Min.

Date of Meeting: August 28-29, 1959

Date of Memo: August 10, 1959

Memorandum No. 6

Subject: Study No. 48 - Right to Counsel in Juvenile Court Proceedings

In connection with this study, see Memorandum No. 7, dated July 23, 1959.

The attached letter was received from Arthur Sherry, our consultant on this study.

I have written to Mr. Pettis requesting him to give us any information he may have that would be helpful to us in connection with this study and asking him to give us the benefit of his views on the matter.

Respectfully submitted,

John H. DeMoully
Executive Secretary

State of California
Office of the Attorney General
DEPARTMENT OF JUSTICE

August 3, 1959

Mr. John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

I read your Memorandum No. 7 concerning the topic of Right to Counsel in Juvenile Court Proceedings with more than usual interest. In its general conclusions it coincides so well with what I believe to be the solution to the problem that there isn't much that I can offer by way of useful comment.

Certainly, specific statutory definitions of the right to counsel in juvenile court proceedings ought to be enacted. The limitation of this right to counsel in juvenile court proceedings based upon delinquency or criminal conduct, as you suggest, is entirely appropriate. Proceedings concerning neglected and abandoned children are truly non criminal in character and with respect to them the provisions of the services of an attorney are neither required by due process nor, as you have noted, the realities of the situation.

There is no question in such situations, however, that the parent, guardian, or custodian, is entitled to counsel. There is ample authority to support this conclusion whenever custodial rights are involved.

It was foreseeable that the implementation of the right to counsel by providing legal representation for the indigent at public expense would raise some questions. However, in the light of the attitude of the courts towards making legal rights available to all, particularly as expressed by the United States Supreme Court in Griffin v. Illinois (1955), 351 U.S. 12, such questions are likely to be academic. It wasn't very long ago that the notion of providing counsel for the indigent in misdemeanor cases and in preliminary hearings was regarded as being quite extreme. As you know, however, California law now makes explicit provisions for counsel for the indigent in preliminary hearings and more and more public defenders and court appointed counsel are appearing in matters in the inferior courts. None of this has resulted in any undue drain on public funds.

Apart from this, it seems to me that there is good reason to believe that the provision for counsel in juvenile court proceedings may

not constitute as large an expense as might be expected. I am sure this is true in most, if not all, of our small counties where the appointed counsel system is almost universally followed. In these counties the volume of juvenile cases is not very great; juvenile matters are usually heard by the superior court judge in the same courtroom in which he hears all other cases and often in the presence of members of the bar who, I am sure, would be quite willing to participate at the request of the court.

In the larger counties where public defender systems exist there will undoubtedly be an increase in case load for public defender personnel. On the other hand, ninety percent or more of juvenile court proceedings would in all likelihood be uncontested. This is true in adult criminal proceedings and there is no reason to suppose that there would be any marked difference in the juvenile court.

As to those which may be contested and in which counsel would be required to participate, the characteristic procedural informality of the juvenile court makes disposition much more rapid than in the criminal courts.

For what an unrepresentative sampling of opinion might be worth, it might be of interest to know that Mr. Martin Pulich, Chief Assistant Public Defender in Alameda County, shares the foregoing opinions. In a discussion with him some months ago he expressed the view that appearances in juvenile court, if the law were changed to require this, would not result in over burdening his office.

I have discussed the matter also with Mr. John A. Pettis, Jr., Counsel for the Crime Study Commission on Juvenile Justice. This Commission, as you know, is making an overall study of our system of juvenile justice in California and will soon begin to prepare its findings and recommendations. Based on his experience in the course of the Commission's work, Mr. Pettis told me that he was convinced that if counsel were made available in juvenile court proceedings there would be a significant reduction in the numbers of cases in which petitions are filed. It is his belief that too many juvenile courts, unchecked by the presence of counsel, assert jurisdiction in many situations in which juvenile court action is either unnecessary or inappropriate.

I realize these opinions are speculative and that it would be far better to decide the issue on something more substantial.

In case any more adequate basis does exist it is more than likely available now in the files of the Crime Study Commission on Juvenile Justice. In the event you have not done so already, I would suggest that you get in touch with Mr. Pettis and ask him if he can provide the Law Revision Commission with anything which might throw additional light on the problem.

You can reach Mr. Pettis at his offices in the Central Building, 14th and Broadway, Oakland 12.

Please address any future correspondence to me at my office in the Law School at Berkeley. I expect to have my assignment in the Attorney General's Office completed within the next week or ten days.

Cordially yours,

S/ Arthur
ARTHUR H. SHERRY
CHIEF ASSISTANT ATTORNEY GENERAL