Recently, many of our members have expressed their opinions and concerns regarding dynamic entry tactics. This article is intended to explore the legal aspects of utilizing dynamic and controlled movement tactics. It is not the intent of the author, or the NTOA, to dictate to the membership which tactic should be used, but rather to emphasize that the selection should be based upon available information, existing circumstances and legal justification.

A brief historical overview of special weapons and tactics teams is necessary to understand the evolution of tactics and their applications to the various disciplines practiced by the tactical community.

The infamous Texas Tower sniper incident, on August 1, 1966, along with civil disorder and violent riots, which were so prevalent during the decade of the sixties, established the necessity for the development of Special Weapons and Tactics (SWAT) teams. Among the first to organize these teams were the Los Angeles Police and Sheriff’s Departments during the latter part of 1966.

Since this was a new concept in policing, much was done by trial and error. It was first thought that tactical officers had to have experience in the military prior to joining a police SWAT team. This proved in part to be erroneous, as did the application of some modified military tactics. One commonly held belief in the 1960s, 1970s and even through the 1980s in many places, was that missions such as high-risk warrant executions should be done swiftly. It was thought that literally running into and through a house was the best way to catch the suspect(s) off guard, thus ensuring the recovery of the items sought, as well as safely taking the perpetrators into custody. Empirical and anecdotal evidence has shown otherwise. An analysis of four decades of SWAT teams as related to high-risk warrant executions has proven that high-speed “crisis” and “dynamic” tactics result in a higher incidence of injury or death to the officers executing the search warrant, as well as to the occupants of the structure to be searched.

There are many examples in which applying military-like tactics have been used in civil police operations that have resulted in tragedy. Probably the most significant to date was
the death of four federal agents of the BATF during a warrant service on the Branch Davidian compound in Waco, Texas. The style of warrant service was militaristic and dubbed Operation Trojan Horse. Granted, other problems existed in terms of command, and the fact that the agents were compromised even before boarding the stock trailers to travel to the compound. There are, of course, differing opinions regarding the operation, but no one can argue that the entire mission was based on the use of dynamic tactics.

By order of Congress following many arduous hours of hearings, the BATF Special Response Team was completely reorganized. Military-based training and tactics that had dominated BATF’s training prior to Waco was replaced by training from subject matter experts from civilian law enforcement agencies across the nation. The very word “dynamic” was removed from all BATF SRT training materials and operational plans.

Like the BATF, many teams have certainly gone through a metamorphosis since their inception. Many teams used to “button hook” or “cross and hook” when entering a room. Now a significant number of teams split the door and clear the vast majority of the room before even crossing the threshold. Entry is now made in a slow, safe and methodical manner. Things change.

Another training aid that was once common was to practice serving a search warrant using a stopwatch. In theory, the faster you went, the better. Each room of a structure had two officers assigned. The idea was to flood the structure to be searched with operators. There was virtually no difference between a search warrant service and a hostage rescue effort, with the exception of yelling “Police with a search warrant!” on the first and “Get down!” on the latter, in conjunction with many more diversionary devices being deployed on a hostage rescue incident. Things change.

If we looked at the tactics of the present and compared them with those of yesteryear, we have to take pause and be thankful that casualties were not higher. As previously stated, things change and will continue to do so. The name of the game is to stay three or four steps ahead of the bad guys. We have to be better and learn from the mistakes that took the lives of fellow officers. We have, in most instances, learned that control is good. We learned that just as much property is recovered by using conservative tactics as was recovered by taking unnecessary risks.

One can’t argue with success using the current tactics of most teams, which comport to current nationally recognized standards. A high-risk search warrant calls for a great deal of planning and preparation. Hopefully, no stone is left unturned.

Regarding the first priority, if the mission is to save human life (a hostage), significant risks may be acceptable. Crisis entry techniques will possibly be used and be completely justifiable. The chances of success using crisis entry techniques in a hostage event are markedly higher than during a warrant service because of many factors, some of which are:

- Explosive breaching with high explosives
- Numerous diversions, both psychological and physiological
- Mindset of the operators
- Breaching multiple windows and doors
- Full rehearsals prior to the intervention
- Team members who have trained together for hundreds of hours to successfully complete the specific mission
- Superior weapons
- Onsite paramedics and an ambulance staged seconds away
- Expectation of possible casualties.

Compare that to a narcotics investigator obtaining a search warrant at 7:00 p.m. resulting from a controlled buy made two hours earlier. They call six field officers on the radio to assist them and subsequently meet up in a parking lot. The senior officer responding has three years experience and has participated in serving only one search warrant with his field training officer. The briefing takes no more than five minutes.

The first uniformed officer pauses at the door to evaluate, as she was taught in the academy, only to be pushed away by an overzealous member of the entry team. A suspect runs down a hallway past numerous open doors, passing who knows how many potential threats, motivated to destroy an eight ball of cocaine. Close behind and in hot pursuit are two guys in raid jackets. They, too, are motivated to get the eight ball. They have to. There will never be any more dope, ever again. It’s worth the
risks. Right? Shots are fired! And the supervisor wanted a “dynamic” warrant service?

What the officers should have been told was that little was known about the house or the suspect. Since knowledge is power, and they had little knowledge about the focus of the search warrant, they should have gone even slower. Since the people from the field were inexperienced the brakes should have been applied even harder. Throughout the United States, sound instructors in the area of unknown and high-risk search warrants preach and practice: “The higher the danger, the slower your speed of execution.”

Going fast and using dynamic tactics for recovering evidence was once broadly accepted and practiced. In the early 1990s, a well-respected SWAT team executed a high-risk search warrant by means of dynamic tactics. Every room of the house was to be flooded by officers, just like a hostage rescue.

One team entered a bedroom, followed by another pair taking the next bedroom. When a suspect hiding in the closet opened fire, one group of officers returned fire. The officers in the other bedroom thought they had a suspect hiding in the closet in their room and they too opened fire. The tragic result was a cop-on-cop shooting, easily avoidable by slowing down and “keeping the threat in front of you.”

Another commonly heard phrase from respected trainers is that of flexibility. To think the only way to serve a search warrant is by means of dynamic/crisis speed and aggression is absolute foolishness. There are many ways to serve a high-risk warrant:

- Contain and call out
- Breach and increase distance
- Breach and hold
- Breach and make partial penetration
- Breach and clear with controlled movement

- Port and hold at points of destruction while the team clears
- Deliberate search (slow, utilizing mirrors, lights and SWAT cam)
- Dynamic only if ethically, tactically and legally justified.

The aforementioned are all possible options. The team leaders select which options are best for the mission. When the mission is over, the priorities change. They might even change a number of times during an operation. What does that mean?

If the search warrant is for a kilogram of cocaine and you see the substance on a coffee table upon breaching the door, what do you do? You have accomplished the first operational mission; you have the controlled substance. Why, after seeing the cocaine, would you run and yell through the house? Practicing mission-driven policing calls for flexibility and a paradigm shift. You have the dope, so why not shift into a deliberate search or hold and call out mode, hopefully reducing risks and greatly increasing safety. If you are set on all warrant services being dynamic, you will needlessly endanger your people and those who were called to assist. This is totally irresponsible at best, and could be recklessly negligent. It also may be reviewed at a later time per the Fourth Amendment of the United States Constitution in a 42 United States Code §1983 action.

If the case can be made by getting a gun, why run? This brings about the discussion of taking only calculated and reasonable risks to recover property. We learned at Waco that guns are relatively difficult to destroy. Contain and call out is the preferred method for recovering property that is hard to destroy, even in a fire.

Dope, whether it is cocaine, methamphetamine or heroin, takes on a mystique of sorts in the eyes of some narcotics investigators. It ceases being what it really is; it morphs into property, evidence, and it becomes the most important thing on the shift. Is running through a house chasing a suspect past threat after threat a reasonable and calculated risk? Of course not. And if it is later determined that we “created the environment where deadly force is likely” and our actions (tactics) are not “objectively reasonable” (see Allen v. Muskomee and Graham v. Connor), we lose and the taxpayers write a check, or worse.

Decision-making by the team leader/commander should include the matter of risk assessment and risk management. The more times you are exposed to a potential risk (or create one), the greater the probability of a negative outcome. If the risk is properly assessed and risk is avoided by a fraction or a great deal, all the better.
• The target is barricaded against entry.
• There is reason to believe the suspect(s) is armed and is willing to use the weapon against the officers serving the search warrant.
• The search warrant is a no-knock warrant.
• The investigation reveals the suspect(s) to have violent propensities.

Do officers obtaining search warrants ever have information that:
• The location to be searched contains suspects who have a high probability to resist arrest?
• There is not sufficient information to even so much as use conjecture to determine if there is a probability for resistance?
• The location to be searched is barricaded, fortified or has burglar bars?
• The suspect is armed and the suspect will use the weapon against officers?

Dynamic entry today
The National Tactical Officers Association (NTOA) is now the largest tactical training organization in the United States and is frequently requested to testify before Congress regarding tactics. In fact, NTOA played an integral role following Waco in suggesting policy for BATF.

While there are always exceptions, the NTOA has taken the position that dynamic and crisis entry techniques are usually reserved for rescuing human life in peril. The association teaches that controlled movement (if entry is indeed made) is generally supported during a warrant service to lessen the risks, enhance officer and citizen safety and to decrease the number of officer-involved shootings. Please note this philosophy is nothing new for the NTOA, which has consistently instructed varying methods of entry and tactics for more than two decades. The International Association of Chiefs of Police has adopted a similar methodology and philosophy.

When you are moving fast (dynamically), you get into trouble by not seeing what is actually taking place. You may see something, but will have difficulty in determining what that something really is. Without going into a long dissertation on the subject, going fast increases the likelihood of mistakes.

Thus: The two largest tactical training entities in the country agree that dynamic entry is reserved almost exclusively for saving human lives, not recovering narcotics or property.

In United States v. Stewart 861 F.2d581 (10th. Cir. 1989) the Court said, “The discretion left to executing (officers) is not without limit, and actions taken during the service of the search warrant must be within statutory and Constitutional limitations.”

Who is going to help decide if the execution “met standards”? Experts in the field and organizations like the NTOA and the IACP. Another case opined, “Expert testimony may be admissible against the department for failure to conform with the standard of care (Graham v. Connor) in the law enforcement community if you do something ….” And just who establishes the proper standards in this area in the country? Organizations just like the NTOA.

As a matter of practice, dynamic entry for drugs is not supported by the standards currently in existence today from any reputable training entity in the United States. That alone should make most arguments for frequent dynamic warrant entry moot.

Consider the criminal prosecution involving United States v. Johnny Ray Basham. (United States District Court for the Northern District of Oklahoma, Case Number 00-CR-107-K). In this case, the defense attorney filed a motion to suppress evidence in great part because of the “military-like” and “aggressive tactics” he contended were used during the search warrant. The court conducted most of the questioning during the suppression hearing.

The warrant service had been videotaped by a television station. Introduction of the tape and the testimony offered were pivotal in the defense motion being completely overruled. The tape showed a very orderly, methodical and slow deployment. It depicted officers conducting themselves as consummate professionals. The front window was ported and a diversionary device was introduced into the structure.

Under questioning by U.S. District Court Judge Kern, one of the team leaders was asked about uniforms, training, weapons, the armored vehicle, diversionary devices and various ways that a search warrant can be served. In the end, Judge Kern felt the tactics were legal, objectively reasonable and in keeping with the law. One can only wonder if the evidence would have been suppressed had the team executed the warrant by knocking down the door and running in, as is far too often depicted on television.

Several years ago a SWAT sergeant in California shot and killed a member of his entry team. The incident resulted in civil litigation (Jensen v. Graham, Ninth Cir.). Examined during the course of litigation were training, speed of execution, diversionary devices and supervision. To make a long story short, all of the aforementioned were found to be contributory, resulting in gross negligence.
In a Tenth Circuit case filed October 19, 2001, styled Holland v. Harrington, 268 F.3d 1179 (Tenth Cir., 2001), the court ruled excessive force claims may be supported by the tactics used to serve a search warrant, perhaps not by the particular tactic viewed alone, but under the totality of the circumstances test.

In Medina v. Gram, the Tenth Circuit recently reaffirmed that the “totality of the circumstances” surrounding a seizure embraces conduct “immediately connected with the seizure,” such as police conduct “arguably creating the need for force” where excessive force has been alleged (252 F.3d at 1132; accord, Bella v. Chamberlin, 24 F.3d 1251, 1256, Tenth Cir. 1994) The Court stated, “Obviously, events immediately connected with the actual seizure are taken into account in determining whether the seizure is reasonable.”

The Tenth Circuit went on in Holland to say the decision to make a dynamic entry into a residence constitutes conduct “immediately connected” with the seizure because it determines the degree of force initially applied in effecting the seizure itself. If, as Garner instructs, “it is plain that reasonableness depends on not only when the seizure is made, but also how it is carried out…ordering them (deputies) to conduct the dynamic entry of a private home does not exempt their conduct from the Fourth Amendment standards of reasonableness.”

The court also wrote in the Holland opinion, “If anything, the special circumstances and greater risks that warrant dynamic entry by a SWAT team call for more discipline, control, mindfulness, and restraint on the part of law enforcement, not less. SWAT officers are specially trained and equipped to deal with a variety of difficult situations, including those requiring a swift and overwhelming show of force. At all times, SWAT officers no less than others…must keep it clearly in mind that we are not at war with our own people.”

Approximately two years ago a legal search engine revealed that Holland had been cited sixteen times. A recent search of the source revealed the case has been cited to in 100 different cases as of March 15, 2009.

A legal database was recently queried for recent decisions regarding “dynamic entry.” That query resulted in 74 cases being identified on 1,040 pages of text. Rest assured, the courts are looking at special weapons team tactics.

**Reaction time and accuracy**

This area must be discussed as part of the overview of dynamic versus controlled entry. Reaction time involves three components: your eyes, your brain and the physical reaction to the stimulus.

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Regarding accuracy, a shot that is misaimed by 1/8 of an inch will miss the intended point of impact by 1 inch at 5 feet, 5 inches at 25 feet and 10 inches at 50 feet. You move only as fast as you can accurately place rounds.

**Conclusion**

Today, dynamic tactics to serve search warrants and structures are not used by very many law enforcement agencies, including the Los Angeles County Sheriff’s Department’s Special Enforcement Bureau, Fort Collins (Colo.) PD, Dayton (Ohio) PD, and the Bureau of Alcohol, Tobacco, Firearms and Explosives Special Response Team, to name a few.

This writing more than supports the position that search warrants should usually not be executed by utilizing tactics that are reserved for saving human life. The NTOA does not recommend using dynamic tactics for the sole purpose of the recovery of property. An analysis of police shootings clearly shows that these tactics are oftentimes contributory to increasing danger and casualties.

Using improper tactics could possibly result in civil prosecution against the law enforcement officer(s), supervisors, agency executives, the agency and the government. Perhaps the most compelling reason, though, is the preservation of life. Things have changed, and no doubt will continue to evolve. Tactical officers must stay abreast of changes in tactics, and philosophy as related to law enforcement and the law.

Tactical decision-making is based on the law, policy, ethics and training. Life priorities must always be taken into consideration. Additionally, scientific research by entities such as the Force Science Research Institute should be factored into what law enforcement officers are and are not capable of in the area of reaction time.

The National Tactical Officers Association recognizes that, on some rare occasions, the tactic of dynamic entry may be acceptable. The NTOA is in no way attempting to extirpate the tool of dynamic entry from the tactical community. However, in the past, dynamic entry has unquestionably been incorrectly utilized when much safer execution options should have been used.  

**Editor’s note:** NTOA’s General Counsel, Scott Wood, has written an article on the impact of tactics on evaluation of use-of-force under the “totality of the circumstances,” which appears in our Legal Department on page 96 of this issue.