**[Powell Pre-Conference Notes 10-09-1980 LFP074F10019-20][[1]](#footnote-1)**

**[1st Page – Image LFP074F10019]**

10/9

79-935 Allen v. McCurry (Collateral Estoppel in 1983 cases – Stone v. Powell[[2]](#footnote-2))

(Pre-Conference Notes)

I. History of Case: Shoot out. Officers wounded. Guns and narcotics in plain view.

1. Suppression rejected. Respondent convicted.

2. Missouri Court of Appeals affirmed – citing Coolidge.[[3]](#footnote-3)

3. Respondent didn’t seek certiorari.

II. Full and Fair Trial conceded

III. Collateral Estoppel applies to 1983

1. “fundamental precept of common law.” Montana v. US.[[4]](#footnote-4)

2. Pre-Stone cases almost unanimously applied it in all 1983 cases. (Eighth Circuit opinion)

IV. Applies particularly in fourth amendment Cases

1. If fairness of state trial is questioned access to federal habeas corpus remains

2. 1983 was addressed to fairness

V. Policies of Stone apply

1. No question of guilt in most fourth amendment cases.

2. Federalism

VI. Federal Res Judicata Act 28 U.S.C. 1738

preclusive effect

of State judgment

Before and After 1983

**[2nd Page – Image LFP074F10020]**

79-935 Allen v, McCurry (Stone v. Powell case)

(Pre-Conference Notes)

1. Does collateral estoppel apply in 1983 cases involving alleged constitutional violations other than fourth amendment? (e.g., Fifth amendment “confession).

- In Montana v. US[[5]](#footnote-5) (tax case, not 1983) Thurgood Marshall wrote for court that Court that “collateral estoppel” is a “fundamental precept” of the common law. (Nor does federal law require “mutuality” of estoppel. Parklane Hosiery)[[6]](#footnote-6)

**Res**

**Judicata**

**Act**

Opinion of the Eighth Circuit in this case said that seven circuits have held “collateral estoppel” applicable in 1983 (Appendix 10). Only two court of appeals cases involved fourth amendment claims, and both were pre-Stone. (At argument a post-Stone court of appeals [case] was cited.)

Thus, on basis of common law and all pre-Stone court of appeals authorities, collateral estoppel would apply in 1983 cases. (Counsel for Respondent disagrees with this unanimous authority. He says collateral estoppel never applies in 1983 case).

**There is habeas corpus remedy if trial was not fair**

Collateral estoppel is particularly applicable in fourth amendment cases because: (1) rarely – including this case – is innocence even claimed; (2) deterrence rationale is weakest in most fourth amendment cases, e.g., this case: plain view, and (3) conceded there was full and fair trial – and appeal – in state courts. No societal purpose served.

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. All footnotes have been added by the editor. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Items or underlining in red are in red in the original. Items or underlining in brown appear to be in pencil. [↑](#footnote-ref-1)
2. Stone v. Powell, 428 U.S. 465 (1976) holding that, in habeas corpus cases, the exclusionary rule should not apply to fourth amendment violations. [↑](#footnote-ref-2)
3. Coolidge v. New Hampshire, 403 U.S. 443 (1971) [↑](#footnote-ref-3)
4. Montana v. United States, 440 U.S. 147 (1979). [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. Park Lane Hosiery v. Shore, 439 U.S. 322 (1979) recognizing offensive non-mutual collateral estoppel but rejecting its use where party asserting preclusion could easily have joined as a plaintiff in the earlier action. [↑](#footnote-ref-6)