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Memorandum No. 11

Subject: Study No. 34 - Uniform Rules
of Evidence

You will recall that we have made an agreement with Professor Chadbourn of U.C.L.A. to have him make a study of all of the Uniform Rules of Evidence for the Commission. We presently have a contract with him for \$3,750 covering the first part of the study and we have agreed to make an additional contract for \$3,750 out of this year's research funds to cover the balance of the study. The Uniform Rules study has been assigned to the Southern Committee of the Commission. The Commission's stated goal is to complete the study in time to report to the 1959 Session of the Legislature.

Professor Chadbourn has been working on the Uniform Rules for several months. To date he has produced three memoranda covering presumptions (Rules 1 subdivisions (1) (3) (4) and (5), 13, 14, 15 and 16) the hearsay rule (Rule 63) and one exception to the hearsay rule (Rule 63, subdivision 1). These memoranda have been considered and discussed by the Southern Committee but final action has not been taken on any of them.

We knew, of course, when we began this study that it would be an enormous undertaking. I believe that the Southern Committee will agree with me that our experience to date in discussing the subjects upon which Professor Chadbourn has reported serves merely to emphasize this. The subject-matter of presumptions and hearsay is difficult, not to say elusive, and lengthy discussions have been required merely to establish what the present law is. I do not believe that this is due to any inadequacy in Professor Chadbourn's memoranda but rather to the intrinsic difficulty of the subject matter. In any case, it seems clear

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that this study will require a great deal of time both by the Southern Committee and the Commission, not to mention the staff before we are ready to report to the Legislature.

Professor Chadbourn is somewhat behind the schedule he had set for himself but reports that, despite moments of discouragement, he is prepared to continue. I suspect, however, that he is beginning to have doubts about meeting the deadline which we had tentatively set for completion of his work, March 1, 1958.

Action
It seems to me that there are some basic questions concerning how the Commission intends to handle this assignment the answers to which would be very helpful to both the Southern Committee and Professor Chadbourn in carrying forward their assignments in the matter. I suggest, therefore, that these be discussed and, if possible, decided by the Commission at the August 1957 meeting.

The principal question, as I see it, is what the Commission's function is on an assignment of this nature. The Concurrent Resolution authorizes the Commission to make a study to determine "whether the law of evidence should be revised to conform to the Uniform Rules of Evidence". It seems to me that the Commission's answer to this question is likely to have four parts: (1) that some of the Rules should be enacted; (2) that some of the Rules should be amended and then enacted; (3) that in some situations the proposed Rule should not be enacted and the law left as it is; and (4) that in some situations the proposed Rule should not be enacted but the present law should be changed in some other way. If this is the Commission's conclusion will our report to the Legislature so state? Or will we limit our report to one of the following:

1. A single over-all recommendation that the Uniform Rules be adopted or that they not be adopted.

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2. A recommendation with respect to each Rule, that it be adopted or that it not be adopted.
3. A recommendation with respect to each Rule, that it be adopted, that it not be adopted, or that it be amended and adopted.

What I am trying to point up here is the question of the extent to which the Commission will treat this assignment as sui generis. Will the assignment be considered as calling merely for a relatively specific answer to a relatively specific question? Or will it be treated as the occasion for a Commission study of the law of evidence resulting in a series of recommendations on the subject, which study will take account of the Uniform Rules of Evidence as one important factor to be considered in reaching our decisions?

Another way to focus the problem which I am trying to present may be to ask whether the Commission will present any bills on the subject to the 1959 Session of the Legislature. The legislative aspect of the problem could be handled by leaving it to the Commission on Uniform State Laws to introduce bills embodying the Uniform Rules, our Commission limiting itself to filing a report which could take any of several forms, as outlined above. On the other hand, we might view it as our responsibility to draft a bill or bills to revise the law of evidence, incorporating various of the Uniform Rules therein as they appeal to us as an adequate solution to the particular problem involved. In other words, will our role be relatively passive, limited to a commentary on other people's work or will it be relatively active, the Law Revision Commission taking the ball and the play largely away from the Commission on Uniform State Laws?

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The other major problem is liaison with other interested groups. In the first place is this our responsibility or is it that of the Commission on Uniform State Laws? If it is ours, should the Commission suggest a close working relationship with the Commission on Uniform State Laws, with us furnishing them copies of research consultants' reports, inviting them to sit in on committee or Commission meetings devoted to the Uniform Rules, etc? As for the State Bar, I believe that I recall that Joe Ball has suggested that a special State Bar Committee be appointed to work with us on this study. Whether or not he has, would this not be a good idea? Should special liaison efforts be made with other groups: the Judicial Council, the Conference of Judges, District Attorneys Association, local bar associations, etc.

These problems should be discussed at the August 1957 meeting if time permits. Such a discussion will probably raise other problems to which the Commission should also address itself at this time.

Respectfully submitted,

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Executive Secretary

JRM:fp