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MINUTES OF MEETING
OF

SOUTHERN COMMITTEE

February 10, 1956
Los Angeles

PRESENT

Members

Mr. Stanford C. Shaw, Chairman
Mr. John D. Babbage
Mr. Joseph A. Ball (morning session)

Research Consultant

Professor James D. Sumner, Jr.

Staff

Mr. John R. McDonough, Jr.
Mrs. Virginia B. Nordby

STUDY NO. 10 - PENAL CODE SECTION 19a.

The committee considered a revised draft of the research consultant's study which had been prepared by the staff pursuant to the direction of the commission at its meeting of January 6 and 7, 1956, and distributed to the members of the committee prior to the meeting. The Executive Secretary pointed out that the research consultant's study had been changed in the following respects:

1. A new introduction had been written;
2. The discussion of the cases which have interpreted and applied Section 19a had been reorganized and considerably shortened by setting out in the text only the leading cases and referring in the footnotes to other supporting cases which the research consultant had discussed in the text; and

3. The lengthy discussion and quotation of specific code provisions and recommendations of the research consultant at the end of the report had been translated into a series of tables.

The committee approved these basic changes in the report and, after making several language changes in it, decided to recommend to the commission that the report as thus revised be accepted for publication. Mr. Ball stated that he was sure that the research consultant would approve the changes made in the report and he offered to take a copy of the revised report to the research consultant and discuss the changes with him.

The Executive Secretary pointed out that in the course of consolidating the material at the end of the research consultant's report into a series of tables two problems had become apparent:

1. Although in many instances the research consultant had indicated the date of enactment of sections inconsistent with Penal Code Section 19a, in many other instances he either had not designated any date or had designated the date of codification but not the date of original enactment. Moreover, in many instances he had not stated whether the section had been amended since its original enactment. It is important to know both the date of original enactment and also the date of subsequent amendments affecting the penal provisions in order to determine which sections were impliedly repealed by the enactment of Section 19a in 1933 and which sections superseded Section 19a by virtue of their later enactment or later amendment of the penal provision. The committee decided that Mr. Ball should request Mr. Cochran to furnish the commission the dates of original enactment of all sections inconsistent with Penal Code Section 19a and also the dates of subsequent amendments of any of

these sections which had been amended since their original enactment.

2. The research consultant had recommended in many instances that the maximum fine, as well as the maximum period of county jail confinement, should be reduced in order to provide a balance between the fine and the imprisonment. (His recommendations on this point were summarized in Table VII, pp. 16-18, of the revised draft.) It was suggested that the research consultant might wish to consider changing his recommendation with regard to Penal Code Sections 33 and 337f (a)(b)(c) because in these sections, which provide for imprisonment either in the state prison or in the county jail, the fine may be imposed in lieu of either state prison confinement or county jail confinement. Although reducing the fine in these cases would provide balance between the provisions for fine and county jail imprisonment, it would seem also to make the fine disproportionately low in comparison with the provision for imprisonment in the state prison. It was also suggested that, for the same reasons, it might be best to eliminate from Table VII all code sections which provide for confinement in the state prison as well as in the county jail. Mr. Ball agreed to obtain the views of the research consultant on this matter.

The committee considered a draft of a Report and Recommendation of the Law Revision Commission to the Legislature which had been drafted by the staff on the basis of the decisions reached by the committee at its meeting of December 22, 1955. The committee made several changes in the draft and decided that, as thus amended, it be recommended for adoption by the commission.

STUDY NO. 4 -- GRANT v. MCAULIFFE.

Mr. Ball was absent during the part of the meeting in which this study was considered. However, he had conveyed his views to Mr. Shaw and had authorized Mr. Shaw to express them for him.

The committee decided to recommend to the commission that Mr. Sumner's report be accepted for publication.

The committee discussed at length what recommendation the commission should make to the Legislature regarding this study. Mr. Shaw stated that both he and Mr. Ball were of the view that the result in Grant v. McAuliffe was good because the Arizona rule which does not allow a personal injury action to survive is, they feel, archaic and unjust. Mr. Shaw expressed the view that it is proper for the California courts to seize upon any available theory to justify refusing to apply such an archaic rule, particularly in a case involving California residents. For this reason both Mr. Ball and Mr. Shaw felt that the choice of law rule applied in Grant v. McAuliffe should not be changed by legislation.

The Executive Secretary expressed disagreement with this view, taking the position that the courts of this State should not choose the applicable law on the basis of which law, of the two or more involved, appears to be the more enlightened but rather by the application of accepted principles of conflict of laws under which this factor is irrelevant. Mr. Sumner expressed agreement with this view.

Mr. Sumner also pointed out that the theory adopted in the Grant case is a two-edged sword which, if applied in all cases, could operate as much to the detriment of California residents as to their benefit. For example,

in a case in which the place of wrong allows survival of a personal injury action, the damages would, under the Grant rule, be limited pursuant to California law (Civil Code § 956) even though not so limited under the law of the place of wrong. Moreover, under the Grant rule, a libel action for an injury to the reputation of a California resident occurring in a state which allowed the cause of action to survive would be abated by the application of California law. Mr. Shaw expressed the view, however, that the California courts might well limit the Grant rule to the special facts of that case and not apply it when the interests of California residents would be adversely affected by doing so.

Mr. Babbage agreed with Mr. Ball, Mr. Shaw and Mr. Sumner that the commission should not recommend any legislation on this matter at the present time. He thought, however, the suggestion of the research consultant that the Legislature might undertake to deal with the entire problem of substance and procedure for purposes of conflict of laws was well taken and suggested that the commission request permission from the Legislature to study this broader question. He stated that if such a study were undertaken it should, in his opinion, include the question of what law should govern survival and revival of actions.

The committee ultimately decided to recommend to the commission (1) that no legislation be recommended to the Legislature at this time, and (2) that authorization be requested to study the broader question of differentiating matters of substance from matters of procedure for purposes of conflict of laws (the committee did not determine whether survival and revival of actions should be included in this study).

STUDY NO. 7 -- RETENTION OF VENUE

The committee considered the revised draft of the staff report on this study and decided: (1) that the separate document entitled "Author's Analysis of Policy Questions Presented" should be inserted in the report immediately preceding the portion entitled "Methods of Changing the Law to Avoid the Transfer-Retransfer Procedure"; (2) that the commission should decide whether the portion of the report beginning on page 5, last paragraph ("It is difficult to determine, etc.") and continuing to the bottom of page 6, and the portion of the "Author's Analysis" beginning on page 28, last paragraph ("Furthermore, the general principle which underlies, etc.") and continuing to the end of the "Author's Analysis" should be retained; and (3) that as thus changed the staff report should be accepted for publication by the commission.

The committee also considered a revised draft of a Report and Recommendation of the Law Revision Commission to the Legislature which had been prepared by the staff. The committee made several changes in the revised draft and in the proposed revision of Code of Civil Procedure Sections 396b and 397. As thus amended the Report and Recommendation was approved for recommendation to the commission.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary