Appeals Court Seeks To Influence Calif. High Court Decisions

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Rule 8.1125 of the California Rules of Court allows anybody to send the Supreme Court a 10-page letter requesting the depublication of a published court of appeal opinion within 30 days of the decision's publication. Under the rules, the court of appeal that issued the decision may respond to a depublication request. Historically, however, the court of appeal has rarely chosen to get involved. Additionally, the court of appeal ordinarily does not go beyond the confines of its written opinions to say whether the Supreme Court should grant review in order to clarify the law in any particular area. Recently, however, the court of appeal has spoken out.

In the matter of Elias V. (2015) 237 Cal.App.4th 568 (Elias), the court of appeal issued a detailed, published opinion analyzing whether a confession made by a 13-year-old accused of molesting another minor violated Miranda. The court held that Elias' statements were inadmissible because of his age, a lack of corroborating evidence and the likelihood that the interrogating detective's tactics would produce a false confession. In reaching its decision, the court relied heavily upon scholarly works, including psychological research addressing police interrogation techniques and the high risk of false confessions by juveniles.

After the California attorney general's office declined to seek review of the court of appeal's decision, attorneys from the Alameda and San Diego County district attorneys' offices submitted requests for depublication of the Elias opinion, claiming that the decision "establishes a new rule of law" and is improperly "based on social science rather than firmly established legal principles." The State Public Defender's Office, Elias' counsel, and the Exoneration Project all opposed the depublication request. So did Presiding Justice Anthony Kline of the California Court of Appeal, First Appellate District, Division Two — the author of the Elias opinion.

In a seven-page letter, Justice Kline, writing on behalf of all three justices on the Elias panel, asked the Supreme Court to deny depublication of their opinion. The justices explained they felt compelled to respond to the district attorneys' claim that the decision should be depublished because of its reliance on social science. Justice Kline summarized the legal argument behind the court's decision and argued its importance, noting that these Miranda issues "are significant matters underappreciated by the bench and bar and probably unknown to the public at large." He called the district attorneys' claims "uninformed and meritless," since the courts have for over 100 years relied upon and cited social science, like the psychological research the court relied upon in Elias. Justice Kline noted that highly relevant social science information should not be ignored, especially here where the district attorneys did not claim the information was deficient in any way. The Supreme Court ultimately sided with Justice Kline and refused to depublish the Elias opinion. (Further, California Supreme Court Justice Goodwin Liu recently wrote a rare dissent from the denial of a petition for review in a similar case, In re Joseph H., S227929, explaining that he believes the court should examine the validity of minors' confessions and Miranda waivers.)

Justice Kline's opposition to the Elias depublication request is not the only example of an unusual statement of the court of appeal's views in proceedings before the Supreme Court.

In People v. Superior Court (Morales) (2015) 239 Cal.App.4th 93, the court of appeal was asked to determine whether a trial court has jurisdiction in a capital punishment case to require the preservation of evidence after imposing the death penalty, while the case is pending on appeal. After sorting through several conflicting California Supreme Court cases on the issue from the early 1990s, the court of appeal held that the trial court had no such jurisdiction.

In a petition for review to the Supreme Court, the defendant argued there have been significant changes in the law surrounding post-conviction jurisdiction in the 25 years since the conflicting Supreme Court decisions cited by the court of appeal. The defendant attached to his petition excerpts of the oral argument transcript from the court of appeal. During argument, Justice Art McKinster noted the issue was "something the Supremes might be interested in." Justice McKinster also blamed much of the confusion in the area on the conflicting Supreme Court precedent, suggesting that the parties were asking the court of appeal to create "a rule that really should

be addressed by the Supreme Court," and that the rule is "better created in front of the folks who created the problem." At the close of argument, Justice McKinster again commented that he believed the decision was really one for the Supreme Court, stating it was time for the court to "clean[] up their own mess."

It seems unlikely that Justice McKinster anticipated a transcript of his statements at oral argument would be seen by the Supreme Court. However, the Supreme Court apparently agreed with him and granted the petition for review.

Although rare, expressions of opinion by the court of appeal sometimes occur outside the boundaries of the court's traditional written opinions, and, as these examples indicate, can be quite effective.

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