

Mapp v. Ohio / Excerpts from the Concurring Opinion—Answer Key

The following is an excerpt from Justice Black's concurring opinion:

I am still not persuaded that the Fourth Amendment, standing alone, would be enough to bar the introduction into evidence against an accused of papers and effects seized from him in violation of its commands. For the Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures. Reflection on the problem, however, in the light of cases coming before the Court since *Wolf*, has led me to conclude that when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule.

Questions to Consider

1. Does Justice Black agree or disagree with the exclusionary rule?

Justice Black agrees with the exclusionary rule.

2. How does his reasoning differ from that in the majority opinion?

His reasoning differs from that in the majority opinion in that he does not think that the Fourth Amendment provides adequate justification for the exclusionary rule but rather, believes that taken together, the Fourth and Fifth Amendments provide enough constitutional basis to justify it.