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NO SEARCH WARRANT NEEDED FOR UNANNOUNCED STONE QUARRY INSPECTIONS

CONSTITUTIONAL LAW: Unannounced warrantless inspections of stone quarries do not violate Fourth Amendment prohibitions against unreasonable searches of private commercial property. *Donovan v. Dewey*, 101 S. Ct. 2534 (1981).

The Federal Mine Safety and Health Act of 1977 (Act) establishes mandatory health and safety standards for the nation's miners.[1] The Act authorizes warrantless inspections of underground and surface mines to insure compliance with those standards. The Act also requires a specified number of unannounced warrantless mine inspections per year plus follow-up inspections to assure correction of previously determined violations.[2]

In July 1978, Douglas Dewey, president of the Waukesha Lime and Stone Company (Waukesha), refused to allow an inspector to complete a follow-up inspection of one of Waukesha's stone quarries until the inspector obtained a search warrant. The inspector cited Waukesha for unlawful termination of the inspection.[3] Pursuant to §818(a)(1)(C) of the Act, the Secretary of Labor, Ray Marshall, instituted a civil action in the District Court for the Eastern District of Wisconsin to enjoin Waukesha from refusing to permit warrantless searches of its facility.

The district court granted summary judgment in favor of Waukesha, holding that the provision of the Act allowing warrantless inspections of stone quarries violates the Fourth Amendment of the United States Constitution.[4] The Fourth Amendment states:

> 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.[5]

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1. 30 U.S.C. § § 801-962 (Supp. III 1979).
2. *Id.* § 813(a).
3. *Id.* § 814(a).
4. Marshall v. Dewey, 493 F. Supp. 963, 966 (E.D. Wis. 1980). The Court distinguished stone quarries from other types of mines although the Act makes no such distinction.
5. U.S. CONST. amend. IV.

The Secretary appealed directly to the United States Supreme Court, which noted probable jurisdiction because the district court's ruling invalidated a provision of a federal statute.[6]

The threshold question addressed by the United States Supreme Court was whether the warrantless inspections allowed under the Act are a per se violation of the Fourth Amendment. The Court distinguished searches of commercial property from searches of private homes, which generally must be conducted under a warrant. It found a fundamental difference in the expectation of privacy between an individual's interest in his commercial property and in the sanctity of his home.[7] The Court concluded that warrantless searches of private commercial property are reasonable where first, Congress has determined that such searches are necessary to further a regulatory scheme and, second, the regulatory presence is so comprehensive and pervasive that it puts an owner of commercial property on notice that his property will be subject to periodic inspection.[8]

Applying these standards, the Court found that the inspection program required by the Act provides a constitutionally adequate substitute for a warrant and consequently does not offend the Fourth Amendment.[9] The Court reasoned that the Act and its associated regulations: (1) place the commercial operator on notice that inspections are to be held on a regular basis;[10] (2) specify the health and safety standards which must be met to insure compliance and require that the Secretary inform the mine operator of these standards;[11] and (3) provide a means for protection of any special Fourth Amendment interests by prohibiting forcible entries and requiring the Secretary to institute a court action to enjoin refusals to allow inspection.[12]

The Court rejected the appellee's argument that the Act is unconstitutional with respect to stone quarries because, unlike other segments of the mining industry, they do not have a long tradition of government regulation. The Court stated that, while the duration of a particular regulatory scheme is often relevant, the decisive factor in determining whether a warrant is required is the pervasiveness and regularity of the regulation.[13] Otherwise, new and emerging industries that pose potentially significant health and safety problems would never be subject to warrantless searches.[14]

6. 101 S. Ct. at 2537.
7. *Id.* at 2538.
8. *Id.* at 2539.
9. *Id.* at 2540.
10. 30 U.S.C. § 813 (Supp. III 1979).
11. *Id.* § 811(e).
12. *Id.* § 818(a).
13. 101 S. Ct. at 2541.
14. *Id.* at 2542.

The Court considered the substantial federal interest in improving the health and safety conditions of mines to be of primary importance. A warrant requirement under the Act could undermine the achievement of this goal.

Justice Stevens concurred in the opinion, but believed that the reasonableness of warrantless inspections of commercial premises should turn on the public interest in occupational health and safety rather than on either the longevity of a regulatory program or a businessman's implied consent to regulations imposed on him by the Federal Government.[15]

Although concurring in the judgment, Justice Rehnquist disagreed with the Court's reasoning that because the mining industry has been pervasively regulated, warrantless searches of stone quarries are permitted. Relying on *Hester v. United States*[16] in which the Court held that the protection of the Fourth Amendment does not extend to open areas in full view of the public, he reasoned that the visibility of appellee's property to the naked eye justified the judgment.[17]

Justice Stewart, in his dissent, reasoned that *Camara v. Municipal Court*[18] requires a search warrant for administrative inspections except where the business is both pervasively regulated and there is a long history of regulation. Since the latter part of the exception was not met in this case, Justice Stewart concluded that the warrantless inspections are unconstitutional.[19]

CONCLUSION

The United States Supreme Court held in *Donovan v. Dewey* that the constitutionality of warrantless inspections of commercial property is to be decided on a case by case basis. The major criteria to be considered are the pervasiveness of the regulatory scheme and the sufficiency of the notice to the owner that his property will be subject to inspection on a regular basis for specific purposes. The implications of this decision are debatable. Justice Stewart, dissenting, believes that it will lead to an erosion of Fourth Amendment protection of private commercial enterprise. This decision will, however, help to prevent the concealment of unsafe conditions and practices in the mining industry by allowing for surprise inspections.

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15. *Id.*
16. 265 U.S. 57, 59 (1924).
17. 101 S. Ct. at 2543.
18. 387 U.S. 523 (1967).
19. 101 S. Ct. at 2544.