11/25/69

Memorandum 69-129

Subject: New Topic--Civil Writ Procedure

Attached (pink) is a letter from Andrew Landay, Santa Monica attorney, suggesting that an unworkable volume of writ proceedings has resulted from an outmoded appeal statute.

Because Bernie Witkin is generally recognized as an expert in this particular area, the staff wrote to him requesting his views as to the desirability of making a study of the suggested problem. His reply is attached (yellow). His conclusion:

> The Commission, at great expense, could produce a much better review system than the one we have. To adopt it would be to undo all the painful work in the wrong direction that the courts and bar have done in the past 15 years. I can think of more useful projects for the moment.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 69-129 EXHIBIT I

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3 November 1969

California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Re: Interlocutory Appeals

Gentlemen:

At a recent CEB lecture on civil writs one of the speakers remarked that the reason why California makes such extensive use of extraordinary writs is that California procedure is far more restrictive of interlocutory appeals than that of other jurisdictions. The speaker further explained that the number of extraordinary writs has increased in enormously greater proportion to the number of appeals, and since extraordinary writs must be handled immediately, a greater strain was being imposed on courts of appeal than would be necessary if there were a system of expeditious interlocutory appeal. The speaker suggested that Bar Associations consider the matter and draft a resolution for presentation to the Annual Conference of Delegates.

After four years of attendance at the Conference of Delegates and submission of several resolutions, it occurs to me that this matter is far too complex for drafting by a local Bar group and handling by the Conference of Delegates. I believe that this problem should be considered by the Law Revision Commission and I trust that you will let me know whether the Commission plans to study this question.

Very truly yours,

Andrew Landay

AL:bh

Memo 69-129

EXHIBIT II

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Nov. 15, 1969

John H. DeMoully
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Dear John:

My usual season's apologies (up to my neck in page proofs) for this delay in answering your letter of November 6.

The question you raise calls for a vast response, but this letter is not the time for it. I will summarize my views.

First, the idea that an unworkable volume of writ proceedings has resulted from an outmoded appeal statute was first expressed by me in 1940-1943 in working on the rules on appeal, restated in my talk to the Conference of Judges about 12 years ago ("The Extraordinary Writ - Friend or Enemy"), printed in the State Bar Journal at about that time, and reiterated in several panels of the Conference of Judges, Appellate section, in recent years. I am still of the same opinion.

Second, the correct solution is a reexamination and revision of the appeal statutes, to reflect the modern need for and desire for expeditious review of many orders which are not final judgments. This solution, proposed in 1943 and thereafter, never aroused any interest. Instead, the State Bar regularly sponsored legislation to increase the scope of writ review (venue, process, motion to suppress, etc.). With the bar committed to the writ solution, and the appellate courts geared to handling it, who wants an intelligent system?

My conclusion: The Commission, at great expense, could produce a much better review system than the one we have. To adopt it would be to undo all the painful work in the wrong direction that the courts and bar have done in the past 15 years. I can think of more useful projects for the moment.

With best regards, I am

Cordially yours,

B. E. Witkin