

THE FRAMERS’ FOURTH AMENDMENT
EXCLUSIONARY RULE:
THE MOUNTING EVIDENCE

15 NEV. L.J. 42

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TABLE S1.¹ PRE-FRAMING PUBLICATIONS CIRCULATING IN AMERICA THAT DISCUSSED EXCLUSION

Title, Quotes, and Comments	Copies ²	Viewed ³
Hargrave’s <i>State Trials</i> 4 th edition (containing <i>Entick v. Carrington</i>) “It is very certain that the law obligeth no man to accuse himself . . . and it should seem, that search for evidence is disallowed upon the same principle.” Entick v. Carrington, 11 State Trials 313 (decided in 1765). <i>Noteworthy Provenances:</i> Owned by Kent, John Purviance, . . . Apparently accessible to Alexander Hamilton (in his post-Constitution law practice) and the first panel of the U.S. Supreme Court	123	70 (57%)
<i>Wilson’s Reports of cases argued and adjudged in the King’s Courts</i> (1770) “Nothing can be more unjust in itself than that the proof of a man’s guilt shall be extracted from his own bosom,” in specific reference to the seizure of Wilkes’s <i>papers</i> . Wilkes v. Wood, (1763) 98 Eng. Rep. 489 (C.P.) 490. <i>Noteworthy Provenances:</i> Robert Treat Paine, Alexander Hamilton, John Worthington, Thomas Jefferson	18	0
Candor’s <i>Letter to the Public Advertiser</i> , 2d ed. (1764) Seizing papers is “the most odious and infamous act, of the worst sort of inquisitions, by the worst sort of men, in the most enslaved countries: It is, in short, putting a man to the torture, and forcing him to give evidence against himself.” <i>Noteworthy Provenances:</i> Owned by George Washington, Robert Livingston, Rufus King, Landon Carter, Samuel Chase.	36	18 (50%)
Father of Candor’s <i>Letter Concerning Libels</i> (all seven editions) (1764–1770) “The laws of England, are so tender to every man accused, even of capital crimes, that they do not permit him to be put to torture to extort a confession, nor oblige him to answer a question that will tend to accuse himself. How then can it be supposed, that . . . any common fellows under a general warrant . . . [may] seize and carry off all his papers; and then at his trial produce these papers . . . in evidence against himself . . . This would be making a man give evidence against and accuse himself, with a vengeance. And this is to be endured, because the prosecutor wants other sufficient proof, and might be traduced for acting groundlessly, if he could not get it; and because he does it truly for the sake of collecting evidence.” <i>Noteworthy Provenances:</i> George Washington, Robert Livingston, Rufus King, Landon Carter, Samuel Chase, apparently by Benjamin Franklin.	177	112 (63%)

Title, Quotes, and Comments	Copies ²	Viewed ³
<p>Earl of Temple's <i>Letter On the Seizure of Papers</i> (1764)</p> <p>“When a person is brought upon his trial for any offence, he is not bound, nor will any court suffer him to give evidence against himself; but by [a nonexclusion rule], if allowed, though a man’s tongue is not permitted to bear testimony against him, his thoughts are to rise in judgment, and to be produced as witnesses to prove the charge. A man’s WRITINGS lying in his closet, NOT PUBLISHED, are no more than his thoughts When ALL a man’s PAPERS are seized, he is at the mercy of his prosecutors.”</p> <p>“The rack itself is hardly a more inhuman mode of accusation, or tyrannical method of proof. Both are equally against the first laws of nature; and nothing can be more unlike the benign spirit of our happy constitution.”</p> <p><i>Noteworthy Provenances:</i> Possibly John Brown, the founder of Brown University, William Plumer, possibly Benjamin Franklin.</p>	31	18 (58%)
<p>Earl of Temple's <i>Letter from Albemarle Street</i> (1764)</p> <p>Complaining that pursuant to a nameless general warrant, “PAPERS [were] put into a sack, and carried to the Secretaries-Office . . . to make the offender a witness against himself, and to condemn him out of his own cabinet.” Such practices were comparable to the abuses of the infamous Star Chamber.</p>	15	4 (27%)
<p>William Meredith's <i>Reply to the Defence of the Majority</i> (1764)</p> <p>“[O]f all those Laws, under which we live and are protected, there is none more sacred than that Law, which says, that no Man shall be obliged to furnish Evidence against Himself. In Felony, you may search for stolen Goods, but not for other Evidence against the Thief. In Treason, you may search for and seize Papers, in order to discover Treason, <i>but cannot use those Papers in Evidence</i> against the Man in whose Custody they are found.”</p> <p><i>Noteworthy Provenances:</i> Landon Carter, apparently by Benjamin Franklin.</p>	41	17 (41%)
<i>Totals:</i>	441	239 (54%)

¹ Cite as 15 NEV. L.J. 42, Supp. tbl.S1.

² Number of original copies known to exist in American rare book libraries.

³ Number viewed or observed by researcher (and percentage of known).