

JS 1-25-80

Decree  
Probably Grant

(See notes on Prelim Memo)

SUPPLEMENTAL MEMORANDUM

February 15, 1980 Conference  
List 3, Sheet 3  
No. 79-935

Cert to CA8 (Lay, Heaney,  
& McMillian)

ALLEN

v.

McCURRY

Federal/Civil

Timely

This is a fascinating case which involves issues concerning the role of collateral estoppel in litigation that may proceed in both state and federal courts, and the effect on those principles of Stone v. Powell.

Actually, the rule in Stone will not be affected by this



case so long as federal proceedings have no greater effect on state proceedings than state proceedings affect federal. That is, a federal determination of the Fourth Amendment issue will not circumvent the rule of Stone unless a state prisoner is able to adjudicate his Fourth Amendment claim in a § 1983 action, then use a favorable judgment in that action as collateral estoppel in state court. But, if the federal action only allows a person to get damages and has not other effect on the state criminal convictions, then the rule of Stone that the exclusionary rule is not to be applied in a federal habeas court will not have been violated.

Alternatively, a holding that a state criminal judgment does collaterally estop a § 1983 proceeding will not contradict the holding of Stone and may be more in accordance with the principles of federalism relied upon in that case.

I would lean to grant in spite of the possibility that the case may be mooted. The case raises serious questions about the relationship between federal and state courts and § 1983 and state courts.

*JS*