MINUTES OF MEETING

of

September 25, 26 and 27, 1961

Monterey

A regular meeting of the Law Revision Commission was held in Monterey on September 25, 26 and 27, 1961.

Present: Honorable Clark L. Bradley
Joseph A. Ball (September 26 and 27)
James R. Edwards
Sho Sato
Vaino H. Spencer
Thomas E. Stanton, Jr. (September 26 and 27)
Ralph N. Kleps, ex officio

Absent: Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable James A. Cobey

Messrs. John H. DeMoully, Joseph B. Harvey and Jon D. Smock of the Commission's staff were also present.

During the discussion of Study No. 36(L) - Condemnation, Messrs. Holloway Jones, Robert Carlson and Norval Fairman from the California Department of Public Works were present.

The Minutes of the meeting of August 18 and 19 were approved.

On September 26, a motion was made by Mr. Bradley, seconded by Mr. Edwards and adopted that a quorum for the meeting held on September 25 would be four members of the Commission but that no action taken by the Commission at that meeting was final. This motion was adopted so that members

of the Commission who met on September 25 to discuss various administrative matters and the study relating to arson would receive per diem and travel expenses for September 25. The action is in accordance with the established practice of the Commission.

ADMINISTRATIVE MATTERS

Table of Cases - Third Bound Volume. After considerable discussion, the Commission adopted a motion that the Executive Secretary is authorized to include a Table of Cases in the Third Bound Volume. However, in view of the strong views of some members of the Commission as to the desirability of including a Table of Cases in the volume, the Executive Secretary was directed to bring this matter to the attention of the Commission if he decides that the Table of Cases should not be included in the volume. If the Executive Secretary decides to include the Table of Cases in the volume, he was authorized to do so without further Commission authorization. The decision on whether the Table of Cases is to be included in the volume is to be made on the basis of the estimated cost of including the table in the volume.

Future Meetings. The following dates and places are set for future meetings:

October 20 and 21 (San Francisco)

November 10 and 11 (Los Angeles)

December 15 and 16 (San Francisco)

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE (HEARSAY ARTICLE)

The Commission considered Memorandum No. 39(1961) and the First Supplement thereto, both relating to the Hearsay Article of the Uniform Rules of Evidence as revised to date by the Commission. The following actions taken by the Commission should be particularly noted.

Rule 62(6). Paragraphs (a) through (d) were previously approved by the Commission. With respect to paragraph (e), staff research disclosed that the language "unable to procure the attendance of the witness by subpoena" (in Section 2016(d)(3)(iv) of the Code of Civil Procedure) requires some showing of diligence, the precise extent not being exactly clear because of the absence of cases directly in point. The Commission approved a revised version of paragraph (e) to read as follows:

> (e) Absent from the hearing and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance by subpoena.

The inclusion of specific reference to showing "reasonable diligence" is believed not to change existing law. Whether or not existing law is changed, the inclusion is deemed desirable because a proponent should be required to show more than that the witness is not present.

Rule 62(8). This tabulated subdivision is substantially the same as former subdivisions (8) and (9), previously approved by the Commission. The Commission approved its present form which makes it clear that the

former testimony exceptions in Rule 63(3) and (3.1) do not apply to depositions taken in the same action or proceeding, which are governed by Section 2016 of the Code of Civil Procedure and Sections 1345 and 1362 of the Penal Code.

Rule 63(3) and (3.1). The Commission determined to eliminate the introductory clauses in subdivisions (3) and (3.1) and place their substance in a separate unnumbered paragraph. This change was made because of their undue length and near unintelligibility as introductory clauses. The Commission rejected a staff suggestion to revise the provisions to coincide with existing language in Section 2016 of the Code of Civil Procedure, which would permit objection to be made to the form of the answer as well as to the form of the question. The staff was directed to use its discretion in tabulating and phrasing these subdivisions in accord with these decisions.

Rule 63(9). Except for the limitation to civil actions, paragraph (c) restates the existing law as to statements of certain third persons. The Commission affirmed its previous approval of this limitation to civil actions because (1) its counterpart in existing law (Section 1851 of the Code of Civil Procedure) has never been applied in a criminal case, (2) no possible application in a criminal case is apparent, and (3) any application in a criminal case would be undesirable because the protections and safeguards provided in Rule 63(10), which protects the right of confrontation to the extent such right exists, would be thwarted since they are not apparent in this Rule.

Rule 63(15). The Commission approved a revised form of this exception which was previously deleted from the Article in the belief that Rule 63(13) provided an adequate exception. The purpose of revised subdivision (15) is to admit matters presently covered by Sections 1920 and 1926 of the Code of Civil Procedure. Note that the test of admissibility is substantially the same as in Rule 63(13) and the Uniform Business Records as Evidence Act, except that the custodian need not testify as to the mode of preparation, etc. As revised, this subdivision now reads substantially as follows:

> (15) A writing offered as a record of an act, condition or event if the writing is made by a public officer or employee of the United States or a state or territory of the United States, and the judge finds that the making thereof was within the scope of the duty of such officer or employee and that it was made at or near the time of the act, condition or event and that the sources of information and method of preparation were such as to indicate its trustworthiness.

The staff was directed to tabulate this subdivision and to make such technical changes as may be necessary to conform this policy with the format of the Uniform Rules.

Rule 63(17). The Commission revised this exception to eliminate reference to "public records" and "public writings" in light of the limited meaning which each of these phrases might have. As revised, this subdivision now reads substantially as follows:

> [~~Subject to Rule 64,~~] (a) If meeting the requirements of authentication under Rule 68, to prove the content of [~~the record~~] a writing in the custody of a public officer or employee, a writing purporting to be a copy thereof. [~~of an official record or of an entry therein,~~]

(b) If meeting the requirements of authentication under Rule 69, to prove the absence of a record in a specified office, a writing made by the public officer or employee who is the official custodian of the [~~official~~] records [~~of the~~] in that office [,] reciting diligent search and failure to find such record. [;]

Rule 63(21.1). The Commission added an exception to continue so much of the existing law codified in Section 1851 of the Code of Civil Procedure as is not included in Rule 63(9)(c). Note that the "for" clause of Section 1851 has been omitted because covered by the doctrine of estoppel by judgment, which permits introduction of a judgment by a person who was not a party to the previous action or proceeding. As adopted in substance by the Commission, this subdivision reads as follows:

(21.1) When one of the issues in a civil action or proceeding is the legal liability, obligation or duty of a third person, evidence of a final judgment against such person to prove such legal liability, obligation or duty, when offered by a person who was a party to the action or proceeding in which the judgment was rendered.

The staff was directed to make such technical revisions in this subdivision as may be necessary to conform it to the format of the Uniform Rules.

Rule 63(22). The staff research on the subject of prior judgments regarding boundary disclosed a sound reason for their admissibility, namely, their superior reliability as compared with reputation. Accordingly, the Commission approved the inclusion of this exception to the hearsay rule. Note that the approved exception is narrower than it could be because its application is limited to cases where the interest of a governmental entity is in issue and was previously litigated by such entity.

Rule 63(27.1). In connection with evidence regarding boundary, the Commission considered the First Supplement to Memorandum No. 39(1961) regarding a previously uncodified exception to the hearsay rule. This concerns the extrajudicial statements of a disinterested and now deceased person who had knowledge of the subject. The Commission approved continuance of this exception as a separate subdivision following reputation as to boundary, which was previously approved as Rule 63(27).

Rule 63(29) and (29.1). The Commission approved the technical change made in subdivision (29) and the new subdivision denominated as subdivision (29.1)--which permits clarification and improvement of both exceptions.

Miscellaneous Adjustments

In addition to approving the proposed comments for those subdivisions added by the above action, the Commission approved several minor changes in language as follows:

1. On page 24, line 1, the word "though" was deleted as being unnecessary. Also, the last paragraph was deleted in its entirety for the same reason.

2. On page 31, the second sentence of the first paragraph was revised to read as follows: "The subdivision has been made applicable only in a civil action or proceeding since the admissibility of admissions in criminal actions is governed by subdivision (6)."

3. On page 42, line 18, the phrase "gave rise to" was replaced with the word "caused" for directness and clarity.

Adjustments and Repeals of Existing Statutes

Section 1851 (Code of Civ. Proc.). In light of the codification in Rules 63(9)(c) and 63(21.1) of the substance of this section as it has been applied in the decided cases, the Commission approved the repeal of this section.

Sections 1893 and 1901 (Code of Civ. Proc.). In light of the adoption of a revised Rule 63(17), which restates the substance of these sections, the Commission approved the revision of Section 1893 in the manner suggested on page 83 (blue) and the repeal of Section 1901.

Sections 1920 and 1926 (Code of Civ. Proc.). The substance of these sections is retained in Rule 63(15) as revised and adopted by the Commission. Accordingly, repeal of these sections was approved by the Commission.

Section 686 (Pen. Code). The Commission approved the revision of this section in the manner suggested on pages 91 and 92 (blue).

It was noted that the various hearsay exceptions in the Uniform Rules of Evidence were drafted with a view to their possible application to a defendant in a criminal case. However, Section 686, if not revised, would prevent the admission of evidence against the defendant in a criminal case although various URE Rule 63 subdivisions--such as Rule 63(3)--make such evidence admissible and were drafted with a view to protecting the right of confrontation. Note that the deposition reference in Section 686(3)(b)

picks up the substance and precise limitations of Penal Code Sections 882, 1345 and 1362.

Sections 1345 and 1362 (Pen. Code). The Commission approved the revision of each of these sections in the manner suggested on page 93 (blue).

Final Action

By unanimous vote, the Commission approved the entire Hearsay Article as revised and approved its distribution to the State Bar without further consideration, allowing the staff discretion to make technical adjustments as may be necessary.

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE (PRIVILEGES ARTICLE)

The Commission considered several memoranda relating to the Privileges Article of the Uniform Rules of Evidence as revised to date by the Commission. The following material reflects the actions taken by the Commission.

Scope of Privileges Article. The Commission considered a staff suggestion in Memorandum No. 43(1961) that a preliminary decision should be made with respect to the desirable scope of the Privileges Article. The purpose of this preliminary decision is not to finally decide upon the desired scope of the Article, but only to determine the most desirable means of approaching the several problems involved in the various substantive rules of privilege.

In rejecting the staff suggestion that initial consideration by the Commission should follow the New Jersey framework, which provides broad coverage in that the Article applies generally to all proceedings--legislative, administrative and judicial at both the state and local levels--unless there is some specific reason for limiting the applicable scope of a particular privilege, which, in turn, would allow for consideration of problems involved in areas outside of strictly judicial proceedings, the Commission considered at least two alternatives:

1. Mr. Kleps and Commissioner Bradley advocated that consideration of the Privileges Article should be restricted by the assumption it would apply in judicial proceedings only and that the Commission should leave other areas of the law untouched.

2. Commissioner Sato favored further study with a view to determining the precise extent to which each privilege should be operative in light of balancing its purpose against competing interests which might be apparent in legislative, administrative and judicial proceedings.

The Commission determined that consideration would be limited by the assumption that application of the Article is restricted to judicial proceedings only, deferring consideration of the application of each privilege to other types of proceedings until adjustments and repeals of existing privilege statutes are taken up. In light of this action, note that a redraft of several of the substantive rules of privilege will be required in order to eliminate problems raised by their possible application in other than judicial proceedings. Also, there is a likelihood of leaving several of the existing statutory privileges untouched except to note their nonapplicability in judicial proceedings unless it is later determined to make the URE privileges apply to administrative and legislative proceedings.

Definition of Incrimination. The Commission considered a portion of Memorandum No. 18(1961) relating to the desirable extent of coverage afforded by use of the word "incrimination" and its definition in Rule 24. This involves the problem of whether the privilege against self-incrimination should extend to matters which tend to incriminate under California law only, either California or federal law, or California, federal or any other state law, but not the law of a foreign country.

As proposed by the Uniform Commissioners, the Uniform Rules of Evidence would limit the privilege to incrimination under the law of California only. Both the Northern and Southern Sections of the State Bar Committee favor extending the privilege to include incrimination under either California or federal law, but not the laws of a sister state or a foreign country.

As noted in the memorandum, the present California law in this regard is in doubt. By analogy to federal law and the law applicable in most other jurisdictions, the matter protected by the privilege must be one which would incriminate under the law of the jurisdiction which grants the privilege. In other words, protection by the privilege against self-incrimination is not greater than the permissible scope of the law which grants the privilege. So far as federal law is concerned, this is the minimum required by the U. S. Constitution.

By analogy, in light of the protection afforded this privilege by the State Constitution, it probably would be constitutionally (State) sufficient to provide protection only where a matter tends to incriminate under California law. [Note that the decided federal cases indicate thus far that a state may abrogate the privilege against self-incrimination protected by the U. S. Constitution; it has no application in criminal proceedings conducted by the state.]

The question of desirable scope is confused and compounded by reason of immunity statutes because these are frequently broader than the privilege afforded in the same jurisdiction. Thus, in light of the Compulsory

Testimony Act of 1954, the federal law provides immunity from both federal and state prosecution where there is compelled disclosure of a matter which tends to incriminate under the laws of both. The immunity from federal prosecution is coextensive with the extent of the privilege against self-incrimination protected by federal law. However, the sole basis for sustaining the federal power to grant immunity from state prosecution is federal supremacy in matters regarding the national security. Since a state does not possess any equivalent power, it cannot constitutionally provide immunity from other than its own prosecution. With respect to immunity statutes, therefore, the only practical avenue open to a state desiring to afford some form of protection is to prevent disclosure where a particular matter would tend to incriminate under the law of another jurisdiction. This is the stated law in California under Penal Code Section 1324 so that in California immunity is probably broader than the privilege presently afforded. The desirable scope of immunity statutes and, conversely, the scope of a privilege against self-incrimination in excess of any minimum required by the California Constitution, is thus reduced to a question of policy.

The Commission approved the proposition that "incrimination" should include matters which tend to incriminate under either California or federal law. Commissioner Bradley opposed this probable extension of the California law in this regard.

Privilege Against Self-Incrimination. The Commission considered a portion of Memorandum No. 18(1961) dealing with Rule 25. In light of the

action taken in regard to Rule 24, note that this privilege is applicable where a particular matter tends to incriminate under either California or federal law.

Introductory Clause. The reference to Rule 37 was deleted because subdivisions (8) and (9) of this rule provide the extent to which the privilege may be waived.

Both Sections of the State Bar Committee agreed to restricting to natural persons those who could claim this privilege. This is merely a restatement of existing California law and the general rule of law in most other jurisdictions.

The State Bar Sections also approved the deletion of matter which would extend the privilege to other than judicial proceedings on the basis that the Uniform Rules of Evidence as revised by the Commission is intended to be limited to judicial proceedings. The Commission rejected the State Bar suggestion which would add "in any action or proceeding" after the word "disclose" for the reason that the phrase adds nothing and because comparable phrases used elsewhere in these rules are used only to restrict or broaden the scope of a rule.

Subdivision (1). This subdivision was approved in the form presented to the Commission.

Subdivision (2). Though both Sections of the State Bar indicated some doubt as to the inclusion of "mental" condition, the Commission reaffirmed its previous decision to include this matter as an exception to the privilege. However, the reference to "his body" was deleted to eliminate the ambiguity created by its inclusion.

Subdivision (3). The Commission adopted this subdivision in the same form in which it was presented, thereby rejecting the Southern Section's suggestion to delete this provision.

Subdivision (4). This subdivision was approved in the form in which it was presented to the Commission.

Subdivision (5). The Commission approved a revision of a redraft submitted by the research consultant. As revised, this subdivision reads in substance as follows:

> (5) No person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise a document, chattel or other thing under his control constituting, containing or disclosing matter incriminating him if the judge finds (i) that the thing ordered to be produced is the property of some other person or a corporation, or other association or organization, or (ii) that some other person or a corporation, or other association or organization other than the custodian has a superior right to the possession of the thing ordered to be produced.

The staff was directed to revise this language to eliminate the repetitious reference to persons, corporations, etc.

Subdivisions (6) and (7). The Commission tentatively approved a new subdivision--subdivision (6) of the revised rule--as a substitute for subdivisions (e) and (f) of the URE because of the probable unconstitutionality of subdivision (f) and that part of subdivision (e) which would compel testimony. The approval of the new subdivision is subject to further staff research on the extent to which a court can compel testimony and the production of certain records. The new subdivision is to read substantially as follows:

(6) No person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise any record required by law to be kept and to be open to inspection.

Subdivision (8). As suggested by the Southern Section, the Commission approved the deletion of the word "voluntarily" in line 2 of this subdivision. This word was considered unnecessary since a defendant cannot be compelled to testify. The revised subdivision was approved.

Subdivision (9). The Commission approved the staff's revision of this subdivision in a manner suggested by the Southern Section. As revised, this subdivision now reads as follows:

(9) Except for the defendant in a criminal action or proceeding, a witness who, without having claimed the privilege under this rule, testifies in an action or proceeding before the trier of fact with respect to a transaction which incriminates him does not have the privilege under this rule to refuse to disclose in such action or proceeding any matter relevant to the transaction.

This preserves the existing law with respect to nonwaiver of the privilege against self-incrimination by testimony in a prior action or proceeding.

Privilege of Defendant in Criminal Case. The Commission considered a portion of Memorandum No. 18(1961) dealing with Rule 23. Subdivision (1), previously added by the Commission, was deleted in favor of a tentative decision to retain present Section 1323.5 of the Penal Code to apply to cases in which the Uniform Rules are not applicable. The repeal of Section 1323.5 will be considered when amendments and repeals of existing law are considered. Whether the section should be retained depends in part on whether comment may be made on a previous claim of the privilege against self-incrimination.

This rule now restricts the privilege of a defendant not to testify to criminal actions or proceedings in which the Uniform Rules are applicable. This is in accord with a broadening of the privilege against self-incrimination.

The question regarding permissible comment on the exercise of this privilege or the privilege against self-incrimination was deferred until consideration of Rule 39, which deals solely with comment. Note that there is considerable interrelation between these rules and Penal Code Section 1323.5.

Lawyer-Client Privilege. The Commission considered Memorandum No. 20(1961) dealing with Rule 26. A redraft of subdivision (1)(a) of this rule makes it clear that a state or public body who consults a lawyer is included in the term "client" and that the term also includes an incompetent person who consults a lawyer. The Commission directed the staff to include "partner" in subdivision (2)(b) to make it clear that a partner or an associate is included as a lawyer's representative.

The State Bar Committee objected to including as a holder of the privilege the personal representative of a deceased client, to the exclusion of the client's lawyer. The Commission approved the deletion of subdivision (3)(c) in favor of including a new provision providing that unless there is no holder still in existence, the privilege must be claimed by the lawyer unless otherwise instructed by the holder of the privilege or his representative.

As a practical matter, note that a lawyer would claim the privilege in every case unless otherwise instructed, leaving the court to determine

whether the claim is properly made in terms of there still being a holder in existence, that the privilege has not been waived, etc.

The State Bar Committee objected to omitting a foundation requirement in determining whether to admit the testimony of a lawyer regarding the purpose of a communication. The Commission affirmed its previous decision to omit a foundation requirement because (1) as a practical matter, such evidence would generally be nonexistent, particularly in light of the abolishment of the eavesdropper exception, and (2) by definition, a matter is not privileged if the communication was for a prohibited purpose. There is no other practical way of determining what the purpose is. A foundation requirement would make every communication privileged whether within the terms of the statute or not because there would be no way to prove the communication was without the terms of the statute; it would make the prohibition ineffective and a mockery. Note that, like the privilege against self-incrimination, the court cannot compel revelation of the communication prior to determining whether or not it is privileged. For a lawyer to openly reveal all communications merely because a judge asks for it would be a breach of fiduciary duty, but not if the lawyer knows the communication to be nonprivileged because it is not within the scope of matter protected by the privilege.

The Commission disapproved a suggestion by the State Bar to insert "deceased client" in subdivision (5)(a) for the reason that there is no practical difference between a living or deceased client so long as he is unavailable, i.e., if the client is unavailable, it makes little

difference whether he is alive or not for the purpose of this subdivision.

The staff was directed to consider the New Jersey counterpart of subdivision (5)(d) to determine whether it would be better to restate this subdivision in terms of who can claim the privilege rather than the inapplicability of such claim in the situation now covered by (5)(d).

The Commission approved the principle of enlarging subdivision (6) to include partnerships and make it clear that successors, assigns and trustees in dissolution would be competent to claim the privilege. As revised, the inclusion of (6) as a separate subdivision adds nothing to the rule so that a revision of the definition of "holder" will accomplish the same policy.

Physician-Patient Privilege. The Commission considered Memorandum No. 21(1961) relating to Rule 27. The Commission approved the abolishment of the eavesdropper exception to this privilege.

The State Bar's objection to "a" guardian as opposed to "any" guardian was rejected because the phrase relates to exactly who may claim the privilege, without present regard for waiver.

The Commission approved the deletion of the word "sole" in subdivision (1)(c), but without the insertion of "principal" as suggested by the State Bar. As it is now drafted, the subdivision in this regard is clearer than it would be without the addition of either word. In the same subdivision, the Commission approved the deletion of the phrase "preliminary to such treatment" modifying and limiting the act of "diagnosis" because it felt the privilege should be operative where the purpose of the communication relates to diagnosis only.

The Commission agreed to revise subdivision (2)(d)(iii) to add a provision requiring a physician to claim the privilege in the same manner and under like circumstances as the lawyer, viz., where not instructed otherwise and a holder is still in existence.

The Commission approved a revision of the definition of "physician" in subdivision (1)(d) to conform with the definition of lawyer in Rule 26, making it clear that this state would recognize the privilege where a similar confidence is respected in other states.

The State Bar objected to the nonapplicability of the privilege in a civil case where the conduct of the patient amounted to a felony, noting the possible overlapping of penalties, etc., which may change the character of the conduct and noting the change in existing law where the privilege is available regardless of the culpable character of the patient's conduct. The Commission favors the URE approach making the privilege inapplicable where the patient's conduct constitutes a crime; however, because of the wide variety of miscellaneous misdemeanors, particularly regarding administrative activities, the Commission feels that the felony-misdemeanor distinction is desirable and that the felony limitation is justified.

The Commission approved the deletion of "deceased" modifying "client" in subdivision (4)(b) to coincide with similar action taken with respect to the lawyer-client privilege.

The Southern Section objected to the spelling out of "counterclaim, cross-complaint or affirmative defense" in subdivision (5) as being unnecessary. However, the Commission favors the use of this technically

accurate language to make it clear that the privilege is available unless the defendant puts his physical condition in issue by one of these means; otherwise, the privilege could be destroyed in every case by the plaintiff putting the same in issue.

STUDY NO. 36(L) - CONDEMNATION (PRETRIAL CONFERENCES AND DISCOVERY)

The Commission considered Memorandum No. 38(1961) relating to pretrial conferences and discovery in eminent domain proceedings and the First Supplement thereto containing comments from the Department of Public Works.

The Commission made the following changes in the tentative recommendation:

(1) A provision is to be added to the statute stating that the Commission's statute does not prevent the use of other discovery procedures in eminent domain cases.

(2) A provision is to be added to the statute to make it clear that the Commission's statute does not make admissible any matter which is not otherwise admissible as evidence in eminent domain proceedings.

(3) A provision is to be added to the statute to require that one who acquires additional information after the exchange of valuation data has a duty to give notice thereof to the persons with whom statements were exchanged and that a court, in determining whether to admit this additional unlisted data, shall consider whether the party has exercised good faith in complying with the statute. Commissioner Edwards voted against this addition.

(4) A minor correction was made in line 18, page 9, by changing "is" to "was" since it is clear that a demand must be served prior to the exchange of valuation data.

The staff was directed to phrase the exact wording of such provisions as may be necessary to effectuate the policy decisions noted above and to make other technical changes as may be necessary.

The staff was authorized to distribute the revised tentative recommendation after the Chairman has conferred with the Chief Justice.

STUDY NO. 46 - ARSON

On September 25, four members of the Commission considered several preliminary problems raised in Memorandum No. 37(1961) relating to the arson study, the recommended statute and the comments relating thereto. No final action was taken on this subject.

STUDY NO. 52 - SOVEREIGN IMMUNITY

Approval of supplemental contract. After discussion, a motion was made, seconded and unanimously adopted that a supplemental contract in the amount of $3,500 with Professor Arvo Van Alstyne be approved and that the Chairman be authorized to execute the contract on behalf of the Commission. During the discussion, members of the Commission recognized the substantial increase in the amount of work required because of the Muskopf decision. The Executive Secretary reported that the new contract would be drafted to impose additional duties for the additional compensation.

Commissioner Kleps reported that there is no topic of greater importance on the agenda of the Commission and that the Legislature is expecting the Commission to make a major recommendation on the subject. He stated that a tentative recommendation of some sort should be made by March of 1962 so that the reaction of the Legislature to the direction in which the Commission is going can be obtained. In addition, if it appears by that time that the Commission is not going to be able to complete the project or that the Commission needs additional funds for research, a special study commission can be created or additional funds can be appropriated. It is essential, though, that the Commission devote all of its available time to the Sovereign Immunity Study. He stated that the Commission should consider the hiring of additional consultants to gather statistical information or do other field research.

The staff was directed to prepare a memorandum for the October

meeting on the subject of Sovereign Immunity. The purpose of the memorandum is to point out the major problems in the field so that the Commission may begin to think about and discuss the possible solutions to these problems.

STUDY NO. 53(L) - PERSONAL INJURY DAMAGES AS SEPARATE PROPERTY

The Executive Secretary reported that the Commission has received a research study from its consultant on this study, Mr. George Brunn of San Francisco. The staff has examined the study and it appears generally to be adequate. Accordingly, the staff recommended that a partial payment be made to the consultant for the study. It was recommended that the entire payment not be made at this time because the Commission may find that the study will need to be supplemented at a later time. Past experience indicates that the research consultant is more inclined to do a satisfactory job of revising his study if he has not received full payment for it. A motion was unanimously adopted that Mr. George Brunn be paid the sum of $800 as part payment for this study.