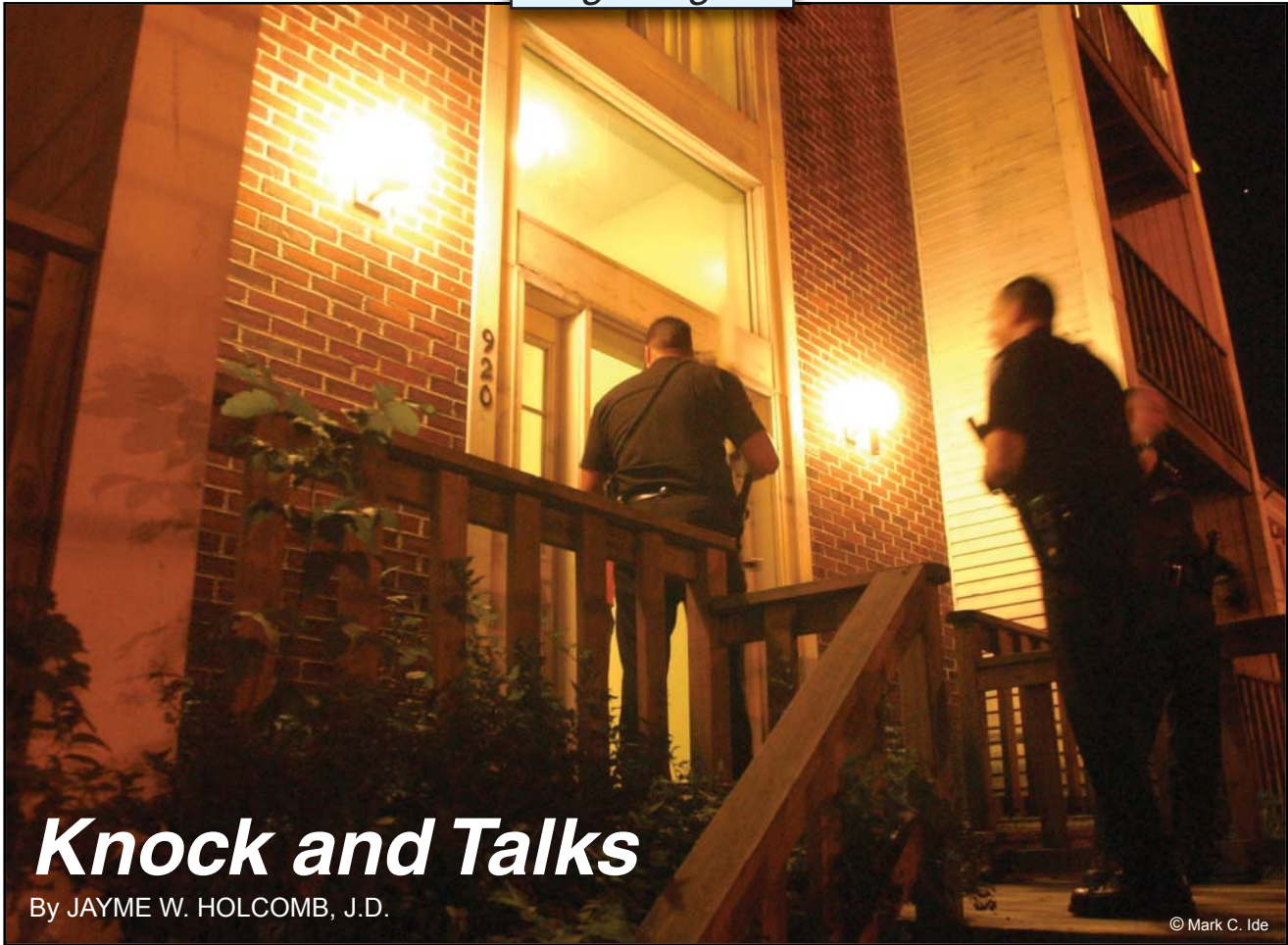




Knock and Talks

By JAYME W. HOLCOMB, J.D.

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Two law enforcement officers conducting an investigation decide they will walk up to the door of a house, knock on the door, and ask the occupant to speak with them. The officers do not have an arrest warrant for anyone at the residence. The officers do not have a search warrant to search the home. The officers do not have reasonable suspicion or probable cause to believe that there is either contraband or a suspect in the dwelling. Can the officers lawfully carry out their plan to walk up to the house,

knock on the door, and ask whether the resident will talk with them?

The technique the officers seek to employ in the scenario is commonly known as a “knock and talk.” Courts have described the knock and talk technique as “a noncustodial procedure where the officer identifies himself and asks to talk to the home occupant and then eventually, requests permission to search the residence.”¹ The knock and talk technique is essentially a form of a consensual encounter that occurs at a residence.² One

court examining a knock and talk case noted that “[t]he utility of this procedure is obvious: It avoids the necessity of securing a search warrant from a judicial officer. While the potential for abuse is apparent, courts and commentators appear to concur the practice can be lawful.”³ This article explores the legal issues associated with the use of the knock and talk technique. Specifically, the article addresses the following: the general rule; getting to the location; the encounter, including the knock and the talk; and issues that can

arise during the course of the knock and talk.

The General Rule

The use of the knock and talk technique raises a number of Fourth Amendment issues. The Fourth Amendment states that “[t]he 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....”⁴ The U.S. Supreme Court has further stated, “It is a ‘basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively unreasonable.”⁵ The general rule under federal law is that the knock and talk is a lawful investigative technique that does not violate the Fourth Amendment.⁶ Many state courts have taken the same position.⁷ Citing both federal and state case law, the Supreme Court of Wyoming stated that “[t]he prevailing rule is that, absent a clear expression by the owner to the contrary, police officers are permitted to approach a dwelling and seek permission to question an occupant in the course of their official business.”⁸ Federal law does not require officers to have reasonable suspicion or probable cause to knock on the door of a residence⁹ and talk to an individual.¹⁰

The Walk

One of the first legal issues presented by the knock and talk technique is whether it is lawful for law enforcement officers to walk up to a domicile and knock on the door without any kind of warrant. This is a particularly significant issue because, as noted by the U.S. Supreme Court, “[a]t 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.”¹¹

The most frequently referenced statement with regard to this issue comes from the U.S. Court of Appeals for the Ninth Circuit decision in *Davis v. United States*,¹² wherein the court stated that

there is no rule of private or public conduct which makes it illegal per se, or a

condemned invasion of the person’s right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man’s “castle” with the honest intent of asking questions of the occupant thereof—whether the questioner be a pollster, a salesman, or an officer of the law.¹³

Exactly where an officer can walk to reach the domicile without violating the Fourth Amendment is a significant question. The U.S. Supreme Court has stated that the curtilage of a house is protected by the Fourth Amendment.¹⁴ In *United States v. Dunn*,¹⁵ the Supreme Court stated that four factors should be considered in determining the extent of the curtilage: “the proximity of the area claimed to be curtilage to the home,

“ The general rule under federal law is that the knock and talk is a lawful investigative technique that does not violate the Fourth Amendment. ”



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whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.”¹⁶

Under federal law, open fields are not curtilage, and, therefore, they are not protected by the Fourth Amendment. Accordingly, officers do not need a warrant to enter open fields under federal law.¹⁷

To use the knock and talk technique, officers frequently must walk along a driveway or sidewalk to reach a door upon which to knock. As one commentator noted “[W]hen the police come on to private property to conduct an investigation... and restrict their movements—to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment.”¹⁸ Where officers have conducted knock and talks by going to doors other than the front door, courts look to whether it is reasonable for the officers to believe that such a door is the primary entry or the officers, in good faith, moved away from the front door to another entryway to the home when trying to contact the occupants.¹⁹

In the case of *United States v. Hatfield*,²⁰ officers began an investigation after receiving a

tip that Hatfield was growing marijuana behind his house. Upon arriving at the scene, one of the officers went to the front door of the home while the other stood on a parking pad at the side of the dwelling. The officer at the front door asked the occupant of the house for consent to search the property. The occupant refused to consent to a search. The officer who stood on the parking pad could see small structures in the backyard from the driveway that could have concealed marijuana.

“**Federal law does not require officers to have reasonable suspicion or probable cause to knock on the door of a residence and talk to an individual.**”

The officers left the premises and called their supervisor. The supervisor arrived at the location, got out of his car, and walked down a county road alongside a fenced pasture to a point where he could see into the backyard. The supervisor believed that he could see marijuana plants in a chicken coop in the backyard. To confirm what he had seen, he walked

back along the road, crossed into a pasture, and walked beside a fence to a point across from the chicken coop where he could look inside and confirm the sighting of the plants. The resident of the house, who by this time had come outside, was placed under arrest, and the officers obtained a search warrant. In analyzing the curtilage issue presented in the case, the U.S. Court of Appeals for the Tenth Circuit found that the observations made by the officer while standing on the parking pad were permissible because the driveway was open and accessible to the public. With regard to the observations made by the supervisor, the court found that the supervisor had remained in open fields while looking into the curtilage and observing the plants in the chicken coop. The court held that “police observation of a defendant’s curtilage from a vantage point in the defendant’s open field is not a search under the Fourth Amendment.”²¹

The Encounter

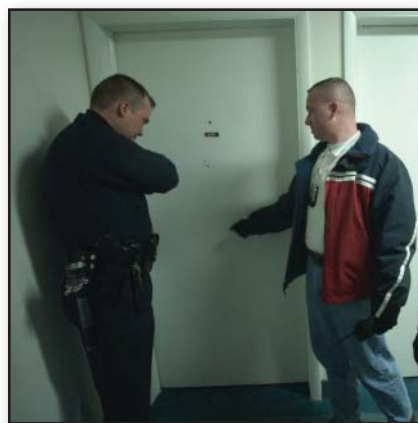
The knock and talk is essentially a form of a consensual encounter.²² As such, in *United States v. Adeyeye*,²³ the U.S. Court of Appeals for the Seventh Circuit stated that the relevant test “is an objective one and requires consideration of the totality of the circumstances.”²⁴ Circumstances that

courts will consider in assessing whether a person would feel free to decline the officers' request or otherwise terminate the encounter include the location,²⁵ the knock,²⁶ the talk,²⁷ the time of day,²⁸ the duration,²⁹ the number of officers present,³⁰ whether the officers wore plain clothes,³¹ the use of physical force,³² the display of weapons,³³ and the situation of the occupant.³⁴

In *United States v. Cormier*,³⁵ an officer determined that a guest with an extensive criminal history had registered at a motel in a traditionally high-crime area. Another police officer arrived at the motel to conduct a knock and talk interview with the identified motel room occupant. One of the officers went to the room and briefly knocked on the door. The room occupant answered the door, whereupon the police officer identified herself as an officer and asked if she might speak with him inside the motel room so that other motel guests would not hear their conversation. The officer was dressed in plainclothes and displayed her badge from a chain hanging around her neck. The officer found a gun in the motel room after the occupant consented to a search of the room and arrested the occupant for being a convicted felon in possession of a firearm. The U.S. Court of Appeals for the Ninth Circuit analyzed the

actions undertaken by the officer in *Cormier* during the knock and talk and specifically noted that

[h]ere, [the officer] knocked on the door for only a short period spanning seconds. In addition, [the officer] never announced that she was a police officer while knocking nor did she ever compel Cormier to open the door



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under the badge of authority. Because there was no police demand to open the door..., and [the officer] was not unreasonably persistent in her attempt to obtain access to Cormier's motel room,...there is no evidence to indicate that the encounter was anything other than consensual. Therefore, no suspicion [would] need to be shown in order to justify the "knock and talk."³⁶

As noted by one court: "[a] knock and talk is ordinarily consensual unless coercive

circumstances, such as unreasonable persistence by the officers, turns the encounter into an investigatory stop."³⁷ Officers must have reasonable suspicion to believe that a crime either has been or is being committed if a knock and talk becomes an investigatory stop or probable cause if a knock and talk becomes an arrest.³⁸

The Knock

The way in which officers knock on a door is a significant factor to consider in assessing whether the knock and talk is a consensual encounter or a seizure. The loudness, frequency, and repetitiveness of the knock will be examined by courts. For example, in the U.S. Court of Appeals for the Seventh Circuit case of *United States v. Jerez*,³⁹ the court held that evidence found in the defendant's hotel room should be suppressed because the manner in which officers conducted the knock and talk resulted in an investigative stop without the requisite reasonable suspicion.

In *Jerez*, officers in Milwaukee located a car with Florida license plates parked at a hotel in close proximity to both the airport and an interstate highway. The officers obtained a criminal history for the registered owner of the vehicle and determined that the person had a suspended driver's license and had previously been

arrested for smuggling contraband into a county jail. After leaving the area for a time, the officers returned to the hotel, noted that the car was no longer there, and set up surveillance to see if the car and driver would come back. The officers completed their shift without the car returning; however, one of the officers spotted it in the parking lot when he drove past the hotel on his way home from work.

Slightly after 11 p.m., both officers went to the room indicated by the hotel clerk as that of the car's driver. At that point, the officers knocked on the door for several minutes. No one responded to the initial knocking, so the officers took turns knocking for approximately 3 minutes. During the course of the knocking, one officer directed his voice toward the door and said, "Police. Open up the door. We'd like to talk with you."⁴⁰ While that officer continued to knock on the door, the other officer went to the room window and knocked on the window loudly enough for the first officer at the door to hear the knocking. After knocking on the window for 1½ to 2 minutes, the officer at the window testified that he heard movement in the room. After knocking on the window a few more times, the officer looked in the window, shined his flashlight inside, and saw the defendant move under the bedcovers.

Shortly thereafter, the defendant came to the window and opened the drapes where he saw the officer standing. The officer was wearing a jacket with a police emblem.

The way in which officers knock on a door is a significant factor to consider in assessing whether the knock and talk is a consensual encounter or a seizure.

The officer identified himself as a police officer and asked the defendant if he would open the door and talk. The defendant, clad only in his underwear, opened the door to speak with the officers. The officers asked if they could enter the room and talk with the defendant. The defendant agreed to let the officers enter the room. Once inside, the officers asked the second defendant to get out of bed. The officers obtained consent to search the room and found cocaine.

The defendants appealed the denial of their motion to suppress the cocaine. The appellate court reversed the district court's ruling and held that a Fourth Amendment seizure occurred in *Jerez*. The court

noted that the district court failed to adequately address two important factors: "the place and the time of the encounter."⁴¹ The court also discussed the amount and duration of the knocking undertaken by the officers, concluding

[s]imply stated, this is a case in which the law enforcement officers refused to take "no" for an answer. Their actions, when objectively assessed, "convey[ed] a message that compliance with their requests [was] required." When [the defendant] finally opened the door to his motel room in his underwear, he was submitting to the [officers'] show of authority. We hold that the totality of the circumstances surrounding this encounter—the late hour of the episode, the three minutes of knocking on the door, the commands and requests to open the door, the one-and-a-half to two minutes of knocking on the outside window, and the shining of the flashlight through the small opening in the window's drapes onto the face of [the defendant] as he lay in bed—makes clear that a seizure took place.⁴²

The court further concluded that the officers did not have reasonable suspicion or probable cause to conduct a seizure.

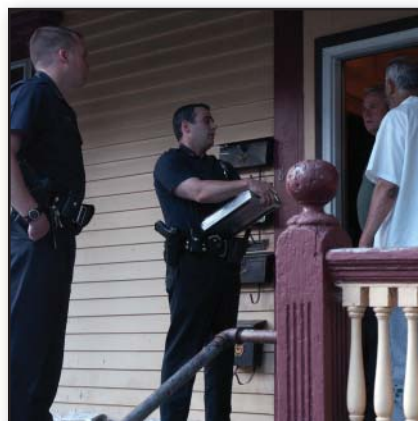
Additionally, while consent to search, in some instances, may “be purged of the primary taint,” in the *Jerez* case the court found the consent to the search was tainted because it occurred almost immediately after the unlawful seizure.⁴³

The Talk

Just as the way in which the knock is conducted can create a Fourth Amendment seizure, what is said and how the officers talk during the course of a knock and talk are significant factors in the assessment of whether the knock and talk is a consensual encounter or a seizure. The content, tone, volume, and repetitiveness of what is said by officers will be carefully considered. For example, in *United States v. Pena-Sarabia*,⁴⁴ officers decided to conduct a knock and talk after learning, through the use of an informant, that the defendants had cocaine at their house. The officer conducting the knock and talk knocked on the door and asked the occupant of the house, “[c]an you come out to the front door, please?”⁴⁵ An individual inside the house opened the door. The officer showed the person her badge and asked to speak with her. The officer asked the individual if she could come inside the house. The person responded, “[c]ome on in,” and the two officers entered the house. The officers were given

permission to search the house. The officers found a gun and 2 kilograms of cocaine during the search.

The defendant argued in *Pena-Sarabia* in the district court that because the officer conducting the knock and talk commanded the defendant to go to the door of the house, thus rendering the defendant’s consent to search involuntary. The



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district court stated that the four decisions cited in support of the defense argument stood “for the proposition that a defendant’s acquiescence to the assertion of authority by police does not constitute consent for police to enter a residence”⁴⁶ and quickly distinguished the facts from those cases. Specifically, the judge stated,

[The officer] did not command that the door be opened to allow police to enter the defendant’s home. Instead, [the officer] asked the defendant to come to

the door, even ending her request with “please.” Upon the defendant opening the door, the police asked if they could enter the house and the defendant said, “come on in.” Consent to search was given by the defendant shortly thereafter. Unlike the cases cited by defense counsel, the prosecution does not claim that the defendant’s act of opening the door constituted consent for the police to enter or search the house. The fact that [the officer] asked the defendant to open the door does not make the defendant’s subsequent consent to search involuntary. In fact, [the officer’s] politeness weighs in favor of finding that the subsequent consent to search was voluntary.⁴⁷

In cases where officers have ordered occupants to open the door, however, courts have found that “if an officer knocks and announces himself by saying ‘Police. Open the door,’ opening the door is neither consensual nor voluntary.”⁴⁸ As illustrated by the district court’s analysis of the consent search in *Pena-Sarabia*, the specific facts surrounding the knock and talk encounter also can significantly impact other Fourth Amendment issues that arise during or subsequent to the encounter, such as whether the defendant consented to have officers either

enter the house or conduct a search of the house.

Other Issues Associated with Knock and Talks

The use of the knock and talk technique often gives rise to additional legal issues. These issues include, but are not limited to, open view, stop and frisk, consent, exigent circumstances, protective sweeps, and plain view. For example, in the U.S. Court of Appeals for the Eighth Circuit case *United States v. Peters*,⁴⁹ officers received information from an informant that an individual was selling drugs from a hotel room. The officers determined that there was an outstanding warrant for failure to appear for the individual renting the room. The officers went to the room and knocked on the door. The defendant opened the door and an officer immediately looked into the room and saw a scale, razor blade, and what he believed to be cocaine. The officers arrested the defendant, who argued that it was a violation of the Fourth Amendment for the officers to look into his room. The court found that “[w]hen an individual voluntarily opens the door of his or her place of residence in response to a simple knock, the individual is knowingly exposing to the public anything that can be seen through that open door and thus is not afforded fourth amendment protection.”⁵⁰

In contrast to the officer’s actions in *Peters*, the U.S. Court of Appeals for the Ninth Circuit in *United States v. Washington*⁵¹ was faced with a situation in which six officers went to a hotel room to conduct a knock and talk after receiving a tip that an individual was operating a methamphetamine laboratory there. After one of the officers knocked on the door, the defendant opened the door, walked

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Officers must have reasonable suspicion to believe that a crime either has been or is being committed if a knock and talk becomes an investigatory stop....

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into the hallway, and closed the door behind him. Shortly thereafter, the officers realized that someone else was in the hotel room, so they ordered that individual out of the room and directed that the room door be left open. The officers also could then see inside the room. In addition to finding the defendant’s consent to search the room involuntary, the court stated,

Whether a hotel room door is opened in response to

a threat or command or is kept open against the wishes of the room’s occupant, police officers obtain visual access to the room by using their power to require that the door be open. Both scenarios result in a search within the meaning of the Fourth Amendment, and both scenarios require consent, a warrant, or probable cause plus an exception to the warrant requirement. Here the officers possessed none of these legal grounds for gaining visual access to [the defendant’s] room. Thus, the officers violated [the defendant’s] Fourth Amendment rights when they gained visual access to his room by refusing to let [the second occupant] close its door.⁵²

Officers will frequently have no probable cause or reasonable suspicion to believe that there is any criminal activity occurring when they conduct a knock and talk. In *United States v. Johnson*,⁵³ four officers decided to conduct a knock and talk on New Year’s Eve after receiving a report of possible drug activity at an apartment. At the moment one of the officers was about to knock on the door, an individual opened it and stepped out of the apartment. The officer at the door told one of the other officers to take control of the person. Even

though the second officer did not have any reason to believe the individual had a weapon, the second officer attempted to frisk the person. After the individual indicated he did not wish to be frisked and tried to leave, other officers struggled with him and eventually recovered a handgun and cocaine. In analyzing the actions taken by the officers, the U.S. Court of Appeals for the Seventh Circuit stated that

[w]e do not hold today that the “knock and talk” technique is automatically unconstitutional. Nevertheless, just as in *Knowles*, the police themselves must recognize the inherent limits in this more informal way of proceeding. Without reasonable suspicion, they cannot detain a person just because that individual walks out of an apartment on New Year’s Eve, even if some unspecified individual (whose reliability is utterly untested, *cf. Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L.E.2d 527 (1983)), thinks something fishy is sometimes going on there. The district court’s findings of historical fact here confirm that nothing more than this supported their detention of [the defendant] that evening.⁵⁴

Significant issues also can arise in investigations where officers seek consent to enter

a premises or seek consent to search a location during the course of a knock and talk. While a complete discussion of consent searches is beyond the scope of this article, officers must remember that the person consenting to the search must have the authority to consent to the search⁵⁵ and must voluntarily give consent.⁵⁶ Because the government bears the burden of proving the voluntariness of



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the consent,⁵⁷ officers need to be extremely familiar with how to properly conduct consent searches if such a warrantless search is to be conducted after a knock and talk.⁵⁸ Additionally, while beyond the scope of what is addressed in this article, officers should familiarize themselves with the law regarding exigent circumstances⁵⁹ and protective sweeps⁶⁰ in their respective jurisdictions as those issues also may arise in investigations in which the knock and talk technique⁶¹ is used.

Conclusion

This article has explored a number of legal issues associated with the “knock and talk” technique. While the general rule under federal law is that the use of the technique is lawful, it is useful to consider the following discussion of the technique by a concurring judge in the *Johnson* case:

The police had no warrant when they went to apartment 7. They were taking a shortcut in the hope that something good (from a drug-busting perspective) would turn up. A little more work would have given the police the probable cause they needed to secure a warrant, but they didn’t want to take the time to do something more. They wanted to go directly to apartment 7 and see what, if anything, was up.... As I see it, the seeds of this bad search were sown when the police decided to use the “knock and talk” technique. And that process—which sounds more like a friendly visit to sell tickets to a police picnic than a perilous visit to a suspected drug hive—is fraught with danger, not to mention constitutional problems....⁶²

Officers contemplating whether to conduct a knock and talk are reminded that, whenever possible, it is always best to obtain a search or

arrest warrant in a case. While the knock and talk is generally viewed as a consensual encounter requiring no reasonable suspicion or probable cause, officers must understand the full spectrum of legal issues associated with using the knock and talk technique. Additionally, officers must keep in mind that if reasonable suspicion or probable cause does not develop during the course of a lawful knock and talk and they do not have a warrant or have circumstances that meet the criteria for a valid exception to the search warrant requirement, they must terminate the knock and talk and consider other investigative avenues. ♦

Endnotes

- ¹ *United States v. Cruz*, 838 F. Supp. 535, 537 (D. Utah 1993).
- ² See, e.g., *United States v. Spence*, 397 F.3d 1280 (10th Cir. 2005).
- ³ *United States v. Powell*, 929 F. Supp. 231, 232 n.3 (S.D. W.Va. 1996).
- ⁴ U.S. CONST. Amend. IV.
- ⁵ *United States v. Payton*, 445 U.S. 573, 586 (1980).
- ⁶ See *United States v. Thomas*, 430 F.3d 274, 277 (6th Cir. 2005) (“A number of courts including this one, have recognized ‘knock and talk’ consensual encounters as a legitimate investigative technique at the home of a suspect or an individual with information about an investigation.”) (citing *United States v. Chambers*, 395 F.3d 563, 568 n.2 (6th Cir. 2005); *United States v. Gould*, 364 F.3d 578, 590 (5th Cir. 2004); *Ewolski v. City of Brunswick*, 287 F.3d 492, 504-05 (6th Cir. 2002); *Nash v. United States*, 117 Fed.Appx. 992, 2004 WL 2912796, at *1 (6th Cir. Dec. 16, 2004); *United States v. Jones*, 239 F.3d 716, 720 (5th Cir. 2001); *United States*

v. Cormier, 220 F.3d 1103, 1109 (9th Cir. 2000); *United States v. Jerez*, 108 F.3d 684, 691-92 (7th Cir. 1997); *United States v. Titmore*, 335 F. Supp. 502, 505 (D. Vt. 2004)).

⁷ See, e.g., *State v. Mann*, 857 A.2d 329 (Conn. 2004); *State v. Reinier*, 628 N.W.2d 460 (Iowa, 2001) (consent found invalid in the case but general use of knock and talk not found unlawful); *Brown v. State*, 835 A.2d 1208 (Md. 2003); *State v. Johnston*, 839 A.2d 830 (N.H. 2004); *State v. Smith*, 488 S.E.2d 210 (N.C. 1997); *Gompf v. State*, 120 P.3d 980 (Wyo. 2005). Courts in

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at least two states have found that officers must inform individuals of their right to refuse consent to search during the course of a knock and talk before entering a home. See *State v. Ferrier*, 960 P.2d 927 (Wash. 1998) (must inform of right to refuse, revoke, and limit scope of consent); *State v. Brown*, 156 S.W.3d 722, 726 (Ark. 2004).

⁸ *Gompf v. State*, 120 P.3d at 986.

⁹ The knock and talk technique also is frequently used at motel or hotel rooms. It is well settled that “[t]he same protection against unreasonable searches and seizures extends to a person’s privacy in temporary dwelling places, such as hotel or motel rooms.” *United States v. Conner*, 127 F.3d 663, 666 (8th Cir. 1997).

¹⁰ See, e.g., *United States v. Cephas*, 254 F.3d 488, 493 (4th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103, 1109

(9th Cir. 2000); *United States v. Cruz-Roman*, 312 F. Supp. 2d 1355, 1361-62 (W.D. Wash. 2004); *United States v. Gray*, 302 F. Supp. 2d 646, 649 n.1 (S.D. W.Va. 2004).

¹¹ *United States v. Payton*, 445 U.S. 573, 589-90 (1980).

¹² 327 F.2d 301 (9th Cir. 1964).

¹³ *Id.* at 303.

¹⁴ *United States v. Dunn*, 480 U.S. 294 (1987).

¹⁵ *Id.*

¹⁶ *Id.* at 301.

¹⁷ *Id.* at 303-05. Officers should be aware that state law may be more restrictive than federal law regarding the issues of law enforcement officers entering open fields. See, e.g., *State v. Bullock*, 901 P.2d 61, 75-76 (Mont. 1995). For an excellent discussion of the concept of curtilage and associated issues, see the article by Edward M. Hendrie, “Curtilage—The Expectation of Privacy in the Yard,” *FBI Law Enforcement Bulletin*, April 1998, 25.

¹⁸ Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 2.3(f), at 506-08 (3d ed. 1996). See also *United States v. Titmore*, 437 F.3d 251 (2d Cir. 2006); *United States v. Carter*, 360 F.3d 1235, 1239 (10th Cir. 2004); *United States v. Hatfield*, 333 F.3d 1189, 1194 (10th Cir. 2003); *United States v. Hammett*, 236 F.3d 1054, 1059-60 (9th Cir. 2001); *United States v. Taylor*, 90 F.3d 903, 908-09 (4th Cir. 1996). This article focuses on officer observations made from a position in which the officer is lawfully entitled to be during the course of the knock and talk. A complete discussion of the issues related to officers looking into homes is beyond the scope of this article.

¹⁹ See *United States v. Titmore*, 437 F.3d 251, 260 (2d Cir. 2006) (“[W]e join our sister circuits in holding that when a police officer enters private property for a legitimate law enforcement purpose and embarks only upon places visitors could be expected to go, ‘observations made from such vantage points are not covered by the Fourth Amendment.’”) (citing *United States v. Daoust*, 916 F.2d 757, 758 (1st Cir. 1990); *United States v. Raines*, 243 F.3d 419, 420-21 (8th Cir. 2001); *United States v. Thomas*, 120 F.3d 564, 571-72

(5th Cir. 1997); *United States v. Taylor*, 90 F.3d 903, 908-09 (4th Cir. 1996); *United States v. Garcia*, 997 F.2d 1273, 1279 (9th Cir. 1993)); *United States v. Hammett*, 236 F.3d 1054, 1060 (9th Cir. 2001); *United States v. Cota-Lopez*, 358 F. Supp. 2d 579, 590-91 (W.D. Tex. 2002) (approaching house via driveway and through garage found appropriate where there was no sidewalk or direct path to the front door).

²⁰ 333 F.3d 1189 (10th Cir. 2003).

²¹ *Id.* at 1198.

²² *See, e.g., United States v. Thomas*, 430 F.3d 274 (6th Cir. 2005); *United States v. Spence*, 397 F.3d 1280 (10th Cir. 2005); *United States v. Adeyeye*, 359 F.3d 457, 461 (7th Cir. 2004); *United States v. Cormier*, 220 F.3d 1103, 1109-10 (9th Cir. 2000); *United States v. Jerez*, 108 F.3d 684, 689-90 (7th Cir. 1997); *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 525-26 (D. Ariz. 2005); *United States v. Ray*, 199 F. Supp. 2d 1104 (D. Kan. 2002); *United States v. Woodard*, 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

²³ 359 F.3d 457 (7th Cir. 2004).

²⁴ *Id.* at 462.

²⁵ *See, e.g., United States v. Spence*, 397 F.3d 1280 (10th Cir. 2005); *United States v. Washington*, 387 F.3d 1060 (9th Cir. 2004); *United States v. Jerez*, 108 F.3d 684 (7th Cir. 1997); *United States v. Ray*, 199 F. Supp. 2d 1104 (D. Kan. 2002).

²⁶ *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Cephas*, 254 F.3d 488 (4th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner*, 127 F.3d 663 (8th Cir. 1997); *United States v. Jerez*, 108 F.3d 684 (7th Cir. 1997); *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Thomas*, 430 F.3d 274, 278 (6th Cir. 2005) (“[the defendant] responded to a simple knock and request, not an order to emerge or the threat of firearms.”); *United States v. Woodard*, 873 F. Supp. 535 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

²⁷ *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001);

United States v. Cormier, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner*, 127 F.3d 663 (8th Cir. 1997); *United States v. Jerez*, 108 F.3d 684 (7th Cir. 1997); *United States v. Tobin*, 923 F.2d 1506 (11th Cir. 1991); *United States v. Edmondson*, 791 F.2d 1512 (11th Cir. 1986); *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Thomas*, 430 F.3d 274 (6th Cir. 2005).

²⁸ *See, e.g., United States v. Adeyeye*, 359 F.3d 457 (7th Cir. 2004); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Jerez*, 108 F.3d 684 (7th Cir. 1997); *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 525 (D. Ariz. 2005); *United States v. Ray*, 199 F. Supp. 2d 1104 (D. Kan. 2002); *United States v. Ponce Munoz*, 150 F. Supp. 2d 1125 (D. Kan. 2001) (no evidence regarding impact of late hour of encounter on defendant).

²⁹ *See, e.g., United States v. Ray*, 199 F. Supp. 2d 1104 (D. Kan. 2002).

³⁰ *See, e.g., United States v. Washington*, 387 F.3d 1060 (9th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner*, 127 F.3d 663 (8th Cir. 1997).

³¹ *See, e.g., United States v. Washington*, 387 F.3d 1060 (9th Cir. 2004); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Conner*, 127 F.3d 663 (8th Cir. 1997); *United States v. Woodard*, 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

³² *See, e.g., United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Gray*, 302 F. Supp. 2d 646 (S.D. W.Va. 2004) (officer touched defendant’s chest); *United States v. Woodard*, 873 F. Supp. 535, 539-40 (D. Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

³³ *See, e.g., United States v. Thomas*, 430 F.3d 274 (6th Cir. 2005) (officers did not threaten the defendant with firearms); *United States v. Washington*, 387 F.3d 1060 (9th Cir. 2004); *United States v. Saari*, 272 F.3d 804 (6th Cir. 2001); *United States v. Cormier*, 220 F.3d 1103 (9th Cir. 2000); *United States v. Tobin*, 923 F.2d 1506 (11th Cir. 1991); *United States v. Woodard*, 873 F. Supp. 535, 539-40 (D.

Kan. 1994), *aff'd*, 91 F.3d 160 (10th Cir. 1996).

³⁴ *United States v. Jerez*, 108 F.3d 684 (7th Cir. 1993).

³⁵ 220 F.3d 1103 (9th Cir. 2000).

³⁶ *Id.* at 1109 (citations omitted).

³⁷ *United States v. Ponce Munoz*, 150 F. Supp. 2d 1125, 1133 (D. Kan. 2001). In *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 525 (D. Ariz. 2005), the court stated: “[i]n *Cormier* the Ninth Circuit identified two sets of coercive circumstances that would transform a knock and talk into a seizure: (1) if the police compelled an occupant to open the door under the badge of authority and (2) if the police were unreasonably persistent in attempting to gain entry.... The court further noted that a nighttime encounter weighs in favor of a seizure” (citations omitted).

³⁸ *See, e.g., United States v. Jerez*, 108 F.3d 684, 693 (7th Cir. 1997); *United States v. Velazco-Durazo*, 372 F. Supp. 2d 520, 526 (D. Ariz. 2005). In *United States v. Thomas*, 430 F.3d 274, 275 (6th Cir. 2005), the court held that “a consensual encounter at the doorstep may evolve into a ‘constructive entry’ when the police, while not entering the house, deploy overbearing tactics that essentially force the individual out of the home,” and further stated that “[t]he difference between the two—between a permissible consensual encounter and an impermissible constructive entry—turns on the show of force exhibited by the police.”

³⁹ 108 F.3d 684 (7th Cir. 1997).

⁴⁰ *Id.* at 687.

⁴¹ *Id.* at 690.

⁴² *Id.* at 692 (citations omitted).

⁴³ *Id.* at 695.

⁴⁴ 172 F. Supp. 2d 1344 (D. Kan. 2001), *aff'd*, 297 F.3d 983 (10th Cir. 2002).

⁴⁵ 297 F.3d at 985.

⁴⁶ 172 F. Supp. 2d 1344, 1346.

⁴⁷ *Id.*

⁴⁸ *United States v. Cruz-Roman*, 312 F. Supp. 2d 1355, 1362 (W.D. Wash. 2004) (citing *United States v. Winsor*, 846 F.2d 1569, 1573 n.3 (9th Cir. 1988)).

⁴⁹ 912 F.2d 208 (8th Cir. 1990).

⁵⁰ *Id.* at 210.

⁵¹ 387 F.3d 1060 (9th Cir. 2004).

⁵² *Id.* at 1070-71.

⁵³ 170 F.3d 708 (7th Cir. 1999).

⁵⁴ *Id.* at 720. *Cf. State v. Mann*, 857 A.2d 329 (Conn. 2004).

⁵⁵ *Georgia v. Randolph*, 126 S. Ct. 1515 (2006) (citing *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990)). See *United States v. Bowden*, 380 F.3d 266 (6th Cir. 2004); *United States v. Corral*, 339 F. Supp. 2d 781 (W.D. Tex. 2004).

⁵⁶ *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

⁵⁷ *Bumper v. North Carolina*, 391 U.S. 543 (1968).

⁵⁸ The Maryland Court of Appeals has stated that: “[a]lthough the courts have generally sustained the ‘knock and talk’ procedure as a legitimate police technique, not amounting to an unconstitutional seizure, they have examined with caution the consents allegedly obtained by the police once they are permitted to enter the room.

To the extent that the courts invalidate searches conducted as part of a ‘knock and talk’ procedure, it is usually upon a finding that the consent, actually given, was not voluntary.” *Scott v. State*, 782 A.2d 862, 873 (Md. 2001).

⁵⁹ See, e.g., *United States v. Scroger*, 98 F.3d 1256 (10th Cir. 1996); *United States v. Torres*, 274 F. Supp. 2d 146 (D.R.I. 2003). For a discussion of issues related to exigent circumstances, see the article by Edward M. Hendrie, “Creating Exigent Circumstances,” *FBI Law Enforcement Bulletin*, September 1996, p. 25.

⁶⁰ See generally *Maryland v. Buie*, 494 U.S. 325 (1990); *United States v. Mendez*, 431 F.3d 420 (5th Cir. 2005); *United States v. Gould*, 364 F.3d 578 (5th Cir. 2004); *United States v. Rucker*, 348 F. Supp. 2d 981 (S.D. Ind. 2004); *United States v. Groce*, 255 F. Supp. 2d (E.D. Wisc. 2003). For a review and discussion of issues

related to protective sweeps, see the article by Thomas A. Colbridge, “Protective Sweeps,” *FBI Law Enforcement Bulletin*, July 1998, p. 25.

⁶¹ See also Morely Swingle & Kevin M. Zoellner, “Knock and Talk” Consent Searches: If Called by a Panther Don’t Anther, 55 J. Mo. B. 25 (1999).

⁶² *United States v. Johnson*, 170 F.3d 708, 721 (7th Cir. 1999) (Evans, concurring).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

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