

Minutes of the Meeting of the Temporary Commission
on Revision of the Penal Law and Criminal Code, held at the
Commission's Offices, 155 Leonard Street, Room 654, on Septem-
ber 22, 1961, at 10:30 A. M.

PRESENT :

~~Hon.~~ Richard J. Bartlett, Chairman

~~Hon.~~ Timothy N. Pfeiffer, Vice-Chairman

~~Hon.~~ William Kapelman, Secretary, also appearing for Anthony J.
Travia, ~~Minority Leader of Assembly~~ (also representing Anthony J. Travia
minority leader of Assembly)

~~Prof.~~ Herbert Wechsler

Nicholas Atlas, ~~Esq.~~

~~Hon.~~ John J. Conway, Jr.

William Mahony ~~Esq.~~

→ Joseph F. Czechlewski, ~~Esq.~~ (representing appearing for Hon. Joseph F.
Carlino, Speaker of the Assembly)

Howard A. Jones, ~~Esq.~~

Samuel J. Kearing, Jr., ~~Esq.~~ (representing appearing for Hon. George L.
Ingalls, Majority Leader of the Assembly)

Herman Bass, ~~Esq.~~ (representing appearing for Hon. Walter J. Mahoney, Temporary
President of the Senate)

Lawrence Marcus, ~~Esq.~~, appearing for the Judicial Conference

Robert Bentley, ~~Esq.~~ (representing Chief Judge appearing for Hon. Austin W. Erwin

NOT PRESENT :

~~Justice~~
~~Hon.~~ Philip Halpern

The meeting was called to order by the Chairman and a report was made on the appointment of Edward McLaughlin, of Syracuse, and Peter J. McQuillan, of New York City, and Sidney Goetz, of Nassau County, to the staff of the Commission. Mr. McLaughlin, is at present on the staff and working with Mr. Denzer, Mr. McQuillan will start November 1, 1961, and Mr. Goetz is to be with the Commission (on a part-time basis) commencing October 1, 1961. The Chairman suggested that the Commission would be in need of two or three more attorneys, in addition to the present staff, who should preferably be younger men, just out of law school who could be hired in the \$5,000. per year salary bracket, as a tremendous amount of research will have to be done. The Chairman further stated that he had been trying to find potential staff members with the necessary qualifications from Upstate. A general discussion followed, during which the Chairman presented a resume of monies expended to date, which met with the approval of the Commission members. It was then agreed by the members of the Commission that the salary for the junior attorneys would have to be left at a rather flexible figure, but the Commission would try to engage them at around the \$5,000. per year figure.

A motion was made by Commissioner Mahoney and seconded by Commissioner Conway that Richard Denzer, as Counsel, proceed in consultation with Richard Bartlett, as Chairman, with the hiring of two to three staff assistants in the \$5,000.00 to \$7,000.00 per year salary range. The motion was unanimously carried.

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The Chairman stated that he would keep in touch with the Commission members in re these new appointments.

The next topic for discussion was the Prospectus for the operation of the Commission which had been prepared by Richard Denzer, and submitted to the Commission members prior to the meeting. It was suggested by the Chairman that the discussion on this subject be divided into two parts, the first dealing with long range programs, and the second, a discussion of the more immediate problem of where to direct our attention in the next few months with a view to the Legislative Session and the interim report due February, 1962. The Chairman stated that one of the big decisions facing the Commission was the question whether or not there was to be an effort made to do anything legislation-wise in connection with the next Session. The topic was placed on the table for discussion.

Atlas: The report that Dick Denzer made was correct in that there should be no piece meal legislation. Otherwise, there will be the same patchwork legislation that we have been appointed to erase.

H. Jones: Problems will arise where we are going to have to resort to urgent measures. For instance, the District Attorneys' Offices are anxious on the matter of Search and Seizure, since Mapp v. Ohio. I agree on the overall philosophy that flexibility will have to be applied if urgent needs arise. I don't want to see discussion and action closed on urgent problems.

Prof. Wechsler: There is a Joint Legislative Committee to study the weapons law. Would there be a conflict?

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RJB: Not at all, the Sullivan Law having been honored with a commission in its own right, we should leave it alone until we see what they come up with. However, there is another problem -- that of implementing legislation.

Hones: The Courts amendment will be passed in November and take effect on Sept. 1, 1962.

RJB: Dick Denzer has given us his thoughts on that problem. It is also my feeling that we ought not to become involved any more than we absolutely have to, and Mr. Pfeiffer is also of that mind. This is a crash program by that group and they are faced with preparing something for the 1962 Session. We have to be concerned with the Code as effected by the Court reorganization, as well as to the question as to whether we should become actively engaged. The primary responsibility has been given to another group and it should remain there.

Pfeiffer: It is a crash program for Sen. Albert's group, and the probability that they will reach anything that will stand the test of time is doubtful. I think we should help as much as we can, but we should make it clear that it is their baby and not ours.

Prof. Wechsler: That's right, otherwise, all of our staff's time would immediately go into this.

RJB: Dick Denzer has asked Peter McQuillan to look over the Code in the next month and to pick out obvious sections that will need amending because of the Court reorganization, and pass it on to the Albert Commission. Other than that, I concur, we would be entirely taken up if we get into it. The Judicial Conference has been concerned with the tremendous undertaking of the Albert group.

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Lawrence Marcus: My personal feeling is that what you expressed is the correct view to take---going through and pointing up obvious changes which are introduced. The only problem is that if it's overlooked--if there is something wrong with the code.

Prof. Wechsler: Whose fault is it?

Marcus: It's theirs.

Atlas: We should have an observer on their Board.

DD: Pete McQuillan is in liaison with that Commission.

RJB: I think that is the most we ought to do. (Addressing Howard Jones) Is that fairly in accord with what Bob had in mind?

Jones: Yes.

RJB: What are we going to try to do within the next few months? Are there any other ~~any other~~ comments on outline or broad long range objectives.

Atlas: I am strenuously objecting to posing or trying to get passed any legislation which ~~we~~ will ~~find~~ subsequently be an adhesion.

Prof. Wechsler: It will be desirable to try to find a way to test legislative sentiment on controversial legislation.

RJB: As to the immediate challenge posed by the 1962 Session, Howard Jones has raised the question of Search and Seizure. The DAS are concerned with the procedural aspects of search warrants. They themselves, are drafting a program to get something together. There are other current problems which require legislative action. It is my plan to have at least a part time man with me at the session whose job it will be to brief bills introduced of interest to our commission. We may well want to take a position on some of them.

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Conway: Search and seizure--something has to be done on it.

RGD: If there is to be a moratorium declared, then, that means that we would have to take care of every problem that comes along.

Jones: It is better that they (DAs) do the necessary drafting in this area. The DAs will be badgering us for a statement either as to approval or disapproval.

RJB: ^{Would we} ~~xxxxxxx~~ ask the DAs association to inform us and even to have a rough draft of their proposal and let us look at it ?

Prof. Wechsler: It's not so much a matter of what the DAs Assoc. has in mind but what does the legislature expect of us. That's a matter which can only be resolved by Legislative leaders. If we are asked to do something I would think we ought to know that as soon as possible and that is a matter which warrants a special project and we should get someone versed in that field immediately. If we can avoid it, we don't have to do it.

Pfeiffer: Can we get information that is accurate as to what Legislative Leaders think about Search and Seizure problems?

RJB: I'll undertake that right away.

Pfeiffer: If it is our responsibility, we ought to get going.

RJB: Dick Denzer has been invited to a meeting of the Leg. Assoc. of the DAs meeting next Friday.

Conway: They already have a bill.

RJB: The DAs are concerned as a result of the Mapp case. Are they seeking a loosening of the requirements of the issuing of search warrants?

Jones

~~Conway~~: That would satisfy them, I believe.

RJBE We will try to determine what we are expected to do by

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Legislative leaders in this field.

RGD: Are there any other organizations other than the DAs which are working on this? The ideal situation would be to have the DAs association make up their bill, we look it over and we then make suggestions.

RJB: I would like our representative to convey to them that we will do what we have to in this regard.

Prof. Wechsler: You could also find them out in certain other areas, and on whether we are to be the instrument of a moratorium.

Agreed by all.

RJBE: A consideration of any change in our present statutes relating to capital punishment has been deferred in anticipation of this Commission, and the McNaughten Rule as well. While the same bills may, or may not be reintroduced, their fate will be the same until we have made a recommendation.

Prof. Wechsler: As Dick Denzer pointed out in his memo, in due course, and as time allows, he will meet these projects. This entails public hearings.

RGD: Just as a matter of interest, capital punishment is an issue that's largely emotional. No amount of study is going to convince most people. For instance, how do individual members feel about it right now-- the California Rule.

Atlas: I think it's a subject upon which you can change your mind at any time.

RJB: Dick and I have discussed this question of capital punishment. I know that Billy Kapelman is very anxious that we undertake something immediately in this area. Specifically, adopting the California Rule of some portion of it.

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Discussion followed on capital punishment and the California Rule.

Pfeiffer: I can't see why we can't have at least one year more on this type of thing where we can make a presentation after a good deal of study.

RGD: This is the kind of thing that we ought to hold public hearings on, let people give thier views. Then we would have a mass of material as a result of hearings.

Mahoney: Certain objections have been expressed to the abolition of capital punishment. Let's ascertain what the sentiment is around the state.

Discussion.

Pfeiffer: We should get started on a study of this matter but don't rush into it until it's determined exactly what the sentiment is to the present situation.

RJB: Apart from capital punishment, and without disposing of it, Dick Denzer, do you want to make any comments on what your staff will be working on, and what you think we ought to present to the Legislature?

RGD: It's been just a month, and there are sommany things to do. I mentioned forgery in my Prospectus. I have Ed McLaughlin ~~working~~ working on that now. Right now, he is the only man available. There are a number of sections in the Penal Law which require that sort of treatment. I think that one-half of the Penal Law can be thrown in the garbage can. For instance, there are over 15 pages on injuring property, of the telephone company, gas meters, etc. That Code heading should be pared down and 9/10ths thrown out. Even though that's not spectacular,

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this statute is really a blot- one of the worst pieces of collective legislation. All provisions are not in one place--it's repetitious.

RJB: You are referring to point 2, clarification and less important changes of substances. If we are not going to deal with anything significant, we might prefer to do nothing in terms of actual bills.

RGD: Yes, then, in 1963, come down with a whole "mess" of bills.

Prof. Weschler: What is the advantage?

Discussion followed as to whether it would be more desirable to wait and submit a "Model Code" to the Legislature, attack the controversial issues, i. e., capital punishment first, or submit the proposed bills on clarification and relocation.

Pfeiffer: Dick Denzer's prospectus points out that the Penal Law and Criminal Code are composed of a mass of outmoded, obsolete material and monstrosities. Why not have the Commission make a report to the Legislature, the substance of which is to be the pointing out of the specific monstrosities that are presently in the Code and Penal Law and make a showing of the general nature of the work of the Commission. Would it not be worth while to have the Commission make a detailed report to the Legislature, point out just what dozens of things there are to be done?

Atlas: For 1962?

Pfeiffer: Yes. Wouldn't it be worth while for us to do that, especially since we are not going to introduce any bills.

RJB: We are faced with the problem of rendering a report in February, 1962.

Prof. Wechsler: Without necessarily introducing a bill--but as a report. Introduce it as a bill for study purposes.

Pfeiffer: It would get a lot of favorable publicity throughout the State.

RJB: Telling how this body of law had its last general revision in 1881.

Prof. Weschler: There is nothing in the bill that I read that says we have to prepare pieces of legislation (by Feb. of 1962). The emphasis should be put on the totality of the Commission's job.

Mahoney: The Law Revision Commission is a continuing body.

Pfeiffer: ~~Is~~ there is going to be an overlapping as far as our recommendations would be concerned to the Legislature? Will our report be overlapping and contrary?

RJB: We have been in touch with the Law Revision Commission since we have been created, and with the aspect of how much they planned to concern themselves. They want to make available to us any work they have already done.

Mahoney: Wouldn't we have to have a liason man?

RJB: We have discussed the advisability of Dick Denzer's going to Ithaca. They're going to continue to work in the fields assigned to them. It is my understanding that they won't be asked to do any more work than they are engaged in.

Meeting adjourned for luncheon at 11:45

The meeting reconvened at 1:45 P. M. at which time discussion was had in re maintaining liasons with Bar Associations throughout the State and it was disclosed that Hon. Paul J. Widlitz, President of the County Judges Ass'n. has appointed a committee to work with the Commission. Discussion followed and agreement was had with the Chairman's suggestion that we should try to channel our activities through the State Bar Committee on Penal Law and Criminal Procedure.

Mr. Conway advised the other members of the Commission that the District Attorneys' Ass'm does not want to thrust itself upon this group but are ready and willing to assist the Commission in any way that they can.

RJB: I gather it is the consensus of the group not to present anything by way of proposed legislation this winter.

Atlas: You have to keep open the possibility of doing something on search and seizure.

Prof. Wechsler: I thought we were going to make an affirmative effort to persuade the legislature that this is not primarily our problem on such short notice, but that we would be glad to look over and make suggestions concerning legislation made by other sources.

Further discussion followed and it was agreed that the Commission would file a report, making it as interesting

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and informative as possible to the Legislature but not seek any legislation passed until 1963.

The Chairman asked for further discussion on the Prospectus which should be dealt with at this time.

Mr. Kapelman: Is it your thought, Mr. Chairman, that we are going to rewrite the entire Penal Law or address ourselves to specific inequities?

RJB: We are clearly charged with rewriting for the purposes of clarity and simplicity as well.

Mr. Kapelman suggested that since that was the case, could we not begin on the basis that the A. L. I. Code is a model.

RJB: We discussed that matter before and I understand that it will be Spring before the printed copies of the whole final draft is available. We ought to get copies as soon as they are available and at that time the members of the Commission should discuss it further.

Mr. Kapelman: Making it a point of beginning. So much time and effort has been put into A. L. I. Code that it would be a good shove off point. How much do we want to introduce into the law of the State of New York. If we try to work from our Penal Law as it presently exists it will be a terrible mess.

Atlas: Our push off points are given in the Prospectus.

Further discussion followed on the proposed report to be submitted to the Legislature and it was agreed that the report should make clear to the Legislature and the public the magnitude of the job which has been given the Commission and the point being made that it would be impossible to submit a final report by 1962. That this will be a long range thing. It was agreed that Richard Denzer would start immediately upon the report to be submitted to the Legislature and that copies of the same would be in the hands of the Commission members by November 25th. It was suggested that the Commission have a meeting in December to discuss the proposed report and December 8, 1961, at 10:00 A. M. the Commission's N. Y. C. Offices was agreed upon.

Mr Conway suggested that the members of the Commission give thought to the farming out of work and give their views on this at the December 8 meeting.

The matter of amending the bill to include Judge Desmond as a member of the Commission was discussed and it was agreed that it would be best not to call attention to the fact that his name was omitted as a Commission member. It was also agreed among the members of the Commission that we should entertain the thought of a member of the Senate on the Commission when and if new members are added to the Commission.

The meeting was adjourned at 3:30.

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