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Summary of Camreta v. Greene

"Camreta v. Greene" involved a civil suit brought by the mother of a nine-year-old girl. Bob Camreta, a state child protective services worker, had information to indicate that the child's father had sexually molested her. Camreta joined a county police officer, James Alford, to investigate the allegations by interviewing the child at school. Camreta conducted the interview in a private room. It lasted two hours. During the interview, the child made statements that Camreta believed implicated the child's parents. Camreta sought and obtained a court order temporarily removing the child from her parents' custody. Further investigation by the state proved inconclusive as to whether the sexual abuse had occurred, and eventually the child was returned to her mother's custody.

The child's mother, Sarah Greene, then filed suit against Camreta and Alford under Section 1983. She argued that Camreta and Alford violated the child's Fourth Amendment rights by detaining her at school for the interview without first obtaining a warrant. The district court concluded that the interview was constitutional, and further that qualified immunity attached because the interview complied with state law and no precedent had held that such interviews were unconstitutional.

On appeal, the Ninth Circuit Court of Appeals agreed that qualified immunity attached so Camreta and Alford could not be held liable. At the same time, the majority opinion reasoned that the need to clarify the law justified reaching out to answer the Fourth Amendment issue. The Ninth Circuit Court of Appeals stated that once a criminal investigation has been opened into child abuse, the government must obtain a warrant to interview a child about the abuse in the presence of a police officer. The Camreta suit was filed against two government employees in their individual capacities, Camreta and Alford, but both employees were represented by their employers. Camreta was represented by the state of Oregon, and Alford by Deschutes County. Although they won the lawsuit on immunity grounds, they lost a major Fourth Amendment ruling along the way (i.e. the school interview constituted a seizure and thus required consent, exigent circumstances, or a court order). Thus, the broad impact of the ruling was far more significant than the outcome of one case. The state and county had no obvious means of seeking review of the Fourth Amendment portion of the Ninth Circuit's ruling. They won the case, and winning parties generally cannot appeal.

The winning officials petitioned the Supreme Court anyway, seeking a reversal of the Fourth Amendment ruling. Once the case reached the Supreme Court, the focus shifted from the merits of the Fourth Amendment question to the procedural issue of whether government officials can obtain Supreme Court review of the merits of adverse Fourth Amendment rulings when they won below on immunity grounds. This inquiry ultimately divided into three questions: First, whether standing existed to allow the Court to adjudicate the Fourth Amendment issue given that it had no impact on the lawsuit below; second, whether the Court should decline to review the claim as a matter of prudential policy; and third, whether the case was moot because several years had passed since the interview had occurred.
The majority opinion concluded standing existed to allow review of the Fourth Amendment ruling, and concluded that the Supreme Court generally could review claims from immunized state officials. However, the Court dismissed the case as moot because the parties were no longer in the same position as they were when the suit was filed. The child had moved to Florida and was now almost 18 years old. Because she was outside the Ninth Circuit and was likely about to graduate from high school, there was "not the slightest possibility of being seized in a school in the Ninth Circuit's jurisdiction as part of a child abuse investigation." The intervening time and distance meant that there was no live controversy and the case was moot. The Court then opted for what it termed a "unique" disposition of the case: It tossed out the Ninth Circuit's new Fourth Amendment rule but retained its qualified immunity decision. In effect, the Supreme Court rewrote the Ninth Circuit's opinion by removing the part that had announced the new Fourth Amendment rule.
Avoiding Civil Liability in Child Welfare Cases:

What Every Social Worker Needs to Know About Parents' Constitutional Rights

January 2012 and February 2012
Presented by Carolyn S. Frost, Senior Deputy County Counsel

The Anatomy of a Civil Lawsuit

Lawsuits Under 42 USC 1983 — What is 42 USC 1983?

"Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, ..."
Lawsuits Under 42 USC 1983 — In Plain English Please!!!!!!

- Applies to situations where a person, who has been given authority by law, deprives another person of rights or privileges given by the United States Constitution or by federal or state law.
- The person who believes they have been harmed by this deprivation may sue in federal or state court.

Lawsuits Under 42 USC 1983 — What Civil Rights Can Be Violated?

- Section 1983 is not itself a source of substantive rights.
- Deprivation involves rights secured by the United States Constitution or federal statutes (i.e. 14th and 4th Amendment claims involving lack of Due Process and Unreasonable Search and Seizure).

Lawsuits Under 42 USC 1983 — The Individual Employee as a Defendant

- Individual employees of federal, state and local governments may be sued in their individual capacities for damages, declaratory or injunctive relief.
- When a plaintiff names an official in his individual capacity, the plaintiff is seeking to impose personal liability upon a government official for actions taken under color of law.
Lawsuits Under 42 USC 1983 – The Employee in Their Official Capacity as a Defendant?

- When a plaintiff names a government official in his/her official capacity, the plaintiff is seeking to recover compensatory damages from the government body itself.
- Naming a government official in his/her official capacity is the equivalent of naming the government entity itself and requires the plaintiff to meet the standards set out in Monell v. Department of Social Services 436 U.S. 658 (1978).

Lawsuits Under 42 USC 1983 – The Government (i.e. County) as a Defendant

- Under Monell, local governments may be liable for damages, as well as declaratory and injunctive relief, whenever "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.
- Local governments may be sued for constitutional deprivations that occur pursuant to governmental custom even though such a custom has not received formal approval through the body's official decision-making channels.


- Unconstitutional policy - an unconstitutional policy statement, ordinance, regulation, or decision is formally adopted and promulgated by the governing body itself or a department or agency.
- Custom or Usage - a policy maker's actual or constructive knowledge of and acquiescence in the unconstitutional custom or practice.
- Failure to Train, Supervise, or Discipline - cannot be derived from a single incident of misconduct by a non-policy-making municipal employee.
Lawsuits Under 42 USC 1983 – Liability for Failure to Train

- Inadequacy of training policy may serve as the basis for §1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the agency comes into contact.

Lawsuits Under 42 USC 1983 – Liability for Failure to Train (Continued)

- Deliberate indifference may be established by demonstrating a failure to train officials in a specific area where there is an obvious need for training in order to avoid violations of citizens' constitutional rights.
- A municipality may be held responsible where a pattern of unconstitutional conduct is so pervasive as to imply actual or constructive knowledge of the conduct on the part of policy makers, whose deliberate indifference to the unconstitutional practice is evidenced by a failure to correct the situation once the need for training became obvious.

Lawsuits Under 42 USC 1983 – Supervisory Liability

- Supervisory liability runs against the individual, is based on his/her personal responsibility for the constitutional violation, and does not require any proof of official policy or custom as the "moving force" behind the conduct.
- Supervisory liability is imposed against the supervisory official in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates.
- Misconduct of the subordinate must be "affirmatively linked" to the action or inaction of the supervisor.
Lawsuits Under 42 USC 1983 —
Defenses to Liability: Qualified Immunity

1. Shields public employees performing discretionary government functions insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.
2. Qualified immunity involves two issues: (1) whether the action in question violated a constitutional right and (2) whether that action violated clearly established law.
3. Qualified immunity bars an award of damages but does not preclude the granting of injunctive relief.

Lawsuits Under 42 USC 1983 — No Immunity for Malicious Acts

1. Per Government Code 820.21, civil immunity of juvenile court social workers, child protection workers and other public employees authorized to initiate or conduct child abuse investigations will not apply to acts committed with malice.
2. Applies to perjury, fabrication of evidence, failure to disclose known exculpatory evidence, and obtaining testimony by duress, fraud, or undue influence.

Lawsuits Under 42 USC 1983 — Remedies

1. Compensatory Damages - fall into one of three categories: special, general, or nominal damages.
2. Punitive Damages - A plaintiff may be awarded punitive damages against an individual defendant when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.
3. Injunctive Relief - To obtain injunctive relief in federal court, a plaintiff must demonstrate "the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law."
Lawsuits Under 42 USC 1983 – Remedies (Continued)

- Declaratory Relief - A declaratory judgment rules on the lawfulness of the policy or conduct challenged by the plaintiff, but, unlike injunctive relief, does not require that the court become engaged in intrusive oversight of governmental activity. A plaintiff need not make a showing of irreparable injury.

- Attorney’s Fees - The Civil Rights Attorney’s Fees Awards Act of 1976 provides that a prevailing party in actions brought under specified civil rights statutes, including § 1983, may be entitled to an award of attorney’s fees as part of the costs of litigation.

Areas of Litigation

- Child Abuse Investigations
  - Entry into home; removal of children; interviews and medical exams
- Juvenile Court Proceedings
  - Perjury/Exculpatory Evidence
- Child Abuse Central Index
  - Ambiguous Terms/Due Process

Potential Constitutional Violation Issues Involved in Investigation of Child Abuse and Neglect
"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)

Child Abuse Investigations

Social workers' investigations of child abuse and removal of minors are subject to the warrant requirement of the Fourth Amendment. Warrants protect individual family member's Fourth Amendment right against unreasonable searches and seizures, as well as the parents' and children's Fourteenth Amendment right to live together without government interference, and thus not to be separated by the state without due process of law. See e.g. Wallis v. Spencer, 202 F.3d 1126, 1138 (9th Cir. 2000).

Child Abuse Investigations-
Warrantless Entry Into a Home

A social worker (SSW) may not enter a home without a search warrant, unless either of two circumstances are present:

1. The CWW obtained consent by a person with the apparent authority to provide it; or

2. Exigent circumstances justify a warrantless entry.
Child Abuse Investigations- Consent to Enter Into a Home

- Two types of consent: a person with apparent authority to consent to a search of the home may consent in two different ways:
  - **Actual Consent:** Actual consent is normally given verbally by responding, "Yes, you may enter my home," "Yes, you may speak to my child," or "Yes, you may inspect my child for injuries." Document all specific words used by the person giving consent in the case notes.

- **Implied Consent:** Consent may be implied through conduct or by a demonstrative gesture that indicates consent to enter. (i.e. waiving hands to come into the home or stepping aside to allow the SSW to enter the home). SSW should always attempt verbally to confirm the non-verbal gesture of consent.

Child Abuse Investigations- Apparent Authority to Consent to Entry

- SSW must have a good faith belief that the person giving consent has the authority to do so.
- In general, the person who can consent to entry must live, or appear to reside, at the residence and must appear to possess the competent mental ability and language skills to fully understand that he/she is giving consent to enter the home (i.e. a 5-year old child does not have the authority to consent to entry). Persons who are under the influence of drugs, intoxicated or mentally agitated may, however, under some circumstances still retain the capacity to provide consent.
- The SSW should document all facts indicating that the person has the capability and authority to consent.
Child Abuse Investigations - Voluntary Consent to Enter

Consent to enter a home must be freely and voluntarily given. SSW must ensure never to coerce, or force, consent to enter and search a home. Coercion may take a number of forms. For example, SSW would coerce consent by causing the parent to believe that the child will be removed from the home if the parent refuses to let him or her enter. Similarly, consent is coerced when obtained in response to an expressed or implied assertion of authority by the SSW, or the accompanying police officer.

Child Abuse Investigations - Scope of Search Upon Entry

A consensual search cannot exceed the scope of the consent given. "Scope" refers to the degree of latitude the occupant has granted the SSW to search different areas of the property, personal property, and any minors found during the course of the search. For example, a parent may let you enter the home to speak to him or her, but may not permit a search of the residence.

Child Abuse Investigations - Scope of Search Upon Entry (Continued)

The occupant or parent controls the scope of consent, and can limit or withdraw consent at any time. The fact that the parent or occupant initially gave permission for a search does not waive the parent or occupant's right to withdraw that consent. A person can withdraw consent either expressly or impliedly. If consent is withdrawn, the SSW must limit the search to those areas of the property or kinds of searches still permitted, or immediately leave the residence if so requested, unless exigent circumstances exist.
Child Abuse Investigations- Exigent Circumstances for Home Entry and Removal

- The second exception to the warrant requirement is exigent circumstances.
- Exigent circumstances exist when there is "reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of intrusion is reasonably necessary to avert that specific injury."
- Exigent circumstances is a separate exception to the warrant requirement from consent. SSW does not need to obtain consent when he or she identifies exigent circumstances.

Child Abuse Investigations- Exigent Circumstances Justifying Home Entry

If in the course of investigating a referral the SSW determines that he or she has reasonable cause to believe that an immediate threat to the child's safety exists, the SSW may enter the home without a warrant. In this context, "reasonable cause" means a "specific, articulable evidence . . . to believe that a child is in imminent danger of abuse." For example, "[a]n indictment or serious allegations of abuse which are investigated and corroborated usually gives rise to a reasonable inference of imminent danger."

Child Abuse Investigations- Independent Determination of Exigent Circumstances

Although law enforcement officers may offer assistance and protection to SSWs making warrantless entries into a home, their presence is not legally required. Moreover, the SSW should independently make a determination whether exigent circumstances exist, and does not have to defer to the opinion of the law enforcement officer present. That said, given the aforementioned danger involved in making a warrantless entry into a home, SSWs should strive to work cooperatively with law enforcement officers to avoid putting themselves in harm's way.
Child Abuse Investigations - Warrantless Removal of a Child

Having obtained consent or determined the exigent circumstances justify warrantless entry into the home does not, in and of itself, justify warrantless removal of a child, a process which the law refers to as a "seizure." As with the entry and search of a residence or child, removal of a child is also subject to the Fourth Amendment's warrant requirement. In addition, the Welfare and Institutions Code provides for specific circumstances under which a SSW may remove a child.

Child Abuse Investigations - Warrantless Removal of a Child (Continued)

The Welfare and Institutions Code provides specific provisions allowing SSWs to remove a child from the custody of his or her parents without a warrant under certain, specified circumstances. The circumstances under which the statute allows a SSW to remove a child without a warrant broadly correspond to the exigent circumstances that would justify warrantless entry into a home to investigate a report of suspected child abuse or neglect.

Exigent circumstances that justify a warrantless removal are those circumstances in which a social worker has reasonable cause to believe that the child is in immediate danger of physical or sexual abuse, the physical environment of the child - or the fact that the child is left unattended - is an immediate threat to the child's health and safety, or the child needs immediate medical attention. The SSW must document the specific facts that prove exigent circumstances.
Child Abuse Investigations — Removal of a Child by Law Enforcement

Law enforcement officers also have the authority to remove children, and the circumstances under which they may do so are much broader than those for SSWs. For example, law enforcement officers have the additional authority to remove children in the hospital whose release to his or her parents poses an immediate risk. In addition, law enforcement officers may remove children found on the street or other public place who are suffering from a injury or illness requiring medical care or hospitalization (Compare Cal. Welf. & Inst. Code § 306 with § 305.)

Child Abuse Investigations — Hospital Holds, and Removal from School

- Hospital Holds: Hospital holds are also subject to the Fourth Amendment's warrant requirement absent consent or exigent circumstances.
- Removing a child at school constitutes a "seizure" under the Fourth Amendment, requiring a warrant or exigent circumstances. In most situations, unless the threat of physical harm occurs in the classroom, the SSW will have time to get a warrant. An exception would be if the interview occurred close to the end of the school day, and the offending individual was picking the child up from school.

Child Abuse Investigations — Investigative Medical Exams

Social work staff will only obtain an evidentiary medical exam of a child with:
- Parental consent, or
- Exigent circumstances that demonstrate a medical emergency requiring immediate attention or a reasonable concern that material evidence might dissipate (e.g., sexual assault occurring within the previous 72 hours), OR
- A court order for an investigative medical exam.

Without exigent circumstances or parental consent, parents must be notified and judicial approval granted before children are subjected to investigatory physical examinations.
Child Abuse Investigations – School Interviews

- Does a school interview of a child who is the subject of a child abuse and neglect investigation constitute a seizure? MAYBE!!
  - Greene v. Camreta and its “aftermath.”
  - When should a warrant be obtained for a school interview?

SO...WHAT IS MEANT BY “EXIGENT CIRCUMSTANCES”?

- Depends on the facts of each case.
- The social worker must have reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of intrusion is reasonably necessary to avert that specific injury.
- Exigent circumstances means there is no time to get a court order!

FEDERAL APPELLATE CASES ON EXIGENCY
Government officials cannot enter a family home to conduct a child welfare check without parental consent, a search warrant, or exigent circumstances. The 9th Circuit rejects argument that an administrative search to protect the welfare of children falls outside the Fourth Amendment, i.e., no "child welfare exception" to Fourth Amendment. Order denying defendants' motion for summary judgment on grounds of qualified immunity affirmed.

Calabretta v. Floyd - continued

- SW conducts initial home visit 4 days after Hotline report of child crying "no daddy no"; mother refuses to permit entry; SW sees children at door who appear okay
- SW returns 10 days later with police; mother again refuses entry; SW and police enter home without consent to "check on the welfare of children"
- After 12-yr-old discloses mother hits them on bottom with small Lincoln log. SW tells 12-yr-old to pull down pants of 3-yr-old to see if there are any marks; 12-yr-old declines, but mother obeys
- SW tells mother "It's against California law to hit your children with objects"

Calabretta v. Floyd - continued

- "A special exigency excuses a warrantless entry where the government officers have probable cause to believe that the child has been abused and that the child would be injured or could not be taken into custody if it were first necessary to obtain a court order."
- "The government's interest in the welfare of children embraces not only protecting children from physical abuse, but also protecting children's interests in the privacy and dignity of their homes - and in the lawfully exercised authority of their parents."
Calabretta v. Floyd - continued

- "In our circuit, a reasonable official would have known that the law barred this entry... We held in White v. Pierce County (1986, 9th Cir., Washington) 797 F.2d 812, 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 exception... is so well established that any reasonable officer would know it."

MEDICAL EXAM - Wallis v. Spencer
(1999, 9th Cir., San Diego) 202 F.3d 1126

- Government officials cannot obtain an *investigatory medical examination* of a suspected child abuse victim without parental consent, a court order, or exigent circumstances.
- "It is important to emphasize that in the area of child abuse... the state is constrained by the substantive and procedural guarantees of the Constitution"

Wallis v. Spencer Continued

- "The Constitution assures parents that, in the absence of parental consent, physical examinations of their child may not be undertaken for investigative purposes at the behest of state officials unless a judicial officer has determined, upon notice to the parents, and an opportunity to be heard, that grounds for such an examination exist... Barring a reasonable concern that material physical evidence might dissipate... or that some urgent medical problem exists... the state is required to notify parents and obtain judicial approval before children are subjected to investigatory medical examinations."

- "..."
PHYSICAL REMOVAL- Mabe v. San Bernardino County DPSS (2001, 9th Cir., San Bernardino) 237 F.3d 1101

- Government officials cannot place a child into protective custody without parental consent, a court order, or exigent circumstances.
- Child's adult sibling phones Sheriff to report that Child's stepfather is molesting 14-yr-old Child; Sheriff interviews mother and stepfather who respond that Child is a liar.
- One month later SW interviews Child and mother at home; Child discloses molest but indicates no further acts since police report; mother denies any misconduct by stepfather.

Mabe v. San Bernardino County DPSS – (Continued)

- SW leaves Child in home; four days later SW presents report to agency case review committee who recommend that SW place Child into protective custody.
- SW and Sheriff place Child into custody without a warrant later that same day.
- Juvenile Court later sustains 300 petition, removes Child from home, and places with adult sibling.
- Mother nonetheless sues SW for wrongful removal.

Mabe v. San Bernardino County DPSS – (Continued)

- "Government officials are required to obtain prior judicial authorization before intruding on a parent's custody of his or her child unless they possess information at the time of the seizure that establishes 'reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury.'" (citing Wallis)
"Several facts... undermine a reasonable belief of exigency here":
First, SW opted to leave child in residence after interview...
Second, no further molestation had occurred since case reported to police...
Third, stepfather's conduct, though "clearly inappropriate... did not involve violence or penetration."

Whether exigent circumstances exist in a given situation is a question of fact for the jury.
"Assuming that [a county social worker] could obtain a warrant the same day as the case review committee recommended that MD be removed, it is difficult to understand how the further delay of a few hours necessary to obtain the warrant would have put MD in imminent danger of serious physical injury."

Government officials cannot place a child into protective custody based solely upon suspicion of imminent emotional harm.
"Unlike physical harm, such as a beating, which can have immediate and dire consequences, emotional harm by its nature does not carry the same immediacy."
Moodian v. Alameda Co. Social Services (Continued)

- Judge in San Francisco phones CPS in Alameda County to report emotional abuse.
- SW conducts home visit and removes children based on belief that children in imminent danger of emotional harm; petition filed but children returned to mother 4 months later.
- In subsequent suit, county conceded SW lacked statutory authority to remove for emotional abuse, but claimed no Constitutional violation.
- Social Worker’s motion for summary judgment based on qualified immunity denied.

MEDICAL EXAM - Doe v. Lebbos
(2003, 9th Cir., Santa Clara) 348 F.3d 820

- A public child welfare social worker cannot obtain an investigatory medical examination of a suspected child abuse victim without parental consent, a court order, or exigent circumstances.

Doe v. Lebbos (Continued)

- Police placed 4-yr-old child into protective custody on November 2nd based on suspicion of neglect by father and child’s complaint of vaginal pain.
- Police delivered child to children’s shelter.
- SW retained child in temporary custody and filed 300 petition.
- SW took child to hospital for sexual abuse exam on November 10th.
- Father alleged violation of 14th Amendment right to family association and 4th Amendment procedural due process.
Doe v. Lebbos (Continued)

- "[SW] did not obtain parental consent or a court order before referring [child] for medical sexual abuse examination. In addition, there was no risk of losing crucial evidence and, although it needed promptly to be treated, [child's] medical condition was not an urgent problem requiring immediate attention. We therefore hold, consistent with our reasoning in Wallis . . . [SW] violated the Does' constitutional rights to family association and procedural due process."

Doe v. Lebbos (Continued)

- However, 9th Circuit found it was not clear to a reasonable social worker in defendant's position that such conduct was unreasonable because (1) a petition had been filed alleging sexual abuse, (2) child was experiencing vaginal pain and discharge, and (3) SW construed court's inquiry about whether child had received medical care as authorization from the court to obtain an exam.


- Government officials cannot place a child into protective custody based on "possible indications of malnourishment coupled with severe tooth decay" without a court order.
- Here the social worker and police officer entered home and observed children ages 3 and 5 to have pale faces, and 3-yr-old had thinning hair while 5-yr-old had bottle rot and several missing teeth; both wearing diapers.
• "Removal without a court order violates the Fourteenth Amendment when officers act on the basis of (1) evidence of possible malnourishment without evidence of emaciation, listlessness, or other indications of a serious condition, and (2) evidence of serious tooth decay without evidence of significant pain or some other serious medical condition related to the tooth decay."
• "A reasonable officer would have known that exigent circumstances were not present. The referral was some two weeks old. The CPS had already found that the information contained in the report did not present an emergency situation."
• "In the situation of medical neglect, the court now holds that the serious bodily injury test requires officials to have probable cause to believe both that the neglect has resulted or imminently will result in a possibly serious medical condition and that immediate removal is necessary to avert that condition, such that a court order cannot first be obtained."
• "In the absence of grave and detailed allegations, an anonymous tip generally may not furnish the requisite exigency to enter and search without a warrant."
• "Social workers are held to the same Fourth Amendment standards as police officers"
Rogers v. San Joaquin Co. Human Services Agency (Continued)

- In removing the children from their home without obtaining judicial authorization, the social worker violated the parents clearly established Fourth and Fourteenth Amendment rights. The lack of exigency would have been apparent to any reasonable social worker. Accordingly, the court erred in granting qualified immunity to the social worker and denying the parents' motion for partial summary judgment as to the social worker.

STRIP SEARCH - Roe v. Texas Department of Protective and Regulatory Services (7/17/02, 5th Cir.) 299 F.3d 395

- Government officials cannot conduct a visual body cavity search of a child without parental consent, a court order, or exigent circumstances.
- Here the social worker conducted a visual inspection of the child's vagina during a home visit.

THE THREE ESSENTIAL QUESTIONS TO ASK WHEN DETERMINING EXIGENCE

- One: "Do I believe that this child falls within 300(b) or 300(g)?"
- Two: "Do I believe this child is at IMMEDIATE risk of SERIOUS PHYSICAL HARM?"
- Three: "Do I believe there is INSUFFICIENT TIME to obtain a court order?"
- If the answer is yes to all three questions, then exigent circumstances likely exist.
Content of Court Reports

- Ensure to the best of your ability that all of the information contained in your court report is truthful (i.e. do not lie and do not misrepresent information).
- Include exculpatory information in reports.
- Reports should contain statements of fact versus broad generalizations that could be misinterpreted by the court.
- Violation of these standards creates liability for the SSW and the County.

Testimony and Case Management

- Do not lie. When you lie under oath it is perjury which is a crime (see Penal Code § 118).
- Do not make threats to a parent to gain their cooperation or compliance. Using fraud, duress, or undue influence is not permitted.
- Violating these standards creates liability for the social worker and the County.
Potential Constitutional Violation Issues Related to the Child Abuse Central Index

Potential Violation of Due Process and Constitutional Related to CACI

- No notice of CACI listing or improper notice
- No procedure in place to challenge listing on CACI
- Types of findings reported to CACI

Potential Violation of Due Process and Familial/Privacy Rights Related to CACI – Burt Case (Continued)

The Burt Litigation: In Burt v. County of Orange (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual’s state constitutional right to familial and informational privacy, thus entitling the person to due process. Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a “reasonable” opportunity to be heard.
Potential Violation of Due Process and Familial/Privacy Rights Related to CACI – Gomez Settlement

The Gomez v. Saenz Settlement: The lawsuit settlement provided due process rights for individuals listed on the CACI by county social service agencies, but not law enforcement agencies. The settlement required that, beginning March 1, 2008, the agencies provide notice of a CACI listing and of the right to request a grievance hearing. Effective March 1, 2008, counties were to provide two forms to individuals who are referred for listing. In the notice form, the county must include case specific information discovered in the child abuse investigation. The second form is the one to be used to request a grievance hearing. When the form is sent, the hearing procedures as well as the county contact information are attached.

Potential Violation of Due Process and Familial/Privacy Rights Related to CACI – Humphries Case

Humphries v. County of Los Angeles (2010) 131 S.Ct. 447: In a federal civil action, the Ninth Circuit Court of Appeals held that the stigma of being listed in the CACI and the statutory consequences of being listed constitute a liberty interest of which plaintiffs cannot be denied without due process. The CACI violates the due process clause of the Fourteenth Amendment as it does not provide identified individuals a fair opportunity to challenge the allegations.

Specifically, the court found the current procedure provided to correct erroneous information submitted to the CACI by law enforcement is inadequate because "California provides no formal mechanism for requesting that an investigator review a report or for appealing an investigator's refusal to revisit a prior report." The person seeking review must hope the investigator is responsive.
After the Ninth Circuit found the Humphries should get declaratory relief, attorney fees, and possibly damages, the County of Los Angeles appealed to the United States Supreme Court. The county argued that the Humphries should not have prevailed because they failed to show that their deprivation was the result of a county policy or custom as required by Monell, in which the Court held that local governments can be directly liable in a civil rights suit under 42 U.S.C. Section 1983 only when their action is the result of official policy or custom. Los Angeles County argued that it was simply following California law, and that it had not adopted an independent policy of its own.

The Court concluded the "policy or custom" requirement also applies when plaintiffs seek prospective relief, such as an injunction or a declaratory judgment. Nothing in the statute or case law suggests that this causation requirement should change based on the form of relief sought. The Humphries (in this particular case) were not entitled to prospective declaratory relief or to damages.

CACI and AB 717
Amends existing provisions of law relating to the Child Abuse Central Index (CACI).
- 1) Changes CACI to include reports only of substantiated cases.
- 2) Removes inconclusive and unfounded reports from CACI.
- 3) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI.
- 4) Provides that on or after January 1, 2012, law enforcement need no longer report to the Department of Justice (DOJ) cases law enforcement investigates of known or suspected child abuse or severe neglect.
CACI and AB 717 (Continued)

• 5) Allows any person listed on the CACI before January 1, 1998 who did not receive notice of inclusion to request a hearing from the reporting agency within three years of learning of his or her CACI listing.
• 6) Allows any person listed on the CACI on or after January 1, 1998, but before March 1, 2008, to request a hearing to request a hearing from the reporting agency.
• 7) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report.
• 8) Requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report.

Practical Tips to Avoid Liability for Violating Civil Rights

Training and Education
- Knowledge of applicable laws and statutes
- Attending training
- Following any applicable policies and procedures
- Consulting with SSSS, PM or County Counsel
- Document, Document, Document
  - Consent for home entry, search or school interview (include specific statement by parent or other party, note times and specific advisements, other parties present and time specific statements are made)
  - Keep documentation of any training you have attended
  - Keep copies of any important correspondence that was sent to parent or other important party involved in a case

Practical Tips to Avoid Liability for Violating Civil Rights

- Including the "good," the "bad," and the "ugly" in court reports.
  - FACTS vs. generalizations that could be misinterpreted
  - State the source of the information when appropriate and when it does not violate confidentiality laws
    - Specific quotes whenever possible
  - If information is a heresy statement (i.e. mom says father is still using drugs because her sister told her she has used with him at a party) interview the source of the information (i.e. in this scenario, the sister).
Course Title: **Avoiding Civil Liability**

Date: ___________________________  Instructor:  Carolyn Frost, County Counsel

Your Job Title ________________________________________________________________

How long in this position? ____________________________________________________

Our intention is to meet your training needs. Giving your opinion of this course is helpful in evaluating our instructors and formatting the content for future classes.

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<thead>
<tr>
<th>Course</th>
<th>excellent</th>
<th>above average</th>
<th>good</th>
<th>fair</th>
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<tr>
<td>Overall Course Content</td>
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<td>Relevancy of course content to your needs/job</td>
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<td>Value of handouts</td>
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<td>Value of practices/exercises</td>
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<th>Instructor</th>
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<tr>
<td>Prepared and organized</td>
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<td>Displayed a clear understanding of the subject matter</td>
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<td>Effective in style and delivery</td>
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<td>Responsive to participants</td>
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<td>Stimulated interest and discussion</td>
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Class length was:  □ Just right  □ too short  □ too long

Class level was:  □ Just right  □ too basic  □ too advanced

1. What were the strengths of this class? _______________________________________

2. Is there anything you would like to see changed or added? ____________________

3. Other comments

___________________________________________________________________________

Thank you for your cooperation in completing this evaluation!
Key California Civil Jury Instructions Regarding Local Government Liability and Supervisor Liability*

(As approved at the December 13, 2011, Judicial Council Meeting. Available at www.courts.ca.gov)


[Name of plaintiff] claims that [he/she] was deprived of [his/her] civil rights as a result of an official [policy/custom] of the [name of local governmental entity]. To establish this claim, [name of plaintiff] must prove all of the following:

1. That the [name of local governmental entity] had an official [policy/custom] [specify policy or custom];

2. That [name of local governmental entity] knew, or it should have been obvious to it, that this official [policy/custom] was likely to result in a deprivation of the right [specify right violated];

3. That [name of officer or employee] was an [officer/employee/other] of [name of local governmental entity];

4. That [name of officer or employee] [intentionally/[insert other applicable state of mind]] [insert conduct allegedly violating plaintiff's civil rights];

5. That [name of officer or employee]'s conduct violated [name of plaintiff]'s right [specify right];

6. That [name of officer or employee] acted because of this official [policy/custom].

(New September 2003; Revised December 2010)


[Name of plaintiff] claims that [he/she] was deprived of [his/her] civil rights as a result of [name of local governmental entity]'s failure to train its [officers/employees]. To establish this claim, [name of plaintiff] must prove all of the following:

...
1. That [name of local governmental entity]'s training program was not adequate to train its [officers/employees];

2. That [name of local governmental entity] knew because of a pattern of similar violations[, or it should have been obvious to it,] that the inadequate training program was likely to result in a deprivation of the right [specify right violated];

3. That [name of officer or employee] violated [name of plaintiff]'s right [specify right]; and

4. That the failure to provide adequate training was the cause of the deprivation of [name of plaintiff]'s right [specify right].

(New September 2003; Revised December 2010, December 2011)


[Name of plaintiff] claims that [name of supervisor defendant] is personally liable for [his/her] harm. In order to establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of supervisor defendant] knew, or in the exercise of reasonable diligence should have known, of [name of subordinate employee defendant]'s wrongful conduct;

2. That [name of supervisor defendant] knew that the wrongful conduct created a substantial risk of harm to [name of plaintiff];

3. That [name of supervisor defendant] disregarded that risk by [expressly approving/impliedly approving/ [or] failing to take adequate action to prevent] the wrongful conduct; and

4. That [name of supervisor defendant]'s conduct was a substantial factor in causing [name of plaintiff]'s harm.

(New April 2007; Renumbered from No. 3013 December 2010; Revised December 2011)

*NOTE: This is not an exclusive or exhaustive list of jury instructions that are, or may be, appropriate in a 42 U.S.C. §1983 lawsuit. For a complete list of jury instructions please visit the website noted above.
California Government Code Section 820.21

(a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

(1) Perjury.
(2) Fabrication of evidence.
(3) Failure to disclose known exculpatory evidence.
(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.

(b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.