

11/30/60

Memorandum No. 103(1960)

Subject: Study No. 40 - Notice of Alibi.

On November 5 the Executive Secretary, at the suggestion of the Senate Judiciary Committee, sent a letter to each district attorney requesting that he advise us of any specific instances that demonstrate the need for a notice of alibi statute. A copy of the letter is set out as Exhibit I. A post card was enclosed with the letter. The post card was in the following form:

Do you know of any specific instance where a notice of alibi statute would have furthered the interest of justice?

Yes _____ No _____

(If "yes," please write us a letter giving the details.)

Do you believe that a notice of alibi statute is necessary?

Yes _____ No _____

As of November 30 we have received only 27 responses to the letter. Only one district attorney advised us of a specific case (two years ago) where a notice of alibi statute might have resulted in the disclosure of what he believes was false testimony as to an alibi. In that case the jury was unable to reach a verdict and the defendant was retried. Four other district attorneys (including Commissioner Gustafson) marked the post card to indicate that they know of specific instances where

a notice of alibi statute would have furthered the interests of justice. We have written to three of them requesting that they give us the details on the cases. We can ask Mr. Gustafson about the details of the cases he knows about at the meeting if he attends.

Of the district attorneys who responded (27):

Twenty-one believed that a notice of alibi statute is necessary.

Five believed that such a statute is unnecessary:
(San Francisco; Monterey ("helpful"); San Diego;
Contra Costa; Amador ("advisable").

One was undecided (Shasta).

The staff has concluded that the danger of miscarriage of justice in the absence of a notice of alibi statute is slight. On the other hand, there may be a very real danger that the witnesses whose names are revealed will be subjected to harassment or intimidation if a notice of alibi statute is enacted (although we have no specific cases to indicate that this is a valid assumption).

Accordingly, the staff presents for Commission consideration the following revision of the recommendation previously approved by the Commission. A copy of the recommendation is attached. On page 1 of the recommendation, delete the last paragraph and insert:

Although notice of alibi statutes may permit the discovery of false alibi testimony, it must be recognized that the witnesses required to be revealed by either the prosecution or defense under such a procedure may be subjected to harassment or intimidation. This ever-present possibility must be weighed against the danger of a miscarriage of justice as a result of false alibi testimony.

There is now no requirement in California that a defendant give a pretrial notice of alibi. To determine the extent to which miscarriages of justice occur in California because a notice of alibi is not required, the Commission requested each district attorney in this State to advise the Commission of any case of which he was aware in which an advance notice of an alibi defense would have prevented either an improper verdict or an unnecessary trial. In response to this request, the Commission has been advised of only a few cases in which such a notice might have furthered the interests of justice.

The Commission has concluded, therefore, that there is no compelling reason to enact a notice of alibi statute in California. The danger of a miscarriage of justice in the absence of a pretrial notice of alibi is slight. However, if the need for such a statute can be demonstrated, the Commission recommends that it contain the following provisions:

On page 5 of the recommendation, delete the sentence under the line and insert:

The Commission's recommendation as to the contents of a notice of alibi statute is incorporated in the following measure:

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

The California Law Revision Commission was authorized by the Legislature to make a study of whether a defendant in a criminal action should be required to give a pretrial notice to the prosecution of his intention to rely upon the defense of alibi. A copy of the tentative recommendation of the Commission is enclosed.

The Commission needs to know of specific cases where a statute similar to the tentative statute prepared by the Commission would have avoided either the unjust acquittal of a defendant or the unnecessary trial of a defendant. Perhaps you and the members of your staff can provide us with specific instances that demonstrate the need for a notice of alibi statute. We would like your permission to use these cases, if necessary, at the time we present this recommendation to the 1961 Legislature.

For your convenience in replying to this letter, we enclose a postcard on which you may indicate whether or not you are aware of specific instances where a notice of alibi statute would have furthered the interests of justice. The Commission will appreciate any assistance you can give us in this matter.

Sincerely,

John H. DeMouilly
Executive Secretary

JHD:gl
Enclosures