

#63(L)

4/19/66

Memorandum 66-21

Subject: Study 63(L) - Evidence Code

The staff believes that it would be desirable to consider at this time the form in which the recommendations on the Evidence Code should be published. The staff suggests that we publish one recommendation for the 1967 legislative session that will contain all our recommended revisions in the Evidence Code itself. This recommendation would include the material in the tentative recommendation distributed some time ago, together with additional material relating to revision of the Evidence Code (including any needed changes to indicate the classification of the presumptions in Evidence Code Sections 1600-1605). We suggest that the recommendation be entitled:

Recommendation Relating to the Evidence Code

Number 1 -- Revisions of the Evidence Code

We suggest that an additional recommendation be published for each of the other codes (except the Penal Code). These recommendations would be given titles consistent with the following:

Recommendation Relating to the Evidence Code

Number 2 -- Revisions of the Agricultural Code

We find it is very difficult to classify certain statutory provisions because we cannot determine from the face of the statute whether a particular presumption or prima facie provision is intended to provide merely a hearsay exception, a presumption affecting the burden of producing evidence, or a presumption affecting the burden of proof. Many of the provisions appear to be designed to provide a hearsay exception or a presumption affecting the burden of producing evidence.

We have examined the provisions of the Agricultural Code. There are a substantial number of provisions that provide presumptions or make evidence prima facie evidence. In addition, we found several provisions that do not relate to presumptions or prima facie evidence that will need adjustment. In order to save time at Commission meetings, we plan to revise these sections to classify them in the presumption category we believe is appropriate or to make them hearsay exceptions and to then send the material to the administrative adviser of the Department of Agriculture for examination. We then plan to discuss the staff's tentative revisions with him. After considering his comments, we will revise the material and bring it to you for your consideration. We believe that this procedure will be the most efficient one since the Commission will have all the information that is available at the time the matter is brought to the Commission. We would like to follow the same procedure where appropriate in connection with the other codes.

We suggest that we not attempt to classify presumptions in the Penal Code since this code is in the process of revision. Instead, we suggest that Professor Sherry be advised that the presumptions scheme of the Evidence Code should be kept in mind in drafting the provisions of the new Penal Code.

We are concerned that it may not be possible to revise all the other codes to conform to the Evidence Code and to classify all presumption and prima facie evidence provisions before the 1967 legislative session. Nevertheless, we believe this is the desirable procedure and we plan to accomplish this task on a code by code basis as rapidly as possible. This will permit us to submit some recommendations on this subject to the 1967 Legislature.

Respectfully submitted,

John H. DeMully
Executive Secretary