

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

**Regionalizing Part Time SWAT Teams to Enhance
Capabilities and Limit Liability Exposure**

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ABSTRACT

In today's world, no jurisdiction is immune to the propensity for violence. Law enforcement administrators have a duty to their citizens to have a plan of action in the event a tactical team is needed. Whether they employ their own or call upon another jurisdiction, agencies must be ready for a high risk call.

Too many times, law enforcement agencies with part time tactical teams find themselves struggling to maintain recommended training hours, purchase necessary equipment, and select the proper personnel. This is usually due to limited budgets and small applicant pools. When these agencies attempt to deploy an insufficiently selected, inadequately trained, and poorly equipped tactical team, agency administrators are setting themselves, their department, and governmental jurisdictions up for liability exposure.

Departments with part time tactical teams and limited resources should seek to develop and implement a multi-jurisdictional tactical team with neighboring agencies to limit liability and enhance capabilities. This is particularly important when it comes to sound policy, supervision, training, and selection of officers on tactical teams. This model can mitigate liability exposure in the event of a lawsuit.

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INTRODUCTION

Police departments across the nation have a duty to provide effective police service and protection to the communities they serve. Often times, these communities experience highly dangerous situations that require the use of Special Weapons and Tactics (SWAT) teams to resolve. Calls for service that require a specialized response can include hostage situations and barricaded suspects as well as high-risk search and arrest warrants where the subject or subjects of the warrants have or are suspected to have a propensity for violence.

The dangerous nature of these incidents and the frequency of occurrence dictates that officers must be uniquely qualified, rigorously selected, highly trained, and appropriately equipped to provide the citizens with the proper protection and to protect the agency from unnecessary exposure to liability. Smaller agencies with fewer human and equipment resources often face difficulties in meeting the tactical needs and proper training of their jurisdictions. Communities, regardless of their size, are not immune from violence and critical incidents, and police agencies nationwide must be prepared and equipped to provide an effective tactical response.

The trend in regionalization of police responses to specialized operations began to spread significantly based on recommendations from the President's Commission on Law Enforcement and Administration of Justice report of 1967 ("President's Commission," 1967). These multi-jurisdictional efforts were intended to pool resources of multiple agencies so that the needs of these agencies could be better met when dealing with specific types of criminal offenses and critical incidents. In the early 1970s, these efforts developed into task forces targeting specific types of crimes such as narcotics

trafficking (U.S. Drug Enforcement Administration, n.d.). As law enforcement regionalization grew, agencies began to consider and implement formation of regionalized tactical assets to address issues faced by smaller agencies in trying to meet tactical needs. Agencies seeking to deploy technically specialized and advanced tactical units requires a large investment with training and equipment. Personnel must first be trained and equipment purchased prior to deployment of these deployments. When agencies pool their resources together, the cost is spread out, thus becoming a more viable and affordable option for departments (Berkowitz, 2015).

POSITION

Agency administrators must think about their agency's response to highly critical incidents requiring a calculated tactical response and consider their options for a tactical team that falls within their agencies means and capabilities. If the agency administrator feels their agency is not training adequately, have the right personnel or are properly equipped, they should consider other options. The National Tactical Officers Association (NTOA) (2015) defined a special weapons and tactics team as "Designated law enforcement teams, whose members are recruited, selected, trained, equipped and assigned to resolve critical incidents involving a threat to public safety which would otherwise exceed the capabilities of traditional law enforcement first responders and/or investigative units" (p. 10). The proper selection of a tactical officer should include experience, a physical fitness test, firearms proficiency, a background investigation, an oral board, a psychological exam, no sustained excessive use of force complaints, letters of recommendation from supervisors, and their last two evaluations (Koepp, 2000). Additionally, the candidate should undergo a series of evaluations to prove

mental judgment under stress, firearms proficiency under stress and fatigue, and the ability to solve problems under stress and exhaustion. Any government agency using a tactical team without the proper training, equipment, and support is setting itself up for liability exposure.

There have been many events in law enforcement history that have contributed to the creation of special weapons and tactics teams worldwide. The first special weapons and tactics team was created in Los Angeles, California in response to the Watts riots that began in August of 1965. The Watts riots began as a routine traffic stop for driving while intoxicated. The department's response was to deploy more police cars and officers to the area, which proved to be ineffective given the state of relations between the police and the community at the time. It turns out that the heavy-handed response by police likely contributed to the riots continuance (Mijares & McCarthy, 2008). During the Watts riots, 34 people were killed and 1,032 people were injured. There was also an undetermined amount of property damage that occurred (Mijares & McCarthy, 2008). Upon the conclusion of the riots, the department determined their officers were ill-equipped and poorly trained to properly handle the situation.

In 1966, a former United States Marine ascended the Tower at the University of Texas in Austin and shot and killed 16 people with a sniper rifle. Although the officers who responded to this critical incident eventually resolved it by killing the suspect, a properly equipped and trained special weapons and tactics team likely would have resolved the situation much sooner, saving many lives (Mijares & McCarthy, 2000). This incident, among many others, contributed to the formation of specially trained officers in high risk incidents.

Then, in 1974, the Symbionese Liberation Army (SLA), a domestic terrorist organization consisting of 44 members, responsible for two murders, several bank robberies, and attempts to kill police officers, were being sought by the Los Angeles police. On May 16, 1974, two members of the SLA botched an attempted shoplifting at a sporting goods store in a suburb of Los Angeles. Using a traffic citation in a vehicle abandoned by the SLA members, LAPD was able to locate the SLA safe house and surrounded the residence. The Los Angeles Special Weapons and Tactics unit engaged in a shootout with the SLA and killed 6 members of their organization. No officers or innocent citizens were injured in the incident (Mijares & McCarthy, 2008). This incident was an incentive for other agencies large in the United States to form their own SWAT teams.

The NTOA (2015) recommends standards and best practices by “providing a credible and proven training resource as well as a forum for the development of tactics and information” (p. 4). In order to mitigate liability exposure for tactical teams, a professional tactical team should adhere to best practices and the recommendations for training, selection, and policy development from the NTOA. It takes a minimum of 17 operators to form an effective and properly functioning tactical team (The National Tactical Officers Association, 2015). In 2011, the NTOA began reviewing and updating their recommendations for standards and training to bring tactical officers up to contemporary best practices. This comes at an important time, as public scrutiny of police officers and the tactics they use has been increasing. Simply put, the standardization of SWAT teams and the expectation that SWAT teams adhere to recognized best standards is more important than ever before (NTOA, 2015).

Agencies that operate part-time special weapons and tactics teams without proper supervision and support are setting themselves up for liability exposure. Many agencies do the best they can with what they have. However, while these teams may have good intentions to do the best with what they have, this will not mitigate their exposure to liability. Having a tactical team that does not meet the generally accepted police practices can lead to liability (Ryan, 2007).

Tactical teams must train to the latest best practices and industry standards. The NTOA (2015) provides the best information and assistance in the arena of special weapons and tactics and every effort should be made for teams to follow these standards. The NTOA also recommends that if part time tactical teams with limited resources cannot meet the best practices and industry standards, then they should regionalize with neighboring agencies to form a multi-jurisdictional team to share resources and enhance capabilities. The NTOA (2015) stated, "It is the position of the NTOA that the decision to form a SWAT team carries with it the responsibility to provide the ongoing training, equipment, leadership and financial support necessary to create and maintain an effective team" (p. 7).

Law enforcement agencies are commonly asked to do as much as they can with limited resources. These reduced resources include limited manpower, stretching training budgets, and utilizing limited and outdated equipment. Law enforcement training in general is expensive, especially in the area of tactical training. Courses in tactical training are very expensive with cost of courses, lodging, and meals, which can deplete a training budget very quickly.

Equipment expenditures can also deplete budgets very quickly. Based on Federal Emergency Management Agency (FEMA) guidelines, teams must meet specific equipment recommendations to meet industry standards in team capabilities (U.S. Federal Emergency Management Agency, 2005). FEMA Type II resource recommendations are the common goal for part-time regional SWAT teams.

Imagine an agency with 50 officers wanting to form their own special weapons and tactics team. This agency would not be able to dedicate enough people to create an effective team since the NTOA advises that an effective team should have a minimum of 17 operators. The applicant pool would be too small and the training requirements would be extremely difficult to achieve. With training requirements being 16 hours per month at a minimum and a 40 hour annual training session, small agencies would have a difficult time meeting these standards (NTOA, 2015).

When neighboring law enforcement agencies are having a difficult time managing a team, it only makes sense to pool their resources together and form a regional team. The applicant pool is expanded, and each agency can manage the training hours more effectively, thereby mitigating failure to train liabilities.

The financial burden is divided among the partnering agencies. Once the regional team is formed and a city has a need for the tactical team, the city where the high risk incident is occurring still has ultimate control and authority of the team. The team is just an asset provided to each city that will be an option for the incident commander to use if needed. At no time does the tactical team take over the scene. This is an important aspect to creating the multi-jurisdictional team. Cities will still maintain control of their incidents.

Police agencies who participate in regional special weapons and tactics teams are providing their citizens with better service and better trained officers. They are minimizing liability exposure and demonstrating their ability to properly respond to high risk incidents. Each jurisdiction is provided with a higher quality team and benefits from pooled resources and enhanced capabilities. Additionally, better training, better recruitment, and a more effective selection process enhances the retention of highly qualified officers. Finally, with the opportunities to gain more resources from member agencies by pooling together, the multi-jurisdictional special weapons and tactics team has a higher chance of success when responding to high risk incidents.

COUNTER POSITION

Although many in law enforcement view SWAT as a means to a safer end for all involved, some within the law enforcement community see regionalization as giving up too much control of their own resources. Others outside the law enforcement industry see SWAT as an unnecessary militarization of law enforcement agencies. The utilization of perceived military weapons and equipment are deemed over aggressive and unnecessary. This can also give agency administrators hesitations when dealing with tactical teams.

From within the law enforcement community, many agency heads and government executives see the proposed implementation of regional SWAT teams as threats to their ability to maintain control of their own personnel and assets thereby avoiding further liability and accountability. In Bergen County, New Jersey, the prosecutor's office proposed that Bergen County law enforcement agencies regionalize their SWAT teams. The proposal and ultimate implementation of the regional SWAT

idea met resistance from the county executive. Bergen County Executive Kathleen Donovan accused the prosecutor of "playing politics" by taking control of the county SWAT team away from the embattled Bergen County Police Department and putting it under the control of the County Sheriff (Sullivan, 2013). Donovan also stated that she feels as if the prosecutor is trying to remove control from local law enforcement heads and give it to the sheriff's department (Sullivan, 2013). In a separate article months later, Donovan still maintained her stance that the risk of participating in the regional SWAT concept was not one she was willing to take. Donovan stated, "I will not obligate and saddle the taxpayers of Bergen County with any liability expenses or costs associated with this plan" (Ensslin, 2014, para 11). Thomas B. Hanrahan, attorney for the Bergen County Police Chiefs Association supported Donovan in her stance against regional SWAT by writing that he felt the participation in regional SWAT exposed agencies to liability for the actions of the officers serving on the regional SWAT team (Ensslin, 2014, para. 23). However, in order for each law enforcement agency to maintain control of their personnel and resources, an interlocal agreement as defined in the Texas Government Code can establish that each participating agency can maintain control of their personnel and resources assigned to the regional team; this makes overreach a non-issue. (Intergovernmental Relations, Chpt. 791.013).

For many outside the law enforcement profession, SWAT is seen as an overused and unnecessary militarization of police forces all over the nation. In a study published by the American Civil Liberties Union (ACLU), they stated, "Militarization of policing encourages officers to adopt a "warrior" mentality and think of the people they are supposed to serve as enemies" (ACLU, 2014, p. 3). Further, the ACLU insists that

the utilization of military equipment procured through the Department of Defense's 1033 Program adds to the "stockpile" of unnecessary equipment by police agencies (ACLU, 2014).

In Davis County, Utah, a former sheriff's son-in-law was killed by members of the Davis County Sheriff's Department SWAT Team. Former Sheriff Williams "Dub" Lawrence's son-in-law suffered from mental health issues and was shot and killed during an incident where it is alleged that Lawrence's son-in-law had assaulted Lawrence's daughter. A Newsweek article described the scene that Lawrence witnessed as "ultra-violent" with "more than 80 tactical officers from numerous police departments" taking part in the incident and being armed with "the type of heavy weapons normally deployed in Helmand Province (Afghanistan)," turning Lawrence into a protagonist for SWAT (Burleigh, 2015, para. 5). Lawrence, who started the agency's SWAT team now feels that instead of deterring violence, officers dressed in military gear escalate incidents (Burleigh, 2015).

In an article in *Police One*, retired Lieutenant Dan Marcou (2014) listed several rebuttals to the ACLU article. In reference to wearing helmets and Kevlar vests, these are protective in nature and not offensive. When citizens see patrol officers, they are on foot patrol, bike patrol, on horseback, and in police cars. These same officers are wearing regular duty belts, uniforms, and hidden body armor. When a high risk incident occurs, officers with a higher level of protective equipment arrive to handle the situation. These incidents are a higher risk and have a higher level of threat that officers must be prepared for. Officers must be prepared for worst case scenarios and have the tools to protect themselves and the citizens they serve (Marcou, 2014).

RECOMMENDATION

Smaller law enforcement jurisdictions with part time SWAT teams should join together in order to form a multi-jurisdictional SWAT team, so they are able to combine resources, increase training abilities, and reduce liability exposure for the involved agencies. When smaller law enforcement agencies are faced with violent incidents that require a tactical and specialized response, those agencies are often unable to provide the necessary resources to resolve the incident effectively. Agencies with part time SWAT teams, that fail to train and select the proper personnel for the tactical team, are setting their agency up for liability. Different agencies have different selection processes (Koepp, 2000). All candidates should go through rigorous screening and testing before being allowed to participate on a SWAT team. Agencies that participate in regional teams have a larger selection pool to choose from when selecting officers to the SWAT team. Regional teams share the financial burden of training, resources, and human resources for critical incidents. The NTOA makes recommendations on the best practices and industry standards for SWAT teams and every effort to follow best practices should be adhered to when forming a regional SWAT team.

Agency executives have to be mindful of the political climate surrounding SWAT teams. There are several articles referring to the militarization of the police and several recent incidents causing controversy regarding the use of SWAT teams. With the proper training, equipment, and effective use of SWAT teams, this stigma can be overcome. Agencies must know when it is appropriate to use SWAT teams effectively.

Agency administrators are understandably apprehensive of losing control of their personnel and not having final decision making authority on a critical incident when

being part of a regional team or using the regional team. Under the incident command structure, the jurisdiction where the critical incident is taking place will have full command authority as to how the use of the regional SWAT team will occur. The regional team will be a supplemental asset to assist with advising options to the incident commander of the jurisdiction where the incident is occurring (U.S. Department of Homeland Security, n.d.). Ultimately, police agencies with part-time special weapons and tactics teams and limited resources should seek to develop and implement a multi-jurisdictional tactical team with neighboring agencies to limit liability exposure and enhance their capabilities.

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