CHILD PROTECTIVE SERVICES AND THE JUVENILE JUSTICE SYSTEM

A guide to protect the constitutional rights of both parents and children.

"*Know your rights before you talk to anyone from CPS, they won't tell you your rights. CPS can't do anything without your consent, demand a warrant and speak with an attorney first before speaking with anyone from CPS, 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*).

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IT'S UNCONSTITUTIONAL FOR CPS TO CONDUCT AN INVESTIGATION AND INTERVIEW A CHILD ON PRIVATE PROPERTY WITHOUT EXIGENT CIRCUMSTANCES 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 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.

The mere possibility of danger 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*)

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 Amendment and other Constitutional protections that are guaranteed even in the context 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 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 rights 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 book 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 conducting a proper investigation. 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. DCF's charges and petition to the court was nothing more than baseless allegations, never evidence. DCF withdrew the fraudulent petition on December 18, 2002 admitting they had no evidence. The fact of the matter is that they never had any evidence but abused the authors and their children for an 8-month period. As a direct result of the false charges and with manufacturing of evidence and violating the authors 1st, 4th, 6th, 9th and 14th Amendment rights, the authors filed a lawsuit in January 2003 in Federal Court in the District of Connecticut (3:03-cv-109AVC). There are 28 Defendants in this civil action and the authors are representing them selves Pro se. The authors have never been convicted of any child abuse or neglect nor are there any investigations on going. The authors have three children, a 16-year old and 11-year old twins.

The author's goals are that not another child is illegally abducted from their family and that CPS and juvenile judges start using common sense before rushing to judgment and to conduct their investigations the same as

do the 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 care giver MUST know your rights and be totally informed what you have a legal right to have and to express, whether you are a parent caught up in a 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 in order for CPS to investigate, this is just a myth. The fact of the matter is that over 80% of the calls that are called in to 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 in 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 and you can sue the social worker and the police who assist them and they both lose immunity from being sued.

If CPS lies to the AAG and the Judge in order 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 and has no legal warrant and 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, 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 to see 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, someone wanting to get revenge so CPS needs to show due diligence as do police to get sworn statements. All CPS agencies all across the country have a much exaggerated view of their power. And what you think is abuse or neglect is or is not, CPS has a totally different definition. That definition is what ever they want it to be. DCF will lie to you, mark my word, they will tell you they can do anything they want and they have total immunity. Tell that to the half dozen social workers sitting in jail in California, they lied to the judge. We will discuss this in further detail on what CPS and the police can do and not do.

SECTION 1

NEVER EVER TRUST ANYONE FROM CPS

You have to under stand that CPS will not give you or your spouse a Miranda warning nor do they have to. 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. 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.

Every thing CPS sees and hears is written down and eventually given to the AAG for your possible prosecution. You also need to know 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 gets the bright idea and lies and makes things up, he/she is also confessing that he allowed what ever he/she alleges.

What you say will more then likely not be written down the way you said it or meant it. For example, the 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 right 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 and said the husband was a victim of domestic violence even though all 5 members of the family stated clearly that there was never any domestic violence. The husband would like to know when this occurred because he wasn't there. They will also misrepresent the condition of your home, as did DCF with us. Even if you were sick or injured and hadn't had a chance to straighten anything out. CPS will not put anything exculpatory in the record so any one 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 if you choose to do so is to tell them you want your attorney there when they come and schedule a time for that.

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 allegation as stated by many judges. They will lie and say they have to come in or 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 in order 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're not guilty and you agree to go through some horse and pony show. That is used against you as if you admitted to it.

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 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*.

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 warrant less 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 'not 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 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. Other wise 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 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 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."

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 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."

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, 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."

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]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 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 RECENTLY RULED THAT CHILD ABUSE INVESTIGATIONS HELD ON PRIVATE PROPERTY 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 (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 to the 4th and 14th Amendment is so impregnated in their statutes, policies, practices and customs, it affects all and what they do and they take on the persona of the feeling of exaggerated power over parents and that they are totally immune and 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 was sued for civil rights violations. CPS workers have lied in reports, court documents, asked

others to lie, kidnapped children without court order, crossed state lines impersonating police and then kidnapping children and were prosecuted for that and including a number of cases were the case worker killed the child.

It is sickening on how many children are subject to abuse, neglect and even killed at the hands of Child Protective Services. These numbers include DCF in Connecticut.

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

Number of Cases per 100,000 children in the United States. These numbers come from The National Center on Child Abuse and Neglect (NCCAN) in Washington.

Imagine that, 6.4 children die at the hands of the agencies that are supposed to protect, and only 1.5 at the hands of parents per 100,000 children. CPS perpetrates more abuse, neglect, and sexual abuse and kills more children then parents in the United States. If the citizens of this country hold CPS to the same standards that they hold parents to, no judge should ever put another child in the hands of ANY government agency because CPS nationwide is guilty for more harm and death than any human being combined. CPS nation wide is guilty for more human rights violations and death of children then the homes they took them out of. When are the judges going to wake up to see that they are sending children to their death and a life of abuse when children are removed from safe homes at the mere opinion of a bunch of social workers.

SECTION 3

THE FOURTH AMENDMENT'S IMPACT ON CHILD ABUSE INVESTIGATIONS.

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 $150,000.00.

Contrary to the assumption of hundreds of social workers, 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; this would be intimidation, coercion and threatening. 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.

SECTION 4

WHEN IS CONSENT NOT 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. If a social worker says, "I will get a warrant from the judge or I will call the police if you do not let me in" 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. DCF's policy clearly tells the social worker that they can threaten parents even if the parents assert their 4th Amendment rights.

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 hot line 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. Anonymous phone calls fail the second part of the two-prong requirement of "exigent circumstances" and "probable cause" for a warrant or order. Anonymous phone calls cannot stand the test of probable cause as defined within the 14th Amendments and would fail in court on appeal. The social worker(s) would lose their qualified immunity for their deprivation of rights and can be sued. Many social workers and Child Protection Services ("CPS") lose their cases in court because their entry into homes was in violation of the parents 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 *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. 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.

Children are not well served if they are subjected to investigations base 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 is well known. Personal vendettas, neighborhood squabbles, disputes on the Little League field, child custody battles, revenge, nosey individuals who are attempting to impose their views on others are turned into maliciously false allegations breathed into a hotline.

"Decency, security and liberty alike demand that government officials shall be subject to the rules of conduct that are commands to the citizen. In a government of laws, existence of government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the whole people by example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy. *U.S. v. Olmstead, 277 U.S. 438 (1928*), Justice Brandeis.

We the people of the United States are ruled by law, not by feelings. If the courts allow states and their agencies rule by feelings and not law, we become a nation without law that makes decisions based on subjectivity and objectivity. CPS has been allowed to bastardize and emasculate the Constitution and the rights of its citizens to be governed by the rule of men rather then the rule of law. It is very dangerous when governmental officials are allowed to have unfettered access to citizens home. It is also very dangerous to allow CPS to violate the confrontation clause in the 6th Amendment were CPS hides, conceals and covers up the accuser/witness who make report. It allows those individuals to have a safe haven to file fraudulent reports and CPS aids and abets in this violation of fundamental right. All citizens have the right to know their accuser/witness in order to preserve the sanctity of the rule of law and that the Constitution is the supreme law of the land.

SECTION 5

IS IT ILLEGAL AND AN UNCONSTITUTIONAL PRACTICE FOR CPS TO REMOVE CHILDREN SOLELY BECAUSE THEY SAW A PARENT WAS A VICTIM OF DOMESTIC VIOLENCE?

Yes it is illegal and an unconstitutional practice to remove children which results in punishing the children and the non-offending parent. In a landmark class action suit in the U.S. District Court, Eastern District of New York, U.S. District Judge Jack Weinsein ruled on *Nicholson v. Williams, Case No.: 00-cv-2229*. This suit challenged the practice of New York's City's Administration for Children's Services of removing the children of battered mothers solely because the children saw their mothers being beaten by husbands or boyfriends. Judge Weistein ruled that the practice is unconstitutional and he ordered it stopped.

ARE PARENTS GUILTY OF MALTREATMENT OR EMOTIONAL NEGLECT IF THE CHILD WITNESSES DOMESTIC VIOLENCE?

"*Not according to Judge Weistein's ruling and to the leading national experts*."

During the trial several leading national experts testified on the impact on children of witnessing domestic violence, and the impact on children of being removed from the non-offending parent. Views of Experts on Effects of Domestic Violence on Children, and defining witnessing domestic violence by children as maltreatment or emotional neglect is a mistake. "great concern [regarding] how increased awareness of children's exposure [to domestic violence] and associated problems is being used. Concerned about the risk adult domestic violence poses for children, some child protection agencies in the United States appear to be defining exposure to domestic violence as a form of child…Defining witnessing as maltreatment is a mistake. Doing so ignores the fact that large numbers of children in these studies showed no negative development problems and some showed evidence of strong coping abilities. Automatically defining witnessing as maltreatment may also ignore battered mother's efforts to develop safe environments for their children and themselves." Ex. 163 at 866.

Effects of Removals of Children and on the Non-offending Parent.

Dr. Wolf testified that disruptions in the parent-child relationship might provoke fear and anxiety in a child and diminish his or her sense of stability and self. Tr. 565-67. He described the typical response of a child separated from his parent: "When a young child is separated from a parent unwillingly, he or she shows distress … At first, the child is very anxious and protests vigorously and angrily. Then he falls into a sense of despair, though still hyper vigilant, looking, waiting, and hoping for her return …" A child's sense of time factors into the extent to which a separation impacts his or her emotional well-being. Thus, for younger children whose sense of time is less keenly developed, short periods of parental absence may seem longer than for older children. Tr 565-65. See also Ex. 141b.

For those children who are in homes where there is domestic violence, disruption of that bond can be even more traumatic than situations where this is no domestic violence. Dr. Stark (Yale New Haven Hospital researcher) asserted that if a child is placed in foster care as a result of domestic violence in the home, then he or she may view such removal as "a traumatic act of punishment … and [think] that something that [he] or she has done or failed to do has caused this separation." Tr. 1562-63. Dr. Pelcovitz stated that "taking a child whose greatest fear is separation from his or her mother and in the name of 'protecting' that child [by] forcing on them, what is in effect, their worst nightmare, … is tantamount to pouring salt on an open wound." Ex. 139 at 5.

Another serious implication of removal is that it introduces children to the foster care system, which can be much more dangerous and debilitating than the home situation. Dr. Stark testified that foster homes are rarely screened for the presence of violence, and that the incidence of abuse and child fatality in foster homes is double that in the general population. Tr 1596; Ex. 122 at 3-4. Children in foster care often fail to receive adequate medical care. Ex. 122 at 6. Foster care placements can disrupt the child's contact with community, school and siblings. Ex. 122 at 8.

Dr. Pelcovitz stated that "taking a child whose greatest fear is separation from his or her mother and in the name of 'protecting' that child [by] forcing on them, what is in effect, their worst nightmare, … is tantamount to pouring salt on an open wound." Ex. 139 at 5.

SECTION 6

DO CHILDREN HAVE LEGAL STANDING TO SUE CPS FOR THEIR ILLEGAL ABDUCTION FROM THEIR HOME AND VIOLATING THEIR 4TH AND 14TH AMENDMENT RIGHTS?

Yes they do, children have standing to sue for their removal after they reach the age of majority. Parents also have legal standing to sue if CPS violated their 4th and 14th Amendment rights. Children have a Constitutional right to live with their parents without government interference. *Brokaw v. Mercer County, 7th Cir. (2000)* A child has a constitutionally protected interest in the companionship and society of his or her parents. *Ward v. San Jose, 9th Cir. (1992)* State employees who withhold a child from her family infringe on the family's liberty of familial association. *K.H. through Murphy v. Morgan, 7th Cir. (1990)*

The forced separation of parent from child, even for a short time, represents a serious infringement upon the rights of both. *J.B. v. Washington county, 10th Cir. (1997)* Parent's interest is of "the highest order." And the court recognizes "the vital importance of curbing overzealous suspicion and intervention on the part of health care professionals and government officials." *Thomason v. Scan Volunteer Services, Inc., 8th Cir. (1996)*

You must protect you and your child's rights. CPS has no legal right to enter your home or speak to you and your child when there in no imminent danger present. Know your choices; you can refuse to speak any government official whether it is the police or CPS as long as there is an open criminal investigation. They will tell you that what they are involved with is a civil matter not a criminal matter. Don't you believe it. There is nothing civil about allegations of child abuse or neglect. It is a criminal matter disguised as a civil matter. Police do not get involved in civil matters if it truly was one. You will regret letting them in your home and speaking with them like the thousands of other parents who have gone through this. Ask a friend, family member or some one at work. They will tell you if you agree to services, they will leave you alone or you can get your kids back.

Refusing them entry is NOT hindering an investigation, it's a Fourth Amendment protection and CPS or the juvenile judge can't abrogate that right as long as your children are not in imminent danger. Tell them to go packing. **DO NOT** sign anything, it will come back to be used against you in any possible kangaroo trial. Your children's records are protected by FERPA and HIPAA regarding your children's educational and medical records. They need a lawful warrant like the police under the "warrant clause" in order to seize any records. If your child school records contain medical records, then HIPAA also applies. When the school or doctor sends records to CPS or allows them to view them with out your permission, both the sender and receiver violated the law. You need to file a HIPAA complaint on the sender and the receiver, a PDF version http://www.hhs.gov/ocr/howtofileprivacy.pdf and a Microsoft Word version http://www.hhs.gov/ocr/howtofileprivacy.doc. Remember, you only have 180-days from the time you found out about it. Tell them they need a lawful warrant to make you do anything. CPS has no power; do not agree to a drug screen or a psychological evaluation.

SECTION 7
FAMILY RIGHTS (FAMILY ASSOCIATION)

The state may not interfere in child rearing decisions when a fit parent is available. *Troxel v. Granville, 530 U.S. 57 (2000)*.

A child has a constitutionally protected interest in the companionship and society of his or her parent. *Ward v. San Jose (9th Cir. 1992)*

Children have standing to sue for their removal after they reach the age of majority. Children have a constitutional right to live with their parents without government interference. *Brokaw v. Mercer County (7th Cir. 2000)*

The private, fundamental liberty interest involved in retaining custody of one's child and the integrity of one's family is of the greatest importance. *Weller v. Dept. of Social Services for Baltimore (4th Cir. 1990)*

State employee who withholds a child from her family may infringe on the family's liberty of familial association. Social workers could not deliberately remove children from their parents and place them with foster caregivers when the officials reasonably should have known such an action would cause harm to the child's mental or physical health. *K.H. through Murphy v. Morgan (7th Cir. 1990)*

The forced separation of parent from child, even for a short time (in this case 18 hours); represent a serious infringement upon the rights of both. *J.B. v. Washington County (10th Cir. 1997*)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. *Malik v. Arapahoe Cty. Dept. of Social Services (10 Cir. 1999*)

Parent interest is of "the highest order," and the court recognizes "the vital importance of curbing overzealous suspicion and intervention on the part of health care professionals and government officials." *Thomason v. Scan Volunteer Services, Inc. (8th Cir. 1996*)

SECTION 8
WARRANTLESS ENTRY

Police officers and social workers are not immune for coercing or forcing entry into a person's home without a search warrant. *Calabretta v. Floyd (9th Cir. 1999*)

The mere possibility of danger 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*)

Police officer and social worker may not conduct a warrantless search or seizure in a suspected child abuse case absent exigent circumstances. Defendants must have reason to believe that life or limb is in immediate jeopardy and that the intrusion is reasonable necessary to alleviate the threat. Searches and seizures in investigation of a child neglect or child abuse case at a home are governed by the same principles as other searches and seizures at a home. *Goodv. Dauphin County Social Services (3rd Cir. 1989*)

The Fourth Amendment protection against unreasonable searches and seizures extends beyond criminal investigations and includes conduct by social workers in the context of a child neglect/abuse investigation. *Lenz v. Winburn (11th Cir. 1995*)

The protection offered by the Fourth Amendment and by our laws does not exhaust itself once a warrant is obtained. The concern for the privacy, the safety, and the property of our citizens continues and is reflected in knock and announce requirements. *United States v. Becker, 929 F.2d 9th Cir.1991)*

Making false statements made to obtain a warrant, when the false statements were necessary to the finding of probable cause on which the warrant was based, violates the Fourth Amendment's warrant requirement. The warrant clause contemplates the warrant applicant be truthful: "no warrant shall issue, but on probable cause, supported by oath or affirmation." Deliberate falsehood or reckless disregard for the truth violates the warrant clause. An officer who obtains a warrant through material false statements which result in an unconstitutional seizure may be held liable personally for his actions under § 1983. When a warrant application is materially false or made in reckless disregard for the Fourth Amendment's warrant clause. A search must not exceed the scope of the search authorized in a warrant. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the Fourth Amendment particularity requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers of the Constitution intended to prohibit. There is a requirement that the police identify themselves to the subject of a search, absent exigent circumstances. *Aponte Matos v. Toledo Davilla (1st Cir. 1998*)

SECTION 9
DUE PROCESS

Child's four-month separation from his parents could be challenged under substantive due process. Sham procedures don't constitute true procedural due process. *Brokaw v. Mercer County (7th Cir 2000*)

Post-deprivation remedies do not provide due process if pre-deprivation remedies are practicable. *Bendiburg v. Dempsey (11th Cir. 1990*)

Children placed in a private foster home have substantive due process right to personal security and bodily integrity. *Yvonne L. v. New Mexico Dept. of Human Services (10th Cir. 1992*)

When the state places a child into state-regulated foster care, the state has duties and the failure to perform such duties may create liability under § 1983. Liability may attach when the state has taken custody of a child, regardless of whether the child came to stay with a family on his own which was not an officially approved foster family. *Nicini v. Morra (3rd Cir. 2000*)

Social worker who received a telephone accusation of abuse and threatened to remove child from the home unless the father himself left and who did not have grounds to believe the child was in imminent danger of being abused engaged in an arbitrary abuse of governmental power in ordering the father to leave. *Croft v. Westmoreland Cty. Children and Youth Services (3rd Cir. 1997*)

Plaintiff's were arguable deprived of their right to procedural due process because the intentional use of fraudulent evidence into the procedures used by the state denied them the fight to fundamentally fair procedures before having their child removed, a right included in Procedural Due Process. *Morris v. Dearborne (5th Cir. 1999*)

When the state deprives parents and children of their right to familial integrity, even in an emergency situation, the burden is on the State to initiate prompt judicial proceedings for a post-deprivation hearing, and it is irrelevant that a parent could have hired counsel to force a hearing. *K.H. through Murphy v. Morgan, (7th Cir. 1990*)

When the State places a child in a foster home it has an obligation to provide adequate medical care, protection, and supervision. *Norfleet v. Arkansas Dept. of Human Services, (8th Cir. 1993*)

Children may not be removed from their home by police officers or social workers without notice and a hearing unless the officials have a reasonable belief that the children were in imminent danger. *Ram v. Rubin, (9th Cir. 1997*)

Absent extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures. An exparte hearing based on misrepresentation and omission does not constitute notice and an opportunity to be heard. Procurement of an order to seize a child through distortion, misrepresentation and/or omission is a violation of the Forth Amendment. Parents may assert their children's Fourth Amendment claim on behalf of their children as well as asserting their own Fourteenth Amendment claim. *Malik v.Arapahoe Cty. Dept. of Social Services, (10th Cir. 1999*)

Plaintiff's clearly established right to meaningful access to the courts would be violated by suppression of evidence and failure to report evidence. *Chrissy v. Mississippi Dept. of Public Welfare, (5th Cir. 1991*)

Mother had a clearly established right to an adequate, prompt post-deprivation hearing. A 17-day period prior to the hearing was not prompt hearing. *Whisman V. Rinehart, (8th Cir. 1997*)

SECTION 10
SEIZURES (CHILD REMOVALS)

Police officers or social workers may not "pick up" a child without an investigation or court order, absent an emergency. Parental consent is required to take children for medical exams, or an overriding order from the court after parents have been heard. *Wallis v. Spencer, (9th Cir 1999*)

Child removals are "seizures" under the Fourth Amendment. Seizure is unconstitutional without court order or exigent circumstances. Court order obtained based on knowingly false information violates Fourth Amendment. *Brokaw v. Mercer County, (7th Cir. 2000*)

Defendant should've investigated further prior to ordering seizure of children based on information he had overheard. *Hurlman v. rice, (2nd Cir. 1991*)

Police officer and social worker may not conduct a warrantless search or seizure in a suspected abuse case absent exigent circumstances. Defendants must have reason to believe that life or limb is in immediate jeopardy and that the intrusion is reasonably necessary to alleviate the threat. Searches and seizures in investigation of a child neglect or child abuse case at a home are governed by the same principles as other searches and seizures at a home. *Good v. Dauphin County Social Services, (3rd Cir. 1989*)

Defendants could not lawfully seize child without a warrant or the existence of probable cause to believe child was in imminent danger of harm. Where police were not informed of any abuse of the child prior to arriving at caretaker's home and found no evidence of abuse while there, seizure of the child was not objectively reasonable and violated the clearly established Fourth Amendment rights of the child. *Wooley v. City of Baton Rouge, (5th Cir. 2000*)

For purposes of the Fourth Amendment, a "seizure" of a person is a situation in which a reasonable person would feel that he is not free to leave, and also either actually yields to a show of authority from police or social workers or is physically touched by police. Persons may not be "seized" without a court order or being placed under arrest. *California v. Hodari, 499 U.S. 621 (1991*)

Where the standard for a seizure or search is probable cause, then thee must be particularized information with respect to a specific person. This requirement cannot be undercut or avoided simply by pointing to the fact that coincidentally there exists probable cause to arrest or to search or to seize another person or to search a place where the person may happen to be. *Yabarra v. Illinois, 44 U.S. 85 (1979*)

An officer who obtains a warrant through material false statements which result in an unconstitutional seizure may be held liable personally for his actions under § 1983. Aponte Matos v. Toledo Davilla, 1st Cir. 1998)

SECTION 11
IMMUNITY

Social workers (and other government employees) may be sued for deprivation of civil rights under 42 U.S.C. § 1983 if they are named in their 'official and individual capacity'. *Hafer v. Melo, (S.Ct. 1991*)

State law cannot provide immunity from suit for Federal civil rights violations. State law providing immunity from suit for child abuse investigators has no application to suits under § 1983. *Wallis v. Spencer, (9th Cir. 1999*)

If the law was clearly established at the time the action occurred, a police officer is not entitled to assert the defense of qualified immunity base on good faith since a reasonably competent public official should know the law governing his or her conduct. *Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982*)

Immunity is defeated if the official took the complained of action with malicious intention to cause a deprivation of rights, or the official violated clearly established statutory or constitutional rights of which a reasonable person would have known. *McCord v. Maggio, (5th Cir. 1991*)

A defendant in a civil rights case is not entitled to any immunity if he or she gave false information either in support of an application for a search warrant or in presenting evidence to a prosecutor on which the prosecutor based his or her charge against the plaintiff. *Young v. Biggers, (5th Cir. 1991*)

Police officer was not entitled to absolute immunity for her role in procurement of court order placing child in state custody where there was evidence officer spoke with the social worker prior to social worker's conversation with the magistrate and there was evidence that described the collaborative worker of the two defendants in creating a "plan of action" to deal with the situation. Officer's acts were investigative and involved more that merely carrying out a judicial order. *Malik v. Arapahoe Cty. Dept. of Social Services, (10th Cir. 1999*)

Individuals aren't immune for the results of their official conduct simply because they were enforcing policies or orders. Where a statute authorizes official conduct which is patently violation of fundamental constitutional principles, an officer who enforces that statute is not entitled to qualified immunity. *Grossman v. City of Portland, (9th Cir. (1994*)

Social workers were not entitled to absolute immunity for pleadings filed to obtain pick-up order for temporary custody prior to formal petition being filed. Social workers were not entitled to absolute immunity where department policy was for social workers to report findings of neglect or abuse to other authorities for further investigation or initiation of court proceedings. Social workers investigating claims of child abuse are entitled only to qualified immunity. Assisting in the use of information known to be false in order to further an investigation is not subject to absolute immunity. Social workers are not entitled to qualified immunity on claims they deceived judicial officers in obtaining a custody order or deliberately or recklessly incorporated known falsehoods into their

reports, criminal complaints and applications. Use of information known to be false is not reasonable, and acts of deliberate falsity or reckless disregard of the truth are not entitled to qualified immunity. No qualified immunity is available for incorporating allegations into the report or application where official had no reasonable basis to assume the allegations were true at the time the document was prepared. *Snell v. Tunnel, (10 Cir. 1990*)

Police officer is not entitled to absolute immunity, only qualified immunity, to claim that he caused plaintiff to be unlawfully arrested by presenting judge with an affidavit that failed to establish probable cause. *Malley v. Briggs, S.Ct. 1986*)

Defendants were not entitled to prosecutorial immunity where complaint was base on failure to investigate, detaining minor child, and an inordinate delay in filing court proceedings, because such actions did not aid in the presentation of a case to the juvenile court. *Whisman v. Rinehart, (8th Cir. 1997*)

Case worker who intentionally or recklessly withheld potentially exculpatory information from an adjudicated delinquent or from the court itself was not entitled to qualified immunity. *Germany v. Vance, (1st Cir. 1989*)

Defendant was not entitled to qualified immunity or summary judgment because he should've investigated further prior to ordering seizure of children based on information he had overheard. *Hurlman v. Rice, (2nd Cir. 1991*)

Defendants were not entitled to qualified immunity for conducting warrantless search of home during a child abuse investigation where exigent circumstances were not present. *Good v. Dauphin County Social Services, (3rd Cir 1989*)

Social workers were not entitled to absolute immunity where no court order commanded them to place plaintiff with particular foster caregivers. *K.H through Murphy v. Morgan, (7th Cir. 1991*)

SECTION 12

Decisions of the United States Supreme Court Upholding Parental Rights as "Fundamental"

Paris Adult Theater v. Slaton, 413 US 49, 65 (1973)

In this case, the Court includes the right of parents to rear children among rights "deemed fundamental."

Our prior decisions recognizing a right to privacy guaranteed by the 14th Amendment included only personal rights that can be deemed **fundamental** or implicit in the concept of ordered liberty . . . This privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and **child rearing** . . . cf . . . *Pierce v. Society of Sisters; Meyer v. Nebraska* . . . nothing, however, in this Court's decisions intimates that there is any fundamental privacy right implicit in the concept of ordered liberty to watch obscene movies and places of public accommodation. [emphasis supplied]

Carey v. Population Services International, 431 US 678, 684-686 (1977)

Once again, the Court includes the right of parents in the area of "child rearing and education" to be a liberty interest protected by the Fourteenth Amendment, requiring an application of the "compelling interest test." Although the Constitution does not explicitly mention any right of privacy, the Court has recognized that one aspect of the **liberty protected** by the Due Process Clause of the 14th Amendment is a "right of personal privacy or a guarantee of certain areas or zones of privacy . . . This right of personal privacy includes the interest and independence in making certain kinds of important decisions . . . While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage . . . family relationships, *Prince v. Massachusetts*, 321 US 158 (1944); and **child rearing and education**, *Pierce v. Society of Sisters*, 268 US 510 (1925); *Meyer v. Nebraska*, 262 US 390 (1923).' [emphasis supplied]

The Court continued by explaining that these rights are not absolute and, certain state interests . . . may at some point become sufficiently compelling to sustain regulation of the factors that govern the abortion decision . . . Compelling is, of course, the key word; where decisions as fundamental as whether to bear or beget a child is involved, regulations imposing a burden on it **may be justified only by a compelling state interest**, and must be narrowly drawn to express only those interests. [emphasis supplied]

***Maher v. Roe*, 432 US 464, 476-479 (1977)**

We conclude that the Connecticut regulation does not impinge on the fundamental right recognized in *Roe* ... There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy ... This distinction is implicit in two cases cited in *Roe* in support of the pregnant woman's right under the 14th Amendment. In *Meyer v. Nebraska*. . . the Court held that the teacher's right thus to teach and the right of parents to engage in so to instruct their children were within the **liberty of the 14th Amendment** . . . In *Pierce v. Society of Sisters* . . . the Court relied on *Meyer* . . . reasoning that the **14th Amendment's concept of liberty** excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The Court held that the law unreasonably interfered with the **liberty of parents and guardians to direct the upbringing and education of the children under their control** ...

Both cases invalidated substantial restrictions of **constitutionally protected liberty interests:** in *Meyer*, the parent's right to have his child taught a particular foreign language; in *Pierce*, the parent's right to choose private rather than public school education. But neither case denied to a state the policy choice of encouraging the preferred course of action ... **Pierce** casts no shadow over a state's power to favor public education by funding it — a policy choice pursued in some States for more than a century ... Indeed in *Norwood v. Harrison*, 413 US 455, 462, (1973), we explicitly rejected the argument that *Pierce* established a "right of private or parochial schools to share with the public schools in state largesse," noting that "It is one thing to say that a state may not prohibit the maintenance of private schools and quite another to say that such schools must as a matter of equal protection receive state aid" ... We think it abundantly clear that a state is not required to show a compelling interest for its policy choice to favor a normal childbirth anymore than a state must so justify its election to fund public, but not private education. [emphasis supplied]

Although the Maher decision unquestionably recognizes parents' rights as fundamental rights, the Court has clearly indicated that **private schools do not have a fundamental right to state aid,** nor must a state satisfy the compelling interest test if it chooses not to give private schools state aid. The Parental Rights and Responsibilities Act simply reaffirms the right of parents to choose private education as fundamental, but it does not make the right to receive public funds a fundamental right. The PRRA, therefore, does not in any way promote or strengthen the concept of educational vouchers.

***Parham v. J.R.*, 442 US 584, 602-606 (1979).**

This case involves parent's rights to make medical decisions regarding their children's mental health. The lower Court had ruled that Georgia's statutory scheme of allowing children to be subject to treatment in the state's mental health facilities violated the Constitution because it did not adequately protect children's due process rights. The Supreme Court reversed this decision upholding the legal presumption that parents act in their children's best interest. The Court ruled:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that **parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations."** *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ... [other citations omitted] . . . **The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.** More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children. 1 W. Blackstone, Commentaries 447; 2 J. Kent, Commentaries on American Law 190. As with so many other legal presumptions, experience and reality may rebut what the law accepts as a starting point; the incidence of child neglect and abuse cases attests to this. That some parents "may at times be acting against the interests of their children" ... creates a basis for caution, but it is hardly a reason to discard wholesale those pages of human experience that teach that

parents generally do act in the child's best interest ... The statist notion that governmental power should supersede parental authority in **all** cases because **some** parents abuse and neglect children is repugnant to American tradition." [emphasis supplied]

Parental rights are clearly upheld in this decision recognizing the rights of parents to make health decisions for their children. The Court continues by explaining the balancing that must take place:

Nonetheless, we have recognized that a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized (See *Wisconsin v. Yoder; Prince v. Massachusetts*). Moreover, the Court recently declared unconstitutional a state statute that granted parents an absolute veto over a minor child's decisions to have an abortion, *Planned Parenthood of Central Missouri v. Danforth*, 428 US 52 (1976), Appellees urged that these precedents limiting the traditional rights of parents, if viewed in the context of a liberty interest of the child and the likelihood of parental abuse, require us to hold that parent's decision to have a child admitted to a mental hospital must be subjected to an **exacting constitutional scrutiny,** including a formal, adversary, pre-admission hearing.

Appellees' argument, however, sweeps too broadly. Simply because the decision of a parent is not agreeable to a child, or because it involves risks does not automatically transfer power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. Most children, even in adolescence, simply are not able to make sound judgements concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgements ... we cannot assume that the result in *Meyer v. Nebraska*, supra, and *Pierce v. Society of Sisters*, supra, would have been different if the children there had announced or preference to go to a public, rather that a church school. The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parent's authority to decide what is best for the child (See generally Goldstein, *Medical Case for the Child at Risk: on State Supervention of Parental Autonomy*, 86 Yale LJ 645, 664-668 (1977); Bennett, *Allocation of Child Medical Care Decision — Making Authority: A Suggested Interest Analyses*, 62 Va LR ev 285, 308 (1976). Neither state officials nor federal Courts are equipped to review such parental decisions. [emphasis supplied]

Therefore, it is clear that the Court is recognizing parents as having the right to make judgments concerning their children who are not able to make sound decisions, including their need for medical care. A parent's authority to decide what is best for the child in the areas of medical treatment cannot be diminished simply because a child disagrees. A parent's right must be protected and not simply transferred to some state agency.

***City of Akron v. Akron Center for Reproductive Health Inc.*, 462 US 416, 461 (1983)**

This case includes, in a long list of protected liberties and fundamental rights, the parental rights guaranteed under *Pierce and Meyer*. The Court indicated a compelling interest test must be applied. Central among these protected liberties is an individual's freedom of personal choice in matters of marriage and family life ... *Roe ... Griswold ... Pierce v. Society of Sisters ... Meyer v. Nebraska ...* But restrictive state regulation of the right to choose abortion **as with other fundamental rights subject to searching judicial examination, must be supported by a compelling state interest.** [emphasis supplied]

***Santosky v. Kramer*, 455 US 745, 753 (1982)**

This case involved the Appellate Division of the New York Supreme Court affirming the application of the preponderance of the evidence standard as proper and constitutional in ruling that the parent's rights are permanently terminated. The U.S. Supreme Court, however, vacated the lower Court decision, holding that due process as required under the 14th Amendment in this case required proof by clear and convincing evidence rather than merely a preponderance of the evidence.

The Court, in reaching their decision, made it clear that parents' rights as outlined in *Pierce* and *Meyer* are fundamental and specially protected under the Fourteenth Amendment. The Court began by quoting another Supreme Court case:

In *Lassiter* [*Lassiter v. Department of Social Services*, 452 US 18, 37 (1981)], it was "not disputed that state intervention to terminate the relationship between a parent and a child must be accomplished by procedures meeting the requisites of the Due Process Clause". . . The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a **fundamental liberty** interest protected by the 14th Amendment ... *Pierce v. Society of Sisters ... Meyer v. Nebraska.*

The **fundamental liberty interest** of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state ... When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. [emphasis supplied]

***Lehr v. Robertson*, 463 US 248, 257-258 (1983)**

In this case, the U.S. Supreme Court upheld a decision against a natural father's rights under the Due Process and Equal Protection Clauses since he did not have any significant custodial, personal, or financial relationship with the child. The natural father was challenging an adoption. The Supreme Court stated: In some cases, however, this Court has held that the federal constitution supersedes state law and provides even greater protection for certain formal family relationships. In those cases ... the Court has emphasized the paramount interest in the welfare of children and has noted that the rights of the parents are a counterpart of the responsibilities they have assumed. Thus, the **liberty of parents to control the education of their children that was vindicated in *Meyer v. Nebraska* ... and *Pierce v. Society of Sisters*** ... was described as a "right coupled with the high duty to recognize and prepare the child for additional obligations" ... The linkage between parental duty and parental right was stressed again in *Prince v. Massachusetts* ... The Court declared it a cardinal principle "that the custody, care and nurture of the child reside **first** in the parents whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." In these cases, the Court has found that the relationship of love and duty in a recognized family unit is an interest in **liberty entitled to Constitutional protection** ... "State intervention to terminate such a relationship ... must be accomplished by procedures meeting the requisites of the Due Process Clause" *Santosky v. Kramer* ... [emphasis supplied]

It is clear by the above case that parental rights are to be treated as fundamental and cannot be taken away without meeting the constitutional requirement of due process.

***Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 US 537 (1987)**

In this case, a Californian civil rights statute was held not to violate the First Amendment by requiring an all male non-profit club to admit women to membership. The Court concluded that parents' rights in child rearing and education are included as fundamental elements of liberty protected by the Bill of Rights.

The Court has recognized that the freedom to enter into and carry on certain intimate or private relationships is a **fundamental element of liberty protected by the Bill of Rights** ... the intimate relationships to which we have accorded Constitutional protection include marriage ... the begetting and bearing of children, **child rearing and education.** ***Pierce v. Society of Sisters*** ... [emphasis supplied]

***Michael H. v. Gerald*, 491 U.S. 110 (1989)**

In a paternity suit, the U.S. Supreme Court ruled: It is an established part of our constitution jurisprudence that the term liberty in the Due Process Clause extends beyond freedom from physical restraint. See, e.g. *Pierce v. Society of Sisters ... Meyer v. Nebraska ...* In an attempt to limit and guide interpretation of the Clause, **we have insisted not merely that the interest denominated as a "liberty" be "fundamental"** (a concept that, in isolation, is hard to objectify), **but also that it be an interest traditionally protected by our society.** As we have put it, the Due Process Clause affords only those protections "so rooted in the traditions and conscience of our people as to be ranked as **fundamental**" *Snyder v. Massachusetts*, 291 US 97, 105 (1934). [emphasis supplied] The Court explicitly included the parental rights under *Pierce* and *Meyer* as "fundamental" and interests "traditionally protected by our society."

***Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990)**

One of the more recent decisions which upholds the right of parents is *Employment Division of Oregon v. Smith*, which involved two Indians who were fired from a private drug rehabilitation organization because they ingested "peyote," a hallucinogenic drug as part of their religious beliefs. When they sought unemployment compensation, they were denied because they were discharged for "misconduct."

The Indians appealed to the Oregon Court of Appeals who reversed on the grounds that they had the right to freely exercise their religious beliefs by taking drugs. Of course, as expected, the U.S. Supreme Court reversed the case and found that the First Amendment did not protect drug use. So what does the case have to do with parental rights?

After the Court ruled against the Indians, it then analyzed the application of the Free Exercise Clause generally. The Court wrongly decided to throw out the Free Exercise Clause as a defense to any "neutral" law that might violate an individual's religious convictions. In the process of destroying religious freedom, the Court went out of its way to say that the parents' rights to control the education of their children is still a fundamental right. The Court declared that the "compelling interest test" is still applicable, not to the Free Exercise Clause alone:

[B]ut the Free Exercise Clause in conjunction with other **constitutional protections** such as ... the **right of parents,** acknowledged in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), **to direct the education of their children**, see *Wisconsin v. Yoder*, 406 U.S.205 (1972) invalidating compulsory-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school.[19] [emphasis supplied]

In other words, under this precedent, parents' rights to control the education of their children is considered a "constitutionally protected right" which requires the application of the compelling interest test. The Court in *Smith* quoted its previous case of *Wisconsin v. Yoder*:

Yoder said that "The Court's holding in *Pierce* stands as a charter for the rights of parents to direct the religious upbringing of their children. And when the interests of parenthood are combined with a free exercise claim ... **more than merely a reasonable relationship** to some purpose within the competency of the State is required to sustain the validity of the State's requirement under the First Amendment." 406 U.S., at 233.[20] [emphasis supplied]

Instead of merely showing that a regulation conflicting with parents' rights is reasonable, the state must, therefore, reach the higher standard of the "compelling interest test," which requires the state to prove its regulation to be the least restrictive means.

***Hodgson v. Minnesota*, 497 U.S. 417 (1990)**

In *Hodgson* the Court found that parental rights not only are protected under the First and Fourteenth Amendments as fundamental and more important than property rights, but that they are "deemed essential."

The family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference. See *Wisconsin v Yoder*, 7 406 US 205 ... The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." In other words, under this precedent, parents' rights to control the education of their children is considered a "constitutionally protected right" which requires the application of the compelling interest test. The Court in *Smith* quoted its previous case of *Wisconsin v. Yoder*:

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Parham, 442 US, at 603, [other citations omitted]. We have long held that **there exists a "private realm of family life which the state cannot enter."** *Prince v Massachusetts* ...

A natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference. As Justice White explained in his opinion of the Court in *Stanley v Illinois*, 405 US 645 (1972) [other cites omitted]:

"The court has frequently emphasized the importance of the family. The **rights** to conceive and to **raise one's children have been deemed 'essential,'** *Meyer v Nebraska*, ... 'basic civil rights of man,' *Skinner v Oklahoma*, 316 US 535, 541 (1942), and '[r]ights far more precious ... than property rights,' *May v Anderson*, 345 US 528, 533 (1953) ... The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v Nebraska*, supra." [emphasis supplied]

The Court leaves no room for doubt as to the importance and protection of the rights of parents.

***H.L. v. Matheson*, 450 US 398, 410 (1991)**

In this case, the Supreme Court recognized the parents' right to know about their child seeking an abortion. The Court stated: In addition, constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.

Ginsberg v. New York, 390 US 629 (1968) ... We have recognized on numerous occasions that the relationship between the parent and the child is Constitutionally protected (*Wisconsin v. Yoder, Stanley v. Illinois, Meyer v. Nebraska*) ... "It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom includes preparation for obligations the state can neither supply, nor hinder." [Quoting *Prince v. Massachusetts*, 321 US 158, 166, (1944)]. See also *Parham v. J.R.; Pierce v. Society of Sisters* ... We have recognized that parents have an important "guiding role" to play in the upbringing of their children, *Bellotti II*, 443 US 633-639 ... which presumptively includes counseling them on important decisions.

This Court clearly upholds the parent's right to know in the area of minor children making medical decisions.

***Vernonia School District 47J v. Acton*, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995)**

In *Vernonia* the Court strengthened parental rights by approaching the issue from a different point of view. They reasoned that children do not have many of the rights accorded citizens, and in lack thereof, parents and guardians possess and exercise those rights and authorities in the child's best interest:

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. See Am Jur 2d, Parent and Child § 10 (1987).

***Troxel v. Granville*, 530 U.S. 57 (2000)**

In this case the United States Supreme Court issued a landmark opinion on parental liberty. The case involved a Washington State statute which provided that a "court may order visitation rights for any person when visitation may serve the best interests of the child, whether or not there has been any change of circumstances." Wash. Rev. Code § 26.10.160(3). The U.S. Supreme Court ruled that the Washington statute "unconstitutionally interferes with the fundamental right of parents to rear their children." The Court went on to examine its treatment of parental rights in previous cases: In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children…*Wisconsin v. Yoder, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972)* ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and This case clearly upholds parental rights. In essence, this decision means that the government may not infringe parents' right to direct the education and upbringing of their children unless it can show that it is using the least restrictive means to achieve a compelling governmental interest.

Conclusion

The U.S. Supreme Court has consistently protected parental rights, including it among those rights deemed fundamental. As a fundamental right, parental liberty is to be protected by the highest standard of review: the compelling interest test.

As can be seen from the cases described above, parental rights have reached their highest level of protection in over 75 years. The Court decisively confirmed these rights in the recent case of *Troxel v. Granville*, which should serve to maintain and protect parental rights for many years to come.

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