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## Prologue

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### WHOSE TRIAL IS THIS ANYWAY?

It was an unusually long oral argument—two hours when most are only one. At noon on March 29, 1961, the nine members of the United States Supreme Court began listening to oral arguments in *Mapp v. Ohio*, a case that seemed to be challenging the constitutionality of Ohio's obscenity laws. Then, late in the arguments, Chief Justice Earl Warren leaned forward and asked Ohio's advocate the whereabouts of Dollree Mapp, the woman who had been sentenced to 1 to 7 years in the state penitentiary for possession of obscene materials. The prosecutor, Gertrude Bauer Mahon, answered, "She's never served time. She's out on bail."

Actually, Dollree Mapp was sitting in the spectators' section of the courtroom. She had traveled all the way from Cleveland to hear the arguments that would decide whether she would go to prison. But to prosecutor Mahon and the justices, she was a nonperson, just another spectator in that majestic setting. Dollree Mapp's thought was "whose trial is this anyway?"

Miss Mapp is one of the very few who have witnessed her own Bill of Rights case being decided by the highest tribunal in the land. But all the cases that have shaped our Constitution have names attached—from Barron to Near to Mapp to Francis to DeJonge to Doe and Roe. They are seemingly faceless names in a pageant, names known to constitutional scholars and lawyers as citations rather than as human beings testing their rights.

Constitutional law and interpretation meanders like an ancient river, winding its way through valleys, continuously cutting new channels. The chapters in this book chart some of these channels. What follows is a series of essays that reach beyond the scholarly casebooks and bring to life some of the human dramas which have helped determine what our Constitution means, reminding us that all landmark cases begin with people.

Justice Felix Frankfurter once observed that "the safeguards of liberty have frequently been forged in controversies involving not very nice people." Some were; some were not. The names of the people involved in these landmark cases appear on no hallowed honor roll; the facts of how they reached the high court are often forgotten, but these cases can