

JUL 9 1956

Memorandum to the Law Revision Commission

Subject: Reference of Commission Studies  
and Recommendations to State Bar

A report will be made to the commission at the July meeting of the action of the Board of Governors of the State Bar referring the several matters which we recently sent to them to Committees -- all but one to the Committee on Administration of Justice -- for study and report to the Board. That report will note the doubts which have been expressed that the Committees will be able to report to the Board of Governors on these matters at an early date. This means that if further steps by the commission with respect to these matters are postponed pending State Bar action on them our legislative program for the 1957 Session will be stalled for several weeks if not months.

The report will also note that the question has been raised by the State Bar whether in the future the commission's studies might be sent to them before the commission has taken action so that there will be more time to consider them.

This report will furnish an occasion to discuss the practice which we have inaugurated of sending our work to the State Bar for comment before it is sent to the Members of the Legislature and other interested persons. I have some questions on the matter which are set forth herein for your consideration.

1. It has never been exactly clear to me what the precise purpose of sending our reports to the State Bar is. Are we seeking an official endorsement of our recommendations by the Board of Governors? If so, it will almost certainly not be forthcoming in some cases, which might prove embarrassing. Are we simply seeking the reactions and views of the Committee on the Administration of Justice or some other Committee on our proposals to be considered in connection with possible revision of the commission's recommendations?

If so, is it necessary to have the matters go through the Board of Governors both before and after they are considered by such committees, thus increasing quite substantially the delay involved in making these references?

2. What weight should we give the views of the State Bar? This is an academic question now because the Bar and/or its committees have not yet differed with us. But differences of opinion will almost certainly occur on some matters over the years. Of course, the commission will consider carefully questions raised or criticisms made. But will we defer to its views? It seems clear to me that we should not. Granting that the members of the State Bar committees and particularly the Committee on the Administration of Justice are able and hardworking lawyers, I do not believe that they are any more able or hardworking than the members of this commission. And I doubt that they will give the matters as much time and thought as we do. I believe, therefore, that the commission ought to have a feeling of considerable independence vis-a-vis the State Bar insofar as its recommendations are concerned.

3. If State Bar committees are to review our recommendations, is it not highly desirable to have a representative of the commission present at all committee and subcommittee meetings, both North and South, at which the proposals are discussed to explain them and answer questions? This would take much time but a selling problem is involved and a species of lobbying would seem to be required if we are going to get our proposals accepted by the State Bar. At least this was our experience with the Probate Code revision in the 1955 Session; we had no difficulty with the Northern Section of the Committee on the Administration of Justice after discussing the problems with a subcommittee but had considerable difficulty with the Southern section with whom we did not talk.

4. Should our work be sent to the State Bar before the commission has made its own decisions? This has been suggested by the State Bar. I doubt that it would be wise. Most of our recommendations have been changed considerably as a result of discussion in both commission and committee meetings. They are not really thought through until final commission action is taken. I believe that it would be a waste of everyone's time to bring the State Bar in before then. Moreover, it might give everyone (including ourselves) the impression that we were working out our reports and recommendations with State Bar -- i.e., that it is kind of a joint effort.

5. Should further action on the items on our 1957 legislative program be suspended pending State Bar action? We have worked hard to get where we are now. At the end of the July meeting we will probably have completed a total of about a dozen studies -- 75% or more of our 1957 program. Our original aim was to get these printed and distributed to the Members of the Legislature and other interested parties during the summer in order to give people an adequate opportunity to study them before the Session. If we wait for State Bar action on them, this will almost certainly not happen and we will find ourselves caught up in the last-minute rush with the Members of the Legislature, the State Printer, and others. Whatever we may do in future years, it may be desirable to go ahead with our printing and distribution program this year prior to State Bar action. We can always prepare or amend our bills to take account of any questions raised or suggestions made by the State Bar.

Respectfully submitted,

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Executive Secretary