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Case Comments

Constitutional Law: Municipal Inspectors Must Obtain Search Warrants When Refused Entry to Private Premises

Defendant refused entry to a city housing inspector conducting a routine inspection,¹ and was arrested for violating the San Francisco Housing Code.² At trial, defendant contended that the section of the Housing Code authorizing entry without a search warrant violated his right of privacy under the fourth and fourteenth amendments. This contention was rejected by both the trial court and the court of appeal.³ The Supreme Court of California refused to hear the case. On appeal, the United States Supreme Court reversed, *holding* that where consent to an administrative search is refused, the inspector must obtain a search warrant, and municipal code provisions authorizing entry without a warrant are unconstitutional under the fourth amendment. *Camara v. Municipal Court*, 387 U.S. 523 (1967).⁴

The question of the constitutionality of locally authorized administrative searches has rarely been faced. The issue was first raised in *District of Columbia v. Little*,⁵ where the court held that the privacy of the home could not be invaded by administrative officials except on the authority of a search warrant.⁶ The court stated that no valid constitutional ground for distinguishing between health inspections and police searches for criminal evidence existed, and that the privacy of the home must

1. SAN FRANCISCO, CAL., CODE § 86(3) provides for annual inspections of apartment houses for the purpose of issuing occupancy permits. Defendant's residency in the rear of his store was inconsistent with the building's occupancy permit. The inspector was refused admittance on three occasions, even after defendant was informed of the inspector's legal right to enter under the City Housing Code. SAN FRANCISCO, CAL., CODE § 503.

2. SAN FRANCISCO, CAL., CODE § 507 makes it a misdemeanor to oppose the execution of any provision of the municipal code.

3. 237 Cal. App. 2d 128, 46 Cal. Rptr. 585 (1965).

4. In a companion case, a Seattle ordinance authorizing inspections and free entry by the fire chief was challenged by the owner of a Seattle warehouse who had been prosecuted for refusing entry to a fire inspector. The Supreme Court stated that the warrant requirements of *Camara* apply to business as well as residential premises. See *v. City of Seattle*, 387 U.S. 541 (1967).

5. 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950).

6. Until *Camara, Little* stood alone in requiring warrants for administrative inspections.

be protected in both cases.⁷ However, in *Givner v. Maryland*,⁸ the Maryland court rejected the *Little* view and held that administrative entry without a search warrant for routine inspection during daylight hours was reasonable and not violative of the fourth amendment.⁹ In reaching this conclusion, it placed considerable emphasis on the public interest in the code programs and in the routine nature of the inspections.¹⁰

In *Frank v. Maryland*,¹¹ the Supreme Court upheld the same code provision sustained in *Givner*. However, the *Givner* reasoning that health inspection programs are of such importance that they cannot be hampered by the requirement of a warrant was not the primary basis for the *Frank* decision. Instead, the majority relied on the historical basis of the search and seizure amendment to conclude that the constitutional protection was not applicable to reasonable searches for noncriminal purposes.¹² The code enforcement inspection was considered civil in nature and therefore outside the area of protection afforded by the fourth amendment. Justice Douglas, dissenting,¹³ suggested that the majority had misread history in refusing to extend the fourth amendment protection to civil searches.¹⁴ Applying a more inclusive interpretation of the protection of privacy, he considered administrative inspections equally as violative of the fourth amendment as criminal searches.¹⁵

7. 173 F.2d at 16. The court felt the prohibition against searches was based on the common law right of a man to privacy in his own home. *Id.* at 17.

8. 210 Md. 484, 124 A.2d 764 (1956).

9. *Givner* involved a Baltimore code provision which authorized entry by a health inspector. See BALTIMORE, MD., CODE art. 12, § 120 (1950).

10. 210 Md. at 504-05, 124 A.2d at 775.

11. 359 U.S. 360 (1959).

12. Justice Frankfurter, writing for the majority, felt that health inspections "touch at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion." 359 U.S. at 367.

13. The Chief Justice, Mr. Justice Black, and Mr. Justice Brennan concurred with Mr. Justice Douglas in dissenting. 359 U.S. 360, 374.

14. 359 U.S. at 374. For a good discussion of the *Frank* civil-criminal distinction, see Comment, *State Health Inspections and "Unreasonable Search": The Frank Exclusion of Civil Searches*, 44 MINN. L. REV. 513 (1960).

15. The sharp division in the Court over the issue of administrative inspections was again evident in *Ohio ex rel. Eaton v. Price*, 364 U.S. 263 (1960), wherein a conviction for refusal to allow a housing inspection was upheld by an equally divided Court, Justice Stewart having disqualified himself from the case because his father was sitting upon the Ohio Supreme Court which had previously upheld the conviction. The four dissenting justices re-echoed the *Frank* dissent by

Although a few state courts continued to apply the *Frank* reasoning,¹⁶ it was clear from the deep division in the Court over the scope of the fourth amendment that the law concerning administrative inspections was still unsettled. In the period between *Frank* and *Camara*, the make-up of the Supreme Court changed¹⁷—a factor to which many of the developments in the search and seizure area¹⁸ have been attributed.¹⁹ In view of the change in personnel of the Court and the precarious majority of *Frank*, a challenge of that case was almost inevitable. Such a challenge came in *Camara*.

The *Camara* majority²⁰ rejected the *Frank* conclusion that the invasion of privacy by an administrative official is not within

Justice Douglas. 360 U.S. at 263. The four affirming justices had previously stated, in noting probable jurisdiction, that *Frank* was completely controlling. 360 U.S. 248 (1959).

16. *Commonwealth v. Hadley*, 222 N.E.2d 681 (Mass. 1966), *vacated*, 388 U.S. 464 (1967); *St. Louis v. Evans*, 337 S.W.2d 948 (Mo. 1960). See also *DePass v. City of Spartanburg*, 234 S.C. 198, 107 S.E.2d 350 (1959).

17. One year after *Eaton*, Justice Goldberg replaced Justice Frankfurter, one of the leading self-restraint advocates, and aligned himself with those favoring a broader incorporation of the fourth amendment into fourteenth amendment due process giving them the majority position. See, e.g., *Malloy v. Hogan*, 378 U.S. 1 (1964); *Wong Sun v. United States*, 371 U.S. 471 (1963). The appointment of Justice Fortas has not affected the strength of the "activist" block since he appears to be following the path of his predecessor.

18. For thorough discussions of search and seizure law, see generally R. DAVIS, *FEDERAL SEARCHES AND SEIZURES* (1964); P. GAY & R. PRUNIER, *THE POLICEMAN AND THE ACCUSED* (1965) & (Supp. 1967); J. LANDYNSKI, *SEARCH AND SEIZURE AND THE SUPREME COURT* (1966); W. RINGEL, *LAWYER'S GUIDE TO LEGAL AND ILLEGAL SEARCHES* (1965). For a history of the constitutional development of the fourth amendment, see N. LASSON, *THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION* (1937).

19. See generally Canan, *Crime and the Supreme Court*, 38 N.Y. St. B.J. 9, 141, 283, 370, 448, 534 (1966); Guhring, *Criminal Law in the Supreme Court of the United States*, 51 *WOMEN L.J.* 77 (1965); Mason, *Judicial Restraint and Judicial Duty: An Historical Dichotomy*, 38 N.Y. St. B.J. 216 (1966).

20. The majority of six included Justice White, who wrote the opinion. Justice White, who replaced Justice Whittaker in 1961, has generally sided with the self-restraint group in the Supreme Court, see, e.g., *Schmerber v. California*, 384 U.S. 757 (1966), and has often spoken vehemently against the broad incorporation of the Bill of Rights into fourteenth amendment due process. See, e.g., *Messiah v. United States*, 377 U.S. 201, 207 (1964) (dissenting opinion); *Escobedo v. Illinois*, 378 U.S. 478, 495 (1964) (dissenting opinion); *Malloy v. Hogan*, 378 U.S. 1, 33 (1964) (dissenting opinion); see also *Ker v. California*, 374 U.S. 23 (1963). Although no clear reason for Justice White's alignment with the majority is evident, he must have felt that *Frank v. Maryland's* limited interpretation of the fourth amendment allowed too great an invasion of privacy.

the protection afforded by the fourth amendment²¹ and applied the more liberal interpretation that had been adopted by the *Little* court and the *Frank* dissent. Since the amendment makes no distinction between civil and criminal searches, the Court was unwilling to do so.²² The amendment was designed to protect the individual's right of privacy by placing the determination of when that right may reasonably be violated in the hands of a neutral magistrate rather than with the government official who demands admission,²³ irrespective of the nature of the search. In rejecting the *Frank* civil-criminal distinction, the Court concluded that any search of private premises is presumptively unreasonable if conducted without a search warrant.²⁴

The Court considered and rejected the argument that the public interest justified inspections without a warrant. It declared that the requirement of warrants for fire, health, and housing inspectors would not so frustrate the goals of these inspections as to render them unattainable. In any event, it thought the additional burden justified by the importance of the individual rights involved.²⁵ However, the Court reduced the burden of obtaining an inspection warrant by establishing a less stringent probable cause test for the issuance of such warrants.²⁶ Since a code inspection program is more effectively enforced through periodic inspections of a general area rather than of the individual premises,²⁷ the Court concluded that a consider-

21. 387 U.S. at 528-31.

22. The majority argued that even under a civil search an occupant may be subjected to criminal prosecution for his noncompliance with the municipal code, thereby raising a self-protection interest. 387 U.S. 523, 531 (1967). See F. GRAD, PUBLIC HEALTH LAW MANUAL 76 (1965) (health inspections considered to be "species of searches" and to have an effect similar to the criminally oriented searches); *Frank v. Maryland*, 359 U.S. 360, 375 (1959) (dissenting opinion); see also F. GRAD, *supra* at 138-56; 13 OKLA. L. REV. 318, 321-22 (1960); 108 U. PA. L. REV. 265, 273-74 (1959).

23. 387 U.S. at 532-33; *accord*, *Schmerber v. California*, 384 U.S. 757, 770 (1966); *Aguilar v. Texas*, 378 U.S. 108, 110-12 (1964); *Johnson v. United States*, 333 U.S. 10, 13-14 (1947); see 45 IOWA L. REV. 419, 425-26 (1960).

24. See *v. City of Seattle*, 387 U.S. 541, 543 (1967).

25. 387 U.S. at 533.

26. *Id.* at 534-39. Generally, whether a search is reasonable or not is determined from the facts and circumstances of each case. *United States v. Rabinowitz*, 339 U.S. 56, 63 (1950); *Harris v. United States*, 331 U.S. 145, 150 (1947); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

27. The Court pointed out that experience has shown area inspections to be the most effective way of enforcing the municipal codes. See authorities cited in 387 U.S. at 536 n.12. Without such area inspec-

ably broader search than that allowed in the criminal area is reasonable.²⁸ The reasonableness of an area inspection for code enforcement is, according to the Court, buttressed by the historic public acceptance of such programs, the beneficial results obtained thereby, and the "relatively limited invasion of the urban citizen's privacy"²⁹ involved.

Therefore, the Court formulated a probable cause test which it believed would result in "suitably restricted search warrant[s],"³⁰ adapted to the demands of the fourth amendment and to the needs of the administrative inspection programs.³¹ Thus, the inspector requesting a warrant is not required to present specific facts or affidavits alleging a particular place, time, or specific violation.³² Instead, the magistrate's decision to authorize an inspection warrant may be based upon the "passage of time, the nature of the building . . . or the condition of the entire area."³³ Probable cause will be satisfied by a general description

tions, the code enforcement program's effectiveness would be greatly limited. For example, a New York inspection team carefully cited 12,445 actual code violations in a fifteen square block area where 567 violations had been reported by complaint. Note, *Housing and Health Inspections: A Survey and Suggestions in Light of Recent Case Law*, 28 GEO. WASH. L. REV. 421, 431 n.70 (1960).

28. Probable cause exists when "the facts and circumstances within their [the officers'] knowledge of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense was committed. *Carroll v. United States*, 267 U.S. 132, 162 (1925); *accord*, *United States v. Ventresca*, 380 U.S. 102, 107-09 (1965); *Aguilar v. Texas*, 378 U.S. 108, 112 (1964); *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

It is clear that the nonapplicability of this test to the administrative search area is the most desirable view. To require the warrant applicants to describe with particularity each premises to be inspected would place an impossible burden on the administrative departments and ultimately defeat the public interest involved. See Note, *Administrative Inspections and the Fourth Amendment—A Rationale*, 65 COLUM. L. REV. 288 (1965).

29. 387 U.S. at 537.

30. *Id.* at 539.

31. The varying of the probable cause standard was first suggested by Justice Douglas in the *Frank* case, 359 U.S. 360, 383 (1959) (dissenting opinion), but was rejected by the *Frank* majority which felt that the rigorous constitutional restrictions for issuing warrants could not be relaxed. *Id.* at 373.

32. The fourth amendment traditionally requires that a warrant particularly describe the place to be searched. Much litigation has arisen in criminal cases concerning overly broad warrants. See, e.g., *Keiningham v. United States*, 287 F.2d 126 (D.C. Cir. 1960); *United States v. Poppitt*, 227 F. Supp. 73 (D. Del. 1964); *United States v. Brown*, 151 F. Supp. 441 (E.D. Va. 1957); *United States v. Diange*, 32 F. Supp. 994 (W.D. Pa. 1940).

33. 387 U.S. at 538.

of an area or the inspector's statement that the area is due for a routine, periodic inspection.³⁴ The applicant need present to the magistrate only a reasonable inspection plan fostering the goals of the code program involved and a warrant authorizing entry into numerous private homes will be issued.³⁵

The Court expressed three practical considerations which tend to reduce the burden imposed by the new warrant system. First, municipal statistics³⁶ indicate that private citizens generally admit the administrative inspectors to their homes.³⁷ Thus the actual breadth of the inspection programs should not be greatly hampered, although the *Camara* decision may increase the number of refusals as people become aware of the right to refuse entry.³⁸ Second, the inspection warrants will usually be

34. A warrant of this type exemplifies the long condemned "general" or "blanket" warrants in the criminal area. See, e.g., *Stanford v. Texas*, 379 U.S. 476 (1965); *Marron v. United States*, 275 U.S. 192 (1927); *Aldridge v. State*, 72 Okla. Crim. 298, 115 P.2d 275 (1941); *Crossland v. State*, 266 P.2d 649 (Okla. Crim. Ct. App. 1954). The primary criticism is that warrants which permit general exploratory searches for evidence infringe upon the right of the individual in many areas beyond those for which sufficient probable cause has been shown for suspecting the presence of criminal evidence.

35. Apparently the warrants may be issued for a single premises when a landowner has specifically requested the production of a warrant for the inspection of his particular home or business, or as area warrants authorizing entry into every premises within a designated area. See 387 U.S. at 555 (dissenting opinion).

36. In Dayton, Ohio, from 1955 through 1964 only 8 cases of refused entry were reported in over 12,000 inspections. 65 COLUM. L. REV. 288, 295 n.37 (1965). Under the Baltimore ordinance tested in *Frank v. Maryland*, out of an average 30,000 inspections per year, the number of prosecutions for refused entry averaged about one per year. 359 U.S. 360, 384 (1959) (dissenting opinion). In recent interviews, Minneapolis and St. Paul fire, building, and health inspection authorities estimated refusals at "very few," "none in 19 years," or "6 or 8 last year," stating that most citizens appear very cooperative to the programs. Interviews with Clarence Bechtel, Supervisor, Housing Inspection, in Minneapolis, Minn., and William Timm, Supervisor, Housing Code Division, in St. Paul, Minn., Sept. 12, 1967. But see *Camara v. Municipal Court*, 387 U.S. 541, 552 (1967) (dissenting opinion) (it is reported that the city of Portland recorded 2,540 refusals out of 16,171 calls).

37. 387 U.S. at 539; see Note, *Urban Renewals: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 504, 547 (1959) (it is suggested that many tenants actually welcome inspections as a step towards improving living conditions).

38. See 387 U.S. 541, 553 (1967) (dissenting opinion); Comment, *State Health Inspections and "Unreasonable Search": The Frank Exclusion of Civil Searches*, 44 MINN. L. REV. 513, 531 n.66 (1960). However, during the nearly three months from the *Camara* decision until Sept. 12, 1967, neither the Minneapolis nor the St. Paul Health Inspection Departments had reason to obtain a search warrant based on a

sought only after entry is refused.³⁹ Inspection programs should continue in the existing policy of seeking admittance through persuasion or repeated requests⁴⁰ in order to avoid the time consuming procedural steps needed to obtain the warrant. A search warrant should be only a last resort. Finally, the *Camara* decision will not require extensive changes in local codes. Obviously, where state statute previously required the obtaining of search warrants, no change will be necessary.⁴¹ In the majority of cases, however, codes will have to be revised and new inspection procedures followed,⁴² but these changes should not disrupt the present programs to any significant degree.

Despite these justifications it is unfortunate that the Court discerned no reasonable alternative, since the weakened standards of probable cause may produce "synthetic search warrant[s]."⁴³ A possible result may be the amalgamation of the standards⁴⁴ which could cause a weakening of the criminal safeguards. However, such a result need not follow if each magistrate clearly differentiates the requirements and distinguishable functions of the two types of warrant. One is intended to expose criminal evidence while the other seeks compliance with municipal codes for the betterment of the community.

The question remains, however, whether a clear differentiation will be possible in every case. Between the extremes of the criminal search for evidence and the administrative inspection there remains a great variety of searches and inspections affect-

refusal of entry. Interviews, *supra* note 36. So for the present this appears to be no problem.

39. 387 U.S. at 539-40. England has long proceeded under this type of system, where a warrant need be obtained only if the householder does not consent to the inspection. See Public Health Act, 26 Geo. 5 & 1 Edw. 8, c. 49, § 287(1)(2) (1936); see also Waters, *Rights of Entry in Administrative Officers*, 27 U. CHL. L. REV. 79, 84 (1959).

40. If a St. Paul inspector is barred admittance, a polite letter from the department explaining the purpose of the program and setting up a time for a second inspection is sent to the homeowner. In most cases, the inspection is completed on the second visit. Minneapolis reported similar results upon a return visit. Interviews, *supra* note 36.

41. E.g., N.H. REV. STAT. ANN. § 147.3 (1964); WIS. STAT. ANN. § 146.14(3) (1957).

42. For review of such code programs, see Note, *Enforcement of Municipal Housing Codes*, 78 HARV. L. REV. 801 (1965); Note, *Housing and Health Inspection: A Survey and Suggestions in Light of Recent Case Law*, 28 GEO. WASH. L. REV. 447-53 (1960).

43. Frank v. Maryland, 359 U.S. 360, 373 (1959); see also Justice Clark, dissenting, in *Camara v. Municipal Court*, 387 U.S. 541, 546 (1967) ("Paper Warrants").

44. See 108 U. PA. L. REV. 265, 277 (1959).