

Time

Place

April 22 - 9:30 a.m. - 3:00 p.m.

State Bar Building
1230 West Third Street
Los Angeles

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

April 22, 1967

1. Approval of Minutes of March meeting (sent 4/4/67)
2. Administrative matters, if any
3. Review of Recommendations to 1967 Legislative Session

Commercial Code Revisions

Memorandum 67-26 (to be sent)

Discovery in Eminent Domain

Memorandum 67-27 (sent 4/10/67)

Relationship with State Bar Committee on Administration of Justice

Memorandum 67-28 (sent 4/24/67)

Review of amendments made to 1967 legislative proposals

(Material will be supplied and reviewed at meeting.)

4. Study 63 - Evidence Code
 - Memorandum 67-29 (enclosed)
 - Memorandum 67-30 (enclosed)
 - Memorandum 67-31 (enclosed)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

APRIL 22, 1967

Los Angeles

A meeting of the California Law Revision Commission was held at the State Bar Building, Los Angeles, on April 22, 1967

Present: Richard H. Keatinge, Chairman
Sho Sato, Vice Chairman
Hon. Alfred H. Song
Joseph A. Ball
James R. Edwards
John R. McDonough
Thomas E. Stanton, Jr.

Absent: Herman F. Selvin
George H. Murphy, ex officio

Note: The Assembly member of the Commission has not yet been designated by the appointing authority.

Messrs. John H. DeMouilly and Clarence B. Taylor of the Commission's staff were present.

Also present were the following observers:

✓ Henry A. Babcock	Consulting Engineer and Professional Appraiser
✓ Richard Barry	Commissioner, Superior Court, Los Angeles
✓ Norval Fairman	State Department of Public Works
✓ Richard Huxtable	Attorney and Chairman, Southern Section, State Bar Committee on Condemnation Law
✓ John M. Morrison	Office of Attorney General
✓ Norman L. Roberts	Office of City Attorney, Los Angeles
✓ Charles E. Spencer, Jr.	State Department of Public Works
David B. Walker	Office of San Diego County Counsel

ADMINISTRATIVE MATTERS

Minutes of March 1967 meeting. The minutes of the meeting of March 19 and 20, 1967 were approved with the following corrections:

- (1) On page 9, the third line is corrected to read:

With respect to the period of notice to the property owner, the Commission

- (2) On page 9, lines 22 and 23 are corrected to read:

In connection with Section 1269.05, which permits certain condemnees to make motions to require that possession of residential property be

Future meetings. Future meetings are scheduled as follows:

June 2, 3	Los Angeles
June 23 (evening), 24	Los Angeles
July 28 (evening), 29	San Francisco
August	No meeting
September 21 (evening), 22, 23	Los Angeles
October 29 (evening), 21	San Francisco

Report on staff vacancies. The Executive Secretary reported that Mr. Gordon McClintock has been appointed to the Junior Counsel position and will work part time from the end of this school year until his passing the bar. The Executive Secretary also reported that the written portion of the civil service examination for the Assistant Executive Secretary position was given on April 15, 1967, and that the Commission may be able to consider an appointment to that position at its next meeting.

Relationship with the State Bar's Committee on Administration of Justice. The Commission considered Memorandum 67-28, relating to the relationship of the Commission and the State Bar Committee on Administration

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of Justice. The Chairman is to attempt to arrange a conference with the President of the State Bar and the Chairman of the committee for the purpose of exploring ways in which to develop a more satisfactory working relationship between the Commission and the committee, especially as to legislative proposals of the Commission.

Report on 1967 Legislative Program. The Executive Secretary amplified his written progress report on the 1967 legislative program and explained the several amendments that have been made in the bills. He also indicated the general nature of the support and objections offered to the various bills at the Senate and Assembly hearings.

With respect to Senate Bill No. 531 (relating to proceedings where two or more defendants are jointly or severally liable), the Executive Secretary reported substantial objections to the bill on the part of the State Bar, the insurance industry, and others. After discussion, the Commission determined that the bill should be dropped from its 1967 legislative program and directed the Executive Secretary to defer indefinitely the hearings on Senate Bill No. 531.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE (DISCOVERY IN
EMINENT DOMAIN PROCEEDINGS - SENATE BILL NO. 253)

The Commission considered Memorandum 67-27 and the various attachments to that memorandum. In addition to that material, the Commission considered a letter of April 17, 1967, from Mr. Charles T. Van Deusen of Pacific Gas and Electric Company and a letter of April 20, 1967, from Mr. Norman L. Roberts, Deputy City Attorney, Los Angeles. Each letter raises certain objections to the system of exchanging valuation data provided by the bill.

Mr. Richard Barry, Commissioner, Superior Court, Los Angeles, explained and amplified the views set forth in his letter to the Commission which was attached to Memorandum 67-27. Mr. Barry discussed in particular (1) the problem that would be created by enactment of the bill in view of the existing Los Angeles rules and practice, (2) problems that might arise under the bill in relationship to other discovery procedures, and (3) problems that might arise from the fact that the bill does not provide for an "in camera" exchange of appraisal reports, but rather provides for service and filing of statements of valuation opinions and data. Specifically, Mr. Barry expressed the views (1) that the addition of comments to various sections of the bill cannot overcome difficulties that would be encountered in maintaining the existing Los Angeles practice; (2) that the bill would cause problems in Los Angeles as well as elsewhere by deferring discovery until the exchange of valuation statements and thereby possibly reduce the percentage of settlements and cause postponement of trials; (3) that problems will be encountered in "extracting" the information from appraisal reports for inclusion in the statement of valuation data; (4) that experience has indicated that all discovery procedures should be under judicial control rather than

← no copies of letters on hand -4-

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being left to the parties with an indirect sanction as provided in Senate Bill No. 253; and (5) that the Los Angeles procedure of dual pretrial conferences and exchange of appraisal reports does not result in a substantial augmentation of the total cost of eminent domain proceedings.

Mr. Huxtable expressed the views that (1) although Los Angeles has pioneered a best procedure for processing the "big case," there is a need for a simplified system of discovery in eminent domain proceedings; (2) that a reduction in the condemnee's costs of prosecuting a condemnation case is essential to prevent economic repeal of the constitutional guarantee of just compensation; (3) that the bill is generally supported by attorneys for property owners because of their expectation that the bill will "reduce the threshold of court costs;" (4) that the scheme of the bill, and specifically the preparation and exchanging of valuation statements, is workable; (5) that the potential benefit of the bill should not be compared or contrasted with the Los Angeles procedure, but rather should be compared with a system without either discovery or meaningful pretrial in eminent domain proceedings; and finally (6) that the State Bar Committee would most probably oppose any alternative scheme, for application throughout the state, of an in camera exchange of appraisal reports.

The Executive Secretary explained that the bill has substantial support, including that of the Attorney General and various state Senators; that as the bill has been passed by the Senate, there are difficulties in offering amendments that change the entire theory of the bill; that the bill has more support at this time than has been shown since it was

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first proposed several years ago; that many have assumed that a uniformity throughout the state is desirable and would be accomplished by the bill; and that the essential purpose of the bill is to overcome the inherent limitations of other discovery procedures in eminent domain proceedings due to case law that (1) requires mutuality and reciprocity in discovery and (2) protects the "work product" of attorneys and litigants.

Mr. Babcock expressed his general view that "the intent of the bill is very good," but that its provisions probably need substantial revision; that most appraisers would object to any extraction or restatement of their views in a "statement of valuation data;" that it is cross-examination and a need for thoroughness that increases the cost of appraisals generally; that there is no practical way to reduce the costs of an appraisal made for purposes of an eminent domain proceeding; and that most appraisers would not particularly object to the extra use or exposure of their appraisal reports by reason of those reports being filed or exchanged in condemnation proceedings. He also explained that the appraisal profession has no particular or direct interest in a bill such as Senate Bill No. 253, but that the American Society of Appraisers, of which he is an official, would be willing to work with the staff of the Commission in arriving at an acceptable proposal.

Mr. Roberts amplified the position set forth in his letter to the Commission and expressed the views that (1) retention of the Los Angeles practice would be preferable to the system provided by the bill; (2) that the bill would result in substantial extra "paper work;" (3) that it is unfair to the appraisal profession to make the added use of their appraisal reports by requiring them, or data extracted from them, to be

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filed and thereby exposed to the public; (4) that an exchange of valuation statements would not result in true reciprocity of disclosure in that certain parties are much more thorough in preparing and disclosing valuation data than their opponents; and (5) that difficulties would arise from the fact that the exchange of statements might not be exactly simultaneous and would not be "in camera."

Mr. Fairman reported his attendance at a meeting of the Northern Section of the State Bar Committee on Condemnation Law and expressed the view of himself and others (1) that comments to various sections of the bill cannot adequately resolve the problem of the bill's impact upon existing Los Angeles practice; (2) that perhaps it would be possible to make the bill provide for an alternative system of in camera exchange of appraisal reports; and (3) in any event, the bill should be clarified as to its impact upon local rules as otherwise the differences in sanctions and timing between the provisions of the bill and local rules would create awkwardness and the need for judicial interpretation of the bill in this respect.

On the question whether it is preferable to exchange valuation statements or actual appraisal reports, there was a marked divergence of views among the observers. Mr. Huxtable explained that an exchange of the actual reports creates problems in that the attorney must review them to avoid inclusion of impermissible matter or considerations; that the necessity of preparing valuation statements would generally cause cases to be better prepared; that in existing practice abbreviated reports, rather than the appraisal report actually received by the attorney, often are exchanged; and that the opinions and data specified in Senate

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Bill No. 253 are about the extent of matters discoverable through other discovery procedures. On the other hand, Mr. Roberts expressed the view that counsel should be permitted to see "what the appraiser actually wrote and signed" and that it is impracticable to restate or extract appraisers' conclusions. Mr. Babcock expressed the view that appraisal reports typically contain rather elaborate conditions and assumptions that would not be reflected in the prescribed valuation statement and that it is impractical for an attorney to make a meaningful extraction from a thorough report.

As a result of the views expressed and its consideration of the problems, the Commission resolved to:

(1) Direct the Executive Secretary not to set the bill for hearing by the Assembly Judiciary Committee until further meeting and instruction of the Commission;

(2) Place the matter on the agenda for the next meeting of the Commission;

(3) Direct the staff to work with Mr. Barry and Judge Thompson of Los Angeles in an effort to resolve the problem of the impact of the bill on Los Angeles practice;

(4) Direct the staff to work with Mr. Babcock and others of the American Society of Appraisers in an effort to accommodate the views of the appraisal profession;

(5) Direct the staff to prepare amendments to the bill, rather than revisions of the Comments, that would most nearly satisfy objections to the bill raised at this meeting;

(6) Direct the staff to obtain and consider the views of the Northern Section of the State Bar Committee on Condemnation Law.