

#34

10/27/64

Memorandum 64-87

Subject: Study No. 34(1) - Uniform Rules of Evidence (Preprint Senate Bill No. 1 - Division 9)

We have received no comments specifically concerning this division.

Sections 1152 and 1154

Several comments concerning the Commission's tentative recommendation relating to Opinion Testimony in Eminent Domain Proceedings also are pertinent to these sections. (See Memorandum 64-100, page 6, and Exhibits VII, XVI, and XVII thereto). These comments relate to the phrase repeated in each of Sections 1152 and 1154 (page 55, lines 22-23 and 42-43): "as well as any conduct or statements made in negotiation thereof." The substantive effect of this phrase in each of these sections is to overrule the holding in People v. Forster, 58 Cal.2d 257, 23 Cal. Rptr. 582, 373 P.2d 630 (1962).

You will recall that the Judges' Committee previously objected to the inclusion of this language. See pages 4 and 5 of Exhibit I to the Second Supplement to Memorandum 64-48. The three identified letters attached as exhibits to Memorandum 64-100 also are in accord in disapproving the Commission's recommendation in this regard.

In light of the substantial adverse comment in regard to this matter, the Commission may wish to consider the advisability of its recommendation to overrule People v. Forster. The existing law could be continued simply by deleting the quoted phrase in each of sections 1152 and 1154.

Section 1103

There is a typographical error in the last line of the introductory clause of this section (page 54, line 37): The word "of" should be changed to "if."

Respectfully submitted,

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