Knock-Notice

Before the Sheriff may break the party's house, he ought to signify the cause of his coming, and make request to open doors. Semayne's Case (1604)[1]

The knock-notice rule has been irritating law enforcement officers for over 400 years. And their complaint is well-founded: If officers have a legal right to enter a house to execute a search warrant or arrest someone, why must they engage in what is arguably a "meaningless formality?"[2] And a dangerous one, too. As the Court of Appeal observed, "[T]he delay caused by [knock-notice] might give a forewarned occupant exactly the opportunity necessary to arm himself, causing injury to officers and bystanders."[3] Knock-notice is also notorious for giving suspects an opportunity to destroy evidence, especially drugs.

But there is another side to the argument; specifically, knock-notice may help prevent a violent response by the occupants. As the California Supreme Court pointed out, "[F]ew actions are as likely to evoke violent response from a householder as unannounced entry by a person whose identity and purpose are unknown to the householder."[4] Thus, the Court of Appeal noted that while "[o]ne particular officer may be willing to risk the chance of sudden violence," the rule "is also directed toward the protection of his fellow officers."[5]

So it appears that the people on both sides of the door have valid concerns and vital interests at stake. How can they be resolved? In the past, many courts ignored the problem and simply ruled that knock-notice was strictly required under the Fourth Amendment.[6] In 1995, however, the Supreme Court rejected this idea, concluding that the Fourth Amendment requires only that officers enter in a "reasonable" manner, which may or may not require an announcement.[7] Thus, in addition to knock-notice, the reasonableness of a forcible entry might also depend on the manner in which officers entered, the time of day or night they entered, whether they damaged the premises, and whether they saw or heard anything before entering that reasonably indicated that full compliance with the knock-notice rule would be counterproductive. Other circumstances include the seriousness of the crime under investigation, the nature and destructibility of the evidence being sought, how the occupants responded to searches and police encounters in the past, the size and layout of the premises, and the existence of any extraordinary security measures.

We will discuss these circumstances later in this article, plus the controversial rule that officers may not enter unless they are refused entry. But first, it is necessary to explain what officers must do to comply with the knock-notice procedure.

Knock-Notice Procedure

If knock-notice is required, officers may comply fully or substantially with the procedure we will now discuss. Substantial compliance occurs when officers take action that achieves the objective of the rule but does not constitute full compliance.[8]

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[1] Court of King's Bench (1604) 5 Coke Rep 91. Paraphrased.
[2] See *People v. Gonzalez* (1989) 211 Cal.App.3d 1043, 1049; *People v. Tacy* (1987) 195 Cal.App.3d 1402, 1421.
[3] *People v. Gonzalez* (1989) 211 Cal.App.3d 1043, 1049.
[4] *Greven v. Superior Court* (1969) 71 Cal.2d 287, 293.
[5] *People v. Webb* (1973) Cal.App.3d 460, 466.
[6] See, for example, *People v. Abdon* (1972) 30 Cal.App.3d 972, 977.
[7] See *Wilson v. Arkansas* (1995) 514 U.S. 927, 934; *People v. Mays* (1998) 67 Cal.App.4th 969, 973.
[8] See *People v. Peterson* (1973) 9 Cal.3d 717, 723. **NOTE**: For some reason, Penal Code §§ 844 and 1531 specify somewhat different procedures. Specifically, if the objective was to make an arrest, officers must demand admittance but they need not wait for a refusal. Because the Supreme Court has ruled that the constitutionality of forced entries no longer depends on technical compliance but on overall reasonableness, the fact that officers demanded or failed to demand admittance and the fact that they waited or failed to wait for a refusal would be relevant but not necessarily mandatory.

(1) **KNOCK**: Although it is called the "knock-notice" rule, there is no requirement that officers actually knock on the door or ring the doorbell. Instead, they must take action that is reasonably likely to alert the occupants of their presence, which also provides some assurance that the occupants will hear the officers' announcement.[9] Substantial compliance also results when it is apparent that one or more of the occupants saw the officers arrive.[10] As the Ninth Circuit observed, "[O]ne cannot 'announce' a presence that is already known."[11]

(2) **ANNOUNCE AUTHORITY**: Officers must also announce their authority by, for example, yelling "Police officers."[12] But this requirement may also be satisfied if at least one of the officers was in uniform and was visible to the occupants.[13]

(3) **ANNOUNCE PURPOSE**: Officers are not required to engage in an explanation of their purpose. Instead, they are simply required to declare it; e.g., "search warrant," "parole search," "probation search," "arrest warrant."[14] This requirement may also be excused altogether if the officers' purpose was reasonably apparent.[15] As the Court of Appeal explained in *People v. Mayer*, "[S]trict compliance with [the knock-notice statute] is excused where the entering officers reasonably believe the purpose of entry is already known to the occupants."[16] For example, it would seem to be reasonable to infer that the occupants were aware that the officers intended to conduct a search or make an arrest if, immediately after they announced their authority, they heard an occupant running, or if an occupant attempted to shut the door on them.[17]

(4) **WAIT FOR REFUSAL**: In the absence of exigent circumstances, officers must do one more thing before entering: wait until they were admitted or until it reasonably appeared that the occupants did not intend to admit them.[18] This is an especially controversial requirement because the occupants have no legal right to refuse entry. In addition, it is notoriously difficult for officers to determine the point at which a "refusal" had actually occurred. In any event, the courts have attempted to resolve these issues by ruling that a refusal can occur by either affirmative conduct or inaction.

Refusals by affirmative conduct

An immediate entry will ordinarily be permitted if it reasonably appeared that an occupant saw the officers and heard their announcement yet did not respond immediately or if he started to escape.[19] The most common types of refusal by affirmative conduct are when officers hear sounds from inside the house that indicate the occupants are attempting to destroy evidence or flee. See "When Compliance Is Not Required" (Destruction of evidence, and Flight, below).

Refusals by inaction

The most common type of refusal is a refusal by inaction, which occurs when officers are not admitted into the premises within a reasonable time after they announced their authority and purpose.[20] As the Ninth Circuit observed, "The refusal of admittance contemplated by the [knock-notice] statute will rarely be affirmative, but will oftentimes be present only by implication."[21] For example, in

[9] See *Duke v. Superior Court* (1969) 1 Cal.3d 314, 319; *People v. Mays* (1998) 67 Cal.App.4th 969, 973.
[10] See *People v. Brownlee* (1977) 74 Cal.App.3d 921, 929; *People v. Franco* (1986) 183 Cal.App.3d 1089, 1094, fn.5.
[11] *U.S. v. Peterson* (9th Cir. 2003) 353 F.3d 1045, 1049.
[12] See Pen. Code §§ 844, 1531; *People v. Maita* (1984) 157 Cal.App.3d 309, 322.
[13] See *Richards v. Wisconsin* (1997) 520 U.S. 385, 395-96; *People v. Lopez* (1969) 269 Cal.App.2d 461, 469.
[14] See *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1115.
[15] See: *Miller v. United States* (1958) 357 U.S. 301, 310; *People v. Franco* (1986) 183 Cal.App.3d 1089, 1094.
[16] (1987) 188 Cal.App.3d 1101, 1112.
[17] See *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1112; *People v. Vasquez* (1969) 1 Cal.App.3d 769, 775.
[18] See Pen. Code §§ 844, 1531; *People v. Alaniz* (1986) 182 Cal.App.3d 903, 906, fn.2.
[19] See *People v. Gallo* (1981) 127 Cal.App.3d 828, 838-39; *People v. Hobbs* (1987) 192 Cal.App.3d 959, 963-66.
[20] See *People v. Peterson* (1973) 9 Cal.3d 717, 723; *People v. Hobbs* (1987) 192 Cal.App.3d 959, 964;
[21] *McClure v. U.S.* (9th Cir. 1964) 332 F.2d 19, 22.

People v. Montenegro[22] the defendant looked out a window, saw the officers at the front door, then mouthed the words, "Okay, okay." When he did not promptly open the door, the officers demanded entry. Still no response, so "within seconds" the officers broke in. The court ruled that Montenegro's "failure to comply in these circumstances justified entry," adding that "the amount of time [the officers waited] is irrelevant because Montenegro acknowledged their presence" but did nothing. On the other hand, a delay will not justify an expedited entry if officers were aware of circumstances that justified the delay; e.g., officers saw that the occupant was asleep on a sofa.[23]

What's a "reasonable" time? As would be expected, there is no minimum wait time.[24] Instead, it all depends on the totality of circumstances.[21] Thus, the Supreme Court acknowledged that "[w]hen the knock-and-announce rule does apply, it is not easy to determine precisely what officers must do. How many seconds' wait are too few?"[26] In making this determination, the following circumstances are frequently noted.

Size and layout: The larger the structure, the longer it might take the occupants to answer the door (and vice versa).[27] As the Supreme Court explained, the required wait time "will vary with the size of the establishment, perhaps five seconds to open a motel room door, or several minutes to move through a townhouse."[28]

Time of day: A delay late at night should be expected if it reasonably appeared the occupants had been asleep. Conversely, a delay might be more suspicious in the daytime or early evening.[29]

Destructible evidence inside: In determining whether a delay constituted an implied refusal, officers may consider the nature of the evidence they are authorized to search for and seize. For example, if a warrant authorizes a search for drugs, documents, or anything else that could be disposed of quickly, a short delay might be viewed with more concern than if officers were searching for, say, a stolen piano. Furthermore, in cases where officers are looking for destructible evidence, they need only wait for the amount of time they estimate it would take an occupant to dispose of the evidence; i.e., they do not need to wait for the amount of time it would take to reach the front door. As the Supreme Court explained in *United States v. Banks*, "[W]hat matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink."[30]

When Compliance is Not Required

There are several situations in which officers are not required to comply fully or even partially with the knock-notice procedure. This does not mean that officers should never attempt to comply under these circumstances. It just means that if these circumstances existed and officers concluded that, under the existing circumstances, they need to make an immediate entry, they may do so.

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[22] (1985) 173 Cal.App.3d 983, 989.
[23] See *People v. Abdon* (1972) 30 Cal.App.3d 972, 978; *People v. Gonzales* (1989) 211 Cal.App.3d 1043.
[24] See *People v. Hobbs* (1987) 192 Cal.App.3d 959, 964; *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1225.
[25] See *United States v. Banks* (2003) 540 U.S. 31, 36; *People v. Neer* (1986) 177 Cal.App.3d 991, 996; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980 ["There is no established time that the police must wait; instead, the time lapse must be reasonable considering the particular circumstances of the situation."].
[26] *Hudson v. Michigan* (2006) 547 U.S. 586, 590. Also see *People v. Byers* (2017) __ Cal.App.5th __ [2017 WL 7238923].
[27] See *People v. Hoag* (2000) 83 Cal.App.4th 1198, 1212; *People v. Drews* (1989) 208 Cal.App.3d 1317, 1328; *U.S. v. Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980.
[28] *United States v. Banks* (2003) 540 U.S. 31, 40.
[29] See *Greven v. Superior Court* (1969) 71 Cal.3d 287, 295 [although officers waited ten to 15 seconds before forcing entry, the house was large and the warrant was executed at 1 A.M. when most people are asleep].
[30] *United States v. Banks* (2003) 540 U.S. 31, 40. Also see *Richards v. Wisconsin* (1997) 520 U.S. 385, 396; *People v. Martinez* (2005) 132 Cal.App.4th 233 ["15 to 20 seconds does not seem an unrealistic guess about the time someone would need to get in a position to rid his quarters of cocaine"].

No-knock warrants

When executing a search or arrest warrant, officers may make a no-knock entry if it was authorized by the judge who issued the warrant. Consequently, if the affiant reasonably believed that a no-knock entry was necessary, he may request the judge to authorize it on the warrant if the affidavit contained facts constituting "reasonable suspicion"[31] that (1) compliance would provide the occupants with time to arm themselves or otherwise engage in violent resistance, (2) compliance would provide the occupants with time to destroy evidence, or (3) compliance would serve no useful purpose; e.g., the premises were abandoned.[32] But even if the judge grants no-knock authorization, officers must not make an unannounced entry if they become aware that circumstances had changed and, as the result, there was no need for an immediate entry.[33]

On the other hand, if the judge refuses to grant the officers' request, they may nevertheless make a no-knock entry if, as the result of changed circumstances, they reasonably believed it was necessary. As the Supreme Court explained, "[A] magistrate's decision not to authorize no-knock entry should not be interpreted to remove the officers' authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed."[34]

Exigent circumstances

Officers may also dispense with the knock-notice procedure if, upon arrival, they became aware of facts that constituted "reasonable suspicion" that compliance would be dangerous or would result in the destruction of evidence. As the Supreme Court explained, there are "many situations in which it is not necessary to knock and announce," such as "when circumstances present a threat of physical violence, or if there is reason to believe that evidence would likely be destroyed if advance notice were given, or if knocking and announcing would be futile."[35] Specifically, there are three types of exigent circumstances that will justify noncompliance: (1) imminent danger to officers or others, (2) imminent destruction of evidence, and (3) futility.

DANGER: Compliance with the knock-notice requirements is excused if officers reasonably believed they or someone else would be harmed unless they made an immediate entry.[36] In the words of the Supreme Court, "[I]f circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in."[37] The following are some examples:

- Entry to arrest an armed prison escapee who vowed he would "not do federal time."[38]
- Entry to arrest a suspect in the murder of a police officer.[39]
- Search warrant for drugs; suspect had previously "expressed his willingness to use firearms against the police" and was known to have access to firearms.[40]
- Search warrant for drugs; suspect's apartment was protected by a steel door; officers knew there was a loaded handgun and a "large amount" of crack cocaine inside the apartment.[41]
- Search warrant on meth lab; the house "was equipped with security cameras and flood

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[31] See *United States v. Ramirez* (1998) 523 U.S. 65, 73; *Richards v. Wisconsin* (1997) 520 U.S. 385, 394 ["This showing [for reasonable suspicion] is not high"].
[32] See *Richards v. Wisconsin* (1997) 520 U.S. 385, 394; *United States v. Banks* (2003) 540 U.S. 31, 37, fn.3.
[33] See *U.S. v. Spry* (7th Cir. 1999) 190 F.3d 829, 833.
[34] *Richards v. Wisconsin* (1997) 520 U.S. 385, 395-96, fn.7. Also see *United States v. Banks* (2003) 540 U.S. 31, 36-37
[35] *Hudson v. Michigan* (2006) 547 U.S. 586, 589-90 [quoting from *Richards v. Wisconsin* (1997) 520 U.S. 385, 394].
[36] See *Brigham City v. Stuart* (2006) 547 U.S. 398, 406-7; *People v. Galan* (1985) 163 Cal.App.3d 786, 795.
[37] *United States v. Banks* (2003) 540 U.S. 31, 37.
[38] *United States v. Ramirez* (1998) 523 U.S. 65, 71.
[39] *People v. Gilbert* (1965) 63 Cal.2d 690, 707.
[40] *U.S. v. Turner* (9th Cir. 1991) 926 F.2d 883, 887.
[41] *U.S. v. Stowe* (7th Cir. 1996) 100 F.3d 494, 499.

lights. Windows were papered over, suggesting that the occupants of the home were concerned with protecting their illegal methamphetamine laboratory."[42]

- There was probable cause that the house contained explosives; as the uniformed SWAT team was assembling outside, one of the occupants opened the door, saw them, and immediately closed the door.[43]
- Officers went to the suspect's home to arrest him for rape; the rapist had been armed with a knife. As officers arrived, they saw a gun in a car parked nearby. When they got to the door they "heard what sounded like running footsteps."[44]

DESTRUCTION OF EVIDENCE: If officers were executing a search warrant or were securing the premises pending issuance of a warrant, an expedited entry would be permitted if they reasonably believed there was destructible evidence on the premises that would be destroyed if they delayed making entry. This is especially likely to occur in drug cases.[45] Nevertheless, officers must have been aware of circumstances indicating an imminent threat to the evidence; i.e. they cannot assume that all entries into drug houses will automatically warrant a no-knock entry.[46]

The following are some examples of no-knock entries in drug cases have been deemed reasonably necessary:

- When officers knocked, the defendant "cracked" open the door, saw a uniformed officer, then slammed the door shut.[47]
- When an officer announced his authority and purpose, two people inside a "heavily barricaded" drug house started running through the house.[48]
- Upon announcing, officers heard "very fast movements toward the rear of the apartment."[49]
- The suspect was a felon operating under an alias, his apartment had been fortified by a steel door, there was a loaded handgun and a "large amount" of cocaine inside the apartment.[50]
- Officers knew that the defendant had "an extensive arrest record including arrests for possession and sale of heroin"; his house was a "virtual fortress"; when officers arrived and identified themselves, the defendant attempted to close a gate to prevent their entry.[51]

FLIGHT: Compliance with the knock-notice procedure would not be required if officers reasonably believed that the occupants had started to flee. Here are two examples:

- FBI agents had probable cause to believe a fugitive who was wanted for several violent offenses involving guns was inside a motel room; before they entered, a friend of the fugitive who was arrested outside the room yelled "Run!"[52]

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[42] *U.S. v. Combs* (9th Cir. 2005) 394 F.3d 739, 745.
[43] *U.S. v. Peterson* (9th Cir. 2003) 353 F.3d 1045, 1049-50.
[44] *People v. Tribble* (1971) 4 Cal.3d 826, 833.
[45] See *United States v. Banks* (2003) 540 U.S. 31, 40 ["[W]hat matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink."]; *Richards v. Wisconsin* (1997) 520 U.S. 385, 394.
[46] See *Richards v. Wisconsin* (1997) 520 U.S. 385, 388; *People v. Neer* (1986) 177 Cal.App.3d 991, 995.
[47] *Richards v. Wisconsin* (1997) 520 U.S. 385, 395. Also see *People v. Martinez* (2005) 132 Cal.App.4th 233 ["15 to 20 seconds does not seem an unrealistic guess about the time someone would need to get in a position to rid his quarters of cocaine"].
[48] *People v. Mayer* (1987) 188 Cal.App.3d 1101, 1112.
[49] *People v. Temple* (1969) 276 Cal.App.2d 402, 413. Also see *People v. Pacheco* (1972) 27 Cal.App.3d 70, 78 ["[D]efendant got off the couch and started toward the rear of the apartment."]; *McClure v. U.S.* (9th Cir. 1964) 332 F.2d 19, 22 ["footsteps running in the wrong direction"].
[50] *U.S. v. Stowe* (7th Cir. 1996) 100 F.3d 494, 499.
[51] *People v. Thompson* (1979) 89 Cal.App.3d 425.
[52] *U.S. v. Reilly* (9th Cir. 2000) 224 F.3d 986. Also see *People v. Tribble* (1971) 4 Cal.3d 826, 833.

- Officers in hot pursuit of a burglary suspect chased him into a house.[53]

FUTILITY: Finally, compliance is not required if doing so would be futile or otherwise serve no useful purpose.[54] For example, knocking and announcing would be excused if officers reasonably believed that no one was inside the premises.[55] "Where no one is present," said the Court of Appeal, "officers executing a search warrant . . . may make forcible entry without giving notice of their authority or purpose."[56]

Tricks and ruses

Officers who have a warrant need not comply with the knock-notice procedure if an occupant consented to their entry—even if the officers lied about who they were or what they wanted. This is because the objective of giving notice of an imminent entry would have been achieved when the occupant consented to their entry. Thus, the Court of Appeal said, "Officers who reasonably employ a ruse to obtain consent to enter a dwelling do not violate [the knock-notice statutes], even if they fail to announce their [true] identity and purposes before entering."[57] The following are examples:

- An officer wearing a Post Office uniform went to the suspect's house to execute a search warrant (the other officers hid outside). When one of the suspects answered the door, the officer said he had a special delivery letter for the other suspect and was told, "Sure, come on in."[58]
- Officers went to the suspect's house to conduct a probation search. An undercover officer knocked on the door and told the suspect's roommate, "It's Jim, and I want to talk to Gail" who was an occupant and suspect. When the officer saw Gail standing behind her roommate, he identified himself and entered.[59]
- The suspect's wife admitted an undercover officer after he said he was a carpet salesman sent by the welfare office to recarpet the house.[60]
- A drug dealer admitted an undercover officer after the office told him that "Pete" had sent him to buy drugs.[61]

Suppression of Evidence

As noted earlier, the Supreme Court has ruled that a failure to comply with the knock-notice procedure does not constitute a violation of the Fourth Amendment. Consequently, a failure to comply will not result in the suppression of evidence if the officers' entry was otherwise reasonable. Suppression is also inappropriate if officers had a legal right to enter, in which case the evidence would have been discovered inevitably. As the Supreme Court explained in a search warrant case, regardless whether or not the officers complied with the knock-notice requirements, "the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house."[62]

This does not mean, however, that officers should not attempt to comply when feasible. Remember that one of the main objectives of the knock-notice rule is to reduce the chances of a violent confrontation when the occupants of a home do not know the identity and intentions of the people who are demanding admittance. POV

[53] *People v. Patino* (1979) 95 Cal.App.3d 11, 21.
[54] See *Richards v. Wisconsin* (1997) 520 U.S. 385, 394; *United States v. Banks* (2003) 540 U.S. 31, 37, fn.3.
[55] See *Wilson v. Arkansas* (1995) 514 U.S. 927, 935; *Hart v. Superior Court* (1971) 21 Cal.App.3d3 496, 504.
[56] *People v. Ford* (1975) 54 Cal.App.3d 149, 154.
[57] *People v. Kasinger* (1976) 57 Cal.App.3d 975, 978.
[58] *People v. Rudin* (1978) 77 Cal.App.3d 139. Also see *People v. Thompson* (1979) 89 Cal.App.3d 425, 432.
[59] *People v. Constancio* (1974) 42 Cal.App.3d 533, 546.
[60] *People v. Veloz* (1971) 22 Cal.App.3d 499.
[61] *People v. Evans* (1980) 108 Cal.App.3d 193, 196.
[62] *Hudson v. Michigan* (2006) 547 U.S. 586, 592. Also see *People v. Byers* (2016) 6 Cal.App.5th 856.