Section 2
Are All CPS Workers In The United States Subject To The 4th and 14th Amendment?

Yes they are, the 4th Amendment is applicable to CPS investigators in the context of an investigation of alleged abuse or neglect as are all "government officials." This issue is brought out best in Walsh v. Erie County Dept. of Job and Family Services, 3:01-cv-7588.

The social workers argued, "the Fourth Amendment was not applicable to the activities of their social worker employees." The social workers claimed, "entries into private homes by child welfare workers involve neither searches nor seizures under the Fourth Amendment, and thus can be conducted without either a warrant or probable cause to believe that a child is at risk of imminent harm."

The court disagreed and ruled: "Despite the defendant's exaggerated view of their powers, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose request to enter, however benign or well-intentioned, are met by a closed door." The Court also stated "The Fourth Amendment's prohibition on unreasonable searches and seizures applies whenever an investigator, be it a police officer, a DCFS employee, or any other agent of the state, responds to an alleged instance of child abuse, neglect, or dependency." (Emphasis added)

The social worker's first argument, shot down by the court. The social workers then argued that there are exceptions to the Fourth Amendment, and that the situation was an "emergency." They state, the "Defendants argue their entry into the home, even absent voluntary consent, was reasonable under the circumstances. They point to: the anonymous complaint about clutter on the front porch; and the plaintiff's attempt to leave.

These circumstances, the defendants argue, created an 'emergency situation' that led Darnold and Brown reasonably to believe the Walsh children were in danger of imminent harm. (Thus is the old "emergency" excuse that has been used for years by social workers.) The Court again disagreed and ruled: "There is nothing inherently unusual or dangerous about cluttered premises, much less anything about such vaguely described conditions that could manifest imminent or even possible danger or harm to young children. If household 'clutter' justifies warrantless entry and threats of removal of children and arrest or citation of their parents, few families are secure and few homes are safe from unwelcome and unjustified intrusion by state officials and officers."

The Court went on to rule, "They have failed to show that any exigency that justifies warrantless entry was necessary to protect the welfare of the plaintiff's children. In this case, a rational jury could find that 'the evidence points to the opposite conclusion' and a lack of 'sufficient exigent circumstances to relieve the state actors here of the burden of obtaining a warrant." The social worker's second argument, shot down by the court.

The social workers then argued that they are obligated under law to investigate any reported case of child abuse, and that supersedes the Fourth Amendment. They argued, "Against these fundamental rights, the defendants contend that Ohio's statutory framework for learning about and investigation of all allegations of child abuse and neglect supersede their obligations under the Fourth Amendment. They point principally to § 2151.421 of the Ohio Revised code as authority for their warrantless entry into and search of the plaintiff's home. That statute imposes a duty on certain designated professionals and persons who work with children or provide child care to report instances of apparent child abuse or neglect." This is the old "mandatory reporter" excuse.

The Court disagreed and ruled: "The defendant's argument that the duty to investigate created by § 2151.421(F)(1) exempts them from the Fourth Amendment misses the mark because, not having received a report described in § 2151.421(A)(1)(b), they were not, and could not have been, conducting an investigation pursuant to § 2151.421(F)(1)." The social worker's third argument, shot down by the court.

The Court continues with their chastisement of the social workers: "There can be no doubt that the state can and should protect the welfare of children who are at risk from acts of abuse and neglect. There likewise can be no doubt that occasions arise calling for immediate response, even without prior judicial approval. But those instances are the exception. Otherwise child welfare workers would have a free pass into any home in which they have an anonymous report of poor housekeeping, overcrowding, or insufficient medical care and, thus a perception that children may be at some risk."

The Court continues: "The anonymous phone call in this case did not constitute a 'report' of child abuse or neglect." The social workers, Darnold and Brown, claimed that they were immune from liability, claiming qualified immunity because "they had not had training in Fourth Amendment law." In other words, because they thought the Fourth Amendment did not bind them, they couldn't be sued for their "mistake."

The police officers, Chandler and Kish, claimed that they couldn't be sued because they thought the social workers were not subject to the Fourth Amendment, and they were just assisting the social workers. The Court disagreed and ruled: "That subjective basis for their ignorance about and actions in violation of the fourth Amendment does not relieve them of the consequences of that ignorance and those actions." The Court then lowers the boom by stating: "The claims of defendants Darnold, Brown, Chandler and Kish of qualified immunity are therefore denied."

The 9th Circuit Court Said, Parents Have The Constitutional Right To Be Left Alone By CPS And The Police.

The 9th Circuit Court of Appeals case, Calabretta v. Floyd, 9th Cir. (1999) "involves whether a social worker and a police officer were entitled to qualified immunity, for a coerced entry into a home to investigate suspected child abuse, interrogation of a child, and strip search of a child, conducted without a search warrant and without a special exigency."

The court did not agree that the social worker and the police officer had "qualified immunity" and said, "the facts in this case are noteworthy for the absence of emergency." No one was in distress. "The police officer was there to back up the social worker's insistence on entry against the mother's will, not because he perceived any imminent danger of harm." And he should have known better. Furthermore, "had the information been more alarming, had the social worker or police officer been alarmed, had there been reason to fear imminent harm to a child, this would be a different case, one to which we have no occasion to speak. A reasonable official would understand that they could not enter the home without consent or a search warrant."

And now the 9th Circuit Court of Appeals defines the law: "In our circuit, a reasonable official would have known that the law barred this entry. Any government official (CPS) can be held to know that their office does not give them unrestricted right to enter people's homes at will. We held in White by White v. Pierce County, 797 F.2d 812, 815-16 (9th Cir. 1986), a child welfare investigation case, that 'it was settled constitutional law that, absent exigent circumstances, police could not enter a dwelling without a warrant even under statutory authority where probable cause existed.'

The principle that government officials cannot coerce entry into people's houses without a search warrant or applicability of an established exception to the requirement of a search warrant is so well established that any reasonable officer would know it."

And there we have it: "Any government official can be held to know that their office does not give them an unrestricted right to enter peoples' homes at will. ... The fourth Amendment preserves the 'right of the people to be secure in their persons, houses ... 'without limiting that right to one kind of government official."

In other words, the parents have the constitutional right to exercise their children's and their 4th and 5th Amendment protections and should just say no to social workers especially when they attempt to coerce or threaten to call the police so they can conduct their investigation. "A social worker is not entitled to sacrifice a family's privacy and dignity to her own personal views on how parents ought to discipline their children." (The Constitution and the Bill of Rights were written to protect the people from the government, not to protect the government from the people. And within those documents, the people have the constitutional right to hold the government accountable when is does deny its citizens their rights under the law even if it is CPS, the police, a government agency, or local, state, or federal government.)

The Court's reasoning for this ruling was simple and straight forward: "The reasonable expectation of privacy of individuals in their homes includes the interests of both parents and children in not having government officials coerce entry in violation of the fourth Amendment and humiliate the parents in front of the children. An essential aspect of the privacy of the home is the parent's and the child's interest in the privacy of the relationship with each other."

Parroting Of The Phrase "Best Interest Of The Child" Without Supporting Facts Or A Legal Basis Is Insufficient To Support A Warrant Or Court Order To Enter A Home.

In North Hudson DYFS v. Koehler Family, filed December 18, 2000, the Appellate court granted the emergency application on February 6, 2001, to stay DYFS illegal entry that was granted by the lower court because DYFS in their infinite wisdom thought it was their right to go into the Koehler home because the children were not wearing socks in the winter or sleep in beds.

After reviewing the briefs of all the parties, the appellate court ruled that the order to investigate the Koehler home was in violation of the law and must be reversed. The Court explained, "[a]absent some tangible evidence of abuse or neglect, the Courts do not authorize fishing expeditions into citizens' houses." The Court went on to say, "[m]ere parroting of the phrase 'best interest of the child' without supporting facts and a legal basis is insufficient to support a Court order based on reasonableness or any other ground." February 14, 2001.

In other words, a juvenile judges decision on whether or not to issue a warrant is a legal one, it is not based on "best interest of the child" or personal feeling. The United States Supreme Court has held that courts may not use a different standard other than probable cause for the issuance of such orders. Griffin v. Wisconsin, 483 U.S. 868 (1987). If a court issues a warrant based on an uncorroborated anonymous tip, the warrant will not survive a judicial challenge in the higher courts. Anonymous tips are never probable cause. "[I]n context of a seizure of a child by the State during an abuse investigation ... a court order is the equivalent of a warrant.

" Tenenbaum v. Williams, 193 F.3d 581, 602 (2nd Cir. 1999).
F.K. v. Iowa district Court for Polk County, Id."

The U.S Court of Appeals for the 7th Circuit Court recently ruled that child abuse investigations held on private property are unconstitutional.

The decision in the case of Doe et al, v. Heck et al (No. 01-3648, 2003 US App. Lexis 7144) will affect the manner in which law enforcement and child protective services investigations of alleged child abuse or neglect are conducted.

The decision of the 7th Circuit Court of Appeals found that this practice, i.e. the "no prior consent" interview of a child, will ordinarily constitute a "clear violation" of the constitutional rights of parents under the 4th and 14th Amendments to the U.S. Constitution. According to the Court, the investigative interview of a child constitutes a "search and seizure" and, when conducted on private property without "consent, a warrant, probable cause, or exigent circumstances," such an interview is an unreasonable search and seizure in violation of the rights of the parent, child, and, possibly the owner of the private property.

Considering that one critical purpose of the early stages of an investigation is to determine whether or not the child is in danger, and if so, from who seems to require a high threshold level of evidence to commence the interview of a child, whether the child is on private or public property.

"In our circuit, a reasonable official would have known that the law barred this entry. Any government official can be held to know that their office does not give them an unrestricted right to enter peoples' homes at will. We held in White v. Pierce County a child welfare investigation case, that 'it was settled constitutional law that, absent exigent circumstances, police could not enter a dwelling without a warrant even under statutory authority where probable cause existed.' The principle that government officials cannot coerce entry into peoples' houses without a search warrant or applicability of an established exception to the requirement of a search warrant is so well established that any reasonable officer would know it."

"We conclude that the Warrant clause must be complied with. First, none of the exceptions to the Warrant Clause apply in this situation, including 'exigent circumstances coupled with probable cause,' because there is, by definition, time enough to apply to a magistrate for an ex parte removal order. See State v. Hatter, 342N.W.2d 851, 855 (Iowa 1983) (holding the exigent circumstances exception to the Warrant Clause only applies when 'an immediate major crisis in the performance of duty afforded neither time nor opportunity to apply to a magistrate.'). Second, as noted

by the Second Circuit, '[I]n context of a seizure of a child by the State during an abuse investigation . . . a court order is the equivalent of a warrant.'

Tenenbaum v. Williams, 193 F.3d 581, 602 (2nd Cir. 1999).
F.K. v. Iowa district Court for Polk County, Id."

"Another recent 9th Circuit case also held that there is no exception to the warrant requirement for social workers in the context of a child abuse investigation. 'The [California] regulations they cite require social workers to respond to various contacts in various ways. But none of the regulations cited say that the social worker may force her way into a home without a search warrant in the absence of any emergency.' Calabretta v. Floyd, 189 F.3d 808 (1999). Calabretta also cites various cases form other jurisdictions for its conclusion.

Good v. Dauphin County Social Servs., 891 F.2d 1087 (3rd Cir. 1989) held that a social worker and police officer were not entitled to qualified immunity for insisting on entering her house against the mother's will to examine her child for bruises. Good holds that a search warrant or exigent circumstances, such as a need to protect a child against imminent danger of serious bodily injury, was necessary for an entry without consent, and the anonymous tip claiming bruises was in the case insufficient to establish special exigency.

The 9th Circuit further opined in Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000), that '[b]ecause the swing of every pendulum brings with it potential adverse consequences, it is important to emphasize that in the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the Constitution. The fact that the suspected crime may be heinous - whether it involves children or adults - does not provide cause for the state to ignore the rights of the accused or any other parties. Otherwise, serious injustices may result. In cases of alleged child abuse, governmental failure to abide by constitutional constraints may have deleterious long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper governmental action may create significant injury where no problem of any kind previously existed...' Id. at 1130-1131."

This is the case involving DCF in Connecticut. Many of their policies are unlawful and contradictory to the Constitution. DCF has unlawful polices giving workers permission to coerce, intimidate and to threatened innocent families with governmental intrusion and oppression. They use police presences to squelch and put down any citizen who asserts their 4th Amendment rights by not allowing an unlawful investigation to take place in their private home when no imminent danger is present.

DCF is the "moving force" behind the unceasing violations of federal law and violations of the Constitution. The idea of noncompliance with the 4th and 14th Amendment is so impregnated in their statutes, policies, practices and customs, it affects everything they do. They subsequently take on the persona of exaggerated power over parents and believe they are totally immune and can do basically anything they want including engaging in deception, misrepresentation of the facts and perjury under oath. This happens thousands of times daily in the United States where the ends seemingly justifies the means even if it is unlawful, illegal and unconstitutional.

We can tell you stories for hours, where CPS employees committed criminal acts and were prosecuted and either went to jail and/or were sued for civil rights violations. CPS workers have lied in reports, court documents and coerced others to lie. They have kidnapped children without court order, crossed state lines impersonating police and were later prosecuted. In a number of cases the worker has even killed the child in question.

It is sickening the number of children who have been subjected to abuse, neglect or even killed at the hands of Child Protective Service workers. The numbers below include DCF in Connecticut.