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NO-KNOCK WARRANTS

*Christian H. Smith-Bishop**

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* Christian H. Smith-Bishop. Law clerk to the Hon. Joseph Dawson, III, 2024–2026.

INTRODUCTION

In England, long before the United States even existed, when sheriffs executed warrants, the common law required that they first knock and announce their business to the occupants of the home and afford the occupants a reasonable time to open the door.[1] If the occupants did not admit the sheriff promptly, the

[1] *See* Semayne's Case (1604) 77 Eng. Rep. 194, 195; 5 Co. Rep. 91 a, 91 b (KB) (the canonical English case establishing this rule in the civil context); Mark Josephson,

sheriff then was free to use force to gain entry.[2] The common law required the sheriff to "knock and announce" for several reasons, including to protect the king's agents from being mistaken for thieves and the occupants responding accordingly.[3]

The American Colonies inherited this rule as part of the common law,[4] and the Framers of the United States Constitution incorporated this rule in the "reasonableness" requirement of the Fourth Amendment.[5] In 1917, Congress elected to codify this rule,[6] thereby demonstrating the "reverence of the law for the individual's right of privacy in his house."[7]

But like other rules, the common law acknowledged exceptions to the knock-and-announce rule,[8] and the Fourth Amendment likewise countenances exceptions so long as the

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Fourth Amendment—Must Police Knock and Announce Themselves Before Kicking in the Door of A House?, 86 J. CRIM. L. & CRIMINOLOGY 1229, 1235–39 (1996) (tracing the rule's history upon arrival and through the colonial period of the United States); *see also* MICHAEL FOSTER, A REPORT OF SOME PROCEEDINGS ON THE COMMISSION FOR THE TRIAL OF THE REBELS IN THE YEAR 1746, IN THE COUNTY OF SURRY; AND OF OTHER CROWN CASES 320 (2d ed. 1776) ("And let it be remembered, . . . in every cafe where doors may be broken open in order to arreft, whether in cafes criminal or civil, there muft be fuch notification, demand and refufal, before the parties concerned proceed to that extremity.").

[2] *See Semayne's Case*, 77 Eng. Rep. at 195; 5 Co. Rep. at 91 b; *cf.* Lee v. Gansell (1774) 98 Eng. Rep. 700, 704; Lofft 374, 380–81 (KB) (explaining that "sufficient notice" was required before the "right to break open the door" attached, but that was not in issue). However, some early English authorities limited the rule in cases of criminal process. *See, e.g.*, 4 EDWARD COKE, THE FOURTH PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING THE JURISDICTION OF COURTS 176–77 (M. Flesher ed. 1648) (explaining that "[o]ne or more Juftice or Juftices of Peace cannot make a warrant upon a bare furmife to break any man[']s houfe to fearch for a felon, or for ftoln goods" despite such authority "being created by Act of Parliament" because Magna Charta prevents it).

[3] *See* Wilson v. Arkansas, 514 U.S. 927, 936 (1995); *see also infra* text accompanying notes 55–90.

[4] *See, e.g.*, Kelsy v. Wright, 1 Root 83, 84 (Conn. Super. Ct. 1783); Curtis v. Hubbard, 4 Hill 437, 438–41 (N.Y. Sup. Ct. 1842); *see also, e.g.*, Miller v. United States, 357 U.S. 301, 306–09 (1958).

[5] *Wilson*, 514 U.S. at 934.

[6] Act of June 15, 1917, ch. 30, tit. XI, §§ 8–9, 40 Stat. 229 (codified as amended at 18 U.S.C. § 3109).

[7] *Miller*, 357 U.S. at 313.

[8] *See, e.g.*, *Lee*, 98 Eng. Rep. at 705; Lofft at 381 ("[A]s to the outer door, the law is now clearly taken" that it is privileged; but the door may be broken "when the due notification and demand has been made and refused . . . .").

search and seizure remains reasonable.[9] For example, judges have the power to issue "no-knock" warrants to authorize government agents to execute a search warrant without knocking and announcing their presence.[10] Such no-knock warrants come in handy when agents are faced with individuals inclined to violence or who might destroy evidence.

Following a string of United States Supreme Court cases beginning in 1958, the rule today is that judges are constrained by the Fourth Amendment's Unreasonable Search and Seizure Clause. That is, judges may issue no-knock warrants only where government agents—often the police or other law enforcement officers—possess a foreknown reasonable suspicion that a recognized exigency exists.[11]

The article provides a brief historical sketch of the English knock-and-announce doctrine from which the American no-knock warrant sprang. The article then discusses the contours of the American version of the knock-and-announce rule. All this in hand, the article then classifies cases in which no-knock warrants have been found justified by the United States Courts of Appeals. This article also discusses the factors that judges must consider when deciding whether to issue no-knock warrants and provides a checklist judges might use when faced with applications for no-knock warrants.

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[9] *Wilson*, 514 U.S. at 934 (noting that not "every entry must be preceded by an announcement" and "[t]he Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests").

[10] "A 'no-knock' search warrant allows the police to enter the residence without knocking and announcing their presence and purpose before entering the residence." United States. v. Mattison, 153 F.3d 406, 409 n.1 (7th Cir. 1998).

[11] United States v. Banks, 540 U.S. 31, 36 (2003) ("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.").

I. KNOCK-AND-ANNOUNCE AND NO-KNOCK WARRANTS

A. Inheritance and Assimilation of Knock-and-Announce

1. The Knock-and-Announce Rule

Distilled to its essence, the knock-and-announce rule requires that an official of the state announce his or her identity and purpose before forcibly entering a private dwelling to perform some government process.[12] It likely was part of the English common law by the 1200s.[13]

A moment's reflection will reveal several distinct elements of the rule. First, the requirement that officers identify their presence.[14] Officers must also announce their identity *and* purpose.[15] Announcement objectively must be "sufficient to alert"

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[12] *See* Semayne's Case (1604) 77 Eng. Rep. 194, 195; 5 Co. Rep. 91 a, 91 b (KB).

[13] *Wilson*, 514 U.S. at 932 n.2.

[14] *See* United States v. Hardin, 106 F. App'x 442, 445 (6th Cir. 2004) ("Despite its title, however, the knock-and-announce rule does not require a knock; rather, an announcement of the officer's identity and purpose suffices.").

[15] Miller v. United States, 357 U.S. 301, 309 (1958) (noting that 18 U.S.C. § 3109 "seems to require notice in the form of an express announcement by the officers of their purpose for demanding admission").

Though many cited decisions on the knock-and-announce rule are decided in the context of 18 U.S.C. § 3109, the United States Supreme Court has implied that the rules of decision in these cases perforce apply to violations of the Fourth Amendment knock-and-announce rule, given the shared common-law heritage of the two authorities. *See, e.g.*, Hudson v. Michigan, 547 U.S. 586, 589 (2006) (explaining that "the [knock-and-announce] rule" in § 3109 is "also a command of the Fourth Amendment").

Of course, the United States Supreme Court has established the converse. United States v. Ramirez, 523 U.S. 65, 73 (1998) (noting "§ 3109 codifies the common law in this area, and the common law in turn informs the Fourth Amendment," so the United States Supreme Court's "decisions in *Wilson* [*v. Arkansas*] and *Richards* [*v. Wisconsin*]," which are Fourth Amendment cases, "serve as guideposts in construing [§ 3109]"); *see* Sabbath v. United States, 391 U.S. 585, 591 n.8 (1968) (dicta suggesting that § 3109's principle applied at common law).

The federal circuit courts of appeals to consider the matter have expressly held that rules of decision in § 3109 cases apply in the Fourth Amendment context, at least as regards to the exclusion of materials obtained under search warrants. *See, e.g.*, United States v. Acosta, 502 F.3d 54, 57 (2d Cir. 2007) ("The Fourth Amendment knock-and-announce principle and § 3109 share the same common law roots, overlap in scope, and protect the same interests, which necessitates similar results in terms of the exclusionary rule's application."); United States v. Southerland, 466 F.3d 1083, 1085–86 (D.C. Cir. 2006) ("The short of the matter is that § 3109 and the Fourth Amendment

the residents of the house, but no specific timbre or volume is required.[16] The statement of purpose need not reflect any formula, so long as the purpose is objectively clear.[17] These procedures are required because they serve several important purposes, including alerting the occupants that they "ha[ve] no right to resist the search."[18]

Second, refusal of entry. The occupants' refusal need not be explicit and may be constructive.[19] Indeed, in most instances, refusal is a failure to open the door promptly as opposed to an

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have merged both in the standards governing entries into the home and in the remedy for violations of those standards.").

The distinction arose from two grounds. First, the fact that "§ 3109 does not apply to state investigations by state officers," United States v. Moland, 996 F.2d 259, 261 (10th Cir. 1993), whereas the Fourth Amendment does. *See* Ker v. California, 374 U.S. 23, 34–35 (1963).

Second, and as will be discussed *infra*, § 3109 contains a textual limitation to search warrants. Nonetheless, in the light of the foregoing, some circuit courts of appeals have applied the statute irrespective of the type of warrant at issue. *See* United States v. Young, 609 F.3d 348, 353 n.2 (4th Cir. 2010) ("While section 3109 refers only to search warrants, its standards govern the execution of arrest warrants as well."); United States v. Alejandro, 368 F.3d 130, 133 (2d Cir.), *opinion supplemented*, 100 F. App'x 846 (2d Cir. 2004) (summary order) (holding the same).

[16] United States v. Spriggs, 996 F.2d 320, 322–23 (D.C. Cir. 1993) (finding sufficient an announcement "slightly above a normal tone of voice" at the outer door of an apartment); United States v. Leichtnam, 948 F.2d 370, 372 (7th Cir. 1991) (announcement of "police" in "voice slightly louder than might be used in conversation" sufficient); United States v. Foreman, 30 F.3d 1042, 1043–44 (8th Cir. 1994) (affirming district court's conclusion that suppression unwarranted when a person present at the home searched pursuant to a warrant testified only that the person "didn't hear" an announcement and *not* that announcement was not, in fact, made).

[17] The Sixth Circuit, in an exigent-circumstances case, put it this way:

> [T]he focus "is properly not on what 'magic words' are spoken by the police, but rather on how these words and other actions of the police will be perceived by the occupant" and thus "when officers pound on the door, yelling 'Police!'" this is sufficient, as it shows "they want in, presumably to search or arrest, not census-taking."

United States v. Finch, 998 F.2d 349, 354 (6th Cir. 1993) (quoting United States v. One Parcel of Real Prop., 873 F.2d 7, 9 (1st Cir.), *cert. denied sub nom.*, Latraverse v. United States, 493 U.S. 891 (1989)).

[18] Bumper v. North Carolina, 391 U.S. 543, 550 (1968); *see infra* text accompanying notes 55–90.

[19] *Spriggs*, 996 F.2d at 322 (so holding in context of 18 U.S.C. § 3109). Of course, it has long been the rule that "if the door of the houfe be open, [the officer] may enter into the same, and arreft the party." COKE, *supra* note 2, at 178.

explicit statement that the occupants will not grant the officers entry.

To afford time for compliance, there also must be a reasonable delay between the announcement and the entry.[20] What delay is "reasonable" requires an analysis of all the circumstances—including, if relevant, the nature of the evidence sought—with the purposes of the knock-and-announce rule in mind.[21] The entry may be forcible,[22] but it need not be.[23] A "ruse" is not forcible entry and often will be the least dangerous option for both the law enforcement officers and the occupants.[24]

The knock-and-announce rule generally does not apply to searches of commercial establishments,[25] though the Ninth Circuit

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[20] *See* United States v. Banks, 540 U.S. 31, 43 (2003) (holding in context of 18 U.S.C. § 3109 that a reasonable period following knocking and announcing is a totality-of-the-circumstances inquiry); United States v. Crippen, 371 F.3d 842, 846–47 (D.C. Cir. 2004) (Rogers, J., concurring); United States v. Espinoza, 256 F.3d 718, 722 (7th Cir. 2001); United States v. Spikes, 158 F.3d 913, 926 (6th Cir. 1998), *cert. denied*, 525 U.S. 1086 (1999) ("The Fourth Amendment's 'knock and announce' principle, given its fact-sensitive nature, cannot be distilled into a constitutional stop-watch where a fraction of a second assumes controlling significance.").

[21] *Banks*, 540 U.S. at 41–42; *see infra* text accompanying notes 55–90.

[22] Semayne's Case (1604) 77 Eng. Rep. 194, 195–97; 5 Co. Rep. 91 a, 91 b–92 b (KB). Though this case "resolved" six (or seven, depending on how you count) propositions of law, for only one is it most often cited: that a home may be "broken" following sufficient notice of process. *Id.* at 195–97; 5 Co. Rep. at 91 b–92 a. But this "holding" is only dicta. The case dealt only with alleged interference with the execution of a civil writ against a surviving joint tenant of a dead debtor. *Id.* at 194–95; 5 Co. Rep. at 91 a–91 b. No issue of forcible entry was before the court. *Id.*

[23] Sabbath v. United States, 391 U.S. 585, 590 (1968) (holding that "[a]n unannounced intrusion into a dwelling" under 18 U.S.C. § 3109 "is no less an unannounced intrusion whether officers break down a door, force open a chain lock on a partially open door, open a locked door by use of a passkey, or, as here, open a closed but unlocked door").

[24] *See, e.g.*, *id.* at 590 n.7 (dicta recognizing lower courts' recognition that a ruse is not a forcible entry); United States v. Syler, 430 F.2d 68, 70 (7th Cir. 1970) (collecting cases supporting the holding that "[r]eliance upon ruse as a means of access to the interior of the house did not invalidate the legality of the entry and ensuing arrests" under the Fourth Amendment).

[25] *See* Wilson v. Arkansas, 514 U.S. 927, 931 (1995) ("An examination of the common law of search and seizure leaves no doubt that the reasonableness of a search of *a dwelling* may depend in part on whether law enforcement officers announced their presence and authority prior to entering." (emphasis added)); United States v. Conley, 911 F. Supp. 169, 172 (W.D. Pa. 1995) ("It is evident from the plain language of [*Wilson v. Arkansas*], that the Supreme Court was concerned with the entry into a dwelling, not a commercial establishment such as the one at issue in Defendant's motion to

Court of Appeals has held that under certain circumstances it may.[26] Also, the knock-and-announce rule generally does not apply to the search of a residence when the occupants or others have left the entry door open.[27] The knock-and-announce rule applies to the outer door of a residence only—officers need not knock and announce at each inner door of a residence after officers enter through the outermost door.[28]

There are many state decisions collected on these points in the literature.[29]

2. Midcentury Modification

The knock-and-announce rule existed in the background of American law for many years.[30] Then, in 1917, Congress enacted the Espionage Act.[31] In that Act, Congress formally codified the knock-and-announce rule regarding federal officers:

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suppress."), *aff'd*, 92 F.3d 157 (3d Cir. 1996); United States v. Lopez, 898 F.2d 1505, 1511 (11th Cir. 1990) (holding the same in context of 18 U.S.C. § 3109).

[26] United States v. Phillips, 497 F.2d 1131, 1133–34 (9th Cir. 1974) (concluding "that a locked commercial establishment, at least at night," constitutes a dwelling for purposes of knock-and-announce under § 3109).

[27] United States v. Sherrod, 966 F.3d 748, 753 (8th Cir. 2020) ("The Fourth Amendment does not require officers to knock and announce their presence before entering an open door."); United States v. Phillips, 149 F.3d 1026, 1029 (9th Cir. 1998) (so holding in context of 18 U.S.C. § 3109).

[28] *See* United States v. Bragg, 138 F.3d 1194, 1194–95 (7th Cir. 1998) (holding in context of 18 U.S.C. § 3109 that the knock-and-announce rule "applies per house rather than per door, so that if the occupants refuse admittance at the first door the police may break open whatever other doors stand in their way").

[29] *See generally* JOHN M. BURKOFF, SEARCH WARRANT LAW DESKBOOK (July 2024 update).

[30] *See Wilson*, 514 U.S. at 932–36 (tracing the lineage of the knock-and-announce rule through the time of the Founding).

[31] Act of June 15, 1917, ch. 30, tit. XI, §§ 8–9, 40 Stat. 229 (codified as amended at 18 U.S.C. § 3109).

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance [or when necessary to liberate himself or a person aiding him in the execution of the warrant].[32]

In 1958, the United States Supreme Court held in *Miller v. United States*, in part, that § 3109 must be interpreted in the light of the common law.[33] And the Court recognized that the common-law principle of announcement that inhered in District of Columbia law—which concededly applied to the case[34]—was equally applicable to § 3109.[35]

Immediately following the decision, the broader applicability of the Court's holding as to § 3109 or the Fourth Amendment was by no means clear.[36] But in 1963, the United States Supreme Court decided *Ker v. California*, in which the Court suggested that "the rule of announcement" explicated in *Miller* may well be a constitutional rule.[37] However, it stopped short of that holding and affirmed based on the constitutionality of the California law.[38]

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[32] *Id.* The bracketed language reflects § 3109 today. Originally, the same substantive language was drafted in two sections of title XI that were consolidated.

[33] Miller v. United States, 357 U.S. 301, 306 (1958). The United States Supreme Court considered the common-law authorities that sprang from the ancient maxim that "a man's house is his castle." *Id.* at 306–09. Ultimately, the Court held suppression warranted because announcement of purpose was insufficient: following announcement of the police's identity, the suspect opened the chained door and inquired what the officers were doing there. *Id.* at 313, 303. But before they could answer, the suspect "attempted to close the door" and the officers then forcibly entered—without a warrant. *Id.* at 303–04.

[34] *Id.* at 306, 309.

[35] *Id.* at 306; *cf.* Sabbath v. United States, 391 U.S. 585, 591 n.8 (1968) (discussing this point).

[36] Aside from establishing its common law roots, the United States Supreme Court in *Miller* did not appear to hold anything regarding § 3109. Indeed, Justice Brennan later characterized the *Miller* holding as referring to § 3109 by "analogy" with respect to District of Columbia law. Ker v. California, 374 U.S. 23, 53 (1963) (Brennan, J., dissenting). Later Supreme Court cases simply cite *Miller* for "acknowledg[ing] that the commonlaw principle of announcement is 'embedded in Anglo-American law.'" Wilson v. Arkansas, 514 U.S. 927, 934 (1995) (quoting *Miller*, 357 U.S. at 313).

[37] The Court explained that state criminal statutes—here, California's—set forth the applicable rules for exclusion. *Ker*, 374 U.S. at 33–34. Of course, such rules must comply with the "constitutional proscription of unreasonable searches and seizures and

3. A Rule Constitutionalized and Contoured

Late in the twentieth century, the United States Supreme Court gave the knock-and-announce rule an explicitly constitutional dimension. First, in 1995, the Supreme Court decided *Wilson v. Arkansas*.[39] There, the Court recognized that the knock-and-announce rule's long history suggested the Framers were keenly aware of this requirement, and accordingly, incorporated the knock-and-announce rule into the Fourth Amendment's reasonableness requirement.[40] The Court held that the rule was limited to the "reasonableness" inquiry.[41]

Second, in 1997, the Supreme Court decided *Richards v. Wisconsin*. There, the Court rejected a state-created "blanket exception" to the Fourth Amendment reasonableness inquiry that threatened to eliminate case-by-case consideration of exigent circumstances. The Court reaffirmed that officers may only derogate from the knock-and-announce rule when they have "reasonable suspicion that knocking and announcing . . . , under the particular circumstances, would be dangerous or futile" or "would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence."[42]

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the concomitant command that evidence so seized is inadmissible against one who has standing to complain." *Id.* at 34.

[38] *Id.* at 39 (noting that because the facts of the case involved California law, the same's rules about "admissibility [are] governed by constitutional standards").

[39] *Wilson*, 514 U.S. at 934.

[40] *Id.* The Fourth Amendment provides, in full, that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[41] *Wilson*, 514 U.S. at 934 (holding that knock-and-announce is "among the factors to be considered in assessing the reasonableness of a search or seizure"); *accord* Hudson v. Michigan, 547 U.S. 586, 615 (2006) (Breyer, J., dissenting) (noting that "failure to comply with the knock-and-announce rule[] [is] not . . . an independently unlawful event, but [instead is] a factor that renders the search 'constitutionally defective.'" (quoting *Wilson*, 514 U.S. at 936)).

[42] Richards v. Wisconsin, 520 U.S. 385, 394 (1997).

Wilson and *Richards* established the general constitutional rule and its exceptions. But further clarification followed. In 1998, the Supreme Court decided *United States v. Ramirez*.[43] The Court held that no distinction exists between the standard applicable to federal actors and the constitutional floor binding on state actors under the Fourth Amendment.[44] This case made it clear that the exigent-circumstances exceptions developed pursuant to the Fourth Amendment apply to no-knock entries under 18 U.S.C. § 3109.[45]

Then in 2003, in *United States v. Banks*, the Supreme Court addressed "the length of time police with a warrant [reasonably] must wait before entering without permission after knocking and announcing their intent in a felony case."[46] The Court held that, on the facts of the case—which was a drug case—a fifteen- to twenty-second delay following knocking and announcing satisfied § 3109 and the Fourth Amendment.[47]

Then, in 2006, the Supreme Court held in *Hudson v. Michigan* that derogation from the knock-and-announce rule in a search pursuant to a warrant perforce does not trigger the Fourth Amendment exclusionary rule.[48] The Court reached this conclusion in two steps. First, the Court observed that the violation of the knock-and-announce rule did not causally contribute to illicit evidence-gathering by officers.[49] Then, it weighed the social costs of exclusion against its deterrence value and concluded that exclusion was inappropriate.[50] The Court noted that internal disciplinary procedures, citizen review boards,

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[43] *See generally* United States v. Ramirez, 523 U.S. 65 (1998).

[44] *Id.* The Court also held that whether reasonable suspicion exists does not depend on whether police must destroy property to enter. *See id.* at 70–71.

[45] *Id.* at 73 ("We therefore hold that § 3109 includes an exigent circumstances exception and that the exception's applicability in a given instance is measured by the same standard we articulated in *Richards* [*v. Wisconsin*].").

[46] United States v. Banks, 540 U.S. 31, 35 (2003).

[47] *Id.* at 33.

[48] Hudson v. Michigan, 547 U.S. 586, 594 (2006). "[T]he exclusionary rule is inapplicable" to knock-and-announce violations, said the United States Supreme Court, because "the knock-and-announce rule has never protected . . . one's interest in preventing the government from seeing or taking evidence described in a warrant . . . ." *Id.*; *see* United States v. Garcia-Hernandez, 659 F.3d 108, 114 (1st Cir. 2011) (noting that "the holding in *Hudson* is categorical").

[49] *Hudson*, 547 U.S. at 590–94 (Part III.A. of the Court's opinion).

[50] *Id.* at 594–99 (Part III.B. of the Court's opinion).

and civil suits provide recourse to persons aggrieved by an officer's failure to announce his presence prior to entry.[51] Most, but not all, courts have held that this analysis applies to 18 U.S.C. § 3109.[52]

As discussed below, because the knock-and-announce rule is a constitutional principle, it applies to the execution of warrants of various kinds, including federal and state arrest warrants[53] and federal and state search warrants.[54]

4. Purposes of the Knock-and-Announce Rule

The knock-and-announce rule serves multiple purposes. It prevents injury and protects physical property and while also preserving the occupants' privacy interests.[55]

a. Minimizing Destruction and Theft of Property.

The knock-and-announce rule helps prevent damage to and theft of property in at least two respects.[56] As the Supreme Court has noted, "[o]ne point in making an officer knock and announce . . . is to give a person inside the chance to save his door."[57] That is, if

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[51] *Id.* at 588–99; *see, e.g.*, United States v. White, 990 F.3d 488, 493 (6th Cir. 2021) ("As *Hudson* explains, the key remedy for unjustified no-knock entries is an action under § 1983 for money damages, not exclusion of the evidence in a criminal proceeding.").

[52] *See, e.g.*, United States v. Acosta, 502 F.3d 54, 59 (2d Cir. 2007) (extending *Hudson v. Michigan* to violations of 18 U.S.C. § 3109); United States v. Bruno, 487 F.3d 304, 306 (5th Cir. 2007) (holding the same); United States v. Southerland, 466 F.3d 1083, 1086 (D.C. Cir. 2006) (holding the same). *But see* United States v. Williams, 130 F.4th 177, 185 (4th Cir. 2025) (declining to say whether *Hudson v. Michigan* applies to § 3109); United States v. Weaver, 808 F.3d 26, 33 (D.C. Cir. 2015) (declining to extend *Hudson v. Michigan* to arrest warrants).

[53] *See, e.g.*, Ker v. California, 374 U.S. 23, 39 (1963) (Fourth Amendment, as "constitutional standard[]," applies to state arrest warrant); United States v. Appelquist, 145 F.3d 976, 979 (8th Cir. 1998) (applying Fourth Amendment knock-and-announce rule to state arrest warrant).

[54] *See, e.g.*, Richards v. Wisconsin, 520 U.S. 385, 387–88 (1997) (state search warrant subject to the Fourth Amendment knock-and-announce rule); United States v. Heacock, 31 F.3d 249, 258 (5th Cir. 1994) (holding the same); United States v. Griffith, 867 F.3d 1265, 1280 (D.C. Cir. 2017) (seizure case in which the court applied the Fourth Amendment to a D.C. search warrant).

[55] WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 3.4, at 163 (2d ed. 1992) ("This requirement, grounded in the Fourth Amendment, serves several worthwhile purposes . . . .").

[56] Bonner v. Anderson, 81 F.3d 472, 475 (4th Cir. 1996).

[57] United States v. Banks, 540 U.S. 31, 41 (2003).

the occupants are afforded sufficient time to open their door in response to the officer's knock, this might prevent the destruction of the door by officers forcibly breaching it.[58] The Supreme Court has recognized this as one of the key purposes of the knock-and-announce rule.[59]

Secondarily, by preserving the door to a dwelling and any locking mechanisms, this also prevents the theft of property that otherwise might occur after the officers leave the premises, as a destroyed door is inadequate to prevent trespassers and thieves from making entry and pilfering the occupants' possessions. Thus, the knock-and-announce rule is consistent with the belief that legal rules should strive to preserve property, increase efficiency, and prevent waste.[60] After all, "[t]he final cause of law is the welfare of society."[61]

b. Preventing Injury to Officers and Occupants.

The knock-and-announce rule also helps minimize the possibility that the occupants of a dwelling mistake police officers for criminals and resist them with force.[62] "Surreptitious entry of private premises" is "fraught with physical—even mortal—danger for both the occupants of the private premises and the police."[63] Indeed, the occupants generally would possess a right of self-defense against criminal intruders.[64] If the occupants of a house

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[58] LAFAVE & ISRAEL, *supra* note 55, § 3.4, at 163 (noting that the knock-an-announce rule "prevents the physical destruction of property by giving the occupant an opportunity to admit the officer").

[59] Wilson v. Arkansas, 514 U.S. 927, 935–36 (1995).

[60] *See* BENJAMIN N. CARDOZO, THE PARADOXES OF LEGAL SCIENCE 69 (1928) (noting that law seeks to promote order and reduce waste); ROSCOE POUND, THE SPIRIT OF THE COMMON LAW 196 (1921) (noting that a sound legal system should eliminate waste and conserve "the goods of existence in order to make them go as far as possible").

[61] BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 66 (1921).

[62] The knock-and-announce requirement protects "human life and limb, because an unannounced entry may provoke violence in supposed self-defense." Hudson v. Michigan, 547 U.S. 586, 594 (2006); United States v. Cantu, 230 F.3d 148, 151 (5th Cir. 2000).

[63] United States v. Ford, 553 F.2d 146, 165 n.58 (D.C. Cir. 1977).

[64] "Self-defense is a basic right, recognized by many legal systems from ancient times to the present day . . . ." McDonald v. City of Chicago, 561 U.S. 742, 767 (2010); District of Columbia v. Heller, 554 U.S. 570, 628 (2008) (recognizing the inherent right of self-defense and noting that "the need for defense of self, family, and property is most acute" in the home); COKE, *supra* note 2, at 161 (noting that a person may use

do not know that the "intruders" are authorized by a warrant to enter the premises, they might lawfully resist the officers with force. This would endanger the safety and lives of the officers.[65] Compliance with the knock-and-announce requirement, thus, is an important "safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder."[66] The knock-and-announce rule, therefore, "protects against personal injury that may result from violence by a surprised resident."[67]

Furthermore, when officers meet resistance and respond in kind to the occupants' use of force, the safety and lives of the occupants are placed in peril. Law enforcement officers, armed with the knowledge that they possess a warrant and are protected by qualified immunity, not to mention actual arms, likely will respond to any resistance with substantial force. For example, "occupants, on discovering the unidentified intruders, may attempt to shoot them, and the officers will doubtless return the fire."[68] This poses a substantial danger to the occupants of a residence. The knock-and-announce rule is designed to prevent such uses of force and the death and injury that can result.[69]

Furthermore, the knock-and-announce requirement may also prevent injuries that might occur through the very act of forcefully breaching a door, which can result in injuries to police officers.[70]

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arms to "keep his houfe againft thofe that come to rob, or kill him, or to offer him violence"); THE FEDERALIST NO. 28, at 173 (Alexander Hamilton) (Random House 1941) (noting the existence of the "original right of self-defen[s]e which is paramount to all positive forms of government"); 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 2–3 (1792) (noting that when a person or his property is attacked, the person may "repel force by force"; the right of self-defense "is juftly called the primary law of nature" which cannot be "taken away by the law of fociety").

[65] Launock v. Brown (1819) 106 Eng. Rep. 482, 483; 2 B. & Ald. 592, 594 (KB) ("[F]or if no previous demand is made, how is it possible for a party to know what the object of the person breaking open the door may be? He has a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost.").

[66] Miller v. United States, 357 U.S. 301, 313 n.12 (1958).

[67] Youngbey v. March, 676 F.3d 1114, 1119 (D.C. Cir. 2012).

[68] United States v. Ford, 553 F.2d 146, 165 n.58 (D.C. Cir. 1977).

[69] Bonner v. Anderson, 81 F.3d 472, 475 (4th Cir. 1996).

[70] *See* Hakim v. Safariland, LLC, 79 F.4th 861, 865 (7th Cir. 2023) (noting that a SWAT team officer was seriously injured while the team was practicing breaching a door and was accidently struck by a shotgun round designed to "break[] down doors by disabling hinges and other attachments on doorframes").

Not surprisingly, then, courts have recognized "that no-knock entries pose serious risks both to occupants and to the entering police."[71]

c. Minimizing the Incidence of Mistaken Entries.

The knock-and-announce requirement "is also intended to protect against intrusions occasioned by law enforcement officers' mistakes."[72] The knock-and-announce rule helps mitigate the damage caused by officers mistakenly targeting the wrong house. Not surprisingly, officers sometimes make entry at the wrong address—not the address at which the warrant authorizes a search nor the address for which the officers intended to obtain a warrant.[73]

"[O]fficers going to the wrong address is a recurring problem in the execution of search warrants, particularly no-knock search warrants."[74] For example, in 1999, a SWAT Team from the Denver Police Department entered a house pursuant to a no-knock warrant and killed the occupant.[75] The warrant, however, had listed the wrong address insofar as the target "crack house" was the house next door.[76] Thus, an innocent person was killed during the execution of a no-knock warrant. There are many other examples of law enforcement officers executing no-knock warrants at the wrong address.[77]

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[71] Penate v. Sullivan, 73 F.4th 10, 19 (1st Cir. 2023).

[72] United States v. Cantu, 230 F.3d 148, 152 (5th Cir. 2000); *see also* Ker v. California, 374 U.S. 23, 57 (1963) (Brennan, J., dissenting) (noting that the knock-and-announce rule is also based on such practical considerations as the possibility that police may be misinformed as to the name or address of the suspect).

[73] This problem has a long history. *See, e.g.*, *infra* text accompanying note 155. Indeed, in January 2025, the United States Supreme Court granted certiorari in a case involving a botched no-knock FBI raid in Georgia. *See* Martin v. United States, No. 23-10062, 2024 WL 1716235, at *1 (11th Cir. Apr. 22, 2024), *cert. granted in part*, 145 S. Ct. 1158 (2025). In that context, the Court answered two questions about the Supremacy Clause's impact on the Federal Tort Claims Act (FTCA) and the reach of the latter's discretionary-function exception. The Court vacated and remanded, rejecting the Eleventh Circuit's interpretation of the FTCA. *See* Martin v. United States, 145 S. Ct. 1689, 1704 (2025).

[74] Solis v. City of Columbus, 319 F. Supp. 2d 797, 806–07 (S.D. Ohio 2004).

[75] Kearney v. Dimanna, 195 F. App'x 717, 718 (10th Cir. 2006).

[76] *Id.*

[77] *See, e.g.*, Norris v. Hicks, 855 F. App'x 515, 516 (11th Cir. 2021) (per curiam) (noting that twenty-four police officers executed a no-knock warrant at the wrong

These erroneous intrusions might have been prevented had the officers knocked and announced their presence.[78] "An announcement before forcible entry gives innocent citizens the opportunity to inform the police of their error—before any adverse consequences."[79] Of course, police officers justifiably would be skeptical of a claim that they are at the wrong address insofar as most criminals are not going to volunteer that they have contraband at a residence about to be searched. Nevertheless, knocking and announcing affords both the officers and the occupant additional time to interact, converse, and perhaps cause the officers to discover their error.

Strict adherence to the knock-and-announce requirement does not completely obviate this problem—law enforcement officers mistakenly enter the wrong houses despite knocking and announcing.[80] But the knock-and-announce rule requires the officers to attempt communication with the occupants, which can reduce the frequency of such mistakes or at least minimize the negative consequences for the occupants and the officers.[81]

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address); Lewis v. City of Mount Vernon, 984 F. Supp. 748, 752–53, 756 (S.D.N.Y. 1997) (noting that the police obtain a no-knock warrant for the wrong apartment, scared the children who lived in the apartment, left the apartment in disarray, and "[t]he sudden nighttime intrusion into this family's home of a dozen or more armed police officers was no doubt a terrifying and unfortunate experience").

[78] *Solis*, 319 F. Supp. 2d at 809. As the *Solis* court stated:

> Part of the rationale for the "knock and announce" requirement is that it decreases the chance that police will enter the wrong house. When the police knock at the door and announce their authority, innocent citizens have the opportunity to explain the mistake. When the search is conducted pursuant to a no-knock warrant, however, the invasion and any attendant danger, humiliation, and fear has already in large part occurred before an inhabitant has any opportunity meaningfully to protest his innocence.

Id. Many criminals profess their innocence, however. So, the *Solis* court might be overstating the value of an occupant being afforded an opportunity to plead innocence.

[79] *Id.* at 805.

[80] *See, e.g.*, Hartsfield v. Lemacks, 50 F.3d 950, 952 (11th Cir. 1995); Duncan v. Barnes, 592 F.2d 1336, 1337–38 (5th Cir. 1979).

[81] Law-abiding occupants might be more likely to resist unknown intruders because the occupants know that they—the occupants—are not criminals and thus the intruders should not be law enforcement officers.

d. Protection of the Privacy of Occupants.

The Framers designed the Fourth Amendment to protect the privacy of individuals.[82] As the Supreme Court has recognized, "a special benefit of the privacy all citizens enjoy within their own walls . . . is an ability to avoid intrusions,"[83] especially unannounced ones. The knock-and-announce rule protects the privacy of dwelling occupants of dwellings and their guests.[84] When law enforcement officers announce their intent to make entry, this provides occupants at least a few seconds to safeguard their privacy,[85] such as donning clothing.[86] "Occupants have a privacy interest in activities not subject to the warrant, and providing them with a few minutes to put on clothes or otherwise prepare themselves for the entry substantially decreases the intrusiveness of the search."[87]

On many occasions, the execution of no-knock warrants has resulted in law enforcement officers invading the privacy of naked or partially unclothed persons of the opposite sex.[88] Requiring the officers to knock and announce their presence minimizes such intrusions on personal and bodily privacy.[89] The knock-and-

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[82] Carpenter v. United States, 585 U.S. 296, 303 (2018) ("The 'basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals . . . .'" (quoting Camara v. Mun. Ct. of S.F., 387 U.S. 523, 528 (1967))); Schmerber v. California, 384 U.S. 757, 767 (1966) ("The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State."); Silverman v. United States, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); Boyd v. United States, 116 U.S. 616, 630 (1886) (noting that the Fourth Amendment was designed to minimize "all invasions on the part of the government and its employ[ee]s of the sanctity of a man's home and the privacies of life").

[83] Frisby v. Schultz, 487 U.S. 474, 484–85 (1988).

[84] United States v. Bustamante–Gamez, 488 F.2d 4, 9 (9th Cir. 1973) (noting that the knock-and-announce rule "symbolizes the respect for individual privacy summarized in the adage that 'a man's house is his castle'" (quoting Miller v. United States, 357 U.S. 301, 307, 313 n.12 (1958))).

[85] LAFAVE & ISRAEL, *supra* note 55, § 3.4, at 163 (noting that the act of knocking and announcing "allows those within a brief time to prepare for the police entry").

[86] Richards v. Wisconsin, 520 U.S. 385, 393 n.5 (1997) (noting that the interval between announcement and entry "may be the opportunity that an individual has to pull on clothes or get out of bed").

[87] Solis v. City of Columbus, 319 F. Supp. 2d 797, 806 (S.D. Ohio 2004).

[88] Duncan v. Barnes, 592 F.2d 1336, 1337–38 (5th Cir. 1979).

[89] United States v. Cantu, 230 F.3d 148, 151 (5th Cir. 2000).

announce rule, therefore, helps preserve "those elements of privacy and dignity that can be destroyed by a sudden entrance."[90]

B. Federal No-Knock Warrants

In 1970, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act.[91] Section 509(a) of that Act explicitly permitted federal judges to issue no-knock search warrants in investigations of "offenses involving controlled substances."[92] Section 509(b) specifically permitted the issuance of no-knock search warrants in certain cases, providing in full that:

> Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.[93]

Despite the political tailwinds leading to its enactment, Congress repealed this statute in October 1974.[94] Nonetheless, at the state level, police officers continue to seek and use warrants with no-knock provisions.[95] Evidence seized pursuant to such

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[90] Youngbey v. March, 676 F.3d 1114, 1119 (D.C. Cir. 2012) (quoting Hudson v. Michigan, 547 U.S. 586, 594 (2006)).

[91] Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236, 1236 (previously codified at 21 U.S.C. § 879).

[92] *Id.* § 509(a), 84 Stat. at 1274.

[93] *Id.* § 509(b), 84 Stat. at 1274.

[94] Act of Oct. 26, 1974, Pub. L. No. 93-481, § 3, 88 Stat. 1455, 1455.

[95] *See, e.g.*, Davis v. State, 859 A.2d 1112, 1122 (Md. 2004).

warrants may be challenged under the Fourth Amendment.[96] Of course, federal officers also may seek no-knock warrants.[97] As discussed below, the federal courts have approved the issuance of such warrants.

1. Federal Judicial Approval of No-Knock Warrants

In 1997, in *Richards v. Wisconsin*, the United States Supreme Court recognized the constitutionality of no-knock warrants, albeit in obiter dicta. In that case, despite the officers' request that the state judge issue a no-knock warrant, the judge had "explicitly deleted those portions of the warrant."[98] The defendant contended that the judge's rejection disestablished reasonable suspicion of exigent circumstances at the time of entry.[99] The Court had no difficulty rejecting this argument and went on to note that "[t]he practice of allowing magistrate[] [judges] to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time."[100]

In *Richards*, the Court held that the constitutional minimum for no-knock entry is reasonable suspicion of danger (to an officer, a victim, or some other person within the residence); futility (useless gesture, or an awareness that no one is inside the

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[96] United States v. Abernathy, 843 F.3d 243, 249 (6th Cir. 2016) ("A 'state search warrant being challenged in a federal court must be judged by federal constitutional standards.'" (quoting United States v. McManus, 719 F.2d 1395, 1397 (6th Cir. 1983))); *cf.* United States v. Dishman, 377 F.3d 809, 811 (8th Cir. 2004) (noting that "[e]vidence seized by state officers in conformity with the Fourth Amendment will not be suppressed in a federal prosecution simply because the underlying search warrant failed to conform to state law").

[97] *See infra* text accompanying notes 154–163.

[98] Richards v. Wisconsin, 520 U.S. 385, 388 (1997).

[99] *Id.* at 395–96.

[100] *Id.* at 396 n.7 (explaining that a judicial officer's declination of a no-knock entry does not "remove the officers' authority to exercise independent judgment" about whether no-knock entry is justified at execution). In a later case, the Court added that such sufficient cause includes exigencies expected to arise "instantly" upon knocking. United States v. Banks, 540 U.S. 31, 36 (2003) ("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.").

residence); or the inhibition of "the effective investigation of [a] crime" (preventing against destruction of evidence or flight).[101]

Thus, after *Richards*, reasonable suspicion is the applicable constitutional standard. It is a lower standard than probable cause,[102] and requires only that "the police officer . . . be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the belief that exigent circumstances exist for the intrusion.[103]

Though *Richards* clearly permits no-knock warrants when reasonable suspicion of exigent circumstances is foreknown, the United States Courts of Appeals have read the dicta in *Richards*—and subsequent statements in other United States Supreme Court cases[104]—as closing the door on any federal constitutional rule that requires law enforcement agents to obtain a no-knock warrant prior to making a no-knock entry.[105] Learned commentators agree that no such rule obtains.[106]

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[101] *Richards*, 520 U.S. at 394.

[102] United States v. Scroggins, 361 F.3d 1075, 1081 (8th Cir. 2004) ("The reasonable suspicion standard, of course, is lower than the probable cause standard.").

[103] Terry v. Ohio, 392 U.S. 1, 21 (1968); *see also* Ornelas v. United States, 517 U.S. 690, 695 (1996) (explaining the contours of the concepts of "probable cause" and "reasonable suspicion"); *Richards*, 520 U.S. at 394. Of course, reasonable suspicion entails "more than 'an inchoate and unparticularized suspicion or hunch.'" United States v. Powell, 222 F.3d 913, 917 (11th Cir. 2000) (quoting *Terry*, 392 U.S. at 27). This article does not address the various laws of the states regarding no-knock warrants.

[104] *See, e.g.*, United States v. Banks, 540 U.S. 31, 36–37 (2003). In *Banks*, the United States Supreme Court was clear that:

> 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. And even when executing a warrant silent about that, if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in.

Id. (footnote omitted).

[105] *See, e.g.*, Penate v. Sullivan, 73 F.4th 10, 19 (1st Cir. 2023) ("Police need not, however, obtain advance permission from a judicial officer to conduct a no-knock entry."); United States v. Ankeny, 502 F.3d 829, 835 (9th Cir. 2007) ("There is no requirement that the police obtain a no-knock warrant simply because one is available."); United States v. Stevens, 439 F.3d 983, 989 (8th Cir. 2006) ("[T]he relevant question is whether the police have reasonable suspicion of exigent circumstances at the time they execute the warrant, regardless of whether the police

But some circuit authority requires officers armed with a no-knock warrant to "reappraise" the facts upon which reasonable suspicion for the warrant was based.[107] Reappraisal ensures that on occasions when, "between the time the warrant is issued and the time it is executed[,] new information comes to the officers' attention that obviates the necessity of a no-knock entry[,]" the officers do not make a no-knock entry solely in reliance on the no-knock warrant.[108]

This reappraisal "rule" thus boils down to just one flavor of the familiar reasonableness inquiry.[109] The circumstances where it is most likely to be invoked are clear enough: where "contrary facts" appear to those upon which the foreknown reasonable suspicion was based;[110] where "the circumstances that justify [a] no-knock [warrant] are premised on transitory events subject to momentary change";[111] or where the reliability of the basis for

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knew those same facts when applying for the search warrant and did not ask for no-knock authorization.").

As Judge Torruella succinctly put it: it is not obvious why "a no-knock entry that is reasonable at the time it is conducted" should "suddenly become unreasonable because the officers intended to conduct a no-knock entry when they got the warrant but did not inform the issuing judge of their intention." United States v. Boulanger, 444 F.3d 76, 83–84 (1st Cir. 2006).

106 2 WAYNE R. LAFAVE, SEARCH & SEIZURE § 4.8(g) (6th ed. 2024) (collecting cases from the states and federal courts standing for this proposition).

107 *See, e.g.*, United States v. Singer, 943 F.2d 758, 763 (7th Cir. 1991) (noting that "firearms, unlike drugs, are durable goods useful to their owners for long periods of time" and reappraisal may be required). *But see* United States v. Spry, 190 F.3d 829, 833 (7th Cir. 1999) (holding that reappraisal-at-entry was unnecessary where the continued existence of the same exigent circumstances underlying the no-knock warrant is not called into question); Doran v. Eckold, 409 F.3d 958, 965 (8th Cir. 2005) ("Therefore, if the facts known prior to obtaining the warrant justify a no-knock entry, and if no contrary facts are discernable to the officers who execute the warrant, the no-knock entry is constitutionally reasonable.").

108 State v. Cleveland, 348 N.W.2d 512, 520 (Wis. 1984), *overruled on other grounds by* State v. Stevens, 511 N.W.2d 591 (Wis. 1994). It is easy to see the benefit. *See* State v. Neiss, 443 P.3d 435, 459 (Mont. 2019) (Gustafson, J., concurring in part) ("In other words, in spite of the fact that law enforcement sought a no-knock warrant on the theory that Neiss was dangerous, law enforcement ultimately determined that it would actually be *safer* to announce its presence.").

109 *Cf. infra* text accompanying notes 204–213.

110 Doran v. Eckold, 409 F.3d 958, 965 (8th Cir. 2005); *see Cleveland*, 348 N.W.2d at 520.

111 *See* Note, *Announcement in Police Entries*, 80 YALE L.J. 139, 170 (1970).

reasonable suspicion is suspect—such as an informant's testimony.[112]

The doctrinal justifications for reappraisal are similar to those raised against requiring no-knock warrants in the first place.[113] This makes sense because, fundamentally, the basis for knock-and-announce is the Fourth Amendment's Unreasonable Search and Seizure Clause,[114] while a judicial officer's review of a warrant falls under the Warrant Clause. This difference, as the Maryland Court of Appeals has explained, is that "[t]he propriety of a 'no-knock' entry, while certainly *related* to the question of the propriety of authorizing a search of the premises, is a different issue, both temporally and analytically."[115] In short, a judicial officer's role in making a pre-search or pre-arrest determination is not to "prospectively evaluate exigent circumstances" and make a determination but is instead to evaluate probable cause.[116]

However, viewing reappraisal as grounded solely on such "gold-leaf distinctions"[117] may obscure the overlapping rights-protection function of the Fourth Amendment.[118] For example, consider a search warrant where an affidavit relies on informant testimony for both probable cause *and* the exigency supporting a

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[112] *See id.* at 171.

[113] *See* 2 LAFAVE, *supra* note 106 (explaining three main bases for this view).

[114] *See* Wilson v. Arkansas, 514 U.S. 927, 931 (1995) (holding that knock-and-announce resides in the reasonableness principle). For the full text of the Fourth Amendment, *see supra* note 40.

[115] Davis v. State, 859 A.2d 1112, 1129 (Md. 2004) (emphasis added). As the Tenth Circuit Court of Appeals noted in a criminal case predating *Hudson v. Michigan*, 547 U.S. 586 (2006), "the method employed to execute a search warrant is not relevant to . . . whether there was a showing of reasonable suspicion sufficient to justify a no-knock warrant." United States v. Basham, 268 F.3d 1199, 1204 (10th Cir. 2001); *accord* United States v. Bryant, No. 21-60960, 2023 WL 119634, at *2 (5th Cir. Jan. 6, 2023), *cert. denied*, 143 S. Ct. 2448 (2023) ("[A] challenge to an underlying warrant is distinct from a challenge to a claimed knock-and-announce violation, occurring either upon execution of, or through a no-knock provision in, a search warrant.").

[116] State v. Neiss, 443 P.3d 435, 449 (Mont. 2019) (interpreting the Montana Constitution and statutes).

[117] MARK TWAIN, ADVENTURES OF HUCKLEBERRY FINN 203 (Riverside Press 1958) (1885).

[118] Josephson, *supra* note 1, at 1232 (noting that "history . . . persuaded the Supreme Court to recognize that the Fourth Amendment's Unreasonable Search Clause protects rights beyond those protected by the Warrant Clause"). Of course, the Warrant Clause applies to no-knock warrants as it does to all warrants.

no-knock provision.[119] Suppose in a motion to suppress challenging the sufficiency of the warrant and the reasonableness of its execution, the reviewing court first concludes that a substantial basis for probable cause indeed exists.[120] But what if the court then concludes that the executing officers' failure to reappraise because of the same informant's reliability is *one* basis—but not the only basis[121]—for the unreasonableness of the resulting search? This effectively second-guesses a probable-cause determination sufficient under the Warrant Clause to avoid offending the Unreasonable Search and Seizure Clause. In such circumstances, howsoever unjustified by the Warrant Clause's text, many courts likely would conclude that the *ex-ante* probable-cause determination carries the day as to whether reappraisal is required. And barring facts such as officers' actual knowledge of vitiating facts or circumstances like delay, this makes some sense.[122]

Reading the Fourth Amendment's clauses together avoids this needless textual problem. The Warrant Clause prefers "informed and deliberate determinations of magistrates

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[119] At least one reported case has similar facts. *See* Betker v. City of Milwaukee, 800 F. Supp. 2d 1002, 1007 (E.D. Wis. 2011), *aff'd sub nom.*, Betker v. Gomez, 692 F.3d 854 (7th Cir. 2012) (in a civil lawsuit for a defective no-knock warrant based on informant testimony, the informant was the sister-in-law of the plaintiff, who fed information to the officer-defendant, who in turn included the "arguably false or misleading statements" in the no-knock affidavit).

[120] "[T]he duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for . . . conclud[ing]' that probable cause existed." Illinois v. Gates, 462 U.S. 213, 238–39 (1983) (second alteration in original) (quoting Jones v. United States, 362 U.S. 257, 271 (1960)); *see* United States v. Bynum, 293 F.3d 192, 195 (4th Cir. 2002) ("'Substantial basis' provides the measure for determination of whether probable cause exists in the first instance.").

[121] As noted *supra* text accompanying notes 48–51, suppression of evidence is unwarranted if the search was unreasonable solely because of a violation of the knock-and-announce rule. Of course, in at least one circuit, it is unclear whether suppression is required for a violation of 18 U.S.C. § 3109. *See supra* text accompanying note 52.

[122] As noted, reasonable suspicion is a less-demanding standard than probable cause. *See supra* text accompanying notes 102–103. A "substantial basis" for probable cause is not tantamount to a lesser standard than probable cause, United States v. Jones, 994 F.2d 1051, 1055 (3d Cir. 1993) (citing United States v. Tehfe, 722 F.2d 1114, 1117 (3d Cir. 1983)); it merely means that "the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." *Jones*, 994 F.2d at 1055 (quoting United States v. Ventresca, 380 U.S. 102, 109 (1965)).

empowered to issue warrants . . . over the hurried action of officers"[123] in protecting citizens' reasonable expectations of privacy. Equally, the Unreasonable Search and Seizure Clause is solicitous of reasonable, on-scene assessments by executing officers.[124] In cases where all of the pertinent information is before a judge *ex ante*, a mere difference in textual root should be no obstacle to suppression if, *ex post*, the totality of the circumstances does not suggest reappraisal should have been required.[125] And so, just because a no-knock provision is supported by facts unlikely to persist does not mean that reappraisal necessarily is required; other facts may exist—known to the officers, but not to the judge—that vindicate no-knock entry. And just because a no-knock provision in a warrant is permitted based on facts likely to persist in a judge's view, as in any case involving probabilities, this does not mean that such facts cannot evaporate. If they do *and* the executing officer learns of it, no-knock entry likely would be unreasonable notwithstanding the presence of the provision in the warrant.

This should highlight the reality that no-knock warrants are largely—but not entirely[126]—a superfluity.[127] Thus, while accounting for the United States Supreme Court's rightful insistence on officer autonomy at the execution of a warrant, the reappraisal rule does not, in itself, incentivize officers to include

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[123] Aguilar v. Texas, 378 U.S. 108, 110–11 (1964) (quoting United States v. Lefkowitz, 285 U.S. 452, 464 (1932)), *abrogated on other grounds by*, Illinois v. Gates, 462 U.S. 213 (1983); *see* United States v. Smith, 386 F.3d 753, 761 (6th Cir. 2004) (noting, pre-*Hudson v. Michigan*, 547 U.S. 586 (2006), importance of "the [Fourth Amendment] rationale for having a neutral detached judicial officer review the affidavit and determine whether or not to authorize a no-knock entry").

[124] *Cf. supra* text accompanying note 104.

[125] *See* Bellotte v. Edwards, 629 F.3d 415, 423–24 (4th Cir. 2011) ("We emphasize, however, that each factual situation must be examined in its totality . . . ."); *see infra* text accompanying notes 204–213.

[126] *See, e.g.*, *Bellotte*, 629 F.3d at 421 (noting in the civil context that under the circumstances of the case, the court of appeals "view[ed] [police officers'] choice not to seek no-knock authorization with some skepticism"); United States v. Weaver, 808 F.3d 26, 34 (D.C. Cir. 2015) (declining to extend *Hudson*, 547 U.S. 586, to arrest warrants and, perhaps, leaving the door open for a no-knock warrant to serve as a proper method to derogate from the rule).

[127] *See supra* text accompanying notes 104–106; *cf. Hudson*, 547 U.S. at 605 (Breyer, J., dissenting) ("[T]he [majority of the United States Supreme Court] destroys the strongest legal incentive to comply with the Constitution's knock-and-announce requirement.").

information they may have in seeking no-knock entry. Yet such information realistically may improve *ex ante* judicial review, at least on the margins, because in some cases foreknown indicia of reasonable suspicion may bolster or diminish a finding of probable cause. Of course, any "always" or "never" approach to reappraisal may be invalid as an impermissible "blanket rule" anyway.[128]

On a practical note, to make judicial review easier, courts should encourage officers to include a separate basis in the affidavit and warrant for outlining facts supporting a no-knock provision.[129]

2. The Good-Faith Exception Does Not Apply Generally to No-Knock Warrants

In criminal cases, the deterrence function of the exclusionary rule is generally limited by the so-called "good faith" exception to the warrant requirement.[130] After *Richards*, but before the Supreme Court handed down *Hudson v. Michigan*, this exception did some work in cases where the justifications for a no-knock warrant were "borderline."[131] But as noted above, the exclusionary rule—and thus, the good-faith exception to that rule—is generally no longer applicable to violations of the knock-and-announce rule in criminal cases.[132] Of course, the existence of other bases for concluding execution of a warrant was unreasonable could

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[128] *See* Richards v. Wisconsin, 520 U.S. 385, 395 (1997); Green v. Butler, 420 F.3d 689, 699 (7th Cir. 2005) (holding "no blanket exception to the requirement for parolees absent exigency or futility").

[129] *See infra* text accompanying note 161. Of course, the officer need only have reasonable suspicion of such facts. *See Richards*, 520 U.S. at 395–96. Where clear from the affidavit which facts precisely are used in support of exigency—as opposed to probable cause to search or arrest—there can be no serious injury to judicial economy, even in borderline cases.

[130] *See generally* United States v. Leon, 468 U.S. 897 (1984).

[131] *See* United States v. Scroggins, 361 F.3d 1075, 1084 (8th Cir. 2004) ("The good-faith exception is perfectly suited for cases like this, when the judge's decision was borderline."); United States v. Tisdale, 195 F.3d 70, 72 (2d Cir. 1999) ("[T]he issuance of a warrant with a no-knock provision potentially insulates the police against a subsequent finding that exigent circumstances, as defined by *Richards*, did not exist." (citing *Richards*, 520 U.S at 395–96)).

[132] *Hudson*, 547 U.S. at 594. But in the civil context, at least one federal circuit court of appeals has signaled that the "strong preference for warrants" caused it to "view [police officers'] choice not to seek no-knock authorization with some skepticism." Bellotte v. Edwards, 629 F.3d 415, 421 (4th Cir. 2011) (quoting *Leon*, 468 U.S. at 914).

nonetheless create the basis for an exclusionary remedy aside from a knock-and-announce violation.[133]

Notably, however, the District of Columbia Circuit Court of Appeals has limited *Hudson* to the search-warrant context.[134] In *United States v. Weaver*, officers knocked, waited, and announced "police" before entering.[135] But they failed to inform the arrestee that they had a warrant to arrest him, in violation of the knock-and-announce rule.[136]

Applying the framework from *Hudson*, a majority of the panel concluded that the exclusionary rule *can* still apply to no-knock warrants in the context of arrest warrants.[137] It first "ma[d]e room"[138] for its conclusion by reasoning that applying *Hudson* without critically examining it violates judicial incrementalism; search warrants and arrest warrants trigger distinct protected interests; and out-of-circuit precedent failed to wrestle with these distinctions.[139] Disposing of the government's arguments, the court then applied the *Hudson* test and concluded exclusion *was* warranted.[140]

Though the persuasiveness of the remedial argument is beyond the scope of this article, it is worthwhile to address the court's conclusion that "[t]he requirements for search warrants and arrest warrants protect distinct privacy interests," and thus "[t]he interests the knock-and-announce rule protects correspondingly differ."[141] The panel was persuaded by the fact that "[i]n the arrest[-]warrant context, the knock-and-announce rule protects the arrestee's privacy" by permitting him to

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133 *See, e.g.*, United States v. Edwards, 666 F.3d 877, 885 (4th Cir. 2011).

134 United States v. Weaver, 808 F.3d 26, 37 (D.C. Cir. 2015).

135 *Id.* at 32.

136 *Id.* at 33. The D.C. Circuit Court of Appeals' holding as to 18 U.S.C. § 3109—also invoked—did not distinguish that rule's application to search warrants only.

137 *See id.* at 37 (excluding evidence for failure to comply with the knock-and-announce rule because in the context of an arrest warrant, police authority to search is circumscribed).

138 ARISTOTLE, RHETORIC, bk. III, pt. 17, 228 ("You should, therefore, make room in the minds of the audience for your coming speech; and this will be done by getting your opponent's speech out of the way.").

139 *Weaver*, 808 F.3d at 37.

140 *Id.* at 42–45 (Part IV).

141 *Id.* at 37.

"surrender himself at the door."[142] This, in turn, "protects an arrestee's interest in shielding intimate details of his home from the view of government agents."[143]

No doubt this privacy interest is both recognized by, and central to, the Fourth Amendment.[144] But as an arrest-warrant-specific privacy interest, it is difficult to reconcile with other tenets of Fourth Amendment law that apply without regard to the type of warrant being executed. To begin with, the Fourth Amendment requires only that officers announce their identity and "their purpose for demanding admission."[145] Generally, the courts have not required that officers specify the kind of warrant they are executing.[146] In fact, apart from circumstances where any announcement requirement is entirely waived,[147] courts have held repeatedly that notice of law enforcement officers' authority and purpose is satisfied by a less-than-fulsome announcement.[148]

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[142] *Id.* at 39 (Part III.B).

[143] *Id.* at 39.

[144] *See* Miller v. United States, 357 U.S. 301, 306–07 (1958); Ker v. California, 374 U.S. 23, 47 (1963) (Brennan, J., dissenting) (noting that "[t]he Fourth Amendment did but embody a principle of English liberty, a principle old, yet newly won, that finds another expression in the maxim 'every man's home is his castle" (quoting Osmond K. Fraenkel, *Concerning Searches and Seizures*, 34 HARV. L. REV. 361, 364 (1921)).

[145] *Miller*, 357 U.S. at 309.

[146] *See* United States v. Combs, 394 F.3d 739, 742, 745–46 (9th Cir. 2005); *cf.* United States v. Ross, 701 F. Supp. 3d 657, 668 (E.D. Mich. 2023) (quoting Sixth Circuit precedent holding that "[d]espite its title, the knock-and-announce rule does not *require* a knock or a set of 'magic words;' rather, it requires 'only that the occupant "know who is entering, why he is entering, and be given a reasonable opportunity to surrender his privacy voluntarily"'" (first quoting United States v. Hardin, 106 F. App'x 443, 446 (6th Cir. 2004); and then quoting United States v. Spikes, 158 F.3d 913, 925 (6th Cir. 1998))).

[147] Richards v. Wisconsin, 520 U.S. 385, 394 (1997) ("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.").

[148] *See, e.g.*, *Combs*, 394 F.3d at 742 (affirming district court holding that police announcing "Anchorage Police with a warrant for 1502 West 32nd Avenue" and "Anchorage Police with a warrant" was a sufficient announcement); United States v. Appelquist, 145 F.3d 976, 978 (8th Cir. 1998) (collecting cases, and holding that the statement of purpose was constitutionally sufficient when an officer announced, "Police Officer. I need somebody to come to the door"); Stokes v. Kauffman, No. 17-4293, 2019 WL 13241964, at *12 (E.D. Pa. Feb. 26, 2019) (holding that police announcement of "Police with a warrant" constituted "fully compl[ying] with the knock and announce

Moreover, the bedrock assumption of the panel majority was that such privacy interests support different treatment. This is unclear,[149] and the panel majority cited no authority for the proposition. Nor did the panel majority conclude that any of the other three interests protected by the knock-and-announce rule—preventing destruction and theft of property, preventing injury to officers and occupants, or minimizing mistaken entries—were unequally served in arrest-warrant cases as compared with search-warrant cases.[150]

Finally, the United States Supreme Court deemed any privacy-based interest irrelevant to the remedial question at issue

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rule"), *rep. and recommendation adopted*, No. 17-4293, 2019 WL 13242654 (E.D. Pa. Sep. 24, 2019).

[149] The Fourth Amendment obviously circumscribes police conduct in executing an in-home arrest. *See, e.g.*, Payton v. New York, 445 U.S. 573, 602–03 (1980) ("[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the *limited* authority to enter a dwelling in which the suspect lives *when there is reason to believe the suspect is within*." (emphasis added)). But within those constitutional parameters, officers executing an arrest warrant at a home may conduct a protective sweep, *e.g.*, Maryland v. Buie, 494 U.S. 325, 327 (1990); use the plain-view doctrine, *e.g.*, Arizona v. Hicks, 480 U.S. 321, 325–26 (1987); and, once they effect the arrest, search the arrestee's person as well as "the area 'within his immediate control,'" Chimel v. California, 395 U.S. 752, 762–63 (1969) (quoting Preston v. United States, 376 U.S. 364, 367 (1964)). Officers may even obtain and execute an arrest warrant with the subjective intent to search the home, so long as the warrant is supported with adequate probable cause and the officers reasonably execute the warrant. *See, e.g.*, United States v. Young, 609 F.3d 348, 354 (4th Cir. 2010) ("An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify the action. *The officer's subjective motivation is irrelevant*." (quoting Brigham City v. Stuart, 547 U.S. 398, 404 (2006) (emphasis added))).

In short, the privacy distinction drawn by the D.C. Circuit Court of Appeals majority is difficult to square with these compromise rules. *See* Maryland v. King, 569 U.S. 435, 448 (2013) (explaining that warrantless-search exceptions balance "'the promotion of legitimate governmental interests' against 'the degree to which [the search] intrudes upon an individual's privacy'" (alteration in original) (quoting Wyoming v. Houghton, 526 U.S. 295, 300 (1999))). Moreover, it is at least debatable whether any light exists between the interest of an at-home arrestee and the interest of the subject of a search warrant in disposing of or hiding inculpatory evidence.

[150] *See supra* notes 55–90 and accompanying text.

in *Hudson*.[151] Judge Henderson pointed out this fact in her vigorous dissent.[152] Ultimately, the D.C. Circuit Court of Appeals' holding as to arrest warrants—and its justification based in part on its intra-privacy distinction—is an outlier.[153]

C. The Judge's Role

The Federal Rules of Criminal Procedure authorize federal judges to issue arrest and search warrants.[154] Although neither the Fourth Amendment nor the Federal Rules use the term "no-knock warrants,"[155] courts have understood the Fourth

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[151] Hudson v. Michigan, 547 U.S. 586, 593 (2006) (rejecting "vindicat[ion of] the interests protected by the knock-and-announce requirement" as a justification for exclusion); James J. Tomkovicz, Hudson v. Michigan *and the Future of Fourth Amendment Exclusion*, 93 IOWA L. REV. 1819, 1841 n.111 (2008). Tomkovicz asserts that the way that the United States Supreme Court formulated the issue it resolved in *Hudson v. Michigan* was such that

> [it] contain[ed] no limitation based on the nature of the violation, the basis of the home search, the character of the evidence sought to be excluded, or the existence of a causal connection. It encompasse[d] all violations and all evidence found and was surely meant to indicate that the Court was deciding whether exclusion is ever an appropriate response to [a knock-and-announce rule violation].

Id.

[152] United States v. Weaver, 808 F.3d 26, 45 (D.C. Cir. 2015) (Henderson, J., dissenting).

[153] *Compare, e.g.*, United States v. Young, 609 F.3d 348, 354 n.3 (4th Cir. 2010) ("[W]e need not consider whether *Hudson* applies in cases involving the execution of arrest warrants."), *with, e.g.*, United States v. Pelletier, 469 F.3d 194, 201 (1st Cir. 2006) (noting "*Hudson* applies with equal force in the context of an arrest warrant").

[154] FED. R. CRIM. P. 4 (arrest warrants); FED. R. CRIM. P. 4(d), FED. R. CRIM. P. 4.1 (warrants by "telephonic means"); FED. R. CRIM. P. 41 (search warrants).

[155] As noted, Congress passed and within four years repealed a statute with explicit authorization for issuance of no-knock warrants in drug cases. *See supra* text accompanying notes 91–94. This legislative d'etat was catalyzed by several botched no-knock raids, *see* Jack Boger, Mark Gitenstein & Paul R. Verkuil, *The Federal Tort Claims Act Intentional Torts Amendment: An Interpretive Analysis*, 54 N.C. L. REV. 497, 499–517 (1976), the backlash from which ultimately led to legislation amending the Federal Tort Claims Act to include certain intentional torts. *See* An Act to Amend Reorganization Plan No. 2 of 1973, Pub. L. No. 93-253, 88 Stat. 50 (1974) (codified at 28 U.S.C. § 2680(h)).

Amendment and the Federal Rules to authorize judges to issue no-knock warrants.[156]

This has not gone unquestioned. Some debate ensued following the 1974 repeal of the Comprehensive Drug Abuse Prevention and Control Act of 1970 about whether federal judges possessed the authority to issue no-knock warrants.[157] In a 2002 memorandum, the Justice Department's Office of Legal Counsel contended that such authority exists even "without express statutory authorization."[158] Thus, the "general authority" of federal judicial officers ensconces the authority to issue no-knock warrants.[159]

The standard federal warrant form promulgated by the Administrative Office of the United States Courts contains no box

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[156] United States v. Banks, 540 U.S. 31, 36–37 (2003) (noting that "a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry"); Richards v. Wisconsin, 520 U.S. 385, 396 n.7 (1997) ("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."). Of course, states may enact their own laws regarding no-knock warrants, and some states do not authorize them. *See Richards*, 520 U.S. at 396 n.7 (noting that some states authorize their judges to issue no-knock warrants); United States v. Singleton, 441 F.3d 290, 292 n.1 (4th Cir. 2006) (noting that some states do not authorize their judges to issue no-knock warrants).

[157] The Conference Report from the House of Representatives explained that the Senate amendment

> repeal[ed] the authority of a judge or magistrate to issue a search warrant (relating to offenses involving controlled substances) [under § 509 of the Comprehensive Drug Abuse Prevention and Control Act] which authorizes, under certain circumstances, an officer to break and enter a building in the execution of the search warrant without giving notice of his authority and purpose.

Authority of Federal Judges & Magistrates to Issue "No-Knock" Warrants, 26 Op. O.L.C. 44, 51 n.10 (2002) [hereinafter OLC Opinion] (quoting H.R. REP. NO. 93-1442, at 4 (1974) (Conf. Rep.), *as reprinted in* 1974 U.S.C.C.A.N. 5974, 5976).

[158] OLC Opinion, *supra* note 157, at 53. "Although not binding on courts, [Office of Legal Counsel] opinions 'reflect[ ] the legal position of the executive branch' and 'are generally viewed as providing binding interpretive guidance for executive agencies.'" Casa De Md. v. U.S. Dep't of Homeland Sec., 924 F.3d 684, 692 n.1 (4th Cir. 2019) (second alteration in original) (quoting United States v. Arizona, 641 F.3d 339, 385 n.16 (9th Cir. 2011) (Bea, J., concurring in part and dissenting in part)).

[159] OLC Opinion, *supra* note 157, at 52 ("[W]e conclude that a federal judge's or magistrate's general authority to issue warrants under Rule 41 of the Federal Rules of Criminal Procedure is sufficiently flexible to encompass no-knock authorizations.").

to check for an officer to indicate that a no-knock warrant is sought.[160] Instead, the no-knock entry must be specifically requested, and a prudent affiant will add a separate section to the affidavit that addresses the prerequisites for issuance of a no-knock warrant.[161]

A federal judge must ensure that the warrant affidavit contains sufficient facts to satisfy the constitutional standards set forth in *Richards* and its progeny. That is, in addition to the ordinary inquiries regarding the affidavit's form,[162] the affidavit should reveal sufficient facts to support reasonable suspicion that a recognized exigent circumstance is present at the time of swearing or is expected to arise immediately upon knocking.

This analysis should drive the appropriate questions for the affiant prior to swearing.[163] The case analyses, checklist, and circuit-specific precedent included below are designed to assist in this endeavor.

D. Summary

The knock-and-announce rule is an ancient requirement that exists to protect life and property as well as privacy. The upshot of the United States Supreme Court's decisions in *Wilson*, *Richards*, and *Hudson* is that the knock-and-announce rule is part of the Fourth Amendment's reasonableness principle. Accordingly, it is subject to the "exigent circumstances" doctrine. An officer's derogation from the knock-and-announce rule must be supported

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[160] U.S. CTS., AO 106, APPLICATION FOR A SEARCH WARRANT (rev'd Apr. 2010).

[161] Affiants probably should request also that the judge explicitly authorize a no-knock entry in the warrant itself rather than relying on the fact that the warrant application requests such an entry. *See* United States v. Smith, 386 F.3d 753, 761–62 (6th Cir. 2004) (holding that the good-faith exception did not apply to a no-knock search executed pursuant to a search warrant that did not explicitly authorize a no-knock entry, even though the application requested no-knock authorization). *But cf.* Richards v. Wisconsin, 520 U.S. 385, 395–96 (1997) (finding a no-knock search valid even though the magistrate explicitly denied no-knock authorization in the warrant because of new exigent circumstances arising at the time of the search).

[162] Such inquiries include, for example, the rote examination for missing pages, misplaced paragraphs, and appropriate signatures.

[163] The safer route is for officers to "independently determine[] that [the] circumstances existing at the time of execution satisfy constitutional prerequisites for an unannounced entry." OLC Opinion, *supra* note 157, at 53; *see also supra* text accompanying notes 104–129.

by reasonable suspicion of either danger, futility, or destruction of evidence. And an attempt to suppress evidence in a criminal case based solely on a purportedly improper no-knock entry is futile.

Federal judges may issue a no-knock warrant if an officer articulates reasonable suspicion that exigent circumstances are present. Both officers and judges should be aware of the fact-sensitive nature of a possible requirement of reappraisal at the execution of a no-knock warrant.

II. ANALYSIS OF NO-KNOCK-WARRANT CASES

A. Context

To best distill and apply the foregoing principles, some brief context on the materials that follow will be helpful.

In the criminal context,[164] any search or seizure which purportedly violates the Fourth Amendment is analyzed by a court in the first instance—or the second instance, if one considers the review prior to issuance of a warrant—in a pretrial suppression hearing.[165]

If the evidence is admitted and the criminal defendant is convicted, she may appeal as of right.[166] On direct appeal, the United States Court of Appeals reviews the district court's decision to suppress the evidence under two standards because bound up in the reasonable suspicion inquiry are factual and legal questions. Fact questions are reviewed under an abuse-of-

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[164] Criminal defendants can maintain civil lawsuits under 42 U.S.C. § 1983 for violations of their Fourth Amendment rights for officers' violation of the knock-and-announce rule. *See supra* text accompanying note 51; *see, e.g.*, Smith *ex rel.* Est. of Smith v. Ford, 488 F. Supp. 3d 1314, 1326 (M.D. Ga. 2020). This article does not address these suits except to note here that when immunity defenses available to individual officers are raised, the standard for no-knock entry becomes "arguable reasonable suspicion." *See* Brent v. Ashley, 247 F.3d 1294, 1303 (11th Cir. 2001).

[165] *See* FED. R. CRIM. P. 12(b) (providing suppression hearings must occur before trial). An order denying a motion to suppress is not a final, appealable order. 28 U.S.C. § 1291; *see* United States v. 608 Taylor Ave., 584 F.2d 1297, 1300 (3d Cir. 1978) ("An order relating to a motion to suppress evidence, even before an indictment, is not an appealable order.").

[166] *See* 28 U.S.C. § 1291 (defendant's appeal of final judgment of criminal conviction); 18 U.S.C. § 3731 (government's appeal of, *inter alia*, "a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding"); *see also* 28 U.S.C. § 1651 (discretionary "All Writs" statute).

discretion standard, and legal questions are reviewed de novo.[167] Of course, like the district court, the courts of appeals consider the probable cause supporting a warrant under the substantial-basis standard.[168]

Following *Hudson*, no-knock warrants are litigated primarily in civil actions on the basis that the search conducted pursuant to the warrant was unreasonable.[169] Even in that context, though, the same standard of "reasonable suspicion" applies to the decision of the judge in approving a no-knock search warrant and the judgment of the officers at execution of the no-knock search warrant.[170] On the margin of cases, the practical effects of this dual-review may matter.[171]

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[167] United States v. Hudson, 405 F.3d 425, 431 (6th Cir. 2005) ("In an appeal of the denial of a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions *de novo*."); United States v. Alejandro, 368 F.3d 130, 133 (2d Cir. 2004), *opinion supplemented*, 100 Fed. App'x 846 (2d Cir. 2004).

[168] *See supra* text accompanying note 120.

[169] Most circuits to consider the matter read *Hudson v. Michigan*, 547 U.S. 586 (2006), as eliminating exclusionary-rule challenges based solely on derogation from knock-and-announce in execution of a search warrant. *See, e.g.*, United States v. Congo, 21 F.4th 29, 34 (1st Cir. 2021) (rejecting argument that "substantial rights" were affected by allegedly unsupported no-knock provision in warrant because "[e]ven if the district court had found that the warrant should not have been no-knock, [the defendant's] suppression motion would still have been denied" under *Hudson v. Michigan*). *But see* United States v. Weaver, 808 F.3d 26, 37 (D.C. Cir. 2015) (distinguishing *Hudson v. Michigan* as not applying categorically to arrest warrants).

[170] United States v. Scroggins, 361 F.3d 1075, 1082 (8th Cir. 2004) ("The showing the police must make to obtain a no-knock warrant is the same showing they must make to justify their own decision to dispense with the knock-and-announce requirement. Only the timing differs."). This boils down to the principle that "[p]olice need not, however, obtain advance permission from a judicial officer to conduct a no-knock entry." Penate v. Sullivan, 73 F.4th 10, 19 (1st Cir. 2023).

[171] The First Circuit Court of Appeals posed this hypothetical: suppose a judge declines to issue a no-knock warrant, but the executing officers second-guess the judicial refusal by—without any new facts—nevertheless declining to knock-and-announce. *See* United States v. Brown, 276 F.3d 14, 18 (1st Cir. 2001) (Lipez, J.). What then? For the principles governing the correct answer, *see supra* text accompanying notes 104–129. In a challenge under 42 U.S.C. § 1983, assuming no other defects with the warrant or with the execution, and assuming the warrant was a search warrant, the judicial officer's declination to issue a no-knock warrant would be plainly immaterial. Instead, the court would review the totality of the facts and circumstances known to the officers at execution of the search warrant. Those facts would include, of course, what foreknown facts were given to the judicial officer; but only because they were known to the officers. The facts may or may not have triggered a duty to reappraise, depending on what they are. Assuming that the officers failed to

B. A Taxonomy of Cases

1. The Toolkit for Analysis

With this background, the article turns now to the project at hand. This part looks to the cases to identify facts and circumstances courts have relied on, explicitly or implicitly, in deciding whether a no-knock provision was constitutionally valid.

Of course, constitutionality—by way of reasonable suspicion of an exigency—is determined by the totality of the factual circumstances of the case.[172] To mitigate the challenges inherent in selecting salient facts under such conditions, the article borrows a familiar concept from another area of the law: "end-means" analysis.[173] "End" refers to the reasonably suspected exigent circumstances. "Means" refers to the logical import of the facts and circumstances recounted.

In this framework, a court's problem with a particular "means" (a fact) in the affidavit will boil down to a perceived over- or under-inclusivity as to the "ends" (a type of constitutionally adequate reasonable suspicion).

To take a common example: an affidavit for a no-knock warrant contains a suspect's criminal conviction for assault as evidence of his dangerousness. Obviously, courts recognize that convictions for violent crimes carry some indicia of the dangerousness of the suspect.[174] But, as we will see, courts are

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reappraise, as the question suggests, the reviewing court would review the totality of the facts and circumstances and would condemn or absolve the failure.

[172] *See, e.g.*, Bellotte v. Edwards, 629 F.3d 415, 423–24 (4th Cir. 2011) ("We emphasize, however, that each factual situation must be examined in its totality . . . .").

[173] This idea commonly is used in assessing justifications proffered for assertedly constitutionally defective government action. *See* United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) (first postulating varying tiers of judicial scrutiny based on the "specific prohibition of the Constitution") (Stone, J.); Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1272 (2007) (identifying and explaining means-end fit in various implementations of "strict scrutiny" review). This article uses these words for different concepts, as explained in-text, but the logical import and relationship of our usages to each other roughly is the same. The obvious caveat is that this article does not posit any particular tier of scrutiny applies.

[174] *See* United States v. Musa, 401 F.3d 1208, 1214 (10th Cir. 2005) (noting that although "the only justification for the no-knock entry, beyond the usual concerns in felony-drug investigations, was the [suspect]'s criminal history[,]" the same contained multiple "arrests for domestic battery and terroristic threat[s]" sufficient for the court

reluctant to credit isolated evidence in the no-knock context. It is both under-inclusive (*e.g.*, there are many other more salient indicators of the suspect's dangerousness) and over-inclusive (*e.g.* it fails to address the suspect's dangerousness currently).[175]

The article classifies cases into three distinct types based on the predominant factual bases for no-knock entry.[176]

2. Types of Cases

The cases surveyed below generally are federal cases decided after *Richards*. This is because *Richards* modified the standard for knock-and-announce and because federal suppression hearings and their rules are more likely to be familiar to the federal judge than state suppression hearings.

Nonetheless, some cases which do not meet these criteria are included because they contain a useful doctrinal or practical point. Where they appear, they are noted.

a. Nature-of-the-Environment Cases

First are cases that turn on the facts of the environment. These cases predominantly address circumstances in the environment in which the no-knock warrant is to be executed.

(1) Loci of Criminal Activity

Where a warrant is to be executed at a situs of extensive criminal activity, some courts agree that no-knock entry is justified based on sufficient dangerousness or

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of appeals to conclude that the suspect "was a hardened criminal" and no-knock entry was justified).

[175] Related is the "staleness" problem. The circuits have set forth similar tests for the staleness of information used in a warrant. *See, e.g.*, United States v. Basham, 268 F.3d 1199, 1206 (10th Cir. 2001) ("The determination of whether information is stale depends on the nature of the crime and the length of criminal activity, not simply the number of days that have elapsed between the facts relied upon and the issuance of the warrant."); United States v. Farmer, 370 F.3d 435, 439 (4th Cir. 2004) (noting that in a staleness challenge the reviewing court "must look to all the facts and circumstances of the case, including the nature of the unlawful activity alleged, the length of the activity, and the nature of the property to be seized" (quoting United States v. Rhynes, 196 F.3d 207, 234 (4th Cir. 1999)).

[176] Though this may appear arbitrary, "dangerousness" (to take that example) is useful as a conceptual category, despite being only a conclusion. Judges will always be called upon to evaluate particular facts because it is the *facts*—not juridical categories—that determine reasonable suspicion.

destruction-of-evidence concerns. For example, in a pre-*Richards* and *Hudson* suppression challenge based on the execution of a search warrant at an apartment—namely, that the delay between announcement and police entry was insufficient to show refusal of admittance—the D.C. Circuit Court of Appeals rejected the challenge based in part on the location to be searched.[177]

Considering the totality of the circumstances, the D.C. Circuit Court of Appeals noted that the executing officers "could reasonably have expected that they were entering into a den of drug traffickers" such that following announcement, they were "blind and vulnerable" outside such an "enclave."[178] Also, the court pointed to the small size of the apartment as tending to show that the suspects likely heard the announcement.[179]

The domain of this fact as a "means" is bounded by the fact that *any* warrant execution includes a lack of knowledge. As Judge Henry explained in a later case, if a lack of knowledge of an area to be searched was a sufficient basis to permit derogation from the knock-and-announce rule, it would essentially swallow the rule.[180] Thus, lack of knowledge illustrates the demanding nature of police investigations, but it does not establish perforce a justification for a no-knock warrant.

(2) The Presence of Dangerous Animals

Unsurprisingly, the presence of a dangerous animal can not only be used to support concerns of dangerousness but also can support destruction-of-evidence concerns. In the former case, the mere presence of a dog is not generally sufficient without "evidence of any potential for violence on the part of . . . the

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[177] The court of appeals also found suppression improper on other bases: "the officers were searching for drugs and other incidents of drug trafficking . . . [and] knew that persons were inside the apartment"; they had obtained a valid warrant; they "twice gave clear notice of their authority and purpose"; that "the possibility of destruction of evidence was clear" because they "heard sounds consistent with both refused admittance and destruction of the object of the search"; and they waited "approximately 11 to 12 seconds from the start of their first announcement." United States v. Bonner, 874 F.2d 822, 824–27 (D.C. Cir. 1989), *abrogated in part on other grounds by*, United States v. Banks, 540 U.S. 31 (2003).

[178] *Id.* at 824.

[179] *Id.* at 825.

[180] *See* United States v. Musa, 401 F.3d 1208, 1217 (10th Cir. 2005) (Henry, J., dissenting) (noting arguments about lack of knowledge "appl[ies] to virtually all warrants").

dog."[181] It is also possible that the presence of a dog can contribute to dangerousness because of the alert that the dog can provide to potentially dangerous occupants.[182]

(3) Barriers to Entry

United States Courts of Appeals have also approved the constitutional validity of no-knock warrants based in part on the existence of barriers to entry, such as barricades.[183] It is important to remember that after *Richards*, it is the barrier's effect on (most likely) the safety of the officers or the destruction of evidence that matters.[184]

b. Nature-of-the-Defendant Cases

Second are nature-of-the-defendant cases. These cases predominantly address characteristics of a suspect—often the defendant—who is likely to be present at the execution of the no-knock warrant.

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[181] United States v. Gonzalez, 164 F. Supp. 2d 119, 125 (D. Mass. 2001) (even assuming the presence of a rottweiler was intended to apply to the no-knock request in the warrant, the breed of the dog alone was insufficient). *But see* United States v. Winters, No. 2:00-CR-590C, 2001 WL 670924, at *8 (D. Utah May 9, 2001) (concluding that a suspect's rottweiler dogs' barking at an informant, who believed the dogs to be dangerous, supported sufficient dangerousness to justify a no-knock entry); *cf.* Bloodworth v. Kansas City Bd. of Police Comm'rs, 89 F.4th 614, 627 (8th Cir. 2023) (noting, in context of a shooting of a dog during execution of search warrant, that "[t]he size and breed of an uncontrolled dog that advances aggressively on officers performing police duties are clearly relevant to the objective reasonableness of their split-second decision to forcefully seize the animal").

[182] *Cf.* United States v. Buckley, 4 F.3d 552, 558 (7th Cir. 1993) (noting that "exigent circumstances certainly existed to excuse any requirement of arousing armed defendants, or their dog").

[183] United States v. Cooper, 168 F.3d 336, 339 (8th Cir. 1999).

[184] *See* United States v. Ross, 701 F. Supp. 3d 657, 669 (E.D. Mich. 2023) (noting that a "dead man" lock, testified to in an affidavit, justified the no-knock warrant since the lock would "prevent officers from quickly entering a residence at the inception of a search, expos[e] officers to danger and allow[] defendants time to destroy evidence"); *Cooper*, 168 F.3d at 339 (citing pre-*Richards v. Wisconsin*, 520 U.S. 385 (1997), circuit authority setting forth some of the same bases the Supreme Court recognized that justify a no-knock warrant); *see also* State v. Miskell, 98-2146, p. 9 (La. 10/19/99), 748 So. 2d 409, 414 (noting that the presence of "burglar bars" themselves suggest an intent "to slow down the entry of the police" and create an additional supportive inference of reasonable suspicion to forego the knock-and-announce rule).

(1) The Defendant's Criminal History Regarding Violence

Obviously, a suspect's violent criminal history almost always is used to support concerns of dangerousness. But as noted above, a suspect's violent criminal history standing alone is rarely, if ever, sufficient.[185] This is, as the Tenth Circuit has explained, simply "policy."[186]

A ubiquitous example is a no-knock entry justified by generalities about the violent propensities of drug-traffickers.[187] Where additional facts suggest a violent criminal history does not suffer from an over- and under-inclusivity problem, such history can be probative.[188]

In *United States v. Basham*, for example, the defendant in a drug and firearm prosecution challenged the sufficiency of the affidavit used to secure a no-knock warrant to search his residence.[189] Though the district court found a description of the

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[185] *See, e.g.*, United States v. Jones, 707 F. App'x 317, 321 (6th Cir. 2017) (Thapar, J.) (finding a "compelling" justification for no-knock entry when the warrant affidavit specified the suspect's possession of "a gun" in conjunction with his "'history of violence' and prior arrests, including for firearm possession and domestic assault").

[186] United States v. Alexander, No. 20-3238, 2022 WL 414341, at *4 n.2 (10th Cir. Feb. 11, 2022).

[187] *Compare, e.g.*, United States v. Scroggins, 361 F.3d 1075, 1082–84 (8th Cir. 2004) (calling no-knock provision "borderline" and a "close call" when affidavit presented only generalities about drug traffickers; defendant's past "narcotics and weapons violations" and his membership in drug ring; informant testimony of presence of drugs; the presence of other known drug dealers at the residence; and drug residue and a single round of assault-rifle ammunition recovered from trash), *with, e.g.*, United States v. Guebara, 80 F. Supp. 2d 1226, 1228 (D. Kan. 1999) (affirming constitutionality of no-knock provision when "reliable informant" disclosed that one "occupant[]" at the residence to be searched possessed and was using cocaine, that this person had "a police record" of "carrying and possessing firearms[,]" and another occupant "had made recent statements that he wanted to kill police officers, had bragged about shooting police officers and had made statements about having a firearm and trying to obtain another").

[188] *See, e.g.*, United States v. Mattison, 153 F.3d 406, 410–11 (7th Cir. 1998) (in affirming a no-knock warrant based in part on an informant's testimony that "defendant was in possession of crack cocaine and that the defendant had stated he was in possession of a weapon and threatened to kill anyone who interfered with his drug sales[,]" the court noted the foregoing was sufficient on its own to justify a no-knock provision); *see also, e.g.*, United States v. Colonna, 360 F.3d 1169, 1176 (10th Cir. 2004) (noting that the suspect's "prior extensive involvement with law enforcement, the expressed fear of a concerned citizen that [the suspect] would retaliate violently, and the presence of children in the vicinity" was sufficient), *overruled on other grounds by*, Henderson v. United States, 575 U.S. 622 (2015).

[189] United States v. Basham, 268 F.3d 1199, 1204 (10th Cir. 2001).

defendant's criminal history to be "somewhat exaggerated," it nonetheless suppressed the evidence.[190]

The Tenth Circuit affirmed.[191] It noted that even with the exaggeration, the affidavit showed that the defendant "had been charged with assault and two weapons violations, was paranoid and had violent tendencies, had stated to an informant that he would not go back to jail at any cost, and previously had approached the door of his residence with a sawed-off shotgun."[192] Thus, the criminal history was supported by additional corroborative information that, in effect, tightened the overall means-end fit.[193]

Similarly, where a suspect or another person likely to be present at the place where the no-knock warrant is to be executed has demonstrated specific violent tendencies—typically as observed by reliable confidential informants—courts have found dangerousness to be sufficiently shown.[194]

(2) The Defendant's Possession of Firearms

Where a warrant is sought for a premises that is under the control of a person with firearms, more is required than that person's mere possession of a firearm to justify a no-knock entry.[195]

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[190] *Id.* at 1205.

[191] *Id.* at 1208.

[192] *Id.* at 1205.

[193] The court so concluded over the defendant's contention that the information was stale. In the affidavit used for the search, the affiant had referenced an earlier affidavit—issued eight months before—for a warrant that was never executed. *Id.* at 1202. That this earlier affidavit contained the "violent and paranoid tendencies" of the defendant that the court of appeals found probative was of no moment, since under that circuit's test, it was not stale. *Id.* at 1206; *see* United States v. Hawkins, 139 F.3d 29, 32 (1st Cir. 1998) (affirming denial of a suppression motion when the defendant's "copious record of violent convictions[] [were] coupled with the attesting police officer's personal knowledge of a recent armed action by him, and the officer's suspicion that Hawkins was aware of the police interest in him").

[194] *See* United States v. Congo, 21 F.4th 29, 34 (1st Cir. 2021) (affirming, on plain-error review, the propriety of a no-knock provision for dangerousness when "[t]wo sources stated that [the defendant] likely had a gun and had behaved violently (or bragged about doing so) in the past").

[195] United States v. Bynum, 362 F.3d 574, 581 (9th Cir. 2004) (noting "that the presence of a gun, standing alone, is insufficient to justify noncompliance with the knock and announce rule"); *see* United States v. Brown, 276 F.3d 14, 15 (1st Cir. 2002) (en banc) (Stahl, J.) (aff'g by an equally divided court) (explaining view that no-knock entry impermissible because "reasonable suspicion that *this* defendant presented a risk

In *United States v. Ramirez*, the United States Supreme Court had no difficulty reversing the grant of a motion to suppress affirmed by the Ninth Circuit.[196] In *Ramirez*, a no-knock warrant was issued to search a private residence for an escaped prisoner identified by a reliable confidential informant.[197] The former prisoner—named Shelby—had "knocked over a deputy sheriff" to escape.[198] In addition, Shelby "was reported to have made threats to kill witnesses and police officers, to have tortured people with a hammer, and to have said that he would 'not do federal time.'"[199] He "was also thought" to have "access to large supplies of weapons."[200] These facts, the Supreme Court observed, meant that "[t]he police certainly had a 'reasonable suspicion' that knocking and announcing their presence might be dangerous to themselves or to others."[201]

Less extreme facts have also resulted in affirmance of no-knock provisions, such as facts involving other firearm-based lawlessness.[202]

(3) The Defendant's Possession of Readily Destroyed Evidence

As the Supreme Court suggested in *Richards*, reasonable suspicion of a defendant's possession of destructible evidence can carry a strong means-end connection.[203]

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of danger to the police" required concluding that "drugs plus a gun amounts to per se 'reasonable suspicion[,]'" in contravention of *Richards v. Wisconsin*, 520 U.S. 385 (1997); *see also id.* at 15, 15 n.1 (collecting cases characterized as containing "specific information regarding that individual defendant's violent criminal history, belligerent disposition, or other factors indicating the likelihood that the defendant would pose a threat to the safety of the police"); United States v. Bates, 84 F.3d 790, 795 (6th Cir. 1996) (holding, pre-*Richards*, that "[t]he presence of a weapon creates an exigent circumstance, provided the government is able to prove they possessed information that the suspect was armed and likely to use a weapon or become violent").

196 United States v. Ramirez, 523 U.S. 65, 74 (1998).

197 *Id.* at 68.

198 *Id.*

199 *Id.*

200 *Id.*

201 *Id.* at 71.

202 *See, e.g.*, United States v. Wardrick, 350 F.3d 446, 452 (4th Cir. 2003) (affirming reasonable suspicion for no-knock provision in warrant given the suspect's "violent criminal history, including a battery conviction stemming from resisting arrest"; a "suggest[ion]" in the affidavit that the suspect "illegally possessed firearms"; that the suspect "had threatened . . . that he always carried a loaded gun and that he 'never missed'"; and that the suspect was likely home at the time of the search).

United States v. Spry illustrates this point, as well as the interplay of a judge's determination and the freedom of officers to determine whether reasonable suspicion exists at entry.[204] In *Spry*—a pre-*Hudson* case—the defendant challenged a no-knock search warrant obtained from a Minnesota judge.[205] The warrant was supported by statements from a confidential informant that the defendant was distributing narcotics from her home.[206] The defendant did not challenge the Minnesota judge's finding of probable cause to search the defendant's home or the existence of exigent circumstances.[207] Instead, the defendant only pressed that the officers were obliged to "reevaluate the reasonableness of the no-knock warrant at the time of entry."[208] The district judge did not believe this to be required and suppressed the evidence.[209]

In this interesting posture, the case went to the Seventh Circuit Court of Appeals, which affirmed.[210] In doing so, it explained that reappraisal is fact specific.[211] The court distinguished an earlier case in which the no-knock warrant affidavit showed that the defendant possessed firearms and posed a threat to the officers, yet since issuance of that warrant, reliable information suggested that the exigencies no longer existed.[212] Only where such information existed would reevaluation of no-knock entry be required. Here, of course, the defendant did not press that such "reliable information" existed as to the narcotics.[213] Thus, suppression was warranted.

Reappraisal aside, facts indicating narcotics are "destructible" or "readily disposable" add force to a destruction-of-evidence argument. In *United States v. Tisdale*, for example, a convicted defendant in a drug prosecution challenged the effectiveness of his counsel's assistance when his counsel

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[203] Richards v. Wisconsin, 520 U.S. 385, 394 (1997).

[204] *See generally* United States v. Spry, 190 F.3d 829 (7th Cir. 1999).

[205] *Id.* at 831.

[206] *Id.*

[207] *Id.* (noting that "loss, destruction, or removal of evidence of drug trafficking and . . . protect[ion of] the safety of the officers involved" were the exigent circumstances).

[208] *Id.* at 833.

[209] *Id.*

[210] *Spry*, 190 F.3d at 837.

[211] *Id.* at 833.

[212] *Id.* at 833 (quoting United States v. Singer, 943 F.2d 758, 763 (7th Cir. 1991)).

[213] *Id.*

failed to move to suppress evidence obtained in a raid of a co-defendant's apartment.[214] The search warrant was issued by a New York state judge.[215] Notably, the affidavit, based on testimony of a "confidential informant experienced in the drug trade[,]" was supported by the informant's purchase of drugs *the day prior* to the warrant's issuance.[216]

The search of the residence recovered vials of crack and accounting records, among other things.[217] The Second Circuit Court of Appeals affirmed the district court's denial of the ineffective-assistance motion.[218] Its affirmance rested on the good-faith exception; because the *affidavit* contained "particularized exigent circumstances," the officers' reliance was, at the least, not "entirely unreasonable."[219]

Though the court chose to rest its affirmance on the good-faith exception, the "very recent" drug sale at the premises prior to the execution of the warrant enhanced the force of the disposability argument.[220] Where they exist, such facts are indicative of a robust means-end connection, because the fact "[t]hat drugs were sold minutes before suggests nothing except that drugs are probably still on the premises."[221]

A similarly important aspect of particularity is the quantity of narcotics—at least to some courts.[222] In *United States v. Tavarez*, the defendant sought to suppress "drugs, guns, ammunition, cash and drug records" seized in a search of his apartment pursuant to a no-knock warrant.[223] The warrant was issued three days before the search.[224] In the affidavit, the officer

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[214] United States v. Tisdale, 195 F.3d 70, 71 (2d Cir. 1999).

[215] *Id.*

[216] *Id.* at 72.

[217] Brief for Defendant-Appellant Kevin Middleton at 5, United States v. Tisdale, 195 F.3d 70 (2d Cir. 1999) (Nos. 98-1362(L), 98-1363), 1998 WL 34089520, at *5.

[218] *Tisdale*, 195 F.3d at 73–74.

[219] *Id.* at 73.

[220] *See* 2 LAFAVE, *supra* note 106, § 4.8(d).

[221] Commonwealth v. Carlton, 701 A.2d 143, 147 (Pa. 1997).

[222] *See* United States v. Gonzalez, 164 F. Supp. 2d 119, 122–125 (D. Mass. 2001) (rejecting argument that evidence of "torn portions of small plastic baggies with cocaine residue inside" coupled with "suspicious behavior by defendant" as reported by informants and the presence of two people in the house was sufficient to establish a destruction-of-evidence exigency).

[223] United States v. Tavarez, 995 F. Supp. 443, 445 (S.D.N.Y. 1998).

[224] *Id.* at 446.

explained that a confidential informant had seen "approximately one and one-half kilograms of a white powder[-]like substance" in the apartment and later saw two bags of "approximately five ounces" of the same substance after the defendant told the informant that the defendant was going to procure more cocaine.[225]

The district court declined to suppress, noting that these "small quantities of drugs" were "easily accessible" and could be disposed of.[226] The officer's experience of how this could be done—that "a residential apartment" offered opportunities to dispose of the narcotics by flushing,[227] destroying, or throwing them out of a window—sufficiently tied the informant's observations to the constitutional threshold of reasonable suspicion of destruction.[228]

It bears noting that in at least some courts, the mere presence of contraband "without more" is insufficient to trigger exigent circumstances.[229]

Drugs are not the only kind of evidence that can be easily destroyed. In such cases, similar considerations—*i.e.*, recency of illegal activity and the particularized nature of the risk of destruction—apply.[230]

c. Nature-of-the-Warrant Cases

Third, and finally, are nature-of-the-warrant cases. These cases predominantly address the type and framing of, and the detail used in, the no-knock warrant and affidavits.

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[225] *Id.* at 447.

[226] *Id.* at 447–48.

[227] *Id.* at 447. *See* United States v. Johnson, 267 F.3d 498, 500–03 (6th Cir. 2001) (affirming denial of suppression motion in drug prosecution when recent controlled buys occurred at residence and "reliable" confidential informant explained "that deals inside the house are usually done near the bathroom in case the police should come in the house").

[228] *Tavarez*, 995 F. Supp. at 447–48.

[229] United States v. Tobin, 923 F.2d 1506, 1510 (11th Cir. 1991).

[230] *See, e.g.*, Hale v. State, 968 S.W.2d 627, 629–30 (Ark. Ct. App. 1998) (affirming, pre-*Hudson v. Michigan*, 547 U.S. 586 (2006), the reasonableness of a no-knock, nighttime entry after earlier in the evening an operation to buy drugs from defendant with "marked bills" concluded and confidential informants indicated that drugs were kept in the bathroom where the purchase earlier in the evening had taken place, and the defendants stayed awake at night).

(1) Arrest or Search Warrant

As noted above, the D.C. Circuit Court of Appeals is the only federal court of appeals to distinguish between a search and arrest warrant for purposes of exclusion of evidence.[231]

(2) Generalizations Are Insufficient

At the outset, it should be noted that a judge should have no problem declining a no-knock provision in a warrant if the facts in the affidavit supporting the provision are mere generalizations.[232]

For example, in the early post-*Richards* case *United States v. Dupras*, the district court straightforwardly applied the teaching of *Richards* that "the courts must determine whether an unannounced entry is reasonable under the particular circumstances of the case."[233]

The no-knock warrant in *Dupras*—issued to search for evidence of drug manufacturing—flunked this test because the affidavit was composed "largely of generalities regarding the habits of drug manufacturers and distributors" and it failed to "present the element of danger justifying [a SWAT team's] no-knock entry."[234] In addition, the court found it relevant that the evidence sought included manufacturing equipment, which was not as easily disposed of as drugs.[235]

However, as common sense would suggest, courts have found alleged "boilerplate" or "generalization" problems of no moment if

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[231] *See supra* text accompanying notes 134–153.

[232] *See, e.g.*, Smith *ex rel.* Est. of Smith v. Ford, 488 F. Supp. 3d 1314, 1326 (M.D. Ga. 2020) (concluding in civil case that an "affidavit's boilerplate language referring to the possibility of a weapon being in the home based solely on the fact that it is an 'establishment for drugs and drug transactions' is not enough").

[233] United States v. Dupras, 980 F. Supp. 344, 347 (D. Mont. 1997) (citation omitted). The court also explained that "[t]here are two types of dangerous or futile circumstances—those that are foreknown and those unexpected exigencies that arise on the scene." *Id.* Because no on-the-scene exigencies were identified by the government, the court focused on what the state magistrate judge knew when he issued the warrant. *Id.*

[234] *Id.*

[235] *Id.* at 348. Though the court's language suggests that the *warrant* was unreasonable, the court noted the warrant was supported by probable cause. *Id.* at 349. The court likely meant that the *search* itself—which employed no-knock entry unsupported by particularized facts suggesting that exigent circumstances were present—was unreasonable.

the purportedly undifferentiated or boilerplate language is, in fact, supported by sufficient evidence.[236]

(3) Explicitness of "No-Knock" Request

Because there can be misunderstandings about what a warrant permits, it is better to be as explicit as possible. In *United States v. Smith*, the affiant, a city police officer, requested a no-knock warrant in his affidavit submitted in support of a warrant.[237] The warrant itself, however, did not indicate on its face that it was a no-knock search warrant.[238] When executing this warrant, the police broke down the defendant's door, deployed a "diversionary device," and ultimately discovered "about [eighty] pounds" of cocaine—as the informant on whose testimony the affidavit relied suggested they would.[239] The district court denied the defendant's motion to suppress based on a failure to knock and announce,[240] and the defendant was convicted.

On appeal, the Sixth Circuit identified several problems with the search and the search warrant.[241] But relevant here, it concluded that the "good faith" exception—an alternative holding of the district court for denying the suppression motion—was incorrectly applied.[242] The Sixth Circuit noted that, although the affidavit requested no-knock entry, the search warrant itself failed to state that it was a no-knock warrant.[243] The court distinguished an earlier case seemingly approving the practice, and was not persuaded by what was left: a silence-as-permission argument in which the only testimony of this purported practice was that of the affiant.[244]

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[236] United States v. Adams, 971 F.3d 22, 36 (1st Cir. 2020) (no-knock hotel arrest warrant containing alleged generalizations about dangerousness of drug dealers supported with "descri[ptions of] evidence gathered from confidential informants" that suggested the defendant was "engaged in drug trafficking," in addition to evidence of "controlled buys").

[237] United States v. Smith, 386 F.3d 753, 756 (6th Cir. 2004).

[238] *Id.* at 756, 756 n.3.

[239] *Id.* at 756–57.

[240] *Id.* at 757.

[241] *Id.* at 758–60 (first among them was the complete absence of exigent circumstances in the first place).

[242] *Id.* at 760–62. Interestingly, because ultimately no evidence came from the residence, this conclusion of the court of appeals did not help the defendant. *Id.* at 762.

[243] *Smith*, 386 F.3d at 761.

[244] *Id.* at 762 (citing United States v. Mattison, 153 F.3d 406 (7th Cir. 1998)).

Though for reasons already explained,[245] this pre-*Hudson* holding is in some ways anachronistic, it well illustrates the importance of specificity. And—notably—even after explicitly recognizing that *Wilson* grounded a knock-and-announce failure in the reasonableness inquiry, the court found it worthwhile to explain the importance of review of a no-knock provision by a judicial officer.[246]

C. Summary

When considering a no-knock warrant application, a judicial officer might consider what this article refers to as the "means-end" fit of the facts presented and any recognized bases of reasonable suspicion. The cases above suggest the modes of analysis required. If the reviewing judge cannot determine from the affidavits submitted whether and when reasonable suspicion was formed, she should explicitly deny the no-knock provision.

III. IDENTIFYING WHEN A NO-KNOCK WARRANT IS APPROPRIATE

Though some courts of appeals have been clear that a judge is under no duty to inquire as to how a warrant is executed,[247] and officers are likewise under no constitutional duty to obtain a no-knock search warrant,[248] the preceding discussion[249] makes clear that no-knock warrants still are employed. At the intersection of the Warrant Clause and the Unreasonable Search and Seizure Clause, a judicial officer must ensure that no-knock entry is

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[245] *See supra* text accompanying notes 130–132.

[246] *Smith*, 386 F.3d at 761.

[247] The Tenth Circuit, for example, has said:

> We conclude, consistent with *Dalia* [*v. United States*, 441 U.S. 238, 257 (1979)] and [*United States v.*] *Ramirez*[, 523 U.S. 65, 73 (1998)], that there is no duty on the part of the magistrate to inquire as to the method by which a warrant will be executed, and that the failure of a magistrate to so inquire provides no basis for suppression of the evidence obtained during the search.

United States v. Basham, 268 F.3d 1199, 1204 (10th Cir. 2001).

[248] United States v. Ankeny, 502 F.3d 829, 835 (9th Cir. 2007) ("There is no requirement that the police obtain a no-knock warrant simply because one is available.").

[249] *See supra* text accompanying notes 102–129.

appropriate if confronted with a no-knock warrant. Therefore, the importance of cultivating an active—rather than merely passive—review of warrant applications cannot be overstated.

A. General Checklist

Though not a substitute for applicable precedent, this article offers a checklist for the federal judicial officer. It is likely that fewer than all questions will apply in a given case, of course. A list belies the nuance of this area, but nonetheless, one can distill the questions to ask:

1. Basic Framework

   a. Which exigency(s) is/are claimed by the officers to justify a no-knock entry?
   b. What specific facts are asserted to support reasonable suspicion of the exigency(s)?
   c. How snug is the "means-end" fit of the facts to the particular exigency(s) claimed?

2. Facts Relevant to Reasonable Suspicion Analysis

   a. Facts unique to the warrant:
      - Is the warrant an arrest warrant or a search warrant?
      - Does the affiant specifically request no-knock entry?
      - Does the warrant itself specify that it is a no-knock warrant?
   b. Facts unique to the suspect (or to others present at entry):
      - Does the affiant rely on any generalities about the suspect? If so, is there sufficient specific and reliable information in support?
      - Does the affiant present both the suspect's disposition for dangerousness and the suspect's present ability to act on this disposition at entry?
      - Does the affiant specify:
        - both the type and ease of disposability of evidence and
        - the expected quantity of that evidence?

- Taking the type and quantity of the evidence, its location, and other factors into account, is imminent disposability upon announcement plausible?

c. Facts unique to the environment:
   - Does the affiant assert the presence of animals with indicia that such animals have a dangerous disposition?
   - Does the affiant present evidence of barriers to entry that would delay entry? If so, do the barriers affect a recognized interest?
   - Does the affiant specify the ease with which the premises to be searched permit destruction of evidence?

3. Some Facts Are Less Probative than Others

a. Are the specific facts relied upon stale? If so, have they been reconfirmed by recent events?
b. Are the specific facts relied upon mutually supportive or isolated and distinct?

4. Certain Facts Should Trigger a Duty to Reappraise

a. Have contrary facts to those relied upon come to the officers' attention?
b. Is there a reliability concern about the factual basis for the reasonable suspicion?
c. Are the specific facts known to the officers likely to persist until entry?
d. If not, how soon is the warrant to be executed? Should the no-knock authorization be limited?

B. Circuit-Specific Formulations of Exigent Circumstances

In addition to this checklist, this article offers a starting point for identifying binding precedent. While all circuits recognize the validity of no-knock search warrants, some have developed certain rules or specific formulae of sufficient exigent

circumstances to justify a no-knock warrant.[250] Accordingly, included below as a starting point is a brief and non-exhaustive survey of some important points in each circuit's law.

1. First Circuit Court of Appeals

The First Circuit generally employs the canonical factors set forth in *Richards*.[251] The First Circuit has been clear that the "[p]olice need not . . . obtain advance permission from a judicial officer to conduct a no-knock entry."[252]

2. Second Circuit Court of Appeals

The Second Circuit considers

> (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry . . . [in addition to] whether "quick action is necessary to prevent the destruction of evidence."[253]

3. Third Circuit Court of Appeals

The Third Circuit allows for

> dispensing with the knock-and-announce requirement in four situations: (1) the individual inside was aware of the officers' identity and thus announcement would have been a useless gesture; (2) announcement might lead to the sought individual's escape; (3) announcement might place the officers

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[250] But as noted above, the existence of facts giving rise to an exigency and the sufficiency of that exigency entails "an analysis of the facts of each case." United States v. Kennedy, 32 F.3d 876, 882 (4th Cir. 1994). And all circuits, of course, recognize the canonical list of exigencies set forth in *Richards v. Wisconsin*.

[251] *See, e.g.*, United States v. Boulanger, 444 F.3d 76, 81 (1st Cir. 2006).

[252] Penate v. Sullivan, 73 F.4th 10, 19 (1st Cir. 2023) (citing United States v. Boulanger, 444 F.3d 76, 83–84 (1st Cir. 2006)).

[253] Terebesi v. Torreso, 764 F.3d 217, 241–42 (2d Cir. 2014) (first quoting United States v. Moreno, 701 F.3d 64, 73 (2d Cir. 2012); and then quoting United States v. Brown, 52 F.3d 415, 421 (2d Cir. 1995)).

> in physical peril; and (4) announcement might lead to the destruction of evidence.[254]

4. Fourth Circuit Court of Appeals

The Fourth Circuit places special emphasis on requiring "a *particularized* basis" for the officers' reasonable suspicion.[255] Also, like several other circuits,[256] the Fourth Circuit also acknowledges 18 U.S.C. § 3109 "encompasses the constitutional requirements of the fourth amendment"—but it is an open question in the Fourth Circuit whether *Hudson*'s rule of exclusion applies to violations of § 3109.[257]

5. Fifth Circuit Court of Appeals

The Fifth Circuit, on the other hand, holds that an "officer does not have to 'demonstrate "particularized knowledge" that a suspect is armed' . . . [but must meet the lower threshold of] 'reasonable suspicion' . . . derived from specific facts and circumstance surrounding a search."[258]

6. Sixth Circuit Court of Appeals

The Sixth Circuit follows the *Richards* factors, but restated:

> when 1) the persons within the residence already know of the officers' authority and purpose; 2) the officers have a justified belief that someone within is in imminent peril of bodily harm; or 3) the officers have a justified belief that those within are aware of their presence and are engaged in escape or the destruction of evidence[,][259]

then officers may dispense with knocking and announcing.

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[254] Kornegay v. Cottingham, 120 F.3d 392, 397 (3d Cir. 1997).

[255] United States v. Singleton, 441 F.3d 290, 293 (4th Cir. 2006) (quoting United States v. Grogins, 163 F.3d 795, 798 (4th Cir. 1998) (emphasis added)).

[256] *See supra* text accompanying note 52.

[257] United States v. Williams, 130 F.4th 177, 184 (4th Cir. 2025) (quoting United States v. Kennedy, 32 F.3d 876, 882 (4th Cir. 1994)).

[258] Bishop v. Arcuri, 674 F.3d 456, 466 (5th Cir. 2012) (citation omitted) (quoting Linbrugger v. Abercia, 363 F.3d 537, 542 (5th Cir. 2004)).

[259] United States v. Smith, 386 F.3d 753, 759 (6th Cir. 2004) (quoting United States v. Bates, 84 F.3d 790, 795 (6th Cir. 1996)).

7. Seventh Circuit Court of Appeals

The Seventh Circuit has said that some fact patterns can raise the question of whether officers must reappraise at the time of entry.[260]

8. Eighth Circuit Court of Appeals

The Eighth Circuit, too, has endorsed the reappraisal rule.[261]

9. Ninth Circuit Court of Appeals

In the Ninth Circuit, "any one factor analyzed under the totality of the circumstances may be sufficient to justify dispensing with the knock and announce requirement."[262]

10. Tenth Circuit Court of Appeals

The Tenth Circuit has explained its approach thusly:

> Search and seizure cases involve, by their very nature, fact-dependent and case-specific inquiries. Thus, our inquiry into whether exigent circumstances exist must rely on analogical reasoning from prior holdings and prior circumstances, as well as a close look at the particular circumstances law enforcement officers confronted in this case.[263]

11. Eleventh Circuit Court of Appeals

The Eleventh Circuit applies the *Richards* factors without embellishment.[264]

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[260] *See* United States v. Singer, 943 F.2d 758, 763 (7th Cir. 1991) (noting that "firearms, unlike drugs, are durable goods useful to their owners for long periods of time"). *But see* United States v. Spry, 190 F.3d 829, 833 (7th Cir. 1999) (holding that reappraisal-at-entry was unnecessary where the continued existence of the same exigent circumstances underlying the no-knock warrant is not called into question).

[261] Doran v. Eckold, 409 F.3d 958, 965 (8th Cir. 2005) ("Therefore, if the facts known prior to obtaining the warrant justify a no-knock entry, and if no contrary facts are discernable to the officers who execute the warrant, the no-knock entry is constitutionally reasonable.").

[262] United States v. Bynum, 362 F.3d 574, 579 (9th Cir. 2004).

[263] United States v. Nielson, 415 F.3d 1195, 1200 (10th Cir. 2005).

[264] *See, e.g.*, United States v. Segura-Baltazar, 448 F.3d 1281, 1289 (11th Cir. 2006); Santana v. Miami-Dade Cnty., 688 F. App'x 763, 768 (11th Cir. 2017) (per curiam).

12. D.C. Circuit Court of Appeals

The D.C. Circuit permits exclusion of evidence when knock-and-announce violations occur in the execution of arrest warrants.[265]

C. Summary

The law germane to knock-and-announce is largely uniform. Accordingly, it is possible to establish a general checklist for approaching a no-knock warrant application. However, there are circuit-specific distinctions of which judges must be aware; and that is why a brief, non-exhaustive list of precedent by circuit is included as a starting point for further research.

CONCLUSION

Under the Fourth Amendment, federal judges often bear the difficult burden of deciding when law enforcement's intrusion upon the rights of suspects is appropriate. The difficulty is especially acute when the intrusions occur in terrain where constitutional doctrines and practical rules overlap. Such badlands are the home of no-knock warrants. The federal judicial officer must exercise care in negotiating the underlying tension between law enforcement and privacy—enduring themes and principles of the Fourth Amendment—when approaching the totality of the facts and circumstances in each case. By attempting to explain and categorize certain recurring scenarios, it is hoped that the article will be a useful reference in discharging the federal judicial officer's important duties.

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[265] *See supra* text accompanying notes 134–153.