

MINUTES OF MEETING

OF

SOUTHERN COMMITTEE

April 13, 1956
Los Angeles

PRESENT

Members

Mr. Stanford C. Shaw, Chairman
Mr. John D. Babbage
Mr. Joseph A. Ball

Research Consultant

Mr. James H. Chadbourn

Staff

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

STUDY NO. 3 - DEAD MAN STATUTE

The Committee considered the report on this topic prepared by Mr. James H. Chadbourn, Research Consultant, and decided to recommend to the Commission that it be accepted and published without modification. The Committee considered whether the report should be shortened but determined that it should not because it is an excellent study of the problem. The Committee was of the view that the Commission should not establish any general limitation on the length of reports and that a long report should be published as submitted when of excellent quality.

The Committee discussed the proposals for legislative action set forth in Mr. Chadbourn's report and expressed interest in the statutes which permit the testimony of the survivor to come in when corroborated, as in the

case in Virginia and Oregon. Mr. Chadbourn stated that there was no indication from the reported cases as to the kind or amount of corroboration required or whether the requirement is generally thought to be reasonable and desirable. The Committee directed the Executive Secretary to try to find out by correspondence how the various statutes adopted in other states to deal with this problem have worked out and what the views in such states seem to be as to their desirability.

After further discussion the Committee decided to recommend to the Commission that the Dead Man Statute (C.C.P. § 1880(3)) be repealed and the draft statute proposed by Mr. Chadbourn be recommended to the Legislature.

STUDY NO. 8 - TESTIMONIAL PRIVILEGE OF SPOUSES

The Committee considered the staff report on this topic, which had been distributed prior to the meeting, and concluded that the discussion on pages 7 and 8 as to whether either the "for" or the "against" marital testimonial privilege, or both, should be abolished needed to be expanded to strengthen the argument for abolition. The Committee suggested that cases graphically illustrating injustice under the present law might be reported and cases or comments approving abolition from states which already have abolished the privilege might be set out. The staff was directed to revise the report along these lines.

The Committee was unable to decide what recommendation to make to the Commission on this topic and determined to refer the matter without recommendation for consideration by the Commission at its May meeting.

STUDY NO. 10 - PENAL CODE SECTION 19a

The Committee decided to make the following recommendations to the Commission relating to this study:

1. That all code sections listed in Table VIII, pages 18 and 19, of the Research Consultant's report, be revised to provide for either fine or imprisonment as well as for both;

2. That all code sections listed in Table IX, page 19, of the Research Consultant's report, be revised to provide for both fine and imprisonment as well as for either;

3. That the following code sections (contained in Table VI, pages 15 and 16) be revised to provide for an alternative felony with the indicated maximum period of confinement in the state prison:

| <u>Code</u> | <u>Section</u> | <u>Maximum State Prison Sentence</u> |
|-------------|----------------|--------------------------------------|
| Penal | 69 | 5 years |
| Penal | 142 | 5 years |
| Penal | 149 | 5 years |
| Penal | 529 | 2 years |

4. That the following code sections (contained in Table VII, pages 16-18) be revised to provide for a \$1,000 maximum fine:

| <u>Code</u> | <u>Section</u> |
|--------------|----------------|
| Bus. & Prof. | 4164 |
| Bus. & Prof. | 10140 |
| Bus. & Prof. | 11020 |
| Govt. | 27443 |
| H. & S. | 12107 |
| H. & S. | 12306 |
| Penal | 148 |
| Penal | 347b |
| Penal | 405 |

STUDY NO. 10 - PENAL CODE SECTION 19a (Cont'd)

5. That the following code sections be revised to eliminate any reference to a minimum fine or minimum period of confinement:

| <u>Code</u> | <u>Section</u> |
|--------------|----------------|
| Bus. & Prof. | 4164 |
| H. & S. | 11715.7 |
| H. & S. | 12107 |
| Mil. & Vet. | 145 |
| Penal | 337f |
| Penal | 347b |
| Penal | 587 |
| Penal | 607 |
| Rev. & Tax. | 12832 |
| Rev. & Tax. | 23303 |

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary