIV. PROC. § 117(l).

[75] CAL. CODE CIV. PROC. § 117(j).

[76] The predecessor of § 117(j) was held unconstitutional in Donohue v. Baker, 2 Rag. 19 (1929), by the appellate department of the superior court, but was later held valid in Superior Wheeler Cake Corp. v. Superior Court, 203 Cal. 384, 264 Pac. 488 (1928).

[77] The pilot study involved 50 claims.

[78] The official records of the small claims court consist of copies of plaintiffs' declarations on which information relevant to disposition of the action is entered. Entries include the names and addresses of plaintiff and defendant, a statement of the nature of the claim, the amount claimed, records and dates of service, date of trial, disposition of the case, costs, and proceedings after judgment.

[79] A copy of the procedural key is on file with the *California Law Review* together with the complete project report. The full report contains 38 appendices and 45 detailed statistical tables. Also on file are the coded punch cards prepared for each case studied. See note 81 *infra*.

[80] July 1, 1962 through June 30, 1963.

[81] A random sample of 383 is said always to allow 95% confidence that the sample proportion will be within 5% of the true population proportion—that is, 95 times out of 100, statistics within 5% of the actual percentages characteristic of the total population will be obtained. DORNBUSCH AND SCHMID, A PRIMER OF SOCIAL STATISTICS 153-55 (1955). The technique of systematic sampling was employed: starting from a number selected at random, every *n*th claim is selected, *n* being determined by the sample size desired. A systematic sample is presumably equivalent to a simple random sample where, as was true with the small claims studied, individual items are filed chronologically as received. Such a method of filing tends to eliminate periodic or cyclic characteristics which might otherwise produce distortion in the sample if the cycles corresponded to the sampling interval. See generally BLALOCK, SOCIAL STATISTICS 397-98 (1960).

Beginning with the 10th and 37th claims filed in fiscal 1963, every 45th case thereafter was included in the sample. The starting numbers were taken from a table of random numbers found in BLALOCK, at 437. Two numbers were selected to lessen the possibility of distortion. To conserve time and facilitate tabulation of the data, extracted information was coded and

A. Basic Data

Users of the small claims court may conveniently be divided into four categories: individuals, proprietorships,[82] corporations, and government agencies. Of all the actions filed, slightly more than thirty percent were brought by individuals.[83] On the other hand, individuals were defendants in more than eighty-five percent of the cases.[84] In other words, business and government interests initiated sixty percent of all actions and individuals defended more than eighty percent of them. Inasmuch as the small claims court was created primarily to help the "poor" litigant,[85] it is questionable whether that purpose is actually being fulfilled in Alameda County; it appears that the poor litigant is far more likely to be defending than bringing an action in small claims court. An even more startling statistic is that fully twenty percent of all claims were brought by government agencies,[86] while less than one percent of the cases were brought against government agencies.[87]

The most frequent claim, nearly thirty percent, was for nonpayment for goods.[88] Fourteen percent of the claims involved charges for governmental services.[89] More importantly, however, a number of claims[90] involved delinquent personal property taxes. Tax matters are excluded from the jurisdiction of the municipal courts and hence from the jurisdiction of the small claims courts.[91] Nevertheless, large numbers of tax cases

---

punched on cards. Royal McBee card No. K5S 671B was chosen because it fulfilled the requirements of the sample. The perimeter of the card has 134 holes into which separate categories of information may be punched; 128 of the holes were actually used. In addition, the center of the card was used to write out information not susceptible to coding such as the names and addresses of plaintiff and defendant. With the aid of a rod device, the cards could then be sorted and data compiled rapidly. This system was especially useful in correlating different categories of information, such as type of claim with number of defaults. Correlates are described in note 120 *infra*.

[82] Proprietorships were defined to include both individuals and partnerships doing business under a business name.

[83] See Appendix A, Table 1.

[84] See Appendix A, Table 1.

[85] Scott, *Small Causes and Poor Litigants*, 9 A.B.A.J. 457 (1923).

[86] See Appendix A, Table 1.

[87] See Appendix A, Table 2.

[88] See *ibid.*

[89] See *ibid.*

[90] Eleven of the 386 items included in the sample were for delinquent personal property taxes. See *ibid.*

[91] CAL. CODE CIV. PROC. §§ 89 and 112 provide that the jurisdiction of the municipal and justice courts does not extend to cases which involve the legality of any tax or assessment. The legality of a tax has been held to be involved where the taxpayer merely denies liability for the tax as well as where the validity of the tax statute itself is questioned. California Employment Stabilization Comm'n v. Citizens Nat'l Trust & Sav. Bank, 73 Cal. App. 2d 915, 167 P.2d 752 (1946). Small claims courts, given jurisdiction over "cases for the recovery of money only" by CAL. CODE CIV. PROC. § 117, are also necessarily limited by the

are filed by the County of Alameda in the small claims court.[92] Court practice apparently varies: some judges do not allow tax cases to be tried; others hear them unless the defendant appears and objects, in which event the action is dismissed.[93] Apparently, the county obtains default judgments in a substantial number of property tax cases.[94]

For purposes of the study, a category of claims entitled "group claims" was set up. A group claim was defined to be a claim filed simultaneously with a number of other claims by a particular plaintiff. More than half[95] of all claims filed were group claims; the usual number of group claims filed together was between ten and fifteen.[96]

More than half[97] of the claims were for amounts between twenty-five and one hundred dollars;[98] few involved amounts under ten dollars.[99] The large percentage of claims for exactly two hundred dollars[100] indicates that many claims are reduced in amount to meet the jurisidictional limit of the small claims court.[101]

Nearly sixty-five percent[102] of the cases reached the point where the judge took some action: tried the case, dismissed, or granted a continuance.[103] In eighty percent of these cases[104] the judge's action occurred within forty days after the claim was filed. It would be difficult to argue that the goal of speedy justice[105] is not being realized in the small claims court studied.

---

jurisdictional requirements for the municipal and justice courts of which they are an adjunct. It can be argued that the validity of the tax is not in question until the defendant appears and contests the matter; therefore, the argument proceeds, in the absence of contest the matter can be heard, default entered and defendant bound. This seems to be the accepted theory under which small claims judges hear tax cases Apparently some judges, however, view tax matters as being beyond the small claims court's jurisdiction per se and refuse to try the case even where the defendant doesn't appear. See note 93 *infra* and accompanying text. Under this approach every tax case is assumed to involve the legality of the tax.

[92] Presumably, approximately 280 per year, *i.e.*, 2.9% of the 9653 small claims cases filed in fiscal year 1963.

[93] Interview with Mr. J. R. McCloskey, Clerk of the Municipal Court, Oakland-Piedmont-Emeryville Judicial District, October 9, 1963.

[94] The county obtained default judgment in 3 of the cases included in the sample. This indicates that perhaps 75 cases per year involving delinquent personal property tax claims are won by the county through default judgments.

[95] 59.3% of all claims filed.

[96] See full report on file with *California Law Review*.

[97] 54.9% of all claims filed.

[98] See Appendix A, Table 4.

[99] 8.5% of all claims filed. See *ibid.*

[100] 9.1% of all claims filed. See *ibid.*

[101] This conclusion seems particularly justified in light of the disparity between the percentage of claims for exactly $200 and that for amounts between $175 and $200: 9.1% versus 4.4%. See *ibid.*

[102] 63.2% of all claims filed.

[103] 56.5% were fully tried, 3.9% were dismissed at plaintiff's request at the time set for trial, and 2.8% were dropped when neither party appeared at the time of trial.

Plaintiff received judgment in ninety percent of the cases that went to judgment.[106] Since slightly over half of the cases initiated in small claims court go to judgment,[107] judgment for plaintiff may be expected in about half of the claims filed, judgment for defendant in about six percent.[108] It is noteworthy that termination without notification to the court occurred in more than twenty-five percent of the claims filed.[109] Only forty percent of the cases that went to judgment were contested.[110]

Judgment for the plaintiff in small claims court generally means substantial success: in eighty-five percent of the cases in which plaintiff received judgment the amount awarded was at least seventy-five percent of the amount claimed.[111] Costs were awarded the successful plaintiff in virtually every case;[112] defendant was not allowed costs in any case.[113] Costs allowed plaintiff amounted to less than six dollars in the overwhelming majority of cases.[114] To this extent, it appears that the poor litigant does benefit from the availability of the inexpensive small claims procedure,[115] irrespective of the fact that he is more likely to be a defendant than a plaintiff.[116]

Statistics on post-judgment activity are sketchy because of the litigants' failure to provide information to the court. While the statute requires the creditor to record any satisfaction of the judgment,[117] there appears to be no method of enforcing this provision absent affirmative action by the judgment debtor. One may suspect that not all judgments fully or partially satisfied are entered in the records.[118] In any event, some type of recorded post-judgment activity occurred in more than half of the cases resulting in judgment for plaintiff.[119]

---

[106] See Appendix A, Table 5.

[107] See text accompanying notes 13-15 *supra*.

[108] See Appendix A, Table 6.

[109] 56.5% of all claims filed. See *ibid*.

[110] See *ibid*.

[111] See *ibid*.

[112] Both parties were present in 90 of the 218 cases fully tried.

[113] See Appendix A, Table 7.

[114] In 194 of the 195 judgments for plaintiff.

[115] See Appendix A, Table 8.

[116] *Ibid*.

[117] See text accompanying notes 13-14 *supra*.

[118] See text accompanying notes 83-84 *supra*.

[119] CAL. CODE CIV. PROC. § 675.

[120] This suspicion finds support through the following reasoning: the county is exempt from the small claims filing fee under CAL. GOV'T CODE § 6103; however, the filing fee is included as part of the county's judgment, and upon collection of an amount equal to the filing fee under the judgment, the filing fee must be remitted to the court. See CAL. GOV'T CODE § 6103.5. Records in a number of cases showed that the filing fee had been received by the court, although no satisfaction of judgment appeared in the records.

[121] See report on file in the *California Law Review*.

B. Correlates[120]

More than half of the claims brought by each type of plaintiff involved amounts between twenty-five and one hundred dollars.[121] It appears that proprietorships, corporations, and government agencies never prosecute claims for less than ten dollars and individuals do so only rarely.[122] Individuals and corporations appear to be the groups most likely to scale down claims to the two hundred dollar jurisdictional limit of the small claims court.[123]

By far the greatest number of corporate and proprietorship claims were for goods, services, or a combination of the two.[124] Hospital services rendered accounted for nearly seventy-five percent of the claims brought by government agencies.[125] More than half of the claims brought by individuals were for either property damage or rent.[126]

Sixteen organizations accounted for nearly forty-five percent of all claims filed during the period studied.[127] The largest and the most successful user of the court is the County of Alameda.[128] The county brought nearly twenty percent of all the claims filed;[129] further, nearly all of the county's claims were group claims, one of which comprised ninety-seven individual claims.[130] In no case did defendant prevail against the county after trial.

Approximately twenty percent of all claims were brought against out-of-county defendants.[131] Nearly fifty percent of the actions brought by corporations, however, were against out-of-county defendants.[132] Inasmuch as fewer out-of-county defendants appear at trial than in-county defendants,[133] it might be surmised that the default rate would be higher

---

[120] After tabulation of the basic data by subject (*e.g.*, type of claim, type of plaintiff), it was possible through utilization of the Royal McBee punch cards (see note 81 *supra*) to correlate between any two informational categories. Thus, for example, the number of corporate plaintiffs bringing claims for amounts between $100 and $125 could be determined. A list of likely correlates was prepared and data compiled. Some of the correlates were completely insignificant and are not discussed in this comment.

[121] See Appendix B, Table 1.

[122] See *ibid.*

[123] See *ibid.*

[124] See Appendix B, Table 2.

[125] See *ibid.*

[126] See *ibid.*

[127] See Appendix B, Table 3.

[128] See *ibid.*

[129] See *ibid.*

[130] See *ibid.*

[131] See Appendix B, Table 4.

[132] See *ibid.*

[133] See *ibid.*

for corporations. Results of the study support this notion: eighty-three percent of all actions brought by corporations which went to judgment ended in default,[134] whereas the default for all actions going to judgment was only sixty percent. Further, nearly half of all corporate claims ended in default; this compares with the overall rate of slightly more than thirty percent.[135] In summary, it seems clear that a small claims action brought by a corporation is much more likely to be against an out-of-county defendant than an action brought by any other type of plaintiff; and it is much more likely that an action brought by a corporation will result in default judgment.

Individuals defended more than eighty percent of the cases studied.[136] Consequently, correlates between type of defendant and other categories are less significant than most of the correlates developed. In any event, it appears that the relative success of corporate defendants, both in winning cases[137] and in minimizing judgments in the cases lost,[138] merely reflects the greater degree of business sophistication and legal prowess of corporations vis-à-vis individuals and proprietorships.

Seventy-five percent of all property damage claims were contested; in most of the other types of claims the defendant was more likely to be absent than present.[139] Property damage cases involved witnesses about thirty percent of the time and accounted for more than half of the tried cases in which witnesses were present for at least one of the parties.[140] Defendants were most successful in property damage cases, winning more than twenty-five percent of those going to judgment;[141] in all other types of cases defendant fared quite badly.[142]

Of the cases going to judgment, government agencies were most likely to be awarded the full amount claimed;[143] individuals were least likely to be wholly successful.[144] Corporate plaintiffs were less than wholly successful in more than thirty percent of the cases they won. This is particularly significant in light of the fact that forty-eight of the fifty-

---

[134] See Appendix B, Table 5.

[135] See *ibid.*

[136] See Appendix A, Table 2.

[137] See Appendix B, Table 6.

[138] See Appendix B, Table 7.

[139] The table setting forth these correlates is not presented here due to space limitations. Interested readers may see the full project report on file at the office of the *California Law Review*.

[140] See note 139 *supra*.

[141] See note 139 *supra*.

[142] See note 139 *supra*.

[143] See Appendix B, Table 8.

[144] See *ibid.*

three successful corporate claims were default cases. Clearly, default does not automatically mean complete victory for the corporate plaintiff.

III

CONCLUSIONS AND SUGGESTIONS FOR REFORM

Results of the study, considered in the context of current procedural requirements, suggest five possible areas of reform. About twenty percent of all claims were brought against out-of-county defendants, many of whom were from distant counties. This is a possible source of injustice, since the statutory procedure for small claims makes no provision for discretionary change of venue in California.[145] It would be possible at the present time for a Los Angeles business firm to send salesmen to the Sacramento area to peddle shoddy or over-priced merchandise. Since orders constitute offers which are accepted in Los Angeles, the contract has technically been entered into in Los Angeles.[146] Therefore, if the defendant in Sacramento stopped his time payments because of the poor quality of the merchandise, the company would be free to bring the action in Los Angeles. The small claims court apparently would be powerless to permit a change of venue.[147]

Because of the relative ease with which the plaintiff could sue in Sacramento, as compared with the burden upon defendant to defend in Los Angeles, considerations of equity would seem to require that discretionary change of venue be permitted. It is therefore suggested that a limited change of venue provision be added to the small claims code provisions. Under such a provision, the judge could transfer the case to the county of defendant's residence whenever the facts warrant transfer. The motion could be made by mail. An alternative solution would be to amend the statute to allow actions to be brought only in the county of defendant's residence. However, since there may be cases where it would be equally inequitable to require a plaintiff to travel to a distant county to prosecute a claim,[148] the discretionary change of venue provision seems preferable.

Of all the claims filed, almost three percent were for delinquent personal property taxes—claims seemingly beyond the jurisdiction of the small claims court.[149] Three of these claims went to trial and resulted in

---

[145] See note 35 *supra* and text accompanying notes 131-33 *supra*.

[146] See note 34 *supra* and accompanying text.

[147] *But see* text accompanying note 36 *supra*.

[148] For example, where a defendant from a distant county purchases merchandise with a bad check, it might be inequitable to force plaintiff to bring the action only where defendant resides.

[149] See note 91 *supra* and accompanying text.

judgment for plaintiff. One means of preventing such extra-jurisdictional judgments might be an explicit statutory prohibition on the hearing of tax cases; alternatively, the statute might be amended to authorize trial of tax cases involving amounts within the small claims court's jurisdictional limits.

In the interests of accurate judicial record keeping, a method should be adopted to ensure notification to the court in all cases resulting in partial or complete satisfaction of judgment. The incompleteness of judgment records apparently results from the lack of an effective means to compel the plaintiff to notify the court that the judgment has been wholly or partially satisfied. Although such notification is presently required by statute, the notification depends almost entirely on some affirmative action by the defendant if the plaintiff fails to notify the court. Perhaps a small fine for failure to notify would provide the necessary stimulus to plaintiffs. Alternatively, it could be required that all payments of money be channelled through the office of the court clerk.

While the courts of some other states have a limit higher than two hundred dollars, no cogent reason appears why the jurisdictional limit should be raised at this time. Most of the claims involved amounts between twenty-five and one hundred dollars.[150] There is a slight bunching of claims for exactly two hundred dollars,[151] but this is not sufficient to warrant an increase of jurisdictional amount. Periodic increases in the jurisdictional limit to adjust for inflation seem justified; raising the limit for other reasons, however, appears unjustified in light of California's provision absolutely barring attorneys from small claims proceedings.[152]

The statutory provision barring actions by assignees[153] was aimed at preventing professional collection agencies from using the small claims court. The study revealed that about forty-five percent of the total volume of cases handled by the court are attributable to sixteen group claimants.[154] While none of these plaintiffs are specifically engaged in the collection business, use of the small claims court procedure by large business group claimants amounts to professional collection.[155] The orig-

[150] See Appendix A, Table 4.

[151] See *ibid.*

[152] CAL. CODE CIV. PROC. § 117(g); see text accompanying note 24 *supra*. For criticism of the absolute bar of attorneys, see *Report of the Committee on Small Claims and Conciliation Procedures of the Conference of Bar Association Delegates*, 10 A.B.A.J. 828 (1924); reprinted in WILLOUGHBY, PRINCIPLES OF JUDICIAL ADMINISTRATION 317, 319 (1924); Smith, *Small Claims Procedure is Succeeding*, 8 J. AM. JUD. SOC'Y 247, 252 (1924); Comment, 34 COLUM. L. REV. 932, 937-38 (1934). These authorities point out that absolute prohibition of attorneys may deprive a frightened or illiterate litigant of a needed spokesman.

[153] See note 22 *supra* and accompanying text.

[154] See Appendix B, Table 3.

[155] The practice has been increasing throughout the United States. See INSTITUTE OF

inal aim of the small claims court to provide an inexpensive, informal procedure for the plaintiff of limited means has no application to the large business group claimant.[156] On the other hand, there may be valid contemporary reasons for permitting the use of the small claims court by business claimants. For example, it seems clear that the availability of small claims procedure tends to relieve formal courts of the handling of petty claims. Also, there seems to be no self-evident reason why business plaintiffs should not be permitted to obtain justice in small disputes at a minimum expenditure of cost and time. The results of the study indicate the necessity for reexamining the purposes of the small claims court in a modern context.

Finally, additional studies of particular small claims courts are desirable. Comparison of a number of such studies would provide a broad insight into the workings of the court and would protect against the possibility that atypical local conditions vitiate generalizations based on the characteristics of a single court. For example, in rural counties corporate and group claims may be small in number or nonexistent; consequently, results obtained from study of a rural court might be significantly different from those derived from the Oakland study.[157] Further

---

JUDICIAL ADMINISTRATION, SMALL CLAIMS COURTS IN THE UNITED STATES 1-2 (1959 Supp.): "Collection agents and professional men employ the small claims court's facilities in increasing number. However, no serious objection has been raised to this tendency; in fact, two states . . . have deleted from their statutes a limitation on the number of claims which an individual may bring before the court during a particular week or month. This action would seem to encourage the use of small claims courts by repeating claimants as well as by the occasional litigant."

156 "Since the court was established primarily for the litigant with modest means who is inexperienced in legal matters, it would seem that extensive use of the procedure by business firms is outside the court's original purpose. These businesses have employees who handle collection matters regularly and who become expert in using this simple device. They are not poor litigants who would have to give up the claim rather than resort to some other method of collection. They choose the small claims court mainly because it is the easiest method for them to collect their claims. Therefore, permitting them to use the courts in this way is a departure from the primary purpose for which the courts were established. If they are to be allowed to continue to use the small claims courts for collections, it must be recognized that this use is permitted for other reasons . . . . There are . . . good reasons for restricting this collection practice. Small claims courts are run with a loss to the taxpayer. They are an extra service. Depriving a company of this mechanism is not removing from its hands the instrument of justice. Rather, it is requiring them to use the more cumbersome, but still appropriate formal courts. After all, in the small claims courts these firms are handling their claims in a formal and systematic manner quite in keeping with lawyer-staffed courts. In small claims courts they bring their experience to bear on defendants who do not have lawyers and who are unfamiliar with legal procedure. And of course there is the danger that companies will extend credit to individuals more readily, knowing that they can resort to the small claims court for collection." Comment, 4 STAN. L. REV. 237, 241-42 (1952).

157 Tentative results from an unpublished study of the Berkeley-Albany small claims court for 1963 indicate that very few corporate plaintiffs and almost no group claims are to be found in that court.

studies would provide the foundation for an accurate analysis of the current functioning of the small claims court.

*Carl R. Pagter**
*Robert McCloskey***
*Mitchell Reinis****

* LL.B., 1964, University of California, Berkeley.
** LL.B., 1964, University of California, Berkeley.
*** LL.B., 1964, University of California, Berkeley.

APPENDIX A: BASIC DATA

TABLE 1
Type of Plaintiff

Type	Number of Claims	Percentage
Individual	134	34.7
Proprietorship	65	16.8
Corporation	110	28.5
Government Agency	77	20.0
Total	386	100.0

TABLE 2
Type of Defendant

Type	Number of Claims	Percentage
Individual	331	85.7
Proprietorship	34	8.8
Corporation	13	3.4
Government Agency	1	.3
Other	7	1.8
Total	386	100.0

TABLE 3
Type of Claim

Type	Number of Claims	Percentage
Goods	114	29.5
Governmental Services	55	14.2
Property Damage	49	12.7
Non-governmental Services	36	9.3
Rent	30	7.8
Goods and Services	24	6.2
Loans	16	4.1
Refunds	13	3.4
Personal Property Taxes	11	2.9
Breach of Contract—other	10	2.6
Damages for non-performance or faulty performance of services	9	2.3
All Other	19	5.0
Total	386	100.0

TABLE 4
Amount of Claim

Amount Over	Including	Number of Claims	Percentage
$ 0	$ 10	2	.5
11	25	31	8.0
26	50	80	20.7
51	75	67	17.4
76	100	65	16.8
101	125	24	6.2
126	150	39	10.1
151	175	26	6.7
176	199	17	4.4
199	200	35	9.1
Total		386	100.0

TABLE 5
Time from Filing Date to Trial Date

Days Over	Including	Number of Claims	Percentage of All Claims	Percentage of Claims on Which Judge Acted
0	20	20	5.2	8.2
20	30	101	26.2	41.4
30	40	74	19.2	30.3
40	60	33	8.6	13.5
60		16	4.1	6.6
		244	63.3	100.0
Claims on which judge took no action		142	36.7	
Total		386	100.0	

TABLE 6
Disposition of Case

Disposition	Number of Claims	Percentage of All Claims	Percentage of Claims Going to Judgment
Judgment for Plaintiff	195	50.5	89.5
Judgment for Defendant	23	6.0	10.5
	218	56.5	
Dismissed at Plaintiff's Request	66	17.1	
Not Tried for Other Reasons	102	26.4	
Total	386	100.0	100.0

TABLE 7
Amount of Judgment (for Plaintiff)

Amount of Judgment as a Percentage of Claim		Number of Claims	Percentage of All Claims	Percentage of Claims Going to Judgment for Plaintiff
Over	Including			
	100	132	34.2	67.7
75	99	35	9.0	17.9
50	75	13	3.4	6.7
25	50	7	1.8	3.6
0	25	8	2.1	4.1
		195	50.5	
Claims Not Resulting in Judgment for Plaintiff		191	49.5	
Total		386	100.0	100.0

TABLE 8
Cost Allowed Plaintiff

Amount		Number of Claims	Percentage of Claims Going to Judgment	Percentage of Claims Going to Judgment for Plaintiff
Over	Including			
$ 0	$ 2	121	55.5	62.1
2	6	47	21.6	24.1
6	10	23	10.5	11.8
10		4	1.9	2.0
		195	89.5	
Costs Allowed Neither Party		23	10.5	
		218		
Claims Not Going to Judgment		168		
Total		386	100.0	100.0

APPENDIX B: CORRELATES

TABLE 1
Amount of Claim by Type of Plaintiff

Amount Over	Amount Including	Number of Claims Brought by: Individual	Proprietorship	Corporation	Government	All
$ 0	$ 10	2	0	0	0	2
10	25	8	10	8	5	31
25	50	22	12	27	19	80
50	75	27	14	11	15	67
75	100	27	9	20	9	65
100	125	7	4	9	4	24
125	150	11	1	13	14	39
150	175	4	6	7	9	26
175	199	8	4	3	2	17
199	200	18	5	12	0	35
Total		134	65	110	77	386

TABLE 2
Type of Claim by Type of Plaintiff

Type of Claim	Number of Claims Brought by: Individual	Proprietorship	Corporation	Government	All
Goods	8	31	75	0	114
Governmental Services	0	0	0	55	55
Property Damage	45	0	2	2	49
Non-Governmental Services	9	17	10	0	36
Rent	25	0	0	5	30
Goods and Services	5	13	6	0	24
Loans	6	0	10	0	16
Refunds	9	0	0	4	13
Personal Property Taxes	0	0	0	11	11
Breach of Contract—Other	4	1	5	0	10
Damages for non-performance or faulty performance of services	8	1	0	0	9
All Other	15	2	2	0	19
Total	134	65	110	77	386

TABLE 3
Heavy Users of the Small Claims Court

Plaintiff	Number of Claims	Percentage of All Claims	Largest Number of Group Claims Submitted Together
County of Alameda	70	18.1	97
Rhodes Department Store	16	4.1	34
Montgomery Ward	14	3.6	14
Milens Jewelers	14	3.6	18
General Refrigeration	8	2.1	5
Goldman's	6	1.6	14
Creamcrest Dairy	6	1.6	29
Mark-it List Publications	6	1.6	10
King's Jewelers	5	1.3	16
State of California	5	1.3	4
Seaboard Finance Co.	5	1.3	11
Meni-Ketti Music Co.	3	.8	5
Dreyco Sales	3	.8	6
Sears Roebuck & Co.	3	.8	3
C. Markus Hardware	3	.8	11
W. T. Grant Co.	3	.8	14
Total	170	44.2	

TABLE 4
Type of Plaintiff by Defendant's Residence

Type of Plaintiff	Number of Claims Brought against Defendant Residing: In-County	Out-of-County	All
Individual	119	15	134
Proprietorship	57	8	65
Corporation	60	50	110
Governmental Agency	73	4	77
Total	309	77	386

TABLE 5

Type of Plaintiff	Number of Claims	Number of Claims Going to Judgment	Number of Defaults	Defaults Percentage of All Claims
Individual	134	85	28	20.9
Proprietorship	65	37	26	40.0
Corporation	110	58	48	43.6
Government Agency	77	38	27	35.0
Total	386	218	129	

TABLE 6
Type of Defendant by Disposition

Type of Defendant	Judgment for Plaintiff	Judgment for Defendant	All
Individual	172	16	188
Proprietorship	15	2	17
Corporation	4	3	7
Government Agency	0	1	1
Other	4	1	5
Total	195	23	218

TABLE 7
Type of Defendant by Amount of Judgment

Type of Defendant	Judgment Equal to Claim	76-100% of Claim	51-75% of Claim	26-50% of Claim	25% or Less than P's Claim
Individual	177	31	12	6	6
Proprietorship	12	1	1	1	0
Corporation	1	3	0	0	0
Government Agency	0	0	0	0	0
Other	2	0	0	0	2
Total	192	35	13	7	8

TABLE 8
Type of Plaintiff by Amount of Judgment

Type of Plaintiff	Judgment Equal to Claim	76-99% of Claim	51-75% of Claim	26-50% of Claim	25% or Less than Claim
Individual	39	12	10	4	4
Proprietorship	26	7	1	1	0
Corporation	33	14	1	1	4
Government Agency	34	2	1	1	0
Total	132	35	13	7	8

Policy Statement

on

GOVERNMENT ACQUISITION OF PRIVATE PROPERTY

California State
Chamber of Commerce
415 Capitol Mall
Sacramento 95814

CALIFORNIA STATE CHAMBER OF COMMERCE POLICY ON THE USE OF EMINENT DOMAIN

The productive use of privately owned property is the basis of our economy, supports our society, and in the process creates the need for government services. The constitutional right of individuals to own and manage land is fundamental to our free American society. Similarly, the sovereign power of government to acquire private lands for public purposes is also fundamental.

The power of government to acquire land and the right of individuals to own lands are therefore inherently in conflict. In land acquisition procedures, the resources of government are overpowering in relation to the resources of the individual to protect his interests.

GROWING GOVERNMENT ACQUISITION

The need for public services has changed and will continue to change as social and technological evolutions occur in such fields as transportation, communication, education, recreation and national defense. As a result, land acquisition programs of public agencies are growing. Greater exercise of judicious restraint on the sovereign power of government is therefore required to minimize infringement on the right of individuals to own property.

Ownership of land by government is excessive in California. Federal holdings account for almost 45% of the 100 million acres in California, in contrast to most (37) of the States in the Union where federal holdings are under 10%. Title to nearly 2 million acres in California is vested in the State and another 2 million acres is owned by local government. Only 51% of the land in California is now under private ownership.

The government land ownership pattern within individual counties ranges from a minimum of 4% to almost 93%. Over 50% of the land area in nearly one-third of our counties is in government ownership. Only eight counties have less than 10% of their land area in public ownership and all but one of these counties is located in the Central Valley in close proximity to large federal holdings. The 49 million acres within the State's boundaries that are now government owned, are managed for a number of different, and in most cases, single purposes by a great variety of public agencies. Much of this land is underdeveloped or undeveloped.

At every level of government the trend has been to acquire private lands with little consideration for utilization of lands already in public ownership. In many cases government property could be used for multiple purposes in lieu of further acquisition for single public purposes.

CONCERN FOR PROPERTY RIGHTS

The State Chamber of Commerce is concerned with the diminution of privately owned land, the need for maximum utilization of land resources (public and private) and the erosion of property rights. *We believe that:*

SURPLUS LAND DISPOSITION

Each government agency should annually review all lands under its jurisdiction to identify those lands not essential to its particular needs. All such surplus lands should be made available for other public purposes to avoid further over-all expansion of government holdings. We urge greater cooperation and coordination between all levels of government and enact-

ment of such legislation as may be needed to effect land transfers. Lands not needed for public purposes should be made available for private ownership and placed on the tax rolls.

EVALUATION OF ALL POTENTIAL USES

In evaluating lands for retention by government or acquisition from private owners, economic potential for all uses should be considered.

LOCAL REVIEW OF PLANS

A detailed plan of proposed land use should be prepared and considered by the government body empowered to authorize the acquisition. Such plans should include full development and utilization details, annual operating and long term costs, and information to conclusively demonstrate the necessity for the proposed acquisition. Legislation should be enacted to require that such plans be submitted to the City or County having jurisdiction over the affected land for review and comment, and to afford opportunity for local public hearings. Cancellation or alteration of proposed acquisition plans should be promptly publicized by the initiating agency to remove adverse effects on land use.

RESOLUTIONS FOR ACQUISITIONS

Resolutions for acquisitions by purchase, condemnation, or otherwise should include a statement that the agency authorizing the acquisition does not own, control or have available from some other public agency, land suitable to uses for which the private land is proposed to be acquired.

LEGISLATIVE STUDY

The California Legislature should give continued study to programs for maximum utilization of existing public lands, the protection of private lands from public acquisition in the absence of public necessity and to provide less costly and less time consuming procedures to assure owners that they will be justly compensated when their lands are needed and taken by public authority.

OWNERS' COURT COSTS

Consideration should be given to establish procedures to reimburse owners for appraisal costs, attorneys' fees and other expenses in condemnation actions.

SHIFT BURDEN OF PROOF

In condemnation actions, the "burden of proof" should be shifted from the property owner to the condemning agency on issues of just compensation.

WAIVER OF JURY TRIAL

Property owners should have the right to determine whether or not a jury is used in condemnation actions.

RELOCATION COSTS

Relocation expenses should be compensable by the condemning agency.

CONTINUE PROGRAMS

Programs now under way through the auspices of the California Law Revision Commission and the State Bar of California should be continued, to revise condemnation procedures in the interests of equity and government efficiency.

ABOUT THIS POLICY.....

The California State Chamber of Commerce since its inception has sought to bring about wise development of California's land resources under policies which would encourage private investments and permit long range planning by landowners. The Chamber's Statewide Committees have focused attention on many of the problems attendant to California's growth, including those inherent in the intensified competition for land.

Land requirements for new government programs, particularly for recreation, and the changing concept of what constitutes "public necessity" in the condemnation of privately owned land, stimulated formation of a special Chamber subcommittee to study current land acquisition procedures of local, state and federal agencies.

The subcommittee was primarily composed of representatives from the Chamber's Statewide Agricultural, Natural Resources, and Travel and Recreation Committees. During the two-year study, numerous conferences were held with government officials in the search for solutions to problems posed by government's expanding use of eminent domain powers.

The policy statement developed as a result of the subcommittee's review was approved by the Chamber's Board of Directors on May 28, 1965. Additional copies are available on request.

SUBCOMMITTEE
ON
USE OF EMINENT DOMAIN

Chairman -- Frank Solinsky, III
Phillip T. Boyle
John Callaghan
T. Louis Chess
George M. Dean
Richard Johnsen, Jr.
C. Bruce Orvis
Wendell T Robie
Gordon Van Vleck
Kenneth R Walker

THE STATE BAR OF CALIFORNIA

601 MCALLISTER STREET
SAN FRANCISCO 94102
TELEPHONE 922-1440
AREA CODE 415

September 27, 1968

TO THE MEMBERS OF THE COMMITTEE ON
GOVERNMENTAL LIABILITY AND CONDEMNATION

Gentlemen:

The Board of Governors at a meeting earlier this year changed the name of the Committee on Condemnation Law and Procedure to Committee on Governmental Liability and Condemnation. At the same time it somewhat revised and amplified the functions of the committee.

At its meeting last month the Board appointed you the members of this committee; some of you have served on the former committee, some are new members. List of all committee members and their addresses are enclosed.

The Board has requested your committee to do the following:

> To undertake, in conjunction with the Law Revision Commission, a study of revision of the existing law on the subjects of:
>
> a. Condemnation Law and Procedure
> b. Inverse Condemnation Law and Procedure
> c. Governmental Liability

The Board further asked you to advise it whether you feel you will need staff assistance.

Enclosed for your information is letter from Mr. DeMoully to Mr. Finger which prompted the Board's action.

Members of Committee on
Governmental Liability & Condemnation

As you know, the significant work of the State Bar is accomplished by its committees. The Board is appreciative of the willingness of you and other members of the Bar to give of your time and professional accomplishments to the work and accomplishments of the State Bar.

Enclosed to those who have not previously served on a State Bar committee are memorandum relating to committee meetings and travel expense therefor, texts of certain policy resolutions adopted by the Board of Governors and copy of Article XIII, Rules and Regulations of the State Bar.

Some of you have previously executed and filed with this office the Oath specified in Government Code and Constitution. To those of you who have not, copy of the oath is enclosed. It is requested that the oath be executed and returned to this office promptly.

Very truly yours,

Mary G. Wailes
Staff Attorney

MGW:jlt
enc(s).

cc: Messrs. Finger, Golden, Malone, Ellingwood, DeMoully
(w/list of committee members)

STATE BAR COMMITTEE ON GOVERNMENTAL LIABILITY AND CONDEMNATION
(Formerly Committee on Condemnation Law & Procedure)

Liaison: John J. Golden

Southern Section:

George C. Hadley, Chairman
One Wilshire Boulevard
Suite 2000
Los Angeles 90017

Robert G. Cockins, Esq.
1685 Main Street
Santa Monica 90401

Thomas M. Dankert, Esq.
144 South California Street
P. O. Box 1443
Ventura 93002

John J. Endicott, Esq.
634 South Spring Street
Los Angeles 90014

Jerrold A. Fadem, Esq.
6505 Wilshire Boulevard
Los Angeles 90048

Richard L. Franck, Esq.
107 South Broadway
Suite 9111
Los Angeles 90012

John N. McLaurin, Esq.
445 South Figueroa Street
34th Floor
Los Angeles 90017

Paul E. Overton, Esq.
1700 The Home Tower
707 Broadway
San Diego 92101

Northern Section:

Willard A. Shank, Vice Chairman
500 Wells Fargo Bank Building
Suite 427
Sacramento 95814

Robert F. Carlson, Esq.
Suite 1316, 1120 N Street
P. O. Box 1499
Sacramento 95806

Stephen W. Hackett, Esq.
10th Floor, 240 Stockton Street
San Francisco 94108

Holloway Jones, Esq.
369 Pine Street
San Francisco 94104

Robert E. Nisbet, Esq.
508 - 16th Street
Oakland 94612

John B. Reilley, Esq.
2130 Adeline Street
Oakland 94607

Grace M. Wallis
Room 1015
508 - 16th Street
Oakland 94612

Norman S. Wolff, Esq.
206 City Hall
San Francisco 94102