

Statement of
Commerce and Industry Association of New York, Inc.
prepared for presentation before the
Temporary State Commission on
Revision of the Penal Law and Criminal Code
Tuesday, November 24, 1964
by Arnold Witte, General Manager

The Commerce and Industry Association of New York, largest service chamber of commerce in the country representing some 3500 business firms in virtually all types of business endeavor, has had the proposed draft of a new Penal Law for New York carefully reviewed by appropriate committees with particular reference to those revisions having a direct bearing on business operations and dealing with what are generally referred to as commercial crimes.

In the over-all we find the work of the Commission to have been constructive and its treatment of commercial crimes to have been reasonable. We are impressed particularly with the tendency to leave parties to their civil remedies in many instances, to require more severe tests and proof of criminal intent, and to restrict the area of criminality to situations limited by time as well as by type of impropriety, as evidenced, for example, in the sections relating to fraud on insolvency.

We have deliberately limited our suggestions to matters we feel of greater substance and left to your own editing the resolution of such language changes as you, on review, may determine necessary for reconsideration, such as whether "secretes" in your new section 190.15, is better than "conceals" in the present law.

160.05 Larceny by False Promise

Paragraph (d) of subdivision 2, making unlawful the obtaining of property by means of express or implied promise of future conduct, is an extension of what is essentially a civil action for breach of contract into the area of criminality and in concept is contrary to the general tendency and tone of other so-called commercial crimes. While the strictness of proof required to establish a violation makes it highly unlikely that any reputable businessman ever would be placed in jeopardy, we

strongly recommend elimination of this paragraph on the ground that redress for such conduct should remain a civil action. The opinion also has been voiced that the existence of this provision sets the stage for blackmail in civil situations.

170.10 Unauthorized Use of a Vehicle

We certainly agree with the purposes of this section but find subdivision 3 (concerned with unlawful retention of a vehicle beyond a specified time) to so lack clarity of language as to result in unfairness both to the owner and to the licensee or lessee of such vehicles. We suggest the addition of two paragraphs to protect the rights of the lessee by spelling out a notice requirement before guilt attaches and to offer the owner a defense in false arrest actions similar to that granted retailers who reasonably detain persons they have a sound basis for believing to have committed a criminal act with respect to the owner's property.

170.20 Theft of Services

Some offences currently proscribed may not be clearly covered by the new language of this section and we therefore recommend your careful review to assure their inclusion.

170.25 Fraudulently Obtained Signatures

While we understand the desirability of eliminating what might be called inconsequential frauds, the fraudulent obtaining of a signature with intent to defraud or injure another seems to be sufficient basis for a crime if any benefit is secured to the guilty party. The requirement that such benefit be "substantial" therefore should be deleted not only for this reason but also because it injects a note of uncertainty which immediately affects the enforceability of a criminal statute.

185.00 and .05 Commercial Bribery

We are particularly concerned here with the deletion from the commercial bribe receiving section of the words "any particular manner" because of the implicit

repeal of the Graf case doctrine, which interpreted this language to mean that the effect of the employee's receipt of the benefit must be adverse to the employer's interest.

It is recommended therefore that either these words be reinserted or that the Graf rule itself be inserted into both this and the preceding section concerned with bribe giving.

It is suggested also that consistency be brought to bear here and that in both sections the giving or receipt of the benefit to or by an employee should be without the "knowledge" of the employer. We are unable to find any valid reason for the test to be that the giving is "without consent" and the receiving "without knowledge".

185.45 Rent Gouging

Certainly we have no objection to the principle of this provision against rent gouging but the indefiniteness and looseness of the proposed section calls for most careful review and revision. To ground a criminal action on the furnishing of a consideration outside the rent if it increases "the possibility that some person may obtain a lease" clearly is to provide too uncertain a standard.

190.00 Fraud Against Unsecured Creditors

The major fault we find here is the omission of non-feasance as criminal acts. Deliberate failure to disclose the existence, amount or location of an interest in the debtor's estate, or to disclose or present records with intent to defraud should be as much a crime as the refusal to disclose or present such data.

Similar reasoning also would call for the reinsertion of language making the fraudulent receiving of a portion of the debtor's estate just as much a criminal act as fraudulently obtaining it.

Finally, we wonder if it is entirely appropriate to eliminate as a crime the hindering or delaying of creditors from securing their just shares.

195.20 False Advertising

The unusual treatment in the second paragraph of this section, under which the burden of proof is switched from the prosecution to the defense, should be deleted. The entire section could be simplified by inserting the test of "~~un~~knowingly or recklessly" uttering a falsity to the basic description of the crime in the first paragraph.

215.40 Apparently Sworn False Statements

The language here is cumbersome, complicated and confusing. It needs substantial redrafting for clarification.

205.10 Harassment

While we are sympathetic with the purposes of this section, the indefiniteness and breadth of language used make it doubtful of implementation.

Again our compliments to the Commission on the job it has done. We know you will give all suggestions made at these hearings your careful consideration.

Section 170.10 Unauthorized use of a propelled vehicle

A person is guilty of unauthorized use of a propelled vehicle when:

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3(a) Having custody of a propelled vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(b) Retention or possession of a propelled vehicle by a person for more than five days after notice in writing by registered mail or telegram to return such vehicle addressed to such person at the address given by such person in the agreement mentioned in (a) above shall be deemed a "gross deviation from the agreement."

(c) It shall be a complete defense to any civil action arising out of or involving the arrest or detention of a person pursuant to this section for failure to return such property to the owner if, prior to the arrest or detention of the person having custody of the vehicle, notice pursuant to paragraph (b) hereof has been given to such person and such person has failed to return the vehicle within said five-day period.