February 20, 1957

Memorandum No. 10

Subject: Uniform Post-Conviction Procedure Act.

At its December meeting the Commission directed the Executive Secretary to write to the Attorney General, the Judicial Council, and the District Attorneys' Association for such information as they might have on the question of whether the number of petitions for habeas corpus and coram nobis constitutes an excessive burden on the prosecuting officers or the courts. The Commission also directed the Secretary to write to Mr. Frank Coakley, President of the District Attorneys' Association upon whose initiative the habeas corpus study was put on the Commission's agenda, to determine whether the Association has in mind only a study of the use of habeas corpus and related remedies in post-conviction proceedings or whether it is of the view that the study should include the use of such extraordinary writs in other proceedings. Pursuant to these directives, I wrote to Chief Justice Gibson as Chairman of the Judicial Council, Attorney General Brown and Mr. Coakley.

We received from Mr. Coakley's office a letter dated January 28, 1957 from Mr. Jay Martin to whom my letter to Mr. Coakley was referred. Copies of Mr. Martin's letter and of my reply to him are attached.

We have not yet had a reply from the Attorney General. A copy of a letter received from Miss Elvera Smith, Research Attorney for the Judicial Council, is attached.

The Commission did not decide at the December meeting whether to carry forward the post-conviction proceeding aspect of the habeas corpus study because it did not have sufficient information on the volume of such proceedings. The Commission may feel that the information contained in the enclosed materials is sufficient to enable it to determine whether to go forward with this study.

Mr. Martin's letter and my reply to him relate also to the scope of the habeas corpus study, i.e., whether it should be limited to the use of the writ in post-conviction proceedings. On the basis of the information there contained, the Commission may wish to make a decision on this point.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

att.

COPY

Office of
District Attorney
Alameda County

COPY

Oakland 7, California

January 28, 1957

Mr. John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. McDonough:

Your letter of January 3, 1957, to Mr. Coakley has been referred to me for reply. At this writing I have not had sufficient opportunity to thoroughly analyze the study submitted by the Law Revision Commission respecting habeas corpus proceedings. From a cursory review of the report, however, the tenor seems to be that due to the small number of habeas corpus applications in relation to the total number of criminal cases filed in our courts, a serious problem does not confront us. If I am correct in this conclusion, I would like to respectfully submit that I must strenuously disagree with the report. It is submitted that the importance of the problem that faces law enforcement and the administration of criminal justice cannot be determined by the volume but rather by the importance of the individual problems.

As you have indicated, the basis of the request for a study by the Law Revision Commission was the Caryl Chessman case. Law enforcement believes that as a result of this lone case, the administration of criminal justice in this State has suffered immeasurably.

It is submitted that the mutual desire of the bench, bar, and law enforcement is to provide for a swift and certain punishment for crimes committed against the State, while at the same time, preserving the criminal's constitutional rights and civil liberties. Conditions existing at the present time which allow the convicted criminal to make a mockery out of our system of criminal justice can do untold harm to the respect for which the public has for our courts, bench, and bar, as well as our law enforcement officers.

Your request for information relating to the number of petitions filed annually, the hours or days required to process them, the number of men assigned by various law enforcement agencies to handle such petitions, etc., should be made in the main to the Attorney General's office in that said office, with few exceptions, handles all the criminal appellant work in the State. Information regarding the use of habeas corpus proceedings prior to conviction may be garnered from the individual District Attorneys throughout the State. In this office, we have no central records which would reveal the informantion you desire.

With respect to the pre-conviction use of habeas corpus in this County, I can estimate that we have on the average of not more than twelve applications for writs of habeas corpus a year. I know as a fact, however, that the situation is quite different in the Southern part of the State and especially Los Angeles County. Here habeas corpus is used daily to obtain bail and the release of a prisoner arrested in a felony prior to charging. It is submitted that the serious problem in the use of habeas corpus for this purpose in Los Angeles County is a result of the judiciary in that area, in that they have fallen into the habit of granting bail pending a hearing on habeas corpus.

In the Northern part of the State, when applications for habeas corpus are presented to the court, hearings are set within twenty-four hours but no bail is set. As a result of this practice, the District Attorney invariably either releases the defendant or charges him prior to the hearing. Because the judiciary in the Northern part of the State does not set bail pending these hearings, we have very little trouble with the misuse of the petition for writ of habeas corpus in Northern California prior to trial. In view of this new problem in the habeas corpus field, I would recommend that a study of the entire field of habeas corpus be made.

If you feel that it would be difficult for you to get information from the individual District Attorneys throughout the State, I will be more than happy to assist you along these lines. If I can be of any further assistance in this matter, please do not hesitate to get in touch with me.

Very truly yours,

J. F. COAKLEY
District Attorney

By /s/ Jay R. Martin
JAY R. MARTIN
Deputy

JRM/rb

CALIFORNIA LAW REVISION COMMISSION

COPY COPY

February 7, 1957

Mr. Jay R. Martin
Deputy
Office of District Attorney
Court House
Oakland 7, California

Dear Jay:

We are pleased to have your letter of January 28, 1957 in reply to my letter of January 3 to Mr. Coakley. The study which you have read is one submitted to the Law Revision Commission by its research consultant on this topic, Mr. Paul Selvin of the Los Angeles bar. The Commission has not yet had an opportunity to consider the problem of post-conviction proceedings at length or to formulate its own view or recommendation to the Legislature on this subject. During the Commission's preliminary consideration of Mr. Selvin's report the question was raised whether information could be obtained as to the volume of post-conviction proceedings and the burden which they impose on law enforcement officials. If the volume and burden were large, this would be a fact which would support any recommendation for the revision of the law which the Commission might make. It does not, of course, follow that no recommendation would be made if it were found that the volume of cases and the burden on law enforcement officials is not substantial. We have contacted both the Attorney General and the Judicial Council, as well as Mr. Coakley, in an effort to obtain whatever information may be available on the matter.

You will doubtless recall that during the 1956 Session of the Legislature you and I discussed your proposal to amend the Law Revision Commission's agenda resolution to add thereto a study of habeas corpus proceedings. It was my understanding at that time that this proposal was made by you on behalf of the District Attorney's Association and that the Association's concern was with post-conviction proceedings as exemplified by the Chessman case. On the basis of my communication of this understanding the Commission has limited its initial study of habeas corpus proceedings to post-conviction problems. At our last meeting we discussed the fact that the topic as described in the amended resolution is, on its face, broader than post-conviction proceedings and, accordingly, wrote to Mr. Coakley for clarification as to whether the District Attorney's Association believes that the law of habeas corpus in other than post-conviction proceedings is in need of revision. Your letter furnishes information which is helpful on this point and concludes with the statement "in view of this new problem [use of habeas corpus to obtain bail prior to charging] in the habeas corpus field,

I would recommend that a study of the entire field of habeas corpus be made". I anticipate that the Commission will be interested in knowing whether this is also the view of the District Attorney's Association and would appreciate clarification from you on this point.

We appreciate very much your offer of assistance in our consideration of this matter and in getting information from individual district attorneys throughout the State. You may be sure that we will be in touch with you further as the Commission's study of the problem proceeds.

Very truly yours,

John R. McDonough, Jr.
Executive Secretary

JRM:fp
bc: Mr. Thomas E. Stanton, Jr.

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THE JUDICIAL COUNCIL OF THE STATE OF CALIFORNIA

State Building, San Francisco 2

January 17, 1957

Mr. John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
c/o School of Law
Stanford University, California

Dear Mr. McDonough:

In the absence of Chief Justice Gibson, I have attempted to assemble such information as we have available which would tend to show the workload of the courts resulting from the filing of post-conviction petitions for writs of habeas corpus. However, I find that our statistics are not particularly revealing in the specific field of your interest.

Our reports show that during the year ended June 30, 1956 there were 4,481 habeas corpus hearings in the superior courts. They do not show the number of petitions filed, the number of post-conviction proceedings, nor even the number which arose in criminal cases. The information as to the appellate courts is somewhat more specific. There was a total of 241 petitions filed in original criminal proceedings in the Supreme Court and the District Courts of Appeal. These included some petitions for other writs than habeas corpus, however. In addition to the foregoing, we know that 89% of the habeas corpus hearings in the superior courts were held in the Los Angeles County Superior Court and that proceedings on petitions for original writs, of all kinds, occupy 5% of the time of the appellate department of that court.

I am sorry that we do not have the specific information which you need and hope the Attorney General or the District Attorneys' Association will be able to give you the assistance you need.

Sincerely,

/s/ Elvera Wollitz Smith
Elvera Wollitz Smith
Research Attorney