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Symposium on the Fortieth Anniversary of *Mapp v. Ohio* - Foreword

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SYMPOSIUM ON THE FORTIETH ANNIVERSARY OF *MAPP V. OHIO*

FOREWORD

This issue of the law review is dedicated to Judge Jack G. Day, known to one and all as just Jack Day, who died on September 25, 2001, at the age of eighty-eight.

When the law review decided to publish this issue devoted to the fortieth anniversary of *Mapp v. Ohio*, which had its origins when Cleveland police, acting without a warrant, broke down the door at Dollree Mapp's house, I asked Jack to write his recollections of the case. Already fighting his last illness, Jack said he would try, and as always, he did. Jack's piece follows, short as he warned it would be, but packed with the best evidence of how the critical issue, whether or not the Fourth Amendment exclusionary rule should be applied to the states, came before the United States Supreme Court. In his usual self-deprecating way he sets forth his role getting the issue into the American and Ohio Civil Liberties Union's amicus brief which enabled the United States Supreme Court to reach out and reverse *Wolf v. Colorado*.

It's not surprising that one of Jack Day's heroes was John Adams, the great American lawyer and patriot and future president, who at great personal risk at the beginning of the revolution, defended the British soldiers charged in the Boston Massacre. Jack spent his career fighting discrimination, bigotry, and injustice. His causes demonstrated his belief that it is a lawyer's duty to protect everyone's civil and human rights, regardless of personal cost. He believed that the criminal law practice is the defense of due process and the Bill of Rights. He saw his duty as working to change the law when it was wrong.

Few lawyers are involved in one landmark Supreme Court case. Jack Day contributed to *Mapp* and was co-counsel with former Congressman Louis Stokes in *Terry v. Ohio*. He was a co-founder of the Ohio and Cleveland chapters of the American Civil Liberties Union and the National Association of Defense Lawyers in Criminal Cases

(now the National Association of Criminal Defense Lawyers). His passionate belief in the Constitution and the Bill of Rights led him to defend people charged with un-American activities during the McCarthy era, and he was an early civil rights pioneer. He participated in bringing the NAACP's desegregation lawsuit against the Cleveland Board of Education, which served as the pilot case for desegregation lawsuits in the North. In 1966, he received the NAACP's Distinguished Service Award. Wherever there was injustice, Jack Day labored to make America be America and live up to its ideals.

Jack Day was an excellent trial lawyer who could talk to jurors. He was also a teacher, scholar and a respected appellate judge for fifteen years. One of his former clerks said that he approached every case with equal enthusiasm and always asked his clerks two questions: "What's the law?" and "What's fair?" He never lost sight of what was fair. During his fifteen years as a judge, Jack was very attuned to and never succumbed to what he called "Judgitis": the judge who can't admit to a mistake; the judge who is sure that politics played a role in everyone else's appointment but not his; and the judge who is offended when old friends call him by his first name. At the celebration of his life (Jack Day had no use for organized religion and forbade his family and friends from holding a memorial service), he was celebrated for his knowledge, his self-effacing nature, his sense of humor, and salty language. He was a great teacher and mentor, and a great family man. He was an American patriot in the best sense of that word, and he was truly a *mensch* of the twentieth century and for all seasons.

LEWIS R. KATZ