

Memorandum 82-78

Subject: Study M-100 - Progress Report by Consultant on Statutes
of Limitations on Felonies

Attached is a progress report from Professor Gerald F. Uelmen, our consultant on the study of the statutes of limitations on felonies.

Professor Uelmen will meet with the Commission on Thursday evening, September 23. The Commission has previously determined that it desired that the consultant appear at a Commission meeting and make a progress report. The purpose of having the consultant meet with the Commission is stated in the Minutes of the January 18-20, 1982, Meeting, as follows:

In some cases, the Commission may invite the consultant to meet with the Commission before commencing work on the background study to discuss the scope of the study and the methodology of the study so that the Commission will gain some understanding of the subject matter to be studied and so that the background study will discuss all of the matters and include all of the information the Commission believes would be useful to the Commission in considering the particular topic.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



LOYOLA LAW SCHOOL

MEMO TO: California Law Revision commission

FROM: Professor Gerald F. Uelman

DATE: September 8, 1982

RE: Progress Report, Statutes of Limitations on Felonies.

A survey of legal literature discloses five factors offered with some frequency to justify the duration of statutory limitations on the prosecution of criminal cases.

1. The Staleness Factor. The purpose of the statute of limitations is viewed as a means of protecting an accused both from having to face charges based on evidence which may be unreliable, and from losing access to the evidentiary means to defend against an accusation of crime. The duration of the statute would then turn on the evidentiary means by which the crime is ordinarily proven or defended against. A crime usually proven by documentary evidence, for example, would justify a longer statutory period than one usually proven by eye-witness testimony.
2. The Discovery Factor. A longer statute is deemed necessary for crimes which are ordinarily concealed for an extended period of time, such as embezzlement, bribery or forgery. In many jurisdictions, this problem is dealt with by delaying commencement of the statute until discovery of the crime, rather than by extending the statutory period. Another approach is to "toll" the statute when it can be shown that defendant concealed the crime.
3. The Investigation Factor. A longer statute is justified by the length and complexity of the investigative activity necessary to solve some crimes. This factor differs from the Discovery Factor, in that even though a crime is disclosed immediately after its commission, the nature of the crime may require lengthy investigation before the perpetrators are identified. Kidnapping and arson are most often offered as examples of this kind of crime.
4. The Motivation Factor. The statute is viewed as a "deadline" to motivate efficient police work and insure against bureaucratic delays in investigating crime. In an era when crime rates far outstrip the dwindling resources of law enforcement agencies, a shorter statute can be utilized to establish higher priority for the investigation of some crimes.

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5. The Seriousness Factor. Since lapse of the statute operates to grant amnesty to an offender, the more serious the crime, the less generous we may want to be in cutting off potential liability. This factor raises serious questions about the purpose of criminal punishment, since its utilization implies recognition of the retributive purpose of punishment for crime. Nonetheless, it appears to be the main rationale supporting the widely accepted pattern of establishing a shorter statute of limitations for misdemeanors than felonies, and having no statute of limitations at all for the crime of murder.

Each of these factors is based on underlying premises or assumptions which should be challenged and tested. The scope of the study adopted by the Commission called for the views of knowledgeable and experienced prosecutors, defense attorneys and judges to be taken into account. I plan to prepare a survey instrument to elicit their views on (1) whether crimes can be realistically categorized by the kind of evidence "ordinarily" utilized by prosecution and defense, and to identify any such crimes; (2) which crimes are "ordinarily" concealed, and the comparative advantages and disadvantages of an extended statutory period, delayed commencement of the statutory period, or "tolling" as the best means to compensate for such concealment; (3) whether the need for lengthier investigation can be anticipated for some crimes, and what those crimes are, and (4) whether the "deadline" of a statute does in fact motivate investigations, and whether such motivation would be more useful for some crimes than others. I would like to elicit police views on the last two questions as well, although not called for.

I also want to explore ramifications of one of the practical problems frequently encountered in situations where the statute is extended simply on the basis of the seriousness of a crime. Such a crime invariably encompasses "lesser included offenses." Where the statute is extended for the "greater" offense but not the "lesser" offense, a defendant may have to be acquitted although the evidence proves his guilt of a lesser included offense, because the statute has run on the lesser offense. I believe this problem will be of great significance with respect to the offenses added to California's 6 year Statute of Limitations in 1981.

A survey of the felony statutes of limitations in each of the fifty states has revealed a surprising degree of legislative activity in recent years in modifying the period of limitations for specific crimes. I plan to analyze this data for trends, and investigate the legislative history of changes which exemplify the trends I can identify.

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The final stage of this study will be an evaluation and ranking of the relative importance of the factors. I then plan to apply the criteria thus formulated to the current California Statutes of Limitations, which are summarized in the attached Appenix.

APPENDIX
CURRENT CALIFORNIA
STATUTES OF LIMITATIONS

California felonies presently fall into one of four categories with respect to the Statute of Limitations. The date each offense was added to a particular category is indicated in parentheses.

- A. No Limitation - P.C. §799
P.C. §187 - Murder (1872)
P.C. §424 - Embezzlement of Public Moneys (1891)
Gov.C. §6200- Falsification of Public Records (1891)
P.C. §209 - Kidnapping (1970)
- B. Six Years After Commission of Crime - P.C. §800(b)
P.C. §§68, 85, 93, 165;
Elec.C. §29160 - Acceptance of bribe by Public Official (1941)
P.C. §261 - Rape (1981)
P.C. §264.1 - Rape Acting in Concert (1981)
P.C. §286(c) - Sodomy by force or with Person under 14 (1981)
P.C. §286(d) - Sodomy Acting in Concert (1981)
P.C. §286(f) - Sodomy with Unconscious Victim (1981)
P.C. §288 - Lewd Acts with Person under 14 (1981)
P.C. §288a(c) - Oral Copulation by force or with Person Under 14 (1981)
P.C. §288a(d) - Oral Copulation Acting in Concert (1981)
P.C. §288a(f) - Oral Copulation with Unconscious Victim(1981)
P.C. §289 - Rape by foreign object (1981)
- C. Three Years After Discovery of Crime - P.C. §800(c)
P.C. §487 - Grand Theft (1969)
P.C. §192(1) - Voluntary Manslaughter (1971)
P.C. §192(2) - Involuntary Manslaughter (1971)
P.C. §72 - Fraudulent Claim Against Government (1972)
P.C. §118 - Perjury (1972)
P.C. §118a - False Affidavit (1972)
Gov.C. §1090 - Conflict of Interest by Public Official (1972)
Gov.C. §27443 - Conflict of Interest by Public Administrator (1972)
P.C. §132 - Offering False Evidence (1975)
P.C. §134 - Preparing False Evidence (1975)
Corp.C. §25540 - All Violations of Corporate Securities Law (1978)
Corp.C. §25541 - Fraud in offer, purchase or sale of Securities (1978)
- D. Three Years After Commission of Crime - P.C. §800(a)
All felonies not specified above.

California misdemeanors are all subject to a Statute of Limitations of one year after commission. P.C. §801(a). If an offense may be punished as either a felony or a misdemeanor, the felony Statute of Limitations applies. P.C. §801(b).