RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation that bans the use of no-knock warrants, which generally permit law enforcement officers to enter a premises without first identifying their authority and purpose. Additionally, any evidence obtained during the execution of a search that violates laws banning No Knock Warrants shall be excluded at trial and during litigation.
I. **Introduction**

A No-Knock Warrant is a search warrant authorizing law enforcement to gain entry and search private premises without giving notice of their authority and purpose.\(^1\) They dispense with the well-established knock-and-announce rule requiring law enforcement to provide such notice before entering private premises.\(^2\) Usually, No-Knock Warrants are applied when there is a “reasonable suspicion that knocking and announcing would be dangerous or would result in the destruction of evidence.”\(^3\)

Violating the knock-and-announce rule “ha[s] been condemned by the law and the common custom of this country and England from time immemorial. It was [even] condemned by the yearbooks of Edward IV, before the discovery of this country.”\(^4\) The knock-and-announce rule not only protected citizens from unreasonable searches and seizures, but also law enforcement, who might be mistaken as burglars from fearful homeowners.\(^5\)

In the early 1900s, courts recognized limited emergency scenarios allowing law enforcement to enter a private residence without a warrant. These circumstances included the belief that the occupant within the home was in danger of bodily harm, attempting to destroy evidence, or shooting weapons at the officer.\(^6\) However, executing searches without notice was illegal, and any evidence obtained from such searches were presumptively inadmissible.\(^7\)

In 1970, the Nixon administration introduced federal No-Knock Warrants as part of the Comprehensive Drug Abuse, Prevention, and Control Act of 1970 (“1970 Act”). No-Knock Warrants were originally intended to have a narrow purpose: to enforce anti-drug laws and to prevent drug dealers from flushing evidence down the toilet.\(^8\) However, in the four years federal No-Knock Warrants were legally used, “innocent Americans around the country [were] subject to dozens of mistaken, violent, and often illegal police raids by local, state and Federal narcotics agents in search of illicit drugs and their dealers.”\(^9\)

Federal No-Knock Warrants were so disruptive that the Senate repealed the “No-Knock” provision of the 1970 Act by a *two-to-one* margin.\(^10\) To this day, No-Knock Searches are

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\(^1\) Brian Dolan, *To Knock or Not to Knock? No-Knock Warrants and Confrontational Policing*, 93 ST. JOHN’S L. REV. 1, 201, 205 (2019).
\(^2\) Id. at 206.
\(^3\) Id. at 205.
\(^4\) Benefield *v.* State, 160 So. 2d 706, 709 (Fla. 1964).
\(^5\) Dolan, *supra* note 1, at 206.
\(^6\) Johnson *v.* United States, 333 U.S. 10, 15 (1948) (“No evidence or contraband was threatened with removal or destruction”); Accarino *v.* United States, 179 F.2d 456, 465 (D.C. Cir. 1949).
\(^7\) Accarino, 179 F. 2d at 465; Miller *v.* United States, 357 U.S. 301, 309 (1958).
\(^9\) Id.
\(^10\) Id.
illegal under the federal knock and announce rule. However, despite the federal ban, state and local law enforcement systems continue to use No-Knock Warrants.

In 2006, the Supreme Court removed an important practical check against No-Knock Warrants when it held that evidence obtained in violation of the knock-and-announce rule need not be suppressed.

II. The Problematic Nature of No-Knock Warrants

In their current usage, No-Knock Warrants do not fulfill their intended purpose because they: 1) undermine the Fourth Amendment; 2) fail to keep the public and law enforcement safe; and 3) contribute to the disproportionate impact of the criminal justice system on communities of color.

A. No-Knock Warrants and Dynamic Entry Tactics Erode the Fourth Amendment

On a fundamental level, No-Knock Warrants inherently discard the idea of presumption of innocence—a cornerstone of the American judicial system. No-Knock Warrants “are often executed using ‘dynamic entry’ tactics,” allowing officers to use battering rams and explosives, such as flash-bang grenades, in order to disorient the people inside the residence. More importantly, No-Knock Warrants are applied indiscriminately and have increasingly affected innocent people.

The knock-and-announce rule, which is included in the reasonableness inquiry under the Fourth Amendment, is supposed to give “innocent citizens a chance to inform the police of their error before any adverse consequences.” When law enforcement uses dynamic entry tactics, “they do not necessarily announce who they are . . . and the knock can be followed almost immediately with . . . a sudden swarm of heavily-armed, adrenalized cops rushing into a sleeping home,” even if they knock. With dynamic entry, innocent citizens have no opportunity to inform the police that they are innocent or that the police have the wrong address, which erodes the Fourth Amendment’s purpose.

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11 Id.
12 Dolan, supra note 1, at 207.
15 Alan Pyke, Florida sheriff cuts tough-guy video with masked SWAT team, THINKPROGRESS (Apr. 10, 2017, 3:29 PM), https://archive.thinkprogress.org/florida-sheriff-mask-on-21f73db095d0/ (“And in many cases, they simply take the wrong door. Maybe the information was bad. Maybe the information was good but officers went to a different house by mistake. Either way, no-knock raids and dead-of-night ‘dynamic entry’ tactics have become notorious . . . precisely because they often terrorize innocent people).”
16 Solis v. City of Columbus, 319 F. Supp. 2d 797, 805 (S.D. Ohio 2004) (citing Ker v. California, 374 U.S. 23, 57 (Brennan, J., dissenting)).
17 Pyke, supra note 15.
B. No-Knock Warrants Fail to Keep the Public and Law Enforcement Safe

No-Knock Warrants are also executed in a manner that increases the likelihood of violent confrontation and decreases public safety. Between the late 1980s—when SWAT teams began joining law enforcement to execute warrants—and 2006, at least 40 innocent people were killed in botched raids.\(^{18}\) This number more than doubled over the next decade. Between 2010 and 2016, at least 94 people, including 13 police officers, died during the execution of No-Knock Warrants.\(^{19}\) Of the 81 civilian deaths, half were members of minority groups.\(^{20}\) However, the number of deaths is likely higher, because until 2014, no state required police agencies to report any instances of forced entry into a private residence.\(^{21}\) As of 2019, Utah is the only state to have these reporting requirements.\(^{22}\)

The disproportionate use of No-Knock Warrants, dynamic entry, and SWAT teams against communities of color means that they bear the brunt of stress and death tolls.\(^{23}\) In 2014, the ACLU found that 68% of all drug searches deploying SWAT teams impacted minorities; only 38% of drug searches impacted white people.\(^{24}\) For any instance of a search deploying a SWAT team, 42% of affected people were Black, while another 12% were Latin American.\(^{25}\) The fact that any lives are lost at all during the execution of a No-Knock Warrant is abhorrent, but even more so when SWAT teams are called to help law enforcement execute warrants.

C. No-Knock Warrants are Not Only Dangerous, but Also Ineffective and Costly

No-Knock Warrants rarely achieve their intended purpose and have significant financial costs. For example, on December 22, 2020, Alderman Jason Ervin stated in a Joint Committee Meeting of the Chicago City Council that “3,400 out of the 4,800 search warrants granted come back with no guns and no drugs, and 1,600 of the 4,800 end up with no guns, no drugs, and no arrest.”\(^{26}\) In other words, 70% of the search warrants in


\(^{21}\) Dolan, *supra* note 1, at 208 (discussing that Utah “enacted a statute in 2014 that set forth reporting requirements regarding the use of tactical groups and forcible entry to execute search warrants. . . .”) (internal citations omitted).

\(^{22}\) Id.

\(^{23}\) Kenneth B. Nunn, *Race, Crim, and the Pool of Surplus Criminality: Or Why the “War on Drugs” Was a “War on Blacks,”* 6 J. GENDER RACE & JUST. 381, 382 (2002).


\(^{25}\) Id. at 36.

\(^{26}\) Rebecca Zellelew, *Joint Committee: Human Relations; Public Safety*, DOCUMENTS POWERED BY CITY BUREAU, 1, 10 (Dec. 22, 2020), https://docs.google.com/document/d/1Nwi06V9rpeepb6ZDzLReR8Ilc4x265pTOiSc__G1p6U/edit.
Chicago came back with no guns or drugs. Further, 33% of the time, law enforcement not only failed to recover guns or drugs, but also did not arrest anyone.

Further, from 2010 to 2015, an average of at least 30 federal civil rights lawsuits requesting relief from botched residential search warrants were filed per year.\textsuperscript{27} Several of these lawsuits resulted in multi-million-dollar settlements, all at taxpayer expense.\textsuperscript{28} Notably, “in each of those cases, as in almost all botched raids, prosecutors declined to press charges against the officers involved.”\textsuperscript{29}

In addition to the physical harm and the costs to taxpayers, No-Knock Warrants also cause tremendous financial harm and extensive property damage. For example, the ACLU’s 2014 report mentioned that at least half of the studied executions of No-Knock Warrants involved property damage to doors or windows, due to battering rams and flashbang grenades.\textsuperscript{30} In general, regardless of whether the search was fruitful, homeowners are rarely reimbursed for property damage.\textsuperscript{31} Victims, homeowners, and taxpayers all have to pay the price for No-Knock Warrants. As a result, regulation is needed.

\textbf{III. State and Federal Measures to Ban No-Knock Warrants}

Three states have banned No-Knock Warrants so far: Oregon, Florida, and Virginia. Whether through legislation or the courts, each state has different requirements.

Under Oregon law, law enforcement can only execute a search warrant “within the period and at the times authorized by the warrant.”\textsuperscript{32} While only police officers can execute a warrant, they can bring anyone who “may be reasonably necessary for the successful execution of the warrant with all practicable safety.”\textsuperscript{33} When law enforcement arrives at the scene, they must give the person to be searched appropriate notice of the officer’s identity, authority and purpose.\textsuperscript{34}

Virginia banned No-Knock Warrants when the governor signed Breonna Taylor’s Law into effect on December 7, 2020.\textsuperscript{35} The bill is comprehensive and leaves little room for ambiguity. Law enforcement can only execute warrants during daytime hours, unless “for good cause shown.”\textsuperscript{36} They must also be recognizable in their uniforms and give “audible...\textsuperscript{36}

\begin{notes}
\item Sack, \textit{supra} note 15.
\item Id.
\item Id.
\item Id.
\item ACLU, \textit{supra} note 24, at 21.
\item Execution of Warrant, ORS 133.575(1) (2009).
\item Id.
\item Id. at ORS 133.575(2).
\item Code of Virginia, § 19.2-56 (Effective March 1, 2021).
\end{notes}
notice" of their authority and purpose before executing the warrant. Any evidence obtained from searches violating this law will not be admitted in any subsequent prosecutions.

Florida, unlike the other states, used the courts to ban No-Knock Warrants. In 1994, the Florida Supreme Court ruled that "in the absence of express statutory authorization, no-knock search warrants are without legal effect in Florida." In its decision, the Florida Supreme Court found that a strong presumption existed against No-Knock Warrants at common law.

On June 11, 2020, Senator Rand Paul proposed a Senate bill known as the Justice For Breonna Taylor Act ("Breonna Taylor Act"). The Breonna Taylor Act would require federal law enforcement officers to provide notice of their authority and purpose before executing a warrant, and the serving officer to provide the same notice of authority and purpose "before forcibly entering a premises." The bill applies to any state and local law enforcement agencies receiving funds from the Department of Justice.

While these various state and federal measures are a good start to resolving this problem, they are not effective enough by themselves. First, none of these bills hold officers accountable for executing No-Knock Warrants. Further, while some of the bills are clearly written, they introduce ambiguity in other ways. For example, Virginia’s law allows judges to broadly authorize No-Knock Warrants, as long as good cause is shown. Notably, "good cause" is not defined anywhere in the statute. There is also ambiguous language in the Oregon statute, which defines neither the people nor the actions to be taken that may be reasonably necessary to successfully execute the warrant. At the federal level, the Breonna Taylor Act is only three sentences long, fails to restrict the times No-Knock Warrants can be executed, and does not prevent illegally obtained evidence from being admitted in court. As a result, the already established or proposed measures are piecemeal, and ensure this problem will not be fully resolved.

37 Id.
38 Id.
40 Id. (citing Benefeld v. State, 160 So. 2d 706 (Fla. 1964)).
41 S. 3955, 116th Cong. § 1 (as reported by S. Comm. on the Judiciary, June 11, 2020).
42 Id. at §§ 2(a)-(b).
43 Id. at § 2(b).
44 Code of Virginia, § 19.2-56 (Effective March 1, 2021).
45 See id.
46 See Execution of Warrant, ORS 133.575(1)-(3) (2009).
47 S. 3955, 116th Cong. §§ 1-2 (as reported by S. Comm. on the Judiciary, June 11, 2020).
IV. **Proposed Resolution: To Ban No-Knock Warrants at All Levels of Law Enforcement and to Require Courts to Suppress Any Evidence Obtained from Searches Where No-Knock Warrants were Executed**

No-Knock Warrants should be banned at all levels of law enforcement, not just for federal officers. States should also be required to establish, and regularly review, strict knock-and-announce guidelines in order to ensure officers notify the appropriate parties when they arrive at the scene to execute a search warrant and update their policies. Of course, states are allowed to enact stricter measures and practices, like Virginia’s, in order to combat No-Knock Warrants.49

In order to deter law enforcement from violating legislation banning No-Knock Warrants, courts at all levels of American government should apply the exclusionary rule in order to suppress evidence obtained in violation of the ban.50 Specifically, evidence including, but not limited to, physical contraband, DNA evidence, fingerprint evidence, and suspect and witness statements should be excluded at trial if they are obtained during the execution of a search that violates laws banning No-Knock Warrants or any other codified search warrant execution policies and procedures. The prosecution should also be prohibited from pursuing any line of questioning pertaining to the execution of such improper search warrant executions during litigation. Adding this provision would also restore an important practical check against No-Knock Warrants that the Supreme Court eliminated in *Hudson v. Michigan*.51

V. **Potential Criticism Against the Proposed Resolution and Past Efforts to Ban No-Knock Warrants**

There is no known opposition to the resolution within the American Bar Association. However, any potential criticisms of the proposed Resolution may likely focus on the resolution’s complete prohibition against No-Knock Warrants, without exception. Opponents may argue that such a blanket prohibition flies in the face of the Fourth Amendment, which inherently requires examining the reasonableness of a proposed

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48 Code of Virginia, § 19.2-56 (Effective March 1, 2021).
49 *State v. Vinuya*, 96 Haw. 472, 491 (Ct. App. 2001) (concluding that the exigent circumstances did not apply “based upon the adequate and independent state grounds” of Hawaii’s state constitution);
*Pennsylvania v. Labron*, 518 U.S. 938, 951 (1996) (per curiam) (Stevens, J., dissenting) (stating that “the sophistication of [Pennsylvania’s] search and seizure law” and caselaw in the Pennsylvania courts about search and seizure law provides “insights that our decisions can provide on related issues of law.”).
50 See, e.g., *People v. Yi Chih Chen*, 50 Cal.App.5th 952, 956 (2020) (Upholding the trial court’s decision to exclude evidence about the neighbor’s failure to comply with homeowner association rules or the Good Neighbor Fence Act because “the law does not entitle Chen to brandish a shotgun to protect against the removal of a fence.”); *People v. Mazel*, 45 Cal. App. 3d Supp. 1, 3-4 (Cal. App. Dep't Super. Ct. 1974) (reversing the trial court’s decision denying a motion to suppress evidence because “no warrant was issued” and because “the FBI occupied the premises all day, and the sheriff had ample time to apply for a warrant.”); *Hawkins v. State of Indiana*, 626 N.E.2d 436, 439-40 (Ind. 1993) (holding that evidence obtained after a warrantless entry was erroneously obtained and illegally introduced at trial when an “officer kicked open the front door” and failed to provide evidence of circumstances that made it impractical to wait for a search warrant).
search and probable cause at the time of entry.\textsuperscript{52} They may also rely on the Supreme Court’s statements that “[t]he common-law knock and announce principle was woven quickly into the fabric of early American law” and that “this principle is an element of the reasonableness inquiry under the Fourth Amendment.”\textsuperscript{53}

Further, opponents may argue that caselaw has reaffirmed that courts must look to the particular facts to determine what is reasonable under the Fourth Amendment. For example, the Supreme Court struck down a \textit{per se} rule for No-Knock Warrants in \textit{Richards v. Wisconsin}, because such a rule would render the Fourth Amendment’s reasonableness requirement “meaningless.”\textsuperscript{54}

However, in response to these potential criticisms, as mentioned above, the current state of No-Knock Warrants violates the Fourth Amendment in effect. The knock-and-announce rule is supposed to give citizens a chance to tell police that they are innocent or that the police is mistaken. However, when dynamic entry is used instantaneously, innocent citizens cannot communicate to police officers. Cutting off this form of communication cannot possibly be reasonable.

Opponents may also argue that a blanket prohibition could put officers and citizens in danger. Being unable to determine the reasonable course of action could hobble law enforcement in exigent circumstances. Typical examples include where someone is in danger, such as a hostage situation or where officers believe someone is about to be injured or killed. To combat this potential criticism and garner further support, it is important to note that there are two closely related exceptions to the knock-and-announce rule: 1) exigent circumstances, and 2) No-Knock Warrants. This prohibition will not affect the common law principle allowing an officer to enter a home without knocking and announcing when there are exigent circumstances.

However, it is also important to fully understand the scope of exigent circumstances. Caselaw has created an exception to the exigent circumstances rule, called the “police-created exigency” doctrine.\textsuperscript{55} “Under this doctrine, police may not rely on the need to prevent destruction of evidence when that exigency was ‘created’ or ‘manufactured’ by police.”\textsuperscript{56} As discussed above, most uses of No-Knock Warrants by law enforcement and SWAT teams are for drug cases. Significantly, the Supreme Court has “reject[ed] the blanket exception to the knock-and-announce requirement for felony drug investigations.”\textsuperscript{57} Further, the “mere presence of contraband, without more, does not give rise to exigent circumstances.”\textsuperscript{58} As a result, this Resolution is in line with the already-existing “police-created exigency” doctrine.

\begin{itemize}
\item \textsuperscript{52} See \textit{United States v. Ramirez}, 523 U.S. 65, 71 n.2 (1998).
\item \textsuperscript{54} 520 U.S. 385, 388 (1997).
\item \textsuperscript{55} \textit{Kentucky v. King}, 131 S. Ct. 1849, 1857 (2011).
\item \textsuperscript{56} \textit{Id.} (citing \textit{United States v. Chambers}, 393 F.3d 563, 566 (6th Cir. 2005); \textit{United States v. Gould}, 364 F.3d 578, 590 (5th Cir. 2004) (\textit{en banc})).
\item \textsuperscript{57} \textit{Richards}, 520 U.S. at 396.
\item \textsuperscript{58} \textit{United States v. Tobin}, 923 F.3d 1506, 1510 (11th Cir. 1991).
\end{itemize}
Opponents may also stress that No-Knock Warrants are used sparingly and argue that the proper way to combat abuses is through training and clear agency policies and procedures. The goal of this Resolution is to do just that. By unambiguously explaining the policies and procedures that law enforcement must follow when executing warrants, and the types of conduct that would result in disciplinary action and pay suspension, officers will understand which actions are abusive. That will create meaningful change and ensure No-Knock Warrants are fully banned both in law and practice.

VI. Conclusion

For these reasons, the American Bar Association should adopt this Resolution to encourage the banning of No-Knock Warrants at all levels of law enforcement. Eliminating them at the state, local, territorial, and tribal levels would put those law enforcement officers on the same level as federal officers, who have been banned from executing no-knock warrants since the 1970s.

Respectfully submitted,

Christopher L. Brown, Chair
Young Lawyers Division

August 2021
GENERAL INFORMATION FORM

Submitting Entity: Young Lawyers Division

Submitted By: Christopher L. Brown, YLD Chair

1. **Summary of the Resolution(s).**
   
The Resolution urges federal, state, local, territorial and tribal governments to enact legislation that bans the use of no-knock warrants, which generally permit law enforcement officers to enter a premises without first identifying their authority and purpose.

2. **Indicate which of the ABA’s Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.**

   This resolution addresses Association goals 3 and 4. An elimination of no-knock warrants would advance safer and more effective policing while removing a tool from the toolkit that was overwhelmingly affecting communities of color.

3. **Approval by Submitting Entity.**

   The Resolution was approved by the Young Lawyers Division Assembly on February 19, 2021.

4. **Has this or a similar resolution been submitted to the House or Board previously?**

   20A116A, among many provisions, urges all federal, state, local, tribal, and territorial governments to enact legislation that eliminates no-knock warrants in drug cases.

5. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   20A116A, among many provisions, urges all federal, state, local, tribal, and territorial governments to enact legislation that eliminates no-knock warrants in drug cases. This resolution would expand upon that earlier foundation.

6. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A.

7. **Status of Legislation.**

   The George Floyd Justice in Policing Act (H.R. 1280, 117th Congress), among other
things, limits the unnecessary use of force and restricts the use of no-knock warrants, chokeholds, and carotid holds. It passed the House of Representatives on March 3, 2021.

8. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

If adopted, the Young Lawyers Division would work with the Governmental Affairs Office to implement the policy.

9. **Cost to the Association.** (Both direct and indirect costs)

The cost of this proposed resolution would result in minor indirect costs associated with Staff and members devoted to the policy’s subject matter and working with the necessary legislative staff to have this heard in Congress.

10. **Disclosure of Interest.** (If applicable)

    N/A.

11. **Referrals.**

    Business Law Section
    Center on Children and the Law
    Commission on Racial & Ethnic Diversity in the Profession
    Commission on Sexual Orientation and Gender Identity
    Commission on Women in the Profession
    Commission on Youth at Risk
    Council for Diversity in the Educational Pipeline
    Criminal Justice Section
    Forum on Affordable Housing and Community Development Law
    Government and Public Sector Lawyers Division
    Health Law Section
    Judicial Division
    Law Practice Division
    Law Student Division
    Science & Technology Law Section
    Section of Civil Rights and Social Justice
    Section of Family Law
    Section of Labor and Employment
    Section of Litigation
    Senior Lawyers Division
    Solo, Small Firm and General Practice Division (GPSolo)
    Tort, Trial, and Insurance Practice Section
    Standing Committee on Legal Aid and Indigent Defense
12. **Name and Contact Information** (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Dana M. Hrelic  
ABA YLD Representative to the HOD  
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Christopher Jennison  
ABA YLD Speaker  
301-538-5705  
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13. **Name and Contact Information.** (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Dana M. Hrelic  
ABA YLD Representative to the HOD  
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EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution urges federal, state, local, territorial, and tribal governments to enact legislation that bans the use of No-Knock Warrants, which generally permit law enforcement officers to enter a premises without first identifying their authority and purpose.

2. Summary of the issue that the resolution addresses.

No-Knock Warrants dispense with the well-established knock-and-announce rule requiring law enforcement officers to provide such notice before entering private premises. The practice of executing a No-Knock Warrant is disfavored. In cases involving drug searches, No-Knock Warrants are disproportionately used against communities of color, further compounding the injustices they face under the criminal justice system. Further, the practice is ineffective. In a majority of cases where No-Knock Warrants are used, contraband is not recovered.

3. Please explain how the proposed policy position will address the issue.

The proposed policy position will resolve the issue through a complete ban against No-Knock Warrants. It will prevent tragedies that have affected many members of communities of color, including Breonna Taylor. Further, allowing courts to suppress evidence illegally obtained from searches violating laws the proposed legislation will deter law enforcement from taking any courses of action during searches that could cause them to execute No-Knock Warrants.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

No opposition has been identified.