

12/18/56

Agenda for Meeting of Law
Revision Commission On
December 21-22, 1956

*Memorandum to
Southern Commission
Meeting*

1. Minutes of November meeting (to be sent).
2. Distribution of Recommendations and Studies (A copy of a memorandum on this subject which was distributed at the November meeting is enclosed).
3. Report on status of studies heretofore scheduled for report to the 1957 Session of the Legislature (See Memorandum No. 1, enclosed).
4. Whether study of sovereign immunity should be added to the 1957-58 study program (See Memorandum No. 2, enclosed).
5. Study No. 12 (Taking Instructions to the Jury Room): consideration of a letter received from Honorable Roy A. Gustafson (enclosed). (Please bring with you also copy of recommendation and study on this subject).
6. Study No. 32 (Arbitration Statute) (See Memorandum No. 3, enclosed).
7. Study No. 35 (Post-Conviction Procedure) (See Memorandum No. 4, enclosed).
8. Fish and Game Code (See Memorandum No. 5, enclosed).

MINUTES OF MEETING
OF
DECEMBER 21 and 22, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on December 21 and 22 at Riverside, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable Jess R. Dorsey
Mr. Bert W. Levit (December 22)
Mr. Stanford C. Shaw
Professor Samuel D. Thurman

ABSENT:

Honorable Clark L. Bradley
Mr. John Harold Swan
Mr. Ralph N. Kleps, ex officio

Mr. John R. McDonough, Jr., the Executive Secretary of the Commission, and Mrs. Virginia B. Nordby, the Assistant Executive Secretary, were present on both days.

The minutes of the meeting of November 17, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

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1. PERSONNEL OF COMMISSION

The Chairman reported that on November 26, 1956, Mr. Joseph A. Ball resigned from the Commission and that on December 19, 1956, Mr. Bert W. Levit sent to the Governor his resignation from the Commission as of January 1, 1957.

2. ADMINISTRATIVE MATTERS

A. Cost of Printing Recommendations and Studies: The Executive Secretary reported that, on the basis of the cost estimates submitted by the State Printer, the printing allotment in the current budget will not be sufficient to print some of the recommendations and studies which are to be reported upon to the 1957 Session of the Legislature. The Legislative Counsel's office has informed us that the cost estimates total \$826.00 more than the \$6,000.00 printing allotment. The Executive Secretary reported that the cost estimates for the individual studies were running a good bit higher than the original estimate of \$10-11 a printed page given by the State Printer in July. The Commission suggested that the Executive Secretary try to negotiate with the State Printer for final charges lower than the cost estimates and if this is unsuccessful that the possibility of having the Legislature print the recommendations and studies not covered by the Commission's printing funds be explored. In the event that no arrangement can be made to print all of the recommendations and studies, the Commission authorized the Chairman and the Executive Secretary to select those recommendations and studies which will not be printed until the printing allotment for the 1957-58 fiscal year is available in July, 1957.

It was agreed that the Chairman and the Executive

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Secretary be authorized to request an amendment of the 1957-58 budget to cover (1) the cost of printing any recommendations and studies which cannot be printed during 1956-57, (2) the cost of binding 500 copies of the 1957 report to the Legislature and the 1956-57 recommendations and studies, (3) the cost of printing the index to the bound volume, and (4) the estimated additional cost of printing for 1957-58 based on this year's experience.

B. Distribution of Recommendation and Study Pamphlets:

The Commission considered a memorandum relating to distribution of recommendations and studies, a copy of which is attached to these minutes. It was decided that copies of all material printed by the Commission should automatically be sent to the following persons:

Members of the Legislature (120)
Supreme Court and Judicial Council (8)
Heads of all State Departments (35)
Members of the Board of Governors
of the State Bar (15)
Members of the State Bar Committee to Act in
Liaison with the Law Revision Commission (3)
Members of the Executive Committee of the
Conference of State Bar Delegates (11)
Chairman, Vice Chairman and Secretary of State
Bar Committee on Administration of Justice (3)
Justices of the California District Courts of
Appeal (21)
Deans of all California law schools (11)
Members of the Stanford Law School Faculty (20)
Law Reviews published at California law schools (5)
California law school libraries (11)
California county law libraries (33)
Legal newspapers published in California (14)
Persons on present mailing list not included
above (50).

The draft letter to Senator Smith, a copy of which is attached, was modified as indicated on the attached copy and approved for use as a covering letter for the first mailing to this group.

The Commission decided that the following persons should be offered the opportunity to request copies of either all or some of the recommendation and study pamphlets:

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Local bar associations (88)
Justices of the U.S. Court of Appeals, 9th Circuit (10)
Justices of the U.S. District Courts in California (18)
Judges of the California Superior Courts (235)
Judges of California Municipal Courts (149)
California law professors other than Stanford faculty (130)
County counsels (15)
District Attorneys (58)
Non-California law school libraries (100)
Commission's research consultants not otherwise reached (21)

The draft letter to Mr. Jones labelled "D", a copy of which is attached, was modified as indicated on the attached copy and approved for use in the first mailing to this group.

A motion was made by Mr. Shaw, seconded by Senator Dorsey and unanimously adopted that the Chairman and the Executive Secretary be authorized to request any budget transfers needed to make the distribution decided upon and that, in the event there is not enough money to cover distribution to all the persons listed, the Chairman and the Executive Secretary be authorized to remove as many names from the list as may be necessary to reduce the cost to the funds available.

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C. Use of Commission's Material by Senate Interim

Judiciary Committee: The Executive Secretary reported that Mr. John Bohn, Counsel for the Senate Interim Judiciary Committee, has requested permission to incorporate in the printed report of that Committee excerpts from the recommendations and studies of the Commission. The Commission agreed that it would have no objection to such a plan assuming that the Committee report acknowledged the source of the excerpt.

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D. Studies to Be Completed for the 1957 Session of the Legislature: The Commission considered Memorandum No. 1, a copy of which is attached to these minutes, relating to the status of studies originally scheduled for completion and report to the 1957 Session of the Legislature. It was decided that Studies 11 (Corporations Code Sections 2201 and 3901), 14 (appointment of administrator in quiet title actions), and 16 (planning procedure) should be carried over on the Commission's program until the 1959 Session and that the 1957 report to the Legislature should be changed to read: "The commission is submitting recommendations relating to most of these topics [i.e., those authorized for study in 1955] to the 1957 Session of the Legislature." It was also decided that as to Study 26 (escheat of personal property) a spot bill on the subject should be introduced and an effort should be made to complete the staff study and the Commission's recommendation in time to amend the bill after the constitutional recess.

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3. AGENDA

The Commission considered Memorandum No. 2 and Suggestion No. 211, copies of which are attached to these minutes, relating to whether the Commission should include in its calendar of topics selected for immediate study a study of the doctrine of sovereign immunity. It was decided that, although the Commission would make such a study if so directed by the Legislature the Commission would not itself at this time request permission from the Legislature to make such a study.

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4. CURRENT STUDIES

A. Study 12 - Taking Instructions to the Jury Room:

The Commission considered a letter, a copy of which is attached to these minutes, received from Honorable Roy A. Gustafson, District Attorney of Ventura County, relating to the recommendation of the Commission on this Study. Mr. Gustafson's suggestion was discussed at length. It was felt that, although there may be some mechanical details regarding the form in which instructions may be given to the jury which will have to be worked out, these details are not a part of the Commission's study and may be dealt with later by the Legislature or the courts. A motion was made by Senator Dorsey, seconded by Mr. Babbage, and unanimously adopted that the Commission's printed recommendation and proposed statute be left unchanged.

B. Study 32 - Arbitration Statute: The Commission considered the Executive Secretary's Memorandum No. 3, the Memorandum of the Executive Secretary to the Northern Committee, and the Report of the Northern Committee, copies of which are attached to these minutes, all relating to the study of the Uniform Arbitration Act. After the matter had been discussed a motion was made by Mr. Shaw, seconded by Mr. Babbage and unanimously adopted that the following recommendations of the Northern Committee be adopted as the action of the Commission:

1. That the Commission should not recommend enactment of the Uniform Arbitration Act at the 1957 Session of the Legislature.
2. That the Commission should not prepare and print a recommendation relating to the Uniform Arbitration Act or print and distribute Mr. Kagel's report at this time.
3. That if the Arbitration Act comes before the Senate and Assembly Judiciary Committees during the 1957 Session, the legislative members of the Commission should, as members of those Committees, report that the question whether the California Arbitration Statute should be revised is now under study by the Law Revision Commission pursuant to Resolution Chapter 42 of the Statutes of 1956 and that the Commission expects to report the results of its study to the 1959 Session of the Legislature. The Committee recommends that it be left to the discretion of the legislative members

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whether to report further to their respective Judiciary Committees that the Commission has had a study of the Uniform Act made by Mr. Kagel and that it would be happy to make copies of his report available to the members of the Committee and other members of the Legislature on request.

4. That the Commission continue its study of the California Statute and of Mr. Kagel's report with a view to determining whether it should recommend revision of the California Arbitration Statute to the 1959 Session of the Legislature and that the Commission should, if necessary, have a further research consultant's report prepared to this end.

The Commission also decided that, although work should be continued on the California Arbitration Statute, no new contract for that work should be made at the present time.

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C. Study 35 - Post-Conviction Procedure: The Commission considered the Executive Secretary's Memorandum No. 4, the Memorandum of the Executive Secretary to the Southern Committee, and the Report of the Southern Committee, copies of which are attached to these minutes, all relating to the study of the Uniform Post-Conviction Procedure Act. After the matter had been discussed a motion was made by Mr. Babbage, seconded by Mr. Shaw and unanimously adopted that the first three recommendations of the Northern Committee relating to the Uniform Arbitration Act also be adopted as the action of the Commission with regard to the Uniform Post-Conviction Procedure Act. The Commission also decided that it needed additional information on the question of whether the number of petitions for habeas corpus and coram nobis constitutes an excessive burden on the prosecuting officers or the courts. It therefore directed the Secretary to write to the District Attorneys' Association, the Attorney General and the Judicial Council for such information. The Executive Secretary was also directed to write to Mr. Frank Coakley, President of the District Attorneys' Association, sponsors of the habeas corpus study, to determine whether the Association has in mind only a study of the use of habeas corpus and related remedies in post-conviction proceedings.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

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DISTRICT ATTORNEY
Ventura County
Room 236 Court House
Ventura, California

December 5, 1956

Mr. John R. McDonough
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. McDonough:

A couple of weeks ago the Committee on Criminal Law and Procedure of the State Bar considered the "Report and Recommendation of Law Revision Commission to Legislature Relating to Whether the Jury should be given a copy of the Court's Instructions to take into the Jury Room." We agreed that the principle was a good one, but we thought that a great deal of further study is necessary to work out the mechanics of a system whereby the written instructions which the jury would get would be in such form as not to cause confusion or prejudice.

I want to explain my own position on the matter. If written instructions as they are now generally constituted are handed to the jury, the jury will see that the instruction comes either from the plaintiff or the defendant or from the court itself. Very often, a typewritten instruction will have the attorney's name and address on it. Furthermore, there is likely to be citation of legal authority and perhaps even argument in support of the instruction. Quite often there will be a rubber stamp on the page indicating the judge's action on the instruction and containing information which has no purpose before the jury.

My reservations about the recommendation of the Law Revision Commission were strengthened by the decision in People v. Lyons (1956), 47 A.C. 316. In substance, the conviction was reversed because the jury took into the jury room a written instruction part of which was in printing and part of which was in the judge's own handwriting. The court felt that the handwriting gave undue emphasis to the statement of law embodied therein. Until we figure out some method of getting the instructions to the jury in a nice, neat form (such as they are in when a reporter's transcript is made of the instructions given by the judge), I think the Law Revision Commission should withdraw its recommendation.

Sincerely yours,

ROY A. GUSTAFSON
District Attorney

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