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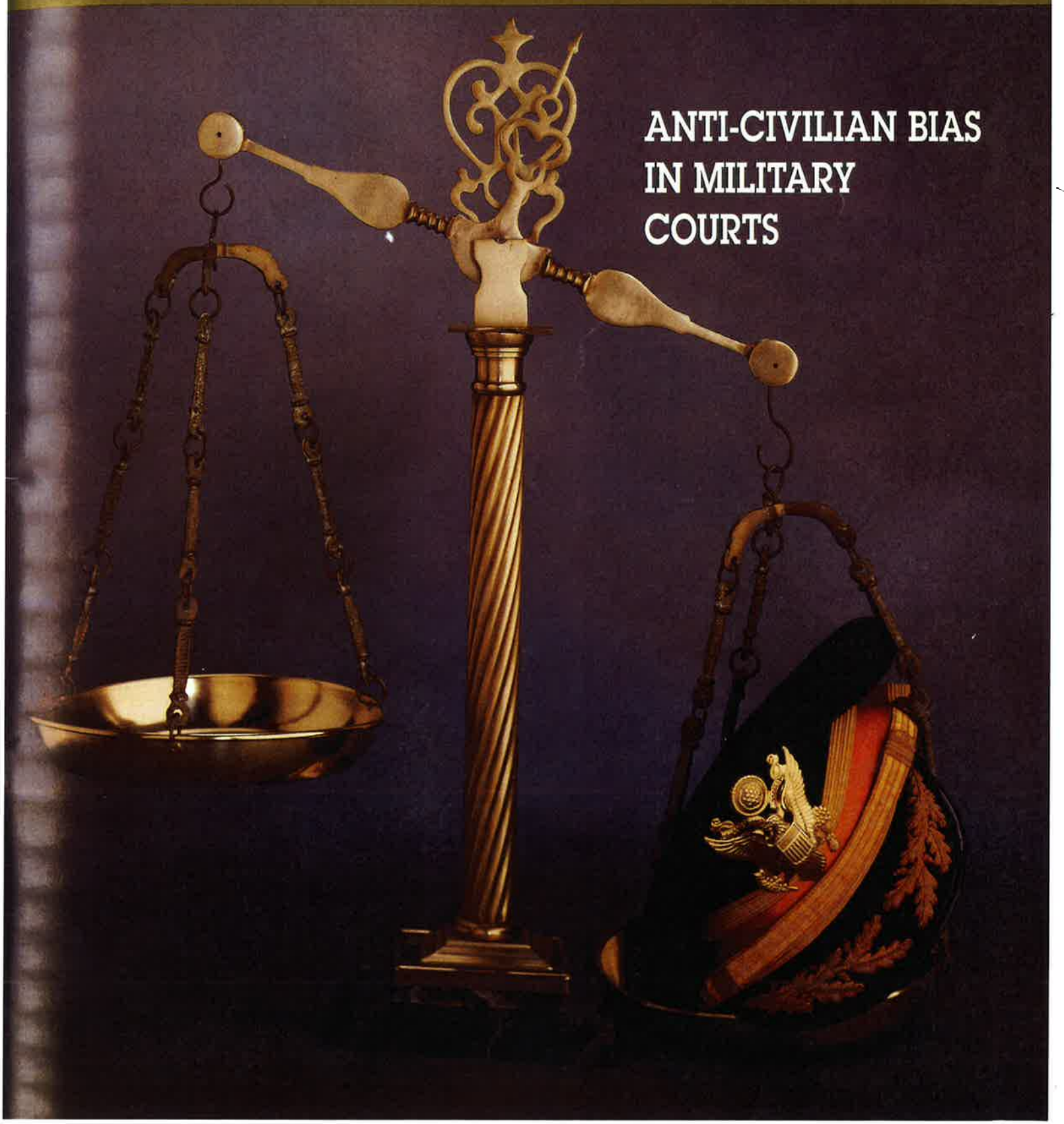

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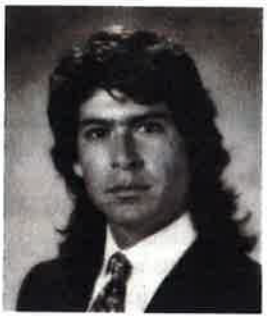

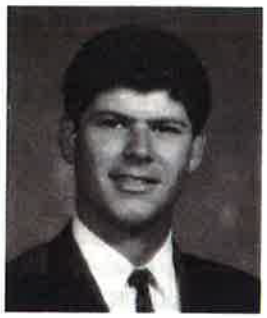

FOURTH AMENDMENT FORUM

Getting *Stoned:* Federal *Habeas* Review Of Fourth And Fifth Amendment Claims

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In *Stone v. Powell,* 428 U.S. 465 (1976), the Supreme Court held that a state court's determination that a particular search or seizure does not violate the defendant's Fourth Amendment rights is not reviewable on federal *habeas,* so long as the defendant had a full and fair chance to litigate the Fourth Amendment claim in the state court. The decision in *Stone* rested on prudential concerns which counseled against the application of the Fourth Amendment exclusionary rule on federal collateral review. *Stone,* 428 U.S. at 494-95, n.37. The Court reasoned that the Fourth Amendment exclusionary rule was not a personal constitutional right. Rather, the rule was designed to deter future Fourth Amendment violations, and its application on federal *habeas* many years after the alleged police misconduct would only marginally advance the goal of deterrence. Moreover, allowing federal *habeas* review would exclude ordinarily reliable evidence, waste judicial resources, frustrate the necessity of finality, and increase friction between federal and state systems. *Stone,* 428 U.S. at 491.

During its last term, the Supreme Court addressed the question of whether *Stone's* restriction on the exercise of federal *habeas* jurisdiction should extend to a state prisoner's claim that his conviction rests on statements obtained without proper *Miranda* warnings. *Withrow v. Williams,* ___ U.S. ___ , 113 S. Ct. , (Opinion filed April 21, 1993). The Court, in a 5-4 decision, held that the prudential considerations which motivated the Court in *Stone* did not militate in favor of foreclosing collateral review of claims based on an un-*Mirandized* confession. The Court concluded, therefore, that the *Stone* rule should not apply to *Miranda* claims.

Leaving No Stone Unturned

In *Withrow,* two police officers asked Robert Williams, Jr. to accompany them to the police station to answer questions about a double murder, and Williams agreed. At the station, the officers made a deliberate decision not to advise Williams of his *Miranda* rights and proceeded to question him about his involvement. After Williams denied his involvement, one officer threatened to lock him up if he did not admit to his role in the murders. Williams then confessed that he furnished the murder weapon to the killer.

At this point, the officers advised Williams of his *Miranda* rights, after which Williams made several more inculpatory statements. Williams admitted that he had driven the murderer to the crime scene, witnessed the murders, and helped the murderer dispose of incriminating evidence. The State of Michigan formally charged Williams with murder.

Williams moved to suppress the statements he made to the police officers as having been obtained in violation of *Miranda.* Believing that Williams was not "in custody" when he made the incriminating statements to the police, the trial court denied the motion to suppress, and Williams was convicted on two counts of first-degree murder, resulting in two concurrent life sentences. The Michigan Court of Appeals affirmed the trial court's denial of Williams' motion to suppress. The Michigan Supreme Court denied leave to appeal, and the United States Supreme Court denied Williams' petition for *certiorari.*

Williams filed a *pro se* petition for *habeas corpus* relief in the United States District Court for the Eastern District of Michigan, alleging that the statements which formed the basis for his conviction were obtained in violation of his *Miranda* rights. The district court granted the writ, holding that Williams had been "in custody" for *Miranda* purposes when the office had threatened to lock Williams up, and that the trial

court should have excluded all statements made by Williams between that point and the time he received the warnings. The district court further concluded that the statements made by Williams after he received *Miranda* warnings were involuntary and should have also been suppressed.

The United States Court of Appeals affirmed the district court's grant of the Great Writ, *Withrow v. Williams,* 944 F.2d 284 (6th Cir. 1991), rejecting the state of Michigan's argument that *Stone v. Powell* barred consideration of the *Miranda* claim on federal *habeas.* The United States Supreme Court granted *certiorari* to "resolve the significant issue thus presented." *Withrow,* 113 S. Ct. at ___.

The Court affirmed the Sixth Circuit's decision insofar as it rejected the argument that *Stone* barred federal *habeas* review of Williams' *Miranda* claim. However, the Court reversed the Sixth Circuit's holding that the statements made by Williams after he was *Mirandized* were involuntary, reasoning that Williams never raised the issue in his *habeas* petition, and therefore, the state of Michigan did not have an opportunity to present evidence to rebut that claim.[1]

In refusing to extend *Stone* to alleged violations of the Fifth Amendment, the Court concluded that the justifications for denying federal *habeas* review of an alleged Fourth Amendment claim were not persuasive in the context of the Fifth Amendment. Justice Souter, writing for the majority (White, Blackmun, Stevens, Kennedy), explained that the prophylactic *Miranda* rule differed significantly from the exclusionary rule applied in *Mapp v. Ohio,* 367 U.S. 643 (1961). The *Mapp* exclusionary rule serves only to deter future Fourth Amendment violations; by contrast, the *Miranda* rule protects a defendant's Fifth Amendment privilege against self-incrimination and safeguards a "fundamental trial right." *United States v. Verdugo-Urquidez,* 494 U.S. 259, 264 (1990). Whereas the *Mapp* exclusionary rule typically excludes reliable evidence which is highly probative of guilt, the *Miranda* rule serves to guard against the use of statements which are inherently unreliable if obtained from a defendant in custody, by compulsion, and without proper warnings. As such, federal *habeas* review is necessary to correct that occasional abuse which results in an inherently unreliable confession being offered against a defendant at trial.

The Court further reasoned that eliminating federal review of *Miranda* claims would neither advance the cause of federalism nor significantly benefit the federal courts in their exercise of *habeas* jurisdiction. After all, a state prisoner could simply couch his barred *Miranda* claim as a due process claim that his conviction rested on an involuntary confession. Either way, the federal court would necessarily review the state court's decision on the defendant's motion to suppress the statements. Thus, in the Court's view, extending *Stone* to alleged *Miranda* violations would not significantly reduce *habeas* litigation in the federal courts.

Justice O'Connor, joined by Chief Justice Rehnquist, dissented on the grounds that the justifications advanced for foreclosing *habeas* review of Fourth Amendment claims apply equally to *Miranda* claims. Justice O'Connor observed that the majority had confused Fifth Amendment *Miranda* claims with Fifth Amendment "voluntariness" claims. In her view, statements obtained without proper *Miranda* warnings are inherently trustworthy and reliable, unless they are made involuntarily. If a court on federal *habeas* review excluded an un-*Mirandized* statement which is nonetheless voluntary and therefore reliable, the truth-seeking function of the judicial system would be frustrated because the outcome of the trial would be *less* reliable.

Moreover, it is not reasonable to suppose that virtually all *Miranda* claims will simply be recast as voluntariness claims, since many *Miranda* claims involve technical errors by police officers which do not affect the voluntariness of the particular confession. In light of the marginal deterrent effect that federal *habeas* has on police officers and the costs to society of allowing criminals to go free, "the interests of federalism, finality, and fairness compel *Miranda's* exclusion from *habeas.*" *Withrow,* 113 S. Ct. at ___ , (O'Connor, J., dissenting).

Justice Scalia, joined in dissent by Justice Thomas, would go further. In his opinion, the only consideration in determining if federal *habeas* review should be afforded is whether a defendant has had a full and fair opportunity to litigate his claim in the state courts. After all, a federal *habeas* court reviewing a federal conviction would not permit a defendant to relitigate claims already litigated and adjudicated. In Justice Scalia's view, state convictions should be given no less respect.

According to Justice Scalia, *Stone* would not foreclose federal *habeas* review of claims which challenge the fundamental fairness of the state court proceeding itself. The Court's decisions since *Stone* have been consistent with that principle. See *Kimmelman v. Morrison,* 477 U.S. 365 (1986) (*Stone* does not bar collateral review of defendant's claim that his trial counsel was ineffective in litigating a Fourth Amendment claim); *Rose v. Mitchell,* 443 U.S. 545 (defendant's claim that state trial court discriminated against him is not foreclosed because defendant could not have opportunity for fair state hearing); *Jackson v. Virginia,* 443 U.S. 307 (1979) (claim of sufficiency of the evidence goes to ultimate result and therefore is cognizable on federal *habeas*).

Nothing Is Etched In Stone

If one accepts the premises of *Stone* — that federal *habeas* review of Fourth Amendment claims would not advance the *Mapp* rule's primary goal of deterring *police officers,* that the truth-seeking function of *habeas* would be frustrated by exclusion of otherwise reliable evidence, and that *habeas* review of such claims would entail costs in terms of finality and federalism which would far outweigh its marginal benefits — then the conclusion in *Stone* applies with equal force to *Miranda* claims. *Stone* and *Withrow,* therefore, are difficult to reconcile. Statements which are un-*Mirandized* but which are nevertheless voluntary, like contraband found in one's home, are reliable and probative of guilt. Further, some might say that there is no empirical evidence to suggest that federal *habeas* review would foster the goals of either the *Mapp* exclusionary rule or *Miranda* — to encourage police officers to respect the constitutional rights of individuals. Understood that way, *Withrow* appears to be inconsistent with the principles and conclusions articulated in *Stone.*

Perhaps, then, the premises of *Stone* should be re-examined. The relevant question is not whether federal *habeas* review of Fourth Amendment claims furthers the goal of deterring police officers; the question is whether federal *habeas* review furthers the more important goal of deterring state courts from ignoring the federal constitutional rights of individuals. While, in Justice Scalia's view, there is no evidence to suggest that state courts cannot apply federal law

with equal aptitude as federal judges, this view misses the point. It is precisely because federal review of their decisions is available that state courts are constrained to apply the law and protect constitutional rights.

Unlike Article III federal judges, state trial judges are typically elected to office. Many state appellate judges are as well. They must raise money to finance campaigns and often feel accountable to those that elect them. It is simply disingenuous to suggest that state judges never consider the public opinion in their decisions. By enforcing the *Mapp* exclusionary rule and the *Miranda* rule, a state judge may be viewed as "soft on crime." The most powerful diametric force against the power of public opinion, although certainly not equal in stature, is the fear of being reversed, even by a federal judge on *habeas*. Absent this fear, the temptation to satisfy the public clamor for conviction in a given case may be too great.

Federal *habeas* review, even of claims which may frustrate the truth-seeking goal of our justice system, serves the important function of checking the state courts and insuring that they fairly apply the law. In enacting the *habeas corpus* statutes, Congress assigned the federal courts the ultimate burden of adjudging whether detentions violate federal law. *Stone,* 428 U.S. at 525-26 (Brennan, J., dissenting). In that regard, *Stone* was a step in the wrong direction; *Stone* skewed the incentives for state courts to properly protect the rights of criminal defendants.

Taken to its logical extreme, Justice Scalia's dissenting opinion should foreclose federal review of all state court decisions, if the defendant had a full and fair opportunity to litigate the claim in state court . *This would logically include even claims that attack the fundamental fairness of the state trial proceeding itself, such as claims of ineffective assistance of counsel.* After all, the defendant typically has state appellate remedies available to him, as well as state *habeas,* and the possibility, however remote, of Supreme Court review. Justice Scalia's view, logically extended, would foreclose federal review of all state convictions since the Constitution does not even provide for the creation of the federal district courts.

Equally important, there is little statutory or constitutional support for the proposition articulated in both Stone and *Withrow* that the ultimate goal of *habeas corpus* is to "seek the truth" and that society's highest value is to punish the guilty. Indeed, the "[e]nforcement of federal constitutional rights that redress constitutional violations directed against the 'guilty' is a particular function of federal *habeas* review." *Stone,* 428 U.S. at 525 (Brennan, J., dissenting). Federal *habeas* review of Fourth Amendment violations actually *furthers* the goals of *habeas corpus* by protecting against state violations of federal constitutional rights. *Stone's* narrow focus on the search for truth ignores the stated goals of *habeas corpus.*

The concern with the finality of state court convictions is also misplaced. Those who express such a concern appear to be more disturbed with the *existence* of the *habeas corpus* remedy than with its scope or application to Fourth Amendment violations. Such concerns are more appropriately directed at curtailing second, subsequent or abusive petitions, see *McCleskey, supra,* than they are at foreclosing first petitions which raise viable claims of constitutional deprivation. Plainly, the concern with finality applies with no more force to Fourth Amendment *(Stone)* or Fifth Amendment *(Withrow)* claims than they do to Sixth Amendment *(Strickland)* claims. Yet, not even Justice Scalia would openly disagree with federal *habeas* review of Sixth Amendment claims.

A Stone's Throw Away

By curtailing the reach of *Stone, Withrow,* no doubt, will be hailed as a victory for individual rights. Although ostensibly distinguishable from *Stone,* those distinctions do not persuade. The problem, however, is not with *Withrow.* The problem is with *Stone.* Even Justice White, who is not high on the exclusionary rule, dissented in *Stone,* for he could not discern a reasoned basis for precluding *habeas* review of Fourth Amendment claims. *Stone,* 428 U.S. at 536-42 (White, J., dissenting).

Notes

1. Ironically, the defendant in *Withrow* may not view his case as a victory. Because the Court held that Williams had failed to raise the claim that his post-*Miranda* confession was involuntary, it appears that on remand *Williams* will have to overcome the state's argument that the trial court's error in denying the motion to suppress the pre-*Miranda* statement was harmless. Arizona v. Fulminante, 111 S. Ct. 1246 (1991). If Williams seeks to amend his *habeas* petition on remand to raise the "voluntariness" claim, the claim may be procedurally barred by the "abuse of the writ" doctrine. McCleskey v. Zant, 111 S. Ct. 1451 (1991). Thus, Williams' conviction may nonetheless stand.