

#34(L)

10/20/64

Memorandum 64-99

Subject: Study No. 34(L) - Uniform Rules of Evidence (Letter of Judge Diether (dated October 5, 1964))

Attached is a copy of a letter from Judge Diether (October 5, 1964).

This letter seems to suggest that the Evidence Code not be proposed for enactment at the 1965 legislative session. Please read the letter with care.

Also attached is my reply (October 19, 1964) and a letter (October 6, 1964) I wrote to Judge Diether that crossed his letter of October 5 in the mail.

Also attached is a letter I wrote to Judge Diether on March 12, 1964, to indicate to him the procedure we planned to follow on this study. This letter was written in response to a letter from Judge Diether which stated in part:

"Since you have already scheduled hearings on said recommendations [Hearsay and Authentication] on March 18th before said subcommittee I am sure that you are not interested in the views of our committee on said recommendations."

"With respect to your future recommendations concerning the Uniform Rules of Evidence, we would appreciate having ample time to review and study them so that we may report our views to you prior to the time you schedule hearings before said subcommittee."

I am sending you these various letters in the event that the Commission wishes to discuss this matter at its October meeting.

Respectfully submitted,

John H. DeBully
Executive Secretary

CHAMBERS OF
The Superior Court
LOS ANGELES 12, CALIFORNIA
LEONARD A. DIETHER, JUDGE

October 5, 1964

California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California

Gentlemen:

I have your letter of September 28 enclosing copy of Preprint Senate Bill No. 1 and I note that you are requesting all committees considering the work of the Commission on the proposed Evidence Code to have their comments to you not later than November 5, 1964.

The new officers of the Conference of California Judges were just installed on September 29 and to date I have not been informed as to whether the Conference will continue its committee to work with the Commission on the study of the Uniform Rules of Evidence nor if the committee is continued who will be appointed to serve on said committee. Even if the Conference should continue the committee and re-appoint the same members who served last year, it would be impossible for the committee to make any report to you concerning said Preprint Senate Bill No. 1 by November 5, 1964. It takes some time to schedule a meeting of judges scattered throughout the State and then, if past experience is any criterion, I am sure it would take a considerable period of time before we could send you any report.

During the Conference of California Judges I had a chance to speak briefly with Ralph N. Kleps, Esq., Director of the Administrative Office of the Courts, and we both agreed if the Judicial Council and the Conference of California Judges were to review the work of the Commission in said Preprint Senate Bill No. 1, their efforts should be co-ordinated and we both express the view that it could not possibly be done in any such time as you have stated in your letter.

No doubt the proposed bill will be referred to the Senate Judiciary Committee and if it follows the practice it did in connection with the Commercial Code, it will appoint

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an Advisory Committee to consider reports from interested groups. If this course is followed and if the Conference of California Judges continues its committee, it could I believe working alone or with the Judicial Council, prepare a report for said Advisory Committee some time in the late spring of 1965. It is my personal feeling, from talking to members of the bar as well as judges who have had no connection with the proposed Evidence Code, that they would like an opportunity to study and review it before it is submitted to the Legislature for adoption.

Yours very truly,


Leonard A. Diether

LAD/vhw

cc: Hon. Mildred Lillie
Hon. Mark Brandler
Hon. Raymond J. Sherwin
Hon. James C. Toothaker
Hon. Howard E. Crandall
Hon. Joseph G. Babich
Warren P. Marsden, Esq.

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Ex Officio

October 19, 1964

Hon. Leonard A. Diether
The Superior Court
308 County Courthouse
Los Angeles 12, California

Dear Judge Diether:

Re: Proposed Evidence Code

Your letter of October 5 apparently crossed my letter of October 6 in the mail. I have had your letter reproduced and am sending a copy to each member of the Commission. We plan to discuss your letter at our next meeting.

I can well understand why your Committee cannot have its comments in our hands by November 5. We requested all committees considering the work of the Commission on the proposed Evidence Code to have their comments in our hands not later than November 5, 1964, because we wanted to consider the comments before we printed our report to the Legislature. We plan to have our report on the Evidence Code available in printed form early in January 1965, so that it will be available for the legislative hearings we anticipate will be held on our proposals during that month. (The report will contain a general discussion of the recommended legislation, the text of the Evidence Code bill, and the Commission Comment to each section of the bill.) In order to have the report available early in January, we must send the last portion of the report to the printer immediately after our November meeting. During the months of November and December the State Printing Plant has an exceptionally heavy work load, including the Governor's Budget and reports of various other agencies to the Legislature.

The Commission, of course, plans to consider the comments we receive after November 5, and the bill introduced in the 1965 legislative session will be amended to reflect any revisions that result from these comments. In addition, we anticipate that revisions will result from the decisions made by the legislative committees at the hearings held during the 1965 legislative session. Consequently, even though we do not receive your comments in time to make revisions in the bill before it is introduced, we will be able to make any necessary amendments to the bill before it is finally acted upon.

October 19, 1964

You will note that much of Senate Preprint Bill No. 1 is based on the published tentative recommendations previously reviewed by your Committee. Accordingly, I hope that it will be possible for your Committee to review the bill in time so that its comments may be considered by the Commission and the necessary amendments made before the bill is finally acted upon by the Legislature.

Attached is a complete set of the Commission's Comments to the various sections of Senate Preprint Bill No. 1, together with a preliminary draft of the general recommendation that will accompany the bill in our printed report to the Legislature. This material, together with Preprint Senate Bill No. 1, will give you the substance of the Commission's report to the Legislature. The Comments are being checked by the members of the Commission and will be revised at the October meeting. Nevertheless, the Comments are in substantially final form. The portion of the recommendation that precedes these Comments has not been reviewed by the Commission and probably will be revised at its October and November meetings. Both the bill and the Comments will be revised to reflect any changes resulting from comments we receive prior to the time we send the report to the printer.

I am sending each member of your Committee a set of the Comments. These Comments should be of substantial assistance to the members of your Committee in reviewing Preprint Senate Bill No. 1.

I also have found that there is great interest in the proposed Evidence Code among the members of the bar as well as among the judges. We already have distributed almost 1,500 copies of the preprinted bill to interested persons and organizations, and a second press run may be necessary when the few remaining copies have been distributed.

In view of your letter, I know that you will be interested to know that the proposed Evidence Code is being studied by two special legislative subcommittees created for this specific purpose. Since early in 1964, a special Subcommittee on Rules of Evidence of the Senate Fact Finding Committee on Judiciary has been holding work sessions to go over the tentative proposals word by word. The subcommittee has had three such sessions and has covered the hearsay evidence provisions. Additional work sessions will be scheduled prior to the 1965 legislative session, the next one being in November.

The Assembly also appointed a special Subcommittee on Law Revision to study the proposed Evidence Code. The Assembly subcommittee has already covered the divisions on Hearsay Evidence and Privileges and has scheduled a two-day meeting in November. At its November meeting, the subcommittee plans to cover the remainder of Senate Preprint Bill No. 1, if possible.

Judge Diether

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October 19, 1964

After these work sessions have been completed and the subcommittees know the content of the proposed Evidence Code, I anticipate the subcommittees will solicit the views of all interested persons. I hope that the subcommittees will complete their work sessions in time to begin considering testimony from other interested persons in December. I also am hopeful that a number of hearings on the Commission's proposals will be held by the subcommittees during January, at which time I anticipate that the testimony of interested persons and organizations will be sought.

In addition to the two legislative subcommittees, a substantial number of other interested persons and organizations have been reviewing the tentative recommendations and will be reviewing Senate Preprint Bill No. 1 prior to the legislative session. These persons and groups are listed on the green sheets entitled "Acknowledgments" in the general recommendation portion of the attached material. Generally speaking, we have listed on the green sheets only those persons who sent us comments. We have, however, distributed the tentative recommendations and Senate Preprint Bill No. 1 to a great number of other interested persons and organizations who have not sent us any comments to date.

You stated in your letter of October 5 that you do not know whether the Conference will continue its Committee to work on this project nor if the Committee is continued who will be appointed to serve on the Committee. However, in order to keep the former members of the Committee up-to-date on this project, I am sending them a copy of this letter and will send them materials relating to the project from time to time.

If we can do anything to assist your Committee in this matter, please let us know.

Sincerely,

John H. DeMouilly
Executive Secretary

Copy to: Members of Committee of Conference of Judges
Members of Law Revision Commission
Mr. Warren P. Marsden

Comments
conf of Cal Judge

March 12, 1964

Judge Leonard A. Diether
Judge of the Superior Court
308 County Courthouse
Los Angeles, California

Dear Judge Diether:

This is in response to your letter of March 10. With my letter of March 8, I enclosed six copies of the minutes of the February meeting of the Commission dealing with hearsay evidence. These minutes plus the recommendation on hearsay evidence previously sent to you gave you the substance of the recommendation the Commission will present to the Subcommittee of the Senate Judiciary Committee on March 18.

It might be helpful to indicate the procedure the Commission plans to follow in the study of the Rules of Evidence. The Commission has been preparing tentative recommendations similar to the one on hearsay evidence. As soon as these are available in the form of a printed pamphlet, we plan to send them to a large number of persons, like yourself, who have indicated an interest in this study. We plan to give them an adequate time to study the tentative recommendations and to send us their comments. After the comments are considered, the Commission plans to prepare a comprehensive evidence statute based on the substance of the tentative recommendations and the revisions made therein in view of the comments received. This statute will also include those provisions of existing law not affected by the Uniform Rules. The Commission plans to commence its study of these provisions at its March 1964 meeting and will determine whether the provisions should be retained in substance, revised or repealed. The comprehensive statute will be published in a separate publication which we hope will be available prior to the legislative session.

On March 8 we had available in published form only one tentative recommendation--the tentative recommendation on hearsay evidence. We have since received the tentative recommendation on Authentication and Content of Writings and we are planning to send this out next week for comment. We do not expect to receive comments by March 18 on the tentative recommendation on Authentication and Content of Writings. Subsequent tentative recommendations will be available from time to time in published form and we will send them out for comments as soon as the printed pamphlet is available.

RS	✓
ATS	✓
AC	JDS
send	✓

The Senate Judiciary Committee has appointed a Subcommittee which will be considering the tentative recommendations at the same time the tentative recommendations are being considered by other interested persons. This Subcommittee plans to go through the recommendations with great care so that they will be aware of all of the ramifications of the recommendations and will have an opportunity to carefully examine the policies reflected in them. Because it is convenient to the Subcommittee to hold a hearing during the Budget Session of the Legislature, we agreed to present our tentative recommendations on hearsay evidence and authentication and content of writings at the hearing on March 18. At the hearing, the Subcommittee plans to go through these recommendations with great care and does not plan to hear testimony from other persons concerning them, except that, if time permits, the Subcommittee plans to hear from the office of the Attorney General. The Commission plans to take into account the views expressed by the members of the Subcommittee when it reviews the other comments on its tentative recommendations.

We have just completed preparation of the material on hearsay evidence that we will present to the interim committee. This material has not been approved by the Commission, but we believe that it correctly reflects the actions of the Commission as indicated in its printed recommendation on hearsay and in the minutes of its February meeting. The staff is aware of a significant number of problems and defects that exist in the material we are presenting to the interim committee at the March 18 hearing. These will be considered by the Commission during the next few months and necessary revisions will be made. In addition, there are a number of provisions that will need to be added to the hearsay portion of the statute. For example, Code of Civil Procedure Sections 1928.1 - 1928.4 will need to be considered to determine whether their substance should be included in the hearsay portion of the new statute. Accordingly, since the Commission will be further revising the material we are presenting at the interim hearing, we do not plan to distribute it for comments until such revisions have been made.

Senator Grunsky (the Chairman of the Subcommittee) will, we hope, hold a hearing toward the end of this year at which all interested persons will be invited to express their views on a tentative draft of a new evidence statute. Before this draft is prepared, the Commission would hope to have the comments of your committee and of all other interested persons concerning the various tentative recommendations it is planning to send to them.

March 12, 1964

I can understand your concern that the Subcommittee is holding hearings on the tentative recommendations before the Commission has received your views. I can assure you, however, that your views will be considered before the Commission prepares the final statute on this matter. Because of the magnitude of the task faced by the Subcommittee, it was concluded that the Subcommittee should begin its study of the tentative recommendations even before they had been finalized by the Commission.

I am transmitting with this letter the following materials that may prove helpful to you in connection with this project:

(1) Revised Schedule of Deadlines in Study of Uniform Rules of Evidence (gold pages). Note the column entitled "Tentative Recommendation Available in Printed Form." This column indicates the approximate date that we will be prepared to distribute the printed recommendations and research studies to your committee. The comments will be needed by the first of the month indicated in the column entitled "General Comments Received." We will be making changes in this schedule. For example, we are planning to request that we receive comments on the Tentative Recommendation on Authentication and Content of Writings by June 1, instead of May 1 as indicated on the schedule.

(2) Six copies of the pamphlet containing the tentative recommendation and research study on Article IX (Authentication and Content of Writings). We are now in the process of mailing this pamphlet out to each person and organization that indicated a willingness to comment on the tentative recommendations. This mailing will begin early next week and each member of your committee will receive another copy.

(3) One copy of a preliminary draft of the tentative recommendation on Article I, II, IV, V, VI, and VII of the Uniform Rules. Some of these have been approved for printing with slight revisions. Others are still being considered and being revised by the Commission. We have not sent them out for comments except to a State Bar Committee that reviews them before they are printed. Each of these will soon be available in the form of a printed pamphlet that will contain the research study as well as the tentative recommendation. A tentative recommendation on Article III of the Uniform Rules has not yet been prepared.

(4) Six copies of the material relating to hearsay evidence that will be presented to the Subcommittee on the Rules of Evidence.

Judge Dietmar

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March 12, 1964

I hope that this letter will clear up any misunderstanding that may exist concerning the procedure the Commission plans to follow on this study. If you have any suggestions as to the procedure the Commission plans to follow or any suggestions as to actions we can take to facilitate the work of your committee, we would appreciate receiving them.

If this does not satisfactorily clear up the concern you expressed in your letter of March 10, please let me know.

Very truly yours,

John H. Donohilly
Executive Secretary

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