

Memorandum 74-36

Subject: Study 63 - Evidence (Jury Views in Civil Cases)

This memorandum discusses the comments received on the tentative recommendation relating to judicial supervision of jury views in civil cases. Copies of the letters of comment are attached as exhibits. In response to these comments, the staff has prepared for your consideration a new version of this recommendation, two copies of which are attached. We hope to be able to approve the attached recommendation for printing at the July meeting, subject to your editorial suggestions.

General Reaction

All the comments agreed that the judge should accompany the jury and supervise the conduct of the view. Seven letters (Exhibits I-VII) approved the tentative recommendation as is. Two writers questioned the provision that the judge's attendance may not be waived. (See Exhibits XV and XVI.) Others, including the State Bar, approved the concept of the tentative recommendation but suggested additional reforms. In order to accommodate some of the suggested reforms discussed below, the staff has redrafted the recommendation based on Mississippi Code Section 13-5-91 (Exhibit XVIII) which essentially provides that the view is a session of court.

Suggested Reforms

1. Type of evidence received outside courtroom. The staff agrees with Judge Yale's opinion (Exhibit VIII) that the statute

should not restrict taking evidence outside the courtroom to a viewing of the property, which is the subject of litigation, or for the viewing of a place where a material fact has occurred. Oft times, a jury should view a mock scene, a staged experiment, a movie film, or other evidence that is incapable of physical presentation in a courtroom and such a view would not correspond with the property or place limitation.

The attached recommendation has been revised to allow the consideration of any evidence related to the place or object viewed, including demonstrations and experiments. (See also Exhibit XVII.)

2. Who may speak to jurors. Section 610 presently provides that only the person appointed to show the view may speak to the jurors on any subject connected with the trial. The tentative recommendation provided that the court (judge) may also speak to the jurors. The staff agrees with those (including the State Bar) who suggest in effect that the view should be a court proceeding in which sworn witnesses may testify concerning the view with the permission of the judge. (See Exhibits VIII, IX, XII, XIII, and XIV.)

3. Attendance of court reporter. The State Bar and one other (Exhibit XIV) have suggested that the court reporter should record statements to the jury. The staff thinks that this is a useful provision, and it is accomplished in the attached recommendation by providing that the whole organized court, including the court reporter, shall proceed to the place to be viewed and that the court is in session while outside the courtroom.

4. Attendance of counsel. The staff also agrees with writers who suggest that counsel should be present when evidence is taken outside the courtroom. (See Exhibits IX and XI.) The attached recommendation provides specifically for the role of counsel at the view. The staff does not think that it is necessary to provide that counsel may inspect the view before the jurors as is suggested in Exhibit XI as an alternative to letting them attend the view.

5. Showers. The staff agrees with Judge Yale that it is unnecessary to require the appointment of persons to show the view to the jury. (See Exhibit VIII.) By eliminating this requirement and providing that witnesses may testify at the view, the concerns expressed in Exhibit X (what shower can say to jurors) and Exhibit XII (appointment of shower is too formal) should be satisfied. In the preliminary part of the attached recommendation, we note Evidence Code Section 775, which permits the court to call witnesses on its own motion or on the motion of any party. This provision should provide adequate authority for the court to designate a shower where one is necessary.

6. Nonwaiver of judicial attendance. As noted above, two writers objected to the provision concerning nonwaiver of judicial attendance. (See Exhibits XV and XVI.) At the meeting where this provision was discussed, it was decided that, if the attendance requirement were waivable, the judge might subtly coerce the parties into waiving his attendance.

This would be undesirable in view of the rationale behind the recommendation that the view is evidence like any other in the case. In the attached recommendation, the specific provision that the judge's attendance cannot be waived is not required to accomplish this end since it is obvious that the judge is required to be present at the session of court held outside the courtroom. It should be noted that the great majority of the comments received either expressly or implied approved the non-waiver provision.

7. Expenses. The South Australia statute discussed in Exhibit XVII contains a provision for payment of the expenses of the view. The staff thinks that such a provision is unnecessary.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

Memo 74-36

EXHIBIT I



OFFICE OF CITY ATTORNEY

CITY COUNCIL
Daniel C. Hella, Mayor
Laurence B. Azevedo
Richard L. Holmes
Thomas J. Wentling
Richard T. La Pointe
Farrei A. Stewart, City Manager

March 1, 1974

California Law Revision Commission
School of Law
Stanford, California 94305

RE: Tentative Recommendation
Relating to Judicial Supervision
of Jury Views in Civil Cases

Gentlemen:

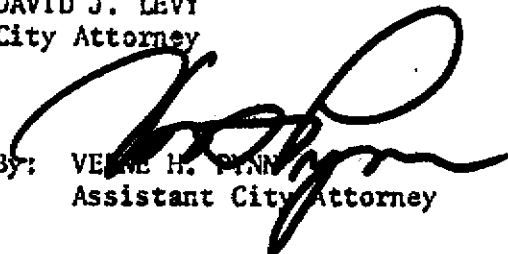
With respect to your proposal to amend Section 610 of the Code of Civil Procedure relating to jury views, it would be our strong recommendation that the amendment be seriously considered by the State Legislature as requiring the presence of the Judge at all times while making the views.

We have had occasion to try eminent domain cases in the past and in our opinion it is extremely productive for the Judge to personally accompany the jury on an inspection of the real property which is the subject of the action.

Furthermore, we believe that the presence of the Judge gives a more serious note to the case and has a tendency to eliminate an attempt by the jurors to interrogate the lawyers to their chagrin and embarrassment.

Yours very truly,

DAVID J. LEVY
City Attorney


By: VERNE H. PENN
Assistant City Attorney

Memo 74-36

EXHIBIT II

LAW OFFICES OF

PILLSBURY, MADISON & SUTRO

STANDARD OIL BUILDING

225 BUSH STREET

SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 963-1000

WRITER'S DIRECT DIAL NUMBER

(415) 983-1311

TELEX 34743

CABLE ADDRESS "EVANS"

TELECOPIER: TEL. (415) 398-2096

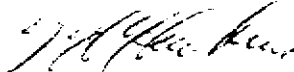
March 1, 1974

Mr. John H. Demouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Sir:

I have a copy of the Commission's tentative recommendation relating to judicial supervision of jury views in civil cases. We strongly favor the proposed amendment to section 610 of the Code of Civil Procedure. As a matter of fact, we are somewhat surprised to learn that in some cases the judge did not attend the view.

Yours very truly,



Fredrick H. Hawkins

Memo 74-36

EXHIBIT III

2-23-74

MEMO FROM WANDA UNDERHILL

To: John H. DeMally
Calif. Law Revision Commission

Re: Judicial Supervision of Jury Views
in Civil Cases, January 1974.

The recommendation of the Commission
that §610 of the C.C.P. be amended
to require the judge to accompany
the jury on views without waiver
sounds reasonable and just.

Wanda Underhill

John H. DeMally
Calif. Law Revision Commission
San Francisco, Calif.



275 EAST OLIVE AVE.
TEL: 846-2141
840-1231

Memo 74-36

EXHIBIT IV

OFFICE OF CITY ATTORNEY

CITY OF BURBANK
CALIFORNIA

SAMUEL GORLICK
CITY ATTORNEY

ELDON V. SOPER
RICHARD L. SIEG, JR.
ALAN S. KALKIN
ASSISTANTS
MICHAEL R. MURNANE
DEPUTY


February 27, 1974

California Law Revision Commission
School of Law,
Stanford, California 94305

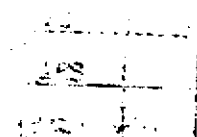
Gentlemen:

I approve the tentative recommendation relative to "Judicial Supervision of Jury Views in Civil Cases" (#63-20-80). The Judge's presence is necessary to preclude misconduct by the jurors or counsel.

Sincerely,


SAMUEL GORLICK
City Attorney

SG:lh





SAN DIEGO GAS & ELECTRIC COMPANY

P. O. BOX 1831 SAN DIEGO, CALIFORNIA 92112

March 28, 1974

FILE NO. **LEA 000**

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Code of Civil Procedure, §610

Gentlemen:

The proposed amendment to C. C. P., §610, should be adopted for the following reasons:

1. There appears to be no rational basis for distinguishing between a civil and criminal action in the handling of viewing evidence outside the courtroom.
2. Requiring the presence of the court during out-of-courtroom viewing of evidence would not impose an unreasonable burden upon the court.
3. The court should be fully aware of all of the evidence in a case to be able to properly rule upon its admission.
4. Juries are instructed not to discuss a cause prior to the time that it is submitted to them. The court's presence would assure that this admonition is not violated.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Genter S. Cohn".
Genter S. Cohn
Attorney

Memo 74-36

EXHIBIT VI

LAW OFFICES OF

di Leonardo, Blake, Kelly, Aguilar & Leal

A PROFESSIONAL CORPORATION
400 SUNNYVALE OFFICE CENTER
CIVIC CENTER
505 WEST OLIVE AVENUE
P. O. BOX 1205
SUNNYVALE, CALIFORNIA 94086
(408) 736-3474

MICHAEL D. LEONARDO
ROBERT L. BLAKE
JAMES T. KELLY, JR.
JESS JOSEPH AGUILAR
STANLEY F. LEAL
THEODORE J. BIAGINI
GARY L. OLIMPIA
RONALD W. ROSE
LOUIS A. BASILE
RICHARD P. ROGGIA
RAYMOND J. DAVILLA, JR.

March 4, 1974

California Law Revision Commission
School of Law
Stanford, CA 94305

Gentlemen:

This letter is simply written in connection with the Letter of Transmittal received in connection with the tentative recommendation relating to Judicial Supervision of Jury Views in Civil Cases. I have read the material provided and I very strongly urge that the suggested legislation be proposed to the California State Legislature. I have conducted several jury trials where views were necessary and never experienced an occasion where the Judge did not accompany the jury during a view. There is no doubt in my mind that this is necessary to the proper adjudication of any case and its absence would create unfortunate and, in my opinion, needless judicial problems.

Very truly yours,

Gary L. Olimpia
Gary L. Olimpia

GLO/jh
Encl.

**DEPARTMENT OF TRANSPORTATION
LEGAL DIVISION**

1120 N STREET, SACRAMENTO 95814
P.O. BOX 1438, SACRAMENTO 95807



March 20, 1974

California Law Revision Commission
School of Law
Stanford, California 94305

Attention: Mr. John H. DeMouilly
Executive Secretary


Dear Mr. DeMouilly:

In re: Judicial Supervision of Jury Views in Civil Cases

This Department has reviewed the tentative recommendation for revision of Code of Civil Procedure Section 610. We concur with the proposed amendment.

A jury view is as much a part of the trial as that which is conducted in the courtroom. Problems can (and often do) arise during the view which require prompt judicial attention. The presence of the judge during this phase of a trial is just as essential as during any other phase.

Very truly yours,


EDWARD J. CONNOR, JR.
Attorney

Memo 74-36

EXHIBIT VIII

The Superior Court

OF THE

State of California

COURTHOUSE - SAN DIEGO 92101

CHAMBERS OF
WILLIAM A. YALE
JUDGE

March 26, 1974

John H. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear John:

Re: 63.20-80

In response to your letter of transmittal pertaining to the proposed amendment of CCP 610, it is my opinion that CCP 610 in its present statutory form and as proposed to be amended should not restrict taking evidence outside the courtroom to a viewing of the property, which is the subject of litigation, or for the viewing of a place where a material fact has occurred. Oft times, a jury should view a mock scene, a staged experiment, a movie film, or other evidence that is incapable of physical presentation in a courtroom and such a view would not correspond with the property or place limitation.

Further, I see little need to waste legislative language on "which shall be shown to them by some person appointed by the court for that purpose", since the appointment of a tour guide simply doesn't take place. I firmly endorse the mandatory attendance of the trial judge during any exterior evidentiary proceeding.

I have performed minor legal surgery to the tentative draft and I enclose a modified version for the consideration by the Commission.

My best regards to you, the staff and the Commission members.

Yours very truly,



WILLIAM A. YALE

WAY/rml

Enclosure: As indicated

CCP 610

When in the opinion of the court, it is proper for the jurors to view or consider evidence at a place other than the courtroom, it may order them to be conducted in a body, under the charge of an officer, to such place. While the jurors are thus absent, and unless otherwise ordered, no person other than the judge shall speak to them on any subject connected with the trial. The judge shall be required to personally attend and supervise such proceedings outside the courtroom and this requirement may not be waived.

Pepperdine University
School of Law

March 20, 1974

California Law Review Commission
School of Law
Stanford, California 94305

Re: Proposed Act to Amend Section 610 of the Code of Civil
Procedure, Relating to Jury Views.

Dear Sir:

I concur in the proposed revision to Section 610, as a definite improvement in the Code. May I suggest, however, that a slight additional change is needed.

The presently proposed second sentence would read: "While the jurors are thus absent, no person other than the persons so appointed, or the court, shall speak to them on any subject connected with the trial."

This sentence will still lead to problems when statements are made out of the presence of the judge or counsel for either party. Inevitably, there will be disputes as to the content and prejudicial effect of any statements. I feel that no statements should be made unless they could have been properly made in the courtroom. Accordingly, I suggest that the above sentence be changed to read:

"While the jurors are thus absent, no person shall speak to them on any subject connected with the trial except that in the court's discretion testimony may be taken when the court, counsel for all parties, and all jurors are present."

Very truly yours,



Elgin Edwards
Associate Professor of Law

EE/dg

Memo 74-36

EXHIBIT X

J. H. PETRY
ATTORNEY AT LAW
374 COURT STREET
SAN BERNARDINO, CALIFORNIA 92401
AREA CODE 714
TURNER 9-9545

February 28, 1974

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Tentative Recommendation Concerning Evidence Code

Gentlemen:

Your tentative recommendation that the evidence code be amended to require a judge to attend personally and supervise the viewing of property by a jury is a sound amendment.

I believe you should give consideration to the provision that the person who shows the property may speak to the jury. There seems to be no restriction on what he may speak about. That point should be clarified.

Also Sec. 610 contains the phrase "while the jurors are thus absent no person -- shall speak to them". This phraseology should be changed. Presumably, it means that while jurors are absent from the court room and are on their way to, at, and returning from, the viewing.

Yours very truly,

J. H. Petry

JHP/hm

Memo 74-36

EXHIBIT XI

KIPPERMAN, SHAWN & KEKER

ATTORNEYS AT LAW

407 SANSOME STREET, SUITE 400

SAN FRANCISCO, CALIFORNIA 94111

STEVEN M. KIPPERMAN

JOEL A. SHAWN

JOHN W. KEKER

TELEPHONE: (415) 788-2200

March 4, 1974

California Law Revision
Commission School of Law
Stanford, California 94305

RE: TENTATIVE RECOMMENDATION RELATING TO JUDICIAL
SUPERVISION OF JURY VIEWS IN CIVIL CASES

Dear Sir:

The only comment I have concerning the above recommendation is that it seems appropriate to include specific language with respect to the right of counsel for the respective parties to be present or at least to inspect the scene themselves prior to the jury visiting the scene.

Very truly yours,



STEVEN M. KIPPERMAN

SMK..m

Memo 74-36

EXHIBIT XII

The Superior Court

12720 NORWALK BOULEVARD
NORWALK, CALIFORNIA 90650
CHAMBERS OF
HOMER H. BELL, JUDGE

TELEPHONE
(213) 868-1828
773-8870

March 6, 1974

California Law Revision Commissions
School of Law
Stanford, California 94305

Attention: John H. Demouilly
Executive Secretary

Re: Proposed Amendment to C.C.P. 610

Dear Mr. Demouilly:

I feel that the proposed amendment to Section 610 of the Code of Civil Procedure relating to jury views, is a good one. Right off the bat, however, I can see a phrase which can lead to claims of error and to appeals. I refer to the language ". . . appointed by the court for that purpose."

I suppose that most judges would have the foresight to select a spokesman or spokesmen for the purpose of pointing out various things to be noted at the site, to be viewed by the jurors, but I can also conceive of a situation in which, before leaving for the trip, no one thinks that it is necessary to have such a guide or spokesman. I can also conceive of a situation where the person appointed to show the site to the jurors might be somewhat unacquainted with one part of the area to be shown, at which point one of the attorneys might ask if he or his investigator or his expert might take over for a few minutes to point out some area or fact with which he was peculiarly well acquainted.

I am thinking back to an all-day trip which the court and jurors took a bus out to the Palmdale Pear Blossom Area, which consisted of desert-like land when the Feather River aqueduct was about to be constructed. After arriving at the scene, we drove over miles of area, not only to follow the general course of the proposed acquisition, but to view "comparable" properties to those being condemned. At such time it is almost inevitable that some juror will want to ask a factual question, such as whether this point or that point is to be the exterior limits of the taking, and so on.

California Law Revision Commission
March 6, 1974
Page Two

My recommendation is that the terms "appointed" be expressly made quite flexible so that the court may formally or informally designate the person to do the showing, before they leave the courthouse, or to permit him to designate such a tour guide in an impromptu manner at the scene to be viewed. Incidentally, would not the word "designate" be a better word than "appoint"? The use of this word, in itself, would indicate greater informality than the word "appoint".

I am pleased to note from your letter that the Commission has undertaken a continuing study of the law relating to evidence. I wrote to you a few days ago, suggesting a return to the words "relating to" [which appeared in former C.C.P. 1870 (B)] instead of the words "in furtherance of" used by Evidence Code 1223 in relation to statements of conspirators.

Thank you for your courteous consideration of all my various suggestions which I have made to your Commission.

Cordially yours,


Homer H. Bell

HHB:ch

New secretary!

Memo 74-36

EXHIBIT XIII

RALSTON, SMITH & SULLIVAN
LAWYERS

TELEPHONE 213 / 380-8650
CABLE: LAWCORP

505 SHATTO PLACE
LOS ANGELES 90020

March 6, 1974

OUR FILE NUMBER

Reply to:

6320 Villa Rosa Drive
Rancho Palos Verdes,
California 90274

California Law Revision
Commission
School of Law
Stanford, California 94305

Re: Jury Views - CCP Section 610

Gentlemen:

I concur with the intent of the recommendation of the Commission. However, the second sentence may impose an unnecessary limitation. It provides that no one may speak to the jurors at the scene. Would it not be more appropriate to provide that no one shall address the jurors without leave of court.

There may be circumstances where it would appropriate for an expert or lay witness to testify at the scene.

Very truly yours,


Austin T. Smith

ATS/fw

Monc 74-36

EXHIBIT XIV
RICHARD G. RANDOLPH
ATTORNEY AT LAW
120 NORTH EL CAMINO REAL
P. O. BOX 1439
SAN MATEO, CALIFORNIA 94401
TELEPHONE (415) 342-4900

February 26, 1974

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

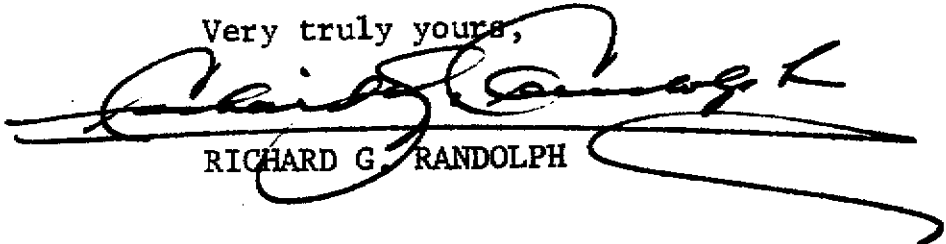
Re: Tentative Recommendation - Judicial Supervision
Of Jury Views In Civil Cases

Dear Mr. DeMouilly:

With respect to the proposed revision of §610 of the Code of Civil Procedure wherein it would be required that the Court attend a view of any premises to which a jury has been sent, I raise the question as to whether or not it will also be propitious to include the court reporter so that the Court might convene at the site and have the records show the comments made by the person appointed to conduct the view or the court in order that a record be created and that there be no future misunderstanding as to what exactly transpired during the view.

It would seem to me that the records should include any comments made by anybody with respect to evidence which is viewed whether the evidence is viewed in a courtroom or viewed at some place outside of the courtroom.

Very truly yours,


RICHARD G. RANDOLPH

RGR/pe



The Superior Court

LOS ANGELES, CALIFORNIA 90012

TELEPHONE
(213) 974-1234

CHAMBERS OF
GEORGE M. DELL
JUDGE

Dept. 51:
974-5675

March 1, 1974

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

Re: Judicial Supervision of Jury Views in Civil Cases

Dear Mr. DeMouly:

I am heartily in accord with the proposed amendments to section 610, Code of Civil Procedure, with the exception of the last sentence. It seems to me wholly unnecessary to provide for "nonwaiver" of the requirement of the judge's personal attendance. Although I find it difficult to conceive of a case in which the parties would, or should, be willing to waive the personal appearance of the judge, such an eventuality is not entirely impossible.

Further, the requirement both eliminates judicial discretion and, in so doing, strongly implies the absence of judicial good sense.

Yours very truly,


George M. Dell

GMD/nej

March 7th-86

EXHIBIT XII

REITH & WELLINGTON

ATTORNEYS AT LAW

444 PEARL STREET

P. O. BOX 158

MONTEREY, CALIFORNIA 93940

DANIEL I. REITH
ROBERT R. WELLINGTON

AREA CODE 408
TELEPHONE 375-3181

March 12, 1974

Mr. John DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

RE: Tentative Recommendation relating to
Judicial Supervision of Jury Views

Dear Sir:

The recommendation to amend CCP 610 to make it mandatory for the judge to attend and supervise a jury view is well reasoned and sound, but I question the prohibition against waiver of this requirement by the parties to an action. Basically, I believe that the judge should be required to attend any jury view if any party wants him to, but I fail to see why all parties could not waive this requirement if they desired to do so, and indeed the parties might stipulate to the judge viewing the scene at a time other than when the jury is present to meet the desirable goal of having the judge aware of all the evidence which has been presented to the jury. One can certainly imagine situations where even prudent counsel might waive the requirement that the judge be present. For example, the situation might arise where the attorneys are satisfied that there is no danger of manipulation of the conditions at the premises being viewed, and the judge's other court commitments might be such that the trial would be unnecessarily delayed waiting for a time when both judge and jury would be available for a view. In short, a prohibition of waiver in a civil case imposes unnecessary rigidity upon the trial court and trial counsel.

Very truly yours,



Daniel I. Reith

DIR:ms



LAW REFORM COMMITTEE OF SOUTH AUSTRALIA

MEMBERS—

THE HON. MR. JUSTICE ZELLING
C.B.E. (Chairman)
B. R. COX, Q.C., S.-G.
R. G. MATHESON Q.C.
~~A. B. C. WILSON~~
J. F. KEELER
K.T. Griffin
SECRETARY—
MISS J. L. HILL

FROM THE CHAMBERS OF THE CHAIRMAN:
THE HON. MR. JUSTICE ZELLING, C.B.E.,
JUDGES' CHAMBERS,
SUPREME COURT,
ADELAIDE . . S.A. 5000
PHONE: 80451 EXT. 724

21st May, 1974.

John H. DeMouly, Esq.,
Executive Secretary,
California Law Revision Commission,
School of Law,
Stanford University,
Stanford,
CALIFORNIA 94305.
U.S.A.

Dear Sir,

Thank you for the various publications of your Commission which have just reached me and which I have read with very great interest. You have also sent a letter of transmittal with regard to judicial supervision of jury views in civil cases and have asked for comment by May 1, 1974. Regrettably the copy did not reach me until May 16 so that I cannot comply with your request but I hope that these comments, in a matter in which we also are interested, may be of some use or at least of some interest to you.

Trial by jury in civil cases in South Australia today is rare. Most trials in civil cases are before a Judge alone.

However some of the problems which occur in relation to views by juries are just as real if the Judge is trying the matter himself as if he is trying it with a jury, because as the tribunal of fact he can himself be led into error if the view exceeds the proper bounds of a view or something is done at a view which ought not to have been done.

In my own experience both at the bar and on the bench, the two major problems in relation to a view are these:

- (a) that a view often ends up wholly or partially as a demonstration and not as a view, and
- (b) quite frequently when the parties go to the view they see that for example measurements taken by the police in relation to the scene of an accident are wrong and ought to be corrected, or that something has been clearly misdescribed by a witness and the true description

ought to be down on the notes or pointed out to the jury as the case may be, so that in effect evidence real or oral is taken at the view.

Even if the Judge is sitting alone, the ~~first~~ line between a view and a demonstration is not always easy to observe in practice, however easy it may be to delimit it by definition, and the second is a problem which can arise ex improviso. In addition of course it not infrequently happens that for example, in the course of measuring out a distance to a probable point of impact in a collision case, the plaintiff or defendant may voluntarily or involuntarily make some remark which cannot help being heard by the trier of fact, be he Judge or be they a jury. Accordingly it is wise, so far as one can, to give directions before the view starts to make sure that what one is embarking on is strictly a view and not a view coupled with a demonstration or a demonstration simpliciter and secondly to warn parties and others that they must say and do nothing that could possibly be interpreted as evidence, and that their counsel will act as shewers for the purposes of the view.

Notwithstanding those precautions, as I have said, things do happen on the spur of the moment at a view and quite often further orders and directions have to be given. To meet both these situations we have evolved a Section which stands as Section 88 of our Juries Act and is used both in jury and in non-jury trials, because of the necessity for giving directions both before and at and sometimes also after a view. You may think it worthwhile incorporating some such section if you have not already an analogue in your own legislation. It reads as follows:-

"(1) In any inquest the Court or Judge may at any time before verdict order a view of any place or property by the jury and may make all such orders upon the Sheriff or other person and give such directions as the Court or Judge may deem necessary for the purposes of such view, and such view shall be had accordingly.

(2) In any civil inquest when such view is ordered, the Court or Judge may direct what amount and by whom in the first instance the expenses of such view shall be paid."

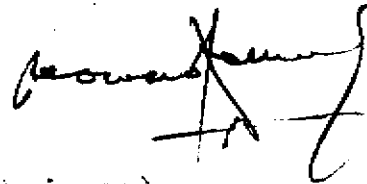
John H. LeMouley, Esq.,

3. 21st May, 1974

In our practice a view is never held except in the presence of the Judge. If he is trying the case without a jury then he must be there in any case, but a jury is never allowed to go to a view on its own without the presence of the judge and although the point has never arisen I am sure a new trial would be ordered if any jury were permitted so to do.

With all good wishes for the continued success of your work.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John H. LeMouley', written in a cursive style.

(Chairman).

EXHIBIT XVIII

Mississippi Code § 13-5-91 (1972)

§ 13-5-91. Jury may view the place.

When, in the opinion of the court, on the trial of any cause, civil or criminal, it is proper, in order to reach the ends of justice, for the court and jury to have a view or inspection of the property which is the subject of litigation, or the place at which the offense is charged to have been committed, or the place or places at which any material fact occurred, or of any material object or thing in any way connected with the evidence in the case, the court may, at its discretion, enter an order providing for such view or inspection as is herein below directed. After such order is entered, the whole organized court, consisting of the judge, jury, clerk, sheriff, and the necessary number of deputy sheriffs, shall proceed, in a body, to such place or places, property, object or thing to be so viewed or inspected, which shall be pointed out and explained to the court and jury by the witnesses in the case, who may, at the discretion of the court, be questioned by the court and by the representative of each side at the time and place of such view or inspection, in reference to any material fact brought out by such view or inspection. The court on such occasion shall remain in session from the time it leaves the courtroom till it returns thereto, and while so in session outside the courtroom it shall have full power to compel the attendance of witnesses, to preserve order, to prevent disturbance and to punish for contempt such as it has when sitting in the courtroom. In criminal trials all such views or inspections must be had before the whole court and in the presence of the accused, and the production of all evidence from all witnesses or objects, animate or inanimate, must be in his presence.

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

JURY VIEWS IN CIVIL CASES

July 1974

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

RECOMMENDATION

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JURY VIEWS IN CIVIL CASES

Section 610 of the Code of Civil Procedure provides that the judge in a civil case may order that the jury be taken out of court to view the property which is the subject of the litigation or the place where a material fact has occurred. The statute requires that the jury be conducted to the property by an officer; once there, the property must be shown to the jury by "some person" appointed for that purpose by the court. Only the person so appointed is permitted by Section 610 to speak to the jurors on any subject connected with the trial.

The Commission believes that Section 610 is deficient in several respects:

1. Section 610 fails to recognize that a jury view is evidence¹ which may be important to the determination of, or even decisive of, certain issues in the case. Consequently, Section 610 does not protect against prejudice which might result from improper conduct of the view.

2. Section 610 is silent concerning whether the judge is required to accompany the jury at the view. Several decisions indicate that, although the judge should accompany the jury, generally no prejudice

1. See Evid. Code § 140 (defining 'evidence'); *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941); *Cutting v. Vaughn*, 192 Cal. 151, 187 P. 13 (1920); *People v. Milner*, 122 Cal. 171, 54 P. 833 (1898); *City of Pleasant Hill v. First Baptist Church*, 1 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, 432 (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); B. Witkin, *California Evidence* § 645 (2d ed. 1966). 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 and inverse condemnation 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. See B. Witkin, *California Evidence* § 646 (2d ed. 1966 & Supp. 1972).

requiring reversal results where the judge is not present.² However, the judge should be present where evidence is given and be himself cognizant of all the evidence since he may be called upon to decide motions directed to the sufficiency of the evidence. The judge should also 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 a witness or other persons, or from improper conduct of the jurors themselves.

3. Section 610 is unnecessarily limited to a view of property which is the subject of litigation or of the place in which any material fact occurred. There is no good reason for the statute to ignore situations where other types of evidence, such as staged experiments or demonstrations,³ need to be received outside the courtroom.

4. Section 610 requires the judge to appoint some person to show the property or place to the jury. Apparently this unnecessarily rigid provision is largely ignored. The court's authority to call or question witnesses under Evidence Code Section 775⁴ should be sufficient to accomplish the purpose of appointing a shower.

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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 950 (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). 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.
 3. Courts have allowed jurors to view demonstrations despite the limited terms of Section 610. See, e.g., Newman v. Los Angeles Transit Lines, 120 Cal. App.2d 685, 262 P.2d 95 (1953).
 4. Evidence Code Section 775 provides in part: "The court, on its own motion or on the motion of any party, may call witnesses and interrogate them the same as if they had been produced by a party to the action"

5. The provision of Section 610 that only the shower can speak to the jurors on matters connected with the trial seems to prevent the judge and any witnesses from speaking to the jurors and so inhibits the jurors' understanding of the evidence.

In order to remedy these defects, the Commission recommends a procedure with the following features:

1. The jury should be allowed to leave the courtroom to receive any sort of relevant evidence where the judge thinks it is proper to do so.

2. When evidence outside the courtroom is to be considered, the scene should simply be shifted outside of the courtroom; hence, the judge, jury, the court reporter, and any necessary officers should be in attendance. Court should be in session from the time the courtroom is left until it is returned to. The judge should have the same authority over the conduct of the proceedings when the court is in session outside the courtroom that he has inside. Such a procedure should help guarantee the solemnity of the proceedings and the proper conduct of those present. It will enable the judge to make any necessary rulings and will guarantee that a record is kept of statements made to the jury on matters concerning the trial.

3. The court and the parties should be able to call and question witnesses to testify concerning the evidence received outside the courtroom.

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

405-467

An act to repeal Section 610 of, and to add Section 610 to, 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 repealed.

610. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation,

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 for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Comment. See the Comment to Section 610 (added).

405-468

Sec. 2. Section 610 is added to the Code of Civil Procedure, to read:

610. (a) On motion of any party, where it appears proper to view or inspect the property which is the subject of litigation, or the place where any material fact occurred, or any material object, demonstration, or experiment in any way connected with the evidence in the case, the judge may order a view or inspection.

(b) The entire court, including the judge, jury, court reporter, and any necessary officers, shall proceed in a body to the place, property, object, demonstration, or experiment to be viewed or inspected, which shall be pointed out and explained to the judge and jury by the witnesses in the case, who may, at the discretion of the judge, be questioned by the judge and by the counsel for the parties at the time and place of the view or inspection, in reference to any material fact brought out by the view or inspection. The court on such occasion shall remain in session from the time it leaves the courtroom until it returns.

(c) While court is in session outside the courtroom, the judge has the same authority he has within the courtroom.

Comment. Section 610 provides a procedure for the taking of evidence outside the courtroom in civil cases heard before a jury. Compare Miss. Code § 13-5-91 (1972).

Subdivision (a) provides that, pursuant to court order, the jurors may view or inspect any property, place, object, demonstration, or experiment connected with the evidence in the case. Former Section 610 provided only for a "view of the property which is the subject of litigation, or of the place in which any material fact occurred."

Subdivision (b) makes clear that the jury view is a session of court, essentially the same as a session inside the courtroom. Hence, the judge, jurors, court reporter, and other officers must be present. Former Section 610 did not require the presence of anyone other than the jurors, an officer to conduct them to the view, and a person appointed by the court to show the view. Subdivision (b) also provides for the testimony of witnesses concerning the evidence being viewed and allows them to be questioned by the court and counsel for the parties. Former Section 610 allowed only the person appointed by the court to speak to the jurors and made no provision for witnesses or counsel for the parties.

Subdivision (c) makes clear that the judge has the same authority at the view that he has in the courtroom.