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LEGISLATIVE COUNSEL

STATE OF CALIFORNIA

California Law Revision Commission

October 8, 1954

MINUTES OF MEETING

OF

SEPTEMBER 23 AND SEPTEMBER 24, 1954

Pursuant to the call of the Chairman, the California Law Revision Commission met at 9:30 A.M. at the Patio Room of the Hotel del Coronado, Coronado, California on September 23, 1954 and at 9:30 A.M. at the Crest Room of the Hotel U. S. Grant in San Diego, California on September 24, 1954.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman

Honorable Jess R. Dorsey, Senate

Mr. John D. Babbage

Mr. Richard C. Fildew

Mr. Bert W. Levit

Mr. Samuel D. Thurman

Mr. Ralph N. Kleps, ex officio

ABSENT:

Honorable Stanford C. Shaw, Assembly

Mr. John H. Swan

Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was present. Mr. Norris Burke, Chief Research Attorney

for the Judicial Council was present during a part of the meeting on Thursday, September 23. During a part of the meeting on Thursday a number of members of the Bench and Bar were also present at the invitation of the Commission to make suggestions for substantive law revision.

A motion was made by Mr. Thurman, seconded by Mr. Babbage and unanimously passed that the Minutes of the Meetings of the Commission of July 17 and August 28 be approved.

Probate Code Study

The Executive Secretary reported that a contract had been negotiated with Mr. Paul E. Basye to do the Probate Code study under Assembly Concurrent Resolution No. 8 for an honorarium of between \$750 and \$1,000 to be fixed after the work is done in accordance with the time required to do it. This contract was negotiated pursuant to authority given to the Chairman at the last meeting. A motion was made by Mr. Levit, seconded by Mr. Fildew, and unanimously passed that the contract made with Mr. Basye be ratified by the Commission. The Chairman then appointed a committee of the Commission, consisting of Commissioners Levit and Thurman, to supervise the study to be made by Mr. Basye. Mr. Levit was appointed Chairman of the Committee.

Discussion of Relationship to Judicial Council

The Commission discussed its relationship to the Judicial Council. The Chairman reported that he had written to Chief Justice

Gibson inviting him to attend this meeting of the Commission and that the Chief Justice had reported that he would not be able to attend but that he had asked Mr. Norris Burke, Chief Research Attorney of the Judicial Council, to attend and discuss with the Commission the question of its relationship to the Judicial Council. Mr. Burke was present and was introduced to the members of the Commission. Mr. Burke was then invited to state his views as to the scope of the Judicial Council's function and its relationship to the Law Revision Commission.

Mr. Burke stated that the two major current projects of the Judicial Council are (1) the revision of Article VI of the California Constitution and (2) a proposal for the adoption of pre-trial procedure.

Mr. Burke stated that in his opinion one of the outstanding needs for law revision in California is a revision of the Constitution. He sketched briefly the history of attempts to revise the present Constitution. He stated that it seems apparent that an over-all revision of the Constitution is not feasible and suggested that a worthwhile project might be to attempt in several succeeding general elections to achieve deletion of much of the material now found in the Constitution, in order to provide a basis for a more affirmative revision effort. He suggested in particular that Article X and Sections 1 to 16 of Article XII should be repealed.

In response to a question from Chairman Stanton, Mr. Burke stated that in his opinion the jurisdiction of the Judicial Council extends to civil, probate, and criminal procedure, i.e. the areas falling within three of the four original California Codes. He stated, however, that he believes that there is sufficient work to

be done to enable both the Judicial Council and the Commission to function in all of these areas. In response to another question from Chairman Stanton, Mr. Burke said that the Judicial Council would be happy to receive suggestions from the Law Revision Commission relating to fields in which the Judicial Council is interested. He suggested the Commission might confer informally with him and that he could then present the suggestions to the Judicial Council for consideration.

Mr. Kleps stated that he doubted that the Judicial Council has acted on suggestions for law revision received from outside sources to any great extent. He said that the staff of the Council has worked usually on one or two major projects in each biennium; for example, the Rules on Appeal project, the Administrative Law project, and the Inferior Court Reorganization project. The relationship between the Commission and the Judicial Council was further discussed at considerable length by the members of the Commission and Mr. Burke. At the end of this discussion Mr. Burke left the meeting.

Discussion of Report to Legislature

The Commission discussed the form which its first report to the Legislature should take. At the end of the discussion a motion was made by Mr. Levit, seconded by Senator Dorsey, and unanimously passed that the Executive Secretary be instructed to prepare a preliminary draft of the Commission's first report; that the report should be in the form of a single report to cover what the Commission

has been doing, what it proposes to do -- i.e., its Agenda - and its specific recommendations to the Legislature; and that the report should have separate appendices on the Education Code project, the Probate Code project and the Agenda. It was agreed that the Commission's report should be submitted to the Legislature in such a way that it would be printed in the Journal without the appendices, and that arrangements be made, if possible, to have the appendices separately printed.

Preliminary Discussion of Agenda

The Commission discussed what general principles should be followed in preparing its first Calendar of topics selected for study to be reported to the Legislature in January. Chairman Stanton raised the question whether the Commission should now decide whether certain categories of subjects should be included in the Commission's work and other categories excluded. Senator Dorsey expressed the view that the Commission should be careful not to put on its first Calendar matters which are highly controversial, e.g., comparative negligence. Mr. Kleps stated that he believes that the Commission should have a relatively small number of items on its first Calendar - e.g., that ten items would be better than fifty - in order to minimize conflict with the Interim Committees of the Legislature. Mr. Fildew raised the question whether the Commission could not have a category of miscellaneous minor substantive changes as a part of its agenda. These would not involve problems requiring extended study but would be concerned with the correction of relatively minor defects in the law. Mr. Levit raised the question whether the Commission should not seek

authority from the Legislature to act as a clearing-house for suggestions for law revision from various persons in the State; the Commission would then report to the Legislature two categories of matters (1) a group which the Commission would propose to study in an extensive way; (2) a group which would not require extensive study but could be acted upon at once.

Suggestions for Law Revision from Members
of Bench and Bar

On the afternoon of Thursday, September 23, beginning at 3:00 o'clock, the Commission received members of the Bench and Bar who responded to the Commission's general invitation to attend the meeting for the purpose of making suggestions for substantive revision of the law. The persons who attended the meeting of the Commission included Mr. Norris Burke, Mr. Max Gilford of Hollywood, Mr. Garrett Elmore of the State Bar and Secretary of the Committee on the Administration of Justice, Mr. Frank Davis of Hollywood, Mr. Francis J. Carr of San Francisco, Mr. Carlyle Miller of Santa Cruz, Judge Raymond Peters of San Francisco, Mrs. Frank Baker, representing her husband, Mr. Frank Baker, of the Bancroft-Whitney Company of San Francisco, Assemblyman S. C. Masterson of Richmond, Mr. Proffitt of Oakland, Dean William Prosser of Bealt Hall, and Mr. Homer Cretty of Los Angeles. The following suggestions were made:

1. Mr. Max Gilford suggested that the Constitution of California be revised and stated that he has some materials which may be of interest if this project is undertaken.

2. Mr. Garrett Elmore reported that the Committee on Administration of Justice of the State Bar has requested the Board of Governors of the State Bar to request the Commission to study the possibility of achieving greater uniformity with respect to the various statutes in California relating to procedures to be followed in presenting claims against governmental agencies. He reported that there is material on this subject in 29 State Bar Journal 230 and in the Supplement to the Second Progress Report of the Senate Interim Judiciary Committee, 1953 Regular Session. He stated that the problem embraces claims both in the area of contracts and of torts and that the Committee on the Administration of Justice has wrestled with the problem unsuccessfully for two or three years. He reported that no State Bar Committee is now working on the subject.

3. Mr. Frank Davis of the Hollywood Bar suggested that in the case of persons who have been juvenile delinquents and have been rehabilitated some procedure ought to be available to expunge the record of their juvenile delinquency and to make it possible for them to make application for licenses, etc., without disclosing this fact.

4. Judge Peters elaborated on his suggestion to the Commission that statutory instructions be enacted for use in personal injury cases, concerning such matters as negligence, contributory negligence, proximate cause, etc. There was considerable discussion of whether statutory instructions on abstract principles of law would meet the problem. Judge Peters said that they have done so in the case of certain instructions in criminal cases.

5. Judge Peters suggested that the Commission might also consider the problem whether decisions of the Appellate Departments of the Superior Court should be subjected to review.

6. Mr. Homer Crotty suggested that the Commission consider the problem of the establishment of minimum standards of judicial administration in California. In this connection he called attention to the book on this subject written some years ago by Chief Justice Vanderbilt of the New Jersey Supreme Court.

7. The Commission also received the suggestion that it consider whether California should adopt the Federal rule prohibiting the use of evidence which is illegally obtained.

Dean Presser of the Law School at the University of California was introduced and Chairman Stanton asked him for his opinion respecting whether the Commission should undertake a study of imputed negligence between husband and wife in California. Dean Presser stated that while in general he believes that the Law Revision Commission must concern itself with controversial matters if it is to be effective, it may possibly be unwise to put a subject as controversial as that of imputed negligence on its Calendar in the first year of its operation.

Agenda Matters

The Executive Secretary reported that expenditures under the Agenda contract with Stanford University to September 15 totalled \$1,197.22 (\$957.67 for research services, \$165.75 for stenographic services and \$73.80 for supplies) leaving \$802.78 still available of the original \$2,000 appropriation. The

Executive Secretary reported that the Agenda contract with Stanford will terminate by its terms on October 31. He reported that Stanford's work under the contract has been very satisfactory and that the study and reports being made pursuant to the contract ought to be continued to enable the Commission to prepare its Agenda as provided in Section 10335 of the Government Code. The Executive Secretary suggested that the Agenda contract with Stanford be extended to June 30, 1955 and that additional funds be made available. After this proposal was discussed, Mr. Babbage made a motion which was seconded by Mr. Thurman and unanimously passed that the Commission's Agenda contract with Stanford University be extended to June 30, 1955 and that additional funds in the amount of \$1,000 be made available to finance the contract.

The Commission decided that in the future matters to be considered for inclusion on the Commission's Calendar will be first considered by a Committee of the Commission which shall make a report and recommendations to the Commission.

The Executive Secretary was directed to have a study made to determine what California statutes, if any, have been declared unconstitutional by the Supreme Court of the United States or the Supreme Court of California since the last report of the Legislative Counsel on this subject, so that these statutes can be reported to the Legislature in accordance with Section 10331 of the Government Code.

Calendar of Topics Proposed for Study

The Commission considered a number of suggestions which it has received from members of the Bench and Bar with respect to

topics to be included on its Calendar of topics selected for study to be reported to the Legislature in January. It was decided that each suggestion considered would be tentatively put in one of five categories:

1) Current Agenda - Suggestions tentatively accepted for inclusion on the Commission's first Calendar to be reported to the Legislature in January, 1955.

2) Deferred - Suggestions which the Commission deems worthy of study in the near future but does not wish to include on its first Calendar.

3) Postponed - Suggestions which the Commission deems worthy of study after the topics included on the Current and Deferred lists have been studied.

4) Not Accepted - Suggestions which the Commission decided not to study.

5) Under Investigation - Suggestions requiring further investigation before the Commission can decide what action to take upon them.

The following disposition was made of 1954 Suggestions Nos. 1 through 37 as a result of discussion of them by the Commission:

Current Agenda

Nos. 10, 31(1) and 31(2) - Study to determine whether Hearsay Rule in California should be revised.

No. 14(1) - Study to determine whether §§1377 and 1378 of the Penal Code, relating to compromise of certain misdemeanor offenses, should be revised particularly in light of the repeal of §811 of the Penal Code.

No. 15(3) - Study to determine whether a statute should be enacted rendering it unnecessary in quiet title suits against deceased persons to have an administrator appointed.

No. 23(3) - Study to determine whether §65808 of the Government Code, relating to procedure when a city or county legislative body performs the functions of a planning commission should be revised.

No. 33 - Study to determine whether §137.3 of the Civil Code should be amended to provide that in default divorce and annulment cases the court may allow reasonable attorney fees and costs without a previous order to show cause or notice of motion if the same are prayed in the complaint.

Deferred

Nos. 2 and 25 - Study to determine whether it would be desirable and feasible to enact statutory instructions for personal injury cases to cover such matters as negligence, contributory negligence, proximate cause, res ipsa loquitur and last clear chance.

Nos. 5, 8, 27 and 30 - Study to determine whether the commitment procedures for mentally ill persons set forth in the Welfare and Institutions Code should be revised, with particular attention to the commitment procedures in respect of sexual psychopaths.

No. 36 - Study to determine whether the California rule imputing the negligence of one spouse to another when the recovery will be community property should be abolished or modified.

Postponed

No. 4 - Study to determine whether the words "to a moral certainty" should be eliminated from §1096 of the Penal Code and instructions in criminal cases.

No. 13(2) - Study to determine whether §1962 of the Code of Civil Procedure, which creates a conclusive presumption that the issue of a wife cohabiting with her husband is legitimate, should be revised to provide an exception when a blood test would normally be given the effect of negating paternity under §1980.6 of the Code of Civil Procedure.

Not Accepted

No. 1 - Suggestion by Assemblyman Conrad that the Commission consider whether it would welcome an assignment to standardize election procedures in California.

- No. 11 - Suggestion that the Commission consider certain proposed amendments of the statutes dealing with procedure in connection with decrees confirming, vacating or modifying awards made in arbitration proceedings.
- No. 12(1) - Suggestion that the rule permitting a defendant to be impeached by proof of a former conviction of crime be repealed.
- No. 12(2) - Suggestion that the rule that former criminal acts of a defendant in a criminal case may be shown to prove scheme, plan, or motive be repealed.
- No. 12(3) - Suggestion that a defendant's attorney be given the same access to witnesses in juvenile halls and under the jurisdiction of juvenile officers as prosecuting attorneys now have.
- No. 12(4) - Suggestion that when several defendants are charged with a crime and one of them is on probation, a hearing on whether or not probation should be revoked should not be held prior to the trial of the fellow defendants.
- No. 12(5) - Suggestion that a law be passed permitting an attorney constitutionally to have one peremptory challenge to a judge.
- No. 14(2) - Suggestion that the California habitual criminal statutes be made more strict.
- No. 15(1) - Suggestion that consideration be given the adoption of the Federal Rules of Civil Procedure in California.
- No. 15(2) - Suggestion that the statutory sections on mechanics lien laws be revised.
- No. 18(1) - Suggestion that the penalty on second offense drunken drivers under §502 of the California Vehicle Code be lowered in order to place second offenses within the jurisdiction of the lower courts.
- No. 18(2) - Suggestion that Vehicle Code §743, permitting a peremptory challenge to a judge in certain traffic cases, be repealed.
- No. 22(b) - Suggestion that provision be made for the taking of depositions of witnesses residing out of state in small claims actions.
- No. 23(1) - Suggestion that the jurisdiction of the small claims court be enlarged from \$100 to \$300.
- No. 24 - Suggestion that Code of Civil Procedure §538.3 be amended to provide that the minimum amount for which an attachment will issue be \$20 instead of \$30.

No. 28(3) - Suggestion that provision be made to give absentee ballots to cloistered nuns who are not permitted by the rules of their order to leave the convent.

No. 31(3) - Suggestion that the Code exemptions from jury duty be revised to limit the exemptions.

Under Investigation

- No. 3 (check with Judicial Council)
- No. 6 (check first suggestion with Probate Code project and second with Controller's office)
- No. 7 (report in process)
- No. 9 (report in process)
- No. 10 (1) (check with State Bar)
- No. 16 (check with State Bar)
- No. 17 (report in process)
- No. 19 (report in process)
- No. 20 (report in process)
- No. 21 (report in process)
- No. 22A (report in process)
- No. 26 (report in process)
- No. 28(1) (refer to Legislative Counsel)
- No. 28(2) (refer to Legislative Counsel)
- No. 29 (report in process)
- No. 32 (Mr. Kleps will discuss with Judge Halbert and report to Commission)
- No. 34 (report in process)
- No. 35 (report in process)
- No. 37 (check with State Bar)

Proposed Budget for 1955-56

The Executive Secretary submitted a revised draft of a budget of the Commission for fiscal year 1955-56. After discussion and some changes, the draft was approved and the Chairman was directed to submit the Commission's proposed budget to the Department of Finance to be supplemented by such information relating to the work of the Commission for fiscal year 1955-56 as may be available from time to time.

Education Code Project

The Executive Secretary reported that expenditures under the Commission's Education Code contract with Stanford University to September 15, 1954 totalled \$3,835.49 (\$2,830.90 for research services, \$699.26 for stenographic services and \$305.33 for supplies), leaving a total of \$6,164.51 available for the \$10,000 committed to the contract. He reported that there is also available \$2,000 of the Education Code appropriation which has not yet been committed to the contract.

The Executive Secretary reported that it is necessary for Stanford University to find someone to assume direct supervision of the Education Code project. He stated that the University has been discussing with Mr. George Brunn, a Stanford law graduate of 1950 and a member of the Bar practicing in San Francisco, the possibility of his taking charge of the Education Code project at Stanford. Mr. Brunn would be paid a salary of \$800 per month. The Executive Secretary reported that in his opinion and that of other members of the Stanford faculty Mr. Brunn is well qualified to do the work.

The Executive Secretary also stated that Stanford is considering the employment of Mrs. Rignor Barker, a member of the Bar now practicing in Santa Barbara, as a Research Assistant under the Education Code contract at a salary of \$500 per month. He reported that Mrs. Barker graduated from the University of California Law School in 1927, served in the office of the District Attorney in Santa Barbara County for several years, and then served with the Department of Justice in New York and Washington for a number of years. Mrs. Barker has been given strong recommendations by her

superiors in all of these offices.

The Executive Secretary reported that if both Mr. Brunn and Mrs. Barker are hired, the Education Code appropriation of \$12,000 will be virtually exhausted by December 31, 1954. The staff assembled at Stanford to work on the Education Code project will then have to be disbanded unless other funds are made available. The Executive Secretary stated that in his opinion this would be most undesirable if the Commission is to be given a further assignment to revise the Code by the next Legislature because a new and inexperienced staff will then have to be assembled. He raised the question whether the work at Stanford might be continued after December 31, 1954 by (a) having the Commission appropriate a part of the research funds in its 1954-55 budget to carry on the work for a time after that date and (b) seeking a deficiency appropriation from the Legislature to carry on the work until the next regular appropriation for the Education Code revision project becomes available. This problem was discussed at length. Senator Dorsey and Mr. Kleps both expressed the opinion that it would be almost impossible to obtain a deficiency appropriation. It was therefore decided not to seek such an appropriation and, in consequence, not to utilize any of the Commission's research funds for the Education Code project. The project will terminate as of December 31, 1954, to be resumed by the Commission if, as, and when the Legislature directs the Commission to do so and makes the necessary funds available.

The Executive Secretary raised the question whether he should report to Dr. Pulliam's committee and to Assemblyman Geddes, the sponsor of the Education Code revision bill, the general situation

with respect to the revision project: (1) that work on the Education Code revision project will be terminated on December 31, 1954; (2) that the Commission will probably sponsor a limited number of bills to revise the Education Code in January; and (3) that the Commission will probably then report to the Legislature that the job is not yet done with an estimate of the time and money which would be required to finish it. After discussion, it was decided that these matters should be communicated to the Committee and to Assemblyman Geddes.

The Executive Secretary reported that the arrangement to have a group of educator-consultants assist in the revision of the Education Code has gone forward. He reported that more than 40 such consultants have been selected and that nearly all of them have indicated their willingness to serve. He reported that he has written to each of these consultants outlining his proposed participation in the project, which is to consist of making a careful study of parts of the Education Code assigned to him and reporting to the Commission sections which are, in his opinion, ambiguous, obsolete or conflicting. Each consultant will also receive for comment and criticism copies of the proposed revision of the Code prepared by the staff at Stanford which fall in the area assigned for him. The Executive Secretary reported that each of the consultants has been asked to send to the Commission by October 15 as many suggestions as he can and to send additional suggestions thereafter.

The Executive Secretary reported that the present circulation of proposed revisions of the Education Code is the following: 12 copies are sent to the State Department of Education and one copy each is sent to each member of Dr. Pulliam's Committee, each of the

educator-consultants concerned, the Attorney General's office, Mr. George Wakefield of the County Counsel's office in Los Angeles County, Mr. Ray Sullivan, County Counsel of Riverside County, and the professors of education administration at Stanford University and the University of California. This program of circulation of proposed revisions was approved.

The question of appointing committees of the Commission to study the proposed revisions of the Education Code prior to their presentation to the whole Commission was then discussed. It was decided that three committees shall be appointed:

Committee No. 1 -- Messrs. Stanton and Thurman

Committee No. 2 -- Messrs. Kleps and Swan

Committee No. 3 -- Messrs. Babbage and Fildew

The Chairman, assisted by the Executive Secretary, will assign proposed revisions of the Code to these Committees for study.

The Committees will meet with the Executive Secretary, discuss the proposals with him, and make recommendations concerning them to the Commission.

The Executive Secretary raised the question whether it would be agreeable, after the Commission has approved a particular proposed revision of the Code, for him to make minor changes therein with respect to such matters as punctuation, the elimination of minor unnecessary words, the capitalization or non-capitalization of letters, etc. The making of such minor changes without further consultation with the Commission was approved.

The Executive Secretary raised the question of who will draft the bills recommended by the Commission. After discussion, it was decided that the bills will be drafted by the Legislative Counsel's office.

The Commission discussed what procedure will be followed in handling the bills recommended by the Commission in the Legislature. It was agreed that the Legislative members of the Commission will sponsor the Commission's bills and that if possible, an arrangement should be made with the Legislature whereby the bills will be designated in such a way as to indicate that they are bills recommended by the Law Revision Commission.

The Commission considered whether it would approve in principle the proposed revisions of the provisions of the Education Code dealing with the appointment and election of school district governing board members which have been prepared by the staff at Stanford and sent to the members of the Commission. The Executive Secretary pointed out that these revisions involve a fairly thorough recasting of the provisions of the Code relating to these matters, requiring substantive revision in some cases in order to provide uniformity with respect to elections in various districts. After discussion, the Commission approved in principle this type of revision of the Education Code.

There being no further business, the meeting was adjourned at 3:45 P.M. Friday, September 24, 1954.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary