

11/13/56

Agenda for Meeting of Law

Revision Commission On

November 17, 1956

1. Minutes of meeting of October 12 and 13 (will be sent later).
2. Final approval of 1957-58 agenda (See Memorandum No. 1 enclosed).
3. Roll call vote on studies previously approved without such vote (See Memorandum No. 2 enclosed).
4. Distribution of pamphlets containing recommendations and research studies (will be sent later).
5. Final approval of 1957 report of Commission (See Memorandum No. 4 enclosed).
6. Further consideration of Fish and Game Code revision (File of material enclosed).

MINUTES OF MEETING

OF

NOVEMBER 17, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on November 17 at San Francisco, California.

PRESENT:

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

ABSENT:

Mr. Joseph A. Ball
Honorable Jess R. Dorsey
Mr. John Harold Swan

Mr. John R. McDonough, Jr., the Executive Secretary of the Commission, and Mrs. Virginia B. Nordby, the Assistant Executive Secretary, and Mr. Kent DeChambeau, Deputy Legislative Counsel, were present.

The minutes of the meeting of October 12 and 13, which had been distributed to the members of the Commission prior to the meeting, were amended and unanimously approved as thus amended.

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1. ADMINISTRATIVE MATTERS

A. Distribution of Recommendation and Study Pamphlets: The Executive Secretary summarized the information given and questions presented in Memorandum No. 3, a copy of which is attached to these minutes, relating to the distribution of pamphlets containing the Commission's recommendations and studies. The Commission decided that copies of the three completed recommendations and studies should be sent as soon as possible to members and members-elect of the Legislature and to all other persons to whom the Commission is required by law to send its reports. The draft letter to Senator Smith, a copy of which is attached, was modified as indicated on the attached copy and approved for use as a covering letter for this mailing. The Commission decided that recommendations and studies should be sent in the future in groups of three or four to the statutory list, but it postponed until its next meeting consideration of whether and to what extent it should expand the statutory mailing list.

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B. 1957 Report: The Commission considered a third draft of its 1957 Report and a memorandum of the Executive Secretary relating thereto, copies of which are attached to these Minutes. A number of changes, which are indicated on the attached copy, were made. A motion was then made by Mr. Babbage and seconded by Mr. Levit that as thus amended the 1957 Report be approved for submission to the Governor and the Legislature. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton, Thurman

Noes -- None

2. AGENDA

The Commission considered Memorandum No. 1, a copy of which is attached to these Minutes, relating to the agenda of topics to be presented to the 1957 Session of the Legislature for approval. After the matter had been discussed, a motion was made by Mr. Levit and seconded by Mr. Babbage that the following topics, as described in the attached statements, be included in the 1957 Report and presented to the Legislature for approval:

- Topic No. 1: A study to determine what the inter vivos rights of one spouse should be in property acquired by the other spouse during marriage while domiciled outside California.
- Topic No. 2: A study to determine whether the law relating to attachment, garnishment, and property exempt from execution should be revised.
- Topic No. 3: A study to determine whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.
- Topic No. 4: A study to determine whether the Small Claims Court Law should be revised.
- Topic No. 5: A study to determine whether the law relating to the rights of a good faith improver of property belonging to another should be revised.
- Topic No. 6: A study to determine whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.
- Topic No. 7: A study to determine whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.

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- Topic No. 8: A study to determine whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.
- Topic No. 9: A study to determine whether the provisions of the Penal Code relating to arson should be revised.
- Topic No. 10: A study to determine whether Civil Code Section 1698 should be repealed or revised.
- Topic No. 11: A study to determine whether minors should have a right to counsel in juvenile court proceedings.
- Topic No. 12: A study to determine whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.
- Topic No. 13: A study to determine whether Section 7031 of the Business & Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.
- Topic No. 14: A study to determine whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.

The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton

Noes -- None

It was decided that the Concurrent Resolution authorizing the study of these topics should be drafted to include an authorization to continue studies in progress which have been previously approved by the Legislature.

A motion was made by Mr. Babbage, seconded by Mr. Levit and unanimously adopted that the Chairman and the Executive Secretary be authorized to make whatever changes in the Commission's proposed budget for 1957-58 may be necessary in light of the agenda of topics selected by the Commission for study.

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3. CURRENT STUDIES

Study No. 2 - Judicial Notice of Foreign Country Law: A motion was made by Mr. Bradley and seconded by Mr. Levit that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton, Thurman

Noes -- None

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Study No. 3 - Dead Man Statute: A motion was made by Mr. Bradley and seconded by Mr. Babbage that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The Executive Secretary reported that he had received a letter from Senator Dorsey stating:

"I cannot go along with the report of our research consultant, Professor Chadbourn, of the School of Law, University of California at Los Angeles. The recommendation is that Sub-division 3 of Sec. 1880 of the Code of Civil Procedure be repealed. This is the subdivision prohibiting parties, or assignees of parties, to an action or proceeding for persons in whose behalf an action or proceeding is prosecuted against an assignor or administrator upon a claim or demand against the estate of deceased person as to any matter or fact occurring before the death of such deceased person.

It is my opinion that to open up the gate to permit such persons to testify against the estate and in support of the claim will be to open the door to fraud. I believe it will be a step backward to permit a person to so testify in the prosecution of a claim or demand against the estate. The present subdivision 3 has been in the law for a long time and I believe it should remain as it is. I, therefore, will state that I cannot join in that recommendation and will ask to be noted as being against the recommendation."

The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton, Thurman

Noes -- None

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Study No. 4 - Law Governing Survival of Actions: A motion was made by Mr. Babbage and seconded by Mr. Shaw that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton, Thurman

Noes -- None

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Study No. 6 - Effective Date of Order Granting New Trial:

A motion was made by Mr. Babbage and seconded by Mr. Shaw that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton,
Thurman

Noes -- None

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Study No. 7 - Retention of Venue for Convenience of

Witnesses: A motion was made by Mr. Bradley and seconded by Mr. Thurman that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton,
Thurman

Noes -- None

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Study No. 9 - Penal Code Sections 1377-78: A motion was made by Mr. Babbage and seconded by Mr. Levit that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved: The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton,
Thurman

Noes -- None

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Study No. 10 - Penal Code Section 19a: A motion was made by Mr. Shaw and seconded by Mr. Babbage that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Levit, Shaw, Stanton,
Thurman

Noes -- None

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Study No. 12 - Taking Instructions to Jury Room: A

motion was made by Mr. Thurman and seconded by Mr. Babbage that the final draft of the Recommendation of the Law Revision Commission relating to this study, a copy of which is attached to these Minutes, be approved. The motion carried:

Ayes -- Babbage, Bradley, Shaw, Stanton, Thurman

Noes -- Levit

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Study No. 18(L) - Fish and Game Code: The Legislative Counsel continued with the procedure approved by the Commission at its meeting of October 12 and 13 of presenting to the Commission for its decision those matters in the draft Fish and Game Code which either he or the Chairman recommend be considered and decided by the Commission. A record of the action of the Commission on the matters presented was kept by the Legislative Counsel.

There being no further business the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary