10-1979

Payton v. New York

Lewis F. Powell Jr.

Note or Grant to resolve conflict

Now can present good opportunity to decide validity of warrantless arrest in a private home in absence of exigent circumstances, - left open in U.S. v Watson.

Case also involves N.Y. "inevitable discovery rule".

PRELIMINARY MEMORANDUM

Dec. 8
~~November 3~~, 1978 Conference
List 2, Sheet 1

No. 78-5420		
PAYTON (State crim. def.)	Appeal from N.Y. Ct. of App. (Jones for the ct. Wachtler Fuchsberg, Cooke dissenting)	may not be proper appeal.
v.		
NEW YORK	State/Criminal	Timely
No. 78-5421		
RIDDICK (Same)	Same	
v.		
NEW YORK	Same	Same

SUMMARY: These cases put in issue the constitutionality of a warrantless entry into a dwelling to effectuate an arrest, as well as the propriety and proper application of New York's "in-

Discuss with a view to granting. This looks like a good case to resolve the question left open by U.S. v Watson. CFB in No 78-5420.

evitable discovery" exception to the fourth amendment exclusionary rule.

FACTS: Former section 178 of the New York Criminal Procedure Law provided that in order to make a warrantless arrest, a police officer could "break open an outer or inner door or office of a building, if, after notice of his office and purpose, he be refused admittance." In 1971, new provisions were enacted which expanded officers' authority by eliminating the notice requirement in cases where there is probable cause to believe notice will result in an escape, personal danger or destruction of evidence

In 1970, A gas station attendant was murdered in the course of a holdup. The murder weapon was never found, but .30 rifle shells were found at the scene. The New York City police obtained information establishing probable cause to believe that appellant Payton was involved in the holdup.

The next day, without obtaining a warrant, they went to his apartment. They could see the light on under the door and hear a radio playing, but no one answered their demand for admission. They summoned the Special Services squad and used crowbars to break in. No one was inside. In plain view, they found a .30 rifle shell. They also searched the apartment and found a sales receipt from an upstate gunshop. Subsequently, the police interviewed the owner of the gunshop, and obtained his records of a sale of a 30/30 rifle to appellant.

Prior to trial, appellant moved to suppress all the evidence obtained in the search. The state conceded that everything except the rifle shell found in apt should be suppressed. The trial court denied the motion with respect to the shell on the basis of the plain view doctrine, holding that the police properly entered the apartment without a warrant for the purpose of making an arrest.

During the trial, a ballistics expert testified that the .30 shell found in the apartment was ejected from the same rifle as the two .30 shells found at the scene of the crime. The state called the gunshop owner, and on the basis of his testimony introduced the record of the sale of the 30/30 to appellant. Appellant objected to the evidence on the ground that it was the fruit of an unlawful search, and after the proof was completed the trial court held a hearing on this issue.

At the hearing, the state attempted to establish that even if they had not found the sales receipt, the police investigation eventually would have led to the gunshop. The trial judge overruled appellant's objection, on the basis of the New York rule that evidence which inevitably would have been discovered in the absence of an improper search is admissible, even if in fact it was discovered as a proximate result of such a search. In this connection, the judge stated that his determination that the evidence inevitably would have been discovered was supported only by a preponderance of the evidence,

and that he would be obliged to rule against the state if clear and convincing evidence or proof beyond a reasonable doubt were required. Appellant was convicted of felony murder.

In June, 1973, two witnesses identified appellant Riddick from a photospread as the perpetrator of two robberies. The New York City Police obtained his address from his parole officer by January, 1974. In March, without having obtained a warrant, they went to his apartment. When appellant's three year old son opened the door, they announced their authority, entered, and arrested appellant in his bed. During a search incident to the arrest, they discovered heroin and paraphen- alia. Appellant was indicted for possession of narcotics and paraphenalia, his motion to suppress the evidence was denied, and he was convicted.

The two cases were consolidated in the New York Court of Appeals. Recognizing that there was authority to the contrary, the court held that the police properly may force their way into a dwelling without a warrant in order to effectuate an otherwise proper arrest. The court reasoned that an arrest is a lesser invasion of privacy than a search, that an arrest inside a dwelling is no greater an intrusion than an admittedly lawful warrantless arrest in public, and that requiring a warrant might hinder the prompt action appropriate in taking custody of criminals.

The court also rejected Payton's contention that the

gunshop owner's evidence should have been suppressed as the product of an unlawful search. The court stated that the "inevitable discovery" doctrine required only a "very high degree of probability" that the evidence would have been discovered by legitimate means, and adopted the trial court's finding that "normal police investigative techniques would have uncovered the Peekskill gun dealer."

Wachtler, Fuchsberg and Cooke dissented with separate opinions. Cooke, joined in this respect by Wachtler and Fuchsberg, argued that the police should be required to obtain a warrant, in the absence of exigent circumstances, before entering a dwelling to make an arrest. He found that this conclusion was dictated by general fourth amendment doctrine that a warrant is a prerequisite to an invasion of a legitimate expectation of privacy, and found it anomalous that the objects of a search should receive more protection than a man in his own home. Recognizing that this Court never has passed on the question, he found dicta in recent opinions supporting his view. Finally, he noted that the exigent circumstances exception to the warrant requirement would minimize the burden imposed by requiring a warrant.

Judge Wachtler joined Judge Cooke's opinion with respect to Riddick. He concluded that the entry for the purpose of arresting Payton was justified by exigent circumstances. Nonetheless, he urged reversal of Payton's conviction because the

gundealer's evidence was the product of an unlawful search following the discovery that Payton was not in the apartment. He accused the majority of diluting the inevitable discovery doctrine to the point of seriously eroding the exclusionary rule.

Judge Fuchsberg joined Judge Wachtler's opinion with respect to the gundealer. He added, however, that if the "inevitable discovery" doctrine were to be recast to require less than a certainty of discovery, the court at a bare minimum should require proof beyond a reasonable doubt that the discovery would have been made in the absence of an improper search. Otherwise, the exclusionary rule would be too easily circumvented.

CONTENTIONS: Both appellants contend that in the absence of exigent circumstances, the fourth amendment requires the police to obtain a warrant before forcing their way into a dwelling for the purpose of effectuating an arrest. Payton also contends that the inevitable discovery doctrine is an improper exception to the exclusionary rule, and that in any event those offering the evidence should be required to prove the independent means for discovering the evidence by clear and convincing evidence.

There is no response to Payton's jurisdictional statement. The state has moved to dismiss or affirm Riddick's conviction on the ground that the Court of Appeals decision is obviously correct. The state contends that a warrantless entry to effec-

tuate an arrest is indistinguishable from warrantless arrests in a public place, which always have been sustained, e.g., United States v. Watson, 423 U.S. 411 (1976).

DISCUSSION: 1. The inevitable discovery rule. New York adopted this rule in People v. Fitzpatrick, 32 N.Y.2d 499, 300 N.E.2d 139. This Court denied certiorari in that case, with Justice White dissenting. 414 U.S. 1050 (1973). The rationale of the inevitable discovery rule implicitly was endorsed in United States v. Ceccolini, 46 U.S.L.W. 4229 (March 21, 1978). There, the Court held that the uncoerced testimony of a witness discovered as a result of an illegal search need not be suppressed as a product of the search, in part because a witness might well volunteer his testimony in any event.

Accordingly, the controversial element of this phase of the case is not the inevitable discovery rule as such, but its dilution to the point where it requires only proof by a preponderance of the evidence of a high likelihood that the evidence would have been discovered in the absence of the unlawful search. This dilution is troublesome on the merits. However, first, the admission of the gundealer's evidence probably could be sustained on the theory of Ceccolini, that the intervention of the uncoerced cooperation of a witness usually dissipates the taint resulting from an unlawful search. Second, the briefs have not indicated that this issue has arisen anywhere outside New York.

2. Warrantless entry to effectuate an arrest. The has never decided whether a warrantless entry into a private place to effectuate an otherwise proper arrest violates the fourth amendment. In United States v. Watson, 423 U.S. 411 (1976), the Court squarely approved the traditional rule that a warrant is not required for an arrest in a public place. Justices Powell and Stewart concurred separately to emphasize that the Court had not decided whether the police could enter a private place to effectuate an arrest without a warrant. Justice Marshall, joined by Justice Brennan, dissenting, complained that the Court's decision would entail that such entries could be made without a warrant.

The issue has produced a profound division among the American courts. See United States v. Watson, 423 U.S. 411, 433 n.7 (1976) (Powell, J., concurring). The traditional position is that adopted by the New York Court of Appeals. However, appellants indicate that the contrary view has been adopted by the (2d) 4th, 6th, 7th, 8th, 9th and D.C. Circuits, and the highest courts of Arizona, California, Colorado, Massachusetts, and Wisconsin. The conflict between the New York Court of Appeals and the Second Circuit is especially problematic, because it will require the federal courts to issue a stream of heabeas corpus writs in favor of New York prisoners, with all the attendant burden on the courts and friction between state and federal courts.

United States v. Reed, 572 F.2d 412 (1978)

In light of Watson, this seems a logical time for the Court to resolve the question. These appeals present the issue squarely, and the Legal Aid Society has submitted a good brief. The New York Court of Appeals does not give plenary treatment of many cases, and the fact that it did so here evidences the importance which that court attaches to the issue. The plenary treatment and the square holding below also assure that this Court's response to the jurisdictional statements will recieve widespread notice.

The Queens County District Attorney has filed a motion to dismiss or affirm in the Riddick case. The New York County District Attorney, who is the responsible official, has not responded in Payton.

10/24/78 Lacy Opn in statements

Dissent

PRELIMINARY MEMORANDUM

November 3, 1978 Conference
List 2, Sheet 1

No. 78-542

RIDDICK (State crim. def.)

v.

NEW YORK

Appeal from N.Y. Ct. of App. (Jones for the ct. Wachtler, Fuchsberg, Cooke dissenting)

State/Criminal

Timely

Please see Preliminary Memorandum in No. 78-5420.

BB 12/1/78

See my notes on orig. memo.

Deferred
Probably
Note (a grant
Riddick -
companion
case - # 78-5420)

SUPPLEMENTAL MEMORANDUM

To: Mr. Justice Powell

Re: No. 78-5420, Payton v. New York
No 78-5421 Riddick v N.Y.

The State has filed a Response, styled a motion to treat part of the Jurisdictional Statement as a petn for cert., and a motion to defer consideration of the appeal.

With respect to the issue of New York's "inevitable discovery" rule, the State argues that this is not a proper appeal because it does not draw into question the constitutionality of any state statute. The Jurisdictional Statement, insofar as it raises the question of the validity of the inevitable discovery rule, should be considered as a petn for certiorari.

The State next argues that cert. should be denied on this question. As I understand the State's position, it is that the evidence admitted under the inevitable discovery rule could have been admitted properly under the rule of

attentuation announced in United States v. Ceccolini, 435 U.S. 268 (1978). But it is clear that the New York Court of Appeals relied on the inevitable discovery rule. And the State does not argue that application of the inevitable discovery rule will always produce the same result as application of the Ceccolini rule.

With regard to the New York arrest statute and its constitutionality, the State raises two interesting points. First, it argues that the record does not show clearly whether or not the officers who entered Payton's apartment did so under exigent circumstances. It notes that in the Ct. of Appeals, Judge Wachtler, dissenting, concluded that there were such exigent circumstances. Based on this uncertainty in the factual record, the State suggests that it would be best to hold this case for Riddick, the companion case. There, according to the State, there were no exigent circumstances, so the constitutionality of the statute is presented clearly.

Second, the State raises a point that is as relevant to Riddick as to this case. The officers in each case entered the dwellings of the defendants in good faith reliance on a statute whose constitutionality had not been challenged. Therefore, even if the statute is now adjudged unconstitutional, the evidence resulting from the entry should not be suppressed, since to do so would not serve the purposes of the exclusionary

good faith of officers

rule. A similar issue has been raised in Michigan v. DeFillippo, No. 77-1680, cert. granted, where the constitutionality of a Michigan criminal statute has been challenged.

If the Court decides to take Riddick, then I think that it should also take Payton. The inevitable discovery rule, as applied in New York, appears to me to be worthy of the Court's attention; the fact that it should perhaps be disapproved for another rule that would also allow the admission of the evidence in this case does not alone make the question uncertworthy. If it appears after full briefing that there is a substantial question of the existence of exigent circumstances in Payton, and if the Court's decision on the constitutionality of the arrest statute makes it necessary, the Court can remand on that issue. The ruling on the applicability of the exclusionary rule, if the Court determines that the statute is unconstitutional, should be attuned to the result in Michigan v. DeFillippo, but this is no reason to defer consideration of the constitutionality of the statute.

I think the State is correct that the Court's jurisdiction over the issue of the inevitable discovery rule is under the certiorari jurisdiction of §1257(3).

December 8, 1978

Court .....
Argued ..... , 19...
Submitted ..... , 19...

Voted on ..... , 19...
Assigned ..... , 19...
Announced ..... , 19 .

No. 78-5421

RIDDICK

vs.

NEW YORK

Relisted. Also motion to dismiss or affirm.

Note

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS DIS	MERITS AFF	MOTION G	MOTION D	ARGUE	NOT TO CONF
Burger, Ch. J						✓							
Brennan, J.				✓									
Stewart, J.				✓									
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.													
Powell, J.				✓									
Rehnquist, J.				✓									
Stevens, J.				✓									

December 8, 1978

Court .....
Argued ..... 19...
Submitted ..... 19...

Voted on ..... 19...
Assigned ..... 19...
Announced ..... 19...

No 78-5420

PAYTON

vs.

NEW YORK

Response requested - motion to dismiss or affirm filed.

Vote

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POSS	JURISDICTIONAL STATEMENT NOT	MERITS AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	SUMM	NOT SUMM
Burger, Ch. J				✓									
Brennan, J.				✓									
Stewart, J.				✓									
White, J				✓									
Marshall, J.				✓									
Blackmun, J.				✓									
Powell, J.				✓									
Rehnquist, J.				✓									
Stevens, J.				✓									

LFP/lab 3/6/79

To: Eric Date: March 6, 1979

From: L.F.P., Jr.

No. 78-5420 Payton v. New York
No. 78-5421 Riddick v. New York

The question presented, as stated in appellant's joint brief, is:

> "Whether New York statutes which, even in the absence of exigent circumstances, authorize warrantless, nonconsentual and forcible entries for the purpose of arresting a person in his home violate the Fourth and Fourteenth Amendments?

These two cases involving unrelated crimes (Payton, convicted of felony murder, and Riddick, convicted of armed robbery) were considered together by the New York Court of Appeals, and though the facts vary they present the same issue: whether the New York statutes that authorize police officers to enter a private home to make an arrest where there is probable cause for the arrest, but where the officers have no warrant and there are no exigent circumstances, are valid. } Issue

Both of the entries here were made in the daytime. In Payton's case, the officers announced their presence and sought to be admitted before breaking down the

door. Payton was absent, and the officers nevertheless searched his apartment - seizing some evidence in plain view (that was admitted at the trial) and other evidence that was not admitted. In Riddick's case, it is contended that no announcement was made by the officers, who were admitted by a three-year-old child.

The questions arose on motions to suppress. If the entries into the homes to arrest were valid, the evidence in plain view was admissible. If invalid, the evidence should have been suppressed.

The New York Court of Appeals sustained the validity of the state statutes and of these particular arrests, dividing 4-3. The opinion of Judge Jones, for the majority, is a good opinion in the sense that it sets forth fully and fairly the arguments on both sides. Relying on (1) the commonlaw, the fact that (2) some thirty states have similar statutes, and (3) the ALI Code of Prearraignment Procedure, Judge Jones concluded that the state had the better of the argument. He also reasoned that entry to arrest is not as intrusive as a search.

Three dissenting opinions were written, and these also make the familiar arguments pro and con.

It is agreed that this Court has never decided this precise issue. In United States v. Watson we sustained the validity of an arrest, on probable cause but without a

warrant, when made in a public place. In my concurring opinion, I made clear my own reservation of judgment with respect to an arrest in a private home.

I continue to have serious doubt as to the validity, under current constitutional doctrine, of such an arrest. To be sure, these were daytime arrests, and the ALI Code draws a distinction between entry during the day and entry at night. I would prefer not to make such a distinction.

If this case came to us on the question whether or not the evidence should have been suppressed, I would have answered in the negative on the ground that the officers acted in good faith pursuant to a New York statute that has been on the books for many years, and indeed in accord with the law of this country since colonial days. We took the cases, however, to decide the Fourth Amendment question, and the parties present their principle arguments on this basis. The final section of the state's brief, however, does argue that the exclusionary rule is inapplicable with respect to Payton for the reason I stated. The state argues that Payton has no legitimate interest as a litigant except to have the exclusionary rule apply to the evidence seized.*

As I am familiar with the arguments pro and con in this case, I will not need more than a summary bobtail memorandum. I will, of course, wish to discuss the case

*See footnote next page.

with you, and particularly will want advice as to whether I can reach the constitutional issue in view of my long-held opinion that the exclusionary rule does not apply where an officer acts pursuant to a presumptively valid statute. Moreover, in a recent argued case (the name of which I cannot recall), a majority of the Court accepted this view.

E.F.P., Jr.

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*It is not clear to me why the State does not make this same arguement with respect to Riddick. Perhaps it is because Riddick has served his term (after his motion to suppress was overruled, he pled guilty to the lesser offense of possession of a controlled substance), for which he has served his sentence. He remains incarcerated for armed robbery.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 31, 1979

Re: 78-5420 - Payton v. New York
78-5421 - Riddick v. New York

MEMORANDUM TO THE CONFERENCE:

These two cases have potential for ranging implications and I now vote to affirm with the caveat that I do this now to afford Lewis time to "turn around" on the question of reargument.

Payton, in particular, is an appealing, "hard" case with the hazards traditionally associated with hard cases.

I considered and rejected the idea of assigning for a memo. Such an important case ought to have better advocates on both sides. If we reargue, I would favor inviting amicus counsel on "both sides" (including the S.G.).

Regards,

WEB

Reversed 6-3

The issues:

1. Validity of N.Y. statutes authorizing, where probable cause to arrest exists, the non-consensual entry of private residence w/o a warrant. (Burger, Rehnquist, Stevens, White, Blackmun)

DOS

The this was common law rule. 35 CAs (led by J. Rottyman in CADC) have rejected it. About half of state courts (5 to 5) support it - and did NY (4-3) in this case.

5 Cts of Appeals have rejected common law rule.

As indicated in Watson, 423 U.S. 411, I left this issue open.

BENCH MEMORANDUM

TO: Mr. Justice Powell

FROM: David

DATE: August 24, 1979

RE: Nos. 78-5420, 78-5421, Payton v. New York, Riddick v. New York (held for reargument)

These curved-line cases present the question whether the Fourth Amendment is violated by a state statute that authorizes warrantless, nonconsensual entry into the home in order to arrest a person even when there are no exigent circumstances supporting immediate action.

Payton v. New York -- Early on the morning of January 12, 1970, Payton robbed a Manhattan gas station and shot the manager, who later died. An eyewitness identified Payton as the likely killer on January 14, and pointed out Payton's apartment to police that afternoon. At 7:30 the following morning, several police officers attempted to enter Payton's apartment without a warrant. After breaking down the door with a crowbar, the police entered Payton's empty apartment and searched it thoroughly. Most of the

1. Whether an Ex Parte presumption #3 of presumptively valid statutes. If warrant Mapp case - Riccio v. Oc. Kellogg

2. Arrest or search warrant? I am inclined to think only an arrest warrant is needed & that premises need not be identified. The finding of probable cause affords protection to occupy of home.

3. Exclusionary Rule. Evidence on "plain view" was not suppressed in these cases, & I believe (but must check) that we must in any event address this issue. As appears related on presumptively valid statute, I'd not suppress, but discuss with David his memo pp 4 & 5. He says, and maybe correctly, that the litigant in case establishing new rule is entitled to its benefit, even tho rule is not applied retroactively.

What was case last Term in which a majority, including P.S., agreed with me on "good faith"

most of ev. was suppressed

evidence seized during this search was suppressed -- with the agreement of the prosecution -- before trial. There were two exceptions: a shell casing that was found in "plain view" on top of a stereo set and which matched shell casings at the scene of the crime; and a receipt for the purchase of a rifle, which was not admitted directly into the record but which ledpolice to the store where Payton had bought the rifle. The testimony of the gun dealer who sold him the rifle was admitted under New York's "inevitable discovery" rule, which admits evidence discovered on the basis of an illegally seized "lead" so long as the police would inevitably have come across the evidence in the course of investigation. Payton surrendered to the police on January 16. He was convicted of felony murder and sentenced to 15 years to life. This appeal from the New York Court of Appeals challenges §§ 177 and 178 of the New York Code of Criminal Procedure, providing that a police officer may break a door or window in order to arrest a felon.

Statutes challenged by Payton

Riddick v. New York -- In June, 1973, the New York City police knew that Riddick was wanted in connection with several robberies. In January, 1974, the police learned Riddick's home address in the Bronx, but they did not approach the apartment until March 14, 1974. At noon on that day, the police were admitted to the apartment by Riddick's three-year-old son. They found Riddick in bed. After announcing that he was under arrest, the police

ordered that he get dressed. The bed, mattress, and dresser were searched, and heroin was found in the dresser. The trial court refused to suppress the heroin as evidence, so Riddick pled guilty to criminal possession of drugs and was sentenced to two and one-half to five years in prison. Under a special New York statute, he can appeal the suppression ruling despite his guilty plea. He has served his sentence but is now in prison for armed robbery. This appeal from the New York Court of Appeals challenges § 140.15 of the New York Code of Criminal Procedure, which authorizes a police officer with a reasonable belief that a suspect is on the premises to enter those premises without a warrant in order to arrest the suspect.

I. Can Payton claim the benefit of the exclusionary rule even though the police were acting in good faith under a presumptively valid statute?

The only remedy available to appellants in this case is suppression of the evidence seized during the entry of their homes. The state argues that Payton is not entitled to such remedy because when the police broke into his apartment they had no reason to suspect that their actions were not constitutional. The state does not press this claim with respect to Riddick because his arrest occurred after this Court cast doubt on the constitutionality of warrantless home arrests in extensive

dicta in Coolidge v. New Hampshire, 403 U.S. 443 (1971). Appellants counter that the litigant in a case establishing a new legal standard should gain the benefit of that standard even if the new rule is otherwise prospective in operation. This achieves two purposes: 1) It prevents the court's action from being a legislative pronouncement of future policy, or from being mere dicta; and 2) It preserves incentives for individuals to litigate constitutional rights. See Stovall v. Denno, 388 U.S. 293, 301 (1967).

A distinction should be made between cases where a litigant argues for a new legal standard and those where a party seeks the benefit of a new standard that was announced after the events in his case occurred. When this Court has altered the exclusionary rule in recent years, it has almost always made its ruling prospective in effect in order to minimize the disruption of the law enforcement system. See Stovall v. Denno, supra (prospective effect to rule of United State v. Wade, 388 U.S. 218 (1967), that line-up evidence is inadmissible if suspect is not represented by counsel at line-up); Fuller v. Alaska, 393 U.S. 80 (1968) (same for Lee v. Florida, 392 U.S. 378 (1968), holding evidence inadmissible if seized in violation of Federal Communications Act); Desist v. United States, 394 U.S. 244 (1969) (same for Katz v. United States, 389 U.S. 347 (1967), excluding evidence from warrantless wiretap); Williams v. Florida, 401 U.S. 646

(1971) (same for restriction of evidence admissible from searches incident to arrest announced in Chimel v. California, 395 U.S. 752 (1970)); United States v. Peltier, 422 U.S. 531 (1975) (same for exclusion of evidence from roving border stop in Almeida-Sanchez v. United States, 413 U.S. 266 (1973)). Yet in all of the cases that first articulated the new legal rule -- Wade, Lee, Katz, Chimel, and Almeida-Sanchez -- the defendant received the benefit of the rule. The Court has carefully struck a balance between the society's interests in effective law enforcement and in the vindication of personal rights. The courts will only exclude evidence when the defendant has established a new principle through litigation. This policy would permit Payton to win exclusion of the evidence in this case.

Perhaps appreciating the force of this distinction, the state proposes a three-step test for when "good-faith" though unconstitutional action by police would not result in exclusion of evidence:

1) When the police action is pursuant to an unambiguous statute;

2) When the statute "clearly was not designed to evade Fourth Amendment requirements"; and

3) When the police entertain no doubts as to the constitutionality of the enactment.

There are serious problems with this test. The identification of "unambiguous" statutes might not be easy.

while major problems of proof might arise for any defendant attempting to prove that police officers thought a statute was of dubious constitutionality. And determining that a statute was designed to evade the Fourth Amendment might not be merely difficult, but might also represent improper speculation as to legislative motives.

Although the state's argument here is not compelling, its distinction between Riddick and Payton on this issue is similarly unpersuasive. The dicta in Coolidge was, after all, dicta. It seems unrealistic to expect local police departments to modify their practices to conform to gratuitous judicial statements. Thus I would think that Payton cannot be denied exclusion of evidence without also denying Riddick.

I probably agree with this

II. Is the Fourth Amendment violated by a warrantless entry to arrest, when probable cause exists but in the absence of exigent circumstances?

No exigent circumstances

This Court's most extensive discussions of this question have come in Coolidge and in your concurrence in United States v. Watson, 423 U.S. 411 (1976). Because all but one of the judges below agreed that neither arrest involved exigent circumstances, the issue now before the Court is straightforward. The Court must decide if warrantless home arrests are more like warrantless searches or like public arrests. See Note, The Constitutionality of Warrantless Home Arrests, 78 Colum. L. Rev. 1550 (1978)

(forthcoming). This decision involves consideration of the weight of experience and a balancing of the interests at stake.

A. The Precedents -- You concurred in Watson, despite reservations, because "logic must sometimes defer to history and experience." You pointed out that no other decision in Anglo-American law had required a warrant for public arrest. The situation is not so extreme in the instant case, although the generally low regard of the common law for arrest warrants has been reflected in many decisions approving warrantless home arrests. I have not explored fully the various common law commentators involved (Blackstone, Coke, Hale, et al.), or the early cases, but the preponderance of the evidence seems to favor the state's view that the common law did not require a warrant before an officer could break into a home to effect an arrest. Still, there were dissenters from the dominant view. See Blakey, The Rule of Announcement and Unlawful Entry: Miller v. United States and Ker v. California, 112 U. Pa. L. Rev. 468 (1964); Columbia Note, supra.

Common law allowed warrantless entry to arrest

Perhaps more important, several lower courts in recent years have concluded that the Fourth Amendment bans such entry without an arrest warrant. Judge Prettyman in Accarino v. United States, 179 F.2d 456 (D.C.Cir. 1949), was the first to reach this conclusion, but it has since been adopted by the D.C. Circuit en banc, Dorman v. United States, 435 F.2d 385 (D.C.Cir. 1970) (en banc), and four

Judge Prettyman first to depart from common law

5 Circuits now reject common law rule

other circuits. See United States v. Prescott, 581 F.2d 1343 (9th Cir. 1978); United States v. Reed, 572 F.2d 412 (2d Cir. 1978); United States v. Killebrew, 560 F.2d 729 (6th Cir. 1977); Vance v. North Carolina, 432 F.2d 984 (4th Cir. 1976). Five state courts have approved warrantless home arrests, while five (including California and Massachusetts) have found them unconstitutional. Columbia Note, supra, at 1553 n.24. Consequently, the weight of precedent in this case is nowhere near as overwhelming as in Watson, and would not seem to justify acquiescence in the ancient, and possibly outdated, view of warrantless home arrests.

5 state courts * are divided 5 to 5

Different from Watson

B. The Balancing -- As in most Fourth Amendment cases, the competing concerns are effective law enforcement and the privacy and liberty of the individual. You have already outlined the difficulties for police officers in the Watson concurrence: the officer will have to decide whether ~~the~~ to seek a warrant early and risk having it go "stale" during the rest of the investigation; or whether to hold off on seeking a warrant, only to have events dictate a quick, warrantless arrest that may be viewed suspiciously by a reviewing court. Some relief from these difficulties is possible because arrest warrants are less likely to go stale than search warrants. (On the arrest warrant/search warrant distinction, see pp. 11-13 infra.) In addition, the exigent circumstances exception should prevent many

Yes

difficulties.* Courts should be sensitive to situations in which the police have properly delayed acquisition of an arrest warrant while an investigation developed, but found themselves in the midst of exigent circumstances requiring an immediate arrest. In view of the sometimes erratic application of the exigent circumstances exception, this may prove a tall order. Then again, the lower courts seem to err most frequently on the side of finding exigent circumstances. E.g., Vance v. North Carolina, supra (warrantless home arrest justified by exigent circumstances even though the police found time to acquire an invalid warrant before the arrest).

Several personal interests in privacy distinguish this situation from the public arrest dealt with in Watson. First, the central focus of the Fourth Amendment is on the sanctity of the home, and there must be a greater concern for constitutional procedures when entry into the home is involved. The legitimate expectation of privacy is highest there. Second, if the home is shared with others, a warrantless entry will invade the privacy of all those people. Finally, a warrantless entry to arrest, as demonstrated by these cases, creates several opportunities for search without a warrant. The police may have to travel through several rooms in order to find the suspect,

Privacy greater in home

*In practical terms, the exigent circumstances "exception" is really quite large, since about three-fourths of all arrests occur within a day of the crime, and half take place within two hours of the crime.

David - authority for this?

and all objects in those rooms may be seized under the plain view doctrine. As in Riddick, search incident to arrest is also justified, and constitutes a further intrusion by the state. These search opportunities may tempt police to "time" an arrest when the suspect is at home. See Note, Warrantless Entry to Arrest: A Practical Solution to a Fourth Amendment Problem, 1978 U. Ill. L. Forum 655, 658.

The majority opinion for the court below argued that an arrest is simply not as big a deal as the ransacking of a home, and should not be subjected to similar restraints. The Model Pre-Arraignment Code of the American Law Institute takes a similar position: "[A]part from search considerations, it is far from clear that an arrest in one's home is so much more threatening or humiliating that a street arrest. . . ." Id. at 307 (1975). This seems wrong. There may be practical reasons for permitting a public arrest without a warrant but not permitting a premises search without a warrant -- for example, an individual may flee, while a building is stationary. But "search considerations" may not be divorced from the consequences of warrantless home arrests, and even Justice White does not think a search is more burdensome than an arrest: "[T]he invasion and disruption of a man's life and privacy which stem from his arrest are ordinarily far greater than the relatively minor intrusions attending a search of his premises." Chimel v. California,

White in Chimel

Supra, 395 U.S. at 776 (White, J., dissenting). The opportunity to challenge probable cause at a preliminary hearing or to seek damages from the arresting officers are imperfect remedies for the injury suffered from false arrest.* An alternative way of thinking about the question was suggested by Judge Prettyman in Morrison v. United States, 262 F.2d 449 (D.C.Cir. 1958), where he characterized an entry for arrest as a search for the person, and thereby subject to a warrant requirement.

Finally, although the ALI retains the distinction between daytime and nighttime entries, there seems little basis for it. The evils of warrantless entry -- intrusion on legitimate expectations of privacy and subjection to "incidental" search -- do not seem smaller when the sun is shining.

III. What kind of warrant?

At oral argument in March, a great controversy developed over whether the arresting officers should acquire a search warrant or an arrest warrant. If a search warrant is required, then a much greater problem arises of "staleness" of the warrant. If an arrest warrant

*The state also argues that a warrant requirement for home arrests would have the unfortunate effect at the preliminary hearing of reducing a defendant's chance of showing no probable cause for arrest, and would undermine his chances to seek a damage remedy subsequently. Appellees' brief at 72-75. Remarkable.

is all that is needed, the questioners suggested, the result is protection of the individual, not the home. This protection may seem anomalous in view of Watson. Alternatively, if only an arrest warrant is required, should the swearing officer be held to demonstrate reasonable cause to believe that the suspect is in the premises identified? Indeed, need the warrant identify any premises at all?

Counsel for appellants argued that a simple arrest warrant would satisfy constitutional concerns and that no address need be specified. He also said that the arresting officer would need to have reasonable cause to believe the suspect was on the premises at time of entry, but would not need to assert that when he was seeking the warrant. This position is coherent, if not elegant. The reason for requiring an arrest warrant before permitting entry into the home is to provide the added protection of review by a neutral and independent magistrate of the presence of probable cause to arrest. This protection is provided whether or not the warrant specifies a home address for the suspect. The existence of reasonable cause to believe the suspect is on the premises is likely turn on the immediate circumstances of the police approach to the dwelling. By requiring an arrest warrant for home entries to arrest, the result would be protection of the home, since the police would still be able to make warrantless public arrests. Thus the apparent anomaly of requiring an arrest warrant to

protect a premises fades on close examination.

IV. Did the police enter Payton's apartment in "hot pursuit"?

Judge Wachtler below concluded that because the entry into Payton's apartment was only three days after the murder, and only one day after the police learned his address, it was part of a "continuous and intensive" investigation and no warrant was required. This Court has approved "hot pursuit" entries when the police were pursuing a suspect a matter of hours after the crime. United States v. Santana, 427 U.S. 38 (1976) (same afternoon); Warden v. Hayden, 387 U.S. 294 (1967) (within an hour). Judge Wachtler's position, which was not joined by the other six judges, takes a very strained view of the facts. Since at least twelve hours passed between the time the police had eyewitness identification of both Payton and his apartment, and the time of entry, the hot pursuit claim seems weak.

David thinks Dr. Fillippo (Detroit ordinance authorizing officers to stop & question held invalid, but ev. obtained in search not suppressed as difficult to distinguish from Almeida). He would distinguish these cases from Dr. Fillippo & suppress ev. seized during warrantless entry. I'm afraid both of these distinctions are difficult to justify.

DOS

SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: David The exclusionary rule applied here has no deterrent effect. Police were doing their sworn duty. It is true, as David says, that unless [illegible] (invalidating statute) in Dr. Fillippo, there will be no incentive to bring suits. This is a close "balance" of imp. interests.

DATE: Sept. 17, 1979

RE: Nos. 77-5420, 78-5421, Payton v. New York, Riddick v. New York (held for reargument).

In your annotations to the original memo, you asked about the relevance of Michigan v. DeFillippo, 47 U.S.L.W. 4805 (June 26, 1979), to the question of suppressing the evidence seized in these cases. DeFillippo involved an arrest under a Detroit ordinance that authorized the police to stop and question an individual whose behavior "warrants further investigation," and makes it a misdemeanor for a person so stopped to refuse to identify himself. The state courts found the ordinance unconstitutionally vague, ruled that the arrest was invalid, and excluded from introduction at trial any evidence seized during a search incident to that arrest. This Court reversed in an opinion by the Chief Justice that was joined by Justices Stewart, White, Blackmun, Rehnquist, and you.

The DeFillippo Court declined to apply the exclusionary rule to the evidence taken from the suspect in a search incident to arrest. The Court distinguished cases approving suppression of evidence, such as Almeida-Sanchez v. United States, 413 U.S. 266

(1973), and Berger v. New York, 388 U.S. 41 (1967), as involving statutes that unconstitutionally ignored the warrant and probable cause requirements of the Fourth Amendment.

> In contrast, the ordinance here declared it a misdemeanor for one stopped for "investigation" to "refuse to identify himself"; it did not directly authorize the arrest or search. Once respondent refused to identify himself as the presumptively valid ordinance required, the officer had probable cause to believe respondent was committing an offense in his presence and Michigan's general arrest statute. . . authorized the arrest of respondent, independent of the ordinance. The search which followed was valid because it was incidental to that arrest.

47 U.S.L.W. at 4808 (emphasis added). The Court's statement suggests that no evidence seized pursuant to an unconstitutional arrest can be suppressed unless the unconstitutional statute "directly authorize[s] the arrest or search." Thus the exclusionary rule will apply only when the invalid statute prescribes police conduct, not when enforcement of a vague or otherwise unconstitutional law will violate personal rights. Although this approach does distinguish this Court's precedents on suppression of evidence, the distinction seems a bit ephemeral. All criminal statutes authorize search incident to arrest, and few (if any) statutes have self-executing arrest provisions. If a criminal statute is unconstitutional, evidence seized incident to arrest is wrongly taken because there was no constitutional probable cause for the search. If the arrest was invalid, the search was also invalid.

The policeman's good-faith belief in the validity of the law, which is much-discussed in the opinion, hardly undermines this point. First, the police are just as likely to have a good-faith belief in the constitutionality of a search-authorizing statute, to

which the exclusionary rule would still apply, as any other statute. Second, good-faith belief should only be relevant to questions of personal liability, not exclusionary rule issues. Finally, DeFillippo ignores this Court's prior concern over providing incentives for the litigation of personal rights by granting the litigant the benefit of his victory. See Bench Memo, at 4-5. I fail to see why any prisoner would challenge an arguably unconstitutional statute when there is no chance that he will benefit from a determination in his favor. Indeed, any such suit might well be vulnerable to the argument that the case was not justiciable due to a lack of adverseness. On a practical level, I would expect that the decision in DeFillippo will protect relatively few convictions, since it would only apply in those few cases where a litigant successfully challenged the constitutionality of a substantive statute. I question whether that benefit to law enforcement is worth the price exacted in deterring the vindication of personal rights.

Applying DeFillippo to these cases, I think there may be a basis for suppressing the evidence. The warrantless home arrest statute authorized certain police conduct; in DeFillippo, the ordinance prohibited certain conduct by private citizens. Of course, the warrantless home arrest provision did not "directly authorize" the searches in these cases, but it did authorize the arrest and thereby created the opportunity for the searches. And by permitting the arrests in particular circumstances, the New York statute combines with the "plain view" and "search incident to arrest" doctrines to legitimate unconstitutional searches. Although the distinction between the statute in DeFillippo and the New York

provision here may seem superficial, I think it may be material within the terms of DePillippo. The DePillippo Court distinguished search-authorizing statutes from substantive criminal statutes, presumably because the Court feels that legislation dealing with police procedures must be more strictly monitored. The warrantless home arrest statute falls within that category.

If DePillippo is held to control this case directly, I wonder if there is any basis for reaching the warrantless home arrest issue at all. These litigants gain nothing from a declaration that the New York statute does not comply with the Fourth Amendment; only the possibility of suppression gives them a real stake in the litigation.

David

DS

for supplemental memo
would there be a difference in
H/L + Steagald + Powell
applies to ~~seizure~~ arrest of
entry of premises?

SECOND SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: David

DATE: Oct. 4, 1979

RE: Payton v. New York, No. 78-5420, Riddick v. New York, No. 78-5421

Both sides have submitted supplemental briefs in this case. The focus on two questions: 1) What kind of warrant should be required in the home arrest situation? 2) What impact does Michigan v. DeFillippo, 47 U.S.L.W. 4805 (June 15, 1979), have on this case?

1) At oral argument the bench pressed counsel for appellants on whether the home arrest situation requires an "arrest" warrant or a "search" warrant. Appellant now contends that although a search warrant would certainly be an effective device for protecting the Fourth Amendment interests at stake here, an "arrest warrant" would be sufficient. The State argues that a mere arrest warrant would provide no actual protection for the home, while a search warrant requirement would be disproportionate to the extent of the intrusion caused by a home arrest. As I noted in the original memo on this case, I believe the State's position on the arrest warrant is unconvincing. An arrest warrant does provide a preliminary probable cause determination. That determination is directed to the

individual, not to the home, but it protects the home because without a warrant there can be no intrusion.

2) My Supplemental Memorandum in this case discussed DeFillippo's holding that drugs seized pursuant to an unconstitutional "stop-and-identify" ordinance need not be suppressed in a drug prosecution. The CHIEF JUSTICE's opinion in that case distinguished between statutes that (1) define substantive crimes and those that (2) authorize police behavior. Suppression is not necessary in the first instance, he concluded, although it is when the statute controls only police conduct. Appellant argues, and I agree, that if the New York home arrest statute is unconstitutional, suppression is correct under DeFillippo. The constitutionality of a substantive criminal provision may be challenged by an individual prosecuted under that law. But a defendant will have no reason to present such a challenge to a statute directing police conduct unless he can gain suppression of evidence seized under that law.

DCS

THIRD SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: David

DATE: October 8, 1979

RE: Payton v. New York, No. 78-5420, Riddick v. New York, No. 78-5421

1. On the exclusionary rule question, only one passage from your concurrence in Brown v. Illinois, 422 U.S. 590 (1975), is directly relevant:

> At the opposite end of the spectrum lie 'technical' violations of Fourth Amendment rights where, for example, officers in good faith arrest an individual in reliance on a warrant later invalidated or pursuant to a statute that subsequently is declared unconstitutional."

Id. at 611 (emphasis supplied). The key phrase refers to the sort of situation presented in DeFillippo, where a substantive criminal statute is declared unconstitutional. I do not think the passage precludes the distinction made by the Chief Justice in DeFillippo between statutes authorizing police conduct and substantive laws regulating the conduct of private parties. Equally, I do not think the passage would hinder application of that distinction to these cases. The central thrust of your opinion in Brown focusses on the attenuation between the initial constitutional violation and the revelation of crucial evidence. I found nothing in that discussion

that would control the disposition of the exclusionary rule issue here.

2. Five circuits have squarely held that warrantless home arrests are unconstitutional: CA 9 (1978); CA 2 (1978); CA 6 (1977); CA 8 (1974); and CADC (1949, per Judge Prettyman; 1970 en banc). Two circuits have adopted the guidelines offered by the DC Circuit in Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970) (en banc), for determining when exigent circumstances would justify warrantless entry into a home to execute an arrest: [redacted]; CA 3 (1972); CA 4 (1970). Since all three courts found the entry before them justified by exigent conditions, those courts have only impliedly held that warrantless entry is unconstitutional when such circumstances are not present. Two circuits have upheld warrantless home arrests: CA 7 (1970); CA 10 (1968). In 1974 CA 5 approved by reference the Dorman guidelines for exigent circumstances, but that CA 5 circuit also has approved warrantless entry into a hotel room to make an arrest (1977).

Chief

Draft

]fo/ss 10/8/79

Payton and Riddick

Dear Chief:

As you expressed last week an interest in my thinking about these cases (at a time when I had not refreshed my recollection), I now write - having read the briefs carefully over the weekend - to say that I probably will vote to reverse.

You may recall that in United States v. Watson, 423 U.S. 411 (involving the warrantless arrest in public place) ~~that~~ I reserved decision as to:

"Whether or under what circumstances an officer lawfully may make a warrantless arrest in a private home or other place where the person has a reasonable expectation of privacy." (p. 433)

There is clearly a significant distinction between

the degree of intrusion of an arrest in a public place and that where a private home is entered - often forceably. To be sure, the long history of the common law as adopted in this country has supported warrantless arrests, on probable cause, regardless of where made. In more recent years, however, courts have commenced to make a distinction - starting, perhaps, with Judge Prettyman's opinion in Accarino v. United States, 179 F.2d 456 (1949). My understanding of the "current nose count" is that five circuits, including CADC, have rejected the common law rule. ~~A number of~~ Several state courts also now require warrants for entry into a private home to arrest, absent exigent circumstances.

It seems to me that reason supports this trend of authorities.

The transcript of the argument that I missed last March includes quite a bit of discussion as to whether the

warrant should be one for arrest or for a search. The supplemental brief on behalf appellants in these cases states that an arrest warrant is sufficient. I am inclined to agree. It can be argued, of course, that a search warrant would provide greater protection to a residence. I would prefer, however, to give the police greater flexibility. The important point is that a detached magistrate would have made a decision on probable cause to [deprive someone] arrest.

A more troublesome question for me is whether the exclusionary rule should be applied in these cases, even though clearly if the New York statute is invalidated our decision should not be retroactive.

Sincerely,

The Chief Justice

lfp/ss

78-5420 Payton v. New York
78-5421 Riddick v. New York

Argued 10/9/79

Hellenstein (Retz)

No different key, "home" and "motel rooms". The case of Nevada cases, the entry was into the residence (home) of Mr. Retz - the case of Neum (Rothkeil) was about a car - leased timeshare in.

Search warrant would be better, by an agent warrant probably needs Court standards.

Consider that in each case - there was probable cause to arrest, & that the cause would have supported a warrant.

(As P.S. needed an agent warrant would not allow a search beyond "plain view" within limits of for the in closet, ⅔ but police have to be carefully there).

Agree, mutually, that search warrant warrant would support an entry into home of a 3rd party to locate the arrestee.

Opinion here was to arrest in public place - Can client invite arrestee to withdraw then entry to arrest in a home. (Ques: permit - via Magistrate's office).

Only requirement for warrant would be probable cause to believe suspect had committed crime

not that he is in a particular home.

Zmirovich (Resh - N.H. Dist Atty's office)

Disputes Peter's view of state of common law.

In N.H. can't ~~get~~ go to magistrate for warrant until police go first to prosecutor's office

Emphasized the magnitude of the problem: thousands of arrests for all sorts of crime

50% of arrests occur w/in two hours after commission of crime. (Exigent circumstances probably existed in most)

Pre-Conference Notes

78-5420 & 5421 {Payton / Riddick

I reserved Q in my Watson ofc.

Weight of modern authority favors a warrant requirement. Five CAs 2, 6, 8 9 & CADC - Discussing with J. Prettyman. Also several state cts, including Mass

I am inclined to agree with this line of cases. But a great warrant - not a search warrant - is required. Exigent circumstances must be construed liberally.

K K K

I know from experience that warrants may be obtained w/o undue delay in Rd.

Dr Hoffman (E/Rule not applied)

Such statute made it a crime for a person not to identify himself — a substantive offense rather than a regulation of police conduct

The D in Dr Hoffman could challenge validity of the such statute in any event

Here, ~~if the only~~ the ~~offense~~ is no substantive ~~offense~~ offense to challenge — only an invalid arrest

Accordingly

Reverse 5-4

78-5420 Payton v. New York
78-5421 Riddick v. New York Conf. 10/12/79

The Chief Justice Affirm both
N.Y. police acted strictly in accord with presumptively valid statute.
Also affirm no warrants.

Mr. Justice Brennan Reverse both.
Motel room would be like a home.
Need not, in this case, decide
bet. search & arrest warrants.

Mr. Justice Stewart Reverse
We should not try to avoid
"type of warrant" question.
Must have an arrest warrant
& must have probable cause to feel
to enter a specific house. Thus
at home warrant is invalid, only
need show probable cause to arrest.
Def. from DeFillippo.

Mr. Justice White Affirm

Law has been settled for long time.
Will stir up needless litigation.

Affirm as to Ex/Rule, as we are changing long settled law.

Mr. Justice Marshall Reverse

Mr. Justice Blackmun Affirm

Re U.S. v. Houle
recent CA8 case
(Hennepin Co.)

Mr. Justice Powell Reverse

See my attached notes.

Mr. Justice Rehnquist Affirm

At time Const. was adopted, common law was clear.

Reversing will have serious results.

Mr. Justice Stevens Reverse

There is significance to common law & though close, it can be argued that common law required a warrant. Cited Dick Howard. Lord Coke thought common law required warrant:

Arrest-warrant will help protect home. Search warrant not required.

Would be lawful in exigent circumstances. Need not decide Q of arrest of A in someone else's home.

Johnny Lee Hopkins
Petitioner-Appellant
v. Cir. Ct. Clinton
Lawrence Co. Arkansas
Respondent-Appellee

Is it supposedly clear that no warrant is required when— except circumstances exist? See holding # 3

Check my pre-Conference note.

L.F.P.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: MAR 13 '80

1st DRAFT Recirculated: _____

Renewed 3/16-17 Join a scholarly opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 78-5420 AND 78-5421

Theodore Payton, Applicant,
78-5420 v.
New York.

Obie Riddick, Applicant,
78-5421 v.
New York.

On Appeals from the Court of Appeals of New York

[March - -, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

These appeals challenge the constitutionality of New York statutes that authorize police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest.

The important constitutional question presented by this challenge has been expressly left open in a number of our prior opinions. In *United States* v. *Watson*, 423 U. S. 411, we upheld a warrantless "routine felony arrest" expressly noting that the case did not pose "the still unsettled question . . . whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest." 423 U. S., at 418 n. 6.[1] The question has been answered in different ways by other appellate courts. The Supreme Court

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[1] See also *United States* v. *Watson*, 423 U. S. 411, 432 (Stewart, J., concurring); *id.*, at 432-433 (Powell, J., concurring); *Gerstein* v. *Pugh*, 420 U. S. 103, 114 n. 13; *Dorman* v. *New Hampshire*, 401 U. S. 444, 471-481; *Jones* v. *United States*, 357 U. S. 493, 499-500, 10; *United States* v. *Santana*, 427 U. S. 38.

of Florida rejected the constitutional attacks as did the New York Court of Appeals in this case. The courts of last resort in 10 other States, however, have held that unless special circumstances are present, warrantless arrests in the home are unconstitutional. Of the seven United States Courts of Appeals that have considered the question, five have expressed the opinion that such arrests are unconstitutional.[3]

Last Term we noted probable jurisdiction of these appeals in order to address that question. 430 U. S. 1044. After

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[3] *See State* v. *Flores*, 277 So. 2d 778 (Fla. 1973), *cert. denied*, 416 U. S. 904.

[4] *See State* v. *Cook*, 115 Ariz. 288, 564 P. 2d 877 (1977) (in dicta on both state and federal constitutional grounds); *People* v. *Rossi*, 10 Cal. 3d 260, 515 P. 2d 1177 (1973), *cert. denied*, 420 U. S. 929 (warrantless); *Dreher* v. *People*, 176 Colo. 188, 489 P. 2d 575 (1971) (federal ruling); *State* v. *Jones*, 274 N. W. 2d 273 (Iowa 1979) (state and federal); *State* v. *Payton*, 225 Kan. 761, 594 P. 2d 220 (1979), *cert. granted sub nom. Payton v. New York*, 367 Mass. 796, 329 N. E. 2d 717 (1975) (federal ruling); *State* v. *Olivas*, 287 Or. 557, 598 P. 2d 670 (1979) (state and federal); *Commonwealth* v. *Williams*, 183 Pa. Super. 590, 133 A. 2d 277 (1957) (federal only); *State* v. *McAvoy*, 251 S. C. 241, 161 S. E. 2d 781 (1968) (state and federal); *Lorentzen* v. *State*, 84 Wis. 2d 583, 267 N. W. 2d 625 (1978) (state and federal). It should be noted that in Colorado, Massachusetts, and Pennsylvania, whose courts rest on the Federal Constitution alone in prohibiting warrantless home arrests, there is another rule, a creature of statute or rule, permitting them.

[5] *Compare United States* v. *Reed*, 572 F. 2d 412 (2d Cir. 1978), *cert. denied*, 436 U. S. 913; *United States* v. *Kirkland*, 540 F. 2d 729 (4th Cir. 1976); *United States* v. *Shye*, 492 F. 2d 886 (6th Cir. 1974); *United States* v. *Hoyos*, 892 F. 2d 1387 (9th Cir. 1989); *United States* v. *Prescott*, 581 F. 2d 1343 (9th Cir. 1978); *Dorman* v. *United States*, — U. S. App. D. C. —, 435 F. 2d 385 (1970), *with United States* v. *Watson*, 578 F. 2d 718 (8th Cir. 1978); *United States ex rel. Knight* v. *Woods*, 542 F. 2d 1110 (7th Cir. 1976), *cert. denied*, 401 U. S. 946. This latter group has created several rules deciding that warrantless home arrests are unconstitutional. *United States* v. *Hagerty*, 555 F. 2d 1151 (4th Cir. 1977); *United States* v. *Davis*, 461 F. 2d 1026 (5th Cir. 1972); *Dorman* v. *Norris*, 442 F. 2d 1308 (8th Cir. 1971). And one of these upheld such an arrest without suppressing the contraband found. *Mascarella* v. *United States*, 383 F. 2d 22 (1st Cir. 1967).

hearing oral argument, we set the case for reargument this Term. 441 U. S. 930. We now reverse the New York Court of Appeals and hold, that the Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, *Mapp v. Ohio*, 367 U. S. 643; *Wolf v. Colorado*, 338 U. S. 25, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.

Holding

We first state the facts of both cases in some detail and put to one side certain related questions that are not presented by these records. We then explain why the New York statutes are not consistent with the Fourth Amendment and why the reasons for upholding warrantless arrests in a public place do not apply to warrantless invasions of the privacy of the home.

I

On January 14, 1970, after two days of intensive investigation, New York detectives had assembled evidence sufficient to establish probable cause to believe that Theodore Payton had murdered the manager of a gas station two days earlier. At about 7:30 A. M. on Saturday January 17th, six officers went to Payton's apartment in the Bronx, intending to arrest him. They had not obtained a warrant. Although light and music emanated from the apartment, there was no response to their knock on the metal door. They summoned emergency assistance and about 30 minutes later, used crowbars to break open the door and enter the apartment. No one was there. In plain view, however, was a 30-caliber shell casing that was seized and later admitted into evidence at Payton's murder trial.[1]

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[1] A thorough search of the apartment yielded no other evidence of additional evidence relating to proof Payton's guilt, but the police subsequently did enter the other warrantless search of the apartment and testified that all the seized evidence except the shell casing had been suppressed.

[2] MR. JACOBS: There's no question that the evidence that was seized

In due course Payton surrendered to the police, was indicted for murder and moved to suppress the evidence taken from his apartment. The trial judge held that the warrantless and forcible entry was authorized by the New York Code of Criminal Procedure[1] and that the evidence in plain view was properly seized. He found that exigent circumstances justified the officers' failure to announce their purpose before entering the apartment as required by the statute.[2] He had no

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has or threats and in the door was "literally ripped off." The police seized a .30-caliber shell casing and left a warrant requesting that Riddick surrender. Id., at 3.

[1] At the time in question, January 15, 1970, the law applicable to the police conduct at issue was governed by the Code of Criminal Procedure. Section 177 of the Code of Criminal Procedure is applicable to this case and provided: "A sheriff, police officer or any person, charged with the execution of any warrant, who has demanded admittance and declared the purpose for which admittance is desired, may break open any outer or inner door or window of a house or any part of a house, or anything therein, if after such demand and declaration of purpose he cannot otherwise reasonably obtain admittance." *People* v. *Payton*, 34 Misc. 2d 975, 976, 975, Sup. Ct., N. Y. County, N. Y. 1971).

[2] "Although [section 35] has knocked up the rule to [the] effect that it is not unlawful for a police officer to enter premises for the purpose of arrest if the police officer, upon declaration of purpose is confronted with exigent circumstances of present danger [*People* v. *Rogowski*, 31 AD 2d 835, *People* v. *McFee*, 28 AD 2d 711]."

[3] "[The] law provides exceptions from the statute of unannounced entry for [exigent circumstances which may allow dispensation with the requirement. It has] been held or suggested that police are not required to announce prior to forcible entry if they will allow an escape or if there is a grave physical risk to the police or to innocent persons." *People* v. *Entner*, 21 NY 2d 368, 372.

[4] "The [police] officer testified that he went to defendant's apartment to execute a warrant of arrest for the defendant; that he suspected that defendant was armed and dangerous; that he knew that defendant had a criminal history of violence; that there was strong reason to believe that the suspect was in the premises being searched and that he had a description of the readily apprehended. From this [the court held that exigent circumstances

occasion. However, to decide whether those circumstances also would have justified the failure to obtain a warrant, because he concluded that the warrantless entry was adequately supported by the statute without regard to the circumstances. The Appellate Division, First Department, summarily affirmed.[2]

On March 14, 1974, Obie Riddick was arrested for the commission of two armed robberies that had occurred in 1971. He had been identified by the victims in June of 1973 and in January 1974 the police had learned his address. They did not obtain a warrant for his arrest. At about 8:00 on March 14 a detective, accompanied by three other officers, knocked on the door of the Queens house where Riddick was living. When his young son opened the door, they could see Riddick sitting in bed covered by a sheet. They entered the house and placed him under arrest. Before permitting him to dress, they opened a chest of drawers two feet from the bed in search of weapons and found narcotics and related paraphernalia. Riddick was subsequently indicted on narcotics charges. At a suppression hearing, the trial judge held that the warrantless entry into his home was authorized by the revised New York statute,[3] and that the search of the immedi-

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especial objects were contained within" at 178. The court holds therefore that the entry into Riddick's apartment was valid." 54 Misc. 2d, at 975.

[2] *People* v. *Payton*, 45 A. D. 2d 820 (1974).

[3] New York Criminal Procedure Law § 140.30(4) provides, with respect to arrest without a warrant:

"In order to effect such an arrest, a police officer may enter premises in which he reasonably believes such person to be present, under circumstances and in the manner he would be authorized, by the provisions of subparagraph (i) of paragraph (b) of subdivision 1 of section 690.05, to enter such premises to execute a warrant of arrest."

Section 120.80, governing execution of arrest warrants, provides in relevant part:

"1. In order to effect the arrest, the police officer may, under the circumstances and in the manner prescribed in this subdivision, enter any premises in which he reasonably believes the defendant to be present. Before such

diate area was reasonable under *Chimel* v. *California*, 395 U. S. 752.[9] The Appellate Division, Second Department, affirmed the denial of the suppression motion.[10]

The New York Court of Appeals, in a single opinion, affirmed the convictions of both Payton and Riddick. The court recognized that the question whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest had not been settled either by that court or by this Court.[11] In answering that question, the majority of four judges relied primarily on its perception that there is a

> "... substantial difference between the intrusion which attends an entry for the purpose of searching the premises and that which results from an entry for the purpose of making an arrest and on the significant difference in the governmental interest in achieving the objective of the intrusion in the two instances." 45 N. Y. 2d at 310, 380 N. E. 2d, at 228–229.[12]

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enter he must give or make reasonable effort to give notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that giving such notice would:

"(1) Result in the defendant escaping or otherwise avoiding his arrest; or

"(2) Endanger the life or safety of the officer or another person; or

"(3) Result in the destruction, damage or concealment of material evidence.

"5. If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter such premises and may break open any outer or inner door or window of a house, any part of a house, or anything therein, if such entry is made for the purpose of executing the warrant, or when he is in the execution of his duties as an officer, in any of the circumstances enumerated in subdivision four."

[9] 395 U. S., at 762–763.

[10] *People* v. *Payton*, 57 A. D. 2d 977, 977 (1977). One Justice dissented on the ground that the officers' failure to announce their authority and purpose before entering an home made the arrest illegal under state and federal law.

[11] *People* v. *Payton*, 45 N. Y. 2d 300, 380 N. E. 2d 224, 225 (1978).

[12] The majority continued:

"In the case of the search, unless appropriate facts dictate the need for a warrant, the decision on the householder's door is usually will be

The majority supported its holding by noting the "apparent historical acceptance" of warrantless entries to make felony

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bol, more extensive and more intensive. In the balancing process the privacy of greater magnitude than what might be expected to exist in an entry made for the purpose of effecting his arrest. A search by its nature contemplates a possible, through rummaging through possessions, with concomitant upheaval of the owner's chosen or random placement of goods and articles and disclosure to the searcher of a myriad of personal items and details which he would expect not to be free from scrutiny by unwanted eyes. The intrusiveness to the entry and search of the residence is equated here, in greater or lesser degree, as the process would normally surround such a felon living, and, it can be said, be bent, to an extent of which he will be unaware.

"Entry for the purpose of arrest may be expected to be quite different. While the taking into custody of the person of the home dweller is undoubtedly of grave import, there is no accompanying carrying into the area of repose [private grounding the possession and effects. That personal seizure alone does not require a warrant was established by *United States v. Watson* 423 U.S. 411, supra, which upheld a warrantless arrest made in a public place. In view of the minimal intrusion on the elements of privacy of the home which results from entry to the premises for making an arrest (as compared with the gross intrusion which attends the arrest itself), no perceptible constitutional distinction between an arrest in a public place and an arrest in a dwelling has been drawn. To the extent that an arrest of absolute certainty is effective, there is little reason to require that arrest within the home to any more extensive test for public places; on the contrary, it may well be that a person in the police custody in the latter may be more objectionable.

"At least as important, and perhaps even more so, in our holding that entries to make arrests are not unreasonable—the entry upon the premises and privacy interests of the occupant which may be made, viz., the arrest of one reasonably believed to be committing a felony, is the resultant protection to the community. The reasonableness of any governmental intrusion is to be judged from two perspectives—that of the defendant considering the degree and scope of the invasion of his person or property; that of the People weighing the detection and apprehension of governmental action. The community's interest in the apprehension of criminal suspects is of a higher order than is the concern for the recovery of contraband or evidence to solve the crime and convict the felon. The failure to apprehend for reasons of the risk of a jump to flee more severely." 45 N.Y.2d, at 310-311, 380 N.E.2d, at 229.

arrests, both in the English common law and in the practice of many American States."

Three members of the New York Court of Appeals dissented on this issue because they believed that the Constitution requires the police to obtain a "warrant to enter a home to arrest or seize a person, unless there are exigent circumstances."[1] Starting from the premise that except in carefully circumscribed instances, "the Fourth Amendment forbids police entry into a private home to search for and seize an object without a warrant,"[2] the dissenters reasoned that an arrest of the person involves no greater invasion of privacy and should therefore be attended with at least as great a measure of constitutional protection.[3] The dissenters noted

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[1] "The opinion [Stevens, J.] proposes in the English common law of arrest a simple formula to guide police officers: If [Hale, Historia Placitorum Coronæ, History of Pleas of Crown] [1st Amer. ed., 1847] p. 92; Chitty, Criminal Law [1st Amer. from 2d London, ed. 1826] 22–23], and the existence of statutory authority for such entry [p. 96], State cases [the case law of the Colonies Congress Proceedings [1851 digest, general principles of common law and statutes] do not establish a presumption . . .

"Nor do we ignore the fact that a number of jurisdictions [that have not been] specifically enacted statutes authorizing warrantless entries of [dwellings (without exception for homes) for purposes of arrest]. The American Law Institute's Model Code of Pre-Arraignment Procedure presently contains a provision in section 120.1, with suggested specific restrictions only as to nighttime entries." 45 N. Y. 2d, at 822–823, 380 N. E. 2d, at 229–230.

[2] 45 N. Y. 2d, at 827, 380 N. E. 2d, at 232 (Wachtler, J., dissenting).

[3] 45 N. Y. 2d, at 827–828, 380 N. E. 2d, at 232 (Cooke, J., dissenting).

[4] "[Long] the point has not been squarely decided [by this Court]. [In *New York ex rel. Burke* v. *Wilkins*, 355 U. S. 413] (per *Curiam*) [*Burke* v. *United States*, 125 U. S. 411, 413 (per curiam)], [it was] assumed [that] . . . At the time of the Fourth Amendment, [with] the limited power of arrest without a warrant, the night [was] thought [to afford] [a] greater protection to the individual's interest in privacy [than] [the] expectation of privacy [in] [a] dwelling. [See] *Boyd* v. *United States*, [116 U. S. 616, 626–627 (1886)]; *Weeks* v. *United States*, [232 U. S. 383, 390–391 (1914)]. [The] [t]ext of the amendment [reflects] the warrant requirement [applies to] public

"the existence of statutes and the American Law Institute important codifying the common-law rule authorizing warrantless arrests in private homes" and acknowledged that "the statutory authority of a police officer to make a warrantless arrest in this State has been in effect for almost 100 years," but concluded that "neither antiquity nor legislative imprimatur can be determinative of the grave constitutional question presented" and "can never be a substitute for reasoned analysis."[7]

As the New York Court of Appeals noted, the narrow question presented by these appeals has been expressly left open in recent cases resolving related issues.[8] "Before addressing that question, however," we put to one side other related problems that are not presented today. Although it is arguable that the warrantless entry to effect Payton's arrest might have been justified by exigent circumstances, none of the New York courts relied on any such justification. The Court of Appeals majority treated both Payton's and Riddick's cases as involving routine arrests at which there was

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and the police reflecting their conviction that the decision to enter a dwelling should be left with the officer in the field, but neither articulated any objective standard governing that decision. *Mapp v. Ohio*, 367 U. S. 643, 655 (1961). Accordingly, as a matter of the Fourth Amendment's protection against unreasonable searches and seizures, the Court's approval could control only conduct to which regardless of the purpose for which it occurs it might be fairly characterized as unreasonable. By definition, arrests should be limited to those with respect to which there is probable cause to believe that the suspect has committed a crime. Since warrantless searches and seizures in the home are presumptively unreasonable, the Court's decision in the Fourth Amendment area designed to deter police misconduct [footnote omitted] will be furthered by a requirement that officers have probable cause to believe that a felony has been committed before they enter a dwelling without a warrant. 45 N. Y. 2d, at 371, 380 N. E. 2d, at 244 (Cooke, J., dissenting).

[7] See n. 1, *supra*.

[8] Although it is not clear from the record in any of these cases that the constitutional issue is properly presented for review by this Court, see *Wade v. Hunter*, 336 U. S. 684, 686 (1949), we have

ample time to obtain a warrant," and we will do the same. Accordingly, we have no occasion to consider generally what sort of emergency or dangerous situation might justify a warrantless entry into a home for the purpose of either arrest or search.

Nor do these cases raise any question concerning the authority of the police, without either a search or arrest warrant, to enter a third party's home to arrest a suspect. The police broke into Payton's apartment intending to arrest Payton and they arrested Riddick in his own dwelling. We also note that in neither case is it argued that the police lacked probable cause to believe that the suspect was at home when they entered. Finally, in both cases we are dealing with entries into homes made without the consent of any occupant. In *Payton*, the police used crowbars to break down the door and in *Riddick*, although his three-year-old son answered the door, the police entered before Riddick had an opportunity either to object or to consent.

II

It is familiar history that the indiscriminate searches and seizures conducted under the authority of "general warrants" were the immediate evil that motivated the framing and adoption of the Fourth Amendment. Indeed, as originally pro-

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[1] 15 N. Y. 2d, at 286, 258 N. E. 2d, at 213. Judge Breitel, however, would have upheld the warrantless entry in *Payton*'s case on exigent-circumstances grounds, and therefore agreed with the majority's refusal to suppress the evidence seized. *See* 15 N. Y. 2d, at 293, 258 N. E. 2d, at 217.

[2] Virginia Declaration of Rights § 10 (1776), *reprinted in* 7 Thorpe 3814 ("That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted"). This was copied by James Otis in the most influential denunciation of writs of assistance, the most destructive of English liberty, and one of the fundamental principles of law, that every man's house is his castle, as the place to which he can resort with all his family, and all his property, and where he ought to be free from search and seizure, if his doors are shut against intruders, every man, who has such a castle to defend, is surrounded with the badges of royalty, and is as secure as the king in his castle or throne, so long as he observes the municipal law. A man's house is his castle, not only for himself, but his family, and his property; and where shall they find a more secure retreat, than in their castles, or places of abode? Your writs of assistance break open not only the doors, locks, bars, and chests, but the walls, the roofs, the garrets, the cellars, the inmost recesses of a house, or any other place, in short, the most secret cabinets and strongest holds, and carry away every thing in them, without exception. In the case of searching for uncustomed goods, they may break open any store, shop, cellar, warehouse, or any house, by day or by night, whether inhabited or uninhabited, and may force any person to open locks, doors, trunks, chests, pockets, and packages, to gratify a mere surmise of a custom-house officer, that he has a right to enter and search wherever he suspects uncustomed goods are concealed. Reported in 2 Tudor, The Life and Times of James Otis of Massachusetts 66 (1823).

posed in the House of Representatives the draft contained only one clause, which directly imposed limitations only on the issuance of warrants but imposed no express restrictions on warrantless searches or seizures.[1] As it was ultimately adopted, however, the Amendment contained two separate clauses: the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause.[2] The 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."

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pre-dated the first proposal (which was withdrawn) of the text of the objection to the expression in the modern context. "That any Person" and "that Men" are identical. The only difference of importance is the addition of "papers" to the objection clause in Great Britain. "Thus, under the Fourth Amendment, as under the English law from which it is derived, papers are 'special objects.'" *Boyd v. United States*, 116 U. S. 616, 623; *Stanford v. Texas*, 379 U. S. 476, 481–482.

See also 1 Cooley's Story and Schouler of the Supreme Court 748 (1931) (abbreviated); Landynski, N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 19–48 (1937) (hereinafter Lasson); T. Taylor, Two Studies in Constitutional Interpretation 19–41 (1969); Davis II, Origins of Taylor.

[1] "The right of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not containing as nearly as may be a description of the place to be searched, and the person or things to be seized." 1 Annals of Cong., 1st Cong., 1st Sess., p. 452. Lasson, *supra*, n. 100.

[2] "The second right, or security from unreasonable searches and seizures, was given a separate clause in the Amendment, thus interpreted as granting a broader scope. That the prohibition against unreasonable searches was intended, accordingly, to cover something other than the issuance of warrants appears on the face of the Amendment. It is also supported by the phraseology of the Amendment." Lasson, *supra*, at 117. (Footnote omitted.)

It is thus perfectly clear that the evil the Amendment was designed to prevent was broader than the abuse of a general warrant. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment. Almost a century ago the Court stated in resounding terms that the principles reflected in the Amendment "reached further than the concrete form" of the specific cases that gave it birth and "apply to all invasions on the part of the Government and its employés of the sanctity of a man's home and the privacies of life." *Boyd* v. *United States*, 116 U. S. 616, 630. Without pausing to consider whether that broad language may require some qualification, it is sufficient to note that the warrantless arrest of a person is a type of seizure that is required by the Amendment to be reasonable. *Brock* v. *Weiss*, 325 U. S. 89, [Indeed as Mr. Justice Powell noted in his concurrence in *United States* v. *Watson*, *supra*, the arrest of a person is "quite-literally a seizure." 423 U. S. 411, 428.

The simple language of the Amendment applies equally to seizures of persons and to seizures of property. Our analysis in this case may therefore properly commence with rules that have been well established in Fourth Amendment litigation involving tangible items. As the Court unanimously reiterated just a few years ago the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *United States District Court*, 407 U. S. 297, 313. And we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort.[1]

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[1] As Justice Jackson so eloquently observed in *Johnson* v. *United States*, 333 U. S. 10, 13-14:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being drawn by the officer engaged

It is a "basic principle of Fourth Amendment law" that searches and seizures inside a man's house without a warrant are presumptively unreasonable. On the other hand, it is also well-settled that objects such as weapons or contraband found in a public place may be seized by the police without a warrant. The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. The distinction between a warrantless

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in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. Crime, even in the privacy of one's own quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." (Footnotes omitted.)

As the Court stated in *Coolidge* v. *New Hampshire*, supra:

"Both sides to the controversy appear to recognize a distinction between searches and seizures that take place on a man's property—his home or office—and those carried out elsewhere. It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of 'exigent circumstances.'

. . . . .

"It is clear, then, that the notion that the warrantless entry of a man's house in order to arrest him on probable cause is per se legitimate is in fundamental conflict with the basic principle of Fourth Amendment law that searches and seizures inside a man's house without warrant are per se unreasonable in the absence of some one of a number of well defined 'exigent circumstances.'" 403 U. S., supra, at 474-475, 477-478.

Although Mr. Justice Harlan joined this portion of the Court's opinion, he expressly disclaimed any position on the issue now before us. *Id.*, at 492 (Harlan, J., concurring).

seizure in an open area and such a seizure on private premises was plainly stated in *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 354:

> "It is one thing to seize without a warrant property resting in an open area or seizable by levy without an intrusion into privacy, and it is quite another thing to effect a warrantless seizure of property, even that owned by a corporation, situated on private premises to which access is not otherwise available for the seizing officer."

As the late Judge Leventhal recognized, this distinction has equal force when the seizure of a person is involved. Writing on the constitutional issue now before us for the United States Court of Appeals for the District of Columbia Circuit sitting en banc *Dorman* v. *United States*, — U. S. App. D. C. —, 435 F. 2d 385 (1969), Judge Leventhal first adverted to the settled rule that warrantless arrests in public places are valid. He unhesitatingly recognized, however, that

> "[a] greater burden is placed [on] officials who enter a home or dwelling without consent. Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment." 435 F. 2d, at 389. (Footnote omitted.)

His analysis of this question then focused on the indisputably well-settled premise that, absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within.[7] He reasoned that the constitutional

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[7] As Mr. Justice Harlan wrote for the Court:

"It is settled doctrine that police officers may enter private premises without a warrant when they are in hot pursuit of a fleeing felon, or in order to prevent the destruction of evidence. *Warden* v. *Hayden*, 387 U. S. 294, 298–299; *Ker* v. *California*, 374 U. S. 23, 39–41; *Vale* v. *Louisiana*, 399 U. S. 30, 34; *Johnson* v. *United States*, 333 U. S. 10, 15. The decisions of this Court have not precisely

protection afforded to the individual's interest in the privacy of his own home is equally applicable to a warrantless entry for the purpose of arresting a resident of the house. For it is inherent in such an entry that a search for the suspect may be required before he can be apprehended.[7] Judge Leventhal concluded that an entry to arrest and an entry to search for and to seize property implicate the same interest in preserving the privacy and the sanctity of the home, and justify the same level of constitutional protection.

This reasoning has been followed in other circuits.[8] Thus, the Second Circuit recently summarized its position:

> "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present." *United States* v. *Reed*, 572 F. 2d, at 428.

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under cover of the Fourth Amendment to shield the citizen from unwarranted intrusions into his privacy. See, e. g., *Johnson* v. *United States*, 333 U. S. 10, 13; *Wolf* v. *Colorado*, 338 U. S. 25, 27; *Camara* v. *Municipal Court*, 387 U. S. 523, 528. This purpose is realized by Rule 41 of the Federal Rules of Criminal Procedure, which implements the Fourth Amendment by requiring the neutral intervention of a magistrate between the citizen and the law enforcement officer engaged in the often competitive enterprise of ferreting out crime. See *Johnson* v. *United States*, *supra*, at 13–14. With limited exceptions not relevant here, a warrant may issue only upon "probable cause to believe that evidence sought is located in the place to be searched." *Ker* v. *California*, 374 U. S. 23, 30. Absent exigent circumstances, the requirement of probable cause would be meaningless unless a neutral magistrate made the assessment. Cf. *Coolidge* v. *New Hampshire*, 403 U. S. 443, 449–450. Without a warrant issued on probable cause, a search or seizure in a home would be unreasonable as a matter of law. In the absence of consent or exigent circumstances, the method of entry into the home would be immaterial. Cf. *Sabbath* v. *United States*, 391 U. S. 585, 590 n. 7; *Miller* v. *United States*, 357 U. S. 301, 313–314; *Jones* v. *United States*, 357 U. S. 493, 499–500.

[7] See generally Dershowitz and Hessel, Search and Seizure Law for the Person to Be Searched, 63 Minn. L. J. 361 (1979).

[8] See n. 4, *supra*.

We find this reasoning to be persuasive and in accord with this Court's Fourth Amendment decisions."

The majority of the New York Court of Appeals, however, suggested that there is a substantial difference in the relative intrusiveness of an entry to search for property and an entry to search for a person. See n. 13, *supra*. It is true that the area that may legally be searched is broader when executing a search warrant than when executing an arrest warrant in the home. See *Chimel* v. *California*, *supra*. But this difference may be more theoretical than real because the police may need to check the entire premises for safety reasons and sometimes they ignore the restrictions on search incident to arrest.[1]

But the critical point is that any differences in the intrusiveness of entries to search and entries to arrest are merely ones of degree rather than kind. The two intrusions share this fundamental characteristic: the breach of the entrance to an individual's home. The Fourth Amendment protects the individual's privacy in a variety of settings. At its core is the zone of privacy manifestly chosen when it is breached by the unambiguous physical limitations of an individual's home—a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their . . . houses . . . shall not be violated." That language unequivocally establishes the proposition that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable Government intrusion." *Silverman* v. *United States*,

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[1] Essentially, our holding rests upon the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic. Our decision does not mean that every entry must be preceded by application for a warrant. Compare *Camara* v. *Municipal Court*, 387 U. S. 523, 528-529. Circumstances may compel unannounced entry to protect life or property or to prevent escape. Hot pursuit might supply an exigency requiring immediate entry. It is also arguable that a lesser intrusion is involved when police officers need only enter a house to arrest a resident who is plainly visible from outside. But we need not consider any such exceptions in this case, since no claim was made that any such circumstances were present.

[2] See, e. g., Brief for Petitioner in Payton's case, p. 8, *supra*.

365 U. S. 505, 511. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

III

Without contending that *United States* v. *Watson*, *supra*, decided the question presented by these appeals, New York argues that the reasons that support the Watson holding require a similar result here. In *Watson*, the Court relied on (a) the well-settled common-law rule that a warrantless arrest in a public place is valid if the arresting officer had probable cause to believe the suspect is a felon;[7] (b) the clear consensus among the States adhering to that well-settled common-law rule;[8] and (c) the expression of the judgment

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[7] The case concerning the Fourth Amendment that "reflect[s] the ancient common-law rule that a peace officer was permitted to arrest without a warrant and on whatever information he possessed as well as for a felony not committed in his presence if there was reasonable ground for making the arrest." 10 Halsbury's Laws of England 314-315 (3d ed. 1955); 1 W. Hawkins, Pleas of the Crown 272 (8th ed. 1824); 1 J. Stephen, A History of the Criminal Law of England 193 (1883); 2 M. Hale, Pleas of the Crown 572-74; Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 547-551, 556-558 (1924); *Samuel* v. *Payne*, 1 Doug. 359, 99 Eng. Rep. 1189 (K. B. 1780); *Beckwith* v. *Philby*, 6 Barn. & Cres. 635, 638 (108 Eng. Rep. 585 (K. B. 1827)); 422 U. S., at 413-419.

[8] "The Nation's experience has not disclosed a single judicial or legislative statute authorizing felony arrests on probable cause and warrant, but omitting such safeguards when the police act without a warrant. It appears to have been left to the States in the form of express statutes or unchallenged practice." *Id.*, at 421-422.

[9] "This is the only clear-cut direction we have had from Congress, and it is persuasive that Congress has specifically approved state legislation authorizing warrantless felony arrests in circumstances where they are reasonable." *Id.*, at 423.

The Court added in a footnote:

"Until 1951 [18 U. S. C. § 3052 conferred the warrantless arrest power on agents of the Secret Service and Federal Bureau of Investigation only when they had reasonable grounds to believe that the person to be arrested was

of Congress that such an arrest is "reasonable." [ ] We consider each of these reasons as it applies to warrantless entries into a home for the purpose of making a routine felony arrest.

A

An examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable. Initially it should be noted that the common-law rules of arrest developed in legal contexts that substantially differ from the cases now before us. In those cases which involve application of the exclusionary rule the issue is whether certain evidence is admissible at trial. See *Weeks* v. *United States*, 232 U. S. 383. At common law the question whether an arrest was authorized typically arose in civil damage actions for trespass or false arrest in which a constable's authority to make the arrest was a defense. See, *e. g.*, *Leach* v. *Three of the King's Messengers*, 19 How. St. Tr. 1001 (K. B. 1765).

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part could be declared." The Act of Jan. 20, 1941, c. 122, § 1, 55 Stat. 1238, 18 U. S. C. § 2231 (1940 ed., Supp. V).

[ ] There is an important difference between the common-law rules governing the validity of searches and seizures and those that have developed through the process of interpreting the Fourth Amendment in light of contemporary notions and conditions. For example, whereas the Framers were deeply concerned with safeguarding the privacy of papers and effects, see *Boyd* v. *United States*, 116 U. S. 616, 630, the concept of property that now finds protection under the Fourth Amendment has been expanded to include more intangibles. *Warden* v. *Hayden*, 387 U. S. 294. Also the prohibitions of the amendment have been extended to protect against invasions by electronic eavesdropping and include persons as their protected interest rather than places. *Katz* v. *United States*, 389 U. S. 347. Even the right to enter has been based on the physical invasion of the subject's property by persons in the course of a seizure of tangible objects. See *Ker* v. *United States*, 377 U. S. 13, 34n. Thus, the Court has not simply recognized common-law principles governing arrests and searches but has sought to apply the Fourth Amendment's prescriptions.

Additionally, if an officer was killed while attempting to effect an arrest, the question whether the person resisting the arrest was guilty of murder or manslaughter turned on whether the officer was acting within the bounds of his authority. See M. Foster, Crown Cases 308, 312 (1762). See also *West v. Cabell*, 153 U. S. 78, 85.

A study of the common law on the question whether a constable had the authority to make warrantless arrests in the home on mere suspicion of a felony, as distinguished from an officer's right to arrest for a crime committed in his presence, reveals a surprising lack of judicial decisions and a deep divergence among scholars.

The most often cited evidence of the common-law rule consists of an equivocal dictum in a case actually involving the sheriff's authority to enter a home to effect service of civil process. In *Semayne's Case*, 77 Eng. Rep. 194, 195, 196 (K. B. 1603), the Court stated:

> "In all cases when the King (*i*) is a party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K.'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors (*k*); and this appears well by the stat. of Westm. 1. c. 17. (which is but an affirmance of the common law), as hereafter appears, for the law without a default in the owner abhors the destruction or breaking of any house (which is for the habitation and safety of man) by which great damage and inconvenience might ensue to the party, when no default is in him; for perhaps he did not know of the process, of which, if he had notice, it is to be presumed that he would obey it, and that appears by the book in 18 E. 2. fol. Execut. 252. where it is said, that the K.'s officer who comes to the execution, &c. may open the doors which are shut, and break them, if he cannot have the keys, which

process, that he might first to demand them. 7 E. 4, 9 (b), 16.[19]

This passage has been read by some as describing an entry without a warrant. The context strongly implies, however, that the court was describing the extent of authority in executing the King's writ. This reading is confirmed by the phrase "either to arrest him, or to do other execution of the K.'s process" and by the further point that notice was necessary because the owner may "not know of the *process*." In any event, the passage surely can not be said unambiguously to endorse warrantless entries.

The common-law commentators disagreed sharply on the subject.[20] Three distinct views were expressed. Lord Coke, widely recognized by the American Colonists "as the greatest authority of his time on the law of England,"[21] clearly viewed

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[20] Those modern commentators who have carefully studied the early works agree that the common law was unclear. See ALI Code of Pre-Arraignment Procedure, Proposed Official Draft 308 (1975) (commentary); ALI; Blakey, The Rule of Announcement and Unlawful Entry: *Miller v. United States* and *Ker v. California*, 112 U. Pa. L. Rev. 499, 502 (1964); Comment, Forcible Entry to Effect a Warrantless Arrest—The Eroding Protection of the Castle, 82 Dick. L. Rev. 167, 168 n. 5 (1977); Note, The Constitutionality of Warrantless Home Arrests, 78 Colum. L. Rev. 1550, 1553-1555 (1978). Cases and commentators that appear to be evenly divided on the requirement of a warrant for a home entry (citing for example, Note, Recent Development, Warrantless Arrests by Police Survive a Constitutional Challenge—*United States v. Watson*, 14 Am. Crim. L. Rev. 193, 210-211 (1976)). See also *Jones v. United States*, 357 U. S. 493, 499-500 (1958); *Accarino v. United States*, — U. S. App. D. C. —, 179 F. 2d 456, 461 (1949).

[21] "Foremost among the volumes in the libraries of the time were the works of Coke, the great expounder of Magna Carta, and similar books on English liberties. The inventory of the library of Arthur Spicer who died in Richmond County, Virginia, in 1699 included Coke's *Institutes*, another work on Magna Carta, [and a] 'Table to Cooke Reports.' The library of Colonel Daniel McCarty, a wealthy planter and member of the Virginia House of Burgesses who died in Westmoreland County in 1724, included Coke's *Reports*, an abridgment of Coke's Re-

a warrantless entry for the purpose of arrest to be illegal." Barr, Foster and Hawkins agreed," as did East and Russell, though the latter two qualified their opinions by stating that

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ports, Coke's Institutes and Rights of the Courts of England." Carrington & Harris, Colonial Virginia, at 172. Edmund Christopher Coke, who died in Princess Anne County, Virginia, in 1719, was a first cousin of Coke's descendants. The only known Virginia reference to Coke's Reports is a 1737 entry in the diary of William Byrd II of Westover, which mentions that Byrd had borrowed a volume of Coke's Reports from Peter Beverley. Byrd, The Secret Diary of William Byrd of Westover, 1709-1712, at 474 (L. Wright & M. Tinling eds. 1941). Coke's Reports were not cited in any reported Virginia case before 1790. See Virginia Cases, 1789-1826, at 1-2 (1957). Coke's Institutes, however, were frequently cited in the colonies and early States. See, e. g., Bacon's Abridgment of the Laws of Virginia (1736); Jefferson, Commonplace Book, in 1 Writings of Thomas Jefferson 419-485 (Ford ed. 1892). Coke's Institutes were cited in 27 of the 47 Virginia cases reported between 1790 and 1826. See Virginia Cases, 1789-1826, at 1-2 (1957). The second most frequently cited work was Hawkins' Pleas of the Crown, cited in 12 cases. See Virginia Cases, 1789-1826, at 1-2 (1957). Hawkins' Pleas of the Crown was also frequently cited in the colonies and early States. See, e. g., Bacon's Abridgment of the Laws of Virginia (1736); Jefferson, Commonplace Book, in 1 Writings of Thomas Jefferson 419-485 (Ford ed. 1892).

[Footnote 2] The popularity of Coke in the colonies is of no small significance. Coke himself had been a champion of the struggle in the 17th century between King and Parliament in the early seventeenth century which did so much to shape the English Constitution. He was the principal author of the Commentaries of Speakers of the House of Commons and Attorney General of Queen Elizabeth I and Sir Edward Coke presided over the Court of Common Pleas and then the Court of King's Bench during this time. Coke gained an international reputation as the champion of the rights of the House of Parliament, especially during its opposition to the Stuart efforts to rule by Royal Decree. Being both a champion of the Crown's prerogative, Coke is also credited with much of the restatement of Thomas à Becket's claim that the home is the castle of the occupant. See, e. g., Dick Howard, The Rule of Law in Virginia, 18 U. Rich. L. Rev. 1, 3 (1983).

[Footnote 3] Nor can the constitutionality of the other all-but-open doors be saved by the quick-seal of the party-in-control or Target with the Blue Dot. See, e. g., Locke, Investing 377. Once the case of the evidence is closed, a judge ordinarily may not reopen it to allow the introduction of new evidence, or even to allow the introduction of old evidence previously excluded, unless the interests of justice so require. See, e. g., Gilbert v. United States, 366 U. S. 363, 365 (1961). Here, no such necessity appears in the case before us.

[Footnote 4] See, The Statutes at Large, Being a Collection of All the Laws of Virginia 87 (Hening ed. 1823); M. Bacon, 1 Laws 621 (1762); 2 W. Hawkins, Pleas of the

if any entry for arrest was made without a warrant at the most an officer was immune from liability for the trespass only if the suspect was actually guilty. Blackstone, Chitty and Stephen took the opposite view, that entry to arrest without a warrant was legal,[11] though Stephen relied on Blackstone who, along with Chitty, in turn relied exclusively on Hale. But Hale's view was not quite so unequivocally expressed.[12] Further, Hale appears to rely solely on a statement in an early Yearbook, quoted in *Burdett* v. *Abbot*, 104 Eng. Rep. 501, 508 (K. B. 1811):[13]

> "'that for felony or suspicion of felony a man may break open the house to take the felon; for it is for the commonweal to take them.'"

Considering the diversity of views just described, however, it

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Crown 139 (ed. cl. 1771): "But where one flies upon a probable suspicion of felony, and is not arrested, it seems the better opinion of the books, that no one is justified in the breaking open doors in order to take him." The source appears to be 2 Hale 96, a work acknowledged among the sources in Dalton's text (n. 9).

[11] 4 W. Blackstone, Commentaries *292; 1 J. Chitty, Criminal Law 23 (1819); 1 H. Stephen, New Commentaries on the Laws of England 176 (1845).

[12] 1 M. Hale, Historia Placitorum Coronae 583, 584 (1736). At page 584 the latter is cited, Hale wrote: "If the officer, or any other, that hath lawful warrant to arrest a felon, or any other offender, if he cannot otherwise enter the house, may break open the door, and any thing therein, to take the felon, or other offender, or to keep the queen's peace, or the like. But he ought first to signify to the owner of the house the cause of his coming, and to demand the prisoner, unless he hath broken prison, or make fresh pursuit." Although it would appear that Hale might have meant to limit warrantless forcible entries to those cases in which the officer had reasonable grounds to believe that the suspect was actually guilty, the quoted passage does not appear to support that view.

[13] Apparently, the Yearbook in which the statement appears has never been fully translated into English.

is clear that the statement was never deemed authoritative. Indeed, in *Burdett*, the statement was described as an "extra-judicial opinion." *Ibid.*[1]

It is obvious that the common-law rule on warrantless home arrests was not as clear as the rule on arrests in public places. Indeed, particularly considering the proclamations of Lord Coke, the weight of authority as it appeared to the Framers was to the effect that a warrant was required, or at the minimum that there were substantial risks in proceeding without one. The common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers. The zealous and frequent repetition of the adage that a "man's house is his castle" made it abundantly clear that both in England

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[1] "That statement is not inconsistent with the description by the Court of the holding of the Yearbook case in *Wilson* v. *United States*, 221 U. S. 361, 387:

"As we gather from the 30th Yearbook of Edward IV, f. 2 [1 Pl. 3], at folio 9, there is a notable holding that it was not well for the sheriff to break the doors of a man's house to arrest him, in a civil suit or upon leave or trespass, for the house was his castle for the private protection of its party."

"There, in Semayne's Case, supra, p. 195, the Court stated: 'That the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and although the life of man is a thing precious in the eyes of the law, but not so precious as that a man who kills another in his own defence, or kills a thief who comes to rob him in his house, shall be put to any penalty, and in some cases he shall not forfeit his goods, and chattels (A), for the great regard which the law has to a man's habitation.' So it is obvious that the right to be free in person and the right of the security of the dwelling are so interwoven that to destroy the one is to destroy the other, and therefore, it is not surprising (Ex parte Boyd, 116 U. S. 616, 630; Weeks v. United States, 232 U. S. 383, 390 & 391; Amos v. United States, 255 U. S. 313, 317) that the two should be considered as guaranteed by the fourth and fifth amendments against violation. And the former would be shorn of its most important element if the search and seizure of papers in the course of a criminal investigation could be justified by the mere fact that they were found in the dwelling house." In the report of that case it is stated that although the doors may be broken open in the case of a felony without warning to effect an entry, a distinction is made in favor of the privilege of the house in civil cases. *Id.* at 194; "And the privilege is confined to the house, and does not extend to a tent,

and in the Colonies "the 'freedom of one's house'" was one of the most vital elements of English liberty."

Thus our study of the relevant common law does not provide the sanction that was present in *Watson*. While it was the rule concerning the validity of an arrest in a public place was supported by cases directly in point and by the unanimous views of the commentators, we have found no direct authority supporting forcible entries into a house to make a routine arrest and the weight of the scholarly opinion is somewhat to the contrary. Indeed the absence of any Seventeenth or Eighteenth Century English cases directly in point, together with the unequivocal endorsement of the point that "a man's

[1] True

solitude [was to be] the sheriff's warrant, for [a] sheriff's writ is the door of a man dwelling or abiding therein, the castle [which is to] protect him against violence, and the same is to be understood of other [private] places." *Penhallow v. Doane*, 3 Dall. 54, 93 (1795).

[2] "Now one of the most ancient, fundamental rights of English liberty is the freedom of one's house. A man's house is his castle; and while he is quiet he is as well guarded as a prince in his castle. This right, it is said, should be declared [and] would [make] void [the] precedent." 2 Legal Papers of John Adams 142 (Wroth and Zobel ed. 1965).

We have [no] occasion to [consider] the relevance of the common law's special regard for the home to the [exceptions] to the Fourth Amendment warrant requirement. See, *e. g.*, *Warden v. Hayden*, 387 U. S. 294, 298–300.

[3] Judge Cooley in his Constitutional Limitations, pp. 430–431, in a treatise of the [same] era as the Fourth Amendment, said: "The maxim that 'one's house is his castle,' is [not] a part of our common law [alone] but [is] found in the [codes] of [most] civilized nations [and] has been looked upon as a [right] of the utmost [importance]. According to Lieber in his [Civil Liberty and Self-Government], the principle of English law in this respect [is] that a man's house [is] so [fully] [protected] by the [process] of [law] that [it] cannot be [entered] by [officers] of [justice] [and] the [latter] will not be [permitted] to [break] [open] doors [or] windows [to] [enter] [except] [under] [certain] [circumstances]. This principle [is] [found] [in] [most] [of] [the] [States]."

Although the quote from Judge Cooley concerning a man's house as the [castle] [of] [his] [person] [was] [not] [in] [the] [Constitution] [but] [in] [a] [treatise], [it] [was] [included] [as] [part] [of] [a] [paragraph] [which] [was] [quoted] [with] [approval] [in] [a] [unanimous] [opinion] [of] [this] [Court] [in] *Weeks v. United States*, 232 U. S. 383, 390 (1914).

house is his castle" strongly suggest that the prevailing practice was not to make such arrests except in hot pursuit or when authorized by a warrant. In all events the issue is not one that can be said to have been definitively settled by the common law at the time the Fourth Amendment was adopted.

B

A majority of the States that have taken a position on the question permit warrantless entry into the home to arrest even in the absence of exigent circumstances. At this time, 24 States permit such warrantless entries;[7] 16 States clearly prohibit them, though three States do so on federal constitutional grounds alone;[8] and 11 States have apparently taken no position on the question.[9]

[7] Twenty-four States explicitly authorize such entries by statute. *See* Ala. Code § 15-10-1 (1977); Alaska Stat. Ann. § 12.25.031 (1971); Ark. Stat. Ann. § 43-411 (1977); Fla. Stat. § 901.20 (1975); Haw. Rev. Stat. Tit. 38, § 803-12 (Supp. 1975); Idaho Code § 19-611 (1948); Ill. Rev. Stat., ch. 38, § 107-7 (1971); Ind. Rev. Stat. Ann., 10 Burns' Ann. Ind. Stat. Ann. § 9-1001 (1971); Mich. Comp. Laws § 764.21 (1968); Minn. Stat. § 629.34 (2017); Miss. Code Ann. § 99-3-11 (1973); Neb. Rev. Stat. § 29-411 (1975); Nev. Rev. Stat. § 171.124 (1973); N. J. Stat. Ann. § 2A:161A-41 (1976); N. M. Stat. Ann. § 30-22-1 (1978); N. Y. Crim. Proc. Law § 140.15 (1); N. C. Gen. Stat. § 15A-401 (b)(2)(c) (1978); N. D. Cent. Code § 29-06-15 (1974); Ohio Rev. Code Ann. § 2935.12 (Supp. 1976); Okla. Stat., Tit. 22, § 197 (1969); S. D. Comp. Laws Ann. § 23A-3-3 (1978); Tenn. Code Ann. § 40-807 (1956); Utah Code Ann. § 77-13-02 (1953); W. Va. Rev. Code § 62-1-10 (1966). Ohio and Nebraska have authorized warrantless entry to arrest by statute, but their statutes have been construed by the courts of those States to require exigent circumstances. *See State* v. *Lamb*, 7 Ohio St. 2d 168, 219 N. E. 2d 463 (1966); *State* v. *Hill*, 185 Neb. 1, 173 N. W. 2d 351 (1969).

A number of courts in these States, though not specifically deciding the issue, have recognized that the existence of such entries is open to question. *See People* v. *Bolton*, 60 Ill. 2d 37, 324 N. E. 2d 407 (1975), cert. denied, 426 U. S. 908; *State* v. *Bowles*, 345 So. 2d 1387 (La. 1977) (citing both state and federal constitutions); *State* v. *Lovely*, 306 Minn. 221, 236 N. W. 2d 584 (1975), cert. denied, 429 U. S. 1077; *State* v. *Arnold*, 128 S. W. 2d 585 (Mo. 1968); *State* v. *Pope*, 277 N. W. 2d 122 (N.D. 1979); *State* v. *Wax*, 205 N. W. 2d 654 (S.D. 1973).

[8] Four States prohibit warrantless arrests in the home in all circum-

(*Footnote 9 is on page 24*)

But these current figures reflect a significant decline during the last decade in the number of States permitting warrantless entries for arrest. Recent cases in this Court raising questions about the practice, see n. 1, *supra*, and Federal Courts of Appeals' decisions on point, see n. 4, *supra*, have led state courts to focus on the issue. Virtually all of the state courts that have had to confront the constitutional issue directly have held warrantless entries into the home to arrest to be invalid in the absence of exigent circumstances. See nn. 2-3, *supra*. Three state courts have relied on Fourth Amendment grounds alone, while seven have squarely placed their decisions on both federal and state constitutional grounds.[5] A number of other state courts, though not having had to confront the issue directly, have recognized the serious Supreme Court of Florida and the New York Court of Appeals nature of the constitutional question.[6] Apparently, only the in this case have expressly upheld warrantless entries to arrest in the face of a constitutional challenge.[7]

A long-standing, widespread practice is not immune from constitutional scrutiny. But neither is it to be lightly brushed

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Ga. Code §§ 27-207, 27-307 (1978) (no prohibition against arrests in the home absent exigency); Ind. Code §§ 35-1-54-1, 35-41-3-1 (2975); Miss. Code Ann. § 99-3-7 (1972 & Supp. 1978); Mont. Rev. Code § 94-6-311 (1977), construed by state statute and law as *United States v. Bell*, 405 F. Supp. 125, 131, n. 10 (ED Tex. 1975); *Wheeler v. State*, 159 Tex. Cr. R. 322, 263 S. W. 2d 916, 917 (1954), and 20 other jurisdictions on federal grounds only, see n. 3, *supra*.

[5] State cases: Del., Idaho, Maine, Maryland, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Virginia, Wisconsin. The courts of three of the above listed States have recognized that the constitutionality of warrantless home arrests is subject to question. *See State v. Anonymous*, 31 Conn. Sup. 331, 329 A. 2d 43 (Superior Court, Appellate Session 1974); *Nowack v. State*, 272 Md. 179, 321 A. 2d 501 (1974); *Palmigiano v. Morton*, — R. I. —, 377 A. 2d 991 (1977).

[6] See cases cited in n. 3, *supra*.

[7] See cases in nn. 47, 49, *supra*.

[8] See n. 2, *supra*.

aside. This is particularly so when the constitutional standard is as amorphous as the word "reasonable," and when custom and contemporary norms necessarily play such a large role in the constitutional analysis. In this case although the weight of state-law authority is clear, there is by no means the kind of virtual unanimity on this question that was present in *United States* v. *Watson*, *supra*, with regard to warrantless arrests in public places. See 423 U. S., at 422–423. Only 24 of the 50 States currently sanction warrantless entries into the home to arrest, see nn. 47–49 *supra*, and there is an obvious declining trend. Further, the strength of the trend is greater than the numbers alone indicate. Seven state courts have recently held that warrantless home arrests violate their respective *state* constitutions. See n. 3, *supra*. That is significant because by invoking a state constitutional provision, a state court immunizes its decision from review by this Court.[1] The heightened degree of insurability of the result thus achieved serves to underscore the depth of the principle underlying the decision.

C

No congressional determination that warrantless entries into the home are "reasonable" has been called to our attention. None of the federal statutes cited in the *Watson* opinion reflects any such legislative judgment.[2] Thus, that

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[1] See, e. g., *Hicks* v. *Oklahoma*, 377 U. S. 177, 175–176. See generally Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977).

[2] The statute referred to in n. 34 *supra* provides:

"The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpenas issued under the authority of the United States, and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be

support for the *Watson* holding finds no counterpart in this case.

MR. JUSTICE POWELL, concurring in *United States* v. *Watson*, *supra*, 423 U. S., at 429, stated:

> "But logic sometimes must defer to history and experience. The Court's opinion emphasizes the historical question accorded warrantless felony arrests [in public places]."

In this case, however, neither history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embodied in our traditions since the origins of the Republic.[29]

IV

The parties have argued at some length about the practical consequences of a warrant requirement as a precondition to a felony arrest in the home.[30] In the absence of any evidence

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arrested has committed or is committing such felony." 61 Stat. 1264, 18 U. S. C. § 3052.

It says nothing else at all about entering warrantless arrestees' homes. See also ALI Code, *supra*, at 308; Columbus Note, *supra*, at 1554–1555, n. 26.

[29] There can be no doubt that Pitt's address in the House of Commons in March of 1763 echoed and re-echoed throughout the Colonies:

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail—its roof may shake; the wind may blow through it; the storm may enter; the rain may enter,—but the King of England cannot enter!—all his force dares not cross the threshold of the ruined tenement!" *Miller* v. *United States*, *supra*, 357 U. S., at 307.

[30] The State of New York argues that the warrant requirement will preclude police from seeking warrants and make arrests less likely. Quite increasing the likelihood of arresting innocent people that it would create pressures thereby interfering with the police's ability to do thorough investigations, that it will penalize the police for deliberate planning, and that it will lead to more injuries. Appellants counter that careful planning is possible and that the police need not rush to get a warrant because if an exigency arises necessitating immediate arrest in the course of an

that effective law enforcement has suffered in those States that already have such a requirement; see nn. 3, 48, *supra*, we are inclined to view such arguments with skepticism. More fundamentally, however, such arguments of policy must give way to a constitutional command that we consider to be unequivocal.

Finally, we note the State's suggestion that only a search warrant based on probable cause to believe the suspect is at home at a given time can adequately protect the privacy interests at stake and since such a warrant requirement is manifestly impractical, there need be no warrant of any kind. We find this ingenious argument unpersuasive. It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.

Because no arrest warrant was obtained in either of these cases, the judgments must be reversed and the cases remanded to the New York Court of Appeals for further proceedings not inconsistent with this opinion.

It is so ordered.

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orderly investigation, arrest without a warrant is permissible; that the warrant procedure will not be abused if police are instructed that an intrusion can be justified only by the presence of exigent circumstances; and that the potential for disruption of evidence is recognized by the fact that there is no basis for the assertion that the time required to obtain a warrant would create peril.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1980

Re: Nos. 78-5420 and 78-5421 - Payton v. New York, et al.

Dear John:

In due course I will circulate a dissent in these cases.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 17, 1980

Re: No. 78-5420 - Payton v. New York
No. 78-5421 - Riddick v. New York

Dear John:

For now, I shall await the dissent.

Sincerely,

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 17, 1980

Re: No. 78-5420 and 78-5421,
Payton v. New York, etc.

Dear John,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

CDS

MEMORANDUM

TO: Mr. Justice Powell

FROM: David

DATE: March 18, 1980

RE: Nos. 78-5420, 78-5421, Payton v. New York; Riddick v. New York

On pages 9 and 10 of his draft, Justice Stevens enumerates several questions that are not before the Court in this case. The first of the list is the "exigent circumstances" issue. His precise statement on page 10 is: "Accordingly, we have no occasion to consider ~~generally~~ what sort of emergency or dangerous situation would justify a warrantless entry into a home for the purpose of either arrest or search."

I think this language successfully puts the question of exigent circumstances to one side. After staring at the sentence for a long time, the only modification that seems plausible would be to say "what sort of emergency or dangerous situation would justify a warrantless entry . . . " The change is largely cosmetic, however. So long as the exigent circumstances question is not being considered in this opinion, it seems gratuitous to carry on at greater length.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 18, 1980

Re: 78-5420 and 78-5421 - Payton and Riddick v. New York

Dear Lewis:

Many thanks for your letter. Your suggested language for page 10 is a definite improvement and I will adopt it verbatim.

Respectfully,

Mr. Justice Powell

March 18, 1980

78-5420 and 78-5421 Payton and Riddick v. New York

Dear John:

Please join me.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

March 18, 1980

78-5420 and 78-5421 Payton and Riddick

Dear John:

I have read with admiration your fine opinion.

My willingness to make what in effect would be a major change in the law of many states, is dependent to a considerable extent on the flexibility that exists under the "exigent circumstances rule". You and I both, according to my notes, made this point at Conference.

On page 10 of your opinion, I assume that you were thinking of this rule and noting that it was not implicated in this case. But I fear the sentence as written may create some doubt as to whether the Court may limit reliance on exigent circumstances. Would you consider rewriting the sentence to read as follows:

> "Accordingly, we have no occasion to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search."

If you can make a change generally along the foregoing lines, I will be happy to join you.

Sincerely,

Mr. Justice Stevens

lfp/ss

1, 2, 9–16, 18–20, 22–24, 27

Some fns, renumbered

John has made the changes requested

See p 10

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: MR 19 '80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-5420 AND 78-5421

Theodore Payton, Applicant,
78-5420 v.
New York.

Obie Riddick, Applicant,
78-5421 v.
New York,

On Appeals from the Court of Appeals of New York.

[March —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

These appeals challenge the constitutionality of New York statutes that authorize police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest.

The important constitutional question presented by this challenge has been expressly left open in a number of our prior opinions. In *United States* v. *Watson*, 423 U. S. 411, we upheld a warrantless "misdemeanor public arrest," expressly noting that the case did not pose "the still unsettled question . . . whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest." 423 U. S., at 418, n. 6.[1] The question has been answered in different ways by other appellate courts. The Supreme Court

[1] *See also United States* v. *Watson*, 423 U. S. 411, 433 (STEWART, J., concurring); *id.*, at 437–438 (POWELL, J., concurring); *Gerstein* v. *Pugh*, 420 U. S. 103, 113, n. 13; *Coolidge* v. *New Hampshire*, 403 U. S. 443, 474–481; *Jones* v. *United States*, 357 U. S. 493, 499–500. Cf. *United States* v. *Santana*, 427 U. S. 38.

of Florida rejected the constitutional attack,[2] as did the New York Court of Appeals in this case. The courts of last resort in 10 other States, however, have held that unless special circumstances are present, warrantless arrests in the home are unconstitutional.[3] Of the seven United States Courts of Appeals that have considered the question, five have expressed the opinion that such arrests are unconstitutional.[4]

Last Term we noted probable jurisdiction of these appeals in order to address that question. 439 U. S. 1044. After hearing oral argument, we set the case for reargument this

[2] *State v. Prieto*, 277 So. 2d 276 (Fla. 1973), cert. denied, 414 U. S. 1094.

[3] *State v. Clark*, 115 Ariz. 148, 564 P. 2d 87 (1977) (relying on both state and federal constitutional provisions); *People v. Bacon*, 16 Cal. 3d 264, 545 P. 2d 1313 (1976), cert. denied, 429 U. S. 923 (state and federal); *People v. Moore*, 175 Colo. 188, 486 P. 2d 353 (1971) (federal only); *State v. Jones*, 271 N. W. 2d 253 (Iowa 1978) (state and federal); *State v. Wheeler*, 255 Kan. 784, 394 P. 2d 071 (1977) (state and federal); *Commonwealth v. Forde*, 367 Mass. 798, 329 N. E. 2d 717 (1975) (federal only); *State v. Oles*, 267 Ore. 332, 516 P. 2d 1310 (1973) (state and federal); *Commonwealth v. Williams*, 188 Pa. Super. 293, 146 A. 2d 377 (1958) (federal only); *State v. McNeal*, 274 S. E. 2d 181 (W. Va. 1981) (state and federal); *Lasley v. State*, 91 Wis. 2d 287, 97 N. W. 2d 478 (1979) (state and federal).

[4] Compare *United States v. Reed*, 572 F. 2d 412 (CA2 1978), cert. denied, 436 U. S. 962; *United States v. Kirsling*, 548 F. 2d 720 (CA6 1977); *United States v. Phoenix*, 542 F. 2d 886 (CA10 1976); *United States v. Houle*, 603 F. 2d 1297 (CA8 1979); *United States v. Prescott*, 581 F. 2d 1343 (CA9 1978); *Dorman v. United States*, — U. S. App. D. C. —, 435 F. 2d 385 (1970), with *United States v. Hoffman*, 556 F. 2d 368 (CA5 1978); *United States ex rel. Knight v. Woods*, 482 F. 2d 1103 (CA7 1973), cert. denied, 409 U. S. 1091. Three other Circuits have reached without deciding that warrantless home arrests are unconstitutional. *United States v. Bonner*, 512 F. 2d 1384 (CA1 1975); *United States v. Davis*, 461 F. 2d 1026 (CA3 1972); *Dyson v. Austin Cty. Sheriff*, 432 F. 2d 951 (CA4 1970). And one Circuit has upheld such arrests without deciding the constitutional issue. *Martinez v. United States*, 501 F. 2d 22 (CA9 1974).

Term. 441 U. S. 930. We now reverse the New York Court of Appeals and hold that the Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, *Mapp v. Ohio*, 367 U. S. 643; *Wolf v. Colorado*, 338 U. S. 25, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.

We first state the facts of both cases in some detail and put to one side certain related questions that are not presented by these records. We then explain why the New York statutes are not consistent with the Fourth Amendment and why the reasons for upholding warrantless arrests in a public place do not apply to warrantless invasions of the privacy of the home.

I

On January 14, 1970, after two days of intensive investigation, New York detectives had assembled evidence sufficient to establish probable cause to believe that Theodore Payton had murdered the manager of a gas station two days earlier. At about 7:30 A. M. on Friday, 12th, six officers went to Payton's apartment in the Bronx, intending to arrest him. They had not obtained a warrant. Although light and music emanated from the apartment, there was no response to their knock on the metal door. They summoned emergency assistance and, about 30 minutes later, used crowbars to break open the door and enter the apartment. No one was there. In plain view, however, was a 30 caliber shell casing that was seized and later admitted into evidence at Payton's murder trial.[1]

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[1] At the trial, each of the apartment searches in the cases at bar was treated as if it were making no claim that Payton's arrest, but the prosecutor stipulated that the officers' search of the apartment was illegal and that all the seized evidence was subject to suppression. And he argued

[2] [illegible] That's not to say that the evidence that was found in

In due course Payton surrendered to the police, was indicted for murder, and moved to suppress the evidence taken from his apartment. The trial judge held that the warrantless and forcible entry was authorized by the New York Code of Criminal Procedure[2] and that the evidence in plain view was properly seized. He found that exigent circumstances justified the officers' failure to announce their purpose before entering the apartment as required by the statute.[3] He had no

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Barton's quarters and in the closet was illegally obtained. I'm perfectly willing to overlook that and I choose in my discretion not to [sic] Here's the ruling on that." App. 4.

[2] At the time of petitioner's arrest, January 15, 1970, the New York statute relating to police entries was governed by the Code of Criminal Procedure. Section 177 of the Code of Criminal Procedure is applicable to this case provided: "A peace officer may, without a warrant, arrest a person . . . [w]hen a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it." Section 178 of the Code of Criminal Procedure provided: "To make an arrest, as provided in the last section [177], the officer may break open any outer door or window of a building if, after notice of his office and purpose, he be refused admittance." *People v. Payton*, 34 Misc. 2d 970, 974-975, 230 N. Y. S. 2d 940, 945 (Sup. Ct., N. Y. County, N. Y. 1974).

[3] "Although Detective Muller knocked on the defendant's door, it is not established that at this time he announced his office and his purpose was to arrest the defendant. Such a declaration of purpose is unnecessary when exigent circumstances are present. *People v. Peoples*, 30 AD 2d 638, 639; *People v. McBride*, 28 AD 2d 917 [1]."

[4] "Case law has made exceptions from the statute or common law rules for exigent circumstances which may allow dispensation with the notice. . . . It has also been held or suggested that notice is not required if there is reason to believe that it will allow an escape or increase unreasonably the physical risk to the police or to innocent persons." (*People v. Floyd*, 26 NY 2d 568, 569.)

"The facts of this matter indicate that a grave offense had been committed; that the suspect was reasonably believed to be armed and could be a danger to the community; that a clear showing of probable cause existed; and that there was strong reason to believe that the suspect was in the premises being entered and that he would escape if not swiftly apprehended. From the fact the record finds that exigent circumstances

occasion, however, to decide whether those circumstances also would have justified the failure to obtain a warrant, because he concluded that the warrantless entry was adequately supported by the statute without regard to the circumstances. The Appellate Division, First Department, summarily affirmed.[4]

On March 14, 1974, Obie Riddick was arrested for the commission of two armed robberies that had occurred in 1971. He had been identified by the victims in June of 1973 and in January 1974 the police had learned his address. They did not obtain a warrant for his arrest. At about noon on March 14, a detective, accompanied by three other officers, knocked on the door of the Queens house where Riddick was living. When his young son opened the door, they could see Riddick sitting in bed covered by a sheet. They entered the house and placed him under arrest. Before permitting him to dress, they opened a chest of drawers two feet from the bed in search of weapons and found narcotics and related paraphernalia. Riddick was subsequently indicted on narcotics charges. At a suppression hearing, the trial judge held that the warrantless entry into his home was authorized by the revised New York statute,[5] and that the search of the imme-

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revised to justify pre-conviction arrest." *Id.*, at 178. The court held, however, that the entry into Riddick's apartment was valid." 34 Misc. 2d, at 975.

[4] *People* v. *Payton*, 53 A. D. 2d 830 (1976).

[5] New York Criminal Procedure Law § 140.15 (1) provides, with respect to arrest without a warrant:

"In order to effect an arrest, a police officer may enter premises in which he reasonably believes such person to be present under the same circumstances and for the same purposes as would be authorized, by the provisions of article forty and law of section 70.30, if he were attempting to make such arrest pursuant to a warrant of arrest."

Section 120.80, governing service of arrest warrants, provides, in relevant part:

"4. In order to effect the arrest, the police officer may enter the circumstances and in the manner provided in this subdivision, premises in which he reasonably believes the defendant to be present. Before such

diate area was reasonable under *Chimel* v. *California*, 395 U. S. 752.[9] The Appellate Division, Second Department, affirmed the denial of the suppression motion.[10]

The New York Court of Appeals, in a single opinion, affirmed the convictions of both Payton and Riddick. The court recognized that the question whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest had not been settled either by that court or by this Court.[11] In answering that question, the majority of four judges relied primarily on its perception that there is a

> "... substantial difference between the intrusion which attends an entry for the purpose of searching the premises and that which results from an entry for the purpose of making an arrest, and on the significant difference in the governmental interest in achieving the objective of the intrusion in the two instances." 45 N. Y. 2d at 310, 380 N. E. 2d at 228–229.[12]

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entry, he must give or make reasonable effort to give notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice will

"(a) Result in the defendant's escaping or attempting to escape; or

"(b) Endanger the life or safety of the officer or another person; or

"(c) Result in the destruction, damaging or secreting of essential evidence.

"3. If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter the premises, and by force if necessary."

[9] App. 62–66.

[10] *People* v. *Riddick*, 56 A. D. 2d 967 (1977). One Justice dissented on the ground that the officers' failure to announce their authority and purpose before entering the home made the arrest illegal as a matter of state law.

[11] *People* v. *Payton*, 45 N. Y. 2d 300, 307–310, 380 N. E. 2d 224, 228 (1978).

[12] The majority continued:

"In the case of the arrest, unless consented to by the terms of a warrant, the invasion of the householder's domain normally will be

The majority supported its holding by noting the "apparent historical precipitance" of warrantless entries to make felony

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both more extensive and more intensive and the resulting invasion of his privacy of greater magnitude than what could be expected to occur on an entry to do so for the purpose of effecting his arrest. A search by its nature contemplates a probably thorough rummaging through possessions, with resultant upheaval of the owner's closets or other places of goods and articles and of chattels to the searchers of a myriad of personal items and details which he would expect to be free from scrutiny by unwelcomed eyes. The householder by the entry and search of his residence is stripped bare, in greater or lesser degree, of the privacy which normally surrounds him in his daily living, and, if he should be arrested, to an extent of which he will be aware.

Clarity for the purpose of arrest may be expected to be quite different. While the taking from bed of the person of the householder is a most intrusive of great moment, it is by an accompanying paying into the area of expected privacy attending his person, clothes and effects. That personal seizure after dressing and upon exit was established by *United States v. Watson*, [423 U.S. 411, supra], which upheld the warrantless arrest in a public place. In view of the substantial intrusion on the interests of privacy of the home which the Court recognizes as the reasons for making an arrest (as compared with the great interests which attends the arrest itself, as previously noted), an arrest for effecting the latter is reasonable if and only if the arrest in a public place and an arrest in the home are equivalent. To the extent that an arrest will always be identified as offensive, I think it is reasonable to assume that arrest within the home is any more so than an arrest in a public place; on the contrary, it may well be that because of the added exposure the former may be more objectionable.

At best, the majority's argument is circular in concluding that entries to make arrests are not unreasonable under the constitutional proscription until the objectives for which they are made, viz., the arrest of the person validly believed to have committed a crime, with resultant protection to the community. The "reasonableness" of any governmental intrusion is to be judged from two perspectives—that of the individual, considering the degree and scope of the invasion of his personal privacy [423 U.S. at 411, supra], and that of the public, weighing the objectives and importance of governmental action. The community's interest in the apprehension of criminal suspects is of a higher order than is its concern for the recovery of stolen property or, generally, the deterrence created by the future threat of prosecution for evasion. To make which may follow warrantless entry [43 N.Y.2d, at 310-311, 290 N.E.2d, at 179].

arrests, both in the English common law and in the practice of many American States.[14]

Three members of the New York Court of Appeals dissented on this issue because they believed that the Constitution requires the police to obtain a "warrant to enter a home to arrest or seize a person, unless there are exigent circumstances."[15] Starting from the premise that, except in carefully circumscribed instances, "the Fourth Amendment forbids police entry into a private home to search for and seize an object without a warrant,"[16] the dissenters reasoned that an arrest of the person involves an even greater invasion of privacy and should therefore be attended with at least as great a measure of constitutional protection.[17] The dissenters noted

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[14] The apparent historical acceptance in the English common law of warrantless entries to make felony arrests (cf. Hale, Historia Placitorum Coronæ, Pleas of the Crown [1st Amer. ed., 1847], p. 92; Cuddy, Criminal Law [2d Amer. from 7th London ed., 1850], 2-23), and the existence of statutory authority for such entries in this State since the enactment of the Code of Criminal Procedure in 1881 argue against a holding of unconstitutionality. [Clarification of the reasonableness of such procedure . . .]

"Nor do we agree that [a number of jurisdictions other than our own have also enacted statutes authorizing warrantless entries of buildings (subject to exception for homes) for purposes of arrest. The American Law Institute's Model Code of Pre-Arraignment Procedure makes similar provision in section 120.6, with appropriate safeguards only as to nighttime entries." 15 N. Y. 2d, at 317, 312, 280 N. E. 2d, at 290, 291.

[15] 15 N. Y. 2d, at 325, 280 N. E. 2d, at 292 (Wachtler, J., dissenting); 26 N. Y. 2d, at 210, 220, 280 N. E. 2d, at 295 (Gibson, J., dissenting).

[16] Although the point has not been squarely adjudicated since *Entick* v. *Carrington*, 19 How. St. Tr. 1029, it is perhaps implicit in *Boyd* v. *United States*, 116 U. S. 616, 630, that a search or seizure, even when effected without unnecessary force, is unreasonable within the meaning of the Fourth Amendment in the absence of a search warrant. In the context of a search, or seizure, in the absence of such a warrant, the Fourth Amendment has drawn a line between police action directed against property and police action directed against persons. Thus, although warrantless searches of automobiles and other readily movable objects are sometimes permissible under the Fourth Amendment, warrantless searches of dwellings are generally prohibited. *Chambers* v. *Maroney*, 399 U. S. 42, 51; *Coolidge* v. *New Hampshire*, 403 U. S. 443. See *United States* v. *Watson*, 423 U. S. 411, 418, n. 6. It is perhaps arguable, in view of *Watson*, that warrantless arrests in public places are not unreasonable within the meaning of the Fourth Amendment, whether in the context of a search or seizure. In the context of the Fourth Amendment, however, it is fundamental that any governmental intrusion into an individual's home or office is the most serious breach of privacy and therefore is strictly circumscribed by the warrant requirement. *Boyd* v. *United States*, 116 U. S. 616, 630; *Camara* v. *Municipal Ct.*, 387 U. S. 523, 528. To consider that, the framers

"the existence of statutes and the American Law Institute legislature codifying the common-law rule authorizing warrantless arrests in private homes" and acknowledged that "the statutory authority of a police officer to make a warrantless arrest in this State has been in effect for almost 100 years," but concluded that "neither antiquity nor legislative unanimity can be determinative of the grave constitutional question presented" and "can never be a substitute for reasoned analysis."[8]

Before addressing the narrow question presented by these appeals,[9] we put to one side other related problems that are not presented today. Although it is arguable that the warrantless entry to effect Payton's arrest might have been justified by exigent circumstances, none of the New York courts relied on any such justification. The Court of Appeals majority treated both Payton's and Riddick's cases as involving routine arrests in which there was ample time to

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of the protection interposed by a neutral requirement between the public and the police, reflecting the conviction that the decision to enter a dwelling should not rest with the officer in the field, but rather with a detached and disinterested Magistrate (*McDonald* v. *United States*, 335 US 451, 455-456; *Johnson* v. *United States*, 333 U. S. 10, 13-14), foremost among the purposes of the Fourth Amendment is to guard against arbitrary governmental invasion of the home, the necessity of prior judicial approval should neutralize any contemplated entry, regardless of the purpose for which that entry is sought. By definition, arrest cases must be included within the scope of the amendment, for which only entries for arrest and search (*Agnello* v. *United States*, 269 U. S. 20, 32) and search (*Silverman* v. *United States*, 365 U. S. 505, 511) " 45 N. Y. 2d, at 328-329, 380 N. E. 2d, at 243-244 (Gabrielli, J., dissenting).

[8] 45 N. Y. 2d, at 324, 380 N. E. 2d, at 241 (Gabrielli, J., dissenting).

[9] While it is not clear from the record that appellant raised this constitutional issue in the trial courts, since the Appellate Court of the State passed on it, there is no doubt that it is properly presented for review by this Court. *See Raley* v. *Ohio*, 360 U. S. 423, 436.

obtain a warrant,[9] and we will do the same. Accordingly, we have no occasion to consider the sort of emergency or dangerous situation, described in our cases as "exigent circumstances" that would justify a warrantless entry into a home for the purpose of either arrest or search.

Nor do these cases raise any question concerning the authority of the police, without either a search or arrest warrant, to enter a third party's home to arrest a suspect. The police broke into Payton's apartment intending to arrest Payton and they arrested Riddick in his own dwelling. We also note that in neither case is it argued that the police lacked probable cause to believe that the suspect was at home when they entered. Finally, in both cases we are dealing with entries into homes made without the consent of any occupant. In *Payton*, the police used crowbars to break down the door and in *Riddick*, although his three-year-old son answered the door, the police entered before Riddick had an opportunity either to object or to consent.

II

It is familiar history that indiscriminate searches and seizures conducted under the authority of "general warrants" were the immediate evils that motivated the framing and adoption of the Fourth Amendment.[10] Indeed, as originally

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[9] 45 N. Y. 2d, at 308, 380 N. E. 2d, at 228. Judge Wachtler, dissenting, however, would have upheld the warrantless entry in Payton's case on exigency grounds and therefore agreed with the majority's refusal to suppress the following. See 45 N. Y. 2d, at 315, 380 N. E. 2d, at 232.

[10] "And in the memory of the newly settled North American colonies were those general warrants known as writs of assistance under which officers of the Crown had occasionally entered homes and other buildings searching for goods imported in violation of the hated trade laws. They were denounced by James Otis as 'the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principle of law, that ever was found in an English law book,' because they placed 'the liberty of every man in the hands of every petty officer.' The historic occasion of this denunciation, in 1761 at Boston, has been characterized

proposed in the House of Representatives, the draft contained only one clause, which directly imposed limitations on the issuance of warrants, but imposed no express restrictions on warrantless searches or seizures.[9] As it was ultimately adopted, however, the Amendment contained two separate clauses, the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause.[10] The 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."

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as well as the most precise at which long-standing abuses of the colonies in the opinion of the mother country. 'Then [of these,' said John Adams,] 'the child Independence was born.'" *Boyd* v. *United States*, 116 U. S. 616, 625." *Stanford* v. *Texas*, 379 U. S. 476, 481–482.

See also J. Landynski, Search and Seizure and the Supreme Court 19–48 (1966) (hereinafter Landynski); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 23–58 (1937) (hereinafter Lasson); T. Taylor, Two Studies in Constitutional Interpretation 20–43 (1969) (hereinafter Taylor).

[9] "The rights of the people to be secured in their persons, their houses, their papers and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized." Annals of Cong., 1st Cong., 1st Sess., p. 452 (Gales, ed., 1834). See Lasson, *supra*, at 109.

[10] "The general right of security from unreasonable searches and seizures was given a variation in its terms and the amendment as thus recast was given a broader scope. That the prohibition against unreasonable searches was intended, accordingly, to cover something other than the form of the warrant is a question no longer left to conjecture to be derived from the phraseology of the Amendment." Landynski, *supra*, at 39. (Footnote omitted.)

It is thus perfectly clear that the evil the Amendment was designed to prevent was broader than the abuse of a general warrant. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment. Almost a century ago the Court stated in resounding terms that the principles reflected in the Amendment "reached further than the concrete form" of the specific cases that gave it birth, and "apply to all invasions on the part of the Government and its employés of the sanctity of a man's home and the privacies of life." *Boyd* v. *United States*, 116 U. S. 616, 630. Without pausing to consider whether that broad language may require some qualification, it is sufficient to note that the warrantless arrest of a person is a species of seizure required by the Amendment to be reasonable. *Beck* v. *Ohio*, 379 U. S. 89. Indeed, as Mr. Justice Powell noted in his concurrence in *United States* v. *Watson*, *supra*, the arrest of a person is "quintessentially a seizure." 423 U. S. 411, 428.

The simple language of the Amendment applies equally to seizures of persons and to seizures of property. Our analysis in this case may therefore properly commence with rules that have been well established in Fourth Amendment litigation involving tangible items. As the Court unanimously reiterated just a few years ago, the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *United States District Court*, 407 U. S. 297, 313. And we have long adhered to the view that the warrant procedure minimizes the danger of needless intrusions of that sort.[29]

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[29] As Justice Jackson eloquently stated in *Johnson* v. *United States*, 333 U. S. 10, 13-14:

"The police officer is not asked to finally judge the reasonableness of a search or seizure in the privacy of his own conscience. The framers of the Fourth Amendment drew the line between the rights of the individual and the police differently. They conferred these rights where the evidence depended upon search and seizure only if a neutral and detached magistrate issued a search warrant. They relied upon the conflict between the search warrant and the criminal interest to produce a judicial determination of reasonableness. Since they expressly recognized only limited authority to search without warrant, the fair construction of their words is that persons should normally enjoy the protection of a search warrant. They knew the impulses and temptations of officers and the hazards of their discretion when they are actively engaged in the competitive business of ferreting out crime. They also knew that no reasonable grounds for search could conceivably arise which could not be submitted to a magistrate. In excusing from securing a warrant only those searches incident to arrests for crimes, they left it to the officer to decide whether the crime committed or attempted in his presence is sufficiently serious to warrant dispensing with a search warrant. Only in that way can we hope to avoid arbitrary encroachments by officers overzealous in the performance of their duties. Power to search without warrant is not to be entrusted to the officer except in an emergency. Even in such cases, the officer assumes a grave responsibility and risks severe penalties if he fails. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."

It is a "basic principle of Fourth Amendment law" that searches and seizures inside a home without a warrant are presumptively unreasonable.[25] Yet it is also well-settled that objects such as weapons or contraband found in a public place may be seized by the police without a warrant. The seizing of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. The distinction between a warrantless seizure in an open area

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in the other circumstances requiring exigency. Any attempt to draw that exception narrowly to require a magistrate's contrary determination in each case that a search warrant will probably be obtained in a timely way, and that a search would not violate the Amendment if probable cause and hence the people's behavior were only in the direction of police officers. Once, even in the presence of one's own quarters, of course of grave concern to society, it is the law that officers ought to be, before proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." (Footnotes omitted.)

[25] As the Court noted in *Coolidge* v. *New Hampshire*, *supra*:

"Both of the basic rules mentioned appear to prohibit warrantless searches and seizures that take place in a man's property. Indeed, as an abstract proposition, the two rules are identical. It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of 'exigent circumstances.'

* * * * *

"It is clear, then, that the notion that the warrantless search of a suspect's house is reasonable if there is probable cause to get a warrant is not to be found in the principles of Fourth Amendment law. Only last term we sought to make explicit that warrants are required in the absence of exigent circumstances even for searches of cars, because there is a constitutionally protected right to privacy in an automobile. 'In enjoying that right, the exercise of sound discretion by judicial officers serves to minimize the risk of needless intrusions of that right.' 403 U. S., *supra*, at 471–472, 477–478.

Although Mr. Justice Harlan joined the portion of the Court's opinion, he expressly declined to pass upon the issue now before us. *Id.*, at 492 (Harlan, J., concurring).

and such a seizure on private premises was plainly stated in *U. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 354:

> "It is one thing to seize without a warrant property resting in an open area or seizable by levy without an intrusion into privacy, and it is quite another thing to effect a warrantless seizure of property, even that owned by a corporation, situated on private premises to which access is not otherwise available for the seizing officer."

As the late Judge Lumbard recognized this distinction has equal force when the seizure of a person is involved. Writing on the constitutional issue now before us for the United States Court of Appeals for the District of Columbia Circuit sitting en banc, *Dorman* v. *United States*, — U. S. App. D. C. —, —, 435 F. 2d 385, 390 (1970), Judge Lumbard first noted the settled rule that warrantless arrests in public places are valid. He immediately recognized, however, that

> "[a] greater burden is placed [on] officials who enter a home or dwelling without consent. Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment." 435 F. 2d, at 390. (Footnote omitted.)

His analysis of this question first focused on the long-settled principle that absent exigent circumstances a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within.[*] He reasoned that the constitutional pro-

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[*] As Mr. Justice Marshall wrote for the Court:

"It is well to take care to emphasize what we do not hold. Nothing we say today questions the right of the police to respond to emergency situations. Numerous state statutes authorize warrantless entry to prevent the escape of a criminal, Ker v. California, 374 U. S. 23, 40-41; Warden v. Hayden, 387 U. S. 294, 298-299, or to save life or property, Mincey v. Arizona, 437 U. S. 385, 392; Wayne v. United States, 318 F. 2d 205, 212 (CADC 1963) (opinion of Burger, J.). The decisions of this Court have not always

tection afforded to the individual's interest in the privacy of his own home is equally applicable to a warrantless entry for the purpose of arresting a resident of the home; for it is inherent in such an entry that a search for the suspect may be required before he can be apprehended.[5] Judge Lumbard concluded that an entry to arrest and an entry to search for and to seize property implicate the same interest in preserving the privacy and the security of the home, and justify the same level of constitutional protection.

This reasoning has been followed in other circuits.[6] Thus, the Second Circuit recently summarized its position:

> "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present." *United States* v. *Reed*, 572 F. 2d 412, 423 (CA2 1978), cert. denied, 439 U. S. 933.

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makes real the essential purpose of the Fourth Amendment to shield the citizen from the unjustified intrusions into his privacy. *E. g., Johnson* v. *United States*, 333 U. S. 10, 14; *McDonald* v. *United States*, 335 U. S. 451, 453; *cf. Camara* v. *Municipal Court*, 387 U. S. 523. This purpose is achieved by Rule 41 of the Federal Rules of Criminal Procedure, which implements the Fourth Amendment by requiring that an impartial magistrate determine from an affidavit clearly probable cause whether information possessed by law enforcement officers justifies the issuance of a search warrant. Were it not for others free to search without a warrant merely upon probable cause to believe that certain articles were within a home, the protections of the Fourth Amendment would become empty phrases, and the protection of private property entirely subject." *James* v. *United States*, *supra*, 367 U. S. at 242–243.

[5] See generally Note, Entering and Leaving a Dwelling to be Seized, 43 Colo. L. J. 261 (1974).

[6] See n. 4, *supra*.

We find this reasoning to be persuasive and in accord with this Court's Fourth Amendment decisions.[28]

The majority of the New York Court of Appeals, however, suggested that there is a substantial difference in the relative intrusiveness of an entry to search for property and an entry to search for a person. See n. 13, *supra*. It is true that the area that may legally be searched is broader when executing a search warrant than when executing an arrest warrant in the home. See *Chimel* v. *California*, *supra*. This difference may be more theoretical than real, however, because the police may need to check the entire premises for safety reasons, and sometimes they ignore the restrictions on searches incident to arrest.[29]

But the critical point is that any differences in the intrusiveness of entries to search and entries to arrest are merely ones of degree rather than kind. The two intrusions share this fundamental characteristic: the breach of the entrance to an individual's home. The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their . . . houses . . . shall not be violated." That language unequivocally establishes the proposition that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreason-

[28] Essentially the same reasoning [illegible] the [illegible] application of the "plain view" doctrine. If the police see an object subject to seizure in plain view and in a place where the police have a lawful right to be, they may seize the object without a warrant. [illegible] except in exigent circumstances, the police have no lawful right to enter a house and seize the objects [illegible] until they have first been authorized [illegible] entry. We [illegible] hold that in seizing people rather than property, the same rules apply.

[29] See, *e. g.*, the facts in Payton's case, n. 5, *supra*.

able Governmental intrusion." *Silverman v. United States*, 365 U. S. 505, 511. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

III

Without concluding that *United States v. Watson*, *supra*, decided the question presented by these appeals, New York argues that the reasons that support the *Watson* holding require a similar result here. In *Watson* the Court relied on (a) the well-settled common-law rule that a warrantless arrest in a public place is valid if the arresting officer had probable cause to believe the suspect is a felon;[1] (b) the clear consensus among the States adhering to that well-settled common-law rule;[2] and (c) the expression of the judgment of Congress that such an arrest is "reasonable."[3] We con-

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[1] "[T]he common-law decisions bearing on the Fourth Amendment contained no rule that a person could not be arrested without a warrant for a felony. The assent of sheriffs was required to the process as well as for a bond and committal in the presence of those who were capable good for the King. . . ." 2 Pollock & Maitland, History of English Law 581–585 (2d ed. 1905); 1 W. Stubbs, Constitutional History 597 and n. 1; Stephen, A History of the Criminal Law of England 193 (1883); 2 *id.*, at 75; Wise at the Crown 372–373; Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 547–570 (1924); *Stowel v. Pagan*, 1 Dougl. 241, 99 Eng. Rep. 1131 (K. B. 1780); *Beckwith v. Philby*, 6 Barn. & Cress. 635, 108 Eng. Rep. 585 (K. B. 1827)." 423 U. S., at 416–419.

[2] "[A] historical study, by the common law to some 19th century authorities, of many arrests on probable cause but without a warrant has revealed substantially universal approval by courts of the States in the form of express statutory authorization." *Id.*, at 421–422.

[3] "Thus, in the case we have before us today, the principal law enforcement officers to whom [the] Congress has granted this detailed power to arrest for felonies are not given any greater power than that of exigent circumstances." *Id.*, at 423.

The Court added in a footnote:

"Until 1951, 18 U. S. C. § 3052 restricted the warrantless arrest

sider each of these reasons as it applies to a warrantless entry into a home for the purpose of making a routine felony arrest.

A

An examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive,[7] consideration of what the Framers of the Amendment might have thought to be reasonable. Initially, it should be noted that the common-law rules of arrest developed in legal contexts that substantially differ from the cases now before us. In those cases, which involve application of the exclusionary rule, the issue is whether certain evidence is admissible at trial.[8] See *Wolf v. United States*, 338 U. S. 25, 28. At common law, the question whether an arrest was authorized typically arose in civil damage actions

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process of the courts of the Federal Government, or to keep the peace to enable [a person] to do those acts which are required of him by the laws of the United States." The Act of Jan. 20, 1903, c. 122, § 1, 32 Stat. 776, 1213, as cited in *Hall v. Cole*, *id.*, at 413, n. 13.

[7] There are many different interests that must be considered in relating to searches and seizures and those that have evolved through the process of interpreting the Fourth Amendment in light of ever-changing notions and values. For example, at least the kinds of property subject to seizure under warrants have changed dramatically and the factors justifying the use of force, see *Gooding v. United States*, 416 U. S. 430, 460, the category of property that may be seized, consistent with the Fourth Amendment, has been expanded to include mere evidence, *Warden v. Hayden*, 387 U. S. 294. Also, the partial closing of the Amendment's scope to protect against warrantless searches of certain kinds of private property in a private home could not stand for long, *Katz v. United States*, 389 U. S. 347, even though the rule had focused on the physical invasion of the individual's person or property interests in the course of a search for tangible objects. See *Warden v. Hayden*, 387 U. S. 294, 304. Thus, this Court has constantly frozen into rules of constitutional law those rules of common-law search and seizure that existed at the time of the Fourth Amendment's passage.

[8] The issue is not whether a defendant could, in a civil suit, recover damages for the arrest or illegal search. See *Carroll v. United States*, 267 U. S. —.

for trespass or false arrest, in which a constable's authority to make the arrest was a defense. *See, e. g., Leach* v. *Three of the King's Messengers*, 19 How. St. Tr. 1001 (K. B. 1765). Additionally, if an officer was killed while attempting to effect an arrest, the question whether the person resisting the arrest was guilty of murder or manslaughter turned on whether the officer was acting within the bounds of his authority. See M. Foster, Crown Cases 308, 312 (1762). See also *West* v. *Cabell*, 153 U. S. 78, 85.

A study of the common law on the question whether a constable had the authority to make warrantless arrests in the absence of the commission of a felony—as distinguished from an officer's right to arrest for a crime committed in his presence—reveals a surprising lack of judicial decisions and a deep divergence among scholars.

The most vivid evidence of the common-law rule consists of an explanation of dictum in a case actually involving the sheriff's authority to enter a home to effect service of civil process. In *Semayne's Case*, 77 Eng. Rep. 194, 195–196 (K. B. 1603), the Court stated:

> "In all cases when the King is a party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K.'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors; and that appears well by the stat. of Westm. 1, c. 17, (which is but an affirmance of the common law) as hereafter appears, for the law without a default in the owner abhors the destruction or breaking of any house (which is for the habitation and safety of man) by which great damage and inconvenience might ensue to the party, when no default is in him; for perhaps he did not know of the process, of which, if he had notice, it is to be presumed that he would obey it, and that appears by the book in 18 E. 2. Execut. 252, where it is said, that the K.'s officer who

> occurs to do execution, &c. may open the doors which are shut, and break them, if he cannot have the keys; which proves, that he ought first to demand them, 7 E. 3. 11." (Footnotes omitted.)

This passage has been read by some as describing an entry without a warrant. The context strongly implies, however, that the court was describing the extent of authority in executing the King's writ. This reading is reinforced by the phrase "either to arrest him or to do *other* execution of the K's process" and by the further point that notice was necessary because the owner may "not know of the *process*." In any event, the passage surely cannot be said unambiguously to endorse warrantless entries.

The common-law commentators disagreed sharply on the subject. Three distinct views were expressed. Lord Coke, widely recognized by the American Colonists "as the greatest authority of his time on the law of England," clearly viewed

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[Footnote 7] For a few commentators who have carefully studied the early works, ignoring such dicta as these, see ALI Code of Pre-Arraignment Procedure, Proposed Offic. Draft 268 (1975); Cuming, 67 Mich. L. Rev. 491, 502 (1969); Comment, Forcible Entry to Effect a Warrantless Arrest: The Knocking Provision of the Code, 52 Calif. L. Rev. 167, 168, n. 5 (1964); Note, The Castle Doctrine: 3 Years of Warrantless Home Arrests, 18 Clevel. L. Rev. 550, 552, 553 (1969). The major common-law treatises appear to be equally divided on the requirement of a warrant for a home arrest. (Decision Colorado Note); Recent Development, Warrantless Arrests by Police Surveillance Circumstances; Challenge of United States v. Watson, 11 Am. Crim. L. Rev. 203, 210-211 (1973). Accord, *Miller v. United States*, 357 U. S. 301, 307-308; *Ker v. United States*, — U. S. App. D. C. —, — F. 2d 450, 461 (1973).

[Footnote 8] "Treatises among the 1760's to be found in private libraries of the time were the works of Coke, the great seventeenth century Magna Carta, and earlier books on English History. The inventory of the library of Arthur Spare, who died in Richmond County, Virginia, in 1760, included Coke's *Institutes*, another work on Magna Carta, and a Table to Coke's Reports. The library of Colonel Daniel McCarty, a wealthy planter

A warrantless entry for the purpose of arrest to be illegal,[24] Bere, Foster and Hawkins agreed,[25] as did East and Russell, though the latter two qualified their opinions by stating that

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and he was of the Virginia House of Burgesses who died in Westmoreland County in 1724 and left Coke's *Reports*, an abridgment of Coke's Reports, Coke on Littleton, and Eight of the Statutes of England." Captain Charles Colston, who died in Richmond County, Virginia, in 1725, and Captain Christopher Clarke, who died in Princess Anne County, Virginia, in 1716, each had copies of Coke's *Institutes*. That Coke in London was typical is suggested by a study of the contents of eighteenth-century English private libraries in colonial Virginia, which found that the most common law books were Coke's *Reports*. They were typically followed, not by Hawkins' study of the Pleas of the Crown (first published in 1716 and 1721, and the most widely used law text in the colonies during the latter part of the 18th Century), but by Coke's *Institutes* (found in 27 of the 37 libraries). The second most common law book was Coke's *Treatise of Pleas of the Crown* (found in 24 of the libraries), followed by Coke's *Entries* (found in 20 of the libraries). See Tate, The Libraries of Colonial Virginia, 2 William & Mary Quarterly 3d Ser. 395, 396, 398, 399, 401 (1945).

[24] The key parts of Coke on the subject is a short chapter that Coke himself had written at the end of the term in the Case between Wise and Dutton at the Sessions held at Newark, wherein he intends to shew the English Constitution. It was the high water mark of the Court—he was Speaker of the House of Commons, Attorney General under Queen Elizabeth, and James I made Coke first Chief Justice of Common Pleas and then the Chief Justice of King's Bench. During the time Coke gained an unbroken reputation as the greatest authority of the time on the Laws of England, frequently bringing an opponent with learned citations from early Year Books. Having been a champion of the Crown's powers, Coke [in a change of role] thereafter championed what Thomas A. Perkins terms in [to] the defense of the common law." A. E. Dick Howard, The Road From Runnymede 138–139 (1968). (Other notes omitted.)

[25] "[N]either the writ of the king's attorney or the king's own letter for the apprehension of the party suspected or charged with the felony . . ." 3 Co. Inst. 179 (6th ed. 1680). Coke also was of the opinion that a king's proclamation could justify the breaking of doors to effect an arrest founded on suspicion and that no warrant was needed to justify the pursuit of a felon with hue and cry. *Ibid.* He was apparently alone in that view, however.

[26] R. Burn, The Justice of the Peace and Parish Officer 87 (6th ed.

if an entry to arrest was made without a warrant, the officer was perhaps immune from liability for the trespass if the suspect was actually guilty.[37] Blackstone, Chitty and Stephen took the opposite view, that entry to arrest without a warrant was legal,[38] though Stephen relied on Blackstone who, along with Chitty, in turn relied exclusively on Hale. But Hale's view was not quite so unequivocally expressed.[39] Further, Hale appears to rely solely on a statement in an early Yearbook, quoted in *Beckett* v. *Abbot*, 110 Eng. Rep. 501, 560 (K. B. 1815):[40]

"'But for felony, or suspicion of felony, a man may break

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[37] 1 M. Hale, Pleas of the Crown 582 (1800) ("[W]here a felony is committed, or upon just suspicion that a felony will be committed, the constable or other peace officer, or any private person that is present, may arrest the offender, or stay him, or commit him to the custody of the constable, or other officer, without warrant, for the avoiding of mischief, and the better apprehending of the offender, and may justify the imprisonment of him, that is so arrested, or stayed, and detain him in custody, till he can be delivered over to the constable, or other officer, without warrant"); 1 W. Russell, Treatise on Crimes and Misdemeanors 745 (Sixth American edition).

[38] 4 W. Blackstone, Commentaries *292; 1 J. Chitty, Criminal Law 23 (1819); 4 H. Stephen, New Commentaries on the Laws of England 390 (1845).

[39] 2 M. Hale, Pleas of the Crown 588, 2 id., at 90-95. At page 91 of the latter volume, Hale writes that in the case where the constable or a private person of a felony, "if the supposed offender flies and take a house, and the door will not be opened upon demand of the constable or other, [he] may break open the door to take the felon, for he hath power to arrest." Although it would appear that Hale might have meant to limit what the "house" can be to one's own personal dwelling, he did not expressly frame it that way.

[40] Apparently, the Yearbook on which the statement appears has never been fully translated into English.

> open the house to take the felon; for it is for the commonweal to take them.'"

Considering the diversity of views just described, however, it is clear that the statement was never deemed authoritative. Indeed, in *Burdett*, the statement was described as an "extra-judicial opinion." *Ibid.*[41]

It is obvious that the common-law rule on warrantless home arrests was not as clear as the rule on arrests in public places. Indeed, particularly considering the prominence of Lord Coke, the weight of authority as it appeared to the Framers was to the effect that a warrant was required, or at the minimum that there were substantial risks in proceeding without one. The common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers. The zealous and frequent repetition of the adage that a "man's house is his castle," made it abundantly clear that both in England[42]

[41] This statement is consistent with the description by this Court of the holding of that Yearbook case in *Miller* v. *United States*, 357 U. S. 301, 307:

"As early as the 13th Yearbook of Edward IV (1461-1483), at folio 9, there is a recorded holding that it was unlawful for the sheriff to break the doors of a man's house to arrest him in a civil suit in debt or trespass, for the arrest was then only for the private interest of a party."

[42] Thus, in Semayne's Case, 77 Eng. Rep. 194, 195 (K. B. 1603), the Court stated: "That the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and although the life of man is a thing precious and favoured in law; so that although a man kills another in his defence, or kills one per infortun', without any intent, yet it is felony, and in such case he shall forfeit his goods and chattels, for the great regard which the law has to a man's life; but if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house, it is not felony, and he shall lose nothing, and therewith agree 3 E. 3. Coron. 303, & 305. & 26 Ass. pl. 23. So it is held in 21 H. 7. 39. every one may assemble his friends and neighbours to defend his house against violence: but he cannot assemble them to go with him to the market, or elsewhere for his safeguard against violence: and the reason

and in the Colonies "the freedom of one's house" was one of the most vital elements of English liberty."[6]

Thus, our study of the relevant common law does not provide the same guidance that was present in *Watson*. Whereas the rule governing the validity of an arrest in a public place was supported by cases directly in point and by the unani-

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of it. Our . . . *Castle doctrine* . . . *is not to be extended whatsoever.*" (Footnotes omitted.)

In the report of that case it is said that although the sheriff may break open the door of a man's house in order to effect service of a writ, a fortiori one of inferior process may justify doing the same. *Id.*, at 396: "And the reason is laid down to be, that every man's dwelling-house, or mansion adjoining thereto, for the sheriff to break open the door, and enter the house of a man to arrest him, or to distrain from the dwelling-house, without requiring the door to be opened to him, or demanding if he may enter, is lex terrae." *Penton* v. *Brown*, 2 Salk. 626, 91 S. C. 1 Salk. 176."

"And . . . as it is the law of England that the first principle of English liberty is the freedom of one's house. A man's house is his castle, and while he is quiet, he is as well guarded as a prince in his castle. This writ [if it should be executed] would terribly break in upon this privilege." 2 Legal Papers of John Adams 142 (Wroth and Zobel, ed. 1965).

We have long recognized the existence of the common law's special regard for the home in the closely parallel area of Fourth Amendment jurisprudence. See, e. g., *Payton* v. *United States*, 445 U. S. 573, 589.

Judge Cooley, in his well-known treatise, pp. 435, 436, in treating of the "Security of our Dwellings," wrote: "The maxim that 'every man's house is his castle,' is made a part of our constitutional law in the clause prohibiting unreasonable searches and seizures, and has always been looked upon as a light which the people cherish." Accordingly, as I observed in my work on Civil Liberty and Self-Government, 62, in spite of English law in this respect, "our doors can be forcibly opened, not to search for goods in transit, as they often can be in England, except in cases of felony, but to execute civil process. The officer must be furnished with a warrant, and the grounds upon which it is issued are carefully specified. This principle is probably declared upon."

Although the quote from Lilly concerning warrantless arrests in the home is not cited for today's decision, it was relevant to Mr. Lilly that the issue involved a warrantless arrest in a public place, and a worthless search of Mr. Lilly's home in his absence.

nous views of the commentators, we have found no direct authority supporting forcible entries into a home to make a routine arrest and the weight of the scholarly opinion is somewhat to the contrary. Indeed, the absence of any Seventeenth or Eighteenth Century English cases directly in point together with the unequivocal enforcement of the tenet that "a man's house is his castle," strongly suggest that the prevailing practice was not to make such arrests except in hot pursuit or when authorized by a warrant. In all events, it is doubtful that one that can be said to have been definitively settled by the common law at the time the Fourth Amendment was adopted.

Cf, Agnello v. United States, 269 U.S. 20, 33

B

A majority of the States that have taken a position on the question permit warrantless entry into the home to arrest even in the absence of exigent circumstances. At this time, 24 States permit such warrantless entries;[9] 15 States clearly prohibit them, though three States do so on federal constitu-

[9] The cases cited in this section are listed by State. See Ala. Code § 15-10-4 (1977); Alaska Stat. Ann. § 12.25.031 (1972); Ariz. Stat. Ann. § 13-3911 (1978); Ark. Stat. § 843-619 (1962); Cal. Penal Code § 844 (West 1970); Colo. Rev. Stat. § 16-3-303 (1978); Del. Code, Tit. 11, § 1907 (1974); D. C. Code § 23-591 (1973); Fla. Stat. § 901.19 (1973); Ga. Code Ann. § 27-305 (1978); Hawaii Rev. Stat. § 846-3 (1976); Idaho Code § 19-611 (1948); Ill. Rev. Stat., ch. 38, § 107-5 (d) (1979); Ind. Ann. Stat. § 9-1-1-7 (Burns 1956); Iowa Code § 755.22 (1979); Kan. Stat. Ann. § 22-2401 (1974); Ky. Rev. Stat. § 431.005 (1975); La. Code Crim. Proc. Ann., Art. 224 (West 1966); Me. Rev. Stat. Ann., Tit. 15, § 151 (1964); Md. Ann. Code, Art. 27, § 594 (1976); Mass. Gen. Laws Ann., ch. 276, § 1 (West 1970); Mich. Comp. Laws § 764.15 (1970); Minn. Stat. § 629.34 (1978); Miss. Code Ann. § 99-3-7 (1972); Mo. Rev. Stat. § 544.216 (1978); Mont. Rev. Code § 95-601 (1947); Neb. Rev. Stat. § 29-411 (1975); Nev. Rev. Stat. § 171.124 (1977); N. H. Rev. Stat. Ann. § 594.1 (1974); N. J. Stat. Ann. § 2A:169-1 (West 1971); N. M. Stat. Ann. § 30-22-1 (1978); N. Y. Crim. Proc. Law §§ 140.15 (1), 120.80 (1) (McKinney 1971); N. C. Gen. Stat. § 15A-401 (c) (1978); N. D. Cent. Code § 29-06-15 (1974); Ohio Rev. Code Ann. § 2935.12 (Supp. 1977); Okla. Stat., Tit. 22, § 197 (1969); S. D. Comp. Laws Ann. § 23A-3-3 (1979); Tenn. Code Ann. § 40-807 (1955); Utah Code Ann. § 77-13-12 (1953); Wash. Rev. Code § 10.31.040 (1961). One State has authorized warrantless arrest entries by federal officers. *See Shields* v. *Commonwealth*, 365 S. W. 2d 312, 315 (Ky. 1963).

A number of courts in these States, though not directly addressing the issue, have recognized that the constitutionality of such entries is open to question. *See People* v. *Wilson-Smith*, 19 Ill. 2d 154, 159, N. E. 2d 1067 (1960), rev'd. on other grounds, 366 U. S. 918; *State* v. *Buckner*, 413 So. 2d 481 (La. 1977) (citing both state and federal constitutions); *State* v. *Ingleby*,

tional grounds alone;[15] and 11 States have apparently taken no position on the question.[16]

But these current figures reflect a significant decline during the last decade in the number of States permitting warrantless entries for arrest. Recent data in this Court raising questions about the practice, see n. 1, *supra*, and Federal Courts of Appeals' decisions on point, see n. 4, *supra*, have led state courts to focus on the issue. Virtually all of the state courts that have had to confront the constitutional issue directly have held warrantless entries into the home to arrest to be invalid in the absence of exigent circumstances. See nn. 2, 3, *supra*. Three state courts have relied on Fourth Amendment grounds alone, while seven have expressly placed their decisions on both federal and state constitutional grounds.[17] A number of other state courts, though not having had to confront the issue directly, have recognized the serious nature of the constitutional questions.[18] Apparently, only the Supreme Court of Florida and the New York Court of Appeals

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[15] See *State* v. *Nash*, 281 N. W. 2d 674 (1979), cert. denied, 439 U. S. 1077; *State* v. *Nash*, 278 N. W. 2d 769 (Minn. 1979); *State* v. *Pope*, 277 N. W. 2d 112 (ND 1979); *State* v. *Moe*, 264 N. W. 2d 486 (SD 1978).

[16] Four States prohibit warrantless arrests in the home by statute, see Ga. Code §§ 27-207, 27-208 (1971) (also prohibits warrantless arrests only in the home absent exigency), Ind. Code §§ 35-1-29-1, 35-2-2-6 (1979), Mont. Code Ann. § 95-601 (1979) (same as Georgia), S. C. Code § 17-13-40 (1977), apparently by state common law, see *United States* v. *Reed*, 408 F. Supp. 145, 151, n. 26 (SD Tex. 1976), *Moore* v. *State*, 548 Tex. Cr. R. 87, 303 S. W. 2d 781, 787 (1956), and 10 on constitutional grounds, see n. 17, *infra*.

[17] Connecticut, Delaware, Illinois, Maryland, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Virginia, Wyoming. The courts of Connecticut, Illinois, and the Federal District Courts in Delaware have suggested that the constitutional duty of warrantless home arrest is not yet settled. See *State* v. *Evangelista*, 31 Conn. Supp. 181, 393 A. 2d 247 (Sup. Ct. Appeals Div. 1977); *Mitchell* v. *State*, 252 Md. 179, 431 A. 2d 1311 (1978); *Peterson* v. *Delaware*, — F. Supp. —, 307 A. 2d 212 (1973).

[18] See cases cited in n. 3, *supra*.

[19] See cases cited in nn. 47, 49, *supra*.

(e) in this case have expressly upheld warrantless entries to arrest in the face of a constitutional challenge.[27]

A long-standing, widespread practice is not immune from constitutional scrutiny. But neither is it to be lightly brushed aside. This is particularly so when the constitutional standard is as amorphous as the word "reasonable," and when custom and contemporary norms necessarily play such a large role in the constitutional analysis. In this case, although the weight of state law authority is clear, there is by no means the kind of virtual unanimity on this question that was present in *United States* v. *Watson*, *supra*, with regard to warrantless arrests in public places. See 424 U. S., at 422–423. Only 24 of the 50 States currently sanction warrantless entries into the home to arrest, see nn. 47–51, *supra*, and there is no obvious developing trend. Further, the strength of the trend is greater than the numbers alone indicate. Seven state courts have recently held that warrantless home arrests violate their respective state constitutions. See n. 3, *supra*. That is significant because by invoking state constitutional provisions a state court immunizes its decision from review by this Court.[28] This heightened degree of certainty underscores the depth of the principle underlying the result.

C

No congressional determination that warrantless entries into the home are "reasonable" has been called to our attention. None of the federal statutes cited in the *Watson* opinion reflects any such legislative judgment.[29] Thus, that

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[27] See n. 2, *supra*.

[28] See, e. g., *Michigan* v. *Mosley*, 423 U. S. 96, 104 (1975). See generally Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977).

[29] The statute referred to in n. 30, *supra*, provides:

"The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of

support for the *Watson* holding finds no counterpart in this case.

MR. JUSTICE POWELL, concurring in *United States* v. *Watson*, *supra*, 423 U. S., at 429, stated:

> "But logic sometimes must defer to history and experience. The Court's opinion emphasizes the historical sanction accorded warrantless felony arrests [in public places]."

In this case, however, neither history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embodied in the centuries since the origins of the Republic.[17]

IV

The parties have argued at some length about the practical consequences of a warrant requirement as a precondition to a felony arrest in the home.[18] In the absence of any evidence

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the Department of Justice may enter any State or Territory named herein, and any place within the jurisdiction of the United States, and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony." 66 Stat. 138, 18 U. S. C. § 3052.

It says nothing either way about entering warrantless arrests in the home. See also ALI Code, *supra*, at 308; Columbia Note, *supra*, at 1554–1555, n. 26.

[17] There can be no doubt that Pitt addressed in the House of Commons in March of 1763 echoed and resounded throughout the Colonies:

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement." *Miller* v. *United States*, *supra*, 357 U. S., at 307.

[18] The State of New York argues that the warrant requirement will generate pleas to seek warrants and have arrests run horribly, thus

that effective law enforcement has suffered in those States that already have such a requirement, see nn. 3, 48, *supra*, we are inclined to view such arguments with skepticism. More fundamentally, however, such arguments of policy must give way to a constitutional command that we consider to be unequivocal.

Finally, we note the State's suggestion that only a search warrant based on probable cause to believe the suspect is at home at a given time can adequately protect the privacy interests at stake, and since such a warrant requirement is manifestly impractical there need be no warrant of any kind. We find this ingenious argument unpersuasive. It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.

Because no arrest warrant was obtained in either of these

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increasing the likelihood of arresting innocent people; that it will divert scarce resources thereby interfering with the police's ability to do thorough investigations; that it will prejudice the police for a favorable plea-bargain; and that it will lead to more injuries. Appellants counter that careful planning is possible and that the police need not seek to get a warrant, because if an exigency arises necessitating immediate arrest in the course of an order's investigation, arrest without a warrant is permissible; that the warrant procedure will decrease the likelihood that an innocent person will be arrested; that the inconvenience of obtaining a warrant and the potential for diversion of resources is overstated by the State; and that there is no basis for the assertion that the time required to obtain a warrant would create peril.

cases, the judgments must be reversed and the cases remanded to the New York Court of Appeals for further proceedings not inconsistent with this opinion.

It is so ordered.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR

March 20, 1980

RE: Nos. 78-5420 & 5421 Payton and Riddick v. New York

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 20, 1980

Re: (78-5420 - Payton v. New York
(78-5421 - Riddick v. New York

Dear Byron:

I join your dissent.

Regards,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 20, 1980

Re: No. 78-5420 Payton v. New York

Dear Byron:

This will confirm what I have already said in my separate dissent: please join me in your dissent.

Sincerely,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 27, 1980

Re: Nos. 78-5420 and 78-5421 - Payton v. New York and Riddick v. New York

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1980

Re: No. 78-5420 - Payton v. New York
No. 78-5421 - Riddick v. New York

Dear John:

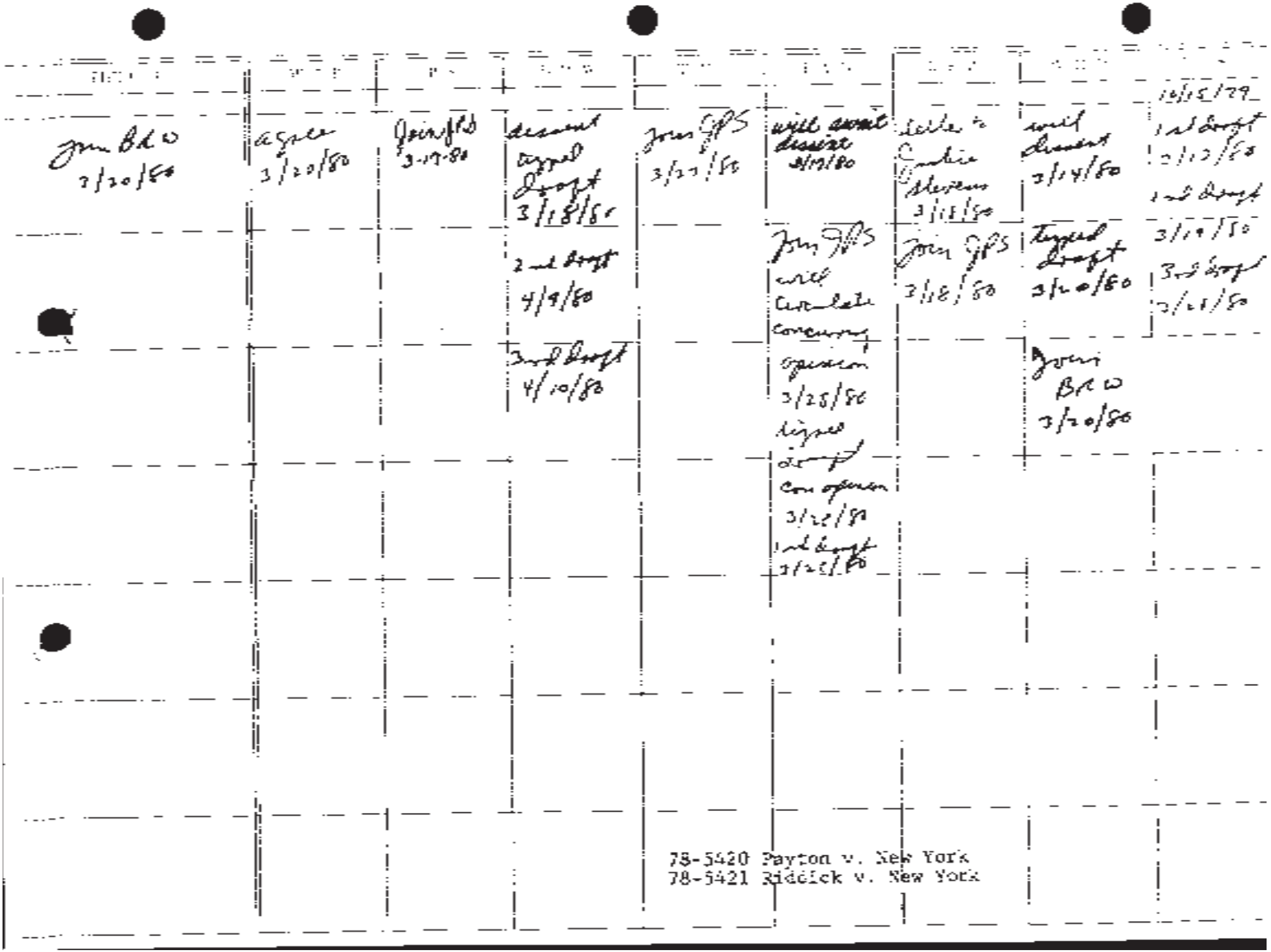
I voted the other way at conference, but, after study and review of the historical factors (compare my dissent in Gannett!), I have now concluded that a reversal and remand in each of these cases is indicated. I therefore join your opinion. I shall circulate a two-paragraph concurrence later today.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference


Join BRW 3/20/80
agree 3/20/80
Join JPS 3-17-80
dissent typed Dft 3/18/80
2nd Dft 4/9/80
3rd Draft 4/10/80
Join JPS 3/21/80
will write dissent 3/19/80
Join JPS with Concurr Opinion 3/25/80
typed draft Con opinion 3/26/80
1st draft 3/26/80
Leave to Cookie Sherman 3/18/80
Join JPS 3/18/80
will dissent 3/14/80
Typed Draft 3/20/80
Join BRW 3/20/80
10/15/79
1st Draft 2/12/80
2nd Draft 3/19/80
3rd draft 3/21/80
78-5420 Payton v. New York
78-5421 Riddick v. New York