Tape 25 - Side 2 - 451 to end
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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 2

January 12, 1972

Minutes

Members Present: Senator Wallace P. Carson, Jr., Chairman
Attorney General Lee Johnson
Judge Herbert M. Schwab (Ex-officio)
Representative Robert Stults (arrived 3:00 p.m.)

Excused: Representative Leigh Johnson

Staff Present: Mr. Donald L. Paillette, Project Director
Professor George M. Platt, Reporter

Others Present: Mr. Chapin Milbank, Chairman, Oregon State Bar Committee on Criminal Law and Procedure
Mr. John W. Osburn, Solicitor General, Department of Justice
Mr. Jackson L. Frost, Oregon District Attorneys' Association Liaison Committee

Agenda: SEARCH AND SEIZURE
Preliminary Draft No. 1; January 1971

Senator Wallace P. Carson, Jr., Chairman, called the meeting to order at 1:35 p.m. in Room 315 State Capitol.

Search and Seizure; Preliminary Draft No. 1; January 1971

The subcommittee, at its meeting of November 29, 1971, had discussed sections 1 through 10 of Preliminary Draft No. 1 and Professor Platt suggested that the discussion begin with section 11.

Section 3. Permissible objects of search and seizure. Referring to the earlier discussion of section 3 of the draft, Mr. Johnson said no conclusion had been reached by the subcommittee on the diary question discussed in connection with subsection (2). He commented that the draft contains a question of evidence on the problem of what is the subject of a search, and by applying evidentiary rules, the police will have to make the determination. How does the officer know whether the diary is serving a substantial purpose in furtherance of a crime, he asked. Mr. Johnson was not confident that the Fifth Amendment excluded this conduct and that once the police seize the diary or private writings, the person's privacy has been invaded anyway.

Judge Schwab referred to a case involving a doctor's diary where the diary, or date book, was suppressed because it wasn't covered within

the scope of the warrant. When the police seized the equipment used for abortions, the date book was found which listed dates, names and abortions performed.

Professor Platt replied he did not believe this would be included within the intent and language of the section for the reason that the draft talks about diaries, letters or other private writings or recordings. The word "private" would exclude it, he said. Professor Platt said this is aimed at the testimonial kind of evidence of a private nature. The Fifth Amendment protects all testimonial evidence and taking someone's statement from a diary is just as incriminating as taking the statement orally in a coercive atmosphere.

Judge Schwab remarked that Professor Platt was pointing to the problem about which there has been much disagreement on the U. S. Supreme Court regarding the scope of Fifth Amendment protection and that it never has been resolved as to what compulsory testimony is. Professor Platt said that the commentary points out that there are definitely two sides to the argument, and this is a suggestion for the way Oregon may want to approach the problem.

Judge Schwab asked if this is then putting into the statutes one side of an argument which may leave Oregon with a statutory prohibition of what otherwise would be proper constitutionally. Professor Platt said this may well go beyond what is required by the U. S. Supreme Court in some, but not too many, instances.

Judge Schwab asked Professor Platt if he is asking the legislature to resolve that issue as a matter of policy. The Commission and then the legislature would have the straight policy question as to whether the Fifth Amendment should be given this broad scope or whether it should be limited to a prohibition against compelling confessions. Professor Platt replied that it was pointed out by him at the last subcommittee meeting that the legislature, by asserting itself in an area that has been traditionally left to the courts, will try to make some of these decisions, subject always to the Constitution and the powers of the court to interpret. One of the reasons he would like to see the Commission enact a thorough search and seizure law would be to give the courts some guidelines. The legislature could then place it where it could be relatively easily changed by political action, rather than having to search for the right facts and the right case and get it appealed to the court at the right time. These are basic policy considerations, he said.

Mr. Johnson said personal diaries are in one category but letters imply to him a communication with someone else. Professor Platt replied that not all letters would be excluded. The draft reads that they are excluded "...unless they have served or are serving a substantial purpose in furtherance of a criminal enterprise."

Chairman Carson stated he held the same concern as that of Mr. Johnson and Judge Schwab, and also that these letters and diaries must be examined in order to make the conclusion as to whether or not they are serving a substantial purpose.

Professor Platt replied that section 3 operates with respect to other sections in the Code, and Preliminary Draft No. 2, section 9, refers to the procedures for the handling of intermingled documents seized pursuant to a search warrant where these diaries and other statements are not subject to seizure. It is provided, he said, that these private documents, where intermingled, are impounded either on the premises or are immediately taken to the issuing magistrate who can then hold an adversary hearing at which time the defendant is present. The court has the authority then to supervise what documents are read, by whom and under what circumstances. Professor Platt reported that it is possible all the documents may be read, and the privacy in that sense is invaded, but they may only be read by someone appointed by the court or by the police, but subject only to the presence of the attorney for the defendant, or any other type of procedure the court may wish to impose. It will not be the choice of the officer whether he reads everything or not.

Judge Schwab referred to the procedural statutes covering these cases and remarked they were in need of restructuring. He asked if the state would be able to appeal if the issuing magistrate, when checking the documents, decides certain ones are not proper to be seized and orders their return. And what kind of a record is made if the issuing magistrate is a municipal judge or a Supreme Court justice, he asked. Professor Platt replied that there is a provision in a later section regarding interlocutory appeal.

Mr. Johnson asked why the question of the diary is interjected into the scope of search and seizure. Professor Platt replied the issue is raised because it is a policy decision. He said he did not wish to make a major issue of whether diaries ought to be included in this provision but he did wish to raise the major problem, the intermingled documents, to broadcast seizure by police of things that are not entitled to be seized under a search warrant and under the search incident to arrest. This is really the basic issue being raised, he said, and presently there is no statutory procedure set up governing or limiting the activity of the police or directing them as to what they may or may not do.

Mr. Johnson was in agreement that there should be some definite guidelines as to how the police should handle the documents, but disagreed with the exclusionary concept embodied in the draft.

Mr. Johnson then moved the deletion of subsection (2) of section 3.

Professor Platt remarked that, in his experience with subcommittees dealing with an area that is very controversial, it has often been left in the draft and presented to the Commission for review but with the subcommittee's recommendation that the area be deleted. This was agreeable to the subcommittee.

Section 11. Search of premises incident to arrest. Professor Platt reported that this section covers the situation where the police have arrested someone inside the premises and it may appear that an accomplice, wife or friend may also be on, or have access to, the premises and could remove evidence before the police obtained a search warrant. In this situation, he said, the police may go ahead and search extensively beyond the present constitutional limit set in Chimel v. California, 395 US 752 (1969). The expanded right to search incident to the arrest approach may not be the right concept, Professor Platt said. Many courts accept this, and if it is overdone by the courts, it simply swallows the Chimel rule.

Since the initial drafting of this section, Professor Platt told the subcommittee it was his opinion the section may be too broad. Davis v. United States, a 1970 Fifth Circuit case, stated that recognition of a general exception to the search warrant requirement on the basis of risk of destruction of evidence would result in the evaporation of an entire arrestee's Fourth Amendment rights in that there is almost always a partisan who might conceal or destroy evidence. Professor Platt said that Chimel is apparently in accord with the Davis view, that is, the court prefers not to assume that partisans will come onto the premises and run off with the evidence. He said this exception would perhaps best be characterized as an emergency search without warrant on probable cause, rather than an expanded right of search incident to arrest. The U. S. Supreme Court and Chimel itself, he said, had the opportunity to apply the rule allowing the police to go ahead and search the premises on the grounds his wife could have taken the evidence. Vale v. Louisiana, 90 S Ct 1969 (1970), was also an authority for the dislike of the U. S. Supreme Court for this type of approach, but there is no direct holding that says it cannot be done because there is a certain amount of reasonableness in allowing police to search further without first obtaining the search warrant, following the arrest of a person in a situation where they have probable cause to believe they will find evidence of crime beyond the reach distance of a person, he continued.

This is a touchy area, Professor Platt observed, and if adopted this way, it would allow the so-called emergency extension of the search incident to arrest to other areas of the premises, extending it to the garage or basement.

Judge Schwab expressed concern over the phrase "reasonable belief that property was likely to be removed in paragraph (c), subsection (1). Does the draft talk about it being "likely" to be removed or

that it is "possible" to be removed? Reasonably likely or reasonably possible, he said, could make quite a difference to the ultimate interpretation.

Professor Platt said the main thrust was not what the court construed but what the police construe this to mean. The section is directed primarily to the police, to which Judge Schwab commented it was his opinion the police would give it the broadest possible interpretation in their favor.

Professor Platt said that more important than the language will be the administrative provisions adopted by the various forces throughout the state, whether it be at the direction of the Attorney General's office or another agency. The courts always have a right under their constitutional duties to construe what this means, and the police, through their own administrative rules, will have another source to direct the officer.

Chairman Carson said that the combination of the words "reasonable belief" and "likely to be removed" no longer gives a 50-50 balance. Deleting the words "likely to be removed" and substituting "will be removed" would tighten the language, although still broadening the scope of the police, he said.

Professor Platt referred to the subcommittee meeting of November 29 where question was raised by the district attorneys concerning an easier warrant producing procedure. A police officer could call on a radio to a magistrate and ask for a search warrant. He said this type of procedure would obviate this kind of problem and allow the complete prohibition of searching beyond the Chimel rule at the same time. It would be very advantageous for the officer not to have to go through the cumbersome process of securing the warrant, he remarked. The record could be provided by having a recording made of the telephone call. One of the problems involved, however, is in the serving, as there would not be a warrant, he said.

Mr. Paillette suggested that if the district attorneys were interested in such a procedure, the Commission should invite them to offer a draft for consideration.

Judge Schwab suggested the subcommittee amend paragraph (c) of subsection (1) to read:

> "[Likely to] May be removed or destroyed before a search warrant can be obtained and served,...."

Mr. Paillette asked the difference between "may" and "likely." Judge Schwab said his interpretation of "likely" would mean "more likely than not" whereas "may" would mean even less likely than not.

Chairman Carson favored the use of the word "will" in the paragraph. He said the officer has to pass judgment that the evidence either "will or will not" be removed.

Mr. Osburn inquired if this change would make the language more restrictive.

Professor Platt said that section 28 of Preliminary Draft No. 2 is a "harmless error" rule and a safety measure so that the police will not automatically lose out because of the automatic application of the exclusionary rule.

Mr. Johnson observed that if the language contained the words "May be removed" the courts would merely have to determine if the circumstances were such that there was a reasonable possibility that the evidence would be removed. Judge Schwab commented that by saying "Will be removed" the draft would then state "reasonable belief that it will be" and leaves it more open to judicial interpretation.

After further discussion, Chairman Carson moved paragraph (c), subsection (1), of section 11 be amended to read:

> "(c) May be removed or destroyed before a search warrant can be obtained and served,...."

Mr. Paillette informed the subcommittee that the section would be redrafted with the proposed amendment and some grammatical changes.

Referring to Mr. Paillette's suggestion that the District Attorneys' Association refer its proposal to the Commission, Mr. Frost pointed out that having to awaken the magistrate in the early morning hours, the typing of the affidavit and the possibility that the magistrate will not be satisfied with it, had put the police in the situation of trying to avoid obtaining a warrant, which, he said, is really defeating the proposition of trying to protect the rights of the people.

Judge Schwab asked why this has to be reduced to writing, except for the problem of serving the warrant.

Mr. Johnson said that part of this is a matter of equipment and suggested drafting a statute providing a procedure whereby an agency can draft a set of standards for this type of warrant which can be presented to the court for approval. He was of the opinion that the Commission, at this time, could not draft a procedure that would fit the situation.

Chairman Carson said there were two distinct issues involved. The mechanical issue, he felt, would be favorable to most people - this would be flexible - but he was of the opinion it would be an

error to assume that because the legislature would show willingness to allow an alternative to typing and printing that it would back too far away with respect to the magistrate and the officer carrying on a telephone conversation in the early hours. This would involve several problems, he observed.

Mr. Frost said the magistrate, if awakened in the early hours, would probably learn more by a conversation between the officer and himself than by reading the affidavit.

Judge Schwab related that this is now done. If an officer comes in with an affidavit which proves to be ambiguous and a colloquy ensues between the officer and magistrate of which a record has been made, this can be used.

Professor Platt pointed out that a record is normally not kept in most counties and the draft provides, in the search warrant procedure, that the magistrate himself make a fair summary or a recording of any colloquy outside the affidavit for the purpose of establishing the probable cause at the time the magistrate issues the warrant.

Judge Schwab spoke of a pending bill making district courts a court of record and allowing tape recordings. If this passes, he said, it will take care of providing the equipment. Rule-making power has now been vested in the Supreme Court for the use of audio tape, he remarked, and they now have a request to accept a tape in lieu of a typewritten transcript. The trouble is that the court has the power, but no rules have been made.

Mr. Johnson stated that the legislature could provide for some limited rule-making authority in the court in this area.

Judge Schwab asked if it were necessary to serve the affidavit along with the warrant. Mr. Osburn remarked that if this would work on a telephone basis, the judge could have recording equipment which adapts to the telephone. The information could be taken from the officer and the magistrate would fill out a form containing name, address, items to be seized, location of the property, place his signature on it and attach it to the warrant.

Mr. Frost asked if the chairman was concerned about the fact that there would be no security in this type of system. Chairman Carson responded that Mr. Frost's statement that the officers are trying to avoid the law because of its complexity, and making it easier for them to follow is, in his opinion, the wrong reason for making the right decisions. If the legislature would facilitate the search procedure and at the same time guarantee the reasonable steps required of law officers, he would be in agreement.

Mr. Frost said his argument was that the officer is trying to abide by the law but on the other hand he knows that contacting the district attorney, getting to the office and to the judge's home will perhaps take him a matter of two hours, and he is faced with an urgent problem. This, he said, discourages the officer from going this route if he can find another way. He said the officer should be encouraged to go the right way, but he should be able to obtain the warrant expeditiously when he does have reasonable cause.

Chairman Carson repeated Mr. Paillette's suggestion to invite the District Attorneys' Association to draft any recommendations it may have along this line.

Section 12. General authorization; authority to search and seize pursuant to consent. This is an introductory section, Professor Platt stated, and sets up the authority to search pursuant to the voluntary and knowing consent of a person.

Mr. Milbank asked if this section is applicable to persons on parole or probation. Professor Platt replied this had not been taken into consideration when the section was drafted. If the parolee had signed the consent, then it would be a question for the courts to decide whether that kind of consent is valid or voluntary, but until it is determined that it is not voluntary, Professor Platt did not feel there would be a problem within the confines of the draft.

Chairman Carson said the subcommittee would proceed with the idea that this consent would include prior consent.

Section 13. Persons from whom effective consent may be obtained. Professor Platt referred to subsection (1) of section 13. The word "apparently" is operative in this subsection, he said. If the person represents himself as 16 or over illegally, the officer is entitled to rely on his statement if that person is "apparently" of that age. With the exception of the age aspect, subsection (1) does not depart from existing law.

Regarding the search of the vehicle in subsection (2), Professor Platt said the age of the person is of no concern to the police. If the person is 14 years of age, the police may still take from him the authority to search the car. An explanation dealing with this anomaly is contained in the commentary, he said.

Subsection (3) allows the person to consent to the search of the premises, even though he is under 16, if the police are reasonable in their belief he has the authority to consent.

Mr. Paillette suggested the insertion of "custody" in subsection (2): "... or in apparent custody or control...." This, he said, would get away from any implication that the person has to actually be driving the car.

Mr. Milbank said that he reads the draft to relate only to the person sitting in the driver's seat and that it does not extend to the passenger. He suggested the subsection be patterned after the section of the new criminal code, "Unauthorized Use of a Motor Vehicle," to include passengers. Mr. Paillette said that language would be broader from the standpoint of describing the individual, giving him less protection than "custody" would.

Chairman Carson presented a hypothetical situation where the owner's friend was driving his car and the owner was the passenger. Who would give the consent to the search of the vehicle, he asked. The draft states "...by the person registered as its owner or in apparent control of its operation...." Professor Platt replied he could see no problem with this situation. The officer would first ask who owns the car, and this is the person from whom he would get the consent. Chairman Carson said the owner would not be "in control" of its operation. Professor Platt was of the opinion the word "apparent" would take care of this situation.

Mr. Johnson suggested striking "of its operation and contents" in subsection (2). This would then be using the word "control" in a broad sense, he contended.

After further discussion, Mr. Johnson moved to amend subsection (2) to read:

> "Search of a vehicle, by the person registered as its owner or in apparent control [of its operation and contents] at the time consent is given; or"

The motion carried.

Section 14. Required warning preceding consent search. Section 14, Professor Platt explained, relates to the warnings required before the police can search pursuant to a consent. Subsection (1) relates to persons who are not in custody or under arrest. Existing law, he said, does not require any type of warning in this situation.

Subsection (2) embodies the Miranda type warning which must be given to persons in custody or under arrest and sets out the requirements in detail.

Subsection (1) requires a minimal warning to any person the police seek consent to search, this warning to state that the person is under no obligation to give the consent and that anything found may be used in evidence. This is a serious Fourth Amendment right, he said, and should be given close attention by the legislature.

Mr. Frost was of the opinion that too much value is being placed on the procedure of the officer in giving the warning. These

warnings, he said, are used by the officers because they feel it is safer than relying on reasonable cause.

Mr. Johnson moved to strike subsection (2).

Professor Platt said subsection (2) reflects what has already been decided but spells out what kind of warning the police should give, and it was his opinion this is one place where the legislature should be speaking to the police in concrete terms.

Mr. Johnson withdrew his motion and moved adoption of the section.

Mr. Paillette pointed out that the commentary speaks of waivers being voluntary and intelligent. The draft uses only the word "voluntarily" in section 12. He asked if it is meant to incorporate "intelligently." Professor Platt replied the courts treat "voluntary" to include the concept of "intelligence" but they are often inconsistent and agreed this insertion would remove any doubt.

Chairman Carson suggested that rather than inserting "intelligently," the subcommittee define "voluntary." It was agreed to do this under the general definition section.

Section 15. Permissible scope of consent search and seizure. Subsection (1), Professor Platt explained, states the search may not exceed, in duration or physical scope, the limits of the consent.

Subsection (2) states the items seizable must be related to the authority given, and subsection (3) states the consent may be withdrawn at any time. This means, he said, that if the person gives consent, knowing he has contraband on his premises, then finds the police getting closer to the evidence, he may call a halt to the search.

The subcommittee recessed at 3:15, reconvening at 3:30.

Section 2. Prohibition of unauthorized searches and seizures. Mr. Johnson moved adoption of section 2. The motion carried.

Section 3. Permissible objects of search and seizure. Mr. Johnson moved adoption of section 3, subject to the recommendation to the Commission that subsection (2) be deleted. The motion carried.

Section 4. Permissible purposes. Mr. Johnson moved section 4 be amended to read:

> "Subject to the limitations in sections 4 through 11... conduct a search of the person, property, premises or vehicle under the apparent control...."

Motion carried.

Section 5. Things subject to seizure. Mr. Johnson moved adoption of section 5. The motion carried.

Section 6. Intermingled documents. Mr. Johnson asked what would now be "intermingled documents." Professor Platt replied they would be documents not related to what is authorized by the search warrant, or what is authorized within the scope of the arrest without a warrant. The officer, under the draft, would either lock the file or confiscate the drawer and present it to the magistrate who will inform him what evidence can be used pursuant to the provisions of section 9 of Preliminary Draft No. 2.

Mr. Johnson moved the adoption of section 6, as amended by the subcommittee at its last meeting, i.e., deleting the words "judicial officer" and inserting "magistrate." The motion carried.

Section 7. Search incidental to arrest for minor offense. Representative Stults asked the reason for taking the major traffic offenses out of the prohibition in the draft. Professor Platt replied that this was a policy decision.

Mr. Frost pointed out that an arrest can now be made for reasonable cause in major traffic offenses whereas an arrest cannot be made for minor traffic offenses. There is now a policy, he said, of distinguishing major traffic offenses on a reasonable cause basis and driving under the influence is where it is most likely to come into play.

Mr. Paillette said ORS 484.010 (5) defines a major traffic offense as reckless driving, driving while under the influence, failure to stop at the scene of an accident, driving while suspended and fleeing or attempting to elude an officer.

Driving while under the influence, Chairman Carson remarked, would be about the only offense where searching a car would give the officer evidence of the crime allegedly committed.

Mr. Frost said there would still have to be probable cause in order to search. Professor Platt replied that there would have to be probable cause to believe there is contraband or evidence of the crime in the car. The officer does not have to do this on a traffic arrest; he can search on the Carroll doctrine. The problem lies, he indicated, where the police only have suspicion and not probable cause to believe evidence of a major crime will be found. What the officer does is arrest the person on a minor traffic offense and then the Chimel rule will apply. This then amounts to a pretext arrest.

Chairman Carson said if there is evidence to be gained that relates to the crime for which the stop and arrest were made, that would be a valid search. He called attention to Mr. Osburn's statement that if the draft included all major traffic offenses, it would

include the reckless driving and driving while suspended charges. No evidence supporting either of those charges could be found by searching a car.

Mr. Johnson moved that section 7 be redrafted by the staff to provide that, with the exception of driving while under the influence, failure to stop at the scene of an accident and fleeing or attempting to elude an officer, a search may not be authorized for any other traffic offense. The draft should also show the substitution of section 7 for the proper ORS statute. The motion carried.

Section 8. Custodial search. A point to be considered in this section, Professor Platt explained, is the custodial search of automobiles. If a man is arrested for a crime while he is in his automobile and there is no reason to believe the car was used in the crime, the car is impounded for its own safety.

Mr. Johnson and Representative Stults were of the opinion the inventory search should not be allowed. Section 2 of the draft would have the effect of prohibiting inventory of the car because inventory was not specifically authorized.

Mr. Osburn remarked that this presents an anomalous situation unless police officers are specifically exempted from a requirement to safeguard the car. If they are required to inventory it under their duty to safeguard the defendant's property, they might find evidence but would be unable to use it. Their duties would have to be changed to merely require that they lock the car.

Professor Platt said that if the police are faced with the fact that a car cannot be inventoried unless they have probable cause, but still they inventory it, anything they find in the nature of evidence of a crime could not be used because it would be illegally obtained and clearly not within the scope of the search. Anything they learn from that evidence is poisoned by the "poisonous fruit" doctrine.

Mr. Frost said the responsbility could be taken from the police by allowing the car to remain where it was at the time of the arrest.

Chairman Carson asked what the police officer's responsibilities are now with regard to this situation. There is no statutory responsibility, Mr. Frost replied. Mr. Osburn said that with illegal liquor or narcotics, the officer does have a duty on probable cause to believe it is in the car and to seize and impound it.

Mr. Johnson moved the adoption of section 8 with a footnote that the intent of the draft is to exclude the inventory search of the car. The motion carried.

Chairman Carson suggested that the district attorneys offer, if this provision prevails, reasonable supplemental statutory language to fix the responsibility of law officers in these circumstances. In a situation where the car is on the shoulder of the highway and the intoxicated person is being taken to the station, what is the responsibility of the officer, he asked. Mr. Osburn responded that the police generally ask the person what he wishes done with the car; should someone be called to pick it up or should it be impounded? Chairman Carson said that perhaps that should be placed in the statutes.

Section 9. Search of the person incident to arrest. Mr. Osburn referred to a blood test by an unconscious driver which the Court of Appeals recently upheld. He said existing law states blood may be obtained on probable cause where the defendant was under arrest and asked if subsection (3), as written, requires strong probability. He was of the opinion there should be probable cause rather than strong probability in this case.

Strong probability, Professor Platt replied, would involve the extremely private parts of the body, not the situation where blood samples are taken for the purpose of checking alcohol content.

Mr. Osburn then stated that the taking of hair samples should be governed by probable cause rather than strong probability. Professor Platt agreed that the strong probability should not extend to the sampling of blood and removal of hair. Mr. Osburn was of the opinion a separate subsection should be drafted to include fingernail scrapings, blood samples and hair removal. Professor Platt replied that if a separate subsection were to be drafted, it should apply to the exceptions, such as invasion of body cavities, based on strong probability.

Mr. Johnson suggested the staff redraft this subsection in accordance with the above provisions for reexamination by the subcommittee. Section 9 was not approved.

Section 10. Search of vehicle incident to arrest. Section 10, Professor Platt reported, authorizes an inventory search of a car.

Mr. Johnson moved the deletion of the last sentence in subsection (2) with instructions to the staff that the section be examined so that it conforms with the policy decisions of the subcommittee. The motion carried.

Mr. Johnson moved the adoption of section 10, as amended. The motion carried.

The operating part of the first sentence in subsection (2) is a comparable provision to the extension of search of premises, Professor Platt said, and should be retained in the draft.

Section 11. Search of premises incident to arrest. Mr. Johnson moved that section 11 be adopted subject to redrafting by the staff as to form and style and with the following amendment to paragraph (c), subsection (1):

> "[Likely to] May be removed or destroyed before a search warrant can be obtained and served...."

The motion carried.

Section 12. General authorization; authority to search and seize pursuant to consent. Mr. Johnson moved the adoption of section 12. The motion carried.

Section 13. Persons from whom effective consent may be obtained. Mr. Johnson moved the adoption of section 13, as amended, by deleting "of its operation and contents" from subsection (2). The motion carried.

Section 14. Required warning preceding consent search. Professor Platt was of the opinion that section 14 should be clarified. Line 4 of subsection (1) states "...an officer present shall inform the individual..." He said he wished to delete "the" and insert "any" and continue the phrase to state "not in custody or under arrest,". Mr. Johnson disagreed with this proposed amendment and moved the adoption of the section as written. The motion carried.

Section 15. Permissible scope of consent search and seizure. Representative Stults moved the adoption of section 15. The motion carried.

Next Meeting

The subcommittee agreed to meet on Tuesday, January 18, at 1:30 p.m. to review Search and Seizure; Preliminary Draft No. 2.

The meeting adjourned at 4:30 p.m.

Respectfully submitted,

Norma Schnider, Clerk
Criminal Law Revision Commission