

Safety Intervention and Civil Rights

Introduction

Doriane Lambelet Colman has written a thought provoking, “stand up and take notice” article about the intrusiveness of child welfare intervention. The article is called *Storming the Castle to Save the Children: The Ironic Cost of Child Welfare Exception to the 4th Amendment*. The article is written for legal scholars it seems. But you should read it. You can find it at <http://lsr.nellco.org/cgi/viewcontent.cgi?article=1033&context=duke/fs>. The title of the article has a great deal to offer us about the seriousness of respecting parents’ rights during CPS intervention. If you read this article, what you find will not surprise you, necessarily, but may have a sobering effect.

The recent development of the safety intervention state-of-the-art presses us to continually focus on the question of civil rights remaining as a critical issue. Our article this month considers respect for rights not so much from a law or lawyer’s point of view but from a CPS good practice perspective.

As a reminder, the United States Constitution 4th Amendment provides for *“the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrants shall issue, but upon reasonable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”*

General Attitude and Intention

Our experience is that CPS workers do not consider themselves as infringing on others’ rights. This simply is not the mentality apparent among staff. Things go astray during CPS intervention more because of personal qualities and styles

of workers than intentions. Some CPS workers misuse their authority as an expression of their personalities or in reactionary ways due to problems of competence or anxiety. Some CPS workers infringe on parents' rights due to ignorance. They simply are not aware of what they are doing. Some CPS workers step over the civil rights line as a matter of convenience as the attempt to meet the demands of the job in the most expedient manner they can. It is safe to say, however, that the vast majority of those conducting initial assessments and safety intervention in CPS are not mean spirited, are not overtly disrespectful of parents' and children's rights, are not seeking to intrude into family life any more than necessary, and, frankly, would be surprised if not offended to be characterized as infringing on peoples' rights.

Whether by mistake or on purpose, any disregard for civil rights is unacceptable. Leadership, policy, training and supervision must be clear about the requirements to respect and protect civil rights and must continually reinforce those expectations. In effect, CPS' general attitude and intent must promote successfully balancing protecting children while protecting civil rights, and you know that this is only going to happen if clear and precise guidance is given about how to accomplish this. For some of that guidance, read on.

Specific Practice Areas of Concern

Much can be written and discussed about areas of CPS intervention that affect civil rights. However, for this article we'll keep focused on a few areas of practice that we see as critically associated with concern for parent rights in particular. These include: intake screening, initial contact with children, initial contact with parents, information collection, and safety management (i.e., safety plans).

Screening

Who CPS serves is subjective. That means that CPS can create intake screening criteria that consider various populations to serve such as unsafe

children, children at risk of maltreatment, high or low risk family situations, families in need of child maltreatment prevention, and so on. CPS can create intake screening criteria that reduce down who it seeks to serve. CPS can decide, as being done in some jurisdictions, to serve only families where children are not safe. Concerning safeguarding civil rights, the wider the cut that CPS chooses related to whom it seeks to serve, the greater the likelihood is for infringing upon parents' rights. This is so because CPS is an involuntary intervention—parents don't ask for child protective services. The further screening criteria move away from the essential mission and legal mandate for CPS, the greater the chances are that workers will be involved with cases in which the authority to do so is suspect. To avoid infringing on parents' rights, you have to be as certain as you can that you are knocking on the right doors. So what we are talking about here is precision.

It's an argument—at least as related to protecting civil rights—for screening criteria to be built around safety concepts which are more precise than child maltreatment, risk of maltreatment, prevention of child maltreatment, child well-being, or unmet need. The idea is to be certain, in so far as one can be from information reported in a CPS referral, that information about a family, a child, or parents is precise enough to have greater confidence about the need to intervene. Family conditions that rise to the safety threshold meet criteria that can also be reworked as screening criteria: out of control, likely to have a severe effect, imminent with respect to the certainty to have severe effects in the near future, and observable, specific and describable. This last criterion is underlined in order to emphasize the importance of screening reports based on information that complies in so far as possible with evidentiary expectations (if not standards). *If what is reported is true, it constitutes facts about threats to a child's safety that could be testified to in court.* The safety concepts that are fundamental to creating such screening criteria are: the concept (definition) of unsafe, present danger, and impending danger.

Initial Contact with Children

Where and when children are first contacted by CPS is a subject that deserves discussion with respect to the ethics of intervention and children's and parents' rights. It is common for school-age children (and children in day care) to first be contacted, observed and interviewed at the school or day care center. Who knows? It is likely that the majority of CPS initial assessments involving school-age children begin this way. It is not only a common practice but one that has existed for decades if not forever. The familiar explanations for first accessing children at school are to assure privacy and control during the interview, for convenience, for expediency and workload management, because of a reported emergency, and because unverified reported information may be suggestive of a dangerous situation. The truth is that this practice is so common and undifferentiated (in terms of the basis for such access) that it is reasonable to question how this as a practice fits with safeguarding parents' rights. Certainly some of the reasons for seeing children prior to notifying parents are not substantial enough to infringe on a parent's rights.

The only legitimate, legally supported reason for contacting and interviewing a child before notifying a parent is exigent circumstances. In other words, to see and interview a child prior to notifying a parent should be considered when reported information suggests that a child is in present danger. We've defined present danger as *an immediate, significant and clearly observable threat to a child occurring in the present*. Many refer to this as a situation suggesting a child is subject to immediate severe harm. The point is that choosing to proceed with an initial contact with a child prior to notifying a parent should only occur when information reported to CPS suggests that a child is in present danger, and to proceed otherwise would be imprudent and fail to behave in accordance with the protection mandate. It is likely that in virtually all CPS reports not involving indications of present danger there is sufficient time and opportunity to begin the initial assessment by first contacting and meeting with the child's parents (caregivers).

Initial Contact with Parents

Coleman's article is correct in representing the CPS initial assessment as an adversarial one. This is true no matter how kindly you behave. It is imperative that you never forget or underestimate the importance of CPS being an involuntary, governmental interference in family life.

Certainly the nature and quality of the interaction between you and a parent can occur in ways that reduces adversariness, and this should always be your objective as a CPS worker. The cardinal rule is that parents do not have to speak with CPS or reveal anything about themselves or their situations. Certainly this is true until such time that, based on indicated need, law enforcement or court orders are involved. So there is a spirit of practice that should compel you to approach the initial contact with parents with an expressed sensitivity about your (CPS) presence as an intrusion into the parent's family and home of which the parent actually does have some say.

The Child Abuse Prevention and Treatment Act requires states to maintain *"provisions and procedures to require that a representative of the child protective services agency shall at the initial contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant."* This requirement is consistent with the intent that parents' rights be a priority during initial contacts. It would be fair and even more effective if required provisions and procedures included introducing a report to a parent in a manner that is consistent with laws protecting the parent's rights. Don't you think so too?

We are unflinching regarding our belief about respect for parents' rights that is expressed in specific communication and behavior occurring at the onset and throughout CPS. However, we see no reason that maintaining this stance should result in Miranda reading type behavior; escalating or emphasizing

adversariness; or emphasizing this so much so that expressions of concern and interest in a parent, the family and a child's safety are not properly represented. Simple and straightforward communication about the reason for the CPS contact and acknowledging a parent's right to have others involved (such as attorneys) is sufficient without making a big deal out of it. But, also, CPS should avoid implied intimidation or manipulation in order to get in the front door.

The only reason for being more assertive at the initial contact with a parent is if there is reason to believe a child is in present danger. Under such circumstances, insistence is appropriate for seeing the child and for evaluating the immediate circumstances. However, parents are within their rights to refuse CPS access to the home or the child. When you believe a child is in present danger and parents are refusing access, then it is time to seek out assistance from law enforcement and even a court order if necessary.

Information Collection

We advocate initial assessment information collection efforts to include the extent and circumstances surrounding alleged maltreatment, child functioning (in particular child vulnerability), adult general functioning, and parenting including disciplinary practices. There are different ways that CPS can be intrusive. Among those is how far CPS goes in gathering information both related to areas of exploration (what) and sources of information (from whom). In effect, we can consider information collection during initial assessment as comparable to search and seizure as represented in the 4th Amendment. State statutes normally have language that requires "a thorough investigation." So, the Constitution provision, state statutory requirements, and actual practice can easily be in conflict with respect to how far CPS intrudes into family life in order to understand sufficiently to make well-informed decisions.

The point we'd like to make here follows the line of thinking that the further away CPS gets from its mandate concerned with child protection, the further it

may pursue information that becomes an unnecessary intrusion into family life and rights. The *need to know* rule should guide you to seek information that is highly related to informing you about threats to child safety and caregiver protective capacities. Such information is in line with the CPS mandate to provide child protection.

Safety Management

Safety management is achieved through the implementation of safety plans. Safety plans may involve in-home strategies, out-of-home placement, or a combination of the two. Concerning parents' rights, the real concern here is for how safety plans are conceived and implemented. That is so because safety plans involving out-of-home placement typically occur in conjunction with court proceedings that a) authorize the action and b) assure parents' rights have been protected.

Depending on how in-home safety plans are formed and implemented, they can infringe on parents' rights. (Actually an in-home safety plan can infringe on a parents 4th (privacy) and 14th (due process) Amendment rights. What is important for you to know and remember is that in-home safety plans are not voluntary in the truest sense, and it is important that parents understand that. Once you've identified a threat to a child's safety, CPS has a responsibility to assure the child is protected. Since CPS protects children using safety plans, then it follows that a safety plan is not optional. When threats exist, a safety plan must be implemented. A parent cannot decide whether a safety plan will be implemented to protect a child who is in danger. It would be wrong for you to tell a parent that an in-home safety plan is voluntary. Well, in fact, they know within themselves that an in-home safety plan is really not voluntary.

However, a parent may participate in choosing what sort of safety plan will be used to assure a child's protection. In that sense, an in-home safety plan is optional and parents have a choice about which options will be used. Of course,

there is more to determining what kind of safety plan is used to protect a child, but for the sake of this article it is enough to state this distinction about voluntary versus optional (and choice making). In order to participate in making choices about how a child will be protected, parents must be fully informed. Being fully informed includes an understanding of their rights, an explanation of CPS findings concerning threats of danger, options available to assure protection, choices parents have, consequences of parents' choices, steps required to implement various options (including who might be involved and what the level of effort might be), and what will be required of parents given the various options. It should always be understood that parents can choose to reject CPS' approach to safety management and can seek review by a court where their points of view can be aired and (if there is any question) where their rights can be assured.

Closing

The integrity of CPS practice and decision making depends on basic imperatives. Most essential of these is respect and vigilance concerned with protection of parents' rights. All CPS staff—leaders, supervisors, and caseworkers—should be fully familiar with all provisions concerned with civil rights. Agency policy and procedure should be formed in ways that assure rights are respected and protected. Training and supervision should advance ways that staff can effectively meet this expectation.