Journal of Criminal Law and Criminology

Volume 84
Issue 4 *Winter*

Article 9

Winter 1994

Habeas Corpus--Fifth Amendment--The Supreme Court's Cost-Benefit Analysis of Federal Habeas Review of Alleged Miranda Violations

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0091-4169/94/8404-0915
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Vol. 84, No. 4

Printed in U.S.A.

HABEAS CORPUS—FIFTH AMENDMENT—THE SUPREME COURT'S COST-BENEFIT ANALYSIS OF FEDERAL HABEAS REVIEW OF ALLEGED *MIRANDA* VIOLATIONS

Withrow v. Williams, 113 S. Ct. 1745 (1993)

I. INTRODUCTION

In *Withrow v. Williams*,[1] the United States Supreme Court held that the exercise of federal habeas jurisdiction on a state prisoner's claim that his conviction was dependant on statements taken in violation of *Miranda v. Arizona*[2] should not be restricted.[3] The Court recognized the prudential concerns inherent in federal habeas review and reasoned that the benefits of habeas corpus review of *Miranda* violations outweigh the costs of its implementation.[4]

This Note begins with a brief background of the writ of habeas corpus and the Supreme Court's prior restriction of its scope in *Stone v. Powell*.[5] Further, this Note examines the opinions of the Court in *Withrow* and concludes that the case was wrongly decided. This Note argues that the majority erred in its balancing of the prudential concerns of habeas review of *Miranda* cases. The Court failed to emphasize the great costs of such collateral review in light of the fact that an avenue of constitutional redress still exists even if the scope of the writ is restricted. This Note suggests that litigants who have had a full and fair opportunity to litigate their *Miranda* claim in state courts should be required to allege that the statements in question were actually involuntary or compelled in order to obtain habeas review.

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1 113 S. Ct. 1745 (1993).

2 384 U.S. 436 (1966).

3 *Withrow*, 113 S. Ct. at 1748.

4 *Id.* at 1750-51.

5 428 U.S. 465 (1976).

II. BACKGROUND

A. THE GREAT WRIT OF LIBERTY

The writ of habeas corpus has often been referred to as the "great writ of liberty"[6] because it provides the nation's citizenry a "prompt and efficacious remedy for whatever society deems to be intolerable restraints."[7] Evidence of its esteemed role in American jurisprudence is highlighted by the fact that the United States Constitution explicitly provides that the writ cannot be suspended.[8] The Judiciary Act of 1789[9] empowered federal courts to grant the writ to federal prisoners "in accordance with the common law [but] limited it to an inquiry as to the jurisdiction of the sentencing tribunal."[10] For example, in *Ex parte Watkins*[11] the Court denied a litigant's application for a writ of habeas corpus and noted that the "judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. . . . It puts an end to inquiry concerning the fact, by deciding it."[12] Although Congress extended the application of the writ to state prisoners in 1867,[13] the writ was still constrained to those cases in which a jurisdictional issue was at stake.[14] Hence, "if a [state] court of competent jurisdiction adjudicated a federal question in a criminal case, its decision of that question was final, subject only to appeal, and not

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6 WILLIAM F. DUKER, A CONSTITUTIONAL HISTORY OF HABEAS CORPUS 3 (1980).

7 Fay v. Noia, 372 U.S. 391, 402 (1963). The Court in *Fay* also noted that the "root principle [of the writ] is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." *Id.* at 402.

8 U.S. CONST. art. I, § 9, cl. 2 states that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." *See also* Engle v. Isaac, 456 U.S. 107, 126 (1982) (commenting that the "writ of habeas corpus indisputably holds an honored position in our jurisprudence").

9 Judiciary Act of 1789, ch. 20, 1 Stat. 73.

10 Stone v. Powell, 428 U.S. 465, 475 (1976). Professor Bator noted that the Act did not define the substantive reach of the writ. Paul M. Bator, *Finality In Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441, 465-66 (1963).

11 28 U.S. (3 Pet.) 193 (1830).

12 *Id.* at 202-03.

13 Act of Feb. 5, 1867, ch. 28, 14 Stat. 385 (codified as 28 U.S.C. §§ 2241-55 (1988)). 28 U.S.C. § 2254 grants federal courts the power to issue the writ to state prisoners who have had their federal constitutional rights violated:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

14 *Stone*, 428 U.S. at 475.

subject to redetermination on habeas corpus."[15] However, the Court began to expand the scope of what constituted a lack of state court "jurisdiction" in the latter part of the nineteenth century.[16] Most notably, *Ex parte Siebold*[17] expanded the writ with regard to convictions based on unconstitutional statutes.[18]

In 1915, the Court took an additional step toward liberalizing the applicability of the writ in *Frank v. Magnum*.[19] The Court in *Frank* held that federal habeas relief is available if the state failed to provide the defendant an adequate review process in which to litigate constitutional claims.[20] Therefore, the Court recognized for the first time that federal habeas courts can grant relief to state prisoners on claims that are based on issues other than whether or not the state court lacked jurisdiction.[21] In addition, the historic decision of *Brown v. Allen*[22] expanded the writ even further to allow federal habeas review of a state prisoner's constitutional claims, despite the apparent adequacy of the state review process.[23]

Ten years later, *Fay v. Noia*[24] conclusively established that the writ is available as relief to state prisoners on issues unrelated to jurisdiction. In *Fay*, the Court held that alleged constitutional viola-

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15 Bator, *supra* note 10, at 483.

16 *See* Erwin Chemerinsky, *Thinking About Habeas Corpus*, 37 CASE W. RES. L. REV. 748, 754 (1987). In 1873, the Court decided that habeas may be used to reexamine the alleged illegality in the sentencing of a litigant. *Ex parte* Lange, 85 U.S. (18 Wall.) 163 (1873). *See also Ex parte* Bigelow, 113 U.S. 328 (1885) (inferior courts lack jurisdiction if principle of double jeopardy is violated).

17 100 U.S. 371 (1879).

18 Although *Siebold* did not reject the rationale that a conviction imposed by a competent court may not be subject to habeas review, the Court noted that "if the laws are unconstitutional and void, the [inferior court] acquired no jurisdiction of the causes." *Id.* at 377.

19 237 U.S. 309 (1915).

20 *Id.* at 334-35. In *Frank*, a defendant who was convicted of murder in Georgia petitioned for a new trial on the ground that the trial court proceedings were dominated by a mob which made impartial adjudication of his case unrealistic. *Id.* at 324-25.

21 Chemerinsky, *supra* note 16, at 754.

22 344 U.S. 443 (1953).

23 *Id.* In *Brown*, a black litigant alleged that his conviction in a North Carolina court violated the federal constitution because of racial discrimination in the jury selection that led to a jury comprised of disproportionately fewer blacks than whites. *Id.* at 453. The Court affirmed the federal court's denial of habeas relief not on the ground that the state offered an adequate appellate process, pursuant to *Frank*, but because the Court found no systematic discrimination in the jury selection. Thus, the Court implicitly decided the substantive merits of Brown's claims. *Id.* at 473-74. More explicitly, Justice Frankfurter's concurrence in *Brown* opened the door for federal habeas courts to address the merits of a litigant's constitutional claims. According to Justice Frankfurter, "the prior State determination of a claim under the United States Constitution cannot foreclose consideration of such a claim, else the State court would have the final say which the Congress, by the Act of 1867, provided it should not have." *Id.* at 500.

24 372 U.S. 391 (1963).

tions "may be challenged on federal habeas corpus even though imposed pursuant to the conviction of a federal court of competent jurisdiction."[25] However, the Court also acknowledged that "habeas corpus has traditionally been regarded as governed by equitable principles"[26] and that "[d]iscretion is implicit in the statutory command that the judge . . . 'dispose of the matter as law and justice require.' "[27] Ironically, this reaffirmance by the Court of the equitable nature of the writ became the source of the writ's subsequent restriction in scope.[28]

B. *STONE V. POWELL* AND THE RESTRICTION OF THE WRIT

The landmark decision of *Stone v. Powell*[29] signified the beginning of the Court's shift toward limiting the use of the writ by state prisoners under certain circumstances. The Court in *Stone* severely limited the availability of federal habeas relief to state prisoners who asserted that the state's use of illegally seized evidence during trial violated their Fourth Amendment rights.[30] The question at bar was "whether state prisoners who have been afforded the opportunity for full and fair consideration of their reliance upon the [Fourth Amendment] exclusionary rule . . . by the state courts at trial and on direct review may invoke their claim again on federal habeas corpus review."[31]

The Fourth Amendment exclusionary rule discussed in *Stone* mandates the exclusion of evidence seized in violation of the Fourth Amendment restrictions on searches and seizures.[32] In *Stone*, the Court acknowledged that this rule is only a judicially created deter-

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25 *Id.* at 409. *See* Stone v. Powell, 428 U.S. 465 (1976). The *Stone* Court stated that the "final barrier to broad collateral re-examination of state criminal convictions in federal habeas corpus proceedings was removed in *Fay v. Noia*." *Id.* at 477.

26 *Fay*, 372 U.S. at 438.

27 *Id.* (quoting 28 U.S.C. § 2243).

28 *See Stone*, 428 U.S. at 478 n.11. *See also infra* notes 29-39 and accompanying text.

29 428 U.S. at 465.

30 *Id.* at 494. The Fourth Amendment provides the following protections:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

31 *Stone*, 428 U.S. at 489.

32 *See* Weeks v. United States, 232 U.S. 383 (1914). The Fourth Amendment exclusionary rule was held applicable to the states in Mapp v. Ohio, 367 U.S. 643 (1961). The Court in *Mapp* held that, via the Due Process Clause of the Fourteenth Amendment, "all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court." *Id.* at 655.

rent remedy,[33] not a personal constitutional right.[34] While noting the obvious benefits of deterring future constitutional violations, the Court recognized that the exclusionary rule does so at substantial cost to the judicial system.[35] Therefore, after recalling that *Fay* stressed the "equitable nature of the writ,"[36] the Court reasoned that the issue at bar should be resolved by "weighing the utility of the exclusionary rule against the costs of extending it to collateral review of Fourth Amendment claims."[37] After weighing the costs[38] and benefits of habeas review of the exclusionary rule, the Court in *Stone* held that "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."[39]

However, the Court declined to apply the rationale of *Stone* to other scenarios in the years following its decision.[40] For instance, the Court in *Jackson v. Virginia*[41] failed to extend *Stone* to limit federal habeas review of a state defendant's Fourteenth Amendment due process claim that his conviction was based on insufficient evidence.[42] The *Jackson* Court distinguished *Stone* on the ground that the issue at bar implicated the state defendant's opportunity for a full and fair state proceeding: "[t]his case is far different from the kind of issue that was the subject of the Court's decision in [*Stone*]. The question whether a defendant has been convicted upon inadequate evidence is central to the basic question of guilt or innocence."[43] Similarly, the Court also refused to extend *Stone* in *Rose v.*

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33 *Stone*, 428 U.S. at 486. The Court explained that the primary justification for the exclusionary rule is not to provide redress to the harmed litigant, but to deter future "police conduct that violates Fourth Amendment rights." *Id.*

34 *Id.*

35 *Id.* at 489-91.

36 *Id.* at 478 n.11.

37 *Id.* at 489.

38 The Court noted that the establishment of a party's guilt or innocence is the primary goal in a criminal case and that the application of the rule detracts from the truthfinding process by excluding reliable evidence. *Id.* at 490. Further, the Court listed some of the costs to be considered: "(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." *Id.* at 491 n.31 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 259 (1973) (Powell, J., concurring)).

39 *Id.* at 482.

40 Withrow v. Williams, 113 S. Ct. 1745, 1750 (1993).

41 443 U.S. 307 (1979).

42 *Id.* at 321.

43 *Id.* at 323.

Mitchell.[44] The question in *Rose* was whether *Stone* should be extended to disallow habeas review of a state prisoner's claim that the grand jury in his case was selected in a racially discriminatory manner.[45] The *Rose* Court reasoned that, because the trial court which allegedly misapplied the grand jury selection procedure often must initially adjudicate this claim, it is doubtful that allegations concerning whether "the operation of the grand jury system violate[d] the Fourteenth Amendment in general will receive the type of full and fair hearing deemed essential to the holding of *Stone*."[46] Likewise, the Court declined to apply the *Stone* rationale in *Kimmelman v. Morrison*.[47] *Kimmelman* involved habeas review of a claim of ineffective assistance of counsel under the Sixth Amendment.[48] The Court in *Kimmelman* again commented on *Stone*'s requirement of a full and fair opportunity in state court proceedings and dismissed the application of *Stone* on the ground that "the essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect."[49]

In sum, prior to *Withrow*, the vitality of federal habeas review of alleged *Miranda* violations remained unclear. On the one hand, the Court had flatly denied the extension of *Stone* to scenarios outside the Fourth Amendment exclusionary rule in *Jackson*, *Rose*, and *Kimmelman*. On the other hand, however, the opinions in these cases each distinguished *Stone* by stressing the absence of the state prisoner's full and fair opportunity to litigate his constitutional claim in the state courts, thereby implying that the key to *Stone* may have been the defendant's prior opportunity in the state courts, rather than the Fourth Amendment exclusionary rule per se.

III. Facts and Procedural History

On April 6, 1985, police officers in Romulus, Michigan found two men shot to death in a parked car.[50] People whom the police questioned in regard to the crime suggested that Robert Allen Williams, Jr., might have information about the murders.[51] On April 10, two officers visited Williams' home and asked him if he would

44 443 U.S. 545 (1979).
45 *Id.* at 550-51.
46 *Id.* at 561.
47 477 U.S. 365 (1986).
48 *Id.* at 368.
49 *Id.* at 374.
50 Williams v. Withrow, 944 F.2d 284, 285 (6th Cir. 1991), 113 S. Ct. 1745 (1993).
51 Michigan v. Williams, 429 N.W.2d 649, 650 (Mich. Ct. App. 1988), Williams v. Withrow, 944 F.2d 284 (6th Cir. 1991), 113 S. Ct. 1745 (1993).

accompany them to the police station to answer some questions concerning the crime.[52] Williams agreed and was searched, placed in the police car, and taken to the station for questioning.[53] He was not handcuffed.[54] Although one of the officers, Sergeant David Early, testified that Williams was not under arrest when he was brought to the station, a police report contradicted this testimony and indicated that the officers arrested Williams at his home.[55]

The officers began questioning Williams immediately after they arrived at the station.[56] Williams was not advised of his *Miranda* rights[57] before this initial series of questions.[58] After Williams denied having any information about the murders, Early assured him that their main concern was to find the perpetrator.[59] Sometime during this initial period of questioning, the officers conferred with each other and decided not to advise Williams of his *Miranda* rights.[60] Williams continued to deny any involvement in the crime, which prompted Early to chide the suspect.[61] Williams then admitted that he had provided the murder weapon, that the murderer called him after the shooting, and that he told Williams that he discarded the murder weapon and his clothes in a nearby river.[62] However, Williams still denied that he had been at the crime scene.[63]

Finally, at this point, the police officers informed Williams of his *Miranda* rights—approximately forty minutes into the questioning

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52 Withrow v. Williams, 113 S. Ct. 1745, 1748 (1993).

53 *Id.*

54 *Id.*

55 *Id.*

56 Williams v. Withrow, 944 F.2d 284, 286 (6th Cir. 1991).

57 The Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. In *Miranda*, the Court mandated the use of warnings to protect this privilege against compelled self-incrimination during custodial police interrogation by assuring the suspect, *inter alia*, that he or she has "the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will.'" Miranda v. Arizona, 384 U.S. 436, 460 (1966) (quoting Malloy v. Hogan, 378 U.S. 1, 8 (1964)).

58 *Williams*, 944 F.2d at 286.

59 *Id.* Early told Williams that "the main thing on this is we want the shooter. We're not real interested in who was there or who was along for the ride . . . . We get the shooter on this and we're gonna pretty well be content." *Id.*

60 Withrow v. Williams, 113 S. Ct. 1745, 1748 (1993).

61 *Id.* Williams' persistent denial prompted the following statement by Early:

> You know everything that went down. You just don't want to talk about it. What it's gonna amount to is you can talk about it now and give us the truth and we're gonna check it out and see if it fits or else we're simply gonna charge you and lock you up and you can just tell it to a defense attorney and let him try and prove differently.

Id.

62 *Williams*, 944 F.2d at 286.

63 *Id.*

and only after he began to implicate himself.[64] Williams waived those rights and continued to make incriminating admissions.[65]

Although he earlier denied being at the scene of the crime, Williams admitted that he had gone with the killer to the scene and had witnessed the shootings.[66] Williams also admitted to driving the getaway car and helping the murderer abandon evidence.[67] Williams was questioned again on April 11 and April 12.[68] The State formally charged him with murder on April 12.[69]

Williams moved to have his statements suppressed before trial.[70] The Circuit Court of Wayne County excluded the statements of April 11 and April 12[71] but held that Williams was told of his *Miranda* rights in a timely fashion and, therefore, did not suppress the statements taken on April 10.[72] Williams was convicted of two counts of first degree murder and two counts of felony firearm charges and sentenced to two concurrent life terms in prison.[73]

Williams appealed the trial court's finding by claiming, *inter alia*, that the court erred in not suppressing the testimony from April 10.[74] Williams argued that the police committed an error in not informing him of his *Miranda* rights because he was in police custody when he gave the statement. The Michigan appellate court rejected this argument and affirmed the trial court's finding that Williams could reasonably have believed that he was free to leave during the questioning. Thus, he was not in custody until he was read his rights.[75] The Michigan Supreme Court denied leave to appeal,[76] and the United States Supreme Court denied Williams' subsequent petition for a writ of certiorari.[77]

Williams then filed a petition for a writ of habeas corpus[78] in

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64 *Withrow*, 113 S. Ct. at 1749.

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 Williams v. Withrow, 944 F.2d 284, 287 (6th Cir. 1991). The trial court found that the statements were "improperly obtained under Michigan caselaw because the delay in actually arresting Williams was used as a tool to extract statements." *Id.* (internal quotation marks omitted).

72 *Withrow*, 113 S. Ct. at 1749.

73 *Id.*

74 Michigan v. Williams, 429 N.W.2d 649, 650 (Mich. Ct. App. 1988).

75 *Id.* at 650-51.

76 Michigan v. Williams, 440 N.W.2d 416 (Mich. 1989).

77 Williams v. Michigan, 493 U.S. 956 (1989).

78 See *supra* note 13 for the full text of 28 U.S.C. § 2254(a), the statutory foundation for federal habeas corpus relief of a state prisoner.

the United States District Court for the Eastern District of Michigan alleging that his *Miranda* rights had been violated.[79] The district court found that Williams was effectively in custody on April 10 as of the moment that Early gave him the option of either answering the questions truthfully or being "lock[ed] up."[80] The district court concluded, therefore, that the trial court should have excluded all the statements that Williams made between that point and the time at which his *Miranda* warnings were finally read to him.[81] Furthermore, by applying the totality of circumstances approach used in *Oregon v. Elstad*,[82] the district court also established that the post-*Miranda* statements made by Williams should also have been suppressed since the officers' repeated promises of leniency if Williams told the truth effectively rendered his admissions involuntary.[83] Unaware that the trial court had already excluded the remarks made by Williams on April 12, the district court's ruling mistakenly applied to those statements as well.[84]

The Sixth Circuit Court of Appeals affirmed the district court's grant of Williams' petition for a writ of habeas corpus.[85] In addition, the court of appeals noted that the Supreme Court had not yet indicated whether *Stone* should be applied to alleged *Miranda* violations and, therefore, rejected the argument that the holding in *Stone* should be extended to bar the federal collateral review of Williams' *Miranda* claim.[86]

The United States Supreme Court granted certiorari to answer the question of whether collateral review of a *Miranda* claim should be precluded where the petitioner has already had a full and fair opportunity to litigate this claim in the state courts.[87]

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79 Williams v. Withrow, 944 F.2d 284, 287 (6th Cir. 1991); Withrow v. Williams, 113 S. Ct. 1745, 1749 (1993).

80 *Williams*, 944 F.2d at 286.

81 *Withrow*, 113 S. Ct. at 1749.

82 470 U.S. 298 (1985). The Court in *Elstad* held that incriminating statements following earlier, unwarned statements are not presumed to be involuntary. *Id.* at 318. Rather, the totality of circumstances approach requires that the "finder of fact must examine the surrounding circumstances and the entire course of police conduct . . . in evaluating the voluntariness of [subsequent] statements." *Id.*

83 *Withrow*, 113 S. Ct. at 1749.

84 *Id.* at 1749 n.1.

85 Williams v. Withrow, 944 F.2d 284, 291 (6th Cir. 1991).

86 *Id.*

87 Withrow v. Williams, 112 S. Ct. 1664 (1992); *Withrow*, 113 S. Ct. at 1749.

IV. THE SUPREME COURT OPINIONS

A. THE MAJORITY OPINION

In an opinion delivered by Justice Souter,[88] the majority concluded that the rationale in *Stone v. Powell*[89] should not be applied to *Miranda* warnings and affirmed the Sixth Circuit's grant of the writ of habeas corpus to Williams.[90] Justice Souter began by noting that the limitation on federal habeas relief imposed by *Stone* was based on "prudential concerns counseling against the application of the Fourth Amendment exclusionary rule on collateral review."[91] Justice Souter explained that because the Fourth Amendment exclusionary rule is not a constitutional right per se, but rather a judicial instrument designed to deter future Fourth Amendment violations by police, the costs of applying the exclusionary rule on collateral review simply outweighed any marginal benefit in deterrence resulting from its application.[92] Justice Souter then pointed out that in previous opportunities the Court had declined to extend *Stone* to bar habeas proceedings in contexts other than the Fourth Amendment exclusionary rule.[93] He also noted that the Court refused to consider the application of *Stone* to *Miranda* claims in previous cases.[94]

In asserting that "the argument for extending *Stone* again falls short,"[95] Justice Souter accepted the premise put forth by Williams that *Miranda* warnings are prophylactic in nature and are not themselves mandated by the Constitution,[96] but he dismissed Williams'

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88 Justice Souter wrote for a unanimous Court with respect to Part III of the opinion and was joined by Justices White, Blackmun, Stevens, and Kennedy with respect to Parts I, II, and IV.

89 428 U.S. 465, 482 (1976). *See supra* notes 29-39 and accompanying text.

90 Withrow, 113 S. Ct. at 1748.

91 *Id.* at 1750. *See Stone*, 428 U.S. at 494-95 n.37. *See also* Allen v. McCurry, 449 U.S. 90, 103 (1980) (*Stone* involves "the prudent exercise of federal-court jurisdiction under 28 U.S.C. § 2254").

92 *Withrow*, 113 S. Ct. at 1750. Justice Souter listed, *inter alia*, the inefficient use of scarce judicial resources, the effect of habeas review on the finality of criminal trials, and federalism concerns as some of the costs of collateral review of Fourth Amendment claims that the *Stone* court factored into its decision. *Id. See Stone*, 428 U.S. at 491 n.31 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 259 (1973) (Powell, J., concurring)).

93 *Withrow*, 113 S. Ct. at 1750. *See supra* notes 40-49 and accompanying text.

94 *Withrow*, 113 S. Ct. at 1751 n.4. *See, e.g.*, Duckworth v. Eagan, 492 U.S. 195, 201 n.3 (1989); Wainwright v. Sykes, 433 U.S. 72, 87 n.11 (1977).

95 *Withrow*, 113 S. Ct. at 1751.

96 Justice Souter explained that, by barring the introduction of statements in their absence, *Miranda* warnings are prophylactic safeguards used to insure that the constitutional right of an individual against compelled self-incrimination is protected. Therefore, *Miranda* warnings are over-inclusive because it is possible that a statement made in their absence would be excluded even though it may be one "that we would not condemn as 'involuntary in traditional terms.'" *Id.* at 1752 (quoting Miranda v. Arizona, 384 U.S. 436, 457 (1966)). *See infra* notes 156-73 and accompanying text.

conclusion that habeas review of *Miranda* claims should then be prohibited.[97]

Justice Souter claimed that "[c]alling the *Miranda* safeguards 'prophylactic,' however, is a far cry from putting *Miranda* on all fours with [the Fourth Amendment exclusionary rule in] *Mapp*, or from rendering *Miranda* subject to *Stone*."[98] He attempted to illustrate this point by distinguishing *Miranda* claims from those in *Mapp* on three main grounds.[99]

First, the primary function of the *Mapp* rule is to deter future constitutional violations, since the exclusion of illegally seized evidence at trial cannot remedy a "completed and wholly extrajudicial Fourth Amendment violation."[100] On the contrary, *Miranda* differs from *Mapp* in that, prophylactic though it may be, it protects a "fundamental *trial* right"[101] by providing a bulwark for a defendant's Fifth Amendment right against self-incrimination.

Second, Justice Souter averred that while "evidence excluded under *Mapp* 'is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant,' "[102] the values served by the exclusion of evidence obtained in violation of *Miranda* are "[not] necessarily divorced from the correct ascertainment of guilt"[103] because the warnings deter the use of unreliable statements obtained during custodial interrogation. As support for this, Justice Souter proposed that a criminal law system dependant on confessions would be less reliable and more subject to abuse than one driven by independent investigation.[104]

Moreover, Justice Souter then proclaimed that the most important rationale for not extending *Stone* to the case at hand is the fact that "eliminating review of *Miranda* claims would not significantly benefit the federal courts in their exercise of habeas jurisdiction, or advance the cause of federalism in any substantial way."[105] For instance, Justice Souter stated that eliminating federal review of *Miranda* claims would simply cause a state prisoner to refashion a *Miranda* claim into a due process claim that the prisoner's conviction

97 *Withrow*, 113 S. Ct. at 1752.

98 *Id.* at 1753.

99 *Id.*

100 *Id. See* Stone v. Powell, 428 U.S. 465, 486 (1976).

101 *Withrow*, 113 S. Ct. at 1753 (quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 264 (1990)) (emphasis added in *Withrow*).

102 *Id.* (quoting *Stone*, 428 U.S. at 490).

103 *Id.*

104 *Id.* (quoting Michigan v. Tucker, 417 U.S. 433, 448 n.23 (1974)).

105 *Id.* at 1754.

was based on an involuntary confession.[106] Hence, according to Justice Souter, the scarce judicial resources of the federal courts would not be conserved by the extension of *Stone*, because the totality of circumstances analysis used in due process analysis is more extensive than the "brighter-line" rules of *Miranda*.[107] Likewise, the abandonment of federal review of *Miranda* issues would not go far toward easing federalism tensions between the state and federal courts.[108] To this end, Justice Souter alleged that habeas review of *Miranda* claims would not raise federal-state tensions to any meaningful degree, due to the fact that law enforcement has grown in constitutional sophistication in the twenty-seven years since the *Miranda* decision, and because there is little reason to fear that police today are unwilling to fulfill the *Miranda* requirements.[109] Finally, Justice Souter finished his discussion of the federal review of *Miranda* by asserting that "[i]t is the occasional abuse that the federal writ of habeas corpus stands ready to correct."[110]

In addition, in Part III of the opinion, which was unanimously endorsed by the Court, Justice Souter briefly noted that the district court committed error prejudicial to the State when it concluded that portions of Williams' statements were involuntary in the due process sense, because a due process claim was not raised in Williams' petition.[111] Thus, since Williams only raised a *Miranda* claim, the district court should not have considered the due process implications of Williams' statements.[112]

B. JUSTICE O'CONNOR'S OPINION

Justice O'Connor[113] dissented from the Court's refusal to extend *Stone* to limit federal habeas review of *Miranda* claims.[114] Justice O'Connor based her conclusion on the fact that the prudential concerns guiding the *Stone* Court's analysis with respect to the Fourth Amendment exclusionary rule are found with equal or greater force in *Miranda* claims;[115] thus, "the principles that inform our habeas

106 *Id.*
107 *Id.*
108 *Id.*
109 *Id.* at 1754-55.
110 *Id.* at 1755 (quoting Jackson v. Virginia, 443 U.S. 307, 322 (1979)).
111 *Id.*
112 *Id.* at 1755-56.
113 Chief Justice Rehnquist joined Justice O'Connor.
114 *Id.* at 1756 (O'Connor, J., concurring in part and dissenting in part).
115 *Id.* at 1759. This proposition by Justice O'Connor is consistent with, and can be regarded as an extension of, her written opinions in previous *Miranda* cases. *See, e.g.*, Duckworth v. Eagan, 492 U.S. 195, 209 (1989) (O'Connor, J., concurring); Oregon v. Elstad, 470 U.S. 298 (1985). *See also* Brewer v. Williams, 430 U.S. 387, 426 (1977) (Bur-

jurisprudence—finality, federalism, and fairness—counsel decisively against the result the Court reaches."[116]

Justice O'Connor began by reminding the Court that Williams was seeking relief not by direct review but by collateral review of his state court conviction through the writ of habeas corpus.[117] She went on to note that the Court has repeatedly emphasized that collateral review deals with issues that are not found on direct review—the most obvious of which is the writ's effect on the finality of previous judicial judgments, which "depriv[es] law 'of much of its deterrent effect.' "[118]

Justice O'Connor then remarked that the Fourth Amendment exclusionary rule and *Miranda* are analogous in that neither the suppression of the result of an illegal search or seizure nor the exclusion of statements obtained in violation of *Miranda*'s warning requirement are constitutionally required.[119] Justice O'Connor also reaffirmed the Court's previous findings that "*Miranda*'s warning requirement is not a dictate of the Fifth Amendment itself, but a prophylactic rule."[120] Further, she averred that *Miranda* is overinclusive and may exclude confessions that may not actually be unconstitutional, therefore confirming the prophylactic aspect of *Miranda*.[121]

Moreover, while Justice O'Connor admitted that the overbreadth of *Miranda* is justified because it deters police from de-

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ger, C.J., dissenting) (advocating the extension of *Stone* to bar habeas review of *Miranda* claims).

116 *Withrow*, 113 S. Ct. at 1756 (O'Connor, J., concurring in part and dissenting in part).

117 *Id.* (O'Connor, J., concurring in part and dissenting in part).

118 *Id.* (O'Connor, J., concurring in part and dissenting in part) (quoting Teague v. Lane, 489 U.S. 288, 309 (1989)). *See also* McCleskey v. Zant, 111 S. Ct. 1454, 1468 (1991). Justice O'Connor explained that " '[n]o one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.' " *Withrow*, 113 S. Ct. at 1756 (O'Connor, J., concurring in part and dissenting in part) (quoting Mackey v. United States, 401 U.S. 667, 691 (1971) (Harlan, J., concurring in part and dissenting in part). *See generally* Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. CHI. L. REV. 142, 146-51 (1970) (discussing why collateral review requires a significant burden of justification).

119 *Withrow*, 113 S. Ct. at 1759 (O'Connor, J., concurring in part and dissenting in part).

120 *Id.* (O'Connor, J., concurring in part and dissenting in part). *See, e.g.*, McNeil v. Wisconsin, 111 S. Ct. 2204, 2208 (1991); Michigan v. Harvey, 494 U.S. 344, 350 (1990); Duckworth v. Eagan, 492 U.S. 195, 203 (1989); New York v. Quarles, 467 U.S. 649, 654 (1984); Michigan v. Tucker, 417 U.S. 433, 442-46 (1974).

121 *Withrow*, 113 S. Ct. at 1759. (O'Connor, J., concurring in part and dissenting in part).

manding compelled or involuntary statements, she also stated that, like the Fourth Amendment exclusionary rule, *Miranda*'s benefits come at a substantial cost.[122] For example, unlike involuntary or compelled statements, confessions obtained without the requisite *Miranda* warnings are not necessarily untrustworthy.[123] Thus, the exclusion of trustworthy confessions due to technical mistakes on the part of the State impairs the pursuit of truth.[124] Justice O'Connor conceded that if a *Miranda* claim is being litigated on *direct* review such injury to the attainment of truth is an acceptable sacrifice.[125]

However, the Justice stressed that "once a case is on collateral review, the balance between the costs and benefits shifts; the interests of federalism, finality, and fairness compel *Miranda*'s exclusion from habeas."[126] Justice O'Connor explained that the benefit of collateral enforcement in terms of both excluding involuntary statements and deterring future interrogations is minimal at best.[127] For example, she noted that excluding involuntary statements can be more accurately achieved by deciding voluntariness questions directly.[128] Similarly, in terms of the deterrent effect of collateral review, Justice O'Connor stated that because habeas relief is often awarded years after the initial conviction, it is unlikely that it will have any material effect on police training or behavior beyond the threat of exclusion during state-court proceedings.[129] Most importantly, she professed that an additional cost of *Miranda*'s application on habeas is that it often undermines the just application of law altogether because exclusion of a statement after federal review will often occur "years after trial, when a new trial may be a practical impossibility."[130]

In the key portion of her opinion, Justice O'Connor stressed that excluding federal habeas review of *Miranda* claims still allows

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122 *Id.* (O'Connor, J., concurring in part and dissenting in part).

123 *Id.* (O'Connor, J., concurring in part and dissenting in part).

124 *Id.* (O'Connor, J., concurring in part and dissenting in part).

125 *Id.* (O'Connor, J., concurring in part and dissenting in part).

126 *Id.* (O'Connor, J., concurring in part and dissenting in part).

127 *Id.* at 1759-60 (O'Connor, J., concurring in part and dissenting in part).

128 *Id.* at 1760 (O'Connor, J., concurring in part and dissenting in part).

129 *Id.* (O'Connor, J., concurring in part and dissenting in part). *See also* Friendly, *supra* note 118, at 163.

130 *Withrow*, 113 S. Ct. at 1760 (O'Connor, J., concurring in part and dissenting in part) (citing Duckworth v. Eagan, 492 U.S. 195, 211 (1989) (O'Connor, J., concurring)). Justice O'Connor posited that this will often result in "the release of an admittedly guilty individual who may pose a continuing threat to society." *Id.* (O'Connor, J., concurring in part and dissenting in part) (citing *Duckworth*, 492 U.S. at 211 (O'Connor, J., concurring)).

for the correction of true Fifth Amendment violations.[131] She postulated that state prisoners still would be able to seek habeas relief by claiming directly that their convictions violated their right to due process because they rested on compelled or involuntary confessions; therefore, Justice O'Connor reasoned, excluding *Miranda* claims from federal review denies collateral review only in those cases in which the prisoner's statement was neither compelled nor involuntary.[132] Furthermore, she emphasized that forcing litigants to adjudicate their claims on the basis of a true Fifth Amendment violation would allow the federal court to look at all the relevant factors of the case, in which the absence of *Miranda* warnings obviously is a major factor, and allows the court to resolve more accurately the ultimate constitutional question: whether the confession at issue was actually involuntary and, thus a violation of the Fifth Amendment.[133]

C. JUSTICE SCALIA'S OPINION

Although Justice Scalia[134] reached the same conclusion as Justice O'Connor, he disagreed with both her analysis and that of the majority by placing more emphasis on the principles of federalism and equity.[135] Justice Scalia proposed that the opinions of both Justice Souter and Justice O'Connor disregarded the fundamental question posed by this case: considering that the writ of habeas corpus is a remedy based in equity,[136] should a federal habeas court reopen and readjudicate a claim that has already been fully and fairly litigated in state proceedings and been denied at each level?[137]

Justice Scalia declared that *Stone* did not deny federal habeas court jurisdiction over all Fourth Amendment claims; rather, *Stone* simply held that equity demands that a federal habeas court should not entertain such a claim when the petitioner has already had a full and fair opportunity to litigate that allegation.[138] Thus, *Stone* is "simply one application of equitable discretion . . . [and is not]

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131 *Id.* at 1761 (O'Connor, J., concurring in part and dissenting in part).

132 *Id.* (O'Connor, J., concurring in part and dissenting in part).

133 *Id.* at 1764 (O'Connor, J., concurring in part and dissenting in part).

134 Justice Thomas joined Justice Scalia.

135 *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part).

136 Justice Scalia noted that the text of the federal habeas statute clearly delineates the equitable nature of the writ by mandating the courts to " 'dispose of the matter as law *and justice* require.' " *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part) (quoting 28 U.S.C. § 2243) (emphasis added in *Withrow*)). *See also* Fay v. Noia, 372 U.S. 391, 438 (1963).

137 *Withrow*, 113 S. Ct. at 1766 (Scalia, J., concurring in part and dissenting in part).

138 *Id.* at 1767 (Scalia, J., concurring in part and dissenting in part).

unique to Fourth Amendment claims."[139] Justice Scalia reasoned that the extension of *Stone* to the case at hand would "treat *Miranda* claims no differently from all other claims, taking account of all equitable factors, including the opportunity for full and fair litigation, in determining whether to provide habeas review."[140] Therefore, Justice Scalia asserted that both Justice Souter and Justice O'Connor had applied *Stone* incorrectly in their analysis.[141]

Justice Scalia thus proposed that *Stone* need not be specially "extended" in any way to cover *Miranda* claims and that "[p]rior opportunity to litigate an issue should be an important equitable consideration in *any* habeas case."[142] He further stated that federal courts should not entertain a habeas claim unless the claim "goes to the fairness of the trial process or to the accuracy of the ultimate result."[143]

Justice Scalia then argued that the three cases which the majority cited as authority for not applying *Stone* to habeas review of alleged *Miranda* violations—*Kimmelman*, *Rose*, and *Jackson*— dealt with issues that were challenges to the fairness and/or accuracy of the trial proceedings. Thus, Justice Scalia concluded, they are entirely consistent with *Stone*'s framework.[144] Justice Scalia also professed that the notion of federalism demanded that collateral review of habeas claims be severely restricted.[145] He emphasized that a prior

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139 *Id.* at 1767-68 (Scalia, J., concurring in part and dissenting in part).

140 *Id.* at 1767 (Scalia, J., concurring in part and dissenting in part).

141 *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part). Justice Scalia criticized the majority for stating that applying *Stone* to the present case involves "eliminating review of *Miranda* claims." *Id.* at 1767 (Scalia, J., concurring in part and dissenting in part) (quoting *id.* at 1754). Likewise, Justice Scalia believed that Justice O'Connor was also incorrect in asserting that the Court was "asked to exclude a substantive category of issues from relitigation on habeas." *Id.* at 1767 (Scalia, J., concurring in part and dissenting in part) (quoting *id.* at 1758 (O'Connor, J., concurring in part and dissenting in part)).

142 *Id.* at 1768 (Scalia, J., concurring in part and dissenting in part). Note that Justice Souter responded to this proposal by claiming that it went beyond the question on which the Court granted certiorari and, hence, did not need to be addressed in the case at hand. *Id.* at 1749 n.2.

143 *Id.* at 1768 (Scalia, J., concurring in part and dissenting in part).

144 *Id.* (Scalia, J., concurring in part and dissenting in part). *See supra* notes 40-49 and accompanying text. Justice Scalia explained that the alleged Sixth Amendment violation in Kimmelman v. Morrison, 477 U.S. 365 (1986), dealt with the fairness of the trial process; that Rose v. Mitchell, 443 U.S. 545 (1979), involved the trial court's alleged discrimination in violation of the Due Process Clause of the Fourteenth Amendment, thereby raising the question of whether the defendant had the opportunity for a full and fair state trial; and that Jackson v. Virginia, 443 U.S. 307 (1978), involved a challenge to the accuracy of the trial court's findings because it implicated a Fourteenth Amendment due process claim of insufficient evidence to prove guilt beyond a reasonable doubt. *Withrow*, 113 S. Ct. at 1768 (Scalia, J., concurring in part and dissenting in part).

145 *Id.* at 1769 (Scalia, J., concurring in part and dissenting in part).

opportunity for full and fair litigation is normally critical with regard to a federal prisoner's claim;[146] thus, it would deride our federal system to give the conclusions of state courts less deference.[147]

V. ANALYSIS

The Court incorrectly decided *Withrow v. Williams*. By the narrowest of margins,[148] the Court refused to extend the rationale of *Stone v. Powell* to cases involving alleged *Miranda* violations. Therefore, the Court's decision in *Withrow* has preserved the application of the writ of habeas corpus to defendants who assert that their state convictions were tainted by the use of statements taken in violation of *Miranda*, even though they have had a full and fair opportunity to litigate this claim in state proceedings.[149]

This Note argues that the prudential considerations that led to the Court's decision in *Stone* should apply with equal force to alleged violations of the prophylactic rules of *Miranda*. Essentially, this Note concludes that the costs of federal collateral review of technical, over-inclusive *Miranda* claims outweigh its conceded benefits. In addition, this Note proposes that, in an effort to deter litigants from alleging purely technical *Miranda* claims without sufficient evidence to show actual compulsion, state litigants should be forced to allege an actual violation of the Fifth Amendment right against compelled self-incrimination to be granted federal habeas relief.

A. THE EQUITABLE NATURE OF THE WRIT DEMANDS DISCRETION

The Court has long held that the writ of habeas corpus must be granted with discretion.[150] In fact, while greatly broadening the

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146 *Id.* (Scalia, J., concurring in part and dissenting in part). *See also* Kaufman v. United States, 394 U.S. 217, 227 n.8 (1969). Justice Scalia also listed federal cases after *Kaufman* that refused to reach the merits of constitutional claims raised and rejected on earlier, direct appeal: Giacalone v. United States, 739 F.2d 40, 42-43 (2d Cir. 1984); United States v. Orejuela, 639 F.2d 1055, 1057 (3d Cir. 1981); Stephan v. United States, 496 F.2d 527, 528-29 (6th Cir. 1974), *cert. denied sub nom.*, Marchesani v. United States 423 U.S. 861 (1975). *See also* 3 CHARLES A. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 593 n.26 (1982).

147 *Withrow*, 113 S. Ct. at 1766, 1770 (Scalia, J., concurring in part and dissenting in part).

148 The case was decided by a five-to-four majority, with Justices O'Connor, Rehnquist, Scalia and Thomas dissenting with regard to the substantive issue at bar.

149 *Withrow*, 113 S. Ct. at 1748.

150 *See* Francis v. Henderson, 425 U.S. 536 (1976). In deciding the appropriate application of the writ, the Court in *Francis* stressed that the "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." *Id.* at 539.

substantive scope of the writ, the Court in *Fay v. Noia* also explicitly emphasized that this broad power requires federal courts to use great responsibility in granting the writ.[151] Therefore, in *Duckworth v. Eagan*, Justice O'Connor recently affirmed that this responsibility has led the Court to find that the proper mode of analysis regarding habeas cases involves "a balancing of state and federal interests."[152]

Although the Court in *Withrow* did not explicitly admit to using a balancing test, its method of analysis reveals that it came to its conclusion by weighing the costs and benefits of extending *Stone* to *Miranda* claims. For example, the Court affirmed *Stone*'s restriction on habeas relief, which was based on "prudential concerns."[153] Also, the Court based its decision largely on the notion that "eliminating review of *Miranda* claims would not significantly benefit the federal courts in the exercise of habeas jurisdiction, or advance the cause of federalism in any substantial way."[154] In effect, the Court's statement is a concession that a balancing test is being used because, as Justice O'Connor recognized, the "consideration the Court identifies as being 'most importan[t]' of all . . . is an entirely pragmatic one."[155]

B. WEIGHING OF INTERESTS MANDATES DENYING HABEAS RELIEF

1. Miranda Rules Are Prophylactic

Determining whether the rules set forth in *Miranda* are prophylactic is vital to the analysis of *Withrow* because the over-inclusiveness of prophylactic rules magnifies the costs that are factored into the cost/benefit analysis used in *Stone*. The purpose of any cost/benefit analysis is to evaluate to what degree, if at all, the costs involved in a decision are outweighed by its concurrent benefits. Prophylactic rules are similar to deterrent remedies, like the Fourth Amendment exclusionary rule, in that they are not specifically mandated by the Constitution; rather, prophylactic rules are created by the judiciary.[156] The objective of a Court-established prophylactic rule is to function "as a preventive safeguard to insure that constitutional violations will not occur."[157] Hence, such rules are over-in-

151 *See supra* notes 24-27 and accompanying text.

152 Duckworth v. Eagan, 492 U.S. 195, 213 (1989) (O'Connor, J., concurring).

153 *Withrow*, 113 S. Ct. at 1750.

154 *Id.* at 1754.

155 *Id.* at 1762 (O'Connor, J., concurring in part and dissenting in part).

156 *See supra* note 96 and accompanying text. *See also* Joseph D. Grano, *Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy*, 80 Nw. U. L. Rev. 100, 101-05 (1985).

157 Grano, *supra* note 156, at 105.

clusive by definition and may be violated by an event that does not necessarily violate the Constitution.[158] The main *Miranda* "benefit" to be considered is the assurance that a defendant's involuntary or compelled statement will be inadmissible. However, since the over-inclusive nature of *Miranda*'s prophylaxis prompts the question as to whether a statement taken was actually involuntary or compelled, the probability of an actual constitutional violation occurring in any given instance must be less than one. This raises a doubt as to whether any real benefit would be gained by its exclusion. Thus, it seems intuitive that the costs involved in *Withrow* are accentuated and demand substantial justification because they are certain to arise in every case, and therefore have a probability of one, *irrespective of the occurrence of any real constitutional violation.* Analysis of *Miranda* itself, coupled with the Court's subsequent interpretation of the case, illustrates that the now familiar *Miranda* rule is a prime example of a prophylactic device.[159]

First, although the opinion never refers to the term "prophylactic," the Court in *Miranda* effectively conceded the over-breadth of the rules it set forth. For example, the majority in *Miranda* admitted that statements taken without the requisite warnings must be excluded from trial, even though "we might not find the defendants' statements to have been involuntary in traditional terms."[160] The *Miranda* Court also remarked that "we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process."[161] In addition, and perhaps most graphic of all, the Court itself referred to the required warnings as "*[p]rocedural safeguards* [that] must be employed to protect" a defendant's Fifth Amendment rights.[162] In sum, as Professor Grano has declared, the reasoning behind *Miranda* is in "the language of prophylaxis. The concern is not to detect an actual violation of the fifth amendment [sic] in the particular case but rather to 'insure' that the 'potential' for constitutional violations is not realized."[163]

158 For instance, the Court noted in Michigan v. Payne, 412 U.S. 47, 53 (1973) that "[i]t is an inherent attribute of prophylactic constitutional rules . . . that their retrospective application will occasion windfall benefits for some defendants who have suffered no constitutional deprivation."

159 Grano, *supra* note 156, at 106. In other words, the warnings of *Miranda* force the exclusion of some statements that do not necessarily violate the Fifth Amendment, which guarantees that no person "shall be *compelled* . . . to be a witness against himself." U.S. CONST. amend. V (emphasis added).

160 Miranda v. Arizona, 384 U.S. 436, 457 (1966).

161 *Id.* at 467.

162 *Id.* at 478-79 (emphasis added).

163 Grano, *supra* note 156, at 108.

Furthermore, as Justice O'Connor correctly pointed out in *Withrow*, the Court has long held that *Miranda*'s warning requirement is a prophylactic rule and is not dictated by the Fifth Amendment itself.[164] For example, the Court in *Michigan v. Tucker* found that *Miranda* "recognized that these procedural safeguards were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected."[165] In addition, the Court has held that, while involuntary[166] or compelled[167] statements must be excluded from trial for all purposes, otherwise voluntary statements taken in violation of *Miranda* can be used to impeach a defendant at trial.[168]

Nonetheless, Justice Marshall opined in his *Duckworth* dissent that a statement may *never* be voluntary unless *Miranda* warnings have been given to the defendant, thereby essentially rebutting the idea of *Miranda*'s prophylaxis.[169] However, if taken to its extreme, this view seems untenable. For instance, Justice White's dissent in *Miranda* suggested a hypothetical of two parts: in the first instance, an accused who has been arrested but not given his *Miranda* warnings blurts out a confession; in the second instance, the police ask the accused a single, simple question such as "do you have anything to say?" before the accused's statement.[170] Justice White posited that, under *Miranda*, the first statement is admissible while the sec-

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164 *Withrow*, 113 S. Ct. at 1759 (O'Connor, J., concurring in part and dissenting in part). Recall that the majority in *Withrow* also accepted the premise that *Miranda* is prophylactic in nature. *Id.* at 1752. *See supra* note 96 and accompanying text.

165 417 U.S. 433, 444 (1974). *See also* Michigan v. Harvey, 494 U.S. 344, 350 (1990); Duckworth v. Eagan, 492 U.S. 195, 203 (1989); Oregon v. Elstad, 470 U.S. 298, 305 (1985).

166 Mincey v. Arizona, 437 U.S. 385 (1978).

167 New Jersey v. Portash, 440 U.S. 450 (1979).

168 Oregon v. Hass, 420 U.S. 714 (1975). In fact, Professor Grano maintains that the holding of *Hass* "by itself proves *Miranda*'s prophylactic status." Joseph D. Grano, Miranda's *Constitutional Difficulties: A Reply to Professor Schulhofer*, 55 U. CHI. L. REV. 174, 177 n.18 (1988). Note that even commentators who propose that *Miranda* should not be restricted under any circumstances generally concede that the Court has interpreted *Miranda*'s warnings as prophylactic. *See, e.g.*, David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. CHI. L. REV. 190 (1988); Stephen J. Schulhofer, *Reconsidering* Miranda, 54 U. CHI. L. REV. 435 (1987); Charles J. Ogletree, *Are Confessions Really Good for the Soul?: A Proposal to Mirandize* Miranda, 100 HARV. L. REV. 1826 (1987); Philip Halpern, *Federal Habeas Corpus and the* Mapp *Exclusionary Rule After* Stone v. Powell, 82 COLUM. L. REV. 1 (1982); Stephen J. Schulhofer, *Confessions and the Court*, 79 MICH. L. REV. 865 (1981) (reviewing YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY (1980)). *But see generally* Thomas S. Schrock et al., *Interrogational Rights: Reflections on* Miranda v. Arizona, 52 S. CAL. L. REV. 1 (1978) (suggesting that *Miranda* may not be prophylactic).

169 *Duckworth*, 492 U.S. at 226 (Marshall, J., dissenting).

170 Miranda v. Arizona, 384 U.S. 436, 533 (1966) (White, J., dissenting).

ond is not.[171] He persuasively concluded that:

> [c]ommon sense informs us to the contrary. While one may say that the response was 'involuntary' in the sense the question provoked or was the occasion for the response and thus the defendant was induced to speak out when he might have remained silent if not arrested and not questioned, it is patently unsound to say the response is compelled.[172]

Therefore, *Miranda*'s rule *must* be prophylactic because the second statement in Justice White's hypothetical can only be viewed as an actual Fifth Amendment violation if one adheres to the extreme view that confessions are only voluntary if there is no police interaction whatsoever.[173]

2. *The Costs and Benefits of Collateral Review*

The benefits of *Miranda*'s prophylactic rule are both readily apparent and crucial to our constitutional jurisprudence. For example, in her *Withrow* dissent, Justice O'Connor emphasized the deterrence function of *Miranda*,[174] while the majority noted that *Miranda*'s main benefit lies in its protection of a defendant's Fifth Amendment privilege.[175] Thus, while both sides of the Court recognized that there are some benefits to *Miranda*, their disagreement lies in the recognition of the substantial costs of habeas review of *Miranda* claims and the relative weight given to these costs.

First and foremost, as Justice O'Connor noted, the most profound cost is the effect on finality.[176] Similarly, in *McCleskey v. Zant*, the Court emphasized that a major object of the law "is the finality of its judgments."[177] Moreover, the majority in *Engle v. Isaac*[178] acknowledged Professor Bator's suggestion that the "absence of finality . . . frustrates deterrence and rehabilitation."[179] Thus, the Court in *Engle* forcefully concluded that one of the costs

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171 *Id.* at 533-34 (White, J., dissenting).

172 *Id.* at 534 (White, J., dissenting).

173 Grano, *supra* note 156, at 109 n.48.

174 Withrow v. Williams, 113 S. Ct. 1745, 1759 (1993) (O'Connor, J., concurring in part and dissenting in part).

175 *Id.* at 1753.

176 *Id.* at 1756 (O'Connor, J., concurring in part and dissenting in part). *See supra* note 118 and accompanying text.

177 111 S. Ct. 1454, 1468 (1991).

178 456 U.S. 107 (1982).

179 *Id.* at 127 n.32. Bator made the following comment:

> it is essential to the educational and deterrent functions of the criminal law that we be able to say that one violating that law will swiftly and certainly become subject to punishment, just punishment . . . [and] a realization by the convict that he is justly subject to sanction, that he stands in need of rehabilitation.

Bator, *supra* note 10, at 452.

of habeas is that "[c]ollateral review of a conviction extends the ordeal of trial for both society and the accused."[180]

Second, the majority in *Withrow* conceded that one of the costs to be considered is the fact that federal habeas review also puts a strain on our notion of federalism.[181] Our federal system of government provides states with the autonomy to define and enforce their own law against the backdrop of the United States Constitution.[182] Consequently, the *Engle* Court stressed that habeas review "frustrate[s] both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights."[183] Importantly, the Court in *Engle* also emphasized that the tension created between the federal and state courts may seriously affect the morale of state judges and, therefore, their overall judicial performance.[184] Bator graphically illustrated this concern by remarking that he has surveyed "nothing more subversive of a judge's sense of responsibility, of the inner subjective conscientiousness which is so essential a part of the difficult and subtle art of judging well, than an indiscriminate acceptance of the notion that all the shots will always be called by someone else."[185] In addition, Justice O'Connor commented in *Duckworth* that the detrimental effects of collateral review of *Miranda* allegations are not limited to judges; rather, federal collateral review of *Miranda* claims also influences the public's perception of the judicial system because it "teaches not respect for the law, but casts the criminal system as a game, and sends the message [to the public] that society is so unmoved by the violation of its own laws that it is willing to frustrate their enforcement for the smallest of returns."[186]

Nevertheless, the majority in *Withrow* argued that, on the benefit side of the ledger, the protection *Miranda* provides to our Fifth Amendment privilege against compelled self-incrimination out-

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180 *Engle*, 456 U.S. at 126-27. The Court explained further:

> [b]oth the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community.

Id. at 127 (quoting Sanders v. United States, 373 U.S. 1, 24-25 (1963) (Harlan, J., dissenting)).

181 Withrow v. Williams, 113 S. Ct. 1745, 1754-55 (1993).

182 *See Engle*, 456 U.S. at 128.

183 *Id.* at 128. *See also* McCleskey v. Zant, 111 S. Ct. 1454, 1469 (1991); Murray v. Carrier, 477 U.S. 478, 487 (1986).

184 *Engle*, 456 U.S. at 128-29 n.33.

185 Bator, *supra* note 10, at 451. *See also Engle*, 456 U.S. at 128 n.33; Schneckloth v. Bustamonte, 412 U.S. 218, 264-65 (1973) (Powell, J., concurring).

186 Duckworth v. Eagan, 492 U.S. 195, 212 (1989) (O'Connor, J., concurring).

weighs the enormous costs of collateral review.[187] Similarly, Justice Brennan asserted in his dissent in *Stone* that habeas review is an integral part of the federal public policy that a litigant's constitutional rights "shall not be denied without the fullest opportunity for plenary federal judicial review."[188] Of course, Justice Brennan's argument[189] is worthy of consideration since it highlights the issue at bar: when is "plenary judicial review" met? The balancing test utilized by both sides of the Court is an attempt to decide the question. However, several determining factors lead to the conclusion that "plenary judicial review" is met without granting state litigants habeas review of *Miranda* claims after they have been provided a full and fair opportunity to litigate their claim on the state level.

First, the majority cited three cases in which the Court has refused to extend the holding of *Stone* outside the realm of the Fourth Amendment exclusionary rule.[190] However, Justice Scalia persuasively argued that in each of the cases the litigants had made constitutional assertions that directly referred to an abridgement of their opportunity for full and fair procedures. Therefore, the three cases do not support the majority's opinion because *Stone* only restricts habeas review of claims that have been fully and fairly litigated at the state level.[191] In essence, *Withrow* is distinguishable from *Jackson*, *Rose*, and *Kimmelman* because it did not raise any doubt as to "the type of full and fair hearing deemed essential to the holding of *Stone*."[192]

Additionally, Justice Scalia explained that allowing collateral review after the litigant has had a full opportunity to litigate the claim is only tenable if one assumes that state courts are intrinsically inadequate to decide federal constitutional claims.[193] Similarly, the *Stone* Court faced the issue of parity and declared that there is "no intrin-

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187 Withrow v. Williams, 113 S. Ct. 1745, 1753-55 (1993).

188 Stone v. Powell, 428 U.S. 465, 519 (1976) (Brennan, J., dissenting) (quoting Fay v. Noia, 372 U.S. 391, 424 (1963)).

189 Note that the majority in *Withrow* implicitly asserted the same argument.

190 *Withrow*, 113 S. Ct. at 1750-51. *See supra* notes 40-49 and accompanying text.

191 *Id.* at 1768 (Scalia, J., concurring in part and dissenting in part). *See supra* note 144 and accompanying text.

192 Rose v. Mitchell, 443 U.S. 545, 561 (1979). *See supra* notes 40-49 and accompanying text.

193 *Withrow*, 113 S. Ct. at 1770 (Scalia, J., concurring in part and dissenting in part). Professor Chemerinsky has noted that since the formation of the Constitution, and "especially for the past thirty years, discussions about the scope of federal jurisdiction have focused on whether federal courts are more willing and able than state courts to protect constitutional rights. This issue has been labeled the question of 'parity' between federal and state courts." Erwin Chemerinsky, *Parity Reconsidered: Defining A Role For the Federal Judiciary*, 36 UCLA L. REV. 233 (1988).

sic reason why the fact that a man is a federal judge should make him more competent, or conscientious, or learned with respect to [constitutional questions] than his neighbor in the state courthouse."[194] Thus, unless the litigant has been denied a full and fair state proceeding, "state courts should be presumed to have applied federal law as faithfully as federal courts."[195]

Third, neither of the dissenting opinions in *Withrow* advocated

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194 Stone v. Powell, 428 U.S. 465, 494 n.35 (1976) (quoting Bator, *supra* note 10, at 509). *See also* Moore v. Sims, 442 U.S. 415, 430 (1979) (stating that the Court has repeatedly and emphatically rejected the claim that state courts are not competent to adjudicate federal claims). *But see* Steffel v. Thompson, 415 U.S. 452, 464 (1974) (noting that the lower federal courts are the primary avenue for vindicating constitutional rights); Brown v. Allen, 344 U.S. 443, 511 (1953) (Frankfurter, J., concurring) (acknowledging that even the highest state courts have occasionally failed to recognize constitutional violations in criminal cases).

195 *Withrow*, 113 S. Ct. at 1770 (Scalia, J., concurring in part and dissenting in part). Note, however, that the parity of state and federal courts is by no means agreed upon by commentators. For example, Professor Redish rejects "the view of federal jurisdiction which recognizes the fungibility, or 'parity' of state and federal courts." MARTIN H. REDISH, FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER 1 (2d ed. 1990) [hereinafter FEDERAL JURISDICTION]. *See also* Martin H. Redish, *Judicial Parity, Litigant Choice*, 36 UCLA L. REV. 329 (1988); Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105 (1977); Paul J. Mishkin, *The Federal Question in the District Courts*, 53 COLUM. L. REV. 157 (1953). Professor Redish has asserted that even though there is "no statistical data to support the assertion that federal courts are, on the whole, better equipped to guard federal interests than their state counterparts . . . common sense functional distinctions may be drawn." FEDERAL JURISDICTION, *supra*, at 2-3. Examples of factors that Professor Redish relies upon to form this distinction are that the appointment process of federal judges assures a floor of competence, state judges are not adequately insulated from the majoritarian process, and the fact that federal courts may have developed an expertise in dealing with federal law that is lacking in state courts because state judges are less frequently exposed to federal issues. *Id.* at 160. On the contrary, those "who contend that there is parity . . . argue that other factors which are the same in the two court systems—such as the oath to uphold the Constitution, the judicial role, and the transmission of information from attorneys—are more important in determining results" than the considerations noted by Redish and others which may differentiate the two systems. Chemerinsky, *supra* note 193, at 278. *See also* Bator, *supra* note 10; Paul M. Bator, *The State Courts and Federal Constitutional Litigation*, 22 WM. & MARY L. REV. 605 (1981); Michael E. Solimine & James L. Walker, *Constitutional Litigation in Federal and State Courts: An Empirical Analysis of Judicial Parity*, 10 HASTINGS CONST. L.Q. 213 (1983); HENRY J. FRIENDLY, FEDERAL JURISDICTION: A GENERAL VIEW 125 (1973). However, Professor Chemerinsky has also poignantly concluded that the debate cannot be resolved:

> [N]either side advances the debate past an intuitive judgement as to whether state courts are equal to federal courts in their willingness and ability to protect federal rights. I fear that the debate over parity is permanently stalemated because parity is an empirical question—whether one court system is as good as another—for which there never can be any meaningful empirical measure.

Chemerinsky, *supra* note 193, at 235-36. Finally, Professor Bator has persuasively posited that state courts should be given full faith in their constitutional jurisprudence because distrusting them may be a self-fulfilling prophecy: "we must not too easily construct our jurisdictional and remedial rules on the premise that [state judges] can't and won't speak for the Constitution. If we want state judges to feel institutional re-

the denial of a *direct* appeal of a *Miranda* claim; rather, they limited their conclusions to collateral review.[196] This is crucial because, by definition, a defendant seeking collateral review has been given a full opportunity to litigate his claim and has been denied relief throughout the state appellate process—including the state supreme court.[197] Therefore, the argument for the extension of *Stone* in *Withrow* is not based on the notion that *Miranda* is categorically unsound but that, *in particular circumstances*, the costs of the over-inclusivity of its prophylactic presumption should be viewed with heightened skepticism. In fact, the impeachment doctrine in *Hass*, which allows statements taken in violation of *Miranda* to be used for impeachment purposes at trial, may be viewed as evidence that the Court has already implicitly recognized that *in certain circumstances* the costs of *Miranda* outweigh its benefits.[198] Conversely, the majority concentrated its analysis on the general attributes of the Fifth Amendment and *Miranda* warnings in general[199] and only briefly discussed the implications of collateral review. It thereby skirted the issue.[200] In fact, Justice Scalia asserted that the Court disregarded the fact that the defendant had a full opportunity to litigate his claim in the state courts prior to his petition for a writ of habeas.[201]

Fourth, and most importantly, the rationale of *Stone* should be extended to *Miranda* claims because restricting the use of habeas for such claims pursuant to *Stone* would not result in the denial of any valid constitutional claims of compelled self-incrimination.[202] As the majority admitted, a state prisoner would still be allowed to convert his *Miranda* claim into a habeas demand by arguing that his due process rights were violated because his conviction rested on a com-

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sponsibility for vindicating federal rights, it is counterproductive to be grudging in giving them the opportunity to do so." Bator, *supra*, at 625.

196 Justice O'Connor noted that while the costs of *Miranda*'s prophylaxis are outweighed by its benefits on direct review, "once a case is on collateral review, the balance between the costs and benefits shifts . . . [and results in] *Miranda*'s exclusion from habeas." *Id.* at 1759 (O'Connor, J., concurring in part and dissenting in part). Likewise, Justice Scalia emphasized that his opinion was founded on the fact that the litigant "has already had full and fair opportunity to litigate this claim." *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part).

197 *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part).

198 *See supra* notes 166-70 and accompanying text. Professor Kainen commented that the Court in *Hass* concluded that the use of evidence obtained in violation of *Miranda* for impeachment purposes found the proper "balance between the costs of admission and the costs of exclusion." James L. Kainen, *The Impeachment Exception to the Exclusionary Rules: Policies, Principles, and Politics*, 44 STAN. L. REV. 1301, 1308 (1992).

199 *Withrow*, 113 S. Ct. at 1751-53.

200 *Id.* at 1754.

201 *Id.* at 1766 (Scalia, J., concurring in part and dissenting in part).

202 *Id.* at 1761 (O'Connor, J., concurring in part and dissenting in part).

pelled confession.[203] This concession is dispositive, given the fact that federal habeas review of *Miranda* violations will often have little to do with actual guilt or innocence or any constitutional violation, because the *Miranda* exclusionary rule "sweeps more broadly than the Fifth Amendment itself. . . . Thus, in the individual case, . . . [it] provides a remedy even to the defendant who has suffered no identifiable constitutional harm."[204] This over-inclusive aspect of *Miranda* stems from the fact that, in contrast to claims alleging actual compulsion, a *Miranda* claim requires only that law enforcement officers commit a technical error.[205] This observation is highlighted when coupled with the majority's statement that "law enforcement has grown in constitutional . . . sophistication, and there is little reason to believe that the police today are unable, or even generally unwilling, to satisfy *Miranda*'s requirements."[206] Therefore, if the Court is correct, the vast majority of *Miranda* claims brought by prisoners will be purely technical administrative errors.[207] Presuming that litigants who have evidence that their constitutional rights have been actually violated would convert their *Miranda* claims to due process claims, the extension of *Stone* to *Miranda* would then serve to deter claims in which the litigant has no evidence of compulsion beyond a purely technical violation of *Miranda*. In other words, Justice O'Connor was correct when she concluded that "[e]xcluding *Miranda* claims from habeas, then, denies collateral relief only in those cases in which the prisoner's statement was neither compelled nor involuntary but merely obtained without the benefit of *Miranda*'s prophylactic warnings."[208] Alternatively, the totality of circumstances approach used in adjudicating due process claims allows "each fact to be taken into account without resort to formal and dispositive labels."[209] Hence, due process claims that directly aver actual compulsion ensure the exclusion of compelled or involuntary

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[203] *Id.* at 1754. The Court noted that under the due process approach, a habeas court would look to the totality of the circumstances to decide if a Fifth Amendment violation had indeed occurred. *Id. See* Arizona v. Fulminante, 111 S. Ct. 1246, 1252 (1991); Oregon v. Elstad, 470 U.S. 298, 318 (1985); Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

[204] *Elstad*, 470 U.S. at 306-07. *See Withrow*, 113 S. Ct. at 1759-60 (O'Connor, J., concurring in part and dissenting in part). *See also supra* notes 156-73 and accompanying text for a detailed discussion of *Miranda*'s prophylaxis.

[205] *Withrow*, 113 S. Ct. at 1762 (O'Connor, J., concurring in part and dissenting in part).

[206] *Id.* at 1755.

[207] *Id.* at 1762 (O'Connor, J., concurring in part and dissenting in part).

[208] *Id.* at 1761 (O'Connor, J., concurring in part and dissenting in part).

[209] *Id.* at 1764 (O'Connor, J., concurring in part and dissenting in part). *See supra* note 133 and accompanying text.

statements with greater accuracy.[210]

Finally, the majority's attempt in *Withrow* to distinguish the Fourth Amendment exclusionary rule involved in *Stone* from the warnings of *Miranda* does not support its conclusion to deny the extension of *Stone* to *Miranda* claims. The Court in *Withrow* claimed that illegally seized physical evidence, which falls under the exclusionary rule, is typically a reliable indicator of the guilt of the defendant, whereas statements acquired in violation of *Miranda* may be unreliable due to coercion.[211] However, Justice O'Connor responded by explaining that, because of *Miranda's* prophylaxis, confessions obtained in violation of *Miranda* are in fact not necessarily untrustworthy and can be vital in the accurate adjudication of the guilt or innocence of the defendant.[212] Thus, because the reliability of evidence can be more effectively deduced under the analysis used in a due process claim, Justice O'Connor correctly asserted that "*Miranda*'s relationship to accurate verdicts is an important consideration . . . . that weighs decisively against the Court's decision."[213]

Moreover, Judge Friendly opined that the costs of habeas review are magnified by the fact that collateral review is a severe drain on judicial resources.[214] In addition, he noted that collateral review diminishes *Miranda*'s deterrent effect because of the undoubted delays between the actual arrest and conviction and the federal habeas review of the case.[215] In *Duckworth*, Justice O'Connor accepted Friendly's argument and stressed that "[r]elitigation of *Miranda* claims offers little or no additional structural incentive . . . . [because] 'the deterrent value of permitting collateral attack goes beyond the point of diminishing returns.' "[216] Thus, providing collateral review of *Miranda*, especially considering its over-inclusive nature when there is a more direct alternative to review actual con-

210 *Id.* at 1761 (O'Connor, J., concurring in part and dissenting in part). *See supra* note 132 and accompanying text.

211 *Id.* at 1753. *See supra* notes 102-04 and accompanying text.

212 *Id.* at 1759 (O'Connor, J., concurring in part and dissenting in part). *See supra* notes 127-30. Justice White emphasized this point in his dissent in *Miranda* when he stated that voluntary confessions, particularly when corroborated, "have the highest reliability and significantly contribute to the certitude with which we may believe the accused is guilty." Miranda v. Arizona, 384 U.S. 436, 538 (1966) (White, J., dissenting).

213 *Withrow*, 113 S. Ct. at 1762 (O'Connor, J., concurring in part and dissenting in part).

214 Friendly, *supra* note 118, at 148. If it were a severe drain in 1970, it is likely that the drain on judicial resources of collateral review in today's severely strained judicial system has increased exponentially.

215 *Id.* at 147. *See supra* notes 129-30 and accompanying text.

216 Duckworth v. Eagan, 492 U.S. 195, 211 (1989) (O'Connor, J., concurring) (quoting Friendly, *supra* note 118, at 163).

stitutional claims, "has a virtuous sound but ignores the finite amount of funds available in the face of competing demands."[217]

In essence, the Court's repeated recognition of the equitable nature of the writ and the prophylaxis of *Miranda* in previous cases suggests that *Stone* should be extended to *Miranda* claims. This would force litigants to dispense "with the search for the prophylactic rule violation . . . [and] instead . . . [focus] on the search for true Fifth Amendment violations by adjudicating the questions of voluntariness and compulsion directly."[218] Therefore, under the totality of circumstances approach, alleged *Miranda* violations would be an important factor in a court's determination of involuntariness but not automatically the dispositive one.[219] Importantly, this suggestion recognizes the costs of federal habeas review and the fact that statements taken in violation of *Miranda* claims are not necessarily truly involuntary or compelled, while also allowing litigants an avenue to redress valid constitutional violations. Unless the Court is willing to overrule its decision in *Stone* or its prior determination of *Miranda*'s over-inclusivity, there seems little reason to allow collateral habeas review of *Miranda* claims if the defendant has had a full and fair opportunity to litigate that claim in state proceedings.[220]

VI. Conclusion

The Court's decision in *Withrow v. Williams* allows state defendants whose *Miranda* claims have been previously denied in full and fair state proceedings to relitigate their claims in federal court. Considering that the Court has long viewed *Miranda* warnings as prophylactic, this result conceivably allows defendants recompense where no constitutional violation has occurred. At the same time, maintaining federal collateral review of *Miranda* incurs great costs to the judicial value of finality, as well as to the judicial system in general, and is a great intrusion on state sovereignty. Finally, to the extent that the Court is striving to remedy actual constitutional violations, that task is more accurately and prudently performed by direct adjudication of Fifth Amendment claims.

Anthony P. Bigornia

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217 Friendly, *supra* note 118, at 149.

218 *Withrow*, 113 S. Ct. at 1765 (O'Connor, J., concurring in part and dissenting in part).

219 *Id.* at 1764 (O'Connor, J., concurring in part and dissenting in part).

220 *See Id.* at 1758 (O'Connor, J., concurring in part and dissenting in part) (stating that the same prudential concerns that decided *Stone* apply with equal or greater force in *Miranda* claims).