WELFARE SEARCHES—LACK OF CONSENT RENDERS EARLY MORNING MASS WELFARE RAIDS UNCONSTITUTIONAL; CONDITIONING RECEIPT OF WELFARE BENEFITS UPON GIVING OF CONSENT HELD INVALID. *Parrish v. Civil Service Comm'n* (Cal. 1967).

Benny Max Parrish, a social worker, refused to participate in an early morning, mass welfare raid[1] on the grounds that it violated the constitutional rights of the welfare recipients.[2] Following his discharge by the Civil Service Commission for insubordination,[3] he petitioned to the Superior Court of Alameda County for a writ of mandamus to compel his reinstatement. The superior court denied his petition and the First District Court of Appeal affirmed.[4] On appeal to the California Supreme Court, *held*, reversed: The mass raids were unconstitutional for lack of legally effective consent, and the county could not constitutionally condition the continued receipt of welfare benefits upon the giving of such consent. Petitioner's belief in the illegality of the raids constituted sufficient justification for his refusal to participate.[5] *Parrish v. Civil Service Commission of the County of Alameda*, 66 Adv. Cal. 253, 425 P.2d 223, 57 Cal. Rptr. 623 (1967).

The arguments of the court are limited to a discussion of mass

---

1 The raid, dubbed "Operation Bedcheck," commenced at 6:30 a.m. on a Sunday morning for the express purpose of determining the presence of unauthorized male visitors in the homes of the welfare recipients. Over half of the homes were selected for their *non-suspect* character. The raid was conducted in a dragnet fashion by teams of welfare workers, one being familiar with the recipient. The worker known to the recipient knocked at the front door while the other covered the back door of the dwelling. Although permission to enter was requested, the recipient was aware that a refusal could be characterized as "uncooperative" and constitute grounds for terminating benefits. Once admitted, the workers conducted a thorough search of the dwelling with special emphasis on places of concealment. Parrish v. Civil Serv. Comm'n, 66 Adv. Cal. at 256, 425 P.2d at 225, 57 Cal. Rptr. at 625 (1967).

2 The welfare recipients were primarily mothers with dependent children, living apart from male spouses, and receiving benefits under the Aid to Families with Dependent Children (AFDC) program, granted pursuant to CAL. WELF. & INST. CODE § 11250 (West 1966).

3 66 Adv. Cal. at 259, 425 P.2d at 226, 57 Cal. Rptr. at 626.

4 Parrish v. Civil Serv. Comm'n, 51 Cal. Rptr. 589 (Dist. Ct. App. 1966), *vacated*, 66 Adv. Cal. 253, 425 P.2d 223, 57 Cal. Rptr. 623 (1967). The decision of the District Court of Appeals was *criticized in*, 18 HASTINGS L.J. 228 (1966) (questioning the court's ruling by demonstrating the incompatibility of mass welfare searches with the edict of the fourth amendment).

5 The court's holding relative to the justification of Parrish's refusal to participate is based on 18 U.S.C. § 242 (1964). *See* United States v. Price, 383 U.S. 787 (1966); Screws v. United States, 325 U.S. 91 (1945); People v. Cahan, 44 Cal.2d 434, 282 P.2d 905. *See also* Annot., 50 A.L.R. 2d 513 (1955).

welfare raids.[6] If the case is so limited,[7] *Parrish* raises little controversy in light of the United States Supreme Court's recent decisions supporting individual rights.[8] The significance of *Parrish* lies not in its settled issues but rather in its ramifications relative to the legality of welfare searches conducted without warrants, particularly with regard to the later United States Supreme Court decision in *Camara v. Municipal Court.*[9] Decided after *Parrish*, *Camara* revitalized the requirement of warrants for administrative searches, thereby eradicating a former distinction between administrative and criminal searches, contrived by the United States Supreme Court in *Frank v. Maryland.*[10]

An examination of *Parrish* reveals undecided issues not subsequently resolved by *Camara.* As a result, the legality of warrantless welfare searches remains open to conjecture. Despite *Parrish's* condemnation of mass welfare raids, there is no suggestion that all welfare searches conducted without warrants are illegal. This ambivalence becomes apparent when the court: (1) distinguishes welfare searches from the public health inspections in *Frank*,[11] (2) doubts the possibility of obtaining legally effective consent for welfare searches,[12] (3) and yet conceives of a warantless welfare search as a condition to receipt of benefits.[13]

---

[6] 66 Adv. Cal. at 259, 425 P.2d at 226, 57 Cal. Rptr. at 626. The court stated, "we must determine, as a central issue in the present case, the constitutionality of the searches contemplated and undertaken in the course of the operation."

[7] *Id.* at 256, 425 P.2d at 225, 57 Cal. Rptr. at 625. The court implies this limitation by a statement to the effect that "[it had] decided that the county's failure [to obtain consent] . . . rendered the mass raids unconstitutional."

[8] Miranda v. Arizona, 384 U.S. 436 (1966) (held that an individual taken into custody for questioning is entitled to certain enumerated procedural safeguards as protection for his privilege against self-incrimination); Elfbrandt v. Russell 384 U.S. 11 (1966) (held unconstitutional an Arizona loyalty oath required of state employees because it interfered with the individual's freedom of association guaranteed by the first and fourteenth amendments); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966) (invalidated a Virginia poll tax because it violated the equal protection clause of the fourteenth amendment); Mishkin v. New York, 383 U.S. 502 (1966), Ginzburg v. United States, 383 U.S. 463 (1966), Memoirs v. Massachusetts, 383 U.S. 413 (1966) (upheld the individual's right of free expression under the first amendment in respect to printing allegedly obscene publications, although two of the convictions were affirmed due to the method of promotion); Gideon v. Wainwright, 372 U.S. 335 (1963) ("the right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours"); Mapp v. Ohio, 367 U.S. 643 (1961) (the court held that products of unlawful searches and seizures are inadmissable in state courts). *Compare with* Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91 (1966).

[9] 387 U.S. 523 (1967).

[10] 359 U.S. 360 (1959) (upholding a Balimore Ordinance authorizing warrantless health inspections).

[11] 66 Adv. Cal. at 260-61, 425 P.2d at 227-28, 57 Cal. Rptr. at 627-28.

[12] *Id.* at 261-63, 425 P.2d at 228-30, 57 Cal. Rptr. at 628-30.

[13] *Id.* at 262-65, 425 P.2d at 229-32, 57 Cal. Rptr. at 630-33.

Because the search in *Parrish* was conducted by welfare workers,[14] the county claimed that the doctrine in *Frank* obviated the need for a search warrant. The court, therefore, was compelled to distinguish welfare raids from the administrative searches sustained in *Frank* and did so on four points.

First, *Parrish* noted that unlike the searches sanctioned by the Baltimore Ordinance[15] in *Frank*, the raids by the Alameda County authorities revealed evidence which in itself would be a basis for criminal prosecution.[16] The *Parrish* raids were designed for the purpose of detecting the presence of unauthorized males.[17] The criminal charge to which the court alludes would be grand theft.[18] Yet, the presence of a man in a welfare recipient's home is not conclusive proof that the recipient is guilty of that crime.[19] Welfare fraud is a form of grand theft and is based on misrepresentation of eligibility;[20] thus a recipient would have to be found guilty of reporting false information to be used in redetermining eligibility.[21] The presence of a man

14 *Id.* at 256, 425 P.2d at 225, 57 Cal. Rptr. at 625. "[D]espite the fact that the county's social workers did not ordinarily conduct fraud investigations, their services were necessary for this undertaking."

15 BALTIMORE, MD., HEALTH CODE art. 12, § 120. The pertinent section provides:

> 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.

16 66 Adv. Cal. at 260, 425 P.2d at 227, 57 Cal. Rptr. at 627.

17 *Id.* at 256, 425 P.2d at 225, 57 Cal. Rptr. at 625.

18 CAL. PEN. CODE § 484 (West 1955) provides:

> Every person . . . who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money . . . or who causes or procures others to report falsely of his wealth . . . is guilty of theft.

Under this section, obtaining welfare funds by misrepresentation constitutes theft by false pretenses or by false representation. *See generally* People v. Darling, 230 Cal. App. 2d 615, 41 Cal. Rptr. 219 (1964).

19 CAL. PEN. CODE § 484 (West 1955).

20 230 Cal. App. 2d at 617, 41 Cal. Rptr. at 220.

21 CAL. WELF. & INST. CODE § 11054 (West 1966), *see* note 30 *infra;* CAL. WELF. & INST. CODE § 11351 (West 1966) specifies:

> Where a needy child lives with his mother and a stepfather or an adult male person assuming the role of spouse to the mother although not legally married to her, the amount of the grant . . . shall be computed after consideration is given to the income of the stepfather or such male person.

CAL. WELF. & INST. CODE § 11265 (West 1966) states:

> The county shall at the time of such redetermination, and may monthly or at such other intervals as may be deemed necessary, require the family to complete a certificate of eligibility containing a written declaration of such information as may be required to establish the continuing eligibilty and amount of grant . . . .

These provisions mean that a failure to report income from some source other than that already indicated on the forms results in a misdemeanor charge of perjury. For such misrepresentations a felonious indictment under the grand theft sections of the Penal Code would not be improbable. *See* note 18 *supra.*

in a recipient's home or the finding of male clothing and personal effects, merely constitutes an evidentiary link toward the ultimate fact of misrepresentation. In addition to such evidence, further culpable conduct is required to convict a recipient under the California Penal Code.[22]

Second, the searches in *Parrish* allegedly produced evidence for criminal prosecution or *forfeiture of benefits*[23] whereas the *Frank* Court limited its approval to searches advancing the general welfare. *Parrish* presumes that forfeiture of welfare benefits is tantamount to a forfeiture of property as conceived in the Constitution[24] and interpreted by the United States Supreme Court.[25] However, the recipient only becomes eligible for future payments when he complies with the requirements enumerated in the California Welfare Code.[26] By not complying with these provisions, the recipient is ineligible for future payments and cannot be said to "forfeit" what was never rightfully his. Only by an overly broad construction can welfare benefits be equated with the property rights envisioned by the Constitution.

Third, like the Baltimore Ordinance, *Parrish* condemns searches of a non-suspect recipient's home.[27] On the other hand, the *Frank* ordinance authorizes warrantless health searches for suspected nuisances, the implication being that a suspect recipient may properly be subjected to warrantless invasions of his home. But is due process obtained when the welfare authorities conducting the searches determine those who are suspect? The purpose of the warrant procedure is to provide a disinterested body with the opportunity to evaluate

---

22 *See* note 18 *supra.*

23 66 Adv. Cal. at 260, 425 P.2d at 227, 57 Cal. Rptr. at 627.

24 U.S. CONST. amend. V "[N]o person shall . . . be deprived of life, liberty, or property, without due process of law . . ."; U.S. CONST. amend. XIV § 1 [No state shall] deprive any person of life, liberty, or property, without due process of law . . . ." Neither embrace welfare benefits within the property concept. This conclusion may logically be inferred from the United States Supreme Court's decision in Flemming v. Nestor, 363 U.S. 603 (1960), which held that accrued Social Security benefits were not property rights within the meaning of the Constitution. Certainly, if accrued benefits are not considered "property rights," then future welfare benefits dependent upon the recipient's continued eligibility would have no greater stature.

25 Boyd v. United States, 116 U.S. 616, 633-34 (1886) (dictum). The Court argued, "We are also clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal."

26 CAL. WELF. & INST. CODE § 11054 (West 1966) provides:

> Each applicant shall be required before approval of assistance or services to file an affirmation setting forth his belief that he meets the specific conditions of eligibility.

27 66 Adv. Cal. at 261, 425 P.2d at 228, 57 Cal. Rptr. at 628.

the justification for issuance of a warrant in order to prevent indiscriminate invasions of privacy.[28]

Fourth, the court explicitly condemns early morning searches causing "inconvenience to the occupants,"[29] while apparently condoning the "orderly visits in the middle of the afternoon" acknowledged in *Frank*. Thus a search without a warrant made at a "convenient" hour seemingly is not within the purview of the court's prohibition.

These arguments, with respect to the four distinctions, are not only inconclusive when applied to mass welfare raids, but clearly imply that welfare searches without warrants may be justified for the same reasons advanced in *Frank*. By comparing the method of investigation in *Parrish's* "Operation Bedcheck"[30] with the searches sanctioned by *Frank*, the court infers that both are basically the same type of administrative search. If the welfare authorities provide safeguards[31] similar to those incorporated in the Baltimore Ordinance, then such warrantless welfare searches would apparently satisfy the constitutional limitations emphasized in *Parrish*. In deciding the constitutionality of welfare searches, as opposed to public health inspections,[32] inconsistent conclusions resulted when *Parrish* and *Frank* were distinguished on their facts. It must be concluded that welfare searches without warrants, conducted under different circumstances and at different hours, may not necessarily be prohibited, and only a case by case examination can determine their constitutionality.

Turning to another aspect of *Parrish* the county contended that "the searches took place pursuant to effective consent, freely and voluntarily given."[33] Since welfare authorities customarily request

---

28 *See* Johnson v. United States, 333 U.S. 10, 14 (1948). "Its [the warrant clause] protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in . . . ferreting out crime." *Accord*, Schmerber v. California, 384 U.S. 757, 770 (1966).

29 66 Adv. Cal. at 261, 425 P.2d at 228, 57 Cal. Rptr. at 628.

30 *See* note 1 *supra*.

31 If the welfare administrators establish that: (1) no property right, in the constitutional sense (*see* text accompanying notes 27-30 *supra*) is subject to a forfeiture; (2) the threat of criminal prosecution is removed; (3) adequate cause has prompted the search; and (4) the searches are conducted during daylight hours without inconvenience to the recipients, then such warrantless welfare searches would not differ from the inspections sanctioned in *Frank*.

32 *See* text accompanying notes 19-20 *supra*.

33 66 Adv. Cal. at 261, 425 P.2d at 228, 57 Cal. Rptr. at 628.

permission to enter a recipient's dwelling,[34] the consent obtained is vitiated by virtue of the official's position.[35] *Parrish* warrants this conclusion because the customary practice in Alameda County was to terminate welfare benefits for a reported refusal of entry.[36] However, "the question [of consent] is one of fact to be determined in light of all the circumstances"[37] and, mere assertion of authority does not necessarily preclude an effective consent.[38] Arguably, the amorphous threat of authority, coupled with a request for entry under the auspices of a welfare search, may render a consent ineffective due to a recipient's awareness of the welfare official's virtual "unlimited power over [his] . . . very livelihood."[39] Yet, the peculiar characteristics of a welfare recipient, particularly his lack of education,[40] limited economic capabilities, and utter dependence upon welfare for subsistence, lend credence to the court's arguments. Although the Alameda practice is probably the exception rather than the rule, the unique circumstances of *any* welfare recipient justify in other welfare searches the *Parrish* court's approval[41] of *Judd v. United States* which held that "the government must show a consent that is unequivocal and specific, freely and voluntarily given."[42]

Conditioning enjoyment of governmental benefits on waiver of constitutional rights is an area of much controversy.[43] Although the court demonstrates that the doctrine of "unconstitutional conditions"[44] is inapplicable to the raids in *Parrish*, three criteria are set

---

34 *Id.*

35 *Id.* at 262, 425 P.2d at 229, 57 Cal. Rptr. at 630.

36 *Id.* at 261, 425 P.2d at 228, 57 Cal. Rptr. at 628.

37 People v. Michael, 45 Cal. 2d 751, 753, 290 P.2d 852, 854 (1955).

38 People v. Campuzano, 254 Adv. Cal. App. 60, 65, 61 Cal. Rptr. 695, 698 (1967). The court found that the defendant freely consented to the search conducted "without any assertion of authority." This case is distinguishable from welfare cases because the facts reveal that the defendant was not concerned with the "amorphous threats" of the police. Defendant knew that the object of the search was evidence of narcotics, and he believed that there were none in his home.

39 66 Adv. Cal. at 263, 425 P.2d at 229, 57 Cal. Rptr. at 629.

40 CAL. DEP'T SOCIAL WELFARE, CHARACTERISTICS OF RECIPIENTS OF AID TO NEEDY CHILDREN, RESEARCH SERIES REPORT NO. 20, July 1963.

> Out of 86,000 ANC [now AFDC or Aid to Families with Dependent Children] mothers in California one-third have eighth grade educations or less, one-third have ony partially completed high school, and only twenty-one per cent have graduated from high school.

41 66 Adv. Cal. at 262, 425 P.2d at 229, 57 Cal. Rptr. at 629.

42 190 F.2d 649, 651 (D.C. Cir. 1951).

43 *Compare* French, *Unconstitutional Conditions: An Analysis*, 50 GEO. L.J. 234 (1961), *with* O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 CALIF. L. REV. 443 (1966).

44 *See* Hale, *Unconstitutional Conditions And Constitutional Rights*, 35 COLUM. L. REV. 321 (1935).

forth which, if present, may justify a waiver of constitutional rights in other welfare searches:[45] (1) the conditions must relate to the justification for the benefit;[46] (2) the value accruing from imposition of the conditions "outweighs any resulting impairment of constitutional rights . . .";[47] and (3) "there are no alternative means less subversive of constitutional right . . ."[48] available relating to "the purpose contemplated by conferring the benefit . . . ."[49] No authority is cited to support this remarkable conclusion. In dismissing the county's claim that benefits may be withheld from recipients not submitting to random, exploratory searches,[50] the court concluded that there was no correlation between the particular condition in *Parrish* and the intended purpose of the benefit.[51]

The authority cited, both approving and disapproving conditioned receipt of benefits,[52] deals almost exclusively with first amendment freedoms.[53] Without attempting to elevate fourth amendment rights

---

[45] 66 Adv. Cal. at 263, 425 P.2d at 230, 57 Cal. Rptr. at 631. The *Parrish* court was most explicit when stating:

> Although we can conceive of unusual situations in which *the government might properly predicate continued welfare eligibility upon consent to unannounced early morning searches,* the record fails to develop any justification for such a condition here (emphasis added).

[46] *Id.* at 265, 425 P.2d at 230, 57 Cal. Rptr. at 630.

[47] *Id.*

[48] *Id.* at 263-64, 425 P.2d at 230-31, 57 Cal. Rptr. at 630-31.

[49] *Id.*

[50] *Id.* at 266, 425 P.2d at 231, 57 Cal. Rptr. at 631.

[51] *Id.* at 263-64, 425 P.2d at 230-31, 57 Cal. Rptr. at 631-32. The court concluded by saying:

> [S]o striking is the disparity between the operation's declared purpose and the means employed, so broad its gratuitous reach, and so convincing the evidence that improper considerations dictated its ultimate scope, that no valid link remains between that operation and its proferred justification.

In reaching this conclusion, the court noted how the searches were to include non-suspect recipients as a means to prove a low incidence of welfare fraud.

[52] *Id.* at 262, 425 P.2d at 229, 57 Cal. Rptr. at 630. Despite the court's conclusion that welfare benefits may be conditioned on waiver of constitutional rights, (*see* note 43 *supra*) the main premise of the argument was that the government lacked power to condition the receipt of benefits.

[53] Sherbert v. Verner, 374 U.S. 398 (1963) (dealt with a condition requiring plaintiff to work on a Saturday, which was contrary to her religious beliefs); Speiser v. Randall, 357 U.S. 513 (1958) (invalidated a California statute requiring as a precondition to certain tax exemptions a statement from the petitioner that he would not advocate the overthrow of government by unlawful means); Hannegan v. Esquire, Inc., 327 U.S. 146 (1946) (held that an order of the Postmaster General to censor mail was unconstitutional); Rosenfield v. Malcom, 65 Cal. 2d 559, 421 P.2d 697, 55 Cal. Rptr. 505 (1966) (ruled that a civil service employee could not be dismissed for political activities displeasing to his superior); Bagley v. Washington Township Hosp. Dist., 65 Cal. 2d 499, 421 P.2d 409, 55 Cal. Rptr. 401 (1966) (held invalid a regulation which imposed restrictions on nurses aides' political activities); Fort v. Civil Serv. Comm'n, 61 Cal. 2d 331, 392 P.2d 385, 38 Cal. Rptr. 625 (1964) (argued that restrictions on county officers to cast votes or to express opinions were invalid in light of related

above first amendment rights, two distinctions seem evident. First, restricting freedoms under the first amendment as a precondition to governmental affiliation may be justified for societal welfare,[54] whereas the benefit derived from withholding one's fourth amendment right is purely economic since the purpose of such unannounced searches is the elimination of fraudulent welfare practices. Second, surrendering the right to freedom of expression as a precondition to governmental employment is essentially voluntary because the prospective employee retains a choice of employment;[55] on the other hand, the welfare recipient has no alternatives and must accede to the conditions accompanying the aid in order to obtain minimal subsistence.

These distinctions require considerably more justification for a waiver of a welfare recipient's fourth amendment rights than the reasons submitted by the court. One writer has suggested numerous criteria for determining conditioned receipt of welfare benefits.[56] Although the criteria are designed to prevent abuses, the lack of a voluntary choice, while requiring a sacrifice of constitutional rights, relegates these potential recipients to second class citizenry. Welfare then becomes openly demeaning and the accompanying stigmas may one day cause society to rue such conditions.

At this point a discussion of *Camara* is imperative because the sweeping doctrine of the United States Supreme Court requiring either consent or a warrant for searches under any circumstances,

---

first amendment rights); Danskin v. San Diego Unified School Dist., 28 Cal. 2d 536, 171 P.2d 885 (1946) (appellants successfully contested certain loyalty oaths as a precondition to use of a school auditorium); O'Neil, *supra* note 41, at 443 (discussed a balancing of criteria for conditioned welfare benefits but did not suggest any abridgement of fourth amendment rights); French, *supra* note 41, at 234 (suggested that government imposed conditions may infringe upon fourth and fifth amendment rights).

[54] Note, *Review of Welfare Practices*, 67 COLUM. L. REV. 84, 101 n.104 (1967) ("regulation of free expression . . . is deemed to serve societal values beyond the merely personal rights to freedom . . .").

[55] A government employee is faced with the choice of waiving his right to free expression and working for the government or retaining government employment. He is not precluded from obtaining employment where waiver of such rights is not required.

[56] O'Neil, *supra* note 41, at 463-74. Eight criteria are listed which may be useful in evaluating particular conditions. A condition need not comply with all the criteria since some may not be appropriate. Essentially a condition may be valid: (1) if the object of the condition could be achieved in no other way; (2) if the condition is relevant to the benefit conferred; (3) providing that no alternative means would achieve the same end; (4) considering the degree of importance which the benefit means to the recipient; (5) whether equivalent benefits were available in the private sector; (6) depending on the manner in which the condition influences the beneficiary's judgment; (7) considering the form in which the condition is imposed; and (8) if proper procedures are provided for determining a breach of condition.

may render the questions raised by *Parrish* moot. In *Camara* the appellant refused to allow a warrantless inspection by city housing inspectors who had reason to believe that appellant was violating the occupancy permit of his apartment building.[57] After appellant unsuccessfully demurred to a criminal complaint filed by the city, he appealed a denial of his subsequent writ of prohibition against further criminal proceedings. In overruling *Frank*[58] the Court held:

> [A]dministrative searches *of the kind at issue* here, are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual. . . .[59]

Moreover, the Court did not concede that broad statutory safeguards were a substitute for individualized review.[60] Nevertheless, the ruling was not all inclusive since the Court added "*except in certain carefully defined classes of cases*, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."[61]

When the legality of welfare searches is considered in view of *Camara*, a question arises whether these searches are to be exempt from the penumbra of the doctrine. *Camara* does not define any of the *excepted classes of cases*, and explicitly limits its holding to administrative searches *of the kind at issue*. The effect of these qualifying phrases may be intended to restrict the ruling in *Camara* to public health and safety searches. If so, *Camara* may not have resolved the legality of administrative searches of a different nature; thus, the issue will remain undecided until presented to the Court for adjudication.

Furthermore, several differences between public health inspections and public welfare searches provide justification for excluding the latter from the penumbra of *Camara*. Inspections conducted with the object of discovering disease, protecting public health, and locating

---

57 387 U.S. at 523.

58 *Id.* at 534. *Accord*, See v. City of Seattle, 387 U.S. 541 (1967) (decided in conjunction with *Camara*). Appellant refused to permit a warrantless inspection of his commercial warehouse. In applying the *Camara* ruling, the Court stated, "[w]e hold only that the basic component of a reasonable search under the Fourth Amendment—that it not be enforced without a suitable warrant procedure—is applicable in this context, as in others, to business as well as to residential premises." *Id.* at 546.

59 *Id.* at 534 (emphasis added).

60 *Id.* at 533.

61 *Id.* at 528 (emphasis added).

safety hazards are preventive by nature and require a narrow interpretation of constitutional limitations since public well-being is the motivating force. Searches conducted by welfare authorities to verify a welfare recipient's eligibility are motivated by punitive and economic interests. Noncompliance with safety standards may result in danger to life and limb thus justifying a departure from strict constitutional limitations.[62] On the other hand, misrepresentation of welfare eligibility touches, at most, on the periphery of our economic interests,[63] and is far less crucial to public health and safety. In light of these differences, investigatory methods adaptable to health inspections may not be applicable to welfare searches.

But assuming that welfare searches do not differ in kind from the inspections treated in *Camara*, at least one other distinguishing factor has consequence. Although the Court broadly construed the "warrant clause" of the fourth amendment,[64] a new dimension to probable cause was formulated.[65] In reference to public health inspections, the general conditions of a geographical area may now constitute sufficient grounds for issuance of a warrant.[66] While such an inter-

[62] Emergency situations have traditionally dictated qualification of otherwise secured rights. *See, e.g.*, North American Cold Storage Co. v. City of Chicago, 211 U.S. 306 (1908) (provided that there was no right of notice or opportunity to be heard for persons whose property [food] is seized as unwholesome and unfit for use); Jacobson v. Massachusetts, 197 U.S. 11 (1905) (found that compulsory vaccination did not violate individual rights since personal liberties are subject to restraints in order to secure the general comfort and health of the people); Compagnie Francaise v. Louisiana State Bd. of Health, 186 U.S. 380 (1902) (ruled that the state possessed power to restrain the movement of healthy persons in localities "infested with contagious or infectious disease"); Pennsylvania v. Maroney, 348 F.2d 22, 32 (3d Cir. 1965), *cert. denied*, 384 U.S. 1019 (1966) (held that warrants were not required in searches incident to a lawful arrest).

[63] For the twelve month period, July 1, 1965 to June 30, 1966, the average number (per month) of welfare recipient cases in the AFDC program was 146,912. CAL. DEP'T OF SOCIAL WELFARE, THE ANNUAL STATISTICAL REPORT, RESEARCH AND STATISTICS, Table 1 (1966). According to a 1963 California welfare study report, the highest percentage of all welfare fraud exists in the AFDC program. CAL. WELFARE STUDY COMM'N CONSULTANTS' REPORT, PART TWO, at 281-83 (Jan. 1963). Yet, in the AFDC program the Department of Social Welfare published statistics for 1966 revealing an average for a three month period, of 1,828 suspected fraud cases, of which only one-third were referred to the District Attorney for prosecution. CAL. DEP'T OF SOCIAL WELFARE, RECIPIENT FRAUD REPORT, RESEARCH AND STATISTICS (1967). These figures indicate that out of 146,912 AFDC cases, approximately 200 suspected fraud cases were reported monthly to the District Attorney for prosecution, or less than .15 percent.

[64] *See* text accompanying note 61 *supra.*

[65] 387 U.S. at 534-35.

[66] *Id.* at 536-38. This construction was based on similar arguments used by Justice Frankfurter to support the distinction in *Frank*, and allowed the Court to effect substantively what they emasculated procedurally. Dissenting in *Camara*, Justice Clark criticized the "new-fangled 'warrant' system that is entirely foreign to Fourth Amend-

pretation is relevant to health and safety inspections, it is clearly inappropriate for welfare searches designed to detect fraud. Misrepresentation of eligibility can only be ascertained by a study of individual characteristics, not area conditions; therefore the general existence of welfare fraud does not provide a justifiable basis for probable cause.

Aside from issues raised by *Camara* and *Parrish*, consideration should be given to state and federal administrative regulations governing the practices of welfare agencies.[67] Initially, the *Parrish* court intimates that the questionable legality of mass warrantless raids is no longer in controversy due to the publication of these regulations. Despite this intimation, two questions remain unanswered: (1) In what respect do these regulations prohibit or sanction welfare searches conducted without warrants? (2) What is the force and effect of these regulations as restraints on the agencies and as protection for the recipients?

First, the state welfare regulation[68] clearly prohibits "mass, indiscriminate or dragnet home visits . . ."[69] but does not preclude warrantless searches in other situations such as random inspections.[70] In fact, unannounced searches at any time of day are authorized.[71]

---

ment standards." He noted that history supported the *Frank* ruling; and the current need for health and safety inspections, unencumbered by a restrictive warrant procedure, substantiated adherence to that holding. In his final argument, Justice Clark attacked the creation of "paper warrants" resulting from the "prostitution" of the warrant procedure.

67 CAL. DEP'T OF SOCIAL WELFARE BULL. No. 624 (Revised), V (B), effective September 1, 1963 (hereinafter cited as CAL. BULL.) and UNITED STATES DEP'T OF HEALTH, EDUC. AND WELFARE, HANDBOOK OF PUB. ASSISTANCE ADM. HANDBOOK TRANSMITTAL No. 77, effective July 1, 1967 (hereinafter cited as FED. HANDBOOK).

68 The pertinent sections of the state bulletin are:

> Home visits at any time of the day, announced or unannounced, are proper. However, when made outside regular office hours or on other than regular working days, they are to be made only during reasonable hours of normal family activity. Mass, indiscriminate or dragnet home visits are not to be used either for the purpose of fraud detection or for the purposes of deterring fraud. They are not to be used as a method of testing the accuracy of eligibility decisions. Search of the home or property of a recipient by welfare department staff for evidence of fraud is prohibited. Evidence may be observed and noted. It may be removed from the premises only with the owner's permission. Recipients are entitled to due process of law.
>
> At all times it is incumbent upon welfare department staff to conduct themselves with courtesy and with recognition of the rights of all persons involved.

CAL. BULL. § V (B).

69 CAL. BULL. § V (B).

70 The regulation does not consider such other situations, therefore, it may be assumed that such warrantless inspections are not within its prohibition.

71 *See* note 68 *supra.*

The recent federal regulation[72] does not proscribe welfare searches without warrants although it does restrict "visits"[73] outside normal working hours.

Second, despite such governmental attempts to curb many of the questionable investigatory practices, considerable doubt remains as to the force and effect of these regulations. If the promulgated regulations are: (1) within the granted power of the enacting agency; (2) pursuant to proper procedure; and (3) reasonable, then they should have the force of law.[74] Whether the regulations do have such effect and afford constitutional protection is a question of judicial interpretation. Regrettably neither the state nor federal regulations have been examined by the courts.

If judicial review is the only way to evaluate the constitutionality of these regulations, or the only way to ensure agency compliance, then a real "case or controversy" must arise.[75] However, few welfare recipients are aware of constitutional concepts[76] or possess knowledge or finances with which to seek meaningful legal advice. In fact, the constitutionality of the Alameda County raids would never have been questioned except for the rather unusual occurrence of a social worker's refusal to participate in an activity which he believed violated the constitutional rights of the recipients. But assuming a "case or controversy" arose, a further question to resolve is whether the provisions of the regulations are mandatory or merely recom-

---

72 FED. HANDBOOK, Pr. IV, § 2220 (1966) requiring state conformance by July 1, 1967. The pertinent provisions prescribe as follows:

> The requirement that a State plan contain policies and procedures for determination of eligibility that are consistent with program objectives and that respect legal rights of individuals and do not violate the individual's privacy or personal dignity, or harass him or violate his constitutional rights, necessitates the testing of each pertinent policy and procedure against those positive and negative criteria . . . .
>
> States must especially guard against violations in such areas as entering a home by force, or without permission, or under false pretenses, making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers, or papers to seek clues to possible deception.

Id. at § 2230.

73 "Visits" are not defined in the federal regulation, yet the scope of the visit, as provided in the regulation, implies that the term may be used interchangeably with inspections or searches. *See* note 72 *supra.*

74 1 DAVIS, ADMINISTRATIVE LAW TREATISE, § 5.03, at 299 (1958).

75 U.S. CONST. art. III, § 2; *see* Muskrat v. United States, 219 U.S. 346, 357 (1911):

> By cases and controversies are intended the claims of litigants brought before the courts by such regular proceedings as are established by law or custom for the protection or enforcement of rights or the prevention, redress, or punishment of wrongs.

76 *See* note 40 *supra.*

mended.[77] Unfortunately, resolution of this question is beyond the scope of this comment.

Previous discussion leads to the conclusion that the *Parrish* court was apparently neither compelled nor motivated to render judgment beyond the constitutionality of the early morning mass raids, although portions of the court's arguments condemning those raids are clearly relevant to warrantless welfare searches. *Camara*, if not limited to public health inspections, may either specifically exempt welfare searches from the holding or simply be inapplicable because of differences in the respective searches.

An observation is in order: At one time, the United States Supreme Court sanctioned searches without warrants in administrative cases, yet insisted on strict compliance with constitutional standards in searches conducted for criminal prosecution.[78] After *Camara*, searches conducted with the object of advancing the general health and safety required a valid warrant.[79] If criminal searches and administrative inspections represent two extremes, welfare searches must be cast between these polarities. These welfare searches possess characteristics germane to both in that they are designed: (1) to apprehend and punish individual abuses,[80] and (2) to provide efficient allocation of public funds.[81] On this basis, the protection given to public safety inspections would clearly apply to public welfare searches.

However, an equally important consideration is the great avenue for fraud provided by welfare assistance; accordingly, the plight of the welfare agencies must not go unheeded. If welfare administrators must now obtain warrants for all searches, it may be too burdensome to require the same degree of probable cause demanded in criminal investigations. *Camara* may offer a solution. The new dimension of probable cause articulated by *Camara* may be precedent for a similar approach. Perhaps a broader interpretation of probable cause would be appropriate with respect to searches conducted for the redetermination of welfare eligibility. To the extent that public

77 67 COLUM. L. REV. 87 & n.27 (1967).

78 *See* text accompanying notes 10 & 23 *supra.*

79 *See* text accompanying notes 58-61 *supra.*

80 *Compare* note 1 *supra*, with Reich, *Midnight Welfare Searches And The Social Security Act*, 72 YALE L.J. 1347 (1963).

81 66 Adv. Cal. at 265-67, 425 P.2d at 231-32, 57 Cal. Rptr. at 631-32. It is understandable that the general public would be interested in the proper utilization of welfare funds so that benefits may be channeled to applicants whose needs may be more legitimate than others.

interest in the proper allocation of welfare funds vindicates such a construction, an evaluation of the following seems relevant: (1) benefit to be derived by the public; (2) harm or hardship to be suffered by the recipient; (3) other methods available to detect welfare fraud; (4) frustration of governmental purpose in the administration of welfare programs; and (5) reasonableness of the initial suspicion. Of course, this presents an anomalous situation in which the court liberally construes one clause of the Constitution to prevent erosion of safeguarded rights, only to reach a contrary result by strictly interpreting another.

In the final analysis, the courts must strike a balance between society's demands for efficient welfare administration and the individual's right of privacy. The far reaching effects of *Griswold v. Connecticut*[82] in defining this right of privacy[83] may foreshadow a broad application of the fourth amendment's "warrant clause." A welfare recipient's right to be free from warrantless welfare searches of his home should remain paramount to a compromise advancing the public interest.

RICHARD PETER SAX

[82] 381 U.S. 479 (1965).

[83] *See generally Symposium—Griswold v. Connecticut and the Right of Privacy*, 64 MICH. L. REV. 197 (1965).