

Judicial Opinion Writing Activity

Mapp v. Ohio (1961)

What you need to know before you begin: In a given term between October and April, the U.S. Supreme Court usually hears oral arguments in 70 to 80 cases. For one hour, the attorneys for the **petitioner** (who lost in the lower court and is now appealing the decision) and **respondent** (who won in the lower court) present arguments and answer the justices' questions. Later that week, the justices hold a private conference and discuss the case. The justices vote on the outcome of the case starting with the chief justice and then the associate justices in order of seniority with the most junior justice going last. The party in the majority with at least five votes wins. The chief justice or the most senior justice in the majority will assign a justice the job of writing a legal explanation, called an **opinion**. The justice will write a draft of the Court's **majority opinion** and circulate it to the other justices in the majority who will sign on to the opinion if they agree. The same procedure will happen to the justices in the minority who will write a **dissenting opinion**. Justices who agree with the outcome of the majority but for different legal reasons may write **concurring opinions** to explain their differences. There can also be more than one dissenting opinion.

How it's done: You have been given the background, facts, issue, constitutional amendments, Supreme Court precedents, and arguments of the case. Consider and apply the constitutional amendments and precedents to the case *Mapp v. Ohio*. Carefully consider all of the arguments. Decide if you will find for the **petitioner** (*Mapp*), and **reverse** the decision of the lower court or for the **respondent** (the state of Ohio), and uphold or **affirm** the lower court's decision. Assume the majority of justices agree with you and write the Court's **majority opinion** explaining the reasons for the decision.

Case name: *Mapp v. Ohio* **Date decided:** _____ (today's date).

Justice _____ (your name) delivered the opinion of the Court.

The question presented is: _____

1. Brief summary of case and lower court decision(s):

2. Write two paragraphs explaining how each of the constitutional amendments apply:

3. Write a paragraph explaining how each of the precedents apply:

5. Write a paragraph explaining which arguments are most persuasive and why:

6. Therefore, we find for the petitioner / respondent (circle one), _____
(name of party) and therefore reverse / affirm (circle one) the decision of the lower court.

Mapp v. Ohio (1961)

Argued: March 29, 1961

Decided: June 19, 1961

Background

As originally written, the Bill of Rights applied only to the national government, not state and local governments. This meant that state and local government officials were able to engage in conduct that would infringe on the rights guaranteed in the first 10 amendments to the Constitution. After the Civil War, the 14th Amendment was ratified, in part, to address this infringement. The amendment's Due Process Clause guarantees that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without **due process of law.**" Over time, the Supreme Court has used the Due Process Clause to apply most Bill of Rights protections to the states through a process called **incorporation**. Because this was done over many years on a case-by-case basis and not all amendments have been applied, the process is known as **selective incorporation**.

To decide if a right should be incorporated, the Supreme Court weighs whether that right is fundamental to liberty and deeply rooted in history and tradition. During the colonial period, the British used general warrants in the American colonies that allowed them to search wherever they wanted and seize whatever they found. This angered the colonists and was among the grievances against King George III and Parliament written in the Declaration of Independence. Many historical documents and cases recognized the individual's right to privacy in their own home.

The Fourth Amendment generally requires the police to get a **search warrant** before conducting a search of someone's home. A search warrant is a document issued by a judge or a magistrate granting law enforcement officers permission to search a particular location to uncover evidence of a crime. An application for a search warrant must be supported by **probable cause**, that is, facts that allow a reasonable person to believe evidence will be found in that location. There are several exceptions to the search warrant requirement, such as emergency circumstances and searches of a person at the time of their arrest.

In a federal case, *Weeks v. United States* (1914), the U.S. Supreme Court created the **exclusionary rule**. The Court ruled that, if federal law enforcement officers violate someone's Fourth Amendment rights and search their home without a warrant, any evidence obtained during the search cannot be used against them at trial. However, after *Weeks*, the exclusionary rule applied only to trials taking place in federal courts. *Mapp v. Ohio* considered whether the exclusionary rule should be incorporated against the states and require exclusion of illegally seized evidence from state trials.

Facts

In 1957, a woman named Dollree Mapp worked for an illegal gambling operation in Cleveland, Ohio. The police received an anonymous tip that Virgil Ogletree, who was wanted for questioning

about a bombing, was hiding in Mapp's home. The police went to Mapp's home and asked for permission to enter, but she refused to let them in without a search warrant.

Several hours later, the police came back to Mapp's house, this time with a piece of paper they claimed was a search warrant. When Mapp took the "search warrant," the police physically fought her to get it back. It is believed the paper was not actually a warrant, a theory that was furthered by the fact that Mapp and her lawyers never saw the alleged warrant again, and the police did not produce it at her trial.

The police searched Mapp's home extensively, including a footlocker in the basement that was too small for a man to be hiding inside. In the footlocker, the police found "lewd and lascivious" material they considered pornography. Mapp claimed the materials had been left by a former tenant. Mapp was arrested and convicted of knowingly possessing pornographic materials in violation of an Ohio state law, even though the trial court found there was no evidence that the police actually did have a search warrant.

Mapp appealed her conviction. She argued that the search violated the Fourth Amendment because the police did not have a warrant and that the illegally seized evidence should have been excluded from her trial. The state of Ohio disagreed, claiming that the exclusionary rule under the Fourth Amendment only applied to federal trials, not cases in state court for violating state law. Mapp asked the U.S. Supreme Court to hear her case, and the Court agreed.

Issue

Is evidence gained in violation of the Fourth Amendment's prohibition on unreasonable searches and seizures admissible in state courts?

Constitutional Provisions, State Statutes, and Supreme Court Precedents

– **Fourth Amendment to the U.S. Constitution**

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

– **14th Amendment, Section 1 (Due Process Clause), to the U.S. Constitution**

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws."

- *Weeks v. United States* (1914)

In a unanimous decision, the U.S. Supreme Court ruled that it was unconstitutional for the police to search Fremont Weeks' home without a search warrant. This case created the **exclusionary rule**, meaning evidence seized in violation of the Fourth Amendment could not be admitted as evidence in a federal trial.

- *Wolf v. Colorado* (1948)

In this case, Julius Wolf was convicted in a Colorado state court of conspiracy to perform an abortion. He argued that the Fourth Amendment and the Supreme Court's decision in *Weeks v. United States* prohibited evidence seized in an unlawful search from being admitted at trial. Although the Supreme Court agreed that the search was unconstitutional, the Court ruled against Wolf and said the exclusionary rule did not extend to prosecutions in state courts.

Arguments for Mapp (petitioner)

- Since the decision in *Wolf v. Colorado*, many states passed laws that prevented the admission of evidence gained from an unlawful search or seizure during trials. Therefore, the circumstances changed enough that the Court should overturn the precedent from *Wolf*.
- The history of the Fourth Amendment shows that the right to privacy and security in one's home is an important constitutional value. There is no reason that the right to privacy should be any less respected in a state court.
- The exclusionary rule acts to discourage the police from conducting unlawful searches and seizures. Without extending the exclusionary rule to the states, there is little to discourage police officers from violating the Fourth Amendment.

Arguments for Ohio (respondent)

- In *Wolf v. Colorado*, the Supreme Court ruled that the exclusionary rule did not apply to state courts. The Court should follow that precedent here.
- In *Wolf v. Colorado*, the Supreme Court decided that the exclusionary rule was not an essential part of the Fourth Amendment. Therefore, the exclusionary rule does not need to be expanded.
- Police can still be dissuaded from conducting unlawful searches and seizures without the exclusionary rule. There are other methods of preventing unlawful searches and seizures, such as allowing civil suits against the police.