equitable principles; thus, the Court time and again underscores that the federal courts have plenary *power* under the statute to implement it to the fullest while the Court's decisions may deny them the discretion to exercise the power.[1371]

Change has occurred in several respects in regard to access to and the scope of the writ. It is sufficient to say that the more recent rulings have eviscerated the content of the 1963 trilogy and that *Brown v. Allen* itself is threatened with extinction.

First, the Court in search and seizure cases has returned to the standard of *Frank v. Mangum*, holding that where the state courts afford a criminal defendant the opportunity for a full and adequate hearing on his Fourth Amendment claim, his only avenue of relief in the federal courts is to petition the Supreme Court for review and that he cannot raise those claims again in a *habeas* petition.[1372] Grounded as it is in the Court's dissatisfaction with the exclusionary rule, the case has not since been extended to other constitutional grounds,[1373] but the rationale of the opinion suggests the likelihood of reaching other exclusion questions.[1374]

Second, the Court has formulated a "new rule" exception to *habeas* cognizance. That is, subject to two exceptions,[1375] a case decided after a petitioner's conviction and sentence became final may

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[1371] 433 U.S. at 83; Stone v. Powell, 428 U.S. 465, 495 n.37 (1976); Francis v. Henderson, 425 U.S. 536, 538 (1976); Fay v. Noia, 372 U.S. 391, 438 (1963). The dichotomy between power and discretion goes all the way back to the case imposing the rule of exhaustion of state remedies. *Ex parte* Royall, 117 U.S. 241, 251 (1886).

[1372] Stone v. Powell, 428 U.S. 465 (1976). The decision is based as much on the Court's dissatisfaction with the exclusionary rule as with its desire to curb *habeas*. Holding that the purpose of the exclusionary rule is to deter unconstitutional searches and seizures rather than to redress individual injuries, the Court reasoned that no deterrent purpose was advanced by applying the rule on *habeas*, except to encourage state courts to give claimants a full and fair hearing. Id. at 493–95.

[1373] *Stone* does not apply to a Sixth Amendment claim of ineffective assistance of counsel in litigating a search and seizure claim. Kimmelman v. Morrison, 477 U.S. 365, 382–383 (1986). *See also* Rose v. Mitchell, 443 U.S. 545 (1979) (racial discrimination in selection of grand jury foreman); Jackson v. Virginia, 443 U.S. 307 (1979) (insufficient evidence to satisfy reasonable doubt standard).

[1374] Issues of admissibility of confessions (*Miranda* violations) and eyewitness identifications are obvious candidates. *See, e.g.*, Duckworth v. Eagan, 492 U.S. 195, 205 (1989) (Justice O'Connor concurring); Brewer v. Williams, 430 U.S. 387, 413–14 (1977) (Justice Powell concurring), and id. at 415 (Chief Justice Burger dissenting); Wainwright v. Sykes, 433 U.S. 72, 87 n.11 (1977) (reserving *Miranda*).

[1375] The first exception permits the retroactive application on *habeas* 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 guarantee accorded by the Constitution. The rule must, to say it differently, either decriminalize a class of conduct or prohibit the imposition of a particular punishment on a particular class of persons. The second exception would permit the application of "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding. Saffle v. Parks, 494 U.S. 484, 494–95 (1990) (citing cases); Sawyer v. Smith, 497 U.S. 227, 241–45 (1990).