

February 18, 1977

Memorandum No. 3

Subject: Cooperation with the State Bar

In early January Mr. Stanton received a letter from Mr. Jack Hayes, Secretary of the State Bar, reporting on behalf of the Board of Governors, inter alia, that the Committee on Administration of Justice had concluded that the Commission should not seek enactment of the bills embodying its recommendations with respect to Section 201.5 of the Probate Code (A.B. 250) and the rule prohibiting suspension of the absolute power of alienation (A.B. 249) by the 1957 Session of the Legislature because the CAJ would not have time to study them adequately prior to their consideration by the Legislature. Mr. Stanton immediately wrote to Mr. Ball, President of the State Bar, asking that the matter be reconsidered by the Board of Governors. As a result, the matter was again considered by the Board at its January 1957 meeting in San Francisco. Mr. Stanton and I were present and as a result of Mr. Stanton's presentation of our view of the matter the Board of Governors authorized Mr. Ball to appoint an ad hoc committee of State Bar members to study each of the proposals involved. It is hoped that this action will enable the State Bar to withdraw its original suggestion that A.B. 249 and A.B. 250 not be pressed for enactment at the current Session.

In the course of our discussion with the Board of Governors the question was also raised of what arrangement should be made for cooperation between the State Bar and the Law Revision Commission over the long haul. No decision was reached on this matter but in the course of the discussion Mr. Ball expressed some views which I found rather disturbing in their implications for

our programs. Accordingly, I subsequently wrote Mr. Ball at some length, pointing out my reservations about the views which he had expressed. A copy of my letter is attached.

In due course, Mr. Ball replied. A copy of his letter is also attached.

I suggest that the Commission discuss the matter of cooperation with the State Bar at the March meeting since some of the questions involved have an important bearing on how our work is to be conducted during the next several months.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

att.

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CALIFORNIA LAW REVISION COMMISSION

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February 1, 1957

Mr. Joseph A. Ball
Ball, Hunt & Hart
120 Linden Avenue
Long Beach, California

Dear Joe:

Jack Hayes has told us that the Board of Governors of the State Bar authorized you to appoint two ad hoc committees to study the recommendations and studies of the Law Revision Commission relating to Section 201.5 of the Probate Code and the rule prohibiting suspension of the absolute power of alienation. We are, of course, very pleased with this action by the Board and recognize that it reflects in a very concrete way the State Bar's interest in cooperating with the Law Revision Commission. I have sent copies of our recommendations and studies on these subjects to the members of the respective committees and have told them that I will be happy to meet with them to discuss the matters involved if they wish to have me do so.

There remains the problem of working out the mechanics of cooperation between the State Bar and the Law Revision Commission in the future. It seems to me that we are all fortunate to have the opportunity to do this while you are President of the State Bar because of your familiarity with the work and the problems of both organizations. The primary purpose of this letter is to set out in some detail what I believe to be some important considerations to be taken into account from the Commission's point of view in working out an arrangement between us. I hasten to add that I speak for myself rather than the Commission in this communication and that I address you as a friend rather than in your official capacity as President of the State Bar.

In the first place, I want to make it clear that I do not believe that the Commission should be jealous of either its jurisdiction or its prerogatives. There is no doubt that having competent lawyers study and discuss our work will prove helpful and that the Commission will, as a result, present better recommendations to the Legislature than it would without such State Bar assistance. In addition, there is, of course, the very practical consideration that such cooperation should in most if not all cases obviate State Bar opposition to any proposal presented by the Commission to the Legislature. Thus, I have no desire to see the Commission "go it alone".

But desire to have the State Bar's assistance is one thing and the mechanics of working it out consistently with maintaining our schedule of work is another. In this connection I am concerned about two suggestions which you made at the January meeting of the Board of Governors while Tom Stanton and I were there: (1) That the State Bar committee which is going to work on a topic

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receive materials relating thereto from the Commission before the Commission has itself considered the matter thoroughly and decided upon its recommendation to the Legislature; and (2) that since the State Bar members are busy men, they should be given at least six months to study the material submitted by the Commission on each of its recommendations.

My difficulty with the first suggestion is that I think it would involve a great deal of waste motion. As you will recall, our experience to date has been that in many cases recommendations proposed by committees have been substantially revised by the whole Commission and in other cases the Commission has, in acting finally on a matter, reversed or qualified positions which it had taken at an earlier stage of its proceedings. It seems to me that it would be quite undesirable to place before a State Bar committee a proposal for action by the Commission made at an early stage in the Commission's deliberations or those of one of its committees which differs markedly from the Commission's final action on the matter concerned. For one thing, such proposals are sometimes not very well thought out and I would hope that any such proposal would not go beyond the Commission itself. Moreover, in all such cases the State Bar committee members would spend a great deal of time thinking about the particular proposal only to have the Commission abandon it and the committee's time would have been largely wasted. We could, of course, send our research consultants' reports to State Bar committees as soon as they are received, but I think this would be questionable both because in some cases the consultants' report is revised after it has been discussed with the Commission or one of its committees and because I rather doubt that the consultant's study would be given much attention by the State Bar committee before the committee also has a Commission proposal based on the study before it. My conclusion as to your first suggestion is, therefore, that the Commission ought to continue to follow its present practice -- i.e., that nothing is sent to the State Bar until the Commission has decided upon a recommendation to the Legislature in action which is final so far as the Commission is concerned, subject to such revision as may seem desirable after we have received the views of the State Bar. I realize, of course, that this procedure involves some risk that the Commission, having settled upon a tentative recommendation and drafted a proposed statute, will be resistant to making changes therein in response to State Bar suggestions. However, our record on this to date is good -- a number of the recommendations made by the State Bar to date have been accepted by the Commission -- and I believe that meritorious suggestions will always be accepted if the present procedure is continued.

I am also concerned by your suggestion that State Bar committees be given six months to study the Commission's recommendations and studies before being asked to report on them. To date the Commission has worked on a tight time schedule and I believe that it always will. The process of getting a topic from approval for study by the Legislature to a printed recommendation

and study ready for distribution is at best a lengthy one. Getting 12 to 15 studies completed during each fiscal year without getting into logjams at various points along the way - whether in the form of overloaded meeting agendas, a tie-up in the printing process, or otherwise - has proved to be very difficult, to put it mildly. In light of our experience to date it seems clear to me that if the Commission is to take on and complete a substantial number of projects each year -- which it certainly should do if we are to justify our \$75,000 budget -- it will just not be possible to hold up work on each topic for six months while the State Bar has it under consideration. Had we done that with the present legislative program, we simply would not have twelve bills to present to the 1957 Session. Of course, in a year like the current year (1956-57) in which we are working on matters to be submitted to the 1959 Session, it would be easier to provide six months for State Bar study than in a pre-Session year like next year (1957-58). But if we get involved in a substantial delay this year, it will pile up the number of studies which we must complete and print in the following pre-Session year and create a situation that is almost certain to get out of hand. I am, therefore, convinced that the Commission must proceed on the basis of pushing each study through as rapidly as possible. As you know, this attitude has given me something of a "Legree" reputation with the members of the Commission at times, but it is the only way we have been able to make the progress which we have to date. In light of this general operating principle, a six months period for State Bar study of our proposals seems to me to be quite unrealistic. I would suggest that the period be 60 days at the most. Such a timetable might, I should think, require the appointment of a special subcommittee of the CAJ or even of a special State Bar committee to study the Commission's work, but if we are to cooperate over the long haul it seems to me that the State Bar will have to recognize the Commission's operating problems and organize itself in such a way as to help us to meet them.

I realize, Joe, that it is a good deal easier to see one's own problems than the other fellow's. I do not, therefore, propose to be adamant in the views which I have expressed. I simply want to make you aware of considerations which I believe to be valid and which I hope you will take into account in making up your own mind as to what is a reasonable basis for cooperation between us. With the good will which exists on both sides I am sure we can work out a mutually satisfactory arrangement.

Sincerely yours,

John R. McDonough, Jr.

JRM:fp

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THE STATE BAR OF CALIFORNIA

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Office of the President

120 Linden Avenue
Long Beach 2

February 7, 1957

MR. JOHN R. McDONOUGH, Jr.,
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

In re: Law Revision Commission studies - State Bar Committees

Dear John:

I do not agree that the State Bar should only have a short time within which to study findings of the Law Revision Commission. Before the Commission takes its action it should have the opinion of practical lawyers of the state. The fact that a committee has recommended for or against proposed legislation presents a problem for Commission decision and it immediately presents a problem for the Bar at large. It may be that the State Bar committee would come to the same conclusion as the Commission and reject the proposals, but the work of the committee would not be unnecessary labor. State Bar committees continuously investigate proposed legislation and take a stand against legislation which is considered to be contrary to the public interest. I can see no alternative but a parallel study with State Bar committees and the Commission. If we can have the advantage of your research it will aid the work of the committees; but if we do not obtain your work until after the Commission has acted, it appears to me that the State Bar committees must begin studying your agenda immediately after the close of each session of the Legislature. We cannot give the bills the cursory examination that we were forced to give them this past year.

On my next visit to San Francisco, I suggest that you come to the city for Martinis and dinner so that we may discuss this important problem in a mellow mood.

Cordially,

/s/ Joseph A. Ball,
Joseph A. Ball,
President

JAB:sm