prisoners. Further, the existing status of the public defender as a county officer[29] is, for the present purpose, undesirable, as the problem is essentially one requiring state administration.

The matter could be more adequately handled, as it has been in Indiana,[30] through the office of a state public defender expressly charged with the duty of representing indigent prisoners who claim unconstitutional detention. A bill basically similar to the Indiana act was introduced in the Illinois House of Representatives in 1945. Under the proposed legislation, two experienced criminal lawyers, appointed by the state Supreme Court, were to be permanently employed as legal counsel for prisoners in the state penitentiary.[31] The bill also proposed that $40,000 be made available to the Supreme Court for "administrative expenses." Although actively supported, the bill unfortunately never became law.

Actually any arrangement would be acceptable by which prisoners seeking relief from unconstitutional detention would be assured competent representation, and by which the courts could give adequate consideration to the merits of each petition. Either of the above methods would be desirable only if they were conscientiously carried out by those charged with the duty. Intelligent legislation dealing with the matter must insure such capable administration. It is a primary duty of the next Illinois General Assembly to take appropriate action.

SEARCHES AND SEIZURES: 1948

The backwash of recent cases which swept away a small but significant fraction of the protection hitherto afforded by the Fourth Amendment[1] appears to have run its course. Whatever rationale may account for the decisions in *Davis*

[29] The present public defender statute applies only to Cook County. Ill. Rev. Stat. (1947) c. 34, § 163c. Even if all counties were provided for, however, the same objections would be present.

[30] In Indiana it is now the duty of the public defender, appointed by the state Supreme Court, to represent prisoners who are paupers "in any matter in which such person may assert he is unlawfully or illegally imprisoned, after his time for appeal shall have expired." Ind. Stat. Ann. (Burns, Supp., 1945) § 13-1402.

[31] The proposed bill fixed the salaries of the attorneys at $7,500 per annum. The two appointees were to be required, in addition to aiding prisoners directly, to perform such other duties as the Supreme Court judges might direct. Ill. H.B. 534, 64th Assemb., Reg. Sess. (Tabled June 28, 1945).

[1] "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."

v. United States,[2] *Zap v. United States*,[3] and *Harris v. United States*[4]—all widely regarded as dealing serious blows to civil liberties[5]—seems to have vanished in the two recent opinions in which the Supreme Court has refused to sanction the extension of the permissive peacetime limits of police activity. In *United States v. Di Re*[6] the Court held that the presence of a third party in an automobile with persons who were there engaged in a conspiracy to sell counterfeit gasoline ration coupons did not in itself afford reasonable grounds to arrest and search the third party without a warrant. And in *United States v. Johnson*[7] a divided Court reaffirmed its historic hostility to search of a private dwelling without a magistrate's writ. Because of manifest differences in fact situations, an attempt to discover a definitive trend in the Court's recent interpretations of the Fourth Amendment would be treacherous; but it is noteworthy that the philosophy of dissent in the *Harris* and *Davis* decisions has found expression in the opinion of the majority in the two later cases. Taken together, the five recent search and seizure pronouncements of the Court reaffirm in striking fashion how subtle con-

[2] 328 U.S. 582 (1946). The defendant, president of a corporation which maintained a gasoline filling station in New York City, was suspected of running a black market in gasoline. Two federal agents, who had no search or arrest warrants, drove their autos into the station and purchased gas from an attendant without ration stamps. The attendant was arrested, and while she was being questioned the petitioner returned to the station. He was arrested, and the officers demanded ration coupons covering the aggregate amount of the sales. The defendant assured the agents that he had sufficient coupons to cover the shortage which an examination of the ration depositories attached to the tanks had revealed. The officers demanded to see the coupons which the defendant said were locked in an inner room of the station, and after at first refusing he unlocked the door and delivered the coupons which formed the basis of the conviction. It was held that the defendant consented to the search, and that the permissive limits of police activity are greater where the object of the search is public property in the custody of a citizen as distinguished from private documents in his possession.

[3] 328 U.S. 624 (1946). The defendant was under contract to do experimental work for the navy. Pursuant to the contract and the Second War Powers Act his books were being audited at his place of business. One of the auditors, a federal agent, demanded and was given by one of the defendant's employees a cancelled check, later used in evidence over the defendant's objection, in a prosecution for defrauding the government. By accepting the contract, it was held, the defendant waived the claim to privacy which he might normally assert, and the seizure was lawful.

[4] 67 S. Ct. 1098 (1947). Federal officers, under authority of an arrest warrant charging use of the mails to defraud, arrested defendant in his apartment. Although they had no search warrant, they explored the premises for about five hours and near the conclusion of the search one of the agents discovered in a bureau drawer an envelope which when opened revealed a number of selective service cards. The defendant was convicted for possession of draft cards in violation of the Selective Service Act. The seizure of government property, the possession of which is a crime, was declared lawful even though the officers were not aware when the search was instituted that such property was hidden on the premises.

[5] See the dissenting opinions of Justice Frankfurter in Davis v. United States, 328 U.S. 582, 594 (1946), and of Justice Murphy in Harris v. United States, 67 S. Ct. 1098, 1113 (1947); see also Frank, The United States Supreme Court: 1946–47, 15 Univ. Chi. L. Rev. 1, 25 (1947); Fraenkel, The Supreme Court and Civil Rights: 1946 Term, 47 Col. L. Rev. 955, 959 (1947).

[6] 68 S. Ct. 222 (1948).

[7] 68 S. Ct. 367 (1948).

struction of the clause has become,[8] and how complex civil liberties can turn out to be on the casuistic level.

Although the Court has had occasion to speak more than fifty times on the Fourth Amendment, none of its previous opinions has directly addressed the question presented by *United States v. Di Re*. An investigator of the Office of Price Administration was informed by one Reed that a certain Buttitta was selling counterfeit gasoline ration coupons, and that he would sell them to Reed at a named place in Buffalo, New York, on the afternoon of April 14, 1944. The investigator and a Buffalo police detective trailed Buttitta's automobile and came upon it parked at the appointed place. The officials went to the car and found the informer, Reed, in the back seat holding two coupons, and Buttitta in the driver's seat, Di Re beside him. Asked where he had obtained the coupons, Reed pointed to Buttitta. All three were taken into custody. At the police station Di Re, in compliance with an order to empty his pockets, produced two coupons, which, together with one hundred inventory coupons subsequently discovered in an envelope between his shirt and underwear, were proved counterfeit. He was indicted for knowingly possessing counterfeit gasoline ration coupons, the evidence seized at the police station was introduced over his objection, and he was convicted and sentenced to a year in prison and a $100 fine. The conviction was reversed by the circuit court,[9] and the reversal was sustained by the Supreme Court, Chief Justice Vinson and Justice Black dissenting without opinion.

It is no longer questioned that an arrest may be made without a warrant under certain circumstances,[10] and that as an incident to a lawful arrest the officers may search the person arrested.[11] Legislation authorizing the use of a search warrant as a general instrument in detecting crime was adopted by Congress during the first World War,[12] but there are no statutes creating a general rule for arrests made without a warrant.[13] The Government contended that the validity of an arrest for a federal crime made without a warrant is a question of federal law to be determined by a uniform rule applicable to all federal courts. But in consonance with the doctrine that there is no federal

[8] See, for example, the twenty-six-case chart prepared by Justice Frankfurter as an appendix to his dissent in United States v. Harris, 67 S. Ct. 1098, 1121 (1947), which treats of just one phase of the law of searches and seizures.

[9] Di Re v. United States, 159 F. 2d 818 (C.C.A. 2d, 1947).

[10] See Carroll v. United States, 267 U.S. 132, 156 (1924); 1 Stephen, History of the Criminal Law of England 192 (1883); American Law Institute, Code of Criminal Procedure § 21 (1931).

[11] See People v. Chiagles, 237 N.Y. 193, 142 N.E. 583 (1923). But cf. Trupiano v. United States, 16 U.S.L. Week 4589 (1948), in which the United States Supreme Court declared the seizure of contraband made during an arrest without a warrant (lawful because the crime had been committed in the presence of the arresting officers) unreasonable because the officers had advance knowledge sufficient to support issuance of a search warrant.

[12] 40 Stat. 228 (1917), 18 U.S.C.A. § 611 et seq. (1927).

[13] United States v. Di Re, 68 S. Ct. 222, 226 (1948).

common law of crimes, the Court rejected the contention and held that the law of the jurisdiction—New York—determines the validity of the arrest.

In contrast to the great majority of states, the New York Criminal Code[14] requires absolute knowledge that a felony has been committed as a precondition to a lawful arrest. The officers, of course, had no such knowledge as to Di Re prior to the arrest. Because arrest without a warrant is permissible in New York if the offense is committed in the presence of the officer, New York courts have evolved an unusually loose definition of "presence" to shield policemen from civil suits for false arrest and malicious prosecution.[15] In a leading New York lower court case[16] an officer noted an individual standing at an intersection at midnight, and when the officer approached, the individual walked away. The officer ordered him to stop, searched him, and discovered a concealed weapon. It was held that a misdemeanor had been committed in the officer's presence and that the arrest was lawful. Even assuming, however, that the New York Code permits an arrest on reasonable belief that a felony has been committed, the Court held the presence of Di Re in the automobile afforded no basis for such a belief.

In the great majority of jurisdictions where absolute knowledge that a felony has been committed is not essential, the requirement of reasonable belief as a condition precedent to an arrest without a warrant would be satisfied if the officer notified the person arrested at the time of the arrest, and before the search, of the offense with which he is being charged.[17] Such in fact is the law in New York,[18] and some members of the majority in the *Di Re* decision sought to invalidate the arrest on the failure of the arresting officers to comply with that requirement.

The fact that the arrest and search in the *Di Re* case were made by state officers is of course immaterial. Although the Fourth Amendment is not applicable to the states,[19] and evidence seized by a private person[20] or state officer

[14] N.Y. Crim. Code (McKinney, 1945) § 177. New York has no proviso analogous to § 21(d) of the model criminal code prepared by the American Law Institute and widely adopted, whereby an officer is authorized to arrest without a warrant where he has reasonable grounds to believe that a felony is being committed.

[15] Defects in the New York law of arrest are examined in Miller, Arrest Without a Warrant by a Peace Officer in New York, 21 N.Y.U.L.Q. Rev. 61 (1946).

[16] People v. Esposito, 118 N.Y. Misc. 867, 194 N.Y. Supp. 326 (1922); cf. People v. Didonna, 124 N.Y. Misc. 872, 210 N.Y. Supp. 135 (1925).

[17] Christie v. Leachinsky, [1946] 1 K.B. 124 (policeman, who makes an arrest without warrant on reasonable suspicion of felony sufficient to justify arrest, but who fails to inform arrestee of the nature of charge, may be liable for false imprisonment); see American Law Institute, Code of Criminal Procedure § 25 (1931).

[18] N.Y. Crim. Code (McKinney, 1945) § 180.

[19] Adamson v. California, 67 S. Ct. 1672 (1947); National Safe Deposit v. Stead, 232 U.S. 58 (1914); Slaughter House Cases, 16 Wall (U.S.) 36 (1873).

[20] Burdeau v. McDowell, 256 U.S. 465 (1921) (papers stolen from defendant's office by private detectives and delivered to federal authorities held admissible).

is admissible in a federal criminal prosecution,[21] even though seized wrongfully according to standards applicable to federal officials, it is well recognized that such evidence will not be received where there was actual participation by a federal officer,[22] or where the state officer acted on behalf of the federal government.[23]

The government's contention that Di Re was a participant in a conspiracy taking place within the officer's presence is persuasive but dangerous. It is indisputable that the same quantum of proof necessary to justify a conviction is not essential to justify an arrest.[24] Thus, arrests based upon hearsay evidence have frequently been upheld.[25] Nevertheless, such a test would be at least an implicit recognition that "association" is sufficient to justify reasonable belief that a party is guilty of a felony, and could easily become a step toward infringement of the principle of personal guilt as the basis of punishment.

The law of arrest is ancillary to the general law of searches and seizures, and the more intimate relation of the *Di Re* opinion to the Fourth Amendment is indicated by the Court's discussion in disposing of the Government's assertion that the arrest was justified as a lawful incident to a search of a motor vehicle reasonably believed to be carrying contraband. During the Prohibition era Congress authorized the search of automobiles without a warrant where officers had reason to believe that the vehicle was being employed in connection with a violation of the Volstead Act.[26] The rationale of the statute, which, when declared valid in *Carroll v. United States*,[27] was recognized as an exception to the general prohibition of search of private property without a warrant, is of course the impracticality of obtaining a writ to search a speeding automobile. A similar practice had long been recognized in the search of vessels at sea suspected of concealing goods in violation of the revenue laws.[28] The government in the *Di Re* case sought to extend the implications of the statute to permit search of all occupants of the vehicle as well as of the automobile itself, but the contention was overruled. Indeed, there is a strong suggestion in the *Di Re* opinion that the statutory exception created under the Volstead Act was intended to be limited to enforcement of that statute, and that without express congressional authorization, moving vehicles may not be the subject of a search without a warrant.[29]

[21] Weeks v. United States, 232 U.S. 383 (1914) (evidence illegally seized by federal marshal inadmissible, but evidence taken by state policeman at another time in an equally unlawful manner admitted).

[22] Byars v. United States, 273 U.S. 28 (1927).

[23] Gambino v. United States, 275 U.S. 310 (1927).

[24] See United States v. Heitner, 149 F. 2d 105 (C.C.A. 2d, 1945).

[25] Perkins, The Law of Arrest, 25 Iowa L. Rev. 201, 238 (1940); Dax and Tibbs, Arrest, Search and Seizure 17 (1946); United States v. Heitner, 149 F. 2d 105 (C.C.A. 2d, 1945).

[26] 41 Stat. 315 (1919), 27 U.S.C.A. § 40 (1927).

[27] 267 U.S. 132 (1924); cf. Husty v. United States, 282 U.S. 694 (1931).

[28] See United States v. Lee, 274 U.S. 559 (1927).

[29] United States v. Di Re, 68 S. Ct. 222, 224 (1948).

United States v. Johnson exhibits the same hostility to search without a warrant. A lieutenant of the Seattle police narcotics detail received information from a confidential informer that unknown persons were smoking opium in a downtown Seattle hotel. The officer, accompanied by two federal narcotics agents, went to the hotel and, standing outside the designated room, at once recognized the strong and distinctive odor of burning opium. The Seattle officer rapped on the door and requested admittance. There were sounds of some one scurrying about in the room, after which the door was opened. The defendant, upon inquiry, denied the presence of the opium fumes, whereupon she was informed that she was under arrest and a search for evidence of the opium was instituted. An opium smoking outfit and opium were found under the bed covers, and opium was discovered in a suit case. The defendant was indicted for violation of the revenue laws, the evidence introduced over her motion to suppress, and she was found guilty and sentenced to eighteen months in prison and a five-hundred-dollar fine. Her conviction was affirmed by the circuit court[30] but was reversed by the Supreme Court, four justices dissenting without opinion.

History and precedent support a presumption against any search of a dwelling without a warrant. "The search of a private dwelling without a warrant is, in itself, unreasonable and abhorrent in our laws."[31] In instances of doubt, however, the controlling consideration appears to be the practicality of obtaining a warrant. This was a decisive factor in permitting the search of vessels and moving vehicles without benefit of a writ. It was undoubtedly a prime consideration in sanctioning the extension of the permissive limits of a search incident to an arrest beyond the person to proofs or implements of the crime which are plainly discernible and accessible to the arresting officer.[32] And it was determinative in *Taylor v. United States*,[33] where officers smelled the odor of whiskey near the garage of a person who had long been suspect. Looking through a crack in the door the officers saw a number of boxes and materials, indicative of a violation of the Volstead Act. They saw no one inside committing the offense. The entering and search were held illegal without a warrant, the Court noting that there was abundant opportunity to obtain a magistrate's authorization.[34] The evidence in the *Johnson* case was clearly adequate to justify the issuance of a warrant, and the slight delay necessitated by the execution of a writ would not have seriously hampered the officers. It is of course debatable whether in fact recourse to a magistrate is an effective bulwark against unrea-

[30] Johnson v. United States, 162 F. 2d 562 (C.C.A. 9th, 1947).

[31] Agnello v. United States, 269 U.S. 20, 32 (1925).

[32] See Marron v. United States, 275 U.S. 192 (1927), limited by Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931), and United States v. Lefkowitz, 285 U.S. 452 (1932).

[33] 286 U.S. 1 (1932).

[34] Compare Agnello v. United States, 269 U.S. 20 (1925) (government agent watching at a window saw defendants selling narcotics; entry of house and subsequent search without a warrant held justified as incident to an arrest).

sonable searches, although the Court has ordered a number of reversals because of fatal defects in warrants.[35] Nonetheless, the constitutional mandate as to the requirement of a warrant is explicit, and may prevent some instances of police abuse.

In the light of *Harris v. United States*, the silence of the Court in the *Johnson* case on the extent of the search is worth noting. The vehement dissents of Justices Frankfurter and Murphy in the *Harris* decision were based on a distinction between a search and a seizure, and hostility to the extensiveness of the quest. A search implies an uncertainty which remains to be resolved, whereas a seizure refers to the actual taking of the evidence or fruits of the crime. Thus it is unconstitutional to seize evidentiary papers, although the search may be proper.[36] By the same token it is unlawful to make an improper search for articles appropriate to seizure, i.e., the search for the liquor in *United States v. Taylor*. Authority to search the premises where the arrest occurs has always been sharply restricted. In a series of three Prohibition cases, the Court explored the extent to which such a search could be made, and concluded that only visible and accessible evidence could be seized.[37] In neither the *Harris* nor the *Johnson* cases was the contraband within plain sight of the officers, and before the *Harris* opinion such seizures would clearly have been unlawful. The two cases are nevertheless clearly distinguishable. In *United States v. Harris* the entry of the officers onto the premises, armed as they were with an arrest warrant, was indisputably lawful. But in the *Johnson* opinion, the Court declared the entry unlawful. Discussion of the subsequent search was thus rendered unnecessary to disposition of the cause. It is interesting to speculate whether a lawful entry in the *Johnson* case, followed by the "rummaging and ransacking" which took place, would have evoked the same emphatic protest from Justices Frankfurter, Murphy, and Jackson as the intensive five-hour search in the *Harris* case.

Each of the search and seizure pronouncements of the Court presents anew the dramatic conflict of policy embodied by the rule which excludes evidentiary material seized in contravention of the Fourth Amendment. The federal rule is a radical departure from the common law[38] and since its inception has been a target of sharp and persistent criticism. The doctrine has been attacked as

[35] Warrants defective because of absence of facts indicating probable cause: Nathanson v. United States, 290 U.S. 41 (1933); Grau v. United States, 287 U.S. 124 (1932); Byars v. United States, 273 U.S. 28 (1927). Defective because statutory time limit expired: Sgro v. United States, 287 U.S. 206 (1932). Defect as to oath: Albrecht v. United States, 273 U.S. 1 (1927).

[36] Gouled v. United States, 255 U.S. 298 (1921).

[37] See cases cited in note 30, supra.

[38] 8 Wigmore, Evidence § 2183 (3d ed., 1940). The federal rule of exclusion is derived from the link between the Fourth Amendment and the privilege against self-incrimination, forged in United States v. Boyd, 116 U.S. 616 (1886). For a detailed historical account of the relationship between the Fourth and Fifth Amendments see Corwin, The Supreme Court's Interpretation of the Self-Incrimination Clause, 29 Mich. L. Rev. 1, 191 (1930).

making an undue concession to the interests of accused persons as against the interests of the public in the detection and punishment of crime.[39] Wigmore has charged that the rule is a product of "misguided sentimentality" and constitutes a "coddling of the law evading classes of the population."[40] He contends that it is illogical in that it results in the freeing of two wrongdoers: the accused and the overzealous police officer who has violated the petitioner's constitutional rights. Critics point to the existence of the common-law remedies of false arrest and malicious prosecution as adequate protection against police oppression,[41] and urge that officers guilty of illegal searches and seizures be made liable to fine or imprisonment. It has been noted that the text of the Amendment makes no reference to the admissibility of evidence procured through violations of its provisions, and it is argued that historically the purpose of the search and seizure clause was to restrain Congress from authorizing general warrants or from legalizing unreasonable searches by denying the injured party a cause of action for the trespass.[42] It is contended that the rule shackles effective law enforcement.[43] And opponents of the Court's position have said that there is no evidence of greater police abuse or more serious infringement of civil liberties in those states which permit the introduction of evidence illegally obtained than in those states which do not.

Justification of the federal rule is largely based on the view that the exclusion of evidence is the only practical method of giving force to the letter and intent of the Fourth Amendment. Analogy is found in the doctrine that equity will not redress a wrong where he who invokes its aid is a wrongdoer.[44] Admission of illegally obtained evidence, it has been asserted, would breed contempt for law and in the last analysis hinder successful prosecution.[45] It is, for example, well known that police testimony is often rejected by juries because of a widely entertained belief that illegal methods are used to secure the evidence. And if officers are compelled to abstain from improper methods for securing evidence, pressure is exerted upon them to exercise intelligence and imagination. The common-law remedies against the offending officer are hopelessly inadequate.[46]

[39] People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926).

[40] 8 Wigmore, Evidence § 2184 (3d ed., 1940).

[41] The first blows at unreasonable searches and seizures were struck in suits for false arrest. See Entick v. Carrington, 19 How. St. Tr. 1029 (1765); Wilkes v. Wood, 19 How. St. Tr. 1153 (1763); and see Fraenkel, Concerning Searches and Seizures, 34 Harv. L. Rev. 361, 363 (1921).

[42] Harno, Evidence Obtained by Illegal Search and Seizure, 19 Ill. L. Rev. 303 (1925); but cf. Atkinson, Admissibility of Evidence Obtained Through Unreasonable Searches and Seizures, 25 Col. L. Rev. 11, 23 (1925).

[43] See Waite, Public Policy and the Arrest of Felons, 31 Mich. L. Rev. 749 (1933).

[44] See Brandeis, J., dissenting in Olmstead v. United States, 277 U.S. 438, 471 (1928).

[45] See Frankfurter, J., dissenting in Harris v. United States, 67 S. Ct. 1098, 1105 (1947).

[46] See Green, Judge and Jury 338 (1930); Winfield, The Law of Tort 644 (1937). The constitutional remedy appears to be equally unsatisfactory. See Bell v. Hood, 71 F. Supp. 813 (Cal., 1947) (complaint against members of FBI for illegal arrest, false imprisonment, and and unlawful search and seizure, alleging violation of the Fourth Amendment as the federal cause of action, is insufficient).

Innocent persons whose rights have been invaded normally are reluctant to incur the expense and uncertainty of a suit and courts and juries are not in the habit of giving substantial damages in civil actions against police officers.[47] Criminal sanctions are equally inadequate; the criminal provisions of the Volstead Act[48] against unreasonable search and seizure were almost never invoked, for prosecutors are naturally loathe to proceed against the officers who have provided them with the convicting evidence. It may be logical to punish both the guilty defendant and the officer who conducted the illegal search. But as Justice Holmes observed, the law frequently has much more to do with intuition, prejudices, and superstition then with pure logic.[49] "It is desirable that criminals should be detected. . . . It also is desirable that the government should not itself foster and pay for other crimes when they are the means by which the evidence is to be obtained. We have to choose and for my part I think it a lesser evil that some criminal should escape than that the government should play an ignoble part."[50]

While abolition of the present rule of evidence would lead to simplicity, such a course of action appears to have no support among the present members of the Court. The Court has, however, joined its critics in taking cognizance of the complexity and uncertainty which has developed in this department of constitutional law. Dissenting in *United States v. Harris*, Justice Jackson argued that once a search is permitted to go beyond the person arrested, it is impossible to draw the line. Justice Jackson contended that no search of the premises should be permitted without a magistrate's warrant. The result would be that even contraband in plain sight could not be captured without a writ.

Curiously enough, despite the long standing controversy, it is impossible to determine whether the rule excluding evidence does in fact result in fewer unreasonable searches. The efficacy of few of our legal rules has been scientifically demonstrated, and judges, lawyers, and scholars have been content with discussing the advisability of one rule rather than another from the viewpoint of what they believe to be general tendencies. It is clear that the federal rule does not entirely eliminate such violations. There are no data available on the actual number of violations in the various states, and a comparison of the number of cases reaching the appellate courts in the respective jurisdictions which do and do not exclude the evidence would of course prove nothing. Perhaps the only area in which a valid study could be made is a jurisdiction both before and after the rule was changed. An analysis of the impact which the rule has made might very well prove to be a profitable though complex venture for students of sociology and the law.

[47] Fairly typical is Caffini v. Hermann, 112 Me. 282, 91 Atl. 1009 (1914) (plaintiff, an illiterate Italian, resisted the illegal seizure of his suitcase by a sheriff, and was struck four or five times with a blackjack. He recovered two hundred dollars).

[48] 41 Stat. 305 (1919), 27 U.S.C.A. § 1 et seq. (1927).

[49] Holmes, The Common Law 1 (1890).

[50] Holmes, J., dissenting in Olmstead v. United States, 277 U.S. 438, 469 (1927).

The law of searches and seizures is a constant reminder of the high price which concern for civil liberties may entail. Its protection is normally invoked by those accused of a crime, and there is little doubt that the amendment restricts the freedom of police in bringing criminals to justice. The framers of the constitution, however, were probably aware of the cost. The Fourth Amendment was forged in the heat of resentment against police abuse manifested by the British writs of assistance, and the general search warrants issued in Star Chamber proceedings to unearth evidence among the papers of political suspects and of authors and printers believed guilty of seditious libel.[51] It is significant that the most telling thrust in defense of the federal rule is still being made by those judges who warn that it stands as a potential defense weapon against future governments determined to suppress political opposition under the guise of sedition.[52] Any other view, Justice Jackson recently declared, might obliterate one of the most fundamental distinctions "between a government where officers are under the law, and the police state where they are the law."[53]

[51] See Lasson, History and Development of the Fourth Amendment to the Constitution (1937).

[52] See Murphy, J., dissenting in Harris v. United States, 67 S. Ct. 1098, 1113 (1947); Hand, J., in United States v. Kirschenblatt, 16 F. 2d 202, 203 (C.C.A. 2d, 1926).

[53] United States v. Johnson, 68 S. Ct. 367, 371 (1948).