

10/8/56

Memorandum No. 1

Subject: Condemnation study.

Mr. Burrill met with the Southern Committee on Saturday, October 6, to discuss further the study of condemnation law and procedure which we have invited him to do. He brought with him a preliminary list of problems which might be included in the study, a copy of which is attached (A). The committee discussed the matter with Mr. Burrill for about an hour and a half. In the course of the conversation the following points were developed:

1. The list of problems submitted by Mr. Burrill was hastily put together, overlaps at points, and does not constitute an integrated outline of a proposed study. Such an outline should be agreed upon before the study gets under way. In addition, if in making the study Mr. Burrill should encounter any major problems in the field not included in the outline, these would be included.

2. Mr. Burrill will not be able to begin work on the study until about January 1, 1957. He will try to have his research report completed by March 1, 1957 and is agreeable to an outside deadline of July 1, 1957.

3. Mr. Burrill stated that compensation for such a study at the standard rates charged by his office would amount to a fee well beyond what the commission could afford to pay. He is, however, willing to let the commission determine his compensation on a basis commensurate with that paid to other consultants for similar work and to regard the balance of his services as a public service.

Although Mr. Burrill is willing to wait until the study is completed before the compensation is determined, it would be preferable to come to an agreement and enter a formal contract with him as soon as possible. This is

necessary in order that we may know how much of our current research funds are available for other studies. It is also usually helpful in achieving a sense of commitment to the undertaking and the deadlines involved on the part of a research consultant.

The Southern Committee reached no conclusion as to the amount of compensation we should pay Mr. Burrill. Under our regular standards, a good research study covering all of the problems included in Mr. Burrill's preliminary list would probably carry a fee of more than \$1500; something in the neighborhood of \$2500-\$3000 would probably be in order. I recommend, however, that we do not commit that much money to the condemnation study at this time because it would require us to hold in abeyance studies on rescission of contracts and on either survival of tort actions or post-conviction sanity hearings which we would like to get started this year.

I recommend, therefore, that we handle this matter as we have the Uniform Rules of Evidence - i.e., do a part of it this year and a part next year. I suggest that we propose to Mr. Burrill that we make a contract with him immediately to make a study of a part of the subject matter for \$1,500 (hastily organized outlines of two possible studies are annexed (B) and (C)) and make a second contract with him next year, out of funds available in 1957-58, to cover the balance of the condemnation study. This would enable us to determine the scope and desirability of such a further study on the basis of information as to both the subject matter and the research consultant gained in this year's work.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

Study No. 36 - Condemnation Law and
Procedure

I. Elements of Problem Bearing on "Just
Compensation" to Land Owner

1. What account should be taken of profits from the operation of a business located on the property condemned? Consider, e.g.--
 - a. Loss of or damage to business as a separate item of damage and compensation; (1) in complete take, (2) in partial take.
 - b. Consideration of profit or loss of business in fixing value of property; (1) in complete take, (2) in partial take.
 - c. Temporary loss of profits from business during construction or move; (1) in complete take; (2) in partial take.
2. Should owners and lessees be entitled to recover costs of moving, including interruption and relocation expenses?
3. Are the recoverable costs provided by Section 1255(a) of the Code of Civil Procedure in the case of abandonment of condemnation adequate? Consider, e.g.,--
 - a. Whether the time limit presently provided with respect to the period in which costs of preparing for trial and attorneys fees may be incurred is realistic (1) when an order of possession is obtained; (2) when an order for possession is not obtained.
 - b. What provision, if any, should be made for contingent attorneys' fees?

- c. Should provision be made for recovery of the cost of maps, photographs, engineering studies, title reports, surveys, etc?
 - d. Should provision be made for recovery of other damages suffered by owners -- e.g., loss of income, etc?
4. Should provision be made for recovery of cost of maps, photographs, engineering studies, title reports, surveys, etc. in all condemnation cases?
 5. What provision should be made for payment of interest -- what rate and at what time to commence?
 6. Should provision be made that attorney's fees and appraisal fees should be recoverable if the award made is in excess of an offer made a specified time before trial?
 7. Should the condemnator be required to offer the highest appraisal?
 8. Other.

(c)

Study No. 36 - Condemnation Law and
Procedure

II. Elements of Problem Relating to
Procedure

1. Who should have the burden of proof in condemnation cases?
 - a. Should plaintiff open the evidence?
 - b. Should defendant open the evidence but plaintiff have the burden of proof?
 - c. Who should have the burden of proof on special benefits?
2. Should there be a conclusive presumption of necessity and location (a) in all cases, (b) in some cases?
3. Should the condemnee be required to answer or merely to appear as under the federal practice?
4. Should there be broader provisions as to discovery re plans of construction?
5. Should testimony as to sales of nearby property be admissible (a) on direct examination, (b) on rebuttal; in either case as (1) direct evidence of value, (2) basis for opinion as to value? Should consideration be given to providing the period of time within which sales shall be deemed relevant?