

Agenda for Meeting of Law

Revision Commission

August 2 and 3, 1957

Stanford

1. Minutes of meeting of April 26, 1957 (Sent to you on May 2, 1957).
2. Report on distribution of reports and studies (Memorandum No. 1, enclosed).
3. Report on bound volume (Memorandum No. 2, enclosed).
4. Budget for 1958-59 (Memorandum No. 3 - to be sent).
5. Personnel -- Commission
Staff *down grade stereo job?*
6. Agenda resolution, 1958 Session (Memorandum No. 4, enclosed).
7. Policy re bills not passed by Legislature (Memorandum No. 5, enclosed).

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8. Current Studies

- A. General status report (Memorandum No. 6, enclosed).
- B. Study No. 24 - Mortgages for future advances (Memorandum No. 7, enclosed).
- * C. Study No. 25 - Probate Code §§ 259--259.2 (Memorandum No. 8, to be sent).
- D. Study No. 31 - Doctrine of Worthier Title (Memorandum No. 9, enclosed).
- E. Study No. 32 - The Arbitration Statute (Memorandum No. 10, enclosed).
- F. Study No. 34 - Uniform Rules of Evidence (Memorandum No. 11, enclosed).
- * G. Study No. 35 - Habeas Corpus (Memorandum No. 12 - to be sent).
- H. Study No. 36 - Condemnation.
- * I. Study No. 56 - Narcotics Code (Memorandum No. 13 - to be sent).
- J. Study No. 57 - Law relating to bail.
- * K. Study No. 58 - Law relating to grand juries (Memorandum No. 14 - to be sent).

*N. Comm meeting
National meeting*

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MINUTES OF MEETING
OF
AUGUST 2 AND 3, 1957
Stanford

Pursuant to the call of the Chairman, the Law Revision Commission met on August 2 and 3, 1957 at Stanford, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice-Chairman
Honorable James A. Cobey
Honorable Clark L. Bradley
Mr. Stanford C. Shaw
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex-officio

Mr. John R. McDonough, Jr., the Executive Secretary and Mrs. Virginia B. Nordby, the Assistant Executive Secretary, were also present.

The minutes of the meeting of April 26, 1957, which had been distributed to the members of the Commission prior to the meeting, were unanimously approved.

Minutes of Meeting of August 2 and 3, 1957

I. ADMINISTRATIVE MATTERS

A. Distribution of Pamphlet Studies: The Commission considered Memorandum No. 1 (a copy of which is attached to these minutes) relating to the mailing list which has been established for distribution of the reports, recommendations and studies of the Commission. The Commission discussed possible expansion of the list. It was decided that when persons who were placed on the "automatic" mailing list leave office their successors should be then placed on that list and that when persons who were given an opportunity to be placed on the Commission's mailing list leave office, their successors should be given the option to be placed on the list. It was decided that no other effort should be made to expand the mailing list at this time.

Minutes of Meeting of August 2 and 3, 1957

B. Distribution of Bound Volume. The Commission considered Memorandum No. 2 (a copy of which is attached to these minutes) relating to distribution of the bound volumes of the Commission's reports, recommendations and studies. It was decided that the following should be sent copies of the bound volume when it is available:

Library of U.S. Supreme Court
Libraries of California Supreme Court
Libraries of the several district courts of appeal
All other libraries in California now on the
Commission's mailing list
California law reviews
Members of the Law Revision Commission (past and
present)
Members and Executive Secretary of New York
Law Revision Commission
The Attorney General
The Governor
The Legislative Counsel
West Publishing Company
Bancroft-Whitney Publishing Company
Shepard Publishing Company
The State Bar of California

The matter of distribution to members of the Legislature was discussed. A motion was made by Mr. Shaw, seconded by Mr. Babbage and unanimously adopted that letters should be sent by each legislative member of the Commission to the members of his house reporting the availability of the bound volume and offering to send a copy upon request. These letters will be prepared in the Executive Secretary's office after consultation with the legislative members; a somewhat different form of letter will be sent to the members of the Judiciary Committees of the two houses.

Minutes of Meeting of August 2 and 3, 1957

C. 1958-59 Budget. The Commission considered Memorandum No. 3 (a copy of which is attached to these minutes) relating to the Commission's budget for fiscal year 1958-59. A motion was made by Mr. Babbage, seconded by Mr. Bradley, and unanimously adopted approving the budget proposed by the Executive Secretary in principle and authorizing the Chairman to submit a budget substantially along these lines to the Department of Finance. The Chairman was authorized to make such changes and adjustments in the various items as might prove to be necessary in view of later action taken at the meeting or other developments with respect to the Commission's program.

Minutes of Meeting of August 2 and 3, 1957

D. Meeting of National Legislative Conference. The Executive Secretary reported that he has received notice of the regular annual meeting of the National Legislative Conference to be held in Oklahoma City on October 16 through 19, 1957. A motion was made by Mr. Babbage, seconded by Mr. Shaw, and unanimously adopted that two persons be authorized by the Chairman to attend on behalf of the Commission.

The Chairman was authorized to increase the item for out-of-state travel in the 1958-59 budget to \$600 in order to cover the cost of travel for two persons to the annual meeting of the National Legislative Conference.

Minutes of Meeting of August 2 and 3, 1957

E. Personnel. The Chairman reported that Senator James A. Cobey had been appointed the Senate member of the Commission to succeed Senator Dorsey and that Mr. Bradley had been reappointed the Assembly member of the Commission. The Executive Secretary reported that there are now three openings on the staff: Assistant Counsel, Junior Counsel and Intermediate Stenographer-Clerk. The suggestion was made that it might be helpful to contact eastern law schools concerning the availability of the Junior Counsel position.

F. Policy Re Commission Bills Introduced at the 1957 Session Which Were Withdrawn, Were Not Passed By Legislature, Or Were Vetoed By Governor. The Commission considered Memorandum No. 5 (a copy of which is attached to these minutes) relating to what policy the Commission should follow with respect to Commission bills introduced at the 1957 Session of the Legislature which did not become law. A motion was made by Senator Cobey, seconded by Mr. Bradley, and unanimously adopted that the following bills introduced at the 1957 Session of the Legislature should be referred to the Committees of the Commission to which the studies out of which they arose were assigned, for consideration and recommendation as to future action:

- S.B. 33 (Taking Instructions to the Jury Room)
- S.B. 36 (Effective Date of a New Trial Order)
- A.B. 246 (Retention of Venue for Convenience of Witnesses)
- A.B. 247 (Dead Man Statute)
- A.B. 248 (Marital Testimonial Privilege)
- A.B. 249 (Suspension of Power of Alienation)

During the discussion of this matter Senator Cobey suggested the desirability of making a showing, if a bill is re-introduced at a future session of the Legislature, that the Commission has given the subject further study before submitting another bill relating to it. He also reported that the counsel of the Senate Judiciary Committee does not prepare a brief summary of Law Revision

Minutes of Meeting of August 2 and 3, 1957

Commission bills, as he does for other bills, for the members of the Committee to have before them at the time of the hearing and suggested that the Commission might consider preparing such summaries at future sessions. The Executive Secretary was requested to prepare a report with respect to each bill which failed to pass recounting the Legislative history of the bill and his impression of the reasons for its failure to pass.

II. CURRENT STUDIES

A. General Status Report. The Commission considered Memorandum No. 6 (a copy of which is attached to these minutes), a general status report with respect to studies which the Commission has been authorized by the Legislature to make but has not yet completed. A motion was made by Mr. Shaw, seconded by Mr. Babbage, and unanimously adopted that the Chairman be authorized to enter into contracts with qualified research consultants to have studies made of the topics listed in this report.

A motion was made by Senator Cobey, seconded by Mr. Shaw, and unanimously adopted authorizing the Chairman to enter into such further contracts with Stanford University, similar to those heretofore made, as may from time to time be necessary.

The Commission then considered the amounts allocated to the various studies as shown in Memorandum No. 6. General approval was indicated and the following comments were made:

1. The amounts allocated to the following studies may be somewhat high: 39, 43

2. The amounts allocated to the following studies appear to be somewhat low (suggested alternative shown in parenthesis):

52(L) (\$1,200)

56(L) (\$1,500)

58(L) (\$2,600)

Minutes of Meeting of August 2 and 3, 1957

3. It was decided not to hire a research consultant at this time for study 53(L) (Whether personal injury damages should be separate property).

4. It was suggested that Studies No. 48 and No. 54(L), both relating to juvenile court proceedings, might be assigned to a single research consultant, thereby effecting a saving.

It was suggested that Study No. 55(L) (whether trial courts should be authorized to deny a new trial on condition damages be increased) might be combined with another topic relating to procedure for assignment to a single consultant, thereby effecting a saving.

It was decided that in submitting the budget for 1958-59 the Commission should include in the item for Research Services approximately \$2,500 to cover a part of the cost of studies No. 56(L) (narcotics code) and 58(L) (grand jury law codification).

Minutes of Meeting of August 2 and 3, 1957

B. Study No. 24 -- Mortgages for Future Advances. The Commission considered the Research Consultant's report and the minutes of the meeting of the Northern Committee of May 4, 1957 containing its recommendations on Study No. 24. The question whether any legislative changes in the law relating to mortgages of real property for future advances are necessary or desirable was discussed at some length. It was decided to request the research consultant, Professor Merryman, to send copies of his study to a limited number of people working in the field of property security transactions with a request for an expression of their views concerning the study and his conclusions and particularly requesting comment on the following questions:

1. Whether any change in the law relating to real property mortgages for future advances is desirable.
2. Whether his interpretation of the meaning of Civil Code Sections 2974 and 2975 relating to personal property mortgages for future advances is correct.
3. Whether the proposed repeal of Section 2974 and proposed revision of Section 2975 are sound. (In this connection Professor Merryman should be requested to submit as his draft the draft appearing in the minutes of the meeting of the Northern Committee).
4. Whether any other legislative change in the law relating to personal property mortgages for future advances is desirable.

Minutes of Meeting of August 2 and 3, 1957

Mr. Kleps raised a question concerning footnote 44 of Professor Merryman's study, which relates to Art. 9 of the Uniform Commercial Code. It was agreed that Professor Merryman should be asked to submit a brief memorandum expanding on the point made in footnote 44, that the provisions of the Uniform Commercial Code relating to mortgages for future advances ought not to be adopted in California unless Art. 9 itself is adopted.

Study No. 24 was re-referred to the Northern Committee, to receive Professor Merryman's report on the matters stated above and take further action in light thereof.

Minutes of Meeting of August 2 and 3, 1957

C. Study No. 25 - Probate Code Sections 259-259.2. The Commission considered Memorandum No. 8 (a copy of which is attached to these minutes) relating to Professor Horowitz' study and Mr. Stern's comments thereon. A motion was made by Mr. Babbage, seconded by Mr. Shaw, and unanimously adopted that the Executive Secretary write to Mr. Stern stating that Professor Horowitz had made a copy of his letter available to the Commission, that the Commission is interested in Mr. Stern's views, and that it would be pleased to receive any further statement of his views that he might care to make.

Minutes of Meeting of August 2 and 3, 1957

D. Study No. 31 - Doctrine of Worthier Title. The Commission considered the research study prepared by Professor Harold E. Verrall and the recommendations of the Southern Committee on this matter as set forth in the minutes of the meeting of that Committee of June 8, 1957. Mr. Thurman stated that Professor Verrall was correct in stating that the existence of the doctrine of worthier title may in particular cases have important estate tax consequences.

A motion was made by Mr. Babbage, seconded by Mr. Shaw, and unanimously adopted that the research consultant's report be accepted.

A motion was made by Mr. Shaw, seconded by Mr. Babbage, and unanimously adopted that the Commission recommend abolition of the doctrine of worthier title.

Mr. Stanton raised some questions concerning the language of the statute proposed by the Southern Committee. These related both to the form of the statute and to whether two statutory provisions, one relating to testamentary dispositions and the other relating to inter vivos transfers, should be drafted. The Executive Secretary was requested to prepare a new draft of a proposed statute or statutes for consideration by the Commission.

Minutes of Meeting of August 2 and 3, 1957

E. Study No. 32 - The Arbitration Statute. The Commission considered Memorandum No. 10, (a copy of which is attached to these minutes) relating to the arbitration study.

The Executive Secretary was directed to write to Senator Regan to ascertain what caused him to move to send this study to the Rules Committee for assignment for interim study. It was suggested that at the same time the Executive Secretary should ask Senator Regan what Senate interim committee is likely to be assigned this study.

A motion was made by Mr. Babbage, seconded by Mr. Shaw and unanimously adopted that this study be re-referred to the Northern Committee with authority to determine (1) whether the Commission should proceed with the study (whether or not the Uniform Arbitration Act is assigned to some Senate interim committee for study), (2) what the scope of the study should be (whether limited to the Uniform Act or to take a broader range), and (3) whether to have an additional research study made, and, if so, by whom.

Minutes of Meeting of August 2 and 3, 1957

F. Study No. 34 - Uniform Rules of Evidence. The Commission considered Memorandum No. 11 (a copy of which is attached to these minutes) relating to this study. The following decisions were made:

1. It was agreed that this study will be treated as a regular item on the Commission's agenda -- that is, that the Commission will sponsor legislation arising out of the study, either to achieve enactment of the Uniform Rules or a part thereof or to enact other new rules of evidence which the Commission's study of the subject indicates are desirable.

2. It was agreed that Mr. Martin Dinkelspiel, Chairman of the Commission on Uniform State Laws, should be sent a copy of materials resulting from the study when such materials are made available to the State Bar but that no other effort should be made to effect liaison with the Commission on Uniform State Laws.

3. It was agreed that the Study No. 34 should be placed on the agenda for the next meeting of the Commission so that the Commission may have the opportunity to determine whether and to what extent the desirability of uniformity of law in matters of evidence should be thought to create a presumption in favor of any given uniform rule as against any other possible solution of a problem of the law of evidence which the Commission might otherwise formulate and recommend.

4. The matter of liaison with the State Bar was discussed,

Minutes of Meeting of August 2 and 3, 1957

particularly with reference to whether the Commission should suggest that a special State Bar Committee be appointed to receive and consider the studies and recommendations of the Commission on this subject rather than having them referred to standing committees. It was agreed that this matter should be discussed with Mr. Ball and that the Commission's preference for a special committee should be communicated to him.

Minutes of Meeting of August 2 and 3, 1957

G. Study No. 35 - Habeas Corpus. The Commission considered Memorandum No. 12 (a copy of which is attached to these minutes) relating to this study. A motion was made by Mr. Babbage, seconded by Mr. Shaw, and unanimously adopted that the habeas corpus study be re-referred to the Southern Committee with full authority to determine (1) whether the Commission should proceed with the study (whether or not the Uniform Post-conviction Procedure Act is assigned to a Senate interim committee for study), (2) what the scope of the study should be (in particular, whether it should cover the use of the writ of habeas corpus in other than post-conviction proceedings), and (3) whether to have an additional research study made, and, if so, by whom.

Minutes of Meeting of August 2 and 3, 1957

H. Study No. 36 - Condemnation Law and Procedure. The Executive Secretary reported that a contract had been made with the firm of Hill, Farrer and Burrill to make a study for \$1,500 covering relocation expense, passage of title and taking possession, and evidence. Senator Cobey suggested that a check be made with the consultant to determine whether this study will cover the question whether the best modern appraisal thinking is being applied in condemnation proceedings, particularly with reference to consideration of evidence of the income history of a parcel of property, which he said the condemning authorities usually try to keep out of the case. It was agreed that the Executive Secretary should write to the consultant raising this question and that both Senator Cobey and the research consultant should be invited to attend the meeting of the Southern Committee on Saturday, September 21 so that the appraisal problem can be discussed.

Minutes of Meeting of August 2 and 3, 1957

I. Study No. 56 - Narcotics Code. The Commission considered Memorandum No. 13 (a copy of which is attached to these minutes) relating to this study. A motion was made by Mr. Bradley, seconded by Senator Cobey, and unanimously adopted that Mr. Kleps be requested to report to the next meeting of the Commission what might be done along the line of gathering all statutes relating to narcotics in a single code and that the Executive Secretary be requested to report to that meeting what might be done along the line of preparing a report summarizing the information to be found in the reports of legislative interim committees relating to differences of opinion which exist with respect to narcotics policy and the need for substantive revision of narcotics law. The Chairman was authorized to make a contract with the Legislative Counsel to make a study and prepare a report showing what laws presently apply to narcotics, where they are presently located, and what non-substantive revision of such laws might be accomplished.

The Executive Secretary was directed to write to Assemblymen Crawford, Allen and Rumford, as the author of the narcotics study resolution and the chairmen of the Interim Judiciary and Public Health Committees respectively, and to Senator Thompson, Chairman of the Senate Interim Public Health Committee, advising them of the Commission's assignment and how it is planning to handle that assignment and stating that we would welcome any comments which they may have.

Minutes of Meeting of August 2 and 3, 1957

J. Study No. 57 - Law Relating to Bail. The Executive Secretary was directed to write to Assemblyman Allen, Chairman of the Assembly Interim Judiciary Committee, informing him of this study, asking him whether any bills relating to bail had been referred to his committee and telling him that the Commission desires to avoid any conflict or overlap with any work which his committee may be doing in this area.

It was agreed that a research consultant should be obtained to make this study and the Chairman was authorized to make a contract for such a study.

Minutes of Meeting of August 2 and 3, 1957

K. Study No. 58 - Grand Juries. The Commission considered Memorandum No. 14 (a copy of which is attached to these minutes) relating to this study. A motion was made by Mr. Babbage, seconded by Mr. Bradley and unanimously adopted that the Chairman be authorized to enter into a contract with the Legislative Counsel to have him make a compilation of laws relating to grand juries, to analyze them for the purpose of pointing up needed technical changes, and to draft such proposed nonsubstantive revisions of the law relating to grand juries as appear to be desirable.

Minutes of Meeting of August 2, and 3, 1957

III. AGENDA

A motion was made by Mr. Bradley, seconded by Mr. Babbage, and unanimously adopted ratifying the action of the Chairman in entering into a contract with Stanford University in the amount of \$2,500 for agenda work for the current fiscal year (1957-58).

The Commission considered whether any new topics for study should be included in the agenda resolution submitted to the 1958 Session of the Legislature. It was agreed that the Commission would plan to submit three to five topics for approval at that Session.

The Commission considered the recommendations of the Southern Committee relating to disposition of suggestions, as set forth in Memorandum No. 4. It was decided to Not Accept the following suggestions:

- 110 (The Commission decided to recommend in its 1958 Report that the unconstitutional statute referred to in this Suggestion be repealed and that the problem of attorneys liens be referred to the State Bar)
- 116 (refer to legislative members)
- 124
- 128 (refer to legislative members)
- 132(17)
- 132(20)
- 132(18) (refer to legislative members)
- 135(2)
- 135(3) (refer to legislative members)
- 135(4) (refer to Legislative Counsel)
- 135(5) (refer to Mr. Bradley)
- 135(6)
- 135(7) (refer to legislative members)
- 135(9)
- 135(10) (covered 1957 Session)
- 135(11)
- 140

Minutes of Meeting of August 2 and 3, 1957

146 (covered 1957 Session)
148
153(1)
153(2)
156(1)
156(2)
156(3)
160(2) (noted that there is joint legislative
committee on assessment practices)
168
169(3) (refer to Senator Cobey)
169(6) (new legislation on contribution among
joint tort feasons may cover)
170(3) (covered by pre-trial)
170(1) (refer to legislative members)
170(4)
170(5)
173 (refer to Mr. Bradley)
174
175
179
180 (refer to legislative members)

The committee's recommendation with respect to Suggestion No. 141 was postponed for further consideration at a later meeting.

The Commission discussed at some length whether it should undertake to make a comprehensive study to find and report all statutes held unconstitutional and, if so, whether it should also introduce legislation to repeal them. It was agreed that Mr. Kleps would make a search through his files to see what material they may contain relating to this subject and that the matter will be considered further at the next meeting of the Commission.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary