

## Knock-Knock... Who's There?

The Knock-Notice rule has garnered much attention lately. Whereas many believe that giving occupants notice and time to come to the door lessens the likelihood of violence, still others may point to situations where the occupants used that time to arm themselves, increasing danger for both officers and occupants. Regardless, the requirement to knock, give notice of authority and purpose and demand entry before entering someone's home has been codified both federally and with the states. In California, Penal Code section 844 and 1531 require entry only after an officer has demanded admittance and explained the purpose for which admittance is desired. Federally, 18 U.S.C.A. § 3109 allows an officer entry only after giving notice of his authority and purpose and being refused admittance.

Is it required by the 4<sup>th</sup> Amendment? At the time of the framing of the Constitution, the common law of search and seizure recognized an officer's authority to break open the doors of a dwelling, but generally indicated that he first ought to announce his presence and authority. Ultimately, this common-law "knock and announce" principle became part of the reasonableness inquiry under the Fourth Amendment. Wilson v. Arkansas 514 U.S. 927, 929, 115 S.Ct. 1914, 1915. The purpose of this knock-notice rule is to protect the privacy of the occupant, to safeguard innocent persons on the premises; to prevent violent confrontations arising from unannounced entries; and to protect the police themselves from injuries caused by a surprised or fearful householder. (People v. King (1971) 5 Cal.3d 458, 464, fn. 3, 96 Cal.Rptr. 464, 487 P.2d 1032.) People v. Murphy, 37 Cal. 4th 490, 496, 123 P.3d 155, 158 (2005).

Like other aspects of the 4<sup>th</sup> Amendment, there are exceptions to the Knock-Notice rule. Further law enforcement factors exist that must be balanced against the reasons for knock-notice. The threat of physical harm to police, the fact that an officer is pursuing a recently escaped arrestee, and the existence of reason to believe that evidence would likely be destroyed if advance notice were given may establish the reasonableness of an unannounced entry. Wilson at 927. For example, in one case, an officer acting with reasonable cause to make a narcotics arrest, kicked down defendant's door after knocking and hearing retreating footsteps. Although the officer failed to demand admittance or explain his purpose, the court upheld the seizure of narcotics found within, noting that full compliance with knock-notice requirements could delay an officer's entry and thereby permit the destruction of evidence. Murphy at 496-97. More recent cases have phrased the test so that strict compliance with the knock-notice rule is excused if the specific facts known to the officer before his entry are sufficient to support his good faith belief that compliance will increase his peril, frustrate the arrest, *or* permit the destruction of evidence. Although this may seem applicable to all drug cases, that knocking should be excused so drugs don't get flushed, there is no per se justification for a no-knock warrant. Murphy at 497. Officers must be able to articulate specific facts for that specific case.

I've heard the news lately say that California does not allow no-Knock warrants, but that appears not to be the case. In fact, it remains ambiguous in California. In 1973, the California Supreme Court in Parsley v. Superior Court, ruled that a police officer cannot get prior judicial authorization for a no-knock warrant because the determination should be made at the time of entry. Parsley, 9 Cal.3d 934. That case has not been overturned, however, the United States Supreme Court suggests that judicial authorization is reasonable. In 1997, the United States Supreme Court held that it is entirely reasonable for judges to review circumstances put forth by the affiant justifying the reasonableness of a no-Knock warrant. Richards v. Wisconsin (1997) 520 U.S. 385, 393. If you can articulate facts showing sufficient cause to believe that notice will

result in the occupant arming himself, becoming violent, or destroying evidence, a court can authorize officers to enter without giving notice. Always better to include the circumstances, if known to you at the time, in the warrant and seek authorization. However, you should always re-evaluate those circumstances before entry to make sure those circumstances have not been eliminated.

*What does this mean for you?* Your ability to articulate facts is very important. Most courts will recognize that these situations require quick thought and quick actions. In some instances, waiting 5 seconds before kicking the door may be reasonable and in others it will not. Either way, currently, violation of the Knock-Notice rule when executing a search warrant does not result in the suppression and exclusion of the evidence at trial.