12/18/56

Memorandum No. 3

Subject: Study No. 32 - Uniform Arbitration Act

The Commission's 1956 Agenda Resolution included as Topic No. 14 a study to determine whether the Arbitration Statute should be revised. When Mr. Martin Dinkelspiel, Chairman of the Commission on Uniform State Laws, learned of this, he requested the Commission to consider whether it would join with the Commission on Uniform State Laws in recommending to the 1957 Session of the Legislature that the Uniform Arbitration Act be enacted in California. The Commission thereupon decided to make the first phase of its study of 1956 Topic No. 14 a study of the Uniform Act. Mr. Sam Kagel, a member of the San Francisco Bar, was retained to make a research study on this subject. A copy of Mr. Kagel's study is attached.

When Mr. Kagel's study was received, I prepared a memorandum to the Northern Committee raising certain questions relating to the study and the matters with which it is concerned. A copy of that memorandum is attached (Note that page references therein are to Mr. Kagel's original manuscript rather than to the mimeographed copy thereof enclosed but that the original pagination is indicated in the margin on the copy).

On Friday, December 14, the Northern Committee met with Mr. Kagel to consider whether it would recommend that the Law Revision Commission join with the Commission on Uniform State Laws in recommending adoption of the Uniform Act in California. A copy of the report of the Northern Committee to the Commission is attached.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

12/18/56

Report of Northern Committee
Respecting Uniform Arbitration Act

The Committee met on December 14, 1956 in San Francisco with Mr. Sam Kagel, research consultant on the Commission's study of the Uniform Arbitration Act, and staff members McDonough and Nordby to discuss Mr. Kagel's report on the Uniform Arbitration Act. On the basis of this discussion the Committee reached the following conclusions:

1. That the Commission should not recommend enactment of the Uniform Arbitration Act at the 1957 Session of the Legislature.

2. That the Commission should not prepare and print a recommendation relating to the Uniform Arbitration Act or print and distribute Mr. Kagel's report at this time.

3. That if the Arbitration Act comes before the Senate and Assembly Judiciary Committees during the 1957 Session, the legislative members of the Commission should, as members of those Committees, report that the question whether the California Arbitration Statute should be revised is now under study by the Law Revision Commission pursuant to Resolution Chapter 42 of the Statutes of 1956 and that the Commission expects to report the results of its study to the 1959 Session of the Legislature. The Committee recommends that it be left to the discretion of the legislative members whether to report further to their respective Judiciary Committees that the Commission has had a study of the Uniform Act made by Mr. Kagel and that it would be happy to make copies of his report available to the members of the Committee and other members of the Legislature on request.

4. That the Commission continue its study of the California Statute and of Mr. Kagel's report with a view to determining whether it should recommend revision of the California Arbitration Statute to the 1959 Session of the Legislature and that the Commission should, if necessary, have a further research consultant's report prepared to this end. In this connection, Mr. Kagel stated at the meeting that he would be willing to work further with the Commission either on his report or on revision of the California Statute.

Thomas E. Stanton, Jr.
Bert W. Levit, Chairman.

12/11/56

Memorandum to Northern Committee

Subject: Research Consultant's Report on Uniform Arbitration Act.

A number of questions which have occurred to me in the course of going over Mr. Kagel's report on the Uniform Arbitration Act are set forth below. As you will see, most of these questions go beyond the narrow question whether the Uniform Act should be adopted but I believe they will tend to point up issues relevant to that decision. Many of the questions go to the California Revision suggested by Mr. Kagel and it should be acknowledged that he has suggested this only tentatively, noting that further study will be required before such a revision could be firmly recommended. Again, however, I think the questions raised will be helpful in considering the Uniform Act.

Section 1 of the Uniform Act
(See pages 1 to 9 of Mr. Kagel's report)

1. Why should an arbitration statute be confined to written contracts for arbitration? Is it contemplated that oral agreements for arbitration are to be governed by the common law? Or should the statute also provide that an agreement for arbitration is not valid unless in writing?

2. I note that in the proposed California Revision (page 8 of Mr. Kagel's report) it is provided that "'controversy'" as used herein applies to any and all questions arising under an agreement . . ." I take it that this language is not intended to confine arbitration to disputes arising out of contracts and other consensual transactions and suggest that this might be made clearer by revising the latter part of the language just quoted to read "all cases arising under the agreement to arbitrate."

3. With respect to the language based on the New York statute which appears on page 9 of the report: (a) What are "appraisals" and "valuations"? (b) What are the pros and cons as to including appraisals and valuations under an arbitration statute? (c) Technically, is this problem not one of whether appraisals and valuations are included within the term "controversies" as used in an arbitration statute and should the problem not be handled by the technique of defining "controversy" either to include or to exclude them? (d) If the problem is to be handled in the fashion suggested on page 9 of the report, I suggest the following change in the language: "This Act shall also apply to questions arising out of agreements providing for valuations or appraisals ~~or~~ and shall apply to other controversies which may be collateral, incidental, precedent, or subsequent to any issues between the parties;" (e) I do not understand what "other controversies which may be collateral, incidental, precedent, or subsequent to any issues between the parties" means.

Section 2 of the Uniform Act
(See pages 10 to 23 of Mr. Kagel's report)

1. With respect to the comment (pages 15-16) on Section 2(b) of the Uniform Act: Is not the purpose of this provision to afford a party contending that he is not under a duty to arbitrate a matter, a kind of declaratory judgment proceeding to determine that question: (quaere, however, whether a party could not use the regular declaratory judgment procedure for this purpose) In the absence of such a provision cannot the party contending that a matter is arbitratable obtain an arbitration award by default under Section 5(a)? Is the provision not, therefore, desirable?

2. Re staying an action (see report pages 17-19): I have some doubt that the question whether one who is in default in proceeding with an arbitration is precluded from obtaining one is covered in the Uniform Arbitration Act "as a practical matter" as suggested in the report (p. 17). The provision that a stay will be granted only "if an order for arbitration or an application therefor has been made under this section" does not tell us that such an order or application shall not be granted if the party seeking it is in default in proceeding.

3. Are not "waiver" and "default in proceeding" the same thing?

4. With respect to the discussion of "arbitrability of claim" I have considerable difficulty with the statement (report pp. 19-20) "but whether a particular claim or issue is arbitratable under such agreement should be determined by the aribtrator." I do not see how this can be a different question from the question whether there is an agreement to arbitrate; that question must always, I should think, be whether there is an agreement to arbitrate a particular dispute and, therefore, a matter for decision by a court. Moreover, it does not seem to me that either Section 2(e) of the Uniform Arbitration Act or the quotations on page 20 of the report support the statement quoted above; rather they indicate only that a court cannot decide whether a claim which it has decided is arbitratable under the agreement has merit.

5. I have the following suggestion, which I believe are self-explanatory, for amendment of proposed Section 2 of the California Revision (pp. 21-23):

> Section 2(a). On application of a party ~~showing~~ alleging an agreement described in Section 1, and the opposing party's refusal to arbitrate, the court shall ~~order-the-parties-to~~ proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party; otherwise, the application shall be denied. But if the court ~~may finds under-appropriate-circumstances~~ that ~~even-though-an~~ the agreement to arbitrate ~~exists,-it~~ has been waived by the moving party, ~~in-which-case~~ the application to compel arbitration shall be denied.

(b) If an issue referable to arbitration under ~~the~~ an alleged agreement to arbitrate described in Section 1 is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this Section, the application shall be made therein. Otherwise and subject to Section 18, the application may be made in any court of competent jurisdiction.

(c) Any action or proceeding involving an issue referable ~~subject~~ to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section. If the issue is severable, the stay ~~may~~ shall be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay. Such an order shall not be issued or application for such order granted if the court finds that applicant seeking the stay has waived arbitration~~, or is in default in proceeding with arbitration~~ as provided for in the agreement between the parties.

(d) On motions to stay or to compel arbitration the only issues that may be raised are whether an agreement to arbitrate the matter in controversy was made and whether one of the parties has waived arbitration. Every other issue whether legal or factual must be left ~~exclusively~~ for determination by the arbitrators. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated has not been shown.

Section 3 of the Uniform Act
(See pages 24 to 27 of Mr. Kagel's report)

1. It occurs to me that there may be some situations in which parties have agreed that certain disputes between them are to be arbitrated by a particular individual (e.g. an "umpire" under a collective bargaining agreement) and where they would not wish the dispute to be arbitrated by any other person should the individual named be unable or unwilling to act. Neither Section 3 of the Uniform Act, nor Code of Civil Procedure Section 1283 nor proposed Section 3 of the California Revision appears to recognize this possibility, providing for the appointment of a successor in all cases. If I am right, should not some limitation be written into any new California arbitration

statute to cover this point?

2. I doubt the wisdom of subsection (c) of proposed Section 3 of the California Revision.

3. I suggest the following modifications, which I believe are self-explanatory, of the language of proposed Section 3 of the California Revision:

> Section 3(a). An arbitrators selected by the parties or the court, who ~~are~~ is to ~~act as the neutral,~~ be impartial ~~shall be designated~~ is a ~~as the~~ neutral-arbitrator. An ~~A~~arbitrators selected by ~~each~~ a party or the court to represent a party to the arbitration ~~shall be designated as the~~ is an advocate-arbitrator.
>
> (b) If ~~the~~ an arbitration agreement provides a method of appointment of either ~~the~~ a neutral-arbitrator or an advocate-arbitrator, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when a neutral-arbitrator or advocate-arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court, on application of a party, shall apoint a neutral-arbitrator and or an advocate-arbitrator as needed. A neutral-arbitrator or advocate-arbitrator so appointed has all the powers of one specifically named in the agreement.
>
> (c) ~~The~~ A courts ~~should~~ shall appoint neutral-arbitrators whenever possible from lists of qualified available arbitrators supplied by recognized governmental agencies or private associations concerned with arbitration.

Section 4 of the Uniform Act
(See pages 28 to 30 of Mr. Kagel's report)

My questions here can best be indicated through my suggestions for revision of proposed Section 4 of the California Revision:

> Section 4. The powers of arbitrators may be exercised by a majority of them unless otherwise provided by the agreement ~~or by this Act~~ if reasonable ~~and due~~ notice of all hearings and meetings required to carry out the duties of the arbitrators ~~shall be~~ has been given in writing ~~by the neutral arbitrator~~ to all ~~members of the Board of Arbitration~~ arbitrators.

My comments are as follows: (a) unless the Act makes some exception, which I do not believe it does, "or by this Act" seems unnecessary; (b) tying the two sentences together is intended to make clear what I suppose the intention to be -- that the majority cannot decide unless notice has been given; (c) it is not clear to me that the notice would or should always be given by the neutral arbitrator; (d) insofar as I know, we have no definition of "Board of Arbitration" and "arbitrators" seems adequate.

Section 5 of the Uniform Act
(See pages 31 to 38 of Mr. Kagel's report)

1. I understand that Mr. Kagel's view is that most of the matters covered by specific provision in Section 5 of the Uniform Act would be decided the same way under the California Arbitration Statute even though it is less explicit on most of them. This seems sound enough to me, and I suggest that this thought might be stated expressly both in his report and in the commission's report to the Legislature.

2. Would the enactment of a statute expressly providing that an arbitrator may determine a controversy notwithstanding the failure of a party duly notified to appear represent a substantive change in the California law?

3. It is stated on page 34 of the report that the Uniform Act "does not intend 'to incorporate the rules of evidence of court proceedings'". This seems sound enough but should such a provision not be written into the Act rather than relying upon the 1954 Proceedings to establish this meaning should the question arise? Perhaps language similar to that quoted from Sapp v. Barenfeld on page 34 of the report could be utilized for this purpose.

4. Does the language of subsection (e) of proposed Section 5 of the California Revision mean that the hearing must begin with all arbitrators present

but may continue if during the hearing one of them ceases to act, or does it mean that it can begin with less than all present if any arbitrator refuses to act?

5. Does subsection (e) of proposed Section 5 of the California Revision mean that if there are two advocate-arbitrators and one neutral-arbitrator and one of the advocate-arbitrators fails to attend the hearing that the other advocate-arbitrator and the neutral-arbitrator may conduct the hearing, or must the other advocate-arbitrator also abstain and the neutral-arbitrator conduct the hearing alone? Suppose the neutral-arbitrator failed to attend; why should not the advocate-arbitrators proceed if they believe they can do so and reach a decision?

6. In light of the language of the first paragraph of Code of Civil Procedure Section 1286 and that of Code of Civil Procedure Section 1283 quoted on page 31 of the report, it seems to me at least open to question whether the decision in the Cecil case is correct or that the Supreme Court would necessarily reach the same result. If this doubt is well founded, the enactment of a provision similar to subsection (e) of proposed Section 5 of the California Revision would represent a more substantial revision of California law than is suggested in the report.

7. I suggest that the last part of the last sentence of subsection (a) of proposed Section 5 of the California Revision might better read as follows:

> "and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award ~~unless the parties consent~~ or, with the consent of the parties, to a later date.

Section 6 of the Uniform Act
(See pages 39-40 of Mr. Kagel's report)

1. Should the words "prior to the proceeding or hearing" not be eliminated from proposed Section 6 of the California Revision? Suppose a party should at the outset of an arbitration proceeding expressly "waive" his right to be represented by an attorney but should subsequently decide that he is unable to present the matter satisfactorily himself and wish to have the services of an attorney during the balance of the proceeding. Is there any good reason why he should be bound by his earlier waiver?

Section 7 of the Uniform Act
(See pages 41 to 45 of Mr. Kagel's report)

1. It seems to me that the provisions of the first paragraph of Code of Civil Procedure Section 1286 are somewhat clearer with respect to the matters covered than are subsections (a) and (c) of Section 7 of the Uniform Act and that it might, therefore, be preferable to incorporate the former rather than the latter into proposed Section 7 of the California Revision.

2. One matter which is not entirely clear to me under Code of Civil Procedure Section 1286 is whether a court may punish a person for contempt for disobeying the subpoena of an arbitrator or may only do so after the court has ordered the person to comply with the subpoena and that order has been disobeyed. This question is even less clear under Section 7(a) of the Uniform Act which is incorporated in the California Revision. I should think that it should be clarified in any new arbitration statute.

3. Code of Civil Procedure Section 1286 provides that where there is more than one arbitrator all or a majority shall sign subpoenas for testimony before them. It is not entirely clear whether this provision applies to all decisions

with respect to depositions but I would suppose that it does. Proposed Section 7 of the California Revision, on the other hand, following the Uniform Act, clearly gives these powers to the neutral-arbitrator alone. This would seem to be a considerable substantive change in the law and one which may be open to some question. (Note, however, that Professor Sturges suggests that all members of a panel should have this power.)

4. Who pays the witness fees? Should mileage and other expenses be expressly covered?

5. Is it clear from proposed Section 7 of the California Revision that limitations as to how far a witness may be required to travel in obedience to a subpoena issued by a court apply to subpoenas issued by an arbitrator?

6. Does the Uniform Act contemplate taking depositions on written interrogatories when (a) the witness is out of the State or (b) in any other case where this appears to be reasonable? If so (or not) should this be spelled out together with procedure for settling written interrogatories if authorized?

7. Should subsection (b) of Proposed Section 7 of the California Revision provide for resort to court to compel the taking of depositions as does C.C.P. Section 1286?

8. Should subsection (b) of Proposed Section 7 of the California Revision have added after "evidence" the words "but not of discovery" to make this intended meaning explicit?

Section 8 of the Uniform Act
(See pages 46 to 49 of Mr. Kagel's report)

I have the following comments on proposed Section 8 of the California Revision:

1. I am not clear why subsection (b) is necessary. While this might be a desirable form in which to cast the arbitrators' work, why is it necessary to require it in the statute?

2. Are the parties empowered to extend the time to make an award when the time was fixed by order of court as well as when it was fixed by agreement? If so, is there any incongruity in this?

3. It is nowhere expressly stated that an award not made within time is ineffective unless the party objecting to the award has waived his right to do so. Perhaps the last sentence of subsection (c) should be recast to express this thought rather than merely to imply it.

4. No criteria are stated which the court is to apply in determining whether to extend the time within which an award might be made; would it be desirable to do so?

5. If it is intended that the arbitrator shall be able to make a decision without any explanation, findings of fact or law, reasoning as to how he reached the decision, or the basis of the decision, would it not be desirable to so state in the statute?

Section 9 of the Uniform Act
(See pages 50 to 53 of Mr. Kagel's report)

1. I read the first sentence of Section 9 of the Uniform Act to provide that the arbitrators may modify or correct the award either (1) on application to them directly by one of the parties or (2) when the award is submitted to them for such purpose by a court which has the award before it under Sections 11, 12 and 13 of the Act. Mr. Kagel seems to assume that the arbitrators are empowered by Section 9 to modify or correct the award only under (2) - i.e., when

the award is submitted to them by a court. The matter should be clarified because the language is incorporated in subsection (a) of proposed Section 9 of the California Revision.

2. It is not clear to me why it is necessary to refer to Sections 11 and 12 as well as to Section 13 in Section 9. I should think that an application for modification by some party under Section 13 ought to be necessary before the court could submit the award to the arbitrators for modification. The application might be made as an alternative motion or a countermotion in a proceeding before the court under Section 11 or Section 12 but it would still be an application under Section 13.

3. I am not convinced that it is undesirable to give the arbitrator the opporunity to clarify the award or/that it is desirable to limit his clarification, in situations where the court requests him to clarify it, to "only those particulars specified in the court's order". Is it apprehended that the arbitrator may actually change the award in the guise of clarifying it? It would seem to me that since many arbitrators are laymen and since the proceedings are rather informal, many awards may be issued which are not clear and are not responsive to all of the problems involved and to afford the arbitrator the opportunity to clarify the award may be desirable even if it involves some modification of it. There seems to be no particular reason for equating an award to a judgment of a court in this respect.

4. I think that the next to last sentence in paragraph (b) of proposed Section 9 of the California Revision should be eliminated. It is not proper as applied to an application made to the arbitrator (assuming that my interpretation that Section 9 authorizes an application directly to the arbitrator). Insofar as it applies to an application to the court, it appears to be covered by Section 13(c) itself.

Section 10 of the Uniform Act
(See pages 54-55 of Mr. Kagel's report)

1. It seems to me that Section 10 of the Uniform Act and proposed Section 10 of the California Revision are directed to somewhat different matters. The latter is a substantive provision as to who shall bear the expense of the arbitration. Section 10 of the Uniform Act, on the other hand, seems to leave this substantive question to the discretion of the arbitrator and to provide further that his decision thereon may be incorporated on the award. One of the consequences of this would appear to be that the arbitrator can unilaterally fix his own fee and make it binding on the parties by incorporating it in the award. Whether this is desirable may be open to question. In any event, the Commission ought to decide whether it wants the essence of both provisions in a new statute.

2. Is it contemplated that the expense of depositions should be shared or should this be treated as it is in a civil action, with the losing party being required to bear this expense?

Section 11 of the Uniform Act
(See pages 56-57 of Mr. Kagel's report)

1. It seems to me that some time limit within which a motion to confirm must be made, such as is provided in Code of Civil Procedure Section 1287, may be desirable, although it might be extended beyond 3 months - say, to a year.

2. Should subsection (b) of proposed Section 11 of the California Revision provide that the opinion of the arbitrator, if any, shall also be filed with the application?

Section 12 of the Uniform Act
(See pages 60 to 68 of Mr. Kagel's report)

The questions which I have here can be raised with reference to proposed Section 12 of the California Revision:

1. It is not clear to me why subsection (a)(1) and subsection (a)(2) are both necessary. Does (1) refer to corruption by persons other than the arbitrators? Is there any reason why (1) could not cover the whole subject by adding at the end thereof "on the part of an arbitrator or any other person"?

2. Is "other undue means" in subsection (a)(1) clear enough to warrant retention?

3. It seems to me to be undesirable to refer to the errors on the part of the arbitrator covered in subsection (a)(3) as "misconduct" or "misbehavior". We do not ordinarily so characterize the kind of errors which seem to be referred to. In any case, I should think that the language of subsection (a)(4) of Section 12 of the Uniform Act would be preferable to that of this subsection to cover what is apparently intended to be reached thereby. Possibly, however, there should be incorporated into the language of (4) the ground stated in subsection (a)(2) of Section 12 of the Uniform Act: "There was evident partiality by an arbitrator appointed as a neutral".

4. I do not understand the following language of subsection (a)(4): "or so imperfectly executed that a mutual final and definite award upon the subject matter submitted was not made". The language may have been clarified by the cases but on its face it seems most indefinite and in effect to give a court very broad power to set aside an award which it simply believes to be wrong on the merits.

5. I suggest that the language of subsection (a)(5) of Section 12 of the Uniform Act be incorporated in the California Revision. I think that Mr. Kagel

is probably right in his suggestion (page 63 of report) that this language is not technically necessary since the matter referred to could be raised under a contention that the arbitrator had exceeded his powers. However, the language is at most redundant and I think that the explicit cross-reference of proceedings under Section 2 and to the possibility of waiver are probably desirable. I would, however, modify the language of (5) to the following extent: "There was no ~~arbitration~~ agreement to arbitrate the dispute in question * * *"

6. I am somewhat concerned by the language of subsection (b) of proposed Section 12 of the California Revision. As I understand the matter, when a court confirms an award, it makes the award a judgment of the court. Suppose, then, that the award provided for some specific relief which a court of equity would not grant in a civil action brought for that purpose -- e.g., the removal of a wall of a building standing an adjoining landowner's land, an affirmative decree requiring detailed supervision of conduct over a long period of time, a decree requiring the performance of affirmative acts in another state, or specific performance of a personal service contract. Is a court to be required to confirm the award and thus in effect to enter such an equitable decree? The same question might be raised with respect to the two examples given in the report (pages 64-65) of relief which might be granted by an arbitrator which would not be granted by a court. It seems to me that other similar questions could be raised about this subsection.

7. If subsection (a)(4) of proposed Section 12 of the California Revision is retained, should the court not be given authority in subsection (d) thereof to order a rehearing before either the old arbitrators or new arbitrators when subsection (a)(4) was the ground for vacation of the award? I should think that

it might in some cases appear to the court that the old arbitrators were so wide of the mark that it would be unlikely that they could do an effective job on rehearing.

8. I think that it should be noted that the language of subsection (e) is probably different in substance from that in the last paragraph of Code of Civil Procedure Section 1288. As I read the former, it would start running as of the date of the order a period of time within which an award could be made equal to the time period specified in the agreement (e.g., 3 months). As I read the latter, the rehearing which it authorizes would have to be completed within the original time provided in the agreement for the making of the award.

9. I have some doubt about subsection (f). It would seem to me to be proper to authorize the other party to make a counter-motion to have the award confirmed and to have the court decide both the motion to vacate and the counter-motion at the same time. But quaere whether the court should confirm the award in the absence of a motion by any party that it do so.

Section 13 of the Uniform Act
(See pages 69 to 71 of Mr. Kagel's report)

The only question which I would raise here is with respect to subsection (b) of proposed Section 13 of the California Revision: Should the court be authorized to confirm the award as made or as modified in the absence of a motion by some party that it do so.

Section 14 of the Uniform Act
(See pages 72 to 74 of Mr. Kagel's report)

I have one question with respect to subsection (b) of proposed Section 14 of the California Revision. It seems to me that a court should not be authorized

to award as "costs" reimbursement for any expense incurred independently of a proceeding in that court; thus, I suggest eliminating the language "unless the arbitration award or agreement provides otherwise". If an arbitration award provides for costs, these would be covered by the enforcement of the award but would not be independently provided for as "costs" in the judgment of the court confirming the award. If an arbitration agreement provides for costs, these should be included in the arbitration award where one is made, and if no award is made they would be the subject of a contract action to recover the amount agreed to be paid but reimbursement expenses incurred outside a judicial proceeding should not be awarded to a party by a court as "costs" in such proceeding.

Section 15 of the Uniform Act
(See pages 75-76 of Mr. Kagel's report)

It is not entirely clear to me that specific directions as to the content of the judgment roll are necessary. If they are, I should think that the judgment roll would include those papers filed in the proceeding which would correspond to the pleadings in a regular action.

Section 16 of the Uniform Act
(See pages 77-78 of Mr. Kagel's report)

1. I would substitute the first sentence of Section 16 of the Uniform Act for subsection (a) of proposed Section 16 of the California Revision.

2. I would substitute for subsection (b) of proposed Section 16 of the California Revision the following: "Notice of an application must be served upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action."

Section 17 of the Uniform Act
(See pages 79 to 81 of Mr. Kagel's report)

1. It is not clear on the face of subsection (a) of proposed Section 17 of the California Revision whether the reference is to the superior, municipal, or justice court. Should all arbitration matters go to the superior court regardless of the amount of money involved or should the jurisdictional amounts ordinarily applicable apply in these cases?

2. Suppose an arbitration agreement does not either expressly or impliedly provide for arbitration in this state but that the person against whom a judicial proceeding arising out of the agreement is brought is amenable to suit within the State. Should our courts not have jurisdiction to proceed, at least where the moving party resides here or is doing business here? I believe that subsection (b) of proposed Section 17 of the California Revision might be read as negativing jurisdiction in such a case.

3. Subsection (c) of proposed Section 17 of the California Revision refers to "service of process on defendant." In Section 16 of the California Revision, however, written notice of application is authorized in all cases. Should not Section 17 therefore refer to "service of notice"?

4. Quaere whether subsection (c) of proposed Section 17 of the California Revision should not be more specific and demanding with respect to acquiring jurisdiction over a person outside the state in a case falling within subsection (b). The non-resident motorist statute provides, for example, for service by registered mail with return receipt filed with the court; is something about equivalent desirable here?

Section 18 of the Uniform Act
(See pages 82 to 84 of Mr. Kagel's report)

1. Should the word "principal" be placed before "place of business" in proposed Section 18 of the California Revision?

2. Does the last sentence of proposed Section 18 mean that if

any application provided for in the statute is made to a court, that all subsequent proceedings must be brought therein? Suppose for example, that an application to stay an action should be made under Section 2(d), the action being filed in a different county than any described in Section 18. Should a later application to confirm an award necessarily be filed there?

3. It should be noted that the venue provisions of proposed Section 18 of the California Revision are considerably less liberal insofar as the moving party is concerned than are those of Code of Civil Procedure Section 1282, since he is not authorized to proceed in the county in which he resides. The provisions are, however, consonant with the general California theory concerning venue.

Section 19 of the Uniform Act

(See pages 85-86 of Mr. Kagel's report)

1. Can appeals be taken in California today from the kinds of orders described in subsection (a)(1) of proposed Section 19 of the California Revision?

2. Would it be desirable to provide for an appeal from an order either granting or denying a motion to stay a civil action on the ground that the issue therein is referable to arbitration? Either order would substantially affect the rights of the parties and while technically both are interlocutory and could be appealed on appeal from the final judgment in the action it seems likely that the questions would be moot at that later time.

3. Is subsection (b) of proposed Section 19 of the California

Revision likely to be misleading as to the questions open for review or appeal? As I understand it, an appellate court would not be justified in reversing a judgment confirming an award on many grounds upon which a reversal could be ordered if the appeal were from a superior court judgment. Quaere whether "to the same extent" throws doubt on this?