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Speech Given at the Fordham University School of Law on the Occasion of the Celebration of the Law Revision Commission's 50th Anniversary December 14, 1984

Carolyn Gentile

Fordham University School of Law, professor

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**SPEECH GIVEN AT THE FORDHAM
UNIVERSITY SCHOOL OF LAW ON THE
OCCASION OF THE CELEBRATION OF THE
LAW REVISION COMMISSION'S 50TH
ANNIVERSARY DECEMBER 14, 1984**

*Carolyn Gentile**

The Law Revision Commission was created by the Laws of 1934 with the enactment of Article 4-A of the Legislative Law.¹ With the passage of its fiftieth year, the Commission is the oldest continuous law reform agency in the common-law world. The impetus for its creation actually occurred thirteen years earlier, in 1921, when Court of Appeals Judge Benjamin N. Cardozo proposed the establishment of an agency, which he called a ministry of justice, to mediate between courts and legislatures.² Judge Cardozo noted that each worked in separation and aloofness from the other. Consequently,

* J.D. New York University; Chairperson of the New York Law Revision Commission; Special Counsel—Seafarers International Union & Related Employee Benefit Funds; Adjunct Professor of Law at Fordham University and New York University; Labor Member of the New York City Board of Collective Bargaining.

1. 1934 N.Y. LAWS ch. 597 (effective May 16, 1934) (codified at N.Y. LAWS Art. 4-A (McKinney 1952) (amended 1955, 1961)). Section 72 of the Legislative Law sets forth the the purpose of the commission as follows:

It shall be the duty of the law revision commission: (1) To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms. (2) To receive and consider proposed changes in the law recommended by the American law institute, the commissioners for the promotion of uniformity of legislation in the United States, any bar association or other learned bodies. (3) To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law. (4) To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions. (5) To report its proceedings annually to the legislature on or before February first, and, if it deems advisable, to accompany its report with proposed bills to carry out any of its recommendations.

N.Y. LEGIS. LAW § 72 (McKinney 1952).

2. "The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged." Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113, 114 (1921) [hereinafter cited as Cardozo]. Justice Cardozo was not the first to advocate creating such an agency. See, e.g., Pound, *Juristic Problems of Natural Progress*, 22 AM. J. OF SOC. 721, 729-31 (1917).

there was much wasted effort.³ The judges had only the methods of judge-made law to fight against anachronism and injustice. They were faced with the conflicts inherent in attempting to accommodate justice and logic, consistency and mercy.⁴ On the other hand, the legislature could provide only patchy solutions because it was informed only intermittently of the needs and problems of the courts, and it had no responsible and systematic advice.⁵ Two years after the publication of the influential Cardozo address, the State of New York, upon the recommendation of Governor Alfred E. Smith, created a body called the Commission to Investigate Defects in the Law and its Administration.⁶ This 1923 Commission had no legislative program except one bill to transform a commission of seventeen, including five judges, the Attorney General, four legislators and seven lawyers, but no law faculty members, into a commission of five. It was minimally funded through 1926, and then completely disappeared from the records of the State of New York.

Finally, in 1931, the legislature created the temporary legislative Commission on the Administration of Justice in New York State,⁷

3. Cardozo, *supra* note 2, at 113.

4. *Id.*

5. *Id.* Judge Cardozo stated:

To-day courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labors bears the tokens of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and courts move on in proud and silent isolation. Some agency must be found to mediate between them.

Id. at 113-14.

6. 1923 N.Y. LAWS ch. 575 (effective May 22, 1923) provides in part: A commission is hereby created to examine the statutes and judicial decisions of the state of New York; to investigate any defects it may find in the present law and in its administration; and to recommend such changes as are necessary, to modify or eliminate antiquated and inequitable rules of law and methods of administration, to remove anachronisms in the law, and generally to bring the law of this state, civil and criminal, into harmony with modern conditions.

7. 1931 N.Y. SESS. LAWS ch. 186 (effective Mar. 30, 1931), which was entitled: An Act to amend chapter seven hundred and twenty-seven of the laws of nineteen hundred thirty, entitled: 'An act to create a commission to investigate and collect facts relating to the present administration of

as proposed by Governor Franklin D. Roosevelt. In its 1934 report recommending the creation of a permanent agency, it stated:

[A] Law Revision Commission, has come to be thought of as a group of students of the law, vested with the responsibility of considering particularly the substantive statutory law with a view to scientific revision in the light of modern conditions, and acting as a link between the courts and the Legislature. So far as we are aware, no state has yet adopted the idea of such a commission, although the suggestion has received wide support from legal scholars, leaders of the bar and students of government. However, according to Judge Cardozo, in countries of continental Europe the project has passed into the realm of settled practice.⁸

Its recommendation was accepted by the legislature, and the Commission thereby created now celebrates its Golden Anniversary.

The first Commissioners held an organizational meeting on July 31, 1934 in the State Capitol in Albany.⁹ Governor Herbert H. Lehman, the third consecutive governor to support the creation of such a body, attended and remained throughout the meeting. Also present were Professor Charles K. Burdick, Chairman; Young B. Smith, Warnick J. Kernan, Walter H. Pollak and Bruce Smith, Commissioners, and William T. Bryne, Chairman of the Senate Judiciary Committee. Its first budget allowed some twenty thousand dollars per annum for research purposes. Its first official action was to write Supreme Court Justice Cardozo in Washington and express to him the great indebtedness which the Commission felt for his initiation of this program of work in New York State.

Since its beginning the Commission has had but seven different

justice in the state and report thereon, and making an appropriation therefor,' in relation to the composition and the time for making preliminary and final reports of such commission and to the payment of its expenses.

8. 1934 N.Y. LEGIS. DOC. No. 50, Jan. 25, 1934. In its 1934 report the Commission on the Administration of Justice in New York State actually recommended the creation of two permanent bodies, the Law Revision Commission and the Judicial Council. Note, *Jurisprudence: Legal History: Ministry of Justice*, 20 CORNELL L.Q. 119, 122 (1934). The Law Revision Commission was created to recommend revisions of the substantive law, while the Judicial Council was created to recommend revisions of the administration of the courts. *Id.* While bodies similar to the Judicial Council were first established in Ohio and Oregon in 1923, *Legislation*, 4 FORDHAM L. REV. 102, 104 n.22 (1935), the Law Revision Commission of New York State was the first governmental agency in the United States which was created to recommend revisions of substantive law. *Id.* at 106.

9. Law Revision Commission Minutes of Meetings, vol. 1, at 1.

persons sitting at the head of its conference table, a continuity in office that has greatly contributed to the quality of its work. I am privileged to be number seven. As just pointed out, Charles K. Burdick was the first, followed by Warnick J. Kernan, Young B. Smith and "Mr. Law Revision"—Professor John W. MacDonald¹⁰ of Ithaca. These superb chairmen built our solid foundation of service to the people and to the legislature from 1934 through 1972. Attending today are Professor Willis L. M. Reese and Judge Joseph M. McLaughlin, who were my immediate predecessors from 1973 through 1982. We salute them all.

The Commission consists of the respective chairmen of the Senate and Assembly Committees on the Judiciary¹¹ and Codes,¹² as members *ex officio*, and five members appointed by the governor. At least two of the appointed Commissioners must be members of law faculties of universities or law schools within the state.¹³

Obviously, a distinction had to be made from the first between the appointed members of the Commission and the *ex officio* members. For the *ex officio* members, regular attendance at meetings and definite assignments could not be planned, although their presence at working sessions of the Commission, either in person or by counsel, is greatly appreciated. Without the wholehearted support of its *ex officio* members, the work of the Commission can never reach fruition. Senators Douglas Barclay and Ronald Stafford and Assemblymen Saul Weprin and Melvin Miller, the current *ex officio* members, have been a source of advice and support at all times. A former *ex officio* member, a chairman of the Assembly Codes Committee for many years and always a firm supporter of the

10. Woodruff Professor of Law, Cornell Law School; Professor MacDonald served as Editor of Reports, Recommendations and Studies of the Law Revision Commission from 1934 through 1956, as Executive Secretary and Director of Research from 1934 through 1956, and as Chairman of the Law Revision Commission from 1958 through 1973.

11. 1934 N.Y. LAWS ch. 597. The 1985 chairmen of the Senate and Assembly Judiciary Committees are, respectively, Senator John Dunne (6th Dist.), NEW YORK RED BOOK 85 (88th ed. 1985-86), and Assemblyman Saul Weprin (24th Assembly Dist.). *Id.* at 291.

12. 1944 N.Y. LAWS ch. 239 (effective Mar. 21, 1944). The 1985 chairmen of the Senate and Assembly Codes Committees are, respectively, Senator Ronald Stafford (45th Dist.), NEW YORK RED BOOK 128 (88th ed. 1985-86), and Assemblyman Melvin Miller (44th Assembly Dist.). *Id.* at 248.

13. 1934 N.Y. LAWS ch. 597. Contrary to Judge Cardozo's original proposal, the bench is not represented on the Commission. See Cardozo, *supra* note 2, at 124.

Commission, is former Governor Malcolm Wilson.¹⁴ He will be with us at lunch today.

The appointed members, therefore, become the active group. The present Commissioners, all here today, are Judah Gribetz, John D. Feerick, Kalman Finkel, and our most recently appointed Commissioner, Paul A. Victor.

Many former Commissioners are in the audience this morning and others will be with us before the end of the day. From Florida is Emil Schlesinger who served as Commissioner from 1940 until 1947 and again from 1957 through 1970, a total of over twenty years. Shortly you will hear from former Circuit Court of Appeals Judge and former Commissioner William Hughes Mulligan and from District Court Judge Joseph M. McLaughlin, a former chairman. Also expected are Federal Senior District Court Judge Charles M. Metzner and District Court Judge Eugene N. Nickerson, as well as attorneys Arthur H. Schwartz and Edward J. Freeman, all former Commissioners.

In its relationship to the legislature, the Commission has been scrupulous in its recognition of legislative supremacy. It has sought to avoid recommendations on topics in which the primary question was one of policy rather than one of law. This practice has been based on its opinion that the best work of the Commission can be done in areas in which lawyers as lawyers have more to offer to solve the problem than other skilled persons or groups. Furthermore, although the Commission will attempt to convince the legislature of the correctness of its recommended program, it will not seek to enlist support or invoke pressure from sources outside the legislature for the enactment of Commission recommendations or the rejection of any other proposal before the legislature.

In all of its fifty years, the Law Revision Commission has had a successful working relationship with other agencies charged with reform of the law, some permanent and some temporary. From the beginning, the Commission had the Judicial Council¹⁵ as its companion in procedural reform, and, upon its abolition, the Judicial

14. Governor Wilson served as the Chairman of the Assembly Codes Committee from 1946 through 1958. *NEW YORK RED BOOK* 53 (68th ed. 1959-60).

15. 1934 N.Y. LAWS ch. 128. The judicial council consisted of a member of the bar from each judicial department and two citizens of the state at large, each appointed by the governor of the state with the advice and consent of the senate. *Id.* In addition, the presiding justices of each appellate division of the supreme court, the chairman of the committee on the judiciary for the senate and the assembly were also members of the Judicial Council. *Id.*

Conference.¹⁶ The role played by each is simply that the Conference does not deal with the substantive law, and the Commission refrains from dealing with procedure except where a substantive change requires subordinate procedural readjustment or implementation.

Between 1935 and 1961, it became clear to everyone—as a result of Law Revision Commission studies, the activities of the specialized judiciary supervising the administration of decedents' estates, and the social and economic evolution which had occurred—that the time had arrived for full re-examination and revision of the law of estates and trusts. In 1961 the Commission on Estates¹⁷ was created with the enthusiastic support of the Law Revision Commission. Significantly, in its first report, the Bennett Commission¹⁸ wrote that the work of the Law Revision Commission over the years had been most helpful to it. The Commission has continued its interest in the field and in the past decade has successfully proposed a score of additions and amendments to the Estates, Powers and Trusts Law, including several to protect the rights of illegitimate children.¹⁹

16. 1955 N.Y. LAWS ch. 869 (effective Apr. 29, 1955) (codified at N.Y. JUD. LAW § 224 (repealed 1962)). Section 230 of this chapter of the New York Session Laws states in part:

There is hereby established the judicial conference of the state of New York. The conference shall consist of the chief judge of the court of appeals who shall be its chairman, the presiding justice of each appellate division of the supreme court, and for each judicial department one justice of the supreme court not designated to an appellate division or the court of appeals . . . or a majority of them. Membership in the conference by any judge or justice shall be deemed to be one of his judicial functions and shall not constitute holding a public office.

Id. § 230.

17. The Temporary Commission on the Modernization, Revision, and Simplification of the Law of Estates. See 1961 N.Y. LAWS ch. 731 (effective Apr. 22, 1961) states:

A temporary state commission is hereby created to be known as the temporary state commission on the modernization, revision and simplification of the law of estates. The commission shall make a comprehensive study of the relevant provisions of the real property law, the personal property law, the decedent estate law, the surrogates court act and such other statutes as the commission may deem advisable for the purpose of correcting any defects that may appear in the laws relating to estates and their administration, the descent and distribution of property, and the practice and procedure relating thereto, and for the purpose of modernizing, simplifying and improving such law and practice.

Id. § 1.

18. The Commission took the name of its first Chairman, Surrogate John D. Bennett of Nassau County. See FIRST REPORT OF BENNETT COMMISSION, 1962 N.Y. LEG. DOC. No. 19.

19. 1981 N.Y. LEG. DOC. No. 65(B); 1980 N.Y. LEG. DOC. No. 65(1); 1975 N.Y. LEG. DOC. No. 65(J).

Its work continues today, and at present, the Commission has before the legislature a proposal to protect the rights of adopted-out children²⁰ and will soon submit a proposal to completely revise Estates, Powers and Trusts Law section 5-1.1, which relates to the surviving spouse's right of election and testamentary substitutes.

In other areas, the Commission has made many contributions to the movement for change in the law of New York. Some examples are its four year study of the Uniform Commercial Code;²¹ its studies on the feasibility of a State Administrative Procedure Act²² regulating administrative agencies in rule making and adjudication, on the revision and recodification of the trust provisions of the Lien Law;²³ and on the revision and recodification of the General Obligations Law.²⁴

Where does the Commission obtain material for its projects? It comes from project suggestions sent to it by outside individuals or groups, and from its own study of New York law.

20. 1984 N.Y. LEG. DOC. No. 65(H).

21. 1 & 2 LAW REVISION COMMISSION, 1954 REPORT, RECOMMENDATIONS AND STUDIES OF THE LAW REVISION COMMISSION (1954); 1, 2, & 3 LAW REVISION COMMISSION, 1955 REPORT, RECOMMENDATIONS AND STUDIES OF THE LAW REVISION COMMISSION (1955); LAW REVISION COMMISSION, 1956 REPORT, RECOMMENDATIONS AND STUDIES OF THE LAW REVISION COMMISSION (1956). The Commission's studies of the Uniform Commercial Code drew upon ten previous years of study and critique of the Code by such bodies as the American Law Institute and the Conference of Commissioners on Uniform State Laws. 1 LAW REVISION COMMISSION, 1954 REPORT, RECOMMENDATIONS AND STUDIES OF THE LAW REVISION COMMISSION 23 (1954).

22. 1975 N.Y. LAWS ch. 167 (codified at N.Y. STATE ADM. PROC. ACT §§ 100-501 (McKinney 1984)). For a brief history of the Commission's part in this legislation, see LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1974, at 9-12 (1974).

23. See LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1959, at 185-263, 1959 N.Y. LEG. DOC. No. 65(F) [hereinafter cited as 1959 REPORT]. This report focused on the resolution of uncertainties regarding the special nature of the trusts arising under the terms of the statute and the applicability of some basic principles of trust law to these trusts. 1959 REPORT, *supra*, at 209; see also LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1942, at 271-336, 1942 N.Y. LEG. DOC. No. 65(H) [hereinafter cited as 1942 REPORT]. This report recommended additional provisions for the lien law that declare that certain funds received for an improvement by a contractor, subcontractor, or owner are trust funds to be applied first for the payment of claims for labor, materials, and other designated claimants for such improvements, and that provide that the failure to so apply such funds constitutes larceny. 1942 REPORT, *supra*, at 273.

24. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1963, at 201-72, 1963 N.Y. LEG. DOC. No. 65(G). The Law Revision Commission sought to provide a logical and coherent organization of existing statutes, not included in the Uniform Commercial Code, that govern the creation, definition, enforcement, transfer, modification, discharge, and revival of various "civil" obligations.

The legislature often asks the Commission to undertake particular studies, as was done recently in connection with reducing the age of majority in New York to conform with the reduction of the voting age by the Congress,²⁵ eliminating unconstitutional sex distinctions in New York statutes,²⁶ recodifying the Insurance Law,²⁷ examining the disabilities and hardships caused by the current statute covering a person's "civil death" following a sentence of life imprisonment²⁸ and creating a Code of Evidence for New York.²⁹

25. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1974, 1974 N.Y. LEG. DOC. NO. 65(A) [hereinafter cited as 1974 REPORT]. Following the adoption of the twenty-sixth amendment to the United States Constitution, the leadership of the legislature in the fall of 1971 requested the Law Revision Commission to review all the statutes of the state in order to determine what changes should be made in light of the reduction in the voting age from twenty-one to eighteen. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1974: RECOMMENDATION OF THE LAW REVISION COMMISSION TO THE LEGISLATURE RELATING TO REDUCTION OF AGE OF MAJORITY FROM TWENTY-ONE TO EIGHTEEN YEARS OF AGE 1. As requested, the Commission reported the results of its review without recommended legislation to the leadership of the legislature during the 1973 session. An omnibus bill on the subject was introduced, passed by both houses, but vetoed by the Governor. *Id.* at 2. In his Veto Message, however, the Governor urged the Law Revision Commission to assist in the preparation of comprehensive legislation to reduce the age of majority in New York from twenty-one to eighteen and, in compliance with this request, the Commission submitted to the Legislature fifty-three bills amending various laws. *Id.*

26. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1976, at 22-28, 1976 LEG. DOC. NO. 65(A) [hereinafter cited as 1976 REPORT]. In December, 1974, Senator Bernard G. Gordon, Chairman of the Senate Committee on the Judiciary and an *ex officio* member of the Law Revision Commission, requested the Commission to proceed with its pending study of gender-based distinctions in New York statutes on a priority basis. The Commission agreed. 1976 REPORT, *supra*, at 7. The year-long study disclosed numerous New York statutes that improperly discriminated on the basis of gender in violation of the equal protection clause of the fourteenth amendment of the United States Constitution. In addition, the study found that some of these statutes were also unlawful under both New York and federal equal opportunity statutes. *See id.* The Commission recommended that one hundred and six sections of New York law be amended because they violated constitutional or statutory mandates. *Id.* at 8.

27. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1984, at 175-80, 1984 N.Y. LEG. DOC. NO. 65(D) [hereinafter cited as 1984 REPORT]. Pursuant to a senate resolution, the Law Revision Commission was authorized and directed to work with the legislature in recodifying the New York Insurance Law. 1984 REPORT, *supra*, at 175. The objective was to simplify, clarify, and systematize the existing Insurance Law without making substantial changes. *Id.*

28. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1985, at 23, 1985 N.Y. LEG. DOC. NO. 65 [hereinafter cited as 1985 REPORT]. The Commission stated that among the various collateral disabilities imposed on convicted felons, those imposed by the civil death statute, N.Y. CIV. RIGHTS LAW § 79-a (sub. 1) (McKinney Supp. 1984-85) were "[p]erhaps the most pointless." 1985 REPORT, *supra*, at 23. The Commission further stated that such unnecessary disabilities should be eliminated and "that others should be redrafted." *Id.*

29. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1983, at 330-32, 1983 N.Y. LEG. DOC. NO. 65(A) [hereinafter cited as 1983 REPORT].

A proposal based on the latter study of the Commission is before the legislature and will be analyzed by Judge McLaughlin in a few minutes.

At times, the Governor may request a specific study by the Commission, as has been done respecting several current topics: the defense of insanity,³⁰ which is the subject of our afternoon panel discussion, joint custody and the entire custody decision-making process,³¹ indemnification of public employees for punitive damages awarded against them³² and a remedy for innocent persons unjustly convicted of crime and subsequently imprisoned.³³ In fact, this week the legislation recommended by the Commission to the governor on erroneous conviction passed the legislature and is now awaiting the Governor's action.³⁴ Another such request from the Governor has

The Law Revision Commission was directed by the Legislature in 1976 to consolidate, simplify, and, where appropriate, revise the laws governing the presentation of evidence in the courts of the state. 1983 REPORT, *supra*, at 331. Pursuant to this directive, the Commission conducted an extensive study of the New York law of evidence. *Id.* The study revealed serious deficiencies in many areas of the law of evidence and a pressing need for revision and clarification. *Id.* The Commission recommended the enactment of a Code of Evidence that would provide the bench and bar with a systematic, comprehensive, and authoritative statement of the law of evidence. *Id.*

30. LAW REVISION COMMISSION, REPORT OF THE LAW REVISION COMMISSION FOR 1981, at 43-108, 1981 N.Y. LEG. DOC. No. 65(A) [hereinafter cited as 1981 REPORT]. "The Governor, noting that the insanity defense was a subject of serious concern among judges, lawyers and experts in the field of psychiatry, as well as the general public formally requested the Commission to conduct a study of the defense of insanity and the legal procedures for dealing with persons who successfully assert the defense." See 1981 REPORT, *supra*, at 6.

31. 1983 REPORT, *supra* note 29, at Appendix i-xxx. Pursuant to the Governor's request, the Law Revision Commission conducted an extensive study of the law as it relates to the joint custody of children, encompassing not only New York law but also the law in all other jurisdictions as well as the law in several foreign countries. 1983 REPORT, *supra* note 29, at ii.

32. 1985 REPORT, *supra* note 28, at 9-10. In the Approval Memorandum accompanying a bill relating to the indemnification of public officers by a county for punitive and exemplary damages, the Governor expressed his concern that with the proliferation of such bills, a 'confusing patchwork' would emerge. Consequently, he requested that the Law Revision Commission conduct an analysis of the necessity and propriety of indemnifying police and peace officers against punitive and exemplary damages. *Id.* at 10. The Commission hoped to submit its report and recommendations by the end of the 1985 Legislative Session. *Id.*

33. 1984 REPORT, *supra* note 27, at 36-92. The Governor requested that the Law Revision Commission undertake a study of the unresolved considerations and issues relating to damages for unjust convictions and subsequent imprisonment. *Id.* at 37. The Commission's study and proposed statutory changes basically recommended that innocent persons who have been unjustly convicted and subsequently imprisoned should be able to present a claim for damages against the State of New York. *Id.*

34. The Bill was subsequently signed into law by the Governor on December 21, 1984. 1984 N.Y. LAWS ch. 1009.

prompted an expansion of the Commission's previous study of New York statutes that could be considered gender based and possibly illegal, improper or archaic.

I also want to take a moment to discuss the Commission's examination of the question of joint custody. Although the Commission determined that the existing law was sufficient to allow a court to award joint custody in an appropriate case, it decided to examine the entire decision-making process.³⁵ It has become increasingly clear that the best interests of the child are served by providing a system to foster settlement of the custody question outside of an adversarial atmosphere. Its recommendation on the matter will be forthcoming shortly.

While, at first glance, it may appear that the more glamorous suggestions come from the executive and the legislature, the Commission members and staff initiate scores of project suggestions every year. At the moment it is at work on its own proposals relating to a duty to aid persons in distress; recovery of costs and attorneys' fees by successful litigants in condemnation proceedings; an infant's right to disaffirm a consent given by its parents; liability of trust and joint accounts for estate debts; immunity for court appointed counsel in criminal cases; inverse condemnation; and brokers' rights to commissions.

Recent events have also demonstrated the need for urgent action by the legislature and the governor's office on another Commission project, the one concerning gubernatorial inability and succession. Last year, the Commission proposed a resolution calling for a constitutional amendment to cure the existing lack of procedures in New York to deal with gubernatorial inability.³⁶ The Commission's recommendation is that the lieutenant governor and four legislators, the majority and minority leaders of the Senate and Assembly, acting unanimously, be responsible for an initial declaration of inability. The court of appeals would then be called upon to decide the matter. In these trying times, no government should lack a mechanism to provide for continuity of leadership. This project, as well as others initiated by the Commission, may be described by some as challenging and attractive; some may disagree, but all must concede one common thread—they are necessary. If the Law Revision Commission did not undertake the matter, it would remain undone. This function

35. See *supra* note 26 and accompanying text.

36. 1984 REPORT, *supra* note 27, at 95-128.

alone makes the Law Revision Commission invaluable to New York State.

You may ask about the Commission's own procedures. When a study is undertaken, its basis is to provide the Commissioners with a thorough review of the problem so that a correct conclusion can be reached as to whether or not legislative action is required, and if such action is to be recommended, how it is to be formulated. Any study must include an analysis of existing New York law, a comparison of it with the law in other jurisdictions, and a consideration of the policy questions involved. Statutory as well as decisional law is examined, and the reports of jurists, textwriters and other authorities are consulted. All available pertinent legal literature is reviewed thoroughly. The search for relevant authorities and the recognition of a sufficient quantum of authority is, of course, the professional responsibility of the researcher. With the research study completed and assuming a decision has been reached that legislative action is desirable, the next step is the drafting of the lengthy research document of the Commission which accompanies each of its proposals and is known as its formal "Recommendation."³⁷ It explains the need for the legislation by reviewing in detail the problems that became apparent during the research of the present law. Accompanying the "Recommendation" submitted to the legislature is a proposed statute and a concise, explanatory "Memorandum in Support" that sets forth the changes that the bill seeks to accomplish. The legislation proposed is the product of joint consideration of every member of the Commission. No item is submitted to the legislature until it has been passed upon and agreed to by the Commissioners.

Before submission to the legislature, however, there is a remaining step which bears upon the relationship of the Commission with the organized bar of the state, which is heard through a standing committee of the New York State Bar Association especially created in 1935 to cooperate with the Law Revision Commission. The cooperating committee meets semi-annually with the Law Revision Commission, the second time at the completion of its year's work, and shortly before the Commission makes its report to the legislature. Materials showing the tentative "Recommendations" of the Commission on each topic are sent to the entire membership of the

37. The Report of the Commission and its "Recommendations" are published each year as a legislative document with the assigned number 65.

cooperating committee. There then follows a joint meeting of the members of the committee and the full Commission and all the proposals are reviewed in round-table discussion. The full Commission, at a subsequent meeting, determines what action it should take respecting the suggestions of the cooperating committee. The Commission's program is then presented to the legislature by or through the *ex officio* members.

The Commission's interests, and perhaps its influence, have not been limited to New York State alone. Over the years, it has been a recognized and important part of the international movement for law reform which spans the globe from Great Britain through the United States and Canada, on to Australia, New Zealand, Sri Lanka and the Sudan. Our headquarters has been privileged to greet and work with the chairman of the Queensland Law Reform Commission of Australia, the chairman and secretary of the New South Wales Law Commission of Australia, and the Attorney General of the Sudan. Each of our visitors had the opportunity to work with staff, and to see our courts in operation. There is an on-going exchange of materials with those who are concerned with law reform in their countries, and, in particular, with the seven law reform agencies in Canada which make up its Institute of Law Research and Reform. We are particularly proud of the fact that on several occasions this Commission has been instrumental in providing guidelines for the establishment of other similar commissions and, in the case of the District of Columbia, the Commission presented testimony before Congress which led to the creation of a reform commission in that jurisdiction.

Through the functioning of this Commission to adjust and perfect the law through revision, an attempt has been made, and successfully continued, to bring the common law into line with modern concepts of justice and equity. The progress that has been made has been due to the intervention of the legislative branch of the government of the state. But in order for the legislature to act to change a law, it has to know that a need exists. In order that it might know, it has to be informed and assisted with expert, objective, responsible and systematic advice. The New York Law Revision Commission, through its "Recommendations," has provided this advice during the past fifty years and, with the help of God, will continue to so do for more years to come.