

**TESTIMONY OF CHRISTOPHER J. KLICKA**

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Hearing on the Reauthorization of the Child Abuse Prevention and Treatment Act

Subcommittee on Select Education of the

House Committee on Education and the Workforce

Representative Pete Hoekstra, Chairman

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My name is Christopher J. Klicka, and I serve as Senior Counsel of the Home School Legal Defense Association (HSLDA). Since 1985, I have counseled and legally represented nearly a thousand home school families who were harassed by social workers investigating child abuse tips they received from their child abuse hotlines. Ninety-five percent of the tips were anonymous. The other attorneys in our organization have handled a similar number of these legal conflicts.

I have seen first hand the trauma innocent families have experienced at the hands of social workers “just doing their jobs.”

The Home School Legal Defense Association is a nonprofit legal advocacy organization dedicated to protecting parental freedom generally and promoting the right to home school. At this time, we represent over 73,000 member families (i.e. approximately 250,000 children and 150,000 parents.)

Over these last 16 years, I have drafted state legislation on child welfare reform, lobbied on this issue before state legislatures and the Congress, and written and spoke extensively on the abuses of families by the present child welfare system. As a constitutional attorney who has represented hundreds of families involved in child welfare legal conflicts, investigations, and court cases, I have been exposed to many abuses in the child welfare system.

The purpose of my testimony today is to offer some possible solutions to real abuses that I have encountered over the years. By incorporating these reforms into CAPTA, Congress can encourage states to protect families from overzealous child welfare workers.

In its current form, CAPTA does not adequately protect parental due process rights. In order to establish this assertion, I have submitted for the record a state-by-state analysis of all the state child welfare codes demonstrating the lack of constitutional safeguards for parents and four charts. I also include a chapter from my book, “Home Schooling: The Right Choice,” that documents how innocent families are abused by the state child welfare systems along with three key cases establishing that the 4<sup>th</sup> amendment standard applies to social worker investigations.

## **I. PARENTS’ RIGHTS THREATENED BY APPLICATION OF STATE CHILD WELFARE LAWS**

We have a complex constitutional jurisprudence that guides judges, checks police and prosecutors, and protects privacy. While the system undoubtedly has its problems, Americans are justifiably proud of our system of criminal justice. Unlike many other areas of the world, *the citizen remains innocent unless proven guilty in a court of law.*

Our child protective services system, on the other hand, has turned this precious jurisprudence on its head. Innocent families are routinely traumatized by child welfare agencies simply because an anonymous tipster calls the local child abuse hotline and fabricates a story or relays a suspicion. Parents who are subject to these “investigations” are told they *must* allow the social worker entry into their home and allow each of their children to be interrogated separately. In fact, most states impose a statutory duty on social workers in their child welfare code to follow this procedure. Unfortunately, since these state statutes often do not expressly delineate the constitutional limitations established by the 4<sup>th</sup> amendment, social workers “get away” with intimidating families to allow them entry into their home and interrogate their children. (*See e.g., West Virginia and Ohio statutes.*)

As one social worker from Illinois told me who had been working almost 30 years: “When I started working, we tried to prove a family was innocent. *Now we assume they are guilty until they prove they are not.*”

The agent will frequently try intimidation to obtain entry. For example, the agent will say: “I have received allegations of child abuse and educational neglect. I need to come into your house right away and talk to your children. I am sure we can clear this all up today.” In our experience, a social worker will never read the parents their rights. They also will usually not even inform the parents of the specific allegations. (Only New Jersey, Washington, and Florida require by statute that social workers reveal the allegations). If the parent refuses entry, the agent will often threaten to obtain a court order.

## **II. SOCIAL WORKERS THEMSELVES EXPOSE THE ABUSE IN THE CHILD WELFARE AGENCIES**

Occasionally, I will talk with social workers who are fed up with the system and who willingly expose its problems.

After resolving a false allegation with a particular Chicago social worker over the phone, the social worker informed me that well over 50% of all referrals to her child welfare agency are “unfounded.” Unfortunately, she complained, many of the cases are deemed unfounded *after* families are broken apart and children are put in foster homes. She explained that many hospitals and health centers are in the “business” of “always” finding child abuse.

Expressing her concern about the new training of recently hired social workers, she said younger social workers are encouraged to go on “fishing expeditions.” In the old days, social workers tried to prove a reported family

was innocent and considered the family innocent until proven guilty. Now the “system” operates on the principle that a family is guilty . . . period.

After seeing so many families broken up, so many careers destroyed, and so many children harmed by the “system,” she now refers to the child welfare system as “the child abuse industry.” She said she was due to retire in the next year. Her frankness on the abuse of the system is particularly sobering, and it confirmed the assumptions that I had developed while dealing with numerous social workers around the country.

I have had several other conversations with social workers from various states who have developed the same opinion about their work. For instance, a social worker in Georgia, after we resolved a fabricated allegation concerning a home schooler, confessed that 90% of all the cases of alleged child abuse she handled turned out to be “unfounded.” She explained that she spent most of her time “spinning her wheels.” She felt the number of false allegations coming into her office were on the rise.

In Alabama and Florida, I met two former social workers who were now home schooling their children. Both admitted that intimidation was a routine procedure which they were taught and which they always used to get their way. Their goal, in fact, was to get into the house and talk with the children, no matter what the allegation. They would regularly demand entry and act as if they had the right to come in on their own authority. If the parent still was not fooled into voluntarily allowing them in, they would threaten to get a policeman. One ex-social worker told me, “If I ever had a social worker come to my door who acted like I did, I would be ‘scared stiff’ and probably comply with their demands!” Both of these social workers admitted that 60% to 70% of their cases were “unfounded.”

I will relate one more conversation I had with a social services worker in Michigan who is also a home school father and a member of the local school board. He said he had been working as a social worker for years and has seen much change. He said social workers have become much more aggressive and eager to go on “fishing expeditions.” He agreed with the description of the system that I learned from the other social workers. He said many social workers use intimidation and deception.

The child welfare system needs to be reformed to curtail these intimidation techniques and preserve parental due process rights.

### **III. TRUE ACCOUNTS OF PARENTS ABUSED BY THE CHILD WELFARE SYSTEM**

Since 1985, I have represented nearly 1,000 innocent families facing investigations by social workers. Here are a few examples of the incredible allegations anonymous tipsters fabricate and of social workers’ attempts to traumatize the family by demanding entry to the home and conducting separate interviews with all the children.

For example, in Wisconsin, a home school family was reported by an anonymous tipster. I secured a copy of the report by the social worker which said:

The caller was concerned because the children were all thin and thought that removal of food was possibly a form of discipline. The caller thought this discipline may have been a practice of the parents’ religion which was thought to have been Born Again. The caller thought that these parents give a lot of money to the church and spend little money on groceries. The caller’s last, somewhat passing concern, was that [the mother] home schools her children.

As usual, the anonymous tip was bogus. It is apparent from the report that the caller was biased against both the fact that the family was home schooling and that they were born again Christians. The social worker insisted on entry into the home and interrogate the children.

One of the most ridiculous allegations against a family I have ever heard was from a child welfare agent in Michigan who received an anonymous tip that the “mother was seen selling all her children’s shoes and coats at a rummage sale.” I asked the agent if he was serious and he said it was his job to investigate all allegations. He demanded entry into the home to interview the children. The mother obviously had only sold clothes which would no longer fit the children.

One family had recently moved to Florida. Within weeks, they were visited by a truant officer who questioned the legality of their schooling. The truant officer left and reported them to the Health and Human Services department. A few days later, an HHS agent appeared at the door and demanded to interview the children within 24 hours or he would send for the police. The allegations were that “the children were home during school hours and the children were sometimes left alone.” I explained the legality of their home schooling and denied the “lack of supervision” charge. (The family only had one car and the father took it to work leaving the mother at home). I then called his bluff and

refused to have the children interviewed. After talking with the parents, we allowed him to come by the door and see the children only from a distance. He finally closed the case because he had no evidence except an anonymous tip.

A really outlandish investigation involved a home school family in New Jersey. In the first visit, the agent from the Division of Youth and Family Services accused the mother of kidnapping some of her children because she had so many children. The mother produced birth certificates to prove the children were hers. The following year, another agent came by and said that someone called and reported that the “children were seen outside during school hours.” She demanded to enter the house but, under my instruction, the mother refused. Although she knew it was only an anonymous tip, the agent then said she would be back with the police. She never came back that day, showing that she was only bluffing.

In California, a single mother was contacted by a social worker with allegations that “children were not in school, mother was incapacitated, and caretaker was absent.” I talked with the social worker and she admitted the allegations were based solely on an anonymous tip. However, she insisted on talking with the children separately. When I objected, she said she would get a police officer and that she did not need a warrant. We held our ground and she settled for a meeting with the mother and a witness only.

One of our member families had just moved into Alabama two weeks earlier and had not really met anyone in their neighborhood yet. However, the Department of Human Resources agent received an “anonymous tip” that the children had “bruises” and demanded a “strip search!” When I refused to allow a “strip search,” the agent became upset and stammered, “No one else ever refused a strip search before!” She also implied the family had something to hide.

The above comment of the social worker in Alabama is a common response which I hear from social workers frequently concerning all kinds of demands. They are personally offended that we would refuse to let them into the home or interview the children. Many of them insinuate the family must be guilty even though they have nothing but an anonymous tip.

The last allegation I will mention is another example of how outlandish anonymous tipsters can become. A family in Texas was investigated by a social worker based on the following allegations: (1) children were not in attendance at school; (2) children were unsupervised and running around the neighborhood; (3) children were dirty and abused; (4) the house may be used for drug trafficking since people were seen frequently coming in and out of the house. The social worker demanded to interview the children (a 6- and 7-year-old) or she would be forced to seek a court order.

These social workers are so used to getting whatever they want from the families, that our choice to stand on the families’ privacy and 4th amendment rights shocks them.

In Appendix I, I relate more true accounts of social workers harassing innocent parents over the last few months. All these examples simply demonstrate the desperate need for consistency in applying a constitutional standard in the all the state child welfare codes.

#### **IV. UNFOUNDED CASES ARE ARTIFICIALLY INCREASING CHILD ABUSE STATISTICS WHILE PARENTS’ RIGHTS SUFFER**

In a single representative year (1986) the American Humane Association (hereafter, “AHA”) reported 2,086,112 allegations of abuse or neglect.<sup>1</sup> Unfortunately, most of these allegations turned out to be either false or trivial. After investigation, only 737,000 of these cases of reported abuse or neglect were found to be valid. The other 1,349,000 were unsupported by evidence.<sup>2</sup> AHA’s percentage of substantiated cases are generally consistent from year to year.<sup>3</sup>

Other studies have consistently shown similarly low levels of validity for child abuse and neglect allegations. One study involving an actual review of every case for a 20-year period from one county determined that only 39 percent of all reported cases of abuse or neglect were substantiated.<sup>4</sup>

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<sup>1</sup> American Humane Association, *Highlights of Official Child Neglect and Abuse Reporting 1986*, p. 10.

<sup>2</sup> *Id.*, at 11.

<sup>3</sup> More than 65 percent of all reports of suspected child maltreatment in 1978 turned out to be unfounded. U.S. National Center on Child Abuse, *National Analysis of Child Neglect and Abuse Report 36 (1978)*, Table 28 (DHEW 1979), at 18, table 5. Another study reported in over half of the cases investigated parents never mistreated their children. U.S. National Center on Child Abuse and Neglect, *National Study on the Incidence and Severity of Child Abuse and Neglect 11*, (DHHS 1981), at 16, Table 3-5.

<sup>4</sup> Dean K. Knudsen, Ph.D., Department of Sociology and Anthropology, Purdue University, *Child Protective Services, Discretion, Decisions, Dilemmas*, Charles C. Thomas, Publisher, Springfield, Illinois, (1988), p. 81.

While 737,000 is still a large number of abused and neglected children, even this figure bears further analysis to avoid overstating the problem. AHA offers the following breakdown by type of abuse or neglect.

Major Physical Injury.....	21,000
Minor Physical Injury .....	115,000
Other Physical Injury .....	84,000
Sexual Maltreatment .....	132,000
Deprivation of Necessities .....	429,000
Emotional Maltreatment .....	71,000
Other Maltreatment .....	34,000 <sup>5</sup>

In New Hampshire, the Department of Child and Youth Services (DCYS) data shows that in 1991, there was 6,434 abuse reports. Believe it or not, 5,524 of those reports turned out to be false! This means 86.2% of all child abuse reports were false. The statistics over the last eight years show that the number of founded cases is dropping and yet the number of false child abuse reports is rising. In 1984, 54% of the child abuse reports turned out to be false. There were 3,855 abuse reports of which 1,814 were founded and 2,041 were false. In 1990, 86% of the child abuse reports were found to be false. There were a shocking 5,616 abuse reports with only 709 which were proven to be founded or legitimate abuse allegations and 4,907 turned out to be false child abuse reports! <sup>6</sup> The system is out of control. Many thousands of innocent families are being abused by the system. Furthermore, Representative Gary Daniels of New Hampshire has federal statistics that demonstrate that approximately 62% of children taken from their homes were taken without justification.<sup>7</sup>

An important book was published in 1990 that confirms much of reports above and provide important documentation of the frequent abuses of the modern child welfare system: *Wounded Innocents*, by Richard Wexler (1990).<sup>8</sup>

In his book, *Wounded Innocents*, Wexler warns:

The war against child abuse has become a war against children. Every year, we let hundreds of children die, force thousands more to live with strangers, and throw a million innocent families into chaos. We call this "child protection."<sup>9</sup>

He demonstrates further that the hotlines have become a "potent tool for harassment." He shows how untrained, inexperienced, and sometimes incompetent social workers are allowed to label parents "child abusers" and remove them entirely on their own authority. He states, through the state child abuse laws, "We have effectively repealed the Fourth Amendment, which protects both parents and children against unreasonable searches and seizures." He shows the child welfare system often denies due process to the "accused" child abusers.<sup>10</sup>

Wexler also confirms the AHA statistics above. In actuality, number of approximately 2 million abused children represents only the number of cases reported by tipsters. In actuality, over half of the reported cases are false. In fact, in 1987 alone there were 1,306,800 false child abuse reports. Sexual maltreatment, which is commonly argued for the need to increase the power of social workers, only makes up 15.7 of all reports. Minor physical injury constitutes only 13.9 percent and severe physical injury only constitutes 2.6 percent.<sup>11</sup>

This means for every 100 reports alleging child abuse:

-at least fifty-eight are false

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<sup>5</sup> *Id.*, at 23. Because of the use of different data sources, the numbers in the AHA study vary from chart to chart. This particular chart totals 784,000 cases of maltreatment while at page 10, AHA uses the number of 737,000 of confirmed cases.

<sup>6</sup> "Is DCYS Running Out of Abusers?" *Christian Home Schooling News*, Vol. 2, No. 4, April/May 1992, Manchester, New Hampshire, p. 3.

<sup>7</sup> *Ibid.*

<sup>8</sup> Richard Wexler, *Wounded Innocents: The Real Victims of the War Against Child Abuse*, (Buffalo, NY: Prometheus Books, 1990).

<sup>9</sup> Wexler, *Wounded Innocents*, p. 14.

<sup>10</sup> *Ibid.*, p. 15.

<sup>11</sup> *Ibid.*, p. 86-88.

- twenty-one are mostly poverty cases
- six are sexual abuse
- four are minor physical abuse
- four are unspecified physical abuse
- three are emotional maltreatment
- three are “other maltreatment”
- one is major physical abuse.<sup>12</sup>

After he shows that the “child abuse panic” is a myth and an excuse to give unconstitutional powers to the social service agencies, he documents the terrible abuse children receive in foster homes and juvenile homes. The true accounts and statistics are sobering and shocking. In Kansas City, a study was done showing 57% of children in foster care to have been placed in “high risk of abuse or neglect” situations.”<sup>13</sup>

#### V. STUDIES AND STATISTICS PROVE THE WIDESPREAD ABUSE WITHIN THE CHILD WELFARE SYSTEM

For example, the San Diego County Grand Jury issued a 56 page report based on a seven month investigation and interviews with more than 250 social workers, therapists, attorneys, judges, doctors, and families.<sup>14</sup> The discovery was shocking.

The Grand Jury found San Diego’s child protection system to be “out of control, with few checks and little balance.” The Grand Jury found the system has developed a mindset that child abuse is rampant and its structure and operation are “biased toward proving allegations instead of finding the truth.” The jury declared:

The burden of proof, contrary to every other area of our judicial system, is on the alleged perpetrator to prove his innocence.

[Social workers rarely try] to find information favorable or evidence exculpatory to the parents. Instead [they] appear to undertake investigations with a bias toward finding facts to support detention or removal and report only that information that justifies detention.<sup>15</sup>

Constitutional rights are ignored and the family has virtually no protection. The Grand Jury reported, “In too many cases, Child Protection Services cannot distinguish real abuse from fabrication, abuse from neglect, and neglect from poverty or cultural differences.”<sup>16</sup>

Furthermore, the Grand Jury heard testimony that 20 to 60% of the children in the system do not even belong there! After reviewing 300 child abuse cases, the Grand Jury concluded 250 of the cases need corrective action or reopening.<sup>17</sup> This is a lot of innocent families, as high as 60%, whose children should never have been removed from their parents in the first place.

The Grand Jury found that “Some social workers routinely lie even when under oath in court.” Also, numerous times, social workers will disobey or ignore court orders!<sup>18</sup>

The jury also discovered that every aspect of the system is in the business of confirming “child abuse” even if it is not there. The County counsel, judges, therapists, and hospitals all work together against the parents:

County counsel, which represents Child Protection Services in court hearings, “has not been screening cases adequately.” In fact, the jury said, screening deputies are pressured “to file petitions on cases which are questionable.”

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12. Ibid. p. 87.

13. Ibid., p.198.

14. Okerblom and Wilkens, “Child Protection System Ripped,” The San Diego Union Tribune, February 7, 1992, p. A-1 and A-19. This article summarizes “Families in Crisis: Report #2,” A report by the 1991-92 San Diego County Grand Jury.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

The Juvenile Court system, which should be the ultimate check in the system, “is not fulfilling its role.” The Jury found that the court does not appear “to offer an even playing field in which the judicial officer serves as a neutral arbiter of the facts.”<sup>19</sup>

...

Rarely, the jury said, does a judge demand a “high standard of performance” from the Social Services staff. The judges “are viewed and appear to view themselves as pro-child which translates to pro-DSS,” it said.<sup>20</sup>

...

Therapists reported that “as long as they are in agreement with the social worker, their reports are given great weight. On the other hand, if they disagree with the social worker, their recommendations may not even appear in the report to the court” the grand jury said.<sup>21</sup>

...

The report also charged that the Center for Child Protection (CCP) at Children’s Hospital, which examines most of the local children suspected of being abused, has lost its objectivity. “A highly respected (appellate court) jurist testified that this lack of objectivity within the CCP has poisoned the stream. He felt that much of the bias and even zealotry found in the child dependency system could be traced back to training conferences and meetings at the behest of the Center for Child Protection.

The jury also found that “patently erroneous testimony” by center physicians “played a significant role” in several cases in which children were removed from their homes.<sup>22</sup>

This is a travesty. The child welfare system has turned into a system which literally abuses children. In San Diego, like many other communities, once children are taken, justice can rarely be found in the system.

The statistics of the abuse of children by the child welfare system go on virtually endlessly. Putting children in foster care is becoming routine even though the studies show the children would be better off at home, especially when so many of the allegations turn out to be false.

Professionals estimate that 35 to 70% of children who end up in foster care should not be there and can be severely damaged psychologically by the experience. “Research over the past 40 years says that if you remove the child from the home, you traumatize the child more than he is already hurt,” says Charles P. Gershenson, former chief of research and evaluation of the Children’s Bureau of the U.S. Department of Health and Human Services.<sup>23</sup>

These and many more statistics explain why it is so important that parents’ due process rights are protected by state child welfare codes. If the federal government is giving funds to the states, it must at minimum, ensure that constitutional protections are in place in all 50 states for parents subject to child abuse allegations.

## **VI. THE FOURTH AMENDMENT, THE COURTS, AND SOCIAL WORKERS**

The 4<sup>th</sup> Amendment applies to all 50 states. It guarantees:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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19. Ibid.

20. Abrahamson, “Child Protection System in S.D. Scored by Grand Jury,” The Los Angeles Times, February 7, 1992, p. A-1 and A-28 through A-29. This article summarizes “Families in Crisis: Report #2,” A report by the 1991-92 San Diego County Grand Jury.

21. Ibid.

22. Okerblom and Wilkens, San Diego Union Tribune, February 7, 1992, p. A-19. This article summarizes the grand jury’s report.

23. Daniel Kagan, “Saving Families Fosters Hope For America’s Troubled Youth,” Insight magazine, April 29, 1991, p. 16.

Yet social workers do not believe it applies to them. Only 16 states specify any standard even close to “probable cause” in their child welfare codes. Innocent parents caught in the dragnet of child welfare investigations due to the out-of-control anonymous tips are not informed of their rights.

It is time for the Congress to take the lead to protect these precious 4<sup>th</sup> Amendment rights of the over 1 million innocent parents being abused by the state child welfare systems.

Below are some of the key cases that define how the 4<sup>th</sup> Amendment applies to social workers.

In an oft-cited case, the Tenth Circuit held that a police officer conducting a strip search of a small child in the context of a child abuse investigation lacked qualified immunity. The Tenth Circuit rejected the officer’s arguments that there was no case directly in point establishing the unconstitutionality, that this was an administrative search, and that such great latitude should be allowed for child protection. *Franz v. Lytle* 997 F.2d 784 (10th Cir.1993)

In a similar case, the Third Circuit held that the general proposition was clearly established that the government may not “conduct a search of a home or strip search of a person’s body in the absence of consent, a valid search warrant, or exigent circumstances”, such as a need to protect a child against imminent danger of serious bodily injury. No exigent circumstances existed when this entry was based on a single anonymous report, received at least 20 hours earlier, indicating only that seven-year-old child, on single occasion, had bruises on her body of unspecified severity. Court held that: “This is hardly a rational basis for a state actor to conclude that forced entry into the residence was required to protect [the child] from imminent harm.” *Good v. Dauphin Co. Social Services for Children and Youth*, 891 F.2d 1087 (3d Cir. 1989).

The Home School Legal Defense Association won its first significant case in this area in 1993, when the Alabama Court of Appeals construed the term “cause shown” in a state child abuse investigation statute to mean “reasonable or probable cause to believe that a crime is being or about to be committed,” since any other reading might conflict with the Fourth Amendment. *H.R. v. Dept. of Human Resources*, 609 S.E.2d 477 (Ala. Civ. App. 1993). In *H.R.*, HSLDA represented a low-income home school mother who was contacted by a social worker over some allegations of child abuse and educational neglect. Under counsel from HSLDA, the family refused to allow the social worker to come into the home or to interrogate the children. In order to muscle this family, charges of child neglect were brought based on no evidence whatsoever: only based on an anonymous tipster who admitted she did not have personal knowledge of the family’s situation.

However, a hearing was held on whether an anonymous tip was enough to require the social worker to enter the home and interrogate the children. The lower court agreed that it was and issued a search warrant.

HSLDA appealed the decision to the Alabama Court of Appeals on the basis that the Fourth Amendment to the Constitution requires government officials to have “probable cause” (some kind of reliable evidence) to enter individuals’ homes. The Alabama Court of Appeals reversed:

We suggest, however, that the power of the courts to permit invasions of the privacy protected by our federal and state constitutions, is not to be exercised except upon a showing of reasonable or probable cause to believe that a crime is being or is about to be committed or a valid regulation is being or is about to be violated....

*The ‘cause shown’ [in this case] was unsworn hearsay and could, at best, present a mere suspicion. A mere suspicion is not sufficient to rise to reasonable or probable cause.*

*H.R. v. Department of Human Resources*, 609 So. 2d 477 (Ct. Civ. App. ALA 1993)

In the years since 1993, court after court has rejected the myth that social workers are exempt from the requirements of the Fourth Amendment.

In *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999), for example, a case we litigated, the unconstitutional strip search took place on October 27, 1994. The federal district court denied the social worker’s summary judgment motion for qualified immunity, and the Ninth Circuit affirmed that ruling on Aug. 26, 1999.

The Fourth Amendment rights case was originally filed February 24, 1995, by HSLDA on behalf of Robert and Shirley Calabretta in the Eastern District of California federal court, after a Yolo County policeman and social worker illegally entered the Calabretta home and strip searched their three-year-old daughter. The policeman and social worker forced their way in the home over the objections of the mother based simply on an anonymous tip. The tipster merely said she heard a cry in the night from the Calabretta home, “No Daddy no!” After the coerced entry, interrogation of the

children, and the strip search of the three-year-old, no evidence of abuse was found and the officials ended the investigation. The police officer and social worker said “thank you” and left.

The Ninth Circuit came down hard against the social workers for violating the 4<sup>th</sup> Amendment:

We held, years before the coerced entry into the Calabretta home, that even in the context of an administrative search, “[n]owhere is the protective force of the fourth amendment more powerful than it is when the sanctity of the home is involved.... Therefore, we have been adamant in our demand that absent exigent circumstances a warrant will be required before a person’s home is invaded by the authorities.” 189 F.2d at 817, quoting *Los Angeles Police Protective League v. Gates*, 907 F.2d 879, 884 (9th Cir.1990).

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 their relationship with each other. 189 F.2d at 820.

The precedent is very clear. The 4<sup>th</sup> Amendment does apply to social workers. This landmark decision of *Calabretta v. Floyd*, makes it perfectly clear that social workers are bound to obey the U.S. Constitution when investigating child abuse cases. With respect to the Fourth Amendment, the Ninth Circuit settled the social worker question once and for all. No longer can social workers enter a home without either a warrant or probable cause of an emergency. It is a myth that Child Protective Services agencies are exempted from the Fourth Amendment’s prohibitions against illegal searches and seizures.

In another case in California, on Tuesday, May 18, 1999, at approximately 3:00 p.m., two social workers from Child Protective Services arrived at the DeSantis home to investigate an *anonymous complaint* of child abuse. The social workers insisted upon entry to investigate allegations of physical abuse, to examine the utilities, and to make certain that the children had adequate food and clothing.

“You do not have my consent to enter, but the gate is open,” Mrs. DeSantis told the workers. Despite the mother’s objections, Debbie Mulvane and Sandy Knabb pushed through the gate and marched into the house.

Once inside, they strip-searched the two younger children and subjected the seven year old to a traumatizing private interview. As the social workers left, they stated that the referral was a hoax and the case would be closed.

On March 2, 2000, HSLDA filed a civil rights lawsuit on behalf of the DeSantis family against the social workers for violating the family’s Fourth Amendment right against entry without a warrant.

After long negotiations, the social workers finally agreed to pay Mr. and Mrs. DeSantis \$40,000 to avoid a trial.

In another HSLDA case, *Marsh v. Bellanca*, based on anonymous tip, officials entered a home without consent. On February 1, 2001, HSLDA filed a civil rights suit against the Riverside County child welfare agency. A social worker visited one of our member fathers in Riverside, California, and advised that he was investigating child neglect and abuse because the son was not registered in public school. Even though it was July 20, 2000, and school was not in session, the father explained that his son was enrolled in a private school. The social worker admitted the report was *anonymous*.

Nevertheless, the worker insisted that the child needed to be interviewed. The father objected, but the two uniformed officers accompanying the worker pushed their way past him. Mr. Marsh advised the officers that they had entered against his will and that he was going to contact his attorney. The social worker inspected the child’s sleeping quarters and then interviewed the child out of the presence of the father. Mr. Marsh gave the social worker the name and phone of the private school, as well as the birth dates of himself and his wife. The officials left, but indicated that the investigation may not be over.

In addition to the 4<sup>th</sup> Amendment rights, parents also have “the fundamental right to direct the education and upbringing of their children” as guaranteed under the 14<sup>th</sup> amendment of the U.S. Constitution. The United States Supreme Court made it clear that these are, in fact, fundamental federal rights. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court struck down a Washington state statute that allowed juvenile courts to order third party visitation without any showing of parental unfitness or harm to the child. The Court ruled that this statute deprived parents of a federally protected liberty interest without due process of law.

This affirms a long line of U.S. Supreme Court case starting with *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Parham v. J.R.*, 442 US 584 (1979). The treatment many parents are receiving at the hands of social workers violates parent’s fundamental rights to direct the upbringing of their children.

## **CAPTA: The Solution to Reform the Child Welfare System**

The five areas where child welfare laws most need reform are:

**1. Anonymous Tips:** As a condition of receiving federal funds, CAPTA should be amended to mandate states to require *all* reporters of child abuse to give their names, addresses and phone numbers. This will curtail false reporting and end harassment using anonymous tips. CAPTA should be amended by adding subsection 42 U.S.C. 5106a(b)(2)(A)(xiv):

provisions and procedures to assure that no reports shall be investigated unless the person making such a report provides such person’s name, address and telephone number and that the information is independently verified.

**2. False Reporting:** As a condition of receiving federal funds, CAPTA should be amended to mandate that states make it at least a class C misdemeanor to knowingly make a false report. U.S.C. 5106a(b)(2)(A)(iv) should be amended to add:

. . .and penalties for any individuals who knowingly or maliciously makes a false report of any type of child abuse or neglect that includes—

a provision stating that such persons shall also be liable to any injured party for compensatory and punitive damages

and a provision requiring that all reporters be informed of the penalties for false reporting and that the call is being recorded. (e.g. Connecticut).

Seventeen (17) states have penalties for false reports in their child welfare code. (See attached chart, *States that require penalties for false reports*).

**3. Specific Declaration of the 4<sup>th</sup> Amendment Probable Cause Standard:** Social workers must be held accountable to the same 4th Amendment standards as the police and other law enforcement authorities. As a condition of receiving federal funds, states should be mandated to declare in their state code that a warrant, supported by probable cause, must be obtained before a social worker can enter the home without consent of the parents. Social workers and those subject to an investigation should be put on notice of the constitutional standards. CAPTA should be amended by adding subsection 42 U.S.C. 5106a(b)(2)(A)(xv):

provisions which specifically require that in the absence of imminent danger, prior to entrance into a home, to remove a child, or for any other reason for which they might seek entrance into a home *without consent of the parents*, social workers shall be held to the same standard as law enforcement personnel, and shall be required to obtain a warrant, issued only on a sworn affidavit that establishes *probable cause.*” (e.g. Oklahoma, Alabama, Minnesota, New Hampshire, South Carolina).

Only sixteen (16) states have even a minimal mention of 4<sup>th</sup> amendment standards. (See attached chart, *States that require probable cause before nonconsensual entry into the home*).

**4. Requirement that Individuals Have the Right to Know Allegations and Certain Rights:** Individuals subject to investigation for child abuse allegations should have the right to know the allegations and be informed of their 4<sup>th</sup> Amendment rights. CAPTA should be amended by adding subsection 42 U.S.C. 5106a(b)(2)(A)(xvi):

Provisions and procedures which require states to inform individuals subject to a child abuse investigation of the specific allegations and their rights under the 4<sup>th</sup> Amendment of the United States Constitution to refuse entry into their home. (e.g. New Jersey).

Only eight (8) states have any requirement that social workers inform suspects of their rights. Only three (3) of those states require the social worker to reveal the allegations to the suspected parent. (See attached chart, *States that require individuals under investigation be informed of certain rights*).

**5. Specific Recognition that Reasonable Corporal Discipline by Parents is Not Child Abuse:** As a condition of federal funds, states should be required to recognize reasonable corporal punishment as not abuse. Many parents are routinely investigated for engaging in traditional discipline for children. The child abuse definition in CAPTA should be amended in 42 U.S.C.S 5106g(2):

The term child abuse and neglect does not include reasonable corporal discipline that does not result in a physical injury. (e.g. Texas, Minnesota, Alabama).

Twenty-eight (28) states have such provisions. (See attached chart, *States that specifically recognize that reasonable corporal discipline is not abuse*).

## **VII. CONCLUSION: CONGRESS HAS A RESPONSIBILITY TO UPHOLD PARENTAL DUE PROCESS RIGHTS**

As long as social workers continue to operate outside of the Constitution, the privacy rights and parental rights enjoyed by Americans everywhere will be in jeopardy. These amendments to CAPTA will significantly protect families from the abuses of the child welfare system.

Respectfully submitted,

Christopher J. Klicka, Esq.

## APPENDIX I

### True Accounts of Social Workers Threatening Innocent Families This is the Consequence of Inconsistent Application of Constitutional Standards by the States

#### Colorado: Hostile Investigation Dropped

Mrs. S was shocked when a sheriff and two social workers from the Department of Human Services (DHS) came to her house and demanded an interview based on allegations that she was a “recluse” and had not left her house in three years.

A widow who is raising her two autistic children on her own, this home schooling mother lives in a remote area, and in caring for the needs of her children, she is not able to leave the house very often.

Mrs. S wisely indicated that she could not let the social workers in her house, and stated she would have to call her attorney. The sheriff responded, “If you close the door, I will break it down.” He also stated that if she did not cooperate, “Things will get nasty.”

Fearing these threatening statements, Mrs. S acquiesced after a 20-minute standoff and let the sheriff and social workers in her home. They interviewed her and looked around the house. When they left, they indicated that they would contact her in the near future.

Mrs. S contacted HSLDA. I immediately called the social worker and explained that Mrs. S was doing nothing illegal in home schooling and caring for her children. I requested that the investigation be dropped at once.

The social worker acknowledged that there was no reason to think abuse was taking place. She also admitted that she could not defend the manner in which the interview was conducted, and she indicated that the investigation was unfounded.

This matter has been resolved to the satisfaction of all parties involved.

#### Michigan Family Harassed by Social Service Agents

Last week, a Home School Legal Defense Association member family from upper Michigan was shocked to find two social workers at the front door, responding to an allegation that the parents were physically abusing their children. The fact that a witness, rather than an anonymous tipster, had called in the allegation made the charge more serious.

The family immediately called HSLDA. Over the phone, I reminded the social workers of the family’s constitutional protection against unwarranted entry into the home. One of the social workers revealed that he had tried getting back in touch with the witness and found out that the witness had given a false name and phone number, thus undermining the credibility of the allegation.

After nearly two hours of discussion with me at the family’s door, the social worker said he could close the case if he could simply see the children at the door and ask them a few questions. The father consented.

As I listened in over the phone, each of the children cheerfully and articulately answered a few questions. This apparently satisfied the social workers, who promised to close the case and to work with the local prosecutor to track down the malicious tipster.

#### Michigan: “What Is the Fourth Amendment Again?”

Mr. and Mrs. A were enjoying an extended out-of-state trip with their family. While checking their answering machine, they discovered a message from a local child protective services worker. Mr. A called CPS to find out what was going on. Apparently, an anonymous person had alleged that Mr. A’s children were being “beaten” and that one had a black eye. The charges were completely false, but the CPS worker insisted that, as soon as they arrived back from their trip, he come into their home and interview each child, including their three year old.

Upon my advice, the family submitted a statement from their doctor, giving the family a clean bill of health and several character references.

However, the CPS worker still insisted that the law required him to come into the house and interview the children. When I challenged him that this was not in the law, he was not able to produce any authority to the contrary.

When I told the CPS worker we simply wanted to protect the family’s Fourth Amendment rights, he asked “What is the Fourth Amendment again?” This man has been a social worker for 20 years, and yet he did not know what the Fourth Amendment to the U.S. Constitution says! The Fourth Amendment is the key Due Process protection that every law enforcement officer must follow.

I reminded the social worker that he had no right to enter the home and interview the children without a warrant or court order signed by a judge. The anonymous tip he had received was false and did not rise to the level of probable cause. After 30 minutes of discussion, the situation was finally resolved to the satisfaction of the parents, and the social worker determined that allegations were unfounded.

### **Kentucky—Social Worker Says Home Schooling without Certified Teacher Illegal**

**Pendleton County, Kentucky**—Two of the most common legal difficulties home schoolers face are anonymous tips to social services by people who are not familiar with all the facts of a situation or government officials who do not know the law. Last week, a single mother in Kentucky faced both problems during an unpleasant social services investigation.

Mrs. T, who home schools her three children, was making preparations to move out of her house. As part of these preparations, the electricity was turned off. Unfortunately, the house she was planning to move into was not immediately available, so she and her children temporarily moved in with her mother, who lives close by.

An unknown person reported the T family to the Kentucky Department of Children and Families, claiming that the children were living in a house without any electricity and were not attending school.

When a social worker came to Mrs. T's door while the family was packing, Mrs. T explained the circumstances. However, the social worker demanded entry to talk to the children about their schooling. Claiming that home schooling is illegal in Kentucky unless the teacher is state-certified, she threatened to remove the children from the home.

Mrs. T called HSLDA, and HSLDA immediately informed the social worker that Kentucky law allows parents to teach their children at home, and that Mrs. T was in full compliance with the law. After the local public school confirmed that Mrs. T had indeed sent in her notice this year, the social worker agreed to drop all of the allegations.

### **Nevada Family Successfully Handles Hostile Investigation**

**NEVADA**—Mrs. P was at the library around lunchtime with several of her children, who began telling her that they were “starving.” Evidently, someone overheard them and called in an anonymous tip to Child Protective Services, claiming that the children were “starving and dirty.” This complaint resulted in an aggressive investigation.

A few days later, a social worker visited Mr. and Mrs. P at home. They explained the situation at the library and brought the children to talk to him, so that he could see they were well fed. But that wasn't enough—the social worker then demanded to enter the home, which Mr. and Mrs. P respectfully denied.

When the P family told HSLDA about the investigation, HSLDA contacted the social worker and explained that the Fourth Amendment protected our member's right to deny his entry without a warrant or an emergency.

Several weeks passed. Suddenly, the social worker showed up on the family's doorstep, again demanding entrance. Mr. and Mrs. P called HSLDA and handed the phone to the social worker. After HSLDA reiterated the family's rights and the family showed the official that they had food on hand, he yelled at Mrs. P and left.

The next day, the social worker's supervisor called Mrs. P and, after vigorously complaining that the family had been “uncooperative,” informed her that the case was unfounded.

### **Missouri: HSLDA Defends Family from False Allegations**

The W family in Missouri, Home School Legal Defense Association members, was recently visited by a social worker investigating allegations that their children were not in school.

When the social worker arrived at their door, Mr. W immediately called HSLDA. We talked to the social worker to discover the specific allegations and then explained Mr. and Mrs. W's constitutional rights.

In response to the allegation of truancy, we told the social worker that the W family was home schooling in compliance with Missouri law. While she quickly dropped that claim, as required by state law, she still insisted upon investigating other allegations, including that of physical neglect and unsafe living conditions.

We advised Mr. and Mrs. W to have their children examined by their family pediatrician. The doctor gave them all a clean bill of health and wrote the social worker a letter to this effect.

In addition, we were able to find a friend of the W family who was a police officer. He examined the house and reported to the social worker that there were no unsafe conditions.

After we supplied the social worker with all this information, the W family had no further contact from her.