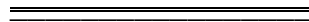


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



RESCUING DOPE



**A Leadership White Paper
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ABSTRACT

Since the 1960's, there has been a shift in the way law enforcement handles high situations. After dealing with domestic terrorism and more sophisticated bank robberies, law enforcement agencies across the country have had to come up with new tactics utilizing military type tools and weapons to combat the violent criminals (Mijares, 2008). As a result of the war on drugs, police departments have begun to utilize these same tactics that were once saved only when innocent life was at stake to conduct high risk search warrants when the only goal is to recover narcotics. This is relevant because it puts officers and citizens lives at risk in hopes of gaining evidence in drug cases (Balco, 2006).

Police departments should discontinue the practice of utilizing S.W.A.T. to serve narcotics search warrants using dynamic entries. Law enforcement agencies use dynamic entries when force is the most likely outcome (Williams & Westfall, 2003). This increased danger has led to numerous deaths of police officers, suspects and innocent persons (Meyers, 2005). There is a contradiction between the use of no-knock dynamic entries and the Castle Doctrine that is recognized in many states (Carter, 2012). Dynamic entry search warrants have also been shown to be ineffective (Balco, 2006).

The use of dynamic entry for the execution of a narcotics search warrant, when the sole purpose is to obtain narcotics evidence, goes against the goals of law enforcement to keep the peace and protect innocent life (Balco, 2006).

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INTRODUCTION

In the 1960's and 70's, law enforcement in the United States began to see a major shift in the level of violence against them. In 1974, the Los Angeles Police Department was involved in a gun battle with the Symbionese Liberation Army. This followed by other major confrontations such as Ruby Ridge and the fire fight between police and Robert Matthews of The Order in Washington state caused police departments across the country to create tactical teams that could be trained to respond to these high-risk situations (Mijares, 2008).

These units took on several names such as, "Special Weapons and Tactics," or S.W.A.T. units, paramilitary police units or P.P.U and tactical teams along with several other names. This paper will refer to all of them as S.W.A.T. teams. These S.W.A.T. teams became more and more prevalent throughout the early 1990's. Their original intent was to respond to barricaded subject calls, hostage situations, mass shootings, and bank robberies along with other high-risk situations that the average patrol officer is not equipped to deal with (Den, 2014). In 1986, President Reagan declared the, "War on Drugs." He compared it with World War I and told the United States that we were going to battle (Balco, 2006). With the expanding war on drugs, the S.W.A.T. unit's mission began to expand to include serving high risk search warrants.

S.W.A.T. unit's deployment quickly changed from predominantly responsive to over 80 percent proactive with a great deal of the proactive deployments being for high risk search warrants (Kraska, 2007). S.W.A.T. teams are well trained in hostage rescue and use very similar tactics to serve a search warrant using dynamic entry tactics.

These tactics often involve the use of "No Knock" entries using forced entry into homes

followed by diversionary devices, window breaking, and a large team of operators entering a structure to surprise and overwhelm the occupants in order to quickly gain control. The thought process behind this is that the entry can be performed quickly enough to avoid any chance of a confrontation with the occupants of the structure (Mijeres, 2008).

The increased number of the use of S.W.A.T. teams to serve search warrants using dynamic entries along with the escalation of force dynamic entries creates has greatly increased the injuries and deaths on both police officers, suspects and innocent persons (Balco, 2006). Use of these dynamic entries has also decreased the perception of police legitimacy (Mazarolle, 2012). With viable options available to narcotics officers and S.W.A.T. to effectively serve these narcotics search warrants more safely, the question of why police departments are risking lives to rescue dope must be asked. Police departments should discontinue the practice of utilizing S.W.A.T. to serve narcotics search warrants using dynamic entries.

POSITION

Many law enforcement agencies across the nation utilize a search warrant matrix to determine whether the search warrant should be considered high risk and whether a S.W.A.T. team should be serving that warrant. The matrix is based on several factors including the criminal history of the suspect and if he/she has been contacted with weapons in the past along with tips given by informants that have recently been inside the structure. The fact that this matrix is used indicates that S.W.A.T. is used when force is the most likely outcome (Williams & Westfall, 2003).

This increased danger has led to numerous deaths of police officers, suspects and innocent persons. A S.W.A.T. officer was killed while serving a search warrant in Maryland by a fellow S.W.A.T. officer. During entry, the breacher, or operator designated to force entry into any given structure, was using a tool that produced a loud popping noise. Another officer believed that shots were being fired through the door and returned fire accidentally striking his partner in the head (Meyers, 2005). This incident demonstrates how dangerous dynamic entries are, even when conducted by highly trained officers, and why alternatives to this technique should be considered.

On January 5, 2011, a dynamic entry narcotics search warrant was conducted on the first floor of a multi-family structure in the city of Framington. There was a man named Stamps that was known to be inside the apartment at the time the search warrant was to be executed. The police department had this intelligence ahead of time and did not suspect Stamps of any wrongdoing. They knew that he was a 68-year-old retired laborer. Upon entry into the apartment, Stamps was ordered to the ground. Stamps complied and was held there at gunpoint by one of the officers. That officer had his M4 rifle set to fire while pointing his weapon at Stamps when the rifle discharged (Excessive Force, 2015). Whether this is lack of training or simply negligence, the fact remains that it would not have happened had the target of the warrant been contacted in a controlled environment outside the structure. This would have taken away the high-risk aspect and allowed the warrant to be served in a more routine manner.

Raleigh, North Carolina's police department conducted 2 search warrants on homes within a 6-month period of time in 1998. In one, they entered a home when they were supposed to be entering the rear apartment behind the home. The homeowner

received an apology from the mayor to which he replied, "I'm just happy I wasn't shot."

In the second mistaken drug warrant, police entered a home and held a pregnant female and 2 children in excess of an hour before realizing they were in the wrong home (Balco, 2006).

In high risk dynamic narcotic search warrant entries, when everything goes right, innocent people are still often injured. A S.W.A.T. team conducted a dynamic narcotics search warrant in New York on May 26, 2005. All occupants of the home were cooperative however there was a dog that posed a danger to officers. The officers shot the dog however one bullet bounced off the floor and struck a child in the home. The shooting of the dog and the entry into the home was found to be justified. The child survived however he was crippled for the rest of his life (Balco, 2006).

Aside from the inherent dangers of dynamic entries, there is a contradiction between the serving of no knock, dynamic entry warrants and the Castle Doctrine or Castle law. The Castle Doctrine states in part that a person may defend his home with deadly force if someone is breaking in to commit a felony against the homeowner. This contrasts with jurisdictions that have a duty to retreat doctrine which requires occupants of a home to retreat as far as they can into their home while warning an intruder that they intend to use deadly force before using it (Carter, 2012). By 2010, Twenty-five states had some form of this law in place (States that have stand your ground laws, 2019). Due to this law, it is very easy for the target of a search warrant to use deadly force against a S.W.A.T. team and claim that he/she did not know the team consisted of legitimate law enforcement (Reddish, 2016). On February 19, 2015, Ray Rosas shot three Corpus Christi Police Officers as they made their approach to his home while

servicing a dynamic entry narcotics search warrant. He claimed he did not know they were police and feared someone was trying to rob him. A Nueces County jury acquitted Rosas of the crime. (State of Texas v. Ray Rosas, 2017).

A S.W.A.T. team killed a man by the name of Todd Blair after they entered his home during a dynamic entry narcotics search warrant. In this case, police announced their presence while entering the home where they met Mr. Blair in the hallway. He was holding a golf club in a most likely attempt to defend his home. In all likelihood, Blair was disoriented as it was 4:30 a.m. He was shot and killed by the team less than 5 seconds after the team had made entry into the home. This incident led to Mr. Blair's death and opened the law enforcement agency up to considerable liability (Reddish, 2016).

Dynamic search warrants have been shown to not be effective. This is due to several reasons including lack of significant search warrant review by judges and search warrants based solely on unreliable informants (Balco, 2006). On February 27, 1998, a narcotics raid was conducted in New York by a tactical team on the home of Ellis Elliott. As the S.W.A.T. team was attempting to knock down Elliott's front door, Elliott, believing his home was being broken into by criminals, fired a round through the door. The result was that the team fired back 26 times. Luckily, Elliott was missed. During the investigation into the incident it was found that the warrant was founded on miscommunication from an informant. Ultimately, Elliott was only charged with disorderly conduct (Balco, 2006). This situation could have easily been deadly for an innocent victim or the S.W.A.T. team.

On June 5, 1997, a dynamic entry narcotics warrant was executed in Brooklyn based on information given by a tipster that was not known to the police department. The tipster described a location and advised police that drugs were at the location. Police went to the area and did not find an exact matching location however found something vaguely similar. The warrant was executed at that location and no drugs were found. New York put a program in place whereas citizens could call in when their home was raided, and no drugs were found. In the first 7 days of the program, over 100 calls were received (Balco, 2006).

In the middle of 2001, a Texas S.W.A.T. team served a narcotic warrant at the home of Sandra Smith after county police believed she was growing marijuana. They took down the house with Ms. Smith and 3 of her guests. The suspected marijuana turned out to be ragweed. Ms. Smith had no criminal history. No drugs were found and after the civil trial, Ms. Smith was awarded \$40,000 by the courts (Balco, 2006).

Use of tactical teams conducting dynamic entry drug raids lessens the trust citizens have in their police dept (Hill & Begar, 2009). Police are significantly outnumbered by citizens and therefore, require the voluntary cooperation of the population. This cannot happen if the citizens do not trust the police and view them as a legitimate law enforcement entity. Citizens perceive these types of raids as overbearing and not in line with procedural justice that lends itself to citizens finding legitimacy in their local law enforcement agency. When this occurs, it creates an environment that makes it difficult for police to serve the community (Mazarolle, 2012). These tactics also adversely affect the perception of distributive justice and fairness

since the tactics are often used in hot spots which are, most often, low income and minority sections of cities (Kim, 2019).

COUNTER ARGUMENTS

There are opponents to the idea that the routine use of dynamic entry by S.W.A.T. teams to execute search warrants should be discontinued. Some believe that using a S.W.A.T. team to execute the warrant can reduce calls for service and drug related crime in the area where the warrant is served. The use of tactical teams serves as a deterrent to criminals in the area (Phillips, 2016). S.W.A.T. teams are known for how quickly they can end social problems (Krashka, 2007).

A study was conducted in a city with a population over 250,000. The city used for the study is located in a metropolitan area with a population of over 1,000,000. The city had a higher crime rate than the surrounding cities and also had a very diverse culture (Kim, 2016). The study spanned 2 days in which numerous raids were conducted in high crime areas using S.W.A.T. The study found that there was no decline in drug arrest calls for service. For a small amount of time there was a decrease in murder, robbery, burglary and other part 1 crimes however the decrease rebounded to normal numbers quickly. If there were any decrease in other violent crimes, they were insignificant (Kim, 2016).

Another argument for the use of dynamic entry narcotic search warrant service is to prevent the loss of evidence. S.W.A.T. teams can serve a search warrant very similarly to the way they execute a hostage rescue. Using speed, surprise and violence of action, the team can overwhelm the target before any narcotics can be destroyed (Allegro, 1989).

There is generally only one way to destroy narcotics inside a home and that is by flushing the narcotics down the toilet. There are only two outcomes that can be true. If a suspect can flush all the narcotics he has down the toilet, then he did not have that much to begin with; not enough to justify a paramilitary raid on the individual's home that risks life. The other outcome is that the suspect is in possession of pounds of narcotics and it would be impossible to destroy that much narcotics in the time it would take to secure the high-risk target by other means than a dynamic entry. As part of an operations plan, teams can turn the water supply off to a home and take away the ability to flush evidence down a toilet or wash it down a sink. Only a small amount of drugs could be flushed if this step was taken (Bacigal, 2012).

Lastly, there is an argument that routinely serving search warrants keeps a S.W.A.T. team well trained and fresh for when they need to react to other less common high-risk situations that they were originally designed for. S.W.A.T. officers with more on the job training are better at their job (Mijares, 2008).

Case law dictates that utilizing a S.W.A.T. team is a higher level of force than a narcotics officer knocking on a door with a search warrant. The routine use of a S.W.A.T. team to serve all narcotics search warrants based on continued training and keeping the team up to date has been found to raise significant liability and possibly cause 4th amendment violations (Liability Exposure in Special Operations, 2018). There are numerous training alternatives to using real time narcotics warrants. Shoot houses utilizing simulations with actors or live fire with targets have proven to be an effective tool in training for dynamic entries. In Kentucky, this type of training has been implanted among all officers in one department. The training is conducted in moving teams with

live fire environments teaching officers how to move and shoot around each other just as they would during a high-risk arrest warrant in a home or other structure (Cain, 2010). Senior law enforcement officers with Daviess County Sherriff's office believe that this type of training works well in preparing officers for deadly force encounters (Cain, 2010).

RECOMMENDATION

Alternatives to the routine use of S.W.A.T. team's utilization of dynamic entry to serve search warrants should be considered. Since the inception of S.W.A.T. teams in the 1980's, there use has increased significantly. Most S.W.A.T. team deployments have become serving narcotics search warrants. With the risk to all involved during dynamic entry search warrants, it is counter intuitive to the mission of law enforcement to continue this policy. Police, suspects and innocent people are being killed to make narcotics cases where other valid alternatives exist (Balco, 2006).

There is a significant clash between citizens rights to defend their property using the castle doctrine and the use of no-knock dynamic search warrants where S.W.A.T. teams strike in the middle of the night and give warning that is often arguable does not hold up to the courts demand (Balco, 2006). This clash is causing homeowners to kill officers and officers to kill suspects.

Narcotics search warrants have shown to be highly ineffective for several reasons. These reasons include judge's rubber-stamping search warrants and search warrants being written up based on unreliable informants and confidential tips that cannot be vetted (Balco, 2006)

Arguments to continue the policy of dynamic entry narcotic search warrants are that using tactical teams reduces crime and calls for service in the area where the warrant is served. The paramilitary team deters crime by showing that law enforcement is willing to demonstrate a significant use of force if drugs are being dealt in a neighborhood. This is done with the expectation that drug dealers will reconsider their illegal acts if they believe their home may be next for a dynamic entry using armored vehicles and flashbangs. A major justified study has shown that this is not the case and that any decline is insignificant (Phillips, 2016)

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