#52.40 3/20/70

Memorandum 70-28

Subject: Study 52.40 - Sovereign Immunity (The Collateral Source Rule)

You will recall that, in City of Salinas v. Souza & McCune Constr. Co., (1967), a case involving a breach of contract by a city, the California Supreme Court held that the trial court improperly determined damages by refusing to allow the city to show that the other party had been compensated in part for the loss from another party. The court held that the collateral source rule--under which evidence of payments from other sources is excluded--was not applicable because the collateral source rule appears to be punitive in nature and punitive damages cannot be imposed on public entities. For the proposition that punitive damages cannot be imposed on public entities, the court cited Government Code Section 818, a section that applies only to tort liability.

It was generally assumed that the decision in Souza carried over to tort actions. Because of the uncertainty created by the Souza decision, the Commission retained Professor Cole of Boalt Hall to prepare a research study on the extent to which the collateral source rule should not be applicable in tort actions against public entities.

In Helfend v. Southern Cal. Rapid Transit Dist., 2 Cal.3d 1 (February 18, 1970), the California Supreme Court unanimously held that the collateral source rule applies in a tort action against a public entity and that it was proper for the trial court to follow the collateral source rule and foreclose the defendant public entity from mitigating the damages by showing that the tort victim received partial compensation from medical insurance coverage. Attached is a copy of the opinion in the Helfend case. You should read the opinion carefully prior to the meeting.

I have talked to the research consultant about whether the study should go forward in light of the Helfend decision. He would like to do the study and is willing to do it notwithstanding the Helfend decision but leaves it up to the Commission whether it is worth doing.

A careful reading of the Helfend case indicates--in the staff's view--that no legislation is needed in this area. We believe that the decision is a sound one and the policy considerations identified by the court convince us that any change in the collateral source rule would require examination of the whole concept of recovery in tort cases, including whether the prevailing party should be awarded reasonable attorney's fees. We do not believe that it would be a justified expenditure of our time and resources to undertake such a study.

The consultant has not devoted a substantial amount of time to the study and has not commenced to write the study. He has reviewed some cases, including a substantial volume of material--law review articles and cases--that I have sent him. He and I believe that, if the Commission decides not to go forward with the study, the contract for the study--$2,000--should be terminated and the consultant should be paid a reasonable amount for the time he has devoted to research on the study. He and I believe that $250 would be a reasonable amount of compensation under the circumstances.

The staff suggests that the Executive Secretary be authorized to execute the necessary agreement on behalf of the Commission to terminate all obligations of both parties to the agreement with Professor Cole and to pay Professor Cole $250 for the time he has devoted to work on the contract.

Respectfully submitted,

John H. DeMoully
Executive Secretary