

OREGON CRIMINAL LAW REVISION COMMISSION  
Room 309 Capitol Building  
Salem, Oregon

September 22, 1967  
10:00 a.m.

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OREGON CRIMINAL LAW REVISION COMMISSION

Second Meeting, September 22, 1967

Minutes

Present: Yturri, Chairman; Harlan, Vice Chairman;  
Burns, Chandler, Clark, Eivers, Elder, Knight, Redden,  
Spaulding, E. G. Foxley representing Thornton

Absent: Howe, Mahoney

Witnesses: The Honorable William C. Perry, Chief Justice of the  
Oregon Supreme Court  
Mr. Courtney Johns, Chairman, Oregon State Bar Committee  
on Criminal Law and Procedure; Linn County District  
Attorney  
Mr. Ed Branchfield, Administrative Assistant to the  
Governor  
Mr. William Moshofsky, Oregon Council on Crime and  
Delinquency  
Miss Kathleen Beaufait, Deputy Legislative Counsel  
Mr. Robert W. Lundy, Legislative Counsel  
Professor George M. Platt, Associate Professor of Law,  
University of Oregon  
Mr. Norman A. Stoll, Vice Chairman, Law Improvement  
Committee

The meeting was called to order at 10:00 a.m. by Chairman Yturri in Room 309 Capitol Building, Salem, Oregon.

Miscellaneous Matters

Chairman Yturri announced that Senator Mahoney was attending a meeting of the National Legislative Conference in San Antonio, Texas.

The Chairman reviewed a telephone conversation he had with Mr. Geoffrey C. Hazard, Jr., Executive Secretary of the American Bar Foundation in Chicago, who had said he would testify before the Commission on his next visit to Oregon. Mr. Hazard had agreed that it would be proper to attack the procedural code revision before the substantive even though all other states had begun with their substantive codes.

Advisory Committee

Chairman Yturri stated that from the material he had read on the subject of criminal code revisions, it appeared that an advisory committee should be appointed. One of the committee's first concerns would be to analyze and report on the revision procedure without benefit of the Commission's views. He noted that California, Illinois and New York all had an advisory committee of this type

and a large citizens' committee composed of lay, professional and law enforcement personnel thus eliminating the possibility of excluding the views of any interested group.

At a later point in the meeting the Chairman asked Mr. Spaulding and Judge Burns to select for the next meeting names of individuals whom the Commission might consider to form an advisory committee composed of district attorneys, defense lawyers, sheriffs, state police, city police, city attorneys, prison officials, parole and probation officers, ministers, laymen, college professors, psychiatrists, judges and representatives of the news media. He also asked other members of the Commission to submit suggested names for the advisory committee bearing in mind that they could not be paid for their services and would need to be individuals willing to sacrifice their own time and energies.

### Goals and Procedures of Criminal Law Revision

Chief Justice William C. Perry. The Chairman introduced Chief Justice William C. Perry. Justice Perry expressed the view that the most pressing need for revision was contained in the substantive law rather than the procedural. He called particular attention to the grand jury system in Oregon and was of the opinion that, except for political misfeasance and crimes against the state, the grand jury had outlived its usefulness. He stated that the grand jury was the place to wash out cases that the district attorney didn't want to try and afforded very little protection to the individual the district attorney wanted to try but noted that earlier efforts to revamp the grand jury system had failed in Oregon. He emphasized the importance of a speedy trial and observed that in some of the state's smaller areas the suspect might be forced to wait six to eight weeks for a jury to be convened so he could be either indicted or released. He was of the opinion that pressure would be increased on the matter of speedy trials by the Supreme Court of the United States.

One of the great problems in carrying out the proposed revision, Justice Perry said, was the distinction between the criminal act and the intent to commit a crime. Not everyone who committed a criminal act intended to commit a crime of any real consequence, a prime example being the writer of the NSF check. A person could write a check with the intention of depositing an amount sufficient to cover it on the following day. If that amount was not forthcoming from the expected source, that person would be as guilty of a crime as one who had written a check with no intention of trying to take care of the obligation involved. Some states, he pointed out, had a check abatement statute which drew a distinction between the individual who had an account in the bank within the last 30 days and one who did not. If restitution was made, in those states the crime was dissolved from his record and he cited the Kansas check abatement statute as an example of this type of law.

Premeditation and deliberation in a murder case, he said, did not present such a clearly distinguishable line. New York had

solved this problem by setting forth that crimes committed in a certain manner were first degree murder; in another manner, second degree; etc.

Justice Perry termed Oregon's conspiracy statute "a trap for the prosecuting attorneys" and urged it be revised.

Oregon statutes, he pointed out, contain approximately 1,400 separate and distinct crimes with over 400 ranges of penalties. He noted that penologists claim one of the great difficulties in the penitentiaries is caused by the disparity in sentences between two men convicted of the same crime and recommended consideration of the mandatory indeterminate sentence. In this connection Justice Perry recommended the Commission consider establishing some kind of a liaison parole board to determine the length of time the person should remain in custody so he could be released when they believed him to be safe to release on society and when they felt there had been reformation of character.

Certain laws in the criminal code, he said, had been enacted through pressure on the legislature. People from eastern Oregon felt stealing cattle was the most heinous offense while bankers thought robbing a bank was the most abominable. He was of the opinion there were too many categories of crime and recommended that the number be reduced and the sentences equalized.

Justice Perry observed that the Commission would probably get into problems involving matters of public policy such as abortion, sex crimes, habitual drunkenness and the question of whether marijuana was a narcotic or a dangerous drug. For this reason he agreed with the Chairman that it would be advantageous to involve a large segment of the public in the revision through an advisory committee.

Mr. Chandler asked Justice Perry if, because revision of the grand jury system had failed a few years ago, he would recommend the subject be dropped and received a negative reply.

Judge Burns asked who would convene the grand jury when it was needed, assuming a limited use of the grand jury system were adopted. Justice Perry replied that there were two possible answers; in some states the grand jury was convened by the Attorney General and in others, which he considered to be the better system of the two, it was called through a request to the circuit court.

Judge Burns next asked Justice Perry why he felt the Commission should begin their revision with the substantive rather than the procedural code and was told that the need for substantive revision was more pressing at the present time. Chairman Yturri advised that he had been doing some research on this subject and had gone through the procedural code. It appeared to him that there were not too many deficiencies in the procedural code so the task in that area might not be too great. He asked Justice Perry if he thought it would be feasible for the Commission, in an effort to have a presentation for the 1969 legislature, to clear up certain areas



in the procedural code and with all the remaining time to take various areas of the substantive code and proceed along the lines he had suggested. Justice Perry agreed that this approach was feasible but emphasized that the real need for revision was in the substantive area.

Chairman Yturri commented that he had received two complaints since the Commission's last meeting with respect to preliminary hearings. Certain district attorneys, he said, when they knew the defendant was not going to escape or leave, rather than having him arrested and holding a preliminary hearing, would wait until the grand jury convened so there would be no opportunity for questioning at the preliminary hearing. Justice Perry acknowledged that this situation was not uncommon and Chairman Yturri remarked that this was a procedural step which could be taken up by the Commission.

Justice Perry outlined the system of information used in Kansas. He explained that after the accused was bound over by the magistrate for trial, an application could be filed in the circuit court for preliminary hearing. If the evidence failed to show the commission of a crime or probable cause to believe that the individual had committed the crime, the circuit court would examine that record and if it found the evidence insufficient, could dismiss the information or could hold a preliminary hearing to see if the state could bring in additional testimony to fill the gaps.

Judge Burns remarked that if the objective was to achieve discovery rights for the defendant, which he now had at the preliminary hearing, before the district attorney took the case to the grand jury, the objectives should be separated into:

- (1) Discovery rights of the defendant in the criminal case;
- (2) Whether or not the grand jury system is a good system.

If the Commission decided that the grand jury was an anachronism and adopted the information system, the statute should forthrightly say that in criminal cases when a man has been informed against, he has discovery rights. If the discretion were placed in the district attorney to inform against a man, with the added provision for a preliminary hearing at which point the judge could dismiss the information, in one sense the defendant was being given two trials. If the objective was to give a man charged one fair trial and fair discovery rights, Judge Burns believed this could be accomplished by an information system plus a discovery statute.

Chairman Yturri commented that a constitutional amendment would be required to enact an information system and Mr. Spaulding added that it might also be necessary to amend the Constitution to provide for a discovery system. Justice Perry observed that it might be possible to avoid the constitutional prohibition in some cases through a statute permitting the accused to waive indictment by the grand jury and continuing the present system of indictment with the additional requirement that the accused be granted the right of preliminary hearing.

Chairman Yturri asked Mr. Knight if he, as a district attorney, would feel it proper in every case to provide an accused with a preliminary hearing to avoid the present situation where there were secret indictments. Mr. Knight was of the opinion that if discovery were allowed for the defendant, the state should also have the right of discovery. He also suggested that if discovery were adopted in Oregon, the defendant should first agree to waive his rights under the Fifth Amendment.

Representative Harlan asked Justice Perry if he had any thoughts about the right of the state to appeal in criminal cases. Justice Perry said there was one particular case in Oregon where he felt the defendant was clearly guilty of the commission of the crime charged but the court had instructed the jury to bring in a verdict of not guilty. However, he said, this did not occur often and, because of the court's workload, he expressed the hope that the door would not be opened too wide to appeals on behalf of the state, especially with respect to determining whether or not certain acts constituted crimes. He said he had always believed that where there was a directed verdict based on insufficiency of evidence, that should be appealable. In Kansas, he remarked, the state could appeal on certain matters but retrial of the defendant could not be permitted because it would place him in double jeopardy.

Representative Harlan suggested the communities might share in some of the burden of reforming individuals convicted of crimes as they now do in the areas of mental health and juvenile law. Justice Perry replied that this was a sociological question and outside of the Commission's area of responsibility.

Mr. Clark mentioned that the President's Commission on Law Enforcement indicated some acts should not be considered violations of the criminal law and asked Justice Perry if he thought the Commission should go into some of these areas such as drunkenness, sex crimes, marijuana and abortion. Justice Perry replied that these were some of the problems to be considered in the substantive law revision.

Mr. Courtney Johns. Chairman Yturri next introduced Mr. Courtney Johns. Mr. Johns expressed pleasure at the creation of the Criminal Law Revision Commission and noted that both the Bar Committee on Criminal Law and Procedure and the District Attorney's Association had recommended a complete overhaul of the criminal code. He pointed out that the revision would encompass both controversial and noncontroversial areas but the revision should not be accomplished on a piecemeal basis. He also expressed approval of the Chairman's intention to form an advisory committee.

Mr. Johns outlined some of the areas which he felt needed immediate attention and could be taken care of in time to present to the 1969 legislature:

NSF checks; obtaining money by false pretense. The first such area he mentioned was the matter of NSF checks. He said that if he had his way, there would be no law against writing NSF checks; instead he would let the merchants take the responsibility for cashing checks. He noted that when the cost was computed of prosecuting bad check cases and then supporting the men at the penitentiary, plus their dependents, it became unreasonable. He expressed the view that merchants should not cash third party checks and mentioned the expense involved in prosecuting a person on an out of state NSF check.

Mr. Johns explained that in Linn County if a person passing a check had never had an account in the bank on which that check was drawn, he could be prosecuted under the obtaining money by false pretense statute but if he had ever had an account, he had to be prosecuted under the NSF statute.

Mr. Knight disagreed that if he had ever had a bank account, the district attorney was limited to prosecution under the NSF statute. He explained that there were instances where a man deposited \$50 on Friday afternoon and over the week-end wrote \$1,000 worth of worthless checks on that account keeping each under \$75. Such a person had an intent to commit a crime, he said, and if NSF check writing was to be a crime, and certain types were definitely crimes in his opinion, the district attorney should be able to prosecute that person for a felony on the total value of the checks cashed rather than for a misdemeanor on the amount of a single check. This, he said, would create a distinction between the person overdrawing his account and the person who made his living by cashing bad checks. Mr. Chandler pointed out that such a provision would involve the problem of joinder in a trial.

Mr. Johns went on to list other areas needing revision:

Embezzlement; larceny by bailee. He noted that it is a violation of the law to buy something on a conditional sales contract and take the property out of the county without written permission. Automobiles are constantly taken outside the county without penalty, yet the same person can be prosecuted for removing furniture from the county.

Petty larceny; grand larceny. Mr. Johns suggested the \$75 figure in the present law may be out of date.

Larceny in a building; shoplifting; burglary. He commented there probably is no way to perpetrate shoplifting unless it is in some kind of building. Burglary is also tied in with larceny in a building and shoplifting too can be burglary in certain instances.

Trespass. It is trespass to enter upon the enclosed lands of another. There is a question concerning trespass of lands not enclosed.



Negligent homicide; manslaughter. Apparently, Mr. Johns said, negligent homicide is intended to be an exclusive charge when death is by a motor vehicle but it requires gross negligence. Yet it would be manslaughter to drive a boat and accidentally kill someone and requires only simple negligence.

Homicide. Mr. Johns raised the problem, as did Justice Perry, of determining premeditation.

Vagrancy. He pointed out that the vagrancy law was used a great deal by the police but doubted that there was any possible way to get enough evidence to sustain a conviction under the vagrancy law unless it would be for public intoxication. Justice Perry noted there was a grave question as to the constitutionality of the vagrancy laws.

Public intoxication. It is a crime to be drunk in some places and not in others. It is against the law to be drunk on a public highway. One judge had ruled that if a person was in a car, he was not on the highway so the officers evaded this ruling by asking the person to step out of his car and he could then be charged with drunkenness on a public highway.

Fraud. Mr. Johns called attention to a limiting evidentiary rule barring a charge of obtaining money by false pretense unless there was something in writing. This in many instances eliminated prosecution of a salesman representing a product or service under false pretense.

Uncorroborated testimony of an accomplice. He referred to the fact that a person could not be convicted upon the uncorroborated testimony of an accomplice. Mr. Johns agreed that convictions should not be made upon one man's testimony, yet if there were three or four accomplices, all willing to testify, the law became ridiculous.

Venue. Venue, he said, may present a constitutional problem. Presently venue appears to be considered jurisdictional in criminal cases while it is not jurisdictional in civil cases. It is not always possible to show venue and yet he thought it was required by the Constitution to some extent.

Gambling. Justice Perry commented on the inconsistency of the gambling laws. Everyone who bet a dollar on a football game, he said, was violating the law. Mr. Johns agreed the gambling laws needed attention but also was aware of the problem faced by legislators in voting on gambling laws in that they were condemned by one side or the other no matter which way they voted. He suggested gambling laws be included in a package with other revisions to avoid this problem. He proposed one possible solution might be to make gambling a crime only when everybody would consider the act a crime.



Appeals by the state. Mr. Johns expressed the view that most district attorneys would be happy if they could appeal on behalf of the state when their whole case depended upon a ruling of the court. For instance, in a search and seizure case, if the evidence was ruled out, a review of that ruling would be reasonable. In some states, he said, either side could appeal and the question of double jeopardy had been handled by saying the defendant was entitled to one fair trial and if the trial was not fair, he had to be retried.

Sentencing; alibi. Mr. Johns contended sentencing and alibi needed review.

Authority of police officer to issue summons in lieu of arrest. Mr. Johns advised that the bulk of his cases were tried in the district court. Presently the officers are issuing citations to court instead of arresting persons and no authority exists for this practice. He also noted that there was no authority for the district attorney to sign an information. Mr. Johns urged the Commission to study the basic practices of law enforcement agencies and provide for a uniform practice with a law authorizing that practice.

Later in the meeting Mr. Knight pointed out that there was authority for the district attorney and his deputies to sign complaints but it was contained in the statutes relating to district attorneys and was not in the procedural criminal statutes. The chief problem, he said, lay in permitting the police officer who investigated a crime to sign the complaint.

Representative Elder noted that the crime rate was increasing faster than the administration of justice could cope with the problem. Mr. Chandler commented that this situation was probably aggravated by the fact that there were too many laws for the people to break and suggested a reduction in the number and categories of crimes. Chairman Yturri pointed out that Representative Elder's concern was crime prevention which might go beyond the province of the Commission except in a subsidiary role.

Assistance by Bar Committee on Criminal Law and Procedure. The Chairman asked Mr. Johns if the Bar Committee on Criminal Law and Procedure would be willing to submit drafts containing proposed revisions with respect to check cases, larceny, burglary and obtaining money under false pretense. Mr. Johns explained that he was the outgoing Chairman of the Bar committee but his committee had agreed that they would be ready and willing to help the Commission in any way possible. The Commission unanimously agreed that Chairman Yturri should address a letter to the Chairman of the Bar Committee on Criminal Law and Procedure requesting that the committee commence drafting statutes in these areas.

Mr. Johns suggested the District Attorney's Association as well as the Judge's Association might also be solicited to point out areas of the law needing attention. Judge Burns later suggested that Mr. Johns check the minutes of the District Attorney's Association to pinpoint the recommendations of that association on recurring or new problems with which they were faced.

The Commission recessed for lunch and reconvened at 1:30 p.m. with the same members present as for the morning session.

#### Availability of Federal Funds

Mr. Ed Branchfield discussed the possibility of obtaining federal funds to aid the criminal law revision project. He called attention to a letter directed to Norman Stoll, Vice Chairman of the Law Improvement Committee, a copy of which is attached hereto as Appendix A. The letter indicated that monies in the Law Enforcement Assistance Act of 1965 could not be used directly for code revision although if a Governor's committee was set up and if the revision was assigned as one of its priorities, part of a \$25,000 matching grant might be used in that way.

More important in this area, he said, was what had been called the "Safe Streets and Crime Control Act of 1967" or the present House version of "The Law Enforcement and Criminal Justice Assistance Act of 1967." The House had made extensive amendments and passed this latter Act. Mr. Branchfield said in his opinion the intent of the two bills had to be stretched to find that money could be used for law revision although there was some general language indicating the purposes for which grants could be used and if it was part of the State Plan and certified by the state committee and the Governor as being an essential part of the State Plan, money might then be available.

Mr. Branchfield indicated that whatever the Governor could do to assist the Commission in obtaining funds, he would be glad to do. The Crime Coordinating Council created by the 1967 legislature was in the process of being formed and, while he said he could not officially speak for that Council, he was of the opinion they would be cooperative in assisting the Commission to obtain financial aid.

Chairman Yturri asked Mr. Branchfield if it was the intention of the Governor to request federal funds for the operation of the Crime Coordinating Council. He was told that since no money was appropriated by the legislature for the Council's operation, their funds would have to be secured either through private grants or federal funds. He said he fully expected the Council to request federal assistance.

Representative Harlan moved that the Governor be requested to:

- (1) Write to Washington requesting that funds for code revision be expressly included in the bill currently under consideration;
- (2) Assist the Commission in obtaining funds; and
- (3) Urge the Crime Coordinating Council to include the work of the Commission in its request for funds.

The motion was seconded by Mr. Chandler and carried unanimously.

Goals and Procedures of Criminal Law Revision

Mr. William Moshofsky. Chairman Yturri introduced Mr. William Moshofsky who explained the work and function of the Oregon Council on Crime and Delinquency and pledged the cooperation of the Council to work with the Commission in any way possible. He suggested the Commission attack the revision as if they were building a code from the beginning and not attach too much significance to present law.

Mr. Moshofsky recommended careful study of a survey made by the National Council on Crime and Delinquency for the Oregon State Board of Control published under the title of "A Balanced Correctional System for Oregon." He suggested the Commission give special emphasis to the problem of sentencing to correct illogical and inappropriate disparity of sentences and the failure of the sentence to fit the person. One solution to this problem, which both the Oregon Council and the National Council were agreed had real merit and which was the result of much study, was the Model Sentencing Act. He noted that it placed emphasis on the offender rather than the offense and contained basically three limits for punishment:

- (1) Life imprisonment as a maximum for murder.
- (2) A maximum of 30 years for those offenders determined to be dangerous to society.
- (3) A maximum sentence of five years for all other offenders.

Mr. Moshofsky next mentioned the practice of police officers who issued a summons in lieu of arrest, previously referred to by Mr. Johns. The Council, he said, felt this procedure should be legalized in the interest of justice and efficiency.

He recommended that the Commission solicit testimony from Mr. Sol Rubin, General Counsel to the National Council of Crime and Delinquency in New York City and one of the leading authorities in the entire field of criminal law and corrections. He left with the Commission the following books written by Mr. Rubin:

- (1) Psychiatry and Criminal Law -- Illusions, Fictions and Myths
- (2) Guides for Juvenile Court Judges
- (3) Procedure and Evidence in the Juvenile Court
- (4) Crime and Juvenile Delinquency -- A Rational Approach to Penal Problems
- (5) The Law of Criminal Correction

Mr. Moshofsky said Mr. Rubin had been informed of the existence of the Criminal Law Revision Commission and he had indicated his



willingness to appear before the Commission. Mr. Moshofsky advised that Mr. Rubin could present actual experiences of other states and of the federal government in law revision activities and was aware of some of the best thinking in this field from both the conservative and liberal viewpoints. Commission members indicated a desire to have Mr. Rubin talk to them and Mr. Moshofsky agreed to investigate the possibility of arranging for him to do so without cost to the Commission. At the Chairman's request he also agreed to furnish each member of the Commission with a copy of the Model Sentencing Act.

Disparity of sentences was discussed further and Mr. Moshofsky agreed that the problem could not be entirely eliminated and was tied in closely with the further problem of parole and probation. Chairman Yturri asked what the Council's position was with respect to the difference between a lay parole board, as used in Oregon, and a professional parole board. Mr. Moshofsky replied that it was a difficult job with grave risks involved in releasing the wrong prisoners on society and the Council believed that when the workload was great enough, it should be handled by a professional staff.

Mr. Chandler pointed out that Mr. Moshofsky had said he was not sure that the Model Sentencing Act as drawn would be a model for Oregon and asked if the Council would be willing to redraft it for the Commission. Mr. Moshofsky replied that they would welcome the opportunity to do so.

#### Availability of Federal Funds and Ford Foundation Grant

Miss Kathleen Beaufait reported that she had written to the federal Department of Justice regarding the question of federal grants but had not received a reply from them. She had also contacted the Ford Foundation but had likewise received no response. It was her opinion, judging from her past experience, that the Ford Foundation would want a proposal setting forth precisely and in detail what the Commission was going to do and she suggested it might be too early to prepare this information.

Chairman Yturri suggested that if the Commission decided to begin its work with the procedural code, the possibility be explored of obtaining funds from the Ford Foundation on the premise that Oregon's revision project differed from criminal law revision projects in other states in that they had all begun with the substantive code.

Representative Harlan asked Miss Beaufait if she had checked with other states to determine if they had received financial assistance from any source outside their state and was told that the letters had been written but replies had not been received.

#### Research Materials

Miss Beaufait called attention to material distributed to the members at this meeting:



- (1) Willamette Law Journal, Vol. 4, No. 2, containing a symposium on criminal law
- (2) The American Law Institute's Model Penal Code

She had also prepared a selected bibliography of research materials which dealt with the problems of penal code revisions in other states together with some comments on specific issues which the Commission had raised. She pointed out that a great deal of material was being written on criminal law and additions to the bibliography could be made on nearly any subject which the members might specifically request. Miss Beaufait had also prepared a list of the materials available in the Legislative Counsel's office. The two bibliographies are attached hereto as Appendix B.

#### Assistance from Attorney General

Chairman Yturri asked Mr. Foxley how much drafting assistance the Attorney General's office would be able to give the Commission and was told the amount would be minimal because of staff and budget limitations but he was sure the Attorney General would cooperate to the extent possible. The Chairman said he would write to the Attorney General formally requesting assistance.

#### Activities of the Law Improvement Committee

Mr. Robert W. Lundy provided each member with a copy of Law Revision Bulletin No. 2 consisting of the report by the Law Improvement Committee to the 1967 legislature and describing some of the activities of the committee over the past two years. He reviewed the make-up of the committee, how and why it was formed and explained that the major projects undertaken had been revision of the forestry laws, the insurance code and the probate code. Mr. Lundy indicated that the committee had experimented with a number of different ways of proceeding with law revision projects and had found the best procedure for all projects to be the advisory committee approach.

#### Goals and Procedures of Criminal Law Revision

Professor George M. Platt. The Chairman introduced Professor George M. Platt who, he advised, would be sitting with the Commission as an observer and asked him to present his reactions to the program being considered by the Commission.

Professor Platt expressed the view the Commission was attempting to look too soon at specific problems and should instead be looking at the "big picture." He suggested the Commission should look at the criminal law not so much from the standpoint of the offender as from the standpoint of citizens of a community whose lives were touched more closely and more frequently, as innocent persons, by the criminal law than by any other branch of the law.

He urged the Commission to consider the effects of their proposals on the large community and made the following two specific suggestions dealing with strategy and procedure of the Commission:

(1) The most important immediate decision was whether to proceed with the law of specific crime, sometimes called substantive law, or the procedural law. His personal opinion, based somewhat on the experience elsewhere, was that the approach should be to the specific crimes first, one reason being that there was less argument about what ought to be done in this area than in the procedural area. He advised against an attempt to approach both problems at once.

Professor Platt indicated he had written to Professor Charles H. Bowman of the University of Illinois Law School, one of the leaders in drafting the Illinois criminal code, which, he said, was very excellent and referred to nationally as a model. He had asked Professor Bowman to give him the benefit of what was going on behind the scenes with the Joint Bar committee when they developed and presented to the legislature the substantive code in 1961. He said he was reasonably sure that one of the answers would be that when they undertook that task, they ran into the most argument and conflict with procedure and, in the first instance, it had bogged down their entire approach because they had decided to tackle procedure first. They submitted to the legislature the specific crimes code in 1961 and, having that successfully enacted, they then tackled procedure and enacted in 1963 the Illinois Code on Criminal Procedure. He said he would be happy to pass along Professor Bowman's remarks when they were received.

(2) Having decided whether to begin work on the substantive or procedural code, Professor Platt urged development of a series of working papers for the members' information and education. The first working papers would include a very brief summary of current Oregon law, based on the Supreme Court cases and the statutes, the Model Penal Code approach and/or the Illinois or Wisconsin approach, a summary of the practical problems and a conclusion or recommendation by the Commission. These working papers, he observed, would serve not only the function of education but would be an excellent source of information for the legislature providing a ready-made record and report to support the Commission's position. The working papers, he noted, should be very brief -- four or five pages at most.

He urged the Commission to turn away from a housekeeping job and to do the whole revision in one package in a sweeping reform.

Chairman Yturri asked Professor Platt if he would feel it would do violence to his recommendation if the Commission were to begin by making certain recommendations in the procedural code. Professor Platt said he would be inclined to answer affirmatively

because if the Commission began on procedural matters, their energies would be likely to be entirely taken up in that area. The Chairman explained that he had specific reference to non-controversial areas and Professor Platt said he would have no objection to consideration of noncontroversial subjects but if controversy developed, the subject should be abandoned.

Mr. Chandler expressed the view that it might be a mistake for the Commission to delve only into noncontroversial matters in its first report to the legislature and then go into the following biennium with all the knotty problems. He pointed out that the Insurance Code and the Uniform Commercial Code had been adopted as packages and the legislature had demonstrated intelligence in adopting package programs.

#### Assistance from Oregon Law Schools

The Chairman next inquired how much help the Commission could expect from the University of Oregon Law School. Professor Platt explained that budget limitations were severe and the professors' workload was heavy but both President Flemming and the Law School were extremely interested in the revision project. Chairman Yturri asked Professor Platt if he could ascertain by the next meeting of the Commission whether or not, through law students or otherwise, he would be able to obtain for the Commission the working papers he had mentioned covering specific areas which the Commission would delineate. Professor Platt agreed this type of research was a good possibility for the law students and promised to investigate the matter.

Judge Burns suggested that in addition to the University of Oregon Law School, the two other Oregon law schools should be approached about offering the same kind of help. Chairman Yturri indicated his intention to invite Professor Courtney Arthur of the Willamette College of Law to the next meeting. He also planned to write him asking that the Willamette Law School examine the preliminary provisions of the Model Penal Code, and perhaps the Illinois and Wisconsin codes, and see how they would be applicable in the State of Oregon, how they would compare with the present law and whether or not they could be used as a basis for continuity of language throughout the code.

#### Miscellaneous Matters

Legal assistance for individual members. Mr. Chandler noted that each member of the Constitutional Revision Commission had been assigned a lawyer for research and study purposes who had proved to be extremely helpful to the members in preparing material of the type suggested by Professor Platt. Most of these lawyers, he said, were former clerks of the Supreme Court who were experienced in legal research. The Chairman agreed that such an arrangement could probably be made for the members who wanted this type of assistance.



Goals. Mr. Chandler pointed out that the Commission's report to the 1969 legislature would have to be substantially completed in the next 12 months. To accomplish this he felt two conclusions were imperative:

- (1) Decide the Commission's direction; and
- (2) Decide how to proceed with the funds at hand in a form of organization which could be expanded if additional funds became available.

He also specified that a legal scholar would need to be employed to do the day-to-day work of research and preparation of material for presentation to the Commission for policy decisions. The Chairman said he had the names of several individuals who could be engaged in this capacity and asked that the members submit additional names if they knew of competent individuals in this field. He explained that no one had been appointed as yet because of budget limitations and because the Commission had not yet definitely determined its course of procedure.

Hour of meeting. Chairman Yturri asked if there was any objection to beginning future meetings at 9:00 a.m. instead of 10:00 a.m. There being no objection, that policy was adopted.

Suggested reading material. Mr. Chandler called attention to a book entitled "The Lawyers" by Martin Mayer. He advised that it contained some interesting and apropos comments in the field of criminal law.

Drafting assistance. Chairman Yturri expressed his intention to write to the newly elected President of the Oregon State Bar explaining the Commission's activities and soliciting aid. He said he had also asked Mr. Johns to outline in writing in more detail some of the matters he had discussed at today's meeting, particularly with respect to procedural laws which were current practice but no law existed authorizing them.

Proposed witnesses. The Chairman asked Professor Platt if he had any suggestions as to whom the Commission should invite to give them the "big picture" about which he spoke. Professor Platt replied that Mr. Geoffrey Hazard would be very fine for this purpose and also suggested that Professor Charles Bowman would be excellent because he would be familiar not only with the over-all picture but with the day-to-day problems faced in Illinois. Chairman Yturri said that because of the cost involved, he had hesitated to invite individuals such as Professor Bowman until a budget had been approved.

Mr. Clark suggested Mr. James Vorenberg, Executive Director of the President's Commission for Law Enforcement and the Administration of Justice, would be helpful and the Chairman asked Mr. Clark to check into his availability.



Mr. Chandler suggested that Professor Herbert Wechsler of the Columbia University School of Law in New York City was also very capable in this area.

#### Goals and Procedures of Criminal Law Revision

Mr. Norman A. Stoll. Mr. Norman A. Stoll was of the opinion that it would be feasible for the Commission to undertake the procedural and substantive criminal codes simultaneously but if only one was chosen, he thought the procedural code was of first importance. He advocated that the number of subcommittees be held to a minimum but maintained that one group could work on the procedural aspects while another was working on the substantive. He suggested that the criminal code be split into three divisions:

(1) Procedure, including organization of courts, initiation of proceedings, guarantees of rights of the accused and rights of law enforcement agencies;

(2) Definition of the various crimes; and

(3) The problem of punishment, parole and handling of the offender after conviction.

Mr. Stoll recommended the Commission contact Mr. Bill Prince, Attorney General in Wisconsin, which, he said, was currently involved in a revision of their procedural code. He commented that Mr. Prince's daughter lived in Portland and he visited her occasionally so he might be available to appear before the Commission on one of his visits to Oregon.

Mr. Stoll was of the opinion that the Commission should not be concerned with submitting its accomplishments to the 1969 legislature because the legislators should be aware that similar projects in other states had taken at least six years. Chairman Yturri expressed disagreement with this comment and said that for the project to succeed, it was imperative that the Commission assure continuity of funds and additional time by producing concrete achievements for the session. He suggested the Commission approach certain fields of substantive definitions of crime and at the same time continue along the procedural lines discussed earlier at this meeting including revamping of the grand jury system and discovery procedures. If the Commission was unable to reach agreement on these problems, the members could then decide whether the majority view should be submitted to the legislature. He was of the opinion that they could complete a code with respect to crimes against property for the 1969 legislature.

Mr. Stoll questioned the wisdom of submitting individual bills to the legislature because he thought this practice could create a

diversion from the total effort. Chairman Yturri pointed out that crimes against property could be presented in one package and if the legislature failed to adopt a portion of that package, the Commission would still be in existence and could resubmit those portions if it so desired.

Mr. Stoll emphasized the importance of evoking and maintaining public interest in the revision project and noted the advantages to be gained by the work of organizations which would actively support the package when it reached the legislature.

Judge Burns pointed out a difficulty that would be present in a piecemeal revision in that it would be difficult to lift out one subject, such as crimes against property, without giving careful attention to some of the general definitions which pervaded the entire code. The drafting job of maintaining continuity of language, he said, posed a severe problem. Chairman Yturri pointed out that in Illinois and California the revisors had gone ahead with the various areas of revision by instructing every subcommittee to base all drafts on the Model Penal Code preliminary language and definitions.

#### Crime of Obstructing Justice

Chairman Yturri called attention to the proposed bill relating to the crime of obstructing justice which had been submitted by Roger Rook, Clackamas County District Attorney, a copy of which is attached hereto as Appendix C. He explained that it was not presented for discussion but in order that the Commission would be aware that such a proposal had been made.

#### Next Meeting

Representative Harlan suggested the date for the next meeting be left to the discretion of the Chairman and proposed it be tied in with the special session of the legislature scheduled to convene on October 30.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,



Clerk  
Criminal Law Revision Commission

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UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF LAW ENFORCEMENT ASSISTANCE

Washington, D.C. 20530

April 20, 1967

Mr. Norman A. Stoll, Vice Chairman  
Oregon Law Improvement Committee  
510 Corbett Building  
Portland, Oregon

Dear Mr. Stoll:

This is in response to your letter of April 13, 1967 regarding the possibility of financial assistance under the Law Enforcement Assistance Act of 1965 for the Oregon code revision program.

Direct aid for such efforts has not as yet been made available because with out limited funds, we are not in a position to support the many code revision programs currently in existence and have been unable to identify any particular effort as offering sufficient uniqueness or demonstration potential as to fall within the "experimental--new methods" criteria governing most of our grant activity.

The communication with Senator John Burns referred to in your letter came to us both directly and through Congressman Green's office and I am enclosing a copy of our response for your information. In summary, we indicated the unavailability at this time of direct aid to a code revision project, but advised that we had a special program available to any State for matching aid of up to \$25,000 to support Governors' or state planning committees established to engage in comprehensive crime control and law enforcement improvement planning spanning all major facets of the criminal justice process--courts, police, corrections, criminal law generally, prevention, etc. (Copy of guidelines enclosed.) We indicated that a particular Governor's committee, if constituted, could give priority to code revision as one of its first efforts (several of our planning committee grantees have selected 5 or 6 specific program areas of initial emphasis) but it was not our intention to indicate that all or a large majority of the planning monies could be allocated solely to code revision since this would defeat the general planning goals of these special grants. It seems that Senator Burns' restructuring of the size and appointive source of the Law Revision Commission may have been in response to qualification under the "planning committee" special program.

In summary then, our special grant program for Governor's Planning Committees on Criminal Administration is not intended to support code revision committees as such, but rather to assist

- 2 -

state-wide law enforcement and criminal justice planning efforts. Indirect aid from such a committee to code revision groups is, of course, not beyond the scope of the program, but the major emphasis should be on an across-the-board look at the criminal justice system in the state.

As regards your inquiry re pending administration legislation, a criminal code revision effort could clearly be included in a state plan under Title I and action grant under Title II of the proposed Safe Streets and Crime Control Act of 1967 (S.917) if the State wished to assign this as a priority item for its federal 60% - 40% matching dollars.

I hope this serves to answer your inquiry but if there is additional information which would be useful to you, please let us know. The staff member assigned to this program area is Mr. Philip J. Hoskins, telephone AC 202 - REpublic 7-8200, extension 3919.

Thank you for your interest in the Law Enforcement Assistance Act.

Sincerely,

/s/ Courtney A. Evans

COURTNEY A. EVANS  
Acting Director

Enclosures



Legislative Counsel  
September 22, 1967

OUTLINE OF RESEARCH MATERIALS

- I. The Revision Project
  - A. Model Penal Code
  - B. Vermont Criminal Discovery Statute (ABA Journal)  
(Distributed with August 1967 minutes)
  - C. California Sample of Tentative Draft of  
Revision in Specific Area (In notebook)
  
- II. The Revision Procedure
  - A. Report by California Staff on Activities in  
Other States (In notebook)
  - B. Legislative Counsel's Memorandum (Appendix A  
to August 1967 minutes)
  - C. 1967 Report to California Joint Legislative  
Committee for the Revision of the Penal Code  
(Distributed at August 1967 meeting)
  
- III. Oregon Comments
  - A. Willamette Law Journal Symposium on Criminal  
Law
  - B. Oregon Law Review: "Criminal Penalties in  
Oregon" by William A. Beckett

Prepared by:  
Legislative Counsel's Office  
September 22, 1967

Oregon Criminal Law Revision Commission

SELECTED BIBLIOGRAPHY

(From Index to Legal Periodicals, July 1965 to August 1967)

Code Revision

California

Sherry, Arthur H. "Criminal law revision." 42  
Calif. State Bar Journal 379, May-June 1967.

Georgia

Molnar, T.T. "Proposed criminal code of Georgia."  
3 Geo. S.B. Journal, 145, November 1966.

Illinois

Lizak, C.A. "Illinois code..., an analysis and  
critique." 3 Ill. C.L.E. 133, July 1965.

Symposium on Illinois criminal procedure, U. of  
Ill. L. Forum, 1966, Summer and Fall issues.

Louisiana

Bennett, D.E. "1966 code of criminal procedure."  
27 La. L. Rev. 175, February 1967.

Texas

Cohen, F. "Reflections on the revision of the  
Texas penal code." 45 Tex. L. Rev. 413,  
February 1967.

Keeton, W.P. and W.G. Reid, "Proposed revision  
of the Texas penal code." 45 Tex. L. Rev. 399,  
February 1967.

La Fave, W.R. "Penal code revision: considering  
problems and practices of police." 45 Tex. L.  
Rev. 434, February 1967.

Wisconsin

Lipton, F.F. "Classification of crimes in Wis-  
consin." 50 Marquette L. Rev. 346, November  
1966.

General Comments

Beckman, G. M. "Three penal codes compared." 10 Am. J. of  
Legal Hist. 198, April 1966.

Finan, W. E. "Uniform post-conviction acts: one state's  
experience." 3 Marq. L. Rev. 385, June 1965.

Symposium on Criminal law and procedure, including criticism  
of Model Penal Code. 17 Hastings L. J. 3, October 1965.

Criminal Discovery

Note: "Criminal discovery by the prosecution..." 22 N.Y.U.  
Intr. L. Rev. 268, May 1967.

Note: "Doctrine of discovery in criminal law procedure."  
43 N.D. L. Rev. 333, Winter 1967.

Note: "Florida's proposed rule of criminal discovery..."  
19 U. of Fla. L. Rev. 68, Summer 1966.

Note: "State statutes to liberalize criminal discovery."  
4 Harv. J. Legis. 105, December 1966.

\* \* \* \* \*

9/22/67

Prepared by:

Legislative Counsel's Office  
September 22, 1967

Oregon Criminal Law Revision Commission

SELECTED MATERIALS AVAILABLE IN LEGISLATIVE COUNSEL'S OFFICE

General Materials

Oregon Legislative Interim Committee on Criminal Law, Final Report, January 1961. Reports of Subcommittees on Criminal Procedure, Substantive Law of Crime and Sentencing, Parole and Probation and Habitual Criminals.

National Council on Crime and Delinquency, "Balanced Correctional System for Oregon: A Report to the Oregon State Board of Control." 1966.

U. S. President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society." February 1967.

Aschenbrenner, L. A. and W. H. Belt, "Cost Study: Defense of Indigents in Misdemeanor Cases in Oregon." February 14, 1967.

National Legal Aid and Defense Association. "Newsletter." Issued periodically.

Bail

Oregon, Conference on Bail and Criminal Justice, "Summary of Proceedings." February 1967.

U. S. Senate Committee on the Judiciary, Subcommittee on Improvement in Judicial Machinery, "Federal Bail Procedures." June 1965.

Insanity

California, Special Commissions on Insanity and Criminal Offenses. First Report, July 7, 1962; Second Report, November 15, 1962.

Symposium on Missouri's Mental Responsibility Law. 19 J. of Mo. Bar 645, December 1963.

Arkansas Legislative Council, "Defense of Insanity." Research Report #118, January 1964.

Rhode Island Legislative Council, "Mental Responsibility for Criminal Behavior". Research Report 12, 1965.

North Dakota State Legislative Research Council, "Criminal Insanity and Facilities for Persons Committed as Criminally Insane." February 24, 1964.



Obscenity

Arkansas Legislative Council, "Obscenity laws of the various states." Informational Memorandum 29, 1966.

Rhode Island Legislative Council, "Obscenity and censorship." Research Report 15, 1966.

Sex Offenders

Oregon Legislative Interim Committee to Study Sex Crime Prevention, Report, December 1956.

Oregon Legislative Interim Committee on Social Problems, "Report on Care, Treatment and Rehabilitation of Sex Offenders." December 1962.

\* \* \* \* \*

ROGER ROOK

DISTRICT ATTORNEY  
OREGON CITY, OREGON 97045

CLACKAMAS COUNTY  
COURT HOUSE  
OREGON CITY, OREGON

AREA CODE 503  
656-2641 (EXT. 250)

DEPUTIES:

JAMES E. REDMAN  
MICHAEL D. MONTGOMERY  
R. D. THOM  
THOMAS H. DENNEY  
RICHARD F. CRIST  
ROBERT D. BURNS

INVESTIGATOR

DURWOOD THOMAS

Anthony Yturri  
Oregon State Senate  
State Capitol Building  
Salem, Oregon

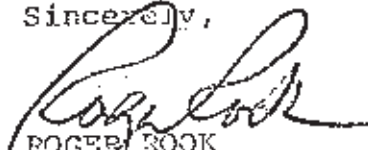
Dear Senator Yturri:

Enclosed is a copy of a rough draft of a bill which I send you for your consideration.

Among the problems that we have in law enforcement is that of the false police report. My first thought in this regard had been to draft a narrow bill making it a misdemeanor for a person to give an intentionally false report of a crime to a police agency. In examining the statutes, however, it appeared that perhaps a broader bill would be appropriate since no general obstruction of justice statute was available.

Knowing your interest in these matters, I thought you might enjoy the opportunity to consider the applicability of such a law in Oregon. I would be happy to hear your thoughts on this and to work with you in seeing it brought before the legislature.

Sincerely,

  
ROGER ROOK  
District Attorney

RR/be

A BILL FOR

AN ACT

1 Relating to the crime of obstructing justice:

2 creating new provisions.

3 Be It Enacted by the People of the State of Oregon:

4 Section 1. Sections 2 through 9 of this Act  
5 are added to and made a part of ORS chapter 162.

Obstruction  
Generally

6 Section 2. Every person who knowingly and wil-  
7 fully resists, delays, or obstructs any police officer  
8 or other public officer in discharging or attempting  
9 to discharge any duty of his office, when no other  
10 punishment is prescribed, is guilty of a misdemeanor.

False Report  
to Public  
Officer

11 Section 3. Every person who, after due notice,  
12 refuses or neglects to make or furnish any statement,  
13 report, or information lawfully required of him by  
14 any public officer, or who, in such statement, report,  
15 or information, makes any wilfully untrue, misleading,  
16 or exaggerated statement, when no other punishment is  
17 prescribed, is guilty of a misdemeanor.

False Report  
to Police  
Agency

18 Section 4. Every person who reports to any  
19 police officer, sheriff, district attorney, deputy  
20 sheriff, deputy district attorney, or member of the  
21 Oregon State Police that a felony or misdemeanor has  
22 been committed or attempted, knowing or having good  
23 reason to know such report to be false, is guilty of  
24 a misdemeanor.

Suppression or  
Falsification  
of Evidence

1           Section 5. Every person who wilfully destroys,  
2 alters, erases, obliterates, or conceals any book,  
3 paper, record, writing, instrument, or thing what-  
4 ever, with intent to conceal the commission of a  
5 crime or to protect or conceal the identity of any  
6 person committing the same, or with intent to delay  
7 or hinder the administration of the law, or to prevent  
8 the production thereof at any time in any trial, pro-  
9 ceeding, or inquiry authorized by law, when no other  
10 punishment is prescribed, is guilty of a misdemeanor.

Tampering  
with Witness

11           Section 6. Every person who wilfully prevents  
12 or attempts to prevent, by persuasion, threats, or  
13 otherwise, any person from appearing as a witness in  
14 any trial, proceeding, or inquiry authorized by law,  
15 or who wilfully induces or attempts to induce, by  
16 persuasion, threats, or otherwise, any person to  
17 give false or withhold true testimony in such trial.  
18 proceeding, or inquiry, when no other punishment is  
19 prescribed, is guilty of a misdemeanor.

Bribery of  
Witness

20           Section 7. Every person who gives, offers, or  
21 promises, directly or indirectly, any gift, gratuity,  
22 valuable consideration, or thing whatever to any  
23 witness or person who may be called as a witness in  
24 any trial, proceeding, or inquiry authorized by law,  
25 upon any agreement or understanding that the testimony  
26 of such witness or person shall be influenced thereby,  
27 or that he shall absent himself from such trial, pro-  
28 ceeding, or inquiry, when no other punishment is  
29 prescribed, is guilty of a misdemeanor.



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Witness Asking  
or Receiving  
Bribe

1 Section 8. Every witness or person who may be  
 2 called as a witness in any trial, proceeding, or  
 3 inquiry authorized by law, who asks or receives,  
 4 directly or indirectly, any gift, gratuity, valuable  
 5 consideration, or thing whatever, or any promise  
 6 thereof, upon any agreement or understanding that  
 7 his testimony shall be influenced thereby, or that  
 8 he shall absent himself from such trial, proceeding,  
 9 or inquiry, when no other punishment is prescribed,  
 10 is guilty of a misdemeanor.

Tampering  
with Juror

11 Section 9. Every person who wilfully influences  
 12 or attempts to influence, improperly, by persuasion,  
 13 threats, or otherwise, any judge or juror in a civil  
 14 or criminal action or other proceeding, or any person  
 15 chosen or appointed as a arbitrator or referee, in  
 16 respect to his verdict, judgment, report, award, or  
 17 decision in any cause or matter pending or about to  
 18 be brought before him, when no other punishment is  
 19 prescribed, is guilty of a misdemeanor.

Comparable Legislation

- Section 2 Cal. Penal Code § 148, Rev. NY Penal Law § 195.05,  
Rev. Code Wash. Ann. § 9.69.040.
- Section 3. Rev. Code Wash. Ann. § 9.69.060.
- Section 4. Cal. Penal Code § 148.5.
- Section 5. Cal. Penal Code §§ 134, 135; Idaho Code §§ 18-2601,  
18-2602, 18-2603; Rev. NY Penal Law §§ 215.35, 215.40;  
Rev. Code Wash. Ann. § 9.69.070.

- Section 6. Cal. Penal Code § 136, Idaho Code § 18-2604, Rev. NY Penal Law § 215.10, Rev. Code Wash. Ann. § 9.69.080.
- Section 7. Cal. Penal Code §§ 136  $\frac{1}{2}$ , 137; Idaho Code § 18-2605; Rev. NY Penal Law § 215.00; Rev. Code Wash. Ann. § 9.18.040.
- Section 8. Cal. Penal Code § 138, Idaho Code § 18-2606, Rev. NY Penal Law § 215.05, Rev. Code Wash. Ann. § 9.18.050.
- Section 9. Rev. NY Penal Law § 215.25, Rev. Code Wash. Ann. § 9.18.060.