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Constitutional Law: Evidence Secured under Police Power without a Search Warrant Admissible in Criminal Prosecution

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Stedman[12] has indicated that there are four administrative alternatives, the selection of one of which should depend on the individual circumstances: (1) general freedom of the public to use with no restrictions; (2) use of the patent rights as a bargaining weapon in getting valuable concessions from others; (3) grant of nonexclusive licenses at a reasonable royalty; and (4) grant of exclusive or partially-exclusive licenses to encourage the exploitation of inventions which might not otherwise be developed. Will the government adopt any of the foregoing alternatives as policy? If so, when and in what form will this implementation take place? These questions are raised in the wake of the *Tektronix* case, but remain to be answered in the future.

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CONSTITUTIONAL LAW: EVIDENCE SECURED UNDER POLICE POWER WITHOUT A SEARCH WARRANT ADMISSIBLE IN CRIMINAL PROSECUTION

Acting under statutory authority[1] the fire chief, his employees, and other investigators entered defendant's premises to determine the cause and origin of a fire. The investigation continued over a period of several weeks and a grand jury indictment, based in part on the evidence obtained, was returned against the defendant charging him with arson. Before trial the defendant filed a motion to suppress testimony of the investigators. Defendant contended that the testimony and evidence of investigators was gained without benefit of a search warrant and therefore was inadmissible. In a five to four decision, the Iowa court held, in *State v. Rees*,[2] that no showing was made that the search violated defendant's constitutional rights. That a statutory investigation uncovers evidence that a crime has been committed does not prevent furher investigation without a search warrant; such further search does not become constitutionally unreasonable nor the evidence obtained thereby inadmissible in a criminal prosecution growing out of this investigation. Justice Rawlings, in a vigorous dissent said:

> *In effect the majority opinion holds that when peace officers, administrative agents, or others are in a place where they have a lawful right to be for conduct of a civil investigation they are, by the same token in a place where they have a lawful right to be for a search and seizure. This cannot be.*[3]

[12] Stedman, *The U.S. Patent System and Its Current Problems*, 42 TEXAS L. REV. 450, 492 (1964).

[1] IOWA CODE ANN. ch. 100, §§ 100.1-3, 100.9.10, 100.12 (1962).
[2] 139 N.W. 2d 406 (Iowa 1966).
[3] *Id.* at 419. (All italicized in original.)

Under common law a search and seizure might be unreasonable for two reasons: (1) because it was made without a warrant or the warrant used was defective; (2) the purpose of the search was to secure material not amenable to search or seizure even with a warrant.[4] Today under statutory authority private premises are subject to inspection for various reasons without a warrant. The constitutionality of such statutes has been tested several times recently and each time, such statutes have been held constitutional with one exception.[5] The contestants usually challenge these statutes on the grounds that they violate their rights under the Fourth and Fourteenth Amendments[6] of the United States Constitution. In the following cases the validity of state statutes permitting public officers to inspect private premises without a warrant will be considered. Although these cases do not deal with criminal prosecutions arising from civil inspections, they do find that such inspections are unreasonable if they are made to secure evidence of a criminal nature. The owner or occupant of the premises in each case refused to allow inspectors to enter the premises and conduct their inspections without a warrant.

In *Griviner v. State*,[7] the Maryland Court of Appeals upheld a Baltimore ordinance[8] which authorized health, fire, and building inspectors to conduct inspections to determine if premises met requirements of applicable regulations and prescribed a fine if the owner or occupier refused to allow inspection. The court said: "There is no suggestion that any of the inspection was to be used as a cover to conduct a search for any violation of the criminal law."[9]

The Missouri Supreme Court, in *City of St. Louis v. Evans*,[10] held that an ordinance, which authorized the building commissioner to enter any structure in performance of his duty and, if refused, to secure the aid of the police did not violate the privileges and immunities, equal protection, or due process clauses of the Fourteenth Amendment of the United States Constitution. It was pointed out in this case that the purpose of the inspection did not involve a criminal charge, but was only to see if there had been a violation of the ordinance.

[4] See 4 SELECTED ESSAYS ON CONSTITUTIONAL LAW 626 (1938).

[5] District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950). This was the first case to consider whether an inspection of a private home without a warrant was a violation of the fourth amendment. The Supreme Court affirmed the reversal of the trial court by the appeals court; however, the Court affirmed on the grounds that the defendant had not interferred with the inspector under the purview of the act and thereby avoided the question of the act's constitutionality.

[6] The fourth amendment secures the people *inter alia* against unreasonable searches and seizures. The fourteenth amendment provides that no state may enforce laws which abridge the privileges or immunities of the citizens of the United States.

[7] 210 Md. 484, 124 A.2d 764 (1956).

[8] BALTIMORE, MD., CITY CODE art 12, § 120 (1950).

[9] Giviner v. State, *supra* note 7 at....., 124 A2d at 774.

[10] 337 S.W.2d 948 (Mo. 1960).

The most recent case in *Camara v. Municipal Court*,[11] which held a San Francisco housing code which authorized employees of city agencies to conduct inspections at reasonable times to be valid; it being a part of a regulatory scheme which was essentially civil rather than criminal in nature, limited in scope and not to be exercised unreasonably.

The leading case is *Frank v. Maryland*,[12] where the defendant refused to allow a health inspector to enter his home without a warrant and was fined for his refusal. The Court held the fine for the refusal to allow inspection where there was probable cause was not in violation of either the fourth or fourteenth amendments. Mr. Justice Frankfurter, who took special notice that no evidence for criminal prosecution was sought to be seized, said: *"Evidence of criminal action may not, save in very limited and closely confined situations, be seized without a judically issued search warrant."*[13] Mr. Justice Douglas, speaking for the four dissenters, felt that any entrance upon private property without a warrant was unreasonable and fourth amendment protections should not be limited to searches for criminal evidence.[14]

In *Ohio ex. rel. Eaton v. Price*[15] the same question was presented, but the issue remained unresolved because of a four to four vote.[16] In light of the cases it would appear that the better rule of law, as to statutory authority to search private premises without a warrant, is: Reasonable searches under statutory authority, for the protection of public health, safety and welfare are not in violation of fourth amendment protection; however, criminal evidence may not be seized under color of such statutes and evidence so secured will be inadmissible in later criminal prosecutions.

This rule was followed in a recent New York case, *People v. Laverne*,[17] where an inspector entered defendant's dwelling under authority of a building zone ordinance,[18] which provided that a violation of its provisions was disorderly conduct and assessed a penalty. The defendant's

[11] 237 Cal. App. 2d 136, 46 Cal. Rptr. 585 (Dist. Ct. App. 1965).
[12] 359 U.S. 360 (1959).
[13] *Id.* at 365 (Emphasis added.)
[14] Mr. Justice Douglas said "Fear of trespassing on Fourth Amendment rights was expressly made the grounds for a narrow reading of statutory powers in Federal Trade Comm. v. American Tobacco Co., 264 U.S. 298, ... The 'fishing expeditions' there condemned . . . led no more directly to possible criminal prosecutions than the knock on the door in the present case." *Id.* at 375-376.
[15] 364 U.S. 263 (1960).
[16] Mr. Justice Stewart disqualified himself from sitting on the case since his father had participated, as a member of the Ohio Supreme Court, in the decision in State ex rel. v. Price.
[17] 14 N.Y.2d 304, 200 N.E.2d 441, 251 N.Y.S.2d 452 (1964).
[18] "It shall be the duty of the Building Inspector and he is hereby given authority, to enforce the provisions of this ordinance. The Building Inspector in the discharge of his duties shall have authority to enter any building or premises at any reasonable hour." VILLAGE OF LAUREL HOLLOW, N.Y., BUILDING ZONE ORDINANCE art. 10, § 10.1 (1961).

building was inspected for evidence of violation of the ordinance. These investigations later became the basis of criminal prosecutions against the defendant for violation of the ordinance which made it a criminal offense to conduct a business in a non-business zone. The majority opinion pointed out that the search here did not lead to a civil proceeding to protect the public health and welfare, but lead instead to an official search without a warrant on which criminal prosecutions were based. The court found that the searches were repugnant to constitutional protections and reversed his conviction.

The Oklahoma Fire Marshall Statute[19] grants the fire marshall and his assistants basically the same authority to investigate the origins and causes of fires as does the Iowa statute.[20] Oklahoma has yet to rule on the admissability in criminal prosecutions of evidence secured under statutory authority without a search warrant. However, the Supreme Court of Oklahoma has ruled on the question of inspection of private premises without a search warrant under statutory authority. Here, as in *Frank,* no criminal prosecution was intended as a result.

In *Jack's Supper Club Ltd.* v. *City of Norman*[21] the Oklahoma Supreme Court held that a Norman city ordinance,[22] providing that the premises of private clubs where intoxicating liquors might be consumed may be inspected by a city officer, was not void as contrary to the fourth amendment guarantee against unlawful searches and seizures. The plaintiff objected to the provision in the ordinance which permitted premises to be searched without a search warrant. The majority opinion said:

> It should be kept in mind that in passing the ordinance complained of the City of Norman is undertaking to regulate the operation of private clubs . . . all under its police power to preserve the peace and welfare of the community. The United States Constitution contains a . . . prohibition against unreasonable searches and seizures, but such prohibitions are not absolute, and it is only unreasonable searches which are are prohibited.[23]

This case is in accord with the *Frank, Giviner, Camara, and City of St. Louis* cases.

If a case similar to *Rees* was to come before the Oklahoma courts, the courts would probably follow the *Laverne* rather than the *Rees* case and hold that a search such as conducted by the Iowa officials in *Rees* would be considered unreasonable, the search not being for the protection of community peace and welfare. *Rees* appears to be contrary to current legal

[19] OKLA. STAT. tit. 74, §§ 314 (1961).
[20] IOWA CODE ANN. ch. 100, §§ 100.1-3, 100.9.10, 100.12 (1962).
[21] 361 P.2d 291 (Okla. 1961).
[22] NORMAN, OKLA., Ordinance No. 1165 § 13.
[23] Jack's Supper Club Ltd. v. City of Norman, *supra* note 21, at 295-96.