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California Judges Legislate and Ignore the Law

Analysis Smith v. Los Angeles County Bd. of Supervisors, 128 Cal.Rptr.2d 700, Cal.App. 2 Dist.,2002.

This is a case challenging Los Angeles County's unlawful practice of forcing all welfare recipients applying for CalWORKs to submit to home visits by welfare fraud detection workers. The California Second Appellate Court ruled that home visits without cause were legal. The ruling was issued by the Epstein, Hastings and Curry trio.

Los Angeles County, not knowing what to do with all of its TANF money, decided to institute a home visit program for all CalWORKs applicants. Applicants viewed this as pure harassment. They would have to wait all day at home, sometime for days, to make sure they were home when the home visit worker showed up to search their house.

Even though the regulations limit when home visits can be made, and there was no authority for home visits without cause, that did not stop the Los Angeles County from implementing this unlawful program to harass poor families with babies and children.

A court case was filed by the victims of this unlawful program. The conservative judges, who are supposed to follow the law, have decided to take a time out – especially when it does not achieve their conservative political objectives. All of a sudden judicial activism becomes the norm for conservative

judges. In this case, although the state regulations limit home visits, the court, relying on the State Department of Social Services (DSS) spin, called the home visits "a verification process". The DSS policy, according to Bruce Wagstaff, was that counties have the authority to verify eligibility, and that can be done any way the county chooses to do so, including through home visits. Well, that is a statewide policy, but it has never been promulgated under the Administrative Procedures Act as mandated by State law. It is an underground rule. Do Judges Epstein, Hastings and Curry of the California Appellate Court care about the law?

How did these guys get on the Appellate court? They did it the old fashion way. They were a part of the "club", appointed by Republicans. Judge Norman Epstein was selected by conservative Governor Deukmejian in 1990 to become a conservative judicial activist and punish the poor. Justice J. Gary Hastings was crowned by Pete Wilson in 1993. Pete Wilson hated welfare recipients and never missed a chance to beat up on poor women trying to parent their children. Then in 1998, he selected Justice Daniel Curry to be a member of the Appellate court. In 1992, Pete Wilson appointed Justice Curry to the Los Angeles Superior Court.

The appellate decision states that the process of verifying eligibility of applicants is delegated to the counties. This is partially true and partially a blatant lie. It is true that the county performs the verification process, but it has to be done pursuant to statute and regulations pro-

mulgated thereunder. There is no statute that states counties can verify eligibility any way they want to. The state legislature enacted the Paper Work Reduction Act (See Welfare and Institutions Code Section 11275 et.seq.) which provides specific guidelines as to how counties will verify eligibility for applicants. But off course the Epstein-Hastings-Curry trio would rather ignore the law than respect the Legislative process. The Epstein-Hastings-Curry trio decided that they would make law by ignoring the law. And that was a Christmas present from Southern California Second Appellate District to impoverished parents with babies and children - the decision was released on December 26, 2002.

**County Performance
Incentive Funds Still Unspent**

**84% of the County Incentive Funds Unspent
Enough to Fund the CalWORKs COLA**

At the beginning of 2002-2003, counties had \$422,143,861 dollars available to play with in the form of TANF “incentive payments”. Counties are awarded incentive payments by state law when CalWORKs recipients get jobs, etc.

There is no evidence that any of the jobs were secured as a direct result of some county action. Maybe child care was the reason that the participant is now able to work. But that is not something that the county does, it is something that the county pays for with federal and state money.

During the first two (2) quarters of 2002-2003, counties had only spent 16% of their total allocations.

The county-by-county breakdown of money available after December 31, 2002, according to DSS, are as follows:

County	\$ Amount Left FY 02-03	Percentage of total left FY02-03
Alameda	\$ 9,412,988.00	87.27%
Alpine	\$ 18,723.00	100.00%
Amador	\$ 226,836.00	77.09%
Butte	\$ 2,984,728.00	99.81%
Calaveras	\$ 367,914.00	100.00%
Colusa	\$ 94,037.00	85.42%
Contra Costa	\$ 5,110,932.00	87.03%
Del Norte	\$ 591,151.00	100.00%
El Dorado	\$ 750,423.00	98.42%
Fresno	\$ 19,809,130.00	82.25%
Glenn	\$ 295,124.00	99.04%
Humboldt	\$ 1,163,398.00	92.73%
Imperial	\$ 2,392,214.00	68.05%
Inyo	\$ 269,515.00	100.00%
Kern	\$ 9,775,375.00	99.19%
Kings	\$ 2,033,513.00	99.05%
Lake	\$ 646,568.00	87.51%
Lassen	\$ 309,313.00	82.06%
Los Angeles	\$124,956,146.00	80.31%
Madera	\$ 1,442,581.00	73.77%
Marin	\$ 216,575.00	100.00%
Mariposa	\$ 225,863.00	100.00%
Mendocino	\$ 1,410,062.00	88.13%
Merced	\$ 4,913,301.00	87.70%
Modoc	\$ 1.00	0.00%
Mono	\$ 451.00	1.27%
Monterey	\$ 3,153,539.00	90.10%
Napa	\$ 276,106.00	79.49%
Nevada	\$ 48,846.00	90.58%
Orange	\$12,845,861.00	62.46%
Placer	\$ 1,145,455.00	100.00%
Plumas	\$ 63,933.00	100.00%
Riverside	\$24,693,538.00	100.00%
Sacramento	\$24,462,046.00	89.02%
San Benito	\$ 472,514.00	97.83%
San Bernardino	\$30,056,040.00	95.17%
San Diego	\$24,066,908.00	93.53%
San Francisco	\$ 1,911,249.00	63.14%
San Joaquin	\$ 5,842,412.00	64.69%
San Luis Obispo	\$ 1,216,763.00	91.50%
San Mateo	\$ 730,630.00	91.49%
Santa Barbara	\$ 2,031,006.00	84.45%
Santa Clara	\$10,357,406.00	77.98%
Santa Cruz	\$ 591,805.00	79.19%
Shasta	\$ 1,506,507.00	90.15%

Sierra	\$ 24,362.00	98.74%
Siskiyou	\$ 423,385.00	83.11%
Solano	\$ 3,320,949.00	86.63%
Sonoma	\$ 1,047,590.00	61.80%
Stanislaus	\$ 0.00	0.00%
Sutter	\$ 562,706.00	78.58%
Tehama	-\$ 5,271.00	-0.50%
Trinity	\$ 89,378.00	98.03%
Tulare	\$ 5,026,631.00	67.26%
Tuolumne	\$ 590,554.00	91.02%
Ventura	\$ 4,576,939.00	77.88%
Yolo	\$ 1,725,973.00	97.78%
Yuba	\$ 489,388.00	55.59%

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ents to meet their basis survival needs. CalWORKs recipient's are living on fixed income at 1989 levels. They need a COLA now! The counties want to use this money in 2003-2004 for reasons other than meeting the basic survival needs of CalWORKs recipients.

CWD Victim of the Week

Ms. J. Garcia and her two children, 8 and 2 were homeless and without any money. On 6/5/03 she applied for cash aid, food stamps and homeless assistance. She arrived at Sacramento County welfare department located on 24th and Florin before

8 a.m. She told her worker that in 2002 she received aid in North Carolina. The worker called North Carolina to verify if she was still receiving welfare benefits. A little after 5 p.m. she was informed by her worker that she was being denied homeless assistance because she could not verify her North Carolina welfare status. The worker had no verification that Ms. Garcia received any welfare from North Carolina during 2003. Still the worker unlawfully denied Ms. Garcia and her two children homeless assistance. The worker told Ms. Garcia to come back Monday because she did not work on Friday.

The worker did not give Ms. Garcia a notice of action denying her homeless assistance or immediate need as required by State law.

Ms. Garcia called her North Carolina worker and asked the worker to fax a statement to Sacramento County stating that she was not receiving cash aid. The North Carolina worker faxed the information and Sacramento County received the fax on 6/6/03. On Friday Ms. Garcia went to the welfare office again to see if she could get homeless assistance now that North Carolina had verified that she was not getting cash aid. The back-up worker, Ms. Chin, told her she was too busy to see her and to come back on

Monday.

Someone told Ms. Garcia to call welfare rights. A welfare rights advocate visited the welfare office. A new worker, Ms. Chin, first suggested that she would only issue immediate need, but not homeless assistance. After the welfare rights advocate informed her that denying homeless assistance would be illegal, the worker went back into the office and discussed the matter with other welfare officials. After 20 minutes, she returned and agreed to issue homeless assistance if Ms. Garcia would sign the 6/5/03 homeless application using 6/6/03 date. The welfare rights advocate informed the

worker that such action would be welfare fraud because Ms. Garcia applied for homeless assistance on 6/5/03 and not 6/6/03. Ms. Garcia finally signed the 6/5/03 application again and put down the 6/6/03 date. Thus, the application contained two application dates; 6/5/03 and 6/6/03. The county worker committed FRAUD by stating on the application that the application was received on 6/6/03. Of course there are no Intentional program Violation Penalties for such workers as Ms. Chin who intentionally and knowingly falsify government documents.

If it was not for the welfare right intervention, Ms. Garcia and her two children would have spent the weekend in the hot streets of Sacramento without food or money.

LEGAL ANALYSIS: Is Ms. Garcia ineligible if she received cash aid from North Carolina during June of 2003? **No.** North Carolina pays a family of 3 less than \$250 a month. California pays \$647. Thus, Ms. Garcia would be eligible for 50% of the difference between \$647 and \$250, if she applied for aid on the 15th of June. Thus, Ms. Garcia was eligible for homeless assistance even if she had received cash aid from North Carolina. Some workers just don't know what they are doing and their gross negligence results in families being homeless and foodless.

NEWS FROM THE STATE CAPITOL

The Senate and Assembly have drafted their budgets that now go to the conference committee. The Conference Committee and the Big Five, which is composed of Governor Davis, Senators Burton (D) and Brulte (R), Assemblymen Wesson(D) and Cox(R) will decide the fate of the budget behind closed doors in a room that is not smoke filled for a change.

The **Assembly** does away with the SSI and CalWORKs COLA. This means that CalWORKs families will live on the same amount of fixed income they received in 1989. The **Senate** provides for a COLA thanks to Senators Burton, Chesboro, Ortiz, Cedillo and the rest of the Democratic Senators.

ACTION NEEDED: Write letters supporting the SSI and CalWORKs COLA today and mail it to your Assemblyman and State Senator.

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