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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 1

May 24, 1972

Minutes

Members Present: Mr. Robert W. Chandler, Chairman
Senator John D. Burns
Representative George F. Cole
Mr. Bruce Spaulding

Staff Present: Mr. Donald L. Paillette, Project Director

Others Present: Mr. John Truitt, Oregon Sheriffs' Association
Mr. Jack Dolan, Oregon Sheriffs' Association
Mr. Charles F. Wuergler, Oregon Association of Chiefs of Police
Mr. Charles W. Carnese, Multnomah County District Attorney's Office
Mr. Mark Johannessen, Chief of Police, Springfield
Mr. Dave Wells, Beaverton Police Department
Mr. David G. Bishop, Beaverton Police Department

Agenda: Discussion of ARRESTS AND RELATED PROCEDURES

The meeting was called to order at 1:30 p.m. by Mr. Robert W. Chandler, Chairman, in Room 315 State Capitol.

Mr. Paillette explained to the subcommittee that the area of arrest to be discussed at today's meeting was the result of a number of inquiries and letters from police officers, attorneys and judges setting forth the problems encountered by them. Rather than attempting to follow the usual procedure by preparing a preliminary draft and then discussing the issues formulated by the draft, and also because there may be a number of statutes which the subcommittee may not wish changed, the meeting was set in the form of a hearing. In addition to the usual mailing list, Mr. Paillette reported that copies of the meeting notice were mailed to all district attorneys, sheriffs and police chiefs throughout the state in order that they may express any views or suggestions before the staff proceeded with a draft for Commission action.

Sheriff John Truitt, serving as Legislative Chairman for the Oregon Sheriffs' Association, appeared at the meeting to discuss a matter which he said was more important to the cities at the present time than to the Sheriffs' Association. In 1969, he said, legislation was passed allowing the police officer to use discretion on whether to arrest or issue a criminal citation. The sheriffs are using the

citation procedure because their warrants can be served throughout the state but many cities are not using this citation on misdemeanor arrests because their warrants cannot be served outside their jurisdiction. Sheriff Truitt advocated that they should be able to serve warrants outside the city under certain conditions. He said it would be unnecessary for warrants to be served for parking tickets, dogs running at large, building code violations, etc., but there is justification for serving them in other jurisdictions if the ordinance which they are enforcing is the same as the state code, whether it be traffic or criminal.

Chairman Chandler asked how Sheriff Truitt would suggest putting this idea into a statute. He responded that the statute would have to say that the municipal warrant could be served anywhere within the state, but only related to those offenses which, by ordinance, was adopted from the state code. Chairman Chandler then asked if this would be applied to all categories of misdemeanors under the state code. Sheriff Truitt was of the opinion minor traffic violations could be omitted.

Mr. Wuergler, representing the Legislative Committee of the Oregon Association of Chiefs of Police, requested that use of the misdemeanor citation remain voluntary by the political subdivisions within the state rather than be made mandatory. His reason for this was that the cities, in enforcing their municipal ordinances, do not have warrants that are effective outside their jursidiction and the fingerprinting and mugging of persons arrested is an important deterrent to apprehending wanted subjects. Chairman Chandler asked if the adoption of a procedure which would allow the municipal warrants to be served throughout the state would relieve this problem. Mr. Wuergler replied it would.

Mr. Paillette referred to a bill in the Criminal Law and Procedure Committee during the 1971 session which would have allowed service of a municipal warrant throughout the state. His recollection was that there was a question as to who would be serving this warrant and what his general authority would be to accompany the warrant.

Charles Carnese, representing the Multnomah County District Attorney's office, spoke to the subcommittee on four areas which he felt were of major concern. The first area, he said, was that of the probable cause arrest (ORS 133.310 (3)). At the present time an arrest on probable cause is authorized only when a felony has been committed and when there is reasonable cause to believe the person has committed the crime. He suggested going to the common law standard as opposed to the statutory standard of Oregon, which is to allow a peace officer to make an arrest on a felony whenever he has probable cause to believe that a felony has been committed and the person has committed it. He noted that in section 29 of the Criminal Code (ORS 161.245) the officer was given immunity if he acted and used force, even deadly force, when

he had reasonable ground to believe the felony had been committed. While he may have the authority to use deadly force, if the felony had not been committed he would not be able to arrest, even though he could shoot and kill. This, to him, was unreasonable and he urged the subcommittee to consider the other alternative of the total probable cause standard being applied.

The second problem area concerns the officer's inability to make probable cause arrests in the misdemeanor area. This, Mr. Carnese said, is a great problem especially in view of the fact that the last legislature took the position that many offenses which previously were felonies have now become misdemeanors and also that any attempted Class C felony became a Class A misdemeanor. Under existing law, there is now the situation that an officer would not be authorized to make a probable cause arrest on an attempted theft of $1 million. Theft, he said, is a Class C felony and attempted theft would be a Class A misdemeanor, regardless of value. Mr. Carnese was of the opinion the officer should be given that authority at least in the Class A misdemeanor area. He urged the committee to also consider authorizing probable cause arrest authority to a peace officer on any other class of misdemeanor.

Mr. Carnese next described the problem in the area relating to the authority of private citizens to stop and interrogate. Under existing law, he remarked, there is no authority for a private citizen to stop someone in a situation where he is not going to make an arrest, except with respect to ORS 133.037 which relates to a reasonable detention of a suspected shoplifter. There are other situations where this detention could be useful, such as a misdemeanor situation where a school investigator cannot stop to interrogate anyone. If this authority could not be given to all persons, Mr. Carnese suggested it be given to specific classes, such as school investigators.

Chairman Chandler asked how this could be defined to limit the right only to those who would have a sufficient reason for this type of authority. Mr. Carnese spoke of an existing statute which speaks of the authority of a person employed in a school to evict persons between after-school hours and midnight, but he has absolutely no authority to stop and question, make an arrest and cannot use force to detain anyone.

Another problem area in the use of the Criminal Code, Mr. Carnese reported, is that at the present time the authority of a private person to use force to make an arrest on probable cause is the same as with a peace officer (ORS 133.350). Section 31 of the Criminal Code expressly states that a private person may not use force in making an arrest or preventing escape unless the defendant has committed a felony. This brings about the situation that if a private citizen

observes someone breaking windows in his neighbor's home, he can do nothing whatsoever to hold him until the police arrive. The citizen ought to be given the authority to use a reasonable amount of force, short of deadly force, to hold his prisoner, once he has made the arrest. The problem also exists in the shoplifting area, he continued, with the inability of a security officer to hold a person after he has been arrested.

Mr. Carnese next referred to Sheriff Truitt's discussion relating to the authority of someone to arrest on a city ordinance violation outside the city in which it was involved. Portland, he said, has no municipal court any longer but a consolidated district court, and his office is presently researching the question of whether a district court warrant issued for a violation of a Portland city ordinance would be valid elsewhere, since it is not a municipal court warrant. He pointed out to the subcommittee that should a city enact an ordinance which is identical to the Criminal Code, a question would arise as to whether the city should be allowed to preempt the Code in that field, when obviously the cities would be doing it for monetary reasons. He stated he would desire legislation in the field to clarify the immediate problem which is whether a Portland warrant, for example, can be served in Salem, even though it is issued in district court.

Another area of concern, Mr. Carnese pointed out, relates to the authority of a peace officer to serve a warrant outside the jurisdiction in which he is employed. Various district attorneys' offices, he said, have differed on this question. The Procedure Code specifies that a peace officer shall serve a warrant and it is directed to any peace officer in the state. The Criminal Code, he continued, in ORS 161.015 (4), defines a "peace officer" as a sheriff, constable, marshal, municipal policeman or member of the Oregon State Police or such other person designated by law. The question immediately arises, he said, as to whether a municipal policeman would be a peace officer outside his jurisdiction since the Criminal Code has not so limited him. This would also apply to the authority of a peace officer of Clackamas County, for instance, to serve a search warrant in Multnomah County and since the question is unclear at this time, he said it would be helpful to the police agencies involved if the legislature would state something on this specific area.

Mr. Chandler remarked that the most critical duty the officer has is to make the initial decision to arrest or not to arrest and then carry it out without danger to the accused, himself or a third party. Referring to the private citizen or special police officer, he said he was somewhat reluctant to broaden this authority by giving it to too many people.

Mr. Carnese referred to the Board of Police Standards and Training which requires all police officers to go through its training program and said this should give a certain level of competency within all

departments. With respect to the use of force by a citizen, he suggested that it would be easier to work with if the private citizen were given authority to use a reasonable amount of force, short of deadly force, to apprehend someone who has committed a misdemeanor. The misdemeanor must have been committed or a finding of not guilty would, of course, allow an action of false arrest and the citizen could not act on probable cause with respect to the use of force. The present rule which limits it to felonies alone does create this situation and people are violating the force sections of the Code daily because if they observe someone breaking the neighbor's windows, they will arrest him. If a fight ensues, they will fight back, although there is no authority to do so.

Mr. Paillette reported that this again brings up past policy discussions which concern the question with respect to allowing the citizen to use reasonable force when he arrests for a misdemeanor. The difficulty encountered by the Commission with this concept of the citizen's arrest is that it presupposes that a citizen has the same expertise as to what constitutes crime as does the police officer. The Commission, as did the legislature, took great pains to clearly distinguish between what a peace officer can and should do and what a private citizen can do. He asked how Mr. Carnese would deal with the underlying problem in tying in the use of force, whether it is reasonable force short of deadly force, or deadly physical force, with the necessity of being able to view a set of circumstances taking place and making the kind of decision which has to be made which lays the foundation for the use of any kind of force.

Mr. Carnese replied that the Criminal Code did the same thing with respect to felonies. It says that the person must have committed a felony. This, in effect, says that the private citizen knows the distinction between a felony and a misdemeanor which is a much more difficult decision to draw than whether something is a criminal act. He referred to an attempted burglary without burglars' tools which would be a misdemeanor. There is no authority for a private citizen to arrest someone for attempted burglary of a building, he said, and also pointed out that there is no authority even for the owner of the building to arrest him, although there is authority for him to use force against him. Mr. Paillette responded that the answer to his hypothetical is that in the case of felonies, the seriousness of the conduct was the underlying reason for the distinction which was drawn in the Code. Because it was serious enough to be considered a felony, the Code went to the extent of saying that a private citizen making an arrest can use force under those circumstances, but only if the crime was committed, not merely attempted.

Mr. Carnese pointed out that section 26 of the Code (ORS 161.229) states:

"A person is justified in using physical force, other than deadly physical force, upon a person when and to the extent that he reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property."

This does give authority to someone other than the victim of the crime in that instance, he said. The force is authorized but he may not arrest unless the crime is committed in his presence, or hold him after he has stopped the commission of the theft. Force then can be used against the shoplifter to stop him from stealing but if the suspect throws away the articles, there is no authority to grab and hold him for the police. A private citizen is not going to understand this, he said, and obviously it is against human nature to expect him to act in that way. It was Mr. Carnese's contention that the legislature should consider either abolishing the authority of the private citizen to make the arrest altogether, except in the true felony situation, or give him the authority to use force to hold his prisoner once he has made the arrest.

Representative Cole asked if, by doing this, it would open up the possibilities for greater injury to the private citizen than is justified. If a citizen must use force to restrain someone after an arrest has been made, he was of the opinion this would be inviting injury to the arresting private party as well as the accused. Mr. Carnese replied that the present situation is that the district attorney must use a great deal of discretion where there appears to be an assault on the accused by a security officer when attempting to detain a shoplifter. A crime has been committed when the assault occurred as there was no statutory authority for the officer to use force against the individual arrested on the misdemeanor.

Representative Cole asked Mr. Carnese if he believed there were sufficient problems in this area and that this authority should now be given to private citizens. Mr. Carnese replied in the affirmative.

Mr. Chandler referred to Representative Cole's question relating to injury and said he was also bothered by the possibility of citizens subjecting themselves to greater danger by giving them authority to arrest and hold. They now have greater authority to arrest and, prior to the enactment of ORS chapter 743, they had more authority to use force, Mr. Carnese commented, and this was taken away under the Code. He did not feel that authorizing a non-deadly use of force, at least as to the victim of the crime, would be aggravating the possible injury to people because they will be doing it anyway. His interpretation of the Criminal Code is that it grants the authority to the

officers involved to use force, but they can't do this if the private citizen who sees the crime must relinquish his hold on him. The Code seems to tell the citizen not to get involved.

Representative Cole remarked that with the money spent training the professional in recognizing and dealing with crime, he would question the wisdom of turning the non-professionals loose. Mr. Carnese maintained this was not what was being done -- it is merely ratifying what had already been done, such as holding a vandal after a window breaking spree.

Mr. Spaulding commented that this is what is being done and people will continue to do it. The important part is to protect them from being sued for unlawful arrest.

Mr. Paillette asked Mr. Carnese if his office has ever prosecuted a person, such as a security guard, for assault. Mr. Carnese said the district attorney's office would not let the shoplifter sign a complaint against the guard, but there should be something in the Code to rely on other than that the district attorney will act with discretion.

Mr. Carnese then reiterated his position that peace officers should be able to arrest on probable cause for some misdemeanors and, if not all, at least Class A misdemeanors.

Mr. Paillette informed the subcommittee that this was one of the areas brought up before and one he particularly wanted discussed.

Mr. Carnese was of the opinion the Commission is aiming toward the idea that there will not be the same authority to arrest by a private citizen as by a peace officer and that there will be two separate sections. He felt this should be in the peace officers' section.

Mark Johannessen, Chief of Police, Springfield, next testified and stated that in May 1971, HB 1916 was introduced but later tabled with the recommendation that the material contained in the bill be brought to the attention of this Commission for consideration and possible inclusion in the procedural law. HB 1916, he said, amended ORS 133.310 to read that the authority of peace officers to arrest extends to any place in the state and that they may arrest whenever they have reasonable cause to believe the person to be arrested has committed a felony, whether or not such felony had in fact been committed.

Chief Johannessen then referred to the California Penal Code which takes into consideration reasonable cause arrests in both misdemeanors and felonies. Section 836 of the California Penal Code reads:

"A peace officer may make an arrest in obedience to a warrant, or may, pursuant to the authority granted him . . . without a warrant, arrest a person:

"(1) Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.

"(2) When a person arrested has committed a felony, although not in his presence.

"(3) Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."

Chief Johannessen told the subcommittee that these laws, to his knowledge, have been in effect since 1965. The reasonable cause section applies to a felony whether or not it has been committed. This is basically the difficulty the officers in Oregon are faced with as they must be a judge, adjudicating the case on the street that a felony has been committed before reasonable cause can be applied to the arrest of the person.

Chief Johannessen also called attention to Senate Bills 717 and 718, also introduced in the 1971 legislative session, which related to the arrest sections and which were also tabled in committee.

With regard to allowing the citizen the right to use reasonable force in the misdemeanor arrest situation, Chief Johannessen believed it a great difference from urging caution on the part of the victim when he is dealing with criminal assault and that of rendering society impotent by taking away his right to his own defense. To encourage lawlessness by the inference that the victim cannot or should not retaliate, and leave the criminal to feel he can pursue his unlawful activity without fear of accountability, should be considered, he believed.

In answer to this, Mr. Paillette said he wished to clarify the difference between defense of a victim and defense of property and the situation of making an arrest for a crime which may or may not have been committed. He did not believe the Criminal Code renders any victim impotent in his own defense. It carefully lays out, he said, what the citizen may do to defend himself, his property or a third person, but it does draw a distinction between that set of circumstances and arresting someone who is committing an act that does not involve him directly. Chief Johannessen responded that a person, in arresting a shoplifter without the authority to use any kind of restrictive force to hold him, would to him mean that it is only a technical one, and, in effect, he is impotent in that sense.

Representative Cole referred to ORS 133.260 (Degree of restraint) and asked how far this has been applied. Mr. Paillette reported there have been a number of cases in this area: State v. Nodine, 198 Or 679, 259 P2d 1056 (1953); Rich v. Cooper, 234 Or 300, 380 P2d 613 (1963); Askey v. Maloney, 850 Or 333, 166 P2d ___ (1917); Scibor v. Oregon-Washington R & N Co., 70 Or 116, 140 P 629 (1914). He remarked that these were all police arrest situations and none related to private citizens.

Chairman Chandler expressed concern over the situation where a youth throws a rock through a window and the victim tries to hold him until the parents arrive, meanwhile striking the youth. Mr. Carnese said this would go beyond what he is suggesting and would allow criminal prosecution but he wondered if the citizen had the authority to grab him by the shirt. Mr. Spaulding believed that under ORS 113.260 it is implied this could be done. This section, Mr. Carnese said, does not square with anything in the Criminal Code under the Justification Article. There is no authority under that Article for this to be done and there are now two stautes which are different -- the degree of force authorized under the Criminal Code in the Justification Article and a different degree of force authorized under the present laws of arrest. It would be confusing to leave them as is and he suggested either taking out one or the other or modifying them so they state the same thing. Section 31 of the Code (ORS 161.255) indicates the force a private citizen may use to make an arrest, and he believed this would prevail over ORS 133.260.

Mr. Paillette responded that ORS 133.280, 133.370 and 133.380 were repealed and that the other statutes were reviewed but not acted upon. He said he was not in disagreement with Mr. Carnese's position with respect to the private citizen situation because he did not feel there was any conflict between this statute and any of the provisions with respect to peace officers but felt there was room for argument that the private citizen making the arrest would be limited under the Justification Article of the Criminal Code.

Mr. Carnese referred to ORS 133.280 which read:

> "If, after notice of intention to arrest the defendant, he either flees or forcibly resists, the officer may use all necessary and proper means to effect the arrest."

ORS 133.350 states that the private citizen may arrest in like manner, which then refers back to ORS 133.280, the repealed section.

Referring again to the authority to arrest for a misdemeanor on probable cause and the California Penal Code, Mr. Carnese suggested the legislature consider giving a peace officer the authority to make a misdemeanor arrest on probable cause when committed in his presence and further suggested that an officer be allowed to arrest on probable cause when not committed in his presence, at least for a Class A misdemeanor.

Mr. Paillette next referred to the California Penal Code and stated that it does not go as far as Mr. Carnese wished it to go with respect to the misdemeanor arrest. Mr. Carnese responded the Code solves everything except the authority to arrest on a probable cause for a misdemeanor not committed in the presence of the officer.

Senator Burns arrived.

Chairman Chandler asked if Chief Johannessen wished to add anything further to his testimony. Chief Johannessen restated that his main concern is that the officer not be asked to make an adjudication in the field while in the process of making an arrest, regardless of whether it be for a misdemeanor or a felony, but that he be required, based on his judgment, to meet the criteria of reasonable or probable cause and have the courts make the adjudication at a later time as to whether either the person or the crime was in fact as presented. Under existing law, he said, the officer must make this adjudication ahead of time which is, in his opinion, most unfair.

Mr. Wuergeler referred to probable cause for a felony arrest and whether it had in fact been committed. In support of this statement, he said that most frequently the crime is discovered before it is reported. He presented a recent situation where theft of a carload of merchandise had been discovered at a Salem auction and which was not reported stolen until three hours after the discovery. The officers were able to hold the suspects because there was a "want" from another state for one of them; however, without that and the burglary not having been reported at the time, the suspects would have had a three hour lead.

Lt. David Bishop, Beaverton Police Department, referred to the problem relating to jurisdiction. In an area such as Beaverton, with Multnomah and Washington Counties joining, the problem arises concerning arrest warrants. One county allows serving arrest warrants in its county and his own county questions the fact of a police officer from the city going outside and serving the warrant. Lt. Bishop requested a clarification in this area.

Chairman Chandler asked if this is a problem requiring a change in legislation. Mr. Carnese responded that it appears to be a problem basically of interpreting legislative intent and what was meant in defining a peace officer as a municipal policeman. Was it meant to say that that he was a peace officer only while acting within his municipal jurisdiction or was it meant to say that he was an officer statewide and therefore a Beaverton police officer could arrest someone upon a warrant or serve a search warrant in Multnomah County.

Senator Burns expressed the view that if the person was a Beaverton police officer, his jurisdiction is limited to Beaverton unless there is a reciprocal agreement between the Portland police department and the sheriff's office as there was in the past.

Lt. Bishop remarked that this is becoming more of a problem now from the standpoint of the police officers going into the cities and attempting to serve an arrest warrant. He told of a recent case where the officer, in attempting to serve a warrant, contacted a sister; the individual was not at home and investigation showed he was approximately 1 1/2 miles outside the city. By the time the agency had been contacted which had jurisdiction to perform the services, the individual was gone as the sister had already informed him they were looking for him. Lt. Bishop felt this type of problem should be clarified and defined and apply throughout the state, either one way or the other.

Mr. Carnese believed that one position that could be taken is the fact that a warrant to search or arrest is written to any peace officer in the state. The Code defines "peace officer" as a municipal policeman and does not necessarily say he must be in his municipality. The question then arises if a Beaverton officer can serve an arrest warrant without the assistance of the Portland police department inside the city of Portland. The code does not seem to say no to this, except perhaps in legislative history.

Mr. Paillette remarked that as far as the Commission was concerned, it did not deal specifically with the problem of service of warrants by municipal policemen. The last legislative session, he said, dealt indirectly with the problem through Senate Bill 198 which related to issuance of bench warrants. Upon passage of this bill, ORS 137.065 reads that instead of directing the warrant to any sheriff or his deputy in the state, it is directed to any peace officer in the state with no mention of jurisdiction. Another change made in the bill brought in the authority of the justice court to issue a warrant. The bill, he related, was incorporated into HB 1535 which passed. It was his impression that there was a feeling that because of the use of the term "peace officer," this would allow the municipal policeman to serve the warrant not only in his city but elsewhere. Rising v. City of Portland, 57 Or 295, 111 P 377 (1910), he said, states that a policeman is a peace officer and a large part of his duties are such that he has authority to act, not as an agent of a city or state, but by virtue of his office as a peace officer. This, he believed, would lend some credence to the argument that a peace officer is not limited to the confines of his city. Branch v. Albee, 71 Or 188, 142 P 598 (1914), states that policemen of the City of Portland are city and not state officials although they have power to make arrests for crimes against the state. He did not believe this involved a warrant service situation but that it was a question of whether they were empowered to arrest for violation of a state statute.

Mr. Carnese asked what the legislative intent was with respect to the authority of a situation such as the Beaverton police officer to act as a peace officer outside his city under the Justification Article and wondered if he could use deadly force to make an arrest for a felony or if he was a private citizen and could only use deadly

Chief Johannessen felt this area needed clarification for two major reasons. First, where the crime is committed in the officer's presence when he is outside his jurisdiction and he is, in fact, a peace officer of the state, the officer can act in the capacity of a private citizen, but this is difficult for him to explain to another citizen. Secondly, and most important, he said, is that eventually the officers will have to deal with the mutual aid plans for the entire state. Presently, one of the difficult aspects of mutual aid is that peace officers will have to be deputized if they are moving to aid in another jurisdiction. This is time consuming, he declared, and has been overcome by other states by putting into effect legislation covering the subject. Chief Johannessen referred to section 830.1 of the California Penal Code which gives authority to any peace officer any place in the state and covers the issue of jurisdiction, particularly as to mutual aid.

Sheriff Truitt referred to the mutual aid plan and spoke of an instance where he had sent officers from Roseburg to assist Lane County officials. He felt it important to clarify the area of jurisdictional authority.

Chairman Chandler remarked that there is a great variation in the functions performed by the sheriffs in the different counties, some having no duties other than transporting prisoners. This is correct, Mr. Carnese said, but there is now the Board of Police Standards and Training requirements which all peace officers in the state must abide by and at least there is a guaranteed level of competency statewide before anyone even qualifies as a peace officer.

Mr. Dolan commented that not all police officers in Oregon are required to be certified. Cities of 1,000 or less do not have to meet the requirements. This was a legitimate concern to many officers, he said.

Mr. Bishop asked if using the Board's certification toward a peace officer's title, with jurisdiction extending throughout the state, might help the problem and at least be a starting place for establishing the definition of a peace officer. It could, Chairman Chandler responded, if it were required of everyone. If "grandfathering" in some and eliminating municipalities such as Sisters, Metolius, Culver, etc. by statute from having to meet those requirements, the problem would still exist.

Senator Burns asked if, besides Lane County, there were other places where the sheriffs are contracting police protection to the small towns. Multnomah County covers the cities of Troutdale, Fairview, Wood Village and does felony work in Gresham; Lincoln County has two cities under contract and Douglas County has three.

Mr. Paillette referred to HB 1916 and remarked that he did not believe, as desirable as it is to have professionalization of law

enforcement officers and to support the efforts of the Police Standards Board, that the Commission should try to use the Criminal Code to force legislation with respect to upgrading police officers. The Code already recognizes that if he is a municipal policeman or deputy sheriff, whether or not he is certified by the Police Standards Board, he is a peace officer.

Sheriff Truitt responded that it was not their intent to professionalize law enforcement through the Criminal Code but only to clarify for both the small and large cities what the officers' particular authority and rights are.

Chief Johannessen commented that the peace officers in the state deal with state crimes and that it is fair and essential for future development of a mutual aid plan that the officer be given the proper authority. He agreed that the matter of qualification and certification should come later through avenues other than legislation, but he did not feel the mutual aid plan could be pursued without this authority the officer needs to perform his duty in any jurisdiction in which he may be.

Referring to the mutual aid plan, Chairman Chandler asked who would be the one to accept a mutual aid pact with one city and refuse a contract with another. Chief Johannessen said he did not believe it would ever come to that. The plan he is familiar with escalates the mutual aid idea from the lowest level up to the first county level within that county, through other counties and then finally through the state. The plan predesignates who the persons in authority are at any given level up through the higher levels and will eliminate to some degree the fears of incompetency of some of the officials.

Representative Cole referred to the mutual aid bill when discussed in the House Judiciary Committee during the 1971 session. He was of the opinion that at that time there were some individual sheriffs who opposed it because of the problem of having to deal with small cities and having their men under that police chief's control and jurisdiction. He related that this was what killed the bill in committee.

Mr. Paillette referred to probable cause arrest for misdemeanors not committed in the officer's presence, and asked the law enforcement officers at the meeting if they were in general agreement that this should be for any misdemeanor or if they thought a Class A misdemeanor was adequate for their purpose.

Mr. Carnese suggested the authority be extended to the Class A misdemeanor because he felt the Commission had attempted to make the Class A misdemeanor an important crime and an offense similar to a Class C felony.

Chief Johannessen believed it should be extended to all misdemeanors because essentially, he said, the classes are a matter of judicial determination.

Mr. Carnese responded that if the officer is given the authority, as he is in California, to arrest for a misdemeanor when he has reasonable grounds even though not committed in his presence, it would solve most of the problems. The one crime that an officer would like to arrest for, and not committed in his presence, would be harassment, which is a Class B misdemeanor. He did not believe there were many other Class B or C misdemeanors where the officer would have the opportunity to arrest on probable cause not committed in his presence.

Mr. Paillette invited all those present at today's meeting to submit any specific legislation or amendments in the form of a bill, rather than a general policy or concept, to the subcommittee. It would be helpful to the staff to know their position when they began drafting in this area, he said. He asked if, with respect to the authority of peace officers throughout the state, if those present would be in agreement if something were recommended along the lines of HB 1916. Chief Johannessen stated that HB 1916 does not go far enough but at least would take care of part of it. He suggested the language of section 830.1 of the California Penal Code might be of some help in drafting. Mr. Carnese suggested amending subsection (4) of ORS 161.015, adding language to state that the authority extends throughout the state, or, if this is not the intent of the subcommittee, to state that the authority only exists within the specific jurisdiction.

The subcommittee recessed at 3:20, reconvening at 3:30 p.m.

With regard to ORS chapter 133, Mr. Paillette remarked that the subcommittee is dealing with several statutes, and that if there is not some compelling reason to change them, there is nothing accomplished by rewriting. He was of the opinion they should be left alone and only the statutes which need attention should be chosen for review, such as ORS 133.310 with respect to reasonable cause to arrest and whether or not a felony or offense has been committed. In this section, he said, the Criminal Procedure Code should incorporate any definitions it has in the substantive code although the subcommittee may not wish to go as far as incorporating the word "offense" which would include a violation as well as a crime. By only inserting "crime," it would focus on one of the major problems which the law enforcement officers are now having. He suggested writing a probable cause standard relating to felonies or misdemeanors. With respect to the question of the jurisdictional problem, Mr. Paillette believed a strong argument could be made that ORS 137.060, which was amended by HB 1535, implies that under an arrest warrant a peace officer can serve that warrant, but whether a court would rule that way, he did not know. These are two areas the subcommittee should concern itself with. Mr. Paillette commented that in this area there are so many different

problems, most of which a person is not aware of unless he works with it on a day-to-day basis, but if the subcommittee would advise him as to the direction it wishes to take, he will attempt to formulate some language.

Chairman Chandler asked if there was anything in ORS chapter 133 which was outdated to the point it was advisable to remove it from the statutes. Mr. Paillette responded that since none of the law enforcement people at today's meeting brought up any of these types of questions, he would assume there was nothing else causing them concern. One area not brought up at the meeting, he said, was with respect to the knock and announce provisions. Mr. Carnese responded that a committee composed of law enforcement personnel has been examining the drafts as they have been received. He said knock and announce was discussed with respect to search warrants, realizing it would apply to both arrest and search warrants, and he assumed it would be a separate section covering both. Therefore, he had not discussed the subject at today's meeting.

Mr. Spaulding stated he was in agreement with having a standard for an officer to arrest on a felony or major traffic offense if he has reasonable cause and even though the felony was not committed. ORS 133.310 (3) is where the problem is apparently arising, he said.

Chairman Chandler referred to ORS 133.350 relating to a private person's authority to arrest without a warrant. The question arises, Mr. Spaulding pointed out, over whether the citizen is able to detain the person. Chairman Chandler agreed with the argument that the citizen should not be given authority to arrest only to have the arrested person walk away but again expressed concern about the citizen being able to arrest. He did not believe it was used often and when it was, the arrest was made by persons who are in effect special police officers.

Mr. Carnese pointed out that in Portland at least 50 to 75% of all misdemeanor arrests are made by private citizens. When there is an assault or a larceny, he said, the police officer will respond to the scene and require the private citizen to actually place him under arrest since the officer has no authority to do so unless the crime was committed in his presence.

This particular area, Mr. Paillette observed, was one which was discussed at length by both the Commission and the 1971 legislature. The definition of arrest in ORS 133.210 is the taking of a person into custody so he may be held to answer for a crime. Mr. Paillette said this should also be read with ORS 133.250 which states, "An arrest is made by the actual restraint of the person of the defendant or by his submission to the custody of the officer." Mr. Spaulding believed this implied that if the citizen has authority to arrest, he also has authority to hold him to answer for a crime.