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THE LEGAL AID SOCIETY

ELEVEN PARK PLACE
NEW YORK 7, N. Y.

TELEPHONE:
BARCLAY 7-2755

EDWARD Q. CARR, JR. ATTORNEY-IN-CHIEF
MARY B. TARCHER, ASSISTANT ATTORNEY-IN-CHIEF

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December 22, 1964

Hon. Richard J. Bartlett
Chairman
New York State Commission on
Revision of the Penal Law
155 Leonard Street (Rm 654)
New York 3, New York

Dear Mr. Bartlett:

Mr. Anthony F. Marra and I were very grateful for the opportunity given us by the Commission at the hearing last month on the proposed new Penal Law to make a recommendation on behalf of The Legal Aid Society for a change in the proposed statute on sentences for persistent felony offenders (Sec. 30.10 of the 1964 bill).

We suggest that the law retain the standard of existing Penal Law sections 1941 and 1942 for determining the seriousness of a conviction in another jurisdiction, taking into account only a crime which would have been a felony under the law of New York.

The alternative test employed in the 1964 bill - taking as a prior felony any conviction in another jurisdiction for which a sentence of more than 1 year was imposed - would bring the harsh threat of life imprisonment for a substantial number of defendants (including many clients of the Society) whose prior convictions in other states for crimes which certainly would not be felonies in New York (trespass, for instance) were punished by long prison sentences. That threat would introduce into many a subsequent New York prosecution at the pleading stage a distortion which would be difficult to correct, even if we assume the sound discretion of the judge in imposing sentence under section 30.10.

We have carefully considered the several questions raised by the Commission about our suggestion. We must reaffirm our belief that the necessity to follow the decision in People v. Olah (300 NY 96) has not given substantial difficulty in most of the cases in our experience involving prior convictions in

The purpose of the Society is to render legal aid in the City of New York to persons who are without adequate means to employ other counsel.—*By-laws of The Legal Aid Society.*

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other states. It is also our belief that the prior federal convictions turning up in such cases are generally for crimes which would be felonies under New York law.

The change we suggest in the proposed statute can be accomplished by the addition of the underscored language below to the introductory portion of subdivision 1 (b):

"A previous felony conviction within the meaning of paragraph (a) of this subdivision is a conviction of a felony in this state, or of a crime in any other jurisdiction which, if committed within this state, would be a felony under the law of this state, provided ..."

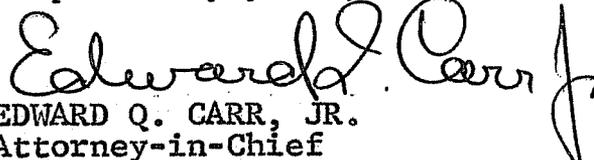
If the Commission should be firmly disposed to abandon the test of the present law, we would urge as an alternative to meet the situation of the defendants for whom we spoke at the hearing the following change in the proposed statute:

"A previous felony conviction within the meaning of paragraph (a) of this subdivision is a conviction of a felony in this state, or of a crime in any other jurisdiction unless that crime, if committed within this state, would be a misdemeanor or lesser offense under the law of this state, provided..."

Most of the cases in which we have found unreasonable harsh sentences for convictions in other states would be excluded from the scope of the persistent felony offender statute by that amendment.

We will be happy to answer any questions of the Commission on this matter.

Respectfully yours,


EDWARD Q. CARR, JR.
Attorney-in-Chief

EQC: jr