

AGENDA FOR MEETING OF  
LAW REVISION COMMISSION

June 1 - 2, 1956

1. Consideration of minutes of meeting of May 4 - 5, 1956.
2. Policy concerning publication of reports of research consultants elsewhere before or after publication by Commission.
3. Senator Dorsey's proposal that the Commission should arrange to have assigned to it for study the report of the Legislative Counsel re nonsubstantive changes in the law necessary to maintain the codes.
4. Report on discussion of budget problems with Department of Finance.
5. Report on 1956-57 study program.
6. Fish and Game Code study.
7. Study No. 5 (Probate Code Section 201.5 and related matters).
8. Study No. 8 (Marital testimonial privilege).
9. Study No. 12 (Taking jury instructions into jury room).
10. Study No. 15 (Attorneys fees and costs in divorce, etc. actions).
11. Schedule of future committee and Commission meetings.

JUN 22 1956

MINUTES OF MEETING

OF

JUNE 1 AND 2, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on June 1 and 2 at San Francisco, California.

PRESENT

Mr. Thomas E. Stanton, Jr., Chairman  
Mr. John D. Babbage, Vice-Chairman (June 2)  
Honorable Clark L. Bradley, Assembly  
Mr. Joseph A. Ball (June 1)  
Mr. Bert W. Levit  
Mr. Stanford C. Shaw  
Mr. Ralph N. Kleps, ex-officio

ABSENT

Honorable Jess R. Dorsey, Senate  
Mr. John Harold Swan  
Mr. Samuel D. Thurman

Mr. John R. McDonough, Jr., Executive Secretary of the Commission, was present on both days.

The minutes of the meeting of May 4 and 5, 1956, which had been distributed to the members of the commission prior to the meeting, were unanimously approved.

1. Administrative Matters

A. Independent Publication of Research Consultants' Studies: The commission again discussed whether its research consultants should be permitted to publish their reports to the commission as law review articles. It was

decided that such publication should not be permitted prior to publication of the reports by the commission. Mr. Shaw made a motion which was seconded by Mr. Ball and unanimously adopted that Professor Chadbourn be given permission by the Chairman to publish his report on the Dead Man Statute as a law review article after its publication by the commission with the understanding that the commission reserves the right to determine the form of any reference made therein to the fact that the report was prepared for the Law Revision Commission and also to control any reference which might be made therein to legislative action on the commission's recommendation on this subject. Mr. Levit then made a motion which was seconded by Mr. Shaw that Professor Mann of Stanford University should be informed that if he should prepare a report for the commission on the putative spouse study he would be permitted to publish it after its publication by the commission on the same conditions as those specified in the resolution adopted respecting publication of Professor Chadbourn's report. Messrs. Ball, Levit, Shad, and Bradley voted in favor of this motion; Mr. Stanton voted against it.

B. Financial Report: The Executive Secretary reported that he had discussed the commission's financial problems with Mr. Ray Harrington of the Department of Finance and that Mr. Harrington had been most cooperative. The Secretary reported that Mr. Harrington had stated that the Department would approve the addition of \$500 to the Stanford contract for the current fiscal year and had suggested that the commission request the Department to supply funds for fiscal year 1956-57 from the Emergency Fund. The Secretary stated that this request had been made by the Chairman.

C. 1956-57 Research Program: The Executive Secretary reported that he had been engaged in negotiating with potential research consultants to make studies on the various topics approved by the 1956 Session of the Legislature. He reported that Professor Harold E. Verrall of UCLA had agreed to do the study on the doctrine of worthier title and that Professor Harold W. Horowitz of USC had agreed to do the study on Section 259 et seq. of the Probate Code. He also reported that there is a substantial possibility that Professor Chadbourn of UCLA will do the study on the Uniform Rules of Evidence and that Professor Mann of Stanford will do the putative spouse study. The Secretary asked for suggestions as to research consultants for several topics on the agenda and a number of suggestions were made.

It was decided that in the case of Topic No. 14, a study of the Arbitration Statute, and Topic No. 17, a study of the law of habeas corpus, the commission should, in light of the fact that there are Uniform Acts relating to these subjects, engage research consultants to make studies of these Uniform Acts. These studies will cover the changes which the enactment of the Uniform Acts would make in California law and the desirability of their enactment and are to be completed, if possible, prior to the 1957 Session of the Legislature. It was also decided that the Chairman should report this action to Mr. Martin Dinkelspiel, Chairman of the California Commission on Uniform State Laws, making it clear that no assurance can be given that the Law Revision Commission's study of the two Uniform Acts can be completed prior to the 1957 Session.

It was decided that the Chairman should write a letter to the State

Bar asking for a report of any State Bar history on the Topics on the commission's 1956-57 agenda, with special reference to the State Bar history on the Model Code of Evidence prepared by the American Law Institute.

2. Current Studies

A. Study No. 18 (L) - Fish and Game Code. The commission discussed the points raised in the letter of the Executive Secretary to the Chairman of the Commission relating to various problems involved in revision of the Fish and Game Code, which had been distributed to the members of the commission prior to the meeting. The Executive Secretary stated that he thought that any revision of the Fish and Game Code would be improved by a close analysis of the work by the commission, a committee of the commission, or the staff. It was decided, however, that the commission should adopt a procedure which would not make it necessary for either the members of the commission or the staff to undertake a detailed review and analysis of the draft code prepared by the Legislative Counsel. It was agreed that the commission should consider and decide all policy questions involved in revising the code which are presented to it by the members of the Legislative Counsel's staff, the Department of Fish and Game, the Fish and Game Commission, and others and that the revision of the draft code should be done by the Legislative Counsel pursuant to the direction of the commission. It was agreed that insofar as members of the Legislative Counsel's staff participate in the Fish and Game Code revision work, it should be made clear to all concerned that they are acting on behalf of the Law Revision

Commission.

The suggestion made by both the Department of Fish and Game and the Fish and Game Commission, that no copies of the present draft be distributed to others than the Department and the Fish and Game Commission until they have had an opportunity to review the draft, was accepted. It was decided that further discussion of the Fish and Game Code study by the Law Revision Commission should be postponed until the commission has received reports on the draft code from the Department of Fish and Game and the Fish and Game Commission.

B. Study No. 5 - Probate Code Section 201.5: The commission discussed the revised Report and Recommendation of the Law Revision Commission to the Legislature prepared pursuant to action taken by the commission at its meeting of May 4 and 5 and by the Northern Committee at its meeting on May 19.

Mr. Shaw made a motion which was seconded by Mr. Ball that proposed Section 201.8 of the Probate Code should be revised to substitute for the clause "without a valuable consideration," the language "without receiving in exchange a consideration of substantial value." Messrs. Shaw, Ball and Bradley voted for the motion; Mr. Stanton voted against it.

It was decided that in revising the Revenue and Taxation Code as required by this study, present Sections 13551-56 of the code should be left as they are except for the amendment of Section 13555 and that new Sections of the code should be drafted to incorporate the new provisions made necessary by the Probate Code revisions proposed by the commission.

A number of additional suggestions for improvement of the Report and Recommendation were agreed upon. It was then decided that after the various

changes indicated had been made, the Report and Recommendation and the research consultant's report should be sent to the State Bar for review and comment in accordance with the regular procedure.

C. Study No. 15 - Attorney's Fees and Costs: The commission considered the research report on this subject prepared by the staff. Several revisions of the report were agreed upon. It was further agreed that the staff report should be revised to conform to the action ultimately taken by the commission on this matter.

The commission then considered a draft Report and Recommendation of the Commission to the Legislature on this subject prepared pursuant to the action of the Southern Committee at its meeting of May 18. A number of suggestions were made for changes in the draft revision of Section 137.3 of the Civil Code. It was agreed that the Executive Secretary should prepare a new draft revision of Section 137.3 in light of the suggestions made. The commission then discussed whether the proposed revision would in any way affect the showing which must be made at the hearing by an applicant for attorney's fees and costs. It was agreed that the commission's recommendation should not affect this matter and that the Report and Recommendation of the commission should contain a statement to this effect. It was also agreed that the staff should undertake further research to determine what significance the courts have attached to the requirement that the moving party's papers state the grounds on which an award of attorney's fees and costs is sought.

Mr. Shaw suggested and it was agreed that the staff report should contain a reference to the fact that an important factor in the development of the present

law is that for many years the California courts held that an award of attorney's fees and costs could not be made retroactively.

A number of other changes in the draft Report and Recommendation of the Commission to the Legislature were agreed upon. It was also agreed that the commission should ask the State Bar for a report of any material in its files bearing on the matter of attorney's fees and costs awarded under Section 137.3.

It was decided that the staff report and the Report and Recommendation to the Legislature should be revised in accordance with the decisions taken and that both should be reconsidered by the commission at its next meeting.

D. Study No. 12 - Whether the Jury Should Take a Copy of the Court's Instructions into the Jury Room: The commission considered the report prepared by the staff on this subject. A revision of footnote 1 was agreed upon.

Mr. Levit made a motion which Mr. Bradley seconded that the commission recommend that whether the jury should be given a copy of the court's instructions should be within the discretion of the court in all cases, including those in which a request that the jury be given a copy of the instructions is made by a party or a member of the jury. Mr. Levit voted for the motion; Messrs. Stanton, Shaw, Babbage, and Bradley voted against it.

Mr. Stanton made a motion which Mr. Bradley seconded that the commission recommend that the trial court be given discretion to give a copy of the written instructions to the jury in all cases and that it should be required to do so upon the request of a party or a member of the jury. Messrs. Stanton, Babbage, and Bradley voted for the motion; Messrs. Levit and Shaw voted against it.

The commission then discussed whether, in a case in which the jury requests the instructions after it has retired for its deliberations, it should be necessary for the court to comply with the requirements of Section 614 of the Code of Civil Procedure and Section 1138 of the Penal Code which state that the judge may not communicate with the jury after it has retired unless the parties or their counsel are given an opportunity to be present. Mr. Shaw made a motion which Mr. Bradley seconded that Sections 614 and 1138 be amended to provide that if the jury wishes to obtain a copy of the court's written instructions, it may but need not return to the court for this purpose. Messrs. Stanton, Babbage, Bradley and Shaw voted for the motion; Mr. Levit voted against it.

It was decided that the staff report and the Report and Recommendation of the Commission to the Legislature should be revised by the Executive Secretary to reflect the action taken and reconsidered by the commission at its next meeting.

E. Study No. 8 - The "For and Against" Testimonial Privilege of Married Persons: The commission considered the report prepared by the staff on this subject. Several revisions of the report were agreed upon.

A motion was made by Mr. Bradley, seconded by Mr. Shaw and adopted unanimously, that both the "for" and the "against" privilege should be abolished in civil actions. A motion was then made by Mr. Shaw and seconded by Mr. Bradley that both the "for" and the "against" privilege should be abolished in criminal actions. Messrs. Stanton, Bradley, and Shaw voted in favor of the motion; Messrs. Levit and Babbage voted against it.

There being no further business, the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

1956-57 STUDY TOPICS

Topic No.	Subject	Research Consultant	Fee	Remarks
1	Overlap Penal and Vehicle Codes	--	--	Staff
2	Procedure re non-resident guardians		\$ 300	} Hope to get single consultant to do all of these for total of \$750 - \$1,000
3	Procedure on Partition Sales		300	
4	Cut-off date on motions for new trials		300	
5	Rescission Contracts		800	
6	Mortgages future Advances	Prof. Merryman - Stanford	800	RC plans finish this summer
7	Probate Code §§ 259 et seq.	Prof. Horowitz USC	600	Preliminary meeting with with RC in Sept.
8	Law governing escheat personal property	Staff	--	Hope to complete for 1957 Session
9	Putative Spouse		800	
10	Condemnation-evidence other sales	--	--	Consolidated with Topic 18
11	Post-conviction sanity hearings	Probably Judge Younger, L.A.	600	
12	Jurisdiction in custody proceedings	Dean Kingsley USC	800	
13	Doctrine worthier title	Prof. Verrall UCLA	500	

1956-57 STUDY TOPICS - Cont'd

Topic No.	Subject	Research Consultant	Fee	Remarks
14	Uniform Arbitration Act		\$1,000	To be completed for 1957 Session
15	Survivability Tort Actions		600	Discuss matter Prof. McCoid
16	Uniform Rules Evidence	Prof. Chadbourn UCLA	5,000	Completion arrangements awaiting decision on funds
17	Uniform Post-Conviction Procedure Act	Prof. Selvin Loyola	900	To be completed for 1957 Session
18	Condemnation law & procedure	--	1,500	Discuss Cobey letter
19	Claims Statutes	Prof. Van Alstyne UCLA	1,000	