

AGENDA FOR MEETING OF LAW

REVISION COMMISSION

May 4-5, 1956

1. Consideration of minutes of meeting of March 12.
2. Policy concerning publication of reports of research consultants elsewhere before or after publication by commission.
3. Number of reprints of commission reports to be given to research consultants.
4. Senator Dorsey's proposal that the commission should include in its legislative program recommendations of the necessary nonsubstantive changes in the law brought to the attention of the Legislature in the reports on this subject by the Legislative Counsel to each Budget Session
5. Memorandum No. 1 of Executive Secretary re 1956-57 agenda.
6. New Stanford contract.
7. Memorandum No. 2 of Executive Secretary re changes in schedule of commission and committee meetings.
8. Procedure with respect to Fish and Game Code study.
 - A. Shall the Legislative Counsel's draft be reviewed by the commission prior to distribution to interested parties?
 - B. What distribution shall be made?
 - C. What priority should this study have in the work of the commission?
9. Study No. 10 (Penal Code Section 19a - Cochran).
10. Study No. 6 (Code of Civil Procedure Section 660 - Barrett).
11. Study No. 5 (Probate Code Section 201.5 - Marsh).
12. Study No. 2 (Judicial Notice of Foreign Country Law - Hogan).
13. Study No. 3 (Dead Man Statute - Chadbourn).
14. Study No. 8 (Marital Privilege - Staff).

MINUTES OF MEETING
OF
MAY 4 AND 5, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on May 4 and 5 at Los Angeles, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable Clark L. Bradley, Assembly (May 5)
Mr. Joseph A. Ball
Mr. Stanford C. Shaw

ABSENT:

Honorable Jess R. Dorsey, Senate
Mr. Bert W. Levit
Mr. John Harold Swan
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 on both days.

The minutes of the meeting of March 12, 1956, which had been distributed to the members of the commission prior to the meeting, were unanimously approved.

1. Administrative Matters

A. Independent Publication of Research Consultants' Studies: The Executive Secretary reported that Professor James H. Chadbourn, the Commission's

research consultant on the Dead Man Statute Study (Study No. 3), had requested permission to publish his study as an article in either the December, 1956 or the February, 1957 issue of the UCLA Law Review. The commission discussed what its general policy should be as to independent publication of research consultants' studies either before or after publication by the commission. It was decided that action on Mr. Chadbourn's request should be postponed until the policy of the New York Law Revision Commission on the matter was ascertained.

B. Number of Reports to Be Given to Research Consultants: The commission decided that all research consultants should routinely be given 25 copies of their printed studies and that requests from consultants for additional copies would be entertained.

C. Legislation Necessary to Maintain the Codes: The Chairman reported that a suggestion had been made by Senator Dorsey that the Law Revision Commission include in its 1957 legislative program the nonsubstantive changes in the law suggested in the Legislative Counsel's "Report on Legislation Necessary to Maintain the Codes" made to the 1956 Budget Session of the Legislature. The Legislative Counsel's recommendation was that the Report be referred to the Interim Judiciary Committees. However, Mr. Kleps had indicated that, if Senator Dorsey's proposal seemed appropriate to the commission, he saw no reason why the matter could not be handled in that fashion. The commission discussed this matter and, although some members expressed the view that it might not be appropriate for the commission to include in its legislative program the nonsubstantive changes necessary to maintain the codes, the commission decided to postpone decision on the matter until a meeting at which Senator Dorsey is present.

D. Arrangements for Studies Approved by 1956 Session of the

Legislature: The Executive Secretary reported that the 1956 Session of the Legislature had authorized and directed the commission to study the fifteen new topics listed in the 1956 report and four additional new topics: (1) whether the California law of evidence should be revised to conform to the Uniform Rules of Evidence; (2) whether the law relating to habeas corpus proceedings in trial and appellate courts should be revised; (3) whether the law and procedure in condemnation proceedings should be revised; and (4) whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.

A motion was made by Mr. Shaw, seconded by Mr. Bradley, and adopted, that 1956 Topic No. 10--use of evidence of sales of adjacent property in condemnation proceedings--be consolidated with the study of law and procedure in condemnation proceedings. The commission's 1956-57 study program therefore consists of eighteen new topics for study.

The commission decided that arrangements should be made as soon as possible with research consultants to have studies made of the topics which the commission was authorized and directed by the 1956 Session of the Legislature to study. A motion was thereupon made by Mr. Shaw, seconded by Mr. Ball, and unanimously adopted that the Chairman be authorized to enter into contracts for such studies with qualified research consultants.

E. Stanford Agenda Contract: The Executive Secretary reported that the commission's 1956-57 budget provides \$2,500 for a contract to be made with Stanford University similar to the present Stanford contract which will expire on June 30. The commission discussed the amount which should be committed to a new Stanford contract and the scope of the work to be done thereunder. A

motion was then made by Mr. Shaw, seconded by Mr. Babbage, and unanimously adopted that the Chairman be authorized to enter into a contract with Stanford University for the fiscal year 1956-57 at a cost not to exceed \$2,500.

F. Additional Expense for Current Fiscal Year Under the Fish and Game Code Revision Contract and the Stanford Contract: The Executive Secretary reported that the Legislative Counsel had informed him that the cost of preparing a revision of the Fish and Game Code for the commission under our contract with his office had already exceeded by \$672 the \$5,000 figure tentatively established when the work was started and that more work would undoubtedly have to be done under the contract during both this fiscal year and fiscal year 1956-57. The Legislative Counsel offered to absorb all costs above the contract amount for the current fiscal year. The commission decided, however, that all expenses connected with the Fish and Game Code revision should be charged to the commission so that its budget would reflect the true cost of the project and requested the Legislative Counsel to act accordingly insofar as it is feasible for him to segregate and bill for services performed by him under the contract.

The Executive Secretary reported that the funds allocated to the contract with Stanford University for fiscal year 1955-56 have been virtually used up. He reported that Stanford will have qualified persons available during June 1956 to do the kind of work covered by the contract and suggested that an additional \$500 be committed to the contract for this purpose. After the matter was discussed a motion was made, seconded and unanimously passed that the Chairman be authorized either to enter into an addendum to the 1955-56 Stanford contract increasing the maximum amount to be charged thereunder to \$2000 or to enter into a supplemental contract with Stanford in the amount of \$500.

G. Prospective Deficit in 1956-57 Research Funds: The Executive Secretary reported that, although he estimates the cost of having the eighteen new studies done by research consultants at approximately \$16,300, the amount allotted to research in the 1956-57 budget is only \$10,500 and, of that, \$2,500 is committed to the Stanford contract. He reported also that, as is mentioned above, an additional \$3,000 is needed to cover expenditures during 1956-57 under the Fish and Game Code contract with the Legislative Counsel. This means that there is a prospective \$13,300 deficit on the research budget for Fiscal year 1956-57.

The commission discussed what steps might be taken to make up the deficit and decided that the Executive Secretary should explore with the Department of Finance what arrangements might be made to cover the deficit and that the Chairman should be authorized to request the Department to make funds available from the Emergency Fund to cover the deficit.

2. Current Studies

A. Study No. 18 (L) - Fish and Game Code: The first draft of a proposed revision of the Fish and Game Code prepared by the Legislative Counsel's office was distributed to the members of the commission. The commission decided that copies of this first draft should be distributed as soon as possible and before the draft is reviewed by the commission to those persons who have requested a copy, members of the Legislative Committees on Fish and Game, the Fish and Game Commission, the Department of Fish and Game, Mrs. Pauline Davis, and the major sportsmen's groups in the State.

B. Study No. 10 - Penal Code Section 19a: The commission considered

the recommendations of the Southern Committee relating to this study which were incorporated in a draft Report and Recommendation of the Commission to the Legislature and which were summarized in the minutes of the meeting of the Southern Committee of April 13, 1956, both of which had been distributed to the members of the Commission prior to the meeting. After a few technical changes were made, a motion was made by Mr. Ball, seconded by Mr. Shaw and unanimously adopted that the Study, the Report and Recommendation to the Legislature, and the Proposed Revisions recommended by the Southern Committee be approved and adopted and that they be sent to the State Bar for comment and suggestions.

C. Study No. 6 - Code of Civil Procedure Section 660: The Commission considered the research consultant's report and a draft of the Commission's Report and Recommendation to the Legislature which embodied the recommendations of the Northern Committee relating to this study. The Northern Committee had recommended that a statute be enacted providing that a motion for a new trial is not determined within the meaning of Section 660 unless and until an order ruling on the motion is either (1) entered in the permanent minutes of the court or (2) signed by the judge and filed with the clerk. The Commission decided, however, that this solution of the problem would place an undue emphasis on the certainty of an objectively determinable event and insufficient emphasis on the more important aim of assuring that a decision by the judge that a new trial should be granted is not rendered ineffective by the failure of his clerical staff to get the order entered or filed within the sixty day period. The Commission therefore decided to recommend to the Legislature that Section 660 be amended to provide that a motion for a new trial is determined within the meaning of Section 660 if within the sixty-day period: (1) an oral order is

announced by the judge in open court or at chambers, or (2) a written order is signed by the judge, and that such determination shall be effective even though the order directs that a written order be prepared, signed and filed.

The Chairman and the Executive Secretary were directed to rewrite the commission's Report and Recommendation to the Legislature to reflect this decision and to forward both the research consultant's study and the Report and Recommendation to the State Bar for comment.

D. Study No. 5 - Probate Code Section 201.5: The commission considered the report of the research consultant in this study and a draft of a Report and Recommendation to the Legislature which embodied the recommendations of the Northern Committee.

The commission approved the recommendation of the Northern Committee that the commission should not attempt at this time to deal with the inter vivos treatment of Section 201.5 property but should limit its recommendations to the disposition of such property on death.

The commission also approved in principle the following recommendations of the Northern Committee:

1. That Section 201.5 be revised to eliminate the provision which purports to give the nonacquiring spouse testamentary power over the acquiring spouse's property during the latter's lifetime.
2. That Section 201.5 be made applicable to real property in California acquired in exchange for real or personal property which would have been community property had the owner been domiciled here when he acquired it.
3. That Section 201.5 be limited to cases in which the owner dies

domiciled in California.

4. That a statute be enacted providing that when a nondomiciliary decedent leaves a valid will disposing of real property in California, the surviving spouse shall have the same right to elect to take a portion of such property against the will of the decedent as he or she would have had if the property had been situated in the state of the decedent's last domicile.

5. That a statute be enacted requiring a surviving spouse to elect whether to take under the decedent's will or to take Section 201.5 property against the will.

6. That a statute be enacted providing that the expectancy of a non-acquiring spouse in Section 201.5 property cannot be defeated by certain inter vivos transfers.

7. That Probate Code Section 661, relating to the creation of a "probate homestead", be revised to treat property covered by Section 201.5 the same as community property for the purposes thereof.

8. That the Inheritance Tax Law be revised to conform to the changes made in Section 201.5.

A number of questions were raised and problems uncovered as to the details of the revisions recommended by the Northern Committee, and the study was referred to that Committee for further consideration and report to the commission.

E. Study No. 2 - Judicial Notice of Foreign Country Law: The commission considered the report of the research consultant on this study and a draft of a Report and Recommendation to the Legislature which embodied the recommendations of the Northern Committee. The commission adopted the recommendation of the Committee that Code of Civil of Civil Procedure Section 1875 be amended to bring the law of foreign countries and political subdivisions of foreign countries within the purview of judicial notice. The commission decided that Section 1875

should also be amended to provide (1) that before a party may ask that judicial notice be taken of foreign country law he must give reasonable notice to the other parties either in the pleadings or otherwise, and (2) that, if it is impossible for the court to determine what the applicable foreign country law is, it shall either apply the law of California, if it can do so consistently with the Constitution of the United States or of California, or it shall dismiss the action without prejudice. The commission also decided that Code of Civil Procedure Section 1900, relating to the admissibility of certain documents to establish the law of a sister state or foreign country, and Section 1902, relating to oral testimony of experts to establish the law of a sister state or foreign country, should be repealed because they are now obsolete as to sister state law and will become completely obsolete when foreign country law is brought within the purview of judicial notice. Moreover, it was decided that Code of Civil Procedure Section 1901, relating to admissibility of certain documents to establish the written law or other public writing of any state or country, should be amended to strike out the reference to "written law." It was also decided that Probate Code Section 259.1 should be amended to strike out the reference to foreign country law as "a fact."

The Chairman and the Executive Secretary were directed to rewrite the commission's Report and Recommendations to the Legislature to reflect the decisions taken and to forward both the research consultant's study and the Report and Recommendation to the State Bar for comment.

F. Study No. 3 - Dead Man Statute: The commission considered the report of the research consultant and the draft of a Report and Recommendation to the Legislature which embodied the recommendations of the Southern Committee

relating to this study. The commission adopted the committee's recommendation that the Dead Man Statute (CCP § 1880(3)) be repealed and an exception to the hearsay rule be created to allow evidence of statements of deceased or incompetent persons, if the statements were made upon personal knowledge, in actions against the personal representative or successor in interest. The commission decided that copies of the research consultant's report and the commission's Report and Recommendation to the Legislature should be sent to the State Bar for comment.

G. Study No. 8 - Marital Privilege: The Southern Committee had referred the staff report on this study to the commission without recommendation. The commission discussed the matter and decided that it should be re-referred to the Southern Committee for further consideration.

There being no further business the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary