

M E M O R A N D U M

TO: Commission on Revision of the  
Penal Law and Criminal Code

FROM: Howard A. Jones,  
Assistant Counsel to the Governor

SUBJECT: Interlocutory Appeals

This memorandum is addressed to the single question of permitting an interlocutory appeal from a denial of a motion to suppress illegally seized evidence. The question has been discussed at length with Bob MacCrate, Counsel to the Governor, and the following observations are made for the Commission's consideration:

(1) Aside from the merit of the proposal, there is a serious question whether the Commission should, at this time, seek to make a radical departure from the long-established rule prohibiting interlocutory appeals in criminal proceedings. Undoubtedly, one serious effect of permitting such interlocutory appeals would be prolonged delays in the disposition of criminal cases pending before the courts. One of the principal reasons underlying the constitutional amendment on court reorganization has been the desire to expedite the disposition of criminal cases in the courts in New York City, and it is believed that the strengthening of centralized vertical control over the courts by the respective appellate divisions will bring about the desired speed-up in the disposition of criminal court cases in the City. Any proposal that would tend to move in an opposite direction would properly be regarded as detrimental to this aim of the court reorganization program. Although the merits of the proposal, as well as the importance of the rights which it seeks to protect may be readily conceded, the successful implementation of court reorganization is of far greater importance at this time.

(2) Nowhere else in criminal law in this State are interlocutory appeals permitted. It would not appear that the reasons for insisting on such appeals, with respect to motions to suppress, are

sufficiently compelling to justify broaching the controversy that is certain to develop without, at the same time, considering the appropriateness of permitting such appeals in connection with other equally important motions in criminal law practice.

(3) We have had the benefit of the experience in the Federal courts where the tendency is to move away from interlocutory appeals, even in civil cases. That experience should serve as some guide for our deliberations.

(4) We have had some discussion with members of the judiciary on this question. While there is considerable agreement in principle with the proposal, much respected opinion supports the position that this Commission should consider seriously the wisdom of making such a radical departure in its first legislative effort. The remarks made at the recent Public Hearing by the State Administrator and Secretary of the Judicial Conference indicate somewhat less than enthusiastic support of the proposal by the Judicial Conference.

(5) It would be considerably embarrassing to this Commission if the bill were to bog down in the Legislature for lack of firm support. The forces that propel new laws through the Legislature cannot be whole heartedly relied upon if the legislation itself is the cause of grave concern to those who would normally help push it through. If the bill were to fail of passage or if the Governor were to be constrained to exercise a veto, the future effectiveness of this Commission would be seriously impaired. In this connection, it must be noted that the Chairman of our Commission, himself a legislator, is firmly opposed to the proposal. This is not to say that suitable amendments could not be made in the Legislature, but here, again, the more reasonable approach would seem to be not to make such action necessary.

(6) The remarks made at the Public Hearing on behalf of the District Attorneys' Association give some evidence of the depth of

feeling against the proposal, and I am not prepared to say that their position would not seriously affect the chances of passage or approval of the bill in its present form.

Should the foregoing arguments prove unconvincing to this Commission, I respectfully ask your indulgence in the matter of submitting a minority report on this question.

HAI:rc

February 9, 1962