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William W. Gooden

Indiana University School of Law

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THE CONSTITUTION AND PRIVILEGE HOLDERS: CONDITIONING THE ISSUANCE OF A LIQUOR LICENSE UPON CONSENT TO A WARRANTLESS SEARCH

In *Daley v. Berzanskis*,¹ the Supreme Court of Illinois recently denied a liquor licensee's fourth amendment challenge to a warrantless search² of his tavern. Although Berzanskis had successfully prevented the prosecution from using seized contraband in an earlier criminal proceeding,³ his suppression motion was overruled in the subsequent license revocation hearing.⁴ Upholding this ruling, the Illinois Supreme Court found that search warrants were unnecessary for liquor inspections.⁵ The court reasoned that since liquor was an "evil of society" the statutes requiring applicants to waive their fourth amendment rights⁶ were a valid precondition to receiving the liquor license.

The *Berzanskis* situation poses three constitutional problems for an administrative fact finder. First, is a warrantless administrative search unreasonable? Secondly, if the search is found unreasonable, does the exclusionary rule apply to administrative proceedings?⁷ And lastly, if the

1. 47 Ill. 2d 395, 269 N.E.2d 716, *cert. denied*, 402 U.S. 999 (1971).

2. The search was conducted pursuant to a warrant which had previously been quashed in a criminal proceeding. 47 Ill. 2d at 397, 269 N.E.2d at 718.

3. 47 Ill. 2d at 397, 269 N.E.2d at 718. The stolen property which was seized consisted of approximately 1000 items, including cameras, radios, office equipment, mink coats, guns, jewelry and small appliances. At the revocation hearing the stolen items introduced into evidence were two television sets, a phonograph, and a portable electric typewriter. *Id.* at 400-01, 269 N.E.2d at 720.

4. 47 Ill. 2d at 396, 269 N.E.2d at 717.

5. *Id.* at 400, 269 N.E.2d at 719.

6. ILL. ANN. STAT. ch. 43, § 112 (Supp. 1972) :

Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses. . . .

. . . .

2. To enter or to authorize any law enforcing officer to enter at any time upon any premises licensed hereunder to determine whether any of the provisions of this Act or any rules or regulations adopted by him or by the State Commission have been or are being violated.

ILL. ANN. STAT. ch. 43, § 190 (1944) :

Whenever complaint is made . . . to any judge of any court having cognizance of criminal offenses, that complainant has just and reasonable grounds to believe and does believe that alcoholic liquor is manufactured, possessed, kept for sale, used or transported, in violation of the Act . . . the judge may issue a search warrant as hereinafter provided; provided, however, no search warrant shall be necessary for the inspection or search of any premises licensed under the Act.

7. While the United States Supreme Court was dealing with a criminal trial when it held in *Mapp v. Ohio*, 367 U.S. 643 (1961), that the exclusionary rule applies to state

exclusionary rule does so apply, is a fourth amendment waiver valid when it is required as a precondition to obtaining a privilege, such as a liquor license?

UNREASONABLE SEARCHES IN ADMINISTRATIVE ACTION

The Supreme Court has yet to decide what circumstances are necessary to render a warrantless administrative search unreasonable. In *Frank v. Maryland*,⁸ the Court held that warrantless administrative searches were reasonable as long as a compelling state interest was present.⁹ However, in *Camara v. Municipal Court of San Francisco*¹⁰ and *See v. Seattle*,¹¹ involving attempts to make warrantless building inspec-

proceedings, the language of the fourth amendment apparently precludes unreasonable searches by administrative agencies as well as more traditional law enforcement agencies. This has been assumed in numerous Supreme Court cases and will be taken for granted throughout this note.

8. 359 U.S. 360 (1959). In *Frank*, a Baltimore city health inspector, finding evidence of rat infestation in the rear of appellant's home, requested permission to inspect appellant's basement. Appellant refused such permission and was fined for a violation of the Baltimore City Code, which provided that

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 full examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars. BALTIMORE CITY CODE art. 12, § 120 (1950).

In a de novo proceeding, the Criminal Court of Baltimore also found appellant guilty. The United States Supreme Court found the code provision constitutional, holding that it touches upon only the "periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion," 359 U. S. at 367, and that it is "hedged about with safeguards designed to make the least possible demand on the individual occupant, and to cause only the slightest restriction on his claims of privacy." *Id.*

9. 359 U.S. at 371-7.

10. 387 U.S. 523 (1967). Here the Housing Code of San Francisco provided for warrantless inspection of any premises within the city. SAN FRANCISCO MUNICIPAL CODE § 503 (1958). Appellant leased the bottom floor of an apartment building for residential purposes. Claiming that the building's occupancy permit did not allow residential use of the ground floor, the city housing inspector sought unsuccessfully on three different occasions to inspect appellant's premises without a warrant. A complaint was then filed charging appellant with refusing to permit a lawful inspection. When appellant's demurrer to the criminal complaint was overruled, he filed a petition for a writ of prohibition alleging that the ordinance authorizing the inspection was unconstitutional. The writ was denied but on appeal the United States Supreme Court reversed, holding that appellant could not constitutionally be convicted for refusing to consent to the inspection. 387 U.S. at 540.

11. 387 U.S. 541 (1967). *See* involved Seattle's Fire Code, which authorized the Fire Chief to inspect all buildings and premises "for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire." CITY OF SEATTLE ORDINANCE No. 87870, § 8.01.050 (1959). Appellant refused to allow a warrantless inspection of his commercial warehouse, which inspection was part of a routine, periodic city-wide check. He was convicted of refusing to permit a lawful inspection. The Supreme Court reversed, holding that the fourth amendment requires a suitable warrant procedure in order to inspect private commercial premises. 387 U.S. at 546.

tions, the Court declared the statutes authorizing these searches unconstitutional. Apparently overruling *Frank*, the Court stated in *Camara* that

the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.¹²

According to the Court in *Camara*, governmental purposes are frustrated by a warrant requirement in situations where evidence might be destroyed,¹³ or where immediate danger to life or health exists.¹⁴ When these situations apply, questions of public interest are only relevant in deciding the existence of probable cause.¹⁵

Camara and *See* may have been limited by two more recent Supreme Court cases.¹⁶ Closer examination, however, reveals that such an analysis is unwarranted. *Colonnade Catering Corp. v. United States*¹⁷ dis-

12. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 533 (1967).

13. *Id.* As an example, the Court cited the situation in *Schmerber v. California*, 384 U.S. 757 (1966), where the evidence in question was the level of alcohol in defendant's bloodstream.

14. 387 U.S. at 539. To illustrate, the Court pointed to the factual situations involved in *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (unwholesome poultry); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (smallpox epidemic); *Compagnie Francaise De Navigation A Vapeur v. Louisiana State Board of Health*, 186 U.S. 380 (1902) (health quarantine); *Kroplin v. Truax*, 119 Ohio St. 610, 165 N.E. 498 (1929) (tubercular cattle).

15. *See* 387 U.S. at 538.

16. In one later decision, *Wyman v. James*, 400 U.S. 309 (1971), the Court upheld the constitutionality of a New York statute requiring recipients of aid to dependent children to permit frequent visits. The Court did not reach the question of reasonableness, but held instead that the frequent visits required by the statute did not constitute searches within the meaning of the fourth amendment. The decision was based on the fact that the visits were designed to achieve rehabilitation, and that refusal to allow such visits was not punishable by criminal sanctions. However, liquor license cases cannot be decided on this basis since the purpose of liquor inspections is not to rehabilitate the licensee, and a refusal to permit an inspection is often a criminal offense.

17. 397 U.S. 72 (1970). In *Colonnade*, the federal statutes in question gave authority to the Secretary of the Treasury Department or his delegate to enter "during business hours" any premise licensed for the sale of liquor. 26 U.S.C. §§ 5146(b), 7606 (1970). A federal agent entered the premises of petitioner, who held a federal retail liquor dealer's occupational tax stamp, without a warrant. The federal agent asked petitioner to unlock his liquor storeroom, and when petitioner refused to do so, the agent broke the lock and entered the room. He seized bottles of liquor which he suspected of being refilled contrary to federal law. Petitioner then brought suit in federal court to obtain return of the seized liquor, and to suppress it as evidence. The District Court granted the relief but the Court of Appeals reversed. The Supreme Court reversed the Court of Appeals, holding that the sole remedy authorized by Congress for a refusal to permit an inspection was a forfeiture of 500 dollars. 397 U.S. at 79. In dictum, the Court stated the statutes authorizing inspection "during business hours" were constitutional. *Id.* at 76.

tinguished *See* on its facts and indicated that warrantless inspection statutes are valid in the liquor license situation. However, this part of the opinion is only dicta,¹⁸ and involves as apparent misapplication of part of the *See* decision. The *Colonnade* Court, interpreting *See*, stated that the whole question of licensing programs is to be resolved on a case-by-case basis.¹⁹ However, *See* did not necessarily leave licensing programs to this resolution. *See* held that "regulatory techniques [such] as licensing programs which require inspections prior to operating a business or issuing a product" were to be decided on a case-by-case basis.²⁰ The Court seemed to be talking about just one search prior to marketing a product, rather than continued administrative scrutiny throughout the course of business. That *Colonnade* did not actually overrule *Camara* and *See* is evidenced by the fact that Justice Douglas, who wrote the majority opinion in *Colonnade*, cited *Camara* and *See* as authority for his statement in a later case that

[t]here is not the slightest hint in *See* that the government could condition a business license on the "consent" of the licensee to the administrative searches we held violated the Fourth Amendment.²¹

The other case which casts doubt upon *Camara* and *See* is *United States v. Biswell*,²² which involved a warrantless search for firearms pursuant to the Gun Control Act of 1968. Here the Court emphasized the fact that some social evils are so inherently dangerous as to render a warrantless search reasonable.²³ *Biswell*, however, may be considered as

18. The Court only held that the government official involved had exceeded his statutory authority by forcing an entry. 397 U.S. at 77.

19. In *See*, we reserved decision on the problems of "licensing programs" requiring inspection, saying they can be resolved "on a case-by-case basis under the general Fourth Amendment standard of reasonableness." 397 U.S. at 76-77.

20. *See v. Seattle*, 387 U.S. 541, 546 (1967).

21. *Wyman v. James*, 400 U.S. 309, 331 (Douglas, J., dissenting). Another factor indicating that Justice Douglas felt that *See* and *Camara* were still good law after *Colonnade* is his vote to grant certiorari in *Berzanskis*. 402 U.S. 999 (1971). If *Colonnade* was dispositive of the question of the constitutionality of liquor licensing statutes authorizing warrantless searches, there would have been no need to review *Berzanskis*.

22. — U.S. —, 92 S. Ct. 1593 (1972).

23. *Biswell* involved a warrantless search of appellee's pawn shop pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* (1970). The Court noted that: close scrutiny of . . . [firearms] traffic is undeniably of central importance in federal efforts to prevent violent crimes. . . . Large interests are at stake, and inspection is a crucial part of the regulatory scheme.

It is also apparent that if the law is to be properly enforced and inspection

an "emergency situation" exception to the *Camara* rule, since possession of certain types of firearms presents a potentially serious danger to life. In fact, the direct connection of mail order rifles and cheap handguns with the rapid increase in murders, robberies and assassinations was the primary reason for passage of the Gun Control Act.²⁴

There is no inherent and immediate danger to health or life involved in the sale of liquor. Characterizing liquor sales as a "social evil" should not be sufficient grounds to validate warrantless searches absent some additional exigent circumstances. Consequently, since *Colonnade* does not appear to overrule prior cases and *Biswell* does not apply to the sale of liquor, the denunciation of warrantless inspections articulated in *Camara* and *See* can be validly applied to liquor license proceedings.

APPLICABILITY OF THE EXCLUSIONARY RULE TO ADMINISTRATIVE PROCEEDINGS

Since warrantless liquor inspections should not be considered reasonable *per se*, the administrative fact finder must then consider whether the exclusionary rule should apply to these situations. The United States Supreme Court has never specifically decided this issue.²⁵ The Court's reasoning in *Mapp v. Ohio*,²⁶ however, strongly supports such a view. Using a two-pronged approach, the *Mapp* Court held that the unlawful conduct of the police and the effect upon the integrity of our legal system of using illegally seized evidence required application of an exclusionary rule.²⁷

The first prong of the exclusionary rule is based upon the assumption that the police will be discouraged from conducting improper searches if the discovered evidence cannot be used to obtain a conviction.²⁸ This rationale should also apply to administrative investigations, since such

made effective, inspections without warrant must be deemed reasonable official conduct under the Fourth Amendment.

— U.S. at —, 92 S. Ct. at 1596.

24. 18 U.S.C. § 923(g) (1970). The legislative history of the Act stresses the drastic increase in the use of firearms in the commission of crimes, and notes the assassinations of President John F. Kennedy, Martin Luther King and Senator Robert F. Kennedy. See S. REP. No. 1097, 90th Cong., 2d Sess. 76-82, 183-85, 189-208, 240-59; 114 CONG. REC. 12303-30, 12481-504, 13308-56, 13360-67, 13619-48, 14473-74 (1968) (Senate debates); 114 CONG. REC. 16271-300 (1968) (House debates).

25. The Supreme Court has held the exclusionary rule applicable to quasi-criminal forfeiture proceedings, *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), finding that the policy reasons behind *Mapp* support such an extension. *Id.* at 702.

26. 367 U.S. 643 (1961).

27. *Id.* at 656-60.

28. *Id.* at 656.

bodies will likewise be deterred from using illegal searches if evidence obtained cannot produce an administrative sanction.²⁹ The second prong of the *Mapp* decision is equally applicable to administrative proceedings.³⁰ Since a state is a law breaker whenever it conducts an unlawful seizure in violation of the fourth amendment, the *Mapp* Court felt that any court which did not suppress the seized evidence would be encouraging further disobedience and disrespect for the law. Furthermore, the court's integrity would be in question since its processes would be giving legal effect to an illegal action. While it might be argued that administrative proceedings are not as sacrosanct as judicial proceedings, it should be noted that the powers of administrative tribunals have become nearly equivalent to those exercised by trial courts.³¹ Therefore, administrative proceedings should be subject to the same standards of conduct and integrity.

Moreover, although *Mapp* involved a criminal prosecution, the Supreme Court's rationale therein has been extended to quasi-criminal forfeiture proceedings.³² Since the ultimate penalty in such proceedings is similar to a criminal penalty, the Court concluded, in *One 1958 Plymouth Sedan v. Pennsylvania*,³³ that

[i]t would be anomalous indeed . . . to hold that in the criminal proceeding the . . . evidence is excludable, while in the forfeiture proceeding, *requiring the determination that the criminal law has been violated*, the same evidence [is admissible].³⁴

29. The deterrence rationale has been severely criticized as unrealistic. See, e.g., *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 411 (1971) (Burger, C.J., dissenting); Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970). However, to the extent that the exclusionary rule is successful in deterring improper conduct, its effectiveness should not vary with the type of enforcement official involved.

30. The possibility of undermining the integrity of the legal system is especially high where the agency is performing quasi-judicial functions.

31. For example, upon conviction for a violation of Illinois' liquor laws, a licensee must forfeit the bond he had posted when he received his license. ILL. ANN. STAT. ch. 43, § 187 (Smith-Hurd 1944). This administratively enforced sanction is highly similar to a criminal court's imposition of a fine for the commission of a misdemeanor.

32. *Supra* note 15.

33. 380 U.S. 693 (1965). The automobile in question was seized pursuant to a Pennsylvania statute which provided for forfeiture of any vehicle used in the transportation of illegal liquor. Two police officers searched the automobile without a warrant and seized 31 cases of liquor not bearing Pennsylvania tax seals. At the forfeiture proceedings, the owner of the automobile sought to have the liquor suppressed as evidence, alleging it was unlawfully seized. The trial court suppressed the evidence and dismissed the forfeiture petition. Following successful appeals by the state in the state courts, the United States Supreme Court held that the exclusionary rule was applicable, and remanded for a decision on the issue of probable cause. *Id.* at 702.

34. 380 U.S. at 701 (emphasis added).

One 1958 Plymouth suggests that any administrative proceeding which requires a showing of criminal violations is subject to the exclusionary rule. This rationale has apparently been adopted by the state courts of New York. In *Leogrande v. State Liquor Authority*,³⁵ with facts closely parallel to *Berzanskis*, the New York Supreme Court excluded illegally seized evidence from a liquor license revocation hearing, holding that all of the policy reasons which suggest the application of the exclusionary rule in criminal proceedings apply equally to administrative hearings.³⁶

EXTENDING A PRIVILEGE

Almost every American jurisdiction has a statute similar to the Illinois statutes cited in *Berzanskis*, requiring a liquor licensee to submit to warrantless inspections of his business premises. Thirty-one states allow such inspections at any time;³⁷ eleven states allow inspections during business hours or at reasonable times;³⁸ and three states authorize their liquor control boards to make regulations concerning inspections.³⁹ While a few jurisdictions have indicated that such statutes are unconstitutional,⁴⁰

35. 25 App. Div. 2d 225, 268 N.Y.S.2d 433 (1966), *rev'd on other grounds*, 19 N.Y.2d 418, 227 N.E.2d 302, 280 N.Y.S.2d 381 (1967). See also *Finn's Liquor Shop v. State Liquor Authority*, 24 N.Y.2d 647, 294 N.E.2d 440, 301 N.Y.S.2d 584 *cert. denied*, 396 U.S. 840 (1969); *La Penta v. State Liquor Authority*, 30 App. Div. 2d 1033, 294 N.Y.S.2d 947 (1968).

36. 25 App. Div. 2d at 231-32, 268 N.Y.S.2d at 440.

37. ARK. STAT. ANN. § 48-1320 (1964); CAL. BUS. & PROF. CODE § 25755 (West Supp. 1972); FLA. STAT. ANN. § 561.07 (Supp. 1971); GA. CODE ANN. § 58-1022 (1965); HAWAII REV. STAT. § 281-20 (1968); IDAHO CODE § 23-930 (1968); ILL. ANN. STAT. ch. 43, § 112 (Smith-Hurd Supp. 1972); IND. CODE § 7-1-1-42(e) (1971), IND. ANN. STAT. § 12-905 (1956); KAN. STAT. ANN. § 41-209 (1964); KY. REV. STAT. § 241.090 (1972); LA. REV. STAT. ANN. § 26-156 (1969); ME. REV. STAT. ANN. tit. 28, § 351 (Supp. 1972); MD. ANN. CODE art. 2B, § 190 (1968); MICH. COMP. LAWS ANN. § 436.7a (1967); MISS. CODE ANN. § 10265-17 (Supp. 1972); MO. ANN. STAT. §§ 311-630, 311-810 (1963); MONT. REV. CODES ANN. § 4-113 (1968); NEB. REV. STAT. §§ 53-1, 108 (1968); N.H. REV. STAT. ANN. § 178:11 (1964); N.J. STAT. ANN. § 33:1-35 (Supp. 1972); N.C. GEN. STAT. § 18A-20(b) (1971 Supp.); N.D. CENT. CODE § 5-01-12 (Supp. 1971); OHIO REV. CODE ANN. §§ 4301.10(A)(6), 4301.49 (Page 1965); OKL. STAT. tit. 37, § 539 (Supp. 1972); ORE. REV. STAT. § 471.330 (1969); PA. STAT. tit. 47, §§ 2-207, 2-209 (1969); R.I. GEN. LAWS ANN. § 3-12-3 (1956); S.C. CODE ANN. § 4-105 (1962); TEX. PENAL CODE art. 666-13 (1952); UTAH CODE ANN. § 32-8-25 (1966); WASH. REV. CODE § 66.28.090 (1962); WYO. STAT. ANN. § 12-39 (1969).

38. ALA. CODE tit. 29, § 36(5) (1958) ALASKA STAT. § 04.15.020(f) (Supp. 1971); IOWA CODE ANN. § 123.33 (Supp. 1972); MINN. STAT. ANN. § 340.51 (1972); NEV. REV. STAT. § 369.530 (1971); N.Y. ALCO. BEV. CONTROL LAW § 106 (McKinney 1970); TENN. CODE ANN. § 57-218 (1968); VA. CODE ANN. § 4-44 (Supp. 1972); W. VA. CODE ANN. § 60-4-16 (1966); WIS. STAT. ANN. § 139.08 (Supp. 1972).

39. COLO. REV. STAT. ANN. § 75-2-6 (1964); CONN. GEN. STAT. ANN. § 30-6 (1958); MASS. GEN. LAWS ANN. ch. 138, § 24 (1972); MONT. REV. CODES ANN. § 4-113 (1968).

40. *Jolliff v. State*, 215 So. 2d 234 (Miss. 1968) (dictum); *Finn's Liquor Shop*,

most courts have upheld their constitutionality.⁴¹ These courts rationalize their decisions by holding that a liquor license is a personal privilege⁴² and, therefore is subject to discretionary regulation and revocation.

Since 1956, when it decided *Slochower v. Board of Higher Education*,⁴³ the Supreme Court has never validated the waiver of a constitutional right solely on the basis that the waiver was obtained as a condition for receiving a privilege. The Court's disapproval of such waivers was articulated in *Sherbert v. Verner*.⁴⁴ There, appellant's religion had precluded her from accepting available employment since she could not work on Saturday, her day of Sabbath.⁴⁵ In deciding that unemployment compensation could not be withheld,⁴⁶ the Court stated that any other decision

forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.⁴⁷

Inc. v. State Liquor Authority, 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584 (1969) (dictum); Salt Lake City v. Wheeler, 24 Utah 2d 112, 466 P.2d 838 (1970); but see Pride Club, Inc. v. State, 25 Utah 2d 333, 481 P.2d 669 (1971).

41. See, e.g., *People v. Lisner*, 249 Cal. App. 2d 637, 57 Cal. Rptr. 674 (1967); *Boynton v. State*, 64 So. 2d 536 (Fla. 1953); *State Liquor Commission v. Gilbert*, 270 A.2d 876 (Me. 1970); *Davids v. State*, 208 Md. 377, 118 A.2d 636 (1955); *Manchester Press Club v. State Liquor Commission*, 89 N.H. 442, 200 A. 407 (1938); *State v. Zurawski*, 89 N.J. Super. 488, 215 A.2d 564 (1965); *Solomon v. Liquor Control Commission*, 4 Ohio St. 2d 31, 212 N.E.2d 595 (1965); *Oklahoma Alcoholic Beverage Control Board v. McCulley*, 377 P.2d 568 (Okla. 1962); *Brown v. State*, 391 S.W.2d 425 (Tex. Crim. 1965).

42. E.g., *Boynton v. State*, 64 So. 2d 536 (Fla. 1953).

43. 350 U.S. 551 (1956). Appellant was an associate professor at Brooklyn College, which is maintained by New York City. The New York City Charter provided that whenever a City employee utilized the privilege against self-incrimination to avoid answering a question related to his official conduct, his employment would be terminated. NEW YORK CITY CHARTER § 903 (1938). Appellant was called to testify before the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate. Appellant agreed to answer all questions about his associations and political beliefs since 1941, but invoked the fifth amendment as to questions concerning his membership in the Communist Party during 1940 and 1941. The Chairman of the Subcommittee accepted appellant's claim as a valid assertion of a constitutional right. Subsequently, appellant was suspended from his teaching position pursuant to the City Charter provisions. The Supreme Court held that appellant could not be dismissed merely for exercising a constitutional right. 350 U.S. at 558.

44. 374 U.S. 398 (1963).

45. *Id.* at 399.

46. South Carolina allowed unemployment compensation, but a claimant was ineligible for such compensation if he failed, without good cause, to accept available, suitable work when it was offered by an employment office. S.C. CODE ANN. §§ 68-1 to 68-401 (1962). Appellant was disqualified from receiving benefits because of her inability to accept work on Saturdays. 374 U.S. at 401.

47. 374 U.S. at 404.

Two more recent cases have reaffirmed *Sherbert v. Garrity v. New York*⁴⁸ specifically held that conditioning employment on a waiver of fifth amendment rights rendered the waiver invalid since it was not "voluntary."⁴⁹ Similarly, *Spevack v. Klein*,⁵⁰ decided along with *Garrity*, invalidated a fifth amendment waiver required before New York attorneys could enter the bar.⁵¹

These cases reflect the current judicial feeling that any waiver of a constitutional right which is used as a precondition to receiving a privilege is *per se* invalid since it is obtained under coercive circumstances. This logic is equally applicable to the *Berzanskis* liquor license situation.

CONCLUSION

Since *Camara* and *See*, a liquor license inspection ordinance has been held unconstitutional in Utah,⁵² and the Supreme Court of Mississippi has indicated that conditioning the grant of a liquor license upon a waiver of the fourth amendment would be unconstitutional.⁵³ In *Finn's Liquor*

48. 385 U.S. 493 (1967). In *Garrity*, the New Jersey law in question provided that the public employment of anyone who refused to testify as to matters relating to such employment upon the ground that his testimony would tend to incriminate him would be terminated. N.J. REV. STAT. § 2A:81-17.1 (Supp. 1965). Appellant police officers gave statements at an investigation which were later used as evidence in a criminal proceeding. Appellants contended that the statements were coerced because a refusal to make them would have resulted in a loss of public employment. 385 U.S. at 495.

49. 385 U.S. at 497-98.

50. 385 U.S. 511 (1967).

51. In *Spevack*, appellant was disbarred after he invoked the self-incrimination privilege in refusing to produce financial records and to testify at a judicial inquiry. The Supreme Court held that appellant could not be disbarred for exercising a constitutional right. 385 U.S. at 516.

52. *Salt Lake City v. Wheeler*, 24 Utah 2d 112, 466 P.2d 838 (1970). In *Wheeler*, defendants Boyd and Jackson refused to permit an early morning, warrantless inspection of the Regal Lounge, which was being operated under a Salt Lake City beer license. Defendant Wheeler refused to allow a warrantless inspection of the same premises at 8:30 p.m. A city ordinance gave the police department authority to inspect all premises licensed to sell beer. REV. ORDINANCES OF SALT LAKE CITY § 19-4-6 (1965). The District Court of Salt Lake County found the ordinance unconstitutional on the ground that it permitted "unreasonable searches and seizures." 24 Utah 2d at 113, 466 P.2d at 838. The Utah Supreme Court affirmed, citing *Camara* and *See* with approval. *Id.* at 115, 466 P.2d at 840.

53. *Joliff v. State*, 215 So. 2d 234 (Miss. 1968). Here the defendant refused to allow two agents of the Alcoholic Beverage Control Division of the State Tax Commission to inspect the beer stock and beer license of Gladys' Cafe in Woodville, Mississippi. He was convicted of attempting to impede the officers in the discharge of their lawful duties. On appeal, the Mississippi Supreme Court reversed, holding that the State did not reserve the right to inspect premises licensed for the sale of beer. *Id.* at 239. In *dictum*, the court stated that a government privilege cannot be granted on conditions that require the relinquishment of a constitutional right. *Id.* at 236.

Shop v. State Liquor Authority,⁵⁴ the Court of Appeals of New York failed to declare New York's particular statute unconstitutional, but did cite *Camara* and *See* for the proposition that a grant of statutory power specifically authorizing warrantless searches would be unconstitutional.⁵⁵

Such holdings are certainly justified. In the absence of "exigent circumstances," warrantless administrative searches are unreasonable since the burden of obtaining a warrant is not likely to defeat the administrative purpose behind the search. Once such searches are deemed unreasonable, the exclusionary rule should be applied to administrative hearings, since the same policies supporting the rule in the criminal area apply to administrative proceedings. Finally, states should not be allowed to precondition bestowal of a state privilege upon waiver of a potential licensee's fourth amendment rights. Expanded protection of constitutional rights has already been granted to those who enjoy privileges in other areas. Increased protections for liquor licensees seem logical and consistent.

WILLIAM W. GOODEN

54. 24 N.Y.2d 647, 249 N.E.2d 440, 301 N.Y.S.2d 584, *cert. denied*, 396 U.S. 840 (1969).

55. *Id.* at 658, 249 N.E.2d at 445, 301 N.Y.S.2d at 591.