Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

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Linkletter v. Walker, 381 U.S. 618 (1965)

On May 28, 1959, Victor Linkletter was convicted of burglary in Louisiana and sentenced to nine years of hard labor. Much of the evidence introduced against him at trial was obtained by police searches without a warrant. The trial judge ruled that those searches were constitutional and the Louisiana Supreme Court agreed. Twenty-one months after Linkletter's appeal was denied, the Supreme Court in Mapp v. Ohio *(1961) ruled that the due process clause of the Fourth Amendment incorporated the exclusionary rule of the Fourteenth Amendment, overruling* Wolf v. Colorado *(1949) which had permitted states to admit evidence in criminal trials that had been illegally or unconstitutionally obtained. After* Mapp *was handed down, Linkletter filed an application for habeas corpus in Louisiana and, after exhausting his state court remedies, he filed a similar writ in a federal district court. His suit was rejected by both the local federal district court and the Court of Appeals for the Fifth Circuit on the ground that* Mapp *did not apply to state cases that were final before that decision was handed down. Linkletter's decision was final because, as noted above, his appeal from the trial decision had been rejected by the Supreme Court. Linkletter then appealed that decision to the Supreme Court of the United States, claiming that exclusionary should apply to all habeas cases, not just habeas cases in which the initial appeal from the trial court decision was decided after* Mapp *was handed down.*

The Supreme Court by a 7-2 vote refused to issue the writ. Justice Clark's majority opinion held that Mapp *did not apply retrospectively. Consider when reading the opinion the extent to which legal, attitudinal, or strategic models of judicial decision-making explain this result. Some justices in the* Linkletter *majority dissented in* Mapp. *Perhaps they believed* Mapp *should not be applied retroactively because they did not like* Mapp. *Allowing all persons in prison to relitigate their Fourth Amendment claims was likely to be very controversial. Perhaps some justices believed denying retroactivity was a bone to allay growing opposition to criminal process decisions being made by the Warren Court. Finally, the legal reasons Justice Clark gave for the decision may have been the actual reasons that explain the result. What are those reasons? Were Linkletter's constitutional rights violated by the search that took place in 1959? If so, how does the court justify the refusal to apply the exclusionary rule? If not, did the constitutional change between 1959 and 1961?*

JUSTICE CLARK delivered the opinion of the Court.

Initially we must consider the term 'retrospective' for the purposes of our opinion. A ruling which is purely prospective does not apply even to the parties before the court. . . . However, we are not here concerned with pure prospectivity since we applied the rule announced in *Mapp* to reverse Miss Mapp's conviction. That decision has also been applied to cases still pending on direct review at the time it was rendered. Therefore, in this case, we are concerned only with whether the exclusionary principle enunciated in *Mapp v. Ohio* (1961) applies to state court convictions which had become final before rendition of our opinion.

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At common law there was no authority for the proposition that judicial decisions made law only for the future. Blackstone stated the rule that the duty of the court was not to 'pronounce a new law, but to maintain and expound the old one.' . . . This Court followed that rule in *Norton v. Shelby County* (1886), . . . holding that unconstitutional action 'confers no rights; it imposes no duties; it affords no protection; it

creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.'. . . In the case of the overruled decision, . . . it was thought to be only a failure at true discovery and was consequently never the law; while the overruling one, . . . was not 'new law but an application of what is, and theretofore had been, the true law.

On the other hand, [John] Austin[1] maintained that judges do in fact do something more than discover law; they make it interstitially by filling in with judicial interpretation the vague, indefinite, or generic statutory or common-law terms that alone are but the empty crevices of the law. Implicit in such an approach is the admission when a case is overruled that the earlier decision was wrongly decided. However, rather than being erased by the later overruling decision it is considered as an existing juridical fact until overruled, and intermediate cases finally decided under it are not to be disturbed.

. . . The Austinian view gained some acceptance over a hundred years ago when it was decided that although legislative divorces were illegal and void, those previously granted were immunized by a prospective application of the rule of the case. . . . Chief Justice Hughes in *Chicot County Drainage Dist. v. Baxter State Bank* (1940), . . . in discussing the problem made it clear that the broad statements of Norton, supra, 'must be taken with qualifications.' He reasoned that the actual existence of the law prior to the determination of unconstitutionality 'is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.'

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Under our cases it appears (1) that a change in law will be given effect while a case is on direct review, . . . and (2) that the effect of the subsequent ruling of invalidity on prior final judgments when collaterally attacked is subject to no set 'principle of absolute retroactive invalidity.' . . .

. . . It is true that heretofore, without discussion, we have applied new constitutional rules to cases finalized before the promulgation of the rule. Petitioner contends that our method of resolving those prior cases demonstrates that an absolute rule of retroaction prevails in the area of constitutional adjudication. However, we believe that the Constitution neither prohibits nor requires retrospective effect. . . .

Once the premise is accepted that we are neither required to apply, nor prohibited from applying, a decision retrospectively, we must then weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. We believe that this approach is particularly correct with reference to the Fourth Amendment's prohibitions as to unreasonable searches and seizures. . . .

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We believe that the existence of the *Wolf v. Colorado* (1949) doctrine prior to *Mapp* is 'an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.' . . . The thousands of cases that were finally decided on Wolf cannot be obliterated. The 'particular conduct, private and official,' must be considered. Here 'prior determinations deemed to have finality and acted upon accordingly' have 'become vested.' And finally, 'public policy in the light of the nature both of the (Wolf doctrine) and of its previous application' must be given its proper weight. . . . In short, we must look to the purpose of the *Mapp* rule; the reliance placed upon the Wolf doctrine; and the effect on the administration of justice of a retrospective application of *Mapp*.

It is clear that the *Wolf* Court, once it had found the Fourth Amendment's unreasonable Search and Seizure Clause applicable to the States through the Due Process Clause of the Fourteenth Amendment, turned its attention to whether the exclusionary rule was included within the command of the Fourth Amendment. This was decided in the negative. It is clear that based upon the factual considerations heretofore discussed the *Wolf* Court then concluded that it was not necessary to the enforcement of the Fourth Amendment for the exclusionary rule to be extended to the States as a requirement of due process. *Mapp* had as its prime purpose the enforcement of the Fourth Amendment through the inclusion of the exclusionary rule within its rights. This, it was found, was the only effective

[1] John Austin (1790–1859) was an English legal theorist. He is generally thought to be the founder of legal positivism, the view that the authority of law is rooted in sovereign commands, not natural justice. See John Austin, *The Province of Jurisprudence Determined* (Indianapolis, IN: Hackett Publishing Company, 1998).

deterrent to lawless police action. Indeed, all of the cases since Wolf requiring the exclusion of illegal evidence have been based on the necessity for an effective deterrent to illegal police action. We cannot say that this purpose would be advanced by making the rule retrospective. The misconduct of the police prior to *Mapp* has already occurred and will not be corrected by releasing the prisoners involved. Nor would it add harmony to the delicate state-federal relationship of which we have spoken as part and parcel of the purpose of *Mapp*. Finally, the ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late.

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Finally, there are interests in the administration of justice and the integrity of the judicial process to consider. To make the rule of *Mapp* retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witnesses available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice.

It is urged, however, that these same considerations apply in the cases that we have applied retrospectively in other areas, notably that of coerced confessions, and that the *Mapp* exclusionary rule should, therefore, be given the same dignity and effect. Two cases are cited, *Fay v. Noia* (1963) . . . and *Reck v. Pate* (1961), . . . but neither is apposite. It is said that we ordered new trials 25 years after conviction in the latter and after the lapse of 21 years in the former. This time table is true but that is all. The principle that a coerced confession is not admissible in a trial predated the arrests as well as the original convictions in each of these cases. . . . There was no question of retrospective operation involved in either case. Moreover, coerced confessions are excluded from evidence because of 'a complex of values,' . . . including 'the likelihood that the confession is untrue'; 'the preservation of the individual's freedom of will'; and "(t)he abhorrence of society to the use of involuntary confessions." . . . But there is no likelihood of unreliability or coercion present in a search-and-seizure case. Rather than being abhorrent at the time of seizure in this case, the use in state trials of illegally seized evidence had been specifically authorized by this Court in *Wolf*. . . . In each of the three areas in which we have applied our rule retrospectively the principle that we applied went to the fairness of the trial—the very integrity of the fact-finding process. Here, as we have pointed out, the fairness of the trial is not under attack. All that petitioner attacks is the admissibility of evidence, the reliability and relevancy of which is not questioned and which may well have had no effect on the outcome.

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All that we decide today is that though the error complained of might be fundamental it is not of the nature requiring us to overturn all final convictions based upon it. After full consideration of all the factors we are not able to say that the *Mapp* rule requires retrospective application.

Affirmed.

JUSTICE BLACK, with whom JUSTICE DOUGLAS joins, dissenting.

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Despite the Court's resounding promises throughout the *Mapp* opinion that convictions based on such 'unconstitutional evidence' would "find no sanction in the judgments of the courts," Linkletter, convicted in the state court by use of 'unconstitutional evidence,' is today denied relief by the judgment of this Court because his conviction became 'final' before *Mapp* was decided. Linkletter must stay in jail; Miss Mapp, whose offense was committed before Linkletter's, is free. This different treatment of Miss *Mapp* and Linkletter points up at once the arbitrary and discriminatory nature of the judicial contrivance utilized here to break the promise of *Mapp* by keeping all people in jail who are unfortunate enough to have had their unconstitutional convictions affirmed before June 19, 1961.

. . . The Court offers no defense based on any known principle of justice for discriminating among defendants who were similarly convicted by use of evidence unconstitutionally seized. It certainly cannot do so as between Linkletter and Miss Mapp. The crime with which she was charged took place more than

a year before his, yet the decision today seems to rest on the fanciful concept that the Fourth Amendment protected her 1957 offense against conviction by use of unconstitutional evidence but denied its protection to Linkletter for his 1958 offense. . . .

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Interesting as the question may be abstractly, this case should not be decided on the basis of arguments about whether judges 'make' law or 'discover' it when performing their duty of interpreting the Constitution. . . .

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Doubtless there might be circumstances in which applying a new interpretation of the law to past events might lead to unjust consequences which . . . cannot justly be ignored.' No such unjust consequences to Linkletter, however, can possibly result here by giving him and others like him the benefit of a changed constitutional interpretation where he is languishing in jail on the basis of evidence concededly used unconstitutionally to convict him. And I simply cannot believe that the State of Louisiana has any 'vested interest' that we should recognize in these circumstances in order to keep Linkletter in jail. I therefore would follow this Court's usual practice and apply the *Mapp* rule to unconstitutional convictions which have resulted in persons being presently in prison.

In refusing to give Linkletter the benefit of the *Mapp* rule, the Court expresses the view that its 'approach is particularly correct with reference to the Fourth Amendment's prohibitions as to unreasonable searches and seizures,' indicating a disparaging view of the Fourth Amendment that leaves me somewhat puzzled after *Mapp* and other recent opinions talking about the indispensable protections of the Amendment. . . . Then the Court goes on to follow a recent pattern of balancing away Bill of Rights guarantees and balances away in great part the Fourth Amendment safeguards one could reasonably have expected from the *Mapp* opinion and the opinion in *Fay v. Noia* (1963). . . . which opened up to collateral attack all unconstitutional convictions even though 'final.' Even using the Court's own balancing process, however, I think those now in prison under convictions resting on the use of unconstitutionally seized evidence should have their convictions set aside and be granted new trials conducted in conformity with the Constitution.

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There are peculiar reasons why the *Mapp* search and seizure exclusionary rule should be given like dignity and effect as the coerced confession exclusionary rule. Quite apart from the Court's positive statement in *Mapp* that the right guaranteed by the Fourth and Fifth Amendments not to be convicted through use of unconstitutionally seized evidence should be given 'like effect as other basic rights secured by the Due Process Clause . . .,' *Mapp*, like most other search and seizure exclusionary rule cases, relied heavily on *Boyd v. United States*. . . . In reaching the conclusion in *Boyd v. United States* (1886) that evidence obtained by unlawful search and seizure could not be admitted in evidence, the Boyd Court relied on the Fifth Amendment's prohibition against compelling a man to be a witness against himself. The *Boyd* Court held that the Fifth Amendment's prohibition against self-incrimination gave constitutional justification to exclusion of evidence obtained by an unlawful search and seizure. The whole Court treated such a search and seizure as compelling the person whose property was thus taken to give evidence against himself. There was certainly nothing in the *Boyd* case to indicate that the Fourth and Fifth Amendments were to be given different dignity and respect in determining what, when and under what circumstances persons are entitled to their full protection. . . .

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One reason—perhaps a basic one—put forward by the Court for its refusal to give Linkletter the benefit of the search and seizure exclusionary rule is the repeated statement that the purpose of that rule is to deter sheriffs, policemen, and other law officers from making unlawful searches and seizures. The inference I gather from these repeated statements is that the rule is not a right or privilege accorded to defendants charged with crime but is a sort of punishment against officers in order to keep them from depriving people of their constitutional rights. In passing I would say that if that is the sole purpose, reason, object and effect of the rule, the Court's action in adopting it sounds more like lawmaking than construing the Constitution. . . . I have read and reread the *Mapp* opinion but have been unable to find one word in it to indicate that the exclusionary search and seizure rule should be limited on the basis that

it was intended to do nothing in the world except to deter officers of the law. . . . If the exclusionary rule has the high place in our constitutional plan of 'ordered liberty,' which this Court in *Mapp* and other cases has so frequently said that it does have, what possible valid reason can justify keeping people in jail under convictions obtained by wanton disregard of a constitutional protection which the Court itself in *Mapp* treated as being one of the 'constitutional rights of the accused'?

. . . It has not been the usual thing to cut down trial protections guaranteed by the Constitution on the basis that some guilty persons might escape. There is probably no one of the rights in the Bill of Rights that does not make it more difficult to convict defendants. But all of them are based on the premise, I suppose, that the Bill of Rights' safeguards should be faithfully enforced by the courts without regard to a particular judge's judgment as to whether more people could be convicted by a refusal of courts to enforce the safeguards. . . .

The Court says that:

> 'To make the rule of *Mapp* retrospective would tax the administration of justice to the utmost. Hearings would have to be held on the excludability of evidence long since destroyed, misplaced or deteriorated. If it is excluded, the witnesses available at the time of the original trial will not be available or if located their memory will be dimmed. To thus legitimate such an extraordinary procedural weapon that has no bearing on guilt would seriously disrupt the administration of justice.' . . .

This same argument would certainly apply with much force to many cases we have heard in the past including . . . *Fay v. Noia*, supra. . . . Indeed in Noia's case this Court went to great lengths to explain in an exhaustive and in what I consider to be a very notable and worthwhile opinion that habeas corpus was designed to go behind 'final' judgments and release people who were held on convictions obtained by reason of a denial of constitutional rights. . . . *Noia* rested on the sound principle that people in jail, without regard to when they were put there, who were convicted by the use of unconstitutional evidence were entitled in a government dedicated to justice and fairness to be allowed to have a new trial with the safeguards the Constitution provides.

The plain facts here are that the Court's opinion cuts off many defendants who are now in jail from any hope of relief from unconstitutional convictions. The opinion today also beats a timid retreat from the wholesome and refreshing principles announced in *Noia*. No State should be considered to have a vested interest in keeping prisoners in jail who were convicted because of lawless conduct by the State's officials. Careful analysis of the Court's opinion shows that it rests on the premise that a State's assumed interest in sustaining convictions obtained under the old, repudiated rule outweighs the interests both of that State and of the individuals convicted in having wrongful convictions set aside. It certainly offends my sense of justice to say that a State holding in jail people who were convicted by unconstitutional methods has a vested interest in keeping them there that outweighs the right of persons adjudged guilty of crime to challenge their unconstitutional convictions at any time. No words can obscure the simple fact that the promises of *Mapp* and *Noia* are to a great extent broken by the decision here. I would reverse.