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## THE ILLINOIS POST-CONVICTION HEARING ACT: A SURVEY

WILLIAM E. SEIDENSTICKER

**I**N 1949, the Illinois Post-Conviction Hearing Act was passed by the General Assembly.<sup>1</sup> This law was an aftermath of the great number of appeals which had been taken to the Supreme Court of the United States by inmates of Illinois penitentiaries who claimed that they had suffered violations of their constitutional rights in the proceedings which resulted in their convictions.<sup>2</sup>

It is a principle of constitutional law that each state must provide prisoners with some clearly defined method by which they may raise claims of denial of substantive and procedural due process rights.<sup>3</sup> Because state remedies must be exhausted first,<sup>4</sup> the United States Supreme Court found it necessary to examine Illinois procedure. Mr. Justice Rutledge, in his concurring opinion in *Marino v. Ragen*, observed that no one seemed sure what remedies were available in Illinois and described the state's procedural pattern as "the Illinois merry-go-round of habeas corpus, coram nobis, and writ of error."<sup>5</sup>

With these ideas in mind, the legislature passed the Post-Conviction Hearing Act which provides that "Any person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both may institute a proceeding under this Act."<sup>6</sup>

The provisions of the act are few and simple. The court in which conviction took place is authorized to grant relief in a proceeding initiated by the filing of a petition setting forth the respects in which

<sup>1</sup> Ill. Rev. Stat. (1951) c. 38, §§ 826-832. For background and discussion of this act see 9 Fed. Rules Dec. 347 (1950).

<sup>2</sup> See the comment by Chief Justice Vinson in 69 S. Ct. VIII (1949).

<sup>3</sup> *Young v. Ragen*, 337 U.S. 235, 239 (1948).

<sup>4</sup> *Ex parte Hawk*, 321 U.S. 114 (1944).

<sup>5</sup> *Marino v. Ragen*, 332 U.S. 561, 570 (1947).

<sup>6</sup> Ill. Rev. Stat. (1951) c. 38, § 826.

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a prisoner's constitutional rights were violated. The state may then answer or move to dismiss the petition and the trial court is authorized to receive oral testimony or documentary proof. A final judgment on a petition filed under the act is made reviewable in the Illinois Supreme Court on writ of error.<sup>7</sup> If the court finds in favor of the petitioner, it must enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to arraignment, retrial, custody, bail or discharge as may be necessary and proper.<sup>8</sup>

Over two and a half years have passed since the act became effective and it might be well to look at the record and discover what has been accomplished under it. In line with this thought, questionnaires were sent by the writer to all of the State's Attorneys in Illinois, 102 in number, and replies were received from 86 of them. Only a half-dozen thought the act of no consequence or even a bad piece of legislation, though many did not approve of it wholeheartedly. The following is an analysis of the cases from Cook as of March 31, 1952, and other counties as of December 31, 1951, according to volume and disposition:

	Cook County	Other Counties (86)
Filed .....	229	282
Pending .....	51	55
Withdrawal or Dismissed w/o Prejudice .....	18	22
Dismissed or Denied .....	153	192
New Trials Granted .....	5	7
Freed at New Trial .....	3	1
New Sentence .....	2	3
Discharged at Hearing on Petition .....	2	6
Petitioners Ordered up for Hearing .....	27	42
Writs of Error (6 remanded in Cook County) .....	68	33

Of the 229 petitions filed in Cook County, 27 of the petitioners had pleaded guilty in the trials resulting in their incarceration, 73 had jury trials resulting in verdicts of guilty, and 52 had previous records. Eighty-one were convicted of robbery, 42 of murder, 38 of burglary and 25 of sex offenses.

The following list shows the allegations raised in petitions filed in Cook County, together with the number of times each allegation was mentioned in the petitions:

<sup>7</sup> *Jennings v. Illinois*, 72 S. Ct. 123, 125 (1951).

<sup>8</sup> Ill. Rev. Stat. (1951) c. 38, § 831.

Prejudicial acts by court or state (including conspiracy and use of known perjury) .....	104
Incompetent or unprepared defense counsel .....	103
Coerced confession or coerced plea of guilty .....	42
Denial of counsel or denial of counsel of own choice .....	35
Denial of witnesses .....	28
Failure of court to advise of rights .....	14
Inability to pay for transcript for appeal .....	12
Denial of jury trial .....	7
Denial of right to confront witnesses .....	7
Miscellaneous .....	39

In other counties of Illinois, the following grounds were raised most often and are listed according to frequency of use: coerced confessions or coerced pleas of guilty; incompetent or unprepared defense counsel; prejudicial acts by court or state; failure of court to advise of rights; denial of counsel; denial of witnesses; inability to pay for transcript for appeal; denial of right to confront witnesses; and denial of jury trial.

The following information concerning the seven cases in Cook County in which the petitioners received new trials or were discharged, may be of interest.

*Case 1.* The petitioner was charged with murder, and in 1939 was sentenced to 199 years in prison. He had beaten his young son to death and had poured two gallons of kerosene over the body and set it afire. Upon a hearing, the court was convinced that the petitioner had been beaten to force a confession as he claimed, and granted him a new trial. On the new trial, the state had to ask that the matter be stricken, with leave to reinstate, because of inability to produce witnesses.

*Case 2.* The petitioner was charged with armed robbery. A verdict of guilty was returned, and in 1933, he was sentenced to life imprisonment. Petitioner claimed that he was denied witnesses, proper preparation, and counsel. He had robbed a man of his automobile, watch and \$2.25. A new trial was granted, but the state had to ask that the matter be stricken, with leave to reinstate, because of inability to produce witnesses.

*Case 3.* The petitioner was charged with robbery, and upon his plea of guilty, in 1947, was sentenced to three to twenty years in prison. He was caught in the act of holding up a Vet cab driver. Petitioner was put on probation. Subsequently, a claim was made that he

had violated his probation by assaulting a street car conductor. There was a very reasonable doubt as to the truth of this claim, and petitioner was discharged at the hearing.

*Case 4.* The petitioner was charged with armed robbery, and upon his plea of guilty, in 1949, was sentenced to three to six years in prison. He claimed that he had been found feeble-minded by the Circuit Court of Cook County prior to his trial. Petitioner was granted a new trial and upon pleading guilty, was resentenced to one to three years in prison.

*Case 5.* The petitioner was charged with armed robbery, and upon being found guilty, in 1937, was sentenced to life imprisonment. Claims were made of illegal search and confession, and prejudicial remarks by court and state. A new trial was granted, and upon pleading guilty, petitioner was sentenced to one to three years in prison.

*Case 6.* The petitioner was charged with burglary, and in 1934, was sentenced to one year to life in prison. Claims of coerced confession by promise, and conspiracy between the state and defense counsel were made. A new trial was granted, at which the case was *nolle prossed* for lack of witnesses.

*Case 7.* The petitioner was charged with assault to kill, and in 1947, was sentenced to one to fourteen years in prison. A claim of conspiracy between the state and defense counsel was made. Petitioner had been arrested for drunkenness and disorderly conduct and resisted. Three police officers fired at him, seven shots striking the petitioner. The state claimed that petitioner had a gun and fired at the officers, but the facts were not very clear on this point. Petitioner was discharged at the hearing.

Only two counties, in addition to Cook County, reported the use of a separate post-conviction docket, twenty-eight counties filing the petitions under the original criminal case number. Some counties used a new criminal number, and six used a new law docket number.

The use of the writ of *habeas corpus ad testificandum* to bring a petitioner before the court for hearing was reported by only six counties. The rest, Cook County included, use a simple order, under Section six of the act, directing the Warden of the penitentiary in which the petitioner is incarcerated to produce him in court on a day certain, to await the further order of the court. This order is entered either on the court's own motion or on the oral request of the attorneys.

Up to very recently, petitions in Cook County were referred al-

most automatically to the original trial judge, if he was available. This procedure is followed in a great majority of the other counties also. The procedure in Cook County may vary with each Chief Justice of the Criminal Court. It has been indicated that the present Chief Justice will hear all future post-conviction matters himself.

A recent decision of the Illinois Supreme Court, *People v. Jennings*,<sup>9</sup> has caused some attorneys to believe that a motion to strike or dismiss a petition filed under the Post-Conviction Hearing Act will not lie. In that case, three inmates of Illinois penitentiaries filed petitions alleging that coerced confessions were used to obtain their convictions. In each case, the state filed motions to dismiss on grounds of res adjudicata and failure to state a cause of action. The trial court dismissed each petition seemingly without conducting a hearing or otherwise determining the truth of the allegations. The Illinois Supreme Court dismissed a writ of error in each case without opinion. The United States Supreme Court granted certiorari<sup>10</sup> and noted that the allegations of each petition, if true, constituted a violation of constitutional rights. Consequently, the case was remanded to the state Supreme Court to determine if the Post-Conviction Hearing Act provided an appropriate remedy.<sup>11</sup>

The Illinois Supreme Court then decided that the act does afford an appropriate remedy for the assertion of petitioners' claims and remanded the cases to the appropriate trial courts for further proceedings.<sup>12</sup> In its opinion, the court stated that a petition which alleges facts constituting denial of constitutional rights calls for an answer from the State's Attorney and a hearing on the merits.<sup>13</sup> This view seems to ignore the words of the act which say that the state shall "answer or move to dismiss." The feeling is also widespread that the presence of the petitioner is necessary at the hearing on the petition. But here again the act states that the court *may* order the petitioner brought before the court for the hearing.<sup>15</sup>

It appears that in most instances it is impossible to devise a full, true and direct answer. The petitions are a hodgepodge of allegations and accusations, unsupported by any substantial affidavits or other evi-

<sup>9</sup> 411 Ill. 21, 102 N.E. 2d 824 (1952).

<sup>10</sup> *Jennings v. Illinois*, 341 U.S. 947 (1951).

<sup>11</sup> *Jennings v. Illinois*, 72 S. Ct. 123 (1951).

<sup>12</sup> Note 9 supra.

<sup>14</sup> Ill. Rev. Stat. (1951) c. 38, § 830.

<sup>13</sup> Note 9 supra, at 26 and 27.

<sup>15</sup> Note 8 supra.

dence, and, in many cases, almost completely unintelligible. Because of the great variety and volume of petitions filed in Cook County, it has become the practice to file a motion to dismiss automatically on the first appearance of the case. The court has ordered answers filed in only 25 instances. However, since the courts have been giving full and complete hearings in each case as if an answer were filed, it might be well to file an answer and abandon the motion to dismiss.

Though there is much doubt on the point, it would seem that a sustained motion to dismiss by the state would make the matter *res adjudicata* under Section three of the act, and has been so considered by the courts of Cook County.

The volume of petitions filed under the act has not been as great as some expected. Perhaps a better understanding of the act and what can be accomplished under it will stimulate activity. It may be, though, that violations of constitutional rights in criminal trials in Illinois are not as common as habeas corpus petitions filed in federal courts prior to the act had suggested.

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