

#36.20-80

10/25/73

Memorandum 73-92

Subject: Study 63.20-80 - Evidence (Judicial Supervision of Jury Views
in Civil Cases)

At the September meeting, the Commission requested that the staff prepare a draft of a tentative recommendation to require the judge in a civil case to accompany the jury at a view ordered pursuant to Code of Civil Procedure Section 610. Two copies of the requested draft are attached. Please mark your suggested editorial changes on one copy and return it to the staff at the November meeting. We hope that this tentative recommendation can be approved for sending out for comment after the November meeting.

Respectfully submitted,

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Legal Counsel

TENTATIVE RECOMMENDATION

relating to

JUDICIAL SUPERVISION OF JURY VIEWS IN CIVIL CASES

Staff Draft

Section 610 of the Code of Civil Procedure provides that the judge in a civil case¹ may order that the jury be taken out of court to view property which is the subject of the litigation or the place where a material fact occurred. The statute requires that the jury be conducted to the property by an officer; once there, the property is shown to the jury by "some person" appointed for that purpose by the court. However, it is unclear under present California law whether the judge is required to accompany the jury at the view. Section 610 is silent on this point. Several decisions indicate that, while the judge should accompany the jury, generally no prejudice requiring reversal results where the judge is not present.²

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1. This recommendation is concerned only with jury views in civil cases governed by Code of Civil Procedure Section 610. Penal Code Section 1119 provides for jury views in criminal cases.
 2. In Rau v. Redwood City Woman's Club, 111 Cal. App.2d 546, 555, 245 P.2d 12, 17-18 (1952), the court said, "We expressly hold it to be improper [for the judge not to accompany the jury at the view], but we cannot say under the circumstances of this case that defendant was prejudiced by such failure." See also Haley v. Bay Cities Transit Co., 83 Cal. App.2d 950, 187 P.2d 850 (1947). Compare decisions holding that in a criminal trial the defendant has a right to have the judge accompany the jury at the view; People v. Yut Ling, 74 Cal. 569, 16 P. 489 (1888); People v. Akens, 25 Cal. App. 373, 143 P. 795 (1914).

There are several important reasons why the judge should accompany the jury where a view is ordered in a civil case:

(1) A view is evidence³ and as such may be important to the determination, or even decisive, of certain issues in the case. Sound principles of judicial administration require that the judge be present where evidence is given and be himself cognizant of all the evidence.

(2) The judge may be called upon to decide motions directed to the sufficiency of the evidence and hence should be aware of all the evidence in the case.

(3) The judge should be present at the view in order to guard against prejudice resulting, for example, from changed or differing conditions at the premises being viewed, from the actions of the person who conducts the view or of other persons, or from improper conduct of the jurors themselves.

Accordingly, the Commission recommends that Section 610 of the Code of Civil Procedure be amended to require the judge to accompany the jury and supervise the conduct of the view.

3. *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941); *Cutting v. Vaughn*, 182 Cal. 151, 187 P. 19 (1920); *People v. Milner*, 122 Cal. 171, 54 P. 833 (1898); *City of Pleasant Hill v. First Baptist Church*, 11 Cal. App.3d 384, 414, 82 Cal. Rptr. 1, 21 (1969); *San Francisco Bay Area Rapid Transit Dist. v. Central Valley Nat'l Bank*, 265 Cal. App.2d 551, 555, 71 Cal. Rptr 430, ___ (1968); *Rau v. Redwood City Woman's Club*, 111 Cal. App.2d 546, 554-555, 245 P.2d 12, 17 (1952); *MacPherson v. West Coast Transit Co.*, 94 Cal. App. 463, 271 P. 509 (1928). The earlier holding that a view was not evidence in *Wright v. Carpenter*, 49 Cal. 607 (1875), was repudiated in *People v. Milner*, *supra*. In eminent domain cases the evidence obtained at the jury view may be used only for the limited purpose of understanding and weighing the testimony of expert witnesses or property owners concerning value. Evid. Code § 813.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 610 of the Code of Civil Procedure, relating to jury views.

The people of the State of California do enact as follows:

Section 1. Section 610 of the Code of Civil Procedure is amended to read:

610. When, in the opinion of the ~~Court~~ court , it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the ~~Court~~ court for that purpose. While the jury ~~are~~ is thus absent, no person, other than the person so appointed or the court , shall speak to them on any subject connected with the trial. The judge shall personally attend and supervise the conduct of the view.

Comment. Section 610 is amended to clarify the obligation of the trial judge to accompany the jury when a view is ordered and to supervise its conduct. For a discussion of prior law, see Recommendation Relating to Judicial Supervision of Jury Views in Civil Cases, ____ Cal. L. Revision Comm'n Reports ____ (19).