several principles of statutory construction of the *habeas* statute. First, all federal constitutional questions raised by state prisoners are cognizable in federal *habeas*. Second, a federal court is not bound by state court judgments on federal questions, even though the state courts may have fully and fairly considered the issues. Third, a federal *habeas* court may inquire into issues of fact as well as of law, although the federal court may defer to the state court if the prisoner received an adequate hearing. Fourth, new evidentiary hearings must be held when there are unusual circumstances, when there is a "vital flaw" in the state proceedings, or when the state court record is incomplete or otherwise inadequate.

Almost plenary federal *habeas* review of state court convictions was authorized and rationalized in the Court's famous "1963 trilogy." [1356] First, the Court dealt with the established principle that a federal *habeas* court is empowered, where a prisoner alleges facts which if proved would entitle him to relief, to relitigate facts, to receive evidence and try the facts anew, and sought to lay down broad guidelines as to when district courts must hold a hearing and find facts.[1357] "Where the facts are in dispute, the federal court in *habeas corpus* must hold an evidentiary hearing if the *habeas* applicant did not receive a full and fair evidentiary hearing in a state

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in a lengthy, informed historical debate about the legitimacy of *Brown* and its premises. *Compare* id. at 401–24, *with* id. at 450–61. *See* the material gathered and cited in Hart & Wechsler (6th ed.), supra at 1220–1248.

[1356] Sanders v. United States, 373 U.S. 1 (1963); Fay v. Noia, 372 U.S. 391 (1963); Townsend v. Sain, 372 U.S. 293 (1963). These cases dealt, respectively, with the treatment to be accorded a *habeas* petition in the three principal categories in which they come to the federal court: when a state court has rejected petitioner's claims on the merits, when a state court has refused to hear petitioner's claims on the merits because she has failed properly or timely to present them, or when the petition is a second or later petition raising either old or new, or mixed, claims. Of course, as will be demonstrated *infra*, these cases have now been largely drained of their force.

[1357] Townsend v. Sain, 372 U.S. 293, 310–12 (1963). If the district judge concluded that the *habeas* applicant was afforded a full and fair hearing by the state court resulting in reliable findings, the Court said, he may, and ordinarily should, defer to the state factfinding. Id. at 318. Under the 1966 statutory revision, a *habeas* court must generally presume correct a state court's written findings of fact from a hearing to which the petitioner was a party. A state finding cannot be set aside merely on a preponderance of the evidence and the federal court granting the writ must include in its opinion the reason it found the state findings not fairly supported by the record or the existence of one or more listed factors justifying disregard of the factfinding. Pub. L. 89–711, 80 Stat. 1105, 28 U.S.C. § 2254(d). *See* Sumner v. Mata, 449 U.S. 539 (1981); Sumner v. Mata, 455 U.S. 591 (1982); Marshall v. Lonberger, 459 U.S. 422 (1983); Patton v. Yount, 467 U.S. 1025 (1984); Parker v. Dugger, 498 U.S. 308 (1991); Burden v. Zant, 498 U.S. 433 (1991). The presumption of correctness does not apply to questions of law or to mixed questions of law and fact. Miller v. Fenton, 474 U.S. 104, 110–16 (1985). However, in Wright v. West, 505 U.S. 277 (1992), the Justices argued inconclusively whether deferential review of questions of law or especially of law and fact should be adopted.