Case Comment

Constitutional Law: Warrantless Parole Officer Searches—A New Rationale

While on parole from a California armed robbery conviction, Clifford Latta was arrested by his parole officer at the home of an acquaintance when the officer found him holding a pipe containing marijuana. Six hours after Latta's arrest, the parole officer and two local police officers searched his house. Latta's stepdaughter admitted the officers after they assured her that they did not need a search warrant. In the garage they found four-and-one-half pounds of marijuana. On the basis of this evidence, Latta was convicted of possession with intent to distribute. A federal district court denied his petition for a writ of habeas corpus and the Court of Appeals for the Ninth Circuit affirmed, holding that the warrant clause of the fourth amendment does not extend to searches by parole officers and that the guarantee against unreasonable searches bars only those parole officer searches that are arbitrary, harassing, or intimidating. Latta v. Fitzharris, 521 F.2d 246 (9th Cir. 1975).

The fourth amendment guarantees freedom from unreasonable searches and seizures and provides that search warrants may be issued only upon probable cause. It is well established that


Latta contended that the search was unreasonable within the meaning of the fourth amendment and that the seized evidence should therefore have been excluded from his trial. Mapp v. Ohio, 367 U.S. 643 (1961), established the principle that the fourth amendment guarantee against unreasonable searches and seizures is incorporated in the due process clause of the fourteenth amendment. See generally Schrock & Welsh, Up from Calandra: The Exclusionary Rule as a Constitutional Requirement, 59 Minn. L. Rev. 251 (1974). Latta also argued that even if the search was legitimate, the evidence obtained should be admissible only at a parole revocation hearing, not at a criminal trial. For a discussion of this argument and the response of the court, see note 60 infra and accompanying text.

2. 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 of affirmation, and particularly describing the place to be searched and the persons or things to be seized.

U.S. Const. amend. IV.
the fourth amendment guarantee against unreasonable searches is an essential component of the due process of law secured by the fourteenth amendment.\(^3\) The Supreme Court in recent years has stressed that the reasonableness clause must be defined, at least to some extent, by the specific commands of the warrant clause.\(^4\) This approach is reflected in the principle that, subject only to a few specific and well-delineated exceptions, warrantless searches are unreasonable per se.\(^5\) Three categories of excep-


The exceptions are narrowly drawn, see Jones v. United States, 357 U.S. 493, 499 (1958), and the party urging such an exception must prove its necessity. See Coolidge v. New Hampshire, 403 U.S. 443, 455 (1970); United States v. Jeffers, 342 U.S. 48, 51 (1951); McDonald v. United States, 335 U.S. 451, 456 (1948). In concluding that parole officer searches are sui generis as to the fourth amendment warrant clause, the Ninth Circuit, at least, has taken the position that such searches are one of the exceptions to this principle. 521 F.2d at 250–51. The question remains an open one, however; the Supreme Court has denied certiorari in cases where parolees have been accorded the same fourth amendment guarantees as ordinary citizens and in cases where the opposite conclusion has been reached. In State v. Cullison, 173 N.W.2d 533, 537 (Iowa), cert. denied, 398 U.S. 938 (1970), the Supreme Court of Iowa stated: Confining ourselves to seizure of evidence relative to a new and independent criminal action, we believe it fairer and far more realistic that an Iowa State parolee's Fourth Amendment rights, privileges and immunities be accorded the same recognition as any other person. In fact there is to us no apparent constitutionally adequate or permissible basis upon which to hold otherwise.

In sharp contrast, the California court of appeals in People v. Hernandez, 229 Cal. App. 2d 143, 150, 40 Cal. Rptr. 100, 104 (Dist. Ct. App. 1964), cert. denied, 381 U.S. 953 (1965), stated that [f]or the purpose of maintaining the restraints and social safeguards accompanying the parolee's status, the authorities may subject him, his home and his effects to such constant or occasional inspection and search as may seem advisable to them. Neither the Fourth Amendment nor the parallel guaranty in article I, section 19 of the California Constitution block that scrutiny. Accord, People v. West, 253 Cal. App. 2d 348, 61 Cal. Rptr. 219 (Dist. Ct. App. 1967), cert. denied, 392 U.S. 663 (1968).
tions to this general principle can be identified from the Supreme Court cases. First, no warrant is required if the person affected or someone authorized to act for him voluntarily consents to the search. Second, no warrant is required for a limited class of routine searches. Third, no warrant is required where the exigencies of the search render obtaining it impractical.

With the exception of California, the search and seizure rights of parolees at issue in Latta have rarely been litigated in either state or federal courts. In California, the courts have consistently held that the nature of parole requires that parolees be denied the constitutional safeguards of privacy afforded to ordinary citizens. Most other courts that have confronted this issue have followed the lead of the California courts. Despite this uniformity, the rationales advanced by these courts for abridging the fourth amendment rights of parolees, "grace," "contract-consent," and "custody," have been largely discredited. Recently, a

6. For a detailed analysis of the exceptions the Supreme Court has recognized, see Amsterdam, supra note 4, at 358; Note, The Law of Administrative Inspections: Are Camara and See Still Alive and Well?, 1972 Wash. U.L.Q. 313, 324-35.
12. Historically, the courts have employed three major rationales to avoid confronting the issue of what protection the fourth amendment extends to parolees. Two of the rationales, grace and contract-consent, have received extensive criticism. See, e.g., United States ex rel. Randazzo v. Follette, 282 F. Supp. 10 (S.D.N.Y. 1968), aff'd on other grounds, 418 F.2d 1319 (2d Cir. 1969), cert. denied, 402 U.S. 984 (1971) (grace rationale); People v. Denne, 141 Cal. App. 2d 493, 297 F.2d 491
few courts have responded to this theoretical void by articulating two new rationales. The first of these is that without broad search powers parole officers cannot effectively supervise parolees. The second, related closely to the first, is that parolees pose a sufficient threat to society to necessitate close regulation.

The Ninth Circuit based its opinion in *Latta* on both of these new rationales for abridging the fourth amendment rights of parolees. It adopted the first by asserting that effective supervision of parolees requires frequent and unannounced searches even though little antecedent justification for such action can be shown. The court explained that parole officers need broad search powers because the other investigatory techniques available to them are inadequate to provide all of the information necessary for parolee supervision. Although it acknowledged that any search of a parolee's dwelling by a parole officer must pass the fourth amendment test of reasonableness, the court concluded that the administrative necessity of discretionary parole officer searches satisfies the constitutional man-

(Contract-Consent Rationale). The fundamental difference between these two rationales lies in their assumptions about the manner in which liberty is restored to the parolee. Under the grace rationale, the state is said to have acted *ex gratia*, to have conferred only a privilege and not a legally protected right and to be able to revoke the privilege at its whim. But see *Morrissey v. Brewer*, 408 U.S. 471 (1972). Under the contract-consent rationale, restoration is said to be the result of a bargain by which the parolee consents to submit to any restrictions the state may impose on him in exchange for his freedom. For an excellent discussion of these two rationales and the weaknesses of each, see Note, *Parole: A Critique of Its Legal Foundations and Conditions*, 38 N.Y.U.L. Rev. 702 (1963) [hereinafter cited as *Parole: A Critique*]. The third, more durable, rationale is that of custody. See, e.g., *People v. Hernandez*, 229 Cal. App. 143, 40 Cal. Rptr. 100 (Dist. Ct. App. 1964), cert. denied, 381 U.S. 953 (1965). The core of this approach is the premise that a parolee is in the constructive custody of his parole officer. Prison authorities may conduct extensive searches of a prisoner's cell, and a parole officer is said to be similarly free to search the dwelling of his parolee. To some extent, the durability of the custody rationale is attributable to legislative endorsement. See, e.g., CAL. PENAL CODE § 3056 (West 1970). The custody rationale also has received sharp criticism, however. See *Parole: A Critique*, supra, at 711-30; Note, *Extending Search and Seizure Protection to Parolees in California*, 22 Stan. L. Rev. 129, 133 (1966) [hereinafter cited as *Extending Search and Seizure Protection*]. The court in *Latta* alluded to the custody rationale, but acknowledged its limitations and did not rely on it. 521 F.2d at 249.

15. 521 F.2d at 251.
In elaborating this standard, the court suggested that even a "hunch" based on what a parole officer had seen or heard would be sufficient to support a finding of reasonableness. Hence parole officer searches are rendered reasonable per se, unless the officer has acted in an arbitrary, harassing, or intimidating manner. Since most parole officer searches would therefore be reasonable, the court concluded that requiring a warrant would afford parolees only superfluous protection.

While the court of appeals justified broad power to search on the basis of the inadequacy of other investigatory techniques, at least one commentator has cogently argued that following the movements of the parolee, interviewing his acquaintances, and making daytime surprise home visits would provide the necessary information. By failing to convincingly demonstrate the limita-

16. Id. at 250.
17. Sharply criticizing this suggestion by the majority, Judge Choy, concurring, expressed concern that the "hunch" rationale would provide parole officers with license to abuse their power to search. 521 F.2d at 253. The majority defended its grant of broad discretion to parole officers by arguing that the officer knows more about his parolees than does anyone else. 521 F.2d at 250. This unsubstantiated assumption of close contact between parole officers and their parolees is questionable, however. See id. at 253 (Wright, J., concurring); United States v. Consuelo-Gonzalez, 521 F.2d 259, 270-71 (9th Cir. 1975) (Wright, J., concurring) (companion case).
18. In United States ex rel. Randazzo v. Follette, 282 F. Supp. 10 (S.D.N.Y. 1968), aff'd on other grounds, 418 F.2d 1319 (2d Cir. 1969), cert. denied, 402 U.S. 984 (1971), the district court reached the same conclusion by relying on the grace rationale. Courts have been extremely reluctant to invalidate a search on the ground that it was harassing or intimidating. See White, The Fourth Amendment Rights of Parolees and Probationers, 31 U. Pitt. L. Rev. 167 (1969).
19. 521 F.2d at 252.
20. See White, supra note 18, at 186-93; Extending Search and Seizure Protection, supra note 12, at 137-40. If carefully circumscribed, daytime surprise home visits could be exempted from the warrant requirement, they would be considerably less intrusive than searches, yet would allow a parole officer to gather a great deal of the information he needs to perform his rehabilitatory and supervisory functions. See Comment, The Parole System, 120 U. Pa. L. Rev. 282 (1971); cf. Wyman v. James, 400 U.S. 309 (1971) (discussed at notes 24-25 infra and accompanying text). For example, a parole officer could ascertain that the parolee is at home when he should be at work and, at the same time, assess the condition of the parolee's living quarters. See White, supra note 18, at 188.

Parolees with a history of drug use present a special problem. In such cases periodic administration of drug detection tests and personal searches may be necessary for effective supervision. See Extending Search and Seizure Protection, supra note 12, at 139. One approach would be to require the parole board to determine at the time of parole whether personal searches are necessary. The parole board would be
tions of these techniques, the court in effect assumed its conclusion that the interest of the state in supervising parolees requires such a broad definition of reasonableness. As a result, the court's observation that the warrant requirement offers no real protection and may therefore be disregarded is unpersuasive. Moreover, even if alternative information-gathering methods were inadequate, this fact alone would not provide sufficient basis for abrogating the constitutional rights of parolees. The court's implicit premise—that the public interest justifies such an abridgment—must also be convincingly demonstrated.

Attempting to do just that, the court of appeals invoked the second new rationale for limiting the fourth amendment rights of parolees. The court maintained that the threat parolees pose to society is sufficient to necessitate close regulation of their conduct. The assumption underlying this theory is that fourth amendment rights may be circumscribed whenever an identifiable class of individuals poses such a threat. Application of this reasoning to classes other than parolees, however, demonstrates its fallaciousness. For example, ex-convicts probably pose as significant a threat to society as do parolees, yet they are not denied full fourth amendment rights. The clear danger of this threat rationale is the ease with which it can be extended to any identifiable class for which the incidence of criminal conduct is above some predetermined norm.

The principal precedents adduced by the court of appeals in support of its decision in Latta were three Supreme Court cases concerning administrative searches. In Wyman v. James the Court held that a visit by a welfare worker to the home of a welfare recipient, made in accordance with statutory regulations, did not constitute a search within the meaning of the fourth amendment. Unlike a criminal search, the home visit had only a limited investigatory purpose, and refusal to permit the home visit posed no threat of criminal penalty. The Court also held that even if the home visit exhibited some of the characteristics of a search, the fourth amendment test of reasonableness had been satisfied.

2. empowerd to issue a “personal inspection” warrant authorizing personal searches for the duration of the individual’s parole. The issuance of the warrant could be challenged by the parolee in the courts. See White, supra note 18, at 192.

21. 521 F.2d at 249.
25. The court in Latta relied on this alternative ground for the
In reaching this conclusion, it stressed the carefully limited statutory authorization for the visit and the interest of the state in preventing misuse of public funds and protecting children from abuse. More recently, in United States v. Biswell, the Court upheld a warrantless search of a locked firearms storeroom, emphasizing the significant public interest in the regulation of interstate firearms traffic and the crucial role of inspection in such regulation. Before these two cases, the Court in Colonnade Catering Corp. v. United States had suggested that Congress possessed the power to authorize warrantless searches of the premises of liquor dealers inasmuch as the liquor industry traditionally had been closely regulated.

Wyman holding; it did not argue that the actions of Latta's parole officer amounted to something other than a search. 521 F.2d at 250.

26. One reading of Wyman is that it creates an implied-consent exception to the warrant requirement: Participation in a government program constitutes an acceptance of all reasonable conditions the government chooses to impose. While this interpretation is consistent with the Latta court's reliance on Wyman, application of it to parole officer searches would amount to a revival of the discredited contract-consent rationale. See note 12 supra.


29. In Colonnade, federal agents who were denied admission to a locked liquor storeroom forcibly entered it and conducted a warrantless inspection. The Court concluded that the fine authorized by 26 U.S.C. § 7342—the only statutory sanction for refusal to permit such a warrantless inspection—is exclusive. Therefore, the agents were not entitled to forcibly enter the storeroom. While refusing to uphold the validity of the particular forcible entry at issue in Colonnade, the Court did endorse warrantless inspections of the premises of liquor dealers as authorized by 26 U.S.C. § 5146 and 26 U.S.C. § 7606.

The essential flaw in the Ninth Circuit's reliance on Wyman, Biswell, and Colonnade is that it considered them out of their proper context. Before these three cases the Supreme Court had invalidated warrantless searches in two other administrative-search situations. In Camara v. Municipal Court, 387 U.S. 523 (1967), the Court held that the fourth amendment prohibited a warrantless administrative search for suspected housing code violations because the intrusion into privacy necessarily involved in such a search outweighed the government's interests in conducting it. In a companion case, See v. Seattle, 387 U.S. 541 (1967), the Court extended the Camara holding to cover inspections of business premises. Certainly Camara, inasmuch as that case involved an attempted search of a residence, deserved consideration in Latta. It seems self-evident that any attempt to extrapolate the Supreme Court's administrative-search cases to other areas must consider not only Wyman, Biswell, and Colonnade, in which warrantless searches were endorsed, but also Camara and See, in which warrantless searches were invalidated. In her dissenting opinion in Latta, Judge Hufstedler argued that in applying these cases to parole officer searches the majority had seriously distorted their meaning. 521 F.2d at 254. For a good synoptical treatment of these cases, see Note, Administrative Search Warrants, 58 Minn. L. Rev. 607, 612-18 (1974).
The court of appeals discerned five factors from these cases and relied on them in treating parole officer searches as an exception to the warrant requirement. First, the court considered whether the warrantless search had been statutorily authorized. Because such authorization represents a legislative determination of reasonableness, the Supreme Court in the administrative-search cases considered it a necessary condition for a valid warrantless search. The court of appeals acknowledged that no California statute authorizes a warrantless parole officer search, but maintained that state case law provides an adequate substitute. The Supreme Court, however, has not addressed the question whether case law can substitute for statutory authorization, and the court of appeals ignored important differences between the two. In Biswell and Colonnade statutory authorization played a crucial role in the Court's balance of private and governmental interests; indeed, the Court grounded the validity of those warrantless searches on the traditional legislative power to regulate the firearms and liquor trades. Even if one makes the dubious assumption that parolees can be equated to firearms and liquor, that is, that states have a traditional and substantial interest in regulating their behavior, the rationale underlying Biswell and Colonnade still requires an analysis of the relative weight of the parolee's interest in privacy. Moreover, statutory authorization is pertinent on a purely practical level as well. In Wyman the statute established explicit limitations on the permissible scope of the home visit. Case law rarely achieves a comparable degree of specificity.

Second, the court summarily discounted the parolee's interest in privacy. It simply asserted that a parolee, like the firearms dealer in Biswell, lacked the ordinary citizen's justifiable expectation of privacy. But in Biswell, the Supreme Court


31. 521 F.2d at 251.

32. The lack of such specificity increases the likelihood of searches that exceed permissible bounds. See Latta v. Fitzharris, 521 F.2d 246, 256 (Hufstedler, J., dissenting).
tied its analysis of justifiable expectations to the existence of express statutory authorization for a warrantless search, maintaining that such authorization correspondingly reduced the individual's expectation of privacy.\textsuperscript{33} The court of appeals concluded, by contrast, that a parolee's expectation of privacy is sufficiently reduced merely by his status as a parolee.\textsuperscript{34} The ramifications of such a modification of the Supreme Court's position extend far beyond the context of parole. Because the court failed to articulate the rationale for this extrapolation, it is unclear to what extent the court would limit abridgement of constitutional rights of others on the basis of mere status. Central to the justifiable expectation-of-privacy standard advanced by the Supreme Court is recognition that even statutory limitations of privacy create the expectation that privacy not expressly restricted is inviolate.

Third, the court concluded that requiring a warrant would inhibit the functioning of the parole system by creating unnecessary difficulty for parole officers seeking to uncover illegal activity. Again in Biswell, the Supreme Court suggested that a warrant requirement for inspections of firearms dealers' premises could deprive inspectors of the flexibility they require with respect to the time, scope, and frequency of inspections.\textsuperscript{35} The circuit court, in perceiving a similar danger of frustration if the warrant requirement were applied to parole officer searches, equated premises searches of firearms dealers with home searches of parolees. In so doing, it failed to explain how a probable cause standard would frustrate anything, and it ignored the Supreme Court's concern in the administrative-search cases with the type and weight of private interest involved. Thus, despite the possibility that a probable cause standard might prevent a particular search, it seems doubtful that parole searches can as a general matter fit within the exigency exception to the warrant requirement, inasmuch as nothing inheres in the parole context that would suggest a special need to avoid the destruction or disappearance of evidence. The \textit{Latta} court said in effect that parole officers must be unencumbered by probable cause, since they generally will be unable to establish it. The implicit as-

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  \item 33. \textit{See United States v. Biswell, 406 U.S. 311 (1972)}. All firearms dealers were informed of the controlling statutes when applying for a license and were sent updated copies of these statutes annually. \textit{Id.} at 316.
  \item 34. 521 F.2d at 251. This theory is essentially a variation of the contract-consent rationale. \textit{See note 12 supra.}
  \item 35. 406 U.S. at 316.
\end{itemize}
}
summation—that a theoretical form of probable cause exists at all times solely because parolees are parolees—is especially troubling. For, with respect to the interests involved here, a search of an individual's home poses a threat to personal privacy not typically present in an inspection of business premises. Only in Wyman did the Supreme Court authorize a warrantless entry into the home, and in that case the Court carefully differentiated a home visit by a welfare worker from a criminal search. Moreover, none of the administrative-search cases involved searches as comprehensive as the one at issue in Latta. In any event, the Ninth Circuit's attempt to stretch the Biswell frustration rationale to parole officer searches is especially egregious in view of the facts in Latta. The particular facts before the court failed to suggest even a hint of exigency. The challenged search was simply an attempt to gather additional evidence after detention of the parolee. It is difficult to imagine how requiring a warrant would have frustrated such an effort.

Fourth, the court determined that deterrence could best be served by frequent and unannounced searches. To be sure, this proposition is a safe one in any context. Thus, in Biswell the Supreme Court endorsed warrantless searches of the premises of firearms dealers by asserting that frequent and unannounced searches were essential as a creditable deterrent to illegal activity. The circuit court, however, seriously distorted the reasoning of the Supreme Court by equating the need for frequent and unannounced parole officer searches with the need for warrantless searches of firearms dealers. In Biswell, the Court emphasized the strong public interest in avoiding unlawful sales of firearms, the peculiar need for warrantless searches in the context of firearms traffic, and the minimal threat to personal privacy posed by such searches in that context. Inasmuch

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36. This threat to personal privacy may account for the Court's concern with the possibility that a search would result in criminal sanction. In Wyman the Court upheld a warrantless home visit, but in so doing it stressed that no threat of criminal sanction existed. 400 U.S. at 317. The Court distinguished Camara, in which a warrant for a home inspection had been required, on the ground that that case involved a search for criminal violations. Id. at 324-25. In Biswell, however, the Court upheld a warrantless inspection of business premises for possible criminal violations. 406 U.S. at 315. One factor that might be relied on to reconcile Wyman and Biswell is the greater threat to personal privacy typically posed by a home search.

37. 400 U.S. at 317-18.

38. 406 U.S. at 316.

39. Id. at 317.
as allowing parole officers to conduct warrantless home searches with little antecedent justification poses a substantial threat to personal privacy, the court in *Latta* should have asked whether the public interest in controlling the conduct of parolees is strong enough to justify such searches and whether, if so, they are indeed necessary.

Fifth, the court considered the pervasiveness of the regulation of the person or premises searched. The Supreme Court in *Biswell* and *Colonnade* examined the searches of firearms and liquor dealers in light of the traditionally broad power of Congress to regulate in these areas. The Ninth Circuit in *Latta* equated the pervasiveness of this regulation with parole supervision—a dubious equation at best. But even if the validity of the comparison were assumed, it would not dispose of the problem. Determination of the limitations on parole officer searches must be reached after balancing the threat to privacy with the interests of the state in conducting the searches.

It thus appears that the recent Supreme Court administrative-search cases provide tenuous support for the circuit court's decision to treat parole officer searches as an exception to the general principle that warrantless searches are unreasonable per se. Moreover, in addition to the constitutional problems it raises, the court's decision exacerbates at least three problems that would not exist if parole officers were required to obtain search warrants issued on probable cause.

The first problem is the protection of parolees from harassment. The court in *Latta* relied on the self-control and training of parole officers as safeguards against harassment. It considered later review by parole authorities and the courts to be sufficient to protect the parolee from the consequences of a harassing search and to deter any such conduct in the future. However, two basic flaws inhere in this reasoning. First, the court's conclusion assumes that parolees would be able and will-

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40. *But see* notes 36-37 *supra* and accompanying text.
41. Under the warrant requirement a parole officer would have to establish that he had probable cause to believe, first, that the parolee had violated parole or that such a violation was imminent and, second, that the search would uncover evidence of the actual or impending violation. *Cf.*, e.g., *United States v. Ventresca*, 380 U.S. 102 (1965); *United States v. Boyd*, 422 F.2d 791 (6th Cir. 1970); *Durham v. United States*, 403 F.2d 190 (9th Cir. 1968), *aff'd after remand*, 419 F.2d 392 (9th Cir. 1969), *vacated*, 401 U.S. 481 (1971); *Rosencranz v. United States*, 356 F.2d 310 (1st Cir. 1966).
42. 521 F.2d at 252.
43. *Id.*
ing to challenge an unreasonable search. But if the search produced incriminating evidence, justifying it after the fact would be easy under the "hunch" standard established in *Latta*.\(^4\) And if the search failed to produce incriminating evidence, a parolee might be reticent, for fear of alienating his supervisor and risking his conditional liberty, to venture a challenge.\(^4\) Second, the analysis ignores the fact that the narrow interests of parole authorities may diverge from broader state policy. The state has two major interests regarding parole: rehabilitation of the parolee and protection of the public.\(^4\) Parole authorities may emphasize other interests, however, such as mere ease of administration.\(^4\)

If this were the case, the proper balance of state and parolee interests could become distorted.\(^4\) By contrast, a requirement that a parole officer obtain a warrant would provide a parolee with at least some protection from arbitrary and harassing searches by forcing the officer to develop a basis for the proposed search in light of the probable cause standard.\(^9\)

Proper treatment of warrantless searches involving both police and parole officers is the second problem that arises from disavowal of the warrant requirement. Joint searches are analytically troublesome, since most courts have held that a police officer must obtain a warrant before searching a parolee's dwelling.\(^5\) The courts that have faced the joint-search problem have not resolved it uniformly, as experience in California demonstrates. The California Court of Appeals for the First District in

\(^4\) See *Latta v. Fitzharris*, 521 F.2d 246, 257-58 (9th Cir. 1975) (Hufstedler, J., dissenting); Amsterdam, *supra* note 4, at 471-72 n.532.


\(^4\) Id.

\(^4\) See Amsterdam, *supra* note 4, at 414. There are indications that reliance on the good faith and restraint of parole officers is unjustified. Parole officers have been accused of harassing politically active parolees. *See In re Cleaver*, 266 Cal. App. 2d 143, 72 Cal. Rptr. 20 (Dist. Ct. App. 1968). There is also evidence that some parole officers have pressured parolees into becoming informers. *See J. Skolnick, Justice Without Trial: Law Enforcement in Democratic Society* 152-54 (1969).

\(^5\) See *White*, *supra* note 18.

People v. Gilkey\textsuperscript{51} held that a joint search without a warrant is valid so long as the parole officer reasonably suspected that the parolee was violating his parole. The second district court of appeals in People v. Limon\textsuperscript{52} held that such a search is valid so long as the officers complied with the state law requiring announcement before forcible entry. And in People v. Coffman\textsuperscript{53} the third district court of appeals held that the validity of the search depends on whether it was conducted for parolee supervision or further criminal investigation.\textsuperscript{54} The admissibility of evidence obtained as a result of warrantless joint searches is thus left to varying interpretation.\textsuperscript{55} One approach to alleviating this uncertainty would be to validate any search in which a parole officer participated.\textsuperscript{56} This approach would only enhance the possibility of the police using parole officers as a means of legitimizing otherwise illegal searches.\textsuperscript{57} The better alternative would be to require both parole and police officers to obtain warrants. Since both officers would first have to be able to establish probable cause,\textsuperscript{58} the admissibility of evidence obtained would not depend on who conducted the search.

The third problem is the use at trial of the evidence seized in a parole officer search. The court of appeals in Latta held that such evidence could be used at both a parole revocation hearing and a new criminal trial.\textsuperscript{59} Since the court specifically exempted parole officer searches from the warrant requirement of the fourth amendment, evidence that would be inadmissible at the trial of an ordinary citizen\textsuperscript{60} may be introduced at the

\textsuperscript{52} 255 Cal. App. 2d 519, 63 Cal. Rptr. 91 (Dist. Ct. App.), cert. denied, 393 U.S. 866 (1967). Judge Hufstedler, who dissented in Latta, wrote the opinion in Limon.
\textsuperscript{54} Id. at 688, 82 Cal. Rptr at 786. See People v. Way, 65 Misc. 2d 865, 319 N.Y.S.2d 16 (Nassau County Ct. 1971) (three inquiries must be made: Who was the "prime mover" behind the search, did the police actually search, and was the primary purpose parolee supervision or furtherance of police investigation).
\textsuperscript{55} For a discussion of the exclusionary rule and the admissibility of illegally obtained evidence, see note 1 supra.
\textsuperscript{56} See Latta v. Fitzharris, 512 F.2d 246, 253 (9th Cir. 1975) (Wright, J., concurring).
\textsuperscript{57} For an extreme example of an attempt by police to use a parole officer to validate an illegal search, see United States v. Hallman, 365 F.2d 289 (3d Cir. 1966).
\textsuperscript{58} See note 41 supra.
\textsuperscript{59} 521 F.2d at 252-53.
\textsuperscript{60} If the initial procurement of evidence by a parole officer is law-
In concluding that broad search power is a prerequisite for effective paroleee supervision, the court obscured this significant effect of permitting warrantless searches. For even if an unfettered power to search were necessary to accomplishment of the purposes of parole, such a power could not be said to be necessary for purposes of the criminal law in general. *Mapp v. Ohio* held in effect that the latter purposes fail to justify searches based on less than probable cause. *Latta* thus affords the government a means of circumventing the exclusionary rule in cases involving parolees.

Perhaps, then, the least restrictive alternative consistent with the broad purpose of parole embraced by the Ninth Circuit is to allow parole officers more discretion to search than is permitted by the probable cause standard, but to limit use of the fruits of such searches to parole revocation hearings. However, courts are unwilling to exclude from criminal trials evidence legally obtained. Thus the only feasible means of ensuring a parolee in criminal trial the same constitutional protections possessed by other citizens may be to require parole officers to obtain search warrants issued on probable cause.

As the Court of Appeals for the Ninth Circuit acknowledged in *Latta*, the rationales underlying most of the earlier cases concerning fourth amendment rights of parolees have been discredited. A reappraisal of the status of parolees seems in

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61. See note 1 supra.
63. See note 60 supra.
64. 521 F.2d at 248. Case law in this area is currently in a state of flux. The extreme positions are represented by *State v. Cullison*, 173 N.W.2d 533 (Iowa), cert. denied, 398 U.S. 938 (1970), and *People v. Hernandez*, 229 Cal. App. 2d 143, 40 Cal. Rptr. 100 (Dist. Ct. App. 1964), cert. denied, 381 U.S. 953 (1965). See note 5 supra. Several courts have recently adopted a "middle ground" approach, expressly rejecting both *Hernandez* and *Cullison*. Although approving warrantless searches, they have employed a narrower definition of "reasonableness" than that followed in *Latta*. See *People v. Anderson*, 536 P.2d 302 (Colo. 1975) (parole officer must have reasonable grounds to believe a parole viola-
order, inasmuch as assumptions about that status form the core of recent judicial opinions that, like Latta, restrict individual liberty in ways that may be unnecessary. In any case, the courts must recognize that the viability of the parole system, however desirable, is not necessarily furthered by minimizing the fourth amendment rights of parolees.\footnote{See White, supra note 18.} Indeed, a number of commentators have suggested that the present policy of allowing unfettered parole officer searches is actually counterproductive.\footnote{See, e.g., Extending Search and Seizure Protection, supra note 12; Comment, supra note 46.} Authorizing warrantless searches to solve the problem of inadequate parolee supervision generates tensions and stifles development and refinement of other information-gathering techniques. And even if broad discretion to search is deemed necessary in the context of parole, courts could attempt to define permissible limits more precisely than did the court of appeals in Latta.\footnote{See generally Amsterdam, supra note 4.} Rather than embracing a “hunch” standard, bereft of content, that court might have asked whether the purposes of parole are so broad as to require a warrantless search of Latta’s home after he had been detained. Surely in Latta’s case a warrant requirement would have frustrated nothing whatsoever. It is hoped that the sweeping endorsement of warrantless parole officer searches by the Ninth Circuit has not seriously lessened the possibility of significant positive change in this area of the law.

\footnote{See White, supra note 18.}

\footnote{See, e.g., Extending Search and Seizure Protection, supra note 12; Comment, supra note 46.}

\footnote{See generally Amsterdam, supra note 4.}