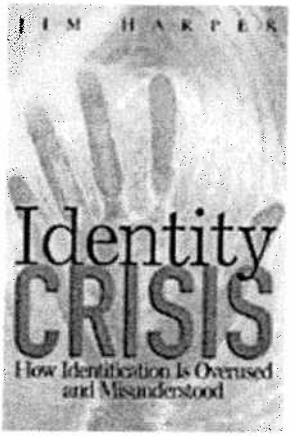

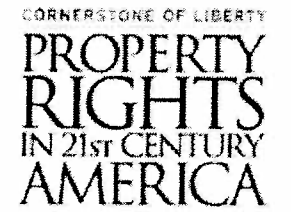

April 6, 2006

No SWAT

by Radley Balko

Radley Balko is a policy analyst for the Cato Institute specializing in vice and civil liberties issues.

Sometime this spring, the Supreme Court will hand down its decision in the case of *Hudson v. Michigan*. At issue is whether or not police who used an illegal "no-knock" raid to enter a defendant's home can use the drugs they seized inside against the defendant at trial. To understand the importance of this case, some background is in order.

As the name indicates, a "no-knock" raid occurs when police forcibly enter a private residence without first knocking and announcing that they're the police. The tactic is appropriate in a few limited situations, such as when hostages or fugitives are involved, or where the suspect poses an immediate threat to community safety. But increasingly, this highly confrontational tactic is being used in less volatile situations, most commonly to serve routine search warrants for illegal drugs.

These raids are often launched on tips from notoriously unreliable confidential informants. Rubber-stamp judges, dicey informants, and aggressive policing have thus given rise to the countless examples of "wrong door" raids we read about in the news. In fact, there's a disturbingly long list of completely innocent people who've been killed in "wrong door" raids, including New York City worker Alberta Spruill, Boston minister Accelyne Williams, and a Mexican immigrant in Denver named Ismael Mena.

It's impossible to estimate just how many wrong-door raids occur. Police and prosecutors are notoriously inept at keeping track of their own mistakes, and victims of botched raids are often too terrified or fearful of retribution to come forward. But over the course of researching a paper for the Cato Institute on the subject, I've found close to 200 such cases over the last 15 years. And those are just the cases that have been reported.

It's bad enough when the police serve a no-knock warrant at the wrong place. But this is not regular service of a warrant. No-knock raids are typically carried out by masked, heavily armed SWAT teams using paramilitary tactics more appropriate for the battlefield than the living room. In fact, the rise in no-knock warrants over the last 25 years neatly corresponds with the rise in the number and frequency of use of SWAT teams. Eastern

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Kentucky University criminologist Peter Kraska, a widely cited expert on the "militarization" of domestic police departments, estimates that the number of SWAT team deployments has jumped from 3,000 a year in the early 1980s to more than 40,000 a year by the early 2000s.

In the 1995 case *Wilson v. Arkansas*, the Supreme Court for the first time ruled that at least in principle, the Fourth Amendment requires police to knock and announce themselves before entering a private home. In doing so, the court acknowledged the centuries-old "Castle Doctrine" from English common law, which states that a man has the right to defend his home and his family from intruders. The announcement requirement gives an innocent suspect the opportunity to persuade the police that they've targeted the wrong residence before having his home invaded. It also protects police from being targeted by innocent homeowners who have mistaken them for criminal intruders and those same homeowners from the burden of determining if the armed intruders in their home are police or criminals.

But *Wilson* didn't eliminate no-knocks. In the same decision, the court recognized three broad exceptions, called "exigent circumstances," to the announcement requirement. The most pertinent of these state that if police believe announcing themselves before entering would present a threat to officer safety, or if they believe a suspect is particularly likely to destroy evidence, they may enter a home without first announcing their presence.

A legal no-knock raid, then, can happen in one of two ways. Police can make the case for exigent circumstances to a judge, who then issues a no-knock warrant; or police can determine at the scene that the exigent circumstances exist and make the call for a no-knock raid on the spot. In the latter case, courts will determine after the fact if the raid was legal.

In the real world, the exigent-circumstances exceptions have been so broadly interpreted since Wilson, they've overwhelmed the rule. No-knock raids have been justified on the flimsiest of reasons, including that the suspect was a licensed, registered gun owner (NRA, take note!), or that the mere presence of indoor plumbing could be enough to trigger the "destruction of evidence" exception.

In fact, in many places the announcement requirement is now treated more like an antiquated ritual than compliance with a suspect's constitutional rights. In 1999, for example, the assistant police chief of El Monte, Calif., explained his department's preferred procedure to the *Los Angeles Times*: "We do bang on the door and make an announcement—'It's the police'—but it kind of runs together. If you're sitting on the couch, it would be difficult to get to the door before they knock it down."

That comment came in a story about a mistaken raid in which Mario Paz, an innocent man, was shot dead by a raiding SWAT team when he mistook them for criminal intruders and reached for a gun to defend himself.

Common sense says the El Monte official is unusual only in his

forthrightness. Kraska's research shows that in most cities that have a SWAT team, the SWAT team serves the vast majority of drug warrants. The whole justification for SWAT procedures, which include serving warrants in the wee hours of the night and shock tactics like "flash bang" grenades, black masks, and overpowering weaponry, are to take a suspect by surprise. Were SWAT teams carefully observing the spirit of the announcement requirement by giving a vigorous knock, a full-throated announcement, and appropriate time for an occupant to answer, they'd be defeating the purpose of using paramilitary tactics to serve search warrants in the first place.

Since *Wilson*, the Supreme Court has only muddied the issue.

In the 1997 case *Richards v. Wisconsin*, the court appeared to be veering toward more protection for defendants, ruling Wisconsin's practice of serving all drug warrants with no-knock raids to be unconstitutional. Writing for the majority, Justice John Paul Stevens laid out a clear, eloquent defense of the Castle Doctrine: "The common law recognized that individuals should be provided the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry. ... These interests are not inconsequential."

But six years later, the court abandoned just that principle and adopted an entirely different standard. In *U.S. v. Banks*, the justices unanimously ruled that 15 to 20 seconds was an adequate wait time between police announcement and forced entry. More significant than the court's actual ruling, however, was its reasoning, summarized by Justice Souter rather concisely:

> On the record here, what matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink....
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> [I]t is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter.

With those two clauses, Souter effectively dismissed the common-law principle that announcement protects the innocent from an unjustified home invasion and instead instructed police to treat everyone named in a drug search warrant as if they were already guilty. What good is an announcement if police aren't required to give you sufficient time to answer the door? Under Souter's reasoning, it's difficult to understand what purpose the announcement requirement put forth in *Wilson* serves at all, other than offering a quaint, ceremonial homage to a time when the Fourth Amendment was more than a mere formality.

The *Hudson* case the court is now considering deals with illegal no-knock raids. That is, raids in which police couldn't even manage to follow the almost-perfunctory hoops they're required to jump through to get a legitimate no-knock warrant.

In *Hudson*, police in Michigan knocked and announced themselves, but waited just 3 to 5 seconds before breaking into the home of Booker T. Hudson. Once inside, they found a

substantial amount of cocaine and charged Hudson with various drug crimes. When a trial court found the wait time insufficient to satisfy the knock-and-announce requirement, Hudson moved to have the evidence suppressed.

The case eventually reached the Michigan Supreme Court, which ruled that suppressing the evidence seized in the raid wasn't a proper remedy for police violating the knock-and-announce rule, and cited the inevitable discovery doctrine: Because police had an otherwise valid search warrant, their failure to announce was inconsequential. They would have found the drugs anyway.

But the exclusionary rule's primary purpose is to serve as a deterrent against Fourth Amendment violations. If police know that breaking a particular Fourth Amendment protection will result in the suppression of any evidence they find, there's strong incentive for them to follow the law.

Should the U.S. Supreme Court uphold the Michigan Supreme Court's ruling, the already-battered knock-and-announce requirement would formally still be law, but there would be no effective sanction for police who violate it (monetary damages against police in such cases are unheard of). Thus, there'd be even less incentive for police to follow the rule than there already is. That means more of these particularly dangerous kinds of searches, conducted mostly by SWAT teams with no prior announcement. And that means wrong-door raids on innocents, and, inevitably, more unnecessary terrorizing of those innocents, more injury, and likely more loss of life.

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