

1/5/67

Memorandum 67-2

Subject: Research consultants and topics for study

This is a progress report on our efforts to obtain research consultants on various topics and a suggested disposition of one topic.

1. Pour-over trusts and powers of appointment. This topic was added to our agenda in 1965 by Senator Cobey at the suggestion of Professor Richard R. Powell.

We have written to Professor Richard R. Powell (Hastings Law School) concerning the need for the study of the two topics. His reply is attached as Exhibit I. (We did not receive the New York law he said he was attaching to his letter.) We also wrote to K. Bruce Friedman--who Dean Edward C. Halbach, Jr. (Boalt Hall) advised us is an expert on pour-over trusts--concerning the need for legislation on pour-over trusts. His reply is attached as Exhibit II.

Based on the letters from Professor Powell and Mr. Friedman, the staff recommends that the study of pour-over trusts be dropped from our agenda of topics and that the following be included in our Annual Report for the year 1967:

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

FOR STUDY

Study Relating to Pour-Over Trusts

In 1965, the Commission was directed to make a study to determine whether the law relating to devises and bequests to a trustee under, or in accordance with, terms of an existing inter vivos trust should be revised.<sup>1</sup> California Statutes 1965, Chapter 1640, enacted the Uniform Testamentary Additions to Trusts Act (Probate Code Sections 170-173) to deal with the problems that existed in this field of law. Accordingly, the Commission recommends that this topic be dropped from its calendar of topics.

<sup>1</sup> The Commission was directed to make this study by Cal. Stats. 1965, Res. Ch. 130.

With respect to the study relating to powers of appointment, the staff recommends that Professor Richard R. Powell be retained as our consultant to prepare a research study and that the compensation for the study be \$1,000. Professor Powell, having prepared the New York statute, is exceptionally qualified to prepare this study. We have written to Professor Powell to determine whether he would be interested in serving as a consultant to prepare the research study on this topic in the event the Commission decides that such a study should be made at this time.

2. Studies to conform the Code of Civil Procedure and Business and Professions Codes to Evidence Code. In accordance with the decisions made at the November meeting, we have executed contracts with Jon Smock to prepare the research studies on these codes.

3. Indexing of Volume 8. In accordance with the decision of the Commission at the October meeting, we have executed a contract with Margaret Loftus to index Volume 8. The compensation is \$600. (As approved by the Commission, the amount of compensation was not to exceed \$900.)

4. Procedural Aspects of Condemnation. We are still attempting to obtain a research consultant to prepare a study on this topic.

5. Quasi-community property and division of property on divorce. We are still attempting to obtain a consultant on these topics. We suggest that we be authorized to separate the two topics and to obtain a consultant for each. The compensation for each study would be \$1,000 instead of \$1,500 for the combined study of both topics, as previously determined by the Commission).

6. Research studies on additional topics. When time permits, we plan to prepare a memorandum to indicate the other research studies that could be made at this time. With the loss of two members of the legal staff, we should have a substantial amount of money that we could (with the approval of the Department of Finance) transfer to research.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

Memo 67-2

EXHIBIT I

UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW

198 MCALLISTER STREET  
SAN FRANCISCO, CALIFORNIA 94102

December 12, 1966

John H. DeMouilly, Esq.  
Executive Secretary  
California Law Revision Commission  
Stanford University  
Stanford, California 94305

Dear Mr. DeMouilly:

I was very glad to get your letter of December 7, and I am hopeful that I can make a reply which will be useful.

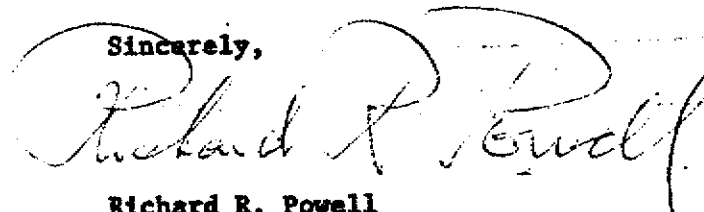
With respect to the problem of pour-over trust legislation, I think that the new Section Probate Code 170 enacted by the California Laws of 1965, Chapter 1640 is completely adequate. As you doubtless know, California and New Mexico in 1965 joined a group of 16 states which, prior to that time, had already enacted the Uniform Testamentary Additions To Trust Act. I am glad that this has been done, as there was a very important gap in the California law on this topic prior to this enactment.

With respect to the general subject of powers of appointment, I do not think that the situation has been in any way remedied since my talk to Senator James A. Cobey in April of 1965. Since that date the statute which I drew for New York has been enacted and improved in the State of New York. The original enactment was Chapter 2 of the Laws of 1964. It has since been incorporated into a large general statute of that state. There has also been a new statute enacted by Chapter 52 of the Wisconsin Laws of 1965, effective May 16, 1965. It constitutes Sections 232.01-232.21 in the Wisconsin Revised Statutes.

I thought it might be interesting to you to have a print copy of the original New York statute marked as to the topics on which I think California law needs statutory clarification. I am enclosing such a copy with an ink line along the margin of the matters which seem to me seriously to need attention.

If I can at any time be of further use to you or to the Commission, please do not hesitate to let me know. With best wishes for the season, I remain

Sincerely,



Richard R. Powell

RRP:jb

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EXHIBIT II

K. BRUCE FRIEDMAN  
ATTORNEY AT LAW  
220 BUSH STREET  
SAN FRANCISCO, CALIFORNIA 94104  
TELEPHONE 434-1363

December 12, 1966

Mr. John H. De Mouilly  
Executive Secretary  
California Law Revision Commission  
Stanford University Law School  
Stanford, California 94305

Dear Mr. De Mouilly:

In response to your letter of December 7, 1966, it is my feeling that our 1965 pour-over legislation resolves the major uncertainties that previously existed, and that it is, on the whole, satisfactory. The legislation also has the virtue of being, essentially, the Uniform Act, with the advantages that uniformity offers. I would, therefore, recommend that the Law Revision Commission not pursue its study of the subject.

Very truly yours,

*K. Bruce Friedman*

K. Bruce Friedman

KBF:s