7/30/57

Memorandum No. 12

Subject: Study No. 35 - Habeas Corpus

Resolution Chapter 35 of the Statutes of 1956 authorized the Commission, inter alia, to make a study to determine "Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised".

This study was added to the Commission's 1956 agenda resolution at the instance of Mr. Jay Martin, then legislative representative of the District Attorney's Association. I had understood from conversations with Jay that his principal concern was with the use of habeas corpus to attack sentences, as illustrated by the Chessman case and others, and so reported to the Commission. Hence we initially limited the scope of the study to the use of habeas corpus in post-conviction proceedings.

At the request of the Chairman of the Commission on Uniform State Laws the Law Revision Commission decided at the meeting of June 1 and 2, 1956 to begin its consideration of this topic by making a study to determine whether the Uniform Post-Conviction Procedure Act should be adopted in California. Mr. Paul Selvin was retained as research consultant on this study. He submitted a report which raised substantial questions as to whether the Uniform Act should be adopted.

Mr. Selvin's report was considered by the Commission at its meeting of December 21-22, 1956. The Commission decided to make no recommendation to the 1957 Session of the Legislature respecting the Uniform Act and not to publish Mr. Selvin's report at that time. No decision was then taken as to whether

the Commission should continue its study of habeas corpus. Rather, as the minutes of the meeting show:

> The Commission also decided that it needed additional information 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. It therefore directed the Secretary to write to the District Attorney's Association, the Attorney General and the Judicial Council for such information. The Executive Secretary was also directed to write to Mr. Frank Coakley, President of the District Attorney's Association, sponsors of the habeas corpus study, to determine whether the Association has in mind only a study of the use of habeas corpus and related remedies in post-conviction proceedings". (Minutes, page 13)

I subsequently wrote to the parties indicated. Attached are copies of letters received from Mr. Jay Martin on behalf of Mr. Frank Coakley and Miss Elvera Smith on behalf of the Judicial Council in reply to my letter, together with a copy of my subsequent letter to Jay Martin seeking clarification as to the view of the District Attorney's Association concerning the scope of the study. (See A, B and C, attached) These letters were placed before the Commission at the March 1957 meeting with a report that no reply had been received from the Attorney General. The action of the Commission at that time is reported in the minutes as follows: "The Commission decided that the Executive Secretary should press for replies to his letters to the Attorney General and Mr. Jay Martin [second letter] and that the study should be re-referred to the Southern Committee for further consideration after those replies are received." (Minutes, page 16)

On March 6 I again wrote to the Attorney General but have received no reply to date. On the same day I received a letter from May Martin, a copy of which is attached (See D attached).

Meanwhile, the Uniform Post-Conviction Procedure Act had been introduced in both houses at the 1957 Session at the instance of the Commission on Uniform State Laws. Both the Senate Bill (S.B. 816) and the Assembly Bill (A.B. 986) were referred by the Senate to its Committee on Rules for assignment to an appropriate interim committee. To the date of my last communication with Charlie Johnson on the subject, no such assignment had yet been made. There is some question whether it will be since no Senate Interim Judiciary Committee was created.

The following questions would seem to be presented for Commission action at the August, 1957 meeting:

1. Should the Commission suspend further action on this study if the Uniform Post-Conviction Procedure Act is sent to an interim committee of the Senate until after the 1959 Session? (Note that our assignment is to study habeas corpus, not the Uniform Act and that our study may cover more than post-conviction proceedings (See discussion above). If so, should copies of Mr. Selvin's report be made available to the committee?

2. Should the Commission continue its study of habeas corpus (a) if the Uniform Act is not assigned to an interim committee or (b) if the Uniform Act is assigned for interim study? If the answer to (b) is yes, should the interim committee be so advised with an offer of cooperation?

3. If we decide to go forward with the study should it be broadened to include a study of habeas corpus other than as used to attack sentences?

4. If we go ahead, should a new research study be prepared? The answer to this question turns at least in part, of course, on the answer to the

preceding question.

5. Should Mr. Selvin be asked to serve as research consultant on any new study which is made?

6. Should Mr. Selvin's report on the Uniform Act be published at this time?

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:fp

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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

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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

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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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COPY COPY

Office of

District Attorney

Court House
Oakland 7, Calif.

March 5, 1957

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

Dear John:

On February 28, March 1st and March 2nd, the Law and Legislative Committees of the District Attorneys' and Peace Officers' Associations met in Los Angeles to review all pending state legislation. At that time, I brought up your inquiry in your letter of February 7, 1957. Both groups were asked if they would recommend that a study of the entire field of habeas corpus be made by the California Law Revision Commission. The members of both groups voted unanimously in favor of such a study and have asked me to transmit this information to you.

I would like to thank you for your cooperation in the past and reiterate my offer of assistance in securing any information you may desire concerning such a study.

Very truly yours,

J.F. COAKLEY
District Attorney

/s/ Jay R. Martin

By Jay R. Martin,
Deputy

JRM/ld