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Place of meeting

New State Bar Building
1230 West Third Street
Los Angeles
(near Union Oil Building)

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

May 20-21, 1960

Friday, May 20. (Mr. Kagel will be present)

- 1. Minutes of April 1960 meeting (enclosed).
- 2. Study No. 32 - Arbitration.

- See: Memorandum No. 43 (1960) (enclosed).
- Study by Kagel (you have this study).
- Printed Pamphlet containing Uniform Arbitration Act.

- 3. Study No. 37(L) - Claims Against Public Officers and Employees.

- See: Memorandum No. 37 (1960) (sent 4/12/60).
- Supplement to Memorandum No. 37 (1960) (sent 4/14/60).
- Second Supplement to Memorandum No. 37 (1960) (sent 5/4/60).
- Third Supplement to Memorandum No. 37 (1960) (enclosed).
- Memorandum No. 29 (1960) (sent 3/30/60).
- Study by Van Alstyn (you have this study).

- 4. Approval of policy decisions set out in Handbook of Practices and Procedures (sent 5/4/60).

Saturday, May 21. (Mr. Nibley will be present)

- 1. Study No. 36(L) - Condemnation.

- See: Memorandum No. 44 (1960) (Taking Possession) (enclosed).
- Study on Taking Possession (you have this study).
- Memorandum No. 47 (1960) (Incidental Business Losses) (enclosed).
- Study on Incidental Business Losses (enclosed).

- 2. Study No. 38 - Inter Vivos Rights.

- See: Memorandum No. 46 (1960) (sent 5/4/60).
- Study by Marsh (you have this study).

3. Study No. 42 - Good Faith Improvers.

See: Memorandum No. 42 (1960) (sent 4/26/60).

4. Study No. 23 - Rescission of Contracts.

See: Memorandum No. 35 (1960) (sent 4/18/60).

5. Study No. 48 and 54 - Juvenile Court Proceedings.

See: Memorandum No. 45 (1960) (enclosed).

Memorandum No. 27 (1960) (sent 3/14/60).

MINUTES OF MEETING

of

May 20 and 21, 1960

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on May 20 and 21, 1960.

Present: Roy A. Gustafson, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable Clark L. Bradley
George G. Grover
Herman F. Selvin
Thomas E. Stanton, Jr.

Absent: Honorable James A. Cobey
Leonard J. Dieden
Charles H. Matthews
Ralph N. Kleps, Ex Officio

Messrs. John H. DeMouilly and Joseph B. Harvey and Miss Louisa R. Lindow, members of the Commission's staff were also present.

Mr. Sam Kagel, research consultant for Study No. 32 - Arbitration, was present during a part of the meeting on May 20.

Mr. Robert Nibley of the law firm of Hill, Farrer & Burrill of Los Angeles, research consultant for Study No. 36(L) - Condemnation, and his associates Messrs. John McLaurin and Stanley Tobin were present during a part of the meeting on May 21.

After the following corrections were made, a motion was made, seconded and unanimously adopted to approve the minutes of the meeting held on April 21, 22 and 23, 1960:

Page 2. The word "Exhibit" is to be substituted for the word "Appendix" in the next to last line.

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Page 13. A question was raised concerning the language of Rule 63A and whether the Commission, when it approved Rule 63A, ^{intended -} intended to have an existing section which is more restrictive than a related Uniform Rule and not repealed by implication because of Rule 63A, prevail over the newly enacted Uniform Rule. It was agreed to defer further consideration of this matter to a later date after the staff and consultant have had time to review the problem and submit their findings to the Commission.

Page 15. The words "be consistent with" are to be substituted for the words "not go beyond" in the third line of the first paragraph.

Page 17. The word "past" is to be added before the word "recollection" in the first line.

Page 21. The word "the" is to be inserted after the word "depreciation" in the next to last line of the last quoted paragraph (Subdivision (1) (c)).

Exhibit I - Page 7. The clause "determines the time as of which the rescission" is to be added before the words "is legally effective" in the fourth line from the bottom of the page.

I. ADMINISTRATIVE MATTERS

A. Stanford Contract: The Commission considered a staff recommendation that the Commission enter into a research contract for the 1960-61 fiscal year with Stanford University similar to the Stanford Contract which expires on June 30, 1960. After the matter was discussed, a motion was made by Mr. Stanton, seconded by Mr. McDonough, and unanimously adopted to authorize the Chairman on behalf of the Commission to enter into a contract in the amount of \$5,000 with Stanford University for the 1960-61 fiscal year similar to the contract now in effect.

B. Commission Handbook of Practices and Procedures:

The Commission considered the Handbook of Practices and Procedures which sets forth the policies and procedures of the Commission. After the following changes were made, a motion was made, seconded and unanimously adopted to approve the Handbook as a statement of the policies and procedures of the Commission:

Page 3 - Meetings. The second sentence of the first paragraph is to be revised to state that the three-day meetings scheduled on alternate months was approved on a six-month trial basis.

The time of the meeting scheduled on Saturdays (9 a.m. to 5 p.m.) to be changed to 9 a.m. to 4:30 p.m.

Page 4 - Committees. The statement referring to the Commission's disapproval of the use of committees is to be revised to indicate that the Commission disapproved only the use of a standing committee to initially review studies on the Commission's agenda and to submit its recommendations to the Commission.

C. Scheduled Commission Meetings: Future Commission meetings are now scheduled for:

June 16, 17 and 18 in San Francisco.

July 15 and 16 in Los Angeles.

August 18, 19 and 20 in San Francisco.

September 28, 29 and 30 in Los Angeles. (The State Bar will be meeting these days. At the August meeting the Commission will review this decision to determine whether a three-day meeting will be necessary in September.)

II. CURRENT STUDIES

A. Study No. 32 - Arbitration: The Commission had before it Memorandum No. 43(1960), containing Exhibit I (the sections of the draft arbitration statute previously considered and approved by the Commission), Exhibit II (the portion of the draft statute prepared by the staff not as yet considered by the Commission), and Exhibit III (the portion of the consultant's draft statute not as yet considered by the Commission), and the Uniform Arbitration Act.

Exhibit I. The following changes were approved:

The word "petition", instead of "motion", is to be used throughout the arbitration statute to refer to applications to the court for relief under the arbitration statute, except applications under Section 1283 (2) for a stay of a pending action.

Section 1280. (1) The word "an" was added before the word "oral" in subdivision (3).

Section 1282. (1) The clause "to arbitrate the controversy" was deleted from the fourth line in subdivision (1).

(2) Subdivision (2) was revised to read as follows:

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If the court determines that there are other issues, not subject to arbitration, that are the subject of another pending action or special proceeding between the parties, and that a determination of such issues may make the arbitration unnecessary, it may order that the arbitration be stayed until such determination or until such earlier time as it shall specify.

(3) The word "matter" was substituted for the word "claim" in subdivision (3).

Section 1283. (1) Subdivision (2) was revised as follows:

(a) The phrase "on the motion of a party" is to be added at the beginning of the subdivision.

(b) The staff was directed to add language to indicate clearly that a pending action is to be stayed if arbitration of the matter has been ordered by, or an application for an order compelling arbitration has been filed in, ^{a court of} ~~a California~~ ^{competent jurisdiction in California or in any other state.} ~~court or court of competent jurisdiction in any other state.~~

(c) The staff was directed to add a provision limiting the time within which a motion to stay a pending action or proceeding may be made.

(2) Subdivisions (1) and (2) are to be made two separate sections.

Section 1284. (1) The words "or is unable" were deleted from subdivision (1).

(2) In subdivision (2) the word "is" was substituted for the words "has been," the comma was deleted after the word "agency" and the words "a neutral" were substituted for the words "the court-appointed."

Section 1285. (1) The staff was directed to revise subdivision (2) to indicate that the powers and duties that may be exercised by a majority of arbitrators are those other than the powers and duties given to the neutral arbitrators exclusively.

(2) Subdivision (2) is also to be revised to be made subject to Section 1286(5).

Exhibit II and Exhibit III. The following actions were taken:

Section 1286. (1) Subdivision (5) was deleted.

(2) Subdivision (6) was renumbered "(5)" and revised as follows:

If an arbitrator for any reason fails to act, the hearing shall continue but only the remaining neutral arbitrator or neutral arbitrators may determine the questions submitted.

(3) Section 1285(3) (Exhibit III) was added as subdivision (6) and revised as follows:

If a neutral arbitrator obtains information relating to the issues other than at the hearing, he must disclose such information to all parties to the arbitration and give the parties an opportunity to meet it.

Section 1287. This section was revised to read:

A party has the right to be represented by an attorney at any proceeding or hearing under this title and no waiver of this right is binding.

Section 1288. (1) Subdivision (1) was approved.

Language is to be added indicating that subpoenas are to be served and enforced as well as issued in accordance with the Code of Civil Procedure provisions relating to subpoenas.

(2) The staff was directed to determine whether a cross-reference to the provisions in the Code of Civil Procedure relating to depositions taken outside the State should be included in subdivision (3).

(3) Subdivision (3) is to be revised to indicate that a party and not the "neutral arbitrator" must apply for an order for an out of state deposition.

(4) The words "and their agents, officers and employees," were added after the word "parties" in subdivision (4).

(5) Subdivisions (2), (3) and (4) were approved as revised.

Section 1289. Section 1289 was approved after the following revisions: In subdivision (1) the phrase "the decision of which is necessary to the award made" was added to the end of the second sentence, and the word "signed" was added before the word "copy."

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Sections 1290 and 1292. The Commission disapproved Section 1292(4) and the principle that an award becomes void unless it is filed within one year from delivery. A new subdivision is to be substituted for Section 1292(4) to provide that a person may sue on an award as a contract between the parties, as at common law, even though the award is not entered as a judgment and the right to use the arbitration statute's summary enforcement procedures is lost.

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B. Study No. 36(L) - Condemnation: The Commission had before it Memorandum No. 44(1960) containing Exhibit I - a draft bill which is consistent with the present constitutional provision and requires no constitutional amendment, Exhibit II - a draft bill which would become effective only if the constitutional amendment is successful, and Exhibit III - a proposed constitutional amendment, and Memorandum No. 47 relating to incidental business losses.

Distribution of Materials

The Commission directed the Executive Secretary to insert a brief notice in the State Bar Journal stating that the Commission is making a study on condemnation law and procedure and, on request, will send its tentative recommendations and draft statutes to persons desiring to comment on them (only the tentative recommendations and draft statutes, but not a copy of the various studies, should be distributed to persons who ask for material in response to this notice).

A. Taking Possession - Constitutional Amendment - Exhibit III.

The Commission first considered whether the proposed amendment to Section 14 of Article I of the Constitution might be construed as taking away the right to immediate possession from those agencies that now have this right. The staff was directed to draft a provision that would

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expressly authorize the Legislature to provide for the right to immediate possession subject to reasonable limitations.

Mr. Nibley pointed out that the phrase "irrespective of any benefits from any improvement proposed by" would preclude setting off benefits against severance damages in all condemnation actions. At the present time this limitation applies to condemnations by private corporations only. The staff was directed to review the matter and make such changes as are necessary to avoid making this limitation applicable generally.

B. Draft Bill - Exhibit I

The Commission then considered the draft bill that is consistent with the present constitutional provision. The following actions were taken:

The staff was directed to consider whether a definition section would be desirable and submit its recommendation.

Section 1244.5.

(1) The preamble was revised to read as follows:

In any case in which the plaintiff is entitled pursuant to Section 14 of Article I of the Constitution to take immediate possession of the property sought to be condemned:

(2) Subdivision (1) was revised to read as follows:

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The plaintiff may, at any time after the issuance of summons and prior to the entry of judgment, apply ex parte to the court for an order authorizing it to take immediate possession of and to use the property or interest therein sought to be condemned.

(3) The first portion of subdivision (2) was revised to read as follows:

If the court determines that the plaintiff is entitled to obtain the property by eminent domain and that the plaintiff is entitled pursuant to Section 14 of Article I of the Constitution to obtain immediate possession. . . .

(4) In the second sentence of subdivision (2) the word "shall" was substituted for the word "must."

(5) In the second sentence of subdivision (2) the phrase "as provided in subdivision (3)" is to be substituted for the phrase "upon the record owner or owners of the property." That portion of the second sentence of subdivision (2) which specifies the time plaintiff can take possession of the property is to be revised to provide that the plaintiff is not authorized to take possession of the property until after a date specified in the order or until 20 days after a copy of the order is filed whichever is later.

(6) In the fourth line of subdivision (3) the word "on" was substituted for the word "upon."

(7) In subdivision (3) the words "a copy of" were inserted before the words "the order" in the eighth line from the bottom of the page.

(8) In subdivision (3) the words "addressed to such person at his" were substituted for the words "to the" in the eighth line from the bottom of the page.

(9) The words "of such person" were deleted from the end of the second sentence of subdivision (3).

(10) Both the third and fourth sentences were deleted from subdivision (3).

(11) The last five lines of subdivision (4) were revised as follows:

[C]ourt pursuant to such order if the court determines that the probable just compensation the owner of the property will be entitled to receive for the taking is different from the amount set forth in such order.

(12) In subdivision (5)(b) the word "is" was substituted for the word "does" and the word "entitled" was substituted for the words "have the right."

The proposed deletion in subdivision (5)(b) of the phrase "there is no necessity for the taking of possession by the plaintiff prior to judgment or that" was approved.

(13) The staff was directed to draft a provision that the court may, ex parte, stay the effect of an order for immediate possession in order to hold open the time within which it might decide a motion under 5(a) or 5(b).

(14) Subdivision (6) was deleted.

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(15) The staff was directed to draft a new subdivision (6) to provide for the right to appeal; however, the appeal is not to automatically stay the proceedings. The trial and appellate courts should have discretion to grant a stay in each case.

Section 1249.1. The words "pertaining to the realty" were added to the second sentence after the word "improvements."

Section 1253. (1) The words "a copy of" were added after the words "the date that" in the third line of subdivision (2).

(2) Subdivision (2) is to be revised to refer to the property described in the order for possession.

Section 1254. Section 1254 was approved without revision.

Section 1254.5. Section 1254.5 was approved without revision.

Section 1254.7. Section 1254.7 was approved with the following changes: (1) The word "thereto" was substituted for the word "thereof" in the eighth line from the bottom of page I-11, and (2) the word "of" was substituted for the word "to" in the eleventh line from the bottom of page I-12.

Section 1255a. Section 1255a was approved with the following changes:

(1) Subdivision (2) was revised to read as follows:

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If the title to the property sought to be condemned has vested in the plaintiff, the plaintiff may not abandon the proceeding except upon the consent of all parties to the proceeding whose interests would be affected by such dismissal or abandonment.

(2) "Or more" was added immediately after the words "forty days" in subdivision (3).

(3) The last line of subdivision (3) is to be revised to refer to "pretrial" rather than "trial."

Section 1255b. (1) In subdivision (1) the word "legal" is to be substituted for the word "lawful" unless the staff determines that this substitution is not desirable.

(2) Subdivision (2)(a) was revised to read:

As to any amount deposited in court or with the State Treasurer, the date that such amount may be withdrawn by the person entitled thereto.

(3) Subdivision (2) is to be revised to provide separately for the abatement of interest on amounts deposited pursuant to an order for immediate possession and on amounts deposited to obtain possession pending an appeal.

Damage Provision. A provision is to be added to require a condemner to pay damages for the use of the property taken under an order for possession if the condemnation is abandoned or if it is determined that the condemner did not have the right to take the property by eminent domain.

C. Draft Bill To Become Effective Only on Passage of the
Constitutional Amendment - Exhibit II

A motion was made, seconded and unanimously adopted to approve the draft bill in Exhibit II as revised to include the revisions that were made to the draft bill in Exhibit I.

Incidental Business Losses - Memorandum No. 47(1960)

The Commission then considered the research consultant's recommendation that the Commission make no recommendation at this time in regard to compensation for incidental business losses. A motion was made by Mr. McDonough and seconded by Mr. Selvin to defer consideration until after the 1961 Session on whether there should be compensation for incidental business losses and to include in the Commission's report to the Legislature on Moving Expenses that the Commission is not prepared to make a recommendation on this matter at this Session. The motion carried:

Aye: Grover, McDonough, Selvin, Stanton.

No: Bradley, Gustafson.

Not Present: Cobey, Dieden, Matthews.

Consideration was then given to the distribution and publication of the study relating to incidental business losses. The following actions were taken:

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(1) The study relating to incidental business losses is to be distributed to those persons on the Commission's mailing list.

(2) The Commission's recommendation on moving expenses should state that the Commission is not prepared at this time to make a recommendation on whether there should be compensation for incidental business losses.

(3) The study relating to incidental business losses is to be printed with the study on reimbursement for moving expenses.

C. Study No. 37(L) - Claims Against Public Officers and Employees: The Commission considered:

Memorandum No. 37(1960) (A letter to the Commission from Mr. Stanton dated April 6, 1960, which raises and discusses the problem of providing for the protection of public officers and employees if the claim filing provisions are repealed) and three supplements, all relating to the matters discussed in Mr. Stanton's letter contained in Memorandum No. 37(1960).

Memorandum No. 29(1960) containing Exhibit I (a draft bill repealing Sections 800, 801, 802 and 803 of the Government Code and adding a new Section 800 to the Government Code) and Exhibit II (a draft bill repealing Sections 2001 and 2002 of the Government Code and adding a new Section 2001 to the Government Code).

Memorandum No. 29(1960).

Exhibit I. A motion was made by Mr. Grover and seconded by Mr. McDonough to approve:

Section 1 which repeals Sections 800, 801, 802 and 803 of the Government Code.

Section 2 which adds a new Section 800 to the Government Code with the following revisions:

(a) The words "to enforce a personal liability" are to be added to the end of the first sentence after the word "employee."

(b) In the second sentence the word "any" is to be substituted for the word "new", the words "shall apply to a cause of action" are to be deleted, and the phrase "to enforce a personal liability is to that extent invalid" is to be added to the end of the sentence after the word "employee."

(c) The first sentence and the second sentence of Section 800 are to be made separate sections.

Section 3 which relates to the effective date of the Act with the words "cause of action" substituted for the word "claim."

The motion carried:

Aye: Bradley, Grover, Gustafson, McDonough, Selvin

No: Stanton.

Not Present: Cobey, Dieden, Matthews.

Exhibit II. The Commission then considered the desirability of repealing Sections 2001 and 2002 of the Government Code and adding a new Section 2001 to the Government Code. A motion to reconsider action taken at the March 18 and 19, 1960 meeting that approved the inclusion of an amended version of Section 2001 in the Commission's proposed legislation carried. Messrs. Bradley and Stanton voted in opposition to this motion. The majority of those present were of the opinion that Section 2001 is beyond the scope of the authority for the Commission's

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study relating to the filing of claims against public entities, officers and employees. Mr. Stanton stated that inasmuch as the Commission is recommending the repeal of Sections 801-803, Section 2001 should be retained and amended to protect public officers and employees; he further stated that such a bill would be within the scope of the Commission's authority. After the matter was discussed at length, a motion was made by Mr. McDonough and seconded by Mr. Selvin that the Commission should make a recommendation to repeal Sections 800, 801, 802 and 803 and to enact a new Section 800, but should not make a recommendation to amend Section 2001 which prescribes the duties of a public entity in the defense of a public officer or employee. The report of the Commission, however, should state the problems raised by Mr. Stanton in Memorandum No. 37(1960) and by Professor Van Alstyne in his study relating to claims against public officers and employees in regard to Section 2001. The motion carried:

Aye: Grover, Gustafson, McDonough, Selvin.

No: Bradley, Stanton.

Not Present: Cobey, Dieden, Matthews.

Mr. Bradley suggested that he could independently introduce a bill repealing Sections 2001 and 2002 and adding a new Section 2001 to the Government Code. The staff was

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directed to send the necessary material to Mr. Bradley.

Section 313 of the Code of Civil Procedure. It was agreed that Section 313 should be revised by deleting that portion in the section that refers to public officers and employees.

D. Study No. 38 - Inter Vivos Rights. The Commission considered Memorandum No. 46 (1960) containing Appendix I (a draft bill containing proposed additions and amendments to various code sections relating to property acquired by married persons), Appendix II (a possible revision of the definition of quasi-community property), and Appendix III (revision of Probate Code Section 201.8) and a proposed revision of a portion of Civil Code Section 164 prepared by Mr. McDonough.

(1) Motions were made, seconded and adopted as follows:

(a) A proposed codification in Section 164 (proposed by Mr. McDonough) of the tracing principle was rejected as unnecessary.

(b) Substitute the alternative draft of subdivision 2(b) (contained in Appendix II) for Section 1237.5(2)(b).

(c) Substitute "means" for "includes" in Section 1237.5(1).

(d) Revise Section 661 of the Probate Code to include a definition clause at the end of the section similar to that included in Section 663.

(2) The following sections in the draft bill contained in Appendix I were approved unanimously:

Section 1 - amending Civil Code Section 164.

Section 2 - adding Civil Code Section 1237.5 as revised.

Section 3 - amending Civil Code Section 1238.

Section 4 - amending Civil Code Section 1265.

Section 5 - amending Probate Code Section 661 as revised.

Section 6 - amending Probate Code Section 663.

(3) A motion to treat quasi-community property like community

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property for the purpose of division on divorce did not carry. Messrs. Bradley, Gustafson and Selvin voted in opposition to this motion.

A motion not to treat quasi-community property like community property for the purpose of division on divorce (i.e., approving the research consultant's recommendation) also did not carry. Messrs. McDonough and Stanton voted in opposition to this motion.

(4) Section 9 of the draft bill contained in Appendix I amending Civil Code Section 149 was unanimously approved.

(5) Section 15303.5 was revised to read as follows:

This part does not apply to the transfer of quasi-community property into community property as defined in Section 15301 of this code.

(6) The following sections in the draft bill contained in Appendix I were unanimously approved:

Section 10 - amending Revenue and Taxation Code
Section 15301.

Section 11 - amending Revenue and Taxation Code
Section 15302.

Section 12 - adding Revenue and Taxation Code
Section 15303.5 as revised.

Mr. Grover did not vote on this motion.

(7) Probate Code Section 201.8 is not to be revised as proposed in Appendix III. Messrs. Grover and McDonough voted in opposition to this motion.

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E. Study No. 42 - Good Faith Improvers: The Commission considered Memorandum No. 42 (1960). After the matter was discussed the motion was made, seconded and carried to defer further consideration of the study relating to good faith improvers until the July 1961 meeting of the Commission. Mr. McDonough voted in opposition to this motion.

F. Study Nos. 48 and 54(L) - Juvenile Court Proceedings: The Commission had before it Memorandum No. 27(1960) containing draft bills designed to effectuate the recommendations of the Commission (Exhibit I - Juveniles' Right to Counsel and Exhibit II - Designation of Juveniles as Wards) and Memorandum No. 45 (1960) containing the proposed recommendation of the Commission.

Memorandum No. 27(1960)

Draft Statute. The Commission first considered the draft bill relating to juveniles' right to counsel (Exhibit I). The proposed Sections 732.1, 732.2, 732.3 and 732.4 to be added to the Welfare and Institutions Code were approved.

The Commission then considered the draft bill relating to the designation of juveniles as wards (Exhibit II). The following changes were agreed upon:

Section 740. The phrase "In the case of a ward" is to be added before the phrase "To the Youth Authority" in subdivision (f).

In both subdivision (g) and in the third from last line in the last paragraph of Section 740, the words "in the case of a ward" are to be inserted before the phrase "if a ward" and the word "the" is to be substituted for the word "a" in the latter phrase.

Subdivision (g) is to be made two separate subdivisions.

Section 743. The first sentence is revised to read as follows:
"No person shall be committed to the Youth Authority unless such person has been adjudged a ward of the juvenile court pursuant to Section 735."

Section 750. The staff is to determine whether Section 753 makes it unnecessary to revise Section 750 to provide for the termination of jurisdiction of the court in the case of a dependent child.

A motion was then made by Mr. McDonough and seconded by Mr. Stanton to approve the draft bills (Exhibits I and II) relating to juveniles' right to counsel and the designation of juveniles as wards as revised.

The motion carried:

Aye: Bradley, Grover, Gustafson, McDonough, Selvin, Stanton.

No: None.

Not Present: Cobey, Dieden, Matthews.

Recommendation - Memorandum No. 45 (1960). The following changes were agreed upon:

Page 1. The third sentence is to be revised as follows:

Upon adjudging a person to be a ward of the juvenile court, the court may place the ward in the custody of his parents under supervision by the probation officer, may order him detained in local institutions (including the county jail if the ward is over 18), or may commit him to the Youth Authority.

Page 2. The clause "is alleged to have" is to be substituted for the word "has" in the eleventh line from the top of the page.

Page 3. The words "as to" at the end of the first line and beginning of the second line of the first full paragraph are deleted.

Page 4. "Make a recommendation to" is substituted for "advise" in the last line.

It was agreed that any other suggestions for changes in the recommendation should be sent to the staff.

A motion was then made, seconded and unanimously carried to approve

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the recommendation relating to juveniles' right to counsel and the designation of the juvenile as ward and to send both the recommendation and draft bills to the State Bar for its views.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

5/19/60

PROPOSED EXPENDITURES UNDER STANFORD CONTRACT 1960-1961

Total proposed expenditures: \$5,000

Student research assistance

(1) Summer 1960 (July, August and part of September).

2 students full time: Total cost approximately \$2,000

(rate of compensation \$350 per month - this is somewhat less than going rate at Stanford for student assistance)

(2) One student on part time basis (15 hours per week)

during balance of fiscal year.

Total cost approximately \$1,550

Clerical personnel

Proofreaders, copy markers, typists, etc. --

Total cost approximately \$1,450

Financing

Budget for 1960-1961 fiscal year contains \$3,000 for Stanford Contract.

It is proposed to use \$2,000 from the research category which was budgeted for research consultants. We budgeted to obtain a consultant for the following studies:

21 - Partition Law and Procedures	\$1,000
47 - Modification of Contracts	1,000
60 - Representation Relating to Credit of a Third person	1,000

We can defer two of these studies until 1961-1962 fiscal year and thus obtain the additional \$2,000 needed to finance the proposed

Stanford contract. We also have an additional \$5,000 in the research category which was budgeted for studies to be assigned by the 1960 Legislature and none were so assigned.

1960-61 Printing Program

The following is a report on the printing program for the 1961 legislative session:

(1) Have printer's proofs:

Survival of Actions

Juvenile Court Procedures

Trespassing Improvers*

Inter Vivos Rights*

Notice of Alibi

* - not proofed or
finally checked

(2) Almost ready to go to printer:

(1) Condemnation - Evidence

Condemnation - Moving Expenses

(3) To be checked and prepared for printer:

Claims*

Rescission

Taking Possession - Condemnation

Incidental Losses - Condemnation

Arbitration

Pretrial Procedure - Condemnation

Apportionment and Allocation of Award - Condemnation

URE - Hearsay*

URE - Privilege

* - Substantial portion
already checked.

(4) Also to be prepared for printer:

1961 Annual Report

(5) We have other studies that we would like to check before mimeographing.

May

CALIFORNIA LAW REVISION COMMISSION

HANDBOOK

of

PRACTICES AND PROCEDURES

P R E F A C E

The purpose of this handbook is to state in a convenient form some of the policy decisions made by the California Law Revision Commission with respect to its practices and procedures.

From time to time replacement pages will be distributed to reflect additions or changes in the Commission's policies.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Stanford University
May, 1960

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CHAPTER ONE

OFFICERS AND MEMBERS OF COMMISSION

OFFICERS

The officers of the Commission are the Chairman and the Vice Chairman. The term of office of the Chairman and Vice Chairman is two years, commencing in January of each even-numbered year.¹ No officer (Chairman or Vice Chairman) is eligible to succeed himself in the same office.²

CERTIFICATES OF SERVICE

The Commission does not present certificates of service to its past members.³

MATERIALS AND SUPPLIES

Advance Sheets. Upon request to the Executive Secretary, a member of the Commission is provided with advance sheet reports of the decisions of the California Supreme Court and District Court of Appeal for use in connection with his work on the Commission.⁴

Binders for Commission materials. Upon request to the Executive Secretary, a member of the Commission will be provided with hard-cover binders.⁵ These are used by some members to keep Commission mimeographed

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1. Minutes, January 1960.
 2. Minutes, January 1960.
 3. Minutes, January 1960.
 4. Minutes, November 1955.
 5. Not authorized by Commission action, but this states the existing practice.

material in a convenient form.

Credit Cards.¹ Members of the Commission are provided with credit cards for telephone and air transportation for use on official business of the Commission. A rail transportation credit card will be obtained for a member if needed.

West Codes and New York Law Revision Commission Reports. Members are provided with a set of the West Codes through the courtesy of the West Publishing Company. This set is furnished to the member by virtue of his office and passes on to his successor.² Each member is also provided with a set of the New York Law Revision Commission Reports and these will be passed on to his successor in office.³

ADMINISTRATIVE SERVICES⁴

The office of the Legislative Counsel provides the Commission with a bookkeeping service and assists the Commission in personnel matters. Members submit their per diem and travel expense claims to our bookkeeper in the office of the Legislative Counsel rather than to the Commission's office at Stanford.

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1. This states the existing practice.
 2. This is a statement of our agreement with West Publishing Company. Original members of the Commission are authorized to keep their sets.
 3. This states the existing practice.
 4. Statement of existing practice.

CHAPTER TWO

MEETINGS AND PROCEDURE

MEETINGS

Regular meetings are scheduled each month. Every other month the meeting is scheduled for the third Friday and Saturday of the month.¹

On alternative months, the meeting is scheduled for the third Thursday, Friday and Saturday of the month.²

The meetings are ordinarily scheduled as follows:³

Thursday - 9 a.m. to 5:30 p.m.

Friday - 9 a.m. to 5:30 p.m.

Saturday - 9 a.m. to 5 p.m.

No night meetings are scheduled except when urgent matters must be considered or other special justification exists.⁴

The Chairman is authorized to call both regular and special meetings.⁵ Notice of a special meeting shall be given to all members of the Commission.^{5a} At a special meeting, no matter may be acted upon except as provided in the call.⁶

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1. Minutes, November 1959.
 2. Minutes, January 1960.
 3. Minutes, March 1959.
 4. Minutes, March 1959.
 5. Minutes, November 1957.
 - 5a. Minutes, November 1957.
 6. Minutes, November 1957.

CONDUCT OF MEETINGS

Quorum. Five voting members of the Commission constitute a quorum and must be present before the Commission may attend to any business.¹ Any action, including a recommendation to the Legislature, may be taken by a majority of those present but with a minimum of four votes.² The Chairman is authorized to determine that less than five voting members constitutes a quorum for the purposes of a particular meeting and members attending the meeting are entitled to per diem and travel expenses but no final action shall be taken at such meeting.³

Roll Call Votes. A roll call vote shall be taken and recorded on every motion to approve for distribution or to adopt any report or recommendation of the Commission to the Legislature.⁴ An absent member may be polled and his vote incorporated in the roll call on such motion only if he was present during a previous discussion of the subject matter at a meeting of the Commission.⁵

Committees. The Commission has disapproved the use of committees of the Commission.⁶

Research Consultants. Research consultants are requested to attend meetings from time to time.⁷

Open Meetings. Meetings of the Commission are open to the public

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1. Minutes, July 1956.
 2. Minutes, March 1959.
 3. Minutes, January 1958.
 4. Minutes, July 1956.
 5. Minutes, July 1956.
 6. Minutes, January 1960.
 7. Statement of existing practice.

and persons so requesting are permitted to attend as observers but are not permitted to participate in the discussion.¹

Termination of Deliberations. The Chairman should terminate prolonged deliberations on any matter by either bringing it to a vote when appropriate or referring the matter to the staff either for further research or redrafting.²

EDITORIAL CORRECTIONS

After the Commission has approved proposed legislation, the Executive Secretary is authorized to make minor changes therein with respect to such matters as punctuation, the elimination of minor unnecessary words, the capitalization or non-capitalization of letters, etc., without further consultation with the Commission.³

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1. Minutes, February 1960.
 2. Minutes, March 1959.
 3. Minutes, August 1954.

CHAPTER THREE

RELATIONSHIP WITH LEGISLATURE

INTRODUCTION OF BILLS

All Commission bills are introduced by the legislative members of the Commission.¹ The Commission is not adverse to allowing other members of the Legislature to be co-author of its bills.² Ordinarily Commission bills will be introduced in the form in which they are published by the Commission and later amended to reflect changes which the Commission believes desirable.³

INTERIM COMMITTEES

The Commission is agreeable to a proposal of an interim committee that the Commission present its legislative program to the interim committee prior to the legislative session.⁴

CONTACTING INDIVIDUAL MEMBERS OF LEGISLATURE⁵

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless he has raised questions about the Commission's bills in

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1. Minutes, January 1959.
 2. Minutes, January 1959.
 3. Minutes, January 1959.
 4. Minutes, October 1959.
 5. Minutes, April 1957.

committee or otherwise and it seems likely that the member does not fully understand the Commission's recommendation or the reasons for it. If in such circumstances 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 the person in question and ask him whether he would be willing to have the Executive Secretary see him in his office to answer such questions as he may have about the bill and otherwise explain it. The Executive Secretary should not contact the members individually unless and until the legislative member has made a call and arranged for him to do so.

ACCEPTANCE OF AMENDMENTS DURING COURSE OF COMMITTEE HEARING

The legislative member of the Commission carrying the bill and the Executive Secretary are authorized to agree to an amendment proposed in the course of a legislative committee hearing on a Commission bill so long as the amendment does not depart from the basic policy of the Commission with respect to the particular bill.¹

REQUEST FOR AUTHORITY TO CONTINUE EXISTING STUDIES

Each session a concurrent resolution is submitted to authorize continuance of existing studies and to authorize any new studies the Commission desires to undertake.²

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1. Statement of existing practice.
 2. Statement of existing practice.

CHAPTER FOUR

RELATIONSHIP WITH STATE BAR

A copy of each study prepared by a research consultant is sent to each member of a special State Bar Committee appointed to consider a Commission study as soon as the research study is approved by the Commission.¹ Later, a copy of the Commission's tentative recommendation and proposed statute is sent to the State Bar.² If no special State Bar Committee has been appointed, 50 copies of the study and the tentative recommendation are sent to the State Bar for distribution to the appropriate bar committee.^{2a} When time permits, the Commission will postpone the printing of its recommendations and studies until it receives and considers the views of the State Bar.³

The Chairman and Executive Secretary meet with representatives of State Bar Committees to discuss informally Commission recommendations when requested to do so by the State Bar Committee.⁴

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1. Minutes, March 1957.
 2. Minutes, March 1957.
 - 2a. Statement of existing practice.
 3. Minutes, September 1956.
 4. Statement of existing practice.

CHAPTER FIVE

RELATIONSHIP WITH RESEARCH CONSULTANTS

SELECTION OF CONSULTANTS

Consultants are selected by the Chairman and the Executive Secretary.¹

COMPENSATION OF RESEARCH CONSULTANTS

Compensation of research consultants is on a modest scale, as paid in connection with public service rather than at regular professional rates.² Payment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.³

FORM AND CONTENTS OF CONSULTANT'S STUDY⁴

Generally speaking, a consultant's study should cover the history and present state of the California law and the law of all or representative other states relating to the problem. It should also include a statement and an objective discussion of the policy considerations which the consultant believes are relevant to the problem. At least with respect to the principal

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1. Minutes, June 1955.
 2. Minutes, June 1955.
 3. Minutes, June 1955.
 4. Minutes, June 1955.

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cases discussed in the study, the facts should be stated and, where possible, the pertinent parts of the opinion should be quoted. The study should include the consultant's recommendation with respect to the position to be taken by the Commission and a draft of such proposed legislation as would be necessary to give effect to such recommendation.

PUBLICATION BY CONSULTANT

Research consultants are not permitted to publish their work for the Commission as law review articles or otherwise prior to publication of the reports by the Commission.¹ When publication has been authorized, an appropriate footnote acknowledging that the work was prepared for the Commission has been required.²

COPIES OF PRINTED REPORTS

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All research consultants are given 25 copies of their printed studies and requests for additional copies would be entertained by the Commission.³

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1. Minutes, June 1956; Minutes, January 1959.
 2. Statement of existing practice.
 3. Minutes, May 1956.

CHAPTER SIX

PRINTING AND DISTRIBUTION POLICIES

SENDING RESEARCH CONSULTANT'S STUDY TO PRINTER

The Executive Secretary determines when a research consultant's study should be sent to the printer to be set in type.¹ However, no pamphlet containing the recommendation of the Commission and the consultant's study is printed without prior authorization from the Commission.

NUMBER OF COPIES PRINTED

Ordinarily 2,000 copies of each annual report or recommendation and study are printed.² In exceptional cases, more copies are printed.³ Of the 2,000 copies printed, 500 are held by State Printer [unbound] for incorporation into the bound volume of Commission reports, recommendations and studies.⁴ Five hundred copies of the bound volume are printed.

DISTRIBUTION

Bound Volumes. A copy of the bound volume is sent to each of the following:⁵

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1. Minutes, March 1960
 2. Minutes, August 1956.
 3. For example, the claims recommendation and study.
 4. Minutes, August 1956.
 5. Minutes, August 1957.

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

Two copies of the bound volume are sent to the Library of Congress.¹
Copies of the bound volume are sent to public law offices on a request basis
so long as not too many requests are made.² Distribution to private law
firms or to out of state libraries is not made.³ Distribution is made on an
exchange basis with the New York Law Revision Commission and with similar
agencies in a few other states.⁴

Distribution to members of the legislature is not made automatically.
Each legislative member of the Commission sends a letter to the members of
his house reporting the availability of the bound volume and offering to
send a copy upon request. These letters are prepared in the Executive
Secretary's office after consultation with the legislative members; a some-
what different form of letter is sent to members of the Judiciary Committees

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1. This is the present practice.
 2. Minutes, June 1959.
 3. Minutes, May 1959.
 4. This is the present practice.

of the two houses.¹ When Volume 2 is distributed, new legislative members should be given the opportunity to request a copy of the Commission's bound Volume 1.²

Printed Recommendation and Study Pamphlets. Copies of all material printed by the Commission are automatically sent to approximately 600 addresses including the following persons:³

Members of the Legislature (120)
Supreme Court and Judicial Council (8)
Heads of all State Departments (35)
Members of the Board of Governors
of the State Bar (15)
Members of the State Bar Committee to Act in
Liaison with the Law Revision Commission (3)
Members of the Executive Committee of the
Conference of State Bar Delegates (11)
Chairman, Vice Chairman and Secretary of State
Bar Committee on Administration of Justice (3)
Justices of the California District Courts of
Appeal (21)
Deans of all California law schools (11)
Members of the Stanford Law School Faculty (20)
Law Reviews published at California law schools (5)
California law school libraries (11)
California county law libraries (33)
Legal newspapers published in California (14)
Persons on present mailing list not included
above

When persons who were placed on the "automatic" mailing list leave office, their successors are then placed on that list and when persons who were given an opportunity to be placed on the Commission's mailing list leave office, their successors are given the option to be placed on the list.⁴

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1. This procedure was approved by the Commission. Minutes, August 1957.
 2. Minutes, May 1959.
 3. Minutes, December 1956.
 4. Minutes, August 1957.

The Commission has a liberal policy on distribution of its printed pamphlets and distributes them upon request.¹

Unpublished Studies. The Commission has authorized the Executive Secretary to distribute, at his discretion, a copy of an unpublished study of the Commission to a person requesting it.² A "warning note" is included on the study indicating that the study is not a recommendation of the Commission and that no part of the study may be published without prior written consent of the Commission.³

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1. A statement of existing practice. See Minutes, December 1956.
 2. Minutes, February 1960.
 3. Minutes, February 1960.

CHAPTER SEVEN

RECEIPT AND DISPOSITION OF SUGGESTIONS

TOPICS SUITABLE FOR AGENDA

The Commission selects both broad and narrow topics for study.¹

ACKNOWLEDGEMENT OF SUGGESTIONS

All letters received making a suggestion for study by the Commission should be acknowledged.² When that suggestion is added to the Commission's agenda, the person making the suggestion should be informed of the general nature of the Commission's action on the matter.³

PROCEDURE FOR HANDLING SUGGESTIONS⁴

The Executive Secretary makes a preliminary analysis of each suggestion received. The staff prepares reports on those suggestions which the Executive Secretary decides will probably be of interest to the Commission. These reports will be similar to the reports prepared by the staff of the New York Law Revision Commission with respect to suggestions for study received from outside sources. The suggestions which the Executive Secretary deems unlikely to be of interest to the Commission are transmitted to the Commission as they

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1. Minutes, August 1955.
 2. Minutes, November 1955.
 3. Minutes, November 1955.
 4. Minutes, August 1954.

are received without a staff report. No staff report will be made on the latter suggestions unless specifically requested by the Commission.

Whenever a suggestion for study is received relating to a field of activity within the purview of another government agency, the Executive Secretary contacts the other agency to find out whether it is doing, or proposes to do, anything about the matter which the suggestion concerns. After the Executive Secretary reports the information obtained from the other governmental agency is included in the staff report relating to the suggestion.

REFERENCE OF SUGGESTIONS TO INTERIM COMMITTEES

Upon request of an interim committee, suggestions not suitable for study by the Commission may be referred to the interim committee.¹

1. Minutes, December 1954.