CONSTITUTIONAL LAW—WARRANTLESS SEARCHES—UNLAWFUL INVASION OF WELFARE RECIPIENT'S PRIVACY—*James v. Goldberg*, 303 F. Supp. 935 (S.D.N.Y. 1969).

Plaintiff, Barbara James, received Aid to Families with Dependent Children (hereinafter referred to as AFDC) benefits for two years.[1] At the end of the second year, her caseworker requested an appointment to visit her at her home to discuss factors regarding her continued receipt of assistance. Plaintiff offered to supply all the relevant information but would not consent to a home visit. Her caseworker then notified her that continued refusal would result in termination of her benefits. Plaintiff still would not allow a home visit. The Social Service Department's review officer, after determining such home visits were required by law,[2] upheld the caseworker's decision to terminate plaintiff's benefits.

Plaintiff brought suit in the United States District Court for the Southern District of New York, to prevent such termination upon the grounds that it would constitute a violation of both her right to be secure in her home from unreasonable searches and her right to privacy.[3] The District Court[4] ordered a convocation of a three-judge panel to consider the constitutional questions raised in plaintiff's complaint,[5] found that the action could proceed as a class action,[6] and granted a temporary restraining order protecting plaintiff and her class from denial or termination of AFDC benefits.[7]

The three-judge District Court[8] granted a mandatory injunction. The court held that to deny or terminate AFDC benefits to otherwise eligible recipients, for failure to permit AFDC officials to enter their homes without a warrant, issued upon probable cause, was in violation

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1 SOCIAL SECURITY ACT, 49 Stat. 627, 42 U.S.C. § 601 (1964). This section provides federal aid to needy families with dependent children. The aid is distributed through state programs, which have been approved by the Secretary of State. The purpose of such aid is to meet a need unmet by programs providing employment for breadwinners and to protect children in families without a breadwinner, wage earner, or father.

2 N.Y. SOCIAL WELFARE LAW § 132 (McKinney 1966); 18 N.Y.C.R.R. 351.10 and 351.21. Pursuant to these laws, Policies Governing the Administration of Public Assistance § 175 provides that mandatory visits must be made every 3 months for persons receiving AFDC benefits.

3 U.S. CONST. amend. IV.

4 James v. Goldberg, 302 F. Supp. 478 (S.D.N.Y. 1969).

5 62 Stat. 968, 28 U.S.C. §§ 2281, 2284 (1964).

6 FED. R. CIV. P. 23.

7 62 Stat. 968, 28 U.S.C. § 2284(3) (1964).

8 James v. Goldberg, 303 F. Supp. 935 (S.D.N.Y. 1969).

of their rights under the fourth amendment to the Federal Constitution.[9]

The first case[10] to deal primarily with searches of an administrative type[11] was *District of Columbia v. Little.*[12] Defendant, Little, refused to permit a health inspector investigating an alleged health violation to enter her premises.[13] The United States Court of Appeals for the District of Columbia, held that Little, in refusing entry to the inspector, was acting within her basic right to personal privacy as guaranteed by the fourth amendment.[14] The court clearly pointed out that the fourth amendment provision regarding searches is not premised upon and limited by the fifth amendment provision regarding self-incrimination.[15] Hence, to confine application of the amendment only to searches of private homes by government officers searching for evidence of a crime is wholly without merit and in fact preposterous.[16] As the court stated,

> We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor oppor-

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9 U.S. CONST. amend. IV provides:

> 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.

The basic purpose of the amendment is to protect the personal privacy, security and dignity of individuals against unwarranted or arbitrary intrusions by government officials. Camara v. Municipal Court, 387 U.S. 523 (1967); Boyd v. United States, 116 U.S. 616 (1886). *See* Schmerber v. California, 384 U.S. 757, 767 (1966); Wolf v. Colorado, 338 U.S. 25 (1949); Agnello v. United States, 269 U.S. 20 (1925); Weeks v. United States, 232 U.S. 383 (1914).

Initially, however, only cases involving intrusions by government officials seeking evidence of a criminal nature were tried. *See* Wolf v. Colorado, 338 U.S. 25 (1949); McDonald v. United States, 335 U.S. 451 (1948); Agnello v. United States, 269 U.S. 20 (1925); Weeks v. United States, 232 U.S. 383 (1914); Boyd v. United States, 116 U.S. 616 (1886).

10 Annot., 13 A.L.R.2d 969 (1950).

11 Administrative searches are searches conducted pursuant to the powers granted to an administrative agency. *See* 1 Am. Jur. 2d *Administrative Law* § 85 (1962). Apparently, the prime purpose of such searches is to discover violations of administrative regulations and not instrumentalities of a crime.

12 178 F.2d 13 (D.C. Cir. 1949).

13 *Id.* at 14. Little was charged with hindering, obstructing and interfering with an inspector of the Health Department in the performance of his duty pursuant to an ordinance making such conduct a crime.

14 178 F.2d 13.

15 *Id.* at 16.

16 *Id.*

> tunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.[17]

On appeal to the United States Supreme Court, *Little* was affirmed[18] but on other grounds.[19] Nine years later, in *Frank v. Maryland*,[20] the Court was again confronted with the constitutional issue raised in *Little*. This time it could not avoid it.

Defendant, Frank, had refused entry to a Baltimore City health inspector who wished to inspect his house for rat infestation without a warrant.[21] While the Court recognized that one of the basic protections afforded by the fourth amendment was protection of an individual's privacy,[22] it limited the scope of the amendment to invasions of privacy in which instrumentalities of a crime were sought.[23] Administrative inspections touched at most upon the periphery of the important interests safeguarded by the fourth amendment's protection against official intrusion[24] and, hence, did not require search warrants.[25]

Eight years later, in *Camara v. Municipal Court*,[26] the Court was called upon to re-examine its decision in *Frank*. Defendant, Camara, refused to permit a building inspector to inspect his residence without a warrant.[27] He alleged that the ordinance authorizing such inspections was in violation of his fourth amendment rights[28] as applied to the States through the fourteenth amendment.[29] The Court expressed dis-

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17 *Id.* at 17.

18 District of Columbia v. Little, 339 U.S. 1 (1950).

19 The Court affirmed on the grounds that Little's refusal to unlock her door, when asked to do so by the inspector, did not constitute an interference with or prevention of the inspection within the meaning of the ordinance making such interference a criminal offense.

20 359 U.S. 360 (1959).

21 *Id.* at 361.

22 *Id.* at 365.

23 *Id.* at 366.

24 *Id.* at 367.

25 *See* Ohio *ex rel.* Eaton v. Price, 364 U.S. 263 (1960). Since 1960 several state courts have reaffirmed the rule enunciated in *Frank* and *Price*. *See* State v. Rees, 258 Iowa 813, 139 N.W.2d 406 (1966); Commonwealth v. Hadley, 351 Mass. 439, 222 N.E.2d 681 (1966); St. Louis v. Evans, 337 S.W.2d 948 (Mo. 1960). *Contra*, People v. Laverne, 14 N.Y.2d 304, 200 N.E.2d 441, 251 N.Y.S.2d 452 (1964).

26 387 U.S. 523 (1967).

27 *Id.* at 526.

28 *Id.* at 527.

29 *See* Stanford v. Texas, 379 U.S. 476 (1965); Ker v. California, 374 U.S. 23 (1963); Mapp. v. Ohio, 367 U.S. 643 (1961).

agreement with the position taken by the majority in *Frank* and stated:

> [W]e cannot agree that the Fourth Amendment interests at stake in these inspection cases are merely "peripheral." 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.[30]

The Court held, therefore, that

> administrative searches of the kind at issue[31] . . . are significant intrusions upon the interests protected by the Fourth Amendment, [and] that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual. . . .[32]

The Supreme Court's holding in *Camara* effectively set the stage for the District Court's holding in *James*.[33] Although *James* involved home visits to AFDC recipients and not routine inspections of private property, the District Court found *Camara* dispositive as to whether such visits were searches.[34] The court viewed the instructions to AFDC caseworkers, whereby they were "instructed not to enter the home of an applicant for or recipient of benefits 'without permission by force, or under false pretenses, and not to make a search of the home by looking into closets and drawers . . . ' ", as insufficient restrictions on their power to search.[35] Hence, the home visits, in permitting as broad a delegation of inspection power as that authorized in *Camara*, were sufficient intrusions into a recipient's privacy as to be repugnant to her interests safeguarded under the fourth amendment.[36]

The District Court recognized that the public interest may de-

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30 387 U.S. at 530.

31 The Court limited its decision to administrative searches of the kind at issue, i.e., those conducted pursuant to broad grants of authority similar to that granted by the City of San Francisco's Municipal Housing Code.

32 387 U.S. at 534. *See* See v. City of Seattle, 387 U.S. 541 (1967), wherein the holding in *Camara* was held to apply to commercial structures as well as private dwellings.

33 303 F. Supp. 935 (S.D.N.Y. 1969).

34 *Camara* held that the community interest in municipal fire, health and housing inspection programs was not superior to the important interests safeguarded by the fourth amendment's protection against official intrusion. The District Court in *James* held that such reasoning applied as well to home visits by caseworkers and concluded therefrom that such visits were searches.

35 303 F. Supp. at 940.

36 *See* Owens v. City of North Las Vegas, — Nev. —, 450 P.2d 784 (1969); Finn's Liquor Shop, Inc. v. State Liquor Authority, 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584 (1969). *Contra*, Colonnade Catering Corp. v. United States, 410 F.2d 197 (2d Cir. 1969), where the court approved of an administrative search without a warrant pursuant to statutory grants of power which were construed as well defined and narrow and, therefore, distinguishable from those at issue in *Camara*.

mand creation of a general exception to the fourth amendment's warrant requirement.[37] However, those who seek exception from the constitutional mandate must make a showing that the exigencies of the situation make the course imperative.[38] The court concluded that such a showing had not been made.[39] Moreover, the court observed that the basic purposes sought to be achieved by home visits could readily be accomplished by means " 'less subversive of [the] constitutional right.' "[40] It suggested that

> [p]roof of actual residence may be ascertained, for example, by the submission of a duly-executed lease upon the premises in question. Family composition may be verified by the submission, in this instance, of birth certificates. The physical well-being of the child could be safeguarded by making available facilities for periodic medical examinations rather than by requiring routine home visits by caseworkers. . . . Information regarding goods or services which the recipient may need in the management of her home can equally be obtained in the offices of the Department should the recipient wish to make her needs known there rather than in the convenience of her home. The regularity of school attendance, academic achievement and information gathered from interviews with school personnel can more accurately reflect the effects of a child's home environment than an interview with his or her parent in the home.[41]

Only when these factors, in a particular instance, indicate impropriety should application for a search warrant be made to an appropriate judicial officer.[42] Should this official determine that a valid public interest justifies the intrusion contemplated, there exists probable cause to issue a suitably restricted search warrant.[43] In this respect, the court adhered to a similar policy outlined in *Camara* with regard to the standard of probable cause applicable.[44] Hence, the welfare official " 'need [not] show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime.' "[45]

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37 303 F. Supp. at 943.

38 *See* Terry v. Ohio, 392 U.S. 1 (1968); Berger v. New York, 388 U.S. 41 (1967); McDonald v. United States, 335 U.S. 451 (1948).

39 303 F. Supp. at 943.

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.* at 944.

44 *Camara* established that administrative inspections required a "relaxed" standard of probable cause as compared with the standard required in criminal searches. *See* 37 GEO. WASH. L. REV. 211 (1968).

45 Camara v. Municipal Court, 387 U.S. 523, 538 (1967).

The *James* Court correctly extends the holding in *Camara* to home visits by AFDC caseworkers. Since the paramount interest protected by the fourth amendment is the right of the individual to privacy,[46] it makes little difference whether the offender is a housing inspector or a caseworker. No matter who the officer or what his mission, a government official cannot invade a private home[47] and intrude on the privacy of its occupants.

The holding in *James* finds support in a recent proposal made by the Department of Health, Education and Welfare.[48] This proposal seeks to eliminate the present system of determining eligibility by individual investigation and replace it by a declaration system wherein only spot checks are conducted.[49] Thus, the Department itself recognizes the need to limit official intrusion into the privacy of recipients to a minimum. *James* is in the spirit of such recognition. It similarly seeks to limit official intrusions by requiring welfare caseworkers to comply with the fourth amendment mandate to obtain a search warrant, founded upon probable cause, when entry into a home is otherwise refused.[50] Moreover, such a requirement will not strike a damaging blow to the successful administration of the AFDC program,[51] in view of the alternatives available for obtaining the information sought through home visits,[52] and the likelihood that relatively few recipients will deny entry.

46 *Id.* at 528; Boyd v. United States, 116 U.S. 616 (1886). *See* Schmerber v. California, 384 U.S. 757, 767 (1966).

47 District of Columbia v. Little, 178 F.2d 13, 17 (D.C. Cir. 1949).

48 33 Fed. Reg. 17189 (1968).

49 *Id.*

50 James v. Goldberg, 303 F. Supp. 935 (S.D.N.Y. 1969).

51 *Id.* at 945.

52 *Id.* at 943.