NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BRECHT *v.* ABRAHAMSON, SUPERINTENDENT, DODGE CORRECTIONAL INSTITUTION

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

No. 91–7358. Argued December 1, 1992—Decided April 21, 1993

At his first-degree murder trial in Wisconsin state court, petitioner Brecht admitted shooting the victim, but claimed it was an accident. In order to impeach this testimony, the State, *inter alia,* made several references to the fact that, before he was given his *Miranda* warnings at an arraignment, Brecht failed to tell anyone with whom he came in contact that the shooting was accidental. The State also made several references to his post-*Miranda*-warning silence in this regard. The jury returned a guilty verdict and Brecht was sentenced to life in prison, but the State Court of Appeals set the conviction aside on the grounds that the State's references to his post-*Miranda* silence violated due process under *Doyle* v. *Ohio,* 426 U. S. 610, and this error was sufficiently ``prejudicial'' to require reversal. The State Supreme Court reinstated the conviction, holding that the error was ```harmless beyond a reasonable doubt''' under the standard set forth in *Chapman* v. *California,* 386 U. S. 18, 24. The Federal District Court disagreed and set aside the conviction on habeas review. In reversing, the Court of Appeals held that the proper standard of harmless-error review was that set forth in *Kotteakos* v. *United States,* 328 U. S. 750, 776, *i.e.,* whether the *Doyle* violation ```had substantial and injurious effect or influence in determining the jury's verdict.''' Applying this standard, the court concluded that Brecht was not entitled to relief.

Held:

1. The *Kotteakos* harmless-error standard, rather than the *Chapman* standard, applies in determining whether habeas relief must be granted because of unconstitutional ``trial error'' such as the *Doyle* error at issue. Pp. 6–17.

(a) The State's references to Brecht's post-*Miranda* silence violated *Doyle.* The *Doyle* rule rests on the *Miranda* warnings' implicit assurance that a suspect's silence will not be used

against him, and on the fundamental unfairness of using postwarning silence to impeach an explanation subsequently offered at trial. It is conceivable that, once Brecht was given his warnings, he decided to stand on his right to remain silent because he believed his silence would not be used against him at trial. The prosecution's references to his pre-*Miranda* silence were, however, entirely proper. Such silence is probative and does not rest on any implied assurance by law enforcement authorities that it will carry no penalty. Pp. 6–7.

(b) *Doyle* error fits squarely into the category of constitutional violations characterized by this Court as ``trial error.'' See *Arizona* v. *Fulminante,* 499 U. S. ___, ___. Such error occurs during the presentation of the case to the jury, and is amenable to harmless-error analysis because it may be quantitatively assessed in the context of other evidence to determine its effect on the trial. See *id.,* at ___. This Court has consistently applied the *Chapman* standard in reviewing claims of constitutional error of the trial type on direct review of state and federal criminal proceedings. Pp. 7–9.

(c) It is for the Court to determine what harmless-error standard applies on collateral review of Brecht's *Doyle* claim. Although the Court has applied the *Chapman* standard in a handful of federal habeas cases, *stare decisis* does not preclude adoption of the *Kotteakos* standard here, since the decisions in question never squarely addressed, but merely assumed, *Chapman*'s applicability on collateral review. Nor has Congress provided express guidance on the question. The federal habeas statute is silent as to the applicable standard, and while the federal harmless-error statute appears to echo the *Kotteakos* standard, it has been limited in its application to claims of nonconstitutional error in federal criminal cases. In line with the traditional rule, the Court finds no reason to draw inferences from Congress' failure to enact post-*Chapman* proposals that would have provided a less stringent harmless-error standard on collateral review of constitutional error. Pp. 8–12.

(d) The *Kotteakos* standard is better tailored to the nature and purpose of collateral review than the *Chapman* standard, and is more likely to promote the considerations underlying this Court's recent habeas jurisprudence. In recognition of the historical distinction between direct review as the principal way to challenge a conviction and collateral review as an extraordinary remedy whose role is secondary and limited, the Court has often applied different standards on habeas than on direct review. It scarcely seems logical to require federal habeas courts to engage in the same approach that *Chapman* requires of state courts on direct review, since the latter courts are fully qualified to identify constitutional error and are often better situated to evaluate its prejudicial effect on the trial process. Absent affirmative evidence that state-court judges

are ignoring their oath, Brecht's argument is unpersuasive that such courts will respond to the application of *Kotteakos* on federal habeas by violating their Article VI duty to uphold the Constitution. In any event, the additional deterrent effect, if any, of applying *Chapman* on federal habeas is outweighed by the costs of that application, which undermines the States' interest in finality and infringes upon their sovereignty over criminal matters; is at odds with habeas' purpose of affording relief only to those grievously wronged; imposes significant ``social costs,'' including the expenditure of additional time and resources by all of the parties, the erosion of memory and the dispersion of witnesses, and the frustration of society's interest in the prompt administration of justice; and results in retrials that take place much later than those following reversal on direct appeal. This imbalance of costs and benefits counsels in favor of application of the less onerous *Kotteakos* standard on collateral review, under which claimants are entitled to relief for trial error only if they can establish that ``actual prejudice'' resulted. See *United States* v. *Lane,* 474 U. S. 438, 449. Because the *Kotteakos* standard is grounded in the federal harmless-error rule (28 U. S. C. §2111), federal courts may turn to an existing body of case law and, thus, are unlikely to be confused in applying it. Pp. 12–17.

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Syllabus

2. It is clear that the *Doyle* error at Brecht's trial did not ``substantially influence'' the jury's verdict within the meaning of *Kotteakos,* since the record, considered as a whole, demonstrates that the State's references to Brecht's post-*Miranda* silence were infrequent and were, in effect, merely cumulative of the extensive and permissible references to his pre-*Miranda* silence; that the evidence of his guilt was, if not overwhelming, certainly weighty; and that circumstantial evidence also pointed to his guilt. Thus, Brecht is not entitled to habeas relief. Pp. 17–18.

944 F. 2d 1363, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a concurring opinion. WHITE, J., filed a dissenting opinion, in which BLACKMUN, J., joined, and in which SOUTER, J., joined except for the footnote and Part III. BLACKMUN, O'CONNOR, and SOUTER, JJ., filed dissenting opinions.