Camara and See: Accommodation between the Right of Privacy and the Public Need

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CAMARA AND SEE: ACCOMMODATION BETWEEN THE RIGHT OF PRIVACY AND THE PUBLIC NEED

I. INTRODUCTION

In *Camara v. Municipal Court* and its companion case *See v. Seattle,* the Supreme Court of the United States recognizes the individual's right of privacy from governmental intrusion as the foundation of fourth amendment protection and brings the nature of the relationship of the amendment's "reasonableness" and "warrant" clauses into clearer focus. *Camara* holds that a householder has a right to refuse entry to his residence when a housing inspector seeks to make a warrantless inspection. *See* adds a different wrinkle, concluding that the owner of a commercial building not used as a private residence has a right to refuse a similar warrantless inspection.

The *Camara* Court finds that the basic purpose of the fourth amendment is to shield the individual's right of privacy from arbitrary governmental intrusions. Prior to *Camara* the only practical protection offered by the fourth amendment to the householder during an inspection of his home was a bar against use of illegally seized evidence in a criminal prosecution. But the exclusionary rule operated only when there had been an unconstitutional invasion of the householder's privacy and aided only those who were subsequently charged with a crime from evidence seized in the inspection. While this rule may have provided householders with adequate self-protection, *Camara* and *See* hold that the individual's right of privacy demands better insulation—that citizens have the right to refuse entry to their homes and businesses when inspectors lack search warrants. *Camara* thus overrules *Frank v. Maryland* which held that warrantless housing inspections were not "unreasonable searches" since they did not unduly infringe upon the "self-protection" interests of occupants.

1 Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967).
3 "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV.
4 "[N]o 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." U.S. Const. amend. IV.
The fourth amendment of course permits reasonable searches which invade the individual's privacy. *Camara* requires the inspector to procure a search warrant when the householder does not consent to the proposed inspection. Search warrants receive fourth amendment approval only when issued upon probable cause, traditionally a rigid evidentiary standard. *Camara* recognizes the general "reasonableness clause" as "the ultimate standard" of fourth amendment protection and constructs a reasonableness test which involves "balancing the need to search against the invasion which the search entails." Therefore, probable cause is seen as a standard within a standard, with the suppleness of the reasonableness test demanding corresponding flexibility in the quantum of evidence necessary to satisfy probable cause.

From this synopsis of *Camara* and *See*, it is readily apparent that the Court has worked substantial change with the procedural safeguards which implement the fourth amendment. This note will examine the Court's stated and unstated rationale, will suggest some possible ramifications of its opinions, and will conclude with a recommendation for legislation to implement the very general procedural guidelines set out by the Court for "area" inspections.

II. THE FOURTH AMENDMENT AND THE INSPECTION OF HOMES AND BUSINESSES

A. THE FRANK VIEW: SELF-PROTECTION PERMITTED WARRANTLESS INSPECTIONS

Prior to *Camara*, *Frank v. Maryland* comprised the precedent Supreme Court case law on housing inspections. In *Frank* a Balti-

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7 Probable cause exists "[if] the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed...." *Carroll v. United States*, 267 U.S. 132, 161 (1925).

8 *Camara v. Municipal Court*, 387 U.S. 523, 539 (1967); accord, *United States v. Rabinowitz*, 339 U.S. 56 (1950), where a search of defendant's desk and file cabinets was conducted without a warrant as an incident to defendant's arrest, even though there was time to obtain a search warrant. The warrantless search was upheld as reasonable: "The relevant test is not whether it is reasonable to procure a search warrant, but whether [after a lawful arrest] the search was reasonable." *Id.* at 66.


11 There have been only two other cases concerning housing inspections litigated before the Supreme Court of the United States. In *District of Columbia v. Little*, 339 U.S. 1 (1949), following a complaint about defendant's home, a health officer sought to inspect it without a warrant. The homeowner refused, claiming that such a search would
more inspector received complaints of rats in a house located on Aaron Frank's block. The suspected house was rundown and there were piles of rodent feces at the rear of the dwelling. The municipal health code provided for daytime inspections where there was cause to suspect that a nuisance existed in any house. The ordinance prescribed fines for refusing entry to an inspector and for failing to correct substandard conditions following a warning by the inspector.

Frank refused the official's request to enter. He was thereupon arrested, convicted, and fined twenty dollars. His appeal was denied certiorari by the Maryland Court of Appeals. The Supreme Court of the United States, in a five-four decision,12 upheld Frank's conviction and ruled that an ordinance authorizing "civil" inspection of homes without the householder's consent and without a search warrant violated neither due process nor the individual's rights of "personal privacy" and "self-protection."

It has been ably argued that the fourth amendment was not fully implemented in the actual decision-making of the Frank Court.13 Although Justice Frankfurter, author of the majority

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13 Justice Brennan dissenting in Ohio ex rel. Eaton v. Price, 364 U.S. 263, 274 (1960), challenged whether the Frank majority's stated adherence to the due process principles recognized in Wolf v. Colorado, 338 U.S. 25, 27 (1949), was really followed in its reasoning. That is, he
opinion in *Frank*, implied that the power to inspect without a warrant under such an ordinance was a reasonable search\(^\text{14}\) under the fourth amendment, *Frank's ratio decidendi* was that civil inspections "touch at most upon the periphery of the important interests safeguarded by the *Fourteenth Amendment's protection against official intrusion.*"\(^\text{15}\) It is fair to infer from the Court's clouded language that the determinative test was one of fundamental fairness, with the interests protected by the fourth amendment composing the major factor. Notwithstanding the *Frank* Court's uncertainty, its analysis of the protections afforded by the fourth amendment in the housing inspection context was very significant because it was the first time the Court had spoken to the issue.

While *Frank* did not state that the fourth's shield against self-incrimination of the householder from evidence obtained during an inspection had priority over the householder's right of privacy, the opinion did convey this implication. Justice Frankfurter gave great weight to the fact that housing inspections were "civil" inspections not conducted for the purpose of seizing evidence for criminal prosecution. The official intrusion in an inspection was found to be but a minor infringement upon one's claim of privacy. The Court considered the ordinance empowering warrantless inspections to be "hedged about with safeguards" and concluded that

\[\text{questioned whether the Frank Court actually construed the fourth amendment guarantee against official intrusion upon one's privacy to be enforceable against the states through the due process clause of the fourteenth amendment. As Justice Brennan pointed out, Justice Whittaker's concurring opinion in Frank "indicates some concern in that respect." Justice Whittaker did preface his concurrence, conditioning it on his understanding that the Frank majority was applying the fourth amendment's protection against unreasonable searches to the states through the fourteenth amendment. *Frank v. Maryland*, 359 U.S. 360, 373 (1959). See Comment, State Health Inspections and "Unreasonable Search": *The Frank Exclusion of Civil Searches*, 44 MNN. L. Rev. 513, 514-19 (1960), and Note, 108 U. PA. L. Rev. 265, 270-71 (1959).}\]

\[^{14}\text{An excellent comment on *Frank v. Maryland* summarized as follows: "Thus, Frank could reasonably be regarded as support for the alternative propositions that: (1) the protections from unreasonable search required by the fourth amendment are substantially 'incorporated' in the fourteenth amendment, but are not violated by the power of search enforced in Frank; or (2) the due process clause only requires state officers to respect the fundamental safeguards which are essential to the American concept of a free society, and though the precedents of the fourth amendment may be relevant to a determination of what is essential, the power of search enforced in Frank violates none of those 'fundamental' safeguards." *Comment, State Health Inspections and "Unreasonable Search": The Frank Exclusion of Civil Searches*, 44 MNN. L. Rev. 513, 516-17 (1960) (footnotes omitted).}\]

\[^{15}\text{*Frank v. Maryland*, 359 U.S. 360, 367 (1959) (emphasis added).}\]
the attempted inspection fairly complied with the ordinance's provisions, thereby satisfying the reasonable search requirement of the fourth amendment.

While this adjudication was sufficient to decide the case, the Court moved its inquiry to the "warrant clause" of the fourth amendment. With much broader ramifications, the Court found that to require a warrant procedure (using a traditional probable cause test) as a check on the reasonableness of housing inspections would greatly hinder the power of administrative inspection and the enforcement of community health standards. The Frank opinion then wandered to the due process arena where the Court promised support of a dynamic concept of due process, but instead placed substantial reliance upon what it found to be long-time public acceptance of warrantless health inspections. Since the inspection procedures under the ordinance were reasonable and had general public acceptance, the Frank Court found no denial of due process in the homeowner's conviction for refusing entry to a housing inspector who had no warrant.

Justice Douglas, dissenting in Frank, foreshadowed what was to come when he stated that the basic interest protected by the fourth amendment prohibition of unreasonable searches was man's right to privacy in his home. In the dissent's view, this right of personal privacy belonged fully to all men whether criminal suspects or not.

The fourth amendment debate crystallized around the priority given by Frank to the self-protection interest. There were strong indications before Camara that the right of privacy had emerged as the foremost fourth amendment interest. The Camara Court squarely recognizes this proposition.

B. CAMARA: THE RIGHT OF PRIVACY REQUIRES SEARCH WARRANT PROTECTION

Subsequent to Frank and prior to Camara, the Supreme Court clarified the relationship between the fourth and fourteenth amendments in Mapp v. Ohio, by finding that the fourth amendment, through the fourteenth amendment's due process clause, bars illegally seized evidence from admission in state courts. Therefore,


the Camara Court looks at the fourth amendment from a different and clearer perspective than did the Frank Court.

In Camara a routine annual inspection for violations of the San Francisco Housing Code was in progress when an inspector was informed by an apartment house manager that part of the ground floor was being used by a tenant as a personal residence. Ground-floor residences allegedly violated the building’s occupancy permit. The tenant, Roland Camara, refused to allow the inspector to enter the premises without first obtaining a search warrant. During the ensuing two weeks Camara twice more refused to allow the inspection to be made without a warrant. Criminal proceedings were then commenced against him for violating a housing code provision which permitted city inspectors to enter any building in the city at a reasonable time of day. Camara’s action for a writ of prohibition to the criminal court was denied by a California Superior Court. The district court of appeals affirmed and the California Supreme Court denied Camara’s petition for hearing.

The United States Supreme Court, in a six-three decision, vacated the judgment and indicated that the writ of prohibition should be issued by the California court. In an opinion written by Justice White, Camara rules that ordinances authorizing the inspection of private residences without the protection of a warrant procedure and without the consent of the occupants are unconstitutional. Fourth amendment interests are considered to be primary in judging the constitutionality of warrantless housing inspections, in contrast to the “peripheral” involvement suggested by Frank.

18 SAN FRANCISCO, CAL., MUNICIPAL CODE § 503.
20 It will be of interest to Nebraska readers that the Omaha, Nebraska, “minimum dwelling standards” ordinance has guaranteed Omaha residents these safeguards since August 23, 1960. “Upon refusal by the owner or occupant to permit inspections at reasonable times, the Administrator, or his authorized representatives, upon due cause, may apply to any court of competent jurisdiction for a warrant authorizing entry of the premises and inspection thereof. Refusal to honor the warrant and permit inspection of the premises shall constitute a misdemeanor.” OMAHA, NEB., MUNICIPAL CODE, c. 53.08.010 (1960).

However, the Lincoln, Nebraska, Municipal Code does not give these safeguards: “For the purpose of making such inspections the health officer, upon displaying proper identification, is hereby authorized to enter, examine, and survey at all reasonable times all dwellings, dwelling units, rooming units and premises.” LINCOLN, NEB., MUNICIPAL CODE, c. 21.08.010 (1960). The Chief of the Fire Department has the right to enter any house or building to inspect as often as he deems necessary. LINCOLN, NEB., MUNICIPAL CODE c. 19.08.150 (1960). It appears safe to conclude that the Lincoln ordinances are unconstitutional under Camara.
Camara makes clear that the basic purpose of the fourth amendment “is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” However, the Court at the same time points out that this right of privacy is not absolute and in certain cases must make some accommodation with the governmental interest. If a valid public interest justifies the contemplated intrusion, the reasonableness requirement has been satisfied. The Court is cognizant that housing inspections usually are not significant intrusions upon the householder's privacy, but finds that warrantless inspection procedures as approved by Frank do not adequately safeguard this right from possible abuse.

The critical point for the householder's right of privacy is the inspection's initial stage—the confrontation at his door. Under Frank when the inspection ordinance gave a right of entry without a warrant, the occupant's right of privacy was left “subject to the discretion of the official in the field.” The inspector's knock often caught the householder by surprise. A flash of the inspector's credentials accompanied by an authoritative announcement that he had the right to inspect generally left the average citizen in a quandary as to what his rights were.

This loophole in the Frank system made the possibility of criminal entry under the guise of official authority “a serious threat to personal and family security.” Because of this omnipresent threat to the individual's right of privacy inherent in the warrantless inspection, the Camara Court deems such inspections unreasonable when administered without the guarantee of a warrant procedure. When the householder has doubts as to whether enforcement of the code requires inspection of his premises or questions about the lawful limits of the inspector's power to search and actual authority to search, he has the right to refuse entry until these questions have been reviewed by a magistrate as witnessed by a search warrant.

Camara goes on to find these warrantless inspections unreasonable even assuming self-protection to be the cornerstone of the fourth amendment. The majority opinion points out that while inspections under the regulatory codes are not searches for “evidence of criminal action,” these housing codes are uniformly enforced by criminal sanctions. Defendant Camara's refusal to permit

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22 Id. at 532.
23 Id. at 531.
the inspection was itself a crime under the San Francisco Code.\textsuperscript{24} The Court notes that even when occupants consent to warrantless inspections they can be subjected to criminal punishment for non-compliance with the inspector's directions to make repairs under virtually all city housing codes. \textit{Camara} recognizes that these potential criminal penalties are sufficient reason for requiring a warrant procedure in the housing inspection context.

In \textit{See v. Seattle}\textsuperscript{25} the owner of a locked commercial warehouse was arrested, convicted, and given a suspended fine for refusing entry to a Seattle fire inspector during a periodic city-wide canvass. The inspector sought access under an ordinance permitting fire inspections of all buildings (except residential dwellings with two or fewer units) "as often as may be necessary."\textsuperscript{26} See's conviction was affirmed by the Washington Supreme Court. The case was then argued before the United States Supreme Court together with \textit{Camara}. The Court found the \textit{Camara} rationale controlling in reversing See's conviction.

The businessman has a right of privacy too. While protection of this right requires a suitable warrant procedure, \textit{See} recognizes that business premises may reasonably be inspected "in many more situations than private homes."\textsuperscript{27} The Court forthrightly states "that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure."\textsuperscript{28}

That the individual's right of privacy would be enhanced by a warrant requirement when he does not consent to the inspection request has been clearly shown. However, the \textit{Camara} Court recognizes that the fourth amendment permits some "accommodation

\begin{itemize}
\item \textbf{24} SAN FRANCISCO, CAL., MUNICIPAL CODE § 507. The ordinance prescribes sanctions not to exceed a five hundred dollar fine and/or six months imprisonment per day of violation. The severity of the penalty did not enter the Court's decision. The Frank and Camara Courts agree on this point. Justice Clark, in his objection to granting probable jurisdiction in Ohio \textit{ex rel. Eaton v. Price}, 360 U.S. 246 (1960), saw the only possibility of distinguishing Eaton from Frank to be the more severe penalty imposed by the ordinance in Eaton. No such distinction was made as the Court considered Frank to be controlling and upheld Eaton's conviction.
\item \textbf{25} 387 U.S. 541 (1967).
\item \textbf{26} SEATTLE, WASH., ORDINANCE 87870, c. 8.01.050.
\item \textbf{28} See \textit{v. Seattle}, 387 U.S. 541, 545 (1967).
\end{itemize}
between public need and individual rights.” The Court presents an excellent outline of the interests balanced in fourth amendment decisions:

In assessing whether the public interest demands creation of a general exception to the Fourth Amendment, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.

In defense of implementing a warrant system, the Camara Court indicates that all dwellings located within the boundaries of area inspection programs will still be examined under the warrant machinery to be prescribed. Justice White sees no merit in expressed fears that a warrant procedure will impede area inspection programs. The effectiveness of most inspections in no way depends upon immediate entry at a particular time and records of past inspection programs indicate that very few householders will refuse inspection requests. Justice White carefully emphasizes that this warrant system in no way prevents prompt, warrantless inspection in certain emergency situations, such as seizure of unwholesome food, destruction of tubercular cattle, and the enforcement of health quarantines and compulsory smallpox vaccinations.

Justice Clark, author of the dissenting opinion, applicable to both Camara and See, accepts the Frank reasoning as settling the fourth amendment issue. Consequently, the dissent concerns itself with criticizing the “newfangled” warrant system and the prostitution of the probable cause standard. Justice Clark argues that an inspection system based on the premise that the occupant can refuse entry to the inspector initially and require him to secure a search warrant will encounter such a high rate of refusals that the burden upon the magistrates in issuing the warrants will bring about a synthetic warrant procedure. The results of a voluntary home inspection program in Portland, Oregon, are offered to support the dissent’s hypothesis. Portland’s 1966 record showed that 2,540 refusals were encountered out of 16,171 calls, approximately one out of every six residences contacted. The dissent submits that inspections will be denied by many householders who are aware that costly repairs are needed but who hope to forestall detection of these and to thereby minimize maintenance costs.

The dissent argues that pressures will mount upon magistrates due to the considerable delay while inspectors secure warrants.

30 Id. at 533.
The fear arises that some magistrates will turn the warrant process into a "rubber stamp" proceeding, destroying the integrity of the warrant and bringing disrepute upon the magistrate and the judicial process. As an alternative, the dissent suggests that householder should have the right to ask for a showing of credentials by the inspector and to resolve their other questions by calling the inspector's superior.

The Portland statistics are from a truly voluntary program, where the occupant's refusal is accepted by the inspector as final—a cancellation. Under the Camara warrant system, the occupant's refusal will only gain him postponement of the inspection. The inspector will return subsequently with an inspection warrant, so the householder at most can gain a few days delay by his refusal. However, it is unlikely that many householders will exercise this right whimsically because in doing so they run the practical risk of provoking the inspector by the delay—an imprudent error since most code offenses are matters of discretion with the inspector. While undoubtedly the sixteen per cent refusal rate postulated by the dissent is too high, the number of people asserting their rights of privacy should rise, but not to the extent that inspectors will be intolerably burdened.

It has been suggested that impatient inspectors who have been compelled to postpone searches and obtain warrants will become very angry by the delay and may frequently use the warrant as a license to be inconsiderate. While there is some validity to this argument, it merely underscores the need to better educate inspectors as to the importance of the individual rights advanced by the warrant requirement. Considerate inspectors will be unmindful of the delay since they are cognizant of the societal values the warrant procedure represents. Under Frank the householder's only recourse to an immediate inspection, no matter how potentially embarrassing, no matter how obnoxious the inspector, was to request a postponement from the inspector himself. While the inconsiderate inspector is not averted by the Camara procedure, the householder can rebut the inspector's entry should he act ill-manneredly following his

31 LaFave, Administrative Searches and the Fourth Amendment: The Camara and See Cases, 1967 SUPREME COURT REVIEW 1, 22-23 (1967) [hereinafter cited as LaFave]; Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 527-29 (1968); Comment, Administrative Inspection Procedure under the Fourth Amendment—Administrative Probable Cause, 32 ALBANY L. REV. 155, 168 (1967).

knock on the door or should he arrive at an incommmodious moment—at least until he returns with a warrant.33

While the conclusion that warrantless inspections without the consent of the occupants violate the fourth amendment was sufficient to rule on the merits in both Camara and See, the Court realized that the nature of the municipal inspection programs involved would not permit this determination to be the end of its inquiry.

III. AREA INSPECTIONS

A. THE REASONABLE SEARCH: A BALANCING OF INTERESTS

"[I]n applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration." Both the majority and dissent in Camara recognize a valid governmental interest in area inspections as a tool of municipal code enforcement. In reaching an abstract determination that area inspections policed by a warrant procedure are "reasonable searches" the Court finds "unanimous agreement among those familiar with this field that the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures." In so assuming the "need to search" factor of the reasonableness scale, the Court prevents a clear analysis of the practical operation of its "need to search" versus "the invasion which the search entails" test.

However, the Court’s reasoning can hypothetically be reconstructed from the housing inspection theories advanced by commentators cited by the Court.38 There is an obvious public interest in maintaining conditions conducive to public health and safety in all buildings and most particularly in preventing the development of slums. City housing codes attempt to attain these goals through enforcement of minimum standards pertaining to the operation and maintenance of existing structures. When code violations are discovered, the housing agency issues an order to comply which is enforceable by sanction should the owner or landlord not provide

33 See id. at 291: "[I]n an ex parte proceeding not attended by the individual homeowner, the existence of a spiteful motive is hardly likely to come to the attention of the magistrate authorizing the inspection."

34 Camara v. Municipal Court, 387 U.S. 523, 533 (1967).

35 Id. at 535.

36 See generally, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 801-09 (1965).
proper repairs. Such negative policing, as noted by Frank, has been the cities' chief weapon in the battle against urban blight for well over a century.

Code enforcement receives assistance from federal urban renewal programs and neighborhood rehabilitation programs, but these allies typically are very expensive and are best adapted to highly deteriorated neighborhoods. Furthermore, the clearance and rehabilitation programs "are unsuited to equally critical tasks that require continuous citywide efforts—for example, conserving presently adequate units or compelling structural improvements, such as the installation of central heating." Consequently, code enforcement is generally considered the principal method of ensuring that minimal dwelling standards are maintained.

Before there can be compliance there must be detection. Administrative inspections, the means of discovering code violations, are of two types—those initiated by a citizen's complaint of a specific violation and those conducted within area inspection programs. Although complaint-initiated inspections are a useful tool in code enforcement, they alone cannot provide effective detection since most violations are not reported. The untrained eye of the household will not detect faulty wiring and "low-income tenants are often unaware of or do not avail themselves of enforcement services." Even when violations have been reported, code enforcement has often been random since complaint-initiated inspections generally center on the alleged violations only, with landlords complying by piecemeal repair of slum buildings. The incentive for voluntary compliance is weakened by spasmodic enforcement since slumlords will make repairs "on their own" only when they are reasonably certain that defects will ultimately be spotted and that repairs will be required.

Area inspection programs, which systematically check all dwellings in designated areas for all housing infractions, have proved capable of effectively ferreting out code violations. Such programs are more expensive than inspections upon complaint, but it is argued that earlier and more extensive detection of defects may in the long run decrease repair costs and the future need for city clearance programs. This elementary summarization of "consensus" slum prevention theory more clearly explains Camara's finding of governmental need for area inspections.

37 Id. at 803.
38 Id. at 803; Schwartz, supra note 27, at 423; Note, 69 Harv. L. Rev. 1115, 1115-18 (1956).
39 Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 807 (1965).
In the "invasion which the search entails" half of the reasonableness balance, the Camara Court does avoid the Frank pitfall of characterizing housing inspections as "civil" inspections. However, the Court deftly sidesteps any meaningful discussion of the household's privacy interest and summarily concludes that these inspections are "a relatively limited invasion of the urban citizen's privacy" since they are impersonal and do not seek evidence of crime.

The final balancing factor considered by Camara in favor of the reasonableness of area inspections is the public's long-time acceptance of these inspections even when they have not been regulated by a warrant procedure. The Camara dissent points out that these same "persuasive factors" were relied upon by the Frank Court when it excused the inspections from a warrant requirement. While the Camara rationale minimizing the invasion of privacy aspect of housing inspections does superficially appear somewhat contradictory, the antithesis disappears when it is recalled that the Court is now speaking of a conceptual area inspection governed by a suitable warrant procedure.

The Camara Court's finding of reasonableness for theoretical area housing inspections policed by a warrant procedure brought the reasonableness and warrant clauses of the fourth amendment into direct conflict. The Court posed the issue: "whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search." The Camara Court resolved this issue by remodeling the probable cause standard for area housing inspections.

**B. Probable Cause for an Area Inspection**

Probable cause for issuance of a search warrant has traditionally required a showing of facts and circumstances which would warrant a man of reasonable caution to believe that an offense has been or is being committed. Most code violations are of a hidden, indoors nature, neither discoverable by the "inexpert occupant himself" nor observable by an inspector outside the building. Consequently, "the agency's decision to conduct an area inspection is unavoidably based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building." This showing of course does not satisfy traditional probable

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41 Id. at 533.
cause. It is here the dilemma arises because Camara requires inspectors to procure search warrants to make area inspections when householders have refused them entry. In establishing the warrant requirement and in making the determination that area inspections are reasonable, the Court obviously contemplated a warrant procedure which would continue to sanction the inspection of all dwellings within entire neighborhoods. The probable cause standard provided the Court with a solution.

The Camara compromise is founded upon its determination that reasonableness is the ultimate standard of the fourth amendment. A flexible probable cause test is formulated from the mold of the reasonableness test: "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." The Court's application of the new probable cause test to the area inspection context is vague:

"[P]robable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling."

Much earlier in its opinion, the Court states that the magistrate will make no "reassessment of the basic agency decision to canvass an area." This leaves the inference that the Court recognizes that most magistrates lack the expertise to make the policy decisions which underlie area inspections. It is submitted that the initial step in probable cause determination under Camara is a court check to ascertain that the inspection program meets constitutional and statutory procedural safeguards and that it is not serving as a facade for police harassment of a neighborhood. Once an inspection program has been approved by a court as having "reasonable legislative or administrative standards," the probable cause decision narrows to a determination that the house to be inspected is located within the perimeter of the inspection program and that the inspector himself is properly authorized by the inspecting agency.

The Camara dissent wonders what proof must be shown for probable cause for "individual inspections of specific problems" not encompassed by an area inspection program. While the Court does

44 Id. at 539.
45 Id. at 538 (emphasis added).
46 Camara v. Municipal Court, 387 U.S. 523, 532 (1967).
47 See LaFave, supra note 31, at 24–25.
not structure its probable cause test in specific terms applicable to complaint-type inspections, it seems clear that the requisite showing would be substantially less than traditional probable cause. A written complaint should certainly be sufficient. An anonymous phone call making a complaint would probably pose the marginal question.

The uncertainties which surround the intricacies of the new probable cause test create a danger that magistrates issuing warrants under different standards of probable cause will tend to amalgamate these standards, creating a possible "dilution of its force as a meaningful safeguard in criminal law administration."48 Skeptics of the new probable cause are provided more ammunition by Camara and See, since the Court makes only sketchy presentations of the warrant mechanisms conceived.

C. WARRANT PROCEDURE FOR RESIDENTIAL AND BUSINESS AREA INSPECTIONS

It is fair to infer from Camara and See that the Court intends to establish a different warrant procedure for the inspection of personal residences than for inspection of non-residential commercial buildings. Although the actual workings of these warrant systems (including the new probable cause) will be the ultimate determinant of whether the occupants' rights of privacy have been truly advanced, the Court is indecisive in its guidelines for the procedures.

Camara's first hedge is its statement that "it seems likely that warrants should normally be sought only after entry is refused."49 This hesitancy seems uncalled for. If warrants can issue prior to inspectors' calls on the basis of the lower probable cause standard for area inspections, occupants will be placed in the same predicaments which occurred under the Frank system—except that Camara will have added an impressive-looking search warrant to the legal barrage inspectors can hurl at unsuspecting residents. Again, the householder's right of privacy would be wholly at the discretion of the inspector. The threat of theft under official guise would scarcely be minimized since impersonation of an inspector would require only the theft or forgery of a warrant. If the Court is to do more than pay lip service to the guarantee of privacy which it seeks to provide, the resident must at least have the right to refuse the inspector's entry initially and to demand that he then secure a search warrant.

Despite this significant non-commitment, Camara conveys the strong implication that a householder can refuse inspection attempts at his whim, the first time around. Although the inspector is sure to return with a warrant, the householder has been spared the embarrassment or inconvenience which might have occurred had the initial search request been accompanied by a warrant. There is no certainty that another embarrassing moment will not occur at the time the inspector returns with the warrant, but the refusing householder is on notice that the inspector will return sometime in the near future. The Camara warrant procedure does not alter prevailing local policy, which in most situations does not authorize forcible entry to inspect. Therefore, illicit collaboration between police and inspectors\textsuperscript{50} should be discouraged since the knowledgeable householder can refuse entry as of right until a warrant is secured and since forcible entries are prohibited even though an inspection warrant has been obtained. While magistrates may not be able to always discern such improper motives of an inspector in an ex parte proceeding, the householder can effectively deny entry in the face of the warrant should he suspect impropriety, since the inspector has no power of forcible entry. However, this latter refusal may bring a code conviction should he subsequently be unable to justify his misgivings.

In See the Court asserts that "a search of private houses is presumptively unreasonable if conducted without a warrant."\textsuperscript{51} At first glance this seems an overstatement of the Camara holding, for Camara places great weight on its premise that most citizens will allow inspection without warrants. Undoubtedly, the Court intends

\textsuperscript{50} A similar collaboration problem was recognized by the Court in Abel v. United States, 362 U.S. 217 (1960). The FBI suspected an alien of espionage but lacked probable cause for an arrest warrant. The INS was notified that Abel was illegally within the country. The INS issued an arrest warrant and proceeded with the FBI to the alien's hotel room. The FBI questioned Abel and when he refused to cooperate signaled the waiting INS agents to make the arrest. Incriminating evidence was discovered in the subsequent search by the FBI and INS. In a five-four decision, the Court ruled the evidence was admissible as seized in a search incident to a lawful administrative arrest. Had the Court found the INS to be serving as a tool for the FBI the arrest would have been invalid. The crucial question on the collaboration issue was the motive of the arresting agency, the INS: \textit{i.e.}, "whether the decision to proceed administratively toward deportation was influenced by, and was carried out for, a purpose of amassing evidence in the prosecution for crime." Id. at 230.

This "good faith" test does not solve any problems, leaving the court with the chore of reading people's minds. \textit{ Cf.} Comment, The Fourth Amendment and Housing Inspections, 77 Yale L.J. 521, 536-38 (1968).

these consensual inspections to be considered "presumptively unreasonable" only in those instances in which a householder contests an inspector's seizure of evidence as illegal. The burden of proof then is on the government to show the householder's bona fide consent to the warrantless inspection. This interpretation would be in line with the emphasis placed by the Court in *Miranda v. Arizona*⁵² on the heavy burden the government must carry when it relies upon a supposed waiver of constitutional rights.

"[T]he basic component of a reasonable search under the Fourth Amendment—that it not be enforced without a suitable warrant procedure—is applicable"⁵³ to business premises. See implies that the warrant procedure applicable to business inspections is analogous to the "rather minimal limitations" the fourth amendment requires when an administrative agency subpoenaes corporate books and records.⁵⁴ An analogous warrant mechanism might call for the administrative agency to issue its own search warrant delimiting the confines of the inspection before an inspection is attempted.⁵⁵ A subpoena-type procedure might enable the businessman to refuse entry to the inspector with an administrative warrant and still obtain judicial review of the agency's decision to search without risking penalty for refusing entry. Unfortunately, See does not amplify its plan beyond stating that the decision to search will not be made by the officer in the field and that physical force can be used to compel entry to portions of commercial premises not open to the public only after a warrant has been secured. Instead, the Court chooses not to decide whether inspection warrants for business premises can be issued only after access is refused, since "surprise may often be a crucial aspect of routine inspections of business establishments."⁵⁶ The Court finds that such surprise warrants may be reasonable under certain circumstances since a person's privacy interest in his business is subordinate to his right of privacy in his home.

⁵⁶ See v. Seattle, 387 U.S. 541, 545 n.6 (1967).
While it is unclear whether See authorizes agencies to issue their own inspection "warrants," the Court seems to indicate that the warrant procedure must include opportunity for judicial review of the decision to inspect. Apparently, such review may be had prior to the initial inspection attempt in those instances where surprise is of the essence for an effective business inspection. The nature of the judicial review intended by See is not ascertainable from the Court's confusing opinion. The See Court speaks of minimal limitations on investigative entry of commercial establishments, but the procedure which the Court appears to approve could prove very restrictive. When an administrative subpoena has been challenged and the agency seeks judicial enforcement, the subpoenaed party can present evidence, witnesses, and oral argument. While it is feasible that the Court might implement a brief hearing into the procedure, it is most unlikely that the Court intends such a full-blown adversary proceeding as exists in the subpoena situation.

D. IMPROVEMENT OF THE CAMARA INSPECTION PROCEDURE

Ideally, the reasonableness of an area inspection program's standards should be determined before any inspections take place. It is most undesirable that an agency can conduct inspections under unreasonable standards until some householder refuses entry and the ensuing warrant proceeding declares the standards unacceptable—which quite likely might be after scores of inspections have been conducted. This defect of the Camara procedure can be corrected by an initial ex parte proceeding solely to determine whether the inspection program's standards satisfy the reasonableness test. It is conceded that an ex parte determination would not detect illegitimate motives which might underlie the inspection program, but it would provide a sufficient check on the program's standards without the costly delay which an adversary hearing open to all householders within the area would surely cause. The proposed procedure, which will be subsequently developed, does provide for adversary hearings before warrants can issue to inspect the homes of those householders who refuse entry. This latter hearing safeguard should adequately protect against the possibility of harassment and

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57 Such a proposition has been objected to by those making the traditional argument that "issuance of a warrant by the prosecuting authority is incompatible with the detached judicial oversight that is the very heart of the warrant requirement." Comment, "The Right of the People to be Secure: The Developing Role of the Search Warrant," 42 N.Y.U.L. Rev. 1119, 1128 (1967).

58 ICC v. Brimson, 154 U.S. 447 (1894), held that a judicial proceeding to enforce a subpoena issued by the commission satisfied the Constitution's "case or controversy" requirement.
the initial proceeding should make certain that all inspections are conducted under reasonable standards.

The Camara warrant system’s failure to ensure that the occupant’s admission of inspectors without protest is not in fact a submission to governmental authority has been said to be its “most dubious” aspect. The possibility of such abuse cannot be slighted since the inspector has substantial discretion in determining what constitutes a code violation. It is probable that many householders will sit by passively rather than run the risk of irking the inspector by refusing entry. The vast majority of householders will consent to inspections if they fall at convenient times, but Camara does nothing to encourage such inspection policy. In fact under Camara, an inspector who has been denied entry is under no obligation “to indicate his intention to return with a warrant, make the time of his return known in advance, or arrange a time convenient to the occupant.”

Since code enforcement relies heavily on voluntary public compliance, householders should be given advance notice of upcoming inspections (including an explanation of their rights) and the opportunity to make inspection appointments. These elementary courtesies would do much to facilitate public support for code enforcement. A notice-appointment requirement would not necessarily burden inspection programs with additional expenses since it would most likely reduce the nonaccess rate resulting from householders not being home when the inspector calls. Notice

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59 Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 527 (1968).
60 Enforcement of Municipal Housing Codes, 78 HARV. L. REV. 801, 811-12 (1965); LaFave, supra note 31, at 34; Note, 69 HARV. L. REV. 1115, 1125 (1956). The proposed “Housing Code” for Lincoln, Nebraska, which was defeated on the November 14, 1967 ballot, may have been aimed to take advantage of the fact that many people do submit to inspection because of the aura of governmental authority represented by the inspector. Section 8 of the ordinance appears to provide inspectors with a right of entry despite the clear holding of Camara handed down five months earlier. While the city circulated literature on the code advising citizens that entry may be refused, nowhere is this right of refusal acknowledged in the ordinance. However, it should be noted that the code did provide other important safeguards: (1) five days advance notice by mail; (2) a showing of proper credentials by inspectors; (3) limiting inspections to the hours of 8 A.M.-5 P.M., Monday through Friday.
61 LaFave, supra note 31, at 35.
62 Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 534 (1968); LaFave, supra note 31, at 35.
could be satisfactorily given by postcards. The policy underlying such advance notice correlates with Camara's recognition that surprise is rarely needed in detecting housing violations since most defects "can be hidden from the inspector only by the desired remedial action." Finally, a notice-appointment system would substantially reduce the risk of criminal entry by unauthorized persons posing as inspectors, since most residents will carefully question anyone coming to inspect at other than the appointed time.

63 Dear Homeowner,

The Middletown Housing Agency will be conducting plumbing inspections in your neighborhood next week. Your home is scheduled for inspection on Tuesday, April 2. If you have any questions concerning this inspection, please call our office, 999-9999. If April 2 is inconvenient for you, we request that you call us and make an appointment for a different day.

We strive to conduct these inspections in a manner which does not interfere with your home activities. Should the inspector arrive at your home on April 2 at an inconvenient time for you, he is required to follow your request that he return at another time and with an inspection warrant should you so desire.

64 However, there are a few code violations, such as over-occupancy of a dwelling, which can be hidden without being corrected. Advance notice might very well frustrate enforcement of this standard, but it is argued that such notice should be omitted only where the city can show that it is essential to the public interest to abate overcrowding, Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 535 (1968).

Midnight welfare searches pose similar problems. A pre-Camara case, Parrish v. Civil Serv. Comm'n of County of Alameda, 66 Cal.2d 260, 425 P.2d 223, 57 Cal. Rptr. 623 (1967), held that a social worker who refused to participate in early morning mass welfare raids because he felt they were unconstitutional was not guilty of insubordination and should be reinstated. The county had not secured legally effective consent for the searches, but even if it had, the county could not constitutionally condition continuance of welfare payments upon the giving of such consent. However, the court went on to state that government can condition publicly-conferred benefits upon a waiver of constitutional rights if it can be established: "(1) that the conditions reasonably relate to the purposes sought by the legislation which confers the benefit; (2) that the value accruing to the public from imposition of those conditions manifestly outweighs any resulting impairment of constitutional rights; and (3) that there are available no alternative means less subversive of constitutional right, narrowly drawn so as to correlate more closely with the purposes contemplated by conferring the benefit." Id. at 271, 425 P.2d at 230, 57 Cal. Rptr. at 630. While there is definitely a governmental interest in assuring taxpayers that they are not being defrauded, it cannot be forgotten that the welfare search has as its purpose the seizure of evidence of crime and should meet similarly-strict criminal probable cause requirements. But cf. Note, 3 HARV. CIV. LIR.-CIV. RIGHTS L. REV. 209, 214 (1967). See generally Schwartz, supra note 27, at 430-42.

However, an advance notice system will not eliminate the distinct possibility that the person actually confronted by the inspector may be unaware of his rights. Such a situation would occur when the agency's postcard does not reach the residence or when someone other than the recipient of the postcard answers the inspector's knock. The right of privacy of these uninformed householders can be protected by requiring inspectors to explain at the door that the agency's policy is to conduct the required inspections at a time convenient for the householder and that the inspector is required to follow the householder's request that the inspector return at another time and with an inspection warrant should the householder so desire.

As to those householders who did in fact receive advance notice, this explanation would not be superfluous but should provide them with a fuller understanding of their rights and the inspection procedure, and should thereby substantially increase the probability that an inspector's entry without a warrant will be with the intelligent consent of the householder. A *Miranda*-type warning has been suggested as a method of informing the householder of his right to refuse, but such a hostile-sounding warning might frighten the individual into refusing needlessly because of undue apprehensions.

*Camara* permits the householder to refuse the inspector initially without fear of sanction. But at an ex parte proceeding, inspection warrants will issue almost automatically under the lower probable cause standard. Therefore, for a householder to effectively challenge the reasonableness of an inspection of his home, he must refuse the inspector when the latter returns with a warrant—at the risk of a possible code conviction. Very few occupants will be willing to pay this price, so *Camara*'s contemplated objective of ensuring that all houses within an area are inspected will undoubtedly be achieved under the new system.

It has been questioned whether the public interest really demands such "universal compliance." The *Frank* dissent instructively pointed out that there is a public interest in ferreting out all crime, but this interest does not warrant the abolition of civil liberties. A fortiori, the right of privacy should not be sacrificed in an attempt to discover all housing code violations. This conclusion is

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67 LaFave, *supra* note 31, at 27-30

68 *Id.* at 15: "A more fruitful line of analysis, compared to this overstated need for 100 percent enforcement, is to consider whether the traditional probable cause test will permit an acceptable level of enforcement."
further compelled by the practicality that code enforcement is often not vigorously pursued following discovery of violations. Therefore, it seems clear that householders should have the opportunity to obtain redress without being forced to defend code violation charges. Such an opportunity should exist prior to the inspector’s initial inspection attempt and upon the householder’s refusal at the door. It is submitted that a challenge proceeding with procedure resembling that of a small claims court would provide satisfactory safeguards with minimal cost and delay, and perhaps could be handled by an adjudicative ombudsman. These inspection warrant proceedings would be adversary in nature, permitting the objecting occupants to appear if they so desire. Since these proceedings are designed to

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69 Code enforcement tends to get watered down when it runs into buildings which need major rehabilitation and cannot be rehabilitated profitably and when it finds owners of rehabitable buildings who are unable to obtain the necessary financing to make needed repairs. When a city considers removal of undesirable buildings it must consider that it will be reducing an already inadequate supply of low-cost housing. The same result occurs when the landlord does make consequential repairs as he will have to cover his expenditure by raising the rent. Therefore, code enforcement in slum areas finds itself balancing the landlord’s ability to survive economically if he makes repairs with the availability of other low-cost housing for his tenants should a rent hike force them out. Sax & Hiestand, *Slumlordism as a Tort*, 65 Mich. L. Rev. 869 (1967); *Enforcement of Municipal Housing Codes*, 78 Harv. L. Rev. 801, 849-50 (1965).

An interesting proposal to this slum housing dilemma is that of a civil tort action by tenants against slumlords who illegally maintain their premises in indecent conditions, Sax & Hiestand, *Slumlordism as a Tort*, 65 Mich. L. Rev. 869 (1967).

70 The suggested postcard advance notice, supra note 63, requests that all questions concerning the inspection be directed to the agency. When a protest is made, or when it is apparent to the agency that its attempts to overcome the householder’s objections have failed, the agency would petition a magistrate for an inspection warrant. Summons would be sent to the objecting householder by mail, cf. Neb. Rev. Stat. § 27-204 (Reissue 1984). A somewhat similar prior review procedure has been suggested, Comment, *The Fourth Amendment and Housing Inspections*, 77 Yale L.J. 521, 531-33 (1968).


73 When an occupant refuses entry, the inspector petitions a magistrate for an inspection warrant. Summons will be sent by mail to the householder informing him: (1) that he may appear should he so desire; (2) that should he not appear and should the warrant issue, he will be given advance notice of the inspection date authorized by
protect the householder's right of privacy, landlords should not be permitted to use them as a dilatory tactic.74

These inspection warrant hearings, resulting from pre-inspection objections and refusals at the door by householders, could be expedited and the magistrates' tasks lightened by consolidating all protests initially into one hearing. This consolidated hearing would take place after all the protests and refusals are received—that is, after the agency has attempted to make inspections of all residences encompassed by the area inspection program excluding those residences whose occupants filed initial protests. The consolidated hearing would serve as the first step in the Camara probable cause decision, ascertaining whether the program satisfies reasonable legislative or administrative standards. The initial ex parte finding on this same issue would be given no weight in this hearing and all objecting householders would be allowed to appear. Should the court find the standards unreasonable, a remote possibility after the earlier ex parte determination, the proceeding would terminate and no warrants would issue. Following a determination approving the program's standards,75 the individual protests would be broken down into separate hearings for the second step in the probable cause adjudication. At the individual hearings the agency would be required to show that the standards for conducting the inspection program are satisfied with respect to particular dwellings—in short, the warrant. This latter safeguard informs the householder who only refused because the time was inconvenient that he need not appear and it assures him that he will be given advance notice of the inspection with the warrant.

74 "Landlords suffer no invasion of protected interests when their tenants' dwellings are inspected. Inspection of the common areas of multiple-dwelling buildings infringes only the technical property interest conferred by the landlord's legal possession of these areas. Because such inspections threaten no invasion of landlords' personal privacy, the Fourth Amendment does not dictate the same careful procedures required to protect the privacy of citizens in their own homes." Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 539-40 (1968) (footnotes omitted).

75 A strong argument can be made that to provide appellate review of this decision would encumber inspection programs to the point that the agencies would quit trying to secure warrants. Should only a small number of appeals be made, the delay in the courts would not do irreparable harm to area inspection programs—the public interest does not demand that all houses be inspected, so even substantial postponement of the inspection of a small number of houses would not be unreasonable. But the probability that an appeal procedure would be abused gravitates against its implementation. Such a denial would not be an injustice to the citizen since he can hardly appeal the issuance of an inspection warrant at the ex parte proceeding approved by Camara.
that the protestants' houses are located within the boundaries of the program's authority. The householder could defend not only by challenging the reasonableness of the particular inspection, but also by unveiling the spiteful motives of any inspectors carrying personal or political grudges, collusion between inspectors and police, and the misuse of the inspection system as a tool of harassment.

When an inspection warrant is approved, the magistrate should offer the householder the opportunity to make an appointment for the inspection. When the householder does not appear at the hearing, as may frequently be the case when the occupant has no objection to the inspection except that the inspector arrived at an inopportune moment, a copy of the warrant order should be mailed to the occupant informing him of the date of inspection. The warrant should be issued by the magistrate on the day of the inspection.

The Camara Court was not faced with the issue of whether evidence seized in an inspection made with the householder's bona fide consent or with an inspection warrant is admissible in a criminal or civil proceeding unconnected with code enforcement. Although ranking the right of privacy first among the objectives of fourth amendment protection, Camara expressly acknowledges the validity of the individual's interest in self-protection. Probable cause for an area inspection permits a lesser evidentiary showing than does probable cause for a criminal search. The inspection warrant's lesser requirements are justified by the Court in part because housing inspections are not conducted for the purpose of discovering criminal evidence. It would seem to logically follow that evidence seized in legal, as well as illegal, inspections should be admissible only in code enforcement proceedings. Whether

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76 It can be argued that under a truly flexible standard of probable cause a warrant will not issue for the inspection of a relatively new house. The probability of there being defects in a new house is quite low, for the house undoubtedly was inspected at the time it was constructed. However, such a rationale for inspection probable cause would present magistrates with an impossible task of deciding when such "new" homes become "inspectable." Inadequate standards for the exercise of discretion are breeding grounds for abuse. A major reason that area inspections are not considered significant intrusions upon one's privacy is that they are impersonal—everyone in the neighborhood must submit to the same inspection. Consequently, there is no stigma from having one's house inspected, as there may be from a criminal search by the police. Furthermore, it has been posited that "[c]ode enforcement can probably prevent deterioration most effectively by enforcing higher standards of maintenance and repair in good neighborhoods than can practically be required in slums." Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 812 (1965).

77 Comment, Administrative Inspections and the Fourth Amendment—
evidence admitted in a code enforcement suit, such as the neglected, disorderly state of a residence, is admissible in a subsequent civil suit is problematical. The issue might arise in a suit by a parent seeking revocation of child custody from the neglectful parent, or in a suit by the state seeking to make the child a ward of the court.

As a practical matter, courts have had and will continue to have a difficult time determining when law enforcement officials have received "poisoned fruit" from an inspector. Since the police can secure a search warrant on the basis of hearsay from a "reliable" informer, and since the warrant can be upheld without disclosure of the informant, evidence obtained from an inspection may find its way into the hands of the police, and even be used by them to sustain the probable cause necessary to secure their warrants. This occasion for possible misuse of housing inspections strengthens the argument for complementing the household's right to refuse initial entry with advance notice, warnings at the door, and the opportunity for judicial review. The probability of anyone leaving evidence of criminal activity within the sight of an inspector after such safeguards are effected is miniscule. In minimizing the possibility for an illegal harvest, the proposed procedure also removes the temptation to the police for tampering with the inspection system.

A Rationale, 65 COLUM. L. REV. 288, 292-94 (1965); Note, 3 HARV. CIV. LIB.-CIV. RIGHTS L. REV. 209, 222-23 (1967); Comment, The Fourth Amendment and Housing Inspections, 77 YALE L.J. 521, 536-38 (1968). Contra, State v. Rees, 258 Iowa 813, 139 N.W.2d 406 (1966), where the Iowa Supreme Court seems to hold that administrative agents who "are in a place where they have a lawful right to be for conduct of a civil investigation ... are, by the same token in a place where they have a lawful right to be for a search and seizure." Id. at 835, 139 N.W.2d at 419 (dissenting opinion).


80 In People v. Laverne, 14 N.Y.2d 304, 200 N.E.2d 441, 251 N.Y.S.2d 452 (1964), the New York Court of Appeals overturned defendant's conviction for violation of a city zoning ordinance prohibiting business activity in a residential use area. The evidence which meant conviction was obtained by the village building inspector, who on three occasions made entries and checks of defendant's home where the prohibited business was operating. The court held unconstitutional an ordinance authorizing official entry upon private premises for the purposes of searching for evidence to be used in a criminal prosecution without first obtaining the consent of the occupant or a warrant.


IV. CONCLUSION

What practical protection for individual rights has *Camara* advanced? The right to refuse the inspector—once—if the householder is aware of this right and if he is not intimidated from exercising it out of awe for the official's authority. Despite the considerable and complex re-balancing of the fourth amendment by the Court, the householder’s right of privacy in the context of a housing inspection has been negligibly improved—perhaps justifying the dissent's charge that the new warrant procedure is but a "legalistic facade." However, *Camara* can also be viewed as the beginning of fourth amendment protection for the householder's right of privacy. Hopefully, the re-evaluation of housing inspection procedures necessitated by the opinion will provide a springboard for legislative or administrative addition of other essential safeguards for a meaningful right of privacy.83

*Camara* has added significance because of its fourth amendment theory. There is now one less exception to the rule that searches of private property without proper consent are "unreasonable" unless authorized by valid search warrants. The search warrant retains its status as the pre-eminent judicial safeguard against unreasonable searches, but it is the "reasonableness" clause of the fourth amendment which the Court finds to be the watchdog of the individual’s right of privacy. Because reasonableness is the ultimate standard, probable cause for issuance of warrants must be sufficiently flexible to balance the "need to search against the invasion

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83 A chronological summary of the proposed inspection procedure is as follows: (1) The agency makes its determination to conduct an area inspection of a particular neighborhood. (2) An ex parte proceeding is held before a magistrate to ascertain whether the inspection program has reasonable standards. (3) If the program is approved by the magistrate, advance notice is sent to all households by mail five days prior to inspection. During the five-day period the householders can ask questions, make appointments for a different inspection date, and make protests. (4) Area inspections will then be attempted excluding those householders making initial protests. The inspectors are required to give an explanation of the inspection and the householder's right of refusal at the door. (5) After the area has been covered, all protests and refusals will be considered at inspection warrant hearings. The reasonableness of the legislative or administrative standards authorizing the program will be determined at a consolidated hearing. If the program is considered reasonable, then each protestant has an individual hearing on whether the program's proposed inspection of his particular home is reasonable. If probable cause is found to allow a warrant to issue for the inspection, advance notice of the proposed date and the opportunity to make an appointment will be given the householder.
which the search entails." It is the Court's recognition that probable cause does not require a set quantum of evidence for the issuance of search warrants which will make Camara a touchstone for all future fourth amendment inquiry.

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