THIS BOOK DOES
NOT CIRCULATE

PLEASE USE
IN LIBRARY

F9219.
A35

MEDIA ROOM

North Dakota State Law Library

WORKING PAPERS

OF

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

VOLUME III

MISCELLANEOUS MEMORANDA AND GUIDELINES FOR CONFORMING TITLE 18, PARTS II–V, AND OTHER TITLES OF THE UNITED STATES CODE TO THE PROPOSALS FOR A NEW FEDERAL CRIMINAL CODE

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $1.25

PREFACE

This is the third, and last, volume entitled "Working Papers of the National Commission on Reform of Federal Criminal Laws." The other two volumes, published in August 1970, contain materials used by the Commission in drafting its Study Draft of a new Federal Criminal Code, published on June 17, 1970. Those materials consist of the consultants' reports and staff memoranda which served as a basis for statutory provisions submitted to the Commission and its Advisory Committee for discussion, and, in addition, staff notes which deal with issues raised at those discussions or considered subsequently. Those volumes are available for purchase in sets which include the Study Draft from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for $8.25. The Commission's Final Report, issued January 7, 1971, is available from the same source for $1.75. It contains the Commission's proposals regarding a new Federal Criminal Code, including revision of the Study Draft.

JUNE 15, 1971

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

Commission

HON. EDMUND G. BROWN OF CALIFORNIA
Chairman

CONGRESSMAN RICHARD H. POFF OF VIRGINIA
Vice Chairman

U.S. CIRCUIT JUDGE GEORGE C. EDWARDS, JR.

SENATOR SAM J. ERVIN, JR. OF NORTH CAROLINA

U.S. DISTRICT JUDGE A. LEON HIGGINBOTHAM, JR. OF PENNA.

SENATOR ROMAN L. HRUSKA OF NEBRASKA

CONGRESSMAN ROBERT W. KASTENMEIER OF WISCONSIN

U.S. DISTRICT JUDGE THOMAS J. MACBRIDE OF CALIFORNIA

SENATOR JOHN L. MCCLELLAN OF ARKANSAS

CONGRESSMAN ABNER J. MIKVA OF ILLINOIS

DONALD SCOTT THOMAS, ESQ. OF TEXAS

THEODORE VOORHEES, ESQ. OF DIST. COL.

U.S. Circuit Judge James M. Carter of California and Congressman Don Edwards of California served as members of the Commission from its inception until December 1967 and October 1969, respectively.

Advisory Committee

HON. TOM C. CLARK, *Chairman*

MAJ. GEN. CHARLES L. DECKER

HON. BRIAN P. GETTINGS (from Oct. 1969)

HON. PATRICIA ROBERTS HARRIS

FRED B. HELMS, ESQ.

HON. BYRON O. HOUSE (to Sept. 1969)

HON. HOWARD R. LEARY

ROBERT M. MORGENTHAU, ESQ.

DEAN LOUIS H. POLLAK

CECIL F. POOLE, ESQ.

MILTON G. RECTOR

HON. ELLIOT L. RICHARDSON (to Apr. 1969)

GUS TYLER (to Nov. 1969)

PROF. JAMES VORENBERG

WILLIAM F. WALSH, ESQ.

PROF. MARVIN E. WOLFGANG

Staff

LOUIS B. SCHWARTZ, Director

RICHARD A. GREEN, Deputy Director

JOHN W. DEAN, III, Associate Director (to Feb. 1969)

DAVID P. BANCROFT, Associate Director (from Dec. 1969)

BURTON C. AGATA, Senior Counsel

MILTON M. STEIN, Senior Counsel

NANCY M. CLARKSON, Counsel

LEE CROSS, Counsel

THOMAS F. HOGAN, Counsel

DANIEL J. POCHODA, Counsel

JOHN A. TERRY, Counsel

Temporary Counsel: Sandor Frankel, Marshall T. Golding, Paula R. Markowitz, Steven R. Rivkin, David Robinson.

Research Assistants: Richard Aguglia, Judy R. Brody, Kerry L. Cathcart, Rebecca Hanslin, Anne Hewitt, Charles L. Renda, Howard Stahl.

Clerical Staff: Ann Felegy, Betty M. Palmer, Barbara I. Mohammed, Jane E. Thomas, Leamond Meekins, Pauline T. Bischoff, Patricia L. Connally.

Consultants

GERALD H. ABRAMS, Professor at Rutgers Univ. Law School (Camden) (Proof and Presumptions).

NORMAN ABRAMS, Professor at U.C.L.A. School of Law (Federal Jurisdiction; Assimilated Offenses; Fugitive Felon Act).

BURTON C. AGATA, Professor at Univ. of Houston Law School (Obstruction of Justice).

PAUL BENDER, Professor at Univ. of Pennsylvania Law School (Obscenity Controls).

G. ROBERT BLAKEY, Professor at Notre Dame Law School; Chief Counsel to the Subcommittee on Criminal Laws and Procedures of the U.S. Senate Judiciary Committee (Conspiracy and Organized Crime).

ROBERT G. DIXON, JR., Professor at George Washington Univ. Law School (Immunity; Civil Rights and Elections).

STEVEN DUKE, Professor at Yale Law School (Protecting Federal Revenues).

RONALD L. GOLDFARB, Practicing Attorney, Washington, D.C. (Contempt).

JOSEPH GOLDSTEIN, Professor at Yale Law School (Riots).

PETER W. LOW, Professor at Univ. of Virginia School of Law (Sentencing; Theft; Forgery and Other Fraudulent Practices).

ROBERT G. MORVILLO, Practicing Attorney, New York, N.Y. (Gambling).

FRANK Q. NEBEKER, Judge of the District of Columbia Court of Appeals; formerly Assistant U.S. Attorney, District of Columbia (Limitations on Prosecution).

DAVID ROBINSON, Professor at George Washington Univ. Law School (Insanity; Intoxication).

MICHAEL P. ROSENTHAL, Professor at Univ. of Texas School of Law (Drugs).

ARTHUR I. ROSETT, Professor at U.C.L.A. School of Law (Multiple Prosecutions).

JOHN SPRIZZO, Professor at Fordham Univ. School of Law (Gambling).

JAMES E. STARRS, Professor at George Washington Univ. Law School (Entrapment).

LLOYD L. WEINREB, Professor at Harvard Law School (Criminal Liability, Culpability, and Mistake).

FRANK E. ZIMRING, Professor at Univ. of Chicago Law School (Firearms).

Statement of Emanuel Celler, Chairman, The House Judiciary Committee

The National Commission on Reform of Federal Criminal Laws was established by Congress in 1966 to undertake a complete review and to recommend revision of the federal criminal laws. The legislation establishing the Commission (P.L. 89-801, 80 Stat. 1516) originated in the House Judiciary Committee (H. Rept. 1891). The membership of the Commission included a bipartisan array of Congressmen, each of whom was also a member of the House Judiciary Committee: Robert W. Kastenmeier (D.-Wis.) [Chairman of Subcommittee No. 3 on revision of the laws], Abner J. Mikva (D.-Ill.) and Richard H. Poff (R.-Va.), who had been elected Vice Chairman of the Commission by his fellow Commission members.

The Commission ended its work on January 7, 1971, with the transmission of its Final Report to the President and Congress.

The Commission's Working Papers, which to date had comprised two volumes, are now completed by the publication of Volume III. The Working Papers contain comprehensive reviews of many aspects of the present law and detail the legal bases and policy foundations for the Study Draft provisions and for alternate formulations.

This volume of the Working Papers contains additional memoranda on particular recommendations of the Commission as well as guidelines for conforming Title 18, Parts II-V and other Titles of the United States Code to the recommendations of the Final Report. This will stimulate incisive comment of which the Committee will ultimately be the beneficiary in insuring our citizens a comprehensive, rational and modern federal criminal law.

EMANUEL CELLER,
Chairman, The House Judiciary Committee.

JUNE 15, 1971.

GENERAL TABLE OF CONTENTS

VOLUME III

	Page
Part I: Miscellaneous Memoranda	1450
Comments Comparing Study Draft to European Penal Codes	1451
Professor Johannes Andenaes	1451
Professor Mirjan Damaska	1477
Memorandum on Assimilated Offenses: Section 209	1507
Comment on Jurisdiction for the Canal Zone	1517
Comment on Jurisdiction for Indian Country: 25 U.S.C. § 212	1521
Part II: Guidelines for Conforming Title 18, Parts II–V, and Other Titles of the United States Code to the Proposals for a New Federal Criminal Code	1527
A. Transitional Provisions	1531
B. Parts II–V of Title 18	1533
C. Relevant Provisions in Titles Other Than Title 18	1575
Table: Title 18, Part I, Provisions to be Transferred into Other Titles	1745

DETAILED TABLE OF CONTENTS

VOLUME III

Page

Part I: Miscellaneous Memoranda 1450
Comment Comparing Study Draft to European Penal Codes—Andenaes 1451
Introduction 1451
I. The organization of the Code 1452
II. General provisions 1452
A. Voluntary conduct 1452
B. Omissions 1453
C. Kinds of culpability 1455
D. Causal relationship between conduct and result 1456
E. Complicity, facilitation and conspiracy 1457
F. Mental disease or defect (section 503) 1458
G. Self-defense (sections 603–607) 1460
H. Mistake of law (section 610) 1460
III. The sentencing system 1461
A. General remarks 1461
B. Classification of offenses (section 3002) 1462
C. Probation and unconditional discharge 1464
1. *Form of Suspended Sentence* 1464
2. *Choice Between Suspended and Unsuspended Sentence* 1464
3. *Restrictions on the Use of Suspended Sentences* 1464
4. *Supervision* 1464
5. *Periods of Probation* 1465
6. *Unconditional Discharge* 1465
D. Definite and indefinite sentences 1465
E. Sentencing for misdemeanors 1466
F. Sentencing for felonies 1468
G. Sentence of death or life imprisonment 1472
H. Concurrent and consecutive terms of imprisonment (section 3206) 1473
I. Fines (chapter 33) 1474
J. Appellate review of sentence 1476
Comment Comparing Study Draft to European Penal Codes—Damaska 1477
I. Problems of criminal jurisdiction 1477
A. The allocation of penal jurisdiction between State and Federal Governments 1477
B. Distinguishing between crime definition and jurisdictional base 1478
C. Extraterritorial Federal jurisdiction 1478

Part I: Miscellaneous Memoranda—Continued
Comment Comparing Study Draft, etc.—Damaska—Continued

Page

II. The sentencing system 1479
A. Classification of offenses 1479
B. Legislatively prescribed minimum sentences 1481
C. Sentencing by the judge 1482
D. Parole 1483
E. Cumulative sentencing 1484
F. Fines 1485
G. Additional observations on sentencing provisions 1485
III. Basis of criminal liability 1486
A. Omissions 1486
B. Secret criminal laws 1487
C. Causation 1487
IV. Provisions on culpability 1487
A. General observations 1487
B. Stability versus instability of the mental element offenses 1488
C. "Transferred intent" and "aberratio ictus" 1488
D. Provisions on mistake and ignorance 1488
E. Liability of corporations and other organizations 1491
V. Defenses 1491
A. The use of deadly force 1491
B. Insanity 1492
C. Defenses against unfair or oppresive prosecution 1493
1. *Entrapment* 1493
2. *Statute of limitation* 1494
3. *Bar on multiple trials and charges* 1494
4. *Multiple convictions* 1494
5. *Other defenses* 1496
VI. Observations on inchoate crime 1496
A. Attempt 1496
B. Criminal facilitation 1497
C. Criminal solicitation 1497
D. Conspiracy 1498
VII. Specific offenses 1499
A. Contempt of court 1499
B. Theft offenses 1500
C. Assault and menacing distinguished 1502
D. Rape 1502
E. Escape and flight to avoid prosecution 1502
F. Felony murder 1502
G. Burglary 1503
H. Drug crimes 1503
I. Obscenity 1504
1. *Concept* 1504
2. *Forbidden conduct with respect to obscene matter* 1505
J. Riot 1505

Part I—Continued

Page

Memorandum on Assimilated Offenses: Section 209 1507
I. Introduction 1507
II. Offenses assimilated and not assimilated 1507
A. Basic assumptions and principles 1507
B. Consideration of some specific state offenses 1509
1. *Offenses Against Public Order and Decency* 1510
2. *Family and Sex-Related Offenses* 1510
3. *Miscellaneous Offenses* 1512
Comment on Jurisdiction for the Canal Zone 1517
Statute 1517
Comment 1518
Comment on Jurisdiction in Indian Country: 25 U.S.C. § 212 1521
Statute 1521
Comment 1522
1. *Present Law* 1522
2. *The Effect of the Proposed Provision* 1524
3. *Remaining Problems Concerning Federal Criminal Law and Indian Jurisdiction* 1526

Part II: Guidelines for Conforming Title 18, Parts II–V, and Other Titles of the United States Code to the Proposals for a New Federal Criminal Code 1527

Foreword 1529
A. Transitional Provisions 1531
B. Parts II–V of Title 18 1533
Introductory Note 1533
Part II (D) 1535
Part III (E) 1552
Part IV (F) 1571
Part V (G) 1573
Part (H) 1574
C. Relevant Provisions in Titles Other Than Title 18 1575
Introductory Note 1575
Title 2. The Congress 1578
Title 4. Flag and Seal, Seat of Government, and the States 1580
Title 5. Government Organization and Employes 1581
Title 7. Agriculture 1584
Title 8. Aliens and Nationality 1594
Title 9. Arbitration 1599
Title 10. Armed Forces 1600
Title 11. Bankruptcy 1601
Title 12. Banks and Banking 1602
Title 13. Census 1609
Title 14. Coast Guard 1610
Title 15. Commerce and Trade 1611
Title 16. Conservation 1623
Title 17. Copyrights 1632

Part II—Continued

C. Relevant Provisions, etc.—Continued

Page

Title 19. Customs Duties 1633
Title 20. Education 1638
Title 21. Food and Drugs 1639
Title 22. Foreign Relations and Intercourse 1648
Title 24. Hospitals, Asylums, and Cemeteries 1655
Title 25. Indians 1656
Title 26. Internal Revenue Code 1659
Title 27. Intoxicating Liquors 1677
Title 28. Judiciary and Judicial Procedure 1679
Title 29. Labor 1681
Title 30. Mineral Lands and Mining 1684
Title 31. Money and Finance 1685
Title 33. Navigation and Navigable Waters 1687
Title 35. Patents 1692
Title 36. Patriotic Societies and Observances 1693
Title 38. Veterans' Benefits 1694
Title 39. The Postal Service 1695
Title 40. Public Buildings, Property, and Works 1698
Title 41. Public Contracts 1700
Title 42. The Public Health and Welfare 1701
Title 43. Public Lands 1709
Title 44. Public Printing and Documents 1711
Title 45. Railroads 1712
Title 46. Shipping 1714
Title 47. Telegraphs, Telephones, and Radiotelegraphs 1725
Title 48. Territories and Insular Possessions 1729
Title 49. Transportation 1730
Title 50. War and National Defense 1736
Title 50. App. War and National Defense 1739
Table: Title 18, Part I, Provisions to be Transferred into Other Titles 1745

Part I: Miscellaneous Memoranda

53-308—71—vol. 8——2

COMMENT

by

PROF. JOHANNES ANDENAES

COMPARING STUDY DRAFT OF PROPOSED NEW FEDERAL CRIMINAL CODE TO EUROPEAN PENAL CODES

(Prof. Johannes Andenaes, University of Oslo, Oslo, Norway, August 31, 1970)

Introduction

The present Study Draft must be welcomed as a remarkable effort to make Federal criminal law coherent, rational and intelligble. The Commission has had the advantage of being able to build on the epoch-making work embodied in the Model Penal Code and some newer State Codes. Through these Codes and the present Study Draft, American draftsmanship in criminal law has reached a level far higher than previously. From a technical point of view the Study Draft compares well with modern Criminal Codes of the Continental breed. On many points, of course, different legal traditions and different social mores have resulted in different solutions, both in substance and in form. Sometimes, especially in the General Part, the draft is more detailed and explicit than most European Codes. The draftsmen have boldly chosen the statutory solution of questions which most European legislators have found it more cautious to leave to the courts and legal scholarship, for instance the definition of different types of culpability. The Draft deals with the general questions of criminal law more fully than any existing Code known to the author. This method has its obvious risks, since it is very difficult to foresee how well general provisions will cover the enormous variety of life situations, but the lack of a uniform tradition in the various Federal and State courts probably calls more strongly for a statutory solution than would be the case in most European states.

The systematization of criminal law in a comprehensive Code will facilitate international comparison and discussion. For foreign students of American criminal law the Study Draft will in the future be a primary source. The distinguishing between definition of offense and scope of Federal jurisdiction represents from a technical point of view a decisive step forward.

The following comments will primarily deal with points about which the author has doubts as to the solution chosen in the Study Draft. Some points are of a trivial and technical nature, others concern fundamentals. It goes without saying that it is a dangerous enterprise for a foreign scholar to comment on a national Code; lack

of familiarity with the background may easily lead to misunderstanding or mistaken conclusions, the more so since the Working Papers have not been at my disposal. In the short time available for study of the draft it has of course been impossible to form an opinion on all matters. The shortness of time has led me to limit my remarks to the General Provisions and The Sentencing System, leaving out all questions of definitions of specific offenses.

I. The Organization of the Code

The Code is divided into three parts: Part A. General Provisions; Part B, Specific Offenses; and Part C, The Sentencing System.

This organization differs from most European Codes, which place the provisions on penalties and principles of sentencing in the General Part. From a logical point of view this can be said to be most adequate. The provisions on sentencing are general provisions in so far as they apply to all offenses. It is, for example, technically somewhat unsatisfactory for the provisions on the various offenses in Part B to define the offenses as belonging to certain classes of felonies or misdemeanors, when the whole scheme of classification is not presented until section 3002 in Part C. Nevertheless I feel that much is to be said in favour of the organization of the draft. There is a fundamental difference between the provisions on jurisdiction and liability in Part A and the provisions on sentencing in Part C. Part A and Part B belong together in so far as they define the conditions of criminal liability, whereas the provisions in Part C become operative only where liability exists. It would, of course, be easy to let Part B and Part C change places.

It strikes me as somewhat surprising that the provisions on criminal attempt are placed in Part B, Specific Offenses. All European Codes known to the author deal with criminal attempt in the General Part. As I see it, it is artificial to look upon criminal attempt as a specific offense. The conviction should not be for criminal attempt, but for attempt of murder, attempt of larceny, and so on. The definition of criminal attempt represents an extension of the definitions of the specific offenses. Since there is a general definition of attempt, the provisions on specific offenses can be formulated with an eye only to the consummated offense.

I am inclined to think that the whole of Chapter 10 would belong more naturally in Part A. To start the Part on "Specific Offenses" with a chapter on "Offenses of General Applicability" sounds almost to be a self contradiction.

II. General Provisions

A. Voluntary Conduct

In section 301(1) voluntary conduct is declared to be a necessary prerequisite of an offense, and voluntary conduct is defined as including "an act, an omission, or possession." *

Such declarations of principle are usually lacking in European Codes. And in legal literature on criminal law the concepts "act" and "omission" are considered to cover all kinds of punishable conduct.

* In the Final Report, the word "voluntary" was deleted.

I raise the question whether "voluntary conduct" is required in cases of self induced intoxication where the person violates a penal provision which is satisfied by recklessness, section 502(2). It is understood that such provisions are applicable even in cases where the person has been quite out of his mind because of the intoxication, and if this is correct, section 502(2) is hardly compatible with section 301(1) without giving "voluntary" a meaning so wide that it does not really signify anything. The Norwegian Criminal Code has the following provision as section 45: "Unconsciousness due to voluntary intoxication (produced by alcohol or other means) does not exclude punishment." Unconsciousness and voluntary conduct seem to be contradictory concepts. If drunkenness is excluded as an excuse, this seems to be an exception to the general principle of voluntary conduct.

Moreover, I tend to think that analytically it is not correct to list possession as a category separate from acts and omissions. To be punishable, the possession must be due to the culpable act of acquiring possession or the culpable omission of getting rid of it.

Consequently I should prefer to omit the somewhat textbook-like definition in section 301(1).

B. Omissions

Section 301, subsection (2) provides that a person who omits to perform an act does not commit an offense "unless a statute provides that the omission is an offense or otherwise provides that he has a duty to perform the act." *

The first alternative, where the statute itself specifically makes the omission an offense, does not raise special difficulties. The second alternative is, I take it, meant to solve problems as to whether an omission can amount to violation of a penal statute which, on the face of it, seems to be directed against criminal actions, for instance homicide, burglary or perjury.

It seems to me that there must be a slip in the text. The Comment says that the subsection restates present Federal law: a person is not liable for an omission unless he has a duty to act. The proposed provision itself says something different: That a statute must provide that the person has a duty to perform the act. This can hardly be intended. More often the duty will arise out of administrative regulations (for example the duties of railway personnel), of a contractual relationship (the nursemaid must see to it that the child does not hurt itself) or of the creation of a dangerous situation (he who has made a fire has to extinguish it before leaving). Whether the duty has a statutory basis or not seems immaterial.

The criminal liability for omissions is not specifically regulated in most European Codes. The Italian Code of 1930 has a provision in article 40, subsection (2) which comes close to the provision of the Study Draft: "Not to prevent an event which one has a legal obligation to prevent, is equivalent to causing it." The Greek Code of 1950 has a similar provision in article 15. The question has been thoroughly discussed during the preparations of a new German Code. By the Second

* In the Final Report this clause reads "unless he has a legal duty to perform the act".

Criminal Law Reform Act of 4 July 1969 [1] the following provision was inserted in the Criminal Code as section 13: "Anybody who fails to avert the harm specified by a penal law, is only punishable under this Code, if it was his legal obligation to avert the harm, and if the omission is tantamount to perpetration by commission."

The intent of the last words in the German provision is that not every omission in breach of duty incurs liability as a perpetrator, but only an omission which could reasonably be equalized with the normal perpetration through an act. This restriction seems to be well founded. It does not seem justified that every legal duty, for example every contractual obligation to avert a harm, should lead to criminal responsibility for causing the harm in case of breach of the contract. Suppose *X* comes across a man with a broken leg in the woods in wintertime, far away from people, and accepts an amount of money to go to the nearest village for help. Later *X* changes his mind and continues his trip, letting the injured man freeze to death. This is certainly reprehensible conduct, and many European Codes have specific provisions against the omission of bringing assistance to a person in danger of death, but can nonfulfilment of a promise make a man a murderer?

On the other hand it is doubtful whether a legal duty, existing independently of the penal provision, should always be a prerequisite to criminal liability. There are cases in which a moral obligation arising out of a personal relationship should not be denied protection by criminal law.[2] Of course, if a court declares a man guilty on the basis of an omission, this implies that he has violated a legal duty. But it can be asked: Is there criminal responsibility because there is legal duty, or is there legal duty because there is responsibility. If the reference to a legal duty as a prerequisite for punishability shall have a tangible meaning, it must be that there shall exist such a duty independent of the penal provision in question.

To conclude: the proposed provision, even if the term "statutory duty" is replaced by "legal duty," seems to go both too far and not far enough to give an adequate solution of the complex problem of criminal omissions, and that this is a field where it would be wiser to abstain from a statutory solution.[3]

It is noted that under section 401(1)(b) on complicity a person is considered an accomplice if, with intent that an offense be committed, "having a legal duty to prevent its commission, he fails to make proper effort to do so." The requirement of intent in this case will exclude the harsh results to which the provision would otherwise have led. It is not to be seen from the comment whether any difference is contemplated between (statutory) "duty" in section 301(2) and "legal duty" in section 401(1).

---

[1] The General Part of the German Criminal Code was totally revised by the Second Criminal Law Reform Act of 4 July 1969. This reform comes into force 1 October 1973. An intermediate and less thorough revision, coming into force partly 1 September 1969, partly 1 April 1970, was undertaken by the First Criminal Law Reform Act of 25 June 1969.

[2] *See, e.g., R. v. Instan*, 1 Q.B. 450, quoted in PAULSEN AND KADISH, CRIMINAL LAW AND ITS PROCESSES at 225.

[3] For a more detailed discussion I refer to my book, THE GENERAL PART OF THE CRIMINAL LAW OF NORWAY § 13 (1965).

C. KINDS OF CULPABILITY

Section 302(1) defines the different kinds of culpability: intentionally, knowingly, recklessly and negligently. "Willfully" comprises the first three kinds. According to subsection (2) the culpability required, if nothing else is stated in the specific statute, is willfully. This means that the most general line of division is between recklessly and negligently.

The Study Draft differs from the Continental tradition, which only has three main degrees of culpability: purposely, intentionally (broadly corresponding to knowingly in the draft) and negligently. Since intention (corresponding to "knowingly") is the kind of culpability ordinarily required, the most important line of demarcation goes between intention and negligence. Few Codes try to define the different kinds of culpability; normally this task is left to the courts and scholarly tradition. The German Drafts of 1960 and 1962 had definitions of purpose, intention and negligence, but they were omitted from the final text in the revision of the Code in 1969.

Negligence includes, in European systems, the conscious risktaking ("conscious negligence," roughly corresponding to the American "recklessness") as well as the inadvertent creating of a risk ("unconscious negligence"). It is conceded that the two forms of negligence are psychologically very different, but it is generally thought that it would be difficult in practice to distinguish between them. Sometimes specific penal provisions distinguish between gross negligence and ordinary negligence, but this distinction does not coincide with the distinction between conscious and unconscious negligence (see, for instance, section 18 of the German Draft 1960).

The solution of the draft simplifies the decision in some cases where European courts have difficulties in deciding whether the conduct is intentional or merely negligent, and where there has, perhaps, sometimes been a tendency to extend the concept of intention too far. On the other hand it seems that the distinction between recklessness and negligence must be difficult to draw in practice. As I read section 302 (2) (c) and (d), the objective deviation from the standard is the same for the two kinds of culpability: the conduct must represent "a gross deviation from acceptable standards of conduct." The difference lies in the degree of awareness in the actor. If *A* and *B* are driving equally wildly, and *A* is acutely aware of the risk he is taking whereas *B* trusts completely in his own competence and good luck, *A* could be convicted of manslaughter if somebody is killed, while *B* could be convicted of negligent homicide only. It seems that the court would be in great trouble making its decision about the state of mind of the offender, if it was not assisted by an admission from the defendant.

The draft requires a gross deviation from acceptable standards of conduct to establish negligence. European systems do not usually have this requirement, but in some—not all—countries it is accepted that there must be a greater deviation from the standard to incur criminal rather than civil liability. I sympathize with the solution of the draft with regard to offenses such as homicide, but I am more doubtful with regard to regulatory offenses. Here it seems to me that even a smaller deviation from the acceptable norm should incur liability. This is more appealing than to fall back on the traditional device of American law, strict liability. The definition in the draft seems to exclude such a flexibility of the negligence concept.

D. CAUSAL RELATIONSHIP BETWEEN CONDUCT AND RESULT

In section 305 the draft gives a definition of causal relationship. Although the concept of causation has attracted great interest in European literature of criminal law, legislatures have normally abstained from giving it a definition. The Italian Code of 1930 is an exception. In section 41 it gives rather complicated rules on concurrent causes, distinguishing between preexisting, simultaneous and supervening causes—rules which it is suspected, have created more difficulties of interpretation than they have solved.

The comment in the Study Draft mentions that an alternative approach would be to have no specific provision on causation, leaving the matter of judge-made law, but that the proposed section is intended to be an aid to uniformity and clarification. It is doubted whether the provision will be of much help. Legal questions concerning causality occur rather rarely in criminal cases. When questions of causation arise they will most often be questions of a factual nature, pertaining to the competence of the expert. But, although infrequent in practice, the legal questions may be very complex and not easily solved through one short formula. The proposed provision deals only with a part of the problem of causation. Thus it does not deal with the solution of cases in which the chain of causation has been of an irregular kind (the question of "adequate causation" in Continental terminology).[4]

The meaning of the provision is, if I interpret it correctly, that in the case of concurrent causes, the "but for" test should not be applied to each single cause, but to the concurrent causes taken together. If *A* and *B* each independently administer one ounce of a poison to the victim, and one half ounce is the lethal dose, the death would have followed even if either *A* or *B* had not acted. According to a strict "but for" test, none of them could be said to have caused the death, but according to the proposed provision they will both be held responsible. If *A* administered one ounce and *B* one quarter ounce, *A* will be responsible, whereas *B* can only be punished for attempted murder. If *A*, *B* and *C* each administer one quarter ounce they will all be responsible. If two or more persons have acted in complicity it is not section 305, but section 401 (complicity) or section 1002 (criminal facilitation) that applies.

I have no objection to these solutions, but have doubts about the application of the proposed rule when the unlawful act operates concurrently with a cause for which nobody is responsible, for instance a disease or defect, or an accident. *A* gives a sedative to a railroad signal man, with the effect that he is unconscious when he should have performed his duties. In the meantime a flood destroyed a bridge which he had to cross to perform his duties, so even without the sedative he would have been missing. Is *A* responsible if a railroad accident takes place? It seems doubtful whether in such cases responsibility for causation should be stated unless the unlawful act has led to a change (for instance with regard to the time or the circumstances of the result) which makes it natural to look upon the outcome as a different result from that which would otherwise have occurred.

I am inclined to think it would be wiser to delete the section and leave it to the courts to solve the problems.

[4] *See* ANDENAES, THE GENERAL PART OF THE CRIMINAL LAW OF NORWAY § 12. V.

E. COMPLICITY, FACILITATION AND CONSPIRACY

Section 401(1) defines the liability for accomplices. I have had some difficulties with the interpretation of these provisions, which do not seem to be drafted with the same clarity as most other parts of the draft.

Subsection (1)(a) deals with the case where one person acts through an innocent or irresponsible person—in Continental terminology the responsible person is here spoken of as "indirect perpetrator."* Subsection (1)(b) is apparently intended to cover the ordinary type of complicity, but as the paragraph is drafted, it seems to deal with the same category as subsection (1)(a). The difficulty lies in the words "such other person,"** which refers to the "innocent or irresponsible person" who is mentioned in the preceding paragraph.

There are two differences in wording between paragraph (a) and paragraph (b), the justification for which seems dubious.

Subsection (1)(c) defines as a separate category of complicity the case where a person "is a co-conspirator and his association with the offense meets the requirements of either of the other paragraphs of this subsection." This seems redundant and confusing. If the conduct of the defendant is covered under paragraph (a) or (b) it is immaterial for the question of guilt whether he is also a conspirator. The comment explains that subsection (1)(c) rejects the doctrine of *Pinkerton* v. *United States*, that mere membership in a conspiracy creates criminal liability for all specific offenses committed in furtherance of the conspiracy. If paragraph (c) is omitted it seems to follow from the principle of legality that liability as accomplice only exists when the requirements in paragraph (a) or paragraph (b) are met. Moreover, the intended result seems to follow explicitly from section 1004. If it is felt appropriate for the sake of clearness to mention the limited liability for conspirators also in section 401, it would be preferable to do it by a specific provision, rather than by listing the conspiracy cases as a separate category in addition to the categories mentioned in paragraphs (a) and (b).

In paragraph (a) the act of the accomplice is described as to *cause or aid* the innocent or irresponsible person to engage in the criminal conduct. In paragraph (b) the act is described as to *command, induce, procure, or aid* the other person to commit the offense. Is a difference intended between "causes" in paragraph (a) and the more detailed "commands, induces, procures" in paragraph (b), and if so, what should be the justification for this difference? The linguistic reasons which are given in comments to a similar provision in the Model Penal Code (Tentative Draft No. 1, at 16–17) are not perfectly convincing.

Secondly, the omission to prevent the commission of the offense is explicitly mentioned in paragraph (b), but not in paragraph (a). Is there any reason why the intentional omission, in breach of duty, to prevent the commission of an offense should be punished if the perpetrator himself is guilty, but not if he is innocent or irresponsible?

* In the Final Report, "an innocent or irresponsible person" was changed to "the other".

** In the Final Report, "such other person" was changed to "the other".

Several modern Codes have dropped the distinction between complicity to a guilty and to an innocent perpetrator, just stating in a general provision that the penalties provided in the specific provisions shall apply not only to the one who committed the act but also to any who furthered it by instigation, advice or deed.[5] This seems a simple and logical solution, which seems to work well in practice.

I note that the Study Draft deals differently with the two categories insofar as "the kind of culpability required for the offense" is sufficient for the accomplice to an innocent or irresponsible person, whereas "intent that an offense be committed" is necessary for an accomplice to a guilty person. Aiding with *knowledge* that the other intends to commit a crime is punishable, if at all, as the lesser offense of facilitation (section 1002). This distinction is foreign to modern European Codes, where the general rule is that the requirement of guilt is the same for the accomplice as for the perpetrator. If it is felt that justice requires a limitation of the accomplice concept to cases in which there is intent that an offense be committed, and accordingly that special provisions on criminal facilitation are necessary, the question is raised whether the same should not apply when the perpetrator is innocent or irresponsible.

It should be mentioned that in European Codes solicitation as well as participation in a conspiracy normally would be considered complicity if the offense is committed according to plans. If the offense is not committed, the soliciting or conspiring person could, according to most modern Codes, be punished for attempt, provided his activity has progressed beyond mere preparation which does not fall under the definition of criminal attempt. Conspiracy itself is only punishable with regard to offenses for which this is expressly provided.

F. MENTAL DISEASE OR DEFECT (SECTION 503)

The difficult problem of the effects of mental disease or defect is, as in the Model Penal Code, solved through the formula that responsibility is excluded if the person as a result of the disease or defect "lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." The formula comes close to the solutions chosen by several European Codes, for instance the German Code of 1871 (as amended in 1969) and the Swiss Code of 1937. The German Code has this wording (section 20):

> Anybody who at the time of the act is incapable of appreciating the unlawfulness of his act or of acting in accordance with such an appreciation, by reason of a morbid mental disturbance, a serious disturbance of consciousness, mental deficiency, or other serious mental abnormality, acts without guilt.

As will be noted, the German Code uses the expression "is incapable of appreciating" whereas the Study Draft has the expression "lacks substantial capacity to appreciate. . . ." It is not clear to me whether this is a real difference or not.

[5] *See, e.g.*, SWEDISH CRIM. CODE ch. 23, § 4; DANISH CRIM. CODE § 23.

It seems as if provisions of this type work reasonably well, and that psychiatrists feel competent to testify on the question whether the defendant was capable of appreciating the criminality of his conduct or of acting in accordance with such appreciation. In my opinion this is bound to be an illusion. When a mentally disturbed person does not conform to law I do not see how it could be decided whether this is because he was unable to conform or because he chose not to conform although he was able to. The test is of a metaphysical character. The law, by presupposing, in accordance with unreflected common sense, that the normal person has a power to act or not to act, builds upon an indeterministic hypothesis. Further it presupposes that the mentally disturbed person may lack this power, but it gives no real assistance to the determination of when this is the case. I therefore submit that when a court or a psychiatrist makes a decision on the basis of the test, what they really do is make a moral judgment: Was the man so deranged that it seems unreasonable or unjust to hold him criminally responsible? For this reason I find intellectually more satisfying the formula which was put forward as an alternative in the draft of the Model Penal Code: whether his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law "is so substantially impaired that he cannot justly be held responsible".[6]

Another way, which sticks closer to psychiatric diagnosis, is used by some of the Scandinavian Codes. The Norwegian Criminal Code states simply (section 44) that an act is not punishable if committed while the perpetrator was insane or unconscious. "Insane" here means psychotic according to psychiatric terminology. The law does not ask for a connection between the disease and the act; it is based on the view that such a connection must always be suspected when an insane person commits a crime, and that in any case the treatment of insane persons should be a matter of mental health, not of criminal justice. The Swedish Code has a more elaborate provision as chapter 33, section 2:

> For a crime which someone has committed under the influence of insanity, feeble-mindedness or other abnormality of such profound nature that it must be considered equivalent to insanity, no other sanction may be applied than surrender for special care or, in cases specified in the second paragraph, fine or probation.

As will be seen, this provision does not exclude responsibility altogether; some sanctions are prohibited, others allowed. Apart from this, the Swedish Code differs from the Norwegian Code on two points: it requires that the act has been committed under the influence of the mental abnormality; on the other hand the scope of the provision is extended to cover abnormality which cannot be diagnosed as insanity (psychosis), but must be considered equivalent thereto.

My personal preference would be a provision somewhat in between the Norwegian and the Swedish Codes: absolute exemption from criminal liability in the case of insanity (psychosis), but with an extension of this rule to cover mentally abnormal states which are

[6] MODEL PENAL CODE, comment at 27,157 (Tent. Draft No. 4).

profound enough to be considered equivalent to insanity. I realize, however, that the workability of the system may be highly correlated to the organization of forensic psychiatry. In the Scandinavian countries the defendant is always examined by court-appointed psychiatric experts whenever there is a suspicion of mental illness or defect, and organizational measures are taken in order to secure a uniform terminology and practice. Thus, in Norway there is established a Commission of Forensic Psychiatry which examines the written reports of the experts and makes the comments it may find appropriate. In the United States the situation is very different.

G. SELF-DEFENSE (SECTIONS 603–607)

One cannot but be struck by the difference in drafting techniques between European Codes and the Study Draft on this subject. European Codes tend to deal with the subject in short provisions in general terms, whereas the Study Draft has very detailed provisions, dealing separately with self-defense, defense of others, and defense of premises and property, and within each of these categories it makes distinctions between the use of deadly force and other force. The provision of the German Code (as amended by the Criminal Law Reform Act of 4 July 1969) on self-defense (including defense of others and defense of property), consists of 30 words only (section 32). In addition there is a section on marginal transgression of the limits of justification, consisting of 17 words (section 33). The Swedish Code deals with the subject in more detail (chapter 24, section 1), but is nevertheless very short as compared with the Study Draft. Contrariwise, the provisions of the German Code which correspond to the sections of the Study Draft on "conduct which avoids greater harm" (section 608) and "duress" (section 611)* are rather more elaborate than their American counterparts (see sections 34–35 of the German Code).

I note these differences without drawing any conclusions. For the person engaged in defense of himself or others I do not think a detailed statutory regulation gives more guidance than a provision framed in general terms, leaving more to sound judgment and common sense. But for judge and jury the detailed statutory solution gives, of course, more stringent guidance than general formulations (compare the remarks of Professor Schwartz in the Study Draft at lxi–lxii. And it may well be that the situation in American Federal law, described as "non-statutory and chaotic" (Study Draft at lxi, and the reformative goals of the draft, make a highly detailed statutory regulation appropriate.

H. MISTAKE OF LAW (SECTION** 610)

The draft has a rather narrow description of circumstances under which mistake of law excuses from criminal liability. As far as the provision goes no objection could be made. Some European Codes have taken a bolder course. In Norway the rule, as worked out by the Supreme Court in interpretation of the relevant provision of the

*Study Draft section 608 was deleted in the Final Report, Study Draft section 611 is Final Report section 610.

**Study Draft section 610 is Final Report section 609.

Criminal Code, is that ignorance of law excludes liability when it is "excusable," which here means the opposite, not of "inexcusable," but of negligent. The ignorance of law exonerates if no blame or fault can be attributed to the offending person. Thus the principle of blameworthiness or fault as a prerequisite for criminal liability is upheld also in this connection. In Germany the same rule has been accepted by the Federal Supreme Court after World War II, and it is now given statutory force in the Criminal Code (section 17), as amended in 1969. The provision reads as follows:

> If the perpetrator in committing the act lacks the understanding to be acting unlawfully, he acts without guilt provided he was unable to avoid the mistake. If he could have avoided the mistake the punishment may be mitigated in accordance with § 49, subsection (1).

The well-known Swedish Professor Thornstedt in his remarkable monograph on mistake of law, after a thorough discussion of various solutions, comes to the conclusion that the solution thus embodied in Norwegian and German law—"the doctrine of fault"—is to be preferred "de lege ferenda." A person who has shown reasonable care in observing the law should not be declared guilty of a criminal offense, and Thornstedt does not think that law enforcement should have to suffer through this solution, provided the requirement of heedfulness is made relatively severe.[7] Experience from Norway and Germany would seem to support this view.

The comment of the Study Draft (at 47) explains that not even the limited defense defined in section 610 is available for infractions where proof of culpability is generally not required. It seems to me tough justice to inflict a fine or other sanction, be it called punishment or not, on a person who has acted in good faith on the words of a statute, a judicial decision, an administrative order, or an official interpretation by the appropriate public authority.

III. THE SENTENCING SYSTEM

A. GENERAL REMARKS

The sentencing system is a battlefield of differing ideologies and assumptions concerning the functions and possibilities of punishment. It is also a field in which American experiments have met with great interest and exerted a considerable influence in Europe. Of the proposals in the Study Draft some are in accord with the prevailing trend in European systems whereas others, especially the sections on indefinite sentences, run counter to them.

According to section 3001 the sentencing provisions of the draft are applicable to "every person convicted of an offense against the United States". I assume from the context that "offense against the United States" here means offense falling under Federal jurisdiction, and that the provision does not contain a substantive limitation as section 109 (ae)* might seem to indicate.

[7] For a fuller discussion with reference to the book by Thornstedt, *see* Andenaes, *Ignorantia Legis in Scandinavian Criminal Law* in ESSAYS IN CRIMINAL SCIENCE (Mueller, ed. 1961).

*Study Draft section 109 (ae) is Final Report section 109 (an).

The draft does not contain a general statement on the purposes of sentencing, but inferences can be drawn both from the section on General Purposes of the Code (section 102, especially subsections (a) and (c)) and from the criteria mentioned for the applications of special sanctions, for example, section 3003 on persistant misdemeanants, section 3101 on probation and section 3202 on extended terms for felonies.* For comparison it might be interesting to quote the general statements on sentencing in two modern Codes, which represent very different philosophies of criminal law, the Swedish and the German.

The Swedish Code of 1962, chapter 1, section 7 provides:

> In the choice of sanctions, the court, with an eye to what is required to maintain general law obedience, shall keep particularly in mind that the sanction shall serve to foster the sentenced offender's adaptation to society.

The German Code, section 46, as amended by the Second Criminal Law Reform Act, 4 July 1969, provides:

> The guilt of the offender is the basis for the choice of punishment. The effects of the punishment which are to be expected on the future life of the offender in society, are to be taken into consideration.

Subsection (2) of the provision contains an enumeration of circumstances which the courts must take into consideration, for example, the motives and goals of the offender, his previous life and his conduct after the act, especially his endeavors to make amends for the harm.

B. CLASSIFICATION OF OFFENSES (SECTION 3002)

The draft classifies offenses into six categories: three classes of felonies, two classes of misdemeanors, and the category of infractions which is not further classified. Infractions are declared to be noncriminal.

This classification is much more detailed than the classifications which are found in European Codes. Most Codes only have two or three classes, for example, crimes, delits and contraventions in the French Code and Verbrechen, Vergehen and Ubertretungen in the German Code. Some codes have no classification at all, but speak uniformly of crimes or offenses, for instance the Danish and the Swedish Code, or English law after the Criminal Law Act of 1967. German law has, in the post World War II period, in addition to the three categories of criminal offenses, created the noncriminal Ordnungswidrigkeit, which may be the closest parallel to the infractions of the Study Draft.

The classification in the draft has purposes different from those of the classifications in European Codes. The purpose of the latter classifications is threefold: (1) to have denominations which express the greater or lesser gravity of the offense, (2) to facilitate technically the restriction of some rules to one or two of the categories (for example, that only attempt of a crime, not attempt of a misdemeanor, is punished), (3) to work as a demarcation line for procedural purposes. The classification in the draft, on the other hand, has its main purpose in defining the limits of punishment. The classes are primarily categories of maximum punishment. The classification of European Codes has no corresponding function, since each criminal provision contains the maximum, and sometimes the minimum, penalty. (For example, robbery is punished with imprisonment from 6 months to 10 years; larceny is punished with imprisonment up to 3 years.)

A direct comparison of the draft with the classification of European Codes therefore is of little interest. The classification of offenses in the draft is one aspect of the sentencing system, but an aspect which can be isolated and discussed apart. The question could be put thus: is it preferable to express the statutory maximum punishment directly in each criminal provision or through reference to one of a limited number of categories? I do not consider this a very important question, since the court will have a wide range of choices within each category. The choice of category therefore will not strongly restrict the choice of maximum term. Moreover, there will exist a possibility of reducing the category (section 3004).* The designation of an offense as felony or misdemeanor represents an exemption from this flexibility. The maximum term fixed by the court for a felony will be at least 5 years (3 years imprisonment and 2 years parole, *see* section 3201(3)), whereas the maximum term for a misdemeanor will be—dependent on further consideration of the draft—1 year, 6 months or 3 months (section 3204 and comment at pp. 286–7).** Especially if one of the two last terms are decided upon by the legislature there will be a gap between the most serious sentence for a misdemeanor and the most lenient sentence for a felony, and I understand that the draft purposely has tried to avoid an intermediate sentence—"one too short for rehabilitation but longer than necessary for shock purposes" (Study Draft at 290).

It appears from the comment that the draftees of the Study Draft felt little doubt about the advantages of the classification system, and that similar classifications have been provided in other modern American Code revisions (Study Draft at xxii, xxxiii and 268). Nevertheless I feel inclined to prefer the traditional European solution. It seems to be simpler, and I see no real advantage in confining the choice of the legislator to six defined steps on the ladder. The comment to the draft refers to and exemplifies the chaotic and inconsistent categories in present Federal law (Study Draft at xxxii–xxxiii and 268). But as indicated there this state of affairs is the result of historical accident, not of considered judgment. When sentencing maxima are contemplated in the setting of a systematic and comprehensive Code there is no reason to expect inconsistencies or chaos because the limits for judicial discretion are fixed in connection with each offense. And it may well be that there is greater need for judicial discretion in one type of offense than in another—that one type

*In the Final Report, "Extended Terms" was changed to "Upper-Range Imprisonment".

*This section was deleted in the Final Report and appears only as bracketed subsection (6) of section 3001.

**In the Final Report the maximum term for a felony does not have to be 5 years; it may be any term up to the statutory maximum. The statutory maximum fixed for a Class A misdemeanor by the Final Report is 1 year with 6 months in brackets. All statutory maxima are set forth in Final Report section 3201.

of offense covers a wider range of gravity than another. I am aware that the classification system has some terminological functions in formulating various rules (for example, sections 607, 3301 and 3105), but I do not think this is essential.

C. PROBATION AND UNCONDITIONAL DISCHARGE

Section 3101 gives the court wide discretion to sentence to probation (or unconditional discharge) for all categories of offenses, and, in subsection (2), restricts the application of prison sentences to cases in which such a sentence is called for by one of the reasons enunciated under subparagraphs (a), (b) or (c).

This regulation differs from traditional European Codes in several respects, but is, on the whole, in harmony with recent trends of law reform. I shall briefly comment on some points.

1. *Form of Suspended Sentence.* When suspended sentences were introduced on the European continent towards the end of last century it was in the form of suspension of execution of a fixed prison sentence. The sentence may or may not be combined with supervision by a probation officer. This is still the dominant form, but law revisions in several countries in the post World War II period have, inspired by English and American law, introduced suspension of sentence as an alternative. This is the case in Denmark, Norway, and Sweden. (In Germany, on the other hand, this alternative has been discussed, but not accepted.)

The difference between such modern legislation and the Study Draft is that the Study Draft does not give the court the possibility of measuring out a fixed prison term, the execution of which is suspended. I realize that this would not fit in well with the system of indefinite sentences which the draft establishes for felonies, but I am inclined to think it might be a useful alternative in the field of misdemeanors. I mention that English law introduced suspension of execution of sentence as an alternative through the Criminal Justice Act of 1967.

2. *Choice Between Suspended and Unsuspended Sentences.* In Continental Codes the unsuspended sentence has traditionally been considered as the rule, suspension of sentence as an exception which needs justification. In practice, however, the suspended sentence has in many countries become the normal sanction against first offenders who have committed less serious crimes. And newer Codes tend to accept suspension of sentence as a normal or even preferable choice for the judge.

3. *Restrictions on the Use of Suspended Sentences.* European Codes used to have rather strict limitations on the use of suspension of sentence. Suspended sentences were, for instance, excluded for serious crimes, for prison terms of more than 3 (or 6 or 12) months, and for persons who had previously served a prison sentence. The development in recent reforms goes towards the relaxation or abolishment of such restrictions. The formulation of Study Draft section 3101 (2) seems to me very adequate. It could be asked whether the list of factors to be considered (subsection (3)) is very useful, but it certainly does no harm.

4. *Supervision.* It is not explicitly stated in the draft whether a sentence of probation always includes supervision by a probation officer or another fit person, but as far as I know this is traditionally

considered an essential part of probation. Modern European Codes give the judge the choice of establishing supervision or not. In many cases where a suspended sentence is adequate, supervision of the offender seems quite useless, as for example, when a middle-aged housewife is convicted of shoplifting. Economy as well as the wish to avoid unnecessary humilitation of the offender seems to commend the possibility of a suspended sentence without supervision. In the Swedish Criminal Code, probation (chapter 28) is always combined with supervision, but if supervision seems unnecessary the court may hand out a suspended sentence without supervision (chapter 27, section 1).

5. *Periods of Probation.* Section 3102 fixes the period of probation at 5 years for felonies, 2 years for misdemeanors and 1 year for infractions. The comment to the provision says that the draft changes present law in denying the court the power to fix initially a shorter period of probation.

In Continental Codes the modern tendency has been to shorten the periods of probation. Thus the Norwegian Code in 1955 changed the normal period from 3 to 2 years but empowers the court to go up to 5 years in special cases. The Danish Code, as amended in 1961, provides "not more than 3 years", but under exceptional circumstances up to 5 years. The Swedish Code has a fixed period of 3 years. The German Code, as amended in 1969, authorizes a period of at least 2 and at most 5 years.

6. *Unconditional Discharge.* The power of the judge to grant unconditional discharge is unknown in most European Codes, and in most countries legislators would probably be hesitant to introduce this institution, because of fear that the public would not grasp clearly the distinction between acquittal and discharge. However, both the Swedish Code of 1962 and the German Second Criminal Law Reform Act of 1969 authorize unconditional discharge under certain circumstances. The Swedish Code, chapter 33, section 4(3), provides: "A sanction may be completely dispensed with, if because of special circumstances it is found obvious that no sanction for the crime is necessary." The German law (Criminal Code, section 60) has a more narrow scope. It authorizes an unconditional discharge only "when the consequences of the act, which have hit the offender, are so serious that the imposition of a penalty would obviously be out of place.")

Personally I do not feel strongly about the objections raised against the institution of unconditional discharge. On the other hand a suspended sentence which does not fix a penalty and does not impose supervision comes very close to serving the same function as an unconditional discharge.

D. DEFINITE AND INDEFINITE SENTENCES

The draft makes a fundamental distinction between felonies and misdemeanors with regard to the sentencing system. A sentence of imprisonment for a misdemeanor shall be for a definite term, fixed by the court. A sentence of imprisonment for a felony, on the other hand, shall be indefinite.* The maximum term is fixed by the court within

*In the Final Report, a sentence of imprisonment of more than six months, whether for a felony or a misdemeanor, is indefinite. A shorter sentence is definite whether for a felony or a misdemeanor.

certain limitations. The ordinary maximum prison term for all categories of felonies is 3 years (in addition to a parole component of 5 years for Class A felonies, 3 years for Class B felonies and 2 years for Class C felonies).* Extended terms of up to 25 years' imprisonment for Class A felonies, 12 years for Class B felonies and 5 years for Class C felonies can be imposed under the conditions specified in section 3202(2), but the reasons must then be set forth in detail.** Normally the sentence has no minimum term, but for Class A and Class B felonies the court may under exceptional circumstances impose a minimum term. The release date will be determined by the Board of Parole.

In European Codes the prison sentence for all types of offenses is for a definite term, but with certain powers for the prison authorities to grant parole after the prisoner has served, for example, two thirds or one half of the term. Indefinite sentences are known in the form of measures of safety and rehabilitation, which may be imposed on special categories of offenders, for instance mental defectives or persistent recidivists, and which are not considered as punishments.

Up to World War II the principle of indefinite sentences was met with great interest among many European penal reformers. The idea that the offender should be kept in prison as long as necessary for his reform, not longer and not shorter, is easy to grasp and gives the penal system a seeming rationality which is felt lacking in the ordinary meting out of punishment. The trend has, however, definitely changed. Few European criminalists would, today, favor a system of indefinite prison sentences. In fact the indefinite sentences for certain categories of offenders (the measures of safety and rehabilitation) have come increasingly under attack.

The reasons for this change of trend might be summarized as follows: (1) There is a breakdown in the belief that a hospital analogy can be applied to a prison. Criminological research has shown that many beliefs have been based on wishful thinking, and has made us realize that we know little about how to reform offenders, and still less about the criteria for deciding that reform has been achieved. (2) It is felt that decisive decisions about a man's life should be taken by the courts, working in the light of publicity, not by administrative agencies, behind closed doors and without procedural safeguards. (3) An indefinite sentence is considered to be a harder strain on the prisoner than a sentence where he can calculate the day of his release. (4) Experience seems to show that the so-called measures for safety and rehabilitation have come to sweep in a great many petty recidivists, more a nuisance than a danger to society, thus violating the principle of a reasonable proportion between offense and sanction (although the measures, as previously mentioned, are not considered as punishment).

E. SENTENCING FOR MISDEMEANORS

The different principles applied for misdemeanors and felonies in the Study Draft is motivated by the different aims of punishment in the two categories.

*There is no "ordinary maximum term" in the Final Report for all classes of felonies. Additionally, in the Final Report, the parole component is not statutorily fixed according to the class of felony, but rather, is generally one-third of the term actually imposed. See section 3201.

**In the Final Report, a hearing must be held.

For misdemeanors deterrence is the only end to be served, since neither the time available under misdemeanor sentences nor the place where such sentences are served, lend themselves to educational programs; for incapacitative purposes short sentences are inadequate. Since no reeducation or rehabilitation program is or can be undertaken in short terms, there is no occasion to measure the prisoner's progress towards reform with a view to early release. (Study Draft at xxxiv and 286–287.)

I have three comments; none of them contradicts the conclusion of the draft that a system of definite sentences is preferable for misdemeanors: (1) Deterrence refers both to the effect on the prisoner and on others who might be tempted to violate the law. This sometimes seems to be forgotten in the comments to the draft. It is stated that there "is growing awareness that misdemeanor sentences longer than six months, and even longer than three months, serve little, if any, penological purpose, may harm rather than help the prisoner, and thus impose unnecessary drains on the correctional system" (Study Draft at 286). Even if a three months' sentence has as good or better effects on the offender than a longer sentence, this does not preclude that the longer sentence may have a superior and useful general deterrent effect (as implicitly accepted at xxxiv). (2) Deterrence should not be taken in a narrow sense, comprising only the conscious fear, but should also include the moral effects of penalization—criminal law as a means of creating and strengthening moral inhibitions against socially reprehensible conduct.[8] The graduation of sentences may have a certain function in this direction. (3) It seems unduly defeatist when the comment to the draft categorically excludes the rehabilitative purpose of short sentences. As will be seen from the next section of this paper, I am not a strong believer in rehabilitative effects of imprisonment. However, penological literature gives examples of interesting therapeutic experiments in short term institutions. Certainly, many misdemeanants do not need any kind of "treatment" or "rehabilitation" plan—this will apply for many white collar offenders. In many other cases lack of time, resources and, above all, knowledge make possibilities small. But all this should not exclude an effort to do whatever possible. To deprive a man of his liberty for several weeks or months is such a far reaching infringement on his life that there seems to be a kind of duty for society to do whatever it can to help him solve the emotional and social problems which may have brought him to prison. This question may look somewhat different from, say a Scandinavian perspective, where only a small fraction of offenders are sentenced to more than one year of imprisonment, than in the United States which has relied so heavily on long prison sentences.[9]

The comments to the draft express the opinion that if the maximum for misdemeanors is fixed at 1 year, provisions permitting parole of a defendant after serving 6 months should be considered (*see* p. 287). I wholeheartedly agree with this suggestion. Scandinavian Codes au-

[8] *See* Hawkins, *Punishment and Deterrence: The Educative, Moralizing and Habituative Effects*, 1969 WIS. L. REV. 550.

[9] Thus, in Norway in 1968, 2,055 persons were sentenced to unconditional imprisonment for felonies, but only 157 sentences were for more than 1 year, and only 8 for more than 3 years. Of the more than 3000 prison sentences for misdemeanors the great bulk were for less than 3 months.

thorize release on parole for considerably lower sentences. This question has been the subject of coordinated legislation in all the Scandinavian countries in recent years. In Denmark, Finland, Norway and Sweden the rule now is that a prisoner is eligible for parole when he has served two thirds of the sentence, but at least 4 months. The great majority of prisoners are released on this date; only when special circumstances make release inadvisable is the date of release postponed, and perhaps the whole term served. When special reasons so warrant the prisoner may be released after having served half of the sentence, at least 4 months. This rule is used rather restrictively, and has its most important field of application for long prison sentences. The German Code, section 57 (as amended in 1969) has rules similar to the Scandinavian laws, but the minimum term which has to be served before release is here fixed at only 2 months.

I note that the draft has no minimum for a prison sentence, and since the maximum for a Class B misdemeanor is 30 days, I take it that the great bulk of misdemeanor sentences will be of very short duration. The question of an absolute minimum is not mentioned in the comments (but is perhaps discussed in the Working Papers). Many modern European Codes try to avoid the very short prison sentences, which are thought to degrade the offender and expose him to undesirable prison acquaintances without having a great deterrent effect. The reasoning is that if the offense does not necessitate more than a few days of imprisonment a fine may be sufficient. The Swedish Criminal Code of 1962 establishes 1 month as a minimum, and the same applies for the German Code, as amended in 1969 (section 38). In Norway a minimum of 21 days was introduced through the Criminal Code of 1902, and I do not think there would be any sympathy for a change. It is difficult to say whether the reasons which have been invoked against the very short prison sentences are valid. I know of no research which could validate or negate them, but in any case the question seems worthy of serious consideration.

The German Code, section 47 (as amended in 1969) provides that imprisonment under 6 months shall be imposed only if it is considered necessary because of special circumstances concerning the commission of the act or the person of the defendant. I am inclined to think that this goes too far and is based on unsubstantiated beliefs in the superiority of long prison sentences as compared with short ones.

F. SENTENCING FOR FELONIES

For felonies the comment indicates that the draft takes rehabilitation as its point of departure. Thus the shortest maximum prison component for a felony is fixed by statute at 3 years, "because a useful rehabilitative program frequently takes several years, and the necessary period of confinement cannot be determined in advance" (comment, at 280).* The date of release will be determined by the Board of Parole "based on the prisoner's progress". The comment further speaks of the time when a prisoner is "ready for release", "the optimum term for release". Extended sentences (section 3202) mainly perform an incapacitative function.

*The Final Report does not fix a shortest maximum prison component for felonies.

These statements reflect the rehabilitative ideology which lies at the bottom of the system of indeterminate sentences. If the basic premise is accepted that the goal of prison reform, and that the prisoner should be kept there as long as necessary to achieve this goal, it inevitably leads to a system of indeterminate sentences, since it must be admitted that the prison administration, which has followed the development of the prisoner during the execution of the sentence, is in a better position to judge his future behaviour than the judge at the trial stage.

Personally I am highly skeptical of a system basing release on the progress of the prisoner. An appraisal of the principle of indeterminacy involves both value judgments and empirical questions. Perhaps the main points could be summarized in the following three questions:

(1) Is the principle compatible with justice? An unqualified acceptance of the principle of indeterminacy could lead to the release of a murderer as soon as the necessary examination has been performed, whereas a petty offender might be kept for a lifetime. In fact, homicides are often committed under circumstances which make repetition of the crime seem very unlikely; on the other hand many petty thieves seem next to incorrigible.

(2) Is the principle compatible with considerations of general prevention, meaning both the purely deterrent and the educative functions of criminal law in the community? Is it not more important to deter serious crimes than more trivial ones, and therefore better to grade the community disapproval inherent in the sentence according to the gravity of the crime?

(3) Is it really possible to diagnose with any reliability when the offender is reformed and thus ought to be released under the rehabilitative theory? Research of recent years, both on the prison community and on the relative effectiveness of various sanctions, has created serious doubt about the rehabilitative possibilities of prison. The destructive influence of fellow inmates and the prison atmosphere works strongly against the efforts of the prison personnel. There is little evidence that a long prison sentence has a rehabilitating effect stronger than that of a short sentence. The traditional skepticism against short prison sentences seems as well founded against long sentences (exception made for the very long sentences which consume the active years of the prisoner). Still more important in this connection: there is little evidence that it is possible from the conduct of the prisoner to tell what real progress he has made and what is the best moment for release. In some cases, especially those including a psychiatric aspect, there may be a reliable basis for determining the right moment for release. In other cases the whole ideology of reform and rehabilitation seems quite out of place, for instance when an officer or a scientist is convicted of delivering defense secrets to a foreign power. In some cases, for example murder out of unhappy marital relations, one may say with great certainty from the beginning that there is a very small risk of recidivism. In many other cases, for example cases of repeated larceny, it is equally clear that prospects for the future are bad whether the offender is kept for a long or a short period. Modern techniques of prediction afford possibilities of giving a reasonably good prediction about the success rates of inmates, but this is a prediction irrespective of the term served. We have little basis

for relating the chances of success to the length of time served. In the Scandinavian countries most prison staff, including prison psychiatrists, would agree with these propositions. It is possible that American prison staffs have more advanced methods of treatment and of assessing the effects of treatment. If this is so, it is the more admirable since American institutions normally are much bigger and have a more unfavorable staff-inmate ratio than Scandinavian institutions.

The preceding discussion refers to the principle of indeterminacy as stated in the comment to the draft, and does not have the same validity with regard to the draft itself. Through the grading of offenses, the draft has accepted that the length of the sentences of imprisonment must rest in part upon the seriousness of the crime, and thus the draft limits the degree of indeterminacy. And a scrutiny of the criteria for parole reveals that the system of the draft is not really based on the principle of an assessment of the progress of the prisoner, but on a more workable scheme.

After 1 year (or any minimum term) the prisoner is to be released unless the Board of Parole finds that his release should be deferred for one of the four reasons stated in section 3402. The first reason is that there is a substantial risk that he will not conform to reasonable conditions of parole. The most important condition is that the parolee not commit another crime during the period of parole (*cf.* § 3404). A substantial risk will in fact exist in the majority of cases.[10] As I read the draft, this does not in itself exclude release, but only when the Board is of the opinion that release ought to be deferred for this reason. If the Board finds that a prolonged stay in prison would be in disproportion to the gravity of the offense it may grant parole although the chances of success are not too bright. It is certainly not in the spirit of the draft to prolong the institutionalization of relatively minor offenders indefinitely because they are, and in all probability will continue to be, poor risks.

The second reason stated in section 3402 for excluding release is that release at that time would unduly depreciate the seriousness of his crime or promote disrespect for the law. This refers to the general deterrent and, perhaps, retributive function of punishment. The question of a reasonable proportion between crime and punishment will here be in focus.

The third reason deals with the effect of the release on institutional discipline. Indeterminacy of sentence is, in this case, used as a means of discipline, which may be perfectly reasonable, but has little to do with the effects of the prison on the offender.

Only the last of the stated reasons is based on the idea of the rehabilitative effects of the treatment in prison. Release may be deferred if the Board finds that "his continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is

[10] The commentary to the Model Penal Code states that data on parole violation is unsatisfactory, but the data presented seems to indicate that about one-half of the paroles from State institutions are revoked during a period of 3 to 4 years. *See* MODEL PENAL CODE 118–120 (Tent. Draft No. 5). For the recidivist group the risk is of course considerably greater.

released at a later date." As previously stated I am skeptical with regard to the possibility of making assessments of this kind, at least apart from special cases of personality disorders. It is, of course, difficult to foresee how the Parole Board will exercise its discretion. But from the text of the draft it seems reasonable to infer that release after 1 year (or the minimum period) will be standard procedure unless this is felt to be too lenient, considering the seriousness of the crime. And the same goes for the later reconsiderations of the parole question, which are to take place at least once a year (*cf.* section 3401).

These somewhat loose speculations may or may not be correct. What seems undeniable is that the decision on release cannot be taken on the basis of the prisoner's progress alone, but will be the outcome of a compromise between different aims of punishment. The prevailing view in Europe, in any case in the Scandinavian states, would be that decisions of this kind ought to be made by the courts, not by administrative agencies. The difference between the system is mitigated by the power of prison authorities in Europe to grant parole after the prisoner has served part of his sentence, but the difference is still of great importance.

There are, however, two features of the penal system in the United States, which may make the indeterminate sentence, and the corresponding authority for the Board of Parole, more attractive than it would be in a European setting. The first is the great discrepancies in the sentencing policies of American courts (*cf. infra*, under Apellate Review of Sentence). In European states there are ample opportunities for judicial review of sentencing. This results in fairly uniform sentencing practices; to leave the decision of the length of imprisonment to a Parole Board would be felt to be a serious impairment of judicial safeguards. In the United States this is different. Under American conditions the transfer of authority from the courts to a Parole Board could mean more uniformity, not less.[11]

The second feature is the wide use of very long sentences by American courts, even for crimes which are not very serious. May it be that, historically, the indeterminate sentence in the United States has functioned as a device to bring down the actual terms served in prison? Another device effectively serving the same end is the eligibility for parole after having served only a small part of a fixed sentence, for instance one third or one fourth of the sentence. The difference between a "fixed" sentence of this kind and an indeterminate sentence is purely formal.

[11] "Indeed, the original purpose of the indeterminate sentence law of California was less to permit an 'individualization' of treatment by a central board than to 'equalize' sentences which under older legislation had been imposed by judges, each of whom used his own standard so that prisoners arrived from different courts with sentences of sometimes very different length for the same crime."

Thorsten Sellin, *The Adult Authority of California as a Sentencing and Parole Board* (a research paper prepared for The American Law Institute, not printed). The release practices which Sellin describes in his paper no doubt contribute strongly towards the end. Paradoxical as it may seem, the Adult Authority could be said to perform a function similar to that of an Appeal Court of Sentencing.

G. SENTENCE OF DEATH OR LIFE IMPRISONMENT

The Study Draft has not made a definite decision whether to recommend retention of the death penalty, but chapter 86 has provisions for the eventuality that the answer is affirmative. In this case life imprisonment will be an alternative to the death penalty. If the death penalty is abolished the maximum penalty will be the 30 years prescribed in section 3201 (including 5 years as a parole component).*

(1) With regard to the death penalty I should only like to make one point. The animated discussions on the subject have mainly concentrated on capital punishment for murder. In my view there is a much stronger case for capital punishment for treason, espionage and sabotage. I mention three reasons: (a) The interests which the sanction is intended to protect may be much greater in the case of these political crimes than in the case of murder. Acts of treason, espionage or sabotage, committed by a trusted member of the civil or military leadership, or on an organized, fifth column scale, may endanger vital national interests and the lives of thousands or even millions of citizens. (b) The deterrent effect of the death penalty for murder is reduced by the fact that the crime is often committed under exceptional circumstances of tension and excitment, or by people who are used to taking ultimate risks (gang murders and gang warfare). Acts of treason, espionage or sabotage usually represent well planned conduct, often committed by otherwise respectable, middle-class people. It seems reasonable to assume that the deterrent effect of the threat of the death penalty has greater possibility of making itself felt under these circumstances. (c) I take it for granted that the death penalty will be retained in martial law. In wartime, and in the preparation of war, acts of civilians may be as detrimental to the interests of defense as acts by members of the armed forces. The wisdom of making an absolute distinction with regard to punishment seems to me doubtful.

In Norway, capital punishment for ordinary crimes was abolished by the Criminal Code of 1902; in fact no death sentence had been executed since 1876. In the Military Criminal Code capital punishment was retained in time of war, and when the legislation on treason and other political crimes was revised in 1950 it was felt that, with a view to experiences of modern warfare, the restriction to armed forces and wartime was no longer appropriate. Accordingly the law now authorizes the death penalty for "war treason"—a concept which comprises also espionage and sabotage—for civilians as well as for military personnel, and not only in time of war or military attack but also under certain specified conditions with a view to a future attack.

(2) European Codes usually have imprisonment for life as an alternative for the most serious crimes. On the other hand the upper limit of other prison sentences is often much lower than the 30 years of the draft, for example 10 (Sweden), 15 (Germany) and 20 (Norway). A sentence for life does not exclude parole or reprieve. In the Scandinavian countries in the last decades the average time served

*In the Final Report, abolition of the death penalty is recommended with life imprisonment as the maximum penalty for treason and intentional murder. The bracketed alternative would retain the death penalty for treason and intentional murder with life imprisonment or 30 years as the sentence if death were not imposed.

of life sentences has been around 11 years in Norway and Sweden, 13 in Finland and 14 to 15 in Denmark. Served times of more than 15 years are most exceptional. This means that the difference between a sentence for life and a sentence for a definite number of years is not as great as could be expected on the face of it. Whether there will, in acual practice, be a difference in time served between a 30-year sentence and a sentence of imprisonment for life will depend on the rules on parole for those sentenced to life. Nor do I think it has much bearing on the deterrent effect whether a sentence is for 30 years or for life, although the latter alternative may have a somewhat stronger psychological impact. Consequently, I do not consider it a very important question whether the maximum term of imprisonment is fixed at 30 years or at life, and if the last alternative is chosen, whether the maximum of sentence not for life is, say, 20 or 30 years. It may be only an effect of habit that I personally would prefer to retain the possibility of a sentence for life, and on the other hand have a limit shorter than 30 years for other sentences.

H. CONCURRENT AND CONSECUTIVE TERMS OF IMPROVEMENT (SECTION 3206)*

The section continues the authority of a Federal court to impose either concurrent or consecutive terms in the case of conviction for more than one offense, but tries to restrict the use of consecutive sentences and fixes an aggregate maximum of such sentences. The proposed provision will no doubt substantially reduce the irrational and sometimes harsh results of the present system. A more radical, and in my view more rational solution would be to abolish altogether the choice of the court between concurrent and consecutive terms, and ask it to fix a joint sentence for the several offenses. It is hard to understand how a judge can mete out the sentence for several offenses without taking into account whether they are to be served concurrently or consecutively. The fixing of a joint sentence is the solution which has prevailed in the modern Scandinavian Codes. See, for instance, the Swedish Criminal Code, chapter 1, section 6:

> Unless otherwise provided, a joint sanction for the crimes shall be imposed when someone is to be sentenced for several crimes.
>
> If there are special reasons for it, a person may be sentenced for one or more crimes to pay a fine together with a sanction for additional criminality, or to imprisonment together with conditional sentence or probation for the rest of his criminality.

The same principle is adopted in German law. (See the German Criminal Code, sections 53–55, as amended in 1969.)

The statutory maximum term for multiple offenses is somewhat extended as compared with the term for one offense only. (See, for instance, the Norwegian Code, section 62 and the Swedish Code, chapter 26, section 2.)

*Study Draft section 3206 is Final Report section 3204.

I. FINES (CHAPTER 33)

Section 3302(1) prescribes that in determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual. This seems to be a just and reasonable principle, which is in accord with modern European Codes. I infer from section 3001(4) that the principle applies also to convicted organizations, and that here the financial resources of the organization will be decisive, but the use of the expression "financial resources of an individual" in section 3302(1) makes me feel some doubt about the meaning.*

The dollar limits in section 3301, which range from $10,000 for a Class A or Class B felony to $500 for a Class B misdemeanor or an infraction will, however, substantially restrict the application of the principle of subsection (1), in a way which might be attacked as a protection of the well-to-do offenders. Moreover it may be argued that a high maximum of fines may be ever more necessary for misdemeanors and infractions, sometimes consisting of sizeable economic dispositions, than for the crimes categorized as Class A and Class B felonies. Rather narrow limits of fines have been the tradition from a time with a different social organization than our own, but several modern Codes go further than does the draft in authorizing fines which make it possible to apply the principle of section 3302 also against a rich offender. Some Codes do it through the system of day fines, originally a Swedish device. The sentence of a fine falls, according to this system, in two parts: (1) the imposition of a number of day fines which expresses the seriousness of the offense, and (2) the amount of every day fine, which is proportioned to the financial resources of the offender. In the Swedish Code the maximum number of day fines is 120, and the maximum amount of each day fine is 500 Swedish kroner. The German Code, as amended in 1969, authorizes up to 360 day fines, with a maximum of 1,000 DM for each day fine, that is a compounded maximum of 360,000 DM. The Norgegian Criminal Code has not adopted the day fine system, but in 1946 abolished all maxima, on the grounds that minima and maxima for the fine are in contradiction to the idea that the fine shall be proportioned to the financial resources of the offender. It seems difficult to understand why is should be necessary to severely curtail the power of the courts with regard to the imposition of fines when they are entrusted with such broad discretion with regard to imprisonment.

It is true that in many cases much higher fines than those authorized under section 3301 (1) of the draft will be possible as alternative measure under subsection (2), but there may well be a need for higher limits also in cases which are not covered by subsection (2). Thus, under subsection (2) a person who has been convicted of an offense through which he derived pecuniary gain, may be sentenced to a fine up to twice the gain so derived. The comment mentions that subsection (2) will be particularly useful for economic offenses—offenses such

*In the Final Report, "individual" was changed to "defendant".

as pricefixing, tax evasion, currency smuggling, share pushing or other offenses which may represent tempting financial propositions come to mind. But the magnitude of the offense and the necessity of a stern economic sanction may be the same even if the plan has been thwarted, so that only a small gain or none at all has actually been achieved. The comment mentions that it might be desirable to set a separate and higher fine limit for organizations for use when subsection (2) is unsatisfactory. With the low fine limits in subsection (1) this seems a reasonable proposition. But I am inclined to think that the most rational solution would be to abolish all fine limits altogether or at least to fix them at a level which would make them suitable for corporations as well as for individuals.

Section 3302 (2) is intended, according to the comment, to discourage the use of fines, unless some affirmative reason indicates that a fine is peculiarly appropriate.* Fine is thus made a "second choice." The wording of the provision, which makes it a condition for using a fine as the sanction "that the fine alone will suffice for the protection of the public "leads one to think of the choice between fine and imprisonment. But section 3101(2) restricts the applicability of imprisonment, giving a certain priority to probation, and it is not clear to me what the effect of the two provisions taken together will be.

In at least several European countries it is considered a goal of penal reform to restrict the use of short prison sentences, *inter alia* by an extended use of fines (see for instance the German Code, section 47.2). The comment to section 3302 gives as reasons for the reserved attitude toward the use of fines that fines do not have affirmative rehabilitative value and that the impact of the imposition of a fine is uncertain, for example, it may hurt an offender's dependents more than the offender himself. This is not entirely convincing. It is true that a fine can work only as a deterrent, but this does not mean that it is ineffective. A great many of the offenders who may be eligible for a fine do not need rehabilitation, but a stern admonition. In research on the comparative effectiveness of various sanctions the fine fares well, not only in comparison with prison, but also in comparison with probation. Thus, the English criminologist Nigel Walker states that "it is worth noting that there is no direct evidence whatsoever to suggest that this (*i.e.*, a fine) is less effective than a reformative measure such as probation; indeed, prima facie, the opposite seems to be the case." [12]

I am inclined to think it would be better to delete subsection (2) of section 3302, thus leaving the choice between a fine and other measures to the discretion of the court. The same applies for subsection (3) which deals with fines in combination with other sanctions.** In the Scandinavian countries a fine in combination with a suspended prison sentence has in recent years been frequently used where a suspended sentence alone is felt to be too lenient and an unsuspended sentence unnecessarily severe.

[12] NIGEL WALKER, SENTENCING IN A RATIONAL SOCIETY (London 1969). Walker refers especially to the research carried out by W. H. Hammond of the Home Office Research Unit.

*This subsection was deleted in the Final Report.

**In the Final Report subsection (3) was merged with subsection (1).

J. APPELLATE REVIEW OF SENTENCE

To a European observer it seems that perhaps the most serious weakness in present criminal justice in the United States lies in the lack of a consistent and uniform policy of sentencing. For similar crimes different courts give highly different sentences, perhaps based on different philosophies of punishment. Whereas appellate review of sentence is taken as a matter of course in European systems, the traditional American approach has been that sentencing belongs basically to the province of the trial court. Only recently has the question of appellate review of sentences attracted more widespread interest.

For these reasons the provision of the Study Draft (28 U.S.C. § 1291) is to be welcomed. It is, however, hard to understand why the power of the appellate court should be restricted to reducing the sentence given by the court below. The comment gives no reason for this restriction. In European systems it is taken for granted that the appellate court has power to correct errors both ways, except that many of the Codes of criminal procedure deny the court the power to increase sentence when only the defendant has appealed.

COMMENT

by

DR. MIRJAN DAMASKA

COMPARING STUDY DRAFT OF PROPOSED NEW FEDERAL CRIMINAL CODE TO EUROPEAN PENAL CODES

(Dr. Mirjan Damaska, Professor of Law, University of Zagreb, Zagreb, Yugoslavia, September 26, 1970)

I. PROBLEMS OF CRIMINAL JURISDICTION

A. THE ALLOCATION OF PENAL JURISDICTION BETWEEN STATE AND FEDERAL GOVERNMENTS

As regards the delineation of law enforcement responsibilities between a Federal government and its constituent units, European Federal systems differ so much from that of the United States that the comparative perspective may hardly be a source of illumination to those who grapple with the complexities of American law in this field. A few illustrations will justify the broad statement.

In the Soviet Union, for instance, the Federation has the power to pass only "fundamental principles" (osnovy). The constituent republics promulgate their Criminal Codes upon these fundamental principles. The fundamental principles are binding on the republics, but are limited to the enunciation of doctrines generally found in the "general part" of Continental Codes. No definitions of specific offenses are contained therein. Thus there is actually no Federal criminal law. Arguably the Federation could pass individual penal statutes in a limited number of areas.

In the West German Federal Republic the constituent units (Laender) may enact criminal statutes only in matters not covered by the very comprehensive Federal Penal Code applicable in all of Germany. The traditional principle obtains that "Federal law prevails over State law" in criminal matters (Bundesrecht bricht Landesrecht). Only in a few areas (such as fish and game laws, offenses affecting the preservation of forests, etc.), is the reverse true: Federal law applies only in the absence of State law. As a result West German criminal law is by and large Federal.

Prior to the constitutional amendments at the turn of the century, jurisdictional problems in Switzerland were similar to those found in America. Presently, however, criminal law is in the Federal legislative domain; individual cantons may only create some (not all) petty offenses, and pass criminal statutes in a few areas. Thus, in Switzerland substantive criminal law (as opposed to the laws of evidence and procedure) is, as a rule, within the Federal legislative jurisdiction.

One more point should perhaps be added. Those accustomed to thinking of Federalism in American terms would probably find it difficult to relate European to American jurisdictional problems in this area on account of different court organizations. For example, neither in West Germany nor in the Soviet Union are there separate hierarchies of Federal and State courts.

B. DISTINGUISHING BETWEEN CRIME DEFINITION AND JURISDICTIONAL BASE

The analysis of the authors of the Study Draft by which they arrived at differentiating between crime definition and jurisdictional base is not unknown to Continental lawyers. They were sometimes led to follow very similar lines of thought, although in different contexts and for different reasons. Occasionally a term or phrase was inserted in a Code description of an offense which was obviously without penological significance. Rather it was intended to indicate a prerequisite to prosecution (Prozessvoraussetzung) or to furnish what came to be called in German speaking countries "an objective basis of culpability" (die objektive Bedingung der Strafbarkeit). Realizing this, Continental lawyers declared that such terms (phrases) fell outside the crime definition (Tatbestandt). As a result, proof was no longer needed that the defendant knew or should have known the circumstances indicated by the term (phrase). The analogy is obvious.

C. EXTRATERRITORIAL FEDERAL JURISDICTION

It is on this question that American law, and to a lesser extent English law, are opposed to the legislation of much of the rest of the world. It is almost everywhere recognized that there are several points of contact between a criminal case and the jurisdiction upon which the applicability of domestic criminal law may be based. The first is that the criminal offense occurred within the territorial limits of the country. This is the territoriality principle, which is usually the starting point in the assertion of jurisdiction. The second "contact" is the fact that the offense (committed abroad) was perpetrated by a citizen of the country claiming jurisdiction. This is historically the oldest principle, the "personality principle" (iura ossibus inhaerent). In West Germany it is the basic principle pursuant to which Germany has jurisdiction over a case (Penal Code art. 3). The third contact lies in the fact that the criminal offense, though committed abroad, affected very important interests of the country claiming jurisdiction. This is the protective principle (Realprinzip). Lastly, an increasing number of modern criminal Codes provide for jurisdiction on the universality principle (système de compétence universelle), whereby most heinous crimes committed by a foreigner abroad without affecting important domestic interests may be prosecuted, on condition that the actor is not extradited. (The principle is "aut dedere aut punire.") The first three principles at least are so widely accepted in contemporary systems that they are often referred to as "principles of international criminal law."

Traditional American concepts of jurisdictional reach are based on a projection of the medieval English notion that the defendant must be tried by a jury of the vicinage in which the crime was committed.

Thus, domestic law applies (and jurisdiction may be claimed) only with respect to acts which occurred within the jurisdictional territory. True, this rigid and restrictive approach is subject to a number of exceptions. For example, section 208(c) of the Study Draft would be classified by Continentals as expressing the "protective principle." Also, courts have developed the idea of "constructive occurrence" within the jurisdiction thus spreading the jurisdictional reach over crimes which actually occurred abroad. Nevertheless, Continentals would consider traditional common law jurisdictional notions less rational than their own, disguising real policy issues by fictions. The present writer is, of course, aware that departures from the traditional approach may be declared unconstitutional by American courts.

II. THE SENTENCING SYSTEM

A. CLASSIFICATION OF OFFENSES

Classification of offenses is quite common in Europe and civil law jurisdictions in general. However, cross-jurisdictional comparison of classification systems in the comman and the civil law may be meaningless or misleading if the purposes of classification are disregarded. Even casual reflection reveals that these purposes are not the same even within a single Criminal Code. For example, the Study Draft distinguishes among three basic classes of offenses, and subdivides two of them into subclasses so that six types of offenses result. Two basic classes—felonies and misdemeanors—arguably still carry the connotation of "very serious crime" and "less than serious crime" with vestigial consequences flowing from this discrimination. The five classes within the felony and misdemeanor groups were established for the obvious purpose of providing ranges of punishment for offenses falling therein. The third basic class, that of infractions, has been provided for quite a different reason. It was thought useful to discriminate between criminal and noncriminal offenses.

Only for the last distinction is there a ready analogue in the civil law. The idea that one should discriminate between criminal and noncriminal punishable conduct is quite old on the Continent. An early example is the distinction, found in eighteenth century German legislation, between "criminal penal law" (Kriminalstrafrecht) and "police" or "administrative penal law" (Polizeistrafrecht, Verwaltungsstrafrecht). The bulk of what in the jargon of the day was called "crimina mere prohibita" were entrusted to the administration rather than the courts of law. The administration was authorized to impose fines and even short terms of imprisonment. Under the French system, the least serious class of offenses (contraventions) was considered criminal, but handled by special courts (tribunaux de simple police), rather than the administration. Special courts were established to disencumber the higher courts and allow them to reserve their dockets for serious crimes. The first Penal Code of unified Germany of 1871 discarded the German tradition, incorporated administrative offenses into the Code as the lowest class of criminal offenses (Uebertretungen), and brought them within the jurisdiction of courts of law. This arrangement was subject to vigorous criticism with the rise in this century of regulatory offenses. After 1945 the Germans

reverted to the old system and reestablished non-criminal infractions (Ordnungswidrigkeiten) handled by the administration. However, in contrast to the old system the administration is no longer authorized to impose prison terms, and may only impose fines. For reasons that need not detain us here "Uebertretungen" which existed at the time of reform remained in the Penal Code as the lowest category of crime. This arbitrary division of petty criminality is obvious to German lawyers and reform movements are afoot. The Draft Code of 1962 would delete "Uebertretungen" and include them among administrative infractions. The situation in Austria is quite similar: some petty offenses are handled administratively, some tried by the lowest courts of original jurisdiction. Administrative offenses are also known in Italy (illicito amministrativo). They exist in all Eastern European countries and in the Soviet Union. In 1958 even the French introduced changes into their system. The least serious category of offenses (contraventions) was declared to be a matter of administrative regulation rather than subject to legislation.

Thus, it may be said that Continental countries typically classify regulatory and minor, merely annoying offenses into a special group. Conduct falling therein is either handled by the administration or tried by special courts. The reasons advanced in favor of such system are essentially the same as those voiced in the United States. It is felt that some types of conduct, although punishable, do not deserve to be branded as criminal, and it is feared that the serious nature of criminal convictions may be diluted in the sea of triviality. Also noted is the need to clear the dockets of those courts which consider really serious crimes. Scholarly opinion is almost unanimous in approving the discrimination between criminal and noncriminal offenses, notably in such areas as traffic offenses, economic offenses, etc. Where noncriminal offenses are handled by the administration, those systems in which sanctions more severe than fines may be imposed are usually criticized. There is, however, an argument advanced on the Continent in favor of a separate noncriminal class of offense which does not apply in America. It is the argument that corporations—as a rule not subject to criminal sanctions—may be punished for administrative infractions. In contrast to the Study Draft, Continental "infractions" are not offenses of strict liability, but, culpability requirements are somewhat changed so as to facilitate conviction, and occasionally presumptions of guilt are established (for example, in France). This difference between the Study Draft and Continental law should not, however, be overemphasized. Perculiarities of the Continental law of evidence and procedure make it much easier to arrive at a finding of culpability than is the case in the United States, and civil law jurisdictions can afford the luxury of retaining the idea of culpability even in an area in which assembly line justice prevails.

Coming to the division of criminal offenses by the Study Draft into five classes, it must be observed that such a division has no real counterpart in Continental criminal law. True, where classification of criminal offenses exists, it is predicated on differences in the punishment threatened for the offense. But the purposes of classification are not identical. The classification in Europe originated in procedural considerations: offenses of different gravity were entrusted to different courts and somewhat different rules of procedure were devised. Also, classification

become a useful tool in drafting the "general part" of Continental Codes. For example, in drafting culpability requirements different rules were contemplated for different classes of offenses. In defining specific crimes, Continental Codes also provide the framework of punishment for every individual offense. Thus, classification is not used, as in the Study Draft, as a convenient shorthand way of providing ranges of punishment for individual offenses. In contrast to the Study Draft, definitions of offenses are accompanied, on the Continent, with frameworks of punishments for each criminal offense. Bearing this different classification purpose in mind, one can easily understand why Continentals never established more than three classes of criminal offenses, and some jurisdictions do not classify criminal offenses at all. The tripartite system which originated in France, can also be found in jurisdictions such as Greece, Austria, Belgium, some Swiss cantons and a number of Latin American countries. The bipartite system has been adopted by Italy, Holland, Portugal, Spain, and some Latin American countries such as Colombia and Venezuela.[1]

The law of Eastern European countries, as well as Danish and Swedish law, does not recognize any division of criminal offenses. But, as noted above, most of the latter jurisdictions do differentiate between criminal and noncriminal punishable acts. It follows from our presentation that comparison with the Continental system on this score is not fruitful. Having studied the present Study Draft, a Continental lawyer would probably agree with the proposition that five grades of offenses—if established for the purpose the drafters had in mind—are not too many. It would seem to the author that the number of classes does not exceed the number appropriate for a rational choice of sanction. It does not lead to arbitrary distinctions among criminal offenses in regard to punishment prescribed.

B. LEGISLATIVELY PRESCRIBED MINIMUM SENTENCES

It is quite common for Continental legislators to prescribe minima for sentences for specific crimes. But, in contrast to present American Federal law such minima are not mandated and do not preclude release on parole. It is generally felt that the legislator cannot foretell all the concrete mitigating circumstances which may appear in a given case. The provision of the Russian Criminal Code of 1960 (Article 43) is quite typical of Continental legislation on this point:

> If the court, taking into consideration the exceptional circumstances of a case and the personality of the guilty person, deems it necessary to assign a punishment less than the lowest limit provided by statute for the given crime or to resort to another milder type of punishment, it may permit such mitigation but shall be obliged to indicate its reasons.

Similar provisions may be found in the French (article 463), Swiss Federal (article 64), and Yugoslav (article 42) Penal Codes and in almost all other European jurisdictions. Not a single instance is known to this writer in which a Continental legislature by providing a minimum sentence also precluded the normal use of parole.

[1] A wealth of data on various classification systems of criminal offenses may be found in III JIMENEZ DE ASUA, TRATADO DE DERECHO PENAL 123 *et seq.* (2d ed. 1958).

Discussion has heretofore been directed at the usual case in which the Continental legislature provides a framework within which the judge sets the sentence. In a few rare instances some Continental jurisdictions still provide legislatively fixed sentences. Thus the Swiss Federal and West German laws provide for mandatory life imprisonment for murder. However, this relic of nineteenth century criminal legislation is subject to so much criticism that reforms may soon be expected. If is only in these rare instances that the Continental judge has no leeway in fixing the punishment.

C. SENTENCING BY THE JUDGE

In the Study Draft, classification of criminal offenses into six groups pertains to those decisions about sentencing which fall within the province of the legislature. Within a class of offense, the decision on sentencing falls on the judge. It is in this area that there is another pronounced difference between the Study Draft and criminal legislation in Europe. The Study Draft adopts the indefinite sentence, quite common in American jurisdictions. Those who seriously espouse a multiple purpose theory of punishment would readily endorse this system of sentencing. The judge is strongly influenced by the deterrent and possibly retributive aspects of punishment and can only speculate as to how the convicted person will respond to treatment in the correctional process, so it would seem only natural that the final decision about sentencing should be reached by the correctional authorities. While this allocation of roles in determining punishment among various agencies is approved by many Continentals, notably criminologists, Continental legislation as a rule rejects the indeterminate sentence system. The arguments advanced by Continental lawyers in support of such rejection do not carry much weight in the scheme of values prevailing among American lawyers. They are for the most part ideological, seldom utilitarian. Notwithstanding doctrinal pronouncements to the contrary, deterrent and latent retributive considerations in setting the punishment still prevail.

Also punishment must be commensurate with culpability (guilt). As the latter is determined by the judge he should also set the sentence. Response to the correctional process should play only a very limited role in that the prisoner may be permitted to serve the last part of his determined sentence outside the institution (parole). It is also often stated on the Continent that indefinite sentences are inhumane (even if the maximum term is set), and that the convicted person "has a right" to know the precise time of release from the institution. But, even if most Continentals would grudgingly agree—if pushed very hard by criminologists—that mere maximum sentencing by the judge be adopted, they would still be strongly opposed to the proposition that the definite duration of the imprisonment term be determined by correctional authorities. It would seem to them as a postulate of the "legality principle" that this decision be reserved for the judiciary (the judge who supervises the execution of sentence). Why is this so? It would seem to the writer that this mistrust of correctional authorities is rooted in Continental history (absolute monarchy, police state), during which correctional authorities were (and often still are) attached to the police and hardly considered as guardians of the rule

of law. Probably as a result of this general climate of opinion, correctional authorities in most European jurisdictions (with the possible exception of some Scandinavian countries) are hard pressed for qualified and well trained personnel to which important decisions regarding punishment could be entrusted.

Notwithstanding the opposition thereto, indeterminate sentences can still be found on the Continent, usually accompanied by the proviso that the final decision on discharge must be entrusted to the judiciary. Viewed from the American perspective, indeterminate sentences are as a rule adopted covertly. They are classified by Continentals as either "security measures" or "educational measures," pertaining to protective rather than punitive law. This distinction, cherished by Continentals, does not say very much to Americans unfamiliar with the "dual track" system.[2] Also, on a realistic and functional view of punishment, security and educational measures consisting of deprivation of liberty are punishment indeed.[3] Indefinite sentences, labelled as measures, exist in Belgium under the 1964 statute on social defense. Indeterminate sentences can be found somewhat more frequently in criminal law relating to juveniles (West Germany and Yugoslavia, for example). Only two instances are known to the author where indeterminate punishments, classified as such, appear in Continental legislation. The Greek Code of 1950 (articles 90 and 91) provides indeterminate sentences in regard to habitual offenders and professional criminals. The other piece of legislation is still on the drawing board. It is the Portuguese Draft Criminal Code (Correia Draft), which, in its article 94, provides indeterminate sentences.

D. PAROLE

With the exception of Scandinavia,[4] Continental criminal legislation still clings to the traditional model of parole, release of the prisoner prior to expiration of his sentence, on condition of good behaviour. In addition, not all Continental jurisdictions make the parole decision a matter for correctional authorities. Thus, for example, in France the decision is made by the Ministry of Justice, and an important role in the decision making is played by the judge who supervises the execution of sentence. In West Germany and all of Eastern Europe the decision to release the prisoner is in the province of the judiciary. Whatever the competent authority, only those prisoners who behave well in the institution are eligible for conditional release. But, because in the majority of Continental European countries there is very little parole supervision, the paradox referred to in the Introduction to the Study Draft (p. xxxviii) is very seldom thought of as a serious problem: neither the unsafe nor the "good" prisoner are under effective supervision after release. Even so the mandatory parole

---

[2] A good description of the dual track system, attuned to the cognitive needs of American lawyers, can be found in SILVING, THE CONSTITUENT ELEMENTS OF CRIME 26 (1967) [hereinafter cited as SILVING].

[3] This is not to say that the distinction between "measures" and "punishments," even if mostly verbal, is without significance in Continental systems. *Compare* Silving, *Toward a Contemporary Concept of Criminal Justice*, 4 ISRAEL L. REV. 491 (1969).

[4] *See* SWEDISH PENAL CODE, Pt. 3, § 7 (1965) on "mandatory probation."

component of all extended prison terms is—where known—highly praised as a useful "transition period" between imprisonment and full freedom. It is quite probable that only the shortage of parole supervision officers prevents some European countries from adopting the system recommended by the Study Draft.

E. CUMULATIVE SENTENCING

The Study Draft departs from conventional Continental views on the problem of multiplicity of offenses, charges and convictions. Clarity of presentation could perhaps be increased by discussing all these problems together with provisions on cumulative sentencing. Even so, following the system adopted by the Study Draft, cumulative sentencing will be discussed separately. In order to avoid undue complexity the presentation shall be limited to instances in which several prison sentences are contemplated by the judge.

A number of systems of punishment in cases involving more than one conviction were developed in the civil law. Under one of them, a unitary sentence (Einheitsstrafe) is set for all offenses, without any indication as to which portion of the unitary sentence relates to the individual offenses. This system is often advocated by the proponents of the "treatment view" of punishment, but does not seem to be much in favor with lawyers. If one of the convictions covered by the unitary punishment is pardoned or reversed, intricate questions arise. Still, the system has been adopted by the 1953 West German Statute on Juvenile Courts.

In a number of jurisdictions the system of "absorption" prevails. Here only the sentence for the gravest crime is actually imposed. Such is the case in France (article 5 of the Penal Code), Austria (articles 23, 35, 267 of the Penal Code) and for a special type of crime multiplicity in West Germany. Also all jurisdictions following the Soviet pattern of criminal legislation (article 35 of the Fundamental Principles of Criminal Legislation) have adopted this system, but in the court's discretion an alternative system may be applied.

The prevailing solution is for the judge to impose separate sentences, but there is a branching off at this point. In one of the possible variants individual sentences are merely added up. This is the old system of cumulation of sentences which prevailed in Europe prior to the French Revolution. It can still be found in Italy (article 73 *et seq.*, article 81 of the Penal Code) and, as an alternative to absorption, in jurisdictions following the Russian pattern. Mere addition of individual sentences is criticized by scholarly opinion on the ground of its severity; as with wholesale purchases, it is thought that the defendant deserves a "discount." The other variant is more common and probably favored over all other systems. In this variant the judge, having set the individual sentences, proceeds to determine an aggregate (total) sentence by aggravating to a variously defined maximum the gravest sentence, never to exceed or even reach the sum total of individual sentences. Illustrations of this system can be found for all cases of crime concurrence in Switzerland (article 356 of the Penal Code) and Yugoslavia (article 46 of the Penal Code), and for a type of crime concurrence in West Germany (section 74 of the Penal Code).

The system of concurrent running of sentences is unknown to the civil law countries. Thus, the question arises as to how the Continental systems relate to the system recommended by the Study Draft. In instances in which the latter bars consecutive sentencing (for example, section 3206(2)(a), (b)),* there is to a Continental mind only one offense[5] and accordingly only one sentence may be imposed. Although in the civil law there may—in this situation—be only one charge and conviction, from the defendant's point of view the practical results are similar. Where, under the Study Draft (section 3206(4)),** consecutive sentences may be ordered, it would appear at first blush that Continental lawyers would consider the draft's solution as corresponding to the much criticized "cumulation system." Due to the limits placed by the draft on maximum terms, cumulation will often be impossible and the practical results will resemble the system of "aggravation." Since the concurrent running of sentences is contemplated by the draft as a rule, Continentals would be inclined to treat this solution as amounting in essence to the "absorption system." The latter is often criticized by scholarly opinion as disregarding "additional culpability" stemming from the commission of more than one offense. But the weight of the argument depends on one's views of the role culpability must play in the determination of punishment.

F. FINES

Chapter 33 of the Study Draft very favorably compares with the most advanced Continental legislation in the area. This seems particularly to be the case with provisions on response to nonpayment. Concerning the assessment of the fine, the attempt obviously is to reduce the inequity of fines by scaling fines according to the financial situation of the defendant. Here, however, some Continental legislative ideas may be of interest, even if the Thyren system is not forgotten.

Even if one has regard to the financial resources of the defendant in assessing a fine, equal treatment need not result. An impecunious defendant may feel a very small fine much more than a wealthy defendant does a much greater one in absolute terms. A German law professor has recently suggested a possible solution to the resulting inequality. Fines should be expressed in days (Laufzeit Geldstrafe) on which the defendant is reduced to a minimal standard of living.[6]

G. ADDITIONAL OBSERVATIONS ON SENTENCING PROVISIONS

1. The ranges of prison sentences for misdemeanors of the B class seem very short indeed when viewed from the perspective of modern penological thinking and legislative trends. The commentary to section 3204 of the Study Draft*** accurately notes that doubts as to the

*Study Draft section 3206(2) (a) and (b) is Final Report section 3204(2) (b) and (c).

[5] *See infra*, comments concerning defenses against unfair prosecution (prosecution for multiple related offenses).

**Study Draft section 3206(4) is Final Report section 3204(5).

[6] *See* J. BAUMANN; KLEINE STREITSCHRIFTEN ZUR STRAFECHTREFORM 217, 218 (1966).

***Study draft section 3204 appears as part of Final Report section 3201.

value of short jail terms prompted proposals to abolish them altogether. It should be added that under recent amendments to the German Penal Code (1969) most prison sentences under 6 months were replaced by fines. Imprisonment for periods under 7 months has been totally eliminated.

2. The ban on increase of sentence at retrial (or upon the proposed appellate review of sentence) reflects not only modern American opinion on the subject, but also cherished and deeply felt Continental convictions that it is unfair to "put the defendant to the Hobson's choice" of either accepting errors committed at trial or appealing with the possibility of deteriorating his position. The ban is known in the civil law under the label of "prohibition against disadvantageous change" (prohibition against "reformatio in peius"). The ban is found with minor variations in all civil law countries. In some (such as Japan) it is even embedded in the Constitution. The only country temporarily to abolish the prohibition was Germany during the Nazi era. Following the end of World War II it was reinstated in the West German procedural law (article 331 of the German Criminal Procedure Code).

It must be stated, however, that the civil lawyers would never insert the ban into a codification of substantive criminal law. Because of the great store set by them on systematic purity, the situs of section 3006 of the Study Draft* (not the contents thereof) would surprise them.

3. What has just been said also applies to the Study Draft amendment of 28 U.S.C. § 1291, which introduces appellate review of sentences. While such review is of long standing in civil law jurisdictions from Japan to the Soviet Union to Spain, the natural situs of the provision is in the law of procedure.

III. Basis of Criminal Liability

A. omissions

The Study Draft provision on commission of an offense by omission raises a few questions from a comparative perspective. Although it is commonplace that civil law systems place far fewer limitations on crimes by inaction than do common law jurisdictions, the draft's limitation of responsiblity for omissions to cases where there is a *statutory* duty to act sounds unusual to a comparativist.** Are duties arising from previous action by the defendant, or duties not provided in a statute but still legal, not covered? It may be said that the draft's regulation is only fragmentary, but if this is so it could perhaps be stated. Otherwise interpretation problems may result. (Expressio unius exclusio alterius.) It would appear to the writer that the reference in section 401(1)(b) of the draft to "legal duties" in dealing with omissions provides much more leeway for decisional law.

On the other hand, the language of section 301(2) may, in a specific instance, have a broader reach than many civil laws on the subject. Suppose a statute imposed a duty to render assistance to a person in danger. X disregards the duty and Y dies. Many important civil law jurisdictions would not be prepared to find X guilty for homicide. Rather they would convict him under specific statutes punishing "failure to render assistance." [7]

*Study Draft section 3006 is, with certain chanes, Final Report section 3005.

**In the Final Report what is required is "a legal duty to perform the act" not a statutory duty.

Section 401(1)(b) deals in the last clause with a problem pertaining to criminal omissions and is also broader than many representative civil criminal laws. There cannot be complicity by omission in France and probably not in West Germany either.[8]

B. secret criminal laws

This provision has no parallel in Continental legislation. Continental statutes cannot take effect without official publication.

C. causation

In the Continental scheme, problems of causation would be regulated before problems of culpability, as they precede them in the Continental order of analysing a criminal case. However, almost all European Criminal Codes do not define causation. The only exception known to this author is the Italian Penal Code. Many reasons are advanced for this. Some of them are not very persuasive. But, as long as the legislature has not thought through the relationship between exemption on the ground of lack of causation and exemption on the ground that there is no culpability, civil law experience would seem to indicate that causation is better not defined by statute to avoid interference with scholarly and decisional development. Also fragmentary regulation may create confusion.

IV. Provisions of Culpability

A. general observations

"General parts" of civil law Codes usually define only two basic kinds of culpability: intent and negligence. The latter is subdivided into advertent negligence (most of the situations the Study Draft classifies as recklessness) and inadvertent negligence (negligence as defined by the draft). Intent is also subdivided, but these subdivisions differ from jurisdiction to jurisdiction. One can only very broadly state that Continental intent encompasses states of mind which, under the Study Draft, would fall under intent, knowledge, and possibly even gross recklessness. The "special part" of Continental Codes usually speaks of some qualified degrees of intent (purpose, premeditation, etc.). Decisional law and scholarly opinions on all these types of culpability and their differentiation have assumed such proportions that it is impossible without gross oversimplification even to describe the dimensions of problems. Fortunately, it seems to this writer that

[7] *Compare*, the decision of the West German Supreme Court as reported in 11 Neue Juristische Wochenschrift 390 (1958). "Failure to render assistance" is quite a common offense in modern Continental legislation. Where it exists it rules out homicide law as a "lex specialis."

[8] For France, *see* the decision of the Cour de Cassation in the *Veuve Theuriot* case, Recueil Sirey, Jurisprudence I, 65 (1952). In Germany one cannot be a coprincipal by omission (unless he is acting through an innocent agent) and it is hotly disputed among scholars whether or not one can be held as an accomplice. *See* Armin Kaufmann, Unterlassungsdelikte 291 (1959).

Continental law with its traditional types of culpability has little to teach. It is based on largely obsolete psychology. Perhaps the culpability types under the Study Draft are more in tune with modern behavioural insights, at least in their core meaning if not in all details of definition. Thus, rather than attempting to present Continental doctrines of culpability, a few somewhat more specific observations of the draft's provisions concerning culpability will be made.

B. STABILITY VERSUS INSTABILITY OF THE MENTAL ELEMENT OFFENSES

In the view of a number of civil law lawyers, including this writer, the A.L.I. Model Penal Code has made an improvement over traditional Continental thought on the mental element in individual offenses. Its drafters realized that the mental element of a single offense may vary in regard to various definitional elements. (See comments to section 2.02 of the A.L.I. Model Penal Code.) If one can say that *X* desires to have intercourse with his sister (purpose as to intercourse) it is psychologically grotesque to say that he desires or wants her to be his sister. In incest cases it is knowledge that the woman is *X*'s sister that suffices. If this writer reads section 302(3)(a) of the Study Draft correctly, the latter seems to have retained the conventional view that culpability requirements remain stable in regard to one offense.* If this is so, the A.L.I. Model Penal Code approach would seem preferable.

C. "TRANSFERRED INTENT" AND "ABERRATIO ICTUS"

In medieval Continental decisions and scholarly opinion it was not required that intent be directed to a definite object. Rather "general intent" to cause harm sufficed. Under this view, in the "erroneous hit" (aberratio ictus) situations, *X* was guilty of intentional assault of *B*, if he intended to injure *A* but missed and hit *B*. It is settled in modern civil law that intent must be directed to a specific object as required by statutory definitions of offenses. Accordingly, "erroneous hit" situations are treated in the civil law exactly as under the draft. *X* is guilty of reckless assault on *B* and attempted assault of *A*.

D. PROVISIONS ON MISTAKE AND IGNORANCE[9]

Until recently, civil law systems have opposed the distinction between mistake of fact and mistake of law, but the distinction has of late either changed its meaning or come under serious criticism. We shall leave aside doctrines that would equate the two types of mistakes.[10] What remains is the changed meaning of the opposition of the two kinds of mistakes. Today the distinction is usually made between mistake about circumstances falling within definitional elements of an offense, and mistake about the fact that one's conduct is prohibited by

*The Final Report added "except that where the required culpability is 'intentionally, the culpability required as to an attendant circumstance is 'knowingly'" to study draft section 302(3)(a).

[9] For the sake of simplicity, mistake and ignorance are not distinguished in the following text.

[10] As an example of this radical and quite perceptive view in the common law world, see SILVING, *supra* note 2, at 370.

law. The first type is called "mistake of fact description" (Tatbestandsirrtum), the other "mistake regarding prohibition" (Verbotsirrtum). As regards mistake of fact description, it is irrelevant whether the error relates to fact perception or norm application. If an element of statutory crime description calls for a legal evaluation, erroneous norm application is treated just as an ordinary error of "factual" perception. This is the reason why the old labels "mistake of fact" and "mistake of law" may be misleading and are increasingly replaced by new terms. The Study Draft still refers to factual and legal mistake, but it is obvious that the actual opposition comes close to the new Continental distinction. (For example, section 304 recognizes legal error if warranted by a crime definition.)

Important differences between the Study Draft and civil law seem to follow from the draft's provisions on error concerning ordinary and affirmative defenses, inasmuch as justifications and excuses from Part A are concerned. For the sake of simplicity we must disregard important procedural differences stemming from the fact that Continental excuses and justifications are not defenses from a procedural point of view.[11] Remaining thus on purely substantive law grounds, differences still seem to be quite substantial. Under modern Continental law, mistake is treated equally no matter whether excuses, justifications or definitional elements of an offense are in issue.[12] Let us quote as an example the provision of section 20 of the 1962 West German Draft Penal Code:

> Anybody who in committing an act mistakenly assumes a state of affairs which would justify or excuse that act, shall not be punished for intentional [in the Continental sense] commission. He will be punished for negligence [in the Continental sense] if he can be blamed for such mistake, provided that negligent commission is punishable at all.

Compare the wording of section 302(3)(d) of the Study Draft to the German Draft. Add the provision of section 303 of the Study Draft. The gap seems to be wide. Upon analysis, however, the two systems are not too far apart.

As regards ordinary defenses, section 609 of the Study Draft* makes the reasonable "mistake of fact" applicable to almost all Continental justification grounds. In view of this, the expression in section 302(3)(d) that "no culpability is required with respect to facts which establish that a defense [defined in Part A] does not exist" would probably be criticized by Continentals as confusing.

[11] Some consequences of ordinary defenses (for example, waiver) would be unacceptable to all Continental procedures, while affirmative defenses violate at least two basic postulates of Continental procedure. The principle of "active court" requires that all issues of relevance in the case be raised "motu proprio" by the court, while the presumption of innocence as understood by Continentals cannot be reconciled with the reversal of the burden of persuasion. Very dogmatic about these two principles, Continentals allow almost no exceptions to them in case of serious crime.

[12] This is again a slight oversimplification. True, some systems bar all distinctive treatment. (*E.g.*, Alternative West German Draft Penal Code § 19 I (1966). But often a differentiation is made among various types of "mistake of law." Thus, our statement in the text applies with precision only to "factual" mistake.

*Study Draft section 609 is Final Report section 608.

As regards situations classified as affirmative defenses, the actual difference is again not as pronounced as it might appear. Some situations (for example, section 1306(4) of the draft) would probably be regarded by Continentals as purely objective conditions for liability (see *supra*, I–A), and thus mistake would not excuse. Also, while under the draft mistake of law is in limited situations exonerating and is treated as an affirmative defense, in the majority of civil law jurisdictions mistake of law is no excuse at all. Mistake as to a duress situation would probably be declared to be an excuse by European scholars, but would hardly ever be recognized in actual cases.[13]

So far discussion has centered on mistake of fact. Mistake as to prohibition (mistake of law) is variously treated in the civil law. Most jurisdictions still cling to the maxim that "error of law is no excuse." But, while the mistake cannot lead to an outright acquittal, if justified it may cause reduction or even remission of sentence. (See article 5 of the Italian Penal Code, article 3, 233 of the Austrian Penal Code, article 10 of the Yugoslav Penal Code, French decisional law.) Almost everywhere scholarly opinion which criticizes this traditional view can be found. Even so, opposition to change is quite strong. More than anything else it is based on fears of the evidentiary difficulties which would arise if the excuse were admitted. The dogmatic rigor with which the presumption of innocence is interpreted in the area of burden of proof precludes the shifting of the burden of proof to the defendant on this specific issue.

Departures from conventional views can, however, be observed in Switzerland,[14] West Germany[15] and in Eastern European countries other than Yugoslavia. Leaving aside differences of detail, the idea as developed in the West is roughly as follows. If the defendant has mistakenly assumed that the conduct he engaged in is not prohibited and his mistake cannot be blamed on him, he must be acquitted. If, however, the mistake is due to his fault in not securing the necessary knowledge, he must be convicted and punished according to the degree of his fault (practically, negligence). The idea as developed in Eastern Europe is somewhat different. Here one of the prerequisites of criminality is that the conduct falling under the statutory crime definition be "socially dangerous." Unless it may be attributed to negligence, mistake as to "social dangerousness" of one's conduct excuses, while mistake as to the legal prohibition does not.[16]

Where does the Study Draft's solution to the "mistake of law" problem fall on the spectrum of these different solutions? While more "conservative" than, for example, West German ideas, the provision

[13] *See* JESCHECK, LEHRBUCH DES STRAFRECHTS, 335–336 (1969) [hereinafter cited as JESCHECK], with reference to court cases. Some jurisdictions (for example, Yugoslavia) have no provisions on duress in their legislation.

[14] *See* articles 19 and 20 of the Penal Code, as well as decisional law. *See* SCHWANDER, DES SCHWEIZERISCHE STGB 98 (1965).

[15] This is, since 1952, the attitude of West German courts. It has been adopted by the 1962 Draft Penal Code.

[16] Soviet legislation is silent on the matter, but the view expressed in the text is that of prevailing opinion. *Compare* KIRICHENKO, ZNACHENIE OSHIBKI PO SOVETSKOMU UGOLOVNOMU PRAVU 35 (1952). This view has been adopted by some Eastern European legislation. *See* article 24(2)(3) of the 1961 Hungarian Penal Code.

of section 610* of the Study Draft is still ahead of typical Continental jurisdictions which reject the excuse altogether. True, the reversal of the burden of proof in regard to mistake of law is without precedent on the Continent. But it may be argued that any defense is better than none.

E. LIABILITY OF CORPORATIONS AND OTHER ORGANIZATIONS

Since the Enlightment in the eighteenth century the view has prevailed on the Continent that criminal law should not apply to legal entities. Arguments advanced in favor of this proposition are mostly dogmatic: corporations cannot act, they have no mind, whereas "conduct" and a "guilty mind" are prerequisites of criminality. The most often advanced pragmatic argument is that punishment falls on innocent members of the corporation. No matter what the value of these arguments, the principle still holds in civil law legislation from the Soviet Union to West Germany to Spain. Practical necessities, notably for misconduct in the field of economic life, have caused the relaxation of the principle in only a number of jurisdictions. Thus, for example, in France the maxim "societas delinquare non potest" is riddled with exceptions. Typically, Continental jurisdictions have chosen another approach to the practical need to punish organizations in some instances. Punishments are imposed for offenses which are not considered criminal. Such is, for example, the case in West Germany and Yugoslavia. The types of punishments (and "measures" in the civil law jargon) imposed for noncriminal offenses are numerous. Prominent, however, are stiff fines and giving publicity to the conviction.

V. DEFENSES[17]

A. THE USE OF DEADLY FORCE

Most modern civil law Codes have consolidated self-defense, defense of others, prevention of crime, protection of property and similar narrowly conceived defenses into a comprehensive, broadly couched defense. Special provisions are usually found in statutes dealing with use of force in law enforcement. This is the reason the use of deadly force is discussed by Continentals in terms which seem somewhat general to American lawyers. The issue on which Continental legislation is dissimilar is whether some kind of proportionality is required between the value protected against the attack and the damage caused by the protection. The minority view is best illustrated by West German law. There is an absolute right of defense, provided that the defense activity is the (least injurious) only way of protecting a value attacked. Thus, for example, deadly force may be used if there is no other way to prevent a man from carrying away your briefcase.[18] In most civil law jurisdictions, however, deadly force may be

*Study Draft section 610 is Final Report section 609.

[17] Some defenses (such as mistake of law) have already been discussed in other contexts (*see supra*, IV, D).

[18] *Compare* JESCHECK, *supra* note 13, at 230. This position seems to contradict article 2, IIa, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). German lawyers maintain, however, that the Convention is binding only on government agencies, not on private persons.

used only in situations in which there is no other way of protecting a value which is not *unproportionately less important* than the value of life. Accordingly, deadly force cannot be used for the protection of property and most interferences with freedom.[19] It is only on the question of withdrawal from an encounter that almost all civil law jurisdictions differ from the Study Draft. The no-retreat rule dominates. This is sometimes even rationalized as a moral imperative.[20]

As regards the draft rules on use of force in law enforcement, they resemble corresponding rules in many Continental jurisdictions. Differences of detail cannot be discussed here. Most would center around self-help against official acts.

B. INSANITY

Three systems of defining "nonimputability" (the civil law term for insanity) are known in Continental jurisdictions. Under the first, a ground for exemption exists if specified biological or medical conditions are ascertained. Underlying is the curious assumption that certain medical conditions possess an inherent power to exempt from criminal liability. This first system is largely discarded, but can still be found in the French Penal Code (article 64). The other system (the "psychological" system) defines nonimputability as lack of capacity either to understand the "nature of one's conduct" or "freely decide" ("conform one's conduct" in the newer variant). This test comes close to the *M'Naghten* test coupled with the "irresistible impulse test." The third and last system dominates in modern civil law legislation and probably inspired the drafters of the A.L.I. Model Penal Code. It is called the "mixed system" because under it exemption is granted only to the defendant who lacked the cognitive or volitive capacity as a result of a "biological" (medical) condition. The system has been adopted in West Germany, Switzerland, Austria, Italy, Spain, Hungary and other Eastern European countries and the criminal legislation of the Soviet Union.[21]

When compared with the available civil law tests on insanity, the test submitted by the Study Draft is substantially identical with the Continental "mixed tests." In that it discards the A.L.I. Model Penal Code's exclusion of "sociopaths" (the now fashionable label for the group formerly called psychopaths), it comes even closer to modern Continental legislation which rejects such limitation of the ground for exemption.[22] *

[19] This is the view held in all Eastern European countries, as well as in Italy, Switzerland and France.

[20] For the Soviet Union, *see* FELDBRUGGE, SOVIET CRIMINAL LAW 111 (1964). Some rationalizations in Western Europe smack of chivalrous ethics (distaste of cowardice, etc.

[21] Article 11 of the Fundamental Principles of Criminal Legislation:

> A person shall not be subject to criminal responsibility who * * * cannot realize the significance of his actions or control them by reason of a chronic mental illness, temporary mental derangement, mental deficiency or other condition of illness.

[22] *Compare* JESCHECK, *supra* note 13, at 290. No proposals to abolish the defense altogether, at least by those who would retain punishment, are known to this author.

*Final Report section 503 follows the A.L.I. formulation by explicitly denying the defense to "sociopaths."

Scholarly opinion has advanced certain criticisms of the tests under the "mixed system," but, agreeing with the draft's Introduction that they are more ideological than practical, we shall not deal with them here.

One question must, however, be asked. If a sick person lacks the capacity to be aware of the criminality of his conduct (and criminality must not be confused with unlawfulness or wrongfulness[23]) he is exempted from criminal liability. Why is it that the mistake at least as to wrongfulness is no excuse with "sane" people?

C. DEFENSES AGAINST UNFAIR OR OPPRESSIVE PROSECUTION

1. *Entrapment.* Before turning to a description of how problems posed by entrapment can be treated in the Continental analytical framework, a brief observation should perhaps be made on the test of entrapment as submitted by the Study Draft. If the defense is available only where means are used likely to cause normally law abiding persons to commit the offense, then it would seem that entrapment is not an issue distinct from defenses involving guilt and innocence. Notice that the Study Draft suggests a more limited defense than the A.L.I. Model Penal Code (section 2.13). Let us suppose that the view is rejected, as optimistic of human nature, that there are no means short of duress to cause a law abiding person to commit a crime. Still, if a person acted as the majority of people would under the circumstances, can such person be properly blamed (*i.e.*, declared guilty)? Is it not morally questionable to exact more from the defendant than one can exact from the average person? If such reasoning is sound, the defense of entrapment—as suggested by the draft—would systematically belong to defenses involving an excuse.

It seems to the writer that the usual statement that there are no functional equivalents to the defense of entrapment in the civil law system is inaccurate. In fact there are several. A government agent may tempt the defendant to commit a crime whose victim consented to the entrapment scheme. If consent is operative in the case, there exists a justification under most civil law systems. Where, however, an offense is involved in regard to which consent is nonoperative, the answer turns on the definition of entrapment. We shall assume that entrapment is defined as it is under the Study Draft. If such means are used in entrapment which would cause an average person to commit a crime, at least some Continental jurisdictions would recognize the excuse that "law abiding conduct cannot be demanded" (Unzumutbarkeit normgemassen Verhaltens). It is predicated on the view that punishment does not make sense if an average person would act as the defendant did.

Where the excuse is unavailable, the entrapped person is punishable, but so is the government agent (agent provocateur).[24] There is no further exemption possibility under substantive Continental law. It is probably not an overgeneralization to state that such a state of affairs

[23] Even the draft distinguishes between criminal and noncriminal offenses.

[24] For a perceptive discussion of the responsibility of the agent provocateur, *see* HEILBORN, DER AGENT PROVOCATEUR (1961). Also STRATENWERTH in MONATSSCHRIFT FUR DEUTSCHES RECHT 717 (1953); SALAMA, L'AGENTE PROVOCATORE (1964).

is acceptable to most Continental systems for the same reasons for which they accept trustworthy though illegally obtained evidence. This brings us to an additional and last possibility for the entrapped person to avoid criminal punishment in a minority of civil law jurisdictions. In some jurisdictions—at least as far as the law on the books is concerned—evidence obtained through the commission of crime is inadmissible. As the "agent provocateur" is punishable, evidence was secured through the commission of an offense, and an argument can be made that it should be excluded.

2. *Statute of Limitation.* Two differences between the draft and Continental legislation come to mind. The limitation statute on the Continent is never a defense in the sense that it can be waived. Such a solution follows from basic procedural principles in the civil law system. Adjudication in criminal matters cannot be shaped by parties. The implementation of criminal policy is a matter of public concern and the court must raise all relevant issues if the parties fail to do so. It is unanimously held that the statute of limitations pertains to matters concerning implementation of criminal policy. The other difference indicated at the outset concerns the running of the statute. In all civil law systems it is possible for a prosecution to commence before the expiration of the limitation period and yet be barred if the period expires before the case has been finally adjudicated. Section 701(1) of the draft suggests the contrary.

3. *Bar on Multiple Trials and Charges.* Most civil law procedural systems provide for joinder of prosecutions where a person has committed more than one offense and they are all known to the prosecutor at the time when he contemplates prosecution. Joinder of prosecutions is, in this situation, also the usual practice. In contrast to the draft, Continental procedural legislation does not provide for compulsory joinder.[25] However, if a prosecution is instituted for an offense which could have been subject to joint trial, the provisions on cumulative sentencing devised for joint trials mandatorily apply.[26] This is thought to preclude abusive and oppressive prosecution. In the Continental setting it probably does.

How many charges may be preferred depends in the civil law system on the number of offenses. If there is no crime plurality, there can be only one charge. As flexible rules apply on amending charging papers (indictments, informations), Continentals usually consider any other regulation of the problem as unduly technical and possibly absurd.

4. *Multiple Convictions.* How many convictions can be obtained seems naturally to depend on how many offenses have ben committed. But it is precisely on this issue (crime plurality v. singularity) that universally accepted doctrines were developed in the civil law which are practically unknown in the common law world. The comparison of the two legal systems on this score is bedeviled by the differences in procedure and evidence. Thus, only a panoramic overview of the problems may be offered.

[25] Compare as a drafting example the following Codes of procedure: West German (section 2), Japanese (article 313), Russian (article 26) and Yugoslav (article 31).

[26] *See supra* II, E. As a drafting example, compare articles 46 and 47 of the Yugoslav Penal Code. They are representative of the law in the area.

There are situations treated under the Study Draft as constituting offenses which in the civil law would everywhere be considered as a single offense. Accordingly, whereas there would be two or more convictions under the draft, there would be only one conviction in civil law countries.

Section 3206(2)(a) as well as section 703(3) of the Study Draft relate to situations where one offense consists of an attempt, solicitation or other form of preparation of the other.* As an aside, it should be said that the author does not know what the precise relationship between these two draft provisions is. They partially apply to the same facts and yet are treated on the conviction level in section 703(3) and on the sentencing level in section 3206(2)(a). Be that as it may, there is little doubt that under the draft there is more than one offense. By contrast, the situation contemplated by the two draft provisions is in the civil law a schoolroom example of the "subsidiary principle" under which there is only one offense. Attempt, solicitation and similar offenses come to life only if the criminal pursuit has not passed them and gone to a more advanced stage. They merge in the provision on the "last stop" on the "iter criminis" (route to crime). Thus, these offenses come to life only in a subsidiary way. "Lex primaria derogat legi subsidiara."

Section 3206(2)(b) of the draft deals with "offenses" differing only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.** Multiple convictions are possible in this situation. In the civil law system this is a schoolroom example of the "specialty principle" under which again there is only one offense. Psychologically, sociologically and historically there is only one unit of conduct. For criminological purposes (such as measuring delinquency) there is also only one unit of conduct. What happens is that several crime definitions compete for application to that single conduct unit. Only the more specific crime description applies. "Lex specialis derogat legi generali."

As opposed to the two situations mentioned thus far, the situation contemplated by section 703(3) of the draft comes close to the civil law view. In the civil law the maxim "lex consumens derogat legi consumptae" requires that only the definition of the graver included crime apply. The residual difference is that under the draft there can still be several charges (if not convictions), while under the civil law there can be only one.

Differences between the two systems do not stop here. Additional situations are known in the civil law system in which several crime descriptions compete but there is only one penological unit. For example, if one offense may be conceived as a sequel of another penologically overshadowing offense, prosecution cannot be brought for both but only for the latter. A usual example is the destruction of the stolen

*Study Draft section 3206(2)(a) is Final Report section 3204(2)(b). Study Draft section 703(3) was deleted in the Final Report. The definition of "included offense" appears as Final Report section 109(q). A prohibition on multiple sentencing for included and inclusive offenses appears as Final Report section 3204(2)(a).

**Study Draft section 3206(2)(b) is Final Report section 3204(2)(c).

object by the thief. Much more significant is the Continenal construct known as "continuing criminal conduct," but it is too complex to be discussed here.

Although technical tools used by lawyers differ greatly, the results reached in the two diverging systems are not too dissimilar. In instances in which, to the surprise of the civil law lawyer, there are two offenses rather than one under the draft, consecutive sentencing is prohibited. Nor should the disparities be neglected. Neither from a procedural nor a criminology point of view are the two approaches identical. Perhaps a dispassionate observer might declare the Continental approach simpler and less legalistic and fragmentary. But he would recommend it only if one were to begin afresh and rethink the problems systematically. As it is, American law on double jeopardy and some related problems requires "fall-back" convictions where the Continental system may safely obtain only one.

5. *Other Defenses.* Most other defenses contained in Chapter 7 of the draft would be found in Continental procedural legislation. Even here some of them would not be regulated as specifically as in the draft. Discussion of these procedural issues involves so much technical detail that it cannot be attempted here. Let us only say that the provisions of sections 705(b) and 706(b) seem strange to a lawyer from the civil law system.* Continental judgments, civil as well as criminal, do not as a rule have any collateral estoppel effect. Also the effect accorded by the draft to former prosecution in another jurisdiction has little precedent in civil law legislation. Foreign judgments very seldom operate as a bar to prosecution (Anerkenungsprinzip), and where they do, domestic jurisdiction is claimed on grounds unknown to American law (for example, the "personality principle," *supra* I, C). However, it is considered a postulate of fairness that foreign sentences served be given credit (Arechnungsprinzip.)[27] Nor does the bar—if it exists—relate to offenses covered by joinder provisions. Rather, it solely relates to the "identical offense" (in the sense of the same conduct rather than identical crime definitions).

VI. Observations on Inchoate Crime

A. Attempt

There is some measure of confusion in ideas underlying punishment policies in attempted crime. Small wonder that a comparative "tour d'horisont" reveals a galaxy of solutions in civil law legislation. Everywhere, however, general provisions on attempt are found, thus obviating the need for specific statutes to prohibit conduct that amounts to an attempt. Also the tendency may be observed that general attempt provisions do no apply to less serious offenses. For misdemeanors, attempt is punishable only if so provided in provisions dealing with

*Study Draft section 706(b) is Final Report section 707(b).

[27] Typically the credit is mandatory. Only in some Eastern European jurisdictions (but not in Yugoslavia) is it optional. *See* article 5(3) of the Fundamental Principles of Soviet Criminal Legislation. For details and drafting examples, *see* Jescheck, *supra* note 13, at 122 *et seq.*; Schwander, Das Schweizerische Strafgesetzbuch 41 (1965); Bettiol, Diritto Penale 137 (1966); Dando, Japanese Law of Criminal Procedure 43 (1965).

specific offenses falling within this class. Exceptions to this are Eastern European countries (save Yugoslavia) and an occasional Western European jurisdiction (for example, Austria, section 239 of the Penal Code). Withdrawal from attempt operates as an exemption from conviction in many civil law jurisdictions, but this is far from a universal rule. (The contrary is the case, for example, in Italy, Japan and Yugoslavia.) As the reader will have expected, withdrawal is not structured as an affirmative defense because the reversal of the burden of proof would violate the presumption of innocence as interpreted in the civil law.[28] The draft's position in regard to "impossible attempt" (inept attempt in the civil law jargon) corresponds to the modern civil law trends.[29]

B. Criminal Facilitation

A glance at the civil law Codes shows that there is no offense of general applicability corresponding to Section 1002 of the Study Draft. It is submitted, however, that if Continental systems required of an accomplice intent (within the meaning of the Study Draft) that the crime be committed, they would probably be driven to resort to a similar construct. However, the usual culpability requirement for an accomplice[30] is not solely that he "desires" the offense or even foresees its commission as a certainty. If he "foresees the likelihood" that the offense be committed and accepts it, or resigns himself to it,[31] the culpability requirements of complicity are met.

C. Criminal Solicitation

The draft and modern civil law come very close together on this issue. Not only is solicitation viewed as an attempted complicity, but it is often defined as such (Wersuchte Anstiftung). As in attempt, so in solicitation, this offense of "general applicability" does not apply to misdemeanors (for example, Italy, West Germany and Yugoslavia). If exceptions to this general tendency are found, it is in those jurisdictions which punish attempt for all offenses. In view of this it may perhaps be considered as an inconsistency in the Study Draft to punish only solicitation of felonies but attempt across the board. The reason for the distinction may, however, lie in the fact that solicitation is committed by speech. Provisions on withdrawal will seldom be inserted in this context, but almost identical results would be reached by civil lawyers by interpretation (the argument proceeding from the law on attempt).

[28] *See supra*, note 11. It is the author's educated guess that it is easier for a party to sustain the burden of proof in a civil rather than in a common law procedural setting. The remark has been made only as a caveat to those American lawyers to whom the Continental view seems very attractive.

[29] For example, impossibility is an excuse in Austria. *See* Nowakovsky, Das Oesterreichische Strafrecht in seinen Grundzügen 90 (1955).

[30] The term "accomplice" has not been used in the sense traditional with Anglo-Americans. Civil law, disregarding a few exceptions, differentiates between co-principals (whose purpose is to promote or facilitate the crime) and accomplices "stricto sensu" (subdivided into "instigators" and "aiders"). The observation in the text as to the culpability of accomplices relates only to accomplices "stricto sensu."

[31] The last state of mind is called "dolus eventualis." For details on this kind of culpability see Silving, *supra* note 2, at 226.

D. CONSPIRACY

As the conspiracy laws perform a variety of purposes in the system, the search for civil law functional analogues must lead into several areas.[32]

Some civil law legislation defines criminal conspiracy as a specific crime of agreeing to perpetrate an offense (for example, section 49a(2) of the West German Penal Code, article 115 of the Italian Penal Code, article 298 of the Yugoslav Penal Code). The object of conspiracy must be a felony. If the latter is perpetrated, conspiracy merges into it. Some jurisdictions know only conspiracies to commit specific felonies, usually political offenses (for example, article 275 of the Swiss Penal Code and article 64 of the Russian Penal Code).[33] In addition to this type of crime, some jurisdictions punish membership in a criminal organization, if the aim of such organization is the commission of several felonies (for example, article 116 of the Italian Penal Code and Article 99 of the Yugoslav Penal Code). Here a distinction is usually made between mere members of the organization and its leaders and organizers, who are more severely punished. There is typically no provision that an overt act must be done in furtherance of the conspiracy or by the organization, but such act will in practice be necessary to establish serious agreement or the existence of an organization.

Where a crime has been committed in furtherance of a conspiracy (or a criminal organization) only the substantive crime remains as a result of merger. Thus the question of who shall be considered to have perpetrated the substantive offense becomes crucial. There is in the civil law no liability for the substantive offense based on mere membership in a conspiracy (organization). Ideas of guilt by association and "borrowed criminality" on which such liability rests are alien to the Continental principle of "personal guilt." Ordinary rules of partnership in crime apply, requiring at least knowledge and "acceptance" of the substantive crime. But the fact that the offense has been committed as a result of previous conspiracy (and particularly by leaders and organizers) is taken as an aggravating circumstance. Explicit provisions to this effect exist, however, only in a small number of jurisdictions (for example, article 39 of the Russian Penal Code).

In a number of Eastern European countries liability for the substantive offense may follow special rules if leaders and organizers of a criminal association are involved. Leading and organizing a criminal association is conceived as a special, severe kind of complicity. Under this system the leaders and organizers are made responsible for all substantive offenses falling within the framework of the "criminal plan" of the association they lead or have organized. (See article 17 of the Russian Penal Code and article 3 of the Yugoslav Penal Code.)[34] The limits of such liability as an accomplice are marginally vague. All that can safely be said is that the leaders and organizers are not automatically liable for offenses which deviate from those they contem-

[32] We are leaving aside the evidentiary impact of complicity charges.

[33] In West Germany there is, in addition to a general provision, a special conspiracy provision on agreements to perpetrate murder (section 49b of the Penal Code).

[34] Some Eastern European jurisdictions, such as Hungary, do not follow the Soviet pattern in this regard.

plated. Some scholars have argued that this type of liability was imported into the Soviet Union from American decisional law. The fact is, however, that the punishment of organizers along similar lines was not unknown in prerevolutionary Russia.

As the American reader will have noticed, traditional American law on conspiracy differs greatly from the civil law approach just presented. The Study Draft, however, comes close to the civil law approach to conspiracy problems. True, the substantive offense does not annul the conspiracy. But, this is only an offshoot of general American views, and, as consecutive sentencing is prohibited under the draft (section 3206), the practical results under the two systems come close.* The specific offense alternative (section 1004) for criminal conspiracy and organized crime leadership (section 1005) is very similar to Continental legislation. Even the sentencing alternative (section 3203) for organized crime leadership does not appear strange to a Continental lawyer.** Withdrawal is regulated somewhat more strictly than it is under Continental Codes. (Compare article 299(3) of the Yugoslav Penal Code, section 49(a) of the West German Penal Code.) Also, provisions on the duration of conspiracy differ. As conspiracy to commit a felony (as opposed to the crime of membership in the criminal organization) merges into the consummated crime, it is treated as nonexistent as of the moment of commission of the substantive offense, and the statute of limitations commences to run. But all these and some others are differences of detail rather than of general principles. What matters is that in most civil law jurisdictions as well as under the draft there is no longer guilt by association, as mere membership in a conspiracy does not constitute complicity in the substantive offense. Only in regard to leaders and organizers does the law of some Eastern European countries come close to *Pinkerton* v. *United States*.[35]

VII. SPECIFIC OFFENSES

A. CONTEMPT OF COURT

The law of contempt has no real counterpart in the civil law. Even so, those areas of the civil law system in which civil and criminal contempt are operative will be sketched. Perhaps a perspective will thus be gained in controversies which will surely rage over the draft's curtailment of the contempt power.***

The first question an American would ask in this context is: when does a civil law judge have authority to impose punishment outside of regular criminal procedure? (By "punishment" is meant penalty for past conduct rather than sanction to coerce compliance.) There is no such power as far as criminal punishment is concerned. Imposition of such punishment would violate the maxim "nulla poena criminalis sine processu." Also if the offense were directed toward the judge another maxim would be violated: "nemo judex in causa sua" (*i.e.*, the judge would have to disqualify himself rather than consider the case). However, the civil law judge possesses the power to impose disciplinary

*Study Draft section 3206 is Final Report section 3204.

**Study Draft section 1005 and 3203 were deleted. Final Report section 3202 (2)(d) covers certain aspects of organized crime leadership.

[35] 328 U.S. 640 (1946).

***The Final Report did not so curtail the contempt power.

penalties. The power is limited to conduct which is violative of a court order and/or disrespectful to the court, as well as failure of a witness to appear (and, in a limited number of jurisdictions, also failure of a witness to testify).

The usual penalty is a disciplinary fine, but in some systems short prison terms may be imposed also.[36] This would surely not suffice as the court's sole power to defend itself. Obstreperous persons (including the defendant) may in all civil law countries be removed from the courtroom, and lawyers forced to withdraw from the case. If the disorderly or disrespectful conduct falls under the definition of an ordinary criminal offense, regular prosecution can also be instituted; the previous disciplinary judicial penalty does not constitute a bar. Let us add at this point that some criminal offenses which are separated from contempt by the Study Draft do not exist in the civil law (for example, hindering proceedings by disorderly conduct, failure to appear as a witness, disobedience of a judicial order and—outside a few jurisdictions such as the Soviet Union—failure to testify).

Instead, the civil law judge has the power to impose sanctions to coerce compliance with orders issued. These sanctions can, of course, be avoided by compliance with the court order. But even here the judicial power is quite limited in comparison with American civil contempt. Sanctions can only be imposed for failure to testify and failure to surrender physical evidence. The limit imposed on these sanctions is also striking to Americans. The maximum limit found by this writer in a civil law jurisdiction is 6 months' imprisonment for failure to testify in a felony case.[37]

B. THEFT OFFENSES

The consolidation of various offenses directed against property relationships into the offense of theft is unknown to the civil law. The various types of punishable conduct integrated into the offense of theft are considered by Continentals as criminologically quite distinct. Nor is there in civil law jurisdictions a unitary term for unlawful deprivation of property corresponding to "theft" in its broader meaning. As far as this writer knows, it has never been suggested by Continental lawyers that any kind of consolidation in this area be undertaken. Legal distinctions between punishable conduct entailing loss or misuse of property roughly correspond to lay distinctions, and this fact is regarded as quite valuable. Consolidation along the lines followed by the Study Draft would disrupt the existing harmony.

American lawyers may be surprised at this difference and a brief explanation seems in order. As is often the case with differences between the common and civil law systems, the differences are rooted in different historical development.

With the advent of commercialism and the breakdown of medieval rural life in England new types of conduct harmful to property relationships appeared. They were often brought under the preexisting concept of larceny. Originally larceny meant—in England as well as on the Continent—the Roman law "furtum", *i.e.*, taking away an object belonging to another with intent to permanently deprive the owner thereof. Gradually, and by the use of fictions, the pristine larceny definition was inflated so as to encompass some cases of fraud (larceny by trick) and embezzlement (servants were declared not to have possession of objects entrusted). After this kind of treatment by fictions for a century, the distinction between the "inflated" larceny on the one hand and "deflated" embezzlement and obtaining by false pretenses on the other became blurred and occasionally perhaps somewhat irrational. The idea seems quite natural that one should get rid of the unwieldy apparatus of technical distinctions. Thus, a Continental lawyer can readily understand the idea of consolidation, and the provisions which charge theft offenses in order to lessen the importance of distinguishing between various punishable conduct presently falling under theft.

The legal development on the European Continent followed a different course. At the critical moment (in the eighteenth century) Continental law was under the influence of systematically oriented legal scholars. In classifying various types of conduct damaging property relationships they proceeded from lay concepts merely refining them by introducing somewhat more refined distinctions. The pristine meaning of larceny, making away with a thing belonging to another "lucri causa," was retained.[38] Fraud retained its essence—obtaining something of value (an object, service, etc.) by false representation—and acquired a much broader reach than the offense of obtaining by false pretenses in the common law.[39] In regard to offenses in which the loss of an object is not initiated by the defendant, the distinction between embezzlement and unauthorized borrowing and use was maintained. Also extortion was defined to preserve the lay core meaning.[40] As a result of this different development a Continental lawyer would, for example, be hard put to understand how the making away from a hotel without paying can be classified as "theft" (of service). Theft to him implies the activity of "taking away," and a realistic concept of taking. One cannot take away service.[41] Similar communications difficulties are legion. Thus, clarification of differences cannot even be attempted here. Nor is it necessary. The civil law example could be of interest to American legal draftsmen only in the unlikely event that they decided to neglect the preexisting law and proceed afresh.

[36] The West German law is quite typical in this respect. *See* the German Code of Criminal Procedure, articles 51, 70(II) and 77, and the German Statute on Court Organization, section 178. As typical of Soviet legislation, *see* article 263 of the Russian Code of Criminal Procedure.

[37] West German Code of Criminal Procedure, article 70 (II). In Yugoslavia, for example, the limit in 30 days.

[38] Only an object may be taken away in larceny. The act of "taking" has a rather narrow meaning by American standards. Also the emphasis in the stolen object is on title not possession. For example, one cannot steal his own shares deposited in a safe by breaking in. Other crime definitions are applicable. The specific intent is usually required to be directed toward pecuniary gain. If an object is taken away for some other purpose, other offenses may be committed (*see, e.g.*, article 143 of the Swiss Penal Code).

[39] Most cases of theft of service under the draft would be classified as fraud on the Continent.

[40] Blackmail is usually distinguished from extortion, *e.g.*, articles 261 and 262 of the Yugoslav Penal Code. In some systems two are lumped together into one offense (article 148 of the Russian Penal Code).

[41] *Compare* section 257 of the 1962 Draft German Penal Code.

C. ASSAULT AND MENACING DISTINGUISHED

The Study Draft, by "disintegrating" the common law offense of assault and battery, removes a difference between American and civil law legislation. Under the latter "bodily injury" (assault in the sense of the draft) designates actual infliction of injury, while attempt to inflict injury is dealt with under provisions on attempt. The offense of menacing (usually not limited solely to threats to inflict imminent serious injury) can be found not among offenses against life and limb (as bodily injury), but rather in the chapter dealing with offenses against personal freedom or public safety. (See, for example, article 180 of the Swiss Penal Code, article 207 of the Russian Penal Code and sections 40 and 41 of the West German Penal Code.) This underscores the conventional Continental view that menacing and bodily injury are offenses directed against different social values.

D. RAPE

A glance at civil law legislation shows that the grading of rape as suggested by the Study Draft is an improvement over the usual civil law regulation of the matter. Continental courts may differentiate among situations contemplated under section 1641(2) of the draft and set different sentences within the general framework of punishment for rape, but there is no separate legislative grading. As the situations differentiated by the draft are penologically and sociologically quite apart, it seems proper for the legislator to treat them separately.

E. ESCAPE AND FLIGHT TO AVOID PROSECUTION

These two offenses do not appear in the majority of civil law codifications. The underlying policy is essentially the same as the one underlying the privilege against self incrimination as understood by Continental lawyers. The criminal's desire to avoid punishment is natural and must not be disregarded by legal provisions. Thus, activity consisting in avoidance of punishment per se (if not accompanied by an ordinary crime) must not be made criminal.

F. FELONY MURDER

Variant A of section 1601 contracts the traditional felony murder rule, in that involvement in a felony only presumptively evinces the kind of recklessness of life required for murder.* If this variant is adopted, the Continental criticisms of the "felony murder rule" as a medieval relic would become unjustified. Although modern Continental law rejected rules similar to felony murder, its construct of the "preterintentional crime" leads to essentially the same result as the restricted felony murder rule submitted by the draft. Under the construct of "preterintentional crime," the defendant is punished for the consequences caused by his crime even if he did not anticipate them. True, negligence in regard to these unintended consequences of a criminal act must be found, but it is always found in court practice where the crime engaged in is a felony, notably of a violent type. Thus,

*Final Report section 1601 includes Alternative B of the Study Draft, not Alternative A.

only the technical tools are different. The technique of civil law legislation is as follows. In defining certain violent crimes (such as robbery) the statute (or Code) provides for a more serious grade of such violent crimes in cases where the victim has died as an unintended consequence of the "basic" offense. The punishment maxima correspond to that of intentional homicide (murder). This different technique has a deeper meaning. It reflects the reluctance of Continentals to label as a murderer a man who, no matter how violent, did not intend to kill.

G. BURGLARY

This is another type of punishable conduct developed by common law which has no counterpart in the civil law system. Under the latter, unlawful entry is punished as mere trespass, no matter what intent has accompanied such entry, provided that there is no attempt to perpetrate a crime in the unlawfully entered premise or enclosure. If there is attempted or consummated larceny, trespass in most jurisdictions merges into larceny. Any other solution appears to Continentals as unfair as it punishes intent to commit larceny twice.

The draft's definition of burglary does not speak of felonious intent, but rather of intent to commit a "crime" (section 1711). "Crime" is defined in section 109 as either a misdemeanor or a felony. It is to be assumed that the drafters did not intend to broaden the offense of burglary so as to encompass illegal entry with intent to commit a misdemeanor therein. If the latter were the case, however, the solution would be subject to criticism in the Continental scheme of values. Is it proper to upgrade a misdemeanor (trespass) into a felony on the sole ground that the actor intended to commit a misdemeanor therein? If he realized his intent, the offense would still be a misdemeanor.

H. DRUG CRIMES

The Study Draft, as opposed to present law, introduces a significant distinction between "trafficking" and possession of drugs for personal use. While both are punishable, unless the user proves dependency on the drug, the scales of punishment differ.*

This innovation brings the contemplated legislation closer to typical Continental laws, many of which were drafted to meet the various League of Nations and United Nations conventions and protocols on intoxicant drugs. Yet an important difference still remains. Under the prevailing Continental approach only "trafficking" in drugs is criminal. Possession for personal use, and often purchase for personal use, fall outside the criminal law. Whether the user is dependent on the drug or merely experimenting with it, is irrelevant. The following may be mentioned as examples of European legislation in the field: section 367(3) of the West German Penal Code, the German Statute of 1929 on Opiates, article 208 of the Yugoslav Penal Code, and articles 224 and 225 of the Russian Penal Code.

The flexible classification of drugs contemplated by the Study Draft, with all its consequences on drug crimes, seems to be an improvement

*The Study Draft defense to a charge of possession for own use, that the possessor was so dependent on the drug that he lacked substantial capacity to refrain from use, was deleted in the Final Report. *See* Study Draft section 1824(2).

over typical European legislation. True, many Continental judges treat pushers of "hard" and "soft" narcotics differently, but legislation seldom provides guidelines for uniform treatment.

I. OBSCENITY

1. *Concept.* Those who draft obscenity laws usually seem a little uneasy about the ambiguity of the definition of obscenity. Continental legislators, perhaps acquiescing to the fact that the definition of obscenity is imprecise, use very general terms in referring to objectionable erotic expression. American legislation in general and the Study Draft in particular seem quite elaborate by comparison.* Thus, Continentals cannot accuse the Study Draft of excessive vagueness in attempting to capture the elusive meaning of obscenity. Perhaps they would criticize the first definitional prong of section 1851(1) of the Study Draft. "Appeal to prurient interest," the successor of "tendency to corrupt," would probably seem to Continentals as a bit superannuated in that it implies subjective judgments and moral condemnation. For Continentals the "objective" test of section 1851(1)(b) would probably suffice. Not unlike the various insanity tests, the practical problem is to use language which makes sense in the culture at large. Also, study of Continental decisional law indicates that the tendency seems to be that "obscenity" should be narrowly construed so as to include "hard core" obscenity only.[42]

Some students of the problem maintain that obscenity remains imprecise only insofar as it is approached as a quality of the thing appraised. The problem of definition is seen "as one of accommodating the competing claims of freedom of expression and suppression of immorality".[43] If obscenity is conceived as a nuisance, ambiguity vanishes. The only problem remaining is to "keep the more obvious forms of public (erotic) display under control".[44] While the "nuisance approach" must be seriously considered, it is submitted that ambiguity would remain even if obscenity were defined as an offense to sensibilities. The problem of what the "more obvious kinds of erotic display" are would remain.

One more minor point regarding the definition of obscenity is in order. Under the Study Draft "redeeming social value" negates obscenity. While legal concepts sometimes differ from philosophical and popular concepts relating to the same phenomenon, this separation should be avoided unless it seems unavoidable or otherwise warranted. Many redeeming values, such as artistic value, are independent of ethical considerations which enter into the judgment of what is "prurient" in sexual desires and interests. What is art lies in the realm of esthetical judgment; what is "obscene" pertains to the realm of ethical values. Thus, art may be obscene. Under similar analysis "redeeming social

*The Final Report does not include the definition of "obscene" contained in Study Draft section 1851(1).

[42] The only possible source of inspiration in drafting definitions of "hard core" obscenity seems to be the approach of the West German Supreme Court in the German "Fanny Hill" case, Judgment of July 22, 1969, 25 JZ 72–74. Unfortunately, the decision is limited to verbal obscenity. Antiquated terms of moral reference are avoided and modern research is taken into consideration by the German court. *See* DAMASKA, in LEGAL ANALYSIS (Vol. 2, Technical Reports, Commission on Obscenity and Pornography [available mid-1971]).

[43] PACKER, THE LIMITS OF THE CRIMINAL SANCTION 323 (1968).

[44] *Id.* at 324.

value" would not negate the "obscene" character of an object, it would only negate criminality of conduct with respect to the "obscene" object.

2. *Forbidden Conduct With Respect to Obscene Matter.* There is no substantial difference on this matter between the Study Draft and modern Continental legislation. The alternative which the drafters seem to favor, "the traditional approach," is in keeping with prevailing European legislation. The "offense to sensibilities" approach, so brilliantly advanced by Packer,[45] and technically developed by the Consultant on obscenity,* comes close to Danish law.

It would seem to the author that the trend is in the direction of the "offense to sensibilities" approach. The only values whose protection has not been undermined by the changing moral outlook are parental standards in education and strongly felt feelings of erotophobes. The regulation I would favor would be to incriminate dissemination of erotica only under circumstances involving exposure to children and imposition upon nonconsenting adults.

J. RIOT

The tenor of the Study Draft provisions on riots are very acceptable to one trained in the Continental systems. The existing Federal law sounds a little strange.

Prevention of riots, as noticed by the drafters, requires efforts to disperse unruly crowds. Thus, almost all Continental Codes contain offenses for disobeying orders to disperse, for example, section 116 of the West German Penal Code and article 292 of the Yugoslav Penal Code. In some jurisdictions, such as Yugoslavia, disobeying orders is punishable only in riot circumstances, whereas in other jurisdictions, such as West Germany, failure to disperse upon order of authorities is criminal as such. The offense is usually analogous to American misdemeanors. For example, both in West Germany and Yugoslavia the maximum punishment provided is 3 months' imprisonment.

How large must a group be in "failure to disperse" offenses? Usually the tests are quite general. For instance, in some jurisdictions the assemblage must be such as to make it impossible to establish the number of persons at first glance. Or, in some others, a general formula is used that the group should not be substantially affected by "individual departures or additions."

In addition to offenses of failing to disperse, most Continental jurisdictions have variously conceived offenses of engaging in a riot, for example, the West German Penal Code, section 115, and the Yugoslav Penal Code, article 302. But in order for participation to be punishable, certain specific offenses (for example, malicious destruction of property, bodily injury, etc.) must be committed in riot circumstances. The offense is often a felony and punishment maxima are increased for leaders.

Regarding incitement to riot, which is punishable almost everywhere, typical Continental legislation is stricter than the Study Draft. This is particularly the case in those instances in which riots have a political overtone. Quite often incitement to politically "coloured" riots is classified as a crime against the State, or to use a popular term, as a "political offense." Very serious punishments are threatened. This phenomenon is not restricted to Eastern European jurisdictions.

[45] *Id.* at 323.

* See Consultant's statutes reproduced at Study Draft pp. 259–265.

MEMORANDUM

on

ASSIMILATED OFFENSES: SECTION 209

(Agata; July 10, 1970)

I. Introduction

The Study Draft comment on proposed section 209 (Study Draft at pp. 20-21) assets the major change in current law which would be effected by replacing 18 U.S.C. § 13 with Study Draft section 209, providing a limitation on the penalty for commission of an assimilated offense.* The purport of the rest of that comment and of the Working Papers (pp. 77 *et seq.*) is that the existing law of assimilated offenses is intended to be continued by applying the same general principles which the courts have been applying to 18 U.S.C. § 13. Professor Abrams discussed these principles in the Working Papers (pp. 89 *et seq.*) and proposed that they be codified. The language of proposed section 209 differs from both 18 U.S.C. § 13 and Professor Abrams' proposal, although it purports to achieve the same results.

It should be noted that when it is said that section 209 does not make any major change in the law of assimilated offenses, the reference is only to the general principles and not as to how it affects any specific offense. Thus it is clear that, in contrast to existing law, burglary would not be an assimilated offense under the proposed Code because a burglary offense is provided for in the Code (section 1711). At the very least, section 209 would preclude assimilation of burglary and any other offense within an enclave when the State and Federal definitions of the offense are identical. Section 209 clearly accomplishes this by its express inapplicability to "conduct" which "Federal law penalizes". Whether the language of section 209 also excludes State offenses related to burglary but not specifically defined in the Code is considered herein.

II. Offenses Assimilated and Not Assimilated

A. Basic Assumptions and Principles

In considering whether an offense would be assimilated or not, it will be apparent that with respect to certain offenses no general principle resolves the question. It is submitted that the uneven character of these offenses requires reliance on judicial construction for border-

*The only major difference between the Study Draft and the Final Report version of section 209 is that the Study Draft version did not contain the second sentence of Final Report subsection (1): "Conduct is immunized within the meaning of this subsection if, having regard to federal legislation as to the conduct constituting the type of offense and the failure of Congress to penalize the specific conduct in question, it may be inferred that Congress did not intend to extend penal sanction to such conduct."

line cases; and in cases in which a possible resolution is unacceptable to the Commission the offense could be covered specifically in the proposed Code. Judicial construction can be aided by the explanation and suggested principles recorded in the legislative history. Following are suggested principles which account for assimilation or nonassimilation of State offenses under the draft; they should be considered together with the material in the Working Papers.

First, the limitation of authorized punishment under section 209 to no more than Class A misdemeanor penalties is based on the principle that the draft adequately covers all offenses deserving felony treatment as Federal offenses, and a State determination that conduct not dealt with in the proposed Code deserves such treatment should not override this basic determination or should serve at most as a suggestion to the Congress that it add a Federal felony provision to cover such conduct.

Second, where a State offense and a federally defined offense are essentially similar, the Federal definition should be the basis of Federal prosecution.

Third, in some cases it is intended that there be no federally recognized offense whatsoever despite the existence of a State offense, and the assimilated offense provision should not subvert this determination.

Fourth, there are offenses in all States which are not defined in the proposed Code. They are characterized by varying attitudes towards the conduct in different parts of the country reflected in a variety of definitions of offenses with a wide range of authorized penalties. Their recognition as Federal offenses in an enclave would not be inconsistent with other determinations in the draft; but recognition as Federal offenses in all enclaves could run counter to relevant State policies in which a particular enclave is located. The degree of controversy surrounding these offenses or their lack of importance precludes concluding either that they necessarily be included in or excluded from Criminal Codes in general, or a national code in a Federal system like the United States, in particular. Assimilation is the device which reaches a balance: when conduct is a State offense, Congress, in its role as a State or local legislature, utilizes assimilation as a means of enabling the Federal Criminal Code to perform the role of a more complete State Code for the enclave, at the same time adapting the Code to the mores and values of the locality in which the enclave is situated.

Family-oriented offenses, bigamy and incest, as well as abortion, typify the areas where the local policy should prevail and where the failure to assimilate can subvert local policy by making enclaves a haven for conduct respecting which the State may have strong feelings.

Fifth, neither the proposed Code nor other Federal statutes deal with many matters, regulatory in nature, which are typically governed by municipal or State codes. Traffic and housing regulations are examples. In a sense, there are essentially prophylactic regulations or cover situations (like traffic) where there is a need for a settled rule, any rule, in order that business may be conducted with safety and certainty. Uniformity with the surrounding State area is not a necessity, but may be desirable to avoid patchwork rule application. Furthermore, Congressional legislative time does not permit dealing with these matters which usually require dispositions as numerous as the number of Federal enclaves. Although Congress could delegate authority in these areas to appropriate public officials, adoption of the State rule avoids a gap and provides for economy of legislative activity; where authority should be delegated to a Federal official, that can be accomplished despite an assimilated offense provision.

Sixth, there are offenses which do not fall within the family-oriented type of offense (*Fourth*, *supra*) or clearly within the regulatory offense category (*Fifth*, *supra*). Examples are possession of burglars' tools,[1] bad check offenses[2] and speeding or driving while intoxicated. From one perspective, they are all prophylactic. They may not require an intent to do the ultimate harm, but are indicia that the harm is intended or might occur despite intent. Thus, possession of burglars' tools and bad check offenses relate to burglary or theft; speeding or driving while intoxicated could result in unintentional but culpable injury or homicide and these offenses are also related to general regulation of traffic. The former are not intended to be assimilated; the latter are. How can they be distinguished? One basic standard would distinguish between those offenses intimately related to offenses defined in the Federal Criminal Code and therefore not assimilated, and those offenses intimately related to assimilated regulatory schemes and therefore, assimilated.

This rule would not assimilate possession of burglars' tools and the bad check offenses. With respect to speeding and driving while intoxicated, a corollary standard is required: where the ultimate harm can be prevented by the attempt offense then it would not be assimilated if the ultimate harm (burglary, for example) is covered by a Federal offense; otherwise it is assimilated. Thus attempted burglary and attempted theft are Federal offenses in the proposed Code, but we do not speak of attempted reckless endangerment. The latter cannot be an inchoate offense; hence, we conclude that driving while intoxicated or speeding is more intimately related to the regulatory scheme governing traffic and is assimilated.

Seventh, the principles or standards considered in *Sixth*, *supra*, could result in failure to assimilate an offense which should be a Federal offense. Possession of a concealed weapon is an example. In principle, it is difficult to distinguish this offense from the bad check or possession of burglars' tools offenses, because it is related to assaults and homicides and the attempt provision will supply prophylactic treatment in some cases involving possession of concealed weapons. If it is decided that this should be an offense, it is recommended that it be defined in the Code as an offense. The need to draft additional offenses may exist with respect to other areas as well and will be considered in the course of the following discussion of specific offenses in State Codes.

B. CONSIDERATION OF SOME SPECIFIC STATE OFFENSES

An examination of representative State Codes for offenses not contained in the proposed Code provides a useful basis for determining which offenses should and which should not be assimilated and for a

---

[1] *E.g.*, N.Y. REV. PEN. L. § 140.35; VA. CRIM. CODE § 18.1-87 (1-10 years); 38 ILL. REV. STAT. § 19-2.

[2] *E.g.*, MODEL PENAL CODE § 224.5 (P.O.D. 1962); N.Y. REV. PEN. L. § 190.00 190.15.

critical evaluation of any proposed formulation of section 209. The Codes examined are the New York Revised Penal Law, the Illinois Criminal Code, the Virginia Criminal Code, the Model Penal Code and, as an example of what Congress had done when acting essentially as a State or local legislature, the District of Columbia Criminal Code.

1. *Offenses Against Public Order and Decency.* One major area in which the Codes examined have many specific offenses which do not appear in the proposed Code is in the category of "public order and decency." Generally this area embraces disorderly conduct, vagrancy, and loitering.[3]* These offenses are often multi-headed and may embrace conduct clearly covered by the proposed Code. For example, those dealing with maintaining brothels are covered by proposed sections 1841–1849 and would not be assimilated.[4]

Disorderly conduct with respect to official proceedings is covered by proposed section 1344 and therefore a state offense would not be assimilated under the proposed provision.[5] However, many of the other specific provisions and the general provisions applied to other situations would be assimilated. Other State provisions which create similar problems are "loitering" laws, unlawful assembly, obstructing public ways and disrupting meetings and processions. Except to the extent that the proposed Code provisions dealing with riot (sections 1801–1804), loitering to solicit sexual activity (section 1853),* and hindering proceedings by disorderly conduct (section 1344), apply to areas of State law just mentioned, those State provisions would all be assimilated.

In view of the possible constitutional vulnerability of some of these provisions and their potential abuse, should the Federal Criminal Code rely on assimilation or should it define the area of punishable misconduct for enclaves? A Federal policy for enclaves would be appropriate, particularly if the enclave is a residential area, but where it is merely a building, a separate Federal policy could make it an anachronistic haven for persons who might constitutionally be susceptible to prosecution under State law. The sensitivity of the issues raised by these offenses could, as with abortion, lead to the conclusion they should be assimilated. On the other hand, the blanket assimilation of offenses involving serious constitutional issues would support undertaking the task of defining offense in the Federal Criminal Code.

2. *Family and Sex-Related Offenses.* A second major area in which the proposed Code does not speak is offenses involving the family or kinship. Clearly bigamy is assimilated.[6] Bigamy has only one significant element—the establishment of a family relationship. Other of-

[3] *See, e.g.,* D.C. Code §§ 22–1121 (disorderly conduct), 22–3302–3304 (vagrancy); Model Penal Code §§ 250.2 (disorderly conduct), 250.6 (loitering or prowling), 250.5 (public drunkenness) (P.O.D. 1962); N.Y. Rev. Pen. L. §§ 240.34 (loitering), § 240.20 (disorderly conduct).

The Final Report contains a disorderly conduct offense (§ 1861) which was not contained in the Study Draft.

[4] *See e.g.,* D.C. Code § 22–3302(4), (vagrancy).

[5] See *United States* v. *Woodward,* 376 F.2d 136 (7th Cir. 1967), assimilating Illinois disorderly conduct statute in connection with hearings before the House Un-American Activities Committee.

[6] But note, bigamy is often a felony. *See, e.g.,* 38 Ill. Rev Stat. § 11–12; D.C. Code § 22–601 (2–7 years).

*This section, which appeared in the Study Draft, was deleted in the Final Report. *But see* Final Report § 1861(1)(f).

fenses deal with the family relationship but have other elements: incest,[7] adultery,[8] and child-related offenses,[9] such as abandonment, nonsupport of a child, and endangering the welfare of a child.

In considering incest and adultery, it would be useful to consider them in the context of the disposition of other sex-related offenses: consensual sodomy, seduction and fornication. The last three offenses are not intended to be assimilated even if the conduct is not an offense in the proposed Code, and the Code structure supports this conclusion. Aggravated forms of sodomy (sections 1643, 1644) and solicitation to engage in sodomy (section 1853)* (as well as indecent exposure (section 1852)) are offenses under the proposed Code. It is the intended conclusion that having covered public solicitation and involuntary acts of sodomy, the consensual act itself is not to be a Federal offense at all. Similarly treated are fornication, in the light of Code coverage of substantial aspects of consensual sexual relations by section 1647(f) and (g), and public solicitation (section 1853)* and seduction, which involves deception, an aspect covered by section 1642(b) (gross sexual imposition). (Compare the felony offenses under D.C. Code §§ 3001, 3002, which are covered by the proposed Code Abuse of wards offense). One aspect of incest is covered by proposed section 1646 (sexual abuse of wards), but the significant feature of the Code offense is the violation of a relationship which permits the actor to impose himself on the victim, and that offense thus does not express a determination based on the fact of kinship alone. Hence, incest should be assimilated.

Adultery presents a more difficult problem. The violation of matrimonial integrity provides an element not necessary to the fornication offense. Yet proposed section 1647 deals with a person "who knowingly has sexual contact with another not his spouse" and can be said to cover all such conduct where this relationship (or nonrelationship) exists. The conclusion would be that because proposed section 1647 announces coverage of nonspousal sexual contact and deals explicitly with a variety of conditions when such conduct would be a Federal offense under the proposed Code, the failure to cover adultery evidences an intent to exclude it as a Federal offense and therefore it would not be assimilated. On the other hand, it could be argued that adultery is closer to bigamy because of the essential aspect of violation of matrimonial integrity; it is the affirmative presence of a matrimonial relationship which distinguishes adultery from the area covered by section 1647. Further, if the "family" element is ignored here, it makes it more difficult to take it into account with respect to incest and its relationship to section 1646, discussed *supra.*

[7] *E.g.,* 38 Ill. Rev. Stat. §§ 11–11 (1–10 years), 11–10 (2–20 years); D.C. Code § 22–1901 (12 years); N.Y. Rev. Pen. L. § 255–25 (Class E felony).

[8] *E.g.,* 38 Ill. Rev. Stat. § 11–7 (1 year); D.C. Code § 22–301 (1 year).

[9] *E.g.,* D.C. Code § 22–903 (nonsupport, 12 months); N.Y. Rev. Pen. L. art. 260, which provides felony treatment for abandonment of a child (§ 260.00), and misdemeanor treatment for nonsupport of a child (§ 260.05), endangering the welfare of a child (§ 260.10), and endangering the welfare of an incompetent person (§ 260.25).

*This section, which appeared in the Study Draft, was deleted in the Final Report. *But see* Final Report § 1861(1)(f).

Presumably, if fornication cannot be assimilated under general principles, the determination is made that such conduct should not be criminal in Federal enclaves. The conclusion is a bit at odds with one policy of the assimilated offense provision—that enclaves should not become havens for offenders against State policy. If adultery is assimilated because of the matrimonial aspect and fornication is not assimilated, the conceptual possibility is presented that enclaves may become havens for fornicators, provided they are not adulterers. The writer prefers assimilating neither offense, but is not certain that any general provisions can assure this result.

It is believed that nonsupport and child abuse generally would be assimilated. Where the conduct constitutes the offense of assault or reckless endangerment, the proposed Code provisions (chapter 16) would apply. A question raised by nonsupport offenses and similar offenses which speak of persons "legally charged with the care or custody of a child,"[10] is whether there is an offense of nonsupport to be assimilated in view of the fact that the obligation is established by State law. No reported case of enclave prosecution for nonsupport of a child has been found and, as a practical matter, the purpose of sanctions in this area is aimed primarily at securing compliance with obligations. In diversity cases, the State law defining the obligation is said to govern; presumably, the same rule will apply in enclaves. As an alternative to assimilating the criminal sanction, adoption of a nonsupport offense similar to the Model Penal Code provision should be considered.[11]

3. *Miscellaneous Offenses.* We now turn to a miscellaneous group of offenses which is difficult to classify.

(a) *Causing or aiding suicide of another (Model Penal Code § 210.5; New York Revised Penal Law § 120.30).* Under some circumstances, if rules of causation permit, this could be murder or attempted murder under the proposed Code; and failing to rise to murder, attempted murder, facilitation of murder or a similar offense in the Code, the conduct should not be punishable as a Federal offense by assimilation because the Code purports to cover all intentional death-resulting conduct.[12]

(b) *Deceptive business practices.* This involves such offenses as false advertising, false weights and measures, and false statements to obtain credit.[13]

Where theft or attempted theft is adequate, the State offense would not be assimilated; but where the State provision is essentially regulatory, there is no equivalent offense in the Code and the State offense should be assimilated. Much of this conduct falls in the theft area; but a false going out of business sale, for example, might not be theft if proper value is received by a purchaser.

There is a possibility that the proposed Code structure could support the view that some of the false advertising and mislabelling offenses would not be assimilated and also would not be Federal offenses under any other Code provision. Consider the going out of business sale in

[10] N.Y. Rev. Pen. L. §§ 260.00, 260.05.
[11] Model Penal Code § 230.5 (persistent nonsupport) (P.O.D. 1962).
[12] *Cf.* N.Y. Rev. Pen. L. § 120.35.
[13] Model Penal Code § 224.7 (P.O.D. 1962); N.Y. Rev. Pen. L. § 190.20.

the context of the last two sentences of the definition of "deception" in the theft complex in the proposed Code (Section 1741(a)):

> The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commedation of wares in communications addressed to the public or to a class or group[.]

If the false advertising condemned by the State offense does not rise to the level of deception in the Code definition because it has no pecuniary significance, then it would not constitute a theft under the proposed Code. Arguably, it would not be assimilated under either of the following views: (i) it is not a Federal offense because it is the kind of deception explicitly excluded by section 1741(a) and hence it is "immunized" within the meaning of section 209; or (ii) the area has been generally covered by Federal theft by deception provisions, as evidenced by the need explicitly to exclude it from the general definition in order to avoid coverage. Similar problems arise with offenses involving mislabeling of kosher meat and other objects.[14]

(c) *Interference with custody.* Interference with custody of children is a common State offense which in substantial part would not be assimilated by virtue of the defense to unlawful imprisonment provided in proposed section 1633(2), and the limitation to persons 14 and under in the definition of "without consent" in Study Draft § 1639(a).

(d) *Tampering with records; falsifying business records; fraudulent destruction, removal or concealment of recordable instruments.* Provisions covering theft, forgery and tampering with public records (chapter 17 and § 1355)* cover most of the conduct covered by State provisions governing record alteration, destruction and concealment. As attempted thefts, forgeries or violations of regulations, there should be no difficulty relying on proposed Code provisions instead of a State provision when intent to injure or deceive is involved. This would include such highly particularized provisions as unlawfully concealing a will.[15]

(e) *Animals.* There is nothing in the proposed Code dealing with cruelty to animals or other regulatory schemes concerning animals and hence, these would be assimilated.

(f) *Jostling; fraudulent accosting.* The New York Revised Penal Law contains the offenses of jostling (section 165.25) and fraudulent accosting (section 165.30). They are misdemeanors and require no culpability concerning the harm against which they are directed, *i.e.*, pickpocketing and confidence games. Their constitutionality may be in doubt in the light of *Benton* v. *United States*,[16] which required proof of intent for some prosecutions of a possession of burglars' tools offense. Arguably, they are regulatory or prophylactic, but following the argument set forth with respect to possession of burglars' tools and bad checks, *supra*, they would not be assimilated. Rather, Federal prosecution would rely on attempted theft in the proposed Code. Of course,

[14] *See e.g.*, D.C. Code § 22-3406.
*Study Draft § 1355 is Final Report § 1356.
[15] *See* N.Y. Rev. Pen. L. § 190.30 (concealing a will with intent to defraud).
[16] 232 F. 2d 341 (D.C. Cir. 1956).

this would result in different standards for a Federal post office and the surrounding area, but the substantial doubt concerning the wisdom and constitutionality of these provisions justifies this result.

(g) *Fortune telling.* Some States prohibit engaging in certain occupations. Fortune telling is prohibited in New York.[17] Prophylactic in nature and designed to protect the gullible even if both parties believe in the power to exorcise evil spirits, it would be assimilated. Otherwise, Federal enclaves could become havens for such enterprises.

(h) *Abortion.*[18] Here too, nonassimilation could result in Federal enclaves being havens for practices condemned by the concerned State. Although arguably homicide, abortion has not been so viewed and, hence, the silence of the proposed Code would result in assimilation.

(i) *Obstruction of State governmental functions and justice.* State offenses relating to obstruction of State governmental functions, *e.g.*, bribery of officials, and obstruction of State justice, *e.g.*, intimidation of witnesses, would not be assimilated by virtue of the fact that, while Congress has not seen fit to cover all State cases, the misconduct *is* penalized by the proposed Code (Chapter 13). Under the Study Draft there would be Federal jurisdiction over the misconduct in these areas when a Federal function, official or proceeding is involved and, in some circumstances, when there is bribery or intimidation of a local official (see section 1368(2)).

An issue is whether it should be a Federal offense if obstruction of State governmental functions or of State justice occurs in a Federal enclave. If it is desired that such obstruction be subject to Federal prosecution, it could be effected in one of three ways: (i) adding section 201(a) as a jurisdictional base to all, or selected, offenses defined in Chapter 13, in which case Federal enclave jurisdiction would extend to use of the enclave for commission of the offense against *any* State, or (ii) adding a special jurisdictional base to such offenses which provides for enclave jurisdiction when the offense involves a function, an official or proceeding of the State in which the enclave is located, or (iii) stating explicitly in section 209 that certain kinds of offenses are assimilated, notwithstanding the fact that they are also penalized in the Code.

It does not appear, however, that States generally make offenses of this kind against other State's offenses against the State in which the misconduct occurs. See N.Y. Rev. Pen. L. § 200.00 (bribery) and § 10.00(15), defining public servant. The difference between the actors in the crime crossing a State border and their crossing into an enclave does not seem to warrant a different policy for enclaves, unless the political relationship between the Federal government and the State with respect to the enclave is deemed sufficient reason.

(j) *Unlawfully solemnizing a marriage; unlawfully issuing a dissolution decree or procuring a marriage license.* Where documents are issued, they would be covered by the Code deceptive writings offense (section 1753); otherwise these offenses would be assimilated.

(k) *Unlawfully dealing with a child; sale of alcohol and tobacco to minors.* These offenses would be assimilated. The proposed Code contains no coverage of this conduct and the policy of preventing

[17] N.Y. Rev. Pen. L. § 165.35.

[18] Va. Crim. Code § 18.1-62 (abortion is a felony, 1-10 years); D.C. Code § 22-201 (1-10 years; second degree murder, if mother dies).

a Federal enclave from becoming a haven therefor dictates assimilation.

(l) *Weapons.* Proposed sections 1811-1814 contain a fairly complete Code governing firearms with an enclave jurisdictional base. New York, for example, also has extensive regulation of firearms, but the same provisions govern other dangerous weapons as well,[19] including mere possession. A fairly complete firearms complex in the proposed Code makes it difficult to assess its effect on State provisions governing other weapons. Possession of switchblade knives is covered by 15 U.S.C. § 1244 and hence State provisions would not be assimilated. If it appears desirable to cover other weapons and to avoid the possibility that State legislation concerning other weapons[20] will not be assimilated, it is recommended that a provision be included in the Federal Code either expressly assimilating State provisions or with its own substantive content. Note *United States* v. *Cooper*,[21] a prosecution under 18 U.S.C. § 13 based upon a California statute prohibiting possession of concealable weapons by convicted felons. The issue concerning assimilation was not discussed. It is believed, however, that, if it is intended to provide for nonassimilation of the possession of burglars' tools and the bad check offenses but to continue assimilation of offenses involving possession of concealed weapons, the Code should expressly so provide.

[19] N.Y. Rev. Pen. L. §§ 265.00-265.35.

[20] *See, e.g.*, N.Y. Rev. Pen. L. § 265.05, which deals with all kinds of weapons, such as a billy, bludgeon, or blackjack.

[21] 143 F. Supp. 76 (N.D. Calif. 1956).

COMMENT
on
JURISDICTION FOR THE CANAL ZONE
(Stein, July 5, 1970, as revised January 7, 1971)

STATUTE

Canal Zone Code § —. Jurisdiction for the Canal Zone.

(1) Applicability to the Canal Zone. In addition to sections of Title 18, United States Code, which by their terms apply to and within the Canal Zone, the sections of Title 18 enumerated in subsection 2 of this section shall apply to and within the Canal Zone.* There is jurisdiction in the Canal Zone over an offense listed in subsection 2 of this section to the same extent that there is jurisdiction over the offense were it to occur within the United States, unless jurisdiction is limited to specific jurisdictional bases in the listing of the offense in subsection 2 of this section.

(2) List of Sections Applicable in the Canal Zone. The following sections of Title 18 apply to and within the Canal Zone:

In Chapter 11: §§ 1101–1129 [all sections of Chapter 11.]

In Chapter 12: §§ 1201–1206; 1221–1229 [all sections of Chapter 12].

In Chapter 13: §§ 1301–1303: 1306–1307: 1310; 1321; 1351–1354; 1361–1366, when jurisdiction exists under section 1368(1); 1381.

In Chapter 14: §§ 1401–1409.

In Chapter 15: §§ 1511–1515; 1521; 1531–1533.

In Chapter 16: §§ 1631(c); 1632(c); 1635. In addition, any offense defined in chapter 16 applies when jurisdiction exists under section 201(c); or when the offense is committed in the course of committing or in immediate flight from the commission of any offense applicable to and within the Canal Zone under this subsection.

In Chapter 17: §§ 1701, when jurisdiction exists under § 201(d), (f) or (i); 1702–1703, when jurisdiction exists under § 201(d); 1704–1706, when jurisdiction exists under § 201 (d), (f) or (i); 1711–1713, when jurisdiction exists under § 201(d) 1714; 1732–1734, 1737, when jurisdiction exists under § 201 (d); 1751, when jurisdiction exists under § 1751 (3) (b), (d), or (e); 1752, when the offense involves a writing made by the United States or any foreign government; 1753 when jurisdiction exists under § 1751(3) (b), (d) or (e); 1755; 1772.

---

*The section numbers used in this draft are the section numbers of the proposed Federal Criminal Code.

In Chapter 18: §§ 1805; 1811–1814; 1821–1829; 1831–1832; 1841–1849.

* * * * * * *

In Parts D and E: [Present 18 U.S.C.] §§ 3042, 3059, 3105, 3109, 3187, 3195, 3500. [sections of 18 U.S.C. explicitly referring to the Canal Zone are: §§ 3183, 3241, 3771, 3772, 4210].

(3) Inchoate Offenses in the Canal Zone. The sections of Title 18 defining criminal attempt (§ 1001), criminal facilitation (§ 1002), criminal solicitation (§ 1003) and criminal conspiracy (§ 1004) apply to an attempt, facilitation, solicitation or conspiracy to commit, within the Canal Zone, an offense applicable to and within the Canal Zone under subsection 2 of this section.

COMMENT

The problem of correlating the sections of Title 18 which are applicable in the Canal Zone, as enumerated in present 18 U.S.C. § 14, with the comparable sections of the proposed Code has been rather difficult. The problem arises because the Panama Canal Zone has its own criminal code, which covers the basic crimes—homicide, assault, theft, *etc.* In the previous codification of the Federal criminal law, the Governor of the Canal Zone expressed concern that a general codification of Federal law "would have undesirable effects insofar as concerns the continued operation of the Canal Zone Criminal Code and Code of Criminal Procedure, established by Congress as Titles 5 and 6 of the Canal Zone Code, . . . and also would perhaps have undesirable effects insofar as concerns the continued applicability to the Canal Zone of the body of general criminal laws which are now applicable." (letter of September 22, 1945, filed with the House Judiciary Committee and quoted in Historical and Revision Notes to 18 U.S.C.A. § 14).

As a result, present 18 U.S.C. §§ 5 and 14 were enacted. 18 U.S.C. § 5 excludes the Canal Zone from the general definition of the United States. This definition is carried forward in proposed Code § 109(am). Present 18 U.S.C. § 14, which the above section of the Canal Zone Code would replace, lists a host of offenses defined in Title 18 which are applicable in the Canal Zone. In this way, the basic criminal laws of the Canal Zone are defined by its own criminal code, while other Federally-defined offenses, not in conflict with those defined in the Canal Zone Code, are added by reference in 18 U.S.C. § 14.

Ironically, this method of defining Canal Zone law was easier under existing Title 18 than it is under the proposed Code, for the very reason that we have, in the proposed Code, greatly simplified Federal law. Almost all of the offenses listed in 18 U.S.C. § 14 concern government operation of the Canal Zone—espionage, sabotage, forgery of government documents, bribery of Federal officials, fraud against the government, interference with foreign commerce. There is no problem, in translating these references into the terminology of the proposed Code, with those types of offenses which are entirely a concern of the Federal government—espionage, offenses involving foreign relations, obstruction of justice or government functions. The problem is in those areas (Chapters 16 and 17 of the proposed Code) in which we have consolidated offenses and existing Federal jurisdiction so that theft and forgery are identically defined, whether the theft or forgery involves government property or any property on a Federal enclave. In applying the proposed Code provisions to the Canal Zone, we are required to differentiate again among the various types of jurisdiction the Federal government may exercise over the same offense; we must distinguish jurisdiction when the government is the victim from enclave jurisdiction.

Because we must be guided here by the existing relationship of the Canal Zone Code to Title 18, and the precedent of 18 U.S.C. § 14, we have been cautious and careful in listing the proposed Code statutes which are equivalent to the present statutes listed in 18 U.S.C. § 14. There is some expansion by use of the piggyback concept; we propose that the proposed Code definitions of felonies against the person be applicable when a crime such as murder or terrorizing is committed in the course of committing any of the other enumerated proposed Code offenses applicable in the Canal Zone. We also suggest that offenses in the proposed Code such as threats to the President, or assault on or assassination of the President or other high officials, be applicable in the Canal Zone. And we would apply the general offenses of attempt, solicitation, facilitation or conspiracy to commisson of any of the proposed Code offenses applicable in the Canal Zone. The proposed list does not go any further than this, however, and apparent existing gaps are not filled—*e.g.*, as at present, introducing contraband useful for escape is not included as a Canal Zone crime under the proposed Code, though the offenses of escape and public servants permitting escape are included.

Additionally, in the course of preparing the proposed Code, we have defined felonies now defined outside Title 18 of the U.S. Code—*e.g.*, tax evasion (from Title 26), offenses against the national defense (from Title 50), narcotics offenses (from Titles 21 and 26), securities offenses (from Title 15), firearms offenses (from Titles 15 and 26), forgery of documents in commerce (from Title 49). Insofar as these offenses now apply to and within the Canal Zone, their proposed Code equivalents are referred to in the proposed section.

Finally, note that those sections which by their terms apply, to the Canal Zone have not been listed in subsection (2). For example, proposed Code § 210 includes within the special maritime and territorial jurisdiction "aircraft within the special aircraft jurisdiction of the United States as defined in 49 U.S.C. § 1301(32)". Title 49 defines that jurisdiction to include *inter alia* aircraft within the United States or scheduled to land and which next actually land within the United States. "United States" includes the Canal Zone. Thus, it is not necessary to list jurisdiction over proposed Code offenses on aircraft to or within the Canal Zone if the offenses have Code § 201(a) as a jurisdictional base.

COMMENT

on

JURISDICTION IN INDIAN COUNTRY: 25 U.S.C. § 212
(Stein, July 20, 1970, as revised January 7, 1971)

STATUTE

25 U.S.C. § 212. Jurisdiction in Indian Country.

(1) *Indian Country Within Special Jurisdiction.* Except as provided in subsections (2) and (3), Indian country shall be deemed to be part of the special maritime and territorial jurisdiction of the United States, as defined in section 210 of Title 18.* "Indian country" means:

(*a*) all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation;

(*b*) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state;

(*c*) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(2) *State Jurisdiction Over Indian Country*

(a) *Offenses Not Involving Indians.* Any state's jurisdiction over an offense committed within Indian country but not committed by or against an Indian or against his property, and the force and effect of its criminal laws with respect thereto, shall be the same as elsewhere within the state.

(b) *Any Offense.* A state's jurisdiction over any offense committed within the areas of Indian country listed below, and the force and effect of its criminal laws with respect thereto, shall be the same as elsewhere within the state:

(i) all Indian country within California, Kansas, Nebraska and Wisconsin;

(ii) all Indian country within Alaska, except that on the Annette Islands over which the Metlakatla community may exercise jurisdiction;

(iii) all Indian country within Minnesota, except the Red Lake Reservation;

(iv) all Indian country within Oregon, except the Warm Springs Reservation.

Except for Kansas, such Indian country shall not be deemed to be part of the special maritime and territorial jurisdiction of the United States.

---

*The section numbers used in this draft are the section numbers of the proposed Federal Criminal Code.

(c) *Matters Not Affected.* Nothing in this subsection shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(3) *Offenses Committed by Indians*

(a) *Nonfelonies.* Federal jurisdiction under this section shall not extend to any offense which is not a felony if it is committed by one Indian against the person or property of another Indian, unless section 202 of Title 18 applies.

(b) *Multiple Prosecutions.* Punishment of an Indian under the local law of the tribe for conduct constituting a federal offense which is not a felony shall be a bar to a subsequent federal prosecution of such Indian under this section. Otherwise sections 707 and 709 of Title 18 apply to a federal prosecution subsequent to a prosecution or similar proceeding under the law of the tribe as if such tribal prosecution or similar proceeding were a prosecution in a state.

Comment

1. *Present Law.* An exceptionally intricate jurisdictional relationship exists between Indian tribes living on their tribal lands, the Federal government, and the States. The relationship is a peculiar product of American history; the tribes, once sovereign, became wards of the Federal government while the States, as they were admitted into the Union, otherwise assumed general jurisdiction over matters within their own boundaries. As a result, jurisdiction over an offense committed on tribal land (the "Indian country") is subject to complex division.

The Federal government retains the basic jurisdiction over offenses committed in Indian country.[1] This jurisdiction exists because the Federal government, rather than the States, has historically had the duty to protect the Indian tribes.[2] It is currently expressed in 18 U.S.C. § 1152, which provides that the laws applicable in Federal enclaves shall apply in Indian country.

But the Indian country is large and, in many places, non-Indian communities and towns have been built in Indian country; the non-Indian population often outnumbers the Indian population.[3] It has long been recognized, therefore, that when an offense does not involve Indians, either as victims or perpetrators, the Federal duty to protect does not come into play, and the State has the primary role in prosecuting the offense, even if it occurs in Indian country.[4] In practice, such matters are always tried by the State.

[1] *Ex Parte Wilson*, 140 U.S. 575 (1891).

[2] *United States* v. *Kagama*, 118 U.S. 375, 384–385 (1886).

[3] *See, e.g., People ex rel. Ray* v. *Martin*, 326 U.S. 496 (1946); *Seymour* v. *Superintendent of Washington State Penitentiary*, 368 U.S. 351 (1962).

The State ordinarily has no jurisdiction, however, when an Indian commits an offense in Indian country, or is the victim of an offense in Indian country. However, the Federal government has ceded jurisdiction over offenses involving Indians in Indian country to some of the States, to the extent that prosecutions in these States do not adversely affect certain existing rights of Indians, for example, water, hunting or property rights. These cessions of Federal jurisdiction are fluid: recent legislation authorizes further cessions of Federal jurisdiction to the States if the affected tribes consent; on the other hand, the Federal government can also accept retrocessions of such jurisdiction from the States.[6]

Where the Federal government retains jurisdiction over offenses committed by or against Indians in Indian country, jurisdiction is divided between the Federal courts and the tribal courts. Tribal courts represent a form of tribal sovereignty; they are, however, entirely subject to regulation by the Federal government.[7] The tribal courts have jurisdiction over a number of minor offenses committed by Indians, defined for most tribes by a Criminal Code drawn up under the guidance of the Department of the Interior.[8] The major penalty authorized under this Code is 6 months' imprisonment, with one exception (use of peyote) which is punishable by up to 9 months' imprisonment. Tribal courts have no jurisdiction to try non-Indians, nor can they try any felony cases.

If any offense is committed by a non-Indian against an Indian, the offender is triable in a Federal district court, under Federal law. If an Indian commits one of thirteen felonies enumerated in 18 U.S.C. § 1153, he must be tried by a Federal district court, though State definitions of the offense must be used for some of these crimes, which are not presently defined in Title 18 of the United States Code. (Present 18 U.S.C. § 3242 is, essentially, repetitive of 18 U.S.C. § 1153). Federal district courts otherwise have no jurisdiction over crimes committed "by one Indian against the person or property of another Indian, nor [over] any Indian committing any [other] offense in the Indian country who has been punished by the local law of the tribe."[9]

[4] *Draper* v. *United States*, 164 U.S. 240 (1896); *People ex rel. Ray* v. *Martin*, *supra* note 3; *Seymour* v. *Superintendent of Washington State Penitentiary*, *supra* note 3.

[5] *United States* v. *Kagama*, *supra* note 2; *Donnelly* v. *United States*, 228 U.S. 243 (1913).

[6] Act of April 11, 1968, title IV, § 401, 82 Stat. 78, 25 U.S.C. § 1321, *Id.*, § 403, 82 Stat. 79, 25 U.S.C. § 1323.

[7] *Iron Crow* v. *Oglala Sioux Tribes of Pine Ridge Reservation*, 231 F.2d 89 (8th Cir. 1956). *See* 25 C.F.R. Part 11, establishing "Courts of Indian Offenses" for the tribes.

[8] 25 C.F.R. §§ 11.38–11.87NH.

[9] 18 U.S.C. § 1152. Section 1152 of Title 18 also excludes Federal court jurisdiction where "by treaty stipulation, the exclusive jurisdiction over such offenses is . . . secured to the Indian tribes . . .," but no such treaty provision appears to be now in force and Indians tribes are no longer dealt with by treaty. *See* Association of American Indian Affairs, Federal Indian Law, 210–212, 324 (F. Cohen ed. 1966).

This tortuous mesh of jurisdictions leaves some loopholes. Some basic felonies are not enumerated in 18 U.S.C. § 1153—for example, kidnapping—so that, if an Indian commits the crime against another Indian in Indian country there is no jurisdiction, either in a State court, Federal district court or a tribal court, over the offense. Further, this process of distinguishing offenses committed by an Indian against a non-Indian from offenses committed by an Indian against an Indian has led to clearly unwarranted differentiations; for example, a present provision in 18 U.S.C. § 1153 makes the penalty for rape depend upon whether the victim was or was not an Indian.

2. *The Effect of the Proposed Provision.* There is obviously little change that can be effected in these fluctuating jurisdictional relationships by a reform of the substantive criminal law. Nor are we able now, without special knowledge and intensive study of the continued need for existing jurisdictional distinctions and potential effects of any change, to propose significant changes in the existing jurisdictional relationships. Rather than venture into an area requiring reforms with which we are substantially unfamiliar, the proposal for the most part is an effort to continue the existing relationships, but restate them in terms of the proposed Code.

Nevertheless by virtue of the proposed Code's complete formulation of major offenses in the special maritime and territorial jurisdiction, some desirable changes could be effectuated. Thus, as with offenses on Federal territory, all major crimes committed by any person on Indian land would be within the Federal jurisdiction, rather than just those thirteen crimes now enumerated in 18 U.S.C. § 1153; moreover all major crimes would be federally defined, and no Federal court interpretation of State laws on the subject would be necessary. Further, by application of the proposed Code, the relationship of trials under tribal laws to Federal prosecutions in cases of minor offenses committed by Indians would be more carefully set forth.

Subsection (1) of the draft proposed here substantially restates the general principle that Federal jurisdiction exists over offenses committed in the Indian country, as it does over offenses committed on Federal enclaves; the subsection, as stated, marks no substantial change from the first paragraph of present 18 U.S.C. § 1152. But, since virtually all the offenses defined in the proposed Code would apply to Federal enclaves, this subsection would operate to render Indians committing any felony subject to the provision of the proposed Code. Indians would be subject to the same felony penalties, regardless of whether the victim is an Indian or non-Indian.[10] The tribal member on Indian territory would, under the proposal, be subject to some felony proscriptions to which he is not now subject when the victim is another Indian—for example, kidnapping, forgery, sodomy. The only felony enumerated in 18 U.S.C. § 1153 which would no longer be covered is incest; definition of that offense is, under the proposed Code, delegated to treatment as a misdemeanor under local law.[11] Additionally, under the proposed Code, some acts of carnal knowledge

[10] *But see* subsection (3) of the proposal, concerning jurisdiction over lesser offenses committed by Indians.

[11] *See* Working Papers, p. 872.

with a female under 16 which are now treated as felonious would be misdemeanors.[12]

The existing definition of "Indian country" in 18 U.S.C. § 1151—defining Indian country to include reservations, dependent Indian communities, and Indian allotments, titles to which have not been extinguished—is incorporated into the subsection. There appears to be no need for redefinition of this judicially construed term.

Subsection (2) represents an effort to codify, somewhat more comprehensively than at present, State jurisdiction over offenses committed in Indian country. The judicially stated rule that the States have jurisdiction over offenses in Indian country which do not involve Indians is set forth in subsection 2(a), and existing 18 U.S.C. §§ 1162 and 3242, listing those States to which jurisdiction over *any* offense in Indian country has been ceded, are restated, without substantial change, in subsection 2(b) and 2(c).*

Subsection (3) serves to clarify the other existing exceptions to Federal jurisdiction over offenses committed by Indians in Indian country. Subsection (3)(a) states the rule set forth in present 18 U.S.C. § 1152, that there is no Federal jurisdiction over offenses committed by one Indian against another Indian in Indian country. The rule is clarified, in the proposal, to apply only to offenses which are not felonies; this is the effect, at present, when 18 U.S.C. § 1153 is read with 18 U.S.C. § 1152. Further, subsection (3)(a) explicity takes section 202 of the proposed Code into account, so that a prosecution of an Indian will not be frustrated if he is found guilty of a lesser included crime to a felony. Note, too, that Federal jurisdiction over these minor offenses is excluded only for those offenses involving the enclave-type jurisdiction which is the subject of this section; minor offenses involving another Federal jurisdictional base (harassment by telephone, for example) will still be federally prosecutable.[13] Thought was given to extending Federal jurisdiction to minor offenses committed by an Indian who is not a member of the local tribe on whose land the offense is committed; this, however, may unnecessarily create many problems, for example, determining jurisdiction over a member of one tribe who has married a member of another.

To the present exception to Federal jurisdiction of minor offenses committed by an Indian "who has been punished by local law of the tribe" (18 U.S.C. § 1152), proposed subsection 3(b) adds a provision applying the proposed Code's double jeopardy provisions (sections 707 and 709), as if trial in a tribal court constituted a trial in a State. This has the virtue of adding significance to tribal sovereignty; anyone properly prosecuted under tribal law, whether or not he has been "punished" (he may have been acquitted), cannot subsequently be

[12] *See* proposed section 1645.

*Subsection (2)(b) reflects the recent changes of P.L. 91-523.

[13] *See Walks on Top* v. *United States*, 372 F.2d 422, 425 (9th Cir. 1967), *cert. denied*, 389 U.S. 879 (1967), upholding Federal jurisdiction over an assault by one Indian on another Indian who was a Federal officer: "[T]he exception granted to Indians who abuse other Indians is, by the terms of the statute [18 U.S.C. § 1152], only an exception from federal enclave law, and not from the general law of the United States."

prosecuted federally for the offense except in the rare instance of Attorney General certification. At the same time, if the defendant is improperly tried for a minor offense when his crime was a serious one, proposed section 709 will apply, and Federal prosecution will not be frustrated.

The remaining present limitation on the general Federal jurisdiction over Indian offenses—when the local tribe holds exclusive jurisdiction by virtue of a treaty—is not provided for in the proposed section, since this limitation is now obsolete.

3. *Remaining Problems Concerning Federal Criminal Law and Indian Jurisdiction.* As noted above, the present Criminal Code reform will have no effect on some related serious problems concerning offenses involving Indians. There are serious problems concerning the existing jurisdictional relationship in its entirety—whether the tribes, or the States, or the Federal government ought to be given greater authority in such matters. There are problems concerning the due process rights of Indians before tribal courts, problems of law enforcement authority among tribal, Federal and State officials; problems on the procedure by which the Federal government may accept retrocessions of jurisdiction over Indian problems; indeed, on definition of who is an Indian tribal member. As specific examples: Indian law enforcement officers often cannot arrest non-Indian offenders in Indian country; they can only evict them. Moreover, while an Indian who commits a minor offense against a non-Indian in Indian country is subject to immediate trial by his tribal court, a non-Indian offender against an Indian must be brought before a Federal court, often far away. Federal prosecutors are understandably reluctant to go to such lengths for minor offenses. But, if they do not, an Indian may be punished for conduct which a non-Indian will not be punished for.

These problems are the results of the present tangled three-party jurisdictional relationship. Fuller investigation of the present structure might lead to more extensive reform than what is proposed here.[14]

[14] *See, generally:* President Nixon's message to Congress on Indian Affairs, July, 8, 1970; Views of Senator Ervin on a Bill of Rights for American Indians, supplementing S. Rep. No. 721 on the Civil Rights Acts of 1968 (1968 U.S. CODE, CONG. AND AD. NEWS 810, 819), Mundt, *Indian Autonomy and Indian Legal Problems*, 15 KAN. L. REV. 505 (1966); Crosse, *Criminal and Civil Jurisdiction in Indian Country*, 4 ARIZ. L. REV. 57 (1962), *American Indian Law: A Symposium*, 20 FED. B. J. 211 (1960); Davis, *Criminal Jurisdiction over Indian Country in Arizona*, 1 ARIZ. L. REV. 62 (1959); Richards, *Federal Jurisdiction over Criminal Matters Involving Indians*, 2 S. DAK. L. REV. 48 (1957); Cohen, *Erosion of Indian Rights, 1950–53: A Case Study in Bureaucracy*, 62 YALE L.J. 348 (1953); and Note, *Indians, The Forgotten Americans*, 81 HARV. L. REV. 1818 (1968); *Applicability of Constitutional Limitations to Indian Tribal Government*, 16 OKLA. L. REV. 94 (1963); *Problems of State Jurisdiction over Indian Reservations*, 13 DEPAUL L. REV. 74 (1963); *Jurisdictional Problems, Indians and Indian Reservations*, 34 ROCKY MT. L. REV. 546 (1962); *Criminal Jurisdiction over Indians and Post-conviction Remedies*, 22 MONT. L. REV. 165 (1961); *Jurisdiction over Indian Country in North Dakota*, 36 N. DAK. L. REV. 51 (1960); *Extent of Washington Criminal Jurisdiction over Indians*, 33 WASH. L. REV. 289 (1958).

PART II: GUIDELINES FOR CONFORMING TITLE 18, PARTS II–V, AND OTHER TITLES OF THE UNITED STATES CODE TO THE PROPOSALS FOR A NEW FEDERAL CRIMINAL CODE

FOREWORD

Although the Commission's Final Report contains in actual draft form the work basis for a proposed new Federal Criminal Code, the provisions of such a new code would constitute only part of the more comprehensive bill required for the code's enactment. A variety of additional provisions would have to be drafted, including some dealing with transitional matters, *i.e.*, the effect of the new laws on persons who were serving sentences or committed crimes under the old laws; some repealing laws being displaced; some re-enacting provisions being transferred from Title 18; and some amending and revising relevant laws to make them consistent with the text and policies of the new code.

Neither the time nor the resources allotted to the Commission permitted it to undertake the drafting of those additional provisions. It was nevertheless recognized that such drafting might be greatly facilitated if members of the Commission staff could identify the matters which should or might be treated in the comprehensive bill and at least provide guidelines for what should or could be done.

Work on this limited project began shortly before the Commission terminated on January 7, 1971, and continued thereafter upon the basis of voluntary contribution of services by former Commission staff members. The principal contribution of this nature was made by former Staff Counsel Lee Cross, who is largely responsible for the guidelines for relevant provisions outside Title 18. Others aiding this effort were former Deputy Director Richard A. Green (general supervision and assistance), former Associate Director David P. Bancroft (Parts II–V of Title 18), and former Senior Staff Counsel Burton C. Agata (Titles 42, 50, 50 App.). Additional assistance was provided by Eugene Barkin, General Counsel of the Bureau of Prisons, with respect to guidelines for Parts III and IV of present Title 18. Anne Hewitt, a former research assistant to the Commission staff, provided editorial and coordinating services. Her work was underwritten, for a period of six months, by the Senate Judiciary Committee's Subcommittee on Criminal Laws and Procedures.

It should be borne in mind that the guidelines are not Commission recommendations and do not necessarily reflect a collective staff judgment or consensus. The guidelines thus constitute suggestions made by persons familiar with the Final Report and the principles underlying the Commission's recommendations. It is expected that the matters touched upon will be given additional study by others, particularly those persons more familiar with the purpose of the various bodies of law involved outside Title 18 and with the experience thereunder.

53-308—71—vol. 3——7

A. Transitional Provisions

Some provisions should deal explicitly with the question of which laws apply to persons charged with or convicted of crimes committed prior to the effective date of the new code. The simplest approach would be a provision to the effect that the laws in existence at the time of the crime should govern. See, *e.g.*, N.Y. Pen. L. § 5.05; Ga. Crim. Code § 26–103; Wis. Crim. Code § 939.01.

Before that approach is taken, several questions ought to be considered:

(1) Should a person tried or sentenced after the effective date be permitted to claim the benefit of more favorable provisions in the new code, *e.g.*, changes in defenses, changes in sentencing authority? See Model Penal Code § 1.01 (P.O.D. 1962); Vt. Proposed Crim. Code § 1.

(2) Where sentences were imposed prior to the effective date, should the Board of Parole be encouraged to make adjustments to accord with the policies of the new code? Should such adjustments be made by statute where, under the old law, the Board of Parole had no discretion, *e.g.*, death sentence, term of years without parole eligibility (mandatory minimum)?

(3) If the good-time allowance system is abolished, should it continue to run along side the new system for old-law prisoners, or should some adjustment be made as of the effective date?

B. Parts II Through V of Title 18

INTRODUCTORY NOTE

Following are guidelines for the parts of present Title 18 not wholly supplanted by the code proposed in the Commission's Final Report. Several of the principles underlying the guidelines are as follows:

(1) Parts and chapters are redesignated to follow the scheme initiated in the Commission's Report. Thus, Part II of Title 18 is redesignated Part D, and the chapter numbering in this part starts with 40. The initial section numbers of the chapters are spaced at intervals of 100.

(2) Section numbers and their catch-lines which are simply cross-reference indices to the Federal Rules of Criminal Procedures, *e.g.*, 18 U.S.C. §§ 3001–3006, are deleted. Their present inclusion in Title 18 is unnecessary since the text of the Rules is not actually enacted as part of Title 18. They have the force and effect of law only as Rules (18 U.S.C. §§ 3771, 3772; see, *e.g.*, 18 U.S.C. § 3060 (1948) and (1968) (P.L. 90–578, § 303(a), 82 Stat. 1117). Deletion of these mere catch-lines should help in clarifying the status of the Rules. Where such deletion results in no sections remaining in a given chapter, the chapter is nevertheless retained since Congress may wish to enact provisions pertaining to the chapter subject and an appropriate place is thereby preserved. See, *e.g.*, Chap. 217, redesignated Chapter 47.

(3) Provisions relating to capital punishment, *e.g.*, 18 U.S.C. 3005, are consolidated in one chapter (60) so as to facilitate whatever amendments may be appropriate thereto.

(4) Similarly, provisions relating to investigative jurisdiction, presently found in Chapters 203 and 205 of Title 18, are collected into new Chapter 59.

(5) Provisions relating solely to Indian offenses, *e.g.*, 18 U.S.C. §§ 3055, 3113 and 3242, are all proposed for repeal in Title 18 and re-enactment in Title 25. This is consistent with the proposal in the Commission's Final Report that the predicate offenses in Chapter 53 of present Title 18 be transferred to Title 25.

Part ~~II.~~ *D*—CRIMINAL PROCEDURE

Chap.			Sec.	
~~201~~	*40.*	General provisions	~~3001~~	*4001*
~~203~~	*41.*	Arrest and commitment	~~3041~~	*4101*
~~205~~	*42.*	Searches and seizures	~~3101~~	*4201*
~~207~~	*43.*	Release	~~3141~~	*4301*
~~209~~	*44.*	Extradition	~~3181~~	*4401*
~~211~~	*45.*	Jurisdiction and venue	~~3231~~	*4501*
~~213.~~		~~Limitations~~	~~3281~~	
~~215~~	*46.*	Grand jury	~~3321~~	*4601*
~~216.~~		~~Special Grand Jury~~	~~3331~~	
~~217~~	*47.*	Indictment and information	~~3361~~	*4701*
~~219~~	*48.*	Trial by United States Magistrates	~~3401~~	*4801*
~~221~~	*49.*	Arraignment, pleas and trial	~~3431~~	*4901*
~~223~~	*50.*	Witnesses and evidence	~~3481~~	*5001*
~~225~~	*51.*	Verdict	~~3531~~	*5101*
~~227~~	*52.*	Sentence, judgment, and execution	~~3561~~	*5201*
~~229~~	*53.*	Fines, penalties and forfeitures	~~3611~~	*5301*
~~231~~	*54.*	Probation	~~3651~~	*5401*
~~233~~	*55.*	Contempts	~~3691~~	*5501*
~~235~~	*56.*	Aplpeal	~~3731~~	*5601*
~~237~~	*57.*	Rues of criminal procedure	~~3771~~	*5701*
	58.	*Interception of wire and oral communication*		*5801*
	59.	*Investigative authority and jurisdiction*		*5901*
	60.	*Capital offenses*		*6001*

Chapter ~~201~~ *40.*—General Provisions

Sec.		
~~3001.~~		~~Procedure governed by rules; scope, purpose and effect; definition of terms; local rules; forms—Rule.~~
~~3002.~~		~~Courts always open—Rule.~~
~~3003.~~		~~Calendars—Rule.~~
~~3004.~~		~~Decorum in court room—Rule.~~
~~3005.~~		~~Counsel and witnesses in capital cases.~~
~~3006.~~		~~Assignment of counsel—Rule.~~
~~3006A~~	*4001.*	Adequate representation of defendants.
~~3007.~~		~~Motions—Rule.~~
~~3008.~~		~~Service and filing of papers—Rule.~~
~~3009.~~		~~Records—Rule.~~
~~3010.~~		~~Exceptions unnecessary—Rule.~~
~~3011.~~		~~Computation of time—Rule.~~
~~3012.~~	*4002.*	Orders respecting persons in custody.

Note: Title 18 U.S.C. §§ 3001–04, 3006 and 3007–11 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3005	Repeal and reenact in proposed Chapter 60 and there consolidate with other provisions relating to capital cases. See Introductory Note, paragraph (3), *supra*.
3006A	Renumber as 4001. Subsections (a) and (b)—delete references to felonies and misdemeanors other than petty offenses and substitute a reference to offenses against the United States "for which a term of imprisonment in excess of six months is authorized by law". This will preserve the six month maximum sentence requirement of present law currently expressed in terms of "petty offenses," a classification not used in the Code. Note that, pursuant to Code § 3006, offenses outside Title 18 may have penalties fixed at levels between six months and 1 year and that the Code's Class B misdemeanor is less than six months.
3012	Renumber as 4002.

Chapter ~~203~~ *41.*—Arrest and Commitment

Sec.

~~3041~~ *4101.* Power of courts and magistrates.
~~3042~~ *4102.* Extraterritorial jurisdiction.
~~3043~~ *4103.* Security of the peace and good behavior.
~~3044.~~ ~~Complaint Rule.~~
~~3045~~ *4104.* Internal revenue violations.
~~3046.~~ ~~Warrants or summons—Rule.~~
~~3047~~ *4105.* Multiple warrants unnecessary.
~~3048.~~ ~~Commitment to another district; removal—Rule.~~
~~3049~~ *4106.* Warrant for removal.
~~3050.~~ ~~Bureau of Prisons employees' powers.~~
~~3052.~~ ~~Powers of Federal Bureau of Investigation.~~
~~3053.~~ ~~Powers of marshals and deputies.~~
~~3054.~~ ~~Officer's powers involving animals and birds.~~
~~3055.~~ ~~Officers' powers to suppress Indian liquor traffic.~~
~~3056.~~ ~~Secret Service powers.~~
~~3057~~ *4107.* Bankruptcy investigations.
~~3058~~ *4108.* Interned belligerent nationals.
~~3059~~ *4109.* Rewards and appropriations therefor.
~~3060~~ *4110.* Preliminary examination.
~~3061.~~ ~~Powers of Postal Inspectors.~~

Note: Title 18 U.S.C. §§ 3044, 3046, 3048, and 3060 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3041	Renumber as 4101. Amend by deleting the reference to chapter "207" and substituting "48".
3042	Renumber as 4102. Amend by substituting "4101" for "3041". Conform the phraseology to Code § 208 which provides for extraterritorial jurisdiction over "places" outside of any "country", and, in some limited instances, over foreign nationals.
3043	Renumber as 4103.
3045	Renumber as 4104.
3047	Renumber as 4105.
3049	Renumber as 4106.
3050–3053	Repeal and reenact in proposed Chapter 59 with other provisions relating to investigative jurisdiction. See Introductory Note, paragraph (4), *supra*.
3054	Repeal and reenact in Title 16, where the predicate provisions, 81 U.S.C. §§ 43–44, are to be transferred.
3055	Repeal and reenact in Title 25, where the predicate provisions, 18 U.S.C. ch. 53, are to be transferred, in large part.
3056	See guideline for sections 3050–53, *supra*.
3057	Renumber as 4107.
3058	Renumber as 4108.
3059	Renumber as 4109. Consolidate with subsection (g) of present 18 U.S.C. § 1751, with appropriate amendment of the references to the sections involved.
3060	Renumber as 4110.
3061	See guideline for sections 3050–53, *supra*.

Chapter ~~205~~ *42.*—Searches and Seizures

Sec.

~~3101.~~ ~~Effect of rules of court—Rule.~~
~~3102.~~ ~~Authority to issue search warrant—Rule.~~
~~3103.~~ ~~Grounds for issuing search warrant—Rule.~~
~~3103a~~ *4201.* Additional grounds for issuing warrant.
~~3104.~~ ~~Issuance of search warrant; contents—Rule.~~
~~3105~~ *4202.* Persons authorized to serve search warrant.
~~3106.~~ ~~Officer authorized to serve search warrant—Rule.~~
~~3107.~~ ~~Service of warrants and seizures by Federal Bureau of Investigation.~~
~~3108.~~ ~~Execution, service, and return—Rule.~~
~~3109~~ *4203.* Breaking doors or windows for entry or exit.
~~3110.~~ ~~Property defined—Rule.~~

~~3111. Property seizable on search warrant—Rule.~~
~~3112. Search warrants for seizure of animals, birds or eggs.~~
~~3113. Liquor violations in Indian country.~~
~~3114. Return of seized property and suppression of evidence, motion—Rule.~~
~~3115. Inventory upon execution and return of search warrant—Rule.~~
~~3116. Records of examining magistrate; return to clerk of court—Rule.~~

Note: Title 18 U.S.C. §§ 3101–03, 3104, 3106, 3108, 3110, 3111 and 3114-3116 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3103a	Renumber as 4201. Amend by substituting a citation to Rule 41 of the Federal Rules of Criminal Procedure for "section 3103 of this title,".
3105	Renumber as 4202.
3107	Repeal and reenact in Chapter 59. See Introductory Note, paragraph (4), *supra*.
3109	Renumber as 4203.
3112–3113	Repeal and reenact in Titles 16 and 25, respectively, for the reasons set forth in the guidelines to sections 3054 and 3055, *supra*.

Chapter ~~207~~ *43*.—Release

Sec.

~~3141~~ *4301*. Power of courts and magistrates.
~~3142~~ *4302*. Surrender by bail.
~~3143~~ *4303*. Additional bail.
~~3144~~ *4304*. Cases removed from State courts.
~~3145. Parties and witnesses—Rule.~~
~~3146~~ *4305*. Release ~~in noncapital cases~~ prior to trial.
~~3147~~ *4306*. Appeal from conditions of release.
~~3148~~ *4307*. Release ~~in capital cases or~~ after conviction.
~~3149~~ *4308*. Release of material witnesses.
~~3150~~ *4309*. Penalties for failure to appear.
~~3151~~ *4310*. Contempt.
~~3152~~ *4311*. Definition of "Judicial Officer".

Note: Title 18 U.S.C. § 3145 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3141	Renumber as 4301. Amend by deleting the second clause relating to capital offenses and, if capital punishment is retained, inserting as an opening phrase: "Except as otherwise provided in this Code". Transfer the deleted provision to proposed Chapter 60 to be there consolidated with other provisions pertaining to capital offenses. See Introductory Note, paragraph (3), *supra*.
3142	Renumber as 4302. Amend by deleting "criminal" and substituting "federal" to comport with the definition of "offense" in Code § 109 (ab).
3143	Renumber as 4303.
3144	Renumber as 4304.
3146	Renumber as 4305. Amend subsection (a) by inserting "federal" before "offense." See guideline for section 3142, *supra*. Delete the reference to the death penalty and add the same opening phrase as provisionally suggested in the guideline for section 3141, *supra*.
3147	Renumber as 4306. Amend by substituting "4305" for "3146", and by inserting "federal" before "offense" in subsection (a). See guidelines to sections 3142 and 3146, *supra*.
3148	Renumber as 4307. Amend by deleting the reference to the death penalty and by inserting "federal" before "offense". See guidelines to section 3142. Substitute "4305" and "4306" for "3146" and "3147" respectively.
3149	Renumber as 4308. Amend by substituting "4305" for "4146".
3150	Renumber as 4309. Repeal the entire text and substitute "A person who violates section 1305 shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release." Code § 1305 displaces all but the forfeiture provision of this section.
3151	Renumber as 4310.
3152	Renumber as 4311. Repeal subsection (2) defining "offense" since it is covered by Code §§ 101 and 109(ab).

Chapter ~~209~~ *44.*—Extradition

Sec.

~~3181~~ *4401.* Scope and limitation of chapter.
~~3182~~ *4402.* Fugitives from State ~~or Territory~~ to State, ~~District or Territory.~~
~~3183~~ *4403.* Fugitives from State, ~~Territory or Possession~~ into extraterritorial jurisdiction of United States.
~~3184~~ *4404.* Fugitives from foreign country to United States.
~~3185~~ *4405.* Fugitives from country under control of United States into the United States.
~~3186~~ *4406.* Secretary of State to surrender fugitive.
~~3187~~ *4407.* Provisional arrest and detention within extraterritorial jurisdiction.
~~3188~~ *4408.* Time of commitment pending extradition.
~~3189~~ *4409.* Place and character of hearing.
~~3190~~ *4410.* Evidence on hearing.
~~3191~~ *4411.* Witnesses for indigent fugitives.
~~3192~~ *4412.* Protection of accused.
~~3193~~ *4413.* Receiving agent's authority over offenders.
~~3194~~ *4414.* Transportation of fugitive by receiving agent.
~~3195~~ *4415.* Payment of fees and costs.

Title 18 Sections	Guidelines
3181	Renumber as 4401.
3182–3183	Renumber as 4402 and 4403 respectively. Amend by deleting references to entities other than "state" since they are covered by the comprehensive definition of "state" in Code § 109(ak).
3184	Renumber as 4404.
3185	Renumber as 4405. Consideration should be given to conforming the description of listed offenses to the Code descriptions.
3186	Renumber as 4406. Amend by substituting "4404" and "4405" for "3184" and "3185" respectively.
3187	Renumber as 4407. Amend by substituting "4102" and "4403" for "3042" and "3183" respectively.
3188	Renumber as 4408.
3189	Renumber as 4409.
3190	Renumber as 4410.
3191	Renumber as 4411.
3192	Renumber as 4412.
3193	Renumber as 4413.
3194	Renumber as 4414. Amend by substituting "4402" for "3182" and by deleting "or Territory" since it is covered by the comprehensive definition of "state" in Code § 109(ak).
3195	Renumber as 4415.

Chapter ~~211~~ *45.*—Jurisdiction and Venue

Sec.

~~3231~~ *4501.* District courts.
~~3232.~~ ~~District of offense—Rule.~~
~~3233.~~ ~~Transfer within district—Rule.~~
~~3234.~~ ~~Change of venue to another district—Rule.~~
~~3235.~~ ~~Venue in capital cases.~~
~~3236~~ *4502.* Murder, ~~or~~ manslaughter *or negligent homicide.*
~~3237~~ *4503.* Offenses begun in one district and completed in another.
~~3238~~ *4504.* Offenses not committed in any district.
~~3239~~ *4505.* Threatening communications.
~~3240~~ *4506.* Creation of new district or division.
~~3241~~ *4507.* Jurisdiction of offenses under certain sections.
~~3242.~~ ~~Indians committing certain offenses; acts on reservations.~~
~~3243.~~ ~~Jurisdiction of State of Kansas over offenses committed by or against Indians on Indian reservations.~~

Note: Title 18 U.S.C. §§3232–3234 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra.*

Title 18 Sections	Guidelines
3231	Renumber as 4501.
3235	Repeal and reenact in proposed Chapter 60. See Introductory Note, paragraph (3), *supra.*
3236	Renumber as 4502. Add "negligent homicide" (Code § 1603). Also, amend as indicated in the chapter analysis.
3237	Renumber as 4503. Amend subsection (b) by substituting references to the appropriate subsections of Code §§ 1401 and 1402. See the guidelines for Title 26.
3238	Renumber as 4504.
3239	Renumber as 4505. Amend by deleting "indicted under sections . . . to communications originating" and substituting "charged with making a threat under sections 1614, 1617, 1618, 1732 or 1733, where the jurisdictional base is paragraph (e) of section 201 and the threat is alleged to have originated".
3240	Renumber as 4506.
3241	Renumber as 4507.
3242–3243	Repeal and reenact in Title 25. See Introductory Note, paragraph (5), *supra.*

~~Chapter 213.—Limitations~~

Sec.

~~3281. Capital offenses.~~
~~3282. Offenses not capital.~~
~~3283. Customs and slave trade violations.~~
~~3284. Concealment of bankrupt's assets.~~
~~3285. Criminal contempt.~~
~~3286. Seduction on vessel of United States.~~
~~3287. Wartime suspension of limitations.~~
~~3288. Reindictment where defect found after period of limitations.~~
~~3289. Reindictment where defect found before period of limitations.~~
~~3290. Fugitives from justice.~~
~~3291. Nationality, citizenship and passports.~~

Note: Repeal of this chapter is recommended because its provisions are covered by Code § 701.

Chapter ~~215~~ *46.*—Grand Jury

Sec.

~~3321.~~ *4601.* Number of grand jurors; summoning additional jurors.
~~3322. Number; summoning—Rule.~~
~~3323. Objections and motions—Rule.~~
~~3324. Foreman and deputy; powers and duties; records—Rule.~~
~~3325. Persons present at proceedings—Rule.~~
~~3326. Secrecy of proceedings and disclosure—Rule.~~
~~3327. Indictment; finding and return—Rule.~~
~~3328. Discharging jury and excusing juror—Rule.~~

Note: Title 18 U.S.C. §§ 3322–38 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3321	Renumber as 4601.

~~Chapter 216—Special Grand Jury~~

Sec.

~~3331~~ *4609.* Summoning and term; *special grand jury.*
~~3332~~ *4610.* Powers and duties; *special grand jury.*
~~3333~~ *4611.* Reports; *special grand jury.*
~~3334~~ *4612.* General provisions; *special grand jury.*

Note: Repeal chapter heading because consolidation into Chapter 46, *supra*, is suggested. Add "special grand jury" to the section headings, as indicated.

Title 18 Sections	Guidelines
3331–3334	Renumber as 4609, 4610, 4611, and 4612 respectively. Consolidate into Chapter 46, *supra*, with appropriate renumbering of internal section references.

Chapter ~~217~~ *47.*—Indictment and Information

Sec. [Reserved.]

~~3361. Form and contents—Rule.~~
~~3362. Waiver of indictment and prosecution on information—Rule.~~
~~3363. Joinder of offenses—Rule.~~
~~3364. Joinder of defendants—Rule.~~
~~3365. Amendment of information—Rule.~~
~~3366. Bill of particulars—Rule.~~
~~3367. Dismissal—Rule.~~

Note: Title 18 U.S.C. §§ 3361–67 are recommended for repeal but the chapter is reserved, for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Chapter ~~219~~ *48.*—Trial by United States Magistrates

Sec.

~~3401~~ *4801.* Minor offenses; application of probation laws.
~~3402~~ *4802.* Rules of procedure, practice and appeal.

Title 18 Sections	Guidelines
3401	Renumber as 4801. Amend subsection (f) by defining "minor offenses" as misdemeanors and infractions, delete citations to present Title 18 sections and substitute their counterpart in the Code. Note that Code § 1361, a partial analogue of 18 U.S.C. § 211, should not be included since it is classified as a felony. Title 5 will contain the balance of 18 U.S.C. § 211 not carried forward in Title 18 by Code §§ 1361 and 1364–65. Subsection (2) of Code § 3301 permits fines substantially in excess of the standard amounts there prescribed in subsection (1).
3402	Renumber as 4802.

Chapter 49.—Arraignment, Pleas and Trial

Sec. [Reserved.]

~~3431. Term of court; power of court unaffected by expiration—Rule.~~
~~3432. Indictment and list of jurors and witnesses for prisoner in capital cases.~~
~~3433. Arraignment—Rule.~~
~~3434. Presence of defendant—Rule.~~
~~3435. Receiver of stolen property triable before or after principal.~~
~~3436. Consolidation of indictments or informations—Rule.~~
~~3437. Severance—Rule.~~
~~3438. Pleas—Rule.~~

~~3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—Rule.~~
~~3440. Defenses and objections determined on motion—Rule.~~
~~3441. Jury; number of jurors; waiver—Rule.~~
~~3442. Jurors; examination; peremptory challenges; alternates—Rule.~~
~~3443. Instructions to jury—Rule.~~
~~3444. Disability of judge—Rule.~~
~~3445. Motion for judgment of acquittal—Rule.~~
~~3446. New trial—Rule.~~

Note: Title 18 U.S.C. §§ 3431, 3433–34, 3436–46 should be deleted and the chapter reserved for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3432	Repeal and reenact in proposed Chapter 60 and there consolidate with other provisions relating to capital cases. See Introductory Note, paragraph (3), *supra*.
3435	This section should be repealed because it has been rendered obsolete by Code § 401, as well as modern cases, regarding accomplices.

Chapter ~~223~~ *50.*—Witnesses and Evidence

Sec.

~~3481~~ *5001.* Competency of accused.
~~3482. Evidence and witnesses—Rule.~~
~~3483. Indigent defendants; process to produce evidence—Rule.~~
~~3484. Subpoenas—Rule~~
~~3485. Expert witnesses—Rule.~~
~~3487. Refusal to pay as evidence of embezzlement.~~
~~3488. Intoxicating liquor in Indian country as evidence of unlawful introduction.~~
~~3489. Discovery and inspection—Rule.~~
~~3490. Official record or entry—Rule.~~
~~3491~~ *5002.* Foreign documents.
~~3492~~ *5003.* Commission to consular officers to authenticate foreign documents.
~~3493~~ *5004.* Deposition to authenticate foreign documents.
~~3494~~ *5005.* Certification of genuineness of foreign document.
~~3495~~ *5006.* Fees and expenses of consuls, counsel, interpreters and witnesses.
~~3496~~ *5007.* Regulations by President as to commissions, fees of witnesses, counsel and interpreters.
~~3497. Account as evidence of embezzlement.~~
~~3498. Depositions—Rule.~~
~~3499. Contempt of court by witness—Rule~~
~~3500~~ *5008.* Demands for production of statements and reports of witnesses.
~~3501~~ *5009.* Admissibility of confessions.
~~3502~~ *5010.* Admissibility in evidence of eye witness testimony.

~~3503~~ *5011.* Depositions to preserve testimony.
~~3504~~ *5012.* Litigation concerning sources of evidence.

Note: Title 18 U.S.C. §§ 3482–85, 3489–90, and 3498–99 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3481	Renumber as 5001. Amend by deleting references to entities other than "state" since they are covered by the comprehensive definition of "state" in Code § 109(ak).
3487	This section should be repealed. It is covered by Code § 1739(2)(a).
3488	Repeal and reenact in Title 25. See Introductory Note, paragraph (5), *supra*.
3491	Renumber as 5002. Amend by deleting "3494" (twice) and "3492" and substituting "5005" and "5003" respectively.
3492	Renumber as 5003. Amend subsection (c) by deleting "3493–3496" and substituting "5004–5007".
3493–3494	Renumber as 5004 and 5005, respectively. Amend by deleting "3492" and substituting "5003".
3495	Renumber as 5006. Amend by deleting "3492–3494" and substituting "5003–5005" and by deleting "3493" (twice) and "3496" and substituting "5004" (twice) and "5007" respectively.
3496	Renumber as 5007. Amend by deleting "3492–3494" and "3495" and substituting "5003–5005" and "5006".
3497	This section should be repealed. It is covered by Code § 1739(2).
3500	Renumber as 5008.
3501	Renumber as 5009.
3502	Renumber as 5010.
3503	Renumber as 5011.
3504	Renumber as 5012. Amend subsection (b) by deleting "2510(5)" and substituting "1563(d)".

Chapter ~~225~~ *51.*—Verdict

Sec. [Reserved.]

~~3531. Return; several defendants; conviction of less offense; poll of jury—Rule.~~
~~3532. Setting aside verdict of guilty; judgment notwithstanding verdict—Rule.~~

Note: Title 18 U.S.C. §§ 3531–32 are recommended for repeal but the chapter is reserved, for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Chapter ~~227~~ *52.*—Sentence, judgment, and execution

Sec.

~~3561. Judgment form and entry—Rule.~~
~~3562. Sentence—Rule.~~
~~3563. Corruption of blood or forfeiture of estate.~~
~~3564. Pillory and whipping.~~
~~3565. Collection and payment of fines and penalties.~~
~~3566. Execution of death sentence.~~
~~3567. Death sentence may prescribe dissection.~~
~~3568. Effective date of sentence; credit for time in custody prior to imposition of sentence.~~
~~3569. Discharge of indigent prisoner.~~
~~3570~~ *5201.* Presidential remission as affecting unremitted part.
~~3571. Clerical mistakes—Rule.~~
~~3572. Correction or reduction of sentence—Rule.~~
~~3573. Arrest or setting aside of judgment—Rule.~~
~~3574. Stay of execution; supersedeas—Rule.~~
~~3575. Increased sentence for dangerous special offenders.~~
~~3576~~ *5202.* Review of sentence; *time for appealing conviction for which sentence imposed under section 3202.*
~~3577~~ *5203.* Use of information for sentencing.
~~3578~~ *5204.* Conviction records.

Note: Title 18 U.S.C. §§3561–62 and 3571–74 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra*.

Title 18 Sections	Guidelines
3563–3564	These sections should be repealed. The exclusive language in Code §3001 forecloses the consequences of conviction prohibited by these sections.
3565	This section should be repealed. Relevant portions are displaced by Code §3304(5).
3566–3567	Repeal and reenact in proposed Chapter 60 and there consolidate with other provisions relating to capital cases. See Introductory Note, paragraph (3), *supra*.
3568	This section should be repealed. It is covered by Code §3205.
3569	This section should be repealed. It is covered by Code §3304.
3570	Renumber as 5201. Amend by deleting inapposite references to pecuniary and corporal punishment and substituting references to fines under Code Chapter 33 (§3341) or as condition of probation under Code Chapter 30 (§3103(2)(f)) or imprisonment under Code Chapter 32.

3575	Amend by deleting all but subsection (g), which should be consolidated in section 3576 (5202), *infra*. There make reference to Code §3202. The balance of this section has been carried forward in Code §3202 or rendered inapposite by other Code provisions, *e.g.*, §§3575(a) and (d), 3601 and 3101(1). (See also Final Report, comment to §3101, last paragraph.)
3576	Renumber as 5202. Amend by deleting "3575 of this chapter," and substituting "3202 of this title." Also amend the section heading as indicated in the chapter analysis.
3577	Renumber as 5203.
3578	Renumber as 5204.

Chapter ~~229~~ *53.*—Fines, Penalties and Forfeitures

Sec.

~~3611~~ *5301.* Firearms possessed by convicted felons.
~~3612~~ *5302.* Bribe moneys.
~~3613~~ *5303.* Fines for setting grass and timber fires.
~~3614. Fine for seduction.~~
~~3615. Liquors and related property; definitions.~~
~~3617. Remission or mitigation of forfeitures under liquor laws; possession pending trial.~~
~~3618. Conveyances carrying liquors.~~
~~3619. Disposition of conveyances seized for violation of Indian liquor laws.~~
~~3620. Vessels carrying explosives and steerage passengers.~~
5304. Property or money used in violation of section 1831.

Title 18 Sections	Guidelines
3611	Renumber as 5301. Amend by deleting "transporting a stolen . . . or foreign commerce" and substituting therefor (if literal conformance to the Code is desired) "disposing of a motor-propelled vehicle under section 1732 where the jurisdictional base is paragraph (j) of section 201 or for a felony under section 1736".
3612	Renumber as 5302. Amend by deleting "official" and "bribe," and substituting "Federal public servant" and "thing of value under section 1361," respectively.

3613	Renumber as 5303. Amend by deleting references to sections 1855 and 1856 and substituting references to Code §§ 1702–1705, adding "where the property which is the subject of the offense is [as described in present 18 U.S.C. §§ 1855, 1856]."
3614	This section should be repealed. Section 2198 of Title 18 to which this provision refers is not carried forward into the Code in its present form. Consideration may be given, however, to enlarging this provision to cover fines under Code §§ 1641–1647.
3615	Repeal and reenact in Title 27 where the predicate provisions, 18 U.S.C. §§ 1261–65, are to be transferred.
3617–3619	Repeal and reenact in Title 27, with appropriate renumbering of internal section references.
3620	Repeal and reenact in Title 46, with appropriate renumbering of 18 U.S.C. § 2278, also being transferred to that Title.
5304 [new]	Restate subsection (d) of 18 U.S.C. § 1955, the remedy of which is covered in Code § 1831.

Chapter ~~231~~ *54.*—Probation

Sec.

~~3651. Suspension of sentence and probation.~~
~~3652. Probation Rule.~~
~~3653~~ *5401.* ~~Report of probation officer and~~ [A]rrest of probationer.
~~3654~~ *5402.* Appointment and removal of probation officers.
~~3655~~ *5403.* Duties of probation officers.
~~3656~~ *5404.* Duties of Director of Administrative Office of United States Courts *with respect to probation system.*

Note: Title 18 U.S.C. § 3652 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra.*

Title 18 Sections	Guidelines
3651	This section should be repealed. Code Chapter 31 covers it.
3653	Renumber as 5401. Amend by deleting the first and second paragraphs and the second sentence of the last paragraph, which deal with matter covered by Code §§ 3102–3104. Also amend the section heading as indicated in the chapter analysis.
3654	Renumber as 5402.
3655	Renumber as 5403.
3656	Renumber as 5404. Add "with respect to probation system." to the section heading.

Chapter ~~233~~ *55.*—Contempts

Sec.

~~3691. Jury trial of criminal contempts.~~
~~3692~~ *5501.* Jury trial for contempt in labor dispute cases.
~~3693. Summary disposition or jury trial; notice—Rule.~~

Note: Title 18 U.S.C. § 3693 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra.*

Title 18 Sections	Guidelines
3691	This section should be repealed. It is rendered inapposite by Code §§ 1341–46.
3692	Renumber as 5501.

Chapter ~~235~~ *56.*—Appeal

Sec.

~~3731~~ *5601.* Appeal by United States.
~~3732. Taking of appeal; notice; time—Rule.~~
~~3733. Assignment of errors—Rule.~~
~~3734. Bill of exceptions abolished—Rule.~~
~~3735. Bail on appeal or certiorari—Rule.~~
~~3736. Certiorari—Rule.~~
~~3737. Record—Rule.~~
~~3738. Docketing appeal and record—Rule.~~
~~3739. Supervision—Rule.~~
~~3740. Argument—Rule.~~
~~3741. Harmless error and plain error—Rule.~~

Note: Title 18 U.S.C. §3732–41 should be deleted for the reasons set forth in the Introductory Note, paragraph (2), *supra.*

Title 18 Sections	Guidelines
3731	Renumber as 5601. Amend the fourth paragraph by deleting "207" and substituting "43".

Chapter ~~237~~ *57.*—Rules of Criminal Procedure

Sec.

~~3771~~ *5701.* Procedure to and including verdict.
~~3772~~ *5702.* Procedure after verdict.

Title 18 Sections	Guidelines
3771	Renumber as 5701.
3772	Renumber as 5702.

Chapter 58.—Interception of Wire and Oral Communications

Sec.

5801. Exempted persons and cases.
5802. Confiscation of interceptive devices.
5803. Prohibitation of use as evidence of intercepted communications.
5804. Authorization for wiretapping communications.
5805. Authorization for disclosure of communications.
5806. Procedure for interception of communications.
5807. Reports concerning intercepted communications.
5808. Recovery of civil damages.
5809. Definitions.

Note: This new chapter is intended to carry forward the provisions of Chapter 119 of present Title 18 not otherwise covered in Code §§ 1561–63.

Proposed Title 18 Sections	Guidelines
5801	Restate present 18 U.S.C. § 2511 (2)(a), (b) and (3), incorporated by reference in Code § 1561 (2).
5802–5808	Restate present 18 U.S.C. § 2513 and 2515–20. Appropriate changes will have to be made in the internal references to Title 18 sections.
5809	Restate present 18 U.S.C. § 2510(7), (9) and (11), defining terms used in these sections. See Code 1561.

Chapter 59.—Investigative Authority and Jurisdiction

Sec.

5901. Powers of Federal Bureau of Investigation.
5902. Powers of marshals and deputies.
03. Powers of Secret Service.
5904. Powers of Postal Inspectors.
5905. Powers of Bureau of ~~Prisons~~ *Corrections* employees ~~powers.~~

Note: This new chapter consolidates the provisions dealing with federal law enforcement agents' powers, now scattered throughout present Title 18 (with the exception of sections dealing with fish, wildlife and Indian investigations which are being transferred to other Titles). It is contemplated that the transitional provisions of the bill would include a section providing that nothing in the new Title 18 shall be deemed to alter, from former laws and practices, the authority or responsibility of any agency to investigate offenses or to enter into agreements with each other regarding investigative authority.

Proposed Title 18 Sections	Guidelines
5901	Consolidate present 18 U.S.C. §§ 3052, 3107 and subsections (h) and (i) of 1751; amend the latter to describe the offense as a violation of Code §§ 1601–03, 1611–12, 1631–32, 1001 and 1004, where the jurisdictional base is paragraph (c) of Code § 201 and the victims are specifically listed by office in that paragraph.

5902	Restate present 18 U.S.C. § 3053.
5903	Restate present 18 U.S.C. § 3056, deleting references to present Title 18 sections and substituting references to Code sections: § 1751, whenever the writing is of the kind described in 18 U.S.C. § 503; Code § 1752, whenever the obligation or request is of the kind described in 18 U.S. § 509; and Code § 1615. Consideration needs to be given to the appropriate contours of powers when the jurisdictional base is paragraph (k) of Code § 201.
5904	Restate present 18 U.S.C. § 3061.
5905	Restate present 18 U.S.C. § 3050, substituting "Corrections" for "Prisons" in the text and Code §§ 1306, 1308 or 1309 for references to present Title 18 sections. Also amend the section heading as indicated in the chapter analysis.

[*Chapter 60.—Capital Cases*

Sec.

[*6001. Counsel and witnesses in capital cases.*
[*6002. Release in capital cases.*
[*6003. Venue in capital cases.*
[*6004. Indictment, list of jurors and witnesses in capital cases.*
[*6005. Execution of death sentence.*
[*6006. Dissection in capital cases.*]

Proposed Title 18 Sections	Guidelines
6001	Restate present 18 U.S.C. § 3005 (if retention is deemed necessary).
6002	Restate present 18 U.S.C. § 3148, adding the last clause of 18 U.S.C. § 3141.
6003	Restate present 18 U.S.C. § 3235, adding "federal" before "offenses".
6004	Restate present 18 U.S.C. § 3432.
6005	Restate present 18 U.S.C. § 3566.
6006	Restate present 18 U.S.C. § 3567.

Part ~~III~~ *E.*—~~PRISONS AND PRISONERS~~ *CORRECTIONS*

Chap.		Sec.	
~~301~~	*70.* ~~General provisions.~~ *Authority of the Attorney General.*	~~4001~~	*7001*
~~303~~	*71.* ~~Bureau of Prisons.~~ *Organization and Personnel*	~~4011~~	*7101*
~~305~~	*72.* Commitment and Transfer	~~4081~~	*7201*
~~307~~	*73.* ~~Employment.~~ *Federal Prison Industries*	~~4121~~	*7301*
~~309~~	~~Good time allowances~~	~~4161~~	
~~311~~	*74. Board of* Parole	~~4201~~	*7401*
~~313~~	*75.* Mental Defectives	~~4241~~	*7501*
~~314~~	~~Narcotic addicts~~	~~4251~~	
~~315~~	*76.* Discharge. ~~and release payments~~		*7601*
	77. Transportation and Temporary Custody		*7701*
~~317~~	*78.* ~~Institutions for women.~~ *Advisory Boards*	~~4351~~	*7801*

Chapter ~~301~~ *70.*—~~General Provisions~~ *Authority of the Attorney General*

Sec.

~~4001~~ *7001.* Control by Attorney General.
7002. Nature of correctional facilities.
~~4002. Federal prisoners in State institutions; employment.~~
~~4003. Federal institutions in States without appropriate facilities.~~
~~4004. Oaths and acknowledgments.~~
~~4005. Medical relief; expenses.~~
~~4006. Subsistence for prisoners.~~
~~4007~~ *7003.* Expenses of prisoners.
7004. Prison camps.
7005. Public works.
7006. Contracting for Federal offenders in State institutions.
7007. Contracting for State offenders in Federal institutions.
7008. Contracting for aftercare.
7009. Federal institutions in States without appropriate facilities.
~~4008. Transportation expenses.~~
~~4009~~ *7010.* Appropriations for sites and buildings.
~~4010~~ *7011.* Acquisition of additional land.
~~4011. Disposition of cash collections for meals, laundry.~~

Title 18 Sections	Guidelines
4001	Renumber as 7001. This section should be revised to reflect modern concepts of institutional nomenclature. "Correctional facilities" should be substituted for "Penal and correctional institutions" in the first sentence and the following paragraph should be added to define "Correctional facilities". "'Correctional facilities' includes penal and correctional institutions, penitentiaries, reformatories, prison camps, youth and juvenile facilities, jails, hospitals for delinquents and offenders, narcotic treatment facilities, and community treatment centers."
[new]	Number as 7002. This new section would bring forward present 18 U.S.C. § 4081, but make special provision for facilities for the treatment of young offenders (who are purposely not defined with any specific age cut-off) and narcotic addicts, since the Youth Corrections Act (Chapter 402) and Narcotic Addicts (Chapter 314) portions of Title 18 are eliminated by the broad sentencing provisions of Part C of the Code. A mandate in the statute spotlights the special treatment needs of these categories of offenders, but not at the expense of the entire correctional program, within which these two correctional categories fall. The new section would read as follows:

§ 7002. Nature of correctional facilities.

(a) The Federal correctional facilities shall be so planned and limited in size as to facilitate the development of an integrated system which will assure the proper classification and segregation of Federal prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and treatment of the persons committed to such institutions.

(b) The Attorney General shall set aside and adapt institutions and agencies for the specialized treatment of youthful offenders. Insofar as practical, such youthful offenders shall be segregated according to their needs for treatment. Treatment shall be afforded in institutions of maximum security, medium security, or minimum security types, including schools, medical facilities, farms, camps, and other agencies that will provide the essential varieties of treatment.

(c) The Attorney General shall provide within the correctional facilities, or set aside separate institutions and agencies, for the specialized treatment of narcotic addicts.

4002 ..... See Section 7006, *infra*.

4003 ..... See Section 7009, *infra*.

4004 ..... See Section 7104, *infra*.

4005 ..... See Section 7103, *infra*.

4006 ..... See Section 7704, *infra*.

4007 ..... Renumber as 7003.

[new] ..... Number as 7004. This new section would bring forward that part of present 18 U.S.C. § 4125 which authorizes establishment of prison camps. The new section would read as follows:

§ 7004. Prison camps.

(a) The Attorney General may establish, equip, and maintain camps upon sites elected by him elsewhere than upon Indian reservations, and designate such camps as places for confinement of persons convicted of an offense against the laws of the United States.

(b) As part of the expense of operating such camps the Attorney General is authorized to provide for the payment to the inmates or their dependents such pecuniary earnings as he may deem proper, under such rules and regulations as he may prescribe.

(c) All other laws of the United States relating to the imprisionment, transfer, control, discipline, escape, release of, or in any way affecting prisoners, shall apply to prisoners transferred to such camps.

[new] ..... Number as 7005. This new section would bring forward verbatim the provisions of subsection (a) of present 18 U.S.C. § 4125, dealing with the use of federal prisoners on public works projects. Consideration should be given to adding after "to the heads of the several departments" the phrase "and to the States and political subdivisions thereof" to make clear that federal prisoners may be used for the described public works projects conducted by State and local governments when they are financed "wholly or in major part by funds appropriated by Congress."

[new] ..... Number as 7006. This new section would bring forward present 18 U.S.C. § 4002, which should be revised to give the authority to contract to the Attorney General (who, of course, can delegate to the Director of the Bureau of Corrections), to make it consistent with the other contracting sections which follow. The provisions should also be revised to provide authority to contract with private agencies, which in small measure, but increasingly, are able to provide correctional services not otherwise available. The second paragraph of the former section, which limits employment to government use, should be deleted, since it expresses an outworn concept which occasionally stands in the way of placement in state and local work-release and community-centered programs. The section would read as follows:

§7006. Contracting for Federal offenders in State institutions.

For the purpose of providing suitable quarters and treatment for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State or political subdivision thereof, and with private agencies or organizations, for the custody, subsistence, care, treatment and proper employment of such persons, or for the providing of services or programs to such persons.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters and services furnished, sanitary conditions and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably descent, sanitary, and healthful quarters and subsistence for such persons.

[new]..... Number as 7007. This new section would bring forward present 18 U.S.C. §5003, with a new title of "Contracting for State offenders in Federal institutions." Delete subsection (d) and "or Territory" (twice) within subsection (a) to conform with the definition of "state" in Code §109(ak). Consideration should be given to deleting the proviso at the end of subsection (a), to permit contracting with the States at less than full cost if it is deemed to be appropriate and desirable. This would enact a specific recommendation of the President's Task Force on the Rehabilitation of the Offender.

[new]..... Number as 7008. This new section would continue the authority to contract for aftercare services contained in 18 U.S.C. § 4255 with respect to narcotic addicts. Except for this, the provisions of Chapter 314 of present Title 18 would be eliminated. Part C of the Code contemplates that narcotic addicts will be sentenced like any other offenders, and the need for specialized treatment for their addiction will be determined after their sentencing and their commitment to correctional facilities. Specialized treatment units for addicts would be continued. Consideration should be given to enlarging the authority to permit arranging for aftercare for selected offenders other than addicts, as follows:

§ 7008. Contracting for aftercare.

For the purpose of providing facilities, services, or programs which are not otherwise available, the Attorney General may contract with any appropriate public or private agency or any person for supervisory aftercare of a released offender.

[new]..... Number as 7009. This new section would bring forward present 18 U.S.C. § 4003. Delete "or Territory or political subdivision thereof," and "Territory," to conform with the definition of "state" in Code § 109(ak).

4008..... See guideline for new section 7701, *infra*.

4009..... Renumber as 7010. Consideration should be given to deleting the ceiling on the sums which the Attorney General is allowed to use and to the limitation to a particular appropriation.

4010..... Renumber as 7011.

4011..... See guideline for new section 7105, *infra*.

Chapter ~~303~~ *71.*—~~Bureau of Prisons~~ *Organization and Personnel*

Sec.

~~4041~~ *7101.* ~~Bureau of Prisons; director and employees.~~ *Establishment of Bureau of Corrections.*

~~4042~~ *7102.* Duties of Bureau of ~~Prisons.~~ *Corrections.*

7103. Medical services.

7104. Oaths and acknowledgments.

7105. Disposition of cash collections.

Title 18 Sections	Guidelines
4041	Renumber as 7101. Pursuant to the nomenclature adopted in the proposed Code, this section should be amended to change the name of the Bureau of Prisons to the Bureau of Corrections. The "prison" concept is outmoded and no longer reflects the scope of the Bureau's programs. Numerous juvenile, youth, and low-security adult facilities cannot possibly be defined as prisons. The increasing emphasis on community programs is antithetical to a "prissons" orientation. "Corrections" covers the whole range of programs and facilities which deal with the custody, care, and treatment of the offender. It is now used by most states to entitle their agencies. It is appropriate to current programming and future planning for this field. The section would read as follows:

§ 7101. Establishment of Bureau of Corrections.

The Bureau of Prisons, heretofore established in the Department of Justice, shall henceforth be known as the Bureau of Corrections and shall be in the charge of a Director appointed by and serving directly under the Attorney General. The Attorney General may also appoint such additional officers and employees as he deems necessary.

4042 ..... Renumber as 7102. Subsection (3) should be deleted as redundant and the remaining provisions modified to cover Bureau activities as follows:

§ 7102. Duties of Bureau of Corrections.

The Bureau of Corrections shall:

(a) have charge of the management and regulation of all Federal correctional facilities, as defined in Section 7001; and

(b) provide suitable facilities and provide for the safekeeping, custody, care, correction, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

[new] ..... Number as 7103. This section would bring forward present 18 U.S.C. § 4005, substituting "Secretary of Health, Education, and Welfare" for "Federal Security Administrator" and substituting "correctional facilities" for "penal and correctional institutions". A third subsection should be added to make it clear that medical services for inmates may also be provided by Department of Justice employees or obtained by contract from public and private agencies and individuals. as follows:

§ 7103. Medical services.

(a) Upon request of the Attorney General, the Secretary of Health, Education, and Welfare shall detail regular and reserve commissioned officers of the Public Health Service, pharmacists, acting assistant surgeons, and other employees of the Public Health Service to the Department of Justice for the purpose of supervising and furnishing medical, psychiatric, and other technical and scientific services to the Federal correctional facilities.

(b) The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations of the Public Health Service in accordance with the law and regulations governing the personnel of the Public Health Service, such appropriations to be reimbursed from applicable appropriations of the Department of Justice; or the Attorney General may make allotments of funds and transfer of credit to the Public Health Service in such amounts as are available and necessary, for payment of compensation, allowances, and expenses of personnel so detailed, in accordance with the law and regulations governing the personnel of the Public Health Service.

(c) The Attorney General may directly appoint health personnel or contract with any public or private agency or organization or any person for providing medical services to federal correctional facilities, or federal offenders.

[new] ..... Number as 7104. This section would bring forward present 18 U.S.C. § 4004. Substitute "correctional facilities" for "penal or correctional institutions" and "such facilities" for "such institutions". Consideration should be given to substituting "The chief executive officers and those members of the staff whom they designate," for "The wardens and . . . and parole officers,".

[new] ..... Number as 7105. This section would bring forward 18 U.S.C. § 4011.

Chapter ~~305~~ *72.*—Commitment and Transfer

Sec.

~~4081. Classification and treatment of prisoners.~~

~~4082~~ *7201.* ~~Commitment to Attorney General; transfer.~~ *Place of commitment and extension of limits.*

~~4083 Penitentiary imprisonment; consent.~~

~~4084~~ 7202. Copy of commitment delivered with prisoner.

~~4085~~ 7203. Transfer for State offense; expense.

~~4086 Temporary safe-keeping of federal offenders by marshals.~~

Title 18 Sections	Guidelines
4081	See guideline for new section 7002, *supra*.
4082	Renumber as 7201. Delete subsection (a), which contains matter covered by Code § 3203(1). The title should be changed to "Place of commitment and extension of limits." "Bureau of Corrections" should be substituted for "Attorney General" to be consistent with Code § 3203(1). Delete subsection (d) which contains matter covered by Code § 1306(3).

4083	This section should be repealed. It is inconsistent with 18 U.S.C. § 4081 and is too rigid to permit the Bureau of Corrections to deal with the occasional case where it would be appropriate to place a person serving a misdemeanor sentence in a high security institution.
4084	Renumber as 7202.
4085	Renumber as 7203.
4086	See guideline for new section 7703, *infra*.

Chapter ~~307~~ *73.*—~~Employment~~ *Federal Prison Industries*

Sec.

~~4121~~ *7301.* Federal Prison Industries; board of directors.
~~4122~~ *7302.* Administration of Federal Prison Industries.
~~4123~~ *7303.* New industries.
~~4124~~ *7304.* Purchase of prison-made products by Federal departments.
~~4125~~ ~~Public works; prison camps.~~
~~4126~~ *7305.* Prison Industries Fund; use and settlement of accounts.
~~4127~~ *7306.* Prison Industries report to Congress.
~~4128~~ *7307.* Enforcement by Attorney General.

Title 18 Sections	Guidelines
4121	Renumber as 7301.
4122	Renumber as 7302. Consideration should be given to deleting or modifying the requirement in subsection (b) that employment be provided "for all physically fit inmates" since it is regarded by correctional officials as neither realistic nor desirable.
4123	Renumber as 7303.
4124	Renumber as 7304.
4125	See guidelines for new sections 7004 and 7005, *supra*.
4126	Renumber as 7305. Consideration should be given to expanding the use of the Industries Fund to educational, as well as vocational, training programs and recognizing that some inmates, who may not be able to achieve "outstanding" performance of their assigned institutional duties, should nevertheless be compensated if they perform those duties "meritoriously."
4127	Renumber as 7306.
4128	Renumber as 7307.

~~Chapter 309.—Good-Time Allowances~~

Sec.

~~4161. Computation generally.~~
~~4162. Industrial good-time.~~
~~4163. Discharge.~~
~~4164. Released prisoner as parolee.~~
~~4165. Forfeiture for offense.~~
~~4166. Restoration of forfeited commutation.~~

Note: This entire chapter should be repealed pursuant to the proposed Code policy of eliminating good-time allowances. See Working Papers, p. 1299. However, parts of 18 U.S.C. § 4163, dealing with other matters, are brought forward in new section 7601, *infra*.

Chapter ~~311~~ *74.*—*Board of* Parole

Sec.

~~4201~~ *7401.* Board of Parole; members.
~~4202.~~ ~~Prisoners eligible.~~
~~4203.~~ ~~Application and release; terms and conditions.~~
~~4204~~ *7402.* Aliens.
~~4205~~ *7403.* Retaking parole violator under warrant; time to serve undiminished.
~~4206~~ *7404.* Officer executing warrant to retake parole violator.
~~4207~~ *7405.* Revocation upon retaking parolee.
~~4208~~ *7406.* ~~Fixing eligibility for parole at time of sentencing.~~ *Parole study.*
~~4209.~~ ~~Young adult offenders.~~
~~4210~~ *7407.* Warrants to retake Canal Zone parole violators.

Title 18 Sections	Guidelines
4201	Renumber as 7401.
4202	Repeal, see Code §§ 3401–02.
4203	Repeal, see Code §§ 3402–05.
4204	Renumber as 7402. Amend by adding after "parole" in the first paragraph "as provided in section 3402,".
4205	Renumber as 7403. Amend by deleting everything after ". . . a number thereof", matter covered by Code § 3403.
4206	Renumber as 7404.
4207	Renumber as 7405. Amend by deleting the last paragraph which deals with matter covered by Code § 3403.
4208	Renumber as 7406. Amend by deleting subsections (a) and (b) which deal with matter covered by Code §§ 3004 and 3201(3) and (4). The title should be changed to "Parole study."
4209	Repeal because of the general repeal of the Federal Youth Corrections Act pursuant to Part C generally of the proposed Code.
4210	Renumber as 7407.

Chapter ~~313~~ 75.—Mental Defectives

Sec.

~~4241. Examinationand transfer to hospital.~~
~~4242. Delivery to state authorities on expiration of sentence.~~
~~4244. Mental incompetency after arrest and before trial.~~
~~4245. Mental incompetency undisclosed at trial.~~
~~4246. Procedure upon finding of mental incompetency.~~
~~4247. Alternate procedure on expiration of sentence.~~
~~4248. Termination of custody by release or transfer.~~

Note: Possible revision of Chapter 313 of title 18 has been under consideration by an Intradepartmental Committee of the Department of Justice and by the Committee on the Administration of the Criminal Law of the Judicial Conference of the United States A revision proposed by the latter group reads as follows:

Sec.

7501. Definitions.
7502. Designation of panel of qualified psychiatrists.
7503. Psychiatric examinations and representation by counsel.
7504. Determination of mental competency to stand trial.
7505. Pretrial commitment, custody, care, report, and discharge.
7506. Hearings on mental competency of persons committed without pretrial consideration thereof.
7507. Disposition of criminal charges on legal issues.
7508. Persons eligible for civil commitment.
7509. Commitment of persons dangerous to person or property of others.
7510. Periodic review.
7511. Motion for referral for examination.
7512. Transfer of custody of previously committed persons.

§ 7501. Definitions

As referred to in this Chapter:

(a) "Court" means a United States District Court organized under Chapter V, Title 28 of the United States Code, but shall not include the Court of the District of Columbia or the Territorial Courts.

(b) "Secretary" means Secretary of the Department of Health, Education and Welfare.

(c) "Panel" shall refer to the panel of qualified psychiatrists created pursuant to Section 7502.

(d) As used in this Chapter "incompetent" means mentally incompetent to stand trial. An accused is mentally incompetent to stand trial if he is unable to understand the nature and consequences of the proceedings against him or to properly assist in his own defense.

(e) As used in this Chapter "competent" means mentally competent to stand trial. An accused is mentally competent to stand trial if, regardless of whether he is suffering from mental illness, he is able to understand the nature and consequence of the proceedings against him and properly to assist in his defense.

(f) "Lack of criminal responsibility" means lack of mental capacity to commit the offense or offenses charged as determined by the applicable law in the federal trial jurisdiction and includes any defense of insanity recognized in such federal jurisdiction.

§ 7502. Designation of a panel of qualified psychiatrists

The district court for each judicial district shall designate a panel or panels of qualified psychiatrists, who may but need not be residents of the district, to conduct examinations under this chapter. In accordance with local rules adopted for this purpose, the court shall examine and qualify members of any panel. Members of a panel shall be paid for their services in the manner provided under the Criminal Justice Act of 1964, unless the examination is ordered at the instance of the Department of Justice, in which case they shall be paid for their services by the Department of Justice.

§ 7503. Psychiatric examinations

(a) All examinations under this chapter shall be conducted as expeditiously as possible and with as minimal a restraint upon the liberty of the person to be examined as is consistent with the need for proper examination, except as otherwise provided in this Act.

(b) In all cases in which examination by a qualified psychiatrist is required by this chaper, the court shall refer the person to be examined to a member of a panel.

(c) If the member of a panel to whom an examination was assigned demonstrates to the court that in order properly to complete examination of a person it is necessary to have that person confined in a hospital or other medical facility, or if the court should otherwise determine such action necessary, the court may order him confined in such hospital or facility. For these purposes hospital facilities, including but not limited to those of the Public Health Service, the Veterans Administration, and the Department of Defense, may be used.

(d) The accused shall be represented by counsel at all stages of court proceedings pursuant to this chapter.

(e) If the court appoints counsel or a psychiatrist for a person under the provisions of this chapter, such counsel or psychiatrist shall be compensated from appropriated funds for the reasonable value of his services as determined by the court.

§ 7504. Determination of mental competency to stand trial

(a) Whenever after charge by either complaint, information or indictment, and prior to either the imposition of sentence or the revocation of probation, the court has reasonable cause to believe an accused may be incompetent, the court shall refer the accused to a member of a panel of qualified psychiatrists for examination as to his competency. The scope of an examination under this section shall be limited to the mental competency of the accused to stand trial or proceed with a hearing on revocation of probation. The report of this examination shall state the medical and other data upon which the opinion of the member of a panel is based, which shall be filed with the court, and copies given to the United States Attorney and to the accused or his counsel as soon as possible, but in no event more than ten days after

entry of the order for examination unless otherwise ordered by the court.

(b) After the receipt of the report of a member of the panel the court shall hold a hearing, upon due notice, at which the report and all other evidence as to the competency of the accused may be submitted by the parties, provided however, that the hearing need not be held if the report indicates that the accused is competent and if the accused, in open court, signs a written waiver. The accused shall have the right to testify, confront and cross-examine adverse witnesses, present evidence and subpoena witnesses in his own behalf. On the basis of the evidence presented, the court shall make a finding with respect to the competency of the accused.

(c) No statement made by the accused in the course of any examination or hearing into his competency under this section shall be admitted in evidence on the issues of guilt or criminal responsibility in any criminal proceedings. A finding by the court that the accused is competent shall in no way prejudice the accused in a plea of lack of criminal responsibility as a defense to the crime charged, and such a finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

§ 7505. Pretrial commitment, custody, case, report and discharge

(a) Whenever the trial court shall determine that an accused is incompetent, it may commit the accused to the custody of the Secretary for such care and treatment as is deemed appropriate by the Secretary. The period of commitment under this section shall run until the accused is determined by the court to be competent, or until the charges are disposed of according to law, or until the accused has been committed to the custory of the Secretary pursuant to Sections 7509(f) and 7510(d), whichever occurs first. Provided, however, the Secretary may temporarily release the accused from the institution to which he is committed. Notice of such anticipated release shall be sent to the court and the United States Attorney of the district in which proceedings under Section 7504 were held, not less than 10 days before the date of the anticipated release. If the United States Attorney objects to such release, the committing court shall authorize the release only if reasonably satisfied that the accused will not flee or pose a danger to himself, or to any other person or to the property of others.

(b) Whenever the accused shall recover his competency or not later than one year after a determination that the accused was incompetent, the Secretary shall petition the court for a hearing to determine the present competency of the accused. A report on the competency of the accused shall be attached to the petition of the Secretary. If the report indicates that the accused remains incompetent, a prognosis regarding the likelihood of the accused regaining his competency shall be included in the report.

(c) Upon receipt of the petition the court, upon due notice, shall hold a hearing at which the accused may testify, confront adverse witnesses and present evidence as to his competency and prognosis. The court shall make findings with respect to the competency of the accused, and, if the accused is found incompetent, with respect to whether the accused is likely to regain competency within a reasonable time. If the court finds that the accused is incompetent, it may order

a continuation of custody, but if it finds that the accused is competent it shall enter an order to that effect and cause the accused to be released from the custody of the Secretary.

(d) If the court finds that the accused is incompetent and is not likely to regain competency within a reasonable time, it may order the pending charges dismissed, and the accused shall be released from custody at the end of 60 days, unless within said period the Secretary shall file a petition pursuant to Section 7508(a). Upon commitment of a person under Sections 7508(a) or 7509(f), the court shall dismiss the pending charges.

(e) The court may grant any necessary or reasonable continuance of the hearing described in subsection (c) for good cause shown in open court, the Government and the accused or his counsel being present.

§ 7506. Hearing on mental competency of persons committed without pretrial consideration thereof

Whenever a psychiatrist and at least one other physician conclude that there is probable cause to believe that a person convicted of a crime against the United States was mentally incompetent at the time of his trial, and the Attorney General concurs (provided the issue of mental competency was not raised during such trial and either a hearing held and a determination made or a written waiver signed by the accused as provided in Section 7504(b) above), the medical report and the concurrence of the Attorney General shall be forwarded to the court in which the person was convicted. The court shall thereupon hold a hearing to determine the mental competency of the accused in accordance with the provisions of Section 7504(b) above. At such hearing such documents shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial the court shall vacate the judgment of conviction and grant a new trial.

§ 7507. Disposition of criminal charges on legal issues

Nothing contained in this chapter shall preclude the court at any time from disposing, upon motion of the accused or otherwise, of the criminal charges pending against the accused whenever the issue of fact or law involved can be resolved, regardless of the mental condition of the accused. Nothing in any such motion, proceeding or ruling thereon shall be used against the accused in any subsequent criminal trial.

§ 7508. Persons eligible for civil commitment

(a) When any person who is in the custody of the Secretary pursuant to Section 7505 has been determined by the Secretary to be unlikely to regain competency within a reasonable time and is in the opinion of the Secretary dangerous to himself or to the person or property of others, the Secretary shall petition the court for an order of civil commitment.

(b) When any person charged with an offense against the United States is acquitted after raising the defense of lack of criminal responsibility at the time of the commission of the act or acts charged, upon motion of the United States Attorney the court shall order such

person delivered to the Secretary who shall examine such person to determine whether, by reason of mental disease or defect, he is dangerous to himself or to the person or property of others. The delivery of such person to the Secretary shall be made by the United States Marshal on court order.

(c) The Secretary, upon the request of the Attorney General, shall examine any person in the custody of the Attorney General whose sentence is to expire, and who, in the opinion of the Attorney General, may be dangerous to himself or to the person or property of others by reason of mental disease or defect. Such examination shall be held at least 90 days prior to the date of mandatory release of the person and at such other times within said 90-day period as the courts may order.

(d) A person examined under this section may be retained in custody pending the dispersion of the proceedings under Section 7509.

§ 7509. Commitment of persons who by reason of mental disease or defect are dangerous to themselves or to the person or property or others

(a) If the Secretary petitions the court as provided in Section 7508(a), the court shall give notice of the petition to the person and his counsel and shall appoint a guardian ad litem for said person.

Proceedings pursuant to Section 7508(a) and 7508(b) shall be conducted in the court for the district in which the criminal charges were brought. If examination is conducted pursuant to Section 7508(c) such proceedings shall be conducted in the court for the district in which the examination is held.

(b) As soon as is practicable after notice is given, the court shall order a further examination of the person. If the person is unable to provide his own psychiatrist, the court shall appoint a psychiatrist from the panel to conduct a separate examination. The report of examination shall be submitted to the court, the Secretary, the United States Attorney, and counsel for the person not later than fifteen days after the person was referred for examination.

(c) If the report of the psychiatrist appointed or employed under (b) above states that the person is not, by reason of mental disease or defect, dangerous to himself or to the person or property of others, the court may terminate the proceedings and dismiss the application.

(d) If the proceedings are not terminated the court shall fix a date for hearing which, unless otherwise ordered by the court, shall be held not more than 30 days from the filing of the examination report.

(e) The court shall give notice of the hearing to the person, his counsel, his guardian ad litem, the United States Attorney, and the Secretary, and afford the person an opportunity to testify, present evidence, confront and cross-examine witnesses and subpoena witnesses in his own behalf.

(f) If, after hearing, the court finds that the person, by reason of mental disease or defect, is dangerous to himself or to the person or property of others, it shall order the person committed to the custody of the Secretary for care and treatment for the period set forth in subsection (h) below.

(g) The Secretary or his representative is authorized to enter into contracts with the several states (including political subdivisions thereof) and private agencies under which appropriate institutions

and other facilities of such States or agencies will be made available, on a reimbursable basis, for the confinement, hospitalization, care, and treatment of persons committed to the custody of the Secretary pursuant to this chapter.

No such contract shall be deemed to relieve the Secretary of his obligation to supervise the treatment of any person committed under this Act or promptly to ascertain and report any recovery which would warrant a petition to the court to determine present competence.

(h) The commitment made pursuant to subsection (f) and the custody provided under subsection (g) shall continue only during such time as the Secretary is not able to have the person civilly committed pursuant to State law to a State facility or facility of any political subdivision of a State. For purposes herein provided the Secretary is authorized and empowered to apply for the civil commitment pursuant to State law of persons committed to his custody under subdivision (f) of this section.

§ 7510. Periodic review

(a) Whenever the Secretary determines that a person committed to his custody under Section 7509 (f) is no longer, by reason of mental disease or defect, dangerous to himself or to the person or property of others, the Secretary shall discharge said person unconditionally.

(b) The Secretary shall, at least once during each year of a commitment made pursuant to Section 7509 (f) and (g), file a report with the court for the district in which the person is confined, setting forth the reasons supporting a determination that the person continues to be, by reason of mental disease or defect, dangerous to himself or to the person or property of others. The court shall give notice of this report to the person and his counsel and to the United States Attorney. Such notice shall set forth the right of the person to petition the court within 30 days for a hearing on the need for continued commitment.

(c) Upon petition of the person, the court for the district in which the person is confined shall, upon due notice, hold a hearing within 30 days to determine if the person, by reason of mental disease or defect, is dangerous to himself or to the person or property of others. The person shall have the opportunity to testify, present evidence, and cross-examine witnesses.

(d) If, after hearing, the court finds that the person, by reason of mental disease or defect, is dangerous to himself or to the person or property of others, it shall order the continuation of the commitment of the person to the custody of the Secretary for care and treatment for the period set forth in Section 7509(h).

§ 7511. Motion for referral for examination

(a) Whenever after charge either by complaint, indictment, or information, and prior to verdict, the United States Attorney demonstrates to the court that the mental condition of the accused of the alleged criminal conduct can reasonably be in issue, the court shall cause the accused to be examined by the panel for examination as to his mental condition in the alleged offense.

(b) In no case shall an examination of the [illegible] tion and an examination under Section 7504(a) [illegible] same psychiatrist.

§ 7512. Transfer of custody of previously committed persons

All persons committed to the custody of the Attorney General under the provisions of Sections 4246, 4247 and 4248 of Title 18, United States Code, prior to the effective date of this Act shall be subject to the provisions of this Act and the amendments made in this Act, and the President of the United States is authorized and empowered by executive order to transfer the custody of and the responsibility for the care and treatment of such persons so committed from the Attorney General to the Secretary.

~~Chapter 314—Narcotic Addicts~~

Sec.

~~4251. Definitions.~~
~~4252. Examination.~~
~~4253. Commitment.~~
~~4254. Conditional release.~~
~~4255. Supervision in the community.~~

Note: Pursuant to the policy of the proposed Code to leave the specialized treatment of narcotic addicts to administrative determination, this chapter should be repealed. The authority to provide appropriate facilities and aftercare is carried forward in new sections 7002 and 7008, *supra*.

Chapter ~~315~~ *76.*—Discharge ~~and Release Payments~~

Sec.

7601. Discharge date.
~~4281~~ *7602.* ~~Discharge from prison.~~ *Transportation and funds for discharged inmates.*
~~4282~~ *7603. Discharge of* [a]rrested but unconvicted persons.
~~4283. Probation.~~
~~4284~~ *7604.* Advances for rehabilitation.

Title 18 Sections	Guidelines
[new]	This section would bring forward the third and fourth sentences of present 18 U.S.C. § 4163 with the title of "Discharge date."
4281	Renumber as 7602. The title should be changed to "Transportation and funds for discharged inmates." Consideration should be given to deleting or raising the ceiling on payments of money to be made in the discretion of the Attorney General.

4282	Renumber as 7603. The title should be changed to "Discharge of arrested but unconvicted persons." Delete "or the Territory of Alaska,". Consideration should be given to deleting the last phrase beginning "if such cost . . . ." to leave to the court's discretion entirely whether transportation and subsistence will be furnished to the place of residence regardless of cost.
4283	See guideline to new section 7702, *infra*.
4284	Renumber as 7604. Consideration may be given to repeal or modification of this section authorizing loans to inmates upon their release because of its disuse and reliance upon gratuities, industries earnings and community placement to take care of the needy inmate.

Chapter 77.—Transportation and Temporary Custody

Sec.

7701. Transportation of prisoners.
7702. Transportation of probationers.
7703. Temporary safe-keeping by marshals.
7704. Subsistence for prisoners in custody of marshals.

Title 18 Sections	Guidelines
7701. [new]	This section would bring forward present 18 U.S.C. § 4008, amending the title to read "Transportation of prisoners."
7702. [new]	This section would bring forward present 18 U.S.C. § 4283, amending the title to read "Transportation of probationers." Consideration should be given to modifying the ceiling of $30, placed on subsistence expenses.
7703. [new]	This section would bring forward present 18 U.S.C. § 4086. It should be expanded to make clear the Marshals' authority to transport and provide for the safe-keeping of federal inmates who are removed on writ, or who are transferred into a community facility, such as a City Hospital, for services which are not available in the federal correctional facility. The section should read as follows:

§7703. Temporary safekeeping by marshals.

United States Marshals shall provide for the safekeeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution, or removed from a Federal correctional facility pursuant to an order or writ issuing from a court of competent jurisdiction, or pursuant to an order for his transfer to a community facility for his care and treatment.

7704. [new] — This section would bring forward 18 U.S.C. § 4006, amending the title to read, "Subsistence for prisoners in custody of marshals."

Chapter ~~317~~ *78.*—~~Institutions for Women~~ *Advisory Boards*

Sec.

~~4351.~~ *7801.* Board of Advisors *of Federal Reformatory for Women.*
7802. Advisory Corrections Council.

Title 18 Sections	Guidelines
4321	Renumber as 7801. Amend the title to read "Board of Advisors of Federal Reformatory for Women." Consideration should be given to repeal or modification of this section in view of the fact that it is the only federal correctional facility which has a board of advisors.
[new]	Number as 7802. This section would carry forward present 18 U.S.C. § 5002, which creates an Advisory Correction Council. Consideration should be given to repeal of the provision since the functions it was contemplated the Council would perform have been taken over by others.

Part ~~IV~~ *F.*—~~CORRECTION OF YOUTHFUL OFFENDERS~~ JUVENILE DELINQUENCY

Chap.		Sec.
~~401~~ *80.*	General Provisions.	~~5001~~ *8001*
~~402~~	~~Federal Youth Corrections Act.~~	~~5005~~
~~403~~ *81.*	*Federal Procedures Regarding* Juvenile Delinquency.	~~5031~~ *8101*

Chapter ~~401~~ *80.*—General Provisions

Sec.

~~5001~~ *8001.* Surrender to State authorities; expenses.
~~5002~~ ~~Advisory Corrections Council.~~
~~5003~~ ~~Custody of State offenders.~~

Title 18 Sections	Guidelines
5001	Renumber as 8001. In the third paragraph substitute "4402" for "3182".
5002	See guideline for new section 7802, *supra.*,
5003	See guideline for new section 7007, *supra.*

~~Chapter 402.—Federal Youth Corrections Act~~

Sec.

~~5005. Youth Correction Division.~~
~~5006. Definitions.~~
~~5007. Duties of members; meetings.~~
~~5008. Officers and employees.~~
~~5009. Rules of Division.~~
~~5010. Sentence.~~
~~5011. Treatment.~~
~~5012. Certificate as to availability of facilities.~~
~~5013. Provision of facilities.~~
~~5014. Classification studies and reports.~~
~~5015. Powers of Director as to placement of youth offenders.~~
~~5016. Reports concerning offenders.~~
~~5017. Release of youth offenders.~~
~~5018. Revocation of Division orders.~~
~~5019. Supervision of released youth offenders.~~
~~5020. Apprehension of released offenders.~~
~~5021. Certificate setting aside conviction.~~
~~5022. Applicable date.~~
~~5023. Relationship to Probation and Juvenile Delinquency Acts.~~

~~5024. Where applicable.~~
~~5025. Applicability to District of Columbia prisoners.~~
~~5026. Parole of other offenders not affected.~~

Note: Pursuant to the policy of the proposed Code to leave the specialized treatment of youthful offenders to administrative determination, this chapter should be repealed. The authority to provide appropriate facilities and aftercare is carried forward in new sections 7002 and 7008, *supra*.

Chapter ~~403~~ *81.—Federal Proceedings Regarding* Juvenile Delinquency

Sec.

~~5031~~ *8101.* Definitions.
~~5032~~ *8102.* Proceeding against juvenile delinquent.
~~5033~~ *8103.* Jurisdiction; ~~written consent,~~ jury trial precluded.
~~5034~~ *8104.* Probation; commitment to custody of Attorney General; support.
~~5035~~ *8105.* Arrest, detention and bail.
~~5036~~ *8106.* Contracts for support; payment.
~~5037~~ *8107.* Parole.

Note: Code § 501 provides for manadatory juvenile disposition of all offenders under 15, of all offenders under 16 charged with murder, aggravated assault, rape and aggravated involuntary sodomy, and of all offenders under 18, unless the court orders trial as an adult.

Title 18 Sections	Guidelines
5031	Renumber as 8101. Redefine "juvenile delinquency" to conform with Code § 501.
5032	Renumber as 8102. This section should be amended to conform with Code § 501, which, by providing mandatory juvenile disposition for offenders under certain ages, renders juvenile consent obsolete.
5033	Renumber as 8103. The fourth sentence should be deleted for the reasons set forth in the guideline to section 5032, *supra*.
5034	Renumber as 8104. Substitute "Corrections" for "Prisons".
5035	Renumber as 8105.
5036	Renumber as 8106. Substitute "Corrections" for "Prisons".
5037	Renumber as 8107.

Part ~~V~~ *G.*—Immunity of Witnesses

Sec.

~~6001~~ *9001.* Definitions.
~~6002~~ *9002.* Immunity generally.
~~6003~~ *9003.* Court and grand jury proceedings.
~~6004~~ *9004.* Certain administrative proceedings.
~~6005~~ *9005.* Congressional proceedings.

Title 18 Sections	Guidelines
6001	Renumber as 9001.
6002	Renumber as 9002.
6003	Renumber as 9003. In subsection (a), substitute "9002" for "6002".
6004	Renumber as 9004. In subsection (a), substitute "9002" for "6002".
6005	Renumber as 9005. In subsection (a), substitute "9002" for "6002".

Part H—INTERSTATE AGREEMENTS

Chap.		Sec.
100.	*Interstate Agreement on Detainers Act*	10001.

Note: The Interstate Agreement on Detainers Act, 84 Stat. 1397, was not enacted into positive law and consequently was placed in Title 18, Appendix. The only other legislation found in the Appendix, with the exception of the Federal Rules of Criminal Procedure, is the Unlawful Possession or Receipt of Firearms Act (title VII, §§ 1201–03, 82 Stat. 236), which the guidelines transfer into Title 26. The establishment of a separate part of Title 18 for the placement of interstate agreements in the criminal area is suggested.

C. Relevant Provisions in Titles of the United States Code Other Than Title 18

INTRODUCTORY NOTE

Following are guidelines for relevant provisions in titles of the United States Code other than Title 18. Included among the provisions are those presently in Title 18 which the Commission recommends be transferred to another title and those sections of a title which should or might be repealed or modified to conform to the Commission's Final Report. Included in the latter group are provisions defining offenses, imposing "fines," and containing references to sections in present Title 18—all which could be identified in a thorough search conducted both by computer and by eye. *Note:* (1) The terminal date of the search was October 15, 1970, so that laws enacted in the closing days of the 91st Congress are not reflected*; also not considered was Title IX of the Organized Crime Control Act of 1970 which added Chapter 96 to Title 18 (§§ 1961 *et seq.*) on Racketeer Influenced and Corrupt Organizations; (2) The list does not purport to be exhaustive with respect to provisions which contain references to already-listed provisions as to which repeal or deletion is recommended; (3) The guidelines are more comprehensive than, and should take precedence over, Table II of the Final Report, which lists sections outside Title 18 and the proposed Code sections affecting them.

The guidelines fall generally into several categories.

1. *Matters Covered by Code.*—Repeal of some sections and deletion of parts of others are recommended either because, in line with the Commission's concept of the scope of the Code, a felony defined outside Title 18 has been brought into the Code or because the provision outside Title 18 defines an offense already defined in the Code.

2. *Penalty.*—The Commission's recommendations with respect to penalties for offenses defined outside Title 18 could be effected without amending the provisions involved outside Title 18. Pursuant to Code § 3006, which classifies offenses defined outside Title 18, all of the Part C provisions would apply to those offenses. Also under that section and under an exception stated in Code § 3301(1), dealing with

*Laws enacted by the 91st Congress after October 15, 1970, which created, amended or repealed criminal provisions were:

Horse Protection Act, Pub. L. No. 91-540, 84 Stat. 1404; Plant Variety Protection Act, Pub. L. No. 91-577, 84 Stat. 1542; Animal Welfare Act of 1970, Pub. L. No. 91-579, 84 Stat. 1560; Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590; Egg Products Inspection Act, Pub. L. No. 91-597, 84 Stat. 1620; Security Investor Protection Act of 1970, Pub. L. No. 91-598, 84 Stat. 1636; Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676; Omnibus Crime Control Act of 1970, Pub. L. No. 91-644, 84 Stat. 1880; Act of January 8, 1971, Pub. L. No. 91-651, 84 Stat. 1940 (regarding the use of the Great Seal of the U.S. and the Seals of the President and Vice-President); and Act of January 8, 1971, Pub. L. No. 91-662, 84 Stat. 1973 (regarding the importation, transportation and mailing of contraceptives).

dollar limits on fines, the existing determinations as to the authorized prison terms and authorized fines are not disturbed, except that prison terms longer than one year would be reduced to that length, consistent with Code policy of bringing all felonies into the code.

Amendment of these provisions should nevertheless be made if for no other reason than to effect a comprehensive "clean up" of the federal criminal laws. In the process, however, offenses with maximum prison terms exceeding 30 days need not automatically be classified as Class A misdemeanors. Reflection upon the purpose of the criminal sanction for minor offenses and the relative placement of the offense on the scale of seriousness may suggest that the offense be reduced to a Class B misdemeanor or an infraction or be made subject to the regulatory offense provision (Code § 1006). The guidelines do not offer answers to these questions, leaving the matter to the judgment of those more familiar with the purpose of and the experience under the law involved. The guidelines do, however, identify the provisions where, at least, the language should be changed to comport with Code style and where these penalty issues may exist. Such identification is made by use of the word *penalty*.

It should be noted that, when the Code's classification language is substituted for the penalty language in the existing statute, a lesser maximum prison term or a greater or lesser maximum fine may nevertheless be authorized, *e.g.*, ". . . shall be guilty of a Class A misdemeanor, except that the maximum prison term shall be six months and the maximum fine shall be $100,000." See Code §§ 3006, 3301(1).

In some cases, it may be regarded as desirable to retain as a felony an offense outside Title 18 which the Commission did not bring into the Code. In those situations it is recommended that, rather than abandonment of the policy of including all felonies in the Code, consideration be given to (1) incorporating the offense in the Code, either wholly or by reference, *e.g.*, as in Code §§ 1121, 1204, 1772, (2) adding the elements of the offense as a specific jurisdictional base to a related offense, *e.g.*, as in Code § 1740(4), or (3) if aggravating circumstances in the commission of the offense are what warrant felony treatment, *e.g.*, aggravated assault, providing that jurisdiction exists over any other, or a specified, offense committed in the course of committing this offense. *Cf.* Code § 201(b).

3. *Culpability.*—Code § 302 provides uniform definitions for words of culpability—"intentionally," "knowingly," "recklessly," "willfully"—which may or may not be consistent with what was intended by use of those words in provisions outside Title 18. "Willfully" under Code § 302, for example, embraces "knowingly" and "recklessly," but its usage in many instances in present law is the equivalent of "intentionally" or even some specific intent—to deceive, to harm, etc. Moreover, under Code § 302(2), if no culpability is specified, the requisite culpability is "willfully" (as defined in the Code), which may or may not be intended. Again, however, the guidelines do not recommend answers to these questions, but identify the possible existence of the issue by use of the word *culpability*. A fair and probably adequate rule-of-thumb would be merely to substitute "intentionally" where "willfully" is now used.

The question of the appropriate culpability is not always identified as an issue if the only penalty authorized is a fine. In addition, where the guideline suggests the offense should be subject to the regulatory offense provision (Code § 1006) and no culpability is specified in the offense, culpability is not identified as a problem because Code § 1006 deals with it. Culpability may still be a problem, however, if the offense should be subject to the regulatory offense provision and the culpability specified in the offense conflicts with the culpability requirements of Code § 1006.

4. *Regulatory Offense.*—Although use of the regulatory offense provision (Code § 1006) may well be considered whenever revision of a penalty is in issue, its use is explicitly suggested in the guidelines largely in the situation where existing law provides a criminal sanction for violation of rules or regulations issued pursuant to a statute. That the penalty is authorized in such circumstances will not always be apparent because sometimes the penalty provision states ". . . violates any provision of this chapter [or sections . . .] . . ." and included in the chapter or sections is authority to promulgate rules and regulation. Note, however, that where the offense is engaging in specified behavior in violation of a regulation, the offense is not necessarily one which should be subject to the regulatory offense provision.

5. *Renumber.*—The word *renumber* has been used to indicate that references within the section to other statutes should be changed. Principally, these involve cases where the reference is to a section in Title 18 being changed by the proposed Code. Often the only change required is substituting the number of the section of the Code counterpart. However, there are some instances when the complexity of finding Code counterparts is so great that the purpose of the statute is probably better achieved by more substantive revision. Such instances are also indicated by the word *renumber*. See, *e.g.*, 39 U.S.C. § 3001(a).

6. *Criminal Law Terminology in Civil Context.*—The words "fine" and "offense" are regarded in the proposed Code as words of art in the criminal law. See Code Ch. 33 and Code § 109(ab). Yet they are often used in statutes which merely authorize the collection of a civil penalty, thus adding confusion to a situation which is none too clear to begin with. See 28 U.S.C. § 2461, where such "fines" are referred to as "civil fines" to provide explicit authority for their collection by civil suit. Where it is clear or apparent that a civil penalty was intended, the guidelines recommend substituting "civil penalty" for "fine" and "violation" for "offense." The civil identity is inferred from the fact the "fine" may be collected, mitigated or remitted by an official of the executive branch or that it is authorized to be collected by a civil action or by some government agency or from some similar feature. Forfeiture is also treated as non-criminal. It may be that these lines between criminal and civil matters are not satisfactorily drawn and that consideration should be given to whether additional matters should be removed from—or, in some instances, added to—the criminal law.

TITLE 2

The Congress

Title 2 Sections	Guidelines*
167g	(Act of Aug. 4, 1950, ch. 561, § 8, 64 Stat. 412.) Regulatory offense. This section should be changed by deleting the "*Provided*," clause, which is covered by Code § 1705.
192	(R.S. § 102, as amended, 2 U.S.C. § 192.) This section, covered by Code §§ 1342 and 1343, should be repealed.
241	(Federal Corrupt Practices Act, 1925, ch. 368, title III, § 302, 43 Stat. 1070, as amended, 2 U.S.C. § 241.) This section should be changed by deleting "and section 208 of Title 18." Section 208 was repealed in 1948 and replaced by section 602, which, in turn, is being replaced by Code § 1534.
248	(Federal Corrupt Practices Act, 1925, ch. 368, title III, § 309, 43 Stat. 1073.) This section should be changed by deleting "and section 208 of Title 18." See comment to section 241, *supra*.
252	(Federal Corrupt Practices Act, 1925, ch. 368, title III, § 314, 43 Stat. 1074.) Subsections (a) and (b)—penalty, culpability. These subsections should be changed by deleting "except those for . . . of this title,". See comment to section 241, *supra*. Section 251 was also repealed in 1948.
269	(Federal Regulation of Lobbying Act, ch. 753, title III, § 310, 60 Stat. 842.) Subsections (a) and (b)—penalty, culpability. *Cf.* Code § 3003.
390	(Federal Contested Elections Act, § 11, 83 Stat. 288.) Consideration should be given to replacing this section with a provision stating that for purposes of Code §§ 1342 and 1343, any subpoena issued under this chapter shall be deemed issued for an official proceeding before Congress.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

Sections Transferred Into Title 2

Former Title 18 Sections	Guidelines*
591	Renumber.
608	Subsections (a) and (b)—penalty, culpability. Subsection (c) should be repealed. Code § 403 covers it. Subsection (d)—renumber.
609	Penalty, culpability. This section should be changed by deleting "the chairman and . . . for such violation" and substituting "any individual whose conduct falls under section 403 of Title 18." Section 403 must be specifically referred to here because the offense by its terms, can only be committed by an organization.
610	Penalty, culpability. This section should be changed by deleting "officer or director . . . case may be," and substituting "any individual whose conduct falls under section 403 of Title 18." See comment to section 609, *supra*.
611	Penalty, culpability.
612	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 4

Flag and Seal, Seat of Government, and the States

Title 4 Section	Guidelines*
3	Penalty, culpability.

Sections Transferred Into Title 4

Former Title 18 Sections	Guidelines*
700	Subsection (a)—penalty. The provisions of subsection (c), covered by Code § 206, can be deleted.
701	Penalty, culpability. Code § 1751 would cover this conduct if engaged in with intent to deceive or harm.
709	Penalty, culpability. This section should be changed by deleting "an officer or member . . . such violation or" in the fourth paragraph from the end, matter covered by Code § 403. The last paragraph should be made a defense. See Code § 103.
712	Penalty.
713	Penalty.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 5

Government Organization and Employees

Title 5 Sections	Guidelines*
304	Subsection (b)—relevant, but no change necessary.
551	Subsection (10)(C) should be changed by deleting "or fine", to eliminate criminal law terminology in a civil context.
552	Subsection (3)—relevant, but no change necessary.
555	Subsection (d)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
1507	Subsection (a)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4)(a)(iv) and (4)(b).
7313	Subsection (a) should be amended to conform to Code Chapter 35.
8125	Consideration might be given to repeal of this section in light of Code §§ 1342–1344.
8312	Subsections (b) and (c)—renumber.

Sections Transferred Into Title 5

Former Title 18 Sections	Guidelines*
202	Subsections (a) and (b)—renumber.
203	Penalty, culpability. This section should be amended to conform to Code Chapter 35.
204	Penalty, culpability. This section should be amended to conform to Code Chapter 35.
205	Penalty, culpability, renumber.
206	Renumber.
207	Penalty, culpability (twice), renumber.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

208 ..... Subsection (a)—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor.

209 ..... Subsection (a)—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor (or the first subsection should be deleted entirely) because it involves less serious behavior than Code § 1363, which is a Class A misdemeanor.

211 ..... The first paragraph, covered by Code § 1354, should be repealed. The second paragraph—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1364, which is a Class A misdemeanor.

218 ..... No change.

219 ..... Penalty, culpability.

292 ..... Penalty, culpability.

431 ..... Penalty, culpability.

432 ..... Penalty, culpability.

433 ..... Renumber.

Present law penalizes many types of mishandling of government property as a theft thereof. Code § 1732 defines theft; an intent to deprive the owner of his property is required. Code § 1737 penalizes misapplication of property which involves a risk of loss as a Class A misdemeanor. But see Code § 1739(2)(a) which makes failure to account by certain people a prima facie case of theft. Present 18 U.S.C. §§ 643 and 648 to 653 (to be transferred to Title 5) and present 18 U.S.C. §§ 645, 646, 647 and 1421 (to be transferred to Title 28) set forth certain rules and regulations on the handling of government property. When there is no intent to deprive the owner of property and no knowing risk of loss, mishandling should be penalized as a regulatory offense. See Final Report, Introductory Note to Theft and Related Offenses, p. 205, and Working Papers, pp. 930–32.

643 ..... Regulatory offense.

648 ..... Regulatory offense. This section should be changed by deleting "or converts to his own use,".

649 ..... Subsection (a)—regulatory offense. Subsection (b)—renumber.

650 ..... Regulatory offense.

651 ..... Regulatory offense.

652 ..... Regulatory offense.

653 ..... Reulatory offense. This section should be changed by deleting "converts to his own use,".

1901 ..... Penalty, culpability. This section should be amended to conform to Code Chapter 35.

1913 ..... Penalty, culpability. This section should be changed by deleting "or attempts to violate", which is covered by Code § 1001.

1916 ..... Regulatory offense. See the comment preceding section 643, *supra*. Renumber.

1917 ..... Penalty, culpability, renumber.

1921 ..... Regulatory offense. See the comment preceding section 643, *supra*.

1922 ..... Penalty, culpability, renumber. This section should be changed by deleting "or knowingly files a false report," which is covered by Code § 1352.

2075 ..... Regulatory offense.

TITLE 7

Agriculture

Title 7 Sections	Guidelines*
13	(Commodity Exchange Act, ch. 369, § 9, 42 Stat. 1003, as amended, 7 U.S.C. § 13.) Subsection (a) should be repealed. Code §§ 1732, 1740(4)(j) cover it. Subsections (b) and (c)—penalty, culpability. In addition, subsection (b) should be changed by deleting "or attempt to manipulate" and "or attempt to corner", matter covered by Code § 1001.
13-1	(Act of Aug. 28, 1958, § 1, 72 Stat. 1013.) Subsection (b)—penalty, culpability.
13a	(Commodity Exchange Act, ch. 369, § 6b, as added, ch. 545, § 9, 49 Stat. 1500, and amended, 7 U.S.C. § 13a.) Penalty, culpability.
13b	(Commodity Exchange Act, ch. 369, § 6(c), as added, § 17, 82 Stat. 31, 7 U.S.C. § 13b.) Penalty, culpability. This section should be changed by deleting "except that if . . . paragraph (a) or (b)", because repeal of section 13(a) is suggested, *supra*. Code § 3006 provides that no crime outside Title 18 shall be a felony.
15	(Commodity Exchange Act, ch. 369, § 6(b), 42 Stat. 1001, as amended, 7 U.S.C. § 15.) Relevant, but no change recommended.
59	(United States Cotton Standards Act, ch. 288, § 8, 42 Stat. 1519.) Subparagraphs (a) and (b), covered by Code § 1751, should be repealed.
60	(United States Cotton Standards Act, ch. 288, § 9, 42 Stat. 1519.) Penalty, culpability. Subsection (b) should be changed by deleting "or shall knowingly . . . as such licensee", matter covered by Code §§ 1751, 1753 and 1361. Subsection (c) should be repealed. Code §§ 1361 and 1366 cover it. Subsection (d) should be repealed. Code §§ 1301, 1361, 1366, 1611 and 1612 cover it. *Cf.* Code § 201(b).

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

87b	(United States Grain Standards Act, ch. 313, part B, § 13, as added, § 1, 82 Stat. 766, 7 U.S.C. § 87b.) Subsection (a)(1) should be repealed. Code §§ 1751 and 1753 cover it. Subsection (a)(2) should be repealed. Code §§ 1751, 1752 and 1753 cover it. Subsection (a)(3) should be changed by deleting "or attempt (whether . . . not) to cause", matter covered by Code § 1001. Subsection (a)(7) should be repealed. Code §§ 1361 and 1366 cover it. Subsection (a)(8) should be repealed. Code §§ 1301, 1366, 1367, 1611 and 1612 cover it. *Cf.* Code § 201(b). (Note that although 7 U.S.C. § 84(d) specifies that certain inspectors are not employees of the government, they do act "for or on behalf of" the government, and thus come within the Code definition of "public servant" in § 109(af).) Subsection (a)(9) should be repealed. Code § 1381 covers it. Subsection (a)(10) should be repealed. Code § 1352 covers it. Subsection (b)(4) should be repealed. Code § 1361 covers it. Subsection (c), approximating the definition of "recklessly" in Code § 302, should be deleted; and, where appropriate, "knowingly" in this section should be changed to "recklessly".
87c	(United States Grain Standards Act, ch. 313, part B, § 14, as added, § 1, 82 Stat. 767, 7 U.S.C. § 87c.) Subsection (a)—penalty, culpability (particularly § 87b(c)) (twice). *Cf.* Code § 3003.
87f	(United States Grain Standards Act, ch. 313, part B, § 17, as added, § 1, 82 Stat. 768, 7 U.S.C. § 87f.) Consideration should be given to making these subpoenas subject to Code § 1342, so that subsection (e) can be repealed. Subsection (g) should be repealed. Code § 1371 covers it.
96	(The Naval Stores Act, ch. 217, § 6, 42 Stat. 1436.) Penalty, culpability.
135a	(Federal Insecticide, Fungicide and Rodenticide Act, ch. 125, § 3, 61 Stat. 166, as amended, 7 U.S.C. § 135a.) Subsection (b) should be made a defense. See Code § 103(2). Subsection (c) should be changed by making the "except" clause in paragraph (3) a defense. See Code § 103(2).

135b ..... (Federal Insecticide, Fungicide and Rodenticide Act, ch. 125, § 5, 61 Stat. 168.) Subsection (c) should be changed by deleting the last sentence and substituting: "It is no defense to a prosecution under section 135a of this title that an article was registered."

135e ..... (Federal Insecticide, Fungicide and Rodenticide Act, ch. 125, § 7, 61 Stat. 169.) Subsection (a) subparagraphs (1) to (4) should be made defenses. See Code § 103 (2).

135f ..... (Federal Insecticide, Fungicide and Rodenticide Act, ch. 125, § 8, 61 Stat. 170, as amended, 7 U.S.C. § 135f.) Subsections (a) and (b)—regulatory offense. See particularly Code § 1006(2) (c). The last part of section 135a(c) (4) (revealing information) should be excepted from this penalty provision. Code § 1371 provides the penalty for this conduct, so only the prohibition need remain. Subsection (c) should be repealed. Code §§ 1371 and 1372 cover it.

150gg ..... (Federal Plant Pest Act, title I, § 108, 71 Stat. 34.) Regulatory offense. This section should be changed by deleting "forges, counterfeits, or" and "alters," matter covered by Code § 1751.

163 ..... (Plant Quarantine Act, ch. 308, § 10, 37 Stat. 318.) Regulatory offense particularly because of section 162. See also section 167. This section should be changed by deleting "forge, counterfeit, alter, deface or", matter covered by Code § 1751. The "*Provided*" clause should be made a defense. See Code § 103.

166 ..... (Terminal Inspection Act, ch. 144, 38 Stat. 1113, as amended, 7 U.S.C. § 166.) Penalty, culpability. This section should be changed by deleting ", corporation", matter covered by Code § 402.

167 ..... (Plant Quarantine Act, ch. 308, § 15, as added, ch. 217, 41 Stat. 762, and amended, 7 U.S.C. § 167.) No change (offense).

195 ..... (Packers and Stockyards Act, 1921, ch. 64, § 205, 42 Stat. 163, as amended, 7 U.S.C. § 195.) Penalty, culpability.

203 ..... (Packers and Stockyards Act, 1921, ch. 64, § 303, 42 Stat. 163, as amended, 7 U.S.C. § 203.) Change "offense" to "violation" to eliminate criminal law terminology in a civil context.

207 ..... Packers and Stockyards Act, 1921, ch. 64, § 306, 42 Stat. 164.) Subsection (h)—regulatory offense, culpability.

215 ..... (Packers and Stockyards Act, 1921, ch. 64, § 314, 42 Stat. 167, as amended, 7 U.S.C. § 215.) Change "offense" to "violation" to eliminate criminal law terminology in a civil context.

218a ..... (Packers and Stockyards Act, 1921, ch. 64, § 502, as added, ch. 532, 49 Stat. 648, 7 U.S.C. § 218a.) Subsection (a)—penalty, culpability.

221 ..... (Packers and Stockyards Act, 1921, ch. 64, § 401, 42 Stat. 168, ch. 64, § 503, as added, ch. 532, 49 Stat. 649, 7 U.S.C. § 221.) Penalty, culpability.

222 ..... (Packers and Stockyards Act, 1921, ch. 64, § 402, 42 Stat. 168, ch. 64, § 503, as added, ch. 532, 49 Stat. 649, 7 U.S.C. § 222.) Relevant, but no change recommended.

270 ..... (United States Warehouse Act, ch. 313, part C, § 30, 39 Stat. 490, as amended, 7 U.S.C. § 270.) Penalty, culpability. This section should be changed by deleting "forge, alter, counterfeit, simulate or" from the first sentence, matter covered by Code § 1751. If felony penalties are deemed necessary, this section should further be changed by deleting "convert to his own use, or," and adding to Code § 1740 (4) that there is federal jurisdiction over an offense defined in Code §§ 1732–34 or 1737 when the subject of the offense is agricultural products stored in a licensed warehouse for which licensed receipts have been or are to be issued pursuant to 7 U.S.C. § 259.

282 ..... (Honeybee Act, ch. 301, § 2, 42 Stat. 834.) Penalty, culpability.

472 ..... (Cotton Statistics and Estimates Act, ch. 337, § 2, 44 Stat. 1373.) This section should be changed by deleting the penalty provision, matter covered by Code § 1371.

473 ..... (Cotton Statistics and Estimates Act, ch. 337, § 3, 44 Stat. 1373, as amended, 7 U.S.C. § 473.) Penalty, culpability. This section should be changed by deleting "or shall willfully . . . are false or", matter covered by Code § 1352.

473c–1 (Cotton Statistics and Estimates Act, ch. 337, § 3c–1, as added, 74 Stat. 328, 7 U.S.C. § 473c–1.) Subsection (a) should be changed by deleting "or to accept money . . . as a sampler;" matter covered by Code § 1361. Subsection (b) should be repealed. Code §§ 1001, 1301, 1361, 1366, 1611 and 1612 cover it.

473c–2 (Cotton Statistics and Estimates Act, ch. 337, § 3c–2, as added, 74 Stat. 329, 7 U.S.C. § 473c–2.) Regulatory offense, particularly because of section 473c–1 (g).

491 (Act of Mar. 3, 1927, ch. 309, § 1, 44 Stat. 1355.) Penalty, culpability. This section should be changed by deleting "corporation" in line 2, matter covered by Code § 402.

499c (Perishable Agricultural Commodities Act, 1930, ch. 436, § 3, 46 Stat. 533, as amended, 7 U.S.C. § 499c.) Change "offense" to "violation" to eliminate criminal law terminology in a civil context.

499d (Perishable Agricultural Commodities Act, 1930, ch. 436, § 4, 46 Stat. 533, as amended, 7 U.S.C. § 499d.) Subsection (b) (C) should be amended to conform to Code Chapter 35.

499m (Perishable Agricultural Commodities Act, 1930, ch. 436, § 13, 46 Stat. 536, as amended, 7 U.S.C. § 499m.) Subsection (c)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4) (a) (iv), and (4) (b).

499n (Perishable Agricultural Commodities Act, 1930, ch. 436, § 14, 46 Stat. 537, as amended, 7 U.S.C. § 499n.) Subsection (b) should be repealed. Code §§ 1751, 1753 and 401 cover it.

503 (Act of Jan. 14, 1929, ch. 69, § 3, 45 Stat. 1080, as amended, 7 U.S.C. § 503.) Penalty, culpability. This section should be changed by deleting "or shall willfully give answers that are false or misleading," matter covered by Code § 1352.

511i (Act of Aug. 23, 1935, ch. 623, § 10, 49 Stat. 733.) Subsection (b) should be repealed. Code §§ 1751, 1753 and 401 cover it. Subsection (d) should be changed by deleting "or to accept . . . sampler or weigher.", matter covered by Code § 1361. Subsection (e) should be repealed. Code §§ 1001, 1301, 1361, 1366, 1611 and 1612 cover it. Subsection (f) should be repealed. Code § 1381 covers it. Subsection (g) should be changed by deleting ", or attempt to substitute," matter covered by Code § 1001.

511k (Act of Aug. 23, 1935, ch. 623, § 12, 49 Stat. 734.) Penalty, culpability.

517 (Act of June 5, 1940, ch. 232, § 2, 54 Stat. 231.) Penalty, culpability.

586 (Act of June 10, 1933, ch. 59, § 6, 48 Stat. 124.) Regulatory offense, culpability.

596 (Act of Sept. 2, 1960, § 6, 74 Stat. 734.) Regulatory offense.

608a (Agricultural Adjustment Act, ch. 25, title I, § 8a, as added, ch. 263, § 4, 48 Stat. 672, and amended, 7 U.S.C. § 608a.) Subsection (4)—regulatory offense.

608c (Agricultural Adjustment Act, ch. 25, title I, § 8c, as added, ch. 641, § 5, 49 Stat. 753, and amended, 7 U.S.C. § 608c.) Subsection (14) regulatory offense. The "*Provided*" clause should be made a defense. See Code § 103 (2).

608d (Agricultural Adjustment Act, ch. 25, title I, § 8d, as added, ch. 641, § 6, 49 Stat. 761, and amended, 7 U.S.C. § 608d.) Delete the last sentence of subsection (2), since the penal provisions are covered by Code § 1371.

608e–1 (Agricultural Adjustment Act, ch. 25, title I, § 8e, as added, ch. 1041, title IV, § 401(e), 68 Stat. 907, and amended. 7 U.S.C. § 608e–1.) Relevant, but no change recommended.

610 (Agricultural Adjustment Act, ch. 25, title I, § 10, 48 Stat. 37, as amended, 7 U.S.C. § 610.) Subsection (c)—regulatory offense. Subsection (g)—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor. Subsection (h)—relevant, but no change recommended.

615 — (Agricultural Adjustment Act, ch. 25, title I, § 15, 48 Stat. 39, as amended, 7 U.S.C. § 615.) Subsection (b–3)(1)—penalty, culpability. Subsection (b–3)(2)—penalty. This subsection should be changed by deleting "or attempts to . . . attempting to secure", matter covered by Code § 401. Subsection (b–3)(3) should be repealed. Code §§ 1751, 1753, 1352 and 1752 cover it.

620 — (Agricultural Adjustment Act, ch. 25, title I, § 20, as added, ch. 263, § 16, 48 Stat. 677, 7 U.S.C. § 620.) Subsections (a), (b) and (c)—penalty, culpability.

953 — (Act of June 24, 1936, ch. 745, § 3, 49 Stat. 1899, as amended, 7 U.S.C. § 953.) Penalty, culpability. This section should be changed by deleting "or shall willfully give answers that are false or misleading," matter covered by Code § 1352.

1011 — (The Bankhead-Jones Farm Tenant Act, ch. 517, title III, § 32, 50 Stat. 525, as amended, 7 U.S.C. § 1011.) Subsection (f)—regulatory offense; delete last sentence as superfluous.

1153 — (Sugar Act of 1948, ch. 519, title IV, § 403, 61 Stat. 932.) Subsection (a)—regulatory offense, culpability.

1156 — (Sugar Act of 1948, ch. 519, title IV, § 406, 61 Stat. 933.) Penalty, culpability. This section should be changed by deleting "or furnishing willfully any false information," matter covered by Code § 1352.

1157 — (Sugar Act of 1948, ch. 519, title IV, § 407, 61 Stat. 933, as amended, 7 U.S.C. §1157.) Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor.

1373 — (Agricultural Adjustment Act of 1938, ch. 30, title III, § 373, 52 Stat. 65, as amended, 7 U.S.C. § 1373.) Subsection (a)—regulatory offense. Subsection (a) should be changed by deleting "report or" after "making any false report," matter covered by Code § 1352. Consideration should be given to making these records subject to Code § 1356. Then "or making any false report or record" could all be deleted.

1379i — (Agricultural Adjustment Act of 1938, ch. 30, title III, § 379i, as added, title III, § 324(2), 76 Stat. 629, and amended, 7 U.S.C. § 1379i.) Subsection (b)—regulatory offense. Subsection (b) should be changed by deleting "or attempts . . . in violation of" matter covered by Code §§ 1001 and 401. Subsection (d) should be repealed. Code §§ 1751 and 1753 cover it.

1380o — (Agricultural Adjustment Act of 1938, ch. 30, title III, §380o, as added, ch. 327, title V, § 501(3), 70 Stat. 211, 7 U.S.C. § 1380o.) Subsection (a)—regulatory offense. Subsection (a) should be changed by deleting "report or" after "false", matter covered by Code § 1352. Consideration should be given to making these records subject to Code § 1356. Then "or making any false report or record" could all be deleted.

1433 — (Agricultural Act of 1949, ch. 792, title IV, § 421, as added, § 2, 78 Stat. 927, 7 U.S.C. § 1433.) Penalty, culpability.

1596 — (Federal Seed Act, ch. 615, title IV, § 406, 53 Stat. 1286, as amended, 7 U.S.C. § 1596.) Subsection (a)—regulatory offense, culpability.

1622 — (Agricultural Marketing Act of 1946, ch. 966, title II, § 203, 60 Stat. 1087, as amended, 7 U.S.C. § 1622.) Subsection (h)—penalty, culpability. This subsection should be changed by deleting "Whoever knowingly shall falsely . . . identification, or device, or", matter covered by Code §§ 1751, 1752, 1753 and 401.

1642 — (International Wheat Agreement Act of 1949, ch. 772, § 3, 63 Stat. 946.) Subsection (c)—regulatory offense. Subsection (c) should be changed by deleting "report or", matter covered by Code § 1352. Consideration should be given to making these records subject to Code § 1356. Then "or making any false report or record" could all be deleted.

1887 — (Act of Aug. 2, 1956, ch. 878, § 7, 70 Stat. 935.) Subsection (a)—renumber. Present 18 U.S.C. §§ 1902 and 1905 are covered by Code §§ 1371 and 1372. State employees covered by this subsection fit within the definition of "public servant" in Code § 109(af). If it is desired to be more specific as to their coverage, they should be added to Code §§ 1371 and 1372.

1903	(Act of Aug. 27, 1958, § 3, 72 Stat. 862.) This section should be changed by deleting "such" before "statement of eligibility" and substituting "a" and by deleting "as, if false . . . Title 18." The false making of a statement of eligibility would be covered by Code §§ 1352 and 1732.
1986	(Consolidated Farmers Home Administration Act of 1961, title III, § 336, 75 Stat. 316.) Penalty, culpability.
2023	(The Food Stamp Act of 1964, 78 Stat. 708.) Subsection (b)—penalty. Subsection (b) should be changed by deleting "if such coupons . . . than $100, shall". Felonious violations are covered by Code § 1759. Subsection (c)—penalty. Subsection (c) should be changed by deleting "of the value of $100 or more," and "felony and shall . . . shall be guilty of a". Felonious violations are covered by Code § 1759. Subsection (d) should be repealed. Code § 1754(j) includes "coupons" as an obligation of the United States.
2044	(Farm Labor Contractor Registration Act of 1963, § 5, 78 Stat. 921.) Subsection (b)(7) should be changed by deleting "extortion, embezzlement, grand larceny," and substituting "felonious theft." ", [V]iolation of narcotics laws" should be deleted, and "a drug felony" substituted. Further, "assault with intent . . . grievous bodily injury" should be deleted, and "aggravated involuntary sodomy, attempted murder" substituted.
2048	(Farm Labor Contractor Registration Act of 1963, § 9, 78 Stat. 924.) Regulatory offense, culpability.
2105	(Cotton Research and Promotion Act, § 6, 80 Stat. 280.) Delete the last sentence of paragraph (c), since the penal provisions are covered by Code § 1371.
2112	(Cotton Research and Promotion Act, § 13, 80 Stat. 284.) Subsection (b)—"offense" should be changed to "violation" to eliminate criminal law terminology in a civil context.

2115	(Cotton Research and Promotion Act, § 16, 80 Stat. 285.) Consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
2149	(Act of Aug. 24, 1966, § 19, 80 Stat. 352.) Penalty, culpability.
2150	(Act of Aug. 24, 1966, § 20, 80 Stat. 353.) Subsection (a)—"offense" should be changed to "violation" to eliminate criminal law terminology in a civil context.

Sections Transferred Into Title 7

Former Title 18 Sections	Guidelines*
707	Penalty, cupability. The fourth paragraph should be made a defense. See Code § 103.
711	Penalty.
916	Penalty, culpability.
2072	Penalty.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 8

Aliens and Nationality

Title 8 Sections	Guidelines*
333	(R.S. § 2160.) This section should be repealed. Code §§ 1631, 1632 and 1002 cover it. With this repeal of all its criminal provisions, consideration should be given to repealing the entire Cooly Trade Act.
334	(R.S. § 2161.) This section should be repealed. Code §§ 1631 and 1632 cover it.
338	(Act of March 3, 1875, ch. 141, § 2, 18 Stat. 477.) This section should be repealed. Code §§ 1631 and 1632 cover it. The provision voiding contracts could be separately continued, if desired.
339	(Act of March 3, 1875, ch. 141, § 4, 18 Stat. 477.) This section should be repealed. Code §§ 1631 and 1632 cover it.
1182	(Immigration and Nationality Act, ch. 477, title II, ch. 2, § 212, 66 Stat. 182, as amended, 8 U.S.C. § 1182.) Subsection (a)(9) should be changed by deleting "a misdemeanor classifiable . . . punishment actually imposed" and substituting "a crime for which the penalty imposed did not exceed imprisonment for a period of six months or a fine of not more than $500, or both," and by deleting "an offense that is . . . imposed upon him," and substituting "a crime for which the penalty which might have been imposed was imprisonment for a term of one year or less,".
1185	(Immigration and Nationality Act, ch. 477, title II, ch. 2, § 215, 66 Stat. 190.) Subsection (a)(3) should be repealed. Code §§ 1352 and 1221 cover it. Subsection (a)(5) should be changed by deleting "or enter," matter covered by Code §§ 1221 and 1225. Subsection (a)(6) should be repealed. Code § 1751 covers it. Subsection (a)(7) should be changed by deleting "any false, forged . . . permission or", matter covered by Code §§ 1751 and 1753.

*For meaning of "penalty," "culpability," "renumber," etc. *see* Introductory Note, *supra*.

	The serious conduct specified in subsection (a) is covered by Code §§ 1221–1229, 1351, 1352, 1751–1754. Subsection (c)—regulatory offense, culpability. This subsection should be changed by deleting "and the officer . . . imprisonment, or both;" which is covered by Code § 403. "Attempt" language should be deleted from subsections (a)(1), (a)(2), (a)(4), (a)(5), (a)(7) and (b). Code § 1001 covers it.
1225	(Immigration and Nationality Act, ch. 477, title II, ch. 4, § 235, 66 Stat. 198.) Subsection (a)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
1227	(Immigration and Nationality Act, ch. 477, title II, ch. 4, § 237, 66 Stat. 201.) Subsection (b) should be changed by deleting "fine" four times and substituting "civil penalty", to eliminate criminal law terminology in a civil context.
1251	(Immigration and Nationality Act, ch. 447, title II, ch. 5, § 241, 66 Stat. 204, as amended, 8 U.S.C. § 1251.) Subsection (a)(5) should be changed by deleting "section 1546 of Title 18," and substituting "section 1221 or 1222 of Title 18, section 1351, 1352, 1751, 1752 or 1753 of Title 18 with respect to any visa, permit or other document required for entry into the United States, or section 1351 or 1352 of Title 18 with respect to any application, affidavit or other document required by the immigration laws or regulations prescribed thereunder;". Subsection (a)(17) should be changed by deleting "sections 791, 792 . . . of Title 18;" and substituting "sections 1109, 1110, 1111, 1112, 1113, and 1118 of Title 18 and an attempt to violate the same; section 1303 of Title 18 with respect to a person who violated section 1109, 1110 or 1111 of Title 18;" by deleting "sections 2151 and 2153–2156 of Title 18;" and substituting "sections 1105, 1106 and 1107 of Title 18 and an attempt to violate the same;" by adding "section 1108 of Title 18 or an attempt to violate the same" after "Universal Military Training and Service

Act;" by deleting "an Act entitled . . . section 871 of Title 18;" and substituting "section 1615 of Title 18;" by deleting "section 2384 of Title 18;" and substituting "section 1103 of Title 18 or an attempt to violate the same;" by deleting "section 960 of Title 18;" and substituting "section 1202 of Title 18;"

1252 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 5, § 242, 66 Stat. 208, as amended, 8 U.S.C. § 1252.) Subsection (d)—regulatory offense, culpability. Subsection (d) should be changed by deleting "or knowingly give false information . . . of such regulations", matter covered by Code § 1352. Subsection (e)—penalty, culpability.

1281 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 6, § 251, 66 Stat. 219.) Subsection (d) should be changed by deleting "fine" four times and substituting "civil penalty", to eliminate criminal law terminology in a civil context.

1282 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 6, § 252, 66 Stat. 220.) Subsection (c)—penalty, culpability.

1284 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 6, § 254, 66 Stat. 221.) Subsection (a) should be changed by deleting "fine" three times and substituting "civil penalty", to eliminate criminal law terminology in a civil context.

1286 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 6, § 256, 66 Stat. 223.) This section should be changed by deleting "fine" and substituting "civil penalty", to eliminate criminal law terminology in a civil context.

1304 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 7, § 264, 66 Stat. 224.) Subsection (e)—penalty, culpability.

1306 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 7, § 266, 66 Stat. 225.) Subsection (a)—penalty, culpability. Subsection (b)—penalty, culpability. Subsection (c) should be changed by deleting "Any alien or any . . . months or both; and" and rewriting the last part to make sense without the deleted language. Matter is covered by Code §§ 1001, 1221, 1223, 1224, 1352 and 1361. Subsection (d) should be repealed. Code § 1751 covers it.

1322 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 272, 66 Stat. 226, as amended, 8 U.S.C. § 1322.) Subsection (c) should be changed by deleting "fine" or "fines" four times and substituting "civil penalty" or "civil penalties" and subsection (d) should be changed by deleting "fine" and substituting "civil penalty" to eliminate criminal law terminology in a civil context.

1323 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 273, 66 Stat. 227.) Subsection (d) should be changed by deleting "fine" twice and substituting "civil penalty", to eliminate criminal law terminology in a civil context.

1324 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 274, 66 Stat. 228.) Subsection (a) should be repealed. Code §§ 1221–1223 and 1001 cover it. Subsection (b) should be rewritten to make sense without subsection (a).

1325 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 275, 66 Stat. 229.) This section should be repealed. Code §§ 1221 and 1352 cover it.

1326 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 276, 66 Stat. 229.) This section should be repealed. Code §§ 1221 and 1001 cover it.

1327 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 277, 66 Stat. 229.) This section should be repealed. Code §§ 1221, 1222, 401, 1001, 1002 and 1004 cover it.

1328 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 278, 66 Stat. 230.) This section should be repealed. Code §§ 1221–1223, 1631–1632, 1841–1842 and 1001 cover it.

1330 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 8, § 280, 66 Stat. 230.) This section should be changed by deleting "fine," to eliminate criminal law terminology in a civil context.

1356 ---------- (Immigration and Nationality Act, ch. 477, title II, ch. 9, § 286, 66 Stat. 232.) Subsection (b) should be changed by deleting "fines and", to eliminate criminal law terminology in a civil context.

1357	(Immigration and Nationality Act, ch. 477, title II, ch. 9, § 287, 66 Stat. 233.) Subsection (b) should be changed by deleting "; and any person . . . 1621 of Title 18.", matter covered by Code §§ 1351 and 1352.
1425	(Immigration and Nationality Act, ch. 477, title III, ch. 2, § 314, 66 Stat. 241.) This section should be amended to conform with Code Chapter 35.
1446	(Immigration and Nationality Act, ch. 477, title III, ch. 2, § 335, 66 Stat. 256.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4) (a) (iv) and (4) (b).
1451	(Immigration and Nationality Act, ch. 477, title III, ch. 2, § 340, 66 Stat. 260, as amended, 8 U.S.C. § 1451.) Subsection (g) should be changed by deleting "1425" and substituting "1224".
1481	(Immigration and Nationality Act, ch. 477, title III, ch. 3, § 349, 66 Stat. 267, as amended, 8 U.S.C. § 1481.) Subsection (a) (9) should be changed by deleting "2383 of Title 18 . . . war against them," and substituting "1103 of Title 18,".

Section Transferred Into Title 8

Former Title 18 Section	Guidelines*
1428	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 9

Arbitration

Title 9 Section	Guidelines
7	Consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4) (a) (v).

TITLE 10

Armed Forces

Title 10 Sections	Guidelines*
504	This section should be amended to conform with Code Chapter 35.
2276	Subsection (c)—penalty, culpability. Subsection (c) should be changed by deleting "or attempts to deprive". Code § 1001 covers it.
2671	Subsection (c) should be repealed and the following substituted therefor: "(c) Nothing in this section shall be deemed to be federal law which penalizes or immunizes the conduct proscribed under subsection (a)(1) or (2)." State fish and game laws will thus be assimilated under Code § 209.
4501	Subsection (f)—penalty, culpability.
7678	Penalty, culpability. This section should be changed by deleting ", or aids or advises in the doing of,". Code § 401 covers it. Consideration should be given to repealing this section ("any act" with a specific intent is very imprecise) and covering the conduct intended to be prohibited herein which is not otherwise covered by the Code by amendments to the definitions or jurisdictional provisions in Title 18 or by a new specific offense modeled on Code § 1301.
9501	Subsection (f)—penalty, culpability.

Sections Transferred Into Title 10

Former Title 18 Sections	Guidelines*
244	Penalty, culpability.
702	Penalty, culpability. Consideration might be given to deleting the reference to the Public Health Service and enacting an identical statute covering that agency in Title 42.
704	Penalty.
710	Penalty.
1024	Penalty.
1383	Regulatory offense.
1385	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 11

Bankruptcy

Title 11 Sections	Guidelines*
32	(Bankruptcy Act, ch. 541, § 14, 30 Stat. 550, 550, as amended, 11 U.S.C. § 32.) Subsection (c) should be changed by deleting subparagraph (1) and substituting "(1) committed an offense proscribed by section 1756 of title 18 or, in relation to the bankruptcy proceeding, committed a crime proscribed by sections 1321, 1351, 1352, 1356, 1361 or 1732 of Title 18; or".
43	(Bankruptcy Act, ch. 541, § 20, 30 Stat. 551, as amended, 11 U.S.C. § 43.) Subsection (b) should be changed by deleting the second sentence. Code §§ 1351 and 1352 cover falsities both under oath and under equivalent affirmation.
69	(Bankruptcy Act, ch. 541, § 41, 30 Stat. 556, as amended, 11 U.S.C. § 69.) Subsecsection (b)—relevant, but no change recommended. Note that disobeying a subpoena of the referee is a crime under Code § 1342 without resort to the court.
104	(Bankruptcy Act, ch. 541, § 64, 30 Stat. 563, as amended, 11 U.S.C. § 104.) Subsection (a) should be changed by deleting "chapter 9" twice and substituting "section 1756" and by adding "or sections 1321, 1351, 1352, 1356, 1361, 1732, or 1737 of Title 18 with respect to a bankruptcy, or section [present 18 U.S.C. §§ 154 and 155] of this Title" after "of Title 18".
205	(Bankruptcy Act, ch. 541, § 77, as added, ch. 204, § 1, 47 Stat. 1474, as amended, 11 U.S.C. § 205.) Subsection (p)—regulatory offense, culpability. Subsection (p), paragraph 4, should be changed by deleting "or any person who willfully and knowingly makes . . . material fact," matter covered by Code § 1352.

Sections Transferred Into Title 11

Former Title 18 Sections	Guidelines*
154	Penalty.
155	Penalty.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 12

Banks and Banking

Title 12 Sections	Guidelines*
92a	(Act of Sept. 28, 1962, § 1, 76 Stat. 668.) Subsection (h)—penalty, culpability.
95	(Act of Mar. 9, 1933, ch. 1, title I, § 4, 48 Stat. 2.) Penalty, culpability. Serious violations are covered by Code § 1773.
95a	(Trading with the Enemy Act, ch. 106, § 5(b), 40 Stat. 415, as amended, 12 U.S.C. § 95a.) Subsection (3)—regulatory offense, culpability. Serious violations are covered by Code § 1204.
209	(Bank Conservation Act, ch. 1, title II, § 209, 48 Stat. 5, as amended, 12 U.S.C. § 209.) This section should be changed by deleting "section 334 . . . 433 of title 18," and substituting therefor "[the new section number of present 18 U.S.C. § 1005] of Title 12; and sections [the new section numbers of present 18 U.S.C. §§ 202, 281, 431, 432 and 433] of Title 5 and section [the new section number of present 18 U.S.C. § 216] of Title 12,". The other Title 18 sections mentioned but not continued above cover conservators jurisdictionally as follows. Present 18 U.S.C. § 334 is covered by Code § 1753(3), paragraph (3)(c) of Code 1751 "the offense is committed by an officer, director, agent, trustee, or employee, acting under color of office, of a national credit institution." If it is desired to be more specific as to the coverage of conservators, the word "conservator" should be added to Code § 1751(3)(c). Coverage should not be attempted in Title 12 because § 3006 limits all felonies to Title 18. Present 18 U.S.C. § 656 is covered by Code § 1740(1), paragraph (k) of Code § 201 "the property which is the subject of the offense is owned by or in the custody of a national credit institution." (Note that "national credit institution" as defined in Code § 219(d) includes all banks operating under the laws of the United States, which encompasses those banks covered by the definition in 12 U.S.C. § 202.) Present 18 U.S.C. § 1005 is covered by Code § 1753(3), § 1751(3)(c), same jurisdiction as § 1753(3), § 1740(1), paragraph (k) of Code § 201, (see above) and § 1352(5), false statement to the government of the United States. Present 18 U.S.C. § 216 is covered by Code § 1368(1)(b), a conservator is a federal public servant as defined in Code § 109(af). Present 18 U.S.C. §§ 431–433 are covered by Code § 1372, a conservator is a federal public servant as defined in Code § 109(af). Thus, no provisions in the Code need be referred to in this section.
211	(Bank Conservation Act, ch. 1, title II, § 211, 48 Stat. 5.) Regulatory offense.
374a	(Federal Reserve Act, ch. 6, § 19 (par.), as added, ch. 89, § 11(a), 48 Stat. 181.) This section should be changed by deleting "fine" twice and substituting "civil penalty", to eliminate criminal law terminology in a civil context.
378	(Banking Act of 1933, ch. 89, § 21, 48 Stat. 189, as amended, 12 U.S.C. § 378.) Subsection (b)—penalty, culpability. This subsection should be changed by deleting "and any officer . . . imprisonment or both.", matter covered by Code § 403.
582	(R.S. § 5207.) Penalty, culpability.
617	(Federal Reserve Act, ch. 6, § 25(a), as added, ch. 18, 41 Stat. 378, 12 U.S.C. § 617.) Penalty, culpability. This section should be changed by deleting "or to conspire to use". Code § 1004 covers it.
630	(Federal Reserve Act, ch. 6, § 25(a), as added, ch. 18, 41 Stat. 378, and amended, 12 U.S.C. § 630.) This section should be repealed. The conduct is covered by the Code as follows. Embezzlement, abstraction and misapplication are covered by Code §§ 1732 and 1737. Jurisdiction is provided in Code § 1740(1), subsection (k) of § 201, the property which is the subject of the offense is owned by or in the custody of a national credit institution. If it is desired to be more specific that a corporation organized to do foreign banking is a national

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

credit institution, it should be added to the definition of "national credit institution" in Code § 219(d). Issuing without authority is covered by Code § 1753. Jurisdiction is set forth in Code § 1751(3)(c), misconduct by an employee of a national credit institution. False entry is covered as attempted theft (see Code § 1001 and § 1735 (6)) and false statement (see Code § 1352). Receivers are covered in the same manner. If it is desired to be more specific as to their coverage in Code § 1751(3)(c), they should be added to that subsection.

631 ---------- (Federal Reserve Act, ch. 6, § 25(a), as added, ch. 18, 41 Stat. 378, 12 U.S.C. § 631.) Penalty, culpability.

640i ---------- (Farm Credit Act of 1937, ch. 704, § 5(i), 50 Stat. 706.) This section should be amended to conform with Code Chapter 35.

1141j ---------- (Agricultural Marketing Act. ch. 24, § 15, 46 Stat. 18, as amended, 12 U.S.C. § 1141j.) Subsection (b)—penalty, culpability. Note that this probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor. Subsection (c)—penalty, culpability. Subsection (d)—penalty, culpability.

1458 ---------- (Federal Home Loan Mortgage Corporation Act, § 308, 84 Stat. 458.) Subsection (a)—penalty, culpability. Subsection (b) should be repealed. The conduct is covered by the Code as follows. The Corporation fits within the Code definition of "government". See Code §109(m)(iii). An employee of the Corporation is therefore a federal public servant. See Code § 109(af). Title 18 U.S.C. § 215 now penalizes bribing employees of the Corporation. Code § 1361 penalizes the bribery of federal public servants. See Code § 1368(1)(a). Title 18 U.S.C. § 607, prohibiting political contributions by federal public servants is covered by Code § 1534. Title 18 U.S.C. § 658 now prohibits certain dealings in property secured by the Corporation. Code § 1738 prohibits such dealings in property when the United States government (which includes the Corporation) holds a security interest. See Code § 1740(2). Title 18 U.S.C. §§ 1011 and 1014 now prohibit the knowing making of a false statement to the Corporation or willful overvaluing of land securing a mortgage by the Corporation. Code § 1352 would prohibit false statements within the jurisdiction of the government of the United States (which includes the Corporation). Code § 1732 would prohibit the theft by deception of property of the United States. See also Code §§ 1740(1) and 1735(6). Subsection (c) should be repealed. Title 18 U.S.C. § 655 now penalizes theft by examiners of the assets of the Corporation. Code § 1732 would penalize theft of property of the United States government (which includes the Corporation). See Code § 1740 (1). Subsection (d) should be repealed. Title 18 U.S.C. § 2113 now penalizes robbery of property of the Corporation, burglary of a Corporation building, theft of property of the Corporation, and assault or murder in the course of committing such offenses. Code § 1721 would prohibit robbery of property of the government of the United States (which includes the Corporation). Code § 1711 would prohibit burglary of a federal building. Code § 1732 would penalize theft of property of the United States. Code § 201(b) provides jurisdiction over assault and murder in the course of committing other Code offenses. See Code §§ 1609 and 1611(3). Subsection (e) should be repealed. The term "government agency" as defined in Code § 109(n) includes corporations in which the government has a proprietary interest. Subsection (f) should be repealed. All the sections of present Title 18 mentioned in subsection (f) are replaced by Code §§ 1751–52. There is federal jurisdiction over those offenses when the writing involved was or purports to have been made by the government of the United States (which includes the Corporation).

1464 ---------- (Home Owners' Loan Act of 1933, ch. 64, § 5, 48 Stat. 132, as amended, 12 U.S.C. § 1464.). Subsection (d)(12)(A)—penalty, culpability. Subsection (d)(12)(B) should be amended to conform with Code chapter 35. Subsection (d)(12)(C)—penalty, culpability.

1713	(National Housing Act, ch. 847, title II, § 207(b), 48 Stat. 1252, as amended, 12 U.S.C. § 1713.) Subsection (b)(2)—penalty, culpability.
1715z-4	(National Housing Act, ch. 847, title II, § 239, as added, title III, § 302, 82 Stat. 506, 12 U.S.C. § 1715z-4.) Subsection (b)—penalty, culpability. Note that conduct which rises to the level of a theft can, of course, be punished as that. See Code §§ 1732, 1740(1).
1725	(National Housing Act, ch. 847, title IV, § 402, 48 Stat. 1256, as amended, 12 U.S.C. § 1725.) Subsection (g)—penalty, culpability.
1730	(National Housing Act, ch. 847, title IV, § 407, 48 Stat. 1260, as amended, 12 U.S.C. § 1730.) Subsection (p)(1)—penalty, culpability.
1730a	(National Housing Act, ch. 847, title IV, § 408, as added, 73 Stat. 691, as amended, 12 U.S.C. § 1730a.) Subsection (j)—regulatory offense. The reference to section 1006 of Title 18 in subparagraph (3) of subsection (j) should be changed to the new number for the part of the section which is being transferred to Title 12. Code § 1352 covers false statements to the government by anyone. Code § 1732 covers theft by deception of the property of a national credit institution. See Code § 1740(1). If it is desired to be more specific that a savings and loan holding company is a national credit institution, it should be added to Code § 219(d).
1738	(National Housing Act, ch. 847, title VI, § 603, as added, ch. 31, § 1, 55 Stat. 56, and amended, 12 U.S.C. § 1738.) Subsection (a)—penalty, culpability.
1750b	(National Housing Act, ch. 847, title IX, § 903, as added, ch. 378, title II, § 201, 65 Stat. 296, and amended, 12 U.S.C. § 1750b.) Subsection (a)—penalty, culpability.
1818	(Federal Deposit Insurance Act ch. 967, § 2[8], 64 Stat. 869, as amended, 12 U.S.C. § 1818.) Subsection (j)—penalty, culpability.

1820	(Federal Deposit Insurance Act, ch. 967, § 2[10], 64 Stat. 882, as amended, 12 U.S.C. § 1820.) Subsection (d)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
1828	(Federal Deposit Insurance Act, ch. 967, § 2[18], 64 Stat. 891, as amended, 12 U.S.C. § 1828.) Subsection (b)—penalty, culpability. The "*Provided*" clause should be made a defense. See Code § 103(2).
1829	(Federal Deposit Insurance Act, ch. 967, § 2[19], 64 Stat. 893.) This section should be amended to conform with Code Chapter 35.
1847	(Bank Holding Company Act of 1956, ch. 240, § 8, 70 Stat. 138.) Regulatory offense, culpability. The reference to section 1005 of Title 18 should be changed to the new number for the part of the section which is being transferred to Title 12. Code § 1352 covers false statements to the government by anyone. Code § 1732 covers theft by deception of the property of a national credit institution. See Code § 1740(1). If it is desired to be more specific that a bank holding company is a national credit institution, it should be added to Code § 219(d).
1909	(Credit Control Act, title II, § 210, 83 Stat. 378.) Regulatory offense, culpability.

Sections Transferred Into Title 12

Former Title 18 Sections	Guidelines*
212	Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor as it involves less serious behavior than Code § 1758, which is a Class A misdemeanor.
213	See comment to section 212, *supra*.
214	See comment to section 212, *supra*.
333	Penalty.
644	Regulatory offense, culpability. See comment preceding 18 U.S.C. § 643 for transfer to Title 5, *supra*. This section should be changed by deleting "converts, appropriates," matter covered by Code § 1732.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

1004	Penalty, culpability.
1005	Penalty, culpability. Serious violations are covered by Code §§ 1753 and 1732.
1006	Penalty, culpability. Serious violations are covered by Code §§ 1753 and 1732.
1009	Penalty, culpability.
1306	Regulatory offense, particularly because of subsection (e) of the sections referred to. Consideration should be given to adding a penalty clause to each section referred to rather than reenacting this section in its entirety.
1906	This section should be changed by deleting "Whoever, being an examiner, public or private, discloses" and substituting "No examiner, public or private, shall disclose" and by deleting ", shall be fined . . . year, or both." This section would thus be a prohibition on disclosure. Disclosure in violation of the duty not to disclose would be penalized as provided in Code § 1371.
1907	See comment to section 1906, *supra*. This section should further be amended to conform with Code Chapter 35.
1908	See comment to section 1907, *supra*.
1909	Penalty, culpability. Note that this probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1363, which is a Class A misdemeanor.

TITLE 13

Census

Title 13 Sections	Guidelines*
211	This section should be repealed. Code §§ 1361 and 1364 cover it.
212	Penalty, culpability.
213	This section should be repealed. Code § 1352 covers it.
214	This section should be changed by deleting "Whoever, being an . . . publishes or communicates," and substituting "No employee referred to in subchapter II of chapter 1 of this title, having taken and subscribed the oath of office, shall publish or communicate," and by deleting "shall be fined . . . or both." This section would thus be a prohibition on disclosure. Disclosure in violation of the duty not to disclose would be penalized as provided in Code § 1371.
221	Subsection (a)—penalty, culpability. Subsection (b) should be repealed. Code § 1352 covers it.
222	Penalty, culpability.
223	Penalty, culpability.
224	Penalty, culpability. This section should be changed by deleting "; and if he . . . year, or both.", matter covered by Code § 1352.
225	Consideration should be given to making these provisions defenses. See Code § 103 (2).

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 14

Coast Guard

Title 14 Sections	Guidelines*
83	Regulatory offense.
84	Regulatory offense.
85	Regulatory offense.
89	Subsection (a) should be changed by deleting "fine or" twice, to eliminate criminal law terminology in a civil context.
431	Subsection (c)—penalty, culpability.
638	Subsection (b)—penalty, culpability.
639	Penalty, culpability.
892	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 15

Commerce and Trade

Title 15 Sections	Guidelines*
1	(Act of July 2, 1890, ch. 647, § 1, 26 Stat. 209, as amended, 15 U.S.C. § 1.) Penalty, culpability. Consideration should be given to making the "*Provided*" clause a defense or affirmative defense. See Code § 103.
2	(Act of July 2, 1890, ch. 647, § 2, 26 Stat. 209, as amended, 15 U.S.C. § 2.) Penalty, culpability. This section should be changed by deleting ", or attempt to . . . persons, to monopolize", matter covered by Code §§ 1001 and 1004.
3	(Act of July 2, 1890, ch. 647, § 3, 26 Stat. 209, as amended, 15 U.S.C. § 3.) Penalty, culpability. Consideration should be given to defining the crimes in 15 U.S.C. §§ 1 and 3 as one crime with jurisdictional bases.
8	(Act of Aug. 27, 1894, ch. 349, § 73, 28 Stat. 570, as amended, 15 U.S.C. § 8.) Penalty, culpability.
13a	(Act of June 19, 1936, ch. 592, § 3, 49 Stat. 1528.) Penalty.
20	(Act of Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734.) The second paragraph of this section should be changed by deleting "Any person who" and substituting "No person", and by deleting "shall be punished . . . officer or director". The paragraph will then be a prohibition, subject to the fourth paragraph. It should further be changed by deleting "or attempt to do", matter covered by Code § 1001. The fourth paragraph should be deleted and the following substituted: "A person who violates this section is guilty of _____, except that a common carrier may be sentenced to pay a fine which does not exceed $25,000." Individual accountability is covered by Code § 403.
24	(Act of Oct. 15, 1914, ch. 323, § 14, 38 Stat. 736.) This section should be repealed. Code § 403 covers it.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

49	(Act of Sept. 26, 1914, ch. 311, § 9, 38 Stat. 722.) Consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
50	(Act of Sept. 26, 1914, ch. 311, § 10, 38 Stat. 723, as amended, 15 U.S.C. § 50.) The first paragraph should be repealed. Title 15 U.S.C. § 49 and Code §§ 1342 and 1343 cover it. The second paragraph should be changed by deleting "who shall willfully make or cause . . . 47–58 of this title, or", matter covered by Code § 1352. Consideration should be given to making the records mentioned in the second paragraph subject to Code § 1356. In that event the rest of the second paragraph could be repealed. If this is not done, penalty, culpability. The fourth paragraph should be repealed. Code § 1371 covers it.
54	(Act of Sept. 26, 1914, ch. 311, § 14, as added, ch. 49, § 4, 52 Stat. 114, 15 U.S.C. § 54.) Subsection (a)—penalty, culpability. See Code § 3003. The "*Provided*" clause in subsection (a) and all of subsection (b) should be made defenses. See Code § 103(2).
68h	(Wool Products Labeling Act of 1939, ch. 871, § 10, 54 Stat. 1133.) Penalty, culpability.
69i	(Fur Products Labeling Act, ch. 298, § 11, 65 Stat. 181.) Subsection (a)—penalty, culpability.
70i	(Textile Fiber Products Identification Act, § 11, 72 Stat. 1723.) Subsection (a)—penalty, culpability.
72	(Act of Sept. 8, 1916, ch. 463, § 801, 39 Stat. 798.) Penalty, culpability. This section should be changed by deleting "or combines or conspires with any other person to violate", matter covered by Code § 1004.
76	(Act of Sept. 8, 1916, ch. 463, § 805, 39 Stat. 799.) Penalty, culpability. This section should be changed by deleting "or attempt or conspire to import", matter covered by Code §§ 1001 and 1004.

77	(Act of Sept. 8, 1916, ch. 463, § 806, 39 Stat. 799.) Second paragraph—penalty, culpability. The second paragraph should be changed by deleting "or attempt or conspire to furnish", matter covered by Code §§ 1001 and 1004. Third paragraph—penalty, culpability. *Cf.* Code § 1205, designed not to prevent unfair competition, but to prevent the United States from being embroiled in a foreign war.
77v	(Securities Act of 1933, ch. 38, title I, § 22, 48 Stat. 86, as amended, 15 U.S.C. § 77v.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4)(a)(iv) and (4)(b).
77x	(Securities Act of 1933, ch. 38, title I, § 24, 48 Stat. 87.) Regulatory offense, culpability. This section should be changed by deleting ", or any person who . . . not misleading", matter covered by Code § 1772.
77yyy	(Trust Indenture Act of 1939, ch. 38, title III, § 325, as added, ch. 411, 53 Stat. 1177, 15 U.S.C. § 77yyy.) Regulatory offense, culpability. This section should be changed by deleting "or any person who . . . not misleading", matter covered by Code § 1772. The second paragraph of 15 U.S.C. § 77uuu(b) should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 77uuu need remain.
78o	(Securities Exchange Act of 1934, ch. 404, § 15, 48 Stat. 895, as amended, 15 U.S.C. § 78o.) Subsection (b)(5)(B) should be amended to conform with Code Chapter 35. Paragraph (b)(5)(B)(iv) should be changed by deleting "1341, 1342, or 1343" and substituting "1732".
78o–3	(Securities Exchange Act of 1934, ch. 404, § 15A, as added, ch. 677, § 1, 52 Stat. 1070, and amended, 15 U.S.C. § 78o–3.) Subsection (b)(9) should be changed by deleting "fine" and substituting "civil penalty" to eliminate criminal law terminology in a civil context.

78u ---------- (Securities Exchange Act of 1934, ch. 404, § 21, 48 Stat. 899, as amended, 15 U.S.C. § 78u.) Subsection (c) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342(4)(b), then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.

78ff ---------- (Securities Exchange Act of 1934, ch. 404, § 32, 48 Stat. 904, as amended, 15 U.S.C. § 78ff.) Subsection (a)—regulatory offense, culpability. Subsection (a) should be changed by deleting ", or any person who willfully and knowingly . . . any material fact", matter covered by Code § 1352. This subsection should further be changed by deleting "but no person . . . rule or regulation". The regulatory offense provision (Code § 1006) provides for grading according to recklessness as to the existence of a rule or regulation. A jail penalty is not possible in the absence of recklessness as to the existence of the rule or regulation violated. Subsection (c) of 15 U.S.C. § 78x should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 78x need remain.

79r ---------- (Public Utility Holding Company Act of 1935, ch. 687, title I, § 18, 49 Stat. 831, as amended, 15 U.S.C. § 79r.) Subsection (d) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342(4)(b), then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.

79z-3 ---------- (Public Utility Holding Company Act of 1935, ch. 687, title I, § 29, 49 Stat. 836.) Regulatory offense, culpability. This section should be changed by deleting "filed or" twice, matter covered by Code § 1352. Consideration should be given to making the records mentioned in this section subject to Code § 1356. In that event, this section could further be changed by deleting ", or any person who willfully makes . . . regulation or order thereunder," in line 18. This section should further be changed by deleting "but no person shall be . . . rule, regulation or order." The regulatory offense provision (Code § 1006) provides for grading according to recklessness as to the existence of a rule or regulation. A jail penalty is not possible in the absence of recklessness as to the existence of the rule or regulation violated. Subsection (c) of 15 U.S.C. § 79u should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 79u need remain.

80a-9 ---------- (Investment Company Act of 1940, ch. 686, title I, § 9, 54 Stat. 805.) Subsection (a)(1) should be amended to conform with Code Chapter 35.

80a-33 ---------- (Investment Company Act of 1940, ch. 686, title I, § 34, 54 Stat. 840.) Consideration should be given to making the records mentioned in subsection (a) subject to Code § 1356. In that event, this subsection could be repealed. Subsection (b) should be changed by deleting "any registration statement . . . to this subchapter or" and substituting "any document". Code § 1352 covers false statements to the government. Consideration should be given to making these documents subject to Code § 1356. In that event the entire first sentence of subsection (b) could be deleted. Subsection (b) should further be changed by deleting the second sentence, matter covered by Code §§ 1352(2)(b) and 1356 (1)(b). Subsection (b) should further be changed by deleting the last sentence and substituting "for the purposes of sections 1352 and 1356 of Title 18 any part of a registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a-30(a) of this title, which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to have been made by such accountant or auditor, as well as by the person who in fact made the complete document."

80a-36 (Investment Company Act of 1940, ch. 686, title I, § 37, 54 Stat. 841.) This section should be repealed. Code §§ 1732 and 1740(4)(i) cover the first sentence. Code § 707 covers the second sentence.

80a-41 (Investment Company Act of 1940, ch. 686, title I, § 42, 54 Stat. 842.) Subsection (c) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342(4)(b), then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.

80a-44 (Investment Company Act of 1940, ch. 686, title I, § 45, 54 Stat. 845.) Subsection (a) should be changed by deleting the last sentence and substituting "It shall be unlawful for any official or employee of a State to whom any information contained in any document so filed or transmitted has been disclosed, to disclose such information, to acquire a pecuniary interest in any property, transaction or enterprise which may be affected by such information, to speculate or wager on the basis of such information or to aid another to do any of the foregoing, if such information is not available to the public." Disclosure in violation of a duty not to disclose and speculation by federal public servants are covered by Code §§ 1371 and 1372.

80a-48 (Investment Company Act of 1940, ch. 686, title I, § 49, 54 Stat. 846.) Regulatory offense, culpability. This section should be changed by deleting "any registration statement . . . to this subchapter or" and substituting "any document", matter covered by Code § 1352. Consideration should be given to making the records mentioned in this section subject to Code § 1356. In that event, this section could further be changed by deleting ", or any person . . . which they were made,". This section should further be changed by deleting "but no person shall be . . . rule, regulation or order." The regulatory offense provision (Code § 1006) provides for grading according to recklessness as to the existence of a rule or regulation. A jail penalty is not possible in the absence of recklessness as to the existence of the rule or regulation violated.

80b-3 (Investment Advisors Act of 1940, ch. 686, title II, § 203, 54 Stat. 850, as amended, 15 U.S.C. § 80b-3.) Subsection (d)(3)(B) should be amended to conform with Code Chapter 35. Paragraph (d)(3)(B)(iv) should be changed by deleting "1341, 1342, or 1343" and substituting "1732".

80b-9 (Investment Advisors Act of 1940, ch. 686, title II, § 609, 54 Stat. 853, as amended, 15 U.S.C. § 80b-9.) Subsection (c) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342(4)(b) then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.

80b-17 (Investment Advisors Act of 1940, ch. 686, title II § 217, 54 Stat. 857, as amended, 15 U.S.C. § 80b-17.) Regulatory offense, culpability. Subsection (b) of 15 U.S.C. § 80b-10 should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 80b-10 need remain.

155 (China Trade Act, 1922, ch. 346, § 15, 42 Stat. 853.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).

158 (China Trade Act, 1922, ch. 346, § 18, 42 Stat. 855.) Penalty, culpability.

159 (China Trade Act, 1922, ch. 346, § 19, 42 Stat. 855.) Penalty, culpability.

235 (Act of Mar. 4, 1915, ch. 158, § 2, 38 Stat. 1186.) Penalty, culpability. The "*Provided, however,*" clause should be made a defense. See Code § 103(2).

241 (Act of Aug. 23, 1916, ch. 396, § 5, 39 Stat. 531.) Regulatory offense.

293 (Act of Feb. 21, 1905, ch. 720, § 2, 33 Stat. 732.) Penalty, culpability. This section should be changed by deleting "corporation", matter covered by Code § 402. This section should further be changed by de-

leting ", and every officer . . . or consenting thereto", matter covered by Code § 403. The title of this section should be changed to "Penalty for violation."

298 ---------- (Act of June 13, 1906, ch. 3289, § 5, 35 Stat. 262.) Penalty, culpability. This section should be changed by deleting "corporation", matter covered by Code § 402. This section should further be changed by deleting ", and every officer . . . or consenting thereto," matter covered by Code § 403.

377 ---------- (Act of Oct. 19, 1949, ch. 699, § 3, 63 Stat. 885, as amended, 15 U.S.C. § 377.) Penalty, culpability.

645 ---------- (Small Business Act, § 2[16], 72 Stat. 395, as amended, 15 U.S.C. § 645.) Subsection (a) should be repealed. Code §§ 1352 and 1732 cover it. Subsection (b)—penalty, culpability. This subsection should be changed by deleting paragraphs (1), (2), (3) and ", or, having such knowledge . . . from the Administration,". Consideration should be given to deleting the first part of paragraph (4) also. Matter is covered by Code §§ 1352, 1361, 1372, 1732, 1737 and 1753. Subsection (c)—penalty, culpability. This subsection should be changed by deleting "disposes of, or converts to his own use or to that of another,". Code § 1732 covers theft. Code § 1738 covers mishandling by the mortgagor. If it is desired to be more specific as to coverage of property mortgaged or pledged to but not in the custody of the Administration, a base patterned on Code § 1740(4)(o) should be added to Code § 1740 for the Administration.

687b ---------- (Small Business Investment Act of 1958, title III, § 310, as added, § 9, 75 Stat. 753, and amended, 15 U.S.C. § 687b.) Subsection (a)—consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).

687f ---------- (Small Business Investment Act of 1958, title III, § 314, as added, § 7, 80 Stat. 1363, 15 U.S.C. § 687f.) Subsection (c) should be amended to conform with Code Chapter 35.

714m ---------- (Commodity Credit Corporation Charter Act, ch. 704, § 15, 62 Stat. 1074, as amended, 15 U.S.C. § 714m.) Subsection (a) should be repealed. Code §§ 1352 and 1732 cover it. Subsection (b) should be repealed. Code §§ 1352, 1361, 1732, 1737 and 1753 cover it. Subsection (c)—penalty, culpability. This subsection should be changed by deleting "steal" and "dispose of, or . . . that of another", matter covered by Code §§ 1732 and 1740(4)(o). Subsection (d) should be repealed. Code § 1004 covers it. Subsection (e) should be changed by deleting all but the "*Provided further*," clause. The Corporation fits within the definition of "government" in Code § 109(m) and so offenses against the Corporation are covered to the same extent as offenses against any other part of the government. In the "*Provided further*," clause present 18 U.S.C. §§ 431 and 432 should be given their new Title 5 numbers. Subsection (f)—penalty, culpability.

715e ---------- (Act of Feb. 22, 1935, ch. 18, § 9, 49 Stat. 32.) Regulatory offense, culpability.

715h ---------- (Act of Feb. 22, 1935, ch. 18, § 9, 49 Stat. 33, as amended, 15 U.S.C. § 715h.) Subsection (a)—relevant, but no change recommended.

717m ---------- (Natural Gas Act, ch. 556, § 14, 52 Stat. 828.) Subsection (d) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342(4)(b), then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.

717t ---------- (Natural Gas Act, ch. 556, § 21, 52 Stat. 833.) Subsection (a)—penalty, culpability. Subsection (b) of 15 U.S.C. § 717g should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 717g need remain. Note that violation of section 717k probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor.

Subsection (b)—regulatory offense. This subsection should be changed by deleting ", in addition to . . . provided by law,". Ordinary rules of double jeopardy would apply.

1004 ..... (Act of March 14, 1944, ch. 92, § 3, 58 Stat. 116.) Penalty. This section should be changed by deleting ". . . and whoever signs . . . does not exist," matter covered by Code §§ 1751 and 1753.

1007 ..... (Act of July 1, 1946, ch. 528, § 3, 60 Stat. 348). Penalty. This section should be changed by deleting ". . . and whoever signs . . . does not exist," matter covered by Code §§ 1751 and 1753.

1024 ..... (Employment Act of 1946, ch. 33, § 5, 60 Stat. 25, as amended, 15 U.S.C. § 1024.) Subsection (f)—renumber present sections 281 and 283 of Title 18 with their new Title 5 number. Section 284 of Title 18 was repealed in 1962.

1116 ..... (Act of July 5, 1946, ch. 540, title VI, § 34, 60 Stat. 439.) Relevant, but no change recommended.

1172 ..... (Act of Jan. 2, 1951, ch. 1194, § 2, 64 Stat. 1134, as amended, 15 U.S.C. § 1172.) This section, except for the last paragraph, should be repealed. Code § 1832 covers it.

1173 ..... (Act of Jan. 2, 1951, ch. 1194, § 3, 64 Stat. 1135, as amended, 15 U.S.C. § 1173.) Subsection (e)(2)—consideration should be given to making the records referred to subject to Code § 1356. False entry could then be excluded from 15 U.S.C. § 1176 penalties as Code § 1356 would cover it.

1175 ..... (Act of Jan. 2, 1951, ch. 1194, § 5, 64 Stat. 1135.) Renumber present section 1151 of Title 18 with its new Title 25 number. This section should further be changed by deleting "section 7" and substituting "section 210".

1176 ..... (Act of Jan. 2, 1951, ch. 1194, § 6, 64 Stat. 1135.) Penalty, culpability.

1193 ..... (Flammable Fabrics Act, ch. 164, § 4, 67 Stat. 112, as amended, 15 U.S.C. § 1193.) Subsection (c) should be changed by deleting "other matter . . . 1905 Title 18," and substituting "processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or

expenditures of any person, firm, partnership, corporation, or association;".

1194 ..... (Flammable Fabrics Act, ch. 164, § 5, 67 Stat. 112, as amended, 15 U.S.C. § 1194.) Subsection (b)—relevant, but no change recommended.

1196 ..... (Flammable Fabrics Act, ch. 164, § 7, 67 Stat. 114.) Penalty, culpability.

1197 ..... (Flammable Fabrics Act, ch. 164, § 8, 67 Stat. 114, as amended, 15 U.S.C. § 1197.) Subsection (a) should be made a defense. See Code § 103(2).

1200 ..... (Flammable Fabrics Act, ch. 164, § 11, 67 Stat. 115, as amended, 15 U.S.C. § 1200.) This section should be made a defense. See Code § 103(2).

1212 ..... (Act of Aug. 2, 1956, ch. 890, § 2, 70 Stat. 953.) Penalty, culpability.

1233 ..... (Automobile Information Disclosure Act, § 4, 72 Stat. 326.) All three subsections—penalty, culpability.

1242 ..... (Act of Aug. 12, 1958, § 2, 72 Stat. 562.) Penalty, culpability.

1243 ..... (Act of Aug. 12, 1958, § 3, 72 Stat. 562.) Penalty, culpability, renumber. Consideration should be given to defining the crimes in 15 U.S.C. §§ 1242 and 1243 as one crime with jurisdictional bases.

1244 ..... (Act of Aug. 12, 1958, § 4, 72 Stat. 562.) This section should be made a defense. See Code § 103(2).

1264 ..... (Federal Hazardous Substances Labeling Act, § 4, 74 Stat. 376, as amended, 15 U.S.C. § 1264.) Subsection (a)—penalty, culpability. The second part of subsection (h) (revealing) of 15 U.S.C. § 1263 should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 1263 need remain. Subsection (b) should be made a defense. See Code § 103 (2).

1281 ..... (Act of Sept. 13, 1963, § 1, 75 Stat. 494.) This section should be repealed. Code § 1705 covers it. (Code § 201 (i)). If it is desired to be more specific as to the method of proof of the interstate character of a shipment, a provision such as section 1281 (c) should be added to Code Chapter 2 in reference to § 201(i) generally. *Cf.* Code § 1739(2)(c).

1282	(Act of Sept. 13, 1961, § 2, 75 Stat. 494.) This section should be repealed. Code §§ 706 and 707 cover it.
1314	(Antitrust Civil Process Act, § 5, 76 Stat. 551.) Subsection (d)—relevant, but no change recommended.
1335	(Federal Cigarette Labeling and Advertising Act, § 6, 79 Stat. 283, as amended, 15 U.S.C. § 1335.) Penalty, culpability.
1611	(Truth in Lending Act, title I, § 112, 82 Stat. 151.) Regulatory offense particularly because of 15 U.S.C. § 1604. See 15 U.S.C. § 1602(k). Paragraph (1) should be changed by deleting "gives false or inaccurate information or". Code § 1352 covers it.
1674	(Truth in Lending Act, title III, § 304, 82 Stat. 163.) Subsection (b)—penalty, culpability.
1703	(Interstate Land Sales Full Disclosure Act, title XIV, § 1404, 82 Stat. 591.) Subsection (a)(2) should be repealed. Code § 1732 covers it. (*See* Code §§ 1740(1) and 201(e).)
1714	(Interstate Land Sales Full Disclosure Act, title XIV, § 1415, 82 Stat. 596.) Subsection (d)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4) (a)(iv) and (4)(b).
1717	(Interstate Land Sales Full Disclosure Act, title XIV, § 1418, 82 Stat. 598.) Regulatory offense, culpability. This section should be changed by deleting ", or any person who willfully, in a . . . to be stated therein," matter covered by Code § 1352. Note that some of the conduct in 15 U.S.C. §§ 1707(b) and 1716 would constitute theft by deception within Code § 1732.

Sections Transferred Into Title 15

Former Title 18 Sections	Guidelines*
836	Penalty.
1761	Subsection (a)—penalty. Subsection (b) should be made a defense. See Code § 103 (2).
1762	Subsection (b)—penalty, culpability.
1821	Penalty, culpability.
2074	Penalty.
2318	Penalty.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 16

Conservation

Title 16 Sections	Guidelines*
3	(Act of August 25, 1916, ch. 408, § 3, 39 Stat. 535, as amended, 16 U.S.C. § 3.) Regulatory offense.
9a	(Act of Mar. 2, 1933, ch. 180, § 1, 47 Stat. 1420.) Regulatory offense, culpability.
26	(Act of May 7, 1894, ch. 72, § 4, 28 Stat. 73, as amended, 16 U.S.C. § 26.) Regulatory offense (twice).
45e	(Act of July 3, 1926, ch. 744, § 5, 44 Stat. 820.) Regulatory offense.
63	(Act of June 2, 1970, ch. 218, § 5, 41 Stat. 732.) Regulatory offense. *Cf.* Code § 1705, a general offense of criminal damage to property which could cover some of the conduct prohibited by this section.
98	(Act of June 30, 1916, ch. 197, § 4, 39 Stat. 244.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section.
114	(Act of June 29, 1906, ch. 3607, § 4, 34 Stat. 617.) This section should be repealed. Code §§ 1705 and 1732 cover it. The mandatory restoration requirement could be separately continued, if desired.
117c	(Act of Apr. 25, 1928, ch. 434, § 4, 45 Stat. 459.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section. This section should be changed by deleting the "*Provided, however,*" clause. Code §§ 1705 and 1732 cover it. The mandatory restoration requirement could be separately continued, if desired.
123	(Act of May 22, 1902, ch. 820, § 3, 32 Stat. 203.) Regulatory offense.
127	(Act of Aug. 21, 1916, ch. 368, § 4, 39 Stat. 522.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

146 (Act of Jan. 9, 1903, ch. 63, § 6, 32 Stat. 766.) Regulatory offense. This section should be changed by deleting "who shall unlawfully . . . property therein, or", matter covered by Code §§ 1705, 1712 and 1732.

152 (Act of Apr. 21, 1904, ch. 1402, § 18, 33 Stat. 220, as amended, 16 U.S.C. § 152.) Regulatory offense. This section should be changed by deleting "corporation" and "corporation or members or agents thereof," matter covered by Code §§ 401, 402 and 403.

170 (Act of Aug. 22, 1914, ch. 264, § 4, 38 Stat. 700.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section.

198c (Act of Mar. 2, 1929, ch. 583, § 4, 45 Stat. 1537.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section.

204c (Act of Apr. 26, 1928, ch. 438, § 4, 45 Stat. 463.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section.

256b (Act of Mar. 6, 1942, ch. 151, § 3, 56 Stat. 136.) Regulatory offense. *Cf.* Code § 1705, which could cover some of the conduct prohibited by this section. This section should be changed by deleting "sections 256, 256b, 256c and 256i of this title." and substituting "this section." Only this section involves proof of a hunting violation.

354 (Act of Feb. 26, 1917, ch. 121, § 8, 39 Stat. 939.) Regulatory offense, particularly because of 16 U.S.C. § 351.

363 (Act of Mar. 3, 1961, ch. 533, § 3, 26 Stat. 843, as amended, 16 U.S.C. § 363.) This section should be changed by deleting ", and to provide penalties . . . by Act of Congress." Violations of rules and regulations should be made subject to the regulatory offense provision (Code § 1006).

364 (Act of Mar. 3, 1891, ch. 533, § 4, 26 Stat. 843, as amended, 16 U.S.C. § 364.) This section should be changed by deleting ", and any such person . . . of the United States;" matter covered by Code § 1351 and § 1352.

371 (Act of Mar. 2, 1911, ch. 200, 36 Stat. 1015 as amended, 16 U.S.C. § 371.) This section should be changed by deleting "and any person desiring . . . than sixty days.", matter covered by Code §§ 1352 and 1733. See particularly Code § 1735 (4) and (5).

373 (Act of Apr. 20, 1904, ch. 1400, § 3, 33 Stat. 187.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section.

374 (Act of Apr. 20, 1904, ch. 1400, § 4, 33 Stat. 188, as amended, 16 U.S.C. § 374.) Regulatory offense. This section should be changed by deleting the "attempt" language. Code § 1001 covers it.

395c (Act of Apr. 19, 1930, ch. 200, § 4, 46 Stat. 227.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section.

408c-3 (Act of Aug. 19, 1937, ch. 703, § 3, 50 Stat. 701.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section.

403h-3 (Act of Apr. 29, 1942, ch. 264, § 3, 56 Stat. 259.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section. This section should be changed by deleting "sections 403h-1, 403h-3, 403h-4 and 403h-10 of this title." and substituting "this section." Only this section involves proof of a hunting violation.

404c-3 (Act of June 5, 1942, ch. 341, § 3, 56 Stat. 317.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section. This section should be changed by deleting "sections 404c-1 to 404c-12 of this title." and substituting "this section." Only this section involves proof of a hunting violation.

408k (Act of Mar. 6, 1942, ch. 150, § 3, 56 Stat. 133.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by this section. This section should be changed by deleting "sections 408i, 408k and 408l of this title." and substituting "this section." Only this section involves proof of a hunting violation.

413 (Act of Mar. 3, 1897, ch. 372, §§ 1, 5, 29 Stat. 621, 622.) This section should be repealed. Code §§ 1705 and 1732 cover it.

414 — (Act of Mar. 3, 1897, ch. 372, §§ 2, 5, 29 Stat. 621, 622.) Penalty, culpability. *Cf.* Code § 1712 which prohibits trespass without regard to the purpose of the trespass.

422d — (Act of June 2, 1926, ch. 448, § 5, 44 Stat. 686, as amended, 16 U.S.C. § 422d.) It appears that the federal government is here setting a civil penalty additional to the state criminal penalty. In that event the word "fine" should be deleted twice and "civil penalty" substituted to eliminate criminal law terminology in a civil context.

423f — (Act of July 3, 1926, ch. 746, §1, 44 Stat. 822, as amended, 16 U.S.C. § 423 f.) It appears that the federal government is here setting a civil penalty additional to the state or federal criminal penalty. In that event the word "fine" should be deleted and "civil penalty" substituted to eliminate criminal law terminology in a civil context.

425g — (Act of Feb. 14, 1927, ch. 127, § 8, 44 Stat. 1094, as amended, 16 U.S.C. § 425g.) It appears that the federal government is here setting a civil penalty additional to the state (or possibly federal) criminal penalty. In that event the word "fine" should be deleted and "civil penalty" substituted to eliminate criminal law terminology in a civil context.

426i — (Act of Mar. 3, 1927, ch. 374, § 10, 44 Stat. 1401, as amended, 16 U.S.C. § 426i.) It is not clear if this is intended to be a civil or a criminal penalty. If civil, the words "guilty of a misdemeanor, and upon conviction thereof" and "fined" should be deleted. If criminal, conviction "before any court of competent jurisdiction", presumably including state courts as in 16 U.S.C. §§ 422d, 423f, and 425g, is most unusual, as it would seem to involve the federal government in setting the criminal penalties to be imposed in state courts. If criminal, this section may be repealed. Code §§ 1705 and 1732 cover it.

428i — (Act of Mar. 26, 1928, ch. 248, § 10, 45 Stat. 368, as amended, 16 U.S.C. § 428i.) See comment to 16 U.S.C. § 426i, *supra*.

430g — (Act of June 21, 1934, ch. 694, § 8, 48 Stat. 1200.) This section should be repealed except for the prohibition on hunting, matter covered by Code §§ 1705 and 1732. As to hunting, penalty, culpability.

430v — (Act of June 26, 1935, ch. 315, § 3, 49 Stat. 423.) Subsection (b)—regulatory offense.

433 — (Act of June 8, 1906, ch. 3060, § 1, 34 Stat. 225.) This section should be repealed except for the prohibition on excavation, matter covered by Code §§ 1705 and 1732. As to excavation, penalty, culpability.

460k-6 — (Act of Sept. 28, 1962, § 4, 76 Stat. 654.) Regulatory offense.

460m-8 — (Act of Oct. 8, 1964, § 6, 78 Stat. 1040.) Regulatory offense.

460n-8 — (Act of Oct. 8, 1964, § 9, 78 Stat. 1041.) Renumber the reference to present 18 U.S.C. § 3402. Rather than detailing the powers of the commissioner, as is done in the second paragraph of this section, consideration should be given to cross-referencing to the new version of present 18 U.S.C. § 3401.

462 — (Act of Aug. 21, 1935, ch. 593, § 2, 49 Stat. 666, as amended, 16 U.S.C. § 642.) Subsection (k)—regulatory offense.

471 — (Act of Mar. 3, 1891, ch. 561, § 24, 26 Stat. 1103, as amended, 16 U.S.C. § 471.) Subsection (b)—regulatory offense.

551 — (Act of June 4, 1897, ch. 2, § 1, 30 Stat. 35, as amended, 16 U.S.C. § 551.) Regulatory offense. Renumber reference to present 18 U.S.C. § 3401.

552d — (Act of May 28, 1940, ch. 220, § 4, 54 Stat. 225.) Regulatory offense. Note that section 104 of Title 18 was repealed in 1948.

590n — (Soil Conservation and Domestic Allotment Act, ch. 85, § 14, as added, ch. 104, § 1, 49 Stat. 1151, and amended, 16 U.S.C. § 590n.) This section should be changed by deleting "under the penalties of Title 18.", matter covered by Code § 1352. The reference to Title 18 is unnecessary.

606 — (Act of June 3, 1878, ch. 150, § 3, 20 Stat. 89.) Regulatory offense.

666a — (Fish and Wildlife Coordination Act, ch. 55, § 7, as added, ch. 965, 60 Stat. 1080, 16 U.S.C. § 666a.) Regulatory offense.

668 — (Act of June 8, 1940, ch. 228, § 1, 54 Stat. 250, as amended, 16 U.S.C. § 668.) Penalty, culpability. This section might be changed by deleting ", within the United . . . the jurisdiction thereof," matter covered by Code § 201. The "*Provided*," clause should be made a defense. See Code § 103(2).

668cc-4	(Endangered Species Conservation Act of 1969, § 4, 83 Stat. 276.) Subsection (b)—regulatory offense, culpability.
668dd	(National Wildlife Refuge System Administration Act of 1966, § 4, 80 Stat. 927, as amended, 16 U.S.C. § 668dd.) Subsection (e)—regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by subsection (c).
690g	(Act of Apr. 23, 1928, ch. 413, § 9, 45 Stat. 450.) Regulatory offense. *Cf.* Code § 1705 which could cover some of the conduct prohibited by 16 U.S.C. § 690d.
693a	(Act of June 13, 1933, ch. 63, § 2, 48 Stat. 128.) Regulatory offense.
707	(Migratory Bird Treaty Act, ch. 128, § 6, 40 Stat. 756, as amended, 16 U.S.C. § 707.) Subsection (a)—regulatory offense. Subsection (b)—penalty, culpability.
718e	(Act of Mar. 16, 1934, ch. 71, § 5, 48 Stat. 452, as amended, 16 U.S.C. § 718e.) Subsection (b) should be repealed. Code §§ 1751 and 1752 cover it.
718g	(Act of Mar. 16, 1934, ch. 71, § 7, 48 Stat. 452.) Regulatory offense.
730	(The Upper Mississippi River Wild Life and Fish Refuge Act, ch. 346, § 11, 43 Stat. 652.) Regulatory offense.
772e	(Northern Pacific Halibut Act of 1937, ch. 392, § 6, 50 Stat. 328, as amended, 16 U.S.C. § 722e.) Subsection (a)—penalty, culpability.
776b	(Sockeye Salmon or Pink Salmon Fishing Act of 1947, ch. 345, § 4, 61 Stat. 512, as amended, 16 U.S.C. § 776b.) Penalty, culpability. This section should be changed by deleting "of any person . . . record or report," and the rest of the section should be rewritten to make sense without it. The matter is covered by Code § 1352.
776c	(Sockeye Salmon or Pink Salmon Fishing Act of 1947, ch. 345, § 5, 61 Stat. 512, as amended, 16 U.S.C. § 776c.) Subsection (a)—regulatory offense.
788	(Act of Aug. 15, 1914, ch. 253, § 3, 38 Stat. 692.) Regulatory offense.
811	(Federal Power Act, ch. 285, § 18, 41 Stat. 1073, as amended, 16 U.S.C. § 811.) Regulatory offense, culpability.

825c	(Federal Power Act, ch. 285, § 304, as added, ch. 687, title II, § 213, 49 Stat. 855, 16 U.S.C. § 825c.) Subsection (b)—consideration should be given to redrafting this subsection along the lines of Code § 1301.
825f	(Federal Power Act, ch. 285, § 307, as added, ch. 687, title II, § 213, 49 Stat. 856, 16 U.S.C. § 825f.) Subsection (c) should be changed by deleting the last sentence. Violation of a court order to appear, produce or testify is covered by Code §§ 1342 and 1343. If the Commission is designated an "authorized agency" within Code § 1342 (4) (b), then failure to obey a Commission subpoena to appear or produce is covered by Code § 1342 without a court order.
825o	(Federal Power Act, ch. 285, § 316, as added, ch. 687, title II, § 213, 49 Stat. 862, 16 U.S.C. § 825o.) Subsection (a)—penalty, culpability. Subsection (b) of 16 U.S.C. § 825 should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 825 need remain. Subsection (b)—regulatory offense, culpability.
831t	(Tennesse Valley Authority Act of 1933, ch. 32, § 21, 48 Stat. 68.) Subsection (a) should be repealed. The TVA fits within the Code definition of "government". See Code § 109 (m) (iii). Property of the TVA is therefore property of the government. Code § 1732 and 1737 cover theft and mishandling of federal government property. Subsection (a) is therefore unnecessary. Subsection (b) should be repealed. Code §§ 1352, 1356 and 1732 cover it. Subsection (c) should be repealed. Code §§ 1361 and 1732 cover most of the conduct mentioned. In addition, the Code does not continue the crime in present 18 U.S.C. § 371 of conspiracy to defraud the government because most of the conduct is covered by more precisely defined crimes and that conduct which is not covered is too vaguely defined for criminal purposes by "conspiracy with intent to defraud". The phrase "to defeat its purposes" is as vague as "intent to defraud".
852	(Act of May 20, 1926, ch. 346, § 2, 44 Stat. 576, as amended, 16 U.S.C. § 852.) Subsection (3) should be changed by deleting "section 10" and substituting "section 219".

853 ..... (Act of May 20, 1926, ch. 346, § 7, as added, ch. 801, 46 Stat. 847, and amended, 16 U.S.C. § 853.) Penalty, culpability.

916c ..... (Whaling Convention Act of 1949, ch. 653, § 7, 64 Stat. 423.) Regulatory offense. This section should be changed by deleting "return" after "furnishes a false" and ", or report" after "false return, record", matter covered by Code § 1352. Consideration should be given to making these records subject to Code § 1356. In that event "or any person . . . record, or report," could all be deleted. The rest of the section should be rewritten to make sense without the deleted portion, *e.g.*, by adding "any person who violates this section or sections 1352 or 1356 of Title 18 with respect to such returns, records or reports" before "shall in addition".

916f ..... (Whaling Convention Act of 1949, ch. 653, § 8, 64 Stat. 423.) Regulatory offense.

954 ..... (Tuna Conventions Act of 1950, ch. 907, § 5, 64 Stat. 778.) Renumber present sections 281 and 283 of Title 18 with their new Title 5 numbers. Section 284 of Title 18 was repealed in 1962.

957 ..... (Tuna Conventions Act of 1950, ch. 907, § 8, 64 Stat. 779, as amended, 16 U.S.C. § 957.) Subsection (d)—regulatory offense. Subsection (e)—regulatory offense. Subsection (f)—regulatory offense.

984 ..... (Northwest Atlantic Fisheries Act of 1950, ch. 1054, § 5, 64 Stat. 1068.) Renumber present sections 281 and 283 of Title 18 with their new Title 5 numbers. Section 284 of Title 18 was repealed in 1962.

989 ..... Northwest Atlantic Fisheries Act of 1950, ch. 1054, § 10, 64 Stat. 1070.) Regulatory offense.

990 ..... (Northwest Atlantic Fisheries Act of 1950, ch. 1054, § 11, 64 Stat. 1070.) Subsection (a)—renumber reference to present 18 U.S.C. § 3041.

1029 ..... (North Pacific Fisheries Act of 1954, ch. 669, § 10, 68 Stat. 699.) Subsection (c)—consideration should be given to redrafting "or to obstruct. . . of such duties" along the lines of Code § 1301.

1030 ..... (North Pacific Fisheries Act of 1954, ch. 669, § 11, 68 Stat. 700.) Subsection (a)—regulatory offense. Subsection (b)—regulatory offense. Subsection (c)—penalty, culpability.

1082 ..... (Act of May 20, 1964, § 2, 78 Stat. 195.) Subsection (a)—penalty, culpability.

1167 ..... (Fur Seal Act of 1966, Title II, § 207, 80 Stat. 1095.) Regulatory offense.

1184 ..... (Fur Seal Act of 1966, title II, § 404, 80 Stat. 1098.) Regulatory offense.

1246 ..... (National Trails System Act, § 7, 82 Stat. 922.) Subsection (i)—regulatory offense.

Sections Transferred Into Title 16

Former Title 18 Sections	Guidelines*
41	Penalty, culpability. This section should be changed by deleting "or willfully destroys . . . lands or waters,". Matter covered by Code § 1705.
42	Subsection (b)—regulatory offense. Note that Code § 1411 covers some of the conduct prohibited by subsection (a)(1) and that, unless excepted from the penalties provided here, violations must be prosecuted at the grading here provided. See Code § 1411(2).
43	Subsection (d)—penalty, culpability.
44	Penalty, culpability.
45	Penalty.
46	Penalty.
47	Subsections (a) and (b)—penalty, culpability.
3054	Renumber.
3112	Renumber.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 17

Copyrights

Title 17 Sections	Guidelines*
14	Penalty, culpability.
18	This section should be repealed. Code § 1352 covers it. The forfeiture provision could be separately continued, if desired.
104	Penalty, culpability. This section should be changed by deleting ", or who shall . . . abet such infringement,". Matter covered by Code §§ 1001 and 1002. The "*Provided, however,*" clause should be made a defense. See Code § 103(2).
105	Penalty (twice), culpability.
115	Subsection (a) should be repealed. Code § 701(2)(c) covers it.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 19

Customs Duties

Note: A number of sections in this Title make persons subject to monetary penalties for described misconduct in a context which implies that the penalties are civil penalties only. These include sections 60, 70, 469, 1432, 1439, 1440, 1445, 1454, 1460, 1497, 1584, 1585, 1586 (a)–(d), 1587, 1595a and 1708(a). No changes are recommended for these provisions, except sections 60, 70, 1445 and 1460, where minor changes in terminology will avoid ambiguity as to whether the violations are civil or criminal (substituting the word "occurrence" for "offense"). Two other sections—1455 and 1599—which, on their face, might have been included in the above category have been treated below as criminal provisions, because of the nature of the conduct addressed.

Title 19 Sections	Guidelines*
60	(R.S. § 2636.) This section should be changed by substituting "occurrence" for "offense," to eliminate criminal law terminology in a civil context.
64	(Act of Feb. 8, 1875, ch. 36, § 23, 18 Stat. 312.) This section should be repealed unless it is necessary for offenses defined, or civil liability imposed, outside of Title 18.
70	(R.S. § 3068, as amended, 19 U.S.C. § 70.) This section should be changed by substituting "occurrence" for "offense," to eliminate criminal law terminology in a civil context.
81s	(Act of June 18, 1934, ch. 590, § 19, 48 Stat. 1003.) Regulatory offense.
283	(R.S. § 3113.) Code § 1411 covers the criminal aspects of this section, so that only the liability and forfeiture provisions need remain and everything following "seized and forfeited" may be deleted.
468	(Act of Mar. 1, 1879, ch. 125, § 12, 20 Stat. 342, as amended, 19 U.S.C. § 468.) This section should be changed by deleting "R.S. §3324" and substituting "26 U.S.C. §§ 5205 (g) and 5604(a) (2), (3), (7), (8), (9) and (17)", or by deleting "R.S. § 3324" and substituting a penalty clause.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

507 (R.S. § 3071.) Penalty, culpability.

1304 (Tariff Act of 1930, ch. 497, title III, § 304, 46 Stat. 687, as amended, 19 U.S.C. § 1304.) Subsection (e) should be repealed. Code §§ 1301 and 1411 cover it.

1333 (Tariff Act of 1930, ch. 497, title III, § 333, 46 Stat. 699, as amended, 19 U.S.C. § 1333.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4) (a) (iv) and (4) (b).

1341 (Tariff Act of 1930, ch. 497, title III, § 341, 46 Stat. 707.) This section should be repealed. Code §§ 1301, 1366 and 1611 (see Code § 201(b) and (c)) cover it.

1431 (Tariff Act of 1930, ch. 497, title IV, § 431, 46 Stat. 710, as amended, 19 U.S.C. § 1431.) The second sentence of subsection (b), if not deleted entirely, should be changed so that vicarious liability (other than as provided generally in the Code for criminal liability) is limited to civil liability. Thus "fine or" should be deleted, and "civil" added before "penalty."

1436 (Tariff Act of 1930, ch. 497, title IV, § 436, 46 Stat. 711, as amended, 19 U.S.C. § 1436.) Penalty, culpability. This section should be changed by deleting the second paragraph, Code §§ 1352 and 1751 cover it. Consideration should be given to further changing this section by deleting "and, if the vessel have, . . . fine and imprisonment." This language defines a harm of attempted smuggling or attempted unlawful trafficking in a taxable object. Code § 1001 would, for the first time, prohibit attempts to commit any federal crime. Code §§ 1403 and 1411 define the crimes of smuggling and unlawful trafficking in a taxable object.

1438 (Traffic Act of 1930, ch. 497, title IV, § 438, 46 Stat. 712, as amended, 19 U.S.C. § 1438.) Penalty, culpability.

1445 (Tariff Act of 1930, ch. 497, title IV, § 445, 46 Stat. 713, as amended, 19 U.S.C. § 1445.) This section should be changed by substituting "occurrence" for "offense," to eliminate criminal law terminology in a civil context.

1455 (Tariff Act of 1930, ch. 497, title IV, § 455, 46 Stat. 716, as amended, 19 U.S.C. § 1455.) This section should be changed by deleting the last sentence. Code § 1301 covers it.

1460 Tariff Act of 1930, ch. 497, title IV, § 460, 46 Stat. 716, as amended, 19 U.S.C. § 1460.) This section should be changed by substituting "occurrence" for "offense," to eliminate criminal law terminology in a civil context.

1464 (Tariff Act of 1930, ch. 497, title IV, § 464, 46 Stat. 718.) This section should be changed by deleting "he shall be fined . . . or both; and". Code § 1411 covers the criminal aspects of this section so only the forfeiture provision need remain.

1465 (Tariff Act of 1930, ch. 497, title IV, § 465, 46 Stat. 718.) This section should be changed by deleting the last sentence. Code § 1411 covers it.

1510 (Tariff Act of 1930, ch. 497, title IV, § 510, 46 Stat. 733, as amended, 19 U.S.C. § 1510.) The proceeding discussed in this section should expressly be made subject to Code § 1342. Then the penalty clause could be deleted as Code §§ 1342 and 1343 cover it. The first part of the section should be rewritten to make sense without the penalty clause. The section should further be changed by deleting "and any person who . . . guilty of perjury;", matter covered by Code §§ 1351 and 1352. The last clause should be rewritten to make sense without the deleted portion.

1581 (Tariff Act of 1930, ch. 497, title IV, § 581, 46 Stat. 747, as amended, 19 U.S.C. § 1581.) Subsection (c) should be repealed. Code § 1352 covers it. Subsection (d)—penalty, culpability. Subsection (f) should be changed by deleting "and to use . . . arrest the same." Code Chapter 6 sets out the permissible limits on the use of force.

1586 (Tariff Act of 1930, ch. 497, title IV, § 586, 46 Stat. 749, as amended, 19 U.S.C. § 1586.) Subsection (e)—penalty, culpability.

1599 (Tariff Act of 1930, ch. 497, title IV, § 599, 46 Stat. 753.) Penalty, culpability.

1619	(Tariff Act of 1930, ch. 497, title IV, § 613, 46 Stat. 756, as amended, 19 U.S.C. § 1613.) Subparagraph (3) should be changed by deleting "fine" and substituting "penalty" to eliminate criminal law terminology in a civil context.
1618	(Tariff Act of 1930, ch. 497, title IV, § 618, 46 Stat. 757, as amended, 19 U.S.C. § 1618.) This section should be changed by deleting "fine" in the four places where the word is used, to eliminate criminal law terminology in a civil context.
1620	(Tariff Act of 1930, ch. 497, title IV, § 620, 46 Stat. 758.) Penalty, culpability. The disqualification provision should be amended to conform with Code Chapter 35.
1708	(Anti-Smuggling Act. ch. 438, title I, § 8, 49 Stat. 520.) Subsection (b) should be repealed. The conduct described is a substantial step towards smuggling and, most likely, towards unlawful trafficking in a taxable object. Code §§ 1001, 1403 and 1411 cover the matter.
1919	(Trade Expansion Act of 1962, title III, § 319, 76 Stat. 892.) This section should be repealed. Code §§ 1352 and 1732 cover it. See Code §§ 1740(1) and 201(d).
1975	(Trade Expansion Act of 1962, title III, § 335, 76 Stat. 897.) This section should be repealed. Code §§ 1352 and 1732 cover it. See Code §§ 1740(1) and 201(d).

Sections Transferred Into Title 19

Former Title 18 Sections	Guidelines*
543	This section should be changed by deleting "fined not more . . . or both; and". Code §§ 401, 1002 and 1411 cover the criminal aspects of this section so only the forfeiture of office provision need remain.
545	This section should be changed by deleting the first four paragraphs and the last paragraph, which are covered by Code § 1411. The fifth paragraph should be changed by deleting "this section" and substituting "18 U.S.C. § 1411", and by deleting "described in the . . . of this section," and substituting "violating 18 U.S.C. § 1411,".

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

548	This section should be changed by deleting the first paragraph. Code §§ 1001 and 1411 cover it. The second paragraph should be rewritten to make sense without the first paragraph.
1915	Penalty, culpability. This section should be changed by deleting the "attempt" language, matter covered by Code § 1001.
2279	Penalty, culpability.

TITLE 20

Education

Title 20 Sections	Guidelines*
581	(National Defense Education Act of 1958, title X, § 1001, 72 Stat. 1602, as amended, 20 U.S.C. § 581.) Subsection (f)(3) should be repealed. Code § 1352 covers it. The specific reference to Title 18 is unnecessary. Subsection (f)(4)(B)—penalty, culpability.
867	(Elementary and Secondary Education Act of 1965, title V, § 507, 79 Stat. 51, as amended, 20 U.S.C. § 867.) Subsection (g)(1)—renumber present 18 U.S.C. §§ 203, 205, 207, 208, and 209 with their new Title 5 section numbers. State employees would fit within the definition of "public servant" in Code § 109(af) and thus would be covered by Code §§ 1361 to 1369.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 21

Food and Drugs

Title 21 Sections	Guidelines*
17	(Act of July 1, 1902, ch. 1357, § 2, 32 Stat. 632.) Penalty, culpability. This section should be changed by deleting "or persons." See 1 U.S.C. § 1. This section should further be changed by deleting ", either in person or through another,". Code Chapter 4 defines accomplice liability.
63	(Act of Mar. 4, 1923, ch. 262, § 3, 42 Stat. 1487.) Penalty, culpability. This section should be changed by deleting the second sentence. Code Chapter 4 covers it.
104	(Act of Aug. 30, 1890, ch. 839, § 6, 26 Stat. 416, as amended, 21 U.S.C. § 104.) This section should be changed by deleting "Any person who . . . three years, and". Code § 1411 covers the criminal aspects of this section, so only the prohibition need remain.
117	(Animal Industry Act, ch. 60, § 7, 23 Stat. 32, as amended, 21 U.S.C. § 117.) Penalty.
122	(Cattle Contagious Diseases Act of 1903, ch. 349, § 3, 32 Stat. 792, as amended, 21 U.S.C. § 122.) Regulatory offense, culpability.
127	(Cattle Contagious Diseases Act of 1905, ch. 1496, § 6, 33 Stat. 1265). Penalty, culpability. This section should be changed by deleting "corporation". Code § 402 covers it.
134e	(Act of July 2, 1962, § 6, 76 Stat. 131.) Subsection (a)—penalty.
135a	(Act of May 6, 1970, § 2, 84 Stat. 202.) This section should be repealed and replaced with the following: "The movement of an animal to the island and movement from the island to another part of the United States shall each be deemed an introduction of the animal into the United States for purposes of section 1411 of Title 18."

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

143 ---------- (Act of Feb. 15, 1927, ch. 155, § 3, 44 Stat. 1102, as amended, 21 U.S.C. § 143.) Second and third paragraphs—penalty, culpability or the penalty clause should be deleted and left to the operation of 21 U.S.C. § 145.

145 ---------- (Act of Feb. 15, 1927, ch. 155, § 5, 44 Stat. 1103.) Penalty.

158 ---------- (Act of March 4, 1913, ch. 145, 37 Stat. 833). Penalty, culpability. This section should be changed by adding "except section 152" after "of this chapter". Code § 1411 covers the conduct prohibited by section 152 and, unless excepted from the penalties provided here, violations must be prosecuted at the grading here provided. See Code § 1411(2). This section should further be changed by deleting "corporation". Code § 402 covers it.

198a ---------- (Act of Aug. 11, 1955, ch. 800, 69 Stat. 684, as amended, 21 U.S.C. § 198a.) First section—renumber.

198c ---------- (Act of Aug. 11, 1955, ch. 800, § 3, 69 Stat. 685.) Consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).

Sections 201–215 comprise chapter 7 of Title 21, which deals with the practice of pharmacy by Americans in China. The lack of any enforcement mechanism has rendered these provisions obsolete. Title 21 U.S.C. § 212 makes it the "duty of the consular and judicial officers of the United States in China to enforce the provisions of this chapter." However, the United States relinquished its extra-territorial rights in China by treaty in 1943, (Treaty Jan. 11, 1943, 57 Stat. 767), thereby abolishing the United States Court for China, and the statutory authorization for consular courts was repealed by the Congress in 1956, (Joint Res., Aug. 1, 1956, ch. 807, 70 Stat. 774.) *See*, 6 WHITEMAN, DIGEST OF INTERNATIONAL LAW 278–299 (1968), and discussion in comment to 22 U.S.C. § 141 *et seq.*, *infra*.

Therefore, consideration should be given to repealing chapter 7 of Title 21.

212 ---------- (Act of Mar. 3, 1915, ch. 74, § 11, 38 Stat. 821.) Penalty, culpability. This section should be changed by deleting "corporation,". Code § 402 covers it.

331 ---------- (Federal Food, Drug, and Cosmetic Act, ch. 675, § 301, 52 Stat. 1042, as amended, 21 U.S.C. § 331.) Subsection (h) should be changed by making the "except" clause a defense. See Code § 103(2). Subsection (i)(1) should be changed by deleting "forging, counterfeiting . . . representing or", matter covered by Code § 1751. See Code § 1751(3)(b)(i). Consideration should be given to redrafting subsection (i)(2) along the lines of Code § 1752 or to adding this jurisdiction to Code § 1752.

333 ---------- (Federal Food, Drug, and Cosmetic Act, ch. 675, § 303, 52 Stat. 1043, as amended, 21 U.S.C. § 333.) Subsections (a) and (b)—penalty, culpability. *Cf.* Code § 3003. The penalty for violation of the first part of section 331(j) (use of information to one's own advantage) probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372 which is a Class A misdemeanor. The second part of section 331(j) (revealing information) should be excepted from this penalty provision. Code § 1371 covers it so only the prohibition in section 331(j) need remain.

372a ---------- (Act of June 30, 1906, ch. 3915, § 10a, as added, ch. 712, 48 Stat. 1204, and amended, 21 U.S.C. § 372a.) Penalty, culpability. This section should be changed by deleting "forges, counterfeits, simulates, or falsely represents, or". Code § 1751 covers it. See Code § 1751(3)(b)(i).

458 ---------- (Poultry Products Inspection Act, §9, 71 Stat. 445, as amended, 21 U.S.C. § 458.) Note that subsection (b) would be covered by Code § 1751 if the conduct were engaged in with intent to deceive or harm. Subsection (c)(1) should be repealed. Code § 1751 covers it. Subsection (c)(2) should be changed by deleting "alter". Code § 1751 covers it. Subsection (c)(4) should be amended by deleting "or any counterfeit . . . altered official mark;". Code § 1751 covers it. Subsection (c)(5) should be repealed. Code § 1352 covers it.

461 ---------- (Poultry Products Inspection Act, § 12, 71 Stat. 446 as amended, 21 U.S.C. § 461.) Subsection (a)—regulatory offense (twice) particularly because of 21 U.S.C. § 463(b). This subsection should be changed by deleting "or attempted distribution". Code § 1001 covers it. This subsection should further be changed by deleting "corporation" twice. Code § 402 covers it. Subsection (c) should be repealed. Code §§ 1301, 1367, 1601, 1611 and 1612 cover it. *Cf.* Code § 201 (b).

467 ..... (Poultry Products Inspection Act, § 18, 71 Stat. 448.) Subsection (a) should be amended to conform with Code Chapter 35.

467d ..... (Poultry Products Inspection Act, § 22, as added, § 17, 82 Stat. 807, 21 U.S.C. § 467d.) Relevant, but no change recommended.

611 ..... (Federal Meat Inspection Act, ch. 2907, title I, § 12, formerly 10th par., 34 Stat. 1263, renumbered and amended, 21 U.S.C. § 611.) Subsection (b)(1) should be repealed. Code § 1751 covers it. Subsection (b)(2) should be changed by deleting "use any official . . . thereof, or alter," matter covered by Code §§ 1751 and 1753. Subsection (b)(4) should be changed by deleting "or any counterfeit . . . altered official mark;" matter covered by Code § 1751.

622 ..... (Federal Meat Inspection Act, ch. 2907, title I, § 22, formerly 20th par., 34 Stat. 1264, renumbered and amended, 21 U.S.C. § 622.) This section should be repealed. Code §§ 1361, 1362 and 1363 cover it.

671 ..... (Federal Meat Inspection Act, ch. 2907, title IV, § 401, as added, § 16, 81 Stat. 597, 21 U.S.C. § 671.) This section should be amended to conform with Code Chapter 35.

675 ..... (Federal Meat Inspection Act, ch. 2907, title IV, § 405, as added, § 16, 81 Stat. 599 21 U.S.C. § 675.) This section should be repealed. Code §§ 1301, 1302, 1366, 1367. 1601, 1611 and 1612 cover it. *Cf.* Code § 201(b).

676 ..... (Federal Meat Inspection Act, ch. 2907, title IV, § 406, as added, § 16, 81 Stat. 599, 21 U.S.C. § 676.) Subsection (a)—penalty, culpability. The "*Provided*" clause should be made a defense. See Code § 103(2). This subsection should be changed by deleting "or corporation" four times. Code § 402 covers it. Note that Code § 1411 covers the conduct prohibited by section 620 and that unless excepted from the penalties provided here, violations must be prosecuted at the grading here provided. See Code § 1411(2).

677 ..... (Federal Meat Inspection Act, ch. 2907, title IV, § 407, as added, § 16, 81 Stat. 599, 21 U.S.C. § 677.) Relevant, but no change recommended.

841 ..... (Controlled Substances Act, § 401, 84 Stat. 1260.) Subsection (a) should be changed by deleting "or intentionally". See Code § 302(4). Subsection (a)(1) should be repealed. Code §§ 1822 and 1823 cover it. Subsection (a) should be changed by deleting "or intentionally". See Code § 302(4). Subsection (b) should be repealed. Code §§ 1822 and 1823 cover it. *Cf.* Code §§ 3202(2)(a) and 3003. Subsection (c) should be repealed. Code § 3403(3) covers it. A penalty provision for subsection (a)(2) should be added.

842 ..... (Controlled Substances Act, § 402, 84 Stat. 1262.) Subsection (c)(2)—penalty. Consideration should be given to replacing all of subsection (c) with a regulatory offense provision. Code § 1006 provides that nonculpable violations are infractions, which are not crimes. See Code § 109(e). Culpable and persistent violations are crimes. If subsection (c) is replaced, subsection (a) should be changed by deleting paragraphs (1), (2) and (3). Code §§ 1822 and 1823 cover them. Subsection (b) should be repealed. Code §§ 1822 and 1823 cover it. The last part of subsection (a)(8) (revealing information) should be excepted from the penalty provision. Code § 1371 covers it so only the prohibition need remain.

843 ..... (Controlled Substances Act, § 403, 84 Stat. 1263.) Subsection (a) should be changed by deleting "or intentionally". See Code § 302(4). Subsections (a)(1) and (a)(2) should be repealed. Code §§ 1822 and 1823 cover them. Subsection (a)(3) should be repealed. Code §§ 1732, 1751 and 1824 cover it. Subsection (a)(4) should be changed by deleting "application, report," "made," and ", or filed". Code § 1352 covers them. Consideration should be given to making these records subject to Code § 1356. Then this subsection could be deleted entirely. Code § 1752 covers the conduct contained in subsection (a)(5) but not the jurisdiction. Consideration should be given to redrafting this subsection along the lines of Code § 1752 or, if felony penalties are desired, this jurisdiction should be added

to Code § 1752 and this subsection deleted entirely. Subsection (b) should be repealed. It is an example of how present federal law punishes jurisdiction rather than only harmful conduct. That five telephone calls were made in the course of an illegal drug sale does not make the sale five times worse than one effected by means of one phone call. See Code §§ 201(e) and 205. See Study Draft p. xxix. See Working Papers, pp. 33–67. If anything is left of subsection (a), subsection (c)—penalty, culpability. *Cf.* Code §§ 3202(2)(a) and 3003.

844 ---------- (Controlled Substances Act, § 404, 84 Stat. 1264.) This section should be repealed. Subsection (a) is covered by Code §§ 1824 and 3003. Subsection (b)(1) is covered by Code § 1827. Subsection (b)(2) is covered, if at all, by Code Chapter 35. See Final Report, p. 257, comment to Code § 1827.

845 ---------- (Controlled Substances Act, § 405, 84 Stat. 1265.) This section should be repealed. Subsection (a) is covered by Code §§ 1822 and 1823, especially § 1822(3)(b). Subsection (b) is covered by Code §§ 3202(2)(a) and 3003.

846 ---------- (Controlled Substances Act, § 406, 84 Stat. 1265.) This section should be repealed. Code §§ 1001 and 1004 cover it.

847 ---------- (Controlled Substances Act, § 407, 84 Stat. 1265.) This section should be repealed. It states a rule of general applicability which does not require explicit statement. If it is desired to continue its explicit statement, it should be added to Code Chapter 1.

848 ---------- (Controlled Substances Act, § 408, 84 Stat. 1265.) This section should be repealed. See Code § 3202. See also Study Draft §§ 1005 and 3203 and Working Papers, pp. 382–384.

849 ---------- (Controlled Substances Act, § 409, 84 Stat. 1266.) This section should be repealed. Code § 3202 covers it.

850 ---------- (Controlled Substances Act, § 410, 84 Stat. 1269.) This section should be repealed. It states a rule of general applicability which does not require explicit statement. If it is desired to continue its explicit statement, it should be added to Code Part C.

851 ---------- (Controlled Substances Act, § 411, 84 Stat. 1269.) This section should be repealed. Code § 3202(3) provides for notice for an increased sentence in felony cases. Code § 3202(4) provides for a hearing in such cases. Rules should be drafted, possibly in the Federal Rules of Criminal Procedure, for Code § 3003 (Persistent Misdemeanants).

876 ---------- (Controlled Substances Act, § 506, 84 Stat. 1272.) Subsection (c)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).

885 ---------- (Controlled Substances Act, § 515, 84 Stat. 1279.) Subsection (a)(1) should be repealed. Code § 1825 covers it. Subsections (b) and (c) should be repealed. Code § 1825 covers them. In subsection (b) the concept of presumption is different from the Code view of it; it is similar to a Code "defense" in that it shifts the burden of going forward with evidence. See Code § 103. Subsection (d) should be repealed. Code § 602(1) covers it. See also Code § 601(4).

952 ---------- (Controlled Substances Import and Export Act, § 1002, 84 Stat. 1285.) Subsection (a) should be changed by deleting the first six lines (all but paragraphs 1 and 2) and rewriting the rest as exceptions to the total ban on importation in Code §§ 1822 and 1823 (see Code § 1829 (a)(iii)). Subsection (b) should be changed by deleting the first five lines (all but paragraphs 1 and 2) and rewriting the rest as exceptions to the total ban on importation in Code §§ 1822 and 1823.

953 ---------- (Controlled Substances Import and Export Act, § 1003, 84 Stat. 1286.) Subsections (a) and (c) should be changed by deleting the first two lines (all but the subparagraphs) and rewriting the rest as exceptions to the total ban on exportation in Code § 1822. Subsections (b) and (d) should be rewritten as exceptions to the total ban on exportation in Code § 1822. Subsection (e) should be changed by deleting the first three lines (all but paragraphs 1 to 3) and rewriting the rest as exceptions to the total ban on exportation in Code §§ 1822 and 1823.

954 (Controlled Substances Import and Export Act, § 1004, 84 Stat. 1287.) This section should be rewritten as exceptions to the total ban on importation and exportation in Code §§ 1822 and 1823.

955 (Controlled Substances Import and Export Act, § 1005, 84 Stat. 1287.) This section should be repealed. Code §§ 1001, 1822 and 1824 cover it.

956 (Controlled Substances Import and Export Act, § 1006, 84 Stat. 1288.) Subsection (a) should be changed by deleting "952(a) and . . . 954, and 955" and substituting "1822, 1823 and 1824 of Title 18". Subsection (b) should be changed by adding "and sections 1822 to 1824 of Title 18" after "of this subchapter".

957 (Controlled Substances Import and Export Act, § 1007, 84 Stat. 1288.) Subsection (a) should be repealed except for the "unless" clause, which should be rewritten as part of an exception to the total ban on importation and exportation in Code §§ 1822 and 1823. Subsection (b) should be rewritten as part of the exception in subsection (a).

958 (Controlled Substances Import and Export Act, § 1008, 84 Stat. 1289.) Subsection (h)—renumber reference to section 952(a)(2)(A).

959 (Controlled Substances Import and Export Act, § 1009, 84 Stat. 1289.) This section should be repealed. Code § 208(d) specifies that there is extraterritorial jurisdiction when the accused participates outside the United States in a federal offense committed in whole or in part in the United States or the offense is an attempt, solicitation or conspiracy to commit a federal offense within the United States. Code §§ 401 and 1002 specify accomplice and faciliator liability.

960 (Controlled Substances Import and Export Act, § 1010, 84 Stat. 1290.) This section should be repealed. Code §§ 1822, 1823 and 1824 cover it. See Code § 3403(3) on parole revocation.

961 (Controlled Substances Import and Export Act, § 1011, 84 Stat. 1290.) This section should be repealed. Code §§ 1822 and 1823 cover it.

962 (Controlled Substances Import and Export Act, § 1012, 84 Stat. 1290.) This section should be repealed. Code §§ 3202(2)(a) and 3003 cover it.

963 (Controlled Substances Import and Export Act, § 1013, 84 Stat. 1291.) This section should be repealed. Code §§ 1001 and 1004 cover it.

964 (Controlled Substances Import and Export Act, § 1014, 84 Stat. 1291.) This section should be repealed. It states a rule of general applicability which does not require explicit statement. If it is desired to continue its explicit statement, it should be added to Code Chapter 1.

TITLE 22

Foreign Relations and Intercourse

Title 22 U.S.C. §§ 141–183 comprise chapter 2, which is entitled "Consular Courts." In 1956, the only foreign country where the consuls of the United States exercised such jurisdiction was Morocco, and that year Congress approved the relinquishment by the President of that consular jurisdiction. At the same time Congress repealed sections 141–143, 145–147, 176–181, and 183 (Joint Res., Aug. 1, 1956, ch. 807, 70 Stat. 774), "... [to become] effective upon date which the President determines to be appropriate for the relinquishment of such [consular] jurisdiction [of the United States in Morocco], except so far as may be necessary to dispose of cases then pending in the consular courts in Morocco." In April 1960, the Department of State was informed by the American consul in Tangier that there were no pending cases.

Of the sections not specifically repealed by the Joint Resolution, section 175 was an annual appropriation measure for the keeping and feeding of prisoners which was last repeated in 1917 although a similar provision appeared in 1925. Section 182 gave the President the authority to suspend the exercise of American consular jurisdiction in Egypt and Turkey under certain conditions. The consular courts in Egypt were closed in 1949. *See*, 6 WHITEMAN, DIGEST OF INTERNATIONAL LAW 278–280, 299–318, 321 (1968).

Therefore, since these statutory provisions for consular courts have been rendered obsolete, consideration should be given to deleting the entire chapter from Title 22. However, in order to effect this "deletion" an executive order of the President, determining that an appropriate time to relinquish such jurisdiction in Morocco has been reached, may be necessary.

Title 22 Sections	Guidelines*
253	(R.S. § 4064.) Penalty, culpability.
254	(R.S. §§ 4065, 4066.) Consideration should be given to making this section a defense to a charge of violation of section 253. See Code § 103.
258a	(Act of Mar. 3, 1911, ch. 231, § 271, 36 Stat. 1163.) No change (offense).
277d–21	(Act of Apr. 29, 1964, § 5, 78 Stat. 185.) Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

286f	(Act of July 31, 1945, ch. 339, § 8, 59 Stat. 515.) Subsection (b) — consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4)(a)(iv) and (4)(b). Subsection (c) should be changed by deleting the second sentence. Code § 1371 covers it so only the prohibition need remain.
287c	(Act of Dec. 20, 1945, ch. 583, § 5, 59 Stat. 620, as amended, 22 U.S.C. § 287c.) Subsection (b)—regulatory offense, culpability. Serious violations are covered by Code § 1204. This section should be changed by deleting "or attempts to violate or evade". Code § 1001 covers it. This section should further be changed by deleting "and the officer . . . imprisonment, or both," matter covered by Code § 403.
447	(Act of Nov. 4, 1939, ch. 2, § 7, 54 Stat. 8, as amended, 22 U.S.C. § 447.) Subsection (c)—regulatory offense, culpability. Serious violations are covered by Code § 1204. The second sentence of subsection (c) should be deleted. Code § 403 covers it.
450	(Act of Nov. 4, 1939, ch. 2, § 10, 54 Stat. 9.) Subsection (a) should be changed by deleting "section 31 of Title 18" and substituting the new section number of present 18 U.S.C. § 967 which will be transferred to Title 22. Section 31 of Title 18 was repealed in 1948.
455	(Act of Nov. 4, 1939, ch. 2, § 15, 54 Stat. 11.) Regulatory offense.
461	(Act of Mar. 4, 1909, ch. 321, § 14, 35 Stat. 1090.) This section should be changed by deleting "sections 21–25, and 30 of Title 18;" twice and substituting "sections 1201, 1202, 1203 and 1205 of Title 18;".
614	(Foreign Agents Registration Act of 1938, as amended, ch. 327, § 4, 52 Stat. 632, as amended, 22 U.S.C. § 614.) Subsection (d) should be changed by deleting "section 343 of Title 18" twice and substituting the Title 39 section number of present 18 U.S.C. § 1717. Section 343 of Title 18 was repealed in 1948.
615	(Foreign Agents Registration Act of 1938, ch. 327, §5, 522 Stat. 633, as amended, 22 U.S.C. § 615.) Consideration should be given to making this section subject to Code § 1354.

618 ---------- (Foreign Agents Registration Act of 1938, as amended, ch. 327, § 8, as added, ch. 263, § 1, 56 Stat. 257, and amended, 22 U.S.C. § 618.) Subsection (a)—regulatory offense, culpability. Serious violations are covered by Code § 1206. Subsection (a) (2) should be repealed. Code § 1352 covers it. Consideration should be given to integrating the registration provisions of present 18 U.S.C. § 951 with this section if it is desired to continue the provisions of § 951.

703 ---------- (Act of June 30, 1944, ch. 326, § 3, 58 Stat. 644, as amended, 22 U.S.C. § 703.) Subsection (a)—relevant, but no change recommended. Subsection (c)—penalty, culpability. Consideration should be given to deleting this subsection and providing in Code § 109 that for purposes of Code §§ 1342, 1343, 1344, 1351 and 1352 "official proceeding" includes proceedings before service courts of friendly foreign forces.

1179 ---------- (Act of June 30, 1902, ch. 1331, § 2, 32 Stat. 547.) Regulatory offense, culpability. Serious violations are covered by Code § 1732 (theft). See also Code § 208(f). See comment preceding 18 U.S.C. § 643 for transfer to Title 5, *supra*.

1182 ---------- (R.S. § 1716.) Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1363, which is a Class A misdemeanor.

1198 ---------- (R.S. § 1734, as amended, 22 U.S.C. § 1198.) Regulatory offense, culpability. Serious violations are covered by Code § 1732 (theft). See also Code § 208(f). See comment preceding 18 U.S.C. § 643 for transfer to Title 5, *supra*.

1199 ---------- (R.S. §§ 1735, 1736, as amended, 22 U.S.C. § 1199.) This section should be changed by deleting "and for all malversation . . . not less than $1,000." Code Chapters 13 and 17 cover the matter with a definiteness which is necessary in a criminal statute but lacking in section 1199.

1200 ---------- (R.S. § 1737, as amended, 22 U.S.C. § 1200.) This section should be repealed. Code § 1753 covers it. See Code § 208(f).

1203 ---------- (R.S. § 1750, as amended, 22 U.S.C. § 1203.) This section should be changed by deleting "If any person shall . . . for such offense; and", matter covered by Code §§ 1351 and 1352. See Code § 208(c). This section should further be changed by deleting "and if any person shall forge . . . or in custody.", matter covered by Code §§ 1351, 1352, and 1751.

1623 ---------- (International Claims Settlement Act of 1949, ch. 54, title I, § 4, 64 Stat. 13, as amended, 22 U.S.C. § 1623.) Subsection (c)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4) (a) (iv) and (4) (b). Subsection (e) should be changed by deleting "1001" and substituting "1352". Subsection (f)—penalty, culpability.

1631n ---------- (International Claims Settlement Act of 1949, ch. 54, title II, § 215, as added, ch. 645, § 3, 69 Stat. 570, 22 U.S.C. § 1631n.) Regulatory offense, culpability. This section should be changed by deleting "and the officer . . . imprisonment or both.", matter covered by Code § 403.

1641k ---------- (International Claims Settlement Act of 1949, ch. 54, title III, § 312, as added, ch. 645, § 3, 69 Stat. 574, 22 U.S.C. § 1641k.) This section should be amended to conform with Code Chapter 35. This section should be changed by deleting "chapter 115," and substituting "sections 1101, 1102, 1103, 1104, 1109(a), 1110, 1111 or 1118,".

1641p ---------- (International Claims Settlement Act of 1949, ch. 54, title III, § 317, as added, ch. 645, § 3, 69 Stat. 574, 22 U.S.C. § 1641p.) Subsection (a)—penalty, culpability.

1642h ---------- (International Claims Settlement Act of 1949, ch. 54, title IV, § 409, as added, § 1, 72 Stat. 529, 22 U.S.C. § 1642h.) This section should be amended to conform with Code Chapter 35. This section should be changed by deleting "chapter 115" and substituting "sections 1101, 1102, 1103, 1104, 1109(a), 1110, 1111 or 1118".

1642m ---------- (International Claims Settlement Act of 1949, ch. 54, title IV, § 414, as added, § 1, 72 Stat. 530, 22 U.S.C. § 1642m.) Penalty, culpability.

1643k	(International Claims Settlement Act of 1949, ch. 54, title V, § 512, as added, 78 Stat. 1113, 22 U.S.C. § 1643k.) Penalty, culpability.
1934	(Act of Aug. 26, 1954, ch. 937, title II, § 414, 68 Stat. 848, as amended, 22 U.S.C. § 1934.) Subsection (c)—regulatory offense, culpability. This section should be changed by deleting "or who willfully, in a . . . therein not misleading," matter covered by Code § 1352.
2518	(Peace Corps Act, title I, § 19, 75 Stat. 623, as amended, 22 U.S.C. § 2518.) Subsection (b) (2)—penalty, culpability.
2584	(Arms Control and Disarmament Act, title IV, § 44, 75 Stat. 636, as amended, 22 U.S.C. § 2584.) Renumber present sections 281 and 283 of title 18 with their new title 5 numbers. Sections 284 and 1914 of Title 18 were repealed in 1962.

Sections Transferred Into Title 22

Former Title 18 Sections	Guidelines*
546	Penalty, culpability. Note that exportation of drugs from the United States in violation of law is covered by Code §§ 1822 and 1823. See Code § 1829(a) (iii).
703	Penalty, culpability. Note that this offense probably should be an infraction or a regulatory offense because the serious misbehavior is covered by Code § 1381.
708	Penalty, culpability. The second paragraph should be made a defense. See Code § 103.
951	See comment to 22 U.S.C. § 618, *supra*, regarding integrating this offense with the regulatory scheme. See Code § 1206.
955	Penalty, culpability.
959	Subsection (a) should be repealed. Code § 1203 covers it. Subsections (b) and (c) should be rewritten as authorizations upon which Code § 1203(2) could act.
961	Penalty, culpability.
962	Penalty. This section should be changed by deleting ", or attempts to . . . out or arm," matter covered by Code § 1001. See Code § 1201. If more felony penalties are desired, this section should be rewritten so as to be subject to Code § 1205.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

963	The first paragraph of subsection (b) should be repealed and the second paragraph should be rewritten to make sense without the first. Code § 1205 covers the criminal aspects of this section so only the prohibition in subsection (a) need remain.
964	The first paragraph of subsection (b) should be repealed and the second paragraph should be rewritten to make sense without the first. Subsection (a) should be rewritten in terms of an order. Then Code § 1205 would cover the criminal aspects of this section so only the prohibition in subsection (a) would need to remain.
965	The first paragraph of subsection (b) should be repealed and the second paragraph should be rewritten to make sense without the first. Subsection (a) should be rewritten in terms of an order. Then Code § 1205 would cover the criminal aspects of this section so only the prohibition in subsection (a) would need to remain.
966	The first paragraph of subsection (b) should be repealed and the second paragraph should be rewritten to make sense without the first. Code § 1205 covers the criminal aspects of this section so only the prohibition in subsection (a) need remain. The last sentence in subsection (a) should be deleted as unnecessary.
967	The first sentence of subsection (b) should be repealed and the second sentence should be rewritten to make sense without the first. Code § 1205 covers the criminal aspects of this section so only the prohibition in subsection (a) need remain. The last sentence in subsection (a) should be deleted as unnecessary.
969	Subsection (a)—penalty, culpability. The third paragraph of subsection (a) should be made a defense. Subsection (b) should be repealed as unnecessary.
1543	Penalty. This section should be changed by deleting the first paragraph, "willfully and" and "or attempts to . . . to be a passport, or" matter covered by Code §§ 1225, 1751 and 1001.
1544	Penalty. This section should be changed by deleting the first paragraph, the third paragraph, and, in the second paragraph, "willfully and" and "or attempts to use". Code §§ 1225, 401, 1002 and 1001 cover it.

1545 ..... Penalty, culpability. Note that "passport" as used in this section does not mean the same thing as the word "passport" in the preceding sections.

TITLE 24

Hospitals, Asylums, and Cemeteries

Title 24 Sections	Guidelines*
50	(R.S. § 4822.) This section should be amended to conform with Code Chapter 35.
154	(Act of Mar. 22, 1906, ch. 1127, § 4, 34 Stat. 83.) Regulatory offense. This section should be changed by deleting "who shall unlawfully intrude . . . property, therein, or"; matter covered by Code §§ 1705, 1712, and 1732.
286	(R.S. § 4881, as amended, 24 U.S.C. § 286.) This section should be changed by deleting the first sentence. Code §§ 1705 and 1732 cover it. The second sentence should be rewritten to make sense without the first.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 25

Indians

Title 25 Sections	Guidelines*
70b	(Act of Aug. 13, 1946, ch. 959, § 3, 60 Stat. 1050, as amended, 27 U.S.C. § 70b.) Subsection (c)—penalty, culpability.
201	(R.S. § 2124.) This section should be changed by deleting "arrested or" and by deleting "prosecution" and substituting "action" to eliminate criminal law terminology in a civil context. An action for debt is civil in nature.
202	(Act of June 25, 1910, ch. 431, § 5, 36 Stat. 857.) Penalty, culpability. Consideration should be given to making this a regulatory offense. See Code § 1006(2)(c).
399	(Act of June 30, 1919, ch. 4, § 26, 41 Stat. 31, as amended, 25 U.S.C. § 399.) The fifteenth paragraph should be changed by deleting "and any person making . . . as for perjury", matter covered by Code § 1352.
1323	(Act of April 11, 1968, title IV, § 403, 82 Stat. 79.) Subsection (a)—renumber present section 1162 of Title 18 with its new Title 25 section number.

Sections Transferred Into Title 25

Former Title 18 Sections	Guidelines*
437	Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor.
438	Penalty, culpability. This section should be changed by deleting "of Title 25," and substituting "of this title,". Consideration should be given to adding a penalty clause to each section referred to rather than reenacting this section in its entirety.
439	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

1154	Subsection (a)—penalty, culpability. The "except" clause should be made a defense. See Code § 103(2). This subsection should be changed by deleting "or attempts to introduce". Code § 1001 covers it. See Code § 3003.
1155	Penalty, culpability. The "except" clause should be made a defense. See Code § 103(2).
1156	Penalty, culpability. The "except" clause should be made a defense. See Code § 103(2). See Code § 3003.
1158	Penalty, culpability. This section should be changed by deleting "counterfeits or colorably . . . Title 25, or, ", "or knowingly, willfully, . . . colorable imitation thereof" and the second paragraph, matter covered by Code §§ 1751 and 1352.
1159	Penalty, culpability.
1160	No change.
1161	Renumber.
1162	See Comment on Jurisdiction in Indian Country by Milton Stein, *supra*, in this volume of Working Papers.
1164	Penalty, culpability. This section should be changed by deleting ", or a Government agency". Code §§ 1705 and 1732 cover the conduct prohibited here. Code § 201(d) provides the jurisdiction. Additionally, there would be federal jurisdiction over this conduct when the sign was erected by an Indian tribe if the sign were in an enclave. The section should be continued, however, to cover such conduct not in an enclave.
1165	Penalty, culpability. This section should be changed by deleting ", or upon any lands of the United States that are reserved for Indian use,". Code § 1712 covers trespass on lands of the United States. Additionally, there would be federal jurisdiction over this conduct if the land were in an enclave. The section should be continued, however, to cover trespass not in an enclave.
3055	No change.
3113	Renumber.
3242	See Comment on Jurisdiction in Indian Country by Milton Stein, *supra*, in this volume of Working Papers.

53-308 - 71 - vol. 3— —15

3243 ..... See Comment on Jurisdiction in Indian Country by Milton Stein, *supra*, in this volume of Working Papers.

3488 ..... No change.

TITLE 26

Internal Revenue Code

Title 26 Sections	Guidelines*
4817	(Internal Revenue Code of 1954, ch. 736, 68A Stat. 573.) Paragraph (7) should be changed by deleting "or corporation". Code § 402 covers it. This paragraph should further be changed by deleting "forge, counterfeit, simulate," and "alter". Code § 1751 covers it.
4918	(*Id.*, as added, § 2(a), 78 Stat. 831, and amended, 26 U.S.C. § 4918.) Subsection (e) should be changed by deleting "perjury" and substituting "false statement". Code § 1351 limits perjury to "official proceedings". See Code § 109 (ad). Subsection (h) should be changed by deleting "perjury" and substituting "false statement" for the same reason.
5203	(*Id.*, as added, title II, § 201, 72 Stat. 1357, 26 U.S.C. § 5203.) Subsection (b) should be changed by adding "as is authorized by chapter 6 of Title 18 and" after "use such force".
5274	(*Id.*, as added, title II, § 201, 72 Stat. 1372, 26 U.S.C. § 5274.) Relevant, but no change recommended.
5551	(*Id.*, as added, title II, § 201, 72 Stat. 1394, 26 U.S.C. § 5551.) Because subsection (b) does not provide any grounds for disapproval except for conviction, it should be amended to conform with Code Chapter 35, or other criteria which could form the basis of a true exercise of discretion as to fitness should be added to the criterion of prior conviction. See Code § 3505(d).
5557	(*Id.*, as added, title II, § 201, 72 Stat. 1396, 26 U.S.C. § 5557.) Renumber section 3041 of Title 18 with its new Title 18 section number.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

5601 (*Id.*, as added, title II, § 201, 72 Stat. 1398, 26 U.S.C. § 5601.) Subsection (a)—penalty, culpability. This subsection should be changed by deleting paragraph (2). Code § 1403 covers it because the prohibition is in section 5171. Paragraph (3) could be deleted because Code § 1352 covers it, but if felony penalties are desired, it should be continued as a prohibition without a penalty clause so that Code § 1403 would cover it. See also Code § 1001. Paragraph (4) should be continued as a prohibition without a penalty clause so that Code § 1403 would cover it. Paragraph (5) could be deleted because Code § 1352 covers it, but if felony penalties are desired, it should be continued as a prohibition without a penalty clause so that Code § 1403 would cover it. See also Code § 1001. Paragraph (6) should be deleted. Code § 1403 covers it because the prohibition is in section 5178. See also Code §§ 401 and 1001. Paragraph (8) should be deleted. Code § 1403 covers it. Paragraph (10) should be deleted. Code §§ 1401 and 1403 cover it. See also Code § 1401. Paragraph (11) could be deleted because Code § 1404 covers it, but if felony penalties are desired, it should be continued as a prohibition, without a penalty clause so that Code § 1403 would cover most of it. See Code § 1405(3). Paragraph (12) could be deleted because Code § 1404 covers it, but if felony penalties are desired, it should be continued as a prohibition without a penalty clause so that Code § 1403 would cover most of it. See Code § 1405(3). The first part of paragraph (14) (carries on the business) should be continued as a prohibition without a penalty clause so that Code § 1403 covers it. The second part of paragraph (14) (possession of ingredients) could be deleted as a substantial step in an attempt to violate Code § 1403. Because Code § 1403 contains an affirmative defense of payment of all taxes, any conduct which it is suggested should be deleted because covered by Code § 1403 could be continued as a regulatory prohibition without the affirmative defense. See Code § 1006. Subsection (b) should be changed by deleting paragraphs (2) and (4) because the paragraphs they apply to should be deleted. Consideration should be given to merging paragraphs (1) and (3) See Code § 1405(2).

5602 (*Id.*, as added, title II, § 201, 72 Stat. 1400, 26 U.S.C. § 5602.) The first sentence should be repealed. Code § 1403 covers it. The second sentence should be redrafted as follows: "No discontinuance or nolle prosequi of any prosecution of a distiller for a Class C felony under section 1403 of Title 18 shall be allowed without the permission in writing of the Attorney General."

5603 (*Id.*, as added, title II, § 201, 72 Stat. 1400, 26 U.S.C. § 5603.) Subsection (a) should be repealed. Code § 1401 covers it. See particularly Code § 1401(1)(f). Subsection (b)—penalty, culpability. This subsection should be changed by deleting ", otherwise than with . . . the United States," in the first paragraph. The phrase is unnecessary, but requires the Government to prove a lack of intent. Subsection (b)(4) should be repealed. Code § 1301 covers it. Consideration should be given to making these records subject to Code § 1356. Then subsections (b)(2) and (b)(3) could be repealed. Code § 1352 also covers subsection (b)(2). This subsection should further be changed by deleting "or who shall . . . to be done," matter covered by Code § 1401.

5604 (*Id.*, as added, title II, § 201, 72 Stat. 1401, 26 U.S.C. § 5604.) Subsection (a)—penalty, culpability. Paragraph (1) should be deleted. Code § 1404 covers minor violations. Code § 1403 covers serious violations because the prohibition is in section 5205. See also Code § 1405(3). Paragraph (2) should be deleted. Code § 1401 covers it. See particularly Code § 1401 (f). Consideration should be given to continuing the prohibition on conduct herein contained without the requirement of "intent to defraud the United States", as a regulatory measure. See Code § 1006. Paragraph (4) should be deleted. Code §§ 1401 and 1751 cover it. Paragraph (5) should be deleted. Code §§ 1751 and 1752 cover it. Paragraph (6) should be deleted. Code § 1401 covers it. See particularly Code § 1401 (f). Consideration should be given to continuing the prohibition on conduct herein contained without the requirement of "intent to defraud the United States", as a regulatory measure. See Code § 1006. Paragraph (10) should be deleted. Code § 1752 covers it. Note that serious vio-

lations of paragraphs (11), (12) and (13) are covered by Code § 1401 (f) (*e.g.*, attempts to evade tax). Paragraph (14) should be deleted. Code §1352 covers it. Note that serious violations of paragraphs (15) and (16) are covered by Code § 1401 (f). Paragraph (17) should be deleted. Code § 1401 covers it. See particularly Code § 1401 (f). Consideration should be given to continuing the prohibition on conduct herein contained without the requirement of "intent to defraud the United States", as a regulatory measure. See Code § 1006. Paragraph (19) should be deleted. Code § 1751 covers it.

5605 (*Id.*, as added, title II, § 201, 72 Stat. 1402, 26 U.S.C. § 5605.) Regulatory offense, culpability. This section should be changed by deleting, "and any officer . . . in such violation," matter covered by Code §§ 401 and 403.

5606 (*Id.*, as added, title II, § 201, 72 Stat. 1402, 26 U.S.C. § 5606.) Regulatory offense. This section should be changed by deleting ", and any officer . . . in such violation," matter covered by Code § 403.

5607 (*Id.*, as added, title II, § 201, 72 Stat. 1402, 26 U.S.C. § 5607.) Amend to provide that the conduct described makes the distilled spirits a "taxable object" under Code § 1409(f). Delete penalty clause.

5608 (*Id.*, as added, title II, § 201, 72 Stat. 1403, as amended, 26 U.S.C. § 5608.) Subsection (a) should be changed by deleting "Every person who . . . years or both." and redrafting the rest to make sense without the first part. Code §§ 1732, 401 and 1001 cover the matter. Subsection (b) should be changed by deleting "Every person who . . . years or both;" and redrafting the rest to make sense without the first part. Code § 1401 covers the matter. See particularly Code § 401(f). Consideration should be given to continuing the prohibition on conduct herein contained without the requirement of "intent to defraud the United States", as a regulatory measure. See Code § 1006.

5661 (*Id.*, as added, title II, § 201, 72 Stat. 1407, 26 U.S.C. § 5661.) Subsection (a) should be changed by deleting "Whoever, with intent . . . each such offense." and redrafting the rest to make sense without the first part. Code § 1401 covers it. See particularly

Code § 1401(f). Consideration should be given to continuing the prohibition on conduct not covered by subsection (b) without the requirement of "intent to defraud the United States", as a regulatory measure. See Code § 1006. Subsection (b)—regulatory offense. This subsection should be changed by deleting "otherwise than with . . . the United States,". The phrase is unnecessary, but requires the government to prove a lack of intent. This subsection should further be changed by deleting ", or who aids . . . any such violation," matter covered by Code § 401.

5662 (*Id.*, as added, title II, § 201, 72 Stat. 1407, 26 U.S.C. § 5662.) Penalty, culpability.

5671 (*Id.*, as added, title II, § 201, 72 Stat. 1408, 26 U.S.C. § 5671.) This section should be changed by deleting "Whoever evades or . . . each such offense," and redrafting the rest to make sense without the first part. Code §§ 1401, 1402 and 1403 cover the deleted matter.

5672 (*Id.*, as added, title II, § 201, 72 Stat. 1408, 26 U.S.C. 5672.) Regulatory offense. This section should be changed by deleting ", otherwise than with . . . the United States." The phrase is unnecessary, but requires the government to prove a lack of intent. If the returns required by section 5415 are only informational, the word "information" should be added after "and file the" to make it clear that matter is not covered by Code § 1402(a). See Code § 1409(e).

5674 (*Id.*, as added, title II, § 201, 72 Stat. 1408, 26 U.S.C. § 5674.) Penalty, culpability. Note that Code § 1403 would cover trafficking, but mere possession is not penalized. Because the serious conduct is covered as a Class A misdemeanor, this section should probably not be a Class A misdemeanor. This section should be changed by deleting "or in any way aids in the removal" and "of". Code § 401 covers it.

5675 (*Id.*, as added, title II, § 201, 72 Stat. 1408, 26 U.S.C. § 5675.) Penalty.

5676 (*Id.*, as added, title II, §201, 72 Stat. 1408, 26 U.S.C. § 5676.) Paragraph (1)—penalty, culpability. Note that even if the penalty clause were deleted, Code § 1403 would cover trafficking in violation of the prohibition. Because the serious conduct is covered as a Class A misdemeanor, this para-

graph should probably not be a Class A misdemeanor. This paragraph should be changed by deleting ", or in any . . . or purchase of," matter covered by Code § 401. Paragraph (2)—penalty, culpability. Note that even if the penalty clause were deleted, Code § 1403 would cover trafficking in violation of this prohibition. Because the serious conduct is covered as a Class A misdemeanor, this paragraph should probably not be a Class A misdemeanor. This paragraph should be changed by deleting "or aids in the withdrawal of" twice. Code § 401 covers it. Paragraph (3)—penalty, culpability. This paragraph should be changed by deleting "Every person who makes . . . be done, and", matter covered by Code §§ 1751, 1752 and 401. This paragrah should further be changed by deleting "or cause to be removed,". Code § 401 covers it. This paragraph should further be changed by deleting "or who, with . . . device for beer," matter covered by Code § 1401. See particularly Code § 1401 (f). Consideration should be given to continuing the prohibition on conduct herein contained without the requirement of "intent to defraud the revenue", as a regulatory measure. See Code § 1006. Paragraph (5)—penalty. This paragraph should be changed by deleting "alters,". Code § 1751 covers it.

5681 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1410, 26 U.S.C. § 5681.) Subsection (a) should be repealed. Code § 1403 covers it because the prohibition is in sections 5115 and 5180. Subsection (b)—penalty, culpability. Note that even if the penalty clause were deleted, Code § 1403 would cover trafficking without a proper sign. Subsection (c)—penalty, culpability. This subsection should be changed by deleting "who works in . . . liquor establishment, or", matter covered by Code § 1403. Because Code § 1403 contains an affirmative defense of payment of all taxes, this conduct could be continued as a regulatory prohibition without the affirmative defense. See Code § 1006. Subsection (d) should be repealed because the subsection it applies to should be deleted. See Code §1405 (2).

5682 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1410, 26 U.S.C. § 5682.) Penalty, culpability. Note that Code § 1401 covers this conduct when done to evade taxes.

5683 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1410, 26 U.S.C. § 5683.) Penalty, culpability. Note that even if the penalty clause were deleted, Code § 1403 would cover trafficking in violation of this prohibition. This section should be changed by deleting ", or causes such act to be done,". Code § 401 covers it.

5685 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1411, and amended, 26 U.S.C. § 5685.)

5686 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1411, 26 U.S.C. § 5686.) Subsection (a)—penalty, culpability. Consideration should be given to deleting this subsection. Possession of property intending to commit a crime therewith would be a substantial step in an attempt to commit the crime. Grading should relate to the crime intended. See Code § 1001. Code §§ 1303 and 1304 cover the serious situation of possession of property which has been used to violate the law.

5687 ---------- (*Id.*, as added, title II, § 201, Stat. 1412, 26 U.S.C. § 5687.) Regulatory offense.

5689 ---------- (*Id.*, as added, title II, § 201, 72 Stat. 1413, 26 U.S.C. § 5689.) This section should be changed by deleting "Whoever manufactures, procures, . . . or both, and", and redrafting the rest to make sense without the first part. Code §§ 1401, 1751 and 1752 cover the deleted matter.

5691 ---------- (*Id.*, as added, title II, §201, 72 Stat. 1413, 26 U.S.C. § 5691.) Subsection (a)—penalty, culpability. Note that Code § 1401 covers serious violations, *e.g.*, an attempt to evade the tax. Subsection (b)—the second sentence should be changed to "unless the sale or offer of sale was made to a person other than a dealer, as defined in section 5112(a)."

5762 ---------- (*Id.*, 68A Stat. 717, as amended, 26 U.S.C. § 5762.) Subsection (a) should be repealed. Code § 1401 covers it. Consideration should be given to continuing the prohibitions on conduct herein contained with the following change without the requirement of "intent to defraud the United States", as a reg-

ulatory measure. See Code § 1006. Paragraph (2) should be changed by deleting "return, report," after "fraudulent record,". Code § 1352 covers it. Consideration should be given to making these records subject to Code § 1356. Then ", or keeps or . . . report, or inventory," could be deleted entirely. Paragraph (3) should be changed by deleting "or attempts in . . . the payment thereof;". Code § 1401 covers the deleted matter. Note that Code § 1403 covers trafficking in violation of 26 U.S.C. § 5751 which is also covered by paragraph (5) of this subsection. Paragraph (6) should be changed by deleting "or counterfeit". Code § 1751 covers it. Subsection (b)—regulatory offense. This subsection should be changed by deleting ", otherwise than as provided in subsection (a), ". The phrase is unnecessary, but requires the government to prove the conduct is not covered bv subsection (a).

5861 (*Id.*, 68A Stat. 729, as amended, 26 U.S.C. § 5861.) Subsection (a) should be continued as a prohibition without a penalty clause. Code § 1813 penalizes violations. Subsection (b) should be continued with a penalty clause. It should be changed by deleting "receive or" matter covered by Code § 1813. Subsection (c) should be divided. Receipt should be continued as a prohibition without a penalty clause. Code § 1813 penalizes violations. Possession should be continued with a penalty clause. Subsection (d)—see comment to subsection (c), *supra*. Subsections (e) and (f) should be repealed. Code § 1813 covers them. Subsection (g) should be continued with a penalty clause. Subsections (h) and (i)—see comment to subsection (c), *supra*. Subsection (j) should be continued as a prohibition without a penalty clause. Code § 1813 penalizes violations. Subsection (k)—see comment to subsection (c), *supra*. Subsection (*l*) should be continued with a penalty clause. It should be changed by deleting ", or cause the making of," and "application, return, or". Code §§ 401 and 1352 cover it. Consideration should be given to making these records subject to Code § 1356. Then subsection (*l*) could be repealed.

5871 (*Id.*, as added, title II, § 201, 82 Stat. 1234, 26 U.S.C. § 5871.) Penalty, culpability. Note that provisions penalized by Code § 1813 should be excepted from the penalty here provided. See comment to section 5861, supra.

6065 (*Id.*, 68A Stat. 749.) Subsection (a) should be changed by deleting "perjury" and substituting "false statement". Code § 1351 limits perjury to "official proceedings". See Code § 109(ad).

6531 (*Id.*, 68A Stat. 815.) This section should be repealed. Code § 701 covers it.

6680 (*Id.*, as added, § 6(a), 78 Stat. 845, as amended, 26 U.S.C. § 6680.) Paragraphs (1) and (2) penalty, culpability. If this is intended as a civil penalty, the word "civil" should be added.

6685 (*Id.*, as added, title I, § 101(e)(4), 83 Stat. 524, 26 U.S.C. § 6685.) Penalty, culpability. If this in intended as a civil penalty, the word "civil" should be added.

7201 (*Id.*, 68A Stat. 851.) This section should be repealed. Code § 1401 covers it.

7202 (*Id.*, 68A Stat. 851.) This section should be repealed. Code §§ 1401(c) and 1402(c) cover it.

7203 (*Id.*, 68A Stat. 851, as amended, 26 Stat. § 7203.) Penalty, culpability. Note that Code § 1402 covers failure to the certain tax returns. See Code § 1409(e).

7204 (*Id.*, 68A Stat. 852.) This section should be repealed. Code § 1402(e) covers it.

7205 (*Id.*, 68A Stat. 852, as amended, 26 U.S.C. § 7205.) Penalty, culpability.

7206 (*Id.*, 68A Stat. 852.) This section should be repealed. Code §§ 1401 and 1352 cover paragraph (1). Code § 401 covers paragraph (2). Code §§ 1751, 1352, 1753 and 401 cover paragraph (3). Code § 1401 covers paragraph (4). Code § 1401 covers paragraph (5)(A). Code §§ 1401 and 1352 cover any conduct intended to evade taxes and falsifications in paragraph (5)(B). It is unclear why receipt of a book relating to the estate of a taxpayer should, without more, be criminal.

7207 (*Id.*, 68A Stat. 853, as amended, 26 U.S.C. § 7207.) This section should be repealed. Code §§ 1401 and 1352 cover it.

7208 ---------- (*Id.*, 68A Stat. 853.) Penalty, culpability. Paragraph (1) should be repealed. Code §§ 1751 and 1752 cover it. Note that serious violations of paragraph (2) are covered by Code § 1401 (*e.g.*, attempts to evade tax). Paragraph (3)(C) should be repealed. Code § 1751 covers it. Paragraph (4)(C) should be changed by deleting "and without lawful . . . on the accused)", and adding "Except as authorized by law" before "knowingly". The burden of going forward with evidence would be on the defendant. See Code § 103(2). Paragraph (5) should be changed by deleting "to defraud the revenue or". Code § 1401 covers it. See particularly Code § 1401(f). If it is desired to continue felony penalties for defrauding any person, a jurisdictional base should be added to theft (Code § 1740) that the theft was committed in the course of violating 26 U.S.C. § 7271.

7209 ---------- (*Id.*, 68A Stat. 854) Penalty, culpability.

7210 ---------- (*Id.*, 68A Stat. 854, as amended, 26 U.S.C. § 7210.) Consideration should be given to making these subpoenas subject to Code § 1342. See Code § 1342(4)(a)(iv) and (4)(b). Then this section could be repealed.

7211 ---------- (*Id.*, 68A Stat. 854.) Penalty.

7212 ---------- (*Id.*, 68A Stat. 855.) This section should be be repealed. Code §§ 1361, 1366, 1611, 1612 (see Code § 201(c)) and 1001 cover subsection (a). Code §§ 1301 and 1001 cover subsection (b).

7213 ---------- (*Id.*, 68A Stat. 855, as amended, 26 U.S.C. § 7213.) Subsection (a)(1) should be changed by deleting "and any person . . . costs of prosecution;" and redrafting the last part to make sense without the deleted portion. Code § 1371 covers the deleted matter so only the prohibition need remain. Subsection (a)(2) and (a)(3)—penalty, culpability. Subsection (b) should be changed by deleting "Any" and substituting "No", by deleting "who divulges or makes" and substituting "shall divulge or make" and by deleting "shall be guilty . . . costs of prosecution;" and redrafting the last part to make sense without the deleted portions. Code § 1371 covers it so only a prohibition need remain. Subsection (c)—penalty, culpability.

7214 ---------- (*Id.*, 68A Stat. 856, as amended, 26 U.S.C. § 7214.) Subsection (a)—penalty, culpability. Paragraph (1) should be repealed. Code §§ 1361 and 1732 cover it. See particularly the last sentence of Code § 1741(k). Note that paragraph (2) probably should not be a Class A misdemeanor because it involves less serious behavior than Code §§ 1362 and 1363, which are Class A misdemeanors. See also Code § 1732. Paragraph (4) should be repealed. Code §§ 1401, 1004, 1732, among others, cover it. See comment to Code § 1004 at Final Report 71. Paragraph (5) should be repealed. Code §§ 401, 1002, 1401 and 1732 cover it. Paragraph (6) should be repealed. Code §§ 401, 1401 and 1732 cover it. Paragraph (7) should be changed by deleting "or makes or . . . return or statement;". Code §§ 1401 and 1352 cover it. Note that serious violations of paragraph (8) are covered by §§ 1304 and 1361. Note that serious violations of paragraph (9) are covered by Code §§ 1361 and 1732. See particularly Code § 1741(k). Subsection (b)—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor as it involves less serious behavior than Code § 1372 which is a Class A misdemeanor.

7215 ---------- (*Id.*, as added, § 2, 72 Stat. 6, 26 U.S.C. § 7215.) Subsection (a) should be repealed. Code § 1402(d) covers it. Subsection (b) should be made defenses. See Code § 103(2).

7231 ---------- (*Id.*, 68A Stat. 857.) Penalty.

7232 ---------- (*Id.*, 68A Stat. 858, as amended, 26 U.S.C. § 7232.) Penalty, culpability. This section should be changed by deleting "or who willfully . . . under section 4101," matter covered by Code § 1352. Note that serious violations of this section are covered by Code § 1401 (*e.g.*, attempts to evade tax).

7233 ---------- (*Id.*, 68A Stat. 858.) Regulatory offense. Paragraph (1) should be changed by deleting "or evades or . . . of such tax", matter covered by Code § 1401.

7234 ---------- (*Id.*, 68A Stat. 850.) Subsections (a), (b), (c), (d)(1), (d)(2), and (d)(3)—penalty, culpability. Subsection (d)(4) should be repealed. Code § 1401 covers it.

7235	(*Id.*, 68A Stat. 859.) Subsections (a) and (b)—penalty, culpability. Subsection (c)—regulatory offense particularly because of 26 U.S.C. § 4817(5). Subsection (d)—penalty, culpability. Subsection (e) should be repealed. Code § 1401 covers it.
7236	(*Id.*, 68A Stat. 860.) Penalty, culpability.
7239	(*Id.*, 68A Stat. 861.) Subsections (a) and (b)—penalty, culpability.
7240	(*Id.*, 68A Stat. 861.) Penalty, culpability. Note that this offense probably should not be a Class A misdeameanor as it involves less serious behavior than Code § 1372 which is a Class A misdeameanor.
7241	(*Id.*, as added, § 6(b), 78 Stat. 847, and amended, 26 U.S.C. § 7241.) Penalty, culpability.
7262	(*Id.*, 68A Stat. 862.) Penalty, culpability.
7263	(*Id.*, 68A Stat. 862.) Subsection (a) should be changed by deleting "or who shall . . . false or misleading," matter covered by Code § 1352. Consideration should be given to establishing a subpoena power under 26 U.S.C. § 4862(b) and to making these subpoenas subject to Code § 1342. Then subsection (a) could be repealed.
7264	(*Id.*, 68A Stat. 863.) Penalty, culpability.
7265	(*Id.*, 68A Stat. 863.) All three subsections—penalty, culpability.
7266	(*Id.*, 68A Stat. 863.) Subsections (a), (c), (d), (e) and (f)—penalty, culpability. Subsection (b)—regulatory offense. This section should be changed by deleting "or corporation". Code § 402 covers it.
7267	(*Id.*, 68A Stat. 864.) All four subsections—penalty, culpability.
7268	(*Id.*, 68A Stat. 865.) This section should be repealed. Code § 1401 covers it. See Code § 1001. If this is intended as a civil penalty, the word "civil" should be added.
7270	(*Id.*, 68A Stat. 865.) If this is intended as a criminal penalty, the section should be repealed. Code § 1401 covers it. If it is intended as a civil penalty, the word "fine" should be deleted and the words "civil penalty" substituted, to eliminate criminal law terminology in a civil context.
7271	(*Id.*, 68A Stat. 865.) All four subsections—penalty, culpability.

7272	(*Id.*, 68A Stat. 866, as amended, 26 U.S.C. § 7272.) Subsection (a)—penalty, culpability.
7273	(*Id.*, 68A Stat. 866, as amended, 26 U.S.C. § 7273.) Penalty, culpability. If this is intended as a civil penalty, the word "civil" should be added.
7274	(*Id.*, 68A Stat. 866.) Penalty, culpability.
7302	(*Id.*, 68A Stat. 867.) Renumber chapter 205 of Title 18 with its new Title 18 section numbers.
7401	(*Id.*, 68 Stat. 791.) This section should be changed by deleting the word "fine", to eliminate criminal law terminology in a civil context.
7604	(*Id.*, 68A Stat. 902, as amended, 26 U.S.C. § 7604.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).

The following provisions, all similar, are cross references to other sections of Title 26 which establish penalties or set forth general administrative provisions relating to the chapter or section in which they are included. Many of these references will be incomplete or inaccurate if not amended to reflect changes made by the new Code.

The citations to the Statutes at Large are to the full section.

911(d)	(Internal Revenue Code of 1954, ch. 736, 68A Stat. 289, as amended, 26 U.S.C. § 911.)
4363	(*Id.*, 68A Stat. 520, as amended, 26 U.S.C. § 4363.)
4375	(*Id.*, 68A Stat. 522, as amended, 26 U.S.C. § 4375.)
4405	(*Id.*, 68A Stat. 526.)
4414	(*Id.*, 68A Stat. 527.)
4463(b)	(*Id.*, 68A Stat. 531.)
4484	(*Id.*, as added, ch. 462, title II, § 206(a), 70 Stat. 391.)
4494	(*Id.*, as added, title II, § 206(a), 84 Stat. 242.)
4806	(*Id.*, 68A Stat. 570.)
4819(b)	(*Id.*, 68A Stat. 575.)
4822(b)	(*Id.*, 68A Stat. 575.)
4836	(*Id.*, 68A Stat. 578.)
4842(b)	(*Id.*, 68A Stat. 579.)
4877	(*Id.*, 68A Stat. 586.)

4886	(*Id.*, 68A Stat. 589.)
4911(c)(2)	(*Id.*, as added, § 2(a), 78 Stat. 809, as amended 26 U.S.C. § 4911.)
5054(d)	(*Id.*, as added, title II, § 201, 72 Stat. 1334, 26 U.S.C. § 5054.)
5061(c)(d)	(*Id.*, as added, title II, § 201, 72 Stat. 1335, 26 U.S.C. § 5061.)
5084(4)	(*Id.*, as added, title II, § 201, 72 Stat. 1339, 26 U.S.C. § 5084.)
5105(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1339, 26 U.S.C. § 5105.)
5114(c)	(*Id.*, as added, title II, § 201, 72 Stat. 1342, 26 U.S.C. § 5114.)
5115(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1342, 26 U.S.C. § 5115.)
5117(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1343, 26 U.S.C. § 5117.)
5148	(*Id.*, as added, title II, § 201, 72 Stat. 1348, 26 U.S.C. § 5148.)
5171(c)	(*Id.*, as added, title II, § 201, 72 Stat. 1349, 26 U.S.C. § 5171.)
5177(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1353, 26 U.S.C. § 5177.)
5178(c)	(*Id.*, as added, title II, § 201, 72 Stat. 1353, 26 U.S.C. § 5178.)
5179(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1355, 26 U.S.C. § 5179.)
5180(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1355, 26 U.S.C. § 5180.)
5203(e)	(*Id.*, as added, title II, § 201, 72 Stat. 1357, 26 U.S.C. § 5203.)
5205(i)	(*Id.*, as added, title II, § 201, 72 Stat. 1358, 26 U.S.C. § 5205.)
5207(e)	(*Id.*, as added, title II, § 201, 72 Stat. 1361, 26 U.S.C. § 5207.)
5221(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1364, 26 U.S.C. § 5221.)
5222(d)	(*Id.*, as added, title II, § 201, 72 Stat. 1365, 26 U.S.C. § 5222.)
5271(e)(5)	(*Id.*, as added, title II, § 201, 72 Stat. 1370, 26 U.S.C. § 5271.)
5273(e)	(*Id.*, as added, title II, § 201, 72 Stat. 1372, 26 U.S.C. § 5273.)
5291(b)	(*Id.*, as added, title II, § 201, 72 Stat. 1373, 26 U.S.C. § 5291.)
5301(d)	(*Id.*, as added, title II, § 201, 72 Stat. 1374, 26 U.S.C. § 5301.)
5505(i)	(*Id.*, as added, title II, § 201, 72 Stat. 1391, 26 U.S.C. § 5505.)

5563	(*Id.*, as added, title II, § 201, 72 Stat. 1407, 26 U.S.C. § 5663.)
5684(d)	(*Id.*, as added, title II, § 201, 72 Stat. 1410, 26 U.S.C. § 5684.)
5761(a)	(*Id.*, 68A Stat. 717, as amended, 26 Stat. 5761.)
6013(b)(5)(B)	(*Id.*, 68A Stat. 733, as amended, 26 U.S.C. § 6013.)
6038(e)	(*Id.*, as added, § 6(a), 73 Stat. 1014, and amended, 26 U.S.C. § 6038.)
6046(f)	(*Id.*, 68A Stat. 747, as amended, 26 U.S.C. § 6046.)
6047(d)	(*Id.*, as added, § 7(m)(1), 76 Stat. 830, 26 U.S.C. § 6047.)
6048(c)	(*Id.*, as added, § 7(f), 76 Stat. 830, 26 U.S.C. § 6048.)
6106	(*Id.*, 68A Stat. 756.)
6420(i)	(*Id.*, as added, ch. 160, § 1, 70 Stat. 87, and amended, 26 U.S.C. § 6420.)
6421(j)	(*Id.*, as added, ch. 462, title II, § 208(c), 70 Stat. 394, and amended, 26 U.S.C. § 6421.)
6424(h)	(*Id.*, as added, title II, § 202(b), 79 Stat. 137, and amended, 26 U.S.C. § 6424.)
6427(h)	(*Id.*, as added, title II, § 207(a), 84 Stat. 246.)
6533	(*Id.*, 68A Stat. 816.)
6652(e)	(*Id.*, 68A Stat. 821, as amended, 26 U.S.C. § 6652(e).)
6674	(*Id.*, 68A Stat. 828, as amended, 26 U.S.C. § 6674.)
6680	(*Id.*, as added, § 6(a), 78 Stat. 845, 26 U.S.C. § 6680.)
6681 (a), (c)	(*Id.*, as added, § 6(a), 78 Stat. 845, 26 U.S.C. § 6681.)
6685	(*Id.*, as added, title I, § 101(e)(4), 83 Stat. 524, 26 U.S.C. § 6685.)
7001(b)	(*Id.*, 68A Stat. 845.)
7123(a)	(*Id.*, 68A Stat. 850.)
7213(e)	(*Id.*, 68A Stat. 855, as amended, 26 U.S.C. § 7213.)
7214(c)	(*Id.*, 68A Stat. 856, as amended, 26 U.S.C. § 7214.)
7303(1), (7), (8)	(*Id.*, 68A Stat. 868, as amended, 26 U.S.C. § 7303.)
7501(b)	(*Id.*, 68A Stat. 895.)
7513(d)	(*Id.*, as added, title I, § 90(a), 72 Stat. 1666, 26 U.S.C. § 7513.)

7601(b)	(*Id.*, 68A Stat. 901.)
7604(c)	(*Id.*, 68A Stat. 902, as amended, 26 U.S.C. § 7604.)
7606(c)	(*Id.*, 68A Stat. 903.)

Sections Transferred Into Title 26

Former Title 18 Sections	Guidelines*
841	No change.
842	Note that false statements to the government under subsection (a)(2) would be covered by Code § 1352. Subsection (a)(3)(B), (b), (c), (d), and (e) should be continued without a penalty clause in the regulatory law. Code § 1812 covers violations of these subsections so only the prohibition need remain. Consideration should be given to making the records referred to in subsection (g) subject to Code § 1356. Then subsection (g) could be repealed. Subsection (h) should be repealed. Code § 1732 covers it. See particularly Code § 1735 (2)(d).
843	No change.
844	Subsections (a) and (b)—penalty, culpability. Subsections (a)(3)(B), (b), (c), (d), and (e) of section 842 should not be subject to these penalty clauses. See comment to section 842, *supra*. Subsection (c)—renumber. Subsection (d) should be repealed. Code § 1811 covers it. Subsection (e) should be repealed. Code §§ 1614 and 1618 cover it. Subsection (f) should be repealed. Code §§ 1701 and 1705 cover it. Subsection (g) should be repealed. Code § 1814 covers it. Subsection (h) should be repealed. Code § 3202(2)(e) covers it. See also comment to Code § 1811 at Final Report 248. Subsection (i) should be repealed. Code §§ 1701 and 1705 cover it. Subsection (j) should be repealed. All subsections to which it applies should be repealed. See also Code § 109(i).
845	Subsection (a) should be made defenses. See Code § 103(2).
846	No change.
847	No change.
848	No change.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

921	No change. Consideration should be given to combining this section and section 841. Under the majority recommendation of the Commission, production of, possession of and trafficking in handguns would be banned in a regulatory scheme, except for the military, the police and similar official activities. With such a separate regulatory scheme for handguns, this chapter should be rewritten to apply only to long guns.
922	Subsection (a)(2) should be continued without a penalty clause. Code § 1812 covers a violation of this subsection so only the prohibition need remain. Subsection (a)(2)(A), (B) and (C) should be made defenses. See Code § 103(2). Subsection (a)(3) (A), (B) and (C) should be made defenses. See Code § 103(2). Subsection (a)(5) should be continued without a penalty clause. Code § 1812 covers a violation of this subsection so only the prohibition need remain. Subsection (a)(5)(A) and (B) should be made defenses. See Code § 103(2). Subsection (b) should be continued without a penalty clause. Code § 1812 covers violations of this subsection so only the prohibitions need remain. Subsection (b)(1) should be changed by deleting "and if the firearm . . . years of age." Handguns should be separately regulated. Subsection (b)(3)(A), (B) and (C), should be made defenses. See Code § 103(2). The last two sentences of subsection (b) should be made defenses. See Code § 103(2). Subsections (c) and (d) should be continued without a penalty clause. Code § 1812 covers violations of these subsections so only the prohibitions need remain. The last sentence of subsection (d) should be made a defense. See Code § 103(2). The "except" clause in subsection (e) should be made a defense. See Code § 103(2). Subsections (i) and (j) should be repealed. Code § 1732 covers them. See Code § 1735(2)(d). Consideration should be given to making the records referred to in subsection (m) subject to Code § 1356. Then subsection (m) could be repealed.
923	No change.

924	Subsection (a)—penalty, culpability. Subsection (b) should be repealed. Code § 1811 covers it. Subsection (c) should be repealed. Code § 3202(2)(e) covers it. See also comment to Code § 1811 at Final Report 248.
925	This section should be made defenses. See Code § 103(2).
926	No change.
927	No change.
928	No change.
3615	Renumber.
1201 Appendix	No change. Under the majority recommendation of the Commission, production of, possession of and trafficking in handguns would be banned in a regulatory scheme, except for the military, the police and similar official activities. With such a separate regulatory scheme for handguns, sections 18 U.S.C. App. 1201–1203 should be rewritten to apply only to long guns.
1202 Appendix	Subsections (a) and (b)—penalty, culpability.
1203 Appendix	This section should be made a defense. See Code § 103(2).

TITLE 27

Intoxicating Liquors

Title 27 Sections	Guidelines*
202	(Federal Alcohol Administration Act, ch. 814, § 2(g), 49 Stat. 977, as amended, 27 U.S.C. § 202.) Subsection (c) relevant, but no change recommended.
204	(Federal Alcohol Administration Act, ch. 814, § 4, 49 Stat. 978, as amended, 27 U.S.C. § 204.) Subsection (a)(2) should be amended to conform with Code Chapter 35.
206	(Federal Alcohol Administration Act, ch. 84, § 6, 49 Stat. 985, as amended, 27 U.S.C. § 206.) Subsection (b)—penalty, culpability. This subsection should be changed by deleting "of this section" and substituting "of paragraph (2) or (3) of subsection (a) of this section". Violation of paragraph (1) of subsection (a) is penalized by Code § 1403 except that Code § 1403 has a defense not afforded by paragraph (1). See Code § 1403(3).
207	(Federal Alcohol Administration Act, ch. 814, § 7, 49 Stat. 1921, as amended, 27 U.S.C. § 207.) Regulatory offense. Note that Code § 1411 covers some of the conduct prohibited by section 203(a) and that, unless excepted from the penalties provided here, violations must be prosecuted at the grading here provided. See Code § 1411(2). Note further that many serious violations of these statutes are covered by Code § 1403.
208	(Federal Alcohol Administration Act, ch. 814, § 8, 49 Stat. 1921, as amended, 27 U.S.C. § 208.) Subsection (d)—regulatory offense.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

Sections Transferred Into Title 27

Former Title 18 Sections	Guidelines*
1261	No change.
1262	Penalty, culpability. This section should be changed by deleting "or attempts so . . . in so doing," matter covered by Code §§ 401 and 1001.
1263	Penalty.
1264	Penalty.
1265	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 28

Judiciary and Judicial Procedures

Title 28 Sections	Guidelines*
454	Penalty, culpability.
636	Subsections (a)(2), (a)(3) and (c)—renumber the references to Title 18 sections.
1291	Depending upon the policies decided upon with respect to appellate review of sentences, which was recommended in principle by the Commission, amendment of this section may be required. See Commission's Final Report, p. 317.
1355	Insert "civil" before "fines" to conform to usage in 28 U.S.C. §§ 2461 and 2462. Note that, while an effort should be made to substitute "civil penalty" wherever "fine" is used in existing laws in a civil context (see Introductory Note, para. (6), *supra*), it would appear prudent to retain the concept of "civil fines" in these Title 28 provisions until such time there is certainty that all such substitutions have been made.
1784	Relevant, but no change recommended.
1864	The last sentence of subsection (b) should be repealed. Code § 1352 covers it.
1865	Subsection (b)(5) should be amended to conform with Code Chapter 35.
1866	Subsection (g)—relevant, but no change recommended.
1867	The last sentence of subsection (f) should be repealed. Code § 1371 covers the criminal aspects of the subsection, so only the prohibition need remain.
1869	Subsection (h) should be amended to conform with Code Chapter 35.
1918	Subsection (a) should be changed by deleting "fine" and substituting "penalty", to eliminate criminal law terminology in a civil context.
2321	This section should be changed by deleting "fines," to eliminate criminal law terminology in a civil context.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

2678	Penalty, culpability.
2901	Subsection (c) should be changed by deleting "voluntary" and "mayhem," by adding "aggravated involuntary sodomy," after "rape," by adding a "p" to "kidnaping," by deleting "or housebreaking in the nighttime . . . punishable as a felony," by adding "theft by threat of violence, aggravated assault, and arson" after "burglary,". Subsection (e) should be changed by deleting "section 1" and substituting "section 109(j)".
2902	Subsection (e) should be repealed. Code § 1306 covers it. See Code § 1306(3)(a).

Sections Transferred Into Title 28

Former Title 18 Sections	Guidelines*
243	Penalty, culpability.
291	Penalty, culpability.
645	See comment preceding present 18 U.S.C. § 643 to be transferred to Title 5. Regulatory offense. This section should be changed by deleting "or converts . . . of another."
646	See comment preceding present 18 U.S.C. § 643 to be transferred to Title 5. Regulatory offense. This section should be changed by deleting "or converts . . . of another."
647	See comment preceding present 18 U.S.C. § 643 to be transferred to Title 5. Regulatory offense, culpability.
1421	See comment preceding present 18 U.S.C. § 643 to be transferred to Title 5. Regulatory offense, culpability.
1910	Penalty, culpability.
1911	Penalty, culpability.
2076	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 29

Labor

Title 29 Sections	Guidelines*
161	(National Labor Relations Act, ch. 372, § 11, 49 Stat. 455, as amended, 29 U.S.C. § 161.) Subsection (2)—consideration should be given to making the subpoenas of the Board subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4)(a)(iv) and (4)(b).
162	(National Labor Relations Act, ch. 372, § 12, 49 Stat. 456, as amended, 29 U.S.C. § 162.) This section should be repealed. Code § 1301 covers it.
186	(Labor Management Relations Act of 1947, ch. 120, Title III, § 302, 61 Stat. 157, as amended, 29 U.S.C. § 186.) Subsection (d)—penalty, culpability.
215	(Fair Labor Standards Act of 1938, ch. 676, § 15, 52 Stat. 1068, as amended, 29 U.S.C. § 215.) See comment to section 216, *infra*.
216	(Fair Labor Standards Act of 1938, ch. 676, § 16, 52 Stat. 1069, as amended, 29 U.S.C. § 216.) Regulatory offense, but note that subsections 215(a) (3) and (4) do not provide penalties for violation of regulations, and might therefore be penalized more severely. Subsection (a)(5) of section 215 should be changed by deleting "filed or". Code § 1352 covers it. Consideration should be given to making the records required to be kept by § 211(c) subject to Code § 1356. If that is done subsection (a)(5) of section 215 should be changed by deleting "or to make . . . a material respect."
259	(Portal-to-Portal Act of 1947, ch. 52, § 10, 61 Stat. 89.) This provision should be made a defense or an affirmative defense. See Code §§ 103 and 609.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

308 (Welfare and Pension Plans Disclosure Act, § 9, 72 Stat. 1002, as amended, 29) U.S.C. § 308.) Subsection (a)—penalty, culpability. Subsection (e)—no change (offense).

308c (Welfare and Pension Plans Disclosure Act, § 12, as added, § 16(a), 76 Stat. 38, 29 U.S.C. § 308c.) This provision should be made a defense or an affirmative defense. See Code §§ 103 and 609.

308e (Welfare and Pension Plans Disclosure Act, § 14, as added, § 16(a), 76 Stat. 40, 26 U.S.C. § 308e.) Subsection (c)(1)—renumber present sections 281 and 283 of Title 18 with their new Title 5 numbers. Section 1914 of Title 18 was repealed in 1962.

439 (Labor-Management Reporting and Disclosure Act of 1959, Title II, § 209, 73 Stat. 529.) Subsection (a)—penalty, culpability. Subsection (b) should be repealed. Code § 1352 covers it. Subsection (c)—consideration should be given to making the records required to be kept by this subchapter subject to Code § 1356. Subsection (c) could then be repealed.

461 (Labor-Management Reporting and Disclosure Act of 1959, Title III, § 301, 73 Stat. 530.) Subsection (c)—penalty, culpability. Subsection (d)—penalty, culpability. This subsection should be changed by deleting "makes a false . . . this section or", matter covered by Code § 1352. Consideration should be given to making the records referred to in the second half of the sentence subject to Code § 1356. Then the entire subsection could be repealed.

463 (Labor-Management Reporting and Disclosure Act of 1959, Title III, § 303, 73 Stat. 531.) Subsection (b)—penalty, culpability.

501 (Labor-Management Reporting and Disclosure Act of 1959, Title V, § 501, 73 Stat. 535.) Subsection (c) should be repealed. Code § 1732 covers it. See Code § 1740(4)(n).

502 (Labor-Management Reporting and Disclosure Act of 1959, Title V, § 502, 73 Stat. 536, as amended, 29 U.S.C. § 502.) Subsection (b)—penalty, culpability.

503 (Labor-Management Reporting and Disclosure Act of 1959, Title V, § 503, 73 Stat. 536.) Subsection (c)—penalty, culpability.

504 (Labor-Management Reporting and Disclosure Act of 1959, Title V, § 504, 73 Stat. 536.) Subsection (a) should be changed by deleting "extortion, embezzlement, grand larceny," and substituting "felonious theft," by deleting "violation of narcotics laws," and substituting "a drug felony," and by deleting "assault with . . . bodily injury," and substituting "aggravated assault, aggravated involuntary sodomy, attempted murder,". This subsection should further be amended to conform with Code Chapter 35. Subsection (b)—penalty, culpability.

522 (Labor-Management Reporting and Disclosure Act of 1959, Title VI, § 602, 73 Stat. 539.) This section should be repealed. Code § 1732 covers it. "Threat" in Code § 1741(k)(x) covers the conduct in this section. Code § 1740(3) which applies Code § 201(g) to theft by threat brings the conduct under federal jurisdiction because 29 U.S.C. § 402(e) defines "employer" as an employer in an industry affecting commerce.

524 (Labor-Management Reporting and Disclosure Act of 1959, Title VI, § 605, 73 Stat. 540.) This section should be changed by deleting "extortion, embezzlement, grand larceny," and substituting "felonious theft," by deleting "violation of narcotics laws," and substituting a drug felony," and by deleting "assault with . . . bodily injury," and substituting "aggravated assault, aggravated involuntary sodomy, attempted murder,".

530 (Labor-Management Reporting and Disclosure Act of 1959, Title VI, § 610, 73 Stat. 541.) Penalty, culpability. This section should be changed by deleting "or attempt to restrain, coerce, or intimidate. Code § 1001 covers it.

629 (Age Discrimination in Employment Act of 1967, § 10, 81 Stat. 605.) This section should be repealed. Code § 1301 covers it. See Code § 201(b).

TITLE 30

Mineral Lands and Mining

Title 30 Sections	Guidelines*
689	(Lead-Zinc Small Producers Stabilization Act of Oct. 3, 1961, § 9, 75 Stat. 768, as amended, 30 U.S.C. § 689.) Subsection (a) should be repealed. Code §§ 1352 and 1732 cover it. Subsection (b) should be repealed. Code §§ 1732 and 1734 cover it.
729	(Federal Metal and Nonmetallic Mine Safety Act, § 10, 80 Stat. 778.) Subsection (k)—consideration should be given to making these subpoenas subject to Code § 1342, so that resort to the court is not always necessary to make out a violation. See Code § 1342 (4) (a) (iv) and (4) (b).
783	(Federal Metal and Nonmetallic Mine Safety Act, § 14, 80 Stat. 782.) Subsection (b)—penalty, culpability. *Cf.* Code § 1613, particularly subsection (2). This subsection should be changed by deleting the last sentence. Code § 403 covers it.
819	(Federal Coal Mine Health and Safety Act of 1969, title I, § 109, 83 Stat. 756.) Subsection (b)—penalty, culpability. *Cf.* Code § 3003. Subsection (c) should be changed by deleting "fines, and imprisonment". Code § 403 covers it. Subsection (d) should be repealed. Code § 1352 covers it. Subsectiton (e)—penalty, culpabality.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 31

Money and Finance

Title 31 Sections	Guidelines*
155	(R.S. § 243, as amended, 31 U.S.C. § 155.) Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor. This section should be amended to conform with Code Chapter 35.
163	(R.S. § 243, as amended, 31 U.S.C. § 163.) See comment to section 155, *supra*.
243	(Military Personnel and Civilian Employees' Claims Act of 1964, § 8, as added, § 5, 79 Stat. 791, 31 U.S.C. § 243.) Penalty, culpability.
395	(Coinage Act of 1965, title I, § 105, 79 Stat. 255.) Subsection (b)—regulatory offense, culpability.
665	(R.S. § 3679, as amended, 31 U.S.C. § 665.) Subsection (i)—penalty, culpability.
1003	(R.S. § 243, as amended, 31 U.S.C. § 1003.) See comment to section 155, *supra*.
1018	(R.S. 244.) Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, which is a Class A misdemeanor.

Sections Transferred Into Title 31

Former Title 18 Sections	Guidelines*
336	Penalty.
337	Penalty, culpability.
475	Regulatory offense.
489	Regulatory offense. The "except" clause should be made a defense. See Code § 103 (2).
492	First paragraph—renumber. Second paragraph—penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

504 ---------- This section should be changed by deleting "Notwithstanding any other provision of this chapter,". Authorization by this section is a defense to a prosecution under Code § 1752. See Code §1752(3).

TITLE 33

Navigation and Navigable Waters

Title 33 Sections	Guidelines*
1	(Act of Aug. 4, 1894, ch. 299, § 4, 28 Stat. 362, as amended, 33 U.S.C. §1.) Regulatory offense. This section should be changed by deleting "and every corporation". Code § 402 covers it.
2	(Act of Mar. 3, 1909, ch. 264, § 5, 35 Stat. 818.) Regulatory offense. This section should be changed by deleting "for which the owner . . . or collectively responsible,". Code Chapter 4 sets forth the rules on complicity.
3	(Act of July 9, 1918, ch. 143, subch. XIX, §§ 1–4, 40 Stat. 892, 893.) Regulatory offense. The third paragraph of this section should be changed by deleting "and every corporation which". Code § 402 covers it.
157a	(Act of Oct. 30, 1963, 77 Stat. 281.) Subsection (c)—penalty, culpability.
158	(Act of June 7, 1897, ch. 4, § 3, 30 Stat. 102, as amended, 33 U.S.C. §158.) Regulatory offense.
244	(Act of Feb. 8, 1895, ch. 64, § 2, 28 Stat. 649, as amended, 33 U.S.C. §244.) Subsection (a)—regulatory offense.
354	(R.S. § 4233B, as added, § 4, 62 Stat. 256, 33 U.S.C. § 354.) Regulatory offense.
368	(Act of Sept. 4, 1890, ch. 875, § 2, 26 Stat. 425.) Penalty, culpability.
391–396	(R.S. §§ 4300–4305, as amended, 33 U.S.C. §§ 391–396.) These provisions are obsolete and should be repealed. Sections 391–395 are covered by the Federal Rules of Criminal Procedure, and section 396 by 28 U.S.C. § 2461.
395	(R.S. § 4304.) This section should be changed to comport with the Code's classification of offenses. See Code § 3002.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

406 (Rivers and Harbors Appropriations Act of 1899, ch. 425, § 12, 30 Stat. 1151, as amended, 33 U.S.C. § 406.) Regulatory offense. This section should be changed by deleting "and every corporation". Code § 402 covers it.

410 (Act of May 9, 1900, ch. 387, §§1–3, 31 Stat. 172.) Regulatory offense.

411 (Rivers and Harbors Appropriations Act of 1899, ch. 425, § 16, 30 Stat. 1153.) Penalty, culpability. This section should be changed by deleting "and every corporation". Code § 402 covers it. This section should further be changed by deleting "or that shall . . . a violation of", matter covered by Code §§ 401 and 403. Note that Code § 1705 would cover some of section 408.

412 (Rivers and Harbors Appropriations Act of 1899, ch. 425, § 16; 30 Stat. 1153.) This section should be changed by deleting "be deemed guilty . . . and shall also". Title 33 U.S.C. § 411 provides the criminal penalties so this language is unnecessary and confusing.

419 (Act of Mar. 3, 1905, ch. 1482, § 4, 33 Stat. 1147.) Regulatory offense. This section should be changed by deleting "or corporation". Code § 402 covers it. The "*Provided further*" clause should be made a defense. See Code § 103(2).

421 Act of June 23, 1910, ch. 359, 36 Stat. 593.) Penalty, culpability. This section should be changed by deleting ", or cause, suffer . . . dumped, or deposited,". Code § 401 covers it. The "*Provided, however,*" clause should be made a defense. See Code § 103(2).

441 (Act of June 29, 1888, ch. 496, § 1, 25 Stat. 209, as amended, 33 U.S.C. § 441.) Penalty, culpability. This section should be changed by deleting "or who shall aid, abet, authorize, or instigate". Code § 401 covers it.

442 (Act of June 29, 1888, ch. 496, § 2, 25 Stat. 209, as amended, 33 U.S.C. § 442.) Penalty, culpability.

443 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. § 443.) Penalty, culpability.

444 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. § 444.) Penalty, culpability. If strict liability is continued, consideration should be given to making this offense an infraction. See Code § 302(2).

445 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. § 445.) Penalty, culpability.

447 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. §447.) This section should be repealed. Code § 1361 covers it.

448 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. § 448.) Penalty, culpability.

449 (Act of June 29, 1888, ch. 496, § 3, 25 Stat. 209, as amended, 33 U.S.C. § 449.) Penalty, culpability.

452 (Rivers and Harbors Appropriations Act of 1894, ch. 299, § 2, 28 Stat. 360.) Penalty, culpability. This section should be changed be deleting "or persons" three times. See 1 U.S.C. §1.

474 (Act of Mar. 6, 1896, ch. 49, §§ 1–3, 29 Stat. 54–55, as amended, 33 U.S.C. § 474.) This section should be changed by deleting "fine" and substituting "civil penalty", to eliminate criminal law terminology in a civil context.

495 (Act of Mar. 23, 1906, ch. 1130, § 5, 34 Stat. 85, as amended, 33 U.S.C. § 495.) Penalty, culpability.

499 (Rivers and Harbors Appropriation Act of 1894, ch. 299, § 5, 28 Stat. 362, as amended, 33 U.S.C. § 499.) Penalty, culpability.

502 (Rivers and Harbors Appropriations Act of 1899, ch. 425, § 18, 30 Stat. 1153, as amended, 33 U.S.C. § 502.) Penalty, culpability. This section should be changed by deleting "corporation" twice. Code § 402 covers it.

507 (Act of Aug. 21, 1935, ch. 597, § 5, 49 Stat. 672.) Penalty, culpability. Note that serious violations are covered by Code § 1732.

519 (Act of June 21, 1940, ch. 409, § 9, 54 Stat. 500.) Penalty, culpability.

533 ---------- (Act of Aug. 2, 1946, ch. 753, title V, § 510, 60 Stat. 849.) Regulatory offense. Consideration should be given to making these subpoenas subject to Code § 1342. Then "or who refuses . . . under said sections," could be deleted.

554 ---------- (Act of Feb. 21, 1891, ch. 252, §§ 1, 2, 26 Stat. 766.) Penalty, culpability.

555 ---------- (Rivers and Harbors Appropriation Act for 1922, ch. 427, § 11, 42 Stat. 1043.) Penalty, culpability. The "*Provided*" clause should be made a defense. See Code § 103 (2). This section should be changed by deleting "or persons". See 1 U.S.C. § 1.

601 ---------- (Rivers and Harbors Appropriation Act of 1888, ch. 860, § 1, 25 Stat. 419.) Regulatory offense, culpability.

682 ---------- (Act of Mar. 1, 1893, ch. 183, § 22, 27 Stat. 510.) Penalty, culpability. This section should be changed by deleting the first sentence. Code § 1705 covers it. This section should further be changed by deleting "persons". See 1 U.S.C. § 1. This section should further be changed by deleting "or corporation, their agents or employees,". Code §§ 401, 402 and 403 cover it.

915 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 15, 44 Stat. 1434.) Subsection (a)—penalty, culpability. Note that serious violations are covered by Code § 1732.

927 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 27, 44 Stat. 1438, as amended, 33 U.S.C. § 927.) Subsection (b)—consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342(4) (a) (iv) and (4) (b).

928 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 28, 44 Stat. 1438.) Subsection (b)—penalty, culpability.

931 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509 § 31, 44 Stat. 1439.) This section should be repealed. Code § 1352 covers it.

937 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 37, 44 Stat. 1442.) Penalty, culpability.

938 ---------- (Longshoremen's and Harbor Workers' Compensation Act, ch. 509, § 38, 44 Stat. 1442, as amended, 35 U.S.C. § 938.) Subsection (a)—penalty, culpability. This subsection should be changed by deleting "shall be also . . . secretary and treasurer," matter covered by § 403. Subsection (b)—penalty, culpability. This subsection should be changed by deleting "and in any . . . for such fine." Code § 403 covers it.

941 ---------- (Longshoremen's and Harbor Workers' Compensation Act. ch. 509, § 41, 44 Stat. 1444, as amended, 33 U.S.C. § 941.) Subsection (f)—regulatory offense. This section should be changed by deleting "or who willfully hinders . . . enforcement of this section," matter covered by Code § 1301. This subsection should further be changed by deleting "and in any case . . . more than $3,000.", matter covered by Code § 403.

990 ---------- (Act of May 13, 1954, ch. 201. § 9, 68 Stat. 96.) Subsection (a) should be repealed. The Saint Lawrence Development Corporation fits within the Code definition of "government." See Code § 109(m) (iv). Property of the Corporation is therefore property of the government. Code §§ 1732 and 1737 cover theft and mishandling of federal government property. Subsection (a) is therefore unnecessary. Subsection (b) should be repealed. Code §§ 1352, 1356 and 1732 cover it. Subsection (c) should be deleted. Code §§ 1361 and 1732 cover most of the conduct mentioned. In addition, the Code does not continue the crime in present 18 U.S.C. § 371, of conspiracy to defraud the government, because most of the conduct is covered by more precisely defined crimes and that conduct which is not covered is too vaguely defined for criminal purposes by "conspiracy with intent to defraud." The phrase "to defeat its purposes" is as vague as "intent to defraud."

1005 ---------- (Oil Pollution Act, 1961, § 6, 75 Stat. 403.) Regulatory offense.

1008 ---------- (Oil Pollution Act, 1961, § 9, 75 Stat. 404, as amended, 33 U.S.C. § 1008.) Subsection (f)—penalty, culpability. Consideration should be given to making these records subject to Code § 1356. Then "and if any . . . months, or both." could be deleted.

TITLE 35

Patents

Title 35 Sections	Guidelines*
24	Relevant, but no change recommended.
25	Subsection (b) should be changed by deleting "1001" and substituting "1352".
33	Penalty, culpability.
186	Penalty, culpability. This section should be changed by deleting "during the period . . . thereto, or whoever," matter covered by Code §§ 1112 to 1115.
187	*Cf.* Code § 602 for justification in criminal case.
292	Subsection (a) penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 36

Patriotic Societies and Observances

Title 36 Sections	Guidelines*
181	(Act of Oct. 17, 1942, ch. 615, § 3, 56 Stat. 796, as amended, 36 U.S.C. § 181.) Regulatory offense, particularly because of section 182. This section should be changed by deleting "or corporation". Code § 402 covers it.
379	(Act of Sept. 21, 1950, ch. 975, § 9, 64 Stat. 901.) Penalty, culpability. The "*Provided, however,*" clause should be made a defense. See Code § 103(2).
728	(Presidential Inaugural Ceremonies Act, ch. 974, § 8, 70 Stat. 1051, as amended, 36 U.S.C. § 728.) Regulatory offense.

Sections Transferred Into Title 36

Former Title 18 Sections	Guidelines*
705	Penalty, culpability. The "except" clause should be made a defense. See Code § 103(2).
706	Penalty, culpability. The fourth paragraph should be made a defense. See Code § 103(2).
917	Penalty, culpability. Consideration should be given to redrafting this offense along the lines of Code § 1381.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 38

Veterans' Benefits

Title 38 Sections	Guidelines*
787	This section should be repealed. Code §§ 1732, 1352, 401, 1002 and 1004 cover it.
3313	Consideration should be given to making these subpoenas subject to Code § 1342 so that resort to the court is not always necessary to make out a violation. See Code § 1342(4)(a)(iv) and (4)(b).
3405	Penalty, culpability ("hard labor"?). This section should be changed by deleting "or attempts to . . . charge or receive," matter covered by Code § 1001.
3501	Penalty. Consideration should be given, however, to repealing this section and adding to the list of special jurisdictional base for theft, in Code § 1740(4), the description of the offender and of the property contained in this section.
3502	This section should be repealed. Code §§ 7132 and 1734 cover it.
3505	Subsection (b)—renumber.

Section Transferred Into Title 38

Former Title 18 Section	Guidelines*
290	Penalty, culpability. This section should be amended to conform with Code Chapter 35.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 39

The Postal Service

Title 39 Sections	Guidelines*
410	Subsection (b)(2) should be changed by deleting "the Postal Service". No section of the new Code deals specifically with the Postal Service.
602	Subsection (c) should be changed by deleting "1699 of title 18" and substituting the new Title 39 section number of present 18 U.S.C. § 1699.
1008	Subsection (a) should be changed by deleting "chapter 83 of title 18" and substituting the new Title 39 section numbers of present 18 U.S.C. ch. 83. Subsection (b) should be repealed. The Title 18 sections referred to are covered by the Code without specific reference to the Postal Service.
2201	This section should be changed by deleting "chapter 307" and substituting the new Title 18 section numbers of present 18 U.S.C. ch. 307.
3001	Subsections (a) and (e)—renumber.
3003	Subsection (a)—renumber.
3008	Subsection (e)—relevant, but no change recommended.
3011	Subsection (e) should be changed by deleting "1461 or 1463" and substituting "1851".
5206	Subsections (a) and (b) should be changed by deleting "fine" and substituting "impose a civil penalty" and subsection (c) should be changed by deleting "fine" and substituting "civil penalty", to eliminate criminal law terminology in a civil context.
5403	This section should be changed by deleting "fines" and substituting "civil penalties", to eliminate criminal law terminology in a civil context.
5603	Penalty, culpability.
5604	See comment to section 5403, *supra*.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

Sections Transferred Into Title 39

Former Title 18 Sections	Guidelines*
440	Penalty, culpability. Note that this offense probably should not be a Class A misdemeanor as it involves less serious behavior than Code § 1372 which is a Class A misdemeanor.
1692	No change.
1693	Penalty, culpability.
1694	Penalty, culpability.
1695	Penalty, culpability.
1696	Subsections (a) and (b)—penalty, culpability. The second paragraph of subsection (a) and subsection (c) should be made defenses. See Code § 103(2).
1697	Penalty.
1698	Penalty, culpability.
1699	Penalty, culpability.
1700	Penalty, culpability.
1703	Penalty, culpabilty. Note that this offense probably should not be a Class A misdemeanor as it involves less serious behavior than Code § 1564, which is a Class A misdemeanor.
1704	Penalty, culpability. This section should be changed by deleting so much of the first paragraph as does not deal with property owned by or in the custody of the United States, matter covered by Code § 1732.
1712	Penalty, culpability. This section should be changed by deleting the first paragraph. Code §§ 1732 and 1352 cover it. This section should further be changed by deleting ", or attempts to induce,". Code § 1001 covers it.
1713	Penalty, culpability.
1715	Penalty, This section should be amended to conform with the regulatory scheme banning handguns, recommended by a majority of the Commission. See Final Report at 246.
1716	Penalty. This section should be changed by deleting the last two paragraphs and substituting therefor a provision that makes commission of the offense defined in the preceding paragraph the basis for jurisdiction for crimes defined in Code Chapters 16 and 17.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

1716A	Penalty.
1717	Subsection (a)—renumber. Subsection (b)—penalty, culpability. This subsection should be changed by deleting "or attempts to use." Code § 1001 covers it.
1718	Penalty.
1721	Penalty, culpability. Note that serious violations are covered by Code § 1732.
1722	Penalty. Note that serious violations are covered by Code § 1733. See particularly Code § 1735(5).
1723	See comment to section 1722, *supra*.
1724	No change.
1725	Penalty, culpability. Note that serious violations are covered by Code § 1733. See particularly Code § 1735(5).
1726	See comment preceding present 18 U.S.C. § 643 to be transferred to Title 5. Regulatory offense.
1727	See comment to section 1726, *supra*.
1728	Penalty, culpability. Note that serious violations are covered by Code § 1732.
1729	Penalty, culpability.
1730	Penalty, culpability. The second paragraph should be made a defense. See Code § 103(2).
1731	Penalty, culpability. This section should be changed by deleting ", and every owner . . . the violation of,". Code Chapter 4 sets forth the rules on complicity.
1732	Penalty, culpability. This section should be amended to conform with Code Chapter 35.
1733	Penalty. Note that serious violations are covered by Code § 1733.
1734	Penalty, culpability.
1735	Subsection (a)—penalty, culpability.
1736	No change.
1737	Subsection (a)—penalty, culpability.
3061	No change.

TITLE 40

Public Buildings, Property, and Works

Title 40 Sections	Guidelines*
13m	(Act of Aug. 18, 1949, ch. 479, § 8, 63 Stat. 617.) Regulatory offense. This section should be changed by deleting the "*Provided*," clause, which is covered by Code § 1705.
53	(Act of Sept. 1, 1916, ch. 433, § 1, 39 Stat. 693, as amended, 40 U.S.C. § 53.) Penalty, culpability.
56	(R.S. § 1803.) Penalty, culpability.
101	(Act of July 29, 1892, ch. 320, § 15, 27 Stat. 325, as amended, 40 U.S.C. § 101.) This section should be repealed. Code § 209 specifies the rules on assimilation. Code §§ 1705, 1732 and 1861 cover the criminal aspects of the section.
193	(R.S. § 1820.) Regulatory offense.
193f	(Act of July 31, 1946, ch. 707, § 6, 60 Stat. 718, as amended, 40 U.S.C. § 193f.) Subsection (b) should be changed by deleting paragraphs (3), (4), (5) and (6). Code §§ 1301, 1344 and 1861 cover paragraphs (3) and (4). Code § 1301 covers paragraph (5). Code Chapters 16 and 17 cover paragraph (6) with a precision lacking here.
193h	(Act of July 31, 1946, ch. 707, § 8, 60 Stat. 719, as amended, 40 U.S.C. § 193h.) Subsection (a)—penalty, culpability. Note that Code § 1814 covers some of the conduct in section 193f(a)(1)(A). Subsection (a) should be changed by deleting ", and any attempt to commit any such violation,". Code § 1001 covers it. Subsection (b)—penalty, culpability. Note that Code § 1705 covers some of the conduct in section 193e. Subsection (b) should be changed by deleting ", and any attempt to commit any such violation, ". Code § 1001 covers it. Much of subsection (c) is unnecessary in that it states general principles and could thus be repealed.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

193s	(Act of Oct. 24, 1951, ch. 559, § 6, 65 Stat. 635, as amended, 40 U.S.C. § 193s.) Regulatory offense. This section should be changed by deleting the "*Provided*," clause, which is covered by Code § 1705.
212b	(Act of July 31, 1946, ch. 707, § 14, 60 Stat. 720, as amended, 40 U.S.C. § 212b.) Subsection (a)—regulatory offense. Subsection (b) should be changed by deleting the "*Provided*," clause, which is covered by Code § 209.
318c	(Act of June 1, 1948, ch. 359, § 4, 62 Stat. 281.) Regulatory offense.
332	(Act of Aug. 13, 1962, title I, § 106, 76 Stat. 359.) Regulatory offense, particularly because of section 331, culpability.

TITLE 41

Public Contracts

Title 41 Sections	Guidelines*
39	(Act of June 30, 1936, ch. 881, § 5, 49 Stat. 2038, as amended, 41 U.S.C. § 39.) Consideration should be given to making these orders subject to Code § 1342 so that report to the court is not always necessary to make out a violation. See Code § 1342 (4)(a)(iv) and (4)(b).
51	(Act of March 8, 1946, ch. 80, § 1, 60 Stat. 37, as amended, 41 U.S.C. § 51.) See comment to section 54, *infra*.
54	(Act of March 8, 1946, ch. 80, § 4, 60 Stat. 38, as amended, 41 U.S.C. § 54.) Penalty. Consideration should be given to incorporating this section into section 51. Consideration should be given to redrafting section 51 along the lines of Code § 1758 or to adding this jurisdiction to Code § 1758 and deleting section 51 and this section.

Sections Transferred Into Title 41

Former Title 18 Sections	Guidelines*
435	Penalty.
441	Penalty, culpability.
443	Consideration should be given to making these records subject to Code § 1356. Then all but the last two paragraphs could be deleted. The last paragraph—renumber.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 42

The Public Health and Welfare

Title 42 Sections	Guidelines*
246	(Public Health Service Act, ch. 373, title III, § 314, 58 Stat. 693, as amended, 42 U.S.C. § 246.) Subsection (7)(f)(A)—reference to Title 18 provisions should be changed to Code §§ 1362, 1363, 1365, 1372 and to the numbering of the Title 18 sections transferred into Title 5, Consideration should be given to deletion from Title 42 and transfer into Title 18.
250	(Public Health Service Act, ch. 373, title III, § 323, 58 Stat. 697.) Substitute "7103" for "751 and 752." Sections 751 and 752 were repealed in 1948 and covered by 18 U.S.C. § 4005, which the guidelines renumber as 7103 within Part E of Title 18. Also, substitute "correctional facilities" for "penal and correctional institutions." Consideration should be given to transfer into Title 18.
257	(Public Health Service Act, ch. 373, title III, §341, 58 Stat. 698, as amended, 42 U.S.C. § 257.) Reference to the Federal Youth Corrections Act should be deleted. See the guidelines for present 18 U.S.C. § 5005–26.
259	(Public Health Service Act, ch. 373, title III, § 343, 58 Stat. 699, as amended, 42 U.S.C. § 259.) Reference to 18 U.S.C. §§ 710–712a and § 744h should be deleted if good-time and employment allowances are discontinued. References to 18 U.S.C. §§ 714–723c should be changed to Code §§3401–03 and the new numbers given to present 18 U.S.C. §§ 3570 and 4281.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

261 ---------- (Public Health Service Act, ch. 373, title III, § 345, 58 Stat. 701, as amended, 42 U.S.C. § 261.) Trafficking in narcotics generally is covered by Code §§ 1821–29. Consideration should be given to retaining these provisions on introduction of drugs as a new provision in the Code or as part of special contraband provisions for correctional facilities. Introducing contraband for escape, aiding escape, etc. are covered by Code §§ 1303, 1306 and 1309, but the provisions do not cover voluntary commitments. If criminal penalties are continued in the area of voluntary commitments for the introduction of contraband, consideration should be given to amending Code § 1306 and grading appropriately. Nondrug or escape contraband should be retained with penalty adjustment.

262 ---------- (Public Health Service Act, ch. 373, title III, § 351, 58 Stat. 702, as amended, 42 U.S.C. § 262.) Subsection (a)—substitute "traffics" for the language describing the criminal behavior. See Code § 1759 (2)(a). Subsection (b)—culpability. Subsection (e)—delete, covered by Code §§ 1301, 1302. Subsection (f)—penalty. Retain authority to punish violation. Delete "or aid and abet in violating.". Code § 401 covers it.

263 ---------- (Public Health Service Act, ch. 373, title III, § 353, as added, § 5(a), 81 Stat. 536, 42 U.S.C. § 263.) Subsection (b)—culpability. Subsection (h)—penalty, culpability.

263i ---------- (Public Health Service Act, ch. 373, title III, § 360A, as added, § 2(3), 82 Stat. 1182, 42 U.S.C. § 263i.) Subsection (e)—delete reference to section 1905 of Title 18, matter covered by Code § 1371. Remainder may be retained as "governmental assurance of confidence."

263j ---------- (Public Health Service Act, ch. 373, title III, § 360B, as added, § 2(3), 82 Stat. 1184, 42 U.S.C. § 263j.) Consideration should be given to making subsections (a) (3) and (5) subject to Code § 1356.

271 ---------- (Public Health Service Act, ch. 373, title III, § 368, 58 Stat. 706, as amended, 42 U.S.C. § 271.) Penalty.

402 ---------- (Social Security Act, ch. 531, title II, § 202, 49 Stat. 623, as amended, 42 U.S.C. § 402.) Subsection (u)(1)(A)—renumber. Subsection (u)(1)(B)—renumber according to guidelines for Title 50.

405 ---------- (Social Security Act, ch. 531, title II, § 205, 49 Stat. 624, as amended, 42 U.S.C. § 405.) Subsection (e)—comport with Code Chapter 13.

406 ---------- (Social Security Act, ch. 531, title II, § 206, 49 Stat. 624, as amended, 42 U.S.C. § 406.) Subsection (a)—culpability, penalty. Delete the reference to fraud. Code §§ 1732 and 1733 cover it. Subsection (b)(2)—penalty.

408 ---------- (Social Security Act, ch. 531, title II, § 208, 49 Stat. 625, as amended, 42 U.S.C. § 408.) This section, with the exception of subsection (d), ought to be repealed as covered by Code §§ 1353, 1732, 1734 and 1751. Subsection (d) may be retained as an offense.

1306 ---------- (Social Security Act, ch. 531, title XI, § 1106, as added, ch. 666, title VIII, § 802, 53 Stat. 1398, and amended, 42 U.S.C. § 1306.) Subsection (a) should be changed by deleting the last sentence, matter covered by Code § 1371. Subsection (c)(3) should be changed by substituting reference to Code § 1371 for "in the second sentence of subsection (a) of this section".

1307 ---------- (Social Security Act, ch. 531, title XI, § 1107, as added, ch. 666, title VIII, § 802, 52 Stat. 1398, and amended, 42 U.S.C. § 1307.) Subsection (a)—delete. Code §§ 1352 and 1732 cover it. Subsection (b)—penalty. This subsection is in part covered by Code § 1381.

1400f ---------- (Temporary Unemployment Compensation Act of 1958, title II, § 203, 72 Stat. 174.) Subsection (a)—repeal. Code §§ 1352 and 1732 cover it.

1400s ---------- (Temporary Extended Unemployment Compensation Act of 1961, § 9, 75 Stat. 12.) Subsection (a)—repeal. Code §§1352 and 1732 cover it.

1422 ---------- (United States Housing Act of 1957, ch. 896, § 23, formerly § 22, 50 Stat. 899, as amended, 42 U.S.C. § 1422.) This section should be repealed. The definition of "government agency" in Code § 109(n) covers it.

1712 ---------- (Act of December 2, 1942, ch. 668, title II, § 202, 56 Stat. 1034.) Consideration should be given to substituting reference to Code sections and "cognate provisions of other codes" for "any subversive act".

1874	(National Science Foundation Act of 1950, ch. 171, § 16, formerly § 15, 64 Stat. 156, as amended, 45 U.S.C. § 1874.) Subsection (d)(1)(B)—substitute "1352" for "1001". Subsection (d)(2)(B)—penalty. See Code § 3007.
1973g	(Voting Rights Act of 1965, § 9, 79 Stat. 441.) Subsection (c)—conform to Code §§ 1341–1349.
1973i	(Voting Rights Act of 1965, § 11, 79 Stat. 441.) Subsection (a)—delete, covered by Code § 1531. Subsection (b)—delete, covered by Code § 1511. Subsection (c)—delete, covered by Code §§ 1531–32. If retained, consideration should be given to making the "*Provided, however,*" clause a defense. See Code § 103(2). Subsection (d)—delete, covered by Code §§ 1531 and 1352.
1713	(Act of December 2, 1942, ch. 668, title II, § 203, 56 Stat. 1034.) This section should be repealed. Code §§ 1732, 1352 and 401 cover it.
1857f–4	(Clean Air Act, ch. 368, title I, § 205, as added, title I, § 101(8), 79 Stat. 994, and amended, 42 U.S.C. § 1857f–4.) Culpability.
1857f–6	(Clean Air Act, ch. 360, title II, § 207, as added, title I, § 101(8), 79 Stat. 994, and amended, 42 U.S.C. § 1857f–6.) Consideration should be given to adding a penalty provision to subsection (a). Subsection (b)—renumber and make subject to Code § 1371.
1857f–6c	(Clean Air Act, ch. 360, title II, § 210, as added, § 2, 81 Stat. 502, 42 U.S.C. § 1857f–6c.) Subsection (c)—delete reference to section 1905 of Title 18 and make subject to Code § 1371.
1973j	(Voting Rights Act of 1965, § 12, 79 Stat. 446, as amended, 42 U.S.C. § 1973j.) Subsection (a)—delete, covered by Code §§ 1511, 1531 and 401. Subsection (b)—consideration should be given to making subject to Code §§ 1356 or 3007. Subsection (d)—delete, covered by Code § 1004.
1973*l*	(Voting Rights Act of 1965, § 14, 79 Stat. 443.) Subsection (a)—consideration should be given to changing "1995 of this title" to the Code contempt provisions, Code §§ 1341–1349.

1973aa–1	(Voting Rights Act of 1965, title II, § 202, as added, § 6, 84 Stat. 316, 42 U.S.C. § 1973aa–1.) Subsection (i)—amend according to the guideline for section 1973i (c), *supra*.
1973aa–3	(Voting Rights Act of 1965, title II, § 204, as added, § 6, 84 Stat. 317, 42 U.S.C. § 1973aa–3). Penalty. Delete "or attempt to deprive," matter covered by Code § 1001. Consideration should be given to making the commission of this crime the basis for jurisdiction over crimes in Code Chapters 16 and 17, or to bringing this section into Code Chapter 15.
1973bb–2	(Voting Rights Act of 1965, title III, § 303, as added, § 6, 84 Stat. 318, 42 U.S.C. § 1973bb–2.) Subsection (b)—see comment to section 1973aa–3, *supra*.
1974	(Civil Rights Act of 1960, title III, § 301, 74 Stat. 88). Culpability. This section should also be made subject to Code § 1355.
1974a	(Civil Rights Act of 1960, title III, § 302, 74 Stat. 88). This section should be made subject to Code §§ 1355, 1732, 1751 and 1753.
1975a	(Civil Rights Act of 1957, pt. I, § 102, 71 Stat. 634, as amended, 42 U.S.C. § 1975a.) Subsection (g)—penalty, culpability.
1975d	(Civil Rights Act of 1957, pt. 1, § 105, 71 Stat. 636, as amended, 42 U.S.C. § 1975d.) Subsection (d)—renumber. Subsection (g)—conform to Code contempt provisions, Code §§ 1341–1343.
1987	(R.S. § 1982, as amended, 42 U.S.C. § 1987.) Renumber references to Revised Statutes. (The present Title 18 sections derived from these Revised Statutes can be found in this section's "References in Text.")
1990	(R.S. §§ 1985, 5517.) Substitute "civil penalty" for "fine" to eliminate criminal law terminology in a civil context.
1995	(Civil Rights Act of 1957, pt. V, § 151, 71 Stat. 638.) Retain the first paragraph if this special treatment is desired; if so, penalty. The second paragraph should be made subject to Code §§ 1341–45. The third paragraph should be deleted.
2000e–5	(Civil Rights Act of 1964, title VII, § 706, 78 Stat. 259.) Subsection (a)—penalty.

2000e–8	(Civil Rights Act of 1964, title VII, § 709, 78 Stat. 262.) Subsection (e)—retain the prohibition but delete "Any officer or . . . than one year,", matter covered by Code § 1371.
2000e–10	(Civil Rights Act of 1964, title VII, § 711, 78 Stat. 265.) Subsection (b)—penalty, culpability. Consideration should be given to making this a regulatory offense. See Code § 1006.
2000e–12	(Civil Rights Act of 1964, title VII, § 713, 78 Stat. 265.) Subsection (b)—consideration should be given to making these provisions defenses or affirmative defenses. See Code § 103.
2000g–2	(Civil Rights Act of 1964, title X, § 1003, 78 Stat. 267.) Subsection (b)—retain the prohibition but delete "Any officer or . . . than one year.", matter covered by Code § 1371.
2000h	(Civil Rights Act of 1964, title XI, § 1101, 78 Stat. 268.) First paragraph—penalty. The second paragraph should be made subject to Code §§ 1341–45. The third paragraph should be deleted.
2000h–1	(Civil Rights Act of 1964, title XI, §1102, 78 Stat. 268.) Consideration should be given to comporting this section with Code Code § 1341(3).
2271	(Act of Aug. 1, 1946, ch. 724, § 221, as added, § 1, 68 Stat. 958, and amended, 42 U.S.C. § 2271.) Subsecion (c)—add a reference to Code § 1121 and a general reference to any prosecution involving Restricted Data on nuclear energy under Title 18.
2272	(Act of Aug. 1, 1946, ch. 724, § 222, as added, § 1, 68 Stat. 958, and amended, 42 U.S.C. § 2272.) Delete "except that whoever . . . $20,000 or both," matter covered by Code § 1121. Remainder—penalty, culpability. Delete references to attempt and to conspiracy, matter covered by Code §§ 1001 and 1004.
2273	(Act of Aug. 1, 1946, ch. 724, § 223, as added, § 1, 68 Stat. 958, and amended, 42 U.S.C. § 2273). See guidelines to section 2272, *supra*. The relevant Code sections here, however, with respect to coverage of the "except" clause, are §§ 1106–08 and 1113.

2274	(Act of Aug. 1, 1946, ch. 724, § 224, as added, § 1, 68 Stat. 958, and amended, 42 U.S.C. § 2274.) This section should be repealed. Code §§ 1112 and 1113 cover it.
2275	(Act of Aug. 1, 1946, ch. 724, § 225, as added, § 1, 68 Stat. 959, and amended, 42 U.S.C. § 2275.) This section should be repealed. Code §§ 1112, 1113 and 1116 cover it.
2276	(Act of Aug. 1, 1946, ch. 724, § 226, as added, § 1, 68 Stat. 959, and amended, 42 U.S.C. § 2276.) Repeal. Code §§ 1105–07, 1112, 1113, 1116 and 1121 cover it.
2277	(Act of Aug. 1, 1946, ch. 724, § 227, as added, § 1, 68 Stat. 959.) Culpability.
2278	(Act of Aug. 1, 1946, ch. 724, § 228, as added, § 1, 68 Stat. 959, 42 U.S.C. § 2278.) Consideration should be given to comporting with Code § 701.
2278a	(Act of Aug. 1, 1946, ch. 724, § 229, as added, § 6, 70 Stat. 1070, 42 U.S.C. § 2278a.) Subsection (b)—regulatory offense. Subsection (c)—penalty, culpability. *Cf.* Code § 1712.
2278b	Act of Aug. 1, 1946, ch. 724, § 230, as added, § 6, 70 Stat. 1070, 42 U.S.C. § 2278b). Penalty, culpability.
2281	(Act of Aug. 1, 1946, ch. 724, § 233, formerly § 231, as added, § 1, 68 Stat. 960, as amended, 42 U.S.C. § 2281.) Relevant, but no change recommended.
2462	(Act of Nov. 18, 1969, § 6, 83 Stat. 199, as amended, 42 U.S.C. § 2462.) Subsection (g)—culpability, penalty.
2515	(Area Redevelopment Act, § 18, 75 Stat. 60.) Subsections (a) and (b)(1)–(3) should be repealed. Code §§ 1731 *et seq.* cover it. Subsection (b)(4) should be repealed. Code §§ 1371 and 1372 cover it. Some form of subsection (b)(4) should be retained to assure the confidential character of the information.
2703	(Economic Opportunity Amendments of 1967, title III, § 301, 81 Stat. 728.) Subsection (a) should be repealed. Code §§ 1731 *et seq.* cover it. Subsection (b)—penalty.
3188	(Public Works and Economic Development Act of 1965, title V, § 508, 79 Stat. 568.) Subsection (a)—penalty, culpability. Subsection (c)—penalty, culpability. Subsections (d) and (e)—renumber.

3220	(Public Works and Economic Development Act of 1965, title VII, § 710, 79 Stat. 574.) Subsections (a) and (b)(1)–(3) should be repealed. Code §§ 1731 *et seq.* cover it. Subsection (b)(4) should be repealed. Code §§ 1371 and 1372 cover it. Some form of subsection (b)(4) should be retained to assure the confidential character of the information.
3425	(Narcotic Addict Rehabilitation Act of 1966, title III, § 315, 80 Stat. 1448.) Consideration should be given to adding reference to this type of commitment to Code § 1306 as subsection (3) and deleting it from Title 42.
3426	(Narcotic Addict Rehabilitation Act of 1966, title III, § 316, 80 Stat. 1448.) This section should be repealed. Code § 1352 covers it.
3610	(Act of April 11, 1968, title VIII, § 810, 82 Stat. 85.) Subsection (a)—delete the last sentence. Code § 1371 covers it. The subsection should be retained to assure the confidential character of the information.
3611	(Act of April 11, 1968, title VIII, § 811, 82 Stat. 87.) Subsection (f)—delete the first sentence and substitute therefor provisions making the Secretary an "authorized agency" under Code § 1342(4)(b). Delete everything in second sentence except what is necessary to retain the offense of neglecting or failing to make entries. Consider penalty, culpability with respect to this offense.
3631	(Act of April 11, 1968, title IX, § 901, 82 Stat. 89.) This section should be repealed. Code §§ 1512–1515 cover it.

Sections Transferred Into Title 42

Former Title 18 Sections	Guidelines*
799	Penalty, culpability.
1012	Penalty, culpability. Delete the first paragraph. Code §§ 1352 and 1356 cover it. Delete the second paragraph, matter more appropriately covered by Code §§ 1361–63.

*For meaning of "penalty," culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 43

Public Lands

Title 43 Sections	Guidelines*
104	(Act of Jan. 31, 1903, ch. 344, § 3, 32 Stat. 790, as amended, 43 U.S.C. § 104.) This section should be replaced by a provision which explicitly makes failure to appear subject to Code § 1342 and authorizes the Secretary to apply to a judge for a direction to testify so that refusal will be subject to prosecution under Code § 1343.
105	(Act of Jan. 31, 1903, ch. 344, § 4, 32 Stat. 790, as amended, 43 U.S.C. § 105.) This section should be changed to conform to Section 104 as revised.
183	(R.S. § 2300, as amended, 43 U.S.C. § 183.) Penalty, culpability. The fourth paragraph should be changed by deleting "corporation", matter covered by Code § 402.
254	(R.S. § 2294, as amended, 43 U.S.C. § 254.) The first paragraph should be changed by deleting the sentence "If any witness . . . of the Interior," matter covered by Code § 1352. The second paragraph—penalty, culpability. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code §§ 1362 and 1363, which are Class A misdemeanors.
255	(R.S. § 2293, as amended, 43 U.S.C. § 255.) Relevant but no change recommended.
315a	(Taylor Grazing Act, ch. 865, § 2, 48 Stat. 1270.) Regulatory offense, culpability.
362	(Act of Aug. 21, 1916, ch. 360, § 3, 39 Stat. 518.) This section should be repealed. Code §§ 1705 and 1732 cover it.
1064	(Act of Feb. 25, 1885, ch. 149, § 4, 23 Stat. 322, as amended, 43 U.S.C. § 1064.) Penalty. This section should be changed by deleting "whether, as owner . . . any violation hereof," matter covered by Code § 401.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

1096	(Act of May 2, 1890, ch. 182, § 24, 26 Stat. 92.) This section, which would otherwise require revision, should be repealed as obsolete.
1191	(R.S. §2471.) This section should be repealed. Code §§ 1352, 1732 and 1751–1753 cover it, to the extent it is not obsolete.
1212	(Act of June 3, 1948, ch. 392, § 2, 62 Stat. 301.) This section should be repealed. Code §§ 1352 and 1732 cover it. Note that 18 U.S.C. § 80 was repealed in 1948.
1333	(Outer Continental Shelf Lands Act, ch. 345, § 4, 67 Stat. 462.) Subsection (a)(2)—relevant but no change recommended. Subsection (e)(2)—regulatory offense. This subsection should be changed by deleting "corporation", matter covered by Code § 402.
1334	(Outer Continental Shelf Lands Act, ch. 345, § 5, 67 Stat. 464.) Subsection (a)(2)—regulatory offense, culpability.

Sections Transferred Into Title 43

Former Title 18 Sections	Guidelines*
714	Penalty, culpability
1860	Penalty. The first paragraph should be changed by deleting ", or attempts to bargain, contract, or agree", matter covered by Code § 1001. The second paragraph should be changed by deleting "combination or unfair management," as inappropriate definitions and bases for criminal liability. In addition, "or attempts to hinder or prevent," should be deleted, matter covered by Code § 1001.
1861	Penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 44

Public Printing and Documents

Title 44 Sections	Guidelines*
3508	Relevant, but no change recommended.
3511	Relevant, but no change recommended.

Section Transferred Into Title 44

Former Title 18 Section	Guidelines*
442	Penalty. Note that this offense probably should not be a Class A misdemeanor because it involves less serious behavior than Code § 1372, on speculating and wagering on official action or confirmation, which is a Class A misdemeanor.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 45

Railroads

Title 45 Sections	Guidelines*
39	(Act of May 6, 1910, ch. 208, § 2, 36 Stat. 351.) Regulatory offense.
60	(Employers' Liability Act of 1908, ch. 149, § 10, as added, ch. 685, § 3, 53 Stat. 1404, 45 U.S.C. § 60.) Penalty.
64a	(Hours of Service Act, ch. 2939, § 5, as added, § 1, 83 Stat. 464, 45 U.S.C. § 64a.) Subsection (c) should be changed by substituting "suits" for "prosecutions" to eliminate criminal law terminology in a civil context.
65	(Act of Sept. 3, 5, 1916, ch. 436, § 1, 39 Stat. 721.) The "except" and "*Provided*" clauses could be considered defenses to the offense defined in section 66. See Code § 103(2).
66	(Act of Sept. 3, 5, 1916, ch. 436, § 4, 39 Stat. 722.) Penalty.
81	(R.S. § 5256.) Penalty, culpability.
83	(Act of July 2, 1884, ch. 216, § 15, 13 Stat. 362, as amended, 45 U.S.C. § 83.) Second paragraph—penalty.
152	(Railway Labor Act, ch. 347, § 2, 44 Stat. 577, as amended, 45 U.S.C. § 152.) Tenth paragraph—"officer, or agent" should be deleted, as matter covered by Code §§ 402 and 403. Penalty, culpability.
228m	(Railway Retirement Act of 1935, ch. 812 § 13, 49 Stat. 973, as amended, 45 U.S.C. § 228m.) Subsection (a)—penalty, culpability. This subsection should be changed by deleting "or who shall knowingly make . . . for the purposes of such sections," matter covered by Code §§ 1352 and 401 and by deleting "or who shall knowingly make or aid . . . under such sections," matter covered by Code §§ 1732 and 401.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

354	(Railway Unemployment Insurance Act, ch. 680, § 4, 52 Stat. 1098, as amended, 45 U.S.C. § 354.) Subsection (a–2) (i) (B) should be changed by deleting everything after the word "accepted" as superfluous, in lieu of amending because of the revision of section 359(a).
355	(Railway Unemployment Insurance Act, ch. 680, § 5, 52 Stat. 1099, as amended, 45 U.S.C. § 355.) Subsection (i)—penalty.
359	(Railway Unemployment Insurance Act, ch. 680, § 9, 52 Stat. 1103.) Subsection (a)—penalty, culpability. This subsection should be changed by substituting "A person" for "Any officer . . . hereinbefore defined," which is unnecessarily prolix. This subsection should also be changed by deleting "or who shall knowingly make or aid . . . under this chapter," matter covered by Code §§ 1352, 1732 and 401. Subsection (b)—penalty. Subsection (c)—regulatory offense.
362	(Railway Unemployment Insurance Act, ch. 680, § 12, 52 Stat. 1107, as amended, 45 U.S.C. § 362.) Relevant, but no change recommended.

TITLE 46

Shipping

Title 46 Sections	Guidelines*
7	(R.S. § 5294, as amended, 46 U.S.C. § 7.) This section should be changed by deleting "fine," a term which should be used to denote only the money penalty imposed by a court in a criminal case. As such a penalty a fine would thus not be subject to remission or mitigation by the Commandant of the Coast Guard or the Commissioner of Customs.
8	(Act of June 26, 1884, ch. 121, § 26, 23 Stat. 59, as amended, 46 U.S.C. § 8.) This section should be changed by deleting "fine" three times, for the reasons set forth in the guideline to section 7, *supra*.
22	(R.S. § 4144.) This section should be changed by deleting "but the master . . . penalty of $1,000," matter covered by Code §§ 1351 and 1352.
45	(R.S. § 4177, as amended, 46 U.S.C. § 45.) This section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.
58	(R.S. § 4187, as amended, 46 U.S.C. § 58.) This section should be repealed. Code §§ 1352, 1356, 1362, and 1753 cover it.
59	(R.S. § 4188.) This section should be changed by deleting "for the first offense . . . under the United States" from this ancient provision, in view of modern Civil Service laws, if reconsideration does not lead to repeal in its entirety. In any event consideration should be given to treating such neglect or refusal as a civil matter.
62	(R.S. § 4191.) This section should be repealed. Its reference to "Mediterranean" passport or certificate of registry appears to be obsolete. In any event submission of false papers to a United States agency is covered by Code § 1352.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

77	(R.S. § 4153, as amended, 46 U.S.C. § 77.) The last paragraph of this section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.
83i	(Act of Sept. 29, 1965, § 13, 79 Stat. 892.) This section should be repealed. Code § 1352 covers it.
85f	(Act of Mar 2, 1929, ch. 508, § 7, 45 Stat. 1494, as amended, 46 U.S.C. § 85f.) The last sentence should be changed by deleting "or fine," to eliminate criminal law terminology in a civil context.
85g	(Act of March 2, 1929, ch. 508, § 8, 45 Stat. 1494, as amended, 46 U.S.C. § 85g.) Subsections (a), (b) and (c) should be changed by substituting "violation" for "offense" to eliminate criminal law terminology in a civil context. Subsection (d)—penalty, culpability. This subsection should also be changed by deleting "or attempt to cause," matter covered by Code § 1001. Subsection (e)—penalty, culpability. This subsection should also be changed by deleting "or shall suffer . . . or obliterate," matter covered by Code §§ 401–402.
88f	(Coastwise Load Line Act, 1935, ch. 747, § 7, 49 Stat. 889, as amended, 46 U.S.C. § 88f.) The last sentence of this section should be changed by deleting "or fine," to eliminate criminal law terminology in a civil context.
88g	(Coastwise Load Line Act, 1935, ch. 747, § 8, 49 Stat. 890, 46 U.S.C. § 88g.) See guidelines for section 85g, *supra*.
91	(R.S. § 4197, as amended, 46 U.S.C. § 91.) This section should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.
101	(R.S. § 4213, as amended, 46 U.S.C. § 101.) This section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.
142	(Act of June 19, 1886, ch. 421, § 17, 24 Stat. 82.) This section should be changed by deleting "and any person opposing . . . exceeding two years," matter covered by Code §§ 1301, 1366, and 401.

143 ..... (Act of March 3, 1887, ch. 339, 24 Stat. 475.) Penalty, culpability.

151 ..... (Passenger Act of 1882, ch. 374, § 1, 22 Stat. 186, as amended, 46 U.S.C. § 151.) Penalty, culpability.

152 ..... (Passenger Act of 1882, ch. 374, § 2, 22 Stat. 186.) The last paragraph of this section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.

154 ..... (Passenger Act of 1882, ch. 374, § 4, 22 Stat. 188.) Penalty, culpability.

156a ..... (Passenger Act of 1882, ch. 374, § 8, 22 Stat. 189, as amended, 46 U.S.C. § 156a.) Penalty, culpability.

157 ..... (Passenger Act of 1882, ch. 374, § 7, 22 Stat. 189.) Penalty, culpability.

158 ..... (Passenger Act of 1882, ch. 374, § 9, 22 Stat. 189, as amended, 46 U.S.C. § 158.) The second paragraph of this section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.

161 ..... (Passenger Act of 1882, ch. 374, § 12, 22 Stat. 191.) Penalty, culpability.

162 ..... (Passenger Act of 1882, ch. 374, § 13, 22 Stat. 191, as amended, 46 U.S.C. § 162.) Relevant, but no change recommended. Fines may be imposed under criminal provisions in the sections referred to; and it appears to be appropriate to impose a lien on the vessel subject to their collection.

163 ..... (Passenger Act of 1882, ch. 120, §§ 1–3, 31 Stat. 58, as amended, 46 U.S.C. § 163.) Regulatory offense.

170 ..... (R.S. § 4472, as amended, 46 U.S.C. § 170.) Subsection (14)—regulatory offense. Subsection (15) should be deleted. Code § 1613 covers it to some extent. Consideration should be given to substituting a provision that when an offense defined in Code §§ 1601–1603 and 1612 is committed in the course of committing an offense defined in this section, there shall be federal jurisdiction over the Code offenses.

194 ..... (Act of Feb. 13, 1893, ch. 105, § 5, 27 Stat. 446.) This section should be changed by substituting "civil penalty" for "fine" (twice), and "has committed" for "is guilty of" (twice), to eliminate criminal law terminology in a civil context.

203 ..... (R.S. § 4292.) This section should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

224a ..... (R.S. § 4438a, as added, ch. 316, 53 Stat. 1049, and amended, 46 U.S.C. § 224a.) Subsection (10) should be changed by deleting "fine or" for the reasons set forth in the guidelines to section 7, *supra*.

229e ..... (Act of May 12, 1948, ch. 286, § 5, 62 Stat. 233.) This section should be changed by deleting the third paragraph, which deals with material covered by Code §§ 1351–1352. Last paragraph—penalty, culpability; felonious aspects of this offense are covered by Code § 1751.

229f ..... (Act of May 12, 1948, ch. 286, § 7, 62 Stat. 234.) This section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.

231 ..... (R.S. § 4445, as amended, 46 U.S.C. §231.) See guidelines for section 229e, *supra*.

232 ..... (R.S. § 4446, as amended, 46 U.S.C. § 232.) This section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.

235 ..... (Act of May 11, 1918, ch. 72, § 3, 40 Stat. 549.) The last sentence should be changed by substituting "committing it" for "guilty thereof," to eliminate criminal law terminology in a civil context.

239 ..... (R.S. § 4450, as amended, 46 U.S.C. § 239.) Subsection (i) should be repealed. Code § 1321 covers it.

239b ..... (Act of July 15, 1954, ch. 512, § 2, 68 Stat. 484.) This section should be amended to conform with Code Chapter 35.

246 ..... (Act of Aug. 1, 1939, ch. 409, § 5, 53 Stat. 1146.) Subsection (a) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context. Subsection (b)—penalty. *Cf.* Code § 1751.

249c ..... (Act of July 24, 1956, ch. 671, § 4, 70 Stat. 606.) Penalty, culpability.

251 ..... (R.S. § 4311, as amended, 46 U.S.C. § 251.) Subsection (c) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

251a ..... (Act of Sept. 13, 1961, § 2, 75 Stat. 493.) This section should be changed by deleting "fine," for the reasons set forth in the guidelines to section 7, *supra*.

277 ..... (R.S. § 4336, as amended, 46 U.S.C. § 277.) Regulatory offense.

316 ..... (R.S. § 4370, as amended, 46 U.S.C. § 316.) Subsection (a) should be changed by deleting "fine" and "fines" and substituting "civil penalty" and "civil penalties" respectively, to eliminate criminal law terminology in a civil context.

319 ..... (Act of June 19, 1886, ch. 421, § 7, 24 Stat. 81, as amended, 46 U.S.C. § 319.) This section should be changed by deleting "fine" and substituting "civil penalty," to eliminate criminal law terminology in a civil context.

320 ..... (Act of June 19, 1886, ch. 421, § 9, 24 Stat. 81, as amended, 46 U.S.C. § 320.) This section should be changed by substituting "civil penalties" for "fines" and "violation" for "offense," to conform to the changes recommended with respect to the sections referred to, to eliminate criminal law terminology in a civil context and for the reasons set forth in the guideline to section 7, *supra*. The reference to section "45" should also be deleted since it has been transferred to Title 49.

321 ..... (R.S. § 4373, as amended, 46 U.S.C. § 321.) See guidelines for section 58, *supra*.

322 ..... (R.S. § 4374.) See guideline for section 59, *supra*.

323 ..... (R.S. § 4375.) This section should be repealed. Code § 1751 covers it.

324 ..... (R.S. § 4376.) This section should be repealed. Code § 1301 covers it.

369 ..... (Act of May 27, 1936, ch. 463, § 5, 49 Stat. 1384, as amended, 46 U.S.C. § 369.) Subsection (e) should be deleted. Code § 1301 covers it. Consideration should be given to making the plans subject to Code § 1356.

391a ..... (R.S. § 4417a, as added, ch. 729, 49 Stat. 1889, and amended, 46 U.S.C. § 391a.) Subsection (7)—regulatory offense.

398 ..... (Act of May 28, 1908, ch. 212, § 13, 35 Stat. 428.) This section should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

403 ..... (R.S. § 4425.) This section should be repealed. Code § 1352 covers it.

407 ..... (R.S. § 4429, as amended, 46 U.S.C. § 407.) This section should be changed, either to make this a regulatory offense or, if the penalty is to be civil, to substitute "liable to a civil penalty of" for "fined," to eliminate criminal law terminology in a civil context.

408 ..... (R.S. § 4430, as amended, 46 U.S.C. § 408.) The second paragraph of this section should be changed by deleting the clause beginning "*Provided*, That any person . . . ," matter covered by Code § 1751.

410 ..... (R.S. § 4432, as amended, 46 U.S.C. § 410.) This section should be repealed. Code § 1751 covers it, to the extent that the marks or stamps are marks and stamps of the government and the names and trademarks of others are affixed with intent to deceive the United States.

413 ..... (R.S. § 4437, as amended, 46 U.S.C. §413.) Penalty, culpability. Note that Code § 1613 covers the felonious aspects of this offense. The section should also be changed by deleting "every person concerned therein, directly or indirectly," matter covered by Code §§ 401–402, and substituting therefor "a person violating the provisions of this section,".

452 ..... (R.S. § 4465, as amended, 46 U.S.C. § 452.) Penalty, culpability.

471 ..... (R.S. § 4478.) This section should be changed by substituting "liable to a civil penalty of" for "fined," to eliminate criminal law terminology in a civil context.

481 ..... (R.S. § 4488, as amended, 46 U.S.C. § 481.) Subsection (d)—penalty, culpability. Code § 1613 covers its felonious aspects.

497 ..... (R.S. § 4499, as amended, 46 U.S.C. § 497.) This section should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

498 ..... (R.S. § 4500.) This section should be changed by deleting "a fine of," to eliminate criminal law terminology in a civil context. Consideration should be given to adding "maximum" before "penalty," if it is desired to permit flexibility in the fixing of the penalty.

526m ..... (Act of April 25, 1940, ch. 155, § 14, 54 Stat. 166.) This section should be repealed. Code § 1613 covers it.

526p ..... (Act of April 25, 1940, ch. 155, §17, 54 Stat. 166, as amended, 46 U.S.C. § 526p.) This section should be changed by deleting "fine," for the reasons set forth in the guideline to section 7, *supra*.

563 ..... (Act of July 19, 1886, ch. 421, § 2, 24 Stat. 80, as amended, 46 U.S.C. § 563.) Penalty, culpability.

564 ..... (R.S. § 4511, as amended, 46 U.S.C. § 564.) Paragraph "Seventh" should be changed by substituting "penalties" for "fines," to eliminate criminal law terminology in a civil contest.

599 ..... (Act of June 26, 1884, ch. 121, § 10, 23 Stat. 55, as amended, 46 U.S.C. § 599.) Subsection (a)—penalty, culpability (twice). Subsection (d) should be changed by deleting the second sentence, matter covered by Code § 1352.

643 ..... (R.S. § 4551, as amended, 46 U.S.C. § 643.) Subsection (a) should be changed by deleting the last sentence, which deals with matter covered by Code §§ 1751 and 1753. Subsection (g), first paragraph—penalty; the second paragraph should be deleted, since Code § 1352 covers it. Subsection (k) should be changed by substituting "liable to a civil penalty" for "fined" and substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

652 ..... (R.S. § 4555, as amended, 46 U.S.C. § 652.) This section should be changed by deleting "and every owner . . . process of the court" and substituting therefor a provision authorizing the Coast Guard official to seek the aid of a court in enforcing his subpoena.

658 ..... (R.S. § 4561, as amended, 46 U.S.C. § 658.) This section should be changed by deleting the third sentence, which deals with matter covered by Code § 1613.

660 ..... (R.S. § 4563.) Regulatory offense.

672 ..... (Act of March 4, 1915, ch. 153, § 13, 38 Stat. 1169, as amended, 46 U.S.C. § 672.) Subsection (i) should be changed to substitute "violation" for "offense," to eliminate criminal law terminology in a civil context.

676 ..... (R.S. § 4575, as amended, 46 U.S.C. § 676.) Regulatory offense.

684 ..... (R.S. § 4581, as amended, 46 U.S.C. § 684.) This section should be changed by deleting "fine" and substituting "civil penalty" to eliminate criminal law terminology in a civil context.

701 ..... (R.S. § 4596, as amended, 46 U.S.C. § 701.) Subsection Fourth—penalty, culpability. Subsection Fifth—penalty, culpability. Subsection Sixth should be deleted. Code §§ 1611, 1612 and 1616 cover it. Subsection Seventh should be changed by deleting "and also . . . twelve months," matter covered by Code §§ 1705 and 1732. Subsection Eighth should be changed by deleting "and it shall be . . . twelve months," matter covered by Code § 1411.

707 ..... (R.S. § 4605, as amended, 46 U.S.C. § 707.) Consideration should be given to repeal of this section. The amount of $15.00 as payment toward the cost of prosecution is negligible under modern conditions: and the principle is not generally applicable in the Federal system.

709 ..... (R.S. § 4607, as amended, 46 U.S.C. § 709.) Penalty.

711 ..... (R.S. § 4610, as amended, 46 U.S.C. § 711.) This section should be changed by deleting "and if a conviction . . . the amount and costs,". These provisions are not applicable to civil penalties and are covered in Code Chapter 33 in the case of fines. This section should also be changed by substituting "violation" for "offense" (twice) and substituting "violator" for "offender" (twice) to eliminate criminal law terminology in a civil context.

712 ..... (R.S. § 4611, as amended, 46 U.S.C. § 712.) Renumber.

728 ..... (Act of Aug. 1, 1912, ch. 268, § 2, 37 Stat. 242.) Penalty.

738b ..... (Act of June 25, 1936, ch. 807, § 3, 49 Stat. 1923.) Regulatory offense.

738c ..... (Act of June 25, 1936, ch. 807, § 4, 49 Stat. 1923.) Regulatory offense.

808 ..... (Shipping Act, 1916, ch. 451, § 9, 39 Stat. 730, as amended, 46 U.S.C. § 808.) Penalty.

812 ..... (Shipping Act, 1916, ch. 451, §14, 39 Stat. 733, as amended, 46 U.S.C. § 812.) Penalty.

815 ..... (Shipping Act, 1916, ch. 451, § 16, 39 Stat. 734, as amended, 46 U.S.C. § 815.) Penalty.

817b ..... (Act of July 7, 1960, § 3, 74 Stat. 362.) Penalty.

817c ..... (Act of July 7, 1960, § 4 as added, §3, 76 Stat. 1201, as amended, 46 U.S.C. § 817c.) Penalty.

820 ..... (Shipping Act, 1916, ch. 451, § 21, 39 Stat. 736, as amended, 46 U.S.C. § 820.) The second paragraph of this section should be deleted. Code §§ 1352 and 1356 cover it.

831 ..... Shipping Act, 1916, ch. 451, § 32, 39 Stat. 738.) Regulatory offense.

835 ..... (Shipping Act, 1916, ch. 451, § 37, as added, ch. 152, § 4, 40 Stat. 901, and amended, 46 U.S.C. § 835.) Penalty. This section should be changed by deleting "or attempts or conspires to violate," matter covered by Code §§ 1001 and 1004. In addition, if necessary, consideration might be given to adding a provision to Code Chapter 11 incorporating this section in the manner felonious conduct is covered in Code § 1121.

836 ..... (Shipping Act, 1916, ch. 451, § 38, as added, ch. 152, § 4, 40 Stat. 902, 46 U.S.C. § 836.) This section should be changed by deleting "offenses against" and substituting "violations of", to eliminate criminal law terminology in a civil context.

837 ..... (Shipping Act, 1916, ch. 451, § 39, as added, ch. 152, § 4, 40 Stat. 902, 46 U.S.C. § 837.) Relevant, but no change recommended.

838 ..... (Shipping Act, 1916, ch. 451, § 40, as added, ch. 152, § 4, 40 Stat. 902, and amended, 46 U.S.C. § 838.) The second paragraph of this section should be repealed. Code § 1352 covers it. See also guideline for section 835, *supra*.

839 ..... (Shipping Act, 1916, ch. 451, § 41, as added, ch. 152, § 4, 40 Stat. 902, and amended, 46 U.S.C. § 839.) First paragraph—penalty. The second paragraph should be deleted. Code § 1352 covers it. See also the guideline for section 835, *supra*.

941 ..... (Ship Mortgage Act, 1920, ch. 250, § 30, subsec. J, 41 Stat. 1003, as amended, 46 U.S.C. § 941.) Subsection (b)—penalty. This subsection should be changed by deleting "and if . . . or association," matter covered by Code § 403.

1119a ..... (Act of June 29, 1936, ch. 858, §§ 302, as amended, 46 U.S.C. § 1119a.) This section, if not repealed, should be changed by deleting "*Provided further*, That any person . . . one year or both," an offense which would have no present applicability.

1132 ..... (Act of June 29, 1936, ch. 858, §§ 302, 905(e), 49 Stat. 1992, as amended, 46 U.S.C. § 1132.) Subsection (e)—penalty.

1171 ..... (Act of June 29, 1936, ch. 858, §§ 601, 905(e), 49 Stat. 2001, as amended, 46 U.S.C. § 1171.) Subsection (b) should be changed by deleting the last sentence, which deals with matter covered by Code § 1352.

1223 ..... (Act of June 29, 1936, ch. 858, §§ 805, 905(e), 49 Stat. 2014, as amended, 46 U.S.C. § 1223.) Subsection (f)—penalty, culpability.

1224 ..... (Act of June 29, 1936, ch. 858, §§ 806(a), 905(e), 49 Stat. 2014, as amended, 46 U.S.C. § 1224.) Penalty.

1225 ..... (Act of June 29, 1936, ch. 858, §§ 807, 905(e), 49 Stat. 2014, as amended, 46 U.S.C. § 1225.) Regulatory offense.

1226 ..... (Act of June 29, 1936, ch. 858, § 808, 49 Stat. 2015.) Penalty.

1228 ..... (Act of June 29, 1936, ch. 858, §§ 806(b), 905(e), 49 Stat. 2014, as amended, 46 U.S.C. § 1228.) The first paragraph should be changed by deleting the first sentence which contains matter covered by Part C of the Code. The second sentence may remain, revised to indicate that the fine limits are higher than otherwise authorized by the Code. The last paragraph—regulatory offense.

1277 ..... (Act of June 29, 1936, ch. 858, § 1108, formerly § 1107, as added, ch. 600, § 46, 52 Stat. 973, as amended, 46 U.S.C. § 1277.) This section should be repealed. Code §§ 1352, 1732 and 1751 cover it.

1333 ..... (Act of June 12, 1940, ch. 337, § 3, 54 Stat. 347, as amended, 46 U.S.C. § 1333.) Subsection (e)—regulatory offense. The provisions should be revised so that the offense is committed by "any person," thus relying On Code §§ 401–403 for accomplice, corporate and individual liability. If a noncorporate organization is to be liable for the acts of individuals, explicit provision should be made therefor.

Sections Transferred Into Title 46

Former Title 18 Sections	Guidelines*
1081	The reference to "chapter" in the first line should be changed to accord with the disposition of sections 1082 and 1083, *infra*, to which it refers.
1082	Penalty.
1083	No change.
2195	Penalty, culpability.
2274	Penalty. The section should be changed by deleting "being the owner . . . crew or other person" as surplusage and by deleting "willfully causes . . . of such vessel," matter by Code §§ 1705, 401 and 1002.
2277	Penalty.
2278	Penalty.
3620	Renumber.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 47

Telegraphs, Telephones, and Radiotelegraphs

Title 47 Sections	Guidelines*
13	(Act of Aug. 7, 1888, ch. 772, § 5, 25 Stat. 384, as amended, 47 U.S.C. § 13.)) Penalty.
21	(Act of Feb. 29, 1888, ch. 17, § 1, 25 Stat. 41.) This section should be repealed. Code §§ 1705 and 1706 cover it.
22	(Act of Feb. 29, 1888, ch. 17, § 2, 25 Stat. 41.) This section should be repealed. Code §§ 1705 and 1706 cover it.
23	(Act of Feb. 29, 1888, ch. 17, § 3, 25 Stat. 41.) This section should be changed as follows: "It shall be a defense to prosecution under sections 1705 or 1706 of Title 18 or similar Federal criminal laws for breaking or injuring a submarine cable that the cable was broken or injured in an effort to save the life or limb of the actor or any other person, or to save his own or any other vessel, and that reasonable precautions were taken to avoid such breaking or injury." While the Commission's Final Report rejected codification of a general "choice-of-evils" justification (see Comment to Code § 601), continuation of this specific justification appears to be appropriate.
24	(Act of Feb. 29, 1888, ch. 17, § 4, 25 Stat. 41.) Regulatory offense.
25	(Act of Feb. 29, 1888, ch. 17, § 5, 25 Stat. 42.) Regulatory offense.
27	(Act of Feb. 29, 1888, ch. 17, § 7, 25 Stat. 42.) Penalty. This section should be changed by deleting "or shall violently resist . . . exercise of their functions", matter covered by Code §§ 1301 and 1611–13.
28	(Act of Feb. 29, 1888, ch. 17, § 8, 25 Stat. 42.) Renumber, consistent with repeal of sections 21 and 22.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

29 (Act of Feb. 29, 1888, ch. 17, § 9, 25 Stat. 42.) This section should be changed to conform to Code § 103(4) as follows: "In a prosecution under sections 1705 or 1706 of Title 18 for breaking or injuring a submarine cable by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall be presumed to have been in charge of and navigating such vessel or boat."

30 (Act of Feb. 29, 1888, ch. 17, § 10, 25 Stat. 42.) Renumber, consistent with repeal of sections 21 and 22.

31 (Act of Feb. 29, 1888, ch. 17, § 11, 25 Stat. 42.) Consideration should be given to repeal of this section. See guidelines for 33 U.S.C. §§ 391–396.

33 (Act of Feb. 29, 1888, ch. 17, § 13, 25 Stat. 42, as amended, 47 U.S.C. § 33.) Consideration should be given to repeal of this section as duplicative of provisions in Title 28 and the Federal Rules.

37 (Act of May 27, 1921, ch. 12, § 4, 42 Stat. 8.) Penalty. This section should be changed by deleting ", instigates, or assists in", matter covered by Code § 401.

202 (Communications Act of 1934, ch. 652, § 202, 48 Stat. 1070, as amended, 47 U.S.C. § 202.) Subsection (c) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

203 (Communications Act of 1934, ch. 652, § 203, 48 Stat. 1070.) Subsection (e) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

205 (Communications Act of 1934, ch. 652, § 205, 48 Stat. 1072.) Subsection (b) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

220 (Communications Act of 1934, ch. 652, § 220, 48 Stat. 1078.) Subsection (d) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context. Subsection (e)—penalty, culpability. If the records described in subsection (a) are made subject to Code § 1356, then this subsection should be changed by deleting "who shall willfully make any false . . . account, record, or memoranda, or".

223 (Communications Act of 1934, ch. 652, title II, § 223, as added, § 1, 82 Stat. 112, 47 U.S.C. § 223.) This section should be repealed. Code § 1618 covers it insofar as it applies to interstate or foreign communications. (To provide coverage in the District of Columbia, Code § 1618 should be added to the District of Columbia Code.)

312 (Communications Act of 1934, ch. 652, § 312, 48 Stat. 1086, as amended, 47 U.S.C. § 312.) Subsection (a)(6) and subsection (b) should be changed to refer to Code §§ 1001, 1732, and 1851, in place of 18 U.S.C. §§ 1343 and 1464. Broadcasting of lottery information (18 U.S.C. § 1304, scheduled for repeal) should be dealt with by regulation.

362 (Communications Act of 1934, ch. 652, § 364, formerly § 362, as added, ch. 229, § 10(b), 50 Stat. 196, and renumbered, 47 U.S.C. § 362.) Subsection (a) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

386 (Communications Act of 1934, ch. 652, § 386, as added, ch. 973, § 1, 70 Stat. 1048, 47 U.S.C. § 386.) Subsection (a) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

409 (Communications Act of 1934, ch. 652, § 409, 48 Stat. 1096, as amended, 47 U.S.C. § 409.) Added to subsection (e) should be a provision that subpoenas issued by the Commission are subject to Code § 1342. Subsection (m) should be deleted as covered by Code §§ 1342 and 1343.

501 (Communications Act of 1934, ch. 652, § 501, 48 Stat. 1100, as amended, 47 U.S.C. § 501.) Penalty, culpability. See Code § 3003. The section should be changed by deleting the "causes or suffers" clauses, matter covered by Code § 401.

502 (Communications Act of 1934, ch. 652, § 502, 48 Stat. 1100.) Regulatory offense, culpability.

503 (Communications Act of 1934, ch. 652, § 503, 48 Stat. 1101, as amended, 47 U.S.C. § 503.) Subsection (b)(1) should be changed by substituting "violation" for "offense," to eliminate criminal law termi-

	nology in a civil context. For changes in subsection (b)(1)(E), see guideline for section 312, *supra*.
506	(Communications Act of 1934, ch. 652, § 506, as added, 60 Stat. 89, 47 U.S.C. § 506.) Both subsections (a) and (b) should be changed to delete "or attempt to coerce, compel, or constrain," matter covered by Code § 1001.
508	(Communications Act of 1934, ch. 652, § 508, as added, § 8(b), 74 Stat. 896, 47 U.S.C. § 508.) Subsection (g)—penalty.
509	(Communications Act of 1934, ch. 652, § 509, as added, § 9, 74 Stat. 897, 47 U.S.C. § 509.) Subsection (a)(4)—culpability. Subsection (a)(5) should be deleted. Code § 1004 covers it. Subsection (c)—penalty.
605	(Communications Act of 1934, ch. 652, § 605, 48 Stat. 1103, as amended, 47 U.S.C. § 605.) Renumber.
606	(Communications Act of 1934, ch. 652, § 606, 48 Stat. 1104, as amended, 47 U.S.C. § 606.) Subsection (b) should be changed by deleting "It shall be unlawful . . . by radio or wire," matter covered by Code §§ 1105–1107 and 1705–1706. Subsection (h) should be changed by deleting "or causes or suffers to be done" and "or who willfully causes or suffers such failure," matter covered by Code § 401. Subsection (h) should also be changed by deleting "except that any person . . . 20 years, or both," since it provides a felony penalty outside Title 18. If it is deemed desirable to continue such felony liability, a section similar to Code § 1121 could be added to Code Chapter 11. The remaining misdemeanor penalty should be changed to "Class A misdemeanor;" the special fine maximum provided for corporations, etc. should be retained.

Section Transferred Into Title 47

Former Title 18 Section	Guidelines
2511	Subsection (2)(a) and (b) should be added to Title 47, probably in Chapter 5, Subchapter VI. The provisions in subsection (2) are explicitly referred to in Code § 1561 (2)(a) as defenses to the offense defined in Code § 1561(1). The remainder of 18 U.S.C. § 2511 will be covered in the new Title 18.

TITLE 48

Territories and Insular Possessions

Title 48 Sections	Guidelines*
1417	(R.S. § 5576.) This section should be repealed. Code § 210(e) covers it.
1421i	(Organic Act of Guam, ch. 512, § 5, 64 Stat. 392, as amended, 48 U.S.C. § 1421i.) Subsection (d)(1) and subsection (f) should be changed to include reference to the income tax crimes contained in the Code: Code §§ 1401–1402. Subsection (h)(4) should be changed by deleting "fines," to eliminate criminal law terminology in a civil context.
1423 f	(Organic Act of Guam, ch. 512, § 16, 64 Stat. 388.) This section should be amended to conform with Code Chapter 35.
1424	(Organic Act of Guam, ch. 512, § 22, 64 Stat. 389, as amended, 48 U.S.C. § 1424.) Subsection (b)—renumber.
1461	(Act of March 22, 1882, ch. 47, § 8, 22 Stat. 31.) Consideration should be given to repeal of this section, or, at least, to deletion of "or any person . . . in this section," because it poses serious constitutional questions regarding loss of civil rights not as a result of a felony conviction.
1572	(Revised Organic Act of the Virgin Islands, ch. 558, § 6, 68 Stat. 499, as amended, 48 U.S.C. § 1572.) Subsection (b) should be amended to conform with Code Chapter 35.
1704	(Act of Nov. 20, 1963, § 4, 77 Stat. 339.) The second sentence of subsection (a) should be repealed. Code §§ 704–706 cover it.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

41 (Act of Feb. 19, 1903, ch. 708, § 1, 32 Stat. 847, as amended, 49 U.S.C. § 41.) Subsection (1) should be changed by deleting the first sentence, which consists of matter covered by Code § 402. Remainder of subsection—penalty, culpability.

46 (Act of Feb. 11, 1893, ch. 83, 27 Stat. 443.) This section should be deleted and replaced by a provision which makes the Commission an "authorized agency" under Code § 1342.

47 (Act of Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904.) This section should be repealed in accordance with section 259 of the Organized Crime Control Act of 1970, 84 Stat. 931.

121 (Act of Aug. 29, 1916, ch. 415, § 41, 39 Stat. 544.) Consideration should be given to covering in the Code matter dealt with in the provisions of this section preceding "or who, with intent to defraud," by adding "when the writing which is the subject of the offense is or purports to be a bill of lading representing property received for interstate or foreign shipment" as a jurisdictional base to Code § 1751 (and thereby to Code § 1753). Remainder of this section—penalty, culpability.

305 (Interstate Commerce Act, ch. 104, pt. II, § 205, as added, ch. 498, 49 Stat. 548, and amended, 49 U.S.C. § 305.) Subsection (d)—relevant, but no change recommended.

314 (Interstate Commerce Act, ch. 104, pt. II, § 214, as added, ch. 498, 49 Stat. 557, and amended, 49 U.S.C. § 314.) Relevant, but no change recommended.

319 (Interstate Commerce Act, ch. 104, pt. II, § 219, as added, ch. 498, 49 Stat. 563, and amended, 49 U.S.C. § 319.) Relevant, but no change recommended.

322 (Interstate Commerce Act, ch. 104, pt. II, § 222, as added, ch. 498, 49 Stat. 564, and amended, 49 U.S.C. § 322.) Subsection (a)—regulatory offense. Subsection (c)—regulatory offense. Subsection (d)—penalty, culpability. Subsection (g)—this subsection should be changed by deleting "or shall knowingly and willfully falsify . . . under this chapter to keep the same," matter covered by Code §§ 1352 and 1356, providing a provision is substituted making the accounts, records and memorandums subject to Code § 1356. Remainder—penalty, culpability. Section (h)—substitute "violation" for "offense" (first sentence and second sentence) and "violator" for "offender" (second sentence and third sentence), to eliminate criminal law terminology in a civil context.

906 (Interstate Commerce Act, ch. 104, pt. III, § 306, as added, ch. 722, title II, § 201, 54 Stat. 935, 49 U.S.C. § 906.) Subsection (c)—relevant, but no change recommended.

917 (Interstate Commerce Act, ch. 104, pt. III, § 317, as added, ch. 722, title II, § 201, 54 Stat. 917, 49 U.S.C. § 917.) Subsection (a)—regulatory offense. Subsection (b)—penalty, culpability. Subsection (c)—penalty, culpability. Subsection (d)—see guideline for section 322, subsection (g). Subsection (e)—penalty, culpability. Subsection (f)—penalty, culpability.

1010 (Interstate Commerce Act, ch. 104, pt. IV, § 410, as added, ch. 318, § 1, 56 Stat. 291, and amended, 49 U.S.C. § 1017.) Relevant, tion (i)—penalty.

1013 (Interstate Commerce Act, ch. 104, pt. IV, § 413, as added, ch. 318, § 1, 56 Stat. 295, 49 U.S.C. § 1013.) Relevant, but no change recommended.

1017 (Interstate Commerce Act, ch. 104, pt. IV, § 417, as added, ch. 318, § 1, 56 Stat. 297, and amended, 49 U.S.C. § 1017.) Relevant, but no change recommended.

1021 (Interstate Commerce Act, ch. 104, pt. IV, § 421, as added, ch. 318, § 1, 56 Stat. 298, 49 U.S.C. § 1021.) Subsection (a)—regulatory offense. Subsection (b)—penalty, culpability. Subsection (c)—penalty, culpability. Subsection (d)—see guideline for section 322, subsection (g) *supra*. Subsection (e)—penalty, culpability. Subsection (f)—penalty, culpability.

1159 (International Aviation Facilities Act, ch. 473, § 10, 62 Stat. 453.) Subsection (a)—regulatory offense.

1378 (Federal Aviation Act of 1958, title IV, § 408, 72 Stat. 767, as amended, 49 U.S.C. § 1378.) Subsection (d)—relevant, but no change recommended.

1471 (Federal Aviation Act of 1958, title IX, § 901, 72 Stat. 783, as amended, 49 U.S.C. § 1471.) Subsection (a)(1) should be changed by substituting "violation" for "offense," to eliminate criminal law terminology in a civil context.

1472 (Federal Aviation Act of 1958, title IX, § 902, 72 Stat. 784, as amended, 49 U.S.C. § 1472.) Subsection (a)—regulatory offense. Subsection (b)—this subsection should be changed by deleting from the beginning through ". . . such fraudulent certificate, and," matter covered by Code § 1751; remainder—penalty, culpability. Subsection (c)—penalty. Note that felony sanctions will be available under Code §§ 1613, 1705 and 1706 in some circumstances. Subsection (d)—penalty, culpability. Subsection (e)—see guideline for section 322, subsection (g) *supra*. Subsection (f)—penalty, culpability. *Cf.* Code § 1371. Subsection (g) should be deleted and a provision substituted which will make the Board an "authorized agency" under Code § 1342. Subsection (h)(1) should be changed by deleting the clause beginning "*provided*," matter adequately covered by Code § 1613; remainder—penalty. Subsection (i) should be repealed. Code §1635 covers it. Subsection (j) should be repealed; it is covered by various Code offenses, since all Code offenses apply within the jurisdiction specified (see Code § 210 (g)). Subsection (k) should be repealed; it is covered by various Code sections, since the Code generally applies within the jurisdiction specified. Subsection (*l*)—penalty culpability. Subsection (m)(1)—conform to revisions of other subsections, penalty. Subsection (m)(2) should be repealed. Code § 1614 covers it. Subsection (n)—conform to revision of other subsections. Subsection (o)—penalty, culpability.

1473 (Federal Aviation Act of 1958, title IX, § 903, 72 Stat. 786, as amended, 49 U.S.C. § 1473.) Subsection (a)—relevant, but no change recommended.

1523 (Federal Aviation Act of 1958, title XII, § 1203, 72 Stat. 800.) Regulatory offense.

1679 (Natural Gas Pipeline Safety Act of 1968, § 10, 82 Stat. 726.) Subsection (b)—relevant, but no change recommended.

1681 (Natural Gas Pipeline Safety Act of 1968, § 12, 82 Stat. 727.) Subsection (a)—a provision should be added to this subsection making the records subject to Code § 1356. Subsection (d)—this subsection should be changed to incorporate the relevant language of 18 U.S.C. § 1905 or to label the information as "confidential information" under Code § 1371.

1725 (Airport and Airway Development Act of 1970, Title I, § 25, 84 Stat. 233.) This section should be repealed. Code §§ 1352 and 1732 (with Code § 1001) cover it.

Sections Transferred Into Title 49

In the transfer of the following sections, consideration should be given to making the necessary amendments to conform the provisions to P.L. 89-670, Act of Oct. 15, 1966, 80 Stat. 931, which transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission referred to in the provisions.

Former Title 18 Sections	Guidelines*
831	In definition of "Etiologic agents"—renumber.
832	Subsection (a) should be changed by deleting "and, if the death . . . ten years, or both," Code § 1613 covers it to some extent. Consideration should be given to substituting a provision that when an offense defined in Code §§ 1601–1603 and 1612 is committed in the course of committing the offense defined in this subsection, there shall be Federal jurisdiction over the Code offenses. Remainder—penalty, culpability. Subsection (b)—see guideline for subsection (a).
833	See guideline for subsection (a) of section 832. Renumber.
834	Subsection (e)—renumber. Subsection (f)—see guideline for subsection (a) of section 832.
835	All subsections—renumber.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 50

War and National Defense

Title 50 Sections	Guidelines*
23	(R.S. §4069.) Relevant, but no change recommended.
167k	(Act of March 3, 1925, ch. 426, § 13, as added, § 2, 74 Stat. 923, 50 U.S.C. § 167k.) This section should be amended by deleting "attempts to violate, or conspire to violate," matter covered by Code §§ 1001–1004. Also, "except that whoever . . . years, or both," should be deleted, matter covered by Code §§ 1105 and 1121. Penalty, culpability. See Code § 3006.
192	(Act of June 15, 1917, ch. 30, title II, § 2, 40 Stat. 220, as amended, 50 U.S.C. § 192.) "Obstruction, or interference" should be deleted from the last clause of the first paragraph, and "or knowingly obstructs . . . by this chapter" from subsection (a), matter covered by Code § 1301. Remainder—regulatory offense; serious aspects of this offense are covered by Code §§ 1105–07, 1205.
210	(R.S. §§ 5306.) Delete "or who makes any false statement . . . or other disposition" and "or who is guilty of any act . . . any false returns," matter covered by Code §§ 1352, 1732 and 1737. Remainder—penalty, culpability. Serious aspects of this offense are covered by Code §§ 1102–03.
217	(R.S. § 5313.) Penalty. See Code § 3006.
459	(National Industrial Reserve Act of 1948, ch. 811, § 10, 62 Stat. 1227, as amended, 50 U.S.C. § 459.) Reference to Title 18 provisions should be changed to Code §§ 1362, 1363, 1365, 1372 and to the numbering of the Title 18 sections transferred into Title 5.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

783	(Internal Security Act of 1950, ch. 1024, title I, § 4, 64 Stat. 991, as amended, 50 U.S.C. § 783.) Subsection (a) should be repealed. Code §§ 1103, 1104 and 1301 cover it. Subsections (b) and (c) should be repealed. Code §§ 1112–1116 cover it. Subsections (e) and (f) should be retained with consideration given to transferring them into Title 18.
792	(Internal Security Act of 1950, ch. 1024, title I, § 13, 64 Stat. 998, as amended, 50 U.S.C. § 792.) Subsection (d)(3)—delete; Code § 1344 covers it.
794	(Internal Security Act of 1950, ch. 1024, title I, § 15, 64 Stat. 1002, as amended, 50 U.S.C. § 794.) Penalty, culpability.
797	(Internal Security Act of 1950, ch. 1024, title I, § 21, 64 Stat. 1005.) Penalty, culpability.
822	(Internal Security Act of 1950, ch. 1024, title II, § 112, 64 Stat. 1029.) Delete "or shall escape, . . . to this subchapter" and add to Code § 1306(3)(a) "apprehension or confinement or detention under the Internal Security Act of 1950." Retain coverage in section 822 of disregarding or evading apprehension. Penalty, culpability. See Working Papers, pp. 467–68.
823	(Internal Security Act of 1950, ch. 1024, title II, § 113, 64 Stat. 1030.) This section should be repealed. Code §§ 401, 1306–1309, 1303, 1118, and 1001–1004 cover it.
824	(Internal Security Act of 1950, ch. 1024, title II, § 114, 64 Stat. 1030.) This section should be repealed. Code §§ 1301 and 201(b) cover it.
843	(Communist Control Act of 1954, ch. 886, § 4, 68 Stat. 776.) Culpability.
855	(Act of Aug. 1, 1956, ch. 849, § 6, 70 Stat. 900.) Subsection (a)—delete "or in any . . . any material fact," matter covered by Code §§ 1122, 1352. Remainder—regulatory offense.
856	(Act of Aug. 1, 1956, ch. 849, § 7, 70 Stat. 900.) Relevant, but no change recommended.
1436	(Act of Nov. 19, 1969, title IV, § 410, 83 Stat. 210.) Subsection (g)—penalty, culpability.

53-308—71—vol. 3——20

Sections Transferred Into Title 50

Former Title 18 Sections	Guidelines*
795–797	Penalty. Serious violations are covered by Code §§ 1112, 1113, 1712, and 401.
2386	Activities within the meaning of "paramilitary activities" should be deleted. Code § 1104 covers them. The last paragraph should be deleted. Code § 1352 covers it.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 50, APPENDIX

War and National Defense

Title 50 App. Sections	Guidelines*
3	(Trading with the Enemy Act, ch. 106, § 3, 40 Stat. 412.) Subsection (a)—the felonious aspects of this offense are covered by Code § 1204. The existing prohibition should be retained as a minor offense. Penalty, culpability. Subsection (b)—penalty, culpability. Subsections (c) and (d)—the felonious aspects of these offenses are covered by Code § 1117. The existing prohibitions should be retained as minor offenses. Penalty, culpability. Consideration should be given to substituting for "present war" in subsection (d) "declared war." All references to "attempt" should be deleted. Code § 1001 covers them.
5	(Trading with the Enemy Act, ch. 106, § 5, 40 Stat. 415, as amended, 50 U.S.C. App. § 5.) Consideration should be given to making subsection (b) (2) a defense or affirmative defense. See Code § 103. Subsection (b) (3)—the felonious aspects are covered by Code § 1204. The existing prohibition should be retained as a minor offense. Culpability, penalty.
7	(Trading with the Enemy Act, ch. 106, § 7, 40 Stat. 416, as amended, 50 U.S.C. App. § 7.) Consideration should be given to making "any person who knowingly . . . or chose in action" in the first paragraph, a violation of Code § 1204 and 50 U.S.C. App § 3.)
12	(Trading with the Enemy Act, ch. 106, § 12, 40 Stat. 423, as amended, 50 U.S.C. App. § 12.) Since the offense in the fourth paragraph would undoubtedly involve false statements and deception, which are covered by Code §§ 1352 and 1732, this offense could be deleted. If retained, penalty, culpability.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

TITLE 49

Transportation

Title 49 Sections	Guidelines*
1	(Interstate Commerce Act, ch. 104, pt. I, § 1, 24 Stat. 379, as amended. 49 U.S.C. § 1.) Subsection (7)—penalty, culpability. Subsection (12)—substitute "violation" for "offense" (twice) in last sentence, to eliminate criminal law terminology in a civil context. Subsection (17) (a)—substitute "violation" for "offense (twice) in second sentence, to eliminate criminal law terminology in a civil context. Subsection (17) (b)—this subsection should be deleted; it is covered by Code § 1758. Subsection (20)—penalty, culpability.
5	(Interstate Commerce Act, ch. 104, pt. I, § 5, 24 Stat. 380, as amended, 49 U.S.C. § 5.) Subsection (1)—substitute "violation" for "offense," to eliminate criminal law terminology in a civil context. Subsection (14)—substitute "violation" for "offense," to eliminate criminal law terminology in a civil context.
6	(Interstate Commerce Act, ch. 104, pt. I, § 6, 24 Stat. 380, as amended, 49 U.S.C. § 6.) Subsection (10)—substitute "violation" for "offense" (twice), to eliminate criminal law terminology in a civil context.
10	(Interstate Commerce Act, ch. 104, pt. I, § 10, 24 Stat. 382, as amended, 49 U.S.C. § 10.) Subsection (1) should be changed to delete provisions covered by Code §§ 401–403 and, possibly, to incorporate the Code's regulatory offense provision, as follows: "(1) (a) Except as provided in paragraph (b) of this subsection, a person who does anything prohibited or declared to be unlawful in this chapter or who intentionally fails to do anything required by this chapter or who violates a provision of this chapter for which no penalty is otherwise provided shall be subject to section 1006 of title 18, except that the maximum fine limits shall be $5,000; (b) a person is guilty of a Class A misdemeanor, but with a maximum fine limit of $5,000, if he knowingly discriminates in rates, fares or charges for the transportation of passengers or property or the transmission of intelligence in violation of a provision of this chapter." Subsection (2)—penalty, culpability. This subsection should also be changed by deleting "or whenever such . . . by such corporation," matter covered by Code § 403. Subsection (3)—penalty, culpability. Subsection (4)—penalty.
15	(Interstate Commerce Act, ch. 104, pt. I, §15, 24 Stat. 384, as amended, 49 U.S.C. § 15.) Subsection (12)—penalty.
16	(Interstate Commerce Act, ch. 104, pt. I, § 16, 24 Stat. 384, as amended, 49 U.S.C. § 16.) Subsection (8)—substitute "violation" for "offense" (three times), to eliminate criminal law terminology in a civil context.
19a	(Interstate Commerce Act, ch. 104, pt. I, § 19a, as added, ch. 92, 37 Stat. 701, and amended, 49 U.S.C. § 19a.) Subsection (k)—substitute "violation" for "offense" (twice), to eliminate criminal law terminology in a civil context.
20	(Interstate Commerce Act, ch. 104, pt. I, § 20, 24 Stat. 386, as amended, 49 U.S.C. § 20.) Subsection (7) (a)—substitute "violation" for "offense," to eliminate criminal law terminology in a civil context. Subsection (7) (b) should be deleted because Code §§ 1352 and 1356 cover most of it. Provisions should be substituted which make the accounts, records and memoranda required to be kept by the section subject to Code § 1356, preserving "knowingly . . . keep any accounts . . . contrary to the rules . . . of the Commission" subject to Code § 1006, and preserving the "*Provided*" clause at the end. Subsection (7) (f)—penalty, culpability.
20a	(Interstate Commerce Act, ch. 104, pt. I, § 20a, as added, ch. 91, § 439, 41 Stat. 494, and amended, 49 U.S.C. § 20a.) Subsection (11)—penalty. Subsection (12)—penalty.

*For meaning of "penalty," "culpability," "renumber," etc., *see* Introductory Note, *supra*.

16 ..... (Trading with the Enemy Act, ch. 106, § 16, 40 Stat. 425.) This section should be amended by deleting "and the officer . . . imprisonment, or both," matter covered by Code § 403. Culpability, penalty. Note that the violation of section 3 is covered by Code §§ 1117 and 1204.

19 ..... (Trading with the Enemy Act, ch. 106, § 19, 40 Stat. 425.) Consideration should be given to the repeal of this section which applies only "until the end of the war," or to making it applicable during any declared war. Delete "corporation," twice. Code § 402 covers it. The last paragraph should be deleted. Code § 1352 covers it.

34 ..... (Trading with the Enemy Act, ch. 106, § 36, as added, ch. 593, title III, § 305, as added, ch. 878, § 1, 60 Stat. 925, 50 U.S.C. App. § 34.) Subsection (a)—renumber references to the "Criminal Code" and the later Acts. For the disposition of these statutes within present Table 18, check the "references in text" note after this section in the United State Code.

327 ..... (Act of March 31, 1947, ch. 26, § 7, 61 Stat. 32.) The disclosure of confidential information provided to the government is covered by Code § 1371 and reference to this offense should be deleted. Remainder—regulatory offense.

460 ..... (Universal Military Training and Service Act, ch. 625, title I, § 10, 62 Stat. 618, as amended, 50 U.S.C. App. § 460.) Subsection (b)(3)—reference to Code §§ 1108 and 1109 should be inserted after "defense to a criminal prosecution instituted under . . ."

462 ..... (Universal Military Training and Service Act, ch. 625, title I, § 12, 62 Stat. 622, as amended, 50 U.S.C. App. § 462.) Note, with respect to the following guidelines, Code §§ 401, 1004, 1108–09, 1352, 1751 and 1753. Subsection (a)—delete "any person who shall knowingly make . . . made pursuant thereto"; "or who knowingly counsels . . . or of said rules, regulations, or directions."; "or any person or persons . . . regulations made pursuant thereto"; and "or who conspires . . . of such offenses." Subsection (b) — delete subparagraphs (1)–(5). Remainder—regulatory offense.

468 ..... (Universal Military Training and Service Act, ch. 625, title I, § 18, 62 Stat. 625.) Subsection (f)—penalty, culpability. Subsection (h)—penalty, culpability.

473 ..... (Act of June 19, 1951, ch. 144, title I, § 6, 65 Stat. 88.) Regulatory offense.

520 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 200, 54 Stat. 1180, as amended, 50 U.S.C. App. § 520.) Subsection (2) should be repealed. Code § 1352 covers it.

522 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 202, 54 Stat. 1181) Substitute "civil" for "fine or" four times to eliminate criminal law terminology in a civil context.

530 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 300, 54 Stat. 1181, as amended, 50 U.S.C. App. § 530.) Subsection (c)—penalty, culpability. Also, "or attempts so to do," should be deleted. Code § 1001 covers it. Consideration should be given to drafting a single penalty provision for violation of 50 U.S.C. App. §§ 530–535.

531 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 301, 54 Stat. 1181, as amended, 18 U.S.C. App. § 531.) Subsection (2)—penalty, culpability. Also, "or attempts so to do," should be deleted. Code § 1001 covers it. See the guideline to section 530, *supra*.

532 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 302, 54 Stat. 1182, as amended, 18 U.S.C. App. § 532.) Subsection (4)—penalty, culpability. Also, "or cause to be made" and "or attempts so to do," should be deleted. Code § 1001 covers it. See the guideline to section 530, *supra*.

534 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 304, as added, § 12, 56 Stat. 772, 50 U.S.C. App. § 534.) Subsection (3)—penalty, culpability. Also, "or attempts so to do," should be deleted. Code § 1001 covers it. See the guideline to section 530, *supra*.

535 ..... (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 305, as added, § 12, 56 Stat. 773, 50 U.S.C. App. § 535.) Subsection (3)—penalty, culpability. Also, "or attempts so to do," should be deleted. Code

§ 1001 covers it. See the guideline to section 530, *supra*.

590 ---------- (Soldiers' and Sailors' Civil Relief Act of 1940, ch. 888, § 700, as added, § 18, 56 Stat. 777, 50 U.S.C. App. § 590.) Subsection (b)(2)—substitute "civil" for "fine or" to eliminate criminal law terminology in a civil context.

643a ---------- (Act of March 27, 1942, ch. 199, title XIII, § 1302, 56 Stat. 185, as amended, 50 U.S.C. App. § 643a.) Delete "and anyone violating . . . years, or both," matter covered by Code § 1371.

643b ---------- (Act of March 27, 1942, ch. 199, title XIII, § 1348, 56 Stat. 186.) Consideration should be given to repeal of this section as obsolete. If not repealed, the last sentence should be deleted, matter covered by Code §§ 1342–43.

781 ---------- (Act of June 25, 1942, ch. 447, § 1, 56 Stat. 390.) Culpability.

783 ---------- (Act of June 25, 1942, ch. 447, § 3, 56 Stat. 391.) Penalty culpability.

1152 ---------- (Act of June 28, 1940, ch. 440, title I, § 2, 54 Stat. 676, as amended, 50 U.S.C. App. § 1152.) Subsection (3)—consideration should be given to making this subsection subject to Code § 1356. Subsection (4)—delete "and anyone violating . . . years, or both," matter covered by Code § 1371. Subsection (5)—penalty, culpability.

1191 ---------- (Renegotiation Act, ch. 247, title IV, § 403, 56 Stat. 245, as amended, 50 U.S.C. App. § 1191.) Subsection (c)(5)(A)—delete "or who knowingly . . . any material respect," matter covered by Code § 1352. Penalty, culpability. Subsection (j)—renumber. Sections 109 and 113 of the Criminal Code and section 190 of the Revised Statutes were repealed. Similar present Title 18 sections are 281, 283 and 207 respectively. The references should be changed to Code § 1372 and to the numbering of the Title 18 sections transferred into Title 5.

1193 ---------- (Renegotiation Act of 1948, ch. 333, § 3, 62 Stat. 259, as amended, 50 U.S.C. App. § 1193.) Subsection (h)—delete "or who knowingly . . . any material respect," matter covered by Code § 1352. Penalty, culpability. Consideration should be given to making this subsection subject to Code § 1341–49.

1215 ---------- (Renegotiation Act of 1951, ch. 15, title I, § 105, 65 Stat. 12, as amended, 50 U.S.C. App. § 1215.) Subsection (e)(1)—delete "or who knowingly . . . any material respect," matter covered by Code § 1352. Penalty, culpability.

1884 ---------- (Housing and Rent Act of 1947, ch. 163, title I, § 4, 61 Stat. 195, as amended, 50 U.S.C. App. § 1884.) This section should be deleted as obsolete. If not, subsection (d)—penalty, culpability.

1941d ---------- (Act of Aug. 7, 1953, ch. 338, § 6, 67 Stat. 409, as amended, 50 U.S.C. App. § 1941d.) Penalty, culpability.

1985 ---------- (Act of July 3, 1948, ch. 814, § 5, 62 Stat. 1232.) Penalty, culpability.

2009 ---------- (Act of July 3, 1948, ch. 826, § 10, 62 Stat. 1246, as amended, 50 U.S.C. App. § 2009.) Penalty, culpability.

2017g ---------- (Act of July 3, 1948, ch. 826, title II, § 208, as added, § 103, 76 Stat. 1110, 50 U.S.C. App. § 2017g.) Renumber reference to Title 18.

2017m ---------- (Act of July 3, 1948, ch. 826, title II, § 214, as added, § 103, 76 Stat. 1112, 50 U.S.C. App. § 2017m.) Penalty, culpability.

2025 ---------- (Export Control Act of 1949, ch. 11, § 5, 63 Stat. 8, as amended, 50 U.S.C. App. § 2025.) If still in effect, give subsections (a) and (b) the same treatment as section 2405, *infra*.

2073 ---------- (Export Control Act of 1949, ch. 932, title I, § 103, 64 Stat. 799.) Regulatory offense.

2155 ---------- (Defense Production Act of 1950, ch. 932, title VII, § 705, 64 Stat. 816, as amended, 50 U.S.C. App. § 2155.) Subsection (d)—penalty, culpability. Subsection (e)—retain the prohibitions against disclosure but delete "and any person . . . year, or both." twice, matter covered by Code § 1371.

2160 ---------- (Defense Production Act of 1950, ch. 932, title VII, § 710, 64 Stat. 819, as amended, 50 U.S.C. App. § 2160.) Subsections (b)(4), (c)–(e)—renumber. (The present Title 18 sections derived from these repealed provisions can be found in this section's "References in Text.") Subsection (f)—delete the penalty provision. Code §§ 1371–72 cover it. Retain the prohibition within the subsection to assure the confidentiality of the information.

2165	(Defense Production Act of 1950, ch. 932, title VIII, § 716, formerly § 715, 64 Stat. 821, as amended, 50 U.S.C. App. § 2165.) Penalty, culpability.
2213a	(Dependents Assistance Act of 1950, ch. 922, § 13a, as added, ch. 697, 70 Stat. 634.) Consider coverage by Code §§ 1731–40 by addition of a jurisdictional base to Code § 1740.
2255	(Federal Civil Defense Act of 1950, ch. 1228, title IV, § 403, 64 Stat. 1255, as amended, 50 U.S.C. App. § 2255.) Subsection (b)—delete the last sentence. Code §§ 1351–52 cover it. Substitute "The preceding shall be deemed a 'Federal official proceding' under Title 18, §§ 1351–52."
2284	(Federal Civil Defense Act of 1950, ch. 1228, title II, § 204, 64 Stat. 1251.) Penalty, culpability.
2405	(Act of Dec. 30, 1969, § 6, 83 Stat. 844.) Subsection (a)—penalty, culpability. See Code § 3003. Subsection (b)—the felonious aspects of this offense are covered by Code § 1204. The existing prohibition should be retained as a minor offense. Penalty, culpability. See Code § 3006.

TABLE

Title 18, Part I and Appendix, Provisions to be Transferred Into Other Titles

Title 18 Sections	Title Into Which Transferred
Ch. 3. Animals, Birds, Fish and Plants	
41–47	16
Ch. 9. Bankruptcy	
154–55	11
Ch. 11. Bribery, Graft and Conflicts of Interest	
202–09	5
211	5
212–14	12
218–19	5
Ch. 13. Civil Rights	
243	28
244	10
Ch. 15, Claims and Services in Matters Affecting Government	
290	38
291	28
292	5
Ch. 17. Coins and Currency	
333	12
336–37	31
Ch. 23. Contracts	
431–33	5
435	15
436	18, Part E
437–39	25
440	39
441	41
442	44
443	41
Ch. 25. Counterfeiting and Forgery	
475	31
489	31
492	31
504	31

Ch. 27. Customs
543 19
545 19
546 22
548 19
Ch. 29. Elections and Political Activities
608 2
609 2
610 2
611 2
612 2
Ch. 31. Embezzlement and Theft
643 5
644 12
645–47 28
648–53 5
Ch. 33. Emblems
700–01 4
702 10
703 22
704 10
705–06 36
707 7
708 22
709 4
710 10
711 7
712–13 4
714 43
Ch. 37. Espionage and Censorship
795–97 50
799 42
Ch. 39. Explosives and Other Dangerous Articles
831–35 49
836 15
Ch. 40. Importing, Manufacturing, Distribution and Storage of Explosive Materials
841–48 26
Ch. 43. False Personation
916 7
917 36
Ch. 44. Firearms
921–28 26

Ch. 45. Foreign Relations
951 22
955 22
959 22
961–67 22
969 22
Ch. 47. Fraud and False Statements
1004–06 12
1009 12
1012 42
1024 10
Ch. 50. Gambling
1081–83 46
Ch. 53. Indians
1154–56 25
1158–62 25
1164–65 25
Ch. 59. Liquor Traffic
1261–65 27
Ch. 61. Lotteries
1306 12
Ch. 67. Military and Navy
1383 10
1385 10
Ch. 69. Nationality and Citizenship
1421 28
1428 8
Ch. 75. Passports and Visas
1544 22
Ch. 83. Postal Service
1692–99 39
1700 39
1703–04 39
1712–13 39
1715–18 39
1721–37 39
Ch. 84. Presidential Assassination, Kidnapping and Assault
1751 18, Pt. D, 4109, 5901
Ch. 85. Prison-Made Goods
1761–62 15
Ch. 87. Prisons
1791 18, Pt. E.
Ch. 89. Professions and Occupations
1821 15

Ch. 91. Public Lands
1860–61 43
Ch. 93. Public Offices and Employees
1901 5
1906–09 12
1910–11 28
1913 5
1915 19
1916–17 5
1921–22 5
Ch. 95. Racketeering
1954 18, Pt. E
1955 18, Pt. D, 5304
Ch. 96. Racketeering Influenced and Corrupt Organizations
[not considered]
Ch. 101. Records and Reports
2072 7
2074 15
2075 5
2076 28
Ch. 107. Seamen and Stowaways
2195 46
Ch. 111. Shipping
2274 46
2277–79 46
Ch. 113. Stolen Property
2318 15
Ch. 115. Treason, Sedition, and Subversive Activities
2386 50
Ch. 119. Wire Interception and Interception of Oral Communications
2510 18, Pt. D, 5809
2511 18, Pt. D, 5801; 47
2513 18, Pt. D, 5802
2515–20 18, Pt. D, 5803–08
Appendix. Unlawful Possession or Receipt of Firearms
1201–03 26
Appendix. Interstate Agreement on Detainers Act
18, Pt. H