Murder Scene Warrantless Searches: A Proposal

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The fourth amendment to the United States Constitution 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.[1]

Although the fourth amendment is designed to provide protection for individual citizens from unrestrained government intrusion,[2] the extent of this protection, and thus the scope of the government's ability to search, depends on how the relationship between the warrant and reasonable clauses of the fourth amendment is interpreted.[3] A view, held by an eminent constitutional scholar,[4] state courts,[5] and at times the United States Supreme Court,[6] is that the two clauses are to be read independently.[7] Under this interpretation, the fourth amendment re-

1. U.S. CONST. amend. IV.

2. *See* Chimel v. California, 395 U.S. 752, 761 (1969); Schmerber v. California, 384 U.S. 757, 767 (1966); Harris v. United States, 331 U.S. 145, 163 (1947) (Frankfurter, J., dissenting); Weinraub, *Generalities of the Fourth Amendment*, 42 U. CHI. L. REV. 47, 50-54 (1974).

3. For a discussion of the relationship between the warrant and the reasonable clauses and other search and seizure issues, see Player, *Warrantless Searches and Seizures*, 5 GA. L. REV. 269 (1971). *See also* Weinraub, *supra* note 2, at 47-49; Williamson, *The Supreme Court, Warrantless Searches, and Exigent Circumstances*, 31 OKLA. L. REV. 110, 114-15 (1978).

4. *See* T. TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION (1969). *See also* note 8 *infra*.

5. *See* State v. Sample, 107 Ariz. 407, 410, 489 P.2d 44, 47 (1971); People v. Chapman, 31 Cal. App. 3d 865, 870, 107 Cal. Rptr. 659, 662 (1973); Patrick v. State, 227 A.2d 486, 489 (Del. 1967).

6. *See* United States v. Rabinowitz, 339 U.S. 56, 65 (1950); Harris v. United States, 331 U.S. 145, 150 (1947). *Rabinowitz* and *Harris* were overruled in Chimel v. California, 395 U.S. 752, 768 (1969), where the Court limited the scope of a search incident to arrest to the arrestee's person and area into which an arrestee might reach. *Id.* at 762-63. *Rabinowitz* and *Harris* permitted officers to search the entire premises where the arrest occurred. United States v. Rabinowitz, 339 U.S. at 63-64; Harris v. United States, 331 U.S. at 151-52. For the Court's present interpretation of the warrant and reasonable clauses see note 19 *infra*. *See also* note 7 *infra*.

7. The classic statement of this position is found in United States v. Rabinowitz, 339 U.S. 56 (1950):

> [T]he Constitution does not say that the right of the people to be secure in their persons should not be violated without a search warrant if it is practical for the officers to

quires only that searches be reasonable, but does not require that a warrant be issued as a precondition to a valid search.[8] The reasonableness of a warrantless search is determined by analyzing the circumstances existing at the time of the search.[9] The competing interpretation reads the warrant and reasonable clauses of the fourth amendment conjunctively.[10] Under this view, reasonable searches are those conducted pursuant to a warrant issued by a magistrate,[11] subject to certain well defined exceptions.[12] Warrantless searches are viewed as being presumptively unreasonable,[13] and are justified only by the presence of a "grave emergency."[14] This latter interpretation is more restrictive of the government's ability to search. In the absence of an emergency situation, it requires that a neutral magistrate, and not the self-interested police officer determine prior to the search whether probable cause exists.[15] No matter how reasonable a search may appear after the fact, if this prior determination of probable cause has not been made, the

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procure one. The mandate of the Fourth Amendment is that people shall be secure against *unreasonable* searches . . . The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case. . . .

Id. at 65-66 (emphasis in original). *See* United States v. Edwards, 415 U.S. 800, 807 (1974) (citing Cooper v. California, 386 U.S. 58, 62 (1967)). *But see* note 10 *infra*.

8. Taylor, argues that "[those] who have viewed the fourth amendment primarily as a requirement that searches be covered by warrants, have stood the amendment on its head." T. TAYLOR, *supra* note 4, at 46-47. To support this position the author cites historical support indicating that the Constitution's framers were not concerned about warrantless searches, but rather with overreaching search warrants. *Id.* at 41. The author states that the framers viewed warrants "as an authority for unreasonable and oppressive searches, and sought to confine [their] issuance and execution in line with the stringent requirements applicable to common-law warrants for stolen goods." *Id.* Seé note 7 *supra*. For an opposing historical interpretation supporting the view that the reasonable and warrant clauses should be read conjunctively, see note 11 *infra*.

9. United States v. Rabinowitz, 339 U.S. 56, 66 (1950).

10. Justice Frankfurter's dissenting opinion in Harris v. United States, 331 U.S. 145 (1947), represents an excellent statement of this position: "[W]ith minor and severely confined exceptions, inferentially a part of the Amendment, every search and seizure is unreasonable when made without a magistrate's authority expressed through a validly issued warrant." *Id.* at 162. *See* Mincey v. Arizona, 437 U.S. 385, 390 (1978); Katz v. United States, 389 U.S. 347, 357 (1967).

11. *See* note 10 *supra*. Justice Frankfurter based this interpretation of the fourth amendment on his observation that the Revolutionary statesmen felt that the fourth amendment was an answer to the abuses of warrantless seizures:

> When the Fourth Amendment outlawed "unreasonable searches" and then went on to define the very restricted authority that even a search warrant issued by a magistrate could give, the framers said with all the clarity of the gloss of history that a search is "unreasonable" unless a warrant authorizes it. . . .

United States v. Rabinowitz, 339 U.S. 56, 70 (1950) (Frankfurter, J., dissenting).

12. *See* text & notes 13, 22-24 *infra*.

13. The Court in Mincey v. Arizona, 437 U.S. 385 (1978) stated, "[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable subject to a few specifically established and well delineated exceptions.'" *Id.* at 390 (quoting Katz v. United States, 389 U.S. 347, 357 (1967)). *See* Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973).

14. Chimel v. California, 395 U.S. 752, 761 (1969) (quoting McDonald v. United States, 335 U.S. 451, 455-56 (1948)). See text & notes 22-24 *supra*.

15. 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

search is unlawful.[16] Although the reasonableness of the search is often subjected to judicial determination,[17] the rule requiring an independent determination of probable cause prior to the search is designed to prevent unreasonable searches from taking place in the first instance.[18]

Given the United States Supreme Court's present interpretation of the fourth amendment,[19] warrantless searches are *per se* unreasonable,

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be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Mincey v. Arizona, 437 U.S. 385, 395 (1978) (quoting Johnson v. United States, 333 U.S. 10, 13-14 (1948)). *See* McDonald v. United States, 335 U.S. 451, 455-56 (1948).

16. Vale v. Louisiana, 399 U.S. 30, 34 (1970); Chimel v. California, 395 U.S. 752, 762 (1969); Angello v. United States, 269 U.S. 20, 33 (1925). *See* note 15 *supra*.

17. The validity of the search is usually decided in the first instance by the trial court on a motion to suppress evidence seized as a result of the search. *See, e.g.*, State v. Mincey, 115 Ariz. 472, 477, 566 P.2d 273, 278 (1977); State v. Chapman, 250 A.2d 203, 205 (Me. 1969); Lonquest v. State, 495 P.2d 575, 577 (Wyo. 1972), *cert. denied*, 409 U.S. 1006 (1972).

18. The United States Supreme Court has stated that "the Fourth Amendment 'is designed to prevent, not simply to redress, unlawful police action.' " Mincey v. Arizona, 437 U.S. 385, 394 n.8 (1978) (quoting Chimel v. California, 395 U.S. 752, 766 n.12 (1969)).

19. In recent cases, the United States Supreme Court has employed the "warrant" interpretation. *See* text & notes 10-13 *supra*. In Michigan v. Tyler, 436 U.S. 499 (1978), which involved the warrantless search of a fire-destroyed building by arson investigators, the Court again stated that warrantless searches are presumptively invalid. *Id.* at 506. Williamson, however, suggests that the Court might be moving toward the adoption of the reasonableness interpretation. Williamson, *supra* note 3, at 112. The author supports this observation by relying on two United States Supreme Court cases which focused on the reasonableness of the search as opposed to whether or not exigent circumstances justifying a warrantless search existed. Williamson points to United States v. Robinson, 414 U.S. 218 (1973), which involved a warrantless search by police of a person arrested for a traffic violation. During this search a cigarette package containing heroin was seized. *Id.* at 220-23. The seizure of the cigarette package could not be justified under the exigent circumstances exception because the officer had no reason to believe that the package contained weapons. *Id.* at 241 (Marshall, J., dissenting). The Court held that "[i]n the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *Id.* at 235. While not expressly disapproving of the exigent circumstance doctrine, the majority did stress that because a custodial arrest based on probable cause is a reasonable intrusion under the fourth amendment, a warrantless search of the arrestee incident to such an arrest requires no additional justification (i.e. the exigent circumstance of danger to the officer). *Id.* Also cited to support the author's conclusion that the Court is moving toward a reasonableness standard is United States v. Edwards, 415 U.S. 800 (1974). In this case, the Court upheld the warrantless seizure of an arrestee's clothing which occurred approximately ten hours after his arrest. *Id.* at 801-02. The Court based its opinion on the observation that since the police could have reasonably seized the clothing at the time of Edwards's incarceration, *id.* at 804-05, the seizure was just as reasonable after the ten hour delay. *Id.* at 805. As pointed out in the dissenting opinion, there were no exigent circumstances justifying the warrantless seizure in this case. *Id.* at 810-11 (Stewart, J., dissenting).

The difference of opinion as to the Court's interpretation of the warrant and reasonableness clauses of the fourth amendment is the product of the Court's inconsistency and lack of clarity on which position to adopt. *See* LaFave, *Warrantless Searches and the Supreme Court: Further Ventures into the "Quagmire,"* 8 CRIM. L. BULL. 9, 9-11, 27 (1972); Weinraub, *supra* note 2, at 49-50; Williamson, *supra* note 3, at 110-13. While it is beyond the scope of this Note to present an in-depth analysis of all the cases in this area, it is suggested that at the very least, the Court will presently employ the warrant analysis in situations involving the search of dwellings incident to arrest. *See* Mincey v. Arizona, 437 U.S. 385 (1978); Michigan v. Tyler, 436 U.S. 499 (1978); Chimel v. California, 395 U.S. 752 (1969). This conclusion is based on the fact that the right to be free from unwarranted governmental intrusion has generally been more scrupulously guarded in cases involving dwelling searches than it has been in searches of an arrestee's person incident to arrest. *Compare* Mincey v. Arizona, 437 U.S. at 388-95; Johnson v. United States, 333 U.S. 10, 14-17 (1948) *with* United States v. Edwards, 415 U.S. at 804-05; United States v. Robinson, 414 U.S. at 235. For analyses which attempt to bring some order to this area, see generally LaFave, *supra*; Player, *supra* note 3; Weinraub, *supra* note 2; Williamson, *supra* note 3.

subject to a "few specifically established and well delineated exceptions."[20] These exceptions are commonly classified under the term "exigent circumstances"[21] and include the following situations: When a search is incident to a lawful arrest;[22] when evidence is likely to be destroyed if the search is delayed until a warrant is obtained;[23] and when the police are in hot pursuit of a fleeing suspect whom they know has committed a serious crime.[24] These exceptions allow the police to conduct warrantless searches only when they are necessary for the safety of the police officer or other persons, or when evidence pertinent to the crime the officers are investigating is likely to be destroyed.[25] The rationale underlying these exceptions is that the protection of life[26] and the achievement of compelling law enforcement goals[27] must be favored over the fourth amendment's protection of freedom from governmental intrusion.

State v. Mincey[28] represented an attempt by the Arizona Supreme Court to add an additional exception to the warrant requirement. *Mincey* involved the murder of a Tucson police narcotics officer during a drug raid at Mincey's apartment.[29] During this raid Mincey and several of his associates were wounded and a narcotics officer was killed.[30] After the shooting, other officers present at the scene did not immediately search the apartment but guarded Mincey and his associates and awaited the arrival of homicide investigators.[31] These investigators

20. Mincey v. Arizona, 437 U.S. 385, 390 (1978); Michigan v. Tyler, 436 U.S. 499, 506 (1978); Katz v. United States, 389 U.S. 347, 357 (1967). *See* text & note 19 *supra*.

21. *See* Mincey v. Arizona, 437 U.S. 385, 394 (1978) (citing McDonald v. United States, 335 U.S. 451, 456 (1948)); Johnson v. United States, 333 U.S. 10, 14-15 (1948).

22. Chimel v. California, 395 U.S. 752, 762-63 (1969).

23. Schmerber v. California, 384 U.S. 757, 770-71 (1966).

24. Warden v. Hayden, 387 U.S. 294, 298-300 (1967).

25. *See* Chimel v. California, 395 U.S. 752, 762-63 (1969); Warden v. Hayden, 387 U.S. 294, 298-99 (1967); Johnson v. United States, 333 U.S. 10, 14-15 (1948).

26. Mincey v. Arizona, 437 U.S. 385 (1978). "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Id.* at 392 (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963)).

27. Law enforcement goals become compelling when there are exigent circumstances. Mincey v. Arizona, 437 U.S. 385, 393-94 (1978); Johnson v. United States, 333 U.S. 10, 14-15 (1948). Thus, if evidence will be destroyed if the search is delayed until a warrant can be obtained, Schmerber v. California, 384 U.S. 757, 770-71 (1966), or when the police are in hot pursuit of a fleeing felony suspect, Warden v. Hayden, 387 U.S. 294, 298-300 (1967), law enforcement goals become overriding and outweigh the right to be free from warrantless governmental intrusion, thereby justifying a warrantless search.

28. 115 Ariz. 472, 566 P.2d 273 (1977).

29. Mincey v. Arizona, 437 U.S. at 387 (1978). Mincey and the slain officer had previously negotiated for the sale of narcotics and the officer left Mincey's apartment ostensibly to obtain money to purchase the drugs. *Id.* The officer later returned with nine other officers and a deputy county attorney to raid the apartment. *Id.*

30. During the raid the narcotics officer rushed into the back bedroom of Mincey's apartment and exchanged gunfire with Mincey. The officer was wounded and died several hours later. *Id.* Mincey and a woman friend who was hiding in a closet were also wounded. *Id.*

31. *Id.* at 388. The officers present at the scene did not immediately search because of a Tucson Police Department directive that officers not investigate shootings in which they are in-

subsequently conducted an extensive four day search of the premises, but at no time did they seek or obtain a search warrant.[32]

Mincey was convicted of murder, assault with a deadly weapon, and several narcotics violations.[33] The Arizona Supreme Court reversed the murder and assault convictions,[34] but affirmed the narcotics conviction,[35] holding that the warrantless search of the apartment was valid on the ground that the search of a murder scene was a "specifically established and well-delineated exception" to the warrant requirement.[36] The United States Supreme Court, in *Mincey v. Arizona*,[37] reversed the Arizona Supreme Court, holding that Arizona's "murder scene exception" was inconsistent with the fourth and fourteenth amendments.[38] The Court based its decision on the theory that the seriousness of the offense under investigation did not of itself create exigent circumstances justifying a warrantless search.[39]

This Note will focus on whether the seriousness of the crime under investigation can justify warrantless searches otherwise prohibited by the fourth amendment. First, the murder scene exception enunciated by the Arizona Supreme Court will be considered. The theoretical and practical rationales for this exception will be critically analyzed in light of both the reasonableness and warrant interpretations of the fourth amendment. Next, the limited warrantless search of murder scenes for victims and suspects approved of by the United States Supreme Court in *Mincey* will be discussed. Finally, a proposal will be advanced, enlarging the scope of the warrantless murder scene search sanctioned by Supreme Court, which would allow police to conduct warrantless murder scene searches for clues of the suspect's identity.

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volved. *Id.* Accordingly, they guarded the premises and awaited the homicide investigators who arrived within approximately 10 minutes. *Id.* at 389.

32. *Id.*

33. State v. Mincey, 115 Ariz. 472, 475, 566 P.2d 273, 276 (1977).

34. *Id.* at 484, 566 P.2d at 284. This reversal was based on state law grounds not discussed by the United States Supreme Court in Mincey v. Arizona, 437 U.S. 385 (1978). Specifically, the Arizona Supreme Court found that the trial court gave conflicting instructions to the jury as to the mens rea requirement for murder "committed in avoiding or preventing lawful arrest," ARIZ. REV. STAT. ANN. § 13-452 (Supp. 1977) (repealed 1978). State v. Mincey, 115 Ariz. at 477-78, 566 P.2d at 278-79. The court found this to be reversible error because under the circumstances, there was no way of knowing whether the jury had determined Mincey's guilt according to the correct instructions. *Id.* at 479, 566 P.2d at 280.

35. 115 Ariz. at 484, 566 P.2d at 284.

36. *Id.* at 482, 566 P.2d at 283. The Arizona Supreme Court did acknowledge that the facts in this case did not fall within any of the usual exigent circumstances and that there was ample time to obtain a warrant. *Id.*

37. 437 U.S. 385 (1978).

38. *Id.* at 395.

39. *Id.* The Court also noted that "except for the fact that the offense under investigation was a homicide, there were no exigent circumstances in this case." *Id.* at 394. The Court pointed to the fact that the police guard at the apartment minimized any possibility that third parties present at the scene could remove or destroy evidence. *Id.*

THE MURDER SCENE EXCEPTION

In his dissenting opinion in *United States v. Rabinowitz*,[40] Justice Frankfurter observed: "It is true . . . of journeys in the law that the place you reach depends on the direction you are taking, and so, where one comes out on a case depends on where one goes in."[41] This observation gives some insight into why the opinions of the United States Supreme Court and the Arizona Supreme Court differ as to the validity of the murder scene exception.

The Arizona Supreme Court approached the question of whether the warrantless search of a murder scene is permissible under the fourth amendment from the conceptual position that the fourth amendment prohibited only unreasonable searches and seizures.[42] Under this approach, reasonableness is determined from the circumstances existing at the time of the search and not with reference to the possibility of obtaining a warrant.[43] While the court formally acknowledged the statement that warrantless searches were *per se* unreasonable, subject to only a few well-delineated exceptions,[44] the thrust of its opinion was that warrantless searches of murder scenes falling within the guidelines set forth by the court[45] are inherently reasonable[46] and thus permissible

40. 339 U.S. 56 (1950).

41. *Id.* at 69.

42. *See* State v. Mincey, 115 Ariz. 472, 482, 566 P.2d 273, 283 (1977).

43. *See* text & notes 7-9 *supra*.

44. 115 Ariz. at 482, 566 P.2d at 283. The court's statement that " 'searches conducted without a warrant issued upon probable cause are per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions,' " *id.* at 482, 566 P.2d at 283, is not indicative of an analysis predicated on the reasonableness approach. This approach defines reasonable search with reference to the totality of the circumstances at the time of the search. *See* text & note 9 *supra*. Rather, this language is indicative of the warrant approach which defines reasonable searches as those conducted pursuant to warrants, or searches without a warrant when exigent circumstances are present. *See* text & notes 10-16 *supra*. By mixing analytical frameworks, the court obfuscates the rationale underlying its opinion thereby weakening its force and persuasiveness. For example, the court says that a search falling within the guidelines set forth in its opinion, see text & note 48 *infra*, "is . . . a 'specifically established and well-delineated exception [to the warrant requirement].' " The "specifically established and well delineated exceptions" to the warrant requirement, however, do not include the search of a murder scene. *See* Mincey v. Arizona, 437 U.S. 385, 395 (1978); text & notes 22-24 *supra*.

45. See text & note 48 *infra*.

46. The court's reliance on a reasonableness rationale is clear. For example, the court declined to limit the exception to actual murders because "[a] reasonable search should not later be invalidated because the intended murder victim may be saved by a medical miracle." State v. Mincey, 115 Ariz. at 482, 566 P.2d at 283. Moreover, the court followed several previous decisions in which it had established the murder scene exception in Arizona. *Id.* at 482, 566 P.2d at 283.

In State v. Sample, 107 Ariz. 407, 489 P.2d 44 (1971), a police officer found a murdered woman in a mobile home and arrested her husband for the crime. Two hours later the officer conducted a warrantless search of the mobile home. *Id.* at 408-09, 489 P.2d at 45-46. The court acknowledged the fact that there were no exigent circumstances existing at the time of the search, *id.* at 409, 489 P.2d at 46, but upheld it on the grounds that a warrantless search of a murder scene was permissible under the United States Constitution. *Id.* The Arizona Supreme Court in *Sample* justified its decision upon an examination of the surrounding facts and circumstances—" 'the total atmosphere' of the case,"—analysis of which indicated that "the search was reasonable within the framework of the fourth amendment and the historical reasons for its existence." *Con-*

under the fourth amendment.[47] The court stated that a search is reasonable if it is of the scene of a homicide or serious personal injury with likelihood of death, where there is reason to suspect foul play, where the officers are legally on the premises in the first instance, where the purpose and scope of the search are limited to determining the circumstances of death, and where the search begins within a reasonable period following the time when the police first learn of the murder.[48]

The United States Supreme Court, on the other hand, approached the murder scene exception from the analytical framework which posits that warrantless searches are invalid unless there are exigent circumstances present.[49] In *Mincey v. Arizona*, the Court declined to expand the exigent circumstance doctrine to include all searches of murder scenes[50] and held that the seriousness of the crime under investigation did not of itself pose exigent circumstances supporting a warrantless search.[51] The Court further stated that there were no exigent circumstances justifying a warrantless search in this case because the presence of a police guard on the premises made it unlikely that evidence would be destroyed before a warrant could be obtained.[52]

The reasonableness position delineated by the Arizona Supreme Court's guidelines in *State v. Mincey* has some superficial appeal. A closer analysis, however, reveals several deficiencies. The guidelines[53] set forth by the court are vague and confer too much discretion upon the police as to the timing and scope of such a search.[54] For example, while the Arizona court said that the search must be "limited to deter-

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tra, Sample v. Eyman, 469 F.2d 819, 822 (9th Cir. 1972) (the failure of the police officer to obtain a search warrant in State v. Sample was constitutional error).

State v. Duke, 110 Ariz. 320, 518 P.2d 570 (1974) involved the warrantless search of a house by police officers who were called to the premises by the defendant, alleging that his wife had committed suicide. *Id.* at 322-23, 518 P.2d at 572-73. The search was conducted contemporaneously with the removal of the body from the house. *Id.* at 324, 518 P.2d at 574. The Arizona Supreme Court upheld the search on the grounds that it was reasonable. *Id.* The court in *Duke* acknowledged the fact that in Sample v. Eyman, 469 F.2d 819, 822 (9th Cir. 1972), the Ninth Circuit had disapproved of the holding in State v. Sample. State v. Duke, 110 Ariz. at 324, 518 P.2d at 574. The *Duke* court, however, distinguished *Sample* on the grounds that the search in that case took place two hours after discovery of the body, while the search in *Duke* occurred contemporaneously with the officer's discovery of the victim. *Id.*

47. 115 Ariz. at 482, 566 P.2d at 283.

48. *Id.*

49. Justice Stewart, writing for a unanimous court, stated that subject to a few specifically established and well delineated exceptions, warrantless searches are *per se* unreasonable. Mincey v. Arizona, 437 U.S. 385, 390 (1978). See note 83 *infra* for a discussion of the analytical process used in the warrant position.

50. 437 U.S. at 394.

51. *Id.* See text accompanying notes 76-83 *infra* for an analysis of this holding.

52. 437 U.S. at 394-95.

53. 115 Ariz. at 482, 566 P.2d at 283. *See* text & note 48 *supra*.

54. The United States Supreme Court, in *Mincey v. Arizona*, observed that the Arizona Supreme Court's guidelines, "confer unbridled discretion upon the individual officer to interpret such terms as 'reasonable . . . search,' 'serious personal injury with likelihood of death where there is reason to suspect foul play,' and 'reasonable period [after discovery of the homicide].'" 437 U.S. at 395.

mining the circumstances of death,"[55] this limitation was interpreted so broadly as to allow an extensive and virtually unlimited four day search.[56] In effect, under the court's guidelines, the scene of a homicide becomes a talisman allowing the police to conduct general searches[57] of the type expressly disapproved of by the United States Supreme Court.[58]

Another deficiency in the Arizona Supreme Court's position becomes apparent when one inquires why a warrantless search of a murder scene should be considered reasonable under the court's criteria. The Arizona court indicates only that it is reasonable to search a murder scene without a warrant because "immediate action may be important to determining the circumstances of death."[59] This rationale is inapplicable to the *Mincey* case[60] because the facts indicate that there was no need for "immediate action."[61] The officers present at the scene of the shooting did not immediately search, but instead awaited the arrival of homicide investigators.[62] Moreover, given the fact that the police were already present at the scene and could prevent the destruction of evidence,[63] they could have delayed their search until a warrant had been obtained.[64]

The Arizona Supreme Court's "immediate action" rationale is also conceptually deficient. Like the exigent circumstances doctrine, it justifies warrantless search of a murder scene on the rationale that delaying

55. State v. Mincey, 115 Ariz. 472, 482, 566 P.2d 273, 283 (1977).

56. *Id.* at 483, 566 P.2d at 284. The United States Supreme Court in *Mincey* stated, "In light of the extensive search that took place in this case it may be questioned what protection the guidelines afford a person in whose home a homicide or assault occurs." 437 U.S. at 394. The Arizona Supreme Court decision in *Mincey* indicated that the "circumstances of death" guideline, *id.* at 482, 566 P.2d at 283, included evidence pertaining to motive and intent. 115 Ariz. at 483, 566 P.2d at 284. This inclusion makes the "circumstances of death" guideline so broad as to be almost without limitation. In many homicides, the police will not have any idea about the motive for a murder. Under this guideline, the police could conduct a general search of the premises to ascertain such a motive. Such general searches have been proscribed by the United States Supreme Court. See text & note 58 *infra*.

57. *See* text & note 56 *supra*.

58. *See* Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971); United States v. Rabinowitz, 339 U.S. 56, 62 (1949), *overruled on other grounds*, Chimel v. California, 395 U.S. 752, 768 (1969); Go-Bart Co. v. United States, 282 U.S. 344, 357 (1930).

59. 115 Ariz. at 482, 566 P.2d at 283.

60. The "need for immediate action" rationale is the foundation of the exigent circumstance doctrine. *See* text & notes 22-24 *supra*. The doctrine allows warrantless searches when delaying the search to obtain a warrant would interfere with the achievement of legitimate law enforcement objectives, as when evidence would be destroyed, Schmerber v. California, 384 U.S. 757, 770-71 (1966), or when a delay would endanger the lives of the police or others. Mincey v. Arizona, 437 U.S 385, 392 (1978). See text & notes 61-64 *infra* for an analysis of the application of the "need for immediate action" rationale in *Mincey*.

61. Mincey v. Arizona, 437 U.S. at 394. The Arizona Supreme Court acknowledged that there was no need for immediate action by stating that there was ample time to secure a warrant. State v. Mincey, 115 Ariz. at 482, 566 P.2d at 283.

62. Mincey v. Arizona, 437 U.S. at 388.

63. *Id.* at 394.

64. *See id. See also* Williamson, *supra* note 3, at 144; Note, *Police Practices and the Threatened Destruction of Tangible Evidence*, 84 HARV. L. REV. 1465, 1475-76 (1971).

the search to obtain a warrant would endanger lives or frustrate compelling law enforcement goals.[65] This rationale is inconsistent with the court's position that the warrantless search is reasonable because the crime of murder is involved and not because of the existence of any exigent circumstances.[66]

Another rationale supporting the reasonableness of warrantless searches of murder scenes was offered by the Arizona Supreme Court in *State v. Sample*.[67] In *Sample*, the court asserted that warrantless searches of murder scenes are reasonable because of society's need for effective protection from serious crime.[68]

This rationale is deficient in several respects. Though the state has an important interest in investigating homicides, it has a similar interest in investigating other serious crimes.[69] Logically, the rationale given in *Sample* should be extended to other serious crimes.[70] The problem is determining which crimes are sufficiently serious to permit warrantless searches. An overly broad definition of "seriousness" would eviscerate the warrant requirement. That the Arizona Supreme Court has found this determination a vexatious problem, is evidenced by the fact that it has not attempted, except in the most general terms, to define those offenses sufficiently serious to permit warrantless searches.[71] Moreover, it has been suggested that defining reasonable searches solely in terms of the gravity of the crime under investigation is futile because this criteria suggests no rational point of limitation.[72] It is also questionable whether an immediate search of the premises, especially in cases like *Sample* and *Mincey*, would add to the effectiveness of law enforcement. In both *Sample* and *Mincey*, the police already had the suspect in custody and there was no danger of destruction of physical evidence.[73]

Several other state courts have adopted some type of murder scene exception. Unlike the Arizona Supreme Court, some of these courts have justified the murder scene exception by employing the warrant

65. *See* text & note 60 *supra*.
66. *See* State v. Mincey, 115 Ariz. 472, 482, 566 P.2d 273, 283 (1977).
67. 107 Ariz. 407, 489 P.2d 44 (1971).
68. *Id.* at 410, 489 P.2d at 47; *see* State v. Duke, 110 Ariz. 320, 324, 518 P.2d 570, 574 (1974) (quoting State v. Sample, 107 Ariz. 407, 410, 489 P.2d 44, 47 (1971)). The premises underlying this rationale are that immediate warrantless searches will aid the effective law enforcement and that effective law enforcement is particularly important in dealing with murder. *See* Mincey v. Arizona, 437 U.S. at 392; State v. Sample, 107 Ariz. 407, 410, 489 P.2d 44, 47 (1971).
69. Mincey v. Arizona, 437 U.S. at 393.
70. *See id.*
71. The United States Supreme Court found that the Arizona Supreme Court's guideline in *Mincey* of "serious personal injury with likelihood of death," 115 Ariz. at 482, 566 P.2d at 283, was too vague. Mincey v. Arizona, 437 U.S. at 394-95.
72. Mincey v. Arizona, 437 U.S. at 393.
73. *See id.* at 394; State v. Sample, 107 Ariz. 407, 409, 489 P.2d 44, 46 (1971).

analysis.[74] The theory advanced by these courts is that murder scenes provide an exception to the warrant requirement because homicides pose an exigent circumstance justifying a warrantless search.[75]

Given the United States Supreme Court's present conceptualization as to what constitutes an exigent circumstance within the perimeters of the fourth amendment,[76] the argument that a murder scene, in and of itself, is an exigent circumstance[77] is tenuous at best. The circumstances that the Court has classified as exigent fall into two fundamental categories: Those situations in which there is serious, potential danger to the police officer's or another person's safety;[78] and those situations where law enforcement goals are compelling.[79] The circumstances presented by many murder scenes simply do not fall within the rationale underlying the exigent circumstance doctrine. In *Mincey* there were no exigent circumstances because after the shooting, the police had located all the occupants of Mincey's apartment and had the crime scene under their control.[80] Consequently there was no danger to their safety. Moreover, since the officers were able to guard Mincey's associates until a warrant could be obtained,[81] there was no danger that legitimate law enforcement goals would be frustrated by the destruction or removal of evidence.[82] Thus, the idea that the type of crime involved inherently indicates exigent circumstances seems to be at odds with the notion of exigency itself. Implicit in the concept of exigent circumstances is the notion that the determination as to whether there are exigent circumstances requires an analysis of the

74. *See* cases cited in note 75 *infra*.

75. *See* Johnson v. United States, 333 U.S. 10, 14-15 (1948); People v. Wallace, 31 Cal. App. 3d 865, 871, 107 Cal. Rptr. 659, 662 (1973); Webster v. State, 201 So.2d 789, 792 (Fla. Dist. Ct. App. 1967) (emergency may be said to exist within the meaning of the exigency rule whenever the police have credible information that an unnatural death may have occurred); State v. Chapman, 250 A.2d 203, 210 (Me. 1969) (where the police investigation was interrupted due to an autopsy of the victim and later resumed without a warrant, the court stated that the renewed search was pursued due to the exigency of the circumstances); State v. Oakes, 129 Vt. 241, 250-51, 276 A.2d 18, 24, *cert. denied*, 404 U.S. 965 (1971) (court found exigent circumstances, citing Warden v. Hayden, 387 U.S. 294, 298 (1967), due to the presence of the body of the victim, the fact that the victim's husband was hysterical, and the fact that there were guns and small children present); Lonquest v. State, 495 P.2d 575, 579 (Wyo. 1972), *cert. denied*, 409 U.S. 1006 (1972) (scene of a homicide is an emergency situation). *See also* Root v. Gauper, 438 F.2d 361, 365 (8th Cir. 1971) (where officers knew that the murder victim had been removed from the house prior to their arrival and emergency existed justifying a warrantless search). *But see* Condon v. People, 176 Colo. 212, 216, 489 P.2d 1297, 1299 (1971) (the detection of an odor which might be that of a decomposing body does not create, in and of itself, an emergency situation sufficient to justify a warrantless search).

76. *See* text & notes 19-20 *supra*.

77. State v. Mincey, 115 Ariz. at 482, 566 P.2d at 283.

78. *See* text & note 26 *supra*.

79. *See* text & note 27 *supra*.

80. 437 U.S. at 394.

81. *Id.*

82. *Id.*

facts presented in each case.[83]

It seems clear that the murder scene exception to the fourth amendment as stated by the Arizona Supreme Court in *Mincey* is conceptually deficient under both the reasonableness and warrant-exigent circumstance analyses. The question still remains, however, whether the gravity of the crime involved can, under certain circumstances, justify a warrantless search.

MURDER SCENE WARRANTLESS SEARCHES AFTER MINCEY

The argument has been made that the seriousness of the crime under investigation will support warrantless intrusions that would be otherwise impermissible if the crime in question were less severe.[84] This argument is based on the premise that serious crimes often involve threat to human life and safety creating emergency situations that require immediate police action.[85] Because of the threat to human life, the state's interest in effective law enforcement is more compelling

83. Williamson, *supra* note 3, at 112-13, states that the exigent circumstance analysis is a two step process. The first step is to inquire whether the facts of a particular case fall within one of the exigent circumstance categories. *Id.* at 112. *See* text & notes 22-24 *supra*. If it is determined that the case fits within the ambit of one of these classifications, a further inquiry is made as to whether the circumstances in the particular case were such that exigency in fact existed. Williamson, *supra* note 3, at 112. The author suggests that an adoption of an analytical paradigm involving only the first step of the two step analysis is similar to the reasonableness analysis. *Id.* at 111-12, 113. See notes 7-8 *supra*.

84. In his dissenting opinion in Brinegar v. United States, 338 U.S. 160 (1949), which involved the warrantless search of an automobile and a resulting seizure of liquor, Justice Jackson observed:

> [I]f we are to make judicial exceptions to the Fourth Amendment. . . it seems to me they should depend somewhat upon the gravity of the offense. If we assume, for example, that a child is kidnapped and the officers throw a roadblock about the neighborhood and search every outgoing car, it would be a drastic and undiscriminating use of the search. . . . However, I should candidly strive hard to sustain such an action, executed fairly and in good faith, because it might be reasonable to subject travelers to that indignity if it was the only way to save a threatened life and detect a vicious crime. But I should not strain to sustain such a . . . search to salvage a few bottles of bourbon and catch a bootlegger.

Id. at 183. *See* McDonald v. United States, 335 U.S. 451, 459 (1948) (Jackson, J., concurring).

The California Supreme Court, in People v. Sirhan, 7 Cal. 3d 710, 102 Cal. Rptr. 385, 497 P.2d 1121 (1971), *cert. denied*, 410 U.S. 947 (1972) has also taken the position that a serious crime will provide support for a warrantless search. *Sirhan* involved a warrantless search by police of the appellant's bedroom the morning after he was arrested for murdering Robert F. Kennedy. *Id.* at 735-36, 497 P.2d at 1137-38, 102 Cal. Rptr. at 401-02. Several notebooks containing incriminating statements were seized and used as evidence in his trial. In upholding the search on the grounds that exigencies were present, the court stated that "[t]he crime was one of enormous gravity and 'the gravity of the offense' is an appropriate factor to take into consideration. . . . The victim was a major presidential candidate, and a crime of violence had already been committed against him." *Id.* at 739, 497 P.2d at 1140, 102 Cal. Rptr. at 404. *Contra*, 4 RUTGERS CAMDEN L.J. 432 (1973), where the author argues that the safeguards of the fourth amendment become more important if the crime is serious. *Id.* at 443. The author argues that serious crimes arouse fears and passions, making it more likely that "justice [will] be enveloped by considerations of expediency." *Id.*

85. See discussion note 84 *supra*.

when a serious crime is under investigation.[86]

The Supreme Court explicitly relied upon this premise in enunciating the scope of permissible warrantless intrusions at murder scenes.[87] The Court stated that the police may conduct a warrantless search of the murder scene for additional victims.[88] This search is justified because it is possible that there might be undiscovered, seriously injured persons in need of prompt medical attention on the premises.[89] Moreover, this search is consistent with the exigent circumstance rationale that the protection of lives outweighs the protection from unwarranted governmental intrusion guaranteed by the warrant process.[90]

In sanctioning warrantless searches for additional victims, the Court did not require that the police show probable cause that there in fact be injured persons on the premises.[91] In *Mincey*, the fact that the circumstances suggested that there was a possibility of additional victims sufficed to permit the police to search.[92] Examples of such circumstances include the confirmed presence of one victim or circumstantial evidence of a violent crime.[93]

A warrantless search for victims could certainly encompass the premises where the murder victim was found.[94] There is no conceptual

86. *See* Mincey v. Arizona, 437 U.S. 385, 392 (1978); cases cited in note 84 *supra*. Also, the United States Supreme Court has recognized "that the needs of law enforcement" are a relevant factor in considering whether a warrantless search is reasonable under the fourth amendment. *See* Mincey v. Arizona, 437 U.S. 385, 392-93 (1978); Michigan v. Tyler, 436 U.S. 499, 509-10 (1978); Schmerber v. California, 384 U.S. 757, 770-71 (1967); Johnson v. United States, 333 U.S. 10, 14-15 (1948). Thus, while this premise is conceptually deficient when used as support for the position that the seriousness of the crime alone justifies a warrantless search, considering the gravity of the state's interest as a factor in determining exigency is consistent with the warrant-exigent circumstance approach. The rationale underlying both of these premises is that the protection of human life is paramount to the protection from unwarranted governmental intrusion guaranteed by the fourth amendment. Mincey v. Arizona, 437 U.S. at 392 (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963)). *See* Sallie v. North Carolina, 587 F.2d 636, 641 (4th Cir. 1978).

87. Mincey v. Arizona, 437 U.S. at 392.

88. *Id.*

89. *Id.*; Sallie v. North Carolina, 587 F.2d 636, 641 (4th Cir. 1978); *see* Mascolo, *The Emergency Doctrine Exception to the Warrant Requirement under the Fourth Amendment*, 22 BUFFALO L. REV. 419, 426 (1972).

90. *See* Mincey v. Arizona, 437 U.S. at 392; Patrick v. State, 227 A.2d 486, 489 (Del. 1967); Note, *The Emergency Doctrine, Civil Search and Seizure, and the Fourth Amendment*, 43 FORDHAM L. REV. 571, 581-82 (1975).

91. *See* Mincey v. Arizona, 437 U.S. at 392. Other courts also have not required probable cause. *See* Sallie v. North Carolina, 587 F.2d 636, 641 (4th Cir. 1978) (officer's search for additional victims reasonable even after being told there were no others); *cf.* State v. Epperson, 571 S.W.2d 260, 265 (1978) (officer's warrantless entry into home reasonable where he felt that someone in the house might be injured and in need of medical aid).

92. 437 U.S. at 388, 392. See text & note 93 *infra*.

93. *See, e.g.*, Mincey v. Arizona, 437 U.S. at 387 (murder victim); State v. Epperson, 571 S.W.2d 260, 265 (Mo. 1978) (odor of decomposing flesh); Webster v. State, 201 So.2d 789, 791 (Fla. 1967) (body in bed with a pillow over its head).

94. *See* Mincey v. Arizona, 437 U.S. at 388; People v. Brooks, 7 Ill. App. 3d 767, 772, 777, 289 N.E.2d 207, 213 (1972); State v. Epperson, 571 S.W.2d 260, 263 (Mo. 1978).

reason why the search should not extend to adjacent areas where other victims may be found, such as garages and yards.

The Court also stated that warrantless searches of the premises to locate and apprehend suspects was permissible.[95] As a justification for this search, the Court used the identical rationale used to support warrantless searches for victims—that a prompt warrantless search for suspects would "protect or preserve life or avoid serious physical injury."[96] As with the search for additional victims, the Court did not require the police to show probable cause that a suspect be on the premises.[97] Thus, it seems that the "possibility of additional victims" standard applies equally as well to the possibility of suspects on the premises.

The warrantless search for suspects would be similar in scope to that for additional victims—any place where a person might reasonably be found.[98] This is consistent with the corrollary to the exigent circumstance doctrine that the scope of a warrantless search must be circumscribed by the exigency justifying its initiation.[99]

The warrantless search for victims and suspects represents somewhat of a departure from the Court's traditional formulation of the requirements for all searches, warrantless or not. Specifically, the Court has required the police to have probable cause that what they are searching for is present in the place they are searching.[100] The Court, however, has mandated no such requirement for victim and suspect searches.[101] In allowing such searches on the mere possibility that suspects or victims may be present at the scene, the Court is implicitly engaging in a process of balancing the lifesaving and law enforcement goals fulfilled by these searches, with fourth amendment values of freedom from unwarranted governmental intrusion.[102] Requiring the police to satisfy the probable cause standard prior to searching for victims and suspects would be unduly restrictive given the lifesaving objective

95. Mincey v. Arizona, 437 U.S. at 392.

96. *Id.*

97. *Id.* Like the search for additional victims, see text & note 91 *supra*, courts sanctioning suspect searches have not required probable cause. *See, e.g.*, Vale v. Louisiana, 399 U.S. 30, 33-34 (1970); United States v. Looney, 481 F.2d 31, 32-33 (5th Cir.), *cert. denied*, 414 U.S. 1070 (1973); United States v. Briddle, 436 F.2d 4, 6-7 (8th Cir. 1970), *cert. denied*, 401 U.S. 921 (1971).

98. The scope of the search is justified under the theory that "[t]he permissible scope of [the] search must, . . . 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." Warden v. Hayden, 387 U.S. 294, 299 (1967).

99. Mincey v. Arizona, 437 U.S. at 393 (quoting Terry v. Ohio, 392 U.S. 1, 25-26 (1967)).

100. *See* Camara v. Municipal Court, 387 U.S. 523, 534-35 (1967); United States v. Ventresca, 380 U.S. 104, 107 (1965); Aguilar v. Texas, 378 U.S. 110, 115 (1964).

101. *See* Mincey v. Arizona, 437 U.S. at 392.

102. "The need to protect or preserve life or to avoid serious injury is justification for what would otherwise be illegal absent an exigency or emergency." *Id.* (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963)).

of the search. At the same time, however, the police are precluded from conducting limitless or unjustified searches.

Implicit in the notion that a search of the premises for the suspect is justified, is the rationale that prompt action by the police in locating and apprehending the perpetrator will help save lives.[103] Given this rationale, the ambit of this search should be permitted to encompass locating clues of the suspect's identity. Both searches are aimed at achieving the goal of quickly apprehending a murder suspect before he can harm additional people. Moreover, restricting the object of the search to the suspect himself cannot be grounded on the fact that it is significantly less intrusive on privacy than a search for clues of his identity. In permitting a warrantless search in the first instance, a determination was made that the benefit of such a search—saving lives—outweighs the intrusion on privacy.[104]

A PROPOSAL

In light of the conceptual and practical inconsistencies inherent in the Supreme Court's sanction of searches for the suspect, but not for clues of his identity, the following proposal is advocated.

Upon being called to the scene of a murder,[105] the police should be permitted to conduct the warrantless search for the suspect as sanctioned by the United States Supreme Court.[106] Upon failing to locate the suspect, a warrantless search for clues to his identity should be allowed.[107] The scope of such a search would be confined to those areas where the suspect, or clues to his identity, could reasonably be found.[108]

Conceptually, the proposed search is justified by a corrollary to the exigent circumstances rationale, known as the doctrine of "continua-

103. Mincey v. Arizona, 437 U.S. at 392. *See* Note, *supra* note 90, at 582.

104. *See* Mincey v. Arizona, 437 U.S. at 392; Note, *supra* note 90, at 581-82; text & note 90 *supra*.

105. The problem of deciding which crimes are sufficiently serious to justify being encompassed in the proposed search is an extremely difficult one. Though the United States Supreme Court found the Arizona Supreme Court's "serious personal injury with likelihood of death" standard overly vague, Mincey v. Arizona, 437 U.S. at 394-95, it made no attempt to delineate a more concrete standard in deciding to which crimes it should apply its warrantless search for additional victims and suspects rule. Moreover, focusing on the crime itself suggests no rational point of limitation. There seems to be general agreement, however, that murder is sufficiently serious to justify warrantless intrusions. *See, e.g., id.* at 392 (prompt warrantless search to locate suspects or other victims at the scene of a homicide is permissible); State v. Hardin, 90 Nev. 10, 16, 518 P.2d 151, 154 (1974) (murder); People v. Hodge, 44 N.Y.2d 553, 558, 378 N.E.2d 99, 102, 406 N.Y.S.2d 736, 739 (1978) (murder).

106. See text & notes 95-98 *supra*.

107. The warrantless search for clues is not permitted until the police have searched for and failed to locate the suspect. The rationale is to limit, as much as possible, intrusions on privacy. *See* United States v. Goldenstein, 456 F.2d 1006, 1010 (8th Cir. 1972), *cert. denied*, 416 U.S. 943 (1974); Mascolo, *supra* note 89, at 427.

108. *See* Mincey v. Arizona, 437 U.S. at 392.

tion of the exigency." This concept was enunciated by the Court in *Michigan v. Tyler*,[109] which dealt with a warrantless arson investigation occurring over several hours. The principle in *Tyler* is that once initiated, warrantless investigations justified by the existence of exigent circumstances can continue as long as those circumstances exist.[110]

In order for a warrantless intrusion to be justified under the continuation of the exigency doctrine, it must satisfy three criteria. First, the initial intrusion must be made in response to an exigent circumstance.[111] Second, the scope of the intrusion must be no greater than that necessary to respond to the circumstances giving rise to the exigency.[112] Third, the duration of the intrusion must last no longer than the exigency justifying the intrusion.[113]

The proposed search satisfies all three criteria. The Supreme Court stated that the scope of a homicide, though not supporting the extensive warrantless search occurring in *Mincey*, is an exigent circumstance.[114] Further, the police are generally permitted to enter the scene of a homicide without a warrant initially because immediate action may be necessary to aid seriously injured persons on the premises.[115] Moreover, the proposed search is "circumscribed by the exigency justifying its initiation" in that it is limited to identifying and apprehending the source of the exigency—the murder suspect.[116] The notion that it is the murder suspect, and not the murder scene, that provides justification for this search is a major conceptual difference between the proposed search and the Arizona Supreme Court's murder scene exception.

Additionally, in requiring that the search for clues of the suspect's

109. 436 U.S. 499 (1978). In *Tyler*, the United States Supreme Court held that firemen could enter a burning building without a warrant under the exigent circumstance doctrine, that they could remain in the building for a reasonable time to investigate without a warrant, and that they could leave the building and return four hours later to continue their warrantless investigation. *Id.* at 509-11. The Court based its opinion on the observation that the firemen's re-entry was a continuation of the first exigent entry and thus reasonable under the fourth amendment. *Id.* at 511.

110. *Id.* at 511. *Accord*, State v. Epperson, 571 S.W.2d 260, 267-68 (Mo. 1978).

111. For example, if the police receive information of a possible homicide and enter the premises without a warrant, this initial intrusion would be justified on the exigent circumstance rationale that it is necessary to save lives. *See* Webster v. State, 201 So.2d 789, 792 (Fla. Dist. Ct. App. 1967); People v. Brooks, 7 Ill. App. 767, 776, 289 N.E.2d 207, 213-14 (1972); State v. Epperson, 571 S.W.2d 267, 268 (Mo. 1978).

112. *See* Mincey v. Arizona, 437 U.S. 385, 392 (1978). The rationale for this requirement is that warrantless intrusions should be as narrow in scope as possible in order to minimize invasions on privacy. *See* Mascolo, *supra* note 89, at 427.

113. In *Tyler*, the Court stressed that after the initial warrantless entry by firemen, an immediate investigation was necessary. 436 U.S. 499, 510 (1978). Once the need for immediate action ceased, a warrant was required before further investigations could be conducted. *Id.* at 511.

114. "Except for the fact that the offense under investigation was a homicide, there were no exigent circumstances in this case." Mincey v. Arizona, 437 U.S. at 394.

115. Mascolo, *supra* note 89, at 426; Note, *supra* note 90, at 581.

116. This idea is consistent with the United States Supreme Court's holding that a murder scene alone will not justify warrantless searches. Mincey v. Arizona, 437 U.S. at 395.

identity not be conducted until the police have searched without result for the suspect, the proposed search is further circumscribed. Finally, because a murder suspect who is not in custody presents a continuing danger to lives and safety,[117] there is a need for the police to immediately locate and apprehend him.[118] In restricting the suggested search to a period no longer than reasonably necessary to obtain clues of the suspect's identity, the search is clearly within the temporal limitations suggested by the continuation of the exigency doctrine.[119]

The "search for clues" proposal has several advantages over both the Arizona and United States Supreme Courts' formulations. Unlike the rule suggested by the Arizona Supreme Court, the proposed search does not allow the police to search merely because they are at the scene of a murder.[120] Instead, the independent justification that a suspect is at large is required. Thus, if the suspect is in custody, or his identity is known, the police must obtain a warrant prior to searching. Moreover, unlike the Arizona Supreme Court's "circumstances of death rule," the proposed rule sufficiently delimits the scope of the warrantless search so as not to make a murder scene a talisman for a general search.[121] The suggested search also provides the police with better opportunity to quickly ascertain the identity of the murder suspect than if the search is limited to merely locating the suspect himself.[122] Thus, there is an increased likelihood that the Court's concern with saving lives and preventing serious injury will be achieved.

Finally, the increased efficiency of the proposed search is obtained at little additional intrusion on privacy. Despite the Court's statement to the contrary,[123] a person's reasonable expectation of privacy in his dwelling is greatly diminished if it becomes the scene of a murder.[124] In *Mincey*, for example, the Court sanctioned searches for victims and

117. A murderer, if not immediately apprehended, might kill again. State v. Hardin, 90 Nev. 10, 16, 518 P.2d 151, 154 (1974). "[The police may be] able to initiate an emergency doctrine search on the theory that the unknown criminal at large poses a continuing threat to human life." Note, *supra* note 90, at 582. *See* Mincey v. Arizona, 437 U.S. at 392.

118. The court in *Mincey* cited *Tyler* as analogous authority for the proposition that, at the scene of a homicide, the police can conduct an immediate search for the suspect to ascertain if he is still on the premises. 437 U.S. at 392. *See* State v. Hardin, 90 Nev. 10, 16, 518 P.2d 151, 154 (1974); Note, *supra* note 90, at 582.

119. Once the police gather clues of the suspect's identity and disseminate this information to officers on patrol, the need for immediate action ceases. Subsequent entries by police would have to be made pursuant to a warrant. *Cf.* Michigan v. Tyler, 436 U.S. 499, 510-11 (1978) (investigation by firemen).

120. See text & note 116 *supra*.

121. See text & notes 54-58, 106-108 *supra*.

122. See text & note 103 *supra*.

123. Mincey v. Arizona, 437 U.S. at 391; Chimel v. California, 395 U.S. 752, 766 n.12 (1969).

124. In permitting the police to search the entire murder scene premises for suspects and additional victims, Mincey v. Arizona, 437 U.S. at 392, the Court has sanctioned an extensive warrantless search. To say that a person does not have a diminished expectation of privacy in his entire dwelling after such a search, *id.* at 391, is untenable.

suspects permitting the police to enter every room of the dwelling.[125] The additional intrusion created by a search for lives seems small in comparison.

CONCLUSION

In *Mincey v. Arizona*, the Court addressed the important issue of whether the police could conduct warrantless murder scene searches. Though a murder scene does not of itself justify a warrantless search, the crime of murder, when coupled with a perpetrator not in custody, poses an exigent circumstance in the form of threats to life and safety justifying a limited warrantless search. The search for victims and suspects sanctioned by the Court, however, is unduly restrictive given its life-saving goal. The search proposed in this Note will assist the police in quickly identifying and apprehending the murder suspect, while remaining consistent with the right to be free from unwarranted governmental intrusion.

125. *See id.* at 392; text & note 124 *supra*. *Cf.* Vale v. Louisiana, 399 U.S. 30, 33-34 (1970) (after arresting defendant in front of his home, permissible to search home to see if anyone present); United States v. Looney, 481 F.2d 31, 32-33 (5th Cir.), *cert. denied*, 414 U.S. 1070 (1973) (permissible to search dwelling for additional suspects after arresting defendant inside dwelling); *accord*, United States v. Briddle, 436 F.2d 4, 6-7 (8th Cir. 1970), *cert. denied*, 401 U.S. 921 (1971).