

2/15/63

Memorandum 63-15

Subject: Senate Bill No. 71 (Discovery in Eminent Domain Proceedings)

We wish to present for Commission consideration a proposal of the Administrative Office of the Courts in connection with the Commission's bill relating to Discovery in Eminent Domain.

Attached are the following:

Senate Bill No. 71

Exhibit I (pink sheet) (Letter dated February 8, 1963)

Exhibit II (green sheet) (Proposed amendment mentioned in letter of February 8, 1963)

Exhibit III (yellow sheets) (Letter dated November 18, 1961)

In view of the objections to a pretrial exchange of valuation data, the Commission previously determined that this exchange should take place not later than 20 days prior to the day set for trial. You will recall that strong objections were made by a number of persons to an exchange even this long before trial. As our recommendation points out, the pertinent valuation data frequently is not accumulated until after the normal time for completion of discovery--the time of the pretrial conference. There are three reasons why this data is not available until a few days before the time of the actual trial. First, the parties usually are unwilling to incur the expense of having the expert complete his appraisal until shortly before the actual trial, for they seek to avoid this expense until it is clear that the case cannot be settled. Second, an appraisal report completed a considerable time before the trial must be brought up to date just before

the trial, and this involves additional expense. Third, an appraiser who completes his appraisal a considerable time before the trial may find that he has forgotten many of the details by the time of the trial and may need to devote a substantial amount of time to reviewing his appraisal just before the trial in order to refresh his memory.

The Administrative Office of the Courts suggests in the attached exhibits that the Judicial Counsel be authorized to promulgate rules that will vary the time limits set out in Senate Bill No. 71. This authority is desired so that the exchange could be made prior to the pretrial conference.

The difficulty with the suggestion of the Administrative Office of the Courts is that we have set the 20-day time period in light of the objections we received to the bill. We recognize that it will require a party to prepare for trial 20 days prior to trial, rather than just before trial. We concluded that this was desirable in view of the desirable benefits to be realized from the exchange of information. However, if the time limit is to be changed so that the exchange will take place at an earlier time, the staff anticipates substantial objections to the bill from both public and private persons who try condemnation cases.

The staff suggests that the suggestion of the Administrative Office of the Courts not be amended into our bill. The staff believes that this is a matter that the Administrative Office of the Courts should present to the Senate Judiciary Committee at the time Senate Bill 71 is set for hearing. If the Committee considers the amendment to be desirable, the staff would have no objection. However, we would not like to see the bill defeated merely because we ourselves incorporated the uncertain time limit proposed

by the Administrative Office of the Courts into our bill.

The Commission took the letter set out in Exhibit III into consideration at the time it prepared its recommendation and proposed legislation on this subject.

Respectfully submitted,

John H. DeMouly
Executive Secretary

2/51/63

EXHIBIT I

JUDICIAL COUNCIL OF CALIFORNIA
Administrative Office of the Courts
4200 State Building, San Francisco 2

February 8, 1963

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

Dear Mr. DeMouilly:

As you may know, for the reasons indicated in our letter of December 18, 1961, we are still concerned about Senate Bill No. 71 introduced by Senator Cobey at the request of the California Law Revision Commission.

While we think there are many ways of taking care of the problems raised in our letter, for such suggestive value as they may have we enclose a set of amendments which would resolve the problems raised.

If you see any problems, please let us know.

Sincerely yours,

Ralph N. Kleps, Director

By S/

J. D. Strauss
Attorney

JDS:bd

AMENDMENTS TO SENATE BILL NO. 71

AMENDMENT NO. 1

On page 2, of the printed bill, between lines 36 and 37, insert:

(e) In the exercise of its constitutional function to prescribe the order of business in the superior courts, the Judicial Council from time to time may prescribe periods for the taking of any action different from those provided for in this Section.

AMENDMENT NO. 2

On page 4, line 41, after "1246.2" insert:

and applicable rules of the Judicial Council

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EXHIBIT III

ADMINISTRATIVE OFFICE OF THE COURTS
4212 State Building, San Francisco
109 Library and Courts Bldg., Sacramento
217 West First Street, Los Angeles

December 18, 1961

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

Dear Mr. DeMouilly:

After consideration of your tentative recommendation relating to Pretrial Conferences and Discovery in Eminent Domain Proceedings, we have one suggestion to make. We think that room should be left in the statute under consideration for filling in procedural details by the Judicial Council, either under its general power (Const., Art. VI, Sec. 1a, subd. (6)) or by specific provision in the statute. This matter has not been submitted to the Judicial Council or its committee because of the tentative nature of your proposal insofar as Council action is concerned, but we think there is no doubt that the Council's rule-making power will be used in such a way as to eliminate the procedural problem which you foresee.

Our suggestion is based on the following kinds of problems which could arise in connection with the drafts submitted:

(a) In some cases a demand 40 days before trial would be impossible since neither statute nor rule now requires setting for trial to be that far in advance, and a statute might not be effective for this purpose in courts with three or more judges (Const., Art. VI, Sec. 7).

(b) While the pretrial rules now in force could be amended to require holding the pretrial conference after the exchange of valuation data not less than 20 days before trial, various changes under consideration with respect to these rules would make it desirable that the times for demand

for, and exchange of, valuation data be subject to rules of the Judicial Council so that they could be correlated with pretrial procedure.

(c) Some provision should be made for advancing and retarding on court order the dates for demand for, and exchange of, valuation data, which could be vital when the time for pretrial or trial is reset (see Rules 8.1, 11 and 12 of Rules for Superior Courts) or in other circumstances.

With kindest personal regards,

Sincerely,

Ralph N. Kleps
Director

by S/

J. D. Strauss

JDS:rs