1. Perlman v. United States, 247 U.S. 7 (1918)

Petr had deposited certain material with clerk of ct in connection with his prior suit for patent infringement. Govt now gets ct's permission to use those documents in connection with a pending criminal action action petr. Petr wants his documents back and claims their use by the DA aviolates 4th Amend't ban v. unreasonable search and seizure and 5th Amend't ban v. self incrimination. HELD: no violation of either 4th or 5th amend't. petr had voluntarily parted with his documents and placed them in ct custody; no compulsion of any sort need be exerted on petr by DA in order to obtain the documents.
Weeks is cited (p. 14) by petr but ct says, in distinguishing it, that there an invasion of premises was involved. About that case the ct sd:

> "...[Weeks] is definite as to principles and as to seizures the Constitution forbids and those it permits."

[The quote referring to principles the Constitution forbids and permits could refer, I think, only to the exclusion rule--since the remainder of the quote covers what is and what is not an unreasonable search and seizure in the constitutional sense. This is so because 1) what the Constitutional ban v. US&S means and 2) the effect on admissibility were the only two questions in Weeks.

2. Stroud v. United States, 251 U.S. 15 (1919)

Petr was convicted of 1st degree murder and sentenced to death. He attacked his conviction on various ground, among them one that evidence used against him should not have been admitted because obtained by an unreasonable search and seizure (US&S). The facts: petr was a convict at Leavenworth; after the killing of the prison guard he wrote certain letters which tended to reflect his guilt; in accordance with the usual prison custom, the warden saw the letters; he turned them over to the DA and were used at the trial. Held: No US&S; the letters were voluntarily written, no threat or coercion was used to obtain them, nor were they seized without process. Weeks in cited (p. 21) as being the basis of petr's argument but the ct says that the facts here do not come under the Weeks doctrine.

[No helpful language.]

Essgee Company of China et al. v. United States, 262 U.S. 151 (1923)
Govt may use a subpoena duces tecum to require a corp to produce its documents for a GJ. The Silverthorne case does not mean that a corp is as protected by the 4th Amend't as is an individual; all that case means is that a corp's papers cannot be seized without a warrant, which has no bearing here since there was a valid duces tecum issued.

Schwartz v. Texas, 344 U.S. 199 (1952)
Telephone communications intercepted in violation of communication Act is ammissible in state ct proceeding even tho barred in federal cts. Support for this proposition is derived from Wolf (admitting US&S evid in state cts) and Weeks (which bars the evidence in federal cts. Aside from this citation of authority the case is irrelevant.

3. Silverthorne Lumber Co. et al. v. United States, 251 U.S. 385 (1920) [Holmes]

Petr refused to comply with a subpena ordering him to produce the documents and records requested by the DA to aid in a criminal action v. him. The police earlier had seized the documents by an US&S and, after making copies, returned them to petr. Later, the DA got the subpena to obtain the originals. Held: petr need not produce the documents.

(p. 391-392: "The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in

> in a more regular form to produce them; that the protection of the Constituion covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act. Weeks v. United States, 232 U.S. 383, to be sure, had established that laying the papers directly before the grand jury was unwarranted, but it is taken to mean only that two steps are require instead of one. In our opinion such is not the law. 232 U.S. 393. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Govemment's own wrong cannot be used by it in the way proposed."

was intended to be a rule of evidence, isn't it strange that it was not so described in any of the cases following immediately on the heels of Weeks.]

4. Gouled v. United States, 255 U.S. 298 (1921).

Petr was indicted for conspiracy to defraud the govt. and use of the mails to defraud. Certain papers were taken from his office by a govt investigator who had been invited there by petr (held: unlawful search and seizure when official enters by stealth to seize papers rather than by force). Other papers were seized under search warrants but they had evidentiary value only (held: DA cannot seize material whose retention by defendant would not be a potential harm to public i.e. this too was US&S). 5th Amend't privilege is also reliedon to bar admissibility.

Govt also argues that the issue of constitutional taking is collateral and cannot be raised at trial wven tho petr had raised it already by motion before trial. To this the Ct said (pp. 312-313):

> "....A rule of practice [i.e. cannot try a collateral issue of constitutionality of taking at trial] must not be allowed for any technical reason to prevail over a constituional right." (Emphasis supplied.)

[THE ONLY CONSTITUIONALRT THE CT COULD BE REFERRING TO IS THE RIGHT NOT TO HAVE ILLEGALLY SEIZED EVIDENCE ADMITTED AGAINST YOU I.E. EVIDENCE SEIZED IN VIOLATION OF 4th AMENDT]

5. AMOS V. UNITED STATES, 255 U.S. 313 (1921)

Petr convicted of violating whiskey laws. Revenue agents had searched his home when petr was absent after being admitted to the house by petr's wife. Petr first petitioned ct to recover the seized bottles of illicit whiskey; petitioned was denied. Later, petr moved to strike out evidence based on bottles. Held: US&S here; even if wife could waive petr's 4th Amend't rts, it is clear that no waiver was intended by wife.

at P. 317: "The contention that the constitutional rights of defendant were waived when his wife admitted to his home the Government officers, who came, without warrant, demanding permission to make seacch of it under Government auhtority cannot be entertained." (Emphasis supp,ied.)

[Again, note the language about constituional rts in this companion of Gouled--although admittedly the rts reffered to here could reasonably refer only to the rt to be free from anx US&S and not to the rt not to have the illegally seized evidence admitted against you.]

Burdeau v. McDowell, 256 U.S. 465 (1921).
Resp brought suit to recover documents now in the hands of petr DA who intends to show them to a grand jury in order to indict resp. Papers were unlawfully seized from resp but not by federal officers. Resp's employers had seized them and then turned them over to the DA. Held: 4th Amend't not violated by govt's use of papers. Weeks cited (pp. 474-5 but no relevant discussion--altho there is nice language about the 4th Amend't itself as a restraint on govt'al action.

p. 475: "It is manifest that there was no invasion of the security afforded by the Fourth Amendment aginst unreasonable search and seizure, as whatever wrong was done in was the act of individuals taking the property ofanother."

[DOESN'T THIS SUGGEST THAT 4'TH AMEND'T MERELY FORBIDS THE TAKING OF EVIDENCE BY THE GOVT AND NOT THE USE OF THE EVIDENCE ONCE OBTAINED UNLAWFULLY I.E. BY WHAT WOULD AMOUNT TO AN UN* REASONABLE SEARCH AND SEIZURE IF THE GOVT HAD DONE IT. IF THIS IS SO, THEN I SHOULD THINK THAT THE WEEKS' EXCLUSIONARY RULE **WHICH RELATES TO ADMISSION OF EVIDENCE AND NOT IS SEIZURE** IS NOT A CONSTITUTIONAL MANDATE**BECAUSE IF IT WERE, SHOULDN'T ALL UNLAWFULLY SEIZED EVIDENCE BE EXCLUDED.? PERHAPS THE ANSWER TO THIS IS THAT THE $TH AMEND'T BANS ADMISSION OF EVIDENCE SEIZED BY AN UNLAWFUL SEARCH AND SEIZURE**AND SUCH AN UNLAWFUL SEARCH AND SEIZURE IS POSSIBLE ONLY WHEN THE ACTS ARE PERFORMED BY A GOVTAL AUTHORITY.]

7. BILOKUMSKY V. TOD, 263 U.S. 149 (1923)

Alien, contesting his deportation, argues that his interrogation, in which he admitted his alienage, constituted an US&S. Ct rejects the claim; Siverthorne & Gouled are cited (p. 155) but the context and language bear no relevance to the basic problem.

8. Wan v. United States, 266 U.S. 1 (1924)

Petr's confession was held coerced; confession did not occur until after a week of intensive interrogation when petr was quite ill. Ct. cites Weeks, Boyd and other such cases in a footnote after a Compare signal (at p. 17).

No direct relevance to our problem excpet that coerced confessions are excluded on a constitutional basis and not as a result of a rule of evidence; hence the Ct's citation to Weeks and the other cases might suggest that there too, the illegally seized evidence is excluded because of a constitutional mandate, not a rule of evidence.

Abel v. UNITEd States, 362 U.S. 217 (1960)
Def was validly arrested by INS who searched his hotel room for evidence of alienage. Evidence found was allowed for admission.

> [If the search was invalid] then whatever the nature of the seized articles, and however proper it would have been to seize them during a valid search, they should have been suppressed as the fruits of activity in violation of the 4th Amend. [citing Weeks]
>
> Good reason must be shown for prhobiting the gov't from using relevant, otherwise admissible, evidence. There is excellent reason for disallowing its use in the case of evidence, though relevant, which is seized by the gov't in violation of the 4th Amend to the Constitution. [quoting from Weeks]
>
> [Since the search was valid] we can see no rational basis for excluding these relevant items from tria: no wrongdoing police officer would thereby be indirectly condemned, for there were no such wrong-doers; the Fourth Amend would not thereby be enforced, for no illegal search or seizure was made; the Ct would be lending its aid to no lawless gov't action, for none occurred.

Elkins v. United States, 364 U.S. 206 (1960)
Evidence illegally seized by st officers and turned over to feds. Held inadmissible. Since 4th Amend is applicable to states (Wolf), the Weeks rule requires that such evidence be supressed in fed cts.

[NO HELPFUL LANGUAGE AS TO WHETHER THE RULE IS EVIDENTIARY OR CONSTITUTIONAL BUT IT IS ALWAYS REFERRED TO AS "THE WEEKS RULE." WOULD NOT THIS INDICATE THAT IT IS ONLY EVIDENTIARY?]

N.H. Fire Ins. Co. v. Scanlon, 362 U.S. 404 (1960)
Irelevant case. Suit in DCt to obtain property seized by CIR for tax lien. Ct held property not in ct nor subject to its orders, as is illegally obtained evidence.

Wilson v. Schnettler, 365 U.S. 381 (1961)
Irrelevant case. Def had sought inj from DCt against fed officer testifying in st ct as to what had been found on def. Def failed to allege that his arrest by feds had been illegal, therefore, motion denied.

Walder v. United States, 347 U.S. 62 (1954)
Def convicted for possession of narcotics. Heroin was obtained by US&S and motion to supress was granted. On trial deft denied ever having heroin. Gov't allowed to use illegal evidence to impeach def.

> The gov't cannot violate the Fourth Amendment . . . and use the fruits of such unlawful conduct to secure a conviction. [citing Weeks]
>
> It is one thing to say that the Gov't cannot make an affirmative use of the evidnece unlawfully obtained. It is quite another to say that the def can turn the illegal method by which evidence in the Gov't's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths. Such an extension of the Weeks doctrine would be a perversion of the 4th Amend.

Irvine v. Calif., 347 U.S. 128 (1954)
Police bugged deft's home to obtain book-making evidence. While evidence obtained by US&S, use in state ct is O.K.

> But Wolf . . . declined to make the subsidiary procedural and evidentiary doctrines developed by the federal courts limitations on the states.
>
> Whether to exclude illegally obtained evidence in federal trials is left largely to our discretion, for admissibility of evidence is governed "by the principles of the common law as they may be interpreted by the courts of the U.S. in the light of reason and experience."

[INDICATES EXCLUSIONARY RULE IS EVIDENTIARY, NOT CONSTITUTIONAL.]

Rea v. United States, 350 U.S. 214 (1956)
Evidence seized by US&S was basis for federal indictment. Motion to supress was granted and case dismissed. Then st brought charges. Def sought inj in fed ct against FBI agent testifying or transfer of evidence to st ct. Ct refused to consider Weeks issue--held that FBI agent had violated F.R.Crim.P and in supervisory power he could be prevented from testifying.

Silverman v. United States, 365 U.S. 505 (1961)
Irrevelant case. Ct held that listening to deft's conversations via spike mike was US&S and therefore the evidence was excludable. No mention of what Weeks is.

Grunewald v. United States, 353 U.S. 391 (1957)
Irrelevant case. Def was indicted for attempting to influence testimony before GJ. On stand, def denied certain activities and gov't sought to impeach by showing that before GJ def had pleaded 5th Amend.

Draper v. United States, 358 U.S. 326 (1959)
Irrelevant case. Ct held narcotics agent had probable cause to arrest def and therefore search of def was valid.

9. Agnello v. United States, 269 U.S. 20 (1925).

Petr was convicted of conspiring to violate the Harrison Act by agreeing to sell cocaine without having registered or paid a tax. After he was arrested, police went to his home and seized a can of cocaine; police had no warrant. Held: US&S v. petr and admission of seized evidence violates 5th Amend't.

(at p. 33-34) "It is wel settled that, when properly invoked, the Fifth Amendment protects every person from incrimination by the use of evidence obtained through search and seizure made in violation of his rights under the Fourth Amendment." [citing Boyd, Weeks and other such cases.]

[This language hurts our position. It assumes that the exclusion rule rests on the 5th, not the 4th Amend't; hence, it may be inferred that if admission of evidence illegally seized does not violate the 5th admen't--as in Irvine--it would be admissible. But is this view correct? I don't think Weeks' rationale was based on the 5th Amend't. This language does seem to stem from Boyd's obliteration of the dividing line between the 2 amendments. Also, it might be due to the fact that in those cases considered by the Ct, the 5th amend't and 4th Amend't were always involved together. Check this!]

10. McGuire v. United States, 273 U.S. 95 (1927)

Petr unsuccessfully challenged his conviction for unlawful possession of whiskey. Police seized part of his liquor under a valid search warrant; they destroyed the rest. This destruction was unauthorized and presumably would be a trespass. Held: destruction of other liquor does not taint the valid seizure and thus the seized liquor is admissible.

(at p. 99): "The use by prosecuting officers of evidence illegally acquired by others does not necessarily violate the Constitution nor affect its admissibility! Cf. ...Weeks v. ..."

[The above language seems to distinguish between constitutionality of acts and admissibility of evidence.]

11. Marron v. United States, 275 U.S. 192 (1927)

Petr convicted of violating Prohibition Act. His place was raided under a lwful search warrant but he wasn't there at the time. Cops seized illegal liquor and books, ledgers etc. However, one of his confederates was there at the time; and he was lawfully arrested. Ct applies familiar doctrine that as incident to a lawful arrest, premises may be searched and items seized.

(at p.194: "It has long been settled that the Fifth Amendment protects every person against incrimination by the use of evidence obtained through search or seizure made in violation of his rights under the Fourth Amendment. Agnello v. United States, ..cite.., and cases cited."

United States v. Lee, 274 U.S. 559 (1927)
U.S. Coast Guard cutter intercepts rum-runner outside 12-mile limit, brings it into port where it is searched. Held: No unlawful S&S; boat is like a car, it can be intercepted and searched if there is probable cause that it is being used for an unlawful purpose.

Segurola v. United States, 275 U.S. 107 (1927)
Def waived any objection on 4th Amend't grounds to admission of seized liquor; he did not protest until the trial and until after testimony (unobjected to) about how def was arrested and the contraband was seized.

Gambino v. United States, 275 U.S. 310 (1927)
NY State troopers stop car w/o probable cause and seized contraband liquor. Held, US&S and evid barred from fed cts; tho state officers, cops thought they were acting to enforce federal law.

12. Go-Bart v. United States, 282 U.S. 344 (1931)
DA held enjoined from using papers illegally seized fro petr's office. Officers had warrant for arrest but no search warrant and their search consisted from rummaging about the office rather than--as in Marron--seizing something that was visible.

Importance of 4th Amend't is emphasized (p. 357) but no language whixh bears on explanation of exclusion rule; opinion concerned mainly with whether or not the search and seizure was unreasonalbe.

13. United States v. Lefkowitz, 285 U.S. 452 (1932)

Resp was arrested in his office under valid arrest warrant. No search warrant tho--but officers searched office anyway with fine tooth comb and seized numerous papers. Held: 1) Seizure of papers on person of resp was a valid incident of the valid arrest; 2) extensive search of office was invalid because a) papers themselves were not offensive nor an integral part of the illegal activity, as in Marron b) and no offense was being committed on thd premises as in Marron --nuisance there, none here. Go-Bart followed, Marron distinguished.

[No language or discussion re exclusion rule--but quote from Boyd (which should be reread, indicates 4th & 5th may be basis for exclusion of illegally seized evidence]

Cogen v. United States, 278 U.S. 221 (1929)
This case deals solely with the question of whether the DJ's denial of petr's motion to suppress evidence in advance of trial is a final, and therefore appealable, order. Held, no final order [Not so for separate proceedings to obtain return of evidence.] Irrelevant case

26. Taylor v. United States, 286 U.S. 1 (1932)
cops had received complaints for over a year about whiskey in a garage. While passing the premises one night they decided to investigate. They detected the odor of whiskey from the outside and were able to see packing cases inside. They broke open the locks and entered, thereupon seizing 120 whiskey cases and arresting the owner ofthe garage who lived next store Held: US&S; conviction reversed. Cops had abundant opportunity to obtain a warrant but failed to do so.
[This case was authority for Trupiano and so presumably is a dead letter by virtue of Rabinowitz, altho ct distinguished Taylor in the Rabinowitz case. Conclusion: Taylor is good law only on its facts; it does not stand for any general proposition that no search is reasonable if a warrant could have been obtainedbecause that is theproposition rejected by Rabinowitz.]

15. Byars v. United States, 273 U.S. 28 (1927)

Warrant issued by state judge was clearly invalid under fed. law because affidavit on which it was based did not contain any info to serve as a basis for belief of law violation. Federal officer went along on search and held to have participated therein in his official capacity. Held, counterfeit whiskey stamps seized in raid are not admissible in evidence.

(p. 29) "Nor is it material that the search was successful in revealing evidence of a violation of a federal statute. A search prosecuted in violation of the Constitution is not made lawful by what it brings to light; and the doctrine has never been recognized by this Court, nor can it be tolerated under our constituioal system, that evidences of crime discovered by a federal o ficer in making a search without lawful warrant may be used against the victim of the unlawful search where a timely challenge has been interposed." [citing Weeks etc.] (emphasis supplied.)

(p. 33) "We do not question the right of the federal government to avail itself of evidence improperly seized by state officers operating entirely upon their own account. But the rule is otherwise when the federal government itself, through its agents acting as such, participates in the wrongful search and seizure. To hold the contrary would be to disregard the plain spirit and purpose of the constitutional prohibitions intended to secure the people against unauthorized official action. The Fo rth Amendment was adopted in view of long misuse of power in the matter of searches and seizure both in England and the colonies; and the assurance againstthe revival of it, so carefully embodied in the fundamental law, is not to be impaired by judicial sanction of equivocal methods, which, regarded superficially, may seem to escape the challenge of illeglity but which, in reality, strike at the substance of the constitutional right."

16. Palko v. Connecticut, 302 U.S. 319 (1937).
Ordering a new trial after acquittal of def, because of errors of law, does not violate 14th Amend'ts due process clause even tho it may constitute double jeapordy in violation of the 5th Amend't. Of course 5th Amend't does not apply to the states.
[Weeks cited in offhand manner which bears no relevance to instant problem]

Goldstein v. United States, 316 U.S. 114 (1942)
Irrelevant case. Holds that evidence induced by divulgence of intercepted phone messages, this being a violation of the Communications Act, is nevertheless admissible against one who was not a party to the conversations.

McNabb v. United States, 318 U.S. 332 (1943)
Ct invokes its supervisory power over federal cts to knock out conviction where defs were not promptly arraigned before a committing magistrate; confession obtained during unlawful detenition is not admissible--regardless of issue of coercion of confession--and thus error in conduct of trial.

[Significantly, in citing the Ct's supervisory power over inferior federal tribunals, FF did not cite the Weeks case. That case was cited for the porposition that evidence obtained in violation of constitutional liberties cannot be admitted at trial.]

25. Carroll v. United States, 267 U.S. 132 (1925)
Search of auto and seizure of liquor therein without a warrant is not unreasonable if made on probable cause. No violation of 4th Amend't.

NATHANSON V. UNITED STATES, 290 U.S. 41 (1933)
search warrant held invalid because no facts given in affidavit on which warrant issued to support allegation that illegal liquor was on premises intended to be searched.

[No helpful language; no relevant discussion]

Feldman v. United States, 322 U.S. 487 (1944)
5th Amend't does not bar admissiion in evidence of testimony adduced by state authorities in a separate proceeding under threat of punishment for refusal to answer. Irrelevant case.

15. Malinski v. New York, 324 U.S. 401 (1945)

Coerced confession case; reversed as to one def, aff'd as to the other. Casual footnote reference to Weeks in Rutledge's partial dissent (p.422)--no relevance to instant problem.

Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946)
A subpoena duces tecum issued by The Fair Labor Standards Act administrator may be judicially enforced without violating 4th or 4th Amend's [corps involved here] Irrelevant case.

18. Davis v. United States, 328 U.S. 582 (1946)
Def convicted of unlawful possession of gasoline ration coupons. Cops had "talked def into" opening up a room at the service station and surrendering the coupons which were used as evidence against him. Held DJ's finding that def had "consented" to S&S is not erroneous as a matter of law. [e.g. during business hours; at place of business; claim made as of right because documents sought were public prop'y] Hence ct need not pass on "reasonableness" of S&S if def had not given his consent.

[Weeks is cited in opinion & dissent at various points but not relevant to main problem here]

19. Harris v. United States, 331 U.S. 145 (1947)
conviction for unlawful possession of draft registration cards. police had arrest warrant charging mail fraud; arrest made at def's apartment. No search warrant but extensive search of apt anyway, which revealed the draft cards. Held: admission of evidence OK since search and seizure were madepursuant to a lawful arrest. (vigorous dissents--claiming ancillary search and seizure went far beyond the bounds of reasonablemess; shouldhave had a search warrant at least- altho some doubt if this would be ok since the only warrant they could have obtained would not have mentioned draft cards as an object of the search.)

[no helful language or discussion in majority opinion; FF's dissent cites Weeks (p. 159) and refers to "the federal rule established in" that case. The tone suggests a rule adopted in the discretion of the Court, not a necessary consequence of the 4th Amend't.]

Composition of Weeks Court (1913-1914)

	Left Court
White, C.J.	1921
McKenna	1925
Holmes	1932
Day	1922
Lurton (apparently took no part in Weeks case because of illness; see note on frontespiece of 232 U.S.)	1914
Hughes	1916 1930-41
Van Devanter	1937
Lamar	1916
Pitney	1922

Can we show that the first hint that Weeks' exclusion rule was a rule of evidence and not a constitutional mandate came about after the membership of the Weeks ct' was completely gone? And before that complete turnover whatever references there were to the Weeks' rule were cast in terms, explicit or ambigous, of a constituional rule?

21. Johnson v. United States, 333 U.S. 10 (1948)
police received tip that opium was being smoked in a hotel room and they later smelled the odor in the hotel corrdior. Without arrest warrant or search warrant they entered the room, xxixx xarrested the occupant, and searched for, and later seized, opium smoking equipment. Held: no lawful arrest to justify incidental search; and no warran t to justify seizure.

[Weeks cited in footnote at p. 17; no relevant discussion but merely repeats a good quote from Gouled]

20. Bute v. Illinois, 333 U.S. 640 (1948)
def in state trial pleaded guilty w/o aid of counsel. Held: due process clause of 14th Amend't does not require that a def. in a non-capital case be given counsel.

[irrelevant citation of Weeks at p. 658]

24. Trupiano v. United States, 334 U.S. 699 (1948)
def was operating an illegal still at the time of the arrest. the cops knew of the still and its operations for at least three weeks thru an informer (owner of the farm where the still was located) and a planted agent (who was working for the bootleggers). Held: the arrest of one def who was operating the still at the time was valid even tho there was no warrant for his arrest; this is so because he was in the act of committing a felony at the time and this act was visible to the revenue agents who were watching from outsied the barn wheree the still was located. But the seizure of the contraband held unreasonable even tho the arrest was lawful. The doctrine permitting seizures w/o warrant incident to a lawful arrest should be construed narrowly; it should not extend to a situation where, as here, the existence of the constraband was known for a long time and a valid search warrant could have been lawfully obtained.

[Query: is the inarticulate premise of this case that Weeks' exclusilnary rule is a constitutional mandate? Black said this in his Rabinowitz concurrence; better check this]

22. McDonald v. United States, 335 U.S. 451 (1948).
numbers game in rooming house room. police had been keeping the house under surveillance and, when they heard an adding machine in use, broke into the house and peeked into defs' room from the hall; no arrest or search warrant. Held: US&S--seized lottery materials must be returned to def; conviction upset.

["And the law provides as a sanction against the flouting of this constitutional safeguard the suppression of evidence secured as a result of the violation, when it is tendered in a federal court." Weeks wtc. ... (at p. 453) ← rais is in Douglas' Opinion for Court,

United States v. Wallace & Tiernan Co., 336 U.S. 793 (1949)
Supbena duces tecum served on def-corp for production of documents before a grand jury investigating possible antitrust violations. Grand jury later found to have been illegally constituted sicne women were excluded. Resp argued that xxixxxxxx use of documents before invalid grand jury constituted an US&S and thus the documents could not be called for later before a validly consituted grand jury. The arg't rested on Silverthorne and the Court, per Black, J., rejected it.

The Silverthorne doctrine, barring forever the use of the unlawfully seized documents, "is an extraordinary sanction, judicially i ... imposed, to limit searches and seizures to those conducted in strict compliance with the commands of the Fourth Amendment." Then says Black, other cases in this Court have applied the same rule, and he cites Weeks and its progeny. IN SHORT, BLACK CLEARLY HAS DESCRIBED THE EXCLSUION RULE AS ONE OF JUDICIAL ORIGIN TO XXX ENFORCE THE 4th Amend't--HE WAS WRITING FOR A UNANIMOUS COURT.

Stein v. New York, 346 U.S. 156 (1953)
Def argues that when state police kep him incommunicado and dealyed ~~xxxxxxx~~ arraignment, any confession thereby obtained was automatically excluded. In rejecting this contention the Court says: (at p. 187)

> "Petitioners confuse the more rigig rule of exclusion which, in the excercise of our supervisory power, we have promulgated for the federal courts with the more limited requirements of the Fourteenth Amednment." [Inter alia, Weeks and Wolf are cited with a Compare signal.]

On Lee v. United States, 343 U.S. 747 (1952)
Ct admits cop's testimony as to conversation between def and "plant" who carried mike on his person. In writing for the Court, Jackson, J. said:

> P. 755: "In order that constitutional or statutory rights may not be undermined, this Court has on occasion evolved or adopted from the practice of other courts exclusionary rules of evidence going beyond the requirements of the constitutional or statutory provision. McNabb v. United States, supra; Weeks v. United States, 232 U.S. 383 [illegible]"

23. United States v. Rabinowitz, 339 U.S. 56 (1950)
def arrested under valid arrest warrant and his one room office was searched, revealing numerous forged stamps. Although there was ample time for the ~~xx~~ police to obtain a search warrant, the Ct held the search and seizure to be a reasonable incident of a lawful arrest. Vigorous FF dissent. [BLACK CONCURS WITH A REITERATION OF HIS WOLF VIEW THAT THE WEEKS EXCLUSIONARY RULE IS A RULE OF EVIDENCE FOR FEDERAL CTS AND NOT A CONSTUTITIONAL MANDATE; TRUPIANO ENTERS INTO HIS DISCUSSION]

United States v. Jeffers, 342 U.S. 48 (1951). [Op. per CLARK, J.]
Police suspected narcotics were being used in a hotel room. Without a search or arrest warrant, cops went into the room. They ~~x~~ seized narcotics ~~xxxxxxxxxxxxxxxxxxxx~~ after entering the hotel room, ~~xlzter~~ arrested the party who stashed the drugs there. Held, US&S at p. 53-54: "We are of the opinion that Congress, in abrogating property rights in such goods, merely intended to aid in their forfeiture and thereby prevent the spread of the traffic in drugs rather than to abolish the exclusionary rule formulated by the courts in furtherance of the high purposes of the Fourth Amendment. See In re Fried, 161 F.2d 453 (1947).

[THIS LANGUAGE HURTS US BECAUSE IT SAYS THE EXCLUSIONARY RULE IS COURT MADE AND IMPLIES CONGRESS CAN CHANGE IT, AND PARTICULARLY, BECAUSE CLARK, J. SAID IT.]

Breithaupt v. Abram, 352 U.S. 432 (1957)
Def was involved in collision and knowked unconscious. While in that state the police took a blood sample and used it to base a ~~xx~~ manslaughter conviction. Def claimed taking was US&S and introduction violated 5th Amend. Ct said Wolf answered these claims in negative.

[WEEKS CITED BUT NO HELPFUL LANGUAGE]

Olmstead v. [illegible]. UNITED STATES, 277 U.S. 438 (1928)
Wiretapping does not consitute an US&S within the meaning of the 4th Amend't; 5-4 decision.

EXCELLENT LANGUAGE IN SUPPORT OF IDEA THAT WEEKS' EXCLUSIONARY RUEL IS CONSTITUTIONAL MANDATE:

pp. 462-463: Court Opinion

"...Admission of the paper [seized in Gouled v. United States] was considered a violation of the Fourth Amendment.

Agnello v. United States, 269 U.S. 20, held that the admission in evidence of contraband narcotics found in defendant's houde, several blocks distant from the placd of arrest, after his arrest, and seized there without a warrant. Under such circumstances the seizure could not be justified as incidental to the arrest.

....

The striking outcome of the Weeks case and those which followed it was the sweeping declaration that the Fourth Amendment, although not referring to or limiting the use of evidence in courts, really forbade its introduction if obtained by government officers through a violation of the Amendment. Theretofore many had supposed that under the ordinary common law rules, if the tendered evidence was pertinent, the method of obtaining it was unimportant...But in the Weeks case and those which followed, this Court decided with great emphasis, and established as the law for the federal courts, that the protection of the Fourth Amendment would be much impaired unless it was held that not only was the official violator of the rights under the Amendment subject to action at the suit of the injured defendant, but also that the evide ce thereby obtained could not be received."

Majority	Dissenters
Taft, C.J.	Holmes
Van Devanter	Brandies
McReynolds	Stone
Sutherland	Butler
Sanford	