

Revised January 29, 1970

<u>Time</u>	<u>Place</u>
February 6 - 9:30 a.m. - 5:00 p.m.	State Bar Building
February 7 - 9:00 a.m. - 4:00 p.m.	1230 West Third Street Los Angeles 90017

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

February 6-7, 1970

FEBRUARY 6 (MORNING)

1. Minutes of November 21 Meeting (sent 11/26/69)
2. Administrative Matters (if any)
 - Election of Chairman and Vice Chairman
 - Memorandum 70-2 (sent 12/5/69)
 - Fiscal Matters
 - Memorandum 70-3 (sent 12/5/69)
3. Future Meeting Schedule
 - (See gold sheet attached to this agenda.)
4. Study 44 - Fictitious Business Name Statute
 - Memorandum 70-10 (sent 1/20/70)
5. Study 63 - Evidence Code (Proof of Foreign Official Records)
 - Memorandum 70-5 (sent 1/20/70)
6. Study 50 - Leases
 - Memorandum 70-1 (sent 12/10/69)
 - 21 ALR3d 527-594 (sent 12/5/69)
7. Procedures in Connection With Obtaining Approval of Legislative Proposals
 - Memorandum 70-4 (sent 12/5/69)

Revised January 29, 1970

FEBRUARY 6 (AFTERNOON) AND FEBRUARY 7

8. Study 65.40 - Inverse Condemnation (Aircraft Noise Damage) Special order of business at 1:30 p.m. on February 6
Memorandum 69-133 (sent 11/26/69)
First Supplement to Memorandum 69-133 (sent 1/20/70)
Second Supplement to Memorandum 69-133 (enclosed)
9. Study 36.95 - Condemnation (Constitutional Revision)
Memorandum 69-138 (sent 11/26/69)
First Supplement to Memorandum 69-138 (sent 12/29/69)
Second Supplement to Memorandum 69-138 (sent 1/20/70)
10. Study 65.25 - Inverse Condemnation (Water Damage; Land Stability)
Memorandum 69-134 (sent 11/26/69)
11. Study 36.60 - Condemnation (Moving Expenses)
Memorandum 69-148 (sent 12/5/69)
Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 69-148 (sent 12/29/69)
Memorandum 70-11 (sent 1/23/70)
12. Study 36.42 - Condemnation (Future Use)
Memorandum 69-131 (sent 11/26/69)
✓ Memorandum 70-11 (sent 1/23/70)
13. Study 36.105 - Condemnation (Joint Powers Agreements Act)
Memorandum 70-9 (sent 1/20/70)
Memorandum 70-11 (sent 1/23/70) - see study 12
14. Study 23 - Confirmation of Partition Sales
Memorandum 69-140 (sent 11/26/69)
15. Study 30 - Custody Jurisdiction
Memorandum 69-141 (sent 11/26/69)
16. Study 39 - Attachment, Garnishment, and Exemptions From Execution
Memorandum 69-146 (sent 12/10/69)
17. Study 76 - Trial Preference
Memorandum 69-142A (sent 11/26/69)
First Supplement to Memorandum 69-142A (sent 12/29/69)

Revised January 29, 1970

18. Study 12 - Jury Instructions

Memorandum 69-137 (sent 12/5/69)

19. New Topic - Civil Writ Procedure

Memorandum 69-129 (sent 11/26/69)

20. New Topic - Use of Affidavits in Default Cases

Memorandum 69-130 (sent 11/26/69)

21. New Topic - Compliance With Water Quality Standards

Memorandum 70-7 (sent 1/20/70)

22. "Short form" cover sheet

TENTATIVE

SCHEDULE FOR FUTURE MEETINGS

March 6-7	Los Angeles
April 3-4	San Francisco
May 8-9	Los Angeles
June 5-6	San Francisco
July 10-11	San Diego
August	No meeting (vacations)
September 3-5 (three full days)	San Francisco
October 9-10	Los Angeles
November 6-7	San Francisco
December 4-5	Los Angeles

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 6 AND 7, 1970

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on February 6 and 7, 1970.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman (February 6)
Carlos J. Moorhead, Member of the Assembly (February 6)
G. Bruce Gourley
Lewis K. Uhler
Richard H. Wolford

Absent: Alfred H. Song, Member of the Senate
Joseph Sneed
George H. Murphy, ex officio

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

The following observers were also present:

Michael M. Berger, Fadem & Kanner (February 6)
Ralph F. Clark, San Francisco (February 6)
Paul F. Dauer, Department of Water Resources
Ronald P. Denitz, Tishman Realty Co. (February 6)
Norval Fairman, Department of Public Works
Maurice A. Garbell, San Francisco (February 6)
Eugene Golden, Buckeye Realty & Management (February 6)
David Ingram, Menlo Park (February 6)
Gideon Kanner, Fadem & Kanner (February 6)
John T. Markle, Department of Water Resources
John M. Morrison, Attorney General's Office
Kenneth G. Nellis, Department of Public Works (February 6)
Willard A. Shank, Attorney General's Office (February 6)
Terry C. Smith, Los Angeles County Counsel's Office
Charles E. Spencer, Jr., Department of Public Works

Minutes
February 6 and 7, 1970

ADMINISTRATIVE MATTERS

Approval of Minutes of November 21, 1969 Meeting. The minutes of the November 21, 1969 meeting were approved as submitted.

Fiscal Matters

The Commission received the report of the Executive Secretary and considered Memoranda 70-3 (Fiscal Matters) and 69-141 (Custody Jurisdiction). The Commission authorized the Executive Secretary to contact Professor Bridget Bodenheimer of the University of California, Davis, and to execute a contract with her for up to \$1,500 (plus travel expenses limited to \$100 per year) for a research study with regard to custody jurisdiction. In the event Professor Bodenheimer is unable or unwilling to prepare such a study, the Executive Secretary was directed to contact other consultants of his choice.

Election of Chairman and Vice Chairman

Thomas E. Stanton, Jr. was unanimously elected Chairman of the Commission. John D. Miller was unanimously elected Vice Chairman of the Commission.

Conflict of Interest Statute

The Commission directed the Executive Secretary to secure and distribute to the Commission the opinion of the Attorney General relating to Chapter 1512 of the Statutes of 1969 (Division 4.5 (commencing with Section 3600) of Title 1 of the Government Code).

Schedule for Future Meetings

The following schedule for meetings during 1970 was adopted:

Minutes
February 6 and 7, 1970

March 6-7	Los Angeles
April 3-4	San Francisco
May 8-9	Los Angeles
June 5-6	San Francisco
July 10-11	San Diego
August	No meeting (vacations)
September 3-5 (three full days)	San Francisco
October 9-10	Los Angeles
November 6-7	San Francisco
December 4-5	Los Angeles

It was suggested that meetings with the local bar associations would be desirable. The staff was directed to contact Judge Yale in connection with a meeting with the San Diego Bar Association during the July meeting. Commissioner Stanton volunteered to contact the executive board of the San Francisco Bar Association with regard to a luncheon with that body during the April meeting.

Procedures in Connection With Obtaining Approval of Legislative Proposals

The Commission considered Memorandum 70-4 and generally reviewed these procedures. The Executive Secretary was authorized to continue existing practices with respect to author's amendments and to distribute, with the consent of the legislative member-author and over the latter's signature, materials describing current bills and advising that the Executive Secretary is available for answering any questions concerning these bills.

Minutes
February 6 and 7, 1970

New Topic - Civil Writ Procedure

The Commission considered Memorandum 69-129 and decided not to request authority to undertake study of this topic.

New Topic - Use of Affidavits in Default Cases

The Commission considered Memorandum 69-130 and decided not to request authority to undertake study of this topic.

New Topic - Compliance With Water Quality Standards

The Commission considered Memorandum 70-7 and decided that this topic was not an appropriate one for its study.

Minutes
February 6 and 7, 1970

STUDY 12 - JURY INSTRUCTIONS

The Commission considered Memorandum 69-137 and determined that this topic should be dropped from the Commission's calendar. It should be reported that certain procedural problems caused the Commission to withdraw its earlier recommendation on this topic. These problems seemed best capable of solution by the Judicial Council; however, the Council advised that it opposed in principle any change in existing law. After further consideration and study by the Commission, including solicitation of the views of both judges and attorneys concerning this matter, the Commission concludes that it would not be desirable to recommend legislation in this field.

Minutes
February 6 and 7, 1970

STUDY 23 - CONFIRMATION OF PARTITION SALES

The Commission considered Memorandum 69-140 and determined to defer further consideration of this topic to the March meeting.

Minutes
February 6 and 7, 1970

STUDY 30 - CUSTODY JURISDICTION

The Commission considered Memorandum 69-141 and authorized the Executive Secretary to contact Professor Bridget Bodenheimer of the University of California, Davis, and, if possible, to execute a contract with her for up to \$1,500 (plus travel expenses limited to \$100 per year) for a research study on this topic. In the event Professor Bodenheimer is unable or unwilling to prepare such a study, the Executive Secretary was directed to contact other consultants of his choice. (See also Administrative Matters, Minutes, February 6 and 7, 1970.)

Minutes
February 6 and 7, 1970

STUDY 36.42 - CONDEMNATION (FUTURE USE)

The Commission considered Memoranda 69-131 and 70-11 and directed the staff to prepare a tentative recommendation adopting the following policy decisions:

(1) Provisions contained in existing statutes that authorize takings for future use should be repealed and one general statute covering all condemnors should be included in the comprehensive eminent domain statute to deal with this matter.

(2) The test to be used to determine whether a taking for future use is permitted should be stated in general terms in the statute. The test in substance should be that developed by the California courts--whether there is "a reasonable probability of use of the property for the public use for which it is taken within a reasonable time." Certain time standards and presumptions based thereon may be helpful in determining whether a taking is for a present or a future use.

(3) The statute should make clear that a taking for future use presents a public use issue and that the resolution declaring the necessity of the taking is not conclusive on whether a taking for future use is permitted under the general test to be stated in the statute. The procedure for contesting a taking for future use should be provided by the statute. The procedure should provide for a court determination of this issue. In drafting the procedure, an attempt should be made to provide a single procedure to cover the public use issue--whether the issue is raised by a taking for future use, an excess taking, or a substitute taking. The procedure so developed should also be made applicable to other similar questions such as whether the taking is for a public use generally, whether the taking is for "a more necessary public use," and the like.

STUDY 36.60 - CONDEMNATION (MOVING EXPENSES)

The Commission considered Memorandum 69-148, the attached tentative recommendation, and the First Supplement thereto. The Commission directed the staff to prepare a tentative recommendation for the March meeting incorporating the following changes, as well as any desirable suggestions forwarded by the Department of Public Works.

(1) Subdivision (a) of Section 7260 should be revised to provide substantially as follows:

(a) "Acquirer" means any public entity, public utility or educational institution which acquires real property or any interest therein for public use and exercises or could have exercised the right of eminent domain to acquire such property for such use.

A definition of "educational institution" should be provided with reference to Section 1a of Article XIII of the California Constitution.

(2) Subdivision (c) of Section 7260 should be revised to provide substantially as follows:

(c) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired by an acquirer,

(1) as a result of the acquisition of such real property; or

(2) as a result of the reasonable expectation of acquisition of such real property, and which property is subsequently acquired.

A person who moves from real property as a result of the "reasonable expectation of acquisition of such real property" is one who moves from such property within the 12-month period immediately preceding the time possession of the property is required for construction purposes; provided that a person who moves onto real property less than the said 12-month period and moves from that property more than 90 days before the end of said 12-month period, is not a displaced person for purposes of this chapter, and also provided that the property is not subsequently occupied by another eligible person, prior to acquisition by the acquirer.

(3) A subdivision defining "moving expense" should be added to Section 7260, providing substantially as follows:

() "Moving expense" means the cost of dismantling, disconnecting, crating, loading, insuring, temporarily storing, transporting, unloading, and reinstalling personal property, including service charges in connection with effecting such reinstallations, and necessary temporary lodging and transportation of eligible persons. Moving expense does not include:

(1) Any addition, improvement, alteration, or other physical change in or to any structure in connection with effecting removal from, or installation in, such structure.

(2) The cost to move or to replace property for which compensation was paid in the acquisition.

(3) Any loss of, or damage to, property.

(4) A subdivision defining "owner" should be added to Section 7260, providing substantially as follows:

() "Owner" means an individual:

(1) Owning, legally or equitably, the fee simple estate, a life estate, a ninety-nine year lease, or other substantial possessory interest in the property acquired.

(2) The contract purchaser of any of the foregoing estates or interests; or

(3) Who within one year immediately preceding the date on which he was required to move has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. In the event of acquisition of ownership by such methods, the tenure of the succeeding owner includes the tenure of the preceding owner.

(5) Subdivision (a) of Section 7262 should be revised to provide substantially as follows:

(a) As a part of the cost of acquisition of real property, an acquirer shall compensate a displaced person for all his actual and reasonable moving expenses subject to the following limitations:

(i) Total reimbursement shall not exceed the value of the property moved.

(ii) Reimbursement for the transportation element of moving expense shall be provided for only the first 50 miles traveled. If the person moving desires that the property be moved a greater distance, he shall bear the additional mileage costs himself. However, packing, unpacking, and other costs of moving shall be borne by the acquirer no matter how far the property is moved.

Minutes
February 6 and 7, 1970

(6) Subdivision (c) of Section 7262 should be deleted. The staff was directed to consider substituting at this point statutory authority to negotiate an in lieu moving expense payment for businesses and farms.

(7) A new section (7262.1) should be added, providing substantially as follows:

7262.1. (a) In addition to the payments provided by Section 7262, the acquirer, as a part of the cost of acquisition, may make a payment to any displaced person who moves or discontinues his business provided the average annual net earnings of the business are less than \$10,000 per year. This payment shall be in an amount equal to the average annual net earnings of the business, except that such payment shall not be less than \$2,500 nor more than \$5,000. Notwithstanding the preceding sentence, in the case of a displaced person who is sixty years of age or over, this payment shall be in an amount equal to three times the average annual net earnings of the business or \$6,000, whichever is less.

(b) No payment shall be made under this section unless the acquirer is satisfied that the business--

(1) cannot be relocated without a substantial loss of its existing patronage; and

(2) is not part of a commercial enterprise having at least one other establishment, not being acquired, which is engaged in the same or similar business.

(c) For purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the business, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business moves from the real property acquired, and includes any compensation paid by the business to the owner, his spouse, or his dependents during such two-year period.

(8) A new section (7262.2) should be added, providing substantially as follows:

7262.2. (a) In addition to the payments provided by Section 7262, the acquirer, as part of the cost of acquisition, may make a payment to any displaced person who moves or discontinues a farm operation, provided the average annual net earnings of the farm operation are less than \$10,000 per year. This payment shall be in an amount

Minutes
February 6 and 7, 1970

equal to the average annual net earnings of the farm operation, except that such payment shall not be less than \$2,500 nor more than \$5,000. Notwithstanding the preceding sentence, in the case of a displaced person who is sixty years of age or over, this payment shall be in an amount equal to three times the average annual net earnings of the business or \$6,000, whichever is less.

(b) In the case where the entire farm operation is not acquired by such acquirer, the payment authorized by this section shall be made **only** if the acquirer determines that the property not acquired is no longer an economic unit.

(c) For purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such farm operation moves from the real property acquired, and includes any compensation paid by the farm operation to the owner, his spouse, or his dependents during such two-year period.

(9) Sections 7263, 7264, and 7265 should be revised to refer to the payments "provided" by Section 7262, rather than "authorized" by Section 7262.

(10) Subdivision (b) of Section 7268 should be deleted.

Minutes
February 6 and 7, 1970

STUDY 36.95 - CONDEMNATION (CONSTITUTIONAL REVISION)

The Commission considered Memorandum 69-138, the First and Second Supplements thereto, and the Executive Secretary's oral report on the proceedings of the Committee on Article I of the Constitutional Revision Commission. The Commission authorized the Chairman to forward to the Constitutional Revision Commission a copy of the Commission's printed tentative recommendation with a cover letter reporting the Commission's interest in this subject, explaining its position, and setting forth the following possible alternative language for Article I, Section 14.

Private property may not be taken or damaged for public use without just compensation, ascertained by a jury unless waived, having first been paid to, or paid into court for, the owner. The Legislature may provide for possession of the property by the condemnor following commencement of eminent domain proceedings upon deposit in court of money determined by the court to be the probable amount of just compensation. This money shall be available immediately to the owner subject to such reasonable conditions as the Legislature may prescribe.

Minutes
February 6 and 7, 1970

STUDY 36.105 - CONDEMNATION (JOINT POWERS AGREEMENTS ACT)

The Commission considered Memoranda 70-9 and 70-11 and directed the staff to prepare a tentative recommendation on this subject. The recommendation should propose that a section in substantially the following form be included in the comprehensive eminent domain statute:

§ . (a) As used in this section, "public agencies" includes all those agencies included within the definition of "public agency" in Section 6500 of the Government Code.

(b) Two or more public agencies may enter into an agreement for the joint exercise of their respective powers of eminent domain, whether or not possessed in common, for the acquisition of real property as a single parcel. Such agreement shall be entered into and performed pursuant to the provisions of Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Minutes
February 6 and 7, 1970

STUDY 39 - ATTACHMENT, GARNISEMENT, AND EXEMPTIONS FROM EXECUTION

The Commission considered Memorandum 69-146 and directed the staff to consider obtaining a consultant to prepare a research study relating to this topic, giving priority to the due process problems but including suggestions for a comprehensive revision of this area of the law.

Minutes
February 6 and 7, 1970

STUDY 44 - FICTITIOUS BUSINESS NAMES STATUTE

The Commission considered Memorandum 70-10 and the attached letter from Maurice D. L. Fuller, Sr., Chairman of the Uniform Commercial Code Committee of the State Bar who forwarded a proposed report of the Committee to the Board of Governors.

The Commission directed the Executive Secretary to have the following author's amendments made to the bill submitted to the Legislature:

(1) Section 17919 should be amended to add a new subdivision (c), to read:

(c) A fictitious business name statement may be executed, filed, and published by an assignee or purchaser of the business at any time after the assignment or sale where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the assignee or purchaser by reason of the assignment or sale.

(2) Section 8 of the proposed statute should be amended, to read:

Sec. 8. (a) This act becomes operative on July 1, 1971, except that at any time after January 1, 1971, a fictitious business name statement may be filed and published as provided in Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code, and the ~~certificate~~ statement so filed shall be deemed to have been filed on July 1, 1971. A person filing an initial statement under Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code need not publish such statement if he has a certificate on file under Chapter 2 (commencing with Section 2466) of Title 10 of Part 4 of Division 3 of the Civil Code unless there has been a change in the information required in that certificate, in which event the statement shall be published as provided in Section 17917 of the Business and Professions Code.

(b) [No change.]

STUDY 50 - LEASES

The Commission considered Memorandum 70-1, the attached materials and an oral presentation by the Executive Secretary. The Commission directed the Executive Secretary to ask Assemblyman Hayes, the author of A.B. 171 (lease recommendations), to consider making the following changes as author's amendments:

(1) Subdivision (a) of Section 1951.4 (Sec. 3) should be deleted and the remaining subdivisions renumbered.

(2) Section 3308 (Sec. 12) should be revised to restore the words "real or" in the first line of the section and the following paragraph should be added at the end of the section:

This section does not apply to a lease of real property unless:
(1) the lease was executed before July 1, 1971, or (2) the terms of the lease were fixed by a lease, option, or other agreement executed before July 1, 1971.

The staff was further directed to reexamine subdivision (b) of Section 1952.2 and to consider alternative language that would make clear: (1) that a lease derived from an agreement executed before July 1, 1971, which agreement was sufficiently certain to be specifically enforceable would not be governed by the new provisions; but (2) that a renewed lease that was subject to renegotiation even though in fact its terms were not changed, would be governed by the new provisions.

STUDY 63 - EVIDENCE CODE (PROOF OF FOREIGN RECORDS)

The Commission considered Memorandum 70-5 and the attached letter from Charles W. Ricketts, Los Gatos attorney. The Commission approved a bill in the form submitted by the staff amending Section 1530 of the Evidence Code and directed the Executive Secretary to take the steps necessary to have the bill introduced in the current legislative session by Assemblyman Moorhead.

The bill provides as follows:

Section 1. Section 1530 of the Evidence Code is amended to read:

1530. (a) A purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if:

(1) The copy purports to be published by the authority of the nation or state, or public entity therein, in which the writing is kept;

(2) The office in which the writing is kept is within the United States or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing; or

(3) The office in which the writing is kept is not within the United States or any other place described in paragraph (2) and the copy is attested as a correct copy of the writing or entry by a person having authority to make the attestation. The attestation must be accompanied by a final statement certifying the genuineness of the signature and the official position of (i) the person who attested the copy as a correct copy or (ii) any foreign official who has certified either the genuineness of the signature and official position of the person attesting the copy or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the person attesting the copy. The final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent, ~~or other officer in the foreign service~~ of the United States stationed in the nation in which the writing is kept, authenticated by the seal of his

Minutes
February 6 and 7, 1970

officer, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without the final statement or (ii) permit the writing or entry in foreign custody to be evidenced by an attested summary with or without a final statement.

(b) The presumptions established by this section are presumptions affecting the burden of producing evidence.

Sec. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In some situations, it now is impossible to satisfy the basic requirement of paragraph (3) of subdivision (a) of Section 1530 of the Evidence Code because there is no United States official in the particular foreign country (such as East Germany) who can make the final statement required by paragraph (3). As a result, it may be impossible in some situations to establish such matters as birth, legitimacy, marriage, death, or a will. This may result in injustice or in delay in the resolution of issues now pending in California courts. Therefore, it is necessary that this act take immediate effect.

Minutes
February 6 and 7, 1970

STUDY 65.40 - INVERSE CONDEMNATION (AIRCRAFT NOISE DAMAGE)

The Commission considered and discussed the first portion (pages 1-22) of Memorandum 69-133 and the First and Second Supplements thereto and heard comments from the following persons: Ralph F. Clark, appraiser; Maurice A. Garbell, aeronautical engineering consultant; David Ingram, Jr., appraiser consultant; Gideon Kanner, attorney; Willard A. Shank, Attorney General's Office; Terry C. Smith, Los Angeles County Counsel's Office.

The Commission determined that a statute dealing with this subject should attempt to identify the entity which "failed to condemn enough" and which is best able to allocate the cost to the damage-producing activity and should impose liability upon such entity. Airplane operator liability should not be precluded, but direct liability or indemnity on the part of such operators should not be specifically provided.

Decisions concerning who (judge, jury, administrative agency) determines whether there has been a taking or damaging and what standards should guide such determinations were deferred. It was reported by Mr. Clark that Mr. John D. Rogers was preparing for a future meeting a presentation relating liability to a "zone of influence" test. Consideration was given to: (1) the relative merits of standards based on the quantum of noise versus a loss of property value; (2) the effect of such standard or standards, e.g., rebuttable or conclusive presumption; (3) the possibility of preliminary screening and elimination of suits. Any restriction to damage from overflights was rejected.

Alternate solutions through zoning and land assembly--analogous to urban renewal--were considered. It was pointed out that the airport operator (the potential defendant) may have no control over zoning, and criticism was voiced

Minutes
February 6 and 7, 1970

of making zoning decisions a matter of direct economic interest for the zoning entity.

For a future meeting, the Executive Secretary was requested to invite representatives of the FAA to provide their assistance, particularly with respect to the issues of federal control of operations (noise) and federal reimbursement for noise easements. Dr. Garbell furnished the names of the following persons: (1) Mr. Ervin Gasnight, Director of Western Region (FAA) (Los Angeles); (2) Dr. Powers, Acting Director of Office of Noise Abatement (FAA)(Washington); (3) Mr. Martin Gach, Director of Office of Noise Abatement-- Eastern Region (FAA)(John F. Kennedy International Airport)(Long Island).

Minutes
February 6 and 7, 1970

STUDY 76 - TRIAL PREFERENCE

The Commission considered Memorandum 69-142A and the First Supplement thereto. The staff was directed to prepare for early consideration a tentative recommendation repealing the preference given to declaratory relief actions.