

Supreme Court of the United States

Memorandum

-----, 19-----

From - none of your changes  
in Math. case inseparable  
barriers for me and us  
as a whole I think they add  
life that contributes to  
clarity & persuasiveness.  
Your discussion of "privacy"  
is so limited that it does  
not justify a belief that  
you are using it as a  
synonym for the 4th

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A memorandum. Since I do not have my "fortress" a dictionary, handy, I am not sure that the word "vouchsafed" in connection with Due Process accurately describes that classic application to the states. It does not

trouble me however.

In summary, I let you know my recollection very much

Hugo

Supreme Court of the United States  
Washington, D. C.

CHAMBERS OF  
JUSTICE HUGO L. BLACK

June 15, 1961.

Re: No. 236 - Mapp v. Ohio

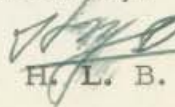
Dear Tom:

I have concluded that before the above case comes down you should have for your files my answer to your note of June 6th, in which you said this about the opinion you had circulated:

"In all fairness, however, as author of that opinion I must say that it was not my intention in drafting it to impliedly overrule Twining v. New Jersey."

The facts in Twining and the facts in Mapp are so different that the two cases can be distinguished on this basis. In view of Brother Harlan's opinion, however, I am disturbed by the sentence on page 13 in your opinion that "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." [Emphasis supplied.] This, I think, makes it necessary for me to say that my agreement to your opinion depends upon my understanding that you read Wolf as having held, and that we are holding here, that the Fourth Amendment as a whole is applicable to the States and not some imaginary and unknown fragment designated as the "right of privacy." This understanding is one of the reasons I am willing to decide in this state case the question of the scope of the Fourth Amendment as applied to the Federal Government. If I am wrong in this and your opinion means that the Fourth Amendment does not apply to the States as a whole, I am unwilling to agree to decide this crucial question in this case and prefer to wait for a case that directly and immediately involves application of the Fourth Amendment to the Federal Government. In other words, I am agreeing to decide this question in this case and agreeing to yours as the opinion for the Court on the basis of my understanding that the holding and opinion mean that hereafter the Fourth Amendment, when applied either to the state or federal governments, is to be given equal scope and coverage in both instances. If this is not correct, I think the case should be set down for reargument as the dissenters suggest.

Sincerely,

  
H. L. B.

Mr. Justice Clark.