Knock-Notice

"But before the Sheriff break the party's house, he ought to signify the cause of his coming, and to make request to open doors."

Semayne's Case (1603) 77 Eng Rep 194

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 to arrest someone, why must they engage in what has been called a "meaningless formality?"[1] And a dangerous one. As noted in *People* v. *Gonzalez*, "[T]the delay caused by [knock-notice] might give a forewarned occupant exactly the opportunity necessary to arm himself, causing injury to officers and bystanders."[2] Knock-notice is especially notorious for providing occupants an opportunity to destroy evidence, especially drugs.

But there is another side to the argument. 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."[3] A example of such a situation was provided by the Court of Appeal:

> On the inside of the door is a lone woman with two daughters; she lives in an increasingly violent society and she must decide at 12:50 A.M. whether to throw her door open to a band of armed men who claim to be police but who are standing on her front porch in scruffy street clothes.[4]

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?

The courts accomplish this by not always requiring blind obedience to each element of the knock-notice rule. Instead, they look at the entry procedure as a whole.[5] This includes 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 strict compliance with the knock-notice rule would be counterproductive.

It also includes 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.

Still, knock-notice compliance, or at least attempted compliance, is an important ingredient in the mix.[6] Consequently, officers and prosecutors must understand the knock-notice rule and how it is being interpreted and enforced by the courts.

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[1] See *People* v. *Gonzalez* (1989) 211 Cal.App.3d 1043, 1049; *People* v. *Tacy* (1987) 195 Cal.App.3d 1402, 1421.

[2] (1989) 211 Cal.App.3d 1043, 1049.

[3] *Greven* v. *Superior Court* (1969) 71 Cal.2d 287, 293.

[4] *People* v. *Gonzalez* (1989) 211 Cal.App.3d 1043, 1049.

[5] See *Wilson* v. *Arkansas* (1995) 514 US 927, 934.

[6] See *Wilson* v. *Arkansas* (1995) 514 US 927, 934 [whether and to what extent officers knocked and announced their presence before entering is an element of the Fourth Amendment's "reasonableness" requirement]. RE INEVITABLE DISCOVERY: It is arguable that a knock-notice violation cannot result in the suppression of evidence on the premises because the evidence would have been discovered inevitably as the result of the warrant. See *People* v. *Lamas* (1991) 229 Cal.App.3d 560, 568-71; *Wilson* v. *Arkansas* (1995) 514 US 927, 937, fn.4. RE STANDING: On

WHEN KNOCK-NOTICE APPLIES

The knock-notice rule applies whenever officers make a nonconsensual entry into a "house" for the purpose of conducting a search or making an arrest.[7] Although the law technically requires compliance only when officers "break" into a house for either of these purposes, the term "break" has been interpreted to mean any nonconsensual entry. For example, compliance is required when officers enter through an open door,[8] or enter after opening an unlocked screen door,[9] or when they use a passkey to open a locked door.[10]

"HOUSE": The term "house" is also broadly defined. It includes virtually any structure that provides the occupants with privacy. To put it another way, compliance will usually be required when the structure has "private character" and appears to be used "for the comfort and convenience of those of the household."[11] Examples include hotel rooms and garages that have been converted into living quarters.[12] A detached shed or garage might also qualify if the doors were closed and officers knew that someone was inside.[13]

January 28, 2004, the California Supreme Court granted review in *People* v. *Rabadeux* (2003) 112 Cal.App.4th 161 in which the court had ruled a defendant who is not at home when officers enter does not have standing to challenge the search. It appears the Supreme Court intends to resolve a split of opinion on this subject.

[7] See Penal Code §§ 844, 1531; *Mann* v. *Superior Court* (1970) 3 Cal.3d 1, 9 ["Since the officers' entry here was consented to by persons present inside the house, the [knock-notice statute] does not apply."]; *People* v. *Hoxter* (1999) 75 Cal.App.4th 406, 411.

[8] See *People* v. *Baldwin* (1976) 62 Cal.App.3d 727, 739 ["'Breaking' includes uninvited entries through open doors, even when the door is opened in response to a police officer's knock, or when an officer forcibly widens the opening of a partially closed door . . ."]; *People* v. *Gallo* (1981) 127 Cal.App.3d 828, 840 ["(A)n open door does not, standing alone, justify the failure to comply with the knock-notice requirements."]; *People* v. *Franco* (1986) 183 Cal.App.3d 1089, 1094, fn.6 ["By opening the drape that served as a door to the hut, the officers effected a 'breaking' within the meaning of [the knock-notice statute]."].

[9] See *People* v. *Uhler* (1989) 208 Cal.App.3d 766, 769; *People* v. *Peterson* (1973) 9 Cal.3d 717, 722; *Duke* v. *Superior Court* (1969) 1 Cal.3d 314, 319, fn.5; *People* v. *Rosales* (1968) 68 Cal.2d 299, 303 ["(N)o more is needed than the opening of a door or window, even if not locked, or not even latched. Pulling open a screen door held closed only by a spring is sufficient."]; *Sabbath* v. *United States* (1968) 391 US 585, 586 ["closed but unlocked door"]; *People* v. *Neer* (1986) 177 Cal.App.3d 991, 995.

[10] See *People* v. *Keogh* (1975) 46 Cal.App.3d 919, 927 [landlord opened door for officers]; *People* v. *Bennetto* (1974) 10 Cal.3d 695, 699 ["A nonconsensual entry by means of a passkey is a 'breaking' within the meaning of [the knock-notice statute]."].

[11] See *People* v. *Murray* (1969) 270 Cal.App.2d 201, 204.

[12] See *People* v. *Zabelle* (1996) 50 Cal.App.4th 1282, 1286 [hotel room]; *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 81 [garage converted into living quarters]; *People* v. *Franco* (1986) 183 Cal.App.3d 1089, 1093 [an enclosed "hut" next to a residence, where the hut was the residence of the suspect and was constructed of plywood, chicken wire, and pieces of carpet, and the "door" to the hut was a "blanket or drape."].

[13] See *People* v. *Superior Court (Arketa)* (1970) 10 Cal.App.3d 122 [wooden shed about 25 yards from a house, a light in the shed was on]; *People* v. *Bruce* (1975) 49 Cal.App.3d 580 [garage door was closed and officers knew it was occupied]. COMPARE *People* v. *Muriel* (1968) 268 Cal.App.2d 477, 480 ["There is no evidence that the garage was used in any sense for the comfort and convenience of those of the household."]; *People* v. *Murray* (1969) 270 Cal.App.2d 201, 204 ["Since the garage could not be regarded as having a private character for living purposes such as a house, or as an outbuilding essential to the comfort and personal well-being of a family, it was not constitutionally protected."].

BUSINESSES: Knock-notice is not required before entering a business that is open to the public.[14] Nor is it required to enter a place to which the public is impliedly invited; e.g., defendant's office opened onto a sidewalk and the door was open.[15] Otherwise, compliance will probably be necessary.[16]

OPENING GATES, CLIMBING FENCES: Compliance is not required before opening a gate leading to a residence or before climbing a fence surrounding it.[17]

UNOCCUPIED STRUCTURES: Compliance is not necessary if officers reasonably believed the premises were unoccupied,[18] or were occupied by trespassers.[19]

OPENING INNER DOORS: Officers who have complied before entering a house are not required to knock and announce before making a non-forcible entry into closed interior rooms except, *possibly*, when the residence is unusually large or the warrant authorized a search of only a single room.[20]

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[14] See *People* v. *Maita* (1984) 157 Cal.App.3d 309, 323 [theater] ; *People* v. *Lovett* (1978) 82 Cal.App.3d 527, 532 ["None of the purposes of the [knock-notice] statute would be advanced by requiring police officers to state their authority and purpose before crossing the threshold of a store into which the general public has been invited to enter."]; *People* v. *Pompa* (1989) 212 Cal.App.3d 1308, 1312 [upholstery store].

[15] See *People* v. *James* (1971) 17 Cal.App.3d 463, 466-7.

[16] See *People* v. *Lee* (1986) 186 Cal.App.3d 743, 747 [court notes that knock-notice requirements have been excused when officers entered a business when "the business area was located behind an unlocked door which was freely accessible to the public."].

[17] See *People* v. *Bencomo* (1985) 171 Cal.app.3d 1005, 1015 ["(K)nock-notice requirements . . . ordinarily do not apply to gates or fences."]; *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1109 ["(T)he Legislature did not envision requiring officers to knock and announce at a gate or fence in attempting to serve a warrant on a house."].

[18] See *Wilson* v. *Arkansas* (1995) 514 US 927, 935 [quoting a 1838 English case: "[T]he necessity of a demand is obviated, because there was nobody on whom a demand could be made"]; *People* v. *Medina* (1968) 265 Cal.App.2d 703, 708 [abandoned garage]; *People* v. *Ford* (1975) 54 Cal.App.3d 149, 154 ["Where no one is present on the premises, officers executing a search warrant . . . may make forcible entry without giving notice of their authority or purpose."]; *Hart* v. *Superior Court* (1971) 21 Cal.App.3d 496, 504 ["To uphold petitioner's contention here would require this court to take the incredibly ridiculous position of holding that Sergeant Eng should nonetheless have stated his authority and purpose to no one."].

[19] See *People* v. *Sanchez* (1969) 2 Cal.App.3d 467, 473 ["Defendants were not innocent persons or the type of householder the statute was designed to protect in view of defendant's testimony that he had entered the premises for the purpose of stealing fixtures and other items"]; *People* v. *Ortiz* (1969) 276 Cal.App.2d 1, 5 ["(The knock-notice statute) is not to be used to protect a trespasser's right to privacy in someone else's home. A trespasser—or a burglar—cannot make another man's home his castle."].

[20] See *People* v. *Mays* (1998) 67 Cal.App.4th 969, 976; *People* v. *Pompa* (1989) 212 Cal.App.3d 1308; *People* v. *Aguilar* (1996) 48 Cal.App.4th 632, 639; *People* v. *Castaneda* (1976) 58 Cal.App.3d 165, 170; *U.S.* v. *Crawford* (9th Cir. 1981) 657 F.2d 1041, 1044 ["The Ninth Circuit has consistently held that where the first or contemporaneous entry is lawful [under the federal knock-notice statute], a defendant cannot complain of the unlawfulness of subsequent entries."]; *People* v. *Howard* (1993) 18 Cal.App.4th 1544, 1554-5 ["(T)here may be instances where repeated knock-notice is required, such as where the residence is unusually large, the outer door does not provide access to the place to be searched under the warrant, or where a single room is the only area subject to search under the terms of the warrant."]. NOTE: Although some older cases ruled that knock-notice applied to inner doors (*People* v. *Webb* (1973) 36 Cal.App.3d 460; *People* v. *Glasspoole* (1975) 48 Cal.App.3d 668; *People* v. *Pipitone* (1984) 152 Cal.App.3d 1112, 1119), as discussed in *People* v. *Howard* (1993) 18 Cal.App.4th 1544, 1550 the reasoning of these opinions is plainly flawed. ALSO SEE *People* v. *Mays* (1998) 67 Cal.App.4th 969, 974 ["(T)he court's reasoning on this point in [*Howard*] is both instructive and persuasive."]; *People* v. *Aguilar*

MULTIPLE ENTRY POINTS: If officers enter simultaneously from two or more points, they must comply at only one point (presumably the main point of entry),[21] although "there may be instances in which the officers' choice of place to announce is so clearly unreasonable that a second announcement is required at [another] point of entry."[22]

CONSENTING PERSON NOT PRESENT: If officers obtained consent to enter from a resident, knock-notice compliance is nevertheless required if the consenting person was not present when they entered.[23]

TRICKS AND RUSES: Officers need not comply if someone inside told them they could come in—even if the officers lied about who they were or what they wanted.[24] As the Court of Appeal explained, "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 identity and purpose before entering."[25] The following are examples:

- Search warrant: An officer wearing a Post Office uniform said he had a special delivery letter for the suspect. An occupant said, "Come on in."[26]
- Parole search: An undercover officer said he was a carpet salesman sent by the welfare office to recarpet the house.[27]
- An undercover narcotics officer said he wanted to talk to the defendant. The defendant opened the screen door and said "Come in."[28]
- A drug dealer admitted an undercover officer into his home when the officer told him that "Pete" sent him to buy drugs.[29]

(1996) 48 Cal.App.4th 632, 639 ["We think that *Howard* is the better reasoned decision and we will follow it."].

[21] See *U.S.* v. *Bustamante-Gamez* (9th Cir. 1973) 488 F.2d 4, 10 ["(O)fficers are not required to announce at *every* place of entry; one proper announcement [under the knock-notice statute] is sufficient."]; *U.S.* v. *Crawford* (9th Cir. 1981) 657 F.2d 1041, 1045.

[22] See *U.S.* v. *Bustamante-Gamez* (9th Cir. 1973) 488 F.2d 4, 10.

[23] See *Duke* v. *Superior Court* (1969) 1 Cal.3d 314, 322; *People* v. *Haskett* (1982) 30 Cal.3d 841, 857 ["(A)n absent cotenant cannot authorize the police to burst into occupied premises unannounced if there is no emergency justifying such a frightening intrusion."]; *People* v. *De La Plane* (1979) 88 Cal.App.3d 223, 235.

[24] See *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 906 ["Employment of a ruse to obtain consent to enter is immaterial where officers have a right to enter"]; *People* v. *Avalos* (1996) 47 Cal.App.4th 1569, 1579 ["(T)he police were properly identified as such and merely made a partial misrepresentation concerning the object of the search."]; *People* v. *Evans* (1980) 108 Cal.App.3d 193, 196 ["(I)t is clear once officers having probable cause are admitted inside a defendant's home by use of a nonforceful strategy to gain entry, compliance with the [knock notice rule] is not required."]; *People* v. *Metzger* (1971) 22 Cal.App.3d 338, 341-1 ["(T)here is nothing *inherently* unlawful in the use of police deceit for the purpose of suppressing crime. . . . Artifice and stratagem may be employed to catch for engaged in criminal enterprises. . . ." Quoting from *Sorrells* v. *United States* (1932) 287 US 435, 441-2]; *U.S.* v. *Bramble* (9th Cir. 1996) 103 F.3d 1475, 1478 ["A direct denial that an agent is a police officer is no more a misrepresentation than the agent's declaring he is someone who he is not."]; *U.S.* v. *Garcia* (9th Cir. 1993) 997 F.2d 1273, 1280 [undercover narcotics officer got the suspect to open his screen door by asking him to dispose of an empty pop bottle].

[25] *People* v. *Kasinger* (1976) 57 Cal.App.3d 975, 978.

[26] *People* v. *Rudin* (1978) 77 Cal.App.3d 139, 144.

[27] *People* v. *Veloz* (1971) 22 Cal.App.3d 499.

[28] *People* v. *Ramirez* (1970) 4 Cal.App.3d 154, 157 ["None of the purposes and policies served by the [knock-notice] rule . . . are violated when the entry is consensual, regardless of whether the consent was fraudulently obtained."].

[29] See *People* v. *Evans* (1980) 108 Cal.App.3d 193, 196; *People* v. *Kasinger* (1976) 57 Cal.App.3d 975 [officer gave a false name].

One final note on ruses. Suspicious occupants who think the person seeking entry might be an undercover officer will sometimes give conditional consent; e.g., "You can come in, but only if you're not a cop." Like most jailhouse "wisdom," this one has no legal basis. The occupant's consent is valid despite the condition.[30]

NO-KNOCK WARRANTS

In some cases, it will be apparent early on that a no-knock entry will be necessary. If this is known when the warrant is sought, officers may seek no-knock authorization from the issuing judge. Such authorization may be given if the affidavit demonstrates reasonable suspicion that knock-notice compliance would be futile, dangerous, or result in the destruction of evidence.[31]

Even if the judge grants no-knock authorization, officers must not make a no-knock entry if they become aware that circumstances have changed and, as the result, there is no need for it.

Finally, if the judge refuses the officers' request for no-knock authorization, they may nevertheless make a no-knock entry if, as the result of changed circumstances, they reasonably believed it was necessary.[32]

FULL AND SUBSTANTIAL COMPLIANCE

Assuming the knock-notice rule applies, the question arises: What must officers do? As we will now discuss, they must either fully of substantially comply unless, as discussed later, compliance is excused altogether.

Full compliance results when officers satisfy each of the technical requirements. Substantial compliance occurs when the objectives of the knock-notice rule are met, despite the failure to comply with one or more of the technical requirements.[33] In other

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[30] See *Lewis* v. *United States* (1966) 385 US 206, 210-11; *U.S.* v. *Bramble* (9th Cir. 1996) 103 F.3d 1475, 1478.

[31] See *United States* v. *Banks* (2003) 540 US ___ ["When a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry."]; *Richards* v. *Wisconsin* (1997) 520 US 385, 395-6, fn.7 ["The practice of allowing Magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time."]; *U.S.* v. *Stowe* (1996) 100 F.3d 494. ALSO SEE *United States* v. *Ramirez* (1998) 523 US 65 [no-knock entry does not require more than reasonable suspicion, even when property is damaged as result of the entry].

[32] See *Richards* v. *Wisconsin* (1997) 520 US 385, 395-6, fn.7 ["(A) magistrate's decision not to authorize a 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."].

[33] See *People* v. *Peterson* (1973) 9 Cal.3d 717, 723 ["When police procedures fail to conform to the precise demands of the [knock-notice] statute but nevertheless serve its policies we have deemed that there has been such substantial compliance that technical and, in the particular circumstances, insignificant defaults may be ignored."]; *Hart* v. *Superior Court* (1971) 21 Cal.App.3d 496, 501 ["In short, the [knock-notice] rule . . . is not mechanical, i.e., that in every case there must always be verbal notice of authority and purpose."]; *People* v. *Tacy* (1987) 195 Cal.App.3d 1402, 1415-6 ["(N)ot every technical violation of the knock-notice rule renders an entry unreasonable within the meaning of the Fourth Amendment."]; *People* v. *Trujillo* (1990) 217 Cal.App.3d 1219, 1227 ["The essential inquiry is whether under the circumstances the policies underlying the knock-notice requirements were served."]; *People* v. *LaJocies* (1981) 119 Cal.App.3d 947, 953 ["Substantial compliance will satisfy knock and notice requirements when, although attempted compliance falls short of strict literal compliance, the policies and purposes of the requirements have been satisfied."]. ALSO SEE *People* v. *Tacy* (1987) 195 Cal.App.3d 1402, 1418 ["In federal decisions the notion of substantial compliance finds a counterpart in what has

words, "Substantial compliance means actual compliance in respect to the substance essential to every reasonable objective of the statute, as distinguished from mere technical imperfections of form."[34]

What must officers do to fully or substantially comply? As we will now explain, it depends on whether they are entering to make an arrest or conduct a search.

Entry to arrest

If officers are entering to arrest an occupant—with or without a warrant[35]—they must do the following:[36]

(1) Knock: Same as entry to search.

(2) Announce authority: Same as entry to search.

(3) Announce purpose: Same as entry to search.

(4) Demand admittance: Although officers need not wait until the occupants refuse to admit them (as in entries to search),[37] they must demand admittance and give the occupants a reasonable opportunity to answer the door[38] unless, as discussed later, there are exigent circumstances.

Entry to search

If officers are entering to conduct a search, they must do the following:

(1) KNOCK: Although it's called the "knock-notice" rule, there is no requirement that officers actually knock on the door or ring the doorbell. What *is* required is that they 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' subsequent announcement.[39]

Substantial compliance with this requirement commonly results when officers, as they approach the front door, see that someone inside the house has spotted them through a window or open door.[40] As the U.S. Court of Appeals recently observed, "[O]ne cannot 'announce' a presence that is already known."[41]

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been termed the 'useless gesture' exception to the requirement of knock and announcement."]; *People* v. *Gonzalez* (1989) 211 Cal.App.3d 1043, 1048; *People* v. *Uhler* (1989) 208 Cal.App.3d 766, 770 ["(T)he federal useless gesture rule is generally viewed as a counterpart to this state's substantial compliance doctrine."].

[34] *People* v. *Hoag* (2000) 83 Cal.App.4th 1198, 1208 [conc. opn. of Morrison, J.].

[35] See *People* v. *Jacobs* (1987) 43 Cal.3d 472, 478.

[36] See Penal Code §844.

[37] *People* v. *Schmel* (1975) 54 Cal.App.3d 46, 51 ["The Legislature, by deleting the refusal provision from section 844, and retaining it as part of section 1531, expressed an intent to create different requirements for each situation."]. NOTE: The court in *Schmel* also noted that "the arrest of a person reasonably believed to be in a house may call for more instant action than the seizure of inert things . . . "].

[38] See *People* v. *Hirsch* (1977) 71 Cal.App.3d 987, 991 [knock-notice violation because the officers "did not give the occupants sufficient time to admit them."].

[39] See *Duke* v. *Superior Court* (1969) 1 Cal.3d 314, 319; *People* v. *Mays* (1998) 67 Cal.App.4th 969, 973 [officers must "knock or utilize other means reasonably calculated to give adequate notice of their presence to the occupants"]; *People* v. *Macioce* (1987) 197 Cal.App.3d 262, 271; *People* v. *Brownlee* (1977) 74 Cal.App.3d 921, 929 ["The purpose of 'knocking' is to get the attention of someone in the house and to thereby induce them to come to the door."]; *People* v. *Franco* (1986) 183 Cal.App.3d 1089, 1094, fn.5 ["Only adequate notice of the officers' presence, not actual knocking, is required."]; *Brown* v. *Superior Court* (1973) 34 Cal.App.3d 539, 543 ["Strict compliance is more readily excused where the police in good faith believe that their presence and purpose to enter is already known to the occupants."].

[40] See *People* v. *Lopez* (1969) 269 Cal.App.2d 461, 469 [the argument that officers must announce their presence to people who already know they are officers is "patently frivolous. Such quixotisms of police procedure befit a Gilbert and Sullivan operetta libretto, not the serious

It may also result if officers announce their presence by means of a ruse. For example, in *People* v. *Thompson*[42] officers obtained a warrant to search for drugs in Thompson's house. Because the house was a "virtual fortress," they decided to trick him into opening the door, thus reducing the amount of time he would have to destroy the evidence. So they staged a phony police pursuit which ended in front of the house in a blaze of "gunfire" (firecrackers). As Thompson stepped out of his house to see what was happening, an officer grabbed him and yelled, "Police officer! I have a search warrant!" The other officers then rushed into the house just as another occupant was trying to flush heroin down the toilet.

In ruling the officers complied with the knock-notice rule, the court said, "The ruse employed here successfully avoided the various consequences that [the knock-notice] rule is designed to prevent. The officers were in full uniform and defendant was made aware of the officers' presence before any entry was attempted."

(2) ANNOUNCE AUTHORITY: When the *Thompson* court mentioned that the officers were in uniform, it was addressing the second knock-notice requirement: that officers alert the occupants that they are, in fact, law enforcement officers. Full compliance results when officers yell, "Police officers" or "Sheriff's Department."[43] But, as demonstrated in *Thompson*, this requirement may also be satisfied if at least one of the officers was in uniform and was visible to the occupants.[44]

Substantial compliance has also been found when it appeared an occupant recognized one of the people at the door as an officer;[45] and (rather obviously) when an occupant, upon seeing officers approaching the house, yelled, "Jesus Christ, the cops!"[46]

(3) ANNOUNCE PURPOSE: Officers must announce their purpose; e.g., "Search warrant."[47] Although it may be more difficult for the occupants to infer the officers'

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business of real-life police investigation."]; *People* v. *Tacy* (1987) 195 Cal.App.3d 1402, 1406 ["As soon as I stood in the front of the door I made contact with a person in the living room directly on the other side of that door and made eye contact with that person."]; *People* v. *Brownlee* (1977) 74 Cal.App.3d 921, 929 ["The court could conclude under the circumstances that the front door was open and Perkins was standing at the screen door and engaged [the officer] in a conversation; that 'knocking' would have been an act of redundancy which was wholly unnecessary."]; *People* v. *Uhler* (1989) 208 Cal.App.3d 766, 770; *People* v. *James* (1971) 17 Cal.App.3d 463, 468 ["The approach of the uniformed officers to the premises was visible through the wide open door to those inside the Black Panther headquarters who, in turn, were visible to the officers."].

[41] *U.S.* v. *Peterson* (9th Cir. 2003) 353 F.3d 1045, 1049.

[42] (1979) 89 Cal.App.3d 425, 432. ALSO SEE *People* v. *Constancio* (1974) 42 Cal.App.3d 533 [officer knocked, said "It's Jim, and I want to talk to Gail." When an occupant opened the door, the officer announced his authority and purpose, and entered]; *People* v. *Cohen* (1976) 59 Cal.App.3d 241, 246-7.

[43] See Penal Code §1531; *People* v. *Maita* (1984) 157 Cal.App.3d 309, 322.

[44] See *People* v. *James* (1971) 17 Cal.App.3d 463, 468 [the requirement that officers knock and announce their authority was satisfied when the officers were in uniform and the front door was open]; *People* v. *Galan* (1985) 163 Cal.App.3d 786, 795 ["Officer Torres wore a uniform with a badge on it, which made it obvious to Manuel that he was dealing with a police officer."]; *Richards* v. *Wisconsin* (1997) 520 US 385, 395-6. ALSO SEE *In re William C.* (1977) 70 Cal.3d 570, 580, 582 ["Appellant's attempt to hide his face when he saw the officer at the door supports the inference that appellant knew full well both the identity and the purpose of the callers."].

[45] See *People* v. *Limon* (1967) 255 Cal.App.2d 519, 521-2.

[46] See *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 80. ALSO SEE *People* v. *Peterson* (1970) 9 Cal.App.3d 627, 632 [court noted that "a uniform identifying the entering person as an officer may be relevant in cases where the entry is subject to the requirements of the [knock-notice statute] and the question is whether there was 'substantial compliance.'"].

[47] See Penal Code §1531; *People* v. *Maita* (1984) 157 Cal.App.3d 309, 322 [officer fully complied with the announcement requirement when he told the occupant, "I am going to search your

purpose than it is to infer their identity, substantial compliance has sometimes been found when their purpose is reasonably apparent.[48] As the Court of Appeal explained, "[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."[49]

For example, it may be reasonable to infer that the occupants knew that the officers at the door had come to arrest them if they had just committed a crime,[50] or if the occupants immediately began to run when the officers announced their identity,[51] or if they attempted to close the door on the officers.[52]

(4) WAIT FOR REFUSAL: As discussed in the next section, the final requirement is that the officers must wait outside until they are refused admittance.

REFUSALS

In the absence of exigent circumstances, officers who are entering to conduct a search may not ordinarily enter until it reasonably appears the occupants are refusing to admit them.[53] As the Court of Appeal explained, "Even where the police duly announce

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house."]; *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1115 ["The announcement that the deputies had a search warrant made the officers' purpose clear"]; *People* v. *Mays* (1998) 67 Cal.App.4th 969, 973 ["(T)he officers were not required to explain the purpose of their demand for admittance before the door was opened, but only before they entered the residence."].

[48] See *Miller* v. *United States* (1958) 357 US 301, 310 ["It may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows their purpose so that an announcement would be a useless gesture."]; *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 80 ["Identification alone can constitute substantial compliance if prior to entry the surrounding circumstances made the officers' purpose clear to the occupants"]; *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1114-5 ["(W)hile mere identification of an officer is normally not substantial compliance with the knock-notice requirement, such identification could constitute substantial compliance 'only if the surrounding circumstances made the officers' purpose clear to the occupants or showed that a demand for admittance would be futile.'" Citing *People* v. *Rosales* (1968) 68 Cal.2d 299, 302]; *People* v. *Vargas* (1973) 36 Cal.App.3d 499, 504 ["(S)trict compliance with the knock and notice requirement is excused when the entering officers reasonably believe that the purpose of entry is already known to the occupants."]; *People* v. *Franco* (1986) 183 Cal.App.3d 1089, 1094 [per the doctrine of substantial compliance, the announcement of purpose may be satisfied if "it is reasonably apparent to the occupants why the police wish to enter."]; *People* v. *Garnett* (1970) 6 Cal.App.3d 280, 290 ["We encounter no difficulty in concluding that the trial court could reasonably have determined that the 'purpose' of the known police officers, in entering a building openly pervaded with narcotics, was obvious to its occupants."]; *People* v. *Limon* (1967) 255 Cal.App.2d 519, 522 ["When, as here, a defendant before the entry already knows what he would have learned from a demand fro admittance and explanation of purpose . . . insistence upon a recitation of those formalities is idle."].

[49] *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1112.

[50] See *People* v. *Hall* (1971) 3 Cal.3d 992, 997; *People* v. *Superior Court (Reilly)* (1975) 53 Cal.App.3d 40, 46; *People* v. *Cockrell* (1965) 63 Cal.2d 659, 666; *People* v. *Sotelo* (1971) 18 Cal.App.3d 9, 18.

[51] See *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1112.

[52] See *People* v. *Vasquez* (1969) 1 Cal.App.3d 769, 775 ["(T)here was abundant evidentiary basis for the trial court's implied finding that when appellant attempted to close the door, he not only knew the officers' identity but was well aware of the officers' purpose in seeking to gain entry into his apartment."].

[53] See Penal Code §1531; *People* v. *Alaniz* (1986) 182 Cal.App.3d 903, 906, fn.2 ["Where compliance with 'knock-notice' provisions is not excused, police officers must give the occupant of a residence a reasonable opportunity to surrender his privacy voluntarily."]; *People* v. *Abdon* (1972) 30 Cal.App.3d 972, 977 [Fourth Amendment violation occurs "if the occupants of the

their identities and purpose, forcible entry is not permitted under the statute if the occupants of the premises are not first given an opportunity to surrender the premises voluntarily."[54]

Not surprisingly, this requirement is the most confusing, most litigated, and most criticized of all the knock-notice rules. This is mainly because the occupants have no legal right to refuse to admit the officers, plus it is often difficult or impossible for officers to determine the point at which a "refusal" has actually occurred. Meanwhile, as they stand around waiting to make sure they don't jeopardize the search by entering too early, the occupants are busy destroying evidence or arming themselves.[55]

Still, it's the law so officers must know how to determine when a refusal has occurred and, just as importantly, when they may enter without waiting for one. As we will now discuss, there are two types of refusals: (1) refusals by affirmative conduct, and (2) refusals by inaction.

Refusals by affirmative conduct

A refusal by affirmative conduct occurs when someone in or about the premises says or does something that reasonably demonstrates the occupants are trying to prevent or delay the officers' entry. This type of refusal is actually an exigent circumstance because it is usually reasonable for officers to believe the occupants are trying to buy some time in order to arm themselves, destroy evidence, or otherwise sabotage the search.[56] Accordingly, this subject is covered below in the section on exigent circumstances.

Refusals by inaction

The most common type of refusal is a refusal by inaction.[57] This occurs when the occupants fail to admit officers within a reasonable time after they announced their authority and purpose.[58] As the Court of Appeal explained, "An unreasonable delay in responding to the officer constitutes refused admittance."[59]

The question arises, What's an unreasonable delay? Ten seconds? Twenty? Although it might simplify matters if the courts adopted such a bright-line rule, the Court of

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premises sought to be entered and searched are not first given an opportunity to surrender the premises voluntarily."].

[54] *Jeter* v. *Superior Court* (1983) 138 Cal.App.3d 934, 937.

[55] See *People* v. *Gonzalez* (1989) 211 Cal.App.3d 1043, 1049 ["(A)lthough one purpose of the requirement is to prevent startled occupants from using violence against unannounced intruders, the delay caused by the statute might give a forewarned occupant exactly the opportunity necessary to arm himself, causing injury to officers and bystanders."].

[56] See *United States* v. *Banks* (2003) 540 US ___ [the standards "for requiring or dispensing with a knock and announcement" are the same as those to determine "when the officers could legitimately enter after knocking."].

[57] See *McClure* v. *U.S.* (9th Cir. 1964) 332 F.2d 19, 22 ["The refusal of admittance contemplated by the [knock-notice] statute will rarely be affirmative, but will oftentimes be present only by implication."].

[58] See *United States* v. *Banks* (2003) 540 US ___ ["Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one."]; *People* v. *Peterson* (1973) 9 Cal.3d 717, 723 [implied refusal occurs if there is "an unreasonable delay by the parties within in responding to the demand."]; *People* v. *Hobbs* (1987) 192 Cal.App.3d 959, 964 ["Implied refusal exists when there is an unreasonable delay in responding to the officers' announcement under the circumstances of the case."]; *People* v. *Neer* (1986) 177 Cal.App.3d 991, 996 ["Implied refusal exists when there is unreasonable delay in responding to the officers' announcement under the circumstances of the case."].

[59] *People* v. *Elder* (1976) 63 Cal.App.3d 731, 739.

Appeal has noted that "such a mathematical formula would trivialize the policies behind the knock-notice rules."[60]

Instead, the test is whether the officers reasonably believed they were being refused entry.[61] This could occur in five seconds, or it might take 20 seconds or more—it all depends on the surrounding circumstances, especially the following.

PREMISES WERE OCCUPIED: If officers knew that someone was inside the house, a delay in responding might be viewed with more suspicion than if officers were unsure if anyone was home or if it appeared the house was unoccupied.[62]

ACKNOWLEDGMENT: If an occupant somehow acknowledged the officers' presence, they must give him a reasonable amount of time to open the door.[63] A refusal results, however, if he does not respond promptly.

For example in *People* v. *Montenegro* the defendant looked through a window, saw the officers at his front door, and mouthed the words, "Okay, okay." When he did not promptly open the door, the officers demanded entry. Still no response, so the officers forced the door open. In ruling Montenegro's conduct constituted an implied refusal, the court said, "[T]he amount of time [the officers waited] is irrelevant because Montenegro acknowledged their presence. His failure to comply in these circumstances justified entry."[64]

REASON FOR DELAY: If officers were aware of an innocuous reason for the delay, they must take that into account.[65] For example, the larger the structure, the longer it might take an occupant to get to the door.[66] As the Court of Appeal observed, "It is impossible

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[60] *People* v. *Trujillo* (1990) 217 Cal.App.3d 1219, 1225. ALSO SEE *United States* v. *Banks* (2003) 540 US __ ["(W)e have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case"]; *People* v. *Hobbs* (1987) 192 Cal.App.3d 959, 964 ["There is no convenient test for measuring the length of time necessary for an implied refusal."]; *People* v. *Neer* (1986) 177 Cal.App.3d 991, 996.

[61] See *People* v. *Neer* (1986) 177 Cal.App.3d 991, 996 [implied refusal depends on whether the delay is unreasonable *"under the circumstances of the case."*]; *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 982 ["The statute requires us to determine only if the police were reasonable in inferring constructive refusal to admit; not if they had, in fact, been constructively refused admittance."].

[62] See *People* v. *Nealy* (1991) 228 Cal.App.3d 447, 450 ["(The officer) observed one of the two cars described in the search warrant parked in front of the apartment building. This led him to believe that someone was in the apartment."]; *Jeter* v. *Superior Court* (1983) 138 Cal.App.3d 934, 937 [court notes that in *People* v. *Elder* (1976) 63 Cal.App.3d 731 and *People* v. *Gallo* (1981) 127 Cal.App.3d 828 "the police had first-hand concrete knowledge that someone was in the residence and was awake"].

[63] See *People* v. *Elder* (1976) 63 Cal.App.3d 731, 739 ["If an acknowledging voice from within had responded, 20 seconds may have been too short a time to wait."].

[64] (1985) 173 Cal.App.3d 983, 989.

[65] See *United States* v. *Banks* (2003) 540 US __ [although the occupant was taking a shower when officers knocked and announced, the officers had no way of knowing this; "(T)he facts known to the police are what count in judging reasonable waiting time"].

[66] See *United States* v. *Banks* (2003) 540 US __, __ fn.6 ["The apartment was 'small', and a man may walk the length of today's small apartment in 15 seconds."]; *People* v. *Hoag* (2000) 83 Cal.App.4th 1198, 1212 ["While 15 to 20 seconds might be too short of a wait for a house of gargantuan proportions or a search during a time normally associated with sleeping, here the residence was only 1,500 square feet in size and the search occurred in the early evening."]; *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980 ["(W)e consider such circumstances as (1) the size and layout of the residence . . ."].

to calculate whether an 18-second delay was sufficient to allow the occupants to respond to a knock at the door without knowing the size and layout of the apartment."[67]

Also relevant is the time the warrant was executed. A delay late at night or early in the morning can be expected if it appeared the occupants were asleep. Conversely, a delay might be viewed with more suspicion if the warrant was executed in the daytime or early evening.[68]

DESTRUCTIBLE EVIDENCE INSIDE: In determining whether a delay constituted an implied refusal, officers may consider the nature of the evidence they are authorized to seize.[69] If the warrant authorizes a search for drugs, documents, or anything else that could be destroyed quickly, a short delay might be viewed differently than if officers were searching for, say, a stolen piano.[70] Thus, if the evidence could be flushed down the toilet or washed down the drain, even a fairly short delay might be significant because it may provide the occupants with the time necessary to reach the bathroom, kitchen, or shredder.[71]

Note, however, that in the absence of exigent circumstances the destructible nature of the evidence will not excuse compliance with the refusal requirement.[72] It is simply a factor that may be considered.

EXAMPLES: The following are examples of circumstances in which the courts ruled the occupants' inaction following knock-notice constituted an implied refusal:

- Drug warrant. Small apartment; 2 P.M., waited 15 to 20 seconds.[73]
- Drug warrant. Small apartment (800 square feet or less); 7 P.M.; officers knew that three people were inside; waited 20-30 seconds.[74]

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[67] *People* v. *Trujillo* (1990) 217 Cal.App.3d 1219, 1226.

[68] See *United States* v. *Banks* (2003) 540 US __ ["The significant circumstances include the arrival of the police during the day, when anyone inside would probably been up and around."]; *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980 [time of day is relevant].

[69] See *United States* v. *Banks* (2003) 540 US __ ["(W)hat matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink."]; *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980 ["nature of suspected offense" is relevant]. ALSO SEE *U.S.* v. *Goodson* (8th Cir. 1999) 165 F.3d 610, 612 [20-second wait was reasonable after a loud announcement at a one-story ranch]; *U.S.* v. *Spikes* (6th Cir. 1998) 158 F.3d 913, 925-7 [15-30 second wait was reasonable in midmorning after a loud announcement]; *U.S.* v. *Spriggs* (C.A.D.C. 1993) 996 F.2d 320, 322-3 [15-second wait reasonable after a reasonably audible announcement at 7:45 a.m. on a weekday]; *U.S.* v. *Garcia* (1st Cir. 1993) 983 F.2d 1160, 1168 [10-second wait was reasonable after a loud announcement]; *U.S.* v. *Jones* (5th Cir. 1998) 133 F.3d 358, 361-2 [15-20 second wait was reasonable]; *U.S.* v. *Jenkins* (10th Cir. 1999) 175 F.3d 1208, 1215 [14-20 second wait at 10 a.m. was reasonable]; *U.S.* v. *Markling* (7th Cir. 1993) 7 F.3d 1309, 1318-9 [small motel room, officers were acting on a tip that the suspect was likely to dispose of drugs, 7-second wait was reasonable].

[70] See *United States* v. *Banks* (2003) 540 US __ ["Police seeking a stolen piano may be able to spend more time to make sure they really need the battering ram."].

[71] See *United States* v. *Banks* (2003) 540 US __ ["(W)hen circumstances are exigent because a pusher may be near the point of putting his drugs beyond reach [by flushing them down the toilet or a drain in the kitchen], it is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter; since the bathroom and kitchen are usually in the interior of a dwelling, not the front hall, there is no reason generally to peg the travel time to the location of the door, and no reliable basis for giving the proprietor of a mansion a longer wait than the resident of a bungalow, or an apartment like Banks's."].

[72] See *Richards* v. *Wisconsin* (1997) 520 US 385, 395; *People* v. *Gastelo* (1967) Cal.2d 586; *People* v. *Neer* (1986) 177 Cal.App.3d 991, 995.

[73] *United States* v. *Banks* (2003) 540 US __.

[74] *U.S.* v. *Chavez-Miranda* (9th Cir. 2002) 306 F.3d 973, 980.

- Drug warrant. Early evening (about 7:30); 1,500-1,800 square feet house; no one acknowledged the officers' announcement; no reason to believe anyone was home; knock-announce twice; waited 15 to 20 seconds, entered with a key.[75]
- Drug warrant. 5:27 P.M.; one-bedroom apartment; knock-announce twice; waited 30 seconds.[76]
- Drug warrant. 6:10 P.M. Officers believed someone was inside the residence because a car described in the warrant was parked in the driveway; waited 20-30 seconds.[77]
- Drug warrant. Officers saw four people sitting at a table; none responded, waited 30 seconds.[78]
- Drug warrant. 6:45 P.M. Officers saw a woman inside the house; the woman looked at the officers for five seconds but took no action to admit them.[79]
- Murder warrant. 11:00 P.M. Officers knew that someone was standing behind the closed door; waited 20-30 seconds.[80]
- Bookmaking warrant. Early afternoon. Officers knew that someone was inside but "just silence inside," waited 20 seconds.[81]

The following are examples of circumstances which did not constitute an implied refusal:

- Drug warrant. 1 P.M. No one responded to knock-notice but officers saw a man lying on a sofa; he was apparently asleep or in the process of waking up; they waited five to six seconds then walked inside.[82]
- Drug warrant. Officers waited five seconds after knocking and announcing; they knew the resident was a woman who was home alone with two children; that she could not see them from the door and, therefore, could not confirm they were officers; the officers knew the door could not be opened quickly because it was secured by a complicated lock.[83]
- Drug warrant. Although officers waited 10 to 15 seconds before forcing entry, the house was large and the warrant was executed at 1 A.M.[84]
- Drug warrant. Five to 10 second delay not sufficient because the officers had no reason to believe the house was occupied.[85]

Excused noncompliance

In a limited number of cases, the courts have permitted officers to enter without waiting for a refusal when all of the following circumstances existed:

(1) Officers knocked or otherwise got the attention of someone inside the premises.
(2) Officers announced their authority and purpose, or their authority and purpose were reasonably apparent.
(3) Officers entered the premises without causing damage to the property.[86]

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[75] *People* v. *Hoag* (2000) 83 Cal.App.4th 1198, 1212.
[76] *People* v. *Drews* (1989) 208 Cal.App.3d 1317, 1328.
[77] *People* v. *Nealy* (1991) 228 Cal.App.3d 447, 450-1.
[78] *People* v. *Gallo* (1981) 127 Cal.App.3d 828, 838-9.
[79] *People* v. *Hobbs* (1987) 192 Cal.App.3d 959, 963-6.
[80] *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 906.
[81] *People* v. *Elder* (1976) 63 Cal.App.3d 731, 739 ["Silence for 20 seconds where it is known that someone is within the residence suggest that no one intends to answer the door."].
[82] *People* v. *Abdon* (1972) 30 Cal.App.3d 972, 978.
[83] *People* v. *Gonzales* (1989) 211 Cal.App.3d 1043.
[84] *Greven* v. *Superior Court* (1969) 71 Cal.2d 287, 295.
[85] *Jeter* v. *Superior Court* (1983) 138 Cal.App.3d 934, 937.
[86] See *People* v. *Tacy* (1987) 195 Cal.App.3d 1402, 1421; *People* v. *Uhler* (1989) 208 Cal.App.3d 766, 770.

For example, in *People* v. *Bustamante*[87] officers went to an apartment to execute a warrant, found the front door open and saw the occupants sitting in the front room. After announcing his authority and purpose, an officer said he was going to enter to conduct a search. Although the officers entered without waiting for a refusal, the court ruled the entry was lawful because:

> It is undisputed that the officers announced their identity and purpose when they arrived at the door; the only thing they did not do was wait for a refusal of admittance before entering. It is also undisputed that the officers did not break in. [W]e do not think the omission of a minor technicality cancels out the full compliance with the really significant requirements of the statute.

EXIGENT CIRCUMSTANCES

If exigent circumstances exist, officers may make an immediate entry into the premises to conduct a search or make an arrest. In other words, they will not be required to knock, announce, or wait for a refusal. As the United States Supreme Court put it, "[I]f circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in."[88]

Exigent circumstances exist if officers have reasonable suspicion that knock-notice compliance would, (1) result in the destruction of evidence, (2) be dangerous, or (3) be futile because the occupants were already aware of the officers' identity and were refusing to admit them.[89]

Although reasonable suspicion is not a high level of proof,[90] it requires some specific, apparently reliable information, as opposed to "unsubstantiated street talk" or "unjustified but sincere fear."[91] Furthermore, officers may not make blanket assumptions that certain species of criminals—most notably drug dealers—will always attempt to destroy evidence or arm themselves when they become aware that a search is imminent.[92] Still, because drugs are "the quintessential disposal contraband,"[93] not much additional information will ordinarily be required.[94]

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[87] (1971) 16 Cal.App.3d 213.

[88] *United States* v. *Banks* (2003) 540 US ___. ALSO SEE *United States* v. *Ramirez* (1998) 523 US 65, 73 ["(The federal knock-notice statute) includes an exigent circumstances exception and that the exception's applicability in a given instance is measure by the same standard [i.e., reasonable suspicion] we articulated in *Richards*."]; *Holland* v. *Harrington* (10th Cir. 2001) 268 F.3d 1179, 1193 ["(T)he reasonableness of the alleged failure to knock and announce cannot be considered in isolation. We are called upon to evaluate one event, a single occurrence, in light of the applicable standards of conduct and the totality of the circumstances surrounding that single event."].

[89] See *Richards* v. *Wisconsin* (1997) 520 US 385, 394 [In order to justify a "no-knock" entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence"].

[90] See *Richards* v. *Wisconsin* (1997) 520 US 385, 394 ["This showing [for reasonable suspicion] is not high"]. NOTE: The degree of suspicion required is "considerably less" than a preponderance of the evidence; i.e., considerably less than a 50% chance. See *United States* v. *Sokolow* (1989) 490 US 1, 7; *Illinois* v. *Wardlow* (2000) 528 US 119, 123; *United States* v. *Arvizu* (2002) 534 US ___ [151 L.Ed.2d 740, 750].

[91] *People* v. *Valdivia* (1980) 114 Cal.App.3d 24, 27; *U.S.* v. *Granville* (9th Cir. 2000) 222 F.3d 1214, 1219; *U.S.* v. *Hudson* (9th Cir. 1996) 100 F.3d 1409, 1417.

[92] See *Richards* v. *Wisconsin* (1997) 520 US 385, 388, *People* v. *Neer* (1986) 177 Cal.App.3d 991, 995 ["A generalized belief based on the fact this was a narcotics investigation is insufficient."]; *People* v. *Rosales* (1968) 68 Cal.2d 299, 305 [no "general assumptions"]; *People* v. *Bruce* (1975) 49 Cal.App.3d 580, 588 ["(E)ven in narcotics cases where evidence can be destroyed far more

As noted earlier, if officers have reasonable suspicion that exigent circumstances will exist when they arrive, they may ask the judge to authorize a no-knock entry.

The following are examples of circumstances that were deemed to have justified a no-knock entry.

Threat of violence

- Suspect was a prison escapee with a violent past who reportedly had access to a large supply of weapons; he vowed that he would "not do federal time."[95]
- Suspect was wanted for the murder of a police officer.[96]
- Suspect shot two people shortly before officers arrived to arrest him.[97]
- Officers had probable cause to arrest the occupants for murder and ADW, and the officers reasonably believed the occupants were armed.[98]
- Search for drugs; suspect's arrest record showed "assaultive" behavior in the past, prior "altercation with a police officer," and firearms possession.[99]
- Warrant for stolen property and drugs. Officer had reliable information that defendant not only possessed weapons but habitually answered the door armed with a firearm.[100]
- Suspect "customarily" carried a gun, during a previous search, officers found several handguns and a blackjack; as officers arrived, a man looked at them from a window, then officers heard "running footsteps."[101]
- Officers knew that an armed robbery had recently been committed and that "defendant was a suspect who was likely to be armed."[102]
- Officer who entered defendant's house to arrest him for armed robbery knew defendant was known to have used guns on other occasions.[103]
- The occupant was a suspect in an armed robbery that occurred 45 minutes earlier; an informant told officers that the suspect "knew the police were around and that he might use the gun on the police," and that the suspect was "crazy."[104]
- Warrant to search suspected drug dealer's home; suspect had previously "expressed his willingness to use firearms against the police. He was known to have access to firearms."[105]
- Officers reasonably believed the house was being burglarized.[106]
- Suspect was a felon operating under an alias, his apartment was protected by a steel door; officers knew there was a loaded handgun and a "large amount" of crack cocaine inside the apartment.[107]

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easily than here, we require some specific indication that destruction is about to occur before we excuse compliance with the knock and notice requirements."].

93 *U.S.* v. *Peterson* (9th Cir. 2003) 353 F.3d 1045, 1050.

94 See *Richards* v. *Wisconsin* (1997) 520 US 385, 394 [Court notes that "felony drug investigations may frequently present circumstances warranting a no-knock entry"].

95 *United States* v. *Ramirez* (1998) 523 US 65, 71. ALSO SEE *People* v. *Ford* (1975) 54 Cal.App.3d 149, 155, fn.5.

96 *People* v. *Gilbert* (1965) 63 Cal.2d 690, 707.

97 *People* v. *Goldbach* (1972) 27 Cal.App.3d 563, 571.

98 *People* v. *Braun* (1973) 29 Cal.App.3d 949, 969.

99 *People* v. *Henderson* (1976) 58 Cal.App.3d 349, 356.

100 *People* v. *Dumas* (1973) 9 Cal.3d 871, 878-9. ALSO SEE *U.S.* v. *Hudson* (1996) 100 F.3d 1409, 1417-8.

101 *Brown* v. *Superior Court* (1973) 34 Cal.App.3d 539, 544.

102 *People* v. *De La Plane* (1979) 88 Cal.App.3d 223, 235-6.

103 *People* v. *Taylor* (1968) 267 Cal.App.2d 505, 508.

104 *People* v. *Amos* (1977) 70 Cal.App.3d 562, 567.

105 *U.S.* v. *Turner* (9th Cir. 1991) 926 F.2d 883, 887.

106 *People* v. *Solario* (1977) 19 Cal.3d 760; *People* v. *Green* (1984) 163 Cal.App.3d 239.

Destruction of evidence

- During the three years prior to execution of the warrant, the defendant had destroyed or attempted to destroy evidence on three occasions.[108]
- Suspect had a long history of attempting to destroy evidence, which included a "penchant for flushing toilets even when nature did not call."[109]
- A drug dealer told a police informant that if he "were to see the police or if he knew the police were around, he would destroy the evidence" and that "he would not get caught again with the evidence."[110]

Futile gesture

- Officers in hot pursuit of a burglary suspect chased him into a house.[111]

Post-arrival exigency: In some cases, grounds for a no-knock entry develop after officers arrive at the scene. The following are examples.

- Search warrant for drugs. When officers knocked, the defendant "cracked" open the door, saw a uniformed officer, then slammed the door shut.[112]
- Search for explosives, weapons, and drugs; as the SWAT team was assembling outside, a man opened the door, saw them, and immediately closed the door.[113]
- FBI agents had probable cause to believe a fugitive, wanted for several violent offenses involving guns, was inside a motel room; before agents entered, a friend of the fugitive who was arrested outside the room yelled for the fugitive to "run."[114]
- 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."[115]
- A reliable informant said the suspect, a drug dealer, would try to destroy evidence if he thought officers were going to search his house; officers saw the suspect cutting heroin in the bathroom; when he saw the officers, he ran back "toward the easily flushable heroin."[116]

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[107] *U.S.* v. *Stowe* (7th Cir. 1996) 100 F.3d 494, 499.
[108] *People* v. *De Santiago* (1969) 71 Cal.2d 18.
[109] *People* v. *Alaniz* (1986) 182 Cal.App.3d 903, 906.
[110] *People* v. *Gonzales* (1971) 14 Cal.App.3d 881. ALSO SEE *People* v. *Vasquez* (1969) 1 Cal.App.3d 769.
[111] *People* v. *Patino* (1979) 95 Cal.App.3d 11, 21.
[112] *Richards* v. *Wisconsin* (1997) 520 US 385, 395 [["Once the officers reasonably believed that Richards knew who they were . . . it was reasonable for them to force entry immediately given the disposable nature of the drugs."]. ALSO SEE *People* v. *Vasquez* (1969) 1 Cal.App.3d 769, 775 ["(W)hen appellant attempted to close the door, he not only knew the officers' identity but was well aware of the officers' purpose in seeking to gain entry into his apartment."]; *People* v. *Baldwin* (1976) 62 Cal.App.3d 727, 739 ["(B)aldwin's unsuccessful attempt to close the door can only be viewed as an evasionary and surreptitious tactic analogous to flushing the contraband down the toilet"]; *People* v. *Thompson* (1979) 89 Cal.App.3d 425, 432 [occupants attempted to block the officers' entry]; *People* v. *Bencomo* (1985) 171 Cal.App.3d 1005, 1018 ["Initiating a struggle after the police have identified themselves and stated their mission amounts to a denial of entry under the statute."].
[113] *U.S.* v. *Peterson* (9th Cir. 2003) 353 F.3d 1045, 1049. ALSO SEE *People* v. *Bigham* (1975) 49 Cal.App.3d 73, 80-1 ["(The) act of barring the garage door from within manifested a clear intent on the part of the occupants to prevent entry"].
[114] *U.S.* v. *Reilly* (9th Cir. 2000) 224 F.3d 986.
[115] *People* v. *Tribble* (1971) 4 Cal.3d 826, 833.
[116] *People* v. *Negrete* (1978) 82 Cal.App.3d 328, 336.

- In apparent response to an officer's announcement of authority and purpose, two people inside a "heavily barricaded" drug house started running through the house.[117]
- After officers knocked and announced at the door of a house occupied by a woman who was involved in drug sales, they heard "shrill female sounds emanating from within the house and the sound of footsteps running away from the door."[118]
- After announcing his identity and purpose, a narcotics officer heard the voices of several children behind him yell, "Mama, Mama," then some exclamatory words in Spanish he did not understand; officers had information that "Mama" was aware that "Papa" sold heroin.[119]
- From outside the apartment to be searched, an officer saw two known drug dealers cutting heroin over a toilet; the officer was aware that one of the dealers had previously "attempted to dispose of evidence by throwing marijuana out of a car when he was stopped by the police."[120]
- "[V]ery fast movements toward the rear of the apartment."[121]
- "[F]ootsteps running in the wrong direction."[122]
- "[D]efendant got off the couch and started toward the rear of the apartment."[123]
- "I heard someone running, and I heard something—falling and rattling and saw a male through the doorway of the kitchen moving quickly."[124]
- An officer "saw defendant approach the door, look at him in apparent recognition, and then run back toward the easily flushable heroin."[125]
- The defendant was seen "leaping through a screened window when the identity of the police was announced."[126]
- A drugs-for-weapons deal just occurred inside the house, and an undercover officer was inside.[127]
- Defendant "brace[d] himself against the door handle with both hands."[128]

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[117] *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1112. ALSO SEE *People* v. *Carrillo* (1966) 64 Cal.2d 387, 392; *People* v. *Pipitone* (1984) 152 Cal.App.3d 1112, 1118.
[118] *People* v. *Freeny* (1974) 37 Cal.App.3d 20, 26, 33.
[119] *People* v. *Vargas* (1973) 36 Cal.App.3d 499. ALSO SEE *People* v. *Hall* (1971) 3 Cal.3d 992, 998.
[120] *People* v. *Colvin* (1971) 19 Cal.App.3d 14.
[121] *People* v. *Temple* (1969) 276 Cal.App.2d 402, 413.
[122] *McClure* v. *U.S.* (9th Cir. 1964) 332 F.2d 19, 22. COMPARE *People* v. *Trujillo* (1990) 217 Cal.App.3d 1219, 1226 ["The generic 'movement' heard by the officer, without more, is no manifestation of a refusal of entry."].
[123] *People* v. *Pacheco* (1972) 27 Cal.App.3d 70, 78.
[124] *People* v. *Pipitone* (1984) 152 Cal.App.3d 1112, 1116.
[125] *People* v. *Negrete* (1978) 82 Cal.App.3d 328, 336.
[126] *People* v. *Lopez* (1969) 269 Cal.App.2d 461, 468. ALSO SEE *People* v. *Mayer* (1987) 188 Cal.App.3d 1101, 1112 [officers saw two men running inside the house]; *U.S.* v. *Stiver* (3rd Cir. 1993) 9 F.3d 298, 302 ["When they announced their presence, they heard heavy and hurried footsteps leading away from the door."]; *People* v. *Stegman* (1985) 164 Cal.App.3d 936, 946 ["The people inside the house immediately began running away."]; *People* v. *Hill* (1970) 3 Cal.App.3d 294, 299-300; *Kinsey* v. *Superior Court* (1968) 263 Cal.Appa.2d 188, 191 [officer heard "rustling, shuffling noise in the room. His description of the noise suggests surreptitious movement"]. COMPARE *People* v. *Neer* (1986) 177 Cal.App.3d 991, 996 ["(T)here were no specific facts, such as shouting or running, to support an objectively reasonable belief the occupants had refused entry."].
[127] *People* v. *Cornejo* (1979) 92 Cal.App.3d 637.
[128] *People* v. *Morales* (1968) 259 Cal.App.2d 290, 297.