

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

The following are excerpts from Justice Clark's majority opinion:

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the 14th, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise . . . the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty." . . . in extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right.

[O]ur holding that the exclusionary rule is an essential part of both the Fourth and 14th Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches.

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." . . . In some cases this will undoubtedly be the result. But, as was said in *Elkins*, "there is another consideration—the imperative of judicial integrity." . . . The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.

Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

Questions to Consider

1. In the majority opinion, the justices refer to the "exclusionary rule." Under this rule, what has to be excluded from trial? Why?

[Under the "exclusionary rule," illegally obtained evidence must be excluded from trial. In this case, that refers to the pornographic materials obtained by an illegal search of Ms. Mapp's trunk.](#)

2. The majority identifies several reasons why evidence gained in an illegal search cannot legally be used against a defendant during trial. Why do they say that such a rule is constitutionally necessary?

The majority identifies several reasons why evidence gained in an illegal search cannot legally be used against a defendant during trial. They say that such a rule is constitutionally necessary to protect individuals because without it there would be no freedom from invasions of privacy, that direct sanctions against offending officers do not work in practice, and that judicial integrity requires the exclusion of tainted evidence.

3. The majority insists that to allow illegally seized evidence during trial would destroy the government. Explain.

The majority insists that to allow illegally seized evidence during trial would destroy the government on the grounds that if you allow the government to violate the law with no consequences, then people will have no respect for that government. When that happens, people will stop obeying the laws and the government will self-destruct.

4. What foundation of U.S. government is the Court referring to when it states, "Nothing can destroy a government more quickly than its . . . disregard of the charter of its own existence?"

When it states, "Nothing can destroy a government more quickly than its . . . disregard of the charter of its own existence," the Court is referring to a principle of democracy, the rule of law: Government officials must follow the laws.

5. Do you agree with the Court's statement "there is no war between the Constitution and common sense"? Explain.

Student answers will vary. When Justice Clark said, "There is no war between the constitution and common sense," he was saying that constitutional provisions protecting the rights of Americans reflect common sense. Some students will argue that most of what is in the Constitution is just good common sense given the structure and form of our government. Others will argue, however, that the Constitution is much more complex than "common sense" and that sometimes it is difficult to figure out what it means.