not be the predicate for federal *habeas* relief if the case announces or applies a "new rule."[1376] A decision announces a new rule "if the result was not *dictated* by precedent existing at the time the defendant's conviction became final."[1377] If a rule "was susceptible to debate among reasonable minds," it could not have been dictated by precedent, and therefore it must be classified as a "new rule."[1378]

Third, the Court has largely maintained the standards of *Townsend v. Sain*, as embodied in somewhat modified form in statute, with respect to when federal judges must conduct an evidentiary hearing. However, one *Townsend* factor, not expressly set out in the statute, has been overturned in order to bring the case law into line with other decisions. *Townsend* had held that a hearing was required if the material facts were not adequately developed at the state-court hearing. If the defendant had failed to develop the material facts in the state court, however, the Court held that, unless he had "deliberately bypass[ed]" that procedural outlet, he was still entitled to the hearing.[1379] The Court overruled that point and substituted a much stricter "cause-and-prejudice" standard.[1380]

Fourth, the Court has significantly stiffened the standards governing when a federal *habeas* court should entertain a second or successive petition filed by a state prisoner—a question with which *Sanders v. United States* dealt.[1381] A successive petition may be dismissed if the same ground was determined adversely to petitioner previously, the prior determination was on the merits, and "the ends of justice" would not be served by reconsideration. It is with the latter element that the Court has become more restrictive. A plurality in *Kuhlmann v. Wilson*[1382] argued that the "ends of justice" standard would be met only if a petitioner supplemented her constitutional claim with a colorable showing of factual innocence. While the Court has not expressly adopted this standard, a later capital case utilized it, holding that a petitioner sentenced to death could

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[1376] Teague v. Lane, 489 U.S. 288 (1989) (plurality opinion); Penry v. Lynaugh, 492 U.S. 302, 313–19 (1989).

[1377] Butler v. McKellar, 494 U.S. 407, 412 (1990) (quoting Penry v. Lynaugh, 492 U.S. 302, 314 (1989), which was quoting Teague v. Lane, 489 U.S. 288, 314 (1989). This sentence was quoted again in Whorton v. Bockting, 549 U.S. 406, 416 (2007)).

[1378] 494 U.S. at 415. *See also* Stringer v. Black, 503 U.S. 222, 228–29 (1992). This latter case found that two decisions relied on by petitioner merely drew on existing precedent and so did not establish a new rule. *See also* O'Dell v. Netherland, 521 U.S. 151 (1997); Lambrix v. Singletary, 520 U.S. 518 (1997); Gray v. Netherland, 518 U.S. 152 (1996). *But compare* Bousley v. Brooks, 523 U.S. 614 (1998).

[1379] Townsend v. Sain, 372 U.S. 293, 313, 317 (1963), imported the "deliberate bypass" standard from Fay v. Noia, 372 U.S. 391, 438 (1963).

[1380] Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992). This standard is imported from the cases abandoning Fay v. Noia and is discussed *infra*.

[1381] 373 U.S. 1, 15–18 (1963). The standards are embodied in 28 U.S.C. § 2244(b).

[1382] 477 U.S. 436 (1986).