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12/14/64

December 9, 1964

Hon. John S. Conable
County Judge and Surrogate
Wyoming County
Warsaw, New York 14569

Dear Judge Conable:

I am very grateful indeed to you and the other judges of your district for your having given us the benefit of your thoughtful comments on our proposed revision. I am having the staff analyse the points you have raised and will, of course, take them up with the commission when we meet early in January to make final changes in the proposal.

I hope you will be attending your association meeting in Albany on December 12th and look forward to having a chance to visit with you then.

Please give my very best wishes to the Congressman. His move sounded like a good idea last spring, but now his decision to leave the Albany scene smacks of pure clairvoyance.

Best wishes.

Yours truly,

Richard J. Bartlett

RJB:eh

John S. Conable
COUNTY JUDGE AND SURROGATE, WYOMING COUNTY
WARSAW, N. Y., 14569

December 7, 1964

Honorable Richard J. Bartlett
Chairman of Commission to Revise
Penal Law
Glens Falls, New York

Dear Dick:

Last September seven of the Judges in this District got together and discussed the proposed Penal Law in the form published by Edward Thompson and Company. I intended to attend your public hearing but I discovered when it was to be held two days before the hearing and our Administrative Judge had other plans for me.

I imagine that most of your comments have been covered but here they are anyway.

§10.00 1. Person is so defined that the Government itself can be guilty of a crime. Did you intend this?

*re victim:
where
appropriate,
yes!*

§25.00 3. We do not like the length of the mandatory period of probation. You have a saving clause referring to the Code of Criminal Procedure which may remove our objection. We think we should have power to close a case any time.

09

§25.15 Para. 3 has a misprint on page 29, third line from bottom.

?

§30.00 There may be trouble from requiring an explanation from the court. While Parole claims to want advice, every time I have said "this person should never return to his family" the Board has always sent him home.

?

§30.10 This is excellent.

§30.30 Para. 5. Suppose defendant is admitted to bail following reversal and before the new trial. As it now stands, your section gives him credit for this time.

See 20.00

§35.00 Para. 3(b). Does this mean one cannot impose a reformatory sentence on a 16 year old boy who is convicted of burglary and petit larceny? The present practice would be to sentence for burglary and suspend on petit larceny.

?

§40.00 May both fine and jail sentence be imposed? Act is silent on this unless it was overlooked.

§50.10 Par. 2) Think these two may be opening Pandora's Box.
§50.15)

See 20.00 (4) (d)

Renunciation.

§60.05. Prefer McNaughten Rule. If you are going with section, foresee substantial trouble from the word "substantial".

§75.10.3B See Downum V. U. S. 10 L.Ed.2d 100. (*Treat in Code*)

§75.15 Para.3(a) Think the last sentence should be eliminated. (*Treat in Code*)

§110.00. Again don't like "substantial". Suggest instead "conduct beyond mere preparation". *OK; we went back to existing law*

§125.05. Some feel this should be a class E felony rather than a class D felony. *We made it D because many att. assault 2°; should be an E.*

§125.30 and §130.15. Apparently define the same act as both a Class "C" and Class "E" felony. *No! One is only an attempt*

§130.35. While this is now the law, it seems that the Court of Appeals, *staff agrees!* if they wish to exercise their discretion, should have the power to order a new penalty trial.

§140.50. Think the language of Para. 8 and 9 is a little broad. *Yes; intended to be*

§170.75. Did any one on the Commission ever try to find the serial number on a 20 year old piece of farm machinery? *OK; we deleted §*

§185.00 - 185.05) Why is first only a misdemeanor and others
§185.10 - 185.15) felonies? Isn't the moral turpitude the same
§185.30 - 185.35) in all cases? *No! Different problems involved*

§195.30. Shouldn't any concealing of a Will be a crime? *No; query accident?*

§250.35. In recodifying §190 of the Penal Law the word "unjustifiably" was omitted. This omission would put the rat poison people out of business. *OK; we now use it*

§265.10 (1) Pretty vague. Some old maid Social Workers have unusual standards. What about football? *??*

§265.20. See §265.10. *?*

§265.15. Was the word "give" found in §484(3) of Penal Law intentionally omitted? *Staff agrees should be in*

§270.05. Par. 4. Has "toy gun" in again. See Chapt. 788 Laws of 1964. Think Chapt 788 is right. On "air gun" see §712a Family Court Act. If all right for an adult, is it a delinquency?
Yes.

Honorable Richard J. Bartlett

§270.15. While this is present law, many explosive substances are beneficial. If a blaster has dynamite in a field at my farm, it beyond doubt is to blow a boulder. A man walking by my house with a can of gasoline has probably run out of gas.

§§400.05)

400.10)

400.02)

400.25)

405.05)

Destruction of articles should occur only after time has elapsed to file notice of appeal or appeal has been decided.

York

§430.30

Overseer of the Poor has been abolished. Why treble damages §430.45. See 430.30.

York

Certain things such as the changes in the sex laws created discussion. We saw nothing wrong with the statutes as drafted if the Legislature feels this is sound policy.

There was discussion over \$145.00 and \$145.05 and a general feeling that we had no desire to be in the middle between the Rod and Gun Clubs and the police agencies.

Generally we were pleased with the classification of felonies and the handling of multiple offenders.

Good luck in getting it passed.

Sincerely,

John A. Conable