MINUTES OF COMMISSION MEETING
July 15, 2004

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein and Vito Gagliardi, Jr. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch, and Professor Bill Garland attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the June 24, 2004 Meeting were accepted as submitted.

Weights and Measures

John Cannel commented on a version of 51A:10-1., Prohibited Acts, which Linda Doherty, President, New Jersey Food Council, sent to him. Mr. Cannel prefers her subsections (b) and (c) to the draft versions. Regarding Ms. Doherty's subsection (i), Mr. Cannel said "manufacturer" can be substituted for "retailer." By agreement of the parties, that section would impose liability on the manufacturer or producer to pay any penalty arising from an error caused by the manufacturer or producer, as opposed to the retailer paying the penalty and subsequently recovering from the manufacturer or producer.

Chairman Burstein said that from a consumer's standpoint, the local retailer may have deeper pockets than the manufacturer has. Professor Garland suggested stating that "Nothing in the Act will impair any rights…." Chairman Burstein said he prefers not to include subsection (i). Commissioner Gagliardi proposed putting the issue in the section's commentary. The Commission unanimously approved the proposal. The Commission directed Mr. Cannel to address the issue of shifting liability from the retailer to the producer by agreement of the parties and the regulator, in the comment.

Mr. Cannel asked the Commission to comment on (d)(2) in the draft dealing with the issue of same act/multiple offenses. Professor Garland asked if violations pertaining to a single lot of an improperly marked product would constitute separate offenses. Mr. Cannel said it would if Handbook 133 allowed it. Chairman Burstein pointed out that the draft has two (b)s, and the language in (d)(2) is bulky. Mr. Cannel is to simplify the language of the new draft.

Professor Bell suggested deleting the words "inure to the" and "of" in subsection (e). He asked if the power to order a court appearance was implicit in subsection (f). Chairman Burstein said there may be a policy reason, such as an egregious case, supporting a court's decision to order an appearance. Mr. Cannel should put in a standby provision, giving discretionary power to the Municipal Court.

In Section 51A:3-4(j)(1), the word "minimally" should be changed to "reasonably." Professor Garland noted that the section's introductory line says "shall," but that (j) does

not fit grammatically with "shall." He further noted that (j)(2) concerns "the Superintendent" who is not an "officer." Chairman Burstein said to carve out a new section for Superintendent. The Commission also added the phrase "that benefit consumers" in subsection (e).

Mr. Cannel said that the enforcing officers still want more enforcement and fines; the food industry people want less. The Commission is being hit from both sides.

U.C.C., Article 2.

Chairman Burstein reported that Barry Evenchick said there is no major push to get this out of the National Conference of Commissioners on Uniform State Law. No state has adopted it yet. Mr. Cannel said there is not much in it that justifies the time needed to be the first state to adopt it. John Burke said that it avoids all the difficult questions, leaving them to the courts' discretion: for example, 1) "goods" vs. "information;" 2) hybrid goods; 2) post-formation terms – does not say whether they are valid or not; 3) battle of form issues are improved but not totally resolved. Precedent has settled many earlier questions. The Article is heavily amended in places; for example, electronic transactions, which the Commission has always regarded as enforceable under New Jersey law. Mr. Cannel gave inventory restocking as an example of contracts completed by two electronic robots.

Chairman Burstein questioned the value in going through the material prepared for the Commission when there was no strong indication that it was likely to become uniform law. The Commission has examined the U.C.C. proposal and will hold it aside. If the Commission later learns of legislative activity in the area, it can come back to it.

Mr. Burke stated which parts of the revised uniform commercial code have been enacted, and questioned whether the process of making uniform law has broken down given the limited response of states to the substantial revisions made to the Code. Chairman Burstein asked staff to keep tabs on it and said that he will have Barry Evenchick keep in touch with him.

Title 39. – Motor Vehicles

Laura Tharney said that the Commission now has all of Volume 2. except the last sections, on financial responsibility. Those sections will go with Volume 3. She spoke with the Director of the Legal Department of the Motor Vehicle Commission (MVC) who will have his people review Volume 1. and provide feedback prior to the Law Revision Commission's September 9th meeting. Ms. Tharney said that the Commission will have a preliminary cut of all of Title 39.

Mr. Cannel said that the MVC has committed to cooperating with our Commission. Commissioner Gagliardi asked if the Commission should read Title 39 materials over the

summer. Ms. Tharney suggested holding off on Volume 2. until she has received comments on Vol. 1. Chairman Burstein asked if there are any issues the Commissioners should be thinking about. Ms. Tharney said that she is compiling a list of issues raised by people in the field with whom she has spoken informally (judges, police, etc.) and that she could give the Commissioners the list in advance of the September meeting. Mr. Cannel mentioned motor vehicle offenses as one topic.

Commissioner Gagliardi recommended that Ms. Tharney contact Tony Parenti who recently retired after 30 years as the Traffic Safety Officers Association President. He is an instructor at the John H. Stamler Police Academy in Scotch Plains, NJ. and is the leading expert in motor vehicle offenses.

Chairman Burstein said that we need to broaden our contacts in the field, and asked Ms. Tharney to reach out to more people. This section of the law, he said, has grown like Topsy without having been examined. This project has meat on it and we should move ahead, getting into the more substantive areas in September.

Miscellaneous

Mr. Cannel reported that the UCCJEA awaits the Governor's signature.

Mr. Cannel asked if the time is right for recompilation. He noted that the Commission has some projects which do not move because they are too big, and some which are too hot (Landlord-Tenant). Material still exists in Title 2A. which the Commission could work on. Would we want to spend five years on the non-substantive project of recompilation? Recompilation can be done in house (as Illinois did) or with a publisher.

Chairman Burstein said to put it on the September agenda under a generic title with the aim of getting feedback. He noted that the revolution in how legal research is done (now mainly by word search) has affected the need for compilation and said that we must recognize that fact.

The next meeting of the Commission is scheduled for September 9th.