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Court of Appeal voices at the Supreme Court

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When the Supreme Court is asked to review or depublish a Court of Appeal decision, the Court of Appeal's input on the matter is usually limited to the reasoning expressed in that court's opinion. Occasionally, however, the Court of Appeal gets more involved, as illustrated by two recent examples.

In *In re Elias*, the Supreme Court denied requests to depublish a detailed opinion that found a *Miranda* violation concerning incriminating statements made by a 13-year-old. (The admissibility of juveniles' statements later gained further prominence when Justice Goodwin Liu wrote a rare dissent from the denial of a petition for review in a different case regarding that issue.) Justice Carol Corrigan recorded a vote in favor of depublishing, which is unusual. Really exceptional, however, was that the author of the Court of Appeal opinion — Presiding Justice Anthony Kline of the First District, Division Two — wrote a seven-page letter to the Supreme Court, on behalf of himself and the two justices who concurred in the opinion, opposing the depublication requests. (Hat tip to The Marshall Project.) Among other things, the letter responded to accusations in the depublication requests that the opinion had improperly relied in part on social science research.

The *In re Elias* letter was obviously a deliberate extra-opinion attempt by the Court of Appeal to influence the Supreme Court. Sometimes, the influencing is of the more unintentional variety. Consider *People v. Superior Court (Morales)*, which involves the issue whether the superior court had jurisdiction to order various entities to preserve materials that might at a later date be included in a motion for post-conviction discovery for a habeas corpus petition in a death penalty case. The Court of Appeal opinion holds there is no such jurisdiction, finding it is “not at liberty to ignore” a 1990 California Supreme Court decision on the subject. The defendant's petition for review claims that, since 1990, there have been important changes in the law governing post-conviction practice.

Of particular note, the petition for review attaches a transcript of the Court of Appeal oral argument. In the transcript, one of the justices is quoted as telling counsel that the issue “[s]eems like something the Supremes might be interested in,” that the “problem” in the case is one “of their [the Supreme Court's] creation,” and that he “always believe[s] in someone cleaning up their own mess.” The justice probably didn't expect or intend his oral argument comments to be conveyed to the Supreme Court, but the court did grant review, possibly to “clean[] up their own mess.”

Posted by David Ettinger