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## Introduction

“They [police officers] made a mistake. There’s no one to blame for a mistake. The way these people were treated has to be judged in the context of a war.”

—Hallandale, Florida, attorney Richard Kane, after police officers conducted a late night drug raid on the home of Edwin and Catherine Bernhardt. Police broke into the couple’s home and threw Catherine Bernhardt to the floor at gunpoint. Edwin Bernhardt, who had come down from his bedroom in the nude after hearing the commotion, was also subdued and handcuffed at gunpoint. Police forced him to wear a pair of his wife’s underwear, then took him to the police station, where he spent several hours in jail. Police later discovered they had raided the wrong address.<sup>1</sup>

On August 5, 2005, at 6:15 a.m., a SWAT team converged around the Sunrise, Florida, home of Anthony Diotaiuto. They came to serve a search warrant based on an anonymous tip and an informant’s purchase of a single ounce of marijuana from the 23-year-old bartender and part-time student.

Friends acknowledge that Diotaiuto was a recreational marijuana smoker, but they deny he was a drug dealer in any real sense of the term.<sup>2</sup> They would later tell the media that Diotaiuto had just bought the modest home with his mother after taking a second job and selling off his prized sports car—good evidence, they say, that he wasn’t running any lucrative criminal enterprise. Also a part-time student in community college, Diotaiuto was described by the parents of one of his friends as “a gem,” by a neighbor as a “beautiful person,” and by others as a churchgoing, family-oriented man.<sup>3</sup> He had one previous conviction for possession of marijuana, when he was 16. Otherwise, Diotaiuto had no criminal record, and no history of violence or criminal conduct.

By 7 a.m. the raid was over. Police had broken down Diotaiuto’s front door, and turned his home upside down looking for drugs, weapons, and drug paraphernalia. Diotaiuto lay dead in a bedroom closet. He had 10 bul-

let holes in his head, chest, torso, and limbs.

What happened between the time police arrived at his home and the time Anthony Diotaiuto’s body arrived at the coroner’s office is in dispute. Police say they announced themselves before breaking down Diotaiuto’s door, consistent with the requirements of a “knock and announce” search warrant. Neighbors say they heard no such announcement.<sup>4</sup> The officers who conducted the raid also say Diotaiuto fled from the living room to the bedroom as the raid commenced, where he armed himself with a handgun. An investigative committee has yet to issue its final report, but **police accounts of the raid have continued to change.** Immediately after the raid, for example, Lt. Robert Voss, spokesman for the Sunrise Police Department, told reporters that Diotaiuto “had a gun and pointed it at our officers.” Later the same day Voss revised, “In all likelihood, that’s what happened. I know there was a weapon found next to the body.”<sup>5</sup>

Police also found a BB gun, a shotgun, the handgun in question, and a rifle, all of which Diotaiuto owned legally. Diotaiuto also had a valid conceal-carry permit for the handgun.<sup>6</sup>

There are nagging questions about the account of the Diotaiuto raid given by Sunrise police. For example, police say that Diotaiuto’s concealed-carry permit indicated he was potentially dangerous, which necessitated the involvement of the SWAT team and the early-morning raid.<sup>7</sup> But common sense suggests the opposite. Applicants for concealed-carry permits in Florida are required to fill out a variety of paperwork, undergo a criminal background check and fingerprinting, pay a fee, and enroll in a class on gun safety and firearms law.<sup>8</sup> If Diotaiuto were a hardened, professional drug dealer dangerous enough to merit the use of such overwhelming force, it seems unlikely that he’d go to the trouble of obtaining a permit for his guns. Diotaiuto’s permit should have indicated to Sunrise police that, if anything, Diotaiuto was more likely a nonviolent, occasional drug user, rather than a volatile offender necessitating use of a SWAT team.

If, indeed, police had given sufficient notice of their presence, as mandated by a “knock and announce” warrant, it’s difficult to understand why Diotaiuto’s immediate reaction would be to flee to his bedroom to arm himself, given the small amount of marijuana in his possession. It’s even more difficult to imagine him then knowingly pointing his weapon at police for such an insignificant amount of the drug. An ounce of marijuana hardly merits a lethal shootout. If Diotaiuto was indeed armed when police entered his home, it seems more likely that his neighbors’ account is correct: The police didn’t give sufficient notice of their presence and identity. Unaware that the armed men breaking down his door were law enforcement, Diotaiuto quickly retrieved his gun to defend himself and his property from what he likely thought were criminal intruders.

Finally, even assuming everything Sunrise police say to be correct, the outcome in the Diotaiuto case is simply unacceptable. As is often the case, the local police department assured the media soon after the shooting that the officers involved had stellar performance records. The *Ft. Lauderdale Sun-Sentinel* reported that both officers who shot Diotaiuto routinely received “above-average” or “excellent” reviews, garnered dozens of recommendations, and earned multiple “officer of the month” distinctions.<sup>9</sup> That may well be. But the problem with these types of drug raids is rarely that the officers themselves were in error in defending themselves in what was certainly a highly volatile situation. The problem is that bad policies made the situation unnecessarily volatile. As Eleanor Shockett, a retired Miami-Dade circuit judge, put it to *Fort Lauderdale Sun-Sentinel* columnist Michael Mayo with respect to the Diotaiuto case, “What in the hell were they doing with a SWAT team? To break into someone’s home at six in the morning, possibly awaken someone from a deep sleep, someone who has a concealed weapons permit? What did they expect to happen?”<sup>10</sup>

The Diotaiuto case is far from unusual. Just a few months before the raid in Sunrise, in March 2005, police on a drug raid in Omao,

Kauai, Hawaii, broke into the home of Sharon and William McCulley, at home at the time with their grandchildren. Police were tracking a box that allegedly contained marijuana, and believed it to be in the McCulleys’ possession. After breaking down the elderly McCulleys’ door, police threw the couple to the ground. They handcuffed Sharon McCulley and held her to the floor with a gun to her head—her grandchild lying next to her. William McCulley—who uses a walker and has an implanted device that delivers electrical shocks to his spine to relieve pain—began flopping around the floor when the device malfunctioned from the trauma of being violently thrown to the ground.<sup>11</sup>

Police had the wrong address. In fact, they conducted a *second* “wrong door” raid before finally tracking down the package.<sup>12</sup>

The use of hyper-militarized, heavily armed police units to carry out routine search warrants has become increasingly common since the 1980s. These raids leave a very small margin for error. A wrong address, bad timing, or bad information can—and frequently does—bring tragedy. The information giving rise to these raids is typically collected from confidential informants. These informants are sometimes no more than well-meaning members of the community who want to tip police to illicit activity. But more often they’re professional “snitches”—people who regularly seek out drug users and dealers and tip off the police in exchange for cash rewards. A third, even more common class of informants is actual convicted or suspected drug dealers themselves, who are then rewarded with leniency or cash in exchange for information leading to other arrests. The folly of using informants of such questionable repute, who hold such obvious ulterior motives to conduct raids with such high stakes and such little room for error, would seem to be self-evident. Yet the practice grows more and more common, and the judges whom the criminal justice system entrusts to oversee the warrant process have grown more and more complacent.

Policymakers seem to be oblivious to this disturbing trend in police work. Few are will-

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