Mondale on Mapp

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Mapp v. Ohio was the path-breaking Supreme Court decision in 1961 that directed state courts to exclude from criminal trials any evidence obtained by state police through unlawful searches and seizures. It was the beginning of the Warren Court’s “revolution” in criminal procedure, an effort to bring American law enforcement practices into line with constitutional standards. Today, with the Warren Court’s approach to criminal justice under wide attack from conservatives, the Burger-Court majority is gearing up to reconsider and possibly overrule Mapp’s exclusionary evidence rule. The Chief Justice himself has deplored what he says is the “high price” that the Mapp rule “extracts from society—the release of countless guilty criminals.” Several other conservatives on the Court have hinted that they are also ready to allow the states to decide whether they will admit illegally obtained evidence.

As lawyers prepare for this return encounter in the Supreme Court, there is a piece of experience in Minnesota that is worth bringing forward, especially since it happens to involve our new Vice President, Walter “Fritz” Mondale.

Before the Mapp case, Minnesota was like New York and twenty other states that allowed illegally obtained evidence in their state criminal proceedings. Some months after the Mapp decision, when Minneapolis appeared to be in the grip of a “burglary wave,” the local police blamed the “new” restrictions of the Mapp rule. “I’d have 20 guys in jail right now,” the head of the city detective bureau lamented, “if we didn’t have to operate under present search and seizure laws.”

Similarly, when the State Bureau of Criminal Apprehension conducted a series of police institutes in 1962 to teach law enforcement officers the law of arrest, search, and seizure, there was much complaint about Mapp. The instructors

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seemed more interested in telling the police how to get around the requirements of obtaining arrest or search warrants than they were in teaching police how to comply with the Fourth Amendment's requirements in their daily operations.

The police backlash against the Mapp ruling strongly disturbed Minnesota's Attorney General, Fritz Mondale, then a new office-holder, and just five years out of law school. He decided to make the principal address at the next state police institute, and to use the occasion for some straight talk to law enforcers.

"The language of the Fourth Amendment," he reminded them, "is identical to the [search and seizure clause] of the Minnesota State Constitution." No one could properly maintain, therefore, that a higher constitutional standard had been imposed "by the Warren Court than the state itself declared necessary to protect the individual's right to privacy and to regulate how government carried out its search and seizure activities."

Furthermore, Mondale noted, "the adoption of the so-called 'exclusionary rules' does not affect authorized police practices in any way. What was a legal arrest before, still is. What was a reasonable search before, still is." In short, "the Mapp case does not reduce police powers one iota. It only reduces potential abuses of power."

Mondale went on to declare that "the very fact that these institutes are being held is eloquent testimony, it seems to me, of the basic wisdom of the Court's decision. We are doing today . . . what we should have done all along. We are studying ways in which we can bring our police methods and procedures into harmony with the constitutional rights of the people we serve."

Then Mondale dealt directly with the way that many law enforcement officials, in Minnesota and elsewhere, had reacted to the Mapp decision: "For those who seek techniques to circumvent the constitutional rights of the people, I say that it is not only illegal, but contrary to our oath and destructive of a free society to do so. As attorney general of this state, I do not propose to permit our Constitution to be circumvented and I serve notice upon anyone so inclined."

Attorney General Mondale was absolutely right in his presentation of what the Mapp case had said. If the Minneapolis police facing a rash of burglaries in 1962 had reasonable grounds to believe that a particular "twenty guys" had done those crimes, they could still have arrested them. If, on the other hand, the police only had vague suspicions and lacked reasonable grounds for detaining those suspects, it was not the Mapp ruling but long-standing commands of both the United States and the Minnesota constitutions that precluded them from making those arrests. The police had never had the legal authority to violate those constitutional rules, only the incentive to do so.
at will, knowing they would not be reprimanded, punished, or have their prosecutions impaired because of such illegal conduct.

Attorney General Mondale's point that police had been violating Fourth Amendment and state constitutional rules all along did not sit well with local law enforcement officials. At an ACLU conference in 1963, the Minneapolis city attorney denied that police had been violating the law; his explanation was that "the courts of our state were telling the police all along that the [exclusionary evidence rule] didn't apply in Minnesota." This peculiar way of reading what was illegal, as opposed to the evidentiary consequences of police illegality, was echoed by a St. Paul detective in his remarks at the same ACLU panel. "No officer lied upon the witness stand," Detective Ken Anderson explained. "If you were asked how you got your evidence, you told the truth. You had broken down a door or pried a window open. . . . Oftentimes, we picked locks." The police did these things, the detective noted, because "The Supreme Court of Minnesota sustained this time after time. [The] judiciary okayed it; they knew what the facts were."

Now that the Mapp decision is being reconsidered by the Supreme Court and the American public is trying to reconsider how to conduct its criminal justice system, the key points Fritz Mondale made fifteen years ago deserve to be the starting place for our thinking. It was not until the U.S. Supreme Court adopted the exclusionary evidence rule in 1961 that most police recognized the requirements of the Fourth Amendment and its state counterparts as binding rules upon their conduct. Mapp generated serious discussions about how to develop lawful arrest, search, and seizure practices into the training sessions and police manuals of American law enforcement in a way that had rarely occurred before.

Any judicial reversal of the Mapp rule threatens to have just the opposite effect. Law enforcement officials are likely to treat a decision that illegally obtained evidence may be admitted into state criminal trials as though that were a practical suspension of the constitutional rules as to lawful arrest, search, and seizure. They are likely to feel that once again "the judiciary is okaying it." With the smell of revelations of FBI "black-bag jobs" and intelligence agency abuses still in the air, is this how we want the Court to contribute to the atmosphere of police practices as we enter our third century as a nation?