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Rehabilitation, Investigation and the Welfare Home Visit

After an initial interview to determine eligibility, the major contact between welfare agency and recipient is the series of mandatory home visits made by the caseworker at regular intervals. These visits are the heart of welfare administration. Through them are channeled all the functions of the caseworker, from redetermining eligibility to providing a wide variety of services.

The home visit is especially suited to the provision of services: it gives the administration of welfare a personal, rehabilitative orientation, unlike that of most federal programs. Despite this orientation, a home visit was dramatically recharacterized as an unreasonable search in a recent federal case, James v. Goldberg. By upholding this decision the Supreme Court could force a drastic reorganization of the whole system of welfare administration.

I.

Home visiting is the practice that most clearly embodies the unique rehabilitative cast of public assistance programs. Ever since their enactment under the 1936 Social Security Act, these programs have been regarded as conceptually different from the contributory schemes of social insurance. Social insurance programs presuppose that most people are able to provide for future contingencies by fixed contributions to an insurance scheme. Public assistance programs help those beyond the reach of social insurance—those people confronting crisis.


In James a recipient of AFDC benefits received a request from her caseworker for an appointment to visit at a specific future date. Plaintiff responded that she was willing to supply any information relevant to her receipt of benefits, but would not consent to a home visit. Soon after, the plaintiff received a "notice of intent to discontinue" her AFDC benefits, and a subsequent administrative panel upheld the caseworker's decision. The recipient petitioned the district court to enjoin termination of her benefits. A three-judge court granted the injunction, ruling that the mandatory home visit is a search and that the state cannot condition the initial and continuing receipt of aid upon a waiver of Fourth Amendment rights. The state has appealed, and the Supreme Court has noted probable jurisdiction sub nom. Wyman v. James, 38 U.S.L.W. 3319 (U.S. Feb. 24, 1970).

situations and those who are for some reason unable to participate in social insurance. While social insurance is geared to the average needs of large numbers of people, public assistance is directed to the peculiar needs of individuals whose financial dependence is supposedly caused by personal inadequacies rather than by general social or economic flaws.\(^3\)

Perhaps because of the strong emphasis on individual need, the legislative framework of the welfare program provides only a minimal outline for its administration.\(^4\) The administrator of public assistance is not a government functionary, as in social insurance, but a trained public caseworker.\(^5\) From the start, the program has been defined by the on-going caseworker-client relationship rather than by fixed legislative standards. The home visit, though not specifically required by either federal regulations or legislation,\(^6\) quickly became important in public assistance and particularly in the Aid to Families with Dependent Children program (AFDC).\(^7\) Individualized casework treatment

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\(^4\) Id. at 128.

\(^5\) The profession of social work has played an important role in shaping the administration of public assistance policies, despite the fact that few workers primarily engaged in public assistance work are fully trained. W. Bell, Aid to Dependent Children 165 (1965); A. Keith-Lucas, Decisions About People in Need 29-32 (1957); Keith-Lucas, The Political Theory Implicit in Social Casework Theory, 47 Am. Pol. Sci. Rev. 1076, 1080 (1953).


The structure of welfare law is such that most of the actual administration of the program is framed by state and local authorities rather than the federal government. The Social Security Act provides only a vague framework for a state’s categorical assistance programs: old age assistance (OAA), aid to families with dependent children (AFDC), aid to the blind (AB), and aid for the permanently and totally disabled (APTD). A state is required to fulfill the provisions of the Act in order to qualify for federal sharing of the costs of the program. The Federal Handbook of Public Assistance Administration represents the official interpretations of the Act by the Department of Health, Education and Welfare; while for the most part these regulations are permissive rather than mandatory, a state may be required to comply with some provisions of the Handbook prior to receiving federal money. (At the present time the Handbook is being phased out and new regulations are being published in the Code of Federal Regulations; parts of the Handbook that are not superseded by new additions to the Code remain legally enforceable.) Authorization for, and a description of welfare programs is found in state enabling legislation. Finally, the administrative regulations specifically shaping the behavior of caseworker to client are found in state administrative codes and/or in individual state public assistance manuals.

\(^7\) The home visit was an administrative practice in the Mothers’ Pension Movement prior to the Social Security Act of 1936. “Determination of eligibility was only part of the [investigator’s] task. The investigator was also responsible for visiting the family after grants had been approved to make certain that adequate standards of home care and parental conduct were maintained. In part these visits fulfilled the requirement for a routine review of eligibility; they were also intended to be supervisory, encouraging,
necessitates an understanding of the client's total environment, including a complete picture of the circumstances of "family interaction."

The 1956 Amendments to the Social Security Act, by adding a variety of social service provisions to public assistance, made explicit what had been implicit in the initial program. Before 1956, the federal statute had specified income maintenance as the only goal of public assistance; individual states provided for additional services but most of the programs they established were poorly funded and ineffective. With the 1956 Amendments Congress recognized services as an integral part of public assistance and offered to share with the states the costs of providing them. This more pronounced service orientation gave redoubled importance to the practice of home visiting; a productive caseworker-client relationship was seen as pivotal in fostering self-care, "self-support" and "strengthening of family life," the new goals of the program.

Arguably, the welfare home visit has little in common with the usual "search." Each of the functions of a home visit—including the verification of eligibility—could be construed as furthering the overall

assisting, so that mothers would be helped to maintain 'suitable' homes," Bell, supra note 5, at 11. The AFDC program enacted after 1936 was then a direct descendant of the Mothers' Pension Movement. Id. at 153, 154. While the characteristics described here are general throughout welfare, it is clear that they have special applicability to the AFDC program. Handler & Rosenheim, Privacy in Welfare: Public Assistance and Juvenile Justice, 31 LAW & CONTEMP. PROB. 377, 387, 388 (1966). 8. The practice of home visiting has been described as "serving a diagnostic purpose in that it provides a picture of environmental influences and family interaction." Levine, Treatment in the Home, 9 SOCIAL WORK 19 (Jan. 1964). In social work schools espousing "aggressive casework" the home visit would appear to be an especially important tool. See Miller, Value Dilemmas in Social Casework, 13 SOCIAL WORK 29 (Jan. 1968); Schott, The Trend to R., 7 SOCIAL WORK 60 (Jan. 1962); Wiltse, The Hopeless Family, 3 SOCIAL WORK 16 (Oct. 1958). See also Keith-Lucas, The Political Theory Implicit in Social Casework Theory, 47 AM. POL. SCI. REV. 1076 (1953); W. Friedlander, INTRODUCTION TO SOCIAL WELFARE 155-56 (1968).

10. Bell, supra note 5, at 153.
11. Id. at 153-54.
13. The requirement of a "social service plan" for every AFDC family was added in 1962: "A State plan ... must ... (15) provide for the development and application of a program for such welfare and related services for each child who receives aid to families with dependent children as may be necessary in light of the particular home conditions and other needs of such child. ..." 76 Stat. 185 (1962), 42 U.S.C. § 602(e)(15) (1964). The home visit is generally seen as the vehicle by which information relevant to the "social service plan" may be gathered. See 18 NYCRR §§ 351.10, 351.21(c)(7).

Bell describes the extent to which the service provisions gave new emphasis to the professional caseworker and casework methods. Bell, supra note 5, at 154-55.
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benevolent goals of the practice. Thus, verifying eligibility is simply the obverse of ensuring that the client has all he is entitled to receive, and information gathered for either purpose is helpful for recommending social services.25 The welfare manual in Wisconsin, for example, classifies virtually every aspect of AFDC administration as a service; the administration of eligibility, supervision of budget and even relatives’ responsibility laws16 are rehabilitative, if “properly carried out” by trained caseworkers.17

Furthermore, investigation plays only a minor role in the actual conduct of home visits. In some areas, caseworkers have been particularly lax in seeking out and reporting evidence of fraud or misrepresentation.18 Several studies have indicated that recipients seldom object to these visits, finding caseworkers neither overly inquisitive nor intrusive.19

Since the overall aims of home visits are rehabilitative, and since in practice most of them are minimally investigative, they are clearly distinguishable from the “early morning” or “midnight raids” of special investigators, practices that were ruled “unreasonable searches” in Parrish v. Civil Service Commission of Alameda County.20 As the dis-

15. Bell, supra note 5, at 154. Bell cites the Virginia Public Assistance Manual: “Social casework is essential in our public program in order that our services may render full value to our communities. Assistance and other welfare services given without casework too often increase dependency and handicap the development of the individual’s capacities. All . . . major activities of a public welfare social worker . . . should be part of a casework process . . . .” Id. at 237 n.a. See Hoshino, The Simplification of the Means Test and Its Consequences, 41 Soc. Serv. Rev. 237, 245 (1967).

16. In determining need, all state programs consider the common law obligation of a parent to support his minor children; in addition some states have imposed support obligation on other relatives as well. 1 CCH Poverty L. REP. § 1300, HANDBOOK pt. IV, § 3123. The potential challenges to these laws have been described in Sparer, Social Welfare Law Testing, 12 PRAC. L. AW. 14, 22-24 (April 1966); ten Brock, California’s Dual System of Family Law: Its Origin, Development & Present Status, 16 Stan. L. Rev. 257 (pt. 1), 900 (pl. 2) (1964), 17 Stan. L. Rev. 614 (pl. 3) (1965).

17. Wisconsin State Department of Health and Social Service Manual, Section III, Chapter 1. See Handler & Hollingsworth, supra note 14, at 44. In New York, the home visit plays a role in the general “social investigation” which includes both eligibility and service functions. 18 NYCRR § 351.10.


20. 66 Cal. 2d 260, 425 P.2d 223, 57 Cal. Rptr. 623 (1967). Several commentators have written on the subject of “early morning” or “midnight raids” in welfare, though few have extended their inquiry to home visits in particular; Reich, Individual Rights and Social Welfare, 74 YALE L.J. 1245 (1965); Reich, Midnight Welfare Searches and the Social Security Act, 72 YALE L.J. 1347 (1963); Reich, Searching the Homes of Public Assistance Recipients, 37 Soc. Serv. Rev. 143 (1963); Comment, Pre-Dawn Welfare Inspections and the Right to Privacy, 44 J. Urban Law 119 (1965); Note, Warrantless Welfare
sent in *James v. Goldberg* claims: "The purpose of the home visit is to assist the children, not to catch the children's mother in violation of the law."21 The routine home visit, subject to limitations on the scope of inquiry and the times during which it may be held,22 and conducted only by caseworkers with "professional" responsibilities to fulfill, is arguably a very different practice from the "midnight raid." These differences were cited by the dissenter in *James* as the primary justification for requiring only administrative safeguards for the procedure, rather than a search warrant. Indeed, the dissenter warns that the relationship will only become an adversary one if the court defines it that way:

What the warrant will do . . . is to introduce a hostile arm's length into the relationship between the welfare worker and the mother of the children, a relationship which can be effective only when it is based upon mutual confidence and trust.23

Labeling the program rehabilitative triggers assumptions about it which serve as a shield against judicial scrutiny. The first assumption is that the goals of the program are identical to the fundamental goals of the client, and thus that the caseworker in administering the program is always acting in the "client's best interests."24

The second assumption is that the caseworker is a professional with expertise in determining what the client's best interests are. In those areas of the recipient's life for which rehabilitation has been prescribed, the recipient is accorded no legal rights against the caseworker's intrusion; any protection which the recipient needs can be provided by administrative safeguards.

Given these assumptions, the court can inquire only into the sufficiency of those safeguards. Prior judicial review to determine whether the recipient's rights will be impinged is both unnecessary and inappropriate. It is unnecessary because to identify areas into which the caseworker cannot intrude—the judicial definition of rights—only allows the recipient to subvert his own best interests. It is inappropriate since prior judicial inquiry challenges the assumed expertise of


23. 303 F. Supp. at 946.

24. "Best interest" language has been found in many parts of the welfare program See *Wilkie v. O'Connor*, 261 App. Div. 373, 25 N.Y.S.2d 617 (1941).
the caseworker and may undermine her\textsuperscript{25} relationship with her client. The entire rationale for judicial deference depends upon the initial assumption that the caseworker is acting in the best interests of her client. If the area characterized as rehabilitation is too broadly defined, or if the caseworker, despite her expertise, is failing to act in her client's best interests, then setting her free from judicial scrutiny to meddle in the most personal affairs of her client is insidious.

II.

While the majority in \textit{James} conceded at the outset that the goals of the home visit are benevolent,\textsuperscript{26} it nevertheless chose to characterize the practice as a search. In doing so it recast the caseworker's relationship to the recipient in an adversary mold, like that of any government inspector to an inspectee. One basis for this conclusion might be found in a balancing of functions: when the service and investigative roles of the caseworker are examined, the investigative role is found to be too important. This balancing of functions approach implies that the court would find some mixture acceptable—that there could be a home visit with an investigative component which would nevertheless not be a search. But the issue is properly one of constitutional principle; if there are elements of the home visit which constitute a search, then either those elements must be expunged, or the practice must be stopped altogether.

It is precisely the ambiguity of the caseworker's position—at once investigative and rehabilitative—which makes the home visit more difficult to characterize as a search than the usual administrative investigation cases. If there are no health code violations, for example, the inspector in \textit{Camara v. Municipal Court of the City and County of San Francisco}\textsuperscript{27} has simply made a fruitless investigation. If there is no evidence of fraud or ineligibility during a home visit, however, the caseworker has nevertheless provided needed services for her client.

Despite this ambiguity, it is difficult to maintain that a home visit has none of the elements of a search. It is true that on any given occa-

\textsuperscript{25} The use of the adjective "her" does not imply that all public assistance caseworkers are women. Studies have shown, however, that a large majority of the less senior caseworkers are women. \textit{Keith-Lucas, supra} note 5, at 38 n.68 (1957); \textit{Graham, Civil Liberties Problems in Welfare Administration}, 43 N.Y.U.L. Rev. 836, 849 (1968). Moreover, popular stereotypes of the social worker are uniformly female. \textit{H. WILENSKY & C. LEBEAU, INDUSTRIAL SOCIETY AND SOCIAL WELFARE} 323 (1965).

\textsuperscript{26} 303 F. Supp. at 942.

\textsuperscript{27} 387 U.S. 523 (1967).
sion the caseworker’s purpose in visiting may be undefined. She may be there to observe a child’s behavior with his parents,28 to verify a budget adjustment,29 or only to fulfill her statutory responsibility to visit her client at fixed intervals.30 Her function as investigator, however, is always potentially operative. Whatever her initial intent, if in the course of a “routine home visit” she comes upon evidence of ineligibility or fraud, however inadvertently, she is legally required to report it.31

The determination whether the home visit is a search does not depend on whether a criminal prosecution or forfeiture occurs in fact.32 As Camara emphasizes, an inspection is a search whenever the inspector enters the home and has the authority to invoke sanctions for discovered violations.33 The judicial determinants of search cannot be the success or failure of the investigative effort, nor the resourcefulness of the official, but rather the caseworker’s capacity to investigate.

The caseworker’s capacity to search during a home visit involves two very different aspects. The first aspect is the traditional capacity to search for tangible items.34 An unidentified man35 or an expensive

28. N.Y. SOCIAL WELFARE LAW § 350.3 (McKinney 1965); 18 NYCRR § 369.4(b).
29. 18 NYCRR § 351.21(g)(1).
30. HANDBOOK pt. IV, § 2200(d); 18 NYCRR § 82.1(b)(2)(f).
31. “Whenever a public welfare official has reason to believe that any person has violated any provision of this section, he shall refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official.” 18 NYCRR § 848.2(b); N.Y. SOCIAL WELFARE LAW § 145 (McKinney 1960).
32. “To attempt to draw a distinction regarding the applicability of the Amendment dependent upon whether the caseworker intends to counsel the recipient as to how best to utilize his limited resources or to look for evidence of fraud, would invite a trial of every official’s purpose—a task which would undoubtedly pervert the intent of the Amendment. There exists no valid reason for varying the protection afforded by the Amendment even assuming that the home visit is an effort to deal with a purely ‘social problem.’” James v. Goldberg, 303 F. Supp. at 942.
33. “Even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security.” 387 U.S. at 530-31.
35. Under the “substitute parent” rules, aid is not only denied to those otherwise eligible children whose father is at home, but also to those children, for whom another man, not their actual father, is acting as a “substitute father” according to the state's regulations. The evidence required to establish the presence of a substitute father has often been minimal; frequent visits to the home or even a man’s presence during the caseworker's visit may be sufficient. See 1 CCH POVERTY L. REP. ¶ 1520 at 2251.

With the decision in King v. Smith, 392 U.S. 309 (1968), the only relevant basis on which a “substitute parent” regulation could be invoked is when the man so distinguished is legally obligated to support the child. The recent Department of Health, Education and Welfare regulations designed to implement this decision preclude a state from citing the presence of an individual, other than one with a legal obligation to support the child, as a basis “for a finding of ineligibility or for assuming the availability of income by the State.” 45 C.F.R. § 203.1(b) (1968).

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article like a television or washing machine which the caseworker observes during her visit can raise the presumption of concealed income, leading to the forfeiture of aid or perhaps prosecution for fraud. Any number of ordinary items which she sees—household supplies, new furniture, clothing—can cause her to reduce the recurring or special need allowances.

The search involved in the home visit is considerably less restricted than the traditional search for tangible items. In a traditional warrant search, the government official must describe in advance both the place to be searched and the items to be seized. His authority extends only as far as the warrant he is executing, although any unexpected illicit items encountered within the scope of such execution may also be seized. In a home visit, the caseworker need not specify anything beforehand; the scope of the visit is entirely within her discretion. Any items she sees in the course of the visit may be relevant to the determination of need, given the complexity of the regulations governing eligibility.

The search is also made more extensive by virtue of the caseworker’s role as a dispenser of services. In the process of asking questions to determine whether her client needs family counseling or child welfare services, for example, the range of inquiry open to the caseworker is expanded considerably beyond that available to the usual investigator.

Aside from the search for tangible objects, the ambiguity of the caseworker’s role permits an entirely different type of search. This search inheres in the nature of the communications between the client and the caseworker; and it impinges on Fourth Amendment rights whether carried on within the home or not.

36. Caseworkers are required to consider the “available resources” of the recipient in determining eligibility as well. 42 U.S.C. § 606(d)(7); 45 C.F.R. 203.1 (1969). This determination includes a consideration of “substitute parent” policies and relative responsibility laws, in addition to a scrutiny of personal property. 18 NYCRR § 352.6 “Exploration of resources for determination of eligibility. . . . (g) Personal property . . . Ownership of all other personal property including, but not limited to, furniture, household furnishings, clothing, jewelry, automobile, . . . shall be explored and analyzed with respect to determining their essentiality to the health, living requirements, or to the production of income of the applicant or recipient, his spouse or minor children, and with respect to determining the cash value of non-essential items.” 37. 45 C.F.R. § 203.1 (1969). See, e.g., 18 NYCRR § 353.1-353.4 (New York’s regulations on budget standards). On the caseworker’s discretion in the area of budget computations, see Graham, Civil Liberties Problems in Welfare Administration, 43 N.Y.U.L. Rev. 830, 899-92 (1968); Bendich, Privacy, Poverty, and the Constitution, 54 Calif. L. Rev. 407, 423 (1966); ten Brock & Wilson, Public Assistance and Social Insurance: A Normative Evaluation, 1 U.C.L.A.L. Rev. 237 (1954); Keith-Lucas, supra note 5, at 39.


The framework for analyzing oral communications for Fourth Amendment violations is provided by *Katz v. United States*,\(^4\) where the attachment of a listening device to a telephone booth was held to constitute a search because the defendant "justifiably relied" on his words remaining private and not being used subsequently as evidence against him in a criminal prosecution.\(^4\)

The state establishes the role of professional counselor for the caseworker and explicitly encourages its performance.\(^4\) It defines many aspects of that role, some of which anticipate conversations with the client of a very private nature.\(^4\) In talking with the client about his medical problems, in order, for example, to determine whether to refer him for treatment, the caseworker serves as the functional equivalent of a doctor screening entering patients in a hospital, where the substance of the interview is protected as a privileged communication.\(^4\)

The proper allocation of services within public assistance depends on the receipt of a sufficient amount of accurate information from the client. Against this background, the court cannot deny that reliance by the recipient on the privacy of his communication is justifiable. In terms of *Katz*, therefore, every communication between caseworker

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\(^{40}\) 389 U.S. 347 (1967).

The Court in *Hoffa v. United States*, 385 U.S. 293 (1966), determined that there was no unreasonable search where the government secured a friend of the defendant as an informant and "placed" him in the defendant's hotel suite. There are two possible bases for the *Hoffa* holding. The Court may be concluding that the defendant "unjustifiably" relied on the privacy of his communications since the risk that "friends" will betray confidences is inherent in human relationships. 385 U.S. at 503. Where government action is concerned, however, the public assumes only those risks which the Court has defined as justifiable. See *The Supreme Court, 1966 Term*, 81 HARV. L. REV. 69, 193, 194 (1967).

Since the state encourages confidential communications with social workers, the Court cannot label reliance on the privacy of those conversations "unjustifiable." An alternative basis for the holding in *Hoffa* might be found in the Court's use of the language of "consent." In the case of a home visit, consent cannot be used to justify the search, since permitting the visit is a condition of the receipt of benefits. See p. 758 infra.

41. Id. at 283.

42. New York requires that "senior caseworkers" have social work training in addition to possessing the "ability to establish and maintain successful relationships with people; initiative, good powers of observation, perception and analysis, sensitivity to the reactions of others, emotional maturity . . . ." 18 NYCRR. § 98.4(d). See *Bell*, supra note 5, at 161, 238 n.5.

43. The welfare manuals of various states are replete with delegations to the caseworker of private decisions of the recipient's life; the child welfare provisions in New York's regulations are one example. See, e.g., 18 NYCRR § 369.3; N.Y. SOCIAL WELFARE LAW § 530(5) (McKinney 1966).

44. The Federal laws do require the caseworker to give advice on medical care. See 42 U.S.C. § 606(b). As such, it may be argued that those parts of the caseworker's conversations with the client should be protected under the rubric of doctor-patient privileged communications. § J. Moore, *FEDERAL PRACTICE* § 43.07, at 155 n.2. It has been argued more generally that all of the caseworker's conversations with her client should fall under privileged communications: "To the extent that these . . . relationships depend upon the free exchange of information or ideas between professional and client or patient, it can satisfactorily be built only upon a foundation of complete trust." Note, *Functional Overlap Between the Lawyer and Other Professionals: Its Implications for the Privileged Communications Doctrine*, 71 YALE L.J. 1226, 1225 (1962).
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and client in which the elements of investigation are intertwined with service, is a search.

This is not to suggest that the intake interview or subsequent inter-
views at the welfare center designed solely to verify eligibility are searches as well. In those instances, the purpose of the conversation is unambiguous; from the outset it is clear that the interview is investiga-
tive, and that disclosure will expose the client to reductions in aid or even to criminal prosecution, so the client cannot justifiably rely on the privacy of her words.46

The Katz analysis, however, does suggest that an interview at the welfare office which retains the mixture of services and investigation now present in the home visit would be a search. The Fourth Amend-
ment is not bounded by the home or by any specific locus. Cases in-
volving the use of electronic devices to secure criminal evidence have led the Court to reject the “protected areas” approach46 and to recog-
nize instead what has been called a “right to control over the informa-
tion of one’s life irrespective of location.”47 The opinion in Katz made it explicit that people rather than places are protected.48

Recent cases involving administrative searches49 have articulated those principles which underlie the protection traditionally given the home under the Fourth Amendment, and these cases will serve as the basis for protecting other contexts outside the home. Search is char-
acterized by the presence of a government official who possesses exec-
utive power or discretion,50 and an individual with recognized privacy claims who is particularly vulnerable to official incursions.51 All wel-
fare contacts have these characteristics, particularly as long as the caseworker retains both investigative and rehabilitative capacities. A caseworker at present has access to information relevant to all areas of the recipient’s life.52 She at once decides on eligibility, dispenses money

45. “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” Katz v. United States, 369 U.S. 347, 351 (1967).
46. The “protected areas” doctrine was carried to its farthest extent in Hester v. United States, 265 U.S. 57 (1924), where the distinction between open fields and homes or enclosed places was made.
51. Camara v. Municipal Court, 387 U.S. at 532.
52. Id.
53. See Skolnick & Woodworth, The Morals Detail: Bureaucracy, Information and
and offers services. At the same time, she is required to report evidence of welfare fraud and to notify law enforcement officials whenever financial need is caused by the desertion of a parent. In each area, the vagueness of the legislative framework gives the caseworker wide discretion. With this discretion the caseworker confronts a constituency completely defined by their financial dependency on the government. Recipients are likely to be uneducated, powerless, and wholly ignorant of their legal rights under the program.

III.

A warrantless search is illegal under the Fourth Amendment unless exceptional circumstances are shown to render the search "reasonable." The Court has permitted the presumption of unreasonableness to be rebutted in three classes of searches: when consent was given to the search, when the officer was in "hot pursuit" of the suspect, or when the search was incident to an arrest.

In a case involving a public health inspection, Frank v. Maryland, the Court carved out a fourth exception for administrative searches. The interest in privacy was considered less serious in an administrative investigation because the official enforcing the administrative code could not immediately use the fruits of his investigation in criminal prosecutions against the tenant, but had to proceed first by obtaining an administrative compliance order. In addition, these searches represented only a minor intrusion in that they were designed "to make the least possible demand on the individual occupant."

Balancing this interest in privacy against the serious interest in protecting the public health and welfare, the Frank court concluded that the minor official intrusions on the privacy of the individual occupants

54. 18 NYCRR § 351.21.
55. N.Y. Social Welfare Law § 145 (McKinney 1966); 18 NYCRR § 384.2.
56. These have been called the NOLEO provisions (Notice to Law Enforcement Officials). 42 U.S.C.A. § 602(9)(11) (1969).
60. Id. at 366.
61. Id. at 367.
62. Id. at 371.
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could be sufficiently curbed by administrative safeguards or redressed by post hoc judicial review.\textsuperscript{63}

Frank was overruled by Camara \emph{v. Municipal Court of the City and County of San Francisco,}\textsuperscript{64} in which a very similar search—a housing code inspection—was held unreasonable. According to the criteria which Frank established, a home visit in welfare is a less reasonable search than either a public health or a housing code inspection. Home visits can lead to criminal sanctions\textsuperscript{65} and civil sanction directly imposed by the social workers,\textsuperscript{66} while in administrative inspections there may be no criminal sanctions\textsuperscript{67} and civil sanctions can be imposed by the officer only indirectly.\textsuperscript{68} The caseworker’s intrusion upon the personal privacy of the welfare recipient is substantial: she is required to visit at regular intervals\textsuperscript{69} and is empowered to inquire widely into the recipient’s life.\textsuperscript{70} The inspector of a building bothers the occupant only to open the door, and inspections are infrequent. Finally the public interest in health and safety is more important than the interest in “keeping down the welfare rolls.”

Distinguishing home visits from inspections may not be necessary, since Camara rejects Frank’s attempt to add a fourth class of reasonable warrantless searches. Camara suggests that the presence of an official investigator in the home without a warrant is \textit{per se} unreasonable—administrative safeguards are insufficient, and the practice demands prior judicial review. Despite attempts by the lower courts to reopen this class of reasonable warrantless searches for administrative inspections, which they distinguish from Frank and Camara,\textsuperscript{72} the Supreme

63. The court speaks of “due regard for every convenience of time and space.” The power of inspection was limited by the administrative requirement of reasonableness, the requirement of daytime visits and the prohibition of forced entry. \textit{Id.} at 366.

64. 387 U.S. 523 (1967).


66. Home visits are the generally accepted means of fulfilling the federal requirement that eligibility be periodically redetermined. \textit{HANDBOOK} pt. IV, § 2200(d). As such, home visits can lead to forfeiture of aid, when evidence is discovered showing the applicant to be ineligible, or simply the immediate reduction of aid. N.Y. SOCIAL WELFARE LAW § 134 (McKinney 1966); 18 NYCRR § 351.10, 351.11, 351.21.

67. 359 U.S. at 366.

68. \textit{Id.} at 366.

69. Redeterminations of eligibility must be made every three months in the AFDC-UP program, every six months in other AFDC cases and every twelve months in all other categorical programs. \textit{HANDBOOK} pt. IV, § 2200(d). See 18 NYCRR 82.1(b)(2)(i).

70. 18 NYCRR § 351.1. “Social Investigation. (a) \textit{Definition}. Social investigation is a continuous process which is concerned with all aspects of eligibility for public assistance or care and services from the period of initial application to case closing.”

71. “Except in certain carefully defined classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant.” Camara \emph{v. Municipal Court}, 387 U.S. at 528. See Frank \emph{v. Maryland}, 359 U.S. 360, 380 (1959) (Douglas, J. dissenting); Apgello \emph{v. United States}, 269 U.S. 25, 32 (1925).

72. Colonnade Catering Corp. \emph{v. United States}, 410 F.2d 197 (1969), appears to be a
Court in cases like *Katz v. United States* has adopted the analysis in *Camara* which categorically denies these exceptions.

Even if the administrative inspection class is closed, the home visit might still be found reasonable by including it in the class of searches justified by consent. In the home visit, unlike the administrative inspections, there is an inducement for the occupant to consent, in the form of the benefits which the caseworker can confer. But because consent cannot be given freely, the doctrine of unconstitutional conditions is appropriate, and no waiver can be found. The state cannot condition the initial or continuing receipt of benefits upon the waiver of a constitutional right; thus, the state cannot condition the services and financial aid of welfare upon the client's waiver of his Fourth Amendment right to refuse a home visit.

IV.

Whether the home visit is characterized as a search for tangible objects or a search for information, major changes are required in the practice; it cannot be cured by a warrant so long as it retains the mixture of investigation and services. The warrant procedure—limiting the scope of a search to the place and the article specified in an affidavit—is appropriate in a situation like *Camara* where there is only an investigation. The scope limitation becomes meaningless, however, when the caseworker, through her service function, has another means of access to information.

return to a *Frank* type rationale in that adequate administrative safeguards coupled with a particularly knowledgeable constituency are sufficient to convert what would have been an unreasonable search under *Camara* to a reasonable one. *James* is distinguished from *Colonnade* on two bases: The constituency with which caseworkers deal—welfare recipient—are by no means knowledgeable enough to understand the limits on the caseworkers' authority. Nor is the caseworker's authority particularly limited in home visits at all. See note 12. See also A. KEITH-LUCAS, supra note 5, at 77, 137; Handler, Controlling Official Behavior in Welfare Administration, 54 Calif. L. Rev. 479 (1966); Handler & Rosenheim, Privacy in Welfare: Public Assistance and Juvenile Justice, 31 Law & Contemp. Probs. 377, 384 (1966).


74. *Id.* at 356-57. "It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. . . . In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end."

75. *But see note 40 supra.*

Welfare Home Visit

Faced with a practice which a warrant cannot cure, the welfare administration could conceivably choose to alter the home visit by having the caseworker explicitly change her roles during the course of the visit, but this would undoubtedly be counterproductive for both investigation and services. None of the information gathered by the caseworker in her service role could be used for other purposes; the caseworker in her investigative role, therefore, would have to serve warrants initiated by separate investigative units, a practice which would be both inefficient and impracticable. The artificiality of the change of roles would undermine the service relationship between client and caseworker.

Alternatively, the welfare administration might choose to discontinue the home visit completely and replace it by an office interview where the caseworker performed the same mixture of functions. This would clearly be legally unacceptable if the court found all communications between client and caseworker a search—in the sense of a search for information. Even if the court failed to find a Fourth Amendment violation, it is likely that the welfare administration would find the office interview an inadequate setting for the caseworker’s service functions.

For both legal and administrative reasons, the only cure for welfare administration is the complete separation of services and investigation throughout the system. This separation is the principal recommendation of the preliminary report of a Special Task Force of the Department of Health, Education and Welfare. The report suggests that the federal government alone administer money payments for public assistance, leaving the administration of social services entirely to state and local governments. Other commentators have suggested that the eligibility determination be routinized—with a declaration system, for example—and that the criteria for eligibility be simplified. The purpose of the suggestion is to free caseworkers to perform “professional” functions rather than general administration. Several states


which have adopted such programs have created special clerical units, separate from the professional caseworkers, concerned only with eligibility.\textsuperscript{80}

The separation of eligibility determination and service in welfare administration will enable the courts better to supervise both aspects of the process, with procedures and safeguards particularly appropriate to each. Once separated from the rehabilitative aspects of the program, the investigation of eligibility can be recognized as an adversary proceeding. Warrants will be required when the investigation is made in the home,\textsuperscript{81} and lawyers or welfare rights representatives may be made available when the interview is held at the welfare center.

The rehabilitative aspects of the program raise more difficult questions. There are persuasive arguments that mandatory home visits, even if solely rehabilitative, should be discontinued completely. Clients will continue to be vulnerable to the caseworker's discretion so long as she has benefits to offer;\textsuperscript{82} as a category, recipients are submissive, and likely to remain open to the caseworker's advice on all aspects of their lives.\textsuperscript{83} In addition, the difficulties of policing a professional relationship\textsuperscript{84} are exacerbated when that relationship is carried on in a private home rather than at the welfare center. In accord with these arguments home visits might be totally suspended and services made available only upon request, with adequate information about the services provided at the welfare center.

On the other hand, it may be argued that the home visit ought to be continued because welfare families are not likely to seek out the caseworker for advice and information;\textsuperscript{85} thus, many recipients may be deprived of needed services because of ignorance or timidity. If home visits are continued, their present form need not be retained; the caseworkers might be replaced by relatively untrained "referral" workers whose only task would be to bring information about services to re-

\textsuperscript{80} Hoshino, \textit{supra} note 79, at 242-43.

\textsuperscript{81} In the pending federal plan for the simplification of eligibility, home visits would only be required on a spot check basis. See note 79 \textit{supra}. In a spot check system, the standards of probable cause would be very much diluted, just as in \textit{Camara}, where the court attempted to provide for area searches. 387 U.S. at 534-39. See, e.g., Note, \textit{The Fourth Amendment and Housing Inspections}, 77 YALE L.J. 521, 528-40 (1968). An alternative solution, one which may avoid some of these problems, would be to provide for home investigations only when there is probable cause for suspecting fraud in that particular home.

\textsuperscript{82} Handler & Hollingsworth, \textit{supra} note 14, at 414-15.


\textsuperscript{85} Handler & Hollingsworth, \textit{supra} note 14, at 417, 418.
recipients, the professional services being performed completely outside the home. The advisability of this change would depend in part upon the qualifications of welfare caseworkers. At present, only a small minority of caseworkers receive sufficient professional training to justify the discretion they are given to interfere with recipients' lives. If service home visits are to be continued, the standards for caseworkers must be raised and their training improved. If home visits continue—whatever their form—they should be optional rather than mandatory.

(In any area of the law but welfare, it would go without saying that a benefit should not be made mandatory.) The client should have an option not only to refuse a home visit, but also to refuse any service extended within the visit. The caseworker should offer the client all the services she needs, while at every point respecting the client’s right to refuse.

Even if home visits are optional, the court is not relieved of hedging them with administrative safeguards. In determining what safeguards to require, the court balances interests similar to those at issue when it decides whether the home visit, once characterized as a search, is reasonable. The interest in avoiding the intrusion of caseworkers at regular intervals for conversations about personal matters should not be disregarded under pressure of the public interest in allocating welfare services efficiently.

Whatever the administrative safeguards imposed by the court, they may not be sufficient if the area defined as rehabilitative is overly broad. In those areas of the client’s life consigned to the caseworker, there may lurk individual rights. Within the framework of administrative safeguards, the caseworker’s visit to the home solely to dispense services appears to be impeccable. It is a rehabilitative program whose administrator is a professional acting, admittedly under vague criteria, in the best interest of the client. The court’s temptation, instead of attempting to define the client’s rights, will be to defer to the caseworker’s discretion; it should be reminded that the home visit too in its present form appeared impeccable before James v. Goldberg.

86. Id. at 419.