

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

October 23-24, 1959

1. Minutes of September 1959 meeting (sent October 14).
2. Part Payment of Professor Chadbourn (See Memorandum No. 7, sent October 14).
3. Second Contract with Hill, Farrer & Burrill (See Memorandum No. 9, enclosed).
4. Hearings by Assembly Interim Judiciary Committee - Civil (See Memorandum No. 6, sent September 15, 1959).
5. Annual Report (See Memorandum No. 3 and Memorandum No. 3-A, sent October 14).
6. Studies:
  - (1) Study No. 32 - Arbitration (See Memorandum No. 4, sent October 14).
  - (2) Study No. 40 - Notice of Alibi (See Memorandum No. 5, enclosed).
  - (3) Study No. 48 - Right of Juvenile to Counsel (See Memorandum No. 6, sent October 14).
  - (4) Study No. 42 - Trespassing Improvers (See Memorandum No. 2, sent October 14).
7. Study No. 34 - Uniform Rules of Evidence  
See:
  - (a) Rules covered at September meeting (See Memorandum No. 1 and Memorandum No. 1a, sent October 14).
  - (b) Rules covered at February and March 1959 meetings (See Memorandum No. 8, enclosed).
  - (c) Rule 36 (See Memorandum, sent 7/30/59, covering Rules 29-36).
  - (d) Rules 37, 38, 39 and 40 (See Memorandum sent 8/10/59).

Minutes of Meeting  
of  
October 23 and 24, 1959  
Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on October 23 and 24, 1959.

Present: Thomas E. Stanton, Jr., Chairman  
John D. Babbage, Vice Chairman  
Honorable James A. Cobey  
Leonard J. Dieden  
Roy A. Gustafson  
Charles H. Matthews  
Herman ~~X~~<sub>F</sub>. Selvin

Absent: Honorable Clark L. Bradley  
Samuel D. Thurman  
Ralph N. Kleps

Messrs. John H. DeMouilly and Joseph B. Harvey and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Professor James H. Chadbourn of the School of Law, University of California at Los Angeles, the research consultant for Study No. 34(L) -- Uniform Rules of Evidence, was present during a part of the meeting on October 23 and 24, 1959.

A motion was made by Mr. Dieden, seconded by Mr. Matthews, and unanimously adopted to approve the minutes of the meeting of September 24, 25 and 26, 1959, as revised as follows:

Page 2. The second and third sentence of the second paragraph should be revised to read:

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The proposed collateral study would cover the method of integrating the Uniform Rules of Evidence into the existing California laws and the necessary adjustments to existing California laws if the Uniform Rules of Evidence were to be adopted, with specific recommendations as to those California statutes which should be retained, revised, amended and repealed (including but not limited to those California statutes the substance of which is not included in the Uniform Rules of Evidence).

Page 19. The first sentence of the Comment should be revised to read "It was agreed that the California law, which permits a person other than a grand juror to disclose the testimony of a witness made to a grand jury, should be retained."

Page 24. The second sentence of the second complete paragraph should be deleted.

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I. ADMINISTRATIVE MATTERS

A. Partial Payment to Professor Chadbourn: The Commission considered Memorandum No. 7 (10/14/59) (a copy of which is attached hereto). After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Matthews, and unanimously adopted to approve the partial payment of \$2,500 to Professor Chadbourn for the first half of his study on the Uniform Rules of Evidence under Contract No. 20 (1958).

B. Second Contract with Hill, Farrer & Burrill Law

Firm: The Commission considered Memorandum No. 9 (10/15/59) and a letter (dated 10/13/59) to the Executive Secretary from Mr. Nibley. (A copy of each of these items is attached hereto.) After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Matthews, and unanimously adopted to authorize the Chairman to enter into the second contract with the law firm of Hill, Farrer & Burrill for the amount of \$5,500 for the study of the various aspects of condemnation law and procedure.

C. Hearings of Assembly Interim Committee on Judiciary-Civil of Commission Proposals: The Commission considered Memorandum No. 6 (9/15/59) (a copy of which is attached hereto). After the matter was discussed it was agreed that the Executive Secretary should call Mr. Stevens, Counsel for the Assembly Interim Committee on Judiciary-Civil and inform him that the Commission is agreeable to the Interim Committee's proposal that the Commission present its 1961 legislative program to the Assembly Interim Committee on Judiciary-Civil. However, the Commission will not be prepared to do so until the late summer or fall of 1960.

D. 1960 Annual Report: The Commission had before it Memorandum No. 3 (10/14/59), the proposed 1960 Annual Report of the Commission, and Memorandum No. 3-A (10/14/59). (A copy of each of these items is attached hereto.)

The Commission first considered various portions of the 1960 Annual Report. After the matter was discussed the following changes were agreed upon:

Page 1 and Page 19. The Letter of Transmittal and Recommendation should list the Members of the Commission as of the date the Report is submitted to the Governor and Legislature.

Page 2. The word "to" should be inserted after the phrase "the principal duties of the Law Revision Commission are" and the word "laws" should be "Laws" in paragraph (2).

Page 3. The word "This" should be substituted for the word "The" which precedes the word "procedure" in the fourth line from the top of the page.

The word "is" should be substituted for the word "are" which follows the phrase "interested persons" in the sixth line from the bottom of the page.

Page 5. This page should be revised to reflect the changes in the membership of the Commission.

Page 9. The 1959 legislative history should be more specific as to where the bill was defeated.

The following sentence was added at the end of the first paragraph on page 9: "Both of these resolutions were adopted."

Other minor changes should be made.

The Commission then considered Memorandum 3-A. After the matter was discussed, the Commission determined that the ~~Superior Court~~ <sup>SUPREME COURT</sup> in People v. Chessman did in fact hold section 1060(g) of the Government Code unconstitutional. A motion was then made by Mr. Babbage and seconded by Mr. Dieden to approve page 18 as written and to add the following paragraph at the bottom of the page:

The question in the Chessman case arose out of the defendant's contention that because of the failure of the justices to reside and maintain their offices in Sacramento, the Supreme Court was "'jurisdictionally foreclosed' from deciding this (or any other) case." This contention in effect amounts to a contention that such residence requirement is a qualification for the retention of the office of the Supreme Court justices. The Supreme Court held that the Legislature could not "properly require" such an additional qualification for office.

The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

A motion was then made by Senator Cobey and seconded by Mr. Babbage to add the following paragraph to its Recommendation, Part VII of the 1960 Annual Report:

Pursuant to the mandate imposed by Section 10331 of the Government Code the Commission further recommends the repeal of section 1060(g) of the Government Code.

The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

II. CURRENT STUDIES

A. Study No. 12 - Taking Instructions Into the Jury Room: The Chairman raised the question as to what approach should be taken by the Commission in carrying forward the study on taking instructions into the jury room. During the discussion the following suggestions were made:

1. Write to the office of the Judicial Council requesting (1) its views on whether there should be a provision which authorizes the jury in a civil case to take the written instruction of the court into the jury room; and if it believes that such legislation should be enacted (2) its opinion as to what procedure would be most practicable for taking written instructions into the jury room in a civil case.

2. Write to the Chief Justice of the Supreme Court and to the Chairman of the Conference of Judges, or either, for their views as to what procedure would be most practicable for taking written instructions into the jury room in a civil case.

3. Draft legislation to provide in substance that counsel be required to submit duplicate copies of instructions without marks of identification.

After the matter was discussed it was agreed that the staff should review the matter and execute its recommendation with regard to what it concludes would be the best approach.

B. Study No. 32 - Arbitration Statute: The Commission considered Memorandum No. 4 (10/14/59) and a supplemental memorandum on oral and written arbitration agreements (10/12/59) prepared by the Assistant Executive Secretary. (A copy of each of these items is attached hereto.) After the matter was discussed, the following action was taken:

1. A motion was made by Senator Cobey and seconded by Mr. Matthews to approve the principle (1) that the agreement to arbitrate existing and future controversies should be in writing and (2) not to require the agreement to arbitrate be signed by either party. The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

2. A motion was made by Senator Cobey and seconded by Mr. Gustafson to direct the staff to draft language to provide that words of art are not required to incorporate by reference extraneous written rules regarding agreements to arbitrate. The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

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3. A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve the principle that the written agreement to arbitrate that has expired but is extended by oral agreement or conduct is enforceable under the arbitration statute. The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

C. Study No. 34(L) - Uniform Rules of Evidence:

The Commission had before it Memorandum No. 8 (10/15/59) and attached material relating to Rules 23, 24 and 25 prepared by the Executive Secretary; Memorandum No. 1a (10/14/59) and attached material relating to Rule 27 prepared by the Executive Secretary; Memorandum No. 1 (10/14/59) and attached material relating to Rules 28 through 35 prepared by the Executive Secretary; Memorandum on Rules 29 through 36 prepared by Professor Chadbourn; Memorandum on Rules 37 through 40 prepared by Professor Chadbourn; Memorandum (9/29/58) relating to Whether Rules Which Disqualify Certain Persons as Witnesses Also Disqualify Hearsay Declarants prepared by Professor Chadbourn and distributed at the meeting; and a substitute draft statute of Rule 37 relating to waiver of the incrimination, attorney-client, doctor-patient privilege prepared by Professor Chadbourn and distributed at the meeting. (A copy of each of these items is attached hereto.)

1. Physician-Patient Privilege. The Commission first considered Memorandum 1a and the attached material relating to Rule 27 (Physician-Patient Privilege). After the matter was discussed the following action was taken:

A motion was made by Mr. Babbage and seconded by Mr. Dieden to tentatively revise the various Uniform Rules

by inserting the words "or proceeding" wherever appropriate.

The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

A motion was made by Mr. Dieden, seconded by Senator Cobey, and unanimously adopted to approve Memorandum 1a revised as follows and to send Memorandum 1a to the State Bar Committee on Uniform Rules of Evidence for its views:

Page 2 (Comment). The second paragraph under the title "Definition of 'patient'" should be revised to read "The Commission approves the requirement of the Uniform Rule that the patient must consult the physician for the sole purpose of treatment or diagnosis preliminary to treatment in order to be within the privilege."

Page 6 (Comment). The phrase "the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the" should be deleted from paragraph (8).

2. Rules 28-35. The Commission then considered Memorandum No. 1 and the attached material relating to Rules 28 through 35. After the matter was discussed the following changes were agreed upon:

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Page 3. The third sentence in the second paragraph should be revised to read "The Commission wants to provide more substantial encouragement to the exchange of marital confidences than <sup>is</sup> ~~as~~ afforded by the Uniform Rules of Evidence."

Page 4. The following sentence from the sixth line from the top of the page should be deleted: "We should provide the maximum encouragement to marital confidence."

Page 5. The following sentence in the third line from the bottom of the page should be deleted: "California recognizes this exception."

Page 6. The word "traditional" should be deleted from the first line.

The sentence beginning on the second line from the top of page 6 should be revised to read "Because of the wide variety of torts and the technical nature of many torts, the Commission believes that to extend the exception to include all torts would tend to discourage spouses from exchanging confidences and would open up too large an area of nullification of the privilege."

The word "appropriate" should be substituted for the word "applicable" in the sixth line from the bottom of page 6.

Page 7. The second paragraph should be deleted inasmuch as this matter will be covered in detail when the

Commission considers the existing California statutes on evidence.

Page 8. The word "is" should be inserted after the word "or" in Rule 29(2)(c).

A motion was then made by Senator Cobey and seconded by Mr. Dieden to approve the adoption of the portion of Memorandum No. 1 as revised which covers Rules 28, 29, 30, 31 and 32. The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

The Commission then considered the portion of Memorandum No. 1 relating to Rule 33 which relates to the privilege to refuse to disclose a matter on the ground that it is secret of state which would endanger public security. During the discussion Mr. Selvin stated that Rule 33 is too broad for, as it is presently drafted, there is no way to compel disclosure of information which is claimed to endanger public security. He suggested that Rule 33 should be revised either (1) to contain a definition of the term "public security" or (2) to provide for minimum disclosure of the information to the judge who in turn would ascertain whether the privilege

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could be claimed under Rule 33. Professor Chadbourn then pointed out that to meet the objections raised this privilege could be more satisfactorily provided for in Rule 34. After the matter was discussed a motion was made by Mr. Dieden, seconded by Mr. Babbage, and unanimously adopted to defer further consideration of Rule 33 until Rule 34 is considered.

After Rule 34 was revised and approved infra a motion was made by Senator Cobey and seconded by Mr. Dieden to disapprove the adoption of Rule 33. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Selvin.

No: Stanton.

Not Present: Babbage, Bradley, Thurman.

[Comment: Rule 34 as revised incorporates the principle of Rule 33 and therefore Rule 33 is not necessary.]

The Commission then considered the portion of Memorandum No. 1 relating to Rule 34 which relates to the privilege to refuse to disclose a matter on the ground that it is official information. After the matter was discussed the following action was taken:

A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve the adoption of Rule 34 (1)(a) as revised by adding the words "or employee" after the words "public officer" in lines 3 and 5. The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

A motion was made by Mr. Dieden and seconded by  
Senator Cobey to approve the adoption of Rule 34(1)(b) as  
revised to read as follows:

(b) "Public officer or employee" includes a public  
officer or employee of the State, a public officer  
or employee of any county, city, city or county,  
district, authority, agency or other political sub-  
division of this State and a public officer or  
employee of the United States.

The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

A motion was made by Senator Cobey and seconded by  
Mr. Gustafson to reconsider its prior action on Rule 34(2)(a)  
and to delete the phrase "in a judicial proceeding" from  
Rule 34(2)(a). The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthew, Selvin,  
Stanton.

No: Babbage.

Not Present: Bradley, Thurman.

A motion was made by Mr. Gustafson and seconded by Mr. Stanton to approve the adoption of Rule 34(2)(a). The motion carried:

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

No: Cobey.

Not Present: Bradley, Thurman.

A motion was made by Mr. Dieden and seconded by Senator Cobey to approve the adoption of Rule 34(2)(b) as revised to read:

(b) Disclosure of the information is against the public interest, after a weighing of the necessity for preserving the confidentiality of the information as compared to the necessity for disclosure in the interest of justice.

The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Stanton.

No: Selvin.

Not Present: Babbage, Bradley, Thurman.

The Commission then considered the portion of Memorandum No. 1 relating to the comment on the Commission's action taken on Rule 35. After the matter was discussed a motion was made by Senator Cobey and seconded by Mr. Dieden to approve the comment as revised as follows on the Commission's action taken on Rule 35: The word "ordinarily" should be

inserted in the second sentence before the phrase "is accomplished with dispatch" and the second paragraph should be deleted. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Selvin,  
Stanton.

No: None.

Not Present: Babbage, Bradley, Thurman.

A motion was made by Senator Cobey and seconded by Mr. Dieden to approve the adoption of the portion of Memorandum No. 1 as revised which covers Rules 33, 34 and 35 and to send Memorandum No. 1 to the State Bar for its views. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Selvin,  
Stanton.

No: None.

Not Present: Babbage, Bradley, Thurman.

3. Rules 23, 24 and 25. The Commission then considered Memorandum No. 8 and the attached material relating to Rules 23, 24, and 25. After the matter was discussed the following action was taken:

A motion was made by Senator Cobey and seconded by Mr. Dieden to insert the words "or proceeding" after the words

"any criminal action" in subsections (1), (2) and (3) of Rule 23. The motion carried:

Aye: Cobey, Dieden, Matthews, Selvin, Stanton.

No: Gustafson.

Not Present: Babbage, Bradley, Thurman.

A motion was made by Mr. Gustafson and seconded by Senator Cobey to approve the deletion of the phrase "in a judicial proceeding" from Rule 25. The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Thurman.

A motion was made by Mr. Dieden and seconded by Mr. Matthews to delete subsection (6) of revised Rule 25 [formerly Rule 25(g)]. The motion carried:

Aye: Cobey, Dieden, Matthews, Selvin.

No: Gustafson, Stanton.

Not Present: Babbage, Bradley, Thurman.

[Comment: Rule 25(6) as presently drafted extends the scope of cross-examination to the extent that a person could be cross-examined on any matter relevant to the case which is contrary to the present California law.]

A motion was made by Mr. Stanton, seconded by Senator Cobey, and unanimously adopted: (1) to delete Rule 25 from Memorandum No. 8, (2) to direct the staff to revise Rule 25(6) to incorporate the present California law, and (3) to reconsider this portion of Rule 25 at a later date.

4. Rule 36. The Commission then considered the Memorandum relating to Rule 36. After the matter was discussed the following action was taken. A motion was made by Mr. Gustafson and seconded by Senator Cobey to revise the first portion of Rule 36 in substance as follows:

A witness has a privilege to refuse to disclose the identity of a person who has directly or indirectly furnished information purporting to disclose a violation of a provision of the laws of this State or of the United States to a law enforcement officer ~~to a representative of the State or the United States or a governmental division thereof,~~ charged with the duty of enforcing that provision and evidence thereof is not admissible,...

The motion carried:

Aye: Cobey, Dieden, Gustafson, Matthews, Selvin,  
Stanton.

No: None.

Not Present: Babbage, Bradley, Thurman.

A motion was made by Mr. Selvin and seconded by Mr. Dieden to revise Rule 36(b) to read as follows: "(b) disclosure of his identity is relevant and helpful to the

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defense of the accused or essential to a fair determination of a cause." The motion did not carry:

Aye: Dieden, Matthews, Selvin.

No: Cobey, Gustafson, Stanton.

Not Present: Babbage, Bradley, Thurman.

A motion was then made by Mr. Gustafson and seconded by Senator Cobey to approve Rule 36(b) as drafted. The motion did not carry:

Aye: Cobey, Gustafson, Stanton.

No: Dieden, Matthews, Selvin.

Not Present: Babbage, Bradley, Thurman.

It was agreed that Rule 36(b) should be reconsidered at a later date.

5. Rule 37. The Commission then considered the question of waiver of privileges under the Uniform Rules of Evidence (Rule 37). The Commission had before it a proposed draft relating to waiver of self-incrimination, attorney-client and doctor-patient privileges. After the matter was discussed it was agreed that the proposed draft of the waiver of the self-incrimination privilege should be revised to provide for both the waiver by the accused and the waiver by a witness other than the accused.

A motion was then made by Senator Cobey, seconded by Mr. Dieden, and unanimously adopted to approve the approach proposed by Professor Chadbourn to draft a separate waiver provision for each of the privilege sections.

6. Rule 38. The Commission then considered Rule 38 relating to the admissibility of a disclosure wrongfully compelled. After the matter was discussed it was agreed that Rule 38 should be revised to provide that the holder has the right to object where a person other than the holder testifies.

7. Rule 39. The Commission then considered Rule 39 relating to the reference by judge or counsel to the exercise of the privileges. After the matter was discussed it was agreed to defer consideration of Rule 39 to a later date and to direct the staff to review and revise Rule 39 to except the Constitutional self-incrimination privilege.

8. Rule 40. The Commission then considered Rule 40 relating to the effect of error in overruling a claim of privilege. During the discussion it was pointed out that Rule 40 does not cover the case where the witness is not the holder of the privilege but is now appealing in a contempt proceeding. After the matter was discussed it was agreed to defer consideration of Rule 40 to a later date.

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9. Rule 63. The Commission then considered whether the various exceptions to Rule 63 should be revised to provide that before a hearsay statement is admitted a foundation is required to show that the declarant was competent at the time he made the statement as suggested by the Commission's consultant. After the matter was discussed it was agreed that the staff should revise the various relevant exceptions as proposed by our consultant and submit the revised exceptions for Commission action at the next meeting.

D. Study No. 40 - Notice of Alibi: The Commission considered Memorandum No. 5 (10/15/59) and a draft statute requiring a notice of alibi (10/15/59). (A copy of each of these items is attached hereto.) After the Commission discussed Paragraph (1) of the proposed draft statute the following matters were agreed upon:

(1) There should be a definition of the meaning of "alibi" as used in the alibi statute.

(2) There should be a statement which provides that minor technical variances will not be held to be noncompliance with the alibi statute.

(3) The alibi statute should provide that the notice should be signed either by the defendant or his attorney.

(4) The alibi statute should require that the defendant state in the notice the business or residence address of the witnesses upon whom he intends to rely to establish an alibi.

(5) The third sentence of Paragraph (1) "A copy of the notice of alibi and proof of service shall be filed in the same place as the accusatory pleading is filed" should be deleted.

(6) A motion was made by Mr. Babbage and seconded by Mr. Matthews to revise the fourth sentence of Paragraph (1) to read "The notice of alibi shall be served not later than ten days before the trial, except that the court in which the action is pending may, upon good cause shown shorten the time for such service." The motion carried:

Aye: Babbage, Cobey, Dieden, Gustafson, Matthews,  
Selvin, Stanton.

No: None.

Not Present: Bradley, Thurman.

Paragraph (5) and the last sentence of Paragraph (1) were discussed. These provisions provide that the alibi statute applies only for the day or days specified in the accusatory pleading. It was agreed that the alibi statute should not apply in a case where several different acts covering a wide period of time are alleged. Because of this decision, Mr. Gustafson suggested that the alibi statute be revised in substance as follows: If a defendant is to rely upon an alibi, he shall, on written demand of the prosecuting attorney, furnish information stating (1) the specific place or places at which the defendant claims to have been at the time or times specified in the demand and (2) the names and addresses of the witnesses upon whom he intends to rely to establish such alibi. Within a specified period after receipt of such information from the defendant, the prosecuting attorney shall furnish the defendant or his attorney with the names and addresses of the witnesses upon whom the State intends to rely to establish defendant's presence at the scene of the alleged offense. A motion was then made by Mr. Gustafson, seconded by Mr. Dieden, and unanimously adopted that the staff be directed to prepare a draft of an alibi statute as outlined by Mr. Gustafson and that further

consideration of the alibi study be deferred until such draft is available for consideration by the Commission.

E. Study No. 42 - Trespassing Improvers: The Commission considered Memorandum No. 2 (10/14/59) and a proposed draft statute (10/1/59). (A copy of each of these items is attached hereto.) The Executive secretary raised the question as to whether a trespasser as defined in Section 2(b) and (c), who has actual notice of circumstances sufficient to put a prudent man upon inquiry but is negligent in prosecuting such inquiry, should be subject to exemplary damages. After the matter was discussed a motion was made by Senator Cobey and seconded by Mr. Stanton (1) to provide application of a good faith test to the improving trespasser, (2) to delete the constructive knowledge provision and (3) to except the negligent improving trespasser from exemplary damages. The motion carried:

Aye: Cobey, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Dieden, Thurman.

F. Study No. 48 - Right of Juvenile to Counsel:

The Commission considered Memorandum No. 6 (10/14/59) and a copy of Section 700 of the Welfare and Institutions Code. (A copy of each of these items is attached hereto.) After the matter was discussed the following action was taken:

1. A motion was made by Mr. Gustafson and seconded by Mr. Matthews to approve the principle that persons subject to the juvenile court's jurisdiction under Welfare and Institutions Code Section 700 should be referred to as either (1) wards of the juvenile court which includes the delinquent person or (2) dependents. The motion carried:

Aye: Cobey, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Dieden, Thurman.

2. A motion was made by Senator Cobey and seconded by Mr. Matthews to classify the persons subject to the juvenile court enumerated in Welfare and Institutions Code Section 700 subsections (a), (b), (c), (d), (e), (1) and (n) as "dependents." The motion carried:

Aye: Cobey, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Dieden, Thurman.

3. A motion was made by Senator Cobey and seconded by Mr. Selvin to extend the application of proposed Section 732 to include all juvenile court proceedings or hearings.

The motion carried:

Aye: Cobey, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Dieden, Thurman.

4. A motion was made by Mr. Selvin and seconded by Mr. Stanton to delete the second paragraph of Section 732.1 which reads "The rights given to parents, guardians and custodians by this section are subject to the provisions of Section 732.4." The motion carried:

Aye: Cobey, Gustafson, Matthews, Selvin, Stanton.

No: None.

Not Present: Babbage, Bradley, Dieden, Thurman.

5. A motion was made by Senator Cobey and seconded by Mr. Selvin to add a sentence at the end of Section 732.1 which reads "Furthermore, the court may appoint counsel on its own motion if it deems such to be in the interest of justice." The motion carried:

Aye: Cobey, Matthews, Selvin, Stanton.

No: Gustafson.

Not Present: Babbage, Bradley, Dieden, Thurman.

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It was agreed that the principle of Section 732.4 should be incorporated into Section 732.3 which should be revised to provide that if the person named in the petition and his parent, guardian or custodian disagree as to the selection of counsel, the selection of the parent, guardian or custodian shall prevail except where the court finds that the interest of the parent, guardian or custodian is adverse to the interest of the person named in the petition. If the interest of the parent, guardian or custodian is adverse, the selection of counsel by the person named in the petition shall prevail or, if the person named in the petition has not selected counsel, the court shall appoint counsel if it deems such to be in the interest of justice.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary