Landmark Supreme Court Cases from Cleveland and Northeast Ohio

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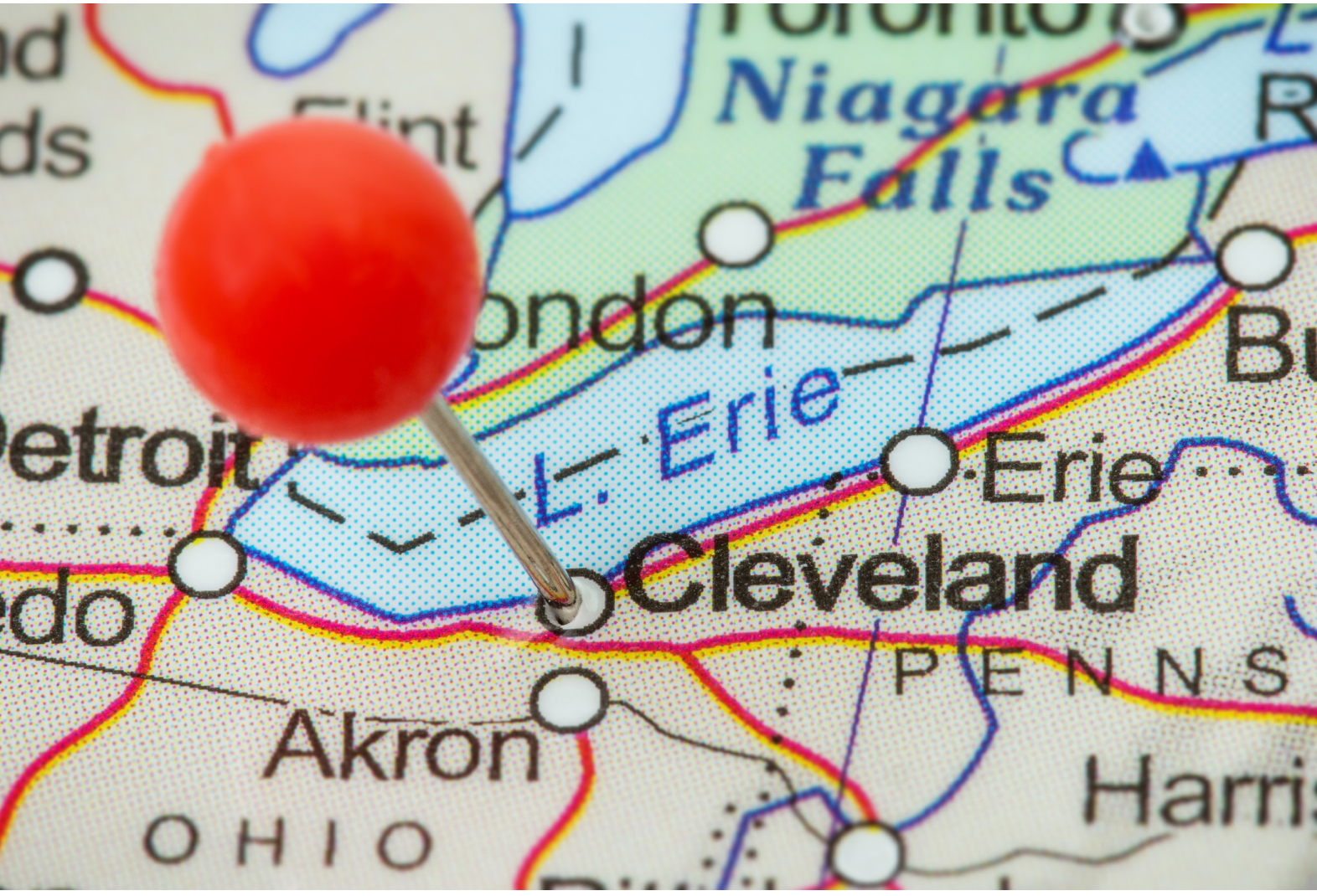

Greater Cleveland has generated a surprisingly large number of landmark Supreme Court cases. There are so many that I regularly offer my students a guided tour of the locations where the events occurred that gave rise to those cases. This article provides some details about a few of those cases, which are presented in chronological order.

1. *Village of Euclid v. Ambler Realty Co.*[1]—Upholding the Concept of Zoning

Zoning emerged as a tool of land use regulation in the first quarter of the 20th century. Advocates of zoning were responding to America's increasing urbanization—the 1920 Census revealed that, for the first time, a majority of the population lived in urban areas—along with deplorable housing conditions and chaotic development that too often made city life dangerous and ugly. There was a less noble aspect of the zoning movement: Some of the support for this new form of regulation reflected a desire to enable the relatively better-off classes and whites to avoid having to associate with the poor, immigrants, and African-Americans. Both of these factors can be seen in the *Euclid* case.[2]

Euclid is an eastern suburb of Cleveland, located about a dozen miles from downtown. With development impending as Cleveland's population expanded, local authorities adopted a zoning ordinance in 1922. The measure divided the entire community into a series of use, height, and area classifications that privileged single-family homes of limited height on relatively large lots. Under the cumulative zoning system, only those privileged homes could be built in the highest classification sections of town. Below this highest level were a descending series of permitted uses, heights, and lot sizes. In theory, single-family homes could be built anywhere, but the ordinance clearly sought to protect such residences from less desirable uses.

Ambler Realty Co. owned 68 acres of land that fronted on Euclid Avenue, the main thoroughfare running easterly from Public Square in downtown Cleveland that included a district known as Millionaires Row because John D. Rockefeller and other affluent figures lived there. The company wanted to develop the land for industrial purposes, but the ordinance limited much of the property to residential uses. These restrictions, Ambler alleged, significantly reduced the value of its land. This was the basis of its constitutional challenge to the Euclid zoning ordinance.

From the outset, it was clear that this was no ordinary case. Ambler was represented by Newton D. Baker, a former mayor of Cleveland; he served as secretary of war under President Woodrow Wilson and was a founder of the law firm now known as Baker-Hostetler. Euclid was represented by James Metzenbaum, who had drafted the ordinance and would go on to write a leading treatise on zoning law; he also was a distant cousin of Howard Metzenbaum, who later would serve for nearly two decades as a U.S. senator from Ohio. Judge David Westenhaver, to whom the case was assigned in the U.S. District Court for the Northern District of Ohio, observed practically at the outset of his opinion: "This case is obviously destined to go higher."[3]

Judge Westenhaver ruled that Euclid's zoning ordinance, as applied to Ambler's property, was unconstitutional because it was not a reasonable exercise of police power. Of particular significance, the opinion relied heavily on the Supreme Court's invalidation of a Louisville, Ky., racial zoning ordinance in *Buchanan v. Warley*.[4] That measure forbade anyone from moving into a block where most of the residents were of a different race than the newcomer. Judge Westenhaver reasoned that, if an ordinance restricting the sale or rental of property on the basis of race was invalid, as *Buchanan* had held, it necessarily followed that an ordinance that severely restricted Ambler's use of its property was similarly invalid. He observed that "no candid mind can deny that more and stronger reasons exist, having a real and substantial relation to the public peace, supporting such an ordinance [as the one involved in *Buchanan*] than can be urged under any aspect of the police power to support the [Euclid] ordinance as applied to [Ambler's] property."[5] After all, the judge opined, "The blighting of property values and the congesting of population, whenever the colored or certain foreign races invade a residential section, are so well known as to be within the judicial cognizance."[6]

Judge Westenhaver's prediction proved to be accurate: His decision was appealed to the Supreme Court. There the case was argued twice, first in January and then in October of 1926. After the initial argument, Alfred Bettman, a Cincinnati lawyer and a pioneer of the city planning movement, filed an influential *amicus curiae* brief that focused less on police power than on the local government's authority to combat nuisances. Metzenbaum had emphasized the police power, but Judge Westenhaver rejected that argument. After all, the Supreme Court had shown considerable skepticism toward expansive police-power claims not only in *Buchanan* but also more recently in *Pennsylvania Coal Co. v. Mahon*[7] and *Adkins v. Children's Hospital*.[8] Bettman's approach had a decisive, albeit unacknowledged, impact on the Supreme Court.

Justice George Sutherland's opinion for a six-justice Court majority—Justices Willis Van Devanter, James Clark McReynolds, and Pierce Butler dissented without opinion—explicitly analogized zoning to the law of nuisance, precisely as Bettman had urged. After noting the increasing complexity of urban life, Sutherland famously observed: "A nuisance may be merely a right thing in a wrong place, like a pig in the parlor instead of the barnyard."[9] He immediately added that the standard of review should be more deferential than the district court had used, stating: "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."[10]

Most of the rest of the opinion focused on the exclusion of apartment houses from the highest zoning category, which was reserved for single-family homes. Applying the deferential standard, Justice Sutherland observed that this subject had received widespread attention from experts and blue-ribbon commissions. Without mentioning the racial and ethnic implications of zoning that the district court had explicitly invoked, he characterized an apartment house in a district of private homes as "a mere parasite" that took advantage of "open spaces and attractive surroundings" and warned ominously that one apartment house might well lead to encroachment by others that could "depriv[e] children of the privilege of quiet and open spac-

es for play, enjoyed by those in more favored localities."[11] Apartment houses, in other words, looked like pigs in the parlor.

Having concluded that Euclid's zoning ordinance was not facially invalid, the Court left open the prospect of as-applied challenges to specific zoning rules. Of course, Ambler had launched an as-applied challenge rather than a frontal assault. But the as-applied challenge apparently was premature. Justice Sutherland explained that the company's claim rested on "the broad ground that the mere existence and threatened enforcement of the ordinance … constitute a present and irreparable injury," but this was too thin a reed to support the injunction that was sought.[12] Thus was the principle of zoning upheld against constitutional attack. This was, of course, just the beginning of the story. Many other zoning issues have since reached the Supreme Court, but only because *Euclid* held that zoning in general was permissible even if particular applications might not be.

2. *Mapp v. Ohio*[13]—Applying the Exclusionary Rule to the States

More than 100 years ago, in *Weeks v. United States*,[14] the Supreme Court held that evidence seized in an unlawful search may not be used against a defendant at a criminal trial. But in 1949, at the height of the incorporation debate, a divided Court held in *Wolf v. Colorado*[15] that the exclusionary rule did not apply to the states. Barely a dozen years later, another divided Court overruled *Wolf* and held in the *Mapp* case that the exclusionary rule in fact applies to the states.[16]

Mapp arose out of an investigation into the May 20, 1957, bombing of the Cleveland home of Don King, a small-time local gambling operator who later became a prominent boxing promoter who arranged bouts for Muhammad Ali, Joe Frazier, Larry Holmes, and George Foreman. Three days after the bombing, investigating officers went to the home of Dollree Mapp, who was suspected of being part of the gambling scene and who also had been romantically involved with light-heavyweight champion Archie Moore. On the advice of her lawyer, Mapp refused to allow the officers to enter without a search warrant. The officers notified headquarters and were told that a warrant would be obtained. About three hours later, after several more officers had arrived on the scene, the police claimed to have a search warrant and demanded entry.

When Mapp did not respond quickly enough, the officers broke into a side entrance and waved a piece of paper that they described as a search warrant. Mapp met the officers on the stairs from her second-floor apartment. She grabbed the alleged warrant and stuffed it down the front of her dress; the officers grabbed it back and handcuffed her to an officer while searching both her upstairs apartment and the basement of the house. The search revealed a cache of obscene books and pictures, but no evidence of illegal gambling that was the basis for police interest in Mapp. She claimed that the obscene materials belonged to a man to whom she had rented space in her home and that she had not known anything about them until she packed up his things for storage after he left before his lease expired.

Mapp was convicted of knowingly having in her possession or under control any "obscene, lewd, or lascivious book, … print, [or] picture" in violation of Ohio law. The state supreme court held that the evidence supported the jury's verdict that she knowingly possessed obscene material: Mapp had taken possession and control not only of the space that the tenant had rented but also of his belongings, including the books and pictures, and she knew that those materials were "lewd and lascivious."[17] The court went on to reject both of Mapp's constitutional challenges to her conviction.

First, although there was "considerable doubt as to whether there ever was any warrant for the search"—no warrant was introduced at any stage of the proceedings and any warrant that might have existed almost certainly would have focused on gambling-related materials rather than on obscenity—the long-standing rule in Ohio, consistent with *Wolf*, held that evidence obtained in an unlawful search was admissible.[18]

Having rejected Mapp's evidentiary objection, the court then turned to her fundamental substantive claim: that a law forbidding simple possession of obscenity violates the First Amendment. The U.S. Supreme Court recently had struck down a similar state statute in *Smith v. California*.[19] Although the Ohio law required knowing possession while the California law imposed strict liability, a majority of the Ohio Supreme Court concluded that the two statutes were functionally identical and that the Buckeye State's law also violated the First Amendment.[20]

This would have been the end of the matter except for an unusual provision of the Ohio Constitution that required that at least six of the seven members of the state supreme court agree before finding a law unconstitutional. This provision was part of a large package of progressive constitutional reforms adopted in 1912 in response to a series of decisions striking down consumer- and worker-protection laws.[21] Because only four justices agreed that the Ohio statute under which Mapp had been tried did contravene the First Amendment, her conviction was upheld by a 3-4 vote.[22]

Mapp's lawyer raised the Fourth Amendment issue in the U.S. Supreme Court, but the main argument focused on the validity of the

Ohio obscenity law under the First Amendment. Indeed, this was the principal basis for Justice John Marshall Harlan II's dissent, which was joined by Justices Felix Frankfurter and Charles Evans Whittaker. The dissenters described Mapp's Fourth Amendment argument as "subordinate;" her lawyer never cited *Wolf* in his written submissions and even at oral argument declined to seek that case's overruling.[23] Only the American Civil Liberties Union, appearing as *amicus curiae*, urged the Court to apply the exclusionary rule to the states.[24] Indeed, Justice Potter Stewart agreed with the dissenters on this point, although he concurred in the judgment because he thought that the Ohio statute violated the First Amendment.[25]

Despite these objections, Justice Tom C. Clark wrote a majority opinion that addressed only the Fourth Amendment issue. He reasoned that, because the Fourth Amendment had been incorporated against the states, it necessarily followed that the exclusionary rule also must apply to the states.[26] Not only was the rule constitutionally mandated, but it also makes good sense on policy grounds by encouraging the states to respect the Fourth Amendment and by upholding public respect for the law through making the government at all levels respect individual rights.[27]

3. *Terry v. Ohio*[28]—Upholding Stop and Frisk

Just over two years later, an incident in downtown Cleveland set in motion the litigation that culminated in the Supreme Court's upholding the ability of police officers to stop and frisk individuals without probable cause.[29] In the midafternoon of Halloween 1963, a veteran Cleveland police detective named Martin McFadden observed two African-American men, John Terry and Richard Chilton, repeatedly walking back and forth along a business block; they met periodically to talk, then continued walking separately along the block. A white man, Carl Katz, spoke briefly with them at one end of the block, then went around the corner along an adjoining street. Soon afterward, Terry and Chilton followed Katz down the adjoining street. Detective McFadden approached the three men, identified himself as a police officer, and asked them to identify themselves. Concerned that they might be carrying weapons, McFadden patted them down and found that Terry and Chilton were carrying loaded revolvers; Katz was unarmed. The detective therefore arrested the two African-Americans for unlawful possession of a concealed weapon and let Katz go.

McFadden testified that he suspected Terry and Chilton of casing one of the stores in the area because both of them repeatedly stopped in front of the display window while walking up and down the block. But he also admitted that he had never before arrested anyone for casing the site of a potential robbery. And although nobody explicitly advanced this argument, it is conceivable that part of what made this episode suspicious to the detective was the apparent connection between the two African-Americans and the white man at a time when such interactions might have seemed unusual.

Louis Stokes, whose brother, Carl, would be elected mayor of Cleveland in 1967 and who would himself be elected to Congress in 1968 to start a 30-year tenure, represented both Terry and Chilton. He consistently argued that McFadden's actions violated the Fourth Amendment because the officer lacked probable cause to stop and frisk Terry and Chilton. The common pleas judge denied a motion to suppress and after a bench trial found both men guilty. The Ohio Court of Appeals affirmed the conviction, and the Ohio Supreme Court denied review.[30]

The Supreme Court, in an opinion by Chief Justice Earl Warren with only Justice William O. Douglas dissenting, rejected Stokes' argument that the stop and frisk was unlawful due to lack of probable cause. At the same time, the Court emphasized that the Fourth Amendment did apply. Although a warrant was not required in the circumstances, McFadden had acted reasonably based on his long experience in law enforcement.[31] *Terry* retains continuing relevance because law enforcement officers regularly encounter members of the public in the course of their duties. The Court's analysis of reasonableness therefore helps to frame the legal and political debate about policing and is likely to do so for a long time.

4. *Sheppard v. Maxwell*[32]—Protecting the Right to a Fair Trial

Before the O.J. Simpson case, there was another so-called trial of the century: the one involving Sam Sheppard, a prominent osteopathic physician. In the wee hours of July 4, 1954, Marilyn Sheppard, Sheppard's pregnant wife, was beaten to death in her bed. Sheppard was charged with first-degree murder; the jury convicted him of second-degree murder. The state courts affirmed, and the Supreme Court denied certiorari.[33] As the Ohio Supreme Court observed, the case combined "[m]urder and mystery, sex and suspense" and unfolded in an "atmosphere of a 'Roman holiday' for the news media."[34] Eventually, the atmosphere before and during the trial would make this a landmark case.

Within days of the crime, a steady stream of press reports, including front-page editorials by *Cleveland Press* Editor Louis Seltzer, portrayed Sheppard as the obvious culprit and demanded prompt

action by the authorities. Seltzer accused Samuel Gerber, the county coroner who quickly had concluded that Sheppard was guilty, of dragging his feet on holding an inquest. Gerber promptly convened an inquest that was conducted before a raucous audience in a school gymnasium and broadcast live on local radio and television stations. Numerous reports featured supposedly inculpatory evidence that was never introduced at trial. Meanwhile, Dr. Sheppard lied at the inquest about his lengthy affair with Susan Hayes, a medical technician who worked at the osteopathic hospital owned by his father and where he and his brother were on the staff. His lack of truthfulness on this matter fed suspicion that the philandering husband must have killed his wife. Meanwhile, Seltzer published another front-page editorial demanding that Sheppard be arrested. Authorities took Sheppard into custody that night. The publicity continued through the trial several months later. Not all of the news stories were hostile to Sheppard, but most of them were. And there seemed to be never-ending newspaper and broadcast coverage. As the trial date approached, all three Cleveland newspapers published the names and addresses of the prospective jurors who then received numerous communications from friends and strangers before jury selection began. And both before and during jury selection, newspapers and radio stations published reports that strongly criticized Sheppard and his defense team.

The trial proceedings that began in mid-October attracted massive coverage. To accommodate the media, a long table was set up inside the courtroom bar for about 20 reporters. One end of that table came within three feet of the jury box. And placement of the table required the removal of one of the two counsel tables that were normally used in trials. In addition, three of the four rows of regular seats in the courtroom also were assigned to the press, leaving the remaining 14 seats in the last row to be shared by relatives of Sam Sheppard, relatives of Marilyn Sheppard, and a handful of members of the public who were admitted by special pass.

The media also were allowed to use all the rooms on the courtroom floor; private telephone lines and telegraph equipment were installed to facilitate the reporters' work. One radio station was allowed to set up shop next door to the jury room, which was on another floor of the courthouse but to which jurors retired during trial recesses and in which they deliberated at the end of the trial. Television and newsreel cameras were set up on the steps and sidewalk outside the courthouse and in the hallways outside the courtroom to take pictures of trial participants.

The congested courtroom meant that Sheppard could not easily talk privately with his lawyers without having to go outside. Moreover, when the prosecutor or defense counsel wanted to discuss matters outside the presence of the jury, the lawyers often had to retire to the judge's chambers and had to run a gauntlet of reporters and photographers to return to their seats at the counsel table.

Further, the daily record of the trial was made available to the local newspapers, which printed virtually the entire transcript verbatim, complete with objections by counsel and rulings by the judge. These accounts often were accompanied by photographs of Sheppard, the lawyers, the judge, and jurors. Some national reporters published inflammatory stories, including one account by a woman who had been arrested in New York City and claimed to have had Sam Sheppard's love child.

Finally, although the jury had been sequestered during its delib-

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erations, bailiffs allowed jurors to make unmonitored telephone calls to their homes.

Sheppard's lawyers filed numerous motions to delay the proceedings, to change the venue to a location that had not experienced the saturation of pretrial publicity that Cleveland had, and for a mistrial. The trial judge denied all the motions. As noted above, the jury returned a conviction for second-degree murder although the indictment had charged first-degree murder. Sheppard received a life sentence.

In affirming the conviction, the Ohio Supreme Court (echoing the Ohio Court of Appeals for the Eighth District) recognized the extensive publicity that the case had generated. At the same time, the court noted, the legal question did not turn on the extent of publicity but rather on whether "the defendant was accorded a fair constitutional trial by an impartial jury which could decide the issues of fact solely upon the consideration of the evidence in light of the law given it by the [trial] court."[35] And on that question, the state's high court had no difficulty in concluding that Sheppard had indeed received a fair trial. The U.S. Supreme Court denied certiorari, although Justice Frankfurter pointedly remarked that this disposition "in no wise implies that this Court approves the decision of the Supreme Court of Ohio."[36]

Nearly a decade later, a young lawyer named F. Lee Bailey became interested in Sheppard's case and filed a federal habeas corpus petition emphasizing the prejudicial publicity surrounding Marilyn Sheppard's murder and Sam Sheppard's trial. The U.S. District Court for the Southern District of Ohio granted the writ;[37] a divided panel of the U.S. Court of Appeals for the Sixth Circuit reversed;[38] the Supreme Court, with only Justice Hugo Black dissenting (without opinion), reversed and remanded the case to the district court with instructions to grant the writ and order that the state either release Sheppard or retry him within a reasonable time.[39] Justice Clark's opinion strongly criticized the trial judge for allowing a "carnival atmosphere" and listed numerous steps that he could have taken to control the proceedings.[40]

The county prosecutor chose to retry Sheppard. The case, heard by a different judge who scrupulously controlled the proceedings, took less than half the time as the first trial. Bailey did an excellent job of cross-examining the state's leading witnesses, including Dr. Gerber. The coroner had testified at the first trial that Marilyn Sheppard had been beaten to death with a surgical instrument of some sort, but Bailey got him to admit at the second trial that he had never been able to find such an instrument despite having searched long and hard for one. The jury acquitted Sam Sheppard at the second trial. He attempted to return to his medical work, but his skills had deteriorated over the years to such an extent that he had to give up that line of work. He briefly tried his hand at professional wrestling but died, at the age of 46, in 1970.

The Sam Sheppard controversy survived the protagonist. Nearly three decades after his death, representatives of the estate filed suit in the Cuyahoga County Court of Common Pleas seeking a declaration of innocence. This would provide a basis for a claim for compensation for wrongful imprisonment under state law. The moving force behind the litigation was Sam Reese Sheppard, who as a 7-year-old had slept through his mother's murder on that fateful 1954 night. The Ohio Supreme Court allowed the case to go to trial,[41] but a jury ruled against the estate and refused to declare Sam Sheppard innocent. This judgment was affirmed on appeal, not on the merits but rather because the suit was untimely and the claim had expired with Sam Sheppard's death.[42]

5. *Cleveland Board of Education v. LaFleur*[43]— Defining Pregnancy Discrimination

Jo Carol LaFleur and Ann Nelson began teaching in the Cleveland public schools in the fall of 1970. Both were married (one to a law student) and both became pregnant partway through the school year. At the time, the Cleveland school board required a pregnant teacher to take an unpaid leave of absence by the end of her fourth month; she could apply to return to work at the beginning of the first school term after the baby reached the age of 3 months. Both women objected to their forced removal from the classroom and sought legal help. LaFleur eventually spoke with Jane Picker, a cooperating attorney with the Women's Equity Action League and a professor at Cleveland-Marshall College of Law at Cleveland State University; Nelson talked with Lewis Katz, a professor at Case Western Reserve University and a close friend and colleague of Sidney Picker, the husband of Jane Picker. Katz and Carol Agin Kipperman, a young lawyer who later moved to Chicago and became a state judge, agreed to represent the pregnant teachers in their challenge to the fourth-month rule.

LaFleur certainly was a victory for the pregnant teachers, but the Court's avoidance of the equal protection argument made it a less significant win than it might have been. The focus on due process reflected the justices' more general discomfort with treating pregnancy-based rules as sex-based.

This case eventually made its way to the Supreme Court, but the doctrinal landscape at the outset was bleak. When the teachers filed their lawsuit, the Court had never found a sex-based classification unconstitutional. Some of the cases refused to take such claims seriously, while others upheld sex-based policies on the basis of patronizing or stereotypical notions of women's roles.[44] Relying heavily on *Muller v. Oregon*,[45] which had upheld a maximum-hour law for women at a time when maximum-hour laws for men were

viewed as infringing on liberty of contract, the district court upheld Cleveland's fourth-month rule as reasonable. The rule afforded students continuity of instruction and prevented educational disruption by removing pregnant teachers from the classroom at a relatively early stage.[46] A divided panel of the Sixth Circuit reversed, holding that the school board's stated concern that pregnant teachers might be embarrassed by giggling and harassment by students was insubstantial and that the medical testimony did not support the board's blanket rule. Because the rule affected only women and the board had no analogous policy applicable to male-only conditions, the pregnancy policy was an impermissible form of gender discrimination.[47]

The Sixth Circuit based its decision in part on *Reed v. Reed*,[48] a Supreme Court ruling handed down several months after the district court issued its opinion and that for the first time invalidated an explicitly sex-based classification. *Reed* struck down an Idaho law that gave males preference over females in the administration of estates, so it did not address pregnancy rules.

Jane Picker, who argued the case in the Supreme Court, based her arguments on the Equal Protection Clause: requiring pregnant teachers to leave the classroom by the end of their fourth month treated women differently than men. The justices, however, hesitated to rely on equal protection and instead focused on the Due Process Clause. The Court concluded that the fourth-month rule could not advance the board's claimed interest in continuity of instruction because the end of the fourth month will come at widely varying times for individual teachers; allowing more flexibility actually would promote greater continuity at least if the teacher has to provide adequate notice.[49] Nor could the rule be justified as a means of keeping physically incapacitated pregnant teachers out of the classroom: the fourth-month rule established a conclusive presumption of physical incapacity at a relatively early stage of pregnancy, but due process required individualized determinations of fitness at least until very late stages of pregnancy.[50] Finally, the return-to-work provision of the pregnancy policy also established an unconstitutional conclusive presumption because it required a teacher who had given birth to wait until the beginning of the first school term after her child reached 3 months of age even if the teacher had medical certification that she was fully capable of starting back to work sooner.[51]

LaFleur certainly was a victory for the pregnant teachers, but the Court's avoidance of the equal protection argument made it a less significant win than it might have been. The focus on due process reflected the justices' more general discomfort with treating pregnancy-based rules as sex-based. Later in the same term that *LaFleur* was decided, the Court rejected a constitutional challenge to a California disability insurance program that excluded coverage for "normal" pregnancy; the opinion explained that the program was not sex-based but instead distinguished between "pregnant women and nonpregnant persons."[52] And two years after that, the Court held that pregnancy discrimination was not a form of prohibited sex discrimination under Title VII of the Civil Rights Act of 1964.[53] Congress responded by adopting the Pregnancy Discrimination Act.[54] Moreover, constitutional challenges to pregnancy rules have become increasingly rare since Congress expanded Title VII to cover most state and local governments. Nevertheless, *LaFleur* remains a landmark in that it was the first Supreme Court case to invalidate a pregnancy rule as unconstitutional. ⊙

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Endnotes

[1]272 U.S. 365 (1926).

[2]For more details on the case and its significance, *see, e.g., Symposium on the Seventy-Fifth Anniversary of Village of Euclid v. Ambler Realty Co.,* 51 Case W. Res. L. Rev. 593 (2001).

[3]*Ambler Realty Co. v. Village of Euclid,* 297 F. 307, 308 (N.D. Ohio 1924), *rev'd*, 272 U.S. 365 (1926).

[4]245 U.S. 60 (1917).

[5]*See Euclid,* 297 F. at 312–13.

[6]*Id.* at 313.

[7]260 U.S. 393 (1922).

[8]261 U.S. 525 (1923), *overruled by West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

[9]272 U.S. at 388.

[10]*Id.*

[11]*Id.* at 394.

[12]*Id.* at 395.

[13]367 U.S. 643 (1961).

[14]232 U.S. 383 (1914).

[15]338 U.S. 25 (1949).

[16]For more details about *Mapp*, *see, e.g.*, Priscilla H. Machado Zotti, Injustice for All: *Mapp v. Ohio* and the Fourth Amendment (2005); *Symposium on the Fortieth Anniversary of Mapp v. Ohio,* 52 Case W. Res. L. Rev. 371 (2001).

[17]*State v. Mapp,* 166 N.E.2d 387, 389 (Ohio 1960), *rev'd sub nom. Mapp v. Ohio,* 367 U.S. 643 (1961).

[18]*Id.*

[19]361 U.S. 147 (1959).

[20]166 N.E.2d at 391.

[21]*See generally* Jonathan L. Entin, *Judicial Supermajorities and the Validity of Statutes: How Mapp Became a Fourth Amendment Landmark Instead of a First Amendment Footnote*, 52 Case W. Res. L. Rev. 441 (2001).

[22]166 N.E.2d at 391.

[23]367 U.S. at 672–74 & nn. 1–6 (Harlan, J., dissenting).

[24]*Id.* at 674 n. 5.

[25]*Id.* at 672 (memorandum of Stewart, J.). Justice Stewart later explained that he fully supported the extension of the exclusionary rule to the states but regarded *Mapp* as an inappropriate vehicle for taking this step. Potter Stewart, *The Road to Mapp v. Ohio and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 Colum. L. Rev. 1365, 1389 (1983).

[26]367 U.S. at 655–56.

[27]*Id.* at 657–59. Justice Black concurred despite his concern that the Fourth Amendment alone was not a sufficient basis for the exclusionary rule. Instead, he viewed the rule as a logical corollary of the Fourth Amendment's prohibition of unreasonable searches and seizures and the Fifth Amendment's privilege against self-incrimination. *Id.* at 661–62 (Black, J., concurring). Justice Douglas also concurred,

reasoning that *Wolf* had created an unacceptable asymmetry in the law and contending that *Mapp* was an appropriate case in which to resolve the problem. *Id.* at 670–71 (Douglas, J., concurring).

[28]392 U.S. 1 (1968).

[29]For more details on this case, *see, e.g.,* Symposium, *"Stop and Frisk" in 1968: The Issue, the Cases and the Supreme Court's Decisions in Terry v. Ohio, Sibron v. New York and New York v. Peters,* 72 St. John's L. Rev. 721 (1998).

[30]*State v. Terry,* 214 N.E.2d 114 (Ohio Ct. App. 8th Dist. 1966).

[31]*Terry v. Ohio,* 392 U.S. at 20, 28.

[32]384 U.S. 333 (1966).

[33]*State v. Sheppard,* 128 N.E.2d 471 (Ohio Ct. App. 1955), *aff'd*, 135 N.E.2d 340 (Ohio), *cert. denied*, 352 U.S. 910 (1956). For additional discussion of the *Sheppard* case, *see, e.g.,* Symposium, *Toward More Reliable Jury Verdicts? Law, Technology, and Media Developments Since the Trials of Dr. Sam Sheppard*, 49 Clev. St. L. Rev. 385 (2001); Jonathan L. Entin, *Being the Government Means (Almost) Never Having to Say You're Sorry: The Sam Sheppard Case and the Meaning of Wrongful Imprisonment*, 38 Akron L. Rev. 139, 139–60 (2005).

[34]*State v. Sheppard,* 135 N.E.2d 340, 342 (Ohio 1956).

[35]*Id.* at 343.

[36]*Sheppard v. Ohio,* 352 U.S. 910, 911 (1956) (memorandum of Frankfurter, J.).

[37]*Sheppard v. Maxwell,* 231 F. Supp. 37 (S.D. Ohio 1964).

[38]*Sheppard v. Maxwell,* 346 F.2d 707 (6th Cir. 1965).

[39]*Sheppard v. Maxwell,* 384 U.S. 333, 364 (1966).

[40]*Id.* at 358.

[41]*State ex rel. Tubbs Jones v. Suster,* 701 N.E.2d 1002 (Ohio 1998).

[42]*Murray v. State,* 2002 WL 337732 (Ohio Ct. App. 8th Dist. Feb. 21, 2002), *appeal not allowed*, 772 N.E.2d 1202 (Ohio 2002).

[43]414 U.S. 632 (1974).

[44]*E.g., Goesaert v. Cleary,* 335 U.S. 464, 465 (1948) (upholding a Michigan law forbidding most women from working as bartenders on the basis that the case was "one of those rare instances where to state the question is in effect to answer it"); *Hoyt v. Florida,* 368 U.S. 57, 62 (1961) (rejecting a challenge to a law making it much less likely that females will serve on juries than will males in part on the basis that the law reflects the reasonable assumption that women are "the center of home and family life").

[45]208 U.S. 412 (1908).

[46]*LaFleur v. Cleveland Bd. of Educ.,* 326 F. Supp. 1208, 1213–14 (N.D. Ohio 1971).

[47]*LaFleur v. Cleveland Bd. of Educ.,* 465 F.2d 1184, 1187–88 (6th Cir. 1972).

[48]404 U.S. 71 (1971).

[49]*Cleveland Bd. of Educ. v. LaFleur,* 414 U.S. 632, 642–43 (1974).

[50]*Id.* at 644–47 & n. 13.

[51]*Id.* at 648–50.

[52]*Geduldig v. Aiello,* 417 U.S. 484, 497 n. 20 (1974).

[53]*Gen. Elec. Co. v. Gilbert,* 429 U.S. 125 (1976).

[54]Pub. L. No. 95–555, 92 Stat. 2076 (1978), codified at 42 U.S.C. § 2000e(k).