Written by **Bob Adelmann** on December 10, 2014

Dollree Mapp, Defendant in Landmark Fourth Amendment Case, Dead at 91

When Dollree Mapp answered the door on May 23, 1957, she had no idea of the impact her next move would have on jurisprudence in the United States.

At her door were three local police officers who were searching for a suspect in a bombing, and they asked permission to enter her home, having been given information that he might be hiding there. She asked them if they had a search warrant. When they said no, she refused entry.

Two officers left, leaving one behind to maintain surveillance. Three hours later the two officers returned, along with several others who demanded entry into her home. At that point, according to Supreme Court Justice Tom Clark, writing for the majority in *Mapp v. Ohio*,

> At least one of the several doors to the house was forcibly opened and the policemen gained entrance.
>
> Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house.

Mapp once again demanded that the officers, now standing in her living room, produce a search warrant. Wrote Clark:

> She demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom.
>
> A struggle ensued in which the officers recovered the piece of paper and as a result ... they handcuffed [Mapp] because she had been "belligerent" in resisting their official rescue of the "warrant" from her person....
>
> At the trial, no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for.

In its decision, the court, headed up by Chief Justice Earl Warren, not only ruled in favor of Mapp but also broke new ground, incorporating the Equal Protection Clause of the 14th Amendment into the Bill of Rights and also establishing the "exclusionary rule" that disallowed any evidence obtained that might be incriminating as a result of the illegal search and seizure to be used against the defendant.

It was, at that moment in time, a landmark ruling and stands today as the first ruling the Warren Court used to apply the 14th Amendment to the states. Wrote Clark:

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

Historically, evidence in federal cases that was obtained illegally couldn't be used against the defendant, but it could in the states. Using the 14th Amendment as its entering wedge, the court, in *Mapp v. Ohio*, applied the same rule to the states. Here's how Clark justified the expansion:

> Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.
>
> Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment.
>
> Thus, the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold.

This, according to Clark, was "unfair" and would allow and even encourage law-breaking by the very forces responsible for enforcing it:

> The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise.
>
> Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment.
>
> Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

Mapp v. Ohio, decided on June 19, 1961, was the opening salvo by the activist Warren Court to use the 14th Amendment to rectify various perceived wrongs being committed by the states. Members of the court at that time included such hard-core liberals and anti-constitutionalists as William Brennan, William O. Douglas, Hugo Black, Felix Frankfurter, and John Harlan.

Warren's use of the 14th Amendment as a hammer to bludgeon dissenting interests was a reflection of his general belief that such a hammer was justified, according to Supreme Court historian Bernard Schwartz, "when the political institutions [read: states] had defaulted on their responsibility to try to address problems such as segregation and reapportionment and cases where the constitutional rights of defendants were abused."

Local police are far more careful in exercising the powers in light of *Mapp v. Ohio*, as noted by the *New York Times*:

> The change has put continuing pressure on police departments to conduct investigations lawfully and brought increased scrutiny when their actions appear improper. Countless cases have been affected, and sometimes thrown out [thanks to Mapp].

RIP, Dollree Mapp, age 91.

A graduate of an Ivy League school and a former investment advisor, Bob is a regular contributor to The New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics.*