

8/10/70

Memorandum 70-76

Subject: Annual Report

Attached is a copy of the Annual Report for 1969. The staff suggests that the Annual Report for 1970 follow generally the same form. We indicate below the changes that should be made in revising the report for 1970.

Inside Cover

This will be revised to reflect Commission and staff membership as of December 1, 1970.

Title Page

Date will be changed to "December 1970."

Letter of Transmittal

Letter will be on new letterhead, submitted by Mr. Stanton, and dates changed to 1970 dates.

Table of Contents

Will revise to conform to contents.

Function and Procedure of Commission (pages 87-89)

Will revise to reflect action on Commission bills by 1970 Legislature.

Personnel of Commission (page 90)

Will revise to reflect Commission and staff changes and to state membership of Commission as of December 1, 1970.

Summary of Work of Commission (page 91)

No change in first paragraph. Second paragraph will be revised to conform to whether Commission requests any new studies. Last paragraph will be revised to reflect actual days of meetings.

1970 Legislative Program (page 92)

This portion of Annual Report, which will be designated "1971 Legislative Program," will list comparable information for recommendations to 1971 session.

Studies in Progress (pages 93-96)

This material will be replaced on material set out in Exhibit I (pink) attached. Please mark your suggested editorial changes on Exhibit I and turn it in to the staff at the September meeting.

Legislative History of Recommendations Submitted to 1969 Legislative Session (pages 97-99)

We will provide a similar history for measures submitted to the 1970 session. The only policy question is whether we should include a reference to Senate Bill 266 (relating to proof of certain foreign writings). This bill resulted from a letter to the Commission after our Annual Report was sent to the printer. The Commission determined that legislation was immediately needed and recommended the enactment of Senate Bill 266 by the 1970 Legislature. The Executive Secretary explained the bill before the Senate Judiciary Committee and, at the request of the author (Senator Cologne), appeared on behalf of Senator Cologne before the Assembly Judiciary Committee. The staff believes that we should report concerning this

bill in our Annual Report and that the bill should be counted in computing the achievements of the Law Revision Commission. A draft of a statement that could be included in the Annual Report is attached as Exhibit II (yellow). Please mark any suggested editorial changes on this draft and turn it in to the staff at the September meeting.

Calendar of Topics for Study (pages 100-109)

The staff suggests that the Commission drop a number of topics that have been continued on the calendar for further study and reallocate the remaining topics as indicated below.

Topics Under Active Consideration (pages 100-102)

We suggest that the following topics listed as under active consideration be retained in that category: (1) Condemnation; (2) Sovereign Immunity; (3) Inverse Condemnation (description of this topic will be conformed to revised description adopted by 1970 Legislature); (4) Arbitration; (5) Counterclaims and Cross-Complaints; (6) Liquidated Damages; (7) Joinder of Causes of Action; (8) Right of Nonresident Aliens to Inherit. We suggest that three additional studies be added to the priority category: (9) Custody (we expect to receive the consultant's study on this topic by the end of September); (10) Attachment and Garnishment (we expect to receive the consultant's study on this topic by October 1, 1970); (11) Lessor-Lessee Rights. We indicate below the disposition of the remaining topics listed under "Active Consideration" in the printed report for 1969.

Other Topics Authorized for Study (pages 102-103)

The first two topics listed in this category will be moved to the "Active Consideration" category: nonprofit corporations (authorized for study by 1970 Legislature) will be listed, and the partition study will be

continued in this category. The study of Civil Code Section 1698 (now shown under "Active Consideration") will be included as a topic authorized for study.

Topics Continued on Calendar for Further Study (pages 103-105)

We suggest that the following studies be retained in this category:

(1) Law Relating to Partnerships and Other Unincorporated Associations; (2) Escheat; (3) Quasi-Community Property and Section 201.5 Property; (4) Powers of Appointment; (5) Fictitious Business Names. The Evidence Code study will be added to this category. These are all major studies and we may need to recommend corrective revisions. Hence, we should retain authority to do so.

Topics to Be Dropped From Calendar of Topics (pages 105-106)

The Commission has determined to drop two topics from its agenda:

(1) Trial Preferences; (2) Jury Instructions. See Exhibit III (green) for a statement concerning these topics. Please mark your editorial revisions on this exhibit and return it to the staff at the September meeting.

The staff suggests that the following topics, all of which resulted in the enactment of legislation, be dropped from our Calendar of Topics: (1) Personal Injury Damage Awards; (2) Mutuality of Remedy; (3) Vehicle Code Section 17150 and Related Statutes; (4) Good Faith Improvers; (5) Code of Civil Procedure Section 1974 (if recommendation to 1970 Legislature becomes law); (6) Additur and Remittitur; (7) Civil Code Section 715.8 (rule against perpetuities).

Topics for Future Consideration (pages 107-109)

The Commission has not as yet determined to request authority in 1971 to study any new topics. See, however, Memorandum 70-96.

Report on Statutes Repealed by Implication or Held Unconstitutional (page 110)

This portion of the report will be considered at a later meeting.

Recommendations (page 111)

To follow same form but conformed to content of report.

Budget Statement

Attached as Exhibit IV (white) is the budget statement. If the staff recommendations above are approved, the first paragraph on the second page of the statement should read:

The workload of this commission is determined primarily by the number of topics assigned to it by the Legislature. The commission now has an agenda of 29 topics referred to it by the Legislature for study, including one topic referred to the commission by the 1970 Legislature. The commission plans to recommend to the 1971 Legislature that seven topics be dropped from its agenda because legislation recommended by the commission on these topics has been enacted and that two additional topics be dropped because no legislation on these topics is desirable.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

STUDIES IN PROGRESS

INVERSE CONDEMNATION

Resolution Chapter 130 of the Statutes of 1965 directed the Commission to study "whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects." The Commission intends to devote a substantial portion of its time during the next few years to the study of inverse condemnation and tentatively plans to submit recommendations covering portions of this topic as work on those portions is completed.

The Commission has given priority to the water damage aspect of inverse condemnation. During 1969 and 1970, the Commission devoted considerable time to the preparation of a tentative recommendation relating to liability for water damage and liability for interference with land stability. The Commission concluded that desirable legislation in this field of law appears to require revision of the rules governing liability of private persons as well as public entities. Accordingly, the Commission requested and the 1970 Legislature authorized the expansion of the scope of the inverse condemnation study to include consideration of whether the law relating to the liability of private persons under similar circumstances should be revised.

The Commission has studied the problem of aircraft noise damage and has decided not to recommend legislation on this subject at this time.* Two

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- * The Commission wishes to acknowledge the substantial assistance it received from its consultants on the aircraft noise study: Professor Arvo Van Alstyne, University of Utah Law School (who prepared the background legal study); Dr. Maurice A. Garbell, aeronautical consultant, San Francisco (who prepared several background papers covering technical aspects of aircraft noise measurement); John N. McLaurin and Gideon Kanner, Los Angeles attorneys. Others who assisted the Commission by attending Commission meetings and providing background legal or technical information include: Dwight E. Bishop, Bolt, Beranek, and Newman, Inc.; Ralph E. Clark, appraiser, San Francisco; Richard F. Desmond, attorney; David Ingram, appraiser, Menlo Park; Bert J. Lockwood, Department of Airports, Los Angeles; E. E. McTaggart, California Department of Aeronautics; John E. Nolan, deputy port attorney, Oakland; John D. Rogers, attorney; J. Kerwin Rooney, port attorney, Oakland; M. N. Sherman, Department of Airports, Los Angeles; Harold H. Woodward, State Department of Aeronautics, Los Angeles. Representatives of various state and local public entities, who regularly attend Commission meetings, also assisted in this study.

recent decisions of the Superior Court in Los Angeles reach generally sound results.¹ The Commission plans to keep abreast of developments in this area of the law in case legislation later appears necessary. Other aspects of inverse condemnation liability under active study by the Commission include liability for highway proximity damage.

Recommendations that already have resulted from the inverse condemnation study are those relating to liability for ultrahazardous activities, liability for the use of pesticides, liability based on a theory of common law nuisance, and the rights and obligations arising when a public entity enters upon private property to survey, examine, and make tests in connection with the possible acquisition of the property for public use.²

Professor Arvo Van Alstyne of the College of Law, University of Utah, has been retained as the Commission's research consultant on this topic. The first five portions of his research study have been completed and published in law reviews.³ Additional portions of the study are in preparation.

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1. Aaron et al. v. City of Los Angeles (Los Angeles Superior Court No. 837, 799)(Memorandum Opinion of Judge Bernard S. Jefferson, February 5, 1970); Greater Westchester Homeowners' Ass'n v. City of Los Angeles et al. (Los Angeles Superior Court No. 931, 989)(Memorandum Opinion of Judge Bernard S. Jefferson, April 17, 1970).
 2. See Recommendation Relating to Sovereign Immunity: Number 10--Revision of the Governmental Liability Act (October 1969), reprinted in 9 Cal. L. Revision Comm'n Reports 801 (1969). For a legislative history of this recommendation, see 10 Cal. L. Revision Comm'n Reports (1970). Portions of the recommended legislation were enacted. See Cal. Stats. 1970, Chs. , .
 3. See Van Alstyne, Statutory Modification of Inverse Condemnation: The Scope of Legislative Power, 19 Stan. L. Rev. 727 (1967); Modernizing Inverse Condemnation: A Legislative Prospectus, 8 Santa Clara Lawyer 1 (1967); Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction, 20 Stan. L. Rev. 617 (1968); Inverse Condemnation: Unintended Physical Damage, 20 Hastings L.J. 431 (1969); Just Compensation of Intangible Detriment: Criteria for Legislative Modifications in California, 16 U.C.L.A. L. Rev. 491 (1969).

CONDEMNATION LAW AND PROCEDURE

The Commission is now engaged in the study of condemnation law and procedure and tentatively plans to submit a recommendation for a comprehensive statute on this subject to the 1973 Legislature.

As it did in connection with the Evidence Code study, the Commission will publish a series of reports containing tentative recommendations and research studies covering various aspects of condemnation law and procedure. The comments and criticisms received from interested persons and organizations on these tentative recommendations will be considered before the comprehensive statute is drafted. The first report in this series has been published. See Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1--Possession Prior to Final Judgment and Related Problems, 8 Cal. L. Revision Comm'n Reports 1101 (1967). Work on the second report in this series, dealing with the right to take, is well underway. The Commission's staff has begun work on background material for the third report which will deal with compensation and the measure of damages.

Prior to 1973, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of immediate attention. The Commission submitted the first such recommendation (exchange of valuation data) to the 1967 Legislature,⁴ a second recommendation (recovery of the condemnee's expenses on abandonment of an eminent domain proceeding)

4. See Recommendation Relating to Discovery in Eminent Domain Proceedings, 8 Cal. L. Revision Comm'n Reports 19 (1967). For a legislative history of this recommendation, see 8 Cal. L. Revision Comm'n Reports 1318 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1104.

to the 1968 Legislature,⁵ a third recommendation (arbitration of just compensation) to the 1970 Legislature,⁶ and will submit a fourth recommendation (uniform relocation assistance statute) to the 1971 Legislature.⁷

EVIDENCE

The Evidence Code was enacted in 1965 upon recommendation of the Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue its study of the Evidence Code. Pursuant to this directive, the Commission has undertaken two projects.

The first is a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code. In this connection, the Commission is continuously reviewing texts, law review articles, and communications from judges, lawyers, and others concerning the Evidence Code. As a result of this review, the Commission submitted

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5. See Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding, 8 Cal. L. Revision Comm'n Reports 1361 (1967). For a legislative history of this recommendation, see 9 Cal. L. Revision Comm'n Reports 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 133.
 6. See Recommendation Relating to Arbitration of Just Compensation (September 1969), reprinted in 9 Cal. L. Revision Comm'n Reports 123 (1969). For a legislative history of this recommendation, see 10 Cal. L. Revision Comm'n Reports (1970). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 417.
 7. See Recommendation Relating to Uniform Relocation Assistance Statute (in preparation).

recommendations to the 1967 Legislature,⁸ to the 1969 Legislature,⁹ and to the 1970 Legislature.¹⁰

The second project is a study of the other California codes to determine what changes, if any, are needed in view of the enactment of the Evidence Code. The Commission submitted recommendations relating to the Agricultural Code¹¹ and the Commercial Code¹² to the 1967 legislative session. To the extent that its work schedule permits, the Commission will submit recommendations relating to additional codes to future sessions of the Legislature.

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8. See Recommendation Relating to the Evidence Code: Number 1--Evidence Code Revisions (October 1966), reprinted in 8 Cal. L. Revision Comm'n Reports 101 (1967). For a legislative history of this recommendation, see 8 Cal. L. Revision Comm'n Reports at 1315 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 650.
 9. See Recommendation Relating to the Evidence Code: Number 4--Revision of the Privileges Article (November 1968), reprinted in 9 Cal. L. Revision Comm'n Reports 501 (1969). For a legislative history of this recommendation, see 9 Cal. L. Revision Comm'n Reports 98 (1969). The recommended legislation was not enacted.
 10. See Recommendation Relating to the Evidence Code: Number 5--Revisions of the Evidence Code (September 1969), reprinted in 9 Cal. L. Revision Comm'n Reports 137 (1969). For a legislative history of this recommendation, see 10 Cal. L. Revision Comm'n Reports (1970). Some of the recommended legislation was enacted. See Cal. Stats. 1970, Ch. 69 (res ipsa loquitur).
 11. See Recommendation Relating to the Evidence Code: Number 2--Agricultural Code Revisions (October 1966), reprinted in 8 Cal. L. Revision Comm'n Reports 201 (1967). For a legislative history of this recommendation, see 8 Cal. L. Revision Comm'n Reports at 1316 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 262.
 12. See Recommendation Relating to the Evidence Code: Number 3--Commercial Code Revisions (October 1966), reprinted in 8 Cal. L. Revision Comm'n Reports 301 (1967). For a legislative history of this recommendation, see 8 Cal. L. Revision Comm'n Reports at 1316 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 703.

OTHER TOPICS UNDER ACTIVE CONSIDERATION

During the 1971 legislative session, the Commission also will be occupied with the presentation of its legislative program. In addition to the recommendation mentioned above, the 1971 legislative program includes a recommendation relating to various aspects of pleading.¹³

If work on eminent domain and inverse condemnation does not occupy substantially all of its time, the Commission plans to consider during 1971 other topics authorized for study. These include arbitration, liquidated damages, and the right of nonresident aliens to inherit.

13. See Recommendation and Study Relating to Counterclaims and Cross-Complaints, etc. (in preparation).

EXHIBIT II

PROOF OF FOREIGN OFFICIAL RECORDS

Senate Bill No. 266, which became Chapter 41 of the Statutes of 1970, was introduced by Senator Gordon Cologne (Chairman of the Senate Judiciary Committee) to effectuate an unpublished recommendation of the Law Revision Commission.¹ This recommendation resulted from a letter from Charles W. Ricketts, Los Gatos attorney, pointing out a deficiency in Section 1530 of the Evidence Code.

1. Senate Bill 266 provides:

An act to amend Section 1530 of the Evidence Code, relating to evidence of writings, and declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

- 1 Section 1. Section 1530 of the Evidence Code is amended
- 2 to read:
- 3 1530. (a) A purported copy of a writing in the custody of
- 4 a public entity, or of an entry in such a writing, is prima facie
- 5 evidence of the existence and content of such writing or entry
- 6 if:
- 7 (1) The copy purports to be published by the authority of
- 8 the nation or state, or public entity therein in which the writ-
- 9 ing is kept;
- 1 (2) The office in which the writing is kept is within the
- 2 United States or within the Panama Canal Zone, the Trust
- 3 Territory of the Pacific Islands, or the Ryukyu Islands, and
- 4 the copy is attested or certified as a correct copy of the writing
- 5 or entry by a public employee, or a deputy of a public em-
- 6 ployee, having the legal custody of the writing; or
- 7 (3) The office in which the writing is kept is not within the
- 8 United States or any other place described in paragraph (2)
- 9 and the copy is attested as a correct copy of the writing or
- 10 entry by a person having authority to make attestation. The
- 11 attestation must be accompanied by a final statement certifying
- 12 the genuineness of the signature and the official position of (i)
- 13 the person who attested the copy as a correct copy or (ii) any
- 14 foreign official who has certified either the genuineness of the
- 15 signature and official position of the person attesting the copy
- 16 or the genuineness of the signature and official position of
- 17 another foreign official who has executed a similar certificate in
- 18 a chain of such certificates beginning with a certificate of the
- 19 genuineness of the signature and official position of the person
- 20 attesting the copy. *Except as provided in the next sentence,*
- 21 *the final statement may be made only by a secretary of an*
- 22 *embassy or legation, consul general, consul, vice consul, or*
- 23 *consular agent, or other officer in the foreign service of the*
- 24 *United States stationed in the nation in which the writing is*
- 25 *kept, authenticated by the seal of his office, or a diplomatic*

Section 1530 of the Evidence Code is concerned with the use of a copy of a writing in official custody to prove the content of the original. Section 1530 was deficient insofar as it prescribed, in subdivision (a)(3), the procedure for proof of foreign official writings. Subdivision (a)(3)

26 or consular official of the foreign country assigned or accredited to the United States. Prior to January 1, 1971, the final
27 statement may also be made by a secretary of an embassy or
28 legation, consul general, consul, vice consul, consular agent, or
29 other officer in the foreign service of the United States stationed in the nation in which the writing is kept, authenticated
30 by the seal of his office. If reasonable opportunity has been
31 given to all parties to investigate the authenticity and accuracy
32 of the documents, the court may, for good cause shown, (i)
33 admit an attested copy without the final statement or (ii) permit the writing or entry in foreign custody to be evidenced by
34 an attested summary with or without a final statement.

38 (b) The presumptions established by this section are presumptions affecting the burden of producing evidence.

40 SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

45 In some situations, it now is impossible to satisfy the basic requirement of paragraph (3) of subdivision (a) of Section 46 1530 of the Evidence Code because there is no United States
47 official in the particular foreign country (such as East Germany) who can make the final statement required by paragraph (3). As a result, it may be impossible in some situations to establish such matters as birth, legitimacy, marriage, death, or a will. This may result in injustice or in delay in the resolution of issues now pending in California courts. Therefore, it is necessary that this act take immediate effect.

requires that the copy of the foreign official record be attested as a correct copy by "a person having authority to make the attestation." The subdivision further requires that the first attester's signature and his official position be certified by a higher foreign official, whose signature can in turn be certified by a still higher official. Under the section as it formerly read, such certifications could be continued in a chain until a foreign official was reached as to whom a United States foreign service officer "stationed in the nation in which the writing is kept" had adequate information upon which to base his final certification. In other words, to prove a copy of a foreign official record, it was necessary to have a certificate of a United States foreign service officer stationed in the nation in which the writing was kept.

In some situations, it was impossible to satisfy the basic requirement of subdivision (a)(3) of Section 1530 because there were no United States foreign service officials in the particular foreign country (such as East Germany) and, hence, there was no one who could make the certificate required by subdivision (a)(3). As a result, in some situations, it was extremely difficult and expensive or even impossible to establish such matters as birth, legitimacy, marriage, death, or a will.

The problem described above was particularly troublesome in the case of a foreign will because Probate Code Section 361 was amended at the 1969 session to provide that a copy of a foreign will (and the related documents concerning the establishment or proof of the will in the foreign country) can be admitted in California "if such copy or other evidence satisfies the

requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code."

When Section 1530 of the Evidence Code was drafted in 1964, the Commission had the benefit of a proposed amendment to Rule 44 of the Federal Rules of Civil Procedure and based subdivision (a)(3) on that proposed amendment. After the Evidence Code was enacted in 1965, Rule 44 was revised (in 1966) to provide for proof of foreign official records. In the revision of Rule 44 in 1966, the defect pointed out above was discovered and provision was made in Rule 44 to cover the problem.

Rule 44 (as revised in 1966) includes the following provision to deal with the East Germany type of case:

If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

The Note of the Advisory Committee regarding revised Rule 44 states:

Although the amended rule will generally facilitate proof of foreign official records, it is recognized that in some situations it may be difficult or even impossible to satisfy the basic requirements of the rule. There may be no United States consul in a particular foreign country; the foreign officials may not cooperate, peculiarities may exist or arise hereafter in the law or practice of a foreign country. See *United States v. Grabina*, 119 F.2d 863 (2d Cir. 1941); and, generally, Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform*, 62 Yale L.J. 515, 548-49 (1953). Therefore the final sentence of subdivision (a)(2) provides the court with discretion to admit an attested copy of a record without a final certification, or an attested summary of a record with or without a final certification. See Rep. of Comm. on Comparative Civ. Proc. & Prac., Proc. A.B.A., Sec. Int'l & Comp. L. 123, 130-31 (1952); Model Code of Evidence §§ 517, 519 (1942). This relaxation should be permitted only when it is shown that the party has been unable to satisfy the basic requirements of the amended rule despite his reasonable efforts. Moreover it is specially provided that the parties must be given a reasonable opportunity in these cases to examine into the authenticity and accuracy of the copy or summary.

Senate Bill No. 266 adds the substance of the sentence of Rule 44 quoted above, making only those changes needed to conform the language of that sentence to the language used in Section 1530. The bill also adopts the language of Rule 44 which specifies the officers who can make the final certificate. The change made by adopting this language is to restrict the United States foreign service officers who can make the final certificate to certain specified responsible officers and to liberalize the provision by permitting "a diplomatic or consular official of the foreign country assigned or accredited to the United States" to make the final certificate. This latter conforming change achieves desirable conformity with Rule 44 and liberalizes the rule but at the same time assures that a responsible official will make the final certificate.

8/10/70

EXHIBIT III

TOPICS TO BE DROPPED FROM CALENDAR OF TOPICS

STUDY RELATING TO TAKING INSTRUCTIONS TO THE JURY ROOM

In 1955, the Commission was authorized to make a study to determine whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.¹ The Commission published a recommendation and study on this topic in November 1956.² A bill was introduced at the 1957 session of the Legislature to effectuate that recommendation. However, the Commission determined not to seek enactment of the bill because it concluded that further study was needed of the procedural problems involved in making a copy of the court's instructions available to the jury in the jury room.

The Commission concluded that the procedural problems in providing the jury with a copy of the instructions could be best solved by rules adopted by the Judicial Council. However, the Commission was advised by the Judicial Council that the Council is opposed as a matter of policy to the taking of instructions into the jury room. After further consideration and study by the Commission, including solicitation of the views of both judges and practicing attorneys, the Commission concludes that it would not be desirable to recommend legislation on this topic and recommends that the topic be dropped from its agenda.

1. This study was authorized by Cal. Stats. 1955, Res. Ch. 207, p. 4207. For a description of the topic, see 1 CAL. L. REVISION COMM'N REPORTS, 1955 Report at 28 (1957).
2. See Recommendation and Study Relating to Taking Instructions to the Jury Room, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959).

STUDY RELATING TO TRIAL PREFERENCES

In 1969, the Commission was authorized to make a study to determine whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised.¹ The Commission solicited the view of the presiding judge of the superior court in each county whether the existing statutory provisions giving trial preference to certain actions and proceedings create significant problems in the administration of the court's business in his county. The overwhelming consensus of the presiding judges² is that these provisions create no significant problems of judicial administration. Accordingly, the Commission has decided not to recommend any legislation on this topic and recommends that the topic be dropped from its agenda.

1. Cal. Stats. 1969, Res. Ch. 224.

2. Without exception, the judges who responded reported that the existing statutory provisions do not create any significant problems in the administration of justice. A minority of the judges suggested that the number of priorities be reduced; a majority recommended no change in existing law. The judges who responded included: Hon. Lyle E. Cook, Alameda County; Hon. Jean Morony, Butte County; Hon. Robert J. Cooney, Contra Costa County; Hon. Joseph A. Wapner, Los Angeles County; Hon. Joseph G. Wilson, Marin County; Hon. Stanley Lawson, Monterey County; Hon. Leo A. Deegan, Riverside County; Hon. Margaret J. Morris, San Bernardino County; Hon. Timothy I. O'Reilly, San Luis Obispo County; Hon. Charles S. Franich, Santa Cruz County; Hon. Richard B. Eaton, Shasta County; Hon. J. E. Barr, Siskiyou County; Hon. Raymond J. Sherwin, Solano County; Hon. William Zeff, Stanislaus County; Hon. Curtiss E. Wetter, Tehama County; Hon. Ross A. Carkeet, Tuolumne County; Hon. Jerome H. Berenson, Ventura County; Hon. John Locke, Visalia County; and Hon. James C. McDermott, Yolo County.

TOPICS UPON WHICH STUDY COMPLETED AND LEGISLATION ENACTED

On the following topics, studies and recommendations relating to the topic have been made and legislation enacted. Because of their nature, these topics do not need to be continued on the Commission's Calendar for further study.¹

1. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person (Cal. Stats. 1957, Res. Ch. 202, p. 4589).²

2. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).³

3. Whether Vehicle Code Section 17150 and related statutes should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats.

1. Some of the topics upon which studies and recommendations have been made are nevertheless retained 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. See page supra.

2. See 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). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). See also 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). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 18 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Chs. 457 and 458.

3. See Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 201 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 99 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 156.

1962, Res. Ch. 23, p. 94).⁴

4. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁵

5. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised (Cal. Stats. 1958, Res. Ch. 61, p. 135).⁶

6. Whether the law relating to additur and remittitur should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁷

4. See Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 702.

5. See Recommendation and Study Relating to The Good Faith Improver of Land Owned by Another, 8 CAL. L. REVISION COMM'N REPORTS 801 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

See also Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another, 8 CAL. L. REVISION COMM'N REPORTS at 1373 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 150.

6. See Recommendation and Study Relating to Representations as to the Credit of Third Persons and the Statute of Frauds (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 701 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS (1970). The recommended legislation was enacted in a modified form. See Cal. Stats. 1970, Ch. .

7. See Recommendation and Study Relating to Additur, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 72.

See also Recommendation Relating to Additur and Remittitur (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 63 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 99 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 115.

7. Whether Civil Code Section 715.8 (rule against perpetuities) should be revised or repealed (Cal. Stats. 1969, Res. Ch. 224; see also 9 CAL. L. REVISION COMM'N REPORTS at 28 (1969)).⁸

8. See Recommendation and Study Relating to the "Vesting" of Interests Under the Rule Against Perpetuities (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 901 (1969). For a legislative history of this recommendation, see 10 Cal. L. REVISION COMM'N REPORTS (1970). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 45.

LAW REVISION COMMISSION

Headquarters Office at Stanford University

SUMMARY OF PROGRAM REQUIREMENTS

Law revision (General Fund) -----
 Personnel man-years -----

ACTUAL 1968-69	ESTIMATED 1969-70	PROPOSED 1970-71
\$144,051	\$160,054	\$162,818
8.3	8	8

Need

The commission assists the Legislature in keeping the law up to date by intensively studying complex and controversial subjects, identifying major policy questions for legislative attention, gathering the views of interested persons and organizations, and drafting recommended legislation for legislative consideration. The commission also identifies deficiencies in the law that might not otherwise come to legislative attention and recommends corrective legislation.

The efforts of the commission permit the Legislature to devote its time to determining significant policy questions rather than having to be concerned with the technical problems involved in preparing background studies, working out intricate legal problems, and drafting needed legislation. The output of the commission thus permits the Legislature to accomplish needed reforms that the Legislature might otherwise not be able to effect because of the heavy demands on legislative time. In some cases, the commission's study results in a determination that no legislation on a particular topic is needed, thus relieving the Legislature of the burden of devoting its time to the study of such topic.

Objectives

The primary objective of the California Law Revision Commission is to study the statutory and decisional law of this state to discover defects and anachronisms and to recommend legislation to effect needed reforms. The subjects of commission study are designated by concurrent resolution of the Legislature. The commission consists of a Member of the Senate

appointed by the Committee on Rules, a Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel is an ex officio nonvoting member of the commission.

Output

The basic measure of the commission's output is the number of statute sections recommended to be added, amended, or repealed at a given session. This is not an accurate measure of output, however, since one statute section dealing with a complex, controversial problem may require substantially more resources than 50 sections dealing with a relatively simple, noncontroversial problem.

	Actual 1968-70	Estimated 1970-71	Estimated 1971-72
Sections enacted -----	98	—	—
Sections recommended -----	106	163	100

Another measure of the commission's output is the number of printed pages contained in material published in a given fiscal year. To some extent, this reflects the commission's actual output since the complexity of the legal problem involved is generally reflected in the number of pages required to discuss the problem. However, the commission strives for conciseness in its publications in order to minimize printing costs and to reduce the volume of material that must be considered by the Legislature and other interested persons. Consequently, the more editorial resources that are devoted to a particular publication, the more likely that it can and will be shortened.

LAW REVISION COMMISSION—Continued

	Actual 1968-70	Estimated 1970-71	Estimated (97)-72
Commission reports (printed pages)	292	245	300
Background studies published in law reviews (printed pages)	—	134	150

Authority

Section 10330 of the Government Code.

General Description

~~First paragraph to be replaced]~~
The workload of this commission is determined primarily by the number of topics assigned to it by the Legislature. The commission now has an agenda of 30 topics referred to it by the Legislature for study, including six new topics that were referred to the commission by the 1969 Legislature. Work has been substantially completed on 13 of the 30 topics, and

the commission plans to recommend to the 1970 Legislature that two other topics be dropped from its agenda.

During the next four years, the commission will devote most of its efforts to preparing recommendations relating to condemnation law and procedure and to inverse condemnation—two topics which legislative committees have directed the commission to give priority. Other recommendations on smaller topics will be submitted to the Legislature during this period.

Present staffing of the commission is adequate to handle the anticipated workload during 1970-72. Delay in completing work on major topics now under study is unavoidable because the studies are complex and controversial.

PROGRAM REQUIREMENTS	PERSONNEL MAN-YEARS 68-69 69-70 70-71			ACTUAL 1968-69	ESTIMATED 1969-70	PROPOSED 1970-71
Totals, Law Revision (General Fund)	8.3	8	8	\$144,061	\$169,864	\$162,818

SUMMARY BY OBJECT	PERSONNEL MAN-YEARS 68-69 69-70 70-71			ACTUAL 1968-69	ESTIMATED 1969-70	PROPOSED 1970-71
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STATE OPERATIONS

PERSONAL SERVICES

Authorized positions	8.3	8	8	\$95,863	\$112,649	\$116,433
Estimated salary savings	—	—	—	—	-1,312	-3,695
Net Totals, Salaries and Wages ..	8.3	8	8	\$95,863	\$112,337	\$110,738
Staff benefits	—	—	—	8,765	11,143	11,180
Totals, Personal Services	8.3	8	8	\$104,648	\$123,480	\$121,918
Operating expenses and equipment	—	—	—	39,408	46,174	40,900
Total Expenditures (General Fund)	—	—	—	\$144,061	\$169,654	\$162,818

EXPENDITURES	ACTUAL 1968-69	ESTIMATED 1969-70	PROPOSED 1970-71
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RECONCILIATION WITH APPROPRIATIONS

STATE OPERATIONS

General Fund

APPROPRIATIONS

Budget Act appropriation	\$154,579	\$162,922	\$162,818
Allocations from Salary Increase Fund	5,677	5,964	—
Total Available	\$160,256	\$168,886	\$162,818
Unexpended balance, estimated savings	-16,205	-202	—
TOTAL EXPENDITURES	\$144,051	\$168,684	\$162,818

REVENUES

Miscellaneous (General Fund)	\$610	\$660	\$700
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