

Revised April 30, 1970

Time

May 8 - 7:00 p.m. - 10:00 p.m.  
May 9 - 9:00 a.m. - 3:00 p.m.

Place

State Bar Building  
1230 W. Third Street  
Los Angeles 90017

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

May 8-9, 1970

1. Minutes of April 3-4 Meeting (sent 4/10/70)
2. Administrative Matters  
    Research Contracts  
        Memorandum 70-45 (enclosed)
3. 1970 Legislative Program  
    Memorandum 70-48 (sent 4/24/70)
4. Study 52 - Sovereign Immunity (Liability of School Districts for Failure to Provide Reasonable Supervision of Pupils)  
    Memorandum 70-43 (sent 4/10/70)
5. Studies 71 and 73 - Joinder of Claims; Counterclaims and Cross-Complaints  
    Memorandum 70-47 (sent 4/29/70)  
    Research Study (attached to Memorandum)  
    [Special order of business - 8:00 p.m. on May 8]
6. Study 36.21 - Condemnation (The Right to Take--The Right to Take a Fee or Any Lesser Interest)  
    Memorandum 70-32 (sent 4/17/70)
7. Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238)

Subdivision 5

Memorandum 70-34 (sent 4/10/70)  
Research Study (attached to Memorandum)

Subdivision 15

Memorandum 70-35 (sent 4/10/70)  
Research Study (attached to Memorandum)

Subdivision 18

Memorandum 70-36 (sent 4/10/70)  
Research Study (attached to Memorandum)

Subdivision 21

Memorandum 70-37 (sent 4/10/70)  
Research Study (attached to Memorandum)  
First Supplement to Memorandum 70-37 (sent 4/17/70)

8. Study 36.201 - Condemnation (Street Railway Use.)

Memorandum 70-42 (sent 4/10/70)

9. Study 39 - Attachment, Garnishment, and Execution

Discussion with Professors Riesenfeld and  
Warren concerning background study

[Special order of  
business - 9:00 a.m.  
on May 9]

10. Study 36.20(2) - Condemnation (The Right to Take--Statute)

Memorandum 70-44 (sent 4/17/70)

11. Study 36.20 - Condemnation (The Right to Take Generally)

Memorandum 70-33 (sent 4/17/70)  
Research Studies (attached to Memorandum)

12. Study 36.22 - Condemnation (The Right to Take--Public Necessity)

Memorandum 70-38 (sent 4/29/70)  
Research Study (see agenda item 11)

13. Study 36.23 - Condemnation (The Right to Take--Extraterritorial  
Condemnation)

Memorandum 70-39 (sent 4/10/70)  
Research Study (attached to Memorandum)  
Memorandum 70-40 (sent 4/17/70)

14. Study 36.95 - Condemnation (Constitutional Revision)

Memorandum 70-46 (sent 4/24/70)

15. New Topic - Renunciation and Disclaimer by Heir or Legatee

Memorandum 70-41 (sent 4/10/70)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MAY 8 AND 9, 1970

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on May 8 and 9, 1970.

Present: Thomas E. Stanton, Jr., Chairman  
John D. Miller, Vice Chairman  
G. Bruce Gourley  
Noble K. Gregory  
Marc W. Sandstrom  
Joseph T. Sneed  
Lewis K. Uhler

Absent: Alfred H. Song, Member of the Senate  
Carlos J. Moorhead, Member of the Assembly  
George H. Murphy, ex officio

Messrs. John H. DeMouilly and Jack I. Horton, members of the Commission's staff, also were present.

The following observers were present on May 8:

Paul F. Dauer, Department of Water Resources  
Terry C. Smith, Los Angeles County Counsel  
Charles E. Spencer, Department of Public Works, Los Angeles

The following observers were present on May 9:

William Bitting, Hill, Farrer & Burrill  
Paul F. Dauer, Department of Water Resources  
Norval Fairman, Department of Public Works, San Francisco  
John N. McLaurin, Hill, Farrer & Burrill  
Terry C. Smith, Los Angeles County Counsel  
Charles E. Spencer, Department of Public Works, Los Angeles

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ADMINISTRATIVE MATTERS

Correction and Approval of Minutes of April 3-4 Meeting. On page 20, line 2, of the Minutes of April 3-4, 1970, meeting, the operative date of AB 126 was corrected from "January 1, 1970" to "January 1, 1971." With this correction, the Minutes were approved as submitted.

1970 Legislative Program. The Commission considered Memorandum 70-48 and discussed the progress of its 1970 legislative program. The actions taken with respect to specific bills are set out in these Minutes under the particular study.

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STUDY 36 - CONDEMNATION (SENATE BILL 91--ENTRY FOR SURVEY)

The Commission considered Memorandum 70-48 and the report of the Executive Secretary that the Senate Judiciary Committee had amended the Commission version of this bill and had restored the right of a property owner to obtain attorney's fees in an action contesting the right to enter to make a survey. In view of the Commission's previous determinations and the opposition engendered by the amendment, when the bill is heard by the Assembly Judiciary Committee the Commission authorized the Executive Secretary to indicate to that committee that the Commission has no objection to deletion of the attorney's fees requirement.

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STUDY 36.20 - CONDEMNATION (THE RIGHT TO TAKE GENERALLY)

The Commission considered Memorandum 70-33 and the research studies attached thereto. The Commission directed the staff to advise the consultant on procedural problems to give priority to the question of raising "public use and necessity" issues at both the trial and appellate levels. The staff itself was directed to give priority to the problem of the former owner's right to repurchase property no longer put to a public use by a condemnor.

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STUDY 36.20(1) - CONDEMNATION (THE DECLARED PUBLIC USES)

(1) Disposition of Section 1238(5)--Mining. The Commission considered Memorandum 70-34 and the attached research study and tentatively approved the deletion of subdivision 5 and a Comment substantially in the form set forth in Exhibit I attached to Memorandum 70-34 with the addition of an appropriate reference to the availability of byroads under the Street Opening Act of 1903.

(2) Disposition of Section 1238(15)--Restoration of Public Records. The Commission considered Memorandum 70-35 and the attached research study. The staff suggestion that the substance of subdivision 15 be retained and transferred to the Government Code was approved. However, the staff was directed to reexamine the problem with a view towards providing for the restoration of all public records by any public entity.

(3) Disposition of Section 1238(18)--Trees Along Highways. The Commission considered Memorandum 70-36 and the attached research study but deferred any decision and directed the staff to resubmit this matter in connection with open space and related issues.

(4) Disposition of Section 1238(21)--Slum Clearance and Low-Rent Housing. The Commission considered Memorandum 70-37, the research study attached thereto, and the First Supplement to Memorandum 70-37. The Commission authorized the staff to advise the Commissioner of Corporations that the Commission was considering recommending the adoption of Health and Safety Code Sections 35167 through 35171 as set forth in Exhibit I to the First Supplement to Memorandum 70-37, and to request his comments concerning the existence and nature of land chest corporations, the practicality of the suggested procedure, and the desirability of permitting such corporations to condemn.

STUDY 36.20(2) - CONDEMNATION (THE RIGHT TO TAKE--STATUTE)

The Commission considered Memorandum 70-44 and reviewed the revised statute attached thereto. The Commission took the following action with respect to these sections:

- (1) Comprehensive Statute Section 107 was amended to provide:

107. "Person" includes any public entity, individual, association, organization, partnership, trust, or corporation.

- (2) The term "public corporation" was deleted from Comprehensive Statute Section 108 and the staff was directed to draft sections defining "public corporation" and providing that "unless otherwise provided by statute, a public corporation shall have the same rights, powers, and duties as a local public entity."

- (3) The staff was directed to revise the Comment to Comprehensive Statute Section 310 to refer to the separate condemnation authority of mutual water companies.

- (4) Subdivision (b) of Comprehensive Statute Section 345 was amended to provide:

(b) Where a public entity has furnished, offers to furnish, or will furnish, according to a specific plan, access to property cut off from access to a public road as a result of the acquisition of property for public use by the public entity, such fact shall be taken into account in determining the damage to the property which is not acquired for public use.

The staff was directed to add a note to the Comment to Section 345 drawing attention to the public use aspect of this section so that it may be reviewed further when the Commission considers substitute condemnation.

- (5) The staff was directed to revise the leadline to Comprehensive Statute Section 360 to refer to the Joint Powers Agreements Act.

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STUDY 36.21 - CONDEMNATION (THE RIGHT TO TAKE--THE RIGHT TO  
TAKE A FEE OR ANY LESSER INTEREST)

The Commission considered Memorandum 70-32. The Commission approved the staff suggestion that the word "property" or a similar phrase be substituted for the numerous different phrases now used to describe the interest that may be acquired under the various grants of condemnation authority scattered throughout the codes. Such substitution will be made when the various special condemnation statutes are conformed to the Comprehensive Statute. If any cases are discovered where the substitution would not be appropriate, these cases are to be called to the attention of the Commission.

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STUDY 36.22 - CONDEMNATION (THE RIGHT TO TAKE--PUBLIC NECESSITY)

The Commission considered Memorandum 70-38 and the research studies and draft statutory provisions attached thereto. The Commission took the following action with respect to these provisions of the Comprehensive Statute:

(1) The staff was directed to redraft and resubmit Section 300. The second sentence of Section 300 should provide in substance that, where the Legislature provides that a specific use, purpose, and the like, is one for which the power of eminent domain may be exercised, such action constitutes a declaration that, such use, purpose, and the like is a public use. A note should be added to this section indicating that, notwithstanding this provision, the issue of "public use" always remains justiciable.

(2) Section 301 had been approved at the April 1970 meeting as Section 300. This section was renumbered and otherwise approved without change.

(3) Section 302 was tentatively approved in the following form:

§ 302. Condemnation permitted only when necessity established

302. Before property may be taken by eminent domain, all of the following must be established:

- (a) The proposed project is a necessary project.
- (b) The proposed project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury.
- (c) The property sought to be acquired is necessary for the proposed project.

(4) Section 310 was tentatively approved in the following form:

§ 310. Resolution of necessity required

310. An eminent domain proceeding may not be commenced by a local public entity until after its governing body has adopted a resolution of necessity that meets the requirements of this chapter.

(5) Section 310.1 was tentatively approved in substantially the following form:

310.1. The resolution of necessity shall expressly set forth all of the following:

- (a) A description of the proposed project.
- (b) A description of the property to be acquired for the proposed project. Such description shall identify each parcel of property to be acquired which is held in separate ownership.
- (c) A declaration that the legislative body of the local public entity has found and determined that the public interest and necessity require the proposed project.
- (d) A declaration that the legislative body of the local public entity has found and determined that the proposed project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury.
- (e) A declaration that the legislative body of the local public entity has found and determined that the property described in the resolution is necessary for the project.
- (f) The specific statute authorizing the local public entity to exercise the power of eminent domain to acquire such property for such use.

(6) Section 310.2 was tentatively approved in the following form:

§ 310.2. Adoption of resolution

310.2. The resolution of necessity must be adopted by a vote of not less than two-thirds of all of the members of the governing body of the local public entity.

(7) Section 310.3 was tentatively approved in the following form:

§ 310.3. Effect of resolution

310.3. (a) If the property described in the resolution is located entirely within the boundaries of the local public entity, the resolution of necessity conclusively establishes the matters referred to in Section 302.

(b) If the property described in the resolution is not located entirely within the boundaries of the local public entity, the resolution of necessity creates a presumption that the matters referred to in Section 302 are true. This presumption is a presumption affecting the burden of producing evidence.

However, the staff was directed to add a note to this section stating that approval of the section does not foreclose further review or changes providing broader justiciability of the matters covered therein, nor does it affect the justiciability of such issues as excess, substitute, and protective condemnation, and future use, and the issue whether the resolution may be attacked by a showing of actual fraud has been expressly reserved.

Time did not permit review of the remaining sections and the staff was directed to redraft the statutory provisions for consideration at a future meeting.

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STUDY 36.201 - CONDEMNATION (THE DECLARED PUBLIC USES--  
CONDEMNATION FOR UTILITY PURPOSES)

The Commission considered Memorandum 70-42 and tentatively approved the staff recommendation to revise proposed Public Utilities Code Section 621 to provide:

621. A street railroad corporation may condemn any property necessary for the construction and maintenance of its street railroad.

The staff was directed to review Public Utilities Code Section 231 and determine whether the definition of "street railroad" contained therein was broad enough to provide adequate condemnation authority for such utilities.

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STUDY 39 - ATTACHMENT, GARNISHMENT, AND EXECUTION

The Commission met with Professors Riesenfeld and Warren and discussed the scope of the study relating to attachment, garnishment, and exemptions from execution. The Commission determined that a study covering certain aspects of the topic is needed as soon as possible and that comprehensive study of all aspects of the topic is needed but that the comprehensive study is not one that must be completed on an urgency basis.

The Commission determined that a contract should be made with Professor Riesenfeld and Professor Warren to cover the aspects of the topic which must be dealt with on an urgency basis and to prepare a detailed comprehensive outline of the entire topic, indicating the promising lines of approach that might be adopted in preparing a comprehensive statute covering the entire topic. The total amount of compensation for the work under this contract is to be \$10,000 and travel expenses are to be authorized for the consultants and persons working under their direction, such travel expenses to be in addition to the \$10,000 compensation but to be limited to not exceeding \$1,000. One contract may be made with both consultants or a contract for one-half of the total compensation and travel expenses may be made with each consultant. The contract is to provide for partial payments as portions of the work under the contract are completed. In addition, the contract may include a provision for progress payments not to exceed \$500 (for each consultant) to permit payment of legal research assistants working for the consultant.

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The portion of the study to be completed on an urgency basis is to cover (1) the impact of the recently enacted Federal Consumer Credit Protection Act on the California law and the changes in California statutes that are needed or desirable as a result of the enactment of the federal act and (2) the impact of Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (relating to prejudgment wage garnishment) on the California law and the changes in the California statutes that are needed or desirable in light of the Sniadach case. The study covering these urgency matters is to be completed as soon as possible, hopefully prior to October 1, 1970, so that the Commission may submit a recommendation on these matters to the 1971 Legislature. Generally speaking, the study should contain a preliminary portion summarizing the present law, the problems that exist under the present law, the general solutions recommended to solve those problems, and the reasons why those solutions are recommended. In addition, the study should contain the text of the legislation recommended by the consultants, including comments to each section. Where appropriate, the comments should indicate the purpose and effect of the revised or new section and should note any significant changes the section would make in prior California law.

The detailed outline of the study which will cover the entire topic should cover not only attachment, garnishment, and exemptions from execution but also any related aspects of debtors' rights and creditors' remedies that should be considered in such a comprehensive study.

The Chairman and Executive Secretary were directed to work out the details of the contracts with the consultants in accord with the decisions of the Commission indicated above and the Executive Secretary was directed to execute the contract or contracts with the consultants on behalf of the Commission.

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STUDY 44 - FICTITIOUS BUSINESS NAMES

The Commission considered Memorandum 70-48 and the report by the Executive Secretary that the newspapers intended to sponsor an amendment to Senate Bill 98 (fictitious business names statute) that would require a bank to determine that a business had complied with the fictitious business name statute prior to permitting such business to open an account with such bank. The Commission authorized the Executive Secretary to take any steps necessary to make clear that the Commission does not recommend passage or enactment of the bill if it is amended as the newspapers desire.

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STUDY 52 - SOVEREIGN IMMUNITY (SENATE BILLS 92 AND 94)

The Commission considered Memorandum 70-48 and discussed the plan or design immunity provisions of Senate Bills 92 and 94. The Commission approved the deletion of the "should have known" requirement of subdivision (b)(3) but determined that no further changes should be permitted in these bills. Specifically, reservoirs or canals should not be added to the exemption of streets and highways and the Executive Secretary was authorized to drop SB 92 and delete the plan or design provisions from SB 94 if such an amendment or similar amendments were made in these bills.

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STUDY 52 - SOVEREIGN IMMUNITY (LIABILITY OF SCHOOL DISTRICTS  
FOR FAILURE TO PROVIDE REASONABLE SUPERVISION  
OF PUPILS)

The Commission considered Memorandum 70-43 and the recent decision by the Court of Appeal in Dailey v. Los Angeles Unified School District, 4 Cal. App.3d 105 (1970). Noting that a hearing in this case had been granted by the California Supreme Court, the Commission determined that no action was required at this time.

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STUDIES 71 AND 73 - JOINDER OF CLAIMS; COUNTERCLAIMS AND  
CROSS-COMPLAINTS

The Commission met with Professor Jack Friedenthal, its consultant on this matter, and considered Memorandum 70-47 and the Research Study attached thereto. The staff was directed to give priority to preparation of a draft statute implementing the following, tentatively approved, principles:

(1) Uniform Procedural Treatment. One uniform set of procedures should be applied to every situation where one person files a cause of action against another so that, regardless of whether they were original parties or not, the person filing the cause and the person against whom it is filed will be treated as plaintiff and defendant, respectively, with all the obligations and rights that they would have had had the cause been instituted in an independent lawsuit.

(2) Permissive Joinder of Claims and Counterclaims. A plaintiff in his complaint should be permitted to join all causes of action he has against a defendant; a defendant, along with his answer, should be permitted to file a pleading, known as a counterclaim, setting forth any causes of action he has against a plaintiff.

(3) Compulsory Joinder of Claims and Counterclaims. When one person files a cause of action against another, and either of them has an unpleaded cause of action against the other arising from the same transaction or occurrence as the cause filed, then such unpleaded cause must also be filed in the action; otherwise it should be deemed waived and all rights thereon extinguished. (Consideration here should be given to the problem of a previously assigned cause of action.)

(4) Permissive Filing of Claims Against Co-parties or Strangers.

Whenever a party is sued on a cause of action arising out of the same transaction or occurrence, or affecting the same property, as an unpleaded cause which the party has against either a non-adverse party or a stranger to the lawsuit, he should be permitted, along with his answer, to file a pleading setting forth his cause and bringing any such stranger into the lawsuit. The staff was authorized to denominate such a pleading a cross-claim, but any final decision concerning terminology was deferred to permit further study.

(5) Impleader Claims for Indemnity. A party against whom a cause of action has been filed should clearly be permitted to file as a cross-claim any impleader claim for indemnity which he has against a third person; however, the third person should be protected from collusion by being afforded the opportunity directly to contest the liability of the person who filed such cross-claim.

(6) Severing of Causes or Issues for Trial. Whenever a lawsuit involves multiple causes of action, the court should have broad discretion to sever causes or issues for trial. The staff was directed to draft a separate section dealing with the matter of venue when a non-impleader cross-claim brought solely against a stranger to the action is severed.

(7) Special Set-off Provisions. The statutes should retain the substance of special set-off provisions to the extent that they prevent one party from taking advantage of another through tactical manipulations.

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STUDY 77 - NONPROFIT CORPORATIONS

The Commission considered Memorandum 70-45. Professor Sneed reported the possibility of obtaining the services of Mr. James Gaither, of **Cooley, Crowley, Gaither, Godward, Castro & Huddleson**, San Francisco, to prepare a comprehensive study relating to nonprofit corporations with assistance from Dean Bayless Manning of the Stanford Law School and Professor Sneed himself.

The Commission authorized the Chairman, Professor Sneed, and the Executive Secretary to negotiate a contract with Mr. Gaither within the limits of ten thousand dollars (\$10,000) and one thousand dollars (\$1,000) for travel, the terms of the contract and the details of the study to be subject to negotiation and approval by the Chairman. The Executive Secretary was authorized to execute the contract on behalf of the Commission.

If suitable arrangements cannot be made with Mr. Gaither, The Chairman, Professor Sneed, and the Executive Secretary were further authorized to attempt to obtain an alternative consultant for this study.