

CONSTITUTION 101

Module 11: The Fourth Amendment: Privacy in a Digital Age, Policing in America, and Protections from Unreasonable Searches and Seizures
11.5 Primary Source

MAPP V. OHIO (1961)

View the case on the National Constitution Center's website [here](#).

SUMMARY

In *Mapp v. Ohio*, police officers entered Dollree Mapp's home without a search warrant and found obscene materials there. Mapp was convicted of possessing these materials, but challenged her conviction. *Mapp* was part of the Warren Court's revolution in criminal procedure, whereby the Court applied provisions of the Bill of Rights to criminal defendants and made those interpretations applicable against the states. In particular, this case found that the exclusionary rule, which prohibits prosecutors from using evidence acquired illegally in violation of the Fourth Amendment, applies to both federal and state governments.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Justice Clark

More states have adopted the exclusionary rule today than in 1949. While in 1949 . . . almost two-thirds of the States were opposed to the use of the exclusionary rule, now . . . more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the [exclusionary] rule. . . .

Today, we apply the exclusionary rule against the states. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court. . . .

The exclusionary rule adds bite to the Fourth Amendment and protects the rights of the people; without this rule, the Fourth Amendment does very little, in practice. Were it otherwise, then . . . the assurance against unreasonable federal searches and seizures would be 'a form of words', valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in 'the concept of ordered liberty.'" . . . To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment. Only last year the Court itself recognized that the purpose of the exclusionary rule 'is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.' . . .

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We have already incorporated the Fourth Amendment against the states; by extending the exclusionary rule to abuses by state and local officers, we make this protection even stronger. 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.

Excerpt: Dissent, Justice Harlan

The majority is applying the approach that we use to check abuses by national officials to abuses by state and local officers. [W]hat the Court is now doing is to impose upon the States not only federal substantive standards of 'search and seizure' but also the basic federal remedy for violation of those standards. For I think it entirely clear that the . . . exclusionary rule is but a remedy which, by penalizing past official misconduct, is aimed at deterring such conduct in the future.

I wouldn't apply the exclusionary rule to the states; many states don't currently use it. I would not impose upon the States this federal exclusionary remedy. . . . [A]t present one-half of the States still adhere to the common-law non-exclusionary rule, and one, Maryland, retains the rule as to felonies. . . .

The states play a key role in law enforcement, and we shouldn't force them to adopt the exclusionary rule; we should give them more flexibility, especially since different states face different law enforcement challenges; let's honor federalism. The preservation of a proper balance between state and federal responsibility in the administration of criminal justice demands patience on the part of those who might like to see things move faster among the States in this respect. Problems of criminal law enforcement vary widely from State to State. One State, in considering the totality of its legal picture, may conclude that the need for embracing the [exclusionary] rule is pressing because other remedies are unavailable or inadequate to secure compliance with the substantive Constitutional principle involved. Another, though equally solicitous of Constitutional rights, may choose to pursue one purpose at a time, allowing all evidence relevant to guilt to be brought into a criminal trial, and dealing with Constitutional infractions by other means. Still another may consider the exclusionary rule too

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rough-and-ready a remedy, in that it reaches only unconstitutional intrusions which eventuate in criminal prosecution of the victims. Further, a State after experimenting with the [exclusionary] rule for a time may, because of unsatisfactory experience with it, decide to revert to a non-exclusionary rule. And so on. . . .

The Fourteenth Amendment is flexible; so, we should give states some flexibility in this area. [I]n implementing the Fourth Amendment, we occupied the position of a tribunal having the ultimate responsibility for developing the standards and procedures of judicial administration within the judicial system over which it presides. Here we review state procedures whose measure is to be taken not against the specific substantive commands of the Fourth Amendment but under the flexible contours of the Due Process Clause. I do not believe that the Fourteenth Amendment empowers this Court to mold state remedies effectuating the right to freedom from 'arbitrary intrusion by the police' to suit its own notions of how things should be done

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**