

79-935 79-935 Allen v McCurry (Collateral Estoppel in 1983 cases - Stone v Powell) 10/4  
(Pre-Conference Notes)

I. History of Case: Shoot out. Officers wounded.

Gun & narcotics in "plain view."

1. Suppression rejected. Resp. convicted.
2. Mo Ct/Supreme affirmed - citing Coolidge.
3. Resp. did not seek Cert.

II. Full & Fair Trial conceded

III. Collateral Estoppel applies to 1983

1. "fundamental precept of Common Law," Montana v U.S.

2. Pre-Stone cases almost unanimously applied it (CA 8's opinion) in all 1983 cases.

IV. Applies particularly in 4<sup>th</sup> Amend cases

1. If fairness of trial is questioned <sup>state</sup>

(Council access to Fed H/C remains

2. 1983 was addressed to fairness in 1983 cases)

V. Policy of Stone applies

1. No Q of guilt in 4<sup>th</sup> Amend <sup>most</sup> cases

2. Federalism

VI. Fed Res Judicata Act 28 USC 1738

preclusive effect of state judgments

Before & After 1983

29-935 Allen v McCurry (Stone v Powell case)  
(Pre-Conference Notes)

1. Does collateral estoppel apply in 1983 cases ~~in~~ involving <sup>alleged</sup> Court. violations other than 4<sup>th</sup> Amend? (e.g. 5<sup>th</sup> Amend "Confession").

- In Montana v. U.S. (tax case, not 1983) T.M. wrote for Ct. that "collateral estoppel" is a "fundamental precept" of the common law. (Nor does Fed. law require "mutuality" of estoppel. Parklane Housing)

Op of CA 8 in this case said that seven circuits have held "collateral estoppel" applicable in 1983 (A10). Only two CA cases involved 4<sup>th</sup> Amend claims, & both were pre-Stone. (At argument a post-Stone CA was cited)

Thus, on basis of common law & all pre-Stone CA authorities, collateral estoppel would apply in 1983 cases. Pl. (Council for Resp. disagrees with this unanimous auth. He says collateral estoppel never applies in 1983 case).

Collateral estoppel is particularly applicable in 4<sup>th</sup> amend cases because: (1) harshly - including this case - is innocent even claimed; (2) deterrence rationale is weakest in most 4<sup>th</sup> cases - e.g. this case: plain view, & (3) it conceded these were full & fair trial - & appeal - in state cts. No substantial proportion remedied

Rev  
Judicial  
Act

There is  
H/C remedy  
if trial  
was not  
fair