THE KNOCK AND ANNOUNCE RULE: "KNOCK, KNOCK, KNOCKING ON THE SUSPECT'S DOOR"

John P. Besselman
Senior Legal Instructor

THE HISTORY

It is a time-honored principle of law that law enforcement officers must provide notice to the occupants of a premises of which a warrant is about to be served. In *Semayne's Case*, 5 Co. Rep. 91a, 91b 77 Eng.Rep. 194, 195 (K.B.1603)(quoted in *Wilson v. Arkansas*),[1] the court states:

> But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors . . ., for the law without a default in the owner abhors the destruction or breaking of any house (which is for the habitation and safety of man) by which great damage and inconvenience might ensue to the party, when no default is in him; for perhaps he did not know of the process, of which, if he had notice, it is to be presumed that he would obey it.

Some historians believe this law may date back to as early at 1275, for even *Semayne's Case* mentions that it is merely affirming common law. *Wilson*, at footnote 2.

[1] 514 U.S. 927 (1995)

Several reasons exist for the "knock and announce" principle. As set out in *United States v. Nolan*,[2] the rule "reduces the likelihood of injury to police officers, who might be mistaken, upon an unannounced intrusion into a home, for someone with no right to be there." The rule reduces the risk of needless damage to private property. It also incorporates the respect for the individual's right of privacy, which is a consideration even when making an entry to search or arrest.

THE RULE

How is this ancient legal standard applicable to the modern law enforcement officer? Title 18 U.S.C. § 3109 states:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

Law enforcement officers must identify themselves and announce their purpose before using force to enter a dwelling with a search warrant. In *Wilson v. Arkansas*, the Supreme Court held that the manner in which law enforcement officers enter a dwelling is subject to review by a court to decide whether the officers acted reasonably under the Fourth Amendment. If the officers mismanage the entry, even with a validly issued warrant, a reviewing court can suppress the fruit of the search.[3]

[2] 718 F.2d 589, 596 (3d Cir.1983)
[3] *U.S. v. Nolan*, 718 F.2d 589 (3rd Cir. 1983)

This is especially unsettling if, after months of investigation, the application for the warrant was written, reviewed and approved, and a judicial officer concluded that probable cause existed and issued a warrant. The difficult legal hurdles seem to have been cleared by the officer.

The "knock and announce" rule requires the officers to announce their presence and authority. The officers need not actually knock on the target dwelling's door for compliance nor must they state any "magic words." A reviewing court will be interested in whether the occupants have been adequately alerted to the officers' presence and authority and been given the opportunity to comply. The use of a bullhorn or other appropriate means is acceptable.[4]

Once the officers have notified the occupants of their intentions, they must allow those inside a reasonable chance to act lawfully.[5] The time required varies from case to case. Many courts have permitted officers to enter after waiting more than five seconds.[6] Likewise, many courts have found entry at five seconds or less to be unreasonable.[7] However, no such "bright line" five second rule exists.

Each case must turn on its own facts. Certain instances will require more time. For instance, officers serving a warrant in the late evening or early morning hours must take into account that they must awake the occupants, who must gather their senses, and perhaps dress themselves before responding. In other circumstances, such as when there is a barking dog, the law may require less time before the officers force entry into the dwelling.[8]

Once the occupants have rejected the officers' request to enter the dwelling peacefully, force may be used. Refused admittance need not be an affirmative refusal. Officers can infer refusal from circumstances such as the failure of occupants to respond,[9] the sound of evidence being destroyed,[10] or of fleeing suspects.[11]

THE EXCEPTIONS

The Federal Rules of Criminal Procedure have no provisions for prospectively authorizing "no knock" warrants. This does not mean that officers must always give clear warning before entering a dwelling with a search warrant. The *Wilson* Court stated that not every law enforcement entry into a dwelling must be preceded by "knocking and announcing." The Supreme Court even hinted that if officers provided facts to the issuing magistrate at the time of their application, the magistrate could consider such facts in permitting a "no knock" entry. See *Richards v. Wisconsin*, at footnote 7.[12]

Generally, there are three recognized circumstances in which officers are justified in making a "no

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[4] *U.S. v. Spike*, 158 F.3d 913 (6th Cir. 1998)
[5] *U.S. v. Dice*, 200 F.3d 978 (6th Cir. 2000)
[6] *U.S. v. Markling*, 7 F.3d 1309 (7th Cir. 1993); *U.S. v. Spriggs*, 996 F.2d 320 (D.C. Cir. 1993); *U.S. v. Ramos*, 923 F.2d 1346 (9th Cir. 1991); *U.S. v. Myers*, 106 F.3d 936 (10th Cir. 1997); *U.S. v. Knapp*, 1 F.3d 1026 (10th Cir. 1993); *U.S. v. Gatewood*, 60 F.3d 248 (6th Cir. 1995)
[7] *U.S. v. Moore*, 91 F.3d 96 (10th Cir. 1996); *U.S. v. Lucht*, 18 F.3d 541 (8th Cir. 1994); *U.S. v. Marts*, 986 F.2d 1216 (8th Cir. 1993)
[8] *U.S. v. Wood*, 879 F.2d 927 (D.C. Cir. 1989)
[9] *U.S. v. Espinoza*, 105 F.Supp. 2d 1015 (E.D. Wisc. 2000)
[10] *U.S. v. Sagaribay, 982 F.2d 906 (5th Cir. 1993)*
[11] *U.S. v. Anderson*, 39 F.3d 331 (D.C. Cir. 1994)
[12] 520 U.S. 385 (1997)

knock" entry with a warrant. The *Wilson* Court provided two examples that excuse the "knock and announce" requirement. If officers have reason to suspect threats of violence or that the evidence sought will be destroyed, they may enter a dwelling without providing notice. However, the Court left to lower courts circumstances when it is reasonable for officers to enter a dwelling without first asking for permission. A third exception, that persons within the dwelling already know of the officers' authority and presence, has been recognized by several circuit courts.[13]

In *Richards*, the Supreme Court revisited this issue. The *Richards* decision struck down a Wisconsin statute that allowed officers to use force to gain entry without first announcing their intentions if the search warrant was issued to locate narcotics. The Supreme Court found this blanket statute inconsistent with the Fourth Amendment. However, the Supreme Court stated that if officers have a reasonable suspicion their "knock and announce" would be dangerous, futile or inhibit the effective investigation of the crime, such notice was not required.

Officers' fear of armed occupants has generated many cases in which the reviewing court found it reasonable to dispense with the "knock and announce" requirements. In *United States v. Ramirez*,[14] the Supreme Court found it reasonable for officers to make a "no knock" entry when they had reason to believe that weapons were stockpiled in the target dwelling and they were seeking a dangerous escapee.

Courts are not inclined, however, to allow a "no knock" entry based simply on the fact that officers believe weapons are in the target dwelling. Other factors must also be present. In *United States v. Fields*,[15] the court found that when occupants sounded a "5-0" alarm, combined with Fields' known potential for violence and the nature of a narcotics bagging operation, it was reasonable for the officers to make a no-knock entry. The court held that compliance with the "knock and announce" requirement would be futile (because the occupants already knew the police were there), potentially dangerous (the defendant might arm himself), and might lead to the destruction of evidence (the defendants could easily dispose of the drugs).

THE RUSE

Many officers have used ruses or tricks to gain entry. Several courts have held that the use of a ruse does not invoke Title 18 U.S.C. § 3109 if no breaking occurs.[16] For this reason, officers should not employ ruses that might be discovered before entry is secured. Other courts have examined how a reasonable person would view the ruse. Ruses that would cause fear in the minds of the occupants (gas leak detected in the house) are designed to fail.[17] Likewise, ruses that have the effect of convincing the occupant that he or she has no choice but to invite the undercover officer will fail. Officers should not present themselves as agents of other government agencies for the purpose of gaining access.[18] The court in *United States v, Bosse* struck down consent

[13] *U.S. v. Bates*, 84 F.3d 790 (6th Cir. 1996)
[14] 523 U.S. 65 (1998)
[15] 113 F.3d 313 (2nd Cir. 1997)
[16] *U.S. v. DeFeis*, 530 F.2d 14 (5th Cir. 1976); *U.S. v. Contreras-Ceballos*, 999 F.2d 432 (9th Cir. 1993); *U.S. v. Stevens*, 38 F.3d 167 (5th Cir. 1994)
[17] *People v. Jefferson*, 43 A.D.2d 112 (1973); *U.S. v. Giraldo*, 743 F.Supp. 152 (E.D.N.Y. 1990)
[18] *U.S. v. Bosse*, 898 F.2d 113 (9th Cir. 1990)

obtained by a federal officer posing as a state license inspector.

Successful ruses are those in which the undercover officer presents a service to the unsuspecting occupant. For instance, calls through the door of offers of room service, maid service, or to deliver flowers are acceptable. The use of subterfuge in law enforcement has long been recognized as a vital tool in the investigation of crime. Ruses that do not use force, leave little option for the occupant but to comply, or have only a small chance to be discovered before access is gained are compatible with Title 18 U.S.C. § 3109 and the Fourth Amendment.