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Withrow v. Williams and Collateral Review of Miranda Violations: The Supreme Court Rejects the Rule of Stone v. Powell Under a Revised View of Applicable Prudential Concerns

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CASENOTES

WITHROW V. WILLIAMS AND COLLATERAL REVIEW OF MIRANDA VIOLATIONS: THE SUPREME COURT REJECTS THE RULE OF *STONE V. POWELL* UNDER A REVISED VIEW OF APPLICABLE PRUDENTIAL CONCERNS

I. INTRODUCTION

More than fifty years before ratification of the Fourth and Fifth Amendments to the Constitution, Lord Camden observed:

> [I]t is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that search for evidence is disallowed upon the same principle. There, too, the innocent would be confounded with the guilty.[1]

Over one hundred years later, in *Mapp v. Ohio*,[2] the Supreme Court affirmed this relationship between Fourth and Fifth Amendment liberties, holding that the doctrines of those amendments "apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life."[3]

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1. Mapp v. Ohio, 367 U.S. 643, 646 (1961) (quoting Entick v. Carrington, 19 Howell's State Trials 1029, 1073 (1765)).
2. 367 U.S. 643 (1961).
3. *Id.* at 646 (quoting Boyd v. U.S., 116 U.S. 616, 630 (1886)).

Specifically, the self-incrimination clause of the Fifth Amendment protects criminal defendants from the use at trial of their own incriminating statements obtained through governmental coercion.[4] Similarly, the Fourth Amendment's protection against unlawful searches and seizures constitutes an exclusionary safeguard, prohibiting the use of physical evidence obtained in violation of a defendant's Fourth Amendment privacy rights.[5] Nevertheless, soon after its decision in *Mapp*, the Court began to recognize specific, carefully defined limitations on the reach of protection afforded by these liberties.[6] Among them, the scope of a defendant's redress for infringement of his Fourth and Fifth Amendment rights, especially on collateral review, has not been entirely clear. In *Stone v. Powell*,[7] a majority of the Court held that where a State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence introduced at his trial was obtained through an unconstitutional search and seizure.[8] Until

4. The Fifth Amendment provides: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. amend V. The privilege against self-incrimination is applicable against federal and state governmental actions. Malloy v. Hogan, 378 U.S. 1, 8 (1964) (incorporating the Fifth Amendment's self-incrimination clause into the Due Process Clause of the Fourteenth Amendment). It is a personal right "applying only to natural individuals." United States v. White, 322 U.S. 694, 698 (1944). It also requires exclusion of coerced testimony absent constitutionally mandated safeguards. Miranda v. Arizona, 384 U.S. 436, 444 (1966). *See also* Edson R. Sunderland, *Self-Incrimination and Constitutional Principle:* Miranda v. Arizona *and Beyond*, 15 WAKE FOREST L. REV. 171, 173-88 (1979).

5. The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. The prohibition on illegal searches and seizures applies both to federal and state officials. *See* Weeks v. United States, 232 U.S. 383, 391-92 (1914); Wolf v. Colorado, 338 U.S. 25, 33 (1949) (holding that the Federal Constitution prohibits unreasonable searches and seizures by state officers). The Fourth Amendment, though not referring to or limiting the use of evidence in court, forbids the introduction of evidence, if obtained through a violation of the amendment in federal courts. Olmstead v. United States, 277 U.S. 438, 462 (1928). The same applies to state courts. Mapp v. Ohio, 367 U.S. 643, 655 (1961).

6. *See* United States v. Janis, 428 U.S. 433 (1976) (holding that the exclusionary rule does not apply to a civil tax proceeding in the Fourth Amendment context); United States v. Calandra, 414 U.S. 338 (1974) (holding that the exclusionary rule does not apply to a grand jury proceeding in the Fourth Amendment context).

7. 428 U.S. 465 (1976).

8. *Id.* at 466.

its recent decision in *Withrow v. Williams*,[9] however, the Court had not directly addressed the question of whether similar limitations apply to federal habeas corpus relief sought by state prisoners on Fifth Amendment grounds. In *Withrow*, the Court held that *Stone*'s restriction on the exercise of federal habeas jurisdiction does not extend to a state prisoner's claim that his conviction rests on statements obtained in violation of Fifth Amendment safeguards.[10] The Court identified a number of reasons for this divergent treatment of Fourth and Fifth Amendment protections. Primarily, *Withrow* examined the nature and operation of a defendant's Fifth Amendment privileges, and the relationship between these liberties and fundamental concepts of federalism and judicial finality.[11] This Note provides an analysis of the holding in *Withrow*, with particular emphasis on the Court's reasoning in these areas. Also addressed is the vital question *Withrow* leaves in its wake, namely, whether the distinction it draws between the Fourth and Fifth Amendment exclusionary rules is a clear and consistent one, and the extent to which the decision signals a change of direction with respect to *Stone* and federal habeas corpus relief. Part II of this Note provides an overview and history of *Miranda* and Fifth Amendment safeguards, in contrast to those of the Fourth Amendment. Part III provides a summary of the facts and procedural posture of *Withrow*, and Parts IV and V

9. 113 S. Ct. 1745 (1993).

10. *Id.* (holding that the *Stone* rule was not jurisdictional but prudential in nature and counselling against application of the *Mapp* Fourth Amendment exclusionary rule on collateral review).

11. The Court identifies these principles as: "(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of criminal justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded." *Withrow*, 113 S. Ct. at 1750 (quoting *Stone*, 428 U.S. at 491). These same concepts, in one form or another, have surfaced in prior cases. *See, e.g.*, Garner v. United States, 424 U.S. 648, 655 (1976) ("the fundamental purpose of the Fifth Amendment [is] the preservation of an adversary system of criminal justice"); Mapp v. Ohio, 367 U.S. 643, 659 (1961) (holding that the "imperative of judicial integrity" must be considered when deciding whether to grant habeas relief for violations of the Fourth Amendment's exclusionary rule); *Stone*, 428 U.S. at 479 (stating that Fourth Amendment violations are different in kind from denials of Fifth or Sixth Amendment rights in that they do not "challenge evidence as inherently unreliable"). For a more extensive discussion of these principles, see Erwin Chemerinsky, *Thinking About Habeas Corpus*, 37 CASE W. RES. L. REV. 748, 761-75 (1987).

address the Court's analysis in *Withrow* and its implications for the future of federal habeas jurisdiction in these areas.

II. DEVELOPMENT OF CASE LAW INTERPRETING AND APPLYING THE SELF-INCRIMINATION CLAUSE OF THE FIFTH AMENDMENT

A. *The Miranda Rule*

In the thirty years between 1936, when the Supreme Court first addressed the issue in *Brown v. Mississippi*,[12] and its landmark *Miranda* decision in 1966,[13] the constitutionality of criminal testimony at the state level was governed not by the Fifth Amendment but by the concept of "fundamental fairness" under the Due Process Clause of the Fourteenth Amendment.[14] This analysis was one which the Court had used on a broader level to justify general interference with state court procedures.[15] In *Brown*, however, the Court expounded upon the "fundamental fairness" doctrine by developing a "coerced confession" test whereby incriminating testimony obtained through police tactics that were "revolting to the sense of justice" was excluded at trial.[16] As applied, the test required examination

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12. 297 U.S. 278 (1936).

13. Miranda v. Arizona, 384 U.S. 436 (1966).

14. *Brown*, 297 U.S. at 286-87 (quoting Herbert v. Louisiana, 272 U.S. 312, 316 (1926)) (stating that the measure of constitutionality was whether government conduct violated "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions"). *See also*, Payne v. Arkansas, 356 U.S. 560, 567 (1958) (characterizing the applicable question to be whether tactics used by the government deprived a claimant of "that fundamental fairness essential to the very concept of justice").

15. Snyder v. Massachusetts, 291 U.S. 97, 105 (1934) (stating that federal interference in state court procedure is justified where state action offends some principle "so rooted in the traditions and conscience of our people as to be ranked as fundamental").

16. *Brown*, 297 U.S. at 286. *Brown* involved homicide convictions based largely on confessions obtained by whipping the defendants. The majority wrote: "[I]t would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process." *Id.* This "shock the conscience" standard was first conceived as an objective test. Ashcraft v. Tennessee, 322 U.S. 143, 154 (1944). Later, the Court considered a defendant's subjective strength of will in determining whether testimony was in fact coerced. Fikes v. Alabama, 352 U.S. 191, 197-98 (1957). Finally, the "totality of the circumstances" requirement included an examination of both the behavior of the police and the characteristics of the confessor. Haynes v. Washington, 373 U.S. 503, 514

of all the circumstances under which a confession was obtained, both the objective physical environment and the subjective characteristics of the defendant and his inquisitor, in order to determine if the tactics used overpowered the defendant's free will and thus violated his due process rights.[17] Doubting the reliability of coerced testimony, the Court also came to view the test as a means of ensuring the accuracy of evidence presented at trial.[18] Over time, the rationale behind the coercion test was enlarged to include concepts of preservation of the American accusatorial justice system and deterrence of oppressive police tactics.[19]

Nevertheless, it gradually became apparent to the Court that the "coerced confession" doctrine was counterproductive to judicial review. Not only did the "totality of the circumstances" case-by-case approach lead to inconsistent results among jurisdictions,[20] but by failing to articulate a precise standard of review, the rule left judges free to base decisions on their subjective evaluations of whether a confession was "voluntary." Although it originally addressed these shortcomings via the Sixth Amendment right to counsel in criminal proceedings,[21] the

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(1963).

17. *Haynes*, 373 U.S. at 514.

18. *See, e.g.*, Lyons v. Oklahoma, 322 U.S. 596 (1944); Ward v. Texas, 316 U.S. 547 (1942).

19. *See, e.g.*, Rogers v. Richmond, 365 U.S. 534, 540-41 (1961).

20. As Justice Clark wrote in criticizing the value of the coercion test:

> [W]e may thus vindicate the abstract principle of due process, but we do not shape the conduct of local police one whit; unpredictable reversals on dissimilar fact situations are not likely to curb the zeal of those police and prosecutors who may be intent on racking up a high percentage of successful prosecutions.

Irvine v. California, 347 U.S. 128, 138 (1954). For a general discussion of the weaknesses of the coerced confession doctrine, see Yate Kamisar, *4 Dissent from* Miranda *Dissents: Some Comments on the "New" Fifth Amendment and the Old "Voluntariness" test*, 65 MICH. L. REV. 59, 94-104 (1966).

21. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence"). Given the multitude of factors that could be applied to a confession under the voluntariness approach of *Brown* and its progeny, the focus of the Court's attention began to shift from the circumstances of the confession to the question of whether a defendant had the protection of counsel during interrogation. In Crooker v. California, 357 U.S. 433 (1958), the Court held that continued questioning of a defendant after he had requested to speak with his attorney violated the Sixth Amendment and barred the use of a confession thus obtained, regardless of whether it was voluntarily given. In *Spano v. New York*, the right to counsel and its attendant protections were held to begin when a defendant

court in its 1964 decision in *Escobedo v. Illinois*[22] held that a suspect not only had a right to consult with an attorney during pre-indictment questioning, but also the absolute right to remain silent until he could do so.[23] This decision, handed down only a week after the Court officially applied the Fifth Amendment to the states in *Mallory v. Hogan*,[24] paved the way for extension of Fifth Amendment safeguards beyond the courtroom and the creation of the modern rule of *Miranda v. Arizona*,[25] with its now-famous "concrete constitutional guidelines for law enforcement agencies."[26] With *Miranda*, the Court established a strict Fifth Amendment exclusionary rule whereby a suspect must be warned prior to questioning that he has the right to remain silent, that any statement he makes can be used as evidence against him, and that he has the right to an attorney of his own choosing or appointed by the state.[27] A confession obtained prior to such warning is presumptively coerced and excluded at trial.[28]

B. *The Fourth Amendment Exclusionary Rule and the Evolution of Collateral Attack*

In contrast to the shifting constitutional background of the *Miranda* safeguards, the exclusion of unlawfully obtained physical evidence found its statutory foundation in both the Fourth

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was formally charged with a crime. 360 U.S. 315 (1959). In *Escobedo v. Illinois*, these protections were extended even to a suspect who has become the focus of a criminal investigation. 378 U.S. 478 (1964).

22. 378 U.S. 478 (1964).

23. *Id.* at 490-91. Though limiting its holding to the facts of that case, the majority declared:

> [W]here, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect . . . and the police have not effectively warned him of his *absolute constitutional right to remain silent* . . . no statement elicited by the police during the interrogation may be used against him at a criminal trial.

Id. (emphasis added).

24. 378 U.S. 1 (1964).

25. 384 U.S. 436 (1966).

26. *Id.* at 442.

27. *Id.* at 444.

28. The Miranda warnings, the Court said, are "prerequisites to the admissibility of any statement made by a defendant . . . . The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner . . . ." *Id.* at 476.

and Fifth Amendments from an early point in its evolution. As early as 1886, in *Boyd v. United States,*[29] the Supreme Court held that the freedom from unlawful searches and seizures and the privilege against self-incrimination were so closely related that they ran "almost into each other."[30] Moreover, the doctrines of those rights, the Court said, "apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life."[31] Less than thirty years after *Boyd*, the Court extended this reasoning in *Weeks v. United States*[32] to hold that, in federal prosecutions, the Fourth Amendment barred the use of evidence obtained in violation of the search and seizure clause.[33]

However, as it had with regard to the exclusion of coerced testimony, the Court's rationale for excluding unlawfully obtained evidence grew to encompass concerns other than protection of a defendant's specific constitutional rights. For instance, in *Wolf v. Colorado,*[34] the Court recognized the fundamental nature of a defendant's Fourth Amendment rights and announced that the "security of one's private property against arbitrary intrusion by the police . . . is . . . implicit in the 'concept of ordered liberty' and as such is enforceable against the States."[35] Nevertheless, the Court balanced the Fourth Amendment's safeguards against other concerns and declined to impose *Weeks* upon the states. This decision, according to the Court, was largely made for "factual" reasons, including the opposition of a substantial number of the states to the *Weeks* doctrine,[36] and the Court's deference to the states in choosing a means for enforcement of Fourth Amendment rights.[37]

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29. 116 U.S. 616 (1886).

30. *Id.* at 630.

31. *Id.*

32. 232 U.S. 383 (1914).

33. *Id.* at 391-92; Wolf v. Colorado, 338 U.S. 25, 28 (1949) (explaining the *Weeks* decision).

34. 338 U.S. 25 (1949).

35. *Id.* at 27 (quoting Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

36. "As of today," the Court emphasized, "30 States reject the *Weeks* doctrine, 17 States are in agreement with it . . . . Of 10 jurisdictions within the United Kingdom and the British Commonwealth of Nations which have passed on the question, none has held the evidence obtained by illegal search and seizure inadmissible . . . ." *Wolf*, 338 U.S. at 29-30.

37. [I]t is not for this Court to condemn as falling below the minimal stan-

Twelve years later, in 1961, the Court overruled *Wolf* in *Mapp v. Ohio*,[38] specifically applying the exclusionary rule to the states and excluding evidence at trial which was seized in violation of the Fourth Amendment.[39] The basis for this decision was the recognition of the universal nature of Fourth Amendment protections,[40] and the conclusion that the *Wolf* rule, if continued, would make those protections a "'form of words,' valueless and undeserving of mention in a perpetual charter of inestimable human liberties."[41] Moreover, far from decrying the principles of federalism and comity espoused by *Wolf* in deciding not to infringe upon state enforcement of the Fourth Amendment, the *Mapp* Court embraced these as valid considerations.[42] Seizing upon the fact that, under *Wolf*, a federal prosecutor may make no use of illegally obtained evidence, but may turn the same evidence over for use by a State's attorney "across the street," the Court held that "judicial integrity"

> dards assured by the Due Process Clause a State's reliance upon other methods which, if consistently enforced, would be equally effective . . . . There are, moreover, reasons for excluding evidence unreasonably obtained by the federal police which are less compelling in the case of police under state or local authority. The public opinion of a community can far more effectively be exerted against oppressive conduct on the part of police directly responsible to the community itself than can local opinion, sporadically aroused, be brought to bear upon remote authority pervasively exerted throughout the country.

Id. at 31-32.

38. 367 U.S. 643 (1961).

39. *Id.* at 655.

40. "Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government." *Id.* at 655.

41. *Id.* Recognizing the precarious protection afforded by entrusting enforcement to state and local officials, the Court held the Amendment applicable to states in the same manner and to the same degree as it applied to the federal government. "To hold otherwise is to grant the right but in reality withhold its privilege and enjoyment." *Id.* at 656.

42. The Court noted that while "prior to the *Wolf* case, almost two-thirds of the States were opposed to the exclusionary rule, now, despite *Wolf*, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the *Weeks* rule." *Id.* at 651. Furthermore, the Court noted that the experience of California, one of the most significant followers of the rule, had shown that "other means of protection" of Fourth Amendment rights were "worthless and futile," a conclusion "buttressed by the experience of other States." *Id.* at 651-52.

demanded universal application of the exclusionary rule to both federal and state governments.[43] "Nothing can destroy a government more quickly," the Court warned, "than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."[44] In *Stone v. Powell*,[45] however, the Court decided that the limitations of this reasoning were reached upon collateral review of a conviction based on illegally seized evidence. In such a situation, the Court held that the countervailing considerations[46] of comity,[47] judicial integrity,[48] and the "costs"[49] in terms of judicial resources of such relief, though justifying enforcement of the exclusionary rule at trial or on appeal, counselled against its enforcement by writ of habeas corpus unless a defendant was denied a full and fair opportunity to litigate the matter earlier.[50] Until *Withrow*, the question remained whether similar constraints would be applied to federal habeas relief for *Miranda* violations.

III. CONSENT, COERCION OR COOPERATION—THE FACTS OF *WITHROW V. WILLIAMS*

Pursuant to the investigation of a shooting and double murder, two Michigan police officers called upon respondent Williams at his residence and asked him to come down to the police station for questioning. Williams agreed to go, and was searched and escorted to the police station unrestrained. One officer testified that Williams was not under arrest at this time, but a contemporaneous police report states that Williams was arrested at his residence. Once at the station, the officers decided not to advise Williams of his rights under *Miranda v. Arizona*, and, after Williams repeatedly denied any knowledge of or connection to the murder, one officer threatened to charge him and "lock [him] up." Williams then began to implicate himself, but the officers, assuring him that their only concern was the

43. *Id.* at 660.
44. *Id.*
45. 428 U.S. 465 (1976).
46. *Id.* at 466.
47. *Id.* at 478.
48. *Id.* at 484.
49. *Id.* at 489.
50. *Id.* at 488-95.

identity of the "shooter," continued questioning without Mirandizing him. Williams admitted that he had furnished the murder weapon to the killer, but claimed he had not been present at the scene of the crime. At this point, some 40 minutes after the beginning of questioning, the officers advised Williams of his *Miranda* rights. Williams waived his rights, and made several more inculpatory statements, including admissions that, in fact, he had: 1) been present at the scene of the murders; 2) driven the killer to and from the scene; 3) witnessed the killings; and 4) helped the killer dispose of incriminating evidence. The officers interrogated Williams again on two other occasions before the state formally charged him with murder.[51]

At trial, the court declined to suppress Williams' statements on the ground that he had been given timely *Miranda* warnings. He was convicted of first degree murder and related crimes. After the decision was affirmed by the Michigan Court of Appeals and Williams was denied leave to appeal by the Michigan Supreme Court, he filed a writ of habeas corpus in the district court, alleging violations of his *Miranda* rights as the principal basis for relief. The district court granted the writ, finding that all statements made between the sergeant's threat of incarceration and the reading of Williams rights should have been suppressed. Without conducting further evidentiary proceedings or hearing arguments, the district court also concluded that the statements Williams made after being Mirandized should have been suppressed as involuntary under the Due Process Clause of the Fourteenth Amendment.[52] The court of appeals agreed on both points and affirmed, summarily rejecting the argument that the rule in *Stone v. Powell*[53] should apply to bar habeas review of a *Miranda* claim.[54] The Supreme Court granted certiorari in 1992, and affirmed in part, reversed in part, and remanded. With respect to the voluntariness of Williams' post-*Miranda* statements, a unanimous Court reversed, holding that this issue was not raised on habeas and that the state was manifestly prejudiced by the district court's failure to afford an opportunity to present

51. Withrow v. Williams, 113 S. Ct. 1745, 1745-48 (1993).
52. *Id.* at 1748-49.
53. *See supra* notes 7-8 and accompanying text.
54. *Withrow*, 113 S. Ct. at 1749.

evidence on that claim.[55] However, in remanding the case for further proceedings on this question, the Court affirmed the court of appeals' decision that *Stone* did not bar habeas review of Williams' *Miranda* claim.[56] Using the same "prudential" considerations it marshalled to deny habeas relief for violations of the exclusionary rule, the Court held that principles of comity, federalism and judicial integrity do not limit use of the writ for *Miranda* violations.[57]

IV. *WITHROW'S* INITIAL BALANCE—WEIGHING THE NATURE OF MIRANDA AND THE EXCLUSIONARY RULE

A. Stone v. Powell: *Jurisdictional Bar or Prudential Limitation?*

Laying the groundwork to distinguish *Stone v. Powell*, the *Withrow* Court begins its analysis by emphasizing that *Stone's* limitation on federal habeas relief was not jurisdictional in nature, but rather a self-imposed prudential constraint limiting habeas review where the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim.[58] Still, this non-jurisdictional portrayal of *Stone* is not a universally accepted one. As Justices Brennan and Marshall argue in their dissent, the majority's decision in *Stone* involves not so much

55. *Id.* at 1755. This point, the Court said, "should keep us only briefly." *Id.* Since Williams had raised only one claim going to the admissibility of his statements to the police, that the police elicited those statements without satisfying the Miranda requirements, and since petitioner's answer addressed only that claim, the Court held that Williams had effectively conceded the voluntariness of statements made after being Mirandized. Therefore, the Court rejected Williams' claim that this issue had been tried by implied consent of the parties under Federal Rule of Civil Procedure 15(b) and held that it was error for the district court to reach the question of whether or not these statements were made voluntarily. *Id.* at 1755-56.

56. *Id.* at 1746.

57. Stone v. Powell, 428 U.S. 465, 466 (1976).

58. *Withrow*, 113 S. Ct. at 1750. Writing for the majority, Justice Souter states: "[w]e have made it clear that Stone's limitation on federal habeas relief was not jurisdictional in nature, but rested on prudential concerns . . . ." *Id. See also* Kuhlman v. Wilson, 477 U.S. 436, 447 (1986) (discussing equitable principles underlying Stone v. Powell); Kimmelman v. Morrison, 477 U.S. 365 (1986); Allen v. McCurry, 449 U.S. 90 (1980) (stating that *Stone* concerns "the prudent exercise of federal-court jurisdiction under 28 U.S.C. § 2254"); *cf.* 28 U.S.C. § 2243 (stating that a court entertaining a habeas petition shall "dispose of the matter as law and justice require").

the right of a defendant to have unlawfully-seized evidence excluded as it does "the availability of a federal forum for vindicating those federally guaranteed [Fourth Amendment] rights."[59] Moreover, regardless of the characterization of the decision, its effects are decidedly jurisdictional in nature.[60] Justice Brennan, for one, argues that the effect of *Stone* on habeas review of exclusionary rule violations "do[es] not fall far short of *abolishing* this head of jurisdiction."[61] Nevertheless, for many of the reasons that the *Stone* Court foreclosed federal habeas jurisdiction over the exclusionary rule, the *Withrow* majority specifically protects such jurisdiction for Miranda violations. Its rationale for doing so involves what the Court perceives to be fundamental distinctions between the nature of Miranda and exclusionary rule safeguards.

B. *Miranda and the Fourth Amendment Exclusionary Rule: "Fundamental Rights"?*

According to the Court, a key distinction between the *Miranda* and exclusionary rule protections is the nature of the rights they protect. Unlike the exclusionary rule of *Mapp v. Ohio*, the majority in *Withrow* contends that *Miranda* secures "a fundamental trial right,"[62] the Fifth Amendment's privilege against self-incrimination. This argument, however, begs the question: are the exclusionary and *Miranda* rules really distin-

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59. Stone v. Powell, 428 U.S. 465, 503 (1976) (Brennan, J., dissenting). Justice Brennan also argued that, in light of federal habeas statutes (28 U.S.C. § 2254), *Stone* was incorrectly decided. He wrote that the equitable considerations advanced by the Court were not sufficient "to allow this court to rewrite the jurisdictional statutes enacted by Congress." *Id.* at 506.

60. As Justice White's dissent illustrates, the Court's decision in *Stone* makes possible a situation in which two defendants, convicted of identical crimes, on the basis of evidence seized pursuant to identical exclusionary rule violations, could face radically different fates. If defendant *A* petitions for certiorari on the basis that his Fourth Amendment rights have been violated, and if his petition is granted, the evidence against him may be excluded and he may go free. If defendant *B*, on the other hand, does not petition for certiorari, or his petition is denied, and he seeks habeas relief without claiming that he has been denied an opportunity for full and fair litigation of his claim, the writ will be denied, and he may spend the rest of his life in jail. *See Stone*, 428 U.S. at 536 (White, J., dissenting).

61. *Stone*, 428 U.S. at 529 (Brennan, J., dissenting) (quoting Brown v. Allen, 344 U.S. 443, 498-99 (1953)) (emphasis added).

62. *Withrow*, 113 S. Ct. at 1753 (quoting United States v. Verdugo-Uriquidez, 494 U.S. 259, 264 (1990)); *cf.* Kimmelman v. Morrison, 477 U.S. 365, 377 (1986).

guishable on this basis? In formulating the exclusionary rule, the *Mapp* Court specifically based its decision on the fundamental nature of Fourth Amendment rights.[63] Extending the rule from federal to state criminal convictions, the Court buttressed its reasoning by arguing that both the Fourth and Fifth Amendments compel the exclusion of unlawfully obtained evidence at trial.[64] At various times, the Court has recognized that, while neither Miranda nor the exclusionary rule are themselves constitutionally mandated, both are necessary to effectuate fundamental Fourth and Fifth Amendment liberties.[65] Given this line of precedent, the proffered difference between the Miranda and exclusionary rule safeguards revolves, not around their constitutional underpinnings, but rather their effect on the operation of the criminal justice system. Are these grounds alone sufficient to distinguish between the two?

Miranda, the *Withrow* majority argues, "facilitates the correct ascertainment of guilt by guarding against the use of unreliable statements at trial."[66] With this line of reasoning, the Court

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63. Mapp v. Ohio, 367 U.S. 643, 649 (1961) (quoting McNabb v. United States, 318 U.S. 332, 339-40 (1943) ("A conviction in the federal courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution, cannot stand.")).

64. Boyd v. United States, 116 U.S. 616, 630 (1886). In addition, the majority emphasized the interconnected nature of the Fourth and the other Bill of Rights Amendments by remarking:

> Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other *basic Constitutional right*. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would (otherwise) stand in marked contrast to all other rights declared as "basic to a free society."

Id. Mapp, 367 U.S. at 656 (citing *Wolf v. Colorado*, 338 U.S. 25, 27 (1949)) (emphasis added).

65. *See* Miranda v. Arizona, 384 U.S. 436, 467 (1966) (arguing that Miranda's procedural safeguards were not themselves rights protected by the Constitution, but instead were measures to ensure that the right against compulsory self-incrimination was protected); *Mapp*, 367 U.S. at 649 (holding that the exclusionary rule was a constitutionally required, if judicially implied, safeguard without which the Fourth Amendment would be reduced to "a form of words"); *cf.* Duckworth v. Eagan, 492 U.S. 195, 203 (1989); Connecticut v. Barrett, 479 U.S. 523, 528 (1987); New York v. Quarles, 467 U.S. 649, 654 (1984); Michigan v. Tucker, 417 U.S. 433, 444 (1974); McNabb v. United States, 318 U.S. 332, 339-40 (1943); Olmstead v. United States, 277 U.S. 438, 462 (1928); Bryars v. United States, 273 U.S. 28, 29-30 (1927).

66. *Withrow*, 113 S. Ct. at 1747. Elaborating on this principle the Court says: "'[A] system of criminal law enforcement which comes to depend on the "confession" will, in the long run, be less reliable and more subject to abuses than a system relying on

alludes to language in several prior opinions which held that the inherently coercive nature of custodial interrogation throws doubt on the reliability of testimony so obtained.[67] Though both *Miranda* and the exclusionary rule serve to deter future unlawful police conduct,[68] the Court concluded that the exclusion of non-testimonial evidence "can do nothing to remedy the completed and wholly extrajudicial Fourth Amendment violation."[69] Here again, these justifications are inconsistent with prior opinions. For instance, although the "reliability of evidence" argument finds support in *Stone,*[70] it expressly contradicts the rationale behind *Mapp*, which held that insufficient empirical evidence was available to conclude that the exclusionary rule fetters law enforcement.[71] More importantly, the *Mapp* majority decided that the exclusionary rule *must* be applied, irrespective of law enforcement concerns, in order to safeguard a defendant's fundamental privacy rights.[72] In fact, the reliability of unconstitutionally seized evidence is controverted by the facts of *Mapp*. There, a defendant was convicted, on the basis of evidence obtained in an unlawful search of her home, of possessing pornographic materials which may not have been hers and of which she may have had no knowledge.[73]

The Court's remedy rationale is similarly contradictory. In either a *Miranda* or *Mapp* situation, a violation of constitution-

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independent investigation." *Id.* at 1753 (quoting *Michigan v. Tucker*, 417 U.S. 433, 448 n.23.).

67. *See* Stone v. Powell, 428 U.S. 465, 479 (1976) (indicating that Fifth Amendment violations are different in kind from violations of similar Bill of Rights protections in that they "impugn the integrity of the fact-finding process" and produce evidence which is "inherently unreliable"); Miranda v. Arizona, 384 U.S. 436, 439-42 (1966) (discussing police interrogation practices and their tendency to elicit false admissions); Escobedo v. Illinois, 378 U.S. 478, 488-89 (1964) (arguing Miranda serves to guard against the use of unreliable statements at trial); *cf.* Rose v. Mitchell, 443 U.S. 545, 559 (1979) (indicating that the rule in *Stone* goes to the integrity of the judicial process itself and, thus, claims of grand jury discrimination are not cognizable on habeas after *Stone*).

68. *Stone*, 428 U.S. at 486 ("The primary justification for the exclusionary rule then is deterrence of police conduct that violates Fourth Amendment rights.").

69. *Withrow*, 113 S. Ct. at 1753 (quoting *Stone*, 428 U.S. at 486).

70. *Stone*, 428 U.S. at 497.

71. Mapp v. Ohio, 367 U.S. 643, 659 (1961).

72. *Id.* at 661. In fact, the Court in *Mapp* insisted that to hold otherwise would be to render the Fourth Amendment meaningless and merely "a form of words." *Id.* at 655.

73. *See id.* at 643-46.

al rights has occurred, the unlawful coercion of testimony or the unlawful seizure of other evidence. In neither case does the exclusion of such evidence address the violation itself; it merely prevents further injury through its use at trial.[74] Nor is a distinction apparent when the *Miranda* and *Mapp* rules are enforced via appeal or by writ of habeas corpus. In both situations, relief does nothing to withdraw the initial breach of a defendant's Fourth or Fifth Amendment privileges. A reversal or writ of habeas corpus provides no redress for the injury itself, it merely interdicts the consequences of incarceration. However, as the *Withrow* decision makes clear, the fact that neither *Miranda* nor the exclusionary rule directly address a constitutional violation, justifies considering other factors in deciding if habeas relief is proper. According to the Court, these "prudential" concerns constitute the most important distinction between the *Miranda* and exclusionary rules.

V. *WITHROW'S* FINAL BALANCE: THE COSTS OF MIRANDA AND THE EXCLUSIONARY RULE—EQUITABLE CONCERNS, INEQUITABLE RESULTS?

In *Stone v. Powell*, a 6-3 majority held that, where evidence has been obtained by an unlawful search and seizure, the Constitution "require[d] exclusion of such evidence at trial and reversal of conviction upon direct review."[75] However, given the societal costs involved, and in light of the "purpose of the Fourth Amendment exclusionary rule," the court held that habeas relief for such a conviction was *not* similarly justified.[76] In *Withrow*, the Court defines these costs in terms of "the public interest in: 1) the effective utilization of limited judicial resources; 2) the need for finality in criminal trials; 3) the minimization of friction between our federal and state systems

74. As the majority stated in *Mapp*, the use of unconstitutionally obtained evidence at trial itself involves "a denial of the constitutional rights of the accused." *Id.* at 648 (quoting Weeks v. U.S., 232 U.S. 383, 398 (1914)). Also in *Mapp*, the Court emphasized that the exclusionary rule is an essential part, "logically and constitutionally necessary" to the right of privacy. The court felt that to hold otherwise was to grant such a right but preclude its enjoyment. *Id.* at 656.

75. *Stone*, 428 U.S. at 480 (citing *Mapp*, 376 U.S. at 643).

76. *Id.* at 481-82.

of justice; and 4) the maintenance of the constitutional balance upon which the doctrine of federalism is founded."[77]

A. *Federalism Concerns*

The *Withrow* Court holds that eliminating collateral review of *Miranda* claims "would not significantly benefit the federal courts in their exercise of habeas jurisdiction, or advance the causes of federalism in any substantial way."[78] According to the Court, eliminating habeas review of *Miranda* issues would not prevent a state prisoner from achieving the same results by simply converting his barred *Miranda* claim into a due process claim that his conviction rested on an involuntary confession.[79] Therefore, the majority concludes that federal courts would not hear the last of *Miranda* on collateral review. In deciding voluntariness under the "totality of the circumstances approach," a court could consider the failure by police to advise a defendant of his rights to remain silent and to have counsel present during questioning.[80] Although admitting to a lack of empirical evidence for the proposition, the Court further assumes that "virtually all *Miranda* claims would be recast in this way"[81] and that, in any case, each *Miranda* claim presents an independent legal question requiring "independent federal determination."[82] As a result, the Court concludes that collateral review of *Miranda* does not extend, but is merely an alternative to, existing federal jurisdiction in this area.[83] Ironically, for much the same reasons, the Court in *Stone* concluded that collateral review of exclusionary rule claims would offend principles of federalism. There, the fact that a defendant could find other Fourteenth Amendment due process grounds for relief counselled against preserving this avenue of jurisprudence.[84] In addition, since the exclusionary rule is a court-created entity, the *Stone* Court decided that collateral review of state court

77. *Withrow*, 113 S. Ct. at 1750.
78. *Id.* at 1754.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* (quoting Miller v. Fenton, 474 U.S. 104, 112 (1985)).
83. *Id.*
84. *Stone*, 428 U.S. at 481-85.

decisions would cause unnecessary friction between federal and state courts.[85] The *Withrow* Court, however, finds that comity concerns are not compelling in the collateral review of *Miranda* violations.

B. *Comity and Friction*

In *Stone,* the majority concluded that indiscriminate federal enforcement of the exclusionary rule would generate "disrespect for the law and the administration of justice."[86] Furthermore, given the other avenues for review of Fourth Amendment claims, the Court ruled that supervision of state courts would be little served by habeas review of such claims. The perceived need for collateral review of this area of law, the Court continued, stemmed from a mistaken belief in the deterrent effect of habeas cases upon law enforcement officials, and a mistrust of state courts as fair and competent forums for the adjudication of constitutional rights.[87] For these reasons, the intergovernmental friction engendered by collateral review outweighed any benefit it might confer.[88] On the other hand, in *Withrow*, these same considerations supported maintaining collateral review of *Miranda* claims.

"We fail to see," the *Withrow* Court states, "how purporting to eliminate Miranda issues from federal habeas would go very far to relieve such tensions as *Miranda* may now raise between the two judicial systems."[89] Though the majority recognizes the potential for friction when a federal court overturns a state conviction, it also decides that "[i]t is not reasonable . . . to expect such occurrences to be frequent enough to . . . raise federal-state tensions to an appreciable degree."[90] In fact, while admitting that the requirements and meaning of *Miranda* were

85. *Id.*
86. *Id.* at 491.
87. *Id.* at 493-94.
88. *Id.*
89. *Withrow*, 113 S. Ct. at 1754.
90. *Id.* at 1755. Along a similar line of reasoning, the majority also argues that, given the expanse of time since the decision in *Miranda*, law enforcement has grown in constitutional and technological sophistication and there is little reason to believe that state law enforcement officials are unable or unwilling to fulfill *Miranda's* requirements. *Id.*

respected by the states, the Court holds that continued collateral review is needed to maintain such respect and respond to "the occasional abuse that the federal writ of habeas corpus stands ready to correct."[91] This same intolerance for even an "occasional" violation of *Miranda* is espoused by the Court in evaluating the effect of the *Miranda* and exclusionary rules upon judicial integrity and judicial finality.

C. *Finality and Judicial Resources*

As Justices O'Connor and Rehnquist observe, collateral attacks raise numerous concerns not present upon direct review. Among the most profound is their effect upon the finality of criminal convictions.[92] In *Stone,* the argument was made that by maintaining extraneous avenues of appeal, collateral review of Fourth Amendment claims undercuts the finality of convictions while providing little benefit to the system and exacting enormous cost.[93] Conversely, in *Withrow* the majority concludes that since collateral attack of Miranda violations creates no additional opportunity for review and imposes no new burden on the system, it consumes few additional resources.[94] In response to claims that its decision undermines finality, the Court defines the term finality not on a case-by-case basis, but in a systemic fashion. The majority proposes that "a system of criminal law enforcement which comes to depend on the [coerced] 'confession' will, *in the long run* be less reliable and more subject to abuses than a system relying on independent investigation."[95] In this manner, the Court also exposes what may be

91. *Id.* (quoting Jackson v. Virginia, 443 U.S. 307, 322 (1979)).

92. *Id.* at 1756. (O'Connor, J., dissenting). As Justice O'Connor remarks: "it goes without saying that, at some point, judicial proceedings must draw to a close and that the matter be deemed conclusively resolved; no society can afford forever to question the correctness of its every judgment . . . . '[t]he writ, however, strikes at finality.'" (quoting McClesky v. Zant, 111 S. Ct. 1454, 1468 (1991)).

93. *Id.*

94. As the Court points out, "eliminating habeas review of *Miranda* issues would not prevent a state prisoner from simply converting his barred *Miranda* claim into a due process claim that his conviction rested on an involuntary confession." *Withrow,* 113 S. Ct. at 1754. "We could lock the front door against *Miranda,*" the Court says, "but not the back." *Id.*

95. *Id.* at 1753 (citing Michigan v. Tucker, 417 U.S. 433 (1966)).

the only way to reconcile these two decisions, a change in perspective.

To illustrate, in *Stone v. Powell* the Court approached the exclusionary rule with the assumption that habeas jurisdiction was unnecessary unless it could be shown to provide some additional utility not offered by other avenues of review.[96] In *Withrow*, however, the Court assumes that a defendant is entitled to collateral review of a *Miranda* claim, unless compelling reasons to deny relief can be found.[97] To the extent that the distinction between *Withrow* and *Stone* rests on differences in the Court's approach in each case, the future of habeas jurisprudence remains uncertain.

VI. THE DIFFERENCE BETWEEN *MIRANDA* AND THE EXCLUSIONARY RULE: THE LAW AFTER *WITHROW V. WILLIAMS*

In short, with its decision in *Withrow*, the Supreme Court reveals less of a substantive difference between the *Miranda* and exclusionary rules than it does a change in its methodology of analysis regarding collateral review of those rules. In *Stone*, the majority asked whether the merits of continued habeas jurisdiction warrant its cost in terms of judicial resources, federal-state friction, and the effectiveness of law enforcement. In *Withrow*, however, the majority asks whether eliminating habeas would achieve sufficient savings, in terms of these same costs, to justify *depriving* a defendant of this avenue of redress. The prudential concerns identified in *Stone*, therefore, are not perceived in *Withrow*, primarily because the applicable test was changed. It is submitted that this change in evaluation constitutes the sole defensible distinction between *Miranda* and exclusionary rule safeguards. As discussed above, neither the nature, function, nor prudential characteristics of *Miranda* or the exclusionary rule provide a clear and satisfying basis upon which to explain such differential treatment.

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96. *See Stone*, 428 U.S. at 478 n.11. For example, note the Court's assertion that habeas review of exclusionary rule violations "will not be allowed to do service for an appeal." *Id.* at 477 n.10 (quoting Sunal v. Large, 332 U.S. 174, 178 (1947)).

97. This is in part based on the Court's conclusion that review in *Miranda* claims is inevitable in one form or another. *Withrow*, 113 S. Ct. at 1754.

What, then, is the future of collateral review in these areas? The Court seems undecided. While preserving habeas jurisdiction over *Miranda* violations in *Withrow*, it nonetheless reins in what it deems an overzealous enforcement of the rule.[98] Moreover, in a case handed down on the same day as *Withrow*, the Court restricted collateral review of *Miranda*, holding that where a defendant's silence was used as evidence against him at trial, habeas relief is available only if he can show that such "evidence" had a substantial injurious effect upon the verdict.[99] This decision is representative of a line of cases which have slowly carved exceptions into what was originally conceived as the absolute or prophylactic nature of the *Miranda* rule.[100] To the extent that such exceptions continue to be recognized and, as the distance between the nature and enforcement of *Miranda* and the exclusionary rule narrows, the differential treatment of the two on petition for habeas may in fact offend the principles of federalism and finality espoused by the Court. For these reasons, it appears that the perceived distinction between *Miranda* and exclusionary rule safeguards will be problematic. A more advisable, and perhaps inevitable course, would be to treat these rules identically on habeas, moderating their "societal costs" through exceptions to review, perhaps for public exigency or good faith adherence to their precepts.[101]

Whatever the case, the current rule of *Withrow v. Williams* offers equitable concerns to justify an arguably inequitable result, and one that may burden the Court in decisions to come.

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98. *Withrow*, 113 S. Ct. at 1755 (holding that the defendant's post-*Miranda* statements were not at issue and should not have been considered by the Court of Appeals).

99. Brecht v. Abrahamson, 113 S. Ct. 1710 (1993).

100. Since the Court's decision in Miranda v. Arizona, 384 U.S. 486 (1966), numerous exceptions to the exclusion of evidence obtained in violation of the rule have been recognized. For instance, where such failure to advise a defendant of his Miranda rights is necessitated by "public exigency," New York v. Quarles, 467 U.S. 649, 654 (1984), or where evidence is used to impeach the credibility of a witness, Harris v. New York, 401 U.S. 222, 224-26 (1971).

101. For example, such an exemption is provided for exclusionary rule violations. *See* Texas v. Brown, 460 U.S. 730 (1983).