

to be the subject of reservation in opinions,¹⁷⁰ but it is far from clear that the Court would accept any such exception should the issue be presented.¹⁷¹

Execution of Warrants.—The Fourth Amendment’s “general touchstone of reasonableness . . . governs the method of execution of the warrant.”¹⁷² Until recently, however, most such issues have been dealt with by statute and rule.¹⁷³ It was a rule at common law that before an officer could break and enter he must give notice of his office, authority, and purpose and must in effect be refused admittance,¹⁷⁴ and until recently this has been a statutory requirement in the federal system¹⁷⁵ and generally in the states. In *Ker v. California*,¹⁷⁶ the Court considered the rule of announcement as a constitutional requirement, although a majority there found circumstances justifying entry without announcement.

In *Wilson v. Arkansas*,¹⁷⁷ the Court determined that the common law “knock and announce” rule is an element of the Fourth Amendment reasonableness inquiry. The rule is merely a presumption, however, that yields under various circumstances, including those posing a threat of physical violence to officers, those in which a prisoner has escaped and taken refuge in his dwelling, and those in which officers have reason to believe that destruction of evidence is likely. The test, articulated two years later in *Richards v. Wisconsin*,¹⁷⁸ is whether police 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.” In *Richards*, the Court held

¹⁷⁰ *E.g.*, *United States v. Miller*, 425 U.S. 435, 440, 444 (1976); *Fisher v. United States*, 425 U.S. 391, 401 (1976); *California Bankers Ass’n v. Shultz*, 416 U.S. 21, 78–79 (1974) (Justice Powell concurring).

¹⁷¹ See, Note, *Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments*, 90 HARV. L. REV. 945 (1977).

¹⁷² *United States v. Ramirez*, 523 U.S. 65, 71 (1998).

¹⁷³ Rule 41(c), Federal Rules of Criminal Procedure, provides, inter alia, that the warrant shall command its execution in the daytime, unless the magistrate “for reasonable cause shown” directs in the warrant that it be served at some other time. See *Jones v. United States*, 357 U.S. 493, 498–500 (1958); *Gooding v. United States*, 416 U.S. 430 (1974). A separate statutory rule applies to narcotics cases. 21 U.S.C. § 879(a).

¹⁷⁴ *Semayne’s Case*, 5 Coke’s Rep. 91a, 77 Eng. Rep. 194 (K.B. 1604).

¹⁷⁵ 18 U.S.C. § 3109. See *Miller v. United States*, 357 U.S. 301 (1958); *Wong Sun v. United States*, 371 U.S. 471 (1963).

¹⁷⁶ 374 U.S. 23 (1963). *Ker* was an arrest warrant case, but no reason appears for differentiating search warrants. Eight Justices agreed that federal standards should govern and that the rule of announcement was of constitutional stature, but they divided 4-to-4 whether entry in this case had been pursuant to a valid exception. Justice Harlan who had dissented from the federal standards issue joined the four finding a justifiable exception to carry the result.

¹⁷⁷ 514 U.S. 927 (1995).

¹⁷⁸ 520 U.S. 385, 394 (1997).