

RECENT DEVELOPMENTS

CONSTITUTIONAL LAW—FOURTH AMENDMENT—WARRANTLESS IN-HOME ARREST IN ABSENCE OF EXIGENT CIRCUMSTANCES VIOLATES FOURTH AMENDMENT. *United States v. Houle*, 603 F.2d 1297 (8th Cir. 1979). In the early morning hours, Bureau of Indian Affairs police received a call that Edward Houle had threatened to shoot his cousin at her father's house. When investigating officers arrived at the father's house, they heard two shots, which one officer identified as coming from the direction of defendant's house. The officers removed the cousin and her two children from the house to police headquarters, where they received a call from a man who identified himself as Houle and threatened to shoot any officer that came into his yard. Four hours later police decided to arrest Houle for interfering with the performance of their duties.¹ Arriving at his house without a warrant, the officers looked through a broken window and saw Houle asleep with a rifle lying nearby. One officer reached through the window and seized the rifle while other officers kicked down the door and arrested Houle. At trial defendant objected to the admission into evidence of the rifle, a rifle clip, and two spent cartridges² seized by police at the time of arrest.³ The trial court overruled defendant's motion to suppress⁴ and convicted the defendant. The Eighth Circuit reversed and *held*: A warrantless arrest of a person in his home, absent exigent circumstances, violates the fourth amendment.⁵

1. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned more than ten years, or both.

18 U.S.C. § 111 (1976).

2. The record is silent where the spent cartridges came from and whether the rifle had been fired. No evidence was found of bullet holes in any nearby house or vehicle. *United States v. Houle*, 603 F.2d 1297, 1299 n.2 (8th Cir. 1979).

3. The issue of illegal arrest arises only when the prosecution attempts to introduce at trial evidence obtained during a search incident to an arrest. LaFave, *Warrantless Searches and the Supreme Court: Further Ventures into the "Quagmire,"* 8 CRIM. L. BULL. 9, 23 (1972). The exclusionary rule provides that all evidence obtained by searches and seizures in violation of the Constitution is inadmissible. See *Mapp v. Ohio*, 367 U.S. 643 (1961).

4. The trial court found that the police officers had probable cause to make the arrest so that no warrant was necessary under *United States v. Watson*, 423 U.S. 411 (1976).

5. 603 F.2d at 1299.

The fourth amendment guarantees the right of persons to be secure against "unreasonable searches and seizures."⁶ Because an arrest is a "seizure" within the meaning of the fourth amendment,⁷ an arrest must meet the fourth amendment standard of reasonableness. The reasonableness standard represents the constitutional balance between two countervailing interests: the interest of society in apprehending criminals and the interest of the individual in personal privacy.⁸

To meet this standard of reasonableness, police can make an arrest only when they have probable cause to believe that a person has committed a crime.⁹ In addition to the probable cause requirement, some courts have construed "reasonableness" to demand a warrant, in the absence of exigent circumstances,¹⁰ for arrests made on private premises.¹¹ The Constitution, however, does not explicitly require police officers to obtain a warrant to effect a lawful arrest, and the Supreme Court has declined to transform the judicial preference for arrest warrants into a constitutional rule.¹²

Thus in *United States v. Watson*,¹³ the Court held that a warrantless arrest in a public place, if based upon probable cause, does not violate the fourth amendment.¹⁴ Similarly in *United States v. Santana*,¹⁵ the

6. The fourth amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

7. See *United States v. Watson*, 423 U.S. 411, 428 (1976) (Powell, J., concurring); *id.* at 436-37 (Marshall, J., dissenting); *Terry v. Ohio*, 392 U.S. 1, 16 (1968).

8. See *Johnson v. United States*, 333 U.S. 10, 14 (1948).

9. See *Henry v. United States*, 361 U.S. 98, 100 (1959).

10. *Coolidge v. New Hampshire*, 403 U.S. 433, 481 (1971) (plurality opinion) (warrant requirement takes decision to arrest away from police and places it with neutral, disinterested magistrate, and thus shields the privacy interest from "well-intentioned but mistakenly overzealous executive officers").

11. See *United States v. Watson*, 423 U.S. 411, 423 (1976); *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975).

12. When exigent circumstances exist, a warrant is not required because the police interest supersedes the person's right to privacy. See, e.g., *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967) ("the Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others"); *McDonald v. United States*, 335 U.S. 451, 455-56 (1948) (warrantless arrests are valid when "the exigencies of the situation made that course imperative").

13. 423 U.S. 411 (1976).

14. *Id.* at 424.

15. 427 U.S. 38 (1976).

Court ruled that the arrest of a person standing in the doorway to her home in open view from a public street does not require a warrant because the person has no expectation of privacy.¹⁶ In both cases, however, the Court left open the question of "whether and under what circumstances a police officer may enter the home of a suspect in order to make a warrantless arrest."¹⁷

Lower courts have split over the issue of whether warrantless arrests may be effected inside of private dwellings in the absence of exigent circumstances.¹⁸ *Dorman v. United States*¹⁹ marked the first case to condemn warrantless arrests in the home absent exigent circumstances.²⁰ Five Circuits,²¹ as well as several state courts,²² have followed *Dorman's* lead. The New York Court of Appeals, however, has decided to uphold warrantless arrests based solely upon probable

16. *Id.* at 42.

The Court has ruled that the fourth amendment protects the privacy of persons and not of places. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Katz v. United States*, 389 U.S. 347, 351-52 (1967) (citations omitted). "[What] has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Id.* at 361 (Harlan, J., concurring).

17. *See* *United States v. Santana*, 427 U.S. 38, 45 (1976) (Marshall, J., dissenting); *United States v. Watson*, 423 U.S. 411, 433 (1976) (Stewart, J., concurring).

18. Cases upholding the warrant requirement include: *United States v. Campbell*, 581 F.2d 22 (2d Cir. 1978); *United States v. Shye*, 492 F.2d 886 (6th Cir. 1974); *Vance v. North Carolina*, 432 F.2d 984 (4th Cir. 1970); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966). *Contra*, *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). *See generally* LaFave, *supra* note 3, at 20-28; Rotenberg & Tanzer, *Searching for the Person To Be Seized*, 35 OHIO ST. L.J. 56 (1974); Note, *The Neglected Fourth Amendment Problem in Arrest Entries*, 23 STAN. L. REV. 995 (1971); Comment, *Watson and Santana: Death Knell for Arrest Warrants?*, 28 SYRACUSE L. REV. 787 (1977).

19. 435 F.2d 385 (D.C. Cir. 1970).

20. The *Dorman* court ruled that "[f]reedom from intrusion into the home or dwelling is the archetype of privacy protection secured by the fourth amendment." *Id.* at 389.

21. *See* *United States v. Houle*, 603 F.2d 1297, 1300 (8th Cir. 1979); *United States v. Prescott*, 581 F.2d 1343, 1350 (9th Cir. 1978); *United States v. Campbell*, 581 F.2d 22, 26 (2d Cir. 1978); *United States v. Shye*, 492 F.2d 886, 893 (6th Cir. 1974); *Vance v. North Carolina*, 432 F.2d 984, 990 (4th Cir. 1970).

The Eighth Circuit previously discussed the issue in *Salvador v. United States*, 505 F.2d 1348 (8th Cir. 1974), but did not decide it because of the presence of exigent circumstances upon which the court could dispose of the case. *Id.* at 1350.

22. *See* *People v. Ramey*, 16 Cal. 3d 263, 275, 545 P.2d 1333, 1341, 127 Cal. Rptr. 629, 636, *cert. denied*, 429 U.S. 929 (1976); *People v. Moreno*, 176 Colo. 488, 497, 491 P.2d 575, 580 (1971); *Commonwealth v. Forde*, 367 Mass. 798, 805, 329 N.E.2d 717, 722 (1975).

cause,²³ reasoning that an arrest, even in the home, does not significantly infringe on a person's privacy.²⁴ The American Law Institute follows the minority view and does not require a warrant to arrest a person at home under either the Model Penal Code²⁵ or the Model

23. *People v. Payton*, 45 N.Y.2d 300, 312, 380 N.E.2d 224, 230, 408 N.Y.S.2d 395, 401 (1978), *prob. juris. noted sub nom. Riddick v. New York*, 441 U.S. 930 (1979). In *Riddick* police detectives arrested defendant without warrant in his home. The detectives had been looking for Riddick since 1973 when he was identified as the perpetrator of a 1971 armed robbery. The police knew Riddick's address for approximately two months before the arrest.

24. The New York court stated: "In view of the minimal intrusion on the elements of privacy of the home which results from an entry on the premises for making an arrest . . . we perceive no sufficient reason for distinguishing between an arrest in a public place and an arrest in a residence." *Id.* at 310-11, 380 N.E.2d at 229, 408 N.Y.S.2d at 400.

The court relied heavily on the distinction between an entry to search and an entry to arrest. *Id.* at 310, 380 N.E.2d at 229, 408 N.Y.S.2d at 400. An entry to search "will be more extensive and more intensive and the resulting invasion of . . . privacy of greater magnitude than what might be expected to occur on an entry made for the purpose of effecting an arrest." *Id.* One article, however, noted that the language of the fourth amendment will not support this distinction. *See Rotenberg & Tanzer, supra* note 18, at 56. Several courts have agreed. *See, e.g., United v. Prescott*, 581 F.2d 1343, 1349 (9th Cir. 1978) ("[t]he sanctity of the home is no less threatened when the object of the police entry is the seizure of a person rather than a thing"); *Morrison v. United States*, 262 F.2d 449, 452 (D.C. Cir. 1958) ("The officers entered the house to make a search. It was to be sure a search for a person rather than the usual search for an article of property, but it was a search."); *Laasch v. State*, 84 Wis. 2d 587, 595, 267 N.W.2d 278, 283 (1978) ("an arrest is subject to a warrant requirement no less exacting than that applicable where the entry is made to effect a search for one's papers and effects"). Supreme Court Justice Marshall also shares this view: A "warrant is required in the search situation to protect the privacy of the individual, but there can be no less invasion of privacy when the individual himself, rather than his property, is searched and seized." *United States v. Watson*, 423 U.S. 411, 446 (1976) (Marshall, J., dissenting).

An arrest can entail a limited search for property as well as the search for the person. First, during a search incident to a legal arrest, the police may search the suspect, the area within his reach, and areas of the home such as closets from which he needs to get personal belongings before leaving with the officer. *Chimel v. California*, 395 U.S. 752, 763 (1969). Second, under the plain view rule, an officer may seize evidence within view. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) (plurality opinion).

25. Section 120.1 of the Code reads:

(1) *Authority to Arrest Without a Warrant.* A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed

- (a) a felony;
- (b) a misdemeanor, and the officer has reasonable cause to believe that such person
 - (i) will not be apprehended unless immediately arrested; or
 - (ii) may cause injury to himself or others or damage to property unless immediately arrested; or
- (c) a misdemeanor or petty misdemeanor in the officer's presence.

(2) *Reasonable Cause.* "Reasonable cause to believe" means a basis for belief in the existence of facts which, in view of the circumstances under and the purpose for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements. An arrest shall not be deemed to have been made on insuffi-

Code of Pre-Arrest Procedure.²⁶

In *United States v. Houle* the Eighth Circuit expressly declined to balance the competing interests involved in warrantless entries into homes to arrest suspects,²⁷ but chose to rely on other opinions in the federal courts and state courts that discussed the issue.²⁸ The court

cient cause hereunder solely on the ground that the officer is unable to determine the particular crime which may have been committed.

(3) *Determining Reasonable Cause.* In determining whether reasonable cause exists to justify an arrest under this Section, a law enforcement officer may take into account all information that a prudent officer would judge relevant to the likelihood that a crime has been committed and that a person to be arrested has committed it, including information derived from any expert knowledge which the officer in fact possesses and information received from an informant whom it is reasonable under the circumstances to credit, whether or not at the time of making the arrest the officer knows the informant's identity.

MODEL PENAL CODE § 120.1 (1975).

26. Section 120.6 of the Code reads:

(1) *Demand to Enter and Entry onto Private Premises to Make an Arrest.* If a law enforcement officer has reasonable cause to believe that a person whom he is authorized to arrest is present on any private premises, he may, upon identifying himself as such an officer, demand that he be admitted to such premises for the purpose of making the arrest. If such demand is not promptly complied with, the officer may thereupon enter such premises to make the arrest, using such force as is reasonably necessary, subject to the provisions of Section 120.7 regarding the use of deadly force.

(2) *Entry Without Prior Demand.* The demand to be admitted required by Subsection (1), need not be made, if the officer has reasonable cause to believe that a person whom he is authorized to arrest for a felony or misdemeanor is present on such premises, and that if such demand were made,

- (a) the person to be arrested would escape;
- (b) the officer would be subject to harm in effecting the arrest; or
- (c) any person would be harmed, or evidence destroyed, or property damaged or lost.

(3) *Special Restrictions on Arrests at Night.* No law enforcement officer shall seek to enter any private premises in order to make an arrest between 10 p.m. and 7 a.m. unless

- (a) he is acting under a warrant of arrest and the warrant authorizes its execution during such hours, or
- (b) he has reasonable cause to believe that such action is necessary to prevent
 - (i) the escape of a person to be arrested for a crime involving serious bodily harm or the threat or danger thereof, or
 - (ii) harm to any person, destruction of evidence, or damage to or loss of property.

MODEL CODE OF PRE-ARREST PROCEDURE § 120.6 (1975).

Even under these criteria, however, Houle's arrest is illegal because the officers (1) did not identify themselves and demand admittance in accordance with § 120.6(1), and (2) entered the home before 7 a.m., in violation of § 120.6(3).

27. To support its rejection of warrantless entries into a private home, the *Houle* court turned to the fourth amendment and concluded that an arrest is a seizure of the person, which must meet the fourth amendment's standard of reasonableness. 603 F.2d at 1299.

28. *Id.* The court relied on cases that advocated privacy of the home. See, e.g., *United States v. United States Dist. Court*, 407 U.S. 297, 313 (1972) ("physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed"); *Warden v. Hayden*, 387 U.S. 294, 301 (1967) (fourth amendment is intended to protect "the sanctities of a man's home and the privacies of life"); *Silverman v. United States*, 365 U.S. 505, 511 (1961) ("The Fourth

concluded from these decisions²⁹ that a person's right to privacy is equally intruded upon whether the police invade the home to search for a person or for property.³⁰

The *Houle* court also rejected the government's contention that exigent circumstances justified the warrantless arrest, reasoning that the police were not in "hot pursuit" and had no reason to believe that defendant would attempt to escape or destroy evidence.³¹ This summary

Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."); *Miller v. United States*, 357 U.S. 301, 306-07 (1958) (law "drastically limited the authority of law officers to break the door of a house to effect the arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle"); *McDonald v. United States*, 335 U.S. 451, 455-56 (1948) (privacy is "too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals"); *Johnson v. United States*, 333 U.S. 10, 14 (1948) ("[t]he right of officers to thrust themselves into a home is . . . a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance"); *Dorman v. United States*, 435 F.2d 385, 390 (D.C. Cir. 1970) (fourth amendment "assures citizens the privacy and security of their homes"); *Accarino v. United States*, 179 F.2d 456, 464 (D.C. Cir. 1949) ("A man in his own home has a right of privacy which he does not have when on a public street. The additional right imposes additional requirements upon the power of arrest."); *Commonwealth v. Forde*, 367 Mass. 798, 805, 329 N.E.2d 717, 722 (1975) ("The right of police officers to enter a home, for whatever purpose, represents a serious governmental intrusion into one's privacy. It was just this sort of intrusion that the Fourth Amendment was designed to circumscribe . . .").

29. 603 F.2d at 1299. The court noted that the "vast majority of state and federal decisions have applied the same Fourth Amendment standards to warrantless entries to search as they have to warrantless entries to arrest." *Id.* See note 21 *supra*. The court then stated that, until the Supreme Court issues a mandate to the contrary, it would follow the principle set forth in *Coolidge v. New Hampshire*, 403 U.S. 443, 477-78 (1971) (plurality opinion), which offered strong dictum favoring an arrest warrant in private places. 603 F.2d 1299-1300. See note 11 *supra* and accompanying text.

In decisions since *Coolidge*, the Supreme Court has acknowledged that the issue of warrantless arrests in the home in the absence of exigent circumstances remains unresolved. See note 17 *supra* and accompanying text.

30. Generally, police officers must obtain a search warrant before entering a private place to search for an object. See *Agnello v. United States*, 269 U.S. 20, 32 (1925). The judge or commissioner will issue a warrant when satisfied that grounds for the warrant exist or that there is probable cause to believe that such grounds exist. U.S. CONST. amend. IV; FED. R. CRIM. P. 41(c). The Court, however, has fashioned certain exceptions to the search warrant requirement: (a) search incident to lawful arrest, *e.g.*, *Chimel v. California*, 395 U.S. 752 (1969); (b) consent search, *e.g.*, *Johnson v. United States*, 333 U.S. 10 (1948); (c) search of vehicle based on probable cause, *e.g.*, *Chambers v. Maroney*, 399 U.S. 42 (1970); (d) search in hot pursuit of dangerous, fleeing suspect, *e.g.*, *Warden v. Hayden*, 387 U.S. 294 (1967); (e) search of abandoned property, *e.g.*, *Abel v. United States*, 362 U.S. 217 (1960); (f) search of open field, *e.g.*, *Hester v. United States*, 265 U.S. 57 (1924); and (g) border search, *e.g.*, *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973).

31. 603 F.2d at 1300.

approach is a departure from *Dorman's* seven-part criteria³² for determining exigent circumstances, which the Eighth Circuit previously had adopted.³³ The *Houle* court's approach, however, is not necessarily a repudiation of *Dorman* and its definition of exigent circumstances because "hot pursuit" and fear of escape or destruction of evidence constitute components of *Dorman's* seven criteria.³⁴ Although the *Houle* court creates some confusion,³⁵ the *Dorman* standards appear to be controlling.

32. 435 F.2d 385, 392-93 (D.C. Cir. 1970). Exigent circumstances were found to exist based on the following considerations: (1) a crime of violence was involved; (2) the suspect was reasonably believed to be armed; (3) there was a clear showing of probable cause; (4) there was strong reason to believe the suspect was on the premises; (5) there was a likelihood that the suspect would escape if not swiftly apprehended; (6) the entry was peaceable; and (7) the entry took place during the day.

33. *Salvador v. United States*, 505 F.2d 1348, 1352 (8th Cir. 1974). In *Salvador* police made a warrantless arrest for bank robbery at the conclusion of a high-speed chase. The court determined exigent circumstances justified the arrest because: (1) a crime of violence was involved; (2) the suspects were reasonably believed to be armed; (3) there was a clear showing of probable cause; (4) there was a strong reason to believe the suspect was on the premises; (5) there was a likelihood the suspect would escape if not swiftly apprehended; and (6) the entry was peaceable. The court did not consider the seventh *Dorman* criteria, the time of day of the arrest.

Other courts adopting the *Dorman* standards are *United States v. Campbell*, 581 F.2d 22, 26 (2d Cir. 1978); *United States v. Reed*, 572 F.2d 412, 424 (2d Cir. 1978); *United States v. Shye*, 492 F.2d 886, 893 (6th Cir. 1974); *Vance v. North Carolina*, 432 F.2d 984, 990 (4th Cir. 1970).

34. Even when a court applies the *Dorman* criteria the court's determination of whether exigent circumstances exist remains largely subjective. The *Dorman* court, for example, found the likelihood-of-escape criterion satisfied because defendant's parole papers had been left at the scene of the crime. "There was at least a possibility that delay might permit escape, when and if the suspect came to realize his papers had been left behind." 435 F.2d at 393. In *Campbell* the crucial fact was the possibility that defendants would notice the absence of an accomplice (who had been arrested). "There were . . . reasonable grounds to believe that the appellants may have been informed of Hall's arrest, or may have surmised the same from his absence, and that unless they were arrested immediately, they might attempt an escape . . ." 581 F.2d at 26. The court in *Shye* acknowledged escape would be impossible, but still found the presence of this exigent circumstance. "Although there was little likelihood of escape, due to the presence of so many officers, there was, nevertheless, a substantial likelihood of bloodshed or an impending siege if quick action were not taken." 492 F.2d at 892 (parenthetical omitted). In *Vance* yet another fact—that the defendant was at large before the crime—proved there was a likelihood of escape. "Vance was at large some three months after the issuance of the parole violator's warrant, and this fact alone supports an inference that he was likely to escape if not swiftly apprehended." 432 F.2d at 991.

35. Another difference in the treatment of exigent circumstances by the Eighth Circuit is the methodology of the decisions. In *Salvador* the court decided the issue of exigency before it found it necessary to reach the issue of whether a warrant would be needed in the absence of exigent circumstances. In *Houle* the court first determined that a warrant is required for an arrest in a private home in the absence of exigent circumstances and then turned to the issue of whether exigent circumstances were present in the case.

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). Plaintiffs¹ 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).