

April 23, 1957

Agenda for Meeting of Law

Revision Commission on

April 26, 1957

Room 4168 State Capitol

1. Minutes of meeting of March 1 and 2, 1957 (Sent to you earlier).
2. Report on status of Commission bills before Legislature (See Memorandum No. 1 enclosed).
3. Study No. 8 (Marital Testimonial Privilege). Consideration of possible amendment of A.B. 248 (See Memorandum No. 2, to be sent).
4. Study No. 6 (Effective Date of New Trial Orders) (See Memorandum No. 3 enclosed).
5. Study No. 13 (New Parties) (See Memorandum No. 4 enclosed).
6. Study No. 12 (Taking Instructions to Jury Room) (See Memorandum No. 5 enclosed).
7. Change in Commission letterhead (See Memorandum No. 6 enclosed).
8. Study No. 36 (Condemnation Law and Procedure) (See Memorandum No. 7 enclosed).
9. Study No. 26 (Escheat) (See Memorandum No. 8, to be sent).

MINUTES OF MEETING OF

APRIL 26, 1957

Pursuant to the call of the Chairman, the Law Revision Commission met on April 26, 1957 at Sacramento, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman  
Mr. John D. Babbage, Vice-Chairman  
Mr. Stanford C. Shaw  
Professor Samuel D. Thurman  
Mr. Ralph N. Kleps, *et officio*

ABSENT:

Mr. John Harold Swan

*Lorsay  
Buddley*

Mr. John R. McDonough, Jr., the Executive Secretary of the

Commission, was present.

The minutes of the meeting of March 1 and 2, 1957, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

I. ADMINISTRATIVE MATTERS

A. 1957-58 Budget. The Commission considered what steps might

be taken to have the item of \$5,000 for additional contractual studies

included in the Governor's budget approved by the Senate Finance Committee.

After the matter was discussed it was agreed that the Executive Secretary

should draft a letter to Senator McBride, Chairman of the Senate Finance

Committee, *and* requesting that the \$5,000 item be restored ~~and~~ pointing out

that the Commission ~~has~~ already been given several additional studies for

which funds are not otherwise provided in its budget. *It was agreed that* ~~The Secretary was~~

*the Chairman should*

~~instructed to~~ request Senator Dorsey to sign the letter if he approved it.

It was also agreed that if the letter does not result in the restoration of

the \$5,000 item ~~and~~ Assemblyman Bradley should be requested to speak to

the members of the Assembly Conference Committee on the Budget with a

view to having them work for the restoration of the \$5,000 item.

B. Procedure to be followed in presenting Commission bills to

the Legislature. The Commission discussed whether ~~and under what circumstances~~

*under* and ~~with~~ what procedure ~~the~~ Commission should contact individual members of

the Legislature to explain its bills to them. It was agreed that this

procedure should not be followed as a matter of course but only <sup>when</sup> ~~under special~~  
~~circumstances~~ <sup>a</sup> where particular member<sup>s</sup> of the Legislature <sup>has</sup> ~~have~~ raised questions  
about the Commission's bills in ~~committee~~ or otherwise and ~~it~~ it seems  
likely that the ~~member~~ does not fully understand the Commission's recommendation  
~~on~~ <sup>or</sup> the reasons for it. It was further agreed that in such circumstances <sup>if</sup>  
the ~~legislative~~ member of the Commission who is carrying the bill believes  
it would be desirable to have the Executive Secretary discuss the bill with  
the member who has raised the question, the legislative member should call  
<sup>Legislative</sup> ~~the member~~ in question and ask him whether he would be willing to have the  
<sup>person</sup> Executive Secretary see him in his office to answer such questions as he may  
have about the bill and otherwise explain it. It was agreed that the Executive  
Secretary should not contact the members individually unless and until the  
legislative member <sup>has</sup> ~~had~~ <sup>a</sup> made <sup>and</sup> the call/arranged for him to do so.

C. New letterhead. The Commission considered <sup>a design for it</sup> ~~the new~~ letterhead, <sup>a copy</sup>  
<sup>of which is attached to these minutes,</sup>  
~~designed by Mrs. Nordby.~~ The letterhead was approved with the following  
changes: <sup>In</sup> the upper righthand corner will appear the following: First line;  
" Mailing Address; " second line; " School of Law; " Third Line; " Stanford, California "

2 Current Studies

has action  
organizing  
order of study  
No 2

⑥ Study No. 36 Condemnation Law and Procedure.

~~D.7 Contract for Condemnation Study~~ The Executive Secretary

reported that after canvassing the various possibilities he and the  
Chairman joined in recommending that a contract for the condemnation study  
be made with the firm of Hill, Farrer & Burrill. After the matter was  
discussed ~~Mr. Babbage~~ <sup>a</sup> the motion was made by Mr. Babbage, seconded  
by Mr. Thurman, and unanimously adopted that the Commission enter into a  
contract with the firm of Hill, Farrer & Burrill <sup>similar to that</sup> which the Executive Secretary  
had been authorized at the March meeting to make with Mr. Burrill.

2. ~~AGENDA~~ CURRENT STUDIES.

⑦ Study No. 8 - Marital Testimonial Privilege.

The Commission considered Memorandum No. 2 (a copy of which is  
attached to these minutes) relating to A.B. 248, ~~(Marital Testimonial  
Privilege)~~ After the matter was discussed it was agreed that A.B. 248  
should be presented to the Senate Judiciary Committee as the recommendation  
of the Commission. It was further agreed that ~~it~~ if it appears that the  
Senate Judiciary Committee is unwilling to accept the bill insofar as it

modifies the present law relating to the "against" privilege, Mr. Bradley and Mr. McDonough should suggest to the Committee that the bill ~~might~~ be revised to restore the present law relating to the "against" privilege and then passed to accomplish the following limited purposes:

(1) the abolition of the "for" privilege and (2) a restatement

of the law relating to the marital privilege as thus modified which would accomplish a desirable technical revision thereof.

*for the purpose of clarifying the statutes the code sections involved.*

(1) Study No. 6 - Effective Date of New Trial Orders The

Commission considered Memorandum No. 3 (a copy of which is attached to these minutes) relating to amendment of S.B. 36. After the matter was

discussed the Commission approved the amendments ~~which had been made to~~ of

*discussed in the memorandum.*  
S.B. 36 ~~in the Senate Judiciary Committee on April 22.~~

(4) Study No. 13 - Bringing New Parties Into a Civil Actions

The Commission considered Memorandum No. 4 (a copy of which is attached

to these minutes) relating to amendment to S.B. 34. After the matter was

discussed the Commission approved the amendments ~~which had been made to~~ of

*discussed in the memorandum*  
S.B. 34 ~~in the Senate Judiciary Committee on April 22.~~

(2) the creation of an exception to the privilege for incompetency proceedings and (3)

3

Study No. 12 - (Taking Instructions to the Jury Room)

The Commission considered Memorandum No. 5 ( a copy of which is attached to these minutes) relating to this matter. After the matter was discussed

Mr. Babbage made a motion which was seconded by Mr. Shaw and unanimously

adopted that the Commission <sup>do</sup> not present S.B. 33 to ~~the Legislature for~~ <sup>an legislative committee</sup> consideration at the present Session ~~but should withdraw it for further~~ <sup>and that this topic should be continued</sup> study with a view to submitting a new recommendation ~~on this matter~~ to the Legislature at the 1959 Session. } <sup>on the Commission's agenda for further</sup>

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Study No. 26 - Escheat The Executive Secretary reported

that due to the amount of time which the presentation of the Commission's <sup>ive</sup> legislative program to the Legislature had taken during March and April

it had not been possible for his office to carry forward the Commission's study on <sup>this topic</sup> ~~the subject of Escheat~~ and that it would not, in his opinion,

be possible for the Commission to make a recommendation on this subject

~~to the Legislature~~ at the present Session. He also reported that Assembly

Bill No. 3087 had been amended in the Assembly on April 12, 1957 to

incorporate a proposed new statute on unclaimed and abandoned property

drafted by the Attorney General's <sup>Office.</sup> He reported that this statute deals

specifically with the problem which is the subject of the Commission's study, i.e., which <sup>of two or more</sup> states should escheat property under certain circumstances.

He said that it is possible that A.B. 3087 would, if enacted, provide a

solution to the problem under study by the Commission or at least enact a policy which the Commission should consider for adoption <sup>with respect to decedent's estates.</sup> After the

matter was discussed it was agreed that the <sup>of this topic</sup> Commission study should be

carried forward with a view to reporting to the Legislature at the 1959

Session and ~~to bring so~~ <sup>that in making even further study the Commission should</sup> take account of the changes made in the law ~~if A.B. 3087 is enacted at the present Session.~~ <sup>take A.B. 3087 into account.</sup>

### 3. AGENDA

The Executive Secretary reported that A.C.R. No. 22 has been amended since its introduction to incorporate four additional topics for study by the Commission. A copy of a memorandum stating these four topics is attached to these minutes. The Executive Secretary also

reported that A.C.R. No. 67 (McBride), which would direct the Commission to make a study of the law relating to bail in California, is being pressed for adoption by the author.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

April 25, 1957

My dear Senator McBride:

The purpose of this letter is to request, on behalf of the California Law Revision Commission, that the Senate Finance Committee restore to the Commission's budget the item of \$5,000 for Additional Contractual Studies which the subcommittee recommended be deleted therefrom.

As submitted by the Commission and included in the Governor's budget the Law Revision Commission's budget for 1957-58 included two items to cover its research costs:

1. An item of \$23,320 for Research Services.

This included \$2,500 for a research contract with Stanford University, \$8,820 for research projects carried over from 1956-57 because the cost of the Fish and Game Code revision and other unanticipated assignments made by the Legislature to the Commission made it impossible to study some of the matters on its agenda, and \$11,450 for research on the first 14 topics listed on A.C.R. 22, the concurrent resolution fixing the Commission's study agenda for 1957-58. (A copy of A.C.R. 22 is attached to this letter.) These 14 topics were originated by the Commission and submitted to the Legislature for approval pursuant to Government Code Section 10335.

2. An Item of \$5,000 for Additional Contractual Studies. This is the item disapproved by the subcommittee. The item was included because it had been the Commission's

experience at every Session to date that it had been given a number of substantial study assignments by the Legislature in addition to those which the Commission itself had recommended and for which funds were provided in the item for Research Services which is based on an item-by-item estimate of the cost of completing studies on hand and new studies recommended by the Commission. The \$5,000 item constituted, in effect, a contingency fund to provide for such additional assignments as might be made by the Legislature at the present Session.

To date four such additional study assignments have been given to the Commission by the Legislature. These are the last four items listed on A.C.R. 22, each of which was added to the Resolution in committee on the motion of a Member of the Legislature who desired the particular study to be made.

Unless the \$5,000 item is restored to the Commission's budget, it will not be possible for the Commission to study during 1957-58 all of the topics listed in A.C.R. 22. The contingency for which this item was originally provided in the Governor's budget having arisen, the Commission has asked me to request that the item be restored to the budget in order that it may promptly complete the assignments which the Legislature has given it.

Very truly yours,

Jess R. Dorsey  
Member of the Senate.

The following topics have been added to the Commission's concurrent resolution:

Topic 15. A study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

Topic 16. A study to determine whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.

Topic 17. A study of the Juvenile Court Law to determine whether changes in that law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.

Topic 18. A study to determine whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.