

Supreme Court of the United States

OCTOBER TERM 1970

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Supreme Court, U. S.

OCT 29 1970

In the Matter of:

Docket No. 69

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GEORGE K. WYMAN, INDIVIDUALLY
& AS COMMISSIONER, NEW YORK, ETC.,

Appellants,

vs.

BARBARA JAMES, ETC.,

Appellees.
----- X

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C O N T E N T S

ARGUMENT OF

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Brenda Soloff, Esq.,
on behalf of Appellants

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Jonathan Weiss, Esq.,
on behalf of Appellees

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

GEORGE K. WYMAN, INDIVIDUALLY
& AS COMMISSIONER, NEW YORK, ETC.,

Appellants,

vs.

No. 69

BARBARA JAMES, ETC.,

Appellees.

Washington, D. C.,
Tuesday, October 20, 1970.

The above-entitled matter came on for argument at
10:02 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

APPEARANCES:

BRENDA SOLOFF, ESQ.,
Assistant Attorney General of
the State of New York
Counsel for Appellants

JONATHAN WEISS, ESQ.,
759 Tenth Avenue, New York, New York
Counsel for Appellees.

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: Case No. 69, Wyman vs. James.

Miss Soloff, you may proceed whenever you are ready.

ARGUMENT OF BRENDA SOLOFF, ESQ.,

ON BEHALF OF APPELLANTS

MISS SOLOFF: Mr. Chief Justice, and may it please the Court, at issue in this case is the ability of the agency which is charged with administering a local aid to families with dependent children program to verify information which an applicant or recipient is concededly obliged to furnish for eligibility purposes, and to verify it as meaningfully as possible by a visit to the home by an agency caseworker; or, put another way, the question is whether the adult AFDC client has an absolute right to refuse access to her home and still receive assistance, no matter what her conceded obligations may be and even if her refusal is entirely arbitrary.

Essentially we submit that since AFDC assistance is premised on the care of children in homes which would otherwise be unable to provide for them, that the request for access to the home is a reasonable one. In addition, since that request was denied, the result is neither entry nor contempt proceedings nor automatic termination of benefits, but a hearing.

The home visit apparatus does not infringe any

1 Fourth Amendment right. No warrant procedure is required to
2 validate the home visit, nor could any such procedure more fully
3 protect the AFDC client against the arbitrary exercise of
4 authority than the one that we have now.

5 Q Is advance notice of the caseworker's visit
6 normally given or is it not?

7 A It was given in this case, Mr. Justice.

8 Q I know it was, but I saw a good many affidavits
9 in the Appendix and --

10 A There is a policy in New York City that it be
11 given. The affidavits do indicate that it was not given in
12 those cases. I would think that that could be an issue which
13 could be resolved at a hearing which is held.

14 Q In any event, in this case conceivably there
15 was notice given?

16 A In this case there definitely was advance no-
17 tice of approximately a week.

18 Q A week.

19 A The adult appellee in this case, Barbara
20 James, first applied for assistance in April 1967. Pursuant to
21 the state regulation requiring that a home visit be made to
22 initial applicants for assistance, such a visit was made. The
23 apartment was seen and various aspects of eligibility were
24 discussed. The worker was not then or afterward persuaded
25 that appellee's eligibility but recommended that the case

1 be opened because of the imminent birth of her trial.

2 Thereafter there were regular periodic contacts with
3 appellee, also as required by regulation. These contacts took
4 the form of additional home visits to attempts to verify
5 eligibility and to attempt to deal with appellee's many de-
6 mands, the greater number of which would seem to be invalid.

7 During these visits no worker went behind closed
8 doors or poked or pried into any closed area and at each visit
9 the child was seen.

10 Ultimately she notified a caseworker who had sought
11 to make an appointment by letter a week in advance that under
12 no circumstances and at no time would the worker be admitted
13 to the home.

14 On May 27, 1969, before any termination of benefits,
15 a hearing was held by the department at which appellee and
16 counsel were present, and counsel represented that although his
17 client would talk anywhere, she would not talk at home, because
18 that would violate her right of privacy.

19 The referee found that refusal to comply with the
20 policy of contact by home visit justified the closing of the
21 case, pointing out -- and I quote from his opinion -- "the
22 home visit which Mrs. James refuses to permit is for the pur-
23 pose of determining if there are changes in her situation that
24 might affect her eligibility to continue to receive public
25 assistance or that might affect the amount of such assistance

1 and to see if there are any social services which the Depart-
2 ment of Social Services can provide to the family."

3 He therefore affirmed the decision to close the case.
4 Appellee did not proceed, as she could have, to a state fair
5 hearing. Instead, a complaint was filed in the District Court
6 for the Southern District of New York, seeking declaratory and
7 injunctive relief against the termination of benefits for re-
8 fusals to consent to a home visit without a warrant.

9 A statutory three-judge court was convened and in
10 its majority opinion the court held that a home visit without
11 a warrant is an invasion of the constitutionally protected
12 right of privacy, that alternative methods are available to
13 verify eligibility, and that should a home visit be deemed re-
14 quired to consider a certain aspect of eligibility, and the
15 applicant or recipient refuses to allow the visit, a suitably
16 restrictive search warrant may issue to force the client to
17 disclose the terms of his eligibility.

18 The majority rejected any idea that the home visit
19 could legitimately ascertain the well-being of the child, al-
20 though I think somewhat inconsistently it also provided in its
21 alternative possibilities for verification of the well-being
22 of the child.

23 The first point to be made, I think, is that the
24 home visit as presently structured is a reasonable and neces-
25 sary investigative tool in AFDC cases. There can be no doubt

1 that it serves valid purposes. It provides information on the
2 need for and extent of assistance, and it provides information
3 on the extent to which the assistance is being used for and is
4 working for, the only purpose of the program, that is to care
5 for children in their home, and in this connection it also
6 serves to identify needed areas of service.

7 It is conceded --

8 Q Miss Soloff, there is no HEW regulation on
9 this subject, is there?

10 A There is -- if you mean, Mr. Justice, is there
11 a regulation specifically requiring home visits, there is only
12 for a quality controlled sample of cases, but there is such a
13 requirement for investigation of a selected sample. And I
14 think it is important to note in this context that the
15 appellees apparently don't challenge the fact that you can
16 make home visits to this selected sample.

17 Q What is the selected sample?

18 A It is not that I know of specifically desig-
19 nated in the regulations, but each householder is a potential
20 member of that sample, and it seems to me that constitution-
21 ality doesn't rest on the number of homes that you include in
22 the sample. If the sample proves inadequate, you must increase
23 it. And in this case what has essentially happened is that it
24 has increased to 100 percent. But there is that core of
25 sample cases, and --

1 Q And is the idea that under that regulation the
2 purposes of the visits would be precisely the purposes that is
3 followed here?

4 A Yes, Mr. Justice.

5 Q Well, sample, tell us something more about
6 that. How do you select the houses to be in the sample?

7 A I am not completely familiar with the mechanics
8 of how these samples are selected, but I do know that each
9 state is required to furnish a sample that will be adequate at
10 least for HEW purposes, will be deemed to be adequate to deter-
11 mine if in fact eligibility requirements are being met.

12 Q Well, is there any significance that HEW -- in
13 the fact that apparently HEW requires only visits to a sample
14 of places and not to all of those sharing in the program?

15 A I think there is no constitutional significance
16 to it, Mr. Justice, as far as whether or not there is -- these
17 are significant in the fact that they deem this adequate --
18 this is a policy question, it may or may not. The states are
19 free unless there is specific proscription to provide for
20 such testing of eligibility as they deem appropriate in their
21 own program. And New York, of course, has just about the most
22 extensive -- I think it does have the most extensive AFDC
23 program in the country, and it presents a great number of
24 problems which the state is trying to cope with in this
25 fashion, and nothing in HEW regulations proscribe this.

1 Q Unless you are to read a proscription beyond
2 the sample in the fact that that is all HEW requires.

3 A There I think you cannot simply say that the
4 regulation which says that you must do so much says that you
5 can't do any more.

6 Q What do the state authorities do in compliance
7 with the HEW requirement of a sample of this?

8 A They provide statistics to HEW based on a se-
9 lective sample of cases.

10 Q Well, what do the New York authorities do in
11 complying with that regulation?

12 A They prepare reports for HEW.

13 Q Well, I know, but they must be reports of what,
14 a sample of visits or what?

15 A No, a sample of field investigation of eligi-
16 bility, including a home visit. I am more familiar with what
17 is happening now in the simplified declaration experiment
18 which is presently going around -- being tried out around the
19 country. In that case, each state was required to set up
20 districts, experimental districts within a state, not the
21 entire state, to try to see if eligibility could be deter-
22 mined on a simple affidavit process.

23 To check that, a home visit was required, as part of
24 a full field investigation, again in a selected sample of
25 cases, and the results that have come in from that so far are

1 inconclusive.

2 Q Now is the investigation including the home,
3 is it aimed only at a surveillance to determine eligibility
4 or continued eligibility?

5 A Its eligibility and continued eligibility in
6 the full sense, that is that the person is in need and that
7 with respect to continued eligibility that the assistance
8 which is being given works for the benefit of the child. And
9 if it doesn't work, then that is an aspect of eligibility for
10 the program.

11 Q How is -- is that a condition for eligibility,
12 that it works?

13 A Yes, Mr. Justice.

14 Q Would you indicate briefly specifically how a
15 home visit contributes to the determining of eligibility based
16 on those few factors that determine eligibility, not from
17 peripheral matters that you might be able to -- that might
18 interest the social worker.

19 A The home visit can verify for us, first, the
20 residence. It can verify the number of people in your family.
21 It can assess management, both past management for eligibility
22 purposes --

23 Q What has that got to do with eligibility?

24 A It has to do with the possibility of resources.
25 This is in terms of the initial eligibility, I am speaking of

1 now, has to do with the possibility of the existence of undis-
2 closed resources.

3 Q How does a home visit contribute to that?

4 A By seeing what is in the home, the worker may
5 be able to have an idea of whether or not the conditions
6 which the client has stated exist do in fact exist, and in
7 terms of the functioning of the household in relation to the
8 child, the home visit can tell more than an office visit.

9 Q Now, that is what I don't understand. A home
10 visit, you want to see if the aid is being used for the child,
11 is that it?

12 A That's right, Mr. Justice.

13 Q How do you tell that?

14 A You can tell by the functioning, the relation-
15 ship of the child to the home, whether there are adequate
16 facilities for the child in the home, whether the child is
17 receiving the kind of care which does now or may create a
18 dangerous situation which must --

19 Q Let's assume that the child isn't receiving
20 adequate care, in your judgment. Doesn't that terminate
21 eligibility?

22 A Under the --

23 Q Or does it just provide some grounds for taking
24 some action under some other law?

25 A Well, it is the ground, the ultimate result is

1 a neglect proceeding, which the statute specifically provides,
2 the Federal Social Security Act provides must be done if there
3 is a danger to the child, that would in effect terminate
4 eligibility. It may be that services will have to be --
5 mandatory services will have to be provided for the child to
6 keep the child in a home.

7 Q Well, let's see, does that mean, for example,
8 that if an investigation disclosed that the mother with a
9 single child is an alcoholic and all the money she gets goes
10 into the purchase of liquor, and none of it goes to buy food
11 for the child or something like that. That then means
12 eligibility may be terminated and so the child gets nothing?

13 A No, Mr. Justice, it means that steps must be
14 taken to protect the child, even if it means either introduc-
15 ing another person into the home to care for the child or
16 removing the child from the home. This is the purpose of the
17 program, is a statutory congressional policy that not only
18 the technical criteria of eligibility but the home conditions
19 of the child are relevant to maintaining the child in that
20 program. If the child cannot be maintained in the home, then
21 he must either be removed or steps taken to improve the home,
22 but that is as important an aspect of the program as the
23 other. We are aiming at the child and seeing the home in this
24 respect is as important as the technical eligibility factors.

25 In my reply brief in this Court, I cited two

1 instances which I think illustrates -- one illustrates one of
2 these factors and the other illustrates the other. The first
3 one referred to was an example from the selected sample in the
4 declaration system, and it was a woman who had applied for
5 assistance and been accepted for assistance on the grounds
6 that her husband had deserted her, and assistance was given.
7 However, a spot check was made and the worker discovered the
8 husband in the home. It was quite as simple as that. And the
9 result of that was a support hearing, a payment of rent arrears,
10 a reference to a marriage counselor, but an ineligible family
11 was not put on the rolls, and that was a purely technical
12 eligibility factor.

13 The other case was far more drastic in what hap-
14 pened and far less precise in what the worker could determine.
15 This was a recertification visit, under New York Law in non-
16 experimental area, under the present system, and the worker
17 walked into the home, and we knew that the family consisted of
18 a mother and three children -- and she walked into the home
19 and she saw the mother and the oldest child and not the other
20 two children, and the home atmosphere quite simply disturbed
21 her.

22 She was told that one child was with his maternal
23 grandparent and that the other child was with some neighbor,
24 but that she wasn't sure which, and that is all she did, but
25 she was disturbed and she went back to the center and she

1 told the maternal grandparents and they had not -- they did not
2 have the infant and they were not aware of where the infant was.
3 The maternal grandparents -- who apparently were more aware of
4 the disturbed nature of the mother than even the center -- went
5 immediately to the home and it was discovered that the younger
6 two children in fact were dead, and the oldest child was
7 brought in to the center.

8 But there was no precise element in that home on
9 which you could get a warrant on which you could base any
10 kind of determination, and yet it was the responsibility of the
11 agency which must provide for care of children in the home
12 only so long as they can be cared for in the home, to find out
13 what happened to those children, and that was the way they did
14 it.

15 Q Could I ask you a question at this point? What
16 are the administrative steps that must be gone through before a
17 caseworker can go in and make an inspection?

18 A The recent specs are established by regulation,
19 Mr. Justice, a visit must be made -- well, a contact is sup-
20 posed to be made in every AFDC case every three months. This
21 had been the policy to make the visit every three months and
22 this would be on a regular schedule devised by the center it-
23 self which was sending out the caseworkers. Caseloads have
24 made every three months impossible in New York City, and it
25 has been reduced to every six months at this point.

1 Q Then the casework in the interval between the
2 scheduled visit, the case when he gets an idea that he or she
3 would just like to go in and just take a look at the house,
4 more than the regulations prescribe, can they do that?

5 A They have no authority to make a recertifica-
6 tion visit for that purpose. I think that eligibility itself,
7 technical eligibility is only in those set slot periods. Now
8 there may be instances, as in Mrs. James case, where home
9 visits were made at other than recertification times. But in
10 those instances it was basically to verify information at the
11 request of the client; certainly at the request of the client
12 it can be made. And I think that the agency would have dis-
13 cretion where factors warrant it, to make a visit outside of
14 the certification period.

15 Q Has anyone suggested what allegations you
16 would make in an application for a warrant?

17 A The district court did make some suggestions.

18 Q What do you have to say about their suggestions?

19 A I think that the suggestions for the warrant
20 the district court made, which are no other alternative avail-
21 able limited to a specific element which you may not be able
22 to find out about until you make the home visit, this is par-
23 ticularly true with pre-school children, to whom there is
24 otherwise no access until something happens to them. It is
25 simply unworkable and it would require on an individualized

1 case basis, you have to set up the kind of body of case law
2 that we have now for criminal Fourth Amendment cases.

3 I think one of the crucial distinctions between the
4 Camara decision of this court and the reliance placed on it by
5 the district court is just this distinction, because what the
6 district court does in mandating a warrant procedure is to re-
7 structure the home visit to make it no longer reasonable to
8 make it on a periodic basis, and yet it clearly is, and it is
9 related so closely to valid purposes that it clearly is reason-
10 able.

11 Q What are the restrictions on visits? You can go
12 in any room? Are there any regulations which tell the worker
13 what she can and cannot do when you make a visit?

14 A Yes, there are, Mr. Justice --

15 Q Are they in the record?

16 A The citations are set forth in our brief and I
17 believe they are not in the Appendix but they are, I believe,
18 in the record.

19 Q In the record?

20 A Yes.

21 Q Could you elaborate on that a little bit and
22 summarize what are those regulations, tell us?

23 A The regulations preclude a visit without con-
24 sent, that is it may not be a forced admission, there may not
25 be a looking into closets or into any closed area, it may not

1 be made outside of normal working hours. In fact, Mrs. James,
2 in this case, proscribed areas such as the bedroom, she said
3 -- the door was closed, and she said you could not enter, and
4 the worker did not enter. So that it really is carefully
5 limited by federal and state regulations. And if there is any
6 abuse of it, of course, it can be resolved at a hearing before
7 benefits are ever terminated.

8 Q But does the recipient know what those regula-
9 tions are and that they have the right to tell them you can't
10 go in those closed rooms?

11 A As far as I know, Mr. Justice, they do. Mrs.
12 James certainly did. She was not in the least bit --

13 Q Mrs. James had a lawyer, didn't she?

14 A Not during the home visit. She had a lawyer
15 after -- at the time of the hearing. How much prior to that
16 she had a lawyer, I don't know, but this was her attitude from
17 the beginning, and it was perfectly proper.

18 Q Do you present to this Court the fact that the
19 average recipient knows those regulations? You wouldn't say
20 that, would you?

21 A Mr. Justice, I don't know to what extent the
22 average recipient knows the regulations. He is informed at the
23 time when his application is taken of investigative procedures.

24 Q Is he told that it is up to him or her as to
25 whether they let you in or not?

1 A No, Mr. Justice.

2 Q Is he told that you can restrict the movement
3 when you get into the apartment?

4 A I would not think that he is told that, but I
5 would also --

6 Q That is a pretty broad warrant, isn't it?

7 A I think not. There is no --

8 Q Well, what is the social worker looking for?

9 A He is looking for evidence of eligibility and
10 the well-being of the children.

11 Q Which means anything.

12 A It means whatever he can establish from what he
13 can see in the apartment and what he can observe of the workings
14 of the apartment, the relationship of the people --

15 Q Well, of course, if the average warrant limits
16 where you search and what you search for, but this is broader
17 than a search warrant, isn't it?

18 A The average warrant would authorize greater
19 entries and into more areas than the worker -- there is no
20 charge in any of these -- either by this appellee or by any of
21 the other people who submitted affidavits that that is their
22 problem in this case. None of them have ever charged that kind
23 of abuse by a caseworker.

24 I would like briefly to say that, as I have said,
25 the warrant procedure really would restructure the home visit

1 and that it is reasonable as it stands. But the reason -- if
2 the home visit is to be allowed as it presently stands, then
3 the warrant would serve no useful purpose. In Camara it served
4 the purpose of creating a relationship between the client or
5 the householder and the authority which sought to make the
6 entry. But that is not necessary in this case. The relation-
7 ship is established and no -- the limitations are established
8 and no warrant is necessary.

9 And finally we have in the warrant -- pardon me, in
10 the home visit situation, we have a predetermination hearing
11 which protects against any arbitrary use of authority before
12 benefits can ever be terminated, and this protects a client
13 more so than an ex parte warrant procedure, which would permit
14 invasion and would not permit the client to state his side of
15 the case and would not protect against the kind of abuse that
16 is suggested, asking of irrelevant questions, looking --

17 Q I gather until the hearing, the determination
18 hearing, indeed until the decision following that hearing, the
19 payments continue?

20 A They do, Mr. Justice.

21 Q Is that what --

22 A That is the decision of this Court basically in
23 Goldberg vs. Kelly.

24 Q Yes.

25 A So that procedure protects. One other suggestion

1 is made, that the warrant is necessary because we are really
2 looking for signs of criminal activity. We are not really
3 looking for signs of criminal activity.

4 Q Suppose you find it, what do you do?

5 A That is another case. It is possible that it
6 could be excluded at a criminal proceeding, it is possible
7 that it would be valid to introduce it at a criminal proceeding?

8 Q Can you say, have there been prosecutions in
9 the case where something has been found?

10 A I know of no prosecution that is based on the
11 results of a home visit, and I might say that information
12 is required to be given no matter where it is given, and if it
13 serves in a really fraudulent sense, then it doesn't matter if
14 it is given in the home or obtained through the home or if it
15 is given in the office. The same result can follow, and the
16 result would be too broad for a reasonable administrative
17 purpose.

18 Q Miss Soloff, am I not correct, the home visit
19 has been established years and year and years as a social
20 service caseworker's method of operation?

21 A That is correct, Mr. Justice. It has been --

22 Q Do you concede in any way that it equates with
23 a search in the criminal sense?

24 A Not at all, Mr. Justice, it is not. We have
25 not denied that the Fourth Amendment is a relevant aspect of

1 this case, but is the right of privacy and not the traditional
2 criminal search.

3 Q Would it make any difference to you if New
4 York provided -- if the law provided that it would be a crime
5 to bar the caseworker? You don't purport to give this case-
6 worker the authority to enter against anybody's will?

7 A No, we do not, we deny him that right.

8 Q Would it make any difference if New York law
9 did purport to give the --

10 A Then you come much closer to the Camara situ-
11 ation, but we don't --

12 Q You are really saying, what your theory is
13 is that really you are conditioning aid on the ability to in-
14 spect the home?

15 A No, Mr. Justice, we are saying that we must be
16 able to determine eligibility, to be conditioned --

17 Q I know, but --

18 A -- it is conditioned on the furnishing of
19 eligibility information.

20 Q Such as -- and that without a home visit the
21 information isn't furnished?

22 A That is right in those cases. Now, it may be
23 at this hearing that it can be learned that the information is
24 available without the home visit, but that really is a ques-
25 tion for the agency and is not for the client to exercise an

1 option to decide how he is going to provide the information.

2 Q Miss Soloff, when the application is made,
3 aren't they told that a part of this is that we will come to
4 your home?

5 A Yes, Mr. Justice, they are.

6 Q And they understand that when they make the ap-
7 plication?

8 A That's right, Mr. Justice.

9 Q Don't you put reliance on that?

10 A We have, yes. The fact that a client under-
11 stands that this is an aspect -- or the visit may be a factor
12 in determining whether to pursue the application, just as all
13 other investigative aspects may be a factor in his determining
14 whether or not he is going to pursue the application.

15 MR. CHIEF JUSTICE BURGER: Thank you, Miss Soloff.

16 Mr. Weiss, you may proceed whenever you are ready.

17 ARGUMENT OF JONATHAN WEISS, ESQ.,

18 ON BEHALF OF APPELLEES

19 MR. WEISS: Mr. Chief Justice, and may it please the
20 Court, I should like to attempt to focus the argument on two
21 crucial factors that are present in this case. They are the
22 place involved, the act involved, as it states here, is an un-
23 warrant intrusion into the home. The act was an intrusion
24 against the will into a person's private home.

25 There is no claim on behalf of the Appellees that

1 all home visits are always bad. When welfare recipients want
2 welfare workers or friends or caseworkers in their home, no
3 one has any complaint. What is at stake here is the forcing,
4 the insistence of a visit by a welfare caseworker, a person
5 who is hired to check certain elementary facts in a certain
6 mechanical way, who has no training, no experience, the social
7 worker who insists, however, on going into the home.

8 The facts of this case, I think, illustrate all the
9 various evils involved in such a forcing of a visit.

10 Q I might ask a question regarding to what Miss
11 Soloff said. What happens if the client does not permit the
12 caseworker to make the home visit? The only thing that can
13 happen is that there may be a notice of intention to terminate
14 benefits, is that right?

15 A No, much more happens. What happens, as in
16 this case, they have a prior hearing, as mandated by this
17 Court, in the case of Goldberg vs. Kelly, at which point the
18 hearing officer, who is not empowered to reach constitutional
19 issues, is not a lawyer, informs the welfare recipient of the
20 regulation, as in this case, and they terminate aid at that
21 moment.

22 That termination of aid, it is imminent that im-
23 pelled the district court in this case to issue a temporary
24 restraining order.

25 Q Say that again? There is a hearing, a

1 Goldberg vs. Kelly type hearing --

2 A That is correct.

3 Q -- as which the client may be represented by a
4 lawyer, is that right?

5 A That is correct.

6 Q Now, what is it she said, that the only thing
7 that the hearing officer determines is whether there was or
8 was not a refusal to permit --

9 A That's right, Your Honor.

10 Q Is that all?

11 A Right. And what ensues from that, as pointed
12 out in the Appellant's reply brief, is a termination of aid
13 and then in the ensuance of a trial they then decide what
14 necessary steps -- I believe those are the words of the
15 Appellant's reply brief --

16 Q Well, tell me, at that hearing may the client
17 say, well, the information is available without a home visit
18 in this way?

19 A Yes --

20 Q May the client do that?

21 A Yes, that is precisely what happened in this
22 case, it was terminated. After the hearing, and Mrs. James
23 was represented by counsel, the welfare department was informed
24 that they can get information of any sort from any place but
25 that home, but she did not want the intrusion of a visit.

1 The welfare department said the regulation reads
2 that because of your refusal, your aid must now be terminated.
3 The welfare --

4 Q Now, wait a minute.

5 A -- and it was terminated.

6 Q You mean even if information is available by
7 some other alternative to a home visit, the refusal of the
8 home visit automatically results in a hearing officer's find-
9 ing that aid is terminated?

10 A That is correct, Your Honor.

11 Q Is that what happened here?

12 A That is what happened here, Your Honor. So
13 that all you are talking about in the prior hearing is the
14 internal administrative mechanical apparatus which leads to
15 termination of aid for the refusal to permit an unwanted entry.

16 Q But the only alternative to the home visit
17 that was offered here was the testimony of the client.

18 A Your Honor --

19 Q Isn't that right?

20 A No. What the client said was if you want
21 specific information, tell me what you want and I will go any
22 place but here and give you that information. They then at
23 that point said to her, well, this and that and this and
24 that -- I presume she would have offered it. I believe that
25 there was the nature of a offer at that moment --

1 Q Tell me, is it your suggestion that the welfare
2 department must be -- is required to take the client's word
3 for certain facts?

4 A I would say not, Your Honor, no more than the
5 Internal Revenue Service is required to take the word of the
6 taxpayer.

7 Q Let's presume that someone wants to verify
8 that the children are actually living in the home rather than
9 with relatives, and the mother says, well, they are living in
10 the house, and the welfare worker or the department says we
11 would like to go check and make sure. Now, your contention is
12 that they may not do that without a warrant?

13 A No more than an analogous case where the
14 Internal Revenue Service wishing to check with somebody about
15 his dependents in fact living with him, where they had --

16 Q Your answer is yes, you would need a warrant?

17 A That is correct, Your Honor.

18 Q How do you satisfy the climate of probable
19 cause for warrant in this context?

20 A It is our contention that there really is no
21 need for warrants in the case of welfare clients. What are
22 the purposes served by warrants, gotten by warrants from
23 other statutes? If, in fact, you are worried about somebody
24 misrepresenting whether they are eligible, what resources
25 they have, if in fact they are doing that, they are liable

1 under the statutes of fraud and a warrant to issue to ascertain
2 that, upon probable cause.

3 If we deal respectively on the neglect and abuse,
4 which is not a specter only to welfare clients, we suddenly
5 become -- abuse and neglect of parents because they needed money
6 from the state or welfare people -- if that specter arises, we
7 proceed, as we do for all families, that is, a warrant issued
8 under the Family Court Act, a warrant to cover every single
9 possibility for purposes of the statute.

10 There is no purpose in the welfare statute I think
11 that would require a warrant.

12 Q So you say that the state just isn't entitled
13 to make a home visit to verify what the mother has said?

14 A That is correct, Your Honor, unless --

15 Q You can't get a warrant because there isn't
16 probable cause and you can't go in without a warrant because
17 of the Fourth Amendment?

18 A The intrusion of a home is defined strictly --
19 the restrictions are defined generally and specifically. Gen-
20 erally, the assumption is in the whole historical meaning of
21 the cases and the provision of the Fourth Amendment are that
22 no one shall go to the home except for matters of public safety,
23 which would involve damage -- for example, if the children
24 are under the neglect statute, crimes, public menaces and
25 health -- that is the category under which this Court, employing

1 the Fourth Amendment, permits intrusions into the home.

2 As an actual intrusion, there is a general warrant
3 for intrusion, you need specific warrants and probable cause.
4 You need general and specific in these cases.

5 Q The issue seems to be, then, whether the state
6 should be permitted to verify eligibility information by home
7 visits.

8 A The statutory --

9 Q Isn't that the --

10 A There is a statutory scheme -- one of the
11 issues -- there is a statutory scheme which allows for double-
12 checking when there has been a misrepresentation, just as we
13 have, for example, again in the Internal Revenue Service. If
14 the welfare department has reason to believe that somebody is
15 misrepresenting the eligibility, then they can refer it to
16 the criminal branch and get a warrant to check whether there
17 was actual welfare fraud.

18 Q What would be your view if this scheme by statute
19 were to provide that a client must permit home visits to continue
20 receiving payments?

21 A The conditioning of the receipt of public bene-
22 fits upon a surrender of constitutional privilege is, of
23 course, unconstitutional.

24 Q Do you say such a statute is unconstitutional?

25 A I would say any statute that permits that would

1 be unconstitutional. The HEW --

2 Q How do you differ that from the requirements in
3 inspection of plumbing and, you know, tenement houses, laws
4 and such?

5 A As I was trying to suggest earlier, the in-
6 spectors for plumbing and so on all deal with protecting laws
7 outside that home. It deals with problems of public safety.

8 Q Just outside, is that all they consider?

9 A Well, if you look at the home, where we see a
10 family unit inside a dwelling place, now that family unit can
11 do destructive acts one from the other, that is unless they do
12 it out in the street. I mean we do not tolerate murder in the
13 home, and we do not tolerate other matters, and that is why we
14 delineate, that is a public act destructive of somebody in a
15 home. That is why we have emergency searches, warrants, and
16 we have neglect -- all of these deal with destruction of some-
17 body or are a menace to the public health.

18 Q May I ask you this question, Mr. Weiss -- were
19 you through, Justice Brennan?

20 Q Yes, sir.

21 Q Do you have the foster home program in New York?

22 A That is correct, Your Honor.

23 Q Suppose hypothetically that children are taken
24 out of their normal home and put into a foster home, some
25 family has three children, as sometimes they will in states.

1 There are provisions for visitation by social workers to those
2 foster homes, are there not?

3 A I believe so, Your Honor.

4 Q These are private homes in the same sense as the
5 home of the recipient of aid to dependent children. I take it
6 there is no difference? It is the same kind of a private home?

7 A In many cases.

8 Q Do you suggest that the State of New York, in
9 conducting surveillance to see that these foster homes meet
10 prescribed standards in the regulations, cannot have a visit to
11 those foster homes without a warrant?

12 A I would make a sharp distinction between crea-
13 tion of a family and dealing with an established family.

14 Q Well, isn't this a substitute family environ-
15 ment, a foster home?

16 A Yes. Your Honor, what I am trying to suggest
17 is that when in fact they place the child with a family, when
18 they engage in the process of creating that family unit in
19 that home, the can make visits. But once that family is estab-
20 lished, once there is an on-going family, they have placed
21 that child there permanently, then I would say there is no
22 warrant --

23 Q There -- is a child ever placed permanently in
24 a foster home?

25 A There are permanent placements in foster homes.

1 Q I can't conceive of the state making a perman-
2 ent placement, because if the child wasn't getting the care,
3 they would certainly remove it. They would have a duty, would
4 they not?

5 A I would believe the state would have the same
6 duty towards that child as they have to any other child living
7 in the home. If the parents are not properly caring for the
8 child, the child ought to be removed in line with the normal
9 neglect proceedings.

10 Q Well, then, I come back to --

11 A But there are established foster homes, that
12 are permanent placements --

13 Q Then I come back to my question: You say that
14 the State of New York, in pursuance of its program of foster
15 homes for children, cannot make an inspection of these foster
16 homes in the conditions without a warrant?

17 A I would say they could make the inspection up
18 to the point at which there is a permanent placement and the
19 family established. At that point, that family is like any
20 other family and they may not make the visits. Now, we seem
21 to be on the logic of our position in this case, that once
22 you have an established family, no matter how the state views
23 it, whether it be that they take taxes or they give welfare,
24 they may not insist upon intruding against their will into
25 those homes.

1 Q Well, let's take an analogy then. You have re-
2 ferred to the income tax problem. Suppose the taxpayer takes
3 off -- shows \$8,000 in interest payments on loans during a
4 given year, and \$12,000 in contributions. And then, in due
5 course, on an examination, the agent writes or calls and says
6 I would like to see your records and your cancelled checks to
7 support these payments. And the taxpayer says no, these are
8 private records, private papers, and most sacred possessions,
9 and you can't look at them. What do you think the Internal
10 Revenue Service is going to do?

11 A I would say within the dictates of cases such
12 as Silverthorn they would probably issue some sort of process,
13 but --

14 Q Don't you think they would just disallow the
15 deductions in very short order?

16 A Under the Internal Revenue Service, of course,
17 the presumption is upon the taxpayer to prove certain types of
18 deductions, and they might do that on the grounds that you
19 would then have to come forward and show proof. But that does
20 not allow the Internal Revenue Service to go into that home.

21 Q The consequence of not going into the home or
22 the private files would be preemptory disallowance of those
23 claims, wouldn't it?

24 A The consequences of not coming forth with evi-
25 dence and not the consequence of refusal of entry into the

1 home. If the Internal Revenue Service said to verify your de-
2 ductions you must -- we must come to your home, sometimes with
3 notice, sometimes without notice, we compel you to have the
4 presence of your child, the threat of cutting off all your tax
5 privileges and, in fact, attach your salary -- I would assume
6 that this Court would find that type of insistence as uncon-
7 stitutional and you would find that type of case before the
8 Court.

9 Q Now, you seem to make a distinction, Mr. Weiss.
10 You said that the Internal Revenue Service places a burden on
11 the taxpayer to do certain things by statute. Suppose the
12 State of New York, if it does not now do so, places a burden
13 on the recipient of welfare aid, as a condition to continued
14 receipt of that aid, that they must allow inspection, wouldn't
15 that be a parallel to the Internal Revenue illustration you
16 gave?

17 A No, because the inspection, the intrusion of a
18 home is different than the request or demand for the purposes
19 of information. There is nothing in the presentation of
20 papers, of facts, there must -- it necessitates it being in
21 the home. What is crucial about a home is how people living
22 in that home regard it, not whether the government wants it as
23 a convenience.

24 Q You still stand on your proposition that the
25 foster home could not be subject to inspection without a

1 warrant?

2 A After the family has been established, that is
3 correct, sir.

4 Q Well, how long after the children are placed in
5 the foster home does that happen, in your view?

6 A I have seen placements where the welfare depart-
7 ment was satisfied within a week and never returned again. I
8 have seen places they have had a continuing interest for a
9 number of years.

10 Q You mean they can go for a number of years with-
11 out warrants?

12 A I have seen them create families over a period
13 of time, much longer perhaps than they should, but over a period
14 of time.

15 Q Mr. Weiss, getting back to the Internal Revenue,
16 suppose an orphanage gets tax exemption --

17 A An orphanage?

18 Q An orphanage -- do you say that the Internal
19 Revenue couldn't go to find out if they had any children there?

20 A No, I would say of course they could. That is
21 a public institution using public funds. What we deal with
22 here in this case is a family in a home --

23 Q An orphanage using public welfare specifically--

24 A An orphanage --

25 Q -- is a private charitable, living on

1 contributions, that is what I am talking about.

2 A It seems to me they would have the right to
3 check it out the way they check out any other organization
4 making any other exemption.

5 Q Now you are getting closer to this case. There
6 is an application for this assistance on the ground that they
7 have three children living in that home.

8 A The difference is --

9 Q Well, how can that be established without a
10 visit?

11 A You can establish the existence of children
12 without home visits, certainly.

13 Q I said that they said they have three children
14 living in this apartment. Now, how can you establish that
15 without a visit?

16 A There are two instances. In one instance, it
17 is not clearly established with a visit. It might not be
18 possible to have three children there at the same time -- I
19 sleep here, I sleep there, I sleep there -- it may not be true.
20 You have the same problem of verification of that as you do
21 with any other. You can ask, I suppose, if that does intrude
22 on their privacy. That may even ask them to let them see
23 the children register at school. You can take all types of
24 testimony but that can't --

25 Q My children are under school age.

1 A If they are under school age, you can talk to
2 whatever community health service they use, where they are
3 registered --

4 Q How could you establish that they lived there
5 and not with the grandparents?

6 A I don't think you can establish anything in the
7 matter beyond a certain point.

8 Q Well, I understand now your position to be that
9 the applicant says I have three children, and that's it.

10 A No, I think you go about trying to verify that
11 fact as you do any other fact. You can't prove it to a cer-
12 tainty. They sleep over one night, they sleep over five
13 nights, ten nights, a hundred nights somewhere else -- when
14 does it end, when are they not living there?

15 It is not clear in any event, the fact that you in-
16 sist upon visiting the home at a certain point, and they claim
17 that they give notice -- and sometimes they do -- but that is
18 not going to prove anything at all.

19 Q They did give notice in this case?

20 A They did give notice in this case and did not
21 give notice in others and, as their affidavits bear out, it is
22 up to the caseworker to decide where notice is appropriate.
23 But leaving those issues aside, there is problem verifying any
24 claims any person makes about how he lives in his home. There
25 are claims all the time made for all sorts of purposes.

1 Q Suppose your argument here is accepted and a
2 warrant is necessary, and then an affidavit is presented for a
3 search warrant saying that the probable cause is that this
4 person is an applicant for welfare and the applying agency wants
5 to establish whether she is qualified. Would that be good
6 enough probable cause?

7 A That would not be probable cause. I would
8 think cases such as Rowe vs. United States suggest that prob-
9 able cause involves the use of an element to be admissible at
10 a trial that proof of something that goes into the statute,
11 and I would think you would have to find different fact warrants
12 were necessary in a welfare area certain specific items that
13 were necessary to be found only be found by a search in order
14 to fulfill certain purposes of the welfare statute.

15 But the welfare statute, as it now is, all they need
16 to know is how many, is it clean, and the fact that how many
17 children are dependent upon that person, just as the Internal
18 Revenue Service need to know how many dependents are there
19 when you fill out your tax forms.

20 Q Well, suppose I add one more to my hypothetical.
21 Suppose the affidavit also said we haven't got enough staff to
22 go out and try to find out this information by indirection and,
23 as a practical matter, a home inspection is the only way we can
24 get it.

25 A Well, let me -- as the amicus brief in this

1 case points out, the practicality goes the other way, of course.
2 Lack of staff means you shouldn't make home visits, that is why
3 the social workers even say that. Presuming they did, adminis-
4 trative convenience can never be an excuse for unconstitutional
5 intrusion.

6 If the police department were to say we are having
7 trouble locating people who steal and we don't have enough
8 staff, therefore we are going to make a blanket search of, say,
9 the area near 14th and Park Road here, that would clearly be
10 unconstitutional. So, too, is it unconstitutional here if
11 it were that it cannot be a claim that is more practical and
12 more easy to make home visits to verify the simple questions
13 of the size and nature of the family composition.

14 Q Mr. Weiss, suppose you were called on by a lady
15 to make a charitable contribution to her children. She said
16 she had three children under five, she is keeping them in the
17 house. It was all right. You said I will make a contribution
18 to help you, but I want to come in and see your children in the
19 house. Would that be an unreasonable request on your part?

20 A It depends on what her attitude toward those
21 children were.

22 Q You wouldn't have to give them anything in the
23 first place, you see, and would that be an unreasonable request
24 on your part?

25 A It would depend on her attitude. If in fact

1 she viewed it as an insult, an embarrassment --

2 Q Do you think she would view it as an insult if
3 you were about to support her children?

4 A I think she might.

5 Q She might?

6 A I am not privy to all the new psychology at all
7 times.

8 Q Is that the reason now you think it was reason-
9 able for this lady to say I am not going to let you come into
10 this house while you are supporting my children at all? I will
11 come outside, I will go to your office, but you can't come in
12 here and look at these children and see how I am taking care of
13 them.

14 A What she was saying is that she, in establish-
15 ing her home, as people --

16 Q Let's get away from fabric. Home, that home is
17 kept up by the charity that is given by the public.

18 A Well, it is not --

19 Q And do you think the public has no right to try
20 to see that she is really taking care of them? There are in-
21 cidents in the history of this country where even parents have
22 not properly taken care of their infant children when they have
23 got money to do so.

24 A That is correct.

25 Q And do you think it is unreasonable for them to

1 want to look and see how they are taking care of them? The
2 question is reasonableness.

3 A Yes, Your Honor, I believe --

4 Q Get away from fabric and everything except the
5 reasonableness.

6 A Well --

7 Q What is there reasonable about this lady tell-
8 ing them she won't let them come in, she won't talk to them in
9 the house, she doesn't want them to see her children, that she
10 will come out and talk to them at their office? What is
11 reasonable about that?

12 A What is reasonable about that is that it is
13 reasonable that anybody in the history of civilization is say-
14 ing that my home, my private domain, I do not want people there,
15 I do not want --

16 Q I do not want you there even though you support
17 my children.

18 A It is not true that they support her children.
19 What is true.--

20 Q They --

21 A -- is they supply money.

22 Q Well, who is supporting the children.

23 A They supply the money.

24 Q What?

25 A They supply the money.

1 Q Well, who supports the children?

2 A She supports the children. She raises them,
3 she --

4 Q I understood you to say that they were getting
5 charity from the government.

6 A They are receiving money in order for her to
7 rear her children, to raise them, as every other family raises
8 their children. She is only receiving money.

9 Q Well, most families, of course, pay for raising
10 their children, but here she has asked the state and the govern-
11 ment to support them, and it is doing it.

12 A That is correct.

13 Q And you say it is unreasonable for them to want
14 to go in and see where she is keeping these children that they
15 are supporting.

16 A I am saying that it is reasonable for her to
17 refuse, as every other family --

18 Q That is a technical reason you are giving,
19 isn't it? It is not a reasonable one, according to the ordin-
20 ary everyday affairs of human beings.

21 A No, I would say it is not technical, it is
22 fundamental, because it is the right of a family to exist in
23 its own privacy in its own home.

24 Q Even though somebody else is supporting them?

25 A That is correct, Your Honor.

1 Q Mr.Weiss, suppose she applies for some kind of
2 categorical aid like the hot water heater is gone out, we need
3 a new hot water heater. They say well we will be glad to give
4 you one, we have to come and make sure it is broken and see
5 how big it is and how much it is going to cost and things like
6 that. She says, sorry, just give me the heater, but don't
7 come in the house. You would have the same answer, I would
8 suppose?

9 A That is correct, Your Honor. Of course, it is
10 true in New York that there are none of these special grants,
11 as they were called. But if in fact --

12 Q There were, though.

13 A There were. Even if they came back, if in
14 fact they believes she was lying, she would be liable as any-
15 body else who lies to the government is liable to criminal
16 prosecution and a warrant would be issued to inspect that home
17 to see if he lied about the presence or absence of a heater,
18 as she in fact had, she would then be prosecuted and necessary
19 steps taken.

20 Q Of course, as long as no one will ever have any
21 idea that she was lying --

22 A No more than any time you fill out government
23 forms of any sort. All of us fill out government forms many
24 times.

25 Q Yes, but you usually don't get money every

1 month when you fill out forms.

2 A But some people get much more money much more
3 often than welfare recipients, of course, Your Honor.

4 Q Mr. Weiss, how many people in New York are re-
5 ceiving one kind of aid or another?

6 A I believe that the welfare roles in New York
7 City are approximately a million to a million two. I think it
8 is the largest welfare --

9 Q How big a staff do they now have, if you know,
10 to operate it?

11 A I am sorry, I do not know that.

12 Q In the Los Angeles, California case last year,
13 the record showed that for 500,000 people on welfare in Los
14 Angeles County, they had 12,500 caseworkers. Now, if they
15 have got to do what you have just said in response to Mr.
16 Justice White, it would take quite an army of caseworkers,
17 wouldn't it?

18 A I don't believe so, Your Honor. I don't believe
19 the majority of welfare recipients are any more honest or dis-
20 honest than the rest of us. I don't believe that this would be
21 a matter for welfare workers, but if a welfare worker were to
22 believe that a particular act of fraud had been committed, she
23 should refer it to the police department.

24 Q Do you think in the hypothetical case Mr.
25 Justice White gave you that they would be justified in refusing

1 to replace the heater until they could inspect the house?

2 A No, it would not be justified, no more than
3 the Internal Revenue Service would be justified in refusing
4 something initially.

5 Q They do refuse a deduction if you don't let
6 them inspect your records, don't they?

7 A I think you can proffer the same sort of evi-
8 dence for heater, a bill of sale, a bill of repair, that you
9 would in fact to the Internal Revenue Service to report a
10 robbery deduction. You proffer certain types of proofs of
11 sale.

12 Q Mr. Weiss, may I ask, if you were to prevail,
13 what would be the effect of the decision upon the HEW regula-
14 tions which is to require some kind of sampling and a report
15 as a condition, I gather, that continued participation in the
16 federal program?

17 A I do not think that all welfare recipients al-
18 ways will refuse to do it, some welcome it, some welcome the
19 conversation. I would think the people who are eager or
20 willing to receive home visits, they would get an adequate
21 sample for their purposes.

22 There also are, as the amicus from San Mateo County
23 puts forth to this Court, other HEW regulations which seem in
24 fact to militate against the type of home visits present in
25 this case. Those regulations, I believe, reflect the

1 constitutional commands present in this case, a manifested in-
2 junction issued by the district court.

3 Q Would you sum up those? I haven't read the
4 entire brief.

5 A The HEW regulation says that nobody should de-
6 mand entrance, they should not go into homes without prior
7 consent. That is what they seek to do here by saying if you
8 do not let us in we will cut off your welfare. That, of course,
9 was held to be unconstitutional coercion in your confession
10 case of Lynumn vs. Illinois, so too here, coercion and there-
11 fore not consent, and I would say therefore against the requ-
12 lation, and reflects, I believe, the constitutional mandate.

13 In summary, I would say that what the welfare de-
14 partment seeks to do is send improper people into inappropriate
15 places to achieve results irrelevant to the welfare statute
16 which in fact violate the constitutional rights.

17 Thank you.

18 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Weiss.

19 Miss Soloff, I believe your time is expired, unless
20 you have any factual matters that you wanted to make a correc-
21 tion in the record about.

22 MISS SOLOFF: I would just like to say that --
23 address myself to Mr. Justice Brennan's --

24 MR. CHIEF JUSTICE BURGER: Would you speak just a
25 little louder.

1 MISS SOLOFF: I am sorry.

2 Mr. Justice Brennan's first questions to Mr. Weiss
3 with respect to what can happen at a hearing, it would appear
4 that Mrs. James' assistance was terminated because of her re-
5 fusal but in point of fact, as I said, the referee did set out
6 what the refusal was supposed to -- what the visit was supposed
7 to accomplish, and Mrs. James did not set forth any reason why
8 the visits should not be made. In fact, her refusal was com-
9 pletely arbitrary.

10 You don't have another case in which -- at least
11 there is none that has come to anybody's attention in which
12 assistance has been terminated solely for refusal to permit --

13 Q Well, I thought what Mr. Weiss said was that
14 the termination hearing amounts to nothing more than an inquiry,
15 was a refusal, and if it was found there was a refusal, then
16 automatically an order is entered terminating benefits. You
17 say that is not so, Miss Soloff?

18 A I say that you have no other case but this one,
19 Mr. Justice, and what happened in this case was that reason was
20 advanced why the visits should not be made, and so that the
21 flat face of the record appears to support that position,
22 whereas it was not the least bit necessary --

23 Q Suppose it had been said I can give you this
24 information, whatever it is you want, without your making a
25 home visit, and this is the way I will supply it, and that

1 tender was made. What would have been the result if the tender
2 had been that a satisfactory tender of evidence upon which it
3 could be concluded no home visit was necessary?

4 A Then I think it up to -- again, we are talking
5 somewhat in the dark, because if she did not go to state fair
6 hearing, but I think the result would be that it would be up to
7 a referee to determine if the department was correct, that the
8 offer was unacceptable, that the alternative was unacceptable.

9 Q But doesn't either the state or the regulation
10 require a home visit regularly?

11 A The statute requires an initial home visit,
12 there the -- pardon me, the state regulation. Thereafter it
13 requires periodic contacts, which may be by home visits or
14 office visits or another method, does not explicitly require
15 that in all cases of continuing eligibility there be a home
16 visit.

17 Q So --

18 A So that agency would have some latitude in this
19 respect.

20 Q You mean the policy of New York is stated in
21 the statute or in the regulation isn't that there must be a
22 home visit in order to assure the welfare department of con-
23 tinued eligibility?

24 A That's right.

25 Q So they must think that there is some other

1 ways of doing it, or they just don't care after the initial --

2 A It is not that they don't care, it is that
3 there is the possibility that there are alternative means, but
4 it is also possible that alternative means will not work. In
5 fact, a home visit has been the traditional means of verifying
6 the --

7 Q What other means would ever work in verifying
8 just the fact that three children are living in the home?

9 A I can't think that another one would work as
10 effectively. I mean that is the answer, that is the closest
11 we can get, whether or not the state would allow or the federal
12 government would permit it, to accept other evidence is not
13 constitutionally required to do so.

14 Q I suppose, if you had unlimited funds, you
15 could put a 24-hour surveillance on the house and if for thirty
16 days no children were seen coming or going, that might lead to
17 an inference that they were either very ill or that there
18 weren't any children there.

19 A I suppose that is possible, Mr. Justice. What
20 is happening here is, of course, the welfare programs are
21 changing. You are trying to reconcile the recognized dignity
22 of the individual with the need to have a workable welfare
23 program. The home visit is changing, and this was stressed,
24 too. It is being adapted to the new programs, and we are
25 trying to see if the new programs work, and we simply don't

1 know. And what they are asking for is that a declaration
2 system or something very close to it can be established as a
3 constitutional verity at a time when the evidence simply is
4 not in that it works now.

5 Q Does the record show how many children there
6 are?

7 A Pardon?

8 Q Does the record show how many children there
9 are and what are their ages and how much they draw?

10 A Mrs. James has one child, who is now, I guess,
11 about three years old. And I do not have the figure for a
12 family of two under the revised standard of need in New York
13 City at this time, Mr. Justice.

14 Q How much is contributed? Anything for rent?

15 A New York State pays rent separately from its
16 grants for other necessities.

17 Q Does she get anything for rent here?

18 A Yes, New York pays rent apart from the --

19 Q How much does she get for the rent of the
20 house in which she is living with the child?

21 A I don't remember what her last -- her last
22 rent that I recall was in the neighborhood of \$100 a month, but
23 I don't remember precisely because she has moved a number of
24 times.

25 Q How big is her house? Is it an apartment or a

1 house?

2 A It is an apartment. It is an apartment. I
3 believe it is three or four rooms.

4 Q Miss Soloff, you heard my hypothetical factual
5 situation I presented to Mr. Weiss about the foster homes. If
6 you know, if you are familiar with the regulations and procedures,
7 does New York State or its subdivisions conduct periodic
8 visitations of foster homes where they place children from time
9 to time?

10 A I believe it does, but I can't cite the section
11 of the law in which that happens. It would be under the family
12 laws in the domestic relations --

13 Q It would certainly be astonishing if they
14 place children in homes and then made no check on them to deter-
15 mine whether they were being properly cared for, wouldn't it?

16 A They do, I am sure, they check foster homes.
17 They check the adopted homes.

18 MR. CHIEF JUSTICE BURGER: Thank you, Miss Soloff.
19 The case is submitted.

20 (Whereupon, at 11:10 a.m., argument in the above-
21 entitled matter was concluded.)

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