"This Court has ever since [Weeks was decided in 1914] required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and *constitutionally required*—even if judicially implied—deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to a 'form of words.'"[445] It was a necessary step in the application of the rule to the states to find that the rule was of constitutional origin rather than a result of an exercise of the Court's supervisory power over the lower federal courts, because the latter could not constitutionally be extended to the state courts.[446] In fact, in *Wolf v. Colorado*,[447] in declining to extend the exclusionary rule to the states, Justice Frankfurter seemed to find the rule to be based on the Court's supervisory powers. *Mapp* establishes that the rule is of constitutional origin, but this does not necessarily establish that it is immune to statutory revision.

Suggestions appear in a number of cases, including *Weeks*, to the effect that admission of illegally seized evidence is itself unconstitutional.[448] These suggestions were often combined with a rationale emphasizing "judicial integrity" as a reason to reject the prof-

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[445] Mapp v. Ohio, 367 U.S. 643, 648 (1961) (emphasis added).

[446] An example of an exclusionary rule not based on constitutional grounds may be found in McNabb v. United States, 318 U.S. 332 (1943), and Mallory v. United States, 354 U.S. 449 (1957), in which the Court enforced a requirement that arrestees be promptly presented to a magistrate by holding that incriminating admissions obtained during the period beyond a reasonable time for presentation would be inadmissible. The rule was not extended to the States, *cf.* Culombe v. Connecticut, 367 U.S. 568, 598–602 (1961), but the Court's resort to the self-incrimination clause in reviewing confessions made such application irrelevant in most cases in any event. For an example of a transmutation of a supervisory rule into a constitutional rule, *see* McCarthy v. United States, 394 U.S. 459 (1969), and Boykin v. Alabama, 395 U.S. 238 (1969).

[447] *Weeks* "was not derived from the explicit requirements of the Fourth Amendment . . . . The decision was a matter of judicial implication." 338 U.S. 25, 28 (1949). Justice Black was more explicit. "I agree with what appears to be a plain implication of the Court's opinion that the federal exclusionary rule is not a command of the Fourth Amendment but is a judicially created rule of evidence which Congress might negate." Id. at 39–40. He continued to adhere to the supervisory power basis in strictly search-and-seizure cases, Berger v. New York, 388 U.S. 41, 76 (1967) (dissenting), except where self-incrimination values were present. Mapp v. Ohio, 367 U.S. 643, 661 (1961) (concurring). *See also* id. at 678 (Justice Harlan dissenting); Elkins v. United States, 364 U.S. 206, 216 (1960) (Justice Stewart for the Court).

[448] "The tendency of those who execute the criminal laws of the country to obtain convictions by means of unlawful searches and enforced confessions . . . should find no sanction in the judgment of the courts which are charged at all times with the support of the Constitution . . . ." Weeks v. United States, 232 U.S. 383, 392 (1914). In Mapp v. Ohio, 367 U.S. 643, 655, 657 (1961), Justice Clark maintained that "the Fourth Amendment include[s] the exclusion of the evidence seized in violation of its provisions" and that it, and the Fifth Amendment with regard to confessions "assures . . . that no man is to be convicted on unconstitutional evidence." In Terry v. Ohio, 392 U.S. 1, 12, 13 (1968), Chief Justice Warren wrote: "Courts which sit under our Constitution cannot and will not be made party to lawless invasions