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# Habeas Corpus--Custody and Release From Custody Requirements of Habeas Corpus--Viability of *McNally v. Hill* in the Moden Context

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# NOTES

## HABEAS CORPUS—Custody and Release From Custody Requirements of Habeas Corpus—Viability of *McNally v. Hill* in the Modern Context

Section 2241 of Title 28 of the United States Code requires that a petitioner for a writ of habeas corpus be "in custody."[1] As a corollary of the "custody" requirement, the common law tradition required that the effect of the writ must be the petitioner's "release from custody."[2] Because the United States Constitution[3] and the federal habeas corpus statutes[4] guarantee the availability of the writ in general terms, it is to the common law that the courts have consistently turned for the definition of these terms and for the restrictive effect of these requirements on the availability of the writ in particular situations.[5] However, recent decisions by the Court of Appeals for the Fourth Circuit and the Pennsylvania Supreme Court have questioned the continued viability of the common law approach.

The traditional definition of these concepts, adhered to by both state and federal courts, is best illustrated by reference to the 1934 landmark Supreme Court case of *McNally v. Hill*.[6] In *McNally*, a prisoner sought a writ of habeas corpus in order to attack a four year sentence which was to run consecutive to the two admittedly valid concurrent sentences which he was then serving.[7] The Court was satisfied that the case was one which presented a case or controversy,[8] but it deemed the petition for the writ of habeas corpus to be premature since, the court reasoned, "a sentence which the

1. "The writ of habeas corpus shall not extend to a prisoner unless (*inter alia*) (3) He is in custody in violation of the Constitution or laws or treaties of the United States . . . ." 28 U.S.C. § 2241(c)(3) (1964).

2. Fay v. Noia, 372 U.S. 391, 427 n.38 (1963). See generally Note, 109 U. PA. L. REV. 1018 (1961). The words "for the purpose of an inquiry into the cause of the restraint of liberty" in REV. STAT. § 752 (1875) were omitted from the present statute because they were considered to be merely descriptive of the writ. H.R. REP. No. 308, 80th Cong., 1st Sess. A-178 (1947).

3. U.S. CONST. art. I, § 9.

4. 28 U.S.C. § 2241(a) (1964). The jurisdiction to issue the writ is not part of the inherent power of the federal courts. *Ex parte* Bollman, 8 U.S. (4 Cranch) 75 (1807).

5. Fay v. Noia, 372 U.S. 391, 399 (1963); McNally v. Hill, 293 U.S. 131, 136 (1934). See generally Oaks, *Legal History in the High Court*, 64 MICH. L. REV. 451 (1966); Note, 59 MICH. L. REV. 312 (1960); 45 MINN. L. REV. 453 (1961).

6. 293 U.S. 131 (1934); see SOKOL, FEDERAL HABEAS CORPUS 30 (1965).

7. The grounds alleged to justify issuance of the writ were that the petitioner would be eligible for parole after serving one third of his sentence; and that, although he had already served one third of the admittedly valid first and second sentences, his parole was precluded by reason of the outstanding, but allegedly invalid, third sentence. 293 U.S. at 134 (1934).

8. U.S. CONST. art. III, § 2. Under 28 U.S.C. § 2241, the custody does not exist until the petitioner is actually serving the sentence he attacks.

prisoner has not begun to serve cannot be the cause of restraint which the statute makes the subject of inquiry."[9] In addition, the Court adopted the "release from custody" requirement by stating that "the only judicial relief authorized [is] the discharge of the prisoner or his admission to bail, and that only if his detention were found to be unlawful."[10] Since the petitioner had failed to qualify under either the "custody" or "release from custody" requirements, the Court denied the petition and refused to hear the case on the merits.[11]

The unequivocal holding in *McNally* has forced ingenious petitioners in the federal courts to seek other writs or remedies in an attempt to gain review of sentences to commence in the future. Several possible paths have, however, already been effectively eliminated. The Supreme Court held that Rule 35 of the Federal Rules of Criminal Procedure,[12] which rule allows a federal court to correct a future sentence improperly imposed after a valid conviction, does not extend to obtaining a retrial for a sentence resulting from an invalid conviction.[13] In addition, petitioners have been unsuccessful in utilizing the Declaratory Judgment Act[14] to attack sentences to commence in the future.[15] A third avenue of attack has been foreclosed by *Heflin v. United States*,[16] wherein a majority of the Supreme Court stated that section 2255 of Title 28 of the United States Code, an additional remedy available to federal prisoners in their trial court districts, is analogous to section 2241 and is thus also inappropriate.[17] In spite of language in section 2255 which

9. 293 U.S. at 138 (1934).

10. *Id.* at 136-37.

11. Following the lead of the *McNally* case, both state and lower federal courts have held that a petitioner serving two concurrent sentences, although "in custody" under both, cannot attack either unless he meets one of two requirements. First, he must successfully attack both. See, *e.g.*, Collins v. Klinger, 353 F.2d 731 (9th Cir. 1965); *In re* Shekoski's Petitions, 239 F. Supp. 996 (E.D. Mich. 1965). Second, the time already served must qualify as a full satisfaction of the admittedly valid sentence and enable his immediate "release from custody." See, *e.g.*, United States v. Rundle, 240 F. Supp. 323 (E.D. Pa. 1965); United States *ex rel.* Brown v. Warden, 231 F. Supp. 179 (S.D.N.Y. 1964); Hoffman v. United States, 244 F.2d 378 (9th Cir. 1957) (same rule applied under 28 U.S.C. § 2255 (1964)).

12. FED. R. CRIM. P. 35. For an illustration of the problems in correcting an illegal sentence when matters *dehors* the record are involved, *compare* Johnson v. United States, 334 F.2d 880 (6th Cir. 1964), *with* Gilinsky v. United States, 335 F.2d 914 (9th Cir. 1964).

13. Hill v. United States, 368 U.S. 424 (1962).

14. 28 U.S.C. § 2201 (1964).

15. "It was the primary purpose of the act to have a declaration of rights not theretofore determined, and not to determine whether rights theretofore adjudicated have been properly adjudicated." Clark v. Memolo, 174 F.2d 978, 981 (D.C. Cir. 1949); *accord*, Forsythe v. Ohio, 333 F.2d 678 (6th Cir. 1964); Tuckson v. Clemmer, 231 F.2d 658 (4th Cir. 1956).

16. 358 U.S. 415 (1959).

17. A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the

declares that a petition may be brought under the section "at any time," the Court stated that in enacting section 2255 Congress intended to incorporate "the basic principle of habeas corpus that relief is only available to one entitled to be released from custody."[18]

Other more fortunate petitioners have sucessfully obtained relief on a hybrid theory adopted by the Supreme Court in *United States v. Morgan*.[19] The petitioner in *Morgan* had received, due to a federal conviction which he was attacking in the federal courts, a heavier sentence under a recidivist statute in a subsequent New York conviction. The majority of the Court allowed him to seek a motion in the nature of the writ of error coram nobis under the all writs statute[20] to attack his federal sentence which he had *fully served*. Since the petitioner, who was imprisoned in New York, was unable to obtain relief in that state's courts, this extraordinary remedy was made available "under circumstances compelling such action to achieve justice."[21] The dissenters accused the Court of "resurrecting the ancient writ of error *coram nobis* from limbo to which it had presumably been relegated" by both the Federal Rules of Civil Procedure and section 2255.[22] Furthermore, since *Morgan*, several United States Courts of Appeals have allowed the use of this same motion to attack a sentence that the petitioner has *not yet begun to serve*.[23] The propriety of this extension of the motion is questionable since, unlike *Morgan*, these petitioners will eventually be "in custody" and thus be able to apply for the writ of habeas corpus; their circumstances are seemingly not sufficiently "compelling" to justify relief under the *Morgan* rationale.

It is uncertain whether the Supreme Court would approve the application of the coram nobis motion in this setting. However, if

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court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255 (1964).

18. Heflin v. United States, 358 U.S. 415, 421 (1959); *accord*, Ramsey v. United States, 351 F.2d 31 (8th Cir. 1965); Williams v. United States, 267 F.2d 559 (10th Cir. 1959).

19. 346 U.S. 502 (1954).

20. "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a) (1964).

21. 346 U.S. at 511. The courts of New York would not review the judgment of another jurisdiction on habeas corpus or coram nobis. People v. McCullough, 300 N.Y. 107, 110, 89 N.E.2d 335, 337 (1949).

22. 346 U.S. at 513 (Minton, J., dissenting). FED. R. CIV. P. 60(b) provides that "writs of coram nobis . . . are abolished . . . ." The Revisers Notes to 28 U.S.C. § 2255 state that the section "restates, clarifies and simplifies the procedure in the nature of the ancient writ of error coram nobis." H.R. REP. No. 308, *op. cit. supra* note 2, A-180.

23. Owensby v. United States, 353 F.2d 412 (10th Cir. 1965); Johnson v. United States, 344 F.2d 401 (5th Cir. 1965); Thomas v. United States, 271 F.2d 500 (D.C. Cir. 1959); Tucker v. United States, 235 F.2d 238 (9th Cir. 1956). *But see* United States v. Baker, 158 F. Supp. 842 (E.D. Ark. 1958).

it would, various practical considerations indicate that a preferable solution to the problem would be an expansion of the writ of habeas corpus by a redefinition of the "custody" and "release from custody" requirements. First, the motion in the nature of the writ of error coram nobis would only apply to petitioners attacking a federal sentence.[24] Second, the errors which may be attacked under coram nobis are limited in number.[25] Third, the providing of a simple, comprehensive remedy to all prisoners would avoid the problems inherent in affording them two different remedial writs.

A liberalized definition of the habeas corpus "custody" requirement has recently been adopted by the Court of Appeals for the Fourth Circuit in *Martin v. Virginia.*[26] The petitioner, who was captured after his escape from an admittedly valid fifteen year sentence, was convicted and sentenced to three and five years for escape and grand larceny respectively, the sentences to run consecutive to his original sentence. He attacked the validity of these latter sentences, which he had not yet begun to serve, by means of a writ of habeas corpus. Recognizing that it must bring the facts within the "custody" requirement of the federal habeas corpus statute, the court relied on the Supreme Court's extension, in *Jones v. Cunningham,*[27] of the "custody" concept so as to include a petitioner on parole.[28] The Court had stated in *Jones* that a man is "in custody" if there is any restraint on his liberty "to do the things which in this country free men are entitled to do."[29] The *Martin* court noted that since the existence of the petitioner's future sentences could delay or prevent his eligibility for parole on his first sentence,[30] such future sentences amounted to a sufficient "restraint on his liberty" for the petitioner to be presently considered "in custody" within the meaning of the habeas corpus statute.[31]

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24. A motion in the nature of the writ of error coram nobis is a step in the criminal case and jurisdiction lies in the federal trial court where convicted. United States v. Morgan, 346 U.S. 502, 505 n.4 (1954). Habeas corpus, however, is a separate civil proceeding. See, *e.g.,* Kurtz v. Moffitt, 115 U.S. 487, 494 (1885).

25. Traditionally coram nobis is only available for matters *dehors* the trial record, for errors of fact rather than errors of law, and for cases in which it would appear that a retrial would reach a different result. See FRANK, CORAM NOBIS (1953); Note, 32 FORDHAM L. REV. 803, 804-15 (1964); Note, 40 N.Y.U.L. REV. 154, 159-61 (1965).

26. 349 F.2d 781 (4th Cir. 1965); see O'Brien v. McClaughry, 209 Fed. 816 (8th Cir. 1913), where another court prior to *McNally* granted habeas corpus relief on similar grounds.

27. 371 U.S. 236 (1963); Note, 51 CALIF. L. REV. 228 (1963).

28. Although most of the cases prior to *Jones* in denying habeas corpus to a petitioner on parole spoke in terms of mootness, it would appear that the actual ground for the decisions was the failure of parole to constitute custody. See Johnson v. Eckle, 269 F.2d 836 (6th Cir. 1959); Strand v. Schmittroth, 251 F.2d 590 (9th Cir.), *cert. denied,* 355 U.S. 886 (1957); United States *ex rel.* St. Johns v. Cummins, 233 F.2d 187 (2d Cir. 1956); Factor v. Fox, 175 F.2d 626 (6th Cir. 1949).

29. 371 U.S. at 243.

30. Although the petitioner would have been eligible for parole in 1963, the additional two sentences extended that date to 1966. 349 F.2d at 783 n.1.

31. *Id.* at 784. Although a "free man" by definition could never be eligible for

Accepting *arguendo* the validity of the *Martin* court's assumption that the Supreme Court would today consider this burden upon eligibility for parole as a restraint of liberty within the meaning of the statute, the court either ignored or implicitly expanded the additional requirement that the effect of the writ be the petitioner's "release from custody."[32] The petitioner could not have been released from custody, for he was at that time serving his first sentence, and even if he were to be paroled, he would still be "in custody" under the rationale of *Jones v. Cunningham.* However, the court's expansion of the "release from custody" requirement may have been justified in light of the Supreme Court's progressive liberalization of the "custody" rule and the correlative departure from common law concepts.[33] Moreover, strict adherence to the traditional "release from custody" requirement would effectively negate most of the advantages realized through the expansion of the "custody" requirement. For the extension of the "custody" rule to be meaningful, it must be accompanied by a corresponding expansion of the "release from custody" requirement so as to include the release or removal of the restraint of liberty attacked in the writ. Thus, the effect of the writ of habeas corpus may be a partial rather than a total removal of the restraints on the petitioner's liberty.[34]

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parole and parole is only a privilege and not a right, it would seem that the ability to be eligible for parole is a right. *But cf.* Holiday v. Johnston, 313 U.S. 342, 349 (1941). The court in *Martin* made a point not to limit its holding to a petitioner like Martin who presented a strong case for parole. 349 F.2d at 784. In effect, the *Martin* court in expanding the scope of the custody requirement in this manner engaged in the same type of legal fiction employed by the Supreme Court earlier in the century to expand the habeas corpus requirement that the attacked sentence be "void for want of jurisdiction" until it finally encompassed any sentence attacked for "denial of due process." See note 33 *infra* and accompanying text. For an illuminating discussion of the use of legal fictions in the expansion of habeas corpus, see Note, 61 HARV. L. REV. 657, 660-62 (1948).

32. See note 10 *supra* and accompanying text.

33. In fact it was not until the middle of the nineteenth century that habeas corpus became a remedy primarily for post-conviction attack in cases of criminal commitments. See Oaks, *Habeas Corpus in the States 1776–1865*, 32 U. CHI. L. REV. 243, 245 (1965). Throughout the last century the writ as a post-conviction remedy in federal and some state courts evolved from one which merely attacked a conviction which was void for want of jurisdiction of the trial court to one which attacked denial of due process. See, *e.g.*, Waley v. Johnston, 316 U.S. 101, 104-05 (1942); Frank v. Mangum, 237 U.S. 309 (1915); Reitz, *Federal Habeas Corpus: Postconviction Remedy for State Prisoners*, 108 U. PA. L. REV. 461, 465-66 (1960); Note, 61 HARV. L. REV. 657, 660-62 (1948).

34. It would appear that *Martin* is not the first decision which has attempted to expand the "release from custody" requirement. The Court of Appeals for the Sixth Circuit in *Coffin v. Reichard*, 143 F.2d 443 (6th Cir. 1944), rejected this requirement where a petitioner attacked his mistreatment at the hands of prison authorities. In doing so the court relied on the seldomly invoked provision of § 2243 of the United States Code which states that a court presented with a habeas corpus petition may "dispose of the . . . [case] as law and justice require." 28 U.S.C. § 2243 (1964). However, the Supreme Court in Parker v. Ellis, 362 U.S. 574 (1960), seemingly foreclosed the attempted use of § 2243 as an expansive device where the custody and release

Although this expansion of federal habeas corpus should be sufficient to accommodate petitioners to the federal courts, the availability of the enlarged writ in state courts warrants examination. The federal habeas corpus statutes require that a state prisoner exhaust his state remedies before he can apply for federal habeas corpus.[35] One of these state remedies may be state habeas corpus proceedings. Since state courts have generally applied the *McNally* rationale in state habeas corpus proceedings, the states themselves must contribute to the simplification of this area. An adequate habeas corpus,[36] coram nobis,[37] or other statutory post-conviction remedy,[38] which would afford relief in the *McNally* situation should be provided. The expanded availability of such state remedies would decrease the opportunities for federal interference with state criminal procedures, eliminate unnecessary expense generated by collateral attacks, and alleviate the case load in the federal courts.

By virtue of its recent decision in *Commonwealth ex rel. Stevens v. Myers*,[39] the Pennsylvania Supreme Court has made such a contribution. Confronted with facts indistinguishable from those in *McNally*, the court chose to expand the meaning of "custody" to

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from custody requirements of *McNally* are not met. Chief Justice Warren in a dissenting opinion urged that § 2243 is authority to modify the release from custody requirement and to provide appropriate other relief by absolving a petitioner from the stigma of an invalid conviction for which he had already served the full sentence. 362 U.S. at 583.

35. 28 U.S.C. § 2254 (1964); see Fay v. Noia, 372 U.S. 391 (1963); Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441 (1963); Meador, *Accommodating State Criminal Procedure and Federal Postconviction Review*, 50 A.B.A.J. 928 (1964). On exhaustion of state remedies, see generally Note, 113 U. PA. L. REV. 1303 (1965).

36. Some states are still interpreting habeas corpus in its narrow common law usage. *E.g.*, State *ex rel.* Williams v. Auten, 211 Ark. 703, 202 S.W.2d 763 (1947); McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959), *cert. denied*, 362 U.S. 981 (1960); Curran v. Woolley, 48 Del. 382, 104 A.2d 771 (1954). Other states have expanded the writ to cover an asserted denial of constitutional rights. See, *e.g.*, Wojculewicz v. Cummings, 145 Conn. 11, 138 A.2d 512, *cert. denied*, 356 U.S. 969 (1958); Sewell v. Lainson, 244 Iowa 555, 57 N.W.2d 556 (1953); Springer v. Hungerford, 100 N.H. 503, 130 A.2d 538 (1957); *Ex parte* Rose, 122 N.J.L. 507, 6 A.2d 388 (1939); *Ex parte* Story, 203 P.2d 474 (Okla. Crim. App. 1949); State *ex rel.* Doxtater v. Murphy, 248 Wis. 593, 22 N.W.2d 685 (1946). See generally Fairchild, *Post-Conviction Rights and Remedies in Wisconsin*, 1965 WIS. L. REV. 52.

37. The primary post-conviction remedy in New York is coram nobis. See Note, 32 FORDHAM L. REV. 803, 804-16 (1964). See generally FRANK, *op. cit. supra* note 25.

38. See Note, 61 COLUM L. REV. 681 (1961); Note, 40 N.Y.U.L. REV. 154 (1965).

39. 419 Pa. 1, 213 A.2d 613 (1965). Petitioner was serving a 10 to 20 year robbery sentence. He sought habeas corpus to attack a life sentence which was to run consecutive to the robbery sentence. The court thought it was "extremely improbable" that Stevens would ever be paroled on the robbery sentence with the life sentence to follow. *Id.* at 616 n.5. The petitioner had been denied the right to counsel for direct appeal of his life sentence. The dissent interpreted the possibility of an increase in retrials as a reason for denying habeas corpus until these premature cases came to trial. *Id.* at 627-28 (Cohen, J., dissenting).

include a sentence to be served in the future.[40] Since Pennsylvania does not have a post-conviction habeas corpus statute, the state's highest court assumes final responsibility for defining the scope of its writ. The court postulated that since the use of the writ as a post-conviction remedy was not foreseen when the common law rules as to its availability were established, a modern court should eschew the blind application of these rules and re-examine them in their modern context. The court noted that Pennsylvania has no express remedy for such a premature case once the time for appeal has expired.[41] It concluded that it would be in the best interest of both the state and the petitioner to enable the state to act immediately upon the petitioner's motion, rather than to have to wait until the allegedly invalid sentence is actually being served.

With the exception of Pennsylvania and California,[42] state courts, including those which have expanded the habeas corpus writ in other respects, appear to be following *McNally* in denying habeas corpus relief to petitioners who seek review of sentences to commence in the future.[43] Several state legislatures, however, have enacted post-conviction procedure statutes which may offer relief to the frustrated habeas corpus petitioner.[44] Furthermore, the National Conference of Commissioners on Uniform Laws promulgated in 1955 the Uniform Post-Conviction Procedure Act[45] for the purpose of abolishing all other common law post-conviction remedies; one procedure was provided for the asserting of every jurisdictional, constitutional, or other ground for collateral relief that was not previously litigated or waived. Although the Act has been substan-

40. Previously the court had followed the rule of *McNally* in Commonwealth *ex rel.* Lewis v. Ashe, 335 Pa. 575, 7 A.2d 296 (1939). For a discussion of the prior development of post-conviction habeas corpus in Pennsylvania, see Note, 20 U. PITT. L. REV. 652 (1959).

41. Commonwealth *ex rel.* Stevens v. Myers, 419 Pa. 1, 11-12 n.15, 213 A.2d 613, 619-20 n.15 (1965), wherein the court discusses the limited usefulness of coram nobis in Pennsylvania. Relying on *Stevens* the Superior Court of Pennsylvania in Commonwealth *ex rel.* Alexander v. Rundle, 213 A.2d 644 (Pa. Super. 1965), extended habeas corpus to a prisoner under a valid sentence who sought to attack a prior sentence from which he had been reparoled. See Commonwealth *ex rel.* Stevens v. Myers, *supra*, at 24-26, 213 A.2d at 626-27 (Bell, C.J., concurring, but disagreeing with the court's extension of habeas corpus to every unlawful detention or restraint or conviction).

42. *In re* Chapman, 43 Cal. 2d 385, 273 P.2d 817 (1954), 2 U.C.L.A.L. REV. 415 (1955); Granucci, *Review of Criminal Convictions by Habeas Corpus in California*, 15 HASTINGS L.J. 189 (1963).

43. See, *e.g.*, Goodman v. State, 96 Ariz. 139, 393 P.2d 148 (1964); People *ex rel.* Martin v. Ragen, 401 Ill. 419, 82 N.E.2d 457 (1948); McLean v. Maxwell, 2 Ohio St. 2d 226, 208 N.E.2d 139 (1965).

44. See, *e.g.*, ILL. ANN. STAT. ch. 38, §§ 122-1 to -7 (Smith-Hurd 1965); N.C. GEN. STAT. §§ 15-217 to -222 (Supp. 1965). Illinois passed one of the first post-conviction statutes in 1949. See Comment, 59 NW. U.L. REV. 696, 703 (1964). The statute was amended in 1965 to extend the time period from 5 to 20 years. ILL. ANN. STAT. ch. 38, § 122-1 (Smith-Hurd 1965).

45. UNIFORM POST-CONVICTION PROCEDURE ACT; see Finan, *Uniform Post-Conviction Procedure Act: One State's Experience*, 2 HARV. J. LEG. 185 (1965).

tially adopted in only two states,[46] it has been the model for similar statutes in several other states.[47] The Act contains language which provides that a "petition for relief under this [subtitle] may be filed at any time."[48] In construing this provision, the Maryland Supreme Court rejected the United States Supreme Court's interpretation of similar language in section 2255[49] and granted relief to a petitioner in the *McNally* situation.[50] It is hoped that courts in states which have enacted post-conviction statutes patterned after section 2255,[51] will also reconsider the Supreme Court's interpretation of the "at any time" provision. Petitioners who attack future sentences under these provisions might then be afforded the same relief which is now available under the Uniform Act.

The history of the writ of habeas corpus as a post-conviction remedy evidences a willingness by the courts to amplify the writ to comport with corresponding developments in other phases of the criminal process. The Fourth Circuit Court of Appeals and the Supreme Court of Pennsylvania were notably cognizant of this fact in liberalizing the "custody" and "release from custody" requirements of *McNally*. Since these decisions rest on a perceptive recognition of the modern evolution of criminal justice, they merit close examination by other state and federal courts.

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46. The act was adopted by Maryland in 1958, and amended in part in 1965. MD. ANN. CODE art. 27, §§ 645A–J (Supp. 1965). The act was adopted in Oregon in 1959, ORE. REV. STAT. §§ 138.510–.680 (Supp. 1963). The act was adopted but subsequently repealed in Arkansas. Ark. Acts 1957, No. 419, repealed, Ark. Acts 1959, No. 227. Maryland recently amended its act to comply with additional habeas corpus hearing requirements established by the Supreme Court in Townsend v. Sain, 372 U.S. 293 (1963). See Finan, *supra* note 45, for a discussion of the Maryland enactment and new amendment.

47. See, *e.g.*, N.C. GEN. STAT. §§ 15-217 to -222 (Supp. 1965); WYO. STAT. ANN. §§ 7-408.1 to -408.8 (Supp. 1965). For a discussion of the Wyoming statute, see Raper, *Post Conviction Remedies*, 19 WYO. L.J. 213 (1965).

48. UNIFORM POST-CONVICTION PROCEDURE ACT § 1.

49. See note 18 *supra* and accompanying text.

50. See Simon v. Director, 235 Md. 626, 201 A.2d 371 (1964). This provision is now codified as MD. ANN. CODE art. 27, 645A(b) (Supp. 1965).

51. ALASKA R. CRIM. P. 35(b); COLO. R. CRIM. P. 35(b); FLA. R. CRIM. P. 1, Note, 17 U. FLA. L. REV. 617 (1965); KAN. REV. CODE OF CIV. P. § 60-1507(b) (1964). For a discussion of the Kansas statute see Foth & Palmer, *Post Conviction Motions Under The Kansas Revised Code of Civil Procedure*, 12 KAN. L. REV. 493 (1964); KY. R. CRIM. P. 11.42.