



# CACEO 4th AMENDMENT, TRESPASSING & YOU

Presented by:

Matthew Silver

Best Best & Krieger LLP

Direct: (949) 263-6588

[Matthew.Silver@bbklaw.com](mailto:Matthew.Silver@bbklaw.com)



# 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





## 4<sup>th</sup> Amendment Applies To Code Enforcement

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

### **4th Amendment**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



# Search/Seizure vs. Inspection

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



# Reasonable Expectation of Privacy Doctrine

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





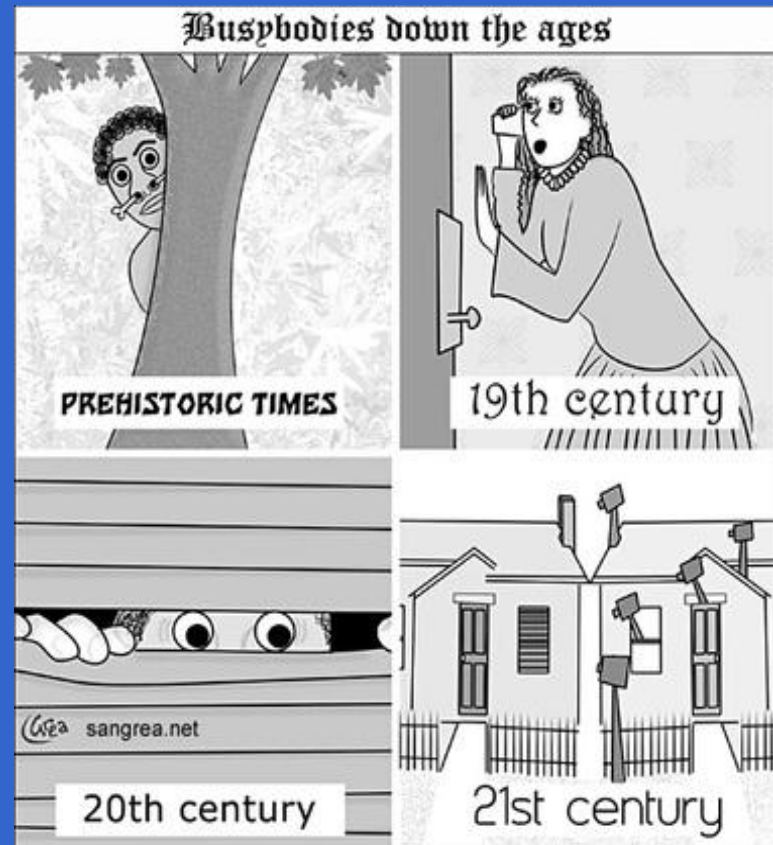
## Reasonable Expectation of Privacy Doctrine (cont'd)

- 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

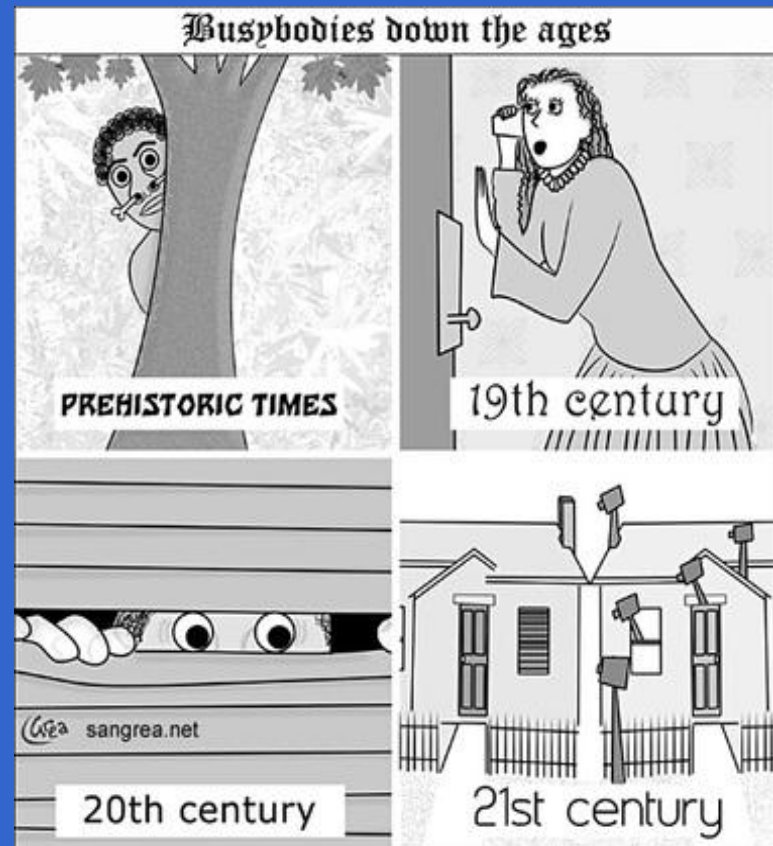




# Reasonable Expectation

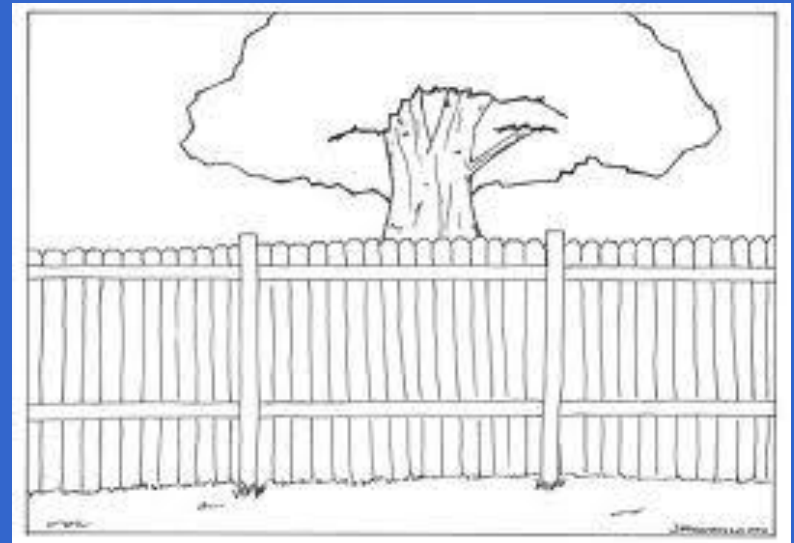
- Subjective AND  
Objective standards:

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







## 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 4<sup>th</sup> Amendment).



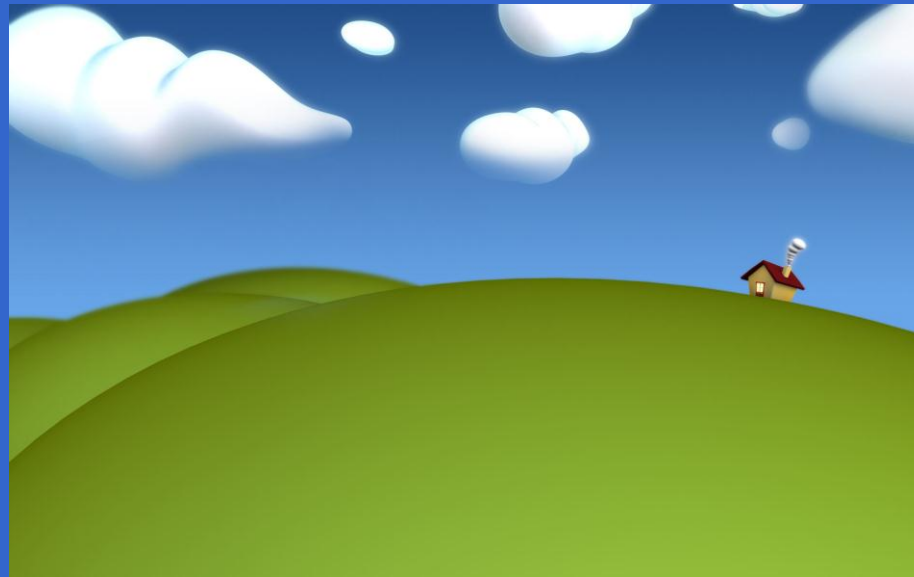


## Plain View (Cont'd)



## 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)





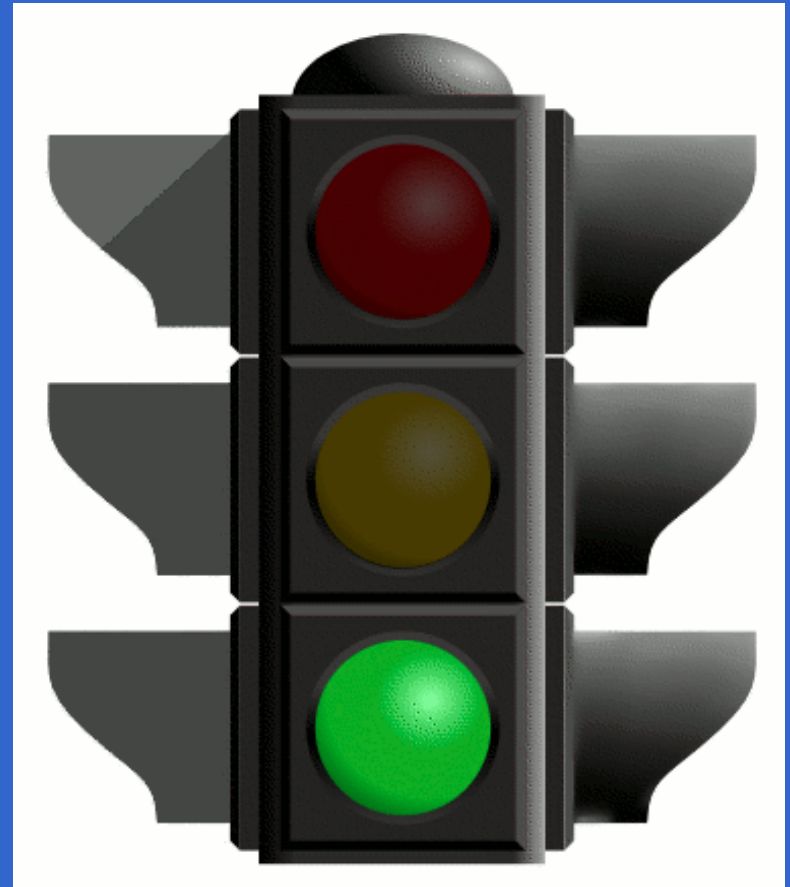
## Plain View (Cont'd)

- 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 4<sup>th</sup> 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





## 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



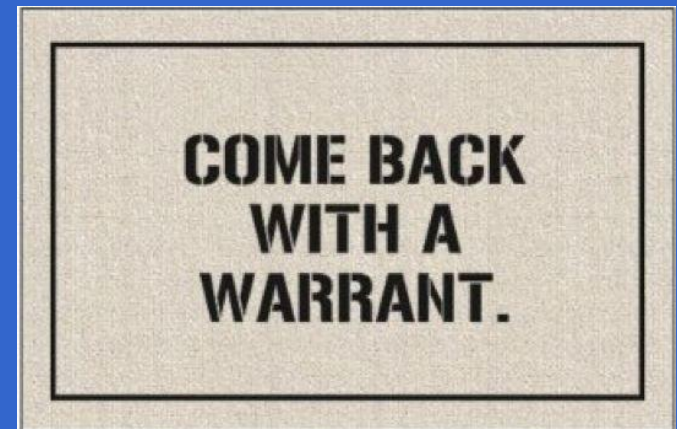


## vs. Search Warrant

- 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  $\neq$  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?





# CACEO 4th AMENDMENT, TRESPASSING & YOU

Presented by:

Matthew Silver

Best Best & Krieger LLP

Direct: (949) 263-6588

[Matthew.Silver@bbklaw.com](mailto:Matthew.Silver@bbklaw.com)