

## **THE FUTURE OF DCF**

by Atty. Michael H. Agranoff

### **The Past is Prologue**

As I have stated many times, most DCF workers are good to excellent. But the fact remains: DCF is a bureaucracy; and in a bureaucracy, you get ahead by telling your boss what he or she wants to hear. If you also help the client or customer, and do the right thing, fine; but that is secondary.

The most important thing is to protect yourself. In this economy, raises, promotions, health care benefits, pensions, and continued employment are important. The wise person is unlikely to jeopardize them.

When I first started as a State-paid Juvenile Court lawyer, I had a much higher opinion of DCF than I do now. It changed with the Mexico baby.

I had an assignment to represent a child. His parents had taken him to the small upstate town of Mexico, New York, and sold him to a very nice middle-class couple who could not have children. The parents, of course, maintained that it was a temporary arrangement, and they were just providing expense money to the couple.

I demanded that DCF investigate. They said that the Mexico couple were very good people, and did nothing. I then threatened to go to the newspapers. Suddenly, a team of DCF social workers and Connecticut State Troopers, aided by New York State Troopers, descended upon Mexico and seized the baby, bringing her back to Connecticut and putting her in a foster home.

The distraught Mexico couple, who believed that they had acted in good faith all along, called me; apparently getting nowhere with DCF. They pleaded how responsible and appropriate they were, etc. I advised them, at least a dozen times, to get a Connecticut lawyer and fight for custody. For whatever reason, they declined, and the baby was eventually adopted by a Connecticut couple.

I thought it strange that DCF needed prodding from me to rescue a bartered child, however respectable the buyers were.

“Luther”, mentioned in the “Story of Nicole”, was my first major brush against pure bureaucracy in DCF. The DCF worker desired only to get the matter off her desk and get rid of me; not to actually see that the child was helped.

### **The Idea of NOREIN**

DCF has changed since those days. Now it goes full-steam into child protection, even if that protection sometimes harms the child more than it helps.

As to the future of DCF, I have an opinion.

DCF operates on the referral system. Someone has to call DCF to say that a child is possibly being abused or neglected. Then DCF investigates.

But why wait for a call? What if DCF could investigate all children at will, and determine for itself if the child were abused or neglected?

That is what I call NOREIN – NO REferral INtervention. And I am convinced that it is the future of DCF.

Several highly-placed DCF managers have told me that there is no such program. Maybe not by that name, but I am morally certain that DCF is planning something like it. NOREIN would ensure that DCF never goes out of business, and is in a position to demand ever-more money from the State Legislature.

This is hardly fantasy. This is the same DCF that once asked the State Attorney General if it had the authority to violate the Fourth Amendment, invading people's homes without their consent, just by claiming that they were investigating child neglect.

DCF has bright people, and they see what the Patriot Act allows law enforcement to get away with. No, it is hardly fantasy.

But how would you actually implement NOREIN? It's a fair question.

The answer is simple: through the schools. The kids are a captive audience; and the teachers, reduced today to teaching to a test, will have no trouble making referrals and comments and filling out reports as they are told to do. The administration is even easier; it is already accustomed to being paper-pushers and taking direction from its downtown lawyers.

This explains why DCF absolutely hates home-schooling with a passion. Although it is perfectly legal, DCF has often stated that parents are neglectful, per se, because of home schooling their kids. DCF is maddeningly frustrated by home schooling; and the obvious reason is that it has little or no control over it.

The DCF pitch is simplicity itself: kids are victims, they cannot speak for themselves, so we cannot wait for a neighbor or a teacher to call. We have to investigate for ourselves. The need for more workers, more investigators, more procedure writers, more supervisors, more legislative liaisons, more think tanks, and more study groups, is clear; as is the need for more taxpayer money to implement Big Brother (or Big Uncle) for our children.

Far-fetched? In truth, many lawyers today would say so. I do not. After Vietnam and Iraq, and our energy policy, and our tax system, nothing done by the Government would surprise me. I ask that lawyers and lay persons remain vigilant: DCF will never give up its quest to be the premier State of Connecticut agency.

Just Say NO to NOREIN.

### **The Possibility of Civil Rights**

Civil rights cases might end up as the tool which forces DCF to respect the rights of individuals. It is too early to tell, but this may be the wave of the future.

On March 9, 2007, the popular TV show “20/20” ran a story of a woman wrongfully convicted of murdering her 10-year-old son. This average middle-class woman was sentenced to 65 years in prison.

Through good luck, after a few years, she got “Project Innocence” to convince a high-powered lawyer to take her case pro bono. The woman had no money, and her family could not afford over a million dollars in legal fees.

The lawyer got her a new trial, and the woman was heard and acquitted. As the lawyer pointed out, there were numerous errors in the original case. As I listened, I realized how similar errors applied to many DCF cases:

1. The police determined from the start that the woman was guilty. They certainly had every right to be suspicious, but they were so certain of her guilt that they simply did not investigate or look for any evidence that might have changed their theory. (The role that laziness plays in the American Justice System deserves to be examined more closely).

In DCF cases, the investigator frequently determines guilt right away, and will not pursue anything resembling an investigation to discover more facts. The subject’s explanation will not be heard; fact witnesses will not be consulted; and independent expert witnesses will be ignored. And without a lawyer to press DCF, the verdict is a foregone conclusion.

2. The prosecutor took the word of the police, pressed for no reasonable investigation, and pursued the woman with a vengeance. He certainly had grounds to be repulsed by this horrible crime, but he ignored his obligation to find the truth.

In DCF cases, the AAG (Assistant Attorney General) virtually never conducts or insists upon any meaningful investigation. In fact, DCF often writes its own court motions, disguised as “affidavits” or “social studies”, while the AAG just rubber-stamps it with the formality of a motion heading and a signature. The traditional legal ethical rules requiring a good-faith belief in your pleadings are ignored. Many AAG’s are indeed good and fair-minded people, and I am pleased to know them; but others relish the idea of persecuting defenseless people.

3. The woman was given a lawyer who was, to be charitable, in over his head. He did not object to improper evidence offered by the prosecutor; he did not conduct his own detailed investigation; he did not properly investigate the forensic evidence; and he talked the woman out of being a witness, which she had initially insisted on being.

In DCF cases, the court-appointed lawyers often act as an alter-ego for DCF. A proper defense is not worth the trouble. Gathering and cross-checking DCF evidence and producing computer-sorted chronologies to discover the smoking gun; asking for discovery; filing pretrial motions to preclude prejudiced evidence; gathering fact and expert witnesses to challenge DCF; objecting to improper hearsay evidence; objecting to being bagged by DCF; insisting that the child's lawyer actually visit the child and observe visits; all these and others are deemed not worth the trouble.

As 20/20 reported, after the woman was acquitted in her second trial, she and her lawyer were mobbed by reporters. One question asked was: "Is it necessary to have a million-dollar defense to vindicate your own innocence?"

Sadly, the answer is often "Yes." Fighting the enormous bureaucratic power of the State is not easy. The "good guys" usually win in the movies and on TV, but not always in real life.

Civil rights would ensure that DCF follows the traditional rules of evidence, that lawyers actually defend their clients, and that persons facing the parental death sentence of TPR (termination of parental rights) be given a fighting chance by the State.

It may yet happen.

But not if NOREIN becomes the rule.

### **Summarizing Thoughts**

When all is said and done, DCF's goal is to ensure that it goes on forever. It demands ever more money, personnel, favorable legal rules, and an uninterested and unquestioning population to give it an untouchable presence, regardless of its results.

NOREIN, avoidance of civil rights, establishing bogus task forces to investigate diversity – all of these help DCF to perpetuate its existence.

This is the future of DCF, a sort of perpetual bureaucratic motion. Innocent people can challenge DCF the old-fashioned way: one case at a time.

Fortunately, those who favor civil rights for DCF clients are not generally accused of being "soft on child abuse." I hope that that day never comes.

Every decent person wants to protect children from abuse and neglect. Every decent person wants to protect the country from foreign invasion. However, these wants cannot give way to destruction of civil rights.

## MY MISSION

The question remains: what is the mission?

It is simple. The mission is to allow DCF to perform its important job of child protection, while preserving the Constitutional rights of citizens.

It is no different from the Police, who are bound to protect the public safety, and who by and large do an outstanding job. They are still required to preserve the Constitutional rights of citizens. Sometimes there are problems. Sometimes an injustice is done to citizens, and sometimes an injustice is done to the Police.

However, our courts try to balance public safety and individual liberty. And we need the same with regard to DCF.

When Miranda rights were first implemented, many police departments screamed that they would be hamstrung. Yet they have come on board; and most police officers will tell you that Miranda actually protects them also. It will be the same for DCF.

In law schools today, students marvel at how in this United States, we actually had situations in which blacks were not allowed to vote; blacks were excluded from juries; death penalty defendants were given inadequate counsel; police could once bust into your home without a warrant and beat hell out of you to get a confession; women could be sexually harassed at work and have no redress; and.... you name it. Students sometimes smile that these things really happened in the Land of the Free, the country that prides itself on being an example of democracy to the rest of the world; as if these were quaint relics of the past.

And some day, law students will smile at the notion that people accused by DCF once had little or no rights, as if losing your child were not as critical as spending six months in jail.

I have no doubt that the establishment of Constitutional rights for DCF clients is coming. I don't know if I'll live to see it; but it will come.

The lesson: Government and corporate bureaucrats will never give up trying to increase their powers and decrease their accountability. "Eternal vigilance is the price of liberty" is just as true now as it was centuries ago.