CENTER PIECE

The Official Newsletter of the National Child Protection Training Center

Finding Equilibrium: *Greene v. Camreta*

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace."
–Kofi Annan

By Amy Russell[1]

Introduction

On December 10, 2009, the United States Court of Appeals for the Ninth Circuit issued a significant decision in the case of *Greene v. Camreta*[2] and attempted to rebalance the competing influences of familial rights and child protection. It is critical that professionals who investigate and prosecute allegations of child maltreatment both within the Ninth Circuit and across the country understand the facts, holding and potential implications of this case, as previous practices may expose investigators to civil liability, and prosecutors may see criminal and civil child protection cases overturned on constitutional grounds.

Factual Summary of the Case

The case of *Greene v. Camreta* initiated with an allegation of sexual abuse of a seven-year-old boy, F.S., by Nimrod Greene ("Nimrod"), a friend of the boy's parents. F.S. alleged that Nimrod touched him on his penis over his jeans on two occasions when Nimrod was drunk at F.S.'s parents' house.[3] The boy's mother indicated to investigators that in conversations with Nimrod's wife Sarah Greene ("Sarah"), Sarah stated she did not like how the Greene's daughters, nine-year-old S.G. and her younger sister K.G., slept in Nimrod's bed and didn't like how Nimrod acted when the girls sat on his lap.[4] F.S.'s father additionally reported to law enforcement investigators that Nimrod had told him that Sarah suspected Nimrod of sexually abusing his daughters.[5]

Nimrod was arrested for sexually abusing F.S., and one week later, child protective services learned of F.S.'s parents' suspicions that Nimrod was sexual abusing S.G. and K.G. Nimrod was released from jail the following day. Three days after Nimrod's release from jail, a child protection worker, in the presence of a law enforcement officer, conducted an in-school interview of Nimrod's nine-year-old daughter S.G.[6] The interview, alleged by the child to have lasted two hours, was conducted with no notice or consent from the child's mother, and under no warrant or order from the courts.[7]

The child protection worker reported the in-school interview lasted one hour, during which S.G. disclosed that Nimrod tried to touch her chest and buttocks the previous week, and that her mother knew about the incidences. However, in court documents, S.G. reported that the touches from Nimrod to which she referred during her interview were hugs and kisses, and that she remembered them "with fondness."[8] S.G. claimed the in-school questioning was conducted in a coercive manner, and that over the course of the two-hour interview, she finally acquiesced to the suggested abuse in order to end the interview.

In its decision, the appellate court references a second critical dispute regarding the contents of a conversation between the child protection worker and Sarah. Sarah maintained that she willingly agreed to establish and adhere to a safety plan, agreed to keep Nimrod out of the house, and consented to medical examinations of the girls.[9] The child protection worker maintained Sarah indicated that her financial situation did not allow Nimrod to keep a separate household during the investigation, and that he would be returning home.[10]

UPCOMING conferences

When Words Matter

July 12-15, 2010

Location: Savannah, Georgia

When Words Matter is a 4-day National Conference hosted each year in a state that has implemented the ChildFirst® Forensic Interview Training Program. This year it will be held in beautiful Savannah, Georgia. *When Words Matter* brings together nationally recognized experts from all areas of the child protection field for this informative and innovative conference. The topics covered will be useful for prosecutors, law enforcement officers, child protective service workers, forensic interviewers, child counselors/psychologists, medical professionals, victim advocates, and anyone else who interviews children or prepares them for court.

N·C·P·T·C
NATIONAL CHILD PROTECTION TRAINING CENTER

OJJDP

This project was supported by Grant No. 2009-DD-BX-K150 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Based on his understanding of the conversation, the child protection worker sought protective custody of the children due to Sarah's failure to ensure the safety of her children. However, there was no documentation in the federal district court record of the protective custody hearing; therefore, the reviewing appellate court could not evaluate any evidence that may have been presented on Sarah's compliance with the no-contact order against Nimrod.[11] Based on evidence presented by the child protection worker, the juvenile court ordered the children into temporary custody, ordered an assessment of the children at the local children's advocacy center, prohibited conversations between Sarah and her children regarding the alleged sexual abuse, established a no-contact order between Nimrod and the girls, and ordered the children to be returned home to their mother as soon as a safety plan was in place.[12] The children were out of the home for twenty days, during which Sarah had supervised visits with the girls.[13]

The interview and medical examination of K.G. were conducted at a children's advocacy center (CAC) nine days after the protective custody hearing; S.G.'s appointment at the CAC occurred twenty days after the protective custody hearing.[14] Sarah showed up at the CAC on both dates, but was excluded from the premises under the direction of the child protection worker.[15] During her interview, nine-year-old S.G. denied any sexual abuse by Nimrod, and later indicated to the courts that she was "uncomfortable" during the medical examination.[16] The results of the medical examination were inconclusive for sexual abuse;[17] however, the staff at the CAC were concerned about possible recantation by S.G. due to a desire to return home to her mother.[18]

Nimrod was eventually tried for sexual abuse with no verdict from the jury. Nimrod subsequently entered an *Alford* plea regarding abuse of the seven-year-old boy, and charges regarding the abuse of his nine-year-old daughter were dropped.[19]

Procedural History of *Greene*

Sarah filed suit claiming 1) the in-school seizure of nine-year-old S.G. violated the girl's Fourth Amendment rights to be free of unreasonable search and seizure when the child protective services (CPS) worker and the law enforcement officer took action to interview her without a warrant, probable cause, consent or exigent circumstances; 2) the CPS worker violated Sarah's Fourteenth Amendment due process rights by presenting false information in court to obtain an order to remove the girls from her custody and by subsequently removing the girls from Sarah's home; and 3) the CPS worker violated Sarah's and the girls' Fourteenth Amendment due process rights through unreasonable interference with Sarah's familial right to be with her children and the children's familial rights to have their mother present during the medical examinations.[20]

The federal district court awarded summary judgment in favor of the child protection worker and the law enforcement officer, among others, finding the in-school seizure was objectively reasonable under the facts and circumstances of the case, the law enforcement officer and the child protection worker had qualified immunity for their actions, and there was no due process violation because the removal of the children from Sarah's care was on a court order, deriving from a hearing during which Sarah had an opportunity to be heard.[21] The federal district court further held that the CPS worker had absolute quasi-judicial immunity for removal of the children and there was no Fourteenth Amendment violation during the medical examinations because the children's mother did not have custody of the children at the time of the examinations, and the exams conformed to Oregon state law.[22]

In-School Interview a Violation of Fourth Amendment Rights

On the issue of the in-school interview, the Ninth Circuit Court of Appeals reversed the United States District Court for the District of Oregon and held the in-school interview conducted by the child protection worker in the presence of a law enforcement officer, and conducted without parental permission, probable cause, exigent circumstances, a warrant or court order, was a violation of nine-year-old S.G.'s Fourth Amendment right to be free from unreasonable search and seizure.[23] The court, at great length, discussed the reasonableness of the seizure, and referenced and analogized the case at bar with prior cases wherein child abuse investigators were required to respect a "family's right to be free of warrantless searches and seizures in their homes."[24] The court concluded that while there are greater privacy interests implicated for interviews conducted with alleged child abuse victims in their own homes, there are privacy interests to be upheld regarding in-school interviews as well.

In addition, the *Greene* court clearly distinguishes actions taken by school officials to "regulate conduct [of students] according to the dictates of reason and common sense" and actions taken at the hands of or at the request of law enforcement officials.[25] While schools are permitted to adhere to the reasonable suspicion standard when dealing with search and seizure issues – a standard less than probable cause – to "maintain order in the schools," the court held this lower standard is inapplicable to actions carried out jointly by law enforcement officials and child protection workers.[26] Furthermore, the court indicates that in the *Greene* case, the issue did not concern any substantial interest of the school to maintain discipline, as the child seized was not accused of violating school rules.[27]

In determining "reasonableness" of an in-school student seizure, therefore, the court examined the circumstances surrounding the seizure, holding that "traditional Fourth Amendment protections apply to the seizure of a child" in the school setting for child abuse investigations.[28] The court rejected the arguments of the law enforcement officer and the child protection worker that there should be a "special needs" doctrine for the administrative program of child protection, eliminating or at the very least reducing warrant and probable cause requirements when investigating child sexual abuse allegations.[29] The court examined several prior decisions on when to apply the lesser standard of "reasonableness," and concluded there was ambiguity within the courts.[30] The *Greene* court indicates the standard applied may depend upon whether a child attends private or public schools, with seizures of children on private school grounds prescribing the higher standard of probable cause.[31]

The court clarified in a footnote[32] that its ruling does not limit a child protection worker from seizing a child under exigent circumstances if the caseworker reasonably believes a child would suffer serious bodily harm in the immediate future. However, the *Greene* court noted that a three-day delay between the release of the alleged offender from jail and the in-school interview of the child did not rise to the level of exigent circumstances, particularly when the child was returned to the care of the parents following the interview.[33]

Qualified Immunity for Law Enforcement and Child Protection for "Reasonable" Seizure of Child Sexual Abuse Victim

In its analysis of immunity for the law enforcement and child protection investigators on the seizure of the alleged child victim of sexual abuse, the court considered the duration that youth were held under a variety of circumstances, generally concluding that seizures of children by CPS workers or school personnel for disciplinary reasons varying from ten to fifty minutes were reasonable, and were "insufficient … to trigger constitutional liberty concerns."[34] The determination of reasonableness of the interview conducted of S.G. could have been aided by a recording of what transpired during this seizure; however, in the absence of documentation that could have been examined by the reviewing court, the court could only consider the evidence in the light most favorable to the family, and concluded that if the child continuously denied abuse, but was coerced into finally acquiescing after a two-hour interview, this was, in fact, an unreasonable seizure.[35]

As opposed to its analysis for the in-school seizure of the child for the interview, the *Greene* court employed a balancing test between the reasonableness of the seizure and the safety of a child or others when analyzing whether qualified immunity existed for the government agents. After a lengthy analysis, the court concluded the law enforcement officer and child protection worker in this case were entitled to qualified immunity based in part upon the difficult task child abuse investigators face in balancing parental rights and the rights of children to be free from abuse.[36]

No Qualified Immunity if CPS Workers Fabricate Evidence

Sarah asserts that the child protection worker intentionally misrepresented the facts to the court, resulting in the removal of the children from her care.[37] Here, the court held that no quasi-judicial immunity exists for social workers who fabricate evidence to secure an order to remove children from their homes.[38] Further, the court concluded that no immunity exists for social workers during their investigative activities, although child protection workers do have immunity when factual evidence is presented in dependency proceedings and post-adjudication custody decisions.[39]

The *Greene* court had no opportunity to evaluate the evidence presented at the protective custody hearing because the lower court did not keep a record of the hearing. As a result, the conflicting accounts of what transpired during conversations between the child protection worker and Sarah were construed in the light most favorable to Sarah.[40] Under these circumstances, the court held the child protection worker was not entitled to qualified immunity.[41]

Exclusion of Mother from CAC Medical Examination May Be a Violation of Fourteenth Amendment Rights for Mother and Children

Sarah additionally claimed her Fourteenth Amendment substantive due process rights were violated when she was excluded from the medical examinations held at the CAC on the recommendation of the CPS worker because the worker claimed Sarah was not protective of her children.[42]

The court in *Greene* held that Sarah's exclusion from the medical examinations conducted at the CAC violated the mother's right to be present for her children, as well as the children' rights to have the support of their mother, during a "potentially traumatic event."[43] This liberty interest upheld by the *Greene* court did allow for parental exclusion from the examination room if there was some "valid reason" for restricting the parent to a nearby waiting area.[44] The court indicates there is a clear precedent establishing a parent's right to be present at the evaluation site, and should not be excluded unless there is "parental consent, some legitimate basis for exclusion, or an emergency requiring immediate medical attention."[45] In a footnote, the court distinguishes a parent's right to be present during a medical examination from the permissible exclusion of a parent from a CPS interview regarding potential child abuse based on Oregon case law and administrative rules if the parent could complicate the interview process.[46]

Case Analysis

The *Greene* court outlined, or at least left open, several possible exceptions to its holding regarding the constitutionality of investigative child abuse interviews. These possible exceptions are delineated below.

1. "Special Needs" Doctrine

"Special needs" doctrines, the *Greene* court states, are inapplicable when law enforcement investigators are involved or when administrative programs such as child protection agencies gather evidence for use in "subsequent criminal proceedings."[47] Because virtually all states have some statutes on investigations conducted by multidisciplinary teams[48] to coordinate investigations of child abuse and reduce trauma to children and duplication of services, most serious physical abuse and virtually all sexual abuse cases would fall under the more rigorous requirement for probable cause.

The *Greene* court did not address the question of whether the "special needs" doctrine would apply to a safety assessment conducted in a school by a CPS worker with no law enforcement involvement or purpose.[49] Ostensibly, this interaction would be an activity of an administrative program to assess the health, safety and welfare of a child. Because this initial assessment with a child would be time-limited, and function only to ensure the immediate safety of the child, this activity would not run afoul of the *Greene* court's decision excluding law enforcement from becoming "entangled" with administrative child protection activities.[50] Once the CPS worker establishes the immediate safety of the child in the school setting, time would allow the CPS worker to either obtain permission from the non-offending caregiver for an interview and/or medical examination at a local child-friendly facility, or enable the CPS worker to obtain a court order or the law enforcement officer to obtain a warrant from the courts, based on probable cause, to "seize" the child to conduct a multidisciplinary assessment.

2. Exigent Circumstances

If a CPS worker determines a child is at imminent risk of harm, exceptions to the Fourth Amendment requirements under exigent circumstances apply. In these cases, the child may be taken into emergency custody for an interview about possible child abuse. In an unpublished Ninth Circuit case delivered after *Greene*, the court reiterated that exigent circumstances may relieve child protection workers of the need for judicial authorization to "remove a child from the custody of its parent … if the information they possess at the time of the seizure is such as provides reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury."[51]

3. Alternative/Differential Response to Child Maltreatment

Extrapolating from the *Greene* court's holding, if CPS takes the route of an alternative or differential response to a report of suspected abuse, also known as a family assessment,[52] as opposed to a traditional family investigation, the *Greene* court's analysis appears to suggest in these circumstances that the "special needs" doctrine is sufficient due to the administrative nature of government involvement as well as the lack of investigative "entanglement" between law enforcement and child protection. However, in making this determination, courts may factor the length of time spent with the child in an in-school interview as well as the immediacy of the need to speak with the child without parental permission or a court order.

Many states permit a case that has been referred into an alternative response system to be switched to a traditional family investigation should the circumstances rise to a moderate- or high-risk situation.[53] In these circumstances, the appellate court in *Greene* does not restrict the sharing of information obtained by a child protection worker with law enforcement investigators should the need arise after a child protection worker begins an independent investigation. However, an administrative procedure conducted by child protection workers cannot serve as a cover for a law enforcement investigation that may culminate in criminal prosecution. The *Greene* court held that once a multidisciplinary investigation of child abuse is initiated, including both law enforcement officials and child protection workers, both agency representatives are bound by the Fourth Amendment requirements for probable cause to conduct an in-school interview of an alleged child victim.[54] Thus, interviews conducted by multidisciplinary members for possible subsequent criminal investigation and prosecution require a warrant, a court order, exigent circumstances or parental consent.[55]

4. Consent of Child

The *Greene* court did not take into consideration the child's ability or willingness to consent to an interview with the child protection worker or the law enforcement officer; presumably because S.G. was merely nine years old. Professionals are guarded against too narrow an interpretation of this decision, thereby limiting their ability to interview children with the child's consent, particularly in cases of alleged adolescent victims. Instead, voluntary interviews with juveniles may be guided by the "totality-of-the-circumstances approach" as described by the U.S. Supreme Court in *Fare v. Michael C.* and its progeny.[56] While this approach was utilized to evaluate a juvenile's competency to waive his constitutional right to counsel, the same factors may arguably be applied to discern whether a youth is able to waive his Fourth Amendment rights regarding seizure for an interview regarding possible victimization. The U.S. Supreme Court included factors such as the "juvenile's age, experience, education, background, and intelligence, and … the capacity to understand … and … waiv[e] those [constitutional] rights" in this mandatory totality approach.[57]

5. Qualified Immunity for Government Agents Acting Prior to Greene

The *Greene* court effectively issued a warning to investigative professionals that "special needs" exceptions to probable cause requirements could not be broadly construed if a seizure takes place on public property.[58] However, a government official who reasonably believed his or her actions to seize a child were justified to protect that child is entitled to qualified immunity, even if the official violated a constitutional right, if the official's actions took place before *Greene* was decided.[59]

The *Greene* court clarified "the contours of the [Fourth and Fourteenth Amendment familial] rights"[60] and clearly established that a seizure of a child by government officials requires parental consent, exigent circumstances, a court order or a warrant.[61] Therefore, this standard is now sufficiently clear "so that a reasonable official [who seizes a child in the absence of these constitutional requirements] would understand what he is doing violates that right."[62]

Hereinafter, it is likely that courts will find child protection workers and law enforcement officers who, after *Greene* was decided, take action to remove children from parental care or seize children for investigative interviews in the absence of parental consent, exigent circumstances, a court order or a warrant, are not entitled to qualified immunity. Furthermore, this case effectively puts government agents on notice that purely administrative searches and seizures are to be limited in time and scope, and violations could also result in civil liability.

Recommendations and Conclusion

The fact-specific case of *Greene v. Camreta* was decided in the U.S. Court of Appeals for the Ninth Circuit, and is therefore binding on courts within in that jurisdiction.[63] However, it is critical for professionals in other jurisdictions to be aware of this decision because it could be used by defense attorneys as a persuasive precedent elsewhere under a similar fact-pattern. However, the *Greene* court very clearly identifies multiple issues that could have been decided differently had the facts of the case been different. Child abuse investigators and multidisciplinary teams are encouraged to consult with their local prosecutors and civil child protection attorneys for additional implications and recommendations for child abuse interventions in their communities.

Based on the previously outlined analysis of this case, several recommendations can be made for child protection professionals in the field:

1) Child protection investigators are advised to limit initial safety assessments of child abuse allegations in public schools to brief interactions with alleged child victims.
2) Joint in-school interviews conducted by child protection workers and law enforcement investigators should be conducted only when access to a children's advocacy center is not available, and only under the authority of parental permission, a court order, a warrant or exigent circumstances.
3) Child protection workers who individually conduct in-school interviews must ensure their interactions with the child are purely administrative in nature, limited in time and scope, and not conducted under the guise of evading constitutional requirements for reasonable search and seizure.
4) Interviews conducted with alleged child victims of abuse should be electronically recorded to ensure transparency in governmental interactions with children, and to demonstrate, if necessary, a lack of coercive or intimidating techniques.[64]
5) Child protection workers and child advocacy center staff are advised to restrict a non-offending parent from attending a non-emergency medical examination of an alleged child victim only with parental consent, a court order or other clearly defined "legitimate" reasons.

The scales of justice require a careful balancing of two incredibly heavy burdens. In *Greene*, the court appears to have placed its thumb on the side of familial rights. Working together, child protection teams can mediate *Greene's* impact and protect both the rights and the welfare of the children and families they serve.

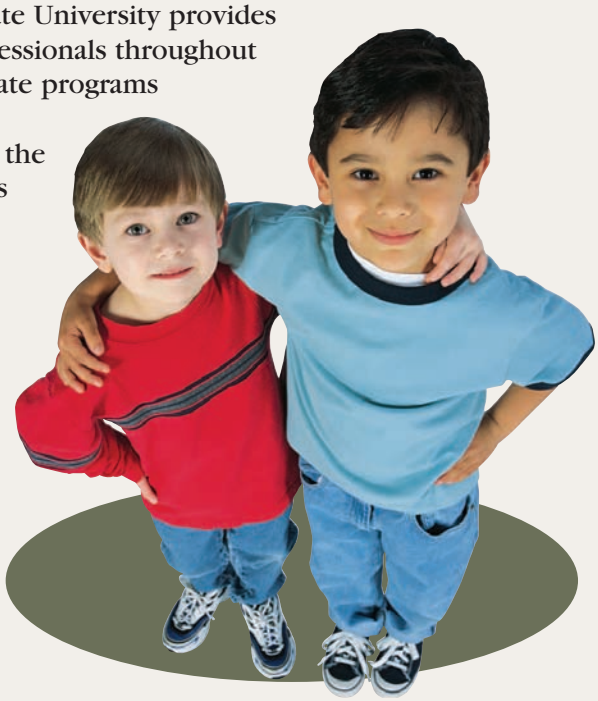
End Notes

[1] Staff Attorney, National Child Protection Training Center, located at Winona State University, Winona, MN. The author thanks Victor Vieth for his tireless support and helpful comments on this article.
[2] *Greene v. Camreta*, 588 F.3d 1011 (9th Cir. Or. 2009).
[3] *Id*, at 1016.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id*, at 1017.
[8] *Id.*
[9] *Id*, at 1018.
[10] *Id.*
[11] *Id*, at 1019, n. 2.
[12] *Id*, at 1019.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] Numerous research studies indicate it is not uncommon to have an absence of medical evidence in sexual abuse cases. *See e.g.*, Astrid Heger, Lynne Ticson, Oralia Velasquez, Raphael Bernie, *Children Referred for Possible Sexual Abuse: Medical Findings in 2384 Children,* 26 CHILD ABUSE & NEGLECT 645 (2002) (finding no medical evidence of abuse in approximately ninety-six percent of child sexual abuse cases); Jim Anderst, Nancy Kellogg & Inkyung Jung, *Reports of Repetitive Penile-Genital Penetration Often Have No Definitive Evidence of Penetration,* 124 PEDIATRICS e403 (2009) (finding no definitive evidence of penetration in eighty-seven percent of patients with a history of ten or more experiences of sexual penetration); Abbey B. Berenson, Mariam R. Chacko, Constance M. Wiemann, Clifford O. Mishaw, William N. Friedrich, & James J. Grady, *A Case-Control Study of Anatomic Changes Resulting from Sexual Abuse,* 182(4) AM. J. OBSTETRICS & GYNECOLOGY 820 (2000) (finding few significant anatomical differences between sexually abused and nonabused children); Joyce A. Adams, Katherine Harper, Sandra Knudson, & Juliette Revilla, *Examination Findings in Legally Confirmed Child Sexual Abuse: It's Normal to be Normal,* 94(3) PEDIATRICS 310 (1994) (concluding the majority of legally-confirmed cases of sexual abuse had normal or non-specific findings from medical examinations of abused children's genitalia).
[18] *Greene,* 588 F.3d at 1019. It is not uncommon for children to fail to repeat or even retract prior statements of abuse when faced with possible negative circumstances, including: lack of support from the nonoffending caregiver; removal from the family home; loyalty to and dependence on the perpetrator; or family pressure to recant previously-disclosed abuse. *See, e.g.,* Lindsay C. Malloy, Thomas D. Lyon & Jodi A. Quas, *Filial Dependency and Recantation of Child Sexual Abuse Allegations,* 46(2) J. AM. ACAD. CHILD & ADOLESC. PSYCHIATRY 162 (2007); Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome,* 7 CHILD ABUSE & NEGLECT 177 (1983).
[19] *Greene*, 588 F.3d at 1020. Footnote 3 explains that under an *Alford* plea, a defendant "maintains his innocence but admits that sufficient evidence exists from which a judge or jury could find him guilty." *Id.*
[20] *Greene*, 588 F.3d at 1020. Exigent circumstances are "circumstances that are of such urgency as to justify a warrantless entry, search, or seizure by police when a warrant would ordinarily be required." Dictionary.com, "exigent circumstances," in *Merriam-Webster's Dictionary of Law.* Merriam-Webster, Inc., www.dictionary.reference.com (last visited February 10, 2010).

[21] *Greene*, 588 F.3d at 1020.
[22] *Id*, at 1020-21.
[23] *Id*, at 1030.
[24] *Id*, at 1023.
[25] *Id*, at 1024 (internal citations omitted).
[26] *Id*.
[27] *Id*, at 1025.
[28] *Id*, at 1026.
[29] *Id*.
[30] *See Greene*, 588 F.3d at 1026, n. 10.
[31] *See Greene*, 588 F.3d at 1026, n. 11.
[32] *Id*, at 1030, n. 17.
[33] *Id*.
[34] *Id*, at 1032.
[35] *Id*.
[36] *Id*, at 1033.
[37] *Id*.
[38] *Id*, at 1034.
[39] *Id*.
[40] *Id*, at 1035.
[41] *Id*, at 1036.
[42] *Id*, at 1036-37. Children's advocacy centers have a history of excluding alleged offenders from their premises to ensure the children receiving services in their facilities feel safe and comfortable in disclosing any abuse they may have suffered. In fact, the National Children's Alliance, the national accreditation agency for children's advocacy centers, requires that CACs ensure its space is psychologically safe for children. NATIONAL CHILDREN'S ALLIANCE, STANDARDS FOR ACCREDITED MEMBERS, REVISED 38 (2008). This philosophy is derived from the abundance of research that indicates the support of the child by the nonoffending mother and the mother's belief in the child's claims that abuse occurred are critical to the child's safety and recovery in the future. *See, e.g.*, Lindsay C. Malloy & Thomas D. Lyon, *Caregiver Support and Child Sexual Abuse: Why Does It Matter?*, 15(4) J. CHILD SEXUAL ABUSE 97, 98-99 (2006).
[43] *Greene*, 588 F.3d at 1036.
[44] *Id*, at 1037.
[45] *Id* (internal citations omitted).
[46] *Id*, at 1037, n. 23.
[47] *Id*, at 1027.
[48] *See, e.g.*, NDAA'S AMERICAN PROSECUTORS RESEARCH INSTITUTE, MULTIDISCIPLINARY/MULTI-AGENCY CHILD PROTECTION TEAMS STATUTES, http://www.ndaa.org/pdf/ncpca_statute_multidisciplinary_nov_08.pdf.
[49] *Greene*, 588 F.3d at 1027, n. 12.
[50] *Id*, at 1027.
[51] *Barragan v. Landry*, No. 08-16790, 2010 U.S. App. LEXIS 483, at *5 (9th Cir. Nev. Jan. 8, 2010) (citing *Wallis v. Spencer*, 202 F.3d 1126, 1138 (9th Cir. 2000)).
[52] A differential response may be utilized in low- to moderate-risk situations, and seeks to evaluate the family's strengths and needs in a non-confrontational manner. Frequently, a differential response does not result in a maltreatment finding, and often seeks to implement voluntary services to reduce state intervention. *See* CHILD WELFARE INFORMATION GATEWAY, DIFFERENTIAL RESPONSE TO REPORTS OF CHILD ABUSE AND NEGLECT (2008). *Available at* http://www.childwelfare.gov/pubs/issue_briefs/differential_response; *See also* Minn. Stat. § 626.556, subd. 2(a) (2009) (explaining that "'Family assessment' means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.")
[53] *See, e.g.*, Minn. Stat. § 626.556, subd. 10(a)(2).
[54] *Greene*, 588 F.3d at 1030.
[55] *Id*.
[56] *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).
[57] *Id*.
[58] *Greene*, 588 F.3d at 1033.
[59] *See Barragan v. Landry*, No. 08-16790, 2010 U.S. App. LEXIS 483 (9th Cir. Nev. Jan. 8, 2010).
[60] *Id*, at *4.
[61] *Greene*, 588 F.3d at 1030.
[62] *Barragan*, 2010 U.S. App. LEXIS 483, at *3.
[63] The U.S. Court of Appeals for the Ninth Circuit is a federal court with appellate jurisdiction over the following district courts: District of Alaska, District of Arizona, Central District of California, Northern District of California, Eastern District of California, Southern District of California, District of Hawaii, District of Idaho, District of Montana, District of Nevada, District of Oregon, Eastern District of Washington, Western District of Washington, Territory of Guam, and the U.S. District for the Northern Mariana Islands.
[64] The *Greene* court analyzed the circumstances of its case in the absence of several important pieces of evidence, and had to rely on conflicting verbal testimony of the plaintiffs and defendants in an adversarial setting. *See Greene*, 588 F.3d at 1017. For example, the court was not offered the opportunity to evaluate the child's interactions with the child protection worker and the law enforcement investigator during the interview itself, nor was it able to assess for itself whether the child protection worker and law enforcement investigator were, in fact, coercive or intimidating in their interactions with the child. This important piece of information could have been settled to the advantage of the government had its agents recorded their interview with S.G. *See, e.g., Fare v. Michael C.*, 442 U.S. 707 (1979) (finding the transcripts of the juvenile's interrogation by law enforcement officers demonstrated the interrogation was not intimidating, coercive or threatening). For more information on recording interviews, *see* Amy Russell, *Electronic Recordings of Investigative Child Abuse Interviews*, 1(8) CENTERPIECE (2009), http://www.ncptc.org/vertical/Sites/%7B8634A6E1-FAD2-4381-9C0D-5DC7E93C9410%7D/uploads/%7B0B9329AD-C748-4012-8954-C3E8587A9865%7D.PDF.

For More Information

The National Child Protection Training Center (NCPTC) at Winona State University provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATAC® forensic interviewing protocol. For further information, contact NCPTC at **507-457-2890** or visit our website at **www.ncptc.org.** For more information about NAPSAC, call **651-714-4673** or visit our website at **www.napsac.us.**



WINONA STATE UNIVERSITY

N·A·P·S·A·C®
NATIONAL ASSOCIATION TO PREVENT SEXUAL ABUSE OF CHILDREN

N·C·P·T·C
NATIONAL CHILD PROTECTION TRAINING CENTER