

Reverse 6-3

79-935 Allen v. McCurry

Conf. 10/10/80

The Chief Justice Reverse

Assault claim is different from collateral estoppel claim.

No sound reason why collateral est. should not apply

Mr. Justice Brennan Affirm

Before Stone, seven CAs applied C/E. Since Stone, in 4th Amend cases have been in conflict.

1983 was enacted because state remedies often were discriminatory. This is reason enough not to apply C/E.

At time of 1983, ~~estoppel~~ had to be mutual.

Purpose of Fed H/C was to assure a fed. remedy.

Mr. Justice Stewart Reverse

No reason why modern doctrine of C/E should not apply to 1983, & Stone doesn't change this.

Mr. Justice White Reverse

Mutuality was orig. required, but
Blonder Torgue & Parklane ~~have~~ have
rejected this.

Agree largely with P.S.

Damages not available in H/C action.
The exception to preclusion is limited
to H/C.

Mr. Justice Marshall Affirm

C/E can't & shouldn't apply. Two
different types of actions

Mr. Justice Stevens Affirm

Mr. Justice Blackmun Affirm
Much of what we've done to expand 1983
was never contemplated in 1873

When a party has a choice of forum
there is a waiver. But is different in
a criminal case. Thus no waiver

Cert review is not enough

C/E not available in any 1983 case

Mr. Justice Powell Reverse

See my yellow sheet notes
H/C remains to determine
fairness.

Mr. Justice Rehnquist Reverse

Habeas Act was adopted in 1867
& 1983 in 1873. Congress could not
have contemplated extent to which fed
cts have supplanted state cts.

Agree generally with LFP

Mr. Justice Stevens Reverse

Civil actions by convicted DS
will be rare.

Stone v. Powell cuts against
CA 8's opinion. Policies are same.

Would limit our op. to criminal
cases. Collateral Estoppel may
not apply in all civil cases