court, either at the time of the trial or in a collateral proceeding."[1358] To "particularize" this general test, the Court went on to hold that an evidentiary hearing must take place when (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact finding procedure employed was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state hearing; or (6) for any reason it appears that the state trier of fact did not afford the *habeas* applicant a full and fair fact hearing.[1359]

Second, *Sanders v. United States*[1360] dealt with two interrelated questions: the effects to be given successive petitions for the writ, when the second or subsequent application presented grounds previously asserted or grounds not theretofore raised. Emphasizing that "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged,"[1361] the Court set out generous standards for consideration of successive claims. As to previously asserted grounds, the Court held that controlling weight may be given to a prior denial of relief if (1) the same ground presented was determined adversely to the applicant before, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application, so that the *habeas* court might but was not obligated to deny relief without considering the

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[1358] Townsend v. Sain, 372 U.S. 293, 312 (1963). The Court was unanimous on the statement, but it divided 5 to 4 on application.

[1359] 372 U.S. at 313–18. Congress in 1966 codified the factors in somewhat different form but essentially codified *Townsend*. Pub. L. 89–711, 80 Stat. 1105, 28 U.S.C. § 2254. The Court believes that Congress neither codified *Townsend* nor precluded the Court from altering the *Townsend* standards. Keeney v. Tamayo-Reyes, 504 U.S. 1, 10, n.5 (1992). *Compare* id. at 20–21 (Justice O'Connor dissenting). *Keeney* formally overruled part of *Townsend*. Id. at 5.

[1360] 373 U.S. 1 (1963). *Sanders* was a § 2255 case, a federal prisoner petitioning for postconviction relief. The Court applied the same liberal rules with respect to federal prisoners as it did for state. *See* Kaufman v. United States, 394 U.S. 217 (1969). As such, the case has also been eroded by subsequent cases. *E.g.*, Davis v. United States, 411 U.S. 233 (1973); United States v. Frady, 456 U.S. 152 (1982).

[1361] 373 U.S. at 8. The statement accorded with the established view that principles of *res judicata* were not applicable in *habeas*. *E.g.*, Price v. Johnston, 334 U.S. 266 (1948); Wong Doo v. United States, 265 U.S. 239 (1924); Salinger v. Loisel, 265 U.S. 224 (1924). Congress in 1948 had appeared to adopt some limited version of *res judicata* for federal prisoners but not for state prisoners, Act of June 25, 1948, 62 Stat. 965, 967, 28 U.S.C. §§ 2244, 2255, but the Court in *Sanders* held the same standards applicable and denied the statute changed existing caselaw. 373 U.S. at 11–14. *But see* id. at 27–28 (Justice Harlan dissenting).