

BC

9/19/61

First Supplement to Memorandum No. 38(1961)

Subject: Study No. 36(L) - Condemnation (Pretrial Conferences
and Discovery)

Attached is a letter from the Department of Public Works concerning
the tentative recommendation on this subject. Note that the Department
suggests several changes in the proposed statute.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA
Department of Public Works

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September 15, 1961

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University, California

Dear Mr. DeMouilly:

Re: Pretrial and Discovery in Eminent Domain Proceedings

By your letter of September 2, 1961, you requested the Department's written comments on Memorandum No. 38 (1961) relating to pretrial conference and discovery in eminent domain proceedings.

In our letters to the Commission of October 25, 1960 and July 27, 1961, the Department set forth its comments concerning the exchange of valuation data and the attorney-client privilege. Since that time the Supreme Court has handed down six decisions, beginning with Greyhound vs. Superior Court, 56 A.C. 353, relating to the Discovery Act of 1959, which construed the areas of discovery broadly. However, the decisions did not deal directly with either discovery in eminent domain proceedings or the discoverability of expert opinion.

We feel that, since in all probability the Legislature cannot consider the proposed legislation until 1963, it would be better to gain some experience under these broadened rules. This would serve two purposes: (1) To determine the extent of discovery under present law; and (2) to evaluate the need for it in eminent domain, and ascertain how the rules work in practice in this field. Also, during this period of time the Supreme Court may have the opportunity to rule on the extent of discovery in eminent domain proceedings, particularly as to the discoverability of expert opinions and reports, and what safeguards or limitations, if any, should be required.

It is our understanding that the State Bar Committee on Administration of Justice is presently considering at least one phase of the Discovery Act and will undoubtedly submit recommendations to the Board of Governors of the State Bar which will be presented to the Legislature. In our opinion, broad consideration of the entire subject at the next session is probable.

Under these circumstances, the Department feels that at this time it would be premature to take a definite position on the tentative recommendation of the California Law Revision Commission. We have studied the measure, however, and there are several items which we believe should be considered by the Commission before any recommendation is finalized.

1. There should be a provision in the statute making clear whether or not the exchange of valuation data is to be supplemental to or in lieu of the other discovery devices, either completely or limited to the extent that these items are discoverable under the proposed bill.

2. The Commission might also consider the addition of a precautionary paragraph to Section 3 of the proposed bill that its terms should not be construed to affect the area of permissible discovery under the Discovery Act of 1959 and its procedure nor should its provisions be construed as affecting in any way the law on the admissibility of evidence in eminent domain cases.

3. The Commission might also give consideration to an additional safeguard in regard to a showing of good cause in Section 1246.5--that before a good cause plea can be made to the court, the moving party must make his motion immediately upon obtaining knowledge of the evidence involved, and must make known to the Court and to the other parties the items of evidence that were not included in the statement which he intends to introduce on direct examination of his case in chief.

We understand that the Consultants to the Commission are revising their research study on this subject in light of the recent Greyhound case. We would appreciate receiving a copy of this revised study when available.

Very truly yours,

(Sig. Robert E. Reed)

ROBERT E. REED
Chief of Division