

1/31/69

Memorandum 69-27

Subject: Agenda Topics

At the January meeting, the Chairman reported that members of the Boalt Law School faculty were being contacted by representatives of a Washington D.C. based research organization concerning studies that might be made by the Assembly Judiciary Committee. The staff was asked to obtain further information on this matter.

I discussed the matter with the Counsel for the Assembly Judiciary Committee. The survey covers all aspects of judicial administration and is intended to identify those major problems that will require legislative attention over a period of time. More than 100 persons informed in the field of judicial administration in California were contacted and expressed their views as to the matters involving judicial administration that require legislative attention. The subjects identified will no doubt include many that would be studied by the Law Revision Commission in the course of time. For example, I understand that a number of persons identified eminent domain as an important area of the law in need of immediate legislative reform.

I do not know if any plans have been made as to how the survey is to be implemented once it is received. Time between annual sessions does not permit substantial interim work on complex matters. The Counsel for the Assembly Judiciary Committee indicated that it was his thinking that a Joint Legislative Committee on the Administration of Justice might be established. The committee would have a substantial staff and could work on long range projects under legislative direction. (You will recall that several years ago, Assemblyman Unruh told the then

Chairman of the Commission that his view was that legislative research--including that being conducted by the Law Revision Commission--should be conducted under direct legislative supervision.)

If such a Committee were established, it is not clear just what place the Law Revision Commission would have in the legislative research scheme. The Counsel for the Assembly Judiciary Committee also indicated that he thought that the Law Revision Commission might play a part in the project to deal with major problems of judicial administration. However, he was concerned that some method be found to increase the production of the Commission.

Another development that should be brought to the attention of the Commission is a telephone call I recently received from the Office of the Legislative Analyst. The Legislative Analyst is the budget officer for the Legislature. The person in that office responsible for our budget called and wanted to know when the Commission was going to submit its recommendation on inverse condemnation. He reported that his office is particularly concerned about liability arising out of water projects. The concern is not limited to the cost of such liability, but apparently budget requests running into many millions of dollars for construction projects are being justified on the ground that they are needed to avoid liability for water damage that would otherwise occur if the project is not constructed. Whether such projects actually are justified on this ground cannot be determined because the rules of liability are so uncertain. He pointed out that the Legislature has directed the Commission to give this topic top priority. Moreover, he was not impressed with the level of production of the Commission during the past year. I advised him that

the low production during the past year was primarily an unavoidable result of turnover in Commission membership and that the Commission was giving a top priority to the water damage problem, that we had prepared a background research study on the problem, and that the problem had been considered at recent meetings of the Law Revision Commission and was scheduled for top priority at future meetings. At the same time, I pointed out that liability for water damage is most often based on inverse condemnation which is a constitutionally imposed liability and that any recommendation of the Commission reducing existing liability would be subject to constitutional objection on the grounds that the Constitution requires just compensation when property is taken or damaged for public use. In addition, I told him that the water damage problems were exceedingly difficult and complex and that it could not necessarily be anticipated that any significant reduction in liability would be recommended by the Commission which has not yet formulated even tentative rules of liability in this area. The Commission has had a very good relationship with the Office of the Legislative Analyst in the past and that office has frequently expressed the opinion that the Commission is producing a substantial volume of excellent work. I am hopeful that this relationship can be maintained in the future.

Based on the two items of information presented above, the staff suggests that top priority be given to the water damage aspects of inverse condemnation and that the next priority be given to eminent domain. I see little possibility of submitting a recommendation on water damage to the 1970 Legislature but, in my opinion, it is essential that a recommendation on this aspect of inverse condemnation be submitted not later than the 1971 Legislature.

As suggested at the last meeting, we will write to the California Appellate Court Judges, Bernard Witkin, and Felix Stumpf requesting suggestions for areas of the law that might be studied by the Law Revision Commission. We will report the response to our request at a future meeting.

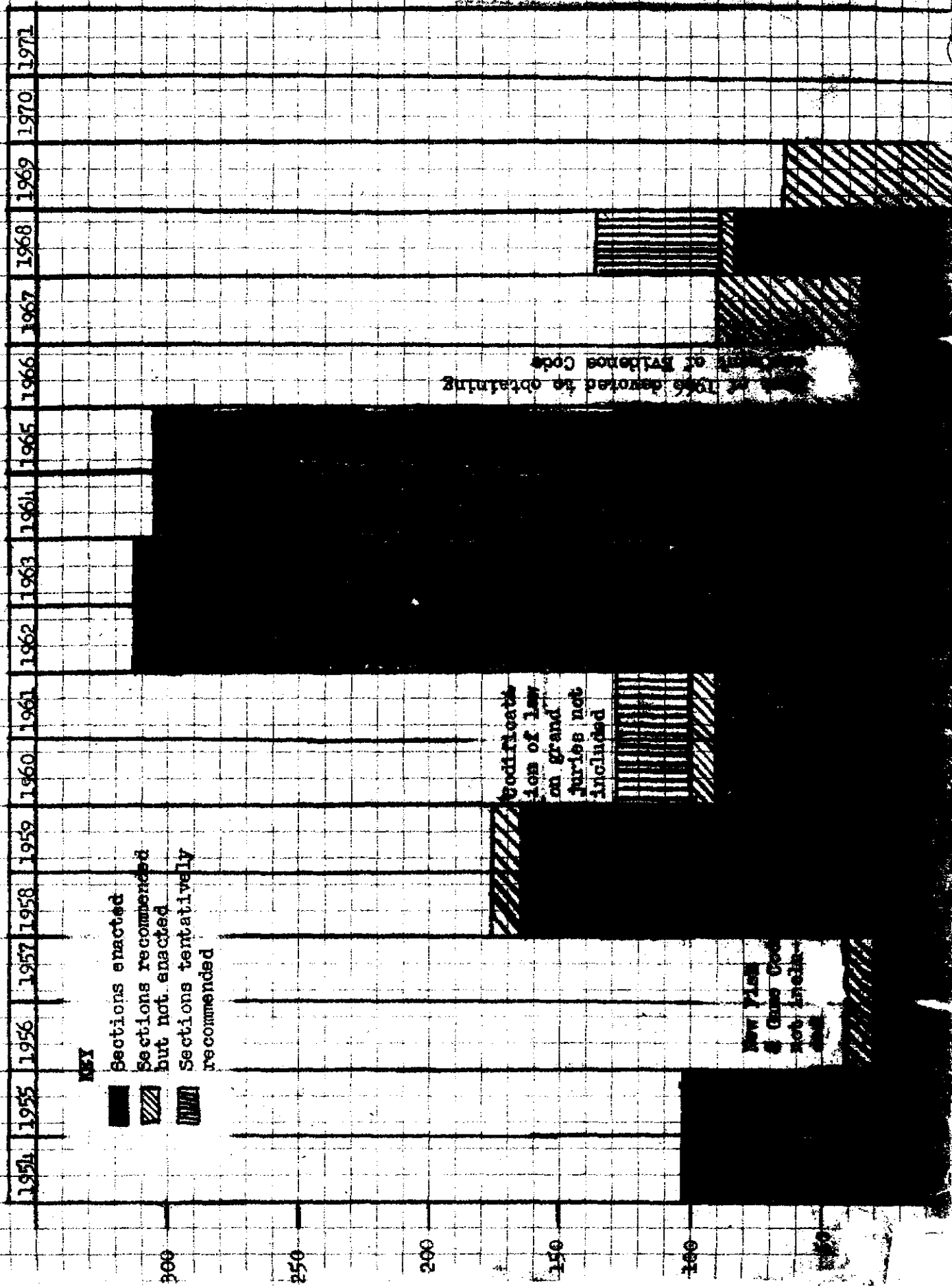
Exhibit I (attached) shows the production of the Law Revision Commission during the period of its existence. This exhibit may be of interest in connection with the two developments reported in this memorandum.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

PRODUCTION OF CALIFORNIA LAW REVISION COMMISSION 1954-1969

(Measured in number of sections recommended)



KEY

- Sections enacted
- Sections recommended but not enacted
- Sections tentatively recommended

Sections enacted & Code Code not included

Sections enacted & Code Code not included

Sections enacted & Code Code not included