

#65

9/17/65

Memorandum 65-64

Subject: Study No. 65(L) - Inverse Condemnation

The 1965 legislative session adopted Senate Concurrent Resolution No. 80 which directs the Commission to study:

Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects. The study of this topic is necessary because of the magnitude of the potential liability for inverse condemnation under recent decisions of the California courts.

We are delighted to be able to report that Professor Van Alstyne has indicated his willingness to serve as our consultant on this topic. He is presently engaged in preparation of a research report for the Constitutional Revision Committee but anticipates that he will be able to begin work on our research report sometime in January 1966. We believe that this will permit production of the first portion of the report (dealing with the power to the legislature to enact legislation that would limit the liability that now exists for inverse condemnation) by August 1966. This would permit the Commission to submit a proposed constitutional amendment to the 1967 legislative session if it is determined that a constitutional amendment is needed or desirable. The remainder of the report should be in our hands during the early months of 1967. We anticipate that we would submit a recommendation on this topic to the 1969 legislative session.

Accordingly, the staff recommends that the Commission approve making a contract with Professor Van Alstyne to prepare a comprehensive research study covering all aspects of inverse condemnation and that he be paid

\$5,000 for such study. In addition, the staff recommends that the contract authorize Professor Van Alstyne to publish the research report in a law review and that the law review article or articles would then be photo-offset in our report. Such publication would be made after the Commission had given preliminary consideration to the research study and authorized publication of the study. These terms are agreeable to Professor Van Alstyne. We further recommend that the Executive Secretary be authorized and directed to execute the agreement on behalf of the Commission.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON, D. C. 20544

ALBERT B. MARIS
CHAIRMAN

September 10, 1965

CHAIRMAN OF ADVISORY COMMITTEES

DEAN ACHESON
CIVIL RULES

PHILLIP FORMAN
MANUSCRIPT RULES

JOHN C. PICKETT
CRIMINAL RULES

WALTER L. POPE
ADMIRALTY RULES

E. BARRETT PRETTYMAN
APPELLATE RULES

ALBERT E. JENKINS
EVIDENCE RULES

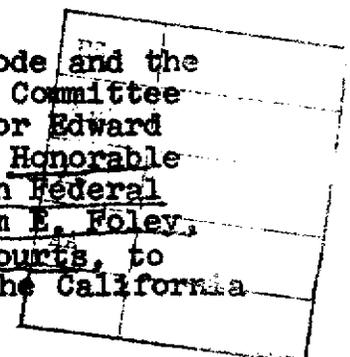
John H. DeMouilly, Esq.
Executive Secretary
The California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

I am indeed indebted to you for your letter of September 1, 1965 with which you enclosed a copy of the State of California Evidence Code with Official Comments enacted by the California General Assembly at its recent sessions, together with the sets of pink and green mimeographed sheets in which are indicated the significant changes made by the California General Assembly in the Code as originally proposed by your Commission.

You generously offer to supply an additional copy of the Code and the mimeographed materials, anticipating possible need therefor in connection with the work of our Advisory Committee on Federal Rules of Evidence, of which the distinguished member of your Commission, Herman F. Selvin, Esquire, is a member. I would find an additional two sets useful. However, if you are in short supply I will be able to manage, of course, with one additional set.

If you have not already sent copies of the Code and the mimeographed materials to the members of the Advisory Committee on Federal Rules of Evidence and, as well, to Professor Edward W. Cleary, our distinguished reporter, not to mention Honorable Albert B. Maris, Chairman of the Standing Committee on Federal Rules of Practice and Procedure, and Honorable William E. Foley, Deputy Director, Administrative Office of the U. S. Courts, to each of whom you were good enough to send copies of the California

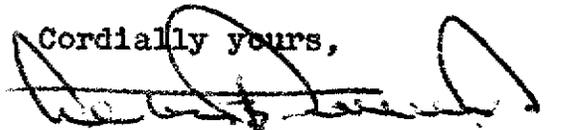


John H. DeMouilly, Esq.
Page 2
September 10, 1965

Law Revision Commission studies and drafts, I would be especially indebted to you and the Commission could they be so favor. Anticipating the likelihood that The California Law Revision Commission might be able to extend us this courtesy, I enclosed a list of names and addresses of members of the Committee, Professor Cleary, Judge Maris and Mr. Foley. Professor Cleary, as in my own case, will find it most helpful to have two sets, and Mr. Foley half a dozen sets. On behalf of myself and the Advisory Committee on Federal Rules of Evidence, we extend to the California Law Revision Commission our congratulations upon its tremendous accomplishment. We have found the materials with which you favored us last Spring quite helpful in our work. We have been pleased to draw heavily on the California materials. It is quite clear that the California Code of Evidence will leave a happy imprint upon our final product.

Would you please be good enough to express to the members of your Commission our appreciation of the courtesies extended us in supplying us with these most worthwhile aids to our work?

Cordially yours,



Albert E. Jenner, Jr.
Chairman

ALJ:hw