RECENT FOURTH AMENDMENT DEVELOPMENTS

> 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.[1]

I. Dominance of Reasonableness Clause or Warrants Clause

By judicial interpretation the fourth amendment has been divided into two clauses. The first, the reasonableness clause, is the constitutional guarantee against unreasonable searches and seizures. The second, the warrants clause, delineates the specific requirements or contents of warrants.

The historical development of the fourth amendment has centered around a search for the relationship between these two clauses; a delineation as to which clause is to be used to determine the constitutional validity of a search and seizure. The warrants clause may be emphasized by a requirement that warrants be obtained wherever reasonably practical. On the other hand, the reasonableness clause may be made dominant merely by a requirement that the search be reasonable. The first of three interpretations emphasizing the warrants clause came in *Trupiano v. United States*.[2] The United States Supreme Court stated that:

> It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable.[3]

This decision, however, was not long lived. Two years later in *United States v. Rabinowitz*[4] the Court expressly overruled *Trupiano* by making the reasonableness clause dominant in the determination of the validity of a search and seizure.

> "The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable."[5]

The requirements of the warrants clause, then, were most obviously relevant in those cases in which a warrant had been obtained.

Except for recent decisions, the history of the relation between

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[1] U.S. Const. amend. IV.
[2] 334 U.S. 699 (1948).
[3] *Id.* at 705.
[4] 339 U.S. 56 (1950).
[5] *Id.* at 66.

these two clauses has been thoroughly discussed in numerous articles.[6] This note will discuss these clauses and their interpretations only in relation to a few of the very recent United States Supreme Court cases.[7]

The *Rabinowitz* decision, with its emphasis on the reasonableness of a search and seizure, can probably best be described as a compromise with law enforcement agencies. *Trupiano,* from the standpoint of law enforcement, propounded a rigid test: officers were to obtain a warrant wherever reasonably practical, except when the search was incident to an arrest. Historically, a warrant has not been required for this type of search and, as a result, after *Trupiano* the incidental search rule became an excuse for not obtaining a warrant. Law enforcement agencies, due to this pressure, were able to bring about the change which came in *Rabinowitz.* That decision was an attempt to change fourth amendment doctrine so that it would better conform to the demands sought by law enforcers.[8]

II. Criteria for Determining Reasonableness

But in introducing this change the Court brought about what might be an even greater problem—what is reasonableness? Are there certain criteria which can be used to judge whether a search is reasonable? "What is the test of reason which makes a search reasonable?"[9] The reasonableness clause itself provides no answer, and the Court prefers to determine each case on its merits—on its own peculiar facts as to whether or not the search is reasonable.[10] This can be seen by the fact that recent cases show the Court has failed to explicitly state a concrete test for reasonableness. In *War-*

[6] *See, e.g., Student Symposium—The Fourth Amendment,* 25 Ohio St. L.J. 501 (1946); *Symposium—Search and Seizure,* 59 Nw. U.L. Rev. 611 (1965); *Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment,* 28 U. Chi. L. Rev. 664 (1961).

[7] Emphasis will be placed on: Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294 (1967); Cooper v. California, 386 U.S. 58, (1967); Schmerber v. California, 384 U.S. 757 (1966); Preston v. United States, 376 U.S. 364 (1964).

[8] *See Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment, supra* note 6, at 678-686.

[9] United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting opinion).

[10] What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are "unreasonable" searches and, regretably, in our discipline we have no ready litmus paper test. The recurring questions of the reasonableness of the searches must find resolution in the facts and circumstances of each case. *See* United States v. Rabinowitz, 339 U.S. 56, 63 (1950).

den, Maryland Penitentiary v. Hayden the search was held to be valid because the police were in "hot pursuit" of the suspect and acted reasonably in entering the house to make the search.[11] The search was unreasonable in *Preston v. United States* because it was "too remote in time or place" from the arrest.[12] In *Schmerber v. California* a blood sample taken to test for intoxication was reasonable because there was a "clear indication" that the officer would find evidence of intoxication.[13]

The Court has recognized the difficulty involved in defining specific criteria of a reasonable search.

> Though there has been general agreement as to the fundamental purpose of the Fourth Amendment, translation of the abstract prohibition against "unreasonable searches and seizures" into workable guidelines for the decision of particular cases is a difficult task which has for many years divided members of this Court. . . .[14]
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> Unfortunately there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.[15]

What is needed, however, is a test, not for the Supreme Court alone, but one which will establish workable guidelines for lower courts and law enforcement officials. It is not enough to judge each case separately and on its own particular facts. What are lower court judges, lawyers, and especially law enforcement officers to do with a particular fact pattern with which the Court has not dealt or with facts slightly different from those with which the Court has already dealt?

> It is no guide at all either for a jury or for district judges or the police to say that 'an unreasonable search' is forbidden—that the search must be reasonable.[16]

The most important question is whether any criteria have been

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[11] 387 U.S. 294, 298-299 (1967).

[12] 376 U.S. 364, 368 (1964).

[13] 384 U.S. 757, 770 (1966).

[14] Camara v. Municipal Court, 387 U.S. 523, 528 (1967).

[15] *Id.* at 536.

[16] United States v. Rabinowitz, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting opinion). Some factors which have been considered to be relevant to the reasonableness of a search are covered in 25 OHIO ST. L. J. 501, 553 (1964). Among them are the scope of the area covered; the nature and number of items to be seized; the time the search occurs; the place to be searched; whether arrest is merely a pretext for search. Cases dealing with each one of these factors are legion. Can we call these effective guidelines for police conduct?

specified in recent cases which could form a guideline or test. What standards, if any, has the Court set for itself? Recent decisions indicate that the Court may be establishing the specifications of the warrants clause as just such a test.[17] This can be seen as a return to the interpretation of the fourth amendment typified by *Trupiano*. The philosophy of *Trupiano* goes much deeper than merely a decision which requires that a warrant be obtained wherever reasonably practical. It is a way of looking at the basic relationship between the two clauses of the fourth amendment. The basic premise of *Trupiano* was that the warrants clause is the most important part of the fourth amendment, that it should be stressed and should dominate over the reasonableness clause in determining the validity of searches and seizures.[18] It is to this premise to which the majority today seems to be returning.

The cases which deal specifically with warrants show the preferred position in which the warrants clause is placed in the eyes of the Court. In *Aguilar v. Texas*[19] Justice Goldberg reaffirmed the view taken in *United States v. Lefkowitz*[20] that

> [t]he informed and deliberate determinations of magistrates empowered to issue warrants . . . are to be preferred over the hurried action of officers . . . who may happen to make arrests.[21]

Again writing for the majority in *United States v. Ventresca* he seemed to show an even stronger inclination toward the warrants clause:

> In *Jones v. United States* . . ., this Court, strongly supporting the preference to be accorded searches under a warrant, indicated that in a doubtful or marginal case a search under a warrant may be sustained where one without would fall.[22]

This same preference is shown in *Camara v. Municipal Court*, the Court overruling *Frank v. Maryland*[23] which had previously held

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[17] *See*, L. Herman *Searches Without Warrants*, in REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION PROGRAM § 3.01 (Ohio Legal Center Institute, 1966); *See also, Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment*, *supra* note 6, at 686.

[18] *See* L. Herman, *Searches Without Warrants*, *supra* note 17, at § 3.01.

[19] 378 U.S. 108 (1964).

[20] 285 U.S. 452 (1932).

[21] 378 U.S. at 110.

[22] 380 U.S. 102, 106 (1965); *See* Jones v. United States, 362 U.S. 257 (1960) and Chapman v. United States, 365 U.S. 610 (1961).

[23] 359 U.S. 360 (1959).

warrants unnecessary in municipal health, fire, and safety inspections.

> [E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.[24]

In *See v. City of Seattle*,[25] the companion case to *Camara*, the Court stated that *Camara* held:

> [A] search of private houses is presumptively unreasonable if conducted without a warrant.[26]

and that,

> We hold only that the basic component of a reasonable search under the Fourth Amendment—that it not be enforced without a suitable warrant procedure—is applicable in this context, as in others . . . .[27]

Berger v. New York[28] gave the Court the opportunity, under the doctrine of reasonableness, to sanction the use of eavesdropping devices, especially under the New York law which contained safeguards modeled somewhat after warrants clause requirements. In striking down that statute, however, the majority refused to retreat from strict adherence to warrants clause requirements.

> It is said that neither a warrant nor a statute can be drawn so as to meet the Fourth Amendment's requirements. If that be true then the "fruits" of eavesdropping devices are barred under the Amendment.[29]

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[24] 387 U.S. at 528. It is interesting to note that MacDonald v. United States, 335 U.S. 451 (1948), is cited as authority for this statement. *MacDonald* was decided only six months after *Trupiano* and at a time when the Court still adhered to the *Trupiano* doctrine.

> Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police.

Id. at 455.

[25] 387 U.S. 541 (1967).

[26] *Id.* at 543.

[27] *Id.* at 546.

[28] 388 U.S. 41 (1967).

[29] *Id.* at 63. In its most recent pronouncement the Supreme Court definitely reaffirmed its rigorous holding in *Berger:*

> 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' . . . and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment . . . .

Katz v. United States, 36 U.S.L.W. 4080, 4082 (U.S. Dec. 18, 1967).

These cases dealt with the requirements of warrants and the content of warrants when they are obtained, or, as in *See* and *Camara,* the new requirement of procuring a warrant for municipal health, safety, and fire inspection. As such they do not put the reasonableness theory of *Rabinowitz* to its greatest test, nor show the extent to which the reasonableness test has been replaced through use of the warrant criteria. They do show, however, the influence of the warrants clause on the Court as exemplified by the preferred position in which that clause is placed.

III. Search Without a Warrant Incident to an Arrest

Rabinowitz, then, marked the real beginning of the era of the search without a warrant incident to an arrest. It is this type of search which is the most difficult to deal with in terms of a test of reasonableness, for here there are no criteria and no guidelines—only the blank statement that a search must be reasonable. But it is here that the requirements of the warrants clause may be used to mark the boundaries of a reasonable search. The requirements of the warrants clause are:

> (1) Probable cause supported by oath or affirmation that the particular person or thing can be found in the place to be searched.
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> (2) A specific place to be searched, particularly described.
>
> (3) Specific persons or things to be seized, particularly described.
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> (4) All these must be reviewed by the magistrate who decides whether or not to issue the warrant.

Obviously the independent judgment of the magistrate is lost in a search incident to an arrest. But can the other requirements of the clause be used? Are they now used by the Court? Examination of a few of the recent decisions suggests that the answer is "yes"—these searches seem to conform to those requirements.

Schmerber v. California[30] and *Warden, Maryland Penitentiary v. Hayden*[31] clearly fit into the category of necessity, the historical requisite for a search incident to an arrest.[32] In addition, they meet warrants clause requirements. Using the definition of probable

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[30] 384 U.S. 757 (1966).

[31] 387 U.S. 294 (1967).

cause formulated in *Carroll v. United States*,[33] the officers in both *Hayden* and *Schmerber* had probable cause to search. In *Hayden* a cab driver had followed the petitioner from the scene of the robbery and had seen him go into a house. He radioed this information to police headquarters along with a description of the clothes the petitioner was wearing. It was held, in effect, that the officers had probable cause to enter the house and make the search.

They acted reasonably when they entered the house and

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[32] The term "necessity" is used to describe the three basic historical justifications for the search incident to an arrest without a warrant:

(1) The need to protect the arresting officer by depriving the suspect of concealed weapons.

(2) The need to deprive the accused of a means of escape.

(3) The need to prevent the destruction of the evidence of the crime.

See Symposium—Search and Seizure, 59 NW. U.L. REV. 611, 617 (1965).

This test was met in *Schmerber*,

> The officer . . . might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant under the circumstances, threatened "the destruction of the evidence . . . .

384 U.S. at 770.

In *Hayden*,

> Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.

387 U.S. at 299.

[33] 267 U.S. 132, 162 (1925):

> [Where] the facts and circumstances within their [arresting officers] knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that [an offense is being or has been committed].

See generally Student Symposium: The Fourth Amendment, Probable Cause: The Federal Standard, 25 OHIO ST. L.J. 501 (1964). A new and interesting development in the definition of probable cause came last term in Camara v. Municipal Court, 387 U.S. 523 (1967). The Court held that administrative searches, specifically health, fire, and safety inspections, must be accompanied by a warrant if the occupant objects. Probable cause to obtain the warrant, however, was made much more lenient—it exists if certain legislative and administrative standards are met, *e.g.*, nature or age of the building or the condition of the area. While the Court declared this weakening of probable cause will not leak into the criminal investigative area, 387 U.S. at 538, what will happen in the area of "stop and frisk?" This is an area which has been considered on borderline of administrative and criminal searches. *See* People v. Sibron, 18 App. Div. 2d 603, 272 N.Y.S.2d 374 (1964), *prob. juris. noted*, 386 U.S. 954 (1967), which could answer this question. For petitioner's brief before United States Supreme Court in the *Sibron* case *see* 3 CRIM. L. BULL. 441 (1967).

> began to search for a man of the description they had been given and for weapons he had used in the robbery or might use against them.[34]

It follows from this that the officers had probable cause to believe the suspect was in the house along with the stolen money and the weapons he had used. In *Schmerber* it seemed almost certain that the blood test would yield incriminating evidence. There was a liquor smell on petitioner's breath and his eyes were "bloodshot, watery, sort of a glassy appearance." In fact there was a "clear indication" that the test would yield evidence of intoxication.[35] Also, in this case there was a specific place to be searched and a specific thing to be seized, both requirements of the warrants clause. The place was the body of the petitioner; the specific item was the blood that was to be taken for the test. The specific place to be searched in *Hayden* was the house of the petitioner.

> [The officers were in hot pursuit of the suspect.] The permissible scope of search must, therefore, at least, be as broad as may reasonably be necessary to prevent the dangers that the suspect at large in the house may resist or escape.[36]

The specific things the officers were looking for were the man, the money and the weapon.[37]

Preston[38] is the opposite of *Hayden* and *Schmerber*. That case involved the arrest of four men on vagrancy charges and the subsequent search of their impounded car which revealed burglary tools. There was no necessity whatsoever in terms of that historical test.[39] It was not a search incidental to an arrest.

> Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest.[40]

While the officers had a specific place to search, there was no indi-

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[34] 387 U.S. at 298.

[35] 384 U.S. at 770.

[36] 387 U.S. at 299. Compare the scope of this search with that in Harris v. United States, 331 U.S. 145 (1947), and United States v. Rabinowitz, 339 U.S. 56 (1950).

[37] 387 U.S. at 299. Petitioner argued that the officer who found the clothing made a general search of the premises, not really knowing what he was looking for and that he certainly was not looking for clothing. The Court countered by saying the officer testified he was looking for the man and the money and under the, circumstances, the inference he was also looking for weapons is fully justified. *Id.* at 300.

[38] 376 U.S. 364 (1964).

[39] *See* text accompanying note 34 *supra.*

[40] 376 U.S. at 367.

cation they were looking for any specific item. It was merely a general exploratory search of the petitioner's car. The Court stated that, while the officers might have had probable cause to search the car at the time and place of arrest, the actual search here, which took place after the petitioner was in jail and the car was impounded, was too remote from the arrest to meet the test of reasonableness.

These three cases dealing with searches without warrants meet the requirements of the warrants clause. To this extent they lend support to the idea that the Court is shifting back to the interpretation of the fourth amendment expressed by *Trupiano* and is using the warrants clause as its benchmark in fourth amendment litigation to determine the ultimate goal of reasonableness.

Cooper v. California[41] seems to disrupt this trend. In *Cooper* the petitioner was arrested after having sold narcotics to an informer. Petitioner's car, in which the transaction took place, was subsequently impounded pursuant to the California Health and Safety Code. One week after the arrest the search in question was made which turned up a small brown piece of paper subsequently used in the conviction of petitioner.

Until *Cooper,* a search without a warrant had never been upheld if not incidental to an arrest.[42] Such searches were not within any exception to the constitutional requirement of a warrant. In *Cooper,* the State of California conceded the search was not incidental to the arrest, but claimed the search was reasonable because of the requirements of the California Health and Safety Code. Under that statute, upon arrest for violation of narcotics law, the officers are to seize any vehicle connected with that violation and hold it as evidence until either released or forfeited to the state.[43] The state argued that because they had lawful custody under the statute they were entitled to search the car.

The California District Court of Appeals relied on *Preston v.*

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[41] 386 U.S. 58 (1967).

[42] Many lower courts, however, have upheld these searches. *See* L. Herman, *Searches Without Warrants,* in REFERENCE MANUAL FOR CONTINUING LEGAL EDUCATION PROGRAM § 3.14 (Ohio Legal Center Institute, 1966).

[43] CAL. HEALTH & SAFETY CODE §§ 11610-11 (West 1964). There are two sections of that code which apply here. Section 11610 provides that any vehicle used to transport narcotics shall be forfeited to the state. Section 11611 authorizes the arresting officers to seize such a vehicle and impound it until forfeited or released.

United States to invalidate the search.[44] As previously noted, that search was invalidated on the grounds that it was "too remote" from the time and place of arrest.[45] A look at the language of the opinion seems to indicate that the real basis of the *Preston* decision was that the search was not incidental to an arrest.

> We think that the search was too remote in time or place to have been made as incidental to the arrest, *and conclude, therefore,* that the search of the car without a warrant failed to meet the test of reasonableness under the Fourth Amendment . . . . (Emphasis added.)[46]

But, the search in *Cooper* was even more remote than that in *Preston.* Both were searches of cars. Both searches were made without a warrant. Neither was made incidental to an arrest. Why, then, the difference in *Cooper*? The Court had to distinguish the two. While the

> '[l]awful custody of the automobile does not itself dispense with the constitutional requirements of searches thereafter made of it' . . . the reason for and nature of the custody may constitutionally justify the search.[47]

In other words, the custody of the car in *Preston* had nothing to do with the charge for which he was arrested—vagrancy. The officers impounded the car simply because they did not wish to leave it in the street.[48] But in *Cooper* the officers were required by law to keep the car until it was either forfeited or released. Petitioner was arrested for violation of narcotics law—his car was impounded for this reason.

> Their subsequent search of the car . . . was closely related to the reason petitioner was arrested, the reason his car had been impounded and the reason it was being retained . . . . It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, — to search it.[49]

But, in light of *Preston,* why the search is reasonable is not altogether clear. The State could not justify the search on the

[44] 234 Cal. App. 2d 587, 44 Cal. Rptr. 483 (1967). Note that while the search was declared invalid the conviction was affirmed on basis of the California harmless error rule.

[45] 376 U.S. at 368.

[46] *Id.*

[47] 386 U.S. at 61.

[48] *Id.*

[49] *Id.* at 61.

basis that it had title to the car because the forfeiture proceeding did not take place until over four months after the car was impounded, which was after the petitioner was convicted. If the authority for the search was the fact the police had custody of the car, there was also custody in *Preston;* there would seem to be no reason why the police would have any more control in *Cooper.*[50] The Court may be saying this was custody of a special kind—it was authorized by statute. This would have to be the distinctive basis for the decision unless it is conceded that *Preston* is overruled.[51]

The decision in *Cooper* cannot be justified in terms of the warrants clause as could *Preston.* The officers might have had probable cause to believe something was in the car, but this does not seem likely. If they had probable cause they would have searched the car immediately after seizure. While the car was a specific place to search, the officers did not have a specific item in mind which they were going to seize. This is a case in which the officers, who already had enough evidence to convict the petitioner, rummaged through the car without probable cause to believe that anything could be found. It seems to have all the earmarks of a general search of the type prohibited by the fourth amendment. Although courts have rarely attempted to define the term "general search," the definition can be taken from the warrants clause itself—a search in which the officers do not know what they are looking for, or one in which they have no probable cause or reasonable expectation of finding an item in the place they are looking. *Cooper* seems to clearly fit within this definition.

Where the Cooper decision will lead is not easy to predict. It raises questions as to whether or not areas normally extended fourth amendment protection will lose that protection when taken into custody (extended beyond the forfeiture statute). It raises questions as to other searches, apart from automobiles, without a warrant and not incident to an arrest—a search which by definition and by the ruling in *Preston* does not fit within the exception for

[50] 386 U.S. at 62 (Douglas, J., dissenting opinion).

[51] This seems to be the way to best characterize the decision—that the forfeiture statute gave the state a proprietary interest or even a property interest in the car and, therefore, had the right of search. *See* State v. Dill, 151 N.W.2d 413 (Minn. 1967). But this too raises a question—if the state had a property interest of some sort in the car, how can petitioner object to the search? Should not the case have gone off on standing? On the point of overruling *Preston see* Cooper v. California, 386 U.S. 58 at 65 (1967), (Douglas, J., dissenting opinion) and Stewart v. People, 426 P.2d 545 (Colo. 1967).

searches incidental to an arrest and should, therefore, be void as a general search.[52] *Cooper* has already been used by lower courts to justify searches without a warrant not incident to an arrest even though no state forfeiture statute is involved.[53] It is read as loosening the bonds to the constitutional exception for incidental searches.[54]

In all probability *Cooper* is an exceptional decision, depending upon the existence of the forfeiture statute.[55] It may even be limited to searches of automobiles. If *Cooper* is based purely upon the reasonableness of the search, it is a prime example of the failure of that standard to provide workable guidelines for lower courts, such as the California District Court of Appeals and for law enforcement agencies.

IV. Proposal

The warrants clause can provide guidelines for determining whether a search incident to an arrest is reasonable. This test is in line with that which the framers of the amendment set up for searches and seizures with warrants. This was to be the best way to set a balance between the interests of law enforcement and the invasions to personal liberty and privacy which result from searches and seizures. To hold searches without warrants up to these standards would be to hold all searches up to constitutional requirements—requirements set up by the framers themselves. It would bring all searches within the scope of the warrants clause and at the same time give a definite test to those searches made without a warrant. A warrants clause test would give some content to the standard of reasonableness which up to now has been devoid of any fixed or predictable guidelines.

Using the warrants clause as criteria would ask that police,

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[52] *See* Cooper v. California, 386 U.S. 58 at 63 (1967), (Douglas, J., dissenting opinion) (paraphrasing opinion of California District Court of Appeals): "Since the search was not pursuant to a warrant and since it was not incident to petitioner's arrest, it was illegal."

[53] *See* United States v. McKendrick, 266 F. Supp. 718 (S.D.N.Y. 1967); Stewart v. People, 426 P.2d 545 (Colo. 1967); Abrams v. State, 223 Ga. 216, 154 S.E. 2d 443 (1967); State v. Omo, 428 P.2d 768 (Kan. 1967).

[54] *See* Davidson v. Boles, 266 F. Supp. 645 (N.D.W.Va. 1967); Draper v. Maryland, 265 F.Supp. 718 (D. Md. 1967).

[55] It should be noted here that the main issue was the California harmless error rule rather than the search issue under the fourth amendment. This being so, this opinion may be the result of inadequate consideration of what was here a side issue.

Also note the petitioner did not argue in terms of a general search but simply on whether there could ever be a valid, warrantless search not incident to an arrest.

first, have a specified place in mind when they begin the search. Second, a specific object or item must be the aim of the search. Third, they must have probable cause to believe that the item they are searching for will be found in the specific place where they are searching. Law enforcers may not properly look in a place where the object could not reasonably be expected to be found.

It is up to the United States Supreme Court and lower courts to apply these requirements to searches without warrants. Without them, the reasonableness clause will allow police to make general and exploratory searches. When no guidelines are drawn and no rules laid out, the way is open for law enforcement to take advantage of this weakness in the law.

The problem stems from the basic question of the relation between the two clauses of the fourth amendment. Which clause was meant to be determinative in judging the validity of a search and seizure? It is suggested that the warrants clause will yield greater clarity and predictibility as guidelines to lawyers and law enforcers, and more continuity and stability in decision making on the part of the courts.

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