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Federal Courts - Civil Rights Action under Section 1983 - Collateral Estoppel Does Not Bar Federal Litigation under Section 1983 of Search and Seizure Claims Following a State Court Decision Upholding Constitutionality of the Search and Seizure

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FEDERAL COURTS—CIVIL RIGHTS ACTION UNDER SECTION 1983—COLLATERAL ESTOPPEL DOES NOT BAR FEDERAL LITIGATION UNDER SECTION 1983 OF SEARCH AND SEIZURE CLAIMS FOLLOWING A STATE COURT DECISION UPHOLDING CONSTITUTIONALITY OF THE SEARCH AND SEIZURE.

McCurry v. Allen (8th Cir. 1979)

Willie McCurry was arrested following a gun battle at his home and charged with illegal possession of narcotics and assault with intent to kill.[1] A state court conducted a suppression hearing to determine the admissibility of evidence seized in McCurry's home following his arrest, and determined that only the heroin which was found "in plain view" could be used at trial.[2] McCurry was convicted in a state court on three counts, one of which was based upon the heroin found in his home.[3]

Following his conviction, McCurry filed a federal action under section 1983 of the Civil Rights Act of 1871[4] against two named police officers, unknown police officers, and the St. Louis Police Department,[5] alleging, *inter alia*, that the officers' seizure of the heroin in his house and the subsequent admission of this evidence at trial violated his rights under the fourth and fourteenth amendments to the United States Constitution.[6]

1. McCurry v. Allen, 606 F.2d 795, 796 (8th Cir. 1979), *cert. granted*, ___ S. Ct. ___ (1980). Six or seven undercover police officers, acting upon an informant's tip that McCurry was selling heroin, went to McCurry's house. 606 F.2d at 796. Two officers asked McCurry if they could purchase some heroin while the other officers hid behind bushes. *Id.* McCurry went into his home and came back to the door firing a pistol. *Id.* The two officers at the door were seriously wounded and a gun battle ensued. *Id.* Upon request by the police, McCurry and his father came out of the house, whereupon they were seized by some officers while other officers searched the house to be certain that no one else was inside. *Id.* During the course of this search, heroin was discovered in some drawers, "among tires," and in "plain view." *Id.*

2. 606 F.2d at 796. The trial court did suppress the heroin which was found "among tires" and in drawers. *Id.*

3. State v. McCurry, No. 77-862 (Mo. Cir. Ct. Jan. 6, 1978), *aff'd*, 587 S.W.2d 337 (Mo. App. 1979). McCurry was convicted on one count of illegal possession of heroin and on two counts of assault with intent to kill. 606 F.2d at 796.

4. McCurry v. Allen, 466 F. Supp. 514, 515, *rev'd*, 606 F.2d 795 (8th Cir. 1979), *cert. granted*, ___ S. Ct. ___ (1980). *See* 42 U.S.C. § 1983 (1976) (originally enacted as Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C § 1983 (1976).

5. 466 F. Supp. at 515. McCurry alleged that he had suffered $1,000,000 in damages. *Id.*

6. *Id.* The fourth amendment assures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. This protection is made applicable to the states by the due process clause of the fourteenth amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend XIV, § 1. *See* Monroe v. Pape, 365 U.S. 167, 171 (1961); Elkins v. United States, 364 U.S. 206, 213 (1960); Wolf v. Colorado, 338 U.S. 25, 27-28 (1949).

Granting the defendant's motion for summary judgment, the United States District Court for the Eastern District of Missouri dismissed McCurry's claim with prejudice, concluding that McCurry was collaterally estopped[7] by the state court's determination that the search and seizure was constitutional.[8]

On appeal, a three-judge panel of the United States Court of Appeals for the Eighth Circuit, reversed and remanded, *holding* that in suits instituted under section 1983,[9] collateral estoppel does not preclude federal review of search and seizure claims previously litigated in a state court. *McCurry v. Allen*, 606 F.2d 795 (8th Cir. 1979), *cert. granted*, ___ S. Ct. ___ (1980).

Enacted pursuant to the enabling clause of the fourteenth amendment,[10] section 1983 creates a federal cause of action for deprivations of

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The constitutional violations alleged by McCurry included: 1) a conspiracy by the police to conduct an illegal search of his house; 2) an illegal search of his house; and 3) an assault by police officers upon him during his arrest. 466 F. Supp. at 515.

7. 466 F. Supp. at 516. Collateral estoppel has been defined as the "doctrine which operates, following a final judgment, to establish conclusively a matter of fact or law for the purposes of a later law suit on a *different* cause of action between the parties to the original action." Polasky, *Collateral Estoppel—Effects of Prior Litigation*, 39 IOWA L. REV. 217, 218 (1954) (footnote omitted) (emphasis added). *See also* Montana v. United States, 440 U.S. 147, 153 (1979); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979); Cromwell v. County of Sac, 94 U.S. 351, 352-53 (1876); RESTATEMENT (SECOND) OF JUDGMENTS § 68 (Tent. Draft No. 4, 1977). Also known as "issue preclusion," collateral estoppel is applicable only in the following limited circumstances: 1) when the two suits involve an identical issue which was necessary to the decision in the first case; and 2) when the estopped party had the opportunity and incentive to fully litigate this issue in the first suit. Vestal, *State Court Judgment as Preclusive in Section 1983 Litigation in a Federal Court*, 27 OKLA. L. REV. 185, 193-94 (1974).

The purposes of collateral estoppel have been expressed as follows: 1) the achievement of the conclusive resolution of disputes; 2) the conservation of judicial resources; 3) the protection of adversaries from protracted litigation; 4) the minimization of inconsistent decisions; and 5) the fostering of confidence in the judicial system. *See* Montana v. United States, 440 U.S. at 153-54; Southern Pac. R.R. v. United States, 168 U.S. 1, 48-49 (1897). Collateral estoppel should be distinguished from res judicata, which is a general doctrine describing the binding effects of former adjudications based on the *same* cause of action. *See Developments in the Law—Res Judicata*, 65 HARV. L. REV. 818, 820 n.1 (1952). *See also* Montana v. United States, 440 U.S. at 153; Lawlor v. National Screen Serv. Corp., 349 U.S. 322, 326 (1955); RESTATEMENT (SECOND) OF JUDGMENTS § 47 (Tent. Draft No. 1, 1973).

On the subject of res judicata and collateral estoppel, *see generally* Hazard, *Res Nova in Res Judicata*, 44 S. CAL. L. REV. 1036 (1971); Polasky, *supra*; Scott, *Collateral Estoppel by Judgment*, 56 HARV. L. REV. 1 (1942); Vestal, *Preclusion/Res Judicata Variables: Adjudicating Bodies*, 54 GEO. L. J. 857 (1966); Vestal, *Preclusion/Res Judicata Variables: Nature of the Controversy*, 1965 WASH. U.L.Q. 158 (1965).

8. 466 F. Supp. at 515-16. The district court concluded that the only issue in the case was "whether the entrance into plaintiff's home and the resulting search was lawful." *Id.* at 515. The court noted that this question had been fully litigated on the merits in the state court proceeding, and therefore ruled that the prior determination by the state court estopped plaintiff from raising the issue in this suit. *Id.* at 515-16. *Cf.* note 45 *infra*.

9. For a discussion of § 1983, *see* notes 10-22 and accompanying text *infra*.

10. *See* Mitchum v. Foster, 407 U.S. 225, 239-40 (1972); U.S. CONST. amend. XIV, § 5. The enabling clause of the fourteenth amendment states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." *Id.*

constitutional rights[11] under color of state law.[12] Since section 1983 establishes an "independent means of redress which a plaintiff could elect initially in preference to an admittedly adequate state remedy,"[13] this section has resulted in significant oversight by the federal courts of state actions.[14]

In *Monroe v. Pape*,[15] a leading decision on section 1983, the Supreme Court considered a section 1983 claim that police officers violated plaintiffs' fourth and fourteenth amendment rights by breaking into plaintiffs' house and ransacking it in search of evidence of a crime.[16] Finding that a valid cause of action existed under section 1983,[17] the Court broadly stated that plaintiffs' search and seizure claim *required* a hearing in a federal forum since the full enjoyment of constitutional rights, privileges, and immunities could *best* be effectuated in a federal court.[18]

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11. 42 U.S.C. § 1983 (1976). For the text of § 1983, *see* note 4 *supra*. For a discussion of the civil rights legislation, *see generally* Chevigny, *Section 1983 Jurisdiction: A Reply*, 83 HARV. L. REV. 1352 (1970); Gressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323 (1952); *Developments in the Law—Section 1983 and Federalism*, 90 HARV. L. REV. 1133 (1977) [hereinafter cited as *Developments—§ 1983*]; Note, *The Proper Scope of the Civil Rights Acts*, 66 HARV. L. REV. 1285 (1953); Comment, *Tort Liability of Law Enforcement Officers Under Section 1983 of the Civil Rights Act*, 30 LA. L. REV. 100 (1969).

12. 42 U.S.C. § 1983 (1976). Concerning the operative phrase "under color of state law," the Supreme Court has stated: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under 'color of' state law." United States v. Classic, 313 U.S. 299, 326 (1941) (citations omitted). *See also* Screws v. United States, 325 U.S. 91, 108-13 (1945). This phrase was further construed by the Court to encompass police action which is violative of constitutional rights, even if that action lies outside the authority of state law. *See* Monroe v. Pape, 365 U.S. 167, 184 (1961).

At least one commentator has noted that the requirement of a showing of unconstitutional acts committed under color of state law creates "an inherent potential for bias" in the state court. Averitt, *Federal Section 1983 Actions After State Court Judgment*, 44 U. COLO. L. REV. 191, 192 (1972), *citing* Chevigny, *supra* note 11, at 1358. The Supreme Court has expanded upon this notion of potential state court bias and has recognized a right to a federal forum under § 1983. *See* Mitchum v. Foster, 407 U.S. 225, 242 (1972); McNeese v. Board of Educ., 373 U.S. 668, 672 (1963); Monroe v. Pape, 365 U.S. 167, 180, 183 (1961).

13. Averitt, *supra* note 12, at 192. *See* 42 U.S.C. § 1983 (1976); P. BATOR, P. MISHKIN, D. SHAPIRO & H. WECHSLER, HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 952-53 (2d ed. 1973) [hereinafter cited as HART & WECHSLER]. For the text of § 1983, *see* note 4 *supra*.

14. *See* Mitchum v. Foster, 407 U.S. 225, 239, 242 (1972) (describing § 1983 as opening "the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation"); Chevigny, *supra* note 11, at 1358 (recognizing that the *Monroe* line of cases signifies a recognition "that the opportunity for state abuse of its remedial role is sufficiently high that an alternative forum should be made available to guarantee federal civil rights").

15. 365 U.S. 167 (1961).

16. *Id.* at 168-69.

17. *Id.* at 187. Although the Court found that plaintiffs stated a good cause of action against the police officers, *id.*, it dismissed plaintiffs' complaint against the City of Chicago, finding that municipalities were not covered by § 1983. *Id.* at 192. It should be noted that *Monroe*'s finding that municipalities were not covered by § 1983 was overruled in Monell v. Department of Social Servs., 436 U.S. 658, 690 (1978). For a discussion of *Monell*, *see* Note, *Suing Municipalities Under 42 U.S.C. § 1983: The Impact of* Monell v. Department of Social Services, 24 VILL. L. REV. 1008 (1979).

18. 365 U.S. at 180. The *Monroe* Court examined the legislative history of the Civil Rights Act of 1871 and concluded that one of the reasons it was passed

The Court's preference for a federal forum for section 1983 claims was expounded upon in *Mitchum v. Foster*,[19] where the Court established that section 1983 authorizes federal courts to issue injunctive and declaratory relief against state court proceedings which infringe upon the petitioner's constitutional rights.[20] The *Mitchum* Court relied upon the legislative history of the Civil Rights Act of 1871, which it found to be the source of the notion that state courts may occasionally be antipathetic to the vindication of federally protected rights.[21] It was thus recognized by the Court that a federal forum is better suited to safeguard these rights.[22]

An alternate means of obtaining federal review of allegedly unconstitutional state action is through petitions of habeas corpus.[23] The writ of

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was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.

Id. Commentators have expressed criticism of this sweeping language in *Monroe*. *See, e.g.*, *Developments*—§ 1983, *supra* note 11, at 1133 n.11; Note, *Limiting the Section 1983 Action in the Wake of* Monroe v. Pape, 82 HARV. L. REV. 1486, 1487, 1501 (1969). For views defending *Monroe's* construction of the Civil Rights Act, *see* Shapo, *Constitutional Tort:* Monroe v. Pape, *and the Frontiers Beyond*, 60 NW. L. REV. 277, 321-22 (1965); Comment, *The Civil Rights Acts and Mr. Monroe*, 49 CALIF. L. REV. 145, 160-62 (1961). *See also* note 64 and accompanying text *infra*.

19. 407 U.S. 225 (1972). *Mitchum* involved a proceeding by the State of Florida to close down plaintiff's bookstore as a public nuisance. *Id.* at 227. The Florida trial court issued a preliminary order prohibiting the continued operation of the store pending the outcome of the suit. *Id.* Plaintiff then filed an action under § 1983 in the United States District Court for the Northern District of Florida, alleging deprivation of his first and fourteenth amendment rights and seeking injunctive and declaratory relief against the pending state court proceeding. *Id.*

20. *Id.* at 242. In holding that the federal district court could enjoin further proceedings in the Florida courts, the *Mitchum* Court declared that § 1983 was intended to enforce the provisions of the fourteenth amendment concerning state action, "whether that action be executive, legislative, or judicial." *Id.*, *quoting Ex parte* Virginia, 100 U.S. 339, 346 (1879).

21. 407 U.S. at 242. The Court noted that the Civil Rights Act of 1871 "makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights." *Id.* For portions of the legislative history of the 1871 Civil Rights Act which support this statement, *see* CONG. GLOBE, 42d Cong., 1st Sess. 361 (1871) (remarks of Rep. Swann); *id.* at 385 (remarks of Rep. Lewis); *id.* at 416 (remarks of Rep. Biggs); *id.* at 429 (remarks of Rep. McHenry); *id.* app., at 179 (remarks of Rep. Voorhees); *id.* app., at 216 (remarks of Sen. Thurman).

22. 407 U.S. at 242. *See also* Averitt, *supra* note 12, at 192; Chevigny, *supra* note 11, at 1357-59; McCormack, *Federalism & Section 1983: Limitations on Judicial Enforcement of Constitutional Claims, Part III*, 60 VA. L. REV. 250, 264 (1974). *But see* Stone v. Powell, 428 U.S. 465, 493-94 & n.35 (1976); notes 30-34 and accompanying text *infra*.

23. *See* Fay v. Noia, 372 U.S. 391, 416 (1963). The early English use of habeas corpus was in the form of orders issued after the initiation of judicial proceedings to assure the appearance of the parties in court. *See Developments in the Law—Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1042 (1970) [hereinafter cited as *Developments—Habeas Corpus*]. The English writ was later broadened, empowering the courts to release prisoners from arbitrary arrests and to review the grounds of confinement. *Id.* at 1045.

The first habeas corpus statute in the United States was the Judiciary Act of 1789, which provided for the issuance of writs by the federal courts to prisoners "in custody under or by colour of the authority of the United States." Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 73, 81-82. *See Developments—Habeas Corpus*, *supra*, at 1044. In 1867, this federal habeas corpus relief was extended to state prisoners. *See* Judiciary Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat.

habeas corpus provides a "ready mechanism for a constitutional attack" on arbitrary exercises of state power to detain individuals and is available to test the legal bases of the "conditions of confinement."[24]

Concerning the scope of federal habeas corpus relief, early cases considered the writ to be "of the most comprehensive character. It brings within the *habeas corpus* jurisdiction of every court and of every judge every possible case of privation of liberty contrary to the National Constitution, treaties, or laws."[25] This expansive concept of habeas corpus was more recently recognized by the Supreme Court in *Fay v. Noia*,[26] where the Court stated that federal courts have the power to grant a writ of habeas corpus to provide an effective remedy for constitutional violations.[27] The *Fay* Court found, however, that "[d]iscretion is implicit in the statutory command" for the federal judge to "deny relief to an applicant who has deliberately bypassed the orderly procedure of the state courts."[28] Thus, while *Fay* adhered to the notion of a broad federal power to review state court judgments, it recognized a limited discretion to withhold a federal habeas forum.[29]

385-86. The present federal habeas corpus statute directs the federal courts to entertain a habeas writ "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a)(1976). The other relevant federal habeas provision states that the writ is to extend to a prisoner who "is in custody under or by authority of the United States . . . or . . . is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c).

24. HART & WECHSLER, *supra* note 13, at 1428-29 (footnotes omitted). The Supreme Court has recognized that federal habeas corpus review is available for claims alleging "disregard of the constitutional rights of the accused, where the writ is the only effective means of preserving his rights." Waley v. Johnston, 316 U.S. 101, 104-05 (1942). A state prisoner's challenge to a trial court's resolution of federal issues was also stated to be an appropriate basis upon which to invoke federal habeas jurisdiction. *See* Brown v. Allen, 344 U.S. 443, 463-64 (1953). This broad habeas corpus jurisdiction was restricted, however, in Stone v. Powell, 428 U.S. 465 (1976). For a discussion of *Stone*, *see* notes 30-34 and accompanying text *infra*..

For a general discussion of the role of habeas corpus, *see* Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441 (1963); Brennan, *Federal Habeas Corpus and State Prisoners: An Exercise in Federalism*, 7 UTAH L. REV. 423 (1961); Hart, *The Supreme Court, 1958 Term, Foreword: The Time Chart of the Justices*, 73 HARV. L. REV. 84 (1959); Oaks, *Legal History in the High Court—Habeas Corpus*, 64 MICH. L. REV. 451 (1966); Reitz, *Federal Habeas Corpus: Impact of an Abortive State Proceeding*, 74 HARV. L. REV. 1315 (1961).

25. *Ex parte* McCardle, 73 U.S. (6 Wall.) 318, 325-26 (1867). *See also Ex Parte* Siebold, 100 U.S. 371, 376-77 (1879).

26. 372 U.S. 391 (1963). In *Fay*, the defendant had been convicted in a state court for felony murder on the sole basis of a signed confession. *Id.* at 394-95. Habeas corpus relief was requested by the defendant on the ground that his confession was coerced and, thus, was violative of his fourteenth amendment right to due process. *Id.* at 395. The major issue in *Fay*, as determined by the Court, was whether the defendant had waived his right to federal habeas review by failing to appeal his conviction in a state court. *Id.* at 394.

27. *Id.* at 434, 441. *See Developments—Habeas Corpus*, *supra* note 23, at 1060-62 (habeas corpus should ensure federal forum to provide full protection of constitutional rights).

28. 372 U.S. at 438.

29. *Id.* This discretionary element in federal habeas corpus jurisdiction had previously been articulated by the Court when it held that the use of habeas corpus to obtain federal review of

The first major limitation on the availability of federal habeas corpus was imposed by the Supreme Court in *Stone v. Powell*,[30] where it was held that federal habeas review of alleged fourth amendment search and seizure violations should not be granted when these claims have been "fully and fairly litigated in the state court."[31] In finding that deference should be given to state court search and seizure determinations which are neither incomplete nor unfair,[32] the *Stone* Court expressed a view markedly dissimilar to its

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constitutional claims will not necessarily be granted if the court is "satisfied that federal constitutional rights have been protected." Brown v. Allen, 344 U.S. 443, 464 (1953) (footnote omitted). The *Brown* Court also noted that since the state and federal courts have the same responsibility to protect an individual's constitutional rights, the federal court *may* decline to award a writ of habeas corpus where the highest state court has adjudged that the prisoner's detention was lawful, whether through affirmance on appeal or through denial of post-conviction remedies. *Id.* at 465. *See also* Townsend v. Sain, 372 U.S. 293, 313 (1963) (indicating the circumstances under which a federal court is compelled to grant a writ of habeas corpus); Thornton v. United States, 368 F.2d 822, 826 (D.C. Cir. 1966) (noting that there is no imperative command to grant collateral review when state procedures are directly available); note 66 *infra*.

30. 428 U.S. 465 (1976). In *Stone*, the respondent's murder conviction was based in part on the seizure of a revolver subsequent to his arrest for violating a vagrancy statute. *Id.* at 468-69. Respondent's motion to the state court to supress the evidence on the basis of an alleged unconstitutional search and seizure was denied, and the California Court of Appeals subsequently affirmed the conviction. *Id.* at 470.

The state of the law immediately prior to *Stone* was expressed in Kaufman v. United States, 394 U.S. 217 (1969), which held that the fourth amendment, as applied to the states through the fourteenth amendment, requires the grant of federal habeas corpus when the prisoner's conviction was based upon evidence obtained in an illegal search and seizure. 394 U.S. at 225. The *Stone* Court asserted that the Court in *Kaufman* believed this result to be compelled by Mapp v. Ohio, 367 U.S. 643, 653 (1961), which required the exclusion of such evidence at trial and a reversal of the conviction on direct review. 428 U.S. at 480-81. *See also* Desisto v. United States, 394 U.S. 244 (1969); Mancusi v. DeForte, 392 U.S. 364 (1968); Carafas v. LaVallee, 391 U.S. 224 (1968).

31. 428 U.S. at 494. Although acknowledging the broad power conferred to it by the habeas corpus statute the *Stone* Court stated that it still possessed discretion over the exercise of that power. *Id.* at 478 n.11. Reviewing the cases supporting the view that habeas corpus relief should be available in search and seizure cases, the *Stone* Court found that only one case actually granted habeas corpus relief on the basis of fourth amendment claims. *Id.* at 481, *citing* Whiteley v. Warden, 401 U.S. 560 (1971). The Court nevertheless distinguished *Whiteley* on the grounds that the *Whiteley* Court was not asked to consider the applicability of the writ to such claims. 428 U.S. at 481.

The majority in *Stone* advanced several reasons for the exclusion of search and seizure claims from habeas corpus review: 1) the justification for the fourth amendment exclusionary rule is the deterrence of future unlawful police conduct and the state courts are in a better position to deter state officials, *id.* at 484; 2) the costs of permitting habeas corpus review of state court applications of the exclusionary rule far outweigh the benefits of such review, *id.* at 491-93; 3) since typical fourth amendment claims have no bearing on the "basic justification of the defendant's incarceration," the need for federal review is minimized, *id.* at 491-92 n.31; and 4) state courts are as competent as federal courts to deal with fourth amendment claims. *id.* at 493-94 n.35.

For a further discussion of the *Stone* analysis, *see* notes 55-59 & 62 and accompanying text *infra*.

32. 428 U.S. at 494.

position in *Monroe*[33] and *Mitchum*,[34] both of which favored federal review of state court decisions.

When federal courts review a state court determination through either habeas corpus or section 1983, the issue arises whether a state court's judgment concerning the alleged constitutional violation estops[35] federal relitigation of that issue. Considering this question in the habeas corpus context, the Court in *Brown v. Allen*[36] established the general rule that collateral estoppel does not bar a federal court, entertaining a habeas corpus plea, from relitigating constitutional issues previously decided in state courts.[37]

In contrast to the habeas corpus area, the issue of the applicability of collateral estoppel in the section 1983 context has not been conclusively decided by the Supreme Court. The Court, in *Preiser v. Rodriguez*,[38] indicated in dictum that it did consider the general doctrine of res judicata to be "fully applicable to a civil rights action brought under § 1983."[39] The specific question of whether collateral estoppel is an appropriate bar in section 1983 suits, however, does not appear to have been directly addressed by the Supreme Court.

The majority of federal district and circuit courts which have considered the issue[40] have found that collateral estoppel properly precludes federal

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33. *See* 365 U.S. at 180; notes 15-18 and accompanying text *supra*.

34. *See* 407 U.S. at 240-42; notes 19-22 and accompanying text *supra*.

35. For a definition and discussion of collateral estoppel, *see* note 7 *supra*.

36. 344 U.S. 443 (1953). In *Brown*, state prisoners attacked the composition of the grand jury by a writ of habeas corpus, and questioned the voluntary character of a confession used at trial. *Id.* at 452. The district court refused to accept habeas jurisdiction. *Id.*

37. *Id.* at 458. The Court in *Brown* noted that "where the state action was based on an adequate state ground, no further examination is required, unless no state remedy for the deprivation of federal constitutional rights ever existed." *Id.* (citation omitted). The Court further observed that "where there is material conflict of fact in the transcripts of evidence as to deprivation of constitutional rights, the District Court may properly depend upon the state's resolution of the issue." *Id.* (citation omitted).

38. 411 U.S. 475 (1973). In *Preiser*, federal review was concurrently requested through habeas corpus *and* section 1983 to decide the constitutionality of the practice of depriving state prisoners of good-conduct-time credits after disciplinary proceedings. *Id.* at 476-77. The Court determined that the appropriate remedy in this case was habeas corpus. *Id.* at 490.

39. *Id.* at 497, *citing* Coogan v. Cincinnati Bar Ass'n, 431 F.2d 1209, 1211 (6th Cir. 1970); Jenson v. Olson, 353 F.2d 825, 829 (8th Cir. 1965); Rhodes v. Meyer, 334 F.2d 709, 716 (8th Cir. 1964); Goss v. Illinois, 312 F.2d 257, 259 (7th Cir. 1963). *See also* Wolff v. McDonnell, 418 U.S. 539, 554 n.12 (1974) (adhering in dictum to the *Preiser* observation that the normal principles of res judicata apply in § 1983 suits).

40. For circuit court decisions applying collateral estoppel in the context of a § 1983 suit, *see* Robbins v. District Ct., 592 F.2d 1015 (8th Cir. 1979); Fernandez v. Trias Monge, 586 F.2d 848 (1st Cir. 1978); Winters v. Lavine, 574 F.2d 46 (2d Cir. 1978); Wiggins v. Murphy, 576 F.2d 572 (4th Cir. 1978) (per curiam), *cert. denied*, 99 S. Ct. 874 (1979); Martin v. Delcambre, 578 F.2d 1164 (5th Cir. 1978) (per curiam); Goodrich v. Supreme Ct., 511 F.2d 316 (8th Cir. 1975); Metros v. United States Dist. Ct., 441 F.2d 313 (10th Cir. 1971); Kauffman v. Moss, 420 F.2d 1270 (3d Cir.), *cert. denied*, 400 U.S. 846 (1970); Coogan v. Cincinnati Bar Ass'n, 431 F.2d 1209 (6th Cir. 1970); Mulligan v. Schlachter, 389 F.2d 231 (6th Cir. 1968) (per curiam); Jenson v. Olson, 353 F.2d 825 (8th Cir. 1965). *But see* Brubaker v. King, 505 F.2d 534, 537-38 (7th Cir. 1974); Ney v. California, 439 F.2d 1285, 1288 (9th Cir. 1971).

relitigation through section 1983 of issues already determined in a state court.[41] Among the lower court decisions, however, only two cases involved section 1983 claims based upon search and seizure violations.[42] Since these two fourth amendment cases were decided before federal habeas corpus review of such claims was severely restricted in *Stone*,[43] they did not fully consider the effect of collaterally estopping a claimant's last possible means of obtaining federal review.[44] The issue thus becomes whether, given the restriction imposed by *Stone* on federal forum availability for fourth amendment claims, collateral estoppel should constitute a complete bar to relitigation of these claims in suits instituted under section 1983.

It was against this background that the Eighth Circuit reviewed the district court's holding[45] that, in section 1983 actions, collateral estoppel precludes federal relitigation of the state court judgment.[46] The *McCurry* court first noted that most of the courts which had confronted the *general* question of whether collateral estoppel could bar any section 1983 claims on the basis of a fully litigated state criminal trial had decided that collateral estoppel did so apply.[47] While acknowledging that this general issue was

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For district court decisions applying collateral estoppel in § 1983 proceedings, *see* Olitt v. Murphy, 453 F. Supp. 354 (S.D.N.Y.), *aff'd mem.*, 591 F.2d 1331 (2d Cir. 1978); Hammer v. Town of Greenburgh, 440 F. Supp. 27 (S.D.N.Y. 1977), *aff'd mem.*, 578 F.2d 1368 (2d Cir. 1978); Smith v. Sinclair, 424 F. Supp. 1108 (W.D. Okla. 1976); Rodriguez v. Beame, 423 F. Supp. 906 (S.D.N.Y. 1976); Moran v. Mitchell, 354 F. Supp. 86 (E.D. Va. 1973).

41. *See* cases cited note 40 *supra*.

42. *See* Metros v. United States Dist. Ct., 441 F.2d 313 (10th Cir. 1971); Mulligan v. Schlachter, 389 F.2d 231 (6th Cir. 1968) (per curiam).

43. 428 U.S. at 482. *See* notes 30-34 and accompanying text *supra*. Many of the non-fourth amendment cases which were decided before *Stone* and which applied collateral estoppel relied heavily on the availability of the alternative federal forum of habeas corpus. *See, e.g.*, Thistlewaite v. City of New York, 497 F.2d 339, 343 (2d Cir.), *cert. denied*, 419 U.S. 1093 (1974); Alexander v. Emerson, 489 F.2d 285, 286 (5th Cir. 1973) (per curiam); Palma v. Powers, 295 F. Supp. 924, 937 (N.D. Ill. 1969).

44. *But see* notes 62-63 and accompanying text *infra*.

45. 606 F.2d at 797. Since McCurry also claimed that he had been assaulted by police officers upon arrest and that the officers had conspired to conduct an illegal search, the Eighth Circuit found that the trial court erred in stating that the *only* issue in the case was the search and seizure claim. *Id. See* note 8 *supra*. The assault and conspiracy issues were remanded to the district court for full consideration. 606 F.2d at 797.

46. 606 F.2d at 797. *See* 466 F. Supp. at 516; note 7 and accompanying text *supra*.

47. 606 F.2d at 797-98, *citing* Fernandez v. Trias Monge, 586 F.2d 848, 854 (1st Cir. 1978); Winters v. Lavine, 574 F.2d 46, 58 (2d Cir. 1978); Wiggins v. Murphy, 576 F.2d 572, 573 (4th Cir. 1978), *cert. denied*, 99 S. Ct. 874 (1979); Martin v. Delcambre, 578 F.2d 1164, 1165 (5th Cir. 1978); Turco v. Monroe County Bar Ass'n, 554 F.2d 515, 520-21 (2d Cir.), *cert. denied*, 434 U.S. 834 (1977); Rimmer v. Fayetteville Police Dept., 576 F.2d 273, 276 (4th Cir. 1977); Meadows v. Evans, 529 F.2d 385, 386 (5th Cir.), *aff'd en banc*, 550 F.2d 345 (5th Cir. 1976), *cert. denied*, 434 U.S. 969 (1977); Mastracchio v. Ricci, 498 F.2d 1257, 1260 (1st Cir. 1974), *cert. denied*, 420 U.S. 909 (1975); Thistlewaite v. City of New York, 497 F.2d 339, 341-43 (2d Cir.), *cert. denied*, 419 U.S. 1093 (1974); Moye v. City of Raleigh, 503 F.2d 631, 634 (4th Cir. 1974); Brazzell v. Adams, 493 F.2d 489, 490 (5th Cir. 1974); Metros v. United States Dist. Ct., 441 F.2d 313, 316 (10th Cir. 1971); Kauffman v. Moss, 420 F.2d 1270, 1274 (3d Cir.), *cert. denied*, 400 U.S. 846 (1970); Mulligan v. Schlachter, 389 F.2d 231, 233 (6th Cir. 1968); Olitt v. Murphy, 453 F. Supp. 354, 358-60 (S.D.N.Y.), *aff'd mem.*, 591 F.2d 1331 (2d Cir. 1978); Hammer v. Town of Greenburgh, 440 F. Supp. 27, 29 (S.D.N.Y. 1977), *aff'd mem.*, 578 F.2d 1368 (2d Cir. 1978); Smith v. Sinclair, 424 F. Supp. 1108, 1111-12 (W.D. Okla. 1976); Rod-

one of first impression in the Eighth Circuit, the *McCurry* court nonetheless declined to conclusively decide it.[48] Rather, the court's analysis focused on the more specific question of whether *Stone*'s limitation of habeas corpus relief for fourth amendment claims of unconstitutional search and seizure compelled a relaxation of the preclusion doctrine in a section 1983 suit.[49]

The court held that since the federal courts were intended to play a special and vital role in protecting civil rights,[50] and since there was no longer an alternative federal forum available through habeas corpus,[51] collateral estoppel should not preclude a section 1983 suit based on claims of an unconstitutional search and seizure.[52] The *McCurry* court nevertheless con-

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riguez v. Beame, 423 F. Supp. 906, 908 (S.D.N.Y. 1976); Moran v. Mitchell, 354 F. Supp. 86, 88-89 (E.D. Va. 1973).

48. 606 F.2d at 798. The *McCurry* court noted that the Eighth Circuit had previously applied collateral estoppel in three civil rights actions. *Id.* at 798 n.10, *citing* Robbins v. District Ct., 592 F.2d 1015, 1016 (8th Cir. 1979) (collaterally estopping relitigation of a claim where the underlying state proceedings were civil); Goodrich v. Supreme Ct., 511 F.2d 316, 318 (8th Cir. 1975) (barring relitigation of a state civil action which considered the constitutionality of disbarment proceedings); Jenson v. Olson, 353 F.2d 825, 829 (8th Cir. 1965) (applying collateral estoppel to bar relitigation of a purely factual matter in a suit alleging unconstitutional dismissal from civil service employment).

49. 606 F.2d at 798. The court stated:

> The specific issue is whether appellant's § 1983 claim raising search and seizure questions is barred by collateral estoppel; the unusual circumstance is that since 1976, search and seizure claims, except in a few situations, can no longer be raised by state prisoners in federal habeas corpus actions. Thus, if collateral estoppel is to apply in § 1983 actions raising search and seizure claims, there will be no federal forum for the victim of a search and seizure which allegedly violates the federal constitution.

Id. For a discussion of *Stone*, *see* notes 30-34 and accompanying text *supra*; notes 56-59, 62 & 66 and accompanying text *infra*.

50. 606 F.2d at 799, *citing* Mitchum v. Foster, 407 U.S. 225, 242 (1972) (federal courts are "guardians" of constitutional rights). *See* note 64 and accompanying text *infra*. *But see* notes 65-66 and accompanying text *infra*.

The *McCurry* court relied upon Chief Justice Burger's concurring opinion in *Stone* which justified denying a federal habeas corpus forum for fourth amendment claims because there were alternative federal forums available. 428 U.S. at 500-01 (Burger, C. J., concurring). 606 F.2d at 799. The inference was made in *McCurry* that a § 1983 civil rights action constituted one of these alternative federal forums. *Id.*

51. 606 F.2d at 799. Although the *McCurry* court mentioned that "a few situations" do exist where search and seizure claims can be raised by state prisoners in a federal habeas corpus suit, *see id.* at 798, the court did not specify what it perceived these exceptions to be, nor did it consider any of them to be applicable to a case such as the one at bar. *Id.* Rather, the court broadly stated that "if collateral estoppel is to apply in § 1983 actions raising search and seizure claims, there will be no federal forum for the victim of a search and seizure which allegedly violates the federal constitution." *Id. See* note 49 *supra; cf.* note 62-63 and accompanying text *infra*.

52. *Id.* The *McCurry* court relied upon the Ninth Circuit's decision in Ney v. California, 439 F.2d 1285 (9th Cir. 1971). 606 F.2d at 798 n.10. In *Ney*, appellant filed a § 1983 action, subsequent to a state court criminal conviction and a denial of habeas corpus, alleging police misconduct in questioning him without advising him of his rights, in disregarding his requests for counsel, and in altering electronic tapes of the interrogation. 439 F.2d at 1286-87. The Ninth Circuit refused to collaterally estop the § 1983 claim, finding that to do so would render § 1983 a "dead letter." *Id.* at 1288. The *Ney* court concluded in dictum that since the Civil Rights Act antedated the exclusionary rule, the latter should not be construed to limit the remedies created by Congress for the vindication of civil rights. *Id. See also* Preiser v. Rodriguez, 411 U.S. 475, 509 n.14 (1973) (Brennan, J., dissenting).

cluded that, on remand, the district court should withhold decision on McCurry's fourth amendment claim pending the state appellate court's review of that claim.[53]

It is submitted that the *McCurry* court, in permitting federal review of search and seizure claims already decided by state courts,[54] chose to overlook the *Stone* Court's cost-benefit analysis regarding federal relitigation of such claims.[55] The *Stone* Court clearly considered the benefits to be gained from allowing relitigation of fourth amendment claims—such as the nurturing of respect for constitutional values[56]—to be outweighed by the societal costs of permitting relitigation—such as depletion of judicial resources and contempt for the criminal justice system.[57] It was further noted by the Supreme Court that collaterally estopping the less grievous fourth amendment claims, and thus limiting federal review of state court decisions,[58] would minimize friction between federal and state court systems and would achieve the desirable goal of finality in criminal trials.[59] The *Stone* Court's analysis, it is suggested, is equally applicable to the case at bar and should have been utilized by the *McCurry* court to conclude that collateral estoppel bars federal relitigation of fourth amendment claims in suits brought under section 1983.[60]

An important distinguishing factor in the *Ney* case is that the issue of unconstitutional interrogation was found *not* to have been litigated in the state court. 439 F.2d at 1288. This is significant in light of the established principle that collateral estoppel is *never* an effective bar when the relevant issue was not raised in the state proceeding. *See* note 7 *supra*. In *McCurry*, on the other hand, the fourth amendment issue had been fully litigated in the state court proceeding. *See* note 8 and accompanying text *supra*.

53. 606 F.2d at 799. The effect of this temporary abstention was to show deference to the Missouri courts while preventing the statute of limitations from denying appellant his § 1983 action. *Id.* For a discussion of the abstention doctrine which permits state courts to litigate cases free from federal interference, *see* Juidice v. Vail, 430 U.S. 327, 333-36 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 604-07 (1975); Younger v. Harris, 401 U.S. 37, 43-44 (1971); *Ex parte* Young, 209 U.S. 123, 162 (1908).

54. 606 F.2d at 799. *See* notes 50-52 and accompanying text *supra*.

55. *See* notes 56-59 and accompanying text *infra*.

56. 428 U.S. at 491. *Cf.* Kaufman v. United States, 394 U.S. 217, 228-29 (1969) (indicating that collateral review is necessary to preserve the vitality of all constitutional rights).

57. 428 U.S. at 491. The *Stone* Court noted that although the exclusionary rule nurtured "respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and administration of justice." *Id. See also* Thornton v. United States, 368 F.2d 822, 826-27 (D.C. Cir. 1966) (collateral federal review cannot deal with search and seizure claims as effectively as direct state review).

58. 428 U.S. at 491.

59. *Id.* at 491 n.31, *quoting* Schneckloth v. Bustamonte, 412 U.S. 218, 259 (1973) (Powell, J., concurring). The *Stone* Court stated that collateral federal review of search and seizure claims under writs of habeas corpus should generally be avoided for the following reasons: 1) to realize "the most effective utilization of limited judicial resources"; 2) to attain "finality in criminal trials"; 3) to minimize "friction between our federal and state systems of justice"; and 4) to maintain "the constitutional balance upon which the doctrine of federalism is founded." 428 U.S. at 491 n.31. *See also* Francis v. Henderson, 425 U.S. 536, 539 (1976) (comity and concerns for the orderly administration of justice require federal courts to forego habeas review in some circumstances); Vestal, *supra* note 7, at 202. *Cf.* Kaufman v. United States, 394 U.S. 217, 228 (1969) (finality is an inappropriate goal in this context).

60. It is suggested that the following justifications provided by the *Stone* Court for limiting federal habeas corpus review are applicable to *all* instances where a federal forum is sought for

Not only is it contended that the *McCurry* court failed to follow the articulated purposes of *Stone*'s limitation on the availability of collateral federal review of search and seizure claims, but it is also submitted that the *McCurry* court's concern that federal review would not exist absent section 1983 reflects a misinterpretation of *Stone*.[61] This is evident from the fact that the Supreme Court in *Stone* did not deny federal courts of *all* jurisdiction over habeas corpus claims, but rather sought to limit that jurisdiction to the most grievous cases where there is a showing of *both* a fourth amendment violation *and* a denial in the state court of full and fair litigation.[62] It is thus suggested that the holding in *McCurry* is undermined to the extent that it relies heavily upon the unfounded assumption that *Stone* blocked all habeas corpus relief "for the victim of a search and seizure which allegedly violates the federal constitution."[63]

The analysis of the *McCurry* court, it is also contended, reflects a belief that the state court system cannot adequately protect constitutional rights.[64] While the court found support for this view in *Mitchum*,[65] it is suggested

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reviewing state court determinations of search and seizure claims: 1) the purpose of the fourth amendment exclusionary rule is to deter future unlawful police action and the state courts are in a better position to deter state officials, 428 U.S. at 484; 2) the typical fourth amendment claims have no bearing on the "basic justification of the defendant's incarceration," and therefore the need for federal review is minimized, *id.* at 491-92 n.31; and 3) state courts are as competent as federal courts to deal with fourth amendment claims, *id.* at 493-94 n.35.

In addition, the *Stone* Court maintained that the costs of allowing federal habeas corpus review of state court applications of the exclusionary rule far outweigh the benefits of such review. 428 U.S. at 491-93. The Court recognized that "[t]hese long-recognized costs of the rule persist when a criminal conviction is sought to be overturned on collateral review on the ground that a search-and-seizure claim was erroneously rejected by two or more tiers of state courts." *Id.* at 491 (footnote omitted). It is contended that this same reasoning applies to preclude collateral federal review of McCurry's § 1983 fourth amendment claim. This is especially evident in that the *Stone* Court appears to have been more concerned with the undesirable costs associated with collateral review of search and seizure claims than with the particular form of federal jurisdiction invoked. *Id.* at 491-93. *See* note 31 *supra*.

61. 606 F.2d at 799. *See* notes 30-31 & 56-59 and accompanying text *supra*.

62. 428 U.S. at 494-95 n.37.

63. 606 F.2d at 798-99. Habeas corpus review would therefore be available to McCurry if he could show that he had not been afforded a full and fair litigation in the state court. *See* 428 U.S. at 494-95 n.37. The *McCurry* court did not specifically acknowledge this possibility. *See* 606 F.2d at 799. Rather, the court appears to have based its decision on the total unavailability of federal habeas corpus review for the victim of an allegedly unconstitutional search and seizure. *See id.* at 798-99; note 51 *supra*.

64. *See* 606 F.2d at 799. For views indicating that a federal forum is necessary to fully adjudicate constitutional claims, *see* Averitt, *supra* note 12, at 218 (federal courts necessary for "protection of those rights which are within their special province"); Chevigny, *supra* note 11, at 1357-60 (preferring federal courts for review of constitutional claims since they deal with the issues on a more uniform, more frequent, and less insulated basis); Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 70 NW. L. REV. 859, 881-82 (1976) (contending that the Civil Rights Act "counsels against an expansive reading of res judicata"); *Developments—Habeas Corpus*, *supra* note 23, at 1060-62, 1273 (noting that a federal forum is needed to test the constitutional basis of the conviction since the state courts are primarily concerned with deciding guilt or innocence); notes 15-22 and accompanying text *supra*. *But see* note 66 *infra*.

65. 606 F.2d at 799. *See* Mitchum v. Foster, 407 U.S. at 242; notes 19-22 and accompanying text *supra*. In contrast to the Civil Rights cases cited by the *McCurry* court, which consid-

that the Supreme Court's more recent decision in *Stone* indicates, at least in the fourth amendment context, an abandonment of the notion that state courts are inadequate guardians of federal rights.[66] Thus, an inconsistency is evident between the section 1983 cases which purport to provide a right to a federal forum for constitutional claims,[67] and the more recent habeas corpus case of *Stone v. Powell* which restricted the availability of this forum.[68] Therefore, at present, the lower federal courts have broad discretion in either denying or granting federal collateral review in section 1983 cases because there appears to be justification for either choice. Since certiorari has been granted on the *McCurry* case,[69] it is hoped that this inconsistency will be resolved by an affirmance of the principles announced in *Stone*.

In considering the impact of *McCurry*, it is evident that the Eighth Circuit will allow federal collateral review of search and seizure claims in section 1983 cases without regard to the fullness or fairness of the state court litigation.[70] It is submitted that this decision, unless reversed by the Supreme Court, will lead the way for an undesirable erosion of the limiting devices which the *Stone* Court attempted to impose on the availability of a federal forum for claims of fourth amendment violations.[71]

It is suggested that although the intention of the Civil Rights Act of 1871 appears to have been to provide exclusive federal constitutional remedies,[72] such a requirement is no longer necessary.[73] A federal forum

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ered the federal courts to be the ultimate "guardians of people's federal rights," stand the recent cases which have collaterally estopped federal relitigation of state court determinations of constitutional issues. *See, e.g.*, Montana v. United States, 440 U.S. 147 (1979); Wolff v. McDonnell, 418 U.S. 539 (1974); Dieffenbach v. Attorney Gen. of Vt., 604 F.2d 187 (2d Cir. 1979); Winters v. Lavine, 574 F.2d 46 (2d Cir. 1978); Mitchell v. National Broadcasting Co., 553 F.2d 265 (2d Cir. 1977). *See also* notes 39-41 & 47-48 and accompanying text *supra*.

66. *See* 428 U.S. at 493-94 n.35; notes 31-34 and accompanying text *supra*. The *Stone* Court stated that the contention that federal judges are better suited to apply federal constitutional law "is especially unpersuasive in the context of search and seizure claims, since they are dealt with on a daily basis by trial level judges in both systems." 428 U.S. at 494 n.35. The Court was "unwilling to assume" that state courts lack "appropriate sensitivity to constitutional rights." *Id.*

For views in favor of applying collateral estoppel to federal review of state court litigation of constitutional claims, *see* Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923); Vestal, *supra* note 7, at 210-12; Note, *supra* note 18, at 1501.

67. *See* notes 15-22 and accompanying text *supra*.

68. *See* notes 30-34 & 56-59 and accompanying text *supra*.

69. ___ S. Ct. ___ (1980).

70. *See* 606 F.2d at 799; notes 47-52 and accompanying text *supra*.

71. 428 U.S. at 491, 491 n.31. *See* notes 30-34 & 56-59 and accompanying text *supra*.

72. *See* Mitchum v. Foster, 407 U.S. at 241-42; Rimmer v. Fayetteville Police Dept., 567 F.2d 273, 276 (4th Cir. 1977); Averitt, *supra* note 12, at 192, 217.

73. *See* Coogan v. Cincinnati Bar Ass'n, 431 F.2d 1209, 1211 (6th Cir. 1970)(Civil Rights Act not designed to provide a means for federal collateral attack of issues decided in state court); *Developments—§ 1983*, *supra* note 11; Note, *supra* note 18. *But see* Rimmer v. Fayetteville Police Dept., 567 F.2d 273 (4th Cir. 1977). The *Rimmer* court noted in dictum that application of the *Stone* holding may have the undesirable effect of completely denying a state court prisoner access to a federal forum. *Id.* at 276. In these cases, the court continued, the Civil Rights Act itself probably bars collaterally estopping the issue in federal court. *Id.* For further discussion of both viewpoints, *see* note 18 *supra*.

should be available for collateral review of state decisions, it is contended, in only the most grievous cases and only for the most lawless deprivations of constitutional rights.[74] It is suggested that this result would be consistent with the *Stone* analysis, which most realistically deals with judicial practicalities and federal-state comity concerns.[75] In contraposition to *McCurry*'s refusal to apply collateral estoppel in section 1983 actions based on fourth amendment claims, it is concluded that, absent a showing of trial unfairness or incompleteness, collateral estoppel should be applied and state court litigation should be acknowledged as an adequate protection of constitutional rights.

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74. *See* notes 30-34 & 62 and accompanying text *supra*. The *Stone* Court indicated that the federal habeas corpus forum should still be available to ensure "that no innocent person suffers an unconstitutional loss of liberty." 428 U.S. at 491. *See also* Note, *The Preclusive Effect of State Judgments on Subsequent 1983 Actions*, 78 COLUM. L. REV. 610, 614-18 (1978) (suggesting a collateral review of state court's procedural fairness approach).

75. *See* notes 56-59 and accompanying text *supra*.