



CACEO 4th AMENDMENT, TRESPASSING & YOU

Presented by:

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TRAINING OVERVIEW

- I. Fourth Amendment
- II. Inspection Without A Warrant
- III. Inspection With A Warrant
 - IIIA. Abatement Warrants
- IV. Obtaining A Warrant
- V. Conducting the Inspection
 - A. Sovereign Citizens and Inspections
- VI. Consequences of Illegal Searches



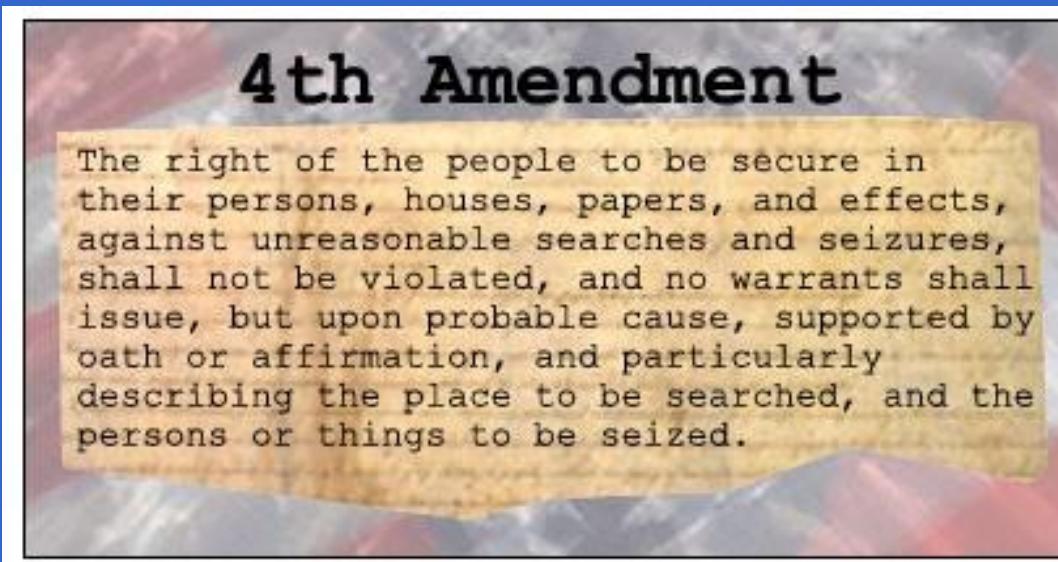
I. FOURTH AMENDMENT





4th Amendment Applies To Code Enforcement

- 4th Amendment protects unreasonable searches by government without a warrant.
- Code enforcement inspectors must adhere to the same fundamental legal limitations.





Search/Seizure vs. Inspection

- Search/seizure: identify and collect evidence of a crime
- Inspection: protect public health and safety



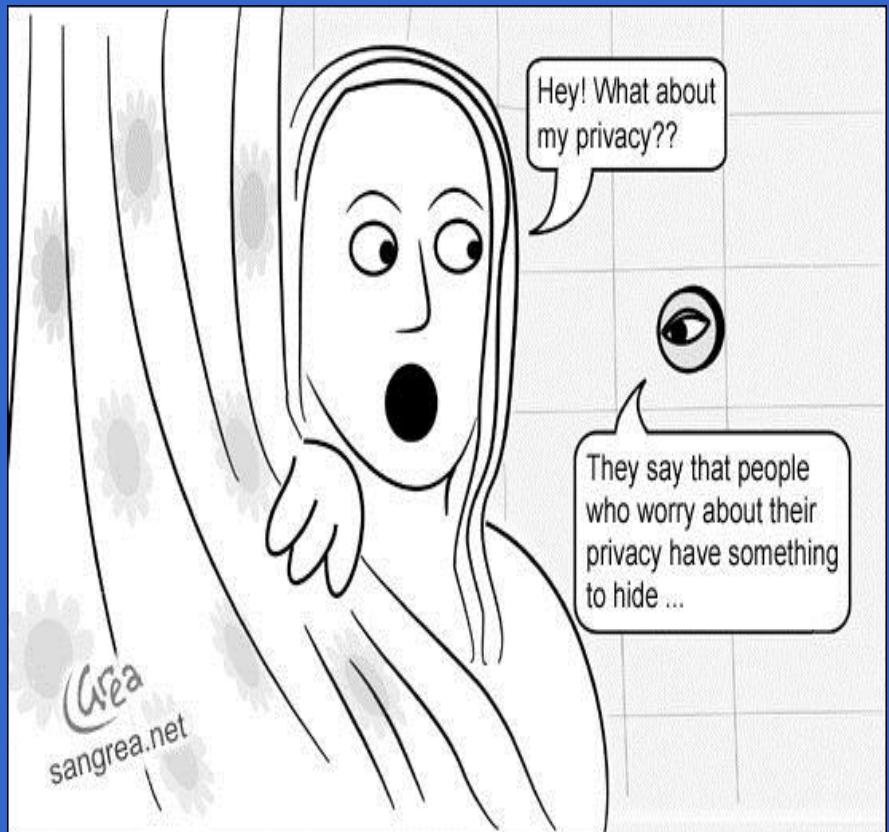
"They say computer crime is the wave of the future. But to me, you just can't beat one-on-one human contact."





Reasonable Expectation of Privacy Doctrine

- 4th Amendment only applies to searches of places where the occupant has a reasonable expectation of privacy.





Reasonable Expectation of Privacy Doctrine (cont'd)

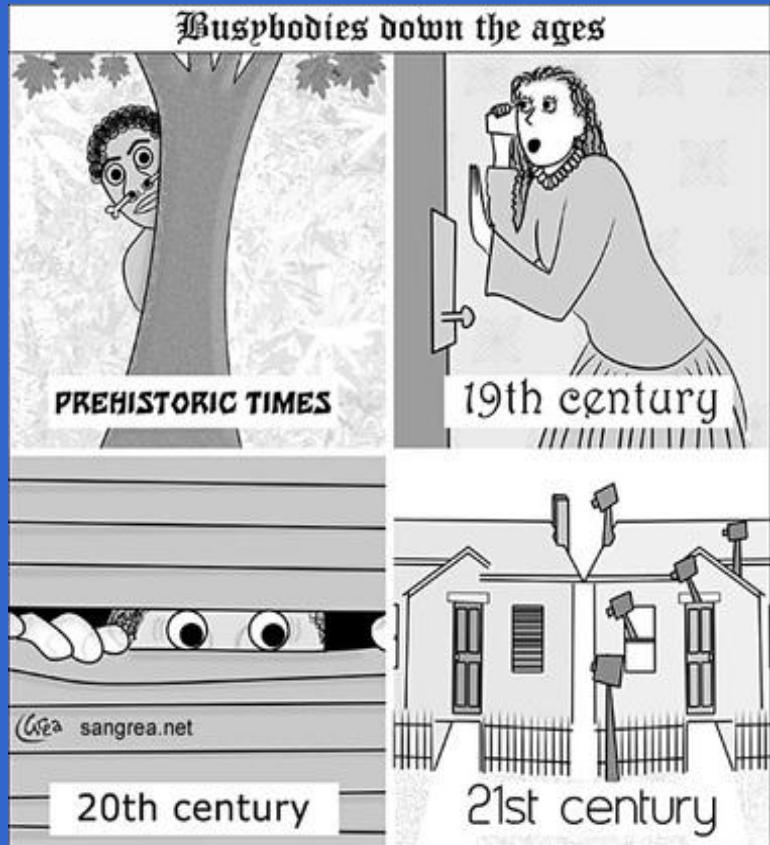
- Ex: No reasonable expectation of privacy exists when garbage is left at the curb for collection. *California v. Greenwood* (1988) 486 U.S. 35, 40.
- Does this change if the city ordinance prohibits searching one's trash?



Reasonable Expectation

- Subjective AND Objective standards:

1. Subjective: person's reasonable subjective expectation of privacy.
 - Consider whether the owner take reasonable efforts to secure his/her privacy

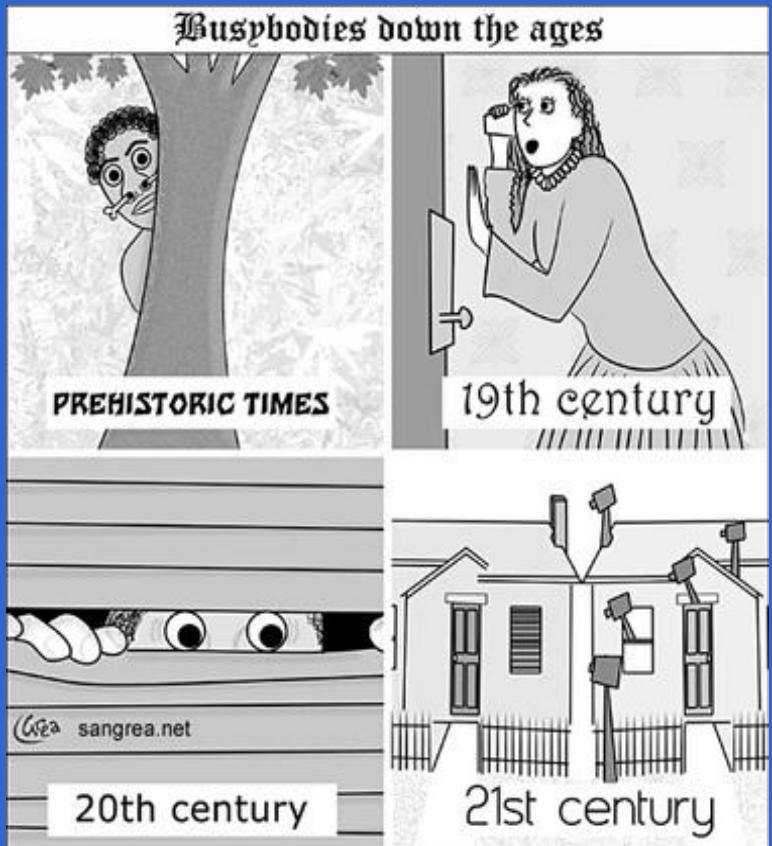




Reasonable Expectation

- Subjective AND Objective standards:

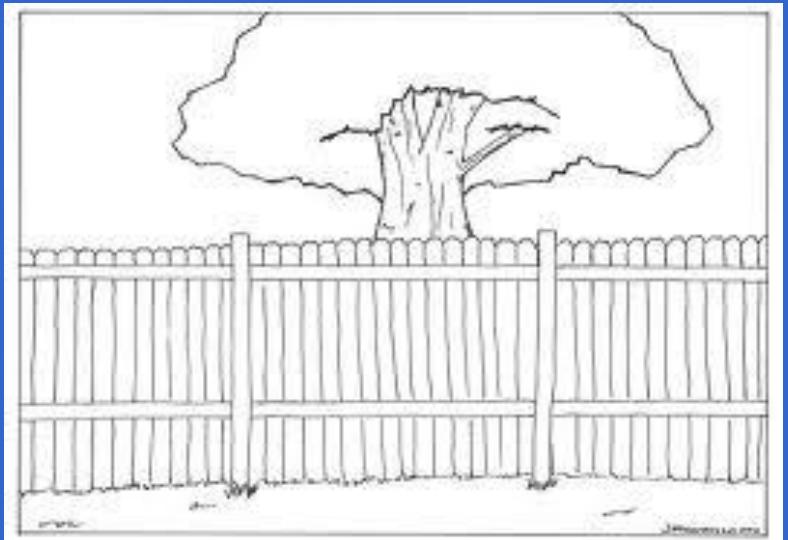
2. Objective: society's willingness to accept the expectation as reasonable.





Reasonable Expectation (cont'd)

- Discussion: fenced front yard vs. not fenced front yard
 - What about owner who builds a six-foot-high fence and gate at each end of the property?





II. Inspection Without A Warrant





When Warrants Are Not Req'd

- No reasonable expectation of privacy exists (Fourth Amendment = N/A)
- Consent from the occupant, or
- Other exceptions
 - Exigent circumstances
 - Highly regulated businesses



"Is **THIS** the line you're telling me not to cross?"



Consent

- Voluntary consent is the most direct and legally permissible means
- Only the person in possession of the property (e.g., tenant) is required to give consent, not necessarily the owner
- Discussion:
 - Is a neighbor's consent sufficient?
 - Is the landlord's consent sufficient?



Plain View

- No expectation of privacy if it is in plain view



- Therefore, an inspector can make observations from areas open to the public or open to public view
- Examples: streets, sidewalks, parks, alleys, and etc.



Plain View

- Requirements:
 - Legal place
 - Readily incriminating
 - Don't need to move subject item



Plain View (Cont'd)

- Discussion:
What about from a neighbor's backyard?
- See *Dillon v. Superior Ct.* (1972) 7 Cal. 3d 305, 310 (police officer's observations from neighbor's yard did not violate 4th Amendment).





Plain View (Cont'd)





Plain View (Cont'd)

- Open Field is another example where the owner does not have a reasonable expectation of privacy





Plain View (Cont'd)

- Technological assistance has no const. significance if the object is in plain view
- Flashlights and binoculars:
 - *People v. Vermouth* (1974) 42 Cal.App.3d 353, 361 (use of binoculars to confirm marijuana plants on sun deck is okay)
 - *People v. Capps* (1989) 215 Cal.App.3d 1112, 1123 (use of flashlight to illuminate inside of a handbag is okay)





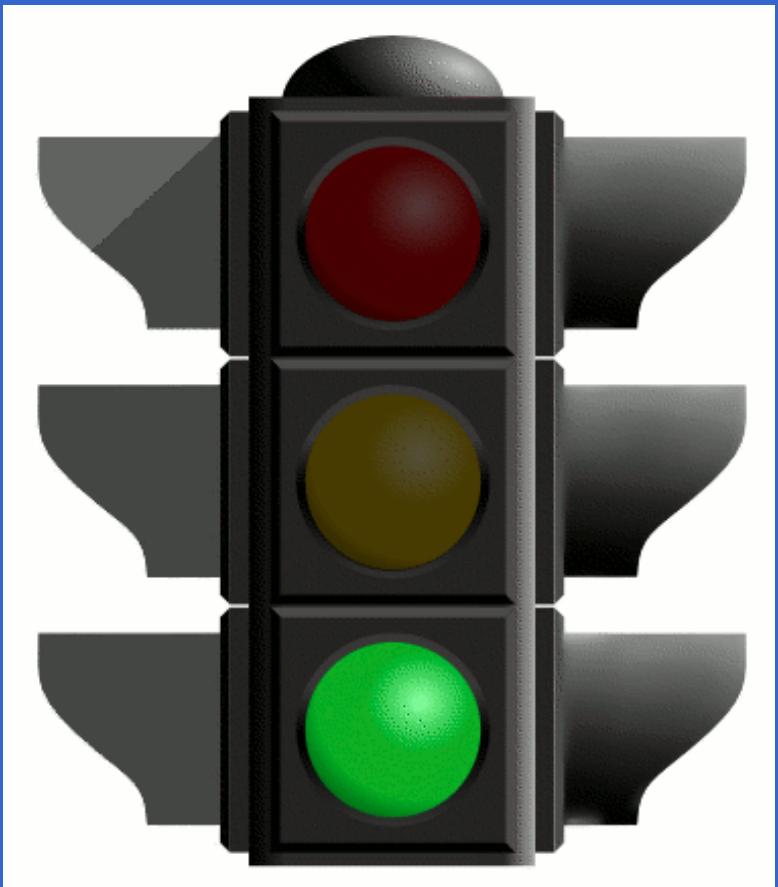
Plain View (Cont'd)

- Aerial Surveillance:
 - *People v. McKim* (1988) 214 Cal.App.3d 766, 769-772 (aerial surveillance by a helicopter at 400 feet did not violate the 4th Amendment).
 - *Dow Chemical Co. v. U.S.* (1986) 476 U.S. 277, 234-238 (taking aerial photos of an industrial plant is lawful).
 - *Florida v. Riley* (1989) 488 U.S. 445, 451-452 (aerial surveillance of residential back yard is lawful)



Exceptions

- Consent
- Highly-Regulated Businesses
- Exigent Circumstances





Exception: Highly Regulated Businesses

- See statutes and ordinances
- Examples:
 - Liquor Industry
 - Wholesale Fish Dealers
 - Junkyards
 - Massage Parlors
 - Health Care Facilities (e.g., day care)
- Hazardous Material Exception: warrant is req'd to inspect a facility storing hazardous waste





Exception: Exigent Circumstances

- Properties with immediate hazards can be inspected without a warrant
- Examples:
 - the seizure of unwholesome food, health quarantine, and the destruction of disease animals
 - entering a burning building





III. Inspection With A Warrant



"You got a search warrant?"



Overview

- Requirement to obtain an inspection warrant is less restrictive than obtaining criminal search/seizure warrant
- Prerequisites:
 - Occupant's refusal to be inspected, and
 - Reasonable cause to suspect code violations or reasonable legislative or administrative standards



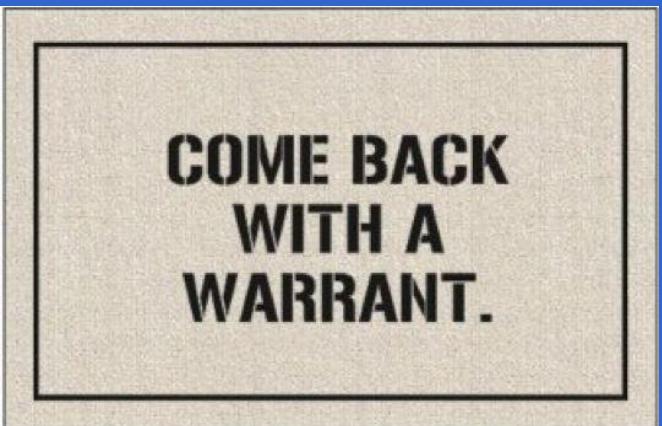
vs. Search Warrant

- What are the differences?
- Benefits of an inspection warrant
- When to use either one



Refusal to Inspect

- Always follow the written guidelines on how to respond and document the refusal
- Sufficient evidence include any communication between the occupant and the enforcement agency
 - Written statement of conversation
 - Letter exchanges





Reasonable Cause

- Reasonable cause ≠ Probable cause
 - Reasonable cause: primary interest in preventing the development of conditions considered hazardous to the public health and safety
 - Probable cause: primary interest in obtaining evidence of a crime



Reasonable Cause (Cont'd)

- Reasonable cause can arise in two basic ways:
 - Enactment of an ordinance or administrative policy which establishes area-wide or annual inspections, or
 - Evaluation of a particular location that is suspected of having code violations.





Reasonable Cause (Cont'd)

- Annual Inspections: to ensure compliance with building and housing codes as well as hazardous materials regulations
- Site-Specific Violations: enforcement inspector suspects code violations on properties that are not part of an annual or area inspection; inspector must support the suspicion with
 - A written statement of specific facts
 - A written statement listing the violated code sections





IIIA. Abatement Warrants

- No statutory authority per se – based on case law.
- Use same procedures as inspection warrant.
- Allows abatement and inspection despite refusal of consent.
- Due process requirements.



IV. Obtaining A Warrant





Procedural Overview

- Relevant statutes are: Code of Civ. Proc., §§ 1182.50-1182.60
- Procedure requires
 - Inspector's Declaration
 - *Ex Parte* Court Hearing
 - Proposed Inspection Warrant
 - Provide notice prior to the inspection
 - Execute and return the warrant





Inspector's Declaration

- Must include
 - The place, dwelling, or premises to be inspected
 - The purpose for the inspection,
 - The occupant's refusal, and
 - Any evidence of suspected code violations
- Evidence of suspected violation may come from
 - Observation
 - Statements from neighbors (e.g., dramatic increase in foot traffic to a residential home)



Ex Parte Hearing

- The written declaration and the proposed inspection warrant are then submitted to a judge at an *ex parte* hearing
- No notice of the *ex parte* hearing is req'd





Inspection Warrant

- The inspection warrant should specify
 - The premise
 - The purpose of the inspection, and
 - Any limitations imposed on the inspection





Provide Notice of Inspection

- Code of Civ. Proc. § 1822.56 requires 24-hour advance notice to be given to the occupant.
- Waiver of this requirement or permission for forcible entry must be specified in the inspection warrant





Forcible Entry and Waiver of Notice

- Forcible entry without prior approval by the judge is an unreasonable search
- Permitting forcible entry and waiving notice:
 - Immediate threat to the public's health and safety, or
 - Numerous unsuccessful attempts to execute a previously issued inspection warrant



Execute and Return

- The warrant is valid for 14 days
- Must be returned to the issuing judge within 30 days of execution



V. Conducting the Inspection





Executing the Warrant

Unless the warrant states otherwise,

- Provide 24-hour notice
- Inspection must be between 8 a.m. -6 p.m.
- Occupant or owner must be present
- No forcible entry





Practical Tips



- Avoid violent confrontations
- Asking for police help when executing inspection warrants is a good practice where the inspector believes the occupant may impede or interfere with the inspection (e.g., sovereign citizens).



Sovereign Citizens





WARNING



NOTICE TO ALL LAW AND CODE ENFORCEMENT

THIS PROPERTY IS POSTED.
READ THIS NOTICE CAREFULLY.

This is private property. This property is declared a Police State free zone. You are not here to help me and cannot be trusted. All law and code enforcement officers harass, annoy and try and entrap people. This denies people the inalienable right to privacy, liberty, freedom and property. You are not welcome, invited, wanted or needed. You do not have implied or express consent, permission or consent by "waiver" or any other lie to enter my property. Neither myself, my family or employees have anything to say to you. There is no crime, exigent or emergency circumstance to warrant entry. This notice is irrevocable. NO WARRANT NO ENTRY. To protect myself from you I am represented by counsel. I hereby exercise my MIRANDA RIGHTS. I also exercise my Constitutional rights. If you have a problem with any point hereby noticed call my lawyer.



Sovereign Citizens (Cont'd)



- Ideology: answer only to common law and are not subject to any statutes or proceedings at the federal, state, or municipal level
- As of 2010, there are approximately 100,000 “hard-core sovereign believers with another 200,000 just starting out.



Sovereign Citizens (Cont'd)

- Since 2000, lone-offender sovereign citizen extremists have killed six law enforcement officers. (FBI Law Enforcement Bulletin)





Identifying sovereign citizens:

- References to the Bible, the Constitution of the United States, U.S. Supreme Court decisions, or treaties with foreign governments
- Personal names spelled in all capital letters or interspersed with colons (e.g., JOHN SMITH or Smith: John)
- Signatures followed by the words “under duress,” “sovereign Living Soul” (SLS), or a copyright symbol (©)
- Personal seals, stamps, or thumb prints in red ink
- The words “accepted for value”
- “No Liability Accepted” above their signature on a driver’s license (do not accept it as a legitimate ID doc)



Sovereign Citizens (Cont'd)





Sovereign Citizens' Tactic

- “It is important to realize sovereign citizens’ tactics to harass and intimidate law enforcement, court, and government officials...” (FBI Law Enforcement Bulletin)
- Methods may be:
 - Refusing to cooperate with requests,
 - Demanding an oath of officer or proof of jurisdiction,
 - Filming interactions with law enforcement, and
 - Filing frivolous lawsuits or liens against real property.





When Occupant Obstructs the Execution of A Warrant

- Only one option: arrest the individual (misdemeanor)
- Enforcement inspectors may NOT forcibly execute the inspection warrant unless the warrant expressly gives permission for forcible entry





VI. Consequences



SIPRESS

"How am I supposed to think about consequences before they happen?"



ILLEGAL SEARCH

- Exclusionary Rule
 - Fruit of the Poisonous Tree
- Civil Rights Lawsuit
 - Against Individual & City
 - Right to Attorney's Fees for the plaintiff only
- May go on Personnel Service Record





QUESTIONS?





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