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Constitutional Law: Knock-And-Announce Violations and the Purposeful Enforcement of the Exclusionary Rule

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CONSTITUTIONAL LAW: KNOCK-AND-ANNOUNCE VIOLATIONS AND THE PURPOSEFUL ENFORCEMENT OF THE EXCLUSIONARY RULE

Hudson v. Michigan, 126 S. Ct. 2159 (2006)

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Officers obtained a warrant to search for drugs and firearms in Petitioner's home.[1] Although the officers announced their presence, they waited only three to five seconds before entering the unlocked residence.[2] Once inside, they discovered large quantities of drugs and a loaded firearm.[3] Petitioner argued that the premature entry violated his Fourth Amendment rights, and he moved to suppress the evidence obtained in the search.[4] The trial court granted his motion, but the Michigan Court of Appeals reversed, holding that even when the knock-and-announce rule is violated, suppression is unnecessary when the search is conducted pursuant to a valid warrant.[5] Petitioner was then convicted of drug possession and appealed to the United States Supreme Court.[6] The Michigan Court of Appeals affirmed his conviction and the Michigan Supreme Court declined review.[7] The United States Supreme Court granted certiorari,[8] and, in affirming the Michigan Court of Appeals' decision, HELD that knock-and-announce violations do not trigger the exclusionary rule.[9]

The Fourth Amendment, in relevant part, provides 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."[10] The

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* This Comment is dedicated to my parents, Ken and Kathy Mattern, for their guidance, encouragement, and love.

1. Hudson v. Michigan, 126 S. Ct. 2159, 2162 (2006).
2. *Id.*
3. *Id.* Cocaine rocks were found in Petitioner's pocket, and the loaded gun was discovered between the cushion and the armrest of the chair where he was sitting. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* Petitioner was sentenced to eighteen months of probation. People v. Hudson, No. 246403, 2004 WL 1366947, at *1 (Mich. Ct. App. June 17, 2004), *aff'd*, 126 S. Ct. 2157 (2006). On appeal, Petitioner once again raised his Fourth Amendment claim. *Hudson*, 126 S. Ct. at 2162.
7. *Hudson*, 126 S. Ct. at 2162.
8. *Id.*
9. *Id.* at 2165.
10. U.S. CONST. amend. IV. *See generally* David E. Steinberg, *The Original Understanding of Unreasonable Searches and Seizures*, 56 FLA. L. REV. 1051, 1062-71 (2004) (providing a detailed history of the adoption of the Fourth Amendment in the U.S. Constitution).

Amendment does not state how courts should protect this right.[11] However, in *Weeks v. United States*,[12] the Court decided that evidence seized in violation of the Fourth Amendment could be excluded in a federal criminal trial.[13] This exclusion deters police from violating the Fourth Amendment when gathering evidence.[14] The Court later applied this exclusionary rule to the states as well.[15] Since the *Weeks* decision, the Court has attempted to clarify the scope of the exclusionary rule.[16]

In *United States v. Leon*,[17] the Court considered whether the exclusionary rule should apply to evidence obtained when officers conduct a search in reasonable reliance on an ultimately invalid warrant.[18] Although the search in this case violated the Fourth Amendment because of the invalid warrant, the Court held that the evidence obtained should not have been excluded.[19] The Court found that whether a person's Fourth Amendment rights were violated was a separate issue from whether to apply the exclusionary rule,[20] a rule which imposes great social costs.[21]

The Court found that these social costs should be balanced with the potential deterrence benefits,[22] and that the exclusionary rule should apply only when its remedial objectives are best served.[23] Applying this balancing test, the Court considered whether the connection between the police misconduct and the evidence obtained was so attenuated that applying the exclusionary rule would no longer serve the constitutional

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11. *See* U.S. CONST. amend. IV.

12. 232 U.S. 383 (1914).

13. *See id.* at 393 (stating that if the Court allowed illegally seized evidence to be used against a defendant "the protection of the [Fourth] Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution").

14. *See, e.g.*, United States v. Leon, 468 U.S. 897, 906-07 (1984) (stating that the exclusionary rule protects the rights guaranteed by the Fourth Amendment with its deterrence benefits).

15. *See* Mapp v. Ohio, 367 U.S. 643, 655 (1961) (holding that all evidence obtained in a search or seizure contrary to the Fourth Amendment should be excluded in state, as well as federal, criminal proceedings).

16. *See, e.g.*, *Leon*, 468 U.S. at 905-06 (discussing the Court's evolving understanding of the exclusionary rule).

17. 468 U.S. 897 (1984).

18. *Id.* at 900. The District Court for the Central District of California determined that the supporting affidavit, which contained police observations of the respondents, was insufficient to establish probable cause. *Id.* at 900, 902-03.

19. *Id.* at 905.

20. *Id.* at 906 (quoting Illinois v. Gates, 462 U.S. 213, 223 (1983)).

21. The Court stated that the exclusionary rule's substantial costs result from the fact that the guilty "may go free or receive reduced sentences" due to suppression of evidence against them. *Id.* at 907.

22. *See supra* note 14 and accompanying text.

23. *Leon*, 468 U.S. at 908 (quoting United States v. Calandra, 414 U.S. 338, 348 (1974)).

principles it was designed to protect.[24] When such attenuation exists, trial courts may decline to apply the exclusionary rule.[25]

In his concurring opinion, Justice Blackmun stressed the provisional nature of the exclusionary rule's effect.[26] He stated that the impact of exclusionary rule decisions will be tested by real-life police enforcement, and that these decisions may be revisited if needed.[27] The scope of the rule, Justice Blackmun asserted, is thus always subject to change with judicial understanding of the rule's effects.[28]

Six years later, in *New York v. Harris*,[29] the Court reiterated its conclusion in *Leon* that the exclusionary rule does not apply to everything that might deter illegal searches.[30] In *Harris*, officers entered the respondent's residence to make an arrest.[31] The arresting officers, however, entered respondent's home without consent and without a warrant, an established violation of the Fourth Amendment.[32] After the illegal arrest, the respondent signed a written inculpatory statement at the police station.[33] The statement was ruled admissible evidence, and respondent was convicted.[34] The New York Court of Appeals reversed and ruled that the inculpatory statement should have been excluded as the fruit of an illegal search.[35] The Court granted certiorari and reversed the Court of Appeals' decision.[36]

In reaching its decision, the Court considered the purpose of the rule against such entries.[37] It found that the rule's purpose was to protect the

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24. *Id.* at 911 (quoting Brown v. Illinois, 422 U.S. 590, 609 (1978) (Powell, J., concurring in part)). Even if there was some police misconduct, if that misconduct was attenuated from the evidence obtained, imposing the social costs of the exclusionary rule may not be justified. *Id.*

25. *See id.* at 911, 913.

26. *Id.* at 928 (Blackmun, J., concurring).

27. *Id.*

28. *Id.*

29. 495 U.S. 14 (1990).

30. *See id.* at 20.

31. *Id.* at 15.

32. *Id.* at 15-16; *see also* Payton v. New York, 445 U.S. 573, 602-03 (1980) (holding that the Fourth Amendment requires officers to obtain an arrest warrant before making an arrest in the home).

33. *Harris*, 495 U.S. at 16. The respondent signed the inculpatory statement roughly one hour after he was arrested illegally. *Id.* at 24 (Marshall, J., dissenting). The officers may have chosen not to obtain a warrant before making the arrest because under New York's right-to-counsel laws, their chances of questioning the respondent without an attorney were greater if they did not first have an arrest warrant. Alan C. Yarcusko, Note, Brown *to* Payton *to* Harris*: A Fourth Amendment Double Play by the Supreme Court*, 43 CASE W. RES. L. REV. 253, 254 (1992).

34. *Harris*, 495 U.S. at 16. Respondent was convicted of second-degree murder. *Id.*

35. *Id.* at 16-17.

36. *Id.* at 17, 21.

37. *Id.* at 17.

integrity of the home—not statements made to police outside the home.[38] For example, if the police had collected evidence inside the house after their illegal entry, that evidence would have been excluded.[39] However, the rule's purpose of protecting the integrity of the home would not be served by excluding a statement made elsewhere.[40] Therefore, the Court held that the exclusionary rule does not apply to a statement made outside a home after an illegal in-home arrest.[41]

Five years after *Harris*, the Court decided another Fourth Amendment case, *Wilson v. Arkansas*.[42] In *Wilson*, the Court dealt with the common-law knock-and-announce rule after officers with a warrant identified themselves as they entered an unlocked residence to search for drugs.[43] The Court concluded that the knock-and-announce rule, which normally required officers to knock and announce their presence before entering the location of a search,[44] formed part of the reasonableness standard of the Fourth Amendment.[45] In reaching this decision, the Court considered the common-law justifications for the rule: protecting the home from destruction and preventing surprised residents from attacking officers.[46]

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38. *Id.*

39. *Id.* at 20. The Court stated that excluding evidence gained directly from the illegal arrest would serve to vindicate the arrest-in-home rule from *Payton*. *Id.*

40. *Id.*

41. *Id.* at 21.

42. 514 U.S. 927 (1995).

43. *Id.* at 929. Officers discovered both drugs and a firearm inside the petitioner's residence. *Id.* Officers also found the petitioner flushing marijuana down the toilet. *Id.* Officers then arrested the petitioner and charged him with delivery and possession of marijuana, delivery of methamphetamine, and possession of drug paraphernalia. *Id.* at 929-30. He was found guilty of all charges and sentenced to thirty-two years in prison. *Id.* at 930.

44. Neither the Court nor the common law ever required officers to knock and announce their presence in all circumstances. *Id.* at 934. On the contrary, because the common-law rule was based, in part, on the idea that harm and destruction would be minimized by knocking and announcing before entering, the rule would not apply if the opposite was true in a situation. *Id.* at 935-36. Along with this threat-of-danger exception, the Court also stated that the knock-and-announce rule would not apply when officers pursue an escaped prisoner or when there is a risk that evidence will be destroyed if police officers announce themselves before entering. *Id.* at 936; *see also* Richards v. Wisconsin, 520 U.S. 385, 394 (1997) (declaring that an officer must have reasonable suspicion that adhering to the knock-and-announce rule would be dangerous, futile, or lead to the destruction of evidence for a no-knock entry to be acceptable).

45. *Wilson*, 514 U.S. at 930.

46. *Id.* at 931-33. The common law presumed that if people had notice that officers were entering their homes, citizens would obey the law and not resist the officers' efforts. *Id.* at 931-32. The Court stated that the knock-and-announce rule may date back as far as 1275 in English law. *Id.* at 932 n.2. The Framers of the Constitution probably considered the knock-and-announce rule part of the Fourth Amendment's reasonableness test because it was such a common rule with a long history. *Id.* at 934. *See generally* Todd Witten, Note, Wilson v. Arkansas*:* *Thirty Years after* Ker *the Supreme Court Addresses the Knock and Announce Issue*, 29 AKRON L. REV. 447, 449-57 (1996) (providing a detailed history of the knock-and-announce rule throughout English and American law).

However, unlike the decisions in *Leon* and *Harris*, the Court in *Wilson* specifically declined to decide whether a knock-and-announce violation implicates the exclusionary rule.[47]

More than a decade after *Wilson*, the Court in the instant case used the analyses from *Leon* and *Harris*, among other cases, to confront finally the issue of whether the exclusionary rule should apply to knock-and-announce violations.[48] The majority reiterated the findings in *Leon* that the exclusionary rule imposes profound social costs and should be used only as a last resort.[49] The instant Court rejected any notion that all Fourth Amendment violations trigger the exclusionary rule.[50] It cited the analysis in *Leon* finding that the violation and the rule are separate issues.[51]

The majority then focused on the belief that the penalties for a law's violation must relate to the purpose of that law.[52] The instant Court stated that attenuation, as discussed in *Leon*,[53] occurs when the interests of a law are not served by suppressing evidence.[54] The instant Court cited *Harris* as an example: Because suppressing the illegally seized evidence in that case did not serve the purpose of the law, the evidence was not excluded.[55]

The instant Court did not reconsider the holding in *Wilson* and accepted that the entry in the instant case violated the knock-and-announce rule.[56] The instant Court did, however, examine the interests that the knock-and-announce rule is intended to protect.[57] First, the Court discussed the interest in protecting human life and limb.[58] The Court reasoned that a person surprised by sudden police entry might react violently.[59] Second, the knock-and-announce rule is designed to protect property.[60] Finally, the instant Court recognized the interest in protecting the rights of people to

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47. *Wilson*, 514 U.S. at 937 n.4. The question whether the exclusionary rule should apply was not addressed by the lower court and was not a part of the question on which the Court granted certiorari. *Id.* Therefore, the Court declined to address the rule's application. *Id.*

48. Hudson v. Michigan, 126 S. Ct. 2159, 2162 (2006).

49. *Id.* at 2163.

50. *Id.*

51. *Id.* at 2164 (quoting United States v. Leon, 468 U.S. 897, 906 (1984)).

52. *Id.*

53. United States v. Leon, 468 U.S. 897, 911, 913 (1984).

54. *Hudson*, 126 S. Ct. at 2164.

55. *Id.* at 2164-65 (citing New York v. Harris, 495 U.S. 14, 20 (1990)); *see supra* notes 37-41 and accompanying text.

56. *Hudson*, 126 S. Ct. at 2163. Michigan had already conceded that there was a knock-and-announce violation. *Id.*

57. *Id.* at 2165.

58. *Id.*

59. *Id.*

60. *Id. But see* United States v. Ramirez, 523 U.S. 65, 67-68 (1998) (holding that a no-knock entry does not require a higher standard than reasonable suspicion when property is destroyed during the entry).

prepare themselves for police intrusion.[61]

The majority found that the knock-and-announce rule does not protect an interest in shielding evidence from the government.[62] The instant Court remarked that while people have a right to privacy for themselves, their homes, and their effects before a warrant is issued, that right does not continue after police obtain a warrant.[63] Because the interests implicated in the instant case were the three knock-and-announce interests discussed above and were, therefore, not related to the evidence obtained, the instant Court held that the exclusionary rule should not apply.[64]

After reaching this decision, the majority reasoned that the exclusionary rule has never been used when the social costs of application outweigh the deterrence benefits, as the instant Court believed they did in this case.[65] Also, the instant Court suggested other means to deter knock-and-announce violations, such as civil lawsuits, which would be less costly to society than suppression.[66] Finally, the plurality[67] concluded by comparing the instant case with three other cases, including *Harris*, in which evidence obtained after an illegal entry was held not to be the fruit of an illegal search.[68]

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61. *Hudson*, 126 S. Ct. at 2165. For example, a person should have time to get out of bed or to get dressed before officers enter to conduct a search. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* The instant Court stated that the costs of applying the exclusionary rule to knock-and-announce violations include the release of potentially dangerous criminals back into society and a flood of litigation from criminal defendants viewing a knock-and-announce violation as a "get-out-of-jail-free card." *Id.* at 2165-66. This might negatively affect police officers by causing them to wait longer than necessary in order to prevent triggering the exclusionary rule. *Id.* at 2166. The instant Court found that the deterrence benefits from applying the exclusionary rule to knock-and-announce violations would be minimal because officers with a warrant could not expect to obtain more evidence simply by ignoring the knock-and-announce rule. *Id.*

66. *Id.* at 2167-68; *see* 42 U.S.C. § 1983 (2000) (providing that a state actor may be civilly liable if that person deprives another of a constitutional right). The instant Court also suggested that internal police discipline effectively deters knock-and-announce violations. *Hudson*, 126 S. Ct. at 2168. *But see* Mapp v. Ohio, 367 U.S. 643, 656 (1961) (finding that excluding evidence is the only proven deterrent to police misconduct).

67. Justice Kennedy concurred in part and concurred in the judgment, but disagreed that *Segura v. United States*, 468 U.S. 796 (1984) and *New York v. Harris*, 495 U.S. 14 (1990), were as relevant as Justice Scalia, in the majority opinion, found them. *Hudson*, 126 S. Ct. at 2170-71 (Kennedy, J., concurring). Therefore, Justice Kennedy refused to join the part of Scalia's opinion that addressed these cases. *Id.* at 2171.

68. *Hudson*, 126 S. Ct. at 2168-70 (majority opinion); *see* United States v. Ramirez, 523 U.S. 65, 68-69 (1998) (finding that no Fourth Amendment violation occurred when officers broke a window to enter the defendant's home to conduct a search); *Harris*, 495 U.S. at 20 (refusing to apply the exclusionary rule to incriminating statements made outside of the home after an arrest-in-home violation); *Segura*, 468 U.S. at 813-14 (finding that the exclusionary rule should not apply

In a lengthy dissent, Justice Breyer criticized the majority for its interest-based approach to the exclusionary rule.[69] He asserted that focusing on the underlying interests of the knock-and-announce rule missed the point and lacked support.[70] Instead, the dissent argued that the deterrence purpose of the exclusionary rule requires suppression of evidence discovered during an unlawful search in all but two specific circumstances.[71]

With its decision, the instant Court narrows the scope of the exclusionary rule in a way consistent with both past precedent and rational public policy.[72] It places the rule's emphasis on the harm that results from police misconduct.[73] The Court in *Harris* already established that the relationship between a law and the harm against which it was designed to protect is relevant to whether the exclusionary rule should apply.[74] The instant Court solidified the importance of this relationship by determining when the costly rule should be triggered.[75] In doing so, it narrowed the exclusionary rule's application to cases in which the harm that occurred relates to the evidence seized.[76]

As Justice Blackmun stated in his concurring opinion in *Leon*, the exclusionary rule is a Court-made rule subject to change with the Court's understanding about the rule's practical impact.[77] The instant Court considered the severe impact that excluding evidence based on a knock-and-announce violation would have on society.[78] Its decision not to apply the exclusionary rule to knock-and-announce violations because the implicated interests did not relate to the seizure of evidence is especially logical in light of those potential impacts on society.[79] The Court should

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when officers obtain a valid warrant after they enter a residence illegally).

69. *Hudson*, 126 S. Ct. at 2180 (Breyer, J., dissenting).

70. *Id.* at 2181.

71. *Id.* at 2175-76. First, the dissent recognized that the exclusionary rule should not apply when its application would "not result in appreciable deterrence." *Id.* at 2175 (quoting United States v. Janis, 428 U.S. 433, 454 (1976)). Second, the dissent argued that the exclusionary rule should not apply when the issue is admissibility in non-criminal trials. *Id.* (citing Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 364 (1998)). The dissent asserted that neither of these two exceptions was present in the instant case, and therefore the exclusionary rule should apply. *Id.* at 2176.

72. *See id.* at 2163-65 (majority opinion).

73. *Id.* at 2166-67.

74. *See* New York v. Harris, 495 U.S. 14, 20 (1990).

75. *See Hudson*, 126 S. Ct. at 2165. The Court stated that "[s]ince the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable." *Id.*

76. *Id.*

77. *See* United States v. Leon, 468 U.S. 897, 928 (1984) (Blackmun, J., concurring).

78. *Hudson*, 126 S. Ct. at 2165-66.

79. *See id.*

be free to revisit, clarify, and, at times, modify a rule that it created.[80] Thus, the instant Court's decision ensures logical and careful use of the exclusionary rule in practice.[81]

The interests that the instant Court states are protected by the knock-and-announce rule are also mentioned in *Wilson*.[82] These common-law interests were central to the decision in that case to include the knock-and-announce rule as a part of the Fourth Amendment's reasonableness test.[83] Therefore, in the instant case, the majority's focus on these interests in determining whether the exclusionary rule should be triggered has support.[84]

To hold, as the dissent urges, that the interests underlying the exclusionary rule are without importance would set a dangerous precedent.[85] Common sense dictates that a rule's purpose is important to its enforcement.[86] The Court would adopt an overly expansive view of a rule with significant consequences if it held that the exclusionary rule applied even when the interest implicated does not relate to the seizure of evidence.[87] The instant Court correctly allows other deterrent measures, which are more suitable for the interests knock-and-announce violations implicate, to remedy those violations.[88] This decision both limits the use of the exclusionary rule and clarifies for future litigants that the Court considers a rule's purpose important to its enforcement.[89]

Furthermore, by focusing on the implicated interests and declining to apply the exclusionary rule, the instant Court in no way belittles the importance of the knock-and-announce rule.[90] Likewise, the Court in *Harris* did not downplay the significance of the arrest-in-home rule when it refused to exclude evidence obtained in a way that did not implicate that rule's interests.[91] Instead, the Court in the instant case said that although

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80. *See Leon*, 468 U.S. at 928 (Blackmun, J., concurring).

81. *See Hudson*, 126 S. Ct. at 2163.

82. Wilson v. Arkansas, 514 U.S. 927, 931-32 (1995).

83. *Id.* at 930-31.

84. *Hudson*, 126 S. Ct. at 2165.

85. *See id.* at 2181-82 (Breyer, J., dissenting).

86. *See id.* at 2165 (majority opinion).

87. *See id.*

88. *Id.* at 2166-67. *See supra* note 66 and accompanying text (discussing alternative deterrent measures available).

89. *Hudson*, 126 S. Ct. at 2165.

90. *See id.* Justice Kennedy emphasized in his concurring opinion that "[t]he Court's decision should not be interpreted as suggesting that violations of the requirement are trivial or beyond the law's concern." *Id.* at 2170 (Kennedy, J., concurring).

91. New York v. Harris, 495 U.S. 14, 20 (1990). Instead, the Court maintained that the main incentive for obeying the rule remained because evidence or statements obtained in the home after an illegal entry could be suppressed. *Id.*

the exclusionary rule should not be applied, the officers who violated the Fourth Amendment may be subject to discipline or civil liability.[92]

The instant Court's confidence in other deterrent methods is practical.[93] As the instant Court notes, deterrent measures such as discipline within the police force have been used effectively for other, arguably more serious, offenses such as police brutality.[94] Although the Court has been reluctant in the past to depend on deterrent methods other than exclusion,[95] by doing so this time, the Court shows an evolving faith in these methods.[96] Instead of constraining itself to decades-old assumptions about access to litigation and internal police disciplinary procedures, the Court effectively embraced Justice Blackmun's concurring opinion in *Leon*[97] and revisited these assumptions.[98]

By removing the exclusionary rule carrot in knock-and-announce violation cases, the Court also effectively reduced the burden the court system would have otherwise faced.[99] Indeed, considering that the knock-and-announce rule requires officers to wait a reasonable amount of time after announcing themselves before entering, it could be difficult to prove in court exactly how long they waited.[100] The instant Court's decision reduces the burden on the courts to try to determine when the ramifications of a mistake might be detrimental to society.[101] Both the knock-and-announce rule and the exclusionary rule remain important Fourth

92. *Hudson*, 126 S. Ct. at 2166-67.

93. *See id.*

94. *Id.*

95. *See* Mapp v. Ohio, 367 U.S. 643, 656 (1961) (finding that excluding evidence was the only "effectively available" deterrent to police misconduct (citation omitted)).

96. *See Hudson*, 126 S. Ct. at 2167. The instant Court states that if it were to hold exclusion necessary here simply because exclusion was previously found to be necessary, it would be "forcing the public today to pay for the sins and inadequacies of a legal regime that existed almost half a century ago." *Id. But see* Cathy Young, Op-Ed., *Knocking on Door to Trouble*, BOSTON GLOBE, June 26, 2006, at A11 (arguing that the trend in police enforcement over the last fifty years has actually been to become more militarized, not more respectful of a citizen's rights, and that civil litigation would still be an ineffective deterrent to knock-and-announce violations).

97. *See supra* notes 26-28 and accompanying text.

98. The instant Court noted that laws allowing civil litigation against municipalities for constitutional violations did not exist in the past. *Hudson*, 126 S. Ct. at 2167. Additionally, the instant Court asserted that police forces have increasingly emphasised internal police discipline. *Id.* at 2168.

99. *See id.* at 2166. The majority asserted that if it were to hold as the dissent urged, it would open the flood gates to litigation from defendants claiming a knock-and-announce violation in the search that led to their arrest. *Id.* at 2165-66.

100. *Id.* at 2166. The instant Court found that a reasonable wait time for the circumstances would be difficult to determine in court, as would the actual amount of time officers waited. *Id.*

101. *See supra* note 65 and accompanying text.

Amendment fixtures after the instant Court's decision.[102] By narrowing the scope of the exclusionary rule to apply only when the evidence excluded implicates Fourth Amendment rights, the Court made a logical decision supported by precedent and public policy.[103] Society will benefit from this common-sense judgment and be safer as a whole.[104]

102. *See Hudson*, 126 S. Ct. at 2165; *supra* note 90 and accompanying text. Justice Kennedy also emphasized in his concurring opinion that "the continued operation of the exclusionary rule, as settled and defined by our precedents, is not in doubt." *Hudson*, 126 S. Ct. at 2170 (Kennedy, J., concurring).

103. *See Hudson*, 126 S. Ct. at 2165 (majority opinion); *see also* Editorial, *The Supreme Court Allows a Questionable Search and Seizure*, SUN-SENTINEL (Fort Lauderdale), June 25, 2006, at 4H (claiming that the instant Court's decision "injected some common sense" into the exclusionary rule by preventing criminals from going free because of a technical knock-and-announce violation).

104. *See Hudson*, 126 S. Ct. at 2166. Society will not fear that incriminating evidence will be excluded against a potentially dangerous criminal because officers violated the knock-and-announce rule. *See id.* at 2165.