

DEC 30 1955

MINUTES OF MEETING
OF
SOUTHERN COMMITTEE

December 22, 1955
Los Angeles

PRESENT

Members

Mr. Stanford C. Shaw, Chairman
Mr. John D. Babbage
Mr. Joseph A. Ball
(morning session)

Research Consultants

Professor Richard C. Maxwell
Mr. Thomas W. Cochran

STAFF

Mr. John R. McDonough, Jr.

Discussion of Study No. 14 -- (Appointment of
administrator in quiet title actions)

This was the initial meeting of the committee with Professor Richard C. Maxwell, research consultant. Mr. Maxwell made an oral report which paralleled his written preliminary report, emphasizing that both are based on preliminary research insufficient to warrant a firm opinion on the points discussed. He stated that he is doubtful that the problem stated in the Commission's 1955 Report (Topic No. 20) exists, inasmuch as preliminary research indicates that the plaintiff in a quiet title action need not appoint an administrator but can always proceed against the decedent's heirs. He stated that in his opinion it would probably often be simpler and less expensive to have a special administrator appointed than to ascertain who their heirs are and use the various methods of substituted service necessary to bind them; thus Probate Code § 573 is really a boon rather than a problem to

the quiet title action plaintiff. He also stated that he believes that it may be possible to proceed under Probate Code § 573 even after the estate is distributed.

Mr. Maxwell's report was then discussed. Doubt was expressed by some present as to whether it would be constitutional and, if constitutional, desirable to provide for proceeding against a special administrator after the estate is distributed. Mr. Maxwell agreed, stated that it is not clear that Probate Code § 573 authorizes this, and stated that this matter should probably be clarified. It was suggested that a study might be made along the lines outlined at the end of Mr. Maxwell's written preliminary report, viz:

(1) Full exploration of the procedural remedies available to one desiring to quiet title against a claim which could have been asserted by a decedent in the action if the decedent were alive.

(2) Evaluation of these remedies to determine their adequacy and efficiency.

(3) If the remedies are found wanting, the drafting of legislation to fill in the gaps with consideration of the remedies utilized by other states. Mr. Maxwell agreed that such a study might be desirable but pointed out that it would be a somewhat different and larger study than that originally contemplated. He also stated that this is a study which falls into the field of procedure rather than his field of real property and that he is not, therefore, particularly well qualified to make it and he stated that he would be somewhat reluctant to undertake it.

It was decided that the committee would report these developments to

the Commission at the January, 1956 meeting and that Mr. Maxwell would not proceed further with his study until the Commission has considered the matter. The Executive Secretary was directed to get in touch with the originator of the suggestion on which this study is based to ascertain his views about the facts and views developed in Professor Maxwell's report.

Discussion of Study No. 10 -- Penal Code
Section 19a)

The committee discussed with Mr. Thomas Cochran, research consultant, his report on this study. At the outset the Executive Secretary reported on the letter sent to judges, sheriffs, probation officers and others inquiring as to the desirability of limiting county jail sentences to one year: 304 letters were sent; 92 replies have been received; of these 80 favor such limitation, 7 are opposed and 5 are equivocal. The ground given by those favoring is that in most counties there is no adequate provision for rehabilitation and that more than a year's "dead time" in a county jail serves no useful purpose and is, indeed, harmful to the prisoner. Mr. Cochran reported that he had discussed the matter with a substantial number of persons in Los Angeles County and that they were unanimously of the same view. He also reported that the Los Angeles County Grand Jury had just filed a report which contained a recommendation for reduction of county jail sentences.

The committee first discussed whether the Commission should favor the principle of Penal Code § 19a. Mr. Babbage pointed out that § 19a covers county penal farms, road-camps, work camps and other adult detention facilities and that the views expressed might not be applicable to such situations. Mr. Shaw pointed out that there is, however, great lack of uniformity from county to county among such facilities as to opportunity for rehabilitation. After the matter was discussed, the committee voted to recommend that the Commission recommend to the Legislature that the principle of Penal Code § 19a be reaffirmed and that all code sections in conflict with § 19a be revised to conform with it.

The committee next noted that Mr. Cochran had reported that the courts have held that in several situations P. C. § 19a does not preclude county jail sentences in excess of one year: (1) when consecutive sentences for separate offenses are imposed; (2) in civil cases when a person found guilty of contempt is imprisoned until he purges himself thereof; (3) when a county jail sentence in excess of one year is imposed as a condition of probation on a felony; and (4) when a prisoner convicted of a felony is fined with provision for imprisonment in the county jail at a rate of _____ dollars per day in default of payment. The committee decided that the principle of P.C. § 19a ought to apply in such cases and recommended that the Commission consider recommending to the Legislature enactment of a statute along the following lines:

P.C. § 19b: Whenever a person is sentenced to more than one year in a county jail, whether on consecutive sentences for separate offenses, or as a condition of probation on conviction of a felony, or in a civil contempt case, or in default of payment of a fine imposed upon conviction of a felony, or otherwise, he shall be delivered to the Adult Authority for imprisonment in a facility operated by the Authority for the period of such sentence or sentences. When such sentence or sentences are imposed upon conviction of a misdemeanor such imprisonment shall not have the effect of making the person sentenced guilty of a felony. The county shall pay to the state a sum equal to what it would have cost the county had the person been imprisoned in the county jail.

The committee recommended that this recommendation be discussed with the Department of Corrections before it is made to the Legislature.

The committee noted that some of the code sections in conflict with P.C. § 19a were enacted after 1933 when § 19a was enacted and that the Executive Secretary is of the view, in which Mr. Kleps concurs, that these prevail over § 19a on a theory of implied repeal of the latter pro tanto. The committee recommended that the Commission's report to the Legislature take note of this view, dividing the statutes reported as in conflict with P.C. § 19a into (a) those enacted prior to 1933 and (b) those enacted thereafter.

The committee noted that Mr. Cochran had, in a number of instances, recommended that the maximum fine provisions of code sections be reduced when their maximum imprisonment provisions are reduced -- e.g., reducing \$5000 to \$1000 when reducing 5 years to 1 year. Mr. Cochran explained that the purpose of this was to achieve balance between the fine and imprisonment provisions. The committee recognized the intrinsic merit of this view but thought that the Commission's study should be limited to problems directly related to P.C. § 19a. It recommends that the Commission report the situation to the Legislature but make no recommendation for reduction of fine provisions.

The committee noted that Mr. Cochran had recommended in several instances that code sections which provide for either fine or imprisonment but do not add "or both" be amended to do so. Mr. Cochran explained that this is the way criminal statutes are nearly always drafted today and that he thought it might as well be done in cases where revision of a code section is otherwise necessary. The committee recognized the intrinsic merit of this

suggestion but thought that it should not be done because it is not directly related to the problem of P.C. § 19a. The committee recommends that the Commission report the matter to the Legislature but that it not recommend such revisions.

The committee recommends that the proposed revision of certain Fish & Game Code sections recommended by Mr. Cochran be referred to the Legislative Counsel and that they be made as a part of the Commission's revision of that code.

The committee considered whether in all or some cases the Commission should recommend that the code sections to be revised to conform to P.C. § 19a should make the offenses alternative felonies with maximum prison sentences equal to their present maximum county jail sentences. After this matter was discussed, the committee decided to recommend that the Commission not so recommend in any case but that it report to the Legislature that this might be done in all or some cases and list the code sections as to which the Commission believes it would be most appropriate.

The committee thanked Mr. Cochran for his excellent report.

Discussion of Suggested Topics for Study

At the afternoon session the committee considered a number of suggested topics for study and staff reports and memoranda relating thereto (Mr. Ball was not present during this part of the meeting). It made the following recommendations:

1. Accept for Immediate study:

(a) Suggestion No. 56 (The committee would include only the matters mentioned in Mr. Golden's letter which are C and D of the staff report).

(b) Suggestion No. 103 (The committee would include both suggestions covered in the staff report, subject to a check as to whether a rehearing or a hearing by the Supreme Court has been granted in Estate of Nolan).

(c) Suggestion No. 104

2. Other:

(a) The committee recommended that the broader study suggested in the staff report on Suggestion No. 102(1) be checked with Mr. Brunn and that both it and the specific suggestion made by Mr. Brunn be checked with Mr. Landels of the California Bankers' Assn. before the Commission acts on this item.

(b) The committee recommended as to Suggestion No. 106 that if the problem exists only as to Wel. & Inst. Code § 702

the Commission ask one of its legislative members to handle the matter as a non-Commission matter but that if a check shows that there are several other similar conflicts as to maximum periods of probation, the Commission make a study on this problem.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary