

June 6, 1961

Re: No. 236 -- Mapp v. Ohio

Dear Hugo:

At your suggestion, I borrowed a copy of the typed draft of your opinion in this case. I note that on pages 5-6 you state that:

"as I understand the Court's opinion in this case, we . . . now definitely hold that the Fifth Amendment's protection against enforced self-incrimination and the Fourth Amendment's protections against unreasonable searches and seizures have both been extended to the states through the Fourteenth Amendment."

As you know, I certainly would not wish you to change any statement of your understanding of the Court's opinion. In all fairness, however, as author of that opinion I must say that it was not my intention in drafting it to impliedly overrule Twining v. New Jersey. Actually, I do not believe it necessary for us to even consider the holding of that case in deciding this one. While I am personally satisfied that the Fourth Amendment, standing alone, is sufficient authority for a constitutional rule of exclusion, I drew upon the Fifth Amendment for analogous support of that conclusion, finding no reason in law to distinguish between coerced real evidence and coerced verbal evidence (cf. Rochin, 342 U.S. at 173) when both are secured prior to trial by methods which offend the Constitution. Testimonial compulsion at trial is, of course, not involved in this case. Hence we neither cite nor consider Twining.

Yours,

Mr. Justice Black

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