

WILLIAM J. BULGER
TOWN JUSTICE
TOWN OF WAPPINGER
MILL STREET
WAPPINGERS FALLS, NEW YORK 12590

November 27th, 1967

Hon. Richard J. Bartlett, Chairman
New York State Temporary Commission
on Revision of the Penal Law and
Criminal Code
155 Leonard Street
New York 13, New York

Dear Sir:

Part II - Title H. Article 60, Section 60.70 1, 2 and 3 in my opinion leave questions to be answered which are unanswered in the present Code and have been the source of conflicting decisions.

Is it the intent of the committee, under the sections cited above, that the court before whom the defendant is taken in the county where the warrant is returnable, merely arraign the defendant for appearance in the jurisdiction where the offense took place or does that court gain trial jurisdiction merely by arraignment of the defendant?

If a warrant is issued in Town A returnable in that town for an offense committed therein, and this defendant is brought before the court of Town B, because the court of Town A was not available, should he be arraigned in Town B for appearance in Town A, or does the court of Town B gain trial jurisdiction because it arraigned the defendant?

If you intend the latter to be true, I would object, since it permits the officer to bring the defendant before a "favorite court"; a situation which reflects discredit on the law, the courts and the officer. I also believe that Sec. 70.50-1 permits the same subjective interpretation.

I am aware of the statements made in Part I, title C, Section 10.50, but feel that an explicit statement as to how far the courts should go in the proceedings as set forth in Sec. 60.70 and 70.50 will reduce possible conflicting interpretations and the problems that will flow therefrom.

I feel that Sec. 70.50 also needs further study since the protection

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of society and of the defendant may require his detention. If a defendant is arrested for Driving While Intoxicated - violation of Sec. 1192-2 of the Vehicle and Traffic Law at 1:30 A.M., it is quite likely that no local criminal court will be available. Section 70.50-3 requires the arresting officer to issue an appearance ticket to the defendant or admit him to bail, regardless of whether or not the defendant may be in such a state of intoxication as to cause him to be a danger to the community, or to himself either by again driving his auto or by wandering about the public highways in an intoxicated condition.

If it was intended that the above situation be handled by some Town Justice aroused from his bed, then the statute should also state: since the "need not be taken" phrase in Paragraph 2 may possibly be interpreted as either permissive or mandatory.

Further if it is the intent of the proposed statute to set a period when a town court, or more precisely a Justice thereof is not available, then perhaps definite statements to this effect should be made,

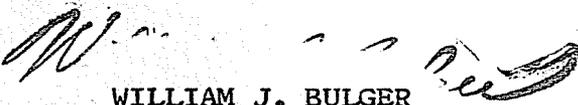
To which local criminal court does Sec. 70.50 refer, as not available? Only the one in the town where the offense took place, or may the officer "go shopping" for a "friendly Town Justice?"

I propose these problems, sir, not to harass the committee, but to bring to its attention those areas which my experience cites, as those which need explicit statute, so as to mitigate against erroneous procedures and possible injustice.

I am in general accord with the proposed Law and commend the committee for the general clarity of expression and the resolutions of many problems.

I would be happy to make myself available for further discussion of these problems with a committee staff member should this prove necessary.

Yours very truly,


WILLIAM J. BULGER
TOWN JUSTICE

c/c Hon. Morris Zweig, President
New York State Magistrate's Assoc.
c/c Senator Jay P. Rolison, State Senator
of 38th Senatorial Dist.