



Department of State
Building Standards and Codes

Lesson 6

Legal Aspects of Inspection

Search and Seizure

January 26, 2024

Objectives

- Describe the Authority for Inspection in relation to the Right of Privacy
- List Acceptable Methods of Entry onto Private Property
- Describe the Consequences of an Improper Inspection



Authority for Inspections

Many local ordinances have a

“Refuse to Allow Inspection” clause

or

“Authorize” code official to conduct inspections

Determined to be in conflict with constitutional rights



Frank v. Maryland- 1959

- Inspection for Rat complaint
- Frank would not consent to inspection
- Fined \$20 for his refusal
- Appealed to Supreme Court
 - Court allow the warrantless search
 - Allowed the fine for refusal to allow the inspection



Why did Frank Appeal?

- US Constitution
- 4th Amendment/14th Amendment
- Individuals Right to Privacy

The Supreme Court did not view “administrative” actions as rising to the same level as “criminal” actions

The Bill of Rights

Ratified December 15, 1791

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

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.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

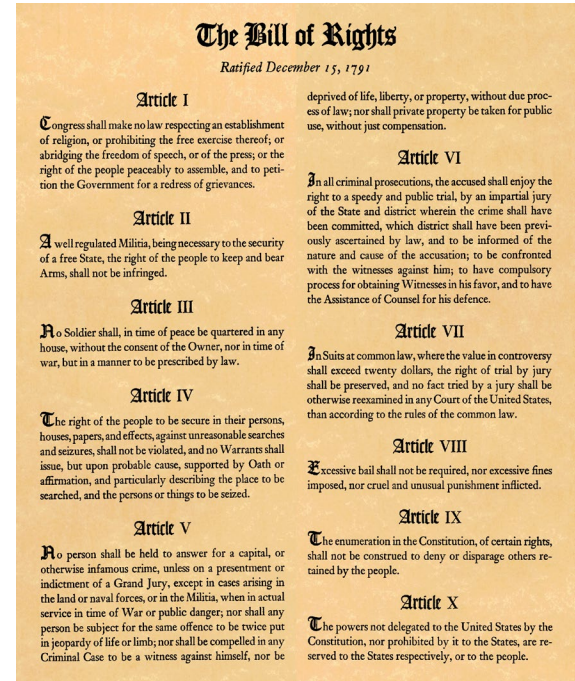
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

PLAY

Police Power of a Municipality

Is Restricted By:

- U.S. Constitution
 - 4th Amendment
 - 14th Amendment
- N.Y.S. Constitution
 - 1st Article
 - 12th Article



RESULTS: Camara v. San Francisco See v. Seattle

- Statute cannot Authorize Warrantless Search
- Search without Proper Consent is Unreasonable
- Refusal of an inspection should not subject individuals to criminal penalties
- WARRANTS should be sought only after entry is refuse
- Appellant cannot be prosecuted for exercising his Constitutional Right



Entry into Private Property



- Consent
- Search Warrant
- Emergency Circumstances



Valid Consent

Option #1 for the Code Official

What is the basis for the validity of the consent?

- Privacy Interest
- Given Freely
- Informed
- Competent



Test For Valid Consent

Consent from ...

- Person with Privacy Interest to be Lost
 - Proprietary Interest
 - Lawful Occupant
- Examples:
 - Owner/Owner's Agent
 - Landlord/Lessor
 - Tenant/Lessee



Test For Valid Consent Given Freely ...

- Threats
- Right to Refuse
- Accustomed to Officials
- In Custody
- Attitude - Prior to Giving Consent



Test For Valid Consent Informed ...

- Clear
- Convincing
- Positive



Test For Valid Consent

Competent to Consent?

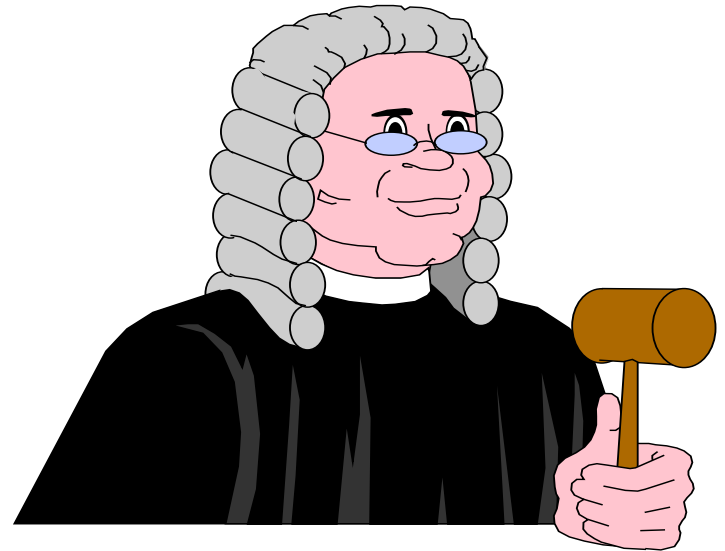
- Age of Consent in NY
- Mental Capacity
- Comprehension



Search Warrant

Option #2 for the Code Official

- IF ... Refused Entry
- SHOW ... Probable Cause



“Probable Cause” Concept

- Developed in criminal investigations
- Standards for administrative search (inspection) not as strict:
 - Condition of the neighborhood
 - Nature of a building, structure
 - Passage of time



Search Warrants

- Request made to Local Criminal Court by:
 - Public Servant acting in the course of official duties
- Probable Cause
 - Evidence of an offense is present in the property



Polling Question

Which of the following is NOT considered a basis for validity of consent?

- a. The person has a privacy interest
- b. The person is coerced
- c. The person is informed as to why entry is requested
- d. The individual understands why entry is requested



“Property” that can be Seized

- Stolen
- Unlawfully possessed or contraband
- Used to commit or conceal the commission of an offense
- Evidence to demonstrate an offense was committed



Application for Search Warrant

Contents of Warrant

- Heading
- Deposition
- Submit to Judge

- The Designated Premises
- The Designated Property
- The Information



Execution of Warrant

- MUST be executed by a Police Officer
- Identifies Property and what can be Searched For
- Issued for the Property
- 6 AM to 9 PM
- Allows Forcible Entry



Search Warrant Return

- By the Police Officer
- Without Unnecessary Delay
- List the “Evidence” Seized
 - the more information and documentation you can provide, the better



Fourth Amendment

- Forbids “Unreasonable Search and Seizure”
- Penalty is the “Exclusionary Rule”
- Search Must be Conducted Properly



Acceptable Searches

- Plain View
- Consent
- From Another's Property



Unacceptable Searches

- Intimidation
- Trespassing



Consent: Guide for Inspector

- Identify yourself and your purpose
- Ask specifically for consent
- Advise occupant of what you are there to inspect
- Advise occupant of the consequences
- Must hear the consent



Exigent or Emergency Circumstances

- All three elements **MUST** be present:
 - Serious threat to life or safety
 - So imminent that delay for warrant would harm
 - A rare occurrence



Polling Question

Which of the following is considered an unacceptable search?

- a. Waiver
- b. Trespass
- c. Forced entry
- d. Bypass



Student Activity

Video: Case Study



CASE HISTORY

>> I'd like to give
you a case in point.

Answers to exercise

