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The Collateral Estoppel Effect Of Guilty Pleas In Section 1983 Actions

THE COLLATERAL ESTOPPEL EFFECT OF GUILTY PLEAS IN SECTION 1983 ACTIONS

Section 1 of the Civil Rights Act of 1871, codified at section 1983 of Title 28 of the United States Code (section 1983),[1] creates a federal cause of action for individuals deprived of constitutional rights by persons acting under color of state law.[2] Many criminal defendants file section 1983

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[1] 42 U.S.C. § 1983 (Supp. III 1979).

[2] *Id.* 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.

Id. Congress enacted § 1983 as § 1 of the Civil Rights Act, or Ku Klux Klan Act, Ch. 22, § 1, 17 Stat. 13 (1871), in response to the lawless conditions in the Reconstruction South. *See* Mitchum v. Foster, 407 U.S. 225, 238-42 (1972); Monroe v. Pape, 365 U.S. 167, 174-75 (1961), *overruled* 436 U.S. 658 (1978). *But see* Monell v. Department of Social Services, 436 U.S. 658, 663 (1978) (overruling *Monroe v. Pape* in part). Many areas of the South in the 1870s had developed a two tier system of justice. *See* Cong. Globe, 42d Cong., 1st Sess. 505 (1871). White Southerners had no difficulty pressing claims, but justice failed when a case involved blacks or Union sympathizers. *Id.* Gangs lynched or attacked innocent people, sheriffs refused to serve writs for blacks, and juries denied justice to blacks without fear of judicial redress. *Id.* at 334, 374. Congress intended § 1983 to supply a federal cause of action to individuals deprived of fourteenth amendment rights by state officials acting under the authority of state law. Monroe v. Pape, 365 U.S. at 185-87; Cong. Globe, 42d Cong., 1st Sess., App. 217.

The United States Supreme Court has found that § 1983 has three main goals. 365 U.S. at 173. First, § 1983 can override certain state laws. *Id.* If a state legislature passes a statute designed to deny certain groups their constitutional rights, an aggrieved party may file a § 1983 action to enjoin application of the statute. *See id.*; Note, *Section 1983: A Civil Remedy for the Protection of Federal Rights*, 39 N.Y.U. L. REV. 838, 846-49 (1964). Second, § 1983 provides a remedy when state laws are inadequate. 365 U.S. at 173. If certain groups have no remedy for legitimate grievances in state court because the state legislature failed to enact a remedy, the group might find a remedy under federal law in a § 1983 action. *See id.* at 173-74. The third goal of § 1983 is an attempt by Congress to remedy the most important problem in the Reconstruction South. *See id.* at 174. Section 1983 provides a remedy when the state remedy is adequate in theory but not in practice. *Id.* at 174-75. Consequently, if a state provides a legal remedy for a particular grievance, but a party cannot utilize the remedy because the sheriff will not deliver a writ, law enforcement officials ignore intimidation of witnesses, or the courts allow juries to disregard legal standards, the afflicted party may strike back with a § 1983 suit in federal court. *See id.* at 174-78. A successful § 1983 plaintiff can obtain injunctive relief and monetary damages against the defendants. *See* Mitchum v. Foster, 407 U.S. 225, 242-43 (1972); Note, *Section 1983: A Civil Remedy for the Protection of Federal Rights*, 39 N.Y.U. L. REV. 838, 846-47 (1964).

Federal courts have jurisdiction over § 1983 suits by virtue of § 1343(3) of Title 28 of the United States Code, which provides the federal district courts with original jurisdiction "to redress the deprivation, under color of any State law, . . . of any right, privilege or immunity secured by the Constitution of the United States. . . ." 28 U.S.C. § 1343(3) (Supp. III 1979). Section 1343(3) does not grant federal courts exclusive jurisdiction over § 1983 claims.

actions in federal court during or upon completion of the state prosecution.[3] If the prosecution results in a conviction, the defendants in the section 1983 suit may attempt to raise a collateral estoppel defense to prevent relitigation of certain issues decided against the defendant in the state prosecution.[4] The United States Supreme Court recently legitimiz-

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See id.; S. NAHMOD, CIVIL RIGHTS & CIVIL LIBERTIES LITIGATION § 1.12 (1979 & Supp. 1981) [hereinafter cited as NAHMOD]. State courts may thus exercise concurrent jurisdiction over § 1983 suits. *See* Williams v. Greene, 36 N.C. App. 80, 84, 243 S.E. 2d 156, 159, *appeal dismissed*, 295 N.C. 471, 246 S.E. 2d 12 (1978); NAHMOD, *supra*, § 1.12. Section 1343(3) does not require that a plaintiff exhaust available state remedies. *See* Preiser v. Rodriguez, 411 U.S. 475, 477 (1973); NAHMOD, *supra*, § 1.12. Consequently, a plaintiff may file a claim in either state or federal court. *See* 411 U.S. at 477; NAHMOD, *supra*, § 1.12. Because plaintiffs filing § 1983 suits typically wish to attack the actions of state officials, the plaintiffs overwhelmingly choose to file § 1983 claims in federal court to obtain a fairer trial. *See* NAHMOD, *supra*, § 1.12.

The seminal § 1983 case is *Monroe v. Pape*. 365 U.S. 167 (1961). In *Monroe*, the Court thoroughly explored the legislative history of § 1983 and construed an action "under color of state law" to be a misuse of power through the use of state law that is possible only because the wrongdoer possesses the authority of state law. *See id.* at 184-87. Since *Monroe*, the importance of § 1983 has grown as the Supreme Court has applied the guarantees in the Bill of Rights to the states through the fourteenth amendment. Averitt, *Federal Section 1983 Actions After State Court Judgment*, 44 U. COLO. L. REV. 191, 192 (1972) [hereinafter cited as Averitt].

[3] *See* Comment, *The Collateral Estoppel Effect of State Criminal Convictions in Section 1983 Actions*, 1975 U. ILL. L.F. 95, 95 (1975) [hereinafter cited as *Collateral Estoppel*]; *see, e.g.*, Thistlethwaite v. New York, 497 F.2d 339, 341 (2d Cir.) (defendant convicted under state law for distributing political pamphlets in Central Park without permit filed § 1983 action asking federal court to declare state law unconstitutional), *cert. denied*, 419 U.S. 1093 (1974); Kauffman v. Moss, 420 F.2d 1270, 1272 (3d Cir.) (after jury convicted defendant in state court of burglary and larceny, defendant brought § 1983 action in federal court claiming that prosecution used perjured testimony at trial), *cert. denied*, 400 U.S. 846 (1970).

[4] *See Collateral Estoppel*, *supra* note 3, at 95. Once a court of competent jurisdiction has litigated and decided a certain issue, collateral estoppel, or "issue preclusion," prevents relitigation of the issue. *See* Vestal, *Issue Preclusion and Criminal Prosecutions*, 65 IOWA L. REV. 281, 281 n.3 (1980) [hereinafter cited as *Issue Preclusion*]. Although the prerequisites for collateral estoppel vary among jurisdictions, three requirements are fundamental. First, the issue that one party wishes to preclude in the second suit must be identical to an issue decided in the first suit. Oldham v. Pritchett, 599 F.2d 274, 279 (8th Cir. 1979); Scooper Dooper, Inc. v. Kraftco Corp., 494 F.2d 840, 844 (3d Cir. 1974); Nash v. Reedel, 86 F.R.D. 13, 15 (E.D. Pa. 1980). Second, the first proceeding must have resulted in a final judgment. Scooper Dooper, Inc. v. Kraftco Corp., 494 F.2d at 844; Hooper v. Guthrie, 390 F. Supp. 1327, 1334 (W.D. Pa. 1975). Third, the party to be estopped must have been a party or privy to a party in the first suit. Oldham v. Pritchett, 599 F.2d at 279; Mayberry v. Somner, 480 F. Supp. 833, 838 (E.D. Pa. 1979). An individual is privy to an action if he controls the suit without becoming a party, allows a party to represent his interests, or is a successor in interest to a party. *See* RESTATEMENT OF JUDGMENTS § 83, Comment a, at 389 (1942).

In addition to these basic prerequisites, many courts list other requirements. *See* Allen v. McCurry, 449 U.S. 90, 95 (1980) (collateral estoppel does not apply if party did not have full and fair opportunity to litigate issue in first suit); Lombard v. Board of Educ., 502 F.2d 631, 637 (2d Cir. 1974) (to apply collateral estoppel to issue, such issue must have been necessary to decision in first action), *cert. denied*, 420 U.S. 976 (1975); Campise v. Hamilton, 382 F. Supp. 172, 183 (S.D. Tex. 1974) (collateral estoppel not applicable unless parties in

ed the use of collateral estoppel in section 1983 actions in *Allen v. McCurry*.[5] In *McCurry*, the Supreme Court held that in a section 1983 action filed after the plaintiff's conviction by a jury in state court, a defendant may assert collateral estoppel under the general limitation that the doctrine will not apply if the state court did not allow the plaintiff a full and fair opportunity to litigate the issue in the state prosecution.[6] The

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first suit actually litigated issue in question), *appeal dismissed*, 541 F.2d 279 (1976), *cert. denied*, 429 U.S. 1102 (1977). The rule from the *Restatement (Second) of Judgments* requires for issue preclusion that the parties actually litigate the issue, that the court render a final judgment on the issue, and that the issue be essential to the judgment. RESTATEMENT (SECOND) OF JUDGMENTS § 68 (Tent. Draft No. 4, 1977). One commentator has criticized the *Restatement* for being too narrow and preventing courts from applying collateral estoppel to cases involving waivers, guilty pleas, default judgments, and consent judgments. *See* Vestal, *The* Restatement (Second) of Judgments: *A Modest Dissent*, 66 CORNELL L. REV. 464, 471-97 (1981) [hereinafter cited as Vestal]. Professor Vestal suggests that a better requirement would allow a court to apply collateral estoppel if the party to be estopped had incentive and opportunity to litigate in the first suit and if the issue was necessary to the judgment. *See id.* at 496-97. If the party had incentive and opportunity to litigate a necessary issue and failed to do so, the court in the second suit could interpret that failure as an admission of the truthfulness of the opposing party's allegations or a waiver of the right to contest the issue. *Id.* at 495. *See also* Hazard, *Revisiting the Second* Restatement of Judgments: *Issue Preclusion and Related Problems*, 66 CORNELL L. REV. 564 (1981) [hereinafter cited as Hazard].

Issue preclusion is one branch of the doctrine of res judicata, the other branch of which is claim preclusion. Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 70 NW. U.L. REV. 859, 859-60 (1976) [hereinafter cited as Theis]. Under claim preclusion, a judgment in one suit bars another suit between the same parties on the same cause of action. *Id.* at 859. The bar includes any issues that the parties raised or might have raised in the prior action. *Id.*

Congress codified the doctrines of res judicata and collateral estoppel in § 1738 of Title 28 of the United States Code. *See* 28 U.S.C. § 1738 (1976). Section 1738 provides that federal courts must give the same preclusive effect to prior state judgments as would the courts of that state. *Id.*; *see Developments in the Law—Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1333-34 (1977) [hereinafter cited as *Developments*]; *Collateral Estoppel*, *supra* note 3, at 96 n.9. The full faith and credit clause of the Constitution requires all state courts to honor the judgments of courts in other states. *See* U.S. CONST. art. IV, § 1. Section 1738 is a full faith and credit statute that applies to federal courts. *See* Huron Holding Corp. v. Lincoln Operating Co., 312 U.S. 183, 193 (1941) (referring to predecessor of § 1738); 28 U.S.C. § 1738 (1976); *Developments*, *supra*, at 1334 & n.13. Under § 1738, a federal court applying collateral estoppel should look to the law in the state of the first adjudication to determine how the courts in that state apply the doctrine. *See* Allen v. McCurry, 449 U.S. 90, 96 (1980). Federal courts applying collateral estoppel, however, often do not mention § 1738 and look instead to the federal law of collateral estoppel. *See* Winters v. Lavine, 574 F.2d 46, 55 (2d Cir. 1978); Torke, *Res Judicata in Federal Civil Rights Actions Following State Litigation*, 9 IND. L. REV. 543, 554-55 (1976) [hereinafter cited as Torke]. Under § 1738, federal courts should look instead to state law. *Id.* at 556-57.

[5] 449 U.S. 90 (1980); *see* text accompanying notes 22-36 *infra*.

[6] 449 U.S. at 101-04. *McCurry* marks the first time that the Supreme Court directly decided that the doctrine of collateral estoppel applies to § 1983 actions. *See id.* at 96. Before *McCurry*, most federal courts concluded that collateral estoppel would apply in § 1983 actions. *See, e.g.*, Martin v. Delcambre, 578 F.2d 1164, 1165 (5th Cir. 1978) (collateral estoppel precluded § 1983 plaintiff from relitigating issues of unconstitutional arrest, prose-

McCurry Court, however, did not reach the question of whether collateral estoppel should apply in a section 1983 suit when the plaintiff's state court conviction results from a plea of guilty rather than from a

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cution, conviction, and detention); Mastracchio v. Ricci, 498 F.2d 1257, 1259-61 (1st Cir. 1974) (since state court conviction necessarily decided issue of perjury by police officer, plaintiff may not relitigate issue in § 1983 action), *cert. denied*, 420 U.S. 909 (1975); Palma v. Powers, 295 F. Supp. 924, 933-36 (N.D. Ill. 1969) (plaintiff precluded by collateral estoppel from relitigating in § 1983 action issues of illegal search and arrest and conspiracy to terminate telephone service). Some courts, however, emphasize the special role of § 1983 as guarantor of constitutional rights. *See* note 2 *supra*. These courts accordingly grant § 1983 suits either a total or partial exemption from collateral estoppel application. *See, e.g.*, Johnson v. Mateer, 625 F.2d 240, 243-45 (9th Cir. 1980) (collateral estoppel should not apply in § 1983 suits if plaintiff was criminal defendant who had no choice but to defend in state court); Ney v. California, 439 F.2d 1285, 1288 (9th Cir. 1971) (collateral estoppel should not apply to § 1983 actions); Moran v. Mitchell, 354 F. Supp. 86, 89 (E.D. Va. 1973) (collateral estoppel may apply in § 1983 suits as long as plaintiff has other access to federal forum). Many commentators likewise suggest that courts limit the use of collateral estoppel in § 1983 suits. *See, e.g.*, Averitt, *supra* note 2, at 195-98 (collateral estoppel should not apply if plaintiff involuntarily litigated in state court, exhausted state remedies, and did not receive disposition of case on adequate and independent state grounds); Note, *The Preclusive Effect of State Judgments on Subsequent 1983 Actions*, 78 COLUM. L. REV. 610, 616-17 (1978) (courts should allow § 1983 plaintiff review of procedural fairness if plaintiff litigated claim in state court, exhausted state remedies, and later alleges denial of full and fair hearing in state court); *Developments*, *supra* note 4, at 1338-43 (collateral estoppel should only apply to plaintiffs who voluntarily litigated in state court); *Collateral Estoppel*, *supra* note 3, at 104-06 (collateral estoppel should apply in § 1983 actions only if court protects plaintiff's right to federal forum through establishment of discretionary evidentiary hearing akin to that allowed in federal habeas corpus actions).

Opponents of unlimited collateral estoppel application in § 1983 suits argue that the doctrine of collateral estoppel is inconsistent with the policy underlying § 1983. *See* Averitt, *supra* note 2, at 192. Congress enacted § 1983 to provide a federal forum for parties unable to receive a fair consideration of their constitutional claims in state court. *See* note 2 *supra* (legislative history). Some authorities argue that Congress intended § 1983 to guarantee to each individual the right to a federal forum to adjudicate his claims of constitutional deprivation. *See* Rimmer v. Fayetteville Police Dep't, 567 F.2d 273, 277 (4th Cir. 1977); Averitt, *supra* note 2, at 196. Unrestricted application of collateral estoppel would deny this right to some § 1983 plaintiffs who have no alternate route to federal court. *See* 567 F.2d at 277. Some commentators disagree with the courts on the issue of whether state judges are as capable and unbiased as federal judges in ruling on constitutional issues. *Compare* Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105, 1121-28 (1977) (state judges less competent and more susceptible to local influences than federal judges) *and Collateral Estoppel*, *supra* note 3, at 98 (state judges become immersed in state law and therefore may not follow recent federal and constitutional developments) *with* Allen v. McCurry, 449 U.S. 90, 105 (1980) (state courts as competent as federal courts in deciding constitutional matters) *and* Palma v. Powers, 295 F. Supp. 924, 938 (N.D. Ill. 1969) (court refused to assume that state courts do not observe criminal defendants' constitutional rights). In *Ney v. California*, the Ninth Circuit feared that if a successful prosecution based upon information obtained in violation of the defendant's constitutional rights could bar a civil rights action against the violating officers, then the Civil Rights Act would often be a "dead letter." 439 F.2d 1285, 1288 (9th Cir. 1971). Individuals wary of collateral estoppel also fear a situation in which a criminal defendant is faced with the Hobson's choice of raising his constitutional defense during the state court trial and risking loss of the right to pursue the issue in federal court or preserving his federal claim by saving the constitutional defense and risking a criminal conviction. *See* Moran v. Mitchell, 354 F. Supp. 86, 88 (E.D. Va. 1973); *Developments*, *supra* note 4, at 1340.

jury verdict. Adjudication by guilty plea in a criminal prosecution presents special problems for the application of collateral estoppel in a subsequent section 1983 action because the parties do not put potential section 1983 issues in contention for direct decision by the court.[7] Because many courts require litigation of an issue during the prosecution before allowing collateral estoppel,[8] courts differ over which issues, if any, a court may estop the parties from relitigating after a guilty plea.[9]

Although most courts before *McCurry* allowed a collateral estoppel defense in section 1983 suits, some courts refused to allow the defense or accepted it with special limitation.[10] For example, several courts premised their acceptance of collateral estoppel upon the availability of a federal forum through a federal habeas corpus action.[11] The Supreme

[7] *See Issue Preclusion, supra* note 4, at 292-93.

[8] *See* Fernandez v. Trias Monge, 586 F.2d 848, 854-56 (1st Cir. 1978); Campise v. Hamilton, 382 F. Supp. 172, 183 (S.D. Tex. 1974), *appeal dismissed*, 541 F.2d 279 (1976), *cert. denied*, 429 U.S. 1102 (1977); note 4 *supra*. *See also* RESTATEMENT (SECOND) OF JUDGMENTS § 68 (Tent. Draft No. 4, 1977).

[9] *Compare* Brazzell v. Adams, 493 F.2d 489, 490 (5th Cir. 1974) (collateral estoppel applies equally whether prior adjudication is by verdict or guilty plea) *with* Brown v. Scott, 462 F. Supp. 518, 519-20 (N.D. Ill. 1978) (because plaintiff entered guilty plea in state prosecution, parties did not litigate issue of statute's constitutionality, and collateral estoppel does not apply), *rev'd on other grounds*, 602 F.2d 791 (1979), *aff'd*, 447 U.S. 455 (1980).

[10] *See, e.g.*, Rimmer v. Fayetteville Police Dep't, 467 F.2d 273, 277 (4th Cir. 1977) (court should deny use of collateral estoppel if plaintiff would thereby have no access to federal forum); Ney v. California, 439 F.2d 1285, 1288 (9th Cir. 1971) (successful prosecution based upon illegally obtained evidence should not preclude later § 1983 action against violator). *See also* note 6 *supra*.

[11] *See, e.g.*, Rimmer v. Fayetteville Police Dep't, 567 F.2d 273, 276-77 (4th Cir. 1977) (court may refuse to apply collateral estoppel in § 1983 action if inability to raise habeas corpus claim would deny plaintiff federal forum) (dicta); Moran v. Mitchell, 354 F. Supp. 86, 88-89 (E.D. Va. 1973) (collateral estoppel may apply in § 1983 action if habeas corpus is available to guarantee plaintiff federal forum).

Congress provided federal habeas corpus review for state prisoners in § 2254 of Title 28 of the United States Code. 28 U.S.C. § 2254 (1976). Under § 2254, any federal court must hear a petition for a writ of habeas corpus on behalf of a person in custody pursuant to a state court conviction on the ground that the petitioner is in custody in violation of the Constitution or federal law. *See id.* § 2254(a). A federal court may accept the application only if the petitioner has exhausted his state remedies and can show that his conviction violated the Constitution or federal law. *See id.* § 2254(a) & (b).

Congress extended federal habeas corpus relief to state prisoners to promote the goals of Reconstruction in the post-Civil War South. *See* Fay v. Noia, 372 U.S. 391, 401 n.9, 417 (1963) (Congress extended habeas corpus relief to state prisoners in anticipation of Southern resistence to Reconstruction legislation); Act of Feb. 5, 1867, ch. 27, § 1, 14 Stat. 385 (1871) (current version at 28 U.S.C. § 2254 (1976)). Principles of res judicata and collateral estoppel do not apply to habeas corpus actions. *See* 372 U.S. at 423. Some commentators argue that, in view of the similar origins and goals of §§ 1983 and 2254, § 1983 also should be exempt from preclusion doctrines. *See* Theis, *supra* note 4, at 872-73; Torke, *supra* note 4, at 566-67. The courts, however, have declined to accept the analogy. *See* Allen v. McCurry, 449 U.S. 90, 104-05, 104 n.24 (1980) (habeas corpus not substitute for § 1983 because remedies have different purposes and procedural rules); Palma v. Powers, 295 F. Supp. 924, 937 (N.D. Ill. 1969) (habeas corpus and § 1983 not analogous because they serve different purposes). *See also* Comment, *The Collateral-Estoppel Effect to be Given State-Court Judgments in Federal Section 1983 Damage Suits*, 128 U. PA. L. REV. 1471, 1493-95 (1980) (habeas corpus

Court, however, significantly restricted the scope of federal habeas corpus review in *Stone v. Powell.*[12] In *Stone*, a jury convicted the defendant of second degree murder despite his claim that the prosecution obtained evidence through a search and seizure that violated the defendant's fourth amendment rights.[13] The defendant filed for a writ of habeas corpus based on the same claim.[14] The Supreme Court held that if the state prosecution provided the opportunity for a full and fair litigation of the defendant's fourth amendment claim, the Constitution does not require habeas corpus relief on the ground that the prosecution introduced illegally obtained evidence at the trial.[15] The Court reasoned that the exclusionary rule[16] should not proscribe the introduction of illegally seized evidence in all proceedings.[17] The *Stone* Court reasoned that the exclusionary rule should apply only if the benefits of police deterrence and judicial integrity outweigh the costs of excluding reliable evidence and

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and § 1983 are separate remedies that do not impose equal costs on judicial system). The court in *Palma v. Powers* noted that society has a special interest in protecting the individual's right to personal liberty, which justifies the habeas corpus exception to collateral estoppel. *See* 295 F. Supp. at 937. The *Palma* court concluded that a § 1983 action for money damages does not justify an equivalent exception. *See id.*; *accord*, Allen v. McCurry, 449 U.S. 90, 98 n.12 (1980).

[12] 428 U.S. 465, 481-82 (1976).

[13] *Id.* at 469-70. In a scuffle with a liquor store manager, Powell shot and killed the manager's wife. *Id.* at 469. A police officer later arrested Powell for violating a vagrancy ordinance and discovered a revolver during a search incident to the arrest. *Id.* At trial, Powell argued that the vagrancy ordinance was unconstitutionally vague. *Id.* at 470. Powell claimed that the court should have excluded testimony regarding the revolver because the officer obtained the gun pursuant to an illegal arrest. *Id.* The trial court rejected Powell's contention and the state appellate court affirmed. *Id.*

[14] *Id.* The federal district court rejected Powell's claim that the vagrancy statute was unconstitutional. *Id.* On appeal, the Ninth Circuit reversed, holding that the statute was unconstitutionally vague, making Powell's arrest illegal. *Id.* at 471. The Ninth Circuit concluded that the trial court should have excluded testimony regarding the revolver. *Id.*; *see* note 16 *infra* (exclusionary rule). The warden of the prison in which Powell was incarcerated petitioned for Supreme Court review. 428 U.S. at 474.

[15] 428 U.S. at 481-82.

[16] The exclusionary rule is a judically created means of protecting an individual's fourth amendment rights. *Id.* at 482. *See generally* Gouled v. United States, 255 U.S. 298 (1921); Weeks v. United States, 232 U.S. 383 (1914). The exclusionary rule provides that a court may not allow the prosecution to introduce evidence seized in violation of the fourth amendment. *See* Stone v. Powell, 428 U.S. at 482-83. The Supreme Court first held the exclusionary rule applicable to the states in *Mapp v. Ohio*. *Id.* at 483. *See generally* Mapp v. Ohio, 367 U.S. 643 (1961).

[17] *See* 428 U.S. at 486. The Supreme Court has held that the exclusionary rule should not extend to grand jury proceedings. *See* United States v. Calandra, 414 U.S. 338, 353-55 (1974) (witness may not refuse to answer grand jury questions on ground that prosecution based question on evidence prosecution obtained in illegal search and seizure). In addition, the prosecution may use illegally seized evidence to impeach a defendant who testifies in his own defense and whose testimony contains more than a mere denial of the charges against him. *See* Walder v. United States, 347 U.S. 62, 65 (1954) (exclusionary rule does not bar introduction of evidence, for impeachment purposes, of heroin capsule illegally seized from defendant after defendant testified that he had never possessed heroin).

possibly freeing a guilty defendant.[18] The Court concluded that the costs of habeas corpus review of search and seizure claims far outweigh the benefits of the review and, thus, courts should not entertain exclusionary rule claims during habeas corpus review.[19] *Stone* effectively eliminated the habeas corpus remedy for prisoners with claims based on the exclusionary rule.[20] After the *Stone* decision, more courts called for an exception to the application of collateral estoppel in section 1983 actions when a plaintiff had no other access to a federal forum.[21]

Several years after *Stone*, the Eighth Circuit held in *McCurry v. Allen*[22] that a state court determination on the constitutionality of a search and seizure would not preclude a section 1983 action because the plaintiff had no federal habeas corpus remedy available after *Stone v. Powell*.[23] After arresting McCurry at his home for possession of heroin and assault with intent to kill, officers entered his home without a search warrant to search for confederates.[24] The officers seized drugs discovered in plain view, as well as drugs found in dresser drawers and in auto tires on the porch.[25] The trial judge admitted the drugs found in plain view but suppressed the drugs found in drawers and tires.[26] After

[18] *See* 428 U.S. at 489. The primary purposes of the exclusionary rule are two-fold. First, courts apply the rule to protect judicial integrity or to prevent the implication of judicial complicity in violations of the fourth amendment. *Id.* at 484. Second, the exclusionary rule is supposed to deter future fourth amendment violations by taking away the incentive for police officers to illegally secure incriminating evidence for use at trial. *Id.*; *see* Mapp v. Ohio, 367 U.S. 643, 658 (1961).

[19] *See* 428 U.S. at 489-95. The *Stone* Court reasoned that the costs of applying the exclusionary rule at trial and on direct appeal persist in habeas corpus review. *Id.* at 491. These costs include diverting the focus of the trial from the question of the defendant's guilt or innocence and excluding evidence that is normally reliable, thus disrupting the truthfinding process. *Id.* at 489-91. On the other hand, the Court found that applying the exclusionary rule on habeas corpus review adds only marginally to the benefit of reduced police incentive to violate fourth amendment rights. *Id.* at 492-94.

The *Stone* Court stated that the exclusionary rule still should apply at the state trial and appellate levels when the benefits of the rule arguably are greater than the costs. *Id.* at 493. The Court also stressed its confidence in the ability and willingness of state court judges to uphold federal and constitutional interests. *Id.* at 493 n.35.

[20] *See* Note, 64 MINN. L. REV. 1060, 1062-63 (1980); *The United States Supreme Court Review*, 8 OHIO N.U.L. REV. 168, 171 (1981).

[21] *See* Johnson v. Mateer, 625 F.2d 240, 244-45 (9th Cir. 1980) (court refused to apply collateral estoppel to § 1983 plaintiff's claim of fourth amendment violation on ground that *Stone* had eliminated possibility of habeas corpus review of claim); Rimmer v. Fayetteville Police Dep't, 567 F.2d 273, 276 (4th Cir. 1977) (collateral estoppel may apply to § 1983 actions provided *Stone* does not operate to deprive defendant of federal forum) (dicta). *See also* Comment, *Collateral Estoppel in Section 1983 Action After* Stone v. Powell: McCurry v. Allen, 64 MINN. L. REV. 1060, 1066 (1980) (application of collateral estoppel to § 1983 plaintiff who lacks recourse to habeas corpus after *Stone* violates special federal interest in providing federal forum for fourth amendment claims).

[22] 606 F.2d 795 (8th Cir. 1979), *rev'd*, 449 U.S. 90 (1980).

[23] *Id.* at 799.

[24] *See* Allen v. McCurry, 449 U.S. 90, 92 (1980).

[25] *Id.*

[26] *Id.* Under the plain view doctrine, objects in the plain view of police officers who are legally present are subject to seizure by the officers regardless of whether the officers have

his conviction, McCurry filed a section 1983 suit against police officers whom McCurry claimed illegally searched his home and assaulted him after arrest.[27] The section 1983 defendants moved for summary judgment based on collateral estoppel, and the federal district court granted the motion.[28] McCurry appealed and the Eighth Circuit reversed.[29] The Eighth Circuit stated that because the federal courts have a special role in protecting civil rights, and because McCurry could not seek habeas corpus relief under *Stone*, collateral estoppel should not preclude the section 1983 claims.[30]

The Supreme Court rejected the argument that criminal defendants have a right to a federal forum[31] and held that McCurry's inability to gain habeas corpus review for his fourth amendment claims did not affect the application of collateral estoppel to his section 1983 action.[32] The Court noted that if a state court gave the defendant a full and fair opportunity to litigate his federal claims, then the defendant had no absolute right to relitigate the claims in federal court just because he considered the lower court decision erroneous.[33] The Supreme Court reiterated the *Stone* Court view that state courts have an obligation to uphold federal and constitutional law and are perfectly competent to do so.[34] While emphasizing that circumstances may justify exceptions to the use of collateral estoppel, the Court recognized one general limitation to the application of collateral estoppel in section 1983 suits subsequent to criminal convictions.[35] Collateral estoppel will not apply in a section 1983 action if the criminal defendant did not receive a full and fair opportunity to litigate the issue in the state criminal prosecution.[36]

In *McCurry*, the Supreme Court finally legitimized the application of

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obtained a search warrant. *See* Harris v. United States, 390 U.S. 234, 236 (1968) (officer who found robbery victim's auto registration card on floor of defendant's car curing impounding procedure did not need search warrant).

[27] McCurry v. Allen, 606 F.2d 795, 799 (8th Cir. 1979), *rev'd*, 449 U.S. 90 (1980).

[28] *Id.* at 797. The district court held that since legality of the search of the plaintiff's home was the only issue in the § 1983 action, and the trial court decided the issue against the plaintiff at his criminal trial, he was collaterally estopped from relitigating the issue in the § 1983 action. *Id.* The district court apparently ignored McCurry's allegation that police officers assaulted him after his arrest. *Id.* The Eighth Circuit ordered the district court to consider this claim upon remand. *Id.* The Supreme Court did not review this portion of the circuit court's decision. *See generally* 449 U.S. 90 (1980).

[29] *See* 606 F.2d at 797-99.

[30] *Id.* at 799.

[31] Allen v. McCurry, 449 U.S. 90, 103-04 (1980).

[32] *Id.* at 104-05.

[33] *See id.* at 101. The Court found no congressional intent in § 1983 to guarantee a criminal defendant a federal forum merely because he was not voluntarily in state court. *Id.* at 104; *cf.* Averitt, *supra* note 2, at 196 (policy of granting all claimants one hearing in federal court should bar collateral estoppel if § 1983 plaintiff involuntarily adjudicated in state court); *Developments*, *supra* note 4, at 1342-43 (collateral estoppel should not preclude federal relitigation if § 1983 plaintiff was involuntary defendant in state court).

[34] 449 U.S. at 105; *see* Stone v. Powell, 428 U.S. 465, 493 n.35 (1976).

[35] 449 U.S. at 95 n.7, 101.

[36] *Id.* at 101.

collateral estoppel to section 1983 actions following criminal convictions.[37] Because the state court in *McCurry* held a supression hearing to decide all fourth amendment issues, the *McCurry* holding necessarily is limited.[38] Since the parties raised and adjudicated the fourth amendment issues in state court, the Supreme Court did not have to decide which issues the plaintiff could not relitigate.[39] Had McCurry pleaded guilty in state court and then claimed fourth amendment violations in a section 1983 action, however, the serious question exists whether the Supreme Court would have extended collateral estoppel to

[37] *See id.* at 97; note 6 *supra*. The *McCurry* opinion represents another of the Supreme Court's expansive collateral estoppel decisions extending over a decade. In *Emich Motors Corp. v. General Motors Corp.*, the Supreme Court stated that collateral estoppel principles will prevent relitigation after a criminal conviction of all issues that the first court directly put in issue and determined. 340 U.S. 558, 569 (1951). *See also* Ashe v. Swenson, 397 U.S. 436, 443 (1970); Cromwell v. County of Sac, 94 U.S. 351, 354 (1876). For years, the principle of mutuality restricted collateral estoppel effects to the parties to the former suit and their privies. *See generally* Triplett v. Lowell, 297 U.S. 638 (1936), *overruled*, 402 U.S. 313 (1971). Many courts then began to loosen the mutuality requirement and the Supreme Court eventually abandoned mutuality. *See* Blonder-Tongue Labs., Inc. v. University Foundation, 402 U.S. 313, 350 (1971). The Supreme Court abandoned mutuality because the doctrine contributed to overcrowded dockets, led to a poor allocation of judicial resources, and was not imperative for fairness. *See id.* at 328-35. The *Blonder-Tongue* decision greatly expanded the reach of collateral estoppel.

Recently, the Supreme Court has expanded collateral estoppel even further. In *Parklane Hosiery Co. v. Shore*, plaintiff stockholders filed a class action suit against corporate officers who were enjoined in a prior action from issuing misleading proxy statements. 439 U.S. 322, 324 (1979). The plaintiffs claimed that collateral estoppel should prevent the defendant officers from relitigating issues decided against the defendants in the prior action. *Id.* at 325. The Supreme Court agreed to the offensive use of collateral estoppel as long as the practice is not unfair to the defendants. *Id.* at 331. The Court allowed the use of collateral estoppel despite the fact that application deprived the defendants of a jury trial. *Id.* at 333.

Collateral estoppel serves several policy goals, among the most important of which is conservation of limited judicial resources burdened by an ever-increasing caseload. *See Issue Preclusion, supra* note 4, at 281; McCormack, *Federalism and Section 1983: Limitations on Judicial Enforcement of Constitutional Claims, Part II*, 60 VA. L. REV. 250, 302 (1974). Other goals include minimizing the possibility of inconsistent judgments, increasing the finality of judgments, protecting litigants from the harassment and expense of multiple lawsuits, and promoting comity among courts, especially between state and federal courts. *See* Montana v. United States, 440 U.S. 147, 153-54 (1979); Stone v. Powell, 428 U.S. 465, 491 n.31 (1976); *Developments, supra* note 4, at 1333; *Collateral Estoppel, supra* note 3, at 96. The expansion of the collateral estoppel doctrine represents a desire to cut back the burdensome caseload that currently is straining the federal court system. *See* Stone v. Powell, 428 U.S. at 491 n.31 (effective utilization of judicial resources is important to federal court system); Blonder-Tongue Labs., Inc. v. University Foundation, 402 U.S. at 328 (collateral estoppel mutuality requirement worsens overcrowding of courts and leads to poor allocation of judicial resources); Note, 8 OHIO N.L. REV. 168, 176-78 (1981) (Supreme Court more sensitive to problem of excessive federal court workloads than to theoretical state court incompetence).

[38] 449 U.S. at 92, 93 n.2. The *McCurry* Court emphasized that it was not deciding how collateral estoppel should apply, *id.* at 105 n.25, nor whether collateral estoppel precludes consideration of issues the plaintiff could have raised in state court, but did not. *Id.* at 97 n.10.

[39] *See id.* at 91.

prevent litigation of the fourth amendment claims in a federal court.

When a defendant pleads guilty, the parties do not contest or litigate all of the constitutional or factual issues relating to the crimes with which the defendant is charged.[40] Thus, a guilty plea does not satisfy the actual litigation or direct decision requirements for collateral estoppel that many courts mandate.[41] To apply collateral estoppel in the guilty plea situation, courts either must abandon the actual litigation requirement[42] or must construe a guilty plea as an implicit litigation of certain issues in the case.[43] Another complicating factor is that many guilty pleas result from a negotiated bargain.[44] Plea bargaining raises the question whether the defendant had the incentive to litigate, which often is an important collateral estoppel prerequisite.[45] In view of these problems, courts have espoused several general rules to give guilty pleas some measure of collateral estoppel effect in any subsequent action.[46]

The first rule that courts use to allow collateral estoppel after a guilty plea states that a criminal conviction based upon a guilty plea conclusively establishes in a subsequent civil action that the criminal defendant engaged in the criminal act of which he was convicted.[47] In *Nathan*

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[40] *See* Vestal, *supra* note 4, at 477.

[41] *See Issue Preclusion*, *supra* note 4, at 295; notes 4 & 8 *supra*.

[42] *See* Hooper v. Guthrie, 390 F. Supp. 1327, 1334-35 (W.D. Pa. 1975); Palma v. Powers, 295 F. Supp. 924, 933 (N.D. Ill. 1969). In *Palma*, the court stated that collateral estoppel usually applies only to issues that the parties actually raised in the first suit. *See* 295 F. Supp. at 933. The *Palma* court then modified the litigation requirement to allow collateral estoppel if the court finds a failure to litigate to be an admission of the truth of the opponent's claim. *See id.* at 936. In *Hooper*, the court ignored any litigation requirement and allowed a collateral estoppel defense in a § 1983 action after the plaintiff pleaded guilty to criminal charges in state court. *See* 390 F. Supp. at 1334-35.

[43] *See* United States v. Globe Remodeling Co., 196 F. Supp. 652, 656 (D.Vt. 1961). In *Globe Remodeling*, the court considered the parties to have put in issue and determined each count to which the criminal defendant pleaded guilty in the criminal prosecution. *See id.*; *accord*, Hyslop v. United States, 261 F.2d 786, 790 (8th Cir. 1958). *See also* Vestal, *supra* note 4, at 475-76. (*Restatement (Second) of Judgments* allows implicit litigation if court in first suit does not expressly determine subject matter jurisdiction).

[44] *See* 1B J. MOORE, FEDERAL PRACTICE ¶ 0.418, at 2706-08 (2d ed. 1969) [hereinafter cited as MOORE]. Criminal defendants often plea bargain with prosecutors and will plead guilty to one offense to avoid conviction for a more serious offense. *Id.* at 2706.

[45] *See Issue Preclusion*, *supra* note 4, at 294-96. If a criminal defendant pleads guilty for reasons of expediency and convenience or to avoid a longer sentence, the defendant may have no incentive to litigate the issues, and the court may be unable to treat the guilty plea as an admission of the truthfulness of the charges. *See* Palma v. Powers, 295 F. Supp. 924, 936 (N.D. Ill. 1969). *But see* Pouncey v. Ryan, 396 F. Supp. 126, 128 (D. Conn. 1975) (collateral estoppel may apply after guilty plea even if party pleaded guilty only to avoid longer sentence).

[46] *See* text accompanying notes 47-83 *infra*.

[47] *See* Nathan v. Tenna Corp., 560 F.2d 761, 763 (7th Cir. 1977). The rule the *Nathan* court applied is similar in result, if not in rationale, to the view that a guilty plea is admissable in a civil suit only as evidence of an admission to the truth of the charges and that the parties may supplement the admission with other evidence. *See* State Farm Mut. Auto. Ins. Co. v. Worthington, 405 F.2d 683, 687 (8th Cir. 1968) (guilty plea to manslaughter charge is not conclusive of defendant's intent in subsequent garnishment proceeding; Dunham v.

v. Tenna Corp.,[48] a diversity action, the plaintiff sued to recover commissions due under a contract that the defendant claimed was unenforceable because of an illegal commissions-splitting scheme.[49] The plaintiff had pleaded guilty in a prior criminal case to mail fraud charges resulting from the scheme.[50] The plaintiff attempted to argue that other parties coerced him into the illegal scheme, but the Seventh Circuit disallowed the argument.[51] Following the general rule in the Seventh Circuit,[52] the *Nathan* court held that the guilty plea conclusively established that the plaintiff's conduct was criminal.[53] The *Nathan* rule is the narrowest of the judicial preclusion rules regarding guilty pleas.

The second rule that courts have developed to give collateral estoppel effect to a guilty plea states that a guilty plea conclusively establishes in a subsequent civil suit all essential elements of the crime charged.[54] *Ivers v. United States*[55] illustrates this broader judicial application of collateral estoppel to guilty plea cases. The plaintiff in *Ivers* attempted to enter the United States without reporting to customs

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Pannell, 263 F.2d 725, 728-30 (5th Cir. 1959) (in tort suit following auto accident, driver's plea of guilty to speeding charge admissable for impeachment purposes); Book v. Datema, 256 Iowa 1330, _____, 131 N.W.2d 470, 471 (1964) (driver's guilty plea to criminal charges resulting from auto accident is admissable as admission against interest in subsequent wrongful death action against driver); RESTATEMENT (SECOND) OF JUDGMENTS § 133, Comment b (Tent. Draft No. 7 1980); Vestal, *supra* note 4, at 478.

[48] 560 F.2d 761 (7th Cir. 1977).

[49] *Id.* at 762. Under the contract, defendant Tenna Corporation (Tenna) agreed to pay the plaintiff a commission for all orders Tenna received from a third party. *Id.* The plaintiff, however, established an illegal commissions-splitting agreement with the buying agent for the third party. *Id.*

[50] *Id.*

[51] *Id.* at 763. The plaintiff claimed that the buying agent threatened to cut off the plaintiff's business with the third party unless the plaintiff agreed to split his commissions with the buying agent. *Id.*

[52] *Id.* at 763-64. The *Nathan* court, following § 1738 of Title 28 of the United States Code, looked to Illinois state law to determine the collateral estoppel effect of the guilty plea. *Id.* at 763; *see* note 4 *supra* (discussion of § 1738). The Illinois rule states that a court determines the collateral estoppel effect of judgments rendered in other jurisdictions by the law in the jurisdiction rendering judgment. 560 F.2d at 763. The court thus applied Seventh Circuit law because the plaintiff was convicted in a Seventh Circuit federal district court. *Id.*

[53] 560 F.2d at 763-64; *accord*, United States v. Accardo, 113 F. Supp. 783, 786 (D.N.J.), *aff'd*, 208 F.2d 632 (3d Cir. 1953), *cert. denied*, 347 U.S. 952 (1954). The *Nathan* court concluded that no material issue existed whether the plaintiff had engaged in illegal conduct. 560 F.2d at 763-64.

[54] *See* Hernandez-Uribe v. United States, 515 F.2d 20, 21 (8th Cir. 1975) (court hearing appeal after defendant pleaded guilty to illegal entry into United States held that, by guilty plea, defendant admitted all essential elements of offense charged), *cert. denied*, 423 U.S. 1057 (1976); Brazzell v. Adams, 493 F.2d 489, 490 (5th Cir. 1974) (in § 1983 action, court held that, by pleading guilty in state prosecution to charge of selling heroin, plaintiff necessarily waived entrapment claim); United States v. Levinson, 369 F. Supp. 575, 578 (E.D. Mich. 1973) (defendant's guilty plea in prosecution for fraud established all essential elements of charge in subsequent suit by government to recover embezzled money under False Claims Act).

[55] 581 F.2d 1362 (9th Cir. 1978).

agents that he was carrying $40,000 in cash.[56] After pleading guilty to a cash-reporting violation and to entering the United States after a former deportation, the plaintiff filed a complaint in federal court to recover the cash.[57] The Ninth Circuit ruled that a plea of guilty is an admission of every essential element of the crime charged, including state of mind.[58] The plaintiff, therefore, could not deny that he entered the country while wilfully failing to report the money.[59] A federal district court in Pennsylvania has applied the *Ivers* rule in a section 1983 action. In *Mayberry v. Somner*,[60] the plaintiff had pleaded guilty to several charges stemming from the plaintiff's attempted escape from custody while guards transported him to prison.[61] Subsequently, the plaintiff filed a section 1983 action against prison guards whom the plaintiff claimed had fabricated the escape attempt in order to kill the plaintiff.[62] The district court noted a "majority rule" that a conviction based upon a guilty plea is conclusive in a subsequent civil suit between the same parties regard-

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[56] *Id.* at 1364. Anyone entering the United States must report on a customs form the amount of cash over $5,000 he is carrying. *See* 31 U.S.C. § 1101 (1976).

[57] 581 F.2d at 1365. The United States seized all cash the plaintiff was carrying when entering the country and informed the plaintiff that he could petition for relief from forfeiture of the money. *Id.* The Customs Service denied the plaintiff's petition and the plaintiff filed suit in federal court. *Id.* at 1366. The plaintiff claimed that he did not violate the cash-reporting statute wilfully because he was ignorant of the reporting requirement. *Id.*

[58] *Id.* at 1366-67. *See also* United States v. Schneider, 139 F. Supp. 826, 829-30 (S.D.N.Y. 1956) (defendant's guilty plea to charge of bribing government employee established essential parts of bribery charge in subsequent government suit to recover damages under Surplus Property Act); United States v. Ben Grunstein & Sons Co., 127 F. Supp. 907, 909-10 (D.N.J. 1955) (although plea of guilty to conspiracy charge established essential elements of conspiracy in subsequent government suit for damages under False Claims Act, alleged overt acts in furtherance of conspiracy were not essential elements of crime of conspiracy); Arctic Ice Cream Co. v. Commissioner, 43 T.C. 68, 75 (1964) (defendant's guilty plea to charge of income tax evasion established fraudulence of tax return in question in subsequent government suit to obtain back taxes). In addition to holding that a guilty plea established the essential elements of the charged offenses for the purposes of a subsequent civil suit, each of these courts stated that giving collateral estoppel effect to a conviction by guilty plea is more appropriate than giving similar effect to a conviction by jury verdict. *See* United States v. Schneider, 139 F. Supp. at 829; United States v. Ben Grunstein & Sons Co., 127 F. Supp. at 909-10; Arctic Ice Cream Co. v. Commissioner, 43 T.C. at 75. The courts reasoned that a defendant who pleads guilty admits the truthfulness of the charges, which gives greater reason to estop the defendant from denying the same charges in a subsequent suit than if the defendant had denied the charges from the beginning. *See* 139 F. Supp. at 829; 127 F. Supp. at 909-10; 43 T.C. at 75.

[59] Ivers v. United States, 581 F.2d 1362, 1366-67 (9th Cir. 1978).

[60] 480 F. Supp. 833 (E.D. Pa. 1979).

[61] *Id.* at 835. Plaintiff Mayberry pleaded guilty to charges of attempted murder, assault, possessing instruments of a crime, and attempted escape. *Id.*

[62] *Id.* Mayberry claimed that the guards drove him to an isolated spot and attempted to shoot him. *Id.* Mayberry further claimed that in self-defense he pushed the gun aside, causing the shots to hit one of the guards in the head. *Id.* Finally, according to Mayberry, the guard with the gun abandoned the attempt to murder Mayberry when another car approached. *Id.*

ing all issues that a contested trial would have determined.[63] The *Mayberry* court then held that a guilty plea admitted the essential elements of the crime charged.[64] The guilty plea thus precluded the plaintiff from arguing different facts than the guilty plea itself established.[65]

The "essential elements" rule is sound logically. A conviction from a guilty plea is a valid final judgment,[66] as is a jury conviction. To obtain a jury conviction, the parties must litigate the essential elements of the crime. A court applying the essential elements standard, therefore, is willing to assume an implicit litigation of those essential elements. One variation in the rationale of the essential elements test is that a court defines "directly determined" as not requiring "actual" litigation, thus allowing court acceptance of the guilty plea as a direct determination of the essential elements of the offense.[67] As another rationale for the essential elements standard, a court rejects the "actual" litigation requirement in favor of an "incentive to litigate" requirement. The court then assumes that the plaintiff had a strong incentive to litigate the essential elements of the crime involved, which assures that the plaintiff made no frivolous admissions through his guilty plea.[68] One advantage of the essential elements standard is the flexibility it leaves courts to decide equitably in each set of circumstances whether a particular element is or is not an essential element of the crime charged.[69] This freedom, however, may lead to inconsistent decisions if courts determine which issues are essential elements of a crime on the basis of the outcome a court prefers in a particular case.

The broadest judicial rule for the application of collateral estoppel

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[63] *Id.* at 838 (quoting 1B MOORE, *supra* note 44, ¶ 0.418, at 2706).

[64] *See* 480 F. Supp. at 839; Vestal, *Preclusion/Res Judicata Variables: Nature of the Controversy*, 1965 WASH. U.L.Q. 158, 170 (1965).

[65] 480 F. Supp. at 839-40. The *Mayberry* court stated that a court must have a sufficient factual basis before accepting a guilty plea. *Id.* The facts that the prosecution alleged were, therefore, an essential part of the crimes charged, and collateral estoppel precluded the plaintiff from alleging different facts. *Id.*

[66] Bradford v. Lefkowitz, 240 F. Supp. 969, 975 (S.D.N.Y. 1965).

[67] *See* United States v. Globe Remodeling Co., 196 F. Supp. 652, 656 (D. Vt. 1961) (guilty plea directly put in issue and directly determined essential elements of offense); Vestal, *supra* note 4, at 479 n.61 (some courts use "directly determined" as not requiring "actual litigation").

[68] *See Issue Preclusion, supra* note 4, at 295-96. Under an incentive to litigate requirement for collateral estoppel, preclusion will not apply to any issue, whether litigated or not, unless the party had an incentive to litigate. *Id.* at 288-89. If the party has incentive to litigate and fails to do so, the failure to litigate is an admission of the truthfulness of the charge. *Id.* at 295-96.

[69] Each case rests upon a unique set of facts. Although a crime always will consist of certain essential elements, other individual facts or statutory elements may become essential depending upon the facts of a given case. The essential elements rule allows courts freedom to decide when a particular element or fact is or is not essential to conviction and, thus, when collateral estoppel will preclude relitigation of such element or fact in the second suit.

states that a guilty plea is a waiver of all nonjurisdictional claims and that collateral estoppel therefore precludes all but jurisdictional attacks in subsequent suits between the parties.[70] In *Bradford v. Lefkowitz*,[71] the plaintiff brought a section 1983 action against the Attorney General of New York.[72] The plaintiff claimed that the prosecution fraudulently had invoked the plaintiff's guilty plea to charges of violating state securities provisions.[73] After noting that a guilty plea has the same effect in law as a jury verdict, the court held that a guilty plea constitutes a waiver of all nonjurisdictional defenses.[74] The *Bradford* court held that since the plaintiff waived nonjurisdictional defenses, collateral estoppel blocked his illegal detention claim.[75] In *Hooper v. Guthrie*,[76] a federal district court in Pennsylvania showed more clearly the extent to which courts are willing to extend the waiver standard. After pleading guilty to charges of passing worthless checks and of false pretenses, the plaintiff brought a section 1983 action claiming a search in violation of the fourth amendment.[77] The court noted that a guilty plea is an admission by which the criminal defendant waives all claim of nonjurisdictional defects in the case.[78] The *Hooper* court, therefore, held that collateral estoppel prevented the plaintiff from raising the illegal search claim in federal court since he gave up his opportunity to contest the issue at trial.[79]

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[70] *See* Metros v. United States Dist. Court, 441 F.2d 313, 317 (10th Cir. 1971) (criminal defendant who pleaded guilty to possession of heroin could not subsequently attack validity of search warrant in § 1983 action because guilty plea waives all but jurisdictional questions in later action); United States v. Doyle, 348 F.2d 715, 718 (2d Cir.) (guilty plea is waiver of all nonjurisdictional issues and rule does not depend on whether party raises issue on appeal or on collateral attack or whether parties raised issue in advance of original trial), *cert. denied*, 382 U.S. 843 (1965).

[71] 240 F. Supp. 969 (S.D.N.Y. 1965).

[72] *Id.* at 971.

[73] *Id.* at 972. The plaintiff claimed that the prosecution had promised to dismiss some charges against the plaintiff and ask for a lenient sentence for other charges if the plaintiff pleaded guilty to reduced charges. *Id.* The plaintiff also claimed, without being specific, that the promises were false. *Id.*

[74] *Id.* at 975; *accord*, United States v. Ptomey, 366 F.2d 759, 760 (3d Cir. 1966) (court denied defendant opportunity on appeal to withdraw guilty plea to bank robbery charge because guilty plea waived all nonjurisdictional defects).

[75] *See* 240 F. Supp. at 975. The *Bradford* court noted that illegal detention is a nonjurisdictional defect. *Id.*

[76] 390 F. Supp. 1327 (W.D. Pa. 1975).

[77] *Id.* at 1329. Police searched the plaintiff and his apartment pursuant to his arrest. *Id.* at 1328. The *Hooper* trial court held no pretrial hearing to determine the legality of the search. *Id.* at 1329.

[78] *Id.* at 1335. The *Hooper* court quoted the general rule that a conviction based upon a guilty plea precludes in a subsequent suit all issues that a conviction after a contested trial would determine. *Id.* at 1334 (quoting 1B MOORE, *supra* note 44, ¶ 0.418, at 2706). The *Hooper* court then held that an intelligent and voluntary guilty plea waives all nonjurisdictional defects and is a conclusive admission that all charges in the indictment are true. 390 F. Supp. at 1335. The *Hooper* court gave the majority rule noted in *Moore* a broader interpretation than did the *Mayberry* court. *See* text accompanying notes 63-64 *supra*.

[79] 390 F. Supp. at 1335.

The broad waiver standard presents a harsh prospect for criminal defendants who plead guilty and then wish to file a related civil claim. The rule does not consider incentive to litigate or the expediency or compromise involved in a bargained guilty plea, which other authorities consider important in determining whether collateral estoppel should apply.[80] The waiver rule ignores the actual litigation and incentive to litigate requirements for collateral estoppel application as well as the requirement that an issue be a necessary element for the judgment before collateral estoppel may preclude relitigation.[81] Most courts utilize one or more of these three requirements in determining whether to apply collateral estoppel because these requirements guard against unjust or inadvertent preclusion of meritorious issues.[82] Although the waiver rule does afford an opportunity to litigate, if the criminal defendant has no incentive to litigate, the opportunity may not be a fair opportunity.[83] Courts may question whether a defendant who pleads guilty always intends to waive all rights to litigate a fourth amendment claim, such as an illegal search. A defendant may plead guilty to a lesser offense, fully intending to pursue the fourth amendment violation in a subsequent federal court suit.[84]

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[80] *See* 1B MOORE, *supra* note 44, ¶ 0.418, at 2706; *Issue Preclusion, supra* note 4, at 294-96. *But see* Plunkett v. Commissioner, 465 F.2d 299, 306 (7th Cir. 1972) (evidence of plea bargain does not lessen preclusive effect of guilty plea); Pouncey v. Ryan, 396 F. Supp. 126, 128 (D. Conn. 1975) (evidence that defendant pleaded guilty to avoid long sentence does not affect collateral estoppel after plea).

[81] *See* note 4 *supra* (requirements of collateral estoppel).

[82] *See* A. VESTAL, RES JUDICATA/PRECLUSION V-196-205 (1969) [hereinafter cited as PRECLUSION]; note 4 *supra*. If a safeguard such as actual litigation or incentive to litigate does not define the limits of collateral estoppel, courts could preclude issues that the defendant did not consider in the first suit or that the defendant did not attempt to prepare or litigate adequately. PRECLUSION, *supra*, at V-196-205. In addition, the deciding court may not have evaluated carefully issues not essential to the judgment. *Id.* at V-204. Preclusion in such circumstances is not equitable.

[83] *See* PRECLUSION, *supra* note 82, at V-196-205.

[84] A state may charge the defendant with a felony following an illegal search. The prosecutor offers to reduce the charge to a misdemeanor in exchange for a guilty plea. The defendant, knowing that the prosecutor has incriminating evidence independent of the illegal search, agrees and pleads guilty to the misdemeanor. The defendant still intends to file a § 1983 action against the police officers regarding the search. The defendant certainly did not intend to waive his illegal search claim, but to litigate the claim in state court and reject the plea bargain would have been foolish. Nevertheless, the waiver rule would treat the guilty plea as a waiver of the illegal search claim and collaterally estop the defendant from raising the claim in a § 1983 action.

The Sixth Circuit, in *Mulligan v. Schlachter*, observed that an individual arrested without probable cause may not use the fourth amendment violation to attack his prosecution unless the arresting officers seized evidence. 389 F.2d 231, 232 (6th Cir. 1968). Whether the defendant contested his arrest at trial or pleaded guilty, his only opportunity for redress for the illegal arrest would be a subsequent civil action against the offenders. *Id.* The *Mulligan* court pointed out that the mere fact of an unreversed conviction does not mean that the trial court examined the issue fully or that the defendant waived his right to recompense. *Id.* at 233. Similarly, one commentator has suggested that a guilty plea should

At the time of the Supreme Court's *McCurry* decision, the federal courts espoused inconsistent rules for the application of collateral estoppel to fourth amendment claims in section 1983 actions following guilty pleas. Under the essential element standard, a court normally would not preclude fourth amendment claims unless the court decided under the circumstances that the fourth amendment claim was an essential element of the crime charged.[85] Under the waiver standard, on the other hand, a court normally would preclude any fourth amendment claim that the defendant could have raised as a defense to or defect in the prosecution.[86] Consequently, the question arises whether *McCurry* gives the lower federal courts any guidance regarding the proper disposition of a fourth amendment claim after a guilty plea. Two recent federal decisions indicate the effects that the courts perceive in this area.

In *Prosise v. Haring*,[87] the plaintiff brought a section 1983 action against several police officers, claiming that the officers illegally searched the plaintiff's home and seized drugs found there.[88] In a state court criminal proceeding, the plaintiff had pleaded guilty to a charge of manufacturing phencyclidine (PCP).[89] The defendants in the section 1983 suit moved for summary judgment on the basis that the guilty plea in the criminal case precluded any recovery in the civil action.[90] The federal district court granted summary judgment, and the plaintiff appealed to the Fourth Circuit.[91] The Fourth Circuit reviewed the *McCurry* decision, but found that *McCurry* was not dispositive in determining the collateral estoppel effect of a guilty plea on a fourth amendment claim because *McCurry* did not decide the guilty plea issue.[92] The *Prosise* court noted that the *McCurry* court emphasized looking to state law to determine how the forum state would apply the estoppel doctrine.[93] Under Virginia law, which still requires mutuality, criminal judgments have no preclusive ef-

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allow a presumption of the preclusion of essential issues subject to the defendant's right to give a good reason why the plea was not a waiver of his right to contest the issue. *See Issue Preclusion*, *supra* note 4, at 331-32.

[85] *See* text accompanying notes 54-69 *supra*.

[86] *See* text accompanying notes 70-84 *supra*.

[87] 667 F.2d 1133 (4th Cir. 1981).

[88] *Id.* at 1135. The defendant police officers answered a call about a domestic disturbance at the plaintiff Prosise's home. *Id.* at 1134. After two gunshots sounded, Prosise answered the door armed with two handguns. *Id.* at 1135. Prosise refused to drop the weapons, and the officers disarmed him by force. *Id.* Prosise's companion then showed the officers bags allegedly containing the drug phencyclidine and equipment for manufacturing the drug. *Id.* The officers called a narcotics detective who obtained a search warrant. *Id.* The officers then seized chemicals and drug paraphernalia. *Id.*

[89] *Id.* The Virginia Supreme Court upheld the voluntariness of the guilty plea. *Id.*

[90] *Id.*

[91] *Id.* The plaintiff also had claimed excessive force in the arrest. *Id.* The district court granted summary judgment on the basis of sworn statements by the defendants. *Id.* The Fourth Circuit affirmed the district court on this count. *Id.* at 1136.

[92] *Id.* at 1137-38.

[93] *Id.* at 1138; *see* 28 U.S.C. § 1738 (1976).

fect in subsequent litigation.[94] The Virginia courts, however, have yet to address the precise question that *Prosise* presents, so the court had to proceed beyond the boundaries of Virginia law.[95] The *Prosise* court held that collateral estoppel should not apply to unlitigated fourth amendment evidentiary questions.[96] The Fourth Circuit reasoned that, unlike essential element issues, fourth amendment issues may not give the defendant sufficient incentive to litigate fully.[97] A criminal defendant may lack the incentive to litigate a fourth amendment issue because the state has adequate evidence of guilt from untainted sources.[98] The *Prosise* court applied a general rule of nonpreclusion because the court felt that a case-by-case analysis to determine whether the criminal defendant had incentive to litigate fourth amendment issues would not be worth the trouble.[99]

In *Ford v. Burke*,[100] the federal District Court for the Northern District of New York addressed a case similar to *Prosise*. After pleading guilty to a robbery charge, the plaintiff brought a section 1983 action claiming illegal arrest in violation of the fourth amendment.[101] While discussing *McCurry*, the district court noted that the Supreme Court's failure to articulate which factors besides "full and fair opportunity to litigate" might preclude collateral estoppel in a particular case has confused the lower courts.[102] The court stated that a case-by-case approach, in which a court looks for factors that would prevent collateral estoppel from precluding litigation, is better than an absolute rule requiring the parties to litigate before allowing collateral estoppel.[103] The court reasoned that the circumstances of each case are too varied for an effective rule and that *McCurry* does not require actual litigation for issue

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[94] 667 F.2d at 1138-39. *See also* note 37 *supra*. *See generally* Board of Supervisors v. Norfolk & W. Ry., 119 Va. 763, 91 S.E. 124 (1916).

[95] 667 F.2d at 1139-43.

[96] *Id.* at 1140-41.

[97] *Id.* at 1141.

[98] *Id.*

[99] *Id.* at 1141-42.

[100] 529 F. Supp. 373 (N.D.N.Y. 1982).

[101] *Id.* at 375. After the *Ford* plaintiff pleaded guilty to the robbery charge, he attacked the plea in a habeas corpus proceeding in which he claimed ineffective assistance of counsel. *Id.* The federal district court found no constitutional rights violations and upheld the guilty plea. *Id.* The plaintiff then filed the § 1983 suit. *Id.*

[102] *Id.* at 377-78. Since *McCurry*, several courts have held that "full and fair opportunity to litigate" means that collateral estoppel only applies to issues that the parties actually litigated. *See* Richardson v. Fleming, 651 F.2d 366, 374 (5th Cir. 1981); Carpenter v. Dizio, 506 F. Supp. 1117, 1123 (E.D. Pa. 1981). *See also* text accompanying note 33 *supra*.

[103] 529 F. Supp. at 378-79; *see Cerbone v. County of Westchester*, 508 F. Supp. 780, 782 (S.D.N.Y. 1981). In *Cerbone*, the plaintiff filed a § 1983 action claiming illegal arrest, trial, and conviction on burglary and larceny charges. 508 F. Supp. at 782. The *Cerbone* court noted that one factor that would cause a court to deny a collateral estoppel defense is inadequacy of counsel. *Id.* at 785. The *Cerbone* court, however, found no factual support for the plaintiff's claims and stated that mere allegations will not call into question the plaintiff's past opportunity for a full and fair litigation. *Id.* at 785-86.

preclusion.[104] The *Ford* court found no factors present to prevent application of collateral estoppel and indicated that the plaintiff's numerous appeals in state and federal courts would ensure that the plaintiff would suffer no prejudice from application of collateral estoppel.[105]

In *Prosise*, the Fourth Circuit held *McCurry* inapposite in guilty plea situations and established a blanket rule of nonpreclusion for fourth amendment claims following guilty pleas.[106] In *Ford*, the District Court for the Northern District of New York read *McCurry* as indicating the use of a case-by-case factor analysis in a guilty plea situation.[107] Both cases implicitly accept an essential element standard as a basis for preclusion after guilty pleas but then derive different standards to handle the nonessential fourth amendment issues.[108]

Both *Prosise* and *Ford* represent a step forward to the extent that they implicitly reject the broad waiver standard that would preclude almost all fourth amendment section 1983 actions.[109] The *Prosise* court's absolute rule, however, may be nearly as harmful as the waiver standard. The *Prosise* rule disallowing collateral estoppel would allow courts no flexibility, even when the facts of a case show the criminal defendant's intent to waive his fourth amendment defense. If the fourth amendment issue was to be the crucial issue at trial and the parties necessarily would have adjudicated the issue had the defendant not pleaded guilty, the *Prosise* rule still would not preclude relitigation. Unlike the *Ford* court, the *Prosise* court refused to look to *McCurry* for any indications of Supreme Court collateral estoppel policy beyond the limited *McCurry* holding. The *Prosise* court's absolute rule against preclusion is a move counter to the Supreme Court's policy of expanding collateral estoppel application and diminishing the availability of fourth amendment claims.[110]

A more reasonable and equitable solution is the case-by-case factor approach that the *Ford* court adopted.[111] The *Ford* rule allows a court to

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[104] 529 F. Supp. at 378-79.

[105] *Id.* at 379-80.

[106] *See* text accompanying notes 96-99 *supra*.

[107] *See* text accompanying notes 103-05 *supra*.

[108] *See* Prosise v. Haring, 667 F.2d at 1140-41; Ford v. Burke, 529 F. Supp. at 377-79; text accompanying notes 54-69 *supra* (essential element rule).

[109] The *Prosise* rule barring collateral estoppel for fourth amendment issues after guilty pleas is the opposite of the waiver rule that broadly allows collateral estoppel under the same circumstances. *See* 667 F.2d at 1141-42; text accompanying notes 70-84 *supra*. The *Ford* rule implicitly rejects the waiver standard because the *Ford* rule allows a court to look at each case to see whether certain factors might forestall collateral estoppel application. *See* 529 F. Supp. at 377-79; text accompanying notes 103-05 *supra*.

[110] *See* note 4 *supra*.

[111] *See* Ford v. Burke, 529 F. Supp. at 378-79. The case of *Palma v. Powers* espouses a rule similar to the *Ford* rule. 295 F. Supp. 924, 934-36 (N.D. Ill. 1969). In *Palma*, the plaintiffs brought a § 1983 action against police officers and the telephone company for conspiring to terminate the plaintiffs' telephone service and for illegal search and arrest. *Id.* at 928-29. Police officers, suspecting a gambling operation centered at the plaintiffs' retail auto parts

consider the facts of each case and decide whether the criminal defendant's guilty plea allowed the defendant a full and fair opportunity to litigate his fourth amendment claim. Under the *Ford* rule, a court would be free to look for any factor that may have denied the defendant a full and fair opportunity to litigate. This approach satisfies both the collateral estoppel policy of conserving judicial resources and the section 1983 policy of assuring equitable treatment of defendants in state prosecutions.[112]

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store, had obtained search warrants, raided the store, and arrested the plaintiffs. *Id.* at 929. The telephone company disconnected the plaintiffs' telephones because of the illegal activity. *Id.* The *Palma* court first ruled that the plaintiffs had raised and adjudicated the telephone service issue at the state criminal prosecution, so collateral estoppel barred relitigation of these issues in the § 1983 suit. *Id.* at 934. The plaintiffs did not challenge the legality of the search during the trial and the trial court admitted evidence seized during the search. *Id.* at 934-35. The question, then, was whether collateral estoppel could apply to an issue that the parties did not contest in the criminal prosecution. *See id.* at 935. The *Palma* court noted that, although collateral estoppel usually applies only to issues actually litigated in the first suit, courts do recognize exceptions for default judgments, consent decrees, and guilty pleas. *Id.* From these exceptions the court distilled a general principle that preclusion is appropriate in cases in which a court believes that a party's failure to contest an issue at trial was a recognition of the validity of the opposing claim. *See id.* at 936. The court hearing the § 1983 claim should look at objective factors, such as the importance of the issue to the party, the cost of litigating the issue, and the possibility of presenting a reasonable defense. *Id.* Preclusion should not apply when expediency and convenience, rather than the merits, dictate a party's trial technique. *Id.* According to the *Palma* court, a court would preclude an issue only if the court considers the party's actions to be a waiver of the right to contest the issue. *See id.* The *Palma* court added, however, that the party who once bypassed an opportunity to litigate an issue, and who in a later suit opposes collateral estoppel, has the burden of explaining why he did not contest an issue necessarily decided in the first suit and why he wants to contest the issue in the second suit. *Id.* Looking to the instant case, the *Palma* court found that the plaintiffs' reasons for not litigating the legality of the search at the trial were superficial and not supported by fact. *See id.* at 936-37. The court concluded that the plaintiffs admitted the legality of the search by their failure to contest the issue at trial and that collateral estoppel, therefore, should preclude litigation. *Id.* at 937; *accord,* Cramer v. Crutchfield, 648 F.2d 943, 945 (4th Cir. 1981) (§ 1983 plaintiff who did not contest legality of search at trial waived any challenge to constitutionality of search).

[112] *See* notes 2 & 37 *supra.*