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Search and Seizure: Municipal Ordinances Permitting Searches without Warrant by Health and Safety Inspectors are Unconstitutional under Fourth and Fourteenth Amendments (Camara v. Municipal Court of the City and County of San Francisco, 87 S.Ct. 1727, 1967)

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RECENT DECISIONS

SEARCH AND SEIZURE: MUNICIPAL ORDINANCES PERMITTING SEARCHES WITHOUT WARRANT BY HEALTH AND SAFETY INSPECTORS ARE UNCONSTITUTIONAL UNDER FOURTH AND FOURTEENTH AMENDMENTS. Lessee of ground floor of apartment building was convicted of violating San Francisco Housing Code by refusing to permit warrantless inspection of his premises by a health and safety inspector. *Held,* judgment vacated. Administrative searches by municipal health and safety inspectors constitute significant intrusions upon interests protected by the Fourth Amendment. *Camara v. Municipal Court of the City and County of San Francisco,* 87 S. Ct. 1727 (1967).[1]

DEVELOPMENT OF THE PROBLEM

The development of industrial society and the growth of large cities have given rise to may social problems requiring the intervention of government. Much of what was once regarded as strictly private, such as the cleanliness of a person's home, has been brought into the domain of public regulation because of abuses that demand correction for community welfare. Nearly all state and municipal codes sanction warrantless inspection of private dwellings by health inspectors, building inspectors, fire inspectors and other such officials.[2] A Montana statute is typical:

> The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality where a fire department is established, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determinining whether the building or premises conforms to the laws and rules relating to fire hazards and fire safety.[3]

The unqualified right granted by such statutes to enter all buildings

[1]See v. City of Seattle, 87 S.Ct. 1737 (1967), was decided by the Supreme Court on the same day as *Camara.* The dissenting opinion of Justices Clark, Harlan and Stewart to both cases appears at 87 S.Ct. 1741. In the *See* case a warehouse owner was convicted of violating Seattle Fire Code by refusing to submit to fire inspection without a search warrant. The Supreme Court reversed the conviction, holding that "only the basic component of a reasonable search under the Fourth Amendment — that it not be enforced without a suitable warrant procedure — is applicable . . . to business as well as to residential premises." In the majority opinion, Justice White stated: "We do not imply that business premises may not reasonably be inspected in many more situations than private homes, nor do we question such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product. Any constitutional challenge to such programs can only be resolved . . . on a case-by-case basis under the general Fourth Amendment standard of reasonableness." *Id.* at 1741. Because the *See* holding is narrow in an area where the scope of governmental regulation is broad, and most of the problems raised by the decision remain to be answered on a case-by-case basis, the discussion here is limited to the *Camara* case — the requirement of a warrant for an administrative search of residences.

[2]The enactments differ in detail but are largely uniform in the kind of authority they confer. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 246 (1966).

[3]REVISED CODES OF MONTANA, 1947, § 82-1218 (Supp. 1967).

for an administrative inspection is in question in *Camara v. San Francisco*. The Fourth Amendment provides that

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The question is whether statutes authorizing administrative inspections of private dwellings at reasonable times without a search warrant violate the Fourth Amendment guarantee of right of privacy.

The question was first raised in 1950 in *District of Columbia v. Little*,[4] but the constitutional issue was expressly avoided by a majority of the court because the case could be decided on other grounds.[5] In a dissenting opinion, Justice Burton, with whom Justice Reed joined, discussed the constitutional issue saying that the "reasonable, general, routine, accepted, and important character" of the health inspection squared fully with the requirements of the Constitution.[6]

The constitutional issue could not long be avoided as more states and municipalities authorized warrantless administrative inspection. It was finally met nine years later in *Frank v. Maryland*.[7] The case arose under a Baltimore ordinance providing that

> [w]henever the Commission of Health shall have cause to suspect that a nuisance exists in any house, cellar, or enclosure, he may demand entry therein in the daytime, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for each refusal the sum of twenty dollars.[8]

Acting on a complaint from a resident that rats were infecting her basement, a health inspector was dispatched to inspect the houses in the neighborhood. He was refused permission to inspect Frank's basement. Shortly thereafter, Frank was arrested, convicted and fined twenty dollars. In a five to four decision the Supreme Court upheld the constitutionality of the inspection.

[4]District of Columbia v. Little, 339 U.S. 1 (1950).

[5]Miss Little was charged with interfering with a health inspector in the course of his duty. Justice Black, speaking for six members of the Court, was of the opinion that "mere refusal to unlock the door accompanied by remonstrances on substantial constitutional grounds was not the kind of interference prohibited by the regulation." Justice Black applied the "sound general policy against deciding constitutional questions if the record permits final disposition of a cause on non-constitutional grounds." *Id.* at 3-6. A finding in the Court of Appeals was also in favor of Miss Little, but was decided there squarely on constitutional grounds. Judge Prettyman stated: "If private homes are opened to the intrusion of government enforcement officials, at the wish of those officials, without the intervening mind and hand of a magistrate, one prop of the structure of our system is gone and an outstanding characteristic of another form of government will have been substituted." 178 F.2d 13, 16 (D.C. Cir. 1949).

[6]*District of Columbia v. Little, supra* note 4, at 7.

[7]Frank v. Maryland, 359 U.S. 360 (1959).

[8]BALTIMORE CITY CODE art. XII, § 120. *Cited in Frank v. Maryland, supra* note 7, at 361.

Speaking for the majority, Justice Frankfurter reviewed the historical background of the Fourth Amendment concluding that the searches which the framers had sought to proscribe were those for evidence of crime or for goods subject to confiscation.[9] Justice Frankfurter was not only impressed by the fact that the inspections were designed to protect vital community interests, but also by the reasonableness of the inspection procedure.

> Valid grounds for suspicion of the existence of a nuisance must exist. . . . Here was no midnight knock on the door, but an orderly visit in the middle of the afternoon with no suggestion that the hour was inconvenient.[10]

A search warrant should not be issued, in Frankfurter's view, because the standards for issuance of a warrant would have to be considerably reduced from those needed for a warrant in criminal cases, thus leading to a "synthetic search warrant."[11]

Chief Justice Warren and Justices Black and Brennan joined Douglas in dissent. Five basic propositions were advanced by them to justify including the administrative search by health and safety inspectors within the restrictions of the Fourth Amendment: (1) History shows that the Fourth Amendment has a much wider frame of reference than mere criminal prosecutions;[12] (2) The Court has continually emphasized that a search without a warrant can be made only in exceptional circumstances,[13] and the concept of extraordinary situations can apply to administrative searches as well as to searches for evidence of crime;[14] (3) Police officers might be encouraged to utilize health inspectors to search for evidence of crime in the guise of a health inspection;[15] (4) The requirement of a warrant would not imperil the public health program since refusals to co-operate are extremely rare; [16] and (5) The warrant will not be "synthetic" since it will be issued only when a person refuses to permit warrantless inspection, and a judicial officer authorizes the inspection on a showing that it is justified by a reasonable government interest.

[9] *Frank v. Maryland, supra* note 7, at 365-6.

[10] *Id.* at 366.

[11] *Id.* at 373.

[12] Justice Douglas argued that the distinction between civil and criminal searches in a case such as this one is invalid because failure to abate the nuisance gives rise to criminal prosecution. He quotes extensively from Judge Prettyman in *District of Columbia v. Little, supra* note 4. Justice Douglas also gives a different interpretation to the history relied upon by Frankfurter to show the intended scope of the Fourth Amendment concluding that the framers intended to include administrative searches. *Frank v. Maryland, supra* note 7, at 376-382.

[13] Johnson v. United States, 333 U.S. 10, 14 (1948); Trupiano v. United States, 334 U.S. 699, 705 (1948); McDonald v. United States, 335 U.S. 451, 454-5 (1948).

[14] *Frank v. Maryland, supra* note 7, at 380-381.

[15] *Id* at 382.

[16] In Baltimore, while inspections averaged more than 30,000 per year from 1954 to 1958, refusals to permit inspection averaged only one per year. Douglas stated: "One rebel a year is not too great a price to pay for maintaining our guarantee of civil rights in full vigor." *Id* at 384.

One month after the *Frank* decision, the dissenters showed their determination to keep the issue of administrative searches alive by forcing a decision in *Ohio Ex Rel. Eaton v. Price,*[17] a case similar to *Frank v. Maryland.* Although the *Eaton* case has no weight as precedent, since it was affirmed by an equally divided Court, it did point out a broadening of the *Frank* decision. In *Eaton* there was no reason to believe that a violation of the health codes existed on the premises of the defendant, nor that the inspection was part of any routine plan.[18] In the *Frank* case a half ton of straw, trash, and rat feces were found in the defendant's yard, and a neighbor had complained of rats.[19] Despite the distinction, four members of the Supreme Court—Justices Frankfurter, Clark, Harlan, and Whittaker—found the *Frank* case "to be completely controlling upon the Ohio decision [*Eaton v. Price*]."[20]

From the time of the *Eaton v. Price* decision in 1959 to *Camara v. San Francisco* in 1967, the United States Supreme Court did not consider the constitutionality of warrantless inspections by municipal safety and health inspectors.[21] By the narrowest possible majority, such warrantless inspections had been approved. But three signals for possible change could be seen. First, the *Frank* rationale was broadened by *Eaton v. Price.* Second, Justice Douglas argued in the *Frank* dissent that warrantless administrative searches would encourage police to collude with administrative inspectors to search for evidence of crime. This threat became reality in another 1959 Baltimore case in which lottery tickets were seized under the guise of a health inspection.[22] Finally, two justices who had voted with the majority in *Frank v. Maryland*—Frankfurter and Whittaker—were no longer on the court.[23]

[17]360 U.S. 246 (1959). There was evidence that this move was to embarass the majority. In addition to being so soon after the *Frank* decision, the dissenters knew that Justice Stewart would almost certainly absent himself since his father was a member of the Ohio Supreme Court at the time *Eaton v. Price* was reviewed. The probable result would be an equally divided court. *See Landynski, supra* note 2, at 253. The four Justices who voted against noting probable jurisdiction took the unprecedented step of explaining their views before the case was tried on its merits. Justice Brennen answered lecturing them for their indiscretion. *Eaton v. Price, supra,* at 247-249.

[18]Eaton v. Price, 168 Ohio St. 123, 151 N.E.2d 523, 525 (1958).

[19]*Frank v. Maryland, supra* note 7, at 361.

[20]*Eaton v. Price, supra* note 17, at 248.

[21]For cases involving the constitutionality of searches for evidence of crime during this period, *see* Mapp v. Ohio, 367 U.S. 643 (1961) *and* Ker v. California, 374 U.S. 23 (1962).

[22]Maryland v. Pettiford, Supreme Bench of Baltimore City, DAILY RECORD (Dec. 16, 1959). In this case a police officer assigned to the Sanitation Department gained entrance to a home without a warrant for the purpose of spying on an illegal lottery while ostensibly making a health inspection. Lottery slips were seized and, over defendant's objection, were received in evidence in a criminal trial. The Supreme Bench of Baltimore City excluded the evidence and reversed the conviction. *See* dissenting opinion of Justice Douglas in Abel v. United States, 362 U.S. 217, 243 n. 2 (1960). It can be argued, of course, that such application of the exclusionary rule diminishes the importance of Douglas's argument that individual rights will be seriously infringed by collusion between health inspectors and police.

[23]Justice White replaced Whittaker in 1962. Arthur Goldberg replaced Justice Frankfurter in 1962, and Justice Fortas replaced Goldberg in 1965. The four justices who had dissented to the decisions of *Frank v. Maryland* and *Eaton v. Price* — Chief Justice Warren and Justices Douglas, Black and Brennan — were joined by Justices

THE CAMARA DECISION

The question to be decided in *Camara* was whether administrative inspections should be controlled by the Fourth Amendment. In theory each individual has a right to the privacy of his "person, house, papers and effects." And this privacy cannot be invaded except on a showing of probable cause to warrant an intrusion. From a more pragmatic viewpoint, however, the requirements for a search warrant based upon the traditional requirements of "probable cause" would seriously hamper the effective administration of sanitation and safety codes.[24] Further, the inspections involve a relatively limited invasion of privacy since they are not personal in nature. The significance of such an invason, as a practical matter, may not be worth the expense and delay of obtaining a warrant.

Camara arose under a section of the San Francisco Municipal Code stating that inspectors of administrative departments "shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."[25] After being informed by a building inspector that a building occupancy permit did not allow residential use of the ground floor, Ronald Camara refused to allow inspection of his ground floor apartment without a search warrant. He was arrested and released on bail. California courts denied his petition for hearing and he appealed to the United States Supreme Court.[26] Speaking for the majority, Justice White re-examined the basic arguments of the *Frank* majority. First, he disagreed that the interests at stake in municipal inspection cases are merely "peripheral" to the Fourth Amendment. "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."[27] Secondly, even though the inspections are "designed to make the least possible demand on the individual occupant," the occupant has no way of knowing if enforcement of the municipal code requires inspection of his premises or if the inspector is acting under proper authorization.[28] Finally, the public need for warrantless administrative searches is not conclusive. "It has nowhere been urged that fire, health, and housing code inspection programs could not

White and Fortas to make up the majority in *Camara v. San Francisco*. The dissenters were the three remaining Justices of the *Frank* majority — Justices Harlan, Clark and Stewart.

[24]The requirement of "probable cause" is discussed more fully below. *See* text at notes 33 and 34, *infra*.

[25]SAN FRANCISCO MUNICIPAL CODE § 503. This code does not have the "cause" requrement of the Baltimore code. *See* note 8, *supra*. Although *Frank v. Maryland* can arguably be distinguished from *Camara* on this basis, the Court attacks the entire *Frank* decision.

[26]He sought a writ prohibiting his prosecution in California Municipal Court. California Superior Court denied the writ, the California District Court of Appeals affirmed, and the California Supreme Court denied a petition for hearing.

[27]Camara v. City of San Francisco, 87 S.Ct. 1727, 1732 (1967).

[28]*Id.*

achieve their goals within the confines of a reasonable search warrant requirement."[29] Following Douglas' dissent in *Frank*, Justice White strongly attacked the argument that the warrant for sanitaton inspection would be merely a "synthetic warrant":

> **The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard.[30]**

In the dissent to *Camara* Justice Clark followed closely the position of the majority in *Frank v. Maryland*. The inspections, he insisted, were conducted in a reasonable manner in response to the great need for health and safety inspections. Since the Fourth Amendment prohibits only those searches which are "unreasonable", there is no necessity for a warrant to conduct a health or safety inspection. "Why the ceremony, the delay, the expense, the abuse of the search warrant? In my view that will not only destroy its integrity but will degrade the magistrate issuing them and soon bring disrepute not only to the practice but upon the judicial process."[31] Justice Clark further argued that the number of refusals to permit entry without a warrant would increase greatly if warrantless inspections were made voluntary.[32]

ANALYSIS OF CAMARA

The problem facing the Supreme Court in *Camara* was one of constitutional vagueness. Since historical interpretation of the Fourth Amendment did not provide an answer, the Court resorted to an examination of the conflicting social interests involved. In *Frank v. Maryland* the Court balanced the scales in favor of the public need for compliance with minimum health and safety standards at the expense of the individual right to privacy. *Camara v. San Francisco* tipped the scales the other way, but not so far as to entirely defeat one side for the elevation of the other. The aim of the Court in *Camara* is to protect the individual's right to privacy without greatly hampering the effective administration of sanitation and safety programs.

The facts necessary to show "probable cause" for an adminstrative inspection are not the same as for the search for evidence of crime. Although the criteria for determining probable cause to search for evidence of crime vary with particular circumstances, a general test can be stated as follows: Whether facts and circumstances before the issuing officer are such as to warrant a man of prudence and caution in believing that a crime has been, or is being, committed on the premises.[33] The require-

[29] *Id.* at 1733.
[30] *Id.* at 1736.
[31] *Id* at 1745.
[32] For support Clark cites statistics from a voluntary inspection program in Portland, Oregon, where entry without a warrant was refused in one out of six cases. Under the Baltimore Code, refusals were significantly fewer. *See* note 16, *supra.*
[33] *See* Go-Bart Importing Company v. United States, 282 U.S. 344 (1931). *See also* 79 C.J.S. *Search and Seizure* § 74(*b*) (1952).

ment is less than certainty or proof, but more than suspicion or possibility. Probable cause to issue a warrant for an administrative inspection, however, does not require a reasonable belief in the commission of crime, but proof that a valid public interest justifies the contemplated intrusion.[34]

> In determining whether a particular inspection is reasonable—and thus in determining whether there is probable cause to issue a warrant for that inspection—the need for the inspection must be weighed in terms of reasonable goals of code enforcement.[35]

By the terms of the Fourth Amendment, a search warrant must particularly describe the "place to be searched" and the "things to be seized." It is necessary that a search warrant pursuant to a criminal investigation contain such descriptions,[36] but the warrant authorizing an administrative inspection apparently need not be so specific. The aim of administrative inspections is to secure general compliance with minimum physical standards for private property, rather than seize particular evidence of crime in a particular dwelling. The standards to determine probable cause for an administrative inspection, therefore, will vary with the municipal program being enforced, and "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."[37]

The majority of the Court in *Frank v. Maryland* did not want to reduce the requirements for "probable cause" of an administrative inspection below those required for the search pursuant to criminal investigation because the resulting warrant would be "synthetic."[38] To satisfy the probable cause requirement as set forth by the Court in *Camara,* it will apparently be sufficient to affirm, under oath, that a portion of the city is in danger of epidemic or fire unless each dwelling in the area is inspected and made to conform to the minimum standards of sanitation and safety.[39] Is the valid public interest for the intrusion so easy to show that the issuance of the search warrant under the "probable cause" requirements of *Camara* would be merely a ceremony delaying the search

[34] "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." *Camara v. San Francisco, supra* note 27, at 1736.

[35] *Id* at 1734.

[36] *See* United States v. Alexander, 202 F. Supp. 209 (D.Minn. 1961). *See also* 79 C.J.S. *Search and Seizure* § 75 (1952).

[37] *Camara v. San Francisco, supra* note 27, at 1736.

[38] *See* note 11, *supra.*

[39] The Court in *Camara* does not specifically address itself to the kind of situation raised by the facts of the *Frank* case where the delapidated condition of Frank's house and the pile of straw and rat feces in the yard gave the inspector cause to believe that Frank's particular dwelling was the source of rats in the neighborhood. In such a situation at the present time, however, it seems clear that a warrant could be obtained under the guidelines of the *Camara* decision if the inspector would show *either* his reasonable belief that a violation of the health code exists within Frank's house, *or* that public interest demands an inspection of Frank's house and houses nearby if the people in that area of the city are to be protected from disease.

and producing a "synthetic" search warrant? It will not be difficult for health and safety officials to show that a valid public interest justifies the intrusion contemplated because public health and safety are the central concerns of their work. In this sense the warrant will be synthetic. But even with the reduced requirements for probable cause, the warrant for an administrative inspection will serve to show the occupant that the actions of the inspector are authorized; and that he is not conducting the search on a personal whim, but on a showing to a judicial officer that reasonable code enforcement demands inspection of the dwelling.

One of the jusifications urged by the *Frank* majority for permitting administrative health and safety inspections without a warrant was that such inspections "touch at most upon the periphery of the important interests safeguarded" by the Fourth Amendment.[40] Under this view the administrative inspection does not fall within the safeguards of the Fourth Amendment because it is not a search for evidence of criminal action. The *Camara* majority disagrees. Like most regulatory laws, fire, health and housing codes are enforced by criminal process.[41] It is not a crime to allow the condition of one's dwelling to fall below the minimum standards of a health or safety code,[42] but failure to alleviate the condition within a specified time when ordered to do so by an inspector and refusal to permit inspection are crimes. They are punishable by fine or even jail sentence.

At the present time there exist two distinguishable types of search warrants and the possible development of a third. Where search pursuant to criminal investigation is contemplated, probable cause requirements are those traditionally required.[43] To issue a warrant for an administrative health or safety inspection when entry is refused by the owner or occupant of a dwelling, probable cause must be weighed in terms of the reasonableness and validity of the public interest protected by the inspection. These warrants are issued by a judicial officer. A possible third type of warrant is the administrative search warrant issued by an official of the administrative department concerned with the search. The development of such a warrant is suggested by Justice Clark in his dissent to *Camara*.

> Under the probable cause standard laid down by the Court, it appears to me that the issuance of warrants could more appropriately be the function of the agency involved than that of the magistrate. This would also relieve magistrates of an intolerable

[40] *Frank v. Maryland, supra* note 7, at 367.

[41] In Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965), the Court held that the exclusionary rule applies to forfeiture proceedings as it does to criminal prosecutions because of the criminal nature of the penalty imposed in a forfeiture proceeding. The situation is analogous to the fines imposed for refusing to permit an administrative inspection.

[42] For this reason the term "search for evidence of crime" has been used here to distinguish the search pursuant to strictly criminal investigation from the administrative health or safety inspection.

[43] 79 C.J.S., *supra* note 33.

burden. It is therefore unfortunate that the Court fails to pass on the validity of the use of administrative warrants.[44]

Present state and municipal codes authorizing administrative searches of dwellings do not provide for a warrant procedure.[45] Hence, the validity of a search warrant issued by a municipal commissioner of health, or similar official of an administrative agency, on probable cause requirements consistent with *Camara* remains an open question. It seems most likely, however, that the administrative search warrant would not be allowed because the party warranting the need to search would not be sufficiently disinterested to insure the complete protection of Fourth Amendment interests.

CONCLUSION

Camara sets the constitutional guidelines for administrative searches by inspectors of sanitation and health departments: a statute requiring a person to submit to a warrantless inspection of his premises violates the Fourth Amendment protection from unreasonable searches. The initial effect of the decision will be to cause changes in hundreds of state and municipal statutes. Much confusion will likely occur until such statutes, inspection procedures, and warrant procedures are made to conform. But many questions remain unanswered. How great a showing of "probable cause" will a magistrate require? Will the magistrate apply "probable cause" requirements consistent with *Camara*? Since the Court does not specifically pass on the validity of administrative warrants, will such warrants ever be allowed? Will the number of persons requiring a warrant before allowing inspection of their premises significantly increase? And will the pragmatic considerations of the expense and delay involved in obtaining a warrant eventually outweigh the need for protection of individual rights?

Until the *Camara* decision, the Fourth Amendment was construed so that a man suspected of crime had a right to protection against search of his home without a warrant, but the privacy of the law-abiding citizen could be invaded without a warrant by an administrative inspector. The Court in *Camara* required a warrant to inspect the home of a law-abiding citizen if he does not consent to a warrantless search. There were two conflicting objectives before the Court: (1) the desire to bring the administrative inspection within the requirements of the Fourth Amend-

[44]*Camara v. San Francisco, supra* note 27, at 1742 n. 1.

[45]Montana Statute permits the Board of Pardons, an administrative body, to issue a warrant for the arrest of a released prisoner for violations of the terms of his release. REVISED CODES OF MONTANA, 1947, § 94-9838. Under the Immigration and Naturalization Act, an arrest warrant may be issued by the District Director of the Immigration and Naturalization Service. 8 C.F.R. § 242.2(*a*) (1967). The validity of such a warrant was upheld by the Supreme Court in Abel v. United States, 362 U.S. 217 (1960). The *Abel* case involved a search pursuant to deportation, not health standards; the warrant was for arrest, rather than search; and Abel was an alien, not a citizen. The case is used here merely to point to the validity of administrative action, without the intervening hand of a magistrate, in the field of search and seizure.

ment, and (2) the social need for effective sanitation and safety programs. To accomplish both of these ends while requiring the type of warrant traditionally known in the search for evidence of crime was not possible. The strictness of the "probable cause" standards required in a search pursuant to criminal investigation would make a warrant difficult, if not impossible, to obtain. Even if this were possible, such a method would be unlikely to permit a search of all the buildings in a particular district—a procedure which is necessary if an area inspection is to be effective. The Court in *Camara* solves the dilemma by setting reduced standards of "probable cause" to warrant an administrative inspection. The *Camara* solution is reasonable and a long standing constitutional question is finally settled, but the resolution of the practical administrative problems created by the decision will not be found quickly.

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INSURANCE: LIABILITY OF INSURANCE COMPANY FOR REFUSAL TO SETTLE WITHIN THE POLICY LIMITS. Plaintiff owned a building which was insured for general liability by the defendant. Plaintiff's tenant fell through a stairway which was negligently maintained. The tenant, who suffered severe mental and physical injuries, brought an action against the plaintiff claiming $400,000 in damages but subsequently offering to settle for $9,000. Although the insurance policy had a limit of $10,000, the insurer refused the offer of settlement. The tenant pursued her action against the plaintiff and recovered a judgment of $101,000. The insurer paid the $10,000 policy limit and disclaimed further liability. Plaintiff then brought this action to recover the excess of the judgment over the policy limits from the insurer. *Held,* by refusing the resonable settlement offer, the defendant breached its duty to act in good faith and was liable for the entire judgment against the plaintiff. *Crisci v. Security Ins. Co.,* 58 Cal. Rptr. 13, 426 P.2d 173 (1967).[1]

In the instant case, the insurer paid $116,000[2] more than its policy limit because it refused to settle the claim within the limits of the policy. This case illustrates the conflict between the interests of the insurer and insured, which arises whenever an injured party offers to settle within the policy limits.[3] Liability insurance contracts require the insurer to pay only the sums which the law determines the insurer owes to the injured party.[4] Often it serves the insurer's financial interests to refuse to settle because a subsequent court action may determine: (a) that there is no

[1] *See also* Potomac Ins. Co. v. Wilkins Co., Inc., 376 F.2d 425 (10th Cir. 1967).
[2] The insurer paid a total of $126,000: $10,000 policy limits, $91,000 excess judgment, and $25,000 for mental suffering caused by the insurer's refusal to settle.
[3] Radcliff v. Franklin National Ins. Co., 208 Ore. 1, 298 P.2d 1002, 1011 (1956).
[4] *Id.*