

Time

June 2 - 9:30 a.m. - 5:00 p.m.

June 3 - 9:00 a.m. - 5:00 p.m.

Place

State Bar Building  
1230 West Third Street  
Los Angeles

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

June 2 and 3, 1967

June 2

1. Approval of Minutes

April meeting (sent 5/16/67)

May meeting (sent 5/16/67)

2. Administrative matters, if any

3. Study 36 - Condemnation (Discovery in Eminent Domain Proceedings)

Special order  
of business  
at 10:00 a.m.

Memorandum 67-37 (enclosed)

4. Review of other recommendations to 1967 legislative session

Memorandum 67-35 (to be sent)

5. Study 36 - Condemnation (Possession Prior to Judgment)

Memorandum 67-34 (to be sent)

Revised Statute (attached to memorandum)

June 3

6. Study 50 - Leases

Memorandum 67-32 (enclosed)

First Supplement to Memorandum 67-32 (enclosed)

Special order  
of business  
at 9:00 a.m.

7. Study 63 - Evidence Code

Memorandum 67-29 (you have a copy of this)

Memorandum 67-30 (you have a copy of this)

First Supplement to Memorandum 67-30 (to be sent)

Memorandum 67-31 (you have a copy of this)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JUNE 2 AND 3, 1967

Los Angeles

A meeting of the California Law Revision Commission was held at the State Bar Building, Los Angeles, on June 2 and 3, 1967. The members of the Commission present on June 2 functioned as a subcommittee and the report of the subcommittee was adopted by the Commission on June 3 and is incorporated in these Minutes as the action of the Commission.

Present: Richard H. Keatinge, Chairman (June 3)  
Sho Sato, Vice Chairman  
Hon. Alfred H. Song (June 3)  
Joseph A. Ball (June 3)  
John R. McDonough  
Thomas E. Stanton, Jr. (June 2)

Absent: James R. Edwards  
Herman F. Selvin  
George H. Murphy, ex officio

Note: The Assembly member of the Commission has not yet been designated by the Speaker.

Messrs. John H. DeMouilly and Clarence B. Taylor of the Commission's staff were present. Also present were Mr. John McLaurin, the Commission's consultant on condemnation law and procedure (June 2), and Mr. Joseph B. Harvey, the Commission's consultant on lease law (June 3).

Also present on June 2 were the following observers:

William Y. Armstrong	American Society of Appraisers
Henry A. Babcock	American Society of Appraisers
G. Q. Braybrant	American Society of Appraisers
Richard Barry	Commissioner, Superior Court, Los Angeles
Norval Fairman	State Dept. of Public Works
Richard L. Huxtable	Chairman, Southern Section, State Bar Committee on Condemnation Law and Procedure

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Robert W. Jackson	American Society of Appraisers
James T. Markle	State Dept. of Water Resources
John M. Morrison	Office of Attorney General
Terry C. Smith	Los Angeles County Counsel
Charles E. Spencer, Jr.	State Dept. of Public Works
Judge Donald R. Wright	Superior Court, Los Angeles

Also present on June 3 as an observer was Eugene Golden, representing the Buckeye Realty and Management Corporation, whose office is Suite 1009, 9777 Wilshire Boulevard, Beverly Hills, California (CRestview 3-1120; BRadshaw 2-5671).

ADMINISTRATIVE MATTERS

Minutes of April and May meetings. The minutes of the April 22, 1967 meeting and May 12, 1967 meeting were approved as presented by the staff.

Future meetings. Future meetings are scheduled as follows:

June 29 (evening), 30, and July 1	Sacramento
Note: The time of this meeting was changed to June 29 (evening), 30, and July 1	
July 28 (evening), 29	San Francisco
August	No meeting
September 21 (evening), 22, 23	Los Angeles
October 20 (evening), 21	San Francisco

Sacramento meeting. The Commission adopted a suggestion of Senator Song that the June meeting be held in Sacramento. The Commission also adopted a suggestion of Senator Song that Chief Justice Traynor be invited to speak on the subject of law reform at a luncheon to the lawyer members of the Assembly and other legislators to be invited by Senator Song. Senator Song agreed to undertake to make the necessary arrangements for the luncheon which will be held on Friday during the time the Commission will meet in Sacramento. It was suggested that Justice Regan be invited to the luncheon.

If Chief Justice Traynor is unavailable, the Commission plans to have lunch with a few members of the Legislature to be invited by Senator Song.

Assistant Executive Secretary position. The Commission directed the Executive Secretary to invite the first three persons on the list for the Assistant Executive Secretary position to appear before the

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Commission for an interview before the Commission determines the person who should be appointed to this position.

Report on 1967 Legislative Program. The Executive Secretary reported that all bills recommended by the Commission have passed the Senate. The status of the bills in the Assembly was discussed. As reported in these Minutes, the Commission determined to withdraw its recommendation that Senate Bill No. 252 (leases) be enacted at the current session.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE (DISCOVERY IN  
EMINENT DOMAIN PROCEEDINGS - SENATE BILL NO. 253)

The Commission considered Memorandum 67-37 and the attached material, including a revision of Senate Bill No. 253 (as amended in the Senate, March 9, 1967) and a revision of the proposed comments to the various sections.

The Commission directed that various changes be made in the bill. For convenience in showing these changes, they are set forth in the revision of the bill attached to these minutes. The Commission also directed that the proposed official comments to the various sections be revised to reflect the changes made in the revised bill.

The reasons for revising the bill were essentially three-fold, as follows:

(a) To specify the effect of enactment of the bill upon the existing procedure in Los Angeles County;

(b) To take into account the recent revision by the Judicial Council of the court rules governing pretrial; and

(c) To accommodate, insofar as possible, the views of the appraisal profession.

Judge Wright and Commissioner Barry outlined the Los Angeles procedure and illustrated the need for that procedure in assuring calendar control and trial preparation. They also pointed out the difficulties that would be encountered in Los Angeles County if the simplified procedure provided by the bill were made applicable in all cases. After extended consideration of the problem and alternative solutions, the Commission determined to make

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the procedure provided by the bill inapplicable to eminent domain proceedings in Los Angeles County in which a pretrial conference is held. The reason for limiting the exclusion to pretrial cases is to make the statutory procedure available in cases where a pretrial is not held. The staff was directed, however, to prepare provisions that specify the details of a procedure for "in camera" exchanges that might be adopted by rule in other counties of the state. These provisions will be considered at a future meeting but are not to be included in Senate Bill No. 253.

Various changes were made to take into account the fact that, under the revised pretrial rules, a pretrial conference may not be held in many eminent domain proceedings. For example, in subdivision (a) of Section 1272.01, the time for service and filing of the demand for an exchange was changed to relate to the date of trial rather than to the date of the pretrial conference. As revised, the provisions of the bill are not dependent upon the holding of a pretrial conference, the termination of discovery, the machinery for setting trial dates, or other matters governed by court rules.

Dr. Babcock and other members of the American Society of Appraisers explained the views of professional appraisers. In general, professional evaluators would oppose the use of "statements of valuation data" because the information is taken out of context, may be extracted by persons other than members of the appraisal profession, and may be misleading without the appraiser's analysis, assumptions, and qualifying conditions. Appraisers generally would prefer the use for all purposes of full and reasoned appraisal reports. Dr. Babcock outlined the contents of such a report and gave illustrations of matters that would be contained in the report but

would not be required to be disclosed by Senate Bill No. 253. It was pointed out, however, that in providing a simple procedure for pretrial disclosure, the bill does not curtail the importance of the appraiser's thoroughness in making his investigation and forming his opinions, does not diminish his role in preparing the client's case, and does not reduce the importance of opinion testimony in the trial of the case. It was also pointed out that, absent such a procedure as that provided in Los Angeles County, there is no feasible way to enforce a requirement that complete appraisal reports be exchanged prior to trial. However, the Commission directed various changes in the bill to accommodate the views expressed. The bill was made to specifically provide that an appraisal report may be used as a "statement of valuation data" (Section 1272.02(f)); statements that are not appraisal reports were required to be signed by the witness and recite that the information fairly and correctly states the opinions and knowledge of the witness (Section 1272.02(e)); changes were made to permit the depositing of appraisal reports with the clerk (Section 1272.01(e)); and the content of statements of valuation data was expanded to include suggestions made by the appraisers (Section 1272.02(b)).

The specific changes made in the bill are as follows:

- (a) The title of the new chapter added by the bill was changed to refer to exchanges of information, rather than "discovery."
- (b) The time for filing demands for exchanges of information was limited to 50 days prior to trial, rather than 10 days prior to pretrial. Section 1272.01(a).
- (c) Throughout, the bill was made to refer to a list of expert witnesses and statements of valuation data for each valuation witness, rather than to a single "statement of valuation data."

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(d) The time for service of "cross-demands" was limited to 40 days prior to trial, rather than 10 days after service of a demand. Section 1272.01(b). The purpose of this change is to permit the maximum feasible time for the service of cross-demands.

(e) Throughout the bill, and particularly in Sections 1272.01 and 1272.02, the language was changed to refer to the calling of witnesses or to the presentation of data "on direct examination during the case in chief." The purpose of this change is to avoid stating the various detailed requirements of the bill in broader language than that used in Section 1272.04 which provides the only sanction for compliance with the chapter.

(f) Subdivision (e) was added to Section 1272.01 to provide that lists and statements are not filed in the proceeding but are deposited with the clerk for the limited purpose of permitting the court to apply the provisions of the chapter. The purposes of this change are to avoid the mechanical problems of filing irregular sized documents, to encourage the use of appraisal reports, and to provide a means of disposing of the lists, statements, and reports after they have served their purpose.

(g) The content of the statements was expanded to include a recitation of the estate or interest being valued and the date of valuation assumed by the witness. Section 1272.02(b). This change was made to accommodate the view of professional evaluators that an appraisal report should state these matters.

(h) A requirement was added that, in connection with the supporting opinion of another expert, the business, occupation, or profession of that expert, and a statement as to the subject matter of his opinion, be disclosed. Section 1272.02(d).

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(i) A requirement was added that a statement of valuation data that is not an appraisal report be signed by the witness and recite that it correctly states the opinions and knowledge of the witness. Section 1272.02(e). The principal purpose of this change is to preclude misstatement or misinterpretation of the views of a valuation witness.

(j) The bill was made to provide specifically that an appraisal report may be used as a statement of valuation data under the bill. Section 1272.02(f).

(k) With respect to all expert witnesses (including experts other than evaluators), a requirement was added that the list of expert witnesses include a statement as to the subject matter of the opinion to be given. Section 1272.03.

(l) The bill was clarified to provide that the sanction of the bill is invoked by objection of an adverse party and that objections may be made only by a party who has himself complied with the chapter. Section 1272.05 (first paragraph).

(m) For the reasons mentioned, the bill was made inapplicable to proceedings in Los Angeles County in which pretrial conferences are held. Section 1272.07

(n) The bill was made to specify that the procedure it provides does not affect the time for completion of discovery in the proceeding. Section 1272.08. The principal purpose of this change is to emphasize the fact that a party may not use the machinery of the bill to initiate discovery nor expect further discovery to be authorized or the trial date to be postponed because of information obtained by use of this disclosure procedure.

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STUDY 50 - ABANDONMENT OR TERMINATION OF LEASES (SENATE  
BILL NO. 252)

The Commission considered Memorandum 67-32, the two supplements to that memorandum, and the draft legislation attached to the second supplement. The staff proposed to substitute that draft for the provisions contained in Senate Bill No. 252, as last amended in the Assembly, April 12, 1967.

Mr. Golden expressed his general view that enactment of the proposed legislation would create substantial problems for lessors, even though the bill were made entirely inapplicable to leases involving a rental of more than \$500 per month or a term in excess of five years. He also expressed his belief that most lessors would, as a matter of self-interest, relet the property to mitigate damages because most lessors would be reluctant to sacrifice assured receipts of rent to obtain the uncertain fruits of a lawsuit. He also expressed the view that a general duty to relet the property to mitigate damages would create a factual and troublesome defense that might prove both awkward and unfair to lessors, especially in that such a duty would require the lessor, in effect, to compromise his claim to future rentals.

After consideration of the problems, the draft prepared by the staff, and various alternatives, the Commission determined to withdraw its recommendation that Senate Bill No. 252 be enacted at this session of the Legislature. The staff was directed to obtain a greater range of views from those concerned, especially those concerned with

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problems of lessees and persons in the real estate field. The Commission generally accepted the suggestion of Mr. Golden that, in view of the extensive changes that would be made in Senate Bill No. 252, an opportunity for further study should be given to those concerned with the proposal.

In discussing the draft legislation attached to the second supplement, the following suggestions were discussed but no action was taken:

(a) In proposed Civil Code Section 1951 delete the introductory phrase "Unless the lease otherwise provides,". The effect of this change is to preclude leases (other than long-term and large-rent leases under Section 1951.5) from making inapplicable the usual remedy of damages.

(b) In the first numbered paragraph of subdivision (a) of Section 1951, change the second sentence, in the interest of clarity, to read:

For the purpose of this paragraph, the present worth of an unpaid rental installment that is not yet due is that sum which, together with four percent simple interest thereon from the present time to the due date of the rental installment, is equal to the amount of the rental installment.

(c) At the end of subdivision (a) of proposed Section 1951.5, add the additional paragraph:

(3) The lease provides that the lessee may assign his interest in the lease to any other person reasonably acceptable as a tenant to the lessor.

The effect of this change is to permit the lessor to recover future rentals as they become due under the terms of the lease if the lease provides a general right of assignment to the lessee.

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STUDY 63 - EVIDENCE CODE (EVIDENCE CODE REVISIONS)

The Commission considered Memorandum 67-35 which included a report on Senate Bill No. 247 (General Evidence Code Revision).

The Commission considered the suggested revision of proposed Section 646 (res ipsa loquitur) which was attached as Exhibit I to Memorandum 67-35 and the oral comments on that draft provided to Commission McDonough by the Judicial Council (represented by Jon Smock).

After having considered the drafting suggestions of the Judicial Council, the Commission revised the material set out in Exhibit I to read as follows:

(a) The judicial doctrine of res ipsa loquitur is a presumption affecting the burden of producing evidence. Unless the party against whom the presumption operates has produced such evidence that the inference of negligence is dispelled as a matter of law, the facts making the doctrine of res ipsa loquitur applicable will support an inference of negligence even after sufficient evidence to support a contrary finding has been introduced.

(b) If the party against whom the res ipsa loquitur presumption operates introduces evidence which would support a finding that he was not negligent, the court may, and upon request shall, instruct the jury that the facts that make the doctrine of res ipsa loquitur applicable are themselves evidence of such party's negligence from which the jury may infer that he failed to exercise due care. The instructions should make it clear that the jury should draw the inference and find for the party in whose favor the presumption operates only if, after weighing the direct and circumstantial evidence of negligence together with all of the other evidence in the case, it believes that it is more likely than not that the accident was caused by the negligence of the party against whom the presumption operates.

The Commission then considered the position of the Judicial Council on the revised section which can be summarized as follows:

(a) The Judicial Council would prefer that the section contain only the first sentence of the section as set out above.

(b) The Judicial Council, by way of compromise, would not object

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if the section were enacted in the form set out in the Commission's recommendation (as presently contained in Senate Bill No. 247).

(c) The Judicial Council would prefer that the section be deleted entirely from the bill rather than being enacted in the more detailed form contained in Exhibit I, even if that draft were revised to incorporate the drafting suggestions of the Judicial Council.

The Judicial Council takes this position because it believes that no statement of the effect of a particular presumption affecting the burden of producing evidence is necessary. All of the language contained in the revised section necessarily follows from the general provisions of the Evidence Code relating to presumptions and the inclusion in the revised section of the detailed description of how *res ipsa loquitur* operates casts doubt on the effectiveness of the general sections relating to presumptions.

After considerable discussion, the Commission adopted the view that the section should be deleted entirely from the bill. The Commission took this view because the section as recommended appears to be unacceptable to the Legislature, because the Judicial Council objects to the revised section, and because time limitations did not permit the review of the revised section by the State Bar Committee on Evidence, and by the Conference of Judges, and by other interested persons. The Commission plans to continue its study of *res ipsa loquitur* with a view to developing appropriate legislation that will be accepted by all interested persons as a desirable statutory statement of the doctrine.

The Executive Secretary was directed to discuss this matter with Assemblyman Bear and to obtain his views on the matter before the bill

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is amended to delete the proposed section. If Assemblyman Bear believes that a statement of res ipsa loquitur should be included in the bill, the matter should be resolved in a way that appears best to the legislative member of the Commission (Senator Song) under the circumstances.

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STUDY 63 - EVIDENCE CODE (COMMERCIAL CODE REVISIONS)

The Commission considered Memorandum 67-35 which included a report on Senate Bill No. 249 (Commercial Code Revisions).

The Commission approved the deletion of the provision that was to have been added to Commercial Code Section 1202 to provide that nothing in that section precludes the parties from providing by contract that the document shall have a different effect than the effect prescribed by this section. This provision was considered unnecessary in view of Commercial Code Section 1102 which provides in part: "The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except . . ."

STUDY 67 - UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 67-35 insofar as it related to Senate Bill No. 251 (unincorporated associations) and approved the following amendments to Senate Bill No. 251 as amended in the Senate on May 2, 1967:

AMENDMENT NO. 1

On page 4 of the printed bill as amended in Senate on May 2, 1967, line 5, after "Code):" insert:  
whether or not the unincorporated association has designated an agent for service of process as provided in Section 24003 of the Corporations Code,

AMENDMENT NO. 2

On page 4, line 12, after "person" insert:  
, if any,

AMENDMENT NO. 3

On page 6, line 4, after "24001." insert:  
(a)

AMENDMENT NO. 4

On page 6, line 5, strike out "for its act or omission" and insert:  
to a person who is not a member of the association for an act or omission of the association

AMENDMENT NO. 5

On page 6, line 7, strike out "Noth-"

AMENDMENT NO. 6

On page 6, strike out lines 8, 9, and 10, and insert:  
(b) Nothing in this section in any way affects the rules of law which determine the liability between an association and a member of the association.

AMENDED IN SENATE MARCH 9, 1967

SENATE BILL

No. 253

Introduced by ~~Senator Bradley~~ Senators Bradley and Song

February 6, 1967

REFERRED TO COMMITTEE ON JUDICIARY

An act to add a chapter heading immediately preceding Section 1237 of, and to add Chapter 2 (commencing with Section 1272.01) to Title 7 of Part 3 of, the Code of Civil Procedure, relating to eminent domain.

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

- 1 SECTION 1. A chapter heading is added immediately pre-
- 2 ceding Section 1237 of the Code of Civil Procedure, to read:
- 3
- 4 CHAPTER 1. EMINENT DOMAIN GENERALLY
- 5
- 6 SEC. 2. Chapter 2 (commencing with Section 1272.01) is
- 7 added to Title 7 of Part 3 of the Code of Civil Procedure, to
- 8 read:

LEGISLATIVE COUNSEL'S DIGEST

SB 253, as amended, Bradley (Jud.). Eminent domain.

Adds Ch. heading, and adds Ch. 2 (commencing with Sec. 1272.01), Title 7, Pt. 3, C.C.P.

Specifies procedures for discovery in eminent domain proceedings.

Sets time for which demands and cross-demands of valuation data must be made, prescribing the form and contents of such demands.

Allows Judicial Council to prescribe, by rule, times for serving and filing demands in eminent domain proceedings different from those prescribed in the Code of Civil Procedure.

Specifies what information shall be contained in the ~~statements~~ of valuation data.

Requires party who has served and filed a statement of valuation data to give notice if he plans to call prescribed witnesses not listed in his statement of valuation data, or witnesses to testify to opinion or data required to be listed in his statement but which was not. Requires that notice be given where information is discovered which was not listed.

Forbids admission to of evidence which was required to be, but which was not, listed in the valuation statement.

Makes statutory procedure inapplicable in any eminent domain proceeding in Los Angeles County in which a pretrial conference is held.

Vote—Majority; Appropriation—No; State Expense—No.

exchange of lists of expert witnesses and statements of valuation data

statements

list of expert witnesses and statements

Forbids calling of witnesses who were required to be, but were not, listed and limits

for exchanges

or to have a witness

expert

a

CHAPTER 2. DISCOVERY IN EMINENT DOMAIN PROCEEDINGS

172.01. (a) Not later than 30 days after the memorandum to set has been served and filed prior to the date set for the pre-trial conference, any party to an eminent domain proceeding may serve upon any adverse party and file a demand to exchange valuation data.

50

day

trial

(b) A party on whom a demand is served may, not later than 10 days after the service of the demand, serve upon any adverse party and file a cross-demand to exchange valuation data relating to the parcel of property described in the demand.

lists of expert witnesses and statements of

lists of expert witnesses and statements of

10 days prior to the day set for the trial

Chapter 2 (commencing with Section 1272.01) of Title 7 of Part 3

to which the demand or cross-demand relates

(c) The demand or cross-demand shall: (1) Describe the parcel of property upon which valuation data is to be exchanged, which description may be made by reference to the complaint.

deposit with the clerk of court a list of expert witnesses and statements

(2) Include a statement in substantially the following form: "You are required to serve and file a statement of valuation data in compliance with Sections 1272.01 and 1272.02 of the Code of Civil Procedure not later than 10 days prior to the day set for trial and subject to Section 1272.05 of the Code of Civil Procedure, your failure to do so will constitute a waiver of the right to introduce on direct examination during your case in chief any matter required to be set forth in your statement of valuation data."

Except as otherwise provided in that chapter,

your right to call unlisted expert witnesses during your case in chief and of your

statements, but is not,

(d) Not later than 10 days prior to the day set for trial, each party who served a demand or cross-demand and each party upon whom a demand or cross-demand was served shall serve and file a statement of valuation data. A party who served a demand or cross-demand shall serve his statement upon each party on whom he served his demand or cross-demand. Each party on whom a demand or cross-demand was served shall serve his statement upon the party who served the demand or cross-demand.

deposit with the clerk of the court a list of expert witnesses and statements

that is

list and statements

list and statements

(e) The Judicial Council may, by rule, prescribe times for serving and filing demands and cross-demands; and a time for serving and filing statements of valuation data, that are different from the time specified in this section, but such rule shall provide that the trial will be held within 35 days from the day on which the statements of valuation data are required by such rules to be served and filed. Such rule may provide for a different form of statement than that specified by paragraph (2) of subdivision (c).

(e) The clerk of court shall make an entry in the register of actions for each list of expert witnesses and statement of valuation data deposited with him pursuant to this chapter. The lists and statements shall not be filed in the proceeding, but the clerk shall make them available to the court at the commencement of the trial for the limited purpose of enabling the court to apply the provisions of this chapter. Unless the court otherwise orders, the clerk shall, at the conclusion of the trial, return all lists and statements to the attorneys for the parties who deposited them. Lists or statements ordered by the court to be retained may thereafter be destroyed or otherwise disposed of in accordance with the provisions of law governing the destruction or disposition of exhibits introduced in the trial.

(a)

1272.02. (a) The statement of valuation data shall contain: (1) The name and business or residence address of each person intended to be called as an expert witness by the party; (2) The name and business or residence address of each person intended to be called as a witness by the party to testify to his opinion of the value of the property described in the demand or cross-demand or as to the amount of the

A statement of valuation data shall be exchanged for

1 damage or benefit, if any, to the larger parcel from which  
2 such property is taken; as to any of the following matters:

er property  
interest being  
valued

3 (1) The value of the property described in the demand or  
4 cross-demand.

special

5 (2) The amount of the damage, if any, to the remainder of  
6 the larger parcel from which such property is taken.

7 (3) The amount of the benefit, if any, to the remainder of  
8 the larger parcel from which such property is taken.

9 (a) The name and business or residence address of each  
10 person upon whose opinion the opinion referred to in subdivi-  
11 sion (b) is based in whole or in substantial part.

12 (d) The opinion of each witness listed as  
13 required in subdivision (b) of this section as to the value of  
14 the property described in the demand or cross demand and as  
15 to the amount of the damage and benefit, if any, to the larger  
16 parcel from which such property is taken; a statement

(b) The statement of valuation data shall  
give the name and business or residence address  
of the witness and shall include a statement

any

will testify to

17 whether the witness has an opinion as to each of the matters  
18 listed in subdivision (a) and, as to each such matter upon

(a)

will give

19 which he has an opinion, what that opinion is and the follow-  
20 ing data to the extent that the opinion on such matter is based  
21 thereon:

items

- (1) The estate or interest being valued.
- (2) The date of valuation used by the witness.

(3)

22 (1) The highest and best use of the property.

(4)

23 (2) The applicable zoning and the opinion of the witness  
24 as to the probability of any change in such zoning.

(5) The

25 (3) A list of all sales, contracts to sell and purchase, and  
26 leases supporting the opinion.

(6)

27 (4) The cost of reproduction or replacement of the existing  
28 improvements on the property less whatever depreciation or  
29 obsolescence the improvements have suffered and the method  
30 of calculation used to determine depreciation.

(7)

31 (5) The gross income from the property, the deductions  
32 from gross income, the resulting net income, the reasonable  
33 from gross income, and the resulting net income; the reason-  
34 able net rental value attributable to the land and existing  
35 improvements thereon, and the estimated gross rental income  
36 and deductions therefrom upon which such reasonable net  
37 rental value is computed; the rate of capitalization used; ;  
38 and the value indicated by such capitalization.

(8)

39 (6) If the property is a portion of a larger parcel, a de-  
40 scription of the larger parcel from which the property is  
41 taken and its value.

its

(a)

42 (c) With respect to each sale, contract, or lease listed under  
43 paragraph (b) of subdivision (a)

(5)

44 (1) The names and business or residence addresses, if  
45 known, of the parties to the transaction.

(b)

46 (2) The location of the property subject to the transaction.

47 (3) The date of the transaction.

48 (4) If recorded, the date of recording and the volume and  
49 page where recorded.

50 (5) The price and other terms and circumstances of the  
51 transaction. In lieu of stating the terms contained in any con-

- 1 tract, lease, or other document, the statement may, if the docu-
- 2 ment is available for inspection by the adverse party, state
- 3 the place where and the times when it is available for in-
- 4 spection.

(d) If any opinion referred to in subdivision (a) is based in whole or in substantial part upon the opinion of another person, the statement of valuation data shall include the name and business or residence address of such other person, his business, occupation, or profession, and a statement as to the subject matter to which his opinion relates.

(e) Except when an appraisal report is used as a statement of valuation data as permitted by subdivision (f), the statement of valuation data shall include a statement, signed by the witness, that the witness has read the statement of valuation data and that it fairly and correctly states his opinions and knowledge as to the matters therein stated.

(f) An appraisal report that has been prepared by the witness which includes the information required to be included in a statement of valuation data may be used as a statement of valuation data under this chapter.

1272.03. The list of expert witnesses shall include the name, business or residence address, and business, occupation, or profession of each person intended to be called as an expert witness by the party and a statement as to the subject matter to which his opinion relates.

1272.04. 5 1272.04. (a) A party who has served and filed a statement  
6 of valuation data shall diligently give notice to the parties  
upon whom ~~the statement was~~ served if, after service of his  
~~statement of valuation data,~~ he:

his list and statements were

list and statements,

is required to exchange lists of expert witnesses and statements

(1) Determines to call an expert witness not listed in his statement of valuation data;

(2) ~~Discovers any data required to be listed in his statement of valuation data for the purpose of having such witness testify on his opinion of the value of the property described in the demand or the amount of the damage or benefit, if any, to the remainder of the larger parcel from which such property is taken;~~

included in his list of expert witnesses to testify on direct examination during his case in chief

(2)

(3)

(3) Determines to have a witness called by him testify on direct examination during his case in chief to any opinion or data required to be listed in the statement of valuation data but which was not so listed; or

for that witness

1272.05.

(4) Discovers any data required to be listed in his statement of valuation data but which was not so listed.

a

upon objection of any party who has served his list of expert witnesses and statements of valuation data in compliance with

(b) The notice required by subdivision (a) shall include the information specified in Section 1272.02 and shall be in writing; but such notice is not required to be in writing if it is given after the commencement of the trial.

and 1272.03

1272.06,

~~1272.04. Except as provided in Section 1272.05, if a demand to exchange valuation data and one or more statements of valuation data are served and filed pursuant to Section 1272.01:~~

list of expert witnesses

the witness is included in the list served by

(a) No party required to serve and file a statement of valuation data may call an expert witness to testify on direct examination during the case in chief of the party calling him unless the name and address of such witness are listed in the statement of the party who calls the witness.

statements

(b) No party required to serve and file a statement of valuation data may call a witness to testify on direct examination during the case in chief of the party calling him to his opinion of the value of the property described in the demand or cross-demand or the amount of the damage or benefit, if any, to the remainder of the larger parcel from which such property is taken unless the name and address of such witness are listed in the statement of the party who calls the witness.

a statement of valuation data for the witness was served by

statements

for such witness

44 (c) No witness called by any party required to serve ~~and~~  
45 ~~the statement~~ of valuation data may testify on direct exami-  
46 nation during the case in chief of the party who called him to  
47 any *opinion* or data required to be listed in ~~the~~ statement of ~~the~~  
48 valuation data unless such *opinion* or data is listed in the ~~the~~  
49 statement of valuation data of the party who calls the witness, ~~the~~ served  
50 except that testimony that is merely an explanation or elabora-  
51 tion of data so listed is not inadmissible under this section.

1272.06.

list of expert witnesses or statements

1272.04,

extent to which

has

1 ~~1272.05-~~ (a) The court may, upon such terms as may be  
2 just, permit a party to call a witness, or permit a witness  
3 called by a party to testify to *an opinion* or data on direct  
4 examination, during the party's case in chief where such  
5 witness, *opinion*, or data is required to be, but is not, listed  
6 in such party's ~~statement~~ of valuation data if the court finds  
7 that such party has made a good faith effort to comply with  
8 Sections 1272.01 and 1272.02, ~~that he has complied with Sec-~~  
9 ~~tion 1272.02.~~ And that, by the date of the service of his ~~state-~~  
10 ~~ment of valuation data,~~ he:

11 (1) Would not in the exercise of reasonable diligence have  
12 determined to call such witness or discovered or listed such  
13 *opinion* or data; or

14 (2) Failed to determine to call such witness or to discover  
15 or list such *opinion* or data through mistake, inadvertence,  
16 surprise, or excusable neglect.

17 (b) In making a determination under this section, the court  
18 shall take into account the ~~fact that the opposing party may~~  
19 ~~have relied upon the statement~~ of valuation data and will be  
20 prejudiced if the witness is called or the testimony concerning  
21 such *opinion* or data is given.

included

to 1272.03, in-  
clusive.

list and  
statements

list of expert  
witnesses and  
statements

1272.07. This chapter does not apply in any eminent domain proceeding in any county having a population in excess of 4,000,000 in which a pretrial conference is held.

1272.08.

22 ~~1272.08-~~ The procedure provided in this chapter does not  
23 prevent the use of *other* discovery procedures or limit the  
24 matters that are *otherwise* discoverable in eminent domain  
25 proceedings. Neither the existence of the procedure  
provided by this chapter, nor the fact that it  
has or has not been invoked by a party to the  
proceeding, affects the time for completion of  
discovery in the proceeding.

1272.09.

26 ~~1272.09-~~ Nothing in this chapter makes admissible any evi-  
27 dence that is not otherwise admissible or permits a witness to  
28 base an *opinion* on any matter that is not a proper basis for  
29 such an *opinion*.