

Date of Meeting: July 18-19, 1958

Date of Memo: July 10, 1958

Memorandum No. 3

Subject: Budget for Fiscal Year 1959-60

Attached is a proposed budget for Fiscal Year 1959-60.

My comments are as follows:

1. Compensation for Commission members is increased slightly in view of the fact that the actual expense for this item was \$2100 during 1957-58.

2. The position of Executive Secretary is budgeted on a 3/4 time basis and on a classification of the position on a full-time basis at a salary of \$15,600. These increases in both the time and the salary allotted to the position have been recently approved by the Department of Finance. (A copy of the Chairman's letter to Mr. Peirce presenting the case for changes in the Commission's staff organization is attached.)

3. A new position of Assistant Executive Secretary at an annual salary of \$12,500 is included. (The justification for this position is also covered in the Chairman's letter to Mr. Peirce. The Department of Finance has indicated that it will go along if the State Personnel Board determines that the position is justified).

4. The position of Intermediate Stenographer Clerk on an

intermittent half-time basis appears to be new for 1959-60; actually, we have established the position on that basis effective July 1, 1958. We find ourselves in need of more than two but less than three stenographer-clerks and believe that our needs can be filled indefinitely on the 2-1/2 person basis which has now been established.

5. The \$33,000 item for printing and binding is, of course, rather staggering. To document it there is attached an estimate of the cost of printing during fiscal years 1957-58, 1958-59, and 1959-60 the studies presently assigned to the Commission. As you will see from this document, we estimate that the printing in 1959-60 of studies presently assigned will cost \$29,300. In addition, we must take account of the possibility that we will be publishing a bound volume by that year; the last bound volume cost us \$2700., and we have added a margin of safety inasmuch as printing and binding costs seem to increase regularly.

I recommend that the Chairman be authorized to submit the attached budget for 1959-60, with such changes in detail as may be necessary to put the budget into final form.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

Estimated Cost of printing Studies Presently
Assigned to Commission,
Fiscal Years 1957-1958, 1958-59 and 1959-60

Study No.	Subject	Actual 1957-58	Estimated 1958-59	Estimated 1959-60
11	Corp. Code §§ 2201, 3901	\$ 374*		
16	Planning Procedure	429*		
19	Penal and Vehicle Code Overlap	561*		
20	Guardians for Nonresidents		\$ 300*	
21	Confirmation Partition Sales		400*	
22	Cut-off Date	341*		
23	Rescission Contracts		800*	
24	Mortgages Future Advances	565*		
25	Probate Code § 259 (Right Non- resident Aliens to Inherit)	550*		
26	Law Governing Escheat		700	
27	Rights Putative Spouse			\$ 800
28	Condemnation (consolidated with 36)			4000
29	Post-Conviction Sanity Hearings			800
30	Custody Jurisdiction			600
31	Doctrine Worthier Title	693*		
32	Arbitration		700	
33	Survival Tort Actions		400*	
34	Uniform Rules of Evidence		4500*	4500

*Based on estimate by State Printer

See Revision of JUL 29 1958

Study No.	Subject	Actual 1957-58	Estimated 1958-59	Estimated 1959-60
35	Habeas Corpus			\$ 700
36	Condemnation			
37	Claims Statutes	\$ 4100*	\$ 1000	
38	Inter-vivos Rights 201.5 Property	506*		
39	Attachment, Garnishment, Property Exempt from Execution			4500
40	Notice of Alibi		400	
41	Small Claims Court Law			700
42	Rights Good Faith Improver Property			800
43	Separate Trial on Insanity	-	-	-
44	Suit Common Name	319*		
45	Mutuality Specific Performance		750	
46	Arson		800	
47	Civil Code § 1698 (Modification of Contract)			800
48	Juvenile's Right to Counsel			800
49	Unlicensed Contractor		450*	
50	Rights Lessor on Abandonment			700
51	Right Wife to Support after Divorce			700
52	Sovereign Immunity			4000
54(L)	Use Term "Ward Juvenile Court"	-	-	-
55	Additur		600	
56	Narcotics Code	-	-	-
57	Law Relating to Bail			2000

*Based on Estimate by State Printer

Study No.	Subject	Actual 1957-58	Estimated 1958-59	Estimated 1959-60
58	Grand Jury Law Codification		\$ 750	
59	Notice by Publication			\$ 800
60	Representation of Credit 3rd Person			800
61	Election of Remedies			800
	Annual Report		500	500
		<u>\$8438.00</u>	<u>\$13000</u>	<u>\$29300</u>

* Based on Estimate by State Printer

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Mr. John M. Peirce
Director of Finance
State Capitol
Sacramento, California

Dear Mr. Peirce:

For some time the California Law Revision Commission has been aware that several changes would soon be needed in its staff organization to enable the Commission to perform effectively the many assignments which it has been given by the Legislature. At its June, 1958 meeting the matter was discussed at length and the Commission decided that three changes should be made: (1) the position of its Executive Secretary should be upgraded to a point where his total compensation (from both the State and Stanford University) would have a pay range of \$16,000 - \$17,000 per year; (2) the position of its Executive Secretary should be changed from a one-half State - one-half Stanford basis to a three-fourths State - one-fourth Stanford basis; and (3) the position of its Assistant Counsel should be upgraded to a position having a pay range of \$12,000 - \$13,000 per year. The net effect of these changes would be to increase the annual budget of the Law Revision Commission by approximately \$10,000 - \$11,000.

The Commission directed me to discuss these necessary changes in its staff organization with the Department of Finance and other State agencies whose approval of them will be necessary. Accordingly I am writing you this letter which must, of necessity, be a rather lengthy one to set forth the considerations which have led to the Commission's decision.

History of California Law Revision Commission,
1954-1958

I believe that it will be helpful to begin with a brief review of the four-year history of the Law Revision Commission.

As you will recall, we had no California experience to go upon when the Commission was established. There was, however, a precedent to look to in the then twenty-year history of the New York Law Revision Commission upon whose founding statute the statute creating the California Law Revision Commission was modelled. We learned that the New York Commission had established its headquarters at the Cornell

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University Law School and had as its Executive Secretary a member of the Law School faculty under an arrangement by which he worked one-half time for the State and one-half time for the University. It was decided to follow this precedent in California.

After consideration of several California law schools, an arrangement was made with Stanford University whereby the offices of the Commission have been located at the Stanford Law School and Professor John R. McDonough, Jr., a member of its faculty, has served as the Commission's Executive Secretary on the basis that he would devote one-half of his time to and receive one-half of his compensation from the State. This arrangement has proved to be an exceedingly advantageous one from the point of view of the Commission and the State in the following ways:

1. The Commission has the use, rent-free, of four offices at the Stanford Law School and of the facilities not only of the Stanford Law Library but of the general University library as well. To have equipped the Commission with an adequate working library would have required an original investment of many thousands of dollars and would require a substantial annual outlay to keep it up to date.

2. The Commission and its staff have had the opportunity to consult, without cost and at very considerable advantage, with members of the Stanford Law School faculty on problems in their fields of special competence.

3. In Professor McDonough the Commission found a man of unusual initiative, ability and energy whose efforts have contributed very materially to the success of its work to date. The Commission doubts that his counterpart would have been available under a different arrangement.

4. Having a law school faculty member as its Executive Secretary has given the Commission ready access to and ease of working with its chief source of research talent -- the law teachers of California -- which it would not otherwise have had.

On the basis of its experience to date, the Commission is completely satisfied with its arrangement with Stanford and is convinced that, in the interest both of the quality of its work and the economy and efficiency of its operations, the arrangement should be maintained or, if this cannot be done, a similar arrangement should be made with another California law school of similar standing.

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The Law Revision Commission determined at the outset to keep its staff small and to have most of its research work done by experts in the fields of law concerned, on a contract basis. This again followed a precedent set by the New York Commission. To date 30 such research contracts have been entered into, 24 with members of law school faculties and 6 with practicing attorneys. The Commission is convinced that this, too, has proved to be a sound procedure. Not only has it enabled the Commission to avoid the building of a large, permanent staff but it has made available to the Commission the learning, experience and insight of experts which could not have been supplied by a staff, however carefully selected and highly paid. Moreover, the net cost to the State of the Commission's research work has been exceedingly modest since the compensation which the Commission's research consultants have been paid has been on the basis of an honorarium for work which is substantially a public service rather than on the basis of payment at going rates for legal services of the calibre which the Commission has commanded. Of course finding, contracting with and supervising the work of such outside research consultants has posed unique problems of management and diplomacy. These could only have been met, we believe, through the kind of arrangement which the Commission has had with Stanford and the exceptional qualities of its Executive Secretary.

We come now to that aspect of the Commission's history which has created the problem which has led to the Commission's decision to make the several changes in its staff organization which are the subject of this letter. This is, simply, the quite unanticipated growth of the Commission's work load. As you know, the Commission's assignments are all given to it by concurrent resolution of the Legislature, pursuant to Section 10335 of the Government Code. The Commission is required to submit a list of topics for study to each regular session of the Legislature to be approved by concurrent resolution. In addition, individual members may introduce separate resolutions directing the Commission to study particular subjects.

To date the Commission has itself requested authority to study 57 topics; of these, 48 topics were approved for study by the Legislature. All of these topics, while important, are of relatively narrow scope, involving problems relating to the decisional law of the State or to a few sections of one of the codes. It is reasonably safe to say, I believe, that if the Commission's assignments from the Legislature had been limited to these 48 topics we would not now be faced with the necessity of making the staff changes with which this letter is concerned.

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In fact, however, the Commission has received the following 16 additional assignments on the motion of individual members of the Legislature, either through the introduction of separate concurrent resolutions or by amendment of the concurrent resolution embodying the topics recommended by the Commission:

1. Revision of the Education Code.
2. Revision of Sections 640 to 646 of the Probate Code.
3. A comparative study of death tax laws of California and the United States.
4. Revision of the Fish and Game Code.
5. Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the right of nonresident aliens to inherit property in this State, should be revised.
6. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
7. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
8. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
9. Whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.
10. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
11. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.

12. Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" should be inapplicable to nondelinquent minors.
13. Whether a trial court should have the power to require, as a condition of denying a motion for new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
14. Whether there should be a separate code for all laws relating to narcotics.
15. Whether the laws relating to bail should be revised.
16. Whether it would be feasible to codify and clarify, without substantive change, provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code.

It will be readily apparent, I believe, that these are all assignments of a substantial character. Indeed, but for the existence of the Law Revision Commission a number of these topics, such as revision of the Fish and Game Code and the studies relating to sovereign immunity, claims against public bodies, habeas corpus, bail, condemnation law and procedure, and the Uniform Rules of Evidence could well have been given to individual ad hoc commissions to study over a two- or four-year period.

While the Commission has been gratified by the confidence expressed in its work by the Legislature in giving it these important assignments and has welcomed the opportunity thus afforded it to contribute to the growth and development of the law of the State, the total work load which has been imposed on it is one of very considerable proportions, to put it mildly. Of necessity, a very large part of that work load falls on the office of the Commission's Executive Secretary. It has now become clear that the changes in the Commission's staff organization which are the subject of this letter must be made if the Executive Secretary is to be able to handle this work load effectively. To a detailed discussion of the need for these changes I now turn.

Need to Reclassify Position of Assistant Counsel

The following functions must be performed by the Commission's staff with respect to each assignment given to the Commission by the Legislature:

1. The topic must be analyzed to determine what kind of study should be made. This often requires that the matter be discussed with the author of the concurrent resolution, the potential consultant or consultants, and the Commission.
2. A qualified person to make a research study must be found, a contract must be negotiated with him and he must be briefed on what kind of study is desired.
3. When the research study is received it must be carefully analyzed and then presented to the Commission. The staff is expected to make a major contribution at this stage of the Commission's work in terms of pointing up any defects and gaps which may exist in the study and in analyzing the substantive problems involved and suggesting solutions to them.
4. A Legislative bill embodying the Commission's substantive recommendations must be drafted. This bill often goes through a number of drafts. The staff is expected not only to prepare these drafts, but to contribute materially to the process of working out their substantive content.
5. A recommendation of the Commission must be drafted for its consideration. This recommendation often goes through several drafts.
6. The recommendation and study must be sent to the State Bar for its comments. This sometimes involves having the Executive Secretary attend State Bar Committee meetings to explain the Commission's position and to become familiar with the views of the State Bar in order to be able to report them to the Commission.
7. After the Commission has considered the views of the State Bar and arrived at its final decisions with respect to the study its recommendation and study must be printed and distributed to interested persons. This involves a great amount of detailed editorial work, proof-reading, etc.
8. The legislative bill must be presented to the appropriate legislative committees. This often involves attending several hearings and drafting amendments to the bill to reflect the action of the committees.

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At the present time, the Commission has no less than 43 studies under way, some of which are of great complexity and major importance. The plain fact is that no single person could hope to be able to do all of the staff work required on all of these studies even if he were working on a full-time basis. Yet to date Professor McDonough has been doing most of the staff work on most of our studies even though he is retained by the State on a half-time basis only. It is essential to provide him with substantial assistance if the Commission's program is to be maintained.

Since 1955 the Commission has had a Junior Counsel. In 1957 it was authorized to have also an Assistant Counsel. However, no satisfactory person was obtainable as an Assistant Counsel and that position has been temporarily filled by a Junior Counsel who has now left the Commission. Rather than to try to fill the position again at the Assistant Counsel level, the Commission now desires to upgrade it to a point where the Commission can have as a member of its civil service staff an attorney of considerable legal experience at a salary ranging from \$12,000 to \$13,000 per year.

The Commission must have on its staff a person to whom the Executive Secretary can, in effect, turn over a substantial number of its studies, to be carried through all of the steps outlined above under the Secretary's general rather than detailed supervision. The experience of the members of the Commission, both as members thereof and as public and private attorneys, is that an attorney of sufficient experience to undertake such responsibility cannot be obtained at the equivalent of the first three levels of the State civil service but only at the equivalent of the fourth level. What the Commission needs, in short, is a man or woman who will be the counterpart of those experienced and highly qualified attorneys who are the backbone of the legal staffs of the Legislative Counsel, the Attorney General and the other important legal officers of the State. In this connection it might be noted that the New York Law Revision Commission has long had just such an attorney on its staff in the person of Mrs. Laura Mulvaney who now bears the title of Director of Research.

This change should be made as soon as possible in order to provide the Commission with the staff assistance necessary to carry it through the 1959 Session of the Legislature.

Need to Reclassify the Position of Executive Secretary

When the position of the Commission's Executive Secretary was established in 1954 the Commission recommended that his salary

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be fixed at \$8000 for one-half time. The Department of Finance took the position at that time that the position did not seem to warrant a salary higher than the maximum then being paid to the fourth level of civil service attorneys -- i.e., \$12,000 annually or \$6,000 for one-half time. The Commission acceded to the Department's view in 1954 (as a result of interim across-the-board pay increases the Executive Secretary's salary is now \$7200 for one-half time) but with the statement that it would bring the matter up again if and when experience should have demonstrated that a higher classification and salary for the position of its Executive Secretary is warranted. The Commission believes that the time is now ripe for reconsideration of the 1954 decision.

What has been said above shows, I believe, the magnitude of the Commission's present work load and the important part which the Executive Secretary must play in getting the Commission's work done. The person holding that position must have the following combination of capacities.

1. He must be an able and efficient administrator. As has been indicated above, there are many facets to the Commission's work. Various studies are at various stages of the Commission's work process at any given time. It is no small administrative task to keep them all moving along. In addition, the Executive Secretary supervises and coordinates the work of a large number of people. While his immediate staff is small he is, at any given time, supervising the work of at least 15 to 20 research consultants.
2. He must be an able legal scholar. The quality of the Commission's work depends, ultimately, on the quality of the legal scholarship that goes into it -- the acuteness of its analysis of difficult legal problems, the perceptiveness of its understanding of the various policy considerations involved, and the soundness of its recommendations. The members of the Commission contribute materially to that scholarship, as do its research consultants. But a major contribution can and must be made by the Executive Secretary. He must have not only the time but the ability to give incisive thought to the difficult problems with which the Commission deals. Unless he is absolutely first-rate the work of the Commission will suffer.

3. He must be able to write well. The Executive Secretary must draft or supervise the drafting of not only the annual reports and the recommendations of the Commission but also the legislative measures which it recommends. He also prepares a large number of communications to the Commission's research consultants, State Bar Committees and others explaining and otherwise relating to the Commission's work. If this part of the job is to be done adequately the Executive Secretary must be able to express himself in writing both lucidly and persuasively.
4. He must be able to make effective oral presentations of difficult subjects. The Executive Secretary is called upon for demanding oral presentations on many occasions -- in presenting to the Commission the work of research consultants, in speaking to members of the bar and other groups about the work of the Commission, in working with State Bar Committees on Commission studies and, especially, in presenting the work of the Commission to committees of the Legislature. The importance of the last of these would be difficult to exaggerate. If the Executive Secretary is to work effectively with legislative committees he must be able not only to organize and present ideas effectively and to think on his feet under sharp questioning by Committee members, but also to grasp quickly and analyze intelligently objections and suggestions made by committee members so that he may explain their effect upon the basic objectives of the legislation recommended by the Commission.
5. He must be able to deal effectively with research consultants, members of State Bar Committees, and others. The Executive Secretary must be a person who can work with persons who have achieved positions of prominence and leadership in the legal profession -- both professors of law at our leading Universities and those men, often the leaders of the bar in this State, who serve on the State Bar committees to whom the Commission's work is referred by the Board of Governors. It often falls to the Executive Secretary to suggest changes in the work of research consultants and to raise questions concerning positions taken by members of State Bar Committees. This requires not only that the Executive Secretary be a person of considerable tact, but also that he be a man of stature in the

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legal profession in his own right and of such maturity and insight as to impress and persuade the people with whom he deals with the soundness of the views which he expresses.

6. He must have initiative, good judgment and the ambition and drive to do an outstanding job. He must work on his own, without direct and continuous supervision from the Commission. The special nature of the Commission's work, together with the discretion inherent in dividing time between two important assignments, make possession of the above qualities imperative.

This catalogue of capacities is an impressive one. Indeed, it is not too much to say, I believe, that the position of the Executive Secretary of the Law Revision Commission is unique in the State service. To find and retain as its Executive Secretary a person having these qualifications the Commission must be able to offer an attractive salary not only for its own sake, but for the prestige that goes with it. The Commission has become particularly aware of this fact since Professor McDonough has decided to leave us as of July 1, 1959 and both the Commission and Stanford will be under the necessity of finding a replacement for him. To be able to find an adequate replacement it is, we believe, necessary that we be able to offer him a combined salary of \$16,000 - \$17,000 per year. The Commission recommends, therefore, that the position of its Executive Secretary be reclassified and his State salary on a half-time basis be increased to from \$8000 to \$8500.

This change should be made as soon as possible.

Need to establish the position of Executive Secretary on a three-fourths time basis.

The very considerable work load of the Law Revision Commission has been discussed above. There, too, has been set forth the Commission's view that this work load cannot continue to be handled in its major substantial aspects by one man. The Commission has recommended that what is presently an unreasonable burden on its Executive Secretary be reduced in part by upgrading the position of its Assistant Counsel. But this alone will not be enough. It will also be necessary to put the position of the Executive Secretary on a three-fourths State one-fourth Stanford basis. Only if both of these changes are made, the Commission believes, will it have a staff organization capable of carrying its work load.

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However, Professor McDonough is committed to a teaching assignment at the Stanford Law School for the academic year 1958-59 which will make it necessary for him to continue on a half-time basis with the School during the coming academic year. The Commission proposes, therefore, to make the change in the position of its Executive Secretary to a three-fourths - one-fourth basis effective July 1, 1959. Since the change is closely related to the other changes referred to in this letter it is presented for your consideration at this time. The Commission's proposal will come before the Department of Finance for action in connection with consideration of the Commission's budget for fiscal year 1959-60. If this change is made and the compensation of the Executive Secretary is increased on the scale outlined above, his State compensation would be \$12,000 - \$12,500 per year for three-fourths time beginning July 1, 1959.

Conclusion

The Commission recognizes, of course, that the immediate and prospective financial situation of the State is such that proposed increases in department and agency budgets must be subjected to close scrutiny. We anticipate, therefore, that at least two questions are likely to be raised concerning the proposals made herein: (1) how is the Commission managing to operate at the present time with its existing staffing arrangement; and (2) could the need for the staff changes outlined herein not be eliminated by deferring until later years some studies on the Commission's current agenda. The Commission has considered both of these questions. Its answers to them follow:

As to how the Commission is managing to operate currently, there are two answers: (1) Professor McDonough has been devoting and will continue during 1958-59 to devote much more than one-half of a normal work week to the work of the Commission; (2) the work of the Commission is not being kept completely current in all of its phases and this situation is bound to be considerably aggravated as we approach and get into the 1959 Session of the Legislature.

As to the second question, the need for the staff changes discussed herein other than the increase in compensation of the Commission's Executive Secretary could be obviated if a substantial part of the Commission's present work load were postponed to future years. Concomitantly it would, of course, be necessary to avoid or minimize new assignments to the Commission by the 1959 Session of the Legislature. The Law Revision Commission does not believe, however, that it should undertake to limit its own work

Mr. John M. Peirce

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load in either of these ways. The Commission is a legislative service agency, existing solely to perform such assignments as the Legislature sees fit to give it. The Commission does not believe that it can properly determine that some of the assignments which it has been given should be postponed while others are given priority. Nor does the Commission believe that it should suggest limitations of its future work load, except such limitations as may be made necessary by the limited time which its own members can give to this work which they are performing as a public service. The matter would seem to be for the Legislature alone to decide.

The Law Revision Commission will appreciate your consideration of the matters discussed in this letter. We are hopeful that the increase in the compensation of our Executive Secretary and the upgrading of the position of our Assistant Counsel can be acted upon favorably at a relatively early date. I will, of course, be happy to respond to any questions which you may have and to come to Sacramento for such discussions with you and the members of your staff and with other State agencies concerned as may be desired.

I enclose two extra copies of this letter for your convenience.

Very truly yours,

Thomas E. Stanton, Jr.
Chairman