

INTER-OFFICE MEMORANDUM

November 27, 1962

TO RJB

FROM PJC

Enclosed please find copy of October 19 Minutes, with comments and addenda by Peter Preiser; pages 9, 12, 13, 14 and 16 remain as originally submitted.

IN REPLY TO ABOVE:

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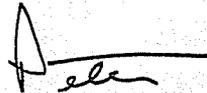
Peter J. McQuillan, Esq.
New York State Temporary Commission
on Revision of the Penal Law and
Criminal Code
155 Leonard Street
New York, New York

Dear Pete:

I return to you herewith the minutes forwarded
to me on October 26, 1962 and apologize for the delay.

Inasmuch as these minutes involve important
comments on my sphere of activities, I would be most
grateful if you could send me a copy of the final draft.

Regards,



Peter Preiser

PP:CK
enc.

INTER-OFFICE MEMORANDUM

October 26, 19 62

TO Peter Preiser

FROM Peter J. McQuillan/rc

Please read enclosed Minutes for errors and/or additions and
return same to this office.

IN REPLY TO ABOVE:

CONFIDENTIAL--FOR COMMISSION USE ONLY

Minutes of the Meeting of the
New York State Temporary Commission
on Revision of the Penal Law and
Criminal Code, held at 155 Leonard
Street, New York, New York, at 10:00 a.m.
on Friday, October 19, 1962.

Present: Richard J. Bartlett, Chairman
Nicholas Atlas
John J. Conway, Jr.
Philip Halpern
Howard A. Jones
William Kapelman
Herbert Wechsler
Richard G. Denzer, Chief Counsel

Samuel J. Kearing, Jr., Representative of the
Majority Leader of the Assembly
Herman Bass, Representative of the Majority
Leader of the Senate
Joseph F. Czechlewski, Representative of the
Speaker of the Assembly
Robert Bentley, Representative of the Senate
Committee on Finance

Excused: Timothy N. Pfeiffer
William Mahoney
Joseph Kunzeman, Representative of the Assembly
Ways and Means Committee

Visitors: Paul D. McGinnis, Commissioner of the State
Department of Correction
Russell G. Oswald, Chairman of the State
Division of Parole
Paul Kelly, Judge, Nassau County
Raymond J. Mino, Judge, Ulster County
John J. O'Brien, Judge, Washington County
Robert J. Trainor, Judge, Westchester County
John S. Conable, Judge, Wyoming County

Also Present: William Bulman, Assistant Counsel, Judicial
Conference
John Brosnan, Assistant Counsel, Judicial
Conference
Arnold D. Hechtman, Assistant Counsel
John R. Kelligrew, Assistant Counsel
Peter J. McQuillan, Assistant Counsel
Charles E. Torcia, Assistant Counsel
Peter Preiser, Associated Counsel

to a carry over from the re-structuring
of various courts to meet the coordinated
now tailored to present thinking in the field. He also observed
that the system of separate statutory maximums for
the various crimes leaves the maximum open to alterations

The Chairman welcomed the members of the liaison committee of the Association of County Court Judges, Commissioner of Correction Paul D. McGinnis, and Russell G. Oswald, Chairman of the Board of Parole. He told them briefly of the Commission's study of the present sentencing structure in New York. He said that the Commission was vitally interested in their views on sentencing and the related fields of parole and probation.

Mr. Preiser reported that the memorandum (part of his survey of New York's sentencing structure) distributed to the Commission members before the meeting covered: (a) concurrent and consecutive sentences, (b) reformatory sentences and sentences under Article 7-A of the Correction Law, (c) sentences where more than one institution is involved, (d) calculating terms of imprisonment, (e) suspended sentences, and (f) probation. He said that his next report will include a study of "fines."

Mr. Preiser observed that ^{the present} statutory ~~maxima~~ ^{for set up} various felonies ~~have no relation to each other~~, e. g., compulsory prostitution of women: 25 years (§2460, subd. 6); manslaughter, first degree: 20 years (§1051); sale of narcotics to minors: 15 years (§1751, subd. 1). He noted that the Commission has decided that in the revised Penal Law crimes will be grouped for sentencing purposes into three or four categories. No decision, he added, has yet been made

caused by
legislation
response
to public
indignation
with respect
to a particular
class crime
as a means of
crime and
the results
to a
schedule
of penalties
to meet
that has
very little
relation to
each other
or to the
way the
community
may view
that crime

5 or 10
years
higher

(a) State Person Penalties
(b) County Penal
Penalties
Penalties

*He stated that these rules
give the Court of Discretion
in dealing with particular
individuals and their operation
they can possibly improve sentences
discretionary [See Sentencing Memo -
Memorandum
pp. 59-61]*

as to what the minimum and maximum terms will be for each category.

examples of

Mr. Preiser briefly outlined nine problem areas in the field of sentencing: (1) New York law requires the imposition of mandatory consecutive sentences in two situations (Penal Law §2190): (a) when a person is convicted of two or more offenses before sentence has been pronounced upon him for either, provided the offenses were not charged in the same indictment, or in separate indictments consolidated for trial; and (b) when a person, under sentence for a felony, afterward commits another felony and is sentenced to another term of imprisonment. ~~Model Penal Code §7.03~~ authorizes an extended term where a defendant is a "multiple offender," i. e., where he is being sentenced for two or more felonies, or where he admits in open court the commission of one or more other felonies and asks that they be taken into account when he is sentenced. Mr. Preiser noted that the imposition of such extended term is discretionary with the court. [See Sentencing Memorandum pps. 59-61.]

(2) — A controversial question is whether ~~the~~ *the* Legislature should ~~require~~ *require* the imposition of mandatory ~~sentences~~ *minimum* sentences.

(3) The present New York habitual offender law provides that a second or third offender must receive an indeterminate term, the minimum of which shall be not less than one-half of the longest term prescribed upon a first conviction and the

maximum of which shall be not longer than twice such longest term. The sentencing court may not look into the circumstances of the prior crimes which form the basis for increased punishment. [See Sentencing Memorandum pp. 14-18.]

(4) Where a prior foreign conviction is the predicate for habitual offender punishment, the constitutionality of such conviction may not be tested in New York courts: the prisoner must bring his action before a federal district court. [See People v. McCullough 300 N.Y. 107; United States ex rel Smith v. Jackson 234 F.2d 742.] (5) There is no provision in New

York law for a mandatory parole term to follow the expiration of a prison sentence. Model Penal Code §6.10 provides for a separate parole term after the expiration of the maximum sentence imposed. (6) There is no provision in New York law

for expunging a conviction from the record of a rehabilitated first offender. Thought needs to be given to the ~~ways and~~ *problem* ~~means which may cleanse~~ *of cleansing* the status of the rehabilitated person so that he may start afresh. (7) Where a court is

uncertain as to what sentence should be imposed, a two or three month "trial commitment" should be authorized. In the federal system, a three month ^{observation} ~~trial~~ commitment is permitted.

~~The~~ Model Penal Code (§7.08.) (8) In New York, a sentencing court is without power to modify its judgment after the defendant has commenced to serve his sentence. In the federal system, the court may reappraise its judgment at any time

also proposed for Connecticut

(18 USC, §4208)

(Rule 35) And under the

are sentenced for one year

within sixty days after sentence, ~~See~~ Model Penal Code, *Commitments* (§7.08). [See, also, Sentencing Memorandum p. 88.] (9) There is no provision in New York law for a so-called split-term, i. e., as a condition of probation the defendant must serve, for example, a sixty day term before probation begins. Federal practice provides for such a split-term, ^(18 U.S.C., §3651) See ^{also,} Model Penal Code, ~~§ 301.1~~ § 301.1 (3)

The Chairman pointed out that in New York there are thirteen different statutory maxima for felonies upon a first conviction. [See Sentencing Memorandum pp. 10-12.] He said that the Commission is considering a system of felony grades, similar to the Model Penal Code, with a prescribed minimum-maximum for each grade. The Code classifies felonies for purpose of sentence into three categories of relative seriousness. He asked the visitors for their opinion of this system. Judge Conable favored such a scheme, provided, he said, there was a comfortable spread between the minimum and maximum. He said that there is no rhyme or reason to the present system. He was particularly critical of long mandatory minima, noting that courts are sometimes required to accept a plea to robbery third degree to cover a robbery first degree indictment in order to achieve substantial justice. He also noted the built-in difficulties in determining which crimes are more serious than others. Judges Kelly, Mino, and O'Brien agreed that categorization would be

useful.

Mr. Preiser said that the basic sentence provisions of the Model Penal Code are in Article 6 [page 91, Proposed Official Draft]. Section 6.01 classifies felonies into three degrees. Section 6.02 deals with the penal dispositions authorized. Section 6.06 (ordinary term) provides statutory maxima as follows: first degree felony, life; second degree felony, ten years; third degree felony, five years. *This ~~is~~ ^{is} ~~although~~* section recognizes the court's role in sentencing and provides *that* that the minimum should be fixed by the court, as follows: first degree felony, one year to ten years; second degree felony, one year to three years; third degree felony, one year to two years. In all cases, he said a sentence of imprisonment for a felony under the Code must be indeterminate, with a substantial spread between the minimum (which must, as an institutional necessity, be at least one year) and the maximum. Apart from the death penalty, the severest sentence envisaged is ten years to life. *[This sentencing scheme, he continued, was drawn from very extensive studies of what actually happens in practice in the best systems, even when longer maxima have been used.]* This sentencing *structure* however, ~~had to be~~ ^{is} supplemented by what is called "extended terms" (section 6.07). The Code provides that the use of an extended term should not in any case be mandatory on the court. Section 7.03 sets forth the criteria for the use of

These maxima are mandatory, the

Page I have no idea how the structure was arrived at.

these terms:

~~this sanction:~~ if the court finds that the defendant is a persistent offender, a professional criminal or a dangerous mentally abnormal person whose commitment for an extended term is necessary for protection of the public or that he is a multiple offender whose criminality was so extensive that an extended term is warranted.

Mr. Preiser noted that section 7.03 also sets out minimal conditions that must be established before an extended term may be imposed: this is a safeguard against the possibility of abusive findings. He also pointed out that the Code contains no restrictions on the court's power to suspend the execution of sentence, except for murder (section 6.02).

Judge Halpern suggested, and the Commission agreed, that because of the traditional use in New York of the word "degree," the revised scheme, in order to avoid possible confusion, should use something like the category "felony of the first grade," etc. Professor Wechsler observed that in the Model Penal Code only four crimes are classified as felonies of the first degree [murder, kidnapping, rape and robbery]. He noted that a controversial question is whether the sentencing court should control the maxima within statutory limits. He said that the American Law Institute originally favored the fixed maxima, conceding, however, that there is room for reasonable disagreement on the issue. The Institute, because of this deep division of opinion, approved an alternate

provision under which the court would be empowered to set shorter maxima within statutory limits. In the case of first degree felonies, where the fixed maximum is life imprisonment, the court would be authorized under Alternate Section 6.06 to fix the maximum at not more than twenty years or at life imprisonment. Court control over maxima is traditional in New York and perhaps, he said, ought to be retained in this state.

Judge Halpern said that if the Commission adopts Alternate Section 6.06, the sentencing court would have discretion to pick out the maxima within a relatively narrow range and the minima within a large range. The Chairman asked the visitors for their opinion of this alternate provision. Judge Trainor said that he was ~~still~~ undecided. The other judges present favored this alternate proposal, noting that it affords flexibility to both the minima and maxima. The Chairman said that this consensus does not, of course, bind the County Judges Association. Messrs. McGinnis and Oswald did not favor the alternate section. They said that the minimum should be fixed by the court, as the Model Penal Code provides. However, they would prefer to have the Parole Board determine at what point the prisoner should be released, noting that the Board is in a better position to make such a decision.

Mr. McGinnis said that the state prison population

is over 19,000. A great number of these people are serving sentences for similar crimes, where the length of the sentences vary considerably. Serious sentence disparities, he said, are destructive to prison administration. Defendants in the 16-21 age group must be committed to the Elmira Reception Center. The Center determines which institution is best qualified to handle the offender. The average length of stay for those serving the indeterminate three year term is about 18 months; for the five year term, it is about 24 months. Release rests with the Parole Board. He noted that a recently established school at Auburn has a full scale academic and vocational program. Any prisoner may be transferred to Auburn to participate in this program. He said that courts today are generally not sentencing defendants to long terms. Some controls are needed, he continued, for the dangerous type who are certain to commit new crimes after release. He noted that the sex offender law is not used very much by the courts. [Laws 1950, ch. 525; see Sentencing Memorandum pp. 18-21.] Mr. Atlas suggested that if treatment is not available, there is no sense in imposing a one day to life sentence. Professor Wechsler said that this sex offender law was enacted upon the assumption that a therapeutic regime would be available: the evidence is now the other way, except for marginal cases. Mr. Oswald disagreed and said that this law has proven to be very good, although admittedly

there are some weaknesses in it. Sex offenders, he continued, are sometimes the best risks on parole. Psychiatry has made real inroads into treatment. Those who are intellectually accessible receive considerable group and individual therapy; many improve to the point where they can be released. The rate of success is amazing, he said. Of 12,000 persons presently on parole, 250-300 were sentenced under the sex offender law. Judges do not use this law because they assume wrongly that there is no treatment. The law mandates certain minimal treatment. Such offenders are considered for parole within six months after conviction and at least once every two years thereafter [Correction Law §214, subd. 3]. A weakness in the law, he continued, is that an individual should be able to petition the court for review after the expiration of the maximum statutory sentence for the crime of which he was convicted.

Judge Conable favors the sex offender law. Where such a person is out on parole, he said, and commits another sex crime which may be difficult to prove (e. g., because of the corroboration rule), the parole authorities can readily order his return to prison.

Judge Halpern observed that qualified psychiatrists and ~~and~~ psychologists are not available in the correctional field. Mr. McGinnis agreed, ^{but noted that at} Sing Sing, ~~he said,~~ there is a concentration of psychiatric treatment. At other prisons,

such treatment is not so adequate. Mr. Oswald ^{said} noted that in the entire country there are only 35 full-time psychiatrists working with prisoners. Mr. Atlas proposed that New York establish a prison hospital similar to the federal institution in Springfield, Missouri. Mr. Oswald said that such a hospital would be desirable.

Professor Wechsler commented that the sex offender sentence is stated in terms of one day to life, rather than one year to life. This, he said, is based on a pretension that a miracle could occur shortly after sentence. He ^{suggested} said that something short of psychotherapy ~~should~~ be available to teach an individual with aberrative sex drives to adjust to and live with his situation. He ^{commented} suggested that ^{perhaps} the successful sex cases are those treated on a less than psychological level, i. e., the offender is trained while in custody to live with his defect.

Judge Halpern observed, in referring to an actual case, that a fifteen year old child indicted for first degree murder, who is unable to stand trial because of a mental disorder, must be committed to Matteawan State Hospital. Mr. McGinnis said that the Code of Criminal Procedure authorizes the transfer of such a person to a Mental Hygiene hospital. He noted ~~that~~ the reluctance of the Department of Mental Hygiene to receive persons charged with crimes. Mr. Jones said that a bill, signed by the Governor at the last session, permits the

transfer of a patient at Napanoch (where life detention is authorized) to a Mental Hygiene facility. [Laws 1962, ch. 463]

Professor Wechsler said that the Model Penal Code favors concurrent sentences rather than cumulative ones. The latter, in effect, cut the Parole Board out, in addition to producing disparity in treatment. The sentencing court is not in a position to know what the situation will be twenty years hence. The Parole Board is best equipped to make decisions of this kind in the light of the prisoner's experience within the institution.

Professor Wechsler said that every study made of the habitual offender laws shows that they are unsatisfactory in practice. The Baumes Law, he said, can come into operation where the defendant's current crime is relatively minor. This leads to a breakdown of the law. The current crime, he said, should be the significant factor in sentencing. Judge Conable referred to the needless complications caused by the Olah decision. [People v. Olah 300 N. Y. 96] Mr. Atlas said that judges should not be placed in a position of being required to hand out stiff sentences and being forced to circumvent the law by subterfuge or intellectual evasion. Judge Halpern observed that the grade of the current crime should not be the significant criterion in applying the extended term provisions of the Model Penal Code. A court, he said, should be

able to look back at the defendant's prior convictions. Under section 7.03, a defendant with two prior relatively minor felony convictions receives the same extended term as one with three prior serious felony convictions. Professor Wechsler suggested that the recidivist was already punished for his prior offenses. All the judges present agreed that the Baumes Law should be modified. The Chairman said that the Commission's tentative findings will be circulated among all of the county judges for their reactions and comments.

Mr. Oswald said that the Parole Board is holding a meeting soon and he will discuss with his members the matters raised at today's meeting. The Board will then submit recommendations in writing to the Commission. He noted that the parole provisions of the Model Penal Code represent an enlightened view. He pointed out that 40 per cent of all prisoners in New York are released at eligibility. This figure includes reformatory inmates; otherwise, about 20 per cent are released at eligibility. He said that 85 per cent of the parolees succeed; 15 per cent are returned for violations, and of these violators 5 per cent are returned because of a new conviction.

Professor Wechsler said that parole should be a normal part of every sentence. Model Penal Code section 6.10 authorizes a maximum parole term of five years, as a separate

portion of the sentence. The Parole Board, he said, may discharge the offender before five years. Mr. Oswald noted that after five years of parole supervision there are practically no violations. Judge Halpern suggested that the Commission adopt this provision. He said that it is a great innovation. Some language and mechanical changes could be made, e. g., he suggested that at the time of sentence the court should expressly advise the defendant that after the expiration of his maximum term he will be under parole supervision for five years. Otherwise, he continued, the prisoner might resent the application of a hidden statutory provision tacking additional time to his maximum.

Mr. Denzer questioned the need for retaining the reformatory type sentence. [See Sentencing Memorandum pp. 27-37, 61-67.] Judge Kelly cited the following case as an example of how this dual system may work unfairly: A, 21 years of age, and B, 17 years of age, are co-defendants in a misdemeanor case. B is adjudged a youthful offender. B must be committed to Elmira for an indefinite term or released on probation. A, on the other hand, may be sentenced to the county jail for six months in lieu of probation. Mr. Denzer also questioned the desirability of indefinite penitentiary sentences under Article 7-A of the Correction Law, applicable only in the City of New York. [See Sentencing Memorandum pp. 38-41, 61-67.] Mr. Preiser reported that there is a conflict of views on this

(189 of these were to the reformatory)

from January to September 1960, only

question. He said that in a recent ten month period, ~~between~~
~~about~~ 200 and 300 such sentences were imposed. The Chairman sug-
gested, and the Commission agreed, to defer discussion
pending a canvass of the views of judges and interested
persons in New York City.

Professor Wechsler suggested that all commitments
should be to the custody of the Commissioner of Correction,
rather than to a named institution. He cited the federal
procedure which requires all commitments to the Attorney
General. [See Sentencing Memorandum pp. 25-26, 74.] He
said that the place of confinement should involve an adminis-
trative judgment and not a judicial one. The present practice
in New York, he continued, is a psychological hazard that is
unnecessary if we want a system of free mobility. Mr. Oswald
said that the trend throughout the country is to have a prisoner
sentenced to the Department, rather than to a specific prison.
[Cf. Laws 1961, ch. 504, requiring a court to certify a
mentally ill patient to the custody of the Commissioner of
Mental Hygiene, rather than to a specific state hospital:
this was designed to increase the flexibility in assigning
patients to various hospitals.]

The Commission decided that no legislation will be
introduced at the 1963 session relating to the repeal of
obsolete provisions in the Penal Law or to the transfer of
regulatory matter to other chapters of the consolidated laws.

The Commission also decided that the public hearing in Albany on November 29th will be devoted to capital punishment and that the morning session on November 30th will cover the insanity defense, and the afternoon session will cover grand jury presentments. The meeting was adjourned at 4:30 p.m. The Commission will meet again at 10:00 a.m., on Saturday, December 8, 1962.

PJMcQ:rc
October 26, 1962

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.

2.

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?

3.

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 mamendment 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 mine. 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.

P. W. 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.

4.

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 liason with that Commission.

RJB: I think that is the most we ought to do. (Addressing Howard Hones) 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.

5.

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.

Would we
RJB: ~~xxxxxx~~ 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

6.

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.

7.

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 ~~xxxxxx~~ 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 35 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. Wechsler: 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.

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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: 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

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.