Constitutional Law - Habeas Corpus - State Prisoners - Waiver of Constitutional Rights - Grand Jury Composition

Lynette Norton

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Law Commons

Recommended Citation
Available at: https://dsc.duq.edu/dlr/vol15/iss3/11

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
Constitutional Law—Habeas Corpus—State Prisoners—Waiver of Constitutional Rights—Grand Jury Composition—The United States Supreme Court has held that absent both a showing of cause for failure to make a timely objection and a showing of actual prejudice, a state prisoner's failure to comply with a state statute providing that defects in indictment must be raised prior to trial or be deemed waived precludes federal habeas corpus relief on a subsequent claim that blacks had been excluded from the grand jury.


Abraham Francis, a seventeen-year-old black youth, was indicted for felony murder by a Louisiana grand jury. The charges arose from a robbery of a white couple in which Francis and three other blacks allegedly participated, and in which the victim of the killing was one of the alleged robbers. Blacks served on the indicting grand jury but the method of selection—eliminating daily wage earners—had the effect of excluding blacks disproportionately. Represented by state-appointed, uncompensated counsel, who was unfamiliar with criminal procedure and who took practically no action in his client's behalf, Francis was found guilty and sentenced to life imprisonment. Neither Francis nor his counsel had objected to the composition of the grand jury prior to or during his one-day trial.

Francis did not appeal from his conviction. Over five years later, however, he sought habeas corpus relief in the Louisiana courts on the ground there had been racial discrimination in the selection of the grand jury which had indicted him. The Louisiana court denied the writ: under Louisiana law failure to make timely objection, prior to trial, to defects in the indictment was a waiver of the right

2. Id. at 538 n.2.
3. Id. at 554.
4. The equal protection clause of the fourteenth amendment has long been held to guarantee a grand jury free from discriminatory selection processes. In Strauder v. West Virginia, 100 U.S. 303 (1880), a case decided not long after the ratification of the fourteenth amendment, the Supreme Court held unconstitutional a state statute excluding Negroes from grand jury duty. More recently, the Court has recognized that discrimination may exist in practice although not intended by statute. In Alexander v. Louisiana, 405 U.S. 625 (1972), a defendant established unconstitutional discrimination in the grand jury selection by showing the statistical improbability, on the basis of race, of the composition of the grand jury which indicted him, and the existence of procedures which provided ready opportunities for discrimination despite the fact blacks were not completely excluded.
to assert the claim in collateral proceedings. Francis then sought relief in federal district court. The District Court for the Eastern District of Louisiana granted the writ, holding that the prisoner had made out a prima facie case of discrimination in the grand jury selection which the state had neither factually rebutted nor vitiated by proving a deliberate waiver by Francis. Furthermore, the district court determined that Francis' failure to timely object to the grand jury procedure was justified; cause was satisfied by proof that his court-appointed lawyer was inexperienced in criminal practice.

The United States Court of Appeals for the Fifth Circuit reversed the district court. Unlike the district court, the circuit court accepted the waiver argument asserted by the state. Additionally, the Fifth Circuit added the requirement that for a state prisoner to be entitled to federal habeas corpus relief, he must demonstrate that actual prejudice resulted from the unconstitutional procedure. The court of appeals remanded the case to allow Francis an opportunity to prove that actual prejudice had resulted from the state's method of selecting grand jurors. On certiorari, the Supreme Court affirmed.

In the majority opinion, the Court first observed that federal district judges had discretionary power to grant a writ of habeas corpus in a case such as Francis, but framed the issue in terms of the appropriate exercise of that power. Six members of the Court, through Justice Stewart, reaffirmed their decision in Davis v.

6. Francis sought relief under 28 U.S.C. § 2254 (1970), which provides in relevant part: (a) 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. Federal courts are to entertain the application for habeas corpus where the applicant can establish or the state admits "that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or . . . that the applicant was otherwise denied due process of law in the State court proceeding." Id.
7. See Newman v. Henderson, 496 F.2d 896, 897-98 (5th Cir. 1974). Newman was a Louisiana prisoner whose case was consolidated with Francis'.
8. Id. at 897-98.
9. Id. at 898-99.
11. 425 U.S. at 542.
12. Id. at 538-39.
United States which had denied a federal prisoner habeas relief when he had failed to timely object to the grand jury composition. Davis, premised on notions of orderly criminal procedure and finality of convictions, permitted a denial of habeas relief to federal prisoners asserting constitutional claims where rights had been waived by procedural default and no cause for waiver was shown. In the Court's view, the reasons underlying that decision called for a similar result where a state prisoner presented a similar constitutional claim. Without attempting to distinguish the cases factually, Justice Stewart justified extending the Davis rule to state prisoners by comparing the Louisiana statute to Federal Rule 12(b)(2) under which Davis had been decided. The Court reasoned that state waiver provisions served the same purposes as the parallel federal procedural rules: they were legitimate methods for effectuating orderly administration of criminal justice and deterring possible abuses of process. Speaking in broad terms of comity and federalism, the Court refused to intervene in the state criminal proceeding as the federal district court had done. It held that the court of appeals had correctly applied Davis in denying relief to a state prisoner who raised a constitutional challenge to a grand jury's composition after having failed to timely object. Future prisoners would have to show cause for the failure to object and actual prejudice resulting from the alleged constitutional violation in order to obtain habeas relief.

Justice Brennan, the sole dissenter, relied on Fay v. Noia, the landmark habeas corpus decision of the Warren Court. Fay opened

15. 411 U.S. at 243-45.
16. 425 U.S. at 541-42.
17. See text accompanying notes 35 & 36 infra.
18. FED. R. CRIM. P. 12(b)(2) directs that defects in an indictment not raised prior to trial are deemed to be waived unless cause for not timely challenging the indictment is shown.
19. The important state interests recognized by the Court included the discouragement of tactical abuses by criminal defendants, the orderly administration of justice free from federal interference, and the finality of convictions. 425 U.S. at 540-42. If the requested relief were granted in this type of case, the state would be faced with the reopening of all convictions resulting from indictments issued by this particular grand jury. Conceivably, all indictments ordered while the unconstitutional method of selection was used would be open to attack, or at least all indictments against blacks for whom the presumption of prejudice would arise.
20. Id. at 541-42.
21. Id. at 542.
22. Id. at 542. See note 41 infra regarding the actual prejudice requirement.
habeas relief to state prisoners presenting constitutional claims even though procedural defaults would have barred direct review of their cases, so long as those defaults had not been conscious and deliberate bypasses of other avenues of review.\textsuperscript{24} Justice Brennan, who had authored the majority opinion in \textit{Fay}, reaffirmed the Court’s definition of waiver in that case as being a purposeful and intelligent act on the part of the defendant.\textsuperscript{25} Finding no such waiver in \textit{Francis}, he reminded the majority that federal courts were meant to be the ultimate arbiters of constitutional claims, and that historically the states have not always been solicitous of constitutional rights.\textsuperscript{26} He objected to the majority’s imposition of the obstacle of demonstrating actual prejudice, and suggested that such a showing might be impossible. Since the majority opinion was in conflict with \textit{Fay}, which had approved habeas relief where a confession had been coerced in violation of the fourteenth amendment, Justice Brennan read \textit{Francis} as either impliedly overruling \textit{Fay} or creating a distinction between the two substantive constitutional claims which denigrated the importance of a constitutionally composed grand jury.\textsuperscript{27}

\textsuperscript{24} \textit{Id.} at 434-35, 438. \textit{Fay} brought to the area of habeas corpus the classic definition of waiver enunciated by the Supreme Court in \textit{Johnson v. Zerbst}, 304 U.S. 458, 464 (1938): an “intentional relinquishment or abandonment of a known right or privilege.” \textit{See also} note 30 \textit{infra}.

\textsuperscript{25} 425 U.S. at 543-45 (dissenting opinion). \textit{Fay} restricted the waiver of a constitutional right to circumstances where a habeas applicant had “deliberately sought to subvert or evade the orderly adjudication of his federal defenses in the state courts.” 372 U.S. at 433. The waiver had to be a knowing and intelligent one. \textit{See note 24 supra}.

\textsuperscript{26} It might be argued that the federal forum is a more appropriate one for considering procedural claims due to the court’s remoteness from the crime. Local courts, more concerned with substantive as opposed to procedural matters and also subject to regional sentiment, might arguably have difficulty in isolating issues of constitutional-procedural guarantees. The Supreme Court has recently reiterated that the habeas writ is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” \textit{Harris v. Nelson}, 394 U.S. 286, 290-91 (1969) (district court must grant evidentiary hearing to habeas applicant upon appropriate showing of unconstitutional procedure). \textit{See also} Amsterdam, \textit{Criminal Prosecutions Affecting Federally Guaranteed Civil Rights: Federal Removal and Habeas Corpus Jurisdiction to Abort State Court Trial}, 113 U. Pa. L. Rev. 793 (1965); \textit{Brennan, Federal Habeas Corpus and State Prisoners: An Exercise in Federalism}, 7 UTAH L. Rev. 423 (1961). For the view that increased federal judicial intervention in state affairs is neither necessary nor wise see \textit{Aldisert, Judicial Expansion of Federal Jurisdiction: A Federal Judge’s Thoughts on Section 1983, Comity, and the Federal Caseload}, 1973 \textit{Law & Soc. O.} 557. Judge Aldisert characterized the expanded role of the federal courts as a movement toward a de facto national court system, and argued for a reinvestment of trust in the state courts.

\textsuperscript{27} 425 U.S. at 546 (dissenting opinion).
To understand the import of Francis, the case must be read in context with the Supreme Court's earlier habeas corpus decisions, particularly Fay and Davis. Historically, the expansion of federal habeas corpus relief to state prisoners was checked by the doctrine of exhaustion of state remedies. However, as the substantive grounds upon which habeas relief could be granted have increased commensurately with the protections afforded by the fourteenth amendment, the Court has restricted the exhaustion requirement to remedies still available to the prisoner or remedies purposefully bypassed. The Supreme Court’s decision in Fay v. Noia marked a peak in extending the writ to safeguard a criminal defendant’s constitutional rights despite his failure to comply with state procedural requirements. Fay granted habeas relief to a defendant who had decided, in consultation with his counsel, not to pursue a state appeal for fear of a retrial resulting in a possible death penalty but later, sought collateral relief in federal court on the ground that his confession had been coerced. The Fay majority enunciated a waiver standard which gave the prisoner the benefit of every doubt. Only if the habeas applicant “understandingly and knowingly forewent the privilege of seeking to vindicate his federal claims in the state courts” would it be open for the district court to deny him relief, 28.

Three cases are particularly notable in the development of the doctrine of exhaustion of state remedies. In Ex parte Royall, 117 U.S. 241 (1886), the Supreme Court denied a prisoner habeas relief where he applied for the writ prior to his trial in state court. In Ex parte Fonda, 117 U.S. 516 (1886), decided the same year, the Court directed a prisoner who had sought the writ following trial and conviction to return to the state forum to exhaust state appellate review. The doctrine was further refined by the requirement that a prisoner apply for a state writ of habeas corpus before his federal application would be entertained. Mooney v. Holohan, 294 U.S. 103 (1935).

29. See the discussion in Fay v. Noia, 372 U.S. 391, 426-34 (1963), reviewing the rationale of the exhaustion of state remedies doctrine.

30. The Court characterized the petitioner’s choice whether to accept life imprisonment or to appeal and risk retrial with a possible death penalty as a “grisly” one, which under the circumstances could not be considered a tactical or strategic decision or “in any way a deliberate circumvention of state procedures.” Id. at 440.

31. Id. at 439.
and then only after the federal court had satisfied itself as to the reasons for the applicant's default by conducting a hearing or by other appropriate means. The prisoner's decision not to appeal, based on fear of a death penalty following retrial, did not constitute an intelligent and voluntary bypass of state procedures; therefore, his claim that his confession was coerced was not foreclosed from federal review.

Davis clearly broke from the Fay precedent by allowing an extinguishment of constitutional rights through an inadvertent omission of proper procedures. In Davis, a federal prisoner sought habeas relief several years after his conviction, contending for the first time that the jury which had indicted him was unconstitutionally composed. The Supreme Court affirmed the federal district court's denial of habeas relief under Federal Rule 12(b)(2), which requires that allegations of defects in an indictment be raised prior to trial or be considered waived absent a showing of cause. There was no determination by the Court that Davis' failure to assert his claim at the proper time was a deliberate bypass, as required by Fay. In Davis, the unconstitutionality of the grand jury selection had not been demonstrated, no cause had been advanced to excuse the failure to timely object, and no actual prejudice had been proven as an alternate method of providing relief from the waiver rule.

Although the Court applied Davis to Francis by comparing the procedural rules for federal and state courts, the cases differed in several important respects that neither the majority nor dissenting opinion in Francis fully acknowledged. First, Davis had not demonstrated the inadequacy of his representation as Francis had done in order to establish cause for waiver. Second, in Francis, the unconstitutionality of the grand jury selection process was proven in the district court; in Davis, two white accomplices were indicted with the defendant, a black, thus rebutting any presumption of prejudice. Finally, the Court in Davis offered the prisoner the opportun-

32. Id.
33. 411 U.S. at 245.
34. Id. at 243-45.
35. In contrast with Francis, Davis' court-appointed counsel received a commendation from the court of appeals. Davis v. United States, 409 F.2d 1095, 1101 (5th Cir. 1969). For further discussion on the relationship between ineffective counsel and the waiver of the defendant's constitutional rights see note 38 infra.
36. 411 U.S. at 235.
ity to show that prejudice had resulted from the allegedly unconstitutional procedure as an alternate means of obtaining relief rather than as an additional requirement to showing cause for waiver. *Francis*, where a state prisoner had proven his constitutional claim and demonstrated cause for waiver due to inadequate representation, was a much stronger case for federal relief than *Davis* where there had been adequate counsel, an unsupported constitutional claim, and original access to the federal forum.  

*Francis* involved more than simply extending the rationale in *Davis* to state prisoners seeking federal habeas corpus relief. Although the majority's argument was that considerations of comity required extension of the rule in *Davis* to the case of a state prisoner, it is clear that the extension is more than jurisdictional. *Francis* has substantially altered the concept of waiver, which now apparently includes not only waivers by competent counsel, as in *Davis*, but also waivers of which neither the defendant nor his counsel were aware. Although it seems clear that *Francis* represents a retrenchment from the "knowing and intelligent" waiver standard of *Fay*,

37. The habeas applications of *Davis* and *Francis* were brought under separate federal statutes. *Davis* filed his claim under 28 U.S.C. § 2255 (1970), a statutory substitute for habeas corpus for prisoners who are already within the federal system. There is an implicit presumption that constitutional claims brought by a federal prisoner in a federal court will be fully and fairly vindicated; the federal court "shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." *Id.* 28 U.S.C. § 2254 (1970), under which *Francis* brought his claim, is the codification, with subsequent revisions, of a Reconstruction measure intended to protect the federal constitutional rights of citizens tried in state courts. See *Wright*, supra note 28, at 237.

38. In *Fay*, the majority had noted that "[a] choice made by counsel not participated in by the petitioner does not automatically bar relief." 372 U.S. at 439. In Henry v. Mississippi, 379 U.S. 443, 451 (1965), the Supreme Court held that a waiver by an attorney without the participation of his client would, except in unusual circumstances, be effective if the waiver was a tactical move. Courts have since split over what degree of participation by the defendant in his counsel's decisions would constitute a waiver. See generally White, *Federal Habeas Corpus: The Impact of the Failure to Assert a Constitutional Claim at Trial*, 58 Va. L. Rev. 67, 69-78 (1972). The majority in *Francis* did not consider the problem of the inadequacy of counsel; only the dissent addressed the issue. The Supreme Court long ago recognized that the right to counsel encompasses the right to adequate representation. See *Powell* v. Alabama, 287 U.S. 45, 58-59 (1932) (assigned counsel must be given proper preparation time to be effective). Although the *Powell* opinion noted that "[e]ven the intelligent and educated layman . . . requires the guiding hand of counsel at every step in the proceedings against him," *id.* at 69, very little has been done by courts or legislatures to reinforce this right. Neither assigned counsel nor public defenders have won the confidence of clients—or commentators. See, e.g., S. NAGEL, *THE RIGHTS OF THE ACCUSED* 151 (1975); Casper, *Did you Have a Lawyer When You Went to Court? No, I Had a Public Defender*, 1 Yale L. Rev. of L. & Soc. Act., 4 (Spring 1971).

39. See notes 24 & 25 supra.
the Court's failure to articulate guidelines as to the parameters of its new standard leaves the current definition of waiver unclear. Lower courts which have been following the deliberate bypass test of *Fay*\(^4\) and its knowing and intelligent waiver standard will have to determine for themselves to what extent, if at all, *Fay* still controls.

A second extension of *Davis*, which also has the potential to reduce the number of habeas writs granted by federal judges, is the *Francis* Court's requirement that a petitioner show "actual prejudice"\(^4\) resulting from the unconstitutional procedure in addition to showing cause for not challenging that procedure. In *Davis*, the opportunity to demonstrate prejudice had been proposed as an alternative to showing cause for a waiver: although Davis had not justified the waiver of his constitutional right by failing to timely object, he could have been granted relief upon a showing that the grand jury composition had led to prejudice in his case.\(^4\) It may be that the Court in *Davis* intended this alternative as a safety valve for cases where a waiver had occurred but where the resulting preju-

\(^{40}\) See, e.g., Paine v. McCarthy, 527 F.2d 173 (9th Cir. 1975), cert. denied, 424 U.S. 957 (1976) (knowing waiver not present where attorney frustrated client's desire to have claim raised on appeal); Hopkins v. Anderson, 507 F.2d 530 (10th Cir. 1974), cert. denied, 421 U.S. 920 (1975) (waiver not sufficient unless made with awareness of relevant circumstances and likely results); Montgomery v. Hopper, 488 F.2d 877 (5th Cir. 1973) (failure to file state appeal held not to constitute a deliberate bypass absent clear proof that waiver was made knowingly in an effort to secure some benefit to defendant).

\(^{41}\) The requirement of a showing of "actual prejudice" was imposed by the *Davis* Court without explanation. The Court did determine, however, that a requirement of actual prejudice was not inconsistent with the presumption of prejudice giving rise to the very existence of the substantive right. 411 U.S. at 244-45. The *Francis* majority similarly refused to explain how a defendant might prove actual prejudice; it imposed the requirement and simply cited to *Davis*. 425 U.S. at 542 & n.6. A presumption of prejudice would normally arise from showing a fact situation which would indicate or imply a likelihood of prejudice. *See Peters v. Kiff*, 407 U.S. 493 (1972) (prejudice presumed on showing of racial discrimination in grand jury selection, regardless of defendant's race). Actual prejudice may require proof of prejudice in fact resulting to the defendant. The term appeared but was not defined in United States v. Marion, 404 U.S. 307 (1971), a case involving an alleged violation of the sixth amendment right to a speedy trial caused by pre-arrest delay. Although the Court found that no presumption of prejudice arose from delay in making an arrest, it admitted that in some cases actual prejudice could result to a defendant. *Id.* at 323-24. Since the case was remanded for a showing of actual prejudice as a means of obtaining relief, the concept was a beneficial one for the defendant, whom the Court had determined had no constitutional right to a speedy arrest. *Id.* at 324. *Marion*, however, is distinguishable from *Francis* where there was a well-settled constitutional right and an admitted violation of that right. *See* 425 U.S. at 555-56 (Brennan, J., dissenting).

\(^{42}\) 411 U.S. at 245.
dice to the defendant was blatant. There is no explanation by the Francis majority for the adoption of the prejudice requirement as an additional barrier to obtaining habeas relief. The requirement of "actual prejudice" is even more alarming in view of the Court's prior acknowledgement in Peters v. Kiff that proof of actual harm from an unconstitutionally composed jury is "virtually impossible to ad-
duce." 44

Francis intimates a reconsideration by the Supreme Court of many of the concerns underlying the writ of habeas corpus, concerns which ultimately determine whether or not a federal court should grant the writ. First, there is the tension between substantive constitutional rights and the requirements for order and finality essential to the administration of criminal justice. A waiver of a constitutional right may logically legitimize an otherwise defective proceeding: for example, although an unconstitutional indictment would normally invalidate the subsequent trial and conviction, the failure to timely object serves to eliminate the defect. 45 This result is particularly harsh, however, where the failure was an involuntary, unconscious act—as in Francis. The argument that a prisoner cannot complain of his custody where he chose not to raise an objection that would have resulted in release obviously fails here, where there was no recognition of the possibility of release. The Supreme Court's preference for finality over the substantive constitutional right lost is troubling in view of the desirability of trying defendants only when they are fully cognizant of their constitutional rights.

Second, the evolvement in Fay, Davis, and Francis shifts the burden of accountability for safeguarding the individual's constitutional rights. Fay placed responsibility on the federal courts to scrutinize the record to insure that a procedural default was adequate to bar federal relief. 46 In Davis, the Supreme Court inferred a waiver from the circumstance that no timely objection had been made, and required the prisoner to prove otherwise. 47 The Francis Court im-

44. Id. at 504.
45. One commentator has observed that "[t]o deprive a person of legal process because of procedural default is always a grave matter; [one that is] doubly true where federal processes are withdrawn because of default under a state procedural rule." Reitz, supra note 28, at 1317.
46. See 372 U.S. at 438-39; text accompanying notes 30-32 supra.
47. 411 U.S. at 245.
posed a waiver where none had been intended, and required not only a showing of cause but also proof of prejudice. The effect, then, has been to place heavier burdens on the applicant seeking entry to the federal forum. This result is difficult to reconcile with the Court's former stance that when an individual seeks federal review of his constitutional claim through a writ of habeas corpus, federal courts were to insure that these liberty rights were not denied "without the fullest opportunity for plenary federal judicial review." At the very least, the Francis decision portends a greater tolerance for defects in constitutional criminal procedure coextensive with a greater deference towards state courts and their ability and willingness to safeguard federal constitutional rights. As Francis and other recent Supreme Court cases illustrate, procedural flaws which at one time might have been considered fatal to an otherwise valid conviction are now thought to be not so fundamentally defective as to render the resulting custody constitutionally intolerable.

There is, in the language of the Francis decision, an attempted accommodation between the competing interests of personal liberties and the efficient administration of justice. Besides insuring both the integrity of state court decisions and cooperation between state and federal courts, Francis' stated purposes, the Supreme Court may have also been responding to the increased workload of the federal courts. Francis, and cases following it, may reduce the number of applications for habeas corpus relief by closing off cate-

48. Arguably, no waiver could have been found in Francis under the standard definition of waiver as established by Johnson and Fay. See notes 24 & 25 supra.


50. In Francis, which was limited to only grand jury claims, the Court distinguished and reaffirmed Lefkowitz v. Newsome, 420 U.S. 283 (1975), a habeas corpus case involving an unconstitutional search and seizure claim. Lefkowitz had held that a plea of guilty in the state court, which extinguished the possibility of appeal, did not bar habeas corpus relief where evidence against the defendant had been unlawfully obtained. Id. at 293. Less than three months after it decided Francis and expressly upheld Lefkowitz, the Court overruled Lefkowitz in Stone v. Powell, 428 U.S. 465 (1976) (exclusionary rule held not an individual right preservable on appellate or collateral review). After Stone, it appears that state courts will have an increasingly important role as arbiters of fourth amendment claims under the exclusionary rule. See also Estelle v. Williams, 425 U.S. 501 (1976) (failure to object to being tried in prison clothing held a waiver of such objection when defendant not compelled to do so).

gories of constitutional claims on a decision by decision basis. How-
ever, under the codified habeas statutes and a long line of interpre-
tive cases, the issue on habeas had come to be solely whether the 
detention was in violation of the Constitution or laws of the United 
States. Contrary to this tradition, that question of federal law may 
now be answered largely within the state courts. How, and how 
consistently, substantive constitutional rights will be interpreted 
there is the important question which remains.

Lynette Norton

52. See, e.g., Walker v. Johnston, 312 U.S. 275 (1941) (habeas petitions could not be disposed of by ex parte affidavits; sufficient allegations by prisoner mandated taking of testimony); Ex parte Siebold, 100 U.S. 371 (1879) (detention unlawful despite fair trial and conviction where indictment under which conviction obtained was unconstitutional). See also Fay v. Noia, 372 U.S. 391, 399-415 (1963) (Brennan, J.) (summarizing some of the Supreme Court's major habeas corpus decisions).