

#34(L)

6/8/64

First Supplement to Memorandum 64-37

Subject: Study No. 34(L) - URE (Article III. Presumptions)

Attached to this memo is a letter from the vice-chairman of the Southern Section of the State Bar Committee that relates to the Commission's recommendation on presumptions.

No quorum was present at the Southern Section's meeting. The vice-chairman, speaking for himself, indicates that our recommendation is sound. Thus, he disagrees with the comments of the Northern Section.

He indicated that considerable criticism might be made of the details of the proposal; but he was unwilling to undertake such detailed criticism without the views of the other members of the Section.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

First Supplement to
Memo 64-37

EXHIBIT I

Law Offices
NEWELL & CHESTER

June 4, 1964

California Law Revision Commission
School of Law
Stanford University
Stanford, California

Attention: Mr. John H. DeMouilly

Gentlemen:

A meeting of the Southern Section of the Committee to Consider Uniform Rules of Evidence was called for Monday, June 1, 1964. However, because of unexpected commitments, some of the members were unable to attend the meeting and we did not have a quorum. Nevertheless, in view of the time factor, I feel that it is advisable to comment to the Commission on its proposed revision of the general subject of presumptions. In making these comments, it should be expressly understood that they are the opinions of your Vice-Chairman individually and do not represent the views of the Southern Section as a deliberative body.

In general, I feel that the Commission has undertaken a worth-while but very difficult task in endeavoring to bring some sort of order out of the chaos that surrounds the California law of presumptions. While one might quibble with the dichotomy, definitions and delineations proposed in the tentative recommendations, in view of the time factor, I think that the proposals are about as much as can be expected at the present time. In particular, I approve of the Commission's intention to do away with the onerous rule set forth in Smellie vs. Southern Pacific Co. and further to state the law of presumptions in such a way as to give them their rational effect. This theme was more aptly enunciated by Justice Traynor in Speck vs. Larver, 20 C 2d 585-590.

Needless to say, this viewpoint, again personal with the Vice-Chairman, is contrary to that suggested by the Northern Section. Therefore, my position can best be summarized by stating that, in general, I approve of the general recommendations but, without the considered opinions of the fellow members of the Southern Section, I feel it inappropriate to make more detailed comments on the various proposed sections.

Very truly yours,

S/
Robert M. Newell, Vice-Chairman
State Bar Committee on
Uniform Rules of Evidence

RMN:em