

ORIGINAL

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PROCEEDINGS BEFORE

**THE SUPREME COURT**

**OF THE**

**UNITED STATES**

CAPTION: STEINEY RICHARDS, Petitioner v. WISCONSIN

CASE NO: 96-5955

PLACE: Washington, D.C.

DATE: Monday, March 24, 1997

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**Supreme Court U.S.**

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IN THE SUPREME COURT OF THE UNITED STATES

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STEINEY RICHARDS, :

Petitioner :

V. : No. 96-5955

WISCONSIN :

Washington, D.C.

Monday, March 24, 1997

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:05 a.m.

APPEARANCES :

DAVID R. KARPE, ESQ., Madison, Wisconsin; on behalf of  
the Petitioner.

JAMES E. DOYLE, Esq., Attorney General of Wisconsin,  
Madison, Wisconsin; on behalf of the Respondent.

MIGUEL A. ESTRADA, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the United States, as amicus curiae, supporting the Respondent.

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1 P R O C E E D I N G S

2 (11:05 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in Number 96-5955, Steiney Richards v. Wisconsin.

5 Mr. Karpe, you may proceed whenever you're  
6 ready.

7 ORAL ARGUMENT OF DAVID R. KARPE

8 ON BEHALF OF THE PETITIONER

9 MR. KARPE: Mr. Chief Justice, and may it please  
10 the Court:

11 This case presents the issue of whether the  
12 Fourth Amendment prohibits a blanket exception to the  
13 knock-and-announce rule in drug-dealing cases. This case  
14 turns on the sanctity of the home, the ultimate private  
15 place --

16 QUESTION: This fellow was actually in a motel  
17 room, wasn't he?

18 MR. KARPE: Mr. Chief Justice, I fully agree,  
19 and as one who has been a resident of a hotel recently I  
20 would submit that it is the longstanding doctrine of this  
21 Court that a hotel room is a home for the purposes of the  
22 Fourth Amendment under Stoner v. California --

23 QUESTION: Is there a case that says a motel  
24 room is a home?

25 MR. KARPE: I believe Stoner v. California,

1 U.S. -- United States v. Jeffers, United States v. --

2 QUESTION: I agree with you those cases said  
3 that a hotel room is protected by the Fourth Amendment. I  
4 don't know that any of them ever said a hotel room is a  
5 home.

6 MR. KARPE: I -- Mr. Chief Justice, I believe  
7 that those stand for the proposition that the hotel room  
8 has the same protection as a home. If it has four walls  
9 and a roof, it's a home.

10 QUESTION: I think that's probably correct, but  
11 to say -- when you say that a motel room -- we're talking  
12 here about the sanctity of the home. You're talking about  
13 something that is protected under the Fourteenth Amendment  
14 in the same way that a home is.

15 MR. KARPE: Yes, Mr. Chief Justice.

16 QUESTION: The Fourth Amendment doesn't mention  
17 homes anyway, does it?

18 MR. KARPE: It mentions --

19 QUESTION: The right of people to be secure in  
20 their persons, houses, papers, and effects, so I guess the  
21 real issue is whether a hotel room is a house. Do you  
22 think it's a house?

23 (Laughter.)

24 MR. KARPE: Justice Scalia, I believe that the  
25 textual use of house is not referring to the -- protecting

1 the structure but rather what occurs inside the house.

2 The Bill of Rights was adopted in reaction to  
3 the anti-Federalist concern that way too much Federal  
4 power was going to exist and it was going to invade the  
5 home and what it contained, the privacy of the -- your  
6 family, your spouse, so I believe that the home is the  
7 core value of the Fourth Amendment.

8 If the Fourth Amendment does not protect the  
9 home, it doesn't protect anything.

10 Now, the judge who issued the search warrant in  
11 this case weighed the sanctity of the home against the  
12 general allegation by the police that drug dealers tend to  
13 carry on, and the judge who issued the warrant found that  
14 no-knock was not appropriate, specifically instructed the  
15 police not to exercise no-knock, they chose to disregard  
16 that when --

17 QUESTION: Mr. Karpe, on that striking feature  
18 of this case, here it was the affidavit of the police  
19 with -- asking for permission for no-knock, and the United  
20 States struck that out. Is that a common thing to include  
21 in affidavits, and how does it -- is it ordinarily taken  
22 out?

23 MR. KARPE: I have seen a number of different  
24 forms of applications for search warrants, Justice  
25 Ginsburg, and sometimes there's check-off boxes. In this

1 particular case, the police made an application for a no-  
2 knock and Judge Frankel, upon reviewing the facts that  
3 were pled in the complaint for the search warrant, decided  
4 that the circumstances did not merit --

5 QUESTION: What I'm asking, maybe you don't know  
6 the answer to this question, is, is it standard operating  
7 procedure in Wisconsin for the police to ask for no-knock  
8 permission?

9 MR. KARPE: Justice Ginsburg, I'm sorry, I  
10 misunderstood your question. There's no requirement that  
11 the police seek advance approval of no-knock. No-knock  
12 warrants are neither specifically forbidden nor  
13 specifically --

14 QUESTION: As a matter of practice, do police --  
15 is this a common form of affidavit? Do police ask for it?

16 MR. KARPE: Often they do that, Justice  
17 Ginsburg.

18 QUESTION: And is it also often that the judge  
19 X's it out, the magistrate X's it out?

20 MR. KARPE: I cannot speak to that, Justice --

21 QUESTION: Would it be a fair interpretation to  
22 say that the judge instructed the officers that they must  
23 knock, and failure to do so was therefore a violation of  
24 the warrant?

25 MR. KARPE: Justice Kennedy, I hope I'm



1 understanding your question correctly, but by --

2 QUESTION: By striking it out, does that mean  
3 that they must knock?

4 MR. KARPE: I believe that was Judge Frankel's  
5 intention, that his review of the facts presented to him  
6 did not present that it would be reasonable --

7 QUESTION: Of course, that's not really in this  
8 case. This case is here for us to test the rule announced  
9 by the Wisconsin court that did not depend on the  
10 interpretation of the warrant.

11 QUESTION: What would your position be if in  
12 situations where the magistrate does authorize a no-knock  
13 entry, do you say that if police then follow such an  
14 authorization and enter without knocking, can we have a  
15 blanket rule saying that if the magistrate has authorized  
16 it it is going to be in compliance with the Fourth  
17 Amendment?

18 MR. KARPE: Justice O'Connor, the way I  
19 understand the question, I think that the pre-approval  
20 would not necessarily make the search reasonable. It  
21 depends on the particular circumstances confronted by the  
22 officer at the time of the entry.

23 QUESTION: I take it the converse would be true.  
24 The court might very well have said, you've got to knock,  
25 but if they get to the porch and they hear guns being

1 fired inside, I take it it would be quite reasonable for  
2 them to say, we're not going to knock, we're going to go  
3 in like gang-busters, and you wouldn't have a  
4 constitutional argument.

5 MR. KARPE: Granted, Justice --

6 QUESTION: Or even if they don't hear guns being  
7 fired, if they hear nothing but what the court expected  
8 them to hear, the court might have just been wrong, isn't  
9 that right, as to whether it would violate the  
10 Constitution?

11 MR. KARPE: Yes, Justice Scalia, which is why  
12 it's so important that there not be a blanket exception  
13 that basically removes the judicial process and has law  
14 enforcement then acting in a way unfettered by legal  
15 process. It basically makes the line officer the final  
16 judge, jury, and executioner.

17 QUESTION: But, gee, that happens a lot of times  
18 with searches and seizures. I mean, the number of  
19 exceptions to the warrant requirement are innumerable now,  
20 and with respect to every one of those exception, exigent  
21 circumstances and so forth, it's up to the police officer  
22 to make his best judgment.

23 MR. KARPE: Yes, Justice Scalia, but hopefully  
24 reviewable by a court.

25 QUESTION: Okay. We're not saying it's not

1 reviewable, but --

2 MR. KARPE: The blanket exception makes it,  
3 Justice Scalia, a very simplistic process. The questions  
4 that are asked are, was there a search warrant? Was there  
5 evidence of drug dealing? And it's not --

6 QUESTION: What about automobiles? I mean, we  
7 have a blanket exception for automobiles, don't we? You  
8 can search automobiles without a warrant.

9 MR. KARPE: Yes, Justice Scalia, and I don't --  
10 the Founders didn't include in the Fourth Amendment that  
11 we had a right to be secure in our carriages or whatever.  
12 The house is textual. The -- this is -- in this area  
13 of --

14 QUESTION: I like that.

15 (Laughter.)

16 MR. KARPE: In this area, we would submit that a  
17 blanket rule would never be acceptable with regard to  
18 unannounced entries. The courts even found --

19 QUESTION: We recently announced a blanket rule,  
20 did we not, in, I believe it's Maryland v. Wilson, with  
21 reference to people stepping out of automobiles. Isn't  
22 this just as sensible?

23 MR. KARPE: Justice Kennedy, I agree that that  
24 did set a blanket rule, but --

25 QUESTION: So there are blanket rules.

1 MR. KARPE: Apart -- but that was a very de  
2 minimis sort of intrusion. The car is stopped anyway.  
3 This is not a de minimis intrusion.

4 QUESTION: Well, that could be major. It could  
5 be a storm, and it could be some poor woman nursing a tiny  
6 baby, or some sick person. That's not a de minimis rule.

7 MR. KARPE: The Court had already ruled in  
8 Pennsylvania v. Mimms that asking the driver to step out  
9 under the same circumstances was de minimis. I think that  
10 Maryland v. Wilson was a fairly simple extension.

11 This is simply not de minimis by any means.  
12 This is one of those extraordinary searches, extraordinary  
13 invasion which is unusually dangerous and unusually  
14 invasive of someone's privacy and their safety.

15 People get killed during these things. There's  
16 a high risk in a no-knock search the citizens are going to  
17 experience some sort of injury. The police come banging  
18 in through the door, weapons are drawn, there's no notice,  
19 and it's dangerous to police, too. People might think  
20 they're being burglarized.

21 QUESTION: Well, it's dangerous even with a  
22 knock and announce as well, I assume, in situations like  
23 this where there's a drug dealer with weapons. By  
24 knocking and saying, police here, it gives the person time  
25 to get the weapons ready and you can have just as much



1 danger to the police who enter.

2 MR. KARPE: Justice O'Connor, there was no  
3 indication that Steiney Richards had weapons. This was a  
4 19-year-old kid from Detroit who's dealing coke. He's not  
5 a member of the Medellin cartel.

6 QUESTION: You were speaking in generalities --

7 MR. KARPE: Yes.

8 QUESTION: -- and so was I.

9 MR. KARPE: Yes, but --

10 QUESTION: He jumped out the window, didn't he?  
11 I mean, he had time. As soon as he finds out the police  
12 are here he jumps out the window, runs away.

13 MR. KARPE: Well, I think --

14 QUESTION: Is that a legitimate concern?

15 MR. KARPE: Justice Breyer, I think it's  
16 ambiguous that he knew that that was police. He looks  
17 out, he sees someone --

18 QUESTION: Did he just jump out the window for  
19 fun?

20 MR. KARPE: He knew someone was trying to bang  
21 the door down. He figured, give up the drugs and save his  
22 skin. I mean, hop out the window. We're talking about  
23 December 31 in Wisconsin. He was not going to get very  
24 far without a shirt, Justice Breyer.

25 (Laughter.)

1 QUESTION: I take it that -- right.

2 (Laughter.)

3 QUESTION: The police say -- I think they have a  
4 legitimate interest in some -- with drug deals in general,  
5 not announcing their presence, because a) they might get  
6 killed, or b) the person might jump out the window, or  
7 c) he might flush the drugs down the toilet.

8 They say that happens all the time -- all the  
9 time. As soon as they find out, police, it's into the  
10 bathroom, the drugs are gone, and they want to preserve  
11 the evidence, they don't want him to run away, and they  
12 don't want to get shot, so what is the response to those  
13 three?

14 MR. KARPE: Justice Breyer, there is certainly  
15 no indication that Mr. Richards was going to attempt to  
16 destroy drugs, and certainly the way they were packaged he  
17 would have had a heck of a time.

18 They were basically divided up into 120 little  
19 plastic packets, plus \* and to answer your question and at  
20 the same time sort of get back to Justice O'Connor's  
21 question, the mere fact that even if a drug dealer has  
22 guns, it does not mean he intends to use them against the  
23 police. More than -- more often than not it's to get --  
24 to enforce debts, to protect themselves against rivals,  
25 and people certainly are afraid of being burglarized.

1           The most dangerous instances that we've come  
2 across in terms of these sort of police invasions without  
3 announcement is that people think they're being  
4 burglarized and take weapons out, get ready to shoot, and  
5 when they learn it's the police, then they drop the  
6 weapons.

7           The instances where police tend to get shot is  
8 not this myth that the Allegro article that's often  
9 referred to speaks of, this fatal funnel where the drug  
10 dealer stands at the door with his weapon pointed at the  
11 door waiting for someone to come in.

12           More often than not, when an officer is killed  
13 during one of these searches it's because there's someone  
14 in a back room who's hiding, and --

15           QUESTION: Once again, I'd rather be inclined to  
16 rely on the judgment of the officers as to what is more or  
17 less likely to endanger their lives. You're asking us to  
18 give them a form of protection that they are too stupid to  
19 give to themselves?

20           I mean, if, indeed, they're getting themselves  
21 killed more often by crashing in, I assume they're not  
22 going to crash in. I don't know why we have to adopt a  
23 constitutional rule to protect police officers from  
24 themselves.

25           MR. KARPE: Justice Scalia, I agree, the Fourth

1 Amendment is not there to protect Government. It's not  
2 there to protect law enforcement. It's there to protect  
3 citizens.

4 QUESTION: So I mean, this argument you've been  
5 dwelling on that, you know, it's going to hurt the police  
6 officers more, I -- you know, it's sort of -- I don't see  
7 it. That'll take care of itself. If, indeed, it's more  
8 dangerous for the police officers, presumably, in the  
9 nature of things, police officers won't do it.

10 MR. KARPE: Justice Scalia, I don't think  
11 there's any indication that in fact it is more dangerous  
12 to the police to announce. That just is not there.

13 QUESTION: Well, the State says so. I -- you  
14 know, and I'm inclined to accept their judgment as to  
15 what's more dangerous or less dangerous for the police.

16 MR. KARPE: I -- in any case -- I don't -- this  
17 is not really in response to your question, but in any  
18 case, in the -- this Court's very well-reasoned and  
19 unanimous decision in *Wilson v. Arkansas*, this Court  
20 recognized the presumption in favor of announcement. I  
21 think that the blanket exception in fact ignores the  
22 precepts of *Wilson* and sets a presumption against  
23 announcement.

24 QUESTION: Suppose it weren't blanket, Mr. Karpe.  
25 Suppose it were just a -- this really wouldn't serve your



1 purposes in this case anyway. Suppose we just had a rule,  
2 sure, ordinarily you must knock and announce. However,  
3 there are extraordinary circumstances where you don't have  
4 to and ordinarily, perhaps almost always, drug-dealing is  
5 one of those extraordinary circumstances. Would that rule  
6 satisfy you?

7 It's not an absolute rule. It just says, you  
8 know, ordinarily. Conceivably there's some situations in  
9 which drug-dealing wouldn't allow you to go crashing in if  
10 you know the drugs are being held in hundred-pound bales  
11 by little old ladies without guns.

12 (Laughter.)

13 MR. KARPE: Justice Scalia, again, that -- the  
14 presumption there is going the wrong way. \*Sir, I'm not  
15 saying there has to be announcement in every single case,  
16 but to basically except what I -- I assume you're  
17 discussing the U.S.'s position --

18 QUESTION: Right.

19 MR. KARPE: -- would create a situation where  
20 the police would possibly have no motivation to uncover  
21 facts but might lead to an indication that this is the  
22 exception to the exception. I think it's a very hard to  
23 enforce rule for law enforcement, and is the defendant  
24 then to have the burden of persuasion?

25 QUESTION: What about a statute that settles it

1 like the two that are in the appendix to this amicus brief  
2 from Americans for Effective Law Enforcement, that gives  
3 the magistrate authority, if he finds two things, one that  
4 there's a danger to life and limb, and that the -- or that  
5 the property sought may be easily or quickly destroyed?

6 Is that statute, those two statutes  
7 constitutional, where the magistrate relieves the officer  
8 of the decision to be made on the spot by authorizing in  
9 the warrant a no-knock search if these conditions -- if  
10 the magistrate finds these conditions present, that the  
11 property sought can be quickly destroyed, or that there's  
12 danger to life and limb of the officer or another?

13 MR. KARPE: Justice Ginsburg, I think if there's  
14 a specific indication that there is danger to the officer,  
15 that would be acceptable. To say it can be easily  
16 destroyed I think goes too far and leads to \*procrustean  
17 application, because we can't deny that many drugs,  
18 particularly in small quantities, can easily be destroyed.

19 QUESTION: And yet that is a standard reason for  
20 applying the exigent circumstances doctrine, and if  
21 exigent circumstances may be applied, why can't the kind  
22 of pre-warrant determination that the statute refers to  
23 and that Justice Ginsburg refers to?

24 MR. KARPE: Justice Souter, I think that it  
25 leads to a danger in application --

1 QUESTION: Well, there's a danger in  
2 application, I suppose, to exigent circumstances, because  
3 it depends upon a judgment made on the spot. This is  
4 somewhat less dangerous, because it's not being -- a  
5 judgment made in the heat of action.

6 MR. KARPE: I think that the mere fact that  
7 there's drugs present and that there's a toilet bowl  
8 nearby would not constitute exigent circumstances. It's  
9 certainly easy enough for the police to turn off the water  
10 so the drugs can be flushed --

11 QUESTION: How are they going to turn off -- you  
12 mean, they're going to go into the basement of the  
13 building and turn the water --

14 QUESTION: You must have these fancy new toilets  
15 in your home. Ours has a tank. You can shut off the  
16 water. You get one flush anyway.

17 (Laughter.)

18 QUESTION: You've got to try something else.

19 MR. KARPE: Well, I'm not arguing for the one-  
20 flush rule, but --

21 (Laughter.)

22 MR. KARPE: The -- many toilets in apartments  
23 and hotels do not have tanks. They can be easily flushed  
24 off from outside the room. And I suppose the police could  
25 even put a tap on the sewer line so that the evidence is

1 recovered. It fact, it has greater weight, so the penalty  
2 would be greater, because then instead of just having the  
3 drug, you've got the drug in solution.

4 But in any case, this would be a procrustean  
5 sort of application, which Mr. Richards certainly wouldn't  
6 fit. He was not poised to destroy evidence. He -- there  
7 was no indication that he was going to be armed or  
8 violently resist, and it will fit a lot of people even  
9 less than it fit Mr. Richards. Certainly someone who has  
10 a marijuana-growing operation outside the house would not  
11 fit this sort of --

12 QUESTION: Well, under what circumstances, Mr.  
13 Karpe, do you think the police may dispense with the  
14 knock-and-announce rule in connection with a, say, a drug  
15 search?

16 MR. KARPE: Mr. Chief Justice, I believe when  
17 there are particular circumstances indicating there are  
18 exigent circumstances present, or --

19 QUESTION: What would some of those indications  
20 be? I mean, how easy would your rule be to apply in  
21 practice?

22 MR. KARPE: Mr. Chief Justice, there's usually  
23 an informant involved in these things who's been in the  
24 home, who can see whether there's provisions being made  
25 for destruction of property, see whether the people are



1 armed.

2 Certainly in Wilson v. Arkansas the Court was  
3 aware of a number of factors that could have led the court  
4 to conclude that a blanket rule was acceptable and the  
5 Court wisely chose not to do so.

6 QUESTION: Would it be enough, Mr. Karpe, if the  
7 police had probable cause to believe that there were  
8 automatic weapons on the premises?

9 MR. KARPE: Justice Stevens, that again would  
10 approach a blanket sort of rule.

11 QUESTION: Are you suggesting that in all drug  
12 arrest cases that we should assume there are automatic  
13 weapons present? It seems to me if you are you may be  
14 suggesting an automatic rule makes a lot of sense.

15 MR. KARPE: Well, I -- Justice Stevens, I don't  
16 know if I understood the question correctly, but I don't  
17 think you can necessarily draw the conclusion each time  
18 there's drugs that there's both weapons and --

19 QUESTION: No, I understand that. I'm saying if  
20 the application for a warrant indicates that police have  
21 probable cause to believe that the people who have the  
22 drugs also are armed with automatic weapons, would that  
23 justify a no-knock entry?

24 MR. KARPE: Justice Stevens, I think you'd have  
25 to look at the particular --

1 QUESTION: Well, those are the facts.

2 MR. KARPE: There has to be --

3 QUESTION: The facts are that there are three  
4 men in the premises, in the motel room. It is known that  
5 they have automatic weapons. They have a large quantity  
6 of drugs with them. That's all. They don't know anything  
7 about their criminal history, but they know they're armed  
8 in that way. Would that justify a no-knock entry, in your  
9 view?

10 MR. KARPE: No, I don't believe so.

11 QUESTION: When would it be justified, then?

12 MR. KARPE: When there would be a particular  
13 circumstance that --

14 QUESTION: But what more than I've told you?  
15 What would be an additional circumstance that would  
16 justify it?

17 MR. KARPE: That threats had been made to other  
18 persons, that they had indicated some sort of intention to  
19 violently resist, that --

20 QUESTION: I see.

21 QUESTION: These are violent people with  
22 automatic weapons, rather than peaceful people with  
23 automatic weapons.

24 (Laughter.)

25 MR. KARPE: Justice Scalia, some people collect

1 automatic weapons.

2 (Laughter.)

3 QUESTION: And take them to the hotel room when  
4 they're in Wisconsin.

5 (Laughter.)

6 QUESTION: I think your reluctance to answer the  
7 question to indicate that the police have the right to  
8 enter when automatic weapons are present is because you  
9 think we're going to say, oh, well, that's a per se rule.  
10 But at some level you have to have certain standards and  
11 rules given by this Court for the police officer to act  
12 upon, and it seems to me that the presence of weapons is a  
13 perfectly sensible rule.

14 MR. KARPE: Well, I think the reasonable  
15 suspicion standard is the applicable standard here. It's  
16 one of the relatively simpler concepts under the Fourth  
17 Amendment. I think it's easy for the police to apply and  
18 should apply in this case.

19 QUESTION: What about reasonable suspicion of  
20 automatic weapons? Then that would not be enough in your  
21 view?

22 MR. KARPE: No.

23 QUESTION: So reasonable suspicion of what?

24 MR. KARPE: Reasonable suspicion that the  
25 occupants in fact have the weapons, were prone to use

1       them, weren't just collecting them --

2               QUESTION: Well, are you serious about saying,  
3       this is a drug bust and you would have to show that the  
4       automatic weapons that the putative defendants had weren't  
5       just being collected in the motel room?

6               (Laughter.)

7               MR. KARPE: Perhaps -- perhaps, Mr. Chief  
8       Justice, it would depend on the quantity of the drugs  
9       involved as well, but there would have to be a regard  
10      towards the particularity of the circumstances.

11              QUESTION: What quantity of the automatic  
12      weapons? I suppose if you had, you know, a couple of  
13      hundred of them, maybe they were collecting them, right?  
14      I mean, more than they could use.

15              If -- just suppose for a moment that I thought  
16      it was enough if you had probable cause to believe that  
17      there were weapons in the room, that that would be enough  
18      to go crashing in, weapons, you know, at the ready. If I  
19      think that's enough, why wouldn't it be enough simply to  
20      know that this is a drug dealer, assuming I can establish  
21      that 95 percent of the time drug dealers are armed?

22              MR. KARPE: Justice Scalia, I believe that the  
23      answer to that lies in the fact that drug dealers do not  
24      necessarily have arms to use against the police but rather  
25      to defend against people who might steal from them, to

1     enforce debts, and particularly many people have firearms  
2     just around, not for particularly drug-related purposes,  
3     even though they might be drug suspects.

4             This -- the knock-and-announce rule protects the  
5     innocent and the relatively innocent as well, and if I may  
6     reserve my remaining time.

7             QUESTION: Very well, Mr. Karpe.

8             MR. KARPE: Thank you.

9             QUESTION: General Doyle, we'll hear from you.

10            ORAL ARGUMENT OF JAMES E. DOYLE

11            ON BEHALF OF THE RESPONDENT

12            GENERAL DOYLE: Mr. Chief Justice, and may it  
13     please the Court:

14            The Wisconsin supreme court has made a common  
15     sense determination, in light of the modern-day drug  
16     trade, that in the execution of search warrants for -- in  
17     felony drug-dealing cases it is reasonable under Fourth  
18     Amendment standards for the officers to knock, announce  
19     their presence, and give the occupants an opportunity to  
20     react.

21            There is discussion about what an invasive,  
22     intrusive entry into the home this search is, and we  
23     agree. Agents inform me that if you had videotapes of a  
24     no-knock search and a knock search in a drug case, you  
25     would be -- you would see almost exactly the same events



1 occur on that videotape, that even in the knock case,  
2 there will be an overpowering number of officers that are  
3 going to enter those premises. The officers will have  
4 their guns drawn. The officers will be shouting, police,  
5 police, search warrant.

6 The officers will round up all of the occupants  
7 on those premises. Those occupants may sometimes be  
8 children. Those occupants may sometimes be elderly.  
9 Those occupants -- because in Wisconsin we have no rule  
10 against night-time searches, most of these searches in  
11 fact occur at night. Those occupants may frequently be  
12 sleeping.

13 Whether there is a knock-and-announce or a no-  
14 knock, there will be a rapid, overpowering securing of the  
15 premises by the law enforcement officers who enter.

16 QUESTION: General Doyle --

17 QUESTION: How long do you wait after announce  
18 and a knock, a knock and announce? I mean, you knock,  
19 announce, nothing happens. How long does the officer  
20 typically wait before they do crash in?

21 GENERAL DOYLE: We -- in Wisconsin -- it depends  
22 somewhat on the circumstances, the size of the room. A  
23 motel room is going to be less than a mansion, but roughly  
24 10 to 15 seconds, enough time for somebody to come to the  
25 door and open the door.

1 QUESTION: Just enough time for somebody who  
2 would hear the knock to come?

3 GENERAL DOYLE: That's correct.

4 QUESTION: General Doyle, if you're correct that  
5 the videotapes would show the same scenario regardless of  
6 whether there's a knock or no-knock, doesn't that suggest  
7 that the no-knock -- that the requirement of a knock  
8 doesn't really harm the law enforcement operation?

9 GENERAL DOYLE: It harms law enforcement  
10 enormously, because in circumstances, and we would argue  
11 in drug-dealing cases, because that knock and announce,  
12 it's 10 to 15 seconds of waiting, and then it's however  
13 long a time it takes to get organized then to come through  
14 the door.

15 QUESTION: Right.

16 GENERAL DOYLE: And during that time a person on  
17 the other side who is going to train a gun at that door  
18 has full time to do it, or a person who is intent on  
19 destroying narcotics may do it.

20 There's a suggestion in this case that there's  
21 no evidence that anybody was going to destroy drugs.  
22 Well, it's interesting, these drugs were stored in the  
23 bathroom. That -- and under Wisconsin law, like under  
24 most law, even if you don't get them all destroyed, the  
25 fewer drugs they find the lesser penalties you have under

1     our drug laws.

2                 QUESTION: Well, if you're going to rely on  
3     destruction of evidence, would it not be true that in  
4     every drug case there is a possibility that some of the  
5     drugs will be flushed down the toilet --

6                 GENERAL DOYLE: It is true --

7                 QUESTION: -- and that therefore you don't  
8     really have to rely on the violence at all.

9                 GENERAL DOYLE: It is true that in every drug  
10    case there will be destruction, there is the potential of  
11    destruction. The Wisconsin blanket rule applies only to  
12    felony drug cases because of the convergence in a violent  
13    and dangerous form of commerce of weapons and the  
14    destruction of drugs.

15                QUESTION: My question really, General Doyle, is  
16    if the potential for destruction of evidence is sufficient  
17    by itself to justify no-knock, why shouldn't the rule  
18    encompass even misdemeanor cases, because there always is  
19    that potential there, it seems to me.

20                GENERAL DOYLE: I think in most misdemeanor  
21    cases, even on a case-by-case analysis with the police  
22    officers going to the door in a drug case, that in that  
23    case-by-case analysis -- there may be some exceptions to  
24    it, but in that case-by-case analysis the balance would  
25    weigh heavily on the side of the police.

1 QUESTION: Would it ever weigh the other way if  
2 the destruction of evidence is enough?

3 GENERAL DOYLE: In a low-level -- in a case-by-  
4 case analysis, in a low-level drug case in which there's  
5 information that it is only the grandmother who is on the  
6 premises, perhaps.

7 QUESTION: But she's fast enough to get to the  
8 bathroom in 10 seconds.

9 (Laughter.)

10 GENERAL DOYLE: Well, she may be, but as I say,  
11 in a case-by-case analysis with -- in a misdemeanor simple  
12 possession of marijuana with a grandmother on the  
13 premises, perhaps it is sufficient. Perhaps in that  
14 balance you would come out with a knock-and-announce, but  
15 what we are advocating --

16 QUESTION: I'm suggesting that you rule out --  
17 you say you never need to knock-and-announce if  
18 destruction of evidence is a sufficient exigent  
19 circumstance. I don't know why you ever have to knock and  
20 announce, because there's always the danger, it seems to  
21 me, that you get some drugs flushed down the toilet.

22 GENERAL DOYLE: I believe you do not have to  
23 knock and announce where you have reasonable suspicion to  
24 believe that destruction of evidence will occur.

25 The question before the Court here, I believe,

1 is whether you can apply that in a blanket way, as the  
2 Wisconsin supreme court has done in felony drug-dealing  
3 cases, or whether in each individual case we have to have  
4 a suppression hearing in which those specific facts are  
5 laid out.

6 QUESTION: Well, may I ask you whether we're  
7 talking about anything but formality, and correct me if  
8 I'm wrong on these points. I assume that most drug cases  
9 do have a suppression hearing. It may be a simple one.  
10 It may not take very long, but usually there's a  
11 suppression motion.

12 Number 2, on the very premises of your argument,  
13 if you have to justify the failure to knock and announce,  
14 you're going to be able to do it, I would assume, without  
15 too much trouble. In fact, I assume you could do it with  
16 virtually no trouble in most cases.

17 There will occasionally be a rare case in which,  
18 for example, the informant has told you there are no guns,  
19 the marijuana is stored in bales out in the barn so that  
20 there's no risk of destruction, and in those rare cases  
21 you wouldn't be able to justify the failure to knock and  
22 announce, but in most of them you could.

23 So are we talking really about the need for  
24 anything more than dispensing with what is probably in  
25 most cases almost a formality in the proof that you will



1     adduce, the evidence that you will adduce at the  
2     suppression hearing?

3             GENERAL DOYLE:   Well, on the question of whether  
4     it will be a formality, much depends on what position this  
5     Court adopts in this case.   If you were to --

6             QUESTION:   Well, let's --

7             GENERAL DOYLE:   -- adopt the petitioner's  
8     position it is much more than a formality.   We'd have  
9     detailed hearings --

10            QUESTION:   Well, let's assume this Court says,  
11    look, we are perfectly willing to recognize that in most  
12    cases involving drug dealers the State will in fact have  
13    valid grounds for dispensing with knock-and-announce,  
14    because the marijuana won't be in the barn and the  
15    informant will not have said, these people are unarmed.

16            So that we said, we recognize that in most cases  
17    they'll be able to make their proof without great  
18    difficulty, but we're not going to adopt a blanket rule  
19    for the simple reason that if we do we're going to be  
20    starting down the road to more blanket exceptions, and  
21    more blanket exceptions after that.

22            So that in order to preserve the particularized  
23    inquiry value, which is a real value in the long run,  
24    we're still going to require the State in effect to make  
25    its proof knowing perfectly well that the State can do it

1 in most cases.

2 Now, that, I take it, would be a fairly benign  
3 atmosphere for you to present your proof in individual  
4 cases.

5 Assuming we said something like that, are we  
6 then in this case arguing about anything much more than a  
7 formality?

8 GENERAL DOYLE: Yes, I believe you are, Justice  
9 Souter.

10 Let me say that the position you've laid out, as  
11 I understand it, is essentially that of the Solicitor  
12 General, and it's one that we would prevail on in this  
13 case under the record and that we would accept, but I do  
14 think that there are values and reasons to go beyond it  
15 for the blanket rule, and there are two of them.

16 The first is that the officer at the scene, as  
17 he or she approaches the door, or as they approach the  
18 door in drug cases is -- will be, under the blanket rule,  
19 able to make a strategic, tactical decision not worrying  
20 about whether or not it will meet a reasonableness Fourth  
21 Amendment test at a later time down the road.

22 And in that regard I think it is -- this case is  
23 very much in line with Michigan v. Summers, in which in  
24 the manner of the execution of the search warrant this  
25 Court did adopt a bright line rule that permitted officers

1 to round up the people on the premises where a search  
2 warrant was being executed.

3 And here we are talking, just as in Michigan v.  
4 Summers, with the manner of the execution of the search  
5 warrant, and I believe that police officers, for their  
6 safety, for the safety of the occupants within, should be  
7 able to make those decisions on the entry based on their  
8 tactical and strategic decisions.

9 Now, they may decide for reasons that were  
10 mentioned earlier by my opponent that in some of those  
11 instances it may not be safe and wise to come barging in.  
12 It may be safer for everyone to come in a different way,  
13 but that decision is a strategic and tactical one.

14 The second issue is, I think that over time you  
15 will see those relatively benign suppression hearings  
16 become very complicated hearings about what additional  
17 facts did the police know. Okay, you --

18 QUESTION: Well, wouldn't part of it be who had  
19 the burden of proof in those hearings? I mean, if the  
20 State had the burden of proof at the suppression that it  
21 didn't know anything more, it's very hard to prove a  
22 negative.

23 GENERAL DOYLE: That's correct, Mr. Chief  
24 Justice. If we have to prove these were the only facts we  
25 had, and we had no further facts -- we knew he was a drug

1 dealer, felony drug dealer, and that's what we knew, and  
2 then we go through a hearing on what more did you know, if  
3 we have to prove what we didn't know, it becomes almost an  
4 impossibility.

5 I think you will also be led, Justice Souter,  
6 into a series of hearings and a whole area of new issues  
7 of law for you to be resolved about what further proof is  
8 enough to overcome the drug-dealing exception. All  
9 right --

10 QUESTION: General Doyle, there are two  
11 questions that I have with respect to your argument about  
12 how complicated this will be. One is, what do we do about  
13 Wilson, where it was a drug case, and where the police  
14 knew in advance that she was armed? Was that just an idle  
15 exercise?

16 And the second question is, in this very case  
17 there was one justice on the Wisconsin supreme court who  
18 said, I think that no-knock is generally required, but  
19 it's obvious that in this case it could be dispensed with,  
20 so it didn't seem like it's a very complicated exercise if  
21 you apply the rule, and if you don't apply the rule,  
22 aren't we just gutting what we said a couple of years ago?

23 GENERAL DOYLE: Justice Ginsburg, I think Wilson  
24 v. Arkansas is -- was not a useless exercise. I think  
25 this Court clearly said that the knock-and-announce is

1 part of the reasonableness consideration of the Fourth  
2 Amendment.

3 QUESTION: And we said that in the case of a  
4 drug offense in which the police were told that the person  
5 they were going in to apprehend was armed.

6 GENERAL DOYLE: That's correct, and you made it  
7 clear in Wilson v. Arkansas that the facts, and whether  
8 there -- whether it was justified to enter without a no-  
9 knock, would be remanded to the Arkansas courts to be  
10 determined, and this Court also made it clear in Wilson v.  
11 Arkansas that it was -- you were going to leave it to the  
12 State courts at least for a while to begin to determine  
13 those times in which legitimate law enforcement concerns  
14 outweighed the requirement of knock-and-announce.

15 As I read Wilson v. Arkansas, the Arkansas  
16 supreme court just sort of put it to you pretty bluntly.  
17 I mean, they said this doesn't have any Fourth Amendment  
18 implications, and I think this Court said it does have  
19 Fourth Amendment implications, and we are here agreeing,  
20 and in fact the Wisconsin courts have always agreed it has  
21 Fourth Amendment implications.

22 QUESTION: But we review a judgment, not an  
23 opinion, so I take it from what you're saying today that  
24 we really should have affirmed, not remanded in Wilson,  
25 because the factors that you're arguing for -- drug



1 offense, arms -- were present.

2 GENERAL DOYLE: I think that, if I might say so,  
3 you were correct at remanding to have the Arkansas court  
4 system consider the facts of that case under the -- in  
5 light of the determination that knock-and-announce is part  
6 of the reasonableness requirement of the Fourth Amendment,  
7 and you sent it back to a State court to make that  
8 determination.

9 QUESTION: We don't always determine alternative  
10 grounds for affirmance on our own. We often remand where  
11 there's an alternative ground argued. Isn't that right?

12 GENERAL DOYLE: Well, that's correct, and again,  
13 after Wilson v. Arkansas, as this Court made it very  
14 clear, it said that failure to knock and announce might  
15 violate the Fourth Amendment, and that you were going to  
16 leave it to States. We --

17 QUESTION: Then if we do that -- I mean, what  
18 I'd be rather worried about here is, if a blanket rule  
19 crime-by-crime is constitutional, Wilson v. Arkansas  
20 doesn't mean too much, I would think, because after all,  
21 most people who are arrested and searched have committed,  
22 at least probable cause to believe they've committed  
23 rather serious crimes.

24 So if a State could go through its criminal code  
25 and sort of block off every serious crime, there aren't

1 too many instances, are there, in which it would have to  
2 follow the Wilson v. Arkansas rule, while at least if you  
3 make it case-by-case you weed out at some hearing price  
4 the instances where there really wasn't a good reason to  
5 dispense with the requirement. That's what I would be  
6 concerned about.

7 GENERAL DOYLE: I think it is difficult, Justice  
8 Breyer, to come up with another category of cases --

9 QUESTION: A murder, for example, or armed bank  
10 robbery where people are injured, and let's try, you know,  
11 serious assaults, and we could go through and find lots of  
12 rather serious crimes in a criminal code.

13 GENERAL DOYLE: There is no doubt, I think, in a  
14 bank robbery where people are injured on the facts of that  
15 particular case there would be no problem with knock and  
16 announce, assuming it was close in time. To say, however,  
17 that all murders or all bank robberies are exempt may be  
18 another case that will come along, but I would suggest  
19 that the drug-dealing case goes well beyond them,  
20 because --

21 QUESTION: So all felony -- felonious use of  
22 marijuana is serious, and murder is subject to case-by-  
23 case?

24 GENERAL DOYLE: Drug-dealing has -- is a  
25 commerce in this country. It is an illegal commerce. It

1 is a commerce, unfortunately, that is marked by danger and  
2 violence.

3 QUESTION: I'm not saying it isn't serious. My  
4 point is, many, many crimes are serious.

5 GENERAL DOYLE: That's correct, Your Honor, many  
6 crimes are serious, but that drug-dealing fits into a  
7 particular -- there is not a commerce in murders or in  
8 bank robberies. There is a commerce in drug-dealing, and  
9 it is a commerce that is characterized by the use of  
10 weapons, by the willingness to use weapons, by gang-  
11 domination, by --

12 QUESTION: That's currently so, General Doyle,  
13 but you could have said the same thing about moonshining  
14 during Prohibition. It was the kind of a crime that  
15 attracted the mob, and there were machine guns and a lot  
16 of violence.

17 I expect you wouldn't say the same thing about  
18 it today. Now, if we're going to adopt a constitutional  
19 rule, does this constitutional rule change as the -- you  
20 know, as the proclivities of criminals change?

21 Why not just leave it the general rule that  
22 where you have cause to believe that you'll be endangered,  
23 or that drugs -- or what you're searching for will be  
24 destroyed, you can enter without knocking, and as things  
25 now are that would work out that in 99 percent of the drug

1 cases you'll be able to do it.

2 But if the culture changes and drug people  
3 become very laid back and pacific instead of the violent  
4 people they are, then we don't have to adopt a new  
5 constitutional rule.

6 GENERAL DOYLE: What I am asking this Court to  
7 do is to, as you did in Maryland v. Wilson, is to  
8 determine reasonableness in a category of cases, and that  
9 reasonable test --

10 QUESTION: May I ask you -- may I ask you in  
11 doing that if you have any statistical evidence that you  
12 want to point out to us that demonstrates that it is more  
13 dangerous to officers to knock and announce than not to?  
14 Is there any place we could look for that?

15 GENERAL DOYLE: Your Honor, the best that we can  
16 do is what is in our brief, which shows that drug-dealing  
17 is dangerous and it's dangerous to police, but frankly --

18 QUESTION: General, I mean, as far as we know  
19 they're as apt to be hurt if they don't knock and announce  
20 as if they do. We aren't able to make that decision,  
21 apparently.

22 GENERAL DOYLE: As a statistical matter I don't  
23 think you can make that decision because I agree, there's  
24 never been a scientific peer-reviewed study on if you  
25 knock and announce or you don't knock and announce, what

1 happens.

2 But as I think Justice Scalia mentioned earlier,  
3 that's a judgment that's made by police officers every day  
4 as they approach --

5 QUESTION: But your State supreme court made the  
6 judgment here, or so you're saying that we should not rely  
7 on the danger of knocking versus danger of not knocking.

8 GENERAL DOYLE: I believe that you should rely  
9 that it is frequently -- it is dangerous for police to  
10 knock and announce their presence, and --

11 QUESTION: Unless we could say that each State  
12 supreme court is capable of making that judgment. Then  
13 one State says it's more dangerous, the other State says  
14 it isn't, and then we have to accept that, but that --

15 GENERAL DOYLE: Well --

16 QUESTION: I don't think that we would adopt  
17 that rule.

18 GENERAL DOYLE: Well, we're asking you to say  
19 that it's permissible under the Fourth Amendment. Whether  
20 States want to go to the full extent of what you declare  
21 to be the limit that they can go to under the Fourth  
22 Amendment will be for different States to make that  
23 decision.

24 QUESTION: General Doyle, isn't it true that  
25 just as there are no statistics comparing the relative



1 danger with a knock and without a knock, isn't it also  
2 true that there are at least some drug cases in which it's  
3 the grandmother example and the marijuana growing in the  
4 backyard, and there really isn't any statistical study  
5 telling us what percentage are the dangerous ones and what  
6 percentage are the relatively not dangerous.

7 GENERAL DOYLE: Well, that's correct, Justice  
8 Stevens, but also, on those kinds of hypotheticals there  
9 are certainly facts presented in our brief, and I think to  
10 the Court's common knowledge, that the fact that it's an  
11 elderly person, or the fact, for example, of those Justice  
12 Department numbers --

13 QUESTION: Well, you're going to say they  
14 generally would not bust in in those cases, but they would  
15 have a constitutional right to do so under your rule.

16 GENERAL DOYLE: That's correct, and  
17 unfortunately in this day and age, because they're elderly  
18 may not mean they're not going to be violent.

19 QUESTION: No.

20 QUESTION: Thank you, General Doyle.  
21 Mr. Estrada.

22 ORAL ARGUMENT OF MIGUEL A. ESTRADA  
23 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,  
24 SUPPORTING THE RESPONDENT

25 MR. ESTRADA: Thank you, Mr. Chief Justice, and

1 may it please the Court:

2 In our view, law officers who have a warrant to  
3 search for evidence of narcotics dealing ordinarily will  
4 be justified in concluding that announcement to the  
5 dwelling, or to those in the dwelling will endanger the  
6 safety of the officers and create a significant risk that  
7 evidence will be destroyed. Therefore --

8 QUESTION: Rebus sic stantibus, right? Under  
9 current circumstances. That might change in the future.  
10 Is that the Government's view?

11 MR. ESTRADA: Well, that is right. A  
12 fundamental point in this case, Justice Scalia, is that  
13 all that is at issue in this case is what can be a basis  
14 for a reasonable belief on the part of the officers that  
15 they will be in danger, or that the drugs will be  
16 destroyed, and our fundamental point is that a judgment  
17 based on past experience with similar cases is just as  
18 valid a ground for a reasonable belief on the part of the  
19 officer as may be the circumstances that confront the  
20 officer at the specific time of the entry.

21 And in our view those circumstances, if nothing  
22 more is known, will ordinarily warrant the officer in  
23 thinking that those dangers exist and to make an  
24 unannounced entry. On the other --

25 QUESTION: Mr. Estrada, one of the things that

1 Chief Judge Abrahamson said in her concurring opinion was,  
2 well, if you're going to go by danger to the police  
3 officer, more police officers are killed responding to  
4 calls, domestic violence calls than in drug raids, so if  
5 it's danger to the police officer and you could have a  
6 blanket rule for drug raids, why not a blanket rule for  
7 domestic violence situations?

8 MR. ESTRADA: Well, I don't know that there is  
9 any reason to think that in those particular cases the  
10 manner of entry makes any difference.

11 Fundamentally as well, we're dealing in this  
12 case with a class of cases in which the fundamental  
13 intrusion is by right. That is to say, a neutral and  
14 detached magistrate has already determined that the  
15 officers will come in.

16 In that other category of cases it is more  
17 likely to be the case that someone has made a call on the  
18 telephone indicating that there is a need for the officer  
19 simply to come and investigate, and it's not necessarily  
20 true in those cases that you know anything other than the  
21 fact that there has been a call as the basis for any  
22 further official action.

23 QUESTION: But what about the statistics that  
24 inform the officer, if you're going to respond to one of  
25 those calls, you're walking into a very dangerous

1 situation where your life is going to be on the line.

2 MR. ESTRADA: Well, that may be true, but it is  
3 not -- and just to put our point in context, our point in  
4 this case is that that may have significance in the  
5 officer's reasonable conduct. It is a fact that the  
6 officer may take into account. There may be other facts.  
7 I don't know that much about --

8 QUESTION: But I'm just wondering why we can't  
9 have blanket rules for all these dangerous situations.  
10 What is it about the drug raid that distinguishes it from  
11 others if danger to the police officer is our standard?

12 MR. ESTRADA: It may be the case that there are  
13 other cases in which similar -- in which a similar rule is  
14 warranted, Justice Ginsburg, but I think that the class of  
15 cases that we have here are significant in that we have  
16 the courts all over the country telling this Court that  
17 this is a class of cases in which there is a remarkable  
18 danger of violence, and a high danger that the evidence  
19 will be destroyed, and this Court --

20 QUESTION: You also identify -- you have a  
21 warrant issued by a magistrate.

22 MR. ESTRADA: Well, that's right, and as I  
23 pointed out earlier in that other class of cases it is  
24 likely to be the case that the fundamental intrusion into  
25 the home has not been authorized.

1 QUESTION: You are suggesting a general  
2 standard, not a per se rule. Is that an appropriate  
3 characterization of your brief and of your argument?

4 MR. ESTRADA: That is right, Justice Kennedy.  
5 All we're saying is that the standard that is offered by  
6 Mr. Karpe is so low that in the absence of any further  
7 information the officer's knowledge that the case involves  
8 drug-dealing will itself be a reasonable basis for a case-  
9 specific reasonable belief that there is danger to the  
10 officers.

11 QUESTION: Well, you're not supporting the  
12 Wisconsin rule in any event, the Wisconsin supreme court  
13 per se rule.

14 MR. ESTRADA: No, we're not.

15 QUESTION: And would you support the rule if we  
16 were only dealing with situations where the magistrate had  
17 specifically determined they should enter without  
18 knocking? What about that?

19 MR. ESTRADA: That is not a course that as I  
20 read this Court's cases is open to the Court, because it  
21 was an argument that was made in the Dalia case.

22 QUESTION: So the statutes in Nebraska and Utah  
23 to that effect presumably are invalid?

24 MR. ESTRADA: No. They are not constitutionally  
25 required. In making the judgment that a no-knock entry



1 may be okay, it is possible for a State or for the Federal  
2 rules to have that sort of a mechanism.

3 My point is that it is not constitutionally  
4 required, because in the Dalia case this Court confronted  
5 that issue, whether the judge should authorize in advance  
6 an unannounced entry, and the Court answered that issue in  
7 the negative, so it may be a good --

8 QUESTION: Yes, but what about those States that  
9 do, by statute, provide that the magistrate will consider  
10 and determine whether or not there can be a no-knock  
11 entry? Now, if that's the scheme, then is it  
12 constitutional to have a per se rule?

13 MR. ESTRADA: It is -- it likely is, if the  
14 judge has made a finding that that is a course that is  
15 warranted in the circumstances. My point was solely to  
16 say that that's not a course that can be required under  
17 the Fourth Amendment, because that is an issue that the  
18 Court has already considered in the Dalia case, and the  
19 answer was in the negative.

20 QUESTION: I'm curious to know, if the  
21 magistrate makes the determination that you must knock,  
22 directs the officer to knock as part of the warrant, and  
23 the officers see something that they think overrides the  
24 judgment, and they don't knock, that does not necessarily  
25 invalidate the search, does it?

1 MR. ESTRADA: That is right, and let me take  
2 that as an opportunity to answer something that Mr. Karpe  
3 said.

4 When the warrant was sought in this case it was  
5 in 1991, and at that time the State courts in this State  
6 had a rule that a mere showing that the case involves  
7 drug-dealing and an assertion that those cases are likely  
8 to be categorically dangerous was insufficient to  
9 authorize a judge to issue a no-knock warrant, so all that  
10 the judge in this case did was to say that the facts that  
11 are in this case had no bearing on whether a -- whether  
12 the officers should make a no-knock entry.

13 It is not that the judge made a determination  
14 under the right Fourth Amendment standard that the  
15 circumstances in this case did not justify a no-knock  
16 entry. Further --

17 QUESTION: Mr. Estrada, what do you do about  
18 General Doyle's concern that it's fine to have this  
19 general rule, but it will always be controverted at the  
20 exclusion hearing, where the defendant will come in and  
21 say, well, you knew that we didn't have -- you knew that  
22 we didn't have weapons.

23 MR. ESTRADA: Well, I think that in our view  
24 someone would not be entitled to a hearing unless he can  
25 point to objectively ascertainable facts that indicate

1     that prima facie at least the conduct was clearly  
2     unreasonable.

3             In the Federal system there are very few  
4     suppression hearings held, because unless someone is able  
5     to come forth with a prima facie showing that there is, in  
6     fact, a Fourth Amendment violation, one is not entitled to  
7     have a hearing so that one may inquire.

8             QUESTION: Well, what does that require to show,  
9     that we didn't have weapons? In fact, we didn't have  
10    weapons.

11            MR. ESTRADA: Well --

12            QUESTION: And I say, you knew it. Is that  
13    enough to get a hearing?

14            MR. ESTRADA: Well, you would have to have a  
15    specific factual basis for the imputation that they knew  
16    it, and in the absence of that, no hearing would be  
17    required.

18            QUESTION: On whom is the burden of proof?

19            MR. ESTRADA: In a search that is conducted  
20    under a search warrant, Mr. Chief Justice, the burden  
21    would be on the defendant. If a search is conducted in  
22    the absence of such a warrant, it would be on the  
23    Government to show that the conduct was lawful.

24            QUESTION: Well, let me just take -- say you're  
25    not in a drug case but a financial crime or something like

1 that, and the police had a warrant, went in without  
2 knocking or announcing, and the defendant proved just  
3 that, that this was a financial crimes case, and they came  
4 in with a warrant, but they did not knock and announce.  
5 Would that have satisfied their burden?

6 MR. ESTRADA: May I answer, Mr. Chief Justice?

7 QUESTION: Yes.

8 MR. ESTRADA: Under the Wilson case, given that  
9 the background rule is that they should not, yes.

10 QUESTION: Thank you, Mr. Estrada.

11 Mr. Karpe, you have 4 minutes remaining.

12 REBUTTAL ARGUMENT OF DAVID R. KARPE

13 ON BEHALF OF THE PETITIONER

14 MR. KARPE: In Wilson v. Arkansas, this Court  
15 gave the State courts an inch, the Wisconsin State court  
16 took a mile, drained the blood out of the meaning of  
17 Wisconsin -- excuse me, of Wilson v. Arkansas.

18 The instances where blanket rules have been  
19 applied by this Court don't apply. Michigan v. Summers  
20 regarded simply a detention while the search was going on.  
21 It wasn't even about the search.

22 In United States v. Dunn, 480 United States 294  
23 at page 301, footnote 4, this Court rejected a blanket  
24 rule even for curtilage of a house, and I made a mistake,  
25 we did not include this in the brief. In fact, it wasn't

1 until I read the as-to-yet undistributed Wayne County  
2 amicus brief that I was made aware of the Dunn case.

3 In Maryland v. Buie, this Court rejected a  
4 blanket rule involving a search of the house.

5 If I could speak to the manner of drug storage  
6 in this particular case, yes, the drugs were in the  
7 bathroom, but behind a ceiling tile, wrapped up several  
8 times in different bags, and again, among the packaging  
9 there were 120 separate little ziplock gem packs.

10 This rule is not to be given a grudging  
11 application by this Court. Then the blanket exception  
12 essentially swallows the rule. It applies to all sorts of  
13 offenses. In footnote 2 of a lower court opinion it  
14 refers even to maintaining a dwelling for use of drugs. I  
15 mean, it refers to obtaining drugs by contraband.

16 One of the very important purposes of this rule  
17 is to avoid unreasonable error. Certainly we have to  
18 tolerate some police errors, but it must be errors of the  
19 police acting as reasonable people.

20 QUESTION: Mr. Karpe, suppose we were to take  
21 Wisconsin's fallback position that not in every drug case,  
22 but at least when the object of the warrant is a drug  
23 dealer, at least in drug dealer cases as opposed to houses  
24 known to have drugs, where you're dealing with a drug  
25 dealer, you can infer that there will be arms, you can



1 infer that there's going to be an effort to destroy  
2 evidence, so why not -- and that's a narrower rule than  
3 any drug case. Why won't that work?

4 MR. KARPE: Justice Ginsburg, that would apply  
5 to two college kids in a dorm room that doesn't even have  
6 a toilet that pass a joint back and forth. They're  
7 committing a felony in Wisconsin, distribution, and  
8 there's no --

9 QUESTION: But I'm narrowing it, as I think  
10 General Doyle did in the brief, to a known drug dealer.  
11 In the case of a drug dealer, somebody who distributes  
12 grand-scale drugs, drug dealers more often than not will  
13 have guns, and more often than not will try to destroy  
14 evidence if they have notice, so we'll narrow it -- remove  
15 your two kids in a college dorm and just take the dealer.

16 MR. KARPE: How about the single mother with six  
17 kids who's selling joints out the back door? Would that  
18 apply to her? Do we really want the police crashing in in  
19 that sort of situation?

20 QUESTION: No. I'm taking all those cases out,  
21 and we're concentrating on the dealer.

22 MR. KARPE: Well, I guess it's hard -- it's hard  
23 perhaps to draw the line. The more drugs someone has, the  
24 harder it is going to be to destroy them. I think that  
25 the -- that rule would have problems, big problems in

1 application just to decide at what point and what quantity  
2 of drug are we going to decide that the rule would apply.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Karpe.  
4 The case is submitted.

5 (Whereupon, at 12:05 p.m., the case in the  
6 above-entitled matter was submitted.)  
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## CERTIFICATION

*Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:*

STEINEY RICHARDS, Petitioner v. WISCONSIN  
CASE NO. 96-5955

*and that these attached pages constitutes the original transcript of the proceedings for the records of the court.*

BY Ann Marie Federico-----

(REPORTER)