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BOOK REVIEWS

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A HANDBOOK OF FEDERAL HABEAS CORPUS. By Ronald P. Sokol. (Michie 1965, Pp. 277. $10.00).

This book, written by Professor Sokol, Lecturer in Law and Director of Appellate Legal Aid at the University of Virginia Law School, provides both bench and bar with a sorely needed legal manual setting forth simply and concisely the statutory and case law applicable to federal habeas corpus. Since 1886 no textbook has been written on that subject[1] even though in more recent years applications for federal habeas relief have nearly flooded the federal courts and have hampered their speed of dispensing justice.[2]

Today, the federal writ of habeas corpus may be sought by those illegally in federal custody,[3] by those illegally in custody for an act done under federal authority[4] and by those illegally in custody for commission of an act permitted by the law of nations.[5] But it is primarily sought by convicted state prisoners, allegedly "in custody in violation of the Constitution or law or treaties of the United States."[6] As a substitute for federal habeas corpus, the federal prisoner seeking post-conviction relief on the ground that his sentence was illegally imposed files a motion to "vacate, set aside or correct the sentence," commonly referred to as a section 2255 motion.[7] It is the latter two subjects, the state prisoner's application for federal habeas corpus and the federal prisoner's motion to vacate the sentence, to which Sokol largely addresses himself.

A brief historical perspective seems appropriate. During our country's earlier years, federal habeas corpus was available

1. This fact is pointed out by Sokol in the Preface to A HANDBOOK OF FEDERAL HABEAS CORPUS at v (1965). The 1886 book was HURD, A TREATISE ON THE RIGHT OF PERSONAL LIBERTY AND OF THE WRIT OF HABEAS CORPUS (1886).

2. See *Applications for Writs of Habeas Corpus and Post Conviction Review of Sentences in the United States Courts,* 33 F.R.D. 363 (1963); United States *ex rel.* Walker v. LaVallee, 224 F. Supp. 661 (N.D.N.Y. 1963).

3. 28 U.S.C. § 2241(c)(1) (1958).

4. 28 U.S.C. § 2241(c)(2) (1958).

5. 28 U.S.C. § 2241(c)(4) (1958).

6. 28 U.S.C. § 2241(c)(3) (1958).

7. 28 U.S.C. § 2255 (1958); United States v. Hayman, 342 U.S. 205 (1952).

only to federal prisoners[8] who were in custody without judicial process or pursuant to an order of a court which lacked jurisdiction.[9] Eventually, in 1867, Congress expanded the writ to make it available to persons held in state custody in violation of the Constitution, laws or treaties of the United States,[10] but the concept of jurisdiction was retained by the courts, thus limiting the scope of habeas corpus review.[11] Therefore, once it was determined that a court had jurisdiction to deal with the offense charged and the person before it, the detention of the habeas petitioner was generally found valid. During the latter part of the nineteenth century, however, and the early years of the twentieth, the traditional, judicially-imposed jurisdictional limitation on the scope of habeas corpus was slowly abandoned in favor of a more flexible standard: the constitutional commandment of due process of law.[12] Thus, where there was a deprivation of a prisoner's constitutional rights, federal habeas relief was generally granted. This expansion of the writ, coupled with the incorporation during the present century of many of the safeguards of criminal procedure contained in the Bill of Rights, theretofore thought inapplicable to the states,[13] has made increasingly more numerous the occasions upon which federal habeas will lie. It is from this perspective that we must consider Sokol's handbook on federal habeas corpus since as a result of the historical development of the writ and the broadening area of constitutional rights the need for such a book has become acute.

For all lawyers, but particularly those who may be appointed to represent some indigent habeas petitioner or section 2255 movant, Sokol's habeas handbook is absolutely essential if they are unacquainted with collateral attacks in the federal courts on criminal convictions. For those members of the bar who are acquainted with that aspect of the law, the book will serve as an endless time saver in relocating and simplifying the pertinent statutory and case law applicable to filing an application for federal habeas relief, preparing for an evidentiary hearing, and taking an appeal from the denial of relief.

Concerning the writ's availability, Sokol points out that habeas corpus is a civil remedy, legal rather than equitable in nature,

8. 1 Stat. 81-82 (1789).
9. See *Ex parte* Watkins, 28 U.S. (3 Peters) 193 (1830).
10. 14 Stat. 385 (1867), now codified in 28 U.S.C. § 2241(c)(3) (1958).
11. *E.g., In re* Rahrer, 140 U.S. 545 (1891).
12. *E.g.,* Moore v. Dempsey, 261 U.S. 86 (1923).
13. *E.g.,* Gideon v. Wainwright, 372 U.S. 335 (1963).

but governed by equitable principles. There are also included valuable suggestions to the attorney concerning the method of conducting an evidentiary hearing in a federal district court.

Sokol also discusses the limitations on the writ's availability. First and most important is the limitation that a state prisoner may not be awarded federal habeas relief unless he has exhausted available state remedies. This doctrine, based solely on comity between the states and the federal government, is now codified.[14] Closely connected with the exhaustion requirement is the limitation that a state prisoner forecloses his right to federal relief if he has deliberately by-passed his remedies in the state court.[15] Another limitation is that of a repetitive or successive application for relief on behalf of the same prisoner, where the issues raised have previously been adjudicated.[16] Finally, Sokol considers as a limitation on the writ's availability the previously mentioned motion to vacate sentence filed by the federal prisoner pursuant to statute.[17] There is no question, of course, that the section 2255 motion is a limitation on the writ's availability since section 2255, insofar as the federal prisoner is concerned, is a statutorily compelled substitute for habeas corpus, except where the relief afforded by that section is "inadequate or ineffective to test the validity of his detention."[18] Generally speaking, however, the principles applicable to habeas corpus are also applicable to section 2255 proceedings.

A section entitled "Problems Peculiar to the Indigent" discusses the benefits to which an impoverished habeas or section 2255 applicant is entitled. This is a rather vital consideration since the vast majority of prisoners who seek such relief are unable to pay either the costs of litigation or an attorney's fee. Here, Sokol explains who qualifies as an indigent; the affidavit of poverty required to institute an in forma pauperis proceeding; the necessity for appointment of counsel in such proceeding; and the criteria for obtaining a transcript of trial, or transcript of hearing, at the expense of the state or federal government.

Sokol also provides in his book a most valuable appendix in which he sets out all the federal statutes applicable to habeas and section 2255 cases; the applicable federal rules of civil proce-

14. 28 U.S.C. § 2254 (1958).
15. Fay v. Noia, 372 U.S. 391 (1963).
16. 28 U.S.C. § 2244 (1958); Sanders v. United States, 373 U.S. 1 (1963).
17. 28 U.S.C. § 2255 (1958).
18. *Ibid.*

dures; and a comprehensive set of forms for the attorney who may be appointed to represent an indigent prisoner in some habeas or section 2255 proceeding. Suffice it to say that the set of forms is complete since it, thoughtfully, includes a sample "Motion to Withdraw as Counsel."

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WILLIAM HOWARD TAFT: CHIEF JUSTICE by Alpheus Thomas Mason (New York, Simon and Schuster, 1965. Pp. 354. $6.50).

In 1889 with the backing of the Governor of Ohio, thirty-two year old William Howard Taft first sought a seat on the Supreme Court of the United States. In 1902 and 1906 Taft reluctantly declined President Theodore Roosevelt's offers of appointment to the Supreme Court in order to continue in the posts of Governor of the Philippines and Secretary of War respectively. In 1921 on the day that Chief Justice White died, Taft included in a letter to a friend in Washington the following list of his qualifications for the newly vacant post.

> . . . I have had federal judicial experience, too. 1. Three years on the State bench. 2. Two years solicitor general, U.S. 3. Eight years presiding judge, U.S. Circuit. 4. Four years Court of Appeals, Sixth Circuit. 5. Four years secretary of war. 6. Four years president. 7. Eight years Kent professor, Yale University, five hours a week Federal Constitutional Law, except one year Chairman National War Labor Board and one year arbitrator in case between Canadian government and Grand Trunk Railway. That would seem to indicate pretty continuous service in the line of judicial and other duties preparing one for service on the Supreme Court.

Taft finally joined the Court later that year at the age of sixty-four, succeeding the Chief Justice whom he himself had appointed. *William Howard Taft: Chief Justice* by Alpheus Thomas Mason presents an evaluation of Taft's work in that high position. For success, Mason believes, a Chief Justice must be a good administrator, a leader capable of accommodating the clash of the justices' personalities and also a statesman.

During Taft's first year at the helm, the Court disposed of almost a hundred more cases than ever before and cut the period between filing and hearing time from fifteen to less than twelve months. From 1921 to 1928 Taft paced the Court by writing an average of thirty opinions per term as compared with his colleagues' average of twenty. Mason ranks Taft along with Fuller and Hughes as the Court's most effective administrators.

Taft also worked hard at massing the Court. To this end, Mason writes, "he persuaded, by example, frowned on dissents, exploited personal courtesy and charm, maximized the assign-

ment and reassignment powers, relied on the expertise of his associates."

During his tenure on the high bench, Taft wrote 253 opinions for the Court and only three dissenting opinions. He observed to Justice Clarke:

> I don't approve of dissents generally, for I think in many cases where I differ from the majority, it is more important to stand by the Court and give its judgment weight than merely to record my individual dissent where it is better to have the law certain than to have it settled either way.

Taft once described his role as that of an impressario with his company of artists. In assigning cases Taft took advantage of Holmes' grasp of the common law, Brandeis' knowledge of tax law and rate litigation and Sutherland's experience with water and irrigation rights cases. He regarded Van Devanter as the strongest man on the Court, called him his "chancellor" and relied upon him to "keep the Court consistent with itself." It was agreed not to decide cases in which the senile Justice McKenna's vote would be decisive. The Chief Justice's efforts to weld the Court together are described by Mason as "extraordinarily successful" during his first three years. After that dissents increased. Taft's chagrin at this development is reflected in his observations that the defected Stone "hungered for the applause of the law-school professors" and that the aged Holmes was being egged by Brandeis into writing dissents in advance—which, indeed, Holmes admitted to Pollock.

Taft's persistent outside activity on behalf of judicial reform wins from Mason the accolade of "judicial architect without peer." The Judges Bill of 1925[1] which Taft helped to lobby through Congress embodied reforms which he had long advocated. As early as 1908 he had urged that the Supreme Court's appellate jurisdiction be generally limited to "those cases which are typical and which give an opportunity to the Court to cover the whole field of the law upon the subject involved." One appeal from the trial court, he felt, was all that any party should be entitled to. Revised federal rules of civil procedure, another Taft project, failed to pass Congress at that time due to the opposition of Senator Walsh of Montana. It is Mason's contention that Taft devoted so much effort to these measures because

1. 43 Stat. 936.

he believed that a reformed judiciary could, in the author's words, better "counteract the disruptive influence of wild-eyed reformers."

As judicial statesman, Taft is rated less highly by Mason who uses eight opinions which Taft wrote for the Court and one of his dissenting opinions as the basis for a consideration of the Chief Justice's "constitutional creed." The opinions in *Truax v. Corrigan*[2] and *Wolff Packing Co. v.* [*Kansas*] *Court of Industrial Relations*[3] are offered as examples of Taft's pitting the due process and equal protection clauses of the fourteenth amendment against state labor legislation. Taft's opinion in *Bailey v. Drexel Furniture Co.*[4] in which a Congressional tax on the income of concerns employing child labor is found to be in violation of the due process clause of the fifth amendment is contrasted with his opinion in *Adkins v. Childrens Hosp.*[5] in which he dissents from the Court majority's view that a Congressional minimum wage act covering women in the District of Columbia was invalid under that same clause of the fifth amendment. *Stafford v. Wallace*[6] and *Board of Trade v. Olsen*[7] which upheld broad congressional power under the commerce clause display Taft opinions which follow "squarely in the Marshall tradition." In his opinions in *Meyers v. United States*[8] and *Ex parte Grossman*,[9] Taft broadly interpreted the removal and pardoning powers of the President. And in *Olmstead v. United States*[10] Taft's opinion affirming the conviction of the leader of a multi-million dollar bootlegging ring despite fourth and fifth amendment objections to the use of wire tap evidence was consistent with his campaign for stricter law enforcement.

These opinions, Mason points out, are generally in accord with personal convictions which the Chief Justice had held throughout his public life. As early as 1894, for example, Taft in a typical address had urged the graduating seniors at the University of Michigan Law School to "call strictly to account public men 'for utterances or conduct likely to encourage resentment

2. 257 U.S. 312 (1921).
3. 267 U.S. 552 (1925).
4. 259 U.S. 20 (1922).
5. 261 U.S. 525 (1923).
6. 258 U.S. 495 (1922).
7. 262 U.S. 1 (1923).
8. 272 U.S. 52 (1926).
9. 267 U.S. 87 (1925).
10. 277 U.S. 438 (1928)

against the guaranties of law, order and property.' " Any inconsistency between this philosophy and Taft's judicial opinions may be explained, the author suggests, by Taft's high regard for judicial stability. Mason's test of judicial statesmanship is "the ability to weigh realistically the strength of the popular will and its claim to prevail." Taft, he claims, along with many other justices did not meet this test.

Mason's book is not of the scope and dimension of his biographies of Brandeis and Stone. After all Taft already had his Pringle. But this by-product of Mason's current comprehensive study of the office and powers of the Chief Justice of the United States is valuable for its newly published material concerning Taft, the Chief Justice.

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