Knock and Talk Technique 3

Law enforcement officers, specifically drug enforcement investigators, are always looking for innovative ways to combat the drug trade. Historically, drug enforcement officers have utilized traditional methods of narcotic enforcement, such as the use of informants, undercover operations, surveillance, wire intercepts, and reverse sting drug operations. Never did the drug enforcement officer imagine that merely knocking on a drug dealer's door and asking if he or she would surrender drugs to police officers or allow the police to search their residence for drugs would really work. In the early part of our careers, never did we think that this would be an option, much less a reality.

The technique now known as a *knock and talk* is an effective law enforcement tool, not only for drug investigations, but also in other criminal investigations. The method is a consensual encounter as described in Chapter 2. This is one type of encounter that starts with the consent of the individual. The difference here is that we are going to the person's residence or business and asking for a consent search. A consent search is one of the exceptions to a search warrant.

This technique is believed to have started in the early to mid-1980s and has developed today into an excellent investigative option. It is creating previously unimagined investigative opportunities. Before this technique, drug enforcement units would receive information regarding drug traffickers dealing or possessing drugs in their homes and businesses, but really did not know what to do with the information. Investigators would rack their brains to think of a way to "get in" to the residence or business to try to make a drug case. If no informants were available or surveillance was either impractical or failed to produce the desired results, that information would probably be left in a file cabinet somewhere. Intelligence information regarding drug activity was handled in that fashion before this technique.

Criminal intelligence should be collected by law enforcement; however, if we do not act upon the information, it is essentially worthless. The knock and talk technique provides an investigative avenue for law enforcement to act on information and intelligence. According to L.T. "Tom" McCabe of Schlim, McCabe & Associates, "the method is simple and straightforward." McCabe is a former California law enforcement officer, and he and his associates teach the technique throughout the United States. The knock and talk enhances a law enforcement agency's ability to combat crime with minimal expense and resources. Whether the police agency is small and rural or large and urban, the knock and talk program can be used with success.

What is a Knock and Talk?

In this chapter, we will explore a number of areas regarding this investigative tool. We will define the nature of knock and talk investigations, identify when it would be most advantages to use this technique, as well as learn the steps of this process. We will emphasize the safety concerns surrounding knock and talk investigations.

The term *knock and talk* simply means what it infers: knocking on someone's door, talking with him, asking for consent to search the premises — the subject's home, apartment, or business. The knock and talk technique does not require probable cause or a search warrant to allow law enforcement to make contact with an individual and ask for a consensual search of the premises. Many courts provide a definition of a consensual encounter. In the case of *U.S. v. Werking*, 915 F.2d. 1404, 1410, 10th Circuit (1991), the court stated that "a consensual encounter is simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official." In *U.S. v. Cormier*, 220 F.3d. 1103, 9th Circuit (2000), the court indicated "the general rule regarding 'knock and talk' encounters is that there is no rule which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably to knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant. There is no evidence to indicate that was anything other than consensual and no suspicion needed to be shown in order to justify the 'knock and talk.'"

Skeptics of this technique will say that a drug dealer is not going to let you into his home to search for drugs. That may be true under certain circumstances. However, it is absolutely astonishing how many times a drug trafficker provides consent to officers to search his premises. In many cases, the drug dealer surrenders narcotics to the officers.

You never know what can happen in a knock and talk; but if you do not try, nothing will happen anyway. The technique calls for being assertive and trying something new. Many police officers say to us, "That stuff won't work in our area. They won't let us in their houses." We say that may be true; however, one never knows until one tries.

Case Study

An investigator in the south part of the country asked a knock and talk detective to make an arrest for him. The investigator, who was an undercover officer, had purchased a small baggie of marijuana from a suspect several weeks earlier. The investigation had come to a standstill and he was ready to arrest the suspect. The agency had a knock and talk section, and the detective volunteered to arrest the suspect for the undercover officer and ask for consent search of the suspect's residence.

The detective arrived at the residence and spoke to the suspect. He told the person he was conducting a narcotics investigation; however, he never told the person he was a suspect or that he was under arrest. The detective and his partner asked the suspect for a consent search of his home, which was given. The search revealed 200 pounds of marijuana in the garage of his home. The undercover investigator was certainly surprised when he heard what was found in the suspect's home.

What typically happens with the information that law enforcement receives about a person dealing drugs? Generally a police agency receives information via a "tip" from an informant or other source of information that a particular individual is trafficking narcotics at their residence or business. Information may be received through a tip line, set up by the police agency to receive information about drug dealing in their community. Many police agencies take this information and act upon it. Much of the information received via a tip line is anonymous, and many of the people providing information about drug dealing prefer to remain anonymous. Information received through a tip line is often generic, something like "Cars are coming to the house and leaving a short time later. I think the guy is dealing drugs because he doesn't work." Other tips may be more specific as to what is occurring at a location, such as "the person is dealing cocaine from his business and keeps the drugs in a safe in his office." Historically, this information was too generic to act upon if no other investigative avenues were available, such as an informant. Today, we can and should act upon just this information. As law enforcement we have an obligation to act upon information regarding drug dealing. Certainly there is an element of risk involved in the decision of doing a knock and talk. We may get nothing at all; the person may slam the door in our faces and refuse to allow us to search. At

least we tried to do something and show the community that we are acting on the information. We put people on notice and advise them we are aware of their activities. Yes, the person may move from the area, and some would argue that we are just displacing crime. That may be true; however, at least we tried to act upon this very serious problem we call drugs.

An investigative group or analyst will do some background work on the individual, and there may or may not be information concerning their narcotics activities. At this point, depending on the police agency, the information may be provided to a detective for further follow-up investigation.

The investigator may drive by the residence or business to see if there is any activity and what vehicles are at the location. He or she may conduct some surveillance at the location. There may or may not be any activity observed at the location that would indicate that drug trafficking could be occurring. Once all of the investigative efforts have been exhausted and there is no active informant or other information, the investigator may either close the investigation or try to obtain further information at a later time. The knock and talk may be an option at this point.

The investigator and his or her partner travel to the location, knock on the door, and ask to speak with the occupants. Investigators at this point should ask consent to enter the premises to discuss some concerns regarding information they have received. A consent may be considered coerced if the investigator uses some sort of trickery or is untruthful about his true purpose. The officers can tell the subject that they have received information concerning drug dealing, or they can be more generic about specific information. The individual is provided with an opportunity to discuss the information. The investigators either ask the individual to surrender drugs if there are any narcotics in the residence or consent to a search of the premises. The drug traffickers may surrender narcotics or the investigators may search the premises and find drugs, at which point the subject will be charged criminally. It sounds simple, does it not? It does not always work this way, but there are numerous documented cases in which this technique has been extremely effective.

This particular method is a versatile program for all types of law enforcement. Criminal investigators, such as robbery investigators, homicide, and property crime detectives can use this technique. In addition, uniform officers can use this process to obtain evidence in a particular crime. Individuals who are most successful in conducting the knock and talk are those who are most comfortable speaking with people. They are officers who know proper procedure and are familiar with search and seizure (Fourth Amendment) in particular. The investigator should display a good presence and demeanor when making contact with individuals in the knock and talk process.

Does the knock and talk work? It certainly does, and the key is to gain entrance to the premises first. It is cost effective for law enforcement agencies that have limited resources. Many agencies are not in the position or do not have the resources to place officers on long-term surveillances or long investigative efforts. The knock and talk is an effective method in dealing with situations of drug trafficking under these circumstances.

There are, of course, safety issues and concerns with this technique. The biggest concern for the officer is entering the unknown. It can be extremely dangerous when the officers enter a location where they are not familiar with the surroundings, do not know how many individuals are at the location, and do not know if there are weapons or firearms present. The purpose of this technique is to verify that a subject or subjects are violating the law, then to obtain a legal consensual search of the premises. Investigators must be aware that false and slanderous information may be provided to law enforcement for a variety of reasons. Some of those reasons include, but are not limited to, domestic situations and child custody issues. A background investigation must be completed before conducting a knock and talk; it may flush out any issues such as false information.

The Use of Tip Programs and Processing

Many agencies throughout the United States have now implemented successful drug tip information telephone lines. These tip programs provide law enforcement with additional assets to obtain information relating not only to drug trafficking, but also other types of crimes such as violent crime, including homicide and robbery. Typically a tip line is operational 7 days a week, 24 hours a day and handled either by law enforcement or other designated groups. The information provides intelligence information to law enforcement regarding a number of crimes and there may be opportunities for rewards for information provided by citizens. Many agencies have a protocol for collection and documentation of the information. The documentation process should include a standard form for the information obtained via the tip program. The tips should have some numerical order and be easily accessible for tracking purposes. A typical tip form should include information such as the name of the subject being reported on and as much biographical information as possible with respect to gender, race, age, date of birth, weight, height, hair color, and eye color. Information regarding the subject's residence, telephone number, business or occupation, and vehicle information should also be included, if available. Any information concerning the family, relevant intelligence information such as the types of drugs being sold or possessed, the location of dealing and any associates

that may be part of an organization, and any other additional information that may be pertinent to the tip should be included. Also include the caller addresses and telephone number if the caller chooses to provide this information. This is helpful for possible future contact of the caller by an investigator.

Many of the tips received by agencies are anonymous. It is important to acquire the caller's motive for providing the information. Motive is important because it lays a foundation as to why an individual would be reporting on a drug dealer. The caller could be a concerned neighbor or friend, or it could be the drug trafficker's competition, although the caller will certainly not admit to the latter. The documentation or tip form should indicate who received the information so the investigator may go back to obtain further details. If this information is to be provided to an investigator, a background check should reveal any open cases on the person to whom the tip was referring. The tip information should be provided to the case agent with the open case for further review. Overzealous investigators do not always do a proper background check, and may do a knock and talk when other investigations are being conducted on the subject. This can cause problems for the existing case and investigator.

All local databases should be examined for local criminal history and any narcotic intelligence. A national search should be conducted to further examine the subject's background. The form should include the name of the investigator to whom the information is routed. It is suggested that a monitoring system be included in this process so that the information can be tracked. If the information results in an arrest and seizure of narcotics, this information should be tracked as well, for statistical purposes. Any other information such as negative results (no arrest or seizure of drugs) or no action taken should also be documented.

Much intelligence is collected with respect to drug traffickers and their activities. Using a tip processing system to document information should be a part of a narcotics intelligence group. Some agencies have full-time tip squads that respond to tip complaints. The technique they deploy on most occasions is the knock and talk. These successful programs are a tribute to this method. Once all the investigative options have been explored and exhausted with respect to either a tip complaint or other information, consider the knock and talk.

Reasons to Use a Knock and Talk

It is essential that investigators investigate information or intelligence as thoroughly as possible, and use a number of investigative options. If other

options "run dry," the knock and talk is a viable alternative. If the investigator has no probable cause for a search warrant or arrest and surveillance fails to produce information where probable cause can be established, the knock and talk can be considered. This technique is a last resort when there are no other investigative leads and no informants who can either provide information or be able to take an active role in the investigation.

Investigators should not use this technique as a shortcut for their cases. If probable cause does exist for a search warrant to the premises, by all means, draft a search warrant and execute it. Some investigators use the knock and talk as a shortcut when they do have other investigative options. In the case of a knock and talk, there are only two things that will happen. You will get into the residence or you will be refused entry. In a search warrant situation, there is no question that investigators will enter the premises and conduct a search. With the knock and talk, there is no guarantee.

Why Do People Consent?

There is an ongoing debate concerning police–citizen encounters and the consent issue. A number of court interpretations exist with respect to consent. The Fourth Amendment to the Constitution of the United States provides individuals the right to be free from unreasonable search and seizure of their persons, houses, papers, and effects. In the past several years, police–citizen encounters in various venues, including public transportation areas, has dramatically increased. These voluntary searches have provided law enforcement with an additional tool to combat and prevent crime. What the courts debate and have begun to examine more closely are the conditions under which consensual encounters are conducted, and whether a person's consent to the police search was in fact voluntary.

There are number of rational reasons why people would consent to a search by the police, and these are recognized by some courts in the United States. Certainly, there are many psychological implications with respect to what an individual believes is occurring during the consent search. Many people believe that evidence in their home will be overlooked, that the officer will not really search; they wish to appear cooperative and think that if they do not consent they will look guilty. A subject may consent to a police search thinking that if drugs are found, he can explain its presence or deny knowledge. A person may think that he simply has been caught, and give up. In providing a consent search, a person may believe that consent will make him appear not to have knowledge. The logic is, "why would I let you search if there were drugs in my house? It doesn't make sense." A subject may believe that the narcotics or contraband is so well concealed that law enforcement

would never find it. This is what we call "wrapping 101." Drug trafficking organizations and individuals use a number of masking agents or concealment areas in a variety of locations. Whether it is in a parcel, a vehicle, home, or on their person, they may feel secure enough to provide law enforcement with consent. There is much discussion between traffickers as to what to use to eliminate the odor of narcotics or to conceal it in a fashion such that they believe it will never be found. Traffickers may build false compartments in the walls, floors, and ceilings of their homes. Many other elaborate concealment areas have been used in homes and businesses. Law enforcement must educate prosecutors, judges, and juries concerning consent searches and how they are a viable mechanism for criminal investigations.

In many instances, unfortunately, law enforcement backs away from individuals who appear to be cooperative. We call this the "lazy cop syndrome." Many officers justify in their minds that if the subject gave them consent, maybe that person does not have anything to hide. If an individual provides the officer with consent to search, the officer should always do a thorough and complete search. If the officer went to the trouble of asking an individual to conduct a consent search, why would the officer not complete that search?

A consent search is one of the exceptions to a search warrant. Other exceptions include incident to arrest, the plain view doctrine, exigent circumstances, abandonment, and the open fields doctrine, where there is no reasonable expectation of privacy in open fields. The U.S. Supreme Court provides homeowners with a great deal of protection, and rightfully so.

An abundance of case law related to consensual encounters exists. One of the premier Supreme Court decisions with respect to this issue is *U.S. v. Bostick*, 501 US 429 (1991). The key phrase in the Court's opinion with respect to a consent search is: "a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter." This phrase is important when law enforcement deals with a consensual encounter such as a knock and talk situation. A person can refuse a search of his premises at any time. The courts have said that law enforcement can conduct a constitutional search without a warrant if they receive the consent of the individual whose premises, effects, or person are to be searched.

Knock and Talk as an Investigative Technique

Once investigators and officers have exhausted all other investigative options and decide to conduct a knock and talk, a number of factors should be taken into consideration with respect to planning and execution of the technique.

The investigator should have as much information as possible concerning the individuals before making contact at a premises or business to ask for a consensual search. You should know as much as possible about the criminal activity you are dealing with, and know the answers to your questions before you ask. It is absolutely essential that a background investigation be done on individuals who can be identified in the residence. Do not go into the knock and talk blindly; it is dangerous. Criminal histories, warrant checks, drivers license checks, and violent tendencies should all be explored.

Know the type of narcotics that is being distributed from the premises. This is important not only for safety, but for health issues. When individuals are operating a clandestine laboratory, this information is crucial to the planning effort. Other information to take into consideration before the knock and talk commences is whether there are any prior tip complaints or intelligence information regarding the individuals at the location. Have a plan before entering a location and consider how many investigators should be taken to a knock and talk.

Once a plan is in place, typically two investigators or officers will go to the door. There is a reason for two officers; one is for safety reasons, and the other is that one of the officers should talk as the other one scans. This is typically called the "talker" and the "scanner." The talker initially makes verbal contact with the individual, as the scanner scans for things that can hurt them, such as a weapon or firearm. In addition, the scanner is looking for items in plain view, such as paraphernalia or narcotics. One officer or more than two should not commence a knock and talk. Going to a knock and talk alone is dangerous. Three or more at the door becomes a coercive and intimidating situation, and the officers may lose the search under these circumstances.

If other officers are available, a plan should be in place to position them as backup at the exterior perimeter, watching for suspicious activity inside as well as outside the residence. Often in these situations, people may approach the residence to purchase drugs. Those individuals can be encountered and possibly used as witnesses.

When the exterior perimeter investigators are in position, two officers should approach the door and make contact with the individual(s). Once the contact is made, the officers should identify themselves with their proper police credentials. Officers should then ask if the person has a moment to speak, and if he would allow officers to come inside. The officer should speak calmly and not be authoritative or accusatory. The object is to get inside of the residence to be in a position to possibly see items in plain view. The element of surprise is a factor in knock and talk, so the suspect will not have the opportunity to hide or destroy evidence or have a plan of response for the detectives' questioning.

Investigators have a variety of options as to what they can wear when conducting this technique. As a plainclothes investigator, casual clothing is an option. As a uniform officer, that is the dress of the day and what the officer would be wearing. In a situation where the officers are in plainclothes, consideration should be given to carrying a firearm and police radio for communicating with other investigators. It is suggested that the investigators be armed and have a firearm in proximity, where it can be readily available. It is not suggested that the officer wear an ankle holster unless he is trained proficiently in this type of holster. If possible, the firearm should be concealed so as not to cause an issue of coercion. Handcuffs and other items such as mace or pepper spray should be concealed. An officer may opt to wear a jacket identifying him as law enforcement. There are windbreaker type jackets with POLICE or SHERIFF on the front and back.

What generally happens during a knock and talk technique is illustrated in Figure 3.1. Investigators are able to make entry to a location approximately 99% of the time. That percentage would depend on the environment and the suspect's prior contact with law enforcement. Once inside, one of four situations is going to occur.

1. The investigators will obtain consent to search the premises for narcotics.
2. Probable cause may be established based on what the investigators see in plain view. The officers may observe narcotics or other evidence such as paraphernalia or drugs in plain view once they are inside.
3. There may be an exigent circumstance. In this case, the investigators must articulate the exigency of the circumstances and describe what was occurring. There may be a situation where the subject is attempting to destroy evidence such as narcotics. For example, the subject might attempt flushing narcotics down the commode.
4. The investigators may receive a refusal to search or cooperate. An individual may say that he will not submit to a consent search or will not surrender any narcotics to the investigators, and requests them to leave. Under these circumstances, unless evidence is seen in plain view, there is no choice but to depart the premises.

A refusal by the subject puts him on notice that the police are aware of his activities and that they would be conducting further investigation. This may put the trafficker on edge, and the subject may move from the area. The knock and talk gives the perception of the police being everywhere, and the subject may be trying to figure out how law enforcement knew that he was dealing narcotics.

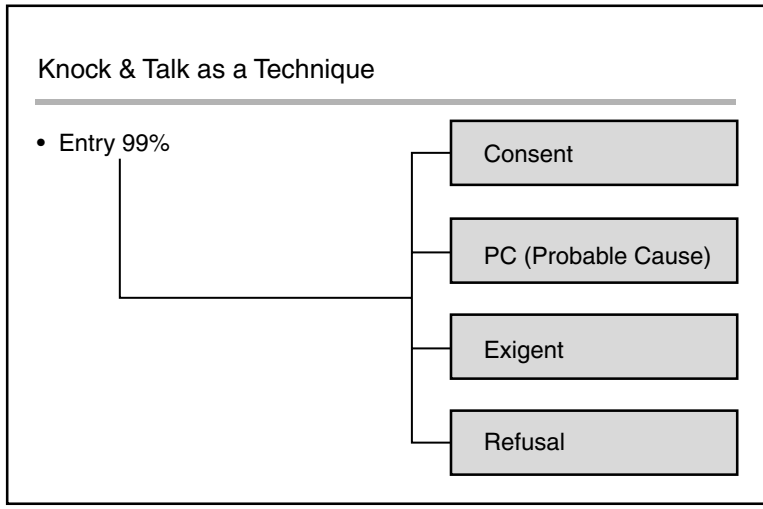


Figure 3.1 (Courtesy of Schlim, J.R., McCabe, L.T., Mornson, L.T., and Schlim, J.G. *Drug/Narcotic Investigations* , 1997, Fremont, CA, pp. 3–11.)

If the individual cooperates and provides consent to the officers to enter the premises, there are a number of options at this point. The first thing the officers should ask is if anyone else is in the residence at that time. The subject may or may not tell the investigators whether there are other individuals on the premises, but there is an option to ask the subject for his consent to conduct a cursory examination of the residence to identify any other people for their protection. If the subject consents, it is permissible for the officer to do a walkthrough and examine areas in which a person may hide. This does not give the officers the authority to search areas in which a person cannot hide such as dresser drawers, medicine cabinets, and other like areas. The officers may examine areas such as a room, a closet, under a bed, and other areas where a person may hide.

An officer may examine the premises for people and, for example, open a closet and find narcotics, such as bales of marijuana or a marijuana-growing operation. Under these circumstances, the officer should leave the items as they were found and go back to the subject and either secure the location for a search warrant or interview the subject further under *Miranda* warnings.

Once the premises have been cleared of other individuals, you may want to ask the subject if he has any knowledge as to why you would be making contact with him. Speak calmly and not authoritatively; tell the subject of your intent and tell him the nature of the complaint. Do not become accusatory, saying something like, "You are dealing." Indicate that you are there to prove or disprove the information. Use your training and experience as an officer to guide you in the proper direction.

Investigators may be surprised to learn that the subject may actually admit to drug trafficking or drug dealing from the residence. He may first state that he has no idea why the officers would be there. At this time, the subject should be asked if he has a moment to speak with investigators to discuss some concerns regarding information that they received. The officers may provide limited information regarding the intelligence or information concerning the drug dealing. They may ask the subject if there are any narcotics in the premises and if so, if the subject would surrender them to law enforcement. There are cases where individuals will surrender a quantity of narcotics to the investigator. In other cases, the subject will deny that involvement, or possession of any narcotics.

If the subject surrenders an amount of narcotics to the officer, the officer should not stop at that point. Sometimes a drug trafficker will provide a small amount of drugs to the officer and say that is all he has. The investigator should probe further, with consent of the subject, and ask if he has any more narcotics. Sometimes a subject will provide additional amounts of the substance. Officers must make sure that if the subject does give consent to search the premises that the consent is unequivocal. Silence or a nod of the head is not enough to provide consent to search.

A subject may ask the officer if he has a search warrant, and ask if it is required to search the premises. The answer to that question should be that a search warrant is not required if the person gives consent. Do not make the mistake of telling the individual, "No, but I can get one." This mistake could be construed as a threat, and could cause the search to be inadmissible in criminal court. No threats or promises should be made to the person who owns, leases, or rents the premises.

Case Study

> In a knock and talk case in Florida, a tip complaint alleged that a person was dealing marijuana from his residence. During the encounter at his premises, the subject invited two detectives into his residence. He was asked if he had marijuana in the home, based on the tip. The subject provided several grams of marijuana to the investigators. When asked if he had additional cannabis in the residence, he stated that he "had a little more." He then showed the investigator a dresser drawer where he had several pounds of marijuana. The officer asked again if he had additional quantities of marijuana and he stated that he had just a "bit" more. The subject led investigators to another part of the residence and showed them the other marijuana, which weighed multiple pounds.

The advice is not to give up on the first thing the subject offers, but continue to ask if he may have other quantities of drugs or other evidence.

If the subject does not surrender any substance, the officer would then ask for a consent search of the premises. If the subject refuses and there is no probable cause such as narcotics in plain view, the officers must terminate the encounter and leave the premises. If the individual agrees, one of the investigators should continue to speak with the individual as the other investigator immediately begins the search. If there is specific information as to where the narcotics are kept, investigators should go to that location first. It is important for the individual who takes the information during a tip complaint or during the debriefing of an informant to attempt to pinpoint where the narcotics may be situated in the premises. For example, a tip may indicate that the marijuana is kept in the refrigerator, above the kitchen cabinet, or in the bedroom. These are the first sites that the investigator should examine.

If narcotics are found, investigators do not have to immediately confront the individual, but may continue to search. Many agencies use code words for communication between investigators under these circumstances. Code words are a safe and effective way to communicate. If narcotics are located or an arrest is to be effected, a code word or phrase should be simple and, of course, be known by the investigators before the execution of the knock and talk. Investigators who have worked together for long periods of time should always use the same phrases. During a knock and talk situation, one of the investigators may be searching in a back bedroom location while his partner is speaking to the owner of the premises. Once the contraband is found, the searching officer does not want to alert the individual that narcotics have been located. This is an opportunity to use a code word or phrase. Simple code words or phrases may be something like "Did you return the video?" or "What time are we going to lunch?" These are simple but effective phrases to alert your partner that you have found narcotics. This puts your partner in a better position, and the individual is not on alert that drugs have been located.

The drugs should be left in the same position in the area in which they were located so the substance can be photographed by evidence technicians. This provides an accurate representation as to where the substance was found and how it was packaged. Additionally, the investigators should process the packaging for latent fingerprints for further identification. Further examination is suggested based on the consent search at the premises. Once the investigator feels comfortable that the search is complete, this may be the time to interview the subject further. Based on many of the court decisions with respect to recent case law, *Miranda* warnings should be read to the subject before questioning once narcotics have been found. The individual may be escorted to the location where the narcotics have been found, or the interview process may begin before confronting the

individual with the narcotics. Once the narcotics have been found and the person admits or denies ownership of the narcotics, the officers have several opportunities to further the investigation. If the subject admits to the narcotics and provides information as to the source of the drugs, investigators may take steps in attempting to identify and possibly further investigate the source.

In many jurisdictions, officers have an option of not initially charging the person criminally, based on his or her cooperation in the case. If the person does not cooperate, officers can make an arrest. The knock and talk provides variety of different investigative options. Once a subject indicates he wants to cooperate, the investigator may want to use the person to contact his source to possibly make additional deliveries, or incriminating statements may be obtained with the help of the cooperative individual. A series of controlled telephone calls or contact with the source under controlled circumstances can be options.

There are a number of other considerations during the knock and talk. One is written consent versus verbal consent. The law does not require written consent; however, it is a plus in the eyes of a court. A verbal consent is just as proper, and often more practical. If it is the policy of the prosecutor's office or individual police agency to have a written consent before a search, that should be adopted. Most police agencies today have a standard consent-to-search form which should be signed by the subject and witness officer.

Some police agencies audio- or videotape their encounters. Each state is different; however, many have a one-party consent to audiotaping, using a recorder, and videotaping of encounters. Other states require a two-party consent for audio- and videotaping. If the police agency has made a decision to use audiotaping during their encounters, it is strongly suggested that they do not use a "selective taping" technique. This puts the investigator and police agency in a precarious position. If officers record some encounters and not others, the court may question this, and the evidence may become inadmissible. The defense may question why his client was not audiotaped when subjects in other cases were. This puts the investigator in the position of having to defend himself as to why he did not audiotape a particular encounter. The defense may claim that the officer had something to hide in the case.

It is a never a good policy to provide the subject of the allegation with any names, sources, or tips information when doing a knock and talk. Many knock and talk cases are because of information provided by an anonymous individual or source.

Before conducting a knock and talk, presurveillance should be a consideration. The surveillance may be able to provide information as to how many

people reside at the premises and other factors that will assist the investigator in determining when it would be most advantageous for the investigator to do the knock and talk.

Another issue to consider is withdrawal of consent. If an officer obtains consent to conduct a knock and talk and, while conducting the consensual search, the subject withdraws that consent, the officer must immediately terminate the search. If the evidence of narcotics has already been found and the subject withdraws consent, the consent search should stop and a search warrant be considered for the remainder of the premises.

Use of a Drug Canine Team

Trained drug canine teams are essential to an interdiction group. They can be used in a knock and talk situation if the suspect consents to the use of the dog after consent is provided. The knock and talk team should not take the dog with them to the door when making contact with the suspect. This creates an intimidating and coercive environment. If a drug canine is available, it should be kept out of sight while the consent is obtained by officers. The knock and talk team may ask the suspect to consent to a trained drug dog examining the residence to expedite the search process. The officers may then ask for the canine team to enter the residence. This can be done in circumstances where there is information about hidden compartments in the residence or business. The use of the dog should be explained in detail to the suspect.

Determination in Obtaining Consent

The knock and talk is no exception to any consensual encounter in determining several factors in obtaining consent. It is important to determine the standing of the person who is providing the consent before a search, while doing a knock and talk in a premises or business. Can the subject give consent overall, and does he have control over the area? Does he have access to the premises or certain portions of the premises? It is incumbent upon the investigator to determine the answers to all of these questions about who exercises control. There may be a visitor in the home who does not have access or control over any of the areas. There may be a tenant who rents a portion of the residence such as a bedroom. That person may be able to provide consent to the investigator over areas to which that person has access or control such as a mutual bathroom, kitchen area, or some living area. That person may not be able to give a consent, however, to another person's bedroom for which he does not have access. These are all determining factors in conducting a search of premises.

With respect to juveniles and consent, there is no real black-and-white answer. This is a gray area with respect to case law. The same factors should apply in obtaining consent and asking who has control over the area, who has access, and does the person providing the consent go into the area to be searched. There may be a situation in which the parent is present at the residence but the juvenile is not. If the parent does not have access to the area to be searched, such as a juvenile's bedroom which the parent indicates he never enters, the parent may not be able to provide consent to that particular room. Locked containers to which a parent does not have access may be an issue as well. The parent does not have the authority to provide you with consent to locked areas or containers, for example, in a juvenile's bedroom. There are situations where juveniles are providing monies to their parents for rent. In this case it should be determined whether the whole room belongs to the juvenile, and does the parent have access to areas of a particular room the juvenile is occupying. The documentation of the consent must be clear and concise. The investigative report should describe the consent to be free of intimidation and coercion and unequivocal.

When it is time to ask someone's consent to search, law enforcement officers may be reluctant to use the word "search." It is important to avoid phrases such as "Can I look around?" " Can I take a peek?" or "Can I take a quick look around?" There must be verbal clarity with a request to search. The courts do not want law enforcement to be vague. The officer must be clear about what he wants to search and should say the word "search." Consent must be defined. Some courts have taken the position that in response to a request to "take a quick look around," a reasonable person may not expect the search to go beyond a plain view search. A defense would be that a "quick look around" did not mean an actual search, and the consent search would be contested.

Consider how you knock on the door of a residence when you conduct a knock and talk. There is a distinction between a "police knock" and a casual, normal knock. The "normal" knock should be described as normal in force and duration. How the officer knocked on the door may be a factor during a court hearing. The defense may claim that the knock was intimidating and put their client in a position of being fearful and anxious.

There are other factors to consider with respect to contact with the person in their home. As a general rule, a command to a person almost automatically converts the encounter in someone's home from voluntary into a detention. Commands to a person in his home should be avoided. Some examples are phrases such as "Come over here, I want to talk with you." "Get out of bed, I want to talk with you." or "Get your hands out of your pockets." Avoid using words and phrases such as "stop," or "stay there," and avoid asking someone to step away from a particular part of the residence. Officers run a

fine line when commands such as these are given. We do want to emphasize, however, that if there is an issue of safety, commands can be appropriate. Even if the search may be lost, the goal is to make the officer safe.

The investigator should avoid putting his hands on a subject; this may be construed as a detention situation, even if it is a casual hand on the shoulder while speaking to the subject. Asking someone to move from one place of the premises to another or to sit may be construed as a detention as well.

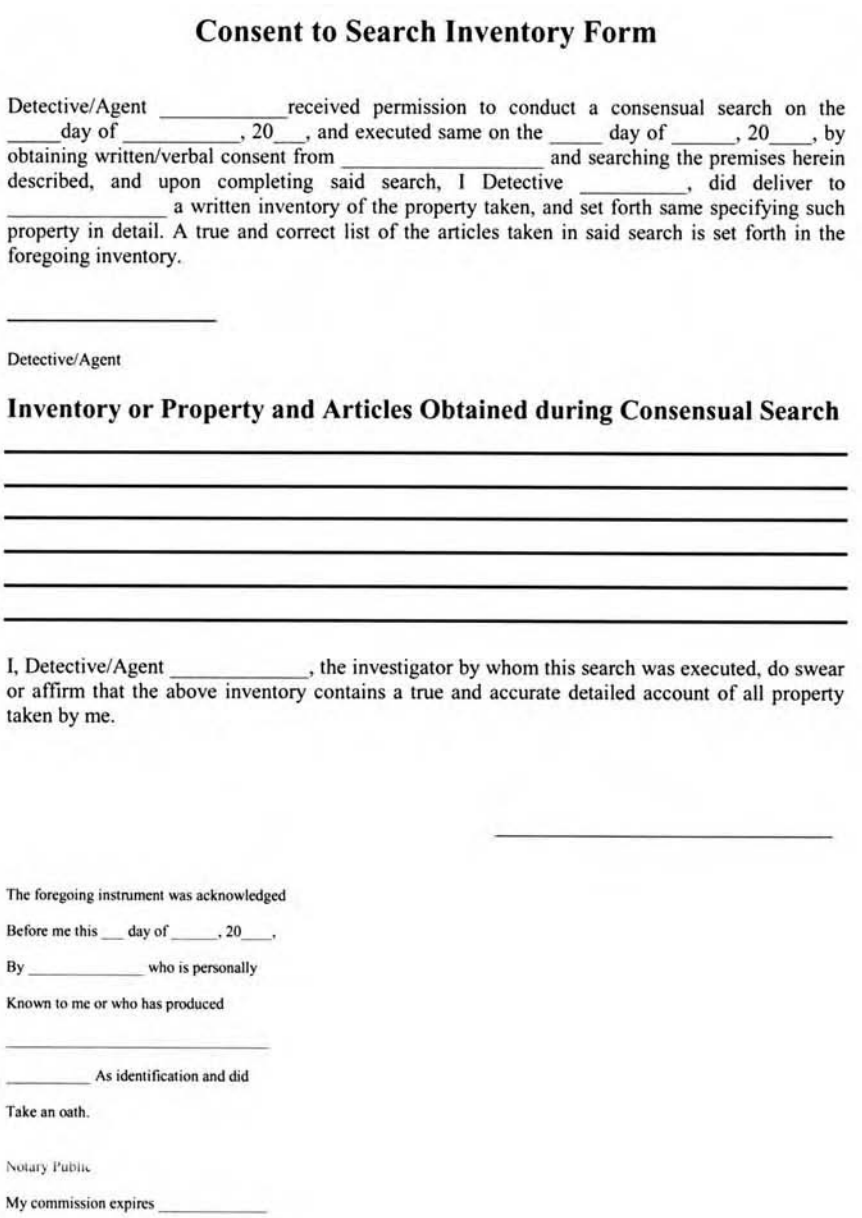
Length of time of an encounter during a knock and talk should be considered. Although there is no definition of the amount of time when an encounter becomes a detention, at some point that encounter may take too long. If the investigator takes a long time to obtain a consent search of the premises, the encounter may become too long.

The age and intelligence of the person whose premises the investigator is asking to search should be taken into consideration. For instance, if a child is left alone in the home by the parents; the child may be in a position intellectually to provide a consent search of the areas in which they have access.

Consensual Search Inventory

When a search warrant is executed and items of evidence have been seized, law enforcement will provide the suspect with a search warrant inventory of items taken during the search. This search warrant inventory provides a detailed list of items seized as part of the execution of the search warrant. Similar to a search warrant inventory list is a consensual search inventory form. This provides the subject with a list of items seized or surrendered by the individual during a knock and talk consensual encounter.

It is suggested that police agencies use something similar to this inventory form when collecting items of evidence during a knock and talk. The consent-to-search inventory form (Figure 3.2) is a simple form that can be useful to investigators. It provides the name of the detective or agent receiving permission to conduct a consensual encounter on a particular day, describes if the detective provided written or verbal consent from the party to search the premises, and upon completion, provides a written inventory and description of any property taken. The document is signed by the investigator, notarized, and signed by the party from whom the items were seized. A copy of the consent-to-search and inventory form is provided to the subject for his or her records. This document should be made part of the case file in the investigation to accurately reflect what was seized at the time of the consent search.



Consent to Search Inventory Form

Detective/Agent _____received permission to conduct a consensual search on the _____day of _____, 20___, and executed same on the _____ day of _____, 20____, by obtaining written/verbal consent from _____ and searching the premises herein described, and upon completing said search, I Detective _____, did deliver to _____ a written inventory of the property taken, and set forth same specifying such property in detail. A true and correct list of the articles taken in said search is set forth in the foregoing inventory.

_____

Detective/Agent

Inventory or Property and Articles Obtained during Consensual Search

_____

_____

_____

_____

_____

_____

I, Detective/Agent _____, the investigator by whom this search was executed, do swear or affirm that the above inventory contains a true and accurate detailed account of all property taken by me.

_____

The foregoing instrument was acknowledged

Before me this ___ day of _____, 20____,

By _____ who is personally

Known to me or who has produced

_____

_____ As identification and did

Take an oath.

Notary Public

My commission expires _____

Figure 3.2

The consent-to-search form has many advantages. It can protect the investigator by being a good faith document, inventorying the property and providing the subject with a copy. This inventory form, which has been signed by the defendant acknowledging that certain items were taken from the premises,

can be used in litigation. If the subject refuses to sign the form, the investigator should write "refused" on the form and provide a copy to the subject.

Conclusion

The knock and talk technique can help develop cooperating individuals who are interested in assisting law enforcement to further their investigative endeavors. Cultivating people to assist in an investigation may be a result of a knock and talk. A situation in which a small amount of drugs turns into a major case may occur because of the use of a knock and talk. It is an extremely effective technique for law enforcement. Any size police agency can use this technique, whether it has several officers to several thousands of officers. The technique can be used in a variety of settings. It is always important, however, that the police conduct be noncoercive and nonauthoritative.

The knock and talk is a consensual encounter that is effective in investigation of crime, particularly narcotics. The more the officer participates in the knock and talk procedure, the more proficient he becomes. Practice does make perfect, but remember that the method is a technique of last resort.

The techniques described in this chapter provide the law enforcement officer with an opportunity to create investigative opportunities. Try it — it really works!

Key Terms

Consent to search
Consent versus detention
Consensual search inventory form
Fourth Amendment
Knock and talk
Presurveillance
Search and seizure
Selective taping
Talker and scanner
Tip complaints
Tip line
Tip programs
Tip processing
Verbal consent
Wrapping 101
Written consent
U.S. v. Bostick
U.S. v. Cormier
U.S v. Werking