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Constitutional Law - Criminal Procedure - Fourth Amendment - "Knock and Announce" Rule

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CONSTITUTIONAL LAW — CRIMINAL PROCEDURE — FOURTH AMENDMENT — “KNOCK AND ANNOUNCE” RULE — The Supreme Court of the United States held that the common law “knock and announce” rule was an indispensable component of the Fourth Amendment’s “reasonableness” requirement, and therefore, should not be subject to a per se blanket exception.

Richards v. Wisconsin, 117 S. Ct. 1416 (1997).

On December 31, 1991, the Madison, Wisconsin police obtained a search warrant for Steiney Richards’ (“Richards”) hotel room intending to search for various drugs and related paraphernalia.¹ The police arrived at Richards’ hotel room at approximately 3:40 a.m.² Officer Pharo, cloaked as a maintenance man, led the search team accompanied by several plainclothes officers and at least one officer in full uniform.³ After knocking on the door and upon Richards’ request for identification, Officer Pharo identified himself as a maintenance man.⁴ With the safety chain still connected, Richards opened the door slightly and observed the officer in uniform standing among Officer Pharo and the plainclothes officers.⁵ Upon viewing the uniformed officer, Richards immediately slammed the door closed.⁶ The officers waited several seconds before they began to batter down the door to gain admittance into the locked room.⁷ As they entered the room, the officers caught Richards attempting to flee through a window.⁸ The officers then seized cash and cocaine stashed above the bathroom ceiling tiles of

1. *Richards v. Wisconsin*, 117 S. Ct. 1416, 1418 (1997). Issuance of the search warrant culminated an extensive criminal investigation linking Richards and several other individuals to a drug ring operating from local hotels in the Madison, Wisconsin area. *Id.* The police requested a warrant that would have granted them permission to perform a “no-knock” entry into Richards’ hotel room, but the issuing magistrate specifically deleted those portions of the warrant, denying the police such authority. *Id.*

2. *Richards*, 117 S. Ct. at 1419.

3. *Id.* The parties disputed the exact number of officers accompanying Officer Pharo. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* At trial, some dispute existed about what transpired after Richards observed the uniformed police officer. Nevertheless, Richards admitted that when he opened the door, he did see the uniformed officer. *Id.*

7. *Richards*, 117 S. Ct. at 1419. The police testified that they identified themselves as police officers while they were kicking and ramming Richards’ door. *Id.*

8. *Id.*

the hotel room.⁹

Following his arrest,¹⁰ Richards sought to have the evidence obtained from his hotel room suppressed¹¹ on the grounds that the officers had failed to knock and announce their presence prior to forcing entry into the room.¹² Richards argued that the officers' failure to knock and announce was in direct conflict with *Wilson v. Arkansas*¹³ decided by the Supreme Court of the United States in 1995.¹⁴ Nevertheless, since the arresting officers could surmise from Richards' unusual behavior that he knew they were police officers, the trial court denied the suppression motion.¹⁵ Richards was subsequently convicted on a charge of Possession with Intent to Deliver a Controlled Substance in violation of Wisconsin Statute section 961.41(1).¹⁶

Both the Wisconsin Court of Appeals¹⁷ and the Wisconsin Supreme Court affirmed the trial court's decision.¹⁸ The Wisconsin Supreme Court centered its affirmation of the trial court's decision upon whether the recent decision by the Supreme Court of the United States in *Wilson v. Arkansas* would force it to overrule

9. *Id.*

10. Richards was arrested for possession of cocaine base with intent to deliver. *State v. Richards*, 549 N.W.2d 219 (Wisc. 1996).

11. "Suppression of evidence" is defined as "the ruling of a trial judge to the effect that evidence sought to be admitted should be excluded because it was illegally acquired." BLACK'S LAW DICTIONARY 1440 (6th ed. 1990).

12. *Richards*, 117 S. Ct. at 1419.

13. 514 U.S. 927 (1995). In *Wilson*, the Supreme Court held that the Fourth Amendment "reasonableness" requirement incorporates the common-law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry. *Wilson*, 514 U.S. at 934. At the same time, the Court recognized that the "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests. . . ." *Id.* Furthermore, the Court "left to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment." *Id.* at 936.

The Fourth Amendment to the United States Constitution provides: "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.

14. *Richards*, 117 S. Ct. at 1419.

15. *Id.*

16. Section 961.41(1) provides, in part: (1) Manufacture, Distribution, or Delivery. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. WISC. STAT. § 961.41(1) (1995-96).

17. The March 3, 1994 opinion of the court is unreported but is listed in a table at 516 N.W.2d 19 (Wisc. 1994).

18. *Richards*, 549 N.W.2d. at 227.

State v. Stevens,¹⁹ a pre-*Wilson* decision.²⁰ In light of *Wilson*, the Wisconsin Supreme Court examined its decision in *Stevens*, concluding that a per se blanket exception to the knock and announce rule could be harmonized with *Wilson*.²¹ First, the court assumed that all felony drug crimes involved deadly risk to police officers.²² Second, the likelihood that key evidence would be destroyed prior to entry by law enforcement officials should create a blanket exception.²³

To buttress its conclusion, the Wisconsin court hypothesized that the violation of privacy that occurs when police officers forcibly enter a residence armed with a search warrant is minimal because residents generally do not have the authority to refuse entry to the police.²⁴ Rather, the primary infringement on Fourth Amendment privacy interests stems from the issuance of the search warrant rather than the manner in which police executed the search warrant.²⁵ Thus, the court reaffirmed its per se blanket exception to the knock and announce rule outlined in *Stevens* despite the *Wilson* Court's decision to anoint the knock and announce rule an indispensable parcel of the Fourth Amendment's "reasonableness" requirement.²⁶

The Supreme Court of the United States granted certiorari²⁷ to determine whether Wisconsin's per se blanket exception to the knock and announce rule in felony drug cases was constitutional in light of *Wilson*.²⁸ Although the Court unanimously affirmed the

19. 511 N.W.2d 591 (Wisc. 1994) *cert. denied*, 515 U.S. 1102 (1995). In *Stevens*, the Supreme Court of Wisconsin held that "when the police have a search warrant, supported by probable cause, to search a residence for evidence of delivery of drugs or evidence of possession with intent to deliver drugs, they necessarily have reasonable cause to believe exigent circumstances exist [to justify a no-knock entry]." *Id.*

20. *Richards*, 549 N.W.2d. at 219.

21. *Id.* at 222.

22. *Id.*

23. *Id.* In determining the dangerousness of felony drug crimes, the court considered various criminal conduct surveys, newspaper articles, and other judicial opinions. *Id.*

24. *Id.* at 226.

25. *Richards*, 549 N.W.2d at 226.

26. *Id.*

27. "Certiorari" is a writ issued by a higher court to a lower court requiring the lower court to produce a certified record of a particular case so that the issuing court can examine the proceedings of the preceding case to decide whether an error of law has occurred. Frequently, this term refers to writs issued by the Supreme Court of the United States, which uses the writ as a discretionary device to select cases it wishes to examine. BLACK'S LAW DICTIONARY 228 (6th ed. 1990).

28. *Richards*, 117 S. Ct. at 1420. Wisconsin's per se blanket exception to the knock and announce rule only applied to felony drug cases. *Id.*

Wisconsin Supreme Court's decision, it ultimately determined that a per se blanket exception to the knock and announce rule ran counter to the Fourth Amendment's "reasonableness" requirement, and was therefore, unconstitutional.²⁹

In addition to rejecting Wisconsin's per se blanket exception to the knock and announce rule, the Court determined that to justify a no-knock entry, the police officers must have a "reasonable suspicion" that their safety is in jeopardy or that the "effective investigation of the crime" would be thwarted.³⁰ Applying those factors to the circumstances in *Richards*, the Court decided that the officers' no-knock entry into Richards' hotel room did not violate the Fourth Amendment because the officers had a reasonable suspicion that Richards might flee or destroy evidence if they did not apprehend him immediately.³¹

To justify its institution of this test, the Court invoked two public policy concerns to support its rejection of Wisconsin's per se blanket exception to the knock and announce rule.³² First, the blanket exception is considerably overgeneralized because not every drug investigation poses risks sufficient to justify an intrusion upon the Fourth Amendment's "reasonableness" requirement through per se no-knock entries.³³ Second, by upholding a per se exception to the knock and announce rule in one category of dangerous crimes, that same exception could be applied to other categories of dangerous crimes such as armed robbery.³⁴ The Court concluded that although "felony drug investigations may frequently present circumstances warranting a no-knock entry," that fact

29. *Id.* at 1422.

30. *Id.* at 1421. More specifically, the Court held: "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." *Id.* This standard, the Court reasoned, would strike "the appropriate balance between legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries." *Id.*

31. *Id.* at 1422.

32. *Id.* at 1421.

33. *Richards*, 117 S. Ct. at 1421. The Court provided two examples of "overgeneralization." First, a search may be conducted at a time when the only individuals present in a residence may be totally unconnected with drug activities and, therefore, unlikely to harm police or destroy evidence. *Id.* Second, the police may know that the drugs that are the subject of the search are of a type or in a location making it impossible to destroy quickly. *Id.*

34. *Id.* The court cited armed robbery as a crime to which Wisconsin's per se exception could easily be applied due to the dangerousness of the crime and the relative ease of destroying the fruits of such crime. *Id.*

"cannot remove from the neutral scrutiny of a reviewing court the reasonableness of the police decision not to knock and announce in a particular case."³⁵

Within *Richards*, the Fourth Amendment's "reasonableness" requirement provided a solid foundation for the Justices to bolster their decision concerning the knock and announce rule.³⁶ However, until the middle of the twentieth century the knock and announce rule was simply a remnant of English common law not rooted in any Constitutional provision.³⁷ The origins of the knock and announce rule³⁸ can be traced back to *Semayne's Case*,³⁹ decided in 1603.⁴⁰ Although *Semayne's Case* did not involve forcible entry,⁴¹ the English court nevertheless decided that when the King is a party to a dispute, the sheriff may break the doors of the dwelling to arrest the occupant or carry out the execution of the King's business.⁴² The court, however, qualified its decision by concluding that before the sheriff may break down any doors, he must identify himself and the purpose for which he has arrived at the residence.⁴³ The court seemed reluctant to permit any property destruction without the owner's knowledge of the reasons the sheriff had arrived at the residence.⁴⁴

Pursuant to state constitutional provisions and/or statutes, the English common law knock and announce rule spread quickly

35. *Id.*

36. *Id.* at 1422.

37. *Wilson*, 514 U.S. at 931.

38. For an in depth discussion of the common law origins of the knock and announce rule, See G. Robert Blakey, *The Rule of Announcement and Unlawful Entry: Miller v. United States; Ker v. California*, 112 U. PA. L. REV. 499, 500-04 (1964).

39. 5 Co. Rep. 91a, 77 Eng. Rep. 194 (K.B. 1603).

40. *Wilson*, 514 U.S. at 931.

41. *Semayne's Case* concerned a sheriff executing a civil writ of attachment levied upon certain property within Peter Semayne's residence. *Semayne's Case*, 77 Eng. Rep. at 194-95. In modern parlance, "attachment" is defined as: "The legal process of seizing another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered." BLACK'S LAW DICTIONARY 126 (6th ed. 1990).

42. *Wilson*, 514 U.S. at 931.

43. *Semayne's Case*, 77 Eng. Rep. at 194-95. See Case of Richard Curtis, Fost. 135, 137, 168 Eng. Rep. 67, 68 (Crown 1757) (extending the rule of *Semayne's Case* to criminal actions: "No precise form of words is required in a case of this kind. It is sufficient that the party hath notice, that the officer cometh not as a mere trespasser, but claiming to act under a proper authority. . ."). *Id.* See also *Lee v. Gansell*, Lofft 374, 381-82, 98 Eng. Rep. 700, 705 (K.B. 1774) ("[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"). *Id.*

44. *Semayne's Case*, 77 Eng. Rep. at 194-95.

through the United States in the late 18th century.⁴⁵ In accordance with such incorporation provisions, early American courts followed the common law knock and announce rule.⁴⁶ Furthermore, in 1917, Congress codified the common law knock and announce rule regarding federal officers executing search warrants in Title 11 of the Espionage Act.⁴⁷

Despite such widespread acceptance of the common law knock and announce rule, the Supreme Court never squarely confronted the issue until 1958 in *Miller v. United States*.⁴⁸ In *Miller*, the Court addressed whether evidence seized after a no-knock entry into "Blue" Miller's ("Miller") apartment should be suppressed.⁴⁹ Federal officers entered Miller's apartment after an arrested informant, Clifford Reed, revealed to the officers that he purchased heroin from Miller through an individual who regularly trafficked drugs for Miller.⁵⁰ The officers not only failed to enter the residence equipped with an arrest or search warrant, they also failed to demand

45. *Wilson*, 514 U.S. at 933. Pennsylvania incorporated English common law (including the knock and announce rule) in the Act of Dec. 23, 1780, ch. 925, section 5. 10 STATUTES AT LARGE OF PENNSYLVANIA 255 (J. Mitchell & H. Flanders comp. 1904).

46. *Wilson*, 514 U.S. at 933. See, e.g., *Bell v. Clapp*, 10 Johns. 263, 265 (N.Y. Sup. Ct. 1813); *Walker v. Fox*, 32 Ky. 404, 405 (1834); *Chipman v. Bates*, 15 Vt. 51, 60 (1843); *Burton v. Wilkinson*, 18 Vt. 186, 189 (1846); *Howe v. Butterfield*, 58 Mass. 302, 305 (1849); *Barnard v. Bartlett*, 64 Mass. (1 Cush.) 501, 503 (1852); *Jacobs v. Measures*, 79 Mass. (13 Gray) 74, 75 (1859). See also *Blakey*, *supra* note 38, at 504-09.

47. Espionage Act, ch. 30, tit. XI, §§ 8-9, 40 Stat. 217, 228-29 (1917). See also Jennifer M. Goddard, *The Destruction of Evidence Exception to the Knock and Announce Rule: A Call for Protection of Fourth Amendment Rights*, 75 B. U. L. REV. 449, 456 (1995). Sections 8 and 9 of Title 11 were later codified by Congress at 18 U.S.C. section 3109 (1988), which provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant." *Id.*

48. 357 U.S. 301 (1958).

49. *Miller*, 357 U.S. at 302.

50. *Id.* at 302-03. Enlisting Reed's help to arrest Miller and Shepherd, an undercover officer accompanied Reed to Shepherd's residence armed with \$100 in marked cash in order to purchase 100 capsules of heroin. *Id.* at 302. Upon Shepherd's acceptance of the \$100 from the undercover officer to procure the heroin from Miller, other federal officers followed Shepherd to Miller's apartment. *Id.* at 303. After Shepherd exited Miller's apartment, he was arrested several blocks away and admitted that he had purchased 100 capsules of heroin from Miller with the marked currency provided earlier in the evening by the undercover officer. *Id.*

The officers then returned to Miller's apartment, knocked on the door, and identified themselves in a low voice as "police" when Miller inquired as to who was at his door. *Id.* Miller then opened the door to inquire why the officers were there, but before they could answer, Miller attempted to close the apartment door. *Id.* Before Miller could close the door, however, the officers placed their hands inside the door, ripped off the safety chain, and subsequently entered the residence to arrest Miller. *Id.* at 303-04.

admission to the residence, or even state their purpose for being there, prior to seizing marked money and arresting Miller.⁵¹ Both the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit denied Miller's motion to suppress the evidence seized from his apartment.⁵²

The United States Supreme Court, however, reversed, declaring that *Semayne's Case* continues to endure, and therefore, the officers should have knocked and announced their intentions when arriving at Miller's apartment.⁵³ Furthermore, the Court noted that the enactment of 18 U.S.C. section 3109 obviously reflected Congress' intention to codify the knock and announce rule outlined in *Semayne's Case*.⁵⁴ Thus, applying the language of 18 U.S.C. section 3109 to the facts at issue, the Court reversed the lower courts' decisions and suppressed the evidence obtained after the officers barged into Miller's apartment unannounced.⁵⁵ Although the *Miller* decision officially indoctrinated the knock and announce rule into American jurisprudence, the Supreme Court of the United States still had not addressed the question of whether an unannounced entry violated the Fourth Amendment's "reasonableness" requirement.⁵⁶

Just five years later, however, the United States Supreme Court, in *Ker v. California*,⁵⁷ addressed whether an unannounced entry is inconsistent with the Fourth Amendment's "reasonableness" requirement.⁵⁸ In *Ker*, law enforcement officials also seized inculpatory evidence⁵⁹ after an unannounced entry⁶⁰ into a

51. *Id.* at 304.

52. *Id.* at 302.

53. *Id.* at 308. The *Miller* opinion, now famous in knock and announce discourse, was penned by Justice Brennan. Goddard, *supra* note 47, at 458.

54. *Miller*, 357 U.S. at 308-09.

55. *Id.* at 313.

56. *Wilson*, 514 U.S. at 933. Rather, as previously mentioned, the Court chose to focus its decision upon the rule enunciated in *Semayne's Case* and 18 U.S.C. section 3109. *Id.*

57. 374 U.S. 23 (1963).

58. See Goddard, *supra* note 47, at 465.

59. "Inculpatory evidence" is "evidence, going or tending to establish guilt; that which tends to incriminate." BLACK'S LAW DICTIONARY 768 (6th ed. 1990). Instantly, the seized marijuana was used at trial to establish the guilt of *Ker*. *Ker*, 374 U.S. at 29.

60. *Ker*, 374 U.S. at 29. In *Ker*, four Los Angeles County police officers arrived at *Ker's* apartment with probable cause to arrest him on narcotics violations after witnessing a drug transaction between *Ker* and another man. *Id.* at 28. Immediately after witnessing the drug transaction, the officers attempted to follow *Ker* as he drove off in his car but lost track of him. *Id.* at 27. Consequently, utilizing *Ker's* vehicle registration number to obtain his address, the officers proceeded to *Ker's* apartment complex. *Id.* at 28.

residence.⁶¹ The factual scenario of *Ker* was not readily distinguishable from *Miller*.⁶² However, for the first time, the Court chose to analyze the unannounced entry in terms of whether the entry was consistent with the Fourth Amendment's "reasonableness" requirement.⁶³

The *Ker* Court ultimately affirmed the defendant's convictions in a 5-4 vote that produced plurality opinions from both Justice Clark and Justice Brennan. Justice Clark's plurality opinion,⁶⁴ which ultimately prevailed, declared that the officer's failure to knock and announce did not violate the Fourth Amendment's "reasonableness" requirement.⁶⁵ In formulating his decision, Justice Clark first determined that the lawfulness of the arrests should be determined under California state law.⁶⁶ While acknowledging that California had adopted the statutory language of 18 U.S.C. section 3109 for governing the execution of search and arrest warrants, Justice Clark recognized that California courts had articulated certain exceptions to the knock and announce rule.⁶⁷

Justice Clark then assessed the constitutionality of California's

After learning that *Ker's* apartment was indeed occupied, the officers obtained a key from the building manager. *Id.* at 1628. Without knocking or announcing his presence, one officer quietly opened the apartment door and found *Ker* sitting in the living room. *Id.* After the lone officer identified himself and his companions as police officers, he proceeded to the kitchen of the apartment where he observed a brick of marijuana on the kitchen table. *Id.*

Ker and his wife were then arrested for suspicion of violating California's Narcotics Law; although *Ker* contended that he and his wife were arrested before the police saw any marijuana. *Id.* Marijuana was also found in a kitchen cupboard, a bedroom dresser, and an automobile registered to *Ker's* wife. *Id.* All of the seized marijuana was introduced as evidence against *Ker* and his wife at trial. *Id.*

61. *Id.* at 24-25.

62. See *supra* notes 51 and 61 and accompanying text.

63. *Ker*, 374 U.S. at 25. More specifically, the Court relied on its rationale in *Mapp v. Ohio*, 367 U.S. 643 (1961) to analyze the issues before it. *Ker*, 374 U.S. at 25. *Mapp* held that the Fourth Amendment's prohibition of unreasonable searches and seizures is applicable to the states through the Fourteenth Amendment to the United States Constitution. *Ker*, 374 U.S. at 30.

64. *Ker*, 374 U.S. at 24. Justice Clark was joined by Justice Black, Justice Stewart, and Justice White. Justice Harlan concurred in the decision. *Id.* Justice Brennan was joined in dissent by Chief Justice Warren, Justice Douglas, and Justice Goldberg. *Id.* at 46 (Brennan, J., concurring).

65. *Id.* at 45.

66. *Id.* The relevant California law cited by Justice Clark was embodied in the California Penal Code, section 844, which essentially mirrored the language of 18 U.S.C. section 3109 (1988).

67. *Ker*, 374 U.S. at 38. Justice Clark specifically pointed to *People v. Maddox*, which held that when an officer has a "good faith belief" that compliance with the relevant knock and announce rule is excused, then the officer's failure to comply with the rule does not mandate the exclusion of the evidence he obtained as a result of the unannounced entry. *People v. Maddox*, 294 P.2d 6 (Cal. 1956), cert. denied 352 U.S. 858 (1956)..

exceptions to the knock and announce rule in light of the Court's decision in *Mapp v. Ohio*.⁶⁸ Justice Clark concluded that the exceptions did not "offend federal constitutional standards of reasonableness" for two main reasons.⁶⁹ First, Justice Clark stated that although the knock and announce rule was nearly absolute at common law, courts had carved out exceptions, principally when exigent circumstances existed.⁷⁰ Second, Justice Clark distinguished *Miller* by noting that neither exigent circumstances nor precedent finding specific exceptions to the knock and announce rule were mentioned in *Miller*.⁷¹ In contrast, exigent circumstances allowing an exception to the knock and announce rule were readily identifiable in *Ker*.⁷² Consequently, the Court held that the officer's unannounced entry into the Kers' apartment was not a violation of the Fourth Amendment.⁷³

Justice Brennan, on the other hand, mirrored his sentiments in *Miller*, and concluded that the police officer's entry into the Kers' apartment did indeed violate the knock and announce rule in violation of the Kers' Fourth Amendment rights.⁷⁴ Justice Brennan opined that only three specific instances exist when the Fourth Amendment permits an unannounced intrusion into the inner sanctum of a person's residence.⁷⁵ Then, after a thorough recapitulation of the history of the knock and announce rule,⁷⁶ Justice Brennan concluded that the officers who initiated the no-knock entry into the Kers' residence were not justified under any of three exceptions he had previously outlined or any

68. *Ker*, 374 U.S. at 38. As explained in note 63 *supra*, *Mapp* held that the Fourth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution. *Mapp*, 367 U.S. at 655.

69. *Ker*, 374 U.S. at 38.

70. *Id.* Justice Clark did not cite any particular case law to elucidate this point. *Id.*

71. *Id.* In a footnote, the Court also distinguished the instant facts from the facts of *Wong v. United States*, 371 U.S. 471 (1963), where the government failed to assert exigent circumstances as a defense to the failure of federal officers to knock and announce before entry into a dwelling. *Ker*, 374 U.S. at 38-39.

72. *Ker*, 374 U.S. at 38-39.

73. *Id.* at 39.

74. *Id.* at 46 (Brennan, J., dissenting).

75. *Id.* The three instances Justice Brennan highlighted were: "(1) where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted." *Id.*

76. See *supra* notes 37-47 and accompanying text.

exceptions enunciated under common law.⁷⁷ Therefore, Justice Brennan believed that the unannounced entry of the officer's into the Kers' residence violated the Fourth Amendment's "reasonableness" standard.⁷⁸

In the *Ker* decision, the Court seemed to suggest that when examining a knock and announce issue, it would apply the Fourth Amendment's "reasonableness" standard to judge the validity of a police officer's unannounced entry into a residence. Nonetheless, only five years later, the Court reverted to its reasoning in *Miller* in deciding the case of *Sabbath v. United States*.⁷⁹ Without mentioning the Fourth Amendment implications, the Court reversed the Ninth Circuit's decision that the officers' unannounced entry into Sabbath's apartment was lawful.⁸⁰ Similar to its rationale in *Miller*, the Court strictly interpreted 18 U.S.C. section 3109 and determined that the officers had a duty to knock and announce their presence before entering Sabbath's unlocked apartment.⁸¹

In 1995, the Court left no doubt as to the direct implication of the Fourth Amendment's "reasonableness" requirement in its analysis of knock and announce rule issues in *Wilson v. Arkansas*.⁸² In *Wilson*, the Court addressed whether the common

77. *Ker*, 374 U.S. at 52-63 (Brennan, J., dissenting).

78. *Id.* at 46 (Brennan, J., dissenting).

79. 391 U.S. 585 (1968). In *Sabbath*, federal officers in Los Angeles failed to knock and announce their presence at Johnny Sabbath's door before entering his unlocked apartment to arrest him on narcotics violations. *Id.* at 586. The officers seized cocaine and drug packaging materials which were introduced against Sabbath at trial. *Id.*

Despite the officers' failure to knock and announce, Sabbath was tried and convicted in the United States District Court for the Southern District of California, Central Division, a decision affirmed by the United States Court of Appeals for the Ninth Circuit. *Id.* The Supreme Court subsequently granted certiorari to decide whether or not the officers' entry was consistent with federal law. *Id.* at 589.

80. *Id.* at 588.

81. *Id.* The Court found that 18 U.S.C. section 3109 applied to unlocked doors as well. *Id.* at 589.

82. *Wilson v. Arkansas*, 514 U.S. 927 (1995). On December 31, 1992, the Arkansas State Police obtained a search warrant for Wilson's home after a police informant had purchased drugs from her on numerous occasions. *Id.* at 929. Upon the officers' arrival at Wilson's home, they found the main door of her home to be unlocked. *Id.*

Consequently, without knocking and announcing their presence, the officers entered the residence and identified themselves as police officers armed with a search warrant. *Id.* The officers seized marijuana, methamphetamines, valium, narcotics paraphernalia, a gun, and ammunition. *Id.* Wilson and her roommate were subsequently arrested and charged with delivery of marijuana and methamphetamine, possession of drug paraphernalia, and possession of marijuana. *Id.* at 930.

Wilson filed a motion to suppress the evidence seized in the search on the grounds that the officers failed to knock and announce their presence before they entered the residence. *Id.* The trial court denied the motion, Wilson was convicted, and the Arkansas Supreme

law knock and announce rule was a part of the Fourth Amendment's "reasonableness" requirement.⁸³ After reversing and remanding Wilson's conviction on various drug charges, the Court delved extensively into the history of the common law knock and announce rule,⁸⁴ concluding that the rule was deeply "embedded in Anglo-American law."⁸⁵ After reaching such a historically-based conclusion, the Court held that the common law knock and announce rule was a fundamental component of the Fourth Amendment's "reasonableness" requirement.⁸⁶ The Court, however, also recognized that exceptions to the knock and announce rule may exist when exigent circumstances arise, rendering the unannounced entry reasonable.⁸⁷ Consequently, the Court relegated to the lower courts the duty of determining whether an exigent circumstance and whether an unannounced entry is accordingly reasonable under the Fourth Amendment.⁸⁸

The *Wilson* decision finally settled nearly forty years of confusion and wavering in the Court's analysis of knock and announce issues in light of *Ker* and *Sabbath*.⁸⁹ However, the *Wilson* Court's failure to provide specific criteria for the analysis of no-knock entries provided justification for per se blanket exceptions to the knock and announce rule similar to the exception adopted by Wisconsin in *Richards*.⁹⁰ *Wilson* provided such justification by granting trial courts the ultimate power to

Court affirmed on appeal. *Id.* The Supreme Court granted certiorari to resolve the issue of whether the common law knock and announce rule was included in the Fourth Amendment's "reasonableness" requirement. *Id.*

83. *Id.* at 931.

84. *Id.* at 931-32. The court cited a variety of English cases but focused mainly on *Semayne's Case* in its historical account of the common law knock and announce rule. *Id.*

85. *Id.* at 934.

86. *Id.* at 936.

87. *Wilson*, 514 U.S. at 936. The government asserted that the unannounced entry was justified because the officers had a reasonable belief that announcing would place their lives in peril or present a risk that Wilson would destroy the articles meant to be seized. *Id.* Because the Arkansas Supreme Court did not address whether an exigent circumstance exception existed, the Court remanded the case for further proceedings consistent with its findings. *Id.*

88. *Id.*

89. As previously noted, the Court's 1963 decision in *Ker* relied on the Fourth Amendment's reasonableness standard to uphold the defendants' convictions. *Ker*, 374 U.S. at 37. A mere five years later, the Court reverted to *Miller's* statutory interpretation analysis to suppress evidence seized in a no-knock entry. *Sabbath*, 391 U.S. at 589.

90. *Richards*, 117 S. Ct. at 1420. Other states have adopted per se blanket exceptions to the knock and announce rule in the context of drug investigations, such as Colorado in *People v. Lujan*, 484 P. 2d 1238, 1241 (Colo. 1971) (en banc), and Maryland in *Henson v. State*, 204 A. 2d 516, 519-20 (Md. 1964). *Id.*

determine when a no-knock entry is reasonable under the Fourth Amendment.⁹¹ Thus, with no prevailing guidelines to mold their decisions, trial courts were free to impose per se exceptions to the knock and announce rule if they believed such exceptions were reasonable under the Fourth Amendment.

The *Richards* decision provided teeth to the Justices' conclusions in *Wilson* by expounding a specific adaptable test to determine when a no-knock entry complies with the Fourth Amendment's "reasonableness" requirement. Consequently, in order to justify a no-knock entry, police must now have "reasonable suspicion" that lives are in danger or that an "effective investigation of the crime" would be thwarted through destruction of evidence or escape by the suspects.⁹² Such a test provides a solid middle ground in which to analyze knock and announce issues, and protects both the police interest in investigating crime and the public interest in being free from unreasonable searches and seizures.⁹³ More importantly, the "reasonable suspicion" test prevents trial courts from adopting per se blanket exceptions to the knock and announce rule because all no-knock entries must pass muster under the test on a case-by-case basis.⁹⁴

In conclusion, *Richards* represents the culmination of incorporating the common law knock and announce rule into the rubric of American constitutional law through the utilization of the Fourth Amendment's "reasonableness" requirement. *Wilson* sounded the trumpet in establishing that the knock and announce rule was an integral parcel of the Fourth Amendment's "reasonableness" requirement.⁹⁵ *Richards*, however, symbolizes a final chapter to the Supreme Court's history of indecision in recognizing the knock and announce rule as an invaluable tenet of the Fourth Amendment. By establishing a litmus test for knock and announce issues, courts at all levels can now decisively recognize the Fourth Amendment issues before them and the proper test by which to weigh those issues.⁹⁶

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91. *Wilson*, 514 U.S. at 936.

92. *Id.* The *Richards* Court subscribed to the same test in reaching its decision not to suppress inculpatory evidence. *Richards*, 117 S. Ct. at 1420.

93. *Id.*

94. *Id.*

95. *Wilson*, 514 U.S. at 936.

96. *Richards*, 117 S. Ct. at 1421.