



RETHINKING TACTICAL TEAM WARRANT ENTRIES

By Jeffrey J. Noble

Over the last several decades, police departments across the country have increasingly used some form of a tactical team to conduct warrant entries. While detectives and officers routinely serve arrest and search warrants, the use of a team of officers with specialized skills, equipment and tactics is a reasonable step to enhance the safety of the officers, innocent parties who may be present, suspects and the community when there is a legitimate concern that the entry poses a substantial risk. All too often, however, tactical teams stray from their intended purpose of addressing violent behavior and are routinely deployed for warrant entries regardless of the threat level of the particular investigation. Moreover, the tactics employed by tactical teams in serving routine warrants sometimes increase the risk of harm, rather than mitigate it.

Tactical teams were developed in the wake of the Texas Towers sniper incident and the Watts riots to address aber-

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rant violent behavior that was outside the tactics and abilities of traditional law enforcement. While tactical teams unquestionably have a role in modern law enforcement, those teams should not be deployed for routine warrant services due to some remote possibility that the officers will encounter a dangerous situation. Nor should tactical teams be deployed

as a method to enhance officer training or as a team-building exercise due to a lack of high-risk activations. Rather, tactical teams should only be deployed for warrant services when there is a substantial risk of violent behavior, as identified by a reasonable threat assessment.

When tactical teams are appropriately activated after a reasonable threat assessment has identified substantial risks, operational planners must avoid using tactics that focus on their team's strengths yet ignore the dangers to themselves, the public and the individuals inside the structure. While a specialized team creates the appearance of the ability to overcome any obstacle by operating as a cohesive group and by being equipped with heavy vests, armored vehicles, extraordinary firepower, shields, flash/sound diversionary devices and a wide variety of other specialized equipment, entry into the structure is always fraught with risk.

Entry teams typically have no idea if there are armed suspects waiting, if there are obstacles, hidden fortifications or suspects who may become violent when the officers enter, or if they will be encountering occupants who are innocent victims. In order to minimize those dangers, specialized teams need to consider the playing field and understand that the structure they intend to enter is someone's castle, that they often have time as a tool on their side, and that there are strong legal and practical aversions to late-night/early-morning warrant services.

Most importantly, entry teams must recognize that they have a cognitive bias in yielding to their strength in conducting high-risk entries when alternative methods may better fulfill their mission to make an arrest or to secure a location for a search.

IT'S THEIR CASTLE

The term "castle" is perhaps the perfect descriptor that law enforcement should consider when planning to make a warrant entry. Medieval castles were designed as a defensible structure to prevent an invading force from making entry. They had high walls made of stone, drawbridges, armed sentries and moats filled with unthinkable things to deter and prevent intruders.

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Police officers are appropriately reticent in making entry into a residential structure because they understand that the occupants of the structure have full control of the interior and there are no failsafe avenues of intelligence to determine what obstacles they may encounter. The ability to control the environment places the occupants of the structure in a much more advantageous tactical position than the officers who will have to make entry.

Unfortunately, many tactical teams view their mission as "entry," which inherently removes other alternatives from consideration. Instead, tactical teams should seek a more global viewpoint and understand that while their task is to ultimately make a structure safe so it may be processed for evidence of a crime, they are not limited to entry tactics alone to accomplish their mission. Indeed, although not eliminated, risks may be substantially reduced by removing known threats from the structure by making an arrest or detention prior to entry.

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HASTE AND VOLUME

There is seldom a need for undue haste in the service of search warrants, particularly search warrants that are related to narcotics violations. While warrants do need to be served in a timely manner, there is generally time to gather intelligence, assess threats and develop a plan. Time is an important tool that should be used in the best interest of law enforcement.

Officers are often able to dictate the location, circumstances and the pace of events, rather than having those factors dictated to them. While time may be used to control operational tempo, warrants should never be served as a matter of convenience.

Although containing costs is a legitimate administrative concern, warrants should not be served to coincide with shift schedules or training days solely in an effort to save money at the expense of safety, nor should warrants be served at a specific time merely for the convenience of some or all of the officers involved.

Similarly, haste by means of dynamic entry tactics should be avoided when possible. While defenders of dynamic entry tactics feel they are necessary to overwhelm suspects by

surprise and to prevent the destruction of evidence, these factors seldom justify the risks to officers and occupants of a structure that are created by hurried movements and rushed decision-making. Moreover, dynamic entries offer no element of surprise when officers comply with knock and announce requirements. The concern of destruction of evidence is usually aimed at small quantities of drugs or narcotics, not large quantities that would justify the use of a tactical team and certainly not evidence of violent crimes. While someone may flush a few grams of drugs or narcotics, they are not going to be able to flush kilos or guns.

While dynamic entries do have value in certain situations, deliberate entry tactics allow a slower, methodical approach that increases team and occupant safety. Operators can often clear rooms prior to entry and give frequent commands ensuring that they are not mistaken for an intruder. Mirrors, shields and other tactical devices are more easily managed and allow more time for decision-making.

Police administrators should be concerned with tactical teams that engage in a high volume of entries, typically for narcotic enforcement, that result in few arrests and insignificant quantities of narcotics or weapons recovered and the recurrent use of dynamic entry tactics. This volume would be an indicator that the tactical team is not being activated for high-risk warrants, but has become a de facto narcotic team that may be attempting to justify its existence rather than serving an important but limited purpose that it should have been designed to perform. Further, the frequent use of dynamic entry tactics may be an indicator of a poorly managed team that is risk prone rather than risk adverse.

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AVERSION TO LATE-NIGHT/EARLY-MORNING WARRANT SERVICE

Similar to the use of dynamic entry tactics, there is some thought that by serving warrants late at night or early in the morning, officers can gain a tactical advantage because the suspects' cognitive ability may be impeded. Thus, the officers will be provided a greater level of safety because the suspects may be sleeping or otherwise somehow less capable of an aggressive response. While late-night/early-morning warrant services may indeed be disorienting to the

suspect, an irrational response of a disoriented person who may fear a rival drug dealer breaking in or an intruder may be more problematic.

Many states have shown their aversion to nighttime searches, reasoning that they are not only a great threat to privacy due to the indignity of rousing people from their beds, but they also bring a greater danger to the police and slumbering citizens. This aversion has caused individual states to enact statutes prohibiting nighttime searches absent a showing of some legitimate cause demonstrating that a search at night would prevent the loss of evidence or protects the police or public safety. While some states have not enacted statutes that prohibit nighttime searches, officers from those states are still responsible to exercise due care and reasonableness under the Fourth Amendment.

Indeed, the American system of justice has always had an aversion to late-night/early-morning warrant services. People's homes are truly their castles and have always required a warrant supported by probable cause and a magistrate's approval, absent a warrant exception, because of the high expectation of privacy that one has within his or her own home. While there is no constitutional prohibition against late-night/early-morning warrants services, the U.S. Supreme Court has held that there is no more severe invasion of privacy than a nighttime intrusion into a private home. Justice Felix Frankfurter had even compared nighttime searches to "evil in its most of obnoxious form." Considering the distaste of late-night/early-morning searches by the government, a court may indeed find such searches, absent legitimate cause, to be unconstitutional.

ALTERNATIVE METHODS

Law enforcement tactical teams were designed in part to conduct high-risk entries. Tactical teams spend considerable time and effort developing their abilities to enter structures safely and resolve threats that may be waiting inside. It should not be surprising that when so much effort is vested into a particular strategy, team leaders and members would seek to default to their strengths. While not eliminating the risks of entry, removing potential threats prior to an entry, if possible, does serve to enhance officer safety. Yet, the tactical advantage of conducting surveillance and detaining or arresting the subject who has been identified as the primary threat is frequently overlooked due to expediency or desire of an entry absent other strategies.

Team leaders must recognize legitimate investigative needs and be willing to set priorities based on reasonable tactical decisions designed to enhance safety. Conducting surveillance and waiting for a suspect to come outside or engaging in surround and call out tactics takes time,

but making a detention or arrest away from the structure reduces the opportunities for the suspect to have immediate access to weapons that may be stored inside and for a barricade situation that may involve innocent occupants of the structure. It also reduces the possibility of violence due to poor decision-making by the suspect or the mistaken belief of a robbery or an intruder.

CONCLUSION

There is no argument that the execution of search warrants is a legitimate law enforcement function when the warrant is based on probable cause and aimed at arrest or seeking and recovering evidence of serious crimes. The concern is not that officers will make entry into the structure of another, but the manner in which these entries are made. Simply put, there are sometimes better methods to achieve a legitimate goal while avoiding late-night/early-morning warrant services and minimizing the need for an operation that opts for an overwhelming show of force to impose its will.

Police officers across the nation serve thousands of search warrants every day and most of them are uneventful. Many

agencies serve large numbers of warrants annually without the need of any significant use of force. However, the fact that officers have conducted themselves in a consistent manner repeatedly with success does not mean that their tactics were reasonable, only that they were fortunate.

Operational plans that remove risks prior to entry by avoiding late-night/early-morning entries, conducting some limited surveillance or attempt to call out, making detentions or arrests away from the warrant location, avoiding dynamic entries and removing the prime threat prior to entry suggests a well-reasoned effort to decrease the likelihood that force will be necessary. ■

ABOUT THE AUTHOR

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