

Study K-200

September 12, 2002

## First Supplement to Memorandum 2002-41

### Comparison of Evidence Code with Federal Rules: Comments of Professor Slomanson

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Memorandum 2002-41 raises an issue regarding the scope of this study: Should the Commission focus only on whether to conform provisions in the Evidence Code to the corresponding Federal Rules, or should it also consider other possible reforms? Due to the Commission's limited resources, the staff recommendation is to focus primarily on potential reforms that are now incorporated into the Federal Rules. Memorandum 2002-41, pp. 5-6.

Professor William Slomanson of Thomas Jefferson School of Law concurs. He views the situation as a choice between "shooting for the stars" and "being content with landing on the moon again." In his opinion, the latter goal is sufficiently ambitious:

... CLRC will accomplish much more by limiting this project — certainly in the early going and probably for the duration — to "baby steps" as some critics might call them. It has now taken twenty-six years to actually move on Jack Friedenthal's background study regarding the differences in the then fresh FRE.

Now that you are poised to assess/present potential changes to the CA Evidence Code, it is my hope that the prevailing view will be to undertake the comparison which Prof. Mendez is well-suited to orchestrate, and not to broaden this study to all possible changes so as to include a third set of rules (drawn from other jurisdictions, and any "clean slate" approaches as suggested in law review analyses from other states). The "intellectual stimulation" of assessing three or more jurisdictions will bog down a dedicated group whose priorities probably do not allow the luxury of writing the elusive "perfect" evidence code. Your group will, at a minimum, close gaps or eliminate the kinds of Code v. FRE differences which carry the impermissible odor of forum shopping

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Email from William Slomanson to Barbara Gaal (Sept. 9, 2002).

Respectfully submitted,

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Staff Counsel