Tape 23 - Side 1 - 250 to end
Side 2 - 60 to end

OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 2

Fourteenth Meeting, January 7, 1971

Minutes

Members Present: Representative Wallace P. Carson, Jr., Chairman
Senator Kenneth A. Jernstedt
Representative Harl H. Haas
Attorney General Lee Johnson

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

Others Present: Mr. Robert D. Geddes, Asst. Atty. Gen., Oregon Department of Justice

Agenda: Consideration of Criminal Procedure Bills to be Submitted by Attorney General

The meeting was called to order at 9:40 a.m. by Chairman Carson, Room 315, State Capitol, Salem, Oregon.

Mr. Paillette explained the purpose of the subcommittee meeting was to discuss the criminal procedure bills being submitted to the Legislature by the office of the Attorney General and to then make a recommendation to the Commission as to endorsement.

Notice of Appeal and Related Procedures

Mr. Johnson advised the time permitted for filing of the notice of appeal would be reduced from 60 days to a maximum of 14 days. He thought the only problem would be that with the Public Defender's office in that that office would not have had the case at the trial level. Mr. Babcock, however, thought he could live with the 14 day maximum. Mr. Johnson noted the maximum on the Federal level is 10 days.

Mr. Johnson related that under current practice post trial motions may not be disposed of prior to expiration of the 60-day period for filing an appeal. It is recommended that the present statutory time limit for filing post trial motions be reduced to 7 days for filing and 21 days for determination.

Rep. Haas asked if the proposed provisions would apply only to criminal cases and Mr. Johnson replied that they would--the decision had been to stay away from the civil statutes entirely.

Mr. Johnson advised the proposed legislation provided for the filing of a combined notice of appeal and designation of record on the trial court clerk. This would be filed with the court to which the appeal is made and would get over the two-step transaction.

Designation, Preparation and Settlement of Record

Mr. Johnson stated that the proposed legislation would, basically, merely authorize the circuit courts to employ electronic court reporting. This, he acknowledged, would be controversial.

Mr. Paillette recalled that a similar proposal had been introduced in the '67 session and that it had created a great deal of controversy.

Rep. Haas understood the Judicial Council had not only recommended the use of electronic court reporting methods but also that the court reporter be made an officer of the court so that the contempt power of the court could be used if a reporter failed to prepare a transcript within the time allowed.

Mr. Johnson replied that this provision was also included in his proposal. Some circuit court judges, he said, do not like the idea of their court reporter being an officer of their court and also of the court of appeal when their transcript goes to the appeals court. Judge Schwab, however, strongly favors the idea.

Replying to a question by Senator Jernstedt, Mr. Johnson again stated that the proposed legislation recommended that each circuit court judge be permitted, in his discretion, to authorize electronic recording in lieu of manual reporting. In Alaska and in some other states, contrary to some impressions, electronic reporting is mandatory. In some cases, he continued, it is thought that a transcript would not even be needed; the tapes could simply be sent and the appeal court would have that much less material to review. Mr. Johnson pointed out that a court reporter would still be necessary to monitor the electronic recording and to keep a very accurate log of proceedings.

Mr. Johnson noted that the Oregon Tax Court uses an electronic reporting system successfully. Judge Gunnar put in the system initially and it has been retained with no problems resulting from its use. Chairman Carson added that when such legislation was considered in 1967 he viewed demonstrations of very sophisticated systems, one of which had seven microphone stations and was a six or eight track system, so that by throwing a switch the statements made by the judge or the witness could be picked up clearly even though several persons had been speaking at one time.

Mr. Johnson commented, also, that court reporters frankly admit that they regard it as part of their job to "edit" testimony and "clean up" their notes so as to make the record read smoothly and intelligibly.

Rep. Haas asked if the period of time by which a transcript must be filed was being changed. Mr. Johnson replied that the time limit was left the same (30 days) but more disciplinary powers would be placed over the reporter and the responsibility of the lawyer for the transcript removed. It also would become more difficult to obtain an extension. A limited extension of 10 to 15 days would be available upon affidavit and further extensions would be allowed only upon personal appearance before the court. The same provision would apply on briefs and this procedure has actually been adopted by rule. In the matter of briefs there is no problem since the public defender files about 50% of those filed by defendants and the Attorney General's office about 85% of those filed by the State and this office will soon file 100% of them.

Mr. Paillette noted that the court reporter would actually be responsible for the delivery of the transcript and Mr. Johnson agreed.

Settlement of Record

Mr. Johnson stated that under the proposal, the trial court would automatically enter an order settling the record ten days after the filing of the transcript, if no objections are filed. Apparently at present there is a long delay because the lawyer fails to get the order in settling the record even though 99% of the time there is no dispute over the transcript.

Briefing Schedules

Mr. Johnson observed that briefing is a matter of rules and has already been taken care of.

Rehearings in the Court of Appeals

Mr. Johnson advised that rehearings by the Court of Appeals, other than on the Court's own motion, would be eliminated. The only legitimate purpose of the rehearing procedure is to protect the Court. If the Court of Appeals errs, there is still available a final petition for review by the Supreme Court. Chairman Carson added that he had observed recently that in several cases when the injured party has pointed out an error that the Court has denied a rehearing and simply corrected or modified the record. The recent Supreme Court case regarding adoption is an example of this.

Bail on Appeal

Mr. Johnson stated that the proposal would make bail on appeal discretionary. Only nine other states and Oregon have statutes providing for bail as a matter of right pending appeal. Since the individual has been convicted, he continued, the presumption of his innocence is gone and this is what provides the rationale for bail as a matter of right pending trial. He noted, also, that in the last year the state won 92% of the cases appealed.

Rep. Haas expressed concern for the defendant who would be incarcerated for perhaps a year before being decided by the Supreme Court and as to whether the defendant was given credit for the time served. Mr. Johnson noted the proposed legislation would permit bail upon appeal only in the discretion of the trial court. Mr. Paillette thought the statute Rep. Haas referred to was ORS 137.370, commencement of term of imprisonment in state penal or correctional institution.

Rep. Haas asked what the present law provides as to bail for someone charged with first degree murder. Mr. Paillette advised that ORS 140.020 provides that "if the proof or presumption of the guilt of the defendant is evident or strong, he shall not be admitted to bail when he is charged with murder in any degree...." This statute, he continued, is one that has been taken for granted for many years for the position that bail is not allowed. In recent years this statute has been used for discovery procedure because the defendant's counsel demands a hearing and bail is demanded unless it can be shown that the "proof or presumption of guilt is evident or strong."

Mr. Robert D. Geddes now present.

Mr. Johnson reported that Mr. Babcock favored the proposed legislation in that he thought the present statute favors the professional criminal with money in that bail is usually set quite high after conviction.

Mr. Johnson expressed the opinion that the only controversy engendered by the proposed legislation would be that caused by the court reporting provisions and possibly by the bail issue.

Rep. Haas asked if there had been any contact from circuit judges about the result of passage of the court reporting provision--would most of them go to electronic reporting and how would such systems be funded.

Mr. Johnson said the systems would be funded by the counties. Mr. Geddes recalled that it was estimated that electronic reporting would save Multnomah County from 12% to 15%, which would amount to

between $40,000 and $50,000 a year, even including the cost of having a court reporter to monitor the system. Mr. Johnson expressed the opinion that courts in the eastern part of the state would look with favor on such a provision in that some courts are somewhat at the mercy of their court reporter since there is no one else around to replace him.

Replying to a question by Rep. Haas, Mr. Geddes stated that five or six states presently use electronic court reporting systems; Judge Schwab is still in the process of compiling statistics in this regard.

Mr. Johnson emphasized that basically the proposed legislation avoided controversial areas but was an attempt to take a few simple steps forward to make changes where possible. It does no good, he noted, for the Court of Appeals to cut down the time it takes for it to handle cases when the procedure before a case reaches it takes so long.

Rep. Haas moved the subcommittee recommend that the Commission endorse the Attorney General's proposed legislation to expedite disposition of criminal appeals in Oregon. The motion carried unanimously by voice vote, Senator Jernstedt not present.

Mr. Paillette asked if the proposal would be contained in one bill and Mr. Johnson said only one bill would be introduced.

Senator Jernstedt returned to the meeting and voiced approval of the motion by Rep. Haas to recommend Commission endorsement of the Attorney General's proposed legislation.

The meeting was adjourned at 10:15 a.m.

Respectfully submitted,

Maxine Bartruff, Clerk
Criminal Law Revision Commission