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Protecting Constitutional Rights

HARRY LEE WILLIAMS, who is in prison in Texas, must have rather strange feelings about the nation's judicial system just now. Ths Supreme Court ruled the other day that, while he had a federal constitutional right to wear civilian rather than prison clothes when he was tried for murder, it would not enforce that right because he asked a deputy sheriff —and not the trial judge—for access to his own clothes. Of course, the Court didn't put its decision quite that way; it discussed the matter in terms of the state's not compelling him to wear prison uniform, of the need to have such questions ruled on by trial court judges, and of the proper role of judges and defense attorneys. But the result was the same; the Supreme Court overruled the Fifth Circuit Court of Appeals, which had granted Mr. Williams a new trial.

The question of what clothes Mr. Williams, or anyone else, should wear during a trial is important; a prison uniform, as the Court ruled, could influence a jury unfavorably. But it is not the major issue in this case. The Court used this case, and another decided the same day, as the occasion on which to redefine the federal writ of habeas corpus, that revered instrument of the law that allows judges to release from jail persons held there illegally or unconstitutionally. Apparently responding to criticism that peaked almost a decade ago, the current Court cut back sharply the potential use of that writ by lower federal courts in state criminal cases. That, in itself, is unfortunate. But even worse is the way in which the Court did it. It undermined major aspects of one of the Warren Court's better decisions, in a case called *Fay v. Noia*, without bothering to discuss the fundamental issues involved. We had thought that the writ of habeas corpus was so important in American jurisprudence that no court would curtail its use so cavalierly.

The Fay case wiped out a series of limitations on when federal judges could use habeas corpus to redress violations of constitutional rights that had occurred in state criminal trials. The two cases decided last week restore some of those limits. They seem to say that there are certain federal rights that cannot be vindicated in federal court unless they are first asserted in state courts. The Fay decision had held that federal courts could act in these situations unless the state courts were deliberately bypassed. The distinction, while it may seem highly technical, was at the heart of some of the criticism of the Warren Court a decade ago. State judges thought the Fay decision made them subservient to federal judges and federal judges thought it increased their work loads too much. The Supreme Court, at that time anyway, thought the decision was necessary to ensure that constitutional rights are adequately protected.

We are considerably less concerned about feelings of overwork, inferiority or comity between courts—the latter is a phrase that marks much of the Supreme Court's work these days—than we are about the quality of justice. The Fay decision was an attempt by the Supreme Court to ensure that everyone had a full opportunity to exercise those rights the Constitution grants. It was totally in keeping with the spirit that guided the development of the writ of habeas corpus over the last five centuries. These recent decisions, it seems to us, subordinate that spirit to desires for tidiness and finality in the federal system.

If the majority of the Court is going to pursue the course it seems to have marked out, however, it is going to have to face a question it has largely avoided. By restricting the power of federal courts to redress constitutional violations in the state courts, the Court seems to be assuming that all state judges and trial lawyers will treat individual rights as competently and as gingerly as do federal judges and lawyers who practice in their courts. To imply, as the Chief Justice does in the Williams case, that an individual can look only to his lawyer for help in learning of and asserting his rights assumes the existence of a higher standard of excellence among trial lawyers everywhere than we believe exists. We suspect that in that Texas jail Mr. Williams never dreamed that a deputy sheriff would violate his constitutional rights or that he was waiving those rights by not asking the judge for them. It is simply not good enough to say, as the Court does in his case: Too bad, Mr. Williams; you had a lawyer and if he didn't tell you about your rights, it's nobody's fault but your own.