

A G E N D A

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Stanford

July 24-25, 1959

1. Minutes of June, 1959 meeting (Sent 7/10/59). ✓
2. Assistant Executive Secretary.
Interviews and selection (Saturday). (See dossiers on ✓
Michaelis and Brunn, enclosed.)
3. Review of bills not passed by Legislature in 1957 and 1959. (See
Memorandum No. 1, sent 7/10/59). ✓
4. Argument in favor of A.C.A. No. 16 (See Memorandum No. 3, enclosed). ✓
5. Studies heretofore considered:
 - A. Study No. 32 - Arbitration (See Memorandum No. 5 to be sent).
 - B. Study No. 33 - Survival of Tort Actions (See Memorandum No. 6 ✓
to be sent).
 - C. Study No. 38 - Inter-vivos Rights (See Memorandum No. 4, ✓
enclosed).
 - D. Study No. 42 - Trespassing Improvers (See Memorandum No. 2 ✓
sent 7/10/59).
 - E. Study No. 48 - Right of Juveniles to Counsel (See Memorandum
No. 7 to be sent).
6. New Studies:
 - A. Study No. 51 - Alimony After Divorce (You have this study.)
 - B. Study No. 40 - Notice of Alibi (To be sent). *Memo #8*

MINUTES OF MEETING

of

July 24 and 25, 1959

Stanford

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on July 24 and 25 at Stanford.

Present: Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice Chairman
Honorable Clark L. Bradley
Honorable James A. Cobey
Mr. Leonard J. Dieden
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

Absent: Mr. Frank S. Balthis

Mr. John R. McDonough, Jr., the Executive Secretary, was present. Mr. Glen E. Stephens, the Assistant Executive Secretary, was present on July 24. Mrs. Virginia B. Nordby, a former member of the Commission's staff, was present during a part of the meeting on July 25.

The minutes of the meeting of June 19 and 20, 1959 were corrected and unanimously approved as corrected. The corrections were as follows: The word "Interim" was deleted from line 10, page 6; in line 9 on page 16 the word "both" was eliminated and replaced by the words "one of the"; in the first sentence of item 11 on page 21 the words "the proposed revision of" were inserted following the word "approve"; in item 14 and 15 on page 22 the words "the proposed revision of" were inserted after the word "approve" in the first sentence of each item.

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I. ADMINISTRATIVE MATTERS

A. Selection of Assistant Executive Secretary: On July 25 the Commission interviewed the following five candidates for the position of Assistant Executive Secretary: George Brunn, Joseph B. Harvey, Rudolf H. Michaels, Charles L. Swezey, Howard J. Taubenfeld.

After the matter was discussed a motion was made, seconded and unanimously adopted to offer the position to Joseph B. Harvey.

A motion was then made by Senator Cobey, seconded and unanimously adopted to authorize Mr. DeMouilly, in the event that Mr. Harvey does not accept the position, to offer it to either George Brunn or Charles L. Swezey, as he may decide, with or without having talked further to either or both of these men, as he may decide.

It was unanimously agreed that if Messrs. Harvey, Brunn and Swezey all decline the appointment Mr. DeMouilly should obtain further information on Mr. Taubenfeld and that the matter will be taken up at the August, 1959 meeting.

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B. Making of Second Contract with Hill, Farrer & Burrill:

The Executive Secretary reported that since fiscal year 1959-60 has begun the Commission is now in a position to enter into the second of its contemplated contracts with Hill, Farrer & Burrill, in the amount of \$5500, for a study of various aspects of condemnation law and procedure. He requested instruction as to whether to do so. After the matter was discussed a motion was made, seconded and unanimously adopted to authorize the Executive Secretary to raise the matter with Messrs. Hill, Farrer & Burrill stating that the Commission is prepared to enter into the second contract whenever the firm might wish to do so.

C. Discussion of Action to be Taken in Respect of Commission

Bills not Enacted at 1957 and 1959 Sessions of the Legislature: The Commission considered Memoranda Nos.1 and 1-A, copies of which are attached to these minutes.

After the letter of Honorable William Biddick, Jr. to the Executive Secretary was discussed it was agreed that the staff should prepare a list of suggestions which have been made to the Commission for study, but which the Commission has concluded, for one reason or another, are not suitable for study by this body, for consideration at the August meeting as possibly suitable topics for reference to Mr. Biddick's committee in response to his letter.

The Commission then considered the bills listed in Memorandum No. 1, taking the following action:

(1) Senate Bill No. 33 (1957) - Taking Instructions to Jury Room. Mr. Babbage made a motion that the staff work out a recommended procedure for carrying this study forward, to be presented to the Commission for approval. The motion was seconded by Mr. Gustafson and carried.

(2) Assembly Bills No. 246 (Retention of Venue for Convenience of Witnesses), 247 (Dead Man Statute) and 248 (Marital Testimonial Privilege) (1957). Mr. Bradley made a motion that none of the matters covered by these bills be the subject of a recommendation to the 1961 Session of the Legislature. The motion was seconded by Mr. Babbage and carried.

(3) Assembly Bill No. 400 (Overlapping Penal and Vehicle Code Provisions re Taking of Vehicles) (1959). A motion was made by Mr. Gustafson, seconded by Mr. Bradley and carried to continue this subject on the Commission's current agenda:

Aye: Babbage, Bradley, Cobey, Dieden, Gustafson, Matthews,
Stanton, Thurman.

No: None.

Not Present: Balthis.

(4) Assembly Bill No. 403 (Sale of Corporate Assets) (1959).

Mr. Bradley moved that this subject be retained on the Commission's current agenda for further consideration with a view to possibly making it the subject of a recommendation to the Legislature in 1961. The motion was seconded by Mr. Babbage and carried:

Aye: Babbage, Bradley, Cobey, Dieden, Gustafson, Matthews,
Stanton, Thurman.

No: None.

Not Present: Balthis.

(5) Assembly Bill No. 402 (Overlapping Provisions of Penal and Vehicle Codes re Drunk Driving) (1959). A motion was made by Mr. Bradley to make no recommendation to the 1961 legislative session with respect to this subject. The motion carried:

Aye: Babbage, Bradley, Cobey, Dieden, Gustafson, Matthews,
Stanton, Thurman.

No: None.

Not Present: Balthis.

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Senator Cobey commented that in his opinion the Commission should not continue to work on a subject covered by a Commission bill which has been referred to an interim committee so long as it is actually being studied by the committee.

(6) Senate Bill No. 160 (Right of Nonresident Aliens to Inherit) (1959). A motion was made by Mr. Dieden and seconded by Mr. Babbage that no recommendation be made on this subject to the 1961 legislative session. The motion carried:

Aye: Babbage, Bradley, Cobey, Dieden, Gustafson, Matthews,
Stanton, Thurman.

No: None.

Not Present: Balthis.

II. LEGISLATIVE MATTERS

Ballot Argument in Favor of A.C.A. No. 16: The Commission considered Memorandum No. 3 and its attachments. (A copy of each is attached hereto.) After the matter was discussed it was decided that the subject should be further discussed at the August meeting and that various of the members would, in the interim, draft proposed arguments for the Commission's consideration at that time.

It was also agreed that steps might properly be taken by members of the Commission to have A.C.A. No. 16 brought to the attention of the Conference of State Bar Delegates at the 1959 State Bar Convention to obtain the endorsement of the Conference.

III. CURRENT STUDIES

A. Study No. 32 - Arbitration: The Commission considered Memorandum No. 5 and its attachment, a copy of each of which is attached to these minutes. There was considerable discussion as to how the Commission should proceed with this study in view of the fact that Mr. Stephens, who has completed two installments of a comprehensive research study on the subject of arbitration, is leaving the Commission on or before August 15. Mr. Stanton reported on a brief conversation he had had with Mr. Kagel and the Commission considered how its relationship with Mr. Kagel should be handled. It was agreed that the Chairman, Mr. McDonough and Mr. DeMouilly should arrange to meet with Mr. Kagel shortly after August 1 to discuss the matter. Some members expressed the view that Mr. Kagel should be invited to act as a general consultant to the Commission on this matter even though he is not invited to act further as a research consultant. The suggestion was made that Mr. Stephens might be retained as a research consultant to complete the study. Mr. Kleps commented that he felt that it would be advisable to somehow retain Mr. Kagel in a senior capacity, with perhaps joint credit to him and another person for the research study published by the Commission, in view of his professional standing and prestige. It was generally agreed that these matters should be left to the discretion of the Chairman and the Executive Secretary.

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B. Study No. 33 - Survival of Tort Actions: The Commission considered Memorandum No. 6 and its attachment, a copy of each of which is attached to these minutes. The draft Recommendation and proposed legislation were reviewed. Mr. Stanton raised the question whether slander of title and trade libel should be included in the list of actions in which they appear on page 2 of the Recommendation. It was decided that the staff should determine whether these actions had been held to fall within the scope of Probate Code Section 574 prior to the decision of Hunt v. Authier and, if so, eliminate them. It was also pointed out that the citations in the footnote on page 10 are incorrect.

It was decided to eliminate the word "herein" appearing in the first sentence of proposed new Probate Code Section 573 on page 1 of the proposed legislation and to substitute therefor the words "in this section." A motion was then made by Mr. Matthews and seconded by Mr. Thurman to approve the Recommendation and proposed legislation as corrected and to send them, together with the research consultant's study, to the State Bar with an invitation to comment. It was agreed that the State Bar should be requested to communicate its views to the Commission within a specified time limit (tentatively fixed at four months subject to a check with Mr. Hayes, Secretary of the State Bar), stating that such a limitation is necessary because of the Commission's printing schedule. The motion carried:

Aye: Babbage, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Present: Balthis, Bradley, Cobey

C. Study No. 38 - Inter Vivos Rights in Property Acquired

During Marriage While Domiciled Elsewhere: The Commission considered Memorandum No. 4 and its attachments, a copy of each of which is attached to these minutes. The Executive Secretary called attention to his correspondence with Professor Marsh, reviewing the highlights of Marsh's letter of July 7, 1959. The Commission then reviewed in detail the proposed statutory provisions on this subject included in the material prepared by the staff. The following action was taken:

Proposed Civil Code Section 154. It was agreed that this section should be eliminated, the substantive provision being made a part of both Section 164 and Section 164.1 of the Civil Code.

Proposed Revision of Civil Code Section 161. It was agreed that Section 161 should be revised to read: "A husband and wife may hold property as joint tenants, tenants in common, or as community property or quasi-community property."

Proposed Revision of Civil Code Section 164. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed New Civil Code Section 164.1. The Commission agreed to the substitution of the word "becomes" for "is" in the phrase "becomes quasi-community property when, during such marriage, etc."; it also approved the addition of the phrase "subject to the provisions of Probate Code Sections 201.4 and 201.5." The Executive Secretary reported that the section had otherwise been approved at the

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June meeting and no further action was taken.

Proposed New Civil Code Section 164.3. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed New Civil Code Section 172b. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed New Civil Code Section 172c. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed Revision of Civil Code Section 1238. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed Revision of Civil Code Section 1265. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed Revision of Civil Code Section 146. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed New Probate Code Section 201.4. After this proposed section was discussed a motion was made by Mr. Dieden and seconded by Mr. Matthews to add a new Section 201.4 to the Probate Code to read:

201.4 Upon the death of any married person
the surviving spouse holds any quasi-community

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property originally acquired by such surviving spouse free of any quasi-community property interest which the decedent had therein at the time of his death and such property becomes the separate property of the surviving spouse.

The motion carried:

Aye: Babbage, Dieden, Gustafson, Matthews, Stanton, Thurman.

No: None.

Not Voting: Bradley.

Not Present: Balthis, Cobey.

In connection with Section 201.4 the Commission discussed what should happen to quasi-community property when the nonacquiring spouse dies. Messrs. Thurman and Stanton both raised the question whether such property should be treated as the separate property of the acquiring spouse (as is done by proposed Probate Code Section 201.4) or whether it should be treated in the same manner as community property, at least for purposes of the application of Probate Code Section 228. Mr. Thurman stated that he felt that the principle expressed in Section 228 should not be applicable - i.e., that the descendants of a nonacquiring spouse should not be entitled to the protection provided therein. A motion was then made by Mr. Thurman and seconded by Mr. Matthews that when the nonacquiring spouse dies first there should be no provision for his collateral heirs similar to that provided in Probate Code Section 228. The motion carried:

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Aye: Babbage, Bradley, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Balthis, Cobey.

Proposed Revision of Probate Code Section 201.5. The Executive Secretary reported that this section was as approved at the June meeting. It was agreed that the words "which was" in the first sentence in proposed Section 201.5 should be deleted. No further action was taken.

The Commission then discussed whether in a situation where the acquiring spouse dies first the property should be treated, for purposes of succession upon the later death of the nonacquiring spouse, in the manner prescribed in Probate Code Section 228 (community property) or in the manner provided in Section 229 (separate property). After the matter was discussed a motion was made by Mr. Babbage and seconded by Mr. Thurman that the principle of Probate Code Section 228 should be made to apply. The motion carried:

Aye: Babbage, Bradley, Dieden, Matthews, Stanton, Thurman.

No: Gustafson.

Not Present: Balthis, Cobey.

Proposed Revision of Probate Code Section 201.6. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed Repeal of Probate Code Section 201.8. The Executive Secretary reported that this had been approved at the June meeting. No further action was taken.

Proposed Revision of Revenue and Taxation Code Section 15301. The Commission discussed whether quasi-community property should be treated the same as community property for gift tax purposes. A motion was made by Mr. Thurman and seconded by Mr. Babbage that Section 15301 of the Revenue and Taxation Code be amended to read as follows:

15301. In a case of a transfer to either spouse by the other of community property or quasi-community property one-half of the property transferred is not subject to this part.

The motion carried:

Aye: Babbage, Bradley, Dieden, Matthews, Stanton, Thurman.

No: Gustafson.

Not Present: Balthis, Cobey.

Proposed Revision of Revenue and Taxation Code Section 15302. The Executive Secretary reported that this section was approved in June. No further action was taken.

Proposed Revision of Revenue and Taxation Code Section 15303. This proposed revision was disapproved as unnecessary inasmuch as the section deals in terms with separate property, not quasi-community property. It was agreed, however, that an additional section, possibly numbered 15303.5, should be added to the Revenue and Taxation Code to read: "This part does not apply to quasi-community which is transferred into community property."

Proposed Revision of Section 13555 of the Revenue and

Taxation Code. Mr. Stanton proposed that in order to parallel substantially the taxation of community property, quasi-community property passing from husband to wife at death be subject to the Inheritance Tax to the extent of one-half thereof in all cases but that property passing from wife to husband be not taxable unless the wife is the acquiring spouse. After discussion it was generally agreed that if the wife is the acquiring spouse the tax should apply to property passing to the husband to the extent of one-half thereof. There was more debate on the question whether the Inheritance Tax should apply upon the death of the nonacquiring wife or the nonacquiring husband. Mr. Babbage suggested that there be no tax in case of the death of either a nonacquiring husband or a nonacquiring wife but that the tax apply at the death of either an acquiring husband or an acquiring wife. A motion was then made by Mr. Babbage and seconded by Mr. Matthews that transfers upon the death of the acquiring spouse to the nonacquiring spouse be taxable to the extent of one-half thereof but that no tax be assessed upon the death of the nonacquiring spouse. (It was recognized that this was, in effect, a motion to approve the proposed revision of Section 13555 as drafted.) The motion carried:

Aye: Babbage, Bradley, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Balthis, Cobey.

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Mr. Babbage then suggested that the Commission reconsider its previous action with respect to the Gift Tax, stating that in his opinion the Commission's action with respect to Inheritance Tax, just taken, was inconsistent therewith. His motion died for lack of a second.

Proposed Revision of Section 13552.5 of the Revenue and Taxation Code. This section was tacitly approved but no formal action was taken.

Proposed Revision of Section 13554.5 of the Revenue and Taxation Code. It was pointed out that this section as drafted is consistent with the proposed revision of Section 13555 which had been approved. A motion was made by Mr. Thurman and seconded by Mr. Babbage that the revision of Section 13554.5 be approved as drafted. The motion carried:

Aye: Babbage, Bradley, Dieden, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Balthis, Cobey.

The Commission then discussed what further action should be taken with respect to this study. The Executive Secretary suggested that a Recommendation of the Commission be drafted by the staff for discussion at the next meeting. Mr. Stanton suggested and it was agreed that the staff also make a thorough check to find if there are other statutes relating to property of married persons which would have to

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be amended to do a complete job.

Mr. Bradley then raised a number of questions going to the very basis of the action proposed to be taken by the Commission. In the course of discussing these questions reference was made to the critical tenor of Professor Marsh's letters. The Commission then discussed whether Professor Marsh should be invited to the August meeting to discuss the action which the Commission is proposing to take. A motion was made by Mr. Babbage and seconded by Mr. Bradley that Professor Marsh be invited to attend the meeting. The motion carried.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary