

Monday, July 9th, 1962 Meeting at Glenburnie Club, Glenburnie,  
New York--meeting reconvened at 3:00 P. M.

Present:

Richard J. Bartlett  
Timothy N. Pfeiffer  
Nicholas Atlas  
Judge Philip Halpern  
Prof. Herbert Wechsler  
Joseph Kunzeman  
Robert Bentley  
Herman Bass and William Bulman  
[Staff Members] Peter J. McQuillan, Charles Torcia

Absent: Joseph Czechlewski, representing Speaker Carlino  
Howard A. Jones  
William Kapelman  
William Mahoney  
Richard G. Denzer  
Frederick Ames (?) should this be noted?

The Meeting was called to order by the Chairman at 3:10 P. M.

Capital punishment was touched upon briefly by the Chairman who noted that the majority of the mail received on the subject has been from other than the professional groups.

Mr. Atlas referred a letter received by him <sup>from</sup> Herbert Roistacher, Esq. (a clerk in the Court of General Sessions) concerning §335 of the C. C. P. over to Charles Torcia (who is the staff member studying the code) for reply.

Memo No. 1 of P. J. McQuillan on the Excision and Relocation project was the next topic for discussion.

McQ. The approach of the Commission was those provisions of a regulatory nature were to be transferred to some other body of law.

Halpern: Would that extend to felonies?

McQ: A good number of these can be downgraded to misdemeanors.

Halpern: Whether in approaching this excision and relocation ~~we~~ we ought to agree <sup>(?)</sup> penal sanctions for business regulations should be of a scheme not an alphabetical arrangements.

Bartlett: ...which deal with crimes in carrying on business practices.

McQ. In the Model Penal Code, ~~it~~ <sup>category</sup> is broad. [224.7--deceptive business practices.]

2.

Halpern: There is a certain psychological effect in having offenses contained in the Penal Law that is dulled by having it in the Consolidated Laws. I have never been an enthusiastic supporter on a large project of excision and relocation. Is there any support for the idea that we ought to give some special weight to the fact that serious offenses ought to be dealt with in the Penal Law?

Bartlett: ... article is ancillary extra by now--insurance section. The purpose of the statute is to regulate business conduct.

Halpern: I have long been an opponent of taking and simply putting them in other bodies of law.

PJMCQ: We made a count of felonies --there are 20 outside the Penal Law. Several chapters are catch-alls. I thought drugs should remain (in the PL.).

Halpern: It would be regarded as a step backward to take all narcotics out of the P. L. Why, it's all psychological. That's the point I'm trying to make. We are not drawing a Model Penal code. It does not have to be brief. A. L. I. had a different problem.

Wechsler: We now have enlarged the magnitude of our commission (TOP) so as to make it practically impossible to do. Prof. Wechsler noted that an article by Prof. Sanford Fox, entitled "Statutory Criminal Law: The Neglected Part, appearing in the Journal of Criminal Law, Criminology and Police Science, Nov.-Dec. 1961 issue would be appropriate reading.

Wechsler: The treatment of penal codes has been to excise but it has made a mess outside.

Halpern: If there are serious offenses--we ought to take a look look and see if they should not be included in the Penal Law. (See EPB by AS (P.L.))

Bartlett: Take a look at all felonies outside the Penal Law.

Halpern: Everything that's a felony should be in the Penal Law. Misdemeanors should be looked at case by case. Look at codification. Generally speaking, even for misdemeanors we ought to have analytical divisions.

Wechsler: I agree generally. A good case is cruelty to animals.

Atlas: ~~Anything which involves a crime of moral turpitude ought to be in the Penal Law.~~

Wechsler: It would eliminate picayune type of legislation. That would be a reason for doing it--example of malicious mischief, cruelty to animals. Stealing dogs should be larceny. there should be some reshuffling and focusing on the totality of an area. ~~relocating in a better area than where it is now deposited.~~

Halpern: I did not say that we have to lay down any rigid rules that we have to take the sanction on any other law.

Bartlett: It's difficult to set down precise standards.

as to facilitate the focus on the totality of an area

3.

Atlas: If we go through section by section we might evolve a policy.

Bartlett: We have several choices-- 1. we defer determination; 2. we excise it by repeal and not relocation; 3. relocation and 4. retain it in the Penal Law.

McQ: There are about 600 sections that are duplicative, *or regulatory & cost.*

Pfeiffer: This Commission, if it's going to consider 600 sections would have to sit here a year.

McQ: Some can be discussed in groups.

Wechsler: In these other parts of the law there are criminal provisions and a lot of instances where criminal sanctions are abused. Are we going to undertake to try to spot these abuses... cases where something is made an offense which ought not to be an offense.

Halpern: If you try to evaluate every section, it would take years to do that.

Pfeiffer: If its in the Penal Law it's our mandate to see whether it should be excised.

Bentley: Give us a list of those you want knocked out.

Specific parts of Memo 1 were then discussed.

Bartlett: Article 16--retain Cruelty to Animals without itemization.

Conway: We'll get a lot of people on our backs.

Bartlett: §180 defines animal, torture and cruelty.

Wechsler: If we have a general provision condemning cruelty to animals. It would be ~~of~~ under a general category. Make cruelty a misd. and \_\_\_\_\_ down to offense.

Atlas: The Legislature can enact that "such and such" are cruelty. General sections would say that cruelty to animals is prohibited.

Bartlett: We ought not to transfer in toto.

Wechsler: Model code misd. was up to a year, petty misd. was not more than 30 days. Offenses just a fine. We ought to make it clear to Peter Preiser that the question has not been pre-judged--you are going to overload the offenses category.

Halpern: Make most a misdemeanor with discretion of the Judge.

5. malicious mischief statute, *for cruelty*  
*same as 194-a*  
 195-a. defer consideration (Interfering with an offense?)  
 196 defer (should peace officers be employees of private organizations) *L. W. of "He's not"*  
 117-a--117-f To be discussed with A. S. P. C. A.  
 185-a. transfer to A & M, tentatively add duckling, poul es, ~~goslings~~ *insist P. C. A.*  
 188 tentatively agreed to transfer to A & M.  
 188-a. General Business Law transfer  
 §191 repeal.  
 §194 "  
 §195 defer *sub §* (see 1.03 P. 4 Model Penal Code, sub. F)  
*territory applicability, studied*  
 (Wechsler in re recommendation: Are there any exceptional situations, i. e., adultery.)  
 197 defer. consider *as* as treated in 211. 2 of M. P. C.  
 leave in. *Recklessly endangering another person.*  
 436-c. transfer to A & M.  
 722-a transfer to *J. J. C. Health* Sanitary Code.

Pfeiffer: Do we want to have anything that is a felony out of the Code.

Wechsler: If its a felony it ought to be included, *just* if the structure of the provision is such that it would take it out of meaningful text to put it in the Penal Law, then we should not do it.

Bartlett: In those cases have a provision in the Penal Law as narcotics. Baring special situations, leave it in the statute where it is now and whether we call attention to it is a question to be decided later on.

Wechsler: If it has its own sentencing *provision and* its not uniform, one trouble is that the sections gets amended and the P. L. section goes on.

It was suggested by the Chairman and unanimously agreed to by the members that during the Summer months, each would write to Peter McQuillan, commenting upon those sections with which they have any arguments or questions and that Peter McQuillan was to reevaluate his recommendations in the light of these suggestions.

The Meeting was adjourned at 4:30 P. M. until 10:00 A. M. July 10, 1962

*P. J. A. de W. L. J. de  
 re P. animals - P. spec. by G.P.  
 P. L. V. P. C. 7. reg  
 a. m. J. E. 70 J. Y.*

4. Halpern: calling it a petty misdemeanor is a matter of restricting his punishment.

Wechsler: Anything that is a misdemeanor must be tried by a jury.

Bartlett: <sup>(In general)</sup> Those sections upon which we agree <sup>ought</sup> ~~but~~ to be excised now, repealed.

Halpern: It ought to be broad. If we transfer we are leaving open...

Bartlett: We have the responsibility not to just throw it in there.

Discussion followed on the first sections, 181-190 and the question for commission: It was agreed that in §190 eliminate the distinction, make it animal. Either write it as a cruelty to animals or transfer to the A & M. Law.

Prof. Wechsler noted that this could be covered by malicious mischief and that we ought not to do anything on this group but hold it until the basic penal code.]

Halpern: We should not propose excision to the Legislature until we get the Penal Law prepared. This is a question of incorporation within a new broad section of the Penal law. We are not going to try to hand in an excision statute.

Bartlett: It might be useful for us to present some bills at the next session repealing archaic sections and excising and relocating some sections.

Conway: As a matter of Public Relations it would be a good idea.

Wechsler: It wouldn't be necessary if we keep attention to the larger matters and the subject of sentencing.

Bartlett: The report on sentencing is going to be an outline on what we intend to do between now and the next session.

In  
Halpern: /The C. P. A. revision, Excision and Relocation was all part of the complete job.

The Chairman suggested that a final determination on this section be deferred.

190-a was to be considered in connection with a "rigging" article <sup>Article e.g. A.L.I. § 224.9 - 190-a</sup> ~~article~~ <sup>or prescribed by A.L. 190-a</sup>  
Halpern: The doing of specific acts forbidden will be transferred to A & M -- general classification of cruelty -- leave open the question of classified as misd. or offense.

192-a to be considered in connection with larceny.

194-a cruelty section -- transfer to A & M. w/degree to be decided later.

194-b provisions would be absorbed by larceny and/or

→ w. A. P. and A. L. 190-a

mis d. category  
1/ - 2 - 3