

To: LVPPA Members  
From: David Roger, General Counsel  
Re: Warrantless Entry into Residences- Emergency Aid  
Date: September 18, 2014

The Fourth Amendment requires that officers either obtain consent from an occupant of the home or secure a search warrant before entering and searching a residence. Over the years, the courts have established exceptions to the warrant requirement: Hot Pursuit; Destruction of Evidence; and the protection of individuals.

This memo is part two of a series of research documents discussing exceptions to the warrant requirement.

### *Emergency Aid Exception*

The U.S. Supreme Court, in *Brigham City, Utah v. Stuart*,<sup>1</sup> held that officers may enter a home, without a warrant, when they have an objectively reasonable basis to believe that an occupant may be seriously injured or threatened with imminent serious harm.

In that case, at 3:00 a.m. officers responded to a loud party disturbance. When they arrived at the residence, officers heard shouting from inside the home. When they peered through the kitchen window, officers saw a group of males in an altercation. Four males were attempting to restrain a juvenile male. When the male broke free, he struck one of the adults in the face, causing the victim to bleed. At that point, the other males tried to restrain the enraged male against a refrigerator, using such force that the appliance began moving across the room. Officers entered the kitchen and arrested the individuals.

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<sup>1</sup> *Brigham City, Utah v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943 (2006).

In justifying the warrantless entry into the residence, the Court explained:

One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.

(Citations and internal quotation marks omitted.)

Additionally, the Court explained that the officer's subjective state of mind is irrelevant as the crux of the issue is whether the officer's belief that he had to enter was objectively reasonable in light of the facts and circumstances.

The officers were justified in entering the residence because they witnessed a violent physical altercation. However, many disturbance calls are not as clear-cut as the facts in the *Brigham City* case. Quite often, the parties are not in the midst of a physical fight. In fact, the Nevada Supreme Court considered such a case in *Hannon v. State*.<sup>2</sup>

In *Hannon*, officers received a 911 call from a neighbor who reported hearing, "yelling and screaming and thumping against the walls" in Hannon's apartment. When officers arrived 45 minutes later, the female answered the door, "red-faced, crying, and breathing hard." The officers saw Hannon in the apartment wearing underwear and a tank top. Hannon appeared to be, "flushed and angry."

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<sup>2</sup> *Hannon v. State*, 125 Nev. 142, 207 P.3d 344 (2009).

Officers questioned the female in the doorway to the apartment. Although she acknowledged she had been having a verbal argument with Hannon, she denied being injured. Additionally, the female insisted Hannon was the only other person in the apartment.

Officers forced their way into the apartment to, “make sure everybody was ok.” Upon entering the residence, officers observed marijuana and paraphernalia on the living room table.

Applying the standards set forth in *Brigham City*, the Court held that officers did not have an objectively reasonable belief that the occupants of the apartment were endangered. The Court noted that officers did not hear an ongoing altercation nor did they observe any signs of injury on the occupants. Moreover, officers did not have any basis to believe a third party was in danger inside the home. Consequently, the Court concluded the officers did not have an, “objectively reasonable belief that there was an immediate need to protect the occupants of Hannon’s apartment.”

Whether officers are justified in entering a residence, without a warrant, will depend on the facts established when the officers decide to enter. It will be important to document every fact you rely on in believing that the occupants are in danger of physical harm. Remember that the risk of harm must be immediate. It will not be sufficient to rely upon a neighbor’s report of an earlier disturbance.

Of course, one of the residents may always consent to you entering the residence.