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SWAT — or Not?

The Rise, Fall and Uncertain Future of SWAT Teams in Maryland

I.

SWAT Teams - An Overview

SWAT (Special Weapons and Tactics) teams have been on the scene since 1968, when Inspector Daryl Gates established the first team in the Los Angeles Police Department. SWAT teams are trained to perform dangerous, high-risk assignments that fall outside of what is normally expected of patrol officers. Examples of SWAT team operations include hostage rescues, the service of high-risk arrest and search warrants, subduing barricaded suspects, and counter-terrorism operations. To perform such volatile missions requires a high level of skill, training, experience, and coordination. In addition, SWAT team members are equipped with specialized weapons (e.g., assault rifles, breaching shotguns, and stun grenades) and equipment (heavy body armor, night vision devices, ballistic shields, motion detectors, and forced entry tools). The successful execution of SWAT team missions requires military precision and timing.

Forty-five years after SWAT teams were first introduced, most citizens are at least familiar with what SWAT teams are and many, if not most, hold a wide range of opinions concerning them. The sweeping use of SWAT and similar high risk mission teams across the United States, by federal, state and local government law enforcement agencies, acting individually or collectively, has ensured this result. For example, in 1980, there were fewer than 3,000 SWAT deployments across the country. By 2010, there were more than 50,000 SWAT team deployments per year, most related to drug enforcement. This prolific use of SWAT teams has ensured one result: just mention the subject today, and you invite a debate.

II. The Raid on the Calvo Residence

That debate erupted in Maryland in July 2008, when members of the SWAT team of the Prince George's County Sheriff's Office was called upon by the Prince George's County Police Department to execute a narcotics search warrant in the Town of Berwyn Heights. The warrant execution or "raid" was the culmination of an investigation that began in Arizona, where a package containing 32 pounds of marijuana was intercepted in a FedEx warehouse. The package containing the marijuana was addressed to Trinity Tomsic, the wife of Berwyn Heights Mayor Cheye Calvo. Even though the package had been intercepted in transit, police allowed the delivery to the Calvo residence to take place. The package was delivered by officers posing as courier deliverymen. They placed the package on the porch. Prior to the delivery, the police had unsuccessfully sought a "no-knock" search warrant, which would have allowed them to forcibly enter the residence without knocking or identifying themselves. Instead, a standard search and seizure warrant was issued which required the officers executing it to knock and identify themselves before entry.

Calvo came home early from work that Tuesday. While walking the family dogs, two Black Labrador Retrievers, he noticed several black sport-utility vehicles and a woman parked in a car down the street. "I figured someone was having a party," he recalled. It was the police. They were watching, waiting for someone to bring the package into the house. As Calvo returned to the house, he spotted the large package that his mother-in-law had told a deliveryman to leave on the porch. He placed it on a buffet table near the front door and went upstairs to change. "I brought it inside because I figured it was something we'd gotten for the garden," he said. Moments later, just after he had undressed, he heard his mother-in-law scream that someone was coming toward the house. He looked out his bedroom window and saw officers in SWAT gear running across the lawn. With the element of surprise lost, the officers forcibly smashed through the front door, without knocking or identifying themselves. Calvo heard a loud crash and then 'bang, bang, bang,' which was the sound of the police shooting the dogs. One of the dogs was running towards the kitchen in an effort to escape. In response to the shooting, Calvo "hit the floor." Members of the SWAT team detained the Mayor and his mother-in-law at gun point. Both were placed in handcuffs. Calvo, clad in only his underwear, was questioned for hours. Other than what was contained in the package, there were no drugs found in the house.

III. The Calvo Raid - The Outcome

As it turned out, the Calvos were not drug dealers and the drugs were unwittingly brought into the house by the Mayor. The package had been sent as part of a drug trafficking plan involving the shipment of large parcels of marijuana to addresses of uninvolved residents. After each parcel was delivered, another member of the drug ring would retrieve it before it was seen by the residents. But it was not the innocence of the Calvos that quickly garnered attention; it was the conduct of the SWAT team. "My government blew through my doors and killed my dogs," Calvo said. "They thought we were drug dealers, and we were treated as such. I don't think they really ever considered that we weren't." Calvo and his mother-in-law were handcuffed and interrogated while surrounded pools of the dogs' blood. Spokesmen for the Sheriff's Office and Prince Georges County police didn't make things any better. They expressed regret that the

mayor's dogs were killed. But they defended the way the raid was carried out, saying it was proper for a case involving such a large amount of drugs. Sergeant Mario Ellis, a Sheriff's Office spokesman, said the deputies who entered Calvo's home "apparently felt threatened" by the dogs. "We're not in the habit of going to homes and shooting peoples' dogs," Ellis said. "If we were, there would be a lot more dead dogs around the county."

In an editorial only a week after the raid, *The Washington Post* criticized the actions of the police officers as "a Keystone Cops operation from start to finish", alluding to improper execution by the Sheriff's Office's SWAT team. Criticism from all corners came fast and furious. Criticism fueled anger and the Calvos were angry. They retained a high-powered and influential attorney who filed suit in state circuit court. The suit named then Prince George's County Sheriff Michael Jackson, members of the police department, members of the SWAT team, the county, and the State of Maryland as Defendants. The defendants were sued for violating the Calvos' state constitutional rights and many other causes of action. The suit settled in principle in February 2011. The settlement includes both money damages and reforms as to how the Sheriff's Office and County Police Departments' SWAT teams would be deployed in the future. When the settlement was announced, Mayor Calvo said: "What matters is that we change the way the system works. We can do this better."

With the glare of national coverage of the raid, it was just a matter of time before politicians responded. In May 2009, Maryland Governor Martin O'Malley signed into law a bill that now requires SWAT teams to regularly report on their activities. This bill, the SWAT Team Activation and Reporting Act (HB 1267), was a direct result of the misbegotten raid on the Calvo home. The law defines SWAT team as "a special unit composed of two or more law enforcement officers within a law enforcement agency trained to deal with unusually dangerous or violent situations and having special equipment and weapons. . . ." The statute requires law enforcement agencies that maintain a SWAT team to report specific information to the Governor's Office of Crime Control and Prevention (GOCCP) every 6 months. That information includes, among other things, the number of times the SWAT team was activated and deployed, the reasons for each activation and deployment, the legal authority for each activation and deployment, and the result of each activation and deployment. The data is analyzed and summarized by GOCCP. In short, SWAT teams can no longer operate unchecked.

IV. What the Statistics Reveal

The first reports generated by the new legislation showed that over the last six months of 2009, SWAT teams were deployed 804 times in Maryland, or about 4.5 times per day. In Prince George's County, with its approximately 850,000 residents, a SWAT team was deployed about once per day. According to a *Baltimore Sun* analysis, 94 percent of the State's SWAT deployments were used to serve search or arrest warrants. This led columnist and leading SWAT critic Radley Balko to observe that only 6 percent of SWAT team deployments were "in response to the kinds of barricades, bank robberies, hostage takings, and emergency situations for which SWAT teams were originally intended." Balko further wrote, "[w]orse even than those dreary numbers is the fact that more than half of the county's SWAT deployments were for misdemeanors and nonserious felonies."

The most recent SWAT reporting, from July 1, 2011 through December 31, 2011, reveals a total of 36 police departments reporting at least one SWAT activation/deployment during that time period. During the last six months of calendar year 2011, there were a total of 800 activations/deployments, or approximately 4.4 per day. Once again, the lion's share of deployments came from Prince George's County (20.9%) and Baltimore City (17.6%). Over 90 % of the SWAT team deployments were for drug related search warrants. Only 5% were in response to barricades and only 1% for arrest warrants. On the positive side, no one was killed, and only nine civilians and five SWAT officers were injured. One animal was killed. Firearms were discharged in only 12 of the 800 activations/deployments. In the vast majority of actual deployments (65%), there was at least one arrest.

V.

SWAT Teams and the Fourth Amendment

With the continued level of SWAT team use as part of the much larger war on drugs, it was only a matter of time before occurrences such as the raid on the Calvo residence caused the pendulum to swing back. From a liability standpoint this may prove to be a good thing. This is because when it comes to search warrant execution, the Supreme Court, and, for that matter all courts, do not simply focus on the validity of the warrant; they also focus on the *reasonableness* of the manner in which the warrant was executed. Certainly, the Supreme Court has given officers latitude in executing warrants for their safety and the safety of others. Officers are allowed to take reasonable steps to secure the premises, including detaining those persons found inside as well as those in the immediate vicinity. However, the actions taken by officers on the scene must be reasonable. The test of reasonableness under the Fourth Amendment is an objective one; it is not limited to the subjective perspective of the officers on the scene. Objectively unreasonable actions may include:

- The use of excessive force or restraints (*i.e.*, handcuffs) that cause unnecessary pain or are imposed for a prolonged or unnecessary period of time;
- Engaging in conduct that is unduly degrading to occupants or willfully violative of their right to privacy; and
- The harsh treatment of the aged, disabled, or very young.

An otherwise "reasonable" search can quickly be rendered "unreasonable" by such conduct.

VI.

The Future of SWAT Teams in Maryland and Beyond

So, after the unprecedented rise, acceptance, and now unprecedented scrutiny of SWAT teams in Maryland and elsewhere, what does the future hold? No one can credibly urge that SWAT teams should simply be abandoned. Certainly, they remain relevant to the truly emergency uses for which they were originally designed. But as federal and other government funding continues to decline, many smaller SWAT units may simply fall by the way side or be incorporated, through mutual aid or other kinds of agreements, into units maintained by larger and better funded agencies. So, one would expect not only the number of SWAT teams to decline, but their actual

rate of use as well. Judicial and legislative oversight will also continue to impact SWAT team use, impacting not only when the teams may be used but also how they need to conduct themselves to ensure constitutional compliance.

Finally and again addressing liability concerns, agencies that maintain SWAT teams may want to take proactive steps to protect themselves without further delay. For example, since 7 out of 10 SWAT team deployments result in forcible entry, it may be a better practice to record the entry to establish not only what occurred relating to knock and announce, but also what the officers encountered in the way of exigent circumstances, the verbal responses of occupants, and the presence of others in proximity to the dwelling. Here are some suggestions:

- Audit all departmental practices and procedures concerning SWAT teams to ensure that deployments are actually justified. The mindset of “We have them, we might as well use them” is no longer acceptable.
- Engage in careful planning and rigorous surveillance in advance of every SWAT team deployment. This will assist execution and minimize risk to officers and occupants.
- Consider alternatives to SWAT team deployment, such as the use of a more limited number of officers who have advanced training and upgraded equipment.
- Videotape all SWAT team entries.
- Ensure that SWAT team members are carefully selected and trained, and properly equipped. Remember that not every officer is suited to the kind of militaristic climate surrounding SWAT team deployment.
- Ensure that proper discipline is imposed against SWAT team members who engage in objectively unreasonable conduct during a raid. The *Calvo* case is a primer on such misconduct.

The decision whether or not to utilize your agency’s SWAT team is ultimately yours. Keep in mind however, that unlike the past, SWAT team deployments are being monitored, if not in real time, then certainly after the fact. And, you can be certain that just one more highly publicized incident, such as the Calvo raid, will result in the imposition of even more sweeping legislation and judicial restraints.

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