

substitute for a warrant. The Court noted, in Donovan, that the pervasiveness and regularity of the federal regulation ultimately determines whether a warrant is necessary to render an inspection program reasonable under the Fourth Amendment. The Court further noted that the length of time for regulation could not be applied to a new or emerging industry, such as the nuclear power industry.

As to private homes, absent consent or an emergency, a warrantless inspection is unconstitutional. Steagald v. United States, \_\_\_ U.S. \_\_\_ (1981); Payton v. New York, 445 U.S. 573 (1980).

There are also constitutional issues with regard to administrative search warrants, or inspection warrants. The Court of Appeals in Fred W. Allnutt, Inc. v. Commissioner of Labor and Industry, 278 Md. 35 (1980) in remanding the case to the circuit court for consideration of the merits of the appeal, reviewed the application of Fourth Amendment principles to administrative search warrants. In Camara v. Municipal Court, 387 U.S. 523 (1967), the Supreme Court had not permitted a warrantless administrative search of an apartment by a housing inspector, but in Camara and its companion case See v. City of Seattle, 387 U.S. 541 (1967), did indicate that probable cause in the criminal sense was not a constitutional requirement for obtaining a warrant. However, the Supreme Court "did not clearly indicate what showing of probable cause would comply with the reasonableness standard". Allnutt, supra, at 43. The Supreme Court in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), considered the administrative probable cause necessary for issuing an administrative search warrant. Barlow is interpreted to require for a finding of probable cause that: (1) a reasonable legislative or administrative inspection program exists; and (2) the proposed inspection comes within that program.

Allnutt, supra, at 53, indicated that Article 89, § 2A of the Code, which permits the issuance of certain inspection warrants not based on probable cause, would need to be examined to determine whether it is facially constitutional in light of the Fourth Amendment, Article 26 of the State Declaration of Rights, and Barlow's and other relevant cases.

For further discussion of the issues on warrantless searches, see FDA, EPA, and OSHA Inspections -- Practical Considerations in Light of Marshall v. Barlow's, Inc., 39 Md. L. Rev. 715, (1980).

Also note that, absent any statutory authorization for the issuance of an administrative warrant for an inspection, there exists no authority for a Maryland Court to issue an administrative warrant. In the Matter of Milligan, October, 1978, Anne Arundel County, Judge H. Chester Goudy.