

#63.70

8/25/77

First Supplement to Memorandum 77-52

Subject: Study 63.70 - Evidence (Evidence of Market Value of Property)

Exhibit 1 is a letter from Mr. Fadem of the State Bar Committee on Condemnation noting reasons for opposition by the State Bar Committee to adopting condemnation valuation rules in all cases. Mr. Fadem cautions that this statement of reasons has not been reviewed, in its present form, by the State Bar Committee.

The staff does not find the statement of reasons persuasive. The Commission's proposal in the tentative recommendation is not to apply the condemnation valuation rules (date of value, severance damage, and the like) to other cases but only to apply the rules of evidence (value may be shown by opinion testimony, opinion may be based on comparable sales, and the like). The statement of reasons also questions whether the requirement of opinion testimony to show value should be imposed in other cases; the staff does not see how value can be shown other than by opinion testimony since direct evidence of "value" is necessarily hearsay.

The staff has also been informed that the State Bar Committee also had some views on the particular changes in the Evidence Code provisions proposed by the Commission in the tentative recommendation. However, we have not yet received a statement of those views.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT I

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August 1, 1977

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Re: Proposal of Reasons for not Adopting
Condemnation Valuation Rules in all Cases

Dear Mr. Sterling:

Enclosed is a draft proposal of reasons for not
adopting condemnation valuation rules in all cases.

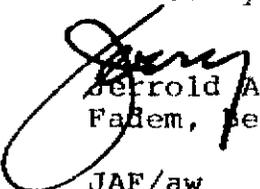
These are my efforts at synthesizing the Committee
discussion. An earlier draft was presented to the
Committee for approval and certain additions were
then called for by the Committee.

Those additions appear in this second draft.

However, the Committee has not seen this second
draft.

I apologize for not getting this to you sooner but
I thought I had dictated it and only learned that
I had not when Jess Jackson "bugged me".

Sincerely,


Jerrold A. Fadem
Fadem, Berger, McIntire & Norton

JAF/aw
Enclosure

cc: Jess Jackson, Esq.
All Committee Members
Roger Sullivan, Esq.
Patricia Remmes Herson

Proposal of Reasons for not Adopting Condemnation
Valuations Rules in all Cases

The rules for valuation in condemnation have evolved through much trial and error to a reasonable balance to meet the constitutional guarantee of just compensation.

Many of the circumstances that are to be considered in condemnation valuations are removed from the real life situations of valuation in commercial transactions.

By way of example:

The Woolstenhulme Rule of disregarding the effect of the public improvement.

The "before" and "after" hypotheticals of severance damage.

Settlements by government agencies, the amounts of which are affected by reimbursement for litigation costs, or by supplemental payments under the Uniform Real Property Relocation Act. (42 U.S.C. §4601, et seq. and Cal. Gov. Code §7260, et seq.)

Shifting dates of value.

To seek to encumber other type cases, and other counsel unfamiliar with eminent domain valuation rules, seems counter-productive to either the achievement of justice under circumstances not present in condemnation, or to the efficient administration of the courts.

The general rule for admission of evidence is relevancy. In eminent domain, the only evidence is the opinion of the witness. All the other testimony is admitted for a limited purpose, to enable the trier of fact to weigh the opinion. See BAJI 11.80.

This contrast in reason for admission of evidence seems likely to cause difficulty in general litigation if the eminent domain evidence rules were transported bodily into general litigation.

The date of condition concept which occurs so often in eminent domain does not seem in the Committee's experience to have occurred in general litigation. For example, a condemnation action is filed in 1975, when the grading ordinance requires slopes of 1 1/2 to 1. The date of value by reason of CCP §1263.120, becomes the date of trial in

1977. In the meantime, slopes have to be 2 to 1. This affects value. Bodily transport of the date of condition concept seems to have some potential for difficulty in general litigation.

Private transactions comprehend many elements specifically non-compensible in eminent domain. These are too well known to require an extensive enumeration but include police power, traffic controls, diversion of traffic, parking restrictions, etc. In a general litigation, there might well be value impacts from such activities, evidence of which the law of eminent domain makes inadmissible.