

Memorandum 77-58

Subject: Study 63.70 - Evidence of Market Value (Results of Questionnaire Concerning Admissibility of Sales to Public Agencies)

Background

A sale of property to a condemnor may not be used in an eminent domain proceeding for purposes of valuing that property or any other property. Evidence Code Section 822(a) provides:

822. Notwithstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and is not a proper basis for an opinion as to the value of the property:

(a) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

The reasons for this rule are stated in the Commission's 1960 recommendation relating to evidence in eminent domain proceedings:

Sales to persons that could have acquired the property by condemnation for the use for which it was acquired should be excluded from consideration on the issue of value. Such a sale does not involve a willing buyer and a willing seller. The costs, risks and delays of litigation are factors that often affect the ultimate price. Moreover, sales to condemnors often involve partial takings. In such cases valid comparisons are made more difficult because of the difficulty in allocating the compensation between the value of the part taken and the severance damage or benefit to the remainder. These sales, therefore, are not sales in the "open market" and should not be considered in a determination of market value. [3 Cal. L. Revision Comm'n Reports A-7 (1961).]

In the 1977 legislative session, Assemblyman Calvo introduced a bill to make sales to condemnors admissible if the sales were consummated before adoption of a resolution of necessity and if the sales do not constitute more than half of the sales relied upon as the basis for an opinion. See Assembly Bill 1166 (Calvo 1977), attached as Exhibit 1 (pink). Assemblyman Calvo referred the bill to the Commission for comment; as a result of the referral, the Commission has undertaken a review of Evidence Code Section 822(a).

In July, the Commission distributed a questionnaire concerning Section 822(a) to persons on its evidence, eminent domain, and inverse condemnation mailing lists. We have received the responses attached as Exhibit 2 (yellow). The function of this memorandum is to analyze the responses received and present the staff's conclusions.

Analysis

We were pleasantly surprised with the quality of the responses received. They are uniformly thoughtful and constructive. The responses are brief and to the point and should be read carefully. Because of the variety of views expressed, the staff will not attempt to summarize all views in this memorandum. Rather, the staff will point out the major common themes that appeared in the responses. Once again, the staff stresses that all responses should be read because they contain a variety of unique and well-thought-out positions.

Of the 34 responses received, 19 favored some change in the rule precluding any evidence of a sale to a condemnor and 15 were opposed to any change. This split did not follow lines of property owner vs. condemnor. Property owner representatives were 5 for change and 5 opposed to change. Condemnor representatives were 6 for change and 5 opposed to change. Persons who represent both property owners and condemnors were 4 for change and 3 opposed to change. Other persons (a law professor, a judge, two appraisers, and a student) were 4 for change and 1 opposed to change.

A common theme among persons opposed to change is that acquisitions by persons having eminent domain power are coerced and not open market transactions, therefor yielding a sale price that is usually lower than market value. See, e.g., Gaut (representative of both property owners and condemnors--p.3), Allen (Santa Barbara County Counsel--p.31), Baggott (property owner representative--p.32), Kingsley (judge--p.38), Desmond (property owner representative--p.52), Denitz (Tishman Realty--p.54).

A common theme among persons favoring admissibility of sales to condemnors is that sales to condemnors create and are part of the market and should not be ignored; they are facts that will aid the trier of fact and, hence, should be admissible and given such weight as the circumstances of the case merit. See, e.g., Quigley (property owner representative--p.13), Faw (professor--p.20), Keiser (League of California Cities--p.23), Pollock (representative of both property owners and condemnors--p.37), Brooks (representative of condemnors--p.39). A number of persons, in fact, point out that sales to condemnors may be the only relevant market that exists, hence to admit them is essential.

See, e.g., Phleger (property owner representative--p.17), Roberts (Los Angeles City Attorney--p.25), Kaplan (Sacramento Municipal Utility Dist--p.40), Claesgens (property owner representative--p.51).

Quite a few respondents state that it is a misconception that sales to condemnors tend to be low: Due to federal and state relocation requirements and fair acquisition policies, and due to other factors such as political and social influence, the price is as likely (or more likely) to be above market value as it is to be below market value, depending on the project. See, e.g. Hemmings (property owner representative--p.1), Dankert (representative of both property owners and condemnors--p.6), Sherman (State Public Works Board--p.28), Betts (appraiser--p.34), Rogers (representative of both property owners and condemnors--p.43), Epstein (property owner representative--p.45), Hackett (Napa County Counsel--p.46), Claesgens (property owner representative--p.51).

From the assumption that sales to condemnors may be high, low, or in between, the respondents arrive at an astounding variety of opinions as to whether the sales should be admissible. Some believe they should be admissible because they are no better or worse than any other sales and should be treated accordingly. See, e.g., Faw (professor--p.19), Pollock (representative of both property owners and public agencies--p.37), Hackett (Napa County Counsel--p.46). Others believe they should be admissible subject to limitations to prevent abuse, such as requirements that the sale be free of coercion, that it be related to appraised value, that it fairly reflect market value, that there be inadequate market transactions, that it be admissible by the property owner but not the condemnor, and the like. See, e.g., Hemmings (property owner representative--p.1), Dankert (representative of both property owners and condemnors--p.6), Bogart (representative of both property owners and condemnors--p.10), Radford (property owner representative--p.15), Bolger (Federal Highway Administration--p.19), Scharf (Los Angeles City Attorney--p.27), Reach (appraiser--p.55). On the other hand, some believe that the sales should be inadmissible because they are prejudicial to the condemnor if high and to the property owner if low. See, e.g., Sherman (State Public Works Board--p.28), Epstein (property owner representative--p.45). And others believe that the sales should be inadmissible because the fact of admissibility will cause the condemnor to make

low settlements in all cases or to delay or defer settlements. See, e.g., Endeman (representative of both property owners and condemnors--p.12), Sullivan (property owner representative--p.36), Fairman (Department of Transportation--p.41), Rogers (representative of both property owners and condemnors--p.43).

Conclusions

The questionnaires reveal that persons knowledgeable in the eminent domain field differ radically on both the facts relating to condemnor acquisitions and on the need for and appropriate limitations on admissibility of the acquisitions. Whether sales to condemnors tend to be high, low, in between, or erratic appears to be in dispute.

Proponents of the admissibility of sales to public agencies stress the need for relevant sales data. While a few would place no limitations on admissibility other than the generally applicable requirements of comparability, most offer limitations of some sort to protect against prejudice resulting from unduly high or low sales. Some of the limitations offered by the respondents, the staff believes, are impractical: They would require difficult preliminary fact findings by the court that would only confuse and prolong the trial. These include requirements that the sales fairly reflect market value, that the sales are voluntary and that the buyer and seller were both willing and satisfied with the sale price, that there was no compulsion or coercion caused by the threat of eminent domain.

Other limitations offered that are of a more mechanical nature, and hence that the staff believes would be more adequate, include:

(1) No sales allowed if made after adoption of resolution of necessity or filing of complaint. This is one feature of Assemblyman Calvo's bill, and is subscribed to by a number of the commentators. The staff believes that this limitation is clearly appropriate since the coercive effect of the eminent domain power would be most forcibly felt at the time the proceeding was commencing.

(2) Sales allowed only if reasonably related to the appraisal made by a public agency pursuant to the fair acquisition policies. This would help assure that the sales used are neither unreasonably high nor unreasonably low.

(3) Sales permitted only if there is a shortage of market data of private sales. This would limit use of the sales to cases where they are necessary. Assemblyman Calvo's bill takes the opposite approach-- sales to condemnors would be admissible only where at least half the other sales used are private sales, thereby providing a check on the accuracy of the public sales.

(4) Sales to condemnors admissible only by property owner. While this would have the virtue of precluding a condemnor from using unduly low acquisitions, it would have the vice of permitting the property owner to pick and choose among unduly high acquisitions. This is particularly unfair where a condemnor gets stuck with an unduly high price paid by some other public agency.

(5) Only sales to the present condemnor admissible. While this rule would preclude an agency getting stung by another agency that offered unduly high prices, it would have the unwanted effect of slowing down settlements by the condemnor for fear it would make a mistake early in the project and be stuck with high prices all the way through. This last point led several commentators to the opposite limitation: Only sales to condemnors other than the present condemnor, or projects other than the present project, admissible.

(6) Sales inadmissible in partial takes. While this limitation appears self-evident (see analysis by Commission, above), at least one of the respondents argued that it is precisely in the partial take situation that sales to condemnors are most needed since partial take private sales are very rare.

The staff believes that any or all of the limitations listed above might be appropriate limitations on the admissibility of sales to public agencies. In fact the listing only includes the most commonly mentioned limitations, and the staff would be happy to explore in a future memorandum these and some of the less commonly mentioned limitations, if the Commission determines that this is a desirable approach.

However, the staff is convinced that sales to condemnors should not be admissible at all. A number of respondents made the telling point that admissibility of sales will have a stifling effect on the public agency's willingness to settle at a generous price. The point is well put by several of the respondents:

If the price paid by agencies was admissible they would be reluctant to settle for more than their approved appraisal for fear the price would be used against them in trials of other properties in the area. [Endeman--representative of both property owners and condemnors--p.12.]

I believe this will discourage condemnors from making reasonably early acquisitions for fear of their later effect. [Sullivan--property owner representative--p.36.]

Admission of such sales tends to have a chilling effect on settlements since the agency may be reluctant to settle with one owner if there is even a remote chance that the terms of that settlement could be used against it in subsequent litigation. [Fairman--Department of Transportation--p.41.]

Condemning agencies under the present statute are not only protected but encouraged to settle litigation, and are insulated against objections by other affected condemning agencies since the settlements made are not legally "precedent" for other acquisitions. [Rogers--representative of both property owners and condemnors--p.43.]

The staff is convinced that, as a matter of policy, it is better to preclude what might be good evidence in order to further the ability and willingness of the parties to reach an early and fair settlement. We know from previous studies in eminent domain that only a fraction of acquisitions for public use ever reach trial as eminent proceedings (even among proceedings actually filed, fewer than seven percent are resolved by contested trial). The staff does not believe that it is right to trade off an intangible benefit (the ability to introduce sales to condemnors) in the comparatively few cases in which it might prove useful against the general adverse effect on all persons who have property acquired for public use.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 1166

Introduced by Assemblyman Calvo

March 29, 1977

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 822 of the Evidence Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 1166, as introduced, Calvo (Jud.). Eminent domain: evidence.

Existing law makes inadmissible as evidence and an improper basis for an opinion as to the value of property in eminent domain and inverse condemnation proceeds the price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

This bill would make the foregoing evidence of an acquisition inadmissible and an improper basis for an opinion as to the value of property in eminent domain and inverse condemnation proceedings only if the acquisition was one for which the governing body of a public entity seeking to condemn such property had adopted a resolution of necessity or the acquisition was one for which, prior to July 1, 1976, a complaint had been filed commencing a condemnation proceeding. The bill would make admissible as evidence and a proper basis for an opinion as to value the price or other terms and circumstances of an acquisition or acquisitions of property or a property interest for a public use if the acquisition

or acquisitions represent not more than one-half of the number of acquisitions offered by a party to the action for admission as evidence and as a basis for an opinion of value.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 822 of the Evidence Code is
2 amended to read:

3 822. Notwithstanding the provisions of Sections 814 to
4 821, the following matter is inadmissible as evidence and
5 is not a proper basis for an opinion as to the value of
6 property:

7 (a) The price or other terms and circumstances of an
8 acquisition of property or a property interest if the
9 acquisition was for a public use for which the property
10 could have been taken by eminent ~~domain~~ *domain and*
11 *for which the governing body of the public entity*
12 *proposing to acquire the property had adopted a*
13 *resolution of necessity pursuant to Article 2*
14 *(commencing with Section 1245.210) of Chapter 4 of*
15 *Title 7 of the Code of Civil Procedure or, prior to July 1,*
16 *1976, had filed a complaint in the superior court pursuant*
17 *to Section 1243 of the Code of Civil Procedure.*

18 (b) The price at which an offer or option to purchase
19 or lease the property or property interest being valued or
20 any other property was made, or the price at which such
21 property or interest was optioned, offered, or listed for
22 sale or lease, except that an option, offer, or listing may
23 be introduced by a party as an admission of another party
24 to the proceeding; but nothing in this subdivision permits
25 an admission to be used as direct evidence upon any
26 matter that may be shown only by opinion evidence
27 under Section 813.

28 (c) The value of any property or property interest as
29 assessed for taxation purposes, but nothing in this
30 subdivision prohibits the consideration of actual or
31 estimated taxes for the purpose of determining the
32 reasonable net rental value attributable to the property

- 1 or property interest being valued.
2 (d) An opinion as to the value of any property or
3 property interest other than that being valued.
4 (e) The influence upon the value of the property or
5 property interest being valued of any noncompensable
6 items of value, damage, or injury.
7 (f) The capitalized value of the income or rental from
8 any property or property interest other than that being
9 valued.
10 (g) *The price or other terms and circumstances of an*
11 *acquisition or acquisitions of property or a property*
12 *interest for a public use by any party to the action if such*
13 *acquisition or acquisitions represent not more than*
14 *one-half the number of acquisitions offered for admission*
15 *by such party as evidence and as a basis for an opinion.*

EXHIBIT 2

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QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name COX, CUMMINS & LAMPHERE, A Professional Corporation

Address Court and Mellus Streets - P.O. Box 111

Martinez, California 94553

We _____

1. generally represent (check the one that best describes your practice)

Condemning agencies very rarely

Private property owners XX

Both condemning agencies and private property owners _____

Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

As presently worded, the price paid for any negotiated acquisition of property is inadmissible, because any property can be taken by a public agency or public utility for a public use.

A public agency's right of way agent whose task is to acquire about ten small separate ownerships can offer a low price, and small owners are not in a financial position to contest these offers.

The same or another public agency acquiring nearby comparable property at a later date may want to argue that these are "comparables". Any experienced condemnation lawyer could easily ward off the effect of such an offer.

Where large ownerships and defense attorneys are involved, we have found to our dismay that agencies of the State of California in particular, argue on the basis of the present §822(a) that evidence of negotiated sales prices of comparable properties in the project are inadmissible. This hurts. See Government Code Section 7275.

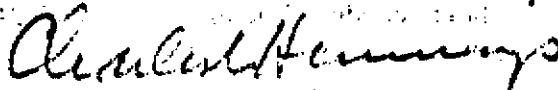
(SEE OVER) -/-

It seems to us that a fair solution is to amend §822(a) to read:

"(a) The price or other terms and circumstances of an acquisition of property or a property interest for a public use when the price paid does not fairly reflect market value.

"The court in making this determination may consider whether the acquiring public agency has fully complied with Government Code Sections 7267.2 and 7267.5."

COX, CUMMINS & LAMPHERE
A Professional Corporation



Charles L. Hemmings

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Barton C. Gaut of BEST, BEST & KRIEGER

Address 4200 Orange Street

Riverside, California 92502

1. I generally represent (check the one that best describes your practice)

Condemning agencies X
Private property owners X
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemners are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemners, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

3. My reasons for believing no change should be made in Evidence Code Section 822(a):

(a) Regardless of the limitations placed upon admissibility of the price and terms of acquisitions by public entities, there will be inadequate protection afforded to the property owner. Every negotiation or transaction between a public agency and a private owner is conducted with both parties' knowledge that the acquisition can ultimately be compelled. Accordingly, no conditions can be placed upon the use of such evidence which would overcome that overriding factor.

(b) I believe there can be no conditions placed upon the introduction of evidence of public acquisition which would overcome the problems referred to above.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name THOMAS B. ADAMS

Address P.O. BOX 152
San Mateo, CA 94401

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners _____

-Both condemning agencies and private property owners X

Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

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You may use the back of this sheet and additional sheets for your answer if necessary.

All parties should be treated fairly and equally and therefore settlement for one party should be the same for another

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

Tom Dankert

Address

P.O. Box 1443

Ventura, Calif. 93001

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners _____

Both condemning agencies and private property owners

Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

See letter forwarded herewith!

Law Offices of

Thomas M. Dankert

POST OFFICE BOX 1443
VENTURA, CALIFORNIA 93001

(805) 843-8577

July 28, 1977

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

RE: Proposed Revision - Subdivision (a)
of Evidence Code, Section 822

Dear Mr. DeMouilly:

Transmitted herewith you will find my green check sheet. I wish to elaborate on the reasons for my statements so I'm doing this by separate letter.

First it might be noted that my legal practice over the years has been substantially equally divided between property owners and public agencies. In addition, I have also tried cases under:

- (1) The original system where no sales at all were admitted in evidence (pre-Faus);
- (2) The Post-Faus system (pre-Evidence Code) where both public agency and private entity sales were admitted in evidence;
- (3) The Post-Evidence Code situation where public entity sales were excluded.

It should be pointed out that the procedures by which public agencies acquire real property have been significantly formalized in the last seven years. In 1970, Congress passed the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [P.L. 91-646 (84 Stat. 1894, 1970); See 142 U.S.C. §4651] Parallel provisions were passed in California law in Government Code §§7267-7267.8. These laws require public agencies to make formal appraisals prior to the initiation of negotiations. It is to be pointed out that

many public projects today involve the use of Federal funds. Therefore, the grantee agency must comply with both State and Federal acquisitional law. It should also be pointed out that most lender-grantor Federal agencies and some State agencies have their own acquisitional administrative regulations based upon Federal law. Many of the agencies have suggested formats for appraisal reports and, in some instances, require two appraisals to be made. The condemnor under both State and Federal acquisitional rules is required to make an offer based upon the appraisal. The result is that public agency acquisitions today are probably more representative of fair market price than they were in the middle 1950's.

It should also be pointed out, however, that so-called "open market" transactions themselves are seldom "perfect". In many cases, there are varying degrees of motivation upon the part of either the buyer to buy, or, the seller, to sell which makes the transaction slightly untrustworthy.¹ If such transactions were not used, frequently there would be no sales evidence at all. In fact, many sales admitted in evidence are subject to the objection of pressure, or other tainting factors. To limit admissibility to the "perfect" transaction would deprive the jurors, in many cases, of most of the available factual data.

There are relatively few cases which I have tried where there was an abundance of untainted sales that did not have varying degrees of non-comparability to the property being condemned.

There is indeed much merit to the position taken by the Court of Appeal in the case of City of Ontario v. Kelber (1972) 24 Cal.App.3d 959 where the court stated at page 971:

"It should likewise be noted that Ontario was permitted to introduce into evidence leases for parcels of land at the Ontario International Airport which ranged in size from 1 to 12 acres. In explaining how these leases were comparable to the subject property, the condemnor states, 'Admittedly, the size of the leased parcels were not as similar to the subject property as might be academically desired. However, the criteria of comparability are not absolutes.' Ontario further concedes that, in the absence of evidence as to larger leases, the smaller leases are 'better than nothing at all.' We agree."

¹ Every seller has a motive to sell and every buyer has a motive to buy. Otherwise, could there be a sale?

Mr. John H. DeMouilly
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The Kelber case announces might be described as a "better than nothing" rule. Where there is a lack of sales data, this rule has a great deal of logic behind it, but certainly where there is a lack of comparable sales data, sales to a condemning agency should be admitted in evidence where the requisite showing of voluntariness can be made.

Based upon these considerations, it would appear reasonable under conditions to permit the introduction in evidence of public agency sales. These are:


1. That the acquisition in question be based upon the appraisal of an outside appraiser other than a staff appraiser.
2. The property have been acquired at, or near, the appraised value of one or more appraisals.
3. It be established that the sale was a voluntary transaction by appropriate evidence.

A further limitation that might be considered is limiting the use of such transactions to the situation where the trial judge specifically makes a finding that there is a shortage of open market transactions. This would prevent the use of such sales in a situation where there was an abundance of open market transaction between private entities.

In conclusion, it would appear that, under the present law of acquisition procedure, sales to an agency with the power to condemn could be permitted in evidence with the necessary appropriate safeguards.

Consideration of the above matter would be appreciated.

Very truly yours,


THOMAS M. DANKERT

TMD:ls
Enclosure

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Peter D. Bogart
Address 2338 Bronson Hill Drive
Los Angeles, CA 90068

1. I generally represent (check the one that best describes your practice)

- Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners x
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") yes (see below)

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

see attached.

The question whether § 822 (a) should be changed should be answered with a qualified "yes".

Evidence of eminent domain acquisitions are some indication of fair market value of the property in view of the requirement that all such acquisitions be preceded by an appraisal which, in turn, should indicate the fair market value.

The qualifications are:

1. Since the courts have defined "market value" for eminent domain purposes as the "highest price" a willing buyer etc... might pay, such eminent domain acquisition prices should be made applicable only where the issue of fact to be determined is the "highest..." price - i. e. eminent domain proceedings; in all other proceedings (e. g. tax appraisals and assessments) such evidence shows the upper limit, but not necessarily the "fair market value". Appropriate jury instructions should be drafted both for BAJI and CALJIC.

2. Each eminent domain acquisition must be broken down to its elements of (a) land, (b) improvements, (c) severance damage, (d) cost to cure and (e) loss of goodwill, if any. In view of these varying elements going into the total "purchase price", and the statutory requirement of separate appraisals for each element, only such segregation can have any bearing on the facts to be determined by the trier of fact.

3. If the eminent domain acquisition was for any sum in excess of the appraisal (except for time differentials and interest), then such acquisition price should be inadmissible; this is a fact determination by non-experts - judge and jury - which may well be based on extraneous circumstances.

4. Where "eminent domain" acquisitions were from another public agency, such valuation should be inadmissible, because it is not an open-market transaction.

Sincerely,



PETER D. BOGART

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name RONALD L ENDEMAN

Address JENNINGS, ENGSTRAND & HENRIKSON
2255 CAMINO DEL RIO SOUTH
SAN DIEGO, CALIF. 92108

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners X
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") NO

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

IF THE PRICE PAID BY AGENCIES WAS ADMISSIBLE THEY WOULD BE RELUCTANT TO SETTLE FOR MORE THAN THEIR APPROVED APPRAISAL FOR FEAR THE PRICE WOULD BE USED AGAINST THEM IN TRIALS OF OTHER PROPERTIES IN THE AREA.

IF SALES TO AGENCIES SHOULD BE MADE ADMISSIBLE, I BELIEVE THAT THERE SHOULD BE A LIMITATION THAT ONLY SALES TO AGENCIES OTHER THAN THE PLAINTIFF BE ADMITTED INTO EVIDENCE.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name MICHAEL T. QUIGLEY
Address 1420 E. CHAPMAN AVE
ORANGE, CALIF 92666

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners X
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") YE

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

See attached letter.

MICHAEL J. QUIGLEY

ATTORNEY AT LAW

1420 EAST CHAPMAN AVENUE

ORANGE, CALIFORNIA 92666

TELEPHONE (714) 833-4921

July 26, 1977

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

Re: Evidence Code, Section 822

Gentlemen:

Enclosed is the questionnaire relative to Section 822.

Evidence of sales to condemning agencies are facts. These facts will aid the trier of fact in the determination of FMV of property. Rather than close the door of admissibility, it should be admitted and given appropriate weight, based on all circumstances.

In many cases, a condemning agency's purchase has unusual features, precluding the traditional market place phenomenon of arms length bargaining. On the other hand it is a sale, which in a highly urban area can be factored up or down by private real estate transactions. In more rural areas, it may be one of only a very few transactions and weighed accordingly.

My opinion would be to allow such evidence.

Very truly yours,


MICHAEL J. QUIGLEY

MJQ/eb

Encl.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Earl A. Radford

Address 511 N. BROOKHURST ST
P.O. Box 4848
ANAHEIM CAL 92803

1. I generally represent (check the one that best describes your practice)

- Condemning agencies _____
- Private property owners
- Both condemning agencies and private property owners _____
- Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") YES

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemners are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemners, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

"822. Notwithstanding the provisions of Section 814 to 821, the following matter is inadmissible as evidence and is not a proper basis for an opinion as to the value of property:

(a) When offered by a condemning agency, the price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain."

(Suggested addition underlined.)

A considerable amount of unfairness would be eliminated if the restriction in the use of such evidence were limited to the condemnor. In general, sales consummated under threat of

condemnation are usually for considerations under the fair market value, considering the severe economic and psychological pressure on property owners in such situations. To allow a condemning agency to introduce such evidence would allow them to make one "highly favorable" settlement and then use the results of that settlement to coerce other property owners, who might disagree with the basis of the purchase price in such transaction, into a settlement or to introduce the evidence of such sale in a trial to establish a lower property market value in the area.

From the property owner's viewpoint, such sales could be clear evidence of the real value the condemning agency is actually putting on property in the neighborhood and would be conducive to fair dealing by condemning agencies with various property owners. Allowing the property owners to introduce actual sales to the condemning agency would also deter such agency from using "low-ball" appraisals in other cases which it chooses to litigate.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

Arthur Phleger

Address

Bobech, Phleger, & Hansen
111 Sutter Street, S.F.
94104

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes
3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemners are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemners, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Large parcels of undeveloped land have been acquired by public agencies and by non-profit agencies for park purposes in recent years.

It is difficult if not impossible to find sales of such properties to private individuals.

Because of the size of the parcels and because of the zoning of such parcels, purchases are limited to agencies that have the power to condemn. The elimination of such sales makes it impossible for the landowner to introduce any comparable sales that are meaningful.

In recent years large parcels of undeveloped land have become valuable as park sites or as openspace. In many cases their highest and best use may be as a park site or as open space. Because of the dirth of sales for such purposes, other than to condemning agencies, it has become impossible to show evidence of sales.

I suggest that the evidence of such sales
be admitted subject to the usual rules on comparability
and time. I would not admit evidence of court awards.

This is just a brief outline of my thoughts.

Atherton Phleger

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Robert J. Bolger
Address ~~2809 15th St~~ Dir. Asst Chief Counsel
Federal Highway Administration
Washington D.C.

1. I generally represent (check the one that best describes your practice)

Condemning agencies 0
Private property owners 0
Both condemning agencies and private property owners 0
Other (describe briefly) Fund State Highway Acquisition

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Recommend allowing sales to public agencies but not in the same project. Process might encourage landowners to delay until pattern established.

There should be some showing that no compulsion or coercion due to agency possessing condemning power influenced sale.

Robert J. Bolger

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

Prof. DONALD L. FAW

Address

PERDUE U. School of Law

1520 S. Anaheim Blvd.

Anaheim, CA 92805

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners _____

Both condemning agencies and private property owners _____

Other (describe briefly) Teacher of Law

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") YES

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Recommend : Delete Entirely.

A true "expert" who can give an opinion on value must have sufficient expertise in the area or values to recognize the impact on MANY circumstances. This is only one such circumstance that might affect price. No legislative fix can be completely fair. The sound judgment of a Judge is better.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name: Ralph R. Kuchler
Assistant City Attorney
Address: 503 City Hall
1421 Washington Street
Oakland, California 94612

1. I generally represent (check the one that best describes your practice)
Condemning agencies X
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No

3. Please elaborate on your answer to question 2.
If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemners are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.
If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemners, state the supporting reasons for your recommendations in that regard.
You may use the back of this sheet and additional sheets for your answer if necessary.

The procedure used in the acquisition of property by a condemning agency is not to establish a market for real estate but merely to reflect what is the fair market value of a particular parcel of property as established in the open market. The major problem which would result in the use of acquisition prices paid by a condemning agency (as was formerly permitted some years ago) is that if an agency makes a mistake--either by paying too much or too little--the mistake would be continued without opportunity to correct simply because it had been made. This would be particularly true if the price some other public agency had paid in acquiring a parcel of real property were the issue.

In fairness, if any such evidence is permitted to be introduced, both the public agency and the condemnee should have the right to introduce evidence as to what was paid for other property by a condemning agency.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name WILLIAM H. KEISER, General Legislative Counsel

Address League of California Cities

1108 "O" Street

Sacramento, CA 95814

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners _____

Both condemning agencies and private property owners _____

Other (describe briefly) League of California Cities

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2. See attached letter.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.



League of California Cities

California Cities
Work Together

Sacramento, California
July 28, 1977

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Mayor, Los Angeles

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

Dear John:

Thank you very much for your letter of July 15 soliciting our view of changes to Section 822 of the Evidence Code which would permit admission of evidence relating to sales to condemning agencies under certain specified circumstances.

We support the concept of revising the present exclusion of Section 822(a). It seems to me that the practice indicates that there are no real reasons not to allow admission of the kind of sales data proposed under controlled circumstances. The purpose of the trial is to determine fair value. With proper constraints, the sales data proposed for admission can be very useful evidence of what fair value should be. It seems to me that the traditional kinds of arguments against elimination of this exclusion are further weakened by the totality of AB 11 which, in many ways, weighted the eminent domain process toward the condemnee.

We have, of course, reviewed the provisions of AB 1166 by Assemblyman Vic Calvo, and I assume you have seen the bill as well. In case you have not, I enclose a copy. We are in support of the concept of Assemblyman Calvo's proposal, and we would recommend it to the Law Revision Commission in terms of its specific language implementing the concept for which you have asked for our comments.

Sincerely,

Bill
William H. Keiser
General Legislative Counsel

WHK:pc
enclosure

cc: Assemblyman Victor Calvo

-24-

OFFICE OF
CITY ATTORNEY
CITY HALL EAST
LOS ANGELES, CALIFORNIA 90012



BURT PINES
CITY ATTORNEY

July 26, 1977

California Law Revision Commission
Stanford Law School
Stanford, California 94305

re: Revising Section 822 of Evidence Code to Allow into Evidence Sales to Condemning Agencies

Honorable Members:

This is in response to your letter requesting comments on whether sales to condemners should be permitted into evidence in eminent domain actions. As is made obvious from this letter, I represent a condemning agency. It is my view that a change should be made in subdivision (a) of Section 822 of the Evidence Code to permit such sales to be introduced into evidence and relied upon in forming an opinion of value.

This office has heretofore commented on Assembly Bill No. 1166, introduced by Assemblyman Galvo on March 29, 1977. That bill permits such sales to be placed into evidence, if they occur prior to the adoption of the resolution of necessity and if the opinion of value is also supported by sales to persons or entities other than entities having the power of eminent domain. We believe that Assembly Bill No. 1166 is desirable legislation. It permits a market actually in existence, to be revealed to a court or jury. Though markets as established by sales to public entities should not be sufficient evidence on which to base an opinion of value, and the bill does not permit it to be so used, it is a market that should not be ignored.

The need to be able to introduce sales to public entities is especially important with respect to partial acquisitions, such as those made for power lines, subsurface pipes, and/or street widening. There is no other market for such acquisitions. Admission into evidence of sales of this type of interest would protect against a public entity offering too small an amount, because evidence of what other public entities may would be admissible. It would also protect against certain property owners arbitrarily demanding excessive amounts, because it could be shown what was considered to be a fair price by other owners.

Protection against sales at grossly excessive or insufficient sums being used is afforded by the provision in Assemblyman Calvo's bill requiring that private sales also be considered by the appraiser and used to support his valuation opinion. Those private sales would be of entire parcels and would impeach the sales to public entities unless the pro rata value indicated by such sales conform to the prices paid by public agencies. Perhaps, another limitation on misuse of such evidence would be to allow introduction of evidence of the number of persons who did not agree to sell to a public entity for the offered price.

It is my view that allowing evidence of sales to public entities prior to the adoption of the condemnation resolution would serve to prevent abuses by both property owners and public entities.

Yours very truly,

BURT PINES, City Attorney,

By 
Norman L. Roberts
Assistant City Attorney

NLR:jm
485-5414

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Robert L. Scharf, Deputy City Attorney

Address Office of City Attorney of Los Angeles
No. 1 World Way, Los Angeles, CA 90009

1. I generally represent (check the one that best describes your practice)

Condemning agencies XXX
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") See below

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

If additional clarifying data were inserted, I might favor such a change. However, there is a problem unless it can be clearly shown that there is a "willing buyer-seller" concept. Many factors would have to be introduced to establish that type of relationship, e. g. did the condemnee agree to the purchase by the condemnor because the condemnee did not want to become involved in litigation? Did the condemnee agree to the purchase price because of the cloud of condemnation? Was the condemnee fully informed as to the fair market values of identical or similar properties?

To be fair to both condemnor and condemnee I would not support a change unless further details are furnished.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name THOMAS E. SHERMAN

Address 1000 ...
...
...

1. I generally represent (check the one that best describes your practice)

- Condemning agencies
- Private property owners
- Both condemning agencies and private property owners
- Other (describe briefly)

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No")

All admissible

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Capitol Mall
Sacramento, CA 95814
(914)445-3441

January 25, 1977

Mr. Walt McCallum
Assembly Committee on Resources,
Land Use, and Energy
11th and L Building, 9th Floor
Sacramento, California

Dear Mr. McCallum:

Re: Proposed Legislation
Evidence Code
Amendment Section 822

We have reviewed and discussed the proposal to change the Evidence Code and considered all aspects of the matter. We do not feel it would be of material assistance in property acquisition matters. In fact, there could be cases in which the proposed change would be detrimental to State acquisition programs.

The submission of State or any other governmental property acquisitions as transaction evidence in condemnation cases as the basis for expert opinion, would be authorized under this proposed change. It is felt that many real estate transactions entered into by local entities without benefit of professional appraisal investigation and complicated by political factors and other considerations not related to market value, could be introduced as evidence. The discussion of these transactions could very well have an effect opposite to the one desired and implant in a jury's mind, inflated examples of property transactions complicated by testimony on matters relating to severance damages and in some cases, premiums paid simply to avoid litigation.

We have discussed this informally with the Attorney General's office and they inform us that while the admission of governmental transactions might be helpful in some cases, the immediate response from attorneys representing land owners would be to say that such sales were consummated under circumstances amounting to duress. It is felt that this argument would be very difficult to overcome and would lead to the elimination of such transactions.

Mr. Walt McCallum
January 25, 1977

Page 2

Finally, we have contacted the Law Revision Commission and are informed that they have considered a similar change and it is their tentative recommendation to leave this section of the Evidence Code intact. The Law Revision Commission is presently conducting a study of the Evidence Code as it relates to eminent domain and we feel that their study is the best vehicle in accomplishing changes in this area and that when their study is completed and submitted to the Legislature, the whole process can be better analyzed.

Sincerely,

Leonard M. Grimes Jr.
Director

LMG:TFS:jh

bcc: Robert Bergman

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name William R. Allen

Address 105 E. Anapamu
Santa Barbara, Calif. 93101
Office of Camp Counsel

1. I generally represent (check the one that best describes your practice)

- Condemning agencies
- Private property owners
- Both condemning agencies and private property owners
- Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

A transfer made under threat of condemnation does not truly reflect fair market value.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

THOMAS E. BACOT

Address

573 W 6th
LA, CA, 90014

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No
3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

PAGE

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Sales to an entity with the power to condemn cannot meet the "fair market value" criterion because the seller is not truly a free agent. He must sell. There are plenty of sales between private parties that can be used to estimate value. Therefore there

is no need to use sales "taunted"
by the buyers power to condense,

[Faint, mostly illegible text, possibly bleed-through from the reverse side of the page]

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Richard M. Betts, MAI, SRPA, ASA
Address 2150 Shattuck Avenue
Suite 405
Berkeley, CA 94704

1. I generally represent (check the one that best describes your practice) AS REAL ESTATE APPRAISER

Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners X
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes
3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

SEE ATTACHED

Commentary re admissibility of sales to condemnors

In the past, the prohibition against admission into evidence of sales to condemnors seems to have been to protect the condemnee. The logic was apparently that the excess bargaining power of the condemnor, armed with the ultimate weapon of the eminent domain power, could result on occasion in unfairly low sales. If the condemnor could use such low sales, one could argue, there would be strong incentive for unscrupulous condemnors to pick the weakest condemnee in a project, bully through a low price, and then use this sale to get a lower price--by bargaining or by eminent domain action--on the remaining parcels.

In recent years, the problem seems to me to have been reversed. Now, it is the apparently higher purchase price paid to a neighbor that bedevils condemnation negotiations. In some cases, there are allegations that prices paid are responsive to the political or social power of the condemnee. Very understandably, condemnees seem to have trouble accepting a restriction on the use of a neighbor's apparently higher price in valuing their own condemnation situation.

In summation, then, I see problems with allowing condemnors to introduce such sales, and I see nominal material benefit to condemnors to be gained from such introduction. Conversely, I see pragmatic benefits in allowing condemnees to introduce such sales. These benefits are 1) the equity of allowing condemnees to argue for the position of getting what their neighbors got, and 2) the desirability of thus creating a force opposing excessive awards by condemnors exposed to occasionally overwhelming political or social pressures. As a believer in counterbalancing forces, I am especially responsive to this second benefit. I see little worrisome loss to the condemnee, or to diligent condemnors, from such a provision. However, I am somewhat concerned by 1) the possible legal problems of such a one-sided admission of evidence and 2) the apparent bias that such a one-sided admissibility rule might suggest to jurors.



Richard M. Betts, MAI, SRPA, ASA
Real Estate Appraiser
2150 Shattuck Avenue, Suite 405
Berkeley, California 94704

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

Roger M. Sullivan

Address

800 W. Shreve Blvd
Los Angeles 90017
Suite 400

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners

Both condemning agencies and private property owners _____

Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") NO

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

I have tried cases under the situation encompassed by the proposed rule. The Plaintiff, Division of Highways, had hundreds of low sales which they were able to refer to. I believe this will discourage condemnors from making reasonable early acquisitions for fear of their later effect.

Roger Sullivan

LAW OFFICES

POLLOCK, WILLIAMS & BERWANGER

800 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 485-0241

JOHN P. POLLOCK
THOMAS B. WILLIAMS
CHARLES V. BERWANGER
JOHN T. HARRIS

July 25, 1977

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Gentlemen:

I am responding to your July 15th request for comments concerning proposed revision of Evidence Code Section 822. Rather than fill out the questionnaire, I thought it might be more meaningful for you to have my comments in letter form.

Generally, I am opposed to any rigid rule concerning the inadmissibility of evidence, particularly where the evidence might be relevant and material. I believe that there are many instances where the terms and circumstances of a purchase of property by an entity having the power of eminent domain reflect market conditions rather than circumstances relating to the exercise of the eminent domain power. In my own practice, which includes both representation of condemning bodies and of private owners, I have seen instances where transactions involving the acquisition by public bodies have been indicative of market conditions alone and I have seen them where they have been indicative solely of factors relating to the power of eminent domain. I, therefore, believe that a flexible rule is preferable to the rigid one and that it should be for the trial court to determine whether the particular terms and circumstances are such as to make the transaction one which is properly usable. It is, therefore, my recommendation that Subdivision (a) to Section 822 be deleted. The circumstances under which these transactions would be admissible should, in my opinion, be left for determination by the trial judge rather than be codified.

Very truly yours,


JOHN P. POLLOCK

JPP:mjk

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name ROBERT KINGSLEY

Address California Court of Appeal,
3530 Wilshire Blvd.,
Los Angeles, Ca 90010

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) Judge

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") NO

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

A property owner, faced with condemnation, may, and often does, accept a too low offer rather than suffer the trauma and expense of litigation. Sales to a condemnor are not between a "willing" seller and a buyer, but sale by one who does not want to sell and does so only under compulsion.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name JAMES S. BROOKS

Address BROOKS & KUTZKIE, P.C.
Box 1115
AGANA, GUAM 96910

1. I generally represent (check the one that best describes your practice)

- Condemning agencies X
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

The purpose of a trial in a condemnation action is to determine fair market value. Any evidence that will assist the trier of fact in reaching a fair decision should be admissible without limitation. The evidence now barred by 822(a) is probative and relevant.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name David S. Kaplan
Address P. O. Box 15830
Sacramento, CA 95813

1. I generally represent (check the one that best describes your practice)

Condemning agencies
Private property owners
Both condemning agencies and private property owners
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

The argument against change is of course that prices of acquisitions for which property could have been taken by eminent domain may not reflect market value. The argument for admissibility of such prices, which I do not believe has been widely discussed, is that in many instances acquisitions of the type in question are the only available comparables or are far more comparable than any available alternatives. On balance, I would favor admitting evidence of all acquisitions except those which occur only after an action in eminent domain has been filed.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Norval Fairman, Assistant Chief Counsel
Address State of California
Department of Transportation-Legal Division
369 Pine Street
San Francisco 94104

1. I generally represent (check the one that best describes your practice)

Condemning agencies X
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No.

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemners are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemners, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Admission of such sales tends to have a chilling effect on settlements since the agency may be reluctant to settle with one owner if there is even a remote chance that the terms of that settlement could be used against it in subsequent litigation. The policy behind CCP §1250.410 (Settlement Offers 30 Days Before Trial) was to encourage parties to settle litigation by inviting settlement offers different from the position of the respective parties on the market value of the property. Any change in present Evidence Code §822(a) would be counter-productive to the achievement of the goals of CCP §1250.410.

In the event such sales were to be admitted, they should be limited to total take situations (both as to the property to be acquired and the sale offered as comparable) and acquisitions where neither a condemnation resolution or an action in eminent domain exists. The reason for the first limitation to total takes is because

acquisitions and sales involving partial takes necessarily involve unique severance damage and special benefit considerations which make comparison of dubious value at best. Under the law applicable prior to adoption of the Evidence Code §822(a) restriction, much discovery and trial time was wasted arguing about the admissibility of partial take sales as comparable to partial take acquisitions. Further, the only problem area of which we are aware where comparable open market sales between private parties are difficult to find is in the coastside region of California due to the effect of the coastal zone moratorium. Agency acquisitions in this area commonly involve total takes and admissibility of such sales to value such acquisitions would meet any problems in that area.

The further limitation of such sales to those made prior to the passage of a condemnation resolution or the filing of an eminent domain action would help, to the greatest practicable extent, limit admissible sales to those where the sale price was truly a product of a meeting of the minds on value and not overly affected by the pressures of threatened or pending litigation. Since CCP §1250.410 only comes into play after litigation is filed, its policies could be accommodated without undue interference since any settlements made after litigation was filed would be nonadmissible. Sales after the condemnation resolution has been passed should also be made nonadmissible since some owners will make a concession at this point to avoid the expense and difficulties involved in processing imminent eminent domain litigation.

Very truly yours,

Norval Fairman

NORVAL FAIRMAN
Assistant Chief Counsel
NF:lma

Dictated but not read.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name John D. Rogers

Address Rogers, Vizzard & Tallett

369 Pine Street

San Francisco, CA 94104

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____
Private property owners _____
Both condemning agencies and private property owners X
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") NO

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Condemning agencies under the present statute are not only protected but encouraged to settle litigation, and are insulated against objections by other affected condemning agencies since the settlements made are not legally "precedent" for other acquisitions.

In practice, certain agencies acquiring large numbers of parcels wherein one settlement could have a significant effect upon the title project (e.g., Dept. of Transportation, redevelopment agencies, BART, etc.). Furthermore, in such cases, the need for reasonable uniformity in acquisition price is directly related to the agency's own fiscal responsibility and critical to its objective of completing the project without undue litigation. However, in cases where the condemning agency has only a single parcel to acquire or a very few parcels distant geographically and unrelated in value (school districts, park districts, Regents of the University of

California, Hastings College of the Law, hospitals, etc.), the considerations for settlement are quite different. There is normally no precedent-setting difficulty with reference to the particular agency acquiring the individual site, although there may be serious effects upon some other public agencies acquiring properties in the vicinity. If construction of substantial buildings is involved in the project, the increased cost of the building may warrant a judgment decision to pay a higher price than the property itself is worth. Other exigencies, including litigation involving the right of the particular agency to acquire the property, may dictate a decision to pursue a similar course. While such decisions to settle litigation are commendable and based upon sound economic reasons, they may prove extremely embarrassing to another public agency acquiring property in the vicinity. It is my opinion that the statute should remain unchanged, in order that the public as a whole may be protected.

Assuming, however, that sales to condemnors are to be made admissible, such sales should be limited to a foundation which would require a showing that the price paid by the agency was not only satisfactory to both parties, but was not in excess of the highest appraisal received by the particular agency involved.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Pauline E. [unclear]

Address 14615 Ventura Blvd
Sherman Oaks, Ca. 91403

1. I generally represent (check the one that best describes your practice)

- Condemning agencies _____
- Private property owners ✓
- Both condemning agencies and private property owners _____
- Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

I believe condemnation for public use results in unequal payment for like property - the public minded and poor not fighting city hall - those not public minded or rich enough to hold out ending up in a better bargaining position and more money for their property so the price is not a dependable

Proof of value

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Stephen W. Hackett
Address County Counsel for the County of Napa
1117 First Street
Napa, CA 94558

1. I generally represent (check the one that best describes your practice)

Condemning agencies X
Private property owners _____
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

(See Attached Sheet)

There would seem to be two arguments against the admissability of sales to condemning agencies:

1. Because the public entity has such coercive power and authority, the property owner who deals with the agency is at a bargaining disadvantage; as a consequence the sale price paid by the public entity is too low and reference to that sale would produce a distorted (low) impression of value; or

2. Because the public entity must have the property in question for some designated public purpose, and because the public entity operates in a political arena subject to pressures from many different quarters, and because the public entity may be less inclined to jealously guard each and every dollar in the treasury (at least not to the same extent as would the private individual), sales to public entities produce a price that is usually too high and reference to those sales would produce a distorted (high) impression of value.

As can be seen, these two arguments are poles apart, and while examples might be available to support either extreme, my impression and my experience leads me to conclude that the truth of the matter in the vast majority of cases is located somewhere in between!

I would acknowledge that my experience has been principally on the side of the condemning agency in representing the state, county, special districts or the school districts. It has been my practice (and I suspect it is the practice of most attorneys representing condemning authorities) to review carefully the staff appraisal that has been prepared in relation to all the property acquisitions anticipated for a given project. I cannot recall an instance of where the staff appraisal represented other than a conscientious and professional effort on the part of that appraiser to achieve a determination of "fair market value." Of course, even as I say this, I

believe that reasonable minds can always differ on matters of judgment. I am also of the opinion that "fair market value" and "just compensation" are not necessarily precise dollar and cent figures but rather represent something of a range whose breadth largely depends upon the nature of the property involved and upon its particular circumstances.

Indeed, in this very political world in which we live, where property owners are much more knowledgeable than they were even ten or twenty years ago, and where the political subdivisions requiring property for public purposes are obliged both legally and politically to answer to a much greater extent to their constituents, it is my impression that there is probably a greater chance of the sale to a condemning authority reflecting a generous rather than a penurious consideration.

For this reason, I would tend to favor the admissability of sales to condemning authorities; I think they can and do offer a legitimate basis for comparison (assuming that the properties in question are otherwise comparable). I also feel that where one advocate might wish to argue the depressing effect of the coercive power of the public entity (and thus suggest to the trier of fact that the sale price was too low), so also should the other advocate be permitted to argue that if anything the price was generous, considering the political and legal forces extant in today's world.

It would, therefore, be my recommendation that subsection (a) of Evidence Code section 822 be deleted in its entirety. If that was deemed too radical a change and an intermediate position had to be advanced, then I would recommend that sales to the specific condemning authority itself be admissable, or (the most constrained of liberalizations) to permit sales to the same condemning authority that related to the same public project that is involved in the condemnation proceeding at hand. I personally would favor, however, the broadest of these liberalizing alternatives.

It would seem that liberalizing the rule as suggested would accrue to the benefit of all concerned; if a given sale to a public entity was proffered as a comparable sale and the property owner felt the sale was too low, the argument could always be made that the coercive effect of the public entity purchaser produced that low figure. Conversely, the "high" sale to the public entity could be argued by the condemning authority as representing the needs of the public entity purchaser in that instance for which an excessive price was paid in order to avoid the expense of condemnation, etc. (Indeed, to use the vernacular, "you pays your money and you takes your choice.")

In essence, I do not feel that a sale to a condemning authority carries with it any more inherent potential of distortion than does any other sales transaction between private parties or private business entities, particularly when one considers the host of variables and motivations and exigencies that may prompt the decision to buy or to sell any given piece of property. I am persuaded that the importance of meaningful comparable sale information is sufficiently great in condemnation proceedings that reference to, and reliance upon, transactions involving otherwise comparable property should not be prohibited or proscribed simply because the purchaser in that sale was a public body which had an unexercised power of eminent domain.



QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Wanda Underhill

Address 2079 Market St., Apt 27

San Francisco, Calif. 94114

1. I ~~generally~~ do not represent (check the one that best describes your practice) anyone.

- Condemning agencies _____
- Private property owners _____
- Both condemning agencies and private property owners _____
- Other (describe briefly) Student of legal and legislative research and drafting (nights + weekends).

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

822.
(a) could be omitted.

Comment. § 811 establishes a "market value standard."
Broad application is to apply and eminent domain cases are included.
∴ 822 (a) does not seem to be necessary.

Commentator does not have the extensive background and experience of a practitioner and ^{she} therefore cannot go into greater detail and specifics. w.u. -50-

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name Charles A. Claessens

Address 6079 Virgo Rd.
Oakland, CA 94611

1. I generally represent (check the one that best describes your practice)

- Condemning agencies _____
Private property owners X
Both condemning agencies and private property owners _____
Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") Yes

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

For many types of property, comparable sales is the only method to accurately value the subject property. Where there is government action covering a large physical area, sometimes the only sales which are comparable are sales to the condemning agencies.

Acts of auction: Sales to condemning agencies tend to be at a higher or lower price than FMV depending on the relative strengths of the parties and the time the condemning agency has to accomplish purchase or condemnation.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name

RICHARD F. DIEMOND

Address

1006 - 4th St

SACRAMENTO 95814

1. I generally represent (check the one that best describes your practice)

Condemning agencies _____

Private property owners

Both condemning agencies and private property owners _____

Other (describe briefly) various occasions

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") No

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Twenty plus years of experience in this field has indicated clearly that negotiated sales under threat of condemnation do not represent or reflect true market in that the seller has no leverage, and, because of the project, the market is ordinarily depressed. There is no competition and generally the sellers are not informed or advised by independent counsel of their rights prior to sale. Most sales, although allegedly "negotiated," are consummated as the result of a "Take it or leave it" offer with the seller's only alternative being defense of a legal

action. Needless to say, the fear and distrust of courts and lawyers ordinarily results in acceptance of the offer. I could provide numerous instances if you so desire.

Our office was closely involved in the original legislation which led to the elimination of this plea. It was thoroughly considered by the legislature and the governor at that time.

Certainly under existing law the danger of unfair results is non-existent. The proposed legislation can result in no improvement to the system. See the *Wooten* and associated cases for an understanding of the problem.

R. J. Desmond.

QUESTIONNAIRE

PLEASE RETURN COMPLETED QUESTIONNAIRE TO: California Law Revision Commission, Stanford Law School, Stanford, CA 94305.

Your name RONALD P. DENITZ

Address 10960 WILSHIRE BLVD, SUITE 700
LOS ANGELES, CA 90024

1. I generally represent (check the one that best describes your practice)

- Condemning agencies _____
- Private property owners
- Both condemning agencies and private property owners _____
- Other (describe briefly) _____

2. Do you believe that any change should be made in subdivision (a) of Section 822 of the Evidence Code? (Answer "Yes" or "No") NO

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

THE "FORCED SALE" UNDER
THREAT OF CONDEMNATION OFTEN
PRODUCES A LOWER THAN TRUE
VALUE PRICE: A SALE DISCOUNTED
BY THE OWNER TO AVOID LITIGATION
EXPENSE & EMOTIONAL TORMENT IS
NOT FAIR VALUE, THIS APPLIES BOTH
TO FULL TAKING & SEVERANCE VALUE

C. S. Reach, FRICS, MAI, ASA
19006 Chace Street
Northridge, Calif. 91324
(213)885-6166

Sales to Agencies with the power of
 eminent Domain

The blanket prohibition of the use of these sales is a needless hardship and cost to the taxpayers. Where it can be shown that the sale to the Agency was entirely or at least substantially voluntary and definitely with no threat of condemnation, it should be permitted to be introduced into evidence. Also where there are multiple acquisitions (say at least 10) and 51% of the owners have agreed to a settlement with the agency, then such settlements should be permitted to be introduced by either side.

Where there are awards made by a court (not reasonably subject to further review or appeal), these awards should be permitted to be introduced into evidence. However, stipulated awards or settlements should not be so introduced.