rules that limit federal petitions in non-capital cases.[184] Then, in *In re Troy Anthony Davis*,[185] the Court found a death-row convict with a claim of actual innocence to be entitled to a District Court determination of his *habeas* petition.[186]

The Court held in *Penry v. Lynaugh* [187] that its *Teague v. Lane* [188] rule of nonretroactivity applies to capital sentencing challenges. Under *Teague*, new rules of constitutional interpretation announced after a defendant's conviction has become final will not be applied in *habeas* cases unless one of two exceptions applies.[189] The two exceptions—the situations in which "[a] new rule applies retroactively in a collateral proceeding"—are when "(1) the rule is substantive or (2) the rule is a 'watershed rul[e] of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." [190] The first exception has also been stated to be "that a new rule should be applied retroactively if it places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" [191] The second exception has also been stated to be "that a new rule should be applied retroactively if it requires the observance of those procedures that . . . are

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[184] Herrera v. Collins, 506 U.S. 390, 405 (1993) ("we have 'refused to hold that the fact that a death sentence has been imposed requires a different standard of review on federal habeas corpus'") (quoting Murray v. Giarratano, 492 U.S. 1, 9 (1989)).

[185] 557 U.S. ___, No. 08–1443 (2009).

[186] Justice Stevens, in a concurring opinion joined by Justices Ginsburg and Breyer, noted that the fact that seven of the state's key witnesses had recanted their trial testimony, and that several people had implicated the state's principal witness as the shooter, made the case "exceptional." Justices Scalia, joined by Justice Thomas, dissented.

[187] 492 U.S. 302 (1989).

[188] 489 U.S. 288 (1989).

[189] The "new rule" limitation was suggested in a plurality opinion in *Teague*, and a Court majority in *Penry* and later cases adopted it. In Danforth v. Minnesota, 128 S. Ct. 1029, 1033 (2008), the Court held that *Teague* does not "constrain[ ] the authority of state courts to give broader effect to new rules of criminal procedure than is required by that opinion."

[190] Whorton v. Bockting, 549 U.S. 406, 416 (2007). In Saffle v. Parks, 494 U.S. 484, 494, 495 (1990), the Court stated the two exceptions as follows: "The first exception permits the retroactive application of a new rule if the rule places a class of private conduct beyond the power of the State to proscribe . . . or addresses a 'substantive categorical guarante[e] accorded by the Constitution,' such as a rule 'prohibiting a certain category of punishment for a class of defendants because of their status or offense.' . . . The second exception is for 'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding."

[191] Teague v. Lane, 489 U.S. at 311, quoting Mackey v. United States, 401 U.S. 667, 692 (1971). "*Teague* by its terms applies only to procedural rules." Bousley v. United States, 523 U.S. 614, 620 (1998). "New *substantive* rules generally apply retroactively . . . because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose on him." Schriro v. Summerlin, 542 U.S. 348, 351, 352 (2004) (internal quotation marks omitted) (the holding of Ring v. Arizona, that "a sentenc-