

2/24/70

Memorandum 70-22

Subject: Status of Topics on Commission's Agenda

The following background information concerning the status of topics on the Commission's agenda may be helpful in determining the priorities to be given to various topics and whether the Legislature should be requested to add any new topics to our agenda.

TOPICS TO BE DROPPED FROM OUR AGENDA

Our Annual Report to the 1970 Legislature requests that the Legislature authorize the Commission to drop two topics that the Legislature previously directed the Commission to study:

1. 41 - Small Claims Court Law (Authorized Cal. Stats. 1957, Res. Ch. 202)
2. 59 - Service by Publication (Authorized Cal. Stats. 1958, Res. Ch. 61)

TOPICS CONTINUED ON CALENDAR FOR FURTHER STUDY

With respect to the following 13 topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's Calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments. Work on these topics is considered to be completed; the topics are included on the agenda so that we can submit corrective legislation in case defects are discovered in legislation enacted upon Commission recommendation. (Beginning in 1967, at legislative suggestion, we continued topics on our Calendar so we could avoid having to request authority to restudy a previously authorized topic merely to correct a minor defect in legislation previously enacted upon our recommendation.) Also, recommendations concerning some of these 13 topics

will be submitted to the 1970 session and these recommendations will have to be reviewed during the 1970 session in light of matters that come to our attention during the session. For additional information concerning these topics, see Exhibit I (pink).

1. 26 - Escheat
2. 42 - Rights of Good Faith Improver
3. 44 - Fictitious Name Statute
4. 45 - Mutuality of Remedies
5. 50 - Leases
6. 53 - Personal Injury Damages
7. 55 - Additur and Remittitur
8. 60 - Representations as to Credit
9. 62 - Vehicle Code Section 17150 and Related Statutes
10. 66 - Quasi-Community Property
11. 67 - Unincorporated Associations
12. 69 - Powers of Appointment
13. 74 - Rule Against Perpetuities

MAJOR TOPICS INCLUDED ON AGENDA FOR "FOLLOW UP" LEGISLATION

Comprehensive legislation has been enacted on evidence and sovereign immunity. These two topics are included on the Calendar of topics because the Legislature expects the Commission to keep abreast of developments in these fields and to submit recommendations for any needed changes.

1. 52 - Sovereign Immunity

The Commission was authorized to study sovereign immunity in 1957. From 1961 to 1963, this subject was given top priority and comprehensive legislation was enacted in 1963. Six of the seven comprehensive recommendations of the Commission were enacted that year. An eighth recommendation (which included the substance of the one not enacted in 1963) was submitted in 1965 and was enacted. A recommendation--relating to the statute of limitations in actions against public

entities and public employees--was submitted to the 1969 Legislature and passed by the Legislature but vetoed by the Governor. The Commission has resubmitted this recommendation to the 1970 Legislature and also has submitted a follow-up recommendation--Number 10--to the 1970 Legislature. It is not anticipated that substantial additional work will be needed in this area. However, one problem--the collateral source rule--is in need of legislative clarification and Professor Cole, Boalt Hall, has been retained as a research consultant on this aspect of sovereign immunity. Professor Cole hopes to complete the research study by July 1, 1970.

2. 63 - Evidence

The Commission was authorized to study evidence in 1956. The Evidence Code was enacted in 1965 upon Commission recommendation. The Commission has since recommended a number of "clean up" bills relating to evidence. In 1967, a bill was enacted that made various revisions in and additions to the Evidence Code itself. At the same session, the evidence provisions of the Agricultural Code and Commercial Code were conformed to the Evidence Code. A recommendation for revision of the privileges article was submitted to the 1969 Legislature but the bill was vetoed by the Governor. Much of this recommendation, together with a provision classifying the res ipsa loquitur doctrine, has been submitted to the 1970 Legislature.

There are problems in evidence that merit study. However, they are of relatively low priority and most would require substantial resources to prepare research studies.

WORK SUBSTANTIALLY COMPLETED

Work on the following topic appears to be substantially completed.

This topic probably will be the subject of a recommendation to the 1971 legislative session.

1. 12 - Taking Instructions to the Jury Room

Authorized: Cal. Stats. 1955, Res. Ch. 207.

Recommendation submitted to 1957 Legislature but recommended legislation not enacted because Commission withdrew its recommendation for further study.

At the February 1970 meeting, the Commission decided to drop this topic without recommending the enactment of any legislation.

RESEARCH STUDIES IN PREPARATION

The following seven topics have been authorized for study. In most cases, a research consultant has been obtained to prepare the background study, or an effort is being made to obtain a background study. It would

not be a profitable expenditure of resources for the Commission to work on these topics until the background research study is available. One topic is being evaluated to determine whether it should be dropped from the agenda. This topic will be considered at the next meeting.

1. 47 - Oral Modification of Written Contract (Civil Code § 1698)

Authorized: Cal. Stats. 1957, Res. Ch. 202.

A law student worked on this research study for three months during the summer of 1969. A portion of the study is substantially complete, but considerable additional work remains.

2. 70 - Arbitration

Authorized: Cal. Stats. 1968, Res. Ch. 110.

A comprehensive arbitration statute was enacted upon Commission recommendation in 1961. A follow-up study to determine whether any changes are needed in light of experience under the statute is being prepared by Mr. Feldman, Los Angeles attorney. He is unable to set a definite time when the study will be completed.

3. 71 - Counterclaims and Cross-Complaints

Authorized: Cal. Stats. 1969, Res. Ch. 224.

Professor Friedenthal, Stanford Law School, is the research consultant. He has begun work on the study. He hopes to be able to devote a substantial amount of time to the study during the summer of 1970 and to complete the study by July 1, 1970.

4. 72 - Liquidated Damages

Authorized: Cal. Stats. 1969, Res. Ch. 224.

Professor Sweet, Boalt Hall, is the research consultant. He has not devoted any substantial amount of time to the study and cannot state when he will complete it.

5. 73 - Joinder of Causes of Action

Authorized: Cal. Stats. 1969, Res. Ch. 224.

Professor Friedenthal, Stanford Law School, is the research consultant. He has not devoted any substantial amount of time to the study. He hopes to be able to devote a substantial amount of time to the study during the summer of 1970 and to complete the study by July 1, 1970.

6. 75 - Right of Nonresident Alien to Inherit

Authorized originally in 1956, recommendation submitted in 1959, but recommendation was not enacted.

Again authorized: Cal. Stats. 1969, Res. Ch. 224.

Professor Barton, Boalt Hall, is the research consultant. She hopes to complete the research study before the summer of 1970.

7. 76 - Preference in Setting Matters for Trial

Authorized: Cal. Stats. 1969, Res. Ch. 224

We do not have a research consultant on this topic. We are making a survey to determine whether there is any great need to revise the law in this area. It is possible that the Commission will determine to drop the topic without making any further study of it. See Memorandum 69-142 which will be prepared for the December 1969 meeting.

TOPICS NOT UNDER ACTIVE CONSIDERATION

For a number of years, the Commission has determined not to give priority to the three topics listed below.

1. 23 - Confirmation of Partition Sales

Authorized: Cal. Stats. 1956, Res. Ch. 42; Authorization expanded: Cal. Stats. 1959, Res. Ch. 218.

The Commission's staff prepared a research study on the topic as originally authorized. When the study was considered by the Commission and others, it was determined that the problems required a broader study and authorization to broaden the study was obtained in 1959. Since then, the Commission has determined that other matters should be given priority over this topic.

2. 30 - Custody Jurisdiction

Authorized: Cal. Stats. 1956, Res. Ch. 42.

The Commission has deferred consideration of this topic because the entire area of family law has been under study for a number of years, first by a special commission appointed by Governor Brown and then during recent years by legislative committees.

The Commission determined at the February 1970 meeting that a research consultant should be retained to prepare a background study on this topic.

3. 39 - Attachment, Garnishment, and Exemption From Execution

Authorized: Cal. Stats. 1957, Res. Ch. 202.

The Commission has deferred consideration of this topic because it is a major one that involves a controversial aspect of law. To prepare a research study on this topic would require a substantial portion of Commission resources. In addition, from time to time since 1957, this subject has been under interim study by legislative committees.

At the February 1970 meeting, the Commission determined that efforts should be made to obtain a research consultant to prepare a background study on the due process aspects of this topic.

MAJOR TOPICS UNDER ACTIVE CONSIDERATION

1. 36 - Condemnation Law and Procedure

In 1956, the Legislature directed the Law Revision Commission to make a study to determine "whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens." In 1965, the Legislature directed that this topic be given high priority, and revised the directive to provide that

the Commission should make a study to determine "whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings." In 1965, the Legislature thus determined that the topic should be given high priority, should be fair to "all parties," not just the property owner, and should be conducted with a view to preparing a comprehensive statute.

The Commission originally obtained a private law firm in Los Angeles to prepare background research studies. This firm hired an outstanding student who had served as a teaching fellow at Stanford Law School. The compensation for the study was based on paying the salary of the person hired who was to work full time on the study until completed. The senior members of the firm agreed to review and revise the material prepared by the new lawyer without compensation and did, indeed, devote a substantial amount of time to the project. The studies that were prepared were found to be inadequate. First of all, the firm could not prepare a series of adequate studies using only one person within the three year period anticipated. Second, the lawyer preparing the studies was not experienced in procedure and condemnation. As a result, the staff of the Commission devoted a substantial amount of time to revising the studies that have been published and the Commission several years ago concluded that the studies in this field would have to be prepared by the Commission's staff. Several small studies have been prepared by the staff. The major study now in preparation is on the right to take. Although Mr. Taylor has devoted most of his time during the last several years to this study, much remains to be done before the study is completed. Mr. Horton will commence working on a study on just compensation when Mr. Taylor has completed the right to take study and is free to work on other Commission projects.

During the period of 1959-61, the Commission devoted considerable time to the condemnation study. Three recommendations were submitted to the 1961 Legislature. Part of one recommendation--taking possession and passage of title--was enacted. Another recommendation--relating to evidence in eminent domain proceedings--was vetoed by the Governor in 1961, was introduced by Senator Cobey in 1963 and again vetoed, and finally--after it was significantly amended and made acceptable to the public entities--was enacted in 1965. The third recommendation--relating to moving expenses--was not approved by the first committee that considered it because federal law did not permit reimbursement for moving expenses. This recommendation has never been enacted although numerous moving expense statutes have been enacted in California.

In 1963, the Commission submitted a recommendation relating to discovery in eminent domain proceedings. The bill passed the Senate

but died in the Assembly Judiciary Committee. A revised bill relating to discovery, which was acceptable to public entities, was submitted to the 1967 Legislature and was enacted.

At the 1968 session, legislation was submitted upon Commission recommendation to provide for increased recovery by the condemnee when an eminent domain proceeding is abandoned. After revisions were made to make the bill acceptable to the public entities, it was enacted by the Legislature.

In September 1967, the Commission published its first tentative recommendation relating to condemnation law and procedure. (The Commission has determined that it will follow the same procedure on condemnation law as it followed on evidence. A series of tentative recommendations and related studies will be published covering the entire field, the comments on the various tentative recommendations will be considered, and the entire series of tentative recommendations will be put together in one comprehensive statute. Where a problem that requires immediate attention is discovered, the Commission will submit a recommendation to the Legislature on that problem and not wait until the comprehensive statute has been prepared.) The 1967 tentative recommendation relates to possession prior to final judgment and related problems and includes suggested revisions of Article I, Section 14, of the California Constitution. Within the next few months, the Commission will be reviewing the comments on this tentative recommendation so that the members of the Commission will become familiar with this aspect of condemnation law and can determine what changes are needed in the tentative recommendation when it is incorporated into the comprehensive statute.

The Commission has submitted a recommendation to the 1970 Legislature relating to arbitration of just compensation. In addition, a provision relating to the right to enter upon private property to determine whether it is suitable for public use and the damages that must be paid and the procedure to be followed in such cases is included in the governmental liability recommendation submitted to the 1970 Legislature.

The Commission also has prepared a tentative recommendation on byroads and this has been distributed for comment. The comments have been reviewed. We will need to review the comments of the State Bar Committee on this proposal within the next few months. This particular tentative recommendation probably will be incorporated into a larger tentative recommendation on the right to take insofar as its publication is concerned.

The Commission also has been considering certain special problems of public use. We are working on a tentative recommendation on "excess condemnation." We have considered "protective condemnation" and

determined that that is a matter to be dealt with in determining the nature of the property interests that may be taken. The problem of "future use" has been considered and the problem of "substitute condemnation" will be considered within the next few months.

The Commission has considered the problem of recovery for litigation expenses in condemnation proceedings and has determined to make no substantial change--that is, the Commission has determined not to adopt a jurisdictional offer provision or a similar provision or to make litigation expenses generally recoverable.

The Commission has determined that a general statute should be enacted to provide for the recovery of moving expenses as a matter of right. A tentative recommendation to effectuate this decision is in preparation.

The Commission has determined that some priority should be given to the preparation of a study on the right of the former owner to repurchase property when it is to be sold by the public entity. Mr. Taylor has devoted some time to the preparation of this study but, based on the work thus far, it does not seem possible to provide any significant relief to the former owner in this type of case. As soon as we can complete work on certain broader aspects of the right to take study, we will return to this aspect of the study. Perhaps then we will have some inspiration as to the solution of the "right-to-return" desire of former owners.

The Commission has discussed the problem of proximity damage from highway construction--the damage to property not taken but injuriously affected. This problem was considered in the context of inverse condemnation. The Commission has decided to return to this problem after it has considered the cases where property is actually taken.

A major difficulty in making significant progress on this study is that background studies must be prepared before the Commission can profitably consider particular problems. We have not had success in having such studies prepared by persons who are not members of the Commission's staff. In addition to our experience with the private law firm (previously described), we made a contract with Professor Ayer of Stanford Law School to prepare a study on the procedural aspects of condemnation law. He prepared one relatively small part of the total study and concluded that it was a job of such substantial magnitude that he did not have the energy or time to complete the whole study. We have obtained another consultant on this aspect of condemnation law.

We do believe that the staff can produce enough material so that substantial progress can be made on this study during the next year. Much of the work that must be accomplished is clarification and codification of provisions that make little sense. In this connection,

you should note the statement in a letter, dated August 12, 1968, from Roy A. Gustafson, former Chairman of the Commission, who was recently elevated from the Superior Court to the Court of Appeal by Governor Reagan:

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 condemnor. 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 condemnor.

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.

It is my belief that the Legislature looks to the Commission to prepare a comprehensive statute that will remedy the worst problems in eminent domain law and do so without substantially increasing the overall cost of property acquisition. This may be possible if additional compensation is provided only in those cases where it is most justified and the procedure for condemnation can be improved to reduce the condemnee's ability to delay the proceedings and to permit the condemnor to obtain early possession of the property in appropriate cases. In the light of our past experience with the Governor on eminent domain legislation, it seems extremely unlikely that any Governor (whether a Democrat or Republican) will approve an eminent domain bill that will substantially increase condemnation costs.

2. 65 - Inverse Condemnation

In 1965, the Legislature directed the Commission to study inverse condemnation. The Senate Judiciary Committee added this topic to our agenda because the public entities were concerned about the cost of inverse liability. The Committee wanted a statute that would reduce such costs to a minimum consistent with constitutional requirements. Since then, the office of the Legislative Analyst has called me on several occasions to find out what progress is being made on the study. That office and the members of the Ways and Means Committee that review flood control project budget proposals want to have legislation to minimize liability in this area as soon as possible. In addition, city attorneys have written to the Commission advising us that it is not possible to insure against inverse condemnation liability because the extent of such liability is unknown and the

law is unclear. These city attorneys believe that merely a clear statement of the existing law in statutory form would be an improvement although they hope that the extent of such liability could also be minimized.

The Commission retained the outstanding expert in the United States to prepare the background research studies--Professor Arvo Van Alstyne.

Professor Van Alstyne has prepared a series of background studies that have been published in various law reviews. (When he has completed all the studies, we plan to collect them together in a Commission publication to be reproduced by offset printing so they will be generally available in a useful form.)

In his first study, Professor Van Alstyne considered whether it would be constitutional to attempt to state inverse condemnation liability and immunity in a statute. This presents a constitutional problem to the extent that such a statute might provide immunity in a case where the court, absent the statute, would find inverse condemnation liability. Professor Van Alstyne--and the Commission--concluded that a reasonable statute would be upheld as constitutional. See Van Alstyne, Statutory Modification of Inverse Condemnation: The Scope of Legislative Power, 19 Stan. L. Rev. 727 (1967).

In his second study, Professor Van Alstyne discusses the general policy criteria that are helpful in resolving policy issues in the inverse condemnation field and suggests the general approach to be taken in approaching the field and the organization he will follow in the following studies which cover particular aspects of the problem. See Van Alstyne, Modernizing Inverse Condemnation: A Legislative Prospectus, 8 Santa Clara Lawyer 1 (1967). Each Commissioner might find it valuable to read this second study. We can provide you with a copy in printed form if you do not have one available.

The third article by Professor Van Alstyne deals with deliberately inflicted injury or destruction. See Van Alstyne, Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction, 20 Stan. L. Rev. 617 (1968). This article deals first with Denial Destruction (destruction of property to protect the greater community from widespread or calamitous loss as, for example, destroying a house to prevent spread of a fire.) Next it deals with requisitioning by the government--taking property in time of emergency to carry out governmental responsibilities. Generally, denial destruction is noncompensable and requisitioning is compensable. The Commission devoted some time to the consideration of these problems. A tentative recommendation was prepared and discussed. Finally, the Commission decided not to attempt to draft legislation in this area because the problems were extremely difficult and the need for such legislation was unlikely to arise frequently enough to justify devoting Commission resources to this aspect of the law. The article

next discusses the destruction of menaces to health and safety, such as, for example, diseased animals, rotten fruit, or infected trees. The law is a mess in this area but the Commission concluded that the possibility of obtaining enactment of a sensible comprehensive statute was so unlikely that it would not be desirable to devote any resources to this aspect of inverse condemnation liability. Next the article considers confiscation and destruction as sanctions to (1) enforce and regulatory policies (such as product standards or vehicles used in illegal activities), and (2) building and safety code enforcement. The Commission concluded that the possibility of obtaining enactment of legislation that made significant improvements in these areas was unlikely and, more important, that the problems were so complex and controversial that they would require a substantial portion of the Commission's resources for a significant period of time. Hence, the Commission concluded that it would not work on any of the problems discussed in the third article.

The fourth article on inverse condemnation covers unintended physical damage. See Van Alstyne, Inverse Condemnation: Unintended Physical Damage, 20 Hastings L. J. 431 (1969). This article first discusses the basis of inverse condemnation liability generally and includes a good analysis of the Albers case and the ramifications of that case. The article then discusses the following areas of inverse condemnation liability: (1) Water Damage (under active consideration by the Commission), (2) Interference With Land Stability (under active consideration by the Commission), (3) Loss of Advantageous Conditions (interference by governmental activities with advantageous conditions physically associated with property, such as an adequate supply of potable water)(Commission has deferred any consideration of this), (4) Concussion and Vibration (included in land stability under active consideration by Commission and in untrahazardous liability recommendation), (5) escaping fire and chemicals (considered only to extent that included in pesticide recommendation), (6) privileged entry upon property (included in governmental liability recommendation), and (7) physical occupation or destruction by mistake (not considered to be worth consideration at this time). The article makes certain conclusions and recommendations. You can see from the above description that the Commission has devoted a substantial amount of time to the problems dealt with in the fourth article.

The fifth article on inverse condemnation covers just compensation for intangible detriment. See Van Alstyne, Just Compensation of Intangible Detriment: Criteria for Legislative Modifications in California, 16 UCLA L. Rev. 491 (1969). This article discusses losses caused by highway and street improvements and losses resulting from aircraft operations. Work on the first problem has been deferred for consideration in connection with the eminent domain study; work on the aircraft operations losses is being given priority.

Professor Van Alstyne plans to prepare an article on the procedural problems in inverse condemnation cases, including such matters as the statute of limitations, claims filing requirements, offset of benefits, and the like. We do not know when the article will be completed.

CONCLUSIONS AND RECOMMENDATIONS

From the foregoing description of the topics on the Commission's agenda, it should be apparent that most of the topics either are ones on which work is complete or substantially complete or ones that cannot be worked on until a research study (now in preparation) is completed. Only two significant topics are ready for Commission consideration--inverse condemnation and condemnation law and procedure. These are topics that the Legislature wishes us to give priority. But, at the same time, they are topics that are very controversial and it would be desirable to have a number of small topics that could be worked into the Commission's meeting schedule from time to time so that we will have a respectable legislative program for future legislative sessions.

In part, as indicated in a memorandum prepared for the October 1969 meeting, our problem arises from the failure of several consultants to prepare research studies they had undertaken to prepare. In part, the problem arises from the fact that the amount of funds available for research were substantially curtailed two years ago and the studies that we would be receiving now were not contracted for. In part, the problem exists because the staff has been devoting a substantial amount of its time to the preparation of research studies on condemnation and inverse condemnation and to work on some relatively small topics on the agenda.

We have two problems for the future. First, we need to obtain legislative authority to study various worthwhile topics that do not

involve the imposition of costs on government (and the resulting difficulty of obtaining enactment of good legislation). If the study on procedure, practice, and pleading is authorized by the Legislature, we could write to each judge and ask that he advise us of any relatively narrow problems in this field and possibly obtain some good topics as a result. We are also requesting authority from the 1970 Legislature to study nonprofit corporation law. Nevertheless, suggestions as to procedures for obtaining good topics are needed. In evaluating such suggestions, it is important to consider the amount of staff and Commission time that would be required under the suggested procedure. The Commission's staff is short one attorney and the staff is engaged in the preparation of complex, time consuming studies and recommendations on inverse condemnation and condemnation law and procedure. If we are to complete work on these topics within a reasonable time, staff resources should not be devoted to other less profitable activities.

The second problem for the future is that the Commission does not have any significant amount of funds to obtain research consultants. Accordingly, great care must be taken in expending funds for research. We should, the staff believes, attempt to complete the studies on eminent domain and inverse condemnation as soon as possible and to devote what research funds we have available to these studies if they can be profitably expended on these studies. Unless we devote substantially all the staff and Commission resources to these studies they will hang over our heads for far too many years. This is not to say, however, that we should not consider research studies prepared under existing research contracts as they are delivered.

MULTI-YEAR SCHEDULE OF PROJECTS

One of the requirements of the State Programming and Budgeting System is that each agency maintain and periodically revise a multi-year program statement. Moreover, it is--I believe--highly desirable that the Commission periodically review the topics it is authorized to study and set priorities and goals.

Attached as Exhibit II is a Multi-Year Schedule of Projects. This schedule shows, on a year-by-year basis, the matters that would be considered and the projects that would be completed. The schedule, of course, is necessarily subject to revision as work on a particular topic indicates that it is easier or more difficult than anticipated. Also, the schedule assumes that research studies will be on hand when the schedule allows time for the Commission to consider them--an assumption that past experience demonstrates is unwarranted. A schedule of this type should be approved at the March meeting.

This schedule guides the staff in giving priority to the various matters we are directed to study. An examination of the schedule will indicate we have given top priority to the two topics that the Senate and Assembly Committees have requested be given priority--inverse condemnation and condemnation law and procedure. We believe that we can work some minor topics into the agenda and have so indicated in the schedule.

The most significant thing to note in the schedule is the treatment of the eminent domain topic. The schedule anticipates that in 1970 we will complete work on a number of tentative recommendations that will cover all

aspects of the right to take, that during the first six months of 1971 these tentative recommendations will be reviewed, commented upon, and revised, and that work will be completed on recommended legislation on the right to take in time so that a comprehensive bill (at least 300 sections) can be submitted to the 1972 session. This bill would provide uniform provisions to replace the great number of scattered provisions in the various codes and thus eliminate a substantial volume of statute law from codes other than the Code of Civil Procedure. This "clean up" job would permit us to prepare a recommendation for a comprehensive statute that would require a substantially shorter bill than would otherwise be required. In the event the schedule is not maintained, it will be necessary to include at least 300 additional sections in the comprehensive bill to be introduced in 1973.

Note that we have scheduled relocation assistance for 1971 and aircraft noise damage for 1972. We believe that a uniform relocation assistance statute is greatly needed and should be given a high priority. We believe that aircraft noise damage is not a problem that is beyond solution.

We have scheduled water damage and land stability for the 1972 Legislature. We believe that it will be exceedingly difficult to draft legislation on this subject that will have any chance of being given serious legislative consideration. The subject is complex and controversial. Moreover, we need to know what action will be taken by the 1970 Legislature

on our request to extend the inverse condemnation study to include related rules applicable to the liability of private persons before we can complete work on a tentative recommendation on this topic.

The staff has abandoned any hope of drafting a comprehensive statute on inverse condemnation--one that covers all aspects of substantive liability. We do believe that we should consider the procedural aspects of inverse liability but we do not know when Professor Van Alstyne will start work on this portion of the study.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

1. 26 - ESCHEAT

Authorized: Cal. Stats. 1956, Res. Ch. 42. Expanded: Cal. Stats. 1967, Res. Ch. 81.

Recommendation submitted: Recommendation Relating to Escheat, 8 Cal. L. Revision Comm'n Reports 1001 (1967).

Enacted: Cal. Stats. 1968, Chs. 247, 356.

2. 42 - RIGHTS OF GOOD FAITH IMPROVER

Authorization: Cal. Stats. 1957, Res. Ch. 202.

Recommendation submitted: Recommendation and Study Relating to The Good Faith Improver of Land Owned by Another, 8 Cal. L. Revision Comm'n Reports 801 (1967).

Not enacted: Passed Senate and Assembly, reconsideration granted in Assembly, died in Assembly Judiciary Committee.

Additional Recommendation submitted: Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another, 8 Cal. L. Revision Comm'n Reports at 1373 (1967).

Enacted: Cal. Stats. 1968, Ch. 150.

3. 44 - FICTITIOUS NAME STATUTE

Authorization: Cal. Stats. 1957, Res. Ch. 202.

Recommendation submitted: Recommendation Relating to Fictitious Business Names, 9 Cal. L. Revision Comm'n Reports at 71 (1969).

Enacted: Cal. Stats. 1969, Ch. 114.

Additional Recommendation: Recommendation and Study Relating to Fictitious Business Names, 9 Cal. L. Revision Comm'n Reports 601 (1969).

Enacted: Submitted to the 1970 Legislature.

4. 45 - MUTUALITY OF REMEDIES

Authorized: Cal. Stats. 1957, Res. Ch. 202.

Recommendation submitted: Recommendation and A Study Relating to Mutuality of Remedies in Suits for Specific Performance, 9 Cal. L. Revision Comm'n Reports 201 (1969).

Enacted: Cal. Stats. 1969, Ch. 156.

5. 50 - REAL PROPERTY LEASES

Authorization: Cal. Stats. 1957, Res. Ch. 202.

Recommendation submitted: Recommendation and Study Relating to Abandonment or Termination of a Lease, 8 Cal. L. Revision Comm'n Reports 701 (1967).

Not enacted: Passed Senate, approved by Assembly Judiciary Committee, but put on inactive file in Assembly to permit study of problems involved when leases are used as a means of financing a shopping center and the like.

Additional Recommendation submitted: Recommendation Relating to Real Property Leases, 9 Cal. L. Revision Comm'n Reports 401 (1969).

Not enacted: Passed Senate, approved by Assembly Judiciary Committee, but defeated on Assembly floor.

Additional Recommendation submitted: Recommendation Relating to Real Property Leases (November 1969).

Enacted: Submitted to the 1970 Legislature.

6. 53 - PERSONAL INJURY DAMAGES

Authorized: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

Recommendation submitted: Recommendation and Study Relating to Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property, 8 Cal. L. Revision Comm'n Reports 401 (1967).

Not enacted: Passed Senate, Defeated in Assembly.

Additional Recommendation: Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property, 8 Cal. L. Revision Comm'n Reports at 1385 (1967).

Enacted: Cal. Stats. 1968, Chs. 457, 458.

7. 55 - ADDITUR AND REMITTITUR

Authorized: Cal. Stats. 1957, Res. Ch. 202. Expanded: Cal. Stats. 1965, Res. Ch. 130 (expanded to include remittitur).

Recommendation submitted: Recommendation and Study Relating to Additur, 8 Cal. L. Revision Comm'n Reports 601 (1967).

Enacted: Cal. Stats. 1967, Ch. 72.

Additional Recommendation: Recommendation Relating to Additur and Remittitur, 9 Cal. L. Revision Comm'n Reports at 63 (1969).

Enacted: Cal. Stats. 1969, Ch. 115.

8. 60 - REPRESENTATIONS AS TO CREDIT

Authorized: Cal. Stats. 1958, Res. Ch. 61.

Recommendation submitted: Recommendation and Study Relating to Representations as to Credit, 9 Cal. L. Revision Comm'n Reports 701 (1969).

Enacted: Submitted to the 1970 Legislature.

9. 62 - VEHICLE CODE SECTION 17150 AND RELATED SECTIONS

Authorized: Cal. Stats. 1962, Res. Ch. 23. Expanded: Cal. Stats. 1965, Res. Ch. 130.

Recommendation submitted: Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections, 8 Cal. L. Revision Comm'n Reports 501 (1967).

Enacted: Cal. Stats. 1967, Ch. 702.

10. 66 - QUASI-COMMUNITY PROPERTY

Authorized: Cal. Stats. 1955, Res. Ch. 207. Reauthorized: Cal. Stats. 1966, Res. Ch. 9.

Recommendation submitted: Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere, 1 Cal. L. Revision Comm'n Reports at E-1 (1957).

Enacted: Cal. Stats. 1957, Ch. 490.

Additional Recommendation submitted: Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere, 3 Cal. L. Revision Comm'n Reports at I-1 (1961).

Enacted: Cal. Stats. 1961, Ch. 636.

Additional Recommendation submitted: Recommendation Relating to Quasi-Community Property, 9 Cal. L. Revision Comm'n Reports 000 (1969).

Enacted: Submitted to the 1970 Legislature.

11. 67 - UNINCORPORATED ASSOCIATIONS

Authorized: Cal. Stats. 1957, Res. Ch. 202. Expanded: Cal. Stats. 1966, Res. Ch. 9 (originally combined with "use of fictitious business names"; split off as separate topic in 1966).

Recommendation submitted: Recommendation and Study Relating to Suit By or Against an Unincorporated Association, 8 Cal. L. Revision Comm'n Reports 901 (1967).

Enacted: Cal. Stats. 1967, Ch. 1324.

Additional Recommendation: Recommendation Relating to Service of Process on Unincorporated Associations, 8 Cal. L. Revision Comm'n Reports at 1403 (1967).

Enacted: Cal. Stats. 1968, Ch. 132.

12. 69 - POWERS OF APPOINTMENT

Authorized: Cal. Stats. 1965, Res. Ch. 130, p. 5289.

Recommendation submitted: Recommendation and A Study Relating to Powers of Appointment, 9 Cal. L. Revision Comm'n Reports 301 (1969).

Enacted: Cal. Stats. 1969, Chs. 113, 155.

13. 74 - RULE AGAINST PERPETUITIES

Authorized: Cal. Stats. 1969, Res. Ch. 224.

Recommendation submitted: Recommendation and Study Relating to the "Vesting" of Interests Under the Rule Against Perpetuities, 9 Cal. L. Revision Comm'n Reports 901 (1969).

Enacted: Submitted to the 1970 Legislature.

EXHIBIT II

CALIFORNIA LAW REVISION COMMISSION

MULTI-YEAR SCHEDULE OF PROJECTS

(Number of sections is estimated unless otherwise indicated.)

JANUARY 1970 - JANUARY 1971

Legislative Consideration of Recommendations to 1970 Legislature (107 sections--actual count)

("*" indicates revised version of recommendation to prior session)

- Fictitious Business Names -- 40 sections
- Sovereign Immunity (Revisions of Governmental Liability Act) -- 23 sections
- *Sovereign Immunity (Statute of Limitations) -- 12 sections
- Quasi-Community Property -- 4 sections
- Condemnation Law and Procedure (Arbitration of Just Compensation) -- 7 sections
- *Real Property Leases -- 14 sections
- *Evidence Code (Revisions of Evidence Code) -- 5 sections
- "Vesting" of Interests Under Rule Against Perpetuities -- 1 section
- Representations as to Credit of Third Persons -- 1 section

Topics to be added to Agenda:

- Nonprofit Corporation Law
- Minor Problems in Civil Practice and Procedure

Topics to be dropped from Agenda:

- Small Claims Court Law
- Service of Process by Publication

Work on Recommendations to 1971 Legislature

("#" indicates topics that can be considered only if study is received on time)

- Condemnation Law and Procedure (Relocation Assistance)(PRIORITY)
- Taking Instructions to Jury Room (assuming that Commission will drop topic)
- Trial Preference Statutes

Work on Other Topics

Inverse Condemnation (Aircraft Noise Damage)(TOP PRIORITY)
Inverse Condemnation (Water Damage; Land Stability)(TOP PRIORITY)
Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
#Right of Nonresident Aliens to Inherit
#Sovereign Immunity (The Collateral Source Rule)
#Revision of Arbitration Statute
Consideration of Recommendations to 1970 Legislature That Are Not
Enacted

JANUARY 1971 - JANUARY 1972

Legislative Consideration of Recommendations to 1971 Legislature (20 sections)

Condemnation Law and Procedure (Relocation Assistance) -- 20 sections

Topics to be dropped from Agenda (Likely ultimate disposition by
Commission):

Taking Instructions to Jury Room
Trial Preference Statutes

Work on Recommendations to 1972 Legislature

Inverse Condemnation (Aircraft Noise Damage)(TOP PRIORITY)
Inverse Condemnation (Water Damage; Land Stability)(TOP PRIORITY)
Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
Right of Nonresident Aliens to Inherit
Sovereign Immunity (The Collateral Source Rule)
Revision of the Arbitration Statute
Liquidated Damages
Cross-Complaints and Counterclaims
Joinder of Causes of Action
Oral Modification of Written Contract
Jurisdiction in Custody Matters

Work on Other Topics

Condemnation Law and Procedure (Various Aspects)(TOP PRIORITY)
Consideration of Recommendations to 1971 Legislature That Are Not
Enacted

JANUARY 1972 - JANUARY 1973

Legislative Consideration of Recommendations to 1972 Legislature (395 sections)

Inverse Condemnation (Aircraft Noise Damage) -- 25 sections
Inverse Condemnation (Water Damage; Land Stability) -- 15 sections
Condemnation Law and Procedure (The Right to Take) -- 300 sections

Liquidated Damages -- 2 sections
Cross-Complaints and Counterclaims -- 25 sections
Joinder of Causes of Action -- 10 sections
Oral Modification of Written Contract -- 2 sections
Jurisdiction in Custody Matters -- 4 sections
Right of Nonresident Aliens to Inherit -- 5 sections
Sovereign Immunity (The Collateral Source Rule) -- 1 section
Revision of Arbitration Statute -- 6 sections

Work on Recommendations to 1973 Legislature

Comprehensive Eminent Domain Statute (TOP PRIORITY)
Consideration of Recommendations to 1972 Legislature That Are Not Enacted

JANUARY 1973 - JANUARY 1974

Legislative Consideration of Recommendations to 1973 Legislature (110 sections)

Comprehensive Eminent Domain Statute -- 110 sections

Work on Recommendations to 1974 Legislature

Nonprofit Corporations Law
Additional Topics (to be determined on basis of priorities and assignments
given by legislative committees)