

my.
Date of Meeting: August 28-29, 1959
Date of Memo: August 10, 1959

Memorandum No. 3-A

Subject: Status of Topics Assigned to Law Revision
Commission for Study, 1955-1959.

The attached memorandum was prepared by John McDonough.
It gives information as to the status of topics assigned to the
Commission for study.

This information should be helpful to the Commission in
determining how many new studies the Commission will ask the 1960
legislative session to assign to the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Min.
7/27/59

Memorandum to John H. DeMouilly

Subject: Status of topics assigned to Law Revision
Commission for Study, 1955-1959.

Study
No.

1. Suspension of Absolute Power of Alienation. Authorized 1955.
Bills were introduced in 1957 and 1959. The 1959 bill was enacted.
2. Judicial Notice of Foreign Country Law. Authorized in 1955. A
bill was introduced in 1957 and passed.
3. Dead Man Statute. Authorized in 1955. A bill was introduced in
1957 but failed to pass. The Commission determined not to pursue this
study further inasmuch as the subject will necessarily be covered in
the course of its study of the Uniform Rules of Evidence.
4. Law Governing Survival of Actions. Authorized in 1955. In
1957 Commission filed a report with Legislature recommending that no
legislation be enacted on this subject. (For an interesting aftermath,
see 10 Stanford L. Rev. 205.)
5. Rights of Surviving Spouse in Property Acquired by Decedent
While Domiciled Elsewhere. Authorized in 1955. A bill was introduced

Study
No.

5 and passed in 1957.
contd.

6. Effective Date of Order Ruling On Motion for New Trial.

Authorized in 1955. Legislation was introduced in 1957 and 1959 and passed in 1959.

7. Retention of Venue for Convenience of Witnesses. Authorized in

1955. Legislation was introduced in 1957 but failed to pass. The Commission determined not to pursue this subject further inasmuch as its views appear to be quite unacceptable to the Senate Judiciary Committee.

8. Marital "For and Against" Testimonial Privilege. Authorized in

1955. Legislation was introduced in 1957 but failed to pass. The Commission determined not to pursue this study further inasmuch as the subject will necessarily be covered in the course of its study of the Uniform Rules of Evidence.

9. Elimination of Obsolete Provisions from Penal Code Sections

1377 and 1378. Authorized in 1955. A bill was introduced and passed in 1957.

10. Maximum Period of Confinement in County Jail. Authorized in

1955. A bill was introduced and passed in 1957.

Study
No.

11. Corporation Code Sections 2201 and 3901, Relating to the Sale of All Or Substantially All of a Corporation's Assets.
Authorized in 1955. The Commission filed a report recommending that no substantive change be made in the law on this subject but that a statute be enacted codifying a Supreme Court decision that notice to stockholders is not necessary in the case of the sale of the assets of a corporation organized specifically for the purpose of selling all or substantially all of its assets. A codification bill was introduced but was strenuously opposed by the State Bar Committee on Corporations. Ultimately, however, the State Bar took no position on the bill. The bill failed to obtain a do-pass recommendation in the Senate Judiciary Committee. At the July 1959 meeting the subject was continued on the Commission's current study agenda.
12. Taking Instructions to Jury Room. Authorized in 1955. A bill to make instructions available to the jury was introduced in 1957 but was not moved because various mechanical problems involved in getting a copy of the instructions to the jury were brought to the Commission's attention. The Commission determined in 1958 to carry this study forward and that decision was reaffirmed at the July 1959 meeting.
13. Bringing New Parties into Civil Actions. Authorized in 1955. A bill was introduced and passed in 1957.

Study
No.

14. Administrator in Quiet Title Action. Authorized in 1955.
After the study was under way the research consultant raised the question whether a study was warranted. The Commission eventually determined that it was not and so reported to the Legislature.
15. Application for Attorney's Fees etc. in Domestic Relations Actions. Authorized in 1955. A bill was introduced and passed in 1957.
16. Planning Procedure Where No Planning Commission. Authorized in 1955. After a staff study was completed the Commission determined that subject was not one appropriate for recommendation by the Commission and so reported to the Legislature.
- 17(L). Feasibility of Conforming California Inheritance and Gift Taxes to Federal Counterparts. Authorized in 1955. The Commission included a study of this problem in its 1956 report to the Legislature but made no recommendation on the subject.
- 18(L). Revision of Fish and Game Code. Authorized in 1955. A revised code was introduced and passed in 1957.
19. Overlapping Provisions of Penal and Vehicle Codes. Authorized in 1956. A bill was introduced in 1959 but did not pass. At the July 1959 meeting the Commission decided to continue on its current agenda the overlap between the codes relating to the taking of

Study
No.

19
contd.

vehicles but not that relating to drunk driving.

20.

Appointment of Guardians for Minors and Incompetents.

Authorized in 1956. A bill was introduced and passed in 1959.

21.

Confirmation of Partition Sales. Authorized in 1956. A

staff study was completed in 1959. At the suggestion of two practitioners to whom the staff study and some legislative recommendations which the Commission had under consideration were sent, this study was broadened, by means of a concurrent resolution adopted in 1959, to include the entire subject of partition actions. The immediate question to be decided in connection with this study is whether the expanded research study should be done by the staff or whether a research consultant should be retained for this purpose if funds are available.

22.

Cut-off Date on Motion for New Trial. Authorized in 1956.

A bill was introduced and passed in 1959.

23.

Rescission of Contracts. Authorized in 1956. We obtained

a lengthy and, in my opinion, an excellent research study from Professor Lawrence A. Sullivan of the University of California at Berkeley. This study and the general problem were given lengthy consideration at a number of meetings of the Commission during 1957 and 1958. At the end of these discussions the Commission was at an impasse as to what legislation, if any, to recommend.

Study
No.

23
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The impasse could not be resolved because attendance at meetings was consistently falling short of sufficient members so that any view could command the five votes then necessary to take action. The subject was temporarily dropped when, in the fall of 1958, the Commission found it necessary to confine its attention to matters being prepared for submission to the 1959 session of the Legislature. The study has not been reactivated but should be now that the 1959 session is over.

24. Mortgages for Future Advances. Authorized in 1956. A bill was introduced and passed in 1959.

25. Right of Nonresident Aliens to Inherit. Authorized in 1956. A bill was introduced in 1959 but did not pass. At its July 1959 meeting the Commission decided not to make this topic the subject of a recommendation to the 1961 session of the Legislature.

26. Escheat -- What Law Governs. Authorized in 1956. I undertook to do a research study on this subject as a staff study back in 1956-57 inasmuch as the topic is one in the field of conflict of laws. I was able to get a pretty fair start on the study; the work which I did is in the file. The study needs considerable additional work, however, particularly with respect to what the law of the several states on the subject is. It should be noted that the Legislature has had before it at the last two sessions proposed

Study
No.

26
contd.

abandoned property legislation which covers the subject at least in part; the status of this legislation should be investigated.

27.

Putative Spouse. Authorized in 1956. We retained as our research consultant on this study Professor J. Keith Mann of the Stanford Law School. For one reason or another Professor Mann has not yet completed the study. He is working on it this summer. He tells me that the subject is considerably broader and more complex than either we or he had heretofore thought, but that he intends to do a thorough job and is not presently inclined to raise the question of re-negotiating the contract. We have a special problem here inasmuch as the funds on which the contract with Mr. Mann was made are no longer available to us in the regular course of business since June 30 of this year. (Funds can be encumbered for a period of only three years after the fiscal year in which they were first available. Since the funds here in question were first available during 1955-56 their availability terminated at the end of fiscal year 1958-59.) I am informed by Mrs. Anderson of Ralph Klep's office, who does our bookkeeping and is our general expert in state government finance, that when the study is completed Mr. Mann will simply have to file a claim with the State Board of Control and that he will then be paid. I hope that the matter is not more complicated than this, but I think it should be looked into. I have not,

Study
No.

27
contd.

incidentally, discussed the problem with Mr. Mann.

28.

Admissibility in Condemnation Proceedings of Evidence
of Amounts Realized in Sales of Adjacent Properties. Authorized
in 1956. This study has been consolidated with Study #36(L) -
Condemnation Law and Procedure.

29.

Post-conviction Sanity Hearings. Authorized in 1956.
We retained Professor David W. Louisell of the School of Law at
Berkeley to do both this study and Study # 43 (Separate Trial on
the Issue of Insanity). Professor Louisell has been given an
extension of time and my recollection is that our present
arrangement with him is that he will submit these studies to
us by April, 1960. I find, however, that there is no memo
or correspondence in the file to this effect and it might be
a good idea for you to write him and get the matter clarified.

30.

Custody Jurisdiction. Authorized in 1956. We retained
Dean Kingsley of the U.S.C. Law School as our research consultant
on this study. Dean Kingsley submitted a study which the
Commission did not regard as satisfactory. We discussed this
with him preliminarily and it was determined that further
discussions should be held. However, Dean Kingsley was out of
the country during the academic year 1957-1958 and we were too
heavily involved in the 1959 legislative program during academic
year 1958-59 to open discussions with him. Because the funds

Study
No.

30
contd.

under which the contract was made would not be available for payment in the ordinary course after June 30, 1959, the Commission decided to pay Dean Kingsley for his study and this has been done on the understanding that he will, nevertheless, continue to work with us on it. The next step should be for someone to go down and talk to Dean Kingsley about such further work as needs to be done on the study. This will probably be a mission of some delicacy.

31. Doctrine of Worthier Title. Authorized in 1956. A bill was introduced and passed in 1959.
32. Arbitration. Authorized in 1956. The Commission first determined to consider whether the Uniform Arbitration Act should be adopted in California. For this purpose it retained Mr. Sam Kagel, a member of the San Francisco Bar, to make a comparative study of the Uniform Act and the California Arbitration Statute. Mr. Kagel recommended that California not adopt the Uniform Act but rather turn its attention to drafting an arbitration statute which would be superior to both the present law and the Act. The Commission accepted this recommendation. It then became necessary to have a second research study prepared. Mr. Kagel was retained to do this study despite the fact that his first study had not been entirely satisfactory to the Commission. (It was recognized that the first study had been prepared under a very short deadline and it was hoped and believed that the second study, prepared under

a more reasonable time limitation, would be superior.) The Commission was disappointed in Mr. Kagel's second study and decided that a more comprehensive research study on the subject should be prepared by a member of its own staff. While he was with us, Glen Stephens spent a good bit of time on this project and completed the first two installments of a major legal research study on the subject of arbitration of the kind which the Commission desires. With Mr. Stephens leaving the Commission it now has the problem of how to carry the arbitration study forward. It also has the problem of its relationship with Mr. Kagel. At the July 1959 meeting it was agreed that Messrs. Stanton, DeMouilly and McDonough should meet with Mr. Kagel during the week of August 3 to discuss the matter. It was also agreed, I believe, that it would not be desirable to arrange to have Mr. Kagel do further research work for the Commission although it might be quite desirable to have him continue as a consultant on the subject of arbitration. It was further agreed that the Commission must have a research study covering the entire subject along the lines of the study thus far prepared by Mr. Stephens. It was suggested that this study might be completed by Mr. Stephens' successor or that the Commission might arrange to contract with Mr. Stephens to complete the study. It was agreed that a decision on this matter would have to be held in abeyance, however, until after the discussion with Mr. Kagel.

33.

Survival of Tort Actions. Authorized in 1956. The

Commission is now at the point of sending to the State Bar in mimeographed form its proposed recommendation and statute and the research consultant's study, with an invitation to the State Bar to submit its views on the matter by a stated deadline (to be fixed after discussion with Mr. Hayes, Secretary of the State Bar).

34(L).

Uniform Rules of Evidence. Authorized in 1956. The

Commission retained as its research consultant on this project Professor James H. Chadbourn of U.C.L.A., who had been its research consultant on the Dead Man Statute study. Professor Chadbourn has been engaged since 1956 in preparing a series of memoranda on various of the Uniform Rules of Evidence or subdivisions thereof. These memoranda undertake to compare the Uniform Rule or subdivision with the present California law, to discuss the merits of the Uniform Rule and to recommend whether or not it should be adopted in this State. The Board of Governors of the State Bar appointed a special committee under the chairmanship of Joseph A. Ball, a former member of the Commission, to study the Uniform Rules of Evidence and the Commission has been working closely with this Committee, sending its members copies of Professor Chadbourn's memoranda and of its own minutes reporting the Commission's action on the subject.

Professor Chadbourn, the Commission and the State Bar Committee addressed themselves initially to Rule 63 which relates

34(L) contd. to hearsay evidence and certain related rules. I attended the meetings of both Sections of the State Bar Committee and thus was able to effect a liaison between the Committee and the Commission. Over a period of time a rather wide area of agreement was reached on hearsay. In September, 1958 the Commission and the Committee held a joint meeting to discuss matters relating to hearsay as to which we were not yet in agreement. As a result of this discussion and the agreement reached therein the two groups are now in agreement on almost every point involved on the subject of hearsay (i.e., all matters which both have considered).

Professor Chadbourn has submitted some additional memoranda since September 1958 and he has given us a schedule on which he will be submitting memoranda in the future. Presumably, the subject of Uniform Rules of Evidence will be appearing regularly on the agenda of Commission meetings from this point on and the cooperative effort of the Commission and the State Bar Committee will be reactivated.

A major project which must be undertaken now is to write what in effect would be a draft recommendation of the Commission on the subject of hearsay, explaining the action it has taken and the legislation which it will recommend. Since I am, I believe, the only person who is sufficiently familiar with the entire background to do this, I am planning to do it if you will make the necessary stenographic help available.

35(L) Post-Conviction Procedure. Authorized in 1956. This study is concerned with the "Chessman" type of problem and got

35(L) contd. on our agenda on the motion of the California District Attorneys' and Peace Officers' Association. The Commission first determined to consider whether the Uniform Post Conviction Procedure Act should be adopted in California. To this end it retained Paul Selvin, a member of the Los Angeles Bar, to make a comparative study of the Uniform Act and the California law. Mr. Selvin reported that the California law on this matter is, on the whole, quite satisfactory. He recommended that the Uniform Act not be adopted here but that further study be given to the possibility of improving California law on post conviction procedures and remedies in some of its details. Mr. Selvin was unable to undertake the second study. The Commission retained Professor Herbert L. Packer of Stanford to do it. I suggest that you get in touch with Herb to find out when he plans to submit his study.

36(L) Condemnation Law and Procedure. Authorized in 1956. During 1956 and early 1957 the Commission negotiated with Stanley Burrill, a member of the Los Angeles Bar, about his doing a research study on this subject. In the course of these negotiations Mr. Burrill prepared a comprehensive outline of the topics to be studied. Mr. Burrill died quite suddenly and unexpectedly and his firm, Hill, Farrer & Burrill, was retained to undertake a kind of pilot research study on several of the topics listed in the Burrill outline, under a contract dated May 15, 1957 providing for the payment of \$1500. Over a period of time it

36(L) contd. became apparent that the firm was having great difficulty in meeting its obligations under the contract because its condemnation people were so busy. In 1959, therefore, it was agreed that the first contract should be terminated and two new contracts should be entered into, one for \$12,500 to be made with funds available during 1958-59, and the other for \$5500 to be made with funds available during 1959-60. The new arrangement was to put the matter on a basis which would enable the firm to get the work out. We have made the first contract and at the July, 1959 meeting I was authorized to write the firm and tell them that the Commission is prepared to make the second contract whenever they would like to go ahead. One matter that has not been clarified as yet and should perhaps be clarified shortly is whether the firm will send its work to us in installments as it is completed or will send the entire study at the end of the contract period. My own view is that the installment system should be used and that the Commission should consider each installment when it comes in, as it is doing in the case of the Uniform Rules of Evidence. Only in this way, it seems to me, can so substantial and undertaking be handled.

37(L) Claims Statutes. Authorized in 1956. Bills were introduced and enacted in 1959. A proposed constitutional amendment was also introduced and adopted by the Legislature. It will now go on the ballot and the Commission may have some concern about informing the electorate of its merit.

38.

Inter-Vivos Rights in Property Acquired by Married

Persons While Domiciled Elsewhere. Authorized in 1957. The Commission has received a study prepared by its research consultant, Professor Harold Marsh of U.C.L.A., and has devoted a substantial amount of meeting time to this subject, particularly during its last several months. At the June and July, 1959 meetings the Commission gave consideration to various proposed statutory provisions on the subject prepared by the staff and approved all of them, some after amendment. The question was then raised by Mr. Bradley and Senator Cobey, who, because of the press of legislative business had not attended the meetings of the Commission during which the subject had been discussed and the proposed statutes approved, whether the Commission was not considering making recommendations here which were too far reaching. It was agreed that this question should be put on the agenda for the August meeting and that Professor Marsh should be invited to attend and to present his ideas to the Commission for consideration before the proposed legislation is sent to the State Bar for its views. My own view is that it would be very helpful to prepare a draft recommendation for distribution to Professor Marsh and the members prior to the meeting. I believe this would help to focus the issues.

39.

Attachment, Garnishment and Property Exempt from Execution.

Authorized in 1957. This is obviously a major undertaking. The Commission has retained Professor Stefan A. Riesenfeld of the

Study
No.

- 39 contd. School of Law at Berkeley as its research consultant on this topic. We have not heard from Professor Riesenfeld recently and he should be contacted soon to find out how he is getting along and when he expects to submit the study or some part thereof. (This one, too, might well be handled in installments.)
40. Notice of Alibi. Authorized in 1957. The report of the research consultant has been received and presumably will be on the agenda of the August, 1959 meeting for consideration.
41. Small Claims Court Law. Authorized in 1957. We hired a recent law graduate under our 1958-59 Stanford research contract to do a study on this subject for us. His study has been completed and is in the file. It was one of the matters that was put aside during the 1959 session of the Legislature. I have not reviewed the study recently; my recollection is that it is pretty good but needs some revision. Perhaps the best way to handle the matter would be to turn it over to the new Assistant Executive Secretary to be completed.
42. Trespassing Improvers. Authorized in 1957. A research study on this subject was prepared by Professor John H. Merryman of Stanford. The study has been approved by the Commission and has been set in type. We have devoted time at several recent meetings to consideration of various drafts of remedial legislation which might be recommended. As is reflected in some of the material

42 contd. in the file, there is some disagreement among the members of the Commission as to the basic form which such legislation should take. This topic was on the agenda for the July, 1959 meeting but we did not reach it due to the press of other business. I assume that it will be on the agenda for the August meeting. You may wish to consider whether Professor Merryman should be invited to attend and to express his views on the matter. (He prefers the legislation he drafted to any we have come up with yet.)

43. Separate Trial on the Issue of Insanity. See Study 29, above.

44. Suit in Common Name. Authorized in 1957. We retained Professor Judson Crane of Hastings as our research consultant on this subject. Professor Crane prepared a study which we learned in the course of our discussions on the subject was really not very adequate. We have undertaken to do some additional research on the subject and Miss Lindow has prepared some memoranda which are in the file. This one needs considerable work. The first step, I should think, would be for someone to take a look at the whole matter and decide how to proceed from here. I suspect that a fair amount of work will be involved in revising the Crane study sufficiently so that it will provide a solid basis for Commission action.

45. Mutuality re Specific Performance. Authorized in 1957.

Study
No.

45 contd. We retained as our research consultant on this subject Professor Orrin B. Evans of U.S.C. We have not heard from Professor Evans and an inquiry should be made about now to determine what the status of the study is and how soon he expects to submit it.

46. Arson. Authorized in 1957. Our research consultant on this study is Professor Herbert L. Packer of Stanford. I believe he is working on the study this summer. You may wish to inquire when he plans to submit it.

47. Civil Code Section 1698. -- Modification of Contracts. Authorized in 1957. We have not yet retained a research consultant on this study. This might be done if a part of the research funds in the 1959-60 budget can be made available for this purpose. On the other hand, I believe that this is a subject that could be handled adequately by the Assistant Executive Secretary if his time permits.

48. Right to Counsel in Juvenile Court Proceedings. Authorized in 1957. We retained Professor Arthur Sherry of the University of California at Berkeley to do a research study on this subject and on Study # 54(L) (Use of the term "Ward of the Juvenile Court"). Professor Sherry has submitted a research report covering both matters which has been the subject of discussion of the Commission at two or more recent meetings. This subject was on the agenda for the July, 1959 meeting but we did not reach it due to the press

48 contd. of other business. I assume that it will be on the agenda for the August meeting. I have sent Professor Sherry a copy of the material prepared for the July meeting with an invitation to comment on it.

49. Rights of Unlicensed Contractor. Authorized in 1957.

We retained as our research consultant on this study Professor James D. Sumner of U.C.L.A. Professor Sumner submitted a study some time ago which is, I believe, not really adequate. We have done some editorial work on the study and some additional research of our own which is compiled in some memoranda prepared by Miss Lindow. This study needs considerable work. The first step, I should think, would be for someone to look over the whole situation and decide how to proceed from here. The Commission has discussed this subject at one or two meetings so the preliminary analysis should include a reading of the minutes of those meetings.

50. Rights of Lessor Upon Abandonment by Lessee. Authorized in 1957. Our research consultant on this study is Harold Verrall of U.C.L.A. who did the research study on which the Commission's recommendation on Doctrine of Worthier Title was based. We have not heard from Professor Verrall for some time and an inquiry as to his plans would, I think, be in order.

51. Right of Wife to Sue for Support After Ex Parte Divorce. Authorized in 1957. We have received what I regard as a good

51 contd. study from our research consultant, Professor Harold Horowitz of U.S.C. The Commission has authorized this study to be printed. I recently sent Horowitz an edited manuscript for his approval. I assume that we will hear from him shortly and that we can then send the manuscript to the printer; however, it may be necessary to follow up. This subject has been listed on the agenda of several recent meetings but we have never been able to reach it. I assume that it will be on the agenda for the August meeting.

52(L). Sovereign Immunity. Authorized in 1957. Our research consultant on this study is Arvo Van Alstyne of U.C.L.A., who did the claims study for us, so we can expect a first rate job. I am not entirely clear as to what Arvo's plans for submitting his study are. Inasmuch as he has a sabbatical leave this year I assume that it will be some time before we receive it. You might wish to make an inquiry of him for planning purposes.

53(L). Whether Personal Injury Damages Should Be Separate Property. Authorized in 1957. At the same session the Legislature enacted Civil Code Section 163.5 which makes a recovery in a personal injury action the separate property of the spouse. The Commission decided to defer study of this subject until there has been some experience with Section 163.5.

Study
No.

- 54(L). Use of Term "Ward of Juvenile Court". See Study # 48.
- 55(L). Power To Deny New Trial on Condition that Damages Be Increased. Authorized in 1957. Our research consultant on this study is Professor Harold Pickering of Hastings. Professor Pickering called me recently to tell me that he is working on the study and expects to submit it at an early date. (There is a case note on additur in 6 U.C.L.A. L. Rev. 441.)
- 57(L). Law Relating to Bail. Authorized in 1957. Our research consultant on this study is Mr. Stanley E. Cohen who is a member of Mr. Gustafson's staff. I asked Roy how Cohen was getting along the other day and Roy said that he is making progress on it. It might be desirable to get in touch with Cohen and find out when he plans to submit the study.
59. Service of Process by Publication. Authorized in 1958. The Harvard Student Legislative Research Bureau having volunteered to do a study for the Law Revision Commission, we gave them this study to do. The Bureau submitted a report about the middle of last year. It was not really adequate for our purposes, primarily because it consisted only of some draft statutes and comments thereon and did not include an analysis of the problem in the format of our research studies. We put the matter aside during the 1959 session. Recently a representative of the Bureau was out in this area and came in to see us.

59 contd. I was absent but he talked to Mr. Stephens. He said that the Bureau was not satisfied with the job that it had done and that he would like to have a chance to improve on it. Our understanding is that they will do some further work on the study and submit a revised report. I am not sure that we have confirmed this arrangement by mail and it might be a good idea to do so.

60. Representation Relating to Credit of Third Person. Authorized in 1958. We have not yet done anything on this study. It could, I believe, be handled in either of two ways: (1) if funds are available a research consultant might be engaged; or (2) the study might be done by the new Assistant Executive Secretary.

61. Election of Remedies Where Different Defendants Are Involved. Authorized in 1958. We recently made a research contract with Professor Robert A. Girard of Stanford Law School. Professor Girard could not, of course, be expected to complete his study at any very early date. You may wish to discuss the matter with him to get some idea of what he has in mind by way of a date for submitting his work.

John R. McDonough, Jr.
Executive Secretary