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MEMORANDUM

August, 1965

TO: MEMBERS OF THE COMMISSION

FROM: Richard G. Denzer

This memorandum and the other enclosed material contain the staff's format of the proposed Code of Criminal Procedure and its first draft of certain portions thereof. It is hoped that the members of the commission will give careful study to the same in order that discussion thereof at the first 1965 Commission meeting may be expedited.

The structure of the proposed Code is to be as follows:

It will be divided into six (possibly seven) "Parts":

Part One--General Provisions

Part Two--Preliminary Proceedings--Up to Plea

Part Three--Disposition of Indictments--Plea Through Judgment

Part Four--Disposition of Information--Plea Through Judgment

Part Five--Post Judgment Proceedings

Part Six--Special Proceedings

(Part Seven--Forms)

Part One: General Provisions

The "General Provisions" of the Code will not be nearly as lengthy or as intricate as the "General Provisions" of the Penal Law. The Penal Law required careful, detailed drafting of numerous across-the-board principles (of culpability, liability, defenses, etc.) in order to explain and construe the specific offenses later defined and to integrate the entire body of law. The same is not true of the Code, which sets forth New York criminal procedure in chronological fashion and needs relatively few principles of general application to hold it together.

The precise content of "Part One" cannot properly be determined until the rest of the Code is almost completed. It will, however contain many definitions of terms of general use throughout the Code, and an article listing, classifying and predicating the jurisdiction and varying functions of all the criminal courts.

Some drafting along these lines has already been done, as may be observed from the incomplete, somewhat sketchy enclosed material relating to this first portion of the Code. This consists of a section containing a few term definitions and an article defining, explaining and classifying the criminal courts and the court structure in general. These provisions are necessary for a thorough understanding of the pattern and terminology of Part Two.

#### Part Two: Preliminary Proceedings--Up to Plea

The first draft of this "Part" has been completed and is enclosed for examination by the Commission.

While this constitutes only one of the six or seven prospective "Parts," it is the lengthiest and by far the most difficult and "meanest" part of the Code project. It takes the reader from the "commencement" of a criminal action in the lower or "local criminal courts" all the way up to the point where a plea of guilty or not guilty to the ultimate accusation is finally entered. It traces the many courses of preliminary action, which vary greatly depending upon whether the offense charged is a felony, a misdemeanor, a violation or a traffic infraction, and differentiates between the different accusatory instruments and procedural devices applicable to each. It enters and seeks to unravel that jungle of confusion prevailing in the lower court system outside of New York City (Justices of the Peace, Police Courts, etc.). It deals with informations, complaints, warrants of arrest, summonses, arrests without a warrant, arraignments, commitments, bail, preliminary examinations upon felony charges, grand juries, indictments, motions to dismiss indictments and informations, and a mass of other matters which form the foundation of our criminal court system.

One of the difficulties inherent in this phase of the work is that a substantial portion of "Part Two" relates solely to lower court procedure outside of New York City, with which the

Commission's staff has had no practical experience. In view of this, the staff has traveled far and wide in an effort to obtain a grasp of the structure and problems of lower criminal court procedure outside New York City. Meetings and conferences have been held with City Court judges, justices of the peace and Police Court justices in various parts of the state.

At our request, the State Magistrates Association (comprising J.P.'s and Police or Village Justices) appointed a committee to help and confer with us, and, among other matters, the staff had a full day conference with this committee and certain police officials in Albany in an effort to straighten out the largely uncharted labyrinth of lower court procedure in the hinterlands.

"Part Two," as indicated, brings criminal procedure up to the stage where the defendant enters a plea of guilty or not guilty to the final accusation. This may be a plea to an indictment (charging a felony or a misdemeanor in the Supreme Court or County Court), or a plea to an information (charging any non-felony offense) in a lower or "local criminal court."

The next step is to take the case from plea to judgment. Since the courts and procedures involved with respect to indictments on the one hand and informations on the other are quite different, this phase of a criminal action is to be presented in two separate "Parts": "Disposition of Indictments" and "Disposition of Informations."

### Part Three: Disposition of Indictments-Plea to Judgment

This "Part" will begin with the entry of a plea to the indictment in the Supreme or County Court and continue chronologically with such matters as motions which may be made before trial, selection of juries, order of trial, opening addresses, general trial procedure, rules of evidence, summations, the courts' charge, jury deliberation, the verdict, post-verdict motions and sentence.

#### Part Four: Disposition of Informations-Plea to Judgment

This "Part" will follow the same lines as "Part Three." Even though there are many differences in procedure between trial and disposition of an indictment in the Supreme and County Courts and trial and disposition of an information in the lower courts, "Part Four" will be considerably shortened by many references to the identical or comparable procedure or rules set forth in "Part Three" for the prosecution of indictments.

It is to be noted that many informations as well as indictments are triable by jury, for a defendant prosecuted by information for a misdemeanor in a lower court outside New York City is entitled to be tried either by a judge alone or by a judge presiding over a six-man jury.

It may further be noted that, according to present plan, this Part and most of the other provisions dealing with criminal actions in the lower criminal courts will not be applicable to the New York City Criminal Court. The latter, though a "city court," has many problems and procedures which are unique, and it is governed for the most part not by the Code of Criminal Procedure but by an individual Act, namely the New York City Criminal Court Act.

#### Part Five: Post-Judgment Proceedings

Post-judgment proceedings consist almost entirely of appeals and of various motions such as coram nobis, habeas corpus (technically a civil remedy under present law), resentence, etc.

With respect to appeals, this Part will, hopefully, clarify, condense and renovate the unsatisfactory and partially scattered provisions of the present Code.

The various post-judgment motions present a controversial problem which involves, in part, the current jurisdictional disputes between the state and federal courts. The staff plans to devise an omnibus motion in this area, broad enough to permit the raising of any issue raisable on federal habeas corpus. This, perhaps, would appreciably curtail federal interference. At

least, it might eliminate federal action taken on the ground that no adequate post-judgment remedy is available in the New York courts.

#### Part Six: Special Proceedings

This Part will be comparable to a dragnet portion of the existing Code dealing with numerous miscellaneous or "special" proceedings and matters which do not readily fit into the main stream of previous titles and articles. Among the subjects included in the existing Code and to be included in the proposed one are probation, search warrants, bail, youthful offender treatment, extradition and motions for suppression of evidence.

#### (Part Seven: Forms)

Eventually, a prolific set of forms will have to be prepared for the new Code. The staff is toying with the idea of presenting these as a seventh "Part." The thought is to give each form or instrument a separate section number so that it may be referred to by section number in the preceding Parts.