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OREGON CRIMINAL LAW REVISION COMMISSION

Twenty-sixth Meeting, December 16, 1971

Members Present: Senator Anthony Yturri, Chairman
Senator Wallace P. Carson, Jr. (Present for afternoon session only)
Mr. Robert W. Chandler
Representative George F. Cole
Judge Edward H. Howell (Ex-officio)
Attorney General Lee Johnson
Representative Leigh Johnson
Mr. Frank D. Knight
Representative Norma Paulus
Judge Herbert Schwab (Ex-officio)
Mr. Bruce Spaulding

Excused: Senator John D. Burns, Vice Chairman
Judge James M. Burns
Mr. Donald E. Clark
Representative Robert Stults

Staff Present: Mr. Bert Gustafson, Research Counsel

Also Present: Mr. Donald R. Blensly, Oregon District Attorneys' Association Criminal Law Revision Liaison Committee
Dr. William J. Brady, State Medical Investigator
Captain Ray Howard, Criminal Division, Oregon State Police
Mr. John Moore, ODAA Liaison Committee
Mr. Gene Murphy, Lane County District Attorney's Office

Agenda:

Senator Anthony Yturri, Chairman, called the meeting to order at 9:30 a.m. in Room 315 State Capitol.

Approval of Minutes of Commission Meeting of October 29, 1971

Mr. Chandler moved that the minutes of the Commission meeting of October 29, 1971, be approved as submitted. Mr. Spaulding seconded and the motion carried unanimously.

Applicability of Criminal Code to Sentences of Penitentiary Inmates; Authority of Justices of the Peace to Conduct Presentence Investigations

Chairman Yturri indicated he had been receiving a considerable amount of correspondence from inmates of the penitentiary with respect to making the substantive Criminal Code applicable to sentences imposed prior to the effective date of the Code. Mr. Chandler said he too had received letters on this subject and was planning to talk to some of the inmates the following week. The Chairman stated that the letters he had received point out that disparity of sentences between crimes committed prior to the effective date of the new Code on January 1, 1972, and sentences imposed after the effective date promised to cause considerable dissension among the inmates. He added that the Commission could do nothing about the problem; it was a matter to be determined by the Parole Board or possibly the Executive Department.

Chairman Yturri reported he had also been receiving mail from another class of prisoners who were being held in county jails. In those instances a plea of guilty had been entered in a justice of the peace court and the justice of the peace then decided to have a presentence investigation. The defendant was sent to jail, in one instance had been in jail for 50 days at the time the letter was written, and still the justice of the peace had not imposed sentence. The question presented, he said, was whether or not a justice of the peace had authority to conduct a presentence investigation.

Mr. Knight commented that if the justice of the peace wanted the defendant to spend 50 days in jail, he should sentence him to that term in the first instance. Mr. Chandler agreed that such cases created a bad situation and formed the basis for one of the reasons he believed that a justice of the peace should be under the direct control of the circuit court judge in his particular circuit. Most circuit judges, he said, would not permit such a practice to continue on a regular basis. Chairman Yturri advised that the practice began because the justices of the peace believed that if the circuit judges could conduct presentence investigations, they could too.

Judge Schwab observed that presentence investigations were, or could be, the source of problems even in the circuit courts. This was the case in Multnomah County sometime ago when the Board of Parole and Probation was behind in its work and sometimes took six to eight weeks to complete a presentence investigation. There was nothing to prevent a circuit judge from being dilatory in studying the presentence report after he received it.

Chairman Yturri indicated that this was an area which the Commission would undoubtedly be studying in more detail at a later date.

Proposed Revision of State Medical Investigator Laws

The Chairman explained that Dr. William J. Brady, State Medical Investigator, had requested an opportunity to appear before the Commission to present a proposed revision of the laws relating to his agency.

Dr. Brady advised that his purpose in appearing was to request that ORS chapter 146, relating to death investigations in the State of Oregon, be studied by a subcommittee of the Commission with a view to revising that law. A number of the ORS sections in that chapter, he said, would ordinarily fall under the surveillance of the Commission.

Dr. Brady indicated that under present law the Oregon State Board of Health was in charge of the medical investigation division, and the administration of the Health Division and the direction of the Board itself was now under the Department of Human Resources. He emphasized that although the present law was working well and would probably continue to do so, there were a number of details adopted in 1958 when the medical investigator law was initially written that were not necessarily applicable to the operation as it presently existed.

Dr. Brady reported that after he had completed the revisions being proposed today, he had reviewed them with Mr. Jacob Tanzer, Director of the Department of Human Resources, who had expressed support of the amendments. Mrs. Marva Graham, Dr. Brady's immediate supervisor from the Health Division, had also reviewed and indicated her support of the revisions. There were some sections in the revision relating to the funeral industry, and the Funeral Directors' Association supported those changes. The Medical Investigator Advisory Board, the appointed agency governing his office, had expressed strong support of the revision. He said he had attempted to contact every person or group of persons who had any relationship to the law and had found no one who opposed any part of the proposed revision.

Dr. Brady reviewed the procedure he had followed in preparing the revision which included a study of laws of others states and incorporating some of the provisions of the Model Medical Examiners' Act. The majority of the proposals in the revision, he said, were based on the need for changes he had observed through personal experience in working with the law for the past six years and on suggestions of his men throughout the state who were working with the law every day.

Chairman Yturri indicated that when he had initially discussed Dr. Brady's proposal with Mr. Paillette, they had decided, rather than assigning the matter to a subcommittee in the first instance, to let

the Commission hear the presentation and make the decision as to whether or not it should be submitted to a subcommittee for further study.

Dr. Brady then explained that the present death investigation law was haphazardly organized, confusing and overlapping so the principal change was one of reorganization. The other principal change was made to conform the new law to the present method of operation of the office. Administratively, he said, he was given a great deal of responsibility for which there was no statutory authority. At the present time this caused no problem because his relationship with the heads of his division was excellent, but should personalities change in the future and the statute be strictly enforced as presently written, the operation of the office would be seriously handicapped. The Board of Health had complete control over his duties, he said, while in actuality they scarcely knew he existed.

Dr. Brady distributed an outline of the proposed revisions to ORS chapter 146, a copy of which is attached hereto as Appendix A. He explained the outline and indicated that the revision was as complete as he could possibly make it so that it should take a minimum amount of Commission time. He said Mr. Paillette had advised him that the revision would not involve a significant amount of the Commission staff's time beyond what had been done by Dr. Brady. He expressed the view that the benefits of the revision would far outweigh the efforts put into it.

Mr. Gustafson commented that the first five sections of Dr. Brady's proposed revision dealt with organization of the medical investigator's office which was under the new Department of Human Resources. The sixth section dealt with duties concerning investigation of deaths, and the only change was to require blood alcohol tests for fatal motor vehicle accidents, this being the main criminal matter involved in the revision. As a matter of policy, he said, the Commission needed to decide if it wanted to spend time changing law which fell within the responsibility of the Department of Human Resources.

Chairman Yturri pointed out that another point that would have to be decided by the subcommittee, assuming it was assigned to one, would be whether to recommend submitting the revision as a separate bill rather than as a part of the criminal procedure code. He said he did not see how a change in the Department of Human Resources law, an existing state agency, would fit in logically with the criminal procedure code. Except for the criminal functions, he said, the proposal appeared to be beyond the purview of the Commission.

Mr. Chandler indicated he would have no objection to undertaking the task but agreed with the Chairman that it was probably beyond the statutory authority of the Commission. Dr. Brady had apparently done

all the groundwork, he said, and it was his opinion that the revision would fare just as well if it were presented to the next legislature as a revision of ORS chapter 146 with Mr. Tanzer and his organization lending assistance in its passage.

Dr. Brady said it was his understanding that ORS chapter 146 did fall under the criminal procedure code. In response to Mr. Gustafson's remarks, Dr. Brady agreed there was no question that the operation of the death investigation system fell administratively under the Human Resources Department; however, the administration of the law was only a fraction of the problem. The biggest problem was the actual authority that the man at the county level had in investigating deaths. The "guts" of the law, he said, was what happened and what authority a medical investigator had when he arrived on the scene of a crime. Did he have authority to order an autopsy, hold the body, seal off the room and prevent people from going into the room and carrying away evidence? The law enabled the man who was called to the scene of the crime at the earliest part of the investigation of a criminal offense to act or not to act. It also dealt with inquests and had a definite relationship to the criminal law.

Mr. Chandler commented that the Motor Vehicle Code, the Pharmacy Code and many others had the same general relationship to the criminal law.

Mr. Knight remarked that investigations of homicides and suspected homicides were the most serious and many times the most complicated investigations in the criminal field. Although part of the proposed revision might not relate specifically to how those investigations were conducted, he was of the opinion that the Commission would not be out of line to deal with this law. He added that this was the type of an investigation that every police agency wanted to get involved in and someone had to be given the authority to take charge. This portion of the law, he said, set out that authority.

Attorney General Johnson suggested that the proposed revision be submitted to a subcommittee with the understanding that the matter would be taken up after the other work of the Commission was finished if sufficient time remained to do so. If it became apparent that there would not be sufficient time to undertake the task, Dr. Brady should be so advised in order that he could present his proposal to the legislature independently.

Chairman Yturri suggested that if the subcommittee found that certain aspects of the proposal were not properly within the purview of the Commission, they could work on the relevant portion and relegate the remainder to an interim committee.

Dr. Brady declared that this was an area of so little general concern and interest that if it were submitted as a separate bill, it would end up at the bottom of the list of legislative priorities.

Several members of the Commission disagreed with that statement. Mr. Chandler commented that he doubted it would be necessary to submit the matter to an interim committee at all because it appeared that the job had been done and apparently done well.

Chairman Yturri questioned the authority or propriety of the Commission to say that the medical investigators should no longer be under the State Board of Health and that it should be an independent agency of the Department of Human Resources.

The Chairman then proposed to refer the revision to Subcommittee No. 1 for further study with the understanding that they would return a specific recommendation to the Commission. There being no objection, it was so ordered. Mr. Chandler, Chairman of Subcommittee No. 1, indicated that the subcommittee would consider the subject promptly and would probably want to talk to Mr. Tanzer before making a final recommendation to the Commission.

Grand Juries

Mr. Johnson asked the Chairman if the Commission would be taking up the subject of grand juries during the course of the procedural revision. Chairman Yturri replied that no specific intent had yet been formulated or expressed, but it was an item that would undoubtedly consume a great deal of the Commission's time at a later stage of the procedural revision. In his conversations with various Commission members, he said, there was some feeling that grand juries should be abolished or at least their entire functional aspect changed.

Mr. Johnson said he raised the question because a change would require a constitutional amendment and, judging from previous history, the proposal would be defeated at the polls because the public did not understand the subject. The Judicial Reform Commission, he said, will probably be proposing an overhaul of the entire judicial article of the Constitution and he suggested that the Commission might want to keep that fact in mind.

In response to the Chairman's request for his comments, Judge Howell said his feeling several years ago was that grand juries could well be eliminated but he had had no contact with them in the last seven years and said he was not in a position to say he approved or disapproved of them at this time. Judge Schwab indicated he held the same opinion that Judge Howell held seven years ago.

Former Jeopardy; Preliminary Draft No. 2; October 1971

Chairman Yturri indicated that Mr. Paillette was not present at today's meeting because a death had occurred in his family and the funeral services were being held today. Mr. Gustafson had prepared the draft on today's agenda and the Chairman asked him to present it to the Commission at this time.

Mr. Gustafson explained that the draft on former jeopardy attempted to make a clear statement of a proper unit of prosecution, balancing the interests of society in resolving a crime against the right of the individual not to be tried twice for the same offense. The bases for the draft, he said, were the Fifth Amendment of the United States Constitution; Article I, section 12, of the Oregon Constitution; the New York Criminal Procedure Law; and the Model Penal Code.

Section 1. Former jeopardy; definitions. Mr. Gustafson noted that the definitions of "conduct" and "offense" were the same as those in the substantive Criminal Code. The definition of "offense" in subsection (1) incorporated a violation of either a municipal or state law so that a violation of any law was still one offense under the draft. This definition would thereby prevent a dual prosecution by two different sovereignties.

The definition of "criminal episode" in subsection (2) constituted the second prong of a two-pronged approach, the first prong being the offense, and together they were intended to set out a unit of proper prosecution.

Subsection (5), Mr. Gustafson said, stated the time when jeopardy would attach. The subcommittee discussion on this subsection turned on the point of time when jeopardy should attach. Originally, he felt it would be constitutional to have one point in time when jeopardy would attach and that time would be when the first witness was sworn. However, the subcommittee changed that proposal because of the holding in United States v. Jorn, 400 US 470 (1970), which said that jeopardy attached when the jury was sworn and empaneled. In Benton v. Maryland, 395 US 784 (1969), the United States Supreme Court held that the due process clause of the Fourteenth Amendment meant that double jeopardy standards of the federal government were the same as for state courts. In essence, therefore, all the jurisprudence at the federal level concerning double jeopardy was applicable to the states. Mr. Gustafson explained that the definitions in section 1 were set forth in the positive, and other sections of the draft either made exceptions to or narrowed the definitions.

Subsection (4). With respect to the definition of "criminal episode" Mr. Knight asked if he was correct in his understanding that ten charges could be rendered out of one criminal episode, but the defendant could be tried only once for all ten of those crimes. For instance, if a person committed five armed robberies on five separate nights, it would be one criminal episode. Chairman Yturri replied that his understanding was that such a situation would be five separate episodes. Mr. Spaulding explained that if a person robbed five people in one place, that would be one episode.

The classic example, Judge Schwab said, and one that was discussed in subcommittee, was where a woman in Portland set fire to her house and killed four of her children. Assuming she set the fire, she would be guilty of four felony murders. There were four deaths, all known to the prosecutor, and under this draft the mother could be charged with four murders but all four would have to be tried together because it was one criminal episode.

Mr. Knight contended that committing an armed robbery every night for five nights would be one criminal episode under the draft because of the language in subsection (4), "the evidence of one offense would be relevant and admissible with the evidence of the other offenses."

Mr. Gustafson explained that the definition of "criminal episode" was derived from an Oregon case, State v. Huennekens, 245 Or 150, 420 P2d 384 (1966), dealing with permissive joinder. Under present law, he said, different criminal acts could be joined if they were related in time, place and circumstances. The draft was attempting to make the permissive joinder compulsory in the instances listed. In his opinion Mr. Knight's example was not joined in time, place and circumstances.

Mr. Knight maintained that subsection (4) did not read in the manner explained by Mr. Gustafson. He was fearful that the subsection was including more than was intended.

Judge Schwab expressed agreement with Mr. Knight's contention because the language relating to relevance in subsection (4) could well include the modus operandi. It was not the subcommittee's intent, he said, to require joinder in such cases. He asked if the problem could be covered by including a suitable explanation in the commentary.

Mr. Johnson suggested the subsection might be clarified by amending it to read:

> " . . . and such conduct is [~~or~~] joined in time, place and circumstances [~~if not~~] and, if more than one offense is charged, the evidence of one offense would be relevant . . . . "

Chairman Yturri remarked that subsection (4) was not intended to cover the situation where a person committed four different crimes at four different times and four different places. However, the unique manner in which he committed them was admissible to show intent or modus operandi.

Judge Schwab affirmed that this was the intent of the subcommittee but if the subsection was susceptible of the interpretation articulated by Mr. Knight, it should at least be clarified in the commentary.

Mr. Johnson disapproved of trying to change what the subsection said by commentary. The proposed statute did not, he said, state the intent accurately.

Mr. Knight pointed out that subsection (4) did not say the crime had to be committed on the same day. "Time," he said, could mean within a week or two weeks or more. He urged that the definition be tied directly into the circumstances covered by a permissive joinder under present law.

Mr. Gustafson suggested the matter might be handled in the commentary by explaining that "time" was intended to mean less than one day and by saying that an example of the type suggested by Mr. Knight would not be considered one criminal episode.

Mr. Johnson pointed out that the phrase relating to "time, place and circumstances" was hinged on the phrase, "the evidence of one offense would be relevant and admissible with evidence of the other offenses." That was the only definition of "time, place and circumstances" in the draft and it was inaccurate. He renewed his earlier suggestion for amendment and explained that the subsection would then refer to two conditions: (1) the crimes had to be joined in time, place and circumstances; and (2) the evidence of one crime would have to be relevant and admissible with the others.

Mr. Knight asked if there was a case that accurately and precisely defined the one transaction test allowing joinder of counts under the permissive joinder provisions of present law. If, under present law, ten counts could be permissively joined, then this draft was attempting to require that they be joined.

After further discussion, Mr. Johnson moved that section 1 be rereferred to subcommittee to see if the members could develop a better definition of "criminal episode" which would be tied down to a one transaction situation.

Chairman Yturri summarized the discussion thus far by saying that Mr. Spaulding's example of a person robbing five people in one room at one time was the type of situation at which the definition was aimed. On the other hand, the definition should not be applicable to Mr. Knight's example of five robberies on five separate nights. If the matter were rereferred to subcommittee, he said, the language should be clarified and the commentary should also contain specific illustrations.

Mr. Chandler pointed out that the Model Penal Code referred to a "criminal episode" as a "continuing course of conduct" to indicate that if a person robbed a bank, shot the teller, ran a red light in the get-away car and wrecked the car three blocks later, such

continuing conduct was triable at one time. If he was not charged with running a red light and he was released on the other charges, he could not then be tried for running the red light.

Mr. Spaulding commented that the way the subsection was written, it appeared to make the admissibility of the evidence an element of the criminal episode, whereas admissibility of evidence was an entirely different concept.

Concerning Mr. Chandler's comments regarding "continuing conduct," Mr. Knight remarked that a person or a band of persons could steal tools on one night, steal explosives from a different place on another night and later on use that equipment to blow a safe in still another spot. It could be argued that such a chain was "continuing conduct." He asked if it was the intent that such conduct be charged in one complaint.

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Mr. Gustafson suggested amending the language of subsection (4) by using the wording in section 1.07 (1) (e) of the Model Penal Code referred to by Mr. Chandler. He proposed not only to use the phrase "continuing course of conduct" but also to incorporate the term "uninterrupted" as did the Model Penal Code.

Mr. Chandler commented that before proceeding to section 2, it was necessary for the members to decide precisely what they meant by "continuing course of conduct" and by "uninterrupted" if that type of language was going to be used. Furthermore, the commentary should contain specific examples of the type of conduct covered by the definition so that no one need be in doubt as to the intent.

In response to the Chairman's request to state the intent of the Commission in defining "criminal episode," and without being bound to any specific language, Mr. Knight indicated that the purpose was to state that one criminal episode would cover an act or transaction where more than one crime was committed but where all the crimes were part of the same act. This would cover situations such as one bullet killing two people; robbing several people at the same time during the course of one armed robbery; or the same transaction where some of the crimes were necessarily separate and distinct but were generally preparatory to the principal offense and to the accomplishment of the perpetrator's intent. Still to be decided, however, was whether it should be considered one criminal episode when dynamite was stolen one night for the purpose of blowing up a safe in a different place on the following night.

Chairman Yturri was of the opinion that the definition should not be too restrictive. A certain amount of flexibility was required, he said, because under one set of circumstances three different acts might occur on different days and those acts might be so interrelated as to time, place and circumstances as to constitute one episode where

the same evidence would be admissible for all the offenses, whereas in another situation five acts might occur at different times and be of such a nature that evidence of one was not admissible with evidence of the others because they were not related in time, place and circumstances. He objected to tying the statute down by saying that if 12 hours elapsed between acts, it was one episode, but if 12 1/2 hours elapsed, it was two. He said he could visualize circumstances where six months could elapse between acts; yet evidence of the first act would be admissible with evidence of the second.

Mr. Moore stated that it might be possible to draft the section using an evidence type of test and to approach the problem from the other end by saying that if more than one offense was charged, proof of one would be necessarily required in the proof of the other. If the transaction were such that the evidence of one offense was necessarily going to include proof of the other offense, then they should be joined. This, of course, was different than saying that if evidence of one was admissible with the other, they would be joined, because proximity in time, place and circumstances would not necessarily be the same.

Mr. Chandler moved that subsection (4) of section 1 be rereferred to the subcommittee with instructions to either revise the definition of "criminal episode" and/or to add appropriate material to the commentary to indicate that one episode was intended to be a continuing course of conduct where the conduct for all intents and purposes was uninterrupted, i.e., the bank robbery where a teller was shot; setting fire to a house where four people were killed as a result of the fire; armed robbery of a tavern where five people were wounded during the course of the robbery. It should not include a situation where a group of people gathered one night to plot a bank robbery, two weeks later stole some dynamite and three weeks later blew up the door of the bank.

Chairman Yturri was of the opinion that "continuing" was a poor word to modify "conduct" and asked if any states had used "related." Mr. Chandler noted that section 40.10 (2) of the New York Criminal Procedure Law said "so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture."

Mr. Knight suggested that "proof of one crime is necessarily included in proof of the principal crime" would generally cover the intent of the Commission. Mr. Chandler thought that language was too limiting and Chairman Yturri agreed. The Chairman said that if a person killed five people in the course of an armed robbery, proof that he killed all five was unnecessary. Mr. Knight's suggestion was therefore rejected because it contained the word "necessarily." Chairman Yturri commented that the term should be "closely related" or similar language and Mr. Knight agreed.

Mr. Spaulding cautioned that the vital portion of the definition should be contained in the statute rather than relying too heavily on the commentary, and the members agreed.

Vote was then taken on Mr. Chandler's motion to rerefer subsection (4) of section 1 to the subcommittee. Motion carried unanimously.

Section 2. Previous prosecution; when a bar to second prosecution. Mr. Gustafson explained that section 2 stated when a previous prosecution was a bar to a second prosecution. Subsection (1) contained the constitutional statement that no person shall be prosecuted twice for the same offense. Subsection (2), he said, was the operative section of the entire draft and hinged on the definition of "criminal episode." It said that a person would be tried for the crimes he committed within one episode but the crimes could not be tried separately and he could only be prosecuted once for the crimes committed in that episode. However, subsection (2) was modified by the exceptions in sections 3 and 4. Subsection (3), Mr. Gustafson said, was a restatement of existing case law.

Subsection (1). Mr. Knight noted that subsection (2) contained an exception relating to the provisions of sections 3 and 4 and he was of the opinion that the exception should also obtain to subsection (1) of section 2. Mr. Spaulding pointed out that there was a difference between "offense" as used in subsection (1) of section 2 and "criminal episode" referred to in subsection (2).

Mr. Knight stated that the cases interpreting the double jeopardy provision of the Constitution held that the defendant waived his right to claim double jeopardy by appealing and getting a new trial.

Chairman Yturri said that if Mr. Knight's suggestion were followed and an exception placed in the statute that was applicable to subsection (1), there would then be nothing to prevent a defendant from claiming that the constitutional prohibition was restricted by statute.

Mr. Knight contended it should be clear that the constitutional provision for waiving double jeopardy was included in the statute. His concern, however, was that a defendant could not be retried if there was an appeal or a mistrial and this could happen if subsection (1) failed to refer to the exceptions in the subsequent sections.

Mr. Knight then moved to amend section 2, subsection (1), to read:

> "Except as provided in sections 3 and 4 of this Article, no person shall be prosecuted twice for the same offense."

Mr. Chandler commented that Mr. Knight's concern apparently did not bother the drafters of the New York Criminal Procedure Law which stated in section 40.20 (1): "A person may not be twice prosecuted for the same offense."

Mr. Spaulding stated that the courts had construed the language of subsection (1) to mean that when a defendant asked for a mistrial and it was granted, he had not been prosecuted. When he appealed and had a new trial, he was retried, not turned loose. If Mr. Knight's suggestion were adopted, the draft would not follow the Constitution.

Mr. Knight pointed out that his proposal would not be unconstitutional because the courts had held that a defendant could be retried following a mistrial or an appeal.

Chairman Yturri read from the Oregon Constitution:

> "No person shall be put in jeopardy twice for the same offense, nor be compelled in any criminal prosecution to testify against himself."

Mr. Spaulding suggested redrafting subsection (1) to adopt the language of the Constitution.

Mr. Gustafson commented that subsection (1) could be changed as Mr. Spaulding suggested to say that "No person shall be put in jeopardy twice for the same offense" or, another way of handling the problem, would be to place an exception relating to sections 3 and 4 in the opening paragraph of section 2 to modify the three following subsections.

Mr. Johnson noted that "prosecuted for an offense" was defined in section 1 and it appeared to him that it would create no problem to include the exception in section 2. Chairman Yturri agreed that it probably created no problem but at the same time it did no good.

Vote was then taken on Mr. Knight's motion to amend subsection (1) of section 2 as stated above. Motion carried.

Subsection (2). Mr. Knight next expressed objection to the phrase in subsection (2) of section 2: "if the several offenses are known to the appropriate prosecutor at the time of commencement of the first prosecution." Mr. Spaulding agreed with Mr. Knight's assessment of the phrase and added that this language might cause problems in a situation where an inept prosecutor was involved who didn't bother to find out everything he should.

Mr. Knight said that with the restricted definition of "criminal episode" there might be circumstances where the prosecutor would have enough evidence to charge the defendant with one or two crimes

committed in a single episode but did not yet have enough to charge him with the third. He asked how that situation was taken care of by the draft. Mr. Gustafson replied that under the proposed definition of "criminal episode," it would not be within the same episode, so it would not apply.

Chairman Yturri said that might not necessarily be true. The prosecutor might know of the several offenses but not have the evidence necessary to prove that the same person committed all of them and it would not be the same criminal episode unless the same person committed all the crimes.

Mr. Spaulding objected to making a criminal episode dependent upon what happened to be within the knowledge or in the mind of the prosecutor and the Chairman agreed. He asked how the prosecutor would prove he had knowledge of the offense. Mr. Knight also concurred and pointed out that "known" as used in subsection (2) would require evidence to prove the prosecutor's knowledge.

Mr. Gustafson commented that if the subsection were interpreted to go that far, it would create an impossible situation because the draft would then have to include a statement as to the quality of the determination the district attorney would be required to make. He was of the opinion that it was up to the court to determine the meaning of "known to the appropriate prosecutor," but it was impossible to define the term by statute.

Mr. Knight said that the statute should at least cover a situation where the prosecutor knew the crimes had occurred but had no idea that they were part of the same criminal episode.

Mr. Spaulding remarked that it would not be the prosecutor who would have to prove that he didn't know certain things. When the defendant was tried or about to be tried the second time, he would be the one who would have to show that the prosecutor knew about the second offense.

Mr. Gustafson stated that the entire intent of this subsection was the opposite of that being discussed by the Commission. Its intent was to protect the prosecutor, not to hinder him. An example of the type of situation it was intended to cover, he said, was where a person, driving while under the influence of alcohol, hit and killed someone. The body rolled into the ditch where it was not found for several days or weeks. In the meantime the driver was arrested a mile down the road for drunk driving and was tried and convicted of that charge. While the drunk driving and the homicide was one criminal episode, the prosecutor did not know of the death at the time of the trial. Subsection (2) was aimed at protecting the prosecutor and the people by permitting him to prosecute later for that portion of the criminal episode he had no knowledge of at the time of the first trial.

Mr. Spaulding remarked that subsection (2) would liberalize the present law a great deal in favor of the defendant and he expressed doubt that, as a matter of policy, it was advisable to take that big a step.

Taking Mr. Gustafson's example, Mr. Knight said it might happen that the body was found but at the time of the drunk driving prosecution, the prosecutor had no knowledge or no evidence that the defendant was the one who had committed the homicide. Mr. Spaulding agreed and said that the prosecutor might well lose his first case but later get the necessary evidence to prove that the defendant was the one who had killed that person.

Chairman Yturri asked why the subcommittee felt it was necessary to change existing law to provide that simply because the prosecutor knew of an offense which was part of a criminal episode, he was not permitted to prosecute that charge at a later time. He agreed with Mr. Gustafson that the provision was protecting the prosecutor to the extent given in his example, but at the same time in a situation where a number of offenses were committed and there was a second prosecution, it was inevitable that the defendant was going to say that the prosecutor knew of the offense causing the second charge and therefore could not proceed with that prosecution. He said he could see no reason for the provision.

Mr. Knight remarked that the question went back to the Commission's earlier discussion concerning the mandatory joinder as opposed to the permissive joinder. He could see nothing wrong in allowing the law to remain in its present state rather than requiring mandatory joinder. Chairman Yturri agreed that this was the basic policy decision to be made by the Commission.

Mr. Chandler advised that it was the subcommittee's intent to recommend to the Commission that they go farther in joinder than did existing statutes. The subcommittee felt it was right and proper to bar multiple prosecutions for consequences arising out of the same course of criminal conduct.

Chairman Yturri said he would agree that joinder should go farther than the present law, but it should apply only when the district attorney knew by reason of evidence that the defendant had committed the particular offense that was a part of the criminal episode and that the nature of the evidence the prosecutor had was such that he believed the defendant could be convicted upon it.

Mr. Spaulding said he could see no reason why, if someone committed a series of crimes, the prosecutor should not be in a position, as he is today, to indict him in any way and in any combination he saw fit in order to convict the guilty defendant. He further saw no good reason for making the prosecutor tie all the crimes together in one prosecution, assuming the defendant had committed a series of crimes.

Representative Cole pointed out that the prosecutor didn't have to join all the crimes but agreed that he would either have to join them or forget them.

Mr. Johnson was of the opinion that this was an area where double jeopardy should apply. If the crimes were truly one criminal episode, he was of the opinion that the state should get only one shot at the defendant.

Chairman Yturri asked what state of knowledge should be possessed by the prosecutor before this provision came into play: (1) Should the statute spell out the quality and quantity of the knowledge? (2) Should it be left to the court or the jury to be determined upon the evidence presented -- and the evidence would be presented by the defendant -- whether or not the prosecutor had the requisite knowledge? Mr. Chandler replied that the subcommittee believed the determination should be left to the court and the jury.

Chairman Yturri asked if that would be a jury question, and Mr. Spaulding replied that it would be a legal question to be determined by the judge.

Mr. Moore said that if there was an interest in having this type of statute, the interest lay in not having a series of consecutive trials that could economically be tried together, assuming the state really needed to try all those charges. That, he said, was a legitimate interest. On the other hand, he was opposed to the "what the prosecutor knew" test.

Chairman Yturri replied that it was not what he knew so much as what he should have known because that was the determination that would have to be made by the court.

Mr. Moore stated it could not be assumed that the court would make that determination. Former jeopardy is entered by an oral plea on the record or by writing and the state can then demur to it, but the demur situation normally arises to remove the former jeopardy plea from the record. In the situation under discussion, the prosecutor would not be able to demur the statement out of the record; he would have to say that he did or did not know. If he said he did not know, it would then be a jury issue for that trial. Chairman Yturri asked if the judge would submit it and ask the jury to render a special finding and was told by Mr. Moore that it would be a part of one of the verdicts the jury could return. In his opinion, he said, that question should not be a part of a criminal trial.

Mr. Johnson expressed agreement and suggested that the proposed statute spell out that the determination should be a finding to be made by the court.

Mr. Knight remarked that Mr. Johnson and some of the other members felt that if the defendant won his case on the first charge, he should be home free, regardless of whether or not he was guilty. Mr. Knight did not feel that attitude was fair to society. Mr. Johnson said Mr. Knight was thinking solely of the defendant who was guilty, and this was not always the case.

Mr. Chandler observed that both the state and the defendant had an equal interest in avoiding a series of trials arising out of the same general course of conduct or series of events. Mr. Moore agreed that this was true when talking about a series of charges before the court. However, when the statute went beyond that and became involved with what the prosecutor knew or should have known or what evidence he had available to convict someone at some future time, it was going too far.

Mr. Knight reiterated his objection to subsection (2). If a person committed five separate crimes, all felonies and all serious, and they met the test of being one criminal episode, under present law his attorney would know that he might be able to get his client off on one of the charges on some kind of a fluke, but he wouldn't be able to con a jury four or five times. If the proposed statute were the law, the attorney would then know that the prosecutor had to beat him on all five charges at once and if there was some fluke, such as failure to prove venue, the defendant would be home free. Mr. Spaulding agreed with Mr. Knight that the defendant should not be turned loose in such a situation; it should be possible for the state to try the defendant again on another charge if the state lost its first case.

Chairman Yturri asked what was so wrong with the present system that it should be changed to bring in the "prosecutor should have known" test. Mr. Johnson replied that the definition of "criminal episode" should be very carefully drawn, but he did not believe that the state should be able to try a man several times for what, in effect, amounted to one criminal act. Chairman Yturri could see no excuse for injecting such a nebulous requirement as whether the district attorney knew or should have known of the offense. Mr. Chandler explained that the subcommittee was attempting to give the state some, but not a great deal, of leeway. Chairman Yturri said it was giving the defendant the opportunity, every time he had a second charge filed against him, to say that the prosecutor knew about the offense and he therefore could not be charged again.

Mr. Johnson pointed out that the provision was quite limited because the exception was only applicable when it was a part of the same criminal episode and when the defendant was charged with a second crime where there were grounds for contention that the district attorney had prior knowledge of that offense. He said he agreed with Mr. Moore that the question of the prosecutor's knowledge should be a question to be determined solely by the court and it should not be a factual issue going to guilt.

After further discussion, Mr. Chandler moved that subsection (2) of section 2 be approved as written.

Mr. Spaulding asked if jurisdiction was the same as venue and was told by the Chairman that it was not. Mr. Spaulding said a circumstance might arise where two crimes, part of the same criminal episode, might be committed in, for example, Polk and Marion Counties. He was of the opinion that the draft should refer to venue rather than jurisdiction. If a person were stealing cattle and stole one cow in Crook County and another in Harney County, the appropriate prosecutor for the one cow would be in Crook County and for the other cow he would be in Harney County. They were in the same circuit and would be in the jurisdiction of a single court but they would not have venue over both cows. A circuit court, he said, had state-wide jurisdiction but could not try a crime committed outside the circuit, not because of jurisdiction but because of venue.

Mr. Gustafson said the intent of the subcommittee was that if the crime occurred in more than one county, either county would have jurisdiction. If the word "venue" would reach that situation, he said, the term should be changed in the draft.

Mr. Johnson observed that if both prosecutors knew of the crime, it would be barred because subsection (2) contained the conjunctive "and" before the phrase referring to jurisdiction. He expressed approval of changing "jurisdiction" to "venue."

Chairman Yturri asked if the Commission was ready to vote on Mr. Chandler's motion to approve subsection (2). Mr. Johnson asked if the motion included the understanding that subsection (2) would be amended to say that the question of whether or not the prosecutor had knowledge of the several offenses was to be a factual determination to be made by the court. Mr. Knight asked if the motion also included not only that the prosecutor knew of the commission of the crime but that he had evidence that the particular defendant had committed it.

Chairman Yturri said he would have no objection to the subsection if it contained something to that effect, but the motion was to approve the subsection as written.

Mr. Spaulding recalled the "goon" cases of a number of years ago where a mill was burned down in Polk County, truck loaders were injured in Wasco County and rocks were thrown through the window of a barber shop in Lane County. The same few people were involved in all of those incidents and it was a part of a program to harass employers in the state. He asked what application the draft would have to a chain of circumstances of that kind. Mr. Knight replied that he would hope that under the definition of "criminal episode" which the Commission had been discussing, those offenses would not be considered as one episode. Mr. Johnson pointed out that all the incidents did not occur in the same place.

Vote was then taken on Mr. Chandler's motion to approve subsection (2) of section 2 as drafted. Motion carried. Voting for the motion: Chandler, Cole, Mr. Johnson, Representative Johnson. Voting no: Knight, Spaulding, Mr. Chairman. This action was subsequently revised.

Subsection (3). Subsection (3) was discussed briefly and Mr. Knight pointed out that it was merely a restatement of present law.

Mr. Chandler moved approval of subsection (3) as drafted and the motion carried unanimously with the same members voting as voted on the previous motion.

Subsection (2). Mr. Johnson recommended that subsection (2) be clarified as to the question raised by the Commission concerning the "knowledge of the appropriate prosecutor." That, he said, should be a court determination. The Chairman agreed that section 2 should be rereferred to subcommittee with instructions to spell out the extent of the knowledge the district attorney was required to have and also how that determination was to be made -- by the court or by the jury. If nothing else, he said, a statement clarifying the matter should be inserted in the commentary. Mr. Chandler, Chairman of Subcommittee No. 1, indicated that the subcommittee would accept that charge.

Mr. Spaulding asked if the subcommittee should also consider the question raised earlier concerning the matter of jurisdiction and venue as it applied to subsection (2). Mr. Chandler said the subcommittee would also take up that question.

Mr. Johnson moved that section 2 be rereferred to subcommittee and the motion carried unanimously.

Mr. Knight asked that the subcommittee give some further thought to reconsidering the policy decision on compulsory joinder that made such a radical change from the present law and Mr. Spaulding expressed agreement. Mr. Chandler invited Mr. Knight to attend the subcommittee meeting, and the clerk was instructed to send Mr. Knight a notice of the meeting date.

At this point the Commission recessed for lunch and reconvened at 1:30 p.m.

Section 3. Previous prosecution; when not a bar to subsequent prosecution. Mr. Gustafson explained that section 3 stated when a previous prosecution was not a bar to a subsequent prosecution. In other words, once jeopardy had attached, the section stated when annulment of such attachment would be proper. The five reasons for terminating a trial listed in subsection (2), he said, were a restatement of existing law.

Mr. Gustafson advised that State v. Jones, 240 Or 546, 402 P2d 738 (1965), held that jeopardy could be properly annuled "for any reason," and the purpose of subsections (1) through (3) was to define the meaning of the term "any reason." He suggested the first three subsections be discussed prior to consideration of subsection (4).

Mr. Johnson called attention to the clause "other than by judgment of acquittal" in the opening paragraph of section 3. When that clause was read in conjunction with subsections (3) and (4), he said, it reached a result not intended. It was possible to have a judgment of acquittal which would be a bar to a subsequent prosecution even though the court did not have jurisdiction. In other words, the defendant might be acquitted by a court that didn't have jurisdiction.

Judge Schwab elaborated on Mr. Johnson's point by saying that if a man were tried for a felony in justice court and acquitted of the charge, the introduction to section 3 would be a bar to his trial in circuit court because he was prosecuted and did receive a judgment of acquittal, although the justice court did not have proper jurisdiction. Subsection (3) would say this circumstance would not be a bar whereas the introductory clause said it would be. In other words, "other than by judgment of acquittal" should modify subsections (1) and (2) but not subsection (3).

Mr. Moore noted that subsections (1) and (2) were basically talking about mistrials where there would be no judgment of acquittal. Subsections (3) and (4) concerned a different subject and attempted to define that which would not be double jeopardy and set up a different fact and a substantially different harm or evil test. Therefore, subsections (3) and (4) should not be modified by the clause under discussion. Those words were added by the subcommittee when mistrials were being discussed but they were only applicable to subsections (1) and (2).

The Commission discussed several methods of accomplishing the desired revision and it was finally agreed that the staff would make whatever revisions were necessary to accomplish the goal just discussed by deleting the clause "other than by judgment of acquittal" from the introductory paragraph and inserting it in the appropriate place or places in the draft.

The Chairman commented that other than the revision just approved, there appeared to be nothing in the first three subsections which were different from present law. Mr. Knight pointed out that the draft would limit the Jones case by setting forth specific provisions and defining "for any reason."

Subsection (4). Mr. Gustafson then explained that subsection (4) was an important portion of the double jeopardy concept and set forth the grounds for severance. For example, if a defendant

committed both arson and murder in one criminal episode, the two harms behind arson and murder were different. Consequently, that fact would be a ground for trying those two charges separately. The principal problem involved in the section, he said, was the meaning of "substantially different harm or evil." The subcommittee had discussed that problem and reached the conclusion that the court should make that decision.

Chairman Yturri asked what the result would be if arson and murder were part of the same criminal episode and was told by Mr. Gustafson that the two could be severed because the arson statute was aimed at harm to property whereas the murder statute was aimed at harm to a human being.

Chairman Yturri then asked if this would not be contrary to the definition of "criminal episode" as discussed by the Commission earlier and was told by Mr. Spaulding that subsection (4) would be an exception thereto.

Chairman Yturri asked if preventing injury to property were considered as a general classification, would it then cover burglary, arson, larceny, robbery, etc. In those crimes would there be a different harm or evil intended to be prohibited?

Mr. Knight said his understanding of the subsection was that the draft was an attempt to be sympathetic to the defendant and protect him; however, if he had created a very bad situation that would upset the community, subsection (4) of section 3 would allow him to be tried twice. Mr. Chandler commented that this was not precisely what the subcommittee had in mind.

Representative Cole noted that both the proof of fact and the substantial harm elements had to be satisfied. Mr. Knight said that if there were two murders, different facts would need to be proved for each death. Mr. Gustafson pointed out that it would be difficult to show a substantially different harm or evil between two murders occurring at the same time. On the other hand, if a person burned a house and killed two persons, there could be two trials; one for arson and the second for a co-murder. Mr. Chandler added that the draft would not permit separate trials for the two murders.

Mr. Knight asked the members of the Commission who had voted in favor of retaining subsection (2) of section 2 as drafted if it would be too offensive to them to require the defendant to request joinder if he wanted to claim double jeopardy on a single criminal episode. Chairman Yturri remarked that Mr. Knight's proposal would eliminate the compulsory joinder and open the door to inequities because each defendant's treatment would be dependent upon the talent and expertise of his attorney. One attorney might make that request and another

attorney might not and there would be a different result in each case. With compulsory joinder, whether or not it was requested, at least everyone would be treated the same.

Mr. Johnson moved adoption of section 3 subject to the revision already approved in the opening paragraph.

Mr. Moore raised a question concerning the language in subsection (4) "which required proof of a fact not required in the subsequent prosecution." Normally, the second prosecution would require additional or different facts and here the enhanced penalty would come into play; for example, when the defendant was a convicted felon. He suggested subsection (4) be simplified and turned around to speak in terms of a different fact rather than tying the different fact to the former or subsequent prosecution. Circumstances would vary, he said, from one type of offense to another as to whether the subsequent prosecution would require the proof of additional facts or perhaps fewer facts.

Mr. Johnson proposed to amend subsection (4) to read:

> "When the [~~former~~] prosecution was for an offense which required proof of a fact not required in the [~~subsequent~~] other prosecution. . . ."

Chairman Yturri asked what difference it made if the original language were retained. Mr. Chandler added that the question would only arise following a former prosecution because a person would not claim double jeopardy before he was tried the first time. Judge Schwab agreed that the language of the section followed the pattern of what actually happened in situations where there was a subsequent prosecution.

Mr. Spaulding said he did not see "the law defining each of such offenses is intended to prevent a substantially different harm or evil" as being a proper determination of whether the offenses should be consolidated. The fact that both property and human rights were concerned, he said, did not seem to him to be a very good reason for not consolidating offenses. Chairman Yturri replied that if that were not used as a basis for consolidation, then the definition of "criminal episode" would go all the way because this was an exception thereto. Probably the subcommittee felt that rather than permit a defendant that much leeway, it should be restricted to the extent that the entity or value protected would be grounds for a separate prosecution. He agreed with Mr. Spaulding that he could not actually see why this should be the criteria, however.

Mr. Chandler indicated that the case discussed by the subcommittee when they were considering this subject arose from an automobile accident where someone was injured as a result of reckless driving. The defendant was tried for reckless driving and six months later, after

the first prosecution began, the injured party died as a result of the injuries suffered in the automobile accident. The driver could not then be tried again if this provision were not included in the draft because the whole transaction was part of one episode.

Mr. Gustafson cited a case where the defendant killed a person while driving under the influence. The district attorney prosecuted for drunk driving and ten months later prosecuted for negligent homicide. The purpose of the section was to say that whether or not the district attorney could prosecute the second time would depend upon whether the second charge involved a substantially different harm or evil.

Mr. Knight said subsection (4) would not apply to that situation because the first prosecution for drunk driving did not require proof of a fact that was necessary for the negligent homicide charge. If drunk driving were the basis for the negligent homicide charge, all the former prosecution required was to show that the defendant was driving while under the influence. It would be the subsequent prosecution that would add additional facts, and that was Mr. Moore's objection to the subsection.

Judge Schwab commented that Mr. Knight made too simple an evaluation of the problem. It need only be proved that the man was drunk to sustain a drunk driving charge, he said. In negligent homicide, drinking might be merely evidence as to the degree of culpability, and negligence might be a totally different fact. This is why the same evidence or same transaction test was not too satisfactory, as was pointed out on page 16 of the commentary. From the standpoint of the expeditious handling of the state's business, if a person commits a felony murder, arson with the intent of murder, or a robbery murder, or is found in possession and is charged with the sale of narcotics and the district attorney knows all about the offenses, he asked what good reason there was for not joining all the charges in one trial. What, he asked, was adverse to the state in trying all the charges at once? Chairman Yturri replied that the district attorneys wanted two shots at the defendant.

Mr. Knight explained that when the district attorney was forced to join, he might spend a week at trial on the case whereas if he could just pick out the one best charge, the case could be tried in one day. If the prosecutor didn't get the defendant on that charge, then he could charge him on another. Oftentimes, he said, there were developments in the first trial that could substantially contribute to the prosecutor's successful prosecution of the second charge. He did not have enough faith in juries, he said, to say that they were always right.

Mr. Johnson said that the Commission might as well forget about compulsory joinder if subsection (4) were retained in the draft. It was in his opinion a wide exception to the compulsory joinder requirement. He then moved to delete subsection (4).

Judge Schwab said he failed to see why the state should have two shots just because the jury system didn't always work. The answer to that problem was to change the jury system procedurally.

Chairman Yturri suggested that subsection (4) be amended to retain only the last clause on page 14 of the draft, i.e., that the subsequent prosecution was for an offense which was not consummated when the former prosecution began. This would accommodate Judge Schwab's preference, he said, and would be a modification of the definition of "criminal episode."

Mr. Chandler moved to adopt the Chairman's suggestion.

Mr. Gustafson pointed out that approval of the motion would limit one of the exceptions to the definition of "criminal episode." Subsection (4) was included in the draft to narrow the meaning of criminal episode and when it was removed, criminal episode became broader.

Mr. Johnson moved to amend Mr. Chandler's motion by incorporating into the definition of "criminal episode" the idea that a crime not yet consummated was not a part of a criminal episode. He was of the opinion that it would make the code more understandable to place this provision with the definition rather than in section 3. Chairman Yturri expressed the view that it made no difference which way the intent was accomplished.

Mr. Spaulding then moved that only the last clause of subsection (4) of section 3 be retained, leaving to the staff the decision as to whether it should be placed in section 3 or placed with the definition of "criminal episode" in section 1, subsection (4), as suggested by Mr. Johnson. Motion carried with Mr. Knight voting no.

Representative Cole asked if a provision should be included in the draft to cover the situation of reversal on appeal.

Mr. Gustafson replied that section 3, subsection (1), said the "defendant consents to the termination or waives, by motion or otherwise, his right . . . ." The words "or otherwise," he said, were intended to refer to a reversal by the Court of Appeals and if that was too vague, more definitive language could be inserted. The Chairman agreed that the provision should be clarified.

Mr. Spaulding noted that the situation was not covered when the state appealed and the decision was reversed. Judge Schwab noted the state could not appeal after judgment. Mr. Spaulding said the state could appeal from a demurrer to the evidence. He recalled a case where the state objected to the evidence because the indictment didn't state facts sufficient to constitute a crime, and the court

sustained the appeal holding that this situation was the same as a demurrer. He thought this situation should also be covered in the draft.

Chairman Yturri said that clearly subsection (1) of section 3 should provide for the situation where the defendant appealed and there should also be a reference to appeals by the state. Judge Schwab said this could be accomplished by inserting "when reversed and remanded on appeal." That phrase would cover both the state and the defendant. He added that the state had no right of appeal from most determinations.

Mr. Chandler moved to rerefer section 3 to subcommittee for the corrections discussed including the one in subsection (4); changing the position of "other than by judgment of acquittal"; and the revision relating to appeals in subsection (1) as proposed by Judge Schwab. Motion carried.

Sections 4 and 4a. Proceedings not constituting acquittal. Mr. Gustafson explained that both sections 4 and 4a restated ORS 135.890 which said that when a variance caused dismissal, it was not an acquittal. He noted that there was presently before the United States Supreme Court a case, Duncan v. Tennessee, to consider the question of whether a second trial constituted double jeopardy when the first ended with an acquittal based on a material variance. The variance in that case was proof that the defendant used a pistol when in fact he had used a rifle. That case, he said, might have some influence on the proposed section.

Mr. Chandler pointed out that the difference between the two sections was chiefly a change in style. Section 4a followed the style used throughout the rest of the code while section 4 was nearly identical to ORS 135.890. Mr. Gustafson pointed out that there was one change made in section 4a by the subcommittee. The existing statute referred only to an indictment and at Mr. Johnson's suggestion "information or complaint" was added.

Mr. Chandler moved to adopt section 4a and the motion carried unanimously.

Next Meeting of the Commission

Chairman Yturri indicated that the next date of the Emergency Board was set for January 28, 1972, and asked if it would be agreeable with the members to hold a Commission meeting to coincide with that date. January 28 was approved as the next meeting date.

Next Meeting of Subcommittee No. 1

Mr. Chandler, Mr. Spaulding and Representative Cole, members of Subcommittee No. 1, agreed that the subcommittee would next meet on December 29 at 11:00 a.m.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Criminal Law Revision Commission

Appendix A
Criminal Law Revision Commission
December 16, 1971

OUTLINE OF PROPOSED LAW

ORS 146

I. Definitions
II. Medical Investigator Advisory Board
    A. Purpose
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III. State Medical Investigator's Office
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VI. County/District Medical Investigator
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