



CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

The Honorable Edmund G. Brown
Chairman, The National Commission
on Reform of Federal Criminal Laws
1111 Twentieth Street, N. W.
Washington, D. C. 20036

My dear Mr. Brown:

Thank you for your letter of 21 May 1970 concerning the work of The National Commission on Reform of Federal Criminal Laws.

As you may know, this Agency has no police, subpoena, law-enforcement powers, or internal-security functions, but we will be pleased to cooperate with the Commission by commenting on the Study Draft of a proposed new Federal Criminal Code.

As you requested in your letter, we have asked the Commission's staff to send a copy of the Draft and all the supporting memoranda to Mr. Lawrence Houston, General Counsel, Central Intelligence Agency, Washington, D. C. 20505.

We are pleased to assist the Commission in its important work.

Sincerely,

Richard Helms
Director

Not sent - called instead



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TRANSMITTAL SLIP		DATE
TO: Mr. Maury		
ROOM NO.	BUILDING	
REMARKS:		
<p>I don't believe this letter is necessary - see paragraph 2 of basic. However, it was prepared in view of Director's instructions on yellow buck slip.</p> <p style="text-align: center;">  Lyle </p>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 53

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

UNCLASSIFIED	CONFIDENTIAL	SECRET	
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	The Director	21 MAY 1970	[initials]
2	Mr. Maury		[initials]
3			
4	The Director		
5			
6	C.L.C.		
<input checked="" type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY
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Remarks:			
<p><u>2-4</u> In accordance with the suggestion in the second paragraph of the attached letter, we have handled the problem by phone and do not believe a written response is called for - [initials]</p>			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
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FORM NO. 1-67 **237** Use previous editions

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Executive Registry
70-2675

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

1111 TWENTIETH STREET N.W.
WASHINGTON, D.C. 20036

May 21, 1970

Mr. Richard Helms
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Helms:

As Chairman of the National Commission on Reform of Federal Criminal Laws, I am writing to advise you that in early June the Commission will be publishing a Study Draft of a proposed new Federal Criminal Code which would not only replace Title 18 of the United States Code but also have varying effect on all federal criminal provisions outside that Title. One of the purposes of such publication is to solicit comment and criticism, particularly from the affected agencies of government, which we can take into account before we make our recommendations to the President and Congress. Since our recommendations must be submitted by November 8, 1970, comments on the Draft, to be useful to us, will have to be received by early summer. Accordingly, we are giving advance notice of the publication in the hope that you will be able to assign necessary personnel and allocate appropriate funds so that, upon receipt of the Draft, your agency will be prepared to give it immediate attention and submit a timely response.

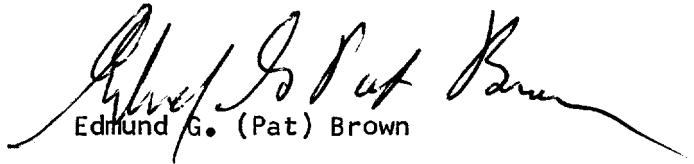
It would be most helpful if, as soon as possible, your legislative liaison officer would contact the Commission staff (tel. 382-2011) to advise us of the number of copies of the Draft and of the two volumes of supporting memoranda which your agency will require and to whom they should be addressed.

As a description of the Commission and its project, I enclose a copy of P.L. 89-801, the statute which established the Commission, and a copy of the Commission's Interim Report to the President and Congress, dated November 4, 1968.

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Although the Commission has not yet expressed itself on the merits of the proposals in the Study Draft, we believe that the Draft promises great and enduring improvements in federal criminal laws, many of which are long overdue. We earnestly solicit your timely assistance in this worthy venture.

Very truly yours,


Edmund G. (Pat) Brown

Enclosures

cc: John Maury

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
UNCLASSIFIED		CONFIDENTIAL	
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1	The Director	48 MAY 1950	<i>[Handwritten initials]</i>
2	Mr. Maury		<i>[Handwritten initials]</i>
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4	The Director		<i>[Handwritten initials]</i>
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Remarks:			
<p><i>2-4</i> In accordance with the suggestion in the second paragraph of the attached letter, we have handled the problem by phone and do not believe a written response is called for - <i>[Handwritten initials]</i></p>			
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Public Law 91-39
91st Congress, H. R. 4297
July 8, 1969

An Act

83 STAT. 44

To amend the Act of November 8, 1966.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Act of November 8, 1966 (80 Stat. 1516) is amended by striking out "within three years after the date of this Act" and inserting in lieu thereof "within four years after the date of this Act".

Sec. 2. Section 10 of such Act is amended by striking out "not to exceed a total of \$500,000" and inserting in lieu thereof "not to exceed a total of \$850,000", and adding at the end thereof a new sentence as follows: "Authority is hereby granted for appropriated money to remain available until expended."

Approved July 8, 1969.

National Commission on Reform of Federal Criminal Laws.
18 USC prec. 1 note.
Final report, extension.
Appropriation.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-34 (Comm. on the Judiciary).
SENATE REPORT No. 91-266 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 115 (1969):
Mar. 17: Considered and passed House.
June 24: Considered and passed Senate, amended.
June 27: House concurred in Senate amendment.



Public Law 89-801
89th Congress, H. R. 15766
November 8, 1966

An Act

To establish a National Commission on Reform of Federal Criminal Laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Commission on Reform of Federal Criminal Laws is hereby established.

National Commission on Reform of Federal Criminal Laws. Establishment.

MEMBERSHIP OF COMMISSION

SEC. 2. (a) The Commission shall be composed of—

(1) three Members of the Senate appointed by the President of the Senate,

(2) three Members of the House of Representatives appointed by the Speaker of the House of Representatives,

(3) three members appointed by the President of the United States, one of whom he shall designate as Chairman,

(4) one United States circuit judge and two United States district judges appointed by the Chief Justice of the United States.

(b) At no time shall more than two of the members appointed under paragraph (1), paragraph (2), or paragraph (3) be persons who are members of the same political party.

(c) Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made, and subject to the same limitations with respect to party affiliations as the original appointment was made.

(d) Seven members shall constitute a quorum, but a lesser number may conduct hearings.

DUTIES OF THE COMMISSION

SEC. 3. The Commission shall make a full and complete review and study of the statutory and case law of the United States which constitutes the federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

80 STAT. 1516
80 STAT. 1517

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 4. (a) A member of the Commission who is a Member of Congress, in the executive branch of the Government, or a judge shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(b) A member of the Commission from private life shall receive \$75 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

THE DIRECTOR AND STAFF

SEC. 5. (a) The Director of the Commission shall be appointed by the Commission without regard to the civil service laws and Classification Act of 1949, as amended, and his compensation shall be fixed

63 Stat. 954.
5 USC 1071 note.

Pub. Law 89-801 - 2 - November 8, 1966

63 Stat. 954.
5 USC 1071 note.

by the Commission without regard to the Classification Act of 1949, as amended.

(b) The Director shall serve as the Commission's reporter, and, subject to the direction of the Commission, shall supervise the activities of persons employed under the Commission, the preparation of reports, and shall perform such other duties as may be assigned him within the scope of the functions of the Commission.

(c) Within the limits of funds appropriated for such purpose, individuals may be employed by the Commission for service with the Commission staff without regard to civil service laws and the Classification Act of 1949.

60 Stat. 810.

(d) The Chairman of the Commission is authorized to procure services to the same extent as is authorized for departments by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed \$75 per diem for individuals.

ESTABLISHMENT OF THE ADVISORY COMMITTEE

SEC. 6. (a) There is hereby established a committee of fifteen members to be known as the Advisory Committee on Reform of Federal Criminal Laws (hereinafter referred to as the "Advisory Committee"), to advise and consult with the Commission. The Advisory Committee shall be appointed by the Commission and shall include lawyers, United States attorneys, and other persons competent to provide advice for the Commission.

(b) Members of the Advisory Committee shall not be deemed to be officers or employees of the United States by virtue of such service and shall receive no compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them by virtue of such service to the Commission.

GOVERNMENT AGENCY COOPERATION

80 STAT. 1517
~~80 STAT. 1518~~

SEC. 7. The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman or any other member when acting as Chairman.

REPORT OF THE COMMISSION; TERMINATION

SEC. 8. The Commission shall submit interim reports to the President and the Congress at such times as the Commission may deem appropriate, and in any event within two years after the date of this Act, and shall submit its final report within three years after the date of this Act. The Commission shall cease to exist sixty days after the date of the submission of its final report.

ADMINISTRATIVE SERVICES

SEC. 9. The General Services Administration shall provide administrative services for the Commission on a reimbursable basis.

November 8, 1966

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Pub. Law 89-801

80 STAT. 1518

AUTHORIZATION OF APPROPRIATIONS

Sec. 10. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts, not to exceed a total of \$500,000, as may be necessary to carry out the provisions of this Act.

Approved November 8, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1891 (Comm. on the Judiciary).
SENATE REPORT No. 1862 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 112 (1966):
Sept. 6: Considered and passed House.
Oct. 20: Considered and passed Senate.

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

1111 TWENTIETH STREET N.W.
WASHINGTON, D.C. 20036

November 4, 1968

The President
The White House
Washington, D.C.

Same letter to
The Vice President and
The Speaker of the House

My dear Mr. President:

The National Commission on Reform of Federal Criminal Laws was established by P.L. 89-801 on November 8, 1966. Section 8 of that law directed the submission of an interim report to the President and Congress no later than two years after its establishment. This is the interim report. In it are discussed the appointment of the members of the Commission and its Advisory Committee, its organization and administration, its objectives and work methods, and some directions in which its reform efforts are moving.

COMMISSION AND ADVISORY COMMITTEE MEMBERSHIP

P.L. 89-801 provided that the Commission be composed of 12 members, 3 Senators appointed by the Vice-President, 3 Representatives appointed by the Speaker of the House, 1 United States circuit judge and 2 United States district judges appointed by the Chief Justice, and 3 persons, including the chairman, appointed by the President.

The appointments were made as follows:

by the President:

Edmund G. Brown, private attorney and former
Governor and Attorney General
of California,
Chairman, Beverly Hills, California;

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Donald S. Thomas, private attorney, Austin, Texas;

Theodore Voorhees, private attorney, Philadelphia,
Pennsylvania.

by the Vice-President:

Sam J. Ervin, Jr., Senator from North Carolina;

Roman L. Hruska, Senator from Nebraska;

John L. McClellan, Senator from Arkansas.

by the Speaker:

Don Edwards, Representative from California;

Robert W. Kastenmeier, Representative from
Wisconsin;

Richard H. Poff, Representative from Virginia.

by the Chief Justice:

George Clifton Edwards, Jr., Circuit Judge,
U.S. Court of Appeals for the 6th Circuit,
Detroit, Michigan;

James M. Carter, Chief District Judge,
U.S. District Court for the Southern
District of California;

A. Leon Higginbotham, Jr., District Judge,
U.S. District Court for the Eastern District
of Pennsylvania.

Congressman Poff was elected Vice-Chairman of the
Commission by his fellow members.

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Judge Carter became a United States Circuit Judge for the 9th Circuit on November 16, 1967. Since P.L. 89-801 requires that the group of three judges appointed by the Chief Justice be composed of only one circuit judge and two district judges, Judge Carter thereupon resigned from the Commission. To fill the vacancy the Chief Justice appointed U.S. District Judge Thomas J. MacBride, Chief Judge of the U.S. District Court for the Northern District of California.

In order to provide for a group of experts to whom the Commission could turn for advice, P.L. 89-801 also established a 15-member Advisory Committee on Reform of Federal Criminal Laws, to be appointed by the Commission. The appointments to the Advisory Committee were as follows:

Honorable Tom C. Clark, Washington, D.C., Chairman;

Maj.Gen. Charles L. Decker, Director, National Defender Project of the National Legal Aid and Defender Association, former Army Judge Advocate General, Washington, D.C.;

Patricia Roberts Harris, Professor, Howard University Law School, former Ambassador and Department of Justice Attorney, Washington, D.C.;

Fred B. Helms, private attorney, Charlotte, North Carolina;

Byron O. House, Justice of the Supreme Court of Illinois, Nashville, Illinois;

Howard R. Leary, Police Commissioner of New York City, New York;

Robert B. Morgenthau, U.S. Attorney for the Southern District of New York, New York City;

Louis H. Pollak, Dean, Yale University Law School, New Haven, Connecticut;

Cecil F. Poole, U.S. Attorney for the Northern District of California, San Francisco, California;

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Milton G. Rector, Director, National Council on Crime and Delinquency, New York City;

Elliot L. Richardson, Attorney General of Massachusetts, former U.S. Attorney for the District of Massachusetts, Boston, Massachusetts;

Gus Tyler, Assistant President, International Ladies Garment Workers Union, New York City;

James Vorenberg, Professor, Harvard Law School, former Executive Director, President's Commission on Law Enforcement and Administration of Justice, Cambridge, Massachusetts;

William F. Walsh, private attorney, former Chairman of the Section of Criminal Law of the American Bar Association, Houston, Texas;

Marvin E. Wolfgang, Director, Center for Studies in Criminology and Criminal Law, University of Pennsylvania, Philadelphia, Pennsylvania.

ORGANIZATION AND ADMINISTRATION

Appointments to the Commission were completed by March 16, 1967; and the events which signal the ability actually to commence operations — the appropriation of funds by the Congress and the engagement of a qualified staff director — occurred during June 1967.

P.L. 89-801 authorized a maximum of \$500,000 to be appropriated, as necessary, for the Commission to carry out the duties assigned it. The sum of \$8,000 was appropriated for the balance of fiscal year 1967 and the sum of \$192,000 for fiscal year 1968. Congress further appropriated \$250,000 for fiscal year 1969. A balance of \$50,000 remains available to appropriate for completion of the Commission's work, unless there is additional authorization and funding.

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The staff director appointed by the Commission was Professor Louis B. Schwartz of the University of Pennsylvania Law School, a former Chief of the General Crimes Section in the Criminal Division of the Department of Justice and co-reporter for the Model Penal Code developed by the American Law Institute. Recruitment of the remainder of the nucleus staff of six full-time attorneys, with varying backgrounds and experience in criminal law, was completed by November 1967.

Quarters were obtained and outfitted, during July and August 1967, at the Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20036.

The Commission, its Executive Committee, and the Advisory Committee have held a series of meetings, either alone or in joint "discussion sessions," according to what work was to be done. A total of nine such meetings have been held over the period of April 1967 to June 1968.

OBJECTIVES AND METHOD

The duties of the Commission were set forth in Section 3 of P.L. 89-801, as follows:

The Commission shall make a full and complete review and study of the statutory and case law of the United States which constitutes the federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

Since many of the matters within this mandate were already being dealt with by others, the Commission decided at an early meeting to concentrate its initial efforts on the

development of a modern substantive criminal code, which would include definitions of crimes and criminal liability and provisions on the sentencing and correctional structure. No fundamental and comprehensive reform of the federal criminal laws dealing with these subjects had ever been undertaken.

The professional staff has had primary responsibility for the research, study, and drafting of statutes for such a Code. It is assisted by consultants, primarily professors of criminal law, who have been engaged by contract to deal with specific subjects. Law schools presently represented in the roster of consultants include George Washington, Harvard, Houston, Notre Dame, New York University, Pennsylvania, Rutgers, Texas, University of California at Los Angeles, Virginia, and Yale. The product of this work is being presented to the Commission and Advisory Committee for discussion and criticism at joint meetings. The submissions take the form of statutory texts, with commentary which explains the background, issues and reasons for the proposals.

Various interested government agencies — eventually, all with any law enforcement responsibilities — provide advice and assistance, by both supplying information and commenting upon proposals. Representatives of the primary law enforcement departments, Justice and Treasury, regularly attend the Commission and Advisory Committee draft discussions.

Work on the Code has progressed to the point where the Commission anticipates distributing a tentative draft, i.e., one which has not been approved by the Commission but which has matured sufficiently to invite widespread study and comment, by the late spring of 1969.

DIRECTIONS

1. Jurisdiction. A major innovation taking shape in the new Code is the manner in which the basis for federal jurisdiction is to be expressed. Except for a few offenses, e.g., murder and assault, traditional crimes are presently defined in terms of the jurisdictional fact which makes them federal offenses, e.g., using the mails to effect a theft by

fraud, theft from customs custody, transporting a stolen article across state lines, etc. The Commission has been considering, however, the feasibility of a code which will define the crime in terms of the misbehavior, and will set forth separately the various grounds upon which such misbehavior becomes a federal offense. Thus, the crime would be theft, and the jurisdictional bases would be the fact that the government was the victim, either as owner or custodian of the property, that an interstate facility was used in committing the theft or that the property was moving in interstate commerce.

This approach is believed to offer several advantages. First, it permits consolidation of numerous, duplicative provisions and is the simplest way to provide uniform definitions of offenses. Second, it facilitates proper grading of offenses and a rational sentencing system by relating the sentence to the substance of the misbehavior, rather than the more or less accidental feature that it was effected through the mails, interstate commerce, or the like. Third, it makes it easier to eliminate irrational discrepancies between existing applications of federal jurisdiction and to provide uniformity in the definition of jurisdictional bases. Fourth, it will promote uniformity between federal and state law enforcement activities both in determining an offender's criminal history and maintaining statistics. And finally, it permits greater use of recent state criminal law reform efforts in developing the modern definitions for federal offenses.

2. Sentencing. The proposed Code's sentencing structure will reduce the present bewildering variety of sentencing categories to no more than six or seven, each with its own set of treatment possibilities and differing substantially from those in other categories, at least as to maximum prison terms. Each offense or degree of an offense will be assigned to one of these categories. In the future, when Congress creates a new offense, it will be able simply to fit the offense into the most suitable category for sentencing purposes, rather than dealing with sentencing problems on an ad hoc basis.

- 8 -

3. General Provisions. Many areas of substantive criminal law which affect all federal crimes are presently treated in scanty fashion by statute or not at all, being left to development by judicial decision. These include the law of attempts, definition of the requisite criminal state of mind, and defenses such as insanity, justification and excuse, entrapment, and duress. In order to provide guidance, uniformity, and precision, such matters — and others — will be dealt with in statutory provisions.

4. Regulatory Offenses. Both within and outside Title 18 of the United States Code, there are many offenses which are — or should be considered as — quite minor, having been made offenses not because the conduct is intrinsically wrong but because their prohibitions or requirements are essential for effecting a regulatory scheme or some function of government. These offenses are too numerous and either too complicated or too intimately connected with other provisions of the regulatory scheme to be profitably included in the Criminal Code. Accordingly the Commission is considering the transfer of such provisions which are presently within Title 18 to other Titles and leaving those outside Title 18 where they are.

There is being developed, however, a standard penal provision, to be set forth in the Criminal Code, which can be incorporated by reference in the regulatory legislation, existing or future. It will provide uniformity in grading according to various aggravating factors which may be present in such a violation — whether it was committed knowingly, whether the conduct reflects persistent disobedience of the regulatory legislation, or whether the violation created a substantial likelihood of the harm against which the legislation was directed.

At the same time many offenses outside Title 18 which presently constitute no more than a parochial definition of a general offense will be eliminated, and others which are both serious and commonplace, e.g., sale of narcotic drugs, will be brought into the Criminal Code.

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COMPLETION

P.L. 89-801 requires the Commission to submit its final report by November 8, 1969.* Whether or not the Commission will have to seek an extension of time or an increase in the authorization will not become apparent until a few months from now, when work in progress will have been completed and considered by the Commission and the direction firmly charted for the final phases of the project. The answer to these questions may also depend upon the reaction to the tentative draft and how long a period of study and comment upon it is necessary.

Respectfully submitted
for the Commission,

EDMUND G. BROWN,
Chairman

*Extended to November 8, 1970 by P.L. 91-39.

Supplement to Interim Report to the President

Congressman Don Edwards resigned from the Commission in October 1969 due to his imminent retirement from public life and was replaced by Congressman Abner J. Mikva, Representative from Illinois.

Byron O. House, Justice of the Supreme Court of Illinois, died in September 1969, and his position remains vacant.

Elliot L. Richardson resigned in April 1969 upon his appointment as Under Secretary of State and was replaced by the Hon. Brian P. Gettings, U.S. Attorney for the Eastern District of Virginia.

Gus Tyler resigned in November 1969 due to other commitments and has not been replaced.