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STONE, WARDEN *v.* POWELL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 74–1055. Argued February 24, 1976—Decided July 6, 1976*

[redacted]

*Together with No. 74–1222, *Wolff, Warden* v. *Rice,* on certiorari to the United States Court of Appeals for the Eighth Circuit.

[redacted]

465 [redacted]

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, BLACKMUN, REHNQUIST, and STEVENS, JJ., joined. BURGER, C. J., filed a concurring opinion, *post,* p. 496. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post,* p. 502. WHITE, J., filed a dissenting opinion, *post,* p. 536.

Robert R. Granucci, Deputy Attorney General of California, argued the cause for petitioner in No. 74–1055. With him on the briefs were *Evelle J. Younger,* Attorney General, *Jack R. Winkler,* Chief Assistant Attorney General, *Edward P. O'Brien,* Assistant Attorney General, and *Clifford K. Thompson, Jr., Thomas A. Brady,* and *Ronald E. Niver,* Deputy Attorneys General. *Melvin Kent Kammerlohr,* Assistant Attorney General of Nebraska, argued the cause for petitioner in No. 74–1222. With him on the brief was *Paul L. Douglas,* Attorney General.

Robert W. Peterson, by appointment of the Court, 423 U. S. 817, argued the cause and filed a brief for respondent in No. 74–1055. *William C. Cunningham* argued the cause for respondent in No. 74–1222. With him on the brief was *J. Patrick Green.*†

† Briefs of *amici curiae* urging reversal in No. 74–1222 were filed by *Bruce E. Babbitt,* Attorney General, *Shirley H. Frondorf,* and *Frank T. Galati,* Assistant Attorneys General, and *William J. Schafer*

MR. JUSTICE POWELL delivered the opinion of the Court.

Respondents in these cases were convicted of criminal offenses in state courts, and their convictions were affirmed on appeal. The prosecution in each case relied upon evidence obtained by searches and seizures alleged by respondents to have been unlawful. Each respondent subsequently sought relief in a Federal District Court by filing a petition for a writ of federal habeas corpus under

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III, for the State of Arizona; by *Arthur K. Bolton*, Attorney General, *Robert S. Stubbs II*, Chief Deputy Attorney General, *Richard L. Chambers*, Deputy Attorney General, and *G. Thomas Davis*, Senior Assistant Attorney General, for the State of Georgia; by *Theodore L. Sendak*, Attorney General, and *Donald P. Bogard*, Assistant Attorney General, of Indiana, and *Richard C. Turner*, Attorney General of Iowa, for the States of Indiana and Iowa; and by *Vernon B. Romney*, Attorney General, and *William W. Barrett*, Assistant Attorney General, for the State of Utah.

John J. Cleary filed a brief for the California Public Defenders Assn. as *amicus curiae* urging affirmance in No. 74–1055. Briefs of *amici curiae* urging affirmance in No. 74–1222 were filed by *Mary M. Kaufman* for the National Alliance Against Racist and Political Repression; by *Henry W. McGee, Jr.*, for the National Conference of Black Lawyers; by *Jonathan M. Hyman* for the National Lawyers' Guild et al.; and by *Theodore A. Gottfried* and *Robert E. Davison* for the National Legal Aid and Defender Assn.

Leon Friedman, *Melvin L. Wulf*, and *Joel M. Gora* filed a brief for the American Civil Liberties Union as *amicus curiae* in both cases. Briefs of *amici curiae* in No. 74–1222 were filed by *Robert L. Shevin*, Attorney General, and *Stephen R. Koons*, Assistant Attorney General, for the State of Florida; by *William F. Hyland*, Attorney General, *David S. Baime*, *John DeCicco*, and *Daniel Louis Grossman*, Deputy Attorneys General, for the State of New Jersey; by *Louis J. Lefkowitz*, Attorney General, *Samuel A. Hirshowitz*, First Assistant Attorney General, and *Lillian Z. Cohen*, Assistant Attorney General, for the State of New York; and by *Frank Carrington*, *Fred E. Inbau*, *Wayne W. Schmidt*, *James R. Thompson*, and *William K. Lambie* for Americans for Effective Law Enforcement, Inc., et al.

28 U. S. C. § 2254. The question presented is whether a federal court should consider, in ruling on a petition for habeas corpus relief filed by a state prisoner, a claim that evidence obtained by an unconstitutional search or seizure was introduced at his trial, when he has previously been afforded an opportunity for full and fair litigation of his claim in the state courts. The issue is of considerable importance to the administration of criminal justice.

I

We summarize first the relevant facts and procedural history of these cases.

A

Respondent Lloyd Powell was convicted of murder in June 1968 after trial in a California state court. At about midnight on February 17, 1968, he and three companions entered the Bonanza Liquor Store in San Bernardino, Cal., where Powell became involved in an altercation with Gerald Parsons, the store manager, over the theft of a bottle of wine. In the scuffling that followed Powell shot and killed Parsons' wife. Ten hours later an officer of the Henderson, Nev., Police Department arrested Powell for violation of the Henderson vagrancy ordinance,[1] and in the search incident to the arrest discovered a .38-caliber revolver with six expended cartridges in the cylinder.

Powell was extradited to California and convicted of

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[1] The ordinance provides:

"Every person is a vagrant who:

"[1] Loiters or wanders upon the streets or from place to place without apparent reason or business and [2] who refuses to identify himself and to account for his presence when asked by a police officer to do so [3] if surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification."

second-degree murder in the Superior Court of San Bernardino County. Parsons and Powell's accomplices at the liquor store testified against him. A criminologist testified that the revolver found on Powell was the gun that killed Parsons' wife. The trial court rejected Powell's contention that testimony by the Henderson police officer as to the search and the discovery of the revolver should have been excluded because the vagrancy ordinance was unconstitutional. In October 1969, the conviction was affirmed by a California District Court of Appeal. Although the issue was duly presented, that court found it unnecessary to pass upon the legality of the arrest and search because it concluded that the error, if any, in admitting the testimony of the Henderson officer was harmless beyond a reasonable doubt under *Chapman* v. *California,* 386 U. S. 18 (1967). The Supreme Court of California denied Powell's petition for habeas corpus relief.

In August 1971 Powell filed an amended petition for a writ of federal habeas corpus under 28 U. S. C. § 2254 in the United States District Court for the Northern District of California, contending that the testimony concerning the .38-caliber revolver should have been excluded as the fruit of an illegal search. He argued that his arrest had been unlawful because the Henderson vagrancy ordinance was unconstitutionally vague, and that the arresting officer lacked probable cause to believe that he was violating it. The District Court concluded that the arresting officer had probable cause and held that even if the vagrancy ordinance was unconstitutional, the deterrent purpose of the exclusionary rule does not require that it be applied to bar admission of the fruits of a search incident to an otherwise valid arrest. In the alternative, that court agreed with the California District Court of Appeal that the admission of the evidence con-

cerning Powell's arrest, if error, was harmless beyond a reasonable doubt.

In December 1974, the Court of Appeals for the Ninth Circuit reversed. 507 F. 2d 93. The court concluded that the vagrancy ordinance was unconstitutionally vague,[2] that Powell's arrest was therefore illegal, and that although exclusion of the evidence would serve no deterrent purpose with regard to police officers who were enforcing statutes in good faith, exclusion would serve the public interest by deterring legislators from enacting unconstitutional statutes. *Id.*, at 98. After an independent review of the evidence the court concluded that the admission of the evidence was not harmless error since it supported the testimony of Parsons and Powell's accomplices. *Id.*, at 99.

B

Respondent David Rice was convicted of murder in April 1971 after trial in a Nebraska state court. At 2:05 a. m. on August 17, 1970, Omaha police received a telephone call that a woman had been heard screaming at 2867 Ohio Street. As one of the officers sent to that address examined a suitcase lying in the doorway, it exploded, killing him instantly. By August 22 the investigation of the murder centered on Duane Peak, a 15-year-old member of the National Committee to Com-

[2] In support of the vagueness holding the court relied principally on *Papachristou* v. *Jacksonville,* 405 U. S. 156 (1972), where we invalidated a city ordinance in part defining vagrants as "persons wandering or strolling around from place to place without any lawful purpose or object . . . ." *Id.*, at 156–157, n. 1. Noting the similarity between the first element of the Henderson ordinance, see n. 1, *supra,* and the Jacksonville ordinance, it concluded that the second and third elements of the Henderson ordinance were not sufficiently specific to cure its overall vagueness. 507 F. 2d, at 95–97. Petitioner Stone challenges these conclusions, but in view of our disposition of the case we need not consider this issue.

bat Fascism (NCCF), and that afternoon a warrant was issued for Peak's arrest. The investigation also focused on other known members of the NCCF, including Rice, some of whom were believed to be planning to kill Peak before he could incriminate them. In their search for Peak, the police went to Rice's home at 10:30 that night and found lights and a television on, but there was no response to their repeated knocking. While some officers remained to watch the premises, a warrant was obtained to search for explosives and illegal weapons believed to be in Rice's possession. Peak was not in the house, but upon entering the police discovered, in plain view, dynamite, blasting caps, and other materials useful in the construction of explosive devices. Peak subsequently was arrested, and on August 27, Rice voluntarily surrendered. The clothes Rice was wearing at that time were subjected to chemical analysis, disclosing dynamite particles.

Rice was tried for first-degree murder in the District Court of Douglas County. At trial Peak admitted planting the suitcase and making the telephone call, and implicated Rice in the bombing plot. As corroborative evidence the State introduced items seized during the search, as well as the results of the chemical analysis of Rice's clothing. The court denied Rice's motion to suppress this evidence. On appeal the Supreme Court of Nebraska affirmed the conviction, holding that the search of Rice's home had been pursuant to a valid search warrant. *State* v. *Rice,* 188 Neb. 728, 199 N. W. 2d 480 (1972).

In September 1972 Rice filed a petition for a writ of habeas corpus in the United States District Court for Nebraska. Rice's sole contention was that his incarceration was unlawful because the evidence underlying his conviction had been discovered as the result of an illegal

search of his home. The District Court concluded that the search warrant was invalid, as the supporting affidavit was defective under *Spinelli* v. *United States,* 393 U. S. 410 (1969), and *Aguilar* v. *Texas,* 378 U. S. 108 (1964). 388 F. Supp. 185, 190–194 (1974).[3] The court also rejected the State's contention that even if the warrant was invalid the search was justified because of the valid arrest warrant for Peak and because of the exigent circumstances of the situation—danger to Peak and search for bombs and explosives believed in possession of the NCCF. The court reasoned that the arrest warrant did not justify the entry as the police lacked probable cause to believe Peak was in the house, and further concluded that the circumstances were not sufficiently exigent to justify an immediate warrantless

[3] The sole evidence presented to the magistrate was the affidavit in support of the warrant application. It indicated that the police believed explosives and illegal weapons were present in Rice's home because (1) Rice was an official of the NCCF, (2) a violent killing of an officer had occurred and it appeared that the NCCF was involved, and (3) police had received information in the past that Rice possessed weapons and explosives, which he had said should be used against the police. See 388 F. Supp., at 189 n. 1. In concluding that there existed probable cause for issuance of the warrant, although the Nebraska Supreme Court found the affidavit alone sufficient, it also referred to information contained in testimony adduced at the suppression hearing but not included in the affidavit. 188 Neb. 728, 738–739, 199 N. W. 2d 480, 487–488. See also *id.,* at 754, 199 N. W. 2d, at 495 (concurring opinion). The District Court limited its probable-cause inquiry to the face of the affidavit, see *Spinelli* v. *United States,* 393 U. S., at 413 n. 3; *Aguilar* v. *Texas,* 378 U. S., at 109 n. 1, and concluded probable cause was lacking. Petitioner Wolff contends that police should be permitted to supplement the information contained in an affidavit for a search warrant at the hearing on a motion to suppress, a contention that we have several times rejected, see, *e. g., Whiteley* v. *Warden,* 401 U. S. 560, 565 n. 8 (1971); *Aguilar* v. *Texas, supra,* at 109 n. 1, and need not reach again here.

search. *Id.*, at 194–202.[4] The Court of Appeals for the Eighth Circuit affirmed, substantially for the reasons stated by the District Court. 513 F. 2d 1280 (1975).

Petitioners Stone and Wolff, the wardens of the respective state prisons where Powell and Rice are incarcerated, petitioned for review of these decisions, raising questions concerning the scope of federal habeas corpus and the role of the exclusionary rule upon collateral review of cases involving Fourth Amendment claims. We granted their petitions for certiorari. 422 U. S. 1055 (1975).[5] We now reverse.

II

The authority of federal courts to issue the writ of habeas corpus *ad subjiciendum* [6] was included in the first

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[4] The District Court further held that the evidence of dynamite particles found on Rice's clothing should have been suppressed as the tainted fruit of an arrest warrant that would not have been issued but for the unlawful search of his home. 388 F. Supp., at 202–207. See *Wong Sun* v. *United States,* 371 U. S. 471 (1963); *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385 (1920).

[5] In the orders granting certiorari in these cases we requested that counsel in *Stone* v. *Powell* and *Wolff* v. *Rice* respectively address the questions:

"Whether, in light of the fact that the District Court found that the Henderson, Nev., police officer had probable cause to arrest respondent for violation of an ordinance which at the time of the arrest had not been authoritatively determined to be unconstitutional, respondent's claim that the gun discovered as a result of a search incident to that arrest violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution is one cognizable under 28 U. S. C. § 2254.

"Whether the constitutional validity of the entry and search of respondent's premises by Omaha police officers under the circumstances of this case is a question properly cognizable under 28 U. S. C. § 2254."

[6] It is now well established that the phrase "habeas corpus" used alone refers to the common-law writ of habeas corpus *ad subjicien-*

grant of federal-court jurisdiction, made by the Judiciary Act of 1789, c. 20, § 14, 1 Stat. 81, with the limitation that the writ extend only to prisoners held in custody by the United States. The original statutory authorization did not define the substantive reach of the writ. It merely stated that the courts of the United States "shall have power to issue writs of . . . *habeas corpus* . . . ." *Ibid.* The courts defined the scope of the writ in accordance with the common law and limited it to an inquiry as to the jurisdiction of the sentencing tribunal. See, *e. g.*, *Ex parte Watkins,* 3 Pet. 193 (1830) (Marshall, C. J.).

In 1867 the writ was extended to state prisoners. Act of Feb. 5, 1867, c. 28, § 1, 14 Stat. 385. Under the 1867 Act federal courts were authorized to give relief in "all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States . . . ." But the limitation of federal habeas corpus jurisdiction to consideration of the jurisdiction of the sentencing court persisted. See, *e. g.*, *In re Wood,* 140 U. S. 278 (1891); *In re Rahrer,* 140 U. S. 545 (1891); *Andrews* v. *Swartz,* 156 U. S. 272 (1895); *Bergemann* v. *Backer,* 157 U. S. 655 (1895); *Pettibone* v. *Nichols,* 203 U. S. 192 (1906). And, although the concept of "jurisdiction" was subjected to considerable strain as the substantive scope of the writ was expanded,[7] this

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dum, known as the "Great Writ." *Ex parte Bollman,* 4 Cranch 75, 95 (1807) (Marshall, C. J.).

[7] Prior to 1889 there was, in practical effect, no appellate review in federal criminal cases. The possibility of Supreme Court review on certificate of division of opinion in the circuit court was remote because of the practice of single district judges' holding circuit court. See P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart & Wechsler's The Federal Courts and the Federal System 1539–1540 (2d ed. 1973); F. Frankfurter & J. Landis, The Business of the Supreme Court 31–32, 79–80, and n. 107 (1927). Pressure naturally developed for expansion of the scope of habeas corpus to reach otherwise

expansion was limited to only a few classes of cases[8] until *Frank* v. *Mangum,* 237 U. S. 309, in 1915. In *Frank,* the prisoner had claimed in the state courts that the proceedings which resulted in his conviction for murder had been dominated by a mob. After the State Supreme Court rejected his contentions, Frank unsuccessfully sought habeas corpus relief in the Federal District Court. This Court affirmed the denial of relief because Frank's federal claims had been considered by a competent and unbiased state tribunal. The Court recognized, however, that if a habeas corpus court found that the State had failed to provide adequate "corrective process" for the full and fair litigation of federal claims, whether or not "jurisdictional," the court could inquire into the merits to determine whether a detention was lawful. *Id.,* at 333–336.

In the landmark decision in *Brown* v. *Allen,* 344 U. S. 443, 482–487 (1953), the scope of the writ was expanded still further.[9] In that case and its companion case, *Daniels* v. *Allen,* state prisoners applied for federal habeas corpus relief claiming that the trial courts had erred

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unreviewable decisions involving fundamental rights. See *Ex parte Siebold,* 100 U. S. 371, 376–377 (1880); Bator, Finality in Criminal Law and Federal Habeas Corpus For State Prisoners, 76 Harv. L. Rev. 441, 473, and n. 75 (1963).

[8] The expansion occurred primarily with regard to (i) convictions based on assertedly unconstitutional statutes, *e. g., Ex parte Siebold, supra,* or (ii) detentions based upon an allegedly illegal sentence, *e. g., Ex parte Lange,* 18 Wall. 163 (1874). See Bator, *supra,* n. 7, at 465–474.

[9] There has been disagreement among scholars as to whether the result in *Brown* v. *Allen* was foreshadowed by the Court's decision in *Moore* v. *Dempsey,* 261 U. S. 86 (1923). Compare Hart, Foreword: The Time Chart of the Justices, 73 Harv. L. Rev. 84, 105 (1959); Reitz, Federal Habeas Corpus; Impact of an Abortive State Proceeding, 74 Harv. L. Rev. 1315, 1328–1329 (1961), with Bator, *supra,* n. 7, at 488–491. See also *Fay* v. *Noia,* 372 U. S. 391, 421, and n. 30 (1963); *id.,* at 457–460 (Harlan, J., dissenting).

in failing to quash their indictments due to alleged discrimination in the selection of grand jurors and in ruling certain confessions admissible. In *Brown,* the highest court of the State had rejected these claims on direct appeal, *State* v. *Brown,* 233 N. C. 202, 63 S. E. 2d 99, and this Court had denied certiorari, 341 U. S. 943 (1951). Despite the apparent adequacy of the state corrective process, the Court reviewed the denial of the writ of habeas corpus and held that Brown was entitled to a full reconsideration of these constitutional claims, including, if appropriate, a hearing in the Federal District Court. In *Daniels,* however, the State Supreme Court on direct review had refused to consider the appeal because the papers were filed out of time. This Court held that since the state-court judgment rested on a reasonable application of the State's legitimate procedural rules, a ground that would have barred direct review of his federal claims by this Court, the District Court lacked authority to grant habeas corpus relief. See 344 U. S., at 458, 486.

This final barrier to broad collateral re-examination of state criminal convictions in federal habeas corpus proceedings was removed in *Fay* v. *Noia,* 372 U. S. 391 (1963).[10] Noia and two codefendants had been convicted

[10] Despite the expansion of the scope of the writ, there has been no change in the established rule with respect to nonconstitutional claims. The writ of habeas corpus and its federal counterpart, 28 U. S. C. § 2255, "will not be allowed to do service for an appeal." *Sunal* v. *Large,* 332 U. S. 174, 178 (1947). For this reason, nonconstitutional claims that could have been raised on appeal, but were not, may not be asserted in collateral proceedings. *Id.,* at 178–179; *Davis* v. *United States,* 417 U. S. 333, 345–346, and n. 15 (1974). Even those nonconstitutional claims that could not have been asserted on direct appeal can be raised on collateral review only if the alleged error constituted " 'a fundamental defect which inherently results in a complete miscarriage of justice,' " *id.,* at 346, quoting *Hill* v. *United States,* 368 U. S. 424, 428 (1962).

of felony murder. The sole evidence against each defendant was a signed confession. Noia's codefendants, but not Noia himself, appealed their convictions. Although their appeals were unsuccessful, in subsequent state proceedings they were able to establish that their confessions had been coerced and their convictions therefore procured in violation of the Constitution. In a subsequent federal habeas corpus proceeding, it was stipulated that Noia's confession also had been coerced, but the District Court followed *Daniels* in holding that Noia's failure to appeal barred habeas corpus review. See *United States* v. *Fay,* 183 F. Supp. 222, 225 (SDNY 1960). The Court of Appeals reversed, ordering that Noia's conviction be set aside and that he be released from custody or that a new trial be granted. This Court affirmed the grant of the writ, narrowly restricting the circumstances in which a federal court may refuse to consider the merits of federal constitutional claims.[11]

During the period in which the substantive scope of the writ was expanded, the Court did not consider whether exceptions to full review might exist with respect

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[11] In construing broadly the power of a federal district court to consider constitutional claims presented in a petition for writ of habeas corpus, the Court in *Fay* also reaffirmed the equitable nature of the writ, noting that "[d]iscretion is implicit in the statutory command that the judge . . . 'dispose of the matter as law and justice require.' 28 U. S. C. § 2243." 372 U. S., at 438. More recently, in *Francis* v. *Henderson,* 425 U. S. 536 (1976), holding that a state prisoner who failed to make a timely challenge to the composition of the grand jury that indicted him cannot bring such a challenge in a post-conviction federal habeas corpus proceeding absent a claim of actual prejudice, we emphasized:

"This Court has long recognized that in some circumstances considerations of comity and concerns for the orderly administration of criminal justice require a federal court to forgo the exercise of its habeas corpus power. See *Fay* v. *Noia,* 372 U. S. 391, 425–426." *Id.,* at 539.

to particular categories of constitutional claims. Prior to the Court's decision in *Kaufman* v. *United States,* 394 U. S. 217 (1969), however, a substantial majority of the Federal Courts of Appeals had concluded that collateral review of search-and-seizure claims was inappropriate on motions filed by federal prisoners under 28 U. S. C. § 2255, the modern postconviction procedure available to federal prisoners in lieu of habeas corpus.[12] The primary rationale advanced in support of those decisions was that Fourth Amendment violations are different in kind from denials of Fifth or Sixth Amendment rights in that claims of illegal search and seizure do not "impugn the integrity of the fact-finding process or challenge evidence as inherently unreliable; rather, the exclusion of illegally seized evidence is simply a prophylactic device intended generally to deter Fourth Amendment violations by law enforcement officers." 394 U. S., at 224. See *Thornton* v. *United States,* 125 U. S. App. D. C. 114, 368 F. 2d 822 (1966).

Kaufman rejected this rationale and held that search-and-seizure claims are cognizable in § 2255 proceedings. The Court noted that "the federal habeas remedy extends to state prisoners alleging that unconstitutionally obtained evidence was admitted against them at trial," 394 U. S., at 225, citing, *e. g., Mancusi* v. *DeForte,* 392

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[12] Compare, *e. g., United States* v. *Re,* 372 F. 2d 641 (CA2), cert. denied, 388 U. S. 912 (1967); *United States* v. *Jenkins,* 281 F. 2d 193 (CA3 1960); *Eisner* v. *United States,* 351 F. 2d 55 (CA6 1965); *De Welles* v. *United States,* 372 F. 2d 67 (CA7), cert denied, 388 U. S. 919 (1967); *Williams* v. *United States,* 307 F. 2d 366 (CA9 1962); *Armstead* v. *United States,* 318 F. 2d 725 (CA5 1963), with, *e. g., United States* v. *Sutton,* 321 F. 2d 221 (CA4 1963); *Gaitan* v. *United States,* 317 F. 2d 494 (CA10 1963). See also *Thornton* v. *United States,* 125 U. S. App. D. C. 114, 368 F. 2d 822 (1966) (search-and-seizure claims not cognizable under § 2255 absent special circumstances).

U. S. 364 (1968); *Carafas* v. *LaVallee,* 391 U. S. 234 (1968), and concluded, as a matter of statutory construction, that there was no basis for restricting "access by federal prisoners with illegal search-and-seizure claims to federal collateral remedies, while placing no similar restriction on access by state prisoners," 394 U. S., at 226. Although in recent years the view has been expressed that the Court should re-examine the substantive scope of federal habeas jurisdiction and limit collateral review of search-and-seizure claims "solely to the question of whether the petitioner was provided a fair opportunity to raise and have adjudicated the question in state courts," *Schneckloth* v. *Bustamonte,* 412 U. S. 218, 250 (1973) (POWELL, J., concurring),[13] the Court, without discussion or consideration of the issue, has continued to accept jurisdiction in cases raising such claims. See *Lefkowitz* v. *Newsome,* 420 U. S. 283 (1975); *Cady* v. *Dombrowski,* 413 U. S. 433 (1973); *Cardwell* v. *Lewis,* 417 U. S. 583 (1974) (plurality opinion).[14]

The discussion in *Kaufman* of the scope of federal habeas corpus rests on the view that the effectuation of the Fourth Amendment, as applied to the States through the Fourteenth Amendment, requires the granting of habeas corpus relief when a prisoner has been con-

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[13] See, *e. g.,* Friendly, Is Innocence Irrelevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142 (1970).

[14] In *Newsome* the Court focused on the issue whether a state defendant's plea of guilty waives federal habeas corpus review where state law does not foreclose review of the plea on direct appeal, and did not consider the substantive scope of the writ. See 420 U. S., at 287 n. 4. Similarly, in *Cardwell* and *Cady* the question considered here was not presented in the petition for certiorari, and in neither case was relief granted on the basis of a search-and-seizure claim. In *Cardwell* the plurality expressly noted that it was not addressing the issue of the substantive scope of the writ. See 417 U. S., at 596, and n. 12.

victed in state court on the basis of evidence obtained in an illegal search or seizure since those Amendments were held in *Mapp* v. *Ohio,* 367 U. S. 643 (1961), to require exclusion of such evidence at trial and reversal of conviction upon direct review.[15] Until these cases we have not had occasion fully to consider the validity of this view. See, *e. g., Schneckloth* v. *Bustamonte, supra,* at 249 n. 38; *Cardwell* v. *Lewis, supra,* at 596, and n. 12. Upon examination, we conclude, in light of the nature and purpose of the Fourth Amendment exclusionary rule, that this view is unjustified.[16] We hold, therefore, that

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[15] As Mr. Justice Black commented in dissent, 394 U. S., at 231, 239, the *Kaufman* majority made no effort to justify its result in light of the long-recognized deterrent purpose of the exclusionary rule. Instead, the Court relied on a series of prior cases as implicitly establishing the proposition that search-and-seizure claims are cognizable in federal habeas corpus proceedings. See *Mancusi* v. *DeForte,* 392 U. S. 364 (1968); *Carafas* v. *LaVallee,* 391 U. S. 234 (1968); *Warden* v. *Hayden,* 387 U. S. 294 (1967). But only in *Mancusi* did this Court order habeas relief on the basis of a search-and-seizure claim, and in that case, as well as in *Warden,* the issue of the substantive scope of the writ was not presented to the Court in the petition for writ of certiorari. Moreover, of the other "numerous occasions" cited by MR. JUSTICE BRENNAN's dissent, *post,* at 518–519, in which the Court has accepted jurisdiction over collateral attacks by state prisoners raising Fourth Amendment claims, in only one case—*Whiteley* v. *Warden,* 401 U. S. 560 (1971)—was relief granted on that basis. And in *Whiteley,* as in *Mancusi,* the issue of the substantive scope of the writ was not presented in the petition for certiorari. As emphasized by Mr. Justice Black, only in the most exceptional cases will we consider issues not raised in the petition. 394 U. S., at 239, and n. 7.

[16] The issue in *Kaufman* was the scope of § 2255. Our decision today rejects the dictum in *Kaufman* concerning the applicability of the exclusionary rule in federal habeas corpus review of state-court decisions pursuant to § 2254. To the extent the application of the exclusionary rule in *Kaufman* did not rely upon the supervisory role of this Court over the lower federal courts, cf. *Elkins* v.

where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.[17]

III

The Fourth Amendment assures the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment was primarily a reaction to the evils associated with the use of the general warrant in England and the writs of assistance in the Colonies, *Stanford* v. *Texas,* 379 U. S. 476, 481–485 (1965); *Frank* v. *Maryland,* 359 U. S. 360, 363–365 (1959), and was intended to protect the "sanctity of a man's home and the privacies of life," *Boyd* v. *United States,* 116 U. S. 616, 630 (1886), from searches under unchecked general authority.[18]

The exclusionary rule was a judicially created means of effectuating the rights secured by the Fourth Amendment. Prior to the Court's decisions in *Weeks* v. *United States,* 232 U. S. 383 (1914), and *Gouled* v. *United States,* 255 U. S. 298 (1921), there existed no barrier to the introduction in criminal trials of evidence obtained in violation of the Amendment. See *Adams* v. *New York,*

United States, 364 U. S. 206 (1960), see *infra,* at 484, the rationale for its application in that context is also rejected.

[17] We find it unnecessary to consider the other issues concerning the exclusionary rule, or the statutory scope of the habeas corpus statute, raised by the parties. These include, principally, whether in view of the purpose of the rule, it should be applied on a *per se* basis without regard to the nature of the constitutional claim or the circumstances of the police action.

[18] See generally J. Landynski, Search and Seizure and the Supreme Court (1966); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution (1937).

192 U. S. 585 (1904).[19] In *Weeks* the Court held that the defendant could petition before trial for the return of property secured through an illegal search or seizure conducted by federal authorities. In *Gouled* the Court held broadly that such evidence could not be introduced in a federal prosecution. See *Warden* v. *Hayden,* 387 U. S. 294, 304–305 (1967). See also *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385 (1920) (fruits of illegally seized evidence). Thirty-five years after *Weeks* the Court held in *Wolf* v. *Colorado,* 338 U. S. 25 (1949), that the right to be free from arbitrary intrusion by the police that is protected by the Fourth Amendment is "implicit in 'the concept of ordered liberty' and as such enforceable against the States through the [Fourteenth Amendment] Due Process Clause." *Id.,* at 27–28. The Court concluded, however, that the *Weeks* exclusionary rule would not be imposed upon the States as "an essential ingredient of [that] right." 338 U. S., at 29. The full force of *Wolf* was eroded in subsequent decisions, see *Elkins* v. *United States,* 364 U. S. 206 (1960); *Rea* v. *United States,* 350 U. S. 214 (1956), and a little more than a decade later the exclusionary rule was held applicable to the States in *Mapp* v. *Ohio,* 367 U. S. 643 (1961).

[19] The roots of the *Weeks* decision lay in an early decision, *Boyd* v. *United States,* 116 U. S. 616 (1886), where the Court held that the compulsory production of a person's private books and papers for introduction against him at trial violated the Fourth and Fifth Amendments. *Boyd,* however, had been severely limited in *Adams* v. *New York,* where the Court, emphasizing that the "law held unconstitutional [in *Boyd*] virtually compelled the defendant to furnish testimony against himself," 192 U. S., at 598, adhered to the common-law rule that a trial court must not inquire, on Fourth Amendment grounds, into the method by which otherwise competent evidence was acquired. See, *e. g., Commonwealth* v. *Dana,* 43 Mass. 329 (1841).

Decisions prior to *Mapp* advanced two principal reasons for application of the rule in federal trials. The Court in *Elkins*, for example, in the context of its special supervisory role over the lower federal courts, referred to the "imperative of judicial integrity," suggesting that exclusion of illegally seized evidence prevents contamination of the judicial process. 364 U. S., at 222.[20] But even in that context a more pragmatic ground was emphasized:

> "The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Id.*, at 217.

The *Mapp* majority justified the application of the rule to the States on several grounds,[21] but relied principally upon the belief that exclusion would deter future unlawful police conduct. 367 U. S., at 658.

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[20] See *Terry* v. *Ohio*, 392 U. S. 1, 12–13 (1968); *Weeks* v. *United States*, 232 U. S. 383, 391–392, 394 (1914); *Olmstead* v. *United States*, 277 U. S. 438, 470 (1928) (Holmes, J., dissenting); *id.*, at 484 (Brandeis, J., dissenting).

[21] See 367 U. S., at 656 (prevention of introduction of evidence where introduction is "tantamount" to a coerced confession); *id.*, at 658 (deterrence of Fourth Amendment violations); *id.*, at 659 (preservation of judicial integrity).

Only four Justices adopted the view that the Fourth Amendment itself requires the exclusion of unconstitutionally seized evidence in state criminal trials. See *id.*, at 656; *id.*, at 666 (Douglas, J., concurring). Mr. Justice Black adhered to his view that the Fourth Amendment, standing alone, was not sufficient, see *Wolf* v. *Colorado*, 338 U. S. 25, 39 (1949) (concurring opinion), but concluded that, when the Fourth Amendment is considered in conjunction with the Fifth Amendment ban against compelled self-incrimination, a constitutional basis emerges for requiring exclusion. 367 U. S., at 661 (concurring opinion). See n. 19, *supra*.

Although our decisions often have alluded to the "imperative of judicial integrity," *e. g., United States* v. *Peltier,* 422 U. S. 531, 536–539 (1975), they demonstrate the limited role of this justification in the determination whether to apply the rule in a particular context.[22] Logically extended this justification would require that courts exclude unconstitutionally seized evidence despite lack of objection by the defendant, or even over his assent. Cf. *Henry* v. *Mississippi,* 379 U. S. 443 (1965). It also would require abandonment of the standing limitations on who may object to the introduction of unconstitutionally seized evidence, *Alderman* v. *United States,* 394 U. S. 165 (1969), and retreat from the proposition that judicial proceedings need not abate when the defendant's person is unconstitutionally seized, *Gerstein* v. *Pugh,* 420 U. S. 103, 119 (1975); *Frisbie* v. *Collins,* 342 U. S. 519 (1952). Similarly, the interest in promoting judicial integrity does not prevent the use of illegally seized evidence in grand jury proceedings. *United States* v. *Calandra,* 414 U. S. 338 (1974). Nor does it require that the trial court exclude such evidence from use for impeachment of a defendant, even though its introduction is certain to result in conviction in some cases. *Walder* v. *United States,* 347 U. S. 62 (1954). The teaching of these cases is clear. While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the exclusion of highly probative evidence.[23]

[22] See Monaghan, Foreword: Constitutional Common Law, 89 Harv. L. Rev. 1, 5–6, and n. 33 (1975).

[23] As we recognized last Term, judicial integrity is "not offended if law enforcement officials reasonably believed in good faith that their conduct was in accordance with the law even if decisions subsequent to the search and seizure have held that conduct of the type engaged in by the law enforcement officials is not permitted by the

The force of this justification becomes minimal where federal habeas corpus relief is sought by a prisoner who previously has been afforded the opportunity for full and fair consideration of his search-and-seizure claim at trial and on direct review.

The primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights. Post-*Mapp* decisions have established that the rule is not a personal constitutional right. It is not calculated to redress the injury to the privacy of the victim of the search or seizure, for any "[r]eparation comes too late." *Linkletter* v. *Walker,* 381 U. S. 618, 637 (1965). Instead,

> "the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect . . . ." *United States* v. *Calandra, supra,* at 348.

Accord, *United States* v. *Peltier, supra,* at 538–539; *Terry* v. *Ohio,* 392 U. S. 1, 28–29 (1968); *Linkletter* v. *Walker, supra,* at 636–637; *Tehan* v. *United States ex rel. Shott,* 382 U. S. 406, 416 (1966).

Mapp involved the enforcement of the exclusionary rule at state trials and on direct review. The decision in *Kaufman,* as noted above, is premised on the view that implementation of the Fourth Amendment also requires the consideration of search-and-seizure claims upon collateral review of state convictions. But despite the broad deterrent purpose of the exclusionary rule, it has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons. As in the case of any remedial device, "the application of the rule has been restricted to those areas where its reme-

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Constitution." *United States* v. *Peltier,* 422 U. S. 531, 538 (1975) (emphasis omitted).

dial objectives are thought most efficaciously served." *United States* v. *Calandra, supra,* at 348.[24] Thus, our refusal to extend the exclusionary rule to grand jury proceedings was based on a balancing of the potential injury to the historic role and function of the grand jury by such extension against the potential contribution to the effectuation of the Fourth Amendment through deterrence of police misconduct:

> "Any incremental deterrent effect which might be achieved by extending the rule to grand jury proceedings is uncertain at best. Whatever deterrence of police misconduct may result from the exclusion of illegally seized evidence from criminal trials, it is unrealistic to assume that application of the rule to grand jury proceedings would significantly further that goal. Such an extension would deter only police investigation consciously directed toward the discovery of evidence solely for use in a grand jury investigation. . . . We therefore decline to embrace a view that would achieve a speculative and undoubtedly minimal advance in the deterrence of police misconduct at the expense of substantially

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[24] As Professor Amsterdam has observed:

"The rule is unsupportable as reparation or compensatory dispensation to the injured criminal; its sole rational justification is the experience of its indispensability in 'exert[ing] general legal pressures to secure obedience to the Fourth Amendment on the part of . . . law-enforcing officers.' As it serves this function, the rule is a needed, but grud[g]ingly taken, medicament; no more should be swallowed than is needed to combat the disease. Granted that so many criminals must go free as will deter the constables from blundering, pursuance of this policy of liberation beyond the confines of necessity inflicts gratuitous harm on the public interest . . . ." Search, Seizure, and Section 2255: A Comment, 112 U. Pa. L. Rev. 378, 388–389 (1964) (footnotes omitted).

impeding the role of the grand jury." 414 U. S., at 351–352 (footnote omitted).

The same pragmatic analysis of the exclusionary rule's usefulness in a particular context was evident earlier in *Walder* v. *United States, supra,* where the Court permitted the Government to use unlawfully seized evidence to impeach the credibility of a defendant who had testified broadly in his own defense. The Court held, in effect, that the interests safeguarded by the exclusionary rule in that context were outweighed by the need to prevent perjury and to assure the integrity of the trial process. The judgment in *Walder* revealed most clearly that the policies behind the exclusionary rule are not absolute. Rather, they must be evaluated in light of competing policies. In that case, the public interest in determination of truth at trial [25] was deemed to outweigh the incremental contribution that might have been made to the protection of Fourth Amendment values by application of the rule.

The balancing process at work in these cases also finds expression in the standing requirement. Standing to invoke the exclusionary rule has been found to exist only when the Government attempts to use illegally obtained evidence to incriminate the victim of the illegal search. *Brown* v. *United States,* 411 U. S. 223 (1973); *Alderman* v. *United States,* 394 U. S. 165 (1969); *Wong Sun* v. *United States,* 371 U. S. 471, 491–492 (1963). See *Jones* v. *United States,* 362 U. S. 257, 261 (1960). The standing requirement is premised on the view that the "additional benefits of extending the . . . rule" to defendants other than the victim of the search or seizure are outweighed by the "further encroachment upon the

[25] See generally M. Frankel, The Search For Truth—An Umpireal View, 31st Annual Benjamin N. Cardozo Lecture, Association of the Bar of the City of New York, Dec. 16, 1974.

public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth." *Alderman* v. *United States, supra,* at 174–175.[26]

IV

We turn now to the specific question presented by these cases. Respondents allege violations of Fourth Amendment rights guaranteed them through the Fourteenth Amendment. The question is whether state prisoners—who have been afforded the opportunity for full and fair consideration of their reliance upon the exclusionary rule with respect to seized evidence by the state courts at trial and on direct review—may invoke their claim again on federal habeas corpus review. The answer is to be found by weighing the utility of the exclusionary rule against the costs of extending it to collateral review of Fourth Amendment claims.

The costs of applying the exclusionary rule even at trial and on direct review are well known: [27] the focus

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[26] Cases addressing the question whether search-and-seizure holdings should be applied retroactively also have focused on the deterrent purpose served by the exclusionary rule, consistently with the balancing analysis applied generally in the exclusionary rule context. See *Desist* v. *United States,* 394 U. S. 244, 249–251, 253–254, and n. 21 (1969); *Linkletter* v. *Walker,* 381 U. S. 618, 636–637 (1965). Cf. *Fuller* v. *Alaska,* 393 U. S. 80, 81 (1968). The "attenuation-of-the-taint" doctrine also is consistent with the balancing approach. See *Brown* v. *Illinois,* 422 U. S. 590 (1975); *Wong Sun* v. *United States,* 371 U. S., at 491–492; Amsterdam, *supra,* n. 24, at 389–390.

[27] See, *e. g., Irvine* v. *California,* 347 U. S. 128, 136 (1954); *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, 411 (1971) (BURGER, C. J., dissenting); *People* v. *Defore,* 242 N. Y. 13, 150 N. E. 585 (1926) (Cardozo, J.); 8 J. Wigmore, Evidence § 2184a, pp. 51–52 (McNaughton ed. 1961); Amsterdam, *supra,* n. 24, at 388–391; Friendly, *supra,* n. 13, at 161; Oaks, Studying the Exclusionary Rule in Search and Seizure, 37 U. Chi. L. Rev. 665, 736–754 (1970), and

of the trial, and the attention of the participants therein, are diverted from the ultimate question of guilt or innocence that should be the central concern in a criminal proceeding.[28] Moreover, the physical evidence sought to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant. As Mr. Justice Black emphasized in his dissent in *Kaufman:*

> "A claim of illegal search and seizure under the Fourth Amendment is crucially different from many other constitutional rights; ordinarily the evidence seized can in no way have been rendered untrustworthy by the means of its seizure and indeed often this evidence alone establishes beyond virtually any shadow of a doubt that the defendant is guilty." 394 U. S., at 237.

Application of the rule thus deflects the truthfinding process and often frees the guilty. The disparity in particular cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice.[29] Thus,

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sources cited therein; Paulsen, The Exclusionary Rule and Misconduct by the Police, 52 J. Crim. L. C. & P. S. 255, 256 (1961); Wright, Must the Criminal Go Free If the Constable Blunders?, 50 Tex. L. Rev. 736 (1972).

[28] See address by Justice Schaefer of the Supreme Court of Illinois, Is the Adversary System Working in Optimal Fashion?, delivered at the National Conference on the Causes of Popular Dissatisfaction With the Administration of Justice, pp. 8–9, Apr. 8, 1976; cf. Frankel, *supra,* n. 25.

[29] Many of the proposals for modification of the scope of the exclusionary rule recognize at least implicitly the role of proportionality in the criminal justice system and the potential value of establishing a direct relationship between the nature of the violation and the decision whether to invoke the rule. See ALI, A

although the rule is thought to deter unlawful police activity in part through the nurturing of respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and administration of justice.[30] These long-recognized costs of the rule persist when a criminal conviction is sought to be overturned on collateral review on the ground that a search-and-seizure claim was erroneously rejected by two or more tiers of state courts.[31]

Model Code of Pre-arraignment Procedure, § 290.2, pp. 181–183 (1975) ("substantial violations"); H. Friendly, Benchmarks 260–262 (1967) (even at trial, exclusion should be limited to "the fruit of activity intentionally or flagrantly illegal"); 8 Wigmore, *supra*, n. 27, at 52–53. See n. 17, *supra*.

[30] In a different context, Dallin H. Oaks has observed:

"I am criticizing, not our concern with procedures, but our preoccupation, in which we may lose sight of the fact that our procedures are not the ultimate goals of our legal system. Our goals are truth and justice, and procedures are but means to these ends. . . .

"Truth and justice are ultimate values, so understood by our people, and the law and the legal profession will not be worthy of public respect and loyalty if we allow our attention to be diverted from these goals." Ethics, Morality and Professional Responsibility, 1975 B. Y. U. L. Rev. 591, 596.

[31] Resort to habeas corpus, especially for purposes other than to assure that no innocent person suffers an unconstitutional loss of liberty, results in serious intrusions on values important to our system of government. They include "(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded." *Schneckloth* v. *Bustamonte*, 412 U. S., at 259 (POWELL, J., concurring). See also *Kaufman* v. *United States*, 394 U. S., at 231 (Black, J., dissenting); Friendly, *supra*, n. 13.

We nevertheless afford broad habeas corpus relief, recognizing the need in a free society for an additional safeguard against

Evidence obtained by police officers in violation of the Fourth Amendment is excluded at trial in the hope that the frequency of future violations will decrease. Despite the absence of supportive empirical evidence,[32] we have assumed that the immediate effect of exclusion will be to discourage law enforcement officials from violating the Fourth Amendment by removing the incentive to disregard it. More importantly, over the long term, this demonstration that our society attaches serious consequences to violation of constitutional rights is thought to encourage those who formulate law enforcement policies, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system.[33]

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compelling an innocent man to suffer an unconstitutional loss of liberty. The Court in *Fay* v. *Noia* described habeas corpus as a remedy for "whatever society deems to be intolerable restraints," and recognized that those to whom the writ should be granted "are persons whom society has grievously wronged." 372 U. S., at 401, 441. But in the case of a typical Fourth Amendment claim, asserted on collateral attack, a convicted defendant is usually asking society to redetermine an issue that has no bearing on the basic justice of his incarceration.

[32] The efficacy of the exclusionary rule has long been the subject of sharp debate. Until recently, scholarly empirical research was unavailable. *Elkins* v. *United States,* 364 U. S., at 218. And, the evidence derived from recent empirical research is still inconclusive. Compare, *e. g.,* Oaks, *supra,* n. 27; Spiotto, Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives, 2 J. Legal Studies 243 (1973), with, *e. g.,* Canon, Is the Exclusionary Rule in Failing Health?, Some New Data and a Plea Against a Precipitous Conclusion, 62 Ky. L. J. 681 (1974). See *United States* v. *Janis, ante,* at 450–452, n. 22; Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 475 n. 593 (1974); Comment, On the Limitations of Empirical Evaluations of the Exclusionary Rule: A Critique of the Spiotto Research and United States v. Calandra, 69 Nw. U. L. Rev. 740 (1974).

[33] See Oaks, *supra,* n. 27, at 756.

We adhere to the view that these considerations support the implementation of the exclusionary rule at trial and its enforcement on direct appeal of state-court convictions. But the additional contribution, if any, of the consideration of search-and-seizure claims of state prisoners on collateral review is small in relation to the costs. To be sure, each case in which such claim is considered may add marginally to an awareness of the values protected by the Fourth Amendment. There is no reason to believe, however, that the overall educative effect of the exclusionary rule would be appreciably diminished if search-and-seizure claims could not be raised in federal habeas corpus review of state convictions.[34] Nor is there reason to assume that any specific disincentive already created by the risk of exclusion of evidence at trial or the reversal of convictions on direct review would be enhanced if there were the further risk that a conviction obtained in state court and affirmed on direct review might be overturned in collateral proceedings often occurring years after the incarceration of the defendant. The view that the deterrence of Fourth Amendment violations would be furthered rests on the dubious assumption that law enforcement authorities would fear that federal habeas review might reveal flaws in a search or seizure that went undetected at trial and on appeal.[35] Even if one rationally could assume that

[34] "As the exclusionary rule is applied time after time, it seems that its deterrent efficacy at some stage reaches a point of diminishing returns, and beyond that point its continued application is a public nuisance." Amsterdam, *supra*, n. 24, at 389.

[35] The policy arguments that respondents marshal in support of the view that federal habeas corpus review is necessary to effectuate the Fourth Amendment stem from a basic mistrust of the state courts as fair and competent forums for the adjudication of federal constitutional rights. The argument is that state courts cannot be trusted to effectuate Fourth Amendment values through

some additional incremental deterrent effect would be present in isolated cases, the resulting advance of the legitimate goal of furthering Fourth Amendment rights would be outweighed by the acknowledged costs to other values vital to a rational system of criminal justice.

In sum, we conclude that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim,[36] a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.[37] In this context the

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fair application of the rule, and the oversight jurisdiction of this Court on certiorari is an inadequate safeguard. The principal rationale for this view emphasizes the broad differences in the respective institutional settings within which federal judges and state judges operate. Despite differences in institutional environment and the unsympathetic attitude to federal constitutional claims of some state judges in years past, we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States. State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law. *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 341–344 (1816). Moreover, the argument that federal judges are more expert in applying federal constitutional law is especially unpersuasive in the context of search-and-seizure claims, since they are dealt with on a daily basis by trial level judges in both systems. In sum, there is "no intrinsic reason why the fact that a man is a federal judge should make him more competent, or conscientious, or learned with respect to the [consideration of Fourth Amendment claims] than his neighbor in the state courthouse." Bator, *supra*, n. 7, at 509.

[36] Cf. *Townsend* v. *Sain*, 372 U. S. 293 (1963).

[37] MR. JUSTICE BRENNAN's dissent characterizes the Court's opinion as laying the groundwork for a "drastic withdrawal of federal habeas jurisdiction, if not for all grounds . . . , then at least [for many] . . . ." *Post*, at 517. It refers variously to our opinion as a "novel reinterpretation of the habeas statutes," *post*, at 515; as a "harbinger of future eviscerations of the habeas statutes," *post*, at 516; as "rewrit[ing] Congress' jurisdictional statutes . . . and [bar-

contribution of the exclusionary rule, if any, to the effectuation of the Fourth Amendment is minimal and the substantial societal costs of application of the rule persist with special force.[38]

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ring] access to federal courts by state prisoners with constitutional claims distasteful to a majority" of the Court, *post,* at 522; and as a "denigration of constitutional guarantees [that] must appall citizens taught to expect judicial respect" of constitutional rights, *post,* at 523.

With all respect, the hyperbole of the dissenting opinion is misdirected. Our decision today is *not* concerned with the scope of the habeas corpus statute as authority for litigating constitutional claims generally. We do reaffirm that the exclusionary rule is a judicially created remedy rather than a personal constitutional right, see *supra,* at 486, and we emphasize the minimal utility of the rule when sought to be applied to Fourth Amendment claims in a habeas corpus proceeding. As Mr. Justice Black recognized in this context, "ordinarily the evidence seized can in no way have been rendered untrustworthy . . . and indeed often . . . alone establishes beyond virtually any shadow of a doubt that the defendant is guilty." *Kaufman* v. *United States,* 394 U. S., at 237 (dissenting opinion). In sum, we hold only that a federal court need not apply the exclusionary rule on habeas review of a Fourth Amendment claim absent a showing that the state prisoner was denied an opportunity for a full and fair litigation of that claim at trial and on direct review. Our decision does not mean that the federal court lacks jurisdiction over such a claim, but only that the application of the rule is limited to cases in which there has been both such a showing and a Fourth Amendment violation.

[38] See n. 31, *supra.* Respondents contend that since they filed petitions for federal habeas corpus rather than seeking direct review by this Court through an application for a writ of certiorari, and since the time to apply for certiorari has now passed, any diminution in their ability to obtain habeas corpus relief on the ground evidence obtained in an unconstitutional search or seizure was introduced at their trials should be prospective. Cf. *England* v. *Louisiana State Board of Medical Examiners,* 375 U. S. 411, 422–423 (1964). We reject these contentions. Although not required to do so under the Court's prior decisions, see *Fay* v. *Noia,* 372 U. S. 391 (1963), respondents were, of course, free to file a timely petition for certiorari prior to seeking federal habeas corpus relief.

Accordingly, the judgments of the Courts of Appeals are

Reversed.