CHILD PROTECTIVE SERVICES AND THE JUVENILE JUSTICE SYSTEM

A guide to protect the constitutional rights of both parents and children as ruled by the Federal Circuit Courts and Supreme Court.

"***Know your rights before you talk to anyone from CPS/DCF or let them in your house, they won't tell you your rights. CPS/DCF can't do anything without your consent, demand a warrant and speak with an attorney first before speaking with anyone from CPS/DCF, it could cost you your children.***"

The United States Court of Appeals for the Ninth Circuit said it best, "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents."

Calabretta v. Floyd, 189 F.3d 808 (9th Cir. 1999).

Permanent termination of parental rights has been described as "the family law equivalent of the death penalty in a criminal case." Therefore, parents "must be afforded every procedural and substantive protection the law allows." *Smith (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45, 54*.

"There is no system ever devised by mankind that is guaranteed to rip husband and wife or father, mother and child apart so bitterly than our present Family Court System."

Judge Brian Lindsay
Retired Supreme Court Judge
New York, New York

"There is something bad happening to our children in family courts today that is causing them more harm than drugs, more harm than crime and even more harm than child molestation."

Judge Watson L. White
Superior Court Judge
Cobb County, Georgia

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IT'S UNCONSTITUTIONAL FOR CPS TO CONDUCT AN INVESTIGATION IN THE HOME AND INTERVIEW A CHILD WITHOUT EXIGENT CIRCUMSTANCES (IMMINENT "PHYSICAL" DANGER) OR PROBABLE CAUSE.

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 ("CPS") investigations of alleged child abuse or neglect are conducted. The decision of the 7th Circuit Court of Appeals found that the practice of a "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.

The mere possibility or risk of harm does not constitute an emergency or exigent circumstance that would justify a forced warrantless entry and a warrantless seizure of a child. Hurlman v. Rice, (2nd Cir. 1991)

A due-process violation occurs when a state-required breakup of a natural family is founded solely on a "best interests" analysis that is not supported by the requisite proof of parental unfitness. *Quilloin v. Walcott, 434 U.S. 246, 255, (1978*)

HEARSAY STATEMENTS INADMISSIBLE FROM CASE WORKERS, POLICE COUNSELORS AND PHYSICIANS

A.G.G. v. Commonwealth of Kentucky

The Court of Appeals of Kentucky vacated and remanded a decision by the Barren Circuit Court which terminated parental rights because of sexual abuse. The court found that a child's statements to a counselor during therapy and a physician during a physical examination were hearsay and inadmissible at trial under the U.S. Supreme Court case, ***Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004*)**, because the child did not testify at trial and there was no opportunity for cross-examination of the child. Because the child's statements were inadmissible, the child welfare agency failed to present clear and convincing evidence that the child had been sexually abused. *Cite: NO. 2004-CA-001979-ME and NO. 2004-CA-002032-ME, 2005 Ky. App. LEXIS 163 (Ky. Ct. App 2005)*

DISTRICT OF COLUMBIA: In re TY.B & In re TI.B

The District of Columbia Court of Appeals reversed a lower court's order terminating a father's parental rights to his children, based on that court's finding of neglect; the appeals court holding that the erroneous termination order was based on inadmissible hearsay testimony. The Court of Appeals concluded that the father adequately preserved his objection to admission of the testimony, and consequently reversed the termination order and remanded the case for further proceedings consistent with its opinion. *Cite: No. 01-FS-1307; No. 01-FS-1320; 2005 D.C. App. LEXIS 390 (D.C. July 21, 2005)*

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PREFACE

This is only a guide to your constitutional protections in the context of an investigation of alleged child abuse and neglect by Child Protective Services ("CPS"). Every state has variances of CPS in one form or another. Some are called DCF, DHS, DSS, DCYS, DCFS, HRS, CYS and FIA, collectively known as "CPS" for the purposes of this handbook. The material in this handbook should be supplemented by your own careful study of the 4th and 14th Amendments and other Constitutional protections that are guaranteed even in the context of dealing with CPS.

The intent of this handbook is to inform parents, caregivers and their attorneys that they can stand up against CPS and Juvenile Judges when they infringe upon the rights of both parents and children. As you read this handbook, you will be amazed what your rights are and how CPS conspires with the Assistant Attorney General ("AAG") who then in turn has the Judge issue warrant/orders that are unlawful and unconstitutional under the law. Contrary to what any CPS officials, the AAG, Juvenile Judge or any social workers may say, they are all subject to and must yield to the 4th and 14th Amendment just like police officers according to the Circuit and District Courts of the United States and the Supreme Court. CPS workers can be sued for violations of your 4th and 14th Amendments, they lose their "immunity" by those "Deprivation of Rights Under the Color of Law" and must be sued in their "Official and Individual" capacity in order to succeed in a §§ 1983 and 1985 civil right's lawsuit. If the police assisted CPS in that deprivation of rights, they also lose immunity and can be sued for assisting CPS in the violation of both yours and your child's rights when they illegally abduct your children or enter your home without probable cause or exigent circumstances, which are required under the warrant clause of the 14th Amendment.

ABOUT THE AUTHORS

The authors of this handbook are not attorneys and do not pretend to be attorneys. The authors were victims of a false report and were falsely accused by DCF in Connecticut without a proper investigation being conducted. The authors fought back for 8 months against this corrupt organization whose order of the day was to deny them their 4th, 6th and 14th Amendment rights and to fabricate false charges without evidence.

The author's goals are to not have another child illegally abducted from their family; that CPS and juvenile judges start using common sense before rushing to judgment and to conduct their investigations the same as police in order to be constitutionally correct and legal; and that CPS **MUST** by law comply with the "Warrant Clause" as required by the Constitution and the Federal Courts whereas they are "governmental officials" and are subject to the Constitution as are the police. There are **NO EXCEPTIONS** to the Constitution for CPS.

INTRODUCTION

You as a parent or caregiver MUST know your rights and be totally informed of what you have a legal right to have and to express, whether you are a parent caught up in the very oppressive, abusive and many times unlawful actions of CPS or if you have never been investigated by CPS. Many individuals come to the wrong conclusion that the parents must have been abusive or neglectful for CPS to investigate, this is just a myth. The fact of the matter is that over 80% of the calls phoned into CPS are false and bogus. Another myth is that CPS can conduct an investigation in your home without your consent and speak to your child without your consent. CPS employees will lie to you and tell you they do not need your consent. The fact of the matter is they absolutely need your consent to come into your home and speak with your children. If there is no "exigent circumstances" (imminent danger) to your children with "probable cause" (credible witness) to support a warrant, CPS anywhere in the United States cannot

lawfully enter your home and speak with you and your children. In fact, it is illegal. You can sue the social worker and the police who assist them and both lose immunity from being sued.

If CPS lies to the AAG and the Judge to get a warrant/order and you can prove it, that also is a 4th and 14th Amendment rights violation which is a civil rights violation under § 1983 and conspiracy against rights covered under § 1985. If a CPS official knocks on your door, has no legal warrant, you refuse them entry, and the worker then threatens you with calling the police, this is also illegal and unlawful and both lose immunity. This is coercion, threatening and intimidation tactics even if the police only got the door open

so CPS official can gain entry. Both can be sued.
Remember, CPS officials will not tell you your rights. In fact, they are going to do everything in their power including lying to you and threatening you with police presence telling you that you have to let them in. The police may even threaten you to let CPS in because you are obstructing an investigation. Many police officers do not realize that CPS MUST comply with the warrant clause of the 14th Amendment or be sued for violating it.
CPS does not have a legal right to conduct an investigation of alleged child abuse or neglect in a private home without your consent. In fact removing a child from your home without your consent even for several hours is a "seizure" under federal law. Speaking to your children without your consent is also a "seizure" under the law. If CPS cannot support a warrant and show that the child is in immanent danger along with probable cause, CPS cannot enter your home and speak with your children. Remember, anonymous calls into CPS are **NEVER** probable cause under the Warrant Clause. And even if they got a name and number from the reporter on the end of the phone, that also does not support probable cause under the law. CPS must by law, investigate the caller to determine if he or she is the person who they say they are and that what they said is credible. The call alone, standing by itself, is insufficient to support probable cause under the law. Many bogus calls are made by disgruntle neighbors, ex-spouses, or someone wanting to get revenge. So CPS needs to show the same due diligence as the police to obtain sworn statements. All CPS agencies across the country have an exaggerated view of their power. What you think is or is not abuse or neglect, CPS has a totally different definition. The definition is whatever they want it to be. DCF will lie to you, mark my word, and tell you that they can do anything they want and have total immunity. Tell that to the half dozen social workers currently sitting in jail in California, they lied to the judge. We will discuss in further detail what CPS and the police can and can not do.

SECTION 1

THE SUPREME COURT RULED THAT THERE IS A PRESUMPTION THAT A FIT PARENT ACTS IN THEIR CHILDREN'S BEST INTERESTS NOT CHILD PROTECTION (CPS) OR YOUR STATE

The United States Supreme Court has stated: "There is a presumption that fit parents act in their children's best interests, *Parham v. J. R., 442 U. S. 584, 602*; there is normally no reason or compelling interest for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children. *Reno v. Flores, 507 U. S. 292, 304*. The state may not interfere in child rearing decisions when a fit parent is available. *Troxel v. Granville, 530 U.S. 57 (2000)*.
Consequently, the State of Connecticut or any state can not use the "best interest of the child" standard to substitute its judgment for a fit parent and parroting that term is "legally insufficient" to use in the court to force parents to follow some arbitrary standard, case plan or horse and pony show. The State cannot usurp a fit parent's decision making related to parental spending for their children, i.e. child support without either a demonstration the parent is unfit or there is proven harm to the child. In other words, the state and Child Protective Services can not impose a standard of living dealing with the rearing

of children. When they violate this fundamental right, they would be intruding on the family's life and liberty interest. The 1st Amendment bars such action because the rearing of children and the best interest of children is often based on ones religious beliefs, i.e. the separation of church and state. By the state imposing any standard of living or the rearing of children, they are putting forth a religious standard by their actions i.e. how you act, what to feed the child, how to dress the child, whether or not to home school and so on. The courts and the state lack jurisdiction on what goes on in the house even though they disagree with the choices made by parents, the Plaintiffs term this "parental immunity." It's none of the state's business on how you are to raise your children. In other words, they can not falsely accuse parents of abuse or neglect just because they disagree with the method of child rearing or the standard in which they live.
State Law provisions mandate that the State invade the family, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles,

spousal conduct, parental decision making, parenting conduct, parental spending, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties and family during their marriage granting the judiciary a broad range of discretion to apply a property stripping statute with a standard of equity. This would be an abuse of the judicial power and the judicial system to intrude into U.S. citizen's lives and violate their privacy rights. It is not the state's right or jurisdiction to examine the day to day decisions and choices of citizens and then sit there in judgment and then force parents to follow conflicting standards with threat of harm for noncompliance i.e. abduction of children.

The United States Constitution's Fourteenth Amendment contains a recognized Right to Privacy. This fundamental Right to Privacy encompasses the Privacy Protected Zone of Parenting. The Plaintiff asserts that DCF policy and Connecticut General Statutes impermissibly infringe the Federal Right to Privacy to the extent they mandate the parent to support his or her children beyond a standard to prevent harm to them. They substitute the State s judgment for the parent's judgment as to the best interest of his or her children. The challenged statutes do not mandate a review to determine if demonstrable harm exists to the children in determining the amount of support that the parent must provide.

The State is not permitted and lacks jurisdiction to determine care and maintenance, i.e. spending, i.e. child discipline, decisions of a fit parent based on his or her income in an intact marriage other than to prevent harm to a child. There is no basis for the State to have a statute that mandates a fit divorced parent should support their child to a different standard, i.e. the standard of the best interests of a child. Furthermore, the State must not so mandate absent a demonstration that the choice of support provided by the parent has resulted in harm to his or her children.

The U.S. Supreme Court has mandated that the standard for the State to intrude in parenting decisions relating to grandparent visitation is no longer best interests of the child. *Troxel v. Granville, 530 U.S. 57; 120 S.Ct. 2054 (2000*). This court should recognize the changed standard of State intrusion in parenting should also apply to the context of parents care, control, and maintenance, i.e. spending, i.e. child discipline decisions, on behalf of his or her children.

In conclusion, unless CPS and the Attorney General's Office can provide the requisite proof of parental unfitness, you're State, CPS, the Attorney General's Office and the Juvenile Courts can't make on behalf of the parents or for the child unless the parent is adjudicated unfit. And as long as there is one fit parent, CPS and the Attorney General's Office can not interfere or remove a single child.

SECTION

Child Protection Threats to Take Children Ruled Illegal

By Ofelia Casillas and Matt O'Connor Chicago Tribune Staff Reporters

A federal judge ruled that Illinois families were deprived of their constitutional rights when state child welfare officials threatened to separate parents from their children during abuse investigations.

In a decision made public Monday, U.S. District Judge Rebecca Pallmeyer found "ample evidence" that families suffered emotional and psychological injuries because the separations lasted "for more than a brief or temporary period."

The judge didn't fault the Illinois Department of Children and Family Services for erring on the side of caution in such cases, but she held that parents had a right to know the length of the expected separations and how to contest the restrictions.

In telephone interviews with the Tribune, families described being shocked, paranoid and frightened by the allegations that some thought would result in them losing their children. Parents felt that caseworkers assumed them to be guilty.

A father from Skokie spent almost a year away from his family, and the effects of the rift that developed between them remain years later.

"I don't think it can ever be repaired. We are all broken up; we are not bonded the way that we used to be," said the father, who requested that he only be identified by his first name, Patrick. "I cannot get over what they did to me. It devastated my whole entire life. I can never be the same again."

The ruling shows the dilemma facing the oft-criticized DCFS in its charge to protect children from harm but also keep families together when possible.
At issue are safety plans, part of the wholesale reforms instituted by DCFS after the public uproar over the horrific 1993 death of 3-year-old Joseph Wallace, who was killed by his mentally ill mother after he was returned to her by the state.
In her decision, Pallmeyer essentially held that DCFS had gone too far in protecting children and had eroded the constitutional rights of parents.
The safety plans are supposedly voluntary agreements by parents in most cases to leave their home indefinitely or stay under constant supervision after investigations into child abuse or neglect are launched, often based on tips to DCFS.
But most of the families who testified at a 22-day hearing in 2002 and 2003 said the investigators threatened to take away their children unless they agreed to the safety plans.
"When an investigator expressly or implicitly conveys that failure to accept a plan will result in the removal of the children for more than a brief or temporary period of time, it constitutes a threat sufficient to deem the family's agreement coerced, and to implicate due process rights," Pallmeyer wrote in the 59-page opinion.
"Significantly, [DCFS] has not identified a single family that, faced with such an express or implied threat of protective custody, chose to reject the plan," the judge said.
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Pallmeyer gave DCFS 60 days to develop "constitutionally adequate procedures" for families to contest the safety plans.
Diane Redleaf, one of the plaintiffs' attorneys, said about 10 families were involved in the court case, but that Pallmeyer's decision would affect thousands of families who agree to safety plans each year.
"Instead of protecting children, the state is actually destroying families and hurting children," Redleaf said.
Diane Jackson, a DCFS spokeswoman, said Pallmeyer's review of safety plans was limited to 2002 and before and didn't consider changes since then.
"We have definitely made changes," said Jackson, declining to be more specific until DCFS can report to Pallmeyer.
Cook County Public Guardian Robert Harris applauded Pallmeyer's decision.
No real due process'
"It's abridging both the children's and the parents' rights to have that amorphous safety plan that could go on forever," he said. "There is no real due process. There is no [procedure] to complain unless you have some money to hire a lawyer."
This is the second significant ruling by Pallmeyer to go against DCFS stemming from the same lawsuit. In 2001, she found that DCFS investigators often made findings of child abuse on little evidence, unfairly blacklisting professionals accused of wrongdoing. The judge extended new protections to teachers, day-care providers, nannies, social workers and others who work directly with children. Those protections are intended to keep the falsely accused from losing their jobs.
As part of assessing whether a child is in danger, DCFS specialists determine whether one of 15 safety factors is present, including if a household member is violent or sexual abuse is suspected. For DCFS to determine a child to be unsafe requires the finding of only one safety factor, some of which require little or no evidence of risk of harm--a fact that drew the criticism of plaintiffs.
But Pallmeyer defended that practice, concluding that "it is not improper for DCFS to err on the side of caution given the significant state interest in protecting children from harm."
But the plans can't remain in place indefinitely, she held.
According to the decision, one day-care worker accused of improperly touching a child was forced out of his own home for nearly a year before a judge at an administrative hearing cleared him of the charges--based in part on information available early on.
Patrick, the father from Skokie, spent 11 months away from his three children and his wife, missing their birthdays and a wedding anniversary.

Even though the allegations concerned his workplace, a DCFS investigator threatened to put his children--a boy, then 10, and two girls, then 12 and 13--in a foster home unless he moved out of their home, Patrick said Monday.
He went home, grabbed a few belongings and later moved in with his sister in Chicago.
"I was put out on the street," said Patrick, crying. "I was just totally violated."
It wasn't until a month later that he was able to explain the circumstances to his children after the caseworker allowed a visit.
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Heart-wrenching goodbyes
Soon, the father was able to see his children at church and later had supervised visits. The goodbyes were heart-wrenching, Patrick recalled.
"I would have to come here after my wife got off work, and then I would have to leave," the father said. "It was really emotional every time I left, every single night. And my kids didn't understand why I had to leave. They were very confused and very hurt. They still are."
At the time, his son was acting up at school. His daughters cried in class, their grades falling, he said.
After he was cleared of the allegations in December 2001, Patrick was unable to find a job in child care, despite about a decade of experience. The lengthy separation changed his relationship with his family, he said.
"I never got any type of apology, any type of thing to say your kids might be messed up, let us give you counseling," Patrick said of DCFS.
In another case, James Redlin, a teacher, was accused by a passenger of inappropriately touching his son, Joey, then 6, who suffers from a mild form of autism, during a Metra train ride to the Field Museum in the summer of 2000.
Joey's mother, Susan Redlin, said Monday that her husband was tickling their son, carrying the boy on his lap and holding him up to look out the window.
DCFS required that the father not act as an independent caretaker for his son until the case was resolved, effectively leaving the family "prisoners" in their own home, according to the court ruling.
Joey's mother, responsible for supervising her son under the safety plan, has multiple sclerosis and uses a wheelchair. "My husband and son could not be out of my sight," she said.
The husband was cleared of wrongdoing by September. Until then, father and son were forced to forgo trail hikes, carnival adventures, movie outings--and plans to teach Joey how to ride a bike.
"It made Jim awfully leery of being alone with Joey, even hugging him, even holding hands," Susan Redlin said. "That was the worst. If I enjoy hugging my [son], am I a pervert?"
Just Sunday, Susan Redlin said, she was out with her son and was about to swat him jokingly on the rear when she stopped herself.
"I did not do that," she said. "What if someone is watching?"

SECTION 2

The Social Worker At Your Door: 10 Helpful Hints

By Christopher J. Klicka, Senior Counsel for the Home School Legal Defense Association

More and more frequently, home schoolers are turned in on child abuse hotlines to social service agencies. Families who do not like home schoolers can make an anonymous phone call to the child abuse hotline and fabricate abuse stories about home schoolers. The social worker then has an obligation to investigate. Each state has a different policy for social workers, but generally they want to come into the family's home and speak with the children separately. To allow either of these to occur involves great risk to the family.
The home school parent, however, should be very cautious when an individual identifies himself as a social worker. In fact, there are several tips that a family should follow:
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1. Always get the business card of the social worker. This way, when you call your attorney or Home School Legal Defense Association, if you are a member, the attorney will be able to contact the social worker on your behalf. If the situation is hostile, HSLDA members should immediately call our office

and hand the phone out the door so an HSLDA lawyer can talk to the social worker. We have a 24 hour emergency number.

2. Find out the allegations. Do not fall for the frequently used tactic of the social worker who would tell the unsuspecting victims that they can only give you the allegations after they have come into your home and spoken to your child separately. You generally have the right to know the allegations without allowing them in your home.

3. Never let the social worker in your house without a warrant or court order. All the cases that you have heard about where children are snatched from the home usually involve families waiving their Fourth Amendment right to be free from such searches and seizures by agreeing to allow the social worker to come inside the home. A warrant requires "probable cause" which does not include an anonymous tip or a mere suspicion. This is guaranteed under the Fourth Amendment of the U.S. Constitution as interpreted by the courts. (In extremely rare situations, police may enter a home without a warrant if there are exigent circumstances, i.e., police are aware of immediate danger or harm to the child.)

However, in some instances, social workers or police threaten to use force to come into a home. If you encounter a situation which escalates to this level, record the conversation if at all possible, but be sure to inform the police officer or social worker that you are doing this. If entry is going to be made under duress you should say and do the following: "I am closing my front door, but it is unlocked. I will not physically prevent you from entering, and I will not physically resist you in any way. But you do not have my permission to enter. If you open my door and enter, you do so without my consent, and I will seek legal action for an illegal entry."

4. Never let the social worker talk to your children alone without a court order. On nearly every other incident concerning our members, HSLDA has been able to keep the social worker away from the children. On a few occasions, social workers have been allowed to talk with children, particularly where severe allegations are involved. In these instances, an attorney, chosen by the parent, has been present. At other times, HSLDA had children stand by the door and greet the social worker, but not be subject to any questioning.

5. Tell the official that you will call back after you speak with your attorney. Call your attorney or HSLDA, if you are a member.

6. Ignore intimidations. Normally, social workers are trained to bluff. They will routinely threaten to acquire a court order, knowing full well that there is no evidence on which to secure an order. In 98 percent of the contacts that HSLDA handles, the threats turn out to be bluffs. However, it is always important to secure an attorney in these matters, since there are occasions where social workers are able to obtain a court order with flimsy evidence. HSLDA members should call our office in such situations.

7. Offer to give the officials the following supporting evidence:

a. a statement from your doctor, after he has examined your children, if the allegations involve some type of physical abuse;

b. references from individuals who can vouch for your being good parents;

c. evidence of the legality of your home school program. If your home school is an issue, HSLDA attorneys routinely assist member families by convincing social workers of this aspect of an investigation.

8. Bring a tape recorder and/or witnesses to any subsequent meeting. Often times HSLDA will arrange a meeting between the social worker and our member family after preparing the parents on what to discuss and what not to discuss. The discussion at the meeting should be limited to the specific allegations and you should avoid telling them about past events beyond what they know. Usually, anonymous tips are all they

have to go on, which is not sufficient to take someone to court. What you give them can and will be used against you.

9. Inform your church, and put the investigation on your prayer chain. Over and over again, HSLDA has seen God deliver home schoolers from this scary scenario.

10. Avoid potential situations that could lead to a child welfare investigation.

a. Conduct public relations with your immediate neighbors and acquaintances regarding the legality and success of home schooling.

b. Do not spank children in public.

c. Do not spank someone else's child unless they are close Christian friends.

d. Avoid leaving young children at home alone.

In order for a social worker to get a warrant to come and enter a home and interview children separately, he is normally required, by both statute and the U.S. Constitution, to prove that there is some "cause." This is a term that is synonymous with the term "probable cause". "Probable cause" or cause shown is reliable evidence that must be corroborated by other evidence if the tip is anonymous. In other words, an anonymous tip alone and mere suspicion is not enough for a social worker to obtain a warrant.

There have been some home-schooled families who have been faced with a warrant even though there was not probable cause. HSLDA has been able to overturn these in court so that the order to enter the home was never carried out. Home School Legal Defense Association is committed to defending every member family who is being investigated by social workers, provided the allegations involve home schooling. In instances when the allegations have nothing to do with home schooling, HSLDA will routinely counsel most member families on how to meet with the social worker and will talk to the social worker to try to resolve the situation. If it cannot be resolved, which it normally can be in most instances by HSLDA's involvement, the family is responsible for hiring their own attorney. HSLDA is beginning to work with states to reform the child welfare laws to guarantee more freedom for parents and better protection for their parental rights. HSLDA will be sending out Alerts to its members in various states where such legislation is drafted and submitted as a bill.

For further information on how to deal with social workers, HSLDA recommends *Home Schooling: The Right Choice*, which was written with the intention of informing home school parents of their rights in order to prevent them from becoming a statistic. Federal statistics have shown that up to 60 percent of children removed from homes, upon later review, should never have been removed. The child welfare system is out of control, and we need to be prepared. To obtain *The Right Choice* or join the Home School Legal Defense Association, call 540-338-5600, or write HSLDA, P.O. Box 3000, Purcellville, VA 20134.

SECTION

The Fourth Amendment's Impact on Child Abuse Investigations

Michael P. Farris President, Patrick Henry College General Counsel, Home School Legal Defense Association (HSLDA)

The United States Court of Appeals for the Ninth Circuit said it best, "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interest in the privacy and dignity of their homes and in the lawfully exercised authority of their parents." *Calabretta v. Floyd*, 189 F.3d 808 (1999).

This statement came in a case which held that social workers who, in pursuit of a child abuse investigation, invaded a family home without a warrant violate the Fourth Amendment rights of both children and parents. Upon remand for the damages phase of the trial, the social workers, the police officers, and the governments that employed them settled this civil rights case for $150,000.

The facts in the Calabretta case are fairly typical for the kind of situation we see almost daily at Home School Legal Defense Association. An anonymous call came into a hotline manned by social workers in

Yolo County, California. The tipster said that he/she had heard a child's voice coming from the Calabretta home or property which cried out, "No, daddy, no." This same tipster said that an unnamed neighbor had told her that she had heard a child cry out from the back yard, "No, no, no" on another occasion.
The tipster added that the family was home schooling their children and noted that the family was very religious. During the course of discovery in the civil rights case, we found that the social worker listed the home schooling and religious information not as merely general background facts but as "risk factors" in her internal reports.
The social worker came to investigate the matter four days after receiving the call. Acting on the advice HSLDA gives all its members, Mrs. Calabretta refused to let the social worker into the home because she did not have a warrant.
The social worker returned to her office and requested that another worker be sent to follow up while she was on vacation. Since this was not done, ten days later, she returned to the home with a police officer and demanded that Mrs. Calabretta allow them to enter. The police officer informed Mrs. Calabretta that they did not need a warrant for any child abuse investigation and when she still refused to allow entry he told her that they would enter with or without her consent.
Not wanting a physical confrontation with a police officer, Mrs. Calabretta opened the door and allowed the social worker and the police officer to enter. A partial strip search was done of one of the young Calabretta children, and an interview was conducted with the family's 12 year old daughter.
The social worker, police officer, and their government agencies moved to dismiss claiming that there was no violation of any clearly established constitutional right. Both the federal district court and the Ninth Circuit disagreed with these arguments.
Contrary to the assumption of hundreds of social workers that we have interacted with at HSLDA, the Ninth Circuit held that the Fourth Amendment applies just as much to a child abuse investigation as it does to any criminal or other governmental investigation. Social workers are not exempt from the requirements of the Fourth Amendment when they act alone. They are not exempt from its rules if they are accompanied by a police officer. And police officers are not exempt from the requirement even if all they do is get the front door open for the social worker.

What are the requirements of the Fourth Amendment?
The general rule is that unreasonable searches and seizures are banned. But the second part of the rule is the most important in this context. All warrantless searches are presumptively unreasonable.
There are two and only two recognized exceptions to the requirement of having a warrant for the conduct of a child abuse investigation:

1. The adult in charge of the premises gives the social worker his/her free and voluntary consent to enter the home.

2. The social worker possesses evidence that meets two standards:

(a) it satisfies the legal standard of establishing probable cause; and
(b) the evidence demonstrates that there are exigent circumstances relative to the health of the children.

Consent.
If a police officer says, "If you don't let us in your home we will break down your door"—a parent who then opens the door has not given free and voluntary consent. If a social worker says, "If you don't let me in the home I will take your children away"—a parent who then opens the door has not given free and voluntary consent. Threats to go get a "pick up order" negate consent. Any type of communication which conveys the idea to the parent that they have no realistic alternative but to allow entry negates any claim that the entry was lawfully gained through the channel of consent.
It should be remembered that consent is only one of the three valid ways to gain entry: (warrant, consent, or probable cause and exigent circumstances.) There is nothing improper about saying, "We have a warrant you must let us in" or "We have solid evidence that your child is in extreme danger, you must

let us in." Such statements indicate that the social worker is relying on some theory other than consent to gain lawful entry. Of course, the social worker must indeed have a warrant if such a claim is made. And, in similar fashion, if a claim is made that the entry is being made upon probable cause of exigent circumstances, then that must also be independently true.

Probable Cause & Exigent Circumstances

The Fourth Amendment does not put a barrier in the way of a social worker who has reliable evidence that a child is in imminent danger. For example, if a hotline call comes in and says, "My name is Mildred Smith, here is my address and phone number. I was visiting my grandchildren this morning and I discovered that one of my grandchildren, Johnny, age 5, is being locked in his bedroom without food for days at a time, and he looked pale and weak to me"—the social worker certainly has evidence of exigent circumstances and is only one step away from having probable cause.

Since the report has been received over the telephone, it is possible that the tipster is an imposter and not the child's grandmother. A quick verification of the relationship can be made in a variety of ways and once verified, the informant, would satisfy the legal test of reliability which is necessary to establish probable cause.

However, a case handled by HSLDA in San Bernadino County, California, illustrates that even a grandparent cannot be considered a per se reliable informant.

A grandfather called in a hotline complaint with two totally separate allegations of sexual abuse. The first claim was that his son, who was a boarder in an unrelated family's home, was sexually abusing the children in that home. The second claim concerned his daughter and her husband. The claim here was that the husband was sexually abusing their children. These were two separate allegations in two separate homes.

The social workers went to the home of the unrelated family first to investigate the claims about the tipster's son. They found the claims to be utterly spurious. They had gained entry into the home based on the consent of the children's parents.

The following day they went to the home of the tipster's daughter. The daughter had talked to her brother in the meantime and knew that her father had made a false report about him. When the social workers arrived at her home, she informed them that they were in pursuit of a report made by a known false reporter—her father. Moreover, she informed the social workers that she had previously obtained a court order requiring her father to stay away from her family and children based on his prior acts of harassment. Despite the fact that the social workers knew that their reporter had been previously found to be unreliable—they insisted that they would enter the family home without consent.

In a civil rights suit we brought against the social workers and police officers, they settled the matter with a substantial payment to the family in satisfaction of their claims that the entry was in violation of their civil rights because the evidence in their possession did not satisfy the standard of probable cause.

It is not enough to have information that the children are in some form of serious danger. The evidence must also pass a test of reliability that our justice system calls probable cause.

In the first appellate case I ever handled in this area, *H.R. v. State Department of Human Resources, 612 So. 2d 477 (Ala. Ct. App. 1992*); the court held that an anonymous tip standing alone *never* amounts to probable cause. The *Calabretta* court held the same thing, as have numerous other decisions which have faced the issue directly.

On the surface, this places the social worker in a dilemma. On the one hand, state statutes, local regulations, and the perception of federal mandates seem to require a social worker to conduct an investigation on the basis of an anonymous tip. But, on the other hand, the courts are holding in case after case that if you do enter a home based on nothing more than an anonymous tip you are violating the Fourth Amendment rights of those being investigated. What do you do?

The answer is: Pay attention to the details of each set of the rules.

First and foremost, keep in mind that the ultimate federal mandate is the Constitution of the United States. No federal law can condition your receipt of federal funds on the basis that you violate some other provision of the Constitution. *South Dakota v. Dole,* 514 U.S. 549 (1995).

Second, realize that the mandate to conduct an investigation does not require you to enter every home. Even if your rules or statutes seem to expressly require entry into every home, such rules and statutes must be construed in a manner consistent with the Constitution. The net requirement is this: if your laws and regulations seem to require entry into every home, then social workers should be instructed to add this caveat: "when it is constitutional for me to do so."

Obviously, nothing in the Constitution prevents a social worker from going to a home and simply asking to come in. If the parent or guardian says "yes", there is no constitutional violation whatsoever—provided that there was no coercion.

This covers the vast majority of investigations. The overwhelming response of people being investigated is to allow the social worker to enter the home and conduct whatever investigation is reasonably necessary.

The second alternative is to seek a warrant or entry order. The Fourth Amendment itself spells out the evidence required for a warrant or entry order. No warrant shall issue but on probable cause. 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.

This was the essence of the decision in the case of *H.R. v. Alabama*. In that case, the social worker took the position that she had to enter every home no matter what the allegation.

In court, I gave her some improbable allegations involving anonymous tipsters angry at government officials demanding that social workers investigate these officials for abusing their own children. Her position was that she had to enter the home of all those who were reported. The trial judge sustained her position and held that the mere receipt of a report of child abuse or neglect was sufficient for the issuance of an entry order. However, the trial judge's decision was reversed by the Alabama Court of Appeals. That court held that the Alabama statute's requirement of "cause shown" had to be read in the light of the Fourth Amendment. An anonymous tip standing alone did not meet the standard of cause shown.

If a social worker receives an anonymous tip, he/she can always go to the home and ask permission for entry. If permission is denied, then the social worker—if he/she believes it is justified—can seek independent sources to attempt to verify the tipster's information. For example, if a tipster says, that the child is covered with bruises from head to toe, contact could be made with the child's teacher to see if he/she has ever seen such bruises. If the teacher says "Yes, I see them all the time," then the report has been corroborated and upon that kind of evidence the social worker probably has the basis for either the issuance of a warrant or an entry on the basis of exigent circumstances if it is not possible to get a warrant in a reasonable time.

Policy Implications It is my opinion that the welfare of children is absolutely consistent with our constitutional requirements. Children are not well-served if they are subjected to investigations based on false allegations. Little children can be traumatized by investigations in ways that are unintended by the social worker. However, to a small child all they know is that a strange adult is taking off their clothing while their mother is sobbing in the next room in the presence of an armed police officer. This does not seem to a child to be a proper invasion of their person—quite different, for example, from an examination by a doctor when their mother is present and cooperating.

The misuse of anonymous tips are well-known. Personal vendettas, neighborhood squabbles, disputes on the Little League field, are turned into maliciously false allegations breathed into a hotline. From my perspective, there is no reason whatsoever in any case, for a report to be anonymous. There is every reason to keep the reports confidential. The difference between an anonymous report and a confidential report is obvious. In an anonymous report the social worker or police officer does not know who the reporter is and has no evidence of the reliability of their report. There is no policy reason for keeping social workers or police officers in the dark.

On the other hand, there is every reason to keep the name of the reporter confidential. There are a great number of reasons that the person being investigated shouldn't know who made the call.

Moreover, precious resources are diverted from children who are truly in need of protection when social workers are chasing false allegations breathed into a telephone by a malicious anonymous tipster. If such a tipster is told: "May we please have your name, address, and phone number? We will keep this totally confidential," it is highly probable that the vast majority of reports made in good faith will give such information. It is also probable that those making maliciously false allegations will simply hang up. Children are well-served when good faith allegations are investigated. They are equally well-served if malicious allegations can be screened out without the need for invasion.
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SECTION 3

NEVER EVER TRUST ANYONE FROM CPS/DCF

You MUST understand that CPS will not give you or your spouse any Miranda warning nor do they have too. If CPS shows up at your door and tells you they need to speak with you and your children, you have the legal right to deny them entry under the 4th and 14th Amendment. But before they leave, you should bring your children to the door but never open it, instead show them the children are not in imminent danger and that they are fine. If you do not at least show them your children, they could come back with an unlawful and unconstitutional warrant even though your children are not in imminent danger.

Everything CPS sees and hears is written down and eventually given to the AAG for your possible prosecution. You also need to know that if the focus of the investigation is on your spouse or significant other you may think you may not be charged with anything and that you are the non-offending spouse, WRONG. If your spouse gets charged with anything, you are probably going to get charged with allowing it to happen. So if a spouse lies and makes things up, he/she is also confessing that he allowed whatever he/she alleges.

What you say will more then likely not be written down the way you said it or meant it. For example, a female CPS worker asks the wife, “Does your husband yell at the children?” your response could be once in a while. Then they ask, “Does he yell at you and argue with you. Your response could be “yes we argue sometimes and he may raise his voice.” The next question is, “Does your husband drink alcohol?” Your response could be “yes he has several drinks a week.” Now let’s translate those benign responses and see what CPS may write in her paperwork. “When the father drinks, he yells at children and wife and wife is a victim of domestic violence.” This is a far cry on what really took place in that conversation. CPS routinely will take what you say out of context and actually lie in their reports in order to have a successful prosecution of their case. They have an end game in mine and they will misrepresent the facts and circumstances surrounding what may or may not have happened.

Something similar happened to the authors where DCF employees lied in front of the judge. They said the husband was a victim of domestic violence even though all five members of the family stated clearly that there was never any domestic violence. The husband would like to know when this occurred because it did not happen when he was there. They will also misrepresent the condition of your home even if you were sick or injured and did not have a chance to straighten anything out. CPS will not put anything exculpatory in the record so anyone that reads her notes will read that the house was a mess and cluttered. Never give them a chance to falsify the record or twist your words. The best advice we can offer is before letting any CPS official in your home, if you choose to do so, is to tell them you want your attorney there when they come and schedule a time for the meeting.

Remember, CPS could care less about your rights or your children’s constitutional rights. Removing a child from a safe home is more harmful then most alleged allegations as stated by many judges. They will lie and say they have to come in and you have to comply. Remember CPS has no statutory authority to enter your home when no crime has been committed. They are trained to lie to you to get in any way they can and this comes from interviewing employees at DCF. Do not sign anything or agree to anything even if you are not guilty and you agree to go through some horse and pony show. That will be used against you as if you admitted to it. The case plan or whatever they call it in your state is essentially a plea of guilty to the charges. If you agree to it and sign it, you are admitting to the abuse and/or neglect allegations and to the contents of the record. You are assisting them in their case against you and in

your own prosecution if you sign their agreements, case plan or menu. Demand a trial at the very first hearing and never stipulate to anything. Force them to prove you are guilty. Do not willingly admit to it by signing a case plan. Due to ignorance and/or incompetence, your attorney may tell you to sign their agreement so you can get your children back sooner. Do not believe it. This will only speed up the process of terminating your parental rights.

SECTION 4

ARE ALL CPS WORKERS IN THE UNITED STATES SUBJECT TO THE 4TH AND 14TH AMENDMENT?

Yes they are. The Fourth Amendment is applicable to DCF 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*. If it is unlawful and unconstitutional for the police who are government officials, likewise it is for CPS employees who are also government officials.

The social workers, Darnold and Brown, argued that "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 DCF employee, or any other agent of the state, responds to an alleged instance of child abuse, neglect, or dependency." (Emphasis added) Darnold and Brown'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 with the Walsh children was an "emergency." Further, 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. (This 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 'no 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 workers' second argument, shot down by the court.

The social workers, Darnold and Brown, then argued that they are obligated under law to investigate any reported case of child abuse, and that supersedes the Fourth Amendment. The social workers argued, "Against these fundamental rights, the defendants contend that Ohio's statutory framework for learning about and investigation 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 or poor housekeeping, overcrowding, and insufficient medical care and, thus 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 could not be sued for their “mistake.”

The police officers, Chandler and Kish, claimed that they could not be sued because they thought the social workers were not subject to the Fourth Amendment, and they were just helping 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.”

SECTION 5

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.”

The 9th Circuit Court of Appeals defines the law and states “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 v. Pierce County (797 F. 2d 812 (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.” (emphasis added)

In other words, parents have the constitutional right to exercise their children’s and their 4th and 5th Amendment’s 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 it does deny its citizens their rights under the law even if it is CPS, the police, or 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."

SECTION 6

PARROTING OF THE PHRASE "BEST INTEREST OF THE CHILD" WITHOUT SUPPORTING FACTS OR A LEGAL BASIS IS LEGALLY 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]bsent 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 judge's 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**." (Emphasis added) *Tenenbaum v. Williams, 193 F.3d 581, 602 (2nd Cir. 1999*). *F.K. v. Iowa district Court for Polk County, Id*."

SECTION 7

THE U.S COURT OF APPEALS FOR THE 7TH CIRCUIT RECENTLY RULED THAT CHILD ABUSE INVESTIGATIONS HELD ON PRIVATE PROPERTY AND INTERVIEW OF A CHILD WITHOUT CONSENT 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, that is "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 (9th Cir. 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 was 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 with 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 on-going violations of federal law and violations of the Constitution. This idea of not complying with the 4th and 14th Amendments is so impregnated in their statutes, policies, practices and customs. It affects all and what they do. DCF takes on the persona of the feeling of exaggerated power over parents and that they are totally immune. Further, that they can do basically do anything they want including engaging in deception, misrepresentation of the facts and lying to the judge. This happens thousands of times every day in the United States where the end justifies the mean 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 went to jail and/or were sued for civil rights violations. CPS workers have lied in reports and court documents, asked others to lie, and kidnapped children without court orders. They even have crossed state lines impersonating police, kidnapping children and then were prosecuted for their actions. There are also a number of documented cases where the case worker killed the child.

It is sickening how many children are subject to abuse, neglect and even killed at the hands of Child Protective Services. The following statistics represent the number of cases per 100,000 children in the United States and includes DCF in Connecticut. This information is from The National Center on Child Abuse and Neglect (NCCAN) in Washington.

Perpetrators of Maltreatment

Physical Abuse	Sexual Abuse	Neglect	Medical Neglect	Fatalities
CPS	**160**	**112**	**410**	**14**	**6.4**
Parents	59	13	241	12	1.5