

**The Bill Blackwood
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**No-Knock Search Warrants:
The Importance of Keeping This Tool Available to Law Enforcement**



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ABSTRACT

No-knock search warrants have come under a lot of scrutiny within the past couple of years. Legislation is being proposed in not only changing some of the prerequisites of obtaining one, but also in banning them all together. This is partly due to the public perception that no-knock warrants are inherently dangerous to the public and violate the Fourth Amendment rights of those who the warrants are executed on. There are dangers associated with any type of search warrants being executed, but these dangers can be easily minimized. The courts have also shown that the uses of no-knock search warrants are not a violation of the public's Fourth Amendment rights.

No-knock search warrants are an effective tool for law enforcement and should not be banned nor completely withdrawn from use through legislation. The use of these warrants help law enforcement to better their chances of safe execution involving the public as well as their own officers, minimize the destruction of evidence, and decreases the chances of offenders escaping. Exclusionary rules exist, which act as checks and balances in acquiring this type of search warrant, and they are reinforced by judiciary approval. This system, along with the use of a threat matrix by law enforcement, would assist agencies with ensuring the exclusionary rules are met prior to obtaining the search warrant. Once the no-knock warrant is obtained, safety should be paramount in executing these warrants through policies, training, and the proper deployment of flashbang equipment. By ensuring this process is done thoroughly, no-knock search warrants should and will be available to law enforcements use in the future.

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INTRODUCTION

Search warrants have been around for many years, to the point where it is impossible to track and pinpoint when the first one was executed. However, one that stands out was documented in 1604 and known as Semayne's Case, which was the first known search warrant that dealt with the knock and announce rule (Josephson, 1996). In this case, Sir Edward Coke of England (the presiding judge) ruled that officers shall identify themselves prior to entering a location, inform the occupants that they demand access inside, advise them of the authority they have to enter, and give the occupants a reasonable amount of time to allow entry prior to forced entry taking place (Josephson, 1996).

However, as time has passed, the knock and announce rule began to change and allowed for circumstances in which officers could enter before knocking and announcing their presence due to exigent circumstances. Exigent circumstances consist of three rules, referred to as the exclusionary rule, and are: the occupants inside are knowledgeable of the officers' authority and intent, and/or if the officers are justified in their belief that the occupants are in immediate danger of bodily harm, and/or if the occupants are currently engaged in activities that make officers reasonably believe that the occupants are trying to escape or destroy pertinent evidence (Josephson, 1996). Warrants executed without knocking and announcing the officers' intent are referred to as no-knock warrants. The whole premise of using a no-knock warrant is to provide stealth and surprise to the officers' advantage to ensure the occupants do not get away, the occupants ability to gain access to weapons prior to being detained, and to ensure no evidence can be destroyed by the occupants. A judge, from a court of record, has to

read the no knock warrants prior to them being obtained by the police. That judge determines if the officers met, with enough probable cause, one or more of the rules of exception to a knock and announce warrant prior to approving it with their signature.

It is these specific warrants that have come under great scrutiny over the past few years, possibly resulting in legislation that could deny officers the ability to utilize no-knock warrants in the future. Georgia law makers are trying to pass legislation to tighten constraints of no-knock warrants to being used only to capture someone who committed murder or assault (King, 2014). The scrutiny has mainly come about from the public opinion that no-knock search warrants are unconstitutional, but also that they are unsafe and cause more injury to both the officer and the occupants of a structure than that of knock and announce warrants. However, no-knock warrants should be utilized, and not legislatively restricted or completely deleted, because they are an important tool used by law enforcement to ensure the safety of officers, the community, and to ensure evidences to crimes are not destroyed.

POSITION

The reason no-knock search warrants came about is because of the inherent dangers associated with announcing an officer's presence to dangerous individuals. By first knocking and announcing prior to entering, officers are telegraphing their intent to individuals that already have the tactical advantage. The occupants of a structure already have better cover and concealment than the officers on scene. They also have time to prepare their reactions to the officers' arrival and contact. This gives them a chance to barricade and take the tactical advantage. This is one of the first exceptions

to the knock and announce rule pertaining to the apprehension of peril or safety for the officers and the occupants of the structure.

A perfect example of a situation like this, where the occupants were notified and obtained the tactical advantage, occurred in Dallas in 2006. Members of the Dallas Special Weapons and Tactics (SWAT) team were executing a knock and announce narcotic warrant for the Drug Enforcement Administration. During the warrant service, the SWAT team arrived in an armored vehicle and announced over the loud speaker their identity and intentions. Occupants of the residence fired upon the officers prior to them even getting to the door of the residence. Four officers were injured and needed medical attention from gunshot wounds. Luckily, they all survived. The occupants of the residence included a woman, a 10-year-old child, and a wounded male who was eventually detained inside ("4 Dallas officers," 2006).

Another case occurred on November 21, 2013. A U.S. Marshal was executing a knock and announce warrant in southwest Atlanta, GA. The warrant was an arrest warrant for a fugitive that resulted in the marshal being shot in the calf. After having announced their identity and intent at the door, the fugitive shot through the door, injuring the marshal. The marshal survived and the fugitive was taken into custody and had additional charges filed against him (Elliot, 2013).

These two cases, along with many more that can be cited, have shown that the dangers of knocking and announcing while executing a warrant are extremely hazardous. Officers coming to the structure, advising of who they are and noting their intention to come in, while waiting for the occupants to allow them in, give the occupants the upper hand. They can easily tell the location of the officers and have time to access

weapons, use cover to their advantage, and give the occupants the ability to engage the officers with effective fire. This takes the advantage away from the officers and hinders their chances of a safer conclusion. Hence, the reason no-knock warrants have been authorized is meeting the rules to the exception.

The destruction of evidence is another exception to the rule that allows no-knock search warrants to be executed. With officers notifying the occupants of the structure ahead of time, it gives the occupants ample time to destroy evidence that proves they have committed some type of crime that is under investigation. These evidences can include narcotics that can be flushed away, weapons that can be hidden or cleaned of evidence that is pertinent to the case, or washing materials that contain blood, semen, or other biological evidence. All of these are obviously important to police investigations.

A case that clearly supports that point occurred in Casper, Wyoming. On December 24, 2014, a woman was taken to Wyoming Medical Center with a head injury that required surgery. Officers were notified and responded to her residence where they suspected her husband had assaulted her. Upon arrival, officers tried to make contact with her husband, whom they could easily see inside the residence but who refused to answer the door. Officers obtained a search warrant, knocked and announced their presence, but had to force their way into the residence since the husband still refused to answer the door. Once inside, there was obvious evidence that the husband had cleaned the crime scene with bleach in order to destroy its availability to the investigation (Morton, 2015).

In Titus County, Texas, deputies also ran into the problem of a suspect attempting to destroy evidence during the execution of their search warrant. On January 8, 2015, Titus County deputies entered a residence with a search warrant in reference to a narcotics investigation. After detaining the occupant, the deputies found that the occupant had attempted to destroy the evidence, which consisted of marijuana and methamphetamine, as they entered, by flushing it down the toilet. Some of the evidence was destroyed, but most of it was recovered (Davis, 2015).

COUNTER POSITION

No-knock search warrants have been questioned as possibly being unconstitutional. One case often supporting this mentality is *Wilson v. Arkansas* (1995). In this case, a confidential informant told the police that Sharlene Wilson was trafficking in marijuana and methamphetamines. The informant was asked to purchase drugs from Wilson under the authority of the Arkansas State Police. During one of the purchases, Wilson threatened the informant with a pistol, suspecting the informant of working with the police. However, Wilson still sold the drugs to the informant. On the following day, officers responded to Wilson's residence to execute a search warrant. They entered by opening an unlocked screen door, which led to an opened main door, and gave commands notifying Wilson and other residents that they were police and had a warrant. But, the officers did not knock prior to entering. Officers found Wilson attempting to destroy evidence by flushing marijuana down the toilet. She was subsequently charged with delivery of methamphetamines, delivery of marijuana, and possession of drug paraphernalia.

Wilson filed to suppress the evidence before the trial, citing that the entry was unlawful since the officers did not first knock and then announce prior to entering the residence. The court denied her plea to suppress the evidence and sentenced her to 32 years in prison. Wilson appealed her conviction to the Arkansas Supreme Court, who denied her appeal, stating that the officers entered “while they were announcing themselves” but denied her argument that the officers were supposed to “knock and announce” as required by the Fourth Amendment (*Wilson v. Arkansas*, 1995). The case went before the U.S. Supreme Court, which reversed the Arkansas Supreme Court decision. The U.S. Supreme Court upheld that knocking and announcing is a requirement of the Fourth Amendment, which is clearly stated in several other cases that have been established such as *California v. Hodari D.* (1991); *United States v. Watson* (1976); *Carroll v. United States* (1925); as well as *Semayne's Case* (1603) (*Wilson v. Arkansas*, 1995).

This case seems to give credit to the thought that any time a search warrant is executed, both knocking and announcing have to take place or it is unconstitutional. However, this exact case reaffirms that certain exigent circumstances may exist that do not require officers to knock and announce prior to entering. These circumstances include probable cause to believe that the suspect is armed and is a danger to officers or others, that the destruction of evidence is likely to take place, or that the suspect may escape making the investigation futile; again, known as the exclusionary rule.

With this in mind, the Arkansas Supreme Court argued that two circumstances existed which negates the knock and announce rule. First, Wilson was armed with a pistol and had threatened the safety of the informant showing she was dangerous as

well to law enforcement. Second, Wilson had attempted to destroy the marijuana by flushing it down the toilet, thus destroying evidence. The U.S. Supreme Court agreed that those circumstances met the exclusionary rule and allowed for the no-knock entry, but the Arkansas Supreme Courts' failure to address those circumstances prior to the U.S. Supreme Courts involvement resulted in the case staying reversed (*Wilson v. Arkansas*, 1995). This proves that no-knock warrants are legal and can be conducted if exigent circumstances that meet the exclusionary rule can be shown to exist prior to its execution.

Safety has been another concern that has been plaguing the use of no-knock search warrants. Numerous accounts have been documented of injuries occurring due to noise flash diversionary devices (also known as flashbangs) that are deployed in the locations that are being entered and searched. A flashbang is a device that looks like a grenade and, when deployed, disorients those within the room in order to stun them momentarily, which provides an advantage to police or military who are entering the structure. It has a metal body, a safety pin, a fuse, and a fuse handle. The flashbang produces a bright flash and a loud noise when it goes off but it does not produce any type of fragmentation like a grenade. The flashbang does produce a lot of heat from the explosion that is expelled from the vents on the device. The heat and pressure released is extensive and if the flashbang is being held, or is up against the body of a person, it can result in severe burns or blast injury. The heat expelled can also cause items to catch fire ("Performance," 2004).

One of the most recent cases of an injury caused by flashbang deployment during a no-knock warrant occurred in Habersham County, Georgia. While deputies

were executing the warrant at a residence for narcotic violations, they deployed a flashbang into the residence that subsequently landed in the crib of a 19-month-old child. The device went off causing severe burns to the chest and face of the child and causing a collapsed lung (Milligan, 2014). This incident is actually what spurred the introduction of the bill in Georgia that is trying to put restrictions on the use of no-knock search warrants (King, 2014). The bill is called SB 159 (Pearl, 2015).

Another injury took place in Minneapolis, Minnesota in 2010. Officers attempt a knock and announce warrant at a residence due to having a narcotics search warrant. After breaching the front door, an officer tossed a flashbang into the residence that landed on the couch. There was a woman, Rickia Russell, sitting on the couch with two males sitting on the floor in front of her playing video games. The flashbang went off next to her leg, causing third degree burns. Russell has had to suffer through numerous treatments from the injury and the City of Minneapolis settled with her for one million dollars (Furst, 2011).

Accidents and injuries, like the two previously cited, can be easily avoided by employing three different techniques of flashbang deployments. First, when entering a structure, tossing the flashbang to an area that has been visually cleared is a must. Viewing a clear corner or location in a room only takes a fraction of a second prior to entering. This helps to ensure there is nobody near the spot where the device will detonate. While viewing the area, the person deploying the device should also ensure there are no clothing, bedding, or other debris that is likely to catch fire. This tactic helps to ensure somebody is not injured during the warrant execution. Secondly, it is a viable option to deploy the flashbang outside the structure near the windows of rooms

where officers suspect people to be. The device exploding near a window still produces enough noise to stun subjects inside the structure. However, there is a loss of the flash sensation that also helps with disorientation. But, this is still a viable option that can be used when children are expected to be inside or even elderly people who might be using oxygen (which could ignite from the heat and flame from the flashbang). The last tactic would be the use of a bang pole. A bang pole is a pole that has a spot to attach the flashbang device onto it. The flashbang can be remote detonated from the other end of the pole with allows the pole to be shoved through a window, kept off of the ground or furniture, and more likely away from subjects inside the structure. Once the flashbang is detonated, the pole can be removed which pulls the hot flashbang back out of the structure. This dramatically reduces the chance of the flashbang causing a fire. With the use of the bang pole, the subjects inside still get the full disorienting effects of the flashbang with less chance of injury or damage (Ijames, 2005).

Proper training and written policies should be conducted and in place prior to the use of flashbangs or bang poles in no-knock search warrant operations. This is to help protect the officers and public from injury by misuse of the equipment as well as to protect the officers' agency from liability of civil suits resulting from accidents or injury.

RECOMMENDATION

No-knock warrants should be utilized, without legislative restrictions or completely banned from use, because they are an important to law enforcement and used to ensure the safety of officers, the community, and to ensure the destruction of evidence is avoided. They help officers execute high-risk entries to ensure they are

less likely to be engaged in gunfire by utilizing the element of surprise. The element of surprise also helps to avoid the destruction of evidence by catching suspects off guard.

Case law has shown that the uses of no-knock warrants are legal. They are justified under certain rules known as the exclusionary rule. Flashbangs, which are commonly used during the execution of no-knock warrants and shown to cause concern, can be safely deployed through the use of proper training and tactics as well as in-place policies in order to protect both the officers involved and the occupants of the structure.

Instead of trying to ban or restrict the use of no-knock warrants, there is an easy alternative that can help police to determine if circumstances exist that meet the exclusionary rule required for one. It is called a threat matrix. A threat matrix is a list of factors that address different concerns. These concerns are listed as follows: is the suspect armed, do the suspects have records of destroying evidence, does he/she have a violent record, are there gang associations, is the structure barricaded, does the structure have surveillance cameras that tip off the suspects, are there aggressive dogs at the location, and are there children or elderly people inside. These questions help determine if a no-knock warrant should be sought. If only one question is affirmative in reference to violence, being armed, or destroying evidence, along with surveillance equipment and/or barricaded equipment, a no-knock warrant would be out of the question. If two or more are true, then a no-knock warrant should be sought.

It is important that judges, who review the application for no-knock search warrants, ensure that one or more of the exclusionary rules exist prior to authorizing the issuance of said search warrant. The use of a threat matrix would also help law

enforcement agencies ensure they have met the requirements of the exclusionary rule prior to requesting a no-knock search warrant, therefore greatly ensuring successful acquisition of a legal no-knock search warrant. The safe and proper use of flashbangs, through proper training and written policies, help to ensure fewer injuries to the public and fewer civil liabilities on the law enforcement agencies. The employment of all three of these checks and balances would greatly increase the proper use of no-knock search warrants within the law enforcement community. It would also significantly reduce the amount of complaints and concerns shown from the public; therefore, no-knock search warrants should be kept as a tool within law enforcement's use to effectively fight criminal activity within their jurisdictions.

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