The *Houle* decision is consistent with the view of the majority of lower courts and reaffirms the fourth amendment's role as protector of the home against unreasonable intrusions. Supreme Court dicta, however, conflict on the issue,[36] leading some commentators to speculate in light of *Watson* and *Santana*[37] that the Court will abolish the public-private distinction and the warrant requirement for in-home arrests.[38] The question may be resolved soon because the Supreme Court has granted certiorari on the issue in another case.[39]

URBAN REDEVELOPMENT—HOUSING—UNIFORM RELOCATION ACT DOES NOT APPLY TO PRIVATE DEVELOPER WITH EMINENT DOMAIN POWERS. *Young v. Harris*, 599 F.2d 870 (8th Cir. 1979). Plaintiffs[1] sought a preliminary injunction to restrain work in a planned

36. *Compare* United States v. Santana, 427 U.S. 38, 43 (1976) (one may not escape arrest by fleeing to private place) *and* Gerstein v. Pugh, 420 U.S. 103, 113 (1975) (Court has never invalidated an arrest based on probable cause because officers failed to obtain warrant), *with* United States v. Santana, 427 U.S. at 45 (Marshall, J., dissenting) ("in the absence of exigent circumstances, the police may not arrest a suspect without a warrant") *and* McCray v. Illinois, 386 U.S. 300, 314 (1967) (Douglas, J., dissenting) ("normally an arrest should be made only on a warrant issued by a magistrate on a showing of 'probable cause, supported by oath or affirmation,' as required by the Fourth Amendment").

37. *See* notes 13-16 *supra* and accompanying text.

38. The *Santana* decision constituted "a significant enlargement of the area available for warrantless arrests. By grafting *Katz* onto *Watson*, the majority had allowed the police freedom to effect warrantless arrests in private areas so long as the suspect was in open view." Comment, *Forcible Entry to Effect a Warrantless Arrest—The Eroding Protection of the Castle*, 82 DICK. L. REV. 167, 178 (1977). The Supreme Court decisions indicate "that since, historically, probable cause and not a warrant has been the standard for a valid arrest, the logical result for at least four members of the Court is that an arrest warrant is not required even for an arrest on private premises." Comment, *supra* note 18, at 788.

39. People v. Payton, 45 N.Y.2d 300, 380 N.E.2d 224, 408 N.Y.S.2d 395 (1978), *prob. juris. noted sub nom.* Riddick v. New York, 441 U.S. 930 (1979). The Supreme Court has accepted the *Riddick* case to address the issue of warrantless in-home arrests in the absence of exigent circumstances. If the *Riddick* case is upheld, the *Houle* decision might still stand because of the difference in the method of entry. In *Houle* the police broke the door down without identifying themselves and demanding admittance. In *Riddick* police were peaceably admitted by defendant's child.

1. Plaintiffs represented "a class of persons who are present and former lower-income, predominantly black residents" in the redevelopment area located in St. Louis, Missouri. Young v. Harris, 599 F.2d 870, 872 (8th Cir. 1979).

redevelopment area,[2] alleging violations of various federal statutes,[3] including the Uniform Relocation Act (URA).[4] Defendants included the Secretary of Housing and Urban Development (HUD), the City of St. Louis, and Pershing Redevelopment Corporation,[5] all participants in the redevelopment project.[6] Pershing Redevelopment Corporation secured private financing commitments for the redevelopment project, the only aspect of federal assistance being mortgages insured by HUD.[7] Pursuant to the Missouri urban redevelopment statute,[8] the City of St. Louis and the Pershing Redevelopment Corporation agreed[9] that the City would perform certain municipal services[10] and the Developer

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2. The court described the area as follows:

> The 106-acre area previously had a relatively high concentration of residential dwellings, but many persons left the area because of its deteriorating condition and high crime rate. Many of the buildings were abandoned, vacant, and vandalized. Prior to the present developer's activity, the area had degenerated to the point that only 500 dwelling units remained occupied. The current plan of development calls for over 2,000 completely rehabilitated and new units . . . .

Id. at 873 n.4.

3. Plaintiffs alleged violations of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified in scattered sections of 42 U.S.C.), and the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4331-4335, 4341-4347, 4361-4369 (1976 & Supp. 1979). 599 F.2d at 873. Plaintiffs also alleged various violations of St. Louis ordinances, but did not raise these issues on appeal. *Id.* at 873 n.3.

4. Uniform Relation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655 (1976).

5. Pershing Redevelopment Corporation, incorporated as "Missouri Urban Redevelopment Corporation," *see* MO. REV. STAT. ch. 353 (1978), was a wholly owned subsidiary of Pantheon Corporation, and was also a party to the action.

6. It would appear, however, that several of the appellees have only a tenuous connection with the redevelopment project and are not appropriate parties in this lawsuit. No relief is requested against the individual private owners of property, and the St. Louis Housing Authority has no present or future possessory interest in the redevelopment area and has had no involvement with the redevelopment project.

599 F.2d at 872 n.2.

7. *Id.* at 874. *See* note 33 *infra*.

8. An urban development corporation shall have the right to acquire by the exercise of the power of eminent domain any real property . . . which is necessary to accomplish the purpose of this chapter, under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter.

MO. REV. STAT. § 353.130(2) (1978).

9. St. Louis, Mo., Ordinance 57,217 (June 22, 1976) approved the redevelopment plan and the agreement between the City of St. Louis and Pershing Redevelopment Corporation.

10. The City agreed to make street, sidewalk, lighting, and park improvements, to aid in the relocation process, to rezone in accordance with the redevelopment plan, and to "take all other necessary and proper steps to insure that adequate municipal services consistent with the development of the area will be rendered to the Development Area." *Id.* § 10, *reprinted in* 599 F.2d at 874-75 n.7.

would have the power of eminent domain[11] in the redevelopment area. The City obtained Community Block Grant funds under applications that specified the municipal services to be supplied.[12] Plaintiffs claimed an entitlement to relocation assistance under section 4625(a) of URA[13] as "displaced persons" within the meaning of 42 U.S.C. § 4601(6) (1976).[14] The Eighth Circuit denied injunctive relief and *held:* A private redevelopment corporation, as a delegatee of the state's power of eminent domain, is not subject to URA requirements in the absence of evidence establishing "a joint undertaking in the nature of partnership" with a state agency.[15]

Congress enacted URA to alleviate the problem of persons displaced by federal and federally assisted programs.[16] Earlier congressional attempts to deal with the problem took the form of "piecemeal" legisla-

11. 599 F.2d at 873-74. Section three of Ordinance 57,217 approved the agreement conferring the benefits of the statute on Pershing Redevelopment Corporation.

12. 599 F.2d at 875 n.8. The City maintained, however, that these federal funds were not obligated to the particular project specified in its application. Rather, these funds, together with general revenues, were intended for city-wide services. *Id.* at 875.

13. Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section.

42 U.S.C. § 4625(a) (1976).

14. The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance.

Id. § 4601(6). The developer argued that "URA does not apply to its redevelopment activities in the Pershing-Waterman area because appellants are not 'displaced persons' because it acquired real property solely in its capacity as a private developer and without federal financial assistance." 599 F.2d at 876 (footnote omitted).

15. 599 F.2d at 877. The Court also rejected arguments claiming violations of the National Environmental Policy Act, *id.* at 878-79, and violations of the Community Development Block Grant application requirements, *id.*

16. "[URA] is the culmination of lengthy and extensive efforts to develop legislation establishing a uniform policy for the fair and equitable treatment of persons who are displaced, or have their real property taken for Federal and federally assisted programs." H.R. REP. No. 91-1656, 91st Cong., 2d Sess. 1 (1970), *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS 5850. *See generally* Pearlman & Barr, *Beyond the Uniform Relocation Act: Displacement by State and Local Government*, 10 CLEARINGHOUSE REV. 329 (1976); Special Research Study, *Relocation—The Uniform Relocation Assistance and Real Property Act of 1970—An Empirical Study*, 26 MERCER L. REV. 1329 (1975); Note, *Displaced Persons and the Uniform Relocation Act: A Proposed Methodology for Awarding Benefits*, 58 B.U.L. REV. 596 (1978); Comment, *The Uniform Relocation Act: A Viable Solution to the Plight of the Displaced*, 25 CATH. U.L. REV. 552 (1976); 46 U.M.K.C. L. REV. 332 (1977).

tion.[17] URA sought to establish a uniform, fair, and equitable policy for the treatment of persons relocated as a result of federal or federally assisted programs, so that those displaced would not suffer disproportionate injuries from programs designed to benefit the general public.[18] To accomplish this goal, URA provides relocation assistance to both the dislocated homeowner[19] and the dislocated tenant[20] when the individual qualifies under the statutory definition of "displaced person."[21]

Litigation arising under URA has focused in part on the meaning of "displaced person."[22] A displaced person is one who has moved from real property acquired "for a program or project undertaken by a Federal agency, or with Federal financial assistance."[23] Although the expressed legislative intent[24] and the statutory definition of "displaced person"[25] seek to compensate all persons displaced by federally assisted projects, the operational provisions of the Act narrow the scope of persons entitled to URA benefits. Statutory benefits are available only when a federal agency or a state instrumentality receiving federal financial assistance is involved.[26]

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17. Note, *supra* note 16, at 602. *See also* 46 U.M.K.C. L. REV. 332, 333-34 (1977).

18. 42 U.S.C. § 4621 (1976).

19. *Id.* §§ 4622(a)(1)-(b).

20. *Id.* §§ 4622(a)(1), 4624, 4625.

21. *See* note 14 *supra* and accompanying text.

22. *Id.*

23. *Id.*

24. It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project.

H.R. REP. NO. 91-1656, 91st Cong., 2d Sess. 4, *reprinted in* [1970] U.S. CODE CONG. & AD. NEWS 5850, 5853.

25. 42 U.S.C. § 4601(6) (1976).

26. Unfortunately for the plaintiff, the broad expression of congressional intention to compensate *all* persons displaced by federally funded projects is much more narrowly implemented in the operational sections of the Act.

Sections 4622, 4627 and 4628 direct that displacement payments be made when the real property is acquired ". . . for a program or project undertaken by a Federal agency".

Relief for persons displaced by action of a State agency that is seeking a grant or contract "under which Federal financial assistance will be available," is contained in § 4630. It requires the head of a Federal agency to refrain from approving a grant to a State unless he receives satisfactory assurance that the relocation payments provided by this Act will be accorded.

Nowhere in the statute is there any operational provision calling for payments to a person, such as the plaintiff, who is displaced by a private entity that has a grant of Federal financial assistance for its project. On the contrary, the wording of the statute

Courts have faced the question of federal finanacial involvement in two types of situations. The first circumstance is an involuntary federal governmental acquisition of real property, occurring when, for example, HUD forecloses on a federally insured mortgage.[27] In *Alexander v. United States Department of Housing and Urban Development*[28] the Supreme Court determined that persons dislocated by HUD foreclosures did not qualify for URA benefits because the displacement was not the result of an acquisition intended to further a federal program or project.[29] The lack of a conscious governmental decision,[30] therefore, precludes administration of URA benefits. The second circumstance resulting in litigation about federal or state involvement is a private party's acquisition of real property with federal financial assistance. Most cases have denied benefits in this situation.[31] In *Moorer v. De-*

appears to assume that all "displaced persons" covered by the Act are evicted either because of projects of Federal agencies or because of projects by State agencies receiving Federal financial assistance.

Parlane Sportswear Co. v. Weinberger, 381 F. Supp. 410, 412-13 (D. Mass. 1974) (URA benefits denied lessee evicted by privately owned educational institution that required leased area for federally funded project) (footnote omitted), *aff'd*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975).

27. *See* Alexander v. HUD, 441 U.S. 39 (1979) (tenants evicted by HUD from project foreclosed pursuant to federal mortgage insurance denied URA benefits); Blount v. Harris, 451 F. Supp. 275 (E.D. Mo. 1978) (former resident of nursing home involuntarily acquired by HUD denied URA benefits), *aff'd*, 593 F.2d 336 (8th Cir. 1979); Harris v. Lynn, 411 F. Supp. 692 (E.D. Mo. 1976) (tenants displaced by closing of public housing project denied URA benefits), *aff'd*, 555 F.2d 1357 (8th Cir.), *cert. denied*, 434 U.S. 927 (1977); Caramico v. Romney, 390 F. Supp. 210 (E.D.N.Y. 1973) (tenants of foreclosed building with federally insured mortgage denied URA benefits after HUD required premises to be vacated), *aff'd sub nom.* Caramico v. Secretary of HUD, 509 F.2d 694 (2d Cir. 1974).

28. 441 U.S. 39 (1979).

29. *Id.* at 62-63.

30. Thus, it is clear that the Act contemplates normal government acquisitions, which are the result of conscious decisions to build a highway here or a housing project or hospital there. In such cases, the acquisition of property and the relocation of certain individuals is a necessary first step in the project. Default acquisitions by the FHA, however, embody no conscious governmental decisions at all. The choice of applying for an FHA insured mortgage is made by the individual mortgagor and the default, which triggers the FHA acquisition, is his choice as well (if it can ever be said to result from a conscious choice). The only voluntary action taken by the Government is the decision to require unoccupied delivery before making the insurance payment. The acquisition itself, however, is clearly involuntary and in response to the default. . . . In sum, we believe that Judge Dooling was correct in holding that random acquisitions by the FHA of defaulted property are not acquisitions "for a program or project undertaken by a Federal agency" within the contemplation of the drafters of the Relocation Act.

509 F.2d at 698-99 (footnote omitted).

31. *See* Conway v. Harris, 586 F.2d 1137 (7th Cir. 1978) (tenants displaced by private developer using federal housing assistance payments in project denied URA benefits); Moorer v. HUD,

partment of Housing and Urban Development[32] a private developer who received federal interest subsidies and federal mortgage insurance[33] for a rehabilitation project evicted the tenants prior to redevelopment.[34] The Eighth Circuit found that Congress intended URA to benefit those displaced by public agencies with coercive acquisition power. Because the developer was not a governmental entity with the power of eminent domain, plaintiffs were not displaced persons entitled to URA benefits.[35]

In *Young v. Harris*[36] plaintiffs faced the same task as plaintiffs did in *Moorer*— proving that the private developer's activities fell within the scope of the Act. As in *Moorer*, because federal mortgage insurance[37] was excluded from the statutory definition of "federal financial assistance,"[38] plaintiffs needed to show that a state instrumentality or governmental entity had undertaken the redevelopment project.[39]

The Eighth Circuit first rejected an argument that the activities of the City and the developer were so intertwined as to render the project a public venture.[40] The court found that the provision of municipal services within the project area[41] was not sufficient to deprive the developer's project of its private status.[42]

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561 F.2d 175 (8th Cir. 1977) (tenants displaced by private acquisitions assisted by federal mortgage insurance and rent subsidies denied URA benefits), *cert. denied*, 436 U.S. 919 (1978); Dawson v. HUD, 428 F. Supp. 328 (N.D. Ga. 1976) (persons displaced by private developer using federal loan insurance and guarantees denied URA benefits), *aff'd*, 592 F.2d 1292 (5th Cir. 1979); Parlane Sportswear Co. v. Weinberger, 381 F. Supp. 410 (D. Mass. 1974) (lessee evicted by private educational institution that required leased area for federally funded project denied URA benefits), *aff'd*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975). None of these cases involved a grant of eminent domain to a private entity.

32. 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978).

33. Section 4601(4) of URA explicitly excludes any federal guarantee or insurance from the definition of "[f]ederal financial assistance." 42 U.S.C. § 4601(4) (1976).

34. 561 F.2d at 177.

35. *Id.* at 182-83.

36. 599 F.2d 870 (8th Cir. 1979).

37. The only direct federal assistance to the project was mortgage insurance by HUD. *See* note 7 *supra*.

38. Pershing Redevelopment Corporation's federal assistance, independent of any participation by the City, consisted only of mortgage insurance. 599 F.2d at 874. *See* note 33 *supra*.

39. 599 F.2d at 877.

40. *Id.*

41. *See* note 10 *supra*.

42. "On this evidence, we cannot say that the assistance provided by the City . . . is sufficient to deprive the developer's project of its status as a private project . . . ." 599 F.2d at 877. Implicit in this conclusion is the presumption of a private status. The court did not, however, justify this

Plaintiffs then presented a number of theories focusing on the developer's activities independent of the City's involvement. First, plaintiffs sought to equate the fourteenth amendment's definition of state action with the definition of state instrumentality.[43] The court looked to the legislative history and found that Congress did not intend to incorporate the fourteenth amendment state action concept into the limited statutory definition[44] of state agency.[45]

Second, plaintiffs asserted that the grant of eminent domain powers transformed an ordinarily private entity into a state instrumentality. The *Moorer* test—whether the project was undertaken by a "governmental entity with the power of eminent domain"[46]—left open the question of URA's application to development by a private entity with the power of eminent domain. The *Young* court determined that the grant of eminent domain should be balanced against the "other factors reflecting the private nature" of the project to ascertain whether the private entity constituted a state instrumentality.[47] Applying this balancing test, but without articulating the specific "private nature" factors to be considered in the analysis,[48] the court stated that the "mere grant" of eminent domain powers in this case did not transform the developer into a state entity.[49]

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presumption. The validity of this presumption is questionable in light of the early municipal involvement in the project. *See generally* ST. LOUIS, MO., REV. CODE §§ 29.010-.390 (1960).

43. 599 F.2d at 877.

44. URA defines "state agency" as any department agency, or instrumentality of a State or of a political subdivision of a State." 42 U.S.C. § 4601(3) (1976).

45. 599 F.2d at 877.

46. Moorer v. HUD, 561 F.2d 175 (8th Cir. 1977), *cert. denied*, 436 U.S. 919 (1978).

47. 599 F.2d at 878.

48. The Court's discussion of the balancing test follows:

> Although in *Moorer v. Department of Housing and Urban Development*, we addressed the application of the URA in terms of whether the real property had been acquired "by a governmental entity with the power of eminent domain," this did not imply that the mere grant of the power of eminent domain created a governmental entity. Although the grant of the power of eminent domain in some circumstances might indicate the existence of a state instrumentality within the meaning of the URA, we conclude that the other factors reflecting the private nature of the redevelopment project outweigh the significance of the mere grant of the power in this case. There is no evidence that the developer used its eminent domain power to cause any displacements. Historically, the power of eminent domain has been granted by legislative enactment to private corporations, of which railroads and private utilities are prime examples. This grant does not transform these private corporations into governmental entities or instrumentalities of the state.

Id. at 877-78 (citation omitted).

49. *Id.* at 878.

The Court concluded that Pershing Redevelopment Corporation and its parent corporation[50] were private entities despite the grant of eminent domain; thus, their acquisitions of real property were exempt from URA.[51] Because the developer acted as a private entity, the City's receipt of federal funds was insufficient to invoke URA benefits.[52]

Young limits the available theories under which URA benefits might otherwise apply. *Young* permits some municipal participation, with federal financial assistance, in a redevelopment program without corresponding URA coverage.[53] The extent of municipal participation needed to invoke URA benefits remains undefined, although the minimum level of involvement must be significant.[54]

Young's balancing test, which weighs the grant of eminent domain against the private nature of the development,[55] is a new judicial tool in URA analysis. The Eighth Circuit, however, failed to articulate clearly the factors involved in the test. The Eighth Circuit should forcefully address these issues when it next examines the Act. Additionally, the court in *Young* allowed frustration of the congressional policy behind URA. Had these plaintiffs been displaced directly by the government, they would have been entitled to URA benefits. By delegating the traditional public function of eminent domain, the city thus can gain the benefits of urban redevelopment, but avoid the compensatory costs of URA.

TAXATION—FEDERAL INCOME TAX—SECTION 302(b)(3) APPLIES TO SERIES OF CORPORATE REDEMPTIONS EVEN THOUGH REDEMPTION PLAN IS NOT CONTRACTUALLY BINDING. *Bleily & Collishaw, Inc. v. Commissioner*, 72 T.C. 751 (1979). Petitioner, a California corporation, owned 225 shares of Maxdon Construction, Inc. (Maxdon), thirty percent of Maxdon's outstanding stock. In order to obtain sole control and

50. *See* note 5 *supra* and accompanying text.

51. 599 F.2d at 878.

52. *Id. See* note 12 *supra* and accompanying text.

53. *See* notes 40-41 *supra* and accompanying text.

54. The City of St. Louis was extensively involved in the present case, but the court found this participation insufficient to make the project a joint undertaking. *Id.*

55. *See* notes 48-49 *supra* and accompanying text.