

NOV 7 1955

PROPOSED AGENDA FOR MEETING OF
CALIFORNIA LAW REVISION COMMISSION

November 11 and 12, 1955

1. Consideration of minutes of meeting of September 16 and 17, 1955.
2. Election of officers.
3. Report on Department of Finance hearing on budget for fiscal year 1956-57.
4. Consideration of report of Executive Secretary on arrangement with Stanford for Agenda research.
5. Consideration of communication from Special Study Commission on Correctional Facilities and Services (See Memorandum No. 1 enclosed herewith).
6. Consideration of policy re use of stenographic services by Executive Secretary (See Memorandum No. 2 enclosed herewith).
7. Consideration of Agenda matters (See memorandum mailed on Nov. 4, 1955).
8. Consideration of preliminary draft of 1956 Report of Commission to Legislature (to be sent to you shortly).
9. Consideration of Committee report on Venue study, staff study, and proposed Report and Recommendation of Commission (See Memorandum No. 3 enclosed herewith).

MINUTES OF MEETING

OF

NOVEMBER 11 and 12, 1955

Pursuant to the call of the Chairman, the Law Revision Commission met on November 11 and 12 at Los Angeles, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman

Mr. John D. Babbage, Vice-Chairman

Honorable Clark L. Bradley, Assembly

Mr. Joseph A. Ball

Mr. Bert W. Levit

Mr. Stanford C. Shaw

Mr. John H. Swan

ABSENT:

Honorable Jess R. Dorsey, Senate

Mr. Samuel D. Thurman

Mr. Ralph N. Kleps, ex officio

Mr. John R. McDonough, Jr., Executive Secretary of the commission, and Mrs. Virginia B. Nordby, Assistant Executive Secretary of the commission, were present.

The minutes of the meeting of the commission on September 16 and 17, 1955, which had been distributed to the members of the commission prior to the meeting, were approved.

An election of officers of the commission was held. Mr. Thomas E. Stanton, Jr. was unanimously re-elected Chairman and Mr. John D. Babbage

was unanimously re-elected Vice-Chairman. Both officers will hold office for a term of two years.

Mr. Babbage, Mr. Ball and Mr. Shaw reported that they had been notified by Governor Knight that they would be reappointed to the commission for terms of four years.

1. Administrative Matters

A. Budget for 1956-57: The Executive Secretary reported that the Department of Finance hearing on the commission's proposed budget for fiscal year 1956-57 was held on October 28 and that the only question raised by the Department concerned the item of \$3,500 for research services for studies which might be assigned by the Legislature in addition to those recommended by the commission. The Department representatives stated that State agencies often seek to justify budget items on the ground that they anticipate that additional work will be assigned to them by the Legislature and that the Department has taken the position that it would be unsound to allow items in agency budgets to cover such anticipated assignments. They said that they felt that this general policy applies to the Law Revision Commission as well as to any other State agency. They will, therefore, recommend that the \$3,500 item be deleted. However, the Department representatives stated that if the item is deleted and the Legislature should give the commission any special assignments, the Department will cooperate in amending the budget bill to allow the commission sufficient funds to complete such assignments.

B. Relationship with Special Study Commission on Correctional

Facilities and Services: The commission considered a request which the Chairman had received from Professor Austin H. MacCormick, Chairman of the Special Study Commission on Correctional Facilities and Services, that the Law Revision Commission give its assistance and cooperation to the Special Study Commission. Copies of Professor MacCormick's letter and a letter from Mr. Milton Burdman, Project Director for the Special Study Commission, and the replies of the Chairman and the Executive Secretary had been distributed to the members of the commission prior to the meeting. The Executive Secretary reported that he had had a telephone conversation with Mr. Burdman prior to the meeting and that Mr. Burdman had indicated that the Special Study Commission had in mind that the Law Revision Commission (1) would undertake such studies and analyses as might be requested by the Special Study Commission, (2) would report its conclusions to that commission, and (3) if that commission approved the recommendations of the Law Revision Commission, would carry its recommendations to the Legislature either independently or jointly with the Special Study Commission.

The Commission discussed the matter at length. It was felt that, although the commission should cooperate with the Special Study Commission in any way it could, the Law Revision Commission could neither exceed its statutory authority nor forfeit its independence in so doing. At the conclusion of the discussion a motion was made by Mr. Shaw, seconded by Mr. Swan, and adopted that the Chairman and the Executive Secretary meet with Professor MacCormick and Mr. Burdman and (1) point out that the office of the Legislative Counsel can give the Special Study Commission assistance in drafting bills to incorporate their policy decisions into the law of the

State; (2) explain that the Law Revision Commission is authorized to study only those matters which have been approved by the Legislature, that the commission annually submits a Concurrent Resolution seeking such approval, and that it is not necessary for the Special Study Commission to have anyone present a special Resolution authorizing the study of any matters it may wish to refer to the Law Revision Commission; and (3) state that the Law Revision Commission will be happy to consider placing on its Agenda any matters which the Special Study Commission may suggest, but that such suggestions will be handled in the same way as suggestions received from members of the Bench and Bar or any other group.

C. Stenographic Services for Executive Secretary. The Executive Secretary reported that his practice in the past has been to utilize the services of Miss Pellicone, the commission's stenographer-clerk, in connection with his Law School work as well as in connection with his work for the commission. He explained that he has done this on the theory that the commission's arrangement with Stanford contemplates that limited stenographic services shall be made available to him in connection with his University work in consideration of the University's furnishing the commission, without cost, office space, heat, light, janitorial services, the use of the law library, and other miscellaneous benefits. The Executive Secretary explained further that the University stenographic services are very limited and that having Miss Pellicone do his University work enables him to work with greater efficiency in both of his capacities. Since a question has arisen as to the propriety of this procedure, the Executive Secretary requested instruction from the commission as to whether he should continue his practice

of utilizing Miss Pellicone's services in connection with his University work or whether some other arrangement should be made. He reported also that he had discussed the matter with Dean Spaeth of the Stanford Law School and that he had been authorized to say that Stanford is prepared to make any arrangement which is desired by the commission.

After the commission had discussed the matter, a motion was made by Mr. Levit, seconded by Mr. Bradley and adopted that the Chairman be authorized to take the matter up with the proper State authorities.

D. Purchase of Advance Sheets for Members: A motion was made by Mr. Shaw, seconded by Mr. Swan and adopted that the Executive Secretary explore the possibility of subscribing to advance sheet reports of the decisions of the California Supreme Court and District Court of Appeal for any members of the commission who may request them for use in connection with their work for the commission.

E. 1956 Report to the Legislature: The commission considered a first draft of its 1956 Report to the Legislature which had been prepared by the Executive Secretary and distributed to the members of the commission prior to the meeting. A number of changes were suggested and the Executive Secretary was directed to prepare a second draft incorporating these changes, for consideration by the commission at its next meeting.

F. The Executive Secretary raised the question of what the policy of the commission should be as to (1) acknowledging replies received by the

commission to its letters soliciting suggestions for law revision or views on various matters under study by the commission and (2) reporting to the people sending in suggestions the disposition made of them and to people giving their views on particular matters the results of the inquiry made and the commission's final action on the matter concerned. After this matter was discussed, it was decided (1) that all letters received should be acknowledged; (2) that those writing in should be informed of the general nature of the replies received and/or of the commission's action on the matter and (3) that, where possible, these objectives should be accomplished by a single communication.

2. Agenda

A. Arrangement with Stanford for Agenda Research: The Executive Secretary reported that, pursuant to the decision taken by the commission at its meeting of September 16 and 17, he had discussed with Dean Spaeth the possibility of having one of the Law School's Teaching Fellows devote a part of his time to Agenda work for the commission. Dean Spaeth is agreeable to such an arrangement and it is tentatively planned that one Teaching Fellow will work full time Summer quarter and part time the rest of the year on the commission's Agenda work. This arrangement will begin in the summer of 1956.

B. Action on Pending Suggestions and 1955 Future Study List: The commission considered a number of suggestions for revision of the law which had been received and also re-examined the topics reported in 1955 to the Legislature as intended for future study. It reached the following decisions:

Immediate Study. The commission decided that the following items should be placed on the list of Topics Selected for Immediate Study:

A study to determine whether four overlapping sections of the Penal Code and the Vehicle Code, relating to the driving of a motor vehicle while under the influence of alcohol, should be consolidated and revised. (Suggestion No. 100.)

A study to determine whether the law respecting post-conviction sanity hearings for persons sentenced to death should be revised. (1955 Future Study Topic A.)

A study to determine whether the law in respect of survivability of tort actions should be revised. (1955 Future Study Topic B.)

A study to determine whether the law governing advancement of cases for trial should be revised. (1955 Future Study Topic E.)

A study to determine whether the rule, applied in cases involving the value of real property, that evidence relating to sales of nearby properties is not admissible on the issue of value should be revised. (1955 Future Study Topic J.)

A study to determine whether the Arbitration Statute should be revised. (1955 Future Study Topic K.)

Future Study: The commission decided to continue the following items on the list of Topics Intended for Future Study:

Suggestion No. 95	1955 Future Study Topic G.
1955 Future Study Topic C.	1955 Future Study Topic H.
1955 Future Study Topic D.	
1955 Future Study Topic F.	

Postponed: The commission postponed consideration of the following suggestions:

56 - The commission requested a staff report on the general problem of discovery in criminal cases.

76(2) - The commission directed the Executive Secretary to send a copy of the staff report to Judge Nourse, the originator of the suggestion, and request his comments.

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98(2) - The commission directed the Executive Secretary to write Mr. S. Ernest Roll, District Attorney of Los Angeles County, for copies of his proposed statute on the law of arrest and his brief on illegal search and seizure.

99 - The Executive Secretary reported that he had written the Attorney General concerning this suggestion and the commission postponed consideration of it until the Attorney General replies.

Not Accept: The commission decided that the following items should not be accepted for study:

1955 Future Study Topic I.

Suggestion No. 44

Suggestion No. 98(1)

The six suggestions offered by the Special Study Commission Correctional Facilities and Services in the letter of November 4 from Mr. Burdman.

Inactive: The commission decided that an Inactive list should be established and that all the Topics Selected for Immediate Study in 1955 which were not authorized by the Legislature should be placed on this list. The Inactive list will be maintained only for purposes of internal organization and will not be published in the commission's report. It was decided that Suggestion No. 101, which relates to the same matter as 1955 Topic No. 13 (filing claims against public bodies) which was not authorized by the Legislature, should be placed on the Inactive list.

C. Authority of Southern Committee: The commission discussed whether the Southern Committee, which functions as the commission's Agenda Committee, should be authorized to place new items on the 1956 Calendar of Topics

Selected for Immediate Study in the event that additional items are necessary and there is insufficient time for the full commission to meet and act upon the matter. A motion was made by Mr. Levit, seconded by Mr. Shaw and adopted that the Southern Committee and the Chairman of the commission be given joint authority to add new items to the Calendar in the circumstances mentioned.

3. Current Studies

A. Contracts with Research Consultants: The Executive Secretary reported that, because of the large amount of administrative and agenda work which the staff must do and because of the amount of staff work which he anticipates will be necessary in connection with the studies being made by Research Consultants, some of the current studies originally assigned to the staff might have to be done by Research Consultants. He stated that the Minutes of the meeting of June 25, 1955 are unclear as to the authority of the Chairman to retain Research Consultants for studies originally assigned to the staff, and requested a clarification of the matter. After the commission had discussed the matter, a motion was made by Mr. Shaw, seconded by Mr. Swan and unanimously adopted that the Chairman be authorized to make contracts with Research Consultants for the study of topics approved by the Legislature within the limits of the commission's budget.

B. Study No. 7 - Retention of Venue for Convenience of Witnesses:
The commission considered the recommendation of the Southern Committee that the draft of the staff report on Study No. 7 which had been distributed to

the members of the commission prior to the meeting, be approved for publication in the commission's 1957 Report to the Legislature. Several questions concerning both the form and the substance of the report were raised and discussed at length. A major point of discussion was whether the report reflected throughout the writers' critical point of view with respect to certain well established principles of California venue law to such an extent as to be "slanted" even in the portions which purported to be merely a report of existing law. It was suggested that the report be rewritten in such a way as to confine all statements of the writers' point of view to a portion of the report labelled as such. The staff was directed to prepare another draft of the report in which this is done.

There being no further business, the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary