Constitutional Law—Miranda Comes out From Under a Stone: In Withrow v. Williams, the Supreme Court Declines to Extend the Rule from Stone v. Powell to Preclude Federal Courts From Hearing a State Prisoner's Habeas Corpus Petition Based on an Alleged Violation of the Prisoner's Miranda Rights

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NOTES

CONSTITUTIONAL LAW—Miranda Comes Out From Under A Stone: In Withrow v. Williams, the Supreme Court Declined to Extend the Rule From Stone v. Powell to Preclude Federal Courts From Hearing a State Prisoner’s Habeas Corpus Petition Based on an Alleged Violation of the Prisoner’s Miranda Rights

INTRODUCTION

In Withrow v. Williams, the United States Supreme Court refused to bar federal habeas corpus relief to a state prisoner who claimed that his conviction was based on a confession that was obtained in violation of his rights to remain silent and to counsel under Miranda v. Arizona. Previously, in Stone v. Powell, the Supreme Court held that, where the state provides an opportunity for full and fair litigation of a claim that evidence was seized in violation of the Fourth Amendment, federal courts cannot entertain a habeas petition of a state prisoner who claims that such evidence was introduced at trial in violation of the prophylactic exclusionary rule. Some commentators felt that the Supreme Court’s opinion in Stone reflected a decision by the Court to drastically restrict the availability of federal habeas relief to state prisoners. Although

2. Habeas Corpus is:
   The name given to a variety of writs ... having for their object to bring a party before a court or judge. ... The primary function of the writ is to release from unlawful imprisonment. The office of the writ is not to determine [a] prisoner’s guilt or innocence, and [the] only issue which it presents is whether [the] prisoner is restrained of his liberty by due process. ... [The writ is] [a]n independent proceeding instituted to determine whether a defendant is being unlawfully deprived of his or her liberty. It is not an appropriate proceeding for appeal-like review of discretionary decisions of a lower court.
5. Id. The exclusionary rule provides that the products of a search that violated a criminal defendant’s Fourth Amendment rights must be excluded from evidence at trial. See Weeks v. United States, 232 U.S. 383, 398 (1914). The United States Supreme Court held that the exclusionary rule was applicable to the states in Mapp v. Ohio, 367 U.S. 643, 655 (1961).
subsequent to Stone the Supreme Court had refused in three instances to extend the "rule of Stone" to bar federal habeas petitions of state prisoners claiming other types of constitutional violations, some continued to believe that under Stone state prisoners would not be able to frame viable federal habeas petitions based on prophylactic rules such as Miranda's pre-questioning warnings. By refusing to extend the rule of Stone to preclude federal courts from granting habeas relief to state prisoners whose petitions are based on the prophylactic Miranda rule, the United States Supreme Court has severely limited the rule of Stone and has left the doctrine of federal habeas corpus in a state of uncertainty.

This casenote begins with a brief description of the facts of Withrow v. Williams in Part I. In Part II, the note reviews the legal background that set the stage for the decision in the subject case. Part III of the note is an analysis of the United States Supreme Court's opinion in Withrow. Finally, the note discusses the potential significance of the case in Part IV.

I. FACTS

On April 10, 1985, in the process of investigating a double murder, two police officers in Romulus, Michigan, went to the house of Robert Allen Williams, Jr., and asked him to accompany them to the police station for questioning concerning the crime. Although one officer later testified that Mr. Williams was not under arrest when he was taken to the station, a police report indicated that the officers arrested Mr. Williams at his residence.

While Mr. Williams initially denied any involvement in the double murder, he began to implicate himself soon after the officers

9. 113 S. Ct. at 1748. The police officers were investigating the murders of Van Robin Hooper and Charles David Stanley, both of whom were killed while sitting in Hooper's car on April 6, 1985. People v. Williams, 429 N.W.2d 649, 650 (Mich. Ct. App. 1988). Hooper was shot four times in the head and once in the neck. Id. Stanley was shot four times in the head, once in each hand, and once each in the chest and back. Id. A witness at the scene originally thought that a woman had committed the crime. Id.
10. 113 S. Ct. at 1748. Mr. Williams, who was asleep when the police arrived at his residence, was probably searched but was not handcuffed before he entered the officers' unmarked police car. 429 N.W.2d at 650-51. Mr. Williams testified at his trial that one of the officers told him that he was under arrest when he left his house. Id.
started questioning him.11 After consulting with each other, the officers decided not to advise Mr. Williams of his rights to remain silent and to counsel under *Miranda v. Arizona*;12 instead, the officers prodded Mr. Williams by telling him that they were only interested in catching the "shooter."13 Mr. Williams continued to deny any involvement in the crime, and one of the officers accused Mr. Williams of lying and told him that they would "lock [him] up" if he did not tell the truth.14 After this admonishment, Mr. Williams made several incriminating statements; the police officers then advised Mr. Williams of his *Miranda* rights.15 Mr. Williams waived his rights and made more incriminating statements during subsequent questioning.16 Mr. Williams was again questioned on April 11 and April 12; on April 12, the state of Michigan charged Mr. Williams with murder.17

Before trial, Mr. Williams moved to suppress his responses to the police officers' questions.18 The trial court agreed to suppress the responses that he made on April 11 and April 12, but refused to suppress Mr. Williams's statements of April 10; the trial judge felt that the police had, with respect to the April 10 statements, advised Mr. Williams of his *Miranda* rights in a timely manner.19 After a bench trial, the court found that Mr. Williams was guilty of two counts of first degree murder and possession of a firearm during the commission of a felony.20 The Court of Appeals of Michigan affirmed the trial court's ruling on the April 10 statements,21 and the Supreme Court of Michigan denied leave to appeal.22 The United States Supreme Court denied Mr. Williams's petition for writ of certiorari.23

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11. 113 S. Ct. at 1748.
13. 113 S. Ct. at 1748.
14. Id.
15. Id. at 1749.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
21. People v. Williams, 429 N.W.2d 649, 651-52 (Mich. Ct. App. 1988). The Michigan Court of Appeals held that the trial court was not clearly erroneous in ruling that Mr. Williams was not the subject of a police investigation until he made incriminating statements while in custody. Id. at 651.
Mr. Williams subsequently petitioned for a writ of habeas corpus in the federal District Court for the Eastern District of Michigan, alleging that his *Miranda* rights had been violated. The district court found that the police had placed Mr. Williams under arrest when they threatened to "lock [him] up"; consequently, the court granted the writ and held that the Michigan trial court should have excluded all of the statements Mr. Williams made between the time that he was placed in custody and his receipt of the *Miranda* warnings. The court also concluded—even though Mr. Williams had not raised the issue—that the statements Mr. Williams made after he was given the *Miranda* warnings were involuntary and should have been suppressed by the trial court. The court determined that, in relation to the statements that he made after receiving his *Miranda* warnings, the "totality of circumstances" had overborne Mr. Williams's will.

The Court of Appeals for the Sixth Circuit agreed that the trial court should have suppressed all of Mr. Williams's statements of April 10, and accordingly affirmed the decision of the federal district court. The court also refused to apply the rule in *Stone v. Powell* to bar federal habeas review of Mr. Williams's *Miranda* claim.

The United States Supreme Court granted certiorari and partially affirmed the Court of Appeals for the Sixth Circuit. The Supreme Court held that the rule in *Stone v. Powell* did not preclude federal habeas review of a state prisoner's *Miranda* claim. Thus, the Court of Appeals had correctly held that the Michigan trial court should have suppressed the statements that Mr. Williams made before he received the *Miranda* warnings. However, because the admissibility of the statements that Mr. Williams made after he received the warnings was not litigated in the federal district court,

24. 113 S. Ct. at 1749. Under the "Great Writ" of habeas corpus, a prisoner may petition a federal court to release him because he is held in violation of the laws or Constitution of the United States. See, e.g., WHITEBREAD & SLOBOSKIN, supra note 8, § 33.01.
25. 113 S. Ct. at 1749.
27. 113 S. Ct. at 1749.
28. *Id.*
29. *Id.*
31. *Id.* at 291.
32. 113 S. Ct. at 1749.
33. *Id.* at 1756.
34. *Id.* at 1753-55.
35. *Id.*
the Supreme Court held that the district court committed error by addressing the involuntariness of those statements.36

II. HISTORICAL DEVELOPMENT

To aid in understanding the legal issue presented in Withrow, this part of the casenote discusses the historical development of habeas corpus in the United States, especially as applied to state prisoners. In addition, this section briefly addresses the evolution of the Fifth Amendment privilege against self-incrimination.

A. Historical Development of the Availability of Federal Habeas Review for State Prisoners

1. Statutory Developments

The "Great Writ"37 of habeas corpus has its earliest origins in the twelfth century.38 In 1789, the drafters of the United States Constitution ensured the continued existence of habeas corpus in this country by precluding the abolishment of the writ except in the

36. Id. at 1755-56.
38. The writ of habeas corpus was initially used as a coercive device by Norman judges following the Battle of Hastings. WILLIAM F. DUKER, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS 14-15 (1980). In 1176, the Assize of Clarendon, the first great legislative enactment of Henry II, authorized the use of the writ to compel the appearance of certain criminal defendants before the King's courts. Id. at 15. By the fourteenth century, English judges were utilizing the writ to bring litigants and jurors into their courts. Id. at 22-23.

The writ was first used as a mechanism for reviewing the legitimacy of a lower court's ruling in the middle of the fourteenth century. Id. at 26-28. At that time the Court of Chancery combined habeas corpus with the writ of certiorari to review the incarceration of prisoners who had been sentenced by local courts. Id. at 27-28. Similarly, the common law courts, concerned over the growing power of the Court of Chancery, began using the writ to free those who had been detained by the Chancellor. Id. at 33-40.

Following a fierce Constitutional battle between Parliament and the monarchy, the modern concept of habeas corpus was born with Parliament's passage of the habeas corpus act of the 31st of Charles II in 1679. Id. at 52-62; see also Ex parte Watkins, 28 U.S. (3 Pet.) 193 (1830) (stating the importance of the habeas corpus act of 1679). This act protected individuals from arbitrary imprisonment by the King. DUKER, supra at 52-62.

Prior to independence, all of the colonies recognized the writ of habeas corpus. Id. at 115. Sensitivity to the importance of the writ and concern over state autonomy prompted the framers to include the habeas clause in the United States Constitution. Id. at 135. The use of the writ has grown and evolved dramatically since that time. See infra notes 39-105 and accompanying text.
most extreme circumstances.\textsuperscript{39} The writ has been governed by statute since the first federal Judiciary Act in 1789.\textsuperscript{40} Today, the scope of the writ of habeas corpus is governed by 28 U.S.C. sections 2241-2255.\textsuperscript{41}

2. Judicial Developments

Initially, the Supreme Court precluded federal habeas review for state prisoners unless the state court that convicted the prisoner lacked proper jurisdiction over the case.\textsuperscript{42} For example, in \textit{Ex parte Watkins}\textsuperscript{43} the habeas petitioner claimed that his state court conviction rested on an indictment that did not even state a crime.\textsuperscript{44} Nonetheless, the Supreme Court refused to consider the habeas claim because it determined that the state court had jurisdiction over the subject matter of the case.\textsuperscript{45} On the other hand, the Court in \textit{Ex parte Watkins}\textsuperscript{46}...
Siebold determined that a state court did not properly have jurisdiction over a case where the prisoner's conviction was based on an unconstitutional statute. Because the Siebold court determined that the statutes on which the petitioners' convictions were based were constitutional, though, it refused to grant the habeas petitions in that case.

Gradually, however, the Court expanded the availability of the writ to state prisoners in a series of decisions that undermined the earlier analysis which focused solely on whether the state court had jurisdiction. In 1915, the first major inroad into the Court's jurisdictional analysis of the availability of habeas corpus petitions to state prisoners was announced in Frank v. Mangum. There, the Court held that a writ of habeas corpus would not issue for a state prisoner when a competent and unbiased state court had already considered the petitioner's federal claims. The Court indicated, however, that despite its previous analysis of state habeas cases only to determine if the state court lacked jurisdiction, the Court now would issue the writ even if the state court had jurisdiction where the state had failed to provide a process adequate for the full and fair litigation of federal claims. Later, in 1942, the Court entirely abandoned its jurisdictional approach to habeas petitions by state prisoners in Waley v. Johnston.

46. 100 U.S. 371 (1879).
47. Id. at 376-77. The Court summarized the jurisdictional analysis of habeas review as follows:

    The only ground on which this court, or any court, without some special statute authorizing it, will give relief on habeas corpus to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void.

Id. at 375 (italics omitted).
48. Id. at 398-99.
49. 237 U.S. 309 (1915).
50. Id. at 335-36. The petitioner in Frank claimed, inter alia, that his state trial had been dominated by a mob and that his conviction thus represented a violation of due process of law. Id. at 333.
51. Id. at 335-36.
52. 316 U.S. 101 (1942); see also Withrow v. Williams, 113 S. Ct. 1745, 1768 (1993) (citing P. BATOR ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1502 (3d ed. 1988)) (stating that the Court in Waley "openly abandoned" the jurisdictional approach to habeas corpus). In Waley, the Court determined that habeas review would be available where a "conviction [had] been [obtained] in disregard of the constitutional rights of the accused." Id. at 105. In effect, Waley permitted a federal court to issue a writ of habeas corpus for a state prisoner only where the state had failed to provide adequate corrective process. WHITEBREAD & SLOBOGIN, supra note 8.
In 1953, the Court drastically expanded the scope of federal habeas corpus in *Brown v. Allen*. In that case, the habeas petitioner claimed that North Carolina had acted in a racially discriminatory fashion in the selection of the grand jury that had issued his indictment and that his confession was inadmissible because it had been obtained in violation of the Fifth Amendment. The North Carolina Supreme Court had considered and rejected both of the petitioner's arguments on direct appeal. Despite the fact that the state court had provided adequate corrective process for the petitioner's federal constitutional claims, the United States Supreme Court determined that those claims should be reconsidered on federal habeas review. By allowing habeas review even where the state had provided adequate corrective process, the Court opened the door for any habeas petition which alleged that the accused was being held in violation of a federal constitutional right.


The number of federal habeas corpus petitions drastically expanded in the wake of the Court's decision in *Brown v. Allen*. The stage was thus set for *Stone v. Powell* and the Court's first modern limitation on the broad scope of federal habeas jurisdiction

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53. 344 U.S. 443 (1953).
54. Id. at 466.
55. Id. at 447; State v. Brown, 63 S.E.2d 99 (N.C. 1951).
56. 344 U.S. at 447, 457-63. However, the majority in *Brown* stated that federal habeas review would not be available to a state prisoner who had not "exhaust[ed] available state remedies." Id. at 487. This requirement reflects the Supreme Court's concern with the continued existence of comity between federal and state judicial systems. *Fay v. Noia*, 372 U.S. 391, 437-38 (1963).
57. See Kathleen Patchel, *The New Habeas*, 42 HASTINGS L.J. 941 (1991). In *Brown*, Justice Frankfurter stated: "The State court cannot have the last say when it, though on fair consideration and what procedurally may be deemed fairness, may have misconceived a federal constitutional right." Id.; 344 U.S. at 508 (Frankfurter, J., concurring). See also *Fay v. Noia*, 372 U.S. 391 (1963) (stating that Congress meant to provide a federal forum for a state prisoner's federal constitutional claims). It has been suggested that the *Brown* court, realizing in the face of its increasing caseload that direct review on writ of certiorari was inadequate to protect all state prisoners' federal constitutional claims, expanded the scope of habeas corpus to provide a federal forum for all federal constitutional claims. See Michael, supra note 6, at 238.
that had been enunciated in Brown. In Stone, the habeas petitioner alleged that the California trial court had improperly allowed the introduction of incriminatory evidence at trial. The Supreme Court declined to consider the admissibility of the evidence, concluding that a federal court could not entertain a habeas petition of a state prisoner who claims that evidence was introduced at trial in violation of the Fourth Amendment where the state provides an opportunity for full and fair litigation of the Fourth Amendment claim.

In making its decision that most state prisoners' Fourth Amendment claims would not be cognizable on federal habeas review, the Stone Court considered several factors. First, the Court noted that the exclusionary rule is not a personal constitutional right of an accused individual, but rather a judge-made remedy designed to deter the police from engaging in illegal searches and seizures.

60. Id. at 470. Lloyd Powell, the habeas petitioner in Stone, and three other men attempted to steal a bottle of wine from a California liquor store on February 17, 1968. Id. at 469. After being confronted by the liquor store's manager, Powell shot and killed the manager's wife. Id. Ten hours later, Powell was arrested in Henderson, Nevada, for violating that city's vagrancy ordinance. Id. While searching Powell, a Henderson police officer discovered that the prisoner was carrying a .38-caliber revolver. Id. Powell was extradited to California and was subsequently convicted of murder; at trial, the prosecutor introduced incriminating evidence concerning the pistol that the Henderson police officer found. Id. at 469-70. Powell alleged at trial, on direct review, and in his habeas petition that the Henderson vagrancy ordinance was unconstitutional. Id. at 470. Accordingly, Powell contended that the evidence concerning the discovery of the pistol was the product of an illegal search and seizure and should have been excluded at trial. Id.

61. The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. In the watershed case of Weeks v. United States, 232 U.S. 383 (1914), the Court determined that federal courts were compelled to follow what is now known in popular parlance as the "exclusionary rule." See, e.g., 428 U.S. at 482-83. That is, federal courts could not consider evidence obtained in violation of the Fourth Amendment's prohibition against illegal searches and seizures. 232 U.S. at 398. The Court held the exclusionary rule applicable to the states in Mapp v. Ohio, 367 U.S. 643, 660 (1961).

62. 428 U.S. at 494. That determination was contrary to the Court's language in an earlier decision in which it had held that "the federal habeas remedy extends to state prisoners alleging that unconstitutionally obtained evidence was admitted against them at trial." Kaufman v. United States, 394 U.S. 217, 225 (1969). At least one commentator has suggested that the Court's decision in Stone was fore-shadowed by Justice Powell's concurring opinion in Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Michael, supra note 6, at 246-47.

63. 428 U.S. at 486. According to the Court, "[t]he rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional
Because the exclusionary rule is a remedial device rather than a constitutional guaranty, its application is limited to those situations in which its remedial objectives are "most efficaciously served." Moreover, even on direct review, the exclusionary rule excludes reliable and probative information from evidence; it thus diverts attention from what should be the "central concern in a criminal proceeding," the ultimate question of the guilt or innocence of the accused.

The Court concluded that, while the exclusionary rule's deterrent effect justifies its application at trial and on direct review, the marginal additional benefit obtained by application of the rule on federal collateral review is outweighed by the costs. The Court stated that application of the rule on habeas review would not increase its deterrent effect. That is, it is unlikely that a police officer would feel any additional compulsion to adhere to the guidelines of the Fourth Amendment based on the tenuous possibility that an illegal search and seizure would escape notice on direct review and at trial, but might then result in the overturning of the prisoners conviction on federal habeas review. Finally, because state court guaranty in the only effectively available way — by removing the incentive to disregard it." (Id. at 484 (quoting Elkins v. United States, 364 U.S. 206, 217 (1960))).

64. 428 U.S. at 486-87 (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)). For example, the Court has refused to apply the exclusionary rule at grand jury proceedings. 414 U.S. at 338. Also, the Court has allowed prosecutors to use unlawfully seized evidence in order to impeach the testimony of a criminal defendant. Walder v. United States, 347 U.S. 62 (1954). The Court has further held that only the victim of the unconstitutional search and seizure may invoke the exclusionary rule. Alderman v. United States, 394 U.S. 165 (1969).

65. 428 U.S. at 489-90. The Court concluded that the rule's "deflection of the truth-finding process . . . often frees the guilty." (Id. at 490).

66. 428 U.S. at 493-94. The exclusionary rule places extra burdens on the legal system by deflecting the truth-finding process. Id. at 489-90. The Court also noted that federal collateral review of state criminal convictions, especially when such review is not premised upon the guilt or innocence of the petitioner, places many extra burdens on the legal system which are not present on direct review. See id. at 491 n.31. In particular, federal collateral review burdens the following values that are important to our system of justice: "(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded." (Id. (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 259 (1973) (Powell, J., concurring)).

67. 428 U.S. at 493.

68. Id. at 493. The Court stated that "there is no reason to believe . . . that the overall educative effect of the exclusionary rule would be appreciably diminished if search-and-seizure claims could not be raised in federal habeas corpus review of state convictions." Id. at 493.
judges are no less able than federal court judges to protect a criminal defendant’s Fourth Amendment rights, there is no reason to allow federal habeas review of state prisoners’ Fourth Amendment claims where the state has provided a full and fair opportunity for litigation of those claims.

Response to the Court’s decision in Stone was wide and varied. Among the most thoughtful was the analysis of the case offered by Professor Philip Halpern. Although the Stone Court emphasized the importance of truth-finding in the judicial process, Professor Halpern suggested that the decision in that case did not limit federal habeas review of non-guilt related claims. Instead, the Stone decision would require the Court to engage in a three-step analysis to determine whether to provide continued federal habeas review for alleged violations of prophylactic rules.

According to Professor Halpern, the Court, when confronted with the cognizability of a prophylactic rule on habeas review, should first weigh the costs of the rule against its benefits. Second, the Court should determine whether the claim subject to preclusion from habeas review could be easily converted into another claim that would be cognizable on habeas corpus. Third, the Court should

69. Id. at 493-94 n.35. But cf. supra, note 57 (discussing various decisions in which the Court determined that Congress intended for federal courts to have the last say in the determination of a prisoner's federal constitutional claims).

70. 428 U.S. at 494.


72. See supra note 66 and accompanying text.

73. Halpern, supra note 71, at 38. However, Halpern's analysis of the case is contrary to the opinion of other commentators. See, e.g., Robert M. Cover & T. Alexander Aleinikoff, Dialectical Federalism: Habeas Corpus and the Court, 86 YALE L.J. 1035 (1977). Professors Cover and Aleinikoff predicted that the decision in Stone would ultimately preclude federal habeas review of any claim not based on the guilt or innocence of the petitioner. Id. at 1086-88; see also 428 U.S. at 517-18 (Brennan, J., dissenting) ([T]he groundwork is being laid today for a drastic withdrawal of federal habeas jurisdiction, if not for all grounds of alleged unconstitutional detention, then at least for claims . . . that this Court later decides are not 'guilt related.' ]); Friendly, supra note 58, at 142 (suggesting that the Supreme Court should limit federal habeas corpus review to those cases which involve the guilt or innocence of the petitioner).

For another analysis of the Court's decision in Stone, see Louis M. Seidman, Factual Guilt and the Burger Court: An Examination of Continuity and Change in Criminal Procedure, 80 COLUM. L. REV. 436 (1980). Professor Seidman suggests that the rule from Stone is very narrow, and that it is meant only to preclude federal habeas review of state claims involving the Fourth Amendment exclusionary rule. Id. at 450-56.

74. Halpern, supra note 71, at 40-41.

75. Halpern, supra note 71, at 40-41.

76. Halpern, supra note 71, at 41.
determine the costs and benefits of adjudicating the two types of claims. Professor Halpern specifically noted that it was "by no means clear" that an application of his cost-benefit analysis to habeas petitions premised on prophylactic Miranda claims would result in the preclusion of those claims on federal habeas review.

4. **Supreme Court Decisions in the Aftermath of Stone v. Powell**

After the landmark decision in *Stone*, the Court refused to apply *Stone*’s preclusion rule in three cases that involved either the innocence of the petitioner or that questioned the integrity of the state judicial system. The habeas petitioner in *Jackson v. Virginia*, the first of those cases, alleged that there was insufficient evidence to support his conviction of first degree murder. The attorney for the state of Virginia argued that, under the rule of *Stone*, the petitioner’s argument should not be cognizable on federal habeas review. The Supreme Court, however, rejected that argument and held that *Stone* did not bar federal habeas review of the petitioner’s claim.

The Court mentioned three major differences between *Stone* and *Jackson*. To begin with, the Court determined that cases such

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77. Halpern, *supra* note 71, at 41. A finding that the claim subject to preclusion could be easily reformed into a cognizable claim with more uncertain or unpredictable legal guidelines would militate against prohibiting the claims. *Id.* at 38-40.


81. *Id.* at 311-12. The petitioner was convicted of murdering Mary Houston Cole, a woman who befriended him while he was a prisoner in a county jail. *Id.* at 309-10. Several police officers testified at trial that, on the afternoon of Mrs. Cole’s death, the petitioner and Mrs. Cole had been drinking at a diner. *Id.* at 310. As the couple was preparing to leave the diner in their car, a deputy sheriff noticed that the petitioner had a kitchen knife in his automobile and was carrying a revolver. *Id.* The deputy “offered to keep the revolver until the petitioner sobered up, but the petitioner indicated that this would be unnecessary since he and [Mrs. Cole] were [going] to engage in sexual activity.” *Id.* One and one-half days later, Mrs. Cole was found naked from the waist down and dead in a secluded parking lot, the victim of two gunshot wounds. *Id.* The petitioner did not deny that he shot and killed Mrs. Cole; instead, he argued that, based on the mitigating factors of self defense and voluntary intoxication, no rational finder of fact could have found him guilty of first degree murder because there was insufficient evidence that the crime was premeditated. *Id.* at 311.

82. 443 U.S. at 321.

83. *Id.*

84. *Id.* at 321-24.
as *Jackson* will not unduly burden the federal courts with meritless habeas claims because most meritorious challenges to the sufficiency of the evidence will be corrected by state appellate courts.\(^8\) Also, problems with the finality of criminal convictions and federal-state comity will not be exacerbated by allowing habeas review of sufficiency of the evidence claims, for such problems arise in all cases where a state prisoner asks a federal court to correct constitutional errors committed by the state courts.\(^6\) Finally, and perhaps most importantly, the Court concluded that the constitutional issue in *Jackson*, unlike that in *Stone*, is central to the question of guilt or innocence of the petitioner.\(^7\) Consequently, *Stone* does not prevent federal habeas review of a state prisoner’s claim that there was insufficient evidence to support her conviction.\(^8\)

The Court next declined to extend the rule from *Stone* in *Rose v. Mitchell*.\(^9\) The habeas petitioners\(^9\) in *Rose* claimed that there was discrimination in the selection of the members of the grand jury that indicted them for first degree murder.\(^9\) While the State of Tennessee argued that the petitioners’ claims should not be cognizable on federal habeas review, the Supreme Court held that the rule in *Stone* did not preclude federal collateral review of a

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85. *Id.* at 321-22. Because the state courts will presumably have fully considered the sufficiency of the evidence claim, an independent evidentiary hearing by the federal habeas court will rarely be necessary. *Id.* at 322.

86. *Id.* at 322-23. While the state appellate courts will adequately correct sufficiency of the evidence problems in most cases, “[i]t is the occasional abuse that the federal writ of habeas corpus stands ready to correct.” *Id.* at 322 (citing Brown v. Allen, 344 U.S. 443, 498-501 (1953) (opinion of Frankfurter, J.)). The Court also specifically rejected the argument that federal habeas review is unavailable any time a state has given a petitioner a “full and fair hearing” in the state court system. *Id.* at 323. The federal habeas statute presumes that a state provides the petitioner with a fair trial and adequate appellate remedies; the statute does not, however, presume that the state proceedings will always be held in accordance with federal constitutional law. *Id.*

87. *Id.* at 323-24. According to the Court, all criminal defendants are constitutionally required to have been found guilty beyond a reasonable doubt. *Id.* at 323.

88. *Id.* at 324.

89. 443 U.S. 545 (1979).

90. Both of the habeas petitioners were of African American descent. *Id.* at 548.

91. *Id.* at 549-50. The habeas petitioners, along with two other men, were indicted for murdering two people during the commission of the robbery of White’s Cafe. *Id.* at 547-48. A jury subsequently convicted both habeas petitioners of two counts of first degree murder. *Id.* at 549. The Supreme Court only considered whether there was discrimination in the selection of the foreman of the grand jury. *Id.* at 547, 550.
claim that there was discrimination in the state's grand jury selection process.92

According to the Court, Rose was distinguishable from Stone because, unlike its predecessor, Rose involved a claim that the state judiciary itself had violated the Constitution.93 Also, while Stone involved a judicially created remedy, allegations of grand jury discrimination involve charges that a person's Fourteenth Amendment rights have been violated.94 The Court further decided that the federalism concerns that supported its decision in Stone were not present in Rose because federal courts had, for almost 100 years, granted relief to state prisoners in cases involving discrimination.96 Because none of the factors that led to the decision in Stone were present in Rose,97 and because claims of discrimination in the selection of grand juries impeach the integrity of the state judicial system itself, the Court declined to extend the rule of Stone to preclude federal habeas review of cases such as Rose.98

92. Id. at 564.
93. Id. at 561-62. Since the state trial court would probably be the same court in which the alleged discrimination took place, the Supreme Court was unwilling to find that the petitioner in such a case would most likely receive a full and fair hearing of the claim at the state level. Id. at 561. Instead, the Court determined that an independent federal forum would be necessary to ensure a full and fair hearing. Id. The Court stated that “If federal habeas review is necessary to ensure that constitutional defects in the state judiciary's grand jury selection procedure are not overlooked by the very state judges who operate that system.” Id. at 563.
94. The Fourteenth Amendment provides in pertinent part:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.
95. 443 U.S. at 561-62. This was a “fundamental” difference between the two cases. Id. at 561. The Court stressed that, whereas the Fourteenth Amendment had always been directly applicable to the states, the Fourth Amendment exclusionary rule had only recently been fully applied to the states. Id. at 562.
96. Id. Thus, reaffirmation of the fact that federal habeas review was still available to redress state discrimination would not increase friction between the states and the federal government. Id.
97. The Court reasoned that, unlike the exclusionary rule, continued federal habeas review of a state prisoner's claim that discrimination existed in the selection of the grand jury that indicted her would have a strong educative and deterrent effect. Id. at 562-63. The Court explained that officials of a state judiciary system could be expected to heed a federal court's opinion that declared that the state's processes were discriminatory and must be changed. Id. at 563.
98. Id. at 563-64. In contrast to Stone, the Court concluded that the benefits of hearing claims of grand jury discrimination on habeas review outweighed the concomitant costs. Id. at 562-64.
In *Kimmelman v. Morrison*, the Supreme Court concluded that the rule in *Stone* should not be extended to Sixth Amendment claims of ineffective assistance of counsel, even where the principal allegation and manifestation of inadequate representation is counsel’s failure to file a timely motion to suppress evidence allegedly obtained in violation of the Fourth Amendment. The Court in *Kimmelman* reasoned that, unlike the judicially created exclusionary rule, the Sixth Amendment guaranty of counsel is a personal constitutional right. Where a personal constitutional right such as the right to effective counsel is involved, the Court cannot, as it did with the judicially created exclusionary rule in *Stone*, weigh the benefits of the application of the rule on habeas review with its costs because the Constitution itself has struck that balance.

The Court acknowledged that the evidence as to which counsel in *Kimmelman* had failed to object was probative and reliable; but the Court noted that the right to effective counsel, including objections

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100. The Sixth Amendment guarantees that:

   In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI (emphasis added).

101. 477 U.S. at 382-83. Neil Morrison, the habeas petitioner, was convicted in New Jersey of the rape of a fifteen year old girl. *Id.* at 368. A few hours after the rape, which occurred at Morrison’s home, the victim and a police officer travelled to Morrison’s residence. *Id.* Although Morrison was not home at the time, a fellow tenant let the pair into his apartment. *Id.* The police officer removed a sheet from Morrison’s bed while she was in his apartment. *Id.* While Morrison’s attorney objected to the introduction of the sheet into evidence at trial, the lawyer failed to comply with a New Jersey procedural rule that requires that suppression of evidence motions be made within thirty days of indictment. *Id.* at 368-69. When the trial court inquired as to why Morrison’s counsel had not made the suppression motion within the prescribed time period, the prosecutor replied that the defendant’s attorney did not know about the sheet because the defense had not conducted any discovery in the case. *Id.* at 369. The trial judge thereafter allowed the prosecution to enter the sheet into evidence. *Id.*

102. *Id.* at 375-79. The Court stated that the fact that the exclusionary rule was not a personal constitutional right had been “crucial” to the decision in *Stone*. *Id.* at 375. Moreover, the Court declined to state, as it had in *Stone*, that the preclusion of federal habeas review of ineffective assistance of counsel claims premised on incompetence in handling Fourth Amendment issues would not seriously interfere with the habeas petitioners’ constitutional rights, because a criminal defendant will many times not realize that his attorney is incompetent until he has exhausted all appeals on direct review. *Id.* at 378.

103. *Id.* at 379.
to evidence, is not premised upon the guilt or innocence of the criminal defendant. As such, the rule in Stone does not extend to bar habeas review of claims that a criminal defendant’s counsel was unconstitutionally ineffective in failing to suppress evidence obtained in violation of the Fourth Amendment.

B. Historical Development of the Fifth Amendment Privilege Against Self-Incrimination

The Fifth Amendment guarantees, among other things, that no person will be compelled to testify against himself in a “criminal case.” In 1897, the Supreme Court determined that the Fifth Amendment provides in full that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Id. (emphasis added).

The privilege against self-incrimination may have its origins in ancient Judaic law. Debra Ciardiello, Note, Seeking Refuge in the Fifth Amendment: The Applicability of the Privilege Against Self-Incrimination to Individuals who Risk Incrimination Outside the United States, 15 FORDHAM INT’L L.J. 722, 724-25 (1991-92). Under Talmudic law, which embodied the ancient oral teachings of the laws of Moses, the accused was prohibited from confessing to a crime. Laurence A. Benner, Requiem for Miranda: The Rehnquist Court’s Voluntariness Doctrine in Historical Perspective, 67 WASH. U. L.Q. 59, 67 n.22 (1989). Thus, even if a criminal defendant confessed to a crime, that confession was inadmissible before the Sanhedrin, the Jewish criminal court. Id. At least one commentator has implied that Jesus invoked the privilege against self-incrimination when He refused to answer to Pontius Pilate, a Roman governor. Id. at 67.

The privilege against self-incrimination was first used in the English legal system in the Middle Ages as a response to inquisitorial proceedings used by the ecclesiastical and common law courts. Ciardiello, supra at 725. During the sixteenth century, these courts would require an accused individual to swear to an oath ex officio;
Amendment privilege against self-incrimination precluded the admissibility of involuntary confessions made during custodial interrogations.\textsuperscript{107} The Court held the Fifth Amendment applicable to the states in \textsuperscript{108} 1964. Before that time, the Court analyzed the admissibility of a state criminal defendant’s confession under a due process\textsuperscript{109} approach in which it determined whether the “totality of circumstances” leading to the confession overcame the defendant’s will and deprived her of her power of resistance.\textsuperscript{110}

The oath required the accused to give truthful answers to whatever questions the court might ask. Ciardiello, \textit{supra} note 725. People found the oath objectionable for several reasons. Lisa Tarallo, \textit{Note, The Fifth Amendment Privilege Against Self-Incrimination: The Time Has Come for the United States Supreme Court to End Its Silence on the Rationale Behind the Contemporary Application of the Privilege}, 27 \textit{New Eng. L. Rev.} 137, 139 (1992). First of all, the accused was required to swear to the oath before he knew the identity of his accusers or the nature of the charges against him. \textit{Id.} Also, although purportedly an oath of inquiry, the procedure was actually designed to extract a confession. \textit{Id.} A prisoner was assumed to have confessed to the crime against which he was charged if he refused to answer questions or swear to the oath. Ciardiello, \textit{supra} at 725. Moreover, the ecclesiastical courts were empowered to use torture to ensure that the accused would speak. Tarallo, \textit{supra} at 139.

The Puritans were very outspoken in their opposition to the oath ex officio. Torallo, \textit{supra} at 139. They felt that the oath gave the ecclesiastical courts the power to identify and restrict the activities of religious dissenters. Tarallo, \textit{supra} at 139-40. At the same time, the common law courts were concerned about the increasing power that the use of the oath gave their ecclesiastical counterparts. Tarallo, \textit{supra} at 140. Consequently, the common law courts restricted the circumstances in which the ecclesiastical courts could use the inquisitorial process. Tarallo, \textit{supra} at 140. By 1661 the ecclesiastical courts were prohibited from using the oath under any circumstances. Tarallo, \textit{supra} at 140 n.33.

The common law courts continued to employ the oath ex officio even after its abolition in the ecclesiastical courts. Tarallo, \textit{supra} at 140-41. By the end of the seventeenth century, though, accused persons began to refuse to swear to the oath, claiming that they had a right against self-incrimination. Tarallo, \textit{supra} at 141. The common law courts gradually began to recognize the privilege against self-incrimination, and it eventually became a firm rule of law. Tarallo, \textit{supra} at 141. Indeed, the common law privilege was extremely broad. Ciardiello, \textit{supra} at 726. A criminal defendant could, for example, invoke the privilege simply to avoid defamation of character. Ciardiello, \textit{supra} at 726.

English common law influenced the development of law in America, and the colonies began to appreciate the privilege against self-incrimination at the end of the seventeenth century. Ciardiello, \textit{supra} at 726. The privilege was ultimately written into the United States Bill of Rights without debate. Ciardiello, \textit{supra} at 727.

\textsuperscript{107} See \textit{Bram v. United States}, 168 U.S. 532, 565 (1897).

\textsuperscript{108} \textit{Malloy v. Hogan}, 378 U.S. 1, 8-11 (1964).

\textsuperscript{109} The Fourteenth Amendment guarantees that no state will deprive a person of her life, liberty, or property without due process of the law. \textit{See supra} note 94.

\textsuperscript{110} \textit{See, e.g.}, \textit{Fikes v. Alabama}, 352 U.S. 191 (1957). The totality of circum-
The landmark decision in modern Fifth Amendment jurisprudence was *Miranda v. Arizona*.

There, the Court held that a state prisoner’s confession was unconstitutionally compelled unless, before being subjected to a custodial interrogation, the accused was informed of his rights to remain silent and to counsel.

Since the inception of the *Miranda* doctrine, the Supreme Court has recognized that the specific warnings mandated in that case are not themselves constitutional rights, but instead are judicially created prophylactic rules designed to protect rights that the Constitution does specifically guarantee. Therefore, a state may satisfy the Fifth Amendment requirement by using other equally effective methods to apprise the criminal defendant of her rights.

In addition, the Court has acknowledged that the *Miranda* requirements are very broad and could possibly exclude some confessions that would otherwise be allowed under the Fifth Amendment. Therefore, the requirements have sometimes been labelled “prophylactic.”

stances approach was used to determine whether a confession had been made “freely, voluntarily and without compulsion or inducement of any sort.” Haynes v. Washington, 373 U.S. 503, 513 (1963) (quoting Wilson v. United States, 162 U.S. 613, 623 (1896)).


112. *Id.* at 478-79. The Court had actually discarded the totality of circumstances approach to unconstitutionally compelled confessions two years before *Miranda*. See *Massiah* v. United States, 377 U.S. 201 (1964) (applying the Sixth Amendment guaranty of counsel to exclude from evidence statements made by an indicted person in the absence of his attorney). In *Miranda*, the Court required that, before a custodial interrogation or other significant deprivation of freedom by authorities and in the absence of other equally protective measures, the states advise an individual that:

> [H]e has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. . . . After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

384 U.S. at 479. The Court now uses the totality of circumstances test to determine the admissibility of an alleged unconstitutionally coerced confession made after the prisoner has properly been advised of her *Miranda* rights. See, e.g., *Miller v. Fenton*, 474 U.S. 104, 109-10 (1985).


114. *Id.* at 447.

115. *Id.*; *see also* Oregon v. *Elstad*, 470 U.S. 298, 306 (1985) (stating that the *Miranda* requirements might exclude some confessions that would otherwise be admissible under the Fifth Amendment).

Moreover, the warnings from *Miranda* are not required in all circumstances.\(^{117}\) For example, when the public safety is threatened there is no requirement that a person must be advised of his rights before being subjected to an interrogation.\(^{118}\)

**III. Reasoning of the Court in Withrow**

In *Withrow*, the Supreme Court declined to extend the rule from *Stone* to preclude federal review of a state prisoner's claim that his conviction was based on a confession obtained in violation of *Miranda*.\(^{119}\) The Court acknowledged that the *Miranda* requirements are not mandated by the Constitution and, for the purposes of the decision in *Withrow*, that they are prophylactic.\(^{120}\) Labelling the requisite warnings under *Miranda* as prophylactic, however, does not, the Court concluded, necessarily equate them with the exclusionary rule of *Mapp v. Ohio*.\(^{121}\) Indeed, the Court determined that the *Miranda* requirements differed from the exclusionary rule in two fundamental respects.\(^{122}\)

The Court stated that the Fourth Amendment exclusionary rule serves as a deterrent to prevent future police misconduct; it does not, however, remedy the fact that the criminal defendant’s Fourth Amendment rights were violated.\(^{123}\) To the contrary, the *Miranda* requirement of advising the suspect of his Fifth Amendment privilege against self-incrimination in advance of questioning does help protect “a fundamental trial right”\(^{124}\) and may prevent a present violation rather than merely deter a future violation.\(^{125}\) Also, while the exclusionary rule often deflects the truth-finding process by preventing the introduction of probative and reliable evidence,\(^{126}\) the Fifth Amendment trial right protected by *Miranda* is not necessarily divorced from the notion of the criminal defendant’s guilt or innocence.\(^{127}\) This is true, according to the Court, because a system of

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117. See New York v. Quarles, 467 U.S. 649 (1984) (finding that, with some limited exceptions, *Miranda*’s prophylactic rule is only applicable when there has been some form of officially coerced self-incrimination).
118. *Id.* at 657-58.
120. *Id.* at 1752.
121. *Id.* at 1753.
122. *Id.*
123. *Id.*
124. *Id.* (quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 264 (1990)).
125. 113 U.S. at 1753. The Fifth Amendment represents “principles of humanity and civil liberty, which had been secured in the mother country only after years of struggle.” *Id.* (quoting Bram v. United States, 168 U.S. 532, 544 (1897)).
126. See *supra* note 65 and accompanying text.
127. 113 S. Ct. at 1753.
criminal justice that relies on confessions will ultimately be less reliable than one that relies on independent investigation.\textsuperscript{128} The \textit{Miranda} requirements, then, guard against the use of unreliable statements at trial by preventing the possibility of police coercion of confessions.\textsuperscript{129}

Seemingly most important to the Court’s decision to continue to allow \textit{Miranda} claims to be reviewed by federal courts on habeas, however, was the fact that precluding habeas review of such claims would not benefit the federal courts or significantly advance the cause of federalism.\textsuperscript{130} For, precluding federal courts from considering \textit{Miranda} claims on habeas review would simply prompt state prisoners to reframe their habeas petitions to allege that their convictions rested on involuntary confessions.\textsuperscript{131} Thus, eliminating \textit{Miranda} claims from federal habeas review would not significantly ease the caseload burden of the federal courts.\textsuperscript{132}

Moreover, because each reformulated \textit{Miranda} claim couched in terms of an involuntary confession would require an “independent federal determination” on habeas, precluding all \textit{Miranda} claims from federal habeas review would not reduce tensions between the state and federal courts.\textsuperscript{133} Significant here was the fact that the federal courts could not be expected to overturn state court convictions based on \textit{Miranda} violations with such frequency as to appreciably raise federal-state tensions.\textsuperscript{134} Further, while the Court recognized that state police are currently able and willing to satisfy \textit{Miranda}’s requirements, it noted that the writ of habeas corpus is designed to correct “the occasional abuse.”\textsuperscript{135}

Finally, the Court determined that, because the habeas petitioner had not raised the issue, both the district court and the court of appeals had committed error by finding that the petitioner’s statements made after he received the requisite \textit{Miranda} warnings were

\begin{itemize}
\item \textsuperscript{129} 113 S. Ct. at 1753 (quoting Johnson v. New Jersey, 384 U.S. 719, 730 (1966)).
\item \textsuperscript{130} 113 S. Ct. at 1754.
\item \textsuperscript{131} \textit{Id.} This would require the federal courts to determine whether a confession was voluntary by looking to the “totality of circumstances.” \textit{Id.}; see supra note 112.
\item \textsuperscript{132} 113 S. Ct. at 1754. The Court stated that it could “lock the front door against \textit{Miranda}, but not the back.” \textit{Id}.
\item \textsuperscript{133} \textit{Id.} (citing Miller v. Fenton, 474 U.S. 104, 112 (1985)).
\item \textsuperscript{134} \textit{Id.} at 1754-55.
\item \textsuperscript{135} \textit{Id.} at 1755 (quoting Jackson v. Virginia, 443 U.S. 307, 322 (1979)).
\end{itemize}
involuntary. The Court otherwise affirmed the case and remanded it for further proceedings.

In her dissent, Justice O'Connor, with whom Chief Justice Rehnquist joined, alleged that the doctrine of habeas corpus profoundly affects the finality of criminal trials. Consequently, federal courts have the power to refuse to grant habeas relief based on prudential concerns, such as equity and federalism. Application of the prophylactic Miranda rule has both benefits and costs; on collateral review, the balance between the costs and benefits of applying Miranda shifts. Justice O'Connor concluded that concerns of finality, federalism, and fairness militate against allowing federal habeas review of Miranda claims.

Justice O'Connor also disagreed with the majority's assertion that the Miranda requirements represent a fundamental trial right. Justice O'Connor alleged that, while the Fifth Amendment privilege against self-incrimination is a fundamental trial right, the Miranda warning requirement is not. Also, Justice O'Connor reasoned that it was unreasonable to assume that barring Miranda claims from federal habeas review would lead all affected petitioners to reframe their habeas petitions to allege that their confessions were involuntary. Finally, the rarity of habeas writs issued for Miranda violations counsels for, not against, the preclusion of Miranda claims on habeas review.

136. Id. at 1755-56.
137. Id. at 1756.
138. Id. at 1756 (O'Connor, J., dissenting).
139. Id. at 1757 (O'Connor, J., dissenting). This notion is grounded in the federal habeas statute, which requires the federal courts to "dispose of [habeas petitions] as law and justice require." Id. (quoting 28 U.S.C. § 2243 (1988)). In addition, the Supreme Court itself has recognized that "in some circumstances considerations of comity and concerns for the orderly administration of criminal justice require a federal court to forgo the exercise of its habeas corpus power." 113 S. Ct. at 1757 (O'Connor, J., dissenting) (quoting Francis v. Henderson, 425 U.S. 536, 539 (1976)).

140. 113 S. Ct. at 1758 (O'Connor, J., dissenting). The Miranda requirements are beneficial because the exclusion of unwarned confessions compels state and local police departments to adopt procedural safeguards against the procurement of compelled or involuntary statements. Id. The Miranda requirements are costly, however, because they suppress trustworthy statements and thus impair the truth-finding process. Id.
141. Id.
142. Id. at 1759-60 (O'Connor, J., dissenting).
143. Id. at 1761 (O'Connor, J., dissenting).
144. Id.
145. Id. at 1762 (O'Connor, J., dissenting).
146. Id. at 1764-65 (O'Connor, J., dissenting).
Justice Scalia, with whom Justice Thomas joined, also dissented from the majority's opinion. According to Justice Scalia, *Stone* did not affect the jurisdiction of federal courts over Fourth Amendment claims; rather, that case held that federal courts should not consider such claims where the petitioner already had a full and fair chance to litigate the issue.\(^{147}\) Justice Scalia alleged that "[p]rior opportunity to litigate an issue . . . should ordinarily preclude [a federal] court from reaching the merits of a claim, unless it goes to the fairness of the trial process or to the accuracy of the ultimate result."\(^{148}\) In conclusion, Justice Scalia noted that the prior opportunity for full and fair litigation is normally dispositive of a federal prisoner's habeas claim, and he argued that such a disparity between federal and state convictions is illogical.\(^{149}\)

**IV. SIGNIFICANCE**

The Supreme Court's opinion in *Withrow v. Williams* is important because it was the first occasion on which the Court applied the rule from *Stone* to a case that involved neither the innocence of the habeas petitioner nor the integrity of a state's judicial process.\(^{150}\) Instead, *Withrow* involved the prophylactic *Miranda* requirements.\(^{151}\) After *Stone v. Powell*, some felt that the Court had adopted a guilt-related view of habeas corpus.\(^{152}\) However, by refusing to deny the petitioner's claim in *Withrow*, the Court indicated that it is willing to allow habeas petitions that do not involve the guilt or innocence of the incarcerated individual.

Because some commentators felt that the rule of *Stone* was valid precedent for the preclusion of all habeas petitions involving prophylactic rules unrelated to the guilt or innocence of the petitioner,\(^{153}\) the decision in *Withrow* has left habeas corpus jurisprudence in the United States in a state of uncertainty. While it is now clear that the Supreme Court has not adopted a guilt-related view of

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147. *Id.* at 1767 (Scalia, J., dissenting). *But see* O'Berry v. Wainwright, 546 F.2d 1204, 1211-12 (5th Cir. 1977) ("Despite the assertions of the Supreme Court in *Stone* to the contrary, we would be blind to reality to pretend that the practical effect of that decision is not a limitation on federal court jurisdiction.").

148. 113 S. Ct. at 1768 (Scalia, J., dissenting).

149. *Id.* at 1769-70 (Scalia, J., dissenting).

150. *See supra* notes 79-105 and accompanying text.

151. 113 S. Ct. at 1752.

152. *See* 428 U.S. at 516-18 (Brennan, J., dissenting); Michael, *supra* note 6, at 233; Cover & Aleinikoff, *supra* note 73, at 1087-88.

153. *See* 428 U.S. at 516-18 (Brennan, J., dissenting); Michael, *supra* note 6, at 233; Cover & Aleinikoff, *supra* note 73, at 1087-88.
habeas, the influence that the rule in *Stone* will have on future habeas petitions is unclear. At least one commentator has previously suggested that the Court meant to limit the decision in *Stone* to the facts of that case.\(^ {154}\) Nonetheless, although the Court has thus far refused to extend the rule from *Stone* beyond Fourth Amendment claims,\(^ {155}\) it has continued to apply the rule in subsequent cases.\(^ {156}\) This indicates that the Court believes that the decision in *Stone* is a viable rule of law that could further restrict the availability of habeas corpus.

Perhaps Professor Halpern was correct when he suggested that the Court’s decision in *Stone* indicated that it was adopting a cost-benefit analysis of habeas corpus petitions involving prophylactic rules.\(^ {157}\) Only by applying the cost-benefit analysis to *Withrow* can one harmonize that case with *Stone*. Consistent with the cost-benefit analysis, the majority in *Withrow* first weighed the costs of the prophylactic *Miranda* requirements against their benefits.\(^ {158}\) The Court determined that, unlike the Fourth Amendment claim that was at issue in *Stone*, the *Miranda* requirements protect a “fundamental trial right” that is “not necessarily” divorced from the guilt or innocence of the petitioner.\(^ {159}\) Consequently, the Court concluded that the benefits of applying the *Miranda* requirements on habeas outweigh the costs.

Also consistent with the cost-benefit analysis, the *Withrow* majority next determined that *Miranda* claims, if precluded from habeas review, could easily be converted into involuntary confession claims that would be cognizable on federal habeas corpus.\(^ {160}\) Finally, while the Court did not specifically determine the costs and benefits of adjudicating the two types of claims, it did determine that each reformulated *Miranda* claim would require an independent federal determination on habeas.\(^ {161}\) As such, eliminating federal habeas review of *Miranda* claims would serve no “appreciable” benefits.\(^ {162}\) The Court thus implicitly determined that the costs and benefits of adjudicating the two types of claims were equal, and it therefore

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154. Seidman, *supra* note 73, at 452-55.
157. See *supra* notes 71-78 and accompanying text.
159. *Id.* at 1753.
160. *Id.* at 1754.
161. *Id.*
162. *Id.*
decided that it would be useless to preclude habeas petitioners from raising *Miranda* claims.\(^{163}\)

By applying Professor Halpern's cost-benefit analysis to *Withrow*, one is able to harmonize that case with *Stone*. Although both cases involved prophylactic rules, the Court in *Withrow* determined that the benefits of applying the *Miranda* requirements on habeas review outweighed the concomitant costs. To the contrary, the *Stone* court had determined that the cost of evaluating Fourth Amendment claims on habeas review exceeded the benefits. *Withrow* is significant, then, because it establishes that the Court will undertake a cost-benefit analysis whenever it is confronted with the cognizability of a prophylactic rule on habeas review.

*Marcus N. Bozeman*

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163. *See id.* It is also important to note that Justice O'Conner, in her dissent, used the same cost-benefit analysis as the majority. *Id.* at 1756-65 (O'Conner, J., dissenting). Justice O'Conner merely differed from the majority in her ultimate determinations under the analysis. *Id.*