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#34(L) 10/15/63

Memorandum No. 63-50

Subject: Study No. 34(L) - Uniform Rule of Evidence (Article VII. Expert and Other Opinion Testimony)

It is the purpose of this memorandum to present the questions the Commission must decide in connection with Rule 56-61 of the URE. You should read the Research Study and the comments of the New Jersey Supreme Court Committee on Evidence.

Attached as Exhibit I (pink pages) is the text of Rules 56-61.

The word "opinion" is not defined in the URE. But "it is clear from the context of the rule [56] that it contemplates 'opinion' in the narrow sense of inferences or conclusions from observed data." Tyree, The Opinion Rule, 10 Rutgers L. Rev. 601, 603 (1956). And it is in this sense that the word "opinion" is used in this memo.

RULE 56.

Subdivision (1) of the Rule 56 deals with the opinion of a lay witness. Clause (a) permits the lay witness to give his opinion only if it is based upon his own perception. This requisite seems no different than the personal knowledge requirement of Rule 19. Generally, this expresses existing law. Manney v. Housing Authority, 79 Cal. App.2d 453, 459 (1947); Start v. Dotts, 89 Cal. App.2d 683, 687 (1949). There is a well-settled exception to this rule involving a witness's testimony as to his age, but it seems unnecessary to mention it in the rule. A witness testifying as to his own age is usually summarizing the admissible hearsay he knows--statements of family history, pedigree, etc.

Clause (b) permits the lay witness to give such opinions as "are helpful to a clear understanding of his testimony or to the determination of the fact

in issue." Professor Chadbourn indicates that this is in substance the existing California law. See study pp. 8-10.

Should subdivision (1) be approved?

Subdivision (2) deals with the opinion of the expert witness. The URE language requires an expert's opinion to be based either (a) on his own perceptions of knowledge or (b) on data made known to him at the hearing.

The New Jersey Supreme Court Committee revised this subdivision to require that an expert's opinion be based either (a) primarily on data or other expert opinion personally known to the expert or (b) primarily on data made known to the expert at or before the hearing.

Thus, the New Jersey version of the rule clearly recognizes the right of the expert to rely to a certain extent on matters he does not know personally. The New Jersey version of the rule seems more in accord with existing California law than does the URE. In Willoughby v. Zylstra, 5 Cal. App.2d 297 (1935), it was held that a physician could rely on statements made to him by the person he was examining in forming his opinion. The case also held that the physician could relate such statements to show the basis for his opinion--but not to show the truth of the statements. People v. Wilson, 25 Cal.2d 341, 348 (1944) is to the same effect:

> The fact that Dr. Malone's opinion was partly based on the case history obtained from Mrs. Anderson does not make it inadmissible. It is settled that a physician may take into consideration a patient's declarations as to his condition, if they are necessary to enable him in connection with his own observations to form an opinion as to the patient's past or present physical or mental condition.

There is some California authority for the proposition that a police officer may not base an opinion upon the statements of witnesses as to the point of impact in a collision. Ribble v. Cook, 111 Cal. App.2d 903 (1952); Hodges v. Severns, 201 Cal. App.2d 99 (1962). The New Jersey version of the

rule might modify the California rule as declared in these cases to some extent. Nonetheless, the New Jersey version seems on the whole to be fairly expressive of California law.

Therefore, recognizing that the application of the principle must necessarily be left to the discretion of the court to a great extent, the staff recommends the addition of the word "primarily" to subdivision (2) so that an expert may give an opinion based primarily on his own observations or on data made known to him at the hearing.

Apparently existing California law is to the effect that an expert cannot predicate his opinion upon the opinion of another expert, but he may base his opinion on facts testified to by another expert or on tests made by another expert. People v. Lewis, 186 Cal. App.2d 585 (1960); Hope v. Arrowhead & Puritas Waters, Inc., 174 Cal. App.2d 222 (1959). In the Hope case a medical doctor testified that in forming his opinion he took into consideration a report on the same patient made by another doctor.

A reference to "other expert opinion" has been included in the New Jersey version of the rule. The effect of the addition is to permit the opinion of an expert to be based primarily on the opinion of another expert. The staff recommends against this change in the existing California law, for it would deprive the adverse party of his right to cross-examine the principal author of the opinion.

Subdivision (3) was deleted from the New Jersey version of the rule and is disapproved by Professor Chadbourn because it merely repeats a provision of Rule 1.

Subdivision (4) is reported by Professor Chadbourn to be declarative of existing California law.

If the foregoing suggestions are approved, the rule would read as follows:

RULE 56. TESTIMONY IN FORM OF OPINION

(1) If the witness is not testifying as an expert his testimony in the form of opinions and inferences is limited to such opinions or inferences as the judge finds (a) may be rationally based on the perception of the witness and (b) are helpful to a clear understanding of his testimony or to the determination of the fact in issue.

(2) If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (a) based primarily on facts or data perceived by or personally known to the witness or made known to him [~~the witness~~] at the hearing and (b) within the scope of the special knowledge, skill, experience or training possessed by the witness.

[~~(3) Unless the judge excludes the testimony he shall be deemed to have made the finding requisite to its admission.~~]

[~~(4)~~] (3) Testimony in the form of opinions or inferences otherwise admissible under these rules is not objectionable because it embraces the ultimate issue or issues to be decided by the trier of fact.

RULE 57.

The staff suggests that Rule 57 be revised to read as follows:

RULE 57. [~~PRELIMINARY EXAMINATION~~] STATEMENT OF BASIS OF OPINION OR INFERENCE.

(1) A witness testifying in terms of an opinion or inference may state both on direct examination and on cross-examination the reasons for his opinion or inference and the facts and data upon which it is founded.

(2) The judge may require that a witness before testifying in terms of an opinion or inference be first examined concerning the facts and data upon which the opinion or inference is founded.

Subdivision (2) of the revised rule is the substance of URE Rule 57 (with recommended changes underscored). This subdivision gives the court discretion as to whether to require that a specification of facts and data precede the expression of an opinion or inference based thereon. The research consultant finds no case in point, but after considering the matter concludes: "It may well be, therefore that Rule 57 is a fair statement of the rule or practice (or both) which prevail in California today." Study, page 16.

The policy question presented is: Should subdivision (2) be approved?

Subdivision (1) is not contained in the URE, but it makes clear what URE Rule 57 apparently assumes to be the rule--that a witness may state on direct examination the reasons for his opinion or inference and the data upon which it is founded.

Subdivision (1) is, of course, subject to Rule 45. For example, under Rule 45 as under existing law, the judge can prevent the witness from placing incompetent evidence before the trier of fact under the guise of giving the reasons for his opinion.

Subdivision (1) states the substance of Code of Civil Procedure Section 1872 and will supersede that section and perhaps Section 1845.5 of the same code. These two sections provide:

> 1872. Whenever an expert witness gives his opinion, he may, upon direct examination, be asked to state the reasons for such opinion, and he may be fully cross-examined thereon by opposing counsel. (Enacted in 1937)

> 1845.5. In an eminent domain proceeding a witness, otherwise qualified, may testify with respect to the value of the real property including the improvements situated thereon or the value of any interest in real property to be taken, and may testify on direct examination as to his knowledge of the amount paid for comparable property or property interests. In rendering his opinion as to highest and best use and market value of the property sought to be condemned the witness shall be permitted to consider and give evidence as to the nature and value of the improvements and the character of the existing uses being made of the properties in the general vicinity of the property sought to be condemned. (Enacted in 1957; amended in 1959)

It should be noted that the existing statutes might be construed to treat eminent domain proceedings differently from other proceedings, for Section 1845.5 (enacted in 1957 and amended in 1959) might be construed to limit the broad provisions of Section 1872. But compare People v. Rice, 185 Cal. App.2d 207, 213 (1960)(relying on Section 1872--and not citing Section 1845.5--in an eminent domain case where the date of taking was January 10, 1959) with Furtado v. Montebello Unified School Dist., 206 Cal. App.2d 72 (1962)(dicta referring to Section 1845.5).

In addition to some doubt about the effect of Section 1845.5, another question arises: Should the Commission include in its revision of the Uniform Rules of Evidence the provisions of the legislation it recommended to deal with evidence problems arising in eminent domain proceedings? You will recall that the bill has twice been vetoed by the Governor. Quite frankly, the staff believes that the bill that passed in 1963 would

have kept out evidence that will be allowed by the California Supreme Court if it is given an opportunity to rule on this matter. We believe that subdivision (1) of proposed Rule 57 will permit the courts to work out sensible rules that will apply in eminent domain proceedings as well as in other proceedings. Accordingly, the staff recommends that we do not include the evidence-in-eminent-domain bill in our revision of the URE and that we repeal Section 1845.5.

The policy questions presented are: Should subdivision (1) be approved? Should Section 1872 be repealed (the matter of cross-examination is covered by proposed Rule 58.5)? Should Section 1845.5 be repealed?

RULE 58.

Rule 58 abolishes the requirement of the hypothetical question. Rule 58 may be existing California law. In Estate of Collin, 150 Cal. App.2d 702 (1957), a medical expert read and considered the transcript of certain testimony in the case together with certain exhibits introduced in evidence. He was then asked to state his opinion. The court held the form of question proper, citing URE Rule 58 with approval as well as Model Code Rule 409, Wigmore and the Uniform Expert Testimony Act. In Howland v. Oakland Consolidated St. Ry., 110 Cal. 513 (1895), the court held a question proper which asked the expert witness to give his opinion upon the assumption that the testimony given by a prior witness was true. And in Poggetto v. Owen, 187 Cal. App.2d 128 (1960), it was held that an expert could properly base his opinion upon a photograph shown to him at the hearing.

Thus, it seems likely that Rule 58 will not change existing California law much, if at all. Should it be approved?

If the policy of Rule 58 is acceptable, consideration should be given to revising Rule 58 (along the lines of the New Jersey Report) to read:

> Questions calling for the opinion of an expert witness need not be hypothetical in form unless the judge in his discretion so requires [~~,-but~~]. The witness may state his opinion and the reasons therefor without first specifying the facts and data on which it is based as a hypothesis or otherwise, [~~,-but~~] although upon cross-examination he may be required to specify such facts and data.

Rule 58

PROPOSED RULE 58.5.

The staff presents for Commission consideration the following proposed rule which is not contained in the URE:

RULE 58.5. CROSS-EXAMINATION OF EXPERT WITNESS.

(1) An expert witness may be fully cross-examined as to the reasons for his opinion and the facts and data upon which it is founded.

(2) An expert witness may be cross-examined upon the basis of a published treatise, periodical or pamphlet on a subject of history, science or art if the judge takes judicial notice, or the witness recognizes, that the publication is a reliable authority on the subject, whether or not the witness relied upon the publication in forming his opinion.

Subdivision (1). This subdivision retains the substance of the last clause of Code of Civil Procedure Section 1872. It is desirable to retain this portion of Section 1872, for the courts have relied on the statute to justify liberal rules as to the permissible scope of cross-examination of an expert witness. The subdivision is, of course, subject to Rule 45, and the trial judge has discretion as to the extent of cross-examination.

Subdivision (2). This subdivision is likewise subject to Rule 45, and the trial judge has discretion to prevent abuses of the right to use text-books on cross-examination. In its study of the Hearsay Evidence article, the Commission did not approve subdivision (31) of Rule 63 which would have provided a hearsay exception for the learned treatises described in subdivision (2). The Commission states in its comment to subdivision (31) of Rule 63:

COMMENT

Revised subdivision (31) consists of the language of Section 1936 of the Code of Civil Procedure as modified in form only to conform to the general format of the hearsay statute recommended by the Commission.

The admissibility of published treatises, periodicals, pamphlets and the like has long been a subject of considerable controversy in this State, much of it centered upon the desirability of permitting excerpts from medical treatises to be read into evidence. Many of the criticisms that are made concerning the present California statute might be resolved by removing some of the present limitations upon the scope of cross-examination of expert witnesses. The Commission plans to study and report on the scope of permissible cross-examination at a later date in connection with its study of the Uniform Rules of Evidence.

Rule 58.5.

The California law on the use of learned treatises in the cross-examination of expert witnesses is confused. See Annotation, 60 A.L.R.2d 77 (1958). Most of the language in the cases is dicta.

A number of cases contain language indicating that a cross-examiner may use those treatises upon which the expert witness has specifically relied to support his opinion. Some of these cases suggest that the cross-examiner is limited to use of treatises upon which the expert witness specifically relied to support his opinion. Gallagher v. Market St. Ry. Co., 67 Cal. 13 (1885) (dictum); Douglas v. Berlin Dye Works Etc. Co., 169 Cal. 28 (1914) (dictum); Lewis v. Johnson, 12 Cal.2d 558, 562 (1939) (error not to permit cross-examination of expert upon textbooks upon which his opinion was based in part); People v. Hooper, 10 Cal. App.2d 332 (1935) (cross-examiner not limited to textbooks upon which expert relied); Scarano v. Schnoor, 158 Cal. App.2d 612 (1958) (dictum); Hope v. Arrowhead & Puritas Waters, Inc., 174 Cal. App.2d 222, 230-231 (1959) (dictum); Baily v. Kreutzmann, 141 Cal. 519, 521-522 (1904) (dictum).

A few cases state a rule that texts of recognized authority may be freely used to test the expert's competence regardless of whether or not he relied upon the particular texts used or any other text or authority. Fisher v. Southern P. R. R. Co., 89 Cal. 399 (1891) (dictum); People v. Hooper, 10 Cal.

App.2d 332 (1935).

Some recent cases state a third rule--that, while there must be some reliance by the expert witness upon authority in order to justify the use of learned treatises by the cross-examiner, it is not necessary that the witness rely on the particular treatise used on cross-examination. Griffith v. Los Angeles Pacific Co., 14 Cal. App. 145 (1910); Gluckstein v. Lipsett, 93 Cal. App.2d 391, 400-404 (1949) (stating that the California cases upon the subject were not well defined, that there were not many holdings and that the dicta were somewhat inconsistent); Salgo v. Stanford University, 154 Cal. App.2d 560 (1957) (the court stating: "This rule does not permit reading to a witness who had not based his opinion on a medical work, text or brochure, extracts therefrom as a part of a question"). See also Brown v. Los Angeles Transit Lines, 282 Pac.2d 1032 (1955), vacated on rehearing, 135 Cal. App.2d 709.

The necessity of establishing the authoritative status of the treatise to be used on cross-examination has been generally recognized or assumed, but the cases contain little upon the proper mode of doing this. See Annotation, 60 A.L.R.2d 77 (1958). The proposed rule adopts the test generally used (witness recognizes the work as a reliable one) and, in addition, permits the authoritative status of the work to be established by judicial notice.

The policy question presented is: Should Proposed Rule 58.5 be approved as drafted, be approved as revised, or be disapproved?

RULES 59, 60 AND 61--COURT-APPOINTED EXPERTS

Rule 59 and Rule 60 (except last sentence of Rule 60). Rule 59 provides for court appointed experts where the judge determines it to be desirable on order to show cause to the parties. Rule 60 provides for the payment of a reasonable compensation to court-appointed expert witnesses, the amount to be fixed by the judge.

Code of Civil Procedure Section 1871 (Exhibit II, yellow pages) contains the basic principles of Rules 59 and 60. The differences between our existing law and Rules 59 and 60 are indicated on pages 27-28 of the Research Study. See also Penal Code Section 1027 and Welfare and Institutions Code Sections 5504-5507 (Exhibit II, yellow pages).

The research consultant concludes (a) that it is neither necessary nor desirable to include the URE provisions respecting the appointment and compensation of experts and (b) that Code of Civil Procedure Section 1871 should be retained without change. He believes our existing law is better than the provisions of Rules 59 and 60. See Research Study, pages 25-30.

The policy question presented is: Should Rule 59 be stricken, should all of Rule 60 (except the last sentence) be stricken, should Section 1871 be retained without change (for the time being, pending report from our consultant on this section)?

Rule 60 (last sentence). The research consultant recommends approval of the last sentence of Rule 60.

It is not clear that the last sentence of Rule 60 is existing California law. As far as eminent domain proceedings are concerned, Section 1256.2 of the Code of Civil Procedure provides:

> 1256.2 In any condemnation proceeding, either party shall be allowed to question any witness as to all expenses and fees

paid or to be paid to such witness by the other party. [Emphasis supplied.]

The extent to which Rule 45 would make the matter of cross-examination on the amount of compensation to be paid to an expert in a condemnation proceeding a matter of discretion for the trial judge is not clear.

It is not clear whether cross-examination is permitted on the amount of the expert's compensation in other types of cases. California apparently would follow the rule that the court in its discretion may allow counsel to cross-examine an expert witness as to the amount he has received, is to receive, or expects to receive for testifying as such, although no California cases have been found so holding. The only California cases in point are cases holding that the refusal of the court to permit cross-examination as to the precise amount paid to an expert witness was not prejudicial error under the circumstances of the particular case. See People v. Tomalty, 14 Cal. App. 224 (1910); People v. Bruch, 46 Cal. App. 391 (1920); People v. Jones, 78 Cal. App. 544 (1926). See also People v. Breen, 130 Cal. 72 (1900). It is clear, however, that under California law the fact that an expert has been employed and paid by a party may be shown to impeach him.

Some indication of what may be the California law is found in the following quotation from People v. Bruch, 46 Cal. App. 391, 396-397 (1920):

> It has been held that it is proper cross-examination, as affecting the credibility of the testimony of a witness who, as a detective, has procured evidence and testified against a person charged with a crime, to ask such witness how much compensation he is paid for his services as such detective, even after he has testified that he has been fully paid for such services. [citations of authorities from New York, Iowa and Minnesota omitted.] The reason of the rule is given in the first case above named and is that such a cross-examination might disclose an inordinate eagerness, motivated by a desire to retain a highly paid employment, to show how successful the detective has been in working up a case against

> the accused, "and the time of payment might indicate that, despite the witness, the compensation was contingent upon some successful step in the prosecution of the crime."
>
> . . . But while we think it would have been the proper course to allow that question to be answered [precise amount of their compensation] and further to permit the cross-examination to be extended to an inquiry as to whether the compensation of the detectives for their services in procuring evidence sufficient to establish a case against the appellants was contingent upon their success in that behalf, still we are not convinced that we would be justified in holding that the errors involved in the disallowance of the cross-examination referred to were prejudicial, or, in view of a consideration of the entire record, operated to produce a miscarriage of justice in the case.

An ALR annotation indicates that the general rule is that the court has discretion to permit cross-examination as to the precise amount of compensation to be paid an expert witness. See Annotation, 33 A.L.R.2d 1170 (1954) (citing cases from Arkansas, Illinois, Iowa, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Texas, and Vermont).

If the last sentence of Rule 60 were approved, it would appear that the effect would be to give the trial court discretion to refuse to permit cross-examination into the precise amount of the expert's compensation when to do so would require undue consumption of time. (Rule 45). Thus, approval of this sentence would retain what probably is the existing California law.

The policy questions presented are: Should the last sentence of Rule 60 be approved? Should CCP Section 1256.2 be retained; and, if it is retained, should it be revised to make clear whether it is subject to Rule 45?

Rule 61. The consultant recommends approval of this rule. The rule states existing California law. See Research Study, page 29. Should this rule be approved?

Respectfully submitted,

The Staff

EXHIBIT I

VII. EXPERT AND OTHER OPINION TESTIMONY

RULE 56. TESTIMONY IN FORM OF OPINION.

(1) If the witness is not testifying as an expert his testimony in the form of opinions or inferences is limited to such opinions or inferences as the judge finds (a) may be rationally based on the perception of the witness and (b) are helpful to a clear understanding of his testimony or to the determination of the fact in issue.

(2) If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (a) based on facts or data perceived by or personally known or made known to the witness at the hearing and (b) within the scope of the special knowledge, skill, experience or training possessed by the witness.

(3) Unless the judge excludes the testimony he shall be deemed to have made the finding requisite to its admission.

(4) Testimony in the form of opinions or inferences otherwise admissible under these rules is not objectionable because it embraces the ultimate issue or issues to be decided by the trier of the fact.

RULE 57. PRELIMINARY EXAMINATION.

The judge may require that a witness before testifying in terms of opinion or inference be first examined concerning the data upon which the opinion or inference is founded.

RULE 58. HYPOTHESIS FOR EXPERT OPINION NOT NECESSARY.

Questions calling for the opinion of an expert witness need not be hypothetical in form unless the judge in his discretion so requires, but the witness may state his opinion and reasons therefor without first specifying data on which it is based as an hypothesis or otherwise; but upon cross examination he may be required to specify such data.

RULE 59. APPOINTMENT OF EXPERTS.

If the judge determines that the appointment of expert witnesses in an action may be desirable, he shall order the parties to show cause why expert witnesses should not be appointed, and after opportunity for hearing may request nominations and appoint one or more such witnesses. If the parties agree in the selection of an expert or experts, only those agreed upon shall be appointed. Otherwise the judge may make his own selection. An expert witness shall not be appointed unless he consents to act. The judge shall determine the duties of the witness and inform him thereof at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the judge or any party. He may be examined and cross-examined by each party. This rule shall not limit the parties in calling expert witnesses of their own selection and at their own expense.

RULE 60. COMPENSATION OF EXPERT WITNESSES

Expert witnesses appointed by the judge shall be entitled to reasonable compensation in such sum only as the judge may allow. Except as may be otherwise provided by statute of this state applicable to a specific situation, the compensation shall be paid (a) in a criminal action by the [county] in the first instance under order of the judge and charged as costs in the case, and (b) in a civil action by the opposing parties in equal portions to the clerk of the court at such time as the judge shall direct, and charged as costs in the case. The amount of compensation paid to an expert witness not appointed by the judge shall be a proper subject of inquiry as relevant to his credibility and the weight of his testimony.

RULE 61. CREDIBILITY OF APPOINTED EXPERT WITNESS.

The fact of the appointment of an expert witness by the judge may be revealed to the trier of the facts as relevant to the credibility of such witness and the weight of his testimony.

EHXIBIT II

1871. Experts; appointment by court; compensation; production by parties; examination; competency and qualifications; bias; limitation of number

Whenever it shall be made to appear to any court or judge thereof, either before or during the trial of any action or proceeding, civil, criminal, or juvenile court, pending before such court, that expert evidence is, or will be required by the court or any party to such action or proceeding, such court or judge may, on motion of any party, or on motion of such court or judge, appoint one or more experts to investigate, render a report as may be ordered by the court, and testify at the trial of such action or proceeding relative to the matter or matters as to which such expert evidence is, or will be required, and such court or judge may fix the compensation of such expert or experts for such services, if any, as such expert or experts may have rendered, in addition to his or their services as a witness or witnesses, at such amount or amounts as to the court or judge may seem reasonable.

In all criminal and juvenile court actions and proceedings such compensation so fixed shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court or judge. In any county in which the procedure prescribed herein has been authorized by the board of supervisors, on order by the court or judge in any civil action or proceeding, the compensation so fixed of any medical expert or experts shall also be a charge against and paid out of the treasury of such county. Except as above otherwise provided, in all civil actions and proceedings such compensation shall, in the first instance, be apportioned

and charged to the several parties in such proportion as the court or judge may determine and may thereafter be taxed and allowed in like manner as other costs.

Nothing contained in this section shall be deemed or construed so as to prevent any party to any action or proceeding from producing other expert evidence as to such matter or matters, but where other expert witnesses are called by a party to an action or proceeding they shall be entitled to the ordinary witness fees only and such witness fees shall be taxed and allowed in like manner as other witness fees.

Any expert so appointed by the court may be called and examined as a witness by any party to such action or proceeding or by the court itself; but, when called, shall be subject to examination and objection as to his competency and qualifications as an expert witness and as to his bias. Such expert though called and examined by the court, may be cross-examined by the several parties to an action or proceeding in such order as the court may direct. When such witness is called and examined by the court, the several parties shall have the same right to object to the questions asked and the evidence adduced as though such witness were called and examined by an adverse party.

The court or judge may at any time before the trial or during the trial, limit the number of expert witnesses to be called by any party.

1027. Plea of insanity; appointment of alienists; examination of defendant; fees; additional expert evidence; alienists as witnesses

When a defendant pleads not guilty by reason of insanity the court must select and appoint two alienists, at least one of whom must be from the medical staffs of the state hospitals, and may select and appoint three alienists, at least one of whom must be selected from such staffs, to examine the defendant and investigate his sanity. It is the duty of the alienists so selected and appointed to examine the defendant and investigate his sanity, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. Said alienists so appointed by the court shall be allowed such fees as in the discretion of the court seem just and reasonable, having regard to the services rendered by the witnesses, but in no event shall such fees exceed the sum of thirty-five dollars ($35) per day in addition to the actual traveling expenses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.

5504.
The judge shall appoint not less than two nor more than three psychiatrists, each of whom shall be a holder of a valid and unrevoked physician's and surgeon's certificate who has directed his professional practice primarily to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years, and at least one of whom shall be from the medical staff of a state hospital or county psychopathic hospital, to make a personal examination of the alleged mentally disordered sex offender, directed toward ascertaining whether the person is a mentally disordered sex offender.

5505.
Each psychiatrist so appointed shall file with the court a separate written report of the result of his examination, together with his conclusions and recommendations and his opinion as to whether or not the person would benefit by care and treatment in a state hospital. At the hearing each psychiatrist shall hear the testimony of all witnesses, and shall testify as to the result of his examination, and to any other pertinent facts within his knowledge.

5506.
Examination of psychiatrists. Any psychiatrist so appointed by the court may be called by either party to the proceeding or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualification as an expert. When called by the court, or by either party to the proceeding, the court may examine the psychiatrist, as deemed necessary, but either party shall have the same right to object to the questions asked by the

court and the evidence adduced as though the psychiatrist were a witness for the adverse party. When the psychiatrist is called and examined by the court the parties may cross-examine him in the order directed by the court. When called by either party to the proceeding the adverse party may examine him the same as in the case of any other witness called by such party.

5507.
Fees of psychiatrist. The psychiatrists so appointed by the court shall be allowed such fees as in the discretion of the court seem just and reasonable, with regard to the services rendered by the psychiatrists, but in no event shall such fees exceed the sum of forty dollars ($40) per day in addition to actual traveling expenses. The fees allowed shall be paid by the county in which the hearing is held.

5508.
The provisions of this chapter relating to psychiatrists appointed by the court shall not be deemed or construed to prevent any party to a proceeding under this chapter from producing any other expert evidence as to the mental condition of the alleged mentally disordered sex offender.

1266.2.

Compensation of Appraisers. In any action or proceeding for the purpose of condemning property where the court may appoint appraisers, referees, commissioners, or other persons for the purpose of determining the value of such property and fixing the compensation thereof, and may fix their fees or compensation the fee or compensation shall not exceed fifty dollars ($50) a day.