

JUL 31 1956

Memorandum to Law Revision Commission

Subject: Agenda Policy.

As you know, Stanford has two people at work this summer under the agenda contract with the commission. They are preparing reports for consideration by the Agenda Committee and the Commission in selecting topics to be included in the agenda resolution to be introduced at the 1957 Session of the Legislature. I suggest that the commission devote some time to consideration of agenda matters at the August meeting and make the agenda the main order of business at the September meeting, with a view to having next year's topics selected by October 1, if possible.

There is, I believe, a major policy problem concerning the agenda which the commission must now decide. The problem should be considered and decided at the August meeting, if possible, because the answer will affect the work of the Stanford staff and the Agenda Committee in the weeks immediately ahead.

As you know, in preparing our first agenda resolution, which was submitted to the 1955 Session, we deliberately avoided selecting topics of great breadth and included several very narrow ones - e.g., revision of Section 660 of the Code of Civil Procedure, a minor revision of the planning laws, etc. In preparing our second agenda resolution which was submitted to the 1956 Session we proceeded along the same general line although not to such a marked degree. As a result of this policy, we have found ourselves engaged in some cases in doing work which, although useful, is of little intrinsic importance - e.g., revision of Penal Code Sections 1377 and 1378 - and in other cases making studies of only a part of a problem - e.g., the study of Probate Code Section 201.5 which covers only problems arising at death and the Howell study which covers only a small

part of the general subject of parties.

The question which we now have for decision is whether the policy which we have followed in selecting topics for study should be changed. This is really two questions, viz:

1. Should we select broader topics? This relates not only to the selection of topics but also to how we describe them in our annual reports and the agenda resolution: whether in broad general terms or in narrow and specific terms. Should we now, for example, place on the agenda such topics as parties, landowner's liability, etc? One consideration here is, of course, that substantial research studies would be required in such cases and our research consultants' fees would have to be larger than they now are.

2. Should we omit narrow topics? The problem here is whether we should limit ourselves to large projects (assuming we select them) or whether we should also undertake, within our limits of time and money, to study any problem involving substantive revision of the law which comes to our attention. As a result of sending out our two general letters soliciting suggestions to judges, district and city attorneys and others we have received a substantial number of suggestions concerning relatively small defects in the law, some little more than mechanical in scope. A number of these suggestions relate to statutes dealing with the mechanics of government - see, e.g., Suggestions No. 130 (posting of notice on sale of surplus property), 148 (uniform notice and procedure provisions in municipal improvement acts) 151 (correction of deed given by city) 163 (use of resolution rather than ordinance in vacating streets). Others relate to relatively minor matters of procedure - see, e.g., Suggestions No. 112 (date as of which appraisal of property should be made in probate proceedings), 116 (filing and library fees in justice courts), 129 (withholding costs if prevailing

party recovers \$50.00 or less), 133 (employment of experts in probate proceedings). Still others raise other problems of relatively narrow importance - see, e.g., Suggestions No. 115 (referring to alcoholic as "common drunkard"), 128 (smoking on own premises in hazardous fire area), 137 (need for statute covering "kickback" payments by employees), 162 (boat lien law).

A number of additional examples of the kind of narrow problems, in some cases involving only semi-mechanical revision, which I have in mind are to be found in some of Judge Fricke's suggestions for Penal Code revisions (Suggestion No. 132) - see, e.g., Nos. 6, 7, 13, 18 in his list - and in the suggestions which were sent to us by the Legislative Counsel (Suggestion No. 164) - see, e.g., 2, 3, 5, 12, 14, 15, 16 and others in his list.

There is no doubt that these problems, though relatively narrow in scope, are important to the people concerned with them. And the fact that they have come to us would suggest that there is no other way - or at least no other simple way - to bring these problems before the Legislature. But the problems do not require either extensive research or intensive analysis and they may, therefore, be less deserving of study by the commission than such topics as the Uniform Rules of Evidence, suspension of the absolute power of alienation, attachment and execution, etc. Our energies are necessarily limited; should they, then, be concentrated on a few major studies rather than spread over a wider range of substantive law revision problems? One obviously important consideration in answering this question is what agency will take care of the smaller problems if we do not. The Legislative Counsel cannot because they do involve substantive change in the law.

If we were to decide to put a number of these smaller topics on our agenda each year, it might be desirable to differentiate them from our larger

studies both in our annual report and in discussing the agenda resolution before the Legislature, making clear the two rather different functions which the commission would then be performing.

One more matter in this connection: the smaller problems of the kind under discussion are not suitable for reference to a research consultant simply because they are limited in scope. If we are to undertake such studies, I believe that we would have to have an additional junior counsel on our staff to make the necessary studies and prepare the relatively brief research reports which they will require. I am recommending the addition of a junior counsel to the staff in another memorandum to be sent to you shortly; this could be a part of the duties assigned to him.

Respectfully submitted,

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Executive Secretary