

CONSTITUTIONAL
Q&A

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KNOCK

& TALK

POLICE TACTICS

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THE RUTHERFORD INSTITUTE, a national nonprofit civil liberties organization, is deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people through its extensive legal and educational programs. The Institute provides its legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute's mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.



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Those who founded this country strongly believed that “a man’s house is his castle.”¹ This belief—that the sanctity of one’s home should be protected against government invasions—led those who drafted the Constitution and the Bill of Rights to forbid government agents from conducting unreasonable seizures and searches of private property,² and from forcing homeowners to allow soldiers to be quartered (or housed) in their homes.³

Unfortunately, the protective barriers erected by the founders to ensure that “we the people” are secure within our homes continue to be battered, shattered and bulldozed by an obnoxious array of court rulings, legislative actions, surveillance technology and police tactics that empower government agents to not only invade the privacy of our homes but to also destroy our property and terrorize our loved ones.⁴

One particularly overt and aggressive tactic being employed with alarming frequency by police is the “knock and talk,” a strategy specifically intended to allow police to conduct warrantless searches of homes, thereby sidestepping the Fourth Amendment’s requirement that, except in cases

of emergencies, the government must apply for and obtain the approval of a judge before searching residences.⁵

In conducting a “knock and talk,” police knock (often aggressively) and confront individuals at their front doors (often late at night or early in the morning) in an effort to coerce them into “voluntarily” allowing the police into their home, with the ultimate goal of obtaining incriminating evidence against them or those residing within the home.

Although courts have embraced the fiction that “knock and talks” are “voluntary” encounters that are no different from other door-to-door canvassing, these constitutionally dubious tactics are highly threatening confrontations meant to intimidate individuals into allowing police access to a home, which then paves the way for a warrantless search of the home and property.

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While in theory one can refuse to speak with the police during a “knock and talk” encounter, as the courts have asserted as a justification for dismissing complaints about these procedures, the reality is far different. Indeed, it is unreasonable to suggest that individuals caught unaware by these tactics will not feel pressured in the heat of the moment to comply with a request to speak with police, who are often heavily armed, and allow them to search the property.⁶ Even when consent is denied, police have been known to simply handcuff the homeowner and conduct a search over his objections.⁷

“Knock and talks” not only constitute severe violations of the privacy and security of homeowners, but the combination of aggression and surprise employed by police is also a recipe for a violent confrontation that rarely ends well for those on the receiving end of these tactics.

For example:

- Although 26-year-old Andrew Scott had committed no crime and never fired a single bullet or lifted his firearm against police, he was gunned down by police who knocked aggressively on the wrong door

at 1:30 a.m., failed to identify themselves as police, and then repeatedly shot and killed Scott when he answered the door while holding a gun in self-defense. The police were investigating a speeding incident by engaging in a middle-of-the-night “knock and talk” in Scott’s apartment complex.⁸

- Carl Dykes was shot in the face by a county deputy who pounded on Dykes’ door in the middle of the night without identifying himself. Because of reports that inmates had escaped from a local jail, Dykes brought a shotgun with him when he answered the door.⁹

As these and other incidents make clear, while Americans have a constitutional right to question the legality of a police action or resist an unlawful police order, doing so can often get one arrested, shot or killed.

Thus, if the courts continue to give police the green light in carrying out these “knock and talk” tactics and they become standard operating procedure for police, it is vital that individuals have a plan in place for how to respond should they find themselves subjected to a “knock and talk” tactic, how to preserve their Fourth Amendment rights, and how to safely exercise their rights.

The following Constitutional Q&A explains how and why police carry out “knock and talks,” the legality of the practice, and how to protect and preserve one’s legal rights if subjected to this law enforcement tactic.

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WHAT IS A “KNOCK AND TALK”?

A “knock and talk” is a police investigation tactic that involves law enforcement officers appearing at a residence without any warning and without invitation. The police knock on the door of the residence and once the door is opened, police are then able to see inside and conduct surveillance of the residence. They also are able to begin questioning the people inside the residence. Although police insist that “knock and talks” are lawful, consensual encounters between police and citizens,¹⁰ the tactic has evolved into an aggressive means of sidestepping the Fourth Amendment that often results in the loss of constitutional rights and, in some



cases, the loss of life.¹¹

HOW IS A TYPICAL “KNOCK AND TALK” CARRIED OUT BY POLICE?

Although a “knock and talk” is often likened to a visit to a home no different from the when Girl Scouts come knocking at one’s door to sell cookies,¹² in practice they are often executed like a SWAT team raid. Multiple police come to the door, often in tactical gear with sidearms prominently displayed and sometimes drawn, demonstrating overwhelming force.¹³

These “visits” also occur at late-night or early-morning hours when homeowners would not expect visitors.¹⁴ Police will loudly bang on the door, while failing to announce that they are law enforcement officers.¹⁵ The procedures employed are calculated to maximize the surprise of and coercion upon the occupants of the home.



WHY DO POLICE CHOOSE A PARTICULAR HOME TO CONDUCT A “KNOCK AND TALK”?

A “knock and talk” most often arises from anonymous, unsubstantiated or hearsay information police possess that alleges illegal activity may be occurring at a particular home. Because police do not have sufficiently reliable information to obtain a warrant from a judge to search the home, they use the “knock and talk” tactic in order to question the occupants and gain access to the home.¹⁶ “Knock and talks” are also employed more frequently against minority populations,¹⁷ and are particularly prevalent in “over-policed” neighborhoods which receive disproportionate attention from police.¹⁸

DO POLICE USE “KNOCK AND TALKS” VERY OFTEN?

While there are no available statistics on how prevalent “knock and talks” are, the growing number of court decisions involving this tactic demon-

strate that it has become a widespread and common tool of police.¹⁹ Some police departments have found “knock and talks” so effective that they have established task forces dedicated to the practice. For example, in 2013, Dallas, Texas, established a “knock and talk” task force that was comprised of 46 officers dedicated to conducting “knock and talks.”²⁰ And Orange County, Florida, has “Squad 5,” an entire division of its sheriff’s office tasked with conducting “knock and talks.” As far back as 2003, Squad 5 was conducting 300 “knock and talks” per month.²¹



WHAT DO COURTS CURRENTLY SAY ABOUT THE LEGALITY OF “KNOCK AND TALKS”?

The Fourth Amendment to the U.S. Constitution provides that people have the right to be secure in their homes against “unreasonable searches and seizures” and generally requires that police have a warrant before conducting a search. In fact, the protections of the Fourth Amendment are at their highest when it comes to homes. At its core, the Fourth Amendment guarantees the right of individuals to retreat into their own homes and be free from unreasonable governmental intrusion.²²

Unfortunately, courts applying the Fourth Amendment have generally concluded that police “knock and talks” are not “unreasonable,” and have allowed this tactic to proliferate. For example, in a 2013 decision,

the United States Supreme Court indicated that police can engage in “knock and talks” without violating the Fourth Amendment. The Court stated that when a police officer approaches a home and knocks on the door in order to speak with the occupants, the officer is acting no differently than other members of the public, such as solicitors, persons seeking signatures on a petition, or trick-or-treaters. The Court held that by custom, there is an “implied license” allowing people to approach and knock on the doors of homes, and when police do this, they are not violating a right of privacy protected by the Fourth Amendment.²³ Based on this idea of an “implied license” to approach a home and knock on the door to speak with occupants, courts have allowed police to engage in “knock and talks.”²⁴

ARE “KNOCK AND TALKS” BY LAW ENFORCEMENT OFFICERS REALLY THE SAME AS OTHER VISITORS COMING TO A HOUSE?

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No, not by a long shot.

First, the purpose of a “knock and talk” is to conduct an investigation. Police use the “knock and talk” tactic for the express purpose of obtaining incriminating evidence against the occupants of the house. It involves a predetermined plan by police to circumvent the warrant requirement and convince the homeowner to let them inside so that they may conduct a search.²⁵ Once inside, they may gather any evidence that is in plain view or that they can obtain access to with the additional consent of any of the occupants.²⁶

Second, police use aggression and intimidation in order to coerce the home occupants to comply with police requests. One former state supreme court judge described a typical “knock and talk”:

Law enforcement typically arrives late at night.... Law enforcement may arrive either by driving up to the dwelling with multiple cars

so that many bright headlights hit the house, or by stealth, walking through the property to arrive at the door without warning. Multiple officers may arrive for the knock and talk.²⁷

The encounter is calculated to instill fear in the residents so that they will answer questions posed by police and comply with requests to allow the police to enter and conduct surveillance.

“Knock and talks” are nothing like the visits of political canvassers or trick-or-treaters.



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ARE “KNOCK AND TALKS” DANGEROUS?

Because of the manner in which police execute this tactic, there is a high and unnecessary risk of violence. As one expert in the field pointed out, late night or early morning encounters between police and homeowners are “inherently dangerous.”²⁸ For example:

- In 2012, Andrew Lee Scott was shot to death by police who were conducting a “knock and talk” at his apartment at 1:30 in the morning. The four police officers, who were trying to find a speeding motorcyclist, surrounded the doorway of Scott’s apartment with guns drawn and pounded on the door without identifying themselves as

police. Alarmed by the banging, Scott came to the door with a lawfully-owned firearm and opened the door. When police saw Scott with the firearm, one officer opened fire and killed Scott as he retreated into the apartment. Although Scott was wholly innocent, a lawsuit filed seeking damages for his wrongful death was rejected by federal courts, one of which concluded that Scott was responsible for the violence perpetrated against him by police because he exercised his Second Amendment right by retrieving a firearm to protect himself.²⁹

- Police were sued for killing nineteen-year old Karvas Gamble, Jr., in the course of a “knock and talk” at a church where Gamble was working. According to the complaint filed in the lawsuit, eight police officers, acting on a confidential tip concerning marijuana, went to the church in the evening and surrounded it. As the officer peered into the windows, they saw two persons working at a computer and Gamble, who was committing no crime and was unarmed. The lawsuit alleged that when Gamble turned toward a window, he was shot by one of the officers and died. Although no criminal charges were brought against the officers, a grand jury concluded that the shooting of Gamble “should not have happened.”³⁰ The police and city eventually settled the wrongful death and excessive force lawsuit filed against them.

IS THE “KNOCK AND TALK” TACTIC AS PRACTICED BY LAW ENFORCEMENT A VIOLATION OF THE FOURTH AMENDMENT?

As pointed out above, courts have allowed police to employ the “knock and talk” tactic. But these rulings do not account for or consider the aggressive actions of police in carrying out “knock and talks,” nor do they account for the fact that police are targeting the residence approached for an investigation and using a “knock and talk” to avoid the requirements of the Fourth Amendment.

The protection of the Fourth Amendment covers not only the interior of the home, but also the area immediately surrounding and associated with

the home, an area called the “curtilage.” The curtilage includes a porch or front steps leading to the home,³¹ and in order for police to conduct a “knock and talk” they must enter upon the curtilage of the home, thereby invading an area protected by the Fourth Amendment.

Because “knock and talks” are almost always undertaken to obtain incriminating evidence from the occupants of a home or to conduct a search of the home, the police crossing onto the curtilage in execution of that plan are in violation of the Fourth Amendment.³² In fact, the same 2013 case in which the Supreme Court recognized that police have an “implied license” to go to a dwelling and knock upon the door also ruled that the custom allowing police to approach and knock does not include an invitation to explore around the home in order to gather incriminating evidence against the occupants.³³

As one legal scholar recognizes:

The implicit license that permits the police to approach the home in order to speak with the occupant does not also permit them to target a specific residence and execute a coordinated plan to sidestep the warrant requirement using tactics designed to wrest permission from the homeowner to come inside. There is no customary invitation to do that.³⁴



ARE THERE TIMES WHEN A “KNOCK AND TALK” IS ALLOWED BY THE FOURTH AMENDMENT?

There are situations where it would be reasonable for a police officer to go to a dwelling and summon the occupants. If the police have reliable information that someone within the home is injured or in need of medical assistance, they could go to the door to investigate.³⁵ But if police are told that no emergency exists, they should leave. If they force their way into the home, they violate the Fourth Amendment.³⁶ If police have a summons or other legal process to serve on a person who they believe lives at the home, they also may approach and knock on the door to speak with the occupants.³⁷

ARE THERE STEPS I CAN TAKE TO PROTECT MYSELF FROM A “KNOCK AND TALK”?

Although it may not be possible to prevent police from conducting a “knock and talk” at your residence, there are steps you can take to protect your legal rights in the event you are the target of this law enforcement tactic:

- Post “No Trespassing” or other signs warning police that they are not welcome to visit your home uninvited at conspicuous places leading to your front door. As pointed out above, police have been granted the authority to conduct “knock and talks” under the concept that there is an “implied license” for them to approach a home and seek to speak with the occupants. Under the law, an “implied license” can be revoked by a homeowner. In fact, posting signs warning the police that they do not have permission to approach and conduct a “knock and talk” would serve to revoke any invitation. In one case, a federal judge wrote a dissenting opinion stating his view that a “knock and talk” violated the Fourth Amendment because the homeowner had “No Trespassing” signs on his yard.³⁸ Several other courts agree that posting signs can revoke the implied license and make a “knock and talk” an illegal search.³⁹

- Don't consent to speak with police. Except in those situations where police have the authority to enter on your property regardless of your consent, you do not have any obligation to open your door and speak to police who arrive unannounced. If you can see that it is the police who are at your door, ask them to explain why they are there. If they do not have a warrant or state that they "just want to talk," you have the right to refuse to open the door or speak with them, and can demand that they contact you by telephone instead.

WHAT SHOULD I DO IF I BELIEVE MY RIGHTS WERE VIOLATED BY POLICE DURING A "KNOCK AND TALK"?

If you believe your rights were violated when police visited your residence, you should try to document what happens, either by making a videotape of the incident or writing down all you remember about the incident as soon as you are able to do so. You should not do anything to threaten officials or use force to resist because this could lead to serious criminal charges against you and/or bodily harm. Instead, remain calm and courteous, but don't indicate your consent to anything the police might ask or suggest. You can seek legal counsel and assistance later in order to challenge the actions of the police in court.

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THE RUTHERFORD INSTITUTE stands ready to defend your rights if they are violated by police. For over a quarter century, we have assisted, without charge, persons deprived of their liberty by government officials. If you believe your rights described above were violated and want to seek justice, contact us and we will listen and provide you with the guidance and help that you need.

Should you have further questions or need legal assistance in exercising your constitutional rights, please contact the Legal Department at legal@rutherford.org.

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