

OREGON CRIMINAL LAW REVISION COMMISSION

Room 309 State Capitol

August 24, 1967  
10:00 a.m.

A G E N D A

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OREGON CRIMINAL LAW REVISION COMMISSION

First Meeting, August 24, 1967

Minutes

Members of Oregon Criminal Law Revision Commission:

Senator Anthony Yturri, Chairman, 1010 SW 8th,  
Ontario 97914  
Representative Dale M. Harlan, Vice Chairman, 11717  
Linwood Avenue, Milwaukie 97222  
The Honorable James M. Burns, Circuit Judge, Multnomah  
County Courthouse, Portland 97204  
Mr. Robert Chandler, Bend Bulletin, Bend 97701  
Mr. Donald Clark, Portland State College, P. O. Box 751,  
Portland 97207  
Senator George Eivers, 12345 Stanley Avenue, Milwaukie  
97222  
Representative Edward W. Elder, Murphy Road, Bend  
Representative Carrol B. Howe, Route 2, Box 697B,  
Klamath Falls 97601  
Mr. Frank D. Knight, District Attorney, Benton County  
Courthouse, Corvallis 97330  
Senator Thomas R. Mahoney, 510 Oregon Bank Building,  
Portland 97204  
Representative James A. Redden, 107 E. Main Street,  
Medford 97501  
Mr. Bruce Spaulding, Standard Plaza Building, Portland  
Mr. Robert Y. Thornton, Attorney General, Supreme Court  
Building, Salem 97310

\* \* \*

Present: Yturri, Chairman; Harlan, Vice Chairman;  
Burns, Chandler, Elder, Knight, Mahoney, Redden  
and E. G. Foxley representing Thornton  
Delayed: Howe  
Absent: Clark, Eivers and Spaulding  
Witnesses: Robert Lundy, Legislative Counsel  
Carl Francis, District Judge, McMinnville; Chairman,  
1961 Legislative Interim Committee on Criminal  
Law  
William Beckett, District Judge, Eugene

The meeting was called to order at 10:00 a.m. by Senator  
Yturri, temporary chairman, in Room 309 Capitol Building,  
Salem, Oregon.

### Election of Officers

Senator Mahoney placed in nomination the name of Senator Yturri as permanent Chairman of the Oregon Criminal Law Revision Commission. Representative Redden moved that the nominations be closed and the motion carried. By a roll call vote, Senator Yturri was unanimously elected Chairman of the Commission. Voting: Burns, Chandler, Elder, Harlan, Knight, Mahoney, Redden, Foxley, Mr. Chairman.

Representative Redden nominated Representative Harlan as Vice Chairman of the Commission. Senator Mahoney moved the nominations be closed and the motion carried. By a roll call vote, Representative Harlan was unanimously elected Vice Chairman of the Commission with the same nine members voting.

Chairman Yturri inquired as to the necessity of electing a Secretary to the Commission. Senator Mahoney moved that a clerk be appointed by the Chairman to perform clerical and secretarial duties. Motion carried.

### Adoption of Rules

The following rules were proposed for adoption by the Commission:

- (1) A quorum shall consist of seven members except that any four members may receive testimony upon authorization of the Chairman or a majority of the Commission.
- (2) Matters before the Commission will be scheduled by the Chairman and he may call and adjourn the meetings.
- (3) All motions for introduction of bills shall be by roll call vote and require a majority of seven members for recommendation.
- (4) Rules may be changed by a majority vote of the Commission.
- (5) In all cases when the foregoing rules are inapplicable, Mason's Manual of Legislative Procedure shall apply.

After a brief discussion, Representative Redden moved the adoption of the proposed rules and the motion carried unanimously.

### Scope and Direction of Commission's Work

Chairman Yturri asked each member to express his opinion as to the scope and type of study which the Commission should undertake. The members were agreed there was an urgent need for a complete substantive and procedural revision of the

criminal code and suggestions for getting the project underway included study of the Model Penal Code and recently revised criminal codes of other states in combination with testimony from persons knowledgeable in relevant fields and from those who had been or were now actively engaged in code revisions. Representative Elder suggested the cause of crime might also be explored.

Chairman Yturri indicated he had received a letter from Mr. Norman A. Stoll, Vice Chairman of the Law Improvement Committee, outlining some of his ideas on the criminal law revision project. He read the following excerpt from the letter:

"In general, I think there are three ingredients for success:

- "(1) The best possible staff;
- "(2) An over-all committee or commission that pays close attention to what's going on--no matter how capable the staff--on the premise that these are the people mainly answerable to the legislature; and
- "(3) Some sort of arrangement that maintains a continuing liaison with every group conceivably having a legitimate interest in the outcome."

Chairman Yturri asked Legislative Counsel to procure copies of the Model Penal Code for each member of the Commission, copies of codes of other states and the August, 1967, issue of the American Bar Association Journal containing a resume of Vermont's pretrial discovery procedures in criminal litigation. He then distributed to each member a copy of the 1967 Report of the California Penal Code Revision Committee.

Chairman Yturri noted that under Chapter 573, Oregon Laws 1967, the Commission was authorized to accept gifts and grants and suggested the possibility be explored of obtaining federal funds to aid in the study. Mr. Robert Lundy advised that the Law Improvement Committee had investigated the possibility of obtaining federal funds when they were discussing a criminal code revision and at that time federal legislation did not appear to contemplate funds being available for law revision as such. However, he said, federal legislation was now being considered which broadened the purpose for which the funds could be used so there was a likelihood that funds would be available soon.

Mr. Lundy, in response to a request by Chairman Yturri, had prepared a memorandum outlining the history of criminal law revision in other states and containing comments on methodology. A copy of this memorandum is attached hereto as Appendix A. On page 2 his memorandum listed six states where revisions were in progress. Since the preparation of the memorandum, Mr. Lundy said he had discovered ten other states in which there was some activity in criminal law revision: Arizona, Colorado, Connecticut, Hawaii, Iowa, Louisiana, Missouri, Ohio, Texas and Utah. In addition he stated there were many projects on the federal level and a few privately financed projects being undertaken by the academic community at universities.

Mr. Lundy urged that basic research and gathering of materials be emphasized at the outset of the project to facilitate the work and save time in the future. He called attention to page 4 of his memorandum which listed various types of work that might be done prior to actually beginning revision of the statutes.

Chairman Yturri requested Mr. Lundy, at the expense of the Commission, to assemble research material and information, including the Model Penal Code and codes of other states as well as editorial comments contained in periodicals embodying both procedural and substantive revision. Mr. Lundy agreed to do so and also offered to prepare a bibliography of relevant material.

Senator Mahoney suggested a start on statute revision might be made by revising procedures relating to arrest and bail to conform to recent court decisions. Chairman Yturri noted that the article in the August, 1967, American Bar Association Journal indicated that Vermont's five year experience with their liberal discovery statute showed there were fewer trials by reason of their pretrial discovery procedures although these procedures were used in only about 20% of the cases. Judge Burns commented on the experience in the U. S. Attorney's office in Portland which, he said, was one of the most forward in the nation in terms of making disclosure to defendants. The U. S. Attorney had told him that disclosure produced more guilty pleas and in lengthy cases substantially shortened the trials. Chairman Yturri asked the clerk to obtain copies of the American Bar Association article on discovery procedures as well as copies of the decision of Miranda vs. Arizona, 384 US 436, 1966, and related decisions.

Judge Burns indicated he had scrutinized every criminal case tried in his court in the last year with respect to whether or not the Miranda decision had made a significant

difference and said he had yet to see a case in which that decision had any meaningful effect on the outcome of the case and added that the number of acquittals in his court had been very low. He noted that he did not see cases which did not get to court because of inhibitions imposed by the Miranda decision but was of the opinion that once the police were advised of the Miranda requirements, it was relatively easy to conform to them.

Chairman Yturri read the following excerpt from the letter previously referred to from Norman A. Stoll:

"You should plan on spending at least some small part of your budget for short consultations with experts who have been through the mill on this sort of thing--Prof. Arthur Sherry of California, Prof. Chas. Bowman of Illinois, Dean Francis Allen of Michigan, Deputy Attorney General Bill Platz of Wisconsin (a very capable and practical guy), Herb Wechsler of Columbia, Lou Schwartz of Pennsylvania, to mention a few. I'd be inclined to confine this essentially to Sherry merely to cut down travel time and travel expense, maybe relegating contacts with others to correspondence."

Chairman Yturri introduced Judge Carl Francis who distributed copies of the report of the 1961 Legislative Interim Committee on Criminal Law. He explained that one of the first things that committee had done was to determine its goals and purposes. The committee had concluded that because of time and financial limitations, the best they could do would be a combination of housekeeping and piecemeal revision of certain specific areas: Crime prevention, processes of reformation, obscenity, habitual criminals, defense of insanity and capital punishment. Judge Francis noted that the legislature had passed the bill on defense of insanity repealing the McNaghten Rule but it was vetoed by the Governor for the understandable reason that there were no alternative facilities available to house violators.

At the conclusion of their study Judge Francis said the committee realized that the status of the criminal code in Oregon was such that the only feasible solution was a complete revision of the code. The need, he stated, was so great and the work so time consuming that the committee's recommendation was:

"The enormity of comprehensively revising the criminal code requires a permanent commission and staff devoted to this job alone. Such a revision could not be undertaken in less than five and would probably need ten years."

Judge Francis called attention to the material which the interim committee had accumulated during its study and

volunteered to spend as much time as required in going over this material with the Commission's staff in the hope that it would eliminate a repetition of the work accomplished by the interim committee.

Chairman Yturri asked Judge Francis how he would begin a project of this magnitude and was told by the judge that he considered an important first step to be dissemination of information to the public to make them aware of the need for such a revision. He also suggested that codes of other states be scrutinized.

Mr. Chandler asked if there was a logical way of breaking the task into steps so that a portion could be presented to the 1969 legislature, another portion to the 1971 legislature, etc. Judge Francis suggested a few topics for initial consideration: Consolidation of theft statutes; penalties; punishment; crimes against persons and crimes against property.

Chairman Yturri suggested, in order to have a report for the 1969 legislature, that the Commission undertake a complete analysis and review of the procedural aspects of the criminal law, leaving for the future the substantive revision. Judge Francis agreed this might be an excellent approach. He left with the Commission a copy of the budget of the interim committee together with a copy of their rules and called attention to the fact that the rules included a decision that pending court cases would not be taken into consideration in the committee's decisions.

Chairman Yturri introduced Judge William A. Beckett, author of a work on criminal penalties which appeared in the Oregon Law Review, Vol. 40, Nos. 1 and 2. He discussed the article briefly and suggested portions of it might be of some benefit to the Commission. He expressed the view that the Commission would need to have certain short range objectives because of the importance of presenting concrete accomplishments to the 1969 legislature. He disagreed with Judge Francis that publicity was important to the project but did recommend using the Model Penal Code as a basis for revision. Volume I, he said, dealt with day by day criminal matters and could be used as a framework from which the Commission could develop more long range and controversial decisions. He expressed agreement with Chairman Yturri's suggestion that the first approach should concern procedural matters, avoiding the controversial issues for the time being. Judge Beckett offered to assist the Commission in any way possible.

#### September Meeting

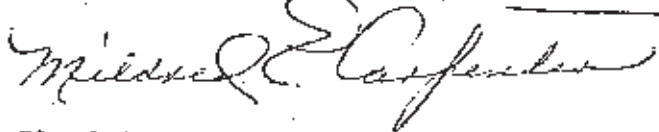
Chairman Yturri asked for suggestions as to persons who should be invited to appear at the Commission's September meeting in addition to Mr. Lundy. Judge Burns suggested

Arthur H. Sherry, Project Director of the California Penal Code Revision Project or someone with similar experience, be invited to outline his experiences in planning for a penal code revision. Mr. Chandler noted that Mr. Geoffrey C. Hazard, Jr., Executive Director of the American Bar Foundation, was occasionally in Oregon and it would be worthwhile to hear from him when he was in the area. Representative Harlan suggested a member of the Supreme Court be invited to appear and the Commission agreed that the Chairman should invite Chief Justice Perry to present his views.

A date for the September meeting was discussed. Several members indicated it was more convenient for them to be away from home at the end of the week rather than in the middle of the week and it was generally agreed that the next meeting would be on September 22 and/or September 23.

The meeting was adjourned at 12:00 noon.

Respectfully submitted,



Clerk  
Criminal Law Revision Commission



MEMORANDUM  
August 24, 1967

To: Oregon Criminal Law Revision Commission  
From: Robert W. Lundy, Legislative Counsel  
Subject: General Comment on Background and Methodology  
of Criminal Law Revision

This memorandum is submitted in response to a request that the Legislative Counsel offer some comment on criminal law revision and the project to revise the criminal laws of Oregon about to be undertaken by the Criminal Law Revision Commission pursuant to chapter 573, Oregon Laws 1967 (Senate Bill 212). The following comment is general in nature and is limited in scope to certain background information and to certain methodology that might be employed in the prosecution of the project.

#### History of Revision

The substantive criminal law of only a few states has been revised in the past century. In recent years revised criminal codes have been enacted in Louisiana (1943), Wisconsin (1956), Illinois (1962), New Mexico (1963), Minnesota (1964), New York (1967) and Nevada (1967).

Oregon's basic criminal code dates back to Deady's Code of 1864. Although many changes have been made in this code over the years, most of these changes have been made on a piecemeal basis and in reaction to problems of the moment. Even the work of the temporary crime commission created by the Oregon Legislative Assembly in 1931 "to study . . . all

matters which have relation directly or indirectly to the crime situation in this state and to suggest revisions and amendments to the statutes of the state of Oregon," and that of the Legislative Interim Committee on Criminal Law established in 1959, must be characterized as piecemeal revision. It is perhaps significant that the interim committee, in its report, stated: "The committee does feel the work accomplished by it is a start towards a modern criminal code and must be continued in some form. It recommends the establishment of a commission made up of persons from different fields related to crime and penology and given a statutory life of ten years in which to accomplish the revision."

#### Current Activity in Revision

It appears that the 1960's will be marked as a decade of considerable activity in the field of criminal law revision. In addition to the enactment thus far in this decade of revised criminal codes in the five states referred to above, criminal law revision projects are presently in progress in six other states (California, Georgia, Kansas, Michigan, Montana and Pennsylvania).

To some extent, this activity can be traced to the work of the American Law Institute in promulgating its Model Penal Code in 1962-1963. The Model Code represents an expenditure of over a half million dollars and 10 years of labor by professors, judges, practicing lawyers, prison administrators, probation and parole specialists, psychiatrists and criminologists. As stated by one of the code reports, the Model Code constitutes "an invitation to law reform, not a dogmatic assertion of the only 'right' solutions to the difficult problems of criminal law."

### Nature of Revision

Although statutes are "revised" each time they are affected by legislative action, these "revisions" differ from the type of revision usually contemplated by criminal law revision projects. The difference may be illustrated by noting in the customary legislative process the absence of a systematic examination of every statute, court decision and issue relating to the one or more statutes directly affected by legislative action. Law revision, on the other hand, involves a systematic, extended study of all these materials.

In Oregon in recent years we have tended to identify law revision as being one of two types, topical or substantive. Topical revision retains the framework of the existing law, while reorganizing its content and attempting to resolve conflicts and ambiguities without resort to controversial change. Substantive revision does all this and more. It attempts in varying degree to harmonize the law with modern social conditions. Substantive revision can make major changes in the social policies embodied in the law. These two types of law revision, of course, are less distinct and are different in operation than they are in definition.

The call for criminal law revision in Oregon apparently is made by at least two sources: First, those who believe that the existing body of law is inadequate to meet present social conditions; and second, those who believe that the existing body of law will be adequate if it is revised to eliminate inconsistencies, needless overlapping and unreasonable variations. Those who base their plea for revision on social conditions want a substantive revision of the law. Others may be satisfied

with a topical revision or a substantive revision of a non-controversial nature.

The goals of a criminal law revision depend, of course, on which call for revision the revisers are attempting to meet. Goals may vary depending on the portion of the criminal law being dealt with. Further, the methods of revision suitable to accomplish one goal may be unsuitable or inadequate to another. Seldom are the goals or methods determinable by a simple declaration of policy. There is a need for an examination of the nature of the demands for revision; many recommendations embrace both types of revision referred to above without articulating or, possibly, recognizing the distinction.

#### Preliminary Work on Revision

The Criminal Law Revision Commission will in future months be deciding on the nature of the revision of the criminal law of Oregon it desires to undertake. In the meantime, certain preliminary work might be initiated that will, regardless of the commission's decision on that matter, provide a solid basis for future activity. It appears desirable, moreover, that certain preliminary work precede substantial involvement by the commission itself in the details of the revision. The preliminary work might include the following:

- (1) Analyze suggestions for revision from all available sources.
- (2) Examine experiences of other states that have completed or recently undertaken revisions of the criminal law, in order to determine goals and methods employed elsewhere.
- (3) Contrast major or significant provisions of the

Oregon criminal law with those in proposed or recently enacted revisions elsewhere and with the Model Penal Code.

(4) Examine criminal law decisions of the Oregon Supreme Court to determine current issues being dealt with thereby.

(5) Examine and annotate United States Supreme Court decisions involving rights in criminal actions.

(6) Identify the various public and private agencies and interest-oriented voluntary organizations concerned with or about the subject of the revision.

(7) Examine reported research in areas of the criminal law for comments and criticisms. There are a number of agencies, both public and private, that have recently undertaken limited programs in research that should provide valuable information. For example, in this state the Judicial Council is studying bail practices, and the Oregon Council on Crime and Delinquency has recently completed a study on sentencing.

(8) Compile bibliographies of relevant material, possibly coupled with a selective acquisition program.

#### Appendices

Appended to this memorandum are copies of letters and a portion of a memorandum written by persons experienced in law revision projects, as follows:

Appendix #1: Dean Francis W. Allen, University of Michigan Law School, who participated in the work on the American Law Institute's Model Penal Code and on the Illinois Criminal Code of 1961, commenting on drafting techniques and representation of special interests in revision projects.

Appendix #2: Professor Arthur H. Sherry, Project Director

of the California Joint Committee for Revision of the Penal Code, commenting on the duration of a revision project.

Appendix #3: Professor Sherry, commenting on limitations of reliance on criminal law revision projects in other states and use of the Model Penal Code.

Appendix #4: Geoffrey C. Hazard, Jr., Executive Director of the American Bar Foundation, commenting on limitations on reliance on work in other states and need for thorough consultation with law enforcement agencies.

Appendix #5: John H. DeMouly, Executive Secretary of the California Law Revision Commission, outlining detailed procedures for a revision project.

Cooperation by Legislative Counsel

Chapter 573, Oregon Laws 1967, which creates the Criminal Law Revision Commission, directs the Legislative Counsel to "cooperate fully" with the commission. Such cooperation, of course, would have been given to the extent possible even in the absence of a statutory directive. Subject necessarily to limitations of staff time and budget, and to the requirements of other duties, the office of the Legislative Counsel will endeavor to provide such assistance to the Criminal Law Revision Commission as the commission considers necessary for the successful prosecution of the criminal law revision project and as is within the capacity of that office.

# # # #

THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
ANN ARBOR

OFFICE OF THE DEAN  
HUTCHINS HALL

February 23, 1967

Miss Kathleen Beaufait  
Deputy Legislative Council  
4110 State Capitol  
Salem, Oregon 97310

Dear Miss Beaufait:

I have your letter of February 2, in which you inquire about alternative means of approaching criminal law revision and the necessary prerequisites to a successful effort in this field.

My experience in this connection relates to the Model Penal Code Project of the American Law Institute and the drafting of the Illinois Criminal Code of 1961. I shall confine my remarks to the latter experience. In Illinois the revision project was not financed by state funds. On the contrary, the 1961 Code was drafted in the first instance by a joint committee of the Illinois State and Chicago Bar Associations. A committee of perhaps twenty persons representing both Associations was appointed. Judge Richard Austin was named Chairman of the full committee. Our first step was to appoint a drafting subcommittee of about six persons derived from the membership of the full committee. The preparation of the draft was the primary responsibility of the subcommittee. I served as Chairman of the subcommittee. At the outset of the project the subcommittee had the services of a reporter which were contributed by the University of Chicago Law School. Our procedures were about as follows: The subcommittee met to discuss a given segment of the draft. After general conclusions were reached as to treatment of that subject matter the matter was placed in the hands of the reporter, who prepared a preliminary draft. The preliminary draft was then submitted to the drafting subcommittee and after careful discussion and modification the draft was accepted. Frequently this process required resubmission of the draft to the reporter, sometimes many times. After the drafting subcommittee was satisfied with the draft, the segment in question was submitted

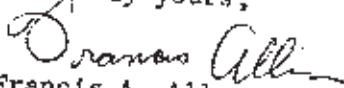
Miss Kathleen Beaufait  
February 23, 1967  
Page 2

to the full committee. Full discussions were then had and the proposed draft was accepted or modified. This process was continued until the revision task was completed and the full Code was ready for submission to the State Legislature. At that point the two Bar Associations approved the draft and contributed their support to the Bill in the Legislature. Ultimately, the new Code was enacted. We were confronted with many problems. Virtually all of the money at our disposal was contributed by the two sponsoring organizations. Our very capable reporter died when the draft was about half completed and we were required to obtain the research assistance of a succession of young men. In the final stages Professor Charles Bowman of the University of Illinois College of Law, a member of the drafting subcommittee, assumed the responsibilities of the reporter for purposes of bringing the job to conclusion. All in all, we did not expend more than thirty or thirty-five thousand dollars.

I do not submit the above experience as a description of an ideal way to get the job done. On the other hand, our experience does indicate that a job of this kind can be accomplished with minimal financing providing one has a group of lawyers willing to expend large amounts of time and energy because of their enthusiasm for the task. I believe there are several prerequisites to a successful undertaking of this kind. I am sure that there should be a small group of persons who participate in the drafting of the entire document. In other words, I believe that an integrated and thoughtful job cannot be done by parceling the task out to various groups of persons who are primarily responsible for a part of the job. I believe also that there are perils in having a working group too large. A notion that every affected interest in the state should be represented on the committee seems to me to be in error. Where the views of special interests are relevant they can be canvassed informally. If special expertise is needed on certain aspects of the revision that also can be obtained on an ad hoc basis. I believe that it is extremely important that the draft be accompanied by reasonably detailed explanatory commentary.

I am not sure that the foregoing will be helpful to you, but I believe that it is about as much as I can suggest.

Sincerely yours,

  
Francis A. Allen  
Dean

FAA:s

RECEIVED

FEB 23 1967



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Chairman  
CLARK L. BRADLEY  
CARL L. CHRISTENSEN  
ROBERT J. LAGOMARSINO  
JOSEPH A. RATTIGAN

CALIFORNIA LEGISLATURE

Joint Committee  
for  
Revision of the Penal Code

ROOM 2082, STATE CAPITOL  
SACRAMENTO, CALIFORNIA

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PROJECT DIRECTOR

ROOM 128, SCHOOL OF LAW (BOALT HALL)  
BERKELEY, CALIFORNIA 94720  
PHONE: ~~549-0944~~  
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APPENDIX #2

February 10, 1967

Norman A. Stoll, Esq.  
Vice Chairman, Oregon Law  
Improvement Committee  
510 Corbett Building  
Portland, Oregon

Dear Mr. Stoll:

It is impossible to make an estimate of the time, in terms of man-months, required for any part of the research function in a criminal law revision project. The time will vary widely depending upon the capabilities and working habits of individual research personnel, whether they will be employed on a full or part-time basis and the operational plans for the overall project. With the exception of New York, all of the completed revision projects have been carried out with part-time personnel, most of whom have been selected from qualified members of law school faculties.

I don't know of any project which was brought to completion in less than six years, including New York with its full-time staff of approximately fifteen lawyers. In justice to the New York staff, it must be acknowledged that their services were diverted to other matters for a considerable time during the opening stages of their work.

California has a permanent law revision body known as the California Law Revision Commission. It is active in all areas of the law and operates with a small permanent staff, consultants who are employed under contract for specific tasks and its governing body of part-time commissioners. This Commission recently completed an Evidence Code after about seven years of continuous effort.

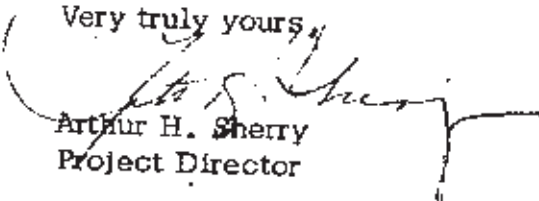
To sum up, the time requirements for any kind of law revision project depend upon the scope of the work and the resources available in money, time and personnel.

Norman A. Stoll, Esq.

February 10, 1967  
Page Two

I am sorry that I can't be more specific but I hope that the foregoing will throw some light on your problem.

Very truly yours,

  
Arthur H. Sherry  
Project Director

AHS:deb

SENATE  
SENATOR  
VINCENT L. STERNSKY  
Chairman  
CLARA L. BRADLEY  
CARL L. CHELTON  
ROBERT J. GOODENOUGH  
JOSEPH A. PATRIGNA

CALIFORNIA LEGISLATURE

Joint Committee  
for  
Revision of the Penal Code

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SPEAKER  
MILTON E. EUTENEIER  
RICHARD L. HOGAN  
JAMES D. HANCOCK  
JAMES E. HANCOCK  
FRANK J. SUTTER, JR.

ROOM 2007, STATE CAPITOL  
SACRAMENTO, CALIFORNIA

ARTHUR H. SHERRY  
PROJECT DIRECTOR

ROOM 125, SCHOOL OF LAW, STATE HALL  
REPUBLIC OF CALIFORNIA BAYARD  
RICHARD BORNHALL BAYARD

APPENDIX #3

February 23, 1967

Miss Kathleen Beaufait  
Deputy Legislative Counsel  
410 State Capitol  
Salem, Oregon 97310

Dear Miss Beaufait:

Your recent inquiry concerning criminal law revision which you addressed to the Legislative Counsel Bureau has been referred to me for reply. I have had prior correspondence concerning revision plans in Oregon with Norman A. Stoll, Esq., Vice Chairman of the Oregon Law Improvement Committee, which may prove helpful if it is available to you.

As for your specific inquiry, I do not think that it would be feasible for your state or any other to undertake criminal law revision solely on the basis of similar projects elsewhere. What other jurisdictions have done are, of course, extremely helpful but I am sure that you will find it necessary to relate their conclusions to Oregon law and that comparative studies between the revised criminal law of other jurisdictions and the existing Oregon law will be necessary.

All contemporary criminal law revision is almost necessarily based upon the American Law Institute's Model Penal Code. It is the best possible point of beginning and has strongly influenced criminal law revision in New York, Illinois, Minnesota and California. Both the Illinois Revised Criminal Law and the New York Penal Law closely parallel the principal substantive drafts in the Model Penal Code. You will find reference to the New York and Illinois revisions excellent examples of the adaptation of the Model Penal Code style and content to the needs of two different jurisdictions.

Under separate cover we will send you a copy of each of our two series of proposed tentative drafts which will serve to illustrate what we are endeavoring to do here.

RECEIVED

Very truly yours,

FEB 27 1967

Arthur H. Sherry  
Project Director

AHS:deb

LEGISLATIVE COUNCIL OF CALIFORNIA  
Office of Legislative Counsel

AMERICAN BAR FOUNDATION

1155 EAST SIXTIETH STREET

CHICAGO, ILLINOIS 60637

493-0513

AREA CODE 312

APPENDIX #4

May 2, 1966

Sam R. Haley, Esquire  
Legislative Counsel  
State of Oregon  
410 State Capitol  
Salem, Oregon 97310

Dear Sam:

As regards collecting materials for the revision of the Oregon criminal law, I would think the materials I mentioned in my earlier letter would be sufficiently productive. That is, I think you could obtain the revision commission reports that led up to the revision of the Illinois, Wisconsin and New York legislation. I really doubt that it will be very useful to go beyond these reports. Judged both by my own experience when I worked for the Legislative Interim Committee in Oregon and by my observation of the problems of criminal law and its administration from the research point of view, I conclude that the maximum benefit to be obtained from other states is to be found in the legislative product itself, together with the supporting official reports, supplemented by personal interview with the key people involved. The official materials disclose, directly or by implication, the considerations of policy and expediency that were officially said to have dictated particular choices. Practically never will you find anything in writing that goes beneath this surface; this can only be done by informal, and confidential, discussion and these discussions should await the mounting of your revision project and the arrival on the scene of the project director. Moreover, it is my observation that the local traditions, existing institutions and ways of looking at things vary so widely that experience elsewhere is only of limited relevance to one's own problems.

For what it is worth, I think the revisions of criminal law that have been undertaken in various states in recent years have suffered from two common defects. The first is that there is no thorough consultation with the law enforcement agencies. The job tends to be a lawyer's job, reflecting policy assumptions and goals that the general community wishes it could attain,

Sam R. Haley, Esquire  
May 2, 1966

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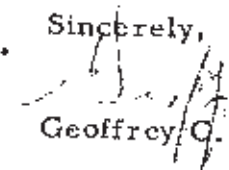
rather than a more realistic assessment of what can be attained with the type and size of law enforcement apparatus that one is likely in fact to have when the thing comes into effect. In short, we expect, in my judgment, the police to do far more things, and to do them with far greater sophistication and effectiveness, than is conceivably possible on any realistic assessment of police department capabilities. This is not intended to be critical of the police at all; rather, it is a sympathetic recognition that the job that is defined for them under the prevailing system is simply impossible. The same point holds for the correctional field.

A second observation I have is that a major shortcoming lies in the assumption, as a given, of the arrangement of existing law enforcement agencies. For example, we assume, without even questioning the wisdom of the assumption, that there should be a police department and a separate office of prosecution, the latter having broad "veto" and supervision of what the police do, but having no direct administrative responsibility for the way the police go about doing their job. For further example, we assigned state level agencies the job of running prisons and parole systems, but assume that counties are to continue to run probation services, even though it is obvious that these are alternative methods of correction. When these alternatives are built into separate autonomous agencies, it is simply impossible to have a reasoned and sensibly administered application of the alternatives. Shouldn't serious consideration be given, for still further example, to merging the prosecutorial function into the Attorney General's office at the state level, establishing district offices, rather than adhering to the present system under which each county is a realm unto itself, except at the appellate level? It might be recalled that precisely this sort of change has been effected, by gradual steps of course, in the organization of the judiciary.

Both of the foregoing lines of thought are radical in the sense that they would require thorough reconsideration of both policy and structure in the administration of criminal law as a predicate for making a revision of the criminal law. I know of no state which has seriously undertaken this kind of analysis, and therefore think that you would be unlikely to find useful suggestions from elsewhere. If it would be useful to you, I might conceivably be able to arrange to come out during one of my western trips to talk with the Committee and anyone else you think who might be brought together, to explore these dimensions of the problem.

Best regards.

Sincerely,

  
Geoffrey C. Hazard, Jr.

GCH/jf

EXCERPT FROM 1963 MEMORANDUM BY JOHN H. DEMOULLY, EXECUTIVE SECRETARY,  
CALIFORNIA LAW REVISION COMMISSION, TO CALIFORNIA SENATE JUDICIARY  
COMMITTEE

Detailed Procedures.

In general, the Commission would probably use the following procedures in preparing a revision of the Penal Code.

1. Selection of a Research Consultant. When the Commission is authorized to study a particular field of law, it first engages a research consultant to prepare a research study. The research study is prepared pursuant to a contract between the Commission and the consultant. Although the research consultant is paid an honorarium, the research consultant--to a considerable extent--contributes his time and talent as a public service. Past experience of the Commission indicates that law professors who are experienced in the particular field of law being studied usually prepare the most satisfactory research studies--studies that not only are scholarly but take into account the practical experience of persons affected by the study.

The volume of the subject matter embraced within the Penal Code is so great that the Commission does not anticipate that one man could prepare the necessary research study within a reasonable length of time. It is likely that a number of assistant-consultants will have to be retained to work under the general supervision of a Chief Research Consultant, or the Chief Research Consultant will have to be supplied with a staff to perform much of the work involved in preparing the study. The Commission expects that the Chief Research Consultant would be given considerable freedom in determining the methods to be used in preparing the research study.

The first task of the Commission, then, would be to engage a

Chief Research Consultant. After discussing with him the best method to proceed with the preparation of the study of the Penal Code, the Commission would make contracts with additional consultants or would provide the consultant with sufficient funds to acquire the necessary staff assistance.

2. Preparation of research study by research consultant. The Chief Research Consultant would be responsible for the preparation of a comprehensive study of the existing law in California, the defects in the existing law, and the various alternative solutions to cure the defects. The research study would include an analysis of the Model Penal Code provisions, together with an analysis of the provisions of modern penal codes adopted or proposed in other states. The Model Penal Code incorporates the views of numerous outstanding individuals who have contributed much creative thought to the field of criminal law. Modern penal codes adopted or proposed in other states are another valuable source of creative thought. The various research consultants preparing portions of the study will likewise suggest additional alternative methods of curing defects in existing California law. The consultants will also consider the suggestions of individuals in California who have practical experience in law enforcement so that they can produce a scholarly research study that takes into account the practical problems in California. Such a study will provide the background information that is necessary before a revision of the California Penal Code can be undertaken.

In preparing his study, the consultant would be expected to

consult with the Attorney General, the Department of Justice, district attorneys, chiefs of police, sheriffs, judges, the Youth and Adult Authorities, the Department of Corrections, various other state officers and departments, public defenders, private attorneys and others who have practical experience in the criminal law field. The facts presented by these persons and an analysis of their suggestions would be incorporated in the research study.

The recently published research studies on sovereign immunity and on the Uniform Rules of Evidence are examples of the type of research study contemplated. In the case of the Penal Code, portions of the research study might be published separately in a number of parts. Each portion could then be distributed widely at the time the Commission commences its study of that portion.

The research studies published by the Commission are valuable source materials not only for the Commission but also for the Legislature and for other persons interested in the particular field of law. It is not unusual for a research consultant to disagree with particular recommendations of the Commission. In such cases, the Commission does not require the consultant to revise his study to support the position taken by the Commission; rather, the Commission submits its recommendation to the Legislature and distributes the consultant's study in connection therewith so that the Legislature may have the benefit of the consultant's views as well as those of the Commission.

The Commission would expect the research study to be substantially completed sometime in 1965. Portions of the study should be sufficiently complete by the end of 1964 so that the Commission might begin working



on the Penal Code immediately after completing its work on its legislative program for the 1965 Session.

3. Preparation of tentative recommendations by Law Revision Commission. Portions of the research study would be available in January 1965, and the Commission would then begin its detailed study of the Penal Code.

The first step in this process will be to advise all interested persons and organizations that the Commission will be working on the Penal Code. Interested persons are permitted to attend Commission meetings as observers; but the Commission meetings are work sessions, not public hearings. It is anticipated that the Office of the Attorney General, the District Attorney of Los Angeles County, the Department of Corrections, the Judicial Council, and numerous other groups will wish to have a representative present at each meeting of the Commission. (The Legislative Counsel serves ex officio as a member of the Commission.) These persons obtain valuable background information by attending the meetings and, in addition, provide the Commission with expert sources of information. Moreover, at the time it begins studying a portion of the Penal Code, the Commission probably would call on interested persons to provide any information or views that are not adequately presented in the research study. The Chief Research Consultant, and probably the associate consultant or consultants who worked on the portion of the Penal Code under study, would be present at the meetings of the Commission. In the past, persons who regularly attend Commission meetings have been provided with copies of all materials to be considered by the Commission. These persons review the materials prior to the

meeting so that they are in a position to provide helpful criticism.

Before the Commission considers a new topic, the staff first prepares a memorandum outlining the various major and minor policy questions presented, together with the various alternatives available. This, together with the research study, serves as a starting point for work on the topic. After basic policy is decided, a draft statute is prepared by the staff to carry out the Commission's policy decisions. The Commission then carefully considers every detail of the draft statute to be sure that it is expressive of the Commission's intent. Many times original policy decisions will be changed when the draft statute is considered, and the staff will be directed to revise the statute accordingly. When the Commission is satisfied with the statute, a tentative recommendation explaining the proposed legislation is prepared and, together with the draft statute, is widely distributed to all persons and groups who have indicated an interest in the subject of the Commission's study. In the past, the tentative recommendations and proposed statutes have been sent to legal newspapers which have printed them for the information of the bar.

Interested groups often appoint committees to work with the Commission. In regard to the Penal Code, the Commission would expect to invite the State Bar, the Judicial Council, the district attorneys, the public defenders, the sheriffs, and others to appoint committees to review and comment on the tentative recommendations of the Commission.

The comments from these organizations and persons upon the tentative recommendation and draft statute are summarized and analyzed by the

Commission staff and are presented to the Commission for consideration. In addition, the complete text of all comments received is reproduced and provided to each Commissioner so that he may read the comments in their entirety.

The Commission thoroughly considers all comments on its tentative proposals and frequently modifies the tentative recommendation and draft statute. At times, the comments received have pointed out problems which have compelled the Commission to abandon completely the tentative recommendation distributed and to turn to other statutory methods of dealing with the problems.

When the Commission is satisfied with its recommendation and statutes, they are printed and submitted to the Legislature.

The Commission anticipates that it might not be necessary to use the foregoing procedure for all portions of the Penal Code. Some parts may be in need of recodification but not substantive revision. For such portions of the Penal Code, the Commission might contract with the Legislative Council to prepare a draft recodification for consideration by the Commission. This procedure has been used by the Commission in the past when it has been asked to recodify certain codes or portions of codes without substantive revision--as in the case of the Fish and Game Code and that portion of the Penal Code dealing with grand juries.

Following this procedure, the Commission would expect to complete the major portion of its tentative recommendation on the Penal Code by July 1967.

4. Interim hearings on tentative recommendation. It is anticipated that extensive interim hearings on the tentative draft of the Penal Code would be held by various interim committees during the two-year period prior to the 1969 legislative session. These hearings would familiarize members of the Legislature with the problems involved in Penal Code revision and would provide the Commission with an indication of what would be acceptable to the Legislature.

5. Final recommendation to 1969 legislative session. It is anticipated that the proposed Penal Code (or a revised Penal Code and a Code of Criminal Procedure) would be presented to the 1969 legislative session.

Cost

Until the Commission has retained a Chief Research Consultant and has discussed with him the procedure he will follow, it is not possible to determine accurately what the cost of the research study would be. Nonetheless, certain preliminary estimates may be made. The expenses contemplated for preparation and publication of the research report will have to be in addition to the money otherwise appropriated for the work of the Commission, for during the time that the research is being prepared and published all of the Commission's resources will be devoted to other major studies, such as the Uniform Rules of Evidence.

There is presented below a detailed budget indicating the additional expenses the Commission estimates that it must incur if it undertakes to revise the Penal Code.