

#36

2/1/72

Memorandum 72-13

Subject: Study 36 - Condemnation Law and Procedure

Attached is a questionnaire on certain aspects of condemnation practice prepared by our consultant, Norman E. Matteoni. The Commission expressed a desire to review this questionnaire before it was distributed to approximately 600 persons on the list we have of persons interested in this topic.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

County of Santa Clara  
California

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William M. Siegel, County Counsel

December 27, 1971

Mr. John H. DeMouly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Stanford, CA 94305

Re: Proposed Questionnaire on Certain Aspects of  
Condemnation Practice

Dear John:

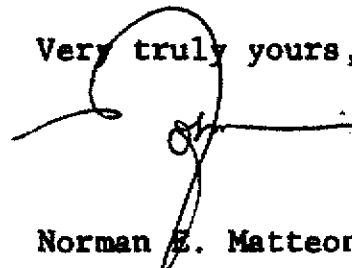
At your request, I have outlined a questionnaire to be sent to practitioners in the field of eminent domain regarding certain aspects of their practice.

The questionnaire has been expanded to include questions on arbitration procedure and the Evidence Code, and also contains questions on discovery as you originally requested in the Law Revision Commission meeting of November 6, 1971. The evidence question is general because I recall that you felt that this type of question, rather than a section-by-section series of questions, would require those replying to be selective in their response.

I devised my own format because I am not familiar with any that the Law Revision Commission may have used in the past. I trust that you will adapt the suggested outline to both the form and substance you desire, and insert the necessary directions for return of the questionnaire after it is answered.

If you care to discuss the questionnaire, feel free to call upon me.

Very truly yours,



Norman E. Matteoni

NEM:mo  
Encl.

CONDEMNATION PRACTICE QUESTIONNAIRE

INTRODUCTION

The California Law Revision Commission is engaged in a comprehensive study of condemnation law and inverse condemnation. The following questions are addressed to you to survey the views of practitioners in the field regarding the following:

I State whether you represent condemnors or condemnees  
or both \_\_\_\_\_

II Arbitration of Just Compensation (CCP §§1273.01-1273.06)

(a) Have you used the arbitration procedure in any  
condemnation action? \_\_\_\_\_

1. Did you initiate the procedure? \_\_\_\_\_

2. What issues were involved in the case(s)? \_\_\_\_\_  
\_\_\_\_\_

3. What was (were) the amount(s) in controversy? \_\_\_\_\_  
\_\_\_\_\_

4. Were you satisfied with the procedure? \_\_\_\_\_

Explain \_\_\_\_\_

(b) Have there been cases where you were willing to submit the matter to arbitration, but the other side refused? \_\_\_\_\_

Explain \_\_\_\_\_

(c) Have there been cases where the other side was willing to submit to arbitration, but you refused? \_\_\_\_\_

Explain \_\_\_\_\_

(d) If you have not used the procedure:

1. Explain what type of case, if any, you would be

willing to submit to arbitration. \_\_\_\_\_

2. If you would not submit any condemnation case to arbitration, explain why not. \_\_\_\_\_

### III Discovery

(a) Do you use interrogatories, depositions and/or statutory exchange (CCP §§1272.01-1272.09)? \_\_\_\_\_

(b) What procedure or procedures of the above is best suited to discovery in eminent domain? \_\_\_\_\_  
Explain \_\_\_\_\_

(c) Have you used statutory exchange of valuation data? \_\_\_\_\_

(d) Do you find plaintiffs or defendants more willing to initiate statutory exchange? \_\_\_\_\_

(e) Do you find statutory exchange used in place of or supplementary to other discovery devices? \_\_\_\_\_

(f) Have you had to seek sanctions under CCP §1272.05 for failure of opponent to exchange valuation data? \_\_\_\_\_

(g) Are there any deficiencies in the statutory exchange of valuation data? \_\_\_\_\_

(h) Do you believe that the statutory exchange should be administered through the pretrial judge, as under the Los Angeles system for exchange of appraisal information (e.g., the pretrial judge reviews the valuation data of each side and does not order it exchanged unless it is deemed comparable)? \_\_\_\_\_

(i) Have you experienced any difficulty in excluding testimony sought to be elicited at trial which was available at the time but not made known through discovery? \_\_\_\_\_

Explain \_\_\_\_\_

(j) Is discovery generally unrewarding in eminent domain? \_\_\_\_\_

Explain \_\_\_\_\_

#### IV Admissibility of Evidence at Trial

What deficiencies are there in the California Evidence Code relating to eminent domain? \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_