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of the
SUBCOMMITTEE ON
IMPACT OF ENEMY ATTACK ON ECONOMY AND
CONSTITUTIONAL GOVERNMENT OF THE
STATE OF CALIFORNIA

A Subcommittee of the
ASSEMBLY INTERIM COMMITTEE ON CONSERVATION,
PLANNING, AND PUBLIC WORKS

House Resolution No. 53, 1956

Prepared for the Subcommittee by JAMES P. KEENE, Jr.

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COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE
ON CONSERVATION, PLANNING, AND PUBLIC WORKS
SACRAMENTO, CALIFORNIA, January 21, 1957
ASSEMBLY CHAMBER, State Capitol
Sacramento, California

HON. L. H. LINCOLN
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
Assembly Chamber, Sacramento, California

This report and the appended documents indicate decided voids in federal, state, and local legislation that must be filled in order to permit the functioning of our form of government and the preservation of our way of life.

I urgently join the subcommittee in its efforts to alert the people of California and their representatives to the need for additional study, and the preparation of necessary legislation and constitutional amendments.

This is a crisis that merits mobilization of the best legal minds in California and all the affected interests to assist the Legislature in the preparation of the required measures.

Respectfully submitted,

FRANCIS C. LINDSAY, Chairman
Assembly Interim Committee on
Conservation, Planning, and Public Works

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
SACRAMENTO, CALIFORNIA, January 21, 1957

HON. FRANCIS C. LINDSAY, *Chairman*
Conservation, Planning, and Public Works Committee
California State Assembly, Sacramento, California

DEAR SIR: This preliminary report, prepared in accordance with House Resolution No. 53 of the First Extraordinary Session 1956, reviews present legislation and constitutional provisions affecting our governmental structure in case of disaster or attack. The chief concern of the subcommittee has been to study those areas which would effectuate the continuation of our civil government and our economic system following a major disaster resulting from sustained enemy attack.

The subcommittee has concluded that our legislative and administrative structure is not prepared to withstand and survive such a crisis. The voids in legislative and constitutional provisions are so great and of such portent to the continuation of our way of life that we view this lack as an emergency.

Consequently, we recommend that this session of the Legislature continue these studies and develop the necessary legislation and constitutional proposals that will assist the survival of the society we know. It is clear to this subcommittee that when we face the real problem of possible nuclear attack, programs of defense and programs dedicated to the saving of lives is not enough. Nor can we rely on martial law, or broad delegations of power to one official, or the American genius of meeting crises with de facto forms of government.

Governmental officers, the legal profession, and business leaders, working together can so prepare us that our institutions will survive to carry on the way of living we cherish.

Respectfully submitted,

VERNON KILPATRICK, Chairman
JACK A. BEAVER
ALLEN MILLER

Subcommittee on Impact of Enemy Attack on Economy
and Constitutional Government of the State of California

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FINDINGS AND RECOMMENDATIONS

The subcommittee's studies thus far have disclosed a vast range of vital problems in the field of preparing our society to withstand a nuclear attack, and to resume its operation in the wake of such an attack. So far, the following problems have not been attacked in any organized manner:

1. Problems of Succession to Elective Office. Methods must be devised to assure that the Governor's position is legally filled, even though the entire present line of succession is wiped out; the same is true for both houses of the State Legislature, for boards of supervisors, and for mayors and city councils. Likewise, provisions must be made for enabling the Legislature, in whatever form it exists after an attack, to do business immediately. The foregoing, in fact, is essential to implement operation of the present California Disaster Act, which now provides with reasonable adequacy for the necessary shifts and rearrangement of function and seat of operations of state agencies.

2. Problems of Record Storage. A state-wide study should be made to determine what records are vital to the orderly continuation of our economy, and plans should be made and implemented to store these records in microfilm form in one or more bomb-proof locations throughout the State. The necessary changes in our present laws should be made to assure the legal acceptability of such records in the event of an emergency when other records are destroyed.

3. Problems of the Judiciary. Provision should be planned now for the operation of our judicial system under conditions of a post-nuclear attack situation. This will necessitate many changes of both law and procedure from our present practices. Courts will have to be given broader powers than they now possess. Procedures must be simplified and provision made for rapid recruitment and appointment of court personnel to fill in the gaps and process the anticipated case load.

4. Problems of Relationships Between Persons, the State, and Corporations. Legislation still will be needed in a number of fields substituting new procedures, rules, and principles to govern private relationships during the period of disruption. Arrangements must be facilitated regarding contracts, leases, mortgages, wills, trusts, etc., to meet contingencies arising out of nuclear attack. Many of these could be effected under existing law, while others would have to wait authorization under new statutes. Additionally, a basic plan must be devised to compensate individuals for injury, death, and the damage and disruption of property by nuclear attack. This should be primarily a responsibility of the Federal Government.

The needed legislation is partly federal, partly state, and partly local, and, in some cases, all three. But, at the present time, as far as the committee is able to learn, the Federal Government is not engaged

in any work bearing precisely on this most important field of national survival. The work of the Federal Government, both on the part of the Executive and Legislative Branches, appears to be primarily directed toward initial defensive, protective, and survival needs.

From two standpoints, then, California should not wait on the Federal Government for development of these phases of our survival plans. It is overwhelmingly clear to the committee that a very great deal of thought and planning and legislating must be done on the state and local levels, regardless of what the Federal Government may or may not do. In addition, if California thinks through the needed pattern of state-federal relationships in this field, the necessary changes in the federal laws will emerge from the study. The chances of getting the kind of changes we will need in federal legislation is much greater if we present to the Congress a package of these needed changes.

This concept of the "package" as the most desirable form of the sum total of the new legal, governmental and economic provisions against the exigencies of existence in a post-nuclear attack situation was suggested many times to the subcommittee during its preliminary studies, and appears to be sound.

This is to say that what eventually we should develop is a package of law involving all of the phases so far noted by the committee and many others which the committee has not yet had time to investigate—which would go into effect when and if the emergency occurs. With sufficient study and planning, it is easily within our power to devise such an emergency system of law that will conform to the spirit of our traditions of constitutional government, which will minimize injustice, and will enable us to cope with the terribly difficult problems of a post-attack era in an orderly, efficient and democratic manner.

To bring this about, an extensive and comprehensive study on the part of government, business and the legal profession is urgently needed, under the coordination of an official body such as this committee, which would lay down the broad guide lines.

Each unit of the State Government, of county and city governments, and of special quasi-governmental units such as water districts, school boards, etc., should study its own operations with a view toward preparing for operations in the event of the emergency, and thus finding out what changes in law and procedure are needed before this can be accomplished.

Each type of business should likewise undertake such a self-examination through committees to ascertain what must be done to prepare the various segments of our economy to sustain a nuclear attack without falling into chaos.

The Bar and the judiciary can begin at once to examine our system of laws and legal procedures, to study and analyze the experience of other nations in the same fields, and bring to the committee a report on what laws need to be changed, what new laws need to be written, to construct the package of law procedure which will help our society to survive with minimum damage.

Once these studies have been made, and the results transmitted and analyzed by our State Legislature through appropriate committees, the necessary laws can be passed, the necessary constitutional amendments

can be submitted to the people, and the Federal Government can be memorialized to take the needed legal steps which are federal in nature.

It is clear to this subcommittee that when we face up to the real problems of possible nuclear attack, programs of defense or programs which deal only with the saving of lives are not enough. Nor is reliance on martial law, nor broad delegations of power to one official, nor the American genius for creating *de facto* forms of self-government enough. Our democratic society owes it to all the people who comprise it and all the children who will be born into it, to face the hard facts of the possible future without flinching, and to do what we can now to bring us through whatever that future may bring with our precious institutions intact.

The committee is firmly convinced that planning to design adequate economic, legal and governmental defenses against the impact of enemy attack is not a task for federal officials alone working under security and classification restrictions. It is a job for businessmen, bankers, economists, political scientists, lawyers, and public officials, aided by research help where needed, able to discuss the dangers and remedies freely and publicly. A better set of plans results from this process. With more responsible citizens to face the danger squarely and to learn through participation in their design the measures that would be put into effect in case of nuclear attack, there will result sounder attitudes toward the risks of such an attack while peace is maintained, and a far more effective response to its terrible impact if war should come.

We recommend that additional hearings of this committee be held as soon as possible. The matter is urgent. The minimum amount of time required for the passage of the most necessary legislation will be substantial. Not only must legislation be prepared, but constitutional proposals must be submitted to the people. We must not delay further.

PRELIMINARY REPORT

INTRODUCTION

By the terms of House Resolution No. 53 of the First Extraordinary Legislative Session of 1956, this subcommittee was authorized to ascertain, study and analyze all facts relating to civil defense in the orderly, efficient and effective continuation of the processes of government at the state and local levels and the orderly, efficient and effective continuation of the activities of industry, business and professional services in the event of enemy attack and any other matters relating to enemy attack and the steps that must be taken to cope with effects and to continue the functioning of our society in as normal a manner as possible, including but not limited to the operation, effect, administration, enforcement, or needed revision of any and all laws in any way bearing upon or relating to the subject of the authorizing resolution.

This is the first preliminary report of the subcommittee based on hearings held in Los Angeles, California, on December 5th and 6th, 1956, and on correspondence and meetings with numerous officials of state, county and city government; leaders of the Bar and judiciary; and others; and a study of relevant, available documents. Cooperating with the committee in these preliminary phases of its investigation have been: the Office of the Attorney General, the Office of State Legislative Counsel, the California Disaster Council, the Office of the Legislative Auditor, The League of California Cities, the Los Angeles County Counsel, the Los Angeles City Attorney, the Los Angeles Bar Association, Mr. Homer D. Crotty, Attorney at Law, Office of the Los Angeles County Registrar, Office of the Los Angeles County Recorder, Congressman Chet Holifield, the Los Angeles City Director of Civil Defense, Judge Roy L. Herndon, Presiding Judge Los Angeles Superior Court, Dr. Alfred Bellamy, professor of biophysics, University of California at Los Angeles, and Mr. Les Wagner, Los Angeles Mirror-News, staff investigator J. E. McCormick. The committee gratefully acknowledges their assistance.

It appears to this committee that, while vast sums and much thought has been devoted to military preparation against possible enemy attack, the closely related and all-important field of civil defense and the planning for the civic and governmental adjustments to meet the catastrophe have been grossly neglected.

Within the field of civil defense itself a great deal of controversy exists—controversy on what are the best things to do to ensure national survival (shall we concentrate on a program of evacuation or a shelter program or a combination of both?), controversy on the role of the military versus the civil government, controversy on who can most effectively plan our national survival, and controversy as to the manner in which they shall go about their planning.

This committee is concerned with one phase of our national survival plan, a phase on which there is virtually no controversy because very

little attention has been paid to it—the preservation or immediate restoration of our constitutional form of government and economy in the face of a disaster of the magnitude inherent in an all-out enemy attack using H-bombs or A-bombs on this Nation.

It is the unanimous conclusion of our military authorities that, since the very nature of our society prevents us from being the aggressor, in case of war our military action would be, first, defensive and, second, retaliatory. It is their further unanimous conclusion that no system of defense which we can now, or in the foreseeable future will, devise can effectively shield this Nation from having H-bombs and A-bombs dropped upon it by an enemy capable of mounting an all-out attack upon us and determined to press it through.

In theory there are two types of warnings available to the United States of impending enemy attack. The first of these is the so-called "strategic warning." This warning is given when there exists a deterioration in the international situation to the point where attack by an enemy seems not only possible but likely and probable. The second is the actual tactical warning which is given when there is information that an enemy attack is actually underway. With regard to the strategic warning concept, it was pointed out to this committee that the period from October through December, 1956, was a period of maximum strategic warning. That is, that this Nation was very close to war. It was also pointed out that as far as civil defense activity went, the strategic warning had no discernible effect.

Therefore, in the event of an enemy attack upon this country, it seems probable under present circumstances that we shall have to depend entirely upon the tactical warning. The tactical warning has been estimated to be anything from many hours to a few minutes. For practical planning purposes it must be presumed to be not more than an hour and in all probability substantially less than that. We must also assume that California, because of its industrial and military importance to the United States, would be one of the prime targets in the event of such an attack; we must assume that enemy atomic or hydrogen weapons would be directed toward the key cities of California from planes, from submarines and possibly from intercontinental guided or ballistic missiles.

In our present state of unpreparedness, the consequences of such an attack would be horrifying in the extreme. Loss of life in the initial blasts would be very high, perhaps more than 50 percent of the population of the area attacked from the shock and heat waves and the radioactive fallout which would follow. Assuming that the bombs fell principally in our major metropolitan areas, destruction of property would also be very great though by no means in the nature of 50 percent of our total wealth. There would be an extensive degree of disruption of industrial and productive facilities, communication, transportation, medical and rehabilitation facilities. In our present state of unpreparedness, a large proportion of all vital records, public and private, would be irreparably destroyed. Almost all of our banks would have their physical facilities destroyed. With them, the complex records of deposits, savings, investments and credit which are one of the mainstays of our civilization, would become instantly unavailable. Almost the entire surviving population, except those engaged in the military,

medical and disaster relief, would become instantly unemployed. The web of industrial and commercial transactions would be shattered. The picture becomes even darker when we contemplate the difference between this type of disaster and other types to which we have become accustomed and with which we have had experience. Normally, a stricken area can rely upon other parts of the State and the Nation to rush aid and succor to it, but in the case under consideration, perhaps every other major center of the Nation would be in the same plight.

Turning directly to the subject of government and economy, with which this committee is primarily concerned, in such an attack it is probable that all or a very large proportion of the state officials, including the State Legislature, and the officials of our larger metropolitan cities and counties would be wiped out, and that many of the vital records on which the operation of our form of government depends would be destroyed or unavailable. The magnitude of loss of official life might well be such that we could neither carry on under our present laws nor change those laws in order to meet the new situation.

The answer most commonly proposed to this particular dilemma is that in the event civil government were unable to function or even if it were, martial law would be declared and would endure until the emergency had passed. But this is, at best, a most unsatisfactory answer and a most inefficient way of conducting the business of the community, however abnormal that business may be. The principal reason for this was clearly stated by Dr. Charles Fairman in his testimony before the subcommittee chaired by Congressman Chet Holifield. Dr. Fairman said,

As I see it, the universal need on the morrow of a nuclear attack would be to re-assure, to inspire, to lead and give direction to the stricken people. For the long pull toward restoration, the people will respond far more willingly to civil leaders than to Army officers. In the workings of our civil government, laws come down but the impulses that cause the laws to be made come up from the people. In military administrations, commands go down but there is no great current of popular control going up. This unavoidable characteristic of military administration is a cogent reason why it is utterly unsuited to the restoration of the American people after a nuclear attack.

Secondly, in the event of a nuclear attack, our military forces would be exceedingly busy carrying out their own primary mission, that of the military defense of this Nation. They would be, however willing, unable to divert manpower and supplies to what are essentially the functions of civil government.

Thirdly, martial law, which is alien to the spirit of America, once imposed, is very hard to remove. Witnesses before this committee pointed to the experience of Hawaii during World War II. There, hostilities, involving the Japanese attack on Pearl Harbor, lasted for only one hour and a half, but the martial law which was thereupon imposed lasted for three years. The civil courts of Hawaii were not reopened for 10 months after the Pearl Harbor attack and then only for limited purposes. It

was not until a year and a half after Pearl Harbor that the first jury trial was held and no writ of habeas corpus was allowed until long after that date.

The committee concedes that in the first hours and days following a devastating attack upon this Nation some form of martial law may be necessary to preserve order. But, in the long run, because of the nature of the problems involved in such devastation to the Country, if martial law were to continue, the military would have to duplicate the functions of civil government. This it would be unable to do with anywhere near the degree of efficiency which civil government itself can accomplish, nor could a military administration command the loyalty and cooperation of the people to anywhere near the extent the people will willingly give to their own elected representative government.

To a democratic people, however severe their problems may be, it is best to solve them in a democratic manner. To a people accustomed to constitutional government at every level, the best and most efficient government which can be devised to meet the problems of a long-continuing emergency such as a nuclear attack would impose upon us, is a continuation of that constitutional government, adequately designed to meet the demands of the emergency situation.

With this in mind, let us examine the current state of some of our laws, both state and local.

LEGAL AND ADMINISTRATIVE FRAMEWORK

There exists on the statute books of the State of California and on the books of political subdivisions, a number of laws designed to facilitate effective mobilization of the resources of the community to meet the immediate problems of disaster or extreme emergency. On the state level, the most important of these is the California Disaster Act which is Chapter 1 of Division 7 of the Military and Veterans' Code commencing with Section 1500. Under this law, the Governor with the advice (and in some cases, consent) of the California State Disaster Council has broad powers to act in case of a state of extreme emergency such as a nuclear attack on California would certainly be. During such a period the Governor is granted complete authority over all agencies of the State Government and the right to exercise within the areas of the emergency all the police powers vested in the State in order to effectuate the purposes of the law.

He may issue and enforce rules and orders which he considers necessary for the protection of life and property. He may commandeer or utilize any private property or personnel necessary for such purposes except that he is not authorized to commandeer any newspaper or any newspaper wire service but may utilize any newspaper wire service in such manner as interferes as little as possible with the use thereof for the transmission of news.

The Governor is granted broad powers to order public employees of local agencies to perform duties outside the territorial limits of their agencies. He may direct all agencies of the State Government to utilize their personnel, equipment and facilities for activities designed to prevent or alleviate actual or threatened damage due to the disaster and such agencies may expend any of their moneys for such activities irrespective of the particular purposes for which the money had been appropriated.

The Governor may suspend the provisions of any regulatory statute or statute prescribing the procedure for the conduct of state business or the rules or orders of any administrative agency where he determines and declares that strict compliance therewith would in any way prevent, hinder or delay the mitigation of the disaster.

The California State Disaster Council consists of the Governor, who is Chairman, the Lieutenant-Governor, the Attorney General, and appointed members who represent city and county governments, city or county law enforcement services, city or county fire services, and the American Red Cross. The President pro Tempore and the Speaker of the Assembly also meet with and participate in the work of the council within constitutional limits.

The principal functions of the Disaster Council are to act as an advisory board to the Governor with reference to the disaster program, to consider and to recommend mutual aid plans, to consider and to recommend rules and regulations to be promulgated by him, and to consider and to recommend to the Governor for approval a state disaster

plan. The Governor is authorized to assign all or part of his powers and duties under the chapter to the California Disaster Office, which is to be established as part of his own office staff and headed by a Director of the Disaster Office, who is appointed by the Governor with the approval of the Senate.

Whenever it appears that a state of extreme emergency proclaimed by the Governor will continue for more than seven days, the Governor is required to call a meeting of the Disaster Council to commence not later than the expiration of such seven days. All of the powers of the Governor under such proclamation terminate when the Governor has failed to call such a meeting of the Disaster Council or he has not, within 30 days after issuing such proclamation, convened the Legislature for the purpose of legislating on subjects related to the state of extreme emergency, except where the Legislature is already convened with power to legislate on such subjects.

1. SUCCESSION AND LEGISLATIVE QUORUM IN STATE GOVERNMENT

This committee notes that the California Disaster Act was not framed with the possible consequence of a nuclear attack on California in mind. As stated before, it is entirely conceivable that not only the Governor but the entire line of succession to the Governorship and a majority of one or both houses of the Legislature might be wiped out in the event of such an attack. In such case, obviously, there would be no person legally able to effecuate the provisions of the law designed to cope with an extreme emergency. **It appears to the committee that one of the first acts which should be considered is that of lengthening the line of succession to the chief executive office of the State.**

Our Constitution now provides that in the event that all of the officers listed as successors to the Governor are killed as well as he, that the Senior Deputy Secretary of State shall convene the Legislature by proclamation to meet within eight days after occurrence of the vacancy in join convention of both houses and in extraordinary session for the purpose of choosing a person to act as Governor until the office may be filled at the next general election appointed for election to the office of Governor.

Assuming that the Senior Deputy Secretary of State to be alive to convene the Legislature, is it not possible that the State Government would be stranded for lack of a quorum to choose a person to act as Governor?

In the event that there should be such a lack of quorum of either or both houses of the Legislature, under present law, extreme difficulties would ensue. Under present laws, vacancies in the Senate and the Assembly can be filled only by elections following the issuance of writs of election by the Governor. The holding of such elections not only involves a certain necessary amount of time but may actually be considerably delayed if the local registration of voter records are destroyed. Further, the Constitution imposes rigid limits on the minimum number of votes required to take legislative action. No action could be taken, in any case, if one-half or more of the members of either house lost their

lives in a disaster and, as to many types of legislative action, this would be true if more than one-third of the members of either house failed to survive.

It appears to the committee, therefore, that not only must a line of succession to the governorship be established of such length and depth as to make certain that there will be a person surviving legally able to act in that capacity, but that also **legal methods must be provided to enable a legislative quorum of sufficient size to take any necessary action to be assembled and enabled to do business.**

The latter can be accomplished in a number of different ways. The surviving Members of the Assembly can be authorized to act, until vacancies can be filled. The Governor may be empowered to make temporary appointments himself, or to appoint a commission to carry out the function. The present constitutional provisions regarding quorum, and size of majority could, in such an emergency, be suspended.

All of the changes discussed above require action by the people to amend the Constitution before they can become law. This in turn means that detailed study should be given to the most preferable form for such legislation to take before it is brought to the ballot.

2. CITY AND COUNTY GOVERNMENT

The problem of line of succession to high elective office and of legislative quorum applies to cities and counties as well as to the State Government itself. It is of the utmost importance to the speedy restoration of a functioning society following an attack that these implements of government be re-established as rapidly as possible. Urban areas are accustomed to municipal services such as police and fire protection and utilities such as water, sewers, and electricity. Such services and utilities are furnished by units of local government, counties, cities and districts.

The State Constitution attempts to cover the situations involved in the vacancies of local offices under Section 8 of Article 5, which reads:

Section 8. If any office shall, from any cause, become vacant, and no mode is provided by the constitutional law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

However, most city charters contain provisions for the filling of vacancies in office. The charter of the City of Los Angeles, for example, provides for the filling of a vacancy in an elective office by a majority vote of the members of the city council. Therefore, the constitutional provision would not be applicable because the method for filling vacancies is provided for in the charter. But if less than 10 members of the Los Angeles City Council survive an attack, there would be no quorum and therefore the council could not act. The charters of the various cities of California are by no means uniform with regard to this type of provision.

This committee should like to call the attention of local officials throughout the State of California to the necessity and desirability of amending local laws and city charters to provide a method whereby local governmental units can re-establish themselves and carry on in the shortest possible time after an attack.

PRESERVATION OF RECORDS

The orderly continuation of constitutional government at every level within the State of California depends, in a very large degree, upon the preservation of essential records. It is true that a considerable body of law exists in California relating to the restoration or duplication of lost or destroyed documents and providing remedies for those whose legal proof of land title, etc., has been destroyed. Many of these statutes grew out of the San Francisco earthquake and fire disaster of 1906. These statutes do not contemplate a situation in which a total emergency of the utmost gravity exists throughout the entire State of California which affects most of the functioning parts of its society simultaneously. Two illustrations will make this clear.

The McEnerney Act provides the method by which a person may quiet title to land where the public records in the office of the recorder of the county or city and county have been lost or destroyed by flood, fire or earthquake. The original and supplemental acts provide great detail for the form of a complaint, the issuance and service of summons, the jurisdiction of the court, the answer, the record pendancy of the action, and the rules of procedure. Another set of statutory provisions relates to the proving of the contents of lost or destroyed documents. *The Code of Civil Procedure*, Section 1937, provides that proof of the loss of an original writing must first be made before evidence can be given as to its contents. The section then provides that “* * * upon such proof being made, together with proof of the due execution of the writing, its contents may be proved by a copy or by a recital of its contents in some authentic document or by the recollection of a witness.” Even the most cursory consideration suffices to disclose the difficulty of applying these acts state-wide to a post-nuclear attack situation. How much better it would be, and how much a post-nuclear attack situation would be eased, if all important records, both public and private, were available in microfilm copy stored in a spot unlikely to be bombed. A start, but only a short start, has already been made in this direction.

With regard to state records, to the present knowledge of the committee, there is no comprehensive state system nor any specific code sections which apply to the preservation of state records in the event of disaster. However, the Secretary of State has taken steps to protect the records under his control that he considers vital. He has placed in storage in the atomic vault near Felton in the Santa Cruz Mountains a microfilm copy of the original laws of the State of California, original journals of the Legislature, the State Constitution and the Spanish Archives. The Secretary of State plans to microfilm all deeds to property owned in the State of California and store these copies in the atomic vaults near Felton.

The State Employees' Retirement System stores microfilm copies of board minutes, control account records, investment records and other permanent accounting records in a bank vault in secluded areas in the

northern part of the State. Also, the Compensation Insurance Fund has attempted to employ the dispersal principle by storing microfilm copies of their important records.

The Office of the Legislative Auditor is currently making a study of all state records to determine what state records should be moved from costly office space to the central record depository, what records should be destroyed after retention periods have been established, and what records should be in storage away from target areas in the event of disaster. This report is anticipated sometime during the month of January, 1957, and should be of considerable help in laying the groundwork for a comprehensive program of the microfilming and storage of vital state records against the possibility of atomic or hydrogen attack. This the committee considers vital.

Among other efforts in the same direction, the committee notes that the County of Los Angeles has established such a record storage center—Biscailuz Center in the hills adjacent to Los Angeles. The Los Angeles County Recorder has microfilmed some 65,000 volumes out of 77,000 total volumes and stored these at the center. Some 12,000 volumes of records which are either accessory or out-dated have not been microfilmed and 7,000 volumes of births, deaths, and other recordings have not been microfilmed because copies are available elsewhere. It is also worthy of note that according to testimony before the committee these records at the Biscailuz Center occupy 40 square feet of floor space whereas the originals required 30,000 square feet of floor space. Other city and county agencies have been invited to take advantage of this storage facility at a nominal cost but, in most cases, have not yet done so. For example, in the vital matter of the list of registered voters, the Los Angeles County Registrar prints 40 copies of the list of registered voters, maintains at least one bound copy in the office of the county registrar, and has one on file with the State Librarian but, so far, it has not filed any copies of this list either bound or microfilmed at Biscailuz Center. Doubt, however, exists as to whether Biscailuz Center would be spared in an H-bomb blast, as the center is only a few miles from the Civic Center, Los Angeles.

Legal authority now exists for officers charged with keeping public records to take such steps as may be necessary to preserve them in the event of disaster. But, as with most other laws of this type, the contingency of a nuclear attack was not anticipated. In this case, either the steps to preserve the records are taken *before* the disaster, or they cannot be taken at all.

Finally, the laws regarding the legal standing of microfilm copies as original records need clarification. The committee notes that the County Recorders' Association is now sponsoring such legislation which should be helpful.

With regard to public records, this committee suggests that the most serious consideration be given to a state-wide determination of what are vital records, to their microfilming, and to the establishment of perhaps several state depositories in which these microfilm copies of vital public records can be stored against the possibility of widespread nuclear attack.

BUSINESS AND LAW

The problems of the maintenance of constitutional government, however difficult, seem almost comparatively straightforward when set against intricate and complex snarls which would beset us in the economic and legal fields in the event of nuclear attack.

Our economic system is one in which a vital role is played by credit in the operation of a vast, intricate set of contractual and proprietary relationships.

The strain that successful though limited attack would impose on the credit system would be terrific. The immediate losses, physical and economic, sustained in the stricken areas alone would render insolvent a great many firms with all or major parts of their businesses in those areas. Solvency ordinarily depends on the maintenance of a going concern and not on the existence of claims for compensation.

In addition to the credit problems of the ordinary sort which we have noted in part, we would have a wide range of problems based on the effects of attack on long-term contracts. The limitations of improvised governmental action to cope with crises would be more than matched by the managerial problems in private industry. A surprise attack on Los Angeles, San Francisco, Chicago, Detroit or New York, if made during business hours, would remove leadership from a wide segment of American business. Closely held corporations might lose not merely their officers and directors but even their shareholders. Plants in the country would survive even though the top management located in the large cities were lost. Even if a protracted crisis had led many firms to put into effect existing plans to keep skeleton forces of officials and trained staff out of the target area, the burdens thrust on them would be far heavier than the full complement had been used to carrying.

What remained of the legal profession would be enormously hard-pressed if a daylight attack succeeded. The attorneys are the very people to whom the stricken banks and business corporations would ordinarily turn to meet problems of the sort which would multiply immediately in the wake of a nuclear attack. Attorneys and their offices are just as vulnerably located as the banks and corporate offices. Those who survived would face perhaps 20 times the normal demand for their services. In normal times the court system is directly involved in only a small fraction of the community's affairs. Only a small part of the Nation's firms go bankrupt even in a depression year; only a tiny fraction of all contracts give rise to disputes involving litigation; only a relatively few propertied people die each year. Nuclear attack would alter this situation rapidly. As insolvency is multiplied, demands for bankruptcy and arrangements would expand explosively. Contract disputes would also proliferate as the basic presumptions of the contracting parties were destroyed. Supply and requirements contracts would almost certainly be disrupted. Distributorships and patent licenses would be affected. Executive employment contracts at high

salaries could embarrass firms. Regulated contracts of utilities and carriers would need re-examination. The corporate mortgage with its various covenants might be unduly restrictive after a nuclear attack had destroyed the factories. Long term lessees might, indeed probably would, experience the same trouble that automobile dealers had with their showrooms in World War II.

The pressure on the courts handling decedents' estates and such family relationships as guardianships would mount fantastically in the areas that had sustained attack and, apart from the dislocation of lives involved, the problems of ownership that would arise if estates were frozen could seriously impede needed economic adjustments. For example, who would vote the stock of closely held corporations when the shareholders of record are dead or missing? Who is entitled to manage and sell property, to compromise disputed claims, to have custody over minors and incompetents? In normal times, the orderly settlement of estates enables us to answer these and many like questions, sometimes slowly, after a man of property has died. But suppose that the death rate among such men has mounted a thousand or two thousand percent in a month?

And where, quite literally, would one find the courts having the jurisdiction over these corporate and property problems? Where, for example, in the event that Los Angeles had sustained a nuclear attack, would be the United States District Court for Southern California, which has its seat in Los Angeles? Where would the Probate Court of Los Angeles County be? Where would the California Supreme Court be if San Francisco were hit by a nuclear bomb while the court was in session?

Similar questions can be multiplied almost endlessly. Disruption caused by atomic attack might require suspension of the statute of limitations; would compel the altering of judicial time tables so that rights would not be lost through failure to file, etc. Should this be state-wide in the nature of a moratorium or should it be an extension of the existing rules on relief from judgments because of mistake, inadvertence and neglect?

Obviously the case load of the courts would require masters, referees, commissioners, pretrial procedures, and sharp limitations on appeals. It follows that the planning for such an eventuality must, of necessity, be done as soon as possible, and, in addition, some system established to provide for temporary appointment of qualified members of the legal profession to act in an official capacity during the emergency.

The multiplicity of problems involved in adjusting our society to successfully withstand a nuclear attack may, at first glance seem so complex and involved as to be hopeless. It is true that the prospect of solving these and countless other problems of like nature for the first time after atomic war has begun is truly desperate. If, however, collectively and individually, we plan and put into effect measures to cope with the situation, we can keep post-attack problems to manageable proportions. Indeed, the very process of thinking them through can lead to a wholesome simplification of a good many existing laws, procedures and private arrangements.

Fortunately, we are not without the benefit of the experience of other peoples in coping with similar problems. A study of foreign experience in World War II is encouraging. With the outbreak of war, England and Germany, for example, put extensive laws into effect to provide for the handling of war-created legal and economic problems. Elaborate contracts were devised to meet wartime exigencies. The courts in England and Germany were authorized to rewrite contracts when they became inequitable by reason of war conditions.

In addition to being able to draw upon the experience of other nations and upon our own experience in disasters of limited extent, we are fortunate to possess an ample number of qualified experts within the state to study and report on the problems and recommend solutions.

APPENDIX No. 1

OPINIONS OF THE OFFICE OF THE
LEGISLATIVE COUNSEL

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, February 24, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

DISASTER LEGISLATION—#1094

DEAR MR. KILPATRICK :

You have asked (1) what federal legislation has been enacted to meet a disaster caused by an all-out enemy attack, and (2) what provision is made for carrying on the Federal Government if Washington was destroyed and with it, the President, Vice President, the members of the cabinet and the Congressmen.

(1) Congress has enacted extensive provisions to provide a plan of civil defense for the protection of life and property in the United States from attack (Act of Jan. 12, 1951, Ch. 1228, 64 Stat. 1245, 50 U. S. C. App. 2251-2297). The act is popularly known as the Federal Civil Defense Act of 1950 and provides that the responsibility for civil defense be vested primarily in the several states and their political subdivisions with the Federal Government providing the necessary coordination.

The Federal Civil Defense Act provides, among other things, for:

(a) A Federal Civil Defense Administration headed by an administrator appointed by the President, charged, generally, with preparation of plans for civil defense; delegation to departments and agencies of the Federal Government of civil defense responsibilities; making provision for civil defense communications; studying and developing civil defense measures; conducting or arranging training programs for instruction of civil defense officials and other persons; dissemination of civil defense information; assisting and encouraging the states to negotiate and enter into interstate civil defense compacts; making financial contributions to states; and arranging for sale of surplus materials and facilities.

(b) A Civil Defense Advisory Council to assist the Administrator.

(c) Emergency authority, upon proclamation by President, under which federal departments and agencies may provide (1) their personnel, materials, and facilities to the Administrator for the aid of the states, (2) emergency shelter by construction or otherwise, and (3) protective or other work essential to the preservation of life and property, for clearing debris and wreckage, and for making emergency repairs to, and temporary replacement of, communications, hospitals,

utilities, transportation facilities, as public facilities of states or their political subdivisions damaged or destroyed by attack.

Further, during any emergency declared by the President, the Administrator may procure, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil defense, and the Administrator is authorized to sell, lease, lend, transfer or deliver materials to or perform services for civil defense purposes on such terms and conditions as the Administrator shall prescribe; coordinate and direct for civil defense purposes, the relief activities of the various departments and agencies of the United States; reimburse any state (or political subdivision thereof) for compensation paid to aid the transportation, subsistence, and maintenance expenses of any employees while engaged rendering civil defense aid outside the State and for materials of the state government or any political subdivision consumed outside of the State, including transportation thereof; provide financial assistance for temporary relief or aid of any civilian injured or in want as the result of any attack; and employ temporary additional personnel without regard to civil service laws and incur such obligations on behalf of the United States as may be required to meet the civil defense requirements of an attack or anticipated attack

(2) The United States Constitution provides that in case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of his office, the office devolves on the Vice-President (Art. II, Sec. 1 (6), U.S. Const.) The same provision of the Constitution provides that Congress may by law provide for the case of removal, death, resignation or inability both of the President and the Vice President, declaring what officer shall act as President. Pursuant to that provision, the Congress adopted the act of June 25, 1948 (Ch. 644, 62 Stat. 672, 3 U.S.C. 19, 20), which reads:

“Sec. 19. (a) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

“(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

“(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

“(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that—

“(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

“(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

“(d) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Postmaster General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor.

“(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

“(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

“(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

“(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.”

We are unaware of any particular provision that would specify the manner in which government would be conducted if all members of Congress were casualties. However, in the absence of any martial law, upon the selection of new members of Congress in the manner prescribed by the Constitution (see U. S. Const., Amend. XVII and Art. 1, Sec. 2(4)), Congress could provide a person to act as President either through selection of an officer who would qualify under existing law or by further legislation. In the event of a disaster such as you suggest,

undoubtedly considerable legislation would be required to provide for resumption of federal activities.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By
GEORGE H. MURPHY
Deputy

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 29, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

CALIFORNIA DISASTER ACT—#3599

DEAR MR. KILPATRICK:

You have asked for an analysis of the California Disaster Act. This act is Chapter 1 of Division 7 of the Military and Veterans Code, commencing with Section 1500. Most of its provisions were the result of the enactment by the Legislature of the Civil Defense Act of 1950. Some of the provisions of this law are temporary in nature and have been continued in effect by the Legislature at each regular session for subsequent two-year periods. The chapter was further amended at the 1956 Special Session to emphasize its provisions regarding disaster as well as civil defense and to make special provisions to prepare for and cope with disasters other than those caused by war.

Provision is made for the California State Disaster Council which consists of the Governor who is chairman, the Lieutenant Governor, the Attorney General, and appointive members who represent city and county governments, city or county fire services and law enforcement services, and the American Red Cross. The President pro Tempore and the Speaker of the Assembly also meet with and participate in the work of the council to the extent they may constitutionally do so. The members of the disaster council receive no salaries but are reimbursed for their expenses incurred in connection with their duties.

The principal functions of the disaster council are to act as an advisory body to the Governor with reference to the disaster program, to consider and recommend rules and regulations to be promulgated by him, to approve certain mutual aid plans, and to consider and recommend to the Governor for approval a state disaster plan.

The Governor is authorized to assign all or part of his powers and duties under the chapter to the California Disaster Office which is established as part of his own office staff and which was formerly known as the Office of Civil Defense.

The California Disaster Office is in charge of the Director of the Disaster Office, formerly known as the Director of Civil Defense, who is appointed by the Governor with the approval of the Senate and whose salary is fixed by the Governor at not to exceed \$15,000 a year. When the Governor proclaims a state of disaster within any region of the State the director acts as a co-ordinator of all state disaster activities

in connection with such emergency, and each state agency and officer is required to cooperate with him in carrying out the provisions of the disaster law.

While the Governor cannot delegate to the director his power to make rules or the power to proclaim a state of extreme emergency or a state of disaster, the director is authorized by law to exercise the power to proclaim a state of extreme emergency or a state of disaster in a proper case when the Governor has not acted because he is inaccessible. In such a case his action must be ratified by the Governor as soon as he becomes accessible, and if the Governor does not ratify the action he is required immediately to terminate the state of extreme emergency or state of disaster as proclaimed by the Director of the Disaster Office.

The Governor is also authorized to create citizen advisory committees to assist in specific fields of civilian protection, war services and disaster mitigation. Members of such committees serve at the pleasure of the Governor and receive no salaries, but are reimbursed for their expenses.

The Governor, with the advice of the disaster council, is authorized to divide the State into mutual aid regions or areas within which counties and cities may exercise their powers within or outside their boundaries either in a state of extreme emergency or state of disaster, or in periods of local peril or emergency.

Counties and cities are authorized to create local disaster councils by ordinance. Such councils are required to develop a plan for meeting any condition of extreme peril or any condition which justifies the proclamation of a state of extreme emergency or a state of disaster, which plan shall provide for the effective mobilization of all the resources of the community both public and private. The state disaster council is required to establish by regulation various classes of disaster service workers and the scope of the duties of each class, and to provide for the registration of such workers. When a local disaster council agrees to follow such regulations it is certified by the state disaster council and thereupon becomes an accredited disaster council. Disaster service workers of an accredited disaster council are entitled to workmen's compensation benefits if killed or injured in the course of their duties as provided by Chapter 10 of Division 4 of the Labor Code. The Governor is authorized to accept gifts, grants or loans of services, equipment, supplies or funds for purposes of civil defense or mitigation of disaster either from the Federal Government or from private sources and may authorize such acceptance by political subdivisions. He is also given broad powers to provide for the necessary offices and equipment and other matters necessary to provide for the establishment and furnishing of the disaster plan.

No organization for civil defense or the mitigation of disaster may participate in any form of political activity or may be employed directly or indirectly for political purposes. The Governor is authorized to adopt and modify necessary orders and rules to carry out the chapter with due consideration of the plans of the Federal Government. Any orders or rules made in the absence of a period of a state of extreme emergency are required to be in writing and are subject to the approval of the disaster council and take effect upon such approval.

The Governor must coordinate the plan and program for the mitigation of disaster, which plan and program shall be integrated into and co-ordinated with the civil defense plans of the Federal Government. He must also co-ordinate the preparation of plans and programs for the mitigation of disaster by the political subdivisions of the State, which plans shall be integrated and co-ordinated with the state disaster plan and program to the fullest possible extent.

The Governor is authorized to exercise broad powers during a period of a state of extreme emergency. A "state of extreme emergency" is defined as meaning the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the State resulting from enemy attack or threatened military action, and also as a result of other cause such as fire, flood, storm, epidemic, riot, earthquake or air pollution, which conditions by reason of their magnitude are likely to be beyond the control of the protective facilities of any single county or city and require the combined forces of a mutual aid region or regions to combat. "State of extreme emergency" does not include, and the chapter does not apply to, any condition resulting from a labor controversy.

The Governor is authorized to proclaim a state of extreme emergency in an area or region affected, or likely to be affected thereby, when he finds that some or any of the circumstances described in the definition thereof exist, and if he is requested to do so in the case of a city by the mayor or chief executive or in the case of a county by the chairman of the board of supervisors, or he finds that local authority is inadequate to cope with the peril.

During a period of a state of extreme emergency the Governor is granted complete authority over all agencies of the state government and the right to exercise within the area or regions designated all police power vested in the state in order to effectuate the purposes of the chapter. He may issue and enforce rules and orders which he considers necessary for the protection of life and property. These rules and orders become inoperative whenever the period of the state of extreme emergency has been ended either by the expiration of the period or by proclamation of the Governor declaring the period terminated.

In the exercise of these emergency powers the Governor may commandeer or utilize any private property or personnel necessary for such purposes, and provision is made for the State to pay the reasonable value thereof. However, the Governor is not authorized to commandeer any newspaper or any newspaper wire service, but may utilize any newspaper wire service in such a manner as to interfere as little as possible with the use thereof for the transmission of news. Claims for any such payment are to be presented to the State Board of Control in the manner provided for the presentation of claims against the State for taking or damaging of private property for public use.

During such a period the Governor is granted broad powers to order public employees of local agencies to perform duties outside the territorial limits of their agencies.

Whenever it appears that a state of extreme emergency proclaimed by the Governor will continue for more than seven days, the Governor is required to call a meeting of the disaster council to commence not

later than the expiration of such seven days. All of the powers of the Governor under such a proclamation terminate when the Governor has failed to call such a meeting of the disaster council or he has not, within 30 days after issuing the proclamation, convened the Legislature for the purpose of legislating on subjects relating to the state of extreme emergency, except when the Legislature is already convened with power to legislate on such subjects.

The powers of the Governor during a period of a state of disaster are not as broad a "state of disaster" as defined as meaning the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the State caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions except as a result of war-caused disaster, which conditions by reason of their magnitude are likely to be beyond the control of the protective facilities of any single county or city and require the combined forces of a mutual aid region or regions to combat. "State of disaster" does not include any condition resulting from a labor controversy.

The Governor is authorized to proclaim a state of disaster in an area or region affected or likely to be affected thereby when he finds that some or any of the circumstances described in the definition thereof exists and if he is requested to do so in the case of a city by the mayor or chief executive, or in the case of a county by the chairman of the board of supervisors, or he finds that local authority is inadequate to cope with the peril.

During a state of emergency, as well as a state of disaster, the Governor is granted broad powers to order public employees of local agencies to perform duties outside the territorial limits of their agencies. He may direct all agencies of the State Government to utilize their personnel, equipment and facilities for activities designed to prevent and alleviate actual or threatened damage due to the disaster, and such agencies may expend any of its moneys for such activities irrespective of the particular purpose for which the money was appropriated.

During a state of disaster the Governor may suspend the provisions of any regulatory statute or statute prescribing the procedure for the conduct of state business, or the rules or orders of any state agency where he determines, and declares that strict compliance therewith would in any way prevent, hinder or delay the mitigation of disaster.

During a state of extreme emergency or a state of disaster in the event that any equipment possessed by a local agency is damaged or destroyed while being used outside of its territorial limits, the agency suffering loss may file a claim for the amount thereof against the State, but it has no claim against the State for services of personnel or for the rental, use, or ordinary wear and tear of equipment, except such extraordinary services incurred by the local agencies in executing mutual aid agreements.

In such cases the laws relating to immunities from liability and exemption from laws or ordinances and pension, relief, disability, workmen's compensation and other benefits which apply to officers or employees of a local agency when performing their functions within their territorial limits shall apply to them to the same degree in per-

formance of their functions outside their territorial limits as provided by this law.

Any physician and surgeon (whether licensed in this or any other state), hospital, nurse, or dentist that renders services during a period of any state of extreme emergency or any state of disaster, at the express or implied request of any state officer or local disaster council is not liable for any injury sustained by any person by reason of such services regardless of the circumstances, except that such immunity does not apply in the event of a wilful act or omission.

Volunteer disaster workers who are duly enrolled and registered have the same immunity as officers and employees of counties or cities performing similar work, and local governmental agencies are not liable for personal injury or property damage sustained by duly enrolled or registered volunteers engaged in or training for disaster preparedness or relief activity.

Any violation of the provisions of the chapter or a refusal or willful neglect to obey any lawful rule or order promulgated or issued as provided therein constitutes a misdemeanor punishable by a fine not exceeding \$500 or by imprisonment not exceeding six months or by both fine and imprisonment.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By LAWRENCE G. ALLYN
Deputy

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 29, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

FUNCTIONING OF GOVERNMENT FOLLOWING DISASTERS—#3343

DEAR MR. KILPATRICK:

You have asked us to review a letter addressed to you by Mr. William H. Neal, Assistant City Attorney of the City of Los Angeles, and our previous opinions to you on this subject and advise you as to any conflict.

We do not believe there is any essential conflict between our opinions to you and Mr. Neal's letter.

Mr. Neal points out that most city charters provide for the filling of a vacancy in an elective office by a majority vote of the members of the city council and states that some legislation is desirable to provide for filling such vacancies where a disaster results in a lack of a quorum of a city council by reason of death or incapacity of more than a majority of the council.

Mr. Neal also points out that in an emergency it may be that a de facto government may take over to meet the needs of a situation and cites cases in which the courts have upheld the acts of de facto city governments in emergency situations.

In our opinions to you we discussed only the express constitutional and statutory provisions that relate to the continuance or reestablishment of local and state governments following a disaster and the need for further legislative action if such continuation or reestablishment is to be provided for in an orderly and unquestionably valid manner. We did not consider the question of the possibility of de facto governmental action since there is so little case law in this field and any expression of opinion in that respect would be largely speculative and for the further reason that your primary concern was to consider legislation to provide for de jure continuation or reestablishment of governmental agencies.

There is another point not discussed in our opinions that we feel should be brought to your attention. We did not consider the possible inherent powers of the Governor under a declaration of martial law since there is not enough case law on this subject to afford a basis for any positive opinion. Also we did not consider the broad powers that the Legislature has endeavored to invest in the Governor under the California Disaster Act (Chapter 1 of Division 7 of the Military and Veterans Code) since this act has never been specifically construed and there is very little judicial authority as to the extent the Legislature can add to the war powers of a Governor (see Re Opinion of the Justices by the Massachusetts Supreme Judicial Court, 150 A.L.R. 1482, and following note).

In the event of an atomic attack it is most likely that martial law will be declared as well as a state of extreme emergency as provided in the California Disaster Act. While it may well be that if the Governor, purporting to act pursuant to such declarations, adopted any reasonable methods designed to continue or restore state or local government his action would be upheld eventually by the courts as establishing de facto if not de jure governmental agencies, we can express no unqualified opinion on this subject that could be supported by judicial decisions. As previously stated, we believe that legislative action is necessary to provide for the orderly and de jure continuance or restoration of state or local governments in the event of an atomic disaster.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By LAWRENCE G. ALLYN
Deputy

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 21, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

HOLDING OF ELECTIONS AFTER DISASTER—#3324

DEAR MR. KILPATRICK:

You ask what might be possible to provide for prompt elections on state or city levels in the event that voters' registration lists were destroyed in a major disaster.

One possible solution would be to provide, by appropriate amendments to the Elections Code, that voters under such circumstances could swear to affidavits that they were residents of the precinct in which they vote and were qualified to vote therein, which affidavits could be sworn to before the election officers of the precinct and delivered to those officers at the same time as the voters cast their ballots. In other words, the voters would be authorized to register and to vote at the same time and place as the election was held. A precedent for this procedure can be found in Chapter 1 of the statutes passed at the Special Session of our Legislature that convened on January 27, 1944, which made similar provisions for absentee voters under the War Voters Law except that the affidavits were mailed with the absent voter ballots.

Another possible solution you may wish to consider is legislation to provide for photocopying or microfilming the voter registers in the more populous counties and the depositing of these copies in some safe place either within or without the county. However, we have no information that would enable us to advise you of the feasibility of such a procedure, and it undoubtedly would be more expensive and cumbersome than our other suggestion.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By LAWRENCE G. ALLYN
Deputy

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, November 21, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

FUNCTIONING OF LEGISLATURE FOLLOWING DISASTER—#3323

DEAR MR. KILPATRICK:

You have asked what provision could be made to insure continuity of the Legislature in the event of a major disaster either by providing for appointment by the Governor to fill vacancies or by constituting the surviving members a quorum until an election can be held.

You also ask whether any type of emergency legislation is possible in view of the fact that a constitutional amendment might require at least two years to enact.

In order to provide either for the filling of vacancies in the Legislature by the Governor in the event of a major disaster or to provide that the surviving members constitute the Legislature and correspondingly reduce the number of members of each house that constitute a quorum and the number necessary to pass a bill, it would require a constitutional amendment since the provisions of law regarding these matters are now contained in Article IV of the State Constitution. Either method of procedure appears to us to be feasible and presents no legal problem. The choice of methods is entirely one of policy.

A constitutional amendment must, of course, be submitted to the electors of the State for their approval. However, such approval need not be deferred necessarily until the next general election. The Legislature has power to enact a law calling a special election at which such a constitutional amendment could be submitted to the voters. Pursuant to Section 1 of Article IV of the Constitution, acts calling special elections can be made to take effect immediately so that such an election could be held within a few months after such an act is passed after allowing sufficient time for the preparation of arguments for and against the measure, the printing of ballot pamphlets and ballots and the other procedural steps necessary for the conduct of the election.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By LAWRENCE G. ALLYN
Deputy

OFFICE OF LEGISLATIVE COUNCIL
SACRAMENTO, CALIFORNIA, November 15, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

EFFECT OF DISASTER ON MEMBERS OF LEGISLATURE
AND CONGRESS—#3315

DEAR MR. KILPATRICK:

You have asked us to assume that an atomic disaster occurs in one of the large cities of the State that renders the city uninhabitable for several years due to radioactivity, assuming further that the Members of the Legislature and of Congress from districts within the city survive but are forced to reside elsewhere. You ask:

(a) Would the legislators continue to be members of the Legislature despite the fact that no one resides in their districts and despite the fact that the particular legislators no longer live in their districts?

(b) What would the effect be when their terms end and no election can be held in the district?

You also ask the same questions with respect to Members of Congress from districts in the area.

It is our opinion that the legislators would continue to be members of the Legislature for the remainder of their terms.

When the terms of these members expire there will be a vacancy that could not be filled except by an election.

The same answers apply equally to members of Congress.

The only residence requirement with respect to members of the Assembly is contained in Section 4 of Article IV of the State Constitution, which provides that a member must be a citizen and inhabitant of the State three years and of the district for which he shall be chosen for one year next before his election. His membership would not be affected by removal from the district after his election. Further, under the principles of law relating to residences a member would not necessarily lose his status as a resident of the district if he ceased to live in

the district because it was uninhabitable, provided it was his intention ultimately to resume living in the district when able to do so.

There is nothing in the Constitution or statutes that would cause a member to lose his status as such because of a change in population of the district even though such change is so great that no person actually lives in the district. Further, the same rules of residence would apply to electors from the district as apply to members.

As to the second question, Members of the Assembly are elected biennially for a term of two years as provided in Section 3 of Article IV of the State Constitution. There is no provision for a member to hold over until his successor is elected and qualifies. Section 12 of Article IV provides that when vacancies occur in either house the Governor shall issue writs of election to fill such vacancies. There is no alternative method of filling vacancies in the Legislature, such as by appointment. Consequently, the uninhabitable district would not have a representative in the Assembly until an election could be held.

So far as Members of the House of Representatives are concerned, the only residence provision we have found is in Section 3 of Article I of the United States Constitution, which requires only that representatives be inhabitants of the State in which they are chosen. While our State Constitution and the Elections Code provide for the establishment of congressional districts, we found no express requirement that members of Congress for those districts must reside in them either at the time of their election or during their terms, nor did we find any court decision indicating that this requirement is necessarily implied.

Section 2 of Article I of the United States Constitution provides that the House of Representatives shall be composed of members chosen every second year, and the Twentieth Amendment provides that the terms of representatives end at noon on the third day of January in the years in which such terms would have ended had that amendment not been ratified. Section 4 of Article I provides that when vacancies happen in the representation of any State the executive authority thereof shall issue writs of election to fill such vacancies.

In view of the foregoing constitutional provisions it is our opinion that Members of the Assembly and of Congress would continue to serve out their terms if their districts become uninhabitable due to radioactivity but that vacancies would exist at the end of those terms which could be filled only by the holding of proper elections. A possible remedy would be to authorize the Legislature under such circumstances to reapportion Assembly and Congressional districts and to create new districts from which members could be elected. This would require a constitutional amendment since our State Constitution now permits such action once in ten years following the decennial federal census.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel
By LAWRENCE G. ALLYN
Deputy

OFFICE OF LEGISLATIVE COUNSEL
SACRAMENTO, CALIFORNIA, October 5, 1956

HONORABLE VERNON KILPATRICK
3715 Abbott Road, Lynwood, California

PRESERVATION OF GOVERNMENTAL RECORDS DURING
DISASTER—#2792

DEAR MR. KILPATRICK:

You have asked what provisions have been made by state law for the preservation of essential records of state agencies in the event of a disaster such as an atomic attack.

There does not appear to be any provision of law specifically providing for storage of agency records in designated bomb proof vaults.

Apparently, Section 1229 of the Government Code is the only section that provides for preservation of records where modern wartime emergency conditions were contemplated. It grants the public officer charged with custody of the records the power to take any action, including the power to transfer the records to any place within the state, necessary for preservation of the records during certain emergencies. The section reads as follows:

“Any public officer who is charged with the custody of public records may take any action, including the transfer of such records to another place within the State, necessary for the safekeeping of such records during any duly proclaimed extreme emergency pursuant to Division 7 of the Military and Veterans Code.”

The “extreme emergency” referred to in the above section is defined in Sections 1505 and 1505.5 of the Military and Veterans Code as follows:

“As used in this chapter, ‘state of extreme emergency’ means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the State caused by an enemy attack or threatened attack by land, sea, or air, or when upon the advice of the commanding general of this area, such an attack is imminent, an air raid alarm, sabotage, or other cause such as fire, flood, storm, epidemic, riot or earthquake, which conditions by reason of their magnitude are or are likely to be beyond the control of the protective services, personnel, equipment and facilities of any single county, city and county, or city and require the combined forces of a ‘mutual aid region or regions’ to combat. ‘State of extreme emergency’ does not include nor does any provision of this chapter apply to any condition resulting from a labor controversy.”

“A ‘state of extreme emergency’ exists immediately and without a proclamation thereof by the Governor whenever this State is attacked by an enemy of the United States by the use of atomic weapons. A period of a state of extreme emergency existing as provided in this section shall be ended in the same manner as a state of extreme emergency proclaimed by the Governor.”

Preservation of historical items and some state records is provided for by storage in the State Archives under the custody of the Secretary of State. The provisions governing the operation of the archives are set forth by Sections 12220 to 12229 of the Government Code and are as follows:

"12220. As used in this article, 'item' includes but is not limited to any paper, document, book, map, or other type of record.

"12221. The Secretary of State is the custodian of the public archives of the State.

"12222. The Secretary of State shall maintain and properly equip safe and secure vaults for the preservation, indexing, and use of the archives.

"12223. The Secretary of State shall receive into the archives any item that is required by law to be delivered to or filed with him.

"12224. The Secretary of State may receive into the archives any item that he deems to be of historical value and shall receive into the archives any other item from a State agency if directed to do so by the Department of Finance.

"12225. With the approval of the Department of Finance, the Secretary of State may at any time return to the State agency from which it was received any item in the archives which he does not deem to be of historical value.

"12226. With the consent of the Secretary of State, the governing body of a county or city may by order or resolution direct the transfer to the Secretary of State for inclusion in the State archives, of official items it deems have historic interest or value, and which are in the custody of any officer of the county or city. Accurate copies of the transferred items shall be substituted for the originals when the governing body deems necessary.

"12227. The Keeper of the Archives is responsible for the preservation and indexing of material deposited in the State archives, and shall make the material readily available for use.

"12228. The Keeper of the Archives shall give an appropriate receipt for all material received by him as a part of the archives.

"12229. The Secretary of State may maintain any item in an active file in his office for such time as he deems proper before transferring it to the archives."

Some other state records are preserved by the Central Record Depository under the custody of the Secretary of State. The provisions governing the operation of the above are contained in Sections 12260 to 12264 of the Government Code and are as follows:

"12260 The Secretary of State shall establish in his office a bureau to be known as the Central Record Depository, for the receipt and custody of all records required or permitted by law to be filed or deposited in the office of the Secretary of State, and may employ such personnel as may be necessary for the proper and efficient operation of the bureau.

"12261. The Secretary of State may, with the approval of the Department of Finance, contract with any qualified person for a

professional survey of records in his custody, in order to establish a uniform method of filing which shall be followed by all state agencies filing records with the Secretary of State.

"12262. The Secretary of State may, with the approval of the Department of Finance, do any or all of the following:

(a) Acquire such filing equipment, lighting equipment, and other equipment as may be necessary for the proper functioning of the bureau.

(b) Provide suitable space for the occupancy of the bureau, and cause such alterations and repairs to be made in his offices and the space under his jurisdiction as may be necessary or convenient for that purpose.

(c) Adopt, amend, and rescind rules and regulations for the receipt and filing of state records in his custody.

(d) Do all things necessary to preserve valuable state records.

"12263. The Secretary of State may, after consultation with the respective interested state agencies, determine as to any record or class of records, the period for which it shall be kept before being destroyed, whether it shall be microphotographed before being destroyed, or whether it shall be microphotographed for the purpose of making a duplicate record.

"12264. The public records of any state agency may be microfilmed or otherwise photographically reproduced and certified on the written authorization of the head of the agency. The microfilming or photographic reproduction must meet the standard specification of the United States Bureau of Standards.

"The certification of each such reproduction or set of reproductions shall be in accordance with the standards, or have the approval, of the Attorney General. The certification shall contain a statement of the identity, description, and disposition or location of the records reproduced, the date, reason, and authorization for such reproduction, and such other information as the Attorney General requires.

"Such certified photographic reproductions shall be deemed to be original public records for all purposes, including introduction in courts of law and state agencies."

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By AUSTIN N. BARBER, Deputy

APPENDIX No. 2

LETTER OF THE LEGISLATIVE AUDITOR ON PRESERVA-
TION OF ESSENTIAL STATE RECORDS IN
EVENT OF DISASTER

JOINT LEGISLATIVE BUDGET COMMITTEE
CALIFORNIA LEGISLATURE
SACRAMENTO, CALIFORNIA, October 2, 1956

HONORABLE VERNON KILPATRICK
Assemblyman, 55th District
3715 Abbott Road, Lynwood, California

DEAR ASSEMBLYMAN KILPATRICK:

In reply to your telephone call of September 28, 1956, regarding the California system and provisions for preservation of essential state records in event of disaster, we submit the following.

To our knowledge at present there is no comprehensive state system nor any specific code provisions which apply to the preservation of state records in the event of disaster. However, the Secretary of State has taken steps to protect the records under his control that he considers vital. He has placed in storage in the atomic vault near Felton in the Santa Cruz Mountains a microfilm copy of the original laws of the State of California, original Journals of the Legislature, the State Constitution and the Spanish Archives. The Secretary of State plans to microfilm all deeds to property owned by the State of California and store this microfilm copy in the atomic vaults near Felton.

The State Employees Retirement System stores microfilm copy of board minutes, control account records, investment records and other permanent accounting records in a bank vault in Grass Valley. Also, the Compensation Insurance Fund has attempted to employ the dispersal principal by storing microfilm copies of their important records in their Fresno office.

Our office is currently making a study of all state records to determine what records should be moved from costly office space to our central records depository, what records should be destroyed after retention periods have been established and what records should be in storage away from target areas in the event of disaster. We anticipate that this report will be completed during the month of January.

A survey by our office of the storage and use of records of the Bureau of Vital Statistics of the Department of Public Health was reported to the Joint Legislative Budget Committee on December 1, 1955. A copy of this report is attached. This survey indicated that a microfilm copy is being made of these records but there has been no provision for disaster security storage. Further study is being made of this problem due to a difference of opinion in regard to whether the microfilm copy

or the original document should be used for reference in making duplicate copies.

We will be happy to supply you with copies of the results of our current studies of records management as they are completed or as they progress, if you wish.

Sincerely,

A. ALAN POST
Legislative Auditor

THE STORAGE AND USE OF RECORDS OF THE BUREAU OF VITAL STATISTICS, DEPARTMENT OF PUBLIC HEALTH

Prepared by the Legislative Auditor
December 1, 1955

The purpose of this report is to determine whether the procedures followed by the Bureau of Vital Statistics concerning the birth, marriage, and death certificates filed with the Department of Public Health pursuant to Division 9, Chapters 4, 5, and 6 of the Health and Safety Code provide the greatest possible efficiency and economy.

Facts obtained from the Bureau of Vital Statistics indicate that approximately 15 and one-half million pieces of paper are presently being filed. The bureau has filmed all of the certificates and made a negative roll. All of the original records are stored with the film in the basement of a building at 631 J Street in Sacramento.

The bureau has given consideration to a program which would provide: (a) protection of all vital records, (b) an adequate copy for office use, and, (c) increased utilization of office space and equipment through permissive legislation to destroy the original records. These are sound objectives for an effective records management program. However, the \$115,000, spent in the last eight years has failed to accomplish these objectives; this consists of \$70,000 for restoration and \$45,000 for microfilming.

The present vital records protection program consists of microfilming the original certificates of births, marriages, and deaths. It is generally recognized that an effective program of this type must have procedures to disperse duplicate copies of vital records to locations which provide protection of these records in times of disaster. There should also be a plan to evacuate or remove all records for which no duplicates exist to a location of safekeeping in times of disaster.

The bureau has, as yet, gone only so far as to provide a copy of all documents through microfilming. However, this copy is being stored in the same rooms as the original records, thereby largely eliminating the protection which is offered in the event of disaster by having a duplicate.

It is further noted that the building in which the records are stored, while being reasonably fireproof, is not a desirable place to house records. The area does not have adequate air conditioning, humidification, or ventilation for proper storage of records of film. It is our opinion that little protection has been provided for these records in the duplication of them through the use of microphotography, because no attempt has been made at dispersal.

After a review of the material submitted by the bureau and an inspection of the premises, we submit the following record-keeping plan for the department, which we believe adequate and the most economical at this time.

1. The generally accepted standard is that if there are less than 10 references per cubic foot a year, records are considered inactive and may be scheduled for storage with the Central Record Depository. Active records should be retained in the office building. From an observation of the present file operation, it would appear that a large percentage of the records could be scheduled for record center storage.

Assuming that a 50 percent distribution of files could be accomplished (one-half in office and one-half in storage) the following storage costs would be applicable: Total records holdings of the bureau, i.e., birth, marriage, and death certificates, are estimated to be 2,500 cubic feet. Scheduling one-half of this for storage indicates that 1,250 cubic feet of files could be stored in 1,250 cartons on 21 shelving units. This is a storage ratio of 10 cubic feet of records stored to one square foot of floor area occupied. The present ratio in the office is less than two cubic feet for one square foot.

Records should be stored in facilities which are available in the Central Record Depository of the Secretary of State's office. Information concerning these facilities is outlined in Exhibit A.

The cost of the containers (approximately 13 cents) and the shelving units (approximately \$35 per section) would represent an initial total cost of \$900 and, under present conditions, would have to be borne by the bureau. Cost to the State from that time on, based on present space rates, would be about \$180 a year.

Even at the present rate of records increase (approximately 13 percent annually), the documents can be stored for far less than the cost of a second microfilm copy.

2. Microfilm presently being stored in the basement should be removed and stored in a location designed to preserve records against the elements and disasters, such as bombing attacks, floods, and earthquakes. Original records would then be used for all references. This is substantially in agreement with the recommendation made in a 1951 report of the Management Analysis Section of the Department of Finance, with the exception that that report envisioned the use of microfilm for reference instead of the original records. Our recommendation does not contemplate the destruction of original records in the near future.

Considering that \$70,000 already has been spent on rehabilitation of these documents, it is reasonable to assume that, stored under proper conditions, they should provide many more years of service with a minimum expenditure. Also significant is the diminishing rate of reference in relation to the age of the records.

The advantages of the plan outlined above are:

- a. It would release office space and equipment.
- b. It would provide realistic protection for vital records.
- c. It would provide for planned records retirement.
- d. The continued use of the original records for office use would eliminate the necessity for a duplicate microfilm copy for this purpose, thus saving cost of additional microfilm equipment and supplies.

In our opinion, the existing photostat equipment used to produce certified copies from the originals is adequate for present needs.

Exhibit A

FACILITIES OF THE STATE ARCHIVES AND CENTRAL RECORD DEPOSITORY

Office of the Secretary of State
State of California

Plant

On or about March 1, 1956, the State Archives and Central Record Depository will become the prime occupant of the Old State Printing Plant at 1020 O Street. Approximately 40,000 square feet of operational area has been assigned for immediate use. In the future, it is expected that normal expansion will require the use of the entire structure, and it will become known as the State Archives and Record Center Building. Constructed of reinforced concrete, this sturdy fireproof building will provide safe, secure, and economical housing. Temperature, humidity controls and an alert fire-alarm system will be additional safeguards for the State's records.

Storage and Service

Storage facilities will be available as usual, including the use of the most economical and modern record center storage equipment; namely, a special type cardboard container (housing both letter and legal size material) and a steel shelving unit. Records will be received from the agencies and checked against their inventories; a signed receipt will then be issued and transmitted to the agencies for the records. If information is required from the records, it will be given in 85 percent of the instances over the telephone. Plans have been made for the installation of a two-way internal communication system in the building that will enable the staff to render rapid reference service to the agencies. This system also will save innumerable steps for the staff and, thereby, reduce operational costs. In other instances, the agencies may send a representative to search the records; the records may be transmitted to the local agencies through the state mail service, and, for the out-of-city agencies, the records can be mailed or expressed.

Reproduction

Copies of records will be made by photostat process in the reproduction section of the office of the Secretary of State. This service can be rendered within a reasonable time, and emergency requests can be expedited.

Disposition

As in the past, the disposition of most records authorized for destruction will be by sale as waste paper. This will include the deposited records at the end of their retention periods, as well as any records the agencies wish to transport to the depository for inclusion in the shipments to the waste paper dealer.

APPENDIX No. 3

LETTER OF THE ATTORNEY GENERAL ON LEGISLATION
FOR CONTINUITY OF STATE AND LOCAL GOVERN-
MENT IN EVENT OF ATOMIC ATTACK

OFFICE OF THE ATTORNEY GENERAL
SAN FRANCISCO, December 5, 1956

HONORABLE VERNON KILPATRICK, *Member of the Assembly,*
Fifty-fifth District
Chairman of the Assembly Subcommittee on the Impact of Enemy
Attack on Constitutional Government, Los Angeles, California

DEAR MR. KILPATRICK:

After a number of discussions with our office, you have asked for my views upon the need for standby legislation to provide continuity for or restoration of state and local government in the event that California receives an atomic attack.

The consideration which your committee is giving to this problem is definitely needed. In my opinion the essential point is to recognize the desirability and need for study of this problem and the making of plans to make possible continuation of civil government or its restoration at an early moment. In some quarters there is an attitude, often not expressed, that such study and planning is a waste of effort and time because if an atomic attack is made the Army will take over anyway and impose martial rule. That type of thinking is unfortunate. In the first place, *present* federal thinking places primary operating responsibility on state and local governments. Martial rule would be established only when the civilian government is unable to function satisfactorily. This basic approach recognizes that people will respond best to the leadership of representative civil government. Hence, our efforts should be directed toward making government adequate to the situation.

However, the problems—many of which are novel—and their solutions present so many matters of policy that I should think that study and planning should be the work of a special advisory committee composed of representatives of the California Disaster Office, representatives of the state and local bar associations, the Legislative Counsel, and the Attorney General. With the impending meeting of the Legislature, it might be advisable to introduce a number of spot bills, covering the subjects which are presently recognized as requiring legislation, with a view toward supplying the specific legislation when the Legislature reconvenes in March. Meanwhile, with the help of the present hearing of this Committee, an agenda of problems could have been drawn up and specific legislation prepared.

You have inquired regarding the following matters:

1. Legislation to provide for appointment by the Governor to fill vacancies or to constitute the surviving members a quorum until elections can be held.
2. Legislation to reconstitute voters registration lists destroyed in order to provide for elections on city and state levels.
3. If Legislators would continue to be members of the Legislature, despite the fact that neither the Legislators nor their constituents reside in their districts. Secondly, what would be the effect when their terms end and no election can be held in their district?

I have read the opinions of the Legislative Counsel on the above matters. With respect to the first question, I agree with the conclusion of the Legislative Counsel that a constitutional amendment would be required to provide for either method by which the Legislature could resume functioning.

I am also in accord with the suggestion that, by appropriate amendments to the Elections Code, voters could place themselves on the registration lists through affidavits.

With respect to the third question, it also is correct that the Legislators would continue to be members of the Legislature for the remainder of their terms, but that at present the terms of these members would expire and the resulting vacancies could not be filled without an election. It is also my view that a constitutional amendment would be required in order to permit members of the Legislature to continue to serve beyond the expiration of their terms until elections could be held.

As you know, the Attorney General is one of the designated members of the California State Disaster Council and I shall read the suggestions which are made at this hearing to determine what action upon them the Council should be asked to take.

Very truly yours,

EDMUND G. BROWN
Attorney General

APPENDIX No. 4

LETTER OF WILLIAM H. NEAL, ASSISTANT CITY ATTORNEY, CITY OF LOS ANGELES, ON REESTABLISHMENT OF LOCAL GOVERNMENT IN CASE OF DISASTER

OFFICE OF CITY ATTORNEY
LOS ANGELES, CALIFORNIA, August 30, 1956

HONORABLE VERNON KILPATRICK,
Assemblyman, 55th District,
3715 Abbott Road, Lynwood, California.

Re: Local government reestablishment in case of war or other disaster resulting in death or incapacity of majority of governing body De facto government.

DEAR MR. KILPATRICK:

At the request of Mr. J. E. McCormack, representing your interim committee, I am submitting herewith some personal views as to the maintenance of local government services after an enemy attack during war or other disaster wherein the majority of the members of a local governing body may have been killed or so incapacitated as to be unable to carry on their official functions.

You have been advised by both the Attorney General and the Legislative Counsel that no present laws adequately cover the situation which your committee has under contemplation. With this interpretation I generally agree. The State Constitution attempts to cover such situations in Section 8 of Article 5, which reads:

“Sec. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.”

This provision is a carry-over from the 1849 Constitution which was construed in *People v. Cazneau*, 20 Cal. 504 (1862) to mean that this constitutional provision was applicable only when no law prescribed a mode or method for filling vacancies in office. The words “Constitution and law” in Section 8, Article 5 have been construed to mean “Constitution or law.” (*People v. Nye*, 9 Cal. App. 148 (1908).)

Most city charters contain provisions for the filling of vacancies in office. The charter of the City of Los Angeles provides for the filling of a vacancy in an elective office by a majority vote of the members of the city council (Section 267). Therefore, the constitutional provision would not be applicable because the method for filling vacancies is provided for in the charter. A case arose in the City of Eureka with the adoption of a new charter in 1895 over the filling of the office of harbor

master. The State Supreme Court in *Quigg v Evans*, 121 Cal. 546 (1898), decided that case by saying: "There being no mode specifically provided by law or by the Constitution for filling such vacancy, the Governor was authorized to do so under the provision of the Constitution already quoted."

It occurs to me that some legislation is desirable to take care of situations where, although a law may provide for the filling of vacancies in office, it was impossible to comply therewith because of a lack of a quorum to act by reason of death or incapacity of more than a majority of the local government having the power of election or appointment. This might be accomplished by vesting such power in the Governor.

There do not appear to be any California decisions upon the precise question with which your committee is confronted. However, Californians have always been able to handle emergency situations with respect to local government. Before the State was organized and admitted to the Union local governments were established by the residents of California mining camps which exercised both civil and criminal jurisdictions and passed local laws governing mining camps. Many of these local laws and customs were later recognized as legal by the State Supreme Court (*Mining Camps, a Study in American Frontier Government*, by Charles Howard Shinn (Knolf, 1948, reprint, pp. 258 and 259, and cases there cited))

In an emergency *de facto* governments may take over to meet the needs of a situation and until legal machinery may fill the hiatus left by the death or incapacity of a *de jure* government be re-established. Such *de facto* governments have been recognized by the courts in many cases. The rule is that a *de facto* corporation may not be collaterally attacked. Only the state itself may question the legality of the *de facto* organization. With respect to the rule which forbids the collective attack upon the existence of a municipal corporation, the Supreme Court of New Mexico, in *City of Albuquerque v. Water Supply Co.*, 174 Pac. 217 (1918), reviews many cases on the rule, and quotes from *City of Topeka v. Dwyer*, 78 Pac. 417 (Kansas, 1904) as follows:

"The rule rests wholly in expedience, and operates in defiance of other legal doctrines. The consequences to society of allowing private collateral attacks upon the existence of cities would be intolerable, and hence courts are concerned with the question, not if there exists a valid law, but if considerations of the public welfare shall forbid any inquiry as to whether or not there is a valid law; not if constitutional limitations have been transgressed, but if the public tranquility and the effective administration of government require that the matter of validity or invalidity shall be ignored, and a situation of affairs be arbitrarily recognized as if it were legal, whether in fact it be so or not."

In a case which arose in California, *Tulare Irrigation District v. Shepard*, 185 U. S. 1 (1902), the United States Supreme Court held that validity of the organization of an irrigation district, under the California Irrigation Act of 1887, because of insufficiency of notice, cannot be raised as against bona fide holders of bonds issued by such district

which met all requirements to constitute a *de facto* corporation, which requirements are set forth in the decision as follows:

“From the authorities * * * it appears that the requisites to constitute a corporation *de facto* are three (1) a charter or general law under which such a corporation as it purports to be might lawfully be organized; (2) an attempt to exercise thereunder; and (3) actual user of the corporate franchise. The case at bar contains the requisites.”

An interesting case upon the ingenuity of the American people to set up local governments whenever and wherever they may settle arose out of the opening of the Oklahoma country to settlement and occupancy in 1889. A large number of people settled for townsite purposes upon the lands now occupied by the City of Guthrie. The Act of Congress, approved March 2, 1889, contained a provision that no entry of lands for townsite purposes shall embrace more than 320 acres in any one entry. To avoid this inhibition, and segregate more lands for the purpose of trade and business, four separate entries were made of these lands, consisting of 320 acres each, and were severally denominated Guthrie, East Guthrie, Capitol Hill and West Guthrie. The townsite settlers and occupants of each of these subdivisions organized what were called provisional governments with charters adopted by the people at public meetings held for such purpose, and each selected municipal officers, made public improvements, graded streets, erected buildings, constructed bridges, adopted laws and ordinances, and arrested, punished and imprisoned violators of such ordinances. These provisional governments assumed and exercised all the powers, functions and authority of legally-constituted municipal corporations, and continued to exercise the same until 1890 when they were consolidated and organized as a village corporation. During the existence of the several provisional governments they each contracted and created in various ways pertaining to their municipal affairs certain debts, which remained unpaid at the time the said provisional governments were converted into a legally constituted municipal corporation. The territorial legislature passed an act requiring the consolidated City of Guthrie to pay the debts of the former provisional governments. The United States Supreme Court in deciding the case said:

“The first question to be determined in this controversy is as to the legal status or character of the so-called ‘provisional governments.’ It is a well-established rule of law that before there can be a *de facto* municipal corporation there must be some authority for a *de jure* corporation. A *de facto* corporation cannot exist where there is no law authorizing a *de jure* corporation. * * * These provisional governments grew out of a necessity made by the absence of legal authority. They were aggregations of people associated together for purpose of mutual benefit and protection. Without any statute law, they became a law unto themselves, and adopted the forms of law and government common among civilized people, and enforced their authority by the power of public sentiment. They had no legal existence. * * * The *de jure* corporation having succeeded to all the property, public improvements, people,

and territory of the provisional governments, has the legislature power to compel the *de jure* government to pay the debts of its illegal unauthorized predecessor? It is a fundamental rule that a legislature may, by a retroactive statute, cure or ratify any defect which it might have, in the first instance, authorized unless prohibited by some constitutional or organic provision; or it may, by a retroactive statute, legalize any proceedings that it might have authorized."

The court held that the act passed by the territorial legislature was legally valid and that the City of Guthrie was compelled to pay such debts in accordance with the territorial statute.

These are some rambling thoughts which bear upon the problem which confronts your committee. If I can be of any further assistance to you or your committee please advise me.

Very truly yours,

WILLIAM H. NEAL,
Assistant City Attorney.

APPENDIX No. 5

PROGRESS REPORT OF LEGISLATIVE AUDITOR ON
RECORD DISPOSAL STUDY

JOINT LEGISLATIVE BUDGET COMMITTEE
SACRAMENTO, CALIFORNIA, January 15, 1957

HON. VERNON KILPATRICK
Assemblyman, 55th District
State Capitol, Sacramento, California

DEAR ASSEMBLYMAN KILPATRICK:

Pursuant to our letter of October 2, we are furnishing you the following progress report on our record disposal study.

We wish to recommend for your consideration the introduction of skeleton bills on the following topics. A brief statement of our tentative findings follows each heading. Our report, when completed, will be released through the Joint Budget Committee, and we shall see that you get one at the earliest possible moment. This will contain further detailed justifications of the present recommendations.

1. An act to add Section 12264 to the Government Code, to establish a Joint Interim Committee on Essential Records, and declaring the urgency thereof, to take effect immediately.

Summary Justification. A nuclear attack on California would find only the official archives of the State, and two relatively minor administrative record groups microfilmed *and in adequate bombproof storage*. An immediate determination should be made, under legislative guidance and mandate, of which records *are essential to the continuance of government* after such a disaster. Recommendations should be presented by each agency to the Committee, standards set, and the absolute minimum of *essential* records microfilmed immediately. The bill should be implemented with funds, tentatively in the amount of \$150,000.

2. An act to add Section 12260.1 to the Government Code, declaring the intention of the Legislature to designate the building at 1020 O Street, Sacramento, as the California Central Record Depository and Archives.

Summary Justification. This building is now divided between the Central Record Depository and Archives, and a sorting and mailing activity of the Personal Income Tax Division of the Franchise Tax Board. A conflict of interest has arisen, which will reach an acute stage about September 30, 1959, so far as we can determine at present. At that time additional space will be required, and one activity or the other will be forced to move. We believe that loft space for the Franchise Tax Board can be obtained more economically than adequate warehousing space can be obtained for the Central Record Depository and Archives. Architects of the Space Allocation Section of the Depart-

ment of Finance, and of the Division of Architecture of the Department of Public Works, should be heard, as well as representatives of the agencies affected.

If the Central Record Depository and Archives is required to move, legislation should be introduced at this session to purchase or build housing for it. Rental space or buildings at the State Fairgrounds can be used, in an emergency, for the Franchise Tax Board.

3. An act to add Section 12260 2 to the Government Code, to authorize the Secretary of State to establish and operate a Branch Record Depository in the Los Angeles area.

Summary Justification. The intent of this proposal is to economize on office space, and to provide adequate physical custody and reference service for documents having a low rate of reference. It is intended that this be used only for such documents as the agencies feel they must have available for immediate reference, all others to be shipped to Sacramento.

We recommend a first year budget of \$18,791 for this activity. The Secretary of State should be authorized to operate this Branch Record Depository, notwithstanding any other provisions of law which may conflict with it. He should also be given permission to operate it in leased space.

4. An act to amend Section 12465 of the Government Code, Destruction of reports: Microfilming before destruction. "All reports from county and city officials and individuals which have been in the custody of the Controller for a period of five years may be destroyed. ~~When they are in excess of 10 years old, the Controller may also destroy after they have been microfilmed claims upon which warrants have been issued, canceled warrants, and other records involving the expenditure of state money. Microfilming before destruction of the documents herein mentioned need not be done if in the opinion of the Controller and the Director of Finance there is no need to preserve a record of the documents to be destroyed. This section does not apply to books of original entry. Paid invoices may be destroyed by the Controller, after final audit, with the concurrence of Director of Finance (Auditor General?). Claim schedules, canceled and paid warrants, and documents relating thereto may be destroyed by the Controller, with the concurrence of the Director of Finance (Auditor General?) at the end of five years from the close of the fiscal year in which they were produced. The Controller may destroy pay roll supporting documents and attendance reports at the end of four years from the close of the fiscal year in which they were produced, with the concurrence of the Director of Finance (Auditor General?).~~"

Summary Justification. We find that the documents listed above are being held far beyond the expiration of the Statutes of Limitations, with possible minor exceptions. In general, this recommendation is satisfactory to the officials concerned. The Controller takes exception to a five-year retention period on Motor Vehicles Tax Refund documents;

we, in turn, believe the Controller's practice in collecting on refunds made 10 years previously should be reviewed by the Legislature. Note that this is *permissive* legislation, and the Controller remains free to hold documents longer if he deems it necessary. We find microfilming of these documents is not justified from a cost standpoint.

We appreciate your interest in this matter, and stand ready to be of assistance as required.

Sincerely,

A. ALAN POST
Legislative Auditor

PRELIMINARY REPORT OF THE SPECIAL COMMITTEE
ON LEGAL PROBLEMS IN DISASTER
OF THE LOS ANGELES BAR ASSOCIATION

I. Introduction. This special committee of the Los Angeles Bar Association was appointed in October pursuant to a request made by Hon. Vernon Kilpatrick, Chairman of the Assembly Subcommittee on the Impact of Enemy Attack on Constitutional Government. The task given the Los Angeles Bar Association special committee was to study legal problems that may arise in time of disaster with particular reference to the impact of enemy attack on constitutional government so as to provide, in advance, appropriate legislation to eliminate distress and confusion and to assure the continuation of the administration of justice through the disaster period. The special committee was given only six weeks to study and report. With such a short time all that the committee can do is to investigate the problems that might arise.

Current civil defense estimates are that in the initial enemy attack, 70 percent of the bombs would be delivered on target and that there would be sufficient bombs to hit all critical target areas. Charles Fairman, "Government Under Law in Time of Crisis," page 88. Our retaliatory attacks would destroy the enemy's attacking ability, but it is assumed that he might be able to mount some repeated attacks for secondary target areas. Victory in such a war might well go to the society that could hold together in face of such catastrophies. David F. Cavers "Legal Planning Against the Risk of Atomic War," 55 Col. L. R. 136.

Los Angeles is important. The assessed valuation of Los Angeles County for 1953-54 was greater than the assessed valuation of 39 states—only nine states (including California) exceeded it in assessed valuation. As of January 1, 1955, with 5,186,000 inhabitants, only eight states (including California) exceeded it in population. Los Angeles City in 1955 was exceeded in population by only 27 states and in assessed valuation by only 21 states. (In judging these figures keep in mind that Los Angeles County assessments are conservative—estimated at 35 percent of actual value.)

Los Angeles is busy. The Los Angeles metropolitan area (Los Angeles and Orange Counties) in 1954 was in third place nationally in value added by manufacture, only New York and Chicago exceeding it. In June, 1956, the Los Angeles metropolitan area had 704,000 workers in manufacturing and in July, 1956, a total number of 2,367,000 persons gainfully employed. In 1954 the number of industrial establishments was 14,492, second only to New York. In 1954 Los Angeles County Agricultural production was fourth nationally with products valued over \$170,000,000. The Los Angeles fishery has the greatest dollar volume in the United States. In 1954 the Los Angeles metropolitan

area had 13 industries with a dollar volume of over \$100,000,000 each and eight over \$200,000,000 each. Said figures do not include movies which employ about 34,000. Los Angeles is the number one county in the Nation in retail store sales (passing Cook County, Illinois, in 1954).

It is probable, then, that the Los Angeles area would be hit. Since it is so spread out, it might be hit repeatedly. If the whole State of California were destroyed or uninhabitable the problems presented to the special committee might become moot. Such total destruction, however, is not contemplated. For the purposes of this report it is assumed that the results of the atomic attacks would be far more serious than the earthquakes, fire and floods experienced by the State because the nerve centers would be destroyed or injured. Large parts of California, however, would be relatively undamaged.

II. Study Important. In the face of a hard first hit plus possible repeated attacks could the Los Angeles area maintain social cohesion? Probably injured would be fleeing the hard-hit areas and secondary target areas would be evacuating. Some of the problems caused by such a situation will be mentioned later, but it is unlikely that present legal machinery is adequate.

Some think "when the 'real thing' comes the Army will have to 'take over'"—that a "dictator * * * backed by martial law, would be the only solution * * *" Charles Fairman "Government Under Law in Time of Crisis" *supra*, pages 108 and 110. But the Army feels that "they have got enough to do as it is * * *" and "* * * do not like to take on these responsibilities * * *" but "They cannot escape being forced to act * * * The failure of * * * the people to understand the danger * * * is incomprehensible * * * ." Charles Fairman, *supra*, page 111.

This special committee submits that a study of disaster legal problems is important. Present legal machinery should be studied to determine if it is adequate for such disasters and if it is to show how it would work. If it is not (and the committee believes that such is the case) study should be made of improvements to do the job.

This special committee does not believe that lawyers will long tolerate martial law. See Fessenden, "Martial Law and the State of Seige," 30 Cal. L. R. 634; Anthony Garner, "Martial Law in Hawaii," 30 Cal. L. R. 371 and 600; "Martial Law, Military Courts and the Writ of Habeas Corpus in Hawaii," 31 Cal. L. R. 477; Walter Armstrong, "Martial Law in Hawaii," 29 A. B. A. J. 698. But there might be no choice.

Advance planning to insure the continuation of civil control would help in preventing martial law or in getting it withdrawn if it were imposed. Homer Crotty, "Administration of Justice and the H-bomb," 37 A. B. A. J. 893. It would be a contribution to our citizens worthy of our profession.

III. Categories of Problems. Problems facing persons studying disaster problems can for convenience be grouped under the following headings:

- A. Law and order.
- B. Preservation of records.
- C. Emergency rules of law.

They will be discussed under those headings.

IV. Law and Order. Law and order problems seem to resolve themselves into the prompt re-establishment of state and local government. This mainly involves the replacement of personnel. Such problems present two questions:

- (1) Are present provisions adequate, and if not what changes are necessary?
- (2) Will changes proposed insure that the personnel is qualified?

A. Re-establishing State Government. Re-establishing our State Government after an atomic attack raises basic questions of California constitutional law. For example Article IV, Section 8 provides:

“A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.”

and Article IV, Section 12 provides:

“When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.”

Suppose the attack, hitting California urban areas but leaving the rest of the State largely undamaged, killed or seriously injured more than a majority of one house or both houses. Would the State Government be paralyzed until an election? (Note, it would not be a simple matter to hold an election under such circumstances.)

Suppose further, that all of the officers listed in Article V, Section 16 as successors to the Governor were killed. Said section provides that:

* * * * *

“In any case in which a vacancy shall occur in the Office of Governor, and provision is not made in this Constitution for filling such vacancy, the Senior Deputy Secretary of State shall convene the Legislature by proclamation to meet within eight days after the occurrence of the vacancy in joint convention of both houses at an extraordinary session for the purpose of choosing a person to act as Governor until the office may be filled at the next general election appointed for election to the Office of Governor.”

* * * * *

Assuming the Senior Deputy Secretary of State to be alive to convene the Legislature, is it possible that the State Government would be stranded because of lack of a quorum to choose a person to act as Governor?

In any emergency the presence of a Legislature to pass laws and a Governor to enforce them would be vital. Likewise vital are courts which could be hamstrung if no Governor were available to appoint

new judges. See Constitution Article VI, Sections 3, 4a, 8. Study should be made to find answers to these problems.

B. Re-establishing Local Government. Urban areas are accustomed to municipal services such as police and fire protection, and utilities such as water, sewers and electricity. Such services and utilities are furnished by units of local government, counties, cities and districts. It is vital that the legislative bodies of these local units be re-established to deal with the problems that arise. It is possible that there might be no remaining members of the legislative body. Study should be made as to methods of speedy reappointment. It is suggested that local government re-establishment should not depend upon prior re-establishment of the State Government, for, as shown above, the State might not have a government. Perhaps a solution to the local problem would be alternate stand-by officers already appointed.

V. Preservation of Records. The special committee was informed that studies were already being made as to preserving public records, so no work was done on this very important problem.

Members of the committee, however, did consult with their clients to see if said clients had duplicate records that would enable them to re-establish their businesses. With a few exceptions the universal answer was "no." Businesses with branches in other areas still had central records. While this is efficient business management, it is no protection after an atomic attack. Attorneys have important records in their offices. Studies should be made on preserving such private records.

VI. Emergency Rules of Law (Legal First Aid). After an atomic attack problems certainly will arise that have not been anticipated. It is vital to have a State Legislature that can deal with such problems by passing the necessary laws. The committee, then, did not consider any permanent law changes, but emergency rules only. Such emergency rules should be considered as "legal first aid."

A. Court Problems. The most litigation arising from atomic attack would probably occur in the areas worst hit. Shifts in population would result in more work for courts in outlying areas.

"Should the business of a destroyed court be transferred to other courts or should the court simply be reconstituted and given other quarters? In either case, the safe deposit of microfilmed court records would be desirable. What provision should be made for the rapid replacement of dead and disabled judges and court personnel, due regard being given to the fact that the normal source of replacements would be in target areas? What changes in the rules as to jurisdiction and venue might be necessary in view of the likely shifts in courts and population? Certainly all rules as to constructive service should be reviewed." Cavers, *supra*, 55 Col. L.R. 152.

Disruption caused by atomic attack would justify tolling of the statutes of limitations. It would compel the altering of judicial timetables so that rights would not be lost through failure to file, etc. Should this be state-wide, in the nature of a moratorium, or should it be an

extension of existing rules on relief from judgments because of mistake, inadvertence or neglect?

The case load burden might require masters, referees and commissioners, pretrial procedures, sharp limitations on appeals.

Remembering that the aim is to have legal "first aid" it is apparent that less damaged areas must do all of the work. Study should be made to see if legal machinery can meet the test and to suggest helpful legislation.

B. Business Problems. Long term contracts present a set of serious problems. The corporate mortgage with its various covenants might be unduly restrictive after an atomic attack had destroyed the trustee. Long term lessees might experience the same trouble that automobile dealers had with their showrooms in World War II. Supply and requirements contracts would almost certainly be disrupted. Distributorships and patent licenses would be affected. Executive employment contracts at high salaries could embarrass firms. Regulated contracts of utilities and carriers could result in legal roadblocks if the basis of determining rates changed. It is suggested that some of these problems can be met in advance by draftsmanship, but the usual *force majeure* clauses may not be desirable. "During World War II, courts in England and Germany were authorized to rewrite contracts when they became inequitable by reason of war conditions." Cavers, *supra*, 55 Col. L. R. 148. Study should be made of this form of "legal first aid." Perhaps the use of arbitration would not add to the court burdens.

Destroying the nerve centers of corporations can create serious problems. Some of the questions needing study are:

"How should the chain of corporate command be extended and under what conditions should command be shifted? What emergency powers should be conferred on officers? What provisions should be adopted to govern special post-attack meetings of directors, reducing notice and quorum requirements? Should the SEC modify its rules as to proxy solicitation, to become effective upon attack? Would it be advantageous to create voting trusts of corporate shares, to become effective upon attack? What measures should be taken to facilitate the calling and holding of shareholders meetings and proof of share ownership and transfer?" Cavers, *supra*, 55 Col. L.R. 149.

Family and estate problems would face each of us and most of our clients. Some of the questions Professor Cavers feels need study are:

"1. *Testamentary dispositions.* To what extent could the use of powers conferred on safely situated family friends or relatives make possible the post-attack revision of estate plans? Would a given plan provide sufficient liquidity to meet survivors' immediate needs, in the view of the closing of securities markets and delays in payment of insurance proceeds? How should the risk of sharp post-war inflation be taken into account? Should the courts have power to revise dispositions where changed conditions due to attack had rendered wills and trusts unjust or ineffective to achieve the testator's or settlor's objectives?"

“2. *Administration.* What should be done in advance to provide probate courts with personnel and physical facilities both to take the place of destroyed courts and to handle the greatly increased case load? What relaxation might be made as to jurisdictional requirements? What measures could be taken for protecting and insuring the accessibility of probate court records? Could *ante mortem* probate be used for wills? How should provision be made for substituting representatives and trustees where those designated in estate instruments (including *inter vivos* trusts) had been killed or incapacitated or, as in the case of corporate trustees, had become understaffed to handle the expanded case load? What simplifications are needed in the requirements as to guardians *ad litem*? What should be done to the notice requirements and timetables for probate courts and administration proceedings? Should administration through the courts be dispensed with entirely in estates below a specified size, say, 50,000 pre-attack dollars?

“3. *Proof.* Are present laws relating to proof of death and of survivorship in common disasters sufficient for atomic attack situations? What measures, if any, should be taken to facilitate proof of lost instruments? What measures could be adopted to facilitate the transfer of securities in cases involving problems of proof? To what extent should banks and safe deposit companies be entitled to recognize claimants to deposits and valuables without strict proof of right? Should special protection be given to personal representatives distributing on the basis of what by peacetime standards would be inadequate and inaccurate proof as to ownership? Should stricter post-attack rules of proof be set up to cover creditors' claims?

“4. *Insurance.* What moratoria might be provided for life insurance premiums and claims? What measures should be planned to assure the orderly rehabilitation of insurance company portfolios and the early recognition of claims, at least up to a limited amount? To what extent and under what conditions should new insurance policies be allowed to be written while atomic attacks were continuing? Would it be desirable to extend the facility of payment clause to other forms of insurance than industrial life? Could and should insurance policies be included in any powers granted for the post-attack revision of estate plans? What adjustments, if any, should be made in the division of state and federal regulatory powers over insurance?” Cavers, *supra*, 55 Col. L.R. 150-51.

VII. Conclusion. Even though the special committee has been very limited in its time, certain conclusions are apparent. These are as follows:

- A. The problems presented are important and deserve thorough study.
- B. The most important is the re-establishment of state and local government, including the courts, as all other problems hinge on having officers available to deal with the problems.

- C. Some one agency needs to act as coordinator for the study of these problems. That agency could be the Assembly Subcommittee on the Impact of Enemy Attack on Constitutional Government, or any other agency qualified to, and which would undertake the task of coordinating the studies to be made.
- D. There is an ample supply of qualified people in California to study and report on these problems. Among the groups who would be qualified to study and report on various aspects of these problems from a legal standpoint, would be the following:

The State Bar of California

Local Bar Associations (particularly larger associations such as the Los Angeles Bar Association, the San Francisco Bar Association, the Alameda County Bar Association, etc.)

The Judicial Council

The Attorney General

The Legislative Counsel

The League of California Cities

The County Supervisors Association

The Irrigation Districts Association

- E. Specific problems should be assigned to the respective study groups. Because the various problems overlap, there will be some duplication of work, but if each study group knew what others were doing, they could check with each other as their studies progressed.
- F. This special committee of the Los Angeles Bar Association would be willing to participate as a study group in a coordinated study of these problems in such specific field as might be assigned to it.

Respectfully submitted,

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