Missouri Law Review

Volume 62
Issue 1 *Winter 1997*

Article 15

Winter 1997

# Miranda in Custody Determinations: Mixed Question of Fact and Law

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# *Miranda* In Custody Determinations: Mixed Question of Fact and Law

*Thompson v. Keohane*[1]

## I. INTRODUCTION

On September 15, 1986, Alaska state troopers questioned Carl Thompson for over two hours at police headquarters without reading him his *Miranda*[2] rights.[3] The interrogation led to a confession used at trial to convict Thompson of first degree murder.[4]

Thompson filed a federal habeas appeal, alleging among other things that he was "in custody" when the police interrogated him and therefore should have been read his *Miranda* rights. Upon review, the United States Supreme Court announced that federal courts shall not apply a presumption of correctness when reviewing state court "in custody" determinations for *Miranda* purposes.[5] The Court held that the question of whether a suspect is "in custody" is a mixed question of fact and law to which the habeas corpus statute's presumption does not apply.[6] This Note explores how the "in custody" determination was historically viewed and addresses the impact of the Court's holding that it is a "mixed" question of fact and law.

## II. FACTS AND HOLDING

Dixie Thompson's body was found by two hunters on September 10, 1986, in a lake near Fairbanks Alaska.[7] One day later, Carl Thompson, Dixie's former husband, responded to an Alaska state trooper's press release seeking assistance in identifying the body.[8] Thompson informed authorities

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1. 116 S. Ct. 457 (1995).

2. Miranda v. Arizona, 384 U.S. 436 (1966). *Miranda* requires suspects interrogated by the police to be told they have the right to remain silent, that anything said can and will be used against them in court, and that they are entitled to legal counsel.

3. *Thompson*, 116 S. Ct. at 460.

4. *Id.*

5. *Id.* at 462.

6. *Id.* at 460.

7. Dixie had been stabbed twenty-nine times. Her body was found wrapped in chains and covered by a bedspread. *Id.* at 460, 467.

8. *Id.* at 460.

that Dixie had been missing for over one month and that her description fit the one given in the press release.[9]

A subsequent dental examination conclusively proved the identity of Dixie Thompson's corpse.[10] A few days later state troopers asked Thompson to come to headquarters to identify some of Dixie's belongings.[11] At the headquarters, Thompson immediately identified Dixie's belongings, but did not leave for another two hours.[12] During that time, two unarmed troopers questioned Thompson in a small interview room and tape-recorded the session.[13] The troopers did not advise Thompson of his rights under *Miranda*,[14] but assured him that he was free to leave at any time.[15] The troopers also repeatedly informed Thompson that they knew he killed Dixie.[16] The questioning resulted in a confession by Thompson that he killed his ex-wife.[17]

A few hours after obtaining the confession, Alaska state troopers arrested Thompson for the murder of Dixie Thompson.[18] Thompson's confession was introduced as evidence in his trial and the jury convicted him of first degree murder.[19] During the trial, Thompson argued that the confession was wrongfully obtained because he was not read his *Miranda* rights.[20] However, the trial court found that Thompson was not "in custody" when he confessed, and therefore authorities were not required to inform him of his *Miranda* rights.[21] The Court of Appeals of Alaska affirmed the trial court's decision and the state supreme court denied review.[22]

In addition to the state appeals, Thompson challenged his conviction in federal court by filing a petition for writ of habeas corpus.[23] Relying on 28 U.S.C. § 2254(d), the United States District Court for the District of Alaska

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9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 461.
13. *Id.*
14. Miranda v. Arizona, 384 U.S. 436 (1966).
15. *Thompson*, 116 S. Ct. at 461.
16. *Id.* At one point in the questioning a trooper told Thompson, "See I know that you did this thing. There's—there's no question in my mind about that. I can see it. I can see it when I'm looking at you." *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 461-62.
22. *Id.* at 462.
23. *Id.*

applied a presumption of correctness to the state court's "in custody" determination and denied Thompson's writ.[24] The Ninth Circuit Court of Appeals affirmed the decision, holding that a state's determination of whether a defendant is in custody is a question of fact which will be given a presumption of correctness on review.[25]

Thompson appealed to the United States Supreme Court, which granted certiorari in order to resolve a conflict among the circuits over applying a presumption of correctness to state "in custody" determinations.[26] In a 7-2 decision, the Court held that state "in custody" determinations are mixed questions of fact and law to which the presumption of correctness does not apply,[27] thereby allowing a federal court to independently review a state court's "in custody" determination.[28] The Court remanded the case to the federal district court to reconsider Thompson's federal habeas corpus petition without applying the presumption of correctness.[29]

## III. LEGAL BACKGROUND

### *A. Miranda's "In Custody" Requirement*

In *Miranda v. Arizona*, the United States Supreme Court held that the Fifth Amendment privilege against self-incrimination applies during custodial interrogation. The decision requires police to inform criminal suspects of their constitutional rights[30] during custodial interrogations[31] in order to safeguard the suspect's Fifth Amendment privilege. However, the *Miranda* decision is only applicable if the suspect is "interrogated"[32] by police while "in custody."[33]

The determination of whether a person is "in custody" is based on an objective standard under which the relevant query is "how a reasonable man

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24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at 465.
28. *Id.* at 467.
29. *Id.*
30. *See supra* note 14.
31. *Miranda*, 384 U.S. at 444.
32. For a discussion of what constitutes "interrogation," see WAYNE R. LA FAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 6.7 (1985).
33. *Miranda*, 384 U.S. at 477-78. *See also* Stansbury v. California, 114 S. Ct. 1526 (1994), in which the Court held that *Miranda* warnings are required "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Id.* at 1528 (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

in the suspect's position would have understood his situation."[34] A court's "in custody" determination must also include a "totality of circumstances" overview, which requires a court to consider the variety of facts surrounding the interrogation, including where the interrogation took place, how many officers were present, and whether weapons were drawn.[35]

### *B. Standard of Review in Habeas Proceedings*

In *Townsend v. Sain*,[36] the Supreme Court set out guidelines for determining when a district court must hold an evidentiary hearing for a habeas petition. In *Townsend*, a state prisoner filed a petition for habeas corpus relief and requested an evidentiary hearing in order to show the unconstitutionality of admitting his pre-trial confession, but the district court denied his request.[37] The Supreme Court held that federal courts have discretion in granting evidentiary hearings, but are required to grant a petitioner such a hearing in certain circumstances.[38] The Court enumerated six such instances.[39] Further, the *Townsend* Court declared that if a petitioner had received a "full and fair" hearing of the factual issues in state court, the habeas court should "ordinarily . . . accept the facts as found" by the state court.[40]

Three years later, Congress amended the federal habeas corpus statute[41] to reflect the Court's decision in *Townsend*.[42] The amended statute now

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34. Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

35. LAFAVE & ISRAEL, *supra* note 32, § 6.6(c), at 320.

36. 372 U.S. 293 (1963).

37. *Id.* at 297.

38. *Id.* at 313.

39. The six circumstances in which a court is required to hold an evidentiary hearing are as follows:

> If (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 by the state court 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-court 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.

*Townsend*, 372 U.S. at 313. *See infra* note 43 to compare *Townsend's* six situations with the eight exceptions listed in 28 U.S.C. § 2254(d) (1994).

40. *Townsend*, 372 U.S. at 318.

41. 28 U.S.C. § 2254 (1994).

42. Act of Nov. 2, 1966, Pub. L. No. 89-711, § 2, 80 Stat. 1104, 1105-06 (1966) (codified at 28 U.S.C. § 2254(d) (1994)).

states that federal habeas courts must presume that state court determinations of factual issues are correct, unless one of the enumerated exceptions listed in the statute applies.[43] These exceptions are almost identical to the six circumstances outlined in *Townsend*.[44] However, it should be noted that the federal habeas corpus statute does not require evidentiary hearings as set out in the *Townsend* decision.[45] The federal statute simply mandates that a presumption of correctness must be applied to state determinations of factual issues.[46]

The presumption of correctness required by Section 2254(d) only applies to a state court's factual findings and is inapplicable to a state court's conclusions of law. In addition, the Supreme Court has held that questions of mixed law and fact shall receive independent review by a federal court.[47]

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43. Section 2254(d) provides that:

> [Facts] shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—
> (1) that the merits of the factual dispute were not resolved in the State court hearing;
> (2) that the fact finding procedure employed by the State court was not adequate to afford a full and fair hearing;
> (3) that the material facts were not adequately developed at the State court hearing;
> (4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;
> (5) that the applicant was an indigent and the State court, in deprivation of his constitutional right failed to appoint counsel to represent him in the State court proceeding;
> (6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or
> (7) that the applicant was otherwise denied due process of law in the State court proceeding;
> (8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made . . . is produced as provided for hereinafter. . . .

28 U.S.C. § 2254(d) (1994).

44. *See supra* note 39.

45. 28 U.S.C. § 2254(d) (1994). *See also* Andrew A. Jones, Note, Keeney v. Tamayo-Reyes *and Federal Habeas Corpus Evidentiary Hearings: Has the Court Deliberately Bypassed Section 2254(d)?*, 1994 WIS. L. REV. 171. "Section 2254(d) . . . does not expressly address the question of whether a federal evidentiary hearing is mandatory." "[Section 2254(d)'s] language alone seemingly does not mandate evidentiary hearings under any circumstance." *Id.* at 179-80.

46. 28 U.S.C. § 2254(d) (1994).

47. Miller v. Fenton, 474 U.S. 104, 112 (1985). *See also* Cuyler v. Sullivan, 446 U.S. 335, 342 (1980) (holding that "mixed determination[s] of law and fact" are not

### C. Questions of Fact v. Mixed Questions

The Supreme Court has acknowledged that distinguishing issues of fact from those of law is difficult at best, stating "we yet know of. . . [no] rule or principle that will unerringly distinguish a factual finding from a legal conclusion."[48]

In *Townsend*, the Supreme Court explained that factual issues were "facts in the sense of a recital of external events and the credibility of their narrators. . . ."[49] The Court in *Miller v. Fenton*[50] used *Townsend*'s reasoning to find that determining the voluntariness of a confession is a legal issue.[51] In *Miller*, the Court recognized that a finding of "voluntariness" involved subsidiary factual questions, such as the length of time of an interrogation and circumstances surrounding a confession.[52] However, the Court stated that the "ultimate" finding of "voluntariness" was a legal determination warranting independent review by a federal habeas court because the determination requires a court to decide, under the totality of the circumstances, whether the methods used to obtain the confession were consistent with constitutional requirements.[53]

The Supreme Court in *Pullman-Standard v. Swint* defined mixed questions of law and fact as "those in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is . . . whether the rule of law as applied to the established facts is or is not violated."[54] Other Supreme Court decisions held that the presumption of correctness does not

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subject to section 2254(d)'s presumption of correctness); Townsend v. Sain, 372 U.S. 293, 309 n.6 (1963) (holding that "[S]o-called mixed questions of fact and law, which require the application of a legal standard to the historical fact determinations . . . are not facts in this sense.").

48. Pullman-Standard v. Swint, 456 U.S. 273, 288 (1982). The Court also noted "the vexing nature of the distinction between questions of fact and questions of law." *Id.* For a commentary on the fact/law distinction, see generally Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229 (1985).

49. *Townsend*, 372 U.S. at 309 n.6.

50. 474 U.S. 104 (1985).

51. *Id.* at 111-112.

52. *Id.* at 117. The Court held that the presumption of correctness in Section 2254(d) would be applied to these factual findings. *Id.*

53. *Id.*

54. *Pullman-Standard*, 456 U.S. at 289 n.19.

apply to mixed questions of fact and law,[55] allowing federal habeas courts to independently review them.[56]

Until the Court's decision in *Thompson*, federal appellate courts disagreed on whether a state court "in custody" determination was a question of fact or a mixed question of fact and law.[57] As a result, the outcomes of cases with strikingly similar facts differed sharply.

Some federal appellate courts, such as the Eighth Circuit, had held that "in custody" determinations are factual issues to which the Section 2254(d) presumption of correctness would apply.[58] In *Feltrop v. Delo*, a Missouri jury convicted Feltrop of capital murder in 1988.[59] At trial, prosecutors used a confession made by Feltrop during a meeting with police in a tiny room at the county sheriff's office.[60] Feltrop argued that he should have been read his *Miranda* rights before police questioned him.[61] The Missouri trial and appellate courts rejected his argument, finding that he was not in custody and the police had no obligation to read him his *Miranda* rights.[62] Feltrop filed a petition for habeas relief, but his petition was denied.[63] Applying Section 2254(d), the United States District Court for the Eastern District of Missouri held that the state court's finding was entitled to a presumption of correctness.[64] The Eighth Circuit affirmed, stating that the test for determining custody is an objective one which focuses on whether the defendant's freedom of movement was restrained, and that Feltrop did not overcome the presumption that he was not in custody.[65]

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55. See Larry W. Yackle, *The Habeas Hagioscope*, 66 S. CAL. L. REV. 2331, 2379 (1993). "[S]ection 2254(d) has always been understood to be inapplicable to questions at the intersection of primary facts and legal principles." *Id.*

56. Miller v. Fenton, 474 U.S. 104 (1985); Cuyler v. Sullivan, 446 U.S. 335 (1980); and Townsend v. Sain, 372 U.S. 293, 304 (1963), *overruled on other grounds by* Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).

57. For example, the Eighth Circuit had applied a presumption of correctness to state "in custody" determinations while the Eleventh Circuit independently reviewed these determinations. *See generally* Feltrop v. Delo, 46 F.3d 766, 772 (8th Cir. 1995), *overruled on other grounds* Thompson v. Keohane, 116 S. Ct. 457 (1995); Jacobs v. Singletary, 952 F.2d 1282, 1291 (11th Cir. 1992).

58. Feltrop v. Delo, 46 F.3d 766, 772 (8th Cir. 1995).

59. *Id.* at 768.

60. *Id.*

61. *Id.* at 772.

62. *Id.* at 773.

63. *Id.*

64. *Id.*

65. *Id.*

The Eleventh Circuit however, held that state "in custody" determinations were mixed questions of fact and law.[66] As in *Feltrop*, in *Jacobs v. Singletary*, police questioned defendant Jacobs without reading her the *Miranda* rights.[67] Jacobs made incriminating statements to police that were admitted at trial to support her conviction for first degree murder.[68] The Florida state appellate courts affirmed her conviction, and she filed a petition for a writ of habeas corpus, alleging that she was in custody when the police questioned her and that she should have been read her *Miranda* rights.[69] The United States District Court for the Southern District of Florida denied her petition, but the Eleventh Circuit reversed.[70] The Eleventh Circuit held that the state court's "in custody" determination was a mixed finding of law and fact, and therefore, the issue could be independently reviewed by a federal habeas court.[71] In reviewing the application of the law to the facts, the Eleventh Circuit found that Jacobs was in custody when police questioned her, and that admitting her confession at trial constituted reversible error.[72]

The difference among the circuits in labeling "in custody" as a mixed or factual question resulted in disparate treatment of criminal defendants.[73] Some defendants received a federal review of the state court's finding and even obtained new trials, while others under similar facts made similar arguments and had their convictions affirmed based on a presumption that the state court got it right.[74] The Supreme Court recognized that the federal habeas corpus statute should be applied uniformly throughout the country and granted certiorari in order to resolve the disagreement between the circuits on this issue.[75]

## IV. INSTANT DECISION

### *A. Majority Opinion*

In *Thompson*, the Court discussed Section 2254(d) of the habeas corpus statute which requires federal courts to apply a presumption of correctness to

66. Jacobs v. Singletary, 952 F.2d 1282, 1291 (11th Cir. 1992).
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 1296.
71. *Id.* at 1291.
72. *Id.* at 1291, 1295.
73. *See supra* text accompanying notes 59-72.
74. *See supra* text accompanying notes 59-72.
75. Thompson v. Keohane, 116 S. Ct. 457, 462 (1995).

state court determinations of factual issues.[76] The Court declared that a state court's determination of whether or not a defendant was "in custody" was a mixed question of fact and law, warranting independent review by a federal habeas court.[77]

The Court first discussed the *Townsend* decision, noting that while it advised habeas courts to accept the facts as found by state courts, the decision also found that mixed questions of fact and law were not "facts" that a habeas court should accept as correct.[78] The Court relied on the *Townsend* finding that facts are ". . . a recital of external events and the credibility of their narrators."[79] Further the Court noted the *Miller* finding that questions requiring a consideration of the "totality of the circumstances" were questions for independent federal determination.[80]

The Court observed that the Alaska trial court used a totality of the circumstances assessment in determining that Thompson was not in custody.[81] The test the trial court used for making an "in custody" determination was whether a reasonable person would feel he was not free to leave and break off police questioning.[82] The Court stated that the trial court's decision that Thompson was not in custody turned on the facts that the police told Thompson he was free to go, that he was not formally arrested at the time of questioning, and that the troopers were unarmed.[83] The trial court weighed these facts and decided under the "totality of the circumstances," a reasonable person would have felt free to leave, but observed that the question was "very close."[84]

Next, the Court stated that, historically, issues raised on habeas appeal were categorized as issues of fact or law, but noted that this determination was "sometimes slippery."[85] In past decisions the Court had held that factual questions included the issues of juror impartiality and a defendant's competency to stand trial.[86] The Court noted that the resolution of these

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76. *Id.* at 460.

77. *Id.* at 465.

78. *Id.* at 463-64. The Court noted that section 2254(d) basically elevated the *Townsend* Court's view into a presumption of correctness. *Id.*

79. *Id.* at 464.

80. *Id. See also* notes 51-54 and accompanying text.

81. *Id.* at 462.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 464. The Court in *Wainwright v. Witt* noted that "[i]t will not always be easy to separate questions of 'fact' from 'mixed questions of law and fact' for § 2254(d) purposes . . ." Wainwright v. Witt, 469 U.S. 412, 429 (1985).

86. *Thompson*, 116 S. Ct. at 464.

issues turned on basic historical facts as well as the trial judge's opinion of the witness's demeanor and credibility.[87] Further, the Court reasoned that since a trial court is in the best position to observe the demeanor of witnesses and evaluate their credibility, a trial court's findings should be given presumptive weight.[88]

Issues which the Court has decided are legal questions include the voluntariness of a confession and the effectiveness of counsel.[89] The Court stated that these issues contained factual components or "what happened" issues which warranted a presumption of correctness.[90] However, the Court stated that *Miller* counseled that "ultimate question[s]" were not within the scope of the Section 2254(d) presumption because of their "uniquely legal dimension."[91]

Next, the Court found that the determination of whether a defendant is "in custody" involves two separate inquiries.[92] The first is "what were the circumstances surrounding the interrogation" and the second is "given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave."[93] The Court decided that the first inquiry is strictly factual, but the second inquiry involves the application of a legal standard. Therefore, the Court concluded that the "ultimate determination" of the second inquiry presented a "mixed question of law and fact" which qualifies for independent review.[94]

The Court stated that reasoning that the "trial court is in the best position" (which is used in factual issues such as finding juror bias and competency to stand trial issues) is not a relevant factor in determining whether "in custody" is a question of fact.[95] The Court said that issues of juror bias and competency involve credibility determinations which sometimes contribute to the historical facts.[96] In contrast, the "in custody" determination depends on an analysis of whether under *Miranda* a "reasonable person" in the defendant's shoes would have been in custody, and this determination does not depend on

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87. *Id.* at 465.

88. *Id.* The Court also stated that the trial court's "predominate function in determining juror bias involves credibility findings whose basis cannot be easily discerned from an appellate record." *Id.* (citing *Wainwright*, 469 U.S. at 429).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* The Court stated that "[a]s this case illustrates, the trial court's superior capacity to resolve credibility issues is not dispositive of the 'in custody' inquiry." *Id.*

96. *Id.* at 465-66.

the demeanor or credibility of witnesses.[97] Further, the Court stated that a trial court's findings of juror bias or a defendant's competency to stand trial were unlikely to have precedential value, while "in custody" findings guide future decisions.[98] The Court concluded that a state court is not in a better position than a federal court in making the ultimate determination of whether the facts found were consistent with *Miranda*.[99]

Finally, the Court stated that allowing habeas courts to independently review state "in custody" determinations would protect the right against self-incrimination.[100] In addition, the Court said that its decision may unify precedent and stabilize the law.[101] The Court vacated the Ninth Circuit's judgment and remanded petitioner Thompson's case for further proceedings.[102]

### *B. Dissenting Opinion*

The dissent agreed with the majority's conclusion that a legal standard should be applied in determining custody for *Miranda* purposes.[103] However, the dissent argued that the *Townsend* decision's distinction between issues of fact and mixed issues is not relevant in this case.[104] The dissent stated that, since the custody issue fell somewhere between issues of fact and law, the Court should have decided "as a matter of the sound administration of justice, [which] judicial actor is better positioned . . . to decide the issue . . . ."[105] The dissent asserted that the "in custody" determination was "fact-laden" and that the trial judge is better suited to make such a determination because complex, diverse, and case-specific factors must be considered in order to make an overall assessment of custody.[106] In support of this argument, the dissent pointed out that trial judges draw inferences from the

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97. *Id.* at 466. The Court analogized "custody" determinations to determinations of voluntariness, stating that "assessments of credibility and demeanor are not crucial to the proper resolution of the ultimate issue of 'voluntariness.'" *Id.* (citing Miller v. Fenton, 474 U.S. 104, 116-17 (1985)).

98. *Id.*

99. *Id.*

100. *Id.* at 467.

101. *Id.* The Court declared that "as our decisions bear out, the law declaration aspect of independent review potentially may guide police, unify precedent, and stabilize the law." *Id.*

102. *Id.*

103. *Id.* at 467-68 (Thomas, J., dissenting).

104. *Id.* at 468.

105. *Id.* (citing Miller v. Fenton, 474 U.S. 104, 114 (1985)).

106. *Id.*

evidence, often take live testimony, assess the demeanor of relevant persons, and consider the length, location and nature of the interrogation.[107]

The dissent also agreed with the majority's view that the assessment of whether a "reasonable man in the suspect's shoes" is in custody contains objective components.[108] However, the dissent stated that making this finding contains many important factbound assessments which should not "go out the window" when a court is making the "ultimate inquiry."[109] Further, the dissent stated that federal habeas courts are inferior in making this assessment because often the habeas court must review the state court's record several years after the trial, and many of the subtleties of the trial judge's opinion are not reflected in the record.[110]

In addition, the dissent pointed out that state courts are qualified to determine constitutional questions and are presumed to apply federal law as faithfully as federal courts.[111] The dissent stated that the majority's decision "insults our colleagues in the States" because it implies that state judges are not competent or reliable enough to decide whether a defendant was "in custody" for *Miranda* purposes.[112]

Finally, the dissent stated that there was no reason to remand the case, because Thompson could not be in custody since he went to the station voluntarily and was not arrested.[113] The dissent concluded that even under *de novo* review, Thompson would not be able to establish a *Miranda* violation and therefore Alaska should be spared the uncertainty and expense of defending the conviction of a confessed murderer.[114]

## V. COMMENT

The *Thompson* Court properly reasoned that the ultimate determination of custody involved an application of the law to the facts found by the trial court and therefore labeled the issue a "mixed question of law and fact."[115] The Supreme Court has noted that labeling an issue as one of fact or law for

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107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 469.

111. *Id.*

112. *Id.*

113. *Id.* The dissent pointed out that the Court in *California v. Beheler* held a person is not in custody if "the suspect is not placed under arrest, voluntarily comes to the police station, and is allowed to leave unhindered by police after a brief interview." California v. Beheler, 463 U.S. 1121, 1121 (1983).

114. *Thompson*, 116 S. Ct. 457, 470 (Thomas, J., dissenting).

115. *See supra* notes 86-88 and accompanying text.

the purposes of Section 2254(d) has been tricky.[116] The Court also used precedent as an aid in reaching its decision,[117] as it had labeled other issues involving the application of a "reasonable person" standard as questions of law or mixed questions.[118] In addition, past Supreme Court decisions treated "in custody" as a legal question in deciding the propriety of state expansion of the meaning of "custodial interrogation."[119]

One commentator suggests that often the determination of whether an issue is of fact, law, or mixed is made by first deciding whether the state or federal court would be better suited to resolve the particular issue and then labeling it accordingly.[120] Under this method, the outcome of *Thompson* would remain the same because federal courts are better suited to resolve the "in custody" issue since they can advance uniform outcomes in *Miranda* violations cases.[121] In addition, because of the institutional differences between them, state courts are not as equally competent as federal courts in the resolution of constitutional issues.[122]

Another important value advanced by allowing federal courts to independently review state court findings of "in custody" is the reduction of possible bias at the state court level. In the *Thompson* dissent, Justice Thomas argued that one should presume that state judges apply federal law as faithfully as federal judges.[123] However, state judges often face a variety of political pressures, while federal judges enjoy life tenure, insulating them from such pressure.[124]

Many commentators have advocated limiting the scope of habeas review by arguing that habeas review of too many issues often allows guilty criminals to go free.[125] Justice Thomas's dissent in *Thompson* appeared to agree with

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116. *See supra* note 47 and accompanying text.

117. Many past decisions indicate that *Miranda* issues were questions of law. *See, e.g.*, Berkemer v. McCarty, 468 U.S. 420 (1984); California v. Beheler, 463 U.S. 1121 (1983); Oregon v. Mathiason, 429 U.S. 492 (1977).

118. *Thompson*, 116 S. Ct. at 467.

119. *Id.* at 467. The Court stated, "It would be anomalous to type the question differently when an individual complains that the state courts had erroneously constricted the circumstances that add up to an 'in custody' conclusion." *Id.*

120. Monaghan, *supra* note 48, at 237.

121. *Thompson*, 116 S. Ct. at 466.

122. *See generally* Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105 (1977). In his article Professor Neuborne criticizes the assumption that state and federal courts can equally decide federal constitutional issues.

123. *Id.* at 468.

124. Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 YALE L.J. 71, 92 (1984).

125. *See* Carole J. Yanofsky, Note, Winthrow v. Williams: *The Supreme Court's Surprising Refusal to Stone* Miranda, 44 AM. U. L. REV. 323, 331 (1994). At common

this view and argued that a state should not have to bear the expense of retrying a confessed murderer.[126] Cost, however, is not a valid reason to limit the amount of process a criminal defendant receives. Currently the law provides that the due process to which a criminal defendant is entitled includes the opportunity to have legal or mixed claims independently reviewed by a federal court.

## VI. CONCLUSION

In *Thompson*, the Supreme Court resolved an inter-circuit conflict as to the standard of review a habeas court shall apply in reviewing state "in custody" determinations.[127] The habeas corpus statute provides that habeas courts must extend a presumption of correctness to state court factual determinations.[128] The Court held that a finding of "in custody" calls for a court to apply a legal standard to historical facts, rendering the question a mixed one of fact and law to which the presumption of correctness does not apply.[129] As a result of *Thompson*, federal courts will be able to define the "in custody" aspect of *Miranda*, which should foster uniformity in the application of *Miranda* nationwide and provide proper protection to criminal defendants seeking habeas review in federal court.

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law habeas review was limited to jurisdictional claims and many conservative scholars would like to see that limitation in place today. The Supreme Court has limited certain habeas claims but has refused to limit constitutional claims. *Id.*

126. *Thompson*, 116 S. Ct. at 470.

127. *Id.* at 462.

128. *See supra* note 40 and accompanying text.

129. *See supra* note 28.