

Meeting Notes by Kathy Lee  
PRC Subcommittee on Warrant Service Policy  
Feb. 11, 2021  
Via Zoom

Meeting called to order around 11:05 a.m.

Present:

Subcommittee members: Comms. Ramsey (Chair) [IR], Calavita [KC], Chang [MC], public member Saginor [KS].

Absent: Comm. Hans Moore

BPD representatives: Lieutenants Montgomery, Turner, and Lindenau

PRC staff: Kathy Lee

Guest speakers: Prof. David Sklansky, Stanford Law School; Prof. Seth Stoughton, Univ. of South Carolina Law School

Prof. Sklansky:

Recommend recent report from Council on Criminal Justice's (CCJ) Task Force on Policing, available online [ed. note: also referenced in Prof. Stoughton's email and distributed with Feb. 22 Subcommittee agenda packet].

In general: there's an emerging, well-founded consensus that no-knock warrants should be banned or severely restricted because of high potential of loss of life, lopsided racial impact and very rarely have a legitimate purpose. This is one of the recommendations of the CCJ Task Force. Also supported by limited statistics on use.

1) One of most telling sets of data, from NY Times: surprise entries by SWAT teams over 6 years resulted in deaths of 81 civilians and 13 law enforcement officers. Doesn't include deaths resulting from no-knock entry by non-SWAT team members.

2) Should acknowledge danger associated with execution of warrants. CCJ distinguishes between emergency entrance v. question of whether warrants should authorize no-knock entry. When there's time to ask for warrant, rarely is there justification to enter without knocking.

3) Increasing # of jurisdictions banning or severely restricting no-knock warrants. Oregon bans, Florida practically bans, Utah bans when solely based on suspicion of drug possession. Bills or ordinances pending in 22 states and 20 cities to restrict or ban. 15 cities incl. Orlando, Louisville, Santa Fe and Indianapolis already ban.

4) A quick-knock search (knocking but not leaving much time for response) often not much better than no-knock search, especially when occurs at night..

5) Transparency critical. CCJ recommends that police depts. regularly publish individualized info and summary data on warrant requests, warrants served, and the outcome.

Comments on BPD policy: (preface -- BPD is not average PD; some standards higher than in many other areas of country. And may be things about BPD he's unaware of that could make his suggestions or impressions incorrect.)

-- Like fact that BPD severely restricts use of no-knock warrants

-- Like threat assessment

-- Some problems related to knock that might be addressed more explicitly. 1. Should there be a policy about quick-knock; how long to wait. 2. Night entrance. Last meeting Lt.

Montgomery guesstimated about 30% night service. CCJ suggests minimizing night service. (Lt. Montgomery: most are really early a.m. 5 or 6 am, not middle of the night.) So, question is whether want to codify avoiding night entry.

-- Valuable to publish data about warrant requests and service if don't already do so.

-- Federal Warrants reviewed by prosecutors. Harder at local level due to volume. Make sense in some cases to include in policy, running warrant by DA's office of City Attorney's office.

#### Prof. Stoughton:

Prof. Sklansky covered many of his points.

No-knock or quick-knock Warrants helps to think of them as dynamite. Highly dangerous and appropriate in certain situations. So figure out when risk justified – who gets to use dynamite and how. No-knock/quick-knock inherently dangerous. Echo some sentiments from prior meeting. Designed to capitalize on confusion: swiftly overwhelm occupant's ability to react and mount defense. Problem is people don't realize it's officers serving warrant. Police tactics as whole typically designed to avoid putting officers in position where have to make split second decision. Sometimes situation demands it, but goal of tactics to expand the amount of time to assess. No-knock tactics deprive officers of that time.

So need to think carefully about when no-knock or quick entry appropriate. Look at what underlying crimes are – drug crimes? Violent crimes? Look at who offenders are or what properties are. Residential or business. Part of assessing how we're doing so far is data. Agree with Sklansky need accurate data re what agency doing to assess how to continue operating.

Second, relieved to see BPD service of no-knock warrants limited to SRT. Properly trained and equipped SRT team significantly better trigger discipline and perform better in time-compressed situations than street officers or narcotics squad without specialized training.

Diff. between restricting/eliminating warrants and restricting or eliminating no-knock entry. Even warrant doesn't permit no-knock, if situation justifies, officers have constitutional authority to enter. Cutting back on no-knock warrants doesn't deprive officers of essential tool. Agency is free to go beyond constitutional requirements.

Re BPD Threat Assessment form: at least a short narrative section rather than just checklist helpful. Brief justification for which box checked and why. May be useful to add not just risk to officers but risk to others in the property, like dogs, other pets; children; vulnerable people, like those with autism. Lots of anecdotes and war stories in many agencies (in general, not BPD); make sure factors looking at as creating risk or threats are evidence-based and not gut feelings or hunches e.g., person on probation or parole. Also helpful to specify the source and/or time and date of certain info.

Q to Lt. Montgomery re 30% night warrants: search or arrest? A: mostly both.

Data: if don't track relevant info, can't assess how we're doing. Don't know what BPD's data-tracking is, but recommend centralizing or publishing in, say, annual review. Can help agency answer specific Qs, such as: are we serving warrants in what can be perceived as racially disparate way; are warrants well-calibrated/proportional to population; are all high risk warrants or early a.m. warrants being served in one neighborhood or high-minority areas. Data has limitations as well. Agency should be

engaged in dialogue with public about what's happening and why. Part of ongoing public relationship and trust-building.

### Questions

KC to BPD: what is BPD practice on reporting data? Lt. Montgomery – log operational search warrant and collect info about who arrested, charged, etc. as a way of logging work. SRT also logs its operations. Log outcomes as well. When make arrest, announce to public arrests that have been made. KC: so, logged but not aggregated or analyzed? A: correct.

IR: RIPA requirements for collecting data related to searches? Lt. Montgomery - Searches of individuals in a bike, car, or pedestrian stop, but not service of search Warrants. RIPA focused on detentions

KS: Have attended many meetings where justifications based on actual incidents but other times maybe stretched, and not usually with data. . . .

MC: Re data tracking, what is frequency of collecting and publishing? Lt. Montgomery: Do discuss crimefighting during annual crime report but told more anecdotally, not as data download or statistical analysis. MC :possible to do on a dashboard, on an annual basis? Lt. Montgomery: can look into it. Do track internally. Re: threat assessment form – appears flat but designed to drive investigation into threat and risk factors and highlight many possible things; it's a trigger for consultation with SRT to hash everything out, like, are there children, pets in the house. SRT will say if high risk they will serve. Absolutely focused on safety of everyone. Even if SRT not triggered, do check on occupants. Every plan includes how to serve safely.

KS: On open portal site can see arrests for prior 30 days. How to access older data? Lt. Montgomery: don't know. BPD custodian of records may know.

KC to Prof. Stoughton: is there data on no-knock entries? Not that he's aware of. Some site-specific studies. KC: Ballpark estimate on frequency of no-knock, warrantless entries? Not every day but not unusual. Distinguish bt. warrantless entry and quick/dynamic entry for community caretaking or emergency aid. Often very slow and deliberate, and officers use different tactics than dynamic entries, so not necessarily same risks.

KC to Lt. Montgomery: Occasions where you have warrant but exigency requires entry without knocking? Lt. Montgomery: Yes, e.g., they run out of the house, but rare. And not something they track; would potentially be in police report. Never plan for quick entry. Typically knock and make entry. High-risk service is opposite of dynamic entry. Bullhorns, cell phones to get people out. Robots with video camera. Even if low risk do deliberate clears.

MC: important for transparency purposes to capture this data – possible to have on a dashboard? Sounds like exigencies aren't captured. Could they be broken out easily in electronic data-gathering system. Lt. Montgomery: possible but challenges getting info on dashboard. Can't commit – a workload issue. Challenge to keep up with thirst for data. Important that people understand how things work and how they do it. Snapshot more manageable and feasible; rolling data more challenging. Should focus on what are concerns and best way to address them.

Prof. Stoughton: BPD's contain and call out is absolutely best practice. Many other agencies still serving dynamic. Make sure data collection isn't gratuitous; make sure you know what you're asking for and why.

KS: BPD's draft policy re no-knock warrants specifies search warrants, so no-knock arrest warrant doesn't require Chief approval? Lt. Montgomery: no intention to draw a distinction; should refer to any forcible entry into residence.

Prof. Sklansky: no-knock should be banned or restricted in general and apply to search or arrest warrants. Prof. Stoughton: agreed. Also potential for perverse incentives. Arrest warrant allows entry into home to arrest individual - gives officers access to home and can seize things they see, or basis to obtain search warrant. If call out, suspect comes out and officers can't go in. IR: so, policy recommendation? Prof. Stoughton: entering homes, even if slow, is risky. If call out possible, typically safer. Usually difficult for officers to control the inside of a home.

IR: BPD hasn't served no-knock warrant in past 3 decades. Struggling with, haven't used in 30 years and haven't articulated situation when no-knock needs to be used where exigency exception applies. Prof. Stoughton: can imagine situations where want officers to go in quickly and get control. Very rare – use in highly dangerous situation where vulnerable occupants. But don't need warrant to say no-knock. Can get arrest warrant and based on tactical realities and if dangerous or futile, officers don't have to knock. Don't need no-knock warrant even if going to serve without knocking.

Prof. Sklansky agrees but that might be argument for leaving open possibility of severe restrictions on no-knock warrants. More people have cameras at front door, making knocking pointless. An argument for allowing no-knock warrant is, if don't allow, you're saying if can go in without knocking then don't need warrant. Generally, if police not going to knocking, better to have written the reasons for that. But an argument for process where officers who want to no-knock entry can get formal approval, if there's time.

Lt. Montgomery: Rare scenario: barricaded hostage situation where someone inside vulnerable, and surreptitious entry required; would seek search warrant if time, and night warrant. So makes sense that Chief should okay and judge approve.

KS confused. Have come around to imagining circumstances rather than saying we have evidence of how this is to work out. Lt. Montgomery: need to understand data v. real stories. In hostage situations, not in control; confronting chaos. In those situations, data not informative. Need to understand what trying to confront. Concern is taking the tool away. If take away too, might run into that scenario. Still trying to account for everyone's safely. Like the Chief's language.

Next meeting: hear from more experts. Comm. Ramsey hasn't heard back from Orland. Ms. Lee will re-contact Profs. Harmon and Lopez. Ms. Saginor will contact Radley Balko.,

Meeting adjourned at 12:45 p.m.