

Section 4

When Is Consent Not Consent?

If a police officer says, "If you don't let us in your home we will break down your door."

A parent who then opens the door has not given free and voluntary consent.

If a social worker says, "If you don't let me in the home I will take your children away."

A parent who then opens the door has not given free and voluntary consent.

If a social worker says, "I will get a warrant from the judge or I will call the police if you do not let me in."

Negate consent. Any type of communication, which conveys the idea to the parent that they have no realistic alternative, but to allow entry negates any claim that the entry was lawfully gained through the channel of consent. DCF's policy clearly tells the social worker that they can threaten parents even if the parents assert their 4th Amendment rights.

Probable Cause & Exigent Circumstances

The Fourth Amendment does not put a barrier in the way of a social worker who has reliable evidence that a child is in imminent danger. For example, if a hot line call comes in and says, "My name is Mildred Smith, here is my address and phone number. I was visiting my grandchildren this morning and I discovered that one of my grandchildren, Johnny, age 5, is being locked in his bedroom without food for days at a time, and he looked pale and weak to me." The social worker certainly has evidence of exigent circumstances and is only one step away from having probable cause.

Since the report has been received over the telephone, it is possible that the tipster is an imposter and not the child's grandmother. A quick verification of the relationship can be made in a variety of ways and once verified, the informant, would satisfy the legal test of reliability, which is necessary to establish probable cause.

Anonymous phone calls fail the second part of the two-prong requirement of "exigent circumstances" and "probable cause" for a warrant or order. Anonymous phone calls cannot stand the test of probable cause as defined within the 14th Amendments and would fail in court on appeal. The social worker(s) would lose their qualified immunity for their deprivation of rights and can be sued. Many social workers and Child Protection Services (CPS) lose their cases in court because their entry into homes was in violation of the parent's civil rights because the evidence in their possession did not satisfy the standard of probable cause.

It is not enough to have information that the children are in some form of serious danger. The evidence must also pass a test of reliability that our justice system calls probable cause. In *H.R. v. State Department of Human Resources*, 612 So.2d 477 (Ala. Ct. App. 1992); the court held that an anonymous tip standing alone never amounts to probable cause. The Calabretta court held the same thing, as have numerous other decisions, which have faced the issue directly. The Fourth Amendment itself spells out the evidence required for a warrant or entry order. No warrant shall issue but on probable cause. The United States Supreme Court has held that courts may not use a different standard other than probable cause for the issuance of such orders. *Griffin v. Wisconsin*, 483 U.S. 868 (1987). If a court issues a warrant based on an uncorroborated anonymous tip, the warrant will not survive a judicial challenge in the higher courts. Anonymous tips are never probable cause.

Children are not well served if they are subjected to investigations base on false allegations. Little children can be traumatized by investigations in ways that are unintended by the social worker. However, to a small child all they know is that a strange adult is taking off their clothing while their mother is sobbing in the next room in the presence of an armed police officer.

This does not seem to a child to be a proper invasion of their person - quite different, for example, from an examination by a doctor when their mother is present and cooperating. The misuse of anonymous tips is well known. Personal vendettas, neighborhood squabbles, disputes on the Little League field, child custody battles, revenge, nousey individuals who are attempting to impose their views on others are turned into maliciously false allegations breathed into a hotline.

"Decency, security and liberty alike demand that government officials shall be subject to the rules of conduct that are commands to the citizen. In a government of laws, existence of government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the whole people by example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for the law. It invites every man to become a law unto himself. It invites anarchy."

U.S. v. Olmstead, 277 U.S. 438 (1928),
Justice Brandeis

We the people of the United States are ruled by law, not by feelings. If the courts allow states and their agencies to rule by feelings and not law, we become a lawless nation making decisions based on subjectivity and objectivity. CPS has been allowed to bastardize and emasculate the Constitution and the rights of its citizens to be governed by the rule of men rather than the rule of law. Citizens should find it alarming when governmental officials are allowed to have unfettered access to their homes. It is also very dangerous to allow CPS to violate the confrontation clause in the 6th Amendment where CPS hides and conceals an accuser/witness making anonymous reports. It allows those individuals to file fraudulent reports with CPS aiding and abetting in this violation of a fundamental right. All citizens have the right to know their accuser/witness in order to preserve the sanctity of the rule of law and the Constitution as the supreme law of the land.