Tapes #10, 11 and 12

#10 - Side 2 only
#11 - Both sides
#12 - 1 to 22 of Side 1

OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 1

April 6, 1968

A G E N D A

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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 1

Third Meeting, April 6, 1968

Minutes

Members present: Senator John D. Burns, Chairman
Mr. Robert Chandler
Representative Edward W. Elder
Mr. Bruce Spaulding (delayed)

Also present: Mr. Donald L. Paillette, Project Director
Miss Kathleen Beaufait, Deputy Legislative Counsel
The Honorable Gordon Sloan, Chairman, Oregon State Bar Committee on Criminal Law and Procedure

The meeting was called to order by Chairman John D. Burns at 10:00 a.m. in Mr. Bruce Spaulding's office, 12th floor, Standard Plaza Building, Portland.

Approval of Minutes of Meeting of March 23, 1968

There were no additions or corrections to the minutes of the second meeting of Subcommittee No. 1 held on March 23, 1968, and they were unanimously approved as submitted.

Preliminary Draft No. 3; Theft

Mr. Paillette explained that Preliminary Draft No. 3 encompassed all of the changes recommended by the committee at its March 23 meeting. He called particular attention to section 5, "Theft by deception," together with the comments he had prepared on this section which appeared at the front of the draft. He enlarged further upon his comments with respect to section 5 and the committee decided to wait until Mr. Spaulding was present before discussing the section in detail. Mr. Paillette proceeded to go through the draft section by section and explained the changes made in accordance with the action of the committee at its March 23 meeting.

Section 1. Definitions. Subsection (5). Mr. Paillette commented that the definition of "property" which had been inadvertently omitted from Preliminary Draft No. 2 had been inserted as subsection (5) together with the addition of the phrase "including, but not limited to,". [Note: See Minutes, March 23, 1968, pp. 1, 2.]

Justice Sloan commented that this phrase had been employed as an accepted rule of construction for such a long time that it had reached the point where naming of the specifics tended to eliminate the general. He proposed that the code contain a rule of construction to be applied throughout which would say that "including, but not limited to," meant that the specific items mentioned were not exclusive and were not to be construed to limit the general terms. He remarked that

the items listed in the property definition were obviously property and suggested that subsection (5) read: "'Property' means any article, substance or thing of value."

Miss Beaufait pointed out that under the common law rule, "property" did not apply to real property and she indicated that in New York, where a very broad approach had been adopted, the Supreme Court had been putting limitations back into the law.

Mr. Paillette indicated that not everything included in subsection (5) was considered to be property in the historical context of larceny and made particular reference to "tangible and intangible personal property."

Chairman Burns asked which subcommittee would be handling the general provisions dealing with rules of construction and was told by Mr. Paillette that Subcommittee No. 2 would have this assignment. The Chairman suggested that committee be apprised of Justice Sloan's suggestion and Mr. Paillette agreed to call the matter to their attention.

Justice Sloan asked if "evidence of" referred to both "debt" and "contract." The committee agreed that this was the intent of the draft. Miss Beaufait pointed out that since the sentence contained neither "and" nor "or" after "action," "contract" did tend to stand alone. After further discussion, Representative Elder moved that "of" be inserted after "debt or" in subsection (5) and the motion carried unanimously.

Section 1, subsection (6). Mr. Paillette noted that subsection (6) was new to section 1 and had been moved from the section on stolen property in Preliminary Draft No. 2. [Note: See Minutes, March 23, 1968, p. 8.] In reply to a question by Chairman Burns, Miss Beaufait explained that the rule followed originally in placing the definition with the section on stolen property was that if a term was used only in one section, its definition was ordinarily included in that section whereas if the term was used in many places, it was placed in the general definition section.

Chairman Burns indicated that the definition had been moved at his suggestion but, upon reflection, he was not certain it was an improvement. He suggested that the discussion of this point be reserved until the committee reached section 7 relating to stolen property and that no formal action be taken on approval of section 1 until the question had been resolved.

Section 2. Theft. Chairman Burns pointed out that the committee had previously considered calling the draft "theft" rather than "larceny" and suggested a decision be made in this regard. Mr. Paillette advised that some of the newly revised codes used "theft" while others used "larceny," and New York had used both terms. He

said his initial thinking had been that larceny was a familiar word and the new code would simply expand its meaning but he was now of the opinion that it might be a good idea to start with a new word and a fresh approach to break away from old concepts, technicalities and inhibitions that had grown into the meaning of larceny. After further discussion, the committee concurred that the draft should be labeled "theft."

Mr. Paillette explained that subsection (1) of section 2 had been amended by removing the provision relating to obtaining property by false pretenses in view of the vote of the subcommittee to make sure that the draft clearly indicated that a false token would be required. This provision now appeared in section 6.

Chairman Burns referred to the Minutes of March 23, page 4, relating the committee's recommended language and noted that the final phrase stated "in any one of the following ways:". "One" had been eliminated, he said, in Preliminary Draft No. 3. Miss Beaufait expressed the view that "any" implied the singular and the committee agreed that the draft should not be changed in this respect.

Chairman Burns asked Mr. Paillette and Miss Beaufait if they were now satisfied with subsection (1) and Miss Beaufait replied that she was not concerned with the inclusion of embezzlement but she was of the opinion that common law larceny by trespassory taking and common law larceny by trick were covered in the following subsections and there was no need to include them in subsection (1). She said she had studied the commentaries of the states which had used the technique of including common law larceny in their theft statute and she did not believe their explanation contained sufficient justification for using that language.

Mr. Paillette said he too had studied the commentaries and had concluded from the early drafts of the Model Penal Code, as well as drafts of other states, that their intent was to set forth in their theft statutes a section to indicate clearly that this was a consolidation type of statute. It was almost a statement of purpose within the draft, he said, to show that the consolidation of crimes previously called something else were now encompassed in larceny or theft. He added that he was not sure that subsections (2) through (6) would cover stealing where no deception was involved.

Miss Beaufait then suggested it would be better to write a section to cover the stealing situation rather than to attempt to cover it by referring to common law. Chairman Burns remarked that the committee should make it crystal clear that they were not eliminating any of the crimes that had historically existed in Oregon such as burglary from a store, shoplifting, larceny from a person, etc. Mr. Chandler pointed out that there were three crimes described in subsection (1) and expressed approval of the suggestion that each be described in its own section.

Chairman Burns replied that the purpose was to get away from too many definitions and to avoid the possibility of excluding some crime that should be covered by defining one and not the other. The intent in writing a comprehensive theft statute, he said, was to define theft without getting into particular definitions and subsection (1) was an attempt to do just that.

Justice Sloan suggested that a period be placed after "an owner thereof" in the opening paragraph of section 2. Mr. Paillette replied that the manner in which the theft was committed would not then be covered. He read the introductory note from Tentative Draft 2 of the Model Penal Code, Part II, page 58, relating that a basic feature of the draft was the unification of theft offenses.

Senator Burns noted that if a period were placed after "an owner thereof," the statement would comprehensively cover theft as we know it today. He said he anticipated that when the committee reached the point of grading offenses, reference could then be made to larceny from a person, larceny from a store, etc. He was of the opinion that transitional language was needed to lead into the necessity of delineating subsections (2) through (6) plus a section on theft by embezzlement. Mr. Paillette disagreed that a section on embezzlement would be necessary. When the definitions were applied to this draft, he said, the conduct that was presently thought of as embezzlement would be covered by some of the other provisions.

Mr. Paillette explained that section 2 was the fundamental concept of the entire theft statute and in other states there had been two basic approaches to theft statutes. Section 2 of this draft followed the New York and Connecticut approach and the other approach was used by Michigan and Illinois. Mr. Paillette read section 16-1 of the Illinois Criminal Code and noted that if it was adopted, the entire draft would have to be rewritten:

"Section 16-1. Theft

"A person commits theft when he knowingly:
"(a) Obtains or exerts unauthorized control over property of the owner; or
"(b) Obtains by deception control over property of the owner; or
"(c) Obtains control over stolen property knowing the property to have been stolen by another, and
"(1) Intends to deprive the owner permanently of the use or benefit of the property; or
"(2) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit;or
"(3) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit."

There was a lengthy discussion and a number of solutions were considered which would clarify the committee's intent to define and consolidate the theft statutes. A recess was taken and Mr. Spaulding arrived. Following the recess, Chairman Burns related the solution that Mr. Paillette had suggested during the recess:

"Section 2. A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he wrongfully:

"(1) Takes, appropriates, obtains or withholds such property from an owner thereof.

"(2) Acquires property lost, mislaid or delivered by mistake as provided in section 3 of this Act.

"(3) Commits theft by extortion as provided in section 4 of this Act.

"(4) Commits theft by deception as provided in section 5 of this Act.

"(5) Commits theft by obtaining property by false pretenses as provided in section 6 of this Act.

"(6) Commits theft by receiving stolen property as provided in section 7 of this Act."

Mr. Paillette explained that if section 2 were adopted as set forth above, the elimination of subsection (1) in the draft would get away from the confusion which had been created by referring to common law larceny and embezzlement. The proposed language with the addition of "appropriates," he said, was broad enough to cover the common law type of larceny and also to cover embezzlement. It would eliminate the use of the word embezzlement entirely and embezzlement would then be covered by the proposed subsection (1) which incorporated the definitions in the definitions section. The proposal would also accomplish the committee's objective of consolidating the theft statutes.

Representative Elder moved that section 2 be approved as set forth above. The motion carried unanimously.

Section 3. Theft of lost, mislaid property. Section 3 had been approved at the March 23 meeting and no further revisions were made.

Section 4. Theft by extortion. Chairman Burns suggested that, in order to be consistent, section 4 should read "commits theft by extortion" rather than "obtains property by extortion" and the committee agreed.

Mr. Chandler questioned the use of the phrase "in the future" and Chairman Burns explained that this had been discussed at the previous

meeting. [Note: See Minutes, March 23, 1968, p. 6.] Mr. Paillette explained that he did not necessarily agree that "in the future" needed to modify all the following subsections although it did no violence to the section. What it was really aimed at was subsection (1), the threat to cause physical injury to some person, because that was the area where there could be confusion between extortion and robbery and without "in the future" the definition of such an act could amount either to extortion or to robbery. After further discussion, the committee agreed that since the intent to distinguish between extortion and robbery was clear as set forth in the draft, no amendment would be made to subsection (1).

Chairman Burns noted in connection with subsection (6) that section 223.4 of the Model Penal Code said "bring about or continue a strike" as did section 3201 of the Michigan code and questioned whether "or continue" should be added to the draft. He also called attention to the fact that the Michigan code said "or other similar collective action;" the MPC said "or other collective unofficial action;" while the draft said "or other collective labor group action." He asked why "labor" was included. Mr. Chandler indicated, and Mr. Paillette agreed, that groups other than labor groups could engage in this type of activity. Chairman Burns suggested that "collective unofficial group action" would allay any fears of labor groups. Miss Beaufait proposed to delete "group" because "group" and "collective" meant the same thing. Mr. Chandler suggested that "unofficial" narrowed the meaning and could cause problems with minority groups, civil rights groups, etc. The committee, after further discussion, agreed that subsection (6) should read:

> "Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or"

Mr. Chandler moved that subsection (6) of section 4 be approved as amended and the motion carried without opposition.

Chairman Burns explained that there had been no change in subsections (7) and (8), and the amendment to subsection (9) had been approved at the March 23 meeting. Mr. Chandler moved section 4 be approved as amended and the motion carried unanimously.

Section 5. Theft by deception. Mr. Paillette pointed out that subsection (1) (a) included the phrase "with intent to defraud" in order to make clear that section 5 did not deal with an unintentional or accidental deception but did require an intent to defraud on the part of the actor. The section, he said, did not cover false pretenses as traditionally known in Oregon where a false token was required but it would cover oral misrepresentations.

Chairman Burns suggested that the opening sentence read "A person commits theft if he obtains, withholds or appropriates property of another by deception." Mr. Paillette commented that he did not see how a person could withhold property of another by deception. Chairman Burns replied that a trustee situation could be involved and Mr. Paillette indicated that embezzlement would take care of such an act. Miss Beaufait noted that language such as that suggested by the Chairman had not been added to the extortion section and to parallel the extortion section, section 5 should read:

> "A person commits theft by deception when, with intent to defraud, he:"

The committee agreed to this revision.

Mr. Chandler asked if property should be included in the opening sentence and Miss Beaufait explained that property was covered under section 2.

Justice Sloan questioned the meaning of "pecuniary significance" in subsection (2) and Mr. Paillette explained that the phrase meant a person would not be hurt by loss of money or property through a misrepresentation where he had been misled about something not really pertinent to the transaction. Justice Sloan asked if such a situation would be covered by "other state of mind" in subsection (1) (a). Chairman Burns cautioned the committee that they should not lose sight of the fact that they were codifying the various crimes involving theft and if there was a misrepresentation in a matter having no pecuniary significance, the exchange involved should not constitute theft. Mr. Paillette read the comments in Tentative Draft 2 of the Model Penal Code, page 73, which stated in part:

> "In view of the general elimination of the issue of 'materiality' it seems desirable to exclude from the possibility of theft prosecution cases such as those in which a salesman misrepresents his political or lodge affiliations. . . . By hypothesis . . the deceived person received everything that he bargained for in the way of property."

Justice Sloan pointed out that subsection (2) said "ordinary persons in the group addressed" and since this subsection was a defense, the guilt of the actor would be judged on the gullibility of the group addressed. He was of the opinion that the intent of the subsection would be covered by the attempt to defraud provisions.

Mr. Paillette expressed the view, and Mr. Spaulding agreed, that since section 5 was entirely new and created a broader area of criminal liability than Oregon had ever had before, in order to allay any fears, it would be worthwhile to have a section like subsection (2) in the statute to show there was no legislative intent to

encompass areas such as advertising where there could be exaggerated statements. In reply to a question by Justice Sloan as to whether the prosecution would have to negative the charge, Mr. Paillette replied that it was not his intention to make this an element that would have to be pleaded and proved by the prosecution.

Mr. Chandler expressed approval of the intent of subsection (2) and urged that it be included to avoid opposition from advertising managers. He also said he preferred the Model Penal Code language "puffing by statements" rather than "representations" as used in the draft. Mr. Paillette indicated he and Miss Beaufait had discussed this point but had decided that "puffing" might have to be defined if the term was used in the statute and it would be difficult to define. He said they felt they were saying the same thing by using "representations" and Mr. Chandler concurred. The committee agreed to retain subsection (2).

Subsection (3) was discussed briefly and approved.

Mr. Spaulding said he had some misgivings with respect to subsection (1)(d) because even though a lien was on record, a person could be prosecuted for not disclosing the fact that there was a lien. He was of the opinion this was going too far. Chairman Burns replied that if there was an invalid, unrecorded impediment, the seller sold the property and the purchaser endeavored to prosecute him because the impediment existed, the prosecutor couldn't prove intent to defraud. Mr. Spaulding's reply was that a provision should not be included in the statute that the prosecutor couldn't prove. Mr. Spaulding said part of what he objected to was the phrase "whether such impediment is or is not valid." Mr. Chandler suggested a semi-colon be placed after "property" and the balance of the sentence deleted.

Mr. Paillette explained that the actor might have an intent to defraud and might not know whether the impediment was valid or not. Or the actor might have believed it to be valid and later found it contained a technical difficulty. After further discussion, Mr. Chandler withdrew his suggestion to amend subsection (1) (d) and the committee agreed that the section should remain as written.

Mr. Chandler moved, seconded by Mr. Spaulding, that section 5 be approved as amended and the motion carried unanimously.

Section 6. Obtaining property by false pretenses. Chairman Burns suggested, in order to make section 6 consistent with the balance of the draft, that it read "A person commits theft by false pretenses when, with intent to defraud, he obtains property of another by means of any false token, pretense or device." The committee concurred.

Representative Elder asked how the crimes in sections 5 and 6 differed. Justice Sloan observed that he could see no great difference between section 6 and section 5 (1) (a). Mr. Paillette explained that

section 6 was new and had been inserted in the draft because the committee at its March 23 meeting had concluded that the requirement for a false token should not be eliminated. The section, he said, was not as extensive as the language in ORS 165.205 but would require a false token on a charge of theft by false pretenses. Mr. Spaulding pointed out that when the committee approved section 5 a few minutes before, they had decided not to require a false token.

Mr. Paillette advised that when the committee reached the stage of determining penalty provisions, they might want to say that a crime was more heinous because a person had used a false token to obtain property of another than if he merely obtained the property by deception.

There was a lengthy discussion concerning the merits of section 6 after which Representative Elder moved that it be deleted and the motion carried unanimously.

Section 7. Receiving stolen property. Chairman Burns again referred to the fact that the definition of "receiving stolen property" had been moved to section 1 at his suggestion at the March 23 meeting and he was now unsure that this had been the wisest thing to do.

Justice Sloan noted that the definition of stolen property was derived from the Model Penal Code which said "acquires possession, control or title" and these were three words that defied definition. To eliminate the definition, he suggested inserting in section 7 "receiving property that has been the subject of theft" in place of "receiving stolen property." Mr. Paillette replied that this revision would eliminate the definition of "receiving" and the section would not then cover lending on security by a "fence," pawnbroker, etc. He informed the committee that when he was drafting section 7, he at one time had a definition of stolen property in the section in addition to the material in the draft but had later decided it was unnecessary.

After further discussion, the committee agreed to leave the definition of "receiving stolen property" in section 1, subsection (6), rather than returning it to section 7.

Mr. Chandler suggested picking up the presumption of knowledge from the Model Penal Code which would tend to limit section 7 to dealers. He read section 223.6 (2) of the MPC and expressed the view that this would be a valuable tool for police in dealing with professional "fences." Mr. Paillette said he had been wary of including presumptions that would tend to show guilt because of criminal cases on the question of presumptions. In reply to a question by Mr. Paillette, Justice Sloan said the statutory presumption that evil intent could be assumed from the commission of unlawful acts had been held invalid. Mr. Paillette said one other reason he had not included the presumption of knowledge was that the general articles for the

criminal code had not yet been drafted and if presumptions were to be included in the criminal law, they should apply to the entire code rather than one section. After further discussion, the committee agreed with Mr. Chandler that it was not necessary to set up a special set of ground rules for the dealer.

There followed a lengthy discussion of the best way to handle the problem of defining "receiving stolen property" and the committee agreed on the following:

Section 1, subsection (6). Delete "stolen property" to make this subsection a definition of "receiving."

"Section 7. Theft by receiving. A person commits theft if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property is the subject of theft, unless the property is received, retained, concealed or disposed of with the intent of restoring it to the owner."

Miss Beaufait asked how a person could dispose of property with an intent of restoring it to the owner. This point was discussed and Chairman Burns asked if the last prepositional phrase in section 7 beginning "unless" should be included in the section inasmuch as it was a subject of defense. Mr. Spaulding pointed out that if a man was trying to get the property back to the owner, he shouldn't be guilty of a crime and all the protections should be included for the defense that were included for the prosecution. Justice Sloan commented that the indictment had to be framed in the language of the statute and since the last clause was a defense, it should be stated as a defense.

Miss Beaufait contended that the verb "receive" should be defined rather than "receiving" in section 1, subsection (6). It was decided that in order to be consistent with the title of section 7, "Theft by receiving," the definition in section 1 (6) should define "receiving" and section 7 should read:

"A person commits theft by receiving if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property is the subject of theft."

Miss Beaufait left the meeting at this point.

Mr. Paillette then proposed the following language to be included in section 10 relating to defenses:

"In any prosecution for theft by receiving, it is an affirmative defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner."

Mr. Spaulding questioned the use of the term "affirmative defense" and asked whether "affirmative" should be deleted. He thought the meaning of "affirmative" might cause trouble in the future and contended that the defendant should have the right to raise the defense and the state should have to prove its case beyond a reasonable doubt. Chairman Burns asked if it was necessary to include the defense in the statute at all and Mr. Paillette said that by including it, at least there would be something there to indicate that the intent was not to make it a crime to receive stolen property unless there was an intent to deprive the owner.

Mr. Spaulding suggested that "defense" be used rather than "affirmative defense" and Mr. Paillette concurred. He noted that "affirmative" was also in the extortion defense and should probably be deleted there too. After further discussion, the committee agreed to add the following as subsection (4) of section 10:

> "In any prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner."

It was moved and seconded that section 7 as amended be adopted and the motion carried unanimously.

Section 8. Right of possession. Chairman Burns noted that section 8 was not changed from the previous draft and had been approved at the March 23 meeting. Mr. Chandler questioned the need for "as follows" in the opening paragraph but after a brief discussion, it was decided that the following sections would not read properly without the phrase and no change was made.

Section 9. Value of stolen property. Section 9 had been approved at the March 23 meeting and no further revisions were made.

Section 10. Theft; defenses. Mr. Spaulding moved that section 10 be approved with the addition of subsection (4) as set forth above. The motion carried.

At this point the Chairman declared that Preliminary Draft No. 3 as amended had been adopted and the subcommittee would not need to hold another meeting to review the amendments. Mr. Paillette said he would distribute to all members a copy of the draft containing the revisions made at today's meeting.

Larceny of Services. Mr. Chandler inquired whether larceny of services would later be considered by this subcommittee or by another subcommittee and was told by Mr. Paillette that the subject would come before Subcommittee No. 1. Chairman Burns called attention to page 8 of the Minutes of March 23 which outlined that larceny of services would be considered at the time the fraud sections were drafted.

Preliminary Draft - Taking or Using Vehicle Without Authority

Chairman Burns asked if the draft on taking and using a vehicle without authority would become a part of the theft chapter and Mr. Paillette replied that he intended to include it in a chapter entitled "Other offenses" or, as in the Model Penal Code, "Theft and related offenses."

Mr. Paillette called attention to his comments preceding the preliminary draft and explained that the draft was limited to motor driven vehicles because that was the type of property that most needed to be protected and that caused the most problems. He also noted that the draft went beyond the present taking and using statute and prohibited unauthorized conduct presently covered under other statutes such as tampering with a motor vehicle.

The committee discussed whether it was advisable to include in the statute vehicles such as gliders, ballons, sailboats and horse drawn vehicles. Chairman Burns suggested using the language of ORS 164.670: "Every person who takes or uses without authority any vehicle, watercraft or aircraft . . . " Mr. Paillette pointed out that "vehicle" was not defined in that section and called attention to the definition of "vehicle" set forth on page 1 a of the material preceding the draft. He also noted that the Supreme Court had interpreted the present statute as applying to motor vehicles.

Mr. Chandler proposed to delete "motor" from the draft and to insert "or other vehicle which is not propelled by human power" in place of "or other motor-propelled vehicle" in subsection (1) (a). Mr. Paillette commented that if Mr. Chandler's suggestion was adopted, borrowing of any vehicle, other than one propelled by human power, would become a crime. He expressed the view, and Mr. Spaulding agreed, that borrowing vehicles other than motor driven vehicles was not serious enough to come under the criminal code. There were, he said, compelling reasons to make it a criminal offense to borrow an automobile but the same reasons did not apply to some of the other vehicles. However, he said, the question of whether or not the statute should apply to all vehicles was a policy decision for the committee to make and if the members decided to include vehicles other than motor driven in the statute, the draft could be easily remedied to do so.

Chairman Burns was of the opinion that the language of the present joy riding statute was not objectionable but expressed approval of subsection (1) (a) of the draft which broadened present law and eliminated other statutes having to do with tampering, entering, etc.

Representative Elder asked if entering an automobile was covered under the draft and Mr. Paillette replied that "exercises control over" was, in his view, broad enough to apply to entering, and other members agreed.

Members enumerated instances involving borrowing of rowboats, gliders and sailbcats which had seriously inconvenienced or caused financial loss to the owners and the majority of the committee agreed that vehicles other than motor driven should be included in the statute.

Chairman Burns proposed to use "vehicle, watercraft or aircraft" in place of "automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle" and Mr. Spaulding expressed approval. Mr. Paillette urged the committee to use "boat" instead of "watercraft" because "boat" was defined in ORS 488.705 (2) and the committee concurred. After further discussion, the following language was agreed upon:

"Section _____. Unauthorized use of a vehicle.

"(1) A person commits the crime of unauthorized use of a vehicle when:

"(a) He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner; or

"(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

"(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

"(2) Unauthorized use of a vehicle, boat or aircraft is a _____."

The affirmative defense in subsection (2) was discussed and Mr. Paillette explained that the provision was derived from the Model

Penal Code and had been included to exempt from liability the borrowing of a car among members of a family or among friends. Mr. Spaulding expressed the view that to include this provision gave stature to such an action and he objected to its inclusion. Chairman Burns moved the deletion of subsection (2) and the motion carried unanimously. It was then moved that the preliminary draft on unauthorized use of a vehicle be approved as amended and this motion also carried without opposition.

Miscellaneous

Chairman Burns noted that Subcommittee No. 1 had been assigned to draft a comprehensive theft statute and asked if the other members agreed that this committee should move forward in the general area of crimes against property including fraud, forgery, robbery, burglary, malicious destruction of personal property, etc. The members concurred, and Mr. Paillette said the next draft would concern fraud.

A date for the next meeting was discussed and Mr. Paillette suggested that he talk to Chairman Yturri to see if he wanted to hold a full Commission meeting in the near future and, if so, the subcommittee might not want to meet until after that time. This was agreeable with the members.

The meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Mildred E. Carpenter

Mildred E. Carpenter, Clerk
Criminal Law Revision Commission