

Defending Your Right Against Unreasonable Searches



By Paul Engel

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- What are the rules when a government agent comes to your door?
- When does a government actor need a warrant to enter your home?
- Looking at some previous Supreme Court cases, we'll see that you may have more legal authority than you realize.

When a government agent stands at your door asking to come in, do you know what your rights are? What would you do if that agent tries to enter your house illegally? If that day comes, the difference between liberty and incarceration may well depend on how well you know your rights and how prepared you are to assert and defend them.

A situation like this was at the core of a 1967 case involving Roland Camara. He was charged with violating the San Francisco Housing Code for refusing to allow city housing inspectors to enter his home without a warrant. The city claimed that the ground-floor quarters violated the building's occupancy permit. Mr. Camara sued in State Superior Court, claiming the inspection ordinance was unconstitutional because it failed to require a warrant for inspections. The court denied his request for a writ of prohibition, relying on the 1959 case *Frank v. Maryland*.

Frank v. Maryland

In the case of Frank v. Maryland, a Baltimore City health inspector discovered evidence of a rat infestation at the rear of Frank's home. When Frank refused access to the health inspector, who did not have a warrant to search, an arrest warrant was sworn out under Article 12 §120 of the Baltimore City Code.

Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, 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 every such refusal the sum of Twenty Dollars.

Frank v. Maryland

Is a city law that allows government agents access to your home valid? After all, wouldn't such a law violate the Fourth Amendment's protections against unreasonable searches? The court looked at history and the laws of Maryland and came to this conclusion:

In light of the long history of this kind of inspection and of modern needs, we cannot say that the carefully circumscribed demand which Maryland here makes on appellant's freedom has deprived him of due process of law.

Frank v. Maryland

What I found interesting in this opinion is the fact that while the court looked at the Fourteenth Amendment, they paid little attention to the Fourth. Notice the court found that an unwarranted search did not violate due process, but said nothing about the search being unreasonable. As I understand the court's reasoning, since a health inspector is not law enforcement, meaning the inspector is not looking for evidence of a crime, the Fourth Amendment does not apply. This opinion

was the basis for the decision of the Superior against Camara, which was upheld by the District Court.

Camara v. Municipal Court

Which brings up back to 1967 and the Camara v, Municipal Court case. This time the court saw things differently.

1. *The Fourth Amendment bars prosecution of a person who has refused to permit a warrantless code enforcement inspection of his personal residence. Frank v. Maryland, supra, pro tanto overruled.*

Camara v. Municipal Court

The Fourth Amendment prohibits unreasonable searches and seizures. By extension, you cannot be prosecuted for refusing to allow a warrantless search. Based on this, the court overturned Frank v. Maryland, pro tanto, latin for “only to the extent”. That means only the question of warrantless code enforcement inspections are affected.

(a) The basic purpose of the Fourth Amendment, which is enforceable against the States through the Fourteenth, through its prohibition of “unreasonable” searches and seizures is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.

Camara v. Municipal Court

I know the courts claim the Bill of Rights doesn't apply to the states except through the Fourteenth Amendment, which I've dealt with before. Notice though, that the court says the purpose of the Fourth Amendment is to protect you from arbitrary invasion by government officials. The Fourth Amendment isn't simply about privacy, but your own security. Is that what the Constitution actually says?

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment IV

It's quite simple; the Fourth Amendment doesn't simply protect you from arbitrary searches, but from unreasonable ones. What makes a search reasonable? One with a warrant based in probable cause or an exigent (urgent) circumstance. Or as the court put it, "carefully defined exceptions".

(b) With certain carefully defined exceptions, an unconsented warrantless search of private property is "unreasonable."

Camara v. Municipal Court

One of the most common examples of the "carefully defined exceptions" the court is referring to is a situation where human life is in imminent danger, such as a fire or cries for help.

(d) Warrantless administrative searches cannot be justified on the grounds that they make minimal demands on occupants; that warrant in such cases are unfeasible; or that area inspection programs could not function under reasonable search warrant requirements.

Camara v. Municipal Court

It's not a question of how invasive the search is, how much of an impact it has on the occupants, or that the inspection program couldn't function if they had to obtain warrants; a law claiming to allow warrantless inspections is not justified under the Fourth Amendment. Of course, that's not to say that the court doesn't see a legitimate reason for inspections.

2. Probable cause upon the basis of which warrants are to be issued for area code enforcement inspections is not

dependent on the inspector's belief that a particular dwelling violates the code, but on the reasonableness of the enforcement agency's appraisal of conditions in the area as a whole. The standards to guide the magistrate in the issuance of such search warrants will necessarily vary with the municipal program being enforced.

[Camara v. Municipal Court](#)

If code enforcement can show the reasonableness of their inspections, then the court has said that satisfies probable cause. However, is that a probable cause? Not according to the Free Legal Dictionary:

Apparent facts discovered through logical inquiry that would lead a reasonably intelligent and prudent person to believe that an accused person has committed a crime, thereby warranting his or her prosecution, or that a Cause of Action has accrued, justifying a civil lawsuit.

Probable cause is a level of reasonable belief, based on facts that can be articulated, that is required to sue a person in civil court or to arrest and prosecute a person in criminal court. Before a person can be sued or arrested and prosecuted, the civil plaintiff or police and prosecutor must possess enough facts that would lead a reasonable person to believe that the claim or charge is true.

[Probable Cause – The Free Legal Dictionary](#)

So how can the court claim probable cause for code enforcement if there isn't a reasonable belief that a civil or criminal violation has occurred? I cannot see one.

- 3. Search warrants which are required in nonemergency situations should normally be sought only after entry is refused.*

Camara v. Municipal Court

This sentence is important. The court isn't asking code enforcement to get a warrant every time they want to perform an inspection, but only if entry is first refused. That doesn't mean you shouldn't ask for a warrant when they show up, just that they likely won't bother getting one unless you ask for it.

4. In the nonemergency situation here, appellant had a right to insist that the inspectors obtain a search warrant.

Camara v. Municipal Court

The court sums up their position here. Unless there is an emergency, the appellant had a right to insist that inspectors get a search warrant to enter their property, and so do you.

Conclusion

So where does that leave you if and when you find a government agent at your door? First, unless they have a warrant, you are not required to grant them entry. Even if you don't think you've done anything wrong, I've had multiple attorneys tell me there is no benefit to allowing law enforcement entry to your home, business, or even your car. The warrant, and the probable cause that is required to get one, is for your protection. Don't let code enforcement, or any other government agent claim they do not need a warrant to search; that is only true if you grant them access or if there is an articulable emergency. If they threaten to have you arrested for refusing them, remind them of the Fourth Amendment and the fact that the Supreme Court has confirmed that you cannot be prosecuted for refusing to allow an inspection without a warrant. If you can remember the case *Camara v. Municipal court*, even better.

I'm still concerned about the court's willingness to defer to

so called “compelling government interest” over the language of the Constitution. According to the court in *Camara*, as long as the government agent can convince a judge that the inspection is “reasonable”, then the warrant can be issued. Which brings us back to the big question: What is a reasonable search or seizure?

Suitable; just; proper; ordinary; fair; usual.

[Reasonable – The Free Legal Dictionary](#)

What makes a search just? When does “public good” outweigh your right to private property? And just how does the reasonableness of an inspection equate to probable cause for a warrant? These are all good questions, ones that should be answered before government agents start getting warrants to perform “inspections” on your property.

To sum this all up, this is an excellent examples of the words of John Jay:

Every member of the State ought diligently to read and to study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will sooner perceive when they are violated, and be the better prepared to defend and assert them.

John Jay, First Chief Justice of the supreme Court

Having read the Constitution, we have a better understanding of our rights, which means we should quickly recognize when they are violated. And having read a bit of court opinion, we are even more prepared to defend and assert them. I hope this helps you feel more prepared and secure in your home. I know it makes me feel more secure in mine.

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