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Constitutional Law—Inspections and the Warrant Requirement—Warrant Required in Zoning Inspections Where Purpose Is to Gather Evidence for a Criminal Prosecution

George Wallach

statute may have. This assumption is contrary to the rules of judicial construction saying it is not necessary to the validity of a statute that the legislature declare on the face of the act the policy or purpose for which it was enacted.[29] The statute should be held to have accomplished what the legislature had in view, when the language will warrant an interpretation favorable to the apparent object.[30] Furthermore, a remedial statute should be construed so as to meet the mischief it seeks to correct and advance the remedy.[31] In determining what was the mischief, the courts may look to legislative debates and contemporaneous outside events.[32] Therefore, the court may look at the findings of the Moreland Commission and the recommendations of Governor Rockefeller in determining the purpose of the statute. These two reports clearly show that the purpose of the statute was to remedy an evil which resulted in price discrimination against the New York consumer, a purpose somewhat inconsistent with promoting temperance, but, nevertheless, a legislative purpose. This alone should be sufficient to meet Chief Judge Desmond's argument, but there is further evidence available. The purpose of prohibiting price discrimination against the New York consumer is explicitly stated in the introduction to the revised statute as it appears in the session laws, for it says that the statute is "an act to amend the alcoholic beverage control law . . . [by] prohibiting price discrimination in sales to wholesalers and retailers . . . ."[33] Therefore, one can conclude that the statute in question had more than one purpose. Section 9, seeking to achieve lower liquor prices for the benefit of the New York consumer, is entirely consistent with one of the stated purposes of the statute. The means chosen, price regulation, to achieve a stated purpose of the statute, the prohibition of price discrimination in sales to wholesalers and retailers, thereby benefitting the New York consumer, does not violate the due process clause of the United States or New York Constitutions, for it is reasonably calculated to achieve that desired end.

CHARLES E. MILCH

CONSTITUTIONAL LAW—INSPECTIONS AND THE WARRANT REQUIREMENT—WARRANT REQUIRED IN ZONING INSPECTIONS WHERE PURPOSE IS TO GATHER EVIDENCE FOR A CRIMINAL PROSECUTION

Erwine Laverne was a furniture designer and interior decorator who carried on his business in his home, which was located in a residential zone. The local zoning ordinance prohibited the operation of any business within a

29. People v. West, 106 N.Y. 293, 12 N.E. 610 (1887).
30. Fonda, Johnstown and Gloversville R. Co. v. State Tax Comm'n, 3 A.D.2d 178, 159 N.Y.S.2d 400 (3d Dep't), *aff'd*, 3 N.Y.2d 853, 166 N.Y.S.2d 305 (1957).
31. Commissioners of Excise v. Taylor, 21 N.Y. 173, 19 How. Pr. 289 (1860); Beal v. Finch, 11 N.Y. 128, 9 How. Pr. 385 (1854).
32. Vanderbilt v. Vanderbilt, 207 Misc. 291, 138 N.Y.S.2d 222 (Sup. Ct. 1955), *aff'd*, 1 A.D.2d 3, 147 N.Y.S.2d 125 (1st Dep't 1955), *aff'd*, 1 N.Y.2d 342, 153 N.Y.S.2d 1 (1956), *aff'd*, 354 U.S. 416 (1957).
33. N.Y. Sess. Laws 1964, ch. 531.

residential zone and authorized building inspectors to enter a resident's home at reasonable hours to search for violations of the regulations. Laverne was convicted of violating the ordinance on the basis of evidence obtained by the building inspector who entered his home without his consent. He was given a six months suspended sentence in a trial conducted by the village police court, and the conviction was affirmed by the county court. On appeal by permission from the judgment for the people, *held*, reversed, three judges dissenting. Three of the judges who voted for reversal relied on *Mapp v. Ohio*[1] in holding that in the absence of a search warrant, evidence obtained for use in a criminal proceeding by a public official during a search made without the resident's consent is constitutionally inadmissible under the fourth and fourteenth amendments.[2] Chief Judge Desmond concurred to complete the majority, but solely on the ground that the record showed no probable cause for the search. The dissenting judges believed that the most effective tool for the enforcement of regulatory statutes designed to protect health and welfare is periodic inspection. Therefore, the requirement that a warrant be obtained if consent were withheld would seriously hamper the enforcement of such zoning ordinances. They also noted that under New York law an inspector is not empowered to obtain a warrant.[3] *People v. Laverne*, 14 N.Y.2d 304, 200 N.E.2d 441, 251 N.Y.S.2d 452 (1964).

The limitations on the right of a government official to enter an individual's private dwelling to search for evidence have developed in two distinct directions. In those cases involving police searches for the purpose of gathering evidence to be used in criminal proceedings, the right to enter without consent and without a warrant has become increasingly more restricted. Through the use of the exclusionary rule, first adopted in *Weeks v. United States*,[4] and extended in *Elkins v. United States*,[5] and *Mapp v. Ohio*,[6] the courts have prohibited the introduction of illegally seized evidence in criminal actions, where such evidence was obtained through a search and seizure found unconstitutional under the fourth and fourteenth amendments of the United States Constitution. Generally, a search warrant is required when consent is withheld.[7] In the cases of inspections by public officials of private homes for the purpose of gathering evidence for use in a civil action, either administrative or judicial, with regard to violations of public welfare statutes, the law is not

1. 367 U.S. 643 (1961).
2. An additional part of the holding, reasoned by analogy from People v. O'Neill, 11 N.Y.2d 148, 182 N.E.2d 95, 227 N.Y.S.2d 416 (1962) held that § 813-d of the N.Y. Code of Crim. Proc. applied only to physical evidence. Failure to make a pre-trial motion for the suppression of illegally seized evidence in the form of testimony did not constitute a waiver of the right to so move during trial.
3. N.Y. Code of Crim. Proc. § 791 (1953).
4. 232 U.S. 383 (1914).
5. 364 U.S. 206 (1960).
6. 367 U.S. 643 (1961).
7. The exceptions are a search made incidental to and contemporaneous with a valid arrest, Rabinowitz v. United States, 339 U.S. 56 (1950), and the search of a moving vehicle, Carroll v. United States, 267 U.S. 132 (1925).

as clear.[8] Although many cities have regulations authorizing officials to inspect during reasonable hours,[9] it seems that this legislation has been rarely challenged by those few individuals who object to such inspections.[10]

Only three individuals have brought their claims of the unconstitutionality of these long-accepted regulations as far as the Supreme Court.[11] In 1949, a resident of Washington, D.C. appealed from her conviction for interfering with an attempted inspection by a health inspector, a misdemeanor under local law.[12] She had refused to admit an inspector whom she had found waiting outside the door when she returned home. The inspector was answering a complaint of a violation of the health regulations by a resident of the same building. In a strongly-worded opinion, Judge Prettyman of the Circuit Court of Appeals reversed the lower court conviction on constitutional grounds.[13] He rejected the argument of the prosecution and the dissent, that the fourth amendment's prohibition against searches without warrants applied only to criminal cases. Judge Prettyman ruled that the fourth amendment ruled out all searches of personal property without warrants regardless of whether the search was utilized for a criminal prosecution or a civil remedy. He believed that the fourth amendment protected a common-law right to privacy and that a government official could not, therefore, 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 opportunity to apply to a magistrate."[14] The Supreme Court upheld the reversal, but it avoided the constitutional question and based its decision on the factual ground that Mrs. Little's refusal to admit the inspector under the given circumstances did not constitute an "interference" within the meaning of the statute.[15]

In 1959, the leading case in this field arose out of the conviction of a

8. Inspections of business premises have long been upheld. Sister Felicitas v. Hartridge, 148 Ga. 832, 98 S.E. 538 (1919) (reasonable exercise of the police power); Keiper v. City of Louisville, 152 Ky. 691, 154 S.W. 18 (1913); Kelleher v. Minshull, 11 Wash. 2d 380, 119 P.2d 302 (1941) (inspection of a public place does not fall within the fourth amendment); Safee v. City of Buffalo, 204 App. Div. 561, 198 N.Y. Supp. 646 (4th Dep't 1923).

9. Of 57 cities studied, 36 empowered their officers to enter and inspect for violations. *Provisions of Housing Codes in Various Cities*, Urban Renewal Bulletin No. 3 (1956).

10. The only evidence in support of the proposition are defendant's figures introduced in Frank v. Maryland, 359 U.S. 360 (1959), showing that prosecutions under the health code for refusing to admit an inspector averaged only one per year, Memorandum of Appellee at Request of Court, No. 2. The fact that a similar code in New York has not been challenged is some further evidence. N.Y. Mult. Resid. Law §§ 303(3), 304(1) (1952); N.Y. Town Law § 138 (1965).

11. There are only two state cases directly on point. Camara v. Munic. Ct. of San Francisco, 46 Cal. Rptr. 585 (1965); Givner v. State, 210 Md. 484, 124 A.2d 764 (1956).

12. Commissioner's Regulations Concerning the Use and Occupancy of Buildings and Grounds, promulgated 1897, as amended 1922.

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

14. *Id.* at 17.

15. District of Columbia v. Little, 339 U.S. 1 (1950), *affirming on other grounds* 178 F.2d 13 (D.C. Cir. 1949).

Baltimore resident for refusing to admit a building inspector.[16] The inspector was searching for the source of rodent infestation on the basis of a complaint from a home-owner on the same street. The presence of rats was obvious from the condition of the grounds around the house. Aaron Frank was found guilty of refusing to admit an inspector in violation of the Baltimore City Code[17] and was fined twenty dollars. Justice Frankfurter, speaking for a majority of five, upheld the conviction.[18] He found that two protections emerged from the broad constitutional proscriptions of official invasion established by the fourth amendment. The first is the right to be secure from instrusions into personal privacy, the second is the right to self-protection. And it was the right to self-protection, the right to be secure from searches for evidence to be used in criminal prosecutions, that inspired the struggles against unreasonable searches.[19] This conclusion was drawn from a study of the early case of *Entick v. Carrington*,[20] and the history of the colonies at the time of the adoption of the Constitution. Furthermore, the right to privacy was not involved here because of the nature of the search,[21] and in addition, the statute involved contained strong safeguards. There was a requirement of suspicion on the part of the Commissioner of Health, inspections were only authorized during the daytime, and entry was not authorized without consent.[22] Justice Frankfurter also pointed to the necessity for health inspections in a modern urban society and the long history of similar inspection statutes in Maryland. Justice Douglas, speaking for the dissent, strongly disagreed with the historical interpretation and concluded that the fourth amendment was designed to protect a right to privacy encompassing such inspections.[23]

It soon became obvious that the court did not base its decision on the safeguards which the Baltimore statute involved or upon the reasonableness of the inspection, given the factual background. In 1960, the Supreme Court affirmed a lower court conviction of a Dayton, Ohio resident who had refused to admit an inspector in violation of a city ordinance[24] in a 4-4 memorandum decision.[25] The defendant was convicted for refusing to allow inspectors into his home who were not searching for a suspected nuisance or immediate health hazard, as they had in *Frank*, but who were merely making a routine area-by-area inspection. The statute involved here contained none of the safeguards of the Baltimore statute involved in the *Frank* decision.[26]

16. Frank v. Maryland, 359 U.S. 360 (1959).
17. Baltimore, O., City Code Art. 12, § 120 (1950).
18. Frank v. Maryland, 359 U.S. 360 (1959).
19. *Id.* at 365.
20. 19 How. St. Trials col. 1029 (Ct. of C.P. 1765).
21. Frank v. Maryland, 359 U.S. 360, 366 (1959).
22. Baltimore, O., City Code Art. 12, § 120 (1950); Frank v. Maryland, *supra* note 21, at 366-67.
23. Frank v. Maryland, *supra* note 21, at 374 (dissenting opinion).
24. Dayton, O., Code of General Ordinances 18099, § 806-30(a) (1954).
25. Ohio *ex rel.* Eaton v. Price, 364 U.S. 263 (1960).
26. Dayton, O., Code of General Ordinances 18099, § 806-30(a) (1954); Ohio *ex rel.* Eaton v. Price, *supra* note 25, at 268 (dissenting opinion).

In the instant case, the New York Court of Appeals reversed Laverne's conviction noting that the important question in regard to the zoning ordinance was the

> . . . validity of that provision of the village ordinance which purports by public authority to sanction entry into private premises by an official without the consent of the occupant and, indeed, against his resistance, for the purpose of obtaining evidence for a criminal prosecution.[27]

The Court stated that "the searches . . . of defendant's home without warrants for the purpose of criminal prosecutions were to that extent in violation of his constitutional rights."[28] The more controversial part of the decision stems from the Court's pronouncement that

> Probably an entry into private premises by a public officer without a search warrant against the resistance of the occupant and in pursuance of the authority of law for the purpose of eliminating a hazard immediately dangerous to health and public safety is constitutionally valid if the purpose be summary or other administrative correction or as a foundation for civil judicial proceedings. (*Frank v. Maryland*, 359 U.S. 360 (1959), rehearing denied, 360 U.S. 914; *Ohio ex rel. Eaton v. Price*, 364 U.S. 263 (1960).[29]

The Court of Appeals, however, reserved decision on the question until "an appropriate case may come here" in which the "validity of a search utilized for civil action" is challenged.[30] Chief Judge Desmond in his concurring opinion reasoned that a search without a warrant, without consent and without necessity could not be made without a showing of probable cause. It appears that Judge Desmond would not require that probable cause be shown before a magistrate, but only in the record.[31] The dissent ignored *Mapp v. Ohio*,[32] in effect denying its relevance to the "civil search" then before the Court, and relied heavily on the necessity argument first used by Justice Frankfurter.[33]

In light of the fact that the purpose for the inspection in the instant case was to gather evidence for use in a criminal proceeding, the holding of the Court that such inspections are in violation of the Constitution appears correct under *Mapp v. Ohio*.[34] But the Court's pronouncement, that a similar ordinance involving an immediate health hazard and civil sanctions would probably be valid, on the basis of the *Frank* and *Eaton* decisions, is not as solidly established.

The first fact that must be noted is that no body of judicial opinion has

27. Instant case at 306-07, 200 N.E.2d at 442, 251 N.Y.S.2d at 453-54 (1964).
28. Instant case at 308, 200 N.E.2d at 443, 251 N.Y.S.2d at 455.
29. Instant case at 307, 200 N.E.2d at 442, 251 N.Y.S.2d at 454.
30. Instant case at 308, 200 N.E.2d at 443, 251 N.Y.S.2d at 455.
31. Instant case at 310, 200 N.E.2d at 444, 251 N.Y.S.2d at 456 (concurring opinion).
32. 367 U.S. 643 (1961).
33. Instant case at 312, 200 N.E.2d 441, 445, 251 N.Y.S.2d 452, 458 (1964) (dissenting opinion).
34. 367 U.S. 643 (1961).

developed on the question of civil searches with or without warrants. While the absence of judicial sanction is not necessarily "persuasive authority that it is unlawful,"[35] its absence is not authority for the conclusion that it is lawful. As the dissent said in *Frank v. Maryland,* the support found for the majority opinion

> concerning Maryland's long-standing health measures may be only a history of acquiescence or a policy of enforcement which never tested the procedure in a definitive and authoritive way. . . . We are pointed to no body of judicial opinion which purports to authorize entries into private dwellings without warrants in search of unsanitary conditions.[36]

Although there is some support for Justice Frankfurter's contention that *Entick v. Carrington,*[37] the landmark case on the right to privacy, dealt only with criminal cases and extended the right to privacy only to that degree,[38] the weight of authority supports the belief that *Entick v. Carrington* went beyond the question in the case to firmly establish a right to privacy within one's home.[39] But the history of the colonies and England prior to the War of Independence is of greater importance to the question involved here. When Pitt denounced the cider tax,[40] and James Otis spoke out against the writs of assistance,[41] and Patrick Henry opposed the adoption of the Constitution without a Bill of Rights,[42] they were primarily interested in protecting the homes of ordinary citizens from indiscriminate and unreasonable governmental invasions. The broad language used clearly indicates this.[43] And it should be noted that the writs of assistance which were so vehemently protested against were designed for use in civil searches by customs officials.[44] There is no reason why a civil search or inspection without a warrant which can lead to criminal penalties should be less objectionable than a civil search with a general warrant which could lead to forfeitures.

The fourth amendment was designed to prevent uncontrolled invasions into the privacy of one's home by requiring that an independent finding of probable cause be made by a judicial officer, a neutral and detached magistrate, rather than by the very person about to make the search.[45] Those who argue that the fourth amendment has no proper relationship to health inspections,

35. Agnello v. United States, 269 U.S. 20, 33 (1925).
36. Frank v. Maryland, 359 U.S. 360, 384 n.2 (1959) (dissenting opinion).
37. 19 How. St. Trials col. 1029 (Ct. of C.P. 1765).
38. Waters, *Right of Entry in Administrative Officers,* 27 U. Chi. L. Rev. 79 (1959).
39. Beaney, *The Constitutional Right to Privacy in the Supreme Court,* 1962 Sup. Ct. Rev. 212, 216; Comment, 44 Minn. L. Rev. 513, 524 (1959).
40. 15 Hansard, *Parlimentary History of England* 1307 (1763).
41. Quincy's Mass. Rep. 471-76 (1865).
42. 3 Elliot, *Debates* 448, 588 (1854).
43. Quincy's Mass. Rep. 471-76 (1865). James Otis said ". . . a man, who is quiet, is as secure in his house, as a Prince in his Castle— . . . and if an Act of Parliament should be made, in the very Words of this Petition (writ of assistance) it would be void."
44. See Lasson, *The History and Development of the Fourth Amendment,* Johns Hopkins Univ. Studies in Historical and Political Science, Series 55, no. 2 (1937).
45. Giordenello v. United States, 357 U.S. 480 (1958).

because their purpose is not to gather evidence for criminal prosecutions,[46] overlook some significant issues. They ignore the possibility that the inspector himself may have other motives besides maintaining minimum housing conditions for the protection of society. The requirement of a warrant issued by a disinterested member of the judiciary would insure that health inspections were not being utilized to harass suspected criminals, or as a method of looking for evidence of a crime without the need to meet the probable cause test for a search warrant.[47] As Justice Douglas so delicately put it, "History shows that all officers tend to be officious; and health inspectors, making out a case for criminal prosecution of the citizen, are no exception."[48] And the argument that the fourth amendment should not be applied to health inspections because their purpose is not to gather evidence for use in a criminal proceeding is itself without merit. For, assuming for the moment that the original inspection can be supported as not falling within the fourth and fourteenth amendments for this reason, a second inspection, for the purpose of ascertaining whether an order to remove or abate a nuisance has been complied with, cannot be said to fall within the same exception. If the order has not been obeyed, the inspection becomes a search for evidence to be used in a criminal proceeding. The imposition of a fine or imprisonment cannot be explained away by calling it incidental to the true purpose of the inspection, or as a mere remedial, and not punitive, measure.[49] Evidence obtained by this second inspection might well be classified as inadmissible in a criminal prosecution under the Court of Appeals' ruling in the instant case.

Another basic argument used in support of broad inspection powers without warrants under the health codes is the argument of necessity. Justice Frankfurter, the dissent in the instant case, and others,[50] have argued that broad inspection powers are indispensable to the enforcement of health and housing codes and that the requirement of a warrant would seriously hamper the effectiveness of such codes designed for the public good. No one could rationally deny the validity of the premise that health inspections are an absolute necessity in today's urban society.[51] The prevention and control of communicable diseases, the enforcement of minimum standards of housing, the necessity for adequate methods of waste disposal, and the control of rodent infestation are all necessary and admirable aims of municipal government. But support of the premise does not require the conclusion that the right to privacy, and the protections inherent in a warrant, must end and bow to the demands of social

46. 108 U. Pa. L. Rev. 265, 273 (1959).
47. See State v. Buxton, 238 Ind. 93, 148 N.E.2d 547 (1958) (fire inspectors searched for evidence of arson without a warrant); State v. Pettiford, Daily Record, December 16, 1959 (Md. 1959) cited in Note, 20 Md. L. Rev. 345, 350, n.23 (police officers gained entry to private home without search warrant masquarading as a health inspector).
48. Frank v. Maryland, 359 U.S. 360, 382 (1959) (dissenting opinion).
49. Stahl & Kuhn, *Inspections and the Fourth Amendment*, 11 U. Pitt. L. Rev. 256, 263 (1950).
50. *Id.* at 275.
51. *Id.* at 266-275.

progress. The courts which have dealt with the problem of health inspections have erred in failing to distinguish between the two necessities involved here.[52] The first is the necessity for the inspection itself. The second is the necessity for a warrant in order to carry out the inspection where the homeowner refuses to consent to the inspection. The two are not necessarily in conflict. They would only be so if large numbers of people objected to health inspections. But whatever evidence exists shows just the opposite to be true. For conceding that the requirement of a warrant where consent to the inspection is withheld would take up some of the inspector's valuable time, it has not been shown that the time loss would be significant. While empirical evidence on a nationwide basis does not exist,[53] it would appear that most people accept health inspections without protest. Perhaps it is a realization that such inspections are for their own ultimate good, and a part of the price of urban living. Perhaps it is a desire to avoid entanglement in the bureaucratic machinery of municipal government.[54] But whatever the reasons for general acquiescence, there appears to be no good reason why a citizen should not be permitted to stand upon a constitutional right and refuse to admit an inspector without a warrant, if he so desires.

The conclusion that a warrant should be required when consent is withheld is not without its own problems. The requirement that probable cause be shown before a warrant will issue has appeared to some to be insurmountable in the field of health inspections,[55] where the evidence of a violation is often found only upon inspection itself. Suggestions that probable cause be founded upon the complaint of a neighbor, location of the house in a blighted area, or upon conditions found outside the house have been assailed as unsatisfactory because they do not meet the requirements of probable cause. Justice Douglas has suggested that the test of probable cause can take into account the nature of the search being sought. "This is not to sanction synthetic search warrants but to recognize that the showing of probable cause in a health case may have quite different requirements than the one required in graver situations."[56] The objection is probably valid, especially in cases where the complaint is made by unnamed neighbors,[57] or where the inspection is purely routine, and based only on the fact that no inspection has been made for a considerable time. The truth of the matter may well be that no inspection will be permitted where no showing of probable cause can be made because indications of viola-

52. See *Camara v. Munic. Ct. of San Francisco*, 46 Cal. Rptr. 585 (1965), as typical of this type of reasoning.

53. See note 10 *supra*. The availability of statistical evidence may have to await the publication of Professor Beaney's proposed work on the right to privacy, which he refers to in the article cited at note 39 *supra*.

54. Note, 10 Hastings L.J. 430, 434 (1959).

55. 108 U. Pa. L. Rev. 265, 274 (1959).

56. Frank v. Maryland, 359 U.S. 360, 383 (1959) (dissenting opinion).

57. If the same standards were used for granting warrants in health cases as are used in criminal cases, Jones v. United States, 362 U.S. 257 (1960) would be controlling.

tions cannot be found outside the home. In light of the fact that few people object, and that most inspections are made in blighted areas where probable cause could be found,[58] it is doubtful that this result will destroy the effectiveness and efficiency of health and welfare inspection programs.[59]

The right to privacy has been described by Justice Brandeis as "the right to be let alone- the most comprehensive of rights and the right most valued by civilized men."[60] But the critical question is whether the right to privacy, encompassing within it the privilege to deny entry to any governmental official without a warrant, is a right or "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."[61] The *Frank* and *Eaton* decisions held that it was not such a principle and therefore not incorporated within the fourteenth amendment. However, recent decisions of the Supreme Court incorporating sections of the Bill of Rights into the fourteenth amendment,[62] combined with the Court's willingness "to re-examine past decisions according the Fourteenth Amendment a less central role in the preservation of basic liberties than that which was contemplated by its Framers . . . ,"[63] indicates that the *Frank* decision may not withstand another constitutional challenge.

GEORGE WALLACH

INSURANCE LAW—NON-ESCAPING FIRE HELD TO CONSTITUTE HOSTILE FIRE

When the automatic temperature control device of plaintiff's gas fired annealing furnace inexplicably failed to operate, the furnace became "almost white hot" so that furnace and forgings therein were totally ruined. Plaintiff, a manufacturer of hand tools, claimed recovery under a standard New York fire insurance policy which covered all direct loss by fire.[1] On submission of the controversy on an agreed statement of facts,[2] *held*, for plaintiff. In view of modern heating devices and equipment, when an uncontrolled fire produces excessive heat causing damage, it is a hostile fire and within the coverage of the policy even

58. Note, *Municipal Housing Codes*, 69 Harv. L. Rev. 1115 (1956).

59. *Supra* note 58, at 1125. *But see* Guandolo, *Housing Codes in Urban Renewal*, 25 Geo. Wash. L. Rev. 1 (1956).

60. Olmstead v. United States, 277 U.S. 438, 478 (1928) (dissenting opinion).

61. Palko v. Connecticut, 302 U.S. 319, 325 (1937), quoting in part, Snyder v. Massachusetts, 291 U.S. 97, 105 (1934).

62. Griswold v. Connecticut, 381 U.S. 479 (1965); Griffin v. California, 380 U.S. 609 (1965); Pointer v. Texas, 380 U.S. 400 (1965); Murphy v. Waterfront Commission of New York Harbor, 378 U.S. 52 (1964); Malloy v. Hogan, 378 U.S. 1 (1964); Gideon v. Wainwright, 372 U.S. 335 (1963).

63. Malloy v. Hogan, 378 U.S. 1, 5 (1964).

1. N.Y. Ins. Law § 168.

2. N.Y. CPLR R. 3222.